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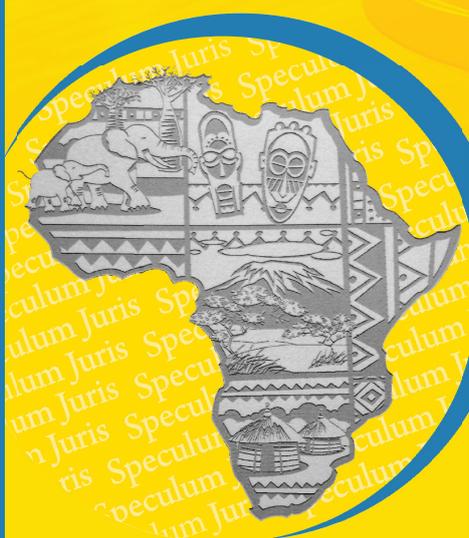
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The History of the Mining Industry in South Africa: The Transformative Role of the Mining Policies and Minerals and Petroleum Resources Development Act 28 of 2002*

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Abstract

The history of South Africa’s mining sector or industry is characterised by social inequalities, injustices, and marginalisation. These problems were caused by laws that did not address social transformation. In spite of a diverse and rapid population growth, South Africa’s previous dispensation, was skeptical about economic exclusion, unfairness, and unequal opportunities which affected the majority of the citizens. Native Black South African mineworkers experienced social exclusion during the exploitation of minerals and petroleum resources. The mining sector under the apartheid regime was oppressive, which ultimately resulted in the country’s legal system being challenged, resulting into transformation. This, however, did not mitigate the industry’s exclusionary laws. These laws were not transformative as they were used to exclude to the extent of

* This article is based on the research that was conducted during my teaching and supervision of the module Mining Law at both undergraduate and postgraduate degree programmes.

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depriving natives of their land. However, the enactment of the Constitution of the Republic of South Africa, 1996 and ultimately the Minerals and Petroleum Resources Development Act 28 of 2002 (MPRDA) proved effective in addressing exclusion and the transformation of the mining industry. Since the existence of these legal instruments, the marginalised have been able to exercise their rights and gained access to social and economic opportunities. Additionally, the adoption of the MPRDA and subsequently the regulations, gave rise to other social and economic development instruments. Significantly, the Mining Charters have been at the forefront of transformation and were created specifically to promote compliance by those conducting minerals extractions and to serve as guidelines to reinforce the objectives under sections 2 and 100 of the MPRDA. Even though the transformative provisions of the MPRDA have been embraced, many challenges lingered, including limited access to the mining industry by the previously marginalised. Therefore, this article, which is desktop research-based, examines, and analyses primary and secondary sources of law in an integrated manner to demonstrate the transformative role of the law and policies. Furthermore, this research seeks to analyse the results, put forth, the outcomes, and then the conclusions.

Keywords: Transformation; mining industry; minerals and petroleum resources; laws and policies; development

1 INTRODUCTION AND BACKGROUND

South Africa has solidified a transformative agenda on mining laws, regulations and policies since the early 1960s.¹ Despite this, the country still faces challenges, including inequality and exclusion of especially the marginalised, who are still not benefitting from the mining industry operations. When South Africa attained its democracy in 1994, the government began with negotiations regarding the transformation regulations, laws, and policies which govern the mining industry and related operations.² The exclusionary laws that were in place during the apartheid-era government served as barometers to determine new laws and policies for the transformation in the industry. Conversely, the South African mining legal system that was developing presented drastic changes, which included radical provisions.³ The changes set out laws aimed at transforming the industry. However, prior to effecting these major changes, laws and policies, the democratic government in South Africa chose to adopt a liberal approach, guided by the principles which aimed to advance human rights.⁴ In terms of this approach, South Africa developed an interim Constitution designed to temporarily safeguard the rights of citizens and all persons in South Africa.⁵

Accordingly, the South African democratic government brought forth laws and policies that aimed to address the social ills created by the apartheid system.⁶ The period between 1990 and 1994 was remarkable, as it was accompanied with a build-up process towards democratising various problematic legal systems to minimise marginalisation.⁷ Ostensibly, before then, marginalisation and inequalities were perpetuating injustices, which also enabled the segmented

1 Van Der Schyff “South African Minerals Law: A Historical Overview of the State’s Regulatory Power Regarding the Exploitation of Minerals” 2012 *New Contree* 131–153. <http://dspace.nwu.ac.za/handle/10394> (accessed 02-10- 2019).

2 *Ibid* 150–153.

3 Minerals Act 50 of 1991 (MA).

4 Constitutional Assembly of South Africa, 1994.

5 South African Interim Constitution Act 200 of 1993 (the Interim Constitution).

6 Van Der Schyff 2012 *New Contree* 149–150.

7 See Constitutional Assembly of South Africa, 1994.

exploitation of the majority of the native population.⁸ Thus, the apartheid government laws prevented natives from participating meaningfully in and contributing to the mining economy.⁹ Clearly, these exclusionary laws lacked transformative vision which could alleviate inequalities and discriminations.¹⁰ These therefore impacted negatively on the transformation agenda of the government of the day and the strides which were to be taken to shape a new mining industry in South Africa from 1994.

1 1 Historical Legislative Overview

Significantly, these laws included the Precious Stones Act (PSA)¹¹ which operated in conjunction with common law, surprisingly granting private persons the rights to mine precious stones without consulting landowners as it had a Board with which the minister could consult for the implementation of its provisions.¹² Antagonistic as it was, this law recognised the common law holders of minerals rights as having the right to prospect other than the landowners or lawful occupiers of land where minerals are.¹³ Similar to this law, was the adoption of the Mining Rights Act (MRA)¹⁴ which was aimed at reversing certain aspects of past laws, however it was repealed by Minerals Act (MA).¹⁵ The MRA's intention, as Cawood found, was to

to consolidate the plethora of legislation under a single Act. However, it was decided that precious stones should continue to be governed by the Precious Stones Act 73 of 1964. MRA recognized the historically different categories of minerals land and dealt mainly with administration of the land over which the State could exercise some control.¹⁶

Whilst the MA sought to address minerals exploitations, it did not address inequality and marginalisation, until it was amended in 1993 by the Minerals Amendment Act.¹⁷ Additionally, the 1991 dispensation alluded that “the presence of minerals on or under land conferred no value on the owner, unless the right to mine in respect of those minerals was also vested in the owner of the property”.¹⁸ Thus, a landowner had no control over minerals in it unless they had access to the land for the purpose of prospecting and mining for minerals. Consequently, the MAA intended to provide a different angle and clarity in what was believed to have been a failure on the part of the MA. For instance, it intended to amend some definitions, particularly those which were ambiguous and vague in terms of the administration of the rights and access to land contained therein.

Despite having being enacted in 1991, with the aim of addressing the injustices of the past, the MRA fell short of redress because of the territorial expansions and independence of the

8 Mostert *Minerals Law: Principles and Policy in Perspective* 1 ed (2010) 33–41.

9 Sorensen “Legislative Transformation of South African Mining Since 1994: What Progress?” 2014 *International Journal of Environmental Studies* 171–190. <https://www.researchgate.net/publication/232920962> (accessed 02-10-2019).

10 Ginwala “South African History Online” <http://sahistory.org.za> (accessed 02-10-2019).

11 Precious Stones Act 73 of 1964 (PSA).

12 The PSA ss 95 and 96.

13 The Precious Minerals Act 31 of 1898 ss 76 and 77.

14 Mining Rights Act 20 of 1967.

15 Minerals Act 50 of 1991 s 68.

16 Cawood “A Historical Perspective on the Economics of the Ownership of Minerals Rights” 1998 *The Journal of the South African Institute of Mining and Metallurgy* 371.

17 Minerals Act Amendment Act 103 of 1993 (MAA).

18 *Agri South Africa v Minister for Minerals and Energy* 2013 4 SA 1 para 19.

Transkei, Bophuthatswana, Venda and Ciskei (TBVC) states.¹⁹ Due to the independence of these states, a national law, such as the MRA, could not function broadly, which therefore led to continued inequalities in minerals exploitations.²⁰

During the democratic government's attempts to introduce new progressive laws which were considered necessary to counter the exclusion, marginalisation and discrimination were conventional.²¹ A few years into the democratic South Africa, the Constitution of the Republic of South Africa was adopted.²² The fundamental cornerstone of the Constitution is that laws must always be drawn up in conformity with it.²³ Consequently, the Constitution gives and to some extent, its Bill of rights promotes the development of laws that address the erstwhile exclusionary legal system.

2 DEVELOPING THE LAW FOR THE PURPOSE OF TRANSFORMATION

The overview above reveals that various laws were ineffective in transforming the mining sector in South Africa. As already stated, from the year 1993, South Africa began to transform its legal system and economy.²⁴ Therefore the South African mining sector intensively adopted the objectives which were considered human rights based. Ostensibly, the apartheid-era laws were lacking when it came to issues of mining industry's transformation. Accordingly, one of the laws that advocated for the erstwhile mining laws, involved the formulation of the minerals and petroleum resources law, which could address issues that are raised in the background section of this research.²⁵

South Africa's first democratic elections paved the way for the re-formulation of laws that govern mining in South Africa as well as a review of significant sections of laws passed during the pre-democratic era for the future, beginning in 1994.²⁶ Central to the transformation process was the Reconstruction and Development Programme (RDP), which in part intended to transfer certain parts of land to previously marginalised people.²⁷ The RDP played a crucial role in that it supported the transformation of the minerals economy for the benefit of all people in the country.²⁸ The aim was to enable the state to take control of the economy in order to benefit South Africans.²⁹ Naturally, the programme was one of the steps towards the transformation of people's lives in South Africa.³⁰ Further, this initiative or programme was aimed at achieving

19 Khunou "Traditional Leadership and Independent Bantustans of South Africa: Some Milestones of Transformative Constitutionalism beyond Apartheid" 2009 *PELJ* 92–106 <http://www.scielo.org.za/pdf/pej/v12n4/a05v12n4.pdf> (accessed 03-11-2022).

20 Van der Vyver "Nationalization of Minerals Rights in South Africa" 2012 *De Jure* 125–142 <http://www.scielo.org.za/scielo.php?Script=sciarttext&pid=S222571602012000100008&lng=en&tlng=en> (accessed 13-11-2022).

21 National Peace Accord of 1991 <http://www.peaceagreements.org> (accessed 06-10-2019). Convention for a Democratic South Africa of 1991 <https://www.sahistory.org.za/article/convention-democratic-south-africa-codesa> (accessed 06-10-2019) and Record of Understanding of 1992 <https://www.sahistory.org.za/dated-event/record-understanding-agreed-sa-government-and-anc> (accessed 06-10-2019). See also Multi-Party Forum of 1992 <https://zh.unesco.org/dataset/316> (accessed 06-10-2019).

22 The Constitution of the Republic of South Africa, 1996 (the Constitution).

23 *Ibid* s 2.

24 Mosala, Venter and Bain "South Africa's Economic Transformation since 1994: What Influence Has the National Democratic Revolution (NDR) Had?" 2017 *The Review of Black Political Economy* 327–340.

25 See Cawood "The Minerals and Petroleum Resources Development Act 2002: Paradigm Shift in Minerals Policy in South Africa" 2004 *South Afr. Inst. Min. Metall.* 53–64.

26 Jones "Mining in the 1990s" 2003 *South African Journal of Economic History* 118–158 <https://www.tandfonline.com/doi/pdf/10.1080/10113430309511157> (accessed 07-10-2019).

27 Reconstruction and Development Programme 1995(RDP).

28 See Item 1.4.12 of the RDP.

29 Item 4.5.1 of the RDP, 1995.

30 Jones 2003 *South African Journal of Economic History* 127.

equality, fair distribution of resources, and inclusive participation in the economy of the country.³¹ Lastly, it was intended to move the country a step closer to social transformation and economic emancipation of all the marginalised.

Intriguingly, the Mining Chamber of South Africa, now the Minerals Council of South Africa (MCSA),³² was of the view that the system should remain unchanged as it considered the common law and previous legislation progressive.³³ This meant that the minerals policies, beneficiation plans, and rights were to remain unchanged as well, therefore sidelining possible transformation.

The 1994 democratic process of revisiting the mining legal system in South Africa, found strength in the progressive Constitution, which makes provision for the right to equality and the prohibition of unfair discrimination. Additionally, the Freedom Charter of 1955 (FC) was also taken into account when reforming the law into a more equal and democratic legal system,³⁴ as per section 9(2) of the Constitution. Thus, South Africa's minerals law was being developed in line with the significant provisions in the Constitution that address any illegalities that could be perceived as injustices.

2 1 The Transformative Role of the Minerals and Petroleum Resources Development Law

In 1997 and 1998, the Green³⁵ and White Papers³⁶ were adopted respectively, with the aim of transforming the regulation of the mining industry's legal system. The policies proposed here named the state as the conduit of minerals and petroleum resources in South Africa.

In 2000 the Minerals and Petroleum Resources Development Bill was tabled for adoption³⁷ and was passed in 2004.³⁸ The MPRDA responded to the exclusion and challenges that were not addressed in the previous mining legal system. One of the objectives of the MPRDA³⁹ was to adopt initiatives that address and balance social and economic issues such as inequality, employment and inclusive participation, to name a few. As a result, section 100(2)(a) of the MPRDA gave rise to the development of a Mining Charter. It was formulated to offer guidance on the transformation objectives found in sections 2 and 100 of the MPRDA.⁴⁰ For instance, the Mining Charter's primary purpose is to promote the inclusion and economic empowerment of the people of South Africa. Furthermore, the Mining Charter was considered an important tool to accelerate social transformation, economic development and sustainability.⁴¹ Despite these initiatives, mining companies failed to promote the objectives of the MPRDA.⁴² However, the Mining Charter was not emphatic about issues of sustainability and development pertaining the previously disadvantaged, which posed a problem. For instance, during its existence, mining companies failed to comply with percentage target requirements imposed. In later years, the

31 *Ibid.*

32 View of the Chamber of Mines in South Africa 1995.

33 Cawood 2004 *South. Afr. Inst. Min. Metall.* 53–64.

34 The Constitution s 9.

35 Green Paper on a Minerals and Mining Policy for South Africa 1997.

36 White Paper on a Minerals and Mining Policy for South Africa 1998.

37 Draft Minerals and Petroleum Resources Development Bill of 2000.

38 Minerals and Petroleum Resources Development Act 28 of 2002(MPRDA).

39 *Ibid* s 100(2) (a) and (b).

40 Broad-Based Socio-Economic Empowerment Charter of 2004.

41 Page 7 8 No. 26661 GG 13 August 2004.

42 Van Wyk "Mining Industry Fails to Comply with the Mining Charter" <https://www.bizcommunity.com/Article/196/645/128744.html> (accessed 03-11-2019).

Charter was reviewed and replaced by the Mining Charter of 2010. The latter had the same goals but different percentages in ownership in that it required plus one (1) to reach a 26 per cent target.

Section 100(2)(a) and (b) embraces the MPRDA's goal of addressing the past mining legal system and provides that

(a) to ensure the attainment of Government's objectives of redressing historical, social and economic inequalities as stated in the Constitution, the Minister must within six months from the date on which this Act takes effect develop a broad-based socio-economic empowerment Charter that will set the framework for targets and time table for effecting the entry into and active participation of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and minerals resources and the beneficiation of such minerals resources.

(b) The Charter must set out, amongst others how the objects referred to in section 2(c), (d), (e), (f) and (i) can be achieved.

The transformative agenda of the MPRDA ensures that measures are taken to promote the socio-economic rights of the previously marginalised and others who are directly affected.⁴³ The measures provided in section 100 aim to ensure transformation of the mining industry and therefore adherence to policy directives imposed thereunder. This is because the laws must promote the spirit, purport and objects in the Bill of Rights of the Constitution.⁴⁴ As a result, the 2010 Mining Charter aimed to support the empowerment of all people in the country. Furthermore, it seemingly sought to address the inequality gap created by past system of laws.

Furthermore, these Charters were critical in addressing issues pertaining to mining inequalities, particularly those which concerned about minerals ownership and access, by ensuring that meaningful and substantial development for all racial groups took place.⁴⁵ Therefore, the Charters contained nine elements aimed at addressing and redressing imbalances experienced in the mining sector. These elements included for instance, the ownership of minerals and land; procurement and enterprise development; beneficiation; employment equity; human resources development; mining community development; housing and living conditions; sustainable development and the growth of the mining industry; and reporting in terms of monitoring and evaluation. These objectives, as they sometimes are referred to, are incorporated in parts of this research.

The mining industry is considered a progressively regulated economic industry through the MPRDA, however, compliance remains extremely critical.⁴⁶ For instance, the mining industry is still dominated by an elite who actively continue to exploit it mercilessly.⁴⁷ Therefore, this calls for a serious and urgent need to adopt more transformative policies that could address the gaps of social and economic inequalities.

43 See s 100 of the MPRDA.

44 Section 39 of the Constitution.

45 See for example, the case of *Minerals Council South Africa v Minister of Minerals Resources and Another* 2020 4 SA 150.

46 Odeku "Regulation of Mining Activities in South Africa: Prospects, Challenges and Pitfalls" 2015 *Journal of Human Ecology* 33–39 <https://doi.org/10.1080/09709274.2015.11906821>

47 Carvalho "Mining Industry and Sustainable Development: Time for Change" 2017 *Food and Energy Security*; 61–77 <https://onlinelibrary.wiley.com/doi/full/10.1002/fes3.109> (accessed 03-11-2019).

3 SOCIAL AND ECONOMIC TRANSFORMATION OF THE MINING INDUSTRY

3.1 Beneficiation Impact of Minerals Policy in South Africa

Transformation in the mining sector may be achieved through several means. For instance, section 26(1) of the MPRDA obliges the minister to initiate incentives to promote the beneficiation of the minerals in the country, a clear indication of the importance of socio-economic empowerment and development. Beneficiation⁴⁸ is one of the other significant means which requires stringent implementation. This must involve removing the gangue minerals,⁴⁹ an approach that could result in the production of a higher-grade product (concentrate) and a waste stream (tailings).⁵⁰ Beneficiation involves the transformation of a primary material (produced by mining and extraction processes) to a more finished and refined product, with a higher export sales value.⁵¹ In accordance with Robinson and Below findings, “the mining industry has frequently required the development of beneficiated products, and that this requirement has ensured a large and secure domestic market for these products. Such products have been developed in response to the mining industry’s needs, irrespective of the domestic availability of the raw materials”.⁵² From the writer’s point of view, beneficiation is both advantageous and disadvantageous in that it may add value to the economy but may, at times, be offset by a competitive black market. Additionally, Tom agreed that: “beneficiation is the vehicle through which South Africa’s comparative advantage can be transformed into a national competitive advantage”.⁵³ The process of beneficiation involves many aspects that could promote inclusive economic participation, including large-scale, capital-intensive activities such as smelting and sophisticated refining plants, labour-intensive processes such as craft jewellery, metal fabrication and ceramic pottery. The full implementation of these can enable a state to create jobs for many people, including mining communities which were previously marginalised.⁵⁴ Additionally, it is undeniable that economies can be improved through the buying of manufactured, polished and finalised minerals products.⁵⁵ Eventually, this will bring major significant changes and transformation to the economy and many people’s lives.

3.2 The Transformative Role of the Mining Charters

Since the adoption of the Broad-based Socio-economic Empowerment Charter in 2004 and the subsequent Revised 2010 mining Charter, there have not been significant changes in the human resources development capacity of the mining companies. The Revised 2010 Mining Charter sought to ensure that proper representation of previously disadvantaged people is implemented, however this seemed unattainable. Failure to meet the target was attributed to self-imposed compliance targets other than what were recommended by the policy. As a result, this has had a negative effect on the development of a policy, which led to people still being

48 Mahupamelo and Magaseng “Beneficiation of Marble from Griekwastad, Northern Cape Province” 2014 *South. Afr. Inst. Min. Metall.* 95 <https://www.saimm.co.za/Journal/v114n11p951.pdf> (accessed 02-11-2019).

49 These are for instance minerals such as garnet, biotite, hornblende, pyroxene, hematite, magnetite, tourmaline, topaz, apatite, and scapolite; and all relating to quartz.

50 Department of Minerals Resources Beneficiation Economics 2007/8 <https://www.dmr.gov.za/minerals-policy-promotion/beneficiation-economics> (accessed 05-11-2019).

51 *Ibid.*

52 Robinson and Below “The Role of the Domestic Market in Promoting the Beneficiation of Raw Materials in South Africa” 1990 *JS A Inst Min Metal* 92–93.

53 Zonwabele Analysis of the Key Factors Affecting Beneficiation in South Africa (Research Report, University of the Witwatersrand, 28 October 2015).

54 Rossouw and Baxter “Subject Concepts and Issue Outline” 2011 *South. Afr. Inst. Min. Metall.* 511–516 .

55 Rabe “A Simple Framework for Developing a Concept Beneficiation Flow Sheet” 2014 *South. Afr. Inst. Min. Metall.* 547–558 <http://www.scielo.org.za/pdf/jsaimm/v114n7/12.pdf> (accessed 05-11-2019)

excluded. Interestingly, in 2015 the then Minister of Minerals Resources, Ngoako Ramatlhodi, assessed both the 2004 and 2010 Charters.⁵⁶ In his assessment he investigated the objectives of the Charters⁵⁷ and found that most mining companies were not fully compliant,⁵⁸ although the investigation revealed some positives, such as that a significant number of rights holders met certain targets, firstly, 26 per cent ownership in terms of the 2010 mining Charter in 2014 while economic participation remained negligible. Second, better housing and living conditions of miners had improved significantly. This indicated that mining companies were partly adhering to calls to promote sustainable development and compliance with targets which had been imposed lawfully.⁵⁹ Third, social corporate responsibility required mining companies operating or conducting mining activities in mining communities to prioritise social and economic development of the communities, partly through the provision of certain services that the mining communities lacked. The legislature considered this aspect as a prerequisite for granting mining rights. The minister's assessment report showed that a significant number of communities around the mining operations were still living in poor conditions.⁶⁰

Following the findings and recommendations made on the Ministry's 2015 Assessment Report, a new revised Broad-Based Black-Economic Socio-Empowerment Charter for the South African mining industry was tabled. It was referred for consultation in 2017 and later gazetted as the new Mining Charter in 2018.⁶¹ The 2018 Charter aims to accelerate social and economic transformation through fast-tracking what the 2004 and 2010 mining Charters could not maintain. While the 2018 Charter did not suggest that the 2004 and 2010 Mining Charters had no transformative *impetus*, it was considered a new tool to radicalise transformation in the mining industry.⁶² This Charter aimed to review the incompetency identified in the 2004 and 2010 mining Charters.⁶³ To some extent, when the Broad-Based Black Economic Empowerment Act 53 of 2003 (BBBEE Act) was enacted, it made provisions for the empowerment of all people.⁶⁴ The BBBEE Act aimed at eradicating inequalities caused by the colonial and apartheid unjust and discriminatory laws, something the mining Charters must emulate to ensure that this is achieved.

The 2018 Charter brought out new targets⁶⁵ of socio-economic transformation which touched on issues of ownership. This means that holders of mining rights are supposed to comply with or transfer rights from shareholding rights of 26 to 30 per cent, so as to comply with the percentage requirement imposed for ownership. With regard to acquiring new prospecting rights and mining rights, holders need to have 50 per cent plus 1 and 30 per cent of that should be through black empowerment. This is envisaged to increase opportunities for the previously excluded, mainly vulnerable and marginalised groups in South Africa. Therefore, the 2018 Charter sought to change the *status quo*. In essence, it is considered as a tool for socio-economic transformation,

56 Ramatlhodi "On Compliance with the Mining Charter" 2015 <https://www.politicsweb.co.za/politics/on-compliance-with-the-mining-charter--ngoako-rama> (accessed 03-04-2022).

57 Sibindi and Ndlovu 2024 "Leadership Coaching and Transformation in the South African Mining Sector" 2024 *JLO* 52.

58 *Ibid.*

59 *Ibid.*

60 *Ibid.*

61 Broad-Based Black-Economic Socio-Empowerment Charter of 2018.

62 <https://www.da.org.za/2017/06/bokamoso-new-mining-charter-radical-economic-transformation-action>. (accessed 04-06-2024).

63 See Clause 27 and 2.14 Broad-Based Black-Economic Socio-Empowerment Charter of 2018.

64 Rungan, Cawood and Minnit "Incorporating BEE Into the New Minerals Law Framework for the South African Mining Industry" 2005 *South. Afr. Inst. Min. Metall.* 735–744 <http://saimm.org.za/Journal/v105n10p735.pdf> (accessed 05-04-2022).

65 Broad-Based Black-Economic Socio-Empowerment Charter (2018) 7–26.

and development, meant to eradicate marginalisation practices. In light of the above, this paper embraces, amongst many aspects, the previous Mining Charters imperatives to accelerate socio-economic transformation and social development in the South African mining industries and communities. After the attainment of democracy, South Africa must make serious comparisons with other progressive countries with more developed mining industries, such as Australia and Canada.

4 CHALLENGES WITH MINING LAW AND POLICY DEVELOPMENT

The apartheid system created an unequal society in South Africa regarding access to and benefit from the mining industry.⁶⁶ Accordingly, in years after the dawn of democracy, the economy remains in the hands of the minority while the majority remain poor and marginalised.⁶⁷ Since 1994, various initiatives including the Mining Charters were introduced to address imbalances and achieve equal and fair opportunities for marginalised groups such as women, thus promoting gender equality in mining.⁶⁸ However the implementation of equality in the administration of mining processes through Mining charters faced challenges, chief amongst them being that stakeholders, government, and mining companies who seem to implement it through fronting and inflation of targets in order to meet the objectives and the requirements under the MPRDA.⁶⁹ Such practices meant that the MPRDA could not achieve its desired objectives such as acceleration of socio-economic transformation and a meaningful participation in mining. South Africa has attempted to achieve transformation, although the results were unsatisfactory. The progress made at the time included having the old minerals legislation replaced with new minerals legislation and policies such as the MPRDA and the Mining Charter.⁷⁰

South Africa's minerals and petroleum resources are considered common assets belonging to all citizens,⁷¹ but majority still do not benefit from their exploitation because of the elite few who benefitted from previous common law legislation.⁷² It is interesting that most government policies adopted during negotiations excluded the majority and benefited only the few exclusive elites, despite the fact that almost all mines are situated in rural mining communities.⁷³ To date, these rural mining communities experience deteriorating infrastructure and a lack of social assistance,⁷⁴ which renders 90 per cent of the black majority vulnerable, compared to the 10 per cent exclusive elites. In a recent court judgement, the transformative role of the Mining Charters was in the spotlight as the 2018 Mining Charter was declared a just legal instrument

66 Polus, Kopiński and Tycholiz "Reproduction and Convertibility: Examining Wealth Inequalities in South Africa" 2021 *Third World Quarterly* 292–311 <https://www.tandfonline.com/doi/pdf/10.1080/01436597.2020.1800450> (accessed 06-04-2022).

67 Schlemmer, Lawrence and Møller "The Shape of South African Society and Its Challenges" 1997 *Social Indicators Research* 15–50 <https://www.jstor.org/stable/pdf/27522256.pdf> (accessed 03-11-2022).

68 April "An Analysis of the Minerals and Petroleum Resources Development Act 28 of 2002, and the Nationalisation of Minerals Debate in South Africa" 2012 *Africa Insight* 122.

69 The MPRDA s 2(a) (h).

70 *Ibid* ss 100(1) and (2)(a) and (b).

71 *Ibid*.

72 Berman and Abdollahian "Negotiating the Peaceful Expansion of the South African Electorate" 1999 *Journal Conflict Resolution* 234 <https://journals.sagepub.com/doi/pdf/10.1177/0022002799043002007> (accessed 13-11-2022).

73 Berman and Abdollahian "Negotiating the Peaceful Expansion of the South African Electorate" (1999) 229–244.

74 Shackleton "Loss of Land and Livelihoods From Mining Operations: A Case in the Limpopo Province, South Africa" 2020 *Land Use and Policy* 104825.

as opposed to subordinate legislation, was perceived so by the state.⁷⁵ This does not mean that the state should no longer apply Mining Charters as policy guidelines, it simply means that they cannot be enforced in the same manner as the MPRDA. This remains a problem because mining companies are still non-compliant under the MPRDA.

5 LITERATURE REVIEW OF MINING LAW TRANSFORMATION

5.1 Scholarly Contributions

The South African mining sector rarely addressed social and economic development satisfactorily.⁷⁶ Some scholars have reviewed and identified the stages of mining law and policy development and painted a clear picture of how this sector could be transformed,⁷⁷ the most important stage being where law and policy were reviewed to assist in meeting the social needs of the South African population.⁷⁸ After the advent of democracy, the South African government received many applications for minerals rights.⁷⁹ These minerals rights applications came in as a result of the introduction of the MPRDA and its regulations under Schedule 2 which required that old minerals rights holders must convert their rights to be regulated by the MPRDA. Applicant mining companies were required to have their social and labour plans (SLPSs) submitted.⁸⁰ This was necessary to foster transformation and national and international respect for the industry as well as the promotion of human rights for attracting investment.

For one to be granted a mining right to minerals, a competing submission of a SLP detailing how one aims to tackle socio-economic development and transformation, is crucial.⁸¹ Mining companies operating in South Africa must conduct “social licensing” within the various mining communities in which they wish to operate in order to obtain informed consent.⁸² Therefore, they have to agree in principle to address the issues and needs raised by the communities.⁸³ This must be a strict requirement before any right can be granted. For instance, an applicant mining company must comply with the environmental laws and regulations, amongst others during the application of minerals rights or permits.⁸⁴

According to Moraka and Van Rensburg,⁸⁵ mining Charters are the most effective tools or

75 *Minerals Council of South Africa & Others v Minister for Minerals Resources and Energy and Another* 2022 1 SA 535 (GP) para 59. See also Veeran *et al.* “2018 Mining Charter is Policy, not Law” 2021 *South. Afr. Inst. Min. Metall.* vii–viii <http://www.scielo.org.za/pdf/jsaimm/v121n9/03.pdf> (accessed 13-11-2022).

76 Lane *et al.* “Tough Choices Facing the South African Mining Industry” 2015 *South. Afr. Inst. Min. Metall.* 471–479 <http://www.scielo.org.za/pdf/jsaimm/v115n6/06.pdf> (accessed 13-11-2022).

77 Muzoroza “Mining Law and Policy: A Comparative Analysis of South Africa and Zimbabwe’s Mining Laws and Policy Regimes” (LLM dissertation, Centre for Human Rights, Law Faculty, University of Pretoria, 2010) 1–86.

78 Wälde “Mining Law Reform in South Africa” 2002 *Minerass & Energy – Raw Materials Report* 10–17 <https://www.tandfonline.com/doi/abs/10.1080/14041040209362577?journalCode=smin2> (accessed 13-11-2022).

79 Stoddard <https://www.dailymaverick.co.za/article/2024-01-14-exclusive-over-2500-sa-mining-applications-not-one-finalised/> (accessed 04-06-2024).

80 Van Der Walt and Marais “Implementing Social and Labour Plans in South Africa: Reflections on Collaborative Planning in the Mining Industry” 2021 *Resources Policy* <https://www.sciencedirect.com/science/article/pii/> (accessed 13-11-2022).

81 *Ibid.*

82 The MPRDA s 10.

83 The Interim Protection of Informal Land Rights Act 31 of 1996 s 2.

84 *Maccsand (PTY) Ltd v City of Cape Town* 2012 4 SA 181 (CC) paras 12–13.

85 Moraka and Van Rensburg “Transformation in The South African Mining Industry – Looking Beyond the Employment Equity Scorecard” 2015 *South. Afr. Inst. Min. Metall.* 669–677 <http://www.scielo.org.za/pdf/jsaimm/v115n8/05.pdf> (accessed 14-11-2022).

policies effecting transformation of the mining industry. Accordingly, government and industry role players regard them as priorities. However, evidence shows that transformation in the mining industry is at best, unreliable.⁸⁶ Cawood⁸⁷ explained the aspect of development and transformation by referring to the developmental stages of transformation in the mining sector before and after the apartheid era. Cawood explained that

the current system of minerals rights prevents the optimal development of mining and the appropriate use of urban land. We must seek the return of private minerals rights to the democratic government, in line with the rest of the world. This must be done in close collaboration with all stake-holders.⁸⁸

The author further highlighted the importance of South Africa's history in socio-economic development and the attempts made to empower and uplift the marginalised. Furthermore, the author stated that it is imperative for the state to oversee all minerals and petroleum resources in order to be able to address and solve the issues. Kloppers and Du Plessis⁸⁹ agreed with the approach of mining charters, which indicated that the state must play a role in facilitating transformation in the mining industry.

South Africa's mining industry is a tool for economic development; however, it is concerning that it is still remained migrant-dominated. Badenhorst⁹⁰ noted that transformation could be another way of creating employment, which is one of the goals in the MPRDA in the mining industry, and which will have a social impact that cannot be ignored. Badenhorst emphasised the importance of having mining companies operating in rural or remote areas because of the potential to create employment that could help meet social needs of the host communities. He further noted that "as a rule of thumb, for every one person employed in the mining industry, eight to ten people benefit economically from such employment".⁹¹

Employing locals also meant that their immediate families are provided for, with the state benefitting from taxation, thus improving the collection of revenue and the economy. Transformation in the mining industry is a key objective of the development of mining law in the democratic era. The targets imposed by the 2018 Charter are part of the agenda for transformation. In 2017 the Minister of Minerals Resources, Mosebenzi Zwane, adopted a corrective approach to ensure that the mining Charter is implemented properly to empower the previously marginalised.

Some scholarly studies align the desired mining sector's transformation with the Fourth Industrial Revolution. According to Zulu, Pretorius and Van Der Ligen,⁹² it is "most important to note that digital transformation is viewed differently by different companies, as it is a significant function of each company's vision, level of maturity, and strategic direction".⁹³ This usually helps mining companies to align their technologies towards maintaining good governance, reshaping all operations, productions and management.⁹⁴ Moreover, Reene Horne, in dealing with patterns

86 Mitchell "Making Sense of Transformation Claims in the South African Mining Industry" 2013 *South. Afr. Inst. Min. Metall.* 29–43 <http://www.scielo.org.za/pdf/jsaimm/v113n1/08.pdf> (accessed 14-11-2022).

87 Cawood 2004 *South. Afr. Inst. Min. Metall.* 53–64.

88 *Ibid* 54.

89 Klopper and Du Plessis "Corporate Social Responsibility, Legislative Reforms and Mining in South Africa" 2018 *Journal of Energy and Natural Resources Law* 107 <https://doi.org/10.1080/02646811.2008.11435179>

90 Badenhorst "The Mining Charter" <https://journals.co.za/doi/pdf/10.10520/EJC49613> (accessed 30-05-2023).

91 *Ibid*.

92 Zulu, Pretorius and Van der Ligen "The Strategic Competitiveness of the South African Mining Industry in the Age of the Fourth Industrial Revolution" 2021 *South African Journal of Industrial Engineering* 190 <http://www.scielo.org.za/pdf/sajie/v32n3/17.pdf> (accessed 30 May 2023).

93 *Ibid*.

94 Zulu et al. 2021 *South African Journal of Industrial Engineering* 187.

of empowerment and disempowerment in the mining sector, mentioned that “the degree of transformation in ownership transfer has seen gains for only a few South Africans. The bone of contention is that economic empowerment policies such as the mining Charter, ‘sought to end the situation in which the historically dominant mining houses stockpiled minerals rights’”.⁹⁵

Therefore, Horne was concerned also with the slow implementation of the Black Economic Empowerment policy in the mining industry that was characterised by paternalism, especially towards those who were previously marginalised by the apartheid system. Furthermore, Diale aligned her discussion with the aspect of corporate social responsibility (CRS) in which she mentioned that “transformation process of the South African mining industry is an on-going process due to the magnitude of injustices caused and perpetuated by both the colonial and apartheid experiences. The history and rationale for such process is well documented and literature is abounded”.⁹⁶ On the other hand, the discussion focused on the role and scope of business in assisting to attain the transformation required, as opined by other writers. Thus, in accordance with Brabrinde

this relates to the role that the business community has played to propel and benefit from the apartheid system, their reaction and attitudes towards the new process of democratising and; promoting responsible business practices and the measures thus far taken by the State to enhance the realization of socio-economic and sustainable development.⁹⁷

Goodman, Rajagpaul and Cassim⁹⁸ posit that South African mining can be competitive, grow, and transform if four fundamental pillars are observed: unleashing productivity revolution; redefining socio-economic roles of mines; embracing the energy disruptions; and unlocking high potential performing mining assets. Also, they identified certain challenges that needed to be addressed. They noted that all stakeholders need to mobilise towards a vision of a renewed mining industry that would remain a primary engine for growth, job creation and broader economic development welfare in South Africa. So, the collective embracement of the MPRDA and its initiatives is critical for the development of the mining sector in South Africa. There must be a desire to foster enforcement and compliance from all the role players.

According to the Mining Economy Report (MER) of 2013 and historically, South Africa’s mining industry has been at the heart of the economy’s development given the country’s competitive position as one of the most naturally resource-rich nations in the world.⁹⁹ The other notable aspect which needs transformation is gender issues in the mining industry. According to Swart, the MPRDA plays an important role in fostering that. Swart perceives the MPRDA as a huge milestone in the holistic transformation of the South African mining sector. The Act reiterates the state’s commitment to facilitate the equitable access of the country’s minerals wealth to all South Africans, through the eradication of discrimination. As a constitutionally confirmed custodian of the nation’s minerals and petroleum resources, the state is empowered

95 Horne “Empowerment and Disempowerment in the South African Mining Sector” 2017 *African Review of Economics and Finance* 7–8 <https://www.ajol.info/index.php/aref/article/view/162142> (accessed 30-05-2023).

96 Diale “Corporate Social Responsibility in the South African Mining Industry: Necessity, Conformity or Convenience?” 2014 *International Journal of Business and Economic Development* 19–24 https://ijbed.org/cdn/article_file/i-4_c-35.pdf (accessed 30-05-2023).

97 Babarinde “Bridging the Economic Divide in the Republic of South Africa: A Corporate Social Responsibility Perspective” 2009 *The International Business Review* 355–368 <https://onlinelibrary.wiley.com/doi/pdf/10.1002/tie.20272> (accessed 30 May 2023).

98 Goodman *et al.* “Putting the Shine Back into the South Africa Mining: The Path to Competitiveness and Growth” 2019 (mckinsey.com) (accessed 30-05-2023).

99 Antin “The South African Mining Sector: An Industry at a Crossroads” 2013 *Economic Report of South Africa* https://southafrica.hss.de/fileadmin/user_upload/Projects_HSS/South_Africa/170911_Migration/Mining_Report_Final_Dec_2013.pdf (accessed 30-05-2023).

under this Act in its effort to redress the results of past racial discrimination. It sets out expressly the process and procedures of how the historically disadvantaged persons (such as women and communities affected by mining operations) will be accommodated in the distribution of wealth. More so, included in the goals is to substantially and meaningfully expand opportunities for them.¹⁰⁰ Ideally, the aim of the Act is to see the inclusion of women in active participation and for them to benefit from the nation's natural resources. In other words, the inclusion of women should not be merely about the increased number of women joining the industry but also about their actual progress. Thus, section 2(f) aims at promoting employment and advancing the social and economic welfare of all South Africans, women included.¹⁰¹

In other words, the MPRDA is seen as the only major tool to compel feasible and holistic transformation of the South African mining industry. It is therefore a measure of facilitating people's access and contribution to the country's minerals wealth and economy. Therefore, the transformative role of the MPRDA is critical to also influence other legislative frameworks necessary to play innovative and efficient roles in expanding opportunities for all.¹⁰²

5.2 Legislative Contributions

The Mines Health Safety Act 29 of 1996 (MHSA) ranked among the most important laws which sought to balance the mining sector's health and safety standards as well as to improve housing and living conditions. The MHSA ensures protection and safety of mine employees and assures compliance with the health and living standards of miners and other persons. The law shares a common purpose with section 27 of the Constitution of 1996, which is to create a democratic society aimed at achieving social balance with socio-economic benefits.¹⁰³ The MHSA safeguards the health and safety interests of miners and persons in the mining sector by involving state participation. This law brought about important transformation that conformed to the objects of the Bill of Rights in the Constitution of 1996 and the MPRDA. The Constitution¹⁰⁴ supports the idea of infrastructural development in the mining sector, in that mining companies should improve the housing and living standards of mining communities, particularly where their mining operations have a negative impact. A recent news report highlighted the activities of mining companies which close their operations without adhering to rehabilitation compliances, as imposed by the MPRDA, causing mining communities to be vulnerable.¹⁰⁵ However, the existence of illegal mining carried out by crime syndicates cannot be ignored and is a significant

100 The MPRDA s 2.

101 Swart "The South African Legislative Framework for Mine Closure" 2003 *South. Afr. Inst. Min. Metall.* 489–492 <https://www.saimm.co.za/Journal/v103n08p489.pdf> (accessed 30-05-2023).

102 Shongwe and Reid "Where to From Here? Considerations Following the 2023 MPRDA Review Summit Regarding the Objects of Transformation Policy" <https://www.cliffedekkerhofmeyr.com/news/publications/2023/Practice/Corporate/Corporate-and-commercial-alert-16-August-where-to-from-here-considerations-following-the-2023-mprda-review-summit-regarding-the-objects-of-transformation-policy> (accessed 21-07-2024).

103 Fényes "The ANC and Its Leaders" in Esterhuyse and Nel (eds) *Development Southern Africa* (1991) 551–553 <https://www.tandfonline.com/doi/pdf/10.1080/03768359108439617> (accessed 30-05-2023).

104 The Constitution s 26.

105 An amended section 5A of the MPRDA provides as follows: "No person may prospect for or remove, mine, conduct technical co-operation operations, reconnaissance operations, explore for and produce any minerals or petroleum or commence with any work incidental thereto on any area without—(a) an environmental authorization;) (b) a reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right or production right, as the case may be; and (c) giving the landowner or lawful occupier of the land in question at least 21 days written notice."

detriment to the the country's economy.¹⁰⁶

The Constitution emphasises the need for social development, which are embraced in the Bill of Rights. First, the mining companies must attend to the human rights of miners with regard to housing, proper health care services, food and social security.¹⁰⁷ Section 100(2) of the MPRDA gives full effect to the fundamental socio-economic needs that are seen as important tools to be adopted by the Mining Charter once developed. Furthermore, the MPRDA recognised the rights of previously disadvantaged South Africans to be recognised and communities to be afforded preference when exploitation of minerals resources is carried out.¹⁰⁸

The MPRDA recognises the principle that “the minerals wealth of South Africa is part of the common heritage of the people of South Africa and as such should benefit from it”.¹⁰⁹ This means that the old system or private ownership under common law and legislation has been changed and therefore giving the state power to be the conduit on behalf of South Africans. The National Environmental Management Act 107 of 1996 (NEMA) and National Environmental Management Amendment Act 62 of 2008 (NEMAA), recognised the need for the rehabilitation and management of the environment where mining operations take place. Mining companies ought to adopt measures¹¹⁰ to ensure that there is no degradation of the environment, because it would defeat the purpose of development and cause harm to immediate and vulnerable mine communities. Land or the environment ought to be properly managed to preserve it for future generations and must not be used in a way that infringe upon the rights of the communities in which these mines operate. The aim was to use the land in a way that it can be rehabilitated for future use and form part of sustainability measures. Both the NEMA and the MPRDA are very important laws which must not be isolated. Both laws require that the government enforce strict compliance and impose penalties for failure to comply.

The BBBEE Act emphasises that black people in the country must be empowered to ensure fair economic, social, and cultural development. Even though some black people benefited under apartheid, they formed an elite part of that population. Transformation must be guided by clear legislation, targets and objectives, the purpose being to reinforce democracy and achieve a non-racial society. The BBBEE Act also supported the notion of empowering the previously disadvantaged and therefore create incentives for business to participate in social economic development.

Mining companies must always comply with the Employment Equity Act 55 of 1998 (EEA) and the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) which ease compliance with inequality and discriminations. The purpose of this legislation can be understood better in relation to human resources and the creation of employment. These laws are there to deal with complaints in relation to unfair discriminations and inequalities. To solve rising problems, mining companies need to comply with EEA and the PEPUDA amongst other laws to complement the objectives in section 2 of MPRDA. Both the laws gave effect to section 9 of the Constitution of 1996. Migrant labour and employment inequality associated with mining companies do not assist in achieving the required affirmative action measures.¹¹¹ In general, mining companies are reluctant to commit and spend money on communities where

106 Martin “The Dark World of Zama Zamas” https://www.parliament.gov.za/storage/app/media/Pages/2022/7-August/8-08-2022/Ministerial_Briefing_Illegal_Mining (accessed 29-04-2024).

107 The Constitution s 27.

108 The MPRDA s 100 (2) (a).

109 *Ibid* s 2.

110 The NEMA 107 of 1998 s 28.

111 *Ibid*.

they mine.

It is noteworthy that several considerable challenges to achieve transformation still exist. Most mining companies fail to comply with the goals of the MPRDA, aimed at accelerating social development and sustainability in the sector through their policies. Second, they fail to establish mechanisms for assessing qualifications, skills, and experiences of employees required. Third, the senior management of the mine companies fail to adhere to employment equity plans, particularly those concerned with the employment of black African females. Finally, the procedure to select suitable candidates from local communities is flawed and problematic.¹¹² Unless these problems are addressed, the ownership and shareholding targets in the mining companies may not be achieved.

5.3 Contributions through the Judiciary

South African courts have always been persuaded to determine the relevance of transformation in the mining industry for the purpose of growth, development, and sustainability. The courts have always emphasised this as critical for the mining companies to consider the provisions of MPRDA and other related legislation to promote socio-economic stability of those surrounding them, working for them and also emphasised the need for economic development as an important aspect of transformation. For instance, if a community owns land and a company would want to mine on it, compliance with the MPRDA and NEMA is critical.¹¹³ The state, which grants such rights, must be able to ensure that the owners are engaged and where possible, compensated for the land needed for mining purposes. This is significant because it fulfils the aspects of consultation and consent as required under the MPRDA.

In *Msiza v Director-General, Department of Land Affairs and Others*,¹¹⁴ in deciding proper compensation for the owner of the land, the court remarked that “in terms of the Land Reform Act 3 of 1996 (LRA), the owner of the affected land shall be entitled to just and equitable compensation as prescribed by the Constitution”.¹¹⁵ In the past, before the adoption of the Constitution of 1996, the LRA, NEMA and other valuable legislation and instruments such as the 2004 mining charter allowed the expropriation of land from lawful owners without just and equitable compensation, resulting in the dispossessed being poor and marginalised.

In the *Bareki v Gencor Ltd and Others*,¹¹⁶ the court had to address the interpretation of section 28 of the NEMA. The court had to decide whether penalties must be imposed retrospectively or proactively when determining the rights of the people affected. The NEMA was passed as a result of section 24 of the Constitution of 1996 which bears reference to protection of and compliance with environmental rights. By abiding with the Constitution of 1996, the MPRDA and NEMA, mining companies promoted a social and sustainable culture of transformation and at the same time the rights of the people affected were protected. Mines have a duty to regularly rehabilitate their operations in order for them not to transgress the terms and conditions under

112 Moraka and Van Rensburg “Transformation in the South African Mining Industry – Looking beyond the Employment Equity Scorecard” 2015 *South. Afr. Inst. Min. Metall.* 673–674.

113 Section 25 provides that “(1) no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property. (2) Property may be expropriated only in terms of law of general application — (a) for a public purpose or in the public interest; and (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court”.

114 *Msiza v Director-General, Department of Land Affairs and Others* 2016 5 SA 513 (LCC).

115 The Constitutions 23.

116 *Bareki and Another v Gencor Ltd and Others* 2006 1 SA 432 (T).

which their rights had been granted in terms of the MPRDA.

In *Minister of Minerals Resources v Mawetse (SA) Mining Corporation (Pty) Ltd*¹¹⁷ the court emphasised the importance of complying with laws concerning black economic empowerment (BEE) when applying for rights in terms of the MPRDA section 2(d). Secondly, when rights are sought, they ought to be awarded lawfully. In other words, before any mining rights can be granted consideration must be given to historically marginalised people.¹¹⁸

In *Agri South Africa v Minister for Minerals and Energy*¹¹⁹ the court had to determine if indeed there was expropriation and if so, interrogate the significance of a just and equitable compensation. The court had to decide whether the historical owners of minerals land needed to be consulted and possibly be given first preference whenever their rights were transgressed. Thus, the unlawful deprivation of land from the owners need to be urgently addressed so that the historical owners can participate equally and fairly in the transformation process. This approach was also supported in *Bengwenyama Minerals (Pty) Ltd v Genorah Resources (Pty) Ltd*.¹²⁰ It is critical when dealing with minerals law, to understand that South Africa has a history of great oppression where most people were the victims of these injustices and violation of rights.

The case law above is very clear when rights are sought. First consideration must be given to those previously marginalised in situations where they are directly affected. For instance, the MPRDA stipulated that the historically disadvantaged have the right to be consulted, and thus able to reach an informed decision to grant consent.¹²¹

6 CONCLUSION

The MPRDA is an important piece of legislation in the history of South Africa. It fosters transformation and has always intended to move away from the previous oppressive and discriminatory setting, in that minerals and petroleum resources are now considered the common heritage of the people of South Africa. There is a significant emphasis on the intention to create employment and to assist historically disadvantaged South Africans, to realise their potential and participate sustainably and meaningfully in the minerals sector. Furthermore, the intention of this legislation and its supporting instruments such as the mining charters is critical in creating a platform for equality and empowerment, more especially for black women and youth. This legislation is seen to be the best tool to bring about transformation by offering the means to alleviate poverty and to liberate previously disadvantaged South Africans. Mines in South Africa are moving towards maintaining acceptable standards of social and corporate responsibility in uplifting the lives of the mining communities. The submission of and compliance with SLPs must strictly meet the requirements for minerals rights and permit applications. However, most mining companies still do not comply with the SLPs and this remains a critical issue that the state must address. South Africa needs to develop strict and stringent minerals policies to support the MPRDA functioning so that there is synergy between other applicable laws and policies.

The state is tasked to ensure that previously disadvantaged people in South Africa are assisted to access the minerals wealth of the country. This must be done during the application of rights, permits or licenses. The MPRDA ensures that there are benefits for people whose land are exploited for minerals and petroleum resources, for sustainability purposes. Therefore, it is imperative to note the relevance of mining charters and what they intend to achieve when

117 *Minister of Minerals Resources v Mawetse(SA) Mining Corporation(Pty) Ltd* 2015 6 SA 306 (SCA).

118 The MPRDA ss 12 and 104.

119 *Agri South Africa v Minister for Minerals and Energy* 2013 4 SA 1 (CC).

120 *Bengwenyama Resources v Genorah Resources* 2010 JDR 1446 (CC).

121 The MPRDA s 10.

dealing with transformation. Basically, the development of mining law depends on the progress made by both state and mining companies in eliminating bad practices and preventing them from perpetuating. For instance, and to date, mining companies have disregarded the applicable law in their quest to obtain minerals rights. Communal landowners or lawful occupiers are significantly affected by these practices due to lack of clear policy and directives from the state.

Although the South African mining industry remains a critical sector that boost the economy, this research has shown that transformation can carry too many challenges. The industry's role players such as mining companies are unsupportive and reluctant to engage in the transformation agenda, meaning that they are not willing to transform.¹²² It is clear therefore that transformation requires open national dialogue. Not only are mining policies crucial for this task, but the urgent and imminent need for transformation policies in addition to the current ones, is critical. Thus, the continued ignorance of the urgent desired interventions by government will lead to insurmountable problems in the future.

122 Moraka and Van Rensburg 2015 *South. Afr. Inst. Min. Metall.* 677.