THE LOCALISATION OF LINKAGES TO PROMOTE SOCIO-ECONOMIC DEVELOPMENT IN THE NAMIBIAN MINING SECTOR

By

REWALDO JOYRICK QUEST

(Student No. u19320966)

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Prepared under the supervision of

Adv. Leonardus J. Gerber

Department of Public Law

Faculty of Law

University of Pretoria

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ABSTRACT

The Namibian government, through its 5th National Development Plan ('**NDP5**') and the Ministry of Mines and Energy Strategic Plan of 2017/2018 – 2021/2022, seeks to localise linkages in the Namibian mining sector to drive socio-economic development. The Mineral Beneficiation Strategy for Namibia Abridged Promotion Version, reveals that the Namibian government is concerned that it has not reached its full potential in converting mineral endowments into socio-economic development across the country for Namibians. Given the Namibian government's plan and other indicators, it is plausible that the new and existing linkages that stem from Namibia's mining sector has more socio-economic development potential therefore this study aims to examine the local content policies ('**LCPs**') that affects the facilitation of linkages in Namibia's mining sector in light of promoting the socio-economic development of Namibians.

A computer desktop analysis is made of most recent and relevant primary and secondary sources that affects the facilitation LCPs and linkages in light of promoting socio-economic development. The primary sources include, amongst others, the Namibian Constitution 1 of 1990, the Minerals (Prospecting and Mining) Act 33 of 1992, the Minerals Development Fund Act 19 of 1996, the Public Private Partnerships Act 4 of 2017, the Namibia Investment Promotion Act, 9 of 2016, the New Equitable Economic Empowerment Framework, as well as the Mineral Policy of Namibia, SADC Protocol on Trade of 2005 and WTO international agreements. The secondary sources include latest academic literature and research reports.

In summary, this study discusses the scope and nature LCPs and linkages and the current legal provisions that affect LCPs and linkages in Namibia. In the latter chapters, the study assesses Namibia's facilitation of LCPs and linkages in light of promoting the socio-economic development of Namibians. Given the discussions and assessments made in the study, it was revealed that mining companies can easily avoid LCPs because of the manner in which LCPs are legislated and facilitated. For example, the most critical LCP, is made dependant on the achievement of economic and technical efficiencies. However there is no regulation to regulate how economic and technical efficiencies are assessed and achieved. The open ended nature of the LCP does not put a demand on businesses to develop businesses cases that are economically and technically efficient.

Furthermore, there is a lack of regulations to monitor and supervise compliance with LCPs and the linkages stem from LCPs. There are no prescribed LCP reporting requirements and standards. Currently LCPs are reported on in qualitative in nature and not quantitative, which gives leeway for LCPs requirements to be reported on in a vague manner. Qualitative reporting methods, compared to quantitative methods, lessens the strict compliance with LCPs and accountability measures that could be taken. The aforesaid inadequacies of LCPs, has a further knock on effect on the facilitation of linkages that stem from LCPs in light of promoting the socio-economic development Namibians. Therefore, this study concludes that, unless, the LCPs are to revised, the Namibian government's plan to drive socio-economic development through the facilitation of linkages may not come to fruition.

LIST OF ACRONYMS

LCPs	Local Content Policies
NIPA	Namibia Investment Promotion Act,
NEEEF	New Equitable Economic Framework
PPA Act	Public Private Partnerships Act

KEYWORDS

Local Content Policies

Socio-economic development

Promote

Linkages

Minister

Facilitation

Domestic Capabilities

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CHAPTER 1
INTRODUCTION, PROBLEM STATEMENT AND RESEARCH METHODOLOGY

1.1. Introduction

African governments are aware of the urgency that naturally stems from the finite nature of mineral resource endowments and are constantly seeking ways on how best to promote the socio-economic development of its people with every mineral discovery made.[1] Since the early 2000s, several African states have been pursuing the aim of localising linkages that stem from their respective extractive industries to capture maximum economic value to create sustained benefits from their mineral endowments for its people.[2] As a result, discussions remerged about local content policies ('LCPs') and the need to optimise the facilitation of linkages for the socio-economic development of its nationals. [3]

The Namibian government has chosen linkages as the vehicle in the mineral value chain to drive socio-economic development.[4] From official policy statements, it is clear that the government appears concerned that its mining sector has not reached its full potential in '*converting Namibia's extensive mineral endowments to create corresponding advances in social and economic development across the country.*'[5] This concern led to the anticipation that the facilitation of linkages in the mining industry will increase multiplier effect of mineral endowments locally which will translate into corresponding advances in socio-economic development.[6] In this context, the government is relying on the mining sector's contribution towards the national economy, with statistics reflecting an 11% contribution towards the GDP[7] with minerals constituting 26% of exports.[8] This is indicative that the mining sector

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[1] FS Weldegiorgis et al 'Building mining's economic linkages: A critical review of local content policy theory' (2021) 1.

[2] Weldegiorgis (n 1 above) 1.

[3] United Nations Trade and Development Board 'Establishing development linkages in the extractive industry: Lessons from the field' (2017) 1.

[4] The Ministry of Mines and Energy 'The Strategic Plan 2017-2022 of the Ministry of Mines and Energy' (2017) 13.

[5] G Dzinomwa *at el* 'Mineral Beneficiation Strategy for Namibia Abridged Promotion Version' (2021) i.

[6] Dzinomwa (n 5 above) i.

[7] V Nambinga 'The Impact of Mining Sector to the Namibia Economy 'Assessing Socio-Economic and Environmental Effects' (2021) 1.

[8] G Lange 'The contribution of minerals to sustainable economic development: Mineral resource accounts in Namibia' (2003) 5.

further plays an important role in driving socio-economic development.[9]

The mineral industry remains the pillar of the economy as documented by its average annual economic growth, contribution to GDP, job creation, income generation, and a primary source of government income and foreign exchange earnings.[10] However, considering the current socio-economic status of the Namibians, there are further expectations by society that the mineral industry will make more meaningful contributions towards the lives of Namibians.[11] The mining sector is of particular importance when considering that the unemployment rate is 36.80% of the national population of 2.6 million people.[12] The poverty index shows that 44% of Namibia's population live in multidimensional poverty.[13] Multidimensional poverty includes the numerous deficiencies suffered by poor people in their daily lives – such as inadequate healthcare, scarcity of educational resources, unsatisfactory living standards, disempowerment, poor work opportunities, and living in areas that are environmentally unsafe.[14] The Gini-coefficient — meant to measure the level of inequities in a country — was recorded at 0.59.1 in 2015, which was the second highest in the world. [15] Given the aforementioned statistics, it is plausible that the mining industry is expected to contribute more towards socio-economic development of Namibians present and in future.[16]

The facilitation of linkages which is intended to create more socio-economic benefits for Namibians, appears to be restrained by ineffective and deficient LCPs . [17] The LCPs forms the base from which linkages are established.[18] Importantly, the Minerals (Prospecting and Mining) Act,1992 amongst other concerns, does not regulate LCPs and administer linkages that ensure linkages are established as a result of LCPs to promote the socio-economic development of Namibians.[19]

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[9] N Barma *et al Rents to Riches? The Political Economy of Natural Resources-Led Development* (2012) xi.

[10] Nambinga (n 7 above) 1.

[11] Nambinga (n 7 above) 38.

[12] Namibia Multidimensional Poverty Index (MPI) Report 2021.

[13] https://data.worldbank.org/indicator/SI.POV.GINI?locations=NA (accessed on 6 March 2022).

[14] The Namibian Constitution 1 of 1990 Article 95 (l).

[15] https://data.worldbank.org/indicator/SI.POV.GINI?locations=NA (accessed on 6 March 2022).

[16] The Namibian Constitution 1 of 1990 article 95 (l).

[17] The Government of the Republic of Namibia 'Namibia's 5th National Development Plan'. (2017) 27.

[18] IGF & IISD 'Local Content Policies in the Mining Sector: Scaling up local procurement' (2019) 13.

[19] The Minerals (Prospecting and Mining) Act 33 of 1992.

1.2. Problem statement

The LCPs in Namibia are mainly housed in the general terms and conditions of mineral licences. In particular, the terms and conditions that relate to the employment of Namibian citizens, carrying out of training programmes, skills development, the use of local products and services to the extent available in Namibia, all make up the LCPs in Namibia.[20] The LCP condition termed '*the use of local products and services to the extent available in Namibia*' is particularly important to promote the socio-economic development of Namibians, however this LCP is made dependant on economic and technical efficiencies first being achieved.[21] This pre-condition is vague as there are no regulations to determine how and when economic and technical efficiencies are achieved.[22] These LCP inadequacies has a further knock on effect on the facilitation of linkages and on promoting the socio-economic development of Namibians. The lack of regulatory and reporting measures affects the enforceability of LCPs as mineral licence holders can easily avoid compliance with most LCPs.[23] If LCPs are not monitored through specific regulations and reported on in a quantitative manner than minimal efforts will be made by mineral licence holders towards promoting socio-economic development of Namibians through linkages.[24]

1.3. Aim and Objectives

1.3.1. Aim

Bearing in mind the problem statement above, the aim of the study is to examine the facilitation of LCPs and the facilitation of linkages in Namibia's mining sector in light of promoting the socio-economic development of Namibians.

1.3.2. Objectives

To achieve the abovementioned aim of this study, certain objectives must be attained:

The first objective is to outline the scope and nature of LCPs and linkages in light of promoting socio-economic development.

The second objective is to discuss the current legal provisions that concern the facilitation

[20] The Minerals (Prospecting and Mining) Act, 1992 sec 50.
[21] The Minerals (Prospecting and Mining) Act, 1992 sec 50(d).
[22] (n 21 above).
[23] A Cosbey & I Ramdoo 'Guidance for Governments: Local content policies' (2018) viii.
[24] Cosbey (n 23 above) viii.

of LCPs and linkages in light of promoting the socio-economic development of Namibians.

The third objective underlining the dissertation aim, is to assess Namibia's facilitation of LCPs and linkages in light of the expectation of promoting the socio-economic development of Namibians.

1.4. Research Questions

1.4.1. Primary Question

The primary research question is the following:

Does Namibia's facilitation of LCPs and linkages optimally promote the socio-economic development of Namibians?

1.4.2. Secondary Questions

To address the primary research question, it is necessary to also address certain secondary questions. These questions will be consecutively addressed in the substantive chapters of the study and include the following:

What is the scope and nature of LCPs and linkages in light of promoting socio-economic development?

What are the Namibian legal provisions that concern the facilitation of LCPs and linkages?

What is the propensity of Namibia's current facilitation of LCPs and linkages to result in socio-economic development of Namibians?

1.5. Relevance of the study

The vehicle that the Namibian government intends on optimising are 'linkages' to drive the socio-economic development of Namibians. Despite its expressed political willingness to do so, the facilitation of linkages may not yield the expected socio-economic returns due to deficient LCPs. Accordingly, this study sheds light on the current facilitation of LCPs in place and the linkages affected thereby, in light of promoting the socio-economic development of Namibians. In hindsight the study makes an assessment on whether Namibia optimally promotes the socio-economic development of its people through the facilitation of LCPs and associated linkages and the manner in which the government can facilitate LCPs to optimally result in the socio-economic development for Namibians.

1.6. Methodology

This study will utilise a desktop-study approach of relevant primary sources that relate to LCPs and linkages. These include, but are not limited to, the Namibian Constitution, the Minerals (Prospecting and Mining) Act, 1992, the Minerals Development Fund Act, 1996, the Public Private Partnerships Act, 2017, the Namibia Investment Promotion Act, 2016, the New Equitable Economic Empowerment Framework, as well as the Mineral Policy of Namibia, SADC Protocol on Trade and WTO international agreements. The primary sources will be supported by select secondary sources, including academic literature and research reports to further contextualise the analysis.

1.7. Chapter overview

The study will commence in Chapter 2 by discussing the scope and nature of LCPs and linkages in light of promoting socio-economic development. Chapter 3 will examine the legal provisions that deals with the facilitation of LCPs and linkages. Chapter 4 will assess Namibian's facilitation of LCPs and linkages in promoting the socio-economic development of Namibians. The study will conclude in Chapter 5 by summarising the findings of the substantive research chapters, and addressing the primary research questions. Where necessary, recommendations on the optimal strategic approaches to facilitate LCPs and linkages to promote the socio-economic development of Namibians will be advanced.

CHAPTER 2

DELINEATING LOCAL CONTENT POLICIES AND LINKAGES

2.1. Introduction

The discussion in Chapter 1 established the background, problem statement, aim, objectives, and research questions. Importantly the research is aimed at examining the facilitation of local content policies ('LCPs') and linkages in Namibia's mining sector in light of promoting the socio-economic development of Namibians. Considering the aim established in the preceding chapter, the objective of this chapter is to understand the scope and nature of LCPs and linkages. Accordingly, section 2.2 discusses what LCPs entails and section 2.3 discusses the concept of linkages. Section 2.4 concludes the chapter by providing a summary of the findings.

2.2. Conceptualising Local Content Policies

LCPs has no settled legal description however the Organisation for Economic Co-operation and Development ('OECD'), a global policy forum of which Namibia is a member of, describes LCPs as a descriptive name given to all legislative and regulatory instruments, policy tools, contracts and licensing arrangements imposed by the government that require firms to purchase and to use of input goods and services available locally in that country.[25] LCPs are also often associated with the employment of locals and the development of domestic industries though linkages. [26] The World Bank has further considered that the participation of nationals in ownership and management of mining companies forms part of the description of LCPs as well.[27]

Deduced from the aforesaid descriptions, aspects of local procurement, local employment, domestic industry creation, local ownership, local participation and local management must all be considered when describing LCPs. [28] Most aspects identified hereinbefore make up

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[25] https://www.oecd.org/trade/topics/local-content-requirements/#:~:text=The%20fastest%20growing%20of%20these,to%20operate%20in%20an%20economy . (accessed on 16 June 2022).

[26] IGF (n 18 above) 5.

[27] K, Svensson & R Barnard 'Increasing local procurement by the mining industry in West Africa: A Practical guide to increasing local procurement in West Africa' (2015) 3.

[28] Svensson (n 27 above) 3.

the five broad types of LCPs namely local procurement concentrated, local direct employment concentrated, horizontal linkages concentrated, downstream linkages concentrate and building domestic capacity concentrated.[29] These types of LCPs are discussed in more detail, further below in this chapter.

2.3. Designing Local Content Polices

When a country designs its LCPs, the above description and types of LCPs must be considered. A country must at the onset define what 'local' is, in order to determine who the beneficiaries of the LCPs are. [30] The term local can be interpreted narrowly which only consider the inhabitants of the communities that are directly or indirectly impacted by the mining. [31] In the alternative, the term can be broadly interpreted to include the entire nation or with an emphasis on nationality or citizenship.[32] Once the beneficiaries of the LCPs are defined, certain LCP criteria must be considered.

2.3.1. Criteria of Local Content Policies

The expression 'local' can be further observed through four different criteria. These include geographical location criterion; the value addition criterion; based on the ownership criterion, or based on the redress of injustice criterion. [33]

Firstly, when the expression local is observed through the geographical location criterion lens, it refers to the physical location of suppliers. Some countries deem suppliers as local if businesses are registered and incorporated in the country and conduct some business in the country. This qualifies suppliers to be 'local'. For example in Ghana, suppliers are deemed to be local if they are located in the province, state or region where mining activities take place. In some countries the geographical location of suppliers is not significant as long as they are registered in the country.[34]

The second approach through which 'local' can be observed, is through the value addition criterion. Value addition refers to the process by which the monetary worth of a good or

[29] Cosbey (n 23 above) viii.

[30] A Djeynaba and B Jeffery 'Local content policies in West Africa's mining sector: Assessment and roadmap to success' (2022) 2.

[31] Djeynaba (n 30 above) 2.

[32] Djeynaba (n 30 above) 2.

[33] IGF (n 18 above) 5.

[34] IGF (n 18 above) 5.

service increases as it goes through different stages of processing. The value addition criterion emphasises that such processing must be done in-country, as opposed to being performed outside the country. Countries who consider local through the value addition criterion, focuses on creating potential linkages and socio-economic benefits that can be derived from the local procurement.[35] LCPs herein are expected enhance the domestic capabilities of the manufacturing industry and the growth of local suppliers. [36] For example in Kazakhstan, suppliers and manufacturers are issued with a CT-KZ certificate based on the assessment on goods totally manufactured or which passed substantial processing on the Republic of Kazakhstan territory.[37]

In Ghana, the commission may require a local procurement list that specifies the goods and services with Ghanaian content from the holder of a mineral right. [38] Mining right holders are obliged to support in-country local suppliers.[39] In Tanzania, mining licence applications must include a statement on the procurement plan of goods and services available in the country, a local content plan and details of expected infrastructure requirements.[40] The Tanzanian Minister is empowered to make regulations to local content principles including the requirements for provision of goods and services by Tanzanian entrepreneur.[41] Zambia's Local Content Strategy sets at least 35% of inputs used by mining companies to be locally sourced.[42]

The third criteria for 'local', is through the lens of the ownership criterion. This interpretation draws attention to the participation of nationals or citizens in the supply of goods and services. This participation can be in the form of equity, meaning the percentage of shares held by citizens. In Zambia a 'citizen-owned company' means a company where at least fifty point one per cent of its equity is owned by the citizens.[43] In this way citizens has significant control of the management of the company. In South Africa, the 2018 Mining Charter requires a minimum of 70 % of total mining goods procurement spending on South African

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[35] IGF (n 18 above) 5.

[36] L Burr *et al* 'Extractive Natural Resource Development: Governanace, Linkages and Aid DIIS Report 2013:28' (2013) 9.

[37] IGF (n 18 above) 7.

[38] Minerals And Mining (General) Regulations of 2012 regulation 2.

[39] (n 38 above).

[40] Tanzania Mining Act of 2019 sec 3 (e).

[41] (n 40 above) sec 129(2)(u).

[42] The Republic Government of Zambia National Local Content Strategy 2018 – 2022 (2018) 5.

[43] (n 42 above).

manufactured goods from local businesses with 60% local ownership and 80% of services.[44]

Finally, 'local' can also be observed through the redress of injustice criterion. In Australia and Canada, specific provisions address concerns with regard to the injustices of particular Indigenous communities. Therefore local is understood to mean policies that are targeted to respond to the concerns of certain ethnic groups and to develop the socio-economic conditions of historically disadvantaged citizens.

In South Africa, the objectives of the MPRDA set out that in the MPRDA will –

> '(d) *substantially and meaningfully expand opportunities for historically disadvantaged persons, including women and communities, to enter into and actively participate in the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources*'
>
> […]
>
> (i) ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.'[45]

When the Minister grants mining rights, the Minister must be satisfied that mining right holders will promote socio-economic development for South Africans.[46]

The abovementioned criterias must carefully be studied when designing LCPs of a country to ensure that desired socio-economic outcomes are achieved. Countries may incoporate a number of LCPs however if the criterias are not understood then the LCPs incorporated may not be fit for purpose.[47]

2.3.2. Socio-Economic Effect of Certain Local Content Criteria

After considering the abovementioned criteria of LCPs, it is observed that certain criteria may not optimally promote the socio-economic development. For instance, if a country

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[44] The Mining Charter of 2018:Mineral Development and Petroleum Resources Development Act 28 of 2002 Inclusive Procurement, Supplier and Enterprise Development Scorecard.

[45] Mineral and Petroleum Resources Development Act 28 of 2002 sec 2.

[46] Mineral and Petroleum Resources Development Act 28 of 2002 sec 23 (1) (h).

[47] IGF (n 18 above) 26.

utilises the ownership criterion, the state can be given shareholding in a mining company as a result of LCP requirements, however if the mining company does not declare dividends due to various mining debts and expenditure, the shares will not be profitable for the state.[48] Secondly, if the dividends are declared and the money is paid into the state revenue fund of a country and the money is not budgeted or allocated to a socio-economic cause, then socio-economic development of Namibians may be restrained. [49]

Furthermore, if a country uses the geographical criterion to describe 'local', such LCP requirement can easily be satisfied by registering input companies locally that provide input goods and services to mining companies and such 100% of the input goods and services may still be imported which in turn no domestic capability is developed and ultimately the socio-economic impact is reduced. [50]

The local content inquiry must require that all goods and services be screened to ensure that they are locally produced and not imported.[51] An assessment of the percentage of inputs that are locally acquired by upstream businesses or if in the service industry, what percentage of upstream linkage production is processed must be done. If it appears that upstream linkage producers import inputs, then further assessment must be done to assess to what extent value is added locally. Further assessment can be done to assess to what extent domestic value is added into inputs or outputs from other related sectors, as a direct consequence of linkages.[52] Once the assessment is done, the facilitator of linkages can assess where value can be added locally and what linkage can be facilitated and how to strengthen the linkage to enhance supply chain development capabilities.[53]

2.3.3. Quantitative and Qualitative Methods of Measuring Local Content Policies

The LCPs can be measured in two different two ways — quantitatively and qualitatively. [54] LCPs can impose mandatory quantitative requirements on suppliers in the form of legally

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[48] K, Drisi & S 'Anderson African Mining Legislation Atlas (AMLA) Toolkit for State Equity Participation in Mining Companies' (2022) 10.
[49] World Bank Group (n 48 above) 10.
[50] IGF (n 18 above) 5.
[51] M Morris *et al* 'Commodities and Linkages: Industrialisation in Sub Saharan Africa. South Africa. MMCP Discussion Paper' (2011) 9.
[52] Morris (n 51 above) 9.
[53] Morris (n 51 above) 9.
[54] IGF (n 18 above) 5.

binding targets in terms of volume or value. In regard to volume, the number of local staff to be employed or number of contracts to be awarded to local suppliers is stated and in regard to value it is the percentage of spending on local procurement. [55]

LCPs can also impose qualitative reporting requirements on the share of local procurement or employment, transfer of technology and knowledge or the training of staff that have no specific quotas, even though it is binding.[56] For example in Botswana and Ghana similar provisions were adopted, goods and services are to be procured to the 'maximum extent possible consistent with safety, efficiency, and economy.[57] The effectiveness of LCPs can be measured by the value added or retained in the national or local economy or the local processing and skills development.[58]

2.3.4. Implementation of Local Content Policies

There are three ways in which LCPs can be implemented, either through the requirement-based model or the incentives-driven model or a hybrid model. The requirement-based model is utilised when policies expressly require investors take certain measures or abide by certain mandatory requirements.[59] For example, governments may impose quantitative targets on firms to source a certain percentage of their procurement spending through domestic suppliers or impose limits on the number of foreign nationals that can be employed by mining firms. For example in Ghana all unskilled labour must be Ghanaian and at least 90% of senior management.[60]

In contrast, the incentives-driven model — where the government acts as a facilitator — provides incentives to firms to increase their use of local factors of production, their transfer of technology, or the capacity development or training for local staff.[61] These can take the form of financial support, fiscal incentives, tariff exemptions, or reduced interest rates, which are only available to firms that meet local content policy objectives. In Finland a 30 million euro fund was established to provide financing opportunities and loan guarantees for firms

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[55] I Ramdoo 'Local Content Policies in Minerals-Exporting Countries, Case Studies Part 1' (2017) 8.

[56] Ramdoo (n 55 above) 8.

[57] Ramdoo (n 55 above) 8.

[58] Weldegiorgis (n 1 above) 5.

[59] IGF (n 18 above) 12.

[60] Ramdoo (n 55 above) 10.

[61] IGF (n 18 above) 13.

operating in the mining industry.[62] The hybrid model comprises of both the requirement-based model and the incentives-driven model.

2.3.5. Local Content Policy: Linkage Considerations

LCPs in the mining industry, by its very nature, if legislated adequately, fosters various kinds of linkages which links mining activity to the rest of the local economy.[63] LCPs establishes legal basis on which linkages are facilitated in the local mining industry and to the rest of the local economy. [64] Hence it is important to consider the concept linkages and it's nuances to insure that the net effect of LCPs are achieved. [65]

2.3.5.1. Conceptualising Linkages

The concept of '*linkages*' was first introduced by Albert Hirschman in a book titled the Strategy of Economic Development in 1958.[66] Hirschman deployed his idea in the context of economics, where the concept found its roots.[67] Hirschman's linkages philosophy was based on the idea of linking the input and output activities of related industries. [68] Linkages are particularly concerned on how industries operate in enclaved forms and the manner in which they link up related industry to optimise their economic output.[69] Once the complementarity or the interdependence among industries in the production process and the external economy is discovered the economic output is bound to increase.[70] Linkages can cause the subsequent growth of other industries originating from the growth and development of the given industry. Linkages can be used as tools to build and develop value addition industries on the back foot of input-output statistics which are key for industrial planning.[71] The nature of linkages tends to promote industrialisation.[72]

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[62] IGF (n 18 above) 13.

[63] Cosbey (n 23 above) ix.

[64] Cosbey (n 23 above) ix.

[65] Cosbey (n 23 above) ix.

[66] T Addison & A Roe 'Extractive Industries: The Management of Resources as a Driver of Sustainable Development' (2018) 106.

[67] Addison (n 66 above) 106.

[68] I Muangthai *et al* 'Inter-Industry Linkages, Energy and CO2 Multipliers of the Electric Power Industry in Thailand' (2016) 2036.

[69] Trade and Development Board (n 3 above) 1.

[70] A, Hirschman 'The Strategy of Economic Development' (1958) 1.

[71] Hirschman (n 70 above) 1

[72] Hirschman (n 70 above) 1

Although linkages originate from the sphere of economics, it has an interdisciplinary application to the extractive industry because of large number of input and output activities associated with extractive industry projects. In the relation to the extractive industry, linkages concern all complimentary value-addition industries that can be identified because of EI Projects.[73] Extractive Industry Linkages further relates to the inter-sectoral relationship between mined commodities and the reception of such mined commodities by the broader local economy.[74] Mined commodities and their uses must be identified, understood, and catered for by the local economy. In essence of the inter-sectoral relationship is in understanding the use of mined commodities and input to retrieve them, this is how linkages are birthed. If the broader economy caters for mined commodities both inputs and outputs successfully, an extractive industry linkage is formed. [75]

The potential capacity of the stored value in mined commodities must be carefully considered to capture it's multiplier effect and all linkages that come about because of stored value. [76] The multiplier effect in context of the extractive industry refers to the employability of the minerals and its potential socio-economic impact of minerals when being stewarded. The multiplier effect can be so great that it stimulates the growth of other sectors.[77] The concept of *'linkages'* further encompasses all sectors, it's setup and demands that all sectors are aligned with the value chain to support mining activity. The relationship of every mineral resource must be assessed for its multiplier effect.[78] This will reveal economic channels where mined resources are propelled towards the broader economy for diverse economic purposes. [79]

There are various types of linkages and each linkage has different characteristics and functions. Upstream linkages are the total input of supplies by the upstream industry to the extractive industry sector.[80] Supplies include day-to-day input goods and services needed

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[73] R Kaplinsky et al 'A Conceptual Overview to Understand Commodities, Linkages and Industrial Development in Africa' (2011) 1.

[74] N Fathi 'Identifying the Key Sector and Analysing the Sector Linkages with Special Reference to Crude Oil, Natural Gas and their related industries – A study in the Input-Output Framework' (2014) 3.

[75] Fathi (n 74 above) 3

[76] Fathi (n 74 above) 1.

[77] United States Department of the Treasury 'The Operation and Effect of the Possessions Corporation System of Taxation Second Annual Report' (1979) 68.

[78] United States Department of the Treasury (n 77 above) 68.

[79] A, Bastida 'From Extractive to Transformative Industries: Pathways to Linkages and Diversification in a Resource-Driven Model' (2014) 1.

[80] Bastida (n 79 above) 1.

to mine, such as trucks, drill bits, explosives, processing plant machinery, information technology systems, fuel, safety gear of worker and other goods and services.[81] It encompasses the procurement of all goods and services that the extractive industry sector requires to operate. [82] It also includes the employment of local people that come about because of upstream linkages. [83] Upstream businesses either lease imported capital goods to mining companies or mining companies buy from upstream businesses. Mining companies often opt to subcontract to upstream businesses or enter into joint venture agreement with upstream businesses to cater for services jointly. These kinds of commercial arrangements usually result in service-level agreement that last over the lifetime of the mine. [84]

Downstream linkages involve the processing of minerals extracted and using them to produce finished goods.[85] There are several processing stages that must be considered in regard to downstream linkages. This is highlighted in South Africa's primary mining legislative text, the *Mineral and Petroleum Resources Development Act, 2002* (the 'MPRDA'). The primary processing stage, includes any process of the winning, recovering, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification of mineral resources. [86] The secondary processing stage includes any action of converting a mineral resource into an intermediate product. The tertiary processing stage includes any action of further converting that product into a refined product suitable for purchase by minerals-based industries and enterprises.[87] The final processing stage, which is the action of producing properly processed, cut, polished or manufactured products or articles from minerals accepted in the industry and trade as fully and finally processed or manufactured and value added products or articles.[88] Downstream linkages also include distributor and franchise agreements or contracts with agents and after-sales service providers.[89]

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[81] Burr (n 36 above) 9.

[82] Burr (n 36 above) 9.

[83] A, Roe *et al* 'Extractive industries and their linkages with the rest of the economy' (2016) 5

[84] Roe (n 83 above) 5.

[85] Roe (n 83 above) 5.

[86] Mineral and Petroleum Resources Development Act 28 of 2002 sec 1.

[87] (n 86 above)

[88] (n 86 above)

[89] Burr (n 36 above) 9.

Fiscal linkages comprises of all tax related systems such as royalty tax systems, corporate tax, value added tax, capital gains tax and withholding tax put in place by a host government to capture the rents that flow from mining activity. [90] Resource rents appropriated by the government and used to promote and strengthen other linkages such as *spatial linkages*. [91] Fiscal linkages have an inward approach and an outward approach. The inward approach comprises of investments made by the state in mining projects to make mining projects more feasible and the outward approach to diversify investment to stimulate other sectors. [92]

Spatial linkages involve building essential shared use or multi-purpose infrastructure to facilitate mineral resource processing. Strategic investments are normally made by a host government in infrastructure areas such as electricity generation, roads rails or ports that can benefit other economic sectors as well as the mining sector are also considered as part of spatial linkages.[93]

Consumption (Business) linkages entail the total expenditure of mining companies on goods and services or the spending of income generated by its mine workers on goods and services produced by other sectors within the economy.[94] Naturally, a local demand is created by mine workers for food and other essential goods and services and this demand is normally catered for by the local sole traders in the mining community or local small medium enterprises or larger shopping centres with international franchises. [95]

Horizontal linkages involve skills and capabilities acquired in the extractive sector to develop other industrial activities or sectors. This is a complex set of linkages comprising of suppliers and users in the chain, who develop capabilities to feed into other industrial and service chains. [96] Knowledge linkages entail the skills and know-how gathered from the day-to-day operation of mining companies. They encompass all programs and training given to mine workers, administrative staff and students interested in the particular extractive industry. [97]

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[90] The Minerals (Prospecting and Mining) Act 33 of 1992 sec 114.

[91]Barma (n 9 above) 1.

[92] Barma (n 9 above) 5.

[93] G, Ireland *et al* 'The Potential for Shared-Use Infrastructure' (2015) 1.

[94] Columbiana Centre on Sustainable Investment 'Linkages to the Resource Sector: The Role of Companies, Government and International Development Cooperation' (2016) 14.

[95] Columbiana Centre on Sustainable Investment (n 94 above) 14.

[96] Columbiana Centre on Sustainable Investment (n 94 above) 14.

[97] Cosbey (n 23 above) ix.

To facilitate the multiple types of linkages highlighted above, the facilitator of linkages must perform in depth studies of the linkage environment, above and beyond the conceptual knowledge of linkages highlighted above, especially in light of promoting socio-economic development. Consideration must be given to, amongst others, the model of identifying and measuring the extent of possible linkages and the national plans of the country.[98]

2.3.5.2. Identifying and Measuring Linkages

In regard to the identifying and measuring linkages the full scope and extent of linkages and its impact, Rasmussem's concept of power of dispersion index can be utilised to identify linkages which, measures the effect of linkages and impact on widespread economic development.[99] The index identifies upstream linkages and key industries that can be developed because of upstream linkages. Furthermore, Cella's decomposition technique can be utilised, which measures the total, upstream and downstream linkages that can be employed in an economy and its effect. [100] This result is measured by calculating the difference between the total output in the economy and the output in the economy if linkages to the rest of the economy were not sold.[101]

McGilvary's intraregional flow matrix sets out that the measure and scope of linkages must include imports from neighbouring countries to better reflects potential linkages. [102] The view of McGilvary was that the host country must not narrowly consider the linkages within the borders of the country, but imports of bordering countries must also be considered. This matrix was supported by Hewings who further examined the interactions and interdependencies between strategic industry groups amongst neighbouring regions rather than the interdependencies between neighbouring regions.[103]

Consideration must further be given to what neighbouring countries are able to produce and laws that restrict quantitative measures taken against the import of foreign goods and services. [104] The dispersion index, the decomposition technique and the intraregional flow

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[98] Cosbey (n 23 above) 8.

[99] Muangthai (n 68 above) 2036.

[100] M Sonis *et al* 'Linkages, key sectors and structural change: some new perspectives' (1995) 1.

[101] Sonis (n 100 above) 1.

[102] G Schachter & T Gregori 'Assessing regional key sectors in Italy: A comparative approach' (1998) 6.

[103] J Guo *et al* 'An Analysis of Internal and External Linkages of Manufacturing and Non-manufacturing Industries: Application to Chinese Metropolitan Economies' in Hewings, G; Sonis, M; Madden, M & Kimura, Y (eds) *Understanding and Interpreting Economic Structure. Advances in Spatial Science* (1999) 1.

[104] Guo (n 103 above) 1

matrix can be utilised to identify and measure the scope of linkages when seeking to facilitate linkages. It is important that all possible linkages be identified and measured to capture the maximum value that can be drawn from linkages.

After linkages are identified and measured and the strategies and implementation plans can then be formulated. The facilitation of linkages requires that visions, policies, strategies, and implementation plans be developed to bring about the systemic competitiveness of the mining commodity value chain. Linkages must be entrenched in long-term national development plans. [105]

Furthermore, in regard to facilitating linkages, it must be understood that, there are certain existing upstream and downstream linkages formed by mining companies and service providers that form as a result of market forces.[106] In certain instances mining companies exploit their own linkages to the extent to which it is economically viable to do so to maximize shareholder value and returns across their global value chains.[107] However, linkages tend not to optimally promote socio-economic development objectives as they are motivated by profit and economies of scale which overshadow the opportunity for such socio-economic development. Therefore, legislative intervention is required to govern the linkages formed in the market to promote socio-economic development. The facilitation of linkages cannot be left to mining companies to facilitate as their motive to make profits out of linkages will clash against socio-economic objectives of the state as alluded to before. Therefore, the state should facilitate of linkages as opposed to mining companies. [108]

2.4. Conclusion

The objective of this chapter was to find out what the scope and nature of LCPs and linkages are in light of promoting socio-economic development is. Accordingly it was found that, the scope and nature of LCPs comprise of all legislative and regulatory instruments, policy tools, contracts and licensing arrangements imposed by the government that require mining companies to: (i) purchase and to use of input goods and services available locally; [109] (ii)

[105] Addison (n 66 above) 521.

[106] S Inouna, et al The Classical Theory of Supply and Demand. (2020) 2.

[107] Inouna (n 106 above) 2.

[108] Inouna (n 106 above) 2.

[109] https://www.oecd.org/trade/topics/local-content-requirements/#:~:text=The%20fastest%20growing%20of%20these,to%20operate%20in%20an%20economy (accessed on 16 June 2022).

employ locals and the development of domestic industries though linkages; [110] and (iii) participation of nationals in ownership and management of mining companies.[111] There are five types of LCPs namely local procurement concentrated, local direct employment concentrated, horizontal linkages concentrated, downstream linkages concentrate and building domestic capacity concentrated.[112] It was further discovered that when designing LCPs, firstly a definition must be given to 'local' to identify the beneficiaries of the LCPs. Furthermore , there are four LCP criteria that must be considered when designing LCPs namely the geographical location criterion, the value addition criterion, the ownership criterion and the injustice criterion. [113] In regard to the different criteria discussed, it was importantly discovered that LCPs established through the geographical location criterion and the ownership criterion do not optimally promoting socio-economic development of locals for reasons because they are either not profitable or can easily be avoided. In essence, the simple act of registering a business locally which satisfies LCP requirements[114] or the attainment of shares in mining companies that do not yield dividends, does not optimally promote the socio-economic development. [115]

Furthermore, it was further discovered that LCPs can be measured in two different two ways — quantitatively and qualitatively. [116] LCPs can impose mandatory quantitative requirements on suppliers in the form of legally binding targets in terms of volume or value.[117] LCPs can also impose qualitative reporting requirements on the share of local procurement or employment, transfer of technology and knowledge or the training of staff that have no specific quotas, even though it is binding.[118] In regard to the qualitative method, Botswana and Ghana's LCPs indicates that it is difficult to measure what input goods and services are procured locally if reported on in a qualitative manner. The fact that no specific quotas are setup can lead to companies exaggerating compliance with LCPs through

[110] IGF (n 18 above) 5.

[111] Svensson (n 27 above) 3.

[112] Cosbey (n 23 above) viii.

[113] IGF (n 18 above) 5.

[114] IGF (n 18 above) 5.

[115] Drisi (n 48 above) 28.

[116] IGF (n 18 above) 12.

[117] Ramdoo (n 55 above) 8.

[118] Ramdoo (n 55 above) 8.

qualitative reporting whilst domestic capabilities are not developed and result in minimal impact on socio-economic development of local citizens. [119]

In regard to LCP linkage considerations, it was discovered that are well crafted LCPs may yield various kinds of linkages which can grow the scale, range and depth of domestic capabilities. [120] Where the facilitation of linkages does not result in the enhancement of domestic capabilities and ultimately the promotion of socio-economic development for nationals, the LCPs of linkages must be enquired upon.[121] Otherwise the existing linkages will persist and no domestic capabilities may not developed as envisaged and the socio-economic development of nationals will be affected thereby[122] In Chapter 3, provides a study of the Namibian legal framework of LCPs and linkages in light of promoting the socio-economic development of Namibians.

[119] Ramdoo (n 55 above) 5.

[120] Burr (n 36 above) 9.

[121] P Jourdan et al Mining Sector Policy Study (2012) ii.

[122] Jourdan (n 121 above) ii.

CHAPTER 3

THE FACILITATION OF LOCAL CONTENT POLICIES AND LINKAGES WITHIN THE NAMIBIAN MINERAL LEGAL FRAMEWORK

3.1. Introduction

The discussion in Chapter 2 concluded that the manner in which countries develop LCPs and linkages of critical importance to ensure that the facilitation of linkages result in socio-economic development. Considering these parameters established in the preceding chapter, the objective of this chapter is to determine how the Namibian government facilitates LCPs and linkages to promote the socio-economic development of Namibians.

Accordingly, section 3.2. will consider domestic legislation that concern the facilitation of LCPs and linkages in Namibia's mining sector. This will be followed by an examination of the domestic policy in 3.3 and select international law that affect the facilitation of linkages in section3.4. The chapter will conclude in section 3.5, by consolidating the findings.

3.2. Facilitation of Local Content Policies and Linkages In Namibia

3.2.1. The Minerals (Prospecting and Mining) Act,1992

The Namibian government has the principal administrative right to govern natural resources in Namibia in terms of the Minerals (Prospecting and Mining) Act 33 of 1992 (the 'Minerals Act').[123] These administrative rights relate to reconnaissance, prospecting, mining, disposal of or exercise any control over, any mineral despite any lawful ownership of minerals, vests in the State.[124] The Namibian Minister of Mines and Energy (the 'Minister'), has the authority to grant such administrative rights in the form of a licence to persons to applicants.[125] A mining licence applicant who has made a significant discovery of mineral resources under any of the prospecting licences and who meets certain requirements of mining licence holder may apply for a mining licence. The Minister has wide powers to impose any condition on mining licences before granting a mining licence. [126]

[123] Minerals (Prospecting and Mining) Act 33 of 1992 sec 2.

[124] Minerals (Prospecting and Mining) Act 33 of 1992 long title.

[125] Minerals (Prospecting and Mining) Act 33 of 1992 sec 91

[126] (n 125 above).

The Minister may use the information gathered from mining licence applications to impose certain conditions on mining licences that may form LCPs and linkages. [127] Other than the imposition of conditions, in terms of the Minerals Act, a mining company can voluntarily enter into a mineral agreement with the Minister that house prescribed conditions that may or may not result in the facilitation of LCPs and linkages.[128] Conditions on mining licences are primarily utilised to facilitate LCPs and linkages, therefore it is important to discuss each prescribed condition to in light of promoting socio-economic development for Namibians. These conditions prescribed in section 49 and section 50 of the Minerals Act (hereinafter referred to as 'LCP conditions').[129]

One of the most important LCP conditions sets out that ' *with due regard to the need to ensure technical and economic efficiency, make use of products or equipment manufactured or produced, services available within Namibia'*. The Minister may impose and enforce the prescribed LCP condition to initiate the facilitation of upstream linkages by compelling mining licence holders to use any available products and services available in Namibia.[130] However this LCP condition is made subject to technical and economic efficiencies that are not defined or regulated which gives mineral licence holders leeway to avoid the usage products and services available in Namibia due to 'regulatory vagueness' of the achievement of technical and economic inefficiencies.[131]

The LCP condition concerning carrying out certain 'training programmes' in order to encourage and promote the development of Namibian citizens employed' relates to the facilitation of knowledge linkages as described in Chapter 2. The Minister may use the prescribed LCP condition to initiate knowledge linkages to ensure the transfer of knowledge and skills about the mining industry to Namibians. However the standard and degree of skills

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[127] Minerals (Prospecting and Mining) Act 33 of 1992 sec 48 (5).

[128] Minerals (Prospecting and Mining) Act 33 of 1992 sec 49.

[129] Minerals (Prospecting and Mining) Act 33 of 1992 sec 50 –

> '(b) in the employment of employees, give preference to Namibian citizens who possess appropriate qualifications, expertise and experience for purposes of the operations to be carried on in terms of such mineral licence;
>
> (c) carry out training programmes in order to encourage and promote the development of Namibian citizens employed by such holder;
>
> (d) with due regard to the need to ensure technical and economic efficiency, make use of products or equipment manufactured or produced, and services available, within Namibia;
>
> (e) co-operate with other persons involved in the mining industry in order to enable such citizens to develop skills and technology to render services in the interest of that industry in Namibia'

[130] (n 129 above).

[131] (n 129 above).

and knowledge of training programmes are not prescribed and as such any training programme may be considered as having complied with this LCP condition. This is problematic as Namibians may not be optimally empowered throughout the facilitation of the potential knowledge linkage. [132]

In South Africa, mining companies are mandated to invest in developing local SMEs and training local workforce to address the limitations in local capacity.[133] The MPRDA Mining Charter states that a mining right holder must ensure that a minimum of 60% Historically Disadvantaged Persons is represented in the mining right holder's core and critical skills by diversifying its existing skills pool. The core skills pool and implementation are through a Social and Labour Plan.[134] A further 2.5% goes to research and development and 2.5 % goes to sample based South African facilities.[135] A mining right holder must invest a minimum 5% of leviable amount (excluding the statutory skills development levy) on essential skills development. It also mandates companies to invest 5% on ‘excluding the statutory skills development levy, towards essential skills development activities such as science, engineering, mathematics skills; artisans, internship, graduate training programs, apprenticeship etc’.[136]

The LCP condition concerning the cooperation of *‘with other persons involved in the mining industry in order to enable such citizens to develop skills and technology to render services in interest of that industry in Namibia, with other persons involved in the mining industry in order to render services in the interest of that industry in Namibia’* relates to the facilitation of upstream, downstream, horizontal and knowledge linkages.[137] The Minister may use these prescribed provision to enforce LCPs that initiate a variety of linkages by subjecting mining licence holders to use co-ops and agree on certain conditions that result in socio-economic development for Namibians.[138]

There are further terms and conditions suggested in section 49 of the Minerals Act, that may be adopted in the form of a mineral agreement at the discretion of the mining licence

[132] (n 129 above).

[133] Weldegiorgis (n 1 above) 5.

[134] Mineral and Petroleum Resources Development Act, 2002.

[135] (n 134 above).

[136] (n 134 above).

[137] Minerals (Prospecting and Mining) Act 33 of 1992 sec 50.

[138] (n 137 above).

applicant. These terms and conditions relate to the facilitation of specific linkages. The first condition relates the '*the formation of joint ventures […] or other joint arrangements'* which can be used to initiate the facilitation of upstream, downstream, and horizontal linkages. Joint ventures can be used during the mine construction phase and the production phase to form joint ventures with wholly owned Namibian companies to procure local input goods and services as far as possible to promote the socio-economix development of Namibians.[139]

The LCP condition in the mineral agreement that relates to '*the processing, whether wholly or partly, within Namibia of any mineral or group of minerals found,*' directly concerns the facilitation of downstream linkages.[140] The mining licence applicant may, dependent on their business model, agree to process minerals wholly or partly within Namibia. In the diamond industry, the Minister is empowered by the *Diamond Act, 1999* to instruct diamond mining companies to sell their output to Namibian diamond cutters and polishers.[141] The Minister is empowered in this regard to initiate downstream linkages. The Minister can exercise his authority to place an export levy on unpolished diamonds to further encourage downstream linkage activities. [142] A further condition relating to the *'utilization of any profits derived by the holder of a mineral licence'* and *'the financial and insurance arrangements*' to concern the facilitation of fiscal linkages as the mining licence applicant may agree to use of funds within the borders of the country to promote the socio-economic development of Namibians. [143]

The abovementioned conditions form sufficient basis which the Minister may use to facilitate LCPs and linkages. These conditions are prototypical conditions and the Minister may exercise his discretion to give them specification as he so decides. [144] However, there are no regulations that guide the Minister's discretion, particularly in context of regulating LCPs and Linkages to promote the socio-economic development of Namibians. [145] Furthermore,

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[139] Minerals (Prospecting and Mining) Act 33 of 1992 sec 49.
[140] Minerals (Prospecting and Mining) Act 33 of 1992 sec 49 (b) (vi).
[141] Diamond Act 13 of 1999 sec 58.

> 'In order that a regular supply of unpolished diamonds of such quantities, classes, qualities and descriptions as may be required by any cutter, toolmaker or researcher may be secured by the cutter, tool-maker or researcher concerned, the Minister may, subject to the provisions of subsection (2), from time to time by written notice to any producer require the producer to make available for sale to that cutter, toolmaker or researcher, during a period specified in that notice, such quantities, classes, qualities and descriptions of unpolished diamonds as the Minister may by that notice reasonably fix and determine.'

[142] Diamond Act 13 of 1999 sec 59.
[143] Minerals (Prospecting and Mining) Act 33 of 1992 sec 49.
[144] Minerals (Prospecting and Mining) Act 33 of 1992 sec 48 (5).
[145] Minerals (Prospecting and Mining) Act 33 of 1992 sec 49.

the Minerals Act, requires that the holder of a mining licence, report on the mining operations from time to time however there are no regulations on substance of the reporting in relation to mining operations and whether or not it specifically includes reporting on LCPs and linkages. [146]

3.2.2. Namibia Investment Promotion Act, 2016

The object of the Namibia Investment Promotion Act, 2016 ('NIPA') is to *'encourage the creation of […] value addition to natural resources and to accelerate the growth and diversification of the Namibian economy'*. When the Minister of Trade and Investment considers an investment proposal, he must satisfy himself that the value addition to the natural resources and manufacturing sector and procurement of local goods and services is likely to occur as a result of the investment.[147] NIPA further sets out that investment proposals must consider the development of managerial skills and the transfer of technological skills.[148] The NIPA further sets out that only on application with specialised services and key professional and managerial persons be hired.[149] Investors are mandated to absorb all available skills in Namibia and invest in human capacity development to ensure national transfer of skills. [150] It can be deduced that the aforementioned provisions specifically promote the facilitation of horizontal and knowledge-based linkages which is inclined to promote the socio-economic development of Namibians.[151]

3.2.3. New Equitable Economic Empowerment Framework

The pillars of the New Equitable Economic Empowerment Framework ('NEEEF') comprises of practical training and skills development, entrepreneurial development and marketing, value addition, technology and investment and financing of transformation that concerns linkages. [152] The practical training and skills development pillar and value addition, combined with the technology and innovation pillar particularly will promote and strengthen horizontal

[146] Minerals (Prospecting and Mining) Act 33 of 1992 sec 101 (1) (g) –

'submit to the Minister such other reports, records and other information as the Minister may from time to time require in connection with the carrying on of mining operations in the mining area in question'

[147] Namibia Investment Promotion Act 9 of 2016 sec 4 (2) (viii).

[148] (n 147 above) sec 4.

[149] (n 148 above).

[150] (n 148 above).

[151] Namibia Investment Promotion Act 9 of 2016 sec 2 (d) (i).

[152] The New Equitable Economic Empowerment Bill of 2016 sec 3.

linkages. The NEEEF has a specific point scoring mechanism that assess the specific local content of companies. The NEEEF would be fitting facilitating instrument to ensure that the local content of linkages are intact and ultimately translate into socio-economic development.

Although the NIPA and the NEEEF encompasses a number of LCPs, the regulations must develop to illustrate how LCPs will be mechanised to ascertain that the socio-economic development of Namibians occurs. [153] Although the NIPA and the NEEEF are more express on LCPs, the both the NIPA and the NEEEEF are not promulgated yet and has been critiqued by various mining companies for a number of commercial reasons, more specifically the fact that they have a negative impact on foreign direct investment climate which have delayed the promulgation of the laws.[154]

3.2.4. Mineral Development Fund Act

The Mineral Development Fund (the 'Fund') established by the *Mineral Development Fund Act, 1996* aims to, by way of providing loans, grants, and other assistance to broaden, through diversification and horizontal and vertical integration, the production base of the mining sector into the national economy. The Fund is a product of a fiscal linkage created and designed to support the facilitation of other linkages. More specifically the fund aims to support the mining sector by expanding the national training facilities and programmes.[155] This also directly encourages the creation of horizontal linkages. The fund is essential to finance the facilitation of fiscal linkages.

3.2.5. Public Private Partnerships Act, 2017

One of the objects of the Public Private Partnerships Act, 2017 ('PPP Act') is to enable private sector investment in the provision of public infrastructure assets or services. [156] This objective concerns spiral linkages. Mining companies can partner with the state to cater for linkage infrastructure projects. The Namibian government can utilise project bonds, sustainability bonds and other project financing tools to finance linkage infrastructure projects. Linkage infrastructure projects can result in better electricity infrastructure and

[153] Weldegiorgis (n 1 above) 5.

[154] G Shilongo *et al* 'Analysis Of The Latest (November 2020) Version Of The National Equitable Economic Empowerment Bill (NEEEB)'. Namibia (2020) 11.

[155] Minerals Development Fund of Namibia Act 19 of 1996 sec 3.

[156] (n 155 above).

enhances its production capacity that may have the effect of rendering certain upstream and downstream value-addition industries feasible. [157]

3.3. Domestic Policy

In the Minerals Policy, there are two provisions that encourage the facilitation of linkages and the adoption of LCPs. The subject of the first provision is on Namibian participation, which proposes that the government must develop strategies to support Namibian participation in the mining sector for purposes of achieving sustainable development and prosperity. Furthermore, the Minister of Mines and Energy ('MME') aims to curtail the shipment of raw resources that could have been used to create employment of Namibians. The curtailment promotes the facilitation of downstream linkages. [158]

MME further aims to 'Integrate the mining industry with other sectors of the economy through upstream, side stream and downstream linkages'. This aim directly concerns the facilitation of linkages. The integration of the mining industry value chain is also captured in the NDP5 mining objective to 'an integrated mining industry value industry value chain with double the share of valued added mining exports from 2015.' [159] The desired outcome of the NDP5 mining objectives is to create an integrated mining industry with double the share of valued added mining exports from 2015[160]

The subject of the second provision of the Minerals Policy is on value addition, which encourages the facilitation of local manufacturing. It is further elaborated that to realise policy aspirations, the government, in conjunction with relevant stakeholders, must identify skills deficiencies for value addition and promote measures to address them in an effort to develop value addition industries. The NDP5 aims to intensify value addition by making *'the sector more profitable and resilient to commodity price shocks by […] addressing challenges with skills'.* [161]

3.4. International Law

Namibia has a monist legal system, whereby international law is considered part of the internal legal order and the general rules of public international law and international

[157] Public Private Partnership Act 6 of 2017 sec 17.

[158] The Namibian Minerals Policy of 2009.

[159] The Government of the Republic of Namibia (n 17 above) 27.

[160] The Government of the Republic of Namibia (n 17 above) 27.

[161] The Government of the Republic of Namibia (n 17 above) 27.

agreements are binding. [162] In particular, Namibia is a signatory to the General Agreement on Tariffs and Trade, which prohibits or restricts though quotas, import or export licences or other measures the importation of any product of territory of any contracting party on the importation of any product.[163] Namibia is also a signatory to the SADC Protocol on Trade which restricts member states from applying any new quantitative restrictions on the import of goods originating in member states. [164] The aforesaid international agreements are in conflict with the establishment of LCPs and the facilitation of local linkages because LCPs gives preferential treatment to local suppliers against foreign goods and service providers and has the impact of restricting the importation of goods and services from other member states.[165] LCPs may have the effect of contravening Namibian's obligations under trade and investment treaties.[166]

However, some quantitative importation restrictions may be placed on foreign goods to favour locally produced goods to create a demand for local goods and services as long as it is found consistent with the General Agreement on Tariffs and Trade as discussed above. [167] To establish LCPs and facilitate the necessary linkages, the local procurement of input goods and services is fundamental.[168] The SADC Protocol on Trade encourages member states to apply a quota system when imposing quantitative import restrictions.[169]

The quantitative importation restriction will naturally have the effect of disrupting the existing service-level agreements internationally. If linkages are localised to promote the socio-economic development of Namibians, international upstream linkage suppliers in particular

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[162] The Namibian Constitution 1 of 1990 article 144.

[163] The General Agreement on Tariffs and Trade article XI –

> 'No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.'

[164] The SADC Protocol on Trade of 2005 article 7 –

> ' Member States shall not apply any new quantitative restrictions and shall in accordance with Article 3, phase out the existing restrictions on the import of goods originating in Member States, expect where otherwise provided for in this Protocol'

[165] Cosbey (n 23 above) x.
[166] Cosbey (n 23 above) x.

[168] Agreement On Trade-Related Investment Measures article 2 and General Agreement on Tariffs and Trade article 3.
[169] SADC Protocol on Trade article 7.

will be affected, as local goods and services will be given preference.[170] Any quantitative restriction placed on the goods and services of upstream linkage suppliers must be made compliant with international laws.[171] All other implementation nuances must be carefully considered when seeking to facilitate upstream linkages for the promotion of socio-economic development of Namibians.[172]

3.5. Conclusion

In retrospect, the objective of this chapter was to discuss the current legal provisions that concern the facilitation of LCPs and linkages in light of promoting the socio-economic development of Namibians. Accordingly it was found that, the most fundamental LCPs are found in section 49 and 50 of the Minerals Act, which imposes certain mandatory general terms and conditions on mining licences that lay the LCP foundation to facilitate local linkages that promote the socio-economic development of Namibians.[173] In essence, these general terms and conditions can be relied subject to being made more mandatory and quantative, however there are no regulations in place to monitor LCP compliance or that regulates the reporting requirements.[174] There is a need for regulations to set out how the local content policies will be treated otherwise the net socio-economic impact of the facilitation of linkages on Namibians can be diminished. [175]

Furthermore, the NIPA, NEEEF and the Minerals Policy contains a number of LCPs that promote the facilitation of local linkages, however, both the aforesaid pieces of legislation are not enforceable yet and therefore the LCPs contained therein are not realisable yet.[176] The objectives of the Minerals Fund to contains the necessary LCPs to facilitate fiscal linkages to promote the socio-economic development of Namibians, however the Minerals Fund is currently not being utilised for this purpose.[177] Furthermore the PPP Act may be

[170] Columbiana Centre on Sustainable Investment (n 94 above) 100.
[171] Columbiana Centre on Sustainable Investment (n 94 above) 100.
[172] Columbiana Centre on Sustainable Investment (n 94 above) 100.
[173] Minerals (Prospecting and Mining) Act 33 of 1992 sec 50.
[174] Cosbey (n 23 above) x.
[175] Weldegiorgis (n 1 above) 5 .
[176] https://www.erongo.com.na/news/investors-spooked2021-12-02 (accessed on 25 September 2022).
[177] Minerals Development Fund of Namibia Act 19 of 1996 sec 3 (b) –

> 'to broaden, through diversification and horizontal and vertical integration, the production base of the mining sector into the national economy'

used as a framework for mining holders to partner up with the state to facilitate spatial linkages to promote the socio-economic development of Namibians.[178]

In regard to international law, whatever LCPs and local linkages are imposed, it must be done in harmony with international agreements that are signed. The SADC Protocol on Trade and the General Agreement on Tariffs and Trade both provide that no restriction may be put on the importation of goods and services however these provisions can be deviated from to encourage domestic production or consumption.[179] The aforesaid, makes up most of the current legislative provisions that affect the facilitation of LCPs and linkages. Chapter 4 seeks to assess the facilitation of LCPs and linkages in light of promoting socio-economic development of Namibians.

[178] Public Private Partnership Act, 2017 sec 2 (b) –
'enable private sector investment in the provision of public infrastructure assets or services'
[179] General Agreement on Tariffs and Trade. Article 20 (g) –

> 'Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: […] relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption'

CHAPTER 4
ASSESSING THE FACILITATION OF LOCAL CONTENT POLICIES AND LINKAGES IN NAMIBIA

4.1. Introduction

Chapter 3 highlighted several Namibian mining legal provisions that concern the facilitation of local content policies ('**LCPs**') and linkages and it was discovered that there is no LCP regulations to facilitate linkages in order to promote the socio-economic development of Namibians. Considering these parameters, this chapter seeks to assess Namibia's current facilitation of LCPs and linkages and it's propensity to promote the socio-economic development of Namibians based on the findings in the previous chapters.

Accordingly, section 4.2. will observe the current facilitation of LCPs and each linkage in Namibia. Section 4.3. gives an assessment of the facilitation of LCPs and linkages and it's propensity to promote the socio-economic development of Namibians. This chapter will be concluded in section 4.4.

4.2. Observing Local Content Policies And Linkages In Namibia

4.2.1. Local Content Policies

To make the relevant observations about Namibia's facilitation of LCPs, a table is prepared below which contains certain 'LCP Enquiries' that are informed by the information contained in Chapter 2 relating to scope and nature of LCPs and in Chapter 3 relating to the legal provisions that deals with the facilitation of LCPs. The LCP Enquiries are used as a yardstick to assess the current facilitation of LCPs in Namibia.

LCP Enquiries	Facilitation of LCPs in Namibia
LCP Regulations	There are no regulations to the Minerals (Prospecting and Mining) Act 33 of 1992 that specifically regulate LCPs in Namibia.
Definition of 'Local' in Namibia	The Minerals (Prospecting and Mining) Act 33 of 1992 makes reference to 'Namibians' as the beneficiaries of LCPs. The

	reference to Namibians is broad and does not single out a particular community in close proximity to mining activity.[180]
LCP Focus in Namibia	The Minerals (Prospecting and Mining) Act 33 of 1992 mainly focuses on local employment, local training and local procurement ownership.[181]
LCP Criteria in Namibia	From the studies of LCPs in Namibia, it is concluded that LCPs in Namibia are fulfilled on the basis using the geographical criterion and ownership criterion.[182] <u>Geographical Criterion</u> The registration of Namibian businesses that supplies input capital goods and services proves to be sufficient to satisfy the LCP condition relating to the *use of products or equipment manufactured or produced, services available within Namibia*.'[183] <u>Ownership Criterion</u> Epangelo Mining Company (Proprietary) Limited ('**Epangelo**') is a company incorporated to invest in mining projects and to hold shares in mining companies on behalf of the state.
Reporting of LCPs in Namibia	There are no prescribed reporting requirements of LCPs in Namibia. Currently, LCPs are reported on a qualitative basis.[184]
Implementation Model of LCPs in Namibia	The Namibian government utilises the requirement-based model.[185] No initiatives are taken by the government to promote mining projects could be established.

[180] Minerals (Prospecting and Mining) Act 33 of 1992 sec 50.
[181] (n 180 above).
[182] R McGregor *et al* 'Beneficiation in Namibia: Impacts, Constraints and Options' (2017) 42.
[183] Minerals (Prospecting and Mining) Act 33 of 1992 sec 50(d).
[184] Minerals (Prospecting and Mining) Act 33 of 1992 secs 101(1)(f) and (g).
[185] (n 184 above).

The above table summarises the current facilitation of LCPs in Namibia which will be used as a basis to make assessment in paragraph 4.3 more specifically to assess the propensity of the facilitation of LCPs to promote the socio-economic development of Namibians.

4.2.2. Linkages

In conjunction with the above observations of Namibia's LCPs facilitation, the current facilitation of linkages, which stems from the facilitation of LCPs, must also considered in assessing it's propensity to promote the socio-economic development of Namibians.

4.2.2.1. Upstream linkages

As studied in Chapter 2, Upstream Linkages relate to the procurement of input goods and services by mining companies. [186] Accordingly, in 2016, Namibian mining companies procured goods and services to the value of almost N$12 billion from business entities registered or residing in Namibia. Only N$6.5 billion was spent on international procurement by mining companies. [187] This means that 5.5 billion worth of capital goods and services should have been imported from Namibian businesses. However, Namibian registered upstream businesses do not have the production capacity to manufacture or assemble the capital goods and services and mostly resort to importing most input capital goods and services. [188]

The NDP5 aims to develop a database of all upstream linkage businesses and input goods and services required by mining companies. Once the database is established, the Minister may imposed on mining licence holders to procure goods and services from specific local businesses that drive the development of domestic capabilities and seek to promote the socio-economic development of Namibians. The database will also contribute to information sharing about the procurement of goods and services. The value addition committee envisaged by the Minister will be responsible for the implementation and oversight of this database.

[186] Burr (n 36 above) 9.

[187] McGregor (n 182 above) 42.

[188] V Nambinga 'Manufacturing Sector In Namibia: What are the factors hampering the manufacturing sector performance in Namibia?' (2017) 11.

4.2.2.2. Downstream linkages

The downstream mineral industry encompasses all minerals, as all minerals require some form of refining however for purposes of assessing the linkage contribution to socio-economic development of Namibians, a select few minerals are considered below.

In Namibia's diamond industry, *Namdeb Diamond Corporation* ('Namdeb') has recorded 96 million carats of diamonds mined in Namibia, since the first diamond was found by Zacharias Lewala in 1904.[189] This is worth over 1.3 trillion United States Dollars ('USD'), if each carat was sold on average price of diamonds today. [190] Namibia's Diamond Act, 1999 gives the Minister the authority impose LCPs to the effect of giving opportunities to local Namibian companies to cut Namibian diamonds. [191] This LCP initiated the facilitation of downstream linkages. The Namibia Diamond Trading Company ('NDTC') are mandated to allocate all Namdeb's rough stones to local diamond cutters. However, it was discovered that only 10% of diamond cutters locally registered or resident business entities have sight holder status.[192] This means that although the only 10% of the list of diamond cutters are allocated diamonds to cut. [193] Futhermore of the 10%, the extent to which diamond cutters are Namibian owned or the value-addition in Namibia cannot be ascertain. [194]

Namibia's gold industry has produced approximately 67 032 kg[195] of gold between the period 1990 until 2018 which translates into the monetary value of approximately 2 billion USD. [196] From the gold production in Namibia, gold ore bodies are sent to the Rand Refinery in South Africa for further processing. It is understood Namibian gold production is not sufficient to justify the building of a gold refinery. Apparently, a gold refinery requires economies of scale to remain competitive, considering the high operating costs (mostly from electricity) and low profit margins involved. Therefore, gold mining companies in Namibia such as B2Gold Navacab Gold Mining Company and QKR Gold Mining Company are reluctant to participate in refining gold.[197]

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[189] Dzinomwa (n 6 above) 6.

[190] https://www.statista.com/statistics/279053/worldwide-sales-of-polished-diamonds (accessed on 6 March 2022).

[191] Diamond Act 13 of 1999.

[192] McGregor (n 182 above) 42.

[193] McGregor (n 182 above) 42.

[194] Morris (n 51 above) 9.

[195] https://www.ceicdata.com/en/indicator/namibia/gold-production (accessed 6 March 2022).

[196] https://www.macrotrends.net/1333/historical-gold-prices-100-year-chart. accessed on 6 March 2022.

[197] McGregor (n 182 above) 21.

Namibia's copper industry contributes to about 1% of the global supply. A copper smelting plant was established to refine copper in Namibia by Dundee Precious Metals Tsumeb. Dundee precious metal produces refined copper cathode which is 99.9% pure.[198] The copper production in Namibia is insufficient for smelting operations to be feasible. In this regard, domestic sources are supplemented with imports from neighbouring countries such as Zambia. The smelter ran at a loss in 2012 and 2013, attributed to high electricity costs, old technology, and low-quality feed. Currently blister copper produced in Namibia is exported to various destinations for further refinement.

Namibia's uranium industry is ranked as the 4th largest producer and contributes to about 10% of global uranium output. Namibia produces yellow cake (uranium oxide). In 2005 Namibia u produced 3 711 tonnes[199] of uranium oxide which is worth U$760 million USD. [200] The uranium oxide can further be converted to uranium hexafluoride, however it requires the establishment of a conversion plant. The construction of a conversion or enrichment facility is estimated to cost between US$250 million and US$500 million.[201] Given Namibia's production of Uranium, the necessary downstream and spatial linkages can be facilitated.

In regard to Gold, Copper, and Uranium, mining companies prefer not process gold, copper, and uranium to a final product because of low margins of profits to be made and economies of scale factors.[202] Mining companies prefer to export of semi-processed minerals for further processing.

4.2.2.3. *Fiscal linkages*

In regard to fiscal linkages created comprises of mainly corporate taxes and royalties. The corporate tax mining tax regime comprises of the following: Diamond mining companies are obliged to pay a corporate tax rate of 55% and non-diamond mining companies corporate tax rate is 37.5%. Additionally, diamond and non-diamond mining companies are subject to a 10% Non-Resident Shareholders Tax on dividends where more than 25% of shares are held by a non-resident company and 20% in all other cases. Namibia generated N$ 3.4 billion in tax revenue in 2019 alone from the entire mining industry. [203] Namibia further

[198] Namibinga (n 8 above) 16.

[199] https://en.wikipedia.org/wiki/R%C3%B6ssing_uranium_mine (accessed on 6 March 2022).

[200] https://www.statista.com/statistics/583796/uranium-oxide-price/ (accessed on 6 March 2022).

[201] R McGregor (n 182 above) 42.

[202] R McGregor (n 182 above) 42.

[203] G, Jemwa & M, Mosweu 'The Mining sector of Namibia: a nuanced overview of selected key aspects' (2020) 8.

imposes royalties averaging around 4.6. percent[204] on average and generates an average of N$ 622 million a year. [205]

Namibia has generated an average of N$ 4 billion in taxes from the period 2012 to 2018 and mining companies has generated an average of N$ 25 billion in the period between 2004 and 2018. [206] The Namibian government has managed to harvest substantial resource rents from mineral endowments, however revenue generated flows into the state revenue fund and most of it is being used for public expenditure as there is a limited budget catered for the development of the mining industry and the building linkages such as fiscal and spatial linkages to develop more value addition industries.

Namibia has also created a Fund, which is strategically purposed to broaden the production base of the mining sector through diversification and horizontal and vertical integration.[207] The financial statements online report on the financial status of the Mineral Development Fund and reveals an shows an asset value of the Minerals Development Fund recorded on 31st March 2012 is N$ 118 million and a loan debt value of N$ 115 million.[208] The most significant investment made by the Minerals Development Fund at the 2012 was a Sanlam investment portfolio account and an investment in a subsidiary of N$ 253.175.00. There are no other investment recorded which has made a significant socio-economic impact on the development of Namibians. [209]

4.2.2.4. Spatial Linkages

There is no evidence of a spatial linkage that resulted in the development of infrastructure in the mining industry value chain specifically. The only recent infrastructure that is closely related to the extractive industry value chain is in the oil sector, wherein the National Petroleum Corporation ('NAMCOR') built a 75 million litre capacity oil storage facility costing

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204 Minerals (Prospecting and Mining) Act 33 of 1992 sec 114.

205 Nambinga (n 8 above) 16.

206 Nambinga (n 8 above) 16.

207 The Minerals Development Fund of Namibia Act 19 of 1996 sec 3.

208 Auditor-General of Namibia. 'Audit Report on the Accounts of the Minerals Development Fund for the financial years ended 31 March 2012' https://oag.gov.na/minerals-development-fund//document_library/leNTTAmcxAn5/view_file/429730?_com_liferay_document_library_web_portlet_DLPortlet_INSTANCE_leNTTAmcxAn5_redirect=https%3A%2F%2Foag.gov.na%2Fminerals-development-fund%3Fp_p_id%3Dcom_liferay_document_library_web_portlet_DLPortlet_INSTANCE_leNTTAmcxAn5%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview accessed on 6th March 2022.

209 Auditor-General of Namibia (n 209 above).

the government approximately N$ 5.5 billion dollars. [210] This development did not stem from a spatial linkage in the mining industry per se.

4.2.2.5. Horizontal and Knowledge Linkages

The Namibian government has established the Namibia Institute of Mining and Technology ('NIMT') which is funded from the education budget by the Namibia Training Authority and occasionally receives voluntary donations from the mining companies such as De Beers who contributed N$2.1 million to enable NIMT to acquire certain buildings in the North of Namibia.[211] NIMT provides mining related vocational training to Namibian students.

As alluded to in Chapter 3, the Minister may enforce horizontal and knowledge linkages by imposing the condition on mining licence holders to carry out training programs that encourage and promote the development of Namibian citizens.[212] However, there is no regulations to regulate the implementation, delivery and supervision of the training program to ensure that there is adequate skills transfer occurs.[213] It is left to the mining company to implement.

4.2.2.6. Consumption Business Linkages

There are a number of consumption business linkages activities that may be considered. Mine workers spend their money on multiple goods and services for their daily needs.[214] The basic needs are water, electricity, food, clothing, and transport. Communities tend to participate in this linkage by establishing small to medium business enterprises and catering for these needs. However once shopping centres are built by international property developers and international franchises penetrate the market, SME business market share diminishes. [215]

4.3. Assessment Of Local Content Policies and Linkages

From the above observations of LCPs and linkages, assessments are made below to assess the propensity of the facilitation of LCPs and linkages to promote the socio-economic development of Namibians. In the same vein, the assessments will unpack some of the

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[210] https://www.namcor.com.na/national-oil-storage-facility/ (accessed on 16 October 2022).

[211] https://www.rough-polished.com/en/news/13251.html (accessed on 6 March 2022).

[212] Minerals (Prospecting and Mining) Act 33 of 1992 sec 50.

[213] (n 205 above).

[214] Columbiana Centre on Sustainable Investment (n 92 above) 14.

[215] B Jenkins *et al* 'Business Linkages: Lessons, Opportunities, and Challenges' (2007) 13.

reasons why Namibia has not reached its full potential in promoting the socio-economic development of Namibians.[216]

4.3.1. No Regulations and Lack of Reporting Requirements

The first assessment relates to the fact that there are no regulations to the Minerals (Prospecting and Mining) Act 33 of 1992 that strictly regulate LCPs in Namibia. The LCPs housed in the Minerals (Prospecting and Mining) Act 33 of 1992 and forms part of the general conditions of a mining license, however the LCPs are not further regulated.[217] There are no prescribed reporting requirements or standards for LCPs. From an accountability perspective, it is difficult to assess how the Ministry keeps mining licence holders accountable to the adherence of LCPs. The lack of reporting requirements gives mining companies leeway to avoid certain reporting on certain LCPs.

4.3.2. Use of the Geographical Criterion

Given the observation made in paragraph 4.2.2.1, it is assessed that LCPs in Namibia are fulfilled on the basis using the geographical criterion.[218] Furthermore given the discussion relating to the socio-economic effect of using the geographical criterion in paragraph 2.3.2, it is assessed that the geographical criterion does not yield the desired socio-economic development objectives. The simple registration of a business is not sufficient to ensure that such business promotes the socio-economic development of Namibians. Further inquiry must be made to assess to what extent value is added locally. [219]

Currently, most Namibian registered upstream businesses import most input goods and services and if this continues, it is assessed that the opportunity to develop domestic capabilities and the opportunity for socio-economic development will continually be diminished. [220] The importation of goods and services undermines the opportunity for domestic capabilities to be developed and ultimately the opportunity for socio-economic development of Namibians. [221]

The same assessment can be made for downstream linkages, in particular, the diamond cutting industry. Only 10% of the list of diamond cutters that are allocated diamonds to cut

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[216] The Ministry of Mines and Energy (n 4 above) 13.
[217] The Minerals (Prospecting and Mining) Act 33 of 1992 sec 50.
[218] McGregor (n 182 above) 42.
[219] Morris (n 51 above) 9.
[220] Burr (n 31 above) 9.
[221] McGregor (n 182 above) 42.

by the NTDC, are Namibian registered. [222] Furthermore of the 10%, it is difficult to ascertain to what extent diamond cutting companies are Namibian owned or the value-addition of the diamond cutting process in Namibia to promote the socio-economic development of Namibians. [223]

4.3.3. Use of the Ownership Criterion

In regard to the ownership of shares by Epangelo referred to in the table above in paragraph 4.2.1, it is assessed that it is not sufficient for the state just to own shares in a mining company. [224] The shares must yield the dividends and such dividends must be used for the socio-economic development purposes.[225] Currently, according to the Epangelo Mining Company Intergated Annual Report 2016/2017 and 2017/2018, it was recorded that Epangelo made a loss of N$ 9 211 355.00 in 2017. This indicates that it is not profitable and little reporting is done on other socio-economic development objectives being reached.[226]

4.3.4. The Voluntary Nature of Downstream Linkages

Mineral licence holders are given the option to decide to agree to the processing of minerals wholly or partly in Namibia.[227] It is assessed that the optional processing of minerals poses a challenge for the development of domestic capabilities and the socio-economic development of Namibians.[228] Specifically in relation to the production of uranium in Namibia valued at close to U$ 760 million per year, a condition must be imposed on Uranium companies to wholly processed uranium in Namibia. Spatial linkages can be created to develop a electricity conversion plant in Namibia. [229]

In regard to further processing of minerals like Gold, Silver and Copper that are rendered uneconomic and infeasible, the NDP5 seeks to address economies of scale concerns by guiding to the Namibian government to enter into and executing off-take agreements and import minerals from other countries to process them in Namibia to achieve economies of scale. This will make Namibia a competitive processor of minerals.[230] The NDP5 further

[222] McGregor (n 182 above) 42.

[223] Morris (n 51 above) 9.

[224] Drisi (n 43 above) 28.

[225] Drisi (n 43 above) 28.

[226] https://www.epangelomining.na/2016-2017-and-2017-2018-intergrated-annual-report.html (accessed on 26 October 2022).

[227] Minerals (Prospecting and Mining) Act 33 of 1992 sec 49 (vi)

[228] (n 227 above).

[229] McGregor (n 182 above) 42.

[230] (n 17 above) 27.

aims to attract foreign mining investment to cater for water, power supply and skills challenges to make the mining sector more profitable and resilient to commodity price shocks .[231]

4.3.5. Lack of Prioritising Revenue From Fiscal Linkages

Currently the Namibian government receives an average of 1.7 billion in revenue from company annual duties, annual licence fees and royalties that are all paid into the state revenue fund. [232] It is assessed that there is no priority plan in regard to the utilisation of the revenue received to broaden the production base of the mining sector as envisaged by the Mineral Fund. [233] Such priority plan must ensure that the net effect of it's priority leads the socio-economic development of Namibians.

4.3.6. Lack of Utilising Spatial Linkages

There are no spatial linkages that are reported to date that can be linked to LCPs. Therefore it is assessed that there is a lack of utilising spatial linkages because of the inadequacies of the facilitation of LCPs in Namibia. There are no studies made or stock taking of minerals produced to assess what value-addition infrastructure can be built, which could be used by mining companies to further promote the socio-economic development of Namibians . [234]

4.3.7. Knowledge Linkage Quality Concerns

As assessed herein before, the fact that there is no regulations that regulate LCPs strictly, hence the implementation, delivery and supervision of the trainings is left to the mining company. It is assessed that there is no reassurance given by the Minerals (Prospecting and Mining) Act 33 of 1992 that adequate skills transfer will occur.[235] This has the indirect effect on the socio-economic development of Namibians.

4.4. Conclusion

The objective of this chapter was to assess Namibia's current facilitation of LCPs and linkages in promoting the socio-economic development of its people. Given this objective it was found the flawed facilitation of LCPs, the current linkages do not yield the desired socio-

[231] (n 17 above) 27.

[232] Nambinga (n 7 above) 16.

[233] The Minerals Development Fund of Namibia Act 19 of 1996 sec 3.

[234] Cosbey (n 23 above) vii.

[235] (n 234 above).

economic potential and accordingly negatively affects the advancement of socio-economic development of Namibians. Most LCPs does not optimally promote the socio-economic development of Namibians. Namibian LCPs are designed utilising the geographical location, which implies that if a company that conducts business in the upstream market and the downstream market, is registered in Namibia, it is sufficient to deem that business 'local'. LCPs do not regulate and screen products or services of companies to assess the percentage of local value addition of inputs. LCPs are reported on a qualitative basis in Namibia. Mining companies can publish qualitative reports about general compliance with LCPs and it suffices.[236] Some of the LCPs can further be avoided if linkages are not technically and economically efficient. [237] Compliance with some LCPs are optional i.e. mineral licence holders can choose to process minerals partly or wholly in Namibia which can detract from development domestic capabilities.[238] All the aforesaid LCP deficiencies negatively affect the facilitation of linkages and the promotion the socio-economic development of Namibians.

In relation to assessment made about specific linkages, the analysis above revealed that although upstream linkages are most affected by deficient LCPs, they have the most potential to be developed. Upstream linkages can contribute immensely to socio-economic development if the LCPs are legislated for adequately as alluded to above.[239] In regard to some of the downstream linkages, apart from the diamond industry, certain economic arrangements must first be made to facilitate them. Furthermore, the Namibian government aims to import minerals from other countries and address water and power challenges to make the facilitation of downstream linkages feasible. In regard to fiscal linkages, it was assessed that there is no priority plan in place to ensure that the revenue generated from mining activity result in the socio-economic development of Namibians. In regard to spatial linkages, it is assessed that the Minerals Fund is underutilised. The knowledge and horizontal linkages has no regulations in place to supervise and monitor trainings to ensure that quality skills transfer takes place.

The assessments above, in particular, the facilitation of the LCPs has a knock on effect on the quality of the facilitation of each linkages and ultimately the propensity of both the LCPs and Linkages, to promote the socio-economic development of Namibians is diminished

[236] Minerals (Prospecting and Mining) Act 33 of 1992

[237] Minerals (Prospecting and Mining) Act 33 of 1992 sec 50 (b).

[238] (n 237 above).

[239] Weldegiorgis (n 1 above) 5.

radically. Chapter 5 will summarise and conclude the study and address the aim of the study and research question.

CHAPTER 5
CONCLUSIONS AND RECOMMENDATIONS

5.1. Introduction

The aim of this study was to examine the facilitation of LCP requirements and the linkages associated with LCPs in Namibia's mining legislative regime in light of promoting the socio-economic development of Namibians. Accordingly, a number of findings have been made throughout the study, in regard to Namibia's facilitation of LCPs and the associated linkages. The aforesaid findings were presented to ultimately address the primary research question being - Does Namibia's facilitation of LCPs and linkages optimally promote the socio-economic development of Namibians? Accordingly, this chapter seeks to summarise the findings of each chapter, to address the aim of research in concurrence with the primary research question, and to suggest recommendations where appropriate.

5.2. Summary of the study findings

Chapter 1 highlighted that the Namibian government elected to facilitate linkages to contribute towards socio-economic development for Namibians. Given government's choice to facilitate linkages, this research paper was conceived and aimed to examine the facilitation of LCPs and linkages and its propensity to promote socio-economic development. The research is specifically aimed at (1) exploring how Namibia facilitates LCPs and linkages and (2) finding out to what extend the facilitation of LCPs and linkages can promote socio-economic development for all Namibians.

Chapter 2 discussed the content and scope of the facilitation of LCPs and linkages. There are various LCP requirements and considerations that must be considered when facilitating linkages to promote the socio-economic development of Namibians such as the local content criteria, qualitative and quantitative methods of formulating LCPs and the methods of implementing LCPs. The local content criteria is critical and must be decided on and understood in order to prevent mining companies from showcasing compliance with LCPs however the net effect of developing domestic capabilities cannot be traced which diminishes the socio-economic impact of LCPs and linkages. In regard to study on linkages, the concept developments, the types of linkages and various facilitation considerations, it was specifically highlighted that the facilitation of linkages should have the effect of growing the scale, range, and depth of domestic capabilities.

Chapter 3 assessed how Namibian government facilitates linkages and its associated LCP identified in chapter 2. It was discovered that there are a number of legislative provisions that lay a foundation for the establishment of LCPs and support the initiation of the facilitation of linkages. The Minister has board powers to facilitate any kind of linkage by imposing such linkage creating condition on mining licences. However, the research indicated that there are no regulations to assess to further assess the description of the Minister, when conditions are imposed which are intended for linkage creation to promote the socio-economic development of Namibians. The conditions that are imposed that do result in linkage creation can also not be monitored and managed as there are no regulations catering for this. Relying on the current provisions of Minerals Act to keep Mining Licence holders accountable to conditions imposed on mining licences is not sufficient. Furthermore, the LCPs that stem from the prescribed conditions are more qualitative then quantitative which makes it difficult to ascertain the socio-economic impact of linkages.

Chapter 4 assessed each linkage including its associated LCP for contribution towards the development of domestic capabilities and the promotion of socio-economic development of Namibians. It was discovered that it is difficult to verify to what extend the facilitation of linkages actually develop domestic capabilities and promote socio-economic development. Upstream linkage suppliers registered in Namibia tend to import most input goods and services from other countries which undermines the development of domestic capabilities.

The local content criteria by geographical location must shift to the value addition criterion to assess to what extend value addition of goods and services are done In-country and where the opportunity may lay for the development of domestic capabilities and ultimately the promotion of socio-economic development of Namibians. In regard to downstream activities, most mining companies process minerals to a semi-processed state and ship it out to China or South Africa for further processing due to economies of scale attractiveness. This also eliminates the opportunity for domestic capabilities to be developed. Fiscal linkages can be utilised to make downstream businesses more feasible. At the moment the downstream industry is not attractive for investors to invest.

Fiscal linkages and spatial linkages are underutilised also, which can reduce downstream businesses overheads. Mining companies struggle signing off-take agreements to ensure a steady flow of minerals for downstream industries. The Namibian government plans to invest in water and electricity and skills security to avoid price shocks that will render downstream businesses unprofitable. The price instability feeds into the low profit markets and it is even worse if the production of minerals is not steady. This was particularly seen in the diamond cutting industry.

The facilitation of horizontal linkages and knowledge linkages are limited because there is a lack of information to ascertain what the upstream needs are and the skills required. Furthermore, in regard to the trainings that licence holders are obligated to conduct, they are not supervised or monitored to ensure that domestic capabilities are deepened, and Namibians are socio-economically developed. There are no regulations to govern the delivery of prescribed trainings to ensure adequate skills transfer takes place.

5.3. Addressing the primary research question

Given the above summaries, it is plausible that the facilitation of LCPs and linkages in Namibia does not optimally promote the socio-economic development of Namibians. The lack of regulations negatively affects the facilitation of LCPs and linkages in Namibia which could further promote socio-economic development of Namibians.

Various approaches and best practices from a number of different countries, discussed in below in paragraph 5.4, can be considered when seeking to optimise the facilitation of LCPs and linkages to promote the socio-economic development of Namibians.

5.4. Recommendation

The recommendation made below are made in light of the findings in the previous chapters. The first recommendation, is that the LCPs contained in the Minerals (Prospecting and Mining) Act 33 of 1992 be regulated. In particular, the reporting requirements and standards must be regulated. LCPs must be made quantitative in nature to hold mining licence holders accountable. Regulations must be made for the facilitation of linkages that result from LCPs to ensure that the socio-economic development of Namibians are promoted.

It is recommended that in regard to upstream and downstream linkages, that the abovementioned example of Kazakhstan be followed, wherein a certificate is provided based on the assessment on goods totally manufactured or which passed substantial processing on in the territory. The example of Ghana can also be followed, whereby, a targeted list of inputs that must be purchased in-country to support local suppliers. These methodologies make it easy to ascertain the value addition of goods and services in the country and to assess what further opportunities there may be for domestic capabilities to be developed and ultimately result in the socio-economic development of Namibians. In addition to methodologies utilised by Ghana and Kazakhstan, the NDP5 plan to establish a upstream database comprising of Namibian businesses that contribute to the socio-economic development of Namibians, should be implemented as envisaged.

It is further recommended that Public Private Partnerships be encouraged to facilitate investment towards spatial linkages such as the supply of water and electricity to render downstream industries feasible to operate. Fiscal linkages can also be utilised particularly the Minerals Development Fund of Namibia to subsidize some downstream costs.

In regard to fiscal linkages it is recommended that the Namibian government prioritise the revenue received from fiscal Linkages to build other linkages. There is a need for the government to create priority plan to strategically deploy resource rents towards the a particular linkage on a priority basis and for the government to manage and monitor the Fund appropriately. Fiscal Linkages can be created such as statutory skills development levy, as introduced in South Africa, and be channelled towards the Mineral Development Fund. Other means can also be achieved to decentralise rents from Fiscal Linkages to be channelled directly into the Mineral Development Fund. The Mineral Development Fund can be used for this purpose or Public Private Partnerships can be formed to enhance public services capacity to enable further spatial linkages to be formed. All aforesaid efforts will have the effect of promoting the socio-economic development of Namibians.

In regard to knowledge linkages, it is recommended that Namibia follow the same approach as South Africa, to compel mining companies to specifically invest in the quality of the trainings and further regulate the quality of trainings given to ensure that adequate skills transfer take place. This will promote the socio-economic development of Namibians.

5.5. Final thoughts

In a developing country, the government must be robust about faciliating LCPs and local linkages to promote the socio-economic development of its citizens as soon as mineral resources are discovered. This can be done by way of creating value addition industries to ensure that the mineral resources have a sustained effect. The more quantitative LCPs are the easier it is to trace it’s socio-economic net of its linkages created. The facilitation of linkages associated with LCPs can further be studied for its optimisation to promote the socio-economic development of locals.

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