

# Critical Analysis of Transformative Interventions Mainstreaming Historically Disadvantaged Black South Africans into the Mining Sector

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**Abstract:** Mining in South Africa has experienced racial discrimination with regard to beneficiation. It has primarily benefited white elites during the apartheid era causing undesirable inequality and escalation of poverty for the Black South Africans. Currently, South Africa has one of the highest level of inequality in the world which may be attributed to most of the means of production still being in the hands of white minority. Despite mineral resources being the common heritage of the people of South Africa, both black and white, under the custodianship of the State. Mining has always formed the backbone of South Africa's economy and in the last two decades it has contributed significantly towards employment and economic growth. But, most of the Historically Disadvantaged Black People have not benefited from it. It is against this backdrop of exclusion that this article examines the innovative minerals interventions introduced to adequately unlock economic potentials of mining for the benefit of the black majority. This article is novel and contributes to the body of knowledge using transformative innovative interventions in the mining industry to mainstream previously denied black majority to take active part in the processes of beneficiation. This article accentuates that to some greater extent, implementation of the interventions would alleviate poverty, promote inclusion and create jobs as the black majority would be able to be part and parcel of exploring, processing and converting mineral resources to finished products and benefit broadly.

**Keywords:** Natural resources, Beneficiation, Entrepreneurship, Poverty alleviation, Job opportunities.

## 1. INTRODUCTION

The mining industry has experienced racial discrimination with regard to beneficiation in South Africa. Historically, advantaged South Africans in particular whites have benefitted immensely from all the mineral resources during the apartheid era causing undesirable inequality and escalation of poverty for the black persons which include coloureds, and Indians (Madolo, 2015). Unfortunately, despite the fact that South Africa became a democratic nation in 1994, the tendency of deliberate exclusion of the back majority in the mainstream economy still continues to be perpetrated post-apartheid black majority rule (Moraka, 2014).

In South Africa, mineral resources are the common heritage of all the people of South Africa and the State is the custodian thereof for the benefit of all South Africans (Van Der Schyff, 2008). Mining has been highlighted as the backbone of South Africa's economy and in the last two decades it has contributed significantly towards employment and economic growth but most of the Historically Disadvantaged Black South Africans (HDBSA) have not really benefited broadly (Ledwaba & Mutemeri, 2018). Majority of the HDBSA remain destitute, vulnerable, marginalized, and

subjected to unemployment and poverty. According to International Labour Organisation 2010 report (ILO) South Africa ranked number 69 out of 100 developing countries. This clearly evidenced the fact that South Africa is one of the worst unequal country in the world. One of the major reasons that might be attributed to this high level of inequality in the country is the means of production being mostly controlled by the white minority. Against the backdrop of this beneficiation gap, there is need to ensure that there is ample opportunity for broad beneficiation where HDBSA can be mainstreamed and actively participate and benefit from the mining sector. This, however, can only be achieved through strategic implementation of innovative interventions that have been enacted to unlock economic potentials of natural mineral resources to benefit the majority of the HDBSA. These innovative interventions can only bear fruits and become realisable and achievable if there are strong political and administrative wills on the part of the government and the role players to strengthen beneficiation delivery and transformation. By so doing, there will be massive and remarkable changes in the lives and well-beings of the citizens especially the HDBSA.

Against this backdrop, this article seeks to examine and analyse various innovative minerals interventions in terms of their effectiveness and efficiency in enhancing the promotion and delivery of socio-economic transformation culminating in growth and development, where the mineral resources of South

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Africa are utilised to mainstream and benefit the HDBSA. The article will also look at the interventions that have been introduced to mainstream HDBSA to actively participate in exploration, exploitation, refining and processing of mineral resources to finished-products.

The article is significant and novel because it untangles the challenges of including blacks in the mineral resources businesses by strongly arguing for implementation of transformative innovative interventions that will mainstream the HDBSA.

## 2. BACKGROUND

Historically, mining operations in South Africa were regulated by Mines and Works Amendment Act 27 of 1956 (MWAA) which aimed to consolidate and amend the laws relating to the operations of mines and works of machinery used in connection therewith. However, this law perpetuated and entrenched discriminatory practices in South Africa, which deprived blacks, Indians and coloureds from owning the mineral resources. Only, white elites benefited from exploitation of means of production, causing undesirable inequality and poverty for the black majority (Seekings & Natrass, 2005). In respect of the Precious Stones Act (PSA) 73 of 1964, section 48(1) recognised mineral rights holders as the owners of means of production instead of mineral landowners despite the fact that the black majority were the owners of the land with the mineral resources. These discriminatory practices continued and allowed the white minority to exercise rights and privileges as the sole owners and participants in the South African mining industry until the enactment of Minerals Act (MA) 50 of 1991. The MA repealed past discriminatory laws that excluded other races in the industry by recognising specifically common law rights of landowners in relation to mining. The MA uniformly regulated the process of prospecting, optimal exploitation, processing and orderly utilisation of South Africa's mineral resources. The introduction of the MA has been commended for removing discrimination within the mining industry and allowing other race groups particularly, the black majority to benefit and participate in the ownership of the mines. It is worth noting that this legislation opened doors for black people for the first time in the history of South Africa to be able to apply for mining rights.

It is pertinent to point out that the State only received royalties paid to it by the owners of the mining rights mainly the white minority mines owners. This

practice enabled the white minority to continue to own mines making it very difficult to transform the industry by mainstreaming black people. This is because, mineral resources are still generally in the hands of white minority private businesses, hence the clarion call by the White Paper of 1998 in terms of clause 1.3.3.2, categorically provides for radical change of ownership of the minerals resources from private hands to the State custodianship. It is against the backdrop of this that the mineral resources of the South Africa now have been legally transferred from private ownership to state custodianship. Therefore, currently the State is bequeathed with the sole authority and custodianship to regulate and administer the mineral resources in the interests of all citizens as beneficiaries.

The Bill of Rights in the Constitution alone is insufficient to heal unfair statutory provisions caused by imbalances of the past. Unfair discriminations have caused hardships and negative consequences which pervades all sectors of business environment in South Africa (Bhorat, *et al.*, 2002). For instance, it has recently been revealed that white South Africans investors holds 39% of Johannesburg Stock Exchange while black South Africans investors holds only 10% (OMG, 2016). For there to be equal representation, progressive interventions already in place should be effectively used to address injustices of the past in order to out rightly dismantle apartheid legacy. Henceforth, the equality clause referred to, as "remedial and restitutionary clause," must be implemented properly and sufficiently as an imperative for transformation in South Africa to redress the injustices of the past.

According to Beech and Veltman (2011), successful implementation of mineral resources beneficiation depends largely on cooperation between government, business and organised labour to drive growth in beneficiation projects. As such, the government, business and unions have to work together so that the process of refining mineral resources to a higher value product would be effective and sustainable in the mining industry. Ultimately, successful cooperation between these key role players should lead to effective and efficient implementation of beneficiation that would enable creating sustainable and stable employment and economic growth.

Section 24(b)(ii) of the Constitution of the Republic of South Africa, 1996 allows the use of natural resources to promote justifiable economic and social

development for the present and future generation. South Africa is endowed with vast natural resources which the Constitution mandates have to be utilised to advance economic growth and improve infrastructure development in the interests of everyone. It is therefore clear that the Constitution encapsulates the importance of natural resources and provides that they should be utilised to advance the transformation of the people's lives.

The constitutional property clause in section 25(4) provides that for the purposes of this section, the public interest includes the nation's commitment to land reform, to bring about equitable access to all South Africa's natural resources; and property is not limited to land. The government's commitment to speedy land redistribution to historically disposed inhabitants of South Africa is good initiative. Majority of mines are situated in marginalised communities and as such, the return of their land would enable majority of HDBSA to utilise natural resources beneath their soil to create economic growth, employment opportunities and eradicate poverty. Further, the effective implementation of beneficiation of mineral resources lies in the availability of land where the various stages of production till the last stage of beneficiation would be conducted, infrastructure and skills developed.

Therefore, the fundamental importance of land reform is for the public interest by allowing the majority HDBSA to have access to their land and natural resources. The Constitution supports land reform programme for land to be distributed equitably amongst the people of Republic of South Africa as a matter of public interests. Section 24(4) of Constitution states clearly that equitable access to land includes everything beneath the soil, including mineral resources of the Republic.

The Constitution also encapsulates both fundamental rights and socio-economic rights that are very important for the full realisation of transformation of the mining industry. In the case of *Road Accident Fund v Mdeyide*, 2011 (2) SA 125; the court held that one of the important purposes of transformation envisioned by the Constitution is for the realisation of fundamental socio-economic rights. In essence, people previously deprived of social and economic benefits become more capable of enjoying a life of dignity, freedom and equality as the gains of democracy and socio-economic rights.

Against the above backdrop of the transformative decision of the court, mining companies have the

obligation to play significant role in the State to ensure realisation of socio-economic rights. Regulation 42 of the Mineral and Petroleum Development Act 28 of 2002 (MPRDA) mandates mining companies to have social and labour plan before being granted mining rights. According to Regulation 46, such plan shall address various inclusion plans in the mining communities they are situated ranging from skills development plan; human resources development; employment equity plan; infrastructure and poverty eradication projects. The Social and Labour Plans (SLP) system, together with Broad-Based Black Economic Empowerment (BBBEE) schemes under the Mining Charter, are the instruments put in place to channel the mines to utilize their proceeds of mining to benefit the mining communities and transform societies in South Africa. As it is under this mechanism that mines have the obligation to ensure that they develop the mining industry and transform both communities and workers in South Africa.

According to Thobatsi (2014), SLP must be aligned with the local and district Integrated Development Plan (IDP) for local economic development initiatives which would provide a platform for investment opportunity, economic growth, reduction and infrastructure development. In terms of section 152(1)(c) of the Constitution, one of the objectives of the municipalities is to promote social and economic development in South Africa. Therefore, partnership between municipalities and mining companies is required and necessary to advance social and economic development in South Africa.

### 3. METHODOLOGY

This article extensively and intensively utilised contemporary literature review research approach to address the problem of the exclusion of black people from participating in the mainstream mining business in South Africa. The article inspired by practical experience of South Africa historical past of apartheid era that resulted racial exclusion in participation in the mining industry. The article implored various legislative interventions that have been enacted to redress the past imbalances. Save to admit that the article is desktop based that critic whether such interventions are capable to mainstream the black majority into the mining business in South Africa. Lastly, the article notes that implementation and enforcement of various transformative interventions are sacrosanct toward ensuring effective black people participation into the mining business in South Africa.

## **4. DISCUSSION OF INTERVENTIONS THAT FOSTER TRANSFORMATION IN THE MINING INDUSTRY**

### **4.1. Interventions Fostering Broad Beneficiation of Mineral Resources**

Even though South Africa is a rich mining jurisdiction with an estimated mineral wealth of \$2.5-trillion, yet, the country exports most of its mineral resources as raw ore which are processed in other countries whereas this should have been done in South Africa since mineral beneficiation had been identified as one of the priority growth nodes to help create jobs, grow the economy and contribute immensely to sustainable development and broad poverty alleviation (Tom, 2016). Generally, minerals beneficiation entails the broad transformation of mineral resources and the industry whereby the exploited minerals are processed to that of higher value products which can either be consumed locally or exported to other countries and international markets (Chitaka, 2015). Obviously, this will make the country earn substantive revenue through the processes of broad transformative beneficiation. Undoubtedly, effective implementation of minerals beneficiation would be an overarching impetus to mainstreaming previously excluded HDBSA.

Against the backdrop of this inclusive mineral resources participation, section 9(2) of the Constitution, provides that "equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination may be taken." This section acknowledges that in order for persons to enjoy equality as the founding values of the Constitution, there must be absolute enjoyment of both fundamental rights and socio-economic rights as encapsulated in the Constitution. As such, it mandates the legislature to enact policies and measures to ensure the protection and advancement of historically disadvantaged individuals of South Africa in order to correct past imbalances.

### **4.2. Mineral and Petroleum Development Act 28 of 2002 (MPRDA)**

Remarkably, in an attempt to strengthening the participation and inclusive of the black majority in various mineral resources entrepreneurs and businesses, the government enacted various pieces of legislation to regulate mining industry in order to build

black capacity to enable them to assume these transformative beneficiation feats. The key transformative interventions which are discussed below are substantive remarkable drivers mainstreaming of the previously denied HDBSA to enable them to participate and benefit broadly from the country's mineral resources.

The MPRDA is the principal Act which regulates the mining industry in South Africa. It significantly transferred mineral rights from private ownership to government as guardian of the people of South Africa and makes special provision to benefit historically disadvantaged persons.

Accordingly, in terms of Section 3 of the Constitution, it provides that:

*"(1) Mineral and petroleum resources are the common heritage of all the people of South Africa and the State is the custodian thereof for the benefit of all South Africans. ....(3) The Minister must ensure the sustainable development of South Africa's mineral and petroleum resources within a framework of national environmental policy, norms and standards while promoting economic and social development."*

The MPRDA gives the government of South Africa sole custodianship over all mineral and petroleum resources in the Republic for the benefit of all South Africans in terms of Section 3(1). In the case of *Agri SA v Minister of Minerals and Energy*, 2013 (4) SA 1 (CC); an application was sought to declare MPRDA unconstitutional on the basis that it expropriated the property rights of Sebenza Pty Ltd coal mine without compensation as required by section 25(2) of the Constitution. It sought compensation to be payable in terms of Section 25(3) of the Constitution. They argued that ownership was legislated to the State by MPRDA, as such it must pay compensation. The existing mining companies afforded an option to apply for conversion of old order rights to new order rights wherein the State is the custodian.

The Chief Justice Mogoeng, in delivering the judgment held that the State did not acquire ownership but custodianship on behalf of the people of South Africa and thus, compensation was not payable as no expropriation occurred. The court held that the State is not a competitor with other business entities for rights

but entrusted with administrative authority to equitably distribute mineral resources in South Africa and dismantle past discriminatory practices in the mining industry.

In terms of Section 3(2) of MPRDA, the State acting through the Minister of Minerals has the authority and responsibility to manage the exploitation of the nation's mineral and petroleum resources and ensure that the black majority, benefit from their common wealth. As the preamble of the MPRDA recognises that the mineral and petroleum resources are non-renewable natural resources, as such the precautionary measures have to be taken to ensure that as they deplete with time, their exploitation contribute broadly towards realisation of socio-economic transformation in South Africa.

Further, the State has the obligation in terms of Section 3(3) of MPRDA to ensure that the mining industry adhere to the national and international mining pieces of legislation, policies, norms and standards and promote economic and social development in South Africa. As part of beneficiation, the State must further assist black owned South African mining companies financially and provide the opportunity to facilitate the process of beneficiation. As the former President Zuma confirmed that black owned companies raised concerns of various difficulties encountered with acquiring industrial finance support, suppliers and technical production support in many industries (Zuma, 2014). Therefore, urged institutions such as National Empowerment Fund (NEF), Industrial development Corporation (IDC) and Small Enterprise Funding Agency (SEFA) effectively empower black industrialist companies through funding and skills trainings.

Section 12(1) of MPRDA mandates the State acting through the minister to assist HDBSA to venture into mining industry, as this is very significant to job creation that will benefit South African black mining companies. The Minister has to ensure that historically disadvantaged South Africa are assisted based on the rights they possess. Assistance implies that training and services must be available for them to properly conduct their operations either of prospecting or mining. In ensuring that communities benefit from their mineral and petroleum resources, the Minister in granting rights in terms of section 104 is obligated to give preference to communities applying for prospecting or mining right. The applications thereof by communities must be in accordance with Section 16. The similar procedure followed by other ordinary

applicants however would be awarded preference by the Minister in determining granting of rights.

In the case of *Bengwenyama-ya-maswazi community and Others V Minister for mineral Resources and Others*, 2015(1) SA 197(SCA), where the community's application for prospecting right was competing with another private mining company to prospect over minerals resources in the Bengwenyama community two farms. The court ruling initially awarded the private company prospecting right on the basis that it complied with procedures and applied first. The community appealed the decision. The court said that the case has created a special category of right for communities as they are owners of the land and should have preferential right to be granted for prospecting right except only if is already granted to another person. Accordingly, SCA instructed the Minister to assist the community with application and award them the prospecting right.

According to Section 9(1) of MPRDA, the "regional manager if he or she receives more than one application for a prospecting right, a mining right or a mining permit, as the case may be, in respect of the same mineral and land applications received on the same date. The Minister is authorised in terms of Section 9(2) of MPRDA to grant preference to applications from HDBSA. As such, Section 9 of MPRDA affords the Minister preferential powers to award rights to HDBSA when competing against their white counterparts regardless of who lodged the application first. This Section affords HDBSA the opportunity to be the forerunners with rights to speedy transform the mining industry in South Africa.

The principal section that deals with mineral beneficiation in the MPRDA of 2002 is Section 26 as amended by Section 22 of MPRDA of 2008. According to Section 26, the Minister is empowered to initiate, promote or prescribe levels required for beneficiation, however his powers is restricted. Firstly, he must act within the advice of the mines and mining development board established by Section 57 and after consultation with the Minister of Trade and Industry. Secondly, mineral beneficiation of such minerals must be economically viable in the Republic (Tim, 2014). This means that the Minister cannot solely prescribe measures to be used to advance mineral resources beneficiation without consulting the stakeholders and this derail effective implementation of beneficiation because it is further time consuming and costly. The Mineral and Petroleum Resources Development Amendment Bill of 2013, that intended to repeal all

these restrictions above, have been recently withdrawn by the minister.

The MPRDA expressly in Section 100 deals with the need for transformation in the mining industry and provides that (1) the “Minister within five years from the date the Act came into effect to firstly, after consultation with the Minister for Housing, develop a housing and living conditions standard for the minerals industry; and secondly develop a code of good practice for the minerals industry in the Republic.”

According to Section 100(1), the Minister must enact code of good practice, which would transform the mining industry. Accordingly, as mandated the Minister gazetted the codes of good practice for the South African minerals industry in 29 April 2009 that deals with several fundamental principles to transform the mining industry amongst others is beneficiation of the minerals resources. It is apparent that transformation in the mining industry has been stagnant, this calling upon on the State to fasten transformation in the mining industry through various mechanisms that would effectively impute progress.

According to Section 100(2)(a) of MPRDA which provides that “to ensure the attainment of the 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 the 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 historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources. The purpose of Mining Charter is to impute transformation for the benefit of HDSA as provided for in section 100, as evident from the Mining Charter of 2004, 2010, 2017 and 2018 respectively”.

The implementation of the Charter has been subjected to judicial review thus, halting the swift implementation of the Mining Charter, the first broad-based socio-economic charter for the South African Mining industry well known as (Mining Charter of 2015) was gazetted in 2004. Amended by Mining Charter of 2010, 2017, and currently faced with implementation of mining charter of 2018, all these charters have a clear vision to transform mining industry to become competitive globally and offer real benefits to all South Africans.

The Mineral and Petroleum Resources Development Amendment Act (MPRDAA) 49 of 2008 amended Section 100(2)(a) of MRDA of 2002 by Section 70 that the Historically Disadvantaged South Africans must not only have access of entry to the mining markets but must equally have entry into, and actively participate in the mining industry. Furthermore, they must benefit from the exploitation of the mining and beneficiation of such mineral resources.

Section 100 speaks to the need for transformation in the mining industry as it prescribes time-frame for the Minister to implement the charter which would address transformation impediments. The objectives of the Charter are amongst others to promote equitable access to the nation’s mineral resources to all the people of South Africa; substantially and meaningfully expand opportunities for HDSA 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 HDSA; expand the skills base of HDSA in order to serve the community; promote employment and advance the social and economic welfare of mining communities and the major labour areas in which majority of miners reside; and expand on measures that would promote beneficiation and implementation in South Africa’s mineral commodities. The Charter was enacted to fast-track transformation by imposing targets which must be fulfilled by mining companies in South Africa.

The 2017 Mining Charter had been challenged in the case of *Scholes and Another V Minister of Mineral Resources* (50642/2015) [2017] ZAGPPHC 303, the application sought to challenge powers vested in the Minister in terms of section 100 (2)(a)-(b) of the MPRDA, which empowers the Minister to develop Broad- Based Socio-Economic Employment Charter that holders of rights or permits must comply with at all times. Despite the court case, the Minister developed and gazetted Mining Charter of 2017 which targets the mainstreaming of black person and targets the harmonisation of the innovative policies and legislation in order to implement meaningful participation of Black persons. The Charter was halted and subsequently withdrawn before implementation by the government due to unpleasant response it received from the mining industry stakeholders.

Consequently, the Minister of Minerals Resources on 26 September 2018 published the long awaited new Mining Charter of 2018 for implementation. The mining

Charter of 2018 aims to bring certainty into South Africa mining industry. It sets new targets in all elements; for example, with regards to ownership it requires mandatory 30% BEE shareholding. It further outlines standards required for procurement, supplier and enterprise development provisions prescribed, the extent to which mining goods may be imported and exported, where services must be sourced and how and where processing of samples should be conducted. With regards to employment equity, human resources development and mine community development required standard increased. However, with regard to beneficiation, the baselines are still required to be determined by the Minister of mineral resources.

Therefore, at this stage it is safe to state that the Charter is published for public comments and the targets are likely to be amended as all parties are willing to sacrifice to afford the industry with stable policies and legislation it deserves. This is a step towards positive change in the unequal mining industry.

#### **4.3. Mine, Health and Safety Act 29 of 1996 (MHSA)**

The discovery of minerals in South Africa is clouded by hazardous peacetime and unhealthy occupations for mine workers. The main purpose of the Mine, Health and Safety Act as outlined in Chapter 1 as amongst others to:

*“(a) to protect the health and safety of persons at mines;*

*(b) to require employers and employees to identify hazards and eliminate, control and minimise the risks relating to health and safety at mines.”*

According to Section 1 of MHSA, the health and safety of mine workers is clearly pivotal and it is the duty of both employers and employees to ensure that necessary precautions are observed and adhered to at all material times to avoid unnecessary injuries and loss of lives.

According to Section 2(1), the mine owners have to ensure that the employees in performing beneficiation process should be equipped with necessary operational skills, mechanisms, equipment to operate adequately and allow them to perform their task effectively and accordingly without endangering the health and safety of surrounding communities, employees, stakeholders or any other person who may

be exposed. Further, according to Section 2(1) (c) the mining companies are obliged to conduct annual report for health and safety measures they have in place which must be made in accordance with the MHSA.

Miners, most especially those involved in drilling are often exposed to life threatening situations. On a yearly basis, more people particularly blacks are dying in South African mines considered to be one of the world's deepest and most dangerous. Just in 2017, there were 82 fatalities.

However, despite the establishment of the MHSA the breakdown of the fatalities per commodity during the year 2016 most death occurring on gold mines (30), followed by platinum (27), the least coal (4) and then other mines (12). In the category of other mines, these include diamonds, chrome, copper and iron ore.

This decline in fatalities is being achieved despite the ever-increasing depths at which gold mining in particular takes place. According to the chamber of mines the three main causes of fatalities during mining are rock falls, transport related accidents, and accidents, which include inhalation of dangerous fumes. The employment of inexperienced and untrained men in dangerous operations contributed largely to the fatalities. As such, the inadequacy and ineffectiveness by the mining companies to train and equip their employees to ensure that quality and safe service is conducted to contribute to the reducing the continuous risk to the lives of miners.

Recently, in Impala Platinum's Rustenburg shaft 12, it was reported that two men died as a result of rocks falling on their heads while drilling (De Villiers, 2017). This incident has instigated fear to miners in the platinum belt. According to Zwane (2017), the department is concerned about miners losing their lives on duty and as a result of these incidents, they have instituted the investigations on this matter with the aim of preventing further similar incidents as their legislative obligation.

Even though the number of mining-related deaths has decreased, it is still of great concern as each life is precious. The Ministry of Mineral resources needs to take appropriate steps to employ mechanism, which would be used as a precautionary measure to avoid mining related death. The lives and well-being of employees mine workers are very important and can never be justified by profit making scheme of the mining companies, hence beneficiation which would

result in the increase of deaths of mine workers at mines is a futile exercise. Therefore, it is necessary to adopt precautionary measures which would alleviate mining-related deaths with immediate effect.

Pursuant to the above, many mine workers have contracted silicosis and other diseases such as Tuberculosis (TB). The World Health Organisation (WHO) in 2015 estimated that South Africa had about 450,000 cases of active TB, which are mostly mine related. Recently, in the case of *Nkala and Others V Harmony Gold Mining Company Limited and (Treatment Action Campaign NPC and Sonke Gender Justice NPC as Amicus Curiae)* [2016] 3 All SA 233 (GJ); 2016 (7) BCLR 881 (GJ); 2016 (5) SA 240 (GJ), the applicants sought to bring class action against 32 companies operating in the gold mining industry. The applicants proposed a bifurcated process through which the single class action would proceed, the bulk of which belong to the silicosis class or court have ordered class action to be instituted against mining companies South Africa in 2013 (Pansegrouw, 2016). The court held that a class action is the only realistic option through which justice can prevail and most mineworkers can assert their claims effectively against the mining companies and the only avenue to realise the right of access to courts, which guaranteed for mineworkers by the Constitution of the Republic of South Africa, 1996.

The case provides mine workers and or their dependants the legal remedy to exploit when affected by health attack caused by unhealthy mining conditions. This is a victory to many mine workers who for many decades have suffered from hazardous working conditions causing chronic diseases as they had not been able to seek recourse from the courts due to financial constraints.

#### **4.4. Skills Development Act 97 of 1998 (SDA)**

In terms of Section 2(1) of the SDA, provides that the SDA is enacted to develop the skills of the South African workforce which include the mining industry, these may be achieved through various measures which include *inter alia* -

- (i) to improve the quality of life of workers, their prospects of work and labour mobility;
- (ii) to improve productivity in the workplace and the competitiveness of employers;
- (iii) to promote self-employment;
- and (iv) to improve the

delivery of social services; (b) to increase the levels of investment in education and training in the labour market and to improve the return on that investment;”

The majority of South Africa workforce are unskilled and this is creating major impediment for effective implementation of beneficiation. As beneficiation requires skilled workforce that would be able to develop a product from mineral resources at conception up to the last stage as final finished product ready to hit the market both locally and internationally.

Accordingly, Section 2(1) of SDA aim to develop South Africa workforce skills to be more productive and competitive for their employers. Importantly, the nation that has effective skilled workforce is likely to attract more investors. Further, this creates certainty towards desired production results and good profit returns. Skilled workforces are cost-effective and labour-intensive, automatically leading to sustainable beneficiation of the mineral wealth in South Africa.

In terms of Section 9(1) of the SDA, the Minister may establish a Sector Education and Training Authority (SETA) with a constitution for any national economic sector. Accordingly, in March 2000, the Minister of Labour established the SETA that is tasked with the responsibility to develop and implement a sector specific skills plan, register and promote learner ships in the Republic of South Africa in order to increase sectoral skills. To achieve its targets, the SETA established the Mining Qualifications Authority (MQA) with the responsibility to administer skills development programmes for the mining and minerals sector in South Africa. The MQA is a necessary vehicle that the industry is in dire need of to promote skilled workers in order to ensure sustainable facilitation of mineral resources.

#### **4.5. Mineral and Petroleum Resources Royalty Act 28 of 2008 (MPRRA)**

The MPRRA recognises that the mineral wealth of South Africa is the common heritage of its citizens and therefore the citizens must benefit from their exploitation. Accordingly, the MPRRA is enacted to regulate beneficiation by the state through taxation. The imposed levies serve as revenue generation to benefit the people of South Africa as government depends largely on taxation to provide services and administration of transformative development to everyone.

According to Section 2 of MPRRA:

“A person that wins or recovers a mineral resource from within the Republic must pay a royalty for the benefit of the National Revenue Fund in respect of the transfer of that mineral resource.”

Section 2 imposes levy on any person, either juristically or naturally to pay royalty to the National Revenue when they transfer mineral resources they extracted in the Republic of South Africa. This amounts to beneficiation from any mineral resources exploited in the Republic when they are being transferred. Section 2 encourages mineral resources exploited in the country to be refined and smelted and processed to finished products for sale in the country or export to another country to maximize the value by earning profitable revenue by the local businesses.

#### 4.6. Precious Metals Act 37 of 2005 (PMA)

The PMA regulates the use and benefits of South African diamond and precious metals together with Diamonds Act, 1986 which in terms of Section 3(1) established the regulator who controls the smelting, refining, beneficiation, use and disposal of precious metals.

In terms of Section 2 of the PMA, objectives of the regulator are to-

“(a) ensure that the precious metal resources of the Republic are exploited and developed in the best interest of the people of South Africa;

(b) promote equitable access to, and local beneficiation of, the Republic's precious metals.”

Accordingly, in terms of Section 2, it is the duty of the regulator to ensure that precious metals of the Republic are developed, promoted and shared equitably and administered in the best interest of all the people of the Republic of South Africa to realise maximum participation in implementation of local beneficiation. This implies that the regulator must ensure that the HDBSA must also be promoted to benefit equitably in the mining industry.

The PMA does not discriminate, but opens the door for anyone who meets the necessary requirements to apply for licence to mine precious metals. Accordingly,

in terms of Section 6(1) the regulator in “considering an application for any licence, permit or certificate must consider following factors:

- (a) the promotion of equitable access to and the orderly local beneficiation of precious metal;
- (b) the requirements of the broad-based socio-economic empowerment Charter developed in terms of Section 100 of the MPRDA.”

As such, Section 6(1) of PMA authorises the regulator to grant licence in the Republic to anyone who aspires to mine precious metals subject to two conditions. Firstly, issuance of the licence must promote access to and broad local beneficiation of precious metal. Secondly, it must advance the objective of Broad Based Socio-Economic Charter (Mining Charter) as required by MPRDA.

The PMA further imposes conditions on export of precious metals. Section 12(1) provides that “no person may export any unwrought or semi-fabricated gold except with the approval of the National Treasury in terms of the Exchange Control Regulations made under the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), granted with the 45 concurrence of the Minister. (2) No person may export any unwrought or semi-fabricated metals of the platinum group except with the written approval of the Minister which shall be granted subject to the promotion of equitable access to, and the orderly local beneficiation of such metals.”

#### CONCLUSION

During apartheid regimes, the mineral resources legislative framework conferred ownership of mining resources in whites' private ownership by mining companies for decades whereas the majority of South Africans were excluded from ownership and effective participation. Since 1994, South Africa has introduced innovative transformative legislation and policies which seek to ensure that there is meaningful participation and transformation of the mining sector in order to mainstream and benefit the black majority.

The promulgation of MPRDA in 2002, afforded the State with custodianship of all the mineral and petroleum resources in the Republic of South Africa and all mining companies were given an option to apply for conversion of old order rights to new order rights. The court in *Agri SA v Minister of Minerals and Energy*, had declared this as valid and constitutional. Since 1994, the dawn of democracy, many pieces of

legislation have been enacted with the aim of transforming the mining industry to provide opportunity to the black people to participate.

The MPRDA is one of the innovative principal Act, which empowered the State to transform the mining industry in order to mainstream the participation of HDBDSA. The overall aims and objectives of all the transformative innovative interventions are to ensure that all minerals exploited are either sold locally or exported, smelted and processed to finished-products for the benefit of black and white South Africans.

While the MHPA acts as the protective tool on behalf of the employees to ensure that in the processes of implementation of beneficiation, there is zero harm and precautionary measures imposed to avoid killings of workers on duty. To achieve broad equitable benefit of beneficiaries of South Africa. The SDA through its agent MQA has the mandate to ensure that it deals with shortage of skills in South Africa by continuously training people to be skilled in order to supply the mining industry with the resource persons and resources they need to continue to contribute sustainably. These will equip the black South Africans in the mining industry to be effective and productive.

It is apparent that South Africa has introduced different types of innovative transformative minerals beneficiation in order to drive and accelerate socio-economic transformation, creation of employments and alleviate poverty in South Africa. This article has therefore demonstrated that there is also need for effective and efficient implementation of these interventions in order to achieve the desired outcomes of broad minerals beneficiation particularly by the HDBSA.

The article establish that some captains of the industry halt the implementation of strategic interventions initiated by the government of South Africa by employing various means, including judicial review processes. In order to redress the injustices of the past that resulted in inequality and poverty to majority black people in South Africa, these initiatives must be implemented effectively and speedily.

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