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RE-DEFINING GENDER EQUALITY IN THE SOUTH AFRICAN MINING SECTOR

By

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ABSTRACT

Mining is one of the ancient economic activities currently still in operation in most African countries. It's potential contribution to economic development remains unmatched in that it provides employment to many people. Its establishments promote infrastructural development, thereby boosting other economic activities and social services in mining communities. However, the industry remains largely disproportionate in its workforce demography. Women remain underrepresented in large-scale underground parts of the mining operations. This research critically analyses the South African legal framework in so far as gender transformation in the labour sector (specifically underground mine operations) is concerned.

The research appraised specific South African labour legislation such as the Employment Equity Act, 55 of 1998, Labour Relations Act, 66 of 1995, Basic Conditions of Employment Act, 75 of 1997 as well as mining specific, Mineral and Petroleum Resources Development Act, 28 of 2002 and the Mining Charter for the South African Mining and Minerals Industry, 2002 (and its successive amendments) among others. The research evaluates the progress facilitated by the existing legal framework since the era of democracy in South Africa. It further presents a summary of how legislation has globally evolved over the years towards the inclusion of women in the industry.

The research was conducted through a desk-based literary study of secondary data. The chief research tools included the legislation, journal articles, reported case law, books and other online academic sources for global trends. Based on the findings, the inclusion of South African women in underground mining activities is still marred with challenges ranging from legislative gaps, health and safety related concerns, a lack of innovative infrastructure that accommodates women among others. In this regard, the government and other interested stakeholders need to address the legislative and policy gaps, the infrastructural concerns impeding on the successful inclusion of women through *inter alia* education and skills development programmes.

LIST OF ACRONYMS

ANC-African National Congress

ASM- Artisanal and Small-scale Mining

AFWIMN-Association of African Women in Mining Network

BEE- Black Economic Empowerment

BBBEE- Broad-Based Black Economic Empowerment

BCEA-Basic Conditions of Employment Act

CCMA-Commission for Conciliation, Mediation and Arbitration

DME-Department of Minerals and Energy

EEA-Employment Equity Act

HDSAs-Historically Disadvantaged South Africans

ILO- International Labour Organisation

LRA-Labour Relations Act

MAWIMA-Malawi Women In Mining Association

MHSC-Mine Health and Safety Council

MHSA-Mine Health and Safety Act

MPRDA-Mineral and Petroleum Resources Development Act

PEPUDA- Promotion of Equality and Prevention of Unfair Discrimination Act

PPE-Personal Protective Equipment

RDP- Reconstruction and Development Programme

SADC-Southern African Development Community

SAWIMA-South African Women In Mining Association

SDG-Sustainable Development Goals

USD- United States Dollar

WIMSA- Women In Mining South Africa

KEYWORDS

Gender equality,

Labour sector,

Legislation,

Mining charter,

Mine Infrastructure,

Skills Development,

South Africa,

Transformation,

Underground mine operations,

Women.

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CHAPTER 1: INTRODUCTION

1.1. Background to the study

Over the years, gender equality has gained prominence in various socio-political and corporate discourses worldwide.¹ Pressure has and is still mounting from the populace over increasing levels of gender disparities in former male dominated industries such as the mining sector where women remain underrepresented.² Despite the global adoption of democratic laws in Africa gender inequality manifests itself in various facades with its roots emanating mainly from society's traditional and cultural norms.³ The male is perceived as the provider who holds a certain level of power over the women. ⁴The latter on the other hand, is submissive and a nurturer who partly, due to less access to education, a lack of substantial and reliable source of income tends to accept male repression.⁵ For that reason, she has been viewed as incapable of making independent decisions, hence whenever she does, her decisions are seldom recognized. ⁶

Scientifically, women are regarded as a human species of inferior masculinity relative to their male counterparts.⁷ These perceptions have been misconstrued as yardstick performance measurements of women's capabilities in the business world to perform certain tasks.⁸ The mining sector is one such sector, where in South Africa legislation and policies such as the Mining Charter had to be enacted to facilitate the employment of women in core mining operations. By the nature of their biological anatomy it had been concluded that women cannot perform labour intensive duties such as mining.⁹

The South African mining sector previously prohibited women from working in core mining operations.¹⁰ Apart from the fact that the sector had generally been shunned by women for the nature

¹Eftimie (2009). Mainstreaming Gender into Extractive Industries Projects; *Extractive Industries and Development*. Series #9 August pg 13.

² *Ibid.*

³ Gender Equality: Why it matters? ;www.un.org/sustainabledevelopment/wp.../5_Why-it-Matters_GenderEquality_2p.pdf

⁴ *Supra* n1, at 11.

⁵ *Ibid.*

⁶ *Ibid.*

⁷Badehorst (2009) 'Women in Mining: A health and Safety Perspective', ;<https://www.scribd.com/.../HS-Conference-2012-Tech-Women-in-Mining-Cas-Badenhorst>. Mitchell *et al* (1992), Lower Haemoglobin concentration and arterial O₂ content; Wasserman (1999) 15 to 30% less aerobic capacity than their male counterparts. Kroemer *et al* (2001) Physical strength; women are weaker than men, usually attaining between 60 and 90% of the men's muscle strength and work output.

⁸ *Ibid.*

⁹ Botha (2015). Women in mining: A conceptual framework for gender issues in the South African mining sector'. *South African Journal of Labour Relations*. vol. 39, 23, par 2.

¹⁰ Zungu (2012). Occupational Health and Safety Challenges reported by women in selected South African Gold and Platinum mines' *Occupational Health Southern Africa*, vol. 18, 6.

of the job it entails, this also perpetuated the male dominance of the industry. With the adoption of the democratic Constitution,¹¹ new laws were introduced to offset the socio-economic and political imbalance created by the then apartheid government. Currently, the Mineral and Petroleum Resources Development Act (MPRDA)¹² and the Mining Charter,¹³ seek to transform the industry and to pave a way for the historically disadvantaged persons including women. The Charter set a 10% deployment of women in core mining operations as a requirement for mining companies to retain their trading licenses, at least by 2009.¹⁴

Notwithstanding the above, it should not be construed to mean that the physiological and anthropometry composition of women should be ignored in circumstances where it matters. Instead, this should constitute an invitation to government and other interested stakeholders to look at gender equality from a different lens when considering women inclusion. There are socio-economic factors occasioned by the deployment of women in underground environment *inter alia* health and safety concerns, physical ability, infrastructural facilities and workplace relations.¹⁵ In that regard, a novel approach to gender equality will assist in addressing the challenges faced by the mining sector in so far as women inclusion is concerned.

1.2. Research Problem

The South African Constitution promotes equality before the law to everyone.¹⁶ Every person has the right to the equal protection and benefit of the law.¹⁷ It prohibits direct or indirect discrimination based on gender, sex, pregnancy, marital status, belief, culture and birth among others.¹⁸ Where discrimination based on the cited grounds exists, the Constitution makes provision for national legislation to prevent or prohibit such unfairness.¹⁹ To give effect to this provision, the MPRDA, among other legal instruments, were enacted to regulate the equitable distribution, ownership and management of mineral resources in South Africa.²⁰

¹¹ Constitution of the Republic of South Africa, 1996.

¹² MPRDA, 28 of 2002.

¹³ Mining Charter, 2002.

¹⁴ April (2012). *Africa Insight*. Vol. 42(1), 122.

¹⁵ *Supra* n10, at 30-33.

¹⁶ *Supra* n11, at s9(1).

¹⁷ *Ibid*.

¹⁸ *Supra* n11, at s9(3).

¹⁹ *Supra* n11, at s9(4).

²⁰ *Supra* n12, at s2(c).

According to Cawood,²¹ the new South African political regime, an equitable system, immediately substituted the old political regime after the 1994 election of the African National Congress (ANC) to parliament. Yet still, twenty-three years after democracy and thirteen years since the coming into force of the MPRDA, the mining industry is largely still male dominated.²² Notably, women remain underrepresented in core mining operations. In recent statistics, the overall workforce of women in the mining sector has been recorded to be at 13.2 % as at the year 2015.²³ Although, the initial Mining Charter's set target of a 10 % women inclusion in the core mining operations by 2009 may have been achieved, however this occurred at a very slow pace. More still, the gender imbalance in the sector has continued to widen as more male mine workers continue to occupy most positions in the sector.²⁴ Consequently, at a national level an assessment into the current legal framework is necessary for purposes of addressing the sector's gender imbalance.

1.3. Aims and objectives of the research

1.3.1. Aim

To investigate factors widening the gender inequality gap among the South African core mining operations under the current legal framework.

Following a legislative ban on women in mining, South Africa's current legal framework promotes the inclusion of historically disadvantaged persons in the male dominated industry, women included.²⁵ Yet, despite the enabling laws, women remain under-represented in major mining operations in general.²⁶ The research seeks to investigate how legislation has been used to facilitate gender equality in the mining labour sector. The research assesses the current legal framework to see if it has addressed gender inequality and if not, what has been the challenges and how can they be best overcome.

1.3.2. Objectives

- To examine the holistic gender transformational strides engaged in the South African mining industry since the democratic Constitution;

²¹Cawood (2004). The Mineral and Petroleum Resources Development Act of 2002: A paradigm shift in mineral policy in South Africa. *Journal of the Southern African Institute of Mining and Metallurgy*, vol. 104, Issue 1, 53-64.

²² Chamber of Mines of South Africa, *Women in Mining Fact Sheet*, 2017, 2.

²³*Ibid.*

²⁴*Ibid.*

²⁵ *Supra* n12, at s2(d).

²⁶ Eftimie, (2009). *Extractive Industries and Development, Series # 8 August, 9.*

- To evaluate the impact of the current legislation/policy in addressing the gender inequality gap in underground mining operations;
- To evaluate the socio-economic factors influencing the deployment of female mine workers in core mining operations; and
- To present suitable recommendations where viable.

1.4. Research questions

1.4.1. Primary Research Question

Is holistic gender transformation in the South African mining sector possible through the current legal framework?

1.4.2. Secondary Research Questions

- What is the status of gender transformation in the South African core mining operations sector?
- Have the current legislation/policies succeeded in addressing the gender inequality gap in the South African underground mining operations?
- What are the socio-economic factors influencing the deployment of female mine workers in core mining operations?

1.5. Research methodology and limitations

1.5.1. Methodology

The research is conducted through a desk-based literary study of secondary data. The chief research tools are the legislation, journal articles, reported case law and books. For globally attainable trends, online sources present the primary repository of information. Essentially, the study appraises specific provisions of the MPRDA, the Charter and the Employment Equity Act.²⁷ Further, to evaluate the global legislative progress made towards gender transformation in the sector, the research considered the historical analysis of various jurisdictional legal frameworks.

1.5.2. Research parameters/limitations

The study is limited to investigating gender equality in the South African underground mining operations. To some extent, the research findings may not be conclusive as the research was not

²⁷ Employment Equity Act, 55 of 1998.

conducted on an empirical basis to assess the actual working circumstances of the sector. It should also be noted that there is a pending amendment bill to the MPRDA and the revised Mining Charter has recently been announced by the Minister. The latter is possibly yet to be contested in competent forums by opponent stakeholders. Consequently, it is acknowledged that the pending changes and their implications fall beyond the scope of this paper as this research only focuses on the existing legal framework at time of writing.

1.6. The relevance of the study

Inequality is still very prevalent in African societies despite the adoption of human rights aligned Constitutions by most countries on the continent. In sub-Saharan Africa, inequality is estimated to cost the region USD 95 billion per year while at a global scale USD 12 trillion is lost to the global economy.²⁸ These statistics reveal how inequality is not only a social problem but also a business-related issue with economic implications. Doyle and Stinglitz²⁹ suggest that the millennium development goals were not met as planned in 2015 because the elimination of extreme inequality was not included as part of the goals.³⁰ In their opinion, the international community may have agreed to a common cause, however, states '*lacked a vision of equitable*' development which they may need to consider in the Sustainable Development Goals (Agenda 2030).³¹

This study is pertinent in that the larger part of Africa is mineral dependant for its economic development.³² The industry creates employment opportunities at a large scale and promotes infrastructural development among others. Hence, if gender inequality is not properly addressed in the mining sector, it will continue to negatively affect economic growth in South Africa and the continent at large. Addressing gender inequity in male dominated sectors such as these will serve as a guide in closing extreme disparity gaps not only in incomes variables but other related socio-economic inequalities. At a national level South Africa will be participating in accelerating poverty reduction, employment creation as set by the SDGs' Agenda 2030 (Agenda 2030).³³

Furthermore, from a political point of view South Africa is of particular interest and significance for its model Constitution, a remarkable political transition and a fairly developed mining industry (as compared to other African countries) in so far as the legislative ban on women working underground

²⁸Adam Smith International on Women in Mining, '*Can a mining law unlock the potential of women?*' Report (2017), 10-13.

²⁹ Doyle (2014). Eliminating Extreme inequality: A Sustainable Development Goal, 2015-2030' *Ethics & International Affairs; New York* 28.1 at 5-13.

³⁰*Supra* n28.

³¹ *Ibid.*

³² The Zambezi Protocol, Discussion Paper 7/2016 at 3.

³³ Griggs (2013). Policy: Sustainable development goals for people and planet. *Nature* 495.7441.305-307.

is concerned. The study is relevant in that, after twenty-three years of achieving democracy in South Africa, women are still not yet fully empowered to work in the underground mining sections. Though still a sector in transition, empowering legislation has been laid as a foundation to liberalise the sector yet still research reveal the contrary. Women remain excluded on many aspects including gender specific needs that are not being met for them to perform their work safely and efficiently when working underground. Support systems and mechanisms aimed at facilitating the vision of empowering legislation in some cases, does not exist, making their inclusion an unrealistic goal. Subsequently, an evaluation into government's initiatives in addressing gender inequality will assist in conducting a checks and balances of where the law has been successful and where it has failed. The outcome of the process will guide in mapping innovative interventions that are compatible with a gender balanced and an equitable resource distribution sector.

1.7. Chapter outline

The research aims at critically analysing the legal framework governing the South African mining industry. The objective is to assess the impact the democratic legislation has had on transforming the male dominated sector through the inclusion of women in its core operations. Chapter 2 of the research commences by presenting a historical perspective of women in mining. The chapter sheds some light on how legislation has evolved over the years to allow women to enter the former male dominated industry. The chapter further illustrates the current state of gender transformation in the South African core mining operations. Chapter 3 explores pertinent labour legislation and policies responsible for the regulation of the South African Mining workplace. Chapter 4 presents a critical legal analysis of specific legislative provisions that speaks to the state of gender equality in the country's core mining operations. Chapter 5 is the shortest of all the chapters as it a briefly summarises all the issues raised in the previous chapters. Chapter 6 concludes the research findings and presents the appropriate recommendations based on the research findings which satisfy the aims and objectives outlined in chapter 1.

1.8. Conclusion

Women remain underrepresented in South African core mining operations despite the legislative efforts initiated by government towards their inclusion. However, though previously segregated, the contemporary efforts to emancipate them in the workplace should not be those that erode their protection in the process as this will jeopardise the well- intended cause. Accordingly, the following chapter presents a historical perspective of how women penetrated the male dominated sector from both a global and continental context. The chapter sheds some light on the pre-democratic legislative framework that governed the mining sector in select jurisdictions. This part further elaborates on how

the formally male dominant industry opened its doors to women, while highlighting the emerging trends in as far as gender transformation is concerned.

CHAPTER 2: A HISTORICAL PERSPECTIVE OF WOMEN IN MINING

2.1. Introduction

According to Zaretsky, the historical division of labour between men and women was very clear in the past.³⁴ Women were normally known to be at home caring for families, while men went out to seek for the means to provide.³⁵ He observes that this division of labour was largely informed by the notion of masculinity and feminine oriented public influences.³⁶ From this, some societies drew societal values and cultural norms that ended up defining and consequently, also restricting women from crossing over to doing what was regarded as 'manly' jobs. In other words, sex differentiation has a tendency of devaluing female activities and sustains sex inequality.³⁷ As Robbins asserts, unfortunately, employees do not separate themselves from their cultural values, lifestyles and preferences and other differences when they are at work.³⁸ Consequently, the culture of restricting women within the household boundaries has been employed to define workplace cultures particularly in male dominated industries such as the mining sector.

2.2. The historical Context from a Global perspective

For many years the mining industry has been dominated by male workers, a workforce which in modern day, is largely drawn from the rural communities.³⁹ However, though, not directly involved in core operations in earlier years, some scholars still recognise women's presence in the sector to have existed for centuries.⁴⁰ In the 1800s British women participated in labour related activism such as organising and staging labour protests, they were wives of mine workers who raised children (reproductive work) among other contributions.⁴¹ With the passage of time, women began to directly participate in the mining sector, the reason why they are present today in both artisanal mining (ASM) and large-scale mining operations, although the ratio in the latter is lower as compared to the former.⁴² Women in large scale mining operations are progressing from being involved in less labour

³⁴ Zaretsky, E (1976). *Capitalism, the Family and Personal Life*. London: Harper & Row, 32.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Padavic et al (2002). *Women and men at work*. Pine Forge Press, 10.

³⁸ Robbins (2009). *Organisational Behaviour: Global and Southern African perspectives*. 2nd ed. Cape Town: Pearson Education South Africa at 12.

³⁹ Botha D. (2015). 'Women in mining: A conceptual framework for gender issues in the South African mining sector, Unpublished PhD thesis, Chapter 2. University of the North West.

⁴⁰ Humphries, J. (1981). "Protective Legislation, the Capitalist State, and Working-Class Men: The Case of the 1842 Mines Regulation Act." *Feminist Review*, vol. 0, no. 7, pp. 1.

⁴¹ Bradley, (1989). *Men's Work, Women's Work: A Sociological History of the Sexual Division of Labour in Employment*. UK: *Polity* at pg 109.

⁴² *Supra* n28, at 16.

intensive positions such as administrative clerks and secretaries to being involved in underground operations.⁴³ However, the pace of the progress has remained slow due to the unique challenges faced by the industry in accommodating them in hazardous and labour intensive fields.⁴⁴ Besides, the legislative restrictions, traditional and cultural barriers have also contributed to the field not being an appealing career path for women.⁴⁵

The regulation around adult employment working conditions began in Britain and Switzerland in 1819 and later intensified in Britain around the 1840s.⁴⁶ This was in response to the escalating levels of industrialization that led to the labour of women and children to be on as much demand as that of men.⁴⁷ According to Engels, labour protection was necessary to curtail high labour demand of women and children in factories which was also threatening the sanctity of homes.⁴⁸ However, men and some civil rights groups resisted the special treatment afforded to women suggesting that it was discriminating against men and also promoting victimisation of women in the workplace.⁴⁹ Effectually, companies began to lay off women employees and giving preference of employment to men to increase productivity and to diminish labour force costs.⁵⁰

The contention against the labour protection laws resulted in lengthy legal battles in European Courts.⁵¹ The courts arrived at conflicting interpretations, with some disregarding potential discriminatory effects in the bid to accommodate women. The basis largely being an understanding of the uniqueness of childbirth as a peculiar condition for women.⁵² In contrast, some Courts found the provision prohibiting night work for women to be in contradiction with the Community Regulation that promoted equal opportunities in the labour market.⁵³ As the need to fight poverty amongst communities weighed against the labour protection, courts began to incline their reasoning towards finding ways of balancing the conflicting rights.⁵⁴ Wikander questions whether the labour protection was designed to help women maximize their workforce contribution or it was simply meant to perpetuate and sharpen the sexual division of labour.⁵⁵ Consequently, this inspired a need to regulate

⁴³ *Supra* n28.

⁴⁴ *Supra* n22.

⁴⁵ Botha (2012). Progress in implementing the Mineral & Petroleum Resources Development Act 28 of 2002. *The Journal of Southern African Institute of Mining and Metallurgy*, vol .112. 401 p 4.

⁴⁶ Wikander, (Eds.). (1995). *Protecting Women: Labor Legislation in Europe, the United States, and Australia, 1880-1920*. University of Illinois Press. pp 5.

⁴⁷ *Ibid*.

⁴⁸ Engels, F. (1993). *The condition of the working class in England*. Oxford University Press, USA.

⁴⁹ *Ibid*.

⁵⁰ *Ibid*.

⁵¹ *Supra* n40.

⁵² *Ibid*.

⁵³ *Ibid*.

⁵⁴ *Ibid*.

⁵⁵ *Supra* n46.

women and children employment in some types of working environment than to entirely ban them from working.⁵⁶ Through the 1842 Mines Regulations Act, Britain then pioneered the ban on women regardless of age from working underground as well as regulating shifts and night.⁵⁷

Britain's legislative exclusion gradually spread around the world.⁵⁸ Germany introduced the ban on underground employment to women in 1878.⁵⁹ In North America, Ontario as a case in point, the statutory prohibition was adopted in 1890 and Sweden passed its own in 1900.⁶⁰ Similarly, Russia imposed the ban after the revolution in 1917 although it revisited its policies around the 1990s following a market stumble.⁶¹ The legislation was viewed to have had unintended consequences in that the need to protect the family unity also restricted potential production capacity.⁶² India also adopted the ban in 1929 while Japan did so in 1933⁶³ and the ILO further reinforced the restrictions through its convention (C45 of 1935). In France and Italy for instance, laws were introduced at national level that regulated night shifts on women in the mining sector to conform with the ILO convention standards.⁶⁴ Those exempted from working underground were those that went in for purposes of performing non-manual occupation.⁶⁵ These included women that held positions of management and did not perform manual work, those employed in health and welfare services and those undertaking their studies and needed to access parts of an underground mine for purposes of training.⁶⁶ The Convention has however, become open for renunciation and some countries such as Australia, Canada, Chile, South Africa has so far denounced the convention.⁶⁷

Bradley, however, argues that the legal exclusion of women employment in underground mining was not universal.⁶⁸ He cites Belgium, German and India as having women working in underground operations until the twentieth century.⁶⁹ In India, North America and China, the 1960s and 1970s saw women taking on mine work, ranging from operating the open cast operations, loading and unloading

⁵⁶*Supra* n40, at 12.

⁵⁷ *Ibid.*

⁵⁸ Alexander, P (2007). Women and Coal Mining in India and South Africa, 1900-1940, *African Studies*, 66:2-3, 201-222.

⁵⁹ *Ibid.*

⁶⁰*Supra* n40.

⁶¹*Ibid.*

⁶²*ibid.*

⁶³ *ibid.*

⁶⁴ Article 2 of the International Labour Organisation, Convention 45 of 1935.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ <http://www.ilo.org/dyn/normlex/en/>.

⁶⁸ *Supra* n41.

⁶⁹ *Ibid.*

and weighting coal and dragging and pushing covers of coal.⁷⁰ The next part will give an overview of the historical legislative ban from an African context.

2.3. The African context

Hinton *et al* suggests that the number of women generally involved in large-scale mining in Africa is lower as compared to those in artisanal mining.⁷¹ From an African perspective, women have been restricted from performing underground mining activities largely due to cultural and traditional norms.⁷² The patriarchal system in most black African societies compel women to naturally submit to men.⁷³ This lack of autonomy has exacerbated women's subordination to male colleagues even in the workplace particularly in male dominated industries such as the mining sector.⁷⁴ In the majority of black African societies women's presence at mining sites is superstitiously considered a taboo.⁷⁵ In Zambia for instance, it is believed, women cannot approach gemstone mines for the fear that the spirits of the stones may drive the stone deeper into the earth or make it disappear.⁷⁶ This is even more emphasized when women are experiencing their menstrual cycle.⁷⁷ In Mozambique women are believed to attract bad spirits if they come close to the vicinity of a mine, even though they are allowed to sell food and beer.⁷⁸ Likewise, in Manica women can transport and wash gold bearing ore, but they are not allowed to dig mining trenches.⁷⁹

Owing to the above mythical beliefs, women have been prevented from working underground in most parts of Africa.⁸⁰ The patriarchal influence that associates them with household chores has also contributed to their restriction to performing labour intensive activities.⁸¹ Even after the legislative restrictions have been repealed, women continue to encounter culturally engrained barriers.⁸² Long mine working shifts, coupled with domestic chores at home, cause excessive strain on them to

⁷⁰ *Supra* n41.

⁷¹ Hinton *et al* (2003). Women and artisanal mining: Gender roles and the road ahead. *The socio-economic impacts of artisanal and small-scale mining in developing countries*, 336099-1163605893612.

⁷² Lahiri-Dutt, K. Macintyre, M. (2006). *Women miners in developing countries: Pit women and others*. Ashgate Publishing, Ltd at 7.

⁷³ *Ibid.*

⁷⁴ *Supra* n72 at 5.

⁷⁵ Namakau Kaingu-Owner and Chairperson of the SADC Women in Mining Trust- quoted by Synergy Africa (2001).

⁷⁶ Lahiri-Dutt, K. (2008). Digging to survive: Women's livelihoods in South Asia's small mines and quarries. *South Asian Survey*, 15(2), 217-244.

⁷⁷ *Ibid.*

⁷⁸ *ibid.*

⁷⁹ *Ibid.*

⁸⁰ According to (Robinson; 1998) as cited by Lahiri-Dutt, see *supra* n72.

⁸¹ Forastieri, V. (2002). Information Note on Women Workers and Gender Issues on Occupational Safety and Health.

⁸² *ibid.*

perform underground work.⁸³ However, with constant efforts of education and equality based interventions in contemporary mining sectors, gender transformation, stereotypes and women empowerment is deriving positive benefits.

The following section presents a synopsis of global emerging trends on gender transformation in select international mining jurisdictions (Australia, China, India, North America and South Africa).

2.4. Emerging trends

2.4.1. Emerging trends from a global perspective

The select countries have been selected for their detailed availability of literature on the history of women in mining. The population size of the select jurisdictions was also of important consideration for a better sample size. The countries were also selected based on diversifying continental representation although due to the scope of the paper not all the continents could be represented.

The 1977 United States law suit clarified the Equal Rights Amendment (ERA) and created precedence over the need for equal employment of women in underground mining activities in America.⁸⁴ As a proposed amendment to the United States Constitution, the ERA was designed to guarantee equal rights to all citizens irrespective of their gender.⁸⁵ Its goal was to end the legal distinctions between men and women in terms of employment among other categorisations.⁸⁶ The legal distinctions were partly as a result of the global influence of the 1842 British Mines Act which banned women from working underground and spread across other jurisdictions.⁸⁷ However, as Lahiri-Dutt observes, in modern day more women are being preferred in the mining sector for their resilience and loyalty, although this may differ in some jurisdictions.⁸⁸ They are even preferred as operators of the huge machinery used in mining for being *'more careful than men, easier to 'handle', less likely to be absent, and improve the behaviour of men.*⁸⁹

In India mining houses began to lay off women in the 1920s following devastating strikes.⁹⁰ Its historical distinctive feature of high women employment worked to its disadvantage during labour protests as they halted production at mining sites.⁹¹ They were prohibited from working underground

⁸³ *Supra* n72.

⁸⁴ *Supra* n58, at 202.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *ibid.*

⁸⁸ *Supra* n72.

⁸⁹ *Ibid.*

⁹⁰ Bhanumathi, (2002). The status of women affected by mining in India. Tunnel vision: Women, mining and communities, 20-25.

⁹¹ *Supra* n90.

under the Indian Mines Act of 1929 and civil society lobbied in favour of the ban on grounds of morality and civilisation especially with regards to child labour.⁹²In modern day, the large-scale mining sector has shifted to technology dependence and as such women employment has dropped significantly due to their lack of skills and cultural restrictions.⁹³

In China, apart from the 1925 law that limited women and children from working in the mines, Chinese women were generally considered a weak segment of society for a very long time.⁹⁴ The doctrine of *Nanzunnubei*, ('women are inferior to men') placed them at the bottom of the social hierarchy.⁹⁵ They were viewed less efficient and unreliable yet expensive for underground mining type of work considering their need to be accommodated on family responsibility related leave benefits.⁹⁶ Men became the most preferred participants of masculine type of jobs such as mining, resulting in gender discrimination.⁹⁷ Culturally, having women working in the mine tunnels was deemed ominous and the foot binding custom (Chinese custom to bind young girls' feet (+/- 8 years) into *Sancunjinlian*, (small triangle shaped feet) significantly affected their mobility as such they could not perform labour intensive tasks.⁹⁸

With the formation of the People's Republic of China political party, women began to participate in underground mining until the passage of the 'Provision for Protection of Working Women law' in 1992.⁹⁹ Although with good intentions to women, the law also deprived them of economic opportunities.¹⁰⁰ Mining companies still had access to abundant male cheap labour readily available which lessened the chances of women employment.¹⁰¹ Due to the harsh working conditions men could work without clothes in the pits, circumstances that were extremely inconvenient for both sexes, when working together.¹⁰² Such factors coupled with resource exhaustion, led to the decline of women in Chinese underground mines with the majority of them mostly working in mining unit affiliated institutions such as hospitals, schools, and nurseries.¹⁰³

⁹²*ibid.*

⁹³*ibid.*

⁹⁴ *Supra* n72 at 227.

⁹⁵ *ibid.*

⁹⁶ *ibid.*

⁹⁷*ibid.*

⁹⁸ *Supra* n72 at 238.

⁹⁹ *Supra* n72,at 239.

¹⁰⁰ *ibid.*

¹⁰¹ *ibid*

¹⁰² *ibid.*

¹⁰³ *ibid.*

Prior to the employment equity policies, Australia's mining industry was largely segregated on sexual lines.¹⁰⁴ Men constituted much of the mining workforce in underground operations, since women were not allowed to work there.¹⁰⁵ With the Equal Opportunity for Women in the Workplace policy women participation began to increase leading to the maximisation of women engagement in the sector, also as a way to address the skills shortage in some areas.¹⁰⁶ Emphasis was directed to the role of women in the entire value chain of the mining sector such that the 2011 partnership between the Australian government and the Mining industry led to the increased number of women employed in the mining sector for a timeframe of five years.¹⁰⁷

2.4.2. *Emerging trends under the African context*

According to Labonne the participation of women in the African large-scale mining industry is among the lowest in the world.¹⁰⁸ Culturally, they are not supposed to enter the mines due to mythical prejudices discussed above.¹⁰⁹ Nevertheless, networks such as the SADC Women in Mining Regional Trust have been initiated to mobilise women in mining.¹¹⁰ Founded in 1997 and based in Lusaka, the Trust represents eight countries namely, Angola, Botswana, Namibia, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe.¹¹¹ The aim of the Trust is to mobilise SADC countries' women involved in mining through research meetings and seminars. There are also national associations at country level in some of these countries for example, Malawi (MAWIMA), South Africa (SAWIMA).¹¹² There is also the 2003 *Association of African Women in Mining Network (AFWIMN)* which was launched in Elmina (Ghana). Its aim is to promote the visible participation of women, growth, innovation and gender mainstreaming of women in the sector, to empower women economically and to reduce poverty through the creation of employment.¹¹³

¹⁰⁴Strachan. (2007). Equal employment opportunity legislation and policies: the Australian experience. *Equal Opportunities International* at 13.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ Lozeva. (2014). '2008 Gender and Sustainable Livelihoods Workshop in Canberra, the 2008 Desert Knowledge Symposium in Alice Springs and the 2009 World Bank's Extracting Industries Week in Washington at 14.

¹⁰⁸ Labonne. (1996). Artisanal mining: an economic stepping stone for women. In *Natural Resources Forum* (Vol. 20, No. 2, pp. 117-122).

¹⁰⁹ *Supra* n75.

¹¹⁰ Mining Africa, 2007.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*

2.4.3. Emerging trends under the South African context

The mining sector is one of South Africa's major economic drivers and a former male dominant industry that excluded women in underground mining activities.¹¹⁴ As a result, whenever women participated in mining related responsibilities, they normally maintained the peripheral duties of the industry. Prior to 1995 the industry was governed by the Minerals Act (50 of 1991), the successor to the Mines and Works Act 12 of 1911 (and its sequential amendments of 1926, 1956, 1959). These, legislatively barred women from working underground until the passage of the South African Constitution and other sector specific supporting legal framework.¹¹⁵ The current Constitution lays a foundation for democratic principles in the workplace.¹¹⁶ In the mining sector, Historically Disadvantaged South Africans (HDSAs), such as women, were fostered into the policy framework.¹¹⁷ The entire labour policy framework underwent a comprehensive overhaul with the introduction of various non-discriminatory laws.¹¹⁸

Most remarkable in the legal framework shift though, was the lifting of the legislative ban on women from working underground by the Mine Health and Safety Act (29 of 1996).¹¹⁹ This Act, the Mining Charter and the MPRDA, promoted a change in the mining companies' demographic profile.¹²⁰ The Charter set a 10% target of women employment in core mining operations with a punitive measure of potentially losing a mining license to operate where companies fail to meet the requirements.¹²¹ To complement and augment the efforts of women inclusion, the South African Women in Mining Association (SAWIMA) was established as a vehicle to mobilise and promote women participation in mining.¹²² More so, government has also endorsed international and national protocols to promote equality and the empowerment of women.¹²³ However, to show its commitment in transforming the mining sector, government and interested stakeholders will have to improve on the following aspects among others;

¹¹⁴ *Supra* n10.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ PEPUDA, 4 of 2000. EE Act 55 of 1998, BCEA, 75 of 1997.

¹¹⁹ *Supra* n10 at 401 p4.

¹²⁰ *Ibid.*

¹²¹ *Supra* n13.

¹²² DMR, 2011b.

¹²³ South Africa is a party to the following protocols; United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979), Beijing Declaration and Platform for Action (1995), The African Union Solemn Declaration on Gender Equality in Africa (2004), The Protocol to the African Charter on Human and People's Rights on the Rights of Women, The Southern African Development Community Protocol on Gender and Development (2008).

i) Health and Safety in the workplace

The mining sector is regarded as one of the professions with the highest number of fatality rates per occupation and industry.¹²⁴ It entails hard labour, often in confined spaces, and small and narrow reef extraction that requires high heat tolerance.¹²⁵ As a result, working environments of such a nature require quality 'personal protective equipment' (PPE) to avoid death, injuries and diseases. Having been largely a male dominated industry and still adjusting to the inclusion and accommodation of women, some mining companies do not have female friendly designed PPEs. Thus, most female miners make use of available male designed, although incorrectly sized, personal protective equipment, which consequently poses a risk to them.¹²⁶

ii) Infrastructural Facilities

Biologically, women differ from men in so many ways in that they require adequate and quality sanitary facilities, safe and secure changing rooms among other facilities when working underground. Save for a few Anglo-American Gold mines, which has established and differentiated underground toilet facilities between male and female, most South African mines do not have appropriate or dedicated sanitary facilities for women.¹²⁷ Female miners are forced keep their soiled sanitary towels with them when working underground.¹²⁸ Some suppress the urge to drink water to avoid the need to use unhygienic underground facilities, even though water is essential to avert dehydration from the heat experienced underground.¹²⁹

iii) Physical Ability

Work in the mining sector generally requires physical strength and stamina. Operating heavy machinery such as load-haul-loaders, rock drills and winches is labour-intensive.¹³⁰ Most women in underground mine activities learn to operate the machinery on the job. More so, with a biologically low haemoglobin concentration and arterial content and their aerobic capacity lesser when compared to that of males, women's lack of training overburdens their physical ability.¹³¹ Badernhost supports

¹²⁴ *Supra* n10.

¹²⁵ Singer, R. (2002) South African women gain ground below surface, 16 May 2002.

¹²⁶ *Ibid.*

¹²⁷ *Supra* n10 at 12.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Supra* n10 at 10 p3.

¹³¹ *Supra* n7.

this view in that he perceives any female employee being capable of doing any job that she is qualified for as long as she meets the required standards and specifications inherent for the job.¹³²

iv) Workplace Relations

Robbins talks about the melting-pot approach in embracing diversity in the workplace.¹³³ He asserts that organizations assume that people from diverse backgrounds would automatically want to assimilate when brought under the same environment. The assumption that women will automatically adapt to the way things are in the mining sector and their male counterparts who have, for years, believed the mining sector is not for women should just accept that now the industry has become open to them is not practical.¹³⁴

Language or communication skills are very crucial in any workplace relations. In the South African mining sector, the lack of a formal mode of communication has exacerbated sexual harassment.¹³⁵ The language mostly used is '*Fanakalo*', a traditional dialect consisting of isiXhosa and isiZulu which most women find very vulgar and unacceptable.¹³⁶ The lack of clear communication hinders effective functionality within a team as employees lack clear understanding of each other. More so, as people coming from diverse cultural and origination backgrounds the language used in the mining environment contributes towards communication problems in the workplace.¹³⁷ According to Botha, several South African mining companies acknowledge the communication barrier resulting from a lack of basic entry level education.¹³⁸

Coburn argues that although sexual harassment is not confined to the mining sector, it is however, most prone in male dominated workplaces.¹³⁹ He emphasizes women's abuse in various areas *inter alia* physical and verbal, sexual inappropriate comments and physical contact.¹⁴⁰

v) Company Policy

Hill *et al* suggest that addressing gender inequality in the extractive industries demands a fundamental shift within company policy structures.¹⁴¹ Company policies should include women in the consultation

¹³² *Supra* n7 at 31 p4.

¹³³ *Supra* n38 at 12.

¹³⁴ *Ibid.*

¹³⁵ *Supra* n45 at 400.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ Coburn, J. (1997). Viewpoint: Sexual harassment: Why is society shocked? vol 29 *National NoW times* at 1-4.

¹⁴⁰ *Ibid.*

¹⁴¹ Hill *et al.* (2016). 'Gender and the Extractive industries: Putting gender on the corporate agenda'. *OXFAM* at 2.

process before the mines come into existence. This keeps management informed on how to support female employees in the industry.¹⁴² The way female miners are treated reflects on management's lack of valuable information that guides gender policies in the company.¹⁴³ The ILO classifies female miners as 'vulnerable workers' with special occupational health and safety needs as such, complimentary legislation such as the Basic Conditions of Employment Act, Employment Equity Act and the Labour Relations Act are in place to address such issues.¹⁴⁴ For instance, the law requires that an expecting female employee be relieved of heavy duties or hazardous work and should be assigned at surface for alternative employment to accommodate the worker and the unborn baby.¹⁴⁵

2.5. Conclusion

This chapter revealed the various challenges that women in the mining sector have been and continue to be exposed to since the discovery of the industry. Their challenges ranged from not being legally allowed to work in major mining establishments at all to working under controlled terms and conditions. Although with good intentions to protect them from hazards, it important that efforts be directed at making the working environment safer, the equipment to be better user friendly and the company policies to be more accommodative of their needs. The chapter further revealed how legislation has evolved globally, the contributing factors to the evolution and how the women themselves have been instrumental in the change globally. At present, the South African women in core mining operations remain excluded from actively participating in the industry. The enabling laws and institutional structures required to facilitate the transformation are not adequately equipped to harmonise the diverse challenges they encounter. A gap exists between the laws and the actual realities of what they experience.

The following chapter explores specific South African mining legislation and policies pertinent to gender transformation in the sector from a labour point of view.

¹⁴² *Supra* n141.

¹⁴³ *Ibid.*

¹⁴⁴ International Labour Organisation Global Employment Trends for women-March 2008, Geneva ILO; 2008

¹⁴⁵ S26(2) BCEA, 75 of 1997

CHAPTER 3:

THE SOUTH AFRICAN MINING LABOUR SECTOR UNDER THE CURRENT LEGAL FRAMEWORK

3.1. Introduction

After many years of unprecedented racial exclusion in South Africa the democratic elect government had an enormous task ahead of it.¹⁴⁶ The priority was to transform the socio-economic and political landscape of the country through the modification of laws, as these were going to be instrumental in facilitating transformation. The Constitution was the first key step towards establishing a democratic and an equitable society. In the mining sector, the goal was not only to address the colour bar economy,¹⁴⁷ but also to foster the inclusion of women among other historically disadvantaged groups of people. Through negotiations between government, labour and industry representatives sector specific legislation was crafted and implemented (although not yet successfully inclusive) to fast track the transformation process.¹⁴⁸

The legislative history of the South African Mining industry dates back as far as the establishment of the Mines and Works Act, a predecessor of the Minerals Act.¹⁴⁹ Under this Act, its amended successor (27 of 1956) as well as the Minerals Act women were barred from working underground in any mine in South Africa.¹⁵⁰ The dawn of democracy paved a way for the complete lifting of the ban through the introduction of non-discriminatory and labour specific legislation. These include the Employment Equity Act, the Labour Relations Act, the Basic Conditions of Employment Act, the Promotion of Equality and Prevention of Unfair Discrimination Act and the Mine Health and Safety Act. Consequently, for gender transformation to take place in the South African underground mining operations accommodative legislation such as these should be effective.

As may be observed in many post-colonial African countries, politics has created what has become a reactionary legal system in Africa. This chapter presents a brief historical overview of the events that led to the designing of the current mining laws in South Africa. The chapter explores the legal

¹⁴⁶*Supra* n21.

¹⁴⁷ Thomas, A. (2002). Employment equity in South Africa: Lessons from the global school. *International Journal of Manpower*, 23(3), 237-255. (Under the Mines and Works Act Amendment Act of 1926, blacks and Indians could not be mine overseers, mine surveyors, mechanical engineers nor do jobs reserved for whites).

¹⁴⁸*Supra* n21.

¹⁴⁹ *Supra* n14 at 18.

¹⁵⁰ Section 8(1) Mines and Works Act 12 of 1911 'no person shall employ underground on any mine a boy apparently under the age of 16, or any female' (RSA 1911:5).

framework guiding the functioning of the country's mining labour industry in the context of women inclusion.

3.2. Historical events leading to the current mining laws

Cawood postulates that part of South Africa's mining labour legislation was birthed from continuous negotiations between government, labour and the business community.¹⁵¹ With the Dutch colonization of the Cape in 1652 to 1994, the black South African population's political turmoil led to the establishment of the 1955 African National Congress (ANC) Freedom Charter.¹⁵² The charter, comprising of ten clauses calls upon government to reflect the political will of all the people of South Africa.¹⁵³ The charter sought to reclaim the wealth and political power of the black majority from the white minority and empowering black people by nationalizing key industries such as the mining sector.¹⁵⁴ This follows an understanding that mineral resources as a national asset are supposed to be developed for the benefit of all the South Africans. Accordingly, the state needed to take full custody of the minerals on behalf of the people, meaning that mining companies needed to pay the state for the exploitation.¹⁵⁵

Subsequently, under the banner of the 1994 Reconstruction and Development Programme (RDP) the ANC's campaigns reiterated the call for state ownership of mineral resources for the good of all South Africans.¹⁵⁶ This among other factors won the party political populace leading to it being elected into power in 1994.¹⁵⁷ The Chamber of Mines (1995) however, as a representative of the domestic mining industry argued against the principles of the RDP suggesting that they made security and continuity of tenure impossible considering government's unlimited intervention in the mining industry.¹⁵⁸ This led to the establishment of the Mineral Policy Process Steering Committee, a representative of the government, labour and the business sector. Having reached an agreement among parties to have the state retain mineral rights on behalf of the people, the Constitution of South Africa (as the supreme law of the land) became an enabling legislation to mining legislative instruments on how the fair and equal distribution of national wealth was going to be facilitated.¹⁵⁹

¹⁵¹ *Supra* n21 at 53.

¹⁵² *Supra* n21 at 54-58.

¹⁵³ <http://www.anc.org.za/content/freedom-charter>.

¹⁵⁴ Clause 3 of the ANC Freedom Charter '*People Shall Share in the Country's Wealth*'.

¹⁵⁵ *Ibid*.

¹⁵⁶ *Supra* n21.

¹⁵⁷ *Ibid*.

¹⁵⁸ *Ibid*.

¹⁵⁹ *Supra* n11 (Preamble).

The Constitutional protection of property rights led to the formation of the 1997 Green Paper on Minerals Mining Policy of South Africa.¹⁶⁰ The paper proposed that government promote mineral development through the use it or lose it principle among others.¹⁶¹ In 1998, the White Paper on Minerals and Mining Policy for South Africa adopted the exclusive state ownership of mineral rights leading to the enactment of the 2000 Draft Minerals Development Bill which was fiercely opposed for lack of public and industry input.¹⁶² The criticism received from the public and the industry then led to the 2002 Mineral and Petroleum Resources Development Act 28 of 2002 and the 2002 Broad Based Socio-economic Empowerment Charter First Draft (Proposed Broad Based Socio-economic empowerment charter for the SA Mining Industry).¹⁶³ The remainder of the chapter discusses select pieces of legislations chosen based on their contextual relevance to the study in that they all share equality as the common factor. It should be noted, however, that they are not chronologically discussed as per their year of promulgation.

3.3. The current legal framework governing the South African mining (labour) sector

3.3.1. The Constitution of South Africa, 1996

The Constitution of South Africa is regarded the supreme law of the Republic.¹⁶⁴ It is founded on the premise that any law or conduct inconsistent to its provisions is invalid.¹⁶⁵ Sector specific legislation therefore, find legitimacy from the Constitution with the Labour Relations Act specifically finding its legitimacy under Section 23. Enacted on democratic principles, the Constitution also contains a Bill of Rights which promotes equality before the law to everyone.¹⁶⁶ The Constitution makes provision for the elimination of all forms of discrimination by expressly affording everyone the right to equal protection and benefit of the law.¹⁶⁷ It bars any direct or indirect form of discrimination on various grounds *inter alia* sex, gender, pregnancy.¹⁶⁸ To address past injustice, the Constitution acknowledges categories of previously disadvantaged people and allows for the legislative interventions and measures designed to protect them.¹⁶⁹ From a mining perspective, the equality clause places women at the same footing as men in terms of their labour rights, thereby nullifying the legislative restrictions

¹⁶⁰ *Supra* n21.

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ *Supra* n11 at s2.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Supra* n11 at s9.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Supra* n11 at 9(3).

¹⁶⁹ *Supra* n11 at 9(2).

on women employment in underground operations. Accordingly, to give effect to this constitutional protection to women employment equity laws and health and safety related laws come into play.

3.3.2. *Mine Health and Safety Act 29 of 1996*

This Act provides for the health and safety guidelines to persons within a mining environment in South Africa. Intrinsically, its object is to establish monitoring and inspection systems, as well as conducting investigations on incidences that threaten a health and safe mine environment.¹⁷⁰ It sets out the circumstances and parameters under which an employee may refuse to work in dangerous conditions.¹⁷¹ The Act places both rights and duties on the employer and employee to maintain a safe and secure mining work environment. Chapter 2 of the Act requires an employer to ensure that every mine being worked at is in a reasonably safe and healthy working condition for the employee.¹⁷² The communication systems and other equipment necessary to achieve those conditions should be adequate and made accessible.¹⁷³

Section 5(1) requires that an employer provide and maintain a working environment that is safe and without risk to the health of employees.¹⁷⁴ In other words, a mine should be commissioned, maintained and or decommissioned in such a way that employees can perform their work without endangering their health and safety nor that of others.¹⁷⁵ Section 6(1)(a) further mandates every employer to supply all necessary health and safety facilities and equipment to each employee.¹⁷⁶ The equipment and facilities should be maintained and be in a serviceable and hygienic condition.¹⁷⁷ Where personal protective equipment is required, the Act makes it mandatory to every employer to ensure that sufficient quantities of all necessary personal protective equipment are available to each employee.¹⁷⁸ Furthermore, the employees required to use the personal protective equipment should be properly instructed in its use, limitations, and the appropriate maintenance of that equipment.¹⁷⁹ As a precautionary measure, the Act further affords employees the right to leave any working place where reasonable justification appear to the employee that serious danger to their health and safety is likely to arise.¹⁸⁰

¹⁷⁰Mine Health and Safety Act 29 of 1996.

¹⁷¹ *Supra* n170, at s23.

¹⁷² *Supra* n170, at s2(1)(a).

¹⁷³ *Supra* n170, at s2(1)(a)(ii).

¹⁷⁴ *Supra* n170 at s25.

¹⁷⁵ *Supra* n170 at s2(1)(b).

¹⁷⁶ *Supra* n170.

¹⁷⁷ *Supra* n170 at s6(1)(b).

¹⁷⁸ *Supra* n170 at s6(2).

¹⁷⁹ *Supra* n170 at s6(3).

¹⁸⁰ *Supra* n170.

3.3.3. *Labour Relations Act 66 of 1995 (LRA).*

The primary purpose of this Act is to give effect to section 23 of the Constitution (1996); to establish and advance economic development, social justice, labour peace and the democratisation of the workplace.¹⁸¹ In most African countries, the Extractive industries comprise of international investors or local elites who, due to their financial capabilities automatically have the scales of bargaining power tilting in their favour. In contrast, their employees particularly in the labour sector, mainly consist of the lowly educated people from poor backgrounds who fall vulnerable to settling for poor working conditions to provide for their families. By establishing a set of basic individual and collective labour rights the Act creates a balance of power between trade unions and employers.¹⁸²

The Act protects the right to work, the freedom to associate, the right to collective bargaining, the right to strike, the right to protection (through legislations such as the Compensation for Occupational Injuries and Diseases Act (130 of 1993), the Unemployment Insurance Act (63 of 2001) and the Occupational Health and Safety Act (85 of 1993)) and the right to training (through the Skills Development Act 97 of 1998). The process of collective bargaining enables employees who might not had been able to engage the employer independently to attain a certain level of power in negotiating for matters of mutual interest such as terms and working conditions of employment.

The LRA establishes a minimum set of organisational rights for collective bargaining purposes.¹⁸³ In terms of these rights, employees and their trade unions enjoy certain benefits within the bounds of the law such as trade union representation as well as access to the workplace.¹⁸⁴ The Act further regulates the conduct and circumstances under which a strike and lock out may be conducted, a characteristic of a democratised workplace. The LRA also establishes dispute resolution structures such as the Commission for Conciliation, Mediation and Arbitration (CCMA) and Bargaining Councils. The CCMA is accessible at no cost to everyone (subject to income earning capacity) regarding labour disputes falling within its jurisdiction. While Bargaining Councils are industry specific but normally accessible at no cost too, they are subject to the rules and regulations of specific sectors. Thus, the mining industry as a sector epitomised of so much labour unrests in South Africa mine workers and their representatives find solace in the provisions of this Act.

¹⁸¹ LRA, 66 of 1995.

¹⁸² *Supra* n181, at s4 & s5.

¹⁸³ *Supra* n181, at Chapter 3.

¹⁸⁴ *Supra* n181, at s12.

3.3.4. *Employment Equity Act 55 of 1998*

Among all the South African labour legislations the Employment Equity Act is remarkable for its direct aim to redress the negative fragments of the apartheid regime in South African workplaces. The Act recognises the occupational and income discrepancies in the national labour market.¹⁸⁵ To reconcile these, the Act promotes equal opportunities and fair treatment through the elimination of unfair discrimination among the previously disadvantaged (black people, women and people with disabilities).¹⁸⁶ It encourages a diverse workforce that broadly represents all the people. In the mining sector, these include women as the formerly restricted group to work in underground operations. Section 5 requires the employer to take steps to promote equal opportunities in the workplace through eliminating unfair discrimination in any employment policy or practice.¹⁸⁷

Section 6(1) bars any employee from being unfairly discriminated against whether directly or indirectly in any employment policy or practice based on gender, pregnancy, sexual or racial grounds.¹⁸⁸ The harassment of an employee is also regarded as a form of unfair discrimination and it is prohibited.¹⁸⁹ Section 15 provides for the implementation of affirmative action measures in the workplace by a designated employer. The employer has a duty to identify and eliminate employment barriers which adversely affect people from designated groups. In this instance, an Employer includes the State except for local spheres of government such as the National Defence Force, the National Intelligence Agency and the South African Secret Service.¹⁹⁰

3.3.5. *Basic Conditions of Employment Act 75 of 1997*

The Basic Conditions of Employment Act (BCEA) replaced the Wage Act of 1957.¹⁹¹ It sets a benchmark to the minimum standards expected in an employment contract regarding the hours of employment, leave days and remuneration. Employees and employers may not agree to terms and conditions of employment that are less favourable to the employee than those contained in the BCEA. Fundamentally, the provisions of this Act accommodate women inclusion in the mining sector explicitly provided they are implemented accordingly. For female miners in the labour sector, underground work is not the only work they do. They also have domestic chores in their homes that require to be accommodated within their daily lives' schedule. Having legislations such as the BCEA

¹⁸⁵ *Supra* n181 (Preamble).

¹⁸⁶ Thomas, A. (2002). Employment Equity in South Africa: lessons from the global school. *International Journal of Manpower*. vol. 23. No. 3, pp. 237-255.

¹⁸⁷ *Supra* n181, at s5.

¹⁸⁸ *Supra* n181, at s6.

¹⁸⁹ *Supra* n181, at s6(3).

¹⁹⁰ *Supra* n181, at s62.

¹⁹¹ *Supra* n145.

reduces the burden on women tremendously. Although some women may still not be able to comprehend the pressures of underground night shifts and raising families the regulation of working hours affords them space to accommodate their domestic work.

Section 7 of the Act mandates every employer to regulate the working time of each employee as guided in section 9.¹⁹² Where an employee has performed duties beyond the legislatively calculated hours, it is regarded overtime and such employee is entitled to be compensated for such hours as well as public holidays.¹⁹³ The Act further acknowledges night work (any work done between 18:00 pm and 6:00 am the following day) and requires that an employee be compensated for it and transport to and from work be made available.¹⁹⁴ Female employees who are child bearers as well are protected in terms of section 25 through their entitlement to at least four consecutive months of maternity leave. An employee is prohibited from work for 6 weeks after giving birth unless medically certified fit to do so.¹⁹⁵ Similarly, an expecting female employee or nursing mother may not perform work that is hazardous to her health or the child's.¹⁹⁶ Effectively, for a period of 6 months after the birth her child an employee is entitled to alternative employment which is suitable to her on terms and conditions that are not less favourable than her ordinary terms and conditions of employment.¹⁹⁷ Furthermore, for an employee who has worked with the same employer for longer than 4 months and works at least 4 days a week, is entitled to a three days' paid leave as family responsibility leave as provided by the Act.¹⁹⁸

3.3.6. *The Promotion of Equality and Prevention of Unfair Discrimination Act (4 of 2000)*

The purpose of this Act is to give effect to section 9 read with section 23(1) of the Constitution.¹⁹⁹ The Act prohibits unfair discrimination, hate speech and harassment to redress historical and social inequalities.²⁰⁰ Essentially, it promotes a free and fair South Africa to all citizens in all spheres of the country. In the context of the mining industry, section 8 is of much relevance with regards to women inclusion in the labour sector. The Act prohibits unfair discrimination against any person on the grounds of gender. It bars any policy or conduct from unfairly limiting women the access to land rights, finance and other resources.²⁰¹ Women may not be discriminated against on grounds of pregnancy

¹⁹² *Supra* n145.

¹⁹³ *Supra* n145, at s10.

¹⁹⁴ *Supra* n145 at s17.

¹⁹⁵ *Supra* n145 at s25(3).

¹⁹⁶ *Supra* n145 at s26.

¹⁹⁷ *Ibid.*

¹⁹⁸ *Supra* n145 at s27.

¹⁹⁹ PEPUDA, 2 of 2000 at s2.

²⁰⁰ *Supra* n199 (Preamble).

²⁰¹ *Supra* n199 at s8(e).

neither may their access to social services, such as health, education and social security be restricted unfairly.²⁰² The systematic inequality of access to opportunities by women because of the sexual division of labour also amounts to unfair discrimination.²⁰³

Based on the above-mentioned legislations female miners are as equal in any workplace (mining sector included) just like their male counterparts. They may not be subjected to harassment based on their gender later alone on any basis.²⁰⁴ Considering the historical disadvantage against them, the employer can consider measures that are designed to protect or advance their cause.²⁰⁵

3.3.7. *The Minerals and Petroleum Resources Development Act 28 of 2002*

Swart perceives the MPRDA as a huge milestone in the holistic transformation of the South African mining sector.²⁰⁶ The Act reiterates the State's commitment to facilitate the equitable access of the country's mineral wealth to all South Africans, through the eradication of discrimination.²⁰⁷ As a Constitutionally confirmed custodian of the nation's mineral and petroleum resources, the State is empowered under this Act in its effort to redress the results of past racial discrimination.²⁰⁸ It sets out expressly the process and procedures of how the historically disadvantaged persons (such as women and communities affected by mining operations) will be accommodated in the wealth distribution. More so, included in the goals is to *substantially and meaningfully expand opportunities* for them.²⁰⁹ Ideally, the aim of the Act is to see women inclusion materialising into active participation and for them to inherit from the nation's natural resources. In other words, women inclusion should not be merely about the increased number of women joining the industry without the actual progress for them. Thus, section 2(f) aims at promoting employment and advancing the social and economic welfare of all South Africans, women included.²¹⁰

3.3.8. *The Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry 2002 (The Mining Charter)*

The Mining Charter is an industry specific economic empowerment strategy for the South African mining sector, comprising of eight elements including employment equity. It was established based

²⁰² Supra n199, at s8(f), s8(g).

²⁰³ Supra n199, at s8(i).

²⁰⁴ Supra n166.

²⁰⁵ Supra n199, at s14(i).

²⁰⁶ Swart, E. (2003). The South African legislative framework for mine closure. *Journal of the Southern African Institute of Mining and Metallurgy*, 103(8), 489-492.

²⁰⁷ Supra n12.

²⁰⁸ Supra n12 at s3.

²⁰⁹ Supra n12 at s2(d).

²¹⁰ Supra n12.

on the Broad-Based Black Economic Empowerment Act 53 of 2003.²¹¹ It was introduced by the Department of Minerals and Energy (DME) in 2002 to promote the equitable access to the nation's mineral resources to all South Africans. The Act primarily, aims at facilitating the economic inclusion into mining, of the previously disadvantaged people such as women through the utilization of the existing skills base.²¹² This follows an understanding that an expanded skills base of the HDSA, increases employment opportunities and advances socio-economic welfare of mining communities.²¹³ Despite its short comings which have prompted constant controversial amendments over the years, the Charter has been instrumental in guiding mining companies in complying with the MPRDA, particularly with regards to promoting black economic empowerment when applying for the new mineral or converting current rights. Through the amendments government has tried to monitor progress made in as far as the set transformative targets are concerned. For instance, the Charter's 10% quota of women inclusion in core mining operations by 2009, 40% historically disadvantaged South African representation in core and critical skills by 2015.²¹⁴

3.4. Conclusion

This chapter highlighted select pieces of legislations guiding the transformation process of the South African mining labour sector. It is observed that the select legislations are unified by a common goal to redress socio-economic inequalities, workplace discrepancies in income ratios, occupational demographic status based on gender and racial lines among others. This chapter also provided an overview of the historical events that guided the legislative process from the democratic phase to the current legal framework. The discussed events revealed the aspirations of the Mining industry stakeholders. Attention was first given to the Constitution for its role as the supreme law of the land and the custodian of the legitimacy of all ancillary legislation, inclusive of mining laws. Admittedly, the Constitution makes it easier for labour legislation to find room of implementation in the mining labour fraternity. The following chapter appraises select *provisions* of the discussed pieces of legislation to evaluate their achievement of gender equality in the country's core mining operations.

²¹¹ Fauconnier, *et al* (2008). Black economic empowerment in the South African mining industry: A case study of Exxaro Limited. *South African Journal of Business Management*, 39(4), 1-14.

²¹² *Supra* n13 at s2(c).

²¹³ *Supra* n13 at s2(d).

²¹⁴ Botha (2014). Workplace opportunities for women employed in core mining activities. *Mediterranean Journal of Social Sciences*, 5(23), 1914.

CHAPTER 4: A CRITICAL LEGAL ANALYSIS OF GENDER EQUALITY IN THE SOUTH AFRICAN CORE MINING SECTOR

4.1. Introduction

Some civil society groups have argued that women's needs in the mining sector have not been accorded much attention in the workplace because their exclusion starts at the decision-making table.²¹⁵ Hill *et al* cites that women have not been allowed to meaningfully engage in consultative processes that pilot the establishment of future mining operations.²¹⁶ As a result, even if mining companies employ them in underground mining operations, their needs will still not be given much attention.²¹⁷ As true as that maybe, it is argued that meaningful participation and women inclusion in decision-making of mining establishments alone may not earn them a democratized, healthy and safe workplace. Consultation and engagement with the affected parties by mining houses is inevitable for an informed managerial team. Equally the same, the strength of the existing institutional and regulatory frameworks governing the mining and labour conditions of women in the industry matters.

When labour laws are established to give effect to the Constitution, reasonable expectation begin to dictate equality in the workplace. For this reason, meaningful engagement in decision-making becomes a follow up process meant to substantiate knowledge and understanding to those responsible for the designing and implementation of an inclusive workplace policy framework. The following part of the paper contextualises the meaning of 'gender equality' and 'core mining operations' in as far as the mining industry is concerned. The chapter further appraises relevant labour laws applicable to gender transformation of the mining. In the process, this identifies the socio-economic factors influencing women deployment in core mining operations.

4.2. What is meant by 'Core Mining Operations'?

The MPRDA does not provide for a precise definition of 'Core Mining Operations'. However, the Charter refers to 'Core and Critical Skills' as high level technical skills within the production and operational parts of the mine value chain.²¹⁸ Botha describes core mining operations as mining related

²¹⁵ Hill. (2016). Gender and the Extractive Industries: Putting Gender on the Corporate Agenda. *Oxfam Australia* at 3.

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

²¹⁸ Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry, 15 June 2017 at 13.

duties normally performed in the underground environmental sections of the mine.²¹⁹ These comprise of labour intensive activities performed in deep, dark and damp parts of the mine with extreme temperatures.²²⁰

4.3. Contextualizing 'Gender Equality' to the mining sector

Gender Equality is defined differently by various authors depending on the contextual use but for purposes of this study preference was given to the ILO's perspective. This follows its internationally recognised reputation as a body responsible for the regulation of international labour standards and advocating for equality of women in the workplace.²²¹ It is a state of empowering both women and men to influence, participate and benefit from the development process.²²² To achieve such a state in the workplace there is need for the elimination of structural barriers. The transformation outcome should result in more equal power relations, shared decision-making and women's equal access and control of productive resources and benefits.

According to the UN Women, gender equality is a people-centred development, a human rights principle based on the premise of equal rights, responsibilities and opportunities of women and men, girls and boys.²²³ It implies that the interests of both men and women are taken into consideration in full recognition of the diversity of different groups of women and men.²²⁴ In simpler terms, the English Oxford Dictionary defines it as the '*state in which access to rights or opportunities is unaffected by gender*'.²²⁵ In the mining sector, gender equality would refer to a state where female miners enjoy equal rights and opportunities to benefit from the nation's mineral wealth. This could be achieved through democratising the workplace in such a way that all employees enjoy their labour rights notwithstanding their gender.

4.4. An appraisal of select mining and labour legislative provisions governing the mining sector

The advent of human rights and the fight for gender equality globally has seen many women joining the labour market over the years.²²⁶ Some authors argue that the increase is due to push factors such as unemployment, poverty and inequality, driving them into sectors they would have ordinarily not

²¹⁹Botha *et al.* (2015). The physical ability of women in mining: can they show muscle? *The Journal of The Southern African Institute of Mining and Metallurgy*. Vol. 115 at 662.

²²⁰*Ibid.*

²²¹ http://www.ilo.org/gender/Informationresources/WCMS_545491/lang--en/index.htm

²²² ILO Action Plan for Gender Equality 2016-2017 at 11.

²²³ <http://www.undp.org/content/undp/en/home/ourwork/gender-equality/overview.html>

²²⁴ *Supra* n222.

²²⁵ https://en.oxforddictionaries.com/definition/gender_equality

²²⁶ Naila, (2005) Gender equality and women's empowerment: A critical analysis of the third millennium development goal 1, *Gender & Development*, 13:1, 13-24.

entered.²²⁷ Whatever reasons women have for going into mining, it is important that they be protected as the push factors reveal and confirm their vulnerability.

4.4.1. *The Constitution of the Republic of South Africa, 1996.*

Within the Constitution is the Bill of Rights enshrined in Chapter 2 and for purposes of this study focus will be limited to sections 9, s 10, s 11, s 13, s 14, and s 23 for their relevance to the area of study. In terms of the Constitution, women like any other employee have the right to be treated with dignity.²²⁸ This means that their ablution and other related facilities when working underground should be designed in such a way that they provide them with human dignity and privacy.²²⁹ Their working conditions should consider their right to life and reproduction.²³⁰ They should not be forced to work under life or health threatening circumstances or be forced into slavery at all. However, despite the above provisions the incidences of gender related occupational fatalities and discrimination in the South African mining sector, begs the question as to whether women in underground mining are being afforded these Constitutional rights.

4.4.2. *MPRDA and the Mining Charter*

The object of the MPRDA is to include women into the mainstream of the South African mining sector through the promotion of opportunities and advancement of socio-economic welfare of all South Africans.²³¹ Section 2(d) expressly provides for the substantial and meaningful expansion of opportunities for the previously excluded persons such as women. As the primary legislative guide on the exploitation, the use and distribution of the country's mineral wealth the MPRDA has a duty to set up infrastructural mechanisms, aimed at enabling the active participation of women sought to be achieved. Botha suggests that women globally feel unsupported to develop their careers in the mining industry.²³² Lahiri-Dutt further, cites Suzanne Tallichet's investigation on women in the American mining industry where an institutionalised prevention of women from *moving out of lower-paying strenuous jobs to more skilled positions* was noted.²³³ It was revealed that women were not allowed to learn new skills such as to operate machinery or to obtain training when they attained skilled positions.²³⁴

²²⁷ Casale, *et al.* (2002). The continued feminisation of the labour force in South Africa. *South African Journal of Economics*, 70(1), 156-184.

²²⁸ *Supra* n11 at s10.

²²⁹ *Supra* n11 at s14.

²³⁰ *Supra* n11 at s11 read with s12(2(a), (b)).

²³¹ *Supra* n12 at s2(f).

²³² *Supra* n214 at 633.

²³³ *Ibid.*

²³⁴ Lahiri-Dutt, K. (2011). Gendering the field: towards sustainable livelihoods for mining communities at 33.

In South Africa, Benya's participatory learning experience at the Rustenburg Platinum Mine (2011-2012) also confirmed similar sentiments.²³⁵ Women struggle to navigate developmental phases in the industry despite the Act's express reaffirmation of providing opportunities for women's 'active participation' in the industry. These views were also expressed by most women in the industry at the WIMSA mentorship session.²³⁶

4.4.3. Employment Equity Act (EEA)

This Act promotes diversity in the South African workplace by legislatively emphasising on equal opportunities to all employees. Section 5 of the Act obliges the employer to take steps to promote equal opportunities in the workplace by eliminating unfair discrimination in any employment policy or practice.²³⁷ Section 6 provides for the prohibition of unfair discrimination on any other arbitrary grounds including gender, pregnancy etc.²³⁸ Contextualising the term 'Arbitrary grounds' to the mining industry, may include being discriminated against for a lack of particular skills. In a recent unreported case of *Impala Platinum*,²³⁹ the Labour Court reasoned that two pregnant employees were not discriminated against because they were pregnant.²⁴⁰ Rather they were, because they did not have the necessary skills that other pregnant women had for purpose of accommodating them in alternative employment.²⁴¹ Consequently, when the employer could not find anything suitable for persons in their state of health (pregnant), the employees were requested to go on early maternity leave, a decision they felt rendered them discriminated against on grounds of pregnancy.²⁴²

The *Impala* Court decision reflects the short comings of some of the mining company policies more than twenty years after democracy and most remarkably a decade since the conception of the MPRDA. Judged against section 5 of the Employment Equity Act, the employer did not have a duty to create alternative employment for pregnant women who did not have the requisite skills for purposes of alternative employment. Nevertheless, the employer failed to eliminate unfair discrimination in its policy and to take steps to promote equal opportunities in the workplace. The case further reveals the skills deficiency among women in the South African core mining operations. The 'active participation' of women in the mining sector as envisaged by the MPRDA can be fundamentally achieved through

²³⁵ Benya, (2016). 'Women in Mining: Occupational Culture and Gendered Identities in the Making' University of the Witwatersrand at 143-156. (Unpublished PhD Research Thesis).

²³⁶ Women in Mining, South Africa. Seminar held at Melrose Arch, Johannesburg (19/08/2017 -18:00 pm- 20:30 pm)

²³⁷ *Supra* n27.

²³⁸ *Ibid.*

²³⁹ *Impala Platinum Ltd v Jonase & others* (JR 698/15).

²⁴⁰ S.A Labour Guide (Online access); <http://www.labourguide.co.za/most-recent/2517-pregnancy-was-not-the-reason-for-different-treatment>.

²⁴¹ *Ibid.*

²⁴² *Ibid.*

skills development. In terms of the affirmative action measures, women require to be reasonably accommodated as people from designated groups for them to enjoy equal opportunities in the workplace.²⁴³ The Act's reaffirmation to the inclusion of the historically disadvantaged persons, is confirmation and commitment to view the mining industry through the lens of a diversified workforce that includes women. As such, making provision for their skills development and the implementation of training measures is requisite to retaining them as people from designated groups.²⁴⁴

Considering the above, the inclusion of women in the mining industry should not be interpreted in terms of a quota system. Rather, it should incorporate an actual understanding of their needs and making provision in financial and material terms, skills and other necessary provision that enables them to function as desired by the laws purporting to advance their cause. Though the cited case may not depict universality in all mining companies in the country, it provides a picture into the daily experiences of underground female miners. The case reflects the limitations of the law and the courts' jurisdiction, which could also be an opportunity for collaboration with lobby groups interested in gender transformation to advocate for improved mining company policies.

4.4.4. *Basic Conditions of Employment Act (BCEA)*

The mining sector is mostly characterised by work done outside ordinary normal working hours. The BCEA is important for the regulation of employees' working hours and days especially to female miners who run a dual set of duties concurrently, as mine workers as well as home care givers. By law an employee who performs night work (between 18:00 pm and 6:00 am the following day) is entitled to compensation.²⁴⁵ The employer should provide transport to such an employee between her place and the workplace at the commencement and the conclusion of her shift.²⁴⁶ Equally, an employee who is required to work regularly between 23:00 pm and 6:00 am the following day must be informed in writing or alternatively, in her language or the language she understands of any health hazards associated with the work to be performed.²⁴⁷

Despite the above legislative provisions, incidences of rape, murder and robberies of female miners on their way to work in South Africa are not unusual.²⁴⁸ This could either mean that mining companies do not always provide transport as required by the Act or employees starting work outside the times defined as night shift do not qualify for arranged transport. The Act is not clear as to whether

²⁴³ *Supra* n27 at s15(2)(c).

²⁴⁴ *Supra* n27 at s15(2)(d)(ii).

²⁴⁵ *Supra* n145 at s17(1).

²⁴⁶ *Supra* n145 at s17(2)(b).

²⁴⁷ *Supra* n145 at s17(3).

²⁴⁸ *Supra* n235 at 149-150.

employees who start their shifts before 6:00 am but do not work the whole night nor start at 23:00 pm are entitled to transport as those falling under the provisions of section 17(1) read with 17(2)(b) and 17 (3). According to Benya, mine workers (including women) at the Rustenburg Platinum Mine would wake up as early as 3:00 am (depending on the travelling distance from their homes) in preparation for their 5:00 am underground shifts.²⁴⁹ This shows the parallel co-existence of the theoretical ideals of the law and the lived realities of the South African female miners.

The BCEA also provides for a 3-day paid family responsibility leave when the employee's child is born among others.²⁵⁰ Until recent legislative changes to accommodate mine workers' families, most migrant labourers resided in hostels leaving their families in their distant home towns or villages. In that regard, 3 days family responsibility leave may be insufficient for migrant workers who may need to travel considering their need to accommodate to long destinations. The Act further protects employees before and after the birth of a child by prohibiting pregnant or nursing employees from performing work that is hazardous to their healthy or the child's.²⁵¹ The employer is obliged to find suitable alternative employment for a pregnant employee, whose terms and conditions are not less favourable from her ordinary employment. Such an employee may also not perform work that poses a danger to her or the child six months from the birth of the child.²⁵²

4.4.5. *Promotion of Equality and Prevention Unfair Discrimination Act (PEPUDA)*

This Act prohibits the denial of access to opportunities, services or contractual opportunities to anyone based on gender or failing to take reasonable steps to accommodate the needs of the person sought to be protected by the Act.²⁵³ The Act further, makes provision for an exemption to unfair discrimination when such is being exercised to advance the cause of the unfairly disadvantaged.²⁵⁴ Yet, with such legislative authorisation, the majority of underground female miners in South Africa still do not have access to decent ablution facilities, PPEs designed to their comfort and safety among other needs.

4.4.6. *Mine Health and Safety Act (MHSA)*

This Act serves as the watch dog for the implementation of the above cited health and safety related laws for safeguarding a danger free mining environment. Yet, with the abovementioned health and

²⁴⁹ *Supra* n235 at 157.

²⁵⁰ *Supra* n145 at s27(3).

²⁵¹ *Supra* n145 at s26(1).

²⁵² *Ibid.*

²⁵³ *Supra* n145 at s8(h)).

²⁵⁴ *Supra* n145 at s14(1).

safety concerns experienced by women in underground mining the Act's application, implementation and monitoring mechanisms come under the spotlight.

4.5. Conclusion

The title of this study calls for the re-definition of what is termed gender equality in the mining (labour) sector. This means the inclusion of women in core mining operations require relevant stakeholders taking initiatives to involve themselves in the lived experiences of female miners. This, coupled with contemporary legislative efforts on companies to change the demographic profile of their workforce will encourage women's active participation. This follows a realisation that, though with good intentions, isolated legislative provisions that seek to work independent of the realities of what miners go through, has led to women being victimised in the workplace. For that reason, a critique of the relevant legislative instruments has exposed the gaps in the law. The chapter also identified various factors influencing women deployment into core mining operations.

The following chapter presents an evaluation and summary of the areas of improvement which policy makers could consider and prepare for in their policy formulation towards the advancement of gender transformation in the Mining Industry.

CHAPTER 5: EVALUATION AND SUMMARY

5.1 Introduction

According to Botha, most South African women working in the mines have found themselves in underground corridors due to various reasons and circumstances.²⁵⁵ For most of them socio-economic factors such as unemployment and poverty has had a larger influence on their decisions. For some, it was the government's legislative influence of addressing gender inequality in the mining sector that influenced them to work in such environments. Nonetheless, whatever the reasons, the plight of women in core mining operations need to be heard and be properly addressed. Mining houses employ large numbers of people in South Africa, an indication of the enormous potential the sector has, to curb unemployment, poverty and inequality. If the industry is properly managed, women could be an untapped source of labour whose contribution could immensely change the country's mining landscape. Accordingly, for women to actively participate in the former male dominated industry, relevant stakeholders may need to consider the following areas of concern in improving the workplace for women among others;

5.1.1 Health and Safety in the workplace; Personal Protective clothing, Ablution (changing rooms, toilets and bathrooms)

The mining sector is a former male dominated industry that is still in the process of transition. In South Africa, the legalisation of women employment in core mining operations is a recent development that was initiated with the coming of democracy. For years, the entire mine value chain ranging from personal protective equipment supply has had a male person as the major end user of its products. For this reason, everything has been designed with that male client in mind. Today most mining companies have not been able to provide female miners with PPE designed suitably for females.²⁵⁶ In some companies, underground ablution facilities specifically designed to cater for female usage do not exist.²⁵⁷ Women are forced to keep their soiled sanitary towels with them while underground because their toilets do not have disposal waste bins.²⁵⁸

²⁵⁵*Supra* n214.

²⁵⁶*Supra* n10.

²⁵⁷*Supra* n10 at 12.

²⁵⁸ *Ibid.*

5.1.2 Sexual abuse and harassment; sexual favouritism

Although some authors have argued that sexual harassment is not only limited to the mining industry,²⁵⁹ women in the South African underground mine operations have endured such daily.²⁶⁰ Female miners working in core activities work side by side with men and often in isolation (night shifts as a case in point) which increases the risk to sexual abuse and harassment.²⁶¹ Sexual favouritism is another challenge in the mining sector where some women fall in love with their superiors in exchange for easy promotion.²⁶² This has been noted to create tensions and negative attitudes from their male colleagues who feel that women have an advantage to promotion that they do not have despite their attained experience and skills.²⁶³ Some studies revealed that some women abuse their legal protection as vulnerable employees in the industry by manipulating their male colleagues, who when they refuse such manipulation, they then allege sexual harassment.²⁶⁴

5.1.3 Infrastructural facilities; Cages,

Miners are transported from surface to underground workplaces using a cage. Research has revealed that these cages are normally overloaded causing an inevitable proximity of employees and increasing the risks of sexual harassment of women.²⁶⁵ For instance, a cage accommodating 80 people is normally made to carry 100 people forcing employees to press against each other.²⁶⁶

5.1.4 Housing and Transportation; Child Care facilities

The mining industry was epitomised by migrant labour which had encouraged the hostel type of accommodation for employees since most of them came from afar places. Until recent legislative changes regarding housing for employees,²⁶⁷ mine workers were accommodated, if still not so, in hostels which restricts their families from staying with them. Furthermore, the BCEA provides that transport for night shift employees be provided between their homes and the workplaces, from the commencement and conclusion of the night shift regardless of whether they stay in hostels or not.²⁶⁸ However, contrary reports of female employees falling victim to criminal activities on their way to or

²⁵⁹ *Supra* n138 at 1-4.

²⁶⁰ Botha. (2016). "Women in mining still exploited and sexually harassed", *SA Journal of Human Resource Management*, vol. 14, no. 1, pp. 1-12.

²⁶¹ *Ibid.*

²⁶² *Ibid.*

²⁶³ *Ibid.*

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*

²⁶⁶ *Supra* n235 at 162.

²⁶⁷ *Supra* n13 at clause 2.7, 2017.

²⁶⁸ *Supra* n145 at s17(2)(b).

from work in the early hours of the morning have not been unusual.²⁶⁹ On another note, there has not been much literature on the establishment of child care facilities in South African mining workplaces to support female employees.

5.1.5 *Company Policy on; Pregnancy, maternity leave, family responsibility leave*

Most mining company policies have not yet fully domesticated industry-specific transformative laws into their company policy framework. The *Impala case* cited earlier is a case in point where the employer designed a policy that partially addresses discrimination in the workplace. Now that women have been allowed to work in core operations, mining companies need to factor into their company policies their special needs such as pregnancy. From a business perspective, setting measures in place timeously to accommodate both predictable and non-predictable life's events save the employer time and money. A pregnancy cycle goes for nine months before the child is born. When the employer sets measures to accommodate that employee before she is in her sixth month or so to need alternative surface employment, the normal function of the business will not be interrupted and as such production continues as normal.

5.1.6 *Skills Development; physical ability, workplace relations*

Generally, there is limited literature on African women being involved in large-scale mining operations as compared to those in artisanal mining. Part of the reasons could be that women still lack the necessary skills required to go into large scale underground operations. As a male dominated industry, training and skills transfer between male and female employees is still crucial in the incorporation of women. In some cases, research has revealed that some male employees are not willing to give informal training to new female employees or operative teamwork that they may need to succeed.²⁷⁰ Instead women are regularly ignored, harassed and undermined resulting in them suffering from negative psychological distresses.²⁷¹ As a masculine biased profession, the inclusion of women in mining has portrayed women as physically unfit to perform manual or strenuous hard labour. However, with the necessary training, development and invention of modern technology women can be accommodated despite their negated physiology.

5.2 Conclusion

This chapter is a brief evaluation of the areas of concern where attention could be directed to in improving underground mining operations as a workplace fit for both man and women employees.

²⁶⁹ *Supra* n145.

²⁷⁰ *Supra* n214.

²⁷¹ *Ibid.*

The following chapter concludes and provides for the recommendations based on the research findings.

CHAPTER 6:

CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

South Africa is known to have a model Constitution in the world, whose crafting was largely influenced by its political and racial past. In its current laws, government recognizes past injustices and segregation based on racial lines. It also, acknowledges various forms of inequalities among which gender in the mining industry is of utmost transformative attention, particularly in core mining operations. The Constitution promotes a democratised workplace, enabling supporting labour laws to find room for application and implementation in contemporary South African workplaces. The underground mining sector on the other hand, is not an ordinary workplace like any other when considering the inclusion of women participation. As observed in the study, it is unique in that it is labour intensive, it comprises of uncomfortable working temperatures and it is mostly in isolation. The basic health amenities are not always available, where there are, they are not always hygienically up to standard as in an ordinary office, raising health issues for all miners including men, although women become the most affected due to their unique biological needs.

The following section concludes the study, summarises the research findings and provides for the appropriate recommendations. The section further discusses the directions for future research opportunities.

6.2 Summary of the research findings

6.2.1 **The underground mine environment is not a workplace like any other particularly when considering the inclusion of women;**

The reality and the stories of female miners contradicts mining and labour legislative provisions. The laws seek to include and protect women in the mainstream of the mining industry. Nevertheless, women work under circumstances that are contradictory to what legislation purports to achieve. The loaded cages taking miners underground are for both men and women use. This reveals an unresponsive working environment that does not take regard of the resultant sexual abuses being promoted against women on daily basis.

6.2.2 **A gap exists between the policy makers' understanding of gender equality and the real experiences of female underground miners.**

Currently, not all South African labour laws are universally applicable to the mining sector as it is with other workplaces. Some labour laws require to be customised to suit the regulation of a mineral

extraction environment, the BCEA as a case in point considering its intrinsic importance in regulating basic employment standards. Though a 3 days' paid family responsibility leave may be sufficient to a teacher who stays with her family, it may not be for a female miner who is only resident in the mine town due to work commitments, as such left her children with her mother in another distant province. As a result, though legislation may exist it will be a futile exercise if the supporting mechanisms are not there or do not feasibly correlation with the reality on the ground.

Recently, the Mining Charter was amended but the ambiguity around the policy document has rendered it subject to varied interpretations. As such as a legislative guide in the industry it obscures compliance procedures to companies since the MPRDA is also still in the process of amendment.

6.2.3 It is time to pay attention to the other push factors forcing women into underground mine work.

The quota system of the Mining Charter had good intentions to get women in the mainstream of the mining sector. However, in the long run, the unemployed women who never wished to work underground were forced to join because of poverty and unemployment. This means that other factors forcing women into mining should be accommodated as these causes them to be more vulnerable. Such that they may not be willing to disclose abusive work relations due to their personal circumstance.

6.2.4 Lack of sufficient professional knowledge and skills of core mining operations;

An employee who feels they got the job because government wanted to address the shortage of female miners in the workplace will never be confident that they too are equally qualified to be underground (for those that are trained). As observed in the study most women who entered underground work learnt the basic skills of operating machines and other skills on the job. The majority did not come as already trained winch operators for instance. Hence, to fully empower women for the mining industry, they should be empowered through skills development and training. This way, they will have the confidence to exercise their labour rights should need rise, without reluctance or fear of victimisation.

6.2.5 Change of attitudes towards women inclusion in core mining operations

The inclusion of women in core mining operations should not be viewed as a benevolent project of accommodating the less advantaged. From a business and economic sense, women should be viewed as a potentially untapped source of labour, who when properly trained and skilled, supported in gender sensitive ways, have potential to positively contribute to the economy. As cited earlier, (See chapter 1; Relevance of the study), gender inequality costs the global economy trillions of dollars.

Consequently, a change in attitudes from all the relevant stakeholders, most importantly policy makers and the male colleagues will provide women with a conducive environment to meaningfully participate as envisaged by the Mining Charter.

6.3 RECOMMENDATIONS

To improve the current state of gender equality in the South African core mining sector it would be recommended that the mining stakeholders consider addressing the following among others; infrastructural related issues in underground mining workplaces, the introduction of educational and skills development programmes designed to equip women for underground work, address the gaps in legislation and institutional mechanisms, pay attention and find means of mitigating the socio-economic factors that have a direct negative impact on women's participation in the sector. Lastly, relevant stakeholders should find ways of eroding negative historic habits and perceptions associated with the mining industry such as the use of informal '*Fanakalo*' language.

6.3.1 Infrastructure: Infrastructure built in accordance to international standards is not only required for purposes of legal compliance in the mining sector. It is equally important for the comfort of female employees. Safe and secure changing rooms will enable them to dress up appropriately for the work they intend to perform while underground. In the long run such facilities prevents from contracting gynaecological defects which affect their reproduction system amongst others. More so, with physical ability as a sensitive issue in so far as women undertaking underground mine operations is concerned, focus should be directed at acquiring innovative technology and equipment that makes them work better and easier. In that regard, government through the safety and security monitoring agents endeavour to encourage mining companies to improve their infrastructure accordingly.

6.3.2 Socio-economic factors affecting women participation: Female miners should not be expected to cease to be who they natural are, that is to be female human beings by virtue that they are in a mining set up as mine employees. Instead mining companies should work towards accommodating diverse groups of people by addressing their different lifestyles, work styles and family needs. In other words, Robbins' melting-pot assumption should be replaced by ethical standards that recognise and value diversity.²⁷² The legislative framework should be sensitive to other socio-economic factors affecting women outside their underground work, particularly factors that have a direct negative impact on their active participation at work such as domestic work. Manual labour is both physically and emotionally

²⁷² *Supra* n38 at 12.

exhausting, after long shift hours underground, women are strained to go and continue with more manual duties for the upkeep of their homes. It would therefore, be recommended that mining companies to establish facilities that lessen the burden on women such as child care facility centres accessible at their times of convenience among others.

6.3.3 **Legislation:** Sector-specific labour laws, specifically meant to address gender inequality should be introduced. Currently, not all the labour laws are universally applicable to the mining sector. The BCEA is a very important piece of legislation in so far as the regulation of basic employment conditions is concerned. However, it falls short in so many ways when applied to female miners, because the industry is a unique one. The designed mining labour laws should encourage the development of company policies that accommodate the natural biological cycle of women of child bearing stages. A company should not start looking for alternative employment at the surface for a pregnant employee at the time she announces her pregnancy. Knowing that among its employees are women of child bearing stages, companies should design policies that readily addresses such issues before hand. It should even find ways of accommodating the unskilled who are unlikely to find any alternative employment at the surface. These could be providing them with soft skills for office administration etc.

6.3.4 **Education:** Despite its challenges, the inclusion of women in mining is a move worth commending of the stakeholders who were instrumental in this achievement. However, gender inequality may be aggravated by educational practices and beliefs that underpin gender stereotypes. The Mining industry alone will not address gender inequality but collaboration with interested stakeholders, such as the Department of Education will achieve better results. Core mining operations should be incorporated into an educational curriculum and funding initiatives that targets women to pursue such careers at tertiary institutions should be created. As reiterated by Mr Bernard Mokwena (Lonmin Executive Vice President), cultural transformation of the mining workplace as well as investing in female tertiary mining related education will make the mining industry to be more appealing to women as a profession.²⁷³ Targeting female students is also a better way of ensuring that a larger pool of women graduates is created over time.

6.3.5 **Eroding negative historic habits and perceptions:** The larger population of the core mining operations are males from poor educational backgrounds. A lack of professional training amongst them leads to poor workplace ethics, values and professionalism. As normally will be the case in other professions, the mining industry should consider introducing a minimum

²⁷³ IFC-Lonmin. (2009). 'Women in mining. A guide to integrate women into the workforce at 3.

educational qualification with a competency of basic English as a form of entry level criteria. This is because the industry employs people from various backgrounds, nationalities amongst others, which makes a standardised formal communication important. More so, with the inclusion of women, appropriate workplace communication manners will be necessary in retaining women. Consequently, training programmes should be designed in such a way that it addresses the communication barriers among mine workers. This will also help cultivate a culture of respect for women among male colleagues and dispel the myths and negative attitudes that arise towards women in the workplace.

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