

**THE ROLE OF POLICIES AND REGULATIONS IN EXPANDING LOCAL  
PROCUREMENT IN THE MINING INDUSTRY IN SUB-SAHARAN AFRICA**

by

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## **Abstract**

The aim of this research is to study the role of policies and regulations in expanding local procurement as a socio-economic development tool in two countries of Sub-Saharan Africa, namely South Africa, which has a strong and well-structured regulatory framework and Namibia, which has a weak one. The concept of local procurement has become very relevant, mostly in resource-rich countries where a strong mining sector represents an important part of the national economy. Whereas governments perceive local procurement as a poverty-reduction tool and as a medium to correct previous inequalities by enabling economic development, private industry sees it from the perspective of securing its social license to operate, thus running smoothly through their life cycle with a reduced likelihood of conflicts with regional stakeholders.

During the course of this research, social, economic, and political indicators were analyzed, legal frameworks were compared and contrasted, interviews were carried out, information from the interviews was examined using data analysis software to help find main themes and patterns among the interviews with the participants, and finally a discussion was carried out to address both, the question and the research objectives of this thesis. The research included a historical document review and field work in both countries.

In conclusion, this study finds that policies and regulations play a paramount role in expanding local procurement in both countries. Furthermore, for local procurement to support long term economic growth; public, private and advocacy stakeholders need to continuously engage through reviewing their policies and regulations ensuring their legal framework is inclusive and its goals and objectives are aligned to the goals and objectives of the host country.

## **Preface**

I Mario David Ramirez H., am responsible for the design, data collection, and writing process of this thesis. The interviews, surveys, analysis, and interpretation of the collected data were also completed by me.

Since interviews and surveys were conducted as a data collection method, this study complies with the requirements of the UBC Research Ethics Board under Certificate of Approval number H16-00654.

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## List of Abbreviations

BEE	Black Economic empowerment
BBBEE	Broad Based Black Economic Empowerment program
BBSEE	Broad-Based Socio-Economic Empowerment
CIA	Central Intelligence Agency
CIRDI	Canadian International Resources and Development Institute
COM	Chamber of Mines
CPIA	Country Policy and Institutional Assessment
DMR	Department of Mineral Resources
DTI	Department of Trade and Industry
FDI	Foreign direct investment
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GPA	Agreement on Government Procurement
HDSA	Historically Disadvantaged South Africans
ICMM	International Council on Mining and Metals
ICTSD	International Centre for Trade and Sustainable Development
IFC	International Finance Corporation
LCRs	Local content requirements
LP	Local procurement
MDB	Mineral Development Branch
MIGDETT	Mining Industry Growth Development and Employment Task Team
MPRDA	Mineral and Petroleum Resources Development
MSV	Mining Shared Value
NEDLAC	National Economic Development and Labour Council
NEEEF	New Equitable Economic Empowerment Framework
OGM	Oil, Gas and Mining
SADC	Southern African Development Community
SLO	Social License to Operate
SME	Small and Medium Enterprises

TRIMS	Trade-Related Investment Measures
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
WTO	World Trade Organization
WB	World Bank

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To Marisol

## Chapter 1: Introduction

Africa is the second largest continent on the planet and possesses one of the richest endowments of natural resources. It is precisely these abundant reserves of natural resources that have driven great sums of foreign investment into this continent, especially to the Sub-Saharan region. Large corporations have found it lucrative to invest in the development of valuable minerals such as gold, diamonds, and bauxite as well as commodities like copper, iron ore, uranium, chromite, gas, and timber. As is the case with many other developing countries throughout the world (e.g. in Latin America), Sub-Saharan African countries should be among the wealthiest countries on the globe, given their abundance in natural resources. However, some of the roots of Sub-Saharan Africa's stagnation, when compared to other worldwide economies include its history of colonization, corruption, armed conflicts, and cultural differences, as well as a variety of other reasons that are not within the scope of this research.

Foreign mining companies working in Africa provide great opportunities for African economic development. Ovadia (2014) suggests that rents, royalties and taxes are not the only contributions from resource extraction. He argues that the benefits of local procurement in terms of the capital retained within the local economy can even be larger than the royalties and taxes from the extraction of a particular resource (Ovadia, 2014).

Local procurement (LP) initiatives have been applied by governments around the world to foster economic growth and development. As an example, according to the success of East Asia, Africa Progress Panel (2013) states the following regarding local procurement:

The history of successful economic development in East Asia was, to a large degree, built on long-term strategies to build value-added industries. Governments used a range of measures – subsidized credit, local content programmes, tax breaks and temporary protection – to strengthen the competitive position of national firms. Critical to the success of these measures (and to the failure of comparable programmes in Africa) was the



application of strict guidelines requiring firms to become competitive in local and, eventually, international markets. (p. 84)

Although, Africa Progress Panel (2013) makes remarks on unsuccessful past efforts at using local suppliers into the mining value chain as a medium through which to generate progress, it asserts that the current demand for Sub-Saharan Africa's natural resources puts these governments in a stronger negotiating position (United Nations, 2013). The report supports the idea that African governments, now more than ever, have the potential to dictate the terms of engagement. However, after an examination of more recent documents on this topic, the ambiguity inherent in the regulatory frameworks used by most governments in the region becomes evident. Africa Practice (2014), suggests that:

Due to the existence of inadequate and inappropriate regulatory frameworks, companies respond with caution and often choose a path of avoidance rather than compliance, giving as a result a complex and difficult local content landscape across the continent, which is difficult to navigate. (p. 1)

Given this situation, policy makers need to understand that although local content is a powerful tool that can generate employment, economic diversification, and economic growth, it cannot be forced within a setting where the drivers are not present. If a country does not have the competitive advantage nor the capacity to develop full local content, it is highly probable that efforts to deploy local content practices will fail (Africa Practice, 2014).

A great deal of research and literature has been compiled on the topic of local procurement including case studies, national reports, international agency reports, guidelines, studies etc. Despite this plethora of available information, African governments have not yet been convinced to unite, or alternatively to work individually, to create regulatory frameworks that would help take full advantage of local procurement strategies.

Having a clear understanding of basic definitions, such as; local, historically disadvantaged, procurement, and other terms, in the context of local procurement can provide the right approach to regulatory frameworks and strategies for policy makers and procurement personnel alike. However, if basic definitions are not clear and commonly understood by all stakeholders, companies will find it difficult to comply with the regulatory frameworks, and at the same time, governments will have a difficult time enforcing their own regulatory frameworks.

Therefore, this thesis examines the role of policies and regulations in expanding local procurement in the mining industry in two countries of Sub-Saharan Africa, namely South Africa and Namibia.

## **1.1 Background**

This research started as an initiative of Mining Shared Value venture of Engineers Without Borders Canada, in partnership with the Canadian International Resource and Development Institute (CIRDI), and the assistance of UBC Norman B. Keevil Institute of Mining Engineering. The project originated out of the increasing debate about the role that policies and regulations in Sub-Saharan countries play in expanding local procurement initiatives in the mining industry.

This thesis examines the local procurement regulatory framework of two Sub-Saharan countries, one with a strong and structured regulatory framework and the other with a weak or nonexistent framework. After a careful analysis of all Sub-Saharan countries South Africa was selected as the primary country containing a well-structured and strong legislation, and Namibia was selected as the control country, which presents a weak regulatory framework with respect to mining-related procurement. The two countries are compared to understand how both approaches affect the mining industry and conclusions and recommendations are drawn at the end of the study.

## **1.2 Thesis Question and Objectives**

The overarching question in this research study is:

Are policies and regulations a major factor in expanding local procurement in Sub-Saharan mining industry?

Based on this overarching question the following four objectives were formulated:

- Objective 1 – Define and implement a detailed approach to determine the best two countries to be evaluated.
- Objective 2 - Develop an understanding of the local procurement regulatory framework in South Africa and Namibia.
- Objective 3 - Gather information regarding the design, effectiveness, enforcement and expectations of local procurement regulatory frameworks in South Africa and Namibia
- Objective 4 - Draw conclusions from the regulatory frameworks approach used in the countries researched during this study.

### **1.3 Thesis Outline**

This thesis is organized into 6 chapters, as follows:

Chapter 1 – Presents the introduction, the case study background information, the research objectives and the thesis outline.

Chapter 2 – Provides a literature review, and discusses the concept of local procurement within the mining sector.

Chapter 3 – Introduces the methodology and the research process. This chapter provides a thorough discussion concerning the methodological approach used in the study.

Chapter 4 – Presents the results of this study. Additionally, the themes resulted from the interviews are presented and illustrated with quotes from the participants.

Chapter 5 – Provides a general discussion of this study, and discusses the findings through answering the question and objectives of this research.

Chapter 6 – Delivers the conclusions of the study, and presents recommendations for future work.

Finally, a bibliography is provided and appendices containing detail information regarding collected data for the analysis of this study complete the thesis.

## **Chapter 2: Literature Review**

There is extensive information on local procurement in the literature. Therefore, in some of the topics the author developed further thoughts and concepts as a result of this extensive review that will be highlighted in different sections of this chapter.

### **2.1 Local Procurement (LP)**

#### **2.1.1 What is Local Procurement?**

Local procurement is considered an economic tool with the potential to drive growth and development to communities in areas where large industrial projects are developed, and where, more often than not, the large projects are run by large foreign companies.

As simple as it may appear, “local procurement” as a combined term, presents complex ideas that can be difficult to grasp unless their meaning is clearly and specifically outlined. Much debate has occurred with respect to the combined use of these two words. At this time then, both words, and their combined uses are discussed in a little more detail.

The Merriam Webster dictionary defines local as: “Characterized by or relating to position in space: having a definite spatial form or location” (Merriam Webster Dictionary, 2016a), and procurement as: “the purchasing, leasing, renting, or selling of materials, services, equipment, or construction”(Merriam Webster Dictionary, 2016b). Therefore, combining these two descriptions, we can arrive at a definition much like the following: local procurement is “the process of obtaining personnel, services, supplies, and equipment from local or indigenous sources” (Department of Defense, 2005).

Appendix A presents a general framework for defining the term “local” according to the needs and goals of a company (International Finance Corporation, 2011). This framework illustrates that the term local should be defined not only based on its

geographical location connotation, but also by its ownership, social representation, and size. These aspects are discussed in further detail in the following paragraphs.

Given the government and industry-wide focus on local procurement in recent years, it is becoming very important for policy-makers involved in the design, implementation, and enforcement of local procurement regulatory frameworks to create an open and transparent discussion among practitioners in academia, industry, and civil society, with respect to the appropriate definition of local procurement based on the country's needs, and expectations, as well as regarding how to make the best use of this economic tool (Thomas, 2015).

Furthermore, given the fact that each mining project is different, and that it is unlikely that one standardized definition will be appropriate for all cases, the definition presented below by Anglo American has been widely accepted in the mining industry as a common definition:

Local procurement refers to the purchasing of goods or services from a local supplier. Local includes host communities, indigenous and previously disadvantaged communities, as well as at provincial, national and regional levels where appropriate (Anglo American, 2012).

### **2.1.2 Additional Literature Definitions of Local Procurement**

The literature refers to local procurement in many different ways, including for instance, local content, local sourcing, and local supplier development (International Finance Corporation, 2011). The use of all these different terminologies make it challenging to gather information about the subject. The concept of procurement has existed since the beginning of trade history (Callender, 2007), and governments have pursued procurement as a leverage through which public administrators create jobs, and support the local economy. Nevertheless, in recent years, governments from resource-rich

countries have realized the potential local procurement, driven by the mining industry, presents as a transformational tool. Therefore, policy makers from these countries are shaping their policies and regulatory framework in order to take advantage of the potential benefits of local procurement (Tordo, S., Warner, M., Manzano, O., & Anouti, 2013). In the following, some of the other definitions used in the literature to address local procurement strategy are examined.

#### **2.1.2.1 Local Content**

Local content is another popular term used in the literature to refer to local procurement practices, and it is used interchangeably with local procurement (International Finance Corporation, 2011). The term local content in trade means that a product needs to have a certain percentage of local parts in order for it to be considered a local product in terms of origin (Stephenson, 2013). In the view of the author for example, for a car factory where local content requirements are specified by regulation, the company needs to show that a certain percentage of the parts that form the vehicle are manufactured (transformed) within the country of origin. However, although it is relatively easy to define local content with respect to manufacturing, when it comes to mining, the line gets blurry as there is no straight forward way of defining it. While there is little disagreement over the reasons that countries choose to encourage the use of local content, there is no agreed-upon definition of what the term “local” actually entails, nor is there a full consensus on the way in which “content” should be defined (Ramdoo, 2015). Again, as there is no universal definition of the concept, its application will vary in depth and scope depending on who defines it and through what lenses it is observed. In both instances, some countries and companies use the aid of additional words to specify their end objectives with respect to local procurement and local content (Milner, Reed, & Talerungsri, 2006). For instance, in terms of geographical location, the company Newmont in Ghana refers to “local local” businesses at those enterprises in the vicinity of mining projects (Svensson, Bocoum, & McMahon, 2012).

### **2.1.2.2 Local Sourcing**

The term local sourcing is one of several economic terms that refer to the process of purchasing goods and services locally (International Finance Corporation, 2011). Once again, the term “local,” as in its use in the term “local procurement,” is ambiguous and leaves a level of uncertainty with respect to its depth and scope (Tordo, et al., 2013).

### **2.1.2.3 Local Supplier Development**

The local supplier development approach goes hand-in-hand with the implementation of local procurement strategies. The objective of cultivating local suppliers is to develop the availability of local goods and services (Svensson, et al., 2012). Although local procurement is not the same as local supplier development, they both have the intention of establishing development in the region, and at the same time, opening opportunities for the growth and expansion of local businesses, where possible (Mehta, 2008).

## **2.2 Challenges to Implementing Local Procurement in a Country**

One of the major challenges faced by international corporations when working on implementing local procurement strategies to benefit local suppliers is, in the majority of cases, the absence of local supplier capacity (World Bank, 2015d). In many cases, countries may have a small and medium-sized business segment. However, these businesses usually do not have the required operational, safety, environmental, and technical standards to supply the project (International Finance Corporation, 2011). Local procurement training programs seek to bridge the gap between the standards of the contracting company and the existing capacities of small and medium-sized enterprises (SMEs) (International Finance Corporation, 2011). Even more so, in many developing countries, the manufacturing and service sectors are so scarce that it makes it almost impossible to supply key goods and services from within the country.



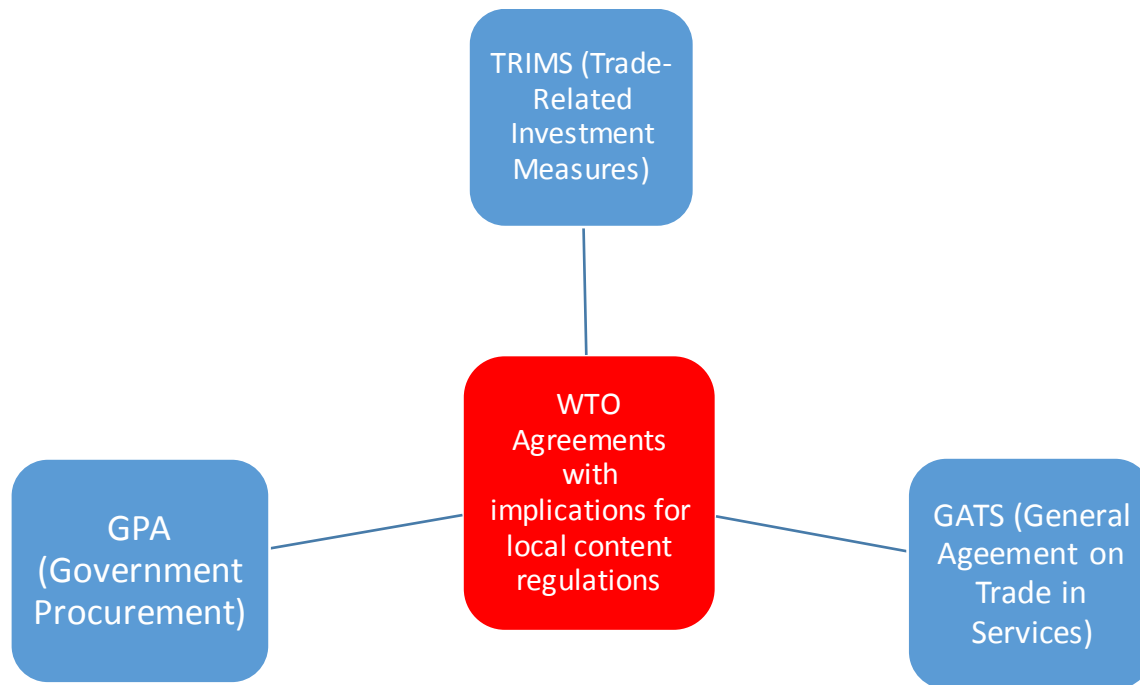
Another important factor affecting the effective implementation of local procurement and local suppliers' strategies is the absence of sound and well thought-out public policies and regulations (Tordo, et al., 2013). Many countries' emphasis is on developing local content policies that focus on local content level, rather than local content development. This short sight approach does not allow for the development of a "competitive, capable, and sustainable local skill and supply industry" (Tordo, et al., 2013 p.58).

## **2.3 Aspects Shaping the Way Local Procurement Policies and Regulations are Designed and Developed**

There are many aspects and variables to consider when setting up procurement strategies. Some critical points to consider are trade agreements, government regulatory frameworks, community expectations, and historically disadvantaged groups. The following paragraphs examine in more detail each of these aspects.

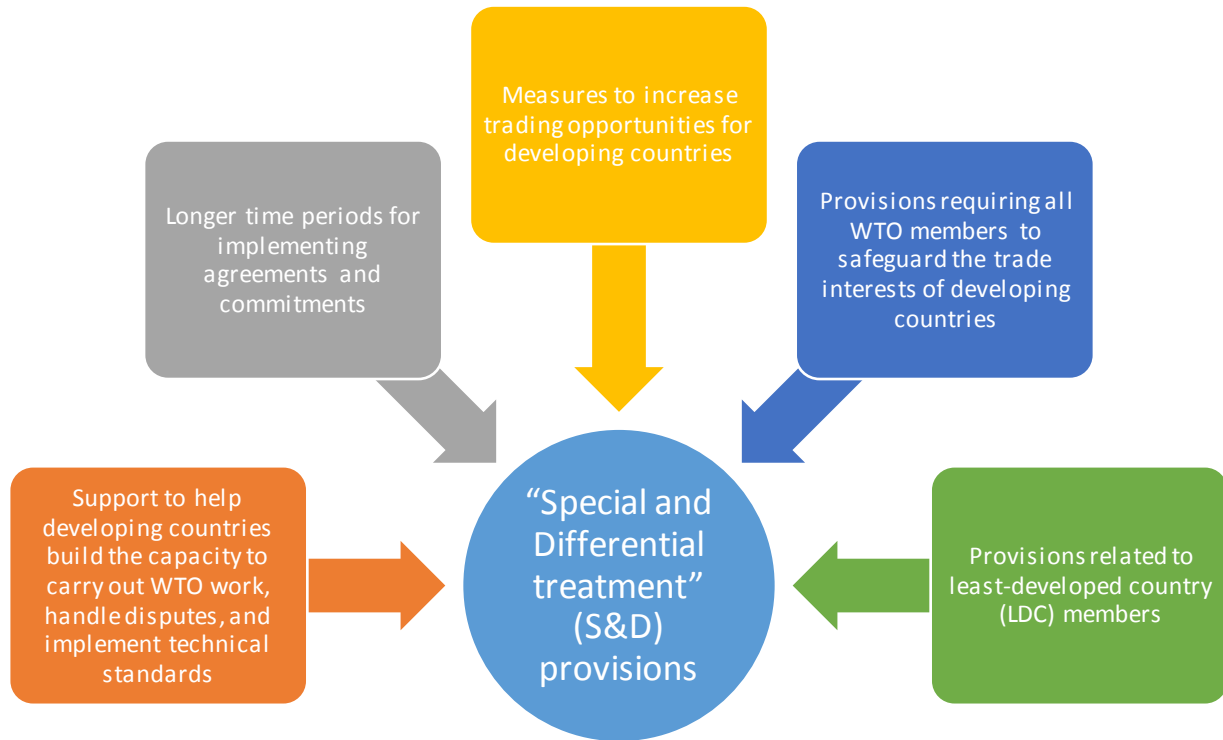
### **2.3.1 World Trade Organization (WTO)**

In developing the most appropriate policies, policy-makers need to understand the rules put forth by the World Trade Organization (WTO). WTO is the foremost global international organization that deals with rules of trade between nations. The agreements under WTO have a set of rules that need to be followed by its members in order to have an open competition among companies, whether these companies are of international or national origin. One of the objectives of the WTO is to eliminate protectionism. Warner (2011), describes in Figure 2.1 the three most relevant WTO agreements regarding local content.



**Figure 2.1. The Relevant Agreements Under WTO with Implications for Local Content Regulations**  
(After Warner, 2011).

Although agreements under WTO are very strict in terms of reducing or eliminating protectionism within industries and markets, they do make it possible for developing countries to use local content as a way of developing their industries and giving preference to their local (national) companies without breaching the WTO normative. The WTO has created the “Special and Differential Treatment Provisions.” through which developing countries receive special rights when it comes to implementing the WTO agreements, and at the same time it gives developed countries the ability to treat developing countries more favourably than other WTO members (World Trade Organization, 2013). Figure 2.2 below shows the provisions under the special and differential treatment.



**Figure 2.2. Special and Differential Treatment Provisions Applied to Developing and Least-Developed Countries (After World Trade Organization, 2013).**

Furthermore, Offset Transactions provide another option for use in Government Procurement Agreements under the WTO. These agreements are available to developing countries to help them receive preferences. However, these Offset Transactions need to be negotiated by countries at the time of their accession into the WTO (World Trade Organization, 2013). The TRIMs agreement under the WTO allows for transitional arrangements to maintain certain (protectionist) measures for a limited time following a country's entry into the WTO. The grace period is two years in the case of developed countries, five years for developing countries, and seven years for least-developed countries (Tordo, et al., 2013). Some instructions given to tenderers on local content from governments can be considered as offsets, and include the items in Table 2.1 that follows:



**Table 2.1. Instructions to Tenderers on Local Content that Could be Considered as Offsets.**

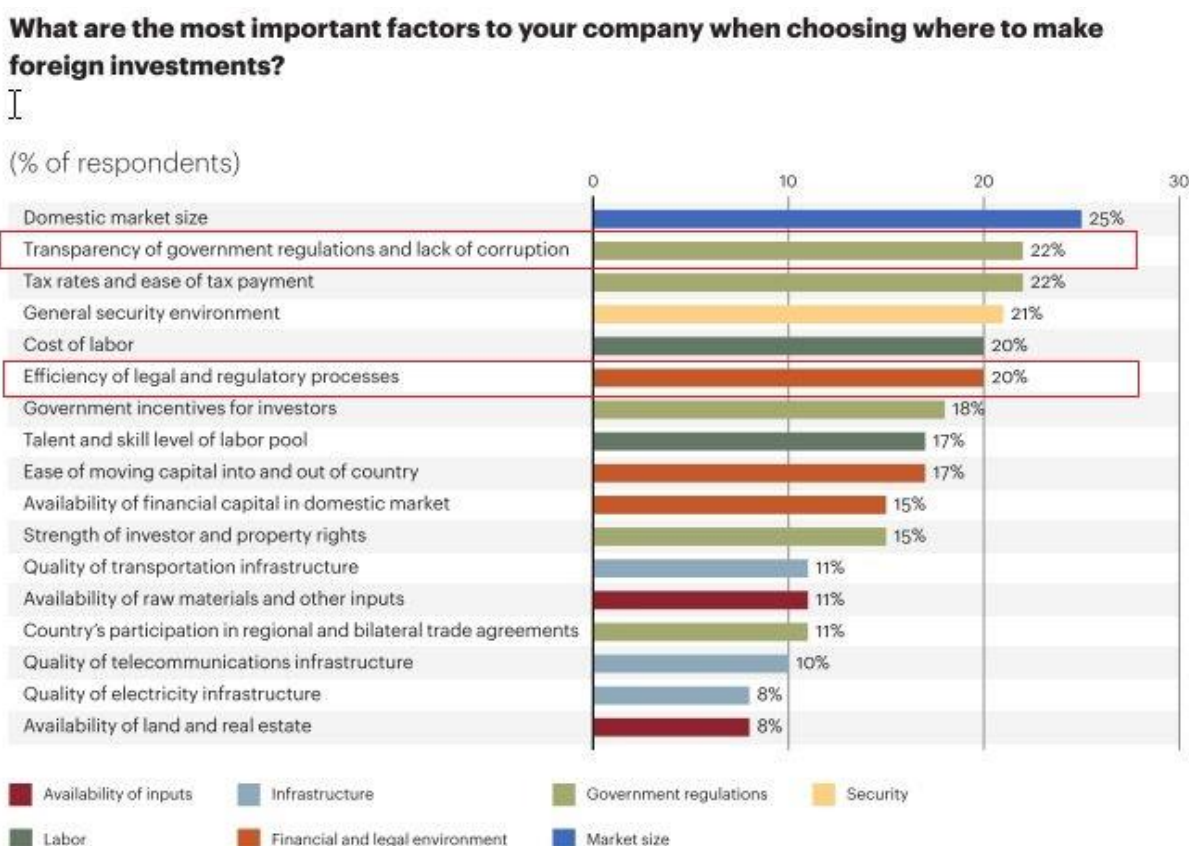
As indicated in the literature, there are clauses in existence within the WTO that provide opportunities for developing and least developed countries to accommodate their policies and regulations in accordance to WTO agreements without breaching the WTO normative.

### **2.3.2 Foreign Direct Investment (FDI)**

Foreign direct investment (FDI) is consider an effective channel through which to bring growth and development to nations (Sanchez-Robles & Bengoa-Calvo, 2002). The United Nations monitors FDI transactions around the globe and delivers yearly updates through its World Investment yearly report. The report provides information regarding how direct investment is distributed within countries and regions around the globe. The 2015 report shows a 40% increase in FDI (\$1.8 trillion) globally, which is the highest growth since the financial crisis of 2008 (United Nations, 2016). Since foreign direct investment is

regarded as an economic engine for development and growth, countries wishing to attract it need to comply with the prerequisites in order to earn access and take advantage of this type of investment. Kearney (2015) shares insights on 17 factors used by executives to decide where to place investments, and on the risks that are considered before making investments.

Figure 2.3 shows how legal frameworks account for some of the most important factors in making these investment decisions.



Note: Respondents selected three factors.

**Figure 2.3. Important Factors when Making Investment Decisions (Kearney, 2015).**

Upon examining Table 2.3, some conclusions can be drawn regarding the impact that regulatory environments play in the investment decisions made by company executives who invest in foreign markets. In the graph, the second and sixth factors deal with

transparency of government regulations and regulatory processes respectively, both of which clearly affect the everyday operations and ease of doing businesses in a country (Kearney, 2015). Therefore, transparency with respect to government regulations and regulatory processes will weigh heavily on decisions regarding investment practices.

Policies and regulations are of primary importance for countries that desire to pursue growth and development through FDI. In order for local procurement strategies to succeed, regulations need to be aligned to the long term development plans, programs, goals and objectives of the host country and society. In many instances, regulations do not meet a country's demands for sustainable development, and this in turn affects the way industries behave towards approaching their internal programs and projects. Poorly defined targets that are non-binding will be difficult to implement and enforce by authorities, thus allowing for margins of avoidance and ways around them. Sanchez-Robles & Bengoa-Calvo (2002) summarize in Table 2.2 some of the potential advantages of FDI to host countries that are worth noting due to their direct relationship to local procurement strategies.

Potential advantages of FDI on host countries
Facilitates the use and exploitation of local raw materials.
Introduces modern techniques of management (the so-called <i>learning by watching effect</i> )
Eases access to new technologies.
Foreign inflows allow financing current account deficits.
Finance flows in form of FDI do not generate repayment of principal and interests (Opposed to external debt).
Increases the stock of human capital via on-the-job training.

Potential advantages of FDI on host countries
<p>The local enterprises are able to learn by watching, if the economic framework is appropriate (Bhawati, 1994).</p> <p>Stimulates the investment in R&amp;D.</p>

**Table 2.2. Potential Advantages of Foreign Direct Investment on Host Countries. Adapted from (Sanchez-Robles & Bengoa-Calvo, 2002).**

### 2.3.3 Social License to Operate (SLO)

H.R.H. The Prince of Wales once said “no business can survive for long as an island of wealth in a sea of poverty.”<sup>1</sup> This quote suggests that a business has the immediate and intrinsic responsibility to engage with communities and other stakeholders in local development as a strategy for maintaining continuous operations throughout a project’s life cycle and beyond.

The term Social License to Operate (SLO) was coined in the 1990s by Canadian mining executive Jim Cooney (Prno, 2013) and it has been largely accepted and used consistently in the literature since it was introduced. As such, many writers now use it to describe the “social permission” needed by companies to engage in projects in a specific geographic area (Jenkins, Akhalkatsi, Roberts, & Gardiner, 2007).

By the same token, it is essential to note that SLO does not consist of a written document but rather it encompasses an intangible agreement between the stakeholders affected by a project. In the case of mining, these agreements constitute the acceptance, by the local

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<sup>1</sup> This quote was by Brew, Peter (2006) “The Role of Business in Society.” It was shared during a conference of the USAID-AED Community Investing in Zagreb, Croatia, on October, 19, 2006.

communities and other groups of interest, of the mining companies and their projects (Fraser Institute, 2012).

Above all, practitioners pursuing a SLO should keep in mind that it is a live and dynamic concept that is susceptible to changes within the social, economic, and political spheres. It should not be taken for granted. Stakeholders' perceptions change overtime, and so can the initial acceptance of a company and its projects (Fraser Institute, 2012).

Given the relevance of a SLO in the projects life cycle, policy makers must consider the communities' needs and expectations to design, and develop their local procurement regulatory framework.

#### **2.3.4 Previously Disadvantaged Groups**

The term previously disadvantaged groups has different synonyms, depending on the country including, historically disadvantaged South Africans (HDSA), historically disadvantaged individuals, and priority population groups. These terms refer to groups or individuals who, during Apartheid, did not have the right to vote and were discriminated against due to their race or origins (Booyens, 2006). For example, South Africa centers its policy and regulatory frameworks based on the Broad Based Socio-Economic Empowerment Program (BBSEE), which is a racially selective program. Namibia has similar policies through its New Equitable Economic Empowerment Framework (NEEEF). Nevertheless, NEEEF is still in the process of development, and further consultation by stakeholders is needed before the program is fully set in place ("More time needed on proposed NEEEF," 2016).

The definition of local procurement provided by Anglo American in the beginning of this study indicates that local procurement is the "purchase of goods or services from local suppliers. Local includes host communities, indigenous and previously disadvantaged groups" (Anglo American, 2010). A number of countries looking to benefit through local



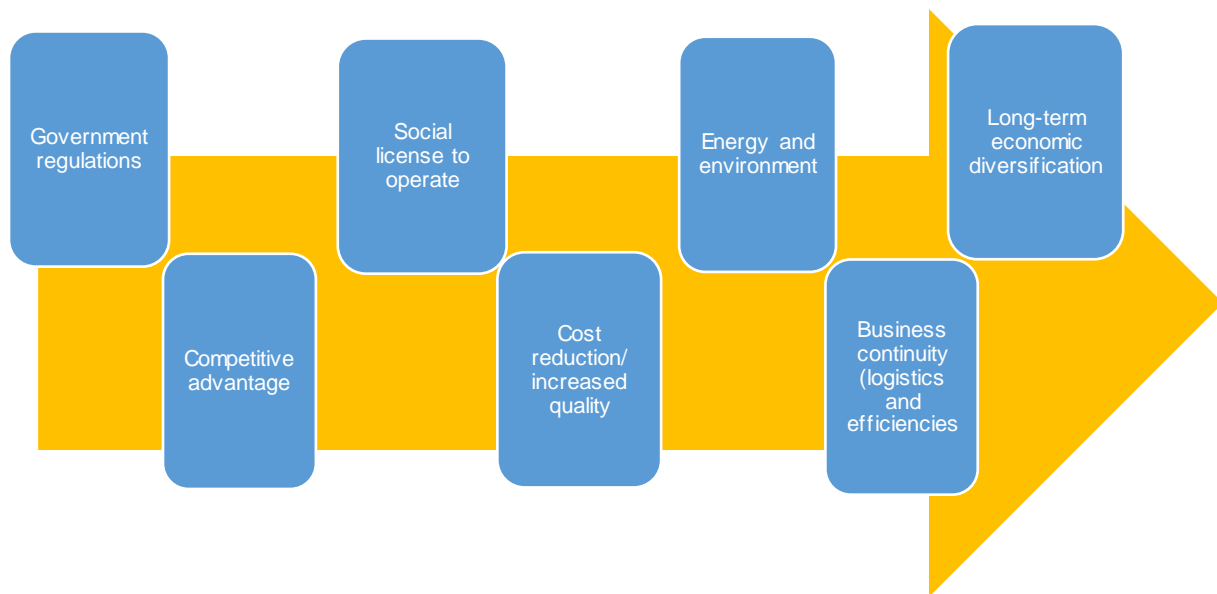
procurement practices concentrate on designing their regulatory frameworks including disadvantaged communities (The Department of Mineral Resources, 2010).

However, given that most extractive projects are located in remote areas, such communities do not have the capacity to provide goods and services that could create social and economic development within their areas, they lose out on possible opportunities, thus leaving them without any tangible benefits that typically result from local procurement activities (Buur, Therkildsen, Hansen, & Kjaer, 2013). Therefore, given this absence of supply capacity, companies proceed to look elsewhere for the procuring of both goods and services for their projects.

## **2.4 Industry Approach to Local Procurement**

In order to accommodate local procurement into the company's agenda, a company needs to have a broad understanding of the reasons for implementing LP policies into their strategies. There are several factors that influence the interest to participate in local procurement activities.

The International Finance Corporation (2011) suggests seven key factors or drivers that industry should consider when designing a local procurement strategy. Figure 2.4 presents these seven factors as follows:



**Figure 2.4. Key Business Drivers for Designing a Local Procurement Strategy. Adapted from International Finance Corporation (2011).**

Nevertheless, out of these seven drivers, the two seemingly relevant ones are; first, appropriate government regulations that are looking to improve the socio-economic impacts and contributions of foreign companies towards their citizens, and second, the need to significantly reduce social risk throughout the different stages of the project lifecycle (Hansen, Buur, Therkildsen & Kjær, 2014). This social risk reduction is attained through developing a positive SLO, which can further enhance the company's reputation and allow it increased access to additional reserves and ore bodies (Engineers Against Poverty, 2011).

Within a company's operations, those involved in materializing development projects such as local procurement and business diversification, are usually supply managers, CSR personnel, and human resources departments. Nevertheless, technical personnel are crucial in the supply chain, as they are the end users of the products, goods, and services, and will ultimately know if that which is being supplied fills the expectations for a job, or what alternative materials and services would satisfy project or equipment needs

(Engineers Against Poverty, 2011; The International Petroleum Industry Environmental Conservation Association, 2011). Some of the common goods and services provided by local suppliers in oil, gas and mining projects are presented in Table 2.3 below.

<b>General Services</b>	<ul style="list-style-type: none"> <li>■ Accommodation</li> <li>■ Catering</li> <li>■ Cleaning and laundry services</li> <li>■ Security</li> <li>■ Logistics and Warehousing</li> <li>■ Mailing and courier services</li> <li>■ Personnel agencies</li> </ul>	<ul style="list-style-type: none"> <li>■ Pest control</li> <li>■ Printing and photography</li> <li>■ Forestry and environmental services</li> <li>■ Translation services</li> <li>■ Transportation services</li> <li>■ Landscaping and gardening</li> <li>■ Basic professional services (legal and accounting)</li> </ul>
<b>Construction &amp; Trades</b>	<ul style="list-style-type: none"> <li>■ Small vehicle maintenance</li> <li>■ Low-voltage electrical maintenance</li> <li>■ Simple mechanical maintenance</li> <li>■ Civil works maintenance</li> <li>■ Air-conditioning maintenance</li> <li>■ Earthworks</li> <li>■ Painting and corrosion protection</li> </ul>	<ul style="list-style-type: none"> <li>■ Telecommunications and data systems</li> <li>■ Road marking &amp; signage</li> <li>■ Roofing and waterproofing</li> <li>■ Sewage, stormwater and drainage</li> <li>■ Carpeting and floor coverings</li> <li>■ Fencing and paving</li> <li>■ Waste recycling and management</li> </ul>
<b>Goods (Wholesale, Distribution, Manufacture)</b>	<ul style="list-style-type: none"> <li>■ Automotive parts</li> <li>■ Small motor vehicles</li> <li>■ Fuels, lubes and greases</li> <li>■ Cleaning supplies</li> <li>■ Food supplies</li> <li>■ Uniforms</li> </ul>	<ul style="list-style-type: none"> <li>■ Furniture and fixtures</li> <li>■ Laundry equipment</li> <li>■ Machined tools and spare parts</li> <li>■ Office equipment and stationery</li> <li>■ Appliances and electrical goods</li> <li>■ Construction supplies and hardware</li> </ul>

**Table 2.3. Potential Goods and Services for Local Supply in OGM Projects (Engineers Against Poverty, 2011).**

Table 2.3 shows the common types of local businesses that supply oil, gas and mining (OGM) projects in most developing countries. These types of businesses benefit significantly during the time a project is in place. However, very importantly, these types of businesses are highly dependent on current OGM projects, and have a high risk of suffering financially as the project reaches the end of operations. As such, the businesses will flourish and possibly grow during the operations of the project, especially during the production phase. However, they will see their participation fading away as the project advances towards its final stages. In contrast, Ovadia (2014) presents the example of

Angola's approach to local procurement, where the country looks to secure greater benefits from the extractive sector by coordinating investments in manufacturing, as well as other mechanisms, such as tax incentives, the use of local currency and the use of Angolan banks for financing.

Angola is setting up industrial hubs to manufacture products that were previously imported. Thus aiming to the development of the country's industry through investing in economic growth through business and economic diversification (Ovadia, 2014). This economic diversification will function to fundamentally develop other areas of the country's economy, demanding more knowledge and requiring improvements in technology, creating higher levels of employment, and the specialization of labor through training. The increase and diversification of industry can bring an array of other demands (social, economic, technological etc.) that will need to be addressed by government. These new "holes" in supply and demand are what Hirschman (1978) refers to as the theory of unbalanced growth. Within this system, given the investment in the strategic sectors of the economy, other sectors of the economy will automatically develop through what is known as the "linkages effect" (Hirschman, 1978).

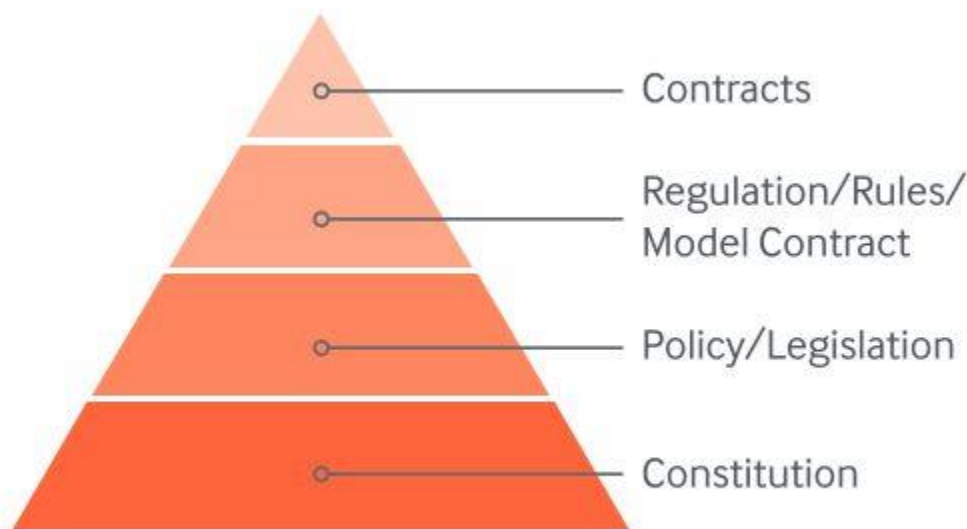
By focusing on the OGM industry, Angola has recently developed manufacturing industries that include fibre optics, high and low voltage cables, paints and varnishes, plastics, pipes, electrical equipment, irrigation materials, fittings, fencing and wire, foam mattresses, roofing tiles, and metallic structures (Ovadia, 2014).

## **2.5 Government Approach to Local Procurement**

Local procurement strategies are generally articulated through policy frameworks or codified in their related regulatory instruments such as; guiding principles, legislation, licensing agreements, contractual agreements, national development plans, policy statements, and country vision statements (Ramdoo, 2015).

The literature presents how international organizations such as the World Bank, the International Finance Corporation, the United Nations, and an array of Non-governmental organizations (NGOs) such as Engineers Against Poverty, the World Economic Forum, and the Natural Resource Governance Institute, among others, have contributed extensively regarding the role of policies and regulations that benefit the sustainable development of nations. Especially with respect to natural resources through local procurement mechanisms. Ovadia (2015) suggests that the effective development of local procurement policies and regulations can bring greater benefits to a country, even greater than the traditional taxes and royalties associated with extractive projects. Some countries have been able to improve their social and economic bases by using effective legal frameworks that not only motivate FDI, but also ensure that a greater percentage of benefits remain within the country.

The legal frameworks employed differ from country to country. Despite this, the Natural Resource Governance Institute (2015) presents a basic model of how a legal framework can be conceived (Figure 2.5).



**Figure 2.5. Legal Hierarchy (Natural Resource Governance Institute, 2015).**

As shown above the constitution rests at the bottom of the pyramid because it is a document with broad and general requirements. In general, a constitution provides the basic structure of the government and the rights and responsibilities of its citizens (Natural Resource Governance Institute, 2015). However, as the instruments move to the top of the hierarchy, they become more detailed and specific. It is very important though that the instruments are consistent along the legal framework, thus eliminating possible contradictions between the different levels.

Svensson et al. (2012) suggests that setting targets is one of the most important tasks to be accomplished by policy makers as policies and regulations are designed. Targets are vital to the success of local procurement strategies, and will set the ground for the success or failure of the implementation and enforcement for both industry and government alike.

Warner (2011) mentions that oil, gas and mining companies dedicate time to ensure that their tenders are weighed equally in order to eliminate any kind of explicit protection. This work of having clear and equitable rules is codified in concession agreements that then translate into agreed-upon tender procedures at the operational level (Tordo, et al., 2013). Ramdoo (2015) presents an example of how tender clauses within both the oil, gas and mining industries are similar, and will demand local enterprises to supply products and services that are suitable in terms of quality, performance and delivery to a company's project (Figure 2.6).

A typical clause on competitive procurement in Oil and Gas exploration and development:

Give preference to local contracts and locally manufactured materials and equipment so long as their performance, quality and time of delivery are competitive with international performance and prices.

A typical clause on competitive procurement in a mining agreement:

The company shall, when purchasing goods and services required with respect to mining operations, give first preference, at comparable quality, delivery schedule and price, to goods produced in [COUNTRY] and services provided by [COUNTRY] citizens or business, subject to technical acceptability and availability of the relevant goods and services in [COUNTRY].

**Figure 2.6. Common Clauses on Procurement from the OGM Sector. Adapted from (Warner, 2011).**

Therefore, any such supplier preference is circumscribed by the competitiveness of the local industry. For most developing countries, delivering to such high standards poses a great challenge as of the very beginning. Therefore, strong support and intervention on the part of industry will be required to guide local enterprises in achieving the required standards (Mining Shared Value, 2015).

As such, policy-makers, need to have a clear understanding of the procurement clauses that industries require from their tenders (in terms of quality, delivery, prices, etc.) in order to design internal laws, policies and regulations that will eventually translate into development.

## **2.6 Advantages and Disadvantages Related to Local Procurement**

### **2.6.1 Advantages Related to Local Procurement**

Over the past few years, local procurement has become an influential tool and strategy used by policy makers to maximize the benefits of the mining industry in their countries.

As a development driver, local procurement practices can help a nation improve its supply chain, ensure skills and technology transfer, help reduce unemployment, promote innovation, improve the acceptance of the mining sector in the region, reduce social risks related to projects, and promote entrepreneurship skills (Ramdoo, 2015). One of the major contributions related to, and expected from the mining sector is to apply local procurement strategies to build capacity in and around mines (International Institute for Environment and Development, 2002).

The author believes that well-developed policies and regulations have the potential to support the building of capacity in the country. Mining companies can better contribute to this capacity building if governments have appropriate legislation frameworks in place that aim at this objective. In order to achieve the potential benefits of local procurement, there must be coordination, planning, and support between government, industry, and civil society.

The increasing attention that is being given to extractive natural resources, especially in Sub-Saharan Africa, is driven by the vast mineral resource potential available in this area. Agencies such as the World Bank, International Finance Corporation, and the United Nations, in conjunction with think tanks and academia, have recognized the great opportunity resource-rich countries have to speed up their social and economic growth. Ovadia (2014) explains that the benefits of resource extraction are usually seen under the umbrella of taxes, royalties, and rents. However, local content policies represent an important second avenue through which to generate development from these resources. Ovadia (2014) attributes local procurement to be “the single most significant innovation in energy policy in the global south in recent decades.” As such, international agencies, such as those previously mentioned, have invested time and resources in developing useful literature to aid the governments of countries to structure and design suitable and effective legal frameworks for the natural resources industry, as well as for the mining



sector to design and apply comprehensive strategies to support development in the host countries.

Resource extraction industries have provided host countries with economic benefits such as royalties and taxes for many years. Despite this, in most of these countries, there has been little or no clear evidence of economic growth from these instruments. Therefore, the application of local procurement is perceived as a means through which to bring more explicit benefits to the citizens at large through backward, forward and sideways linkages along the value chain (Ovadia, 2015).

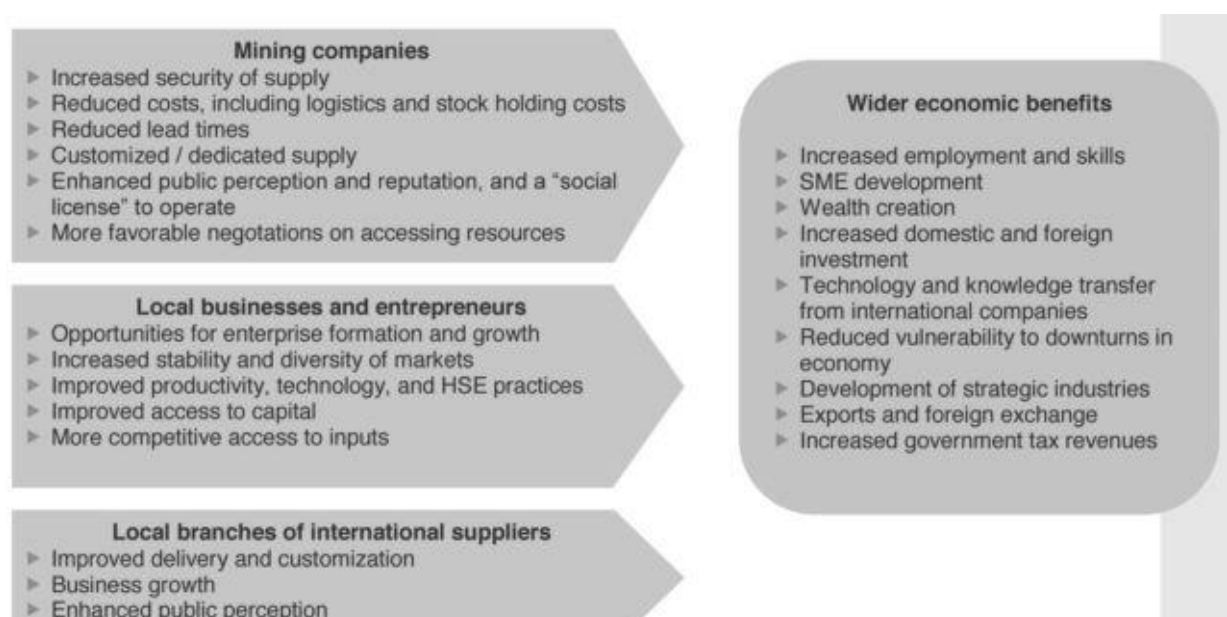
Svensson et al. (2012) argues that local procurement can bring a range of opportunities in diverse input categories such as: services, capital goods and construction materials, consumables and replacement parts, bulk services and infrastructure, and non-core goods. Table 2.4 presents some common inputs for each of the categories.

Category	Inputs
Services	Legal, regulatory, financial, and negotiation services. Purchasing, logistics, information systems, training, counselling, health and safety services. Also services that are core to the operations, such as: drilling, crushing, mining, sample analysis, laboratory testing, geoscientific surveying, and mapping, etc.
Capital goods and construction materials	Machinery for the mine site, processing plant, and tailings areas, like for instance: excavators, bulldozers, trucks, drills, crushers, grinders, concentrators, separators, ventilation equipment, conveyors, irrigation systems, cement, steel, etc.
Consumables and replacement parts	Explosives and accessories, chemicals, anchor bolts, valves and fittings, liners, tires, hydraulic systems, pneumatic systems, conveyor rolls, bearings, etc.
Bulk services and infrastructure	Electricity, telecommunications, waste management, transport infrastructure, water, etc.

Category	Inputs
Non-core goods	Uniforms, lamps, protective equipment, air-quality monitoring services, furniture, medicine, office supplies, etc.

**Table 2.4. Local Procurement Categories and Examples of Inputs.** Adapted from (Svensson et al., 2012).

In a study related to local procurement in West Africa conducted with the support of the World Bank, Svensson et al. (2012) argues that while there are costs associated to developing a local supply base, there are also potential benefits and gains for local businesses, mining companies, and local communities from this approach. Figure 2.7 below presents these potential benefits.



**Figure 2.7. Potential Benefits from Local Procurement** (Svensson et al., 2012).

## 2.6.2 Disadvantages Related to Local Procurement

Local content requirements (LCRs) are used as a protective device through which to provide jobs at home rather than abroad, and they channel business to domestic rather than foreign firms (Hufbauer, Schott, & Wada, 2013). After the 2008 crisis, 117 LCRs

measures were proposed or implemented, affecting all types of economies and a broad range of industries. These measures are believed to have affected investment, services, and employment. Hufbauer et al. (2013) argues that the implementation of those protective measures could have affected global trade by \$920 billion in 2010, which is 5% of the total global trade.

Nonetheless, although LCRs have previously been associated with government procurement, they have recently expanded to a variety of private industries as well. Hufbauer et al. (2008) explains that in the situation of economic downturns and crises, as in the 2008 recession, protectionism, although not openly accepted, increased substantially. Most of the G20 countries avoided new explicit tariffs and quotas. However, many applied more opaque measures, especially with respect to border nontariff barriers (NTBs). Local content requirements were some of the opaque measures taken during these times. Hufbauer et al. (2008) also argues that there are better alternatives to protectionism and suggests six alternatives that would provide a better impact on the general economy (Table 2.5).

<b>Alternatives to LCRs</b>	<b>Approach</b>
Promoting a business-friendly environment	Upgrade conditions for doing business. Low corporate tax rates and honest officials are the key ingredients. This is a proven way to create jobs and stimulate investment over the long term.
Encouraging corporate social responsibility	Governments can encourage procurement through local firms without crossing the line into “forced localization.”
Providing training	Quality training programs are critical.
Improving logistics	Developing good logistics is critical. Reducing trade transaction cost burdens can make countries more competitive in world markets and create jobs at home.
Investing in infrastructure	Infrastructure is critical for economic performance. In the average developing country, every \$1 billion in infrastructure investment creates about 70,000 jobs (in the US, the same money creates 18,000 jobs)

Alternatives to LCRs	Approach
Imposing tariffs or subsidies	Tariff or subsidy is the less bad economic choice. These instruments' cost is more visible, and properly done, their administration can be simple and transparent, unlike LCRs, which are more likely to "play favorites."

**Table 2.5. Alternatives to LCRs (Hufbauer et al., 2013).**

Ozden & Reinhardt (2003) describe the negative effects of protectionism and how these types of measures affect the trade liberalization and growth of an economy. With regard to developing economies, using the umbrella of special preferences Ozden & Reinhardt (2003) indicate:

If increasing trade is indeed a key to development and growth, then developing countries would be better served by abandoning reliance on nonreciprocal preferences altogether, becoming members with full responsibilities and thus rights in the world trading regime. (p. 3)

Moran (1998) raised firm arguments in his work about the negative effects of using LCRs as a measure of development. These arguments were based on case studies in the electrical, automobiles, chemicals, mining and petroleum where LCRs brought more negative effects to an economy than the opposite (Hufbauer et al., 2013). Regarding these negative effects Moran (1998) states: "The empirical record of the contribution of domestic-content requirements to the economic development of the host countries that have adopted them, whatever the aim and whatever the purported justification, is decidedly negative." (p. 41)

According to Moran (1998) there are some major inconveniences faced by foreign firms when governments impose domestic-content requirements:

Attempts to "improve" the functioning of markets by imposing domestic-content requirements on foreign firms generate technical, economic,

managerial, and political-economic problems for the investors and for the host country. These problems interact in a perverse manner and tend to reinforce each other toward inefficiency and stasis rather than lead to some new level of dynamic learning, enhanced efficiency, or accelerated growth. (p. 43)

Moran (1998) argues that governments believe that by imposing LCRs countries can achieve economic development and growth to a particular region, or even to an entire nation. However, historically, a different scenario has emerged where the results of imposing local content requirements usually produced negative effects on the country. In many instances where LCRs have been stringent, companies have decided to give up and have sold out. A good example of this is the case of Dow Chemicals in South Korea, as cited by Gray & Walter (1984).

Another critical disadvantage related to local procurement is that in the wrong hands, it will benefit only certain social classes that are already well off. Countries where preferences are given to the elite provide another preoccupation with respect to the use of local procurement practices (Ovadia, 2014), as it will deter the creation and development of a larger small and medium business force, which is, by default, one of the major goals of local procurement. Ovadia (2014) gives the example of how, in Angola, the elite class dominates and has complete control over the economy and politics. Here, “the elite use their connections to win contracts and keep the country within a vicious circle of underdevelopment” (Faria, 2013). However, Angola is not alone, and many developing countries are prey to this type of behavior, presenting equal or even higher degrees of corruption. Economists use indicators to measure corruption and poor governance, and how these two are correlated with per capita income and the Human Development Index (HDI) (Lambsdorff, 2006).

Developing countries present some similarities with respect to their political class, where, in many cases, the absence of mechanisms to enforce transparency leads to cases of bribery, extortion, cronyism, influence peddling, and graft (Hanlin & Kaplan, 2011; Stephens, 2016). The author shares the recent example that forced resignation of the Guatemalan former president Otto Perez Molina due to a large case of state cooptation, which is now under judicial process (Lohmuller, 2016). As with this case, many other cases of corruption involving public officials and private companies exist worldwide. In 2012, Dr. Oby Ezekwesili former Vice President for the World Bank Africa region, presented a very intriguing paper related to corruption. This paper discussed the billions of dollars that have been stolen or misappropriated by politicians and public officials due to corruption in developing and transitional economies, with an emphasis on Nigeria (“Oby Ezekwesili: Corruption, National Development,” 2012). This publication, also provides very enriching information about the importance of good governance and how the absence of it makes space for corruption to enter. Ezekwesili goes further by expanding upon the eight characteristics highlighted by the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) on good governance. Figure 2.8 presents these eight characteristics.



**Figure 2.8. Eight Major Characteristics of Good Governance (United Nations, 2009).**

In general, aiming in the direction of good governance provides an ideal towards which countries and societies can focus to draw as close as possible in order to achieve sustainable human development (United Nations, 2009). Therefore, if social, and economic development is to be achieved through local procurement practices and strategies, resource rich countries must abide by these characteristics and build their policies and regulations with this aim in mind.

## **Chapter 3: Research Methodology**

### **3.1 Choice of Research Methodology**

To address the research question and the objectives depicted in section 1.2 a case study methodology will be applied for this research.

Yin (1994) defines a case study research method as “an empirical inquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used.” (p. 13)

Case studies, originally known as “case histories” or “case work” (Platt, 1992) have their origins in the early 1900’s. This type of methodology flourished primarily in the disciplines of anthropology, medicine, social work, and psychology (Johansson, 2003). After decades of being employed as an important form of research within these fields, the methodology was also taken up within other fields such as economics and sociology, and has ultimately been employed towards the enhancement of research studies in practice-oriented fields such as business, and environmental studies.

Case studies provide the opportunity for investigating situations from different perspectives with the aid of either or both qualitative or quantitative information, and usually also involving field data (Yin, 2010). This research method when combined with qualitative information typically:

- Draws on multiple interactive methods
- Integrates interviews, field notes, photographs, recordings etc.
- Focuses on content
- Is emergent and evolving



- Is fundamentally interpretive (Denzin & Lincoln, 2011; Marshall, C., & Rossman, 2011; Yin, 2010)

The case study research method usually takes two forms or approaches: On the one hand, the instrumental or analytical case study method is conducted because of its potential value for generalization to other similar like-situations. While on the other hand the intrinsic case study method, where the researcher has no desire in generalizing the findings (Yin, 2010; Johansson, 2003).

Case studies are intensive, meaning very detailed, rich, and complete studies. Although, definitions about case studies abound in the literature. Johansson (2003) combines the most common definitions in order to provide a description that might create a common ground for researchers. He states that a case study should have a case “which is the objective of the study,” and that this case should:

- be complex itself,
- be investigated in its natural context with a multitude of methods, and
- be contemporary

Yin (2010) presents different qualitative research methods that are widely accepted (Figure 3.1).

<b>Illustrative Variations</b>	<b>Relevant works</b>	<b>Brief description</b>
Action research	Lewin (1946); Small (1995); Greenwood & Levin (1998); Reason & Riley (2009)	Emphasizes the researcher's adoption of an action role or an active collaboration with study participants.
Case study	Platt (1992); Yin (2009); Yin (in press)	Studies a phenomenon (the “case”) in its real world context.
Ethnography	Powdermaker (1966); Geertz (1973); Wolcott (1999); Anderson-Levitt (2006)	Involves a field-based study lengthy enough to surface people's everyday norms, rituals, and routines in detail.
Feminist research	Fine (1992); Olesen (2005); Hesse-Biber & Leavy (2007)	Embraces the perspective that methodological and other relationships embed oft-ignored power relations that can affect research findings.
Grounded theory	Glaser & Strauss (1967); Charmaz (2005); Corbin & Strauss (2007)	Assumes that the natural occurrence of social behavior within real-world contexts is best analyzed by deriving “bottom-up” grounded categories and concepts.
Life history	Lewis (1961, 1965); Langness (1965); Bertaux (1981)	Collects and narrates a person's life story, capturing its turning points and important themes.
Narrative inquiry	Riessman (1993, 2008); Chase (2005); Connelly & Clandinin (2006); Murray (2009)	Constructs a narrative rendition of the findings from a real-world setting and participants, to accentuate a sense of “being there.”
Participant-observer study	Becker (1958); Spradley (1980); Tedlock (1991)	Conducts field-based research with the researcher being located in the real-world setting being studied.

**Figure 3.1. Illustrative Variations of Qualitative Research. Adapted from (Yin, 2010).**

Yin (2010) emphasizes credibility and trustworthiness as necessary elements for a qualitative research. In order to achieve credibility, the researcher ought to be transparent, methodical, and adhere to evidence.

Yin (2010) suggests that practitioners of qualitative research through case studies need to keep in mind that this methodology is especially useful when:

- The focus of the study is to answer “how” and “why” questions;
- The behaviour of those involved in the study cannot be manipulated;
- Contextual conditions are covered because it is assumed they are relevant to the phenomenon under study;
- The boundaries are not clear between the phenomenon and context.

## **3.2 Critique of “Case Studies” Methodology**

### **3.2.1 Methodological Strengths**

Since the early 1900s, the use of case studies has had its place of significance within society. According to George & Bennett (2005), roughly half of all articles in the top journals in political science are based on case studies. Flyvbjerg (2006) states that much of the empirical knowledge humanity currently holds can be attributed to case study research, and he goes beyond this to say that “the most treasured classics in each discipline are case studies” (Denzin & Lincoln, 2011).

The strength of the case study research method is that, given its inherent properties in investigating a particular situation, this research strategy has the potential to bring together various research methodologies (qualitative and quantitative) in order to produce empirical knowledge from which one can draw analytic generalizations as a final result, or for further investigation (Yin, 2010) .

An important advantage of the case study as a research method is that it investigates a phenomenon in its real context (Yin, 2010), eliciting personal meaning suitable for

expansion through external data, as opposed to the use of quantitative methods that can be perceived as dry, abstract and narrow (Platt, 1992).

### **3.2.2 Weaknesses Attributed to Case Studies**

One of the major weaknesses described by some academics about the case study methodology can be found in the Abercrombie, Hill, & Turner (1994) definition, which suggests that a case study research approach lacks the strength and depth to provide reliable outcomes for the ability to make broader generalizations. Campbell & Stanley (1966) minimized the value of case studies by suggesting that “such studies have such a total absence of control as to be of almost no scientific value, and that investigating isolated objects, is found to be illusory upon analysis.” Then they went even further by saying that presenting this type of work as a thesis or dissertation was unethical. However, Johansson (2003) discusses how Campbell’s later works indicate a drastic change of attitude, and suggest that he eventually became one of the relevant supporters of the case study methodology.

Flyvbjerg (2006) presents five misunderstandings for which it is believed case study research methodology has been poorly understood. Then Flyvbjerg (2006) puts forth in-depth arguments to correct each of these misunderstandings in order to provide researchers with more balanced understanding of the subject. Due to the time and scope of this research, these arguments will not be analyzed. Table 3.1 below presents a general overview of these misunderstandings.

<p>Misunderstanding No. 1</p> <p>General, theoretical knowledge is more valuable than concrete, practical knowledge.</p>
<p>Misunderstanding No. 2</p> <p>One cannot generalize on the basis of an individual case; therefore, the case study cannot contribute to scientific development.</p>
<p>Misunderstanding No. 3</p> <p>The case study is most useful for generating hypotheses; that is, in the first stage of a total research process, whereas other methods are more suitable for hypotheses testing and theory building.</p>
<p>Misunderstanding No. 4</p> <p>The case study contains a bias toward verification, that is, a tendency to confirm the researcher's preconceived notions</p>
<p>Misunderstanding No. 5</p> <p>It is often difficult to summarize and develop general propositions and theories on the basis of specific case studies.</p>

**Table 3.1. Five Misunderstandings About the Case Study Methodology (Flyvbjerg, 2006).**

Out of the five misunderstanding presented in Table 3.1, misunderstanding No.2 “One cannot generalize on the basis of an individual case; therefore, the case study cannot contribute to scientific development,” has been the one for which case studies have been mostly criticized. With respect to this, Yin (1994) explains that the most important challenge when doing case studies, is to understand that generalizations in case studies are analytic generalizations, and not statistical ones. Therefore, the empirical results from a case study will be compared to a previously developed theory (Yin, 1994).

Yin (1994) mentions another weakness attributed to case studies that has at times ranked this method in a less desirable position in comparison to other forms of empirical inquiry (i.e. experimental or surveys). This weakness has to do with the behavior of the case

study investigator in relation to the study itself. In too many instances, the results of case studies have been negatively influenced by the poor performance of the investigator.

To overcome this situation, Yin (1994) reminds readers that the case study as a research strategy provides a comprehensive methodology that entails a structure that includes:

- Design approach (determine and define the research questions, select the cases, determine the data collection and analysis techniques),
- Data collection (prepare to collect data and field data collection),
- Results and analysis (evaluation and analysis of data),
- Study findings, and ultimately,
- Draw conclusions and recommendations.

### **3.3 Research Procedure**

Governments in Sub-Saharan countries have shown great interest in competing for international investors in order to attract capital to within their borders, and ultimately to reap the benefits from the invested capital, which include taxes, royalties, and more recently, local procurement expenditures, among others. As previously stated in the literature review, Ovadia (2014) argues that local content policies in the extractive sector represent an important second stream through which to achieve positive development outcomes for a country. The scope of this study focuses on local procurement, and how legal frameworks affect the implementation of such an economic tool. Therefore, to understand the ways in which legal frameworks affect the impact of local procurement, this study conducted a contrast-and-compare analysis of two countries in Sub-Saharan Africa.

In order to choose the most appropriate two countries, a series of steps followed. First, a matrix with several indicators was designed. This matrix outlined social, economic, and

political indicators that allowed to evaluate each of the Sub-Saharan countries on a general level. Once this matrix was in place, the next step was to group countries based on their social, economic, and political contexts. After the countries had been grouped, five countries were selected for the analysis of their legal frameworks specifically as they related to local procurement. From those five countries originally selected, two countries were then ultimately selected for study in this research project. One of these countries, which had a strong local procurement legal framework, was known as the primary country while the secondary country, which was known as the control country, had a weak or non-existent legal framework with respect to local procurement.

The main point embraced in this approach was to compare and contrast both countries, their approaches to local procurement, and understand how these approaches both positively and negatively affected the ways in which the mining industry performed under either a strong or weak local procurement legal framework.

After the two countries had been selected, the next step was to construct the institutional mapping process that was necessary to provide information regarding who the potential participants were for the interview process. For example, these were individuals involved in designing, implementing, and enforcing mining policies and regulations in the country. The idea was to choose participants with the necessary knowledge and expertise to be able to make valuable contributions to the research. The contributions from the participants were captured in personal interviews during the fieldwork to South Africa and Namibia using a semi-structured questionnaire format that contained five themes related to the design, implementation, effectiveness, control, and expectations of local government legal framework towards local procurement as a development tool.

Results from the field work was inputted in Nvivo 11, a software that is frequently used for the analysis of qualitative data (Pittman, 2009). The recorded interviews were carefully transcribed to maintain the context provided by the participants. After a careful

transcription, the interviews were coded in Nvivo and different themes or nodes were captured in accordance with the research objectives. Nodes were analyzed for patterns and relevant categories of meaning from the participants (Marshall & Rossman, 2011). Chapter 4, section 4.6 elaborates on the results of this analysis.

### **3.4 Interview Questions**

The interview questions for this study are attached in Appendix D the questionnaire was designed as a semi-structured interview with five main themes: design, goals and objectives, effectiveness, enforcement, and expectations. The questions were designed to delve into the reasoning behind the current regulatory frameworks as they exist in both countries. First, the design theme aims to reveal how regulations are conceived and who conceives them, as well as to find out if there are specific programs that have had influence on the conception of the framework. Second, the goals and objectives theme looks into the expected outcomes based on the current framework. Third, the aim of the effectiveness theme is to generate information on the metrics that each of the two countries use to evaluate the performance of their policies and regulations. Fourth, the enforcement theme evaluates the degree of industry compliance under close state monitoring, the jurisdiction level at which enforcement is carried out, and the penalties imposed on those who violate the law. And fifth, the expectations theme evaluates the long-term vision that governments have with respect to their local regulatory framework, and how much independence from mining they will be able to achieve.

### **3.5 Document Review**

Mineral and mining acts, laws, regulations, charters, procurement policies, protocols, and many development, and poverty reduction plans were analyzed for this research. Most of the documents were obtained from government official websites, mining company's websites, and Chambers of Mines online information. The revision of these documents



was necessary to verify the accuracy of the information presented in the tables and throughout this research.

### **3.6 Ethical Considerations**

Given that this research involves human subjects, careful ethical considerations were required by the University of British Columbia before beginning the process of engagement with, and contacting and/or interviewing the participants. A thorough review of the research proposal, research consent form, interview questions, and letter of initial contact was conducted by the Behavioral Research Ethics Board (BREB) prior to the approval of this research. The documents presented were approved satisfactorily under a “Minimal Risk” level and the approved certificate and number were granted.

### **3.7 Data Security and Storage**

The participants’ information and the collected data are considered confidential under the ethical approval. The identity of participant(s) will be disclosed or kept from disclosure depending on the participant’s decision regarding having his/her identity disclosed in the final thesis document. In case the participant(s) prefer to keep their identity protected, an ID name will be assigned (e.g. participant A, participant B, etc.). Nevertheless, hard copies of the interview questions, electronic recordings, and data will be kept securely in a locked location at the University of British Columbia.

## Chapter 4: Results

### 4.1 Sub-Saharan Indicators Table

A table containing a combination of eighteen social, economic and political indicators for each of the forty-eight Sub-Saharan countries evaluated was constructed. The graphical display of these indicators facilitate the comparison and contrasting of different countries based on their social, economic, and political realities (see Appendix B). In the beginning, 27 indicators were used in the table. However, 18 were discarded from the analysis as the remaining 9 were found to better represent the data needed to decide upon the five preliminary (runner-up) countries chosen in the research. The information and data varied depending on the availability of information, and not all indicators were available for all countries. For instance, if we take the investment attractiveness index, it can be seen in the indicators table in Appendix B that several countries have no recorded data on this topic. Another example among many is the democracy index. This is why, in order to compare different countries, it was necessary to focus attention on countries with the most available data in order to arrive at a best informed decision.

According to the indicators table, six are social indicators, seven are economic, and five are political indicators. The six social indicators in the table are:

- Population (total)
- Literacy rate
- Population growth
- Total Unemployment under the international labor organization
- Poverty Headcount Ratio, and,
- Human Development Index

The seven economic indicators range from GDP to competitiveness and business-friendly environments, the list of these seven indicators are:

- GDP growth (annual %)
- GDP per capita (current US\$)
- Mining Contribution Index
- Index of Economic Freedom
- The Investment Attractiveness Index
- World's Bank Doing Business, and
- Global Competitive Index

And the remaining five political indicators are the following:

- African mining legislation
- Corruption Perception Index
- Democracy Index
- BTI Status Index, and
- CPIA Transparency, Accountability in the Public Sector Rating.

The gathering of these indicators provide insights on the standings of sub-Saharan countries based on the three aspects described before (social, economic, and political).

## **4.2 Selection of Five Countries**

The five selected countries based on the preliminary review of data were Mozambique, Namibia, South Africa, Tanzania, and Zambia. These five countries have local procurement clauses in their legislation and share several similitudes in terms of social, economic, and political performance. The information for all indicators in all five countries was available, with the exception of the CPIA index from South-Africa and Namibia. Interesting enough, they all are located in the southern cone of Sub-Saharan Africa and enjoy rich natural resource endowments including; gemstones and diamonds; precious

metals like, gold, silver; and a range of commodities, such as, nickel, copper, iron ore, coal, uranium, manganese, and others. Almost half of the world's production of vanadium, platinum, and diamonds originate in this African region, as well as 36% of gold and 20% of cobalt (Southern African Development Community, 2010).

The African Mining Legislation Atlas ranks these five countries as highly dependent on mining activities, matching the ICMM mining contribution index in terms of the importance of mining and metals in each country's national economy (Haglund, Roe, Ericsson, & Hodge, 2014).

Africa is grouped into regional economic communities in order to provide impulse for regional development among certain areas of the continent. For our study, the five selected countries, interestingly enough, are part of the Southern African Development Community (SADC), which gives an important plus to our selection given the fact that they share bilateral and multilateral agreements focused on bringing the needed leverage in order to grow together as a block.

One example of the multilateral agreements this region shares is the SADC-created Protocol on Mining. This protocol has its origins in 1997, and was created as an effort to ensure that, through co-operation and collaboration, they would develop the mineral sector so as to improve the living standards of their people. In section 2.1 and 2.2 of this protocol, the document emphasizes two of its main objectives. It reads:

- 2.1 Member States recognise that a thriving mining sector can contribute to economic development, alleviation of poverty and the improvement of the standard and quality of life throughout the region.
- 2.2 Member States shall seek to harmonise national and regional policies, strategies and programmes related to the development and exploitation of mineral resources (Southern African Development Community, 1997)

The members of SADC recognize the importance of their mining endowments as a way of bringing prosperity to their citizens, and it also states the ways in which a thriving sector can contribute to wellbeing. At the same time, the community looks at ways to harmonize the regional frameworks to achieve much-needed prosperity.

Although the protocol came out in 1997, it was in 2004 that a harmonization framework was developed, and it was not until 2008 that an implementation plan took form. The harmonization framework is based on nine thematic areas presented in Table 4.1 below:

Mineral policies	Political, economic and social environment	General investment environment
Mining fiscal environment	Minerals administration	Artisanal and small-scale mining (ASM)
Research and development (R&D)	Human resources and skills development	Gender

**Table 4.1. Nine Thematic Areas Covered by the Harmonization Framework (United Nations Economic Commission for Africa, 2004).**

The United Nations & Southern African Development Community (2004) argues that the harmonization framework has the capacity to create a friendly and competitive investment environment for the development of the mining sector under international minerals best practices. However, despite these tools, little has been accomplished in terms of

standardization and policy alignment. The reasons for this lack of implementation is out of the scope of this study, but leaves an opportunity for further research.

Notwithstanding the significance of all the indicators, a very important piece of information about the five selected countries was the fact that they all have mining legislation. This information allows to dig deeper into the breadth and depth of the respective legislations and, by comparing these legislations against each other, a more informed decision is going to be made regarding the final two countries to use towards the research objectives of this study.

After a careful analysis of the local procurement regulatory environment, and an additional examination of the indicators table, the necessary information has been gathered to make the decision with respect to selecting the five countries of interest. The remarks are presented in the Table 4.2 below:

Rank	Country	Local Procurement Legislative Environment
1	South Africa	Mentions local procurement Requests action and implementation plans Legislation contains specific objectives A score card is used to monitor the compliance to legislation An auditing committee monitors compliance with the score card and reports on the results Strong push for inclusion of historically disadvantaged South Africans
2	Zambia	Requests proposals for the promotion of local business development Requests the participation, partnership, and training of Zambian entrepreneurs in procurement and supply chain Requests compliance to the proposed plan No score card or specific targets No information on enforcement and auditing measures.

Rank	Country	Local Procurement Legislative Environment
3	Tanzania	Requests mining companies to guarantee the procurement of available goods and services within the United Republic Requires mining license applicants to present a procurement plan and implement it Offers support and promotes Tanzanian supply of quality goods and services No specific targets No information on enforcement and auditing measures.
4	Mozambique	Mentions local content preferences for products and services Local content/procurement seems not to be a central area in Mozambique's development strategies and plans No information on enforcement and auditing measures
5	Namibia	Minerals Act of 1992 requests mining license holders to use products, services and equipment manufactured or provided within Namibia Mining policy suggests, expects and encourages mining companies to engage in social responsibility activities to promote development.

**Table 4.2. Local Procurement Legislative Environment in the Chosen 5 Sub-Saharan Countries.**

Upon further examination of the indicators, the Ease of Doing Business Indicator called attention as the analysis showed the five countries as having similar rankings. However, a deeper analysis untapped interesting information about two of the five countries, Namibia and South Africa, both of which had better business environments in 2007 but have shifted negatively during the last nine years. Table 4.3 below shows the ranking of the five countries in 2007, followed by the rankings of 2015 and 2016.

<b>Country/year</b>	<b>2007</b>	<b>2015</b>	<b>2016</b>	<b>Shift (09 years)</b>
Mozambique	140	127	133	07 ranks up
Namibia	42	88	101	59 ranks down
South Africa	29	43	73	44 ranks down
Tanzania	142	131	139	03 ranks up
Zambia	102	111	97	05 ranks up

**Table 4.3. Rankings: Ease of Doing Business Index for Years 2007, 2015, and 2016.**

An analysis of this table shows how, despite their recognition of the importance of mining as a developing driver, the 5 countries have done little over the years to improve their policies in order to facilitate the growth of business in their respective jurisdictions. In nine years Mozambique, Tanzania, and Zambia have shown only a very small improvement. However, South Africa, and Namibia have shown a decline with respect to their previous positioning of 152% and 140% respectively. If local procurement is an important part of the agenda for Sub-Saharan countries, as the literature suggests it is (Engineers Against Poverty, 2011; Esteves & Barclay, 2011; International Finance Corporation, 2011; Ovadia, 2015), then there is a clear opportunity for these countries to begin their journey by facilitating the process of business creation. This would ensure that the backward and forward linkages could take advantage of the opportunities the mining industry is currently presenting and will continue to present in the coming years. Referring back to Table 4.3, and based on the information from the Ease of Doing Business Indicator, it seems an oxymoron to present the use of a regulatory framework to push for local procurement quotas when the support for business creation appears to be inefficient.

### **4.3 Selection of Primary and Control Countries**

After the five countries were selected based on the indicators reviewed previously, a detailed analysis of the local procurement regulatory environment was conducted for each



one of these particular countries. The objective was to identify policies, procedures, laws, and agreements that could help us gain understanding regarding the extent of the inclusion of local procurement as a development tool for the regulatory environment of those countries and to start from there to make the decision regarding selecting the final two countries.

After a careful analysis of the local procurement regulatory environment, and an additional examination of the indicators table for these samples, a few remarks were drawn which helped in the decision of selecting the two countries of interest. Table 4.4 presents these remarks:

Rank	Country	Local Procurement Legislative Environment
1	South Africa	Mentions local procurement Requests action and implementation plans Legislation contains specific objectives A score card is used to monitor the compliance to legislation An auditing committee monitors compliance with the score card and reports on the results Strong push for inclusion of historically disadvantaged South Africans
5	Namibia	Minerals Act of 1992 requests mining license holders to use products, services and equipment manufactured or provided within Namibia Mining policy suggests, expects and encourages mining companies to engage in social responsibility activities to promote development.

**Table 4.4. Local Procurement Legislative Environment in South Africa and Namibia Countries**  
(See Appendix E for Greater Detail).

The results of evaluating the local procurement regulatory environment provided a clear indication that South Africa should be the country selected as the primary country given its robust legislative framework. This framework seeks social inclusion and development

plans through the achievement of specific targets with respect to local procurement, employment equity, ownership, beneficiation, human resource development, mining community development, and housing and living conditions.

In contrast, the analysis found Namibia as the country with a very minimal regulatory environment with respect to mining, with the Mineral Act of 1992 showing what may have been the most solid demand for local procurement practices from the mining sector. Other than that, the minerals policy only ambiguously suggests the implementation of development plans from the mining sector. Further discussion of the results will be provided in the following chapter.

#### **4.4 Institutional Mapping**

After South Africa and Namibia were selected for further analysis of their regulatory frameworks, institutional mapping was conducted to understand which government institutions support the design, implementation and enforcement of local procurement.

In the case of South Africa, the Department of Mineral Resources (DMR) is responsible for the legislative framework related to the mining industry in the country (Appendix F). Before 2002, the Mineral Development Branch was the institution looking after all the mineral resources aspects of the industry. However, after the promulgation of the Mineral and Petroleum Resources Development Act 2002, the Mineral Development Branch was divided into three main streams; regulatory, promotion, and policy formulation.

Table 4.5, 4.6, and 4.7 present the main responsibilities of each branch, beginning with the mineral regulatory branch, followed by the mineral promotion branch, and finally, the mineral policy formulation branch (Department of Mineral Resources, 2016).

The Mineral Regulatory Branch is divided into four regions; northern, central, western, and coastal regions, and their main functions are presented in Table 4.5 below.

<ol style="list-style-type: none"> <li>1. Administer the Minerals and Petroleum Resources Development Act 2002, No 28 of 2002, and other applicable legislation to ensure the granting of prospecting and mining rights in terms of the Act</li> <li>2. Promote mineral development including urban renewal, rural development and black economic empowerment</li> <li>3. Address past legacies with regard to derelict and ownerless mines and enforce legislation regarding mine rehabilitation by means of regulated environmental management plans</li> <li>4. Co-ordinate and liaise with national, provincial and local government structures for efficient governance</li> </ol>
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**Table 4.5. Functions of the Mineral Regulatory Branch of the DMR in South Africa .**

The Mineral Promotion Branch is divided in five directorates; mineral promotion, mineral economics, small-scale mining, beneficiation economics, and international coordination. The main responsibilities of this branch are presented in Table 4.6.

<ul style="list-style-type: none"> <li>• Responsible for the provision, through research, of relevant information that will enhance global competitiveness and attract new investment</li> <li>• Collects and collates all mineral and mining-related statistics. Compiles promotional publications, taking part in exhibitions and undertaking particular international obligations.</li> <li>• Contributes towards sustainable development through enterprise development, mainly focusing on the second economy. It also promotes the development of small-scale and medium-scale enterprises</li> <li>• Develops strategies for the development of downstream beneficiation and investigates alternative use of minerals</li> </ul>
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**Table 4.6. Functions of the Mineral Promotion Branch of the DMR South Africa .**

Finally, the third branch in the DMR, the Mineral Policy Formulation Branch, looks after mineral policy development, environmental policy, and environmental research and development.

Table 4.7 presents the main responsibilities of the Mineral Policy Development Branch.

- Reviews policies, amending legislation and conducting research on mine environmental policy to achieve transformation and to attract new investment
- Reviews current and pending laws. It is responsible for drafting regulations on various legislation, such as the Diamonds Amendment Bill and Precious Metals Bill in September 2005
- Responsible for researching, developing and promulgating environmental policy, legislation, norms, standards and strategies in terms of the Minerals and Petroleum Resources Development Act (MPRDA) 2002
- This directorate focuses on sustainable mine closures and the management of mine water.

**Table 4.7. Functions of the Mineral Policy Formulation Branch of the DMR South Africa .**

In contrast, Namibia does not present an organizational structure such as the one that was developed by South Africa. Namibia's Ministry of Mines and Energy demonstrates a well-organized structure divided in six directorates; Geological Survey, Energy, Diamonds Affairs, Mines, Petroleum Affairs, and Administration and Finance. Each one of these six directorates has developed a set of objectives to ensure that a good use and management of their natural resources is carried out. Although the objectives are very clear and encompass areas of interest for the nation, it seems these objectives lack specific plans through which to achieve those objectives. Please refer to Appendix G for the Namibia's institutional mapping. One important aspect of note is the absence of a branch responsible for the management of policies and regulations for the ministry in general. The Petroleum Affairs Directorate is the only directorate that contains a regulation and compliance-related policy office. The other directorates do not mention anything alike. In contrast, South Africa has two governing branches that consider legislation and regulatory frameworks.

After the internal country mapping was evaluated, the next step required finding those individuals within the organizations of interest who could provide information about the respective local procurement regulatory frameworks. For this reason, a list of contacts was prepared and analyzed in order to find the most suitable subjects to participate in the

interview questionnaires. Appendix H and Appendix I show the contact charts for both countries. In South Africa, the chart gathered information with respect to public officials in the Department of Mineral Resources, the National Economic Development and Labour Council (NEDLAC), and the Chamber of Mines. In Namibia, the chart gathered information with respect to public officials mainly from the Ministry of Mines and Energy, and the Chamber of Mines.

#### **4.5 Primary and Control Research Countries**

South Africa and Namibia's constitutions both have embedded within them the desire to promote the use of their natural resources as a way of bringing benefits to their citizens. In the case of South Africa, the mining local procurement framework starts at the constitutional level by requiring the use of natural resources with the aim of bringing "justifiable economic and social development" (South African Parliament, 1996). Namibia on the other hand, also suggests the "promotion of the welfare of its citizens by using its natural resources in a sustainable fashion" (Constitutional Assambly, 1990).

Moving from constitution, the legal framework of South Africa and Namibia present a set of policies that begin the process of transforming general statements into more specific requirements. Appendix E presents the legislation applied in both countries in the form of acts. For instance, South Africa enacted the Mineral and Petroleum Resources Development Act of 2002, and Namibia approached its policy through the Republic of Namibia Minerals (Prospecting and Minerals) Act of 1992, in conjunction with the Minerals Policy of Namibia. Nevertheless, it is at this point where the two countries begin to diverge. In its policy, the primary country (South Africa) presents specific programs and features that will later be translated into very specific regulations and targets. In contrast, although Namibia also makes statements regarding development and inclusion, those statements do not transcend to factual targets. Table 4.8 examines examples of the different wordings in both policies:

South Africa	Namibia
<ul style="list-style-type: none"> <li>a) <b>Strategy:</b> Broad Based Economic Empowerment</li> <li>b) <b>Ownership</b> in mining projects</li> <li>c) <b>Control</b> of operations by management inclusion</li> <li>d) <b>Development of management</b>, scientific, engineering, etc. skills</li> <li>e) <b>Involvement</b> of or <b>participation</b> in the procurement chains of operations</li> <li>f) <b>Ownership</b> of and <b>participation</b> in forward and backward linkages</li> <li>g) <b>Socio-economic development</b> of projects' neighboring communities</li> <li>h) <b>Socio-economic development</b> of HDSA</li> <li>i) <b>Readdress</b> historical social, and economic disparities.</li> </ul>	<ul style="list-style-type: none"> <li>a) <b>Carry out</b> training programmes to promote development of Namibian citizens</li> <li>b) <b>Make use</b> of products or equipment manufactured or produced, and services available, within Namibia</li> <li>c) <b>Preference</b> in allocation of jobs and tenders</li> <li>d) Social responsibility <b>should</b> promote capacity building, skills development and access to knowledge and technology</li> <li>e) <b>Ensure</b> maximum sustainable contribution to the socio-economic development</li> <li>f) <b>Promote</b> and encourage local participation in exploration and mining</li> <li>g) <b>Development</b> of linkages</li> </ul>

**Table 4.8. Legislation Regarding Socio-Economic Inclusion in South Africa and Namibia (See Appendix E).**

At this point, in their respective policies, both countries contemplate the importance of using their natural resources as a mechanism for creating development for their citizens. Nevertheless, at this precise point is where South Africa diverts from Namibia.

In its policy, South Africa states the need for the creation of a Broad-based Socio-economic Empowerment Charter (BBSEE), known as the Mining Charter. This charter has the objective of providing the inclusion of Historically Disadvantaged South Africans into mining activities that so they could benefit from this activity. The Mining Charter was released in 2004, and mining companies were bound to the requirements of this Charter

from then on. Booyens (2006) mentions that the Mining Charter is based on eight pillars (see Table 4.9) that provide a framework for advancing the empowerment of HDSA.

1. Human resource development
2. Employment equity
3. Migrant labour
4. Mine community and rural development
5. Housing and living conditions
6. Procurement
7. Ownership and joint ventures, and
8. Beneficiation

**Table 4.9. Eight Pillars of the Mining Charter of South Africa 2004 (Booyens, 2006).**

In order to achieve these eight pillars, the Mining Charter's section 4.11 of licencing introduces the scorecard for the Mining Charter. This scorecard is a performance-measuring instrument that contains the expected targets set by South Africa for the mining industry, and it is designed to facilitate the application of the Mining Charter (Booyens, 2006). The scorecard measures the compliance of the mining industry through nine performance indicators, comprising the eight pillars presented in Table 4.9, plus the addition of "reporting" as the ninth performance indicator. Industries in the mining sector report their compliance on an annual basis.

According to Booyens (2006), the scorecard of 2004, although oriented to satisfy the requirements of the Mining Charter as its performance measuring instrument, lacks the basic productive attributes of a performance management instrument that would consist of: clear performance objectives, quantifiable targets, consistency among all indicators, and continuous monitoring at regular intervals. These deficiencies render the scorecard weak in nature. Appendix J presents the scorecard released in 2004. In summary, the Mining Charter scorecard of 2004 resembles a checklist, with poor monitoring timeframes (at five-year and ten-year intervals), and although the indicators are clearly defined, the measuring targets are vague and in most instances, non-existent.

Given the shortcomings of the 2004 scorecard, South African policy makers embarked on a revision and amendment of the BBSEE Charter in 2010. This new charter grants more specific and quantitative targets which were introduced in the also new 2010 Scorecard. The amendments to the BBSEE came largely as a result of the recommendations provided by the assessment conducted in 2009 by the Mining Industry Growth and Development Task Team (MIGDETT). This task team is a tripartite initiative, established in 2008, and consists of government officials, business representatives, and organized labour representatives. The objective of MIGDETT is to assess, at regular intervals, the extent of the compliance to the nine performance indicators established in the mining charter. Appendix K presents the 2010 Scorecard. The differences between the two scorecards are very significant, and it is easily noted that it has evolved from a vague and unclear measuring instrument to a more specific, measurable, and enforceable one.

There has been an evolution of the regulatory framework in South Africa which is important to describe as it has allowed this country to bring forth clearer and more specific goals by which mining companies need to abide, overall the regulations have become more specific, and look towards inclusion.

From the point of view of local procurement, there has been an evolution with respect to setting targets. The 2004 Scorecard mostly consisted of a checklist with no specific targets having been set. Local procurement compliance was measured through answers to three questions, where the options were to answer with either a “yes” or “no” response (Figure 4.1). However, although the amended 2010 BBSEE presented a scorecard with the same nine pillars, it demanded more specific and measurable requirements. Figure 4.2 presents the changes made to the procurement requirements, in which specific goals were set for capital goods, services, and consumables. Also included has been the implementation of a multinational supplier contribution to the social fund. Appendix J and Appendix K show the complete scorecards of 2004 and 2010. The 2010 amended



charter and scorecard were accepted by the industry, and for the following five years, the mining sector has worked towards complying with the targets. The revision of the charter in 2010 has clearly raised the bar towards local procurement. However, there are also oppositional views regarding those targets that make the criticism that the targets do not address the long term development of the country.

Item	Procurement	Progress			
		Yes	No	Yes	No
	Has the mining company given HDSA's preferred supplier status?	Yes	No		
	Has the mining company identified current level of procurement from HDSA companies in terms of capital goods, consumables and services?	Yes	No		
8	Has the mining company indicated a commitment to a progression of procurement from HDSA companies over a 3 – 5 year time frame in terms of capital goods, consumables and services and to what extent has the commitment been implemented?	Yes	No		

**Figure 4.1. Procurement Pillar Scorecard 2004.**

ELEMENT	DESCRIPTION	MEASURE	COMPLIANCE TARGET BY 2014	PROGRESS ACHIEVED BY					Weighting
				2010	2011	2012	2013	2014	
Procurement & Enterprise Development	Procurement spent from BEE entity	Capital goods	40%	5%	10%	20%	30%	40%	5%
		Services	70%	30%	40%	50%	60%	70%	5%
		Consumable goods	50%	10%	15%	25%	40%	50%	2%
	Multinational suppliers contribution to the social fund	Annual spend on procurement from multinational suppliers	0.5% of procurement value	0.50%	0.50%	0.50%	0.50%	0.50%	3%

**Figure 4.2. Procurement Pillar Amended BBSEE Scorecard 2010.**

South African government and industry worked closely in the enactment and implementation of the Mining Charter since its beginnings in 2004. Both stakeholders were positive about the changes the country needed to undergo in order to provide opportunities to all citizens to participate in the economic activities of the country. Nevertheless, a shocking drafted and publication of a “Reviewed Broad Based Black Economic Empowerment Charter (Mining Charter)” was gazetted in early 2016, where, the Department of Mineral Resources had unilaterally made changes to the amended

2010 Mining Charter without the participation and consultation of the mining industry. This action from the DMR has created surmounting consequences to the nation, polarizing the government and mining industry, and delivering a legal battle in terms of interpretations, and validity of the new amendments. The mining sector through its Chamber of Mines has filed legal measures to stop the government's reviewed Charter to come into effect, arguing its lack of legitimacy as a regulatory instrument. However, the government is asking the mining sector to negotiate outside the courts to reach an agreement. Lowman (2016) suggests that regulatory uncertainty is a "key concern for miners in South Africa's most industrialized but struggling economy."

In summary, while the DMR is calling for engagement to discuss their reviewed Charter ("Mining empowerment bill shouldn't scare investors," 2016); Companies are displaying a clear discontent, frustration and anger given the approach and government's stance, calling the renewed Charter "currently unachievable" ("Anger over new SA mining laws," 2016).

Namibia presents a contrasting scenario in terms of policies and regulatory frameworks to that of South Africa. The government of Namibia currently does not have a set of regulations that the mining sector needs to abide by, including any policies to do with local procurement. That said, the mining industry and government appear to have an open and participative approach with respect to their relationship, where government officials look for engagement with the private sector to discuss the best approach to policies and regulations that may affect both parties as well as other stakeholders. One example of this seemingly good communication scheme has resulted in the mining industry rolling out a mining charter as an empowerment strategy. The sector adopted this charter in 2014, and has been implementing it on a trial basis. Policymakers in Namibia have been working towards a legislation framework since 2011 that will require the mining sector and the industry in general to take more direct and specific responsibilities towards the development of the country. Nonetheless, this piece of policy and regulation has also

received a great deal of opposition and criticism from both industry and academics who firmly believe this legislation will create more harm to the economy than the benefits it perceives to accomplish (“NEEEF in current form,” 2016). Academics and politicians have critiqued the bill, arguing that its lack of clarity and ambiguity make the bill unsuited to achieving its expected purposes (“Kazenambo and others critique NEEEF bill,” 2016). In the same article, Veikko Nekundi, a member of parliament, says that “everything from A to Z is pathetic and that the bill should go back to the drawing board to make it more specific and clear.” The New Equitable Economic Empowerment Framework (NEEEF) as it is called, is in itself an empowerment policy and regulatory framework that is based on five development pillars that are very similar to the South African BBBEE program implemented in 2004. Table 4.10 presents the five empowerment pillars contained in the NEEEF.

- |  |
|--|
| <ol style="list-style-type: none"> <li>1. Ownership</li> <li>2. Management Control and Employment Equity</li> <li>3. Human Resources and Skills Development</li> <li>4. Entrepreneurship Development</li> <li>5. Community Investment</li> </ol> |
|--|

**Table 4.10. Five Pillars of the NEEEF Namibia.**

Each one of the pillars will require the compliance of specific targets depicted in the NEEEF scorecard. For instance, under the proposed NEEEF, a minimum of 25% current and new businesses are to be owned by previously disadvantaged Namibians. Also pillar two calls for a minimum of 50% of the board members and management positions to be filled by historically disadvantaged Namibians, and pillar three requires companies to spend 1.5% of gross wages in training and skill development. Pillar four talks about procurement. However, it does not demand specific targets, nor does it link procurement to other ministries or existing development plans and objectives, making it vague, short sighted, and ambiguous. Pillar five specifies that 1% of after-tax profits are to be allocated

to community development projects. The main concerns for the mining sector are with respect to the two first pillars. However, for the purposes of this research, it is pillar four that raises the greatest concern. As the old saying goes, “history repeats itself,” and as such, one can perceive from the literature regarding legislation in Namibia that it is taking the same route that South Africa has taken for the past twelve years. As such, policymakers are designing legislation that fails to incorporate long term objectives at the expense of the well-being of future generations. Continuous ambiguity, and the absence of structural strategies and measures to reduce inequalities in the short and long terms seem to be absent in the currently proposed Namibian legislation. Stakeholders have presented submissions in relation to NEEEF, and included the pieces that they consider would be relevant for this piece of legislation to contain. Hopefully, policymakers will find those submissions valuable enough to reshape their policies and regulations, and thus include broader development aspects within this document.

The Chamber of Commerce and Industry, the Chamber of Mines, and the Namibian Financial Institutions Supervisory Authority (NAMFISA), among others, have spoken about the negative effects that this bill will bring to the country in terms of foreign direct investment, development, and growth. Some headline articles were captured from different newspapers, and are presented in Figure 4.3 below.



**Figure 4.3. Namibia's Newspapers Headlines Regarding NEEEF.**

In terms of local procurement, Namibia's mining sector through its Chamber of Mines, has expressed its desire to participate with government in creating policies and regulations that would truly achieve the development goals needed for the country. The Chamber of Mines believes that procurement can be an essential driver to economic development, and that through supporting local enterprises and developing new enterprises to serve the mining sector, there will be a greater potential for reducing poverty and creating economic growth in society in general.

#### **4.6 Results of Interviews with Participants of Both Countries**

Contacts from both countries were approached to ask for their willingness to participate in the study through personal interviews that would take place during the fieldwork to South Africa and Namibia the researchers planned from May 14<sup>th</sup> to June 1<sup>st</sup> 2016. The Chamber of Mines of both countries were keen to set up interviews with the research team, and to answer the questionnaire. Although government officials were also contacted, in this case, no replies were received. Thus, no personal interviews were secured either in South Africa or in Namibia prior to the fieldwork. On May 17<sup>th</sup>, 2016, a workshop titled “Effective Local Procurement Regulation and Best Practices in South Africa and Beyond” was organized by The High Commission of Canada, Canadian International Resource and Development Institute (CIRDI), and Engineers Without Borders Canada (EWB) in Johannesburg, South Africa. It was during and after this workshop that the researchers had the opportunity to network with the participants who belonged to industry, government and financial agencies concerned with the subject matter. This effective networking allowed the researchers to contact a public official from the DMR who agreed to participate in a personal interview. The interview took place in the DMR premises. However, the participant argued that their internal policy did not allow to discuss research questions in person but to provide written responses. While the meeting provided some insights this cannot be shared in this study and no comments can be made from the interview. Subsequent to the meeting the survey was submitted and a continuous follow up was carried out. However, due to their schedule no answers were received. In Namibia, one of the public officials from the Ministry of Energy and Mines also agreed to participate in an interview with the team. Despite this, the interview did not take place due to the official’s change of agenda. The questionnaire was sent to the official in Namibia, and the person returned the completed questionnaire several weeks later via email.

#### 4.6.1 South African Outcomes

Using Nvivo as an analysis tool was helpful in order to examine the content and the relevant topics discussed in the interviews. Word frequency queries made it possible to get a more detailed analysis of the information. The results are presented using word clouds and information provided by the participants.

The word cloud below presents the major themes observed during the interview process in both personal interviews and written questionnaires, the major topics were: the charter as a regulatory mechanism used by the government, and the importance of regulations that take into account real development through capacity building.



**Figure 4.4. Word Cloud: South Africa's Chamber of Mines.**

In the case of South Africa, the information available highlighted several important topics regarding the priorities and major concerns in the country at that period of time regarding not only local procurement, but also the country's regulations as a whole (community development, employment, procurement, etc.). As such, the word cloud shows that

among the major topics of concern for South Africa’s mining industry are the unilateral decisions that the Department of Mineral Resources (DMR) is taking in terms of modifying the mining regulatory framework with little concern for the appropriate inclusion and participation of the rest of the stakeholders involved in the industry. The current Ministry of Mineral Resources decided to review the Mining Charter and release a revision in the National Gazette. This action took the mining industry by surprise (Table 4.11) given that, in previous years, the charter had been consulted with other stakeholders, all of whom had contributed to the development of this document and had agreed to the attainment of the objectives that had been set.

We knew that something had to happen, but we did not know this is the way that it would happen. The gazetting was a big surprise. It created a big confusion. Now we do not know what is the real state of the charter

Participant 1 South Africa

**Table 4.11. Deficient Stakeholder Communication Engagement – Interview Comments by Participants.**

The release of the new revision of the Charter in the second quarter of 2016 has resulted in the industry rejecting the revision and fighting back against the Department of Mineral Resources approach towards modifying the regulatory framework, and even questioning the validity of the Charter as a regulation instrument (Table 4.12).

We are telling him that he cannot use section 100a, the Charter is just a policy truce. Not a regulation, but his understanding is that it is a regulation, because he can use your non-compliance to the Charter to revoke your mining rights. So this is the problem now from the policy development directress, and this is going to be a very interesting discussion. Because he has just open the door for discussion. We have submitted our comments and we are asking for thirty days for engaging in all these issues, we know that even those thirty days won't be enough.

Participant 1 South Africa

**Table 4.12. Disputing the Validity of the Mining Charter - Interview Comments by Participants.**

The lack of consultation is evidently a major reason that the mining industry opposes and mistrusts the current government officials’ actions. This situation has created a harsh



environment where neither party trusts the other. The participants spoke about the historical goodwill that the mining industry has shown when negotiating proposals and changes to legislation (Table 4.13). However, the gazetting of legislation without prior negotiation and lobbying has left a bitter flavor and a difficult environment for both stakeholders. It will require large amounts of work, time, and resources to dissipate the current negative atmosphere.

<p>We support transformation, but we believe the legislative framework is not right for us to implement a document like the Charter. And we are appealing to the Ministry of Mineral Resources to set the legislative framework for the Charter that is a transformation tool.</p> <p style="text-align: right;">Participant 1 South Africa</p>
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**Table 4.13. Willingness to Support Better Crafted Legislative Frameworks - Interview Comments by Participants.**

As suggested by Jeffery (2016a), “bad policies are damaging and hurting the industry, killing the goose that lays the golden eggs...particular care should be taken in crafting policies for the mining industry.” Jeffery (2016a) goes so far as to recommend that South African policy makers should “go back to the drawing board and rethink their legal framework with respect to mining.” Also noted that “mining legislation must provide certainty, stability, and predictability to investors.”

Although local procurement is very important to South Africa’s mining legal framework, it is considered a piece of the larger picture. As previously mentioned, South Africa’s empowerment framework is based on eight pillars. Therefore, the conversations carried out with the participants in this research most often considered the entire empowerment approach rather than to focus specifically on local procurement.

Table 4.14 presents another topic of interest with respect to the implementation of local procurement in South Africa. It considers that local procurement by itself cannot have a comprehensive impact, and cannot contribute to genuine sustainable development if it is

employed as an isolated tool or methodology. The literature review revealed that several academics have argued in favor of the potential of local procurement as a tool for economic growth, and have presented a variety of examples of countries and projects that have been successful. However, the participants in the South African portion of the study believe that in order to take advantage of all the benefits that local procurement has to offer, the country needs to rapidly embark on building its capacity through incentivising its manufacturing industry. This lies in contrast to that which the current local procurement regulations aim for.

<p>The weakness of the Charter is that it measures procurement by the ownership of a company that is owned by black people and they are not necessarily measuring procurement by the local content in that particular product. This Charter approach has created agencies that comply with the requirement of South African context. They comply with the BEE code, and ownership requirements but they do not manufacture in South Africa.</p>
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Participant 1 South Africa

**Table 4.14. Boosting Manufacturing in South Africa – Interview Comments by Participants.**

The Department of Mineral Resources (2010) vision is to “facilitate sustainable transformation, growth, and development of the mining industry” (p. 7). In this regard, the participants believe that the sustainable development aspects of local procurement should aim towards building capacity through manufacturing in order to create industries that will “live” and not “leave” long after a mining project has come to an end.

<p>We need a law which says we need to develop our own local content from the manufacturing point of view, and then we need to come up with a regulation that says you will procure locally manufactured goods. Now, procuring locally manufactured goods does not necessarily mean that locally manufactured goods are actually owned by HDSA.</p>
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Participant 1 South Africa

**Table 4.15. Designing Inclusive and Sustainable Legislation – Interview Comments by Participants.**

However, that being said, there is a perception that mining legislation in South Africa is not moving in that direction and that it is being driven by ideology rather than by either logic or the needs of the economy (Jeffery, 2016b). The participants have argued that the mining industry can serve as a leverage for developing the manufacturing industry, and that if sound policies and regulations are put in place, the progress and prosperity previously discussed, could be attained (Table 4.16).

<p>The problem in SA is that there is not current capacity to manufacture goods locally. Should we be concerned at this moment about percentage ownership, or percentage of capital goods? What we should be doing is asking <b>how</b> do we encourage mining companies to invest in local manufacturing? That would be real transformation. How a South African mining company says, I will invest in this engineering company to manufacture different components and in research and development? If a company do that, they will be promoting manufacturing, founding it, and therefore, you can get recognition from actually building local capacity.</p>	Participant 1 South Africa
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**Table 4.16. Leveraging Manufacturing Through Mining – Interview Comments by Participants.**

### 4.6.2 Namibian Outcomes

The Namibian government, through its Ministry of Energy and Mines, and in conjunction with the Chamber of Mines, and civil society have taken a business friendlier approach to local procurement and legislation when compared to its neighbor, South Africa. This approach seems to be less invasive and therefore more collaborative overall. Namibia has taken some concepts from South Africa, but has also been cautious not to make the same mistakes that South Africa’s policy-makers have made, as in the case of poor communication with stakeholders, and stringent empowerment schemes. Thus, policy makers in Namibia are more open to dialogue, look for inclusion of the entire society, and are seemingly working to improve their economy through the design of a more comprehensive and sound mining legal framework.

The word cloud below presents the major themes observed during the interview process, from both the personal interviews and written questionnaires conducted in Namibia. The

major topics were the proactive approach of the mining sector in implementing the charter they had put together, concerns for the new charter and bill requirements, especially in terms of empowerment, the government's emphasis on business ownership structures, enforcement of mining policies, amongst others.



**Figure 4.5. Word Cloud: Namibia's Chamber of Mines and Ministry of Energy and Mines.**

There seems to be an acceptable relationship between government and mining industry in Namibia. Overall, the communication is open and the government asks industry to participate in the design and elaboration of the country's legal framework. During the interview, the participant recalled several instances when government had requested assistance from the private sector for the review of policies and other legal instruments to achieve a consensus prior to gazetting (Table 4.17). In this particular case, the government is considering a National Equitable Economic Empowerment Framework bill, referred as NEEEF. In many ways, this framework is a resemblance of the Black Economic Empowerment Act in use in South Africa. NEEEF is an empowerment tool that aims to achieve a more just and equitable country.

The government asked the industry to contribute with reviewing the document and provide their input on it, all sectors as all industries are unique, and so the input of all industries was requested.

The environment is such that there has been a close consultation between the private sector and the government in a way that they have been able to make compromises and make good negotiations for the benefit of both parties and also for the communities at large.

It is very likely that there will be another round of consultations with the private sector, in the form of meetings as instead of written submissions.

Since the bill was released and put in the public domain, they have asked the private sectors to come together and scrutinize the bill, as well as the policy and they called for submissions. Those submissions have already been put into various relevant offices and that is now under consideration

If they announce a policy that lacks evidence based research or is quite a shock to the investment community, the private sector will come together and put a case which will be taken into consideration. It has been my experience. This is how policy aspects and other regulations proposals have been dealt with. So, the government is quite receptive. So it is in the realm of prosperity and a move to build constructive partnership with the private sector.

Participant 2 Namibia

**Table 4.17. Open Communication Between Stakeholders – Interview Comments by Participants.**

The release of the NEEEF has caused concerns within the mining industry since it fears Namibia could be falling into the same situation as South Africa, where uncertainty with respect to the administration of current regulations has affected the country's social, economic and political indicators, making uncertain the future FDI in mining in that country. Despite the different approach being taken to the revision of legislation, it is already creating uncertainty and concerns across all industries. (Table 4.18).

The challenge has been the recently announced NEEEF, the pillars have remained the same but the requirements and various clauses within the bill have created a lot of uncertainty not only in mining sector but across other private sectors.....

So the bill has not been passed yet, but as you can imagine, it has created vast uncertainty, not just in the mining sector but across the board.

Participant 2 Namibia

**Table 4.18. Industry Concerns and Uncertainty – Interview Comments by Participants.**

In relation to local procurement, the participant recognizes the government’s interest in learning about the business ownership structure in Namibia’s mining sector. Having a breakdown of the businesses ownership structure will allow the government of Namibia to understand which businesses are owned by Namibians, which are owned by historically disadvantaged Namibians, and which businesses are owned by foreign nationals. The interest in understanding the business ownership structure will allow the government cluster businesses in terms of value addition and/or none value addition (Table 4.19).

<p>The other day my boss and I had a meeting with the presidential advisors and they said, look, what we are looking for is a breakdown of the suppliers. Because what is happening is that you have Namibian registered businesses and that yes, those are businesses that employed large number of Namibians but then, they are not necessarily Namibian owned. They are a franchise company or foreign South African owned company, so there is very little value addition that takes place in Namibia. Also how many of those business are owned by historically disadvantage Namibians, and how many are owned by just Namibians. So there is a great interest in looking at procurement from that perspective, and also identify business opportunities for those which are already existing.</p> <p>We as the chamber just for purpose of simplicity and also general contribution, if you look for a supplier and how many people they employed whether it is a South African owned entity or a Namibian owned entity will still employ large numbers of Namibians and there is still this skill transfer asset. So we always look at Namibian registered businesses for that very reason. But as I said, now we will have to start changing because the government is now placing big emphasis on these three components</p> <p>Participant 2 Namibia</p>
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**Table 4.19. Government Focus on Business Ownership Structure – Interview Comments by Participants.**

The participant reported the existence of certain ambiguity when defining basic concepts such as “local” and “historically disadvantaged groups.” This deficiency in defining basic concepts could be critical, as these concepts are the foundation of a well-designed policy and regulatory framework (Table 4.20). The absence of clarity leaves room for discretionary actions that may play in favor or against the mining sector and/or the government as well. This is why mining legislation must provide clarity, certainty, stability,

and predictability.

I do not have an exact definition but for local procurement they are looking at, there is a shift now, how many of those businesses are owned by Namibians, how many are owned by historically disadvantaged Namibians, and other businesses agencies to see if they are just getting the product from elsewhere and supplying them or are they actually producing...

There is a problem with the definition. We have two terms, racially disadvantaged and historically disadvantaged. In our definition, Historically disadvantaged encompasses anyone that is of color, and women, and disabled, and then racially disadvantaged, is anyone who has previously suffer from the previous regime (apartheid)

Participant 2 Namibia

**Table 4.20. Ambiguity Basic Definitions – Interview Comments by Participants.**

Another important point addressed during the interview was the disconnection between governmental institutions that result in the passing of mechanisms such as plans, policies, and regulations that are not aligned to one another (Table 4.21). The results of such misalignment not only generate confusion and uncertainty, but also have a direct effect on the achievement of targets and goals for the entire nation. The absence of cooperation, coordination, and alignment among governmental entities fails to produce a combined effect greater than the sum of their separate effects (lack of synergy).

What is also interesting is that the president has also recently announced his new Harambee Prosperity Plan and if you look at the two documents and of what one is calling for, and the empowerment framework, they do not speak to one another. The private sector is very pro Harambee, they are willing to engage and be partners in this plan whereas with the empowerment framework it is not the case for various reasons.

Interviewer: The poverty alleviation piece, is that separate from NEEEF or is it intertwined?

Participant: Well, it is on paper intertwined, but in reality it is not. That is the objective of the NEEEF, but it will not happen.

Participant 2 Namibia

**Table 4.21. Disconnection Among Governmental Mechanisms – Interview Comments by Participants.**

One interesting aspect about Namibia is that it has reported a fairly high expenditure on local procurement. The mining sector has implemented local procurement and other empowerment strategies, and has substantially contributed to Namibia’s economy for the past several years (Tlhage, 2014). The participant explains that it was actually the mining sector that introduced the current mining charter and has implemented it on a trial, self, and voluntary basis. This approach concurs with the previous comments regarding the active participation of the mining sector in the economy, and its willingness to engage with government in constructing positive legal frameworks.

What the mining sector then did is, they drafted a mining charter, and there was a sort of weekend workshop to put together this document which is available in our website. For the last year and a half the mining sector, our chamber members, have been actually implementing this mining charter on a self, voluntary bases to see how easy is it to comply with the specific requirements and find the bottlenecks and so on.

Participant 2 Namibia

**Table 4.22. Mining Charter Development by the Mining Sector – Interview Comments by Participants.**

In terms of enforcing local procurement activities, there are no specific mechanisms in place yet. Given that the charter and bill are still under revision, many details of the legislation are still uncertain, and things will be clearer once the legislation is presented as a final document, or for further consideration (Table 4.23).

There is no clarity on that aspect. It seems they are going to be establishing a council, and they will be the overseeing body and there will be a team that is under that, and will ensure that people are complying, and they will be the sort of the group to seek coordination so that the different ministries have to report to them according to their mandate. But it is still on revision and there might be further consultation.

Participant 2 Namibia

**Table 4.23. Enforcing LP Activities in the Country – Interview Comments by Participants.**



During the time that the mining sector has implemented the Mining Charter on a trial basis, the participant argues that one of the challenges faced by the mining industry in implementing local procurement on a larger scale is the lack of capacity in the country. There is a shortage of people with the necessary skills to produce products that are comparable in quality to those from international markets (Table 4.24).

As you have to come to realize there is a big deficiency of required skills in this country. If you look at more pluralistic cases, some of the challenges had to do with the quality of the product the mines were receiving, often local supplier struggle to be competitive with bigger suppliers in the international market, and those are some of the challenges that the mines face when trying to enhance local suppliers purchasing.

Participant 2 Namibia

**Table 4.24. Challenges in Expanding Local Procurement Activities – Interview Comments by Participants.**

In the following paragraphs comments from participant 3 Namibia will be discussed. This questionnaire was received by the researcher several weeks after it was sent. The comments represent the participants' views regarding local procurement policies and regulations. When asked how policies and regulations were designed and what programs influence the writing of legislation, Participant 3 Namibia said:

The Minerals Policy of Namibia does not contain a specific theme on local procurement, however the draft Namibian Economic Empowerment Framework (NEEF) contains specific provisions to the subject.

To a very large extend, the South African programme has spilled over in Namibia and previously disadvantaged Namibians, particularly entrepreneurs tend to refer to it as if it is a legal instrument in Namibia. The draft NEEF certainly has some elements of the BEE legislation.

Participant 3 Namibia

**Table 4.25. NEEEF Provisions on Local Procurement and Influence of BEE in Namibia's Bill - Interview Comments by Participants.**

The participant mentions that the NEEEF is still in draft form. Therefore, no enforcement and penalties can take place. However, it is expected the NEEEF once approved will take into consideration the enforcement and disciplinary actions. The participant mentions that in the absence of legislation, the mining sector and government have developed a mining charter and the reporting on procurement is being documented and is easy to verify, a comment in relation to this mining charter was also raised during the interview with the participant from the Chamber of Mines (Table 4.26).

In the absence of a comprehensive policy or legislation, the mining industry together with the ministry has developed a charter. Every company reports its spending on procurement and most of it is easy to verify.

Participant 3 Namibia

**Table 4.26. Development of a Mining Charter by Mining Sector and Government - Interview Comments by Participants.**

## **Chapter 5: General Discussion**

### **5.1 Related to Literature Review**

In general, clarity in defining local procurement is a priority when dealing with local procurement. For instance, in regards to geographical location, the first question that comes to mind would be the distance a business should be considered “local”. Should it be 5 km, 10 km, 20 km, and at what point would it not be considered “local” anymore? Furthermore, at which point would “local” begin to be considered “regional”, and does this matter?

In terms of local ownership, if the owner comes from a different region, would it still be considered a local enterprise? What do the regulations say about ownership? Another issue involves “size.” Should the size of the enterprise matter? Should priority be given to small and medium-sized enterprises over those of larger, more established businesses? Do the local businesses represent previously disadvantaged groups? Are there regulations that the industry needs to comply with? These and other questions arise from the definition, and different stakeholders may have widely varying perspectives and answers with respect to these and other interrogations.

In section 2.1.2 the author presented additional definitions of local procurement found interchangeably in the literature. However, should all these definitions be referred to as LP? There are evident differences between some of the terms, and not all can be referred to as local procurement. The various ways that local procurement is referred to creates ambiguity and confusion. Nevertheless, there are correlations between the terms. In the case of local procurement, local content and local sourcing, it is evident that all three terms refer to the supply of goods and services through tendering to local businesses. Focusing on local supplier development requires a wider strategy on the parts of both government and industry. The relationship between procurement and the development

of suppliers is an important consideration at the outset of any industrial, agricultural, and technological project.

In regards to the challenges faced by the mining sector in implementing local procurement in a country, the author mentioned in section 2.2 the absence of supplier capacity and inadequate policies and regulations. In addition to those challenges, the author believes that currently, businesses are seeking to improve their profitability by maximizing efficiencies in their operations. The opening of borders with respect to traditional and ecommerce operations through technology has opened up endless opportunities for worldwide business transactions. At present, anyone can buy or sell accessories, machinery, and services from anywhere around the globe. From Russia to Peru, Italy to Guatemala, China to Mexico etc., technology now allows us to conduct transactions in a safe and reliable manner with the ease of a few clicks and a couple phone calls. Major firms within all industries are able to sell directly to their customers, thus reducing the costs of the middle man. The world of ecommerce is breaching the gap between buyers and sellers in an unprecedented way. Furthermore, as previously mentioned, large firms and other ecommerce engines such as Amazon, Alibaba, eBay, Wall-Mart are investing time and money to make the experience and reliability of commercial transactions more interesting, safe and appealing to customers. This ease of doing business makes it more difficult for large companies to adapt or take into consideration local suppliers that lack the agility to perform at high standards.

In the view of the author, the example shared by Ovadia (2014) about Angola, is a landmark for other countries to emulate. The new industries developed in the country will directly supply Angola's OGM industry and certainly, these new industries will be able to sell their products to other industries at both the national and international levels. This positive economic growth benefits the lives of the Angolan people, and creates wealth for the nation. The case of Angola is an example of tangible sustainable economic

development through the application of beneficial policies and regulations that use local content practices to promote growth.

There are many aspects that affect the success of an industrial project, some include, cultural, social, economic, political, geographical, and environmental aspects, to mention a few. However, by mapping and asking some general questions, a company can establish a plan of action that takes into account the socio-economic needs of those communities in the vicinity of a project. Some basic questions would include:

- What are the applicable regulatory requirements for this project?
- What is the scope of “local” for the purposes of this project?
- How robust is the current supply chain around the project?
- How many communities will be affected by the project?
- What are the stakeholder’s expectations and needs?
- What are the most effective and available communication channels?
- Are there special provisions to consider when designing the company’s social strategy? (Aboriginals, historically disadvantaged groups, etc.)?

Answers to these and other questions usually help company officials establish and identify the depth and breadth of the development strategy, and allow community leaders to be involved in the company’s strategy.

On the other hand, when drawing local procurement legislation government officials should consider asking an array of questions to ensure their legislation is aligned with the country’s goals and social needs, some basic questions include:

- What are the country’s long term goals?
- How can local procurement legislation contribute to the nation’s objectives?
- Is the country’s current industry competitive enough?

- How competitive does the country's industry need to be?
- How can government and ministries support SMEs?
- How competitive and trained is the country's population?
- How are current regulations supporting communities' self-sustainability?

Local procurement is indeed an important tool to generate development. Countries such as Brazil, Norway, Australia, Chile, and Canada have historically capitalized from the resource extractive industry through local procurement and other economic tools, and the aim is for other countries, especially developing and least developed countries, to follow suit. One very important aspect of taking full advantage of a country's natural resources is to have sound, clear, stable and predictable policies and regulatory frameworks that provide certainty to investors so they can feel secure in continuing their investments, and also have policies and regulations that give citizens a clear vision of the benefits received through the extraction of the country's natural resources.

It is interesting to note that in most cases, public officials and policy-makers have little or no knowledge of how much their LCRs measures cost and the outcomes of those measures in terms of the economic growth. With this in mind, for LCRs to really make a difference, there needs to be a comprehensive long term national development plan in which LCRs are used as a vehicle through which to achieve that plan. However, for now, there is no country that is known to be surpassing the expected results of their LCRs regulatory frameworks. Several economists have raised their concerns about local content requirements in their research, for instance:

The arguments regarding the benefits of LP in the long run are still unclear. Although important to the development of the economy either at a small or large scale, LP can be argued to have a rather short term impact on development, meaning that there is no evidence yet of its positive effects on long term sustainable development. (Aragon & Rud, 2013)

Most, if not all the evidence from projects and programs documented in the literature shows the benefits of local procurement for communities and the economic sector. Nevertheless, no evidence has been documented with respect to communities, towns or countries depicting a growth in GDP or other economic indicators thanks to the successful implementation of local content practices, especially after mining operations have ended. More information will possibly be collected in the coming years to present such findings.

In summary, comprehensive local procurement legislation (government) and strategies (mining sector) have the potential for promoting development through an array of economic venues. Building capacity through supporting new entrepreneurship ventures, potentiating current enterprises, and developing and supporting the manufacturing sector are critical opportunities for the advancement and diversification of the economy. Mining, therefore, can surely be a significant catalyst for economic growth and development.

## **5.2 Related to Results**

Mining legal frameworks in South Africa have been important in expanding local procurement activities in the country. The policies and regulations have evolved over time. An example of this is the strengthening of the scorecard process, which has made it more specific and enforceable. However, both the policy and regulatory frameworks have inherent weaknesses that need to be addressed by all stakeholders in the extractive industry and beyond. Working in isolation, the DMR will not be able to achieve the economic growth that is needed and demanded by the citizens of South Africa.

Namibian policy-makers also recognize the need to have a policy and regulatory framework that supports the development and economic growth of the country. Their approach has been such that communication channels with stakeholders have stayed open and engaging. The Namibian government has been cautious to avoid making the same mistakes made by their neighbors in South Africa where a great deal of contention

has intensified due to the poor communication and consultation approach by the government. Mining and other private sectors are skeptic about NEEEF as the right strategy to deliver development and economic growth as it is perceived as vague and ambiguous. The similarities between NEEEF and the South African Mining Charter have also raised concerns and uncertainty in the private sector believing that neither the South African Mining Charter nor the NEEEF reflect the current and future needs of their respective countries.

In both cases, South Africa and Namibia present weaknesses in their approach to local procurement and the major concern is not in the regulatory layout. Meaning, if both countries have or not regulations in place, or if those regulations are strong or not. The major concern is that both: South Africa's stringent framework and Namibia's regulatory draft are not taking into consideration true transformation for their citizens. The author perceives there is an absence of purpose. Local procurement is not an end in itself, but a means to an ending.

### **5.3 Question and Objectives**

At the beginning of this study an overarching question was raised which guided the methodology of the work. The question is:

- Are policies and regulations a major factor in expanding local procurement in the Sub-Saharan Africa mining industry?

Based on this question four objectives were established and addressed throughout this study. The objectives were:

- Objective 1 – Define and implement a detailed approach to determine the best two countries to be evaluated.



- Objective 2 - Develop an understanding of the local procurement regulatory framework in South Africa and Namibia.
- Objective 3 - Gather information regarding the design, effectiveness, and enforcement of policy and regulatory frameworks in South Africa and Namibia
- Objective 4 - Draw conclusions from the regulatory frameworks of the countries researched during this study.

To address Objective 1, a number of activities were conducted in order to identify South Africa and Namibia as the primary and control countries for this study. To achieve this objective the first step was to develop a matrix containing a series of socio-economic, and political indicators for the 48 Sub-Saharan countries in Africa. These indicators were addressed in Chapter 4, Section 4.1 and a copy of the indicators table illustrating this work is attached in Appendix B. Additionally, a detailed explanation of each indicator is included in Appendix C of this thesis. This matrix allowed evaluation of the Sub-Saharan countries on a general level. After the general evaluation of each country was conducted, countries were grouped based on their socio-economic and political contexts. Then, based on their overall socio-economic and political environments, five countries were selected and an evaluation of their policy and regulatory frameworks was conducted specifically related to local procurement. From this evaluation and the similarities both countries presented, in terms of socio-economic and political characteristics, South Africa was selected as the primary country based on its strong regulatory framework and Namibia was selected as the control country of study based on its weak regulatory framework.

In order to address Objective 2, a detailed study of the local procurement legal framework of both countries was conducted. South Africa and Namibia have legal frameworks that are tailored to the mining industry. However, these policy and regulatory frameworks are not exclusive to local procurement but contain a series of requirements the mining sector needs to abide by. For instance, additional requirements in terms of ownership, housing,

employment equity, human resource development, enterprise development, beneficiation, etc. are included as part of these frameworks. Chapter 4, Sections 4.5 and 4.6 explain how the regulatory frameworks of both countries are constructed and Appendix E shows the breakdown of these frameworks. In synthesis, South Africa and Namibia embrace in their legislation the need for the inclusion of their citizens in the mining sector, whether it is through ownership, management, exploration, development, construction, operations, or any other activity related to mining that can ultimately contribute to the growth and development of the country and its people. To further develop an understanding of the local procurement regulatory frameworks in both countries, the author compiled the institutional mapping of the Department of Mineral Resources in South Africa, and the institutional mapping of the Ministry of Energy and Mines of Namibia. In parallel, a stakeholder mapping for both countries was also created. Both, the institutional and stakeholder mappings allowed the author to further understand where local procurement policies and regulations were created and by whom were they created. Chapter 4: Section 4.4 presents the research conducted in relation to the institutional mapping and Appendixes F,G,H and I, show the analysis of the institutional and stakeholder mapping for South Africa and Namibia.

To address Objective 3, fieldwork was carried out and a set of questions was constructed to engage with public officials responsible for the design and implementation of local procurement policies and regulations in South Africa and Namibia. Additionally, members of the Chamber of Mines (COM) of both countries were approached to seek their participation. Chapter 3, in Section 3.4 and 3.6 cover in further detail the design of the interview questions and the ethical considerations involved in this type of research and Appendix D presents the questionnaire template used during the fieldwork. The fieldwork was a relevant piece for the success of this research as it provided the opportunity, through the workshop “Effective Local Procurement Regulation and Best Practices in South Africa and Beyond” organized in Johannesburg, South Africa, to meet people from industry, government and financial agencies that were involved and interested in

discussing and sharing their knowledge and concerns in regards to local procurement activities already being applied in the country. The fieldwork took place from May 14<sup>th</sup> to June 1<sup>st</sup> and allowed the author to contact and conduct personal interviews with participants from the Chamber of Mines of South Africa and Namibia, also a personal interview was conducted with a participant from the DMR in South Africa and a questionnaire was answered by a participant from the Ministry of Energy and Mines of Namibia. The personal interviews conducted with the COM of both countries and the written questionnaire from the Ministry of Energy and Mines of Namibia provided interesting insights that were covered in Chapter 4, Section 4.6 of this thesis. However, there is no information from the personal interview conducted at the DMR in South Africa. As previously discussed in Section 4.6, the participant from the DMR in South Africa requested, due to internal policies, not to discuss research questions in person, instead provide written inquiries that would be answered and replied promptly by the people responsible for each section of the questionnaire. The questionnaire was submitted to the respective official channels and continuous follow up was carried out. However, no answers were provided.

To address Objective 4, a number of conclusions are presented based on the review of books, journal papers, guidelines, reports, and other documents related to local procurement during the literature review in Chapter 2, and also from the analysis of the legal frameworks, the fieldwork approach, and the personal interviews developed and conducted in Chapter 3 of this thesis. Based on this research, the author considers that local procurement policies and regulations are an essential part of the mining legal structure of a country, and they set the ground rules for how industries can plan their projects and develop their local procurement strategies. A too stringent legal framework will create uncertainty and concern for investors, a too weak legal framework on the other hand, will not allow a country to take full advantage of their non-renewable natural resources. In relation to enforcement and compliance, the lack of properly and effectively monitoring compliance with respect to the country's legal framework can result not only

in financial losses in terms of country revenues, but also in an ailing development of the SMEs sector, which seems to be one of the main objectives of local procurement government regulations and mining industry strategies. In regards to economic diversification and building capacity, government officials should consider to integrate into their mining legislation particular ways to diversify the economy. Mining, through local procurement legislation and other fiscal regimes, has the potential to promote economic diversification and build capacity.

#### **5.4 Methodological Limitations**

The initial work for this study began in December 2015. The information found in the indicators table was collected around that time. Therefore, the data presented will embody the figures and information found up to that month. New data released by the World Bank, United Nations, CIA Fact Book, ICMM, as well as agencies and organizations from where the data was collected was not captured and updated due to restrictions in time. This research was framed in such a way as to focus on two countries in Sub-Saharan Africa. Even though, in the beginning, the research took into account all Sub-Saharan countries, in order to draw the primary and control countries for further evaluation of their policies and regulatory frameworks, it is difficult to conclude if the findings of this research can be extrapolated and generalized to other regional or neighboring countries given the unique social, economic, and political schemes inherent to each nation and society.

Another limitation was the gathering of data. It was difficult to receive responses from government officials of South Africa and Namibia. Although, emails were continuously sent to request time to interview in person, no answers were received. With the exception of one participant from the DMR in South Africa and one from the Ministry of Energy and Mines in Namibia.

## **Chapter 6: Conclusions and Recommendations for Future Research**

### **6.1 Conclusions**

This research was undertaken to understand whether policies and regulations were a major factor in expanding local procurement in the Sub-Saharan African mining industry, from this question four objectives were formulated, a methodology was developed, and results were collected, analyzed and discussed in order to address both, the question and the objectives of this thesis.

The approach used to define and determine the best two countries for this study proved to be effective and resulted in choosing countries that, although, had similar socio-economic and political contexts, differed on their approach to local procurement policies and regulations. Developed was a table containing legislation and the institutional information, and stakeholder mapping for South Africa and Namibia allowed the author of this research to develop an understanding of the local procurement regulatory framework in both countries.

Although a series of desktop activities were conducted during the elaboration of this thesis, the fieldwork in South Africa and Namibia was a key element to achieve the objectives of this research as it provided empirical knowledge from the interviews conducted with participants from both countries. This resulted in approaching the analysis as a case study.

As local procurement policies and regulations are an essential part of the mining legal structure of a country, and they set the ground rules for how industries can plan their projects and develop their local procurement strategies. However, mining regulatory frameworks need to be balanced in a way that as this frameworks are attractive to investments, they also take full advantage of those investments for the development of the country. The lack of properly and effectively monitoring compliance with respect to

the country's legal framework can result not only in financial losses in terms of country revenues, but also in an ailing development of the SMEs sector, which seems to be one of the main objectives of local procurement government regulations and mining industry strategies.

Government officials should consider integrating into their mining legislation particular ways to diversify the economy. Mining, through local procurement legislation and other fiscal regimes, has the potential to promote economic diversification and build capacity. In terms of generalization of the results of this case study to other Sub-Saharan countries, the author believes the results could be used by other countries, as a reference to evaluate their own mining legislative frameworks and decide where they stand in comparison to South Africa and Namibia. Taking into consideration their own socio-economic and political environments. The overall conclusion of this study is that policies and regulations are a major factor in expanding local procurement in the Sub-Saharan African mining industry. Ongoing reviews, improvements and reformulations are necessary to refine these policy instruments to better address the developing landscape.

## **6.2 Recommendations for Future Work**

A number of recommendations are included in this section. These recommendations arise from the discussion, conclusions and current literature regarding local procurement policy and regulatory frameworks.

- Additional research with a focus on local enterprises and the development of communities affected by mining projects needs to be conducted in light of the country's current mining regulatory framework and mining industry's local procurement strategies. Most research has been conducted on a variety of aspects targeting either the government or the mining industry's performance and/or contributions. However, bottom-up studies are scarce and need to be conducted to validate if the social and economic impacts of mining regulations and industry's

strategies related to local procurement are truly contributing to the development and prosperity of the country's society.

- For future studies, having a local researcher would be a suitable approach, especially if the project involves contacting government officials. A local researcher would, through networking, have the opportunity to meet more people and accommodate his/her time to meet with government officials, given that time would not be as much of a constraint to a local researcher as it would be to external researchers.
- It is recommended that policy makers should get familiar with all publicly available information regarding the structuring of local procurement legislation frameworks in order to build their best possible legal structures. A useful and worthwhile strategy, in cases where there is insufficient in situ expertise, is the hiring of experts to support in the process of designing and creating legislation frameworks.
- Working in conjunction with Global Affairs Canada proved to be a very successful approach in this project. Their support and relevance as an official Canadian agency provided greater credibility to the project, and at the same time attracted the attention of those participants who attended the “Effective Local Procurement Regulation and Best Practices in South Africa and Beyond” workshop that was held in Johannesburg, South Africa. Engaging with agencies of similar relevance is highly advised for future studies.
- Local engagement with stakeholders through workshops or small training sessions can be a powerful tool to meet relevant people related to the research subject. The previously mentioned workshop that was held in South Africa provided the opportunity to meet with participants and hear their ideas and concerns regarding local procurement and the legislation frameworks that affect industry and government. It

also provided a fantastic opportunity to network and gather relevant contact information that helped with the accomplishment of the research objectives.



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## Appendices

### Appendix A : A framework to Define Local According to a Company's Needs

(International Finance Corporation, 2011)

Step	Description	Example
Step 1	Determine what expectations/requirements your definition of <i>local</i> is addressing	<ul style="list-style-type: none"> <li>• Government requirement: does the government require a certain amount of local content? How do they define <i>local</i>?</li> <li>• Social license to operate: are there expectations of jobs or economic development that can be addressed through a LPP?</li> </ul>
Step 2	Determine the areas you would like to prioritize, taking account of risk factors	<ul style="list-style-type: none"> <li>• Liaise with community affairs office to find out which communities provide a social license to operate and which therefore may need to see sustainable benefits from the company's operation</li> <li>• Establish what kinds of SMEs are identified in the communities</li> <li>• Establish what kinds of opportunities can be reasonably 'localized' based on existing skills of community businesses</li> <li>• Establish what kinds of opportunities can be 'localized' after community businesses undergo training/mentoring programs</li> <li>• Create a SME map organized by proximity to firm to evaluate potential for this program to address community concerns</li> <li>• If there are no SMEs in neighboring communities then other programs managed by the CSR department will take priority. Consider joint ventures with entrepreneurs to develop SMEs in these areas</li> </ul>
Step 3	Analyze your risk assessment in conjunction with the desired areas of focus to arrive at an appropriate definition of <i>local</i>	<ul style="list-style-type: none"> <li>• <i>Geography-based</i>: SMEs within a specified radius surrounding your operation or within a specified geographic location, possibly requiring certification from a third party. Alternatively, <i>geography-based</i> may depend on the SME having: <ul style="list-style-type: none"> <li>- Local registration</li> <li>- Local tax number</li> <li>- Local domicile</li> </ul> </li> <li>• <i>Input-based</i>: the bulk of inputs into the product are locally made</li> <li>• <i>Ownership-based</i>: a certain percentage of staff and/or the majority of shareholders are local</li> </ul>

## Appendix B : Socio, Economic and Political Indicators Table

	Social	Social	Social	Social	Social	Social	Economic	Economic	Economic	Political	Economic	Economic	Economic	Economic	Political	Political	Political	Political
	World Bank	CIA Factbook	World Bank	World Bank	World Bank	UNDP	World Bank	World Bank	ICMM	AMLA (African Mining Legislation	The Wall Street Journal and The Heritage Foundation	Fraser Institute 2015	World Bank Group: Doing Business, measuring business regulations	World Economic Forum	Transparency International	The Democracy Ranking Association	The Bertelsmann Stiftung's	World Bank
	1	12	26	7	16	11	9	10	15		20	21	22	24	14	17	18	13
SUB SAHARAN AFRICA (A)	Population 2014 (1)	Literacy rate (%) 2015 (12)	Population growth % 2000-2012 (26)	Total Unemployment (% of total labor force) (modeled ILO estimates) 2013 (7)	Poverty headcount ratio at \$1.90 a day (2011 PPP) (% of population) (16)	Human Development Index 2013 (11)	GDP growth (annual %) 2014 (9)	GDP per capita (current US\$) 2014 (10)	Mining contribution index (ICMM) (15)	Local content or local procurement relevant clause in legislation?	Index of Economic Freedom (Wall Street Journal) (20)	The Investment Attractiveness Index (21)	World Bank's Ease of Doing Business (2015) (22)	Global Competitiveness Index (24)	Corruption Perception Index 2014 (14)	Democracy Index (17)	BTI Status Index (18)	CPIA transparency, accountability, and corruption in the public sector rating (1=low to 6=high) (13)
Angola	24,227,524	71.1%	40.8%	6.8	30%	0.53	3.9%	5,424	36.91	Yes	47.9	42.4	181	3.0	19		4.44	..
Benin	10,598,482	38.4%	36.7%	1.0	53%	0.48	5.4%	825	66.22	No	58.8		158		39	48.9	6.36	3.50
Botswana	2,219,937	88.5%	20.6%	18.4	18%	0.68	4.4%	7,123	93.74	Yes	69.8	68.3	72	4.2	63	53.3	7.90	..
Burkina Faso	17,589,198	36.0%	35.8%	3.1	55%	0.39	4.0%	713	94.21	Yes	58.6	71.9	143	3.2	38	43.0	5.20	3.50
Burundi	10,816,860	85.6%	39.7%	6.9	78%	0.39	4.7%	286	53.87	No	53.7		152	3.1	20	41.0	4.90	2.50
Cabo Verde	513,906	87.6%	13.4%	7.0	18%	0.64	2.7%	3,641	43.16	No	66.4		126	3.7	57			4.50
Cameroon	22,773,014	75.0%	30.7%	4.0	29%	0.50	5.9%	1,429	29.03	Yes	51.9		172	3.7	27		4.40	2.50
Central African Republic	4,804,316	36.8%	21.5%	7.6	66%	0.34	1.0%	371	84.84	Yes	45.9		185		24		3.30	2.50
Chad	13,587,053	40.2%	42.0%	7.0	38%	0.37	7.3%	1,025	12.29	No	45.9		183	2.8	22		3.40	2.50
Comoros	769,991	77.8%	28.9%	6.5		0.49	3.0%	841	31.65	No	52.1		154		26			2.50
Congo, Dem. Rep.	74,877,030	63.8%	37.6%	8.0	77%	0.34	9.0%	440	95.88	No	45.0	59.4	184		22		3.00	2.00
Congo, Rep.	4,504,962	79.3%	32.3%	6.5	29%	0.56	6.5%	3,138	17.65	No	42.7		176		23		4.70	2.00
Cote d'Ivoire	22,157,107	43.1%	24.7%	4.0	29%	0.45	9.0%	1,546	67.48	No	58.5	68.0	142	3.7	32	34.0	4.50	3.00
Equatorial Guinea	820,885	95.3%	37.7%	8.0		0.56	-3.1%	17,430	14.64	No	40.4		180		..			..
Eritrea	5,110,444	73.8%	32.1%	7.2		0.38	1.7%	755	96.38	Yes	38.9		189		18		1.80	2.00
Ethiopia	96,958,732	49.1%	32.8%	5.7	34%	0.44	9.9%	565	57.27	Yes	51.5	64.1	146	3.6	33		3.70	3.00
Gabon	1,687,673	83.2%	27.2%	19.6		0.67	4.3%	10,208	50.62	Yes	58.3		162	3.7	37			..
Gambia, The	1,928,201	55.5%	38.4%	7.0		0.44	-0.2%	419	53.32	No	57.5		151	3.5	29			2.00
Ghana	26,786,598	76.6%	30.5%	4.6		0.57	4.2%	1,443	62.08	Yes	63.0	71.0	114	3.7	48	57.2	7.40	3.50
Guinea	12,275,527	30.4%	27.7%	1.8	35%	0.39	-0.3%	540	94.79	No	52.1	38.0	165	2.8	25	40.4	4.70	2.50
Guinea-Bissau	1,800,513	59.9%	26.5%	7.1	67%	0.40	2.5%	568	14.11	No	52.0		178		19			2.00
Kenya	44,863,583	78.0%	31.4%	9.2		0.54	5.3%	1,358	50.04	No	55.6	38.0	108	3.9	25	46.1	5.80	3.00
Lesotho	2,109,197	79.4%	10.3%	24.7	60%	0.49	2.0%	990	92.67	Yes	49.6		114	3.7	49	51.6	5.50	3.00
Liberia	4,396,554	47.6%	38.8%	3.7	69%	0.41	0.5%	461	91.98	No	52.7		179		37	51.7	5.50	3.00
Madagascar	23,571,713	64.7%	34.8%	3.6	82%	0.50	3.0%	449	74.33	Yes	61.7	63.0	164	3.4	28	45.2	4.30	2.50
Malawi	16,695,253	65.8%	34.0%	7.6	71%	0.41	5.7%	255	44.54	Yes	54.8		141	3.2	33	48.6	5.80	2.50
Mali	17,086,022	38.7%	37.7%	8.2	49%	0.41	7.2%	707	62.27	Yes	56.4	51.0	143	3.4	32		4.10	3.00
Mauritania	3,969,625	52.1%	33.1%	31.0	11%	0.49	6.4%	1,275	96.82	No	53.3		168	3.0	30		4.40	3.00
Mauritius	1,260,934	90.6%	6.0%	8.3	1%	0.77	3.6%	10,006	31.3	No	76.4		32	4.5	54	66.7	8.10	..
Mozambique	27,216,276	58.8%	34.1%	8.3	69%	0.39	7.4%	602	84.89	Yes	54.8	51.0	133	3.2	31	44.0	5.50	3.00
Namibia	2,402,858	81.9%	19.3%	16.9	23%	0.62	4.5%	5,589	82.51	Yes	59.6	70.0	101	4.0	49	56.0	7.10	..
South Africa	54,001,953	94.2%	17.8%	24.9	17%	0.66	1.5%	6,478	62.43	Yes	62.6	58.0	73	4.4	44	53.0	7.10	..
Tanzania	51,822,621	70.6%	35.9%	3.5	47%	0.49	7.0%	998	81.81	Yes	57.5	57.0	139	3.6	31	48.1	5.50	3.00
Zambia	15,721,343	63.4%	33.4%	13.3	64%	0.56	6.0%	1,722	66.97	Yes	58.7	57.0	97	3.9	38	44.4	5.90	3.00
Zimbabwe	15,245,855	86.5%	15.5%	5.4		0.49	3.2%	896	76.61	Yes	37.6	41.0	155	3.5	31		3.90	1.50

## **Appendix C : A Brief Explanation of Each Indicator**

- **Population**

Population size helps draw a mental map of the dimensions and density of a population in a defined area. This indicator opens the door to further questioning related to a country's governance. For instance, are the laws, policies, and regulatory frameworks aligned to the needs of the current and projected population, its composition, and distribution? Governments are set in place to represent the needs, and protect the inherent rights of all their citizens. Understanding who a country is made of, in terms of population; helps define the organization and structuring of its bases.

- **Literacy Rate**

As expressed by the World Bank, education supports the reduction of poverty and inequalities. It “lays a foundation for sustained economic growth” (World Bank, 2015b). Literacy provides the foundation for better opportunities for the citizens of a country. The lack thereof, has critical consequences for individuals and societies. Literacy Foundation (2016) argues that the consequences of individuals' illiteracy range from low self-esteem to health problems. It also argues that social illiteracy affects the GDP growth rate and community involvement, especially with respect to issues that affect those communities, and where they could make a difference. A higher number means a better literacy level.

- **Population Growth**

Population growth is an important parameter to evaluate as it sheds light on the economic needs that a country is facing in the present, and is going to face in the decades to come. High fertility rates are associated with poverty and other negative social and economic effects. The United Nations Population Fund argues there are tangible benefits in GDP, education, and health, among others, related to appropriate fertility control rates in a country. On the other hand, it also provides information on the negative effects and consequences of an uncontrolled population growth (United Nations Population Fund,

2014). The large and fast increase in a country's population requires adequate planning as the demands for food, water, employment, health care, and other basic needs will increase rapidly over the years affecting the social, economic, and political stability of a nation, usually on a negative pattern. A higher number represents a larger population growth.

- **Total Unemployment Under the International Labor Organization Indicator**

The International Labor Organization defines the unemployed as members of the economically active population who are without work but available for and seeking work (International Labour Organization, 2015). The Unemployment Indicator can be a measure of stability and prosperity, but needs to be evaluated with caution as high unemployment rates do not necessarily mean less economic prosperity or vice versa. However, high and sustained unemployment could, most certainly, mean serious inefficiencies in resource allocation (World Bank, 2015c). A higher percentage represents more unemployed individuals.

- **Poverty Headcount Ratio**

In the 1990s the poverty line was drawn at 1 dollar a day, later in 2005 it was changed to 1.25 dollars a day. Using the 2011 PPP (Purchasing Power Parities) term, the current International Extreme Poverty Line is at 1.90 dollars. The \$1.90 was obtained considering the mean of the poverty lines of the fifteen poorest countries in terms of their per capita consumption. Basically, the poverty headcount ratio reflects the percentage of the population who lives below the Standard Poverty Line, in other words, the depth of poverty and its incidence (World Bank, 2015c). A higher percentage means a larger population group under the \$1.90 a day poverty line.

- **Human Development Index (HDI)**

The HDI is an important measure created by the United Nations Development Programme. The reason behind this indicator is to monitor the development of the

citizens of a country under the light of three dimensions; long and healthy life, knowledge, and a decent standard of living. This indicator goes beyond economic growth alone as it emphasizes that people and their capabilities should be the ultimate objective for assessing the development of a country (United Nations Development Programme, 2015). Under the long and healthy life dimension rests the life expectancy at birth indicator, which is measured by the life expectancy index. The knowledge dimension is measured by the mean years of schooling for adults and the expected years of schooling for children. This dimension is contained in the Education Index.

Finally, the Standard of Living Indicator uses the Gross National Income per Capita (GNI per capita (PPP\$)) as its indicator, and it is measured in the GNI index. A higher index (closer to 1.0) represents a higher level of human development under the criteria described previously in this paragraph.

- **GDP Growth (Annual %)**

Growth Domestic Product is one of the most important indicators of economic performance of a country. It was established by the United Nations System of National Accounts to measure the value of economic activity of a nation at a specific time. The importance of GDP lies within its use as an economic health indicator and also to forecast economic scenarios, like for instance, if an economy is contracting or expanding, if the economy needs a boost or restraint, and also to foresee a possible recession or inflation in the future (Picardo, 2015). The shortcoming of using GDP is that it does not account for the “black economy” which tends to be large in many countries, especially in developing ones. And also, this measure focuses on economic output, without considering the economic well-being of the country’s citizens. The higher the number the more active the economy of a country.

- **GDP per Capita (Current US\$)**

This indicator is obtained by dividing GDP into the number of people in the country. Per capita GDP is used to compare the relative economic performance of one country to another, and also indicates how productivity is affected by this economic performance. A decrease in per capita GDP is the indication of economic weakening, which translates into lower productivity. The same concept applies for the opposite. The primary drawback of this indicator is that it does not take into account the distribution of family income. The higher the per capita GDP, the more productive a nation is perceived to be.

- **Mining Contribution Index**

The Mining Contribution Index was released by the International Council on Minerals and Metals, and its purpose is to understand the importance and relevance of the mining sector in the economy of a country. This index is a combination of three indicators related to the contributions of mining to national economies. These indicators are: Mineral and Metal Export Contribution 2012, Increase/Decrease In Mineral and Metal Export Contribution 2007-2012, and Mineral Production Value Expressed as a Percentage of GDP in 2012 (Haglund et al., 2014). Two additional indicators were considered as part of the MCI calculation. However, the limited data made it unviable to add them. These two were: Fiscal Contributions from Mining as Percentage of GDP or Percentage of Total Fiscal Revenue, and Direct Employment in Mining as a Percentage of Total Formal Employment. The MCI scale goes from 0 to 100. The closer to 100 the number, the higher the relevance of minerals and metals in the nation's economy.

- **Index of Economic Freedom**

This index was created by The Wall Street Journal and The Heritage Foundation in 1995, and the data is collected from businesses, trades, governance and policy. The higher the score, the greater the economic freedom of a country. People where economic freedom is high live longer, have better health, are more educated, and care more about the

environment. The major advantages found in countries with better economic freedom scores is that they are more prosperous in three key areas: income per capita, social progress, and democratic governance. Improvement in these three areas is what most development programs are aiming for in their work in developing countries, and that is why this indicator is valuable. The Index of Economic Freedom evaluates ten variables in order to calculate the ranking and index, these are: prosperity rights, freedom from corruption, fiscal freedom, government spending, business freedom, labor freedom, monetary freedom, trade freedom, investment freedom, and financial freedom. As previously mentioned, the closer to one hundred, the higher the economic freedom.

- **The Investment Attractiveness Index**

The Fraser Institute has created this index by combining the Best Practices Mineral Potential Index and the Policy Perception Index, both of which look into factors with respect to mining in a country, including: geological attractiveness, government policy towards exploration investment in terms of taxation levels, onerous regulations, and the quality of infrastructure, among others. The index attempts to rank provinces, states and countries depending on the extent that “*public policy factors encourage or discourage investment*” (Jackson & Green, 2015). The index gives 40% of its weight to policy and 60% to mineral potential; 100 is the highest score (higher investment attractiveness), and 0 the lowest (lower investment attractiveness).

- **World Bank’s Composite Index of Doing Business**

The World Bank’s Composite Index of Doing Business looks into the friendliness of the country’s business environment in terms of starting a local firm, taking into consideration legal, economic, and operational variables. The ten variables comprising this indicator are; starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, and resolving insolvency. A total of 189 countries are ranked in this indicator, including 47 Sub-Saharan countries. For this indicator, a low

numerical value represents a more conducive business regulatory environment (i.e. Singapore is the highest-ranked country under this index, position # 1, whereas Eritrea ranks last, taking position # 189).

- **Global Competitive Index**

This comprehensive index looks into a country's competitiveness-high productivity framework. The Global Competitive Index was developed by the World Economic Forum in 2004, and it is based on twelve main pillars relevant to a country's competitiveness. The twelve pillars include over 110 variables, of which two thirds are derived from the Executive Opinion Survey (also created by the World Economic Forum), and one third from public information sources (Wikipedia, 2015). High productivity, which is synonymous with competitiveness, is an important key factor of growth and resilience for any country, therefore its importance. The twelve pillars making up this index are:

*Basic requirements*

- Institutions
- Infrastructure
- Macroeconomic framework
- Health and primary education

*Efficiency enhancers*

- Higher education and training
- Good market efficiency
- Labor market efficiency
- Financial market development
- Technological readiness
- Market size

*Innovation and sophistication factors*



- Business sophistication
- Innovation

This index uses a 1-7 scale, where 7 represents the best competitive scenario.

- **African Mining Legislations Atlas**

This mining atlas is composed of a compendium of information gathered by the World Bank to help those interested in researching the legislation frameworks available in African countries (mining codes, policies, regulations, and others). This is a user-friendly tool that allows for the easier discovery of information related to mining legislation, and in a one-stop format. The site is interactive, allowing one to compare countries in the region. It also provides information about each country's dependency on mining and their EITI status (World Bank, 2013).

- **Corruption Perception Index**

For over twenty years, Transparency International (TI) has published the Corruption Perception Index on an annual basis. This index scores countries on how corrupt their public sector is perceived to be. Transparency International argues that their index has persuaded countries to take action regarding their standings in terms of corruption. Corruption in the public sector, as described by TI, "is about so much more than missing money. It is about people's welfare." The CPI uses a scale of 0 (highly corrupt) to 100 (very clean).

- **Democracy Index**

The Democracy Index measures the quality of democracy in a country (quality of politics + quality of society). It is based on 6 dimensions; one political and the other five non-political dimensions. The political dimension represents 50% of the total weight (score), then, the next five will account for the other 50%, having a weight of 10% each. These

are: (1) gender (socio-economic and educational gender equality); (2) economy (economic system); (3) knowledge (knowledge-based information society, research and education); (4) health (health status and health system); (5) environment (environmental sustainability)<sup>2</sup>. The Democracy Index values range from 1 being the weakest (poorest) to 100 representing the strongest (best).

- **BTI Status Index**

This index evaluates how developing and transitional countries move towards democracy and a market economy for the benefit to their citizens. The BTI Status Index uses a set of seventeen criteria to analyze and evaluate each country. The criteria are divided into three main areas; political, economic, and management transformation. The five criteria under political transformation are: stateness, political participation, rule of law, stability of democratic institutions, and political and social integration. Economic transformation evaluates: level of socioeconomic development, organization of the market and competition, currency and price stability, private property, welfare regime, economic performance, and sustainability. The third, being management transformation encompasses: level of difficulty, steering capacity, resource efficiency, consensus-building, and international cooperation. The BTI Status Index evaluates countries in a 1-10 scale (one being the weakest and ten the strongest).

- **CPIA Transparency, Accountability in the Public Sector Rating**

This indicator assesses the extent to which public officials are held accountable for their use of funds and for the results of their actions by the civil society. The World Bank evaluates this indicator under three dimensions: accountability of the executive to oversight institutions and of public employees for their performance, access of civil society to information on public affairs, and state capture by narrow vested interests (World Bank, 2015a). This indicator is measured according to a 1 (low) to 6 (high) scale.

## Appendix D : Interview Questions



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### **Questions**

#### **Design:**

1. How are local procurement policies and regulations designed, and who is involved in their design?
2. How do programs, such as the Black Economic Empowerment Programme (BEE) in South-Africa, influence the current local procurement regulatory framework?

#### **Goals and objectives:**

3. What are the intended outcomes and goals of local procurement policies and regulations?
4. How have specific population groups, such as the historically disadvantaged South-Africans (HDSA), benefited from the current local procurement regulatory framework?

#### **Effectiveness:**

5. What are the metrics and criteria used for determining local procurement policies?
6. What instruments do you have to measure regulation effectiveness and compliance?

#### **Enforcement:**

7. From a regulatory perspective, how do government officials enforce compliance to local procurement policies and regulations?
8. At what jurisdictional level are regulations enforced (national, regional, provincial)?

9. Is there a relationship between enforcement of local procurement policies versus the implementation by industry? How is this measured?
10. What are the penalties for not complying with local procurement policies and regulations (fines, license suspension, etc.)?

**Expectations:**

11. How have regional organizations, such as SADC (South African Development Community), supported local procurement efforts?
12. Are there different expectations with regard to local procurement between government and industry? **Yes/No**
  - i. If yes, what are these differences?
13. What is the responsibility of industry in the absence of local procurement policies and regulations?
14. As successful as it can become, local procurement still creates "dependency" to mining. Are the policies designed to also contribute to economic diversification and sustainable economic growth?

## Appendix E : Legislation Table (South Africa and Namibia)

Country	LP Legislation	Laws and Regulations	Location	Content:
South Africa	Yes	MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT OF 2002:	CHAPTER 1: DEFINITIONS	<p><b>(b)"broad based economic empowerment"</b> means a social or economic strategy, plan, principle, approach or act which is aimed at:</p> <p>(a) redressing the results of past or present discrimination based on race, gender or other disability of historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such industries; and (b) transforming such industries so as to assist in, provide for, initiate or facilitate –</p> <p><b>(i) the ownership, participation in or the benefiting from existing or future mining, prospecting, exploration or production operations;</b></p> <p>(ii) the participation in or control of management of such operations;</p> <p>(iii) the development of management, scientific, engineering or other skills of historically disadvantaged persons;</p> <p><b>(iv) the involvement of or participation in the procurement chains of operations;</b></p> <p><b>(v) the ownership of and participation in the beneficiation of the proceeds of the operations or other upstream or downstream value chains in such industries;</b></p> <p>(vi) the socio-economic development of communities immediately hosting, affected by supplying labour to operations; and</p> <p><b>(vi) the socio-economic development of all historically disadvantaged South Africans from the proceeds or activities of such operations;</b></p>
			CHAPTER 7: GENERAL AND MISCELLANEOUS PROVISIONS No. 49 of 2008: Mineral and Petroleum Resources Development Amendment Act, 2008.	<p>Amendment of section 100 of Act 28 of 2002</p> <p>70. Section 100 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:</p> <p>“(a) To ensure the attainment of the Government's objectives of redressing historical, social and economic inequalities as stated in the Constitution, <b>the Minister must within six months from the date on which this Act takes effect develop a broad-based socio-economic empowerment Charter that will set the framework for targets and time table for effecting the entry into and active participation of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of the mining and mineral resources and the beneficiation of such mineral resources.</b>”.</p>
		Regulation Gazette No. 7949 Vol. 466 Pretoria 23 April 2004 Mineral and Petroleum Resources Development Regulation,	PART II: SOCIAL AND LABOUR PLAN	<p>41. the objectives of the social and labour plan are to:</p> <p>a. Promote employment and <b>advance the social and economic welfare of all South Africans</b></p> <p><b>c. Ensure the holders of mining rights contribute towards the socio-economic development of the areas in which they are operating</b></p>
				<p>42. Submission of social and labour plan</p> <p>1. a. <b>an application for a mining right must be accompanied by a social and labour plan contemplated in regulation 46</b></p> <p>1.b. The <b>Regional Manager</b> may refer the said social and labour plan back to the applicant with proposals for amendments and the revised social and labour plan must then be re-lodged within a period specified by the <b>regional manager</b>.</p>
				<p>2. a. An application for the conversion of an old order mining rights in terms of the act <b>must be accompanied by a social and labour plan contemplated in regulation 46</b></p>
				<p>43. Applicability of social and labour plan (<b>plan is valid until a closure certificate has been issued</b>)</p>
				<p>44. Amendment of social and labour plan (not amendment without consent of Minister)</p>
				<p>45. <b>Reporting of social and labour plan. (submit an annual report with the compliance to the Regional Mgr).</b></p>
				<p>46. Contents of social and labour plan</p> <p>c. A local economic development programme which must include-</p> <p>(i) social and economic background of the area</p> <p>(ii) key economic activities of the area</p> <p>(iii) the impact that the mine would have in the local and sending communities</p> <p>(iii) the infrastructure and poverty eradication projects that the mine would support in line with the integrated development plan (IDP)</p> <p><b>(vi) the procurement progression plan and its implementation for HDSA companies in terms of capital goods, services and consumables and the breakdown of the procurement which must be completed in the form of Form T Contained in annexure II.</b></p> <p><b>e. (ii) the local economic development programmes</b></p>
			Note: 2	<p><b>2. The mentoring of empowerment groups refers to that mining company's HDSA employees and HDSA linked partners at the levels of ownership and procurement.</b> It does not preclude mining companies being involved in mentoring programmes outside of its own operations.</p>
			Note 8:	<p><b>8. In terms of procurement the mining company should commit to an increase of procurement from HDSA companies over the 3-5 year time frame and agree to a monitoring system.</b></p>
			Noting that (page 5):	<p>That the following laws would also assist socio-economic empowerment:</p> <ul style="list-style-type: none"> <li>• <b>The Preferential Procurement Framework Act (No. 5 of 2000)</b></li> </ul>
			2. INTERPRETATION	<p>Transforming such industries so as to assist in, provide for, initiate, facilitate or benefit from the:      * <b>Involvement of or participation in the procurement chains of operations;</b></p>

Country	LP Legislation	Laws and Regulations	Location	Content:
South Africa	Yes	<p><b>SEPTEMBER 2010 AMENDMENT OF THE BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SA MINING AND MINERALS INDUSTRY</b></p> <p>Section 100(2)(a) of the MPRDA provides for the development of the Mining Charter as an instrument to effect transformation with specific targets. Embedded in the Mining Charter of 2002 is the provision to review the progress and determine what further steps, if any, need to be made to achieve its objectives. BBSEE sets the "Scoring Principles"</p>	1. OBJECTIVES: BBSEE sets the "SCORING PRINCIPLES"	<p>b. To substantially and meaningfully expand opportunities for HDSEA to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources.</p> <p>c. To utilise and expand the existing skills base for the empowerment of HDSEA and to serve the community</p> <p>d. to promote employment and advance the social and economic welfare of mine communities and major labour sending areas</p> <p>f. Promote sustainable development and growth of the mining industry</p>
			2. ELEMENTS OF THE MINING CHARTER	<p><b>2.2 Procurement and Enterprise Development:</b> ... expand economic growth that allows for the creation of decent jobs and widens scope for market access of SA capital goods and services.</p> <p>* Procure a minimum of 40% of capital goods from BEE entities by 2014</p> <p>* Multinational suppliers of capital goods contribute annually a minimum of 0.5% of annual income towards socio-economic development of local communities into a social development fund from 2010</p> <p>* Procure 70% of services and 50% of consumer goods from BEE entities by 2014</p> <p><i>Targets above are exclusive of non-discretionary procurement expenditure.</i></p>
				2.6 Mine Community Development
				Meaningful contribution towards community development, both in terms of size and impact in keeping with principles of the SLO
				Must conduct an assessment to determine the developmental needs in collaboration with mining communities and identify projects within the integrated development plan, the cost should be proportionate to the size of investment.
				<p><b>2.8 Sustainable Development and Growth of the Mining Industry:</b></p> <p><b>The term Sustainable development (SD) in this document seems to emphasize SD to the mining industry no referring to Social SD</b></p> <p>Pg. 17 of the amendment shows the scorecard for the BBSEE Charter to 2014.</p>
		<p><b>SEPTEMBER 2010 STAKEHOLDER'S DECLARATION ON STRATEGY FOR THE SUSTAINABLE GROWTH AND MEANINGFUL TRANSFORMATION OF SA'S MINING INDUSTRY</b></p>	<p>PREAMBLE Document where stakeholders involved in mining industry commit towards attaining sustainable growth and meaningful transformation of SA by adhering to BBSEE "SCORING PRINCIPLES"</p>	<p>Scoring Principles: 4. Procurement; 7. Mine Community Development; 8. Sustainable Development (focused on industry more than in the people).</p>
			STAKEHOLDERS	<p>Mining Stakeholders Include:</p> <p>The Department of Mineral Resources</p> <p>National Union of Mineworkers</p> <p>Chamber of Mines of South Africa</p> <p>South African Mineral Development Association</p> <p>Solidarity</p> <p>UASA - The Union</p>

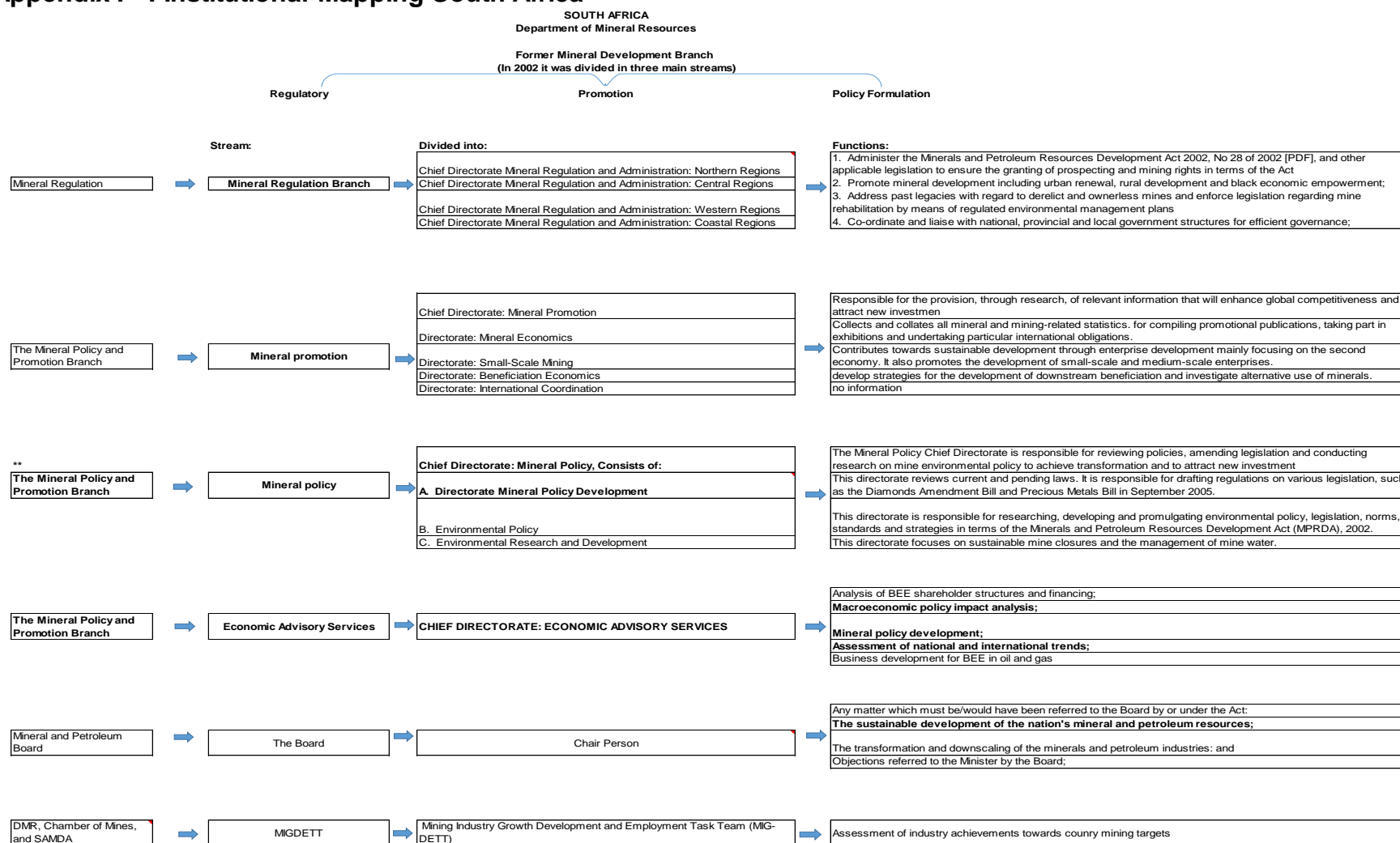
Country	LP Legislation	Laws and Regulations	Location	Content:
		MAY 2015 ASSESSMENT OF THE BBSEE CHARTER FOR THE SA MINING INDUSTRY (MINING CHARTER)	MIGDETT	MIGDETT is a Department of Mineral Resources initiative consisting of labour, businesses and various government departments. Established in December 2008. This team is responsible to assess the extent of compliance of the scoring principles, established in the BBSEE Charter. (reporting, ownership, housing and living conditions, <b>procurement</b> , employment equity, human resource development, mine community development, and sustainable development).
		OCTOBER 2011 ECONOMIC DEVELOPMENT DEPARTMENT	LOCAL PROCUREMENT ACCORD New growth path: ACCORD 3	Presented in October 2011 by the Ministry of Economic Development, this accord aims to <b>increase local procurement strategies</b> to develop the manufacturing, and services sector. This accord does not mention mining but could be a good inter-departmental strategy to boost the LP strategy of the country as a whole. I look for assessments (audits) of the successful implementation of this accord but could not find anything.
		PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT NO. 5 OF 2000	"Organ of State"	This policy is specific to government agencies

Country	LP Legislation	Laws and Regulations	Location	Content:
* Namibia	Yes	GOVERNMENT GAZETTE OF THE REPUBLIC OF NAMIBIA MINERALS (PROSPECTING AND MINING) ACT, 1992	PART VIII General provisions relating to mineral licences	50. General terms and conditions of mineral licences. In addition to any term and condition contained in a mineral agreement and any term and condition contained in any mineral licence, it shall be a term and condition of any mineral licence that the holder of such mineral licence shall – (c) carry out training programmes in order to encourage and promote the development of Namibian citizens employed by such holder; (d) with due regard to the need to ensure <b>technical and economic efficiency, make use of products or equipment manufactured or produced, and services available, within Namibia;</b> (e) co-operate with other persons involved in the mining industry in order to enable such citizens to develop skills and technology to render services in the interest of that industry in Namibia;
		MINERALS POLICY OF NAMIBIA	2.2.6 Social Responsibility of Mining Companies	2.2.6 Social Responsibility of Mining Companies A perception exists, in the mineral sector, that there is an unequal or unfair distribution of income, including benefits in the mineral sector between communities and mining companies. To overcome this, <b>this policy presents an opportunity for community engagement.</b> The social responsibility of companies has been considered as a vehicle to meet this challenge. This includes processes that encourage formation of joint ventures; <b>locals receiving preference in allocation of jobs and tenders;</b> and disadvantaged people being assisted by a transparent and enabling environment. Examples of the ways in which the social responsibility of companies can be practically implemented are capacity building, skills development and the provision of access to knowledge and technology. This will be achieved through interaction between government, industry and the communities to set-up guidelines for social upliftment. <b>Government will encourage the mining industry to address social responsibilities through support programmes, training and community participation.</b>
			EXECUTIVE SUMMARY	EXECUTIVE SUMMARY: In the same vein the Government <b>will expect the industry to take the challenge of social responsibility</b> in terms of planning for closure, <b>community involvement and empowerment of formerly disadvantaged people.</b>
			1.1 Rationale for a Minerals Policy:	It will also <b>contribute to the development of opportunities for the Namibian people to benefit from their country's mineral resources in line with the Government's policy on socio-economic upliftment.</b>
			1.2 Vision and Mission	<b>To achieve a high level of responsible development of national resources</b> in which Namibia becomes a significant producer of mineral products while <b>ensuring maximum sustainable contribution to the socio-economic development</b> of the country.
			1.6 The Objectives of the Minerals Policy:	<b>Promote and encourage local participation in exploration and mining;</b> Ensure the adherence to the principle of socio-economic upliftment through appropriate measures;
			2.2.7 Empowerment:	The Minerals Policy poses an opportunity to develop an empowerment framework. It also presents an opportunity for the disadvantaged majority to participate fully in the development of the mining sector and to benefit from it. <b>Government will develop strategies to support Namibian participation in the mining sector to achieve sustainable development and prosperity.</b> This will be achieved by undertaking research into the process of setting up empowerment initiatives in mining. These initiatives will aim to make it easier for the disadvantaged groups to overcome impediments to business development in the mining sector.
			2.4 Marine Exploration and Mining 2.4.1 Marine Exploration and Mining:	There is a limited number of skilled Namibians in the marine mining sector, which results in employment practices that favour foreigners. In addition, <b>local goods and services are not being used by the marine mine operators</b> partly because some coastal towns lack adequate social infrastructure. <b>The use of local goods and services by MMO's will also be encouraged.</b>
			7.3 Technology	<b>This will be achieved through the public and private mining sector developing linkages and continued active participation in SADC mining sector initiatives and programmes of work.</b>
			9. REGIONAL INTEGRATION Overview	9.1 The Namibian Government acknowledges the benefits of regional initiatives and is participating in many programmes under the SADC umbrella.



Country	LP Legislation	Laws and Regulations	Location	Content:
		2006 PROTOCOL ON MINING IN SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)	ARTICLE 2 GENERAL PRINCIPLES	1. Member states recognise that a thriving mining sector can contribute to economic development, alleviation of poverty and the improvement o the standard and quality of life throughout the region. 5. Member States agree to cooperate in facilitating the development of human and technological capacity. 7. Member States shall encourage private sector participation in the exploitation of mineral resources. 8. Member States shall promote economic empowerment of the historically disadvantaged in the mining sector.
			ARTICLE 6 PROMOTION OF PRIVATE SECTOR PARTICIPATION	1. Member States undertake to develop a mechanism that will enable the private sector's continued participation in the sector.
				2. Member States shall strive to create a conducive environment for attracting local and foreing investment to the region and to the mining sector in particular.
		Republic of Namibia Namibia's Fourth National Development Plan 2012/13 to 2016/17	Desired Outcome 8 (DO8) (MANUFACTURING #12) (pg. 97)	Increase preferential Government procurement of locally produced goods to a ratio of 70% by the end of the NDP4 cycle (pg. 127). THIS PROCUREMENT IS MAINLY FOCUSED TO GOVERNMENT PROCUREMENT.
			1: What we cherish as a nation: People-centred economic development (pg.4)	Undoubtedly, we need economic growth and diversification to achieve sustainable development. The welfare of the people is emphasised, therefore, while aiming at human development and equitable and balanced growth that will result in an expanding industrial sector, a modernised agricultural sector, and an enabling macroeconomic and political environment.
		Minerals Development Fund of Namibia ACT, 1996		The mineral development Fund of Namibia does not contemplate the development of new industries or diversification to free dependance of mining in the future.. This is a 1996 Act.

## Appendix F : Institutional Mapping South Africa



Information adapted from the following sources:

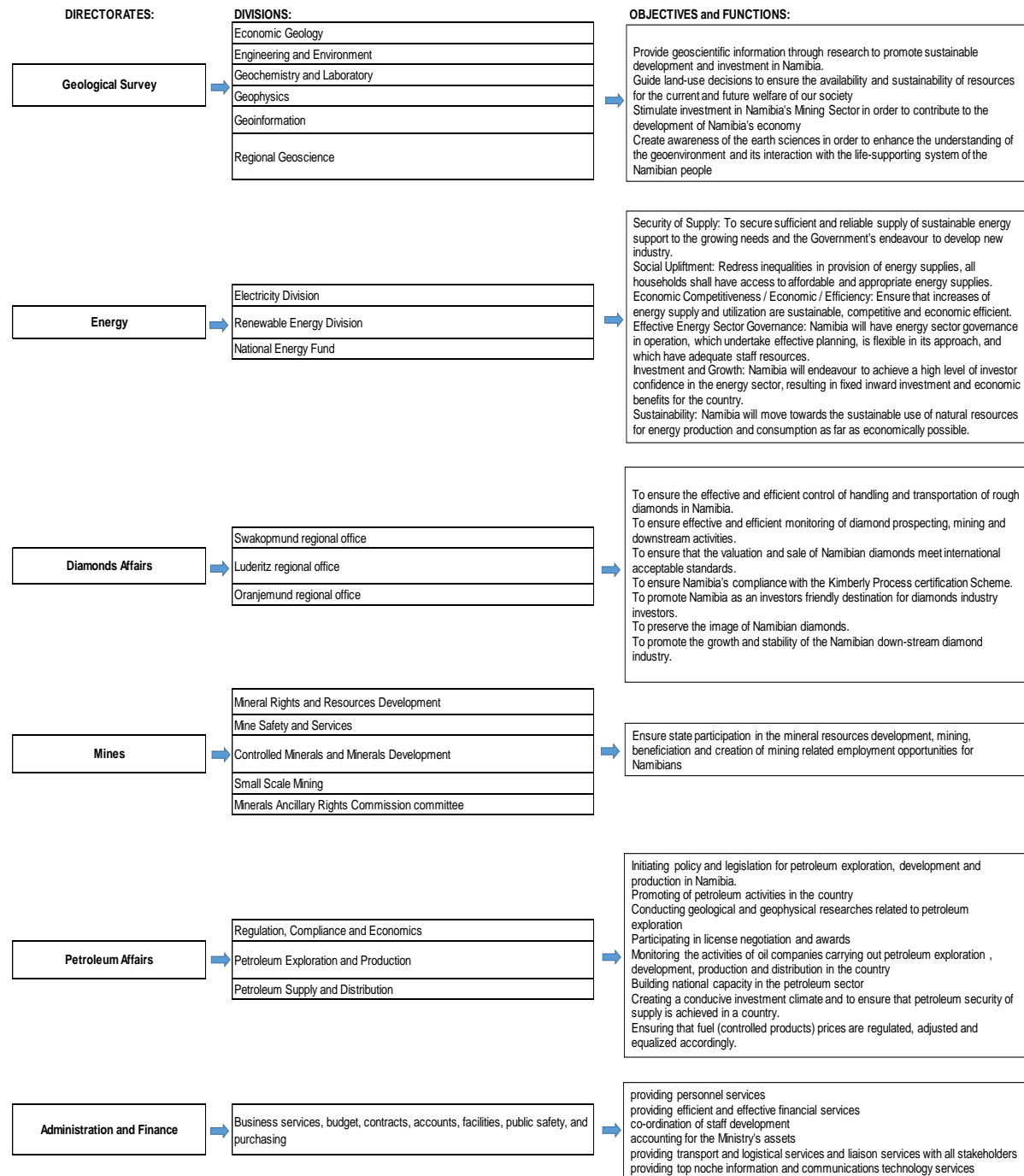
Source: <http://www.dmr.gov.za/mineral-regulation.html>

Source: <http://www.dmr.gov.za/mineral-policy-a-promotion.html>

Source: <http://www.dmr.gov.za/mineral-a-mining-board.html#composition>

## Appendix G : Institutional Mapping Namibia

### NAMIBIA Ministry of Mines and Energy



Information adapted from the following source:  
<http://www.mme.gov.na/directorate/>

## Appendix H : Government Stakeholder Mapping South Africa

### DEPARTMENT OF MINERAL RESOURCES (DMR):

Mr. Mosebenzi Joseph Zwane	Minister of Mineral Resources	70 Meintje Street, Trevenna Campus, Sunnyside 7	(012) 444 - 3000
Mr. Godfrey Oliphant, MP	Deputy Minister of Mineral Resources	70 Meintje Street, Trevenna Campus, Sunnyside 7	(012) 444 - 3000
Mr Khayaletu Matrose khayaletu.matrose@dmr.gov.za	Director General's Office		(012) 444 3308
Mr Andre Eagar Enquiries@dmr.gov.za	General Enquiries		(012) 444 3231
Ms Kefilwe Chibogo kefilwe.chibogo@dmr.gov.za	Deputy Minister's PA		(012) 444 3996

Regional Manager	Regional Managers					
	Secretary	Province	Physical Address	Postal Address	Telephone	Fax
A K Kharivhe Aaron.Kharivhe@dmr.gov.za	Ms M Mangaba Tebogo.Mangaba@dmr.gov.za	Limpopo	BROLL Building, 101 Dorp Street, POLOKWANE, 0699	Private Bag X9467 POLOKWANE 0700	(015) 287 4736	(015) 287 4729
Mr A Tshivhandekano Aubrey.Tshivhandekano@dmr.gov.za	Ms L Maphopha Lydia.Maphopha@dmr.gov.za	Mpumalanga	Saveways Crescent Centre, Mandela Drive, Emalahleni, 1035	Private Bag X7279, EMALAHLENI, 1035	(013) 653 0500	(013) 690 3288
Ms Mmadikeledi Malebe mmadikeledi.malebe@dmr.gov.za	Ms C Khanyile Carol.Khanyile@dmr.gov.za	Gauteng	Mineralia Building, Cnr De Korte and De Beer Street, BRAAMFONTEIN, 2017	Private Bag X 5, BRAAMFONTEIN, 2017	(011) 358 9700/9758	(011) 339 2423
Mr Pieter Swart Pieter.Swart@dmr.gov.za	Ms I Wesi Ipeleng.Wesi@dmr.gov.za	North West	Vaal University of Technology Building, c/o Voortrekker & Margaretha Prinsloo Streets, KLERKSDORP, 2570	Private Bag A 1, KLERKSDORP, 2570	(018) 487 9830	(018) 462 9039
Ms N Khanyile Ngobile.khanyile@Dmr.gov.za	Ms N Qwalela Nandipha.Qwalela@Dmr.gov.za	KwaZulu-Natal	Durban Bay House, 333 Smith Street, DURBAN 4001	Private Bag X 54307, DURBAN, 4000	(031) 335 9600	(031) 301 6950
Azwihangwisi Mulaudzi Azwihangwisi.Mulaudzi@dmr.gov.za	Ms Z. Tyala Zimkita.Tyala@dmr.gov.za	Eastern Cape (Port Elizabeth)	Pier 14 Building, 444 Govan Mbeki Avenue, North End, Port Elizabeth 6000	Private Bag X 6076, PORT ELIZABETH 6000	(041) 396 3900	(041) 373 8171
Duduzile Kunene Duduzile.Kunene@dmr.gov.za	Ms Busisiwe Magazi busisiwe.magazi@dmr.gov.za	Eastern Cape (Umthata) Western Cape	PRD Building 2nd Floor 96 Sutherland Road, UMTHATA Atterbury House, 9th Floor, c/o Lower Burg & Riebeeck Street, CAPE TOWN, 8012	Private Bag X 5252 UMTHATA, 5099 Private Bag X 9, ROGGEBAAL, 8012	(047) 532 4488 (021) 427 1000	(047) 532 4547 (021) 427 1046
Sunday Mabaso sunday.mabaso@dmr.gov.za	Ms Lungi Mondela Lungi.Mondela@dmr.gov.za	Northern Cape (Kimberley)	65 Phakamile Mabija Street, Perm Building KIMBERLEY, 8300	Private Bag X 6093, KIMBERLEY, 8300	(053) 807 1700	(053) 830 0827
Jasper Nieuwoudt		Northern Cape (Springbok)	Hopley Centre, cnr of Van der stel & Van Riebeeck Streets, SPRINGBOK	Private Bag X 14, SPRINGBOK, 8240	(027) 712 8160	(027) 712 1959

## Appendix I : Government Stakeholder Mapping in Namibia

### MINISTRY OF MINES AND ENERGY NAMIBIA

Name	Title	Physical Address	Telephone	Fax
Obeth Mbuipaha Kandjoze	Minister of Mines and Energy:	70 Meintje Street, Trevenna Campus, Sunnyside 7		
Kornelia Kashiimindjola Shilunga	Deputy Minister:	1 Aviation Road, Private Bag 13297, Windhoek, Namibia	264 61 284 8111	264 61 284 8363
Simeon Niilenge Negumbo	Permanent Secretary:		264 61 284 8312	264 220386

### DIRECTORATE: Mines

Erasmus Shivolo	Mining Commissioner		264-61- 284 8111	264-61-238366
Erasmus.Shivolo@mme.gov.na				
Anna Gideon	Senior Private Secretary		264-61- 284 8167	264-61-238366
Anna.Gideon@mme.gov.na				
Isabella Kandjii-Chirchir	Deputy Director (Mining)		264-61- 284 8251	264-61-284 8385
Isabella.Chirchir@mme.gov.na				
Abraham lilende	Deputy Director: Mineral Rights & Resources Development		264-61- 2848290	264-61-2848299
Abraham.lilende@mme.gov.na				
Ms. Helena Itamba	Deputy Director: Controlled Minerals and Minerals Development		264-61- 284 8162	264-61-2848366
Helena.Itamba@mme.gov.na				
Mr. Jafet Aebab	Chief Mineral Rights Officer		264-61- 284 8275	264-61-238299
Jafet.Aebab@mme.gov.na				
Mr. Mathews Amunghete	Chief Inspector of Mines		264-61- 284 8254	264-61-284 8385
Mathews.Amunghete@mme.gov.na				
Mr.Brain Beukes	Chief Mineral Rights Officer		264-61- 284 8225	264-61-238299
Brain.Beukes@mme.gov.na				
Diamond Commissioner: Mr Kennedy Hamutenya	Directorate: Diamond Affairs		264 61 284 8230	264 61 284 8380

## Appendix J : Scorecard South Africa 2004

### Scorecard for the Broad Based Socio-Economic Empowerment Charter for the South African Mining Industry

NOTES	DESCRIPTION	5 YEAR TARGET				10 YEAR TARGET
	<b>Human Resource Development</b>					
1	<ul style="list-style-type: none"> <li>Has the company offered every employee the opportunity to be functionally literate and numerate by the year 2005 and are employees being trained?</li> </ul>	Yes		No		
	<ul style="list-style-type: none"> <li>Has the company implemented career paths for HDSA employees including skills development plans?</li> </ul>	Yes		No		
2	<ul style="list-style-type: none"> <li>Has the company developed systems through which empowerment groups can be mentored?</li> </ul>	Yes		No		
	<b>Employment Equity</b>					
	<ul style="list-style-type: none"> <li>Has the company published its employment equity plan and reported on its annual progress in meeting that plan?</li> </ul>	Yes		No		
3	<ul style="list-style-type: none"> <li>Has the company established a plan to achieve a target for HDSA participation in management of 40% within five years and is implementing the plan?</li> </ul>					
	<ul style="list-style-type: none"> <li>Has the company identified a talent pool and is it fast tracking it?</li> </ul>	Yes		No		
4	<ul style="list-style-type: none"> <li>Has the company established a plan to achieve the target for women participation in mining of 10% within the five years and is implementing the plan?</li> </ul>					
	<b>Migrant Labour</b>					
5	<ul style="list-style-type: none"> <li>Has the company subscribed to government and industry agreements to ensure non-discrimination against foreign migrant labour?</li> </ul>	Yes		No		
	<b>Mine community and rural development</b>					
	<ul style="list-style-type: none"> <li>Has the company co-operated in the formulation of integrated development plans and is the company co-operating with government in the implementation of these plans for communities where mining takes place and for major labour sending areas? Has there been effort on the side of the company to engage the local mine community and major labour sending area communities? (Companies will be required to cite a pattern of consultation, indicate money expenditures and show a plan).</li> </ul>	Yes		No		
	<b>Housing and Living Conditions</b>					
6	<ul style="list-style-type: none"> <li>For company provided housing has the mine, in consultation with stakeholders established measures for improving the standard of housing, including the upgrading of the hostels, conversion of hostels to family units and promoted home ownership options for mine employees? Companies will be required to indicate what they have done to improve housing and show a plan to progress the issue over time and is implementing the plan?</li> </ul>	Yes		No		
7	<ul style="list-style-type: none"> <li>For company provided nutrition has the mine established measures for improving the nutrition of mine employees? Companies will be required to indicate what they have done to improve nutrition and show a plan to progress the issue over time and is implementing the plan?</li> </ul>	Yes		No		
	<b>Procurement</b>					
	<ul style="list-style-type: none"> <li>Has the mining company given HDSA's preferred supplier status?</li> </ul>	Yes		No		
	<ul style="list-style-type: none"> <li>Has the mining company identified current level of procurement from HDSA companies in terms of capital goods, consumables and services?</li> </ul>	Yes		No		
8	<ul style="list-style-type: none"> <li>Has the mining company indicated a commitment to a progression of procurement from HDSA companies over a 3 - 5 year time frame in terms of capital goods, consumables and services and to what extent has the commitment been implemented?</li> </ul>	Yes		No		
	<b>Ownership &amp; Joint Ventures</b>					
9	<ul style="list-style-type: none"> <li>Has the mining company achieved HDSA participation in terms of ownership for equity or attributable units of production of 15 percent in HDSA hands within 5-years and 26 percent in 10-years?</li> </ul>		15%			26%
	<b>Beneficiation</b>					
	<ul style="list-style-type: none"> <li>Has the mining company identified its current level of beneficiation?</li> </ul>	Yes		No		
10	<ul style="list-style-type: none"> <li>Has the mining company established its base line level of beneficiation and indicated the extent that this will have to be grown in order to qualify for an offset?</li> </ul>	Yes		No		
	<b>Reporting</b>					
	<ul style="list-style-type: none"> <li>Has the company reported on an annual basis its progress towards achieving its commitments in its annual report?</li> </ul>	Yes		No		

## Appendix K : Scorecard South Africa 2010

### SCORECARD FOR THE BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY





INDUSTRY										
ELEMENT	DESCRIPTION	MEASURE	COMPLIANCE TARGET BY 2014	PROGRESS ACHIEVED BY					Weighting	
				2010	2011	2012	2013	2014		
1	Reporting	Has the company reported the level of compliance with the Charter for the Calendar year	Documentary proof of receipt from the department	Annually	March 2011	March 2012	March 2013	March 2014	March 2015	Y/N
2	Ownership	Minimum target for effective HDSA ownership	Meaningful economic participation	26%	15%				26%	Y/N
		Full shareholder rights	26%	15%				26%		
3	Housing and living conditions	Conversion and upgrading of hostels to attain the occupancy rate of one person per room.	Percentage reduction of occupancy rate towards 2014 target.	Occupancy rate of one person per room	Base-line	25%	50%	75%	100%	Y/N
		Conversion and upgrading of hostels into family units	Percentage conversion of hostels into family units	Family units established	Base-line	25%	50%	75%	100%	
4	Procurement & Enterprise Development	Procurement spent from BEE entity	Capital goods	40%	5%	10%	20%	30%	40%	5%
			Services	70%	30%	40%	50%	60%	70%	5%
			Consumable goods	50%	10%	15%	25%	40%	50%	2%
		Multinational suppliers contribution to the social fund	Annual spend on procurement from multinational suppliers	0.5% of procurement value	0.50%	0.50%	0.50%	0.50%	0.50%	3%
5	Employment Equity	Diversification of the workplace to reflect the country's demographics to attain competitiveness.	Top Management (Board)	40%	20%	25%	30%	35%	40%	3%
			Senior Management (Exco)	40%	20%	25%	30%	35%	40%	4%
			Middle Management	40%	30%	35%	40%	40%	40%	3%
			Junior Management	40%	40%	40%	40%	40%	40%	1%
			Core Skills	40%	15%	20%	30%	35%	40%	5%
6	Human Resource Development	Development of requisite skills, incl. support for South African based research and development initiatives intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation	HRD expenditure as percentage of total annual payroll (excl. mandatory skills development levy)	5%	3%	3.5%	4.0%	4.5%	5.0%	25%

**SCORECARD FOR THE BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY**

ELEMENT	DESCRIPTION	MEASURE	COMPLIANCE TARGET BY 2014	PROGRESS ACHIEVED BY					Weighting	
				2010	2011	2012	2013	2014		
7	Mine community development	Conduct ethnographic community consultative and collaborative processes to delineate community needs analysis	Implement approved community projects	Up-to-date project implementation	Implementation of projects will serve to enhance relationships amongst stakeholders leading to communities owing patronage to projects.					15%
8	Sustainable development & growth	Improvement of the industry's environmental management	Implementation of approved EMPs.	100%	Annual progress achieved against approved EMPs.					12%
		Improvement of the industry's mine health and safety performance	Implementation of the tripartite action plan on health and safety	100%	Annual progress achieved against commitments in the tripartite action plan on health and safety.					12%
		Utilisation of South African based research facilities for analysis of samples across the mining value chain	Percentage of samples in South African facilities	100%	establish baseline	25%	50%	75%	100%	5%
9	Beneficiation	Contribution of a mining company towards beneficiation (this measure is effective from 2012)	Additional production volume contributory to local value addition beyond the base-line	Section 26 of the MPRDA (percentage above baseline )	The beneficiation strategy and its modalities of implementation outline the beneficiation requirements per commodity extracted in South Africa.					-
TOTAL SCORE										100%

Y/N applies to pillars that are ring- fenced.

**Legend**

	0-25% (Gross non-compliance)
	25-50% (Non-compliance)
	50-75% (Marginal to acceptable performance)
	75-100% (Excellent performance)