THE ENFORCEMENT OF CORPORATE SOCIAL RESPONSIBILITY IN THE SOUTH AFRICAN MINING INDUSTRY

By

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STUDY SUMMARY

This mini-dissertation dealt with the enforcement of corporate social responsibility (CSR) in the South African mining industry. The study discovered that CSR is more of a voluntary act rather than a legally enforceable concept upon the mining companies, thus it is rather difficult to enforce CSR as the mining companies are left with a wide discretion on how to implement their CSR policies. The study further found that even in instances where the CSR policies are actionable, the implementation is often hindered by factors such as lack of transparency and compliance by the mining industry. The study also discovered that though the success of these policies and the implementation is heavily reliant on the consultation with the communities concerned, this approach is found to be disregarded by the mining communities in most cases. In outlining the lessons that could be learnt in terms of effectively implementing and enforcing CSR policies, a comparative study was done between Australia, Chile and Ghana in order to understand as to what they are doing differently in having an effective CSR landscape in their mining industries. This therefore assisted in the compilation of the recommendations that can assist in improving the enforcement of CSR in the South African mining industry.

LIST OF ABBREVIATIONS

BBSEEC	Broad-Based Socio-Economic Empowerment Charter
CALS	Centre for Applied Legal Studies
CSR	Corporate Social Responsibility
DMR	Department of Mineral Resources
GDP	Gross Domestic Product
IDP	Integrated Development Planning
MPRDA	Mineral and Petroleum Resources Development Act
NEMA	National Environmental Management Act
SAHRC	South African Human Rights Commission
SLP	Social and Labor Plan
UN	United Nations

DECLARATION

I Dorcus Mapula Ralefatane declare that The Enforcement of Corporate Social Responsibility in The South African Mining Industry hereby submitted to the University of Limpopo, for the degree of Masters of Law in Development and Management Law has not previously been submitted by me for a degree at this or any other institution and that it is my work in design and in execution, and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete list of references.

..... 19 August 2025

DM RALEFATANE, Ms DATE

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DEDICATION

This mini dissertation is dedicated to my late parents, Fridah Makgale and Mokwena Phineus Ralefatane. Thank you for the gift of life and instilling the culture of learning in me. You sowed in me the seed of wisdom and pursuit of education, with which I shall continue to honor your everlasting memories with. You may be no more, but your unwavering love and support are still hovering over me. Rest in peace my guardian angels.

CHAPTER 1: INTRODUCTION OF THE CONCEPT OF CSR IN THE MINING INDUSTRY

1.1 Introduction

South Africa is regarded as a country rich with mineral resources.[1] It is deemed to have the fifth largest mining industry given the value of the gross domestic product (GDP).[2] Statistically, in 2021, the sector made a GDP contribution to a figure of R480,9 billion, being an increase on 2020's R353,2 billion. In 2020, the GDP contribution of the mining industry was at 7.1%, which increased to 8.7% in 2021.[3] That is therefore an indication of the continuous contribution that the mining industry makes to the economy. The remnants of the apartheid era must not be forgotten when discussing the mining industry, given the fact that the goal of the mining industry was the exploitative extraction of the abundant natural resources that South Africa has, with a minimal benefit to the majority of the population. As much as it is now occurring at a lesser degree, it was a practice of the mining industry during the apartheid era to operate without restraint, while also having the undue influence over the government decision making processes.[4] This therefore created an enabling environment upon which there was a maximization of profits at the expense of the people and the environment.

Given the above, it is imperative to examine the mining industry's socioeconomic development in the communities that they are operating on to promote Corporate Social Responsibility (CSR). To begin with, CSR can be loosely explained as 'the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as the local community and society at large.'[5] From this definition, though not a definitive definition of this concept, mining companies are bound to make commitments towards developing communities in which they operate by ensuring

[1] Perez, C & Claveria, O 'Natural Resources and Human Development: Evidence from Mineral-Dependent African Countries Using Exploratory Graphical Analysis' (2020) 65 *Resources Policy* 4.

[2] Pocket Guide to South Africa: Mineral Resources 2012/13 151-154.

[3] Minerals Council South Africa: Facts and Figures (2022) 4

[4] Leonard, L 'Mining Corporations, Democratic Meddling, and Environmental Justice in South Africa' (2018) 7 *Social Sciences* 13.

[5] Serfontein-Jordaan, M *et al* 'Achieving Sustainable Corporate Social Responsibility Outcomes: A Multiple Case Study in The South African Mining Industry.' (2022) 27 *Communitas (Bloemfontein*) 4.

legislative commitment within which they operate and also ensuring a push towards legislative commitments.

South Africa prides itself as a rich post democratic nation with the amplitude of human rights protections. The Constitution provides for the protection of environmental rights[6] and other socioeconomic rights, that are closely associated with the CSR of mining companies. as enshrined within, thus section 24(b)(iii) provides for the promotion of justifiable and sustainable economic and social development. In order to achieve this, this section provides that there must be a promulgation of legislative measures that are put in place to give effect to these promotions. One such cardinal legislation was the enacting of the Mineral and Petroleum Resources Development Act 28 of 2002, commonly abbreviated as the MPRDA. [7] The MPRDA is considered to be the primary legislation enacted for the purpose of putting effect to the provisions of the Constitution. It therefore placed the custodianship of the mineral wealth and petroleum resources in the state, thus imposing a duty on the state to administer these resources for the benefit of all the citizens.[8]

This discussion positions the research on the mining industry's conduct in promoting the socioeconomic needs of the communities they operate in. In addition to the MPRDA, the National Environmental Management Act (NEMA) imposes a duty on the state to respect, protect, promote and fulfil the social, economic and environmental rights of everyone and to strive to meet the basic needs of previously disadvantaged communities.[9] Furthermore, in terms of NEMA, in order to ensure that development benefits both current and future generations, sustainable development necessitates the integration of social, economic, and environmental factors.[10] NEMA provides that development must be socially, environmentally and economically sustainable.[11] This means that the socioeconomic development of mining communities must conform to the provisions of NEMA.

1.2 Research Problem statement

The South African mining industry, notorious for its exploitative practices during the apartheid era, has undergone substantial regulatory changes to promote

[6] Section 24 of the Constitution of South Africa,1996(hereinafter referred to as the Constitution).

[7] Mineral and Petroleum Resources Development Act 28 of 2002.

[8] Section 3(1) of the *MPRDA*.

[9] National Environmental Management Act 107 of 1998 preamble.

[10] NEMA preamble.

[11] Section 2(3) of *NEMA*.

socioeconomic development in mining communities.[12] Despite these efforts, challenges persist in ensuring mining companies fulfil their CSR obligations. This is seen through the fact that though the MPRDA and NEMA have been enacted as the pioneering legislations towards driving CSR in the South African Mining industry, gaps in enforcing CSR policies remain.[13] Mining companies prioritize profit over community development, perpetuating socioeconomic disparities.[14] Stakeholder collaboration is hindered by conflicting interests and power dynamics, which exacerbates mining community grievances.[15] The lack of commitment by mining companies to their CSR programs has led to inadequate infrastructure development and limited access to basic services for mining communities.[16] While legal frameworks provide remedies for non-compliance, their effectiveness is questionable due to regulatory loopholes, insufficient monitoring, and inadequate penalties.[17] Critical examination of existing legislation and stakeholder involvement is necessary to promote sustainable development in mining communities.

The predicament above can be seen through the challenges faced by the Xolobeni community, through which the proposed mineral sands project has led to a prolonged dispute between mining companies and the Xolobeni community in the

[12] Murombo, T 'Regulating Mining in South Africa and Zimbabwe: Communities, The Environment and Perpetual Exploitation' (2013) 9 Law Env't & Dev. J 31.

[13] Mpanza M, Adam, E, Moolla RA 'Critical Review of The Impact of South Africa's Mine Closure Policy and The Winding-Up Process of Mining Companies' (2021) 17(1) *The Journal for Transdisciplinary Research in Southern Africa* 6-8.

[14] Hirons, M 'How the Sustainable Development Goals Risk Undermining Efforts to Address Environmental and Social Issues in The Small-Scale Mining Sector' (2020) 114 *Environmental Science & Policy* 325.

[15] Conde, M & Le Billon, P 'Why Do Some Communities Resist Mining Projects While Others Do Not?' (2017) 4(3) *The Extractive Industries and Society* 681-697.

[16] Mbilima, F 'Extractive Industries and Local Sustainable Development in Zambia: The Case of Corporate Social Responsibility of Selected Metal Mines' (2021) 74 *Resources Policy* 12-15.

[17] Hodges, C *Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics* (Bloomsbury Publishing 2015).

Eastern Cape province.[18] Although the mining company made assurances of infrastructure development, including schools, healthcare facilities, and roads, there has been minimal progress on this front.[19] The dearth of infrastructure investment has made it difficult for the community to access vital services like healthcare and education, thus aggravating socioeconomic inequalities in the area.[20] The failure to adhere to CSR obligations related to infrastructure development has further exacerbated these disparities that are impeding socioeconomic progress in the community.

Additionally, the predicament of non-compliance with CSR policies is witnessed through the mining od coal within the Mpumalanga Province. The adverse effects of coal mining operations in Mpumalanga are being called out for the detrimental impact on housing and living standards in the surrounding mining communities.[21] These activities, which include blasting, pollution, and land degradation, have triggered the displacement of people and the degradation of housing infrastructure.[22] Despite CSR pledges to address housing demands, a lot of residents still live in inadequate conditions, thus lacking basic amenities, thus the failure to meet CSR obligations concerning housing needs exacerbates the housing deficit and low living standards, further damaging community welfare and social unity.[23]

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[18] Sibane, NV *Environmental Politics: The Case of The Xolobeni Mining Project in Mbizana, Eastern Cape Province, South Africa* Masters Dissertation (University of Fort Hare, 2012).

[19] Qumba, M *The Interface Between Local Government and Traditional Authority: Exploring Infrastructure Development in Mbizana Local Municipality* Masters dissertation (University of Kwa Zulu Natal 2021).

[20] Giampiccoli, A & Saayman, M 'Community-Based Tourism, Responsible Tourism, And Infrastructure Development and Poverty' (2017) 6(2*) African Journal of Hospitality, Tourism and Leisure* 1-28.

[21] Siyongwana, PQ & Shabalala, A 'The Socio-Economic Impacts of Mine Closure on Local Communities: Evidence from Mpumalanga Province in South Africa' (2019) 84 *GeoJournal* 367-380.

[22] Leonard, L 'How Mining is Threatening the Sustainability of the South African' 2019 *New Directions in South African Tourism Geographies* 317.

[23] Othman, A & Abdellatif, M 'Partnership for Integrating the Corporate Social Responsibility of Project Stakeholders Towards Affordable Housing Development: A South African Perspective' (2011) 9(3) *Journal of Engineering, Design and Technology* 273-295.

1.3 Research methodology

The methodology to be used in this research will be non-empirical qualitative research, while also exploring the use of a comparative analysis approach in between the chapters. The study will heavily be reliant on library materials that include but are not limited to case laws, journal articles (local and international), books, legislations and the constitution.

1.4 Literature review

1.4.1 Introduction and overview

The focus of the literature review is on the intricate landscape of CSR in the South African mining industry, emphasizing the interactions between ethical values, legal requirements, and socioeconomic development goals. The review commences by recognizing the multifaceted factors that influence CSR practices, ranging from ethical considerations to global guidelines such as the UN Guiding Principles on Business and Human Rights. The constitutional and legislative framework that supports CSR in South Africa is highlighted, with an emphasis on the Constitution's supreme authority and its implications for mining firms' obligations to uphold human rights and promote socioeconomic development.

Additionally, the literature scrutinizes the practical implementation of CSR initiatives, analyzing key policy instruments like the Broad-Based Socio-Economic Empowerment Charter (BBSEEC) Mining Charters and their effect on mining communities.[24] Through the examination of case studies and non-empirical evidence, the review examines the challenges and limitations of CSR implementation, including issues related to housing, community involvement, and corruption. By synthesizing viewpoints from multiple stakeholders and scholars, the literature review intends to provide a thorough

[24] Heyns, A & Mostert, H 'Three Mining Charters and A Draft: How the Politics and Rhetoric of Development in The South African Mining Sector Are Keeping Communities in Poverty' (2018) 11(2*)* *Law and Development Review* 801-841.

understanding of the complexities of CSR in the South African mining industry and identify opportunities for enhancing its effectiveness in promoting sustainable development and social equity.

1.4.2 Brief historical analysis of CSR practices in the South African mining industry

Over the last decade, CSR practices in the South African mining industry have undergone substantial transformations, driven by changing ethical standards, regulatory reforms, and socio-economic imperatives.[25] In the early 2010s, the importance of mining companies going beyond legal compliance and actively contributing to local communities' well-being and environmental sustainability gained recognition. As a result, this led to a surge in CSR initiatives aimed at addressing socio-economic challenges such as poverty, unemployment, and infrastructure inadequacies in mining-affected areas.[26]

Mining companies responded to increasing pressure from civil society and regulatory bodies by elevating CSR to a critical aspect of their business strategies.[27] The introduction of the Broad-Based Socio-Economic Empowerment Charter (BBSEEC) Mining Charter in 2010 represented a significant milestone, setting out clear guidelines for mining companies to promote the socio-economic development of communities impacted by mining activities.[28] The Charter prioritized community engagement, equitable resource allocation, and sustainable development,

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[25] Diale, AJ 'Corporate Social Responsibility in The South African Mining Industry: Necessity, Conformity or Convenience?' (2014) 2(1*) International Journal of Business and Economic Development (IJBED)* 16-28.

[26] Igbayiloye, OB & Bradlow, D. (2021). 'An Assessment of The Regulatory Legal and Institutional Framework of The Mining Industry in South Africa and Kenya for Effective Human Rights Protection: Lessons for Other Countries' (2021) 21(1) *African Human Rights Law Journal* 363-388.

[27] de Villiers, C & Alexander, D 'The Institutionalisation of Corporate Social Responsibility Reporting' (2014) 46(2) *The British Accounting Review* 198-212.

[28] Broad -Based Socio- Economic Empowerment Charter for the Mining and Minerals Industry, 2010.

establishing ambitious targets for employment equity, local business procurement, and social infrastructure investment.[29]

Over the decade, there was a gradual transition towards more inclusive and cooperative approaches to CSR, with mining companies increasingly engaging with stakeholders to jointly design solutions and address community needs.[30] Examples of this included participatory decision-making forums, community development committees, and partnerships with local businesses.[31] Furthermore, the adoption of global frameworks such as the UN Guiding Principles on Business and Human Rights set a benchmark for responsible business practices, prompting further incorporation of human rights considerations into CSR initiatives.[32]

Despite advancements in some areas, numerous obstacles persisted in implementing CSR initiatives. Matebesi writes that insufficient housing, inadequate access to education and healthcare, and environmental degradation persisted in mining communities, underscoring the importance of greater transparency and accountability in CSR practices.[33] Additionally, instances of corruption, regulatory non-compliance, and community resistance highlighted the intricacy and tension of balancing corporate interests with socio-economic development objectives.[34]

Towards the end of the decade, there was a growing realization of the need for a more comprehensive and systemic approach to CSR in the South African mining

[29] Kgoale, PT & Odeku, KO 'Transformative Mineral Resources Beneficiation Intervention Fostering Local Entrepreneurship in South Africa' (2019) 25(2) *Academy of Entrepreneurship Journal* 5.

[30] Maswanganyi, TC *Social Justice, Corporate Social Responsibility and The South African Mining Industry* Masters dissertation (University of Witwatersrand 2016)4.

[31] Note 30, 24.

[32] Newton, A *the Business of Human Rights: Best Practice and The UN Guiding Principles* (Routledge 2019) Chapter 4.

[33] Matebesi, S *Social licensing and mining in South Africa* Routledge 2019) 11-12.

[34] Tladi, MJ *Corporate Governance Compliance Within South African Regulatory Agencies: Towards an Implementation Framework* Doctoral dissertation (North-West University 2021).

industry.[35] This entailed a greater focus on long-term sustainability, climate resilience, and inclusive growth, as well as addressing historical injustices and systemic inequalities.[36] Looking ahead, the next decade presents both challenges and opportunities for further advancing CSR practices in the mining industry, with a renewed emphasis on ethical leadership, stakeholder collaboration, and impactful measurement.[37]

1.4.3 Discussion

The CSR continues to be directly influenced by ethical values other than by law. However, the duty to make sure a corporate entity is acting ethically and responsibly extends well beyond the law into the area of what is or is not acceptable behavior by that company with reference to its social context. In this regard, the duty of the corporate entity to ensure that it commits to the CSR program that it has adopted may be influenced by factors like ethics, sustainable development, transparency, philanthropy, or as a public relation exercise. [38]

Adherence to the law is undoubtedly an obligation and a duty that cannot be waived by anyone. The Constitution is the supreme law of the country and any conduct that is inconsistent with it, and the obligations imposed by it must be fulfilled.[39] Furthermore, the Constitution stipulates that the provisions of the Bill of Rights are binding on all natural and juristic persons,[40] and that in giving effect to the rights in the Bill, a court must apply or develop common law where legislation does not give

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[35] Bernard, T 'The Discursive Representation of Social Actors in the Corporate Social Responsibility (CSR) and Integrated Annual (IA) Reports of Two South African Mining Companies' (2018) 10(1) *Critical Approaches to Discourse Analysis across Disciplines* 81-97.

[36] Buddu, A & Scheepers, CB 'CSR and Shared Value in Multi-Stakeholder Relationships in South African Mining Context' (2022) 18(2) *Social Responsibility Journal* 368-387.

[37] Moalusi, LA *A Public–Private Partnership Between the Public and Mining Sector to Improve the Design and Implementation of Corporate Social Responsibility (CSR): The Case of Lejweleputswa District in The Free State Province* Doctoral dissertation (North-West University 2019).

[38] Agudo-Valiente, JM *et al* 'Corporate Social Responsibility Drivers and Barriers According to Managers' Perception; Evidence from Spanish Firms' (2017) 9 *Sustainability* 5-6.

[39] Section 2 of the Constitution.

[40] Section 8(2) of the Constitution.

effect to the right.[41] This simply means that the provisions of the Constitution in section 24(b)(iii) are applicable to mining companies as juristic entities, and as such, these companies cannot waive the fact that the Constitution binds them, thus their operations must be consistent with it.

Apart from available legislative authorities, companies may be heavily reliant on international codes or provisions in order to guide their CSR agendas or policies. An example of such may be the UN Guiding Principles on Business and Human Rights.[42] In terms of this guideline, business enterprises have the responsibility to respect human rights by avoiding causing or contributing to the adverse human rights impacts, and that they must seek to prevent these adverse human rights impacts which are directly linked to their operations, even if they did not contribute to the impacts.[43] Furthermore, the responsibility to respect human rights by business enterprises falls on all the enterprises despite their size, operational context or structure, as much as the scale at which the responsibility may vary in terms of the severity of the enterprise's adverse impact on the human rights.[44]

However, the question still remains as to what South Africa's commitment towards the enforcement of these policies is. Such can be seen from the publication of what is commonly referred to as the 2018 Broad -Based Socio- Economic Empowerment Charter for the Mining and Minerals Industry, or the BBSEEC Mining charter.[45] This is established to give effect to the provisions of the MPRDA, together with the intention to transform the mining industry. [46] The mining charter requires a balance between the mining activities and the mining community's socio-economic development needs.[47] It requires that a mining right holder make a substantive contribution towards the mining community's development by having consultations with all the relevant stakeholders to identify the needs of the community affected which must also be a subject of social and labor plan by a mining right holder.

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[41] Section 8(3)(a) of the Constitution.

[42] United Nations Human Rights: Guiding Principles on Business and Human Rights, 2011.

[43] Guiding Principle 13 of the United Nations Human Rights: Guiding Principles on Business and Human Rights, 2011 14.

[44] Guiding Principle 14 of the United Nations Human Rights: Guiding Principles on Business and Human Rights, 2011 15.

[45] Broad -Based Socio- Economic Empowerment Charter for the Mining and Minerals Industry, 2018.

[46] Section 100(2) of the *MPRDA*.

[47] Article 2.5 of the Broad -Based Socio- Economic Empowerment Charter for the Mining and Minerals Industry, 2018.

Moreover, the Charter does not bar multiple mining right holders from collaborating their efforts in order to maximize the socioeconomic development impact. A 100% of these plans must be implemented at the end of a financial year, unless there are alterations to the plans which must be approved upon consultation with the affected mining communities in terms of the provisions of the MPRDA.[48]

As the case may be, the court in *Minerals Council of South Africa v the Minister of Mineral Resources and Energy* brought light to the legal effect of policy documents in the mining sector.[49] In this case, the applicant made an application to the court to preview certain provisions of the mining charter as they constituted to be a policy instead of a subordinate legislation. The minister argued that the transformative objectives of the MPRDA cannot be achieved unless if this charter constituted a binding subordinate legislation. With the decision of the court being that the charter is just a policy document rather than a binding piece of legislation, this can be viewed as a disempowerment upon which the court does not take into consideration the effects of the lack of enforcement of the policies that mining companies undertake to ensure impeccable developmental milestones to mining communities.

It is the social commitment of mining companies and those who possess mining rights to guarantee that they contribute to the economic welfare of our citizens.[50] Failure to uphold social commitments in some circumstances may lead to the termination or suspension of mining rights. Although some accuse the state shifting social responsibility to private corporations, it is reasonable to expect mining to reinvest some of their profits in the social advancement of their workforce and communities.[51]

The state is the custodian of these resources, and the mines must operate under a license granted by the state. Though not an exhaustive list, these are some of the resources that are mined in South Africa:[52]

i. Gold.
ii. Coal.
iii. Silver.
iv. Cobalt.
v. Titanium.
vi. Phosphate.

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[48] Section 102 of the *MPRDA*.

[49] 2020 (4) SA 150 (GP).

[50] Hogan Lovels mining communities: A corporate responsibility nightmare? February 2016 accessed at https://www.hoganlovells.com/en/publications/mine-communities-a-corporate-responsibility-nightmare

[51] See note 23 above.

[52] Pocket Guide to South Africa: Mineral Resources 2012/13 151-154.

vii. Platinum group metals like platinum, palladium, rhodium, chromite, etc.
viii. Ferrous metals like copper, iron ore, manganese, diamonds, etc.
ix. Industrial minerals like limestone, dolomite, sand, silica, etc.

Mining corporations that are trapped in antiquated or old-fashioned practices and see communities as annoyances and barriers to their successful businesses will eventually realize they are out of touch with reality and risk having their shareholder value irrevocably diminished. It would be unwise of mining companies to wish away their commitment to support the nation's social and economic development. Mines should have a strategic, long-term business strategy that is supported by the civic duty that each of us has.

In order to shed some more light, it would be better to highlight some of the challenges that mining communities tend to face. The constitution provides for the right to access to adequate housing.[53] In a report by the South African Human Rights commission (SAHRC), it was alluded that inability to infuse housing related planning onto the existing plans is a direct violation of the duty imposed by the constitution in section 26, which is a duty that is imposed on all stakeholders including the mining companies, which are imposed on to refrain from violating the access to adequate housing. [54] The SAHRC then made a finding that failure by the mining companies to include the local government in their initial phase of drafting their Social and Labor Plans (SLP) consequently results in the insufficient planning and budgeting for housing at the local level, thus also indirectly putting at a jeopardy other projects that may include water and sanitation, electricity and infrastructure, etc.[55]

A community case study that can be taken into view is that of the Amajuba District in the KwaZulu Natal province. As much as this is one of the largest coal mining communities in the country, it is also considered to be one of the most vulnerable areas in the country as it is considered to be a very rural area in need of proper and appropriate community development plans that will alleviate the extensive social ills faced by this community. In a study conducted by Ngobese, the following discoveries were made:[56]

i. Mining companies failed to establish meaningful development infrastructure which could have had significant socioeconomic impact on the community.

[53] Section 26(1) of the Constitution.

[54]SAHRC: National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa, November 2016, 4.

[55] See note 27 above.

[56] Ngobese, *S Examining the Socio-Economic Impact of Mining on The Livelihoods of Amajuba District Mining Communities* Master of Commerce Dissertation (University of Kwa-Zulu Natal 2015) 46.

ii. The socioeconomic conditions of the communities that are near the mining locations have not had any improvements.
iii. Communities are being excluded from publicly participating in any development initiatives that are led by the mining companies.
iv. The sustainability of the development projects that are initiated by the mining companies is significantly low and poor due to the lack of relationships that are meaningful and strategic in order to support the development goals in place.

It can therefore be said that it is imperative for mining companies to prioritize establishing a good relationship with the communities that they operate in, in order to integrate and encourage the participation of the community in the development of such a community. Moreover, it is also imperative that the government takes charge in ensuring the development of policies and regulations that prioritize addressing the socioeconomic challenges of mining communities, while simultaneously ensuring compliance and contribution of the mining companies towards sustainable development.

Maitikainen also denotes the importance of multiple stakeholders, who may either be primary or secondary, who tend to focus on the various aspects of the sustainability development plans.[57] Sustainability will not be entirely dependent on the stakeholders being primary or secondary, but instead, it is heavily reliant on the willingness of the stakeholders to establish a constructive dialogue and/or collaboration that is necessary in order to enhance sustainability. The local community within which the mining company operates can be regarded as a very essential stakeholder towards the development of viable CSR programs.[58] The relationship that the company develops with the community will form a very integral part of the plans that the mining company has towards contributing to the development of the community. By involving members of the community, it is therefore an advantage on the side of the mining company in that the community that is well informed on the CSR activities of the mining company is in a better position to assist the mining company with regards to the activities that should be prioritized when adopting a formal CSR policy.[59] Maimunah concedes to the fact that there is a certain level of interdependency between companies and

[57] Matikainen, LM *Enhancing Sustainability in The Mining Industry Through Stakeholder Engagement* Master's Dissertation (Tampere University 2020) 75.

[58] Brew, Y *et al* 'Corporate Social Responsibility Activities of Mining Companies: The Views of the Local Communities in Ghana' (2015) 5 American *Journal of Industrial and Business Management* 464.

[59] Wamitu, SN 'Corporate Social Responsibility: Intentions and Practice' (2014) 2 *Open Journal of Business and Management* 117.

communities.[60] This is because the role of CSR in community development may primarily focus on poverty alleviation in the concerned community, and therefore a mining company that seeks to involve itself in such definitely will need the community as a stakeholder to help shine the light on the issues that are of concern in the community.

Considering the above, it is therefore evident that the communities at which mining activities take place at play an integral part in their own development. This is supported by Viveros, who says that statutory stakeholder participation is one way in which the involvement of stakeholders is enforced.[61] This therefore makes it a compulsory step for mining companies to consult with the mining communities when assessing the predicaments that are faced by the communities. This will also assist in building a positive relationship between the company and the community in question.

Given the fact that there are multiple stakeholders involved in the implementation of CSR programs,[62] Ntoutoume discusses the following aspects pertaining to the challenges faced by CSR in Africa:[63]

i. CSR is still viewed as a component of philanthropy at the core of certain businesses in Africa.
ii. The government's way of interpreting CSR is the key to understanding this practice and understanding human rights challenges.
iii. The is no clear roadmap as to the undertaking of CSR by businesses.

The challenges mentioned above are an indication that much effort needs to be exhibited to outline a clear plan of an adoption of CSR policies. Mining companies need to view CSR policies as more than just a philanthropic exercise. This means that they are to invest themselves more in the communities they are in instead of just leaving the concept of development onto the government.

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[60] Maimunah, I 'Corporate Social Responsibility and Its Role in Community Development: An International Perspective' (2009) 2 *The Journal of International Social Research* 207.

[61] Viveros, H 'Unpacking Stakeholder Mechanisms to Influence Corporate Social Responsibility in The Mining Sector' *Resources Policy* 51 (2017) 2.

[62] Engaging stakeholders in CSR activities accessed at https://www.ey.com/en_pl/consulting/crowdsourcing/engaging-stakeholders-in-CSR-activities accessed on 05 April 2023.

[63] Ntoutoume, A 'Challenges of CSR In Sub-Saharan Africa: Clarifying the Gaps Between the Regulations and Human Rights Issues' (2023) 8 *International Journal of Corporate Social Responsibility* 6-7.

Moreover, stakeholder expectations are another challenge towards the implementation of CSR policies.[64] High expectations in very poor communities may end up overwhelming the companies, thus affecting their CSR policies. As indicated in the introduction, majority of the population, being the black community, were excluded from participating in the economy of the country, thus leaving them with high levels of illiteracy, poverty and other forms of social and economic inequalities.[65] This therefore contribute to the high levels of expectations by communities towards mining companies to assist in order to remedy the social ills faced by the community.

Secondly, Anwana further discusses corruption to be one of the contributing factors that are overwhelming toward a company's commitment to its CSR policies. For the mining companies to be able to invest better in the socioeconomic development of their communities, it is therefore of utmost importance that corruption be ended, as this will enable the mining companies to invest in the socioeconomic development of their communities, the people, or the environment.[66]

The Constitutional Court in the case of *Glenister v President of the Republic of South Africa* held that corruption powers maladministration and impedes on the capacity of the state to fulfil its obligations to respect, protect, promote and fulfil all the rights enshrined in the Bill of Rights.[67] The Court further stated that corruption stunts on sustainable development and dwarfs on economic growth, thus putting the stability and security of the public at risk.

1.5 Research aims and objectives

1.5.1 Aim

This research aims to analyze the provisions of the MPRDA as the primary legislation that regulates the mining industry of South Africa, along with other pieces of legislation like NEMA, together with its effectiveness in ensuring the commitment of the mining companies to deliver on their CSR programs. Moreover, the research seeks to investigate the procedure embarked on by the mining companies when adopting an

[64] Anwana, E 'Erratum: Social Justice, Corporate Social Responsibility and Sustainable Development in South Africa', 2021 77 *HTS Teologiese Studies/Theological Studies* 6.

[65] Karunanidhi, R "Social justice in South Africa: Law and The Role of Business in Atiner's Conference Paper Series' (2015) Athens *Institute for Education and Research* 1–19.

[66] Mohammed, A 'Battling Corruption Within a Corporate Social Responsibility Strategy' (2011) 21(3) *Indiana International & Comparative Law Review* 1–24.

[67] *Glenister v President of the Republic of South Africa and Others* CCT 48/10 [2011] ZACC 6, Para 166.

effective CSR program that seeks to alleviate the socioeconomic challenges that are faced by the mining communities.

1.5.2 Objectives

The objective of this research is to identify the gaps that exist in the law on the enforcement of mining companies to commit to the CSR programs that they undertake while conducting their business in the vicinity of the mining community, together with the enforcement and implementation of such, while also giving the appropriate recommendations to overcome this dilemma.

1.6 Significance of the study

This research will analyze the process of mining companies adopting a viable CSR program that addresses and is effective towards the socio-economic challenges that are faced by the mining communities. In doing so, it will also be assessing the challenges that are faced in the process of implementing the CSR programs. This research will also highlight the need to have the legislative means that make it compulsory for mining companies to commit to their socioeconomic development programs. Moreover, in highlighting these challenges and aiming to provide viable solutions, the research will borrow from the mining practices of other countries in order to provide a different perspective of what is being done wrong and what needs to be addressed.

1.7 Research questions

This research will seek to answer the following questions:

- What are the gaps in/challenges faced by the legislation in ensuring the enforcement of CSR policies in the mining industry?
- What are the roles of various stakeholders in the mining industry in ensuring the commitment of mining companies toward the socioeconomic development of the mining community?
- What are the effects of the lack of commitment by mining companies towards their CSR programs in the mining communities that they operate in?
- What are the remedies and their effectiveness thereof, that are provided by the law to remedy the non-compliance of mining companies with their CSR programs?

1.8 Conclusion

In conclusion, it is undeniable that the mining industry plays an important role in the development of our country. It may be that the socioeconomic challenges were not caused by the mining company in question and their mining activities, but it is an issue of what the mining company does to address the social ills of the community that they are operating within. The commitment of the mining companies towards their CSR policies must not be deviated from unless it is reasonable to do so. The involvement of the mining communities in the processes that help mining companies is a vital step in ensuring that members of the community are given an opportunity to participate in finding solutions to their problems. The interdependency between mining companies and mining communities is essential in that it speaks to and encourages the concepts of accountability and transparency, especially from the side of the mining companies, as the communities are to be provided with adequate information on the mining activities that are to take place. Mining communities are also entitled to know as to how the mining activities that will take place will help in addressing the socioeconomic ills.

In rooting out the corruption in the mining sector, the government needs to have honest dealings with the mining companies from the moment a mining company seeks to obtain a mining right or a mining license. It will make it easier if the government is not influenced by the ill intentions of a company to improperly influence the proceedings of obtaining the right/license. The government needs to ensure that they protect the rights of those that live in mining communities, and as such, by not allowing themselves to be improperly influenced by mining communities, they are able to scrutinize the intentions of the mining companies with impartiality, and without fear or favor.

1.9 Chapter Outline

The mini dissertation will consist of the following chapters:

Chapter 1: introduction of the concept of CSR in the mining industry.

Chapter 2: a critical analysis of the legislative provisions and policy frameworks that provide for the promotion of justifiable and sustainable economic and social development in mining communities and the gaps that exist in such provisions.

Chapter 3: challenges faced in the mining communities during the implementation of the CSR policies and the socioeconomic ills faced in the mining communities.

Chapter 4: a comparative study of the adoption of CSR policies in various countries and the challenges thereof.

Chapter 5: recommendations and conclusions.

CHAPTER 2: AN ANALYSIS OF THE LEGISLATIVE PROVISIONS AND POLICY FRAMEWORKS PROVIDING FOR THE PROMOTION OF JUSTIFIABLE AND SUSTAINABLE ECONOMIC AND SOCIAL DEVELOPMENT IN MINING COMMUNITIES

2.1 Introduction

As established in chapter one of this study, it is indeed a challenge that not much is being done in order to enforce CSR policies. The government as the custodian of mineral resources is tasked with the duty to ensure that there is a justifiable use of these resources in order to ensure adequate socioeconomic development in the mining communities.[68] As a result, this therefore imposes a duty in this study to explore, in addition to chapter 1, the legislative provisions that provide for the promotion of justifiable and sustainable economic and social development in mining communities, and the gaps that exists in these provisions.

2.2 The ethical considerations of mining companies

As explained by Serfontein-Jordan,[69] the concept of CSR revolves around the ethical undertaking of a mining company to contribute to the development of the mining company. To this effect, Vernon writes that the ethical considerations of a mining company is hooked on their need to be good corporate citizens.[70] These companies give effect to this need through one of two ways:

- By considering the members of the communities within which they operate to be fellow stakeholders, with whom they shall share a prosperous and sustainable future. This will therefore help them establish a good relationship with the communities.
- They foster a good relationship with the state by making contributions to the sustainable progress in the society.[71]

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[68] Section 3(1) of the *MPRDA*.

[69] Note 4.

[70] Phil Vernon 'Ethical Challenges facing Mining companies?' 2018 https://philvernon.net/2018/02/05/challenges-facing-mining-companies/ accessed on 03 May 2023.

[71] Note 2 above.

By considering the above two elements, mining companies are able to establish a tripartite relationship in which both the citizens and the government have a valuable role in the operation of the mining companies.

Adey writes that there are often guiding principles and voluntary codes of practice that mining companies tend to subscribe to, in order to acknowledge the concept of good practice in the industry.[72] The MPRDA provides for the development of a code of good practice for the minerals industry in South Africa, with the main intention being the transformation of the mining industry in South Africa.[73] The Codes of good practice for the South African minerals industry was developed in order to give effect to the requirement in section 100 of the MPRDA.[74] The codes are not meant to replace the key legislations governing the mining industry, thus the application of these codes cannot be separated from the MPRDA standard of application in terms of the socioeconomic transformation of the mining industry.[75]

In terms of the code, the element of mine community and rural development is aimed at the extent to which mining companies contribute to the development of such a community, thus creating sustainable access to the economy.[76] The Code further says that where a mining company does not comply with it, shall be in breach of section 47 of the MPRDA,[77] at which the minister may either cancel or suspend the right held by the company.[78] What this implies is that the codes maintain the same status as the MPRDA, so is their implementation and their non-compliance consequences.

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[72] EA Adey *et al* 'Corporate Social Responsibility Within The Mining Industry: Case Studies From Across Europe and Russia' 2011 https://www.divaportal.org/smash/get/diva2:1011206/FULLTEXT01.pdfhttps://www.diva-portal.org/smash/get/diva2:1011206/FULLTEXT01.pdf accessed on 03 May 2023.

[73] Section 100(1)(b) of the *MPRDA*.

[74] CODES OF GOOD PRACTICE FOR THE SOUTH AFRICAN MINERALS INDUSTRY, NO 32167 APRIL 2009(herein after referred to as the Code).

[75] Note 6 above, 10.

[76] Note 7 above.

[77] Note 6,25.

[78] Section 47 of *MPRDA*.

2.3 The interlink between CSR policies and *SLP*'S

Although the CSR policies might just be the ethical undertakings on mining companies, there appears to be a link with what is regarded as Social and Labour Plans (*SLP*'s). It is therefore important to define what *SLP's* are. The most common and acceptable definition of social and labour plans is that these are the plans that outline the commitment undertook by a mining company towards employees and the communities that they operate within, and how these commitments shall be achieved. [79] This however is a broad and generalised meaning of this concept. The understanding from this is that these are the plans that the mining companies come up with in order to outline how the activities of the mining company will be of benefit to the community in question. It is therefore important that in addition to the definition of these plans, there needs to be an outlining of the purposes of *SLP'S*, which are as follows:[80]

i. Promotion of job creation.
ii. Promotion of social and economic welfare.
iii. Contribution to the transformation of the mining industry.
iv. Contribution to the development of the mining community within which they operate.

The objectives of a well drafted *SLP* are drawn from the following provisions of the MPRDA:

i. Section 2(e) of MPRDA*:* Promotion of economic growth and mineral and petroleum resources development in the Republic.
ii. Section 2(f) of MPRDA: Promotion of employment and advancement of the social and economic welfare of all South Africans.

[79] Gold Fields: Social and Labour Plans https://www.goldfields-southdeep.co.za/our-communities/social-and-labour-plans accessed 07 May 2023.

[80] Social and Labour Plan mining community toolkit, 2017 https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/environment/resources/*SLP*%20Community%20Toolkit%202%20March%202017.pdf accessed 07 May 2023.

iii. Section 2(i) of MPRDA: Ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.

Cawood writes in support of the above objectives in that he wrote the following:

> "There is clarity in the fact that the MPRDA was enacted with the purpose of balancing the ability of the mineral industry to generate wealth from natural resources with societal needs.[81]"

This therefore highlights the fact that these objectives are important in ensuring the promotion of sustainable development in mining communities. In support of the objective provided by section 2(f) of MPRDA, Ndlazi also alludes to it in the following manner:

> "The MPRDA differs from the previous legislations in that the role played by the mining industry towards the development of rural communities is that of ensuring that the remnants of the system of racial discrimination of the past are addressed and approached in a positive manner, which will seek to guarantee that the people of South Africa all benefit from the mining industry.[82]"

This therefore guarantees that the objective of ensuring contribution requires the undertaking that mining right holders must take in order to guarantee that post the granting of the mining right, there is a guarantee that this objective shall be effected. From this, it can be deduced that the objectives as outlined by the MPRDA are relevant in that they provide the basis of a solid *SLP*, through which the end goal is the execution of CSR policies that are of benefit to the mining communities.

It is therefore worth noting that the purposes of the *SLP* are a mirror of their objectives as outlined above in terms of the provision of the MPRDA. Moreover, it is also important to note that the *MPRA* makes a provision for the Minister to develop and

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[81] Cawood, FT 'The Mineral and Petroleum Resources Development Act of 2002: A paradigm shift in mineral policy in South Africa' 2004 *The Journal of The South African Institute of Mining and Metallurgy* 58.

[82] Ndlazi, S 'Alone in The Dark: How the Current Mining and Minerals Legal Regime Continues to Fail Artisanal and Small-Scale Farmers in South Africa' (2021) 25 *Law, Democracy and Development* 230.

implement regulations with regards to the operations of the mining industry in South Africa.[83] It is in terms of these regulations that we find the source or empowerment regarding the development of *SLP's*. The regulations provide for the objectives of *SLP's*,[84] upon which it is clear that the provisions in Regulation 41 are mirror reflection of the provisions of section 2 of the MPRDA. This therefore lays the foundations of what *SLP*'s are aiming to achieve.

It is further established that an application for a mining right is required to be accompanied by an *SLP*.[85] Moreover, the Regional manager with whom the application of a mining right was lodged with is empowered, if not satisfied with the submitted *SLP*, to refer the plan back to the applicant the *SLP* together with proposals for amendments, upon which the revised *SLP* is to be lodged again with the regional manager within the specified period.[86] This provision therefore guards against the use of flawed and lousy *SLP'S* to obtain these mining rights. It is therefore established from this point that liability is with the regional manager to protect and act against mining companies that have no real intention of contributing towards the development of the community in question.

In guarding against the misuse of *SLPs*, the courts are more cautious to make an outline of the commitment that mining companies are bound to have towards their *SLPs*. This became evident in the *Mining Forum case,*[87] in that the main point of contention for the applicants was with regards to the non-compliance with their *SLPs,* while also putting into focus the failure of the minister to adhere to the prescribed actions that are supposed to be taken once a mining right holder grossly fails to comply with the *SLPs* that they have submitted. In determining whether these companies are to be held accountable for their non-compliance, the Court held that it will be an

[83] Section 107 of the *MPRDA.*

[84] Regulation 41 of the Mineral and Petroleum Resources Development Regulations, 2004(hereinafter referred to as the Regulations).

[85] Regulation 42(1)(a) of the Regulations.

[86] Regulation 42(1)(b) of the Regulations.

[87] *Mining Forum of South Africa and Another v Minister of Mineral Resources and Others* [2019] 2 All SA 485 (NWM) (28 February 2019).

encroachment on the powers of the minister as a representative of the executive to direct to the department or the minister on the procedure to be taken in order to suspend or cancel a mining right.[88] These steps to be taken by the Minister are empowered by the MPRDA, where the Minister is empowered to either suspend or cancel a mining right where is discovered that the holder of such a right has breached the material terms or conditions of the right in question.[89] In order to adhere to the legal rule of the separation of powers, the court therefore accustoms itself towards applying judicial deference when making these determinations.

From the above, it can be deduced that as much as the courts are to lean on protecting the rights of the marginalised communities that are adversely affected by the non-compliance of the mining companies to their *SLPs*, they are often caught in between a rock and a hard place in that, in attempting to make a determination on the legality of the non-compliance, they also have to apply a careful consideration towards not encroaching on the powers of the executive, or the legislature thereof. Moreover, in order to guarantee that the *SLP* that has been submitted in order to obtain a mining right is binding on the holder of the right, the court in the *Baleni* case cautioned on the submission of draft *SLPs*, by making mention of the adverse impact of the amendment of the *SLP* on the communities post the granting of the mining right.[90] What can be interpreted from the above statement provided by the court is that the amendment of *SLPs* post the granting of the mining right tend to create an long and unnecessary tedious procedures, which could be avoided by ensuring that the *SLP* that is submitted to the department is a final one, which the prospective mining right holder can be held to account to.

In further considering whether mining companies are required to live up to the *SLP* plans that they have submitted to obtain the mining right, Theron J highlighted and alluded to the provisions of section 23(1) of the MPRDA in that for a mining right to

[88] Note 18, par 57.

[89] Section 47 of the *MPRDA*.

[90] *Baleni And Others v Regional Manager, Eastern Cape Department of Mineral Resources and Others* 2021 (1) SA 110 (GP) Par 57.

be granted, it must meet the requirement of ensuring that the objectives as detailed in the *SLP* are met.[91] By its own virtue, this means that the mining right holder is legally required and expected to fulfil the plans as curtailed in the *SLP* one they have been granted the mining right. Moreover, the court in the case of *Mbete v United Manganese* held that once a mining right holder undertakes to adhere to the *SLP* that they have submitted, it therefore becomes a requirement that for the mining right to be continued, such will be done on the condition that the mining right holder must have fulfilled their duties as outlined in the *SLP*.[92] It can therefore be submitted that the above court decisions are clear in outlining the fact that *SLPs* are not just documents to be submitted in order to obtain a mining right, rather it becomes a legal requirement that once the mining right holder undertakes to fulfil them, they are therefore required by the law to adhere to the *SLPs*.

It is a requirement that an *SLP* must contain the following details:[93]

- A preamble that shall provide the information of the mine.
- A human resources development program, which must address skills development and career progression plans amongst other aspects.
- A local economic development program, which is to address the social and economic background of the area that the mine will operate in, together with the following: [94]
    - The impact of the mine on the community,
    - Infrastructure and poverty eradication projects that the mine intends to support,
    - Plans to address the nutrition, living and housing conditions of the mine employees,

[91] *Aquila Steel (South Africa) (Pty) Ltd V Minister of Mineral Resources and Others* 2019 (3) SA 621 (CC) par 126.

[92] *Mbete v United Manganese of Kalahari (PTY) LTD* 2016(5) SA 414(GJ) par 138.

[93] Regulation 46 of the Regulations.

[94] Regulation 46(c) of the Regulation.

In addition to this, the Regulations make it an imperative that the *SLP* Must also contain or outline plans to finance the implementation of the plans as mentioned above,[95] and further cements that there must be an undertaking made by the prospective holder of the mining right to ensure that once the mining right is granted, the mine shall comply with the *SLP'S*, and that they will ensure that its known to the employees.[96] The understanding from the above is that the regulations makes it easy for mining companies by outlining as much as possible the structure of an *SLP*. Above that, it is required by law that the mining right holder must also commit to ensuring that these plans are to be implemented as planned.

Coming back to the relationship between CSR *policies and the SLP'S* of mining companies, Diale writes that the concept of CSR must be incorporated into the key activities and decision making processes of a mining company in order to acknowledge the social, economic and environmental aspects of sustainability in a more comprehensive manner.[97] What can be deduced from Diale's assertion is that CSR policies form a very integral part of *SLP'S* in that they must be incorporated within, and if that is the case, these CSR policies shall become the guiding principles in ensuring that the *SLP* of a mining company is drafted in a manner that acknowledges the socio-economic challenges of a mining company.

Further establishing the interlink between CSR policies and *SLP'S*, in echoing the need for mining companies to be good corporate citizens, Fig is of the narrative that this need is effected by the companies by having in place policies and practices that are used as guiding principles towards ethical operations, meeting legal requirements, and that this is utilized to indicate the consideration for societies, communities and the environment.[98] This point of view is also further supported by Ndhlovu, who makes the assertion that CSR policies are to be integrated into the operations of the mining

[95] Regulation 46(e) of the Regulation.

[96] Regulation 46(f) of the Regulations.

[97] Diale, AJ 'Corporate Social Responsibility in the South African Mining Industry: Necessity, Conformity and Convenience?' (2014) 2(1) *International Journal of Business and Economic Development*, 18.

[98] Fig, D 'Manufacturing Amnesia: Corporate Social Responsibility in South Africa' (2005) 81(3) *International Affairs* 601.

companies in order to put into place the social and environmental considerations of a mining Company.[99] It is therefore clear that the CSR policies fit into the *SLPs* in that the CSR policies are intended at the alleviation of socioeconomic challenges, and in the same breath, one of the objectives of *SLP's* is to ensure that mining Companies make a valuable contribution towards the socioeconomic development of mining communities that they operate within.[100]

2.4 Challenges faced with regards to the implementation of CSR Policies

Before addressing the challenges that are faced with regards to the implementation of the CSR policies, it must be noted that it is the submission of this study that due to the discussion in 2.3 above, both the concepts of CSR and *SLP* tend to overlap over each other. As such, in order to address the challenges, they shall both be used interchangeably. The overlap between the two concepts is supported by the assertions of Tloubatla in that CSR initiatives are deemed as mobilisers for guaranteeing the restoration of the dignity of those who were previously disadvantaged by the pre democratic dispensation.[101] While on that, Diale supports this assertion by highlighting the fact that in most instances, mining activities occurs in communities that have been previously disadvantages, thus there is a severe lack of development in such communities.[102] Tloubatla further writes that the government as the custodian of the mineral resources seeks to ensure that mining right holders fulfil their CSR undertakings through implementation of *SLPs*, which is a furtherance on the strategy of the government in ensuring that the mines/mining companies are making a valuable contribution towards the development of the communities that they operate in.[103]

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[99] Ndhlovu, T 'Corporate Social Responsibility and Corporate Social Investment: The South African Case' (2011) 12(1) *Journal of African Business*, 73.

[100] Section 2(i) of *MPRDA*.

[101] Tloubatla, A *the Role of Richards Bay Minerals (RBM) on the Sustainable Local Economic Development of Kwambonambi and Sokhulu Communities* MBA dissertation (University of KwaZulu Natal 2020) 1.

[102] Note 70.

[103] Note 34.

Both Diale and Tloubatla support the ideology that is put forward by Mabuza in that there is a general agreement that due to the nature of the economic activities that are involved in mining, it is only fair that mining companies are expected to contribute towards the social and economic development of the communities that they either operate in or source their labour from.[104] What can be drawn from the above is that CSR policies are in their nature enforceable through guaranteeing the implementation of *SLPs* that mining companies have undertook to execute. This may as well mean that the CSR policies that are adopted by mining companies form an integral part of the *SLP*s that mining companies submit in order to obtain a mining right. On top of the above, Jenkins asserts that CSR policies are an important part of the development of a mining community, given that their priority is focused on the various impacts of the mining activities at the community level.[105] It is therefore a submission that both these concepts tend to intersect and intertwine in the effort to execute them. As such, in order to address the challenges faced with the implementation of CSR policies, both these concepts shall be used interchangeably.

2.4.1 Compliance with *SLP* commitments

To begin with, Siyobi asserts that as much as the MPRDA requires mining companies to draw up and submit an *SLP* in the application for the mining right, it does not give a directive as to how the plans in the *SLP* are to be achieved.[106] This also warrants the mining companies with "discretionary powers", in that the mining companies are at liberty to interpret the provisions of the MPRDA to how it suits their objectives, thus

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[104] Mabuza, L *et al* 'Mining and Corporate Social Responsibility Partnerships in South Africa' (2010) *Africa Institute of South Africa (AISA) Policy Brief 15, 2.*

[105] Jenkins, H 'Corporate Social Responsibility and the Mining Industry: Conflicts and Constructs' (2004) 11 *Corporate Social Responsibility and Environmental Management*, 27.

[106] Busisipho Siyobi 'Corporate Social Responsibility in South Africa's Mining Industry: An Assessment' 2015 SAAIA POLICY BRIEFING https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwis8aPHmP7-AhUeSEEAHWqrDdgQFnoECAoQAQ&url=https%3A%2F%2Fsaiia.org.za%2Fwp-content%2Fuploads%2F2015%2F09%2FPolicy-Briefing-142.pdf&usg=AOvVaw0WrlCT5h2vsMPLhYbVS0gF Accessed 12 may 2023.

they can choose their own level of compliance with the CSR policies. Siyobi further writes that how these mining companies choose their way or level of compliance is a voluntary act, and as such, this is an indication that the MPRDA was poorly drafted with regards to addressing this matter.[107]

In order to put the challenge above into focus, one can look at the most defining moments of the past decade in mining industry, which is the Marikana Massacre. Without delving much into the history and the events that led to the Massacre, this study will only address the parts that are relevant to the implementation of *SLP'S* by mining companies, Lonmin in this instance. Regulation 42 provides that an *SLP* may not be amended or varied without the consent of the minister, as long as the amendment is to occur after the mining right is granted.[108] This will be relevant later. In the *SLP* submitted by the mine in 2006, which was subsequently approved by the Department of Mineral Resources(DMR), Lonmin had made a commitment to convert the current housing units if that moment into bachelor and family units, and also committed to building 5500 houses for the employees.[109] Power summarises the findings of the Marikana Commission in that specifically with regards to the above provision in the *SLP*, Lonmin had failed dismally and defaulted in the implementation of its commitment in by 2009,only 3 of the houses had been built, and only 29 housing units were converted, as per the initial undertaking in 2005.[110] The commission also alerted to the discovery that the conditions in which the miners were lining in were below the standard that the mine had committed to improve in the *SLP* that it had submitted, and that even the basic social services that should be afforded to the miners were lacking.[111]

Lonmin attempted to justify this failure by relying on the 2008 financial crisis, thus citing that it could not afford to build the houses.[112] The commission rejected this

[107] Note 25.

[108] Regulation 42 of the regulations.

[109] Power, M 'Massacre at Marikana' (2017) 14(25) *SUR International Journal on Human Rights 63.*

[110] Marikana Commission of Enquiry Report, 2015 527.

[111] Note 28.

[112] Note 27.

reasoning by providing evidence that during the same period that the mine was allegedly unable to build these houses, it had made dividend payments to the value of $607 million, while the aggregated cost of the project was only $65 million.[113]The Commission held that the justifications of the mine were irrelevant and from a mistaken premise in that they had failed to comply with the provisions of the regulations for the mining industry in that they had failed to obtain a consent from the minister in order to vary their *SLP*, as the law requires.[114] This also therefore prompted the Commission to declare the justification of the mine of inability to afford as irrelevant, due to the profit that was accumulated during the same period that they had failed to fulfil their obligations.[115]

It must also be noted that as per the regulations, there must be an undertaking by the mining right applicant in terms of regulation 46(f) that they shall comply with their *SLP* and also ensure that the *SLP* implemented. Any change to the *SLP* is provided in terms of regulation 42 in that the mining right holder is bound to obtain the consent of the minister to vary or change their *SLP*. What is to be understood from this and in the case of Lonmin mine is that the kiting companies had failed dismally in three ways:

i. Failure to understand that once they had the mining right granted, they are bound by law to give effect to their *SLP*.
ii. Failure to heed to the provisions of regulation 42, in that they had failed to obtain consent of the minister.
iii. Failure to understand that their undertaking in terms of regulation 46(f) is also legally binding.

This is therefore an indication of the loophole that exists in the provisions of the MPRDA, together with its regulations in that this echoes Siyobi's assertion that the law fails to dictate to the mining companies as to how they should give effect to their *SLP'S*. Moreover, the case in Lonmin proves the danger of the wide range of the discretionary powers and the danger of the voluntary act of implementing the *SLP*, in

[113] Note 27.

[114] Note 28, 537.

[115] Note 32.

that the companies do as they wish as the law does not provide any guiding principles. One can also say that this is the one other thing that may have indirectly contributed to the tragedy of the Marikana massacre in that mining companies take advantage of the mean methods available to the authorities to ensure that they compel the mining companies to act. It is therefore the submission of this court that it will not be enough recourse to approach the courts in order to compel the mining companies to adhere to the *SLP'S*, given the fact that it is not a matter of the law that these companies are not giving effect to their *SLP'S*.

2.4.2 Transparency with *SLP's*/CSR policies

The concept of transparency speaks to the ability, or rather the willingness of a corporate entity to conduct its dealings in an open manner. Transparency is views as a principle that is premised upon the ability of a mining company to report on the external impact of its actions, while also ensuring that the most relevant facts are not hidden or buried within the report itself.[116] This might as Well mean that mining companies when they to their progress reports on how far they have come with their CSR programs, it is important that they must reveal all of the relevant information in their reporting, thus they will be transparent in their dealings. Furthermore, transparency can be utilised as one of the tools to assist in preventing corruption in the mining sector, whereby there must be openness from the moment an application for a mining right begins, and the openness must subsist even after the granting of the mining right, that is during the operations/activities of the mining company.[117] This means that mining companies must remain transparent from start to finish, and that this must not be something that is casually done when it suits the company's objectives only.

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[116] Crowther, D & Aras, G *Corporate Social Responsibility: Part 1-Principles, Stakeholders and Sustainability'* (Ventus Publishing APS 2010) 13.

[117] Transparency international 'accountable mining' https://www.transparency.org/en/projects/accountable-mining accessed 17 May 2023.

Curtis writes that the insufficiency of transparency in the mining industry does not only contribute to increased levels of corruption, but also places a significant challenge towards the consultation on the mining companies with the communities that are affected by the mining activities.[118] This can be attributed to the fact that as much as some of the contracts of these mining companies may contain sensitive and confidential information, these mining communities will therefore be kept in the dark, thus they are being excluded from making valuable contribution to the planning and drafting of the *SLP's*.[119]

An example of this lack of transparency can be seen from the analysis of the impacts that were left by the mining activities of the Pafuri Coal Mine. An analysis of its *SLP* revealed that in two or three of its commitments towards improving the community, the names of the villages that were to benefit from these developments were not published, and the findings by the Centre for Applied Legal Studies (CALS) were that none of those commitments had been fulfilled by the mining company at the end of the promised period.[120] Furthermore, it was also discovered that the community in which the mine operated was not aware of the *SLP* nor its contents, and neither was there any alignment between the *SLP* provisions of the mining company and the IDP of the local government.[121]

What the above establishes is not only the lack of transparency by the mining company, but also proves the lack of communication or consultation between the mining company and the community. An indication of this was also seen in the *Baleni* Case, where the Court explained that it would have been much easier for the community to consent to the mining activities if they were provided with accurate and sufficient information about the prospective mining activities that are to take place on

[118] Mark Curtis 'improving South Africa's mining revenues and transparency: the need for government action' https://curtisresearch.org/wp-content/uploads/Mining-Revenues-and-Transparency-Policy-Brief.pdf accessed 17 may 2023.

[119] Note 37.

[120] Centre for Applied Legal Studies 'The social and labour plan series phase 2: implementation-open analysis report' 26.

[121] Note 26.

their land, and the impact of these proposed mining activities.[122] Thambi writes that the decision in the *Baleni* case is important in that it highlights the need for mining companies to establish meaningful communication and consultations with the mining communities in order to not only obtain their consent to approve the mining right, but to also let them know of the extent of the proposed mining activities.[123] It is therefore a submission that perhaps despite the lack of communication from the mining company, or if there was, it could have been much easier to hold the mining company to account for its lack of compliance and non-transparency, only if it had been forthcoming about its *SLP* provisions.

It is therefore the submitted that as much as MPRDA provides for the disclosure of information by mining companies in order to give effect to the right to access of information, as provided for by the Constitution in section 32,[124] it still does not do justice to the fact that mining companies will withhold relevant information from their *SLP's* or their CSR policies under the guise that they contain sensitive company information. One can therefore analyse this from the point that where these mining communities were never consulted at any point, for example, in the case of the Pafuri Coal Mine, or if these communities had no knowledge about CSR or *SLP*, it would then become a question of how easy it will be for them to obtain this information after the fact. Moreover, it also becomes a query on the willingness of these mining companies to dispense this information to the mining community voluntarily without these communities going the court route.

Nieto writes that the level at which the mining company is accepted by the mining community is definitely heavily reliant on the relations that are established by the mining company, thus in order to establish legitimacy and transparency, mining companies are required to incorporate and involve the community in their planning

[122] *Baleni and others v Minister of mineral resources and others* [2019] 1 ALL SA 358(GP) par. 15.

[123] Thambi, K 'Baleni v Minister of Mineral Resources: A fait accompli' (2022) 122(9*) Journal of the Southern African Institute of Mining and Metallurgy* 528.

[124] Section 30(1)(b) of the *MPRDA*.

and the decisions in matters that concern them.[125] This therefore puts into place the need for mining companies to establish proper consultations for their *SLP's* in order to ascertain all the relevant information and to also guarantee that the community is well informed about the proceedings. This therefore also means that these consultations cannot be just a once off thing, as the process of obtaining a mining right, and that of the implementation of either CSR policies or *SLP's* is also not a one step process.

2.5 Conclusion

It is in the preamble of the 2018 mining charter that we find the specific purpose the charter will serve, which is that of a regulatory instrument in support of the MPRDA objectives, rather than a policy document.[126] The MPRDA further delegates legislative powers to the minister to develop a subordinate legal instrument in the form of the mining charter that is intended to give effect to the implementation of the objectives of the MPRDA.[127]what can be drawn from then decision of the court in the *Minerals Council* case is that the court was fixated on the use of the word 'charter' instead of either 'law' or 'regulation'.[128] The court therefore opined that it was a deliberate act by the legislature to utilise the word 'charter', thus the declaration that the mining charter was merely a policy instrument rather than a legislative instrument. The court further relied on the use of the word 'develop' in determining the binding effect of the charter in that, the use of the word is associated with the creation of a policy document rather than with the direct implication of granting the minister with the power to make subordinate legislation.[129]

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[125] Nieto, A & Medina, JF 'Development of a socio-economic strategic risk index as an aid for the feasibility assessment of mining projects and operations' (2020) 120 *The Southern African Institute of Mining and Metallurgy* 434.

[126] Preamble, Broad Based socio-economic empowerment charter for the mining and minerals industry, 2018.

[127] Section 100(2)(a) and (b) of the *MPRDA*.

[128] *Minerals Council of South Africa v Minister of Mineral Resources and Energy and Others* ZAGPPHC 623 par 23.

[129] Note 101, par 30.

It is therefore submitted that it is in the declaration of the Mining Charter by the court as a mere policy document that it is found to be defeating the transformative objectives of the MPRDA. What informs this is the fact that already there is a huge discrepancy on the development of laws and regulations that are meant to revolutionise the mining industry and ensure maximum benefit to the mining communities that are adversely affected by mining activities that operate in the area. Given the declaration of the charter as a policy document, it is further submitted that this adds more to the dilemma that neither the MPRDA nor its regulations provide a clear directive to ensure that the challenges as discussed above are addressed.

It is therefore an imperative that there needs to be an amendment of the current legislative provisions to guarantee that the wide discretion that mining companies are left with in deciding the implementation of their CSR*/SLP* is curbed. Furthermore, one can also conclude that the implementation of instruments like the mining charter is important in the order to guarantee the compliance of mining companies to the legislative provisions that seek to bring sustainable development in the mining communities.

Despite the declaration of the charter as a mere policy document, neither the MPRDA no its regulations provide a guideline that can be used to avert these challenges that are addressed above. It is therefore important to highlight that given the fact that CSR policies or *SLP* provisions are about the improvement of the lives of the community members, their involvement in the planning stages shall play a vital role in that they are the ones to be adversely impacted by the mining activities, and as a result, it must be made an imperative that mining companies are to involve them greatly while drafting up the plans on how help alleviate the socioeconomic challenges that are faced by these communities. It must therefore start with the amendment of the MPRDA together with the regulations, which they must both be clear on the procedure to be followed by the mining companies as to how they are to implement their CSR policies. This will be important in that the mining companies are not left with a wide discretion of how to implement the policies that will ensure sustainable development in the mining communities.

CHAPTER 3: CHALLENGES FACED IN THE MINING COMMUNITIES DURING THE IMPLEMENTATION OF THE CSR POLICIES AND THE SOCIOECONOMIC ILLS FACED IN THE MINING COMMUNITIES

3.1 INTRODUCTION

Having had a discussion on the challenges that are faced with regards to the implementation of the CSR policies, it becomes an imperative for a shift in focus in order to assess the challenges that are faced by the mining communities, which are sought to be addressed by the CSR policies. This is due to the fact that for these policies to be effective in addressing the challenges that these communities are facing, mining companies need to make a reasonable identification of the particular challenges to be resolved, in order to ensure that ongoing community concerns are addressed, and to also guarantee that the right benefits are awarded to the communities by the mining companies, thus maintaining a balance of the socioeconomic development of the mining companies. This therefore leads to the need to identify the socioeconomic ills that are faced by the mining communities, in order to understand the implications of mining activities in these communities. As such, these will be better addressed in two stages: the pre-mining activities stage, and during the mining activities stage.

3.2 The challenges with practicalisation of CSR policies with regards to the socioeconomic challenges in the mining communities of South Africa

The South African Human Rights Commission (SAHRC) writes the following:

> "These challenges are heightened in rural or remote communities, where inadequate access to basic services, poor infrastructure, endemic unemployment and high levels of poverty often reflect an unresponsive and inactive local government."[130]

[130] SAHRC 'National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa' (2016) 1:

This is further supported by Cronje and Chenga in saying:

> "Mining communities are typically remote, rural, and have high rates of illiteracy and as a result, they depend on the mining companies for their survival and development."[131]

It is in this regard whereby mining companies are to be held accountable in the communities within which they operate,[132] which entails that companies should not only focus on the profitability and production of their mining operations, but should also focus of their core business towards CSR, which implies their involvement in the sustainable development of the mining communities.[133] This therefore tells on the fact that once the a mining company has expressed their interest in the extraction of minerals from that particular mining community, that therefore says the socioeconomic interests of the particular mining community should be taken into account in order to balance the interests of both the parties.

Nyembo and Lees write to the effect that not attending to the challenges that are faced by the mining communities will result in an adverse escalation of these issues, which may which may have far-reaching negative implications for not only the mining industry, but for other similar industries such as agriculture, thus impacting the country as whole.[134] In addressing these challenges, as much as CSR policies may

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> "These challenges are heightened in rural or remote communities, where inadequate access to basic services, poor infrastructure, endemic unemployment and high levels of poverty often reflect an unresponsive and inactive local government."

[131] Cronje, JF & Chenga, CS 'Health Issues in a Mining Community in South Africa' 2007 *HIV/AIDS, Illness and African Well-being*, 210:

> "mining communities are mainly isolated, originally rural with high illiteracy rates, and consequently, they become dependent on the mining companies for their livelihood and development."

[132] Calvano, L 'Multinational Corporations and Local Communities: A Critical Analysis of Conflict' (2008) 82 *Journal of Business Ethics* 799.

[133] Hamann, R 'Mining companies' role in sustainable development: The 'why' and' how' of corporate social responsibility from a business perspective' (2003) 20(2) *Development Southern Africa* 238, 243.

[134] Nyembo, N & Lees, Z 'Barriers to Implementing a Social License to Operate in Mining Communities: A Case Study of Peri-Urban South Africa' (2020) 7(1) *The Extractive Industries and Society* 157.

denote that companies can decide to voluntarily and willingly contribute to a better society and a cleaner environment, the challenge that comes with this is the theory and the practice concerned with the actual implementation of these plans.[135] This is supported by the fact that theoretically, mining companies may have written their intentions into their company policy documents, yet the practical part of implementation is what remains to be addressed.[136] Hamman supports this assertion by writing that socioeconomic issues faced by mining communities may have been put forth in terms of CSR and sustainable development policies at a national level in order to allow the minerals industry to play their roles in resolving them, but the lack of proper measuring tools or benchmark or the monitoring capacity to ascertain to what extent companies are implementing their social commitment policies is what remains a mammoth task of the practical aspect.[137]

The lack of the practical implementation of CSR policies can further be attributed to the fact that state sponsored regulatory policies seem to underestimate the importance of power politics in the relationship between the mining companies and the communities they operate from.[138] What this means is that given the financial and multinational status, most of these mining companies have a tendency to exert and wield their authority over the governments of especially the developing countries, of which this power play is what leaves these mining communities in a vulnerable position.[139] It is therefore a submission to this effect that this is a direct indication of the African proverb which says 'when two elephants fight, it is the grass that suffers'.

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[135] Hamann, R & Kapelus, P 'Corporate Social Responsibility in Mining in Southern Africa: Fair Accountability or Just Greenwash?' 2004 47(3) *Development*, 85–92.

[136] Cronje, F & Chenga, C.S 'Sustainable Social Development in the South African Mining Sector' (2009) *26*(3) *Development Southern Africa*, 413-427.

[137] Note 4, 242.

[138] Garvey, N & Newell, P 'Corporate Accountability to the Poor? Assessing the Effectiveness of Community-based Strategies' (2004) Working Paper No. 227. Brighton: Institute of Development Studies.

[139] Hansen, M 2002. 'Environmental Regulations of Transnational Corporations: Needs and Prospects' *in* Utting, P (Ed.), *The Greening of Business in Developing Countries: Rhetoric, Reality and Prospects* (London: Zed Books 2002) 120.

What this means that when you find a power and money hungry government paying no attention to the needs of its most vulnerable citizens, while on the other hand you have profit-mongering mining companies with little to no regard to the needs of the communities they operate within, it is the rights of the marginalized, poor and vulnerable communities that are being violated.

3.3 The socioeconomic challenges in the mining communities of South Africa- the pre-mining activities stage

3.3.1 The need for identification of challenges before mining operations begin

The pre-mining activities stage is the most important in that it assists with the identification of the issues that the mining community is facing, thus assisting with giving the prospective mining company direction on which issues must the *SLP* or the CSR policy address. This stage is essential in that it provides an early on identification of the issues that are rampant in such a mining community, thus allowing mining companies to plan properly on how to mitigate these issues.[140] This therefore will put the mining company in a better position of understanding the kind of responsibility that they undertake to commit to. Hart further extends this process of identification by saying that this undertaking of the mining company to address the challenges that are faced by these communities not only will it be beneficial to the mining communities themselves in the long run, but it is also a very essential part of obtaining a social license to operate, thus the demonstration of these commitments will assist in gaining the trust of the community.[141]

[140] Lahiri-Dutt, K *Between the Plough and The Pick: Informal, Artisanal and Small-Scale Mining in The Contemporary World* (Ed., ANU Press 2018) 151.

[141] Hart, G 'Mining and dispossession: The case of the Xolobeni Mineral Sands Project, South Africa' (2019) 46(3) *The Journal of Peasant Studies*.

The establishment of the trust between the mining company and the community in the pre-mining era further extends into the promotion of meaningful engagements between the community and the mining company, which ensures that the community has a participatory solid voice in the decision-making processes of the mining company.[142] The process of allowing the community to have their voices heard before the mining operations commence is a twofold beneficial one in that while it may assist with the prevention of conflicts and disputes that may arise once mining operations have begun,[143] Penney *et al* writes that this will be important to ensure that there is sufficient planning for economic diversification, reducing communities' dependence on mining-related jobs.[144] One can view as a very essential aspect in that the community's suffering post the mining activities stage shall be alleviated, or at least an attempt would have been made.

Given the potential damaging effect that the mining operations will have on the environment it occurs on, the onset identification of environmental concerns will allow for the development of proper conservation efforts and the protection of natural resources,[145] thus an extension into ensuring that at these early stages, there is a guarantee that the mining company has committed to recognize the concerning health and safety issues that may arise as a result of the mining operations, allowing for the implementation of preventive measures, safeguarding the well-being of community

[142] Lukasiewicz, A & Baldwin, C 'Voice, Power, and History: Ensuring Social Justice for All Stakeholders in Water Decision-Making' (2017)*22*(9) *Local Environment* 1047-1052.

[143] Azapagic, A 'Developing a Framework for Sustainable Development Indicators for the Mining and Minerals Industry' (2004) *12*(6) *Journal of cleaner production* 641.

[144] Penney, EK, Owusu-Ansah, A, Amewu, G & Nsor-Ambala, R 'Do firms operating in a shared institutional environment have similar sustainability disclosure practices? A comparative analysis of multinational and locally listed firms in Africa' (2023) 10(2) *Cogent Business & Management* 5-6.

[145] Maluleke, GT & Pretorius, L 'Modelling the impact of mining on socio-economic infrastructure development - a system dynamics approach' (2016) *27*(4) *South African Journal of Industrial Engineering* 74.

members.[146] Thus further allows an extension into the component of sustainable development in that where it can be established that there is an understanding in terms of the pre-existing sustainable development issues, this will help to smoothen the facilitation of developing sustainable solutions that will ensure that in the long run after the mining operations have begun, there will also be a long term positive impact and response to the community's wellbeing.[147]

3.3.2 The challenges before mining activities begin

In the spirit of expressing the need to identify the challenges before mining operations begin, it is therefore important to simultaneously highlight the issues that these communities face, in order to understand the developmental stage of CSR policies. One most notable issue that is a thorn to many mining communities in South Africa is that of unemployment, given its profound socioeconomic implications.[148]

Unemployment

The high unemployment rates often result in an array of negative consequences for both individuals and the community as a whole. Given the limited employment opportunities in mining communities, residents often face economic insecurity. This insecurity can manifest as an inability to meet basic needs, including food, housing, and healthcare.[149] Statistics have further proven that the high unemployment rates have contributed significantly to the extreme poverty levels in these communities, thus the families struggle to make ends meet, which makes poverty to become deeply

[146] Maphumulo, WT & Bhengu, BR 'Challenges of quality improvement in the healthcare of South Africa post-apartheid: A critical review' (2019) 42(1) *Curationis* 1-9.

[147] Littlewood, D "Cursed' communities? Corporate social responsibility (CSR), company towns and the mining industry in Namibia' (2014) 120 Journal *of business ethics* 39.

[148] Kitula, AGN 'The environmental and socio-economic impacts of mining on local livelihoods in Tanzania: A case study of Geita District' (2006) *14*(3-4) Journal *of Cleaner Production* 410.

[149] Petkova, V, Lockie, S, Rolfe, J & Ivanova, G 'Mining developments and social impacts on communities: Bowen Basin case studies' (2009) 19(3) *Rural society* 212-213.

entrenched, affecting the overall quality of life in the said communities.[150] The hardship of struggling to make ends meet will result in the social disintegration amongst members of the mining community in that most individuals will struggle with the psychological and emotional impact of joblessness, which can result in strained family relationships and increased social tensions within the community.[151] These frustrations further deepen into the high rates of crimes and violence within the mining communities,[152] which is interconnected with the disengagement from education and training by not only young people, thus perpetuating a cycle of joblessness and limited opportunities for both the current and the next generation.[153] From the above, what can be understood is that unemployment is a multifaceted challenge that spews various adverse effects upon the mining communities. This therefore warrants that when mining companies draw up the CSR policies in the aspect of employment opportunities, careful consideration should also be paid upon the effects that unemployment has had in order to positively mitigate the consequences thereof.

Lack of infrastructure

The lack of proper infrastructure in the mining communities of South Africa is a challenging issue that significantly affects the development of these communities. This shortage in basic infrastructure has far-reaching implications for the quality of life in these areas, hence it is a challenge that demands the attention and investment from

[150] Statistics South Africa. (2020). 'Poverty Trends in South Africa: An examination of absolute poverty between 2006 and 2015' (2020) https://www.statssa.gov.za/publications/Report-03-10-06/Report-03-10-062015.pdf accessed 01 September 2023.

[151] Du Toit, M, De Witte, H, Rothmann, S & Van den Broeck, A 'Contextual factors and the experience of unemployment: A review of qualitative studies' (2018) *21*(1) *South African Journal of Economic and Management Sciences* 2.

[152] Breetzke G. 'A socio-structural analysis of crime in the city of Tshwane, South Africa' (2010) 106(11/12) *South African Journal of Science* 1-7.

[153] World Bank 'South Africa Economic Update: Jobs and inequality' (2018). https://www.worldbank.org/en/country/southafrica/publication/south-africa-economic-update-jobs-and-inequality accessed on 01 September 2023.

the mining companies that seek to operate within the communities. An example of this is that of inadequate road infrastructure, which hampers accessibility and mobility for both residents and mining companies' operations, resulting in the difficulties of accessing healthcare, education, and job opportunities.[154] The lack of proper road infrastructure can further be connected to the lack of health care access in that the already inadequate healthcare infrastructure means that residents often have to travel long distances to access medical facilities, delaying critical healthcare services.[155]The lack of proper water infrastructure leads to the limited access to clean and safe drinking water, which jeopardizes public health in that residents may be forced to rely on unsafe water sources, which increases the risk of waterborne diseases.[156]

One aspect interconnected with the above is that of the lack of proper sanitation facilities, which contributes to the poor hygiene and sanitation-related diseases, thus the lack of proper waste disposal systems can lead to environmental contamination.[157] This lack of proper infrastructure contributes to the educational limitations of these communities in that the poor infrastructure in schools, including inadequate classrooms and sanitation facilities, hinders educational opportunities and affects the quality of education.[158] It is at the behest of this challenge where we find that addressing the lack of infrastructure in the South African mining communities is crucial for promoting community development, enhancing living conditions, and ensuring the

[154] Pillay, R. M 'The Impact of Road Infrastructure on Rural Development in South Africa' (2023) *6*(7) *International Journal of Social Science Research and Review* 566-574.

[155] Rice, B, Boccia, D, Carter, D.J *et al* 'Health and wellbeing needs and priorities in mining host communities in South Africa: a mixed-methods approach for identifying key SDG3 targets' (2022) 22(68) *BMC Public Health* 4,6.

[156] Aleixo, B, Pena, J L, Heller, L & Rezende, S 'Infrastructure is a necessary but insufficient condition to eliminate inequalities in access to water: research of a rural community intervention in Northeast Brazil' (2019) 652 *Science of the Total Environment* 1445-1455.

[157] Henry, RK, Yongsheng, Z & Jun, D 'Municipal solid waste management challenges in developing countries–Kenyan case study' (2006) 26(1) *Waste management* 92-100.

[158] Kaiser, N & Barstow, CK 'Rural Transportation Infrastructure in Low- and Middle-Income Countries: A Review of Impacts, Implications, and Interventions' (2022) 14 *Sustainability* 1-48.

sustainable and responsible operation of mining activities. As a result, comprehensive infrastructure development plans, including road construction, water and sanitation projects, and healthcare facility upgrades, are essential for improving the quality of life for residents and fostering long-term community well-being.

Limited access to education

Limited access to education in mining communities poses significant risk to the development and future prospects of children in these communities. The lack of quality schools and educational resources definitely have far-reaching consequences for both individual students and the broader community. The limited access to quality education perpetuates educational inequalities, as students in mining communities may receive poor quality education compared to their urban counterparts.[159] As a result, without adequate education, children from these communities face limited prospects for future employment and economic mobility, which provides a reinforcement of the cycles of poverty.[160] This further contributes to the low literacy rates in that the limited access to education hinders an individuals' ability to participate fully in society and the job market.[161] With the limited access to the job markets, this results in skills shortages in the mining communities in that they miss out on developing a skilled workforce, which will impact not only local industries but also the broader regional and national economy.[162] Woodheard writes that the limited access to education poses a potential risk of increased vulnerability with regards to both adults and children in that they may be at a higher risk of exploitation and involvement

[159] Epperson, L 'Bringing the market to students: School choice and vocational education in the twenty-first century' (2011) 87 *Notre Dame L. Rev.* 1861.

[160] Jenkins, SP *Changing fortunes: Income mobility and poverty dynamics in Britain*. (OUP Oxford 2011).

[161] Alam, A 'Impact of gender discrimination on gender development and poverty alleviation' (2011) 27(2) *Sarhad J. Agric* 330-331.

[162] Francesca, F, Sylvain, G, & Andrea-Rosalinde, H (Eds.) *Local economic and employment development (LEED) designing local skills strategies* (OECD Publishing 2009) 60, 107.

in hazardous labour practices.[163] This goes to the extent that the poor educational opportunities seen within these mining communities can contribute to community social disintegration, as residents may not have the skills and knowledge needed for proper community development,[164] thus limiting community progress whereby an inadequately educated population can hinder community development and engagement in activities that promote overall well-being.[165] What is to be understood from the above is that addressing the issue of limited access to education through CSR policies in mining communities requires a multi-pronged approach, which involves improving school infrastructure, ensuring the availability of qualified teachers, providing educational resources, and promoting community involvement in educational initiatives. By investing in education, mining companies, government agencies, and community stakeholders can help break the cycle of limited opportunities and contribute to the long-term development of these communities.

Lack of proper housing facilities

Housing in the mining communities is often characterized by substandard conditions, overcrowding, and the prevalence of informal settlements,[166] which is a cause for concern with significant implications for the well-being and quality of life of residents.[167] What is a reality for many of the mining communities is that these housing challenges represent a critical aspect of the broader socioeconomic issues faced by

[163] Woodhead, M 'Psychosocial impacts of child work: A framework for research, monitoring and intervention' (2004) 12(4) *Int'l J. Child. Rts.* 321.

[164] Jansen, M 'Unemployment, social disintegration, and crime in South Africa' (2017) 18(1) *Journal of International Migration and Integration* 145-162.

[165] Hajkowicz, SA, Heyenga, S & Moffat, K 'The relationship between mining and socio-economic well-being in Australia's regions' (2011) 36(1) *Resources Policy* 30-38.

[166] Cronje, F, Reyneke, S & Van Wyk, D 'Local communities and health disaster management in the mining sector' (2013) *5*(2) *Jàmbá: Journal of Disaster Risk Studies*, 1-12.

[167] Marutlulle, NK 'A critical analysis of housing inadequacy in South Africa and its ramifications' (2021) 9(1) Africa's *Public Service Delivery & Performance Review* 16.

mining communities. Where there is inadequate housing, there's often overcrowding, with multiple generations of families forced to share limited living space.[168] This not only compromises individuals' privacy and comfort but also increases the risk of the spread of diseases.[169] The lack of proper housing facilities often comes with the lack of proper sanitation and ventilation, which is a major contributing factor to health problems in that there is a more increased risk of respiratory illnesses and waterborne diseases.[170] The lack of properly constructed houses in the said mining communities is a cause for safety concerns in that informal settlements and poorly constructed houses are at a higher risk or vulnerable to fires, structural collapses, and other safety hazards, which is putting residents at risk.[171]

As a result of the lack of proper housing facilities, there is often in the mining communities households lack access to essential services such as clean water, electricity, and sanitation facilities, further compromising residents' quality of life.[172] The overcrowding and the poor living conditions have been seem as a contributing factor not only to physical wellbeing, but also to poor mental health in that living in substandard housing can lead to psychological stress and a diminished sense of well-being for community members, [173] which further contributes to the social fragmentation within the community, as residents may lack spaces for communal

[168] Mosoetsa, S *Eating from one pot: The dynamics of survival in poor South African households* (NYU Press 2011).

[169] Ranson, R *Healthy housing: a practical guide* (Taylor & Francis 2002) 61, 93.

[170] Krieger J & Higgins DL 'Housing and health: time again for public health action' (2002) 92(5) Am *J Public Health* 758-768.

[171] Gibson, L, Engelbrecht, J & Rush, D 'Detecting historic informal settlement fires with sentinel 1 and 2 satellite data-Two case studies in Cape Town' (2019) 108 *Fire Safety Journal* 1-15.

[172] Misselhorn, M *A new response to informal settlements "The Transformer"* (Afesis-corplan, Cape Town 2010).

[173] Bonnefoy, X 'Inadequate housing and health: an overview' (2007) 30(3) International *Journal of Environment and Pollution* 411–429.

activities and gatherings.[174] What is to be understood with regards to the challenge above is that the need to address housing issues in mining communities by the mining companies should prioritize the provision of safe, affordable, and dignified housing for residents. The CSR policies that shall be put in place to address these issues should explicitly involve investment in housing infrastructure, land tenure security, and community participation in housing development initiatives. Such interventions are essential for improving the living conditions of mining community residents and promoting sustainable and equitable development in these areas.

3.4 The challenges in the mining communities of South Africa- during the mining activities stage.

3.4.1 The need for identification of challenges during the mining operations

With the need to identify the challenges in mining communities before mining activities commence already expressed, it is also an imperative to express the need to identify the challenges faced by mining communities while mining continues. This is due to the fact that the socioeconomic challenges faced by mining communities in South Africa after mining activities commence are of paramount importance, both from a humanitarian and corporate social responsibility (CSR) perspective. As a result, the identification and addressing of these issues is vital in that there is a need to ensure compliance with CSR policies, thus fostering sustainable development in mining communities.[175]

The mining communities frequently face health risks from exposure to mining-related pollutants, including respiratory illnesses and contaminated water sources which puts

[174] Bertotti, M, Adams-Eaton, F, Sheridan, K& Renton A 'Key Barriers to Community Cohesion: Views from Residents of 20 London Deprived neighbourhoods' (2012) 77(2) *GeoJournal* 223-234.

[175] Hilson, G 'Small-Scale Mining in Africa: Tackling Pressing Environmental Problems with Improved Strategy' (2002) 11 *The Journal of Environment & Development* 149-174.

humongous pressure on the healthcare systems.[176] In addition to the pollution and contamination pressuring the health systems, housing and infrastructure are also often burdened during this stage in that there is an influx of migrant labour into the mining community, which puts a strain on the already limited social services, often leading to overcrowding, strained educational facilities, and increased crime rates.[177] Therefore, this provides for the need to adhere to the CSR policies put in place by the mining companies in order to address challenges such as the one above. When submitting the final CSR policies to the regulatory authorities for obtaining a mining right, mining companies are bound to ensure that they also make an undertaking to comply with the submitted policies post the granting of a mining right.[178] Furthermore, it is required that the holder of a mining right must annually submit a compliance report with the relevant regional manager.[179] What this means is that the annual submission of a compliance report is a legally inevitable requirement that must be fulfilled, within which it will be outlined as to how far the mining company has come in addressing the socioeconomic issues that are faced by the mining community, as per their undertaking. This will therefore provide an imperative to the government for the purpose of monitoring and evaluation of the accomplishments by the mining company in terms of stressing these community challenges.[180]

3.4.2 The challenges faced in mining communities during the mining operations

Adherence and compliance with CSR *policies during mining operations*

[176] Selebalo, IM, Scholes, MC & Clifford-Holmes, JK 'A Systemic Analysis of the Environmental Impacts of Gold Mining within the Blyde River Catchment, a Strategic Water Area of South Africa' (2021) 13 *Water* 1-22.

[177] Parsons, M & Fisher, J 'The Socioeconomic Impact of the Mineral Revolution on South African Society in the Late 19th Century' (2019) 9(4) *Minerals* 219.

[178] Regulation 46(f) of the *MPRDA* regulations.

[179] Regulation 45 of the *MPRDA* regulations.

[180] Oranje, M 'The Extractive Industries and Shared, Inclusive and Sustainable Development in South Africa' (2013) 29 *SPATIUM International Review* 1-7.

The compliance to CSR policies during mining operations is important for the sake for sustainable and responsible mineral resources extraction for the benefit of both the mining company and the community. This is because compliance ensures that mining operations prioritize environmental protection and minimize ecological impacts that ensue due to mining.[181] This further leads to the initiation of eco-friendly mining practices and rehabilitation efforts by mining companies, thus leading to improved environmental sustainability.[182] Furthermore, the constant monitoring and evaluation of compliance with CSR policies is essential as it evaluates the level of adherence that a mining company has had to their CSR commitments.[183] This was seen in the case of *Mining and Environmental Justice Community Network*, where the court ruled against a mining project that was not in compliance with the regulatory requirements that are in place, thus putting to light the importance of monitoring in the enforcement of environmental law provisions that have been incorporated into *SLP*/CSR policies.[184]

Ongoing monitoring and evaluations over companies are an essential part of ensuring that there is transparency and accountability on the part of mining companies,[185] hence the adherence to ethical standards, is beneficial to the mining companies in maintaining and enhancing public trust in them.[186] Ferreira opines that the extensive involvement of citizens in the process of ensuring compliance is important in that not

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[181] Hope, A & Kwarteng, A 'CSR and Sustainable Development in the Mining Industry: The case of Newmont Ghana Gold' (2014) 1-18.

[182] Muduli, K & Barve, A 'Sustainable development practices in mining sector: a GSCM approach' (2013) 12(3) International *Journal of Environment and Sustainable Development* 222-243.

[183] Krishna, IM, Manickam, V, Shah, A & Davergave, N *Environmental management: science and engineering for industry* (Butterworth-Heineman 2017) 488.

[184] *Mining and Environmental Justice Community Network of South Africa and Others v Minister of Environmental Affairs and Others* (50779/2017) [2018] ZAGPPHC 807 (GP).

[185] Hira, A & Busumtwi-Sam, J 'Improving mining community benefits through better monitoring and evaluation' (2021) 73 *Resources Policy* 1-12.

[186] Moffat, K & Zhang, A 'The paths to social license to operate: An integrative model explaining community acceptance of mining' (2014) 39 *Resources policy* 61-70.

only the voice of the communities in concern are heard, but they can also contribute greatly to ensuring that those to be held accountable for environmental degradation are kept in check, thus guaranteeing a transparent systematic way of ensuring compliance.[187] Compliance monitoring and evaluation further seeks to allow the state to assess the effectiveness of existing mining regulations, which further provides insights into whether regulatory measures in terms of CSR policies are achieving their intended outcomes.[188]

The need for monitoring and evaluation in terms of compliance with CSR policies is important in that it promotes stakeholder collaboration between the mining company and all the other relevant stakeholders,[189] at which point it is important to highlight that a positive CSR record enhances a mining company's reputation, reducing reputational risks associated with negative environmental or social impacts. [190] The case of *Minister of Water Affairs and Forestry v Stilfonteinn* stresses this point in that one of the characteristics of good governance in terms of mining companies is social responsibility.[191]

3.5 Conclusion

In conclusion, the challenges faced in the mining communities during the implementation of CSR policies are multifaceted and deeply intertwined with the socioeconomic ills prevalent and evident in these areas. These challenges are the representation of the complicated dynamics of the relationship between the mining

[187] Ferreira, S 'The Role of Citizen Science in South African Environmental Governance' (2017) 113 *South African Journal of Science* 3.

[188] Deegan, C., & Shelly, M 'Corporate social responsibilities: Alternative perspectives about the need to legislate' (2014) 121 *Journal of Business Ethics* 499-526.

[189] Mutti, D, Yakovleva, N, Vazquez-Brust, D & Di Marco, M H 'Corporate social responsibility in the mining industry: Perspectives from stakeholder groups in Argentina' (2012) 37(2) *Resources Policy* 212-222.

[190] Frederiksen, T 'Corporate social responsibility, risk and development in the mining industry' (2018) 59 *Resources Policy* 495-505.

[191] *Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company* 2006 5 SA 333 (W).

companies and the communities they operate within. To begin with, the lack of effective stakeholder engagement and community participation in CSR initiatives remains a significant challenge in that without meaningful consultation and collaborative efforts with local communities, CSR policies will definitely fail to address the specific needs and priorities of these communities, leading to a disconnect between the industry's intentions and the community's expectations.

Secondly, transparency and accountability are still on a crooked path that is hindering the successful implementation of CSR policies. Therefore, without clear reporting mechanisms and oversight, there is a risk that funds allocated for community development may not reach their intended recipients or be misappropriated, elevating the socioeconomic discrepancies in between mining communities. Furthermore, the prevalent socioeconomic challenges persistent in the mining communities, including poverty, inadequate healthcare and poor-quality education present menacing and daunting obstacles. This is because these issues are often exacerbated by the heavy inflow of transient labour, creating a strain on local infrastructure and social services, leaving communities grappling with the negative aftereffects of mining. The health risks that are caused by mining activities continue to plague mining communities, with inadequate healthcare facilities exacerbating these issues. CSR policies must address these health concerns comprehensively and sustainably.

The cycle of poverty that is perpetuated by the inadequate access to economic opportunities beyond mining activities contributes to the challenge faced by the community members in an attempt to break free from their dependency on the industry. The lack of adequate education opportunities in the mining communities extremely contribute to the cycle of poverty, which limits the potential for upward mobility among members of the community. As a result, there is a need to develop education-focused CSR programmes that make it a priority to empower future generations and break the cycle of underdevelopment. In addition, the environmental impact of mining activities remains a pressing concern, with adverse effects on water quality, air pollution, and deforestation. As such, the CSR programmes that are in

place often struggle to mitigate these environmental consequences effectively, further straining the relationship between mining companies and local communities.

As such, it is important to point out that addressing the challenges faced in mining communities during the implementation of CSR policies requires a holistic and collaborative approach. This demands that the mining companies, government, civil society organizations, and communities must work together to ensure that CSR policies are tailored to local needs, are being transparently managed, and are focused on mitigating the socioeconomic challenges that plague these communities. It is only through centralised efforts and a commitment to genuine sustainable development can mining communities hope to overcome the challenges they face and build a more equitable and prosperous future.

CHAPTER 4: A COMPARATIVE STUDY OF THE ADOPTION OF CSR POLICIES IN VARIOUS COUNTRIES AND THE CHALLENGES THEREOF

4.1 Introduction

As the previous chapters in the study addressed the challenges that are faced in the processes of adopting and implementing CSR policies in the South African mining industry, this positions the study to explore a comparative analysis of this concept across countries that have a similar practice of CSR as South Africa. The rationale behind this study is to identify practices and successful strategies employed by countries that have encountered similar challenges in their mining sectors. By analyzing the experiences of these nations, valuable insights can be garnered to guide policy development and implementation in South Africa, leading to more effective CSR initiatives. By learning from the successes and failures of other countries, South Africa can optimize its policies to achieve greater sustainability, environmental protection, and social responsibility. Additionally, this knowledge can be used to foster dialogue and collaboration between the multiple stakeholders in the mining industry, thus promoting a more unified and effective approach to mining sector governance.

4.2 Choice and rationale of the countries the comparative analysis is based on

With the above being said, it is then important to identify the countries that South Africa can draw some important lessons from. This will help in making an individual analysis of each country in comparison to south Africa to distinguish each experience. As such the below discussion will identify each of the countries, how do they compare to South Africa, what they are doing different and the lessons that can be learnt from each country.

4.2.1 Australia

Australia is an excellent case study for inclusion in a comparative analysis of CSR policies in the mining industry in comparison with South Africa. This is due to the fact that Australia's mining industry is advanced, making it an ideal benchmark for the

evaluation of CSR practices and policies.[192] Australia has a long-standing history of engagement with CSR policies, resulting in a vast amount of experience and knowledge that can provide valuable insights into sustainable mining practices.[193] The Australian mining industry is characterized by social engagement and community development, which are critical components of CSR policies.[194] The minerals industry regulatory framework in Australia is known for its robust and comprehensiveness, as opposed to South Africa's regulatory framework.[195] Asa such, employing Australia as a benchmark model can prove vital in assessing the effectiveness of different regulatory models in promoting responsible mining practices.[196]

In understanding the contrasting principles underpinning CSR policies in both Australia and South Africa, Brown *et al* writes that Australia has a long-standing history of CSR integration in its mining operations, and as a result it has fine-tuned its sustainable mining practices over several decades.[197] In comparison to this, South Africa's change of direction towards comprehensive CSR policies in the mining industry is comparatively recent, reflecting a transition from a difficult past towards more responsible and equitable practices.[198] A further distinction between the two countries

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[192] Dimmler, L 'Linking Social Determinants of Health to Corporate Social Responsibility: Extant Criteria for The Mining Industry' (2017) 4(1) *The Extractive Industries and Society* 216-226.

[193] Dashwood, H S *The Rise of Global Corporate Social Responsibility: Mining and The Spread of Global Norms* (Cambridge University Press 2012) 22.

[194] Bice, S 'What Gives You a Social Licence? An Exploration of The Social Licence to Operate in The Australian Mining Industry' (2014) 3(1) *Resources* 62-80.

[195] Steyn, M 'Organisational Benefits and Implementation Challenges of Mandatory Integrated Reporting: Perspectives of Senior Executives at South African Listed Companies' (2014) 5(4) *Sustainability Accounting, Management and Policy Journal* 476-503.

[196] Wang, L, Zhang, P, Ma, L, Cong, X & Skibniewski, MJ 'Developing A Corporate Social Responsibility Framework for Sustainable Construction Using Partial Least Squares Structural Equation Modelling' (2020) 26(1) *Technological and Economic Development of Economy*186-212.

[197] Brown, JA, de Bakker, FG, Bapuji, H, Higgins, C, Rehbein, K & Spicer, A 'Building on Its Past: The Future of Business and Society Scholarship' (2022) 61(5) *Business & Society* 967-979.

[198] Benn, S, Edwards, M & Williams, T *Organizational Change for Corporate Sustainability* (Routledge 2014) 87.

lies in the regulatory frameworks that guard CSR initiatives in the mining industry. In essence, Australia is preferential of a collaborative combination of government regulations, industry-led initiatives and self-regulation, which results in a blend of compulsory and voluntary efforts.[199] In addition to the above distinction, the Australian mining industry has established an extensive culture of involving indigenous communities in its mining operations by incorporating their perspectives and rights through agreements and partnerships, thus promoting community engagement in the adoption and implementation of their CSR policies.[200]

In assembling the lessons that South Africa can draw from Australia in order to be able to implement effective CSR policies, Carrol opines that the collaborative element between the mining industry and all the other relevant stakeholders that is utilized by Australia can be a guiding tool towards South Africa learning from this model and optimizing its CSR policies.[201] This is informed by the intention to creating an optimal balance between government supervision and industry participation, which is an essential element for successful adoption and implementation of CSR policies.[202]

As highlighted that there is a deficit in the mining industry in that there is less involvement of the mining communities in the decision making process in relation to the mining activities, what can be learnt from the Australian mining industry is that local communities impacted by mining activities have a substantial voice and are

[199] Fordham, AE & Robinson, GM 'Mapping Meanings of Corporate Social Responsibility–An Australian Case Study' (2018) 3 *International Journal of Corporate Social Responsibility* 1-20.

[200] Jackson, S & Poelzer, G *et al* 'Mining and Sustainability in the Circumpolar North: The Role of Government in Advancing Corporate Social Responsibility' (2023) 72 *Environmental Management* 37–52.

[201] Carroll, AB 'Carroll's Pyramid Of CSR: Taking Another Look' (2016) 1(1) *International journal of corporate social responsibility* 1-8.

[202] Beckman, T, Colwell, A & Cunningham, PH 'The Emergence of Corporate Social Responsibility in Chile: The Importance of Authenticity and Social Networks' (2009) 86 *Journal of Business Ethics* 191-206.

stakeholders in the decision-making process.[203] The inclusion of mining communities as valuable stakeholders in the Australian mining industry decision making processes has proven significant in that it has proven the ability to build and maintain trust and transparency, which can serve as a valuable lesson for South Africa as it seeks to enhancing the community engagement practices in CSR adoption proceedings.[204] What can be done to cement this is the development of agreements and partnerships that are enforceable that will guarantee the incorporation of the perspectives of the mining communities into the operations of the mining companies.[205]

4.2.2 Chile

Chile makes a relevant choice for a comparative study due to its thriving mining sector. This therefore warrants for a deeper delving into the intricacies of CSR policy implementation, in a context where mining plays a crucial role in the national economy, similar to that of South Africa.[206] Chile boasts a mining industry that is dominated by the extraction of copper, which has proven to be of economic significance both on the national and the global scale.[207] Chile makes a compelling case in that its strategical approach towards CSR policy development has undergone

[203] Erzurumlu, SS & Erzurumlu, YO 'Sustainable Mining Development with Community Using Design Thinking and Multi-Criteria Decision Analysis' (2015) 46 *Resources Policy* 6-14.

[204] Chipangamate, NS, Nwaila, GT, Bourdeau, JE & Zhang, SE 'Integration of Stakeholder Engagement Practices in Pursuit of Social Licence to Operate in A Modernising Mining Industry' (2023) 85 *Resources Policy* 1-11.

[205] Conde, M & Le Billon, P 'Why Do Some Communities Resist Mining Projects While Others Do Not?' (2017) 4(3) *The Extractive Industries and Society* 681-697.

[206] Moody, R *Rocks and Hard Places: The Globalization of Mining* (Bloomsbury Publishing 2008) 49-64.

[207] Kalantzakos, S 'The Race for Critical Minerals in An Era of Geopolitical Realignments' (2020) 55(3) *The International Spectator* 1-16.

significant changes in recent years, reflecting the evolving dynamics and growing emphasis on responsible mining practices.[208]

What underpins a contrasting principle in terms of CSR principles in Chile is that the country is characterized by a market-oriented regulatory framework that encourages mining companies to voluntarily engage in CSR practices, making it more reliant on industry-led initiatives.[209] In contrast to this approach, Ramlall writes that the South African CSR model provides for a more prescriptive approach, with regulations that mandate certain CSR initiatives, [210] making South Africa to rely on government intervention rather than industry-led initiatives.[211] Furthermore, Chile has displayed a significant expansion in the mining industry that is fuelled by a favourable investment environment.[212] This expansion has allowed the mining companies operating within Chile to allocate adequate resources towards CSR initiatives, particularly with regards to community development.[213] This is however a stark contrast in the South African CSR model in that the multifaceted socio-economic obstacles and a legacy of social

[208] Liu, W & Agusdinata, DB 'Dynamics of Local Impacts in Low-Carbon Transition: Agent-Based Modelling of Lithium Mining-Community-Aquifer Interactions in Salar De Atacama, Chile' (2021) 8(3) *The Extractive Industries and Society* 1-13.

[209] Babidge, S & Bolados, P 'Neoextractivism and Indigenous Water Ritual in Salar De Atacama, Chile' (2018) 45(5) *Latin American Perspectives* 170-185.

[210] Ramlall, S 'Corporate Social Responsibility in Post-Apartheid South Africa' (2012) 8(2) *Social Responsibility Journal* 270-288.

[211] Ndiweni, E & Sibanda, W 'CSR Governance Framework of South Africa, Pre, During and Post-Apartheid: A Manifestation of *Ubuntu* Values?' (2020) 14(4) *International Journal of Business Governance and Ethics* 363-383.

[212] Ghorbani, Y & Kuan, S. H 'A Review of Sustainable Development in The Chilean Mining Sector: Past, Present and Future' (2017) 31(2) *International Journal of Mining, Reclamation and Environment* 137-165.

[213] Zhang, A, Moffat, K, Lacey, J, Wang, J, González, R, Uribe, K & Dai, Y 'Understanding the Social Licence to Operate of Mining at The National Scale: A Comparative Study of Australia, China and Chile' (2015) 108 *Journal of Cleaner Production* 1063-1072.

disparities negatively impact the scope and character of CSR practices,[214] which results in the South African mining industry frequently concentrating on rectifying historical inequities and promoting social justice through mining.[215] In addition, the success of CSR initiatives within the Chilean mining industry can be attributed to the centralised focus of mining companies on fostering positive relationships with indigenous communities and other stakeholder's, thus seeking to promote community engagement.[216]

With the above contrasts addressed, the question then becomes what some of the lessons that South Africa can draw from the Chilean Model of CSR policy initiatives. A lesson can be learnt from the strict regulations of the Chilean mining industry, which have played a significant role in ensuring that mining companies contribute to the welfare and the development of the mining communities that they operate from within.[217] This warrants for a reformation of the South African mining regulations that are already in place in order to guarantee the implementation of CSR policies that are enforceable.[218] This reformation further extends into ensuring that the current legislative framework is strict on the involvement and cooperation of the mining

[214] Chahoud, T, Kneller, M, Krahl, K, Rieken, J & Riffler, V *Corporate Social Responsibility (*CSR*) And Black Economic Empowerment (BEE) In South Africa: A Case Study of German Transnational Corporations* (No. 58). (Studies 2011) 37.

[215] Soyapi, C & Kotzé, L J 'Environmental Justice and Slow Violence: Marikana and The Post-Apartheid South African Mining Industry in Context' (2016) *Verfassung und Recht in Übersee/LAW AND POLITICS IN AFRICA/ ASIA/ LATIN AMERICA* 393-415.

[216] Poelzer, G, Frimpong, R & Noble, B 'Community as Governor: Exploring the Role of Community Between Industry and Government In SLO' (2023) 72(1) *Environmental Management* 70-83.

[217] Wirth, H, Kulczycka, J, Hausner, J & Koński, M 'Corporate Social Responsibility: Communication About Social and Environmental Disclosure by Large and Small Copper Mining Companies' (2016) 49 *Resources Policy* 53-60.

[218] Shongwe, CM *Effective Ways of Enforcing the Obligation of Corporates to Observe and Promote Human Rights: A Critical Evaluation of The Approaches Adopted in South African and India* Doctoral dissertation (University of Johannesburg 2018).

companies with the government and the communities they operate from,[219] which is a great tool of building trust and displaying transparency among stakeholders and addressing issues related to mining more effectively.[220]

4.2.3 Ghana

What rationalizes the choice of Ghana as a comparable country of study is that the Ghanaian mining industry plays a very significant role in both Africa and at a global scale.[221] With its long standing history of mining activities in West Africa, Ghana, just like in South Africa, ranks among the largest gold producers globally, which propels its vital position in the mining industry.[222] Ghana boasts a regulatory landscape of the mining industry in terms of CSR policy initiatives that has evolved gradually over the years, which is reflective of the countries commitment towards stakeholder and community engagement.[223]

What seems to present a contrast in the regulation of both CSR countries is that while South Africa's CSR policies are less prescriptive in allowing for a more voluntary

[219] Mutti, D, Yakovleva, N, Vazquez-Brust, D & Di Marco, M H 'Corporate social responsibility in the mining industry: Perspectives from stakeholder groups in Argentina' (2012) 37(2) Resources Policy 212-222.

[220] Biggemann, S, Williams, M & Kro, G 'Building in Sustainability, Social Responsibility and Value Co-Creation' (2014) 29(4) *Journal of Business & Industrial Marketing* 304-312.

[221] Debrah, AA, Watson, I & Quansah, DPO 'Comparison Between Artisanal and Small-Scale Mining in Ghana and South Africa: Lessons Learnt and Ways Forward' (2014) 114(11) *Journal of the Southern African Institute of Mining and Metallurgy* 913-921.

[222] Elbra, A 'A History of Gold Mining in South Africa, Ghana and Tanzania' (2017) *Governing African gold mining: Private governance and the resource curse*, 67-103.

[223] Awuah, LS, Amoako, KO, Yeboah, S, Marfo, EO & Ansu-Mensah, P 'Corporate Social Responsibility (CSR): Motivations and Challenges of a Multinational Enterprise (MNE) Subsidiary's Engagement with Host Communities in Ghana' (2021) 6(1) *International Journal of Corporate Social Responsibility* 1-13.

approach by mining companies, [224] the Ghanaian model maintains stringent regulations that make it a requirement for mining companies to invest a percentage of their profits in community development projects, inclusive of schools, healthcare facilities and infrastructure.[225] Ghana may have a less diversified mining industry than that of South Africa,[226]however Ghanaian mining companies have made sure to capitalize on the establishment of sufficient engagement with their communities, thus there is adequate community engagement.[227] In that regard, Hinson and Ndhlovu argue that even though the South African mining companies often have more resources and expertise to engage in CSR activities, they are often criticised for their insufficient engagement with local communities that they operate within.[228] In addition, the Ghanaian model aims to promote local participation in the mining industry by requiring mining companies to prioritize the hiring of local labour and sourcing of goods and services locally,[229] which is aimed at the creation of economic opportunities for Ghanaian citizens and businesses.[230]Kemp and Owen are of the argument that a similar trend exists within the South African mining industry, with the

[224] Cheruiyot-Koech, R & Reddy, C D 'Corporate Social Responsibility Preferences in South Africa' (2022) 14(7) *Sustainability* 1-16.

[225] Kumi, E, Yeboah, T & Kumi, YA 'Private Sector Participation in Advancing the Sustainable Development Goals (SDGs) In Ghana: Experiences from The Mining and Telecommunications Sectors' (2020) 7(1) *The Extractive Industries and Society* 181-190.

[226] Note 194.

[227] Mensah, SO & Okyere, SA 'Mining, Environment and Community Conflicts: A Study of Company-Community Conflicts Over Gold Mining in The Obuasi Municipality of Ghana' (2014) 5(1) *Journal of Sustainable Development Studies* 64-99.

[228] Hinson, RE & Ndhlovu, TP 'Conceptualising Corporate Social Responsibility (CSR) And Corporate Social Investment (CSI): The South African Context' (2011) 7(3) *Social Responsibility Journal* 332-346.

[229] Ba, DG & Jacquet, JB 'Local Content Policies in West Africa's Mining Sector: Assessment and Roadmap to Success' (2022) 9 *The Extractive Industries and Society* 1-13.

[230] Appiah, KM, Possumah, B T, Ahmat, N & Sanusi, NA 'External Environment and SMEs Investment in The Ghanaian Oil and Gas Sector' (2018) 11(1) *Economics and Sociology* 124-138.

reservation that there is an inconsistent implementation of these policies in the mining industry.[231] This has unfortunately resulted in the negative public perception of the mining industry as a whole,[232] which may also extend into adversely affecting the relationship between the mining companies and investors, customers, and other stakeholders, potentially impacting their profitability and viability in the long run.[233]

In assembling the lessons that South Africa can draw from the Ghanaian CSR model, Muller opines that in order to effectively address the historical grievances that are related to the mining industry, in addition to the current legislative provisions, there should be more emphasis on the promotion of local content, employment and economic development in the mining industry.[234] This will ensure the that the local communities are incorporated into the operations of the mining companies in order for the mining communities to also benefit from the mining operations.[235] What contributed to the effective governance of the mineral industry with the Ghanaian Model is that Ghana has thrived effectively under a stable political environment, which has enabled it to develop resilient regulatory frameworks which have helped with the effective governing of the mining industry and the CSR policy development.[236] What South Africa can learn from this experience is that a favourable political climate is a

[231] Kemp, D & Owen, JR 'Community Relations and Mining: Core to Business but Not "Core Business"' (2013) 38(4) *Resources Policy* 523-531.

[232] Devenin, V & Bianchi, C 'Soccer Fields? What For? Effectiveness Of Corporate Social Responsibility Initiatives in The Mining Industry' (2018) 25(5) *Corporate Social Responsibility and Environmental Management* 866-879.

[233] Devie, D, Liman, LP, Tarigan, J & Jie, F 'Corporate Social Responsibility, Financial Performance and Risk in Indonesian Natural Resources Industry' (2020) 16(1) *Social Responsibility Journal* 73-90.

[234] Müller, M 'The 'New Geopolitics' of Mineral Supply Chains: A Window of Opportunity for African Countries' (2023) 30(2) *South African Journal of International Affairs* 177-203.

[235] Lesser, P, Suopajärvi, L & Koivurova, T 'Challenges That Mining Companies Face in Gaining and Maintaining a Social License to Operate in Finnish Lapland' (2017) 30 *Mineral Economics* 41-51.

[236] Johnson, MF, Laurent, RL & Kwao, B 'Constructing A Crisis: The Effect of Resource Curse Discourse on Extractive Governance in Ghana' (2020) 7(3) *The Extractive Industries and Society* 965-974.

catalyst for the promotion of good governance, which will ensure the effective development of CSR policies and the implementation thereof.[237] This will further foster the implementation of stricter CSR policies that will ensure compliance with the mining industry regulations that are in place.[238]

4.3 Conclusion

From the study conducted above, what can be seen is that Australia, Chile, and Ghana are three unique countries with contrasting characteristics, strengths, and obstacles. What distinguishes Australia is that it is a highly developed country with a robust economy, advanced infrastructure, and a high standard of living. Its expansive landmass and abundant natural resources have played a pivotal role in its economic prosperity. As such, Australia highlights the importance of effective governance, innovation, and efficient natural resource management in ensuring sustainable growth and the effective adoption and implementation of CSR policies.

On the other hand, Chile is recognized for its stable political environment, market-driven economy, and position as one of the world's primary copper producers. It has dedicated its efforts towards sustainable practices and economic diversification initiatives, which have contributed significantly to its consistent growth. As a result, Chile's evolution towards a market-driven economy underscores the significance of economic diversification and wise CSR policies, which further helps to diversify and develop the mining industry.

Moreover, Ghana is a representation of a nation that is striving for the advancement of its mining industry regulations considering its historical challenges. It has provided the indication that with a resilient political climate, a reasonable commitment towards

[237] Ganson, B 'Business (Not) For Peace: Incentives and Disincentives for Corporate Engagement on Good Governance and Peaceful Development in The African Context' (2019) 26(2) *South African Journal of International Affairs* 209-232.

[238] Lauwo, SG, Otusanya, OJ & Bakre, O 'Corporate Social Responsibility Reporting in The Mining Sector of Tanzania: (Lack Of) Government Regulatory Controls and NGO Activism' (2016) 29(6) Accounting*, Auditing & Accountability Journal* 1038-1074.

the responsible resource extraction can be guaranteed, while also ensuring that there are stringent regulations developed for the benefit on the mining communities, thus ensuring compliance and implementation with CSR policies.

CHAPTER 5: CONCLUSIONS AND RECCOMENDATIONS

4.1 Conclusions

As the study aimed at an analysis of the South African legal framework that advocates for the transformation of the mining communities, the study opines that there are significant strides that have been made, though not to a large extent. This was further cemented by using CSR policies associated with the mining industry which drive the positive transformation of the mining activities. The study further opines that while they may have been indicators of these change here and there, it is however still a predicament that there is a lack of commitment that has taken a two-way trajectory:

i. Execution of CSR policies in the mining industry is often seen as a voluntary practice rather than a legally mandated one, which brings about the lack of commitment as there are no sound legal repercussions for non-compliance.
ii. The enforcement of these policies from the government lacks commitment. This can be seen as a contributing factor to the non-effectiveness of these policies in bringing development to the mining communities.

Although the study acknowledges the transformation efforts that have been made thus far to ensure that the CSR policies that have been adopted by the mining companies are effective, it is still unfortunate that this is being done at every slow rate, which has adverse effects on the development of the communities that these policies are aimed at transforming. As a result, the lack of commitment by the mining companies towards effective CSR policies implementation is seen as an anti-transformation action, thus standing in opposition of the provisions of the MPRDA.[239] What can be deduced from the section 2(f) of the MPRDA is that CSR policies should

[239] Section 2(f) of the *MPRDA*.

adhere to the high standard of ensuring that there is an advancement of the social and economic welfare of all South Africans, specifically the mining communities.[240] study therefore opines in this regard that the lack of effectiveness in the implementation of CSR policies can be traced to this point in that the lack of commitment to the CSR policies directly affects the lack of transformation.

The study further identified that with regards to the process of adoption and implementation of CSR policies, one predicament that underscores the effectiveness of the CSR policies is that of the lack of transparency by the mining companies. It is opined that transparency begins at the inception of the policies to identify the issues that the CSR policies seek to address.[241] This also brings in another issue that the study identified, which is that of consultation with the affected communities and/or the relevant stakeholders. It is therefore in the opinion of this study that when the mining companies are transparent in their dealings with the communities, this will lay a foundation in ensuring that there are good relations between the mining companies, the communities and the relevant stakeholders that are involved in the process of executing the CSR policies without a hitch.

In addition to the above, it is in the opinion of the study that transparency and consultation with the affected communities and the relevant stakeholders requires inclusivity, openness and willingness to accommodate the mining communities in addressing the challenges that are faced by the mining communities that are to be addressed by the prospective CSR policies. The depiction of this study is that transformation and development of the mining communities cannot take place effectively without the cooperation of all the relevant stakeholders. The study thus opines that stakeholder engagement is the cornerstone of ensuring successful and effective adoption and implementation of CSR policies that effectively address the

[240] Bester, V & Groenewald, L 'Corporate Social Responsibility and Artisanal Mining: Towards A Fresh South African Perspective' (2021) 72 *Resources Policy* 1-10.

[241] Frynas, JG 'Corporate social responsibility and societal governance: Lessons from transparency in the oil and gas sector' (2010) 93 *Journal of business ethics* 163-179.

challenges in the miming communities that they have set out to address in their inception.

In conclusion, the study does not entirely disregard the South African CSR model in its entirety, but rather points out the flaws that contributes to its ineffectiveness in addressing the challenges that are faced by the mining communities. The CSR models of the countries utilized for a comparison with the South African CSR model are also no without their challenges. However, it is in the opinion of the study that in looking for better options that will guide for better CSR initiatives, a look at what these countries have done in order to have thriving mining industries that are effective in addressing their socioeconomic challenges will not only be beneficial in the current perspective of the CSR initiatives, but this will also be beneficial for the future generations in creating socioeconomically viable communities even post the life of the mine.

5.2 Recommendations

It is in the opinion of this study that the following is being recommended:

- The Codes of Good Practice, as provided for by the MPRDA, are industry standards that are developed to give effect to the spirit and purport of the MPRDA in terms of transformation of the minerals industry and the mining communities thereof. As a result, a lack of adherence to the Code must be put on the same standard as lack of compliance with the MPRDA, of which the consequences of the non-compliance must be applied similarly. As such, the study recommends that the lack of compliance with the Codes of Good Practice by the mining companies must have sound legal repercussions that will send a strong message against those who are not in compliance.
- It has been established that the MPRDA provides no directive in terms of how CSR/*SLP*s are to be given effect to as a result, this leaves mining companies with the discretionary power as to which degree to comply with their CSR policies. As this proves that the MPRDA was poorly drafted to address this issue, the study recommends that there needs to be a reformation of the MPRDA, which will focus on ensuring that compliance with CSR policies is more of a

legally mandated act rather than a voluntary action, thus ensuring that the policies are effective in alleviating the socioeconomic challenges that are faced by the mining communities.

- Consultation with mining communities is an important aspect of ensuring that there is effective communication between the mining companies and the communities concerned. As a result, consultation in this regard must not be a once off aspect in the processes of adopting and implementing CSR policies. As such, the recommended amendments of the MPRDA and its regulations must be inclusive of the procedures that will ensure and guarantee that consultations are mandatory and periodical between the community and the mining companies, and that they are conducted from the beginning of the mining activities until closure.
- In addition to the above recommendation, the same must be applied to the transparency of the mining companies with regards to their CSR policies during the mining activities. It is therefore recommended by this study that amendments of the MPRDA and its regulations must be explicit in requiring the mining companies to have full disclosures with regards to their dealings in terms of CSR policies, which must be a compulsory procedure at all stages of the adoption and implementation of CSR policies.
- In addition to the reformed legal framework imposing on the mining companies to consult with the mining communities, the study recommends that stakeholder cooperation also plays an important role in ensuring that mining companies are held accountable, which will in turn contribute valuably to the effective implementation of CSR policies. To achieve transformation of the mining communities, mining industry legislations must impose on the mining companies to draw in and effectively allow stakeholder participation in their decision-making processes, especially the ones that involve addressing the socioeconomic challenges of the mining communities.
- The non-compliance and lack of commitment towards implementation of CSR policies carry no penalties nor sound legal punishments. As a result, there needs to be an insertion of penalty provisions in the current legislative framework. History has already taught us a hard lesson on non-compliance and its effect

on the mining communities. As such, the study opines that the Minister of Mineral Resources must effectively carry out the duty of suspension or revocation of mining licences in instances where mining companies are habitually defaulting on the commitment, they have taken in positively developing the communities that they operate within. This therefore calls for effective penalty provisions in the current mining industry legal framework.

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