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Institutional gaps and challenges in artisanal and small-scale mining in South Africa

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A B S T R A C T

While South Africa is respected in the mining fraternity for its seemingly prosperous large-scale mining industry; its artisanal and small-scale mining (ASM) sector is characterised by informal and illegal activities with limited prospects for growth and contribution to socio-economic development. This paper examines through literature review, the institutional frameworks e.g. policy, legislation and programmes put in place to facilitate the development of the ASM sector in order to identify the gaps and challenges in the ASM sector. The recognition of the ASM sector in 1994 came with a series of frameworks aimed at supporting the development of the sector. This paper finds that while the main legislative framework broadly supports a transformation agenda as it pertains to ASM (e.g. increasing the participation of disadvantaged South Africans) there is considerable criticism on the requirements of the framework which are argued to have hindered the development of the sector. In line with the current wave of discussions on policy and legislation reforms in the mining and minerals sector in Africa; it is recommended that South Africa as a signatory to the African Mining Vision (AMV), should consider the domestication of the AMV which would result in the development of appropriate support frameworks for the ASM sector to enable it to contribute to the South African economy.

1. Introduction

South Africa is well-known for its large-scale mining (LSM) industry which is ranked the fifth largest in the world (Government Communication and Information System, 2012; Antin, 2013; Baxter, 2015). With an estimated mineral base of 2.5 trillion USD, South Africa is the largest exporter of platinum group metals, chromium and manganese ores (Antin, 2013, 2015a, 2015b). According to the Department of Mineral Resources (DMR) (2015), the mining industry has been the backbone of the country's economy for nearly 150 years and it has contributed immensely to shaping the socio-economic landscape of South Africa, and it continues to play this role with its contribution towards the country's Gross Domestic Product (GDP), foreign direct investment, state revenue, infrastructure development and employment[2] (Baxter, 2015; DMR, 2015; Statistics South Africa, 2017).

Over the past few years, the mining industry has been beset with a number of challenges including, *amongst others*: falling commodity prices, high input costs, infrastructure constraints, labour instability, and policy and regulatory uncertainty (Baxter, 2015). These challenges have adversely affected the industry and its contribution towards the economy. More than 115,000 jobs were shed in the industry between 1994 and 2014 (DMR, 2016). Additional jobs are expected to be lost as the industry continues to struggle under the current economic conditions.[3] These difficult times have compelled affected communities in and around mining operations to retaliate with protest actions as unemployment and poverty levels continue to mount in South Africa. The dissatisfaction of communities has also affected most companies' social license to operate and currently the social license to operate is ranked fourth in terms of the risks facing the mining and metals industry in South Africa (Ernst and Young, 2016). The Chairperson of the Bench Marks Foundation, Seoka (2015) alluded that:

> "*Mining in South Africa is facing a crisis of legitimacy as support from local communities and the broader society is waning*".

The current turbulence in the South African mining industry is rooted within the past injustices created by the apartheid regime. Hamann (2004) cited by Odeku and Odeku (2015) noted that while South Africa has undergone major political transformation; the mining industry still lags behind in terms of socio-economic transformation. According to the DMR (2015) while most LSM companies are found to

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[2] In 2014, the mining industry contributed 7.6% to GDP; 15% to FDI; 20% to private investment; 1.4 million jobs; and 25% of exports to the South African economy (Baxter, 2015).

[3] On 28 June 2017, AngloGold Ashanti released a statement stating that its restructuring plan could result in about 8500 workers being retrenched [Available: http://www.fin24.com/Companies/Mining/alert-mining-charter-warning-as-anglogold-retrenches-8–500-workers-20170628].

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be compliant in terms of the 26 per cent HDSA[4] ownership requirement; the majority of blacks are still not actively involved in the economy. Over the years the country has experienced an escalation of communities still classified as being poor living below the poverty line. This is because a large percentage of the ownership and benefits within the mining industry is still in the hands of the minority.

The South African mining industry comprises mostly of LSM companies (mostly transnational companies) (Mutemeri and Petersen, 2002) e.g. more than 90 per cent of mining companies in South Africa are LSM companies (Landu, 2014). This structure is a product of the discriminatory policies and practices of the apartheid regime which were skewed towards building the LSM sector and hence other forms of mining (e.g. junior mining and ASM) in which HDSAs would have participated in were not considered an important part to the mining industry and hence received little to no support (African National Congress, 1994; Solomons, 2012; Fakir, 2016).

It was only during the transition from the apartheid government to the new democratic government that these other forms of mining became part of the Reconstruction and Development Programme (RDP)[5] for their potential to contribute to the transformation agenda of the mining industry. ASM in particular was brought to the national agenda because of its potential to redress past injustices specifically in terms of ownership in the mining industry. ASM was seen as a platform to empower HDSAs, provide skills to communities and stimulate entrepreneurship development in the country (African National Congress, 1994). To date the ASM sector has been part of the South African mining industry *"officially"* for over two decades and during these years several programmes have been initiated to develop the sector and to make its potential benefits a reality.

This paper aims to examine the institutional frameworks which have been put in place to facilitate the development of the ASM sector. Donnellan et al. (2012) define an institutional framework as a system of formal laws, regulations, and procedures; and informal conventions, customs and norms that broaden, shape and restrain socio-economic activity and behavior. The Organisation for Economic, Cooperation and Development OECD (2004) describes institutional framework as a law or other formal provision that assign primary responsibility as well as authority to an agency for implementation, enforcement and monitoring.

In the context of this paper, institutional framework refers to policies, laws and organisations or institutions established to facilitate the development of the ASM sector in South Africa.

The paper provides the landscape of ASM activities post-1994 and compares it with the envisioned picture as was painted by the White Policy on: Minerals and Mining Policy for South Africa (referred to as mineral policy onwards) released in 1998 (Department of Minerals and Energy, 1998). The paper examines through literature review past and existing institutional frameworks aimed at supporting the ASM sector to determine if whether they have contributed to the development of the sector. In addition, the paper unpacks the gaps and challenges within these support frameworks with a view of identifying important issues to be considered for the development of appropriate frameworks for the sector. This paper is written at a time when the South African economy has gone into technical recession after the GDP declined by 0.7 per cent in the first quarter of 2017 following a negative growth in the last quarter of 2016 (Statistics South Africa, 2017). While mining and agriculture performed positively during this quarter (e.g. contributed 12.8 and 22.2 per cent respectively to the GDP), the two sectors continue to struggle amid low commodity prices in the case of mining and the drought conditions which have severely affected the agricultural sector. On 1 June 2017, Statistics South Africa released the first quarter Labour Force Survey and the unemployment rate has increased from 26.5 per cent in the last quarter of 2016 to 27.7 per cent. According to Statistics South Africa (2017a), the number of unemployed persons increased by 433,000 in over three months. This is unfortunate news for South Africa as it strive to create 11 million jobs by 2030 (National Planning Commission, 2011). The likelihood of this happening is shrinking unless other alternative opportunities are found and can actually complement the largest sectors in the economy. It is the authors' view that ASM could be one of those alternatives that could create considerable employment opportunities across the country. However, this can only be achieved if the challenges in the sector are addressed and this would require appropriate institutional frameworks and requisite support programmes to enable it to contribute to the South African economy.

2. Landscape of the ASM sector post-1994

According to the DMR (2011) the ASM sector has grown since democracy and this is reflected by the number of applications received for mining licenses. While there are no reliable estimates of the size of the ASM sector, a study conducted by Buxton (2013) estimated the number of people involved in ASM activities to be around 10,000. It is however believed that more people are involved in ASM activities and this is seen through the growth of illegal mining activities across the country. According to the Chamber of Mines (2017) at least 14,000 people are involved in zama-zama mining activities alone. The term zama-zama is a local term meaning "*we are trying*" and it is associated with artisanal miners who work mostly in abandoned and disused gold shafts (Nhlengetwa and Hein, 2015). This term is also used to describe those found working illegally in operating shafts and on the surface on mining dumps (South African Human Rights Commission, 2015; Chamber of Mines, 2017). These types of activities are found mostly in the gold sector but recently the Chamber of Mines (2017) has reported the spread to other commodities including diamonds, chrome and coal.

Mining opportunities for ASM in South Africa fall into two categories high-value minerals e.g. gold, diamonds and platinum and low-value minerals e.g. mostly industrial minerals and construction materials (Ramatlhodi, 2015; Kwata, 2016; Matamba, 2016). While there is a tendency to associate ASM activities with high value minerals e.g. diamonds and gold; the bulk of ASM operators in South Africa exploit industrial minerals and construction materials such as sand, stone and aggregate, dimension stones (*to name a few*) (Mutemeri et al., 2010; DMR, 2011). This category of minerals is the most preferred by locals as well as policy-makers because the bulk of these minerals appear near the surface; they require minimum costs for exploitation; mining and processing are relatively simple; they have a high degree of vertical integration; and there is a significant local market (Dlambulo and Motsie, 2015). These minerals are also linked to local beneficiation and value addition such as the making of traditional clay crafts, brick making, producing tiles from dimension stones (e.g. sandstone, slate etc.) and crushing stone to produce aggregates (Mutemeri and Petersen, 2002). They therefore constitute an important part of local economies in areas where they are exploited.

Over the past few years, South Africa has seen an intensification of illegal mining activities across the country. Popularly known as zama-zama mining, these activities continue to dominate the news headlines and discussions amongst different stakeholders including government, industry, trade unions, civil society organisations, communities and academics. These discussions are largely impelled by the increasing death toll in zama-zama mining that hangs over the country. While zama-zama mining appears to play an important role in the economic activities of local communities; it also poses serious risks to the miners themselves and the surrounding communities in which these activities take place. Most of these communities have become victims of

[4] HDSA is an abbreviation for Historically Disadvantaged South Africans and it refers to South African citizens, category of persons or community, disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa (Act No. 200 of 1993) came into effect (Department of Mineral Resources, 2015).

[5] The Reconstruction and Development Programme is a policy framework aimed at eradicating past injustices created by the apartheid government (Government gazette, 1994).