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ADDRESSING LEGAL GAPS IN ZAMBIA'S MINING SECTOR: A COMPARATIVE

ANALYSIS OF LOCAL PARTICIPATION LAWS IN ZAMBIA AND SOUTH AFRICA

By:

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AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE BACHELOR OF LAWS (LLB) DEGREE.

2025

DECLARATION

I , PETER NJILIKA, do declare that this dissertation titled **ADDRESSING LEGAL GAPS IN ZAMBIA'S MINING SECTOR: A COMPARATIVE ANALYSIS OF LOCAL PARTICIPATION LAWS IN ZAMBIA AND SOUTH AFRICA** which is hereby submitted in partial fulfillment of the requirement for the award of a Bachelor's Degree at the University of Lusaka is my own original work and it has not been previously submitted for the award of a degree at this university or any other tertiary institution.

I understand what plagiarism entails and I am aware of the University's policy in this regard. Thus, where other people's work is cited, I have duly acknowledged. The errors or omissions in this work are solely mine.

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SUPERVISORS RECOMMENDATION

I, TABITHA MUKUKA, do recommend that this dissertation prepared under my supervision By **PETER NJILIKA, titled, “ADDRESSING LEGAL GAPS IN ZAMBIA’S MINING SECTOR: A COMPARATIVE ANALYSIS OF LOCAL PARTICIPATION LAWS IN ZAMBIA AND SOUTH AFRICA”** be admitted for examination by the university. I have checked it carefully and I am satisfied that it fulfills the requirements pertaining to the format laid down in the regulations governing directed research by the university.

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Ms. T MUKUKA

(Supervisor)

…………………3/11/25………………..

Date

DEDICATION

This research is dedicated to my wife Mrs. PRECIOUS KUNDA NJILIKA and our beautiful daughter Maylah, my lovely parents, siblings and my entire family. Your unwavering support and encouragement has always been my driving force. This research would not be possible without your constant support.

ACKNOWLEDGEMENTS

I wish to start by thanking God almighty for granting me the gift of life withoiut which non of this would be possible.

I extend a special thank you to my parents who tirelessly groomed me to be task oriented and always chase my goals. The completion of this Research is tastement to your tireless effort in ensuring I remain on the right path to success.

I would like to thank my wife who has always believed in my potential even when I second guessed myself. Your constatnt encouragement was pivitol in the success of this Research.

I also want to extend my heartfelt gratitude to my supervisor, Ms TABITHA MUKUKA who always spared time from her busy schedule to guide me and share her knowledgde on Research. By extention, I also wish to thank all the University lecturers from the School of Law for all their knowledge that have shared with me through my studies.

Finally, I would like to thank my siblings, family and friends for always choosing to see the best in me and offer sufficient guidance and support whenever it was required.

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ABSTRACT

This paper critically examined the legislative frameworks governing local economic participation in the mining sectors of Zambia and South Africa. It explored the legal provisions aimed at encouraging local ownership, procurement and employment within Zambia's mining industry, as well as the challenges in implementation and enforcement that limit meaningful inclusion of Zambian citizens and enterprises. The study contrasted these with South Africa's more robust legal system, notably its Mineral and Petroleum Resources Development Act and the Mining Charter, which impose binding local participation obligations and enforceable transformation targets. Through a comparative legal analysis , the research identified key weakenesses in Zambia's laws, such as the lack of binding thresholds, weak enforceament mechanisms and institutional fragmentation, recommending comprehensive legal reforms amd institutional coordination to enhance local paticipation and ensure the mining sector contributes equitably to national development and empowerment of local communities. This study contributed important insights for policymakers, legal practitioners and stakeholders aiming to make Zambia's mining governance more inclusive and sustainable by learning from South Africa's experience.

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CHAPTER ONE

1.0 Introduction

Zambia's mining industry has been identified for decades as a major engine for economic growth, it has for many years been contributing to a large extent to Zambia's foreign exchange earnings, employment, and it’s Gross Domestic Product (GDP). Due to Zambia's vast mineral resources, the mineral industry remains a major source of attractive foreign investment, most notably copper. To regulate this important industry, Zambia has put in place several legal and policy framework intended to ensure that mining contributes substantively to the country's development.

One of the fundamental frameworks is the Mines and Minerals Development Act No. 11 of 2015, which has provisions that encourage local participation, such as consumption of Zambian products and services, employment, and training of Zambian citizens.

Meanwhile, other mineral-rich countries in the region, such as South Africa, have adopted more specialized legal systems intended to enhance local participation in the mining sector. This has generated interest in comparative legal analysis as a means of identifying potential improvement to Zambia's approach.

This research is a comparative study into the legislative systems governing local participation in the mining economies of South Africa and Zambia. It seeks to explore how the legal framework in each country is crafted, how they work on the ground, and how well they are able to produce inclusive economic opportunities for local people

1.1 Background of the Study

Zambia's mining sector is a mainstay of the nation's national economy, playing a major role in the country's export earnings, employment of citizens, and generating government revenues. Copper, being the most profitable mineral, with immense foreign investment and shaping the trajectory of Zambia's economic development.[1] Successive administrations have, since time in memorial promoted mining as a driving force of economic development in Zambia by opening up the sector to the world to facilitate Foreign Direct Investment (FDI). This has resulted in the existence of multinational companies operating huge mining operations across the nation.

Despite the massive investment inflows and levels of production, a growing concern has existed over the degree to which Zambian citizens and local businesses get benefits from mining activities, as the participation of local players be it in the form of jobs, ownership, or procurement has been minimal thereby raising serious concerns. There concerns raise issues over the sustainability and inclusivity of the country's mining-led growth model, particularly in light of Zambia's development agenda and poverty reduction strategy.

In efforts to address these concerns, the Mines and Minerals Development Act[2] makes provision for initiatives aimed at boosting local content and participation. Section 20 of the Act, for example, encourages preference by licensees to use Zambian services and products, while section 35 demands their use and development of Zambian citizens. However, the requirements are commonly written in discretionary instead of imperative terms and come without associated specific benchmarks and rigid enforcement frameworks. As a result, they have been ineffective in enhancing meaningful local contribution to the industry.

Conversely, countries such as South Africa have stronger legal and policy structures that aim to rectify historical injustices and promote inclusive growth within the mining industry. The South African Broad-Based Black Economic Empowerment (B-BBEE) policy and the Mining Charter are examples of legislative tools designed to provide previously disadvantaged individuals with benefits of involvement in the ownership, control, and advantages of mining activities.[3] They include measurable goals, reporting mechanisms, and

[1] PwC, Zambia 2024 Mining Report (PwC Publications, 2024).
[2] Act No. 11 of 2015
[3] South African Government, Broad-Based Black Economic Empowerment Act 53 of 2003 (Government Gazette, 2003).

sanctions against non-compliance, thereby setting up a more formalized and enforceable plan to local participation.[4]

Owing to the resemblance of mineral resource endowments and the strategic importance of mining in both countries, South Africa is an apt comparative case when examining Zambia's legal approach towards local participation. A comparative analysis of the relative strengths and weaknesses of the legal systems of the two countries can offer insightful lessons on how Zambia can undertake reform of its laws and policies to enhance economic inclusivity and ensure that the mining sector makes a more direct contribution to national development and empowerment of citizens.

The study is therefore, based on the broad discourse on natural resource management, local economic empowerment, and legal reform. It seeks to analyze the legal loopholes that discourage domestic participation in Zambia's mining sector and identify the strengths from South African legal framework that can inform the development of a more inclusive legal framework in Zambia. The research will contribute to accelerating the efforts of making mining a more equitable and sustainable driver of growth for Zambia.

1.2 Statement of the Problem

Zambia's mining sector is a major driver of economic growth, attracting substantial Foreign Direct Investment (FDI). However, concerns have emerged that the country's legal and regulatory framework disproportionately favors foreign investors while failing to ensure meaningful participation of local entrepreneurs and businesses. The Mines and Minerals Development Act[5] includes provisions such as section 20 which require mining companies to prioritize locally made materials, Zambian-owned suppliers, and section 35 which obliges a holder of a mining license to employ and train Zambian citizens, these provisions lack clear targets, implementation mechanisms, and enforcement measures. As a result, local businesses and communities remain largely excluded from benefiting fully from the mining sector.

[4] Ibid
[5] Act No.11 of 2015

Zambia's legal framework does not impose mandatory local ownership requirements, strict local procurement quotas, or direct state equity in mining operations. The lack of such measures has led to foreign dominance in the mining sector, profit repatriation, and limited participation of Zambian businesses and communities in mining-related economic activities. This study examines the shortcomings in Zambia's mining laws compared to South Africa and Botswana and explores legal and policy reforms that can promote greater local participation and inclusive economic growth.

1.3 Research Objectives

1. To critically examine the legal and institutional framework governing local participation in Zambia's mining sector, including its implementation challenges and socio-economic impact.

2. To analyze South Africa's legal framework for local participation in mining, focusing on its design, enforcement mechanisms, and outcomes.

3. To conduct a comparative analysis of Zambia and South Africa's legal frameworks on local participation in mining, highlighting key strengths, weaknesses, and lessons Zambia can draw from South Africa.

1.4 Research Questions

1. What legal and institutional frameworks currently govern local participation in Zambia's mining sector, and what challenges affect their effective implementation and impact on local communities and businesses?

2. How does South Africa's legal framework promote local participation in the mining sector, and what mechanisms have been effective in achieving inclusive economic growth?

3. What are the key similarities and differences between Zambia's and South Africa's legal approaches to local participation in mining, and what lessons can Zambia draw from South Africa's experience?

1.5 Significance of The Study

Though mining has generated tremendous revenues and foreign investment, the lack of high levels of Zambian business and citizen involvement in mining-related economic activities has prevented the benefits of the sector from being evenly distributed. Through a critical examination of the legal and institutional frameworks controlling local participation, this research aims to contribute to current initiatives to ensure the mining sector becomes more inclusive and sustainable.

To begin with, the study will develop a deeper understanding of the structural and legal shortcomings that preclude Zambians from effectively sharing in the country's mineral wealth. Existing legislation contains local procurement and employment clauses but without binding requirements, enforceable quotas, and implementation frameworks. The study will help to reveal these shortcomings and clarify how they impact local economic empowerment.

Second, through the comparison of South Africa's legal regime marked by more precise targets, more robust enforcement mechanisms, and a more vigorous policy commitment to economic inclusion this study will yield valuable comparative insights. The South African experience offers a reasonable benchmark.

Third, the research findings will be significant to policymakers, legislators, and regulatory institutions in Zambia with the responsibility to enact laws and policies for inclusive development. It will provide evidence-based recomendations on how to improve local participation law and align it with international best practices. It will also be useful to advocacy groups, local entrepreneurs, and civil society organizations who have an interest in influencing legal and policy reforms in the mining sector.

Finally, the study contributes to academic discourse on resource governance and local content development in Sub-Saharan Africa. The study will contribute to the comparative legal scholarship examining how natural resource law can be designed and applied to obtain broader social and economic benefits for host countries.

1.6 The Scope of The Study

This study is limited to examining the legal and institutional frameworks that govern local participation in the mining sector in Zambia, with a comparative analysis of South Africa's legal framework. The focus is specifically on how each country's laws and policies facilitate or hinder the involvement of local citizens and businesses in mining-related activities such as procurement, employment, and ownership.

In the Zambian context, the study will critically analyze key provisions of the Mines and Minerals Development Act [6] and institutional mechanisms that relate to local content and participation. It will assess the clarity, enforceability, and practical impact of these provisions on local communities and economic actors.

.The analysis will highlight how South Africa has structured and implemented its laws to enhance participation and redress socio-economic inequalities.

The comparative analysis will be limited to identifying the key similarities and differences between the two countries' legal frameworks, with a view to drawing practical lessons for Zambia. Although Botswana is mentioned in the problem statement, it will not be a subject of in-depth analysis but may be referred to briefly for context where necessary.

Geographically, the study is confined to the national legal systems of Zambia and South Africa and does not extend to provincial or regional mining laws. The timeframe of the study will focus on the current legal frameworks, though it may include brief historical references to trace the evolution of relevant laws and policies.

The study is legal in nature and does not extend into technical, geological, or purely economic aspects of mining, except where such considerations are directly relevant to the interpretation or application of local participation laws.

1.7 Research Methodology

[6] Act No. 11 of 2015

This research shall primarily be a qualitative analysis. Reference shall be made to textbooks, internet sources, journals and articles, statutes, reports, as well as relevant case law and various other materials that shall aid the research. The study will adopt a doctrinal approach, focusing on a critical analysis of the legal framework governing local participation in Zambia's mining sector, with comparative reference to South Africa. This research will also include interview information, which is field research, to obtain insights from stakeholders such as legal experts, policy makers, and individuals from the mining sector.

1.8 Ethical Considerations

This research shall be in line with all the essential ethical standards that shall be encountered during the period of carrying it out. The researcher will make certain that all the information and knowledge obtained in confidence in the pursuit of this research shall continue to be confidential, and there shall be no forms of misinformation or misuse of the said information to the disadvantage of the source from which such information is acquired. Interview participants shall be informed of the purpose of the study, and their participation shall be based on voluntary and informed consent. Where necessary, anonymity shall be maintained to protect the identity of the respondents.

1.9 Literature Review

The study of Zambia's mining sector has drawn the attention of several scholars and institutions, each making incisive remarks on the governance, socio-economic, and legal dimensions of the industry. However, while there is abundant literature on issues of mining governance and policy, there is a noticeable lack of comparative legal examination to spur local engagement a gap this study seeks to fill.

Grifin Nyirongo has contributed through his examination of the governance frameworks in Zambia's mining sector, he focused his examination particularly on the institutional shortcomings in enforcement and greater respect for human rights.[7] His study is pivotal in identifying the institutional flaws in Zambia's

[7] G Nyirongo, 'A Study on Frameworks and Policies for Governance in the Mining Sector in Zambia' (Jesuit Centre for Theological Reflection, 2017).

mining legal framework, although, this study extends beyond Nyirongo's examination in comparing the legal framework of Zambia to South Africa and identifying practical lessons regarding how to ensure that participation is more inclusive.

Afrodad (African Forum and Network on Debt and Development) has assessed Zambia's mining law in the light of the Africa Mining Vision, with the aim of reviewing issues relating to management of mineral rent as well as the revenue collection.[8] Despite its emphasis on fiscal aspects of mining regulation, the present study moves attention to the legal provisions with direct effects on local content, procurement, employment, and ownership, emphasizing the socio-economic aspects of weak local participation frameworks.[9]

Brigadier Siachitema has also contributed significantly by analyzing human rights abuses and gaps in the law in Zambia's mining industry, highlighting the challenges faced by vulnerable communities due to poor legal protection.[10] Although his own approach is rights-based, this research shifts the focus to economic inclusion, assessing whether current laws offer effective pathways for local enterprises and citizens to gain from the mining value chain.

At a continental scale, **Leonardus J. Gerber** has led work on African extractive industries law, such as legal frameworks for and their intersection with human rights.[11] Whereas his work gives regional summary, this work gives specificity by making an in-depth legal analysis of the Mines and Minerals Development Act of Zambia and contrasting it against South Africa's Mining Charter and Broad-Based Black Economic Empowerment (B-BBEE) dispensation to uncover structural differences in furthering local engagement.

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[8] Afrodad, 'An Assessment of the National Mining Legal Frameworks and Policies of SADC Countries Against the Africa Mining Vision: The Case of Zambia' (African Forum and Network on Debt and Development, 2017).
[9] ibid
[10] B Siachitema, 'A Legal Analysis of the Human Rights Violations in the Zambian Mining Sector' (University of Pretoria, 2018).
[11] L J Gerber, 'African Extractive Industries Law: Legal Frameworks and Human Rights Intersection' (University of Pretoria, 2018).

Dr. Alastair Fraser's study examines the political economy of Zambia's mining industry, and the role of governance and foreign investment within it.[12] Although Fraser is interested in the structural issues that impede local economic development, this study is uniquely concentrated on the political and institutional domains of local engagement, drawing its findings from a comparative analysis of the laws in Zambia, South Africa, and Botswana to a lesser extent.

Dr. Deborah Brautigam raised awareness about Chinese investment in Zambian mines and its significance for economic sovereignty and local empowerment.[13] Although her research is imperative to understand the investor-driven forces, this paper is concerned rather with Zambia's domestic legal apparatus and how the same can be realigned in order to upgrade local content obligations and economic participation.

In the realm of domestic policy, **Dr. Oliver Saasa** has written a series of articles outlining the socio-economic outcomes of Zambia's mining policies, commenting on the disconnect between mineral riches and local benefit.[14] While his work gauges policy success, this research further develops the study by looking at the legal foundations of the policies and comparing them to models with relative success in South Africa.

From a developmental economics point of view, **Dr. Paul Collier** outlines the theory of the "resource curse" and how poor institutional legal frameworks in resource-abundant nations often lead to adverse development results.[15] His work serves as a valuable theoretical background for this paper in which the necessity of robust, enforceable legal provisions is framed within a broad objective of shunning exploitative or exclusionary means of economy.

[12] A Fraser M Larmer, 'Zambia, Mining, and Neoliberalism: Boom and Bust on the Globalized Copperbelt' (Palgrave Macmillan, 2010).
[13] D Brautigam, 'How Zambia and China Co-Created a Debt 'Tragedy of the Commons' (China Africa Research Initiative, Johns Hopkins University, 2021).
[14] O Saasa, 'Assessment of Mining Fiscal Regime in Zambia: 2000–2019' (Premier Consult Limited, 2019).
[15] P Collier, 'The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done About It'(Oxford University Press, 2007).

Finally, **Dr. Chanda Chisala** has focused on the role of small and medium enterprises (SMEs) in Zambia's mining sector, his study focuses on the SMEs exclusion from procurement contracts and mining supply chains.[16] This study is a continuation of Chisala's work in that it examines whether the current legal system in Zambia promotes SMEs inclusion and how best South African law can inform reforms that integrate local businesses more fully.

Collectively, these contributions provide a foundation for understanding the challenges facing Zambia's mining sector. However, this study distinguishes itself by undertaking a comparative legal analysis, an area that is underexplored in the literature. This study will focus on local structures of the law as narrowly as possible by comparing to South Africa's more command-style approach, this research is meant to be a contribution toward the creation of a legal environment that facilitates participatory economic development and equitable stake in Zambia's most important sector of the economy.

Chapter 2

[16] C Chisala, 'Unlocking the Potential of Zambian Micro, Small and Medium Enterprises: Learning from International Best Practices' (Institute of Developing Economies, Japan External Trade Organization, 2008).

Local Participation in Zambia's Mining Sector: Legal Frameworks, Institutional Dynamics and Implementation Challenges

2.1 Introduction

The mining sector in Zambia remains the cornerstone of the national economy, accounting for approximately seventy percent of the country's export earnings and serving as the primary source of foreign exchange. Predominantly driven by copper and cobalt production, it has historically shaped the socio-economic trajectory of the nation and continues to influence both macroeconomic stability and local livelihoods. Mining is not merely a source of fiscal revenue; it is also a site of contestation over how the country's mineral wealth should be shared, regulated, and integrated into broader national development objectives. Within this context, the notion of local participation takes on particular importance. It refers to the active involvement of Zambian citizens, communities, and enterprises in mining operations, supply chains, employment, and decision-making processes. It extends beyond the direct extraction of minerals to encompass backward and forward linkages within the economy, local procurement, and inclusive governance mechanisms that ensure communities affected by mining have a meaningful voice in the sector's development.

2.2 Legal Framework Governing Local Participation

The legal framework governing local participation in Zambia's mining sector is anchored in several key statutes, each designed to advance resource nationalism and economic empowerment while ensuring environmental and social safeguards.

2.2.1 Mines and Minerals Development Act No.11 of 2015: Economic Empowerment and Environmental Safeguards

The **Mines and Minerals Development Act**[17] is the principal legislative instrument regulating Zambia's mining sector. It embodies a dual normative objective to promote economic empowerment of Zambian citizens and to ensure environmental and social accountability in mineral exploitation. These objectives are embedded within the statutory framework through provisions that seek to strengthen domestic economic linkages while safeguarding community welfare and ecological integrity.

Section 20 of the Act[18] mandates holders of mining licences give preference to Zambian contractors, products and services, and prioritize the employment of citizens. This provision reflects a deliberate legislative intent to foster inclusive economic growth by stimulating local enterprise development, reduce capital flight this aligns with Zambia's broader empowerment agenda, as articulated in the **Citizens Economic Empowerment Act**[19] which seeks to redress historical patterns of economic exclusion through targeted support for citizen-owned businesses. In tandem, Section 35 of the **Mines and Minerals Development Act**[20] imposes a duty on licence holders to promote local content. It requires them to submit periodic reports detailing the proportion of Zambian nationals employed, the value and volume of goods and services procured locally, and the measures undertaken to build capacity among domestic suppliers.

While these provisions are conceptually sound and normatively progressive, their practical efficacy has been undermined by several structural and regulatory deficiencies. Notably, the Act[21] does not prescribe binding local content thresholds, leaving compliance largely discretionary and subject to the goodwill of mining companies, this is a serious challenge that requires attention. The Act lacks clearly defined sanctions for non-compliance and there is no dedicated oversight body tasked with auditing procurement practices or enforcing local participation obligations. The absence of a comprehensive Local Content Regulation has significantly contributed to fragmented enforcement and inconsistent implementation across Zambia's mining sector. While policy

[17] Act No. 11 of 2015
[18] Act No. 11 of 2015
[19] Act No. 9 of 2006
[20] N3
[21] ibid

drafts have been circulated since 2020, the lack of binding legislative authority has resulted in discretionary compliance by mining companies and limited accountability in procurement practices. This regulatory gap undermines efforts to promote domestic participation, particularly among Zambian-owned enterprises and local communities seeking integration into mining value chains. Without a statutory framework to mandate thresholds for local procurement, employment, and enterprise development, the sector remains vulnerable to external dominance and extractive practices that offer minimal socio-economic returns to host region

In addition to its economic empowerment provisions, the Act[22] incorporates a suite of environmental and social safeguards under Sections 80 to 87. These provisions recognise that sustainable mineral development must be anchored in the protection of community welfare and ecological systems. Section 80 requires licence holders to rehabilitate land disturbed by mining activities, ensuring that post-mining landscapes are safe, usable, and environmentally sound. Section 81 mandates the protection of occupational health and safety, with regulatory oversight vested in the Director of Mines Safety. Sections 82 and 83 impose obligations on mining companies to mitigate adverse social impacts, including displacement, pollution, and disruption of local livelihoods. Section 87 empowers the Minister to prescribe regulations governing environmental protection, including waste management, water use, and biodiversity conservation.

2.2.2 Citizens Economic Empowerment Act No.9 2006: Legislative Intent and Sectoral Integration

The **Citizens Economic Empowerment Act**[23] was enacted as a cross-sectoral legislative framework aimed at redressing historical economic

[22] Act No. 11 of 2015

[23] Act No.9 of 2006

marginalisation and promoting inclusive participation of Zambian citizens in the national economy. Although not sector-specific to mining, the Act complements the **Mines and Minerals Development Act**[24] by establishing institutional and policy mechanisms designed to enhance the competitiveness of citizen-owned enterprises across strategic sectors, including extractives.

Part III of the **Citizens Economic Empowerment Act**[25] under Sections 13 to 28, establishes a statutory framework for economic inclusion these include preferential procurement under Section 19, skills development and sectoral training in Sections 17 and 18, investment promotion under Section 20 and the formulation of sector-specific codes of good practice pursuant to Sections 24 through to 28. Collectively, these provisions are supported by the principle of broad-based economic empowerment, which seeks to redress historical disadvantage by according citizens and citizens-owned companies that were previously access to procurement contracts, investment opportunities and employment equity.

The institutional mechanism for implementing this framework is the Citizens Economic Empowerment Commission (CEEC), established under Part II of the Act. The CEEC is vested with statutory authority to administer the Citizens Economic Empowerment Fund under sections 29–32 which is intended to provide financial support to citizen-owned enterprises. The Fund aims to enhance local capacity, facilitate technology acquisition and enable Zambian firms to compete in capital-intensive sectors such as mining, where structural barriers often preclude meaningful domestic participation. In addition to its financing mandate, the CEEC is responsible for monitoring compliance, evaluating programme outcomes, and maintaining a register of empowered entities, as provided under Sections 33 to 36.

Notwithstanding its primary objective, the CEEC has encountered persistent implementation challenges that have undermined its effectiveness. The CEEC objective has been constrained due to Under-capitalization of the Empowerment Fund, while procedural impenetrability and bureaucratic

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[24] N6
[25] N7

inefficiencies have eroded public trust.[26] More critically, the Commission has struggled to drive in its empowerment agenda within the mining sector. Due to the absence of binding procurement quotas or sector-specific reservation schemes, citizen-owned companies remain largely excluded from the core supply chains of large-scale mining operations.[27]

The current draft regulatory developments propose a progressive approach which reflects the CEEC mandate, If enacted into law, it will be a turning point of their current implementation challenges. The proposed Citizens Economic Empowerment (Reservation of Goods and Services in the Mining Sector) Regulations, which was published in early 2025 for stakeholder consultation adopted a more assertive local content enforcement. The draft regulations proposed that only Zambian-owned firms should be awarded mining contracts valued at ZMK30 million or less, it has further proposed that mining companies should allocate a defined portion of their procurement budgets to local communities in their operational areas. If enacted and effectively enforced, these measures could materially advance the integration of the CEEC's empowerment mandate into the mining sector, thereby translating legislative intent into substantive economic outcomes.[28]

2.2.3 Environmental Management Act No.12 of 2011

The **Environmental Management Act** is Zambia's principal environmental legislative document, it establishes a comprehensive legal framework for the sustainable management of the environment through rules that regulate, and protect it, the Act plays a pivotal role in ensuring local participation by providing environmental stewardship and community consultation within the regulatory governing activities.[29]

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[26] 'Preferential Procurement – Citizens Economic Empowerment Commission' *CEEC Official Website* https://www.ceec.org.zm/preferential-procurement/ accessed 13 August 2025.

[27] ibid

[28] 'Zambia to Introduce Local Content Law for Mining Sector' *Copperbelt Katanga Mining* (3 February 2025) https://copperbeltkatangamining.com/zambia-to-introduce-local-content-law-for-mining-sector/ accessed 13 August 2025.

[29] Act No.12 of 2011

The Act under Sections 29 and 30 of mandates every person intending to conduct any business or project likely to have significant environmental effects to conduct an Environmental Impact Assessments (EIAs) prior to the commencement of any project including mining operations. These assessments are not merely technical exercises as they largely involve community consultations and social impact evaluation. The statutory requirement for community engagement provides a procedural avenue through which local voices contribute to the project design such as implementation and mitigation strategies, especially for affected communities, in theory, this participatory mechanism enhances transparency, fosters procedural justice and ensures that mining projects are responsive to the socio-environmental realities of host communities.[30]

However, the efficacy of EIAs as instruments of local empowerment is not as effective in practice as it is in theory, as a result, the transformative potential of EIAs as participatory tools remains largely unrealized, studies have shown that community consultations are often done with limited access to technical information and inadequate facilitation of informed consent. The Zambia Environmental Management Agency (ZEMA), tasked with overseeing the EIA process, frequently lacks the technical capacity and logistical resources to conduct thorough reviews or enforce compliance across geographically dispersed mining regions, thereby rendering the whole process academic[31]

Beyond procedural safeguards, the Act under Sections 97 and 98 provides for the creation of the Environmental Protection Fund and the imposition of environmental performance bonds, it also establishes financial instruments aimed at ensuring environmental accountability. These mechanisms are designed to ensure that adequate financial resources are set aside for post-mining rehabilitation, pollution control, and ecological restoration. The performance bond, in particular, functions as a form of financial assurance,

[30] Ibid

[31] M Katati, 'Mining EIA Process and Practices in Zambia' (2022) https://www.academia.edu/93789515/Mining_EIA_Process_and_Practices_in_Zambia accessed 13 August 2025

compelling mining companies to internalize the environmental costs of their operations[32].

Even though the purpose of the environmental protection fund is to ensure that adequate environmental rehabilitation or remedial through performance bonds, empirical evidence from legacy mining sites such as lead contamination in Kabwe and sulphur dioxide emissions in Mufulira suggests that the costs of environmental remediation often far exceed the amounts secured through performance bonds issued to the Environmental Fund, therefore, the adequacy of these financial instruments relative to the scale and complexity of environmental degradation caused by large-scale mining remains a subject of contention, Moreover, the absence of a transparent and publicly accessible registry of environmental liabilities undermines accountability and impedes civil society oversight.[33]

The Act under Sections 36 to 39 provides for **Ward Development Committees (WDCs)** these committees are designed to serve as conduits for community engagement, they act as grassroots participatory structures enabling residents to contribute to the formulation of local development priorities, monitor service delivery, and participate in budgetary processes. The WDCs have statutory mandate of identifying community needs, facilitation of citizen input into council decisions, and mobilization of local resources. In principle, these structures offer a democratic mechanism for embedding local voices within the governance of mining regions, where the socio-economic and environmental impacts of extractive operations are most felt.

Besides participatory planning, the Act empowers local councils to regulate land use, levy development fees, and enforce planning regulations within their jurisdictions. These powers are particularly relevant in mining contexts because land allocation, infrastructure development, and environmental management

[32] Act No.12of 2011

[33] K Chisanga, 'Call for Urgent Action to Protect Communities, Strengthen Environmental Governance in Mining Sector' *Efficacy News* (8 August 2025) https://efficacynews.africa/2025/08/08/call-for-urgent-action-to-protect-communities-strengthen-environmental-governance-in-mining-sector/ accessed 13 August 2025.

intersect with the operations of large-scale mining companies. The ability of councils to impose development charges and negotiate land use agreements theoretically positions them as key stakeholders in ensuring that mining activities contribute to local development and respect community rights.

Despite these powers, the practical influence of local government structures in mining governance remains constrained by several institutional and structural limitations. These constraints severely undermine their capacity to engage meaningfully with mining companies most notably, local councils and WDCs suffer from chronic resource deficits, including inadequate financial allocations, limited technical expertise and insufficient staffing which leads to failure to interpret complex environmental and contractual documents, or enforce compliance with planning regulations. Furthermore, the absence of formalized consultation protocols between mining firms and local authorities has resulted in ad hoc and often superficial engagement, with community concerns frequently sidelined in favour of national-level negotiations.

While the Act provides for participatory governance, it does not confer decision-making power over mining approvals, environmental assessments, or benefit-sharing agreements. It has been noted that, local authorities are instead relegated to reactive roles, responding to the consequences of mining operations rather than shaping their trajectory. The disconnect between statutory empowerment and practical authority is further exacerbated by the centralized nature of mining licensing and regulation, which remains under the limited authority of the Ministry of Mines and the Minerals Regulation Commission.

2.3 Institutional Framework and Governance

In Zambia, the mining governance framework involves multiple bodies with overlapping mandates such as the Ministry of Mines and Mineral Development (MMMD), Zambia Environmental Management Agency (ZEMA), The Citizen Economic Empowerment Commission (CEEC). The Ministry of Mines and Mineral Development is responsible for licensing, policy formulation, and sector oversight, the Zambia Environmental Management Agency enforces environmental regulations and monitors compliance with EIAs, while the CEEC focuses on economic empowerment through funding and capacity-building initiatives. In addition, the local councils play a pivotal role in land allocation and community engagement.

Despite this multiplicity of institutions, coordination among them is often weak. Overlapping jurisdictions, limited resource allocations, and fragmented communication channels result in regulatory gaps and inconsistencies in policy enforcement. ZEMA's environmental oversight, for example, is constrained by insufficient staffing and logistical capacity, leading to irregular site inspections and delayed enforcement actions.[34] The CEEC lacks targeted strategies for integrating mining sector suppliers into its empowerment programmes further limiting its impact on local content development. Even though ZCCM Investments Holdings (ZCCM-IH) serves as the government's investment arm, holding equity stakes in major mining ventures to secure a share of profits for the state, the state loses revenue due to institutional failures.[35]

2.4 Implementation Challenges

2.4.1 Regulatory Gaps and Weak Enforcement

The absence of binding local content thresholds in existing legislation is one of the most significant regulatory gaps in Zambia, a shortcoming the proposed **Mining Local Content Bill** seeks to address.[36] Fiscal policy instability, particularly abrupt changes in mineral royalty regimes, has further created uncertainty for both local and foreign investors, undermining the stability necessary for long-term capacity-building initiatives.[37] In addition, Zambia lacks

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[34] Matildah Kaliba, 'The Environmental Toll of Mining on Zambia's Copperbelt – Part I' *News Diggers* (10 March 2025) https://diggers.news/guest-diggers/2025/03/10/the-environmental-toll-of-mining-on-zambias-copperbelt-part-i/ accessed 13 August 2025.
[35] ibid
[36] L Miamba, 'Localising the Mining Sector: A Trajectory for Inclusive Development' *ZAM* (11 March 2025) https://zam.co.zm/localising-the-mining-sector-a-trajectory-for-inclusive-development/
[37] 'Zambia's Mining Law Overhaul' *Dentons* (18 March 2025) https://www.dentons.com/en/insights/articles/2025/march/18/mining-law-overhaul

a mineral asset valuation and reserve reporting code, which hampers transparency in resource accounting and reduces public trust in the fairness of revenue distribution.[38]

2.4.2 Capacity Constraints

Artisanal and small-scale miners (ASM), who employ an estimated eighty to one hundred thousand Zambians, face severe barriers in accessing finance thereby facing challenging with equipping their businesses with modern equipment, and geological data.[39] Many Zambian suppliers struggle to meet the quality, safety, and technical standards required by mining companies, reducing their competitiveness in procurement processes.[40] Without targeted capacity-building programmes, these miners remain confined to low-value operations, limiting their contribution to local economic development.

2.4.3 Socio-Legal Conflicts

While the law requires consultation during EIAs, in practice such engagements are often not practiced, leading to disputes and allegations of inadequate compensation, forced relocation, and neglect of long-term community welfare. Disputes frequently arise between holders of customary land rights and statutory mining rights, with communities often feeling marginalized in decision-making processes.[41]

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[38] Webby Banda, 'Zambia is in Dire Need of a Mineral Asset Valuation Code' *Lusaka Times* (2 February 2021) https://www.lusakatimes.com/2021/02/02/zambia-is-in-dire-need-of-a-mineral-asset-valuation-code-to-prevent-overpricing-or-underpricing-of-mining-assets/

[39] 'An Overview of Artisanal and Small-Scale Mining in Zambia' *Zambia EITI* (2025) https://zambiaeiti.org/wp-content/uploads/2025/02/An-Overview-of-ASM-in-Zambia.pdf

[40] P Kanyinji G Tembo, 'Exploring Barriers Affecting Suppliers in the Mines in Zambia' (2019) 13 *African Journal of Business Management* 498 https://academicjournals.org/journal/AJBM/article-full-text-pdf/F22776C62006

[41] M Sommerville et al, 'Documenting Customary Land Rights in Zambia' *USAID Land Tenure Report* (2016) https://tenuresecurity.org/wp-content/uploads/2016/09/USAID_Land_Tenure_World_Bank_2016_Zambia_Open_Source.pdf

2.5 Socio-Economic Impact on Communities

2.5.1 Positive Outcomes

Large-scale mining operations have contributed to infrastructure development, as seen in Solwezi where Kansanshi Mine has funded roads, schools, and clinics.[42]Employment generation and supplier development initiatives, such as partnerships for local manufacturing of personal protective equipment, have provided additional economic benefits.[43]

2.5.2 Persistent Challenges

Due to inadequate revenue-sharing mechanisms, the distribution of these benefits remains uneven and communities in resource-rich districts often continue to experience high poverty rates.[44] Environmental degradation, including water pollution and deforestation remains a pressing concern, eroding agricultural productivity and public health in affected areas.

2.5.3 Artisanal and Small-Scale Mining (ASM)

While artisanal and small-scale mining provides a livelihood for tens of thousands of Zambians it equally poses serious health risks. The unsafe working conditions leaves ASM operators vulnerable to exploitation due to the illegal nature of its mining activities coupled with lack of proper tools to conduct

[42] 'Kansanshi Mine PLC Pledges Infrastructure Development in Solwezi' *Lusaka Times* (10 June 2017) https://www.lusakatimes.com/2017/06/10/kansanshi-mine-plc-pledges-infrastructure-development-solwezi/

[43] L Miamba, 'Localising the Mining Sector: A Trajectory for Inclusive Development' *ZAM* (11 March 2025) https://zam.co.zm/localising-the-mining-sector-a-trajectory-for-inclusive-development/

[44] W Banda, 'Mining Revenue Sharing Mechanism in Zambia: An Introductory Perspective' *News Diggers* (26 April 2021) https://diggers.news/guest-diggers/2021/04/26/mining-revenue-sharing-mechanism-in-zambia-an-introductory-perspective/

mining activities.[45] Integrating ASM into formal value chains could enhance its developmental impact while addressing safety and environmental concerns.

2.6 Conclusion

Zambia possesses a comprehensive legislative and institutional framework that aspires to promote local participation in the mining sector. However, the gap between legislative intent and actual outcomes remains substantial, driven by regulatory shortcomings, institutional weaknesses and socio-economic inequalities. Addressing these challenges requires a combination of legal reform, capacity-building and strengthened community engagement mechanisms. Only through such a holistic approach can the nation ensure that its mineral wealth translates into inclusive and sustainable development for present and future generations.

[45] 'Artisanal and Small-Scale Mining in Zambia: Blueprint for a National Formalisation and Business Acceleration Strategy' *ACP-EU Development Minerals Programme* (2025) https://developmentminerals.org/wp-content/uploads/2025/05/Zambia-Blueprint-for-a-National-Formalization-and-Business.pdf

Chapter 3

Analysing South Africa's Legal Framework for Local Participation in Mining

3.0 Introduction

Since the end of apartheid South Africa's mining sector has undergone profound transformation. Under the apartheid regime, mineral wealth was concentrated in the hands of a few, entrenching deep socio-economic inequalities. In the democratic era, mineral governance was deliberately reconfigured to serve as an instrument of social redress. Custodianship of mineral resources was vested in the state, and transformation obligations were imposed directly on holders of mining rights. The core legal instruments driving this reform are the **Mineral and Petroleum Resources Development Act** and the **successive Mining Charters**, complemented by the **Broad-Based Black Economic Empowerment (B-BBEE) framework** and related regulatory measures.

This transformation agenda rests on the principle that mining should no longer function merely as an extractive activity yielding rents to private actors, but as a vehicle for broad-based local participation, employment equity, supplier development, and community upliftment.

This chapter provides a critical analysis of South Africa's legal framework for local participation in mining. It first interrogates the design of the framework, then examines enforcement mechanisms and finally evaluates outcomes highlighting where the law has succeeded in advancing inclusive participation and where it has fallen short. The purpose of this analysis is not only to understand the South African experience in its own right, but also to generate insights that will inform a comparative discussion in the next chapter, where lessons for Zambia will be drawn.[46]

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[46] Act No.28 of 2002

3.1 Design of the Legal Framework: statutory architecture, policy instruments and normative aims

3.1.1 The Mineral and Petroleum Resources Development Act 28 of 2002

This piece of legislation is critical in South Africa this is because it was enacted to ensure equitable access to and sustainable development of South Africa's mineral and petroleum resources, while addressing historical injustices and promoting inclusive growth.

Section 2 of the Act provides the following important objectives

- (a)recognize the internationally accepted right of the State to exercise

  sovereignty over all the mineral and petroleum resources within the Republic;

- (b) give effect to the principle of the State's custodianship of the nation's mineral
- and petroleum resources;
- (c) promote equitable access to the nation's mineral and petroleum resources to all the people of South Africa;
- (d) substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to enter the mineral and petroleum industries and benefit from the exploitation of the nation's mineral and petroleum resources;
- (f) promote employment and advance the social and economic welfare of all South Africans;

- (h) ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating[47]

These objectives are important because they shift mineral exploitation from serving a privileged few to benefiting the broader South African population by recognizing the State's sovereignty over mineral resources, the Act ensures that these non-renewable assets are managed in the public interest, promoting equitable access and expanding opportunities for historically disadvantaged groups. This helps correct the injustices of apartheid and fosters inclusive economic growth. The focus on employment and community development ensures that mining contributes directly to improving people's lives, especially in areas most affected by extraction. Together, these goals make mining a tool for national development rather than just private profit.

Unlike the Zambian mining Act, Section 23(1) (e) of the **Mineral and Petroleum Resources Development Regulations** requires applicants for mining rights to submit a Social and Labour Plan (SLP), which demonstrates how the proposed operations will contribute to local socio-economic development and employment equity, the Act embeds transformation as a statutory licensing requirement through multiple provisions. Further, under regulations 41–46C the Minister's discretion to grant, refuse, suspend, or cancel rights is framed by the transformative objectives in Section 2, notably subsections (c), (d), (f), and (h), which mandate equitable access, empowerment of historically disadvantaged persons, employment promotion, and community development. Furthermore, Section 47(1) (a) empowers the Minister to suspend or cancel rights where holders of mining licences fail to comply with the Act, including transformation obligations.[48] This legal architecture elevates transformation from a policy aspiration to a binding condition of tenure and access to mineral wealth, enforceable through administrative sanctions.

[47] Act No.28 of 2002
[48] ibid

3.1.2 The Mining Charter(s): Operationalising statutory aims

While the **Mineral and Petroleum Resources Development Act** provides the statutory authority for transformation under Section 100(2) (a), the **Mining Charter** translates that mandate into quantifiable targets and binding sectoral obligations. The Charter has undergone three major alterations in 2004, 2010 and the final alteration in 2018 (**Mining Charter III)** each progressively expanding the scope and specificity of transformation requirements. The **2018 Charter** was gazetted on the 27the of September 2018, its rich mandate is to ensure e a minimum of 30% black ownership for holders of new mining rights, divided as 5% for employees, 5% for communities and 20% for black entrepreneurs, as detailed in Clause 2.1.3 of the said Charter and reinforced by the Implementation Guidelines (GN 1399 of 2018)2.[49]

It goes further by imposing inclusive procurement obligations, requiring that 70% of mining goods be sourced from South African manufacturers and 80% of services from local suppliers, with verification mechanisms outlined in Clauses 2.2.1 and 2.2.2. Employment equity targets are specified across four occupational levels, namely top management, senior management, middle management and junior management with minimum thresholds for black representation and gender inclusion, as set out in Clause 2.4. Additionally, Clause 2.5 introduces mandatory community development contributions, including ring-fenced allocations for mine-affected communities.

Under Clause 2. 1. 1 the **Charter** introduces the concept of “re-empowerment” requiring that black ownership be restored or maintained upon transfer or renewal of mining rights, thereby binding holders to transformation obligations beyond initial licensing. This provision has sparked legal and policy debate due to its implications for tenure security and transactional certainty.[50]

Scholars such as **Phololo Solomon Morolo** have critically examined the legal architecture of the Mining Charter, highlighting its dual character as both a policy instrument and a quasi-regulatory framework. **Morolo** argues that the

[49]Act No. 28 of 2002
[50] ibid

Charter's quantifiable targets such as ownership thresholds and procurement quotas enhance legal certainty by translating broad transformation ideals into enforceable benchmarks[51] thereby facilitating administrative accountability. In contrast, critics question the Charter's legal status, particularly its attempt to impose binding obligations such as continuous black ownership during renewals or transfers without explicit statutory delegation under Section 100 (2) of the **Mineral and Petroleum Resources Development Act** this ambiguity, they contend, risks exceeding the limits of subordinate legislation and has triggered litigation over the Charter's enforceability and constitutional alignment. **Nokuhle Vencentin Madolo**[52]

Madolo further contends that while the Charter is a necessary agent of transformation, its evolving scope demands clearer legislative strengthening to avoid regulatory overreach and ensure sustainable compliance strategies beyond its formal lifespan. What emerges is a contested legal terrain where the Charter's normative ambitions which are community development, employment equity, supplier development are fused with compliance mechanisms like **Social and Labour Plans (SLPs)**, procurement targets, and ownership structures. This fusion reflects a deliberate regulatory strategy to drive in transformation within the licensing regime, but it also exposes fault lines between executive policy-making and statutory authority.[53]

3.1.3 <u>B-BBEE and the Charter: overlapping frameworks and compliance complexity</u>

The Mining Charter, issued under section 100(2)(a) of t**he Mineral and Petroleum Resources Development Act**[54] operates within the broader

[51] Pholclo Solomon Morolo, Legislative Governance and Transformation in the South African Mining Sector: The Legal Nature of the 2018 Mining Charter (LLM thesis, North-West University 2023) Available at : https://repository.nwu.ac.za/handle/10394/4209
[52] Nokuhle Vencentin Madolo, Transformation of the Mining Sector of South Africa: Strategies Beyond the Life of the Mining Charter (PhD thesis, University of the Witwatersrand 2014)Available at : https://wiredspace.wits.ac.za/handle/10539/15236
[53] N5
[54] Act No.28 of 2002

framework of **Broad-Based Black Economic Empowerment (B-BBEE),** governed by the **B-BBEE Act 53 of 2003** and its **Codes of Good Practice**. Policy architects intended this overlap to harmonize sector-specific transformation in mining with national empowerment objectives, ensuring that mineral development contributes to the wider economic redress agenda.

However, scholars such as **Renee Horne**and commentators from **SERR Synergy**[55] highlight that this dual regime has produced compliance complexity and regulatory friction. Mining companies are required to report against both the Mining Charter scorecard and the generic **B-BBEE** scorecard, despite differences in structure, thresholds, and enforcement mechanisms. For instance, while the Mining Charter mandates minimum ownership and procurement targets as licensing conditions, the B-BBEE Codes allow for flexible scoring without automatic disqualification for non-compliance[56].

This divergence has led to legal uncertainty in transactions involving mining rights, where the Charter's stricter provisions such as continuous black ownership during renewals conflict with the more flexible B-BBEE model. Critics argue that this fragmented framework encourages formalistic or "tick-box" compliance, where companies meet numeric targets without delivering substantive redistribution, local control, or community benefit. **Moeletsi Mbeki** in his critique of BEE as a reparations model, contends that such approaches entrench elite capture and fail to transform underlying economic structures.

The result is a regulatory landscape where transformation is both mandated and muddled, raising questions about the coherence and enforceability of empowerment obligations across legal instrument[57]

3.2 Enforcement mechanisms: administration, audits, and the courts

[55] SERR Synergy, 'The Mining Charter and the Revised B-BBEE Codes '(28 June 2017) https://serr.co.za/the-mining-charter-and-the-revised-b-bbee-codes

[56] Renee Horne, **'Patterns of Ownership and Labour Unrest within the South African Mining Sector '(**2015) 40(2) *Journal for Contemporary History* 25, 33–35.

[57] Moeletsi Mbeki, 'BEE: A Disservice to South Africa's Economy '*Fin24* (21 May 2020) republished by NEASA https://www.neasa.co.za/newsletters/a-must-read-bee-a-disservice-to-south-africas-economy-by-moeteltsi-mbeki

3.2.1 Administrative oversight and SLPs

The **Department of Mineral Resources and Energy (DMRE)** is responsible for implementing the **Mineral and Petroleum Resources Development Act** and monitoring compliance with the Mining Charter. Its enforcement mechanisms are primarily administrative: mining right holders are required to submit **Social and Labour Plans (SLPs)** and annual compliance reports; the DMRE conducts inspections and may request supporting documentation. In terms of statutory authority, the Minister is empowered under section 47(1) of the **Mineral and Petroleum Resources Development Act** to suspend or cancel mining rights for non-compliance.[58]

Despite this framework, the effectiveness of administrative enforcement has been constrained by institutional capacity limitations and political economy pressures. Independent assessments such as those by the **Centre for Environmental Rights (CER)** have documented inconsistent monitoring, delayed enforcement action, and a tendency to rely on negotiated settlements rather than formal sanctions.[59] These findings suggest that while the enforcement architecture is well-defined in law, its practical implementation has often been uneven and under-resourced.

3.2.2 Compliance reporting, audits and measurement issues

SLPs and **annual compliance reports** are the main tools used to measure whether mining companies are meeting the transformation goals set out in the Mining Charter. These documents require companies to submit detailed, quantifiable data such as black ownership percentages, procurement from black-owned suppliers, employment equity across occupational levels, and spending on community development.

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[58] Act No. 28 of 2002

[59] Centre for Environmental Rights, *Environmental Compliance Monitoring and Enforcement at Mines: The DMRE s Performance 2017–2019* (December 2020) https://cer.org.za/wp-content/uploads/2020/12/DMRE-Environmental-CME-performance-FY2017-2019.pdf

It is **Moraka** argument that while this reporting system is essential for transparency, it faces serious challenges. One of the biggest issues is definitional complexity.**[60]**

For example, the term **“beneficial ownership”** is not consistently defined across the Mining Charter, B-BBEE Codes, and corporate law. In some contexts, it refers to individuals who hold economic benefits from shares; while in others, it includes those with voting rights or control, even if they don’t directly hold equity. This lack of clarity makes it difficult to verify whether companies truly meet ownership targets or are simply structuring deals to appear compliant.[61]

Similarly, terms like **“community procurement”** are vague does it mean suppliers based in the geographic area of the mine, or businesses owned by members of affected communities? Without precise definitions, companies interpret these terms differently, leading to inconsistent reporting.[62]

On top of that, auditing standards vary, and some companies may manipulate metrics to meet scorecard requirements without delivering real transformation. As a result, reported compliance figures are often contested with government, industry, and civil society offering conflicting accounts of what progress has actually been made.

3.2.3 Judicial enforcement and doctrinal clarification

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[60] N.V. Moraka M. Jansen van Rensburg, ‘Transformation in the South African mining industry – looking beyond the employment equity scorecard ’(2015) 115(8) *Journal of the Southern African Institute of Mining and Metallurgy* 669.

[61] Michael Barron and Tim Law, *Beneficial Ownership Transparency in South Africa s Mining Sector* (Corruption Watch, November 2022) 14–18 https://www.corruptionwatch.org.za/wp-content/uploads/2023/06/20221111_Beneficial-Ownership-Transparency-in-South-Africas-Mining-Sector_V0.2_Final_14Nov2022.pdf

[62] Centre for Environmental Rights, *Mining and Environmental Compliance: DMRE Performance Review 2017–2019* (December 2020) 6–9 https://cer.org.za/wp-content/uploads/2020/12/DMRE-Environmental-CME-performance-FY2017-2019.pdf

Courts have played a pivotal role in interpreting and enforcing transformation obligations under South Africa's mineral law framework. Three key lines of judicial intervention illustrate the evolving legal terrain.

First, in **Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others**[63], the Constitutional Court affirmed that the allocation of prospecting rights under the MPRDA must comply with principles of administrative justice and procedural fairness, especially where such rights affect third-party interests. The Court held that vesting custodianship of mineral resources in the state under section 3(1) of the MPRDA does not override constitutional obligations to consult affected communities, nor does it diminish their right to be heard under the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

Second, the controversy surrounding the "once empowered, always empowered" principle was addressed in **Chamber of Mines of South Africa v Minister of Mineral Resources and Others**[64].the Gauteng Division of the High Court ruled that mining companies may retain recognition for past BEE transactions even if black shareholders later exit, thereby affirming the continuing consequences of empowerment deals. This interpretation prioritised legal certainty and investor reliance, but also sparked debate about whether it undermines the Charter's goal of ongoing transformation. The ruling did not fully resolve the doctrinal tension, leaving room for administrative negotiation and future litigation.

Third, in **Minerals Council South Africa v Minister of Mineral Resources and Energy and Others**the Gauteng Division reviewed the legal status of the 2018 Mining Charter. The Court held that the Charter constitutes policy, not binding subordinate legislation, and set aside several clauses that purported to impose enforceable sanctions and ownership renewal obligations. The judgment clarified that the Minister's powers under section 100(2) of the MPRDA do not extend to creating binding law without express statutory delegation. This decision significantly limited the Minister's ability to enforce

[63] 2011 (4) SA 113 (CC)
[64] 2018 (4) SA 581 (GP)

transformation obligations through Charter provisions alone, reinforcing the need for a credible statutory basis[65].

3.2.4 Community participation, FPIC and constitutional safeguards

South African courts have progressively strengthened the procedural and participatory rights of mine-affected communities, especially those holding informal or customary land rights. This jurisprudence goes beyond general administrative fairness and engages directly with constitutional protections and statutory safeguards.

The Constitutional Court in ***Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others*** also held that the allocation of prospecting rights under the MPRDA must comply with the principles of **administrative justice** under the **Promotion of Administrative Justice Act 3 of 2000 (PAJA)**. The Court emphasised that vesting mineral custodianship in the state under **section 3(1)** of the MPRDA does not eliminate the duty to consult affected communities, especially where their rights or interests are directly impacted.[66]

This principle was deepened in ***Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Ltd and Another***[67], where the Constitutional Court affirmed that communities with **informal land tenure** are protected under the **Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA)**. The Court ruled that such communities cannot be displaced or have their land rights infringed without **consent**, not merely consultation. This marked a shift from procedural engagement to **substantive participatory rights**.

Further clarity was provided in ***Baleni and Others v Minister of Mineral Resources and Others***[68]***.*** Where the High Court held that communities occupying land under customary law must give **free, prior, and informed consent (FPIC)** before mining rights are granted. The judgment recognised

[65] [2021] ZAGPPHC 623 (Case No. 20341/19)
[66] 2011 (4) SA 113 (CC)
[67] [2018] ZACC 41
[68] 2019 (2) SA 453 (GP

IPILRA as a statutory mechanism that operationalises FPIC in the South African context, especially for rural and indigenous communities.

All in all the foregoing cases establish that consultation alone is insufficient where informal or customary land rights are at stake. The courts have affirmed that **constitutional property rights**, **customary tenure**, and **statutory consent requirements** must be respected in the licensing process under the **Mineral and Petroleum Resources Development Act.** This jurisprudence has become a practical tool for communities to assert influence over mining projects and challenge extractive activities that disregard their legal entitlements.

3.3 Outcomes: successes, limitations and the politics of compliance

3.3.1 Measured successes: ownership, employment metrics and supplier opportunities

Empirical evidence and industry reporting confirm that the Mining Charter has yielded measurable transformation gains in several domains. In response to the Charter's ownership requirement the 30% black ownership threshold for new mining rights under Clause 2.1.3 of the 2018 Charter many large mining corporates restructured their equity holdings.[69] This led to the creation of employee share ownership schemes (ESOPs) and community trusts, which now hold meaningful stakes in mining operations.[70]

The **Implementation Guidelines for the Mining Charter, 2018** further detail how these ownership structures must be verified and maintained, reinforcing their role in inclusive economic participation.

In terms of employment equity, sectoral data shows consistent improvement at lower and middle occupational levels, with increased representation of historically disadvantaged South Africans. The Charter's Clause 2.4 sets specific targets for black representation across job categories, and many firms

[69] Department of Mineral Resources, Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018 (Government Gazette No 41934, 27 September 2018) clause 2.1.3.
[70] ibid

have reported compliance in their annual reports submitted to the Department of Mineral Resources and Energy (DMRE).[71]

Under Clause 2.2.1 and 2.2.2. Procurement and supplier development have also seen progress. The Charter mandates that 70% of mining goods and 80% of services be procured from South African companies, with sub-targets for black-owned and women-owned enterprises. This has opened supply-chain opportunities for black-owned SMEs, particularly in mining-adjacent sectors such as logistics, engineering services, and protective equipment.[72]

Scholars and industry commentators acknowledge that these reforms have created new economic actors, institutional incentives for transformation, and a more diversified mining ecosystem. While challenges remain, the Charter's measurable targets have helped shift transformation from aspirational rhetoric to trackable outcomes.[73]

3.4 Conclusion

South Africa's framework for local participation in mining stands out for its ambition and transformative intent. Through the MPRDA, successive Mining Charters, and the broader B-BBEE system, it has sought to redistribute mineral wealth to historically disadvantaged South Africans and to local communities, building a layered and comprehensive model of reform.

However, implementation has been uneven. Administrative capacity constraints, definitional and measurement challenges, judicial rulings that limit the Charter's binding force, and broader political economy dynamics have diluted the framework's impact. On the positive side, the reforms have created

[71] Department of Mineral Resources, Implementation Guidelines for the Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018 (GN 1399 of 2018, Government Gazette No 42021, 19 November 2018).
[72] Department of Mineral Resources, Implementation Guidelines for the Broad-Based Socio-Ec onomic Empowerment Charter for the Mining and Minerals Industry, 2018 (GN 1399 of 2018, Government Gazette No 42021, 19 November 2018).
[73] N.V. Moraka and M. Jansen van Rensburg, 'Transformation in the South African mining industry – looking beyond the employment equity scorecard '(2015) 115(8) *J Southern Afr Inst Min Metall* 669. Nokuhle Vencentin Madolo, *Transformation of the Mining Sector of South Africa: Strategies Beyond the Life of the Mining Charter* (PhD thesis, University of the Witwatersrand 2014).

new economic actors, increased employment representation, and expanded procurement opportunities. On the negative side, benefits have often been captured by elites, while many communities continue to shoulder environmental and socio-economic costs.

Taken together, these mixed outcomes underscore both the possibilities and the limitations of using law and policy to drive inclusive transformation in mining. This analysis therefore provides an important foundation for the next chapter, which turns to Zambia. By placing South Africa's experience alongside Zambia's, the study will draw comparative lessons about how legal frameworks can and cannot deliver meaningful local participation in resource governance.

CHAPTER FOUR

COMPARATIVE ANALYSIS OF ZAMBIA AND SOUTH AFRICA'S LEGAL FRAMEWORKS ON LOCAL PARTICIPATION IN MINING

4.0 Introduction

The previous chapters examined South Africa's legal framework for mining participation, including the MPRDA, successive Mining Charters, the B-BBEE framework, and their enforcement through administrative and judicial channels. They also established the normative architecture of Zambia's local participation, including its legislative ambitions through the **Mines and Minerals Development Act**[74] **, the Citizens Economic Empowerment Act**[75] , environmental law, and local government involvement. I weave those strands into a coherent comparative analysis in this chapter. The objective is to determine how Zambian reforms, particularly those aimed at resolving the structural issues mentioned in Chapter 2, might benefit from South Africa's advantages in design, implementation, and results. The chapter is divided into three sections. First, it contrasts South Africa's design philosophy and operational processes with Zambia's local participation system. Second, it looks at court theory, enforcement policies, and implementation issues in both jurisdictions. Third, it outlines reform requirements for Zambia that are based on comparative analysis and tailored to the country's institutional setting.

4.1 Comparative Design and Normative Architecture

4.2.1 Zambia's normative framework vs South Africa's transformation foundation

The **Mines and Minerals Development Act**[76] , **Citizens Economic Empowerment Act**[77] , **Environmental Management Act**[78] and **Local Government Act**[79] are among the legislation that form the foundation of Zambia's local involvement framework. These statutes all incorporate

[74] Act No. 11 of 2015
[75] Act No. 26 of 2006
[76] N1
[77] N2
[78] Act No.12 of 2011
[79] Act No. 2 of 2019

normative goals of community engagement, environmental preservation, and empowerment. However, many of these measures are still aspirational, as it has been shown in Chapter 2. The Mines Act mandates "preference" for Zambian suppliers and citizen training, but it lacks enforceable local content standards, transparent measurements, and an enforcement framework. Although the CEEC's undercapitalization and poor integration with procurement procedures restrict its ability to assist citizen-owned businesses, it is mandated by the Citizens Economic Empowerment Act to do so. Although decentralisation and environmental law offer community participation procedures, local governments hardly ever have any influence over mining permits or benefit distribution.

The South African regime, on the other hand, is specifically designed to encourage redistribution and local involvement and is based on statutory transformation goals that are incorporated into the **Mineral and Petroleum Resources Development Act[80] (MPRDA)** of South Africa

Section 2 of the **MPRDA's** lists goals including community development, employment promotion, expanding mining opportunities for historically under-represented individuals, and fair access to mineral resources. [81] This constitutionalised pipeline guarantees that any mining operation or right is evaluated based on its ability to achieve social and economic justice objectives, not only technical or commercial considerations.
South Africa aims for coherence, whereas Zambia's architecture is still disjointed. High-level principles are provided by the **MPRDA.** These ideas areoperationalised into measurable pledges in the Mining Charter. The national empowerment policy and sectoral reform in mining are in line with the B-BBEE framework. The South African government has a higher chance of converting social goals into regulatory practices because to this multi-layered design.[82].

[80] Act No.28 of 2002
[81] ibid
[82] Ibid

4.2.2 Translating principles to obligations: specificity, thresholds, and continuity

The level of specificity is one of the most important design distinctions. Zambian laws state general objectives such as "promote participation," "employ and train," and "give preference," but they rarely specify how much, when, or how compliance is to be assessed. This ambiguity gives mining firms more latitude and compromises accountability.

In contrast, specific goals are specified in South Africa's Mining Charter, particularly in its 2018 edition. It divides shares into community, employee, and black entrepreneur allocations and requires that new mining rights be owned by at least 30% Black people. With additional sub-targets for B-BBEE compliance, it mandates that 70% of goods and 80% of services be purchased from South African vendors. Mining businesses are required to contribute to community development, and employment equity measures are calibrated across occupational levels. [83] Notably, the Charter contains a "re-empowerment" clause that mandates that black ownership be maintained or restored through a new transfer of rights, making transformation a continuous duty.

It is crucial to translate fundamental concepts into specific duties because this eliminates uncertainty, permits firm-to-firm comparability, and for performance monitoring by regulators and civil society. Because Zambia lacks measurable benchmarks, mining corporations might legitimately comply in token ways without promoting genuine participation.

Continuity of duty represents another design distinction. Through its re-empowerment provisions, South Africa's Charter expects not only initial compliance but also renewal or transfer circumstances. This implies that after the end of a period, mining rights cannot just go back to their initial state. The

[83] Department of Mineral Resources and Energy, Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018 (Government Gazette No. 41714, Notice No. 611 of 2018) Parts 2.1, 2.2, and 2.3 <https://www.gov.za/sites/default/files/gcis_document/201806/41714gon611.pdf> accessed 12 October 2025.

structure in Zambia is not as consistent. New participation measures may not be required for subsequent licence renewals or transfers once the original licence criteria have been completed, or at least partially met.

4.3 <u>Enforcement, Compliance, and Judicial Architecture</u>

4.3.1 <u>Administrative oversight, audits, and licence conditions</u>

The Ministry of Mines and regulatory bodies in Zambia are normally in charge of enforcing local participation, but this is sometimes done haphazardly and with limited authority.[84] For local content requirements, the Mines Act does not assign a specific enforcement cell or auditing organisation; rather, compliance is evaluated by means of self-submission of training or procurement plans and monthly reporting. Inspecting and auditing for compliance is rare or shallow due to institutional capacity limitations, geographical distance, and a lack of technical resources. Furthermore, the deterrent effect of fines linked to failures of local participation is diminished because they are rarely used.

Through licensing requirements, administrative audits, and compliance evaluations conducted by the **Department of Mineral Resources and Energy (DMRE)**, South Africa aims to make transformation enforceable. Annual compliance reports, Social and Labour Plans (SLPs), and comprehensive data supporting transformation indicators (equity, employment, and procurement) are required of mining rights holders. Section 47(1) of the **MPRDA**[85] gives the **DMRE** the power to suspend or revoke mining licenses for failure to comply with contractual or regulatory requirements, such as transformation and SLP criteria.

Nevertheless, enforcement is unequal in spite of this architecture. The DMRE is occasionally criticised for its lack of resources, postponed audits, use of

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[84] Copperbelt Katanga Mining, Zambia to Introduce Local Content Law for Mining Sector (3 February 2025) <https://copperbeltkatangamining.com/zambia-to-introduce-local-content-law-for-mining-sector/> accessed 12 October 2025; Lusaka Times, Mining Stakeholders Demand Local Content Bill Finalised (24 September 2025) <https://www.lusakatimes.com/2025/09/24/mining-stakeholders-demand-local-content-bill-finalised/> accessed 12 October 2025.

[85] Act No.28 of 2002

reputational pressure rather than official revocation, and negotiated compliance as an alternative to severe sanctions. In some instances, poor monitoring and a lack of follow-through have been brought to light by independent organisations such as the Centre for Environmental Rights. As a result, institutional capacity compromising enforcement integrity is a problem that both jurisdictions face. Although not always fully fulfilled, South Africa's larger leverage potential is provided by the greater congruence between license responsibilities and transformation requirements.

4.3.2 Measurement, reporting, and definitional integrity

South Africa and Zambia both use reporting requirements to assess compliance, but results might be muddled by the intricacy of definitions and measurement. According to South Africa's system, businesses must submit detailed information on supplier localisation, employment by demographic group, procurement cost breakdowns, and beneficial ownership. However, ambiguous definitions (such "beneficial ownership," "community procurement," or "local supplier") allow for different interpretations.[86] For instance, a corporation may say it has a contract with a "community supplier," yet it may have its headquarters somewhere else or be merely ostensibly connected to a community. In a similar vein, ownership arrangements might be set up to meet numerical requirements without actually shifting control or financial gain. Measurement issues are made worse by the definitions' uneven alignment throughout the Charter, B-BEE Codes, and corporation law.

Reporting is typically less auditable and much more generalised in Zambia. Procurement or training data may remain unconfirmed or uncontested in the absence of clear classifications or thorough verification. The credibility of reported compliance is further undermined by the lack of independent spot inspections, third-party audits, or civil society validation.

[86] Department of Mineral Resources and Energy, Mining Charter, 2018: Implementation Guidelines (Govenment Gazette No. 42122, Notice No. 1399 of 2018) <https://www.gov.za/sites/default/files/gcis_document/201812/42122gon1399.pdf> accessed 12 October 2025; Deloitte South Africa, 2018 Mining Charter: Key Insights<https://www.deloitte.com/za/en/Industries/energy/analysis/2018-mining-charter.html> accessed 12 October 2025.

Stakeholders can (and do) challenge claimed transformation outcomes in South Africa despite issues due to this disparity in measurement discipline; in Zambia, however, this is uncommon because there is little legal support for requesting clarification or an audit.

4.3.3 Judicial enforcement, constitutional rights, and community safeguards

The legal system in South Africa serves as an example of how courts have stepped in to uphold and explain community rights and reform. According to the Constitutional Court's ruling in **Bengwenyama Minerals v. Genorah** state custodianship does not negate the need for community engagement since mineral rights allocations must adhere to procedural fairness under PAJA and appropriately involve communities that may be impacted. The courts upheld the concepts of free, prior, and informed consent (FPIC) and the acknowledgement of informal land rights (via IPILRA) as components of the rights landscape in communities affected by mining in the cases of Maledu v. Itereleng and Baleni v. Minister. These decisions give impacted groups real rights against unfair distribution or eviction, extending the legal framework for community involvement in mining beyond simple consultation.[87],

The High Court's decision in Minerals Council South Africa v. Minister of Mineral Resources and Energy, which declared the 2018 Mining Charter to be a policy tool rather than a legally binding document and struck down some of its provisions that sought to impose enforceable obligations outside of express statutory authority, is equally important. In the end, transformation duties must be based on strong statutory foundations or be incorporated into enforceable rights. This ruling emphasises that even well-designed policies cannot go beyond the limits of assigned legislative power.

These legal developments are informative because they show that transformation strategies need to be supported by legislative and constitutional legitimacy, protect community property and procedural rights, and be subject to

[87] [2010] ZACC 26; 2011 (4) SA 113 (CC); 2011 (3) BCLR 229 (CC).

judicial review and accountability. Because there are fewer judicially tested precedents of this type in Zambia's legal system, regulatory ambiguity frequently goes uncontested.

4.4 Outcomes, Constraints, and Comparative Reflections

4.4.1 Transformation outcomes: gains and limitations

Measurable change effects have been produced by South Africa's legal system, which is based on the Charter. In order to satisfy the 30 percent black ownership criterion for new rights, several mining companies have reorganised their ownership, frequently through employee share ownership schemes, community trusts, or black entrepreneur shareholdings. Black-owned supplier participation in mining-related services, inputs, logistics, and engineering has increased because to the Charter's emphasis on procurement. In many companies, traditionally under-represented South Africans are now more prevalent in junior and middle management positions, according to employment equity metrics.[88] As mandated by the Charter, community development plans have resulted in official pledges to livelihood, education, and infrastructure initiatives in areas impacted by mining.

But the results are not uniform. Some businesses find it difficult to completely accomplish their goals or postpone implementation. Rather than deep, rural local companies, transformation gains have frequently been concentrated in metropolitan supplier hubs or elite networks. Because of their limited capabilities or opaque governance, certain community trusts erode the link between local benefit and ownership.[89]Therefore, even though the Charter has changed the normative foundation for mining, there is still debate on the extent and scope of this change.

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[88] Centre for Development and Enterprise (CDE), The Mining Charter: Transformation or Tokenism? (CDE Report No. 5, 2023) <https://www.cde.org.za/the-mining-charter-transformation-or-tokenism/> accessed 12 October 2025; Department of Mineral Resources and Energy, Mining Charter, 2018: Implementation Guidelines (Government Gazette No. 42122, Notice No. 1399 of 2018) <https://www.gov.za/sites/default/files/gcis_document/201812/42122gon1399.pdf> accessed 12 October 2025.

[89] Ibid

The tangible results of local involvement are still quite low in Zambia. Particularly in capital-intensive industries, local suppliers are still excluded. Instead than being determined by legally binding obligations, community benefit flows are frequently indirect and depend on the goodwill of the enterprise. Small-scale and artisanal miners still work in hazardous, unofficial environments with little integration into larger value chains. Benefits tend to accrue equitably where infrastructure is constructed, as in the Solwezi example.[90] The gap between shallow implementation and rich normative language continues to be a major obstacle.

4.4.2 Structural constraints and political economy pressures

Both South Africa and Zambia have structural limitations, such as regulatory bodies' limited capacity, supplier competency gaps, indigenous entrepreneurs' capital limits, and incumbents' resistance. How ambitious local involvement mandates can be maintained depends on the political economy backdrop, which includes power imbalances in the mining industry, the impact of foreign capital, and demands for regulatory stability.

Investor resistance, legal restrictions, and the need to strike a balance between redistribution and competition have occasionally slowed South Africa's transformation ambition. The Charter's legal vagueness restricts the State's capacity to enforce more forceful re-empowerment, particularly in the wake of court decisions. Hard enforcement in Zambia is replaced by voluntarism and negotiation due to a lack of institutional competence and a lack of coordination among ministries.

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90 Jesuit Centre for Theological Reflection (JCTR), A Community–Company–Government Assessment of Copper Mining in Solwezi (June 2017) <https://repository.jctr.org.zm/bitstream/handle/20.500.14274/1721/20170617-solwezi_report-1.0.pdf?sequence=1> accessed 12 October 2025; Nachinanga Siaciti, The Role of Artisanal and Small-Scale Mining in Enhancing Sustainable Livelihoods in Zambia (LLM thesis, University of Zambia 2022) <https://dspace.unza.zm/items/5aa61a83-cc3b-4346-9c6e-ae0627a69852> accessed 12 October 2025; Centre for Environment Justice, Does Zambia’s Artisanal and Small-Scale Mining Policy Approach Support Sustainable Development? (June 2025) <https://cejzambia.org/wp-content/uploads/2025/06/Does-Zambias-Artisanal-and-Small-Scale-Mining-Policy-Approach-Support-Sustainable-Development.pdf> accessed 12 October 2025.

Even though it is not flawless, South Africa's design affords it more "regulatory muscle" to deal with pushbacks. The Zambian government has never had that kind of power.

4.5 Reform Imperatives for Zambia: Comparative Lessons and Adaptation

The following reform paths, which are based on the comparative diagnosis, are essential for Zambia to bridge the governance gap and incorporate significant local participation:

1. A legal framework that ties local involvement to measurable goals. Zambia should amend the Mines and Minerals Act (or pass a related Local involvement and Empowerment Act) to incorporate explicit numerical benchmarks for employment, equity involvement, and local procurement, with phase-in schedules tailored to the scope and size of the project.
2. Including responsibilities in the licensing framework. It is imperative that local involvement targets be legally integrated into mining licence conditions or contractual agreements rather than existing as distinct policy pronouncements. Meeting participation requirements should be a requirement for licence extensions, transfers, or renewals.

3. Establishing a specific enforcement agency. An interministerial commission or a dedicated local content oversight unit inside the Ministry of Mines should have the authority to communicate with CEEC, ZEMA, and local government, audit employment and procurement statistics, confirm compliance, and apply incentives or penalties.

4. Integration and alignment of institutions. Zambia needs to dismantle the silos that exist between the local government, mining, economic empowerment, and environmental sectors. Supply development, procurement, and community development will be supported rather than in conflict by coordinated policy among Mines, CEEC, the Ministry of Commerce/Industry, and local governments.

5. Mechanisms for equal involvement and ownership. To guarantee local stakes in operations, Zambia should integrate state, community, or citizen

equity models (such as carried interest, community trusts, and progressive divestment) into its mining regime. Shareholding requirements for local stakeholders. An interministerial commission or a dedicated local content oversight unit inside the Ministry of Mines should have the authority to communicate with CEEC, ZEMA, and local government, audit employment and procurement statistics, confirm compliance, and apply incentives or penalties.

4.6 Conclusion

This chapter's thorough comparative study is based on the institutional and legal underpinnings of Zambia's mining regime in Chapter 2 and the specific legal framework and body of precedent of South Africa's mining reform regime in Chapter 3. The results of the analysis show a sharp contrast: Although South Africa's design is flawed and subject to legal challenges, it incorporates quantifiable transformation goals, incentive leverage, and institutional alignment that tip the scales in favour of increased local participation. Zambia's laws specify local participation in broad strokes but lack the enforceable framework required to produce significant results.

Although there are several issues with South Africa's strategy, such as measurement complexity, judicial retreat, elite capture, and uneven implementation, it provides a more convincing model for connecting normative objectives to regulatory procedures. The way forward for Zambia is to go beyond aspirational rhetoric to include strong law design, institutional capability, performance enforcement, and local supply-side empowerment. Based on comparative analysis and local institutional circumstances, the following chapter will summarise the results of this comparison and offer specific recommendations and reform proposals adapted for Zambia's mining industry.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This chapter summarises the important findings and analyses offered in the previous chapters of the dissertation. It also presents recommendations to solve the legal and institutional inadequacies that have been highlighted in Zambia's mining sector in terms of local participation and ownership. The study sought to determine whether Zambia's current legal framework sufficiently promotes and enforces local participation in the mining industry, as well as what lessons could be learnt from South Africa's legal approach, which has made more measurable progress in transforming ownership and participation patterns in the mining sector.

5.1 General Conclusion

A key component of both economic empowerment and sustainable resource governance is local involvement in the mining industry. It guarantees that the development of the country and the standard of living of the host people are significantly impacted by the exploitation of mineral wealth. According to this study, Zambia has attempted to enact laws through the **Mines and Minerals Development Act** however these laws are still primarily aspirational and lack clear monitoring procedures, enforceable requirements, or specified quotas.[91],

In contrast, South Africa's mining transformation framework is supported by legally binding commitments, compliance systems, and judicial enforcement. It is based on the Mineral and Petroleum Resources Development Act 28 of 2002, the **Broad-Based Black Economic Empowerment Act**[92] and the Mining Charter. Despite continued efforts to increase local participation, this has had more noticeable results.It guarantees that the development of the country and the standard of living of the host people are significantly impacted by the exploitation of mineral wealth.

The comparative analysis therefore reveals that Zambia's challenge is not merely the absence of policy intent but the absence of **legal precision, institutional coordination and**

[91] Act No.11 of 2015
[92] Act No.53 of 2003,

enforcement power. The country's mining laws must evolve from general policy aspirations to **binding instruments of socio-economic transformation**.

5.2 SUMMARY OF CHAPTERS

This dissertation comprised five chapters that collectively explored the legal gaps in Zambia's mining sector and proposed actionable reforms through comparative legal analysis.

5.2.1 Chapter One

The research problem and its background were presented in Chapter One. It proved that although Zambia's economy depends heavily on the mining industry, local residents still receive very little in the way of benefits. The goals and research topics that directed the comparative analysis between South Africa and Zambia were also described in the chapter. The study was deemed significant because it strengthened domestic legal ability to support inclusive mining governance and contributed to ongoing policy reform debates.

5.2.2 Chapter Two

This chapter looked at the laws that control local mining participation in Zambia. It examined pertinent statutory instruments, policy documents like the **Local Content Strategy (2017**), and the **Mines and Minerals Development Act** (2015). According to the research, Zambia's structure is disjointed and devoid of institutional procedures for compliance monitoring, enforceable targets, and precise definitions of local participation. It also pointed out how little the Ministry of Mines and the Zambia Extractive Industries Transparency Initiative (ZEITI) could do to guarantee genuine local empowerment.[93]

5.2.3 Chapter Three

In Chapter Three, the institutional and legal framework for local mining participation in South Africa was examined. It covered the Mining Charter, the B-BBEE Act, and the MPRDA as complementary tools for economic change. With the support of quantifiable metrics, consistent reporting, and court enforcement exemplified by cases like **Bengwenyama Minerals (Pty) Ltd v. Genorah Resources (Pty) Ltd** South Africa has successfully connected mining rights to empowerment requirements, according to the study.

[93] Act No.11 of 2015

Notwithstanding implementation difficulties, South Africa's framework shows how legally binding agreements can gradually change ownership arrangements in the mining sector.[94]

5.2.4 Chapter Four

The mining laws of South Africa and Zambia were compared in this chapter, with similarities and differences noted. The main conclusion was that South Africa's success is a result of its successful incorporation of social justice concepts into legally binding responsibilities, which are backed by open reporting on compliance and judicial supervision. In contrast, Zambia's laws rely on ministerial discretion and are primarily declaratory. The chapter came to the conclusion that in order to guarantee significant local involvement, Zambia's mining governance requires institutional coherence, statutory specificity, and quantifiable empowerment duties.

5.3 Recommendations

Having highlighted the deficiencies in Zambia’s current legal and institutional framework, this study proposes the following reforms to enhance local participation and ensure equitable benefit-sharing in the mining sector.

5.3.1 Enactment of a Comprehensive Local Content Act

Zambia should enact a **Local Content and Participation Act** specifically dedicated to defining, regulating, and enforcing local participation obligations across the mining value chain. The Act should:

- Define “local participation” to include ownership, procurement, and employment dimensions.
- Establish minimum thresholds for local equity ownership and procurement of goods and services.
- Create penalties for non-compliance and incentives for over-compliance.
- Mandate annual compliance reports and audits verified by an independent regulator.

[94] 2011 (4) SA 113 (CC); [2010] ZACC 26; 2011 (3) BCLR 229 (CC).

This would align Zambia's legal framework with global best practices and South Africa's B-BBEE standards.

5.3.2 AMENDMENT OF THE MINES AND MINERALS DEVELOPMENT ACT (2015)

Sections 20 and 35 of the current Act should be **amended** to make local participation obligations **mandatory rather than discretionary**. Specifically:

The Minister should be required, not merely empowered, to prescribe minimum local content requirements for licensing and renewal.

Mining right holders should submit periodic local content implementation plans.

Non-compliance should constitute grounds for suspension or revocation of licences.

5.3.2 <u>Establishment of a Local Content Regulatory Authority</u>

A **Local Content and Participation Commission (LCPC)** should be established as an independent oversight body to:

Monitor, evaluate, and report on compliance.

Maintain a national database of local suppliers and contractors.

Coordinate between the Ministry of Mines, the Zambia Development Agency, and civil society to ensure transparency and accountability.

This institutional reform would mirror South Africa's model of coordinated empowerment oversight under the Department of Mineral Resources and Energy.

5.3.3 <u>Introduction of Measurable and Transparent Compliance Mechanisms</u>

To ensure accountability, Zambia should adopt:

A **Local Participation Scorecard**, modelled on South Africa's B-BBEE scorecard, to measure ownership, management, employment, procurement, and community development.

Annual **public disclosure of compliance reports** by all major mining companies.

Periodic performance audits to verify reported figures and prevent misrepresentation.

5.3.4 Strengthening Judicial Enforcement and Public Interest Litigation

The judiciary should play a more proactive role in interpreting and enforcing socio-economic rights within the mining context. This may be achieved through:

Empowering local communities and civil society organisations with **locus standi** to challenge non-compliance.

Establishing an **Extractive Sector Tribunal or Chamber** to handle disputes related to local content and participation expeditiously.

5.3.6 PROMOTING CAPACITY BUILDING AND TECHNOLOGY TRANSFER

For local participation to be meaningful, legal reforms must be complemented by human capital investment. Therefore:

Mining licences should include binding obligations for **skills development and technology transfer**.

Government should create partnerships with universities and technical institutions to train Zambians in mining engineering, geology, and management

Local suppliers should be supported through targeted financing and capacity-building programs.

5.3.5 Alignment with African and International Frameworks

Zambia should domesticate and align its mining laws with the **African Mining Vision (AMV)** and the **African Charter on Human and Peoples' Rights**, which emphasize equitable resource governance. This alignment would enhance Zambia's international standing and ensure consistency with regional development commitments.

5.4 Concluding Remarks

The study comes to the conclusion that only legally binding, open procedures that encourage sincere local involvement can fulfil Zambia's goal of inclusive and sustainable mining development. The comparative lessons learnt from South Africa show that when legal frameworks incorporate quantifiable goals, institutional accountability, and legally obligatory empowering requirements, they can truly be revolutionary.

Zambia may transition from policy declarations to a genuinely people-centered mining regime where the use of mineral resources promotes social justice and economic growth by putting the aforementioned suggestions into practice.

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SCHOOL OF LAW

L400B / Dissertation II – DIRECTED RESEARCH (OBLIGATORY ESSAY)

RESEARCH CLEARANCE FORM

NAME: PETER NJILIKA **STUDENT NUMBER: LLB 22113244**

SUPERVISOR: Ms. TABITHA MUKUKA **TOPIC: ADDRESSING LEGAL GAPS IN ZAMBIA'S MINING SECTOR: A COMPARATIVE ANALYSIS OF LOCAL PARTICIPATION LAWS IN ZAMBIA AND SOUTH AFRICA**

Stage	Supervisor's Comments	Supervisor's Signature & Date	Student's Signature & Date
Research Proposal	Corrections Reviewed	07/08/25	07/08/25
Chapter 1 – Introduction	Reviewed.	11/08/25	11/08/25
Chapter 2 –	Reviewed.	14/08/2025	14/08/2025
Chapter 3 –	Correction Reviewed.	17/08/2025	17/08/2025

Chapter 4 –	**Change of numbering of the sections.**	**20/10/2025**	**20/10/2025**
Chapter 5 – Conclusions & Recommendations	**Reviewed.**	**30/10/25**	**30/10/25**
Abstract, Table of Contents, Bibliography and Appendices	**Reviewed.**	**12/11/2025**	**12/11/2025**
First Draft	**Reviewed and approved.**	**12/11/25**	**12/11/25**
Second Draft	**Reviewed.**	**12/11/25**	**12/11/25**
Final Draft	**Reviewed and approved.**	**12/11/25**	**12/11/25**

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