

**Assessing the Adequacy of Enforcement Mechanisms for Local Employment and Skill
Transfer under Kenya's Mining Act 2016**

Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree,
Strathmore University Law School

By

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FEBRUARY 2024

Word Count: 11621

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ACKNOWLEDGEMENT

I acknowledge God for the ability to perform this study. I extend my sincere gratitude to my supervisor, Mr Claude Kamau for his dedication, guidance and moral support. I would also like to acknowledge my mother, who has given her all to ensure that I obtain a good education. To my friends, you are the best! Last but not least, I would like to acknowledge Ms Nneoma, Ms Tindana, Nadia, Marshall and the whole AMLA team for sparking my interest in mining.

ABSTRACT

The problem of inadequate local employment and skill transfer in Kenya's mining sector persists despite Section 47 of the Mining Act 2016 providing for employment local content. This study investigates the sufficiency of the current legal framework and explores how and why enforcement challenges have emerged. The study will be anchored on the social contract theory. The methodology adopted for the study is doctrinal, drawing from primary sources such as Constitutions and the Mining Acts, and secondary sources including academic articles and reports. The conclusion aims to provide recommendations for improving the enforcement of local content laws, drawing on best practices from resource-rich countries like Ghana. The findings will contribute to the discourse on local content enforcement and inform policymakers and persons of interest on maximising benefits in the mining sector.

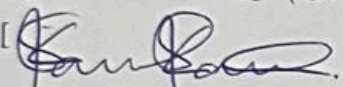
DECLARATION

I, **NJUE ESTHER KANGAI**, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: 

Date: 19/2/25

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed: Claude Kamau
[]

Date: 24-02-25

LIST OF ABBREVIATIONS

AMV	The Africa Mining Vision
AU	African Union
CDAs	Community Development Agreements
CSR	Corporate Social Responsibility
GDP	Gross Domestic Product
GMC	Ghana Mineral Commission
FDI	Foreign Direct Investment
KRA	Kenya Revenue Authority
LC	Local content
LCPs	Local Content Policies
LCVA	Local Content and Value Addition
MRB	Mineral Rights Board
RMOs	Regional Mining Officers
SDoM	State Department of Mining

LIST OF CASES

Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy & 17 others eKLR 2015

Save Lamu & 5 Others v National Environmental Management Authority & Another [2019] eKLR 2019

Friends of Lake Turkana Trust v Attorney General & 2 Others eKLR 2014

LIST OF LEGAL INSTRUMENTS

International Instruments

The African Mining Vision

The Constitution of Ghana

The Minerals Commission Act 1993

Minerals and Mining (Local Content and Local Participation) Regulations, 2020 LI 2431

Local Instruments

The Constitution of Kenya

Mining Act of 2016(Act No 12 of 2016)

The Local Content Bill

The Mines and Minerals Policy 2016

Kenya Vision 2030

Republic of Kenya Local Content Policy 2020

CHAPTER ONE

1.1. Introduction

Mining is considered a key driver of economic growth for resource-rich nations. However, the full potential of this sector has not been realised because of several challenges, including ineffective enforcement mechanisms. Section 47 of the Kenyan Mining Act mandates that mining companies prioritise the employment of Kenyan citizens and transfer skills to ensure sustainable local capacity in the sector. Despite the introduction of this provision, enforcement and compliance gaps persist, limiting the intended benefits for local communities.

This study will examine the effectiveness of enforcement mechanisms in implementing Section 47 of the Mining Act 2016 to safeguard local employment and skill transfer in Kenya's mining sector. The study aims to propose recommendations for strengthening labour local content enforcement.

1.2. Background

Mining presents several challenges for the host country, because mining is a capital-intensive process, and countries with these resources often lack sufficient funds.¹ Due to these limitations, many countries are compelled to seek foreign direct investment to facilitate mining operations. The problem with this arrangement is that host countries often do not get local value from the extraction, because these agreements often favour the foreign company, at the expense of locals. This scenario has at times led to the "resource curse," where countries rich in natural resources experience slower economic growth and little to no benefits for their communities.² Lynn Karl describes this paradoxical relationship between resource wealth and underwhelming economic development as the "paradox of plenty."³

¹Pereira E, Matthews C, Trischman H, 'Local Content policies in the petroleum industry: lessons learned' Oil and Gas, Natural resources & Energy Journal,2019,637.

²Ingilav A, Artemyev A, 'How to scrutinise a production sharing agreement; a guide for the oil and gas sector based on experience from the Caspian Region' International Institute for Environment and Development, 2012, 11.

³Terry K, 'The oil trap', Transparency International Quarterly Newsletter, 2003 [Transparency International Annual Report 2003 - Publications](#) on 15 September 2024.

To address this issue, the African Union adopted the Africa Mining Vision, which aims to, among other things, build and utilise labour force capacity and improve revenues generated by African governments from the sector.⁴ As a result, almost half of the African Union member states enacted legislation to achieve these objectives.⁵ Legislation passed in the wake of the Africa Mining Vision can be considered part of the 6th generation of mining laws. Their primary focus is maximising the retention of mining benefits within the country, often through mechanisms like local content regulations.⁶ Kenya was among the twenty-three countries that adopted new legislation,⁷ in a bid to maximise the retention of mining benefits within the country.⁸

Local content has widely been described as the value that an extraction project brings to the national, regional or local economy beyond the resource revenues.⁹ Labour local content can be defined as a set of policy instruments developed to ensure that a substantial portion of the factors of production such as labour are sourced locally.¹⁰ "Local" can be interpreted narrowly, as the geographical area or population surrounding a mineral site, or more broadly, as the nationality or citizenship involved in employment or business ownership.¹¹

The Constitution of Kenya mandates that benefits from natural resources be shared equitably among all citizens.¹² Additionally, it requires the National Assembly to enact legislation ensuring

⁴Nwogu N, 'Mining at the Crossroads of Law and Development: A Comparative Review of Labor Related Local Content Provisions in Africa's Mining Laws Through the Prism of Automation' 28 Washington International Law Journal 1, 2019,137.

⁵ Africa Mining Legislation Atlas –< <https://www.a-mla.org/en>>-- on 18th August 2024.

⁶ Nwogu N, 'Mining at the Crossroads of Law and Development: A Comparative Review of Labor Related Local Content Provisions in Africa's Mining Laws Through the Prism of Automation,' 152.

⁷ Africa Mining Legislation Atlas –< <https://www.a-mla.org/en>>-- on 22nd December 2023.

⁸ Section 47, Mining Act (Act No. 16 of 2016).

⁹ Nwogu N, 'Mining at the Crossroads of Law and Development: A Comparative Review of Labor Related Local Content Provisions in Africa's Mining Laws Through the Prism of Automation,' 152.

¹⁰ International Institute for Sustainable Development, Designing Local Content Policies in Mineral-rich Countries, 2018, 2-6.

¹¹ International Institute for Sustainable Development, Designing Local Content Policies in Mineral-rich Countries, 2018, 2-6.

¹²Article 69, Constitution of Kenya (2010).

that communities near resource extraction sites benefit from these resources. Furthermore, the Community Land Act stipulates that benefits from extraction must be directed to the entire community where the resources are located.¹³This principle was underscored in *Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy & 17 others*,¹⁴ where the court affirmed that communities around mining areas must be fully involved in decisions affecting them and receive maximum benefits from the resources within their locality. In the *Save Lamu* case,¹⁵ the court emphasised the need for a robust and active enforcement of legal requirements, especially where public interest is concerned. Finally, the court in the *Friends of Lake Turkana* case,¹⁶the court reprimanded the government for ignoring certain environmental protocols. The court affirmed that the failure to enforce regulations violates rights under Articles 42 and 69 of the constitution.

Despite clear obligations from statute and case law, there is still a challenge in the implementation of local content. In 2019, the Office of the Auditor General conducted an audit to assess the effectiveness of the State Department of Mines (SDoM) in monitoring the implementation of conditions set out in the Mining Act of 2016.¹⁷The audit found that the SDoM had only 11 mine inspectors, leaving a shortfall of 221 inspectors. Additionally, the department had not developed a comprehensive monitoring framework, including timelines and reporting mechanisms, to ensure that mining companies adhered to the conditions outlined in their licences.¹⁸

¹³Section 35, Community Land Act (2016).

¹⁴[2015] eKLR.

¹⁵ *Save Lamu & 5 Others v National Environmental Management Authority & Another* [2019] eKLR.

¹⁶ *Friends of Lake Turkana Trust v AG & 2 Others* [2014] eKLR.

¹⁷Office of the Auditor General, Performance Audit Report on Monitoring of Mining Operations by the State Department of Mining April 2019. [Monitoring of Mining Operations by State Department of Mining \(2019\)](#).

¹⁸ Office of the Auditor General, Performance Audit Report on Monitoring of Mining Operations by the State Department of Mining April 2019. [Monitoring of Mining Operations by State Department of Mining \(2019\)](#).

In 2022, a further audit was performed by the Auditor General to assess the efficiency of public spending.¹⁹The audit revealed inadequate funding for the monitoring of mining operations. The Directorate of Mines had an authorised technical staff establishment of 235, but only 89 positions were filled at the time of the audit, resulting in a deficit of 146 staff. Interviews with ministry personnel and Regional Mining Officers indicated that this staffing shortfall negatively impacted the inspection and monitoring of mining activities.²⁰

In 2023, the State Department of Mining operated with only 320 staff members, despite an approved establishment of 838 positions.²¹ The estimated financial requirements for the 2023 financial year were KSh 3,997 million, while the estimated allocation was KSh 3,779 million, resulting in a deficit of KSh 218 million. The estimated financial requirements for 2024 were KSh 7,168.92 million, yet the allocation was only KSh 5,668.5 million, creating a shortfall of KSh 1,500.42 million.²²

The financial and capacity challenges highlighted in the 2019, 2022, and 2023 reports show that the Ministry of Mining struggles to carry out its duties effectively. These problems range from inadequate resource allocation at the national level to operational failures at the county level. As a result, mining companies that fail to meet the requirements outlined under the Mining Act are not held accountable.

¹⁹ Performance Audit Report on Monitoring of Artisanal Mining Operations by the Ministry of Petroleum and Mining 2022, <https://www.oagkenya.go.ke/wp-content/uploads/2023/01/P.A.-MINING-NOV.-22-compressed.pdf> on 10 October 2024.

²⁰ Performance Audit Report on Monitoring of Artisanal Mining Operations by the Ministry of Petroleum and Mining 2022, <https://www.oagkenya.go.ke/wp-content/uploads/2023/01/P.A.-MINING-NOV.-22-compressed.pdf> on 10 October 2024.

²¹ Performance Audit Report on Monitoring of Artisanal Mining Operations by the Ministry of Petroleum and Mining 2022, <https://www.oagkenya.go.ke/wp-content/uploads/2023/01/P.A.-MINING-NOV.-22-compressed.pdf> on 10 October 2024.

²² State Department for Mining Strategic Plan 2023-2027 Draft Report, <https://www.mining.go.ke/sites/default/files/SDM%20SP%20DRAFT.pdf> on 10 October 2024.

1.3. Statement of the Problem

Section 47 of the Mining Act mandates that mining companies prioritise local employment and skill transfer. The same act provides for various enforcement mechanisms, including the establishment of the Ministry of Mining to ensure the implementation of Section 47. However, operations at the Ministry are hindered by institutional challenges, for example, understaffing. In the absence of effective monitoring and implementation measures, mining companies will more likely bypass the requirements of section 47, resulting in a disadvantage for local communities.

1.4. Research Questions

1. Whether the Mining Act of 2016 and its supportive frameworks sufficiently support the enforcement of Section 47 of the Mining Act particularly in promoting employment and skill transfer?

- a) Whether Section 47 of the Mining Act requires an extensive implementation framework to achieve its objectives and if so, what should this framework entail?

2. Whether there are implementation challenges of Section 47 of the Mining Act?

- a) What specific legal, institutional and operational challenges hinder the implementation of Section 47 of the Mining Act?
- b) How do these challenges impact the achievement of the intended goals of Section 47 of the Mining Act?

3. What can Kenya learn from resource-rich countries like Ghana with successful implementation measures?

- a) How can Kenya's local content enforcement mechanisms be improved by incorporating best practices like establishing an independently funded body and enacting a local content regulation?

1.5. Research Objectives

1. To determine whether the Mining Act of 2016 and its supportive frameworks sufficiently enhance the enforcement of Section 47 of the Mining Act, particularly in promoting employment and skill transfer.

- a) To assess whether Section 47 of the Mining Act requires an extensive implementation framework to achieve its objectives and, if so, what this framework should entail.
2. To identify whether Section 47 of the Mining Act has implementation challenges.
 - a) To analyse the specific legal, institutional, and operational challenges that hinder the implementation of Section 47 of the Mining Act.
 - b) To evaluate how these challenges impact the achievement of the intended goals of Section 47 of the Mining Act.
3. To explore what Kenya can learn from resource-rich countries like Ghana with successful implementation measures.
 - a) To propose how Kenya's local content enforcement mechanisms can be improved by incorporating best practices, such as establishing an independently funded body and enacting a local content regulation.

1.6. Hypothesis

This study proceeds on the hypotheses that:

1. The enforcement of Section 47 of the Mining Act 2016 is inadequate in promoting local employment and skills transfer.
2. The gap in enforcing the implementation of Section 47 is primarily caused by inadequate institutional capacity, a lack of an independent monitoring body, and a lack of local content legislation.
3. Establishing an independently funded oversight body, implementing robust tracking and reporting mechanisms, and enacting local content legislation could strengthen enforcement mechanisms.

1.7. Justification of the study

Kenya's mining industry has potential that is yet to be realised. Section 47 of the Mining Act, which promotes local employment and skill transfer, lacks effective enforcement. This study will highlight these gaps, propose solutions that will help enhance community benefits through the employment of local content. It aims to guide policymakers and mining companies in necessary reforms.

1.8. Research Methodology

This is a doctrinal study that will rely on primary and secondary sources. Primary sources include the Constitution, laws, policies, and case law. Secondary sources include journal articles, books, dissertations, reports, newspapers, and credible online materials.

1.9. Limitations of the study

The author acknowledges that biases may influence the interpretation of findings and recommendations. However, the author is committed to remaining introspective and vigilant throughout the research process. Time is also a constraint, as the study must be completed within six months. Despite these challenges, this study aims to maintain integrity and rigour, contributing meaningfully to the local content discussions in Kenya's mining sector.

1.10. Theoretical Framework

This research is grounded in the social contract theory. The theory is important to the study as it highlights the government's responsibility to protect the rights of its citizens. Part of this custodianship role includes ensuring economic security. The requires the state to enact legislation and uphold institutions that ensure justice for its citizens, including economic justice.

First introduced by Thomas Hobbes and later expanded by other scholars like John Locke and Jean-Jacques Rousseau, the Social Contract Theory states that the relationship between the state and its citizens is based on a mutual agreement.²³ The proponents argue that individuals are born free, but by being part of a society, they willingly surrender certain rights and freedoms to the

²³Rousseau J, *The Social Contract and Other Later Political Writings* Cambridge University Press 2018.

state. In exchange, the state is responsible for protecting them from harm and ensuring their well-being.²⁴

Hobbes argued that, initially, there was a peaceful co-existence among people through natural human relations. However, civilisation came from the desire for individual ownership of property, which subsequently led to conflict.²⁵ To address these conflicts, people developed the idea of the "general will," which represented a collective agreement among members of society to use shared resources in a way that benefits everyone. This idea promoted cooperation and ensured that resources were managed for the common good, rather than for individual gain.²⁶ The state was granted the authority to protect the rights, liberties, and privileges of each individual. In return for this protection, members of society willingly surrendered certain rights to the state.²⁷

This theory supports this study as it forms the foundation for arguing that the government must protect its citizens' rights, including their economic rights. The Mining Act 2016 represents a formal commitment to deliver benefits to local communities through local employment and skill transfer. The government is therefore obligated to ensure that the mining policies lead to real improvement in local livelihoods, fulfilling its part of the social contract. If enforcement mechanisms by the state fail, it signals a breach of the social contract, which may eventually lead to a state of social unrest or a lack of trust in government institutions.

²⁴Rousseau J, *The Social Contract and Other Later Political Writings* Cambridge University Press 2018.

²⁵August JH, Alamilla S and Liang B, 'The Social Contract Theory Revisited: Examining the Relationship Between Greed, Conflict, and the Evolution of Cooperation', in *The Role of Community Development in Reducing Extremism and Ethnic Conflict*, May 2018, 135-153.

²⁶ Rousseau J, *The Social Contract and Other Later Political Writings* Cambridge University Press 2018.

²⁷ Rousseau J, *The Social Contract and Other Later Political Writings* Cambridge University Press 2018.

1.11. Literature review

On labour local content,²⁸ Ramdoo²⁹ interprets "local" in multiple ways.³⁰ According to the author, the term "content" is complex, as it must address various objectives.³¹ On the social front, Ramdoo observes that Local Content Policies(LCPs) are often seen as tools to secure social peace and maximise national benefits. This is particularly important in response to public dissatisfaction with policy failures and the inability of successive governments to deliver inclusive and sustainable development. Mining firms also view LCPs as a means to secure their social licence to operate and to contribute benefits to local communities, sometimes through voluntarily defined LCPs.³²

Nneoma³³ similarly argues that African countries must apply local content policies to maximise the benefits of mining. She suggests that appropriate government measures can lead to spillover benefits, citing the example of early 20th-century copper mining in the United States. This mining activity fostered a knowledge network in chemistry and metallurgy, laying the groundwork for later diversification and industrialisation.

²⁸ Ramdoo defines labour content as a set of policy instruments developed by regional governments to ensure that a significant portion of the factors of production such as labour, goods, services, and technology used in the mineral value chain are sourced locally.

²⁹ International Institute for Sustainable Development, *Designing Local Content Policies in Mineral-rich Countries*, 2018, 2-6.

³⁰ In a narrower sense, she interprets it to mean the geographical area or population surrounding a mineral site. In a broader sense, she relates it to nationality or citizenship in employment or business ownership.

³¹ Firstly, these policies seek to enhance the participation of domestic industries by improving access to mining procurement markets and encouraging the sourcing of inputs locally. Secondly, local content policies focus on workforce development. This involves building the competencies of the local workforce at different stages of the mineral value chain through employment opportunities, training, skill development, and knowledge transfer. Such measures are essential for ensuring that local workers can effectively contribute to and benefit from the mining sector.

³² International Institute for Sustainable Development, *Designing Local Content Policies in Mineral-rich Countries*, 2018, 2-6.

³³ Nwogu N, 'Mining at the Crossroads of Law and Development: A Comparative Review of Labor Related Local Content Provisions in Africa's Mining Laws Through the Prism of Automation,' 137-156.

On local content and employment, Abdulkabir³⁴ et al note that unemployment remains a persistent challenge for developing African countries. The authors argue that when local content policies fail to generate jobs, their objectives remain unmet. They call for continuous evaluation of contracts and effective monitoring of local content development to ensure policy success. Additionally, they advocate for flexibility in these policies to facilitate technology transfer by foreign companies and enhance the capabilities of the local industry.

On enforcement, the Intergovernmental Forum on Mining, Minerals, and Metals suggests that once policies are developed, they should be administered, enforced, and progress tracked against clear benchmarks, such as specific plans and targets. An independent monitoring and enforcement mechanism is crucial to ensure accountability among stakeholders in the mineral industry. This mechanism should include common reporting requirements for mining companies and robust systems for collecting data and assessing the outcomes of interventions. Additionally, it should feature a review process where failure is not just met with punishment but followed by consultation and an evaluation of the policies themselves.³⁵

Muyonga asserts that the primary challenge for Kenya lies in maximising the potential benefits from its natural resources while avoiding the under-developmental path that has historically affected major oil-producing nations in Africa.³⁶ This has been reflected in a recent audit, where a review of the financial allocations for the Migori, Eldoret, Mombasa, and Kakamega regions showed a decline in funds for field activities.³⁷ Additionally, the audit found that the Ministry had

³⁴ Adedeji A, Sidique S, Rahman A, Hook L, 'Relationship Among Local Content Policy, Indigenous Oil Firms, Participation and Job Creation in Nigeria: A Theoretical Concept' , Proceedings of the Australian Academy of Business and Social Sciences Conference, 2014. https://www.aabss.org.au/system/files/published/AABSS2014_081.pdf

³⁵ Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, Guidance for Government Local Content Policies, [IGF Guidance for Governments: Local Content Policies Executive Summary](#) on 27 September 2024.

³⁶ Muyonga N, 'Complexities of local content in Kenya's extractive sector: An appraisal of policy, legal and institutional frameworks and practice in Eduardo G, Pereira S, Jonathan M, Sovereign wealth funds, local content policies, and CSR: Developments in the extractives sector, Springer Nature, Switzerland, 2021, 287.

³⁷ Performance Audit Report on Monitoring of Artisanal Mining Operations by the Ministry of Petroleum and Mining 2022, <https://www.oagkenya.go.ke/wp-content/uploads/2023/01/P.A.-MINING-NOV.-22-compressed.pdf> on 10 October 2024.

not established a clear mechanism for supervising and reporting by field officers. Interviews with ministry officials and RMOs indicated that head office teams were expected to conduct field visits, but these visits often did not occur due to a lack of funding.³⁸ Moreover, reports from regional offices to headquarters were inconsistent in content, structure, and frequency.³⁹

Even though there is a lot of research material on local content policies and their social and economic impacts, there is not enough focus on how the policies are enforced in Kenya under the Mining Act 2016. Scholars like Ramdoo, Nneoma and Abdulkabir have shown that local content policies can help deliver many benefits for a country. However, recent reports have pointed out problems with the enforcement mechanisms. This shows that even with good policy intentions, the current enforcement mechanisms may not be strong enough to boost local employment and skill transfer. This study will fill this gap by examining how the mechanisms work in practice.

This research will take a keen look at how Section 47 is put into action. By building on ideas from the authors above, this study will identify key obstacles that stop the policies created from reaching their full potential. This study therefore, aims to offer practical recommendations that can improve labour local content implementation in the Kenyan context.

1.12. Chapter Breakdown

Chapter 1: Introduction

Chapter 1 will serve as the introduction, covering the background, research objectives, research questions, problem statement, hypothesis, justification of the study, literature review, study limitations, and the proposed research timeline.

³⁸ For example, In Migori County, the allocation was reduced from KSh 1,999,314 to KSh 965,987, and then further to KSh 996,923.

³⁹ Performance Audit Report on Monitoring of Artisanal Mining Operations by the Ministry of Petroleum and Mining 2022, <https://www.oagkenya.go.ke/wp-content/uploads/2023/01/P.A.-MINING-NOV.-22-compressed.pdf> on 10 October 2024.

Chapter 2: Research Question One

This chapter will address the first research question, assessing whether the Mining Act and its supporting frameworks adequately support local employment and skills transfer. It will also examine whether Section 47 requires a more extensive implementation framework.

Chapter 3: Research Question Two

Chapter 3 will explore the institutional, regulatory and legal challenges that contribute to the gap in enforcing Section 47.

Chapter 4: Research Question Three

This chapter will examine successful implementation strategies from other resource-rich countries like Ghana. It will explore best practices, such as the creation of independent monitoring bodies, and robust tracking and reporting mechanisms.

Chapter 5: Conclusion and Recommendations

The final chapter will summarise the research findings and provide recommendations on how to enhance the enforcement of Section 47 of the Mining Act 2016.

Timelines

MILESTONE	DATE
Submitting the concept paper	December 2023
Research Proposal (Chapter 1)	8th March 2024
Improving on Chapter 1	June - August 2024
Researching and Writing (Chapter 2)	September 2024
Researching and Writing (Chapter 3)	October - November 2024
Researching and Writing (Chapter 4)	December 2024

Writing Chapter 5; The conclusion	January 2025
Submission of the dissertation	February 2025
Defence	March 2025

CHAPTER TWO

2.1. Introduction

Africa's vast mineral wealth, while a potential catalyst for economic development, has often failed to deliver tangible benefits to its people. Nigeria serves as a strong example in this regard.⁴⁰ The country's economy is heavily reliant on the oil and gas sector, which generates 90% of its total revenue. However, despite this dependence, the contribution of these industries to Nigeria's GDP remains below 30%.⁴¹ This gap is primarily due to the high level of foreign involvement in the production and distribution of oil, with minimal engagement of Nigerian companies.⁴²

Kenya is not an exception to the challenges highlighted above. While the mining sector has shown growth in recent years, its contribution to GDP and the well-being of local communities remains limited. The mining sector as of 2022, contributed only 0.4% to the GDP.⁴³ The government's efforts to regulate the mining industry through various regulations aim to address these challenges and ensure that the sector benefits both the nation and local communities. However, the effectiveness of these regulations hinges on their implementation and enforcement.⁴⁴

The Mining Act of 2016 plays an important role in regulating Kenya's mining industry and ensuring the benefits of mining are shared fairly. However, a point of concern for this study is whether the Mining Act and its supporting frameworks are strong enough to fully enforce Section 47 and achieve its goals. This chapter will examine whether the current laws and frameworks provide enough support to enforce Section 47 effectively. It also explores whether a

⁴⁰ Okafor J, Aniche E, 'A critical appraisal of Enforcement of Nigerian oil and gas industry content development Act, 2010 Journal of Law Policy and globalisation, 31,2014, 82.

⁴¹ National Bureau of Statistics (NBS), Nigerian Statistical Fact sheets, 2008.

⁴² Izeze I 'Nigerian oil and gas local content Act: abuse of expatriate quota' The Nation, 19 January 2015 <https://thenationonlineng.net/expatriate-quota-abuse-local-contents-greatest-challenge/> on 15 September 2024.

⁴³ KPMG, Analysis of the Mining Act 2016, July 2016, on 4 August 2024.

⁴⁴ Kariuki Muigua & Company Advocates,Regulating Mining: A New Vision for Kenya? Kariuki Muigua, <https://kmco.co.ke/wp-content/uploads/2019/07/Regulating-Mining-A-New-Vision-Kariuki-Muigua-12th-July-2019.pdf> on 4 September 2024.

detailed implementation plan is needed to achieve the aims of Section 47. The discussion will look at what such a plan might include, such as better monitoring stronger institutions. This chapter aims to highlight gaps in the current implementation approach and the next chapters, suggest ways to improve the enforcement of local employment and skill transfer requirements in Kenya's mining sector.

2.2. Key Requirements for the Implementation of Local Content

To achieve the intended results of Section 47, several requirements must be met. First, there must be a strong local content framework that clearly defines the scope of local content, specifying the meanings of key terms.⁴⁵ Specificity and clarity are essential to achieving the objectives set out in the policy. Second, there must be strong enforcement and monitoring mechanisms. Pereira et al. observe that local content policies, no matter how well-designed, hold little value for the host country without effective enforcement mechanisms.⁴⁶ The enforcement of local content policies (LCPs) varies across governments and may be carried out by different agencies overseeing resources or by specialised agencies tasked with enforcing local content.⁴⁷ This ensures measurable and continuous industry development. Many stakeholders agree that monitoring and enforcement are crucial to ensuring that projects comply with legal requirements, thereby allowing risks and opportunities to be appropriately distributed.⁴⁸ The enforcement body should be actively involved from the start of operations, including issuing certificates and overseeing compliance with local content requirements.⁴⁹ However, it is important to note that implementing

⁴⁵ Odhiambo M, 'Kenya's oil and gas industry local content framework: an analysis of Sections 50, 51 and 52 of the Petroleum Act 2019' Published LLM Thesis, Strathmore University, Nairobi, 2021, 8-15.

⁴⁶ Pereira E, Mathews C, Trischman H, 'Local Content Policies in the Petroleum Industry: Lessons Learned 4(5) Oil and Gas, Natural Resources and Energy Journal, 2019, 658-659.

⁴⁷ Odhiambo M, 'Kenya's oil and gas industry local content framework: an analysis of Sections 50, 51 and 52 of the Petroleum Act 2019' Published LLM Thesis, Strathmore University, Nairobi, 2021, 8-15.

⁴⁸ Smith E, Rosenblum P, 'Government and Citizen Oversight of Mining: Enforcing the Rules' Revenue Watch Institute, (2011) -< [Enforcing the Rules](#)>- 19 December 2024.

⁴⁹ Odhiambo M, 'Kenya's oil and gas industry local content framework: an analysis of Sections 50, 51 and 52 of the Petroleum Act 2019' Published LLM Thesis, Strathmore University, Nairobi, 2021, 8-15.

LCPs alone does not guarantee positive results.⁵⁰It is often a combination of many factors. However, implementation plays a major role in success. It is against this backdrop, that this paper will analyse both the regulatory and enforcement framework of local content under the Kenyan Mining Act of 2016 and other relevant laws to determine whether they are sufficient in ensuring that the objectives of Section 47 are met.

2.3. Regulatory Framework of Local Content in the Kenyan Mining Industry

The local content regulatory framework focuses on increasing job opportunities for Kenyans, developing the local workforce, supporting local suppliers, and establishing community development agreements.⁵¹The framework governs skills training, workforce development, supplier growth, and community agreements. The employment and training provisions aim to create jobs by building and retaining Kenyan expertise, enhancing local capacity through education, encouraging the transfer of skills, technology, and knowledge, and ensuring the minimum employment thresholds are met throughout the mining industry value chain.⁵²

2.3.1 African (Banjul) Charter on Human and Peoples' Rights

The African (Banjul) Charter on Human and Peoples' Rights, commonly referred to as the African Charter, is a regional human rights instrument adopted by the Organisation of African Unity (OAU), now the African Union (AU). The charter establishes a framework to promote and protect human rights across African countries, recognising individual and collective rights, such as self-determination and development. It prohibits discrimination, safeguards the right to a fair trial, and emphasises the duties of individuals toward their communities.⁵³The charter explicitly states that everyone has the right to participate in decisions that affect them.⁵⁴ Szablowski argues that a purposive interpretation of the charter requires that communities be actively involved in the decision-making process for developing local content policies and legal

⁵⁰ Acheampong T, Ashong M, Svanikier V, 'An assessment of local-content policies in oil and gas producing Countries' *Journal of World Energy Law and Business*, 9(4), 2016, 6.

⁵¹ The Mining(Employment & Training) Regulations, 2017, Legal Notice No. 82 of May 2017.

⁵² The Mining(Employment & Training) Regulations, 2017, Legal Notice No. 82 of May 2017.

⁵³ African(Banjul) Charter on Human and Peoples' Rights.

⁵⁴ Article 13(1),African(Banjul) Charter on Human and Peoples' Rights.

frameworks, as these form the foundation for public participation in governance.⁵⁵ Furthermore, the charter affirms that communities hold property rights, and any encroachment on these rights is only permissible after considering the community's interests.⁵⁶

2.3.2 Constitution of Kenya, 2010

The 2010 Constitution is a transformative law that is also the highest in the country, governing all individuals and state organs at both levels of government. It covers various aspects of the socio-economic and cultural sphere and addresses many important national issues. All other laws are required to align with the Constitution, and everyone is required to uphold it.

The Constitution does not contain specific provisions addressing local content; however, some elements can be interpreted as related to it. A key provision is Article 1, which establishes the people of Kenya as the holders of sovereign power.⁵⁷ This means that every decision should reflect the needs and aspirations of the Kenyan people. Additionally, Article 10(2) outlines national values and principles, including the principle of public participation.⁵⁸ The involvement of the local community is essential for the development of local content, as it ensures that those living in areas where extraction occurs can take part in the formulation and implementation of relevant laws and policies. Article 62(1)(f) places all natural resources under the government's control and specifies areas classified as public land. It also mandates the government to hold public land in trust for the Kenyan people.⁵⁹ The extraction, processing, and use of resources like oil and gas should be equitable, efficient, productive, and sustainable. Furthermore, Article 66 specifically addresses the benefits that local communities should receive from the extraction of natural resources.⁶⁰ Finally, Article 69(1)(h) emphasises that resource utilisation must benefit the public.⁶¹

⁵⁵ Szablowski D, *Transnational Law and Local Struggles: Mining, Communities and the World Bank*, Bloomsbury Publishing 2007.

⁵⁶ Article 14, African (Banjul) Charter on Human and Peoples' Rights.

⁵⁷ Article 1, Constitution of Kenya 2010.

⁵⁸ Article 10(2), Constitution of Kenya 2010.

⁵⁹ Article 62(1)(f), Constitution of Kenya 2010.

⁶⁰ Article 66, Constitution of Kenya 2010.

⁶¹ Article 69(1)(h), Constitution of Kenya 2010.

2.3.3 Mining Act, 2016

The Mining Act gives effect to Articles 60, 62 (1)(f), 66 (2), 69 and 71 of the Constitution in so far as they apply to minerals; provide for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals.⁶²Section 47 of the Act establishes the requirement for mineral right holders to give preference to local goods, services, and employment.⁶³ This section mandates that companies operating in the mining sector must prioritise local content in their operations. In addition, Section 50 requires holders of mining licences to submit a Local Content Plan detailing how they will maximise local employment and procurement of goods and services.⁶⁴There is a requirement that the plan be monitored and reviewed by relevant oversight bodies. Furthermore, Section 12 states that the Cabinet Secretary is responsible for the general administration of the Act.⁶⁵ Finally, Section 17 establishes the Directorate of Mines, whose main function is to assist the cabinet secretary in administering the Act. The Directorate of Mines has the specific function of supervising and promoting activities that are related to the exploitation of mineral resources.⁶⁶

2.3.4 The Local Content Bill

The local content bill aims to implement Article 66(2) of the Constitution of Kenya, which mandates Parliament to enact laws that enable communities to benefit from investments in natural resources.

At the national level, the bill has made significant provisions for Kenyan citizens. Some of the value-added aspects it envisions include employment and training requirements for locals. Mining companies are mandated to train local individuals and enhance their skills to build their

⁶²Kenya Association of Manufacturers, <https://kam.co.ke/mining-act-2016/#:~:text=This%20Act%20was%20assented%20by.and%20any%20dealings%20in%20minerals>. On 25 September 2024.

⁶³ Section 47, Mining Act(Act No 12 of 2016).

⁶⁴ Section 50, Mining Act (Act No 12 of 2016).

⁶⁵ Section 12, Mining Act (Act No 12 of 2016).

⁶⁶ Kenya Association of Manufacturers <https://kam.co.ke/mining-act-2016/#:~:text=This%20Act%20was%20assented%20by.and%20any%20dealings%20in%20minerals> on 25 September 2024.

capacity.⁶⁷The bill also stipulates that mining companies must give priority to locals during the hiring process. However, mining companies are permitted to employ foreigners only when there are no local candidates with the necessary expertise for a specific position.⁶⁸

The bill has also established a local content committee and a secretariat within its institutional framework, marking a significant improvement to the existing legislation on local content. These two bodies are responsible for developing local content policies and ensuring that mining companies comply with them. Mining companies are required to submit local content plans to the committee, detailing the community benefits arising from their operations. The committee includes two members appointed by the Council of Governors.

While the bill is more specific concerning implementation, the bill has not yet been enacted into law and therefore is not binding.

2.3.5 Mining(Employment and Training Regulations, 2017)

The Mining (Employment and Training) Regulations, 2017 were enacted by the Cabinet Secretary under the authority granted by sections 46(3) and 223(1) of the Mining Act, 2016. The main objectives of these Regulations are to promote job creation by utilising local expertise in the mining industry and throughout the mining value chain, to retain essential skills within the country, and to develop local capacities through education, skills and technology transfer, as well as research and development. Additionally, the Regulations aim to achieve minimum levels of local employment and in-country spending across the entire mining value chain.⁶⁹

⁶⁷ Clause 25, Local Content Bill of 2018.

⁶⁸ Clause 26, Local Content Bill of 2018.

⁶⁹ Mining(Employment and Training Regulations, 2017), Legal Notice No. 82, Laws of Kenya.

2.4. The Oversight Structure under the Mining Act of 2016

a) The Cabinet Secretary for Mining

Once appointed, the Cabinet Secretary oversees the overall administration of the Mining Act.⁷⁰

b) The Mineral Rights Board

The main role of the Mineral Rights Board (MRB) is to advise the Cabinet Secretary on decisions related to issuing permits and licences, defining exploration areas, and classifying minerals.⁷¹

c) Key Directorates

The Mining Act sets up the Directorate of Mines and the Directorate of Geological Survey, with the Cabinet Secretary authorised to create additional directorates when necessary to ensure adequate access to their services.⁷² Each directorate is led by a director who helps the Cabinet Secretary implement the Mining Act in their daily duties. The Directorate of Mines manages the policies and operations of mineral activities.

d) Agencies

The National Mining Institute, as outlined in the Mining Policy, is tasked with developing skills and addressing the gap in technical expertise within the mining sector. This shortage of specialised skills has slowed the growth of the industry. The Institute provides training in mining-related fields and researches the extractive industries.⁷³

2.4.1 The Role of the Cabinet Secretary and Other Key Officials under the Mining Act

The Mining Act requires all mineral rights applications to be submitted to the Cabinet Secretary, who, based on the recommendations of the Mineral Rights Board (MRB), has the authority to

⁷⁰ Section 12, Mining Act(Act No 12 of 2016).

⁷¹ Section 31, Mining Act(Act No 12 of 2016).

⁷² Section 17, Mining Act(Act No 12 of 2016).

⁷³ By Gazette Notice No 4725 of 19 May 2017, the Cabinet Secretary established a committee to develop the framework for the establishment of a National Mining Institute.

grant, deny, or revoke these rights.⁷⁴ Additionally, the Cabinet Secretary can negotiate and sign mineral agreements with applicants or licence holders, guided by the MRB and in consultation with the National Treasury to ensure balanced terms.⁷⁵ For local participation, the Cabinet Secretary may require mineral rights holders with significant capital expenditure to list at least 20% of their company's equity on a local stock exchange within three years of commencing production.⁷⁶

2.4. An Analysis of the Regulatory and Implementation Framework of Employment Local Content

From the discussion above, it is undeniable that Kenya has no shortage of legislation concerning local content. This study argues that in fact, the existing legal framework is both comprehensive and well-structured, as far as highlighting the importance of local content in the mining industry. However, Kenya's framework lacks some aspects that inadvertently contribute to the enforcement gaps that were highlighted in the first chapter, and will further be highlighted in the next chapter.

Firstly, the Mining Act and related laws do not establish specialised bodies to monitor and enforce local content provisions, leading to inadequate oversight and inconsistent implementation. Secondly, there is no dedicated local content legislation that would otherwise provide more clarity in the enforcement of local content. These gaps are further compounded by weak institutions, as highlighted in the first chapter. Together, these deficiencies in both the law and the supporting institutional structures contribute significantly to the challenges in enforcing Section 47 and achieving its goals of local employment and skill development in Kenya's mining sector.

In summary, this chapter has established that Kenya has comprehensive laws emphasising the importance of boosting local content. However, despite their existence, there are clear enforcement gaps. The current framework lacks specialised bodies, and there is no standalone

⁷⁴ Section 32, Mining Act(Act No 12 of 2016).

⁷⁵ Field R and Shah G, Local Content and Participation in Ambani J, Wasunna M, (eds), Mining Law Commentaries on Kenya's framework legislation, Strathmore University Press, 2018, 63-76.

⁷⁶ Section 49, Mining Act(Act No 12 of 2016).

local content law to guide consistent application. The next chapter will build on this analysis by identifying the specific weaknesses in the enforcement structures and highlighting how the gaps affect labour local content and skill transfer.

CHAPTER THREE

3.1 Introduction

Kenya's mineral wealth has the potential to contribute significantly to the country's socio-economic development. However, since the discovery of minerals with the potential to be commercially exploited in Kenya, there has been a strained relationship between mining companies and the local communities.⁷⁷ An example of such tensions would be the titanium mining project in Kwale. This has been the biggest mining project in Kenya since 1911, and the interaction between the locals and the project has been hostile both before and after the beginning of the project.⁷⁸ It took many years of local struggle against the company for the community's interests to be addressed.

While the Kenyan government has enacted legislation such as the Mining Act and instituted measures to protect local content, the local institutional capacity still faces some major challenges. The local content requirements in the law often surpass the government's capacity to: set goals, establish support initiatives, and establish modes of evaluation and compliance monitoring.⁷⁹ Altenburg⁸⁰ posits that the need to correct a certain market failure must be accompanied by the capability of the government to correct it. It is a well-known fact that many African countries lack the requisite institutional capacity to manage extractive linkages.⁸¹

⁷⁷ Abuya W, 'Mining conflicts and Corporate Social Responsibility: Titanium mining in Kwale, Kenya,' *The 3, Extractive Industries and Society*, 2, 2016, 485-493.

⁷⁸ World Forest Movement, Kenya: Canadian titanium mining challenged by new government, 2003, <https://www.wrm.org.uy/bulletin-articles/kenya-canadian-titanium-mining-challenged-by-new-government>.

⁷⁹ Ngata K, 'Enhancing the benefits of local content in Kenya's Mining Industry' Published LLM Thesis, University of Nairobi, Nairobi, 2018, 56.

⁸⁰ Altenburg T 'Linkages and Spillovers Between TNC's and SMEs in Developing Countries,' UNCTAD Geneva, 3-57.

⁸¹ Mjimba V, 'The Nature and Determinants of Linkages in Emerging Minerals Commodity Sectors: A case Study of Gold Mining in Tanzania' in Hansen M, Milton Keynes and Cape Town, The Open University and University of Cape Town, 2014.

In Kenya, the Cabinet Secretary for Mining holds the primary responsibility for ensuring compliance with the provisions of the Mining Act of 2016.⁸² The Mineral Rights Board (MRB) is established to advise and assist the Cabinet Secretary on the granting, rejection, and revocation of mineral rights. The MRB is also mandated to recommend to the Cabinet Secretary whether applications for mineral rights should be approved, ensuring that companies comply with various obligations under the law.⁸³ The State Department of Mines (SDoM), regulates and monitors mining operations. It ensures compliance with mining licences, environmental protection, and local content regulations.⁸⁴ Together, these offices act as regulators in the mining industry, ensuring that the requirements of the act, in this case about local content, are adhered to.

However, as established in the previous chapters, it is clear that these offices are plagued by many challenges that hinder the effective implementation of section 47 of the Mining Act. This chapter will critically examine the challenges ranging from human resource limitations to funding deficits to answer the central question: *How do institutional weaknesses contribute to the ineffective enforcement of section 47 of Kenya's Mining Act?*

3.2 Institutional challenges hindering the implementation of labour local content requirements in Kenya's Mining Sector

As highlighted in the previous chapter of this study, several institutional weaknesses impede the achievement of the objectives of Section 47 of the Mining Act. This study contends that mining companies' failure to meet their employment local content obligations without facing consequences,⁸⁵ demonstrates a critical enforcement gap that my research seeks to explain. This section will rely on reports from key actors in the mining sector to demonstrate the challenges faced in the industry.

⁸² Section 12, Mining Act (Act No. 16 of 2016).

⁸³ Section 12, Mining Act (Act No. 16 of 2016).

⁸⁴ Section 20, Mining Act (Act No. 16 of 2016).

⁸⁵ World Forest Movement, Kenya: Canadian titanium mining challenged by new government, 2003, <https://www.wrm.org.uy/bulletin-articles/kenya-canadian-titanium-mining-challenged-by-new-government>.

3.2.1. Human Resource Limitations

One challenge is the shortage of trained and specialised personnel within the Ministry of Mining. In 2019, SDoM had only 11 mine inspectors, leaving a shortfall of 221 inspectors.⁸⁶ As of 2022, the Directorate of Mines had an authorised technical staff establishment of 235, but only 89 positions were filled at the time of the audit, resulting in a deficit of 146 staff. The Ministry also lacks sufficient technical expertise to verify compliance.⁸⁷ For example, evaluating whether mining companies have engaged local suppliers or employed Kenyan workers often requires expertise in contract management and procurement oversight,⁸⁸ which is in short supply. Additionally, the lack of robust training programs for existing staff widens this gap, leaving critical tasks such as field inspections, audits, and stakeholder engagement incomplete or inadequately executed.⁸⁹

The situation in Kenya's mining sector reinforces this research's main argument that institutional weaknesses are central to the policy's ineffective implementation.

3.2.2 Inadequate Funding and Infrastructure

The Ministry of Mining operates with limited financial resources, which constrains its ability to implement local content policies effectively.⁹⁰ Budgetary restrictions hinder the acquisition of necessary infrastructure, such as digital monitoring tools and data management systems, essential for tracking compliance.⁹¹ For instance, the Ministry has been unable to complete a centralised database for local suppliers, leaving companies with no comprehensive resources to identify

⁸⁶ Office of the Auditor General, Performance Audit Report on Monitoring of Mining Operations by the State Department of Mining April 2019. [Monitoring of Mining Operations by State Department of Mining \(2019\)](#).

⁸⁷ Republic of Kenya Local Content Policy, Ministry of Trade and Enterprise development, 2020. [Local Content Policy](#).

⁸⁸ United Nations Development Programme and the Ministry of Mining, The Kenya Country Mining Vision (KCMV) Report, 2017.

⁸⁹ United Nations Development Programme and the Ministry of Mining, The Kenya Country Mining Vision (KCMV) Report, 2017.

⁹⁰ Performance Audit Report on Monitoring of Artisanal Mining Operations by the Ministry of Petroleum and Mining 2022, [Monitoring of Artisanal Mining Operations \(2022\)](#) on 10 October 2024.

⁹¹ Local Content Policy, September 2020, [Local Content Policy?](#)

Kenyan goods and services providers. Without such tools, the Ministry struggles to hold companies accountable for failing to meet local content targets.⁹²

The 2019 and 2022 auditor general audits revealed that the State Department of Mines (SDoM) faces severe operational inefficiencies.⁹³ While the Ministry has established a mining cadaster portal⁹⁴ to manage licensing and monitor operations,⁹⁵ regional offices lack the necessary computer and network infrastructure to access and utilise the system effectively. This non-functional portal at the regional level creates a major gap in monitoring, leaving key systems underutilised and compliance unchecked.

Further, the Ministry's ability to conduct regular inspections and supervision is hindered by logistical challenges, particularly the use of unreliable vehicles. Each regional office is allocated only one vehicle, which is often old and prone to breakdowns.⁹⁶ The 2022 audit highlighted that vehicles in key mining regions such as Taita Taveta, Kitui, and Kisumu were grounded during the assessment, effectively halting inspection activities in these areas.⁹⁷ The inability to monitor mining operations consistently weakens the enforcement of the Mining Act. According to the audits, there is little effort to track whether the rules outlined in the Act are being followed. Inspections are infrequent and poorly coordinated, and key compliance data is either missing or outdated. Without reliable oversight, many of the Act's goals, such as employment of the local community, remain unachieved. This study contends that the deficit in resources not only impairs the ministry's ability to ensure the enforcement of local content requirements but also exacerbates the overall enforcement gap.

⁹² United Nations Development Programme and the Ministry of Mining, The Kenya Country Mining Vision (KCMV) Report, 2017.

⁹³ Local Content Policy, September 2020 , [Local Content Policy?](#)

⁹⁴ This is a platform by the Ministry of Mines that allows all stakeholders in the Mining Industry to interact with the Ministry of Mines.

⁹⁵ Local Content Policy, September 2020 , [Local Content Policy?](#)

⁹⁶ Performance Audit Report on Monitoring of Artisanal Mining Operations by the Ministry of Petroleum and Mining 2022, <https://www.oagkenya.go.ke/wp-content/uploads/2023/01/P.A.-MINING-NOV.-22-compressed.pdf> on 10 October 2024.

⁹⁷ Performance Audit Report on Monitoring of Artisanal Mining Operations by the Ministry of Petroleum and Mining 2022, [Monitoring of Artisanal Mining Operations \(2022\)](#) on 10 October 2024.

3.2.3 Weak coordination among Government Agencies

Enforcing local content requirements involves multiple stakeholders, including the Kenya Revenue Authority (KRA), the Ministry of Labour, and county governments. However, poor coordination between these entities creates inefficiencies.⁹⁸ Vaaland et al⁹⁹ argue that overcoming barriers in the mining sector requires recognising the interdependence of various actors, including foreign and local companies, educational and research institutions, industrial regulators, infrastructure providers, financial institutions, and the legal framework as a whole.

For instance, while county governments are better positioned to monitor community-level compliance, the lack of a clear framework for collaboration with the national government often results in overlapping mandates or missed responsibilities.¹⁰⁰ Benton attributes this state to the pervasive mistrust between the local communities, county governments and the national government, due to some cases of opaque decision-making processes and limited local involvement, which ultimately translates into challenges by county officials and national government officials in the Ministry of Mines in implementing their legal mandate.¹⁰¹ This weakens enforcement mechanisms and may allow mining companies to exploit gaps in oversight.¹⁰²

This state has also been attributed to the lack of political will¹⁰³ among key decision-makers. This lack of urgency is caused by competing interests, which may include lobbying for large companies that may want to reduce their operational costs. Policymakers often face the pressure

⁹⁸ United Nations Development Programme and the Ministry of Mining, The Kenya Country Mining Vision (KCMV) Report, 2017.

⁹⁹ Vaaland I, Soneye O, Owusu A, 'Local content and struggling suppliers: a network analysis of Nigerian oil and gas industry', 5399-5413.

¹⁰⁰ United Nations Development Programme and the Ministry of Mining, The Kenya Country Mining Vision (KCMV) Report, 2017.

¹⁰¹ Benton D, 'Corruption, transparency and regulation: how at risk is Kenya's mining sector?', May 2020, <https://miningdigital.com/supply-chain-and-operations/corruption-transparency-and-regulation-how-risk-kenyas-mining-sector?> on 23 December 2024.

¹⁰² Local Content Policy, September 2020, [Local Content Policy?](#)

¹⁰³ In this case political will refers to the commitment of government officials and policy makers to prioritise and enforce certain policies.

to prioritise short-term economic gains, such as attracting Foreign Direct Investment(FDI) at the expense of local communities.¹⁰⁴

3.2.4. Ineffective Monitoring and Evaluation Systems

The Ministry lacks robust monitoring and evaluation frameworks to assess the effectiveness of local content plans.¹⁰⁵ For instance, there is no consistent system for reporting and verifying whether companies are meeting their commitments. This deficiency makes it difficult to identify non-compliance or areas requiring improvement. Without reliable data, the Ministry cannot make evidence-based decisions or adjust its strategies to enhance the impact of local content requirements.¹⁰⁶

3.2.5 Social issues contributing to the enforcement gap

One of the pressing social issues is insecurity. Some mining regions face security challenges arising from local conflicts and cross-border threats. The presence of armed groups in some mining regions¹⁰⁷necessitates additional security measures that increase costs. This kind of environment hampers the implementation of local content by the institutions mandated to do so.¹⁰⁸

In addition to this, there is widespread corruption in Kenya, which undermines the implementation of government policies, including local content policies.¹⁰⁹Corruption risk

¹⁰⁴ UNESCO Lecture Series, Wasunna M, ‘Earth Materials: Mineral extraction and Communities’ <https://www.icrag-centre.org/t4media/Melba%20Wasunna.pdf?>

¹⁰⁵United Nations Development Programme and the Ministry of Mining, The Kenya Country Mining Vision (KCMV) Report, 2017.

¹⁰⁶ Local Content Policy, September 2020 , [Local Content Policy?](#)

¹⁰⁷ An example of such a community is the makeshift shanty mining town of Illo in Dabel, Marsabit and accommodates over 20,000 people. It has been associated with crime, sexual violence, trafficking.

¹⁰⁸ Enact, A hopeful mix between governance and gold in Kenya, <https://enactafrica.org/enact-observer/a-hopeful-mix-between-governance-and-gold-in-kenya?> On 2 January 2025.

¹⁰⁹ Media Fact Sheet on Compliance and Gaps in Beneficial Ownership in the Mining Sector in Kenya, March 2024, [MEDIA FACT SHEET ON COMPLIANCE AND GAPS IN BENEFICIAL OWNERSHIP IN THE MINING SECTOR IN KENYA?](#) On 2 January 2025.

assessments have identified corruption as one of the major vulnerabilities in the mining sector, for example, bribery in the awarding of mining licences and permits, which ultimately compromises the enforcement of local content regulations.¹¹⁰

In summary, the interplay of these challenges has created an environment where the objectives of Section 47 remain largely aspirational. This analysis reinforces the fact that institutional weaknesses are a key driver of the enforcement gap.

Addressing these challenges requires a wholesome approach to the issue, and one that addresses the issues at the root. Realising the potential in the Kenyan mining industry requires a concerted effort to attract investment, develop the necessary infrastructure, and ensure that the benefits of mining are equitably distributed¹¹¹ Without urgent reforms, the promises and hope that local content gives in the mining sector will sadly remain unfulfilled.

¹¹⁰ Transparency International Kenya, Corruption Risk Assessment in Mining Awards, 2017, [Corruption Risk Assessment in Mining Awards, 2017 | Transparency International Australia](#) on 8 January 2024.

¹¹¹ International Institute for Sustainable Development, Designing Local Content Policies in Mineral-rich Countries, 2018, 2-6.

CHAPTER FOUR

4.1. Introduction

Chapters two and three of this study analysed the challenges in the enforcement of labour local content obligations. This analysis has revealed that there are major institutional problems that the government will have to contend with if benefits for the local community are to be reaped. This chapter will consider another jurisdiction in Africa, which has designed and implemented local content with a considerable degree of success. Ghana has managed to achieve 95% local employment by multinationals in Ghana and an overall 99% staffing in the country's mining operations.¹¹² This comparison is founded on the desire to improve the benefits accruing to local communities from mineral resources in Kenya, while aligning the mineral sector to the objectives of Section 47 of the 2016 Mining Act.

In addition to the impressive statistics in Ghana's local employment rates, Ghana has been selected for this comparative study because both Kenya and Ghana have various socio-economic, political, legal and cultural similarities. Both Kenya and Ghana have been classified as lower-middle-income economies by the World Bank,¹¹³ with the mining sector contributing significantly.¹¹⁴ Additionally, they both have mining acts that act as the primary legislation for the mining sector.¹¹⁵ Finally, both countries have a strong emphasis on community engagement and accruing local benefits from mining operations.¹¹⁶

¹¹² Ghana Chamber of Mines, Annual Report 2023, <https://ghanachamberofmines.org/wp-content/uploads/2025/01/Annual-Report-2023-PERFORMANCE-OF-THE-MINING-INDUSTRY-IN-2023.pdf>

¹¹³ World Bank Group, 2023, on 30 January 2025. [Kenya Overview: Development news, research, data | World Bank](#).

¹¹⁴ Ghana's mining sector contributes 7.5% to the national GDP, (Ghana Statistical Service) while in Kenya it contributes around 1% (Kenya National Bureau of Statistics, 2023). The Kenyan figure is yet to go up, with the government outlining its intentions to grow the industry and derive more benefit.

¹¹⁵ This is the Mining Act for Kenya and the Mines and Minerals Act of Ghana.

¹¹⁶ This can be seen in the enforcement of local content regulations in both primary and subsidiary legislation.

Ghana also has individual strengths. Ghana is one of the few countries that has dedicated legislation for local content.¹¹⁷ Moreover, she has been hailed as one of the few African countries that has developed a comprehensive local content framework in the mining sector.¹¹⁸ Her local content has a huge focus on local employment, which is the major focus of this research. Furthermore, under the law, the government plays a major role in regulating the mining industry.¹¹⁹ This forms a firm foundation for the comparative analysis as it offers a benchmark by which the Kenyan regulatory authorities could learn.

That being said, this study also recognises various differences that may affect the comparative analysis. Ramdoo¹²⁰ notes that countries implement Local Content Policies (LCPs) for various reasons, including political, strategic, economic, and social motivations. Economically, they can create jobs and develop local suppliers if the domestic industry is competitive and meets the required standards. In more advanced mining economies, there is often a strategic interest in developing expertise in high-tech industries. Ramdoo provides the example of Chile, which supports local small and medium-sized enterprises (SMEs) in creating innovative solutions for the copper mining industry. By developing a niche in this area, Chile aims to build competitive advantages that can be exported globally, thereby enhancing the country's economic standing.¹²¹ This study recognises that both Kenya and Ghana may have different reasons for implementing local content and that implementation contexts vary from country to country. This means that different designs may produce different outcomes in different countries.¹²² The selection of

¹¹⁷ Columbia Center on Sustainable Investment, Ghana- Petroleum December, 2019 <https://ccsi.columbia.edu/sites/default/files/content/docs/Local%20Content%20-%20Ghana%20Petroleum%20-%20CCSI%20-%20December%202019.pdf> on 7 February 2025.

¹¹⁸ Ngata K, 'Enhancing the benefits of local content in Kenya's Mining Industry' Published LLM Thesis, University of Nairobi, Nairobi, 2018.

¹¹⁹ Mushameza E and Okira J, 'Local Content Frameworks in the African Oil and Gas Sector: Lessons from Angola and Chad', Africa Regional Evidence Papers, 2016.

¹²⁰ International Institute for Sustainable Development, Designing Local Content Policies in Mineral-rich Countries, 2018, 2-6.

¹²¹ International Institute for Sustainable Development, Designing Local Content Policies in Mineral-rich Countries, 2018, 2-6.

¹²² Esteves A, Coyne B, Moreno A, 'Local Content Initiatives: Enhancing the Sub-national Benefits of the Oil, Gas and Mining Sectors', Natural Resources Governance Institute, 2013.

Ghana as a country for a comparative study has been greatly informed by its success in enhancing local content. The results, therefore, for Kenya might be slightly different based on Kenya's unique circumstances.

Additionally, Ghana has had a long history in gold production, with a legacy dating back to colonial times.¹²³This has allowed Ghana to refine its approaches to local content.¹²⁴ Kenya, on the other hand, is still at the developmental stage of mining.¹²⁵The policy framework has therefore been justifiably focused on establishing the sector and creating stability, rather than on mature policies. This study will therefore give recommendations, while accounting for the fact that Kenya may require transitional mechanisms to build capacity.

Furthermore, years of mining operations in Ghana have contributed to a skilled workforce with industry-specific training programs.¹²⁶Ghana has also aligned academic curricula with industry needs.¹²⁷On the other hand, the relative infancy of the mineral sector in Kenya means that local expertise is still developing. Kenya may therefore find it difficult to rapidly create a skilled workforce to cater for labour local content. This study will take into account these differences.

Despite the differences highlighted, this study affirms that learning from Ghana, a country with various similarities to Kenya, promises positive results.

4.2. Ghana: Setting the stage

It is expected that regions endowed with mineral resources experience exponential growth and development. However, this relationship is not universally applicable, for example, in sub-Saharan Africa, the average per capita income in the region was at \$1645, which was

¹²³ Hilson G. and Potter C. Structural Adjustment and the Mining Industry in Ghana: Past, Present and Future, 29 Resources Policy 1, 2003, 1-3.

¹²⁴ World Bank, Kenya: Extractives, Mining and Local Content Opportunities and Challenges 2021 [Kenya: Development news, research, data | World Bank](#) on 7 February 2025.

¹²⁵ World Bank, Kenya: Extractives, Mining and Local Content Opportunities and Challenges 2021 [Kenya: Development news, research, data | World Bank](#) on 7 February 2025.

¹²⁶ Hilson G. and Potter C. Structural Adjustment and the Mining Industry in Ghana: Past, Present and Future, 1-3.

¹²⁷ Extractives Industries Transparency Initiative (EITI), <https://eiti.org/countries/ghana> on 7 February 2025.

significantly lower than Europe's \$38,234¹²⁸ Yet Sub-Saharan Africa boasts of larger natural resource deposits.¹²⁹

Ghana has had a rich mining history, dating back to the fifteenth century.¹³⁰ It is well endowed with minerals like diamond, gold, bauxite and manganese.¹³¹The mining sector has also been an important part of the Ghanaian economy. Ghana is a significant gold producer, ranking second after South Africa.¹³² While Ghana has one of Africa's largest gold reserves, Ghana still has had to face challenges in ensuring that the vast mineral resources translate to benefits, to be more specific, employment benefits to the local people.¹³³

Local content is one of the ways that resource-rich countries increase the benefits they attain from resource extraction to their economies.¹³⁴Countries have traditionally relied on fiscal measures such as royalties and other tax measures.¹³⁵However, in the past decade, there have been various resource economies that rely on non-fiscal measures. They are widely referred to as local content and value addition(LCVA). Among other things, they seek to broaden

¹²⁸ World Bank Group, 2022, World Development Indicator, on 28 January 2024 [WorldWorld Development Indicators | DataBank](#) .

¹²⁹ Baafi J, Unraveling Ghana's Resource Curse Hypothesis: Analyzing Natural Resources and Economic Growth with a Focus on Oil Exploration, 12, Economics of Energy Market, 4, 2024.

¹³⁰ Ghana's Minerals and Mining policy. [MINERALS AND MINING POLICY OF GHANA](#)

¹³¹ Ghana's Minerals and Mining policy. [MINERALS AND MINING POLICY OF GHANA](#)

¹³² Ghana's Minerals and Mining policy. [MINERALS AND MINING POLICY OF GHANA](#)

¹³³ Tuffor J, Aubynn T, Quayson A, Local Content and Value Addition in Ghana's Mineral, Oil and Gas Sectors: Is Ghana Getting It Right?, African Center for Economic Transformation, 2015. [Local Content and Value Addition in Ghana's Mineral, Oil and Gas Sectors - ACET](#)

¹³⁴ Tuffor J, Aubynn T, Quayson A, Local Content and Value Addition in Ghana's Mineral, Oil and Gas Sectors: Is Ghana Getting It Right?, African Center for Economic Transformation, 2015. [Local Content and Value Addition in Ghana's Mineral, Oil and Gas Sectors - ACET](#)

¹³⁵ Tuffor J, Aubynn T, Quayson A, Local Content and Value Addition in Ghana's Mineral, Oil and Gas Sectors: Is Ghana Getting It Right?, African Center for Economic Transformation, 2015. [Local Content and Value Addition in Ghana's Mineral, Oil and Gas Sectors - ACET](#)

opportunities for employment and trigger broad-based growth of the sector.¹³⁶ Ghana is one of the countries that has adopted such models, with impressive results.

Since 2010, Ghana has been developing local content policies for the hydrocarbon and the solid minerals sectors.¹³⁷ A new era was ushered in by the passing of the Minerals and Mining (General) Regulations, 2012-L1 2173. These regulations solidified Ghana's local content regime. Ghana is one of the few countries that has a dedicated legislation to deal with local content in the African continent. Before, the Minerals and Mining Law of 2006 had the goal of promoting a localisation policy.¹³⁸ However, the frameworks in the act were generic, leaving the enforcement authorities with a bit too much discretion.¹³⁹

As of 2022, 30,000 people had been directly employed in Ghana's mining sector, together with 1.1 million indirect workers.¹⁴⁰ In the year 2023, 12,674 people were employed by companies that are members of the Ghana Chamber of Mines. This was an increase from the year 2022, when 11,284 people were employed. Out of these numbers, 99% of employees were citizens of Ghana, while the rest were expatriates.¹⁴¹ Furthermore, multinational mining firms in Ghana reported about 95% Ghanaian employment in their operations.¹⁴² These statistics portray an upward trend in the local employment of Ghanians in the mining sector. This can be attributed to various factors, but most importantly, a testament to how a well-structured legal and institutional framework can enhance enforcement and ensure the effective implementation of mining laws.

¹³⁶ Tuffor J, Aubynn T, Quayson A, Local Content and Value Addition in Ghana's Mineral, Oil and Gas Sectors: Is Ghana Getting It Right?, African Center for Economic Transformation, 2015. [Local Content and Value Addition in Ghana's Mineral, Oil and Gas Sectors - ACET](#)

¹³⁷ Tuffor J, Aubynn T, Quayson A, Local Content and Value Addition in Ghana's Mineral, Oil and Gas Sectors: Is Ghana Getting It Right?, African Center for Economic Transformation, 2015. [Local Content and Value Addition in Ghana's Mineral, Oil and Gas Sectors - ACET](#)

¹³⁸ Section 50(3) Minerals and Mining Law, Act 703(Ghana).

¹³⁹ Section 50(3) Minerals and Mining Law, Act 703(Ghana).

¹⁴⁰ Ghana Chamber of Mines, Performance of the Mining Industry in 2023, [PERFORMANCE OF THE MINING INDUSTRY IN 2023](#) .

¹⁴¹ Statista, number of employees in the mining sector in Ghana from 2018 to 2023, [Ghana: number of mining sector employees 2023 | Statista](#). On 28 January 2025.

¹⁴² Newmont Ghana Sustainability Report 2022, [Newmont 2022 Sustainability Report](#) on 28 January 2025.

4.3. The Forces Behind Ghana's Local Content Success

Ghana's mining sector has transformed, shaped by key factors that have driven its progress. This part explores how the country has navigated its journey toward achieving local employment content. It argues that two major elements have played a crucial role in this success. First, Ghana's strong regulatory framework has provided a solid foundation for enforcing local content policies. Additionally, the country's institutional capacity has ensured effective implementation and oversight. This part will shed light on the lessons that can be drawn from Ghana's experience

4.3.1. A Robust Regulatory Framework

The laws that regulate employment local content in the mining industry in the country of comparison, Ghana, are both statutory and constitutional. The Ghanaian Constitution is the highest legal authority that stipulates how mining agreements should be made. The Minerals and Mining Act, 2006(Act 703) consolidates the law relating to minerals and mining. The Minerals Commission Act 1993(Act 450) establishes the Mining Commission, which is the main regulatory body¹⁴³

4.3.1.1 The Constitution of Ghana

While the Constitution does not explicitly mention local content, it establishes various principles that support local content. For example, the Constitution mandates the state to take all necessary actions to ensure the maximum welfare, freedom and happiness of every person in Ghana.¹⁴⁴In addition, the constitution encourages the state to undertake a balanced development of all regions, promoting effective resource mobilisation.¹⁴⁵

4.3.1.2. Minerals and Mining Act, 2006 (Act 703)

The Minerals and Mining Act regulates the exploration and exploitation of minerals in Ghana. It contains various amendments for example the Minerals and Mining (Amendment) Act, 2015 and the Minerals and Mining (Amendment) Act, 2019; the Minerals Commission Act, 1993; the

¹⁴³ Ghanam Bentsi-enchill, Letsa and Ankomah, <https://bentsienchill.com/wp-content/uploads/2023/05/Lex-Africa-Mining-Guide.pdf>

¹⁴⁴ Article 36(1), Constitution of Ghana (1993).

¹⁴⁵ Article 36(4), Constitution of Ghana (1993).

Minerals Development Fund Act, 2016; the Minerals Income Investment Fund Act, 2018; and the Kimberley Process Certificate Act, 2003.

Under this legislation, holders of mineral rights are required to hire a minimum number of Ghanaian staff in various job groupings, subject to a few exceptions.¹⁴⁶The Minerals Commission¹⁴⁷ works closely with mining companies to ensure that this requirement has been met. The law also requires licensees to submit a program that details how the training of Ghanians will be done and including the phased replacement of expatriates.¹⁴⁸This law specifically puts a maximum on the number of expatriates a licence holder can employ. After six years, the maximum expatriate numbers should not exceed 10 percent of the total senior and management staff. Clerical positions and unskilled labour is to be reserved for the locals. Finally, a detailed plan to replace foreign workers is to be approved by the Minerals Commission.

One of the key strategies adopted by many countries to improve local content is to require mining companies to submit local content plans proposing to enhance the employment of locals. The Kenyan Mining Act of 2016, like the Ghanaian Act, has provided for the submission of : a local employment and training plan, a local product plan, a procurement plan and a succession plan. The focus of this study is the local employment plan and the succession plan that proposes the training and granting of jobs for Kenyan citizens and proposes the replacement of expatriates with Kenyans respectively. ¹⁴⁹In this regard, the Kenyan and Ghanaian legislations have some similarity.

4.3.1.3. Minerals and Mining (Local Content and Local Participation) Regulations, 2020 LI 2431

The regulations were created to promote the creation of jobs for the Ghanaian people, the use of local services and goods as well as to develop the capacity and competitiveness of local

¹⁴⁶Ackah, Godfred C, and Mohammed A, 'Local Content Law and Practice: The Case of Ghana', in Page J, and Tarp F, Mining for Change: Natural Resources and Industry in Africa, Oxford, 2020, 139-160.

¹⁴⁷ Government agency in Ghana with the mandate of developing and coordinating mineral sector policies and monitoring their implementation.

¹⁴⁸ Section 51, Minerals and Mining Law, Act 703(Ghana).

¹⁴⁹ Sections 61, 68. 72, 86, 101 and 106 Mining Act, (Act No. 12 of 2016).

businesses in the mining sector. The legislation aims to ultimately achieve full localisation and therefore eliminate reliance on expatriates and foreign service providers. The regulations apply to holders of mineral licences, and the GMC is the sector regulator.

An applicant for a mineral right is required to submit a localisation programme that details all the proposals for the employment of Ghanians.¹⁵⁰The legislation requires that the proposals should contain details such as the curriculum vitae for the expatriates to be employed and details of how the mineral holder intends to train Ghanians to replace the expatriates. One observation is that there is a notable expansion of the positions reserved for Ghanians. For example, the General Manager position must be localised within three years from the start of mining operations. In the regulations as well, non-technical service and non-engineering service roles for example, legal, accounting and human resource roles ,are reserved for Ghanians.

On Monitoring and enforcement, the entities are required to submit annual reports to the commission showing their compliance. They are also required to submit semi-annual reports to show the implementation of the procurement plan.

Kenya, on the other hand, lacks a specific local content legislation. There is a current local content bill that has not yet been passed to law. Assuming the bill is passed into law soon, there are still some lessons to be learned from Ghana's regulations. For instance, Kenya's bill does not stipulate employment quotas. Grace and Circle suggest setting employment quotas as an approach to implementing local content policies.¹⁵¹These quotas can apply either to specific roles or to the mining project as a whole. For instance, Kazakhstan has varying minimum targets for employing Kazakh nationals, with management positions requiring at least 70% local employees and technical or specialist roles needing a minimum of 90%.¹⁵² In contrast, Tordo disagrees with

¹⁵⁰ Regulation 4, Minerals and Mining (General) Regulations, 2012(L.I 2173).

¹⁵¹ Grice T, ' Policies and Strategies for Implementing Local Content: Local Content in the Mining Sector, Stimulating Direct Employment?' International Institute for Sustainable Development IISD, [Local Content Policies in the Mining Sector: Stimulating direct local employment | International Institute for Sustainable Development](#) on 10 October 2024.

¹⁵² Grice T, ' Policies and Strategies for Implementing Local Content: Local Content in the Mining Sector, Stimulating Direct Employment?' International Institute for Sustainable Development IISD, [Local Content Policies](#)

the use of quotas, arguing that imposing them at the outset of a programme, particularly when training is necessary to address skill gaps, can result in suboptimal outcomes.¹⁵³Nwaokoro supports Tordo's view, adding that such quotas could be perceived as discouraging investment.¹⁵⁴

Despite the dissents from the authors above, as seen in the case of Ghana, quotas go a long way in improving compliance with local content requirements. This study therefore, proposes that if tailored well to the Kenyan context, it would be a useful addition to the framework.

4.3.1.4. The Mineral Commission Act 1993 (Act 450)

This act primarily establishes the Minerals Commission and outlines its functions and administrative structures. While the act does not explicitly detail local content provisions, it grants the Commission the authority to regulate and manage the utilisation of mineral resources in Ghana. This regulatory oversight includes the implementation of local content and local participation regulations within the mining sector.

Finally, there is a need for Kenya to establish legislation that deals with enforcement mandates for any mineral rights, as seen in the Minerals Commission Act of Ghana. This will provide clarity as to the role of the governing body. This, as previously discussed, has resulted in an, and ensure accountability gap in enforcing local content.

4.3.2 *A Strong Institutional Framework*

For local content to work, there needs to be institutions to facilitate and support contracts, including those that can reduce the information asymmetry and reduce the monitoring

[in the Mining Sector: Stimulating direct local employment | International Institute for Sustainable Development](#) on 10 October 2024.

¹⁵³ Anouti et al, Local Content Policies in the Oil and Gas Sector, World Bank Publications, 2013. <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/549241468326687019/local-content-in-the-oil-and-gas-sector> on 14 October 2024.

¹⁵⁴Nwaokoro C, A Critical Analysis of the Challenges to the Implementation of Local Content in Nigeria Oil and Gas Industry, Centre for Energy, Petroleum and Mineral Law and Policy, 2011.

costs.¹⁵⁵Ghana’s primary mining legislation establishes the Minerals Commission as the primary regulatory body.¹⁵⁶ It is mandated by the constitution and set up by the Minerals Commission Act. The body is tasked with the management, regulation and use of mineral resources in Ghana. It is also responsible for the coordination of policies that relate to mineral resources.¹⁵⁷

Various factors have made the work of the commission successful. First, the Ghana Minerals Commission (GMC) has a well-defined mandate to manage and regulate the use of Ghana’s mineral resources.¹⁵⁸This clarity is important as it avoids overlaps with other agencies. It also ensures accountability and a more focused approach to mineral management.¹⁵⁹ While the Kenyan Mining Act establishes the position of the cabinet secretary, there is no clear delineation of functions and duties, especially concerning the enforcement of local content requirements. There is a possibility of duplication between the ministry and the Directorate of Mines. A clearer delineation of roles and responsibilities could significantly enhance the efficiency of enforcement.

The Commission is significantly autonomous. It is established as a body corporate with perpetual succession, capable of suing and being sued, and acquiring, holding or disposing of property.¹⁶⁰This corporate status grants the body a degree of operational independence. This reduces political interference and allows the commission to function effectively. This independence allows the commission to make unbiased decisions in the interest of proper resource management and benefit for the local community.¹⁶¹ The directorate of mines under the

¹⁵⁵Hansen, Michael W, Buur, Laar, Therkildsen, Ole, Kjaer, Mette, ‘The Political Economy of Local Content in African Extractives: Lessons from Three African Countries’, Dansk Selskab Statskundskab, Vejje, Denmark,2014. [The political economy of local content in African extractives.](#)

¹⁵⁶ Section 1, Minerals Commission Act, Act 450, (Ghana).

¹⁵⁷ Ghanam Bentsi-enchill, Letsa and Ankomah, <https://bentsienchill.com/wp-content/uploads/2023/05/Lex-Africa-Mining-Guide.pdf> on 27 January 2025.

¹⁵⁸ Section 2, Minerals Commission Act 1993, Act 450,(Ghana).

¹⁵⁹ World Bank in Ghana, 2020 [The World Bank in Ghana](#) on 27 January 2025.

¹⁶⁰ Section 1, Minerals Commission Act 1993, Act 450 (Ghana).

¹⁶¹ Organisation for Economic Co-operation and Development, Revenue Statistics in Africa: Ghana,2021.

Kenyan Mining Act does not enjoy such autonomy, especially in decision-making. Strengthening its independence could significantly improve its regulatory efficiency.

Additionally, the Ghana Mineral Commission has mechanisms to generate revenue, for example, royalties, fees and charges.¹⁶² This financial capacity enables the body to fulfil its duties without relying on government budgetary allocations, which can be insufficient, as demonstrated in the Kenyan case.¹⁶³ The Kenyan Mining Act provides for the establishment of a Mineral Royalty Fund. However, the operationalisation of the fund has been slow due to budgetary challenges. Strengthening independent revenue generation could enhance the ministry's enforcement capacity by overcoming some of the hurdles highlighted in chapters two and three.

The Mining Sector can get a bit sophisticated due to the nature of its operations. The GMC is staffed with experts in geology, mining engineering, environmental science and law. The multidisciplinary team improves capacity to follow up and enforce regulations, as well as address any challenges that may arise.¹⁶⁴

Finally, the GMC has clear monitoring and enforcement mechanisms to ensure compliance with local content requirements.¹⁶⁵ For example, inspections, audits and the use of sanctions for any violations. There are also very clear penalties specified in the legislation. For example, the non-compliance with the approved localisation program incurs a penalty requiring one year's salary of the expatriate involved for one month.¹⁶⁶

¹⁶² Section 17, Mineral Commission Act, Act 450 (Ghana).

¹⁶³ International Monetary Fund Country Report No. 24/14.

¹⁶⁴ Section 9 of the Act allows the commission to engage the services of experts and consultants as necessary for the efficient discharge of their functions.

¹⁶⁵ Section 26, Minerals Commission Act, Act 703(Ghana).

¹⁶⁶ Columbia Center On Sustainable Investment, Local Content Ghana- Mining 2014, [LOCAL CONTENT](#) on 27 January 2025.

The Commission has made notable strides in the enforcement of local content regulations within the mining industry in Ghana. For example, GMC has managed to expand the procurement list¹⁶⁷ to include more items. The fifth edition of the list, which was launched in 2023, comprises about 50 items that mining companies are required to procure locally. This expansion has resulted in job creation and the use of local expertise in the mining sector.¹⁶⁸

Kenya can learn many lessons from the operations of the GMC in Ghana. While Kenya's Mining Act assigns responsibility to the cabinet secretary and the directorate of mines, there is still ambiguity around who enforces. Kenya needs to clarify, through legislation, the responsibilities within the Ministry of Mines and the Directorate of Mines. This will improve accountability. In addition to this, the Directorate of Mines lacks autonomy, making it susceptible to political influence. Kenya should consider granting more autonomy to the directorate of mines, allowing them to make impartial decisions that prioritise the development of the community.

Chapter three of this study showed that budgetary constraints as provided for compliance enforcement, weak monitoring systems have been a major cause of the regulatory gap in Kenya's mining sector. Kenya should also strengthen mechanisms for independent revenue collection to hinder. Strengthening monitoring units and imposing stricter penalties could enhance the government's capacity to enforce local content rules compliance.

This study recognises that establishing an independent monitoring body presents both an opportunity and a challenge. The structural overhaul is likely to be financially burdensome, considering Kenya's existing resource constraints.

¹⁶⁷ This is a list that specifies the specific number of goods and services that mining companies are required to acquire locally.

¹⁶⁸ Minerals Commission of Ghana, Major Boost for Local Banks and Ghanaian- Owned Insurance Companies https://www.mincom.gov.gh/press-releases/major-boost-for-local-banks-and-ghanaian-owned-insurance-companies/?utm_source on 7 February 2025.

As an interim mechanism, but not a substitute for strong enforcement, Community Development Agreements (CDAs) may be used. A CDA is a legally binding agreement between a mining company and the affected local community, outlining the company's commitments to community development initiatives such as employment, training, infrastructure and other social investments.¹⁶⁹ Section 109(i) of the Mining Act requires large-scale mining companies to enter into CDAs.¹⁷⁰ Despite their inclusion in the Act, there has been limited scholarship in Kenya on their role in promoting local employment and skill transfer. This study aims to fill that gap by showing that they have the potential to supplement the enforcement of Section 47, especially where oversight is weak as shown in the previous chapters of this study.

An example of their success is demonstrated by Base Titanium's CDA with communities in Kwale County. In 2019, the company signed an agreement with community leaders in the presence of government representatives. This agreement laid out a framework for shared benefits, for example, education and most importantly, employment initiatives.¹⁷¹ One of the major efforts that emerged from this agreement is the Recognition of Prior Learning (RPL) programme, which assessed and certified workers' skills acquired on the job. One hundred and twenty employees benefited from the scheme,¹⁷² acquiring the relevant documentation commensurate with their skills.¹⁷³ In addition to this, Base reportedly invested about 70 million annually in the training of staff and community development.¹⁷⁴ The company also runs graduate trainee programmes and industrial attachment programmes.¹⁷⁵

This shows that CDAs, when backed by genuine commitment by mining companies, can contribute to community involvement and job creation, which are the key objectives of section

¹⁶⁹ Columbia Center on Sustainable Investment, Emerging Practices in Community Development Agreements, 2016 [EMERGING PRACTICES IN COMMUNITY DEVELOPMENT AGREEMENTS](#) on 18 April 2025.

¹⁷⁰ Mining Act (Act No. 16 of 2016).

¹⁷¹ Kenya News Agency, 'Mining Firm Sign Cooperation Agreement with Communities' 2019 [Mining firm sign cooperation agreement with communities – Kenya News Agency](#) on 18 April 2025.

¹⁷² Kenya News Agency, 'Base Titanium Enhanced Employee Skills Through RPL Programme' [Base Titanium enhances employee skills through RPL programme](#) on 18 April 2025.

¹⁷³ Kenya News Agency, 'Base Titanium Enhanced Employee Skills Through RPL Programme' [Base Titanium enhances employee skills through RPL programme](#) on 18 April 2025.

¹⁷⁴ Base Titanium, 'Training and Development' [Building Skills - Base Titanium](#) on 18 April 2025.

¹⁷⁵ Base Titanium, 'Training and Development' [Building Skills - Base Titanium](#) on 18 April 2025.

47. However, this study also notes that relying on corporate goodwill alone risks entrenching voluntary compliance.¹⁷⁶

Therefore, while CDAs are a promising complement, they cannot be substitutes. This study still maintains that a well-structured and adequately funded institution like that of Ghana will compensate for the initial financial burden through the long-term economic growth that local content will provide.

4.4. Conclusion

This chapter has built on chapters two and three, demonstrating that enforcement weaknesses have hindered local employment obligations. By comparing Kenya and Ghana's approaches, this chapter has shown key lessons that Kenya can learn. It is important, however, to highlight that these lessons should be applied within Kenya's context to ensure good implementation outcomes. In the next chapter, the insights gained will provide a basis for recommendations to strengthen Kenya's local content enforcement framework.

¹⁷⁶ Ayine D, 'Extractive Resource Governance and Local Content', *Cambridge UP*, 2020, 87.

CHAPTER FIVE

5.1. Introduction

This chapter synthesises the key findings of this study on the enforcement of labour local content obligations in Kenya's mineral sector. This chapter will provide sector-specific recommendations to enhance the local content framework in Kenya. Finally, the chapter will end by emphasising reforms that align with Kenya's context and the overall objectives of the Mining Act.

5.2 Findings

Introduction (Chapter One)

The chapter introduces the study, providing an overview of local content policies in Kenya's mining sector. The chapter sets the stage for the study by presenting a literature review that identifies gaps in existing literature.

Regulatory Framework (Chapter Two)

This chapter analyses the legal and regulatory framework governing local content in Kenya. It reviews both international and national instruments. It also discusses the role of key officials. It highlights that while the legal framework is comprehensive, its enforcement mechanisms remain weak due to institutional gaps.

Challenges in implementing local content (Chapter Three)

The chapter analyses the specific institutional challenges hindering the enforcement of local content requirements. It identifies key barriers like human resource challenges, inadequate funding and weak coordination among government agencies.

Chapter Four: Comparative Analysis – Ghana's Local Content Success (Chapter Four)

This chapter examines Ghana's approach to local content, highlighting best practices. The chapter concludes that Kenya can learn from Ghana by strengthening its institutional oversight, enacting a standalone local content law and improving enforcement mechanisms.

5.3. Recommendations

To bridge the gap between Kenya's performance and the desired outcomes, this study proposes the following:

5.3.1. Legislative Recommendations

Enactment of a dedicated local content legislation

The legislature should expedite the passage of the local content bill that sets out the requirements for local employment. This legislation should incorporate lessons from Ghana's Regulations, ensuring there are enforceable quotas, accompanied by a clear roadmap for the phased replacement of expatriates with qualified Kenyan nationals.

5.3.2 Administrative Recommendations

Strengthening of Institutional Capacity

The structure of the Ministry of Mining and the Directorate of Mines should be reformed. Clear roles and responsibilities should be assigned. The government should also consider establishing an independent oversight body to improve accountability and reduce political interference.

Enhancing funding and resource allocation

The government should develop mechanisms for individual revenue generation such as royalties and fees or charges, to ensure that the enforcement body has the financial resources necessary for effective monitoring operations.

Robust monitoring and Reporting Systems

There should be an introduction of regular reporting and audit requirements for mining companies to ensure that they adhere to the requirements of the law.

5.3 Industry Recommendations

Investing in Local workforce development

Companies should collaborate with local educational institutions to develop targeted training and certification programs. This will help bridge the skills gap.

Adopting best practices in local content enforcement

This includes the preparation of detailed local employment, training and succession plans. Mining companies can also peer review from other companies.

5.4. Conclusion

In conclusion, this study has explored the challenges facing the enforcement of labour local content obligations in Kenya's mining sector, drawing on comparative insights from Ghana's more mature framework. The analysis reveals that legislative gaps, weak institutions, and insufficient industry practices currently hinder the full realisation of local benefits. This proves the hypothesis, with comparative evidence from Ghana showing that stronger enforcement leads to significantly better benefits with regard to local content.

The findings of the research also affirm the social contract theory, showing that the state has breached the social contract by formally recognising local content in the law, but actively ignoring implementation. The study therefore recommends a set of reforms spanning legislative, administrative, and industry spheres. By enacting a dedicated local content bill, strengthening institutional capacity, and investing in local workforce development, Kenya can align its mining sector with best practices, ensuring that its mineral wealth translates into benefits for local communities.

BIBLIOGRAPHY

Books

Rousseau J, *The Social Contract and Other Later Political Writings*, 2nd ed., Cambridge University Press 2018.

Chapters in books

Field R and Shah G, Local Content and Participation in Ambani J, Wasunna M, (eds), *Mining Law Commentaries on Kenya's framework legislation*, Strathmore University Press, 2018, 63-76.

Muyonga N, 'Complexities of local content in Kenya's extractive sector: An appraisal of policy, legal and institutional frameworks and practice in Eduardo G, Pereira S, Jonathan M, *Sovereign wealth funds, local content policies, and CSR: Developments in the extractives sector*, Springer Nature, Switzerland, 2021, 287.

Hard Copy Journals

Abuya W, 'Mining conflicts and Corporate Social Responsibility: Titanium mining in Kwale, Kenya,' *The 3, Extractive Industries and Society*, 2, 2016.

Acheampong T, Ashong M, Svanikier V, 'An assessment of local-content policies in oil and gas producing Countries' *Journal of World Energy Law and Business*, 9(4), 2016.

Ado R, 'In Search of the Link Between Local Content (LC) and Corporate Social Responsibility(CSR) in Petroleum Operations', 3, *International Journal of Management Studies*, 1, 2014.

Ayine D, 'Extractive Resource Governance and Local Content', *Cambridge University Press*, 2020.

August JH, Alamilla S and Liang B, 'The Social Contract Theory Revisited: Examining the Relationship Between Greed, Conflict, and the Evolution of Cooperation', in *The Role of Community Development in Reducing Extremism and Ethnic Conflict*, May 2018.

Benton D, 'Corruption, transparency and regulation: how at risk is Kenya's mining sector?', May2020,

<https://miningdigital.com/supply-chain-and-operations/corruption-transparency-and-regulation-how-risk-kenyas-mining-sector?>

- Diale A, 'Corporate Social Responsibility in the South African Mining Industry: Necessity, Conformity or Convenience?' 2, *International Journal of Business and Economic Development*,1, 2014.
- Nwogu N, 'Mining at the Crossroads of Law and Development: A Comparative Review of Labor Related Local Content Provisions in Africa's Mining Laws Through the Prism of Automation' 28 *Washington International Law Journal* 1, 2019.
- Okafor J, Aniche E, 'A critical appraisal of Enforcement of Nigerian oil and Gas Industry Content Development Act, 2010 *Journal of Law Policy and Globalisation*, 31, 2014.
- Pereira E, Matthews C, Trischman H, ' Local Content policies in the petroleum industry: lessons learned' *Oil and Gas, Natural resources & Energy Journal*,2019.
- Vaaland I, Soneye O, Owusu A, 'Local content and struggling suppliers: a network analysis of Nigerian oil and gas industry' 6 *African Journal of Business Management*, 15, 2012.

Other Internet Sources

Africa Mining Legislation Atlas –< <https://www.a-mla.org/en>>.

Anouti et al, *Local Content Policies in the Oil and Gas Sector*, World Bank Publications, 2013.

[Local content in the oil and gas sector \(English\)](#).

Base Titanium, 'Training and Development' [Building Skills - Base Titanium](#)

Columbia Center on Sustainable Investment, Emerging Practices in Community Development Agreements, 2016 [EMERGING PRACTICES IN COMMUNITY DEVELOPMENT AGREEMENTS](#).

Enact, A hopeful mix between governance and gold in Kenya, <https://enactafrica.org/enact-observer/a-hopeful-mix-between-governance-and-gold-in-kenya/>

Grice T, and Circle S ' Policies and Strategies for Implementing Local Content: Local Content in the Mining Sector, Stimulating Direct Employment ' , 2018. [Local Content Policies in the Mining Sector: Stimulating Direct Local Employment | International Institute for Sustainable Development](#).

Ingilav A, Artemyev A, 'How to scrutinise a production sharing agreement; a guide for the oil and gas sector based on experience from the Caspian Region', International Institute for Environment and Development, 2012.

Kakonge J, 'Kenya's Turkana oil and gas field shows the challenges of implementing local content policies', London School of Economics and Political Science, 2020 [Kenya's Turkana oil and gas field shows the challenges of local content policies | Africa at LSE](#)

Kariuki Muigua & Company Advocates, *Regulating Mining: A New Vision for Kenya?* Kariuki Muigua.

Kenya News Agency, 'Mining Firm Sign Cooperation Agreement with Communities' 2019 [Mining firm sign cooperation agreement with communities – Kenya News Agency](#)

Kenya News Agency, 'Base Titanium Enhanced Employee Skills Through RPL Programme' [Base Titanium enhances employee skills through RPL programme](#)

KPMG, *Analysis of the Mining Act 2016*, July 2016.

National Bureau of Statistics (NBS), *Nigerian Statistical Fact Sheets*, 2008.

Media Fact Sheet on Compliance and Gaps in Beneficial Ownership in the Mining Sector in Kenya, March 2024, [MEDIA FACT SHEET ON COMPLIANCE AND GAPS IN BENEFICIAL OWNERSHIP IN THE MINING SECTOR IN KENYA?](#)

Smith E, Rosenblum P, 'Government and Citizen Oversight of Mining: Enforcing the Rules' Revenue Watch Institute, (2011) -< [Enforcing the Rules](#)>-.

UNESCO Lecture Series, Wasunna M, 'Earth Materials: Mineral extraction and Communities' <https://www.icrag-centre.org/t4media/Melba%20Wasunna.pdf?>

World Forest Movement, *Kenya: Canadian titanium mining challenged by new government*, 2003, <https://www.wrm.org.uy/bulletin-articles/kenya-canadian-titanium-mining-challenged-by-new-government>.

Reports

Office of the Auditor General, *Performance Audit Report on Monitoring of Mining Operations by the State Department of Mining* April 2019. [Monitoring of Mining Operations by State Department of Mining \(2019\)](#).

Performance Audit Report on Monitoring of Artisanal Mining Operations by the Ministry of Petroleum and Mining 2022, Monitoring of Artisanal Mining Operations (2022) on 10 October 2024.

Transparency International Kenya, Corruption Risk Assessment in Mining Awards, 2017, Corruption Risk Assessment in Mining Awards, 2017 | Transparency International Australia on 8 January 2024.

United Nations Development Programme and the Ministry of Mining, The Kenya Country Mining Vision (KCMV) Report, 2017.

Terry K, 'The oil trap', Transparency International Quarterly Newsletter, 2003 <https://www.transparency.org/en/publications/transparency-international-annual-report-200>.

Newspapers

Izeze I 'Nigerian oil and gas local content Act: abuse of expatriate quota' The Nation, 19 January 2015 'Expatriate quota abuse, local content's greatest challenge' - The Nation Newspaper .

Dissertations and Theses

Odhiambo M, 'Kenya's oil and gas industry local content framework: an analysis of Sections 50, 51 and 52 of the Petroleum Act 2019' Published LLM Thesis, Strathmore University, Nairobi, 2021

Ngata K, 'Enhancing the benefits of local content in Kenya's Mining Industry' Published LLM Thesis, University of Nairobi, Nairobi, 2018.