

CASE STUDY**SOUTH AFRICA:
DIRECT EMPLOYMENT****BROAD-BASED SOCIO-ECONOMIC
EMPOWERMENT CHARTER; FOCUS
ON HISTORICALLY DISADVANTAGED
SOUTH AFRICANS (HDSAS)****OVERVIEW****LEVEL OF OPERATION:**

National; industry

GOVERNMENT ROLE:

Regulator

FOR MORE INFORMATION:See [South Africa's Mining Charter](#)**KEY COMMODITIES:**Gold (world leader), platinum (world leader), diamond,
coal, base metals¹**TOTAL NATURAL RESOURCE RENTS
(AS % OF GDP) (2015):**4.2 per cent²**NATIONAL EXTRACTIVES COMPANY:**African Exploration Mining and Finance Corporation
(AEMFC)**UNDP HUMAN DEVELOPMENT INDEX VALUE (2016):**0.666 (Rank 119)³**DIRECT EMPLOYMENT IN MINING SECTOR (2013):**Approximately 457,000 (>3 per cent of total workforce⁴)

South Africa is the world's leading producer of gold and platinum, and is estimated to have approximately USD 2.5 trillion in mineral reserves.⁵ The South African mining sector has been one of the major drivers of the country's economy, attracting foreign investment and generating significant employment opportunities for the local population.

Successive South African governments have used local content in the extractives sector to create opportunities for project equity, employment and business for historically disadvantaged groups.

While many local content targets have been met, a new South African Mining Charter has raised concerns in the international mining community that even tougher rules on local ownership, employment and revenue redistribution could negatively impact investment in a country already experiencing recession.

¹ Central Intelligence Agency (CIA). (2017). *The world factbook*. Washington, DC: CIA. Retrieved from <https://www.cia.gov/library/publications/the-world-factbook/geos/sf.html>

² World Bank Group. (2017). *Total natural resource rents (% of GDP)*. Washington, DC. Retrieved from <https://data.worldbank.org/indicator/NYGDPTOTLRTZS>

³ United Nations Development Programme. (2016). *Human Development Reports: South Africa*. Geneva, Switzerland. Retrieved from <http://hdr.undp.org/en/countries/profiles/ZAF>

⁴ Chamber of Mines of South Africa. (2016). *Mine SA 2016 facts and figures pocketbook*. Johannesburg, South Africa: Chamber of Mines of South Africa. Retrieved from <http://www.chamberofmines.org.za/industry-news/publications/facts-and-figures/send/17-facts-and-figures/390-facts-and-figures-2016>

⁵ Hydralok. (2013). *Top five mining countries in the world and their GDP (Infographic)*. Bristol, UK: Hydralok. Retrieved from <https://hydralok.net/top-five-mining-countries-in-the-world-and-their-gdp/>



THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT STRATEGY

The Broad-Based Black Economic Empowerment (B-BBEE) Strategy was released in 2003 as a precursor to the B-BBEE Act of the same year. The B-BBEE framework forms part of the government's broader mandate to transform the South African economic and social landscape to redress long-ingrained historical discrimination against the country's black population.

The 2010 Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry (otherwise known as the "Mining Charter") builds on the B-BBEE program. The Charter aims to advance ownership rights and participation of Historically Disadvantaged South Africans (HDSAs) in the mining industry through explicit local content requirements. The Charter's legislative and policy provisions constitute one of the most comprehensive and complex examples of local content within the global mining industry. Stipulations on employment quotas for all levels of project operation are coupled with extensive procurement and ownership targets as well as mandatory (phased; gradually increasing) expenditure of training and skills development—all of which are targeted toward the empowerment of HDSAs. By 2014, the Charter specified that all mining companies were to be 40 per cent owned by HDSAs and have HDSAs occupy 40 per cent of all management positions (Article 2.4). Mining companies are also required to produce annual reports that detail their degree of compliance with the Mining Charter and "scorecard" their progress in meeting regulated targets (Article 2.9).

Targets have been relatively complex, which has sometimes led to differences in interpretation by industry stakeholders.

PROGRAM SUCCESSES AND CHALLENGES

A report by the South African Department of Mineral Resources in 2015 stated that the mining industry had, as a whole, generally exceeded the requirement of 40 per cent black representation in "all functional categories," and most companies had met the target of spending 5 per cent of their annual payroll on skills development.⁶

Nevertheless, a number of concerns remain about the unintended consequences of the Charter and its associated local content framework. Targets have been relatively complex, which has sometimes led to differences in interpretation by industry stakeholders.⁷ The Charter's wide-scale quotas, which are based solely on the criteria of race, have challenged authorities in their efforts to ensure the program targets those genuinely in need. A lack of definitional parameters has meant that benefits have sometimes been captured by powerful and politically connected black "elites," serving to entrench existing inequalities within disadvantaged communities.

SOUTH AFRICA'S NEW MINING CHARTER

A new Mining Charter, with tougher local content requirements,⁸ was introduced in June 2017. The new

⁶ Cited in South African Institute of Race Relations (IRR). (2016). *Full Submission on Reviewed Mining Charter – 13 May 2016*. Johannesburg, South Africa: IRR. Retrieved from <http://irr.org.za/reports-and-publications/submissions-on-proposed-legislation/full-submission-on-reviewed-mining-charter-2013-13-may-2016>

⁷ Korinek, J. Ramdoo, I. (2017). *Local content policies in mineral-exporting countries* (OECD Trade Policy Papers, No. 209). Paris: OECD Publishing. Retrieved from <http://dx.doi.org/10.1787/4b9b2617-en>

⁸ Requires miners operating in South Africa to increase stakes held by black shareholders to 30 per cent within a year. Also 88 per cent of junior management positions must be held by black HDSAs. See Cotterill, J. (2017, July 15). South Africa suspends contentious mining charter. *Financial Times*. Retrieved from <https://www.ft.com/content/dc681eac-68a8-11e7-8526-7b38dcaef614>; Yeomans, J. (2017, June 15). Miners ready legal challenges as South Africa publishes mining charter. *The Telegraph*. Retrieved from <http://www.telegraph.co.uk/business/2017/06/15/miners-ready-legal-challenge-south-africa-publishes-mining-charter/>



charter was suspended a month later following a drop in mining shares and intense criticism from the mining industry, with the Chamber of Mines calling the proposed Charter a “most egregious” case of regulatory overreach that would “destroy” the country’s mining industry.⁹

There are fears that strengthening the regulatory environment around B-BBEE will stifle foreign investment and concentrate company ownership in the hands of a small minority of black beneficiaries.

As of January 2018, the fate of the new Mining Charter looked uncertain. The country had fallen from its status as one of the top 10 African mining investment destinations (to 13th place) and was sitting at 74th position globally on the 2016 Fraser Institute investment attractiveness index, which rates jurisdictions based on the attractiveness of their policy climate and mineral potential.¹⁰

KEY LESSONS

- Regulation can go some way to ensuring compliance with local content objectives, and explicit targets are desirable, but governments need to be aware of the risks of an environment that is too heavily regulated.

Local content policies that are overly complex and demanding can impact private sector confidence and foreign investment.

- The Mining Charter is part of a broader framework for the economic empowerment of South Africa’s disadvantaged demographics. Integration with national policy frameworks helps to ensure consistency of approach, as well as strengthen linkages between the industry and the local economy.
- Transparency and good governance in implementing local content policies are essential to ensuring that benefits are not captured by local elites and are accessible to those most in need.
- Targets need to be clear and well understood by industry stakeholders at the project outset so as to avoid misinterpretation and non-compliance.

⁹ Omarjee, L. (2017, October 18). Chamber files for review of ‘disastrous’ Mining Charter. *Fin24*. Retrieved from <https://www.fin24.com/Companies/Mining/chamber-files-for-review-of-disastrous-mining-charter-20171018>

¹⁰ Jackson, T. & Green, K.P. (2017). *Fraser Institute Annual Survey of Mining Companies 2016*. Vancouver, British Columbia: Fraser Institute. Retrieved from <https://www.fraserinstitute.org/sites/default/files/survey-of-mining-companies-2016.pdf>



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