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**HEALTH AND SAFETY OF WOMEN IN EXTRACTIVE INDUSTRIES**

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in partial fulfilment of the requirements of the degree  
Master of Laws (LLM) degree in Extractive Industries law in Africa

**By**

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**OCTOBER 2018**

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## **ABSTRACT**

For centuries, Extractive Industries in many countries have been a major economic driver which generated jobs, revenue, and opportunities for growth and development.

Although Extractive Industries create jobs, there are significant gender inequalities in male and female access to jobs. Historically mining has always been a male dominated industry. Women were underrepresented in the mining industry and such underrepresentation divulges a broader social inequality.

This research analyze the health and safety challenges faced by women in the extractive industry. The research deliberated on the improvement made on the health and safety of women in the mining industry. The research evaluated specific South African legislation which play a role in the execution of health and safety of women in mining. Legislations discussed in this research are as follows; the Mine health and Safety Act, 29 of 1996, Mineral and Petroleum Resources Development Act, 28 of 1994, 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, 2002 and the Mining Charter for the South African Mining and Minerals Industry, 2002 (and its successive amendments) among others.

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 of the research it is clear that although mining industry has improved their efforts to accommodate women in the core business of mining, limitations and deficiencies are still prevalent. Challenges faced by women in the industry are evidence that women are still exposed to some of health and safety hazards in the industry. From the foregoing, occupational health and safety at work is one of the major issue that require the attention of both the government and the mining industry.

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## KEY WORDS

Health and safety, women, mining, legal framework and inequality

## CHAPTER 1: INTRODUCTION

### 1.1. Background to the study

In South Africa women working in the male-dominated mining environment are still facing a range of obstacles or challenges, which threatens their health and safety.<sup>1</sup> Previously the mining industry was not regarded as career choice for professional women. The above was based on the fact that existing mining laws at that time prohibited the employment of women underground. However after 1994 new legislations such as the Mine Health and Safety Act, 29 of 1996 (MHSA) were introduced in South Africa which prohibited the exclusion of women in the extractive industry including underground.<sup>2</sup> After the promulgation of the MHSA, women were allowed to work in the mining industry however, the employment of women in mining has been very slow this is due to the industry being associated with unsafe working conditions.<sup>3</sup> It is common cause that the integration of women into the mining industry is complemented by a number of challenges which include discrimination by their male counterparts<sup>4</sup>.

Some challenges faced by women in the extractive industry includes sexual harassment and exploitation.<sup>5</sup> Sexual harassment is regarded as 'unwanted conduct of a sexual nature' and may include 'unwelcome physical, verbal or non-verbal conduct'. Physical conduct of a sexual nature refers to all unwanted physical contact, for example, brushing up against a person, touching a person, forced fondling.<sup>6</sup> The discrimination of women on the grounds of gender and sexual harassment in the Extractive industry, sometimes occur on a more direct level, for instance men make snide or explicit remarks or refuse to accept the authority or capabilities of women.<sup>7</sup> The safety of women in the extractive industry is a growing concern and requires a

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<sup>1</sup> Chamber of Mines South Africa "Women in mining fact sheet"2017 page 3.

<sup>2</sup> Act 29 of 1996 ("the Act").

<sup>3</sup>Mashiana BR 2010 Transformational barriers against women's advancement in South African Platinum mining companies LLM thesis Unisa page 35.

<sup>4</sup> Mashiane (n 3 above) page 35.

<sup>5</sup>Botha, D (2016) Women in mining are still exploited and sexually harassed 14 **SAJRM**.

<sup>6</sup> Pons & Deale 2010:16.

<sup>7</sup> (Mining safety 2017).

shift in policy and legislation to protect them. For the past fifteen years the number of women working in the extractive industry has significantly increased from 2.6% to 13.7% in the year 2015<sup>8</sup>. The primary concern of the Chamber of mines, that women working in the extractive industry have same opportunity open to them as men and that they are confident and safe to pursue them.<sup>9</sup>

The South African Mineral and Petroleum Resource Development Act, 2002 (“MPRDA”)<sup>10</sup> and the Broad Based Socio- Economic Empowerment Charter for South African Mining Industry provides for the development of the Mining Charter as an instrument to effect transformation with specific targets.<sup>11</sup>

## **1.2. Aims and objectives of the study**

The aim of this study is to identify, discuss and to analyze the health and safety challenges faced by women the extractive industry. This will be done assessing available health and safety data collected from the mining industry. The study will not only look at data collected within South African mines. It will however explore on the health and safety of women globally. The study further aim to propose and to make recommendations on what the industry, the government and other relevant stakeholders can do to address the health and safety challenges of women in mining.

The objectives of this study is to provide the historical background of women in mining. Moreover, the objective of this study is to investigate health and safety challenges of women in mining. The study will also examine the working conditions in underground mining impacting on women in the EI. Furthermore this study intends to explore the legal framework relating to women in mining. Lastly the study intends to recommend actions required in addressing the health and safety of women in the extractive industry.

## **1.3. Research questions**

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<sup>8</sup> Note (1) page 1.

<sup>9</sup> *Ibid*, 3.

<sup>10</sup> Minerals and Petroleum Resources Development Act, 2002.

<sup>11</sup> Broad-Based Socio-Economic Empowerment Charter.

### 1.3.1. *Primary question*

- Does the South African OHS/MHS law framework provide for the particular requirements associated with women workers in the mining sector?

### 1.3.2. *Secondary question*

- What is the historical background of health and safety of women in mining labour forces?
- What are the particular needs associated with women in the mining labor force, the risks etc.?
- What is the legislative framework on health and safety of women in the Extractive Industry?
- Is there room for the improvement of the particular needs of women labor forces in the South African mining sector?

## **1.4. Research methodology and limitation**

### 1.4.1. *Methodology*

The research methodology for this study, will follow a critical desktop analysis of applicable legislation. The research will take the form of desktop research and analysis of different legislations, case law, journals and relevant articles.

### 1.4.2. *Research parameters*

The research does not include the health and safety of every mine employee, but only focuses on the analysis of health and safety of women workforce in the mining sector... The information and data dating back from pre-colonial, and post-colonial era will be used up to the date of this research is finalized and submitted. This will also be a policy based research however it will not address deep technical details of health and safety. Though the topic of sexual harassment normally falls within the scope of criminal law, this study will examine it through an OHS lens.

## **1.5. Relevance of study**

The research intends to contribute to the literature available on the health and safety challenges of women in the extractive industry. Further the study will contribute to the body of knowledge in handling and dealing with issues involving the health and safety of women in the extractive industry. The research will explore ways and means of striking a balance in gender relations in the mining industry. It is common cause that the extractive industry is a male dominated industry.

### **1.6. Chapter outline**

The overall structure of this study consist of five 5 chapters. The first chapter provide an outline for the research study to be undertaken. The chapter set out the aims and objectives of the study. It also deals with the research questions, methodology and research parameters.

The second chapter will assess and contextualize the historical background on health and safety of women in mining. The third chapter will discuss and analyze the working conditions of women in the extractive industries, this chapter will further expand on inadequate or lack of sanitary facilities and other issues affecting the health and safety of women in EI. Furthermore this chapter will further discuss the sexual harassment which is probable and possible propelled by unfriendly and improper working conditions in the mining industry. Chapter four will analyze the legislative framework pertaining to women in mining. This chapter will also explore on legislative challenges as it apply to women in mining. Chapter five will conclude the findings of the research on health and safety issues of women in extractive industries. It will also give alternative recommendations for review to successfully address these issues.

## CHAPTER 2: HISTORICAL BACKGROUND OF WOMEN IN MINING

### 2.1. Introduction

This chapter will contextualize the historical background on health and safety of women in mining. In this chapter we will also deliberate on the changes brought into the mining industry through the introduction of the Mining Charter. In addition, this chapter will explore on the upliftment of debarment of women in core mining.

### 2.2. Historical background of women in mining

Extractive Industry is described as a fundamental component that shaped the South African economy, the industry contributed to the formation of the Johannesburg Stock Exchange and has more than a million people employed within the mining sector.<sup>12</sup>

South Africa is famous for its richness in mineral resources, which account for a substantial proportion of the world production and reserves.<sup>13</sup> According to Khoza, South Africa is estimated to have the world's fifth-largest mining sector based on its Gross Domestic Product (GDP) value and is also acknowledged for its leading role in the discovery of new mining technologies, such as a ground-breaking process that converts low-grade superfine iron ore into high-quality iron units.<sup>14</sup> Additionally, Khoza indicates that the mining industry contributes an average of 20% of South Africa's GDP.

Furthermore Khoza 2015, point out that the Extractive Industry is one of the country's largest providers of formal employment, which is also one of the largest contributor by value to black economic empowerment in the economy.

For centuries, Extractive Industries in many countries have been a major economic driver which generated jobs, revenue, and opportunities for growth and development.<sup>15</sup> Although Extractive Industries create jobs, there are significant gender

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<sup>12</sup> Khoza N 2015 Women's Career Advancement in the South African Mining Industry Masters in Social; Science thesis (Unpublished). Page 5

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid*

<sup>15</sup> A Eftimie, K Heller, and J Strongman "Gender Dimensions of the Extractive Industries: Mining for Equity" 2009 world Bank group 1 page 1.

inequalities in male and female access to jobs.<sup>16</sup> Historically mining has always been a male dominated industry.<sup>17</sup> Women were underrepresented in the mining industry and such underrepresentation divulges a broader social inequality.<sup>18</sup>

Prior to 1994, women in South Africa were barred from working underground due to legal barriers.<sup>19</sup> The introduction of the Mining Charter in 2002 brought in changes in the mining industry which allowed the employment of women in the industry.<sup>20</sup> Traditionally, the development of the mining industry during the colonial era institutionalized discrimination against women.<sup>21</sup>

Colonial migratory labor system in mineral-rich countries employed males only and made it difficult for women to get jobs in the mining industry.<sup>22</sup> The aforementioned labor system at that time introduced laws that prohibited mine workers from living together with their spouses at the mines.<sup>23</sup> Whilst men migrated to minerals rich countries or cities, women were left behind in the rural areas and worked in the agricultural land without being paid<sup>24</sup>. Women were deliberately exploited through the use of their unpaid labor in agriculture to subsidize mining operations.<sup>25</sup> The Colonial discrimination policies against women, made it difficult for them to get jobs in the mining industry.<sup>26</sup>

Frequently women miss out on the possible benefits of the Extractive Industries and bear an unequal share of its burdens.<sup>27</sup> The renunciation of women access to

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<sup>16</sup> *Supra n 15, at 2.*

<sup>17</sup> Let's talk about: Women in the Mining Industry, [https://www.worldwide-rs.com/blog/lets-talk-about-women-in-the-mining-industry page 1-downloaded on 14 March 2018.](https://www.worldwide-rs.com/blog/lets-talk-about-women-in-the-mining-industry-page-1-downloaded-on-14-March-2018)

<sup>18</sup> *Ibid, 16.*

<sup>19</sup> Yeukai Mlambo "Women in mining: Legislation and representation for women in mining. "page 1 [http://www.polity.org.za/article/women-in-mining-legislation-and-representation-for-women-in-mining-downloaded on 28 February 2018](http://www.polity.org.za/article/women-in-mining-legislation-and-representation-for-women-in-mining-downloaded-on-28-February-2018)

<sup>20</sup> The Broad-based Socio Economic Charter for the South African Mining Industry of 2004.

<sup>21</sup> Moyo T "Extractive Industries and women in Southern Africa" Open Society Initiative for Southern Africa 2011 page 62.

<sup>22</sup> *Ibid*

<sup>23</sup> *Supra n 21, at 6.*

<sup>24</sup> *Ibid, 20.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> Women in mining: A guide to integrating women into the workforce draft V 1.0 (International Finance Corporation) page5.

economic and social development by EI constitutes a violation of the women human rights.<sup>28</sup>

Extractive Industries affect women in different ways than men.<sup>29</sup> The World Bank reported that, men have the utmost access to benefits, which consist mainly of employment and income.<sup>30</sup> While women and their families are more vulnerable to the risks created by extractive industry, which consist of harmful social and environmental impacts.<sup>31</sup>

Previously Mine workers in South Africa were governed by the Mines and Workers Act 12 of 1911<sup>32</sup>. The aforesaid Act was discriminatory in nature and therefore not representing a democratic country based on equality values<sup>33</sup>. Blacks mine workers and women were discriminated in the mining industry and no provision existed for issues affecting their health and safety.<sup>34</sup> Many mine workers lost their lives during that era. Majority of mine workers were fatally injured and some seriously injured due to exposure to underground risk in the mining industry. The Mines and Works Act No.12 of 1911 was repealed by the Mines and Works Act No. 27 of 1956<sup>35</sup> and the Mines and Works Act was repealed by the Minerals Act No.50 of 1991<sup>36</sup>.

The Minerals Act focused mainly on safety issues in the mining industry with no emphasis on promoting the occupational health status of workers<sup>37</sup>. In 1994, the Honorable President, Nelson Mandela appointed a commission of inquiry into health and safety in the mining industry. The Leon Commission identified numerous gaps in the Minerals Act when it came to both the occupational health and safety of workers in the mining industry<sup>37</sup>. Pursuant to the Leon commission recommendations to draft the Mine Health and Safety Act which will provide a comprehensive legal framework

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<sup>28</sup> J Onyisi Abebe "Promoting Women's Participation in the Extractive Industries Sector: Examples of Emerging Good Practices"2016 United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) page1.

<sup>29</sup> N Nyembe "Extractives and Gender on the African continent: the need to make mining beneficial for women" 2015 page1.

<sup>30</sup> *Supra n14 page5.*

<sup>31</sup> Why extractive sector abuses matter for women's rights in Afghanistan (October 2016) page 2.

<sup>32</sup> Mines and Workers 12 of 1911.

<sup>33</sup> Understanding the mine health and safety Act objectives : Sheqafrika.com, 2014

<sup>34</sup> *Supra no 21*

<sup>35</sup> Mines and Works Act No. 27 of 1956.

<sup>36</sup> Minerals Act No.50 of 1991.

<sup>37</sup> South African Mining Industry Journey to zero harm 2003 to 2013.

for creating a healthy and safe working environment were made<sup>37</sup>. The Mine Health and Safety Act (MHSA), Act 29 of 1996 (the MHSA)<sup>38</sup> was promulgated following the outcomes of the Leon Commission.

### **2.3 Abolishment of the debarment of women in core mining**

The International Labour Organization (ILO) Convention 54 of 1935 prohibited the employment of women in core mining industry including working underground.<sup>39</sup> The ILO Convention was ratified by majority countries including Australia, Canada, Chile and South Africa.<sup>40</sup> The 1935 ILO convention which prohibited women from working underground was later denounced by majority of countries which ratified it.<sup>41</sup> The 1935 Convention stated, “No female, whatever her age, shall be employed on underground work in any mine.”<sup>42</sup> The 1935 ILO Convention was substituted by the ILO Convention 176 of 1995.<sup>43</sup> In terms of the 1995 convention rights of all mine workers including women were recognised.<sup>44</sup>

Contrary to the old ILO Convention method which prohibited women from working underground, the contemporary ILO approach focus on risk assessment and risk management.<sup>45</sup> Unlike the old ILO method, the contemporary approach provide for sufficient preventative and protective measures for all mineworkers.<sup>46</sup> The ILO insists on the intervention by mining companies in ensuring that women are performing their duties safely and efficiently.<sup>47</sup> Furthermore the ILO’s aim to promote equal opportunities for women and men to obtain decent and safe work environment.<sup>48</sup> Since the abolishment of the debarment of women from working underground, women have slowly become formal participants in all aspects of the mining industry’s work.<sup>49</sup> The number of women working in the mining industry including underground has increased

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<sup>38</sup> The Mine Health and Safety Act, No 29 of 1996.

<sup>39</sup> The ILO Convention 54 of 1935.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> The ILO Convention 176 of 1995.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> <http://www.ilo.org/gender/Aboutus/ILOandGenderEquality/lang--en/index.htm>. Accessed 30 April 2018.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

significantly in South Africa for the past 15 years from 11 400 in 2002 to 53,179 in 2017.

It is common knowledge that working underground for women is not a forthright decision, for instance in South Africa some of the gold and platinum mines are the deepest mines worldwide.<sup>50</sup>In addition to the above, the mining industry is known as being very labour-intensive. Regularly physical strength and effort are required from underground jobs and that impede women from being do the job effectively.<sup>51</sup>

And added to that is the fact that these mines are historically very labour-intensive with physically arduous work under challenging conditions. Often, the physical strength and effort required from many underground jobs simply precludes many women from being able to effectively do them. Some of the most difficult jobs, such as rock drill operators, may also have physiological risks for women. Although working in the mining industry is a bit difficult and strenuous for women, over the years, the mining industry has become better at identifying and dealing with these challenges as a result the industry is creating better conditions for more women to work underground.<sup>52</sup>

### **2.3. South African Women in mining industry post 1994**

Women in South Africa played an important role in ensuring that South Africa is liberated.<sup>53</sup> The aforementioned role was demonstrated in 1956 when women marched to the Union Building to protest against the pass laws.<sup>54</sup> The role of women was acknowledged by the post-apartheid government, with August currently known as women's month.

South Africa obtained its democracy in 1994, after the attainment of democracy the government implemented a number of policies and legislation which uplifted the debarment of women from working in the extractive industry and underground.<sup>55</sup>

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<sup>50</sup> MCSA "Women in mining fact sheet"2017 page 2.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> Apleni L "Women role in the transformation of South Africa" (2012) page 1.

<sup>54</sup> *Ibid*, p7.

<sup>55</sup> Zungu L "Women in the South African Mining Industry: An Occupational Health and Safety Perspective" page4.

Prior to 1994 A number of legislative barriers existed in South Africa, those legislative barriers prevented women from working underground until recently.<sup>56</sup> In terms of the Minerals Act No.50 of 1991 women in South African were prohibited from working in underground mines.<sup>57</sup>

According to D Botha numerous initiatives, protocols and legislation have been developed to promote gender equality and address existing discrimination against women in the mining industry<sup>58</sup>. South Africa is not exempted to this trend<sup>59</sup>. Equal opportunity and mining legislation introduced by various countries, including South Africa, have opened up former prohibitions, such as working underground to women.<sup>60</sup>

After democracy in South Africa, a number of strategies aimed at accepting women in the mining industry were adopted by the government as part of its economic empowerment policy which was in line with the Employment Equity Act.<sup>61</sup> The Employment Equity Act prohibits employment discrimination on the basis of race, religion or gender in the workplace.<sup>62</sup>The introduction of the Mineral and Petroleum Resources Development Act 28 of 2002 and the accompanying Broad-Based Socio-Economic Empowerment Charter, in 2004, brought in a significant increase of the number of women in the mining industry.<sup>63</sup>

The South African mining industry has made a major progress in executing transformation and promotion of gender diversity in terms of women representation, with the number of women having increased from an “extreme minority” to exceeding 10% across different levels.<sup>64</sup> The Chamber of Mines 2017 fact sheet, indicates that about 57 800 women were employed in the industry from 2015 to 2016, compared with 11 400 in 2002. According to the Chamber of Mines women currently represent

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<sup>56</sup> [https://dspace.nwu.ac.za/bitstream/handle/10394/8670/De Klerk\\_\(Accessed 17 August 2018\)](https://dspace.nwu.ac.za/bitstream/handle/10394/8670/De_Klerk_(Accessed_17_August_2018))

<sup>57</sup> Minerals Act No.50 of 1991.

<sup>58</sup> Botha, D “*Barrier to career advancement of women in mining*” (2017) 41 **SAJLR**

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> The employment Equity Act, 55 of 1998 page 7.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> <http://www.miningweekly.com/article/s-african-mining-industry-advances-gender-diversity-transformation-targets-still-to-be-improved> (accessed 17 August 2018).

more than 13% of employees in the local in the South African mining industry, thereby exceeding the Mining Charter's requirements.<sup>65</sup>

Although the representation of women in mining exceed the Mining Charter requirements, the United National Development Programme is of the view that women lag far behind men in the extractive industry in terms of employment, income, compensation, consultation and participation in decision-making processes.<sup>66</sup> Study conducted by Women in Mining South Africa (WIMSA) association in 2014 indicates that women in the mining industry are not enjoying the same privileges as their male counterparts.<sup>67</sup> These challenges faced by women in the extractive industry include absence of mentorship and support in the workplace.<sup>68</sup>

According to Kephart and Schumacher (2005), for centuries and in all types sectors women have been receiving a hostile attitude from their male counterparts, irrespective of whether they are occupying same positions. <sup>69</sup> Women have been fighting for equal roles in the workplace, equal pay for equal work, and equal respect alongside their male colleagues.<sup>70</sup>

Even after attainment of democracy, women in the extractive industry are still of the view that there's no career and development guidance for them.<sup>71</sup> Due to resistance to change by certain mining companies, some women have given up on changing their work environments to be more conducive and equitable<sup>72</sup>. Women in the mining industry have given up on adapting their styles to more masculine ways in order to accomplish the well-deserved promotion, with equal power and equal pay.<sup>73</sup>

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<sup>65</sup> *Ibid.*

<sup>66</sup> Nyembe N, Extractives and Gender on the African Continent: the need to make mining beneficial for women Page 1.

<sup>67</sup> Noleen Pauls "Women in mineral value chains and addressing gender related and other challenges in the mining zone."

<sup>68</sup> Note (36) page7.

<sup>69</sup> Kephart, p & Schumacher L (2005):2-5 "*Has the glass ceiling cracked*" 12 **JLOS**.

<sup>70</sup> *Ibid*

<sup>71</sup> *Ibid.*

<sup>72</sup> Kephart (n 54 above).

<sup>73</sup> *Ibid.*

Women in the mining industry are still classified as vulnerable workers with special occupational health needs than their male counterparts.<sup>74</sup> Based on the historical background of mining industry in general, challenges faced by women in the industry are evidence that women are still exposed to some of health and safety hazards in the industry.

Although currently women all over the world involved in mining activities, mining is still considered a very masculine industry due to its heavily male-dominated workforce as well as the physicality of mining work.<sup>75</sup> Furthermore, the nature of work in mines, specifically underground, is considered to be hazardous and therefore extensive training is required.<sup>76</sup> Though well-intended, the introduction of women into the male mining environment created and still creates challenges, not only for managers but also for male co-workers and the newly employed female mineworkers.<sup>77</sup> To be accepted and recognized in the industry female workers need a sound level of overall fitness to complete their daily task as well as to achieve independence and credibility in the eyes of their co-workers.<sup>78</sup> Whilst on the other hand, the mining industry is production-driven and that put female employees under constantly pressure to reach production targets.<sup>79</sup>

As a result of physical differences between women and men, women often find it difficult to perform certain work activities and tasks and thus have a direct negative impact on them and also on production targets.<sup>80</sup>

## **2.4. Conclusion?**

Extractive industries continue to grow in Africa, however not enough attention has been paid towards addressing gender specific impacts and interests of women affected by the mining industry. Despite the legislative changes and support that was introduced in the mining industry, literature shows that women in mining still

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<sup>74</sup> www.mhsc.org.za “*personal protective equipment for women in mining: can they show muscle*” August 2015 page 10.

<sup>75</sup> D. Botha; J.F. Cronjé “*The physical ability of women in mining (2015)*”115 J.S.Afr.Inst Min Metall

<sup>76</sup> *Ibid*

<sup>77</sup> *Ibid*

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

experience acceptance problems and structural disadvantages as workers.<sup>81</sup> It is significant to note that most literature available explored and acknowledged the challenges of women entering the mining industry.<sup>82</sup> However available literature doesn't put more emphasis on the working conditions of women in mining. The involvement of women in Mining industry is vital because women have the same rights to development as men.<sup>83</sup>

The next chapter comprises of the working conditions of women in South African mining industry. The author will also look into the challenge faced by women with regards to sanitation as well as the challenge of sexual harassment which is prevalent in the mining industry.

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<sup>81</sup> Benya, A.P. (2009) Women in Mining: A Challenge to Occupational Culture in Mines. Unpublished Masters Dissertation, University of the Witwatersrand.

<sup>82</sup> *Ibid.*

<sup>83</sup> Promoting Women's Participation in the Extractive Industries Sector Examples of Emerging Good Practices: Un Women Eastern and Southern Africa page1.

## CHAPTER 3: WORKING CONDITIONS OF WOMEN IN SOUTH AFRICAN MINING INDUSTRY, REQUIREMENTS & RISKS

### 3.1. Introduction

This chapter aims to describe aspects of current mine culture and working conditions that affect health and safety of women in mining. This chapter will also analyse the challenges faced by women in mining with regard to inadequate sanitation and exposure to sexual harassment whilst working underground.

Women in mining worldwide continue to experience a lot of uncertainty and challenges.<sup>84</sup> These challenges are caused by antagonistic working conditions they face at their respective workplaces.<sup>85</sup> Internationally, the mining industry is known as being tough.<sup>86</sup> Things are harder for women working in South African mining industry as over and above all the other issues that the industry faces, they also have a number of gender related challenges that they have to deal with.<sup>87</sup>

Notwithstanding the difficulty brought by working in the mining industry, women in South African mines continue to challenge issues of unfavorable working conditions. These issues around labor uncertainty, infrastructure, health and safety regulatory and legislative uncertainty, and illegal mining operations contribute to unfavorable working conditions. In addition, all these issues have created an atmosphere of uncertainty for women working in the mining industry.<sup>88</sup>

### 3.2. Working conditions of women in South African Mines

Mining industry is notorious of being patriarchal and the most hostile sector towards women.<sup>89</sup> The establishment of gender equality in the mining sector remains one of the biggest equity challenges worldwide.<sup>90</sup> The deployment of women in the core mining

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<sup>84</sup><http://careerminer.infomine.com/the-challenges-that-women-in-mining-in-south-africa-continue-to-face/> -Accessed 31 August 2018.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Supra.*

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

<sup>89</sup> [www.minesandcommunities.org/article.php](http://www.minesandcommunities.org/article.php) accessed 19 June 2018.

<sup>90</sup> Botha, D (2015) "Occupational health and safety considerations for women employed in core mining positions" 13 SAJHRM

activities resulted in women facing problems such as sexual harassment, non-acceptance of females by their male colleagues, physical constraints and challenges related to infrastructure facilities.<sup>91</sup> One of the contributory factor to non-acceptance and of women in the mining industry is the historical myth which indicate that the presence of women in the mine pits leads to collapse of mines and death of miners.<sup>92</sup> Stereotypes such as “mining is not a place for women” and “women do not fit at the mine” are still encountered in the mining industry.<sup>93</sup> Numerous challenges faced by women in the mines are due to ergonomic problems and working conditions.<sup>94</sup> Working conditions for women in mining comprise of more musculoskeletal risk factors due to the type of work and the area in which the work is done.<sup>95</sup> The collaboration between the female worker and the work station and the duration of work also add to the challenges.<sup>96</sup> Underground conditions makes women to feel more vulnerable.<sup>97</sup> Congested conveyances, visibility in the tunnels and work areas, lack of toilet and changing facilities, and the fact that there are very few other women working near them, all make underground working condition more difficult for women.<sup>98</sup>

The challenge of working in the mining industry include heavy work, exposure to toxic chemicals, noise, vibration, heat and cold stress.<sup>99</sup> Other work condition faced by women in mining is working at high altitude and shift work which include night shifts.

Women employed in the mining industry suffer from several occupational illnesses right from respiratory problems, silicosis, tuberculosis, leukemia, arthritis, to reproductive problems.<sup>100</sup> Due to occupational illness or injuries caused by mining activities very few mine workers work until they reach the 'retirement' age.<sup>101</sup> The above is based on the fact that years of labour in the mining industry, leaves them with

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<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> D Botha “*Barriers to career advancement of women in mining*” (2017) 41 SAJLR, Page 21

<sup>94</sup> <http://www.miningsafety.co.za/dynamiccontent/124/Are-we-doing-enough-for-the-safety-of-female-miners> Accessed 23 August 2018.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Supra* n53, at 3.

<sup>98</sup> *Ibid.*

<sup>99</sup> <http://www.occhealth.co.za/accessed> 17 August 2018(Occupational Health Southern Africa, Vol 23) Page 12.

<sup>100</sup> *Supra* n 88, at 1

<sup>101</sup> *Ibid*

terminal illnesses which make them unfit for any kind of work.<sup>102</sup>The employment of women in the core mining necessitates that women be placed in positions equal to their male counterpart's.<sup>103</sup> Though placed in the same position as man, women experience difficulty when using machinery and tools in the mining industry.<sup>104</sup>This is based on the fact that the machinery and the tools are designed for men and their physical attributes.<sup>105</sup> Since machinery and tools in the mining industry are designed for the physical attribute of men, its use by women has some disadvantage which can cause musculoskeletal disorders as the conditions have a more consequence on them than on men.<sup>106</sup> In addition, the Personal Protective Equipment (PPE) such as shoes, harnesses and overalls that are used in the mining industry are not always precisely designed for women and are therefore not as safe, comfortable or practical for women.<sup>107</sup>

Although women around the world are now involved in core mining activities, mining is still considered a very masculine sector due to its heavy male dominated workforce as well as the physicality of mining work.<sup>108</sup> Working in mine is associated with high risk and dirt, this propensity renders males to be the typical labours.<sup>109</sup>

The preamble to World Health Organization (WHO) define the word health as a state of complete physical, mental and social well-being and not merely the absence deceases<sup>110</sup>. Globally mining industry is one of the most perilous employment<sup>111</sup>. This is in spite of considerable efforts in many countries to implement and maintain occupational health and safety. Annually a large number of mine workers including women die due to mine related accidents and occupational diseases contracted whilst working in the mining industry.<sup>112</sup> Most of the occupational diseases contracted by mine workers including women are as a result of unhygienic and unhealthy working

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<sup>102</sup> *Ibid.*

<sup>103</sup> *Supra* n 101, at 22.

<sup>104</sup> *Ibid.*

<sup>105</sup> *Supra* n 102 at 1.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Supra* n 102.

<sup>108</sup> D Botha "Women in Mining: An assessment of workplace relations struggles" (2016) Page 252.

<sup>109</sup> *Ibid.*

<sup>110</sup> The preamble to the World Health Organization, 1946

<sup>111</sup> *Supra* n 102.

<sup>112</sup> *Ibid.*

conditions which include the inhalation of airborne pollutants which are not controlled.<sup>113</sup>

When women inhale the gases emitted during extraction, they can become sick, and end up developing health complications like asthma or lung diseases. Since women workers are the most vulnerable, they tend to suffer the most from work-related diseases<sup>114</sup>. The working conditions alluded to above, combined with stress, fatigue and the traditional family responsibilities of women in households and society constitute an increased risks for women in mining.<sup>115</sup>

Furthermore the aforesaid conduct affects women's psychological health, generating stress related reactions such as emotional trauma, anxiety, depression, anger and low self-esteem.<sup>116</sup> Moreover, the working conditions of women in mining affects their physical health, producing stress related diseases such as sleep disorders, headaches, stomach problems, and ulcers.<sup>117</sup>

The 12th joint assembly of the ILO and the World Health Organization Committees defined the aims of occupational health, which include the promotion and maintenance of the highest degree of physical, mental and social well beings of workers in all occupations.<sup>118</sup>

### 3.2.1. *Thermal stress*

Regularly Mining atmospheres are found to be very hot and humid, mostly underground mining which over time can cause thermal stress in workers.<sup>119</sup> Since women in mining are expected to go underground on a regular basis, they are therefore likely to be overexposure to heat and humidity in underground mining.<sup>120</sup> The overexposure to heat can cause the body to become fatigued and distressed.<sup>121</sup>

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<sup>113</sup> *Ibid.*

<sup>114</sup> Zungu L "Occupational health and safety challenges reported by women in selected South African gold and platinum mines" (2012) Page 6.

<sup>115</sup> *Supra* n 102.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> <https://www.miningreview.com/mining-health-safety-7-common-risks-to-protect-yourself-against/>

Accessed 25 April 2018.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

Women in working underground are at risk of heat stroke or more serious ongoing health problems.<sup>122</sup> To protect the health and safety of women, mining Companies are urged to carry risk assessment in work places where there's a possibility of heat stress occurring.<sup>123</sup>

In their assessment mining companies must considers the work rate, working climate and worker clothing and respiratory protective equipment.<sup>124</sup> Where possible, temperature should be controlled by using engineering solutions.<sup>125</sup> To protect women and other employees from being exposed to heat stress, employers should provide mechanical aids to reduce the work rate, and regulate the length of exposure to hot environments.<sup>126</sup> Finally to minimize the exposure of women in mining to thermal stress, the employer should provide women with suitable personal protective equipment, such as specialized protective clothing that incorporates personal cooling systems or breathable fabrics.<sup>127</sup> Mining companies must ensure that unnecessary exposure to heat is prevented by providing training to their employees, especially new and young women employees.<sup>128</sup> Furthermore the mining company should monitor the health of women who are at risk of exposure to heat stress.<sup>129</sup>

### 3.2.2. Chemical hazards

The mining industry is concerned about the potential effects of occupational exposure of women to chemical substance, physical, ergonomic and biological hazards on reproductive outcomes.<sup>130</sup> Everyday women in mining are often exposed to harmful chemicals. In addition to obvious physical and ergonomic risks of underground work, many chemical substances with reported reproductive and development effects continue to be used regularly in the mining industry and thus present potential exposure to women in mining.<sup>131</sup> The number of women of reproductive age who have

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<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.*

<sup>129</sup> *Ibid.*

<sup>130</sup> [http://www.saimm.co.za/Conferences/HardRockSafety2009/055-074\\_Badenhorst](http://www.saimm.co.za/Conferences/HardRockSafety2009/055-074_Badenhorst).

<sup>131</sup> *Ibid.*

the potential of being exposed to occupational chemical has increased in the mining industry.<sup>132</sup>

Women should be made aware of the fact that each chemical has a unique set of hazards therefore they must handle it properly to ensure their safety. In ensuring the health and safety of women in mining is not compromised, the employer must conduct risk assessments to establish best practices.<sup>133</sup>

To prevent exposure women from chemical hazard in the mine working environment, the mining industry must ensure that women are trained and provided with the correct personal protective equipment (PPE)<sup>134</sup>. Inadequate availability of PPE for women in South African mines is a critical workplace health and safety issue.<sup>135</sup> Furthermore insufficient PPE undermines efforts to protect women in mining against health and safety hazards.<sup>136</sup> The availability of appropriate PPE for women in mining should be prioritize. It is proposed that a comprehensive PPE strategy centered on best practice in the, use and management of PPE should be implemented.<sup>137</sup>

It is recommended that a Standard Operating Procedure (SOP) that addresses the use of correct personal protective equipment, safe handling, safe use, and proper disposal chemicals should be established.<sup>138</sup>

To promote optimal and safe production, the mining industry should pay special attention to women in mining and their special health and safety needs.<sup>139</sup>This should include ensuring that women have work buddies who make sure they do not have to move around quiet areas on their own.<sup>140</sup>

It is acknowledged that most women in the mining industry do not have the same levels of physical strength as man and that has a material impact on their ability to do considerable work underground.<sup>141</sup>Physical strength shortcoming of women in mining

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<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid*

<sup>134</sup> *Ibid* page 62

<sup>135</sup> *Ibid*

<sup>136</sup> *Ibid.*

<sup>137</sup> *Ibid*

<sup>138</sup> <https://ohsonline.com/Articles/2011/08/01/Eight-Tips-for-Chemical-Safety> Accessed 23 August 2018.

<sup>139</sup> *Ibid*

<sup>140</sup> *Supra* n 53, at

<sup>141</sup> *Ibid.*

can be eliminated by introduction more mechanized equipment's.<sup>142</sup>When equipment's are mechanized physical strength and stamina will become less important than fine motor skills, dexterity and problem solving.<sup>143</sup>

### **3.3. Requirements specific to women labor force**

#### *3.3.1. Introduction*

A period of twenty years have passed since the fourth World Conference on Women in Beijing decided on a global platform for action on gender equality and women's empowerment.<sup>144</sup> A number of strategic areas discussed on the platform touched upon aspects of equality for women and men in the world of labor.<sup>145</sup> Under the heading of women and the economy, the following strategic objectives were adopted, promotion of women's economic rights and independence, including access to employment, appropriate working conditions and control over economic resources.<sup>146</sup>

#### *3.3.2. South African women labor force*

Subsequent to the Beijing conference South Africa implemented policies and legislation that regulate the labour market. The South African labour market is regulated by labor laws such the Employment Equity Act no 8 of 1998, as amended in 2013.<sup>147</sup> The aim of the Act is to eliminate unfair discrimination and to enforce affirmative action in the work place.<sup>148</sup>

South African women labour force has been growing because of equity legislation and enhanced access to education and work opportunities. <sup>149</sup> Irrespective of population group, by in March 2017 the female Labour Force Participation Rate (LFPR) in South Africa averaged to 55%.<sup>150</sup>

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<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*

<sup>144</sup>[http://www.labour.gov.za/DOL/downloads/documents/annual-reports/labour-market-bulletin-report/2017\(2016-2017AnnualLabourMarketBulletin\)](http://www.labour.gov.za/DOL/downloads/documents/annual-reports/labour-market-bulletin-report/2017(2016-2017AnnualLabourMarketBulletin)) Page 22 Accessed 30 August 2018

<sup>145</sup> *Ibid*

<sup>146</sup> *Ibid.*

<sup>147</sup> The Employment Equity Act.

<sup>148</sup> *Ibid.*

<sup>149</sup> Martin, P, & Barnard, A. (2013). The experience of women in male-dominated occupations: A constructivist grounded theory inquiry. SA Journal of Industrial Psychology Page 1.

<sup>150</sup> *Supra n 155, at 23.*

Prior to 1994, female employees on mines were to be found in human resources, finance or laboratory work above ground.<sup>151</sup> Even after the coming into being of the Employment Equity Act, mining was slow to transform.<sup>152</sup> Depending on a stipulation in section 6 of the Employment Equity Act, mining houses argued that females were unable to meet the inherent requirements of much of the underground work.<sup>153</sup> Since female employment levels stayed resolutely low, the government increasingly objected to these arguments and insisted on higher levels of female employment, setting targets of at least 10% to rectify the gender imbalances in the industry.<sup>154</sup> This was done in terms of the Mineral and Petroleum Resources Development Act of 2002<sup>155</sup> and the Broad-based Socio Economic Charter for the South African Mining Industry of 2004.<sup>156</sup> The penalty for not meeting these targets ended in the non-renewal of mining licenses.<sup>157</sup>

The new mining legislation in South Africa brought in some changes which required mining companies to have at least 10% female representation. Based on the above requirement mining companies were obliged to upgrade and improve their infrastructure facilities in order to accommodate women.

The number of women employed in the mining industry has increased significantly in the past 15 years.<sup>158</sup> During the year 2002, the women labor force ranged from around 11,400 to around 53,000 women in 2015, increasing to 53,179 in 2017.<sup>159</sup> Women in South Africa represent 12% of the mining labor force of 464,667.<sup>160</sup> There are over 48000 women working in underground mines across South Africa, primarily in platinum and goldmines.<sup>161</sup> Those women form part of the core workforce and labour in the mines and occupy positions of miners or general workers.<sup>162</sup>

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<sup>151</sup> <http://roape.net/2016/02/10/gender-in-the-mining-industry/> Accessed 30 August 2018.

<sup>152</sup> *Ibid n 158.*

<sup>153</sup> *Ibid n 161.*

<sup>154</sup> *Ibid.*

<sup>155</sup> *Supra n 10.*

<sup>156</sup> *Supra n 22.*

<sup>157</sup> *Ibid n 161*

<sup>158</sup> *Supra n 53, at 2.*

<sup>159</sup> *Ibid.*

<sup>160</sup> *Ibid.*

<sup>161</sup> <http://www.miningweekly.com/print-version/occupational-culture-remains-challenge-for-women-in-mining>.

<sup>162</sup> *Ibid.*

Transformations in occupations in which women and men work are just one factor indicating that much more progress needs to be made before women can achieve equality in the workforce.<sup>163</sup> Occupational discrimination continues to be persistent in different forms in the South African labor force, with the occupations in which women are involved paying less than those in which men are concentrated.<sup>164</sup> According to the South African department of Labour statistics, there's a need for enforcement of policies and practices that can fast-track the pace of transformation for women and improve their status in the area of employment and earnings.<sup>165</sup> From the above it is clear that women employed in the labour force, globally, are subjected to various restraints.<sup>166</sup> Even though equal employment opportunity policies guaranteed the participation of more women in the labour force, they are still struggling with issues such as balancing work and family life, discrimination in terms of job opportunities, career advancement, different wage scales for women and men jobs and sexual harassment.<sup>167</sup>

### 3.3.3. Sanitation

In the rush to bring women into underground operations to comply with mining charter targets, companies seem to have lagged behind ensuring that women in the industry separate ablution facilities.<sup>168</sup>

Women in the mining industry are exposed to numerous and serious health and safety risk. The above risks include but not limited to unhygienic working conditions and lack of access to adequate sanitary facilities while working underground.<sup>169</sup> Adequate sanitation is essential for human survival and for leaving a life in dignity.<sup>170</sup> The Constitution of the Republic of South Africa does not provide for an explicit right to

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<sup>163</sup>[www.labour.gov.za/DOL/downloads/documents/annual-reports/labour-market-bulletin-report/2017](http://www.labour.gov.za/DOL/downloads/documents/annual-reports/labour-market-bulletin-report/2017) Accessed 30 August 2018.

<sup>164</sup> *Ibid.*

<sup>165</sup> *Ibid.*

<sup>166</sup> Botha D" Gender and gender inequality-A theoretical framework" <https://repository.nwu.ac.za/bitstream/handle/10394/12234/BothaDChapter2> (Accessed 01 October 2018 P 85.

<sup>167</sup> *Ibid.*

<sup>168</sup> *Supra n 161.*

<sup>169</sup> Zungu, L "South African guideline for the selection and provision of personal protective equipment for women in mining"2015 page 12.

<sup>170</sup> <http://www.un.org/waterforlifedecade/index.shtml> Accessed 20 April 2018.

sanitation, however such right can be expansively found from the right to a healthy environment in section 24 of the Constitution of the Republic of South Africa.<sup>171</sup> Section 24 (a) of the Constitution provides that everyone has a right to an environment that is not harmful to their health or well-being.<sup>172</sup>

According to Article 11 of the International Covenant on Economic, Social and Cultural Rights (CESCR), the right to sanitation is essentially related to the right to health.<sup>173</sup> Therefore such right must be accessible to all groups including women in mining. The 2001 White Paper on Basic Household Sanitation explicitly acknowledges that “government has a constitutional responsibility to ensure that all South Africans including women in mining have access to adequate sanitation.<sup>174</sup> According to the Strategic Framework for Water Services (2003) Sanitation is defined as an infrastructure necessary to provide a sanitation facility which is safe, reliable, private, protected from the weather and ventilated, keeps smells to the minimum, is easy to keep clean, minimizes the risk of the spread of sanitation-related diseases by facilitating the appropriate control of disease carrying flies and pests, and enables safe and appropriate treatment and/or removal of human waste and wastewater in an environmentally sound manner.<sup>175</sup>

Sanitation facilities in most South African mines are designed in such a manner that they cater for both males and females. Based on the fact that the sanitation facilities cater for both male and female, women become worried about their privacy for instance toilet undergrounds doesn't have doors and in most cases women get exposed to sexual harassment and become rape victims add Mosiami.<sup>176</sup>

It should be born in mind that when a women is schedule to work underground, she is expected to be there for a full eight-hour shifts.<sup>177</sup> Since women are expected to be

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<sup>171</sup> The Constitution of the Republic of South Africa, 1996.

<sup>172</sup> Section 24 (a) of the Constitution.

<sup>173</sup> Kamga SD “*The right to basic sanitation: a human right in need of constitutional guarantee in Africa*” (2013) 29 SALHR 618.

<sup>174</sup> 2001 White Paper on Basic Household Sanitation.

<sup>175</sup> <https://www.gov.za/sites/default/files/Sanitation%20Report> Accessed 30 August 2018

<sup>176</sup> Mail and Guardian “Mining discontent: How women miners are raped, and become sex skivvies to get ahead” October 2016 accessed 14 March 2018.

<sup>177</sup> Women in mining guide Lonmin & International Finance Corporation 2009 page 21.

underground for eight hours and as they work they must also respond to the call of nature which is using a toilet. Therefore, lack of easy access to sanitary facilities underground, lead to women avoiding to drink water whilst working underground.<sup>178</sup> Women in mining use the suppression of urge to use the toilet as a coping mechanism to deal with the challenge of inadequate sanitation facility.<sup>179</sup> According to available literature women in mining believe that if they don't drink water whilst working underground then they won't have urge to go to the bathrooms. Working underground involves working in hot humid environments which lead to excessive sweating.<sup>180</sup> Avoiding drinking enough water can cause heat stress, signs of which include dizziness, weakness, a rapid heartbeat, extreme thirst and fainting.<sup>181</sup> Since women share the same sanitation facility with men, they become worried about where they will change their pads and how they will dispose of the dirty ones during menstruation.<sup>182</sup> The underground toilets are unsuitable for changing pads or washing materials used during menstruation because the toilets lacked water and are also considered unhealthy by the women in mining.<sup>183</sup>

The underground toilets are unsuitable for changing pads or washing materials used during menstruation because the toilets lacked water and are also considered unhealthy by the women in mining.<sup>184</sup> Since women share the same sanitation facility with men, they become worried about how and where they will change their pads. Furthermore women become worried on how they will dispose of their dirty pads during menstruation.<sup>185</sup> The suppression of the urge to use the toilets as a coping mechanism to deal with the challenges of the unavailability unhygienic sanitary facilities could expose women to heat stress and other related sickness.<sup>186</sup>

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<sup>178</sup> Zungu, L “Occupational health and safety challenges reported by women in selected South African gold and platinum mines” (2012) Unisa page9.

<sup>179</sup>*Ibid.*

<sup>180</sup>*Ibid.*

<sup>181</sup><http://www.miningweekly.com/article/gold-mining-industrys-effects-on-health-of-mineworkers> accessed 04 May 2018.

<sup>182</sup>*Supra n 186.*

<sup>183</sup> *Ibid.*

<sup>184</sup> *Ibid*

<sup>185</sup> *Ibid*

<sup>186</sup> *Ibid*

In conclusion, failure by the mines to provide women with access to adequate sanitation violates their constitutional rights and also expose them to potential risk as stated in the *Ntombentsha Beja's* case.<sup>187</sup> In this case the residents of Makhaza informal settlement in Khayelitsha, Cape Town brought an application before court to declare unenclosed waterborne toilets constructed by the municipal to be unconstitutional. The court held that the municipal failed to take into account people with disability as well as safety and security of vulnerable members of the community including women, who were exposed to potential risk of gender based violence.<sup>188</sup> Improving sanitation would make the lives of women working in undergrounds mines both safer and healthier.<sup>189</sup> Improved sanitation could mean that all women working in underground mines will have a safe place to go and relieve themselves.<sup>190</sup> Furthermore improved sanitation will mean that women in mining are free from fear of assault and the loss of dignity when accessing sanitary facilities.<sup>191</sup>

Since mining has traditionally been a male's job, therefore there was no need to separate toilet facilities for men and women as they were only used by men. The employment of women challenges the view that both men and women can use the same toilet facility. Women and men cannot use the same ablution facilities, this is because women require SHE bins to dispose sanitary towels whereas man doesn't require such. Due to lack of SHE-bins for disposal of sanitary towels, women end up not changing sanitary towels until reaching the surface.<sup>192</sup> Some women experience bad odor because of not changing sanitary towel Subsequent to the above challenges, the following measures are recommended in order to prevent the risk of infections and chaffing among women in mining.<sup>193</sup> It is recommended that mining companies should provide additional per mine work section. Additional toilets do not need to be separated however they need to be classified between males and females for reasons of privacy, protection and dignity. The sanitary facilities need to be equip with enough toilet paper and hand washing facilities. It is further recommended that women toilets should be equip with

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<sup>187</sup> *Ntombentsha Beja and Others v Premier of the Western Cape and Others* 2011(10) BCLR 1077)

<sup>188</sup> *Ibid*

<sup>189</sup> <https://lifewater.org/blog/sanitation-for-women> Accessed 20 September 2018.

<sup>190</sup> *Supra n 183.*

<sup>191</sup> *Ibid.*

<sup>192</sup> <http://www.mhsc.org.za/sites/default/files/PPE%20For%20WIM%20Handbook%20-%20English> Accessed 20 September 2018.

<sup>193</sup> *Ibid.*

SHE bins which must be cleaned and emptied often. Mining companies must ensure that areas close to the toilets have enough light. Clearly light up toilets facilities are safe for women users.

#### 3.3.4. Sexual Harassment

The health safety and risks that women are exposed to in the mining industry are numerous and serious. Women working in the mining industry are still facing a range of obstacles, including sexual harassment.<sup>194</sup> Sexual harassment is one of the major challenges faced by women in the work environment.<sup>195</sup> Pons and Deale (2010) define sexual harassment as 'unwanted conduct of a sexual nature' and may include 'unwelcome physical, verbal or non-verbal conduct'.<sup>196</sup>

One of the biggest apprehensions facing women who want to work underground is safety specifically the risk of sexual harassment, even sexual violence, directed at them by their male colleagues and illegal miners.<sup>197</sup> Women in the mining industry are exposed to harassment and abuse from their male counterparts due to patriarchal tendencies.<sup>198</sup>

Sexual harassment can take place in every kind of work environment.<sup>199</sup> Women working in a male-dominated workplace like mining are vulnerable to sexual harassment.<sup>200</sup> Due to physical work demands, women found themselves in a disadvantage position compared their male counterparts.<sup>201</sup> Women in EI work side by side with men and are often at risk of sexual abuse or harassment.<sup>202</sup> People working in underground mines, more often find themselves working in very close

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<sup>194</sup> Botha D "Women in Mining still exploited and sexually harassed"(2016) 14 SAJHRM,Page 1

<sup>195</sup> Kihn S "The challenges that women in mining in South Africa continue to face" (2016).<http://careerminer.infomine.com/the-challenges-that-women-in-mining-in-south-africa-continue-to-face/> Accessed 15 April 2018.

<sup>196</sup> Pons, A., & Deale, P. (2010). Labour relations handbook (revision service 18). Cape Town: Juta.chapter 2 page 16.

<sup>197</sup> *Supra n 53, at P 3.*

<sup>198</sup> *Ibid.*

<sup>199</sup>[https://www.cliffedekkerhofmeyr.com/export/sites/cdh/en/practiceareas/downloads/employment sexual-Harassment Page 2](https://www.cliffedekkerhofmeyr.com/export/sites/cdh/en/practiceareas/downloads/employment%20sexual-Harassment%20Page%202) Accessed 15 April 2018

<sup>200</sup> *Supra n 202, at 1.*

<sup>201</sup> *Ibid*

<sup>202</sup> *Ibid.*

proximity to one another while being transported from the surface to the workplace underground, which often also increases the risk of sexual harassment.<sup>203</sup>

Women in mining still face practical challenges and safety issues on a daily basis, such as verbal harassment and physical abuse in the form of rape, which either goes unreported or result to death of the victim as the case of Ms Binky Mosiami (Mosiami).<sup>204</sup> In February 2012, Ms Mosiami a young women who worked in the mining industry was found lying in a pool of blood with a used condom next to her lifeless body. She was attacked during her underground shift at Anglo Platinum’s Khomanani mine in Rustenburg North West Province. <sup>205</sup>Ms Mosiami was one of the 10% of women who worked in the male dominated industry. She was powerless to defend herself.<sup>206</sup>

In March 2015, another women in mining was attacked and raped by a suspected illegal miner at Rustenburg’s Thembelani Mine.<sup>207</sup> The women was attacked whilst taking a shower in the women’s changing rooms. The attack took place at about 4am during her morning shift with a security guard on the premises.<sup>208</sup>

The safety of women in mining remains a growing concern and requires a shift in policy and legislation to protect them.<sup>209</sup> It therefore, of paramount importance that mining companies introduce a good working sexual harassment policy to protect all employees.

### 3.4. Conclusion

The introduction of women in mining came with many challenges for both men and women.<sup>210</sup> It challenges the very male, “**macho**” gender stereotype and introduces new challenges for mineworkers and mining industries as whole.<sup>211</sup> It is common

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<sup>203</sup> Botha D “*Women in mining: a conceptual framework for gender issues in the South African mining sector*” (2013) 39 SAJLR, P 1.

<sup>204</sup> Mining discontent: How women miners are raped, Mail and Guardian, October 2016.

<sup>205</sup> *Ibid.*

<sup>206</sup> *Ibid.*

<sup>207</sup> *Ibid.*

<sup>208</sup> *Ibid.*

<sup>209</sup> Supra n 202, at

<sup>210</sup> *Supra n 58, at p 4.*

<sup>211</sup> *Ibid.*

knowledge that working underground is not a straightforward decision especially for women therefore to attract more women in the industry, the government and the industry must ensure that the health and safety women in the mining industry is prioritize.<sup>212</sup> Employers should endeavour to implement interventions that aim to facilitate the adjustments of working conditions of women in mining, such effort will promote the health and wellbeing of women in mining.<sup>213</sup> Interventions from the industry should include improved visibility in working and travelling areas, providing safe and demarcated toilets, showers and changing facilities for males and females.<sup>214</sup> Safe and secure sanitary and changing facilities will boost women confidence and will also enable them to be physiologically ready to perform their job.

Ensuring that women in mining have access to adequate sanitation will assist in overcoming discrimination against women in the industry.<sup>215</sup> A sanitation facility which is safe, reliable, environmentally sound, easy to keep clean, will provide privacy to women in mining and will also enhance protection against deceases.<sup>216</sup> According to the World Health Organization (WHO) an improved sanitation reduces diarrhea death rates by a third.<sup>217</sup>

Lack of access to adequate sanitary facilities is frequently a problem for women working underground and it infringe their constitutional rights to privacy and human dignity. In terms of section 10 of the constitution every person including women in mining has a right to have their inherent dignity respected and protected.<sup>218</sup> Lack of access to proper toilet facilities is inherently degrading, and undermines the human dignity of a human being. In the case of (*Ntombentsha Beja and Others v Premier of the Western Cape and Others 2011(10) BCLR 1077*).<sup>219</sup> In this case the residents of Makhaza informal settlement in Khayelitsha, Cape Town brought an application before

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<sup>212</sup> *Supra n 98, at 1.*

<sup>213</sup> *Ibid* page 28

<sup>214</sup> *Supra n 53 at 3.*

<sup>215</sup> *Ibid.*

<sup>216</sup> *Ibid.*

<sup>217</sup> *Supra n 183.*

<sup>218</sup> Section 10 of the South African Constitution.

<sup>219</sup> *Ntombentsha Beja and Others v Premier of the Western Cape and Others 2011(10) BCLR 1077*).

court to declare unenclosed waterborne toilets constructed by the municipal to be unconstitutional.

The community also lodged a complaint with the South Human Rights Commission (SAHRC). The SAHRC investigated the complaint and released a report with findings that the municipal had violated the Makhaza resident's rights to human dignity.<sup>220</sup> On the basis of the finds from the SAHRC, the residence approached the Western Cape High Court and filed an application. The judgement found that the municipal failed to take into account people with disability as well as safety and security of vulnerable members of the community including women, who were exposed to potential risk of gender based violence. Discrimination against women in the mining industry and in different forms in the South African labor force continues to be persistent.<sup>221</sup> Many women still are still confronted with considerable prejudice and stereotyping in the workplace, and often face different rules.<sup>222</sup> Unfavourable working conditions compromise the safety and security of women in mining.

Whilst various legislations allow the influx of women in the mining industry, substantial improvements needs to be introduced especially since the mining industry was previously a male dominated environment.<sup>223</sup> One important area that require urgent attention is the promotion and maintenance of health and safety for women working underground.<sup>224</sup> There is an urgent need to increase the awareness of workplace health and safety issues and their impact on women in mining in order to promote women's health and safety in the mines.<sup>225</sup>

The next chapter will focus on the health and safety of women in the extractive Industry (EI). The chapter will also explore the constitutional framework pertaining to the right to equality as entrenched in section 9 of the Constitution of the Republic of South Africa (the Constitution).<sup>226</sup>

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<sup>220</sup> South African Human Rights Commission investigative report vol 6 2013.

<sup>221</sup> *Supra* n 172.

<sup>222</sup> <https://www.fin24.com/Finweek/Featured/9-tips-to-fight-gender-bias> Accessed 30 August 2018.

<sup>223</sup> Zungu L (2011) "women in the South African mining industry: an occupational health and safety perspective"

<sup>224</sup> *Ibid.*

<sup>225</sup> <http://www.mhsc.org.za/sites/default/files/SIM%20100904%20Summary> Accessed 30 August 2018.

<sup>226</sup> Section 9 of the Constitution of the Republic of South Africa.



## CHAPTER 4: LEGISLATIVE ANALYSIS OF SOUTH AFRICAN LAW

### 4.1. Introduction

This chapter will explore on the legislative framework pertaining to mine health and safety. In this chapter we will deliberate on the broad outline and background to the Mine Health and Safety Act 29 of 1996.<sup>227</sup>The second section of this chapter will explore the constitutional framework pertaining to the right to equality as entrenched in section 9 of the Constitution of the Republic of South Africa (the Constitution).<sup>228</sup> In terms of the Constitution everyone is equal before the law and has right to equal protection and benefit of the law. The preceding sections will deliberate on the right to equality, the right to a safe work environment and other legislative framework governing the mining industry.

Prior to the enactment of the Constitution, Mine Health and Safety legislation was detailed and prescriptive.<sup>229</sup> The transformation in South Africa's political regime to a democracy and the enactment of the Constitution had an impact on mine health and safety legislation.<sup>230</sup>

### 4.2. The Constitution

The Constitution of the Republic of South Africa is an excerpt from the Freedom Charter's objectives which aimed at achieving the promise of a non-racial, democratic, and unitary country.<sup>231</sup> The Constitution as the supreme law of South Africa contain some detailed transformative guidelines.<sup>232</sup> Any law or conduct that is inconsistent with the Constitution is invalid. The Constitution is committed to transform the mining industry through its provisions of primary pillars of the mineral policy.<sup>233</sup> Since democracy, the South African government has constantly developed legislative and

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<sup>227</sup> *The Mine health and Safety Act.*

<sup>228</sup> Section 9 of the Constitution of the Republic of South Africa.

<sup>229</sup> Jephson G "Mine health and Safety in South Africa "(2016) P 4

<sup>230</sup> *Ibid.*

<sup>231</sup> Moraka NV "*Interpretation of transformation - perspectives from mining executives in South Africa*" (2016) 116 J South. Afr. Inst. Min. Metall P456.

<sup>232</sup> *Ibid.*

<sup>233</sup> *Ibid.*

policy frameworks that aim at strengthening gender equality and subsequent, participation of women in mining.<sup>234</sup>

The Bill of Rights is an important element of this Constitution and it outlines the fundamental rights afforded to all South Africans. The promulgation of the Labour Relations Act 66 of 1995 (LRA), the Basic Conditions of Employment Act 75 of 1997, the EEA and the AA provisions, are some of the measures which accelerate one of the imperatives of the Constitution, which is to bring about the equality envisaged by section 9, in the workplace.<sup>235</sup>

The provisions of the Constitution form the basis of the application of addressing the injustices of the past in the employment sphere. The mining industry is no exception to the rest of the working sphere, thus the application of these provisions level the ground for the application of the EEA and the AA measures in the mining industry.<sup>236</sup>

#### 4.2.1. Equality

The Constitution acknowledges gender equality as a foundation for South Africa's democracy<sup>237</sup>. The rights to equality before the law is one of the fundamental human rights which must also be protected in the working environment including extractive industry. The Constitution contains provisions for improving the quality of life for all South Africans and promoting equality.<sup>238</sup> The Constitution requires a balance between race and gender so as to broadly represent the country's demographics in the way in which organizations are structured.<sup>239</sup>

Subsequent to the democratic elections, the Republic of South Africa has been consistent in developing legislative and policy framework to strengthen gender equality and promote women empowerment in society.<sup>240</sup> Mechanisms to promote the inclusion, participation and benefit of women into mining sector have been put in place.<sup>241</sup> South Africa has been successful in putting in place legislative and policy

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<sup>234</sup> Supra n 161, at 2.

<sup>235</sup> [http://dspace.nwu.ac.za/bitstream/handle/10394/16/dikane\\_matthewsp](http://dspace.nwu.ac.za/bitstream/handle/10394/16/dikane_matthewsp) (Accessed 30 October 2018).

<sup>236</sup> Ibid.

<sup>237</sup> Note (**Error! Bookmark not defined.**) page 20.

<sup>238</sup> Supra n 246, at 456.

<sup>239</sup> Ibid.

<sup>240</sup> Supra n166, at 71.

<sup>241</sup> Ibid.

frameworks, nevertheless inequalities remain a challenge.<sup>242</sup> Notwithstanding the government intention to eliminate inequalities in society and the workplace, several forms of inequality still exist.<sup>243</sup> Section 9(4) of the Constitution provides that “No person may unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth”<sup>244</sup> Section 9(1) and (2)<sup>245</sup> of the Constitution states that “*everyone is equal before the law and has the right to equal protection and benefits of the law*”. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken.

It is acknowledge that there’s a slight change regarding the participation of women in the mining industry, however the change is slow. The slow change has meant that there has been little progress preventing equal and equitable opportunities for women in the mining sector.<sup>246</sup> Women still make up 16.4% of labour force in mining sector and representation in both professional and management levels is way less than the 50% mark.<sup>247</sup> Although there’s progress in the involvement of women in core mining activities, women continue to suffer discrimination in almost all aspects of employment, including the jobs they can obtain; their remuneration, benefits and working conditions; and their access to decision-making positions.<sup>248</sup> Women also often experience a glass ceiling when aspiring for top management positions in the mining sector.<sup>249</sup> There is therefore a need for policy makers in both public and private sector to revisit the commitments made, deepen understanding of the challenges in order to develop address the social, cultural, economic and political barriers women face in the mining sector.

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<sup>242</sup> *Ibid.*

<sup>243</sup> *Supra* 166, at 239.

<sup>244</sup> Section 9 (4) of the Constitution.

<sup>245</sup> Section 9(1) and (2) of the Constitution.

<sup>246</sup> *Ibid.*

<sup>247</sup> *Ibid.*

<sup>248</sup> Botha D” Gender and gender inequality-A theoretical framework” <https://repository.nwu.ac.za/bitstream/handle/10394/12234/BothaDChapter2> (Accessed 01 October 2018.

<sup>249</sup> *Ibid.*

#### 4.2.2. Labour

The participation of women in the labour force has increased over the past 30 years, this is due to increase in economic opportunities and equal employment opportunity legislation which drawn female workers into the market.<sup>250</sup>The Constitution of South Africa confirms that “Everyone is equal before the law and has equal protection and benefit of the law” Employment legislation has been enacted to give effect to the Constitution and to protect all employees, including women in mining.<sup>251</sup>

In terms of the Labour Relations Act,<sup>252</sup> women in mining are protected against dismissal, a dismissal is automatically unfair if the employee is dismissed because of her pregnancy, intended pregnancy or a reason related to her pregnancy.

Section 6 (1) of Employment Equity Act<sup>253</sup> (EEA) protects employees from unfair discrimination on listed grounds which include gender, sex, pregnancy, marital status, family responsibility or on any other arbitrary grounds. The EEA is one of the legislations which aimed at redressing discrimination of women.<sup>254</sup> The EEA was enacted to equity in the workplace. South Africa has experienced a major change in employment relations in organizations over the past year.<sup>255</sup>Although a number of legislation have been put in place to achieve social justice, progress in redressing unfair discrimination the workplace has been slow and uneven.<sup>256</sup>

#### 4.2.3. Safe Environment

The South African Mine Health and Safety Act, 1996 (MHSA) enforces and promotes the health and safety of persons at work in the mining sector.<sup>257</sup> The MHSA was updated by the Mine Health and Safety Amendment Act of 1997<sup>258</sup>.

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<sup>250</sup> *Ibid.*

<sup>251</sup> [www.bizcommunity.co/article/196/717/166217.html](http://www.bizcommunity.co/article/196/717/166217.html) (Accessed 01 October 2018).

<sup>252</sup> The Labour Relation Act.

<sup>253</sup> The Employment Equity Act.

<sup>254</sup> *Ibid.*

<sup>255</sup> Booyesns L, “Barriers to employment equity implementation and retention of blacks in management in South Africa”(2007)SAJLR 31.

<sup>256</sup> *Ibid.*

<sup>257</sup> *Ibid* 233.

<sup>258</sup> *Mine Health and Safety Amendment Act.*

The Constitution is a framework within which South Africa's mining and environmental legislation must operate.<sup>259</sup> This is based on the fact that the Constitution is the supreme law of the Republic, any law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.<sup>260</sup> Moreover, the constitution contains an environmental right and it also gives allocation of responsibilities amongst the different spheres of government in the country.<sup>261</sup> In terms of section 24 of the Constitution, everyone has a right to an environment that is not harmful to their health or wellbeing.<sup>262</sup> The right to a healthy environment and sustainable development are fundamental and closely connected to health and well-being of persons including women in mining.<sup>263</sup> *“Section 2 of the MHSA provides that the employer of every mine that is being worked must ensure, as far as reasonably practicable, that the mine is designed, constructed and equipped to provide conditions for safe operation and a healthy working environment”.*<sup>264</sup>

The duty of care is one of the main principles of the MHSA. As stated above section 2 of the MHSA stipulates that the employer, must, as far as reasonably practicable provide a work environment which does not expose mine employees to hazards or things that can harm them.<sup>265</sup> The employer owe a duty of care to vulnerable employee with special needs than those who are not; for example, pregnant women, breast feeding mothers. It is expected of the employer to conduct risk assessment and to provide information regarding health hazards to employees especially women who just join the mining sector information, training and supervision to ensure they work in a safe manner.<sup>266</sup>

### **4.3. Law framework**

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<sup>259</sup> Maswaka L “An Analysis of the Legislative Framework concerning Sustainable Mining in South Africa”P 23.

<sup>260</sup> *Ibid.*

<sup>261</sup> *Ibid.*

<sup>262</sup> Section 24 of the Constitution.

<sup>263</sup> *Ibid* 250.

<sup>264</sup> Section 2 (1) (a) of the MHSA.

<sup>265</sup><http://aspasa.co.za/wp-content/uploads/2017/11/legislative-framework-know-the-main-principles-of-the-Mine-Health-and-Safety-Act-2-3>. Accessed 10 October 2018.

<sup>266</sup> *Ibid.*

#### 4.3.1. MPRDA

South African mining law is governed by the Mineral and Petroleum Resources Development Act, which is the primary piece of legislation dealing with the right to conduct inter alia: reconnaissance, prospecting and mining operations.<sup>267</sup> The MPRDA places all mineral and petroleum resources in South Africa in the guardianship of the state, which means that the state is the custodian of all mineral and petroleum resources.<sup>268</sup> In addition, the MPRDA places the responsibility of allocating mineral authorizations under the MPRDA to the state.<sup>269</sup> According to section 3 of the MPRDA, mineral and petroleum resources are the common heritage of all the people of South Africa and the State is the custodian thereof for the benefit of all South Africans.<sup>270</sup> The Department of Mineral Resources (DMR) is state entity responsible for mineral authorizations and for the governance of the mining industry in South Africa is the under the executive leadership of the minister of mineral resources.<sup>271</sup> The MPRDA require that there should be equal opportunity for all in terms of ownership and access to mineral resources with meaningful participation of HDSA.<sup>272</sup> The MPRDA places emphasis on the employment, development and participation of women in the mining industry.<sup>273</sup>

The MPRDA also states that the holder of a mining right<sup>274</sup> , prospecting right<sup>275</sup> or mining permit<sup>276</sup> is prohibited from mining without an environmental authorization and without giving the landowner or lawful occupier of the land at least 21 days' written notice of intention to exercise allocated rights.<sup>277</sup> Section 100(2)(a) of the MPRDA stipulated that the Minister must within six months from the date of coming into effect of the MPRDA take effect develop a broad-based socio-economic empowerment

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<sup>267</sup>[www.corruptionwatch.org.za/wp-content/uploads/2017/10/Mining-for-Sustainable-Development-report-South-Africa-2017](http://www.corruptionwatch.org.za/wp-content/uploads/2017/10/Mining-for-Sustainable-Development-report-South-Africa-2017) (Accessed 30 August 2018).

<sup>268</sup> *Ibid.*

<sup>269</sup> *Ibid.*

<sup>270</sup> Section 3 of the MPRDA.

<sup>271</sup> *Ibid n 252.*

<sup>272</sup> *Supra* 166, at 123.

<sup>273</sup> *Ibid.*

<sup>274</sup> *Section 22 of the MPRDA*

<sup>275</sup> *Section 16 of the MPRDA*

<sup>276</sup> *Section 27 of the MPRDA.*

<sup>277</sup> *Section 5A of the MPRDA.*

charter that will set the framework, targets and time-table for effecting the entry of HDSAs into the mining industry.<sup>278</sup>

#### 4.3.2. *The Broad-based Socio-economic Empowerment Charter (Mining Charter)*

Transformation in the South African mining industry is governed by the MPRDA, which was promulgated and implemented on 1 May 2004<sup>279</sup> and the Mining Charter which was signed in October 2002 and formally published on 13 August 2004<sup>280</sup>. The broad objectives of the MPRDA and the accompanying amended Mining Charter are to rectify previous inequalities and disadvantages in the mining sector and to ensure equity, accessibility, and sustainability in the industry.<sup>281</sup> The Mining Charter make specific provisions for the inclusion of women in core mining activities.<sup>282</sup> The Mining Charter is the policy instrument to effect transformation of the South African mining sector.<sup>283</sup>In terms of the Mining Charter no 1, the industry was supposed to have reach a quota of 10% women in core mining activities by 2009.<sup>284</sup> In 2009, the DMR conducted a thorough impact assessment to determine the progress made on the objectives of Mining Charter no 1 which was adopted in 2002, concerning transformation in the mining industry.<sup>285</sup> The 2009 assessment of the Mining Charter led to the in the amendment of the Mining Charter no 1 and the launched Mining Charter 2 in September 2010.<sup>286</sup> The amendment of the aforementioned Mining Charter set further requirements in terms of employment equity targets.<sup>287</sup>This time mining companies were required to reach a target of 40% historically disadvantaged South African (HDSA) representation in core and critical skills by 2015.<sup>288</sup> In addition, a 40% HDSA representation in junior management levels by 2011, middle management levels by 2013, and senior or executive management levels by

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<sup>278</sup> *Supra* 166, at 123.

<sup>279</sup> *Supra n 80, at 659.*

<sup>280</sup> *Ibid.*

<sup>281</sup> *Ibid.*

<sup>282</sup> *Ibid.*

<sup>283</sup>

<sup>284</sup> *Ibid.*

<sup>285</sup> *Ibid.*

<sup>286</sup> *Ibid.*

<sup>287</sup> *Ibid.*

<sup>288</sup> *Ibid.*

2015.<sup>289</sup>The term HDSAs refers to black people African, so-called Coloured people and Indians), women, and people with disabilities.<sup>290</sup>

On the June 2017, the then Minister of Mineral Resources, Mosebenzi Zwane gazetted Mining Charter for the South African Mining and Minerals industry, which comes into effect on the date of publication.<sup>291</sup> Within hours of the gazetting of the 2017 Mining Charter, the Mineral Council South Africa formerly known as the Chamber of Mines of South Africa issued a public statement rejecting the unilateral development and imposition of the 2017 Mining Charter on the industry.<sup>292</sup> The Mineral Council was of the view that the process followed by the DMR in developing the 2017 Mining Charter flawed.<sup>293</sup> Subsequent to the publication of the 2017 Mining Charter, the Mineral Council made an urgent application to the North Gauteng High Court to stop the implementation of the reviewed Mining Charter which was published by Minister Zwane on June 15 2017. <sup>294</sup>Preceding the urgent application brought by Mineral Council on 14 July 2017, an agreement was reached wherein the minister and the DMR undertook not to apply the provisions of the new charter pending the outcome of the interdict application.

Subsequent to a development period of exactly one year, which saw a strip of urgent High Court applications, a change in administration at DMR, the Minister of Mineral Resources, the Honourable Samson Gwede Mantashe published the revised Mining Charter no 3 on the 15 June 2018.<sup>295</sup> The Mining Charter no 3 is an improvement of the 2017 Mining Charter version.<sup>296</sup> The 2018 Charter does contain extensive changes and introduces more onerous and more stringent compliance obligations than those currently stipulated in Mining Charter no 2.<sup>297</sup>

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<sup>289</sup><https://www.cliffedekkerhofmeyr.com/en/news/publications/2017/corporate/mining-and-minerals-alert-21-june-the-mining-charter-2010-v-the-mining-charter-2017> (Accessed 17 September 2018).

<sup>290</sup> Moroka NV, M Jansen van Rensburg “*Transformation in the South African mining industry –looking beyond the employment equity scorecard*” (2015) 115 J South. Afr. Inst. Min. Metall P670.

<sup>291</sup> [www.ensafrica.com/news/What-you-need-to-know-about-the-2017-Mining-Charter](http://www.ensafrica.com/news/What-you-need-to-know-about-the-2017-Mining-Charter) (Accessed 17 September 2018)

<sup>292</sup> *Ibid.*

<sup>293</sup> *Ibid.*

<sup>294</sup> <http://www.mineralscouncil.org.za/special-features/724-court-document> Accessed 17 September 2018.

<sup>295</sup><http://www.webberwentzel.com/wwb/content/en/ww/insights-and-next-steps-the-new-mining-charter-iii> (Accessed 17 September 2018.)

<sup>296</sup> *Ibid.*

<sup>297</sup> *Ibid.*

The introduction of the South African Mining Charter in 2002 was instituted to redress the imbalance of the past<sup>298</sup> Mining Charter no 1 required mining companies to ensure that 10% of their total workforce were women by the year 2009.<sup>299</sup> The introduction of laws and policies such as the Mining Charter resulted in a noticeable increase in the number of women in the mining industry.<sup>300</sup> Mining Charter no 1 was successful in ensuring that, by 2009, at least 10% of the workforce in the mining industry were women.<sup>301</sup> As a result of the introduction of the Mining Charter and other measures in number of women miners in the Southern African Development Community (SADC) region is now estimated at 600,000.<sup>302</sup> Albeit the increase of number of women in mining, measures such as the Mining Charter and legal requirements to incorporate women in the industry do not guarantee equal treatment of women to their male counterparts.<sup>303</sup> As stated above, the Mining Charter is an exceptional feature of the legislation which is seen as an instrument to effect transformation with specific targets in the mining industry in South Africa. Failure to comply with the charter amounts to an offence which could result in a fine or imprisonment.<sup>304</sup>

#### 4.3.3. *Mine Health and Safety Act 29 of 1996*

Mining has always been the main and very active industry in South Africa.<sup>305</sup> Gold mining in South Africa began in the Witwatersrand in 1886.<sup>306</sup> The MHSA was passed in 1996.<sup>307</sup> Prior to coming into effect of the MHSA, the mine health and safety matters were regulated in terms of the Minerals Act.<sup>308</sup> The MHSA removed restrictions which barred women from working on mines, including underground.<sup>309</sup> The purpose of the MHSA is to promote a culture of health and safety, provide for the enforcement of health and safety measures, provide for appropriate systems of employee, employer and state participation in health and safety matters, establish representative tripartite

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<sup>298</sup> <http://www.polity.org.za/article/women-in-mining-legislation-and-representation-for-women-in-mining> (Accessed 17 April 2017)

<sup>299</sup> *Ibid.*

<sup>300</sup> *Ibid.*

<sup>301</sup> *Ibid.*

<sup>302</sup> *Ibid.*

<sup>303</sup> *Ibid.*

<sup>304</sup> *Section 98 and Section 99 of the MPRDA.*

<sup>305</sup> *Supra n, at 236 p3.*

<sup>306</sup> *Ibid.*

<sup>307</sup> *Supra n 227.*

<sup>308</sup> The Minerals Act.

<sup>309</sup> *Supra n 166, at 123.*

institutions to review legislation, promote health and enhance properly targeted research; provide for effective monitoring systems and inspections, investigations and inquiries to improve health and safety, promote training and human resource development; regulate employers' and employees' duties to identify hazards and eliminate, control and minimize the risk to health and safety, entrench the right to refuse to work in dangerous conditions, give effect to the public international law obligations of the Republic of South Africa relating to mining health and safety; and to provide for matters connected therewith.

The MHSAs introduced the concepts of risk assessment and occupational health and safety management to the mining industry.<sup>310</sup> Additional amendment to the MHSAs followed in 2008 which aimed to review and fortify enforcement provisions, to reinforce offences and penalties and to effect certain amendments necessary to ensure consistency with other laws, particularly the Minerals Petroleum Resource Development Act (MPRDA).<sup>311</sup> The MHSAs were reviewed in 2011 and 2012. The publication of the draft bill was approved by Cabinet in October 2013.<sup>312</sup> The bill aims to improve the health and safety of mine employees and seeks to maintain a healthy and safe mine environment with a positive impact on environmental sustainability and resilience.<sup>313</sup>

Notwithstanding improved efforts from the South African government, and specifically the Department of Mineral Resources, (DMR) to promote health and safety in the mining industry, the safety record in the South African mining industry continues to be a matter of great concern.<sup>314</sup> The loss of life due to accidents in the mining industry is still a concern, especially in the gold and platinum sectors.<sup>315</sup>

The involvement of women in the core business of mining exposed them to the various hazards related to working in mines.<sup>316</sup> Women face more risks to their health and safety because most supportive infrastructure, such as personal protective equipment

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<sup>310</sup> *Supra* n 98, at 2.

<sup>311</sup> *Ibid.*

<sup>312</sup> *Ibid.*

<sup>313</sup> *Ibid.*

<sup>314</sup> *Ibid.*

<sup>315</sup> *Ibid.*

<sup>316</sup> *Supra* 166, at 127.

(PPE) as well as mining machinery, tools and equipment are not designed for women.<sup>317</sup>

#### 4.4. Conclusion

It is patent from the above information that the DMR is committed to transformation of the entire mining industry.<sup>318</sup> This is seen by the significant participation of women in all sphere of the mining industry.<sup>319</sup> The involvement of women in the mining industry is promoted in various mining legislation as well as policy documents.<sup>320</sup> In finding solutions to discrimination and other challenges faced by women in mining, it is recommended that to alleviate gender discrimination for women in mining, policies should be developed from the perspective of the women in mining and not from a perspective that will favour the government.<sup>321</sup> It is further recommended that when developing those policies women in mining should be consulted extensively.<sup>322</sup> Actual and concerted efforts need to be made in the area of eradicating all discrimination within the mining industry.<sup>323</sup>

Though legislation is integral to addressing unfair workplace discrimination, it is merely the beginning of the process. A complete and supportive human resources practice is essential in the drive for workplace equity.<sup>324</sup> The next chapter will analyse the

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<sup>317</sup> *Ibid*

<sup>318</sup> *Supra* 166, at 147.

<sup>319</sup> *Ibid.*

<sup>320</sup> *Ibid.*

<sup>321</sup> *Supra* n 161, at 5.

<sup>322</sup> *Ibid.*

<sup>323</sup> <http://diversi-t.co.za/articles/view/>(Accessed 30 October 2018).

<sup>324</sup> *Supra* n 265, at 1.

## CHAPTER 5: ANALYSIS

### 5.1. Introduction

Previously mining industry were a male dominated industry and hostile towards women.<sup>325</sup> Women were seldom employed in mining as it was considered to be a highly male dominated activity and women were considered unfit for the hard labour of working in the mines.<sup>326</sup> Historically most of the occupations of women on mines were related to either administrative or to menial lower rank activities like sweepers, cleaners or attendants in the administration offices.<sup>327</sup> The personal protective equipment available were also unsuitable for women and were posing major risk of workplace injuries to women.<sup>328</sup> Since the mining industry is being considered a male dominated, does the South African Mine Health and Safety legal framework provide for the protection of women in the mining sector. There's is a substantial Industry concern about the impending effects of occupational exposure to chemical substances, physical, ergonomic and biological hazards on reproductive outcomes.<sup>329</sup>

Furthermore women in the mining industry are exposed to the obvious physical and ergonomic risks of underground work.<sup>330</sup> Chemical substances are often used in the mining industry and regular use may thus present potential exposure to mine workers including women in mining. In addition physical, ergonomic and biological hazards with reported reproductive and development effects are present in a number of workplaces and thus present potential exposure to workers.

### 5.2. Analysis of the MHSA

Occupational health and safety at work is one of the major issue that require the attention of both the government and the mining industry. The MHSA and its regulations constitute the main body of legislation that regulates occupational health and safety in the South African Mining industry<sup>331</sup> Additional pieces of legislation such

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<sup>325</sup> *Supra n 130, at 55.*

<sup>326</sup> *Ibid.*

<sup>327</sup> *Ibid.*

<sup>328</sup> *Ibid.*

<sup>329</sup> *Ibid.*

<sup>330</sup> *Ibid.*

<sup>331</sup> *Supra n 265, at 1.*

as Hazardous Substances Act, 1973<sup>332</sup> and Labour Relations Act apply to the mining industry as well.

The MHSA aims to protect employees and other persons affected by mine activities. Furthermore the MHSA also aims to promote a culture of health and safety in the mining industry. In its focus the MHSA does not only focus on the r the enforcement of measures but also on the participation of employees, employers and the state in resolving health and safety matter in the form of representative tripartite institutions which consist of the state, industry, and labour representatives.

As stated above, the MHSA require employers to create safe work environment for their employees. To ensure that employers comply with the provisions of section 2 (1) (a) of the MHSA. The DMR and Mine Health and Safety Council (MHSC) issue guidance notes and guidelines to help the mining industry implement certain provisions or requirements of MHSA<sup>333</sup>. The MHSA comprise of tools which must be used by mining companies check whether the Act itself is being implemented well to accommodate the health and safety needs of women in mining.<sup>334</sup> The same tools can be used to check whether the health and safety management system is performing well. For example, MHSA requires the mine carry out regular audit and review of their health and safety management system. Through the MHSA Regulator which is the DMR is expected to conduct inspections and audit to the mines on a regular basis. This is to ascertain whether the mine are implementing review processes by making spot checks and in certain cases high-level audits of the health and safety management system at the mine<sup>335</sup>. Although the Mine health and safety statistics, indicate poor safety record, there's a slight improvement this is due to constant inspection the health and safety of women in the mining is improving.

### **5.3. Are we doing enough to address the health and safety of women in mining**

Occupational health and safety regulation is a means by which the work environment can be measured to ensure the safety, health and welfare of employees and persons

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<sup>332</sup> Hazardous Substances Act

<sup>333</sup> *Ibid.*

<sup>334</sup> *Ibid.*

<sup>335</sup> *Ibid.*

likely to be adversely affected by the work environment are protected.<sup>336</sup> Based on available literature review and the experiential findings, it is evident that women in mining are still exploited and sexually harassed in the mining industry.<sup>337</sup> This is perceived by the number of incidents of harassment taking place on a daily basis in the mining industry. The above harassment vary from whistling; name calling; use of vulgar or derogatory language; display of body parts; physical contact, ranging from touching to sexual assault and rape.<sup>338</sup> Women continue to suffer abuse both at home and in the workplace, they are subjected to discrimination which are often ignored. Though well intended, women working in the male-dominated mining environment are facing a range of obstacles, and sexual harassment is one of them. According to Zungu one important aspects that needs urgent attention from the government and the mining industry is the promotion of health and safety of women. Although there are legislative developments to protect women against discrimination in the mining industry, protection of women against abuse is not yet at the level is supposed to be.<sup>339</sup>

Based on the above background, it is of utmost importance that mining companies develop good working sexual harassment policies. The policy statement must highlight that sexual harassment in the workplace will not be tolerated.<sup>340</sup> Both males and females in the mines must be trained on the sexual harassment policy.<sup>341</sup> The policy should also explain the procedure that should be followed by employees who are victims of sexual harassment.

#### **5.4. Improvement of the mining industry to accommodate women**

The mining industry has been the backbone of the South African economy for over a period of time.<sup>342</sup> Based on the fact that the mining industry was male dominated therefore there's a need for some intervention to facilitate access to the industry for women.<sup>343</sup> South Africa has made progress in facilitating a gender sensitive

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<sup>336</sup> <https://dspace.lboro.ac.uk/dspace-jspui/bitstream/2134/4079/3/Kheni> Accessed 29 October 2018).

<sup>337</sup> Botha, D. (2016). *Women in mining still exploited and sexually harassed*. SA Journal of Human Resource Management.

<sup>338</sup> *Ibid.*

<sup>339</sup> *Ibid.*

<sup>340</sup> *Ibid.*

<sup>341</sup> *Ibid.*

<sup>342</sup> Zungu L (2017) "Occupational Health and Safety for women in mining"Unisa.

<sup>343</sup> *Ibid.*

environment in the workplace.<sup>344</sup> Though the debarment of women participation in the mining industry has been lifted, there's not much preparation done to receive them. One of the challenge is that women are expected to go underground as men however the attire they wear and the equipment they use underground are designed for use of men only.<sup>345</sup> Since women are expected to operate machinery, tools and equipment that have been designed for men, increase in risk of injury and ill-health has become prevalent.<sup>346</sup> More often women are appointed in core mining positions without having the physical ability to cope with the requirements of the positions. As a male employees have to assist and support their female colleagues to do their jobs properly. For example, women find it difficult to do mechanical type of work that requires physical strength. This often leads to frustration on the side of male co-workers and contributes to a negative attitude towards women in mining. A study conducted by the Mine Health and Safety Council, with women in gold mines found due to intensive labour duties, some women reported ailments such as back, joint, shoulder and abdominal pains and other musculoskeletal disorders.<sup>347</sup> The mining sector is categorized as high-risk work and falls into a category which is perceived as hazardous occupations.<sup>348</sup> Mining involves hard physical labour under conditions of extreme discomfort, deafening noise, intense heat and humidity and cramped space. Mine workers often experience anxiety and tension due to the high risk of potential hazards and danger.<sup>349</sup>

Though job reservations do not exist and women are employed in all sections at the mines, women do not have the physical strength and ability to be employed in all core mining positions. It is therefore important to consider job specifications and requirements when appointing women in positions that require physical strength. It is acknowledged that majority of mining companies conduct a pre-employment medical test is done before women are employed; however, the mining company does not conduct health risk assessments for women in order to ensure that appropriate jobs are assigned to appropriate women. To enhance health and safety it is recommended

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<sup>344</sup> *Ibid.*

<sup>345</sup> *Ibid*

<sup>346</sup> *Ibid.*

<sup>347</sup> *Ibid.*

<sup>348</sup> Zungu L

<sup>349</sup> *Ibid.*

that women in the extractive industry should be engaged in all stages of policy development and in decision-making processes. This will ensure that their needs including health and safety and issues of equality are properly taken into consideration at all levels of implementation. In order to ensure that appropriate jobs are assigned to appropriate women, it is important to incorporate gender into the health risk assessment.<sup>350</sup>

## 5.5. Conclusion

The Mining continues to be inundated by uncertainty and challenges. Universally mining has been tough, and there are additional challenges for women working in the industry.<sup>351</sup> For women in mining in South Africa things are even harder as over and above all the other issues that the industry faces as a whole, they also have numerous gender related challenges that they have to deal with.<sup>352</sup>

Despite the aforementioned challenges, one need to be mindful of the fact that the mining industry not only in South Africa but international have worked very hard over the years to improve the work environment of women in mining.

Although the mining industry has also made progress in advancing the rights of women at the workplace, there is still room for improvement.<sup>353</sup> Important areas that needs improvement is a gendered approach regarding occupational health and safety issues to embrace the steady inflow of women into the mining industry and to retain them within the industry.<sup>354</sup>

From the available literature it is evident that the introduction of women in the core business of mining requires commitment and devotion from mining industry and the relevant state departments.<sup>355</sup> Additionally, the health and safety of women in mining require, amongst others, extraordinary attention to the provision of women.<sup>356</sup>

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<sup>350</sup> *Supra n*

<sup>351</sup> *Supra n11, at 1.*

<sup>352</sup> *Ibid.*

<sup>353</sup> *Ibid.*

<sup>354</sup> [www.unisa.ac.za/sites/corporate/default/Colleges/Human-Sciences/News-&events/Articles/Occupational-health-and-safety-for-women-in-mining](http://www.unisa.ac.za/sites/corporate/default/Colleges/Human-Sciences/News-&events/Articles/Occupational-health-and-safety-for-women-in-mining)(Accessed 04 November 2018).

<sup>355</sup> *Supra n 90, at 1.*

<sup>356</sup> *Ibid.*

Mining companies are encourage to do health risk assessments for all mining-related jobs assigned to women.<sup>357</sup> Mining companies are urged to take the required action to mitigate the risks. Actions to be taken in risk mitigation will limit exposure of women in mining to harmful substances and working conditions and will prevent injury and loss of life. Mining companies should know the detailed physical requirements for each job so that it can test men and women for suitability for a specific job, regardless of gender.

In conclusion it is recommended that further research in the fields of health and safety of women in the mining industry be considered a developed field.<sup>358</sup> Furthermore it is recommended that aspects of work environment and occupational health and safety need to be included in the design of the production system and the automation to create a good, attractive and sustainable work organization.<sup>359</sup>

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<sup>357</sup> *Supra n 130, at 59.*

<sup>358</sup> [www.diva-portal.org/smash/get/diva](http://www.diva-portal.org/smash/get/diva) (Accessed 4 November 2018)

<sup>359</sup> *Ibid.*

## CHAPTER 6: CONCLUSION

### 6.1. Summary and Conclusions

One of the milestones of the last two decades is simply the fact that the mining industry in South Africa is now one of the career choices available to women.<sup>360</sup> The mining industries continue to grow in South Africa, however not enough attention has been paid towards addressing gender specific impacts and interests of women affected by the industry. Despite the legislative changes and support that was introduced in the mining industry, literature shows that women in mining still experience acceptance problems and structural disadvantages as employees.<sup>361</sup>

It is significant to note that most literature available explored and acknowledged challenges of women who are entering the mining industry.<sup>362</sup> However available literature doesn't put more emphasis on the working conditions of women in mining.

It is acknowledge that there's a slight change regarding the participation of women in the mining industry, however the change is slow. The slow change has meant that there has been little progress preventing equal and equitable opportunities for women in the mining sector.<sup>363</sup> Women still make up 16.4% of labour force in mining sector and representation in both professional and management levels is way less than the 50% mark.<sup>364</sup>

Although there's progress in the involvement of women in core mining activities, women continue to suffer discrimination in almost all aspects of employment, including the jobs they can obtain; their remuneration, benefits and working conditions; and their access to decision-making positions.<sup>365</sup> Women also often experience a glass ceiling when aspiring for top management positions in the mining sector.<sup>366</sup> There is therefore

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<sup>360</sup> Ibid n 342.

<sup>361</sup> Benya, A.P. (2009) Women in Mining: A Challenge to Occupational Culture in Mines. Unpublished Masters Dissertation, University of the Witwatersrand.

<sup>362</sup> *Ibid.*

<sup>363</sup> *Ibid.*

<sup>364</sup> *Ibid.*

<sup>365</sup> Botha D" Gender and gender inequality-A theoretical framework" <https://repository.nwu.ac.za/bitstream/handle/10394/12234/BothaDChapter2> (Accessed 01 October 2018).

<sup>366</sup> *Ibid.*

a need for policy makers in both public and private sector to revisit the commitments made, deepen understanding of the challenges in order to develop address the social, cultural, economic and political barriers women face in the mining sector.

It is patent from the above information that the DMR is committed to transformation of the entire mining industry.<sup>367</sup> This is seen by the significant participation of women in all sphere of the mining industry. <sup>368</sup> There is an increased emphasis on safety in the mining industry, just like in any other workplace and a strong belief that administrative and engineering control measures, coupled with the safest ways to operate machinery, are the best options to execute various tasks. However, the relationship between practices of masculinity/feminity and safety related behaviours must not be ignored in the quest to promote a safety culture, especially in mining.

Although the mining companies have built and upgraded change houses and ablution facilities to accommodate women in core mining positions, a lack of adequate facilities still exists.

## **6.2. Recommendations**

From the above it is evident that mine health and safety challenges are still serious issues in the South African mining sector and, if left unattended, could have serious social and economic implications.

The involvement of women in the mining industry is promoted in various mining legislation as well as policy documents.<sup>369</sup> In finding solutions to discrimination and other challenges faced by women in mining, it is recommended that to alleviate gender discrimination for women in mining, policies should be developed from the perspective of the women in mining and not from a perspective that will favour the government.<sup>370</sup>It is further recommended that when developing those policies women in mining should be consulted extensively.<sup>371</sup> Actual and concerted efforts need to be made in the area of eradicating all discrimination within the mining industry.<sup>372</sup>

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<sup>367</sup> *Supra* 166, at 147.

<sup>368</sup> *Ibid.*

<sup>369</sup> *Ibid.*

<sup>370</sup> *Supra* n 161, at 5.

<sup>371</sup> *Ibid.*

<sup>372</sup> [http://diversi-t.co.za/articles/view\(Accessed](http://diversi-t.co.za/articles/view(Accessed) 30 October 2018).

It is recommended that policy makers in both public and private sector to revisit legislation pertaining to mining. Furthermore it is recommended that the both the industry and government should revisit the commitments made to expand understanding of the challenges of women in mining in order to develop address the social, cultural, economic and political barriers women face in the mining sector.

Though legislation is integral to addressing unfair workplace discrimination of women, it is merely the beginning of the process. A complete and supportive human resources practice is essential in the drive for workplace equity.

This is exacerbated by increasing numbers of women employed by mining companies in order to meet the 10% target required by the Mining Charter<sup>373</sup>. Some mining companies are not yet fully prepared to accommodate all these female employees.<sup>374</sup>

It is clear that although mining companies have improved their efforts to accommodate women in the core business of mining, limitations and deficiencies are still prevalent. Women working in the core business of mining have specific needs in terms of infrastructure facilities ablution facilities, change houses, transport, housing, and so forth and mining companies should be sensitive to these needs and should aim to address them as far as possible in order to create a conducive environment for female employees.<sup>375</sup>

The following main concerns regarding changes houses and ablution facilities were raised by the females employed in core mining positions, change houses are too small and do not accommodate the number of women using them. Only open showers are provided.<sup>376</sup> Women want to be private and require showers with curtains or doors. Change houses and ablution facilities should be feminine, comfortable and provided with equipment that addresses the special needs of women. Change houses and ablution facilities should be regularly cleaned. Ablution facilities underground should be treated in the same way as facilities on surface. It should be women-friendly and regularly cleaned.<sup>377</sup> Change houses and ablution facilities should be as close to the plant as possible, because women do not feel safe, especially at night. Ablution

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<sup>373</sup> *Supra n 355, at 310.*

<sup>374</sup> *Ibid.*

<sup>375</sup> *Ibid.*

<sup>376</sup> *Ibid.*

<sup>377</sup> *Ibid.*

facilities should not be shared with men; separate facilities for men and women should be provided. Enough lockers should be provided.<sup>378</sup>

From the above it is evident that the female participants of the platinum mine are not satisfied with the current change houses and ablution facilities at the mine.<sup>379</sup> They also expressed serious concerns regarding ablution facilities underground.

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<sup>378</sup> *Ibid.*

<sup>379</sup> *Ibid.*

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## ACRONYMS

Mine health and safety Act: MHSA

Extractive Industries: EI

Mineral and Petroleum Resource Development Act, 2002 :(MPRDA)

Women in Mining South Africa Association: (WIMSA)

International Labour Organization: ILO

South African Society of Occupational Medicine: SASOM

South Human Rights Commission: SAHRC

Standard Operating Procedure: SOP