

**Implementation of Laws Regulating Mining Industry Transformation in South
Africa**

By

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Mini-dissertation submitted in fulfilment of the requirements for the degree of

Masters in Development and Management Law

In the

Faculty of Management and Law

School of law

At the

UNIVERSITY OF LIMPOPO

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2016

DECLARATION BY STUDENT

I Nkgolodishe Hermit Phaladi declare that the Implementation of laws regulating mining industry transformation in South Africa hereby submitted to the university of Limpopo, for the degree of Masters in Development and Management Law has not previously been submitted by me for a degree at this or any other university; that it is my work in design and in execution, and that all material contained herein has been duly acknowledged.

Phaladi NH, Mr

NH Phaladi

Date

DEDICATION

I dedicate this mini-dissertation to my late grandfather, Tsedi Mahlatsi Manotwane and to my father: Matsintsane Petrus Phaladi, who stood by me and encouraged me to work hard. He made me realize the importance of hard work and the proceeds thereof. Thank you father and I will continue to make you proud.

ACKNOWLEDGEMENTS

I would like to express my deepest gratitude to the following people who have contributed significantly towards the success of this mini-dissertation:

- Firstly, to the Almighty God, Allah you prepare me food in front of my enemies and you let me pass in safety on the traps set for me by my foes. You gave me strength and ability not to give up but to soldier on even during rainy days. Thank you father for your love, care and shelter.
- Secondly, to Prof: KO Odeku, my supervisor, for his courage, motivation and words of wisdom. Without him this mini-dissertation wouldn't be a success. Your selflessness, valuable comments, guidance and competence have contributed greatly to the success of this work.
- Thirdly, to Adv: LT Nevondwe, you are my inspiration, thank you so much for your support, valuable comments, confidence you have shown in me, courage and care. You have contributed greatly towards the completion and success of this work.
- Fourthly, to my family: MP Phaladi (Father), KG Phaladi (Mother), Agreement (Brother) and sisters (Pleasure, Lighty, Trinity, Ingrid) and my niece and nephew (Prominent and Pledge). And to my grandma (Meladi) who have given me courage, love and care throughout my studies and to my late grandfather (Mahlatsi). Thank you for your understanding, support, love and care. I appreciate you.
- Fifthly, to my girlfriend: Pheladi Thari Makgopa, who have stood by me and encouraged me to soldier on even when it was difficult to cope. I appreciate the effort you put and the confidence you have shown in me. Thank you honey.
- Lastly to my 2015 LLM colleagues, thank you for your input guys.

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Minerals Act 50 of 1991

Minerals and Petroleum Resources Development Act 28 of 2002

Skills Development Act 97 of 1998

Skills Development Levies Act No 9 of 1999

Preferential Procurement Policy Framework Act 5 of 2000

INTERNATIONAL INSTRUMENTS

- **Canadian instruments: Policy, Departments and Legislations:**
 - Canadian Constitution of 1982
 - The Minerals and Metals Policy of the Government of Canada: Partnerships for Sustainable Development 1996.
 - Mining Association of Canada (MAC)
 - Mining Industry Human Resources Council 2010
 - Ready to Mine, Skills Development Project 2010
 - British Columbia Aboriginal Mine Training Association
 - Economic and Social Development Canada
 - Employment and Social Development Canada's Skills and Partnership Fund
 - Aboriginal Skills and Employment Training Strategy
 - The Assembly of First Nations and the Mining Industry Human Resources
- **Australian instruments: Policy, Departments and Legislations**
 - Native Title Act 1993
 - Government's Indigenous Economic Development Strategy 2011-2018

ABBREVIATIONS

ABET	: Adult Basic Education and Training
ASETS	: Aboriginal Skills and Employment Strategy
BEE	: Black Economic Empowerment
BBBEE	: Broad Based Black Economic Empowerment
BBSEE	: Broad Based Socio-Economic Empowerment
BPD	: Broad Partnership Division
DEI	: Department of Trade and Industry
DMR	: Department of Mineral Resources
EEA	: Employment Equity Act
GWE	: Gender and Women Empowerment
HDSA's	: Historically Disadvantaged South Africans
HET	: Higher Education AND Training
HRSDC	: Human Resource and Social Development Canada Workplace Skills
MAC	: Mining Association of Canada
MOA	: Memorandum of Understanding
MMS	: Mineral and Metals Sector
MPRDA	: Minerals Petroleum Resources and Development Act
MQA	: Mining Qualification Authority
NDP	: National Development Plan
NRCAN	: Natural Resources Canada
PPPFA	: Preferential Procurement Policy Frame Work Act
SAMDA	: South African Mining Development Association
SDA	: Skills Development Act
SETA	: Sector Education Training Authority

SLP : Social Labour Plan

SPF : Skills and Partnership Fund

ABSTRACT

This mini-dissertation deals with the implementation of laws regulating mining industries transformation in South Africa. This mini-dissertation finds that the pace of transformation is very low and the challenges faced in the mining industries which are slowing the process are evaluated. Such challenges include: lack of skills, unqualified candidates and lack of experience. It finds that the Broad-based socio-economic empowerment (BBSEE) introduced 15% target by 2011 where only 8.9% was reached in respect of transformation and that by 2014, 26% must be met where only 17.4% at the top management is achieved. The call for nationalisation of mines as a solution to speed up transformation have also been evaluated and the Mining Qualification Authority category of providing scholarships to maths and science learners to the exclusion of other streams as transformational aspect was also evaluated. The question as to whether 26% of the historically disadvantaged South Africans occupying managerial position is enough to rectify the injustices of the apartheid ills is also looked at. A comparative study was done between South Africa, Canada and Australia to see whether lessons could be learnt.

Keywords: Implementation, transformation laws, Historically Disadvantaged South Africans, Mining Qualification Authority, and Mining industry.

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1.1 INTRODUCTION

The pace of transformation in the mining industries in respect of black disadvantaged South Africans occupying supervisory and managerial positions is a major concern. The apartheid laws such as Mines and Works Act¹ deprived black people an opportunity of occupying managerial positions in the mining industries by denying them chance to possess necessary qualifications and trainings to occupy upper positions in the mining sector. Pieces of legislation were, however, promulgated to address transformation agenda in the mining industries but as yet the transformation progress is slow. The enacted laws such as Mineral Petroleum Development and Resources Act (MPRDA)², Mining Charter 2010 (BBSEE 2010)³ and Broad Based Socio- Economic Empowerment Act 2003 (BBBEE)⁴ were aimed at encouraging meaningful contribution and participation of the black people in the mining industries.

The Mining Charter 2010 set the target of 26% of the black people occupying managerial and supervisory positions in the mining industries, but the target was not reached as only 17.4% was reached in terms of the commission for employment equity report (CEE) 2013-2014.⁵ The challenges hampering the transformation progress include lack of skills, inexperience and lack of qualifications. The Skills Development Act⁶ was enacted to address the issue of skills and training of employees, but the mining industries are not complying with the legislations put in place.

Therefore, despite the promulgation of laws in the mining industries to redress the imbalances caused by the apartheid era, the mining industries are still not participating effectively in the implementation of the government transformation agenda. Thus, few historically disadvantaged South Africans presently occupy managerial and supervisory positions in the mining industries.

¹ Act 12 of 1911

² Act 28 of 2002

³ Broad Based Socio Economic Empowerment Amendment 2010

⁴ Act 53 of 2003

⁵ Commission for Employment Equity Report 2013-2014

⁶ Act 97 of 1998

1.2. RESEARCH PROBLEM

1.2.1. SOURCE OF THE RESEARCH PROBLEM

Apartheid oppressing laws such as Mines and Works Act in the mining industries caused imbalances and inequality in the workplace. Black people were denied opportunities to occupy upper positions in the mining sectors. Majority of the Black people do not have requisite qualifications such as certificate of competency which was only granted to the white people to enable them to move through the ranks of supervisory and managerial positions, hence black people were subjected to low wages and lower positions.

There was a racial segregation in the mining workplace. The laws such as Employment Equity Act, Skills Development Act and Mineral Petroleum Resources and Development Act were however, enacted to cure the imbalances caused by the apartheid laws and create a more democratic, equal and fair workplace environment but the implementation of the laws put in place for equal opportunities is poor, especially in the mining industries where the black South African still lack skills and qualification necessary to occupy higher positions. Notwithstanding the fact that laws were put in place to transform the mining industries, the transformation progress is hindered by the lack of skills and qualifications which black people were denied during apartheid era.

1.3 BACKGROUND TO THE STUDY

In 1910, the Act of union was passed by the British government in South Africa and this Act brought unity between the British people and Afrikaner.⁷ The Act remained the British territory but with home rule for Afrikaners.⁸ The 1910 Act⁹ had three basic principles which were: that “South Africa would adopt the Westminster style of government and would become a unitary state in which political power would be won by a simple majority and in which parliament would be sovereign.

⁷ Roger B. Beck, *the History of South Africa 1st ed* (2013) 20.

⁸ <http://v1.sahistory.org.za>: Found at 13:00 on the 04/08/2015.

⁹ The South African Act of Union, which was passed by the British House of Commons in 1909 and ratified by the South African Parliament on May 31, 1910, the anniversary date of the Treaty of Vereeniging signed in 1902 after the Anglo-Boer War. See more at <http://uir.unisa.ac.za>.

” Secondly, “the question of voting rights for blacks would be left up to each of the four self-governing colonies to decide (the Cape and Natal based their franchise on a property qualification; the Orange River Colony and the Transvaal denied all blacks the right to vote) and that “Dutch and English would be the official languages.¹⁰

The Union’s Act gave the political power to the National Party which comprised of the white minority. In 1914, white people earned better wages than the black people as they were classified as being uncompetitive in the market.¹¹ The black people due to their lack of skills were paid lower wages.¹² The depression in the mining industry then took place with the white occupying upper positions and earning higher wages than the black people.¹³ In 1948, the National Party was elected into government and there was more racial discrimination based on race and gender in major economic industries and greater restriction of black people and women to participate in major economic industries.¹⁴

The laws such as Mines and Works Act that operated during the apartheid era were discriminatory, gender biased and only beneficial to the white people. Section 8 (1) of the Act prohibited women from being employed underground in mines. This discriminated against women from participating in the mining sectors during the apartheid. Top management employment opportunities were limited to the white people. The apartheid government passed the Mines and Works Act¹⁵ which “prohibited blacks from accessing mining opportunities in the country”.

Section 12 of the Mines and Works Act of 1911 made a provision that “uplifted the poor whites at the expense of the black people by employing large number of unskilled and semi-skilled whites into state and para-statal corporations”.¹⁶ The certificate of competency could only be possessed by the White or Cape Coloured people to the exclusion of the black people and this explains the lack of necessary skills by the black people.

¹⁰ Ibid.

¹¹ MacKinnon, A.S: *Africans and the Myth of Rural Retirement in South Africa* The Journal of Cross-Cultural Gerontology June (2008) 161–179.

¹² Clark, N.L. *The Rise and Fall of Apartheid* 2nd ed (2013).

¹³ Ibid.

¹⁴ Lipton. M *Capitalism and Apartheid: South Africa*, 1986.

¹⁵ Act 12 of 1911.

¹⁶ Adams, C. *Affirmative action in a Democratic South Africa* (1993) 22.

Black labourers could not occupy top managerial and supervisory positions on the basis that they were denied an opportunity to equip themselves with necessary skills. Therefore they could not climb up to the ranks of the managerial positions as their white counter-parts.¹⁷ The 1911 Mines and Works Act was amended by the Colour Bar Act into the so called” Mines and Works Amendment Act of 1926.¹⁸ This legislation stated “that regulation under paragraph (n) of subsection (1) may provide that in any province, area or place specified therein, certificates and competency in any occupations likewise specified, shall be granted only to persons of the following classes: (i) Europeans (ii) persons born in the Union and ordinarily resident therein, who are members of the class or race known as Cape Coloureds or of the class or race known as Cape Malays (iii) the people known as Mauritius Creoles or St. Helena persons or their descendants born in the Union.”¹⁹

In this regard the certificate of competency could only be granted to the white and coloured people to the exclusion of the black people, denying the black people opportunities for being competitive and productive in the mining industries. Further, this also serves as a reason for why black people could not be represented at the top managerial positions in the mining industries during apartheid era. In 1994, when the first democratically elected government came in to power, a period of transformation began.²⁰ During this period, the ANC (African National Congress) came in to power and its followers grew around the country as it began to give hope for restoration of peace and balance for the people of South Africa.

The issue of transformation was introduced with the aim of providing black disadvantaged people an opportunity of getting the employment opportunities they were denied during the apartheid period. The Freedom Charter was drafted and the ANC called for nationalisation of mines, banks and other monopolies.²¹ The ANC requested and demanded that the land should be shared by those who work it.

¹⁷ Cruise J.A *The gender and racial transformation of mining engineering in South Africa The Journal of The Southern African Institute of Mining and Metallurgy April (2011) 218.*

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ This is an extract of the masters’ thesis by Moraka for a full discussion on *Board transformation and EE scorecard target attainment: progress made and barriers faced with*

They stood for rights of all people to access houses, works, and security and free and equal education.²² The charter²³ also addressed that the “national wealth of the country, the heritage of all South Africans, shall be restored to the people; the mineral wealth beneath the soil, the banks and monopoly industry shall be transferred to the ownership of the people as a whole; all other industry and trade shall be controlled to assist the well-being of the people; all people shall have equal rights to trade where they choose, to manufacture and to enter all trades, crafts and professions”. However, the nationalisation failed as well.²⁴

There was an enactment of Minerals Act²⁵ which regulated the mining industry until May 2004. Section 42 of the Act makes the provisions for compensation to be paid to the owner of the land by the person who intends to mine on the owner’s land.²⁶ In 1995, BEE (Black Economic Empowerment) was developed and policies and legislations were passed to remedy the apartheid ills. For example, Employment Equity Act²⁷ was enacted with the intention of eliminating unfair discrimination at workplace and the affirmative action measures were also adopted as contemplated in section 15 of the Act.

The aspect of affirmative action provides if two candidates, especially a white and the black person with the same qualifications contest for a same employment position, a black disadvantaged person must have a preference. Section 2 (b) of the Act “promotes implementation of the affirmative action to redress the disadvantages in employment experienced by designated groups”.²⁸ It is clear that affirmative action was for the benefit of the black people as they were the disadvantaged group during the apartheid era

transformation by JSE listed companies in the South African Mining Industry. See LLM thesis of Moraka N.V, University of South Africa.

²² Reed S.G. *The challenge of transformation: an analysis of the ethical and strategic need for transformation with special reference to the Employment Equity Act (2003).* See more at <http://scholar.sun.ac.za>.

²³ The Freedom Charter has been adopted in 1955 by the Congress of the People.

²⁴ A Perspective on Nationalisation of Mines towards the transfer of Mineral wealth to the ownership of the people as a whole. Available online at <http://www.ancyl.org.za>: Found at 10:h33 17/03/ 2015.

²⁵ Act 50 of 1991.

²⁶ Ibid.

²⁷ Act 55 of 1998.

²⁸ Ibid.

BBSEE (Broad-Based Socio Economic Empowerment) Act 2003²⁹ was also introduced “which established a legislative framework for the promotion of Black Economic Empowerment, by promoting economic transformation in order to enable meaningful participation of black people in the economy”.³⁰ Further section 2(c) “promoted an increase to the extent to which communities, workers cooperatives and other collective enterprises own and manage existing and new enterprises and increasing their access to economic activities, infrastructure and skills training”.³¹

Minerals and Petroleum Resource Development Act³² was also introduced “which opens mining opportunities to all with focus on Blacks with specific purpose to make provision for the historically disadvantaged South Africans”. The Skills Development Act³³, made skills development compulsory for all employees as a way of making them competitive and productive in the workforce. This Act was also enacted with the aim of providing skills on the basis that majority of the black people working in the mining industries did not have sufficient and competitive qualifications for the upper managerial positions in the mining industries.

The Skills Development Act introduced a skills development programme for all, especially the black people to improve and equip themselves with necessary skills and training so that they can be productive, competitive and employable. This transformation period is aimed at changing the mining industry into a sustainable industry and creating wealth for all in South Africa. Pieces of legislation were enacted with the intention of providing meaningful participation of historically disadvantaged individuals in respect of the country’s mineral resources.

The legislation set the goal that at least 26% of the mining assets must be owned by the companies which are black owned and that at least that 51% of the mining projects must be solely owned by the black-owned firms”. However, statistics indicate that less than 5% of management positions, especially at top management level, were held by HDSA’s (Historically Disadvantaged South Africans).

²⁹ Act 53 of 2003.

³⁰ Section 1 of Act 53 of 2003.

³¹ Ibid.

³² Act 28 of 2002.

³³ Act 97 of 1998.

This low percentage led to a public outcry and government scrutiny for slow or poor transformation processes.³⁴

The “Mining Charter 2002” aimed that by October 2009, 15% of mining equity should be held by historically disadvantaged South Africans which will clearly indicate that there is progress in transformation. However, only 9% of the target set by the mining charter was reached.³⁵ The Broad Based Socio-Economic Empowerment Amendment Charter 2010 was enacted, hence increasing the percentage from 15% to 26% by 2014, yet only 17.4 % was achieved.³⁶ Even though laws have been put in place to remedy ills caused by apartheid discriminatory laws the targets set for transformation are yet to be reached. The mining industries in South Africa are still finding it difficult to comply with the mining charter’s goals of transforming the mining industries and ensuring that black disadvantaged people are given opportunities to also compete for the supervisory and managerial positions in the mining sectors.

1.4. STATEMENT OF RESEARCH PROBLEM

South Africa became a constitutional democratic country in 1994. Pieces of legislation were passed to bring change in the mining industries to ensure that there is a radical restoration of balance and equal opportunities to benefit those oppressed by the apartheid laws. However, such legislation have not yet achieved the purpose they were enacted for on the basis that they still have not yet reached the target of 26% of the black people occupying upper supervisory and managerial positions in the mining industries. This indicates poor transformation process and it is evident that implementation of laws and regulations put in place is low.

³⁴ Commission for Employment Equity (CEE) Annual Report 2013-2014.

³⁵ Shona K. *BEE ownership targets, an ineffective means of transforming SA’s mining industry published by Consultancy Africa Intelligence October (2010)*. See more at <http://www.polity.org.za>.

³⁶ BBSEEC 2010, *The Broad Based Socio-Economic Empowerment Charter for the South African mining and mineral industry*.

1.5. DEFINITIONS OF KEY CONCEPTS

1.5.1 Transformation

(a) It is explained as a “change in appearance or character especially one for the better or complete change in something”.³⁷

(b) In our context, “Transformation is defined as redressing of the past or present unfair discrimination suffered by Historically Disadvantaged Individuals in South Africa”.³⁸

(c) “In an organizational context, a process of profound and radical change that orients an organization in a new direction and takes it to an entirely different level of effectiveness. Unlike 'turnaround' (which implies incremental progress on the same plane) transformation implies a basic change of character”.³⁹

1.5.2 The historically disadvantaged South African (HDSA)

According to “the Minerals and Petroleum Resources Development Act” (MPRDA)⁴⁰, a historically disadvantaged person in South Africa refers to:

a) “Any person, category of persons or community, disadvantaged by unfair discrimination before the constitution took effect.

(b) Any association, whose majority of members are persons contemplated in paragraph (a).

(c) Any juristic person other than an association, in which persons contemplated in paragraph (a) own and control the majority of the issued capital or members interest and are able to control a majority of the members votes”.

According to “BBSEE (Broad-Based Socio Economic Empowerment) Act”⁴¹ historically disadvantaged south Africans refers to: “all black people including women, workers, youth, people, living with disabilities, people living in rural areas”.

³⁷ Oxford Advanced Learner's Dictionary: International Student's Edition. Publisher: Oxford University Press; 9th revised edition 1587.

³⁸ This is an extract from a transformation presentation by Masongwa A, *Transformation in the mining industry a practical approach* May 2012.

³⁹ <http://www.businessdictionary.com>: Found at 11:H30 17/03/2015.

⁴⁰ Act 28 of 2002.

1.6. LITERATURE REVIEW

The slow transformation progress in the mining industry in South Africa is a major concern.⁴² Laws have been enacted to redress the imbalances caused by the apartheid era in the mining industries⁴³, but the implementation process is slow.⁴⁴ The Mining Charter 2010 was enacted to facilitate the developmental and socio-economic needs of the communities within which mines are based.⁴⁵ Therefore, in order to see the achievement of its objectives and vision, the Mining Charter 2010 introduced 26% ownership of the HDSA's participation in the mining industries where the disadvantaged South African must occupy managerial positions.⁴⁶ However, the target is yet to be reached.

According to Bikani, the Parliament's Mineral Resource Portfolio Committee acting chairwoman, "the Mining Charter 2010 was introduced to give effect to the transformation agenda". "Mining companies need to become part of implementations for transformation to take place in the mining industries".⁴⁷ She reiterated further that the government itself cannot achieve the transformation targets if the mining sectors are not taking part in the implementation process.⁴⁸ A similar sentiment was shared

⁴¹ Act 53 of 2003. See also Sorensen, P *Legislative transformation of South African mining since 1994: International journal of environmental studies*, (2011). 171-190.

⁴² Hamann. R. etal *South Africa's Charter Approach to Post-Apartheid Economic Transformation: Collaborative Governance or Hardball Bargaining The Journal of Southern African Studies* (2008) 21-37.

⁴³ In *Brink v Kitshoff NO* (CCT15/95) [1996] ZACC 9; 1996 (4) SA 197; 1996 (6) BCLR 752 (15 May 1996). , " the court pronounced that Apartheid systemically discriminated against black people in all aspects of social life. Black people were prevented from becoming owners of property including filling up senior jobs".

⁴⁴ Baleni F, The country is very frustrated with slow transformation in the sector, Business Day Live newspaper, 7 August 2012, online.

⁴⁵ BBSEEA (Ibid at 36).

⁴⁶ Ibid.

⁴⁷ <http://www.iol.co.za>: found at 12:H46 03/03/2015. Bikani mentioned this in a first mining Lekgotla (a partnership between the Chamber of Mines, Department of Mineral Resources and the National Union of mine workers) held at Gallagher Estate in 2012.

⁴⁸ Du Toit, A etal *Deracializing Exploitation, Black Economic Empowerment in the South African wine industry, Journal of Agrarian Change*, (2008) 6–32.

by Moraka and Rensburg when they alluded that transformation in the mining industry requires effective collaboration between government and industry.⁴⁹

Moreover, Nokuhle is also of the view that measurement of true transformation of the mining industry could only be achieved through strong partnerships between the stakeholders.⁵⁰ According to Mbazima⁵¹ “mining companies must engage with the government, Chamber of Mines and other stakeholders to ensure that together they help create a sustainable mining industry and reach the transformation targets as set out in the mining charter 2010”.⁵²

Former Mineral Resources Minister, Ramatlhodi said that” the mining industries are for the benefit of the country and efforts towards transformation needed to be doubled to regain the confidence of workers and communities in the mining sector”.⁵³ In her 2013 budget address, former mining Minister, Shabangu gave clear instruction that the mining companies must meet the transformation targets as set out in the mining Charter 2010.⁵⁴ Minister Shabangu reiterated that “she was disappointed in the lack of progress made, and that the sector had demonstrated an absence of accountability for driving the government’s transformation agenda”.⁵⁵

According to Mitchell “the Mining Charter 2010 in the mining industries had not brought about the transformation as intended when it was enacted”. “Mining charter was passed; no progress on transformation had been made”.⁵⁶

⁴⁹ Moraka TN and Jansen van Rensburg M *Transformation in the South African mining industry looking beyond the employment equity scorecard The Journal of The Southern African Institute of Mining and Metallurgy, August (2015).*

⁵⁰ This is an extract from Master’s thesis by Madolo for a full discussion on *Transformation of the mining industries of South Africa; Strategies beyond life of the Mining Charter (2014).* See full thesis of Madolo N.V, A thesis submitted to the Faculty of Engineering and Built Environment, University of Witwatersrand, Johannesburg, in fulfilment of the requirements for the degree of Doctor of Philosophy.

⁵¹ Norman Mbazima is the Chief Executive of Kumba Iron Ore.

⁵² <http://www.angloamericankumba.com>: Found at 15:H00 31/03/2015

⁵³ <http://reference.sabinet.co.za>: Found at 12:H10 28/04/2015.

⁵⁴ KPMG South Africa blog, Black Economic Empowerment and Mining Looking toward (2014)

⁵⁵ Ibid.

⁵⁶ Mitchell .G. *Making sense of transformation claims in the South African mining industry The Journal of the Southern African Institute of Mining and Metallurgy Volume 113 January (2013).*

According to Ramaphosa⁵⁷ companies are inconsistent in the implementation of their social and labour plans⁵⁸ and this had led to poor transformation progress in the mining sectors. “There is no training and human resource programmes to assist equip HDSA, thus white men continue to dominate top management and technical positions”.⁵⁹

Former Deputy President Motlanthe said that “mining industries had not expedited transformation sufficiently and companies are urged to fast track transformation as it will lead to incremental of Growth Domestic Product growth in mineral value addition and create opportunities for enterprise development and skills development”.⁶⁰

Ntshalintshali⁶¹ is of the view that the Minister of the Department of mineral resources (DMR) must not hesitate to revoke the licences of holders of mining rights who do not want to see transformation of the industry and economy of South Africa.⁶² Undeniably this will compel the mining sectors to implement transformation and the progress will improve. Ramphele said that “the mining companies must commit to invest in skills development to migrate the industry to a high-skills operating model and increase productivity and competitiveness”.⁶³ “The focus must be on-the-job training for new entrants to make the transformation needed industry-wide”.

⁵⁷ Deputy President of the Republic of South Africa.

⁵⁸ Social and Labour Plans are envisaged in the MPRDA with the purpose to contribute to the socio-economic and developmental needs of the community within which the mining sector is located or stationed.

⁵⁹Ramaphosa C, how the mining industry needs to change; this is an extract of his address at the 15th National Congress of the National Union of Mineworkers. See more at <http://www.rdm.co.za>.

⁶⁰<http://www.sanews.gov.za>.

⁶¹ Cosatu Deputy General Secretary

⁶² Ntshalintshali C.B Mining industry must own up to its failure to transform (2015): See more at <http://www.politicsweb.co.za>.

⁶³ Cosatu, Mining industry must own up to its failure to transform 2015. Available online at <http://www.bdlive.co.za>.

This way transformation will readily progress. According to Selby and Sutherland” transformation will be achieved once people are equipped with necessary skills and training”.⁶⁴

The transformation targets will be achieved if the mining companies are ready to strictly comply with the government’s transformation agenda. There must be constant monitoring of the companies for compliance and penalty for non-compliance because the above statement by the former minister indicates that there is lack of accountability on the part of industries and there is a need for compliance in order to reach the targets.

1.6.1. Challenges facing transformation

(a) Skills shortage

Most of the historically disadvantaged South Africans are uneducated, lack experience and are unqualified to fill managerial positions in the mining sectors. This is one of the reasons why transformation is slow in the sector. The scarcity of skills in the mining industries was created by mining industry themselves because they hire illiterate employees and when there was an outcry for transformation, the mining industries avers that there are no skilled workers while they did not empower people with necessary skills and training as they are obligated to by the mining charter 2010.⁶⁵

(b) Lack of relevant qualifications

Historically disadvantaged South Africans lack necessary qualifications required for placement in the managerial positions.⁶⁶ The mining industries continue to hire illiterate people and it is therefore necessary that the mining industries must provide people with skills and training before hiring them. Once people are employed they do not make the efforts to gain more qualification. The mining industries must employ those with skills. This will further encourage people to acquire skills and education thus bringing to an end the challenge of lack of qualifications in the mining industries.

⁶⁴ Selby K and Sutherland M, *Space Creation; A strategy for achieving Employment equity at senior management level South African Journal of Labour Relations (2006)*

⁶⁵ Moraka NV, *opcit* at page 4.

⁶⁶ *Ibid.*

Moreover, there is a need for compulsory training and skills development for employees so that even if they employ illiterates, they could still be trained by the mining companies.

(c) Lack of experience from HDSA

Historically disadvantaged South Africans do not possess experience to occupy supervisory or managerial positions in the mining industries.⁶⁷ The mining companies must provide the black disadvantaged people with training, this will enable them procure necessary experience because they will be taught how to execute their duties and what their scope of employment entails.

1.6.2. Regulations and statutory frameworks for the mining industries.

(a) Preferential Procurement Policy Framework Act (PPPFA) of 2000.

This Act “was enacted as a result of Section 217 of the Constitution. The PPPFA stipulates that when government assesses contracts, it must take into account a preference point system which prescribes functionality, price and reconstruction development programme (RDP) goals”.⁶⁸ Moreover, “it stipulates the need to implement a procurement policy that will provide for categories of preference in the allocation of contracts; and the protection or advancement of persons, or categories of persons disadvantaged by unfair discrimination”.⁶⁹ Stipulations of this Act are aimed at empowering historically disadvantaged people in the sense that it makes it clear that contracts should be allocated with preference to oppressed by the apartheid laws. However, a challenge in this instance might be where HDSA do not have necessary capacity or qualification to be awarded such contracts.

(b) Employment Equity Act 1998

In terms of this Act, companies should “establish targets for employment equity, particularly in the junior and senior management categories”. Further, “Companies

⁶⁷ Ibid.

⁶⁸ Act 5 OF 2000.

⁶⁹ This is an extract from a master’s thesis by Rantseli on a full discussion on *The role of preferential procurement in promoting historically disadvantaged SMMEs: evidence from Ekurhuleni Municipality* (2011). A research report presented in partial fulfilment of the requirements for the degree of Master in Development Finance at the University of Stellenbosch.

agree to spell out their plans for employment equity at the management level”. “The stakeholders aspire for a baseline of 40% HDSA participation in management within 5years, a target which has not been achieved due to reasons furnished earlier in the study(refer to challenges facing transformation)”. This Act makes the provision for the employer to ensure that suitably qualified persons are given equal employment opportunity and the employer must also implement affirmative action measures to eliminate employment barriers including unfair discrimination and making sure that people who were oppressed by the apartheid are opportunities are given fair chance and have representatives at the top management levels of the companies.

This makes it clear that barriers to equal employment opportunities must be eliminated in the workplace. This will be beneficial to the qualified black people on the basis that they will be afforded the same opportunity as their white counterparts and most importantly the Act reiterates on the importance of the designated groups as they are those disadvantaged by unfair discrimination in that they must be given equal opportunity as well.

(c) Skills Development Act of 1998

This Act makes the provision that it “aims to encourage the employers to use the workplace as an active learning environment;⁷⁰ to provide employees with the opportunities to acquire new skills;⁷¹ to provide opportunities for new entrants to the labour market to gain work experience⁷² and most importantly to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education.

If the provisions of this Act are effectively implemented by the employers in the mining industries, transformation progress will accelerate on the basis that those historically disadvantaged by unfair discrimination will be equipped with skills, training and education enabling them to be competitive and productive at workplace.

⁷⁰ Section 2 (1) (a) (i) of ACT 97 OF 1998.

⁷¹ Section 2 (1) (a) (ii) of ACT 97 OF 1998.

⁷² Section 2 (1) (a) (iii) of ACT 97 OF 1998.

(d) Broad-Based Black Economic Empowerment Act 46 of 2013

It “aimed at redressing the results of past or present discrimination based on race, gender or other disability of historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such industries; and transforming such industries so as to assist in, provide for, initiate, facilitate or benefit from them”.⁷³ This Act encourages the empowerment of the historically disadvantaged South Africans as the owners and managers of enterprises. It introduced “broad-based socio economic empowerment” which focuses heavily on the participation of the HDSA’s in the mining industries.

(e) Minerals Petroleum Resources and Development Amendment Bill 2013

Minerals Petroleum Resources and Development Amendment bill defines “beneficiation as the transformation, value addition or downstream beneficiation of a mineral and petroleum resource (or a combination of minerals) to a higher value product, over baselines to be determined by the Minister, which can either be consumed locally or exported”.⁷⁴ Further, the Minister “must in order to regulate the mining industry to meet national development imperatives and to bring optimal benefit for the Republic initiate or promote the beneficiation of mineral resources in the Republic: (i) ensure transformation of the mining and other sectors involved in the beneficiation of minerals; (ii) ensure sustainability for the supply of minerals in the national interest; and (iii) develop capacity”.⁷⁵

The Minister is given a wide discretion to determine what percentage of specified minerals must be made available to local beneficiaries as well as specifying which mineral the percentage is applicable to.⁷⁶ It is a great initiative on the basis that the minister in this regard would have taken “into consideration the national development imperatives such as macro-economic stability, energy security, industrialisation, food security and infrastructure development to ensure the security of supply to the local

⁷³ Act 46 of 2013.

⁷⁴ Stevens C, *The Impact of the MPRDA Amendment Bill, February (2013)*. Also available online at <http://www.werkmans.com>: Found at 15:H20 3/03/2015.

⁷⁵ Tucker C and Sibisi S , *Brief overview of the main amendments enacted in terms of the Minerals and Petroleum Development Amendment Bill (2013)*.

⁷⁶ Ibid.

beneficiators”.⁷⁷ Therefore the minister would have acquired sufficient details or information to determine the percentage to be allocated to the local beneficiators.

(f) New Section 23(2) of the MPRDA (BILL)

“The Minister now in granting an application for a mining right may, having regard to the nature of the mineral in question, and after taking into consideration the socio economic challenges or needs of a particular area or community, direct the holder of a mining right to address those challenges or needs”. These will benefit the community in terms of their socio-economic needs as it empowers the minister to have discretion as to how the holder of the right is to address such issues.⁷⁸

(g) Constitution of the Republic of South Africa 1996

The Constitution states that the government has a commitment to restructure the mining industry.⁷⁹ The constitution has a focused goal of transforming the mining industry and to promoting equality especially for the HDSA. This is clearly reflected in the Bill of Rights which states that all citizens are equal.⁸⁰ To realize this equality, the government aims to reform legislation to protect all the rights of people. Therefore transformation of the mining industries is also a key aspect as per constitution and only through radical transformation as a way of healing apartheid ills and equality will also be achieved in the mining sectors.⁸¹

The Constitution of the Republic of South Africa states that when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. Furthermore, it stipulates the need to implement a procurement policy that will provide for categories of preference in the allocation of contracts; and the

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Section 25 of south African constitution 1996.

⁸⁰ Section 9 of the Constitution of the Republic of South Africa 1996.

protection or advancement of persons, or categories of persons disadvantaged by unfair discrimination”.⁸²

1.6.3. A call for nationalisation of mines

According to South African Mining Development Association (SAMDA) chairperson, Peter Temane, the slow pace of transforming the industry was “a self-inflicted injury” and if the industry had got it right before, the issue of nationalisation would not have been here today.⁸³ A call of nationalisation is urged to have been influenced by the lack of transformation by the companies and also to reduce private ownership or capitalists. This study submits that a call for nationalisation of mines cannot be the answer to the transformation on the basis that if the mines are under control of the government and the people, the transformation would not be achieved as white people with skills to occupy the upper positions will continue to run top positions. Rather the focus on transformation than nationalisation.

1.6.4. Mining Qualification Authority as envisaged in the mining charter

The objectives of the mining charter include empowering HDSA in the mining sectors. The stakeholders (Department of Mineral Resources), National Union of Mine worker, Chamber of mines South Africa, South Africa Mineral Development Association are vested with the powers of offering scholarships to the schools in area within which mines are located and such benefits are allocated to learners who excel in only mathematics and science to the exclusion of other subjects which is not reasonable.⁸⁴

1.7. PURPOSE OF THE STUDY

1.7.1. AIMS

This study seeks to analyse the importance of complying and implementing the Mining Charter 2010 and other laws put in place to drive and deliver transformation in the mining industries in South Africa.

⁸² Section 217 of the Constitution 1996.

⁸³ <http://www.thenewage.co.za>:Found at 15:H25 on the 25/03/2015.

⁸⁴ Mining Charter 2002.

1.7.2. OBJECTIVES

The key objective is to examine the implementation, compliance and enforcement of the laws aimed at transformation in order to mandate the mining sectors to achieve the transformation. The other objectives relevant to the key objective are:

- Showing that transformation progress is slow due to failure of the mining companies to become part of the implementation process. This study will evaluate the importance of the intervention of the Minister of mineral resources to enforce the laws in order to reach transformation.
- Highlight the importance and opportunities available to the black people to become more functional in terms of skills.

1.8. RESEARCH METHODOLOGY

The research methodology will be non-empirical qualitative approach. The research will be majorly library based and will rely on the library materials that include but are not limited to: textbooks, reports, legislations, regulations, charters, policies, amendments to the legislations, journals or academic journals, government gazette, constitution, international or national and local journals.

1.9. SIGNIFICANCE OF PROPOSED RESEARCH

This study is significant because it seeks to address: radical implementation of transformation in the mining industry which will reduce unemployment of the community members within which the mining sector is located. There will be less dependants on social grants on the basis that more people will be employed, there will be more jobs creations in the community at large and less crime rate due to the fact that most of the people within the community will be employed, Community service delivery which is a socio-economic right to the community by the mining sector will be achieved.

Further, there will be increase in tax collection by the government on the basis that most people will be employed and this will reduce poverty. There will also be improved standard of living to the community as majority will be employed and reduction of urbanisation on the basis that community members would not be compelled to drift to the cities for employment.

1.1.0. SCOPE AND LIMITATION OF THE STUDY.

This mini-dissertation consists of five chapters and they are outlined as follows:

- Chapter 1. This will be an introduction.
- Chapter 2 .This will contain the legislative frameworks and regulation in the mining industries.
- Chapter 3. This will be comparative analysis with Canada, Australia and South Africa.
- Chapter 4. This will address challenges facing confronting transformation.
- Chapter 5. This will be recommendation and conclusion

CHAPTER 2

LEGISLATIVE FRAMEWORK AND REGULATIONS IN THE MINING INDUSTRY IN SOUTH AFRICA

2.1. INTRODUCTION

Mining Charter 2010 set the target of 26% of the historically disadvantaged South Africans occupying managerial positions in the mining industries by 2014, the target which is yet to be reached. However pieces of legislation had been enacted with the purpose of redressing the imbalance caused by the discriminatory laws in the mining industries. The legislations which were enacted to transform and cure the imbalances caused by the apartheid in the mining industries include: “Skills Development Act 97 of 1998, Skills Development Levies Act No 9 of 1999, Preferential Procurement Policy Framework Act 5 of 2000, Employment Equity Act 55 of 1998, Minerals Petroleum Resources and Development Act 28 of 2002, Constitution of the Republic of South Africa 1996, Broad-Based Black Economic Empowerment Act 46 of 2013”. Despite passing of these legislations the target is not yet reached and this indicates poor transformation and it is clear that implementation of laws and regulations put in place is slow.

2.1.1. Skills Development Act of 1998

The aim of the Act⁸⁵ “is to improve the skills of workers by promoting education and training in the workplace”.⁸⁶ It governs the National Skills Authority⁸⁷ and Fund, the skills development levy-grant scheme, the Sector Education Training Authorities (SETAs)⁸⁸, labour centres and the Skills Development Planning Unit.⁸⁹

⁸⁵ Act 97 of 1998.

⁸⁶ Section 2 of Act 97 of 1998.

⁸⁷ In terms of section 5 (1) of Act 97 of 1998 “The National Skills Authority is the body that advises the Minister of Labour on policy, strategy and guidelines on the implementation of the skills development”.

⁸⁸ In terms of section 10 (1) of Act 97 of 1998 “Sector Education Training Authorities or SETAs are responsible for developing skills plans and running learnerships and skills programmes in their specific sectors”.

⁸⁹ Section 2 (2) of Act 97 of 1998.

These bodies encourage partnerships between the public and private sectors of the economy and help new entrants into the labour market to find work.⁹⁰ The skills development implementation process is integral to an effective employment equity implementation process.⁹¹ Hence, a company can use the skills development process to develop employment equity candidates in a way that will prepare them to be effective employees in the future through the provision of skills and training to the employees, and not just ‘window dressing.’⁹²

In this way mining industry would have transformed the employees in the sense that they would be effective, competitive and productive in the workforce not only to the benefit of the industry but also towards their own benefit on the basis that they will in future be able to occupy those upper positions they qualify to fill. This means that effective implementation of this Act will contribute greatly to transformation progress as the employees will be made work- ready through education, skills and education.

According to Ramashala, who chaired the Commission for Employment Equity at the time, “The Skills Development Act, 1998, (SDA) was promulgated to develop the skills of the national workforce in order to facilitate economic and employment growth, and social development”. The act is mainly aimed at providing skills to the Historically Disadvantaged South African who had been denied opportunities by the apartheid era in the workplace.⁹³ Further, Mineral Resources Minister Ramatlhodi said that skills development would be critical in moving forward.

Minister Ramatlhodi said that the mining industry must work towards the commitment of contributing to the socio-economic struggles unfolding in our country through the transfer of skills, necessary education, training and experience to the Historically Disadvantaged South Africans. This can be achieved provided the mining company work together with other stakeholders and organisations aimed at providing training and education to the workers in the workplace.

⁹⁰ <http://www.workinfo.com/free/downloads/25.htm>: found at 12:H30 20/04/ 2015.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Nthabiseng V M, opcit at page 5.

It is evident from the objective of this Act that by providing skills to the HDSA's it promotes the ideal of transformation by encouraging competitiveness and productivity.⁹⁴ The Act seeks to develop skills in the workplace by encouraging the employees to use the workplace as an active learning environment;⁹⁵ to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education.⁹⁶ Further, According to the Mining Qualifications Authority (MQA) 14 000 employees completed ABET (Adult Basic Education and Training) in 2010.⁹⁷

ABET was negotiated as a priority area because it is a requirement for any form of formal skills development in the industry and allows employees the opportunity to enter the National Skills Framework.⁹⁸ Despite this, the Department of Mineral Resources (DMR) research claims that ABET is not being effectively implemented. It is claimed that employees have to attend ABET after hours and there is no incentive to do ABET.⁹⁹ Further, A compounding factor is that many of the underground workers are older than forty and do not see the need for ABET.¹⁰⁰ Therefore there is little opportunity for employees to practice ABET in the workplace.¹⁰¹

Furthermore, there is a need for the mining industry to compel new entrants (new employees) to complete ABET training prior to work in the sense that if the employees are forced to complete this training before they could hire them then transformation would not be slow in terms of pace on the basis that already they would have the require skills for the positions. However, if they hire them without compelling them to complete training then only few would decide to attend and complete the training. It is of paramount importance for the mining industry to be equipped with literate employees on the basis that such employees would still be able to compete after retirement or when they decide to change workplace for a new environment or new competition.

⁹⁴ Ibid at 28.

⁹⁵ Section 2(1) of Act 97 OF 1998.

⁹⁶ Ibid.

⁹⁷ Mitchell G,opcit at page 10.

⁹⁸ Ibid.

⁹⁹ Ibid. See more at <http://www.scielo.org.za/scielo>.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

2.1.1. (a) Chamber of mines towards Skills Development in the Mining Industry.

The Chamber of Mines also plays an important role in ensuring implementation of the skills development in the workforce. Its Skills Development Unit has the goal of ensuring the creation of an environment that enables the mining industry to deliver skilled and trainable employees for advancement and deployment.¹⁰² Chamber of mines have identified the following problems in the mining industries:

- (a) There will always be challenges in developing the skills and education needed for mining jobs in South Africa because of the dynamic nature of the labour market and the mining industry in particular. The mining industry still employs a large number of people who are functionally illiterate. This places a challenge on our Skills Development Unit to continue to engage with the Minister of HET (Higher Education and Training) and his policy makers to propose creative ways of addressing illiteracy in the workplace.¹⁰³ Therefore this on its own slows transformation in the mining industry on the basis that the mining industries can't afford to put someone in a top managerial position who is illiterate and doesn't comprehend issues. As such the problem of skills shortages in the mining industries have been created by the mining industries themselves.

If the mining industries only hires its employees on merits, that is to say those who are qualified, then transformation won't be an issue on the basis that when the time to put those disadvantaged in the managerial positions then it would be easier because the person would be skilled. The process of transformation is slowed by lack of skilled candidates. Most of mining industries employ older people who are no longer active and interested in furthering their education and being productive, therefore since the industries are dominated by older people as confessed by the Chamber of Mines, than transformation pace will always be slow and the targets set won't be reached anytime soon.

- (b) The tertiary institutions face a challenge of losing skilled professionals who are attracted to the sector. The Chamber of Mines of South Africa needs to create an environment where the sector itself supports the tertiary institutions

¹⁰² <http://www.chamberofmines.org.za/about/transformation>: found at 14h26 26/04/2015.

¹⁰³ Ibid.

strategies to retain staff and further support post-graduate bursaries and research to ensure that there are enough highly qualified people who can be employed at universities. This is how skills development will enhance and promote better mining jobs and careers in South Africa.¹⁰⁴

However, section 2 of the Skills development amendment Act 31 of 2003 makes the provisions that the purpose of the enactment of this Act is to develop skills in the South African's workforce and use the workplace as an active learning environment and to provide employees with opportunities to acquire new skills employ persons who find it difficult to be employed.¹⁰⁵ This will only benefit younger employees in the workplace to the exclusion of the older people on the basis that they are no longer active and productive.

Therefore the mining industries must ensure that all new entrants in the industries are equipped with skills to avoid a situation where almost half of the employees are illiterate.

2.1.2. Skills Development Levies Act No 9 of 1999

This Act regulates a compulsory levy scheme to fund education and training in businesses within various sectors in South Africa. It aims to expand the knowledge and competencies of the labour force and in so doing increase the supply of skilled labour in South Africa, providing for greater productivity and employability.¹⁰⁶ The provision of skills and competency in the labour force falls within the armpits of transformation and this is much beneficial to the employees in the workplace especially to the HDAS's.

¹⁰⁴ Ibid.

¹⁰⁵ This is an extract from a master's thesis by Thlalosi for a full discussion on *Application of the Employment Equity Act and diversity in the mining industry*. See LLM dissertation by Thlalosi M.M. submitted to the faculty of Economic and Management Science (Potchefstroom Business School) in fulfilment of partial requirements for the degree of Masters in Business Administration at the North West University.

¹⁰⁶ This is a piece extracted from the Service sector education and training authority. Available online at <http://www.serviceseta.org.za>.

2.1.3. Preferential Procurement Policy Framework Act 5 of 2000

This Act was enacted to give effect to section 217 (3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217 (2) of the Constitution; ¹⁰⁷and to provide for matters connected therewith.¹⁰⁸ It provides that an organ of state must determine its preferential procurement policy and implement it within the specific goals which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability.

This also mean that when the mining contracts or tenders are issued, preference must be given to those historically disadvantaged by unfair discrimination provided they meet the prescribed requirements for the allocation of the contract. This also facilitates the empowerment of black people on the basis that they are given preference to contract as they were depressed by the apartheid discriminatory laws and could not get such opportunities. Therefore this as well speed up transformation in the mining industries on the basis that when they are awarded such contracts they will be managers or rather employers or owners of such tender. This is therefore in line with the objective of the Mining Charter.

2.1.4. Employment Equity Act 55 of 1998

This Act was enacted in order to promote a constitutional right of equality and true democracy; eliminate unfair discrimination in employment; ensure an implementation of employment equity to redress effects of discrimination; achieve a diverse workforce broadly representative our people and promote economic development and efficiency in the workforce.¹⁰⁹ Further this Act vests an obligation on the employer to take steps to promote equal opportunities in the workplace by eliminating unfair discrimination in any employment policy or practice.¹¹⁰

¹⁰⁷ Constitution of the Republic of South Africa 1996.

¹⁰⁸ Act 5 of 2000.

¹⁰⁹ Act 55 of 1998.

¹¹⁰ Section 5 of Act 55 of 1998.

In this instance the employer bears the burden of proving an allegation of unfair discrimination is in actual fact fair.¹¹¹

The Act further aims to achieve equity in the workplace by implementing affirmative action measures to redress the disadvantages in employment experienced by the designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workplace.¹¹² As such designated groups will be considered as far as hiring, selection and promotion is concerned.¹¹³ However, through preferential treatment suitably qualified persons from the designated groups must be retained, trained and developed by appropriate measures for provision of skills development.¹¹⁴ Therefore, redressing of the disadvantaged groups is cured through affirmative action as a way of transformation and empowering black people who had been previously disadvantaged by apartheid laws.

However, the stumbling block as depicted by the chamber of mines is that mines stills continue to hire illiterate employees and if this is continuous the affirmative action measure will not be useful to place black disadvantaged employees in the managerial positions on the basis that upper positions in the mining industry require skills and knowledge and if shortage of skills remains a threat then the targets won't be met. Therefore with the current transformation target not being met on the basis of skills shortage, even the affirmative action measure won't be effective and this is another rationale for slow pace of transformation in the mining industries.

Further the success of employment equity in the workplace will depend on the successful implementation of the Skills Development Act¹¹⁵ which makes the provision of skills and training to the employees and employment equity will be awarded to suitably qualified designated group and if they have not obtained necessary skills, employment equity would not be a success.

¹¹¹ Jongens C *Perceptions of employment equity implementation at a major South African multi-national financial corporations*, postamble 2 (1) (2006) 32.

¹¹² Section 2(b) of Act 55 of 1998.

¹¹³ This is an extract of a master' thesis by Tladi for a full discussion on *Affirmative Action and Employment Equity Act of South Africa*. A dissertation by Tladi T.M submitted for a partial fulfilment of a Master's of Arts in Philosophy, Rand Afrikaans University.

¹¹⁴ Ibid.

¹¹⁵ ACT 97 OF 1998.

2.1.5. Minerals Petroleum Resources and Development Act 28 of 2002

The aim of the Act is the promotion of equitable access to the nation's minerals and petroleum resources to all the people of the republic of South Africa; Substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources¹¹⁶; Promote employment and advance the social and economic welfare of all South Africans and Ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.¹¹⁷

The Act reiterates on the mining charter goal of transformation in the sense of promoting employment, contributing to the socio-economic developments of the communities or areas within which such a mining industry is located and providing historically disadvantaged South Africans with substantial and sustainable opportunities in the mining industry. Therefore, the provisions of the Act are without doubt in line with transformation goals to the HDSA's. The Act further makes the provision "that the Minister must develop a code of good practice for the minerals industry".¹¹⁸ It further intends to ensure the attainment of the objectives of the MPRDA of redressing historical, social and economic inequalities; the Minister must develop a broad-based socio-economic empowerment charter. This charter will set the framework, targets and timetable for affecting the entry of HDSA's into the mining industry and allow such HDSA's to benefit from the exploitation of mining and mineral resources.¹¹⁹

As part of transforming the black disadvantaged people, the Act makes the provision that the minister may provide assistance to the historically disadvantaged South Africans who conducts a prospecting or mining operations.¹²⁰ Further, when

¹¹⁶ The proposed amendment of this provision provides (Minerals Petroleum Resources and Development Amendment Bill)" substantially and meaningfully expand opportunities for historically disadvantaged persons, including women and communities, to enter into and actively participate in the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources.

¹¹⁷ Section 2 of Act 28 of 2002.

¹¹⁸ Section (100) (a) of Act 28 of 2002.

¹¹⁹ Section 100 (2) (a) of Act 28 of 2002.

¹²⁰ Section 12(1) of Act 28 of 2002.

considering the request made by the disadvantaged person the minister may request any organ of the state to provide assistance to the disadvantaged person who wishes to conduct prospecting or mining operations.¹²¹

The Minerals Petroleum Resources and Development Act (MPRDA) further makes the provision of beneficiation which entails that the minister may initiate incentives to promote beneficiation of minerals in the republic¹²² and if the minister acting on advice of the board and after consultation with the minister of trade and industry find that a particular mineral can be beneficiated economically in the republic, the minister may promote such beneficiation subject to such terms and conditions as the minister may determines.¹²³ Anyone who wants to beneficiate a mineral mined in the republic outside the republic may do so after consultation with the minister.¹²⁴

However, there is a proposed amendment to the beneficiation provision, hence there is a Minerals Resources Petroleum and Development amendment Bill which defines beneficiation as the transformation, value addition or downstream beneficiation of a mineral and petroleum resource (or a combination of minerals) to a higher value product, over baselines to be determined by the Minister, which can either be consumed locally or exported.¹²⁵

Further The Minister “must in order to regulate the mining industry to meet national development imperatives and to bring optimal benefit for the Republic initiate or promote the beneficiation of mineral resources in the Republic: (i) to ensure transformation of the mining and other sectors involved in the beneficiation of minerals; (ii) to ensure sustainability for the supply of minerals in the national interest; and (iii) to develop capacity”.¹²⁶

¹²¹ Section 12 (4) of Act 28 of 2002.

¹²² Section 26 (1) of Act 28 of 2002.

¹²³ Section 26 (2) of Act 28 of 2002.

¹²⁴ Section 26 (3) of Act 28 of 2002.

¹²⁵ Stevens C *Impact of the MPRDA Amendment Bill*, February (2013). Also available online at <http://www.werksmans.com>.

¹²⁶ This is a piece from an article by Tucker C and Sibisi S on *Brief overview of the main amendments enacted in terms of the Minerals and Petroleum Development Amendment Bill*, Government Gazette, No. 36037 published on 27 December 2012.

However, these give the Minister a wide discretion to determine what percentage of specified minerals must be made available to local beneficiators as well as specifying the mineral this is applicable to.¹²⁷

2.1.5 (a) Department of Mineral resources on transformation

According to Oberholzer, transformation in the mining industry is deemed a very important matter and the full implementation of an approved Social and Labour Plan is an important factor in respect of transformation of the South African mining industry.¹²⁸ The “Department of Mineral Resources (DMR) published the Mineral and Petroleum Resource Development Act (MPRDA) in 2004 which resulted in substantive changes to the mining sector in respect of their human resource and local economic development planning”.¹²⁹ Social and labour plan contains the requirements for every mine and the approval must be from the Department of Mineral Resources before any mining right could be given or approved.¹³⁰ Moreover, “once the mining rights are granted the mine is required to implement the undertakings and programmes stipulated within the SLP and thereafter report against the respective progress on an annual basis to retain their mining right”.¹³¹

However, before getting in to more details on Social Labour Plan, it is worth it to provide a clear definition of the phenomenon. Therefore, Social Labour Plan¹³² is

¹²⁷ Ibid.

¹²⁸ This is a piece from a presentation made by Oberholzer on The quest for a win-win situation relating to mineral regulation and compliance with the Mineral and Petroleum Resources Development Act, 2002 (28 of 2002)([MPRDA). The presentation was made at the Free State regional workshop of the Aggregate and Sand Producers Association of Southern Africa, 20 February 2014.

¹²⁹ Department of Mineral Resources Republic of South Africa. See more at <http://slps.co.za>

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² The Social Labour Plan must be reported. The holder of a mining right or mining permit, or the manager of any processing plant operating separately from a mine, must submit to the Director General of the DMR (Department of Mineral Resources), an annual report detailing the extent of the holders compliance with the provisions of section 2(d) and (f), the charter contemplated in section 100 and the Social and Labour Plan on the compliance with the Social and Labour Plan. Note: The Regional Manager (DMR) or Designated Agency may request a progress report (Portfolio of Evidence) as and when required. Further, The Social and Labour Plan Portfolio of Evidence (POE): (Must include the following Chapters): Skills Development Plan, WSP and ABET for the transformation of the employees and benefit of

defined as” complex, strategic intervention, planning and implementation document consisting of a variety of targets and strategies to promote socio-economic growth and development, promote employment and the advancement of the social and economic welfare and promote the use of skills and empower Historically Disadvantaged South Africans, in the community and area in which industrial activity (mining and production) takes place”.¹³³

Further, “it clearly defines commitments made by mining or production related businesses in their quest to earn the right¹³⁴ to operate in a geographical area.” “The Social and Labour Plan is a strategic day-to-day working document that manages the implementation of the plans and strategies mining and production businesses commit to”. “It is a key document in the application for and retention of a mining or production right”.¹³⁵

The objectives of the Social Labour Plan (SLP) are:

- “Promote employment and advance the social and economic welfare of all South Africans.¹³⁶
- Contribute to the transformation of the mining industry, and ensure that all holders of mining rights contribute towards the socio-economic development of the areas in which they are operating.¹³⁷
- Promote economic growth and mineral and petroleum resources development in the Republic of South Africa.¹³⁸

the community within which a mining operation will take place, Learnership, Participation of Historically Disadvantaged South Africans (HDSA's) within the operation of the mining activities, Women in Mining to ensure that there is equality as per spirit of the constitution of South Africa 1996. See more at <http://slps.co.za/index.php/slp-what-is-it.html>: found at 10:H12 30/04/2015.

¹³³ <http://slps.co.za>: Found at 10:h12 30/04/2015.

¹³⁴ An application for a mining or production right in terms of the Minerals and Petroleum Resources Development Act must be accompanied by a Social and Labour Plan.

¹³⁵ Department of Mineral Resources Republic of South Africa, Social and Labour Plan guidelines for the mining and production industries.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ This objective as outlined in the Social Labour Plan emanates from the provision of section 2 (e) of the MPRDA 28 of 2002.

- Promote employment and advance the social and economic welfare of all South Africans.¹³⁹
- Ensure that holders of mining or production rights contribute towards the socio-economic development of the areas in which they are operating as well as the areas from which the majority of the workforce is sourced.¹⁴⁰
- To utilize and expand the existing skills base for the empowerment of HDSA's (Historically Disadvantaged South Africans) and to serve the community".¹⁴¹

A proper implementation of the spirit and objectives of the Social Labour Plan brings transformation in the mining industry in the sense that its objectives include the participation of the HDSA's, development of the community within which the industry is located because transformation doesn't only come through employment but also through development to the community, it also make provision of skills which benefits employees in terms of advancing and furthering their education to the elimination of illiteracy in the mining industry.¹⁴²

The implementation of this plan contributes significantly to the development of the community in the sense that socio-economic factors of the community are considered before the mining right could be granted.¹⁴³ Therefore, Social Labour Plan if implemented or strictly complied with it will speed up the transformation progress in the mining industry.

One key aspect in terms of transformation is the shortage of skills in the mining industry, however Social Labour Plan make provision in that respect and if implemented and not there in principle, but implemented in line with the skills development act, then transformation progress would not disappoint, hence it will speed up.

¹³⁹ This objective as outlined in the Social Labour Plan emanates from the provision of Section 2 (f) of the MPRDA 28 of 2002.

¹⁴⁰ This objective as outlined in the Social Labour Plan emanates from the provision of Section 2 (i) of the MPRDA 28 of 2002.

¹⁴¹ <http://slps.co.za/index.php/slp-what-is-it.html>: found at 10:H12 30/4/ 2015.

¹⁴² Ibid.

¹⁴³ Ibid.

2.1.5 (b) Human Resource Development Programme

This programme aims “to ensure the availability of mining and production operation specific skills and competencies of the workforce and skilling of employees for portable skills utilizable by the employees outside the life in the mining or production industries”.¹⁴⁴ These objectives if met will provide greatly towards transformation on the basis that it doesn’t confine employees with skills utilisable to the mining industry’s employment but it provide skills which even allow the employees to utilise outside the mining industries after employment at the industry.¹⁴⁵ This means that employees are equipped with a skill which allows them to be competitive outside the mining industry.

According to the Plan, the following must be submitted:

- Skills development plan

This plan provides a “detailed skills development plan that outlines how the Mine or Production Operation intends to offer employees opportunities to be functionally literate and numerate, learnerships; skills programme; portable skills and any other training”.¹⁴⁶ “The skills development plan should also outline how the Mine or Production Operation would participate with processes of skills development legislation including developing and submitting the workplace skills plans and annual training reporting; paying and claiming of levy and grants with the SETA(s) with which the Mine or Production Operation is registered”.¹⁴⁷ This will also serve to reduce the shortage of skills and reduce illiteracy in the mining industry and allow the HDSA’s to occupy managerial positions in the mining positions and this will make transformation a success.

- Career progression (path) plan

This will “provide a detailed career progression (path) plan, which is in line with the skills development plan on how the mine or Production Operation would progress the

¹⁴⁴ Department of Mineral and Energy: Social and Labour plan guidelines for the Mining and production industries.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

employees through the employment levels”.¹⁴⁸ This entails the promotion of the employee once the employee had acquired necessary skills and transformation in this regard is realized.

➤ Employment Equity Plan

This “provide the employment equity statistics which must be completed in the format of Form S, Annexure II, accompanied by a plan on how the mine would achieve the ten percent (10%) women participation in mining and the forty percent (40%) HDSA participation in management within 5 years from the commencement of the MPRDA”.¹⁴⁹ The objectives of this plan has failed already on the basis that the percentage targets are not met. Since introduction of MPRDA the achieved progress in terms of percentage targets is 17, 4%.¹⁵⁰

2.1.5 (c) Section 23(2) of the MPRDA Bill 2013

“The Minister now in granting an application for a mining right may, having regard to the nature of the mineral in question, and after taking into consideration the socio economic challenges or needs of a particular area or community,¹⁵¹ direct the holder of a mining right to address those challenges or needs”. These might as well benefit the community in terms of their socio-economic needs as it empowers the minister to have discretion as to how the holder of the right is to address such issues.¹⁵² The provisions of the amendment Act which gives the minister such discretion is beneficial to the community on the basis that their socio-economic challenges will be addressed before mining takes place.

2.1.6. Broad-Based Black Economic Empowerment Act 53 of 2003

Broad-based black economic empowerment is defined as “the economic empowerment of all black people including women, workers, youth, and people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to increasing the number of

¹⁴⁸ Ibid.

¹⁴⁹ Social and Labour Plan Guidelines for the Mining and Production Industries 7.

¹⁵⁰ Commission for Employment Equity Report 2013-2014.

¹⁵¹ Section 23 of the Minerals Petroleum Resources and Development Amendment Bill 2013.

¹⁵² Mineral and Petroleum Resources Development Amendment Act, 2008.

black people that manage, own and control enterprises and productive assets; facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises; human resource and skills development levels in the workforce: preferential procurement; and investment in enterprises that are owned or managed by black people”.¹⁵³

The objectives of this Act include the facilitation of the Broad-Based Black Economic Empowerment by:

- (a) “promoting economic transformation in order to enable meaningful participation of black people in the economy;¹⁵⁴
- (b) achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises;¹⁵⁵
- (c) Increasing the extent to which communities, workers, cooperatives and other collective enterprises own and manage existing and new enterprises and increasing their access to economic activities, infrastructure and skills training.¹⁵⁶
- (d) Increasing the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training;¹⁵⁷
- (e) Promoting investment programmes that lead to broad-based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity;¹⁵⁸
- (f) Empowering rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skills;¹⁵⁹ and
- (g) promoting access to finance for black economic empowerment”.¹⁶⁰

¹⁵³ Section 1 of Act 53 of 2003.

¹⁵⁴ Section 2 (a) of Act 53 of 2003.

¹⁵⁵ Section 2 (b) of Act 53 of 2003.

¹⁵⁶ Section 2 (C) OF Act 53 of 2003.

¹⁵⁷ Section 2 (d) of 53 of 2003.

¹⁵⁸ Section 2 (e) of Act 53 of 2003.

¹⁵⁹ Section 2 (f) of Act 53 of 2003.

¹⁶⁰ Section 2 (g) of Act 53 of 2003.

“During December 2004 the Department of Trade and Industry published the draft Codes of Good Practice on Broad-Based Black Economic Empowerment (Codes of Good Practice).¹⁶¹ The Minister of Trade and Industry, Dr Rob Davies (MP), has announced the release of the revised Broad-Based Black Economic Empowerment (B-BBEE) Codes of Good Practice.

Minister Davies says the refined Codes symbolise a new beginning in the re-orientation of the transformation policy to focus more on productive B-BBEE and the growth of black entrepreneurs through Enterprise and Supplier Development elements”.¹⁶² Further section 100 (1) (a) Minerals Petroleum Resources and Development Act¹⁶³ (MPRDA) the minister is vested with the powers to develop” a code of good practice for the mining industry in the Republic”.¹⁶⁴

The codes are discussed below:

(a) Ownership

This means that historically disadvantaged South Africans must be allowed to own, manage and control enterprises.¹⁶⁵

(b) Management control

This carries the effective control of entities by the black people.¹⁶⁶ The enterprises are required to have Black employees in management positions, if they wish to be in

¹⁶¹ This is an extract from master’s thesis by Booyens for a full discussion on *The Scorecard for the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry: A Performance Measuring Instrument*. See LLM by Booyens S.A, Mini-dissertation submitted in partial fulfilment of the requirements for the degree Master of Development and Management at the North-West University (2006).

¹⁶² Department of Trade and Industry, available online at <https://www.thedti.gov.za>: found at 16:H16 on the 30/04/2015.

¹⁶³ Act 28 of 2002.

¹⁶⁴ This codes are developed with the specific purpose of ensuring the attainment of the government’s objective of redressing historical, social and economic inequalities as depicted in the constitution 1996, the minister must within six months from the date on which this Act takes effect develop broad-based socio-economic empowerment charter that will set a framework, targets and time table for effecting entry of historically disadvantaged south Africans to the mining industry and to allow such south Africans to benefit from the exploitation of mining and mineral resources. See section 100 (2) (a) of Act 28 of 2002

¹⁶⁵ Nthabiseng V M, opcit at page 5.

¹⁶⁶ Department of trade and industry (supra n162).

compliance with the law.¹⁶⁷ In this regard the objective of the management control encapsulates the similar objective of the mining charter goal of transforming the black people and having them occupying managerial positions in the mining industries. Therefore the implementation would lead to meeting and achieving of better transformation end results.

Enterprises or companies, especially mining industries must strictly comply with these codes of good practice for the compliance will have better outcomes as far as transformation in the industry is concerned.

(c) Skills development

This entails the measures to which the “employers carry out the initiatives designed to develop competencies of the black employees and people internally and externally”.¹⁶⁸ The focus is on providing training for staff members within an enterprise.¹⁶⁹ Training in this case may take the form of learnerships, internships and/or vocational training.¹⁷⁰ When providing training, enterprises¹⁷¹ are, in terms of the Regulations of Employment Equity Act and the Commission on Employment Equity Report, demanded to take into account demographic breakdown of the areas in which they operate.¹⁷²

Therefore, even in the mining industries black people must be preferred to be provided with the training ahead of the white counterparts for black were denied such opportunities during apartheid era. The main focus of the Skills Development

¹⁶⁷ Krensel A, Amended Broad-Based Black Economic Empowerment (BBBEE) Act, Codes of Good Practice LLM Dissertation University of Cape Town (2013).

¹⁶⁸ Department of trade and industry (supra n 162).

¹⁶⁹ Krensel A (supra n 167).

¹⁷⁰ Ibid.

¹⁷¹ Furthermore, in order for an enterprises’ skills development project to be recognised, the rule is that the enterprise providing such a project must not only have been registered, but also, its training must be the relevant SETA requirement. See Krensel A, *Amended Broad-Based Black Economic Empowerment (BBBEE) Act, Codes of Good Practice* (2013) 5.

¹⁷² For example, if an enterprise operates in the Western Cape – where coloured people form the majority population – the expectation is that the enterprise would train a higher percentage of coloured people compared to people of all other races. The same applies where it is in terms of the mining industry, if it operates within black dominated community, the higher percentage of the people who must be provided training must be blacks. See Krensel, *Amended Broad-Based Black Economic Empowerment (BBBEE) Act, Codes of Good Practice* (2013) at 5.

element is on the provision of learnerships, internships and/or training opportunities both for employees and Black people.¹⁷³ Further, skills development in the perspective of the BEE Act, it “refers to the development of focal competencies and technical skills of HDSAs to exercise their practice in the mainstream of the economy”.¹⁷⁴

Therefore in the context of the mining industry it contributes significantly to the achieving and complying with the legislations aiming at transformation when the employees are provided with training, learnership, vacations and or internships through skills development on the basis that it enables unskilled employees to procure skills and become competitive and productive which is in line with the skills development act. Only if the companies are complying and implementing these codes and the legislations that transformation targets will be met and poor progress as envisaged in the commission for employment equity annual report 2013-2014 will improve.

(d) Employment equity

Objectives of the Employment equity act “is to achieve equity in the workplace by promoting equal opportunity and fair treatment in the employment through the elimination of unfair discrimination and implementation of the affirmative action to redress disadvantages in the workforce experienced by the black people”.¹⁷⁵

The objective of the introduction of affirmative action in the workforce is to distribute economic opportunities in the society in the wider range of membership and ensure help the employer to gain the talents and energy of the members in the workforce. Therefore the mining industries and enterprises are urged to comply with the affirmative action method as a way of redressing ills caused by the apartheid

¹⁷³ Supra (n 167) at 6.

¹⁷⁴ Supra (n 165) at 33.

¹⁷⁵ Section 2 of Act 53 of 1955.

regimes and ensuring that blacks are entitled to the same employment opportunities white people are entitled to.¹⁷⁶

(e) Preferential procurement.

“Preferential procurement by both the state and the private sector is an effective and efficient instrument to drive BEE, as it provides emerging black enterprises with opportunities to expand their output”.¹⁷⁷

(f) Enterprise development

Enterprise development can take a way where there is an investment in the businesses which are owned by the black people and were there would transfer of skills to the marginalized people in the society.¹⁷⁸

2.1.7. Broad-Based Black Economic Empowerment Amendment Act 46 of 2013.

It amended the “definition of the broad based black economic empowerment”. An amended definition reads “ as the viable economic empowerment of all the black people including, in particular, women, workers, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include but are not limited to; preferential procurement from the enterprises that are managed or owned by the black people”.¹⁷⁹ “The Act makes clear by the insertion of the enterprise that are owned or managed by the black people that their objective is for the benefit of the historically disadvantaged South African”.

¹⁷⁶ During apartheid certain jobs and positions were reserved for white people and blacks were only allowed to be employed as unskilled labours while white people could occupy skilled labour positions, See Colour Bar Act 12 of 1926.

¹⁷⁷ <http://www.southafrica.info/business/trends/empowerment/BEEcodes.htm>.

¹⁷⁸ Ibid.

¹⁷⁹ Section 1 (c) of Act 46 of 2013, however it is evident from the definition that the following were not amended : increasing the number of black people that manage, own and control enterprises and productive assets; facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises; human resource and skills development levels in the workforce: preferential procurement; and investment in enterprises that are owned or managed by black people.

2.1.8. Constitution of the Republic of South Africa 1996.

The constitution promotes equality and transformation of the mining industries in that it stipulates clearly in section that everyone is equal before the law and this translates also towards the mining companies. Equality in the mining industries will ensure that transformation is expedited and everyone will be represented in the managerial positions especially the HDSA's. The constitution stipulates that "when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective".¹⁸⁰ A fair and equitable manner of contracting in the mining industries will speed up transformation in the sense that everyone will get an opportunity including the HDSA's.

Section 217 (3) provides for the legislation that will prescribe a framework within which the policy must be implemented to be enacted.¹⁸¹ Thus, the Preferential Procurement Policy Framework Act" prescribes the minimum requirements regarding black economic empowerment in consideration of the government's tenders.¹⁸²

Therefore the provisions of section 217 of the Constitution¹⁸³ ensures that government contracts are awarded to previously disadvantaged South Africans, so that they too can be actively involved in the economy of this country.¹⁸⁴ It is clear that when the mining industries award contracts or tenders, the preference must be towards those historically disadvantaged by the apartheid discriminatory laws provided they meet the prescribed "terms and conditions" of the contract in question. This will also contribute positively towards the acceleration of the meeting of the empowerment of the black people in the mining industries as outlined in the Mining Charter 2010 on the basis that once they are awarded the contracts it means that black people will also get an opportunity to become the managers or owners of the tenders or business.

¹⁸⁰ Section 217 (1) of the constitution of South Africa 1996.

¹⁸¹ Tucker C, Public procurement in South Africa, an overview (2013).

¹⁸² Ibid.

¹⁸³ Constitution of the Republic of South Africa 1996.

¹⁸⁴ Gunter C.N, Critical analysis of Preferential Procurement in the Mining Industry, master's dissertation in Business Leadership, University of South Africa.

2.1.9. Conclusion.

The legislative framework and regulations discussed above reflect transformation targets which the mining industries are expected to have complied with since the transitional period (post-apartheid). The targets are not yet complied with in terms of the report from the Commission for Employment Equity 2013-2015 and this indicates that there is a poor implementation pace or progress. The mining industries are not effectively implementing the legislation. The literature review has made it clear that the challenges faced in the mining industries which are contributing greatly to the poor transformation pace include shortage of skills and inexperience.

These challenges are hampering those historically disadvantaged from occupying managerial positions. The Chamber of mines also indicated that mines are continuing to hire illiterate employees and this slows down transformation. In closing the compliance with the legislation is of paramount importance and could be effective provided such employees are literate, experienced and productive. Once this is achieved, then transformation pace will successfully improve

CHAPTER 3

A COMPARISON OF SOUTH AFRICA, CANADA AND AUSTRALIA

3.1. INTRODUCTION

This chapter deals with the comparison in respect of South Africa, Canada and Australia concerning transformation of the historically disadvantaged people in the mining industry operating within a certain community. The main emphasis is given to the empowerment of the indigenous or aboriginal people through mining education and provision of skills as part of transformation in Canada and Australia. The initiatives taken by the mining companies in both Canada and Australia as a way of transforming indigenous people will be looked at and the contribution made by the mining companies to the developmental needs of the community.

3.2. Canada.

In terms of section 35 of the Canadian Constitution of 1982 the Canadian indigenous people have the right to oppose any mining project which does not take in to consideration their socio-economic and developmental needs before they could mine or operate within a community.¹⁸⁵ Therefore this compels companies to develop the community where they wish to operate their project. The mining sectors in Canada have entered in to an agreement known as Impact and Benefit Agreements (IBAs)¹⁸⁶ and this agreement tends to include that: Aboriginal peoples may be preferentially hired, fulfilling an agreed upon number of Aboriginal employees; training for these jobs could also be provided through local classes and apprenticeships or with scholarships and bursaries to the community members; Recognition and support of relevant local Aboriginal businesses through preferential contracting, as long as said business is cost competitive, efficient and timely; possible partnerships with

¹⁸⁵ Hart R, Introduction to the Legal Framework for Mining in Canada, (2012).

¹⁸⁶ An Impact and Benefit Agreement (IBA) is a formal contract outlining the impacts of the project, the commitment and responsibilities of both parties, and how the associated Aboriginal community will share in benefits of the operation through employment and economic development. See Sosa, I. and K. Keenan, *Impact Benefit Agreements between Aboriginal Communities and Mining Companies in Canada* (2001).

Aboriginal businesses to structure joint initiatives; the creation of a registry of Aboriginal businesses to update the company".¹⁸⁷

The Mining sectors also take initiatives to enhance the skills and education of the aboriginal people. Such initiative include the Network for Aboriginal Mining Education which is a group of educators, industry members, Aboriginal communities and others interested in improving the opportunities and successful education to employment outcomes of Aboriginal learners.¹⁸⁸ The Canadian aboriginal people benefit from the mining sectors operating within their respective communities and this makes it clear that transformation in Canada is far much better than South Africa and there are lessons that South Africa can draw from Canada.

3.2.1. Mining transformation in Canada: Lessons to be learned by South Africa.

The Natural Resources Canada (NRCan) Minerals and Metals Sector (MMS) has developed the Minerals and Metals Policy of the Government of Canada: *Partnerships for Sustainable Development*, as the central statement of Canadian government mineral policy (NRCan MMS 1996). This policy encapsulates the engagement between the mining companies and aboriginal¹⁸⁹ community through the mechanisms such as the Aboriginal Participation in Mining inclusive of training, employment and business ventures to the community.¹⁹⁰ Therefore, the indigenous people¹⁹¹ in Canada are provided with the career development in order to allow them to occupy top level organisation positions and supervisory or management positions.¹⁹²

¹⁸⁷<http://www.aboriginalmining.ca/en/miningeducationnetwork/networkforaboriginaleducation>: Found at 13H33 on the 28/04/2015.

¹⁸⁸Ibid.

¹⁸⁹ Aboriginal people include the first Nations peoples, Inuit and Métis who may live anywhere from far northern isolated communities to bustling urban centres. Accessible online at <http://www.everyoneschance.ca/our-campaign/aboriginal-communities>: Found on the 29/04/2015.

¹⁹⁰ This piece is extracted from the working discussion paper Prepared for the North South Institute by William H *et al* for a full discussion on *Aboriginal Peoples and Mining in Canada: Consultation, Participation and Prospects for Change* (2012) at 23.

¹⁹¹ In terms of section 35(2) of the Canadian Constitution Acts, 1867 to 1982, Indigenous people include the Indian, Inuit, and Métis Peoples of Canada.

¹⁹² Canadian International Council on Mining and Metals, Good Practice Guide: Indigenous Peoples and Mining 2nd edition (2015) at 84.

This objective is assisted by providing indigenous employees with career development opportunities and training and educational support to obtain qualifications.¹⁹³ “If employees from indigenous communities have the opportunity to develop their careers, they will be more likely to stay in the mining workforce over the longer term; they will also have greater employment mobility when and if the mine closes”. “Another important reason for increasing the number of employees from indigenous communities in skilled roles and supervisory and management positions is to provide positive role models within their communities and in the workplace”.¹⁹⁴

Moreover there is a Mining Association of Canada (MAC), which signed the memorandum of understanding (MOA) with Canada in order to enhance the aboriginal participation in the mining industry such as the “charity that is committed to improving educational outcomes for Aboriginal youth, supporting Aboriginal students through post-secondary scholarships and bursaries and MAC is also a large supporter of the Mining Industry Human Resources Council, which offers resources on mining careers and a work readiness program geared to Aboriginal job-seekers”.¹⁹⁵

This makes it clear that upon post-secondary indigenous people are given scholarships unlike in south Africa where only specific learners are given scholarships (e.g. only science students are given scholarships to the exclusion of other students from communities.)¹⁹⁶ The Canadian indigenous people have the right to be consulted¹⁹⁷ on any decision concerning mining activities which is to be operated

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ This is a piece extracted from the Mining Association of Canada on *Aboriginal Affairs*, (2013). Available online at <http://mining.ca/our-focus/aboriginal-affairs>: Found on the 17/05/2015.

¹⁹⁶ This was made clear by the South African Mining Qualification Authority. See Broad Based Socio Economic Empowerment Charter 2002.

¹⁹⁷ Consultation right is recognised in terms of the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP 2007) which Canada endorsed in 2010. See further, Section 35 of the Canadian Constitution Acts, 1867 to 1982 recognizes and affirms existing “Aboriginal and treaty rights” wherein the indigenous people have the right to oppose the mining activities if they are not developmental and transformational towards the indigenous people. Therefore the Canadian indigenous people are entitled to say no to the mining

within the area where they are located.¹⁹⁸ As part of transforming and equipping the disadvantaged Canadians (herein referred to as indigenous people), there is a “support for training community members to increase their employability in the project; commitments to employee community members; and financial contributions to the community for development of the community”.¹⁹⁹ Therefore if they are trained they become eligible and equipped for positions suitable for their qualification. Therefore before a person is employed, he is given a prior training and skills for the employment in question. As such South Africa may learn to equip youth with educational skills prior to their employment as it is done in Canada so that they will be able to be productive and competitive even outside the mining industries.

Moreover, mining companies negotiate agreements²⁰⁰ which impacted “aboriginal communities so that the latter receive a share of the benefits that are created from mining activity”.²⁰¹ This doesn’t only contribute towards the skills to the aboriginals but it develops the community at large for transformation involves change in the community and it is developmental in nature.

“To increase employment opportunities, mining companies can provide training and apprenticeship programs, scholarships, career support including counselling, flexible work schedules that accommodate traditional activities, facilities that permit the preparation of traditional local food, the use of local languages, and subsidized transportation between communities and the work site. Monetary benefits to

activities provided they are of the view that it would not be of any benefit to them and if it is not benefiting them.

¹⁹⁸ Hart R, opcit page 41.

¹⁹⁹ Ibid.

²⁰⁰ These agreements have set out such commitments as education, training, jobs, business development and financial payments to help ensure mining projects bring long-lasting benefits to Aboriginal communities. In terms of employment, the mining sector has become, proportionally, the largest private sector employer of Aboriginal people in Canada. Given the proximity of many Aboriginal communities to current and potential mining operations, as well as the large number of Aboriginal youth, employment in well-paying, skilled mining jobs is poised to increase well into the future. Accessible at <http://mining.ca/our-focus/aboriginal-affairs>: Found on the 17/05/2015.

²⁰¹ This is extracted from a conference paper by Karyn K, José E.D and Ken T for a discussion on *Mining and Communities: Poverty Amidst Wealth, International Conference on natural Assets*, November 2002, at 2.

communities can include royalties, profit shares or fixed cash amounts”.²⁰² “They may also include equity interests in the mining project, with possible representation of local parties²⁰³ on the company’s board of directors. The mining companies have established the Aboriginal Mining Education Forum where delegates from the mining industry and the indigenous people engage concerning the mining education”.²⁰⁴ There is an increase in the mining education and training & collaborate with professionals in order to equip the indigenous people with tools and skills for employment in the mining industries.²⁰⁵ There is “Human Resources and Social Development Canada’s Workplace Skills” where aboriginals are provided with the skills for mining industry eligible for the mining employment and The “Office of Literacy and Essential Skills (HRSDC) provides funding opportunities for skills development for the indigenous people”.²⁰⁶

Further, there is an established project known as Ready to Mine, Skills Development Project,²⁰⁷ which realized that “Companies need employees and communities need employment, but skills development is needed”. Therefore the project was established to “increase the involvement and engagement of Aboriginal peoples by providing work-ready and essential skills needed to gain meaningful employment in mining, to provide training that is created with industry validation and through consultation with Aboriginal organizations, this project can bridge the gap to employment”.²⁰⁸ “There are some interesting initiatives to ensure that Aboriginal people can access future development jobs, such as the British Columbia Aboriginal

²⁰² Ibid.

²⁰³ This makes it evident that indigenous people are made part of the board of directors of the mining companies operating within the area of the indigenous people. Therefore, this reflects a good transformation example of the disadvantaged Canadian people.

²⁰⁴ <http://www.aboriginalmining.ca/en/miningeducationnetwork/networkforaboriginaleducation>: found 13H33 on the 28/04/2015.

²⁰⁵ Ibid.

²⁰⁶ See Mining Industry Human Resources Guide For Aboriginal Communities in Canada, 10.

²⁰⁷ This is extracted from a presentation paper by Bryan H and Mel S, for a discussion on *Mining Essentials: A Work Readiness Training Program for Aboriginal People*, November (2010).

²⁰⁸ Ibid.

Mine Training Association”.²⁰⁹ It functions as a federal charity in partnership with industry, governments and educators.²¹⁰

“There are also a growing number of impact benefit agreements made by mining companies and Aboriginal communities where the mining activities or project will be located”.²¹¹ Moreover, according to Economic and Social Development Canada Minister Jason Kenney, Strengthening linkages between universities and employers in all sectors will further enhance the skills that graduates bring to their careers.²¹² Further, the mining industries in Canada established an innovative local training and employment programs for the aboriginal people in the local community.²¹³ Moreover, the mining activities are “expected to have plans and programs for indigenous training and employing members of the indigenous community and the recruitment for the indigenous people”.²¹⁴

Further, “Prime Minister Stephen Harper announced more than \$5.8 million over two years - through Employment and Social Development Canada’s Skills and

²⁰⁹ <http://www.everyoneschance.ca/our-campaign/aboriginal-communities>: retrieved at 17H46 on the 29/05/2015.

²¹⁰These agreements outline the impacts of the project, the commitment and responsibilities of both parties, and how the associated Aboriginal community will share in benefits of the operation through employment and economic development. The agreements generally contain labour provisions, whereby members of the Aboriginal community are preferentially hired, and training for the jobs may be provided through local classes and apprenticeships or with scholarships and bursaries. Available online at <http://www.everyoneschance.ca/our-campaign/aboriginal-communities>

²¹¹<http://www.everyoneschance.ca/our-campaign/aboriginal-communities>: retrieved at 17H46 on the 29/05/2015.

²¹² Komarnicki E.D, Labour and skills shortages in Canada: addressing current and future challenges, December (2012).

²¹³ Canadian International Council on Mining and Metals, *opcit* at page 42.

²¹⁴The mining industry must provide pathways to employment such as developing work-readiness programs that prepare Indigenous Peoples for the transition into the mainstream workforce – this might include, for example, mine access and vocational training programs; scholarships; vacation work experience and employment; literacy, numeracy and other skill development programs and employ a transparent process for selecting candidates that includes opportunities for women and youth, and offers a dedicated technical and other skills training program. See Canadian International Council on *Mining and Metals, Good Practice Guide: Indigenous Peoples and Mining 2nd edition* (2015) at 93.

Partnership Fund (SPF) – to the Northwest Territories Mine Training Society for a new mining sector-skills training program”. “This program will help Aboriginal participants gain the training they need to access the jobs and prosperity generated by this industry”.²¹⁵ “The government is also promoting job creation for Aboriginal people in the North through the Aboriginal Skills and Employment Training Strategy (ASETS) and the First Nations Job Fund”.²¹⁶

A Work Readiness Training Program for Aboriginal Peoples to create more employment opportunities for Aboriginal peoples and to provide a practical solution to recruitment challenges currently facing mining employers.²¹⁷ According to Russell, Manager of Training Programs at the Yukon Mine Training Association and Ready to Mine Project Steering Committee member, this program is going to help Aboriginal peoples across Canada. It is going to give them the confidence they need to take advantage of all the opportunities available in the mining industry, she says. “Industry and communities have both been asking for this type of program to tap into more skill-specific training.”²¹⁸

While Faubert, Manager of Aboriginal Affairs at Goldcorp Inc.’s Musselwhite Mine and member of the Ready to Mine Project Steering Committee, agrees that the program provides a viable solution that is mutually beneficial to both employers and Aboriginal communities. “It makes good business sense to have a local trained work force at a remote mine site,” Faubert explains”. “And employment opportunities are much needed within remote Aboriginal communities because the unemployment rate is high. The local community elders really support employment for their youth for the health and well- being of the community, the more people they have employed, the more functional the community.”²¹⁹ Other initiatives taken by the mines in Canada for the benefit of the aboriginal people include scholarships and training to the

²¹⁵ <https://www.pm.gc.ca>: found at 17H56 on the 29/05/2015.

²¹⁶ Ibid.

²¹⁷ Forcellini L, Mining Industry Human Resources Council (MiHR) Working to Increase Aboriginal Participation in Mining Sector, June (2010).

²¹⁸ Ibid.

²¹⁹ Ibid.

aboriginals as a way of enhancing them to participate in the upper managerial positions.²²⁰

The legislature must incorporate the provision in the regulations aimed at transforming mining industries that will compel the mining sectors to initiate programmes aimed at providing training and education to the community where the mining operation take place.

The South African mining industries must consult with the community and find out if their socio-economic and developmental needs had been carried out by the mining sectors and if the communities are not satisfied they must be allowed to bring forth what they think will be the best step in order to satisfy their developmental needs. The mining industries in South Africa must initiate the memorandum of Understanding with the community so that they may know the needs of the community apart from the developmental needs in the Social Labour Plan. If these initiatives are taken, transformation will be better in progress. The better transformation initiatives in Canada are clearly as a result of the commitment between the mining sectors and the community and if the mining industries in South Africa also commit and place community needs at the forefront, then transformation will progress.

3.3. Mining transformation in Australia: Lessons to be learned by South Africa.

According to Chellam a legal scholar who has studied Australian and South African legal tradition²²¹ , Australia has not enacted any specific legislation requiring mining companies to hire and/or educate Indigenous Australians unless in terms of the Native Title Act 1993 which declared the aboriginal right in respect of their ancestral land and engagement or negotiation of the mining company and community with regard to the compensation for usage of their land, employment and the developmental needs of the community where the company wishes to operate.²²²

²²⁰ Minerals and Metals Sector Canada, The Minerals and Metals Policy of the Government of Canada Partnerships for Sustainable Development.

²²¹ Roeder R.W., Employment and Indigenous Empowerment in Mining: Australia and South Africa, University of Queensland, September (2013).

²²² Ibid.

The Australian mining industries provide education and training to the indigenous Australian people in order to enable them to be employable. “Access to education, training and employment is the key to building sustainable Indigenous communities”.²²³ “Mining companies have a critical role to play in capacity building because they can provide training, not just for operational roles, but in the areas of leadership training, and the development of management and governance skills. If Indigenous people are to live in prosperous and sustainable communities, it is essential for them to develop leadership and management skills, which are essential competencies of viable communities”.²²⁴

The current contribution of the mining industries to the local developments of the indigenous communities includes the following:²²⁵

- “employment, along with education and training to help community members be employable;
- Small business development and local contracting related to the mining operation;
- support of basic education and health care; and
- infrastructure development”

The “issues of employment and employability are of concern with almost every industry respondent surveyed. It was perceived to be one of the critical components of Indigenous development and one that all companies in some way had committed to.”²²⁶ other inputs to the development by the mining projects or companies are:²²⁷

- “increased attention to supporting small business development in non-mining related activity;
- financial literacy and financial management to assist Indigenous communities in handling the increased cash flow and business opportunities; and

²²³ Tiplady T and Barclay M.A Indigenous Employment in the Australian Minerals Industry (2007) at 12.

²²⁴ Ibid.

²²⁵ Render J.M, Mining and Indigenous Peoples Issues Review,(2004) at 35.

²²⁶ Ibid.

²²⁷ Ibid.

- Leadership training for community organisations and Indigenous governments unfamiliar with working with a large commercial enterprise, to aid in community development planning efforts as well as conflict resolution”.

Apart from the mining industry’s contribution towards transformation of the indigenous people, the government have also working with “Government’s Indigenous Economic Development Strategy 2011-2018, which aims to support increased personal and economic wellbeing of Aboriginal Australians through greater participation in the economy”.²²⁸ It aims to “encourage participation and improve access to skills development and jobs.”²²⁹ The mining industries have also found out that it is difficult to provide Aboriginal employees with the experience and training required to fill higher-level positions if they cannot be retained for a reasonable period”.²³⁰ Therefore in order for the aboriginals to occupy upper positions they are kept for longer period while being provided with training.

South Africa mining industries must also prioritize the developmental needs of the community just like Australia such as the support towards local enterprise development, support education through the building of schools and leadership training to the community. If this is made a priority then transformation in the community will improve in the sense that their developmental and socio-economic needs would be fulfilled. The support to local enterprise will lead to black owners in business which is also a target in the Mining Charter 2010 and building of schools and training to the community will lead to introduction of skills and elimination of illiteracy in the community. The fulfilment of the community developmental needs is transformative in nature and if the mining sectors in South Africa take initiatives aimed at empowering people, Such as training, education and support to local enterprises the transformation progress will improve.

Chellam recommended that “if there is a lesson South Africa can learn from Australia it could be a good idea to supplement the national legislative framework provided by local comprehensive agreements, e.g. by expanding the tribal agreements”. “Those comprehensive agreements which would have to be within the scope of national

²²⁸ Government of Western Australia, Aboriginal participation Economy strategy (2014) at 9.

²²⁹ Ibid.

²³⁰ Tanuja B, Aboriginal employment at century mine: developing a strategic approach to dealing with retention issues.

legislative could then better address local differences and demands and provide room and give incentive for Corporate Social Responsibility initiatives”.²³¹

3.4 Lessons learned from South Africa

The South African mining industries are compelled by the legislations, policies and regulation to include the participation of the historically South Africans in the mining industries to enable to become competitive and productive.²³² The legislations put in place to heal the imbalances of the past include are Constitution which eliminated unfair discrimination and encourages equality before the law and introduced preference of contracts in the mining industries to historically disadvantaged south Africans, the Broad-based Black Economic Empowerment Act 53 of 2003, the Preferential Procurement Framework Act No. 5 of 2000 and the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA 2002), the Mining Charter of 2002 and the Mining Charter of 2010. Specifically, “Broad-based black economic empowerment (B-BBEE)” aims to: “promote the achievement of the constitutional right to equality, increase broad-based and effective participation of black people in the economy and promote a higher growth rate, increased employment and more equitable income distribution”.²³³

Broad-Based socio-Economic Empowerment Charter for the South African Mining Industry (Mining Charter 2002 was enacted to “create an industry that will proudly reflect the promise of a non-racial South Africa” and to “provide a framework for progressing the empowerment of historically disadvantaged South Africans in The Mining and Minerals Industry”.²³⁴ “Regarding the equity of employees the Mining Charter specifically requires companies to”, “establish targets of at least 40 percent for HDSA employment equity within five years, to properly train HDSAs and by 2014 to achieve a 26% HDSA ownership of the mining industry, the target which was never achieved”.

²³¹ Roeder R.W, opcit at page 48.

²³² Ibid.

²³³ Ibid.

²³⁴ Ibid.

The lessons that can be learned from South Africa is that there are legislation compelling the mining industries to promote the participation of the disadvantaged people unlike in Australia where the initiatives are taken out of the agreement between the mining industries and community. There is a need for the enactment of the legislation and policies forcing engagement and participation of the Australian indigenous people in the mining industries. The training and empowerment of the indigenous people in Australia must be legislated in the mining industries notwithstanding the provisions of the Native Title Act where the Australian community is entitled to compensation for the land usage by the mining industries.

3.5. Conclusion

The Canadian constitution of 1982 has given the aboriginal people a right to be consulted by the company wishing to operate a mining project within their community and this right include the engagement between the mines and community in respect of the employment, training, education and developmental needs of the community. The Canadian indigenous people are provided with the training prior to their employment in order to improve their employability. The provision of mining skills prior to the employment or to the new entrants assisted the transformation in Canada and South African mining industries could use the same initiative and ensure that new entrants are provided with new necessary skills and education as a way of preparing them to be employable and competitive.

Further the Mining Association of Canada had established a charity committed to providing educational outcomes of the youth, post-secondary scholarships and it also supports the Mining Industry Human Resource Council in its initiative of offering “mining careers and work-readiness for aboriginal job seekers”. So that when employed they are already skilled and well educated. The mining industries in South Africa could also take the initiative to provide the scholarships to the students not to only those who wish to pursue their careers in mining related education but to those who deserve it.

The government had also issued a policy known as partnership for sustainable development which encourages the engagement of the companies and communities through aboriginal participation in mining by providing education, employment and training of the community youth prior to their employment and career development

which equips them with experience and eligibility of occupying managerial positions. The mining industries in South Africa must provide training to those disadvantaged and retain them in order to enable them to procure experience. There is also an Aboriginal Mining Education Forum where industry engages with community on mining training and education to prepare the aboriginals for employment and there is Human Resource and Social Development of Canada which provides aboriginals with skills and mining education to enhance their employability and there is “Office for Literacy and Essential Skills” providing “funding opportunities for skills development for the Canadian indigenous people”.

There is “British Columbian Aboriginal Mine Training Association” which functions as the charity in partnership with the government, mining companies and educators to provide education, training and mining skills to the people in order to ready them for employment.²³⁵

Apart from Canada, even though there is no specific legislation in Australia compelling mining companies to hire, educate and provide skills to aboriginals, the Australian government had also encouraged the provision of skills, education and training for the aboriginal Australians through Indigenous Economic Development strategy for the well-being of the people. Further as for the Republic of South Africa, the empowerment of the historically disadvantaged is provided in the MPRDA,²³⁶ Skills Development plan which aims at improving workplace skills and the only problem with this is that the people who are employed are aged and not interested in improvement of their skills unlike in Canada or Australia where skills, education and training are encouraged prior to the employment.

In South Africa, the Skills Development Act makes the provision for the skills to the workers but it does not make it clear that skills must be provided prior to the employment for the new entrants. Just like in Canada and Australia where training and education or skills are given prior to the employment, the South African mining industries must include in their skills development act a provision compelling skills and training to the new entrants before they could be employed.

²³⁵ Ibid.

²³⁶ ACT 28 OF 2008.

MPRDA, Mining Charter 2010 encourages engagement with the community in terms of participation of the community in the mining industries and the same initiatives are taken in both Canada and Australia. However, the socio-economic and developmental needs of the community must be put at forefront in South Africa as it is being practised in Canada and South Africa. The mining industries in South Africa must also despite the legislations, take in initiatives that support the skills, education and training to the communities where mines are located.

CHAPTER 4

ADDRESSING THE CHALLENGES CONFRONTING TRANSFORMATION IN THE MINING INDUSTRIES IN SOUTH AFRICA

4.1. Introduction

The challenges that are confronting transformation in South Africa include lack of skills, lack of qualification and inexperience on the black people in mining industries. Therefore this chapter looks the challenges and suggests the possible solutions or reduction to the challenges.

4.2. Providing a possible solution to the lack of skills in mining industries.

The mining industries in South Africa is confronted with the lack of skills as a major transformation progress obstacle and the reality is that lack of skills could only be improved or reduced if the black disadvantaged people are accorded training by their employers. Therefore the mining industries must assist combat lack of skills amongst black employees by providing them with training and education. This initiative was taken in Canada where the mining industry (Diavik Diamond Mine)²³⁷ entered in to an agreement with the community and employed five representatives from the community and offered them training, education and skills. This indicates that if the mining industries in South Africa engage with the community in terms of skills development, transformation will progress.

The mining industries in South Africa must also create a charity where new entrants and youth who are interested in mining career could be taken school for mining education, training and skills. The same initiative was taken in Canada where the mining association of Canada signed a memorandum of understanding to enhance aboriginal participation in the mining industries through a charity aimed at funding youth interested in mining career.²³⁸

²³⁷ Canadian International Council on Mining and Metals, Good Practice Guide: Indigenous Peoples and Mining 2nd edition (2015) at 84.

²³⁸ <http://mining.ca/our-focus/aboriginal-affairs>: found on the 17/05/2015.

This explains why Canada has an improved transformation initiative and a powerful aboriginal participation in the mining industries. Therefore South Africa could also take the same initiative when combating lack of skills challenge. Despite education, the community job seekers could also be provided with work readiness program where the mining industries would employ experienced individuals to provide them with skills in order to prepare them for employment.

The same initiative is taken in Canada where there is a program known as work-readiness²³⁹ which is aimed at providing the community with necessary skills and training to ensure that when they are employed, they would have necessary skills and experience for their employment.²⁴⁰ Alternatively the mining industries must ensure that when the contractors employ, they have offered training and education to the new entrants and this would ensure that the employees are work ready and have necessary skills. If the mining industries would take the above mentioned initiatives transformation will be reduced because such initiative have worked in Canada and South Africa might as well benefit from them and improve lack of skills challenge.

4.3. Providing a solution to lack of qualification in the mining industries.

The mining industries in South Africa must provide the scholarships to the community youth who are interested in pursuing mining career and this will assist speed up transformation in the country on the basis that when the new entrants are employed they would have schooled and obtained necessary qualifications for the employment in question. This initiative was taken in Canada where the mining association urges the mining project to provide scholarships to the indigenous people as a way of transforming them and equipping them with necessary education and when they are employed, they will be work-ready in terms of qualification.²⁴¹

²³⁹ Forcellini L, opcit at page 47.

²⁴⁰ Ibid.

²⁴¹ <http://mining.ca/our-focus/aboriginal-affairs>: Found on the 17/05/2015.

The other alternative might be where the mining industries in South Africa initiate a forum within the community and that forum must be aimed at providing education and training to the community members as part of their development and the forum must be funded by the mine. Canadian mining industries have initiated a programme known as Aboriginal Education Forum²⁴² which is aimed at the engagement of the community by providing them with education and training in order to prepare them for employment and if South African mining industries could take the same initiative, the transformation will improve and lack of qualification will be reduced.

4.4. Providing a solution to inexperience in the mining industries.

According to de Kock, a CEO (chief executive officer) at management leadership consultancy Louis Allen, “it is difficult to employ a person as the manager of a mining company without first showing the person how to perform their duties”.²⁴³

“He emphasizes that it is important to provide people with training before they could be appointed as managers of companies for after raining they will gain a necessary experience and be able to carry out their duties”.²⁴⁴ “He states that if someone is to be employed as the manager of a certain sector; it is important that they undergo a development process, which teaches them to understand managerial concepts and processes and helps them to acquire new knowledge and skills, and become confident and able to apply the principles in their work environment”.²⁴⁵

Therefore if the mining industries accord the black people with training rather than saying that they lack experience, they will have experience when they are trained and they will know how to carry out their duties. These will therefore contribute to transformation on the basis that the mining industries will now provide training to the people or new entrants and as such they will acquire experience while training and when they are placed in managerial positions they will know what is expected from them because they would have been trained in that regard.

²⁴² Bryan H and Mel S, opcit at page 45.

²⁴³ Moodley S, Management a skill not to be overlooked in mining, May (2012). Accessible online at <http://www.miningweekly.com>: Found on the 8/08/2015.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

4.5. Conclusion

Transformation in the mining industries in South Africa will improve if the mining sectors commit to engage the community within which they are located and provide them with programmes that are aimed at provision of education, training and skills to the community members. These initiatives could be taken in the form of charity for scholarships to the youth to pursue mining career and forums providing education to the job seekers in order to prepare them for employment. The mining industries must also encourage training of their staff or new entrants in order to enable them to gain experience for the work they are supposed to carry out. New entrants or older staff could gain managerial positions only if they are trained on how to perform their duties and the mining industries must provide such training.

Lack of skills and lack of qualification will be reduced only if the mining industries are ready to spend little on the provision of education through programmes and forums to the members of the community. Therefore, taking in to account that Canada is developed and transformed, the initiatives that Canada have taken in order to equip aboriginal people with skills and education could be of great importance to south Africa and if undertaken, transformation will progress as it progressed in Canada.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1. CONCLUSIONS.

The aim of the study was to analyse the importance of complying and implementing the Mining Charter 2010 and other laws put in place to drive and deliver transformation in the mining industries in South Africa. The research depicts that whilst some slow progress had been made with regard to black representation on managerial and supervisory positions, the mining companies lack commitment towards reaching government transformation agenda. The challenges that were found to be hindering transformation progress are lack of skills, lack of experience and lack of qualifications. The study revealed that compliance and implementation of the laws and policies aimed at transformation will lead to mining community development and substantial or meaningful participation in the nation's mineral wealth.

However, it is clear that without cooperation of all the stakeholders in the mining industries, it is unlikely that transformation can be delivered or achieved. In compliance with Mineral Petroleum Resources and Development Act and Broad Based Socio Economic Empowerment Charter 2010, the mining sectors need to deepen their contribution to socio-economic and developmental needs of the mining communities and it has the responsibility to promote and uplift community livelihood.²⁴⁶ The Mining Charter 2010 makes it clear that mining sectors must contribute to the local developments of the mining communities; this includes the transfer of skills and job creation. The meaningful and substantial participation of the historically disadvantaged South Africans in the mining sectors cannot be underestimated. Therefore, an effective stakeholder engagement and participation in the government transformation agenda is the key to the success of achieving the targets set by the Mining Charter 2010 and MPRDA goal of meaningful participation.

²⁴⁶ Rogerson C M, Mining enterprise, regulatory frameworks and local economic development in South Africa 2011.

Further, transformation will be delivered provided all the mining companies show the high level of commitment towards reaching the targets. There is a need for an effective and strategic partnership amongst all relevant stakeholders in the mining industries to meet transformation goals as set out in the Mining Charter 2010.

In conclusion, it is clear that Mining Charter 2010 does not contain penalties for non-compliance and implementation of the transformation agenda in the mining sectors, therefore there is a need for the insertion of the penalty clause for non-compliance with transformation target set by Mining Charter 2010, thus mining sectors will see a need for a compliance with the transformation agenda and progress will surely improve.

5.2. RECOMMENDATIONS

Therefore this mini-dissertation makes the following recommendations:

- There should be stringent and legal enforcement for the mining industries to comply with the transformation targets and non-compliance must be rigorously penalised. The minister of mineral resources must not hesitate to revoke the mining licenses of the erring companies. Therefore it is recommended that the government must establish a commission in a mining community where the community members will lodge complaints if the company does not fulfil its obligations as stated in the social labour plan and through this it will be known if or not the company is complying with the regulations.
- The government must also make awareness campaigns to the community to let them know of their rights and the obligations the mining companies must fulfil.
- The government must appoint representatives to different districts where mines are operating to assess and monitor whether mining companies are complying with the regulations as far as transformation is concerned and report to the relevant authority. This will enable relevant authority to take

appropriate decision on whether to impose sanctions, penalties or withdrawal or cancellation of the mining rights.

- The Skills Development Act must include the clause which states clearly that employers must provide education and training to their new entrants before employment because the Act provides that employer must provide education or skills to the employees but it doesn't specify when such a skill should be provided, either before or after being employed.
- The legislature must incorporate a clause in the Employment equity which will compel employers to spend a little on training their employees so that they shall know how to perform their duties.
- Further, the mining industries must also support the enterprises that are owned by the local community members and invest in their businesses in order to allow them to be managers in such businesses.
- The mining industries must provide the older employees who have served the mining industries for a long time with the management leadership lessons and training so that they could acquire necessary knowledge as far as managerial role is concerned. There must be an induction of literate candidates who have the necessary documentation for the managerial or supervisory positions. This will assist speed up transformation in the sense that the mining sectors will be comprised of skilled and educated employees thus when a certain position becomes vacant the employees will be able to compete. Therefore the question of lack of skills will no longer be a problem.
- Since it was revealed by the chamber of mines that employees are expected to attend ABET school after hours and by then they are tired and wouldn't see a need to attend, the mining sectors must alter the attendance period and provide training and education opportunities to the communities within the areas where the mines are located before employment takes place. This is on the basis that if such opportunities are provided prior to the employment as a way of preparing them for the employment, the issue of enhancing their qualification wouldn't be a problem for already they would have necessary

documentations. The countries like Canada²⁴⁷ and Australia have the initiative where the mining industries provide the neighbouring community members with prior education and training as a preparation for the employment and when the employment vacant comes, they know that there are community members with required skills. Therefore in this way lack of skills and illiteracy is eliminated amongst the employees or community members and they also become eligible to compete for the higher supervisory and managerial positions. Further the Canadian constitution makes it clear that community have the right to be consulted and developmental needs of the community must be outlined and carried out by the mining sector which is located within that community.²⁴⁸ This includes employment, training and education opportunities for the disadvantaged aboriginals. Therefore this is what South Africa could also include in their social labour plan in terms of benefiting the community with education, training and skills prior to the employment rather than hiring them without necessary documentation.

- South African mining sectors must emulate what Canada and Australia are doing in terms of providing education, training and skills to the community members before they provide them with employment so that when they are employed, they would have acquired necessary skills. This could be done by way of community workshops and forums initiated by the mining industries to provide skills to the community.
- Mining Charter provision where Mining Qualification Authority offers scholarships to science and mathematics students only must be altered as it does not promote transformation but rather only benefits certain students to

²⁴⁷The Natural Resources Canada (NRCan) Minerals and Metals Sector (MMS) have developed the Minerals and Metals Policy of the Government of Canada: Partnerships for Sustainable Development, as the central statement of Canadian government mineral policy (NRCan MMS 1996). This policy encapsulates the engagement between the mining companies and aboriginal community through the mechanisms such as the Aboriginal Participation in Mining inclusive of training, employment and business ventures to the community. See Hipwell W *etal*, Aboriginal Peoples and Mining in Canada: Consultation, Participation and Prospects for Change, at 23.

²⁴⁸ Canadian Constitution Acts 1687 to 1982.

the exclusion of others.²⁴⁹ This initiative was taken to empower students from schools that are located within the area where the mining sectors are located and the benefits are supposed to benefit all the deserving students not certain students. the mining industries don't only comprise of the job opportunities requiring only scientists but for example there is human resource department which don't need a scientist personnel and the criteria in which the scholarship is being offered must be altered and be open to all those who deserve.

- The mining industries must create engagement with the community in terms of the charity where the mining sectors will be contributing to the charity for the students within the community where they are based and this will generate scholarships and bursaries to all the students who deserve it. This encourage community members to enrol in schools for they will know that should they perform well in school they are guaranteed a scholarship to further their studies and this will further encourage competition within the community in terms of education thus eliminating the problem of illiteracy. The same initiative was taken in Canada and this explains why they don't have unskilled and uneducated employees.²⁵⁰
- The mining industries must provide the university graduates who studied mining related careers with training upon completion of their studies as a way of preparing them for the employment. This will aid them in terms of experience and also equip them in terms of knowing what is expected from them when given similar task.

²⁴⁹ Broad-Based Socio-economic Empowerment Charter 2010.

²⁵⁰ Mining Association of Canada (MAC), signed the memorandum of understanding (MOA) with Canada in order to enhance the aboriginal participation in the mining industry such as the charity that is committed to improving educational outcomes for Aboriginal youth, supporting Aboriginal students through post-secondary scholarships and bursaries and MAC is also a large supporter of the Mining Industry Human Resources Council, which offers resources on mining careers and a work readiness program geared to Aboriginal job-seekers. Available online at <http://mining.ca/our-focus/aboriginal-affairs>: found on the 17/06/2015.

- Lastly, mining sectors in South Africa must take the initiative of empowering area were they are located in terms of education and training before they offer them employment and this will significantly contribute towards acceleration of transformation in the Republic in the sense that the problems of lack of skills and uneducated employees wouldn't be encountered and it will further assist them to be more productive and competitive even after mining careers. Transformation targets are only been slowed down by poorly skilled, uneducated and unqualified employees.

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