

CHAPTER THREE
**TRANSFORMATION AND EQUALITY IN THE LABOUR FORCE:
THE SOUTH AFRICAN STATUTORY AND REGULATORY
FRAMEWORK**

3.1 INTRODUCTION

The previous chapter provided the theoretical basis for the study. Feminist theories were scrutinised to provide an understanding of the origins and implications of gender inequality in society in general, and the workplace specifically, as feminists have been mainly responsible for developing theories of gender inequality. Furthermore, various issues that women experience in the workplace globally were outlined and discussed. This chapter provides the South African statutory and regulatory framework to address inequality in the labour force in general and the mining sector specifically.

The South African political and legal systems were based upon the apartheid system from 1948 until 1990. The regime followed a philosophy of separate racial development, underwritten and enforced by white minority governments. During the late eighties, the government of the day agreed to negotiate a new democratic constitution after an extended period of international political pressure and economic sanctions against South Africa's policies. Nelson Mandela was released from prison in 1990 and elected as South Africa's first democratic president in May 1994.

The new political dispensation also brought about significant transformative socio-economic changes post-1994. Nearly every sector in the country was transformed and reshaped, including the mining sector. The vision of the new regime, the African National Congress (ANC), was to "transfer power to the people and transform society into a non-racial, non-sexist, united, democratic one, and change the manner in which wealth is shared, in order to benefit all the people" (ANC, 2007).

Accordingly, a number of laws were passed by the South African government in order to support their constitutional commitment to transform the country. The newly elected democratic government also introduced major gender-sensitive policies and practices to reshape the socio-economic framework of the country and to normalise society and the workplace and, in so doing, promote a sense of equity and justice in the country.

This chapter provides the legislative framework for the transformation process of the total labour workforce of South Africa, with the mining sector as primary focus. Legislation aimed at redressing previous inequality and discriminatory practices of the past is placed in context. The legislative framework is discussed in three sections. Firstly, attention will be given to the Constitution of South Africa as it leads the way to the reformation of existing legislation as well as the development of new legislation in its attempt to remove inequalities and discriminative practices of the past. Secondly, the new labour legislation framework is discussed, as it had a significant impact on the process of achieving equality of the total workforce of South Africa, including the mining sector. Thirdly, an overview of 'old' and 'new' mining legislation is given with specific reference to the employment and development of women in the mining sector.

3.2 GOVERNMENT LEGISLATION AND REGULATORY FRAMEWORKS

As indicated, South Africa's past was characterised by discrimination with regard to race, gender and disability in terms of opportunities for education, employment, promotion and wealth creation. The newly elected democratic government initiated a number of actions to redress these injustices of the past. The following legislation (Figure 3.1) was introduced, and leads the way to transformation of the total labour workforce of South Africa, including the mining sector.



Figure 3.1: Drivers for transformation of the South African mining sector

Source: Constructed by author (2013)

3.2.1 The Constitution of the Republic of South Africa

The Constitution of the Republic of South Africa was signed by President Nelson Mandela on 18 December 1996 and was implemented on 4 February 1997. South Africa's Constitution is the supreme act of the country and therefore the provisions of all South African statutes must conform to the basic principles contained in the Constitution. The implication is that Parliament as well as all private and public sectors are all subordinate to the Constitution. Therefore, sovereignty no longer belongs to Parliament but resides in the Constitution, and hence the Constitutional Court has the authority to overrule Parliament (Nel *et al.*, 2009:75).

The preamble of the Constitution (RSA, 1996a:1243) entails the following:

- It recognises the injustices of the past.
- It honours those who suffered for justice and freedom.
- It respects those who have worked to build and develop the country.
- It states that South Africa belongs to all who live in it.

The Constitution (RSA, 1996a:1243) has the following main objectives:

- To heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights
- To lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law
- To improve the quality of life of all citizens and free the potential of each person
- To build a united and democratic South Africa.

The Bill of Rights is an important component of this Constitution and outlines the fundamental rights afforded to all South Africans. According to Chapter Two of the Constitution (RSA, 1996a:1245), the people of South Africa have the following rights:

- The right to equality. It states that all must be equal before the law and all are entitled to equal protection of the law. Section 9 (2–5) further states that:

- (2) Equality includes the full and equal employment 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.
 - (3) The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
 - (4) No person may unfairly discriminate, directly or indirectly, against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
 - (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.
- The right to freedom of conscience, religion, thought, belief and opinion
 - The right to freedom of expression
 - The right to assemble, to picket and demonstrate with others peacefully and unarmed and to present petitions
 - The right to freedom of association
 - The right to freely engage in economic activity and to pursue a livelihood anywhere in the national territory
 - The right to fair labour practices
 - The right to use the language and to participate in the cultural life of his or her choice.

From the above, it is evident that government intended to remove any discrimination existing from the past and lay the foundation for a democratic society. Great emphasis was placed on equality, equal protection and benefit from the law, and government hereby aimed to promote gender justice in society and the workplace. In the next section, labour legislation that had an impact on transformation of the total labour force, including the mining sector, is discussed.

3.2.2 Labour legislation

The newly elected democratic government also introduced a comprehensive reformation of the South African labour policy. Government aimed to provide a comprehensive framework of legislation, which would give effect to the various labour rights enshrined in the Constitution and thus regulates all facets of the labour relationship. The Labour Relations Act (66 of 1995) (LRA), the Basic Conditions of Employment Act (75 of 1997) (BCEA), the Employment Equity Act (55 of 1998) (EEA) and the Skills Development Act (97 of 1998) (SDA) are regarded as the four ‘bastions’ of this comprehensive framework (Levy *et al.*, 2009:165). The mentioned acts together with the Promotion of Equality and Prevention of Unfair Discrimination Act (4 of 2000) and the Broad-based Black Economic Empowerment Act (53 of 2003) (BBBEE Act) are discussed below, as they lead the way to transformation of the total labour industry and had a profound impact on the process of achieving equality of the total workforce of South Africa, including the mining sector.

3.2.2.1 *The Labour Relations Act (66 of 1995)*

From the above it is clear that the Constitution is the highest level of law and the labour law, entitled the Labour Relations Act (LRA), follows it. Shortly after the new democratic government was elected, a process of revamping the South African labour policy followed. The intention of government was to create a work environment free from conflict and conducive to constructive and harmonious labour relations. The emphasis in the workplace shifted from ‘confrontation’ to ‘cooperation’. ‘Equalisation’ of the power of rights is a clear trademark of the new LRA (66 of 1995) (Pons & Deale, 1998: ch 1, p.8). The purpose of the Act is to advance economic development, social justice, labour, peace and democratisation of the workplace by fulfilling the primary objectives of the Act, namely to realise and regulate the fundamental rights of workers and employers in the Constitution (Section 23) as mentioned above (Nel *et al.*, 2011:52).

The following six internationally recognised labour rights are enshrined in the Constitution and apply to workers in South Africa (Nel *et al.*, 2011:45):

- The right to work. The worker has a right to find employment and to perform the job willingly. According to South Africa’s Constitution and labour laws it is not the duty of the state to provide work, in other words, the citizen does not have a right to be placed in employment. The Unemployment Insurance Act (63 of 2001) makes provision for unemployment pay.

- The right to freedom of association. Anybody in South Africa has the opportunity to join an association that will protect him/her and negotiate on his/her behalf with the employer for fair and acceptable remuneration and conditions of employment.
- The right to collective bargaining. This right enables trade unions to represent workers and to bargain on their behalf with representatives of employers regarding all aspects of the employment contract.
- The right to strike. In terms of the LRA, every employee has a fundamental right to strike; however, this right is subject to certain limitations and is in line with the letter of the Constitution of the Republic of South Africa.
- The right to protection. This right includes the following components: the right to fair remuneration and conditions of service; the right to health, safety and security; and the right to protection from unfair labour practices. Different laws are applicable in this regard, among others the Compensation for Occupational Injuries and Diseases Act (130 of 1993), the Unemployment Insurance Act (63 of 2001) and the Occupational Health and Safety Act (85 of 1993).
- The right to training. The right of training is extremely important in South Africa today and is enforced by the SDA. The main aim of this Act is to provide an institutional framework to implement national, sectoral and workplace strategies to develop and improve the skills of the employees of South Africa.

It is important to note that the Labour Relations Amendment Act came into effect on 1 August 2002 and has the following major focuses:

- To correct practices that undermine the application of the Act
- To ensure effective alignment of laws with the changing labour market environment
- To sensitise the legal framework to the need for job creation in South Africa.

The Act applies to all employment relationships between employers and employees and makes no distinction whether these relationships are in the private or the public sector (Nel *et al.*, 2009:87).

In 2012, additional amendments to the LRA were suggested. The Minister of Labour submitted an amendment bill for the LRA to the Cabinet Committee on Wednesday, 14 March 2012 (Ministry of Labour, 2012; Stansfield, 2012). Amendments were suggested for

the following areas: to address the problem of labour broking, to regulate contract work, to deal with the operations of the Commission for Conciliation, Mediation and Arbitration (CCMA), to deal with the procedural requirements for protected industrial action, to address disputes in essential services and to deal with organisational rights and collective bargaining (Ministry of Labour, 2012). Amendments to South Africa's labour laws (Labour Relations Amendment Bill, Basic Conditions of Employment Amendment Bill, Employment Equity Amendment Bill and Public Employment Services Bill) were expected to be finalised by the end of November 2013 (Odendaal, 2013).

In summary, the purpose of labour legislation in a country is to create a balance of power between the parties in the employment relationship (the state, employer and employee) and to promote industrial peace. The state is supposed to play an important role in this relationship and provides mechanisms for the protection of the individual and acknowledges the freedom of expression of collective interests in the workplace (Pons & Deale, 2010: ch 1, p.12).

3.2.2.2 *The Basic Conditions of Employment Act (75 of 1997)*

The Wage Act of 1957 was replaced by the Basic Conditions of Employment Act (75 of 1997) (BCEA) and became operational on 1 December 1998 in the private sector and on 1 May 2000 in the public sector. An important amendment to the Act was introduced and came into effect on 1 August 2002, namely the Basic Conditions of Employment Amendment Act (11 of 2002) (Nel *et al.*, 2011:46).

The purpose of the Act is to promote economic development and social justice by establishing and enforcing basic conditions of employment. The main objective of the Act is to give effect to and regulate the right to fair labour practices. Furthermore, the Act endeavours to balance the “protection of minimum standards” and “the requirements of labour market flexibility” (Nel *et al.*, 2011:47). The Act applies to all employees and employers except members of the National Defence Force, the National Intelligence Agency, the South African Secret Service and unpaid charity workers (Nel *et al.*, 2011:47).

The following aspects, among others, are covered in this Act (Grobler *et al.*, 2006:85):

- Hours worked
- Leave, including maternity leave and sick leave
- Remuneration

- Deductions
- Notice of termination
- Administrative obligations
- Prohibition of the employment of children and forced labour.

An amendment bill for the BCEA was submitted by the Minister of Labour to the Cabinet Committee on Wednesday, 14 March 2012 (Ministry of Labour, 2012). Amendments were proposed to adjust the powers of the Minister and the Employment Conditions Commission to protect vulnerable workers and facilitate their right to freedom of association, to ensure compliance with international labour standards, to rectify historical anomalies and to clarify uncertainties that have arisen from the application of this statute (Ministry of Labour, 2012; Vatalidis & Workman-Davies, 2012). According to Elleck Nchabeleng, the chairperson of the Portfolio Committee on Labour, amendments to South Africa's labour laws are expected to be finalised by the end of November 2013 (Odendaal, 2013).

3.2.2.3 *The Employment Equity Act (55 of 1998)*

Since 1994, gender justice and gender equality have been high on the transformation agenda of the new democratic regime. There have been important developments in this area and a commitment to achieve gender equality in society and the workplace is evident in various legislation, policies and frameworks of the South African government.

The Employment Equity Act (55 of 1998) (EEA) aimed to redress the disadvantages in employment experienced by designated groups, including Africans, coloured people, Indians, women and people with disabilities, by eliminating unfair discrimination at the workplace. It provides for fair discrimination to ensure that Africans, coloured people, Indians, women and people with disabilities are equitably represented at all occupational levels (DoL, 2010:IV).

The EEA is divided into two major chapters. Chapter Two of the EEA is designed to prohibit discrimination in the workplace. Nineteen grounds for unfair discrimination are listed and apply to all employers. Chapter Three of the EEA is designed to promote

affirmative action in the workplace and apply to “designated employers”.² It imposes a duty on employers to take active affirmative action measures in order to redress the disadvantages in employment experienced by designated groups (Grogan, 2005:280).

Grobler *et al.* (2006:553) define affirmative action as “a response to the under-use of protected groups in various job categories in which a business attempts to attract and advance people from such groups because of their failure to do so in the past as a result of discrimination”.

According to Bendix (2005:435), affirmative action refers to the purposeful and planned placement or development of competent or potentially competent persons in or to positions from which they were debarred in the past, in an attempt to redress past disadvantages and to render the workforce more representative of the population, on local and national level.

Bendix (2005:435) states that affirmative action has different facets and entails the following:

- The search for persons with known competencies or potential to fill positions worthy of their ability
- The training and development of HDSAs so that they may in future possess greater mobility
- The continuous monitoring and adaptation of the demographic spread at all levels of the organisation.

The main objectives of the EEA are twofold (Nel *et al.*, 2009:78):

- To ensure that the workplace is free from discrimination
- To ensure that employers promote employment equity in the workplace by taking active affirmative action measures.

The purpose of the Act is to achieve equity in the workplace by (Nel *et al.*, 2009:78):

² ‘Designated employer’ refers to (RSA, 1998:3):

- A person who employs 50 or more employees

- promoting the constitutional right of equality and the exercise of true democracy;
- promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination;
- implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups in order to ensure their equitable representation in all occupational categories and levels in the workplace;
- achieving a diverse workforce broadly representative of our people;
- promoting economic development and efficiency in the workforce; and
- giving effect to the obligations of the Republic of South Africa as a member of the International Labour Organization.

In May 2006 the Act was revised and introduced a number of important amendments. Some of the most important amendments to the regulations of the Act were the following (Nel *et al.*, 2009:79):

- The definition of ‘designated groups’ was extended to refer to black people (African, coloured people and Indians), women and people with disabilities who are natural persons.
- The responsibility for employment equity must be assigned to a senior manager or managers who must have these duties incorporated into their performance contracts.
- Employers have a duty to consult a workplace forum (representation at the forum should include employees from designated groups as well as non-designated groups and one or more senior managers) and keep employees informed of the content and application of the Act, employment equity and discriminatory issues, and the process that the employer is following for involving all stakeholders.

In 2012, the Minister of Labour released the Employment Equity Amendment Bill for public comment. The Bill seeks to amend the EEA (55 of 1998) to further prohibit unfair

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- A person who employs fewer than 50 employees, but has a total annual turnover that is equal to or above the applicable turnover of a small business.

discrimination in the workplace. Among many changes, the following have been introduced:

- A substitution for the definition of ‘designated groups’ has been included. According to the Employment Equity Amendment Bill (RSA, 2012a:3), ‘designated groups’ is defined as follows:
“... black people, women and people with disabilities who
 - (a) are citizens of the Republic of South Africa by birth or descent; or
 - (b) became citizens of the Republic of South Africa by naturalisation
 - (i) before 27 April 1994; or
 - (ii) after 26 April 1994, who would have been entitled to acquire citizenship by naturalisation prior to that date but were precluded by Apartheid policies”.
- A new form of unfair discrimination was introduced. “This will regulate situations where different employment conditions are applied to different employees who do the same or similar work (or work of equal value). Unless the employer can show that differences in wages or other conditions of employment are, in fact, based on fair criteria such as experience, skill and responsibility, such conduct will constitute unfair discrimination” (Cliffe Dekker Hofmeyr, 2012).

Other provisions include psychometric testing, arbitration of unfair discrimination claims by the CCMA, employment equity plans and reporting by employers and enforcement mechanisms, such as calling for undertakings from designated employers. Employers who fail to implement employment equity plans can be reported directly to the Labour Court and fined (PMG, 2013:6). As indicated in 3.2.2.1, amendments to South Africa’s labour laws were expected to be finalised by the end of November (Odendaal, 2013).

From the above it is evident that government is serious about achieving gender equality in the workplace by constantly renewing and revising employment equity legislation and enforcements. An additional burden is placed on employers to not only develop employment equity plans, but also to ensure that these plans are adequately implemented.

3.2.2.4 *The Skills Development Act (97 of 1998)*

The Skills Development Act (SDA) should be seen as supportive to the EEA, as it promotes human resource development by encouraging employers to develop persons who were previously disadvantaged. The SDA (97 of 1998) came into effect on 1 February 1999 and replaced the Manpower Training Act (56 of 1981) and the Guidance and Placement Act (62 of 1981) (Nel *et al.*, 2009:109).

The purpose of the SDA is to (Nel *et al.*, 2009:109):

- develop the skills of the South African workforce;
- increase the levels of investment in education and training in the labour market and improve the return on investment;
- use the workplace as an active learning environment in order to provide employees with the opportunities to enter the labour market to gain work experience;
- employ persons who find it difficult to be employed;
- encourage workers to participate in leadership and other training programmes;
- improve the employment prospects of persons previously disadvantaged by unfair discrimination and redress those disadvantages through training and education;
- ensure the quality of education and training in and for the workplace;
- assist work seekers to find work, retrenched workers to re-enter the labour market and employers to find qualified employees; and
- provide and regulate employment services.

The South African Qualifications Authority Act (58 of 1995) was the forerunner to this Act and put in place the South African Qualifications Authority (SAQA), which endorses the objectives of the National Qualifications Framework (NQF). The objectives of the NQF are to (Nel *et al.*, 2009:109):

- create an integrated national framework for learning achievements;
- facilitate access to and mobility and progression within education, training and career paths;
- enhance the quality of education and training; and

- accelerate the redress of past unfair discrimination in education, training and employment opportunities.

Although significant progress has been made since 1994 to reduce poverty and inequality, a vast number of South African citizens remain unemployed and unskilled. In fact, the South African unemployment rate stood at 25.6% in the second quarter of 2013 (Greve, 2013) – among the world’s highest (South African Institute of Race Relations, 2012:14). Nel *et al.* (2009:412) state that the existence and wellbeing of countries and enterprises are linked to the quality of its citizens’ and workforce’s knowledge, skill and expertise. Therefore, government and employers should continue to invest in a skilled and knowledgeable workforce in order to improve productivity and by doing so, reduce poverty and promote sustainable growth in the country and its enterprises.

3.2.2.5 *The Skills Development Levies Act (9 of 1999)*

The Skills Development Levies Act (9 of 1999) (SDLA) was passed to promote the further advancement of skills development in South Africa. In terms of the Act, every employer, as from 1 April 2000, must pay a skills development levy equal to 0.5% of the employer’s payroll and as from 1 April 2001 it increased to 1%. The South African Revenue Services (SARS) is the national collection agency. The Act regulates, among other things, the imposition and collection of levies for training purposes, the role of Sector Education and Training Authorities (SETAs), as well as the distribution of levies and the recovery of levies by SETAs (Nel *et al.*, 2009:78).

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

The Promotion of Equality and Prevention of Unfair Discrimination Act (4 of 2000) (PEPUDA) was passed by Parliament on 2 February 2000 and came into effect on 1 September 2000. This Act was amended by the Promotion of Equality and Prevention of Unfair Discrimination Amendment Act (52 of 2002).

Although significant progress has been made in terms of restructuring and transforming our society and its institutions, systemic inequalities and unfair discrimination remain deeply embedded in social structures, practices and attitudes. The major aim of this Act (RSA, 2000:2) is to facilitate the transition to a democratic society guided by the following principles:

- Equality
- Fairness
- Equity
- Social progress
- Justice
- Human dignity
- Freedom.

The objectives of the Act (RSA, 2000:5) are as follows:

- To give effect to Section 9 of the Constitution by providing for:
 - the equal enjoyment of all rights and freedoms by every person;
 - the promotion of equality;
 - the values of non-racialism and non-sexism contained in Section 1 of the Constitution;
 - the prevention of unfair discrimination and the protection of human dignity as contemplated in sections 9 and 10 of the Constitution; and
 - the prohibition of advocacy of hatred based on race, ethnicity, gender or religion that constitutes incitement to cause harm, as contemplated in Section 16 (2)(c) of the Constitution.
- To provide for measures to facilitate the eradication of unfair discrimination, hate speech and harassment, particularly on the grounds of race, gender and disability
- To provide for procedures for the determination of circumstances under which discrimination is unfair
- To provide for measures to educate the public on and raise public awareness of the importance of promoting equality and overcoming unfair discrimination
- To provide remedies for victims of unfair discrimination, hate speech and harassment and persons whose right to equality has been infringed
- To set out measures to advance persons disadvantaged by unfair discrimination

- To facilitate further compliance with international law obligations, including treaty obligations, in terms of, among others, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

In addition to the EEA, the PEPUDA further aims to eradicate all forms of discrimination, not only in the workplace but also in society.

3.2.2.7 *The Broad-based Black Economic Empowerment Act (53 of 2003)*

The Broad-based Black Economic Empowerment Act (BBBEE Act), which was signed on 9 January 2004, regulates black economic empowerment (BEE). The main aim of the Act is to address inequalities resulting from the legacy of apartheid, which restricted black South Africans from meaningful participation in the economy and therefore denied them access to skills and jobs, self-employment and entrepreneurship.

‘Broad-based black economic empowerment’ is defined in the Act as economic empowerment of all black people, including women, workers, youths, people with disabilities and people living in rural areas, by utilising integrated socio-economic strategies (RSA, 2003:4).

The objectives of the Act (RSA, 2003:4) are to facilitate BBBEE by:

- promoting economic transformation in order to enable meaningful participation of black people in the economy;
- achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises;
- increasing the extent to which communities, workers, co-operatives and other collective enterprises own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training;
- increasing the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infra-structure and skills training;

- promoting investment programmes that lead to broad-based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity;
- empowering rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skills; and
- promoting access to finance for BEE.

In the mining industry today, emphasis is increasingly being placed on stimulating and increasing BEE participation, as the industry is still largely white-dominated. The Mining Charter (see 3.2.3.4 and 3.2.3.6) was developed to redress this and other historical imbalances, pertaining especially to black people, mining communities and women that were largely excluded from participating in the mainstream economy.

3.2.2.8 Conclusion

It is clear from the acts discussed above that the democratic government of South Africa is serious about the elimination of discriminative practices of the past. The correct implementation of these acts will lead to the redressing of previous inequalities, such as unequal employment opportunities, inequalities in education, inequalities in ownership of productive assets and access to finance. It is also clear from the acts that the empowerment of women is high on the agenda of government. Women should be developed to fulfil their rightful place in society as well as the labour workforce, including the mining sector. The following section discusses ‘old’ and ‘new’ mining legislation and the impact thereof on the employment and development of women in the South African mining sector.

3.2.3 Mining legislation

As indicated in the Introduction (3.1), significant developments in terms of mining legislation took place since 1994. Firstly, a brief overview of these developments is given with specific reference to the employment and development of women in the mining sector. Furthermore, the following recent mining legislation and regulatory frameworks that have an impact on and promote the participation of women in the mining sector are discussed in more detail: the Mine Health and Safety Act (29 of 1996) (MHSA), the Mineral and Petroleum Resources Development Act (28 of 2002) (MPRDA), the Broad-based Socio-economic Empowerment Charter of 2002 (the Mining Charter) and the

amendment of the Broad-based Socio-economic Empowerment Charter for the South African Mining and Minerals Industry. A review of the Mining Charter impact assessment conducted by the DMR is also given.

3.2.3.1 Overview of mining legislation

The Mines and Works Act (12 of 1911) was passed by the Union of South Africa and specifically prohibited women from working underground. According to Section 8(1) of the Mines and Works Act of 1911, “[n]o person shall employ underground on any mine a boy apparently under the age of sixteen, or any female” (RSA, 1911:5).

The Mines and Works Act (12 of 1911) was amended by the Mines and Works Act (27 of 1956), which still prohibited women from working underground (Sadie & Van Aardt, 1995:81).

The Minerals Act (50 of 1991) replaced the Mines and Works Act (12 of 1911). Women were still restricted from working underground, but certain exemptions were made. According to the Minerals Act of 1991, the following classes of women were allowed to work underground in a mine (Benjamin, 1991:476, 479):

- Those holding positions of management and who do not perform manual work (these are referred to as heads of departments and executive directors)
- Those employed in health and welfare services (this accommodates nurses and social workers)
- Women who, in the course of their studies, have to spend a period underground in a mine for training or research purposes
- Any other woman who may occasionally have to go underground in a mine for the purposes of a non-manual occupation.

A major review of the country’s minerals and mining policy followed in April 1995. The following stakeholders were involved in the review process: representatives from government, organised businesses, the small-scale mining sector, labour unions, communities and environmental groups. It was the most comprehensive consultative process that was ever conducted for a mineral policy review in South Africa. This culminated in the release of a Green Paper on Minerals and Mining Policy in February 1998 and eight months later, in October 1998, a White Paper on Minerals and Mining

Policy. The Green Paper as well as the White Paper was organised into the following six main themes (DME, 1998a:1; DME, 1998b:1):

- Business climate and mineral development, which looks at the continuation of policy conducive to investment and includes a section on mineral rights and prospecting information, which proposes changes to the system of access to, and mobility of, mineral rights
- Participation in ownership and management, which examines racial and other imbalances in the industry
- People issues, which a focus on health and safety, housing needs, migrant labour, industrial relations and downscaling
- Environmental management
- Regional co-operation
- Governance.

In the meantime, the MHSA was passed in 1996 and, for the first time, was a stand-alone Act that pertained to mine health and safety issues. Previously, mine health and safety matters were regulated in terms of the Minerals Act. The MHSA (29 of 1996) removed restrictions prohibiting women from working on mines, including underground (Ranchod, 2001:22).

The Mineral and Petroleum Resources Development Act (28 of 2002) (MPRDA) came into effect on 1 May 2004 and replaced the Minerals Act. The MPRDA contains certain transitional measures with regard to mineral rights, prospecting permits and mining authorisations (old-order rights) obtained prior to 1 May 2004. The main revolutionary change introduced by the new law was that mineral rights should be vested in the state. Another main requirement is that there should be equal opportunity for all in terms of ownership and access to mineral resources with meaningful participation of HDSAs (DME, 2005:1). Great emphasis is placed on the employment, development and participation of women in the mining sector (DME, 2005:1).

Section 100(2)(a) of the MPRDA requires that 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, targets and time-table for effecting the entry of HDSAs into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources” (RSA, 2002b:84).

To give effect to Section 100(2)(a) of the MPRDA, mining stakeholders, including the Chamber of Mines, the South African Mining Development Association (SAMDA) and the National Union of Mine Workers (NUM), developed the Mining Charter and introduced nine elements to promote transformation in the mining sector (see 3.2.3.4). In addition, the former DME issued a separate document, the scorecard, which set the framework, target and timetable against which mining companies will be measured and need to report. Stakeholders agreed to meet after five years to review the progress made and to determine the steps to be taken in order to achieve the objectives of the Charter. The DMR conducted a thorough impact assessment in 2009 to determine the progress made in terms of the objectives of the Mining Charter (see 3.2.3.5). This culminated in the Amendment of the Broad-based Socio-economic Empowerment Charter for the South African Mining and Minerals Industry, launched in September 2010, with the main objective of further redressing historic inequalities in the mining sector.

On 27 December 2012 the Minister of the DMR, Susan Shabangu, gave notice in the Government Gazette that she intend to introduce the draft Mineral and Petroleum Resources Development Amendment Bill, 2012, in Parliament (RSA, 2012b:1). She invited the mining and minerals industry and interested parties to submit written representations on the draft Bill by 8 February 2013. The Bill has several objectives, including removing ambiguities that exist within the MPRDA, streamlining administrative processes and improving the regulatory system. The Bill aims to amend the MPRDA as if the Mineral and Petroleum Resources Development Amendment Act, 2008 (the Amendment Act) is in force, although the Amendment Act has never been brought into effect (Wentzel, 2013b). Among many changes, the Bill introduced the following (the section indicated in bold):

Section 2, subsection (2) paragraph (d):

Substantially and meaningfully expand opportunities for historically disadvantaged persons, **including women and communities**, to enter into and actively participate in the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources.

On 7 June 2013, the Mineral and Petroleum Resources Development Act (49 of 2008) came into operation and will stay in operation until the Mineral and Petroleum Resources Development Amendment Bill, 2012, come into effect (RSA, 2013:3; Wentzel, 2013a).

From the above, it is clear that significant developments in mining legislation took place. Furthermore, mining legislation also attempts to redress previous inequalities and aims to promote women's participation in the industry. Recent mining legislation, aiming to transform the mining sector in South Africa and promote women's participation in the industry, is discussed in the sections below.

3.2.3.2 *The Mine Health and Safety Act (29 of 1996)*

The two main regulatory acts applicable to employee health and safety are the:

- Occupational Health and Safety Act (85 of 1993) (OHSA); and
- Mine Health and Safety Act (29 of 1996) (MHSA).

The objective of the OHSA is to enforce and promote the health and safety of persons at work. The Act covers everybody in South Africa, with exception of the mining industry and merchant shipping (which includes load-line ships and fishing, sailing and whaling boats), which are separately legislated.

The MHSA was passed in 1996. The purpose of this Act is to (RSA, 1996b:1):

- 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 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 minimise 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
- provide for matters connected therewith.

The MHSA of 1996 has been updated by the Mine Health and Safety Amendment Act of 1997. The Act introduced the concepts of risk assessment and occupational health and safety management to the mining industry. Great emphasis is placed on the reduction of mining-related deaths, injuries and diseases.

Another amendment to the Act followed in 2008. The Mine Health and Safety Amendment Act (74 of 2008), published on 17 April 2009, has the following major focuses (RSA, 2009:2):

- To review and strengthen enforcement provisions
- To simplify the administrative system for the issuing of fines
- To reinforce offences and penalties
- To substitute, add and remove ambiguities in certain definitions and expressions
- To effect certain amendments necessary to ensure consistency with other laws, particularly the MPRDA, 2002, and to provide for matters connected therewith.

The MHSA was reviewed in 2011 and 2012. In October 2013, Cabinet has approved the publication of the Draft Amendment Bill of the MHSA (2013), in the Government Gazette, for public comment (SA News, 2013). The Bill seeks to amend the MHSA (29 of 1996). It 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. It has the following major focuses (SA News, 2013):

- To review the enforcement provisions
- To simplify the fine system
- To strengthen penalties.

Mine health and safety remains a serious issue in the mining sector and if left unattended, could have huge social and economic implications. Although South Africa has some of the world's deepest and most dangerous mines, great progress has been made towards mine health and safety and a gradual decline in mining fatalities over the last couple of years is visible. The health and safety of mine workers is high on the agenda of both the Chamber of Mines of South Africa and the DMR. The following figures provided by the DMR (2012b) reflect the decline in mining fatalities as well as mining accidents for the past two years:

- A 3% improvement in all fatalities from 127 in 2010 to 123 in 2011, which is an 8% reduction in terms of fatality rates
- A reduction of 19% in fall-of-ground fatalities from 48 in 2010 to 39 in 2011
- No mine disaster accident for the first time in five years
- Accidents related to fires and explosives dropped by 100% and 20%, respectively.

Due to women's involvement in the core business of mining, they are exposed to the various hazards related to mine work (see Chapter Four under 4.4.5). Furthermore, women face greater risks to their safety because most supportive infrastructure, such as personal protective equipment (PPE) as well as mining machinery, tools and equipment are not designed to be used by women. The safe placement of women prior to and during pregnancy remains a further challenge to mining companies. It is important for mining companies to adhere to the requirements of the MHSA in terms of not compromising the health and safety of women employed in the core business of mining.

3.2.3.3 *The Mineral and Petroleum Resources Development Act (28 of 2002)* (MPRDA)

As discussed in the Introduction (3.1), South Africa's past was characterised by the systematic marginalisation of the majority of South Africans by the exclusionary policies of the apartheid regime, which prevented HDSAs from owning the means of production and from meaningful participation in the mainstream economy. This type of discrimination excluded the majority of South Africans from full participation in the South African minerals industry. South Africa's democratic transition aimed to rectify these historic inequalities and government introduced the MPRDA in 2002, thereby giving effect to Section 9 (equality clause) of the Constitution of the Republic of South Africa (108 of 1996).

The objectives of the MPRDA in terms of Section 2 of the Act are to (RSA, 2002b:18):

- recognise the internationally accepted right of the state to exercise sovereignty over all the mineral and petroleum resources within South Africa;
- give effect to the principle of the state's custodianship of the nation's mineral and petroleum resources;
- promote equitable access to the nation's mineral and petroleum resources to all the people of South Africa;

- substantially and meaningfully expand opportunities for HDSAs, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources;
- promote economic growth and mineral and petroleum resource development in South Africa;
- promote employment and advance the social and economic welfare of all South Africans;
- provide for security of tenure in respect of prospecting, exploration, mining and production operations;
- give effect to Section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development; and
- ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.

As indicated under 3.2.3.1, the promulgation of the MPRDA introduced an additional important document essential to the transformation process, namely the Broad-based Socio-economic Empowerment Charter (the Mining Charter). This is a document that was negotiated through the involvement of government, the labour sector, businesses and representatives of communities where mining takes place (Sonjica, 2006:6). The Mining Charter and accompanied scorecard set the framework, targets and timetable for the entering of HDSAs into the mining industry and for allowing these HDSAs to benefit from the exploitation of mining and mineral resources.

In addition, the MPRDA also requires from mining companies the submission of a Social and Labour Plan (SLP) as a pre-requisite for the granting of mining or production rights. In the SLP they should develop and implement comprehensive human resource development programmes, a mine community development plan, a housing and living conditions plan, an employment equity plan and processes to save jobs and manage downscaling and/or closure (RSA, 2010b:4).

The main elements of the Mining Charter are now discussed.

3.2.3.4 *The Broad-based Socio-economic Empowerment Charter (the Mining Charter)*

The Mining Charter, signed on 11 October 2002, was formally published by the South African government on 13 August 2004 and introduced meaningful transformation in the mining industry in South Africa. The Mining Charter aimed at improving the socio-economic welfare as well as the empowerment of HDSAs. The following nine elements were identified to facilitate transformation in the mining sector and are discussed below:

- Human resource development
- Employment equity
- Migrant labour
- Mine community development
- House and living conditions
- Procurement
- Ownership and joint venture
- Beneficiation
- Reporting.

The DME (now the DMR) as well as stakeholders from the mining industry, including the Chamber of Mines, SAMDA and NUM, agreed to meet after five years (which was due in 2009) to review the progress made and to determine further steps that needed to be taken, if necessary, to achieve the objectives of the Mining Charter. A scorecard was drawn up in terms of the nine elements and stakeholders were to be measured against the scorecard criteria. The nature and extent of the 2004 Mining Charter is discussed below.

3.2.3.4.1 *Vision*

The main aim of the Mining Charter is to “create an industry that will proudly reflect the promise of a non-racial South Africa” (RSA, 2004:6).

3.2.3.4.2 *Preamble*

The Mining Charter (RSA, 2004:6–7) provides a framework for progressing of the empowerment of HDSAs in the mining and minerals industry and recognises the following:

- The history of South Africa, which resulted in black people, mining communities and women largely being excluded from participation in the mainstream of the economy
- The formal mining industry's stated intention to adopt a proactive strategy of change to foster and encourage BEE and transformation with regard to ownership, management, skills development, employment equity, procurement and rural development
- The imperative of redressing historical and social inequalities, as stated in the Constitution of the Republic of South Africa
- The policy objective stated in the MPRDA to expand opportunities for HDSAs to enter the mining and minerals industry or benefit from the exploitation of the nation's mineral resources
- The scarcity of relevant skills as one of the barriers for HDSAs to entry into the mining sector
- The slow progress made with employment equity in the mining industry compared to other industries.

3.2.3.4.3 *Objectives*

The objectives of the Mining Charter (RSA, 2004:8) are to:

- promote equitable access to the nation's mineral resources to all the people of South Africa;
- substantially and meaningfully expand opportunities for HDSAs, including women, to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources;
- utilise the existing skills base for the empowerment of HDSAs;
- expand the skills base of HDSAs in order to serve the community;

- promote employment and advance the social and economic welfare of mining communities and the major labour sending areas; and
- promote beneficiation of South Africa's mineral commodities.

3.2.3.4.4 *Undertakings*

All the stakeholders undertook to create an enabling environment for the empowerment of HDSAs and by doing so subscribed to the following:

(a) Human resource development

According to the Mining Charter (RSA, 2004:10), the South African labour market does not produce enough of the skills required by the mining industry. It is required from the different stakeholders to work together in addressing this skills gap in the following manner:

- The formulation of comprehensive skills development strategies, including a skills audit, through bodies such as the Mines Qualifications Authority (MQA)
- Interfacing with the education authorities and providing scholarships to promote mining-related educational advancement
- Undertaking to ensure the provision of scholarships
- Providing skills-training opportunities to miners during their employment through the MQA in order to improve their income-earning capacity after mine closure.

Government undertook:

- to secure training opportunities for staff of HDSAs companies as well as exchange opportunities with mining companies operating outside of South Africa, in its bilateral relations with relevant countries; and
- to provide training courses in mining entrepreneurial skills through the MQA and in collaboration with academic institutions, DME- (now DMR) associated institutions, non-governmental organisations (NGOs) and the Gender Commission.

Companies undertook:

- to offer every employee the opportunity to become functionally literate and numerate by the year 2005;
- to implement career paths to provide opportunities to HDSA employees to progress in their chosen careers; and
- to develop systems through which empowerment groups can be mentored as a means of capacity building.

(b) Employment equity

The Mining Charter (RSA, 2004:11) stipulates that mining companies have to publish their employment equity plans and achievements and subscribe to the following:

- Establishing targets for employment equity, specifically in junior and senior management. Stakeholders aspired to achieve a baseline of 40% HDSA participation in management within five years, which was due by 2009.
- Focusing their overseas placement and/or training programmes on HDSAs
- Identifying and fast-tracking a talent pool.
- Ensuring a higher level of inclusiveness and advancement of women. Stakeholders aspired to achieve a baseline of 10% female participation in the mining industry, which was due by 2009.
- Setting and publishing targets and achievements.

(c) Migrant labour

In terms of the Mining Charter (RSA, 2004:12), stakeholders undertook to ensure non-discrimination against foreign migrant labour.

(d) Mine community development

Stakeholders, in partnership with all spheres of government, undertook to co-operate in the formulation of Integrated Development Plans (IDPs) for communities where mining takes place and for major labour-sending areas. Special emphasis was placed on the development of infrastructure (RSA, 2004:12).

(e) Housing and living conditions

As stipulated in the Mining Charter (RSA, 2004:12), stakeholders, in consultation with government, undertook:

- to establish measures for improving the standard of housing, which includes the upgrading of hostels, the conversion of hostels to family units and the promotion of home ownership options for mine employees; and
- to establish measures for improving the nutrition of mine employees.

(f) Procurement

The Mining Charter (RSA, 2004:13) states that procurement can be broken down into three levels, namely capital goods, services and consumables. Stakeholders undertook to give HDSAs a preferred supplier status in all three levels of procurement.

(g) Ownership and joint ventures

In terms of the Mining Charter (RSA, 2004:13), government and industry recognised that one of the means of effecting the entry of HDSAs into the mining industry and of allowing HDSAs to benefit from the exploitation of mining and mineral resources is by encouraging greater ownership of mining industry assets by HDSAs. Mining companies agreed to achieve 26% HDSA ownership of mining industry assets in 10 years by each mining company.

(h) Beneficiation

Beneficiation activities, in terms of the Mining Charter (RSA, 2004:15), refer specifically to activities beyond mining and processing and include the production of final consumer products. Mining companies agreed to:

- identify their current levels of beneficiation; and
- indicate to what extent they can grow the baseline level of beneficiation.

(i) Reporting (monitoring and evaluation)

Companies undertook to report on an annual basis their progress towards achieving their commitments.

Stakeholders agreed to participate in annual forums for the following purposes (RSA, 2004:17):

- Monitoring progress in the implementation of plans
- Developing new strategies as needs are identified
- Ongoing government/industry interaction in respect of these objectives
- Developing strategies for intervention where hurdles are encountered
- Exchanging experiences, problems and creative solutions
- Arriving at joint decisions
- Reviewing the 2002 Mining Charter.

(j) Non-compliance

The 2002 Mining Charter states that the regulatory framework and industry agreements shall strive to facilitate the objects of the Charter (Cliffe Dekker Hofmeyr & Reid, 2010:11).

The DMR conducted an impact assessment in 2009 to review the progress made in terms of the above-mentioned undertakings. These are discussed in the section below.

3.2.3.5 *The Department of Mineral Resources: Mining Charter impact assessment*

Although significant progress had been made regarding transformation in the mining industry, a period was reached of assessing the extent to which objectives had been achieved. The DMR conducted a detailed assessment in 2009 of the progress made regarding transformation in the mining industry against the Mining Charter objectives as adopted in 2002. The assessment was done against the nine elements as indicated above (see 3.2.3.4) and the major findings are briefly discussed below.

The analysis of the impact assessment is based on the DMR's internal inspection processes and findings derived from an independent assessment conducted by a consultancy group appointed by the DMR (DMR, 2009). The findings are discussed according to the DMR's Mining Charter Impact Assessment Report (DMR, 2009).

(a) Human resource development

Due to the fact that the mining industry is knowledge-based, it requires critical skills, and therefore great emphasis should be placed on skills development. The Mining Charter (drafted in 2002 and promulgated in 2004) recognised the lack of enough requisite skills for the mining industry and stakeholders agreed to work together in addressing this skills deficit.

In order to measure the progress made in terms of human resource development in the mining industry, stakeholders were measured against the following criteria:

- Has the company offered every employee the opportunity to be functionally literate and numerate by the year 2005 and are employees being trained?
- Has the company implemented career paths for HDSA employees, including skills development plans?
- Has the company developed systems through which empowerment groups can be mentored?

The findings indicated that in terms of both functional literacy and career pathing, an average of 17.1% was achieved. With regard to mentoring of empowerment groups, an average of 11.4% was achieved. Furthermore, a discrepancy prevails between empowerment plans (in terms of career pathing and mentoring) submitted to the DMR and the actual implementation of the plans. The findings also indicated that career plans are more focussed on the development of senior managers and mostly exclude lower-level employees. In addition, the findings revealed a definite lack of investment in core and critical skills development in the mining sector (DMR, 2009:4–6).

(b) Employment equity

Employment equity is included in the Mining Charter to have a meaningful effect on the demographic profile of the workforce in the mining sector and thus contribute to transformation of the mining industry. The Employment Equity Act (55 of 1998) and the Basic Conditions of Employment Amendment Act (11 of 2002) have reference.

In order to measure the progress made in terms of employment equity in the mining industry, stakeholders were measured according to the following criteria:

- Has the company published its employment equity plan and reported on its annual progress in meeting that plan?
- Has the company established a plan to achieve a target for HDSA participation in management of 40% within five years and is it implementing the plan?
- Has the company identified a talent pool and is it fast-tracking it?
- Has the company established a plan to achieve the target for women participation in mining of 10% within the five years and is it implementing the plan?

The findings indicated that only 37% of mining companies developed employment equity plans and only a few companies published the plans. The assessment report (DMR, 2009) also indicated that none of the mining companies submitted employment equity reports to the DMR, which demonstrated their lack of commitment to the transformation of the industry.

Furthermore, an average of 26% of mining companies achieved the targeted 40% of HDSA participation at management level, as prescribed by the Mining Charter. The average achievement for the mining industry was 33% HDSA participation at management level. It was also clear from the findings that a large number of HDSAs occupy middle-management positions and that only an insignificant number are in key decision-making positions.

The findings further revealed that only 26% of mining companies have managed to comply with the 10% female participation in mining. The average rate of female participation in the mining industry was 6%, of whom most were occupied in supportive functions and less than 1% held core management positions, which was largely filled by white women (DMR, 2009:6–9).

(c) Migrant labour

The mining industry relies, to a great extent, on migrant labour, and the Mining Charter made special provision to ensure non-discrimination against migrant labourers. Progress made in terms of this element of the Mining Charter was measured against the following criteria:

- Has the company subscribed to government and industry agreements to ensure non-discrimination against foreign migrant labour?

The findings positively revealed significant compliance with this element, which was also illustrated by the benefits enjoyed by migrant workers in terms of skills development (DMR, 2009:9).

(d) Mine community development

Mine communities form an integral part of mining development and stakeholders agreed to support communities within which mining takes place. Stakeholders were measured against the following criteria to determine progress made in terms of this element:

- Has the company cooperated in the formulation of IDPs and is the company cooperating with government in the implementation of these plans for communities where mining takes place and for major labour-sending areas?
- Has there been an effort on the side of the company to engage the local mine community and labour-sending area communities?

Although the findings indicated a high level of compliance (63%) in terms of community consultation, there was no evidence of a direct link between the proposed and implemented community development projects. This could be due to inefficient consultation processes and a lack of collaboration with communities.

Forty nine per cent of mining companies participated in the formulation of IDPs in mine communities and a mere 14% extended their participation in the development of IDPs for labour-sending areas. Only 37% of companies showed proof of expenditure in accordance with commitments set out in approved SLPs and the rest of the companies indicated that they implemented corporate social responsibility projects (DMR, 2009:9–11).

(e) Housing and living conditions

Before the advent of democracy, black mine workers were often obliged to live under harsh conditions in the mining community. These conditions often led to different social ills, including, among others, the destruction of the social fabric of communities, substance abuse and the spread of diseases, specifically HIV/Aids. According to the 2004 Mining Charter, stakeholders agreed to promote human living conditions for mining workers. Stakeholders were measured against the following criteria to determine progress made in terms of this element:

- For companies providing housing, has the mine, in consultation with stakeholders, established measures for improving the standard of housing, including the upgrading of hostels and the conversion of hostels into family units, and promoted home ownership options for mine employees?
- For companies providing housing, has the mine established measures for improving the nutrition of mine employees?

The findings indicated that reasonable progress was made in terms of the creation of decent housing and living conditions for mine workers. Twenty-six per cent of mining companies indicated that they have provided housing for the employees and 29% had improved the existing standards of housing. Although the majority of mines moved away from the hostel system, the upgrading as well as the conversion of existing hostels into family units remained extremely low. Despite the fact that the findings indicated a reduction of the number of occupants per unit, from 16 to 4, the occupancy rate remained high. Inspection of most hostels also revealed the appalling unhygienic living conditions and inadequate facilities the hostel dwellers are subjected to. According to the findings, it was also established that 29% of companies have offered nutrition to employees or had plans in place to improve the nutrition of employees (DMR, 2009:11–13).

(f) Procurement

The new regime introduced political freedom in South Africa, but economic freedom still remained elusive to the majority of its citizens. The procurement of capital goods in the mining industry continued to be dominated by non-HDSA companies, while HDSA companies largely benefited from procurement contracts for the provision of consumables and non-core services such as providing cleaning facilities and toilet paper. The procurement element of the Mining Charter provided for HDSA supplier participation in the mainstream economy in order to rectify and redress discrimination from the past. Stakeholders were measured against the following criteria to determine progress made in terms of this element:

- Has the company given HDSAs preferred supplier status?
- Has the mining company identified current levels of procurement from HDSA companies in terms of capital goods, consumables and services?
- Has the mining company indicated commitment to a progression of procurement from an HDSA company over a three- to five-year timeframe in terms of capital

goods, consumables and services and to what extent has the commitment been implemented?

The assessment revealed an extremely slow progression in terms of this element of the Mining Charter. The findings indicated that 89% of mining companies had not given HDSA companies preferred supplier status; a further 80% of companies had not indicated commitment to the progression of procurement from HDSA companies over a three- to five-year timeframe. According to the assessment, it was established that there is no evidence that stakeholders had identified levels of procurement from HDSA companies as per their undertaking at the time of adoption of the Charter (DMR, 2009:13–14).

The above findings demonstrate the lack of commitment by mining companies to advance the procurement element of the Mining Charter, thereby delaying the achievement of broader economic freedom.

(g) Ownership and joint ventures

As already mentioned, the apartheid regime prevented black people from owning the means of production and therefore inhibited them from meaningful participation in the mainstream economy. For this reason, the Mining Charter provided for HDSA ownership and joint ventures.

Stakeholders were measured against the following criteria to determine progress made in terms of this element:

- Has the mining company achieved HDSA participation in terms of ownership for equity or attributable units of production of 15% in HDSA hands within five years and 26% in ten years?

The assessment report revealed that BEE ownership of the mining industry reached only 9% (DMR, 2009:16–19).

(h) Beneficiation

Stakeholders were measured against the following criteria to determine progress made in terms of this element:

- Has the company identified its current level of beneficiation?
- Has the mining company established its baseline level of beneficiation and indicated the extent that this will have to be extended in order to qualify for an offset?

According to the assessment report, the above measures had not been achieved, but it was stated that there had been pockets of local beneficiation of the country's mineral resources, albeit in an uncoordinated manner. The South African government introduced the Precious Metals Act (37 of 2005) and the Diamonds Amendment Act (29 of 2005), which led to the establishment of the South African Diamond and Precious Metals Regulator (SADPMR) and the State Diamond Trader (SDT), to regulate and coordinate beneficiation in South Africa (DMR, 2009:14–15).

(i) Consultation, monitoring, evaluation and reporting

Stakeholders were measured against the following criteria to determine progress made in terms of this element:

- Has the company reported on an annual basis its progress towards achieving its commitments in its annual report?

The findings revealed that only 37% of mining companies had audited reports, while only 11% purported to have submitted their annual progress report to the DMR. Furthermore, the assessment report indicated an absence of coordinated mechanisms within the DMR to effectively monitor and evaluate progress against the Mining Charter targets on an annual basis (DMR, 2009:15–16).

It is clear from the review process that very little has been achieved regarding transformation of the mining sector. Although the participation of women in the mining sector has increased, there is still a limited number of women employed in core positions. Due to the findings of the impact assessment concluded by the DMR, the Minister of Mineral Resources, Susan Shabangu, launched the Mining Charter review and scorecard on 13 September 2010. The revised Mining Charter and scorecard are discussed below.

3.2.3.6 *The amendment of the Broad-based Socio-economic Empowerment Charter for the South African Mining and Minerals Industry*

The major aim of the amendment of the Broad-based Socio-economic Empowerment Charter for the South African Mining and Minerals Industry is to further redress historic inequalities in the mining industry. The nature and extent of the revised Mining Charter are discussed below.

3.2.3.6.1 *Vision*

The main aim of the Amendment of the Broad-based Socio-economic Empowerment Charter for the South African Mining and Minerals Industry was to “facilitate sustainable transformation, growth and development of the mining industry” (RSA, 2010a:ii).

3.2.3.6.2 *Preamble*

The Mining Charter of 2002 was developed as an instrument to effect transformation in the mining industry with specific targets. The Mining Charter made provision for reviewing the progress made and for determining the further steps needed to achieve its objectives. The DMR conducted a comprehensive assessment in order to determine the progress of transformation in the mining industry against the objectives of the Charter. A number of shortcomings were identified in terms of the manner in which the mining industry has implemented the various elements of the Charter, i.e. ownership, procurement, employment equity, beneficiation, human resource development, mine community development and housing and living conditions. To address these inadequacies, amendments were made to the Mining Charter of 2002 (RSA, 2010a:i).

3.2.3.6.3 *Objectives*

The revised Mining Charter (RSA, 2010a:1) sought to:

- promote equitable access to the nation’s mineral resources to all the people of South Africa;
- substantially and meaningfully expand opportunities for HDSAs, including women, to enter the mining and minerals industry and to benefit from the exploitation of the nation’s mineral resources;
- utilise the existing skills base for the empowerment of HDSAs;
- expand the skills base of HDSAs in order to serve the community;

- promote employment and advance the social and economic welfare of mining communities and the major labour-sending areas;
- promote the beneficiation of South Africa's mineral commodities; and
- promote sustainable development and growth of the mining industry.

3.2.3.6.4 *Undertakings*

Stakeholders committed to the following undertakings in terms of the Charter elements to address and redress further inequalities in the mining industry in order to promote and ensure sustainable development and growth of the mining industry:

(a) Human resource development

Human resource development is of paramount importance for the mining industry in order to ensure social transformation and sustainable development at the workplace. Therefore, the mining industry must invest a percentage of its annual payroll (the scorecard requires 3% by March 2011, 3.5% by March 2012, 4% by March 2013, 4.5% by March 2014 and 5% by March 2015) in essential skills development activities. Skills development activities should include support for South African-based research and development initiatives intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation (RSA, 2010a:3).

(b) Employment equity

To ensure social cohesion, transformation and competitiveness of the mining industry, the Mining Charter requires a minimum of 40% HDSA (which include women) demographic representation with the following targets (indicated in Table 3.1 below):

Table 3.1: Scorecard requirements for HDSA representation

Level of HDSA representation	Scorecard requirements				
	March 2011	March 2012	March 2013	March 2014	March 2015
Executive management (board) level / Senior management (Exco) level	20%	25%	30%	35%	40%
Middle-management level	30%	35%	40%		
Junior management	40%				
Core and critical skills	15%	20%	30%	35%	40%

Source: Table adapted by author (based on Cliffe Dekker Hofmeyr & Reid, 2010)

In addition to the above-mentioned, mining companies have to identify and fast-track their existing talent pools to ensure high-level operational exposure in terms of career path programmes (RSA, 2010a:3).

(c) Migrant labour

This element was not dealt with in the revised Mining Charter.

(d) Mine community development

Given the fact that mine communities form an integral part of mining development, mines have to contribute towards community development, in terms of both size and impact. This is of paramount importance for mines to keep their licenses to operate. Stakeholders must adhere to international best practices in terms of rules of engagement and guidelines. Ethnographic community consultations as well as collaborative processes must take place prior to the implementation/development of mining projects. Mining companies must conduct an assessment in collaboration with mining communities in order to determine the developmental needs within mining communities and to identify projects within the needs analysis for their contribution to community development. These community development projects must be in line with the IDPs of the municipality concerned and the cost should be proportionate to the size of the investment (RSA, 2010a:4).

(e) Housing and living conditions

According to the Mining Charter (RSA, 2010a:4), great emphasis is placed on the human dignity and privacy of mineworkers. Therefore, mining companies need to implement measures to improve the standard of housing and living conditions for mine workers. This must be done by converting and upgrading all hostels into family units by March 2015 and attaining the occupancy rate of one person per room by March 2015. Both requirements must be complied with as follows (from baseline at March 2011):

- 25% by March 2012
- 50% by March 2013
- 75% by March 2014
- 100% by March 2015.

In addition, home ownership options for all mine employees must be facilitated in consultation with organised labour by 2014 (not scored).

(f) Procurement

Local procurement is important for the following reasons (RSA, 2010a:2):

- To achieve and attain competitiveness and transformation
- To capture economic value
- To present opportunities to expand economic growth.

The mining industry must procure from BEE entities in accordance with the criteria indicated in Table 3.2 below:

Table 3.2: Scorecard requirements for procurement from BEE entities

Procurement from BEE entities	Scorecard requirements				
	March 2011	March 2012	March 2013	March 2014	March 2015
Procurement of capital goods	5%	10%	20%	30%	40%
Procurement of services	30%	40%	50%	60%	70%
Procurement of consumer goods	10%	15%	25%	40%	50%

Source: Table adapted by author (based on Cliffe Dekker Hofmeyr & Reid, 2010)

(g) Ownership and joint ventures

Effective ownership is an important component for the meaningful integration of HDSAs into the mainstream economy, for achieving a substantial change in racial and gender disparities and for the attainment of sustainable growth of the mining industry (RSA, 2010a:1). Effective ownership is defined as “the meaningful participation of HDSAs in the ownership, voting rights, economic interest and management control of mining companies” (Cliffe Dekker Hofmeyr & Reid, 2010:2). In order to enable a meaningful economic participation of HDSAs, stakeholders must commit to achieving a minimum target of 26% ownership by 2014 (RSA, 2010a:1).

(h) Beneficiation

Cliffe Dekker Hofmeyr and Reid (2010) define beneficiation as “the transformation of a mineral (or a combination of minerals) to a higher-value product, which can either be consumed locally or exported”. Mining companies must facilitate local beneficiation by adhering to the provisions of Section 26 of the MPRDA and the mineral beneficiation strategy (RSA, 2010a:2).

(i) Sustainable development and growth of the mining industry

Cliffe Dekker Hofmeyr and Reid (2010) define sustainable development as “the integration of social, economic and environmental factors into planning, implementation and decision-making to ensure that the mineral resources development serves present and future generations”. According to the revised Mining Charter (RSA, 2010a:5), every mining company have to implement elements of sustainable development commitments included

in the Stakeholders' Declaration on Strategy for the sustainable growth and meaningful transformation of South Africa's mining industry of 30 June 2010 and in compliance with all relevant legislation, as follows:

Improvement of the industry's environmental management by (RSA, 2010a:5):

- implementing environmental management systems that focus on continuous improvement to review, prevent and mitigate adverse environmental impact;
- undertaking continuous rehabilitation on land disturbed or occupied by mining operations in accordance with appropriate regulatory commitments;
- providing for the safe storage and disposal of residual waste and process residues; and
- designing and planning all operations so that adequate resources are available to meet the closure requirements of all operations.

Improvement of the industry's health and safety performance by (RSA, 2010a:5):

- implementing a management system focused on continuous improvement of all aspects of operations that have a significant impact on the health and safety of employees, contractors and communities where mining takes place;
- providing all employees with health and safety training and requiring employees of contractors to have undergone such training; and
- implementing regular health surveillance and risk-based monitoring of employees.

Stakeholders undertook to enhance the capacity and skills in relevant South African research and development facilities (RSA, 2010a:5).

(j) Reporting (monitoring and evaluation)

Every mining company has to report its level of compliance with the Mining Charter annually, which in turn will be monitored and evaluated by the DMR (RSA, 2010a:6).

(k) Non-compliance

Non-compliance with the provisions of the Charter and the MPRDA will render the mining company in breach of the MPRDA and subject to the provisions of Section 47 read in conjunction with sections 98 and 99 of the Act (RSA, 2010a:6). Therefore, the Minister may cancel or suspend the “reconnaissance permission, prospecting rights, mining rights, mining permits or retention permits” of mining companies (RSA, 2002b:50).

3.2.3.7 Conclusion

It is evident from the above that the DMR is committed to transformation of the entire mining industry. The substantial and meaningful participation of women in all sections of the industry (core positions, management positions and beneficiation) is promoted in various mining legislation as well as policy documents. Furthermore, the Mining Charter and accompanied scorecard enforced undertakings by setting the framework, targets and timetable for affecting the entry of HDSAs (which include women) into the mining industry. If mining companies do not adhere to the requirements of the Mining Charter and scorecard, they could lose their licences to operate.

3.3 CHAPTER SUMMARY

This chapter provided an overview of specific statutory and regulatory frameworks that act as drivers of transformation of the mining sector. Several anti-discriminatory and gender-sensitive legislation, policies and frameworks, introduced by the democratic government of South Africa in order to redress injustices from the past and promote the deployment of women in the labour environment generally and the mining sector specifically were discussed.

Firstly, attention was given to the Constitution of South Africa, as it leads the way to the reformation of all legislation, including mining legislation. The Constitution aims to build a united and democratic society by removing inequalities and discriminative practices of the past.

Secondly, the new labour legislation framework was discussed, as it has a profound impact on the process of achieving equality of the total labour force of South Africa, including the mining sector. The following acts were discussed: the Labour Relations Act (66 of 1995), the Basic Conditions of Employment Act (75 of 1997), the Employment Equity Act (55 of 1998), the Skills Development Act (97 of 1998); the Promotion of

Equality and Prevention of Unfair Discrimination Act (4 of 2000) and the Broad-based Black Economic Empowerment Act (53 of 2003).

Thirdly, an overview of 'old' and 'new' mining legislation was given with specific reference to the employment and development of women in the mining sector. The purposes and main objectives of the Mines Health and Safety Act (29 of 1996) and the Mineral and Petroleum Resources Development Act (28 of 2002) were discussed, as it led the way to the total transformation of the South African mining sector. In addition, the main elements of the accompanied Broad-based Socio-economic Empowerment Charter of 2002 and the amendment of the Broad-based Socio-economic Empowerment Charter for the South African Mining and Minerals Industry were highlighted, as it set the framework, targets and timetable for effecting the entry of HDSAs (which include women) into the mining industry. Furthermore, the main findings of the Mining Charter impact assessment conducted by the Department of Mineral Resources were revealed.

The following chapter presents and discusses global and national trends in and perspectives on the involvement and integration of women in the mining industry.