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WITWATERSRAND,
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FACULTY OF COMMERCE, LAW AND MANAGEMENT

RE-DEFINING GENDER EQUALITY IN THE FORMAL MINING INDUSTRY. A CASE OF SELECT CATEGORIES OF WOMEN IN SOUTH AFRICA.

Dissertation submitted by

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In fulfilment of the requirements for the degree **DOCTOR OF PHILOSOPHY** in the School of Law at the University of the Witwatersrand

2023/03/21

Supervisor: Professor Catherine Albertyn

DECLARATION

I, Prisca Chipo Mudimba, declare that this thesis is my own unaided work. It is submitted in fulfilment of the requirements of the degree of Doctor of Philosophy (PhD) in the Faculty of Commerce, Law and Management at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in this or any other university.



(Signature of candidate)

21st day of March 2023, Johannesburg, South Africa.

UNIVERSITY OF THE WITWATERSRAND JOHANNESBURG

ABSTRACT

The mining industry has been one of the major contributors to the economic development of many developing countries. It employs and creates business for both skilled and unskilled people and has great potential for developing mine-hosting communities. The industry also has potential to contribute towards development programs, designed through Social and Labour Plans. Mining can improve lives. However, due to the masculine nature and culture of the industry, women have long been excluded from participation and, in many jurisdictions, it has required the law to correct this inequality. In South Africa, despite a plethora of laws to incorporate women in the industry, the majority of women remain excluded from recognition and participation, thus reflecting different meanings and understandings of the concept of equality from a more formal idea to a more substantive notion of equality. This study investigates the role and potential of the law in advancing substantive gender equality in the South African large-scale mining industry. Its focus is on three groups of women: those in ownership and control of mining related businesses, employees and women resident in mine hosting communities. A qualitative mixed methods approach (documentary interpretation, interviews and focus group discussions) was used to investigate the problem and collect data. The findings showed that, while the law plays a huge normative role in advancing equality, in practice this has often been limited to formal and, sometimes, inclusive interpretations of equality. Overall, the law is unable to cure barriers such as patriarchal and socio-cultural limitations experienced by women in the industry. Consequently, alternative solutions that seek to advance a more transformative substantive equality, drawing on women's practical experiences, are recommended.

JOHANNESBURG

DEDICATION

I dedicate my dissertation work to my kids, Twasantika and Twaabilwa and to my late father, Ba Mudimba, Mizimituba! To my kids, one lesson I learnt out of this research project that I wish I can pass to you is that should you find yourself in a position of privilege, allow the most disadvantaged in your circles to achieve their small goals through you!

To my late father whom I believe his spirit lives on, thank you for all the sacrifices you made for me to attain formal education. In the eyes of society and specifically my culture, of what use was I to the family as a girl child? But in your eyes, I was not just a girl child and of less value for being created a female as our culture dictates. Instead, I was and I am a human being with great potential when equally supported and loved. *Ndalumba Muzimu wangu*!

Last, I also dedicate this work in honour of all the women around the world (both alive and deceased) who have and continue to stand up for themselves and other women against patriarch. You are my inspiration!

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My sincere gratitude also goes to the WIMSA network and all the Participants that gave their time to share their lived experiences in the research project. I also extend my gratitude to Lifeline (Braamfontein) and Wits Law Clinic for the psychological and legal counselling services respectively offered to the participants that needed such. Further, I cannot forget to mention the translators (Advocate Gezile Masilo, Mrs Itumeleng Modise and Mme Mampuru) for bridging what could have been a language barrier. Am also thankful to my office mates and cohort members both from Wits University and other institutions (Glancina Mokone, Daniel Mokgosi, Thandiwe Mathews, Morris Sibanda, Meghan Finn, Coline Bruintjies) for the feedback sessions and moral support.

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LIST OF ABBREVIATIONS

AA- Affirmative Action

ANC- African National Congress

BCEA-Basic Conditions of Employment Act

CALS- Centre for Applied Legal Studies

CEDAW - Convention on the Elimination of all forms of Discrimination Against Women

CGE - Commission for Gender Equality

EEA-Employment Equity Act

GEAR-Growth, Employment and Redistribution.

ILO- International Labour Organisation

ICMM- International Council on Mining and Metals

LRA-Labour Relations Act

MCSA-Minerals Council South Africa

PPE- Personal Protective Equipment

MPRDA-Minerals and Petroleum Resources Act

RDP-Reconstruction and Development Program

UDHR-Universal Declaration of Human Rights

UIF – Unemployment Insurance Fund

UNDP – United Nations Development Programme

WIMSA-Women in Mining South Africa.

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CHAPTER ONE

WOMEN AND THEIR JOURNEY TO A GENDER EQUAL SOCIETY

1.1 Introduction and Background

The debate around the legal and social status of women in society dates back at least as far as the ancient Greek period.[1] Women were confined to the private spheres of their homes, to take up responsibilities such as nurturing families and the general managing of households.[2] With restricted participation in civic life due to patriarchal influence and authority, political and economic participation was limited.[3] For a long time, they lacked the right to vote which invalidated their legal recognition as independent citizens.[4] In the United States of America, O'Connor claims that though women were subject to the Constitution, in its text they were, however, 'uninvited, unacknowledged and unsolicited'.[5] Thus, she argues that the US founding document, written in the 17th century, envisioned no role for (American) women at all.[6] While her observations reflect the status of American women at the time, this position is representative of what most women across the world have experienced, albeit differently influenced by geographical location, culture, religion, and so on.[7]

Historically, women's capabilities have generally not been judged according to their qualifications or ability, but more on their sexual and reproductive roles.[8] Upon marriage, they attained legal status but one that had limited legal recognition in terms of rights and obligations.[9] Their identities became merged with those of their husbands and they could not individually purchase, own, control, bequeath or convey property, retain their own wages, enter into contracts, or bring legal actions.[10] They effectively became men's subjects and subordinates, reinforcing the perception that they were physically and mentally inferior.[11] This

[1] H Barnett 'Introduction to feminist jurisprudence' (1998) 3; J. Lorber 'Using gender to undo gender: A feminist de-gendering movement' (2000) 1 *Feminist theory* 7 9.
[2] S D O'Connor 'The legal status of women: The journey toward equality.' (2001) 15 *Journal of Law and Religion* 29; J Lorber 'Gender inequality' (2001) 1.
[3] Ibid.
[4] Ibid.
[5] Ibid 30.
[6] Ibid.
[7] Ibid 29.
[8] *Bradwell v Illinois*, 16 Wall. 130, 141 (1873). In a concurring judgement by Justice(s) Bradley, Swayne, and Field, it was held that 'man is, or should be, women's protector and defender'. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.
[9] O' Connor (note 2 above) 31.
[10] Lober (note 2 above).
[11] O' Connor (note 2 above).

position may have now changed across the world, however, women continue to experience systematic and structural forms of discrimination in many public and private spaces where stereotypes and sexual distinctions remain intact.[12] This is notably the case in the world of work in general, and in male dominated industries in particular.[13] Consequently, over the years diverse groups of feminists, legal scholars and agents of social change have been motivated to fight for women's equality in various sites of gendered exclusion: a struggle that continues to this day.[14]

In South Africa, the coming of democracy in 1994 placed the 'woman question' in the spotlight. By the 'woman question' I mean the feminist (legal) methodology of interrogating the relationship between women, the law and society.[15] This relationship has become legally relevant in South Africa because of the guarantee of gender equality in section 9 of Constitution of the Republic of South Africa, 1996. This follows the fact that women have been historically excluded, silenced, and otherwise treated unequally by law. Today, the South African legal system formally regards women as equal to men in all facets of life, which is in line with international norms.[16] In theory, for example, they can participate in any professional field they have trained for or desire, provided they meet the requirements.[17] As a result of the promotion of gender equality, women theoretically have equal access to job opportunities and fair working conditions, as well as equal rights to purchase, own and sell property.[18] More than before, women can and have entered positions of influence in business and beyond.[19]

One would imagine, therefore, that women in a sector as important and prominent as mining (large-scale in particular) would have been fully empowered. Instead, the opposite is true as women continue to be underrepresented at all levels of the mining sector.[20] According to my Master's degree research findings, women in large-scale mining operations continue to

[12] Ibid.
[13] Ibid.
[14] Ibid.
[15] K T Bartlett 'Feminist legal methods' (1990) vol *Harvard Law Review* 370.
[16] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) Art 7.
[17] C J Badenhorst 'Occupational health and safety considerations for the employment of female workers in hard rock mines' (2009) *Southern African Institute of Mining and Metallurgy, Hard Rock Safety Conference* 59; P Schutte 'Heat stress management in hot mines' in JF Brune (ed) *Extracting the Science: a Century of Mining Research* (2010) 30-34.
[18] Ibid.
[19] In November 2018, 16 South African women featured in top 100 list of the Global Inspirational Women in Mining. Document accessible on http://miningmirror.co.za/2018/11/23/top-100-women-in-mining-honoured/.
[20] The Commission for Gender Equality 'Promoting Gender Equality Underground' Women, mining, and gender mainstreaming in South Africa' Report (2015/2016) 58.

work in an unchanged terrain.[21] The industry has not yet transformed to accommodate their full and equal participation. Most mining companies are yet to incorporate and implement gender sensitive organisational policies and unlearn the masculine culture. Further, not only is this unequal treatment meted out to female miners as employees, but research for this thesis suggests that women are also viewed as unequal partners in mining ownership deals.[22] They are often relegated to positions that have less influence in decision making. As a result, they are hardly able to influence organisational policies aimed at transformation, among others. In mine affected host communities too, women bear the brunt of mining induced disruptions and associated social ills, among others.[23] Partly, this is because their voices and views are unheard and or unsolicited during consultations. Here women find that their identities are concealed in inclusive terms, such as 'the community', 'the oppressed' or 'the people' in platforms of discourse and engagement.[24] As Hill *et al* postulate, an impression has been created that women's interests are automatically included in the generalised community views when, in fact, they are not.[25]

This study is interested in the gaps in the interpretation, meaning, and understanding of the concept of gender equality in the large-scale mining sector. Through an investigation of the relationship between the policy and legislative framework and the experiences of women in the South African large-scale mining industry, I look at different groups of women in three broad areas: Women as owners or managers of mining businesses; women as mine employees and women as members of mine-affected communities.

[21] P C Mudimba 'Re-defining gender equality in the South African mining sector' (Masters dissertation, University of Pretoria, South Africa 2017).

[22] This was based on the researcher's observations drawn from the testimonials shared by WiMSA members on their different experiences as women in mining related businesses. Different events were attended, held at Worly Parsons Building, Melrose Arch, (23 August 2018), Fasken, Office No.2, Building 2, Inanda Greens Business Park, 54 Wierda, Sandton (29th November 2018): WiMSA Women's Month Breakfast, Anglo American Centre for Experiential Learning (8th August 2019): Panel Discussions: Webber Wentzel Offices, Convention Tower, Heerengracht Street, Cape Town (5th February 2020).

[23] A Benya 'The invisible hands: Women in Marikana' (2015) 42 *Review of African Political Economy* 545; B Ndibongo 'Women of Marikana Survival and Struggles' (Masters Dissertation, University of Johannesburg South Africa, 2015); B Meyersfeld 'Empty Promises and the Myth of Mining: Does Mining lead to Pro-Poor Development? (2017) 2 *Business and Human Rights Journal* 31-53.

[24] K Lahiri-Dutt '*Gendering the field: Towards sustainable livelihoods for mining communities*' (2011) 5.

[25] C Hill, C Madden, & M Ezpeleta 'Putting gender on the Corporate Agenda' (2016) *Gender and the Extractive Industries* 3.

1.2 History and Context of the study

To set the context, this section first explores three aspects of the South African large-scale mining industry. First, I consider the historical legacy of discrimination embedded in the culture of the sector, both in terms of the historical legal ban and ongoing structural and institutional discrimination. Next, I describe the sector's economic contribution to the country, as well as the emergence of new challenges. Finally, I briefly set out the emergence of inclusive legislation after democracy, including the Broad-Based Black Economic Empowerment (B-BBEE) Act 53 of 2003, the Mining Charter and its parent Act the Mineral and Petroleum Resources Development Act (MPRDA) 28 of 2002.[26]

This section provides the context for and background to understanding women's exclusion from economic participation and government's rationale behind the introduction of more inclusive policies. I raise questions whether the set targets and means of monitoring progress have achieved anything and, if so, to what extent have the targeted women meaningfully benefited as envisioned.

1.2.1 The culture of discrimination within the mining industry in SA prior to 1996

1.2.1.1The Legal Ban

The historical legal ban forms a very important part of women's history in this study. It emphasises the role of the law and how its form reflects on society, women and their struggles. For this reason, it is discussed separately. The gendered history of mining is useful for reflecting and highlighting various forms of discrimination that existed (and perhaps still do) in the industry before the purported integration of women. It is a classic example of how far women have come in their struggles to assert their voices in different spaces, especially the formal economy. At the same time, the movement of women from dominating the domestic and private space to entering a male dominated civic sphere for economic recognition, inclusion, and participation has also proved to be a reminder of the various tools of women's oppression (the law, cultural and mythical beliefs, in Africa for example) that underpinned the industry's discriminatory culture in South Africa from 1911 to 1996.

[26] Section 100(2)(a) of Mineral and Petroleum Resources Development Act 28 of 2002; The Mining Charter for the South African Mining Industry, 2018, clause 13.

As discussed in detail later in this study, the legal ban had far-reaching consequences for the majority of black women in South Africa as compared to women of other races. Due to the educational curriculum aimed at separate development, they lacked competitive skills to service the formal economy. Therefore, manual work associated with underground labour could have provided black women with opportunities for entering the formal economy and gaining a foothold for their advancement. By restricting their participation, the state (through the law) prevented the development of their economic abilities and progress.

1.2.1.2 Racial Discrimination

Notwithstanding the aforesaid legal restrictions, the industry was already infamous for its various forms of racial discrimination.[27] As an exclusively male dominated space at the time, race was the major tool of segregation against black male workers.[28] Job reservations and appointments, wage disparities and the allocation of housing were all based on racial lines.[29] Skilled positions and supervisory jobs were assigned to white males while black people occupied lowest levels in job categories and wages.[30] This was despite the fact that they worked in extremely dangerous environments as compared to their white counterparts.[31] In addition, the allocation of black miners to temporary and single sex hostels, very close to the mines yet far away from their families, was for job convenience purposes rather than their own well-being.[32] Their white masters, on the other hand, were allocated 'five-roomed houses' as accommodation by mining companies where they could stay with their families.[33] As Meyersfeld also adds, the infrastructure developed was, and is, not for the employees or surrounding communities but rather meant to serve the mine and its management.[34]

Upon the incorporation of women, it was as though they replaced black males in occupying a lower status in the sector. They were all women, but race differentiated them in terms of accessing opportunities and other benefits. In some organisations in the workplace,

[27] P M Dikane 'The implementation of employment equity and affirmative action as a tool of balancing the injustices of the past in the mining industry' (Doctoral dissertation, North-West University, South Africa, 2006, 2-9; W H Hutt 'The *economics of the colour bar'* (1964) 47 – 49.
[28] Dikane ibid 9.
[29] Ibid.
[30] P Alexander 'Women and coal mining in India and South Africa, c1900-1940' (2007) 66 *African Studies* 211-212.
[31] Ibid 213.
[32] Ibid.
[33] Dikane (note 27 above).
[34]Meyersfeld (note 23 above) 2.

remuneration and promotion to executive roles is still based on racial lines.[35] Likewise, the mining entrepreneurial space remains uneven in terms of access to resources and opportunities.[36] Through the Black Economic Empowerment strategy discussed further below, for instance, race has played out differently for women with some finding the policy beneficial while others have found it to be exclusionary. Finally, the mine hosting communities in South Africa mostly comprise black women who have been at the receiving end of the social, economic, and environmental ills associated with mining operations.

1.2.2 The development, economic contribution and decline of the mining industries in South Africa

The period between the 1930s and the late 1940s saw a massive mineral resource exploitation of Africa's wealth by colonising powers. According to the Dumett, the target countries on the continent were exporters of major commodities (gold, platinum, diamonds, chrome, cobalt, manganese).[37] These were the Union of South Africa (now South Africa), Northern and Southern Rhodesia (now Zambia and Zimbabwe respectively), the Belgian Congo (now Democratic Republic of Congo) and Nigeria. The exploitation resulted in different types of minerals leaving the continent in large shipments to the colonial masters including Britain and the United States of America.[38] The demand for specialised wartime instruments during the Second World War motivated the resource exploitation. As Fedderke and Pirouz also add, minerals were used to replenish war material in the destination countries and to prepare for peacetime, leading to the introduction of advanced metallurgical research.[39] This research was dedicated to creating new and self-sustaining military services that would be compatible with peacetime, leading to the exploring of new mineral supplies in the Southern hemisphere.[40]

Each of the above colony countries had a crucial role in the Second World War. South Africa was indispensable for its gold, platinum, diamonds and iron.[41] Importantly and besides its general use in the manufacturing of ammunition, gold was also used to settle debts incurred

[35] Wimsa reports (note 22 above).
[36] Ibid.
[37] R Dumett 'Africa's strategic minerals during the Second World War' (1985) 26 *The Journal of African History* 380-383.
[38] Ibid 382.
[39] J Fedderke & F Pirouz 'The role of mining in the South African economy' (2002) 5 *South African Journal of economic and management sciences* 1-34.
[40] Dumett (note 37 above*)* 383.
[41] F Wilson 'Minerals and migrants: how the mining industry has shaped South Africa.' (2001) 130 *Daedalus* 99.

by Britain's lend-lease to the USA.[42] It is this historical demand for large quantities of minerals that led to the economic expansion of some of the African countries' mining industries, albeit not to the benefit of the citizens of the colony countries. In South Africa, the demand for these commodities continued even after the Second World War, partly due to the availability of cheap labour.[43] Mining was central to the development of the economy and it has been that way for over 100 years.[44] In the 1970s, the country was recognised as the primary producer of gold the world over.[45] It reached a remarkable peak production of 1000 tonnes of gold that led to the development of Johannesburg, the City of Gold colloquially known as '*Egoli'*.[46]

With the largest gold deposits and close to a century of operations, the Witwatersrand Basin has the deepest mines (depth of 4 000 metres) in the world.[47] At such depths, it is reported that rock temperatures are as high as 50 degrees Celsius and vertical rock pressures are around 100 mega pascal (MPa).[48] Despite its intricate ways of extraction, gold remains a precious commodity due to its chemical properties which means it does not tarnish.[49] It is malleable and is regarded to be ideal for use in many industrial applications.[50] According to the Minerals Council, SA, it is still the world's most coveted metal and revered for its beauty and symbolism.[51] For that reason, it remains in demand to this day in South Africa. Platinum, on the other hand, was first discovered in 1924 in South Africa. With most of the deposits concentrated around the Bushveld Igneous Complex, it makes the country host to 80% of the world's platinum reserves.[52] Like gold, it has a significant economic value due to its catalytic properties which are useful in the automotive industry, jewellery and many more.[53] Its extraction also creates significant employment opportunities which translates into employment in other industries due to its extensive supply chain.[54]

[42] Dumett (note 37 above) 384.
[43] Ibid 383.
[44] Minerals Council, South Africa; Facts and figures Pocketbook, 2017, 8.
[45] Ibid 10.
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] Ibid.
[50] Ibid.
[51] Ibid.
[52] Ibid 12.
[53] Ibid 8.
[54] Ibid 28.

1.2.3 South Africa's mining industry after democratisation

During the 2020/2021 financial year, the industry's contribution to South Africa's gross domestic product (GDP) was estimated at R 371.9 billion.[55] Approximately 452 866 jobs were created in employment opportunities to both semi-skilled and unskilled workers who may have not been easily absorbed into the economy by other sectors.[56] This was less by 11 801 from the 2018/2019 financial year.[57] Fixed investment contribution was recorded at R 95.7 billion[58] and R 450.6 billion worth of produce was exported.[59] R 11.8 billion was paid in royalties[60] and R 27.2 billion in taxes and all this in the same financial year.[61] Remarkably, the industry's potential to create employment at a large scale has it regarded as the largest contributor by value to South Africa's Black Economic Empowerment initiative (BEE).[62]

On the other hand, like other trades, the sector is not without problems. Its heavy reliance on the stability of global markets in terms of commodity prices and investor confidence (among others), makes it subject to a lot of factors. The fluctuating rate of the rand against the US dollar for instance, affects the commodity prices resulting in a high cost of doing business in the country. As Neingo and Tholana also add, with the great depth of the gold mines, the extraction of quality ore grade also requires sophisticated infrastructure.[63] Low-grade ore on the other hand requires high energy consumption for mineral processing, such as water and electricity.[64] Consequently, around 2000, there was a decline in economic contribution to the GDP due to socio-economic and geopolitical factors affecting major commodities (gold and platinum).[65] These included price volatility, escalating costs of production (depth and mining methods), decline in resource grade, labour issues and the political, social and environmental issues.[66] These factors combined with price volatilities exacerbated by the spill-over effects of the 2008 global financial crisis,[67] rendered the country unattractive as a mining destination over the

[55] MCSA 2020/2021 pocketbook, 2-4.
[56] Ibid.
[57] MCSA 2018 pocketbook, 11.
[58] MCSA (note 55 above).
[59] Ibid.
[60] Ibid.
[61] Ibid.
[62] Commission for Gender Equality (note 20 above) 10.
[63] P N Neingo, & T Tholana 'Trends in productivity in the South African gold mining industry' (2016) 116 *Journal of the Southern African Institute of Mining and Metallurgy* 186.
[64] Ibid.
[65] Fedderke (note 39 above) 1.
[66] P Neingo and F Cawood, 'Correlation of productivity trends with market factors at three selected platinum mines' (2011) *Statistics*, 4.
[67] Neingo & Tholana (note 63 above) 283.

recent years.[68] Subsequently, the effects of the Covid-19 global pandemic also affected the industry's performance.[69]

Finally, the recent show of public discontent towards the mining industry by hosting communities also testifies to the non-viability of the industry in its current form.[70] In 2012, the Marikana tragedy placed the country's mining industry in the spotlight as the events of 16th August exposed the industry's social, economic, and political problems. Thirty-four mineworkers were brutally killed by members of the South African Police Service during protests for better living and working conditions and a minimum monthly wage of R 12 500.00.[71] In terms of South African labour law, the mine management had no legal obligation to negotiate these demands because the Association of Mineworkers and Construction Union (AMCU) making them fell outside the collective bargaining structures.[72] However, employees had lost trust in the majority National Union of Mineworkers (NUM) which they accused of abandoning its mandate of representing them.[73] Subsequently, striking employees organised themselves outside their union structures in a strike that was found to be illegal by mine management. The latter then engaged the services of the South African Police Services who shot 34 of them dead and left many injured.[74]

As one of the major mineral commodities that contributes to the South African economy, the decline of platinum extraction also had a negative impact on the economy. This study focuses on platinum mine extraction especially on the mine hosting communities and the employees. In employment terms therefore, the decline results in the loss of many jobs as some companies retrench some of their employees.[75] For productivity purposes, this exposes women employees to high job uncertainty as employers tend to prefer men over them.[76] Also, in the

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[68] Fraser Institute Annual Survey of Mining Companies 2021 available on: *https://www.fraserinstitute.org/studies/annual-survey-of-mining-companies-2021* (Published on April 12, 2022).
[69] T. Laing 'The economic impact of the Coronavirus 2019 (Covid-2019): Implications for the mining industry' (2020) 7 *The extractive industries and society* 580: J E Ataguba 'COVID-19 pandemic, a war to be won: understanding its economic implications for Africa' (2020) 18 *Applied Health Economics and Health Policy* 325.
[70] Centre for Applied Legal Studies (CALS) Report, Submission to the special rapporteur on violence against Women: 2015, 6-8: Mining affected communities from different provinces in South Africa protested outside Parliament with activists demanding mines to develop and help the communities that host them (Article available on *https://www.groundup.org.za/article/mining-affected-communities-protest-outside-parliament/16 August 2022*) .
[71] E Cairncross and S Kisting 'Platinum and gold mining in South Africa: The context of the Marikana massacre' (2016) 25 *New solutions: a journal of environmental and occupational health policy* 513.
[72] Ibid.
[73] Ibid.
[74] Ibid.
[75] M Sichone and C Lew 'Anglo American platinum South Africa: strategic renewal in a declining industry' (2021) 11 *Emerald Emerging Markets Case Studies* 1.
[76] Ibid.

communities where the interviews were conducted, participants stated that the unemployment rate in their communities was exacerbated by retrenchments. Some companies were retrenching workers as they could not sustain business during the Covid-19 pandemic.

1.2.4 The origins of 'economic inclusion' in South African mining legislation and the Mining Charter

Following the country's dark political past that left citizens divided along racial lines, the 1994 African National Congress (ANC) government introduced progressive legislation and economic policies.[77] These were aimed at rectifying the legacy of colonialism and apartheid that excluded the majority of black South Africans from political and economic participation.[78] In some economic sectors, this also resulted in their exclusion from ownership of the means of production, among others. Consequently, to incorporate these into the mainstream economy, the Black Economic Empowerment strategy, commonly known as BEE, was introduced. However, the idea of black economic empowerment was to go through several policy iterations before the formal BEE strategy.

With minimum intervention from the government, transformation of the economy remained slow which eventually led to the introduction of industry-specific charters.[79] In the mining sector, the Broad-Based Black Socio-Economic Empowerment Charter for the South African Mining Industry was introduced in 2004. Its legislative weight stems from the MPRDA and it is underpinned by seven pillars which include equity, ownership and community development.[80] The Charter sets minimum targets and quotas for the empowerment of women in the industry.[81]

The main targets of empowerment are Historically Disadvantaged South Africans (HDSAs) who mostly comprise black people. 'Black People' is used as a generic word to refer to Africans, Coloureds and Indians.[82] However, in this category of the previously disadvantaged are also women, the youth, and persons with disabilities.[83] Consequently, in an attempt to address gendered, racial and socio-economic inequality in the industry, the MPRDA, the

[77] S Ponte, S Roberts and L Van Sittert '"Black economic empowerment", business and the state in South Africa' (2007) 38 *Development and Change* 934.
[78] Ibid 933.
[79] Ibid.
[80] Section 100(2) of the MPRDA 28 of 2002.
[81] Ibid.
[82] Chapter 1 of the Employment Equity 55 of 1998.
[83] Chapter 1 of MPRDA (note 30 above); 2004 Mining Charter; 2018 Mining Charter.

Charter and the BEE strategy has had unintended consequences. First, the racial classification of the previously excluded resulted in the exclusion of South African white women. This is because prior to 1996, all women in South Africa were excluded from participating in large-scale mining regardless of their race.[84] In this context South African white women would qualify to be categorised as the HDSAs, yet the law disqualifies them on the basis of their race.[85]

Second, given that some companies have measured their success in including women against the minimum quota,[86] can one really conclude that there has been progress in terms of bridging the gender gap in large-scale mining in South Africa? If so, to what extent? Has there been formal or substantive compliance? These questions also arise in consideration of the fact that the Charter's scorecard, as a measuring tool, fails to provide a detailed report on the extent of the progress made. In that sense, it is unclear how many women have benefited under the overall ownership transfer targets, employment and community development.

1.3 Articulating the Research Problem

With the coming of democracy, the notion of gender equality found its basis in the constitutional value of and right to equality. Under section 9 everyone is equal before the law and has a right to equal protection, and benefit of the law.[87] In addition, subject to section 36, everyone has a right to be free from unfair discrimination.[88] Section 9(2) provides for positive measures to advance persons or groups disadvantaged by unfair discrimination. However, the fact that the Constitution provides such rights does not mean that South Africans automatically access and enjoy these rights. As shall be discussed in detail in Chapter 2, the equality right has not always been interpreted, applied or implemented adequately or properly. In the mining sector, studies show that the equality right has had varied meaning. For example, the industry through the Minerals Council's South Africa Facts and Figures Report shows that more women have been absorbed into the industry since the promulgation of the first Mining Charter in

[84] Convention 45 of International Labour Organisation, 1935.
[85] Section 1 (c), Broad-based Black Economic Empowerment Amendment Act 46 of 2013.
[86] Wilhemina Manaso, Mine Manager, BHP Billiton in South Africa in her women in the mining industry interview with Creamer Media's Mining Weekly on 28 March 2014.
[87] The Constitution of the Republic of South Africa, 1996.
[88] This section of the Constitution provides for a limitation of rights is such limitation is reasonable and justified in democratic society, considering the principles of human dignity, equality and freedom and other relevant factors.

2004.[89] The figures presented, however, do not translate into women's actual recognition, participation, ownership, and control of the industry's activities and establishments. Instead, several scholars have shown that most women continue to experience several barriers in their participation in the industry.[90] In part, their challenges are related to their intertwined circles of exclusion emanating from their reproductive roles (as mothers), their low social and legal status in society in general and so forth. Moreover, as Samuels observes, multidimensional and intersectional forms of oppression tend to place some women at an advantage over others, due to differences in positions and context.[91] This raises questions about what understandings of the notion of equality have been adopted and applied in the mining industry? In particular, has it adopted a narrow formal approach or more expansive approaches, and what has this meant for different groups of women in the sector.

To give some perspective to this research problem, below I set out a brief overview of the questions and concerns that have been raised about the levels of control, participation, and recognition of the three groups of women in the formal mining sector that are the subject of this research.

1.3.1 Women in ownership and control of mining related businesses

The Mining Charter subscribes to the transfer of ownership of mining assets and participation of the previously disadvantaged in the mining industry.[92] This is demonstrated in both documents' (2004 and 2018) commitment to the minimum quota of 26 and 30 percent ownership transfer respectively.[93] While the initial document did not factor gender into its apportionment of transfer, the reviewed document does recognise women's allocation.[94] The challenge is that, in some cases, the percentage margins allocated to women are insignificant particularly given the population ratios between men and women in South Africa.[95] Women are also classified in collective terms which has concealed the identities of different groups.

[89] Minerals Council, South Africa, 2018-2021 Report.
[90] I C De Klerk, C J Botha, D Botha 'The perception on women working in core mining environment' (2015) 6 *J Economics* 200; Benya (note 23 above); Lahiri-Dutt (note 24 above).
[91] G M Samuels 'Identity, oppression, and power: Feminisms and intersectionality theory' (2008) 23 *Journal of Women and Social Work*, 5-9.
[92] Clause 4.7 and 2.1 of the Mining Charter(s), 2004 & 2018 respectively.
[93] Clauses 4.7 of the 2004 Mining Charter & 2.1.1.2 of the reviewed Charter (2018).
[94] In terms of the Mining Charter, women are allocated 5 percent within 5 years.
[95] The 2021 Statistics South Africa (Stats SA) estimated the mid-year population at 60.14 million people. In that figure, approximately 51.1% (about 30,75 million) were female and approximately 48,9% (about 29,39 million) were male. See also J Hills 'Addressing gender quotas in South Africa: Women empowerment and gender equality legislation' (2015) 20 *Deakin Law Review* 153.

They are sometimes incorporated in collective categorisation such as 'women and the youth' for instance. This has created controversy when it comes to accounting for the actual number of women who have benefited in terms of the Charter.[96] Also, in cases where black women have been identified for empowerment, the underlying empowerment funding model restricts transformation.[97] The ownership of mining assets intended for transformation have been tied to loan agreements whose interest-rates are out of reach for most black women.[98] Their lack of capital and sometimes insufficient technical skills and networks have opened space for window-dressing, also referred to as 'fronting'.[99] Black women have sometimes been incorporated as business partners, but with limited ownership or control of the business.[100] Importantly, most of the women with access to such opportunities have normally been the few politically connected rather than ordinary women.[101] Consequently, the topic around the ownership of mining establishments by HDSAs who are women has remained a hotly debated issue.

1.3.2 Women as Mine Employees

While all female mine employees generally face diverse challenges, the women of interest in this case are those that perform underground mining operations. They engage in labor-intensive duties using physically demanding equipment and operating in high-risk environments of the mines.[102] Yet, often their economic contribution is not appropriately recognized nor rewarded accordingly. For instance, the principle of equal rewards in pay and other benefits for the same job as their male counterparts is not always been followed to the letter.[103] Some studies have shown that many women still use ill-fitting or male designed protective wear.[104] The infrastructure in most workstations is yet to be female customized to meet their needs.[105] Also, as primary care givers, there are certain parental roles they often forego to balance domestic

[96] S V Rungan, F T Cawood and R C A Minnitt 'Incorporating BEE into the new mineral law framework for the South African mining industry' (2005) 105 *Journal of the Southern African Institute of Mining and Metallurgy* 735; G Mitchell, 'Making sense of transformation claims in the South African mining industry' (2013) 113 *Journal of the Southern African Institute of Mining and Metallurgy* 39.
[97] Ibid.
[98] Ibid.
[99] Ibid.
[100] D Botha 'Women in mining still exploited and sexually harassed' (2016) 14 *SA Journal of Human Resource Management* 1.
[101] Ponte (note 77 above) 943.
[102] D Botha and F Cronjé 'Occupational health and safety considerations for women employed in core mining positions' (2015) 13 *SA Journal of Human Resource Management* 1; Schutte (note 17 above); Badernhost (note 17 above).
[103] Botha and Cronjé (note 102 above), Schutte (2010) & Badernhost (note 17 above).
[104] Ibid.
[105] Ibid.

roles with employee duties. Given all these challenges and their biological differences from men, working in an untransformed environment of this nature renders women to be judged against a male model of an employee. In labour terms, this transgresses the principle and aspects of fair treatment of employees. In other words, the failure to acknowledge women's multiple differences, including their biological and physical make-up, can result in unfair discrimination. This also overlooks the socio-economic imbalance caused by their past disadvantage which has affected their skills and level of education.

1.3.3 Women as residents of mine hosting communities

The Mining Charter's commitment to socio-economic redress includes giving effect to meaningful economic participation through community engagement.[106] This is in line with the international best practice standard in terms of the International Council on Mining and Metals (ICMM).[107] In South Africa, the Social and Labour Plans (SLP) Community Toolkit Report reveals that many company SLPs have not been complied with nor achieved their purpose.[108] In some cases, SLPs have also never been developed at all although they are required.[109] For consultation purposes, for instance, it is important that those affected by mining establishments be given an opportunity to participate in the decision making process. As an integral part of mine hosting communities therefore, women have typically tended to be the most affected due to their position in society, and the most excluded from consultation processes. They lack an independent voice in deciding on issues that matter to them. As Lahiri-Dutt points out, they are submerged in collective terms, such as the 'the community', the previously disadvantaged', the people and so on.[110] Such categorisation is based on an assumption that women benefit from group-allocated resources when in fact they do not. Consequently, with the constant protests against mining companies in SA dominating the public domain in recent years, it can be inferred that companies are non-compliant with their agreements. Alternatively, it could also

[106] Mining Charter (note 83 above) clause 2, 13.
[107] The ICMM's ten principles include the respect human rights and the interests, cultures, customs and values of employees and communities affected by it member activities (Principle 3). It also requires company members to proactively engage key stakeholders on sustainable development challenges and opportunities in an open and transparent manner, effectively report and independently verify progress and performance (Principle 10). *https://www.icmm.com/en-gb/about-us/member-requirements/mining-principles*
[108] Available on: *https://www.wits.ac.za.../SLP%20Community%20Toolkit%March* 2017.
[109] Regulation 46 of the MPRDA 2002.
[110] Lahiri-Dutt (note 24 above).

imply a flawed consultation process of engagement where communities do not adequately benefit.

1.4 Problem with applying a wrong standard of equality

Albertyn and Fredman talk about two types of equality ideas, the formal and substantive conceptions.[111] As shall be discussed in more detail later in Chapter 2, the formal idea of equality is grounded in treating people alike regardless of their differences.[112] In other words, the concept is blind to barriers that restrict women's participation in different economic spaces. As Bonthuys points out, among the common barriers that have a detracting effect on women's status and desirability for employment are maternally related needs and demands. [113] As primary care givers, for example, it is challenging to effectively balance this role with the irregular working hours of an underground mine worker. Thus, to address such gendered barriers, a correct standard of measuring equality is proposed. In Albertyn's view, this includes an approach that 'subverts, rather than reinforces, the gender roles and stereotypes that place women in unequal positions'.[114] Consequently, in the mining sector this would mean incorporating a counterbalancing strategy that offsets women's disadvantages to allow them to compete with their male counterparts on an equal footing. This is in line with what is provided at law, that where the full enjoyment of rights and freedoms is unreasonably restricted, legislative and other measures may be crafted to protect or advance the unfairly discriminated persons or groups of people.[115]

This study proposes a change in the equality paradigm towards an interpretation of gender equality that is receptive of women's unique set of skills. One that demonstrates and incorporates this understanding into policies with the aim of creating a democratized workplace, business agreements and environment, as well as communal platforms of engagement. Although described as elusive in some cases, substantive equality is such an alternative that pushes for a more pragmatic interpretation of the concept of equality.[116] This interpretation that looks beyond likeness in order to accommodate different aspects of people's

[111] C Albertyn 'Substantive equality and transformation in South Africa' (2007) 23 *South African Journal on Human Rights* 253; S Fredman 'Substantive equality revisited.' (2016) 14 *International Journal of Constitutional Law* 712.
[112] Ibid.
[113] Albertyn (note 111 above) 250.
[114] C Albertyn 'Gendered Transformation in South African Jurisprudence: Poor Women and the Constitutional Court,' (2011) 22 *Stellenbosch L. Rev*. 591.
[115] Section 9(2) of the Constitution of the Republic of South Africa, 1996.
[116] Fredman (note 111 above) 713.

circumstances such as stigma, stereotyping and disadvantage in measuring equality. Accordingly, in the mining sector, the call by advocates of substantive gender equality is to understand the various structural and intersectional barriers that women experience in accessing the mining space. Some of this manifests in the form of legal systems, domestic duties and responsibilities, society's gendered expectations, etc.[117] The concept of substantive gender equality should, therefore, be interpreted in practical terms aimed at correcting variances that exist in women's circumstances. Overall, a true exercise of substantive gender equality principles promotes a culture of unlearning stereotypes and redressing the disadvantage that restricts one group of people in society from asserting their rights claims freely.

1.5 Objectives, and Research questions

The overall objective of this thesis is to examine how the concept of gender equality has been legally interpreted, understood and incorporated in the South African mining sector. The thesis seeks to establish a theoretical standard of substantive gender equality and to evaluate the extent to which this is experienced and enjoyed by women in mining. This will be done by measuring progress in policy and law as well as women's actual experience in the sector and their views on the efficacy of law. Through the lens of the law and its practice, therefore, the study aims to assess how the concept of substantive equality has been interpreted, applied and implemented in the integration of women in three areas: (i) in the levels of ownership, control, and participation of women in mining related businesses; (ii) in their recognition and participation as employees in the mining workplace; and (iii) in their position, recognition and participation as members of mine affected host communities. Overall, the study seeks to establish whether, and the extent to which, the law is an appropriate tool to facilitate substantive gender equality in these three spheres. In engaging this task, the study will pursue and address the following objectives and questions:

1.5.1 Research Objectives

[117] E Bonthuys and C Albertyn *Gender, Law and Justice* (2007) 88-89.
[117] Ibid 250.

1.5.1.1 Evaluating women's levels of ownership, control, and participation in the South African mining industry.

1.5.1.2 Developing on my Master's findings on whether women enjoy substantive gender equality in the mining workplace.

1.5.1.3 Investigating the gendered nature of mining operations, their forms of consultation and their effects on communities to understand how these affect women resident in mine hosting communities.

1.5.1.4 Examining if the law is an appropriate tool to facilitate substantive gender equality in the mining sector.

1.5.2 Research Questions

i) What does gender equality mean in so far as women in mining are concerned?
ii) What is the legislative framework of women in mining?
iii) Do women formally own and have legal control over mining establishments in South Africa? If so, do they enjoy actual control and participation? If not, what are the barriers?
iv) What do my Master's findings on women's participation indicate about substantive equality? Are women included? Do they enjoy full participation?
v) What does gendered equality in terms of participation for women resident in South African mine hosting communities mean? How are they affected by mining operations and which women? What are the legal commitments made to women by mining companies in SLPS? How do they play out in practice in terms of the SLP? Are they noticed at all?
vi) How can the understanding and implementation of gender equality and the role of law improve or be achieved?

1.6 Purpose and significance of the Study

The economic development of many Sub-Saharan African countries is still largely dependent on primary industries, such as mining.[118] In South Africa, as large employers of both the semi-skilled and unskilled black majority,[119] such industries promote meaningful economic

[118] P Chuhan-Pole, A L Dabalen and B C Land 'Mining in Africa: are local communities better off?' (2017) *World Bank Publication,* 71; S Adams 'Can foreign direct investment (FDI) help to promote growth in Africa? (2009) 3 *African Journal of Business Management* 178.
[119] Minerals Council SA Reports (note 93 above).

inclusion. Drawing on the transformative agenda of the Mining Charter to empower women, the mining sector should also promote women's financial independence and contribute to reducing (gender) inequality. This study is therefore significant in its critique of the understanding and application of the concept of (gender) equality in the mining sector for a number of reasons. First, it creates insights into an unexplored area, particularly from a South African legal perspective. Second, it engages the role of the law in advancing substantive gender equality in a domain where women were completely excluded from enjoyment of their fundamental right to equality. Third, the limited studies that have been conducted have relied on either quantitative or qualitative methods of data collection. As discussed below, this study benefits extensively from the advantages of a mixed method approach that draws rich insights from both documentary sources as well as the social research (field work). This allows the study to reflect on the progress made in the integration of women, whether the means of integration has achieved the goal, to what extent, and, if not, how a way forward can be mapped out.

In light of the above, the study aims to make the following contributions.

- To provide clarity on the concept of substantive gender equality in the formal mining sector in South Africa.[120]
- To provide a measure of the relationship between the letter of the law and how it is applied and experienced in practice.
- To contribute knowledge to the research and academic (publication) body on the footprint of African women in large-scale mining.[121]
- To serve as a guide for policy formulation and development to interested civil society groups, the government, business, trade unions and mine hosting communities etc.

[120] According to J Hills 'Addressing Gender Quotas in South Africa: Women Empowerment and Gender Equality Legislation. (2015) 20 *Deakin L. Rev*. 153, the understanding of the concept of (substantive) gender equality in most male dominated (mining) organisations is limited. For some, it has been confused with employment equity wherein companies adhere to its provisions for purposes of compliance with government economic empowerment programmes. This has exposed women to exploitation as some companies absorb them for reputation without necessarily empowering them. Evident to this is Malcom Larsen's assertions on the 8th October 2014 in an interview at Vuma Reputation Management, Illovo, Sandton, South Africa. He is a co-founder of Business Engage, an organisation at the forefront of SME development and the empowerment of women. His view on the appointment of women to managerial positions was that '*Whether or not to appoint women to board level is a business issue, and not a women's issue'.*

[121] While there has been research around women mine employees, there is limited research and academic publication on the three groups of women in so far as the understanding of substantive equality is concerned.

1.7 Research Methodology

In order to accomplish the research objectives and activities outlined above, information will be gathered through a combination of desk-based literary study of primary legal sources and secondary data. These will be supplemented by evidence from an empirical study conducted through social research (fieldwork). In terms of the primary legal sources, a review and analysis of legislation, government policy documents and case law will be conducted. For the secondary data, the chief research tools include journal articles, books, industry related periodicals and official publications on women and society, the law and mining generally in South Africa. For globally attainable trends, the internet is also a huge repository of information. The fieldwork component comprises interviews and focus group discussions that supplement the understanding of women's lived experiences.

1.8 Chapter Outline

The thesis comprises eight chapters. Chapter 1 sets out and introduces the premise of the study. It presents the historical background of women's journey to a gender equal society. Through this, it provides the context of the study, the aim, the objectives, and the research questions that guide the study. It further articulates the research problem and provides the justification, purpose, and significance of the study. It also introduces the research methodology and the limitations to the study. Chapter 2 sets out the theoretical framework on substantive equality. It provides a contextual background to inequality in general. Through this, it distinguishes different forms and ideas of equality, how these are understood and applied. It also provides insights on the effects of the different interpretations of the ideas of equality on women. The chapter also entails an overview of women's inequalities in different places of exclusion, the gendered nature of the law as well as the conceptual model.

Chapter 3 presents an outline of the research methodology used to arrive at the findings. It entails a detailed description of the research design, the methods, and the justification for the choice of such methods for data collection. It provides a detailed description of the participant selection process, the data collection techniques used and the justifications. It also presents the techniques relied on to test the quality or credibility of the findings, the data analysis method and the ethical considerations followed.

Chapter 4 sets out the legal, policy and institutional framework governing the South African large-scale mining industry. The chapter describes specific legislation introduced to

address socio-economic injustices that resulted in the exclusion of certain groups of people in South Africa such as women. These are government economic policies and legislation that address women's empowerment in the sector, some of which apply across all three groups of women and some of which are specific to each chapter. They include the Mining Charter and its parent Act, the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) and the Broad-Based-Black Economic Empowerment Act 53 of 2003 (B-BBEE).[122] It also incorporates select labour laws such as the Labour Relations Actions Act 66 of 1995, the Basic Conditions of Employment Act 75 of 1997 and the Employment Equity Act 55 of 1998.

Chapter 5 to 7 form the core of the thesis to focus on the analyses of the issues raised in the research questions. Chapter 5 and 7 provide findings relating to women in ownership and control of mine establishments and those resident in mining hosting communities. The applicable legal framework includes sections of the Constitution, the MPRDA, the B-BBEE and the Mining charter. Chapter 6 presents data and analyses the findings extracted from interviews with women mine employees. Apart from the legislation noted above, employment laws are also key to this section. These include the Labour Relations Act, the Basic Conditions of Employment Act, the Employment Equity Act. Finally, chapter 8 is a conclusion of the entire study, a summary of the findings and the recommendations suitable of the study.

[122] This is a form of affirmative action policy adopted by the South African government in post-apartheid era to address the nation's political and socio-economic inequality.

CHAPTER TWO

TOWARDS A FRAMEWORK FOR UNDERSTANDING GENDER EQUALITY AND MINING

2.1 Introduction

The South African Constitution commits itself to the achievement of equality for all. What does this mean for women in the mining sector? As is often said, equality is a contested concept, whose different meanings can produce quite different understandings and outcomes. This Chapter reviews the multi-facetted literature on gender equality in law and practice. Using substantive gender equality as a yardstick, it seeks to explore the role and application of the law in addressing gender inequality among three categories of women in South Africa: owners of mining related business, mine employees, and members of mine hosting communities in their interactions within different spaces in the industry. The chapter locates this discussion in the context of South Africa, its political and socio-economic past as well as its current democratic Constitution and legal framework.

Following the constitutional promise and commitment to redress past injustices, the chapter explores and unpacks the purpose of various legal and economic policies and, in this case, the Mining Charter's acclaimed economic inclusion of women. It interrogates the disjuncture that exists between what the industry's legal framework purports to achieve in relation to women and what it does, in fact, achieve. In other words, it starts a discussion on whether the legislative interventions employed to empower women have achieved the intended purpose or not.[123] To do so, I develop a conceptual framework for understanding of how gender equality is thought about, in different ways, in the industry. I build my discussion around the three ideas of equality posited by Albertyn in a South African setting, namely formal equality, inclusive substantive equality, and transformative substantive equality.[124] I use these to analyse the extent to which women enjoy recognition, redistribution, and participation in three different parts of the South African mining industry: ownership and control, employment, and community participation. These different ideas of equality are important to my analysis as they

[123] Clause 1(b), (c) of the objects of the Mining Charter, 2018, 12 (see note 83 above).
[124] C Albertyn 'Contested substantive equality in the South African Constitution: beyond social inclusion towards systematic justice. (2018) 34 *South African Journal on Human Rights* 442.

allow for an evaluation of the different kinds of equality outcomes that are possible for women in mining.

The chapter is arranged as follows, section 2.2, provides a contextual background on the nature, scope, the form, and sites of women's inequality generally and in South Africa in particular. This uncovers the complex nature of women's inequality, an understanding of which must inform the remedies that can be employed to address gender inequality at all levels. In section 2.3, I discuss the gendered nature of the law by briefly illustrating how feminists engage the law and the courts to bring about meaningful social change. This work reveals much about the role of the law and its effects on women's lives whether positive or negative. In section 2.4, I turn to the different forms and ideas of equality, formal and substantive. It is here that I draw on Albertyn's work to focus on the different forms of substantive equality, the liberal egalitarian/inclusive and transformative forms, before demonstrating how their interpretation and application affects women in large-scale mining in South Africa. This foregrounds my analysis in later chapters. Section 2.5 presents a frame of analysis for understanding the complexities in the interpretation and application of equality to the integration of women in the South African large-scale mining industry. Section 2.6 entails a brief summary of the conceptual framework that serves as a guide to the research project while the last section, 2.7, concludes the chapter.

2.2 Contextual Background: Women, their multiple sites of exclusion and the different forms of inequality

According to O'Connor '*the test of every civilization is the position of women in the society'*.[125] Judging today's civilisation against this adage may possibly render a large part of society 'uncivilised'. This is not to critique or belittle the progress that has been achieved in bridging the gender gap between men and women given the huge economic and political disparities in the past. Rather, it is to reflect on the present social and legal status of the majority of women across the world. It is also an attempt to answer unsettling questions around their sustained position at the bottom of the social hierarchy. In male dominated industries such as the mining industry, such questions invoke conversations around the role of the law in addressing women's exclusion. This touches on various spaces, both public and private, where there have been

[125] O'Connor (see note 2 above) 29.

pronounced levels of women's exclusion. These include the family unit, often reinforced by several socio-cultural structures and practices,[126] the education system, and the political and economic spheres, among others.[127]

In the next section, I discuss some of the spaces where women have been excluded and or treated unequally with men.

2.2.1 The Family Unit and associated socio-cultural practices as a site of women's exclusion

As a social institution, the family has facilitated multiple forms of discrimination and exclusion for women in society. By its private nature, the space and the relationships within are said to have obscured many patriarchal tendencies which are often accepted as normal.[128] Among these is the gendered division of labour which tends to directly or indirectly influence other relational arrangements outside the family space. Below, I look at how the traditional sexual and gendered division of labour, and the religious and cultural practices within families sustain women's exclusion beyond the private space.

2.2.1.1 The traditional division of labour

According to both Barnett and De Beauvoir, women's oppression is naturally interwoven with their biological role as mothers.[129] Women are often defined by their biological and maternal features such as '*she is a womb*' and '*an ovary'*.[130] They are viewed primarily as child bearers meaning that their reproductive needs (maternity leave, family responsibility) fundamentally detract from their status and desirability for economic participation.[131] Accordingly, their reproductive functions give rise to the traditional and unequal sexual and gendered allocation of household duties. This requires them to spend more time on household duties and child-care

[126] M Kambarami 'Femininity, sexuality, and culture: Patriarchy and female subordination in Zimbabwe.' (2006) *South Africa: ARSRC*.
[127] A Kainuwa, N M Yusuf 'Cultural Traditions and Practices of the Parents as Barriers to Girl-child Education in Zamfara State Nigeria.' (2013) 3 *International Journal of Scientific and Research Publications* 1.
[128] A M Mínguez 'Gender, family, and care provision in developing countries: Towards gender equality' (2012) 12 *Progress in Development Studies* 275; D Du Toit 'Not Work Like Any Other: Towards a Framework for the Reformulation of Domestic Workers' Rights.' (2011) *Indus. LJ*, 32.
[129] S De Beauvoir *The Second Sex* (1949) 45; Barnett (note 1 above) 5.
[130] Ibid.
[131] Albertyn and Bonthuys (note 117 above) 250.

compared to men.[132] In addition, Lober stresses that where both spouses spend an equal amount of time in their paid work, the wife still retains the responsibilities of extra family care.[133] Unemployed women or those outside formal employment experience bigger challenges because patriarchal norms and values often influence how responsibilities and the distribution of resources are allocated.[134] Where the husband is the one formally employed, often it is the wife that takes care of household responsibilities. Without any form of safety net, many women become vulnerable to exploitation and domestic violence. Masculinity therefore becomes a measure of physical strength and authority over 'his' wife and children, and his fitness to 'rule over the female'.[135] In contrast, a woman's feminine or 'she status' relegates her to a subordinate position, figuratively known as 'her place'.[136]

Women's unpaid labour is subject to inappropriate recognition in the mainstream economy and its economic value is not properly quantified.[137] Their unique abilities and contribution as human beings are overshadowed by associating their capabilities solely with their maternal function.[138] This has exacerbated the entrenched social system of patriarchy that gives men the continued and free benefit of certain sexual and reproductive services at the expense of many women. Unfortunately, for a very long time, such gendered dominance over social roles has gone unchallenged keeping many women in subordinate positions. Therefore, as Barnett and Lober argue, as long as women are not set free from the 'oppression of the womb' they will never be truly free.[139] In other words, they are still, and will continue to be, responsible for the greater part of unpaid domestic work in society.[140] With a 'double-shift' of full responsibility for childcare and housework, as well as taxing employment, their ability to fairly compete economically becomes limited.[141] Nussbaum argues that this further impacts on their opportunities for play and cultivating imaginative and cognitive faculties.[142] In addition, these unequal power relations in the family are further entrenched in, and exploited by, religion and cultural practices. I briefly discuss this in the next section.

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[132] E Boserup 'Woman's role in Economic Development*'* (2011) 3 *Earthscan* (2011) 247.
[133] J Lober 'Feminists and their contributions to gender equality' (2010) 6, 1-2.
[134]Albertyn (note 114 above) 592.
[135] Barnett (note 1 above); De Beauvoir (note 129 above).
[136] De Beauvoir ibid 32.
[137]Benya (note 23 above) 543.
[138] Albertyn & Bonthuys (note 117 above) 96.
[139] Barnett & Lober (note 135 above) 7.
[140] De Beauvoir (note 136 above) 14.
[141] Lober (note 133 above) 6.
[142] M C Nussbaum *Women and human development: The capabilities approach* (2001) 1-3.

2.2.1.2 Cultural and Religious practices

The religious and culturally protected gendered differentiation of women from men influences, and is influenced by, socio-cultural practices in many societies around the world. This is often the basis for societal expectations and beliefs that have held back many women from progressing in life.[143] In some cultures, the incomparable pressure and expectations placed on a girl child result in several disadvantages. For instance, she bears the stigma and shame of teenage pregnancy and bearing children out of wedlock more often than her partner.[144] For the school-aged girls, pregnancy might result in their exclusion from many aspects of their daily lives (including school), while their partner(s) retain most of their freedoms. Also, in some cultures, by a certain age, women are expected to have settled in marriages and established families; something not emphasised for a male child.[145] Once married, they relinquish their independence as adults and individuals and culturally belong to their husbands.[146] The legal implications of this have often been that they cannot enter legally binding obligations without the permission of their spouses. In addition, as Nussbaum points out, should they be forced into early marriages they often have no recourse from bad marriages and even the law. [147]

Religious beliefs and practices have also influenced women's access to and enjoyment of certain personal freedoms. In some jurisdictions, legislation and government policies reflect a failure at law to bridge the gap between sometimes conflicting prohibitions, e.g. the right to religious freedom versus gender equality.[148] On religious grounds, for example, the distribution of female reproductive resources and services to women in some countries and organisations is regulated.[149] Often, this restricts their rights of access to family planning services, such as pregnancy preventative measures. As a result, women's choices in the broader sense of life, and more specifically in the economy and the workplace, become limited. Against this background, therefore, it is argued that one cannot speak of equality between men and women in terms of production and income without rectifying the inequality of culture and the family.[150]

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[143] R Martineau 'Women and education in South Africa: Factors influencing women's educational progress and their entry into traditionally male-dominated fields' (1997) *Journal of Negro Education* 383.
[144] Kainuwa *et al* (note 127 above).
[145] Ibid.
[146] O'Connor (note 2 above) 31.
[147] Nussbaum (note 142 above) 1-3.
[148] K Bennoune 'Secularism and human rights: A contextual analysis of headscarves, religious expression, and women's equality under international law.' (2006) 45 *Colum. J. Transnat'l L* 367.
[149] S Thorburn Bird and L M Bogart 'Birth control conspiracy beliefs, perceived discrimination, and contraception among African Americans: An exploratory study' (2003) 8 *Journal of Health Psychology* 265.
[150] Mínguez (note 128 above) 278.

These remain dominant and silent forms of discrimination against women to the extent of restricting their participation in areas aimed at potentially liberating them.

One of these areas is the education system and the next section looks at how women's exclusion in the formal educational system has deleterious consequences for many women.

2.2.2 The Education system as a site of women's exclusion

Education has potential to mould one's identity and provide skills and knowledge to solve life's everyday challenges. Its system (schools and other learning platforms and services) offers a space to exercise agency and to allow young people's voices to be heard.[151] In developing countries, this has potential to create opportunities for interaction and socialisation for young people and, importantly, girls. According to Mollel and Chong, it gives them access to platforms where they can exercise their first leadership opportunities.[152] It is also presumed that here they can learn and exchange knowledge about different cultures and values.[153] They can even adopt lifestyles that appeal to them, while in the process learning to express their personal freedoms.[154] Education can, therefore, assist people to be productive and to progress in various aspects of life. By this, Ojong and Muthuki also defend its potential to address gender inequality on the basis that it creates awareness about rights.[155] This boosts confidence and empowers women to defend their rights by challenging their traditional roles and empowering them to respond to opportunities that change their lives.[156]

Yet, despite such distinguished potential for women's lives, it is argued that nearly two thirds of the world's illiterate comprise women.[157] Put differently, education may have a positive impact on peoples' lives throughout the world today, but the system often remains exclusive of many women. For instance, it is one thing acknowledging the existence of the right to education, but it is another taking steps to ensure that the exercise of the right is feasible. In most of rural Africa, for instance, women have had no redress of the past socio-cultural

[151] Plan International, 2019 Annual Review Report. Available at: *https://plan-international/education/girls-education*? Accessed 13 February 2020.
[152] N S Mollel and R Chong 'Socio-cultural constraints of girls' access to education in Mtwara district, Tanzania.' (2017) *Journal of Humanities and Social Sciences* Volume 20 No 3,108.
[153] Ibid.
[154] Ibid.
[155] V B Ojong and J M Muthuki 'Empowerment or reconstituted subordination? Dynamics of gender identities in the lives of professional African migrant women in South Africa.' (2010) 25 *Journal of Social Sciences* 170.
[156] Ibid.
[157] Lober (note 133 above) 4-6.

impact of educational exclusion. The structures that reinforce(d) their past lack of equal participation, such as the patriarchal culture, remain intact thereby rendering the formal educational system unaccommodating. In other words, there hasn't been much done to offset the burden associated with their domestic responsibilities to allow them to fully participate in formal education. Such factors coupled with high levels of poverty and inequality have forced many girls from underprivileged backgrounds to drop out of schools and enter into early marriages.

In South Africa, Martineau speaks about the historic system of separate development that led to the creation of the apartheid government's Bantu Education policy.[158] Described as a 'calculated attempt to subvert the political and economic aspirations of black South Africans',[159] this policy was designed to meet labour demands of industrialisation and modernisation wherein black children were prepared for subordinate jobs.[160] The educational curricula ensured that African schools steered males and females in specific, but different, directions with boys being instructed in trade while girls were instructed in domestic duties such as sewing, cooking, laundry and so on.[161]

The education of girls and women was historically given less priority as the concern was to prepare African women to be good Christian wives and mothers.[162] This had notable and far-reaching consequences for black women as it prevented them from acquiring technical skills relevant to work in the formal economy. As observed in educational statistics in the early 1990s, men dominated science and technological fields such as engineering.[163] In classes that were still largely racially stratified, the figures comprised 97 percent white, 95 percent Coloured, 97 percent Indians and 94 percent African males in science and engineering subjects.[164] Secretarial students constituted 85 percent of African females and over 99 percent of other female racial groups.[165] The majority of women dominated professional fields that were regarded as 'soft' and 'feminine,' such as teaching, social work and nursing, while men pursued 'difficult' fields such as science, seen to be more 'masculine'.[166] By restricting women, and particularly black women, from participating in science subjects, the system effectively

[158] Martineau (note 143 above).
[159] Ibid 384.
[160] Ibid 386.
[161] Ibid.
[162] Ibid.
[163] Ibid 383-395.
[164] Ibid.
[165] Ibid.
[166] Ibid 392-393.

excluded them from future economic engagements; a situation that currently defines industries such as the large-scale mining sector. In other words, while Martineau's data may be too old to inform the current educational trends in SA, in the mining sector, the data remain relevant. The impact of the historic gendered (technical) skills discrepancy is still being felt in various sections of the industry.

As a result of low levels of education, skills and exposure, women's bargaining power on the political front is also low. Politically, they are often excluded in major decision-making platforms. The political space is yet another site of women's exclusion and the next section discusses this subject.

2.2.3 The exclusion of women from politics

Women's exclusion in the political space occurs in different ways with their presence often met with aggression and violence.[167] Their political activism is sometimes unrecognised, and their history is not properly documented.[168] While it is widely known that women were often restricted to the private space years ago, this narrative overlooks their active involvement and contribution to political freedom in many countries.[169] As Lober argues, the First and Second World Wars were fought with the support of women.[170] In South Africa and elsewhere in the world, liberation struggles saw women playing a very instrumental role.[171] The ANC Women's League is but one example of how women supported the struggle against racial and gender discrimination, alongside the ANC until its unbanning in 1990.[172] Yet, their contribution has often been rendered invisible to portray men as having been exclusively at the forefront of struggle.[173]

Although the advancement of democracy over the years has enabled women to overcome some challenges, the political sphere remains generally discriminatory against many

[167] UN (1949) Report on Political Rights of Women: O'Connor (2001); Lober (note 133 above).
[168] UN ibid.
[169] Ibid.
[170] Lober (note 133 above).
[171] A M Goetz 'Women in politics & gender equity in policy: South Africa & Uganda.' (1998) 25 *Review of African Political Economy* 246; C Albertyn 'Women and the transition to democracy in South Africa.' (1994) *Acta Juridica*, 39.
[172] Meghan Knapp on 'The ANC Women's League in the Struggle for Women's Rights in South Africa'. Article available on *https://www.sahistory.org.za/article/anc-womens-league-struggle-womens-rights-south-africa-meghan-knapp*.
[173] In South Africa, the late Winnie Madikizela-Mandela is a typical example of women's lack of recognition in politics. Despite standing strong in the face of adversity, being incarcerated on political grounds on numerous occasions and having to raise the family alone while her husband was imprisoned, it is Nelson Mandela (her former husband) that received the respect of the world.

of them. The male dominated party politics have resulted in many women finding the political space hostile and almost inaccessible.[174] In South Africa, however, through the use of electoral processes and political institutions, the democratic era has allowed women to use the political space to demand appropriate responses to their issues from political leaders.[175] As Goetz points out, women have been enabled to call for the enforcement of constitutional commitments to issues of their concern.[176] Through this, women have demonstrated an ability to find each other for a common cause (gender equality) on several occasions.[177] This has also improved their representation to public office since 1996, although it is unclear how much influence and independence they have in decision-making. Besides, depending on cultures and exposure, some women have more access to political processes and platforms than others. In the rural areas for instance, gendered cultural constraints, among others, place the majority of women at more disadvantage in accessing vital political platforms compared to those in urban areas.[178] This suggests that women in urban areas are likely to be more vocal about their interests in public meetings as compared to the those in rural areas.[179] Therefore, while progress is noted, there still remains a need for stronger political will to facilitate an inclusive and effective political space. If gender equality is important to democracy, women will need to access and use democratic spaces to advocate for maximum economic participation for all. In other words, political representation is effective when women are enabled to use their political voices to freely raise issues that are of concern to them because, without it, there can never be a possibility of equality.

2.2.4 The Economy as a site of women's exclusion

Women's experiences of exclusion from the mainstream economy differ on the basis of race and class, and between the unemployed, self-employed and the formally employed. Even when formally unemployed, women often contribute indirectly to the mainstream economy through unpaid domestic work supporting their families and often enabling family members to work in the formal or informal economy. These comprise different types of women such as the middle class and working class that stay at home, as well as older women in rural areas who often care

[174] Goetz (note 171 above); Albertyn (note 171 above) 243.
[175] S Hassim and A Gouws 'Redefining the public space: women's organisations, gender consciousness and civil society in South Africa.' (1998) 25 *Politikon* 53; Albertyn (note 171 above); Goetz (note 171 above).
[176] Goetz (note 171 above) 29.
[177] Hassim & Gouws (note 175 above): Albertyn (note 171 above); Goetz ibid.
[178] S Mnisi and A Claassens 'Rural women redefining land rights in the context of living customary law.' (2009) 25 *South African Journal on Human Rights* 491.
[179] Ibid.

for children. However, the majority of unemployed black women are, in fact, not merely engaged in unpaid labour but are also seeking jobs. Neither their unpaid work nor that of women who choose to stay at home is quantified in economic terms. It is accordingly inappropriately recognised and seldom rewarded.[180] As Benya argues in relation to mine workers' wives, for instance, they do not just render unpaid domestic work,[181] but also support the business of their (spouses') employers. Yet to the employers they are non-existent and unacknowledged.

For women in domestic work in South Africa, strides have been made to formally recognise and protect them as workers through a number of laws such as the National Minimum Wage Act,[182] the Basic Conditions of Employment Act, the Unemployment Insurance Fund, and Compensation for Occupational Injuries and Diseases.[183] However, these are limited to formal employment arrangements, i.e. outside their immediate families. For family members who provide domestic work within their families, there is seldom any reward, unless otherwise agreed.

For the self-employed, unequal power relations over property rights (land and access to natural resources) expose many of them to marginalisation and exclusion.[184] Indeed, those with formal (registered) business and informal (unregistered) businesses experience almost similar challenges due to limited property rights. For example, women who are subject to customary or traditional leadership practices, where women's independence as citizens is still subject to patriarchal principle,[185] are often limited in access to credit facilities to grow their businesses, among other opportunities. Boserup suggests that women's lack of economic bargaining power can result in their exclusion from decision-making platforms in the economy.[186] For example, women in food production industries carry a major responsibility for household food security and natural resource management.[187] Yet despite their critical views to planning for food security, it is claimed that their opinions are not reflected at policy level.[188]

[180] Benya (note 23 above) 543.
[181] Ibid.
[182] The National Minimum Wage Act 9 of 2018 (Act), recently revised the minimum rates for domestic workers in South Africa from R 19.09 to R 23.09 although this may differ for different provinces or metropolitan cities.
[183] Basic Conditions of Employment Act, 75 of 1997, Unemployment Insurance Act, 63 of 2001, Compensation for Occupational Injuries and Diseases Act 130 of 1993.
[184] Nussbaum (note 142 above).
[185] C Boone 'Legal empowerment of the poor through property rights reform: Tensions and trade-offs of land registration and titling in sub-Saharan Africa.' (2019) 55 *The Journal of Development Studies* 388.
[186] Boserup (note 132 above) xii.
[187] Ibid.
[188] Ibid.

In South Africa, women in ownership and control of mining business are good examples of gendered exclusion. As discussed in more detail in chapter 5, they often compete with their male counterparts on an unequal footing, because men have been in the industry longer. With that history, men often have more experience, established networks and financial resources and equipment to run their businesses. It is different for women, particularly in South Africa where inclusive mining legislation and economic empowerment policies are still fairly new. Since they are still new in the industry, women first need to catch up on the socio-economic gap causing the discrepancy in business and technical skills. They need to improve on their low industry entrepreneurial acumen and experience, networks, and access to equipment among others. In addition, government's model of empowerment (funding) vehicles is not easily accessible to ordinary women.[189] As Hills argues, fair participation in such circumstances has been a challenge for most women especially in the era of BEE compliance.[190] As discussed further in chapters 5 and 6, this is a form of affirmative action strategy that requires companies intending to trade with the government to comply to the provisions. By this, the government aims at fostering the inclusion of the previously excluded into the mainstream economy. Thus, with all the aforesaid barriers, Hills identifies how women become exposed to exploitative business deals that render them vulnerable.[191] These include being used as fronts or proxies in companies to meet government quotas which compromises their level of influence, control, and ownership in their businesses.

For the formally employed, the labour market generally excludes them by its systemic preference for men as employees.[192] While, this may not be the case in all professions around the world, Lahiri-Dutt argues that it is the norm in most developing countries' mining industries.[193] As shall be discussed later in chapter 6, across the world, the industry has always employed more men than women.[194] There are many reasons for this. Women have been excluded due to the assumption that they are physically unfit for labour intense work.[195] They are also perceived as less reliable and less efficient, and more expensive, for mining operations resulting in men becoming the ideal employees.[196] In cases where employment laws have been

[189] These are meant to cater for the previous disenfranchise of the HDSAs but in most cases access to these is mostly limited to the politically connected.
[190] Hills (note 120 above) 153.
[191] Ibid
[192] Boserup (note 132 above).
[193] K Lahiri-Dutt and M Macintyre *Women miners in developing countries: Pit women and others* (2007) 228.
[194] K Sesele, L Marais, D van Rooyen, and J Cloete 'Mine decline and women: Reflections from the Free State Goldfields' (2021) 8 *The Extractive Industries and Society* 211; Minerals Councils Fact sheets (2018 to 2021).
[195] Sesele *et al* ibid 211-219.
[196] Ibid.

enacted to ensure the equal protection of all employees, many employers have not adhered to the rules. [197]Consequently, if women are employed, they are usually considered for unskilled, low wage jobs or lower positions.[198] In South Africa, contributing to these factors is also the technical skills discrepancy between men and women due to past educational laws.[199] Although this has begun to change since 1994, as educational opportunities are more open to all South African women,[200] the inequality in the scientific and technological fields among black women, particularly, is yet to be reduced.[201] This has resulted in another layer of exclusion (racial) in access to economic opportunities. Women of other races have more easily been absorbed into positions and professional fields that tend to be more closed to black women.[202]

2.2.5 Summary

In summary, this section outlines the various ways and sites in which women have been systematically and structurally excluded. These are also discriminatory spaces because women are not offered many choices or options to live a life that they might desire, but are rather expected to conform to existing norms and standards. By its private nature, the family unit has been the most restrictive in the exercise of women's other freedoms. Since it is often, in fact or in practice, beyond the reach of interventions such as the law, it becomes a breeding ground for other exploitative socio-cultural practices that extend beyond the private space. The traditional division of labour, for instance, remains entrenched in the public perceptions of how men view women regardless of the profession. As primary care givers, women remain exclusively responsible for the larger part of domestic duties which impairs their ability to compete fairly in a wide range of economic activities.[203] And as discussed further in this thesis, in male dominated industries, such as mining, unlearning this has not been easy as women continue to be relegated to positions and duties perceived as 'soft'. Consequently, despite their qualifications and work experience, their traditional gendered roles in society have often influenced and determined their level of economic participation.[204]

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[197] The failure to observe minimum wage bracket in the remuneration of employees for example results in most women being prone to economic exclusion.
[198] C Albertyn 'Substantive equality and transformation in South Africa.' (2007) 23 *South African Journal on Human Rights*; 82: Boseup (note 132 above) viii, 2.
[199] Martineau (note 143 above).
[200] Ibid 390, 5.
[201] Ibid 389, 2.
[202] Ibid.
[203] Hills (note 120 above) 166.
[204] D Botha and J F Cronjé 'The physical ability of women in mining: Can they show muscle?' (2015) 115 *Journal of the Southern African Institute of Mining and Metallurgy* 659.

The family space has also embraced harmful religious and socio-cultural practices that allow for the unchallenged exploitation of women, a situation that has persisted for generations. Some of these have also infiltrated the education system, the political arena, and the economy. These have deprived women of their true identity and without a proper recognition of such identities, women's participation, contribution, and interests in all these sites is reduced and even rendered invisible. It slows down their career choices, progression and, ultimately, their full potential to participate in the mainstream economy. In the end, this reflects and is reflected in the dominant norms, rules and standards in society, and especially the law. The next section looks at how the gendered nature of the law reflects and contributes towards shaping equality narratives and outcomes in the already fragmented sites and structures surrounding women in society. This is important as it has potential to guide appropriate interventions in the redress of gender inequality.

2.3. The Gendered nature of the Law

Within the multiple intersections of women's inequalities also lie challenges related to the gendered nature of the law. As Ashe postulates, the '*law reaches every silent space; it invades the secrecy of women's wombs. It breaks every silence, uttering itself. It defines, It commands, It forces*'.[205] This concurs with De Beauvoir's earlier notion that humanity is male and so 'he' defines everything else, including women.[206] This means that men introduced everything including the rules of life into the world with little to no input from women with an obligation that 'she' obeys, and so 'he' is both judge and party. [207] In other words, a woman is not defined in herself, but in relation to a male person, thus eroding her autonomy as a human being. Indeed, through the law, over centuries, men have created a language and system through which gendered meanings and cultural practices are constructed and organised.[208] The law is accordingly a language of power with the ability to create an authoritative discourse which can pronounce definitely what something is, or is not, including how a situation is to be understood.[209] It reinforces certain gendered worldviews and understandings of events, while also silencing alternative meanings in order to suppress other versions. From this, followed an

[205] M Ashe 'Zig Zag Stitching and the Seamless Web: Thoughts on" Reproduction" and the Law' (1989) *Nova Law Review* 13.
[206] De Beauvoir (note 129 above) 26-31.
[207] Ibid.
[208] L M Finley 'Breaking women's silence in law: The dilemma of the gendered nature of legal reasoning.' (1989) 64 *Notre Dame L. Rev* 888.
[209] Ibid.

understanding that all things should be consistent with how men comprehend the world and people without consideration of other views.

In the *Bradwell v Illinois* judgement, the US Supreme Court's approach demonstrated how men's perceptions and the practice of law were exalted above what women actually thought and wanted for themselves.[210] In South Africa, a classic example of this approach was applied in the *Wookey* case, in which Madeleine Wookey could not be registered as an articled clerk because, as a woman, she was not a person in the eyes of the law.[211] The gendered nature of the law has also influenced many countries' mining regimes, starting with Britain's Mines Act of 1842.[212] According to Alexander, the fact that leading engineers in South Africa's early mines came from jurisdictions where women and young children were legally prohibited greatly influenced South Africa's law, as it did global standards.[213] In 1935, under Convention 45 the International Labour Organisation (ILO) adopted the restriction for its member states.[214] South Africa, as a signatory, subsequently domesticated the provision to prohibit all women of any age from entering underground parts of a mine unless they entered for specifically exempted duties.[215] Also through the law in South Africa, the state dictated who voted (in terms of race, gender and age), when, and in which type of election.[216] This resulted in white and black South African women being granted suffrage at different times (1930s and 1994 respectively).[217] Further, through the imposition of the 'pass' under the Urban Areas Act of 1952, the movement of the black majority was restricted as they were defined as 'idle and undesirable' who could not enter urban areas without permission.[218] According to Romany, the implications of this

[210] *Bradwell v. State of Illinois* (note 3 above). A U.S. Supreme Court decision in which Justice Bradley concluded that women were unfit for the rude world of law practice and as such Ms Illinois could not be admitted to the Bar.
[211] *Incorporated Law Society v. Wookey*, 1912 AD 623. A firm of attorneys was willing to enrol Ms. Madeline Wookey as an articled clerk, but the Cape Law Society opposed the registration of her articles. Wookey submitted an application to the Cape Supreme Court, which ordered the Society to register her. The Law Society appealed this decision to the Appellate Division, arguing that Wookey could not be admitted as an attorney because she was a woman. The Appellate Division was called upon to decide whether the term "persons" used in the statute governing admission of attorneys to the bar included only "male persons" or also included women. They determined that "persons" included only male persons, thus excluding women from the legal profession.
[212] It provided that 'No person shall employ underground on any mine a boy apparently under the age of sixteen years or any female'.
[213] Alexander (note 30 above) 213.
[214] *https://www.ilo.org/*.
[215] International Labour Organisation, 1935, Convention 45 (CO45) Underground Work (Women) Convention, Article 2, subject to Article 3.
[216] United Nations Report (1949) (note 167 above).
[217] Ibid.
[218] C Romany 'Black Women and Gender Equality in a New South Africa: Human Rights Law and the Intersection of Race and Gender.' (1995) 21 *Brook. J. Int'l L* 866.

were far-reaching as men tended to enter urban areas to work on mines and in factories, while the majority of black women were locked out of the market economy.[219]

Years after the *Bradwell and Wookey* cases, the gendered nature of law is still manifest in some jurisprudence. For example, Finley critiques the definition of the crime of rape through a male's view of what should amount to women's consent in determining legal consent.[220] She argues that women's experiences of sexual violation should be what defines the crime and not the amount of force and penetration.[221] In South Africa, the *Jordan* case, where the crime of prostitution was described from a male point of view, is another example.[222] Prostitution was understood as a crime only targeted at women, but apparently exonerating intentionally participating males from criminal liability. In other words, the framing of the legal text and the reasoning structures assume the gender of those with power.[223] They reflect the everyday life experiences of intellectually, economically, and politically privileged and empowered white males.[224] Consequently, when interpreted from their standpoint, the law has the power to ignore other perspectives and assume the situation of its framers as the norm and their reality as the objective.

The gendered nature of the law has potential to undermine the majority of women's right to equality in different structures, because it influences the political, social, and economic potential and productivity of people. Through this, it exposes women to male subordination through both the patriarch of the state and that of the customary law system. In South Africa, this rendered many women vulnerable to what Romany describes as a '*pitiless zone where the different patriarchies meet'*.[225] This means that women would have no protection from these different patriarchies because the law could not, and perhaps still cannot, protect those with whom it does not identify and hold with the same value (women) as those whom it was initially created to protect (men).[226] In short, if it does not recognise women as equals of men, it cannot properly protect them. However, given the progress in time, evolution of humanity and politics

[219] Ibid.
[220] Finley (note 208 above) 888.
[221] Ibid.
[222] *S v Jordan and Others* (Sex Workers Education and Advocacy Task Force and Others as *Amici Curiae* 2002 (6) SA 642.
[223] Ibid.
[224] *S v Jordan* (note 222 above)
[225] Romany (note 218 above) 865.
[226] Ibid.

since the *Bradwell* and *Wookey* cases, the power of the law can also be used to change and help women address their different challenges.

With the constitutional promise of an equal society centred on the redress of past injustices in South Africa, this thesis looks at how successful the current laws have been and can be at achieving equality for women. Before it does so, I briefly explore the history of inequality in South Africa and the birth of a constitutional democracy, resulting in different frames of equality and different possibilities through law.

2.3.1 Equality under the South African Constitution

Equality has political underpinnings, and these are reflected in different countries' constitutions and form part of their people's history. Likewise, South Africa's Constitution, regarded as 'a product of a negotiated settlement' emerged from politics.[227] It informs the laws we currently have, many of which emphasise transformation as the ideal goal. With its political history rooted in racial divisions, South Africa's aspirations to transformation demanded that all citizens be treated as equals before the law. By treating everyone as such, the Constitution officially acknowledged identities that had previously been unequally recognised and treated. This was a step towards facilitating and catering for those previously excluded in the allocation of the country's mineral wealth.[228] In mining, these include women.

The Constitution's commitment to equality comprises a free-standing and overarching value and a substantive right.[229] As a value, equality is key to transformation because it gives substance to the vision of the Constitution.[230] As a legal right, it provides the mechanisms through which right holders can legally pursue the promise of the fundamental value in order to achieve substantive equality.[231] Constitutional equality was historically described as a race-transcendent status in which all people are subject to the law and may claim equal legal protection.[232] Today it goes beyond race to allow all citizens to enjoy the same rights and

[227] Albertyn (note 124 above) 442.
[228] A Gouws 'Recognition and redistribution: State of the women's movement in South Africa 20 years after democratic transition.' (2014) 28 *Agenda* 19.
[229] Section 9 of the Constitution of the Republic of South Africa 1996.
[230] C Albertyn and B Goldblatt 'Facing the challenge of transformation: Difficulties in the development of an indigenous jurisprudence of equality.' (1998) 14 *South African Journal on Human Rights* 249.
[231] Ibid.
[232] W M Wiecek 'Emergence of Equality as a Constitutional Value: The First Century' (2007) 82 *Chi.-Kent Law. Review* 233.

opportunities regardless of their race, gender, class and otherwise. This is meant to allow individuals to attain certain levels of liberty and fulfilment in order to develop their full human potential.[233] By prohibiting discrimination and promoting positive measures for certain classified grounds, the Constitution imposes upon the state and society the obligation to promote mutually supportive human relationships in society.[234] It creates room for the eradication of disadvantage, particularly the kind that perpetuates the subordination of disadvantaged groups of people such as women. It is, however, noted that not all differences are problematic, only those that lead to negative impacts.[235]

To achieve the above would require an examination of individuals in the context of their groups in terms of their social and economic conditions. That is, it requires a focus on impact and context, especially in relation to previously disadvantaged groups such as black people or women as they are often the adversely and disproportionately affected by neutral or similar treatment.[236] This approach recognises past and existing political, social and economic disparities and, in so doing, it promotes the remedial and restitutionary potential of the equality guarantee, and ensures that addressing these patterns of disadvantage is a central function of the right.[237] Accordingly, equality under the Constitution for women would mean an eradication of racial and gender difference in a way that makes the effects of any such differentiation as 'costless' as possible.[238] For example, it would call for an extinction of systemic patterns of disadvantage experienced in employment practices, access to property rights, human dignity, privacy, the environment, and so on. This would entitle women employees to substantively equal treatment in the workplace, including equal pay for the equal amount of work done by both men and women. It also includes creating democratic platforms and processes where women in mine affected host communities can speak openly and be well represented in mining related engagements. For the women in ownership of mine related businesses, equality will entail being treated as equal partners in business transactions and not ceremoniously, as is often the case.[239] For this to happen, the interpretation, application and enforcement of the law, as well as related legal processes, should be in harmony with the vision of the Constitution. This

[233] Albertyn & Goldblatt (note 230 above) 252.
[234] Ibid.
[235] S Jagwanth 'Expanding equality' (2005) *Acta Juridica* 131: Albertyn & Goldblatt (note 230 above).
[236] Ibid.
[237] Jagwanth (note 235 above) 132.
[238] Albertyn and Goldblatt (note 230 above) 252.
[239] R Tangri and R Southall 'The politics of black economic empowerment in South Africa.' (2008) 34 *Journal of Southern African Studies* 699.

leads to the next discussion on the role of the law in relation to different groups of women in mining.

2.3.2 The Role of the Law

Section 2.3 generally describes the gendered nature of the law in society. However, this does not mean that that power cannot be tamed and harnessed for women's positive change. With the constitutional drive to redress past political, social, and economic divisions, for example, the law can assist in facilitating change. As discussed later in chapters 5, 6 and 7, in mining the law has enabled the redistribution of the country's economic resources and opportunities among its citizens. The above mentioned chapters discuss, inter alia, the implementation of the Mining Charter in terms of which historically disadvantaged South Africans (HDSA), such as black people and women, are prioritised.[240] It provides for a quota system aimed at the inclusion and participation of women in different areas such as ownership and employment.[241] With the collaboration of other sector specific legislation, women have found legitimate space and access to institutional processes through which they can assert their rights in the industry. Working with the law, feminists and other legal scholars have also been able to insist on a substantive understanding of equality where the need arises, that is, one that recognises women's intersectional forms of disadvantage that are deeply structural and embedded in the way in which society is organised.[242] What does this mean for South Africa's women in mining? Has the law – in form and in substance – successfully shifted from being a tool that reinforced women's historic legal ban in the early 1930s to opening up the industry for women's full participation during democracy?

Through the lens of women in mining, this thesis also seeks to investigate the role of law in achieving equality. In the context of this study, this entails a discussion of discrimination, positive measures as well as other laws and rights and their impact on women. The aim is to investigate if the law has been instrumental in the removal of patterns of structural disadvantage and systematic discrimination of women in the mining sector. In other words, it investigates whether the law has promoted women's meaningful participation in mining

[240] The Mining Charter (2004) established in terms of the s100(2) of the MPRDA Act 28 of 2002.
[241] Ibid.
[242] S Fredman 'Providing equality: Substantive equality and the positive duty to provide.' (2005) 21 *South African Journal on Human Rights* 163.

opportunities and engagement platforms.[243] By this, it seeks to answer questions on whether women are not only able to participate in the male dominated industry, but have safe spaces and voices to do so?

However, an important question when asking whether law addresses women's disadvantages and advances their equality is what kinds of equality are, in fact, achieved through law? The next section evaluates three different forms of equality, that arise from the changing nature of inequality, and that are apparent in evaluating the role and effects of law in relation to the three groups of women being investigated.

2.4 Equality and its different forms

In an extremely diverse society, there can never be a single matrix through which the value of equality can be measured. Primarily, it is because people are generally different and so are their needs and priorities. As a result, coming up with a precise definition of what may constitute a state of equality, especially in a unique industry such as mining, may be problematic. For men and women, for example, gender sets them apart in many ways which include their access to economic opportunities, the type of opportunities and where they are located. In mining, women were not considered for certain types of jobs because they were considered physically demanding.[244] Likewise, while that may not be the case anymore, there are still certain areas and duties in which they may still not be able to fully participate, due to their biological needs and limitations.[245] There are also differences among women themselves, such as their social, economic and political backgrounds. For some, their differences in class, racial and educational background may also determine their career paths. For example, while they may be in ownership of mining businesses and probably trading in the same commodity, their networks, exposure and expertise may vary and be dependent on their backgrounds.

A discussion on the different forms of equality that play out in the mining sector not only provides guidance on society's normative understanding and meaning of equality, but also shows how these understanding and interpretations play out in practical situations, taking account of women's differences from men and from each other. In the following section I

[243] Albertyn (note 124 above) 255.
[244] L I Zungu 'South African guideline for the selection and provision of personal protective equipment for women in mining.' (2013) 19 *Occupational Health Southern Africa* 4; Botha and Cronjé, (note 102 above) 1-12.
[245] Badenhorst (note 17 above) 59; Schutte, (note 17 above) 30-34.

discuss the two forms of equality namely, formal and substantive. I dwell on the two substantive forms of equality suggested by Albertyn, namely the inclusionary and transformative equality, to demonstrate how their distinctive features restrict or advance women's access to and the enjoyment of equality in different areas of their lives.

2.4.1 Formal equality

The principle of formal equality is grounded in treating like people alike.[246] According to Stancil, Fredman and Bartlett, it is concerned with consistency and it implicitly depends on the idea that identical treatment equates to fairness.[247] In support of this view, Barnard states that formally equal systems promote justice by depriving both comparator groups of a particular benefit (levelling down) or by conferring the benefit on both groups (levelling up).[248] This approach requires those claiming to be unfairly treated to show that they are identical to their comparator. In terms of gender, it would mean that the state should provide men and women with similar opportunities to exercise civil responsibilities. In mining employment opportunities, this would mean availing to men and women formally equal opportunities and benefits on the same terms. Since this idea of equality does not recognise intersectionality, black African women would be treated the same as white women and as their fellow black African men in the industry. It will also mean that the employer is obligated to apply the same hiring and promotion criteria to both men and women in the workplace. As fair as it may sound theoretically, in practice it actually creates unintended inequalities among different groups of people. In mining, this might provide women with an opportunity to prove that they have the strength and skill required for mining jobs, but may also create and reproduce their limitations. For example, the requirement that demands all employees (male and female) to work from 8 am to 5 pm fails to take regard of the disadvantage this creates for women due to their family responsibilities. This is in line with Barnard and Hepple's claim that while some job requirements may appear gender-neutral, they in fact rest on traditional stereotypes.[249]

Formal equality disregards the pre-existing and unfavourable conditions that some people find themselves.[250] It is intolerant of differences such as culture, race, class, and religion,

[246] K T Bartlett, D L Rhode and J L Grossman, D L Brake and F R Cooper. *Gender and Law: Theory, Doctrine, Commentary* (2022) 1; C Barnard and B Hepple 'Substantive equality.' (2000) 59 *The Cambridge Law Journal* 562.
[247] P Stancil 'Substantive Equality and Procedural Justice.' (2016) 102 *Iowa Law Review* 1633; Bartlett *et al*. (note 246 above); Fredman (note 242 above).
[248] Barnard and Hepple (note 246) 562.
[249] Ibid.
[250] Fredman (note 242 above) 166.

even when differential treatment on this basis promotes equality because this will be seen as a form of discrimination.[251] The approach struggles to accept affirmative action measures or gender-based employment benefits, such as maternity leave, as forms of equality. It assumes same treatment of all can address inequality and by so doing, it fails to recognise the 'protected groups' past disadvantage which perpetuates their inequality further.[252] Overall, the approach is grounded in conformity to the norm and uses this as the standard for equal treatment. Yet the requirements for conformity have been a challenge for the majority of black South African women in mining who have not achieved equality on this basis. A neutral standard that assumes all women are able to compete equally anywhere, without necessarily interrogating other structures in their social life, fails to remove the barriers that restrict their effective participation.

As discussed in chapter 1, the Minerals Council, South Africa currently boasts having exceeded the set target in the employment of women to core mining employment operations.[253] Yet, as shall be shown later in chapter 6, the figures presented do not translate into their actual participation and recognition in the industry. For those in mine hosting communities, even if there are formally neutral consultation mechanisms, the power dynamics in community-mining consultations, among others, still tilt in favour of the mining corporates who largely comprise men. In addition, women in ownership and control of mine business still do not have much influence and control in decision making as partners or owners in some of those entities. As Samuels posits, therefore, women's multidimensional and overlapping forms of inequality have a tendency of placing one at an advantage over the other due to their differences in positions and context.[254] As a result, by extending the same rights to all, formal equality fails to recognise and address women's disadvantage and subordination. It is such shortcomings of the principle which prompt a need for an alternative form of equality.[255] Substantive equality which consists of the inclusionary and transformative approaches has been recommended as such an alternative. It is discussed in much more detail in following section.

[251] Albertyn (note 198 above) 87.
[252] Ibid.
[253] Minerals Council, South Africa, Facts and Figures- Fact sheet, 2020 (14 October 2021).
[254] Samuels (note 91 above) 5-9.
[255] Ibid.

2.4.2 The concept of Substantive Gender Equality

As Lorber asserts, it is hard to believe that women did not have most of the rights we take for granted today.[256] They were 'supposedly free' yet equated to children who derive their economic dependence, social and legal status from their adult male relatives.[257] She credits the persistence and resilience of different generations of feminists, legal scholars, and social change agents for where women are today.[258] However, their struggles are still multi-dimensional. Gender and race are no longer the only prevalent barriers to economic participation, but other interlocking forms of exclusion have emerged. Depending on context, these include nationality, religion, class, and culture which make the definition of equality complex since the term would mean different things to various people. As Samuels suggests, for instance, what entails equality to one woman may not be the same elsewhere, because women experience their womanhood differently.[259] Likewise, what may be oppressive or disadvantageous to one may be an advantage to the other. The complex nature of inequality therefore has exposed the shortcomings of the formal application of (equality) law in equalising differences.[260] This has resulted in several scholars arguing for a more refined conception of equality in the form of substantive equality.

This study focuses on substantive equality, as adopted in the South African Constitution, due to the context in which women's rights are being evaluated. For black women in South Africa, who have suffered multiple disadvantages, Albertyn claims that alongside their struggle against colonial rule and apartheid in pre-democratic South Africa, was also a hidden struggle against patriarchy.[261] Today their struggle is a simultaneous fight for inclusion (in both private and public spaces), recognition, participation and economic redistribution of the privileges enjoyed by their male counterparts.[262] With such an unequal past, in post-independence South Africa the principles of social justice (in the legal system, its structures, and processes) require more than the formal application of equality. This means going beyond the notion that everyone is the same before the law and should be treated in the same way. For

[256] Lorber (note 1 above) 1.
[257] Ibid.
[258] Ibid.
[259] Samuels (note 254 above) 5-9
[260] Fredman (note 242 above) 713.
[261] Albertyn (note 124 above), 456.
[262] Ibid.

women, this would mean adopting a holistic idea of equality that acknowledges and accommodates the inherent differences and disadvantages that they have.[263]

Substantive equality is concerned with context, impact, value, and purpose of the right to those alleging equality claims through an attempt to understand the realities of disadvantages created by difference.[264] Thus, by adhering to the notion of equal 'concern and respect' regardless of differences, the approach can be more inclusive than transformative in its effort to facilitate social and economic change.[265] As was held in *Botha v Mthiyane*,[266] the approach entails an appreciation that people do not have to be treated the same to achieve fairness. In essence, it is actually in the different treatment of individuals (as per their circumstances) that equality is sometimes achieved. Substantive equality, therefore, incorporates a notion of remedial and redistributive justice which places at the centre, an understanding of equality in the context of people's lived conditions.[267]

In the case of women in mining (as a previously disadvantaged group), this would mean interrogating various mixes of inequality which result in different equality claims. It would mean unpacking the overwhelmingly dominant history of economic exclusion and repression associated with them which results in racially unequal employment figures, among others, when black women are always at the bottom.[268] Subsequently, this must direct the state to equalise the distribution of resources, opportunities and or power within society. For this to happen, a substantive equality approach is therefore proposed.[269] It identifies structural and systematic barriers that restrict women's participation in the economic mainstream and finding solutions for economic distribution. It challenges socio-economically entrenched poverty and allows everyone access to resources and amenities of life. In so doing it interrogates and transcends several gender-based differences to facilitate social recognition and inclusion.

The substantive equality approach, however, has its own limitations as it is dependent on, among other things, the law (a product of social, economic, and political dynamics). The achievement of substantive equality through law is dependent upon the progressive interpretation, application and enforcement of the law by courts. In South Africa, for instance,

[263] Ibid 458.
[264] Ibid 451; Fredman (notes 260 and 261 above).
[265] Albertyn (note 198 above) 253-276.
[266] 2002 (1) SA 289 (W) at 319, citing Chaskalson *et al Constitutional Law in SA* 14-3.
[267] Albertyn (notes 124 and 198 above); Fredman (notes 265, 261 and 260 above).
[268] O Dupper 'Affirmative action and substantive equality: The South African experience.' (2002) 14 *South African. Mercantile Law Journal* 281
[269] Albertyn (note 198 above) 256.

the judiciary is bound by jurisdictional capacity to make certain decisions and secondly, the implementation of some of its decisions is subject to relevant institutional capacity.[270] As was demonstrated in the *Impala Platinum* case (also discussed in chapter 6), the Labour Court upheld an appeal and set aside the award that had found the employer (Impala Platinum) to have discriminated against pregnant women.[271] Judge Steenkamp found the Commissioner to have exceeded her powers when she ordered the company to amend its policy when that was not the complaint before her. Also, though necessary for substantive gender equality, it was further held that there was no absolute duty on the employer to find alternative positions for the complainants.[272] The two pregnant employees, who could not qualify to be allocated to less dangerous and alternative employment, were therefore instructed to go on early maternity leave by the employer. They referred the matter to the CCMA as an unfair labour practice. The Commissioner held in their favour and ordered that the employer amend its policy on pregnancy and also compensate the two employees accordingly. On appeal the Labour Court Judge reasoned that the employees failed to prove discrimination based on pregnancy. He argued that they were told to go on maternity leave because they lacked the necessary skills for the available alternative employment suitable to their circumstances. Besides, in their initial matter at the CCMA they were not challenging the company policy and as such the Commissioner erred in ordering the company to change a policy that was not expressly challenged by the employees.

Courts that stick with such narrow remedies argue that their role is not to create the law, but to interpret and apply it. In truth, however, judges make the law all the time which means such evaluations and conversations around the different forms and nature of women's struggles are necessary to contribute to the development of the notion of substantive equality and in particular the law itself.

2.4.2.1 Inclusionary/ Liberal egalitarian approach

Albertyn argues that there are two forms of substantive equality namely the inclusionary or liberal egalitarian and the transformative approaches.[273] As Fraser also adds, the inclusionary

[270] Ibid.
[271] *Impala Platinum Ltd v Jonase & others* (JR 698/15).
[272] Ibid.
[273] Albertyn (note 124 above).

approach echoes Ronald Dworkin's depiction of the notion of equality as being equal concern and respect for all members of the society.[274] It is an approach that aligns with the inclusion of the disadvantaged into the dominant system without necessarily disturbing the structures that create and reinforce the inequality of the system.[275] For example, it can challenge the exclusion of women from the political arena for turning them into second class citizens. However, Gouws argues that it is still a narrow approach in that it defines their interests in a very limited way.[276] She argues that it relies on the law reform and women's representation for their interests to be put on the political agenda, which means it pursues and promotes these interests by engaging the state through legislative means.[277] In addition, Albertyn also finds the inclusionary approach to have been synonymous with the Constitutional Court jurisprudence for seeking to address social inclusion or sufficiency, and not structural and systematic inequality.[278]

In the mining industry, and as discussed in more detail in chapters 5, 6 and 7, this approach will be concerned with bringing women on board, but without assessing and seeking to dismantle the systematic and structural conditions to which they are exposed. In other words, gender equality in this context is measured by meeting the minimum threshold as per the legislatively set quotas. It disregards the fact that the improved figures do not necessarily translate into the actual transformation of the industry. For instance, the equipment used by women (underground) employees is still designed in line with the heights and weights of men as the end user.[279] This is because mining work is still viewed as traditionally 'men's work', an approach that fails to acknowledge that such equipment may be unsuitable for female use. Also, the law requires that mining hosting communities be consulted in mining-community developmental programs.[280] It does not, however, consider the cultural aspects that subject women, particularly in rural settings, to patriarchal subordination which impairs their potential for effective participation. Likewise, due to a lack of adequate technical skills, appropriate networks, and financial resources, some women in ownership of mining business fall victim to power imbalances in business relationships. Some of these challenges are compounded by the fact that government empowerment opportunities are only accessible to the politically

[274] N Fraser 'From redistribution to recognition? Dilemmas of justice in a 'post-socialist' age.' (1995) *New left review* 68: Albertyn (note 124 above) 457.
[275] Albertyn (note 198 above); Albertyn & Bonthuys (note 117 above).
[276] Gouws (note 228 above) 20.
[277] Ibid.
[278] Albertyn (note 124 above) 463.
[279] S Mangaroo-Pillay and D Botha 'An exploration of women's workplace experiences in the South African mining industry.' (2020) 120 *Journal of the Southern African Institute of Mining and Metallurgy* 475-483; Zungu (note 244) 4-9.
[280] Clause 2.5 Mining Charter (2018)

connected and the elites. As a result, ordinary black women are taken advantage of in using their racial profile to front for others.

Dismantling the above structural barriers by way of applying either the formal idea of equality or the inclusionary approach may be problematic. The formal approach of equality would push for all like people to be subjected to the same principles of law, yet disregarding their past and present disadvantage. The inclusionary approach, on other hand, would broaden the horizons of inclusion to incorporate the previously excluded, but without necessarily addressing their initial cause of exclusion. As it stands in practice, the three categories of women under this study have been experiencing the limits of both the formal idea of equality as well as the inclusionary approach.[281] By creating a legal framework that governs women's participation, formal equality has been successful in having women recognised as capable employees, community members and entrepreneurs in the industry (thus eliciting a degree of substantive equality). In so doing, they have been included into the system yet, still remain excluded in that the system itself has not yet transformed to accommodate what the law seeks to change.

In summary therefore, the inclusionary approach only broadens the protection of social recognition, but it does not dismantle the foundations of structural and systematic inequality. This suggests the need for an alternative approach, which leads to the next discussion on the transformative substantive equality approach.

2.4.2.2 Transformative substantive equality

Born out of diverse struggles of life such as racism, slavery, and sexism, disadvantaged people look to different forms of equality to overcome these. While recognising that the liberal substantive equality approach broadens the base of inclusion, where there has been exclusion, Fredman and Albertyn argue for a more transformative approach as the better alternative for the achievement of greater substantive equality.[282] This is because it seeks more disruptive and redistributive approaches which go beyond mere inclusion to addressing the structural conditions that create and perpetuate inequalities. As Albertyn further submits, it shifts society's structural and systematic power relations that are normally taken for granted yet create, reproduce, and maintain an unequal status quo.[283] Hence, in the case of women, it goes

[281] Hills (note 120 above).
[282] Albertyn (note 124 above) 464; Albertyn (note 198 above) 256.
[283] Ibid.

beyond mere sufficiency to addressing the actual or material socio-economic inequalities they experience on daily basis. It, therefore, speaks to women's social and economic role and position in the broader society and how they are affected by these in any given situation.[284] Thus, a transformative approach is more focused on changing conditions of inequality than individuals, thereby recognising the multiple and intersectional forms of difference in which individuals and groups experience these inequalities.

For women in the mining industry, this approach has the potential to improve their circumstances and conditions at many levels. As an industry previously and still dominated by men, the culture, infrastructure, general interaction, and function of the industry may not be appealing to women.[285] Consequently, developing and interpreting laws and policies with an understanding of the context and impact of these factors on women will not only result in their inclusion, but can also help to create opportunities that allow for transformation. For instance, gender equality will not only be measured by the meeting of the minimum threshold introduced by the law. It will consider other factors, directly or indirectly, that need to be addressed for women to function effectively in the industry. For those in ownership and control of mining establishments, this approach will direct the law to establish how women fare under a system established with a male person as a model throughout the entire value chain. In other terms, this approach allows for an interrogation of the social, political, and legal inequalities created by structures of capitalism, racism, patriarchy and call for change.

2.5 Conclusion

This chapter explored literature around the different ideas of equality. It developed the principle of equality from the standpoint of a political idea as well as a constitutional value and legal right. It explored some of women's major sites of exclusion in society which include the family space, the education system, politics, and the mainstream economy. From this, there was an illustration of how some of the religious and socio-cultural practices and relationships, nurtured within some of these sites, influence behaviour. It emerged that most of these turned out to be a burden that restricts women's choices in their broader life. One such example is the interconnectedness of women's roles in their private space, their access to quality education

[284] S Fredman 'Substantive equality revisited.' (2016) 14 *International Journal of Constitutional Law,* 712; Albertyn & Bonthuys (note 117 above); Albertyn (note 282 above).
[285] Mangaroo-Pillay & Botha (note 278 above) 475.

and participation in civic space which is affected by their primary care duties. In other words, the more time they spend on one aspect of their life, the more affected are other areas of their lives, whether positively or negatively. In the workplace and business, for instance, gender-based career progression emanating from women's social responsibilities detracts from them obtaining quality skills and opportunities to compete in the marketplace.

Different forms of equality namely, substantive, and formal equality were discussed with the former further subdivided into the liberal egalitarian/inclusionary approach and the transformative equality principles. While the substantive equality approach provided for a better alternative, it was not without some shortcomings. In the next chapters, the questions to explore include how law is enforced, and whether there is attention to context in adjudicating women's issues, among others. In addition, while the courts might provide progressive rulings, the question will be how is substantive equality going to be achieved especially as enforcement often requires the intervention of other arms of the government, corporates, and other interested stakeholders? Moreover, with the gendered nature of the law, will those entrusted with the duty of interpretation and application of the law execute their duties with attention to context? In other words, while it is acknowledged that South Africa has one of the best constitutions in the world to inspire legislative tools that can effectively drive gender transformation in spaces where women are silently excluded (such as mining), it still requires the support of monitoring and evaluation structures and principles that can be 'religiously' implemented.

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CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter describes the research methodology that was used to achieve the study objectives set out in Chapter 1. Qualitative mixed methods comprising documentary sources, interviews and focus group discussions were used. This chapter comprises twelve sections. Section 3.2 describes the major types of research designs, (qualitative and quantitative approaches) and demonstrates the preference of a qualitative mixed methods approach over other research designs. I also describe the data collection techniques and tools used. Section 3.3 focuses on the population and target population and explains the criteria that defined the eligible participants. Section 3.4 deals with sampling, the sample size, and the purposive sampling method ideal for social research portions of the study. Section 3.5 deals with validity which entails different forms of criteria that I relied on to enhance the quality of the findings.

Section 3.6 entails a discussion on the data analysis method, in this case, a thematic analysis was used. Section 3.7 describes and justifies its application to the study. Section 3.8 notes the reflections and general observations made by the researcher during the data collection process. Section 3.9 discusses the researcher's positionality. In section 3.10 the limitations of the study are noted and section 3.11 describes the ethical considerations that were adhered to. The last section, 3.12, concludes the chapter.

3.2 Qualitative *versus* Quantitative methods

Creswell and Poth describe two major research approaches, namely, qualitative and quantitative methods.[286] The distinction between the two lies in their philosophical and theoretical differences which are rooted in different worldviews.[287] The qualitative approach focuses on observation and behaviour, while the quantitative approach is more concerned with experimental strategies of inquiry.[288] According to Etikan *et al*, quantitative methods seek to

[286] J W Creswell and C N Poth *Qualitative inquiry and research design: Choosing among five approaches*. (2016) 35-39; C R Kothari *Research methodology, Methods and techniques* (2004) 3-5; H Lune and B L Berg *Qualitative research methods for the social sciences* (2017) 12-15.
[287] J W Creswell and J D Creswell *Research design: Qualitative, quantitative, and mixed methods approach* 3rd ed, (2017) 16.
[288] Ibid.

achieve breadth of understanding while qualitative methods, for the most part, seek to achieve depth of understanding.[289] Therefore, a researcher using a qualitative approach would seek to establish the meaning of a phenomenon from the views of the participants.[290] One using the quantitative design, on the other hand, focuses on testing theory by specifying a narrow hypothesis and the collection of data to refute or support the hypothesis.[291] To differentiate further between the two: the first approach attempts to make sense of a phenomena from the participants' view, by studying things in their natural setting to discover how social experience is created and given meaning.[292] The second approach relies on an experimental approach, also called a laboratory setting, which emphasises the measurement and analysis of causal relationships between variables and not the processes.[293]

While a quantitative research would focus on counting in measuring things, a qualitative research approach refers to the definitions, meanings, characteristics and descriptions of things.[294] This gives the qualitative approach many advantages over the quantitative approach because it can produce rich detailed descriptions of the participants' opinions and their reasons behind the occurrence of a phenomenon.[295] The qualitative approach also provides a more realistic feel of the world, something that cannot be done by statistical and numerical data analysis of a quantitative nature.[296] It is also a highly flexible way of gathering, interpreting, and analysing data because, through the use of unstructured and primary data, it provides for descriptive capability.

This study relied on a qualitative mixed methods approach consisting of documentary interpretation and analysis, interviews and focus group discussions. The research design is discussed in more detail below.

3.2.1 The two research methods

3.2.2 Qualitative mixed methods research design and data collection techniques

[289] I Etikan, S A Musa,and R S Alkassim 'Comparison of convenience sampling and purposive sampling' (2016) 15 *American journal of theoretical and applied statistics* 3.
[290] Ibid.
[291] Ibid
[292] N K Denzin and Y S Lincoln *The Sage handbook of qualitative research* 3rd ed. (2011) 3.
[293] Ibid 10.
[294] Lune & Berg (note 286 above) 12- 13.
[295] Creswell & Creswell (note 287 above).
[296] A Holliday *Doing and writing qualitative research.* 2nd ed (2017) 60-88.

Qualitative mixed methods combine diverse data collection techniques in a complimentary manner which enables them to be applied in different paradigms. These include social constructions, and culturally and historically embedded discourse practices that reflect basic belief systems or worldviews around ideas and how knowledge is created or changed.[297] As shown in the next section, each technique played a key role in this study. For example, the analysis of documentary sources prior to engaging in field work provided the researcher with a solid theoretical, policy, legal and historical background into the research subject. Importantly, it also enabled her to engage substantively with the participants in their different mining spaces during the social research and offered a frame for evaluation of theory and practice.

3.2.2.1 Literature or documentary analysis

Literature or documentary analysis is described as a systematic technique used to evaluate or review printed or electronic documents that contain information about the phenomenon being studied.[298] According to Mogalakwe, documents are examined and interpreted to elicit meaning in order to gain understanding and develop empirical knowledge.[299] Documents can be found either in the private or public domain and they are used to investigate, interpret, categorise, or identify limitations of physical sources.[300] They include books and brochures, journal articles, government economic policies, official company newsletters, agendas, minutes of meetings, background papers, memorandums etc. As part of the initial stages of research (before field work), the researcher consulted documentary sources, both primary and secondary. Primary sources included policy, statutes and case law, while secondary sources comprised of academic literature on the subject such as legal scholars and feminists' writings on the law, society, intersectionality, equality and mining. These complemented data obtained from several industry-related statistical and annual reports on the research subject. They include official reports, publications and submissions on women and mining from civil society interest groups or organisations such as Women in Mining South Africa (WIMSA), Minerals Council, South Africa (MCSA), the Commission for Gender Equality (CGE), Centre for Applied Legal Studies

[297] J Byrne and A Humble 'An introduction to mixed method research. *Atlantic research centre for family-work issues*,' (2007) 1, 1-4.
[298] G A Bowen 'Document analysis as a qualitative research method.' (2009) *Qualitative research journal*, 27-28; M Mogalakwe 'The use of documentary research methods in social research' (2006) 10 *African Sociological Review/Revue Africaine De Sociologie* 221.
[299] Mogalakwe ibid 223.
[300] Ibid.

(CALS), and the organisation called 100 Global Inspirational Women in Mining (published in the years 2018, 2019 and 2020).[301]

Documentary sources significantly enhanced my knowledge and understanding of the law and the incorporation of women into the mining space. Given the South African context, a look back into the legislative history provided a deeper understanding of the industry's patriarchal, racial, and labour dynamics. A sound knowledge of this background informed and shaped the development of the content and structure of the research aims and objectives, and also helped in answering the research questions. It prepared and alerted me to the appropriate strategies to use in soliciting participants' experiences, expectations, and assumptions in the actual field work.[302] Importantly, documentary sources provided a background to the origins and evolution of the current challenges faced by women in the formal mining sector. In other words, they served as a key reservoir in laying the historical background and setting the theoretical/conceptual framework (contained in Chapter 1 and 2). Court judgements/Case law, Statutes, government economic policies as well as independent jurisprudential analysis or opinion were other useful sources in building up the legal framework (contained in chapter 4) to the three findings chapters (Chapters 5, 6 and 7).

A study of literature also enabled the researcher to eliminate certain unconscious biases around the concept of gender equality as understood in theory compared to what it actually is in practice. It revealed the discrepancies between constitutional and statutory commitments and legislative provisions and their application, and how these played out in practice. For example, understanding that the legislative provisions of the Mining Charter do not translate

[301] Women in Mining South Africa (WIMSA) is an independent volunteer-run, free-membership non-profit organisation that provides an empowering network to support, inspire and develop the progression of women working in the mining industry in South Africa. The organisation was founded in 2010. The Minerals Council, South Africa (MCSA) a South African mining-industry employer organisation. Previously known as the Chamber of Mines, the body was founded in 1968 and its members include Anglo American, De Beers, Gold Fields and Harmony etc. The Commission for Gender Equality is a constitutional entity, relied upon to 'strengthen constitutional democracy' in creating a framework for a new society as established by Bill of Rights in Chapter 2 of the Constitution of 1996. Centre for Applied Legal Studies CALS is a public interest law organisation based at the Wits School of Law. CALS is also a law clinic registered with the Legal Practice Council that connects the worlds of academia and social justice. CALS practices human rights law and social justice work with a specific focus on five intersecting programme areas, namely Basic Services, Business and Human Rights Environmental Justice, Gender, and Rule of Law. 100 Global Inspirational Women in Mining (WIM, UK) is a non-profit volunteer organisation dedicated to promoting the employment, retention and advancement of women in the mining industry by: • Advocating and speaking for women in the mining sector • Informing industry participants of the challenges and opportunities women are finding in pursuing careers in mining • Offering thought leadership, analysis and research on the business case for diversity, inclusion and the economic advancement of women in the sector.

[302] Sensitivity towards the participants particularly those in mine hosting communities was important to the researcher as the topic tended to border on political lines depending on the approach.

into, nor automatically mean that women have access to, the provided rights. This was important for purposes of providing a balanced analysis to the findings in order to respond to the study objectives and the research questions (for Chapters 5 to 7).

3.2.2.2 The interviews

Interviews can be formal or informal conversations aimed at identifying a participant's emotions, feelings, and opinions regarding a particular research subject.[303] This study used unstructured interviews to extract information from two groups of participants (mine business owners and mine employees). Since unstructured interviews are not predefined and fixed, they allow flexibility to the researcher to spontaneously follow the informant's narration in generating more questions based on her reflections.[304] As a result, the entire conversation relies on the interaction between the researcher and the respondents. With questions that are formal and some not pre-determined, the responses are also unplanned which facilitates developing an understanding of the informants' perspectives and, consequently, their social reality. This means that knowledge independently acquired from different experience is not imposed on the respondents. Unstructured interviews are also preferred because they give participants the opportunity to respond in their own way. More so, the interviewer and respondents can explain questions that may have been misunderstood and ask for further clarification and elaboration of replies.[305] Importantly, personal and direct interaction between parties eliminates chances of non-response rates.

Given that the method has evolved from more traditional direct conversations to being done remotely or online, using custom software on mobile devices was an added advantage.[306] The study used online interviews through the Zoom platform which allowed for flexibility especially where meeting in person was impossible. Indeed, the stringent Covid-19 lockdown regulations at the time of the first phase of interviews meant that this approach allowed

[303] Y Zhang and B M Wildemuth 'Unstructured interviews. *Applications of social research methods to questions in information and library science*.' (2009) 222-231. B M Wildemuth *Applications of social research methods to questions in information and library science*. (2016).
[304] M Q Patton 'Qualitative research and evaluation methods. Thousand Oaks' (2002) *4*.
[305] A L Holbrook, M C Green and J A Krosnick 'Telephone versus face-to-face interviewing of national probability samples with long questionnaires: Comparisons of respondent satisficing and social desirability response bias.' (2003) 67 *Public opinion quarterly* 79.
[306] B Duffy, K Smith, G Terhanian and J Bremer 'Comparing data from online and face-to-face surveys.' (2005) 47 *International Journal of Market Research* 615; C N Phellas, A Bloch and C Seale 'Structured methods: interviews, questionnaires and observation.' (2011) 3 *Researching society and culture* 25-27.

interviews to continue online as they were not possible in person.[307] It also reduced costs where travelling would have been involved to conduct in person interviews. Moreover, given that most people generally get busy during the first quarter of the year, online interviews provided a better chance of securing time with business women. Therefore, participants, who may not have been able to participate, conveniently did so from the comfort of their homes.

Despite being time consuming as each participant must be allocated an individualized time slot to speak, interviews still offered better data collection techniques for this study. They incorporate an observational approach as a complementary method in data collection. With several types of social situations that cannot be communicated and fully understood solely based on verbal information, the approach catered for such as well. As Stausberg suggests, paralinguistic dimensions of talk, for instance, are important carriers of different meanings.[308] Body language and displays such as facial expression, laughter and tone, pitch and tremor of voice all convey diverse messages.[309] Face to face interviews – both in person and online - enabled the researcher to observe and consider a wide range of sensory perceptions and actions that rise above the mere visual, such as sounds etc.[310] The researcher was also able to observe participants' actions as they spoke which was helpful in obtaining all data, including non-verbal language such as emotions, change of tone in participants' responses and so on. It was also an opportunity to study participants in their native environment to better understand experiences from their perspectives.

Overall, the researcher generated a list of questions called an *aide memoire* or agenda (sample attached as Annexures), a survey instrument specifically suited for unstructured face-to-face interviewing.[311] The list was compiled to loosely guide the researcher through the interview towards the satisfaction of the research objectives. It comprised different open-ended questions (for each group of women) that did not have a pre-determined order. This allowed the researcher flexibility and the ability to tailor the interview to the participant, including probing for deeper answers or prompting for examples, while noting down and recording (by

[307] Government imposed restrict lockdown regulations on people's movement and gatherings during the initial covid-19 pandemic
[308] M Stausberg 'Structured observation' in The *Routledge Handbook of Research Methods in the Study of Religion.* (2011) 382, 382-383.
[309] Ibid.
[310] Ibid.
[311] C Bless, C Higson-Smith and A Kagee '*Fundamentals of social research methods: An African perspective*.' (2006); V Minichiello, R Aroni, E Timewell and L Alexander 'In-depth Interviewing: Researching people. Hong Kong.' (1990).

zoom) the responses. This was meant to accurately capture the responses and to further allow for effective decoding of the responses.

3.2.2.3 Focus Group Discussions

A focus group is usually between six and twelve people who meet in an informal setting to discuss a particular topic that has been set by the interviewer.[312] It is designed to determine the reactions of persons who have been exposed to the situation being investigated by the researcher.[313] It assesses discrepancies between anticipated responses and the actual effect of the situation on the participants (who form subgroups) of the bigger population.[314] The interviewer facilitates the discussion to keep the participants on the topic by being non-directive to allow them to explore the subject from many angles. He or she also endeavours to record and comprehend participants' subjective experiences rather than having to rely on standard assumptions. The interaction, which mostly relies on the respondents themselves, lasts between one and two hours and it is reasonably informal, conversational in nature and flexible enough to be carried out in person or online.

Focus group discussions were conducted in person for the women in mine hosting communities for a number of reasons. First, personal access to the internet for most rural participants was out of reach both in terms of cost and infrastructure. There was limited access to personal technological devices among participants to facilitate online meetings on platforms such as Zoom or Teams. Besides, the majority of the participants came from low-income household brackets who were unable to afford securing such facilities on short notice and for temporary use. Also, as a very recent mode of communication, online meetings posed a potential hurdle to many of them as it required a considerable time for orientation on how it works. Not all the participants were sufficiently literate to try it independently and, therefore, it was feared that this would deter a free space of communication. It would also result in information being withheld, or some participants completely withdrawing from participation since they were not familiar with the mode of communication and platform. Conventional face-to-face group discussions wherein the interviewer went into the communities was, therefore, cost effective, convenient and likely to generate the best information.

[312] R Longhurst 'Semi-structured interviews and focus groups. (2003) *Key Methods in Geography* 143.
[313] R E Merton and P L Kendall 'The focused interview.' (1946) 51 *American journal of Sociology* 541.
[314]Ibid.

As with the interviews, a set of questions to guide the focus group discussions were prepared and shared with the respondents. I facilitated the focus group discussions partly in English, SePedi, Setswana, and Xhosa/Zulu to accommodate participants that preferred speaking in their local languages. Most participants were comfortable speaking in their local language as they understood and expressed themselves better that way. This was important because some idioms could not be easily translated in English but when they described the scenario as it was in their own languages, it gave the researcher a clear picture and sense of their experiences. For instance, numerous legal issues were raised and expressed in participants' own words as opposed to the researcher having to directly ask questions about the law.

3.3 Target Populations

Polit and Beck describe a population as 'a group of elements or individuals that conform to a specific criterion from which the researcher intends to generalize the results of the research'.[315] A target population therefore becomes 'an aggregation of elements from which the study sample is selected'.[316] As they suggest, 'a target population consists of all cases that meet the designated criteria and a necessary requirement to ensure that the study objectives are sufficiently addressed'.[317] This study comprised three population targets described below.

Women in ownership of mining related businesses: This population comprises South African women in ownership (full ownership or partnership) or managing mining related businesses across the country for at least more than five years.

Women as mine employees: This population comprises South African women with substantial exposure and working experience of both the underground and surface mining employed in mining companies around South Africa.

Women resident in mine hosting communities: These are South African women resident in the vicinity of multiple poor mine hosting communities or located within the proximity of mining operations in South Africa. They are historically disadvantaged and their backgrounds are characterised by low levels of education, and low household incomes. The geographical areas

[315] D F Polit and C T Beck 'International differences in nursing research, 2005–2006*'* (2006) *Journal of Nursing Scholarship* 41, 44–53.
[316] E R Babbie and J Mouton *The Practice of Social Research* (2007).
[317] Polit and Beck (note 315 above)

of interest are limited to two provinces namely Limpopo and the North West which are largely black communities.

3.4 Sampling

Creswell and Creswell describe sampling as 'a technique of choosing an appropriate sample or representative section of a defined population'.[318] A sizeable sample from the bigger group (target population) is preferred due to the difficulties around researching an entire population. The aim is to draw some inferences or determine characteristics of the whole given population using the chosen sample. This study used a non-probability sampling method that draws samples based on a judgement approach.[319] A purposive sampling method was applied for all the three groups of participants. The method includes purposive and convenience sampling which is usually used in qualitative studies to choose small samples of individuals that hold 'specific knowledge or attributes about a particular topic'.[320] The purpose is to collect individuals or elements that are suitable for the determined criteria. Purposive sampling involves the use of different methods to access all possible cases that are appropriate for the criteria.[321] Convenience sampling, on the other hand, involves using any method that is appropriate to the researcher to access the chosen group of study participants.

3.4.1 Purposive sampling method

The purposive sampling method entails the deliberate selection of participants due to their specific characteristics.[322] It does not use theories or put a limit on the number of people who take part in a study. It deliberately includes a diverse cross section of participants' backgrounds, ages, and cultures as was the case with all the three groups of respondents in this study. For women business owners and mine employees, the researcher recruited these based on their knowledge and experiences in their interaction with the subject of interest. In this study, the researcher relied quite strongly on networks in finding participants as it was her only way of accessing this group. She used her own discretion to find knowledgeable and experienced

[318] Creswell & Creswell (note 287 above).
[319] R Acharya and R T Kumar *Statistical survey design and evaluating impact* (2016).
[320] Creswell and Creswell (note 287 above).
[321] I Newman, C S Ridenour and G M DeMarco 'A typology of research purposes and its relationship to mixed methods' in *Handbook of mixed methods in social and behavioural research*, (2003) 167.
[322] Creswell (note 317 above).

women with relevant information to the different dynamics of the mining industry. Participants also needed to be willing and available to participate, able to communicate their opinions in a reflective, articulate, and expressive manner.[323]

The women business owners and mine employees were chosen from a pool in the Women in Mining South Africa (WIMSA) database. The organisation served as a sampling filter for the researcher because it provided a platform where participants were easily identified. Through their presentations at the organisation's different functions held around Johannesburg and Cape Town (between 2017 and 2019), the researcher was able to choose participants that met the criteria from the presenters. Some of the participants' profiles were also accessed through the organisation's affiliated magazine (the 100 Global Inspirational Women in Mining).[324] The researcher contacted them individually, by telephone as well as through emails, inviting them to participate in the study.[325] For the women employees, invitations to participate were also shared through the WIMSA public relations personnel and those that were interested responded. The researcher also obtained participants through referrals from among those that she had interviewed.

According to Creswell, the most useful ways of getting participants for focus groups is to recruit them on location.[326] The researcher chose the sites, and recruited the participants from two provinces, Limpopo and Northwest. For purposes of maintaining privacy, the names of the communities are withheld. Access to participants was obtained through referrals to local leadership (traditional and informal leadership structures). These were instrumental in providing support in terms of finding venues and maintaining communication around meeting times. The choice of sites was influenced by the accessibility and availability of participants as well as for purposes of communication, the possibility of a shared language(s) between participants and researcher. Consequently, for the women in mine hosting communities, the researcher's access and convenience to the participants was of utmost importance. This is because unlike the two groups, the data collection technique used (focus group discussions) required that both researcher and participants meet in person. Thus, after identifying mine towns close to her, the researcher contacted different people (friends and colleagues from the legal fraternity) for referrals to traditional leaders. In communities where there were no

[323] Etikan *et al* (note 289 above) 1-4.
[324] Women in Mining UK (WIM UK) (note 301 above).
[325] Most of them shared their business contact details during their presentations which made it easy for the researcher to get in touch.
[326] Creswell (note 287 above).

traditional leaders as such, informal leadership structures were approached for permission to interview participants. Through the leaders' assistance, she obtained access to the women that met the population target in the communities.[327]

3.4.1.1 Community (Limpopo)

Due to her work schedule and cultural protocols that needed to be observed, the traditional leader was interviewed first and alone at her royal premises and at a time of convenience. Through her assistance and that of her regents, an interview with some of the women in the community was arranged a month later. Among the participants were six women strategically chosen at her discretion, information that came to the attention of the researcher during the interviews. The other six women that joined were randomly invited by the researcher as they fitted the population target of the study. These were also willing to participate as they were at the royal premises at the time.

3.4.1.2 Community (Limpopo)

Access to this community was through a referral to one of the local female residents. With her assistance, as somebody that knew the community well and was fluent in the local language, the researcher mobilised other interested women to participate. Since they were approached within their community, participants were able to decide on the neutral venue for the interviews as well as the time that was convenient to them.

3.4.1.3Community (informal settlement- Northwest)

This community was accessed through a colleague from the Department of Mineral Resources who was chairing a meeting with the community on their concerns with local mining companies. Through the forum leader (male), I requested women that were present and interested to participate after their consultation meeting. Although the population target were women, a few males (five) also showed interest in participating, resulting in the group having a few males among the target participants. The interview schedule however remained focused on women's issues, as was initially designed. Female participants in this group were a bit reserved when expressing themselves as compared to the women in other groups. Apart from the cultural demeanour of women showing respect to men, this could have been due to the male

[327] The researcher's previous town of residence was a mine town (Carletonville) surrounded by a number of mines. Through the networks she had established during her stay, she was able to reach out to other mining communities for referrals.

dominance in responding to questions. There was also a private vehicle that constantly drove around the venue at 20 to 30 minutes' interval until the end of the meeting. Given the issues around political killings and victimization related to mine operations in the area indicated by participants, this could have stirred fear or anxiety in some of the women.

In the first community, the initial communication with the traditional leader (Queen) was done telephonically through her son. This was in observance of the cultural and communication protocols around her. Similarly, the second community was also accessed through a referral by a friend who provided contact details of one of the local ladies in the community. After the introduction and description of the research details, a formal invitation was extended to her which she shared with other women in her community that showed interest and met the target population. The third community was accessed through a colleague who was chairing a community engagement session on behalf of the Department of Mineral Resources (DMR). I extended a formal invitation to the community forum leader (a male) to have an interview with some of the women after the DMR consultation which was accepted.

3.4.2 Sample sizes

According to Etikan *et al* a sample size is 'the actual number of the individuals in the population that the researcher uses in the study'.[328] It is influenced by a number of factors among which are the nature of the study, the type of analysis to be conducted and preferred precision of the estimates a researcher desires to attain.[329] It is also dependent on how heterogeneous the sample is, as well as the number of variables to be examined.[330] The researcher was guided by some of these factors but also by the historical sampling approach of similar past studies in estimating the appropriate sample size.[331] The costs or resources required for the study were also a determining factor. The study comprised of three sample sizes and the breakdown of the extracted information from each target group is presented in table 3.1 below.

[328] Etikan *et al* (note 289 above).
[329] Ibid.
[330] Ibid.
[331] Ibid; Creswell (2009), Creswell (2017).

Target Group		Race/Nationality	Age group	Number	Total
Women in mine affected host communities	Community RC	All Black SA	24-56	7	30
	Community NM	All Black SA	32-71	12	
	Community PM	All Black SA	24-70	11 (6 F & 5 M)	
Women Employees		5 B: 1 Ind SA	27-42	6	6
Women in Ownership and Control of mining establishments		3 B: 2 Ind SA	37-45	5	5
Total participants					41

Table 3.1: Sample size (Source: Author's computations)

This shows that women in mine hosting communities accounted for the highest sample size for the study with a combined total of 25 females and 5 male participants. This was followed by women mine employees who comprised 6 (5 Black and 1 Indian) participants and last, were women in mine related businesses who accounted for 5 (3 Black and 2 Indians) of the respondents. The variance in distribution of sample sizes across the three groups of women was attributed to the willingness, availability, and the researcher's easy access to the respondents, and well as the method chosen.

3.4.3 Content and structure of the research instruments (interview guides)

The interview guides for all the participants had two sections: biographical data and substantive questions. The biographical information for both those in interviews and focus group discussions (discussed in detail later) was the same. However, on analysis this information showed different results for each group of participants. In no specific order, the information included the nationality, age, race, marital status, number of children and level of education. Employment status/position, years of experience in current position/business, religion and other were also included. Biographical information was important because it involved certain characteristics that shape human behaviour, choices and influence a wide range of life's events and outcomes, whether direct or indirect.[332] The attainment of formal education and employment status, for instance, influences the choice of career path and the formation of a family and ultimately, the knowledge and exposure around access to rights among others. Race and nationality were used to assess the extent to which the country's Black Economic Empowerment Initiative has fared in facilitating substantive equality in the industry. This was

[332] M Kankaraš 'Personality matters: Relevance and assessment of personality characteristics' (2017).

in so far as it relates to the empowerment of women as a category of Historically Disadvantaged South Africans (HDSAs). The age, marital status, and the number of participants' children were key in ascertaining the impact primary care duties, among other domestic and related responsibilities, has on women in general and, more specifically, in their different personal spaces.

Religion was incorporated in consideration of its influence on the family structure and allocation of roles in some societies. As Casanova points out, though religions and beliefs appear as discursive systems of practice, they often offer structures of moral order and cultural meaning to individuals and collectivities.[333] They shape or influence the arrangement of the social order, such as the family structure, and the division of gender roles in accordance with what some believe to be the divine principle posited as being natural or of divine origin. Such systems mirror our worldviews towards one another as well as the way we perceive ourselves as individuals. Also, given the advent of democracy, the researcher's thoughts were aimed at getting the participants' views around the interpretation of the 'Women Question' in the context of the study. In other words, to solicit views on whether the social order as imposed by religion or culture has a material influence on their participation and ultimately their enjoyment of substantive equality. Last, there was an 'other' section to accommodate information that may have been overlooked, yet was important to the findings. Most participants did not provide anything under this section except for one who revealed that she was based in a rural setting. This uncovered certain preconceptions and biases that the researcher had. These included assumptions that, by virtue of being businesswomen, participants in her category were all on an equal footing in terms of access to resources and services, which was not the case.

3.4.3.1 The substantive questions for women entrepreneurs and employees.

Substantive questions for the study were in the second section of the interview schedule. Between nine and ten questions on gender transformation in relation to women's interactions with different mine related spaces were prepared. These were developed from the primary and secondary data which formed the first phase of the research. Arising from the study of literature, the questions sought to investigate the extent to which women enjoy and experience

[333] J Casanova 'Religion, politics and gender equality: Public religions revisited' in José Casanova and Anne Phillips *A Debate on the Public Role of Religion and Its Social and Gender Implications. Gender and Development Programme Paper*. (2009) 14-18.

the concept of substantive gender equality in mining. In other words, to understand their views around the use of the law to advance gender equality in mine ownership and in the mine workplace. For the women entrepreneurs, the aim was also to establish if they formally owned or had legal control over mining establishments in South Africa? If so, whether they enjoyed actual control and participation and, if not, what the barriers were to such?

3.4.3.2 The substantive questions for women in mine hosting communities

Focus group discussions were used to collect data from women in mine affected communities and the research questions were derived and developed from the study aims and objectives. The main objective was to investigate their level of participation in mine related challenges that affected them (as women) residing in mine hosting communities. In other words, to understand if they had any influence in the development and implementation of Social and Labour Plans (SLPs) for example. This was meant to assess if the law is/was an appropriate tool to facilitate substantive gender equality in the sector. The questions also sought to establish how women in mine hosting communities were affected by mining operations in South Africa. Where their challenges different from the rest of the community members, how and for which women? The researcher further sought to establish if there were any legal commitments that were made to women by mining companies in SLPS. If so, how did these play out in practice in terms of the SLP?

As discussed in more detail in Chapter 7, participants' responses revealed how women in mine hosting communities experienced unique mining related challenges that were different from the rest of the communities. Their lack of knowledge around the existence of their community SLPs pointed to the non-recognition of their voices in strategic consultations. Alternatively, it could be due to a flawed process of consultation where community engagements were a mere formality (tick in the box) but with no impact. In other words, the provisions of the Mining Charter regarding SLPs were not being implemented in practice as required by law. In summary, therefore, while there has been progress in the incorporation of women in the South African formal mining industry, a lot still needs to be done. Women's participation, recognition and redistribution in mining still take a formalistic approach which doesn't translate into actual gender transformation nor women empowerment. For this reason, most women have not yet fully enjoyed the notion of substantive gender equality in the industry.

3.5 Validity and Reliability

In designing research, analysing the results, and determining the quality of the findings, validity and reliability are very important aspects. They require a qualitative researcher to provide means for credibility, dependability, confirmability, and transferability.[334] These four criteria constitute the standards for quality and trustworthiness in qualitative research, and thus depict the true value of the findings of the study. This entails consistency, repeatability and stability of the participants' accounts and the researcher's ability to gather and record data. [335] Hence, to ensure the consistency and validity of the data collection tool and the collected data itself, several qualitative techniques were applied. These include credibility, dependability, transferability, and confirmability.

3.5.1 Credibility

Punch describes credibility as the precise representation of the research participants' life experiences.[336] It can be achieved through the researcher's prolonged engagement in the context in which the research phenomenon is embedded. According to Guba and Lincoln, the credibility of a study is determined when consumers of the collected data (readers) are confronted with experiences which they are able to recognize.[337] It can be addressed through activities such as 'persistent observation, data collection triangulation, as well as prolonged engagement'.[338] Punch also recommends peer debriefing as it can provide an external check on the research process.[339]

The researcher ensured credibility by choosing three different categories of women in mining. These were in ownership and control of different mining related businesses, employees of different mining companies and residents of diverse mine hosting communities. To demonstrate credibility, the researcher allowed the participants to see the draft versions of their responses. The reported research findings were confirmed by the participants as their own experiences which confirms truthfulness of the data. Participants were also interviewed on the similar questions per group to confirm the written data. The researcher also allowed a colleague to go through the findings of the study to determine credibility to the people under study.

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[334] Y S Lincoln. and E G Guba *Naturalistic inquiry* (1985).
[335] Ibid
[336] K F Punch 'Introduction to Research Methods in Education.' (2016).
[337] Lincoln and Guba (note 331 above).
[338] Punch (note 333 above).
[339] Ibid.

3.5.2 Transferability

Nowell *et al* equate transferability to the generalizability of inquiry.[340] It is regarded as 'a process of demonstrating the applicability of a set of findings to another context'.[341] In qualitative research, transferability demonstrates the probability that the research findings have meaning to other researchers in similar situations'.[342] Transferability for a study can be improved by using purposive sampling technique and giving detailed descriptions of information.[343]

In this study, interviews and focus group discussions were conducted until the point of data saturation. According to Cohn *et al*, collecting data from additional participants is meant to increase its appropriateness, adequacy, and scope.[344] The researcher immersed herself in the study topic so as to fully describe and understand it comprehensively. Great care was taken in handling the processes to do with data collection, identification, and analysis for this study. The services of a professional transcriber were used to meticulously transcribe the audiotaped data. All steps followed in the analysis of data were documented. All efforts were made to ensure that there was coordination in the methodology and analytical materials used. After thematic analysis was performed on the transcribed data, all efforts were made to illuminate the themes which emerged exhaustively.

3.5.3 Dependability

To achieve dependability, Tobin and Begley propose that researchers ensure that their research process is logical, traceable and documented.[345] One way of demonstrating dependability for this research was to have the research process audited by another doctoral colleague. The colleague reviewed some of the transcribed material. New themes which emerged were illuminated and acknowledged. Comparisons were then made with the researcher's own thematic analysis. Where new themes emerged, it was deliberated whether or not to include them in the final analysis. The objective was to both agree on the themes and meanings obtained from the transcribed data. The researcher kept records of all raw data collected, field notes and the reflexive journal to help her relate, systematise, and cross reference the data.

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[340] L S Nowell, J M Norris,D E White and N J Moules 'Thematic analysis: Striving to meet the trustworthiness criteria.' (2017) 16 *International Journal of Qualitative Methods* 1.
[341] Ibid.
[342] Ibid.
[343] L Cohen, L Manion and K Morrison *Research Methods in Education* (2013).
[344] E S Cohn and G I Orsmond 'The distinctive features of a feasibility study: objectives and guiding questions.' (2015) OTJR*: occupation, participation, and health*, *35*(3), 169-177.
[345] G A Tobin and C M Begley 'Methodological rigour within a qualitative framework' (2004) 48 *Journal of advanced nursing* 388.

3.5.3 Confirmability

For qualitative studies, confirmability relates to the extent to which the research findings can be verified by fellow researchers.[346] It seeks to establish if the researcher's interpretations and findings are authentically derived from the data.[347] It requires the researcher to demonstrate how she reached her conclusions and interpretations. According to Polit and Hungler, it is a '*criterion* for evaluating data quality which occurs when two or more independent people agree on the similarity of the data'.[348] Confirmability can be attained by having a reflexive journal for use during the research, to document daily introspections and keep notes that would be important to a study. These are important to show that the research findings are free from bias.

In this study, an audit trail was used to trace the data analysis and collection processes that took place. The researcher had documents which consisted of actual focus group notes and a detailed account of how the focus groups unfolded. Confirmability was also established by verifying the given data with industry experts in all the three categories of women from different and independent organizations.

3.6 Data Analysis

The study used thematic analysis to analyse data from interviews, observation and focus group discussions. There were also pre-identified issues extracted from the documentary sources that were linked to the findings of the social research, such as the general exclusion of women from decision making platforms. Women were the least consulted for opinion in strategic initiatives, be it in business, at the workplace or in communities. They were often not considered for positions of leadership in the industry due to the stereotypes around their physical ability in male dominated industry. Like grounded theory, thematic analysis, requires a great deal of researcher input and interpretation.[349] It is much more than just counting words or phrases but rather going further to identify and describe explicit and implicit ideas contained in data known as themes.[350] In this study, thematic analysis was done in three steps:

i. Familiarizing with the data: the researcher familiarized herself with the transcribed interviews, focus group discussions and observational remarks. Familiarizing involved reading through the transcripts observing patterns and meanings which emerged.

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[346] P Nguluve *Handbook of Research on Mixed Methods Research in Information Science* (2020).
[347] Tobin & Begley (note 339 above).
[348] D F Polit and B P Hungler *Nursing Research: Principles and Methods*' (1995) 456–457.
[349] Creswell (note 287 above).
[350] Ibid.

ii. Reviewing and revising the themes: once the initial themes were set, the researcher reviewed and revised them. The objective was to ensure that each theme was distinct and had sufficient data to support it. At this stage some themes were merged and others without enough data to back them up were deleted. Once this stage was completed the researcher prepared to write the narrative.

iii. Writing up the narrative: the last step of thematic analysis involved writing up the research findings and the conclusions that emanated from the analysis.

3.7 Justification for thematic analysis

Despite the reliability issues, thematic analysis is regarded as one of the most effective ways of capturing complexities contained in textual data.[351] Thematic analysis is also one of the most widely used methods of analysing qualitative data. One of the main strengths of thematic analysis is that it is well suited for large data sets such as those produced from transcribed focus group interviews in this study. In thematic analysis, the interpretations that emerge are comprehensively supported by data and useful for studying topics beyond individual experience.[352]

3.8 Reflections

The observation method was used simultaneously with the two techniques of data collection (interviews and group discussions) employed in the study. As questions were being asked, the researcher captured non-verbal communications in participants' responses, such as facial expressions, change of voice tone and emotions and so on. It was observed that most of the participants among business owners and employees became emotional at some point (in one incident even a breakdown) when they narrated their experiences in the industry.

Further, though attitude and behaviour differed among women in communities, certain visible emotional responses that were noted in some communities were not displayed in other

[351] J Corbin and A Strauss *Basics of qualitative research: Techniques and procedures for developing grounded theory*. (2013)
[352] C Edwards and K D Johnson 'Understanding Exception from Informed Consent in Planned Emergency Research.' (2020) 47 *Journal of Emergency Nursing* 503-506.

communities. For purposes of maintaining anonymity, I only mention the communities according their provinces. For instance, except for the women in the North West province who displayed composure and were reserved most of the time, the other groups freely expressed their discomforts without fear. In the North West province, there was a sense of fear among some women at the constant passing by of a certain vehicle near the venue.[353] The researcher also observed that during the community's consultation meeting with the DMR consultant, men in this community dominated the conversation most of the time. [354]The three women that spoke, only did as and when the consultant requested their views or when a male member wanted to collaborate a point with one of them. This carried an important message around women's freedoms and how this feeds into the gender equality discourse, particularly in the context of the study. It exposed the extent of women's vulnerability in mining beyond what words could articulate.

In terms of the University's ethics clearance procedures, women in communities were categorised as the most vulnerable group that required mandatory counselling services. Based on the researcher's observations, however, though all groups of women were generally vulnerable to male dominance, their levels of vulnerability varied. First, women entrepreneurs were actually the most vulnerable and needed much counselling as they were more exposed to the industry's 'jaws of power'. They were in constant and direct contact with company owners or their representatives which exposed them to various forms of vulnerability. Besides, they experienced much of the abuse, often as individual-company owners, compared to employees and communities who were most often a collective. Second, in the varying levels of women's vulnerability, employees and women in communities had a sort of protective network in the form of trade unions and community forums or structures respectively. Unlike the employees, women in communities were perhaps stronger as a collective because they shared the burden of vulnerability thereby neutralising the extent of the emotional impact compared to the other groups of women. As shall be seen in chapter 6, employees, on the other hand, probably did not get much protection from trade unions as these were male dominated as well.

In summary, the data collection techniques used in the study provided substantial information to enable the researcher to achieve her study aims and objectives as well as responding to the research questions. For instance, the information obtained through secondary

[353] Some participants seemed uncomfortable each time a Toyota Fortuner marked with a mine operations sticker passed by.
[354] These collaborated sentiments that were raised by one participant in ownership of mining related businesses that men don't ask for permission to speak, they just speak.

data sources could be verified through interviews and focus group discussions with relevant participants. What the participants could not articulate in words, the observation method provided a way through which meaning could be deduced from the non-verbal communication. Also, certain reactions from the participants shaped new questions that may not have been anticipated and yet important to answering the research objectives. The structure and content of the interview guide is described below and a sample of some of the questions that were asked to the different groups of women are attached as (Annexure A 2, Annexure B 2 and Annexure C 2).

3.9 Positionality

England and Bourke perceive research as a process that is shaped by both the researcher and the person being researched (participant).[355] By its dialogical nature, it is argued that the process opens up parties to getting personal along the way.[356] As Stanley and Wise also add, researchers *'remain human beings, complete with all the usual assembly of feelings, failings, and moods'*.[357] They always carry along their personal histories and lived experiences which often influences their feelings and the understanding of what is going on. As a black African woman with an interest in exploring business opportunities in mining, I joined WIMSA before my research project with an aim of learning more about business, women and the industry. This gave me an advantage in accessing the participants as well as a balanced understanding as an outsider and insider (due to my affiliation with WIMSA). This, however, did not subjectively influence my analysis of the findings.

3.10 Limitations of the study

First, the study was only limited to select communities in Northwest and Limpopo. This geographical limitation inhibits the generalisability of the study's findings and recommendations across all nine provinces in South Africa. However, despite the geographical limitation of the study, the outcome of the study provides useful baseline data or information

[355] K V England 'Getting personal: Reflexivity, positionality, and feminist research' (1994) 46 *The professional geographer*, 80-89; B Bourke 'Positionality: Reflecting on the research process.' (2014) 19 The *qualitative report* 1-9.
[356] Ibid.
[357] L Stanley and S Wise *Breaking Out Again: Feminist Ontology and Epistemology.* (2002) 157.

which acts as a reference point for further research on a similar subject. Second, the study was also constrained by the outbreak of the Covid-19 pandemic which resulted in adjusting the method of data collection for some participants to suit the prevailing environment. This required the researcher to notify the ethics committee about the forced adjustments to her research methods. For example, due to the pandemic, there were imposed lockdowns and restrictions on people's movement and gatherings across the country. This delayed the data collection process because the researcher was not able to move between places to conduct the study. For instance, the restrictions inevitably created unexpected delays in conducting of focus group interviews amongst women in affected communities by two months. Nonetheless, immediately after the restrictive measures were lessened, data collection on mine women in mine affected communities progressed as planned. The researcher was therefore able to overcome this obstacle.

Further, the interviews with women mine entrepreneurs and employees were conducted through online platforms, such as Zoom meetings, instead of the in person meetings as was indicated earlier to the committee. Online meetings were convenient, time saving and had less Covid-19 related hygienic regulations. They also allowed participants to speak from the comfort of their homes/offices. However, these were often interrupted by poor internet connection and load shedding (intermittent and usually planned power outages due to lack of capacity in the country's national grid). Due to the prevailing economic conditions, the cost of access to the internet/data for some of the participants was another challenge. Consequently, some interviews would either take longer than anticipated or have to re-scheduled altogether resulting in delays. This might have imposed some limits in relation to observation.

There were unexpected circumstances that were beyond the researcher's control and knowledge at the time of conducting the discussions which had a bearing on the data collected. In the first community, for instance, some of the participants were selected and invited to the focus group discussions at the discretion of the traditional leader. The venue was also provided through her support which suggests participants' lack of independence and potential bias in their views and responses. Lastly, the presence and participation of some men in one of the focus group interviews in Rustenburg might have also compromised the full participation of the women in question.

3.11 Ethical Considerations

According to Creswell, it is important that researchers follow certain recognized processes and meet specific requirements before and during data collection.[358] Researchers are bound by what are called ethical considerations which are aimed at protecting the interests of participants in the study. At Wits University, the ethical considerations are stricter in studies that involve human subjects and, more specifically, the vulnerable groups. The researcher therefore also adhered to the required University standards during the data collection process and interaction with respondents. The discussion on ethical considerations in this section is important to show that the study was conducted subject to the principles of social research.

The researcher first applied for ethical clearance from the University's (Witwatersrand) Ethics Committee. Consent was granted on the basis that the research focus and planned data collection processes did not endanger or infringe upon the participants' rights as discussed below. Given the fact that the research involved women in a male dominated industry, the Committee classified the study as a possible but low risk study. Permission from WIMSA (an NGO to which most of the participants were members) and support from Lifeline Counselling and Social Services was required. Counselling services were required for vulnerable participants that might need such before or during the interviews. The Committee also recommended that interview schedules for women in communities be interpreted into respective local languages and that was done. After consent was granted by the University, the researcher sought formal permission and approval from the selected participants to conduct the study.

In compliance with the ethics requirements, below are some of the specific items she was required to adhered to and she shows how she went about achieving same.

3.11.1 Informed consent

For purposes of obtaining informed consent, participants were provided with an explanation of what the study entailed (see attached Annexure A1). They were required to sign the consent form before commencing with the interviews (see attached Annexure B1). Participants who could not read nor write had the contents of their consent form interpreted into their mother language and they were requested to confirm if they consented or not. Their responses were recorded by a recording device, and they were informed about the decision to freely withdraw

[358] J W Creswell *Qualitative inquiry and research design: Choosing among five traditions* (1998).

from participating at any stage if they felt uncomfortable. However, care was taken not to put any of them in such a position.

3.11.2 Voluntary participation

It was made clear to the participants that the study was purely academic and there were no incentives or rewards for participating. This means that the researcher did not coerce the participants to take part in the study which means that the choice to participate was purely voluntary. This ethical consideration was important to emphasis in order to provide participants with an opportunity to make unbiased contributions to the study.

3.11.3 Specific permission for audio-recording

In cases where a researcher wants to video record (film), audio record (tape) or take photographs of participants, he/she must do so only after getting approval from the concerned individuals.[359] In some countries, this can be a legal requirement included under privacy laws. For the current study, permission was sought from the participants to audio record the focus group interviews and zoom meetings. The researcher also obtained consent and permission to take photographic images of information that was relevant to the study and fell under private ownership. All subsequent recordings were made after permission to do so was granted.

3.11.4 Right to withdraw

The right to withdraw is linked to the right of voluntary participation.[360] Participants must take part in a study with the knowledge that they can withdraw their participation at any time or have their data removed from analysis if possible. The researcher made it known to the participants that they had a right to withdraw from the study at any time they wished to do so.

3.11.5 No harm to participants

It is critical that no harm befalls participants during the course of taking part in a study. Harm during participation is not only limited to physical or emotional exposure to pain or danger during a research, but also extends to adverse consequences to participants caused by participating in a study.[361] Researchers must do their best to protect the participants from harm or danger and to make sure that, during informed consent, the participants are fully informed about all the risks of participating in a study. At times, participants may experience emotional distress as a result of opening up on personal issues. In such circumstances, the researcher is

[359] E Haber and A Tamò-Larrieux 'Privacy and security by design: Comparing the EU and Israeli approaches to embedding privacy and security' (2020) 37 *Computer Law & Security Review* 49-52.
[360] Holliday (note 296 above).
[361] Creswell & Creswell (note 287 above).

obligated to ensure that the study does not end without resolving the issue. The researcher should allow for counselling and follow up assistance to the participants.

The researcher was careful not to expose any respondent to physical harm, psychological abuse, stress, or any activity that might cause a loss of self-esteem. Prior to conducting the interviews, she engaged a team of female social workers from Lifeline Counselling Services (Braamfontein). This was to help participants that may have been exposed to traumatic experiences and who needed support to be at easy and request for assistance should they need it. Having professional counselling services along also helped the researcher to focus on the interviews without worrying about how she will contain disturbing experiences that may be beyond her ability. On the other hand, the researcher was also careful not to impose counselling services on participants who did not prefer being assisted through that means. However, she ensured that she left details of such support in case the participant decided to seek help.

3.11.6 Avoidance of undue intrusion

The interviews and focus group discussions were strictly focused on and confined to issues relevant to the research topic.

3.12 Conclusion

This Chapter presented an outline on how the research was conducted, illustrating the process that was used to select the participants, the methods and instruments used for collecting data and the approach that was used in analyzing the collected data. The study made use of qualitative mixed methods and a purposive sampling method. Documentary sources, face to face interviews and focus group discussions that incorporated observations were used to collect data. Focus group discussions and face to face interviews (those done by zoom meetings) were recorded after permission was granted to do so. The quality of the findings was enhanced through four criteria namely, credibility, transferability, dependability, and confirmability. These are the criteria used to test the trustworthiness of qualitative research findings. A thematic analysis approach was used to analyse the data collected from the focus groups. The latter parts of the chapter discussed the limitations of the study and ethical considerations. Some of the ethical considerations which were observed include informed consent, specific permission to record, right to withdraw, no harm to participants, confidentiality and anonymity and data protection.

CHAPTER FOUR

THE LAW, POLICY, AND INSTITUTIONAL FRAMEWORK: ITS ROLE IN FACILITATING EQUALITY (GENDER) IN SA'S LARGE-SCALE MINING INDUSTRY

4.1 Introduction

This chapter engages the legal, policy, and the institutional framework governing the South African large-scale mining industry. Following the democratic Constitution's commitment to correct, among other things, socio-economic injustices, specific legislation was introduced to correct the imbalance in social and economic participation, recognition, and resource distribution among citizens. In the mining sector, this resulted in the legal incorporation of previously excluded groups, including women, into the mainstream industry.[362] The areas of empowerment included ownership, employment equity, and mine community and rural development. These are provided for in The Broad-Based Black Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry, commonly known as the Mining Charter. The initial Mining Charter of 2004 and its successive reviews derive legislative power from the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) and the Broad-Based-Black Economic Empowerment Act 53 of 2003 (B-BBEE Act).[363] As a result, the study focuses on state law as it seeks to evaluate the notion of substantive equality within the context of the state's BEE strategy.

This chapter explores and evaluates policies and legislation aimed at assisting women, and black women in particular, to overcome the hurdles they encounter in pursuing substantive (gender) equality in mining. The chapter focuses on specific provisions of the MPRDA, certain Affirmative Action oriented economic policies and select labour laws. They include the B-BBEE policy, the Employment Equity Act 55 of 1998, the Labour Relations Act 66 of 1995, the Skills Development Act 97 of 1998 and the Basic Conditions of Employment Act 75 of 1997. The aim is to describe how the law is understood and interpreted in its legal form in order to compare this to its application and implementation in practice to the three identified groups of women in the chapters five, six and seven of the study.

[362] Section 100(2) of the MPRDA (see note 26 above).
[363] This is a form of affirmative action policy adopted by the South African government in post-apartheid era to address the nation's political and socio-economic inequality.

The chapter comprises six sections; section 4.2 briefly sets out the historical context, policy, and legal framework of the large-scale mining industry from a global perspective. It highlights the industry's patterns and culture of discrimination that existed prior to the incorporation of women. With multiple forms of segregation already in existence in the industry, section 4.3 discusses how such an environment nurtured and resulted in the exclusion of women through the historical legal ban. Here I also show how the economic consequences of the ban affect(ed) women's participation in the industry. The remnants of the legal restrictions remain deeply rooted in the institutional structures and culture of the industry to the present day, and continue to reinforce the inequalities and complex patterns of prejudice and disadvantage which affect different groups of women differently. Turning to government's attempt to correct some of these injustices, section 4.4 discusses the influence of the country's international legal obligations on its domestic laws. Drawing on these, I describe the history and origins of the broad Affirmative Action policy and how it fits into the South African mining sector regarding the incorporation of women.

Section 4.5 moves to discuss select provisions of the MPRDA and the Black Economic Empowerment strategy in its broader sense as an economic strategy. I describe what the policy entails and its developmental stages before narrowing it down to how it relates to mining and women in South Africa. Here I pay attention to select provisions of the Constitution of 1996 and the above-mentioned employment equity laws to assess their relevance on ordinary women. This is important to highlight issues of the intersectionality of gender, race, and class and how these affect economic redistribution, participation, and recognition of the identified groups of women in this study. Section 4.6 concludes the chapter.

4.2 The historical context, law, and policy on discrimination in large-scale mining from a global perspective

To understand women's exclusion from the formal mining sector, a journey into the global history and legal framework of the industry is important. This provides a historical narrative on the evolution of the industry and, importantly, an appreciation of the different patterns of discrimination that existed and how these shaped the domestic laws of various mining jurisdictions. Different scholars claim discrimination in mining to have been a longstanding

problem that dates back as far as the 18th and 19th century.[364] Hutt and Cruise specifically point out the various inequalities that the industry grappled with by the 1800s.[365] This concurs with Wikander *et al's* work on the regulation of the conditions of employment that began in Switzerland and Britain around 1819 and the 1840s respectively.[366] The restrictions that were introduced in response to the escalating levels of industrialization resulted in the demand for labour in the mines.[367] This necessitated a consideration of alternative and untapped sources of labour such as that of women and children.

In the mining industry, widespread concerns around poor working conditions soon raised public outrage in the United Kingdom's underground coal mines.[368] This led to the enactment of the UK Mines and Collieries Act, 1842 which pioneered protective legislation and introduced a legal ban (discussed in detail later at 4.3) on all women from working underground.[369] Diverse groups of people were differently affected, based on age, race and gender and, gradually, the restrictions spread around the world to different countries. These included Germany (1878), North America, (Ontario) (1890), Sweden (1900), Russia (1917), India (1929) and Japan (1933).[370]

In South Africa, mining only began around the 1870s with gold and diamonds being the major commodities at the time.[371] As an industry still at its inception then, Alexander suggests that, the employment of engineers from other countries, particularly the UK, had an influence on the country's domestic laws.[372] He argues that protective legislation from their jurisdictions influenced gender restrictions under the South African law too.[373] It is further suspected that this was reinforced by the country's ratification of Convention 45 of the International Labour Organisation of 1935.[374] In addition, Hutt also talks about the 'Colour Bar' restrictions that the

[364] K Lahiri-Dutt 'The act that shaped the gender of industrial mining: Unintended impacts of the British Mines Act of 1842 on women's status in the industry' (2020) 7 *The Extractive Industries and Society* 389-390; Dikane (note 27 above); Alexander (note 30 above) 201-222.
[365] J A Cruise 'The gender and racial transformation of mining engineering in South Africa.' (2011) 111 *Journal of the Southern African Institute of Mining and Metallurgy* 218-219: Hutt (note 27 above) 58-59.
[366] U Wikander A Kessler-Harris and J E Lewis, Protecting *women: labor legislation in Europe, the United States, and Australia, 1880-1920* (1995).
[367] Ibid.
[368] Lahiri-Dutt (note 358 above) 389-390.
[369] Alexander (note 30 above) 201-222.
[370]Wikander *et al (*note 360 above).
[371] Hutt (note 27 above), Alexander (note 30 above).
[372] Alexander ibid 214-215: The Wet No. 12, (XVIII:146) of 1898 stated that '*No male person under the age of sixteen years and no female would work, and no person shall cause or permit any male person apparently under the age of sixteen years or any female to work, underground in any mine*'.
[373] Ibid.
[374] Alexander (note 30 above) 214-215:

industry put in place before the legal ban on women.[375] Hutt is supported by Dikane and Meyersfeld on the view that the restrictions promoted the monopolisation of various types of jobs in favour of white employees (mostly males at the time).[376] This resulted in the industry being referred to what Hutt terms the 'white man's economy'.[377]

At the time, race was a major determining factor in access to power, resources, income and benefits within the South African mining industry.[378] The allocation of employment, promotion, remuneration and associated benefits, such as accommodation to employees, was based on racial lines.[379] Given the mandatory requirement that higher positions be occupied by 'scheduled persons', this automatically meant that, without the necessary competency qualification, black people could not qualify for certain kinds of jobs.[380] As Cruise argues, for instance, without a Blasting Certificate, one could not be a miner.[381] Also, the difficulties around obtaining a university degree for the majority of black people, as an alternative pathway to managerial positions, meant that many could not qualify for a permanent appointment such as a Mine Captain position.[382] Consequently, a single racial requisite for certification of competency prevented black mineworkers from competing for certain categories of jobs. This promoted white males to well-paying jobs, with high prospects of further promotion among other benefits. Yet, despite performing the most laborious and dangerous jobs, black male employees' salaries were lower.[383] In the main, therefore, they were kept in lower positions as labourers, while their white counterparts rose through the ranks to manager status.[384]

Further, white males were given preference for decent accommodation while their fellow black males stayed in single-sex hostels that could not accommodate their families.[385] This contributed to many black families living apart for long periods of time. According to Hutt, this was made possible by the laws in place at the time which empowered the government to promulgate non-appealable regulations on a number of issues.[386] This also created a reclassification of employees according to their race with the white males at the top of the racial

[375] Hutt (note 27 above).
[376] Dikane and Hutt (note 27 above), Meyersfeld (note 23 above).
[377] Hutt ibid.
[378] Ibid.
[379] Ibid.
[380] Ibid.
[381] Cruise (note 359 above) 217-224.
[382] Ibid.
[383] Dikane and Meyersfeld (note 370 above).
[384] Ibid.
[385] Dikane (note 370 above) 2-4.
[386] Hutt (note 27 above) 62.

scale, followed by Indian males, then coloured males and lastly black males.[387] It is this racial classification that influenced standards around promotion and remuneration, career progression and accommodation. Eventually, this also altered individuals' quality of life and development. In other words, the Colour Bar legislation ultimately rendered the upper echelon of the South African formal mining space an 'all-white and male' stronghold that reinforced white privilege.[388]

Around 1988, racial discrimination in the industry was repealed, but this did not stop the persistence of further forms of exclusion.[389] Instead, the already fragmented system and culture of segregation became a conducive environment for the perpetuation of race and gender discrimination at the time of the incorporation of women. I now turn to a discussion on the historical legal ban on women and how this economically affected their participation in the industry.

4.3 The historical legal ban and its economic consequences on women in South Africa

As mentioned earlier, Britain's 1842 Act and Convention 45 of the ILO significantly influenced the shaping of other countries' and member states' mining laws, including those in South Africa. According to Lahiri-Dutt, this triggered the complete erasure of women's long and impressive history of labour contribution to the industry.[390] She argues that, prior to the legal ban, a lot of women in countries such as India and China participated in large-scale mining.[391] In South Africa, by ratifying the Convention, the country subscribed to its provisions and entrenched the legal ban in its various Mines and Works Acts and their successive amendments. The first legal ban on women from underground work was adopted around 1898 and transferred to the Mines Acts of 1911 and 1956.[392] Both Clause XVIII:146 of Wet No.12 (1898) of the Zuid-Afrikaansche Republiek (the Boer republic in the area previously known as the Transvaal in colonial and apartheid South Africa) and paragraph 8.1 of the Union of South Africa's Mines and Work Act, No 12 of 1911 provided that '*No person shall employ underground on any mine*

[387] Ibid.
[388] Meyersfeld (note 23 above), Dikane (note 27 above) 2-9.
[389] Cruise (note 365 above) 217-224.
[390] Ibid.
[391] Ibid.
[392] Alexander (note 30 above) 214-215.

a boy apparently under the age of sixteen years or any female. '[393] Although the provision only prescribed an age restriction to the underground employment of males, all women were prohibited regardless of the age.

In South Africa, the legal ban disadvantaged all women, but the most affected were black women who already had fewer economic opportunities due to limited access to quality education, among other disadvantages. Their lower education levels meant that manual labour, such as underground work (for those that sought employment), would have been a route to enter into the formal economy, but this was denied to them. Further, and perhaps applicable to women of all races (interested in entrepreneurship), the legal ban also restricted women's ability to innovate and develop entrepreneurial capabilities. Innovation and entrepreneurship are usually born out of, and enhanced by, practical exposure to different economic environments. Thus, women's lack of participation in this area of the economy kept them away from vital technical exposure that had the potential to provide an enabling environment for them to acquire skills, knowledge, and experience and to bring a different set of skills to the industry.[394] Women could have worked in the industry, while also learning how to navigate its challenges and devise solutions to specific issues related to their needs as women. For example, women might have found solutions to gender specific challenges that restricted their effective participation in the industry, such as those related to their biological differences as women. In other words, there was potential for a mutually beneficial relationship between women and the industry, had diversity been embraced far earlier than it was.

Further, as an integral part of many rural communities in South Africa, the economic potential of women resident in mine hosting communities was also affected by the legal ban. Most mining operations in the country take place in rural or economically less developed areas and these are made up of women who remain in charge of ancestral land while men migrate to urban areas in search of employment.[395] Consequently, the lack of proper engagement between the mining companies and local women meant the exclusion of the latter from any development programmes. They did not have a say in decision making as to what happens to their natural wealth that formed part of their local economy. This is beside the fact that developmental

[393] Alexander (note 30 above).
[394] A Benya 'Women in Mining: Occupational Culture and Gendered Identities in the Making.' (Unpublished Doctoral Thesis, University of the Witwatersrand, South Africa, 2016) 143-156.
[395] Mnisi and Claassens (note 178 above) 491-516.

programmes aimed at women's empowerment were not prevalent before 1994.[396] Consequently, their lack of participation, even at the fringes of the industry in engagements with mines, further suppressed their economic potential.

In summary, mining is one of the economic activities with the most potential, directly and indirectly, to uplift individuals and communities in South Africa, especially those disadvantaged by class and race.[397] By disenfranchising women, the legal ban widened the inequality circle even more, particularly for black women as women's differences arise out of intersectional inequalities. This created a series of unintended socio-economic disadvantages that has affected women's economic participation in many ways over the years. This overview of the gendered history of the South African mining industry gives context to the legislative interventions that were later designed by the democratic government to eventually transform the sector and also to understand why such transformation might be difficult to achieve. In relation to the former, the 1994 democratic government introduced laws and polices founded on the values of equality and social justice to drive transformation. These included racially oriented policies and Affirmative Action programmes such as the Black Economic Empowerment (BEE) and Employment Equity. Drawing on the experiences of the predecessor National Party government's attempt to uplift Afrikaners, these aimed at redressing past injustices by empowering black people and other outsider groups in those economic spaces, where they were previously excluded, through business opportunities, education, employment and so on.

The next section discusses the origins of some of the government's measures that have been implemented through economic strategies such as the BBE and Employment Equity. Before that, I briefly consider select constitutional and international legal obligations whose provisions influence the framing of the country's domestic laws.

4.4. South Africa and International legal obligation supporting women's empowerment

South Africa is a state party to a number of legal instruments that promote the empowerment and equality of women. These are both international and regional, and they influence the domestic laws and policies of member states. The three briefly mentioned here are the

[396] The Status of Women in the South African Economy (2015). Available at https://www.gov.za/sites/default/files/gcis_document/201508/statusofwomeninsaeconomy.pdf
[397] Hutt (note 27 above) 59.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),[398] the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (also known as the Maputo Protocol),[399] and the Southern African Protocol on Gender and Development.[400]

The CEDAW provides a way to think about women's interests in a broad, inclusive, and flexible manner.[401] For example, Article 2 require state parties to 'embody principles of equality of men and women in their national constitutions or other appropriate legislation'.[402] The aim is to ensure that state parties establish competent national tribunals and other public institutions to promote the practical realization of women's protection from all forms of discrimination.[403] By this, state parties are mandated to refrain from engaging in acts or practices of discrimination against women. State parties are also required to introduce and conform with the Convention's positive measures of women's empowerment. These measures include introducing laws that 'modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women'.[404] By this, the Convention seeks 'to eliminate prejudices caused by social and customary practices based on the idea of the

[398] The Convention on the Elimination of All Forms of Discrimination against Women (adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, came into force on the 3rd of September 1981in accordance with article 27(1) of the UN General Assembly) (CEDAW).

[399] The Protocol to the African Charter on Human Rights and People's Right on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo, Mozambique 11th July 2003, entry into Force 25th November 2005.

[400] The SADC Protocol on Gender and Development was signed in August 2008 and the Protocol came into force in 2013.

[401] L Baldez 'The UN Convention to Eliminate All Forms of Discrimination Against Women (CEDAW): A new way to measure women's interests.' (2011) 7 *Politics & Gender* 419-423.

[402] Article 2: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
(g) To repeal all national penal provisions which constitute discrimination against women.

[403] Ibid.

[404] Ibid.

inferiority or the superiority of either of the sexes or on stereotyped roles for men and women'.[405]

Although the Convention does not expressly provide for anything (protection) for women in the mining sector, it however appreciates women's role in different ways. For example, it provides for positive measures in its recognition of the social function of maternity responsibility among others.[406] Article 11[407] is pertinent to women employees in that it requires state parties to ensure, on a basis of equality of men and women, that the right to work is made an inalienable right of all human beings. This mandates state parties to take all appropriate measures to eliminate discrimination against women in the field of employment for them to enjoy the right to same employment opportunities. These include the same criteria for selection in matters of employment with men, the freedom to choose a profession and employment, the right to job security, promotion and all benefits and conditions of service. Women also have a right to receive training including apprenticeships, advanced vocational training and recurrent training. The Article further protects women's right to equal remuneration and benefits as well as equal treatment in the of evaluation of quality of work. Important to women mine employees

[405] Article 5.
[406] Ibid.
[407] The Article provides that 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
(a) The right to work as an inalienable right of all human beings;
(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary

in this case is their protection from discrimination on grounds of pregnancy or maternity. Clause (f) for instance requires that state parties promote the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction. Furthermore, to enable parents, especially women to combine family obligations with work responsibilities and participation in public life, the Article incorporates positive measures. These include the introduction of maternity leave with pay and or comparable social benefits. The encouragement for the provision of support social services, such as child-care facilities and special protection to women during pregnancy in types of work proved to be harmful to them, is remarkable. In light of scientific and technological knowledge, it is also provided that a periodic review of protective legislation on matters covered in the article be conducted and that it be revised, repealed or extended as necessary.[408]

Article 14[409] on the other hand promotes the rights of rural women in respect to the significant role they play and the problems they face in the economic survival of their families. The Convention mandates state parties to take all appropriate measures to eliminate discrimination against women in rural areas to ensure their participation in and benefit from rural development. This supports the provisions of Article 5(a) [410] on modifying the social and cultural patterns of conduct of men and women, towards the elimination of prejudices and customary practices based on the idea of the inferiority or the superiority of sexes on

[408] Ibid.

[409] The Article provides that; (1) State parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
(a) To participate in the elaboration and implementation of development planning at all levels;
(b) To have access to adequate health care facilities, including information, counselling and services in family planning;
(c) To benefit directly from social security programmes;
(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
(f) To participate in all community activities;
(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications

[410] (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

stereotyped roles for men and women. The Article promotes this principle by advocating for the participation of women in the elaboration and implementation of community planning at all levels. In the mining sector, this speaks to their access to adequate information, training and education, access to land, credit facilities and appropriate technology. Access to these will improve their participatory opportunities in diverse community-mining related developmental programmes. This also improves their enjoyment of adequate living conditions, especially in relation to housing, sanitation, electricity, transport and communication as well as water supply.

The Maputo Protocol of 2003 also explicitly places an obligation on member states to 'combat all forms of discrimination against women'.[411] While the Protocol does not expressly provide anything on mining, it entrenches principles of equality in domestic legislation and institutions and requires member states to protect women's rights. These include rights of equal access to employment and opportunities, equal pay as well as being able to advance their careers.[412] For those that are employed, a member state is further required to protect them from any form of violence at the workplace. The Protocol also protects women's right to a Healthy and Sustainable Environment.[413] In the context of this study, this would apply to women resident in mine hosting communities whose right requires that state parties take all appropriate measures to protect them from a harmful environment.[414] In terms of Article 19, women also have a right to sustainable development which entails, *inter alia*, guaranteed access to and control over productive resources, such as land and their rights to property. [415] Women must further have access to training skills, credit, and to have their levels of poverty reduced.[416] To ensure, this is achieved, Article 25 of the Protocol also provides for positive measures to redress inequality or a violation of women where such has taken place.[417]

[411] Article 2 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.
[412] Article 13(a)-(b) of the Maputo Protocol.
[413] Article 18 (1), 2 (a-e).
[414] 2(a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels; b) promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in their control; c) protect and enable the development of women's indigenous knowledge systems; d) regulate the management, processing, storage and disposal of domestic waste; e) ensure that proper standards are followed for the storage, transportation and disposal of toxic waste. sustainable
[415] Article 19(d) (Maputo Protocol).
[416] Ibid.
[417] Article 25 provides that States Parties undertake to: a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated; b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.

At a regional level, the Southern African Protocol on Gender and Development[418] aims at the elimination of barriers that prevent women from participating in all spheres of life.[419] Like the other two legal instruments, this Protocol does not make express provisions regarding women and the mining industry. However, there is an indirect call for state parties to protect women in several provisions. Article 5 for instance, provides that state parties put in place affirmative action measures focused at promoting women's meaningful participation in all spheres of life.[420] This is supported by a provision for positive measures such as enacting domestic legislation aimed at abolishing the minority status of women by 2015 and eliminating gender based violence.[421] The Protocol also makes provision for women's right to equal access to justice both in judicial and quasi-judicial proceedings, right to acquire and hold property rights.[422] The Protocol also requires that state parties improve women's representation and participation, promote gender equality in education, promote women's economic empowerment in policies and decision-making.[423] Important and worth noting is the recognition of the role played by women,[424] the empowerment of women entrepreneurs,[425] women's access to property rights,[426] equal access to employment and benefits,[427] as well as the abolishment of sexual harassment.[428]

As a member state to the above legal instruments, South Africa also embraces principles of equality in its national Constitution.[429] In addition, section 22 provides everyone with the right to choose their trade, occupation and profession.[430] Given women's history in mining, these provisions are evidence of the country's commitment to redressing past injustices based on gender. To facilitate such transformation, domestic policies and legal frameworks incorporate affirmative action policies such as the Black Economic Empowerment strategy and Employment Equity. As discussed in detail in the following sections, these initiatives seek to

[418] SADC Protocol on Gender and Development (note 394 above).
[419] Article 5 SADC Protocol; see also Salgado "Heavy Tread: The Social Footprint of Mines in South Africa: Africa-wide − Monitoring Economies" October 2013 Africa Conflict Monthly Monitor 21−24).
[420] Ibid.
[421] Article 7 of the SADC Protocol.
[422] Article 7 (a), (b).
[423] Articles 12- 15 of the SADC protocol.
[424] Article 16.
[425] Article 17.
[426] Article 18.
[427] Article 19.
[428] Article 22.
[429] Section 9.
[430] The Constitution, 1996.

mitigate and address issues of inequality meted on different groups of people in society such as women.

In the next section I look at the origins of the affirmative action policy and how it is broadly understood.

4.4.1 The origin of the Affirmative Action Policy

Many countries around the world, including South Africa, still grapple with high inequality levels among its citizens. For some, it is due to different factors influenced by their political and socio-economic history. In some cases, to bring a balance where there have been pronounced levels of disadvantage and difference, countries have turned to affirmative action policies. These are positive measures that seek to level the playing field by giving preference of treatment in specific areas to the previously disadvantaged. Affirmative action is generally concerned with achieving fairness between different groups of people in various aspects of their lives. It seeks to create a balance between the disadvantaged and the privileged through a selective process of empowerment. Affirmative action has been adopted in many countries around the world including the United States of America where it was devised to address the effects of racial inequality.[431] Contentious and often raising debates and emotions charged with racism, the policy is said to have held the key to success in many countries (where it has been embraced and appropriately implemented) especially in areas such as education, employment, and business.[432]

Anderson and Dupper demonstrate how affirmative action measures in America were necessary to neutralise the discrimination that was entrenched in social norms and laws.[433] These totally separated black and white people from all interactions of life, including education, work, and economic opportunities. To illustrate the extremes of racial separation in America, Dupper describes how black and white witnesses were not allowed to swear on the same bible in some courts.[434] Subsequently, to build a more non-racial and equal society, America needed policies such as affirmative action aimed at holistically recognising and incorporating the interests and needs of the previously excluded into the economy and politics.[435] As in America,

[431] T H Anderson *The pursuit of fairness: A history of affirmative action* (2004) 3-7.
[432] Ibid.
[433] Dupper (note 268 above) 275, Anderson (note 422 above).
[434] Ibid.
[435] Ibid.

South Africa's history of racial segregation also left a deep legacy of inequality. This continues to be reflected in disparities in access to economic resources and opportunities within the economy.[436] On the business front, the construction of infrastructural facilities and the allocation and distribution of resources were, and still are, imbalanced. According to Iheduru, this was influenced by the previous government's explicit use of state power to foster affirmative action, wherein economic policies were crafted to protect state contracts and parastatal deployment in major divisions of the economy in favour of the Afrikaner minority.[437] Thus, with the vast economic power and means of production held and controlled by the white minority, they were allowed to advance their interests in a variety of ways.[438] This significantly contributed to the differences in the quality of services and economic opportunities for black and white communities.

In short, in contrast to the positive measures and huge opportunities for the white minority, racially based policies and laws actively denied these to the black majority. For example, residential and business sections in the urban centres were established and divided along racial lines which meant that black people could not live, operate businesses nor own land in certain demarcated areas.[439] Homeland areas were characterised by poor living conditions and a limited business and infrastructural environment and opportunities, creating an environment devoid of economic innovation. Even further, the social fabric and the unity of black enterprises that existed within their communities were virtually destroyed and subsequently led to their complete exclusion from the political and economic arena.[440] The apartheid legacy of inferior Bantu education further contributed to a skills discrepancy in both racial and gender terms.[441] As Martineau points out, the system was particularly detrimental to black women as it created a poorly equipped group with limited resources and skills for participation in a modernised commercial economy.[442] This caused a significant structural distortion in the country's economy which persists in the large-scale mining industry today.[443]

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[436] Excerpts of the then Minister of Labour's speech at the promulgation of the Employment Equity Bill, 1998.
[437] O C Iheduru 'Black economic power and nation-building in post-apartheid South Africa.' (2004) vol *Journal of Modern African Studies* 1; Ponte *et al* (note 77 above) 937-938.
[438] R Southall 'Ten propositions about black economic empowerment in South Africa.' (2007) 34 *Review of African Political Economy* 67; P Sorensen 'Legislative transformation of South African mining since 1994: what progress?' (2011) 68 *International Journal of Environmental Studies* 171.
[439] A Mabin 'Comprehensive segregation: the origins of the Group Areas Act and its planning apparatuses.' (1992) 18 *Journal of Southern African Studies* 405.
[440] Ibid.
[441] Martineau (note 143 above) 386-388.
[442] Ibid.
[443] Ibid.

In the 1955 Freedom Charter,[444] the African National Congress and its allies made clear their intentions to take over ownership of the country's natural wealth.[445] The ANC's aspirations to govern enshrined promises of equality, justice, peace, and a fair distribution of resources among all the citizens regardless of their race, gender, culture, and all other affiliations.[446] These values were later entrenched in the democratic constitution which also expressly acknowledged the injustices of the past.[447] It embraced diversity and committed to working towards healing the divisions of the past in order to build 'a society based on democratic values, social justice, and fundamental human rights'.[448] This was a commitment 'to improve the quality of life of all citizens and to free the potential of all persons'.[449]

With the likelihood that certain sectors would not voluntarily act towards accommodating diversity and transformation, state intervention was inevitable. Progressive laws were put in place to dismantle past racialized and male dominated patterns of ownership and control, employment, and community participation in many sectors. In the South African mining sector, this supported the commitment to correct the long-supressed potential of women by promoting gender and racial transformation through racially focused strategies and preferential treatment. This paved way for the introduction of corrective measures such as affirmative action in business, employment, and education. In business, the B-BBEE strategy was employed to diversify the ownership composition and below is a discussion on what the strategy entails, its purpose and how it has evolved through different development stages over the years.

4.5. The BEE strategy and what it entails

After 1994, the South African government introduced legislation and economic policies aimed at correcting the colonial and apartheid legacy. The remnants of this past, whether physically visible, emotional, or structural in form, still resurface in the lives of the majority of black South Africans.[450] These policies are aimed at economically empowering persons collectively referred to as Historically Disadvantaged South Africans (HDSAs). This category includes

[444] The Freedom Charter, 1955.
[445] N Nattrass 'Politics and economics in ANC economic policy.' (1994) 93 *African Affairs* 343.
[446] Ibid.
[447] Preamble to the Constitution of South Africa.
[448] Ibid.
[449] Ibid.
[450] F M Horwitz and H Jain 'An assessment of employment equity and broad based black economic empowerment developments in South Africa.' (2011) Vol. 30 *Equality, Diversity and Inclusion* 297*;* Ponte *et al* (note 77 above) 933-955.

black people, women, the youth, people with disabilities and people living in rural areas.[451] 'Black' in this case is a generic term used to refer to black African persons, Coloureds, and Indians.[452] Among the targeted areas of economic empowerment were ownership, employment and rural development.[453] These necessitated the introduction of a race oriented economic strategy called the Black Economic Empowerment initiative popularly known as BEE. The concept emerged in the ANC's policies around the early 1990s. It was subsequently institutionalised in legislation such as the Broad-Based Black Economic Empowerment Act.

As a significant part of government's transformation strategy, the BEE policy combines notions of redistributive justice, and social and economic inclusion while also accommodating neoliberal market-oriented economic policies.[454] Initially, the policy focused on increasing the economic representation and participation of the previously disadvantaged by increasing their ownership of shares in major corporations.[455] This was done, *inter alia,* through altering the composition of the labour force and ownership in institutions and economic sectors previously restricted such as mining.[456] The strategy was also implemented as an entrepreneurial model for redressing black people's socio-economic ills deeply rooted in the past inequalities.[457] Overall, the BEE policy guides both public and private business players on how to implement the redress of past unjust laws and practices in a sustainable manner. Thus, in an attempt to reverse the past use of race in controlling access to the nation's productive resources, the B-BBEE Act requires the establishment of sector specific Charters and codes of good practice.[458]

In the mining sector, this is the Charter for the South African Mining and Minerals Industry known as the Mining Charter which has been reviewed over the years.[459] Recognised and protected as non-repugnant to the values of society by the Constitution itself, BEE therefore opened a variety of economic avenues for black people as will be discussed in detail in the substantive chapters. This was however not until the policy went through different phases that

[451] Ibid.
[452] Broad-Based Black Economic Empowerment Act, 53 of 2003, section 1.
[453] Ibid section 2.
[454] L Patel and L Graham 'How broad-based is broad-based black economic empowerment?' (2012) 29 *Development Southern Africa* 193.
[455] Department of Trade and Industry. (2003). South Africa's Economic Transformation: A Strategy for Broad-Based Black Economic Empowerment: Southall (note 429 above) 67-84.
[456] B-BBEE Act supra note 443.
[457] E Shava 'Black economic empowerment in South Africa: Challenges and prospects.' (2016) 8 *Journal of Economics and Behavioral Studies* 161.
[458]Section(s) 9, 10 and 12 of the B-BBEE Act (note 443 above).
[459] First review of the Charter was in 2010, second review was in 2017/2018.

I will call Jack's four developmental stages, each of which had different implications for women.[460] These are discussed below.

4.5.1 The Four Developmental stages of BEE

4.5.1.1 Phase 1: Narrow Economic Empowerment Approach

The first phase was initiated around 1993 in the context of several economic and developmental laws and policies, such as the Reconstruction and Development Programme (RDP, 1994)[461] and the Growth, Employment and Reconstruction programme of 1996 (GEAR).[462] These were government strategies aimed at facilitating a more equal distribution of resources and economic opportunities with a priority of the previously excluded, such as black people and women. Initially, the method used to address the effects of the country's past political and economic inequalities in the RDP policy framework entrenched an interventionist approach which had negative repercussions in a global economic environment of neoliberalism.[463] Accordingly, to promote more market friendly approaches that did not harm business confidence, government replaced the RDP with GEAR.[464] The assumption was that by replacing an interventionist approach with a market friendly approach, ownership changes to the HDSAs in the private sector would occur naturally.[465] Instead, this had unintended consequences as only a small number of the well-connected politicians and businesspeople benefited in the first phase, in the face of persistent poverty.[466]

It is thus argued that the first phase created a black bourgeoisie and capitalist class that legitimatised the instalment of a 'rainbow' neoliberal economic and political system.[467] According to Southall and Iheduru, the first phase of BEE deliberately structured a mechanism that would preserve a dominant 'white capitalist class' and enable it to defend its property rights.[468] Therefore, the system remained economically non-inclusive resulting in challenges

[460] V Jack 'Outlining the framework that unpacks the 4 waves of BEE in South Africa' (2019).
[461] The White Paper on Reconstruction and Development (WPJ/1 994, tabled in Parliament Cape Town on 15 November 1994)
[462] Ibid
[463] Iheduru (note 428 above; Southall (note 429 above).
[464] Ibid.
[465] Ibid.
[466] S Ponte and L Van Sittert 'The chimera of redistribution in post-apartheid South Africa: 'Black Economic Empowerment'(BEE) in industrial fisheries. (2007) *African Affairs* 933-955.
[467] R Southall 'The ANC & black capitalism in South Africa.' (2004) 31 *Review of African Political Economy* 313; Iheduru (note 428 above).
[468] Ibid.

around unity, reconciliation and ultimately, economic redistribution. Rather, it produced what the former President Thabo Mbeki named the 'Two Nations', in his speech of the same name.[469] His speech reflected on the glaring socio-economic disparities that continued to exist between the rich and poor, and between black and white. In other words, it illustrated how the economic benefits of the initiative were not trickling down to ordinary segments of the HDSAs, such as women. The first phase was further critiqued for nurturing dependency between the black capitalist class and the ANC government.[470] Since this phase comprised black males who focused on the ownership of shares in big multinational companies, it did not benefit ordinary women. This resulted in the re-packaging of the concept from a narrow approach to a 'Broad-Based Black Economic Empowerment'.

4.5.1.2 Second Phase: Acquisition of shares in big Corporates Dividend Payments

The first developmental stage of BEE led to the second phase around 1998, which entailed buying stakes in companies by building up debt and then relying on dividend payments to settle the debts.[471] Without sufficient capital, this idea was more appealing for most black people as it was a quick way to get rich regardless of the means used. However, in mining, Mitchell argues this was structured as a debt trap to keep the BEE beneficiaries in perpetual debt.[472] How was this done? The interest on the repayment of the loans was too high and above the reach of many to repay.[473] In the end, therefore, the benefits or proceeds of the economic policy remained with the original owner of the company. As Fauconnier and Marthur-Helm add, the arrangement of this model constituted a lock-in period which forced BEE partners to prevent the dilution of the organisation's BEE status.[474] As a result, the initiative could not uplift the lives of ordinary people or partners due to challenges related to fostering collaboration and building trust among others. Important to mention also is the fact that, as in the first phase, this stage did not benefit ordinary women.

4.5.1.3 The third phase: Black People starting up own companies

[469] 29 May 1998, National Assembly debate speech available on *http://www.dirco.gov.za/docs/speeches/1998/mbek0529.htm* (accessed on 12 February 2021).
[470] Ibid.
[471] Jack (note 451 above).
[472] Mitchell (note 96 above). 39-43.
[473] Ibid.
[474] A Fauconnier and B Mathur-Helm 'Black economic empowerment in the South African mining industry: A case study of Exxaro Limited' (2008) 39 *South African Journal of Business Management* 13.

Following the introduction of industry charters under the B-BBEE 2003 Act, the early 2000s ushered a remarkable third phase. Through different quota allocations in procurement and development opportunities embedded in the B-BBEE policy, black people started their own businesses from scratch. In mining, it was the Mining Charter (2004 and its successive reviews) established by the MPRDA which prescribed certain quotas for the incorporation of women to different segments of the industry.[475] Certain quotas were allocated towards entrepreneurship, employment and empowerment of rural communities.[476] For example, there was a 10% minimum employment of women to underground work, a 26% quota provided in (later revised to 30%) transfer of ownership[477] and a 5% percentage for rural development.[478] The initial 26% share ownership did not include gender in its allocation. The reviewed Charter however provides a 5% share ownership to women BEE entrepreneurs. The Mining Charter also require that companies contribute towards the development of their hosting communities. Unfortunately, the 5% share ownership allocated for this task also does not prescribe how much of that belongs to women. The quotas are important to this discussion to evaluate the extent at which the law has been instrumental to women's equality. For example, as discussed in detail in chapter 6, in employment, the application of the Employment Equity Act (55 of 1998) did produce substantial results towards democratising the workplace. This marked a shift in the law and economic policies as it encouraged black people and some women to capitalise on the provided preferences and procurement provisions (as discussed in more detail in chapters 5, 6 and 7).

While the third phase had positive changes, Jack critiques its ability to benefit the ordinary black man and women.[479] He perceives it as a disguised initiative by the elites aimed at expanding their economic interests. He argues that since prominent politicians were

[475] MPRDA (note 26 above).
[476] Mining Charter (2004) clauses 4.2, 4.4, 4.7.
[477] A mining company interested in doing business with government (e.g through tenders) required a minimum of at least 26% of share ownership in its company to be held by HDSAs. The initial 26 % of transfer of ownership did not specify the amount meant for women. However, the reviewed 30% provides for a 5% share ownership for women mine entrepreneurs. The transfer of ownership provides women entrepreneurship an opportunity to own shares in in mining companies through the BEE quota allocation. Women in rural communities do not have a specific share of their own because they are incorporated in the share allocated towards the development of host communities. This is important to the themes in that they reflect the shortcomings of the law or policies in addressing gender inequality. For women in rural communities for instance, their collective categorization as members of the communities give an impression that they benefit from the development of communities when they in fact benefit least if at all.
[478] Scorecard to the Mining Charter (2004)
[479] Jack (note 451 above).

knowledgeable about the Special Purpose Vehicles (SPV)[480] granted by government to empower black people, the third phase still comprise elites whose pattern of ownership just played out differently to that of phase one. The elites had been established in business and therefore they took advantage of the limited level of education and skills of the majority of ordinary black South Africans. Also, the fact that, at the time, very few ordinary people were able to easily tap into these benefits, the third phase resulted in the development of a different part of black bourgeoisie. This comprised professionals and entrepreneurs who felt excluded by the previous provisions of the B-BBEE policy.[481] Like the other phases, however, this phase continued to exclude the majority of ordinary women who only began to benefit in the fourth phase.

4.5.1.4 The fourth phase: Women slowly beginning to take up space in different economic spaces

The above three phases represented different stages of the development of BEE but they all substantially excluded ordinary women as men mostly featured in all the stages.[482] With the industry being male dominated by nature, the mining sector remained male controlled in business, employment and community development.[483] Nonetheless, through reviews to the Mining Charter, an increase in the number of women being empowered began to occur. This suggests better implementation of legislation and industry monitoring tools, such as the review of the initial Charter. This review resulted in the incorporation of inclusive and time-framed key performance areas such as ownership, employment equity, community development and rural upliftment.[484] As the monitoring and evaluation tool, the scorecard was also reviewed to include specific details to measure empowerment,[485] the horizon of beneficiaries also widened to a broader group compared to the first three developmental phases. Consequently, women were enabled to enter economic spaces that were once beyond their reach, as employees and owners of mining related businesses, and also participate in community engagements.

[480] These are credit facilities that could have been possibly known by those already exposed to different industries where it applied.
[481] Jack (note 451 above).
[482] Former President, Thabo Mbeki's National Assembly debate Speech available on http://www.dirco.gov.za/docs/speeches/1998/mbek0529.htm (accessed on 12 February 2021).
[483] M Mbeki *Architects of poverty: Why African capitalism needs changing. Johannesburg: Picador,*2009
[484] Clause 2.5 of the Reviewed Mining Charter, 2018.
[485] Ibid.

I now turn to discuss the legal and policy framework on mining, and women, beginning with women in ownership of mining businesses, women mine employees and women resident in mine hosting communities.

4.5.2 The law, mining and women business owners in South Africa

To give effect to the constitutional right to equality in mining, the MPRDA commits to redress the effects of past discrimination based *inter alia* on the race and gender of historically disadvantaged persons in the minerals and petroleum industry.[486] Through the industry Charter, a minimum quota target of 26 percent was set towards the transfer of ownership to HDSAs who include women.[487] This percentage was subsequently reviewed to 30 percent for new mining rights holders by the succeeding Charter (2018).[488] In its allocation, the initial Charter did not factor in gender, but the latter provided for a specific percentage. In other words, the initial 26% incorporated all clusters of the HDSAs, regardless of whether male or female. Although it appears insignificant given that women are the majority in South Africa, the reviewed Charter (2018) provides for a 5% allocation[489] to women ownership.[490] The set minimum quotas are aimed at substantially changing the racial and gender composition that prevailed in the control and management of the industry's major corporations.[491] The Charter further seeks to promote enhanced access to infrastructure, skills training, and access to BEE empowerment models, (such as finance and investment programmes) to the HDSAs who include women.[492]

To measure compliance with the above quotas, the Mining Charter also incorporates a scorecard which lists key performance areas such as ownership.[493] The initial scorecard had its own shortcomings which meant that it was critiqued as a monitoring and evaluation tool. Until its review in 2010, the document did not provide for much detail in its measurement of company compliance with target quotas. It only provided a yes or no option on whether

[486] The Preamble to the MPRDA (2002) (note 26 above).
[487] Clause 4.7 of the Mining Charter (2004) (note 83 above).
[488] Clause 2.1.3 of the reviewed Mining Charter (2018).
[489] Clause 2.1.3.2 of Mining Charter (2018).
[490] StatsSA (note 95 above).
[491] Ibid.
[492] Ibid.
[493] Clause 13 of the Mining Charter (2018).

compliance had taken place or not. Nevertheless, such provisions improve women's likelihood of exercising the abovementioned right to freedom of trade and profession, as regulated by law.

4.5.3 Mining, Employment Equity and Women in South Africa

In South Africa, the concepts of employment equity and affirmative action in the workplace are adopted from legislation of other jurisdictions such as Canada and the USA.[494] To advance the constitutional commitment to the right to equality, these have also been incorporated in employment laws such as the Employment Equity Act (55 of 1998), Labour Relations Act (55 of 1995), Skills Development Act (97 of 1998) and the Basic Conditions of Employment Act (75 of 1997) among others. Employment equity seeks to prevent and eliminate unfair employment discrimination of the previously excluded. This idea is similar to the Canadian concept of employment equity, described in the *Action Travail* case as a program designed to break the persistent cycle of systemic discrimination.[495] The concept aims at ensuring that job applicants or workers belonging to the previously affected groups do not face the same barriers as those experienced by their forebears.[496] It does so by providing for equal access to opportunities, fair treatment, and ensuring equitable representation of the HDSAs in all occupational categories and levels of the workforce.[497] In previously restricted economic spaces for women, such as mining, this reflects the object of section 22 that grants citizens the right to freedom of occupation and profession.[498]

As a result of the above laws, there have been claims of significant progress in workforce representation in some sectors, especially in the public sector.[499] However, some industries in the private sector remain largely male dominated, especially at the level of management.[500] As was recently established in the Quarterly Labour Force Survey, the country's labour market generally still favours men over women in employment.[501] The Survey's findings also reveal that men are more likely to be in paid employment than women, regardless of race, while the

[494] Horwitz and Jain (2011) (note 441 above).
[495] *Action Travail des Femmes v Canadian National Railway Co* 40 DDR (4TH) 193.
[496] Dikane (2006) (note 27 above).
[497] A Thomas 'Employment equity in South Africa: Lessons from the global school' (2002) 23 *International Journal of Manpower* 237.
[498] Constitution, 1996.
[499] Ibid.
[500] Ibid.
[501] Quarterly Labour Force Survey of the 2nd quarter of 2021, available on *https://www.statssa.gov.za/?p=14606*

opposite is true for unpaid work.[502] This has contributed to, and is reflected in, the lower unemployment rate among men (32,4%) as compared to women (36,8%) in the 2nd quarter of 2021.[503] In racial terms, the unemployment rate among black African women was 41% during the same period as compared to 22,4% among Indian/Asian women, 29,9% among coloured women and 8,2% among white women.[504] While these statistics may not be reflective of industry specific data, they are nevertheless informative in guiding the employment patterns of women, especially in male dominated sectors such as mining.

As discussed earlier, the legal ban on women affected their participation in the economy. In addition to this is also the past racially orchestrated separation of black people which resulted in differences in the access to quality education. Black African women for instance had a different curriculum from women of other races.[505] This altered the former's career paths and rendered them ineligible to participate in a number of economic activities. Thus, to address all these multi-layered inequalities, comprehensive and targeted legislative and institutional state interventions were required. As discussed in detail in chapter 6, one such intervention was the introduction of the 10% minimum target for the employment of women to previously restricted areas such as core mining operations.[506] Supported by the Employment Equity Act, the aim is to redress gender and racially invented disparities in employment, occupation, and income in order to ensure a diverse workforce that broadly represents all groups of peoples.[507] At an international level, the Employment Equity Act also seeks to give effect to the nation's obligations as a member of the ILO.[508]

There are also laws such as the Labour Relations Act and Basic Conditions of Employment Act which play a significant role in democratising the workplace. The Labour Relations Act seeks to regulate employment relations between employers and employees (as well as the parties' representative organisations).[509] The Act does this by providing simplified dispute resolution procedures through statutory mediation and conciliation.[510] The Basic Conditions of Employment Act on the other hand regulates working hours, leave days and

[502] Ibid.
[503] Ibid.
[504] Ibid.
[505] Martineau (note 143 above).
[506] Ibid.
[507] Preamble to the Employment Equity Act, 1998.
[508] Ibid.
[509] Act 66 of 1995.
[510] Chapter VII of the Act.

general working conditions to give effect to the constitutional provision of the right to fair labour practices.[511] Also, to ensure an environment free from violence in the workplace, South Africa ratified Convention 190 of the International Labour Organisation on the protection of women from various forms of violence and abuse.[512] This is important, particularly for specialised fields such as mining as it supports gender transformation. As shall be discussed in detail in chapter 6, unlike other professions, the industry functions differently for women in terms of the required technical skills, nature of duties, as well as work environment. In South Africa, this has been a source of women's low levels of participation due to the skills gap between men and women, as well as the lack of gender responsive infrastructural facilities characterising the industry. Some of these factors reinforce the masculine culture and stereotypes that scare women due to a lack of professional work etiquette. To embrace principles of equality, company policies and the institutional framework and guidelines around dispute resolutions in the industry also needed to change

4.5.4 Mining Charter, women and mine hosting communities

Women have not only been excluded in terms of mining related entrepreneurial (business) and employment as shall be discussed in detail in chapter 7. Literature shows that women resident in mine hosting communities have also been excluded from meaningful participation in mining related consultations.[513] According to Sesele *et al*, they are often not consulted in decision making regarding mine operations taking place in their areas.[514] The causes of this are multifaceted and include patriarchal and socio-cultural restrictions on their participation.[515] The collective categorisation such as the 'community' also conceals their independent identity. As a result, despite occupying land that is rich in mineral wealth, most of them have not benefited much.[516] In terms of being a pool of local labour, for example, Sesele *et al* and

[511] Act 75 of 1997.
[512] The country ratified C-190 of the ILO in November 2021.
[513] Sesele *et al* (note 194 above) 211-219: S Mnwana 'Mining and 'community' struggles on the platinum belt: A case of Sefikile village in the Northwest Province, South Africa' (2015) 2 *The Extractive Industries and Society* 500-508; K Lahiri-Dutt 'Do Women Have a Right to Mine?' (2019) 31 *Canadian Journal of Women and the Law* 1; A Benya 'Going underground in South African platinum mines to explore women miners' experiences.' (2017) 25 *Gender & Development* 509.
[514] Ibid.
[515] D Hemson 'Women are weak when they are amongst men': women's participation in rural water committees in South Africa' (2002) 17 *Agenda* 24; J Hicks 'Strengthening women's participation in local governance: lessons and strategies' (2011) 46 *Community Development Journal* i36-i50.
[516] Ibid.

Mnanwa argue that women are generally less preferred for employment by local mining companies.

Also, most mining operations in South Africa are hosted in rural settings where infrastructural development is still poor. To promote the development of mine hosting communities and rural upliftment, the government, through the Mining Charter provides for certain measures. First, the Charter makes provision for the allocation of an equity equivalent benefit to hosting communities of 5%.[517] This authorises the establishment of a Trust or similar vehicle to be created for purposes of benefiting hosting communities. Second, the Charter provides for guidelines and a legal framework around the establishment of Social and Labour Plans (SLPs).[518] The development of SLPs require that stakeholders cooperate in formulating integrated development plans for hosting communities.[519] This requires mining companies to meaningfully consult or engage with those that are affected by mining operations in hosting communities.[520] This is done to encourage partnership between different spheres of stakeholders (mine management and communities) towards community development that meets relevant needs such as infrastructure. Consultation between companies and affected hosting community members is also a prerequisite for the granting of a mining license.[521] Yet, despite these legislative provisions, women resident in mine hosting communities remain marginalised in their participation in the industry.

4.6 Conclusion

In conclusion, this chapter explored the various legal instruments and economic policies that govern the participation of women in the South African large scale mining industry. Among these are national laws and policies that have been crafted with the aim of responding to the inequalities caused by the country's historical and political past. These draw authorities from the country's international and constitutional obligations on the empowerment of women and the advancement of gender equality. Consequently, as the laws continued to develop over the years, the industry also slowly reformed from the racial and gendered discrimination that characterised its culture. It turned to more gender inclusive laws that attempt to incorporate

[517] Clause 2.1.4 of the Mining Charter, 2018.
[518] These are agreements concluded by communities and mining companies that serve as a guide and stipulate how parties can work together to develop communities where operations are taking place.
[519] *https://www.wits.ac.za.../SLP%20Community%20Toolkit%March 2017.*
[520] Clause 4.4 of the Mining Charter, 2004 (note 83 above).
[521] Section 10 of the MPRDA, 2002 (see note 26 above).

women, although at a very slow pace of actual transformation. With the government's interventions, however, progress has been made in the representation of women in different spaces within the industry, although so much more can be done. In business and the workplace in particular, several affirmative action measures have been utilised to bring balance in the participation of women. However, there remains much to do in the empowerment of women in communities, partly due to lack of effective monitoring and evaluation mechanism of the mine-community agreements or SLPs.

CHAPTER FIVE

WOMEN IN OWNERSHIP AND CONTROL OF MINING RELATED BUSINESSES

5.1 Introduction

The preceding chapters, specifically Chapters Two and Four, provided a theoretical background and a legislative history of the study respectively. Chapter Two entails a review of literature on a framework towards an understanding of substantive gender equality. It includes a conceptual framework on gender and (in)equality within the South African large-scale mining industry. Chapter Four describes the legal history and evolution of the formal mining sector from a global perspective and narrowed down to the South African context. It shows how legal developments in different jurisdictions influenced and, in some cases, exposed several patterns of discrimination in the industry. In South Africa, this history is important to reflect on how it informs the incorporation of certain laws and economic policies into the country's legal system. In line with the Constitution's right to equality,[522] for instance, the country adopted and introduced several economic policies aimed at the promotion of gender equality.

In the mining sector, following the establishment of a charter for the industry (the Mining Charter) to empower and encourage greater ownership of industry assets by the HDSAs,[523] this chapter focuses on the incorporation of women into ownership and control of mining related businesses. As noted above, the minimum quota for women's ownership as prescribed by the Mining Charter was set at 5%. Existing data show an industry increase of 39,2% in ownership by HDSAs, however, women's ownership still falls below the set target.[524] This chapter seeks to gain a deeper understanding as to why this is the case. What are the variables that impact on women's participation in the running and control of their businesses in the industry? As such it presents the findings of the field work on barriers associated with women entrepreneurs' enjoyment of substantive gender equality and whether these can be remedied by the law.

The chapter comprises seven sections that are arranged as follows, section 5.2 entails a summary description of the participants' biological information and business profiles. Section

[522] Section 9 of the Constitution of South Africa (note 87 above).
[523] Clause 4.7 of the Mining Charter (2004), Clause 2.1 of the Mining Charter (2018) (note 83 above).
[524] Opportunities in the Mining Sector for Women by Elizabeth Marabwa (21 August 2021). Available on *https://www.energy.gov.za.*

5.3 reports on the different thematic issues that emerged from, and resonated among, most if not all the participants. They ranged from general issues around how participants entered the mining sector to more specific issues concerning their levels of control and ownership. When extracted, analysed, and thematically arranged, the participants' responses revealed both advantages and disadvantaged related to their gender. Section 5.4 describes participants' racial experiences in their participation as owners of mining businesses and the findings thereof. Section 5.5 sets out participants' ideas on solutions and strategies for addressing and alleviating their identified challenges. Section 5.6 provides participants' views on whether a legal solution is appropriate to address race and gender related challenges in the industry. Section 5.7 concludes the chapter.

5.2 Participants' biological data.

Biographical Variable	Category	Frequency	Percentage (100%)
Age	35 – 40	3	60
	41 - 45	0	0
	46 - 50	1	20
	51 – 55	1	20
Race	Black African	3	60
	Indian	2	40
Nationality (By birth)	South African	5	100
Marital status	Married	3	60
	Divorced	2	40
Number of children	1 – 2	3	60
	3 – 4	2	40
Level of education	Advanced Diploma	2	40
	Degree level	3	60
Employment Status	Full ownership	3	60
	Co-ownership	2	40
Years of Experience	10 – 15	3	60
	16+	2	40
Religion (specify)	Christian	2	40
	Hindu	2	40
	None indicated	1	20
Other	None indicated	4	80
	Situated in a rural setting	1	20

Table 5.2.1: The table gives a brief description of the participants' biological data.

The table above gives a brief description of the participants' biological data. Participants in this category were five South African-born women (3 Black Africans and 2 Indians) between the ages of 37 and 52 years (39, 40, 48). At the time of interviews, three were married and two were divorcees with between 2 and 4 children (both minors and grown-ups). There were two black Africans from the Christian faith, two Indians from the Hindu religion and one did not indicate her religious beliefs.

All five were senior business women in different mining related enterprises, who held influential positions in industry affiliated organisations that advocated for women's empowerment. Among them, were motivational speakers and authors who were locally and internationally recognised for their contribution to and outstanding performance in the industry. Of the five for instance, four were featured in the 100 Global Inspirational Women (WIM UK) Mining Report (2018 -2020)[525] consecutively. One of them was also once a speaker for the Global Women in Mining. [526]

They all had formal tertiary educational qualifications with some equivalent to a degree level. None of the participants had a mining related qualification, such as geology or mining engineering. They all started building their careers from different professional fields prior to getting into mining. However, at the time of the interviews, all had substantial exposure to the industry which contributed towards their years of experience. Their experience in different mining fields ranged between ten and twenty years. One participant added that she was based in a rural setting, which differentiated her circumstances profoundly from the rest, as I shall show in the relevant sections. I now turn to a report on the issues that I found to have resonated with all or most of the participants' responses.

5.3. Thematic issues

Participants were asked a number of questions, such as how they got into mining, their level of control, ownership statuses and the roles they played in the positions they held in their businesses. They also shared on the gender related advantages and disadvantages that they encountered as women mine entrepreneurs. The study further sought to establish how race affected them (if it did) in their participation as business owners. In addition, they presented

[525] The organisation is described in more detail (note 301 above).
[526] Also called International Women in Mining (IWiM) is a global not-for-profit organisation focused on gender equity. IWiM engages with stakeholders throughout the mining value chain including companies, policy makers, civil society organisations, governments, and women in mining organisations.

recommendations on the identified challenges, and provided justifications for their views on whether the law can or cannot be an appropriate solution. Several issues resonated in most of their responses and, from these, a number of themes were identified and are presented below.

5.3.1 Getting into mining and ownership status in business

Participants were asked to elaborate on how they entered the mining space and the status of ownership in their organisations. The responses were diverse with the first participant (A) being driven by personal circumstances. She required flexibility to juggle family and earning a stable income. She therefore entered the industry by offering transport services to mine employees whose employer had discontinued these services. The company was one of the biggest in town, with many employees. The majority of these could not afford to purchase their own cars because they did not meet the prerequisite conditions for bank financed vehicles. After thirteen years in corporate banking, she knew that their low incomes and lack of drivers' licenses would disqualify them. She therefore provided bus transport services to these employees through a partnership company until she was able to establish a sole owned business. From transporting mine employees, she expanded her business to acquire trucks that transported coal from the mines to power stations. She also diversified her business interests to specialising in underground roof supporting and blasting, ventilation, mobile undergrounds, and support for long anchors.[527] Her other company (also sole-owned) designed women's (two-piece) work-suits that were approved by the Mine Health and Safety Council and Department of Mineral Resources as suitable for underground.

Participant B got exposed to the mining industry through her geologist spouse. She was from a humanities background (as an Industrial Psychologist) at the time and worked for a recruitment firm. Part of her work involved head-hunting for suitable candidates for companies in the supply chain. Thus, by visiting her spouse's workplace she was always encouraged to join their human resources department. Due to an economic downturn in the recruitment industry some years previously, she and her spouse acquired a drilling company which she took over and successfully managed. She was the sole-owner in the business, which specialises in drilling services and mine rehabilitation, among other services provided to some of the big companies in the sector.

[527] This refers to mine support equipment designed to reinforce the strength of rocks and to provide maximum safety for underground mining personnel.

Growing up in a rural platinum mine town, participant C was fascinated by the buzz of the mines and wondered from where the huge trucks that operated in the area got the minerals. What mostly intrigued her was the fact that no women were visible in this industry, and she always wondered why. This inspired her to be part of the value chain. While she gained exposure to the industry through her ex-husband (through their welding business that did steel fabrication), she has grown to build her own business. Her business specialises in metal fabrication, steel engineering, plant maintenance and the supply of related products to the mining industry. Participant D on the other hand, was in the construction industry where she owned yellow equipment.[528] Her friends from the mining sector hired her equipment for small jobs such as graders for developing roads. Through various interactions and knowledge-sharing sessions about mining she decided to hire equipment to mining companies. After numerous failed attempts to acquire funding from banks to purchase more equipment, she approached two established businessmen (white males) for a partnership. They formed their own equipment hiring company where she was majority shareholder.

Participant E lacked a foundation in Science, Technology, Engineering and Mathematics (STEM) from a tender age. Because of this, she too did not enter the industry through pursuing a mining degree programme at university as this was not her career of choice while growing up. Like the other participants, she too started her career in a different profession and found herself ill equipped when she entered the space. Through her supply chain management (automotive) exposure she ended up in mining as a supply chain professional. Through her previous leadership role, she was handpicked for a marketing and sales position by one mining executive. She became the first female in the position within the organisation and worked her way up to heading a drilling exploration company. This exposed her to women's challenges in the industry and inspired her to start a co-owned consulting firm. Their organisation provides coaching, mentorship, and the general empowerment tools to women in the male dominated field.

[528] This is a term used to encompass agricultural equipment used for construction and earth moving as well as quarrying equipment such as fork-lift trucks and tractors.

5.3.2 Levels of control and the roles played in business positions by women in ownership of businesses

Participants were requested to share their levels of control and the roles they played in their businesses. This was meant to establish their levels of authority and the type of duties they were enabled to perform in their positions. Participants A, B and C were in full ownership of their enterprises and worked as managing directors. They were responsible for all the necessary decisions in the running of their organisations. This ranged from overseeing the administrative duties to taking charge of strategic decisions in directing their businesses. This gave them substantial liberty and flexibility to run their enterprises with minimal to no restrictions at all. With a support staff of more fifty employees in three of her companies, participant A did much of the decision-making especially on strategic issues.

While participant B's position enabled her to be agile, she described how she relied on her spouse for certain decisions during the early stages of the company formation. Her spouse was more knowledgeable about the industry due to his mining background. However, with time, she gained experience and was no longer dependent on him. However, she emphasised that their business relationship was independent of their marital one, such that whenever necessary her spouse always allowed her to take charge. At business meetings where her presence was often overlooked in the boardrooms for being a woman, her husband always directed all questions and enquiries to her. In her view, her authority was respected in the organisation and received all the necessary support within the organisation. However, though she stated that her spouse was an employee in the company, his involvement in the decision-making and his 'allowing her to take charge' suggests that he might have had ultimate power in the business.

Participant C, on the other hand, having been once in a partnership before, was now a sole owner of her current business which allowed her much more control and flexibility. As the managing director, she was responsible for guiding the vision of her business which she emphasised as one of the greatest advantages of being an owner. She was able to design and implement company policies that advanced the vision of her organisation in the direction she wanted to see it grow. She did this without any opposition or resistance compared to what would have been the case had the business been co-owned, especially when views differed.

Participant D's response to this question suggested that she did not have much control in the business despite her 51% shareholding status. She was in charge of marketing company

services, but even in this position she did not have sufficient control to perform her assigned duties. In her view:

'*I felt like a ceremonious business partner, a mere black female face strategically placed as an appealing feature for BEE compliance in the company*'.

This was because she was not consulted on major decisions by her business partners. Instead, she was only notified about the final decisions, as a formality, after such had already been taken. As a result, by the time she was informed of any decision, there was usually nothing she could contribute since a position would have been already taken. Thus, though she was a majority shareholder, her control of the business in practice was not as reflected on paper.

Participant E was in an equal partnership (50 percent shareholding), but also the brains behind the establishment of the business. She was a speaker at different platforms that worked with women in mining. Her role involved providing women with tools to navigate male-dominated spaces, such as mining, through individual couching, mentorship and so on. She encouraged women to speak out about their discomforts in mining because, if not exposed, these (challenges) would never disappear. She experienced her ownership status and authority differently from participant D. As the one with the ideas, plan, and vision, and also understanding of the direction of the organisation, she was in full control of her business. As a result, her partnership status gave her a fairly unrestricted control of the business.

5.3.3 Findings on getting into the mining space and the level of control over their businesses

The participants' testimonies on their experiences in entering the mining sector revealed several ways by which women entered the industry. None of them followed the conventional route of first acquiring a mining related formal qualification to enter the industry. Instead, they all built up their businesses through exposure to the industry while in different professional fields. Apart from their personal circumstances, this could have been due to a number of factors. These include the historical legacy of the previous mining laws, the subsequent restrictions around engineering education, as well the profession's membership registration.[529] As

[529] The 'Colour Bar Acts' (the 1911 Mines and Works Act, the 1926 Mines and Works Amendment Act and the 1956 Mines and Works Amendment Act reinforced the apartheid era's racial discrimination in the mines. It stated that 'Any regulation under paragraph (n) of subsection (1) may provide that in any Province, area or place specified therein, certificates and competency in any occupations likewise specified, shall be granted only to persons of the following classes: (i) Europeans (ii) persons born in the Union and ordinarily resident therein, who

discussed in chapter 4, for instance, while the industry was exclusively male dominated at the time, the Colour Bar Acts restricted certain qualifications (certificate of competency) to white males only.[530] Such laws could have influenced successive legislation to exclude certain groups from some economic activities. Indeed, years later, the two universities that offered mining engineering, (Witwatersrand and Pretoria) applied strict gender and racial restrictions in enrolment.[531] Black people and women were excluded in mining programmes such that even after the lifting of restrictions, they still faced bureaucratic processes to be professionally registered.[532]

At the University of Witwatersrand, gender transformation in mining engineering only started around 1990 with the first female graduate professionally registered in 2002.[533] On average, it is argued that it took black mining engineers from South African universities at least nine years to be professionally registered.[534] Adding years of matriculation, Cruise estimates a minimum of twenty years from primary school to tertiary level for one to be professionally registered with an engineering body.[535] Consequently, though it is approximately thirty-two years since 1990, it is estimated that a significant number of female graduates only came out of universities fifteen years later.[536] This could be due to the low number of enrolment of qualifying students given the programmes' previous restrictions. While some of the above factors may not have directly affected the group of participants in this study, however, their educational foundation was nevertheless restricted. This may have also affected their access to an enabling environment for entrepreneurial capacity-building, particularly for an already disadvantaged group of people in society. Taking into account the age groups and racial profiles of the participants therefore, this in part explains the different ways women used to enter the industry.

Participants' level of control in the running of businesses was largely influenced by their ownership status. Those in full ownership, for instance, enjoyed the flexibility of making decisions without much restriction. This means that they were able to drive the vision of their

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are members of the class or race known as Cape Coloureds or of the class or race known as Cape Malays (iii) the people known as Mauritius Creoles or St. Helena persons or their descendants born in the Union.

[530] Ibid.

[531] Cruise (note 359 above) 218.

[532] Ibid 217-224.

[533] Ibid 218- 219.

[534] Ibid 219-220.

[535] Cruise (note 521 above).

[536] Ibid.

organisations in the way they saw fit. It was, however, different for those in partnerships whose level of control was influenced by the power of their business partners. Participant D for instance is one example whose control of business in practice did not match what was purported at law for someone holding a 51 percent shareholder status in a company. While participants D and E experienced their partnerships differently, their responses were particularly important in revealing the power dynamics that existed in their organisations and how this affects women's participation. In summary, participants' responses showed that, no matter their unorthodox entry into the industry, their gender remained a disadvantage to their level of control in their business.

5.3.4 Gender and its dis/advantages for women's participation in and ownership of mining related business

The responses to this question showed that all participants had been both advantaged and disadvantaged by their gender in one way or the other. However, most of their responses showed that they were more gender-related disadvantages to their participation than advantages. These emanated from their reproductive and domestic roles, which eventually affected their participation in business too. Depending on their ownership status, these disadvantages played out differently for each one of them, as shown in the next section.

5.3.4.1 Disadvantages arising from women's domestic roles

The role played by most women in society and the nature of the mining industry present several limitations to women's participation. As mothers, participants expanded broadly on how gender was a huge disadvantage, not only to them as mining entrepreneurs but to all women. They often find themselves unaccommodated when it came to their maternal and other domestic duties. As one participant elaborated,

'*The industry expects us to be just receptive of everything we experience and pretend as though we don't have children*'.

This was confirmed by another participant in relation to how, in emergency cases relating to childcare, mothers were often contacted first. This meant that primary care was/is a responsibility they cannot avoid. This was besides biological factors, such as pregnancy, that often stand as barriers to certain business commitments. These sentiments were shared by other participants who particularly expressed discomfort around attending after-hours business

networking sessions or trips that were held away from their hometowns or outside the country. Without extra help to assist their children with duties such as school homework, cooking, and so on, consistent attendance at such occasions was a challenge for most of them.

Some of the participants were married, but none of them mentioned anything disadvantageous for their work participation due to their roles as wives. Only participant E opened up on how supportive her spouse was in terms of taking care of the children when she could not do so due to business commitments.[537] On the other hand, striking a balance between responsibilities that flowed from diverse roles was particularly difficult for one participant in a single parenting setting. Apart from business, she was also pursuing her career studies and was required to manage all of these commitments with a constrained support system and resources. This resulted in her prioritising certain business commitments over others, even though she would have wanted to take up all opportunities.

In light of the above, the circumstances associated with some of the responsibilities have sometimes caused women to be misunderstood, perceived unreliable, and less preferred for business. This is because some corporates have fears around issues such as maternity and family responsibility interrupting production. Unlike their male counterparts, who may just pack up and respond to business calls, it was different for most women. Primary care was a key factor in their decision making as they often required and paid a helper (usually another women) to take care of their domestic chores to enable them to attend to other things outside the home. As a result, they are extremely restricted in participation and are sometimes forced to be selective of opportunities to accommodate their circumstances.

In the next section are some of the participants' examples of how gender also disadvantaged them in the entrepreneurial space.

5.3.4.2 Gender disadvantage(s) within the entrepreneurial space

Participants were involved in different mining businesses which resulted in diverse experiences of the industry. Except for participant D, whose experience of disadvantage came from both within and outside her organisation, the rest mostly experienced it from third parties, i.e. clients and other colleagues outside their businesses. Among the issues raised, the lack of proper recognition and appreciation of women in general by the industry emerged repeatedly. When

[537] The researcher witnessed this as she observed how her spouse served her snacks and refreshments at intervals during the course of the interview.

requested to unpack this, participants cited the lack of female customised support platforms and services in terms of training and mentorship. They also mentioned limited funding opportunities, especially for first time female business owners. Their responses also revealed negative stereotypes and unconscious biases meted against them by male colleagues, especially in the allocation of business opportunities. In contemporary times, the lack of honest conversations and practical solutions in responding to the effects of the Covid-19 pandemic on women mine entrepreneurs was a big concern for most of them. These included challenges arising from remote working, childcare, mental health and so on.

Due to their different ownership statutes, some of the challenges played out differently for them in business. The next section below is a discussion of their experiences, separated between those in partnership and those in full ownership.

5.3.4.3 Gender disadvantage(s) for Participants in Partnerships

5.3.4.3.1 Exclusion from decision-making

Participants in partnerships experienced gender disadvantage differently. While Participant E did not experience any challenges in decision-making, it was different for D. She was often excluded from strategic decision-making processes in the business. As a majority shareholder, her input in acquiring key company assets, for instance, was not solicited. Instead, meetings were held in her absence and she only found out about the decisions later as a formality.

'If it's a purchase of a truck for instance, the seller or service provider would have already been identified and paid by the time I got to be told'.

She also pointed out her lack of access to company financial records or minutes of strategic meetings. As a result, her contribution to the business was restricted, as a position would have already been taken by the time she was informed of it.

5.3.4.3.2 Difficulties of participation in an environment that is unaccommodating of differing views

A partnership involves different players which means that views will not always be the same as partners are bound to see things differently. However, mutual respect for difference is healthy for business as it limits business risks, creates room for innovation through new and diverse ideas, and so forth. As females in a male dominated space, participants have the

potential to bring in new ideas, diverse skills sets, among other contributions. Participant E did not have many challenges around the sharing of ideas with her business partner because she was the brains behind the business concept. She understood the vision, plan and direction of the business and shared these with her partner who supported and guided where there was need. Participant D, on the other hand, experienced a lot of challenges in getting her views considered. For example, whenever employees protested, she attempted to engage management to find amicable solutions as she believed that, at times, their concerns were genuine.

'*I was often told that I want to babysit adults and that is not a strength in this industry'*.

Her altruistic attributes as a woman were mistaken for weakness, yet she thought by being in management it was important to accommodate employees' concerns. These were the people that performed the actual job and listening to them would advance business' interests too.

5.3.4.3.3 Lack of confidence in women

Some of the participants' experiences also revealed a lack of confidence in women's abilities by some men in the industry.

'*They said they did not want me to be worried about anything stressful, but I am not sure if that was the actual reason'*.

On this aspect, the participant shared how certain duties in the business were chosen and allocated to her. Her attendance to certain meetings, for instance, was dependent on the agenda and attendees or audience, otherwise her business partners exclusively attended most key business meetings.

'They emphasised that I listen attentively in meetings and whenever I ask questions I must ensure that it is not a stupid one because I will become a point of reference for all women'.

This highlights the problematic extremes of power against women's participation, especially considering that she is a black female in a partnership with white males in an already male dominated industry. Her experiences perhaps set the tone for how some of the male counterparts in the industry view women which feeds into stereotypes often associated with their abilities.

Further, the lack of confidence in women also came from clients who preferred speaking to male partners on technical issues. This was collaborated by most of the participants. As Participant E illustrated,

'*As the brains behind the business idea, this made me feel unrecognised, undermined and invisible as the business expert'.*

In addition, some of the women also lacked confidence in other women but expressed this in disguised sentiments of fear and discouragement. The participant showed how at the inception of the business, some of the senior women in the industry also discouraged her from exposing women's discrimination in the industry.

'*They said they feared I could be stigmatised, victimised, and ruin my career'.*

Although optimistic that their fear was from a place of care and concern, she still argued that had the initiative been started by a male, there would be no backlash. Consequently, being the first, and perhaps the only, women to coach and mentor other women on the 'unspoken' issues within the sector, she experienced a sense of solitude.

'*I had to prove to the industry that I was worthy listening to; ten times greater than my male colleagues always if I was to be taken seriously*'.

5.3.4.4 Gender disadvantage(s) for Participants in full Ownership

As sole owners of their businesses, participants in full ownership did not experience much gender related discrimination in their organisations. However, beyond their sphere of influence (i.e. outside their organisations), they shared almost similar challenges to the participants in partnerships. For instance, some clients and male colleagues preferred engaging a male person on technical issues and, where there was none, they were hesitant to give them business. Below I add other issues that were raised by women in full ownership of businesses that frequently resonated amongst them.

5.3.4.4.1 Violence and abuse of women

Some of the participants testified to having been physically and emotionally abused. Some experienced incidents of retaliation and bullying for speaking up on the discrimination of women. Participant A elaborated on one of her experiences where she was sworn at and locked

in a room for speaking out against the discrimination of women in a meeting. In retaliation, the company she had exposed prematurely cancelled a multimillion-rand contract it had with her company.

'I had invested a lot in that project and employed many people from rural areas but because I voiced out on the ill-treatment of women the contract was cancelled'.

Getting justice or recourse for breach of contract against the company was difficult as it was one of the powerhouses in the industry. Comprising well-resourced white males, they were able to afford legal representation with any of the big law firms in the county and she was the opposite. Her company was smaller, owned by a black woman with limited resources and not prominent as they were in the industry.

'*No attorney among the big law firms in the country was willing to take on my case because they did business with them*'. [538]

5.3.4.4.2 Stereotypes and unconscious biases against women

The industry still has to unlearn a lot of practices, attitudes and perceptions about women entrepreneurs and women in general. Most men in the industry are not yet accustomed to working with women in mining related businesses. In mine drilling for instance, Participant B revealed how some are still surprised to find a woman in the business space.

'*I am often asked if I inherited the company from my father or grandfather*'.

The fact that most of the participants were often overlooked by clients who preferred males in technical issues revealed a lot of biases. The pressure they all cited, of having always to prove their worth by working harder than men, indicated that they were perceived not to be knowledgeable enough. As Participant D and E agreed, this pointed to women being associated with people that were not capable of providing quality services. Also, with government's empowerment initiatives of the HDSA, participants experienced a lot of stigma from their male

[538] She sought legal assistance from a junior attorney in a legal battle that took almost two years to finalise. Attempts to silence her through bribes and intimidation of high legal costs were made. Subsequently, an offer of out of court settlement followed two weeks before the day of court which she accepted under undue influence. The offer was not even half of her claim, but she was later convinced to accept it by her attorney whom later discovered that she had been offered a well-paying job in their company.

colleagues. As some of them pointed out, they were treated as though they were only in mining to 'fill up' BEE statistics with no career aspirations. According to Participant D,

'they don't see us as anything at all, except that government brought us to come and help them'.

5.3.4.4.3 Lack of female customised mentorship and training programmes

The majority of participants' biological data showed that they held educational qualifications that were unrelated to mining. In addition, their age groups correspond with the category of women that were educationally excluded from engineering programmes as shown in chapter 4. This contributed to their disadvantage because it negatively affected their skills foundation, entrepreneurial exposure and leadership skills to function competitively in the industry. As participant E shared,

'*When we get to corporate spaces dominated by man, we learn things through copying what they do which is not always the right way of adapting'.*

In her case, for example, observational learning helped her adjust to certain business etiquettes that she did not know. As she notes:

'*I didn't know that I do not need permission to speak in meetings'*

Here she had realised that women often ask for permission to speak:

'*May I also say something, yet men didn't ask to speak, they just shot to the point*'?

Thus, by not providing female customised mentorship and training programmes, the industry expressly restricted their participation too.

Female customised mentorship and support groups were also very important for women business owners based in rural areas. Without access to resources and open avenues of networking, many women find it very difficult to do business anywhere, especially where they are alone in rural areas. Showing concern, participant C stated that:

'*I am based in the rural areas and where I come from, most women do not have the technical skills or the modern- day technology to access resources'.*

Thus, creating appropriate business platforms and networks for women would provide the much-needed support to the less advantaged. This was particularly a concern for almost all the participants who cited how things had changed due to the Covid-19 pandemic. The traditional contact networking sessions that offered most of them the much-needed support had been moved to platforms such as Zoom and Teams. All of them mostly relied on Women In Mining South Africa (WIMSA)'s networking, mentorship and support sessions which had also been done remotely.[539] Without data or internet access, consistent attendance to such engagements was now a challenge for most rural women aspiring to enter into this business. Thus, a lack of female customised mentorship, training programmes and support groups significantly impairs on the ability of many women's ability to participate.

5.3.4.4.4 Lack of funding

Mining businesses are capital intensive and participants mentioned having experienced financial constraints along their journeys. First time female entrepreneurs were the most affected as they lacked the required collateral to secure loans from financial institutions. Although unsubstantiated, three of the participants also indicated how some financial institutions always preferred a male profile in women-owned business applications. This affected a lot of women such that, in some cases, some resorted to short-term solutions to mitigate their circumstances. In the mine related transportation business, for instance, some purchased low cost used trucks for business purposes. However, these often required high maintenance which increased their operational costs, especially for those with an international clientele base.[540]

Also, some mining projects require site visits as part of the tendering process and the costs involved are the prospective service provider's responsibility. Some women were unable to participate in many of these due to the cost implications related to transport/fuel and accommodation where the prospective site is outside her town of residence. Important to mention here is that site visits did not guarantee prospective applicants success by mere

[539] Through such sessions, the participant benefited in terms of compiling tender applications and being able to meet the submission deadlines for instance. Before that, she found the process very bureaucratic since she was still learning how to use modern technology and navigating the industry itself. The networking sessions helped them share information on how to access documents such as SARS certificate without necessarily going to the offices.

[540] The trucks were constantly stopped and sometimes penalised at weighbridges, border posts clearance offices and even in random roadblocks. They were considered un-roadworthy in terms of the standards of their purported use. With Covid-19 pandemic, international travel has also become cumbersome as Covid test certificates for the drivers have also increased the financial strain on some women who are already working on stringent budgets resulting in the disinterest to enter the space as entrepreneurs.

attendance at site surveys. Thus, given already constrained funds, many of them chose to let go of opportunities which ended up being taken by their male counterparts. In addition, participants also raised concerns around the unregulated timeframes for settling accounts for services they already rendered, especially to big companies. As entrepreneurs with limited funding sources, their major income comes from the services they render. At the same time, some were not sure if it was their gender that exposed them to exploitation by bigger companies.

'*We are not sure if it's our gender or the sizes of our companies that cause big companies to never pay us in time as per our contractual agreements for services already rendered'.*

5.3.4.4.5 Concealed identity and implications

Participants also raised concerns around what they called 'inappropriate categorisation' which resulted in them being incorrectly recognised. They preferred being classified as women mine entrepreneurs who are independent of broad collective terms such as women and the youth for instance. Illustrating this point, participant B referred to how the current government portfolio that serves women's affairs at national level is collectively known as the Department of Women, Youth and Persons with Disabilities. This was quite problematic for some of them who argued that such a classification of women had negative implications in business. Their association with the youth or children caused them to be easily swallowed up in clusters such as the 'Youth and Small Businesses'. They argued that this concealed their independent identity as women mine business owners. In the context of women's empowerment in mining, therefore, it was difficult to determine the actual number of women business owners that had been economically empowered in terms of the quotas of the Mining Charter. Participant A elaborated further on this point by demonstrating how the Minerals Council overlooked female entrepreneurs in its annual reports.

'*It (the Council) does not even provide any figures about us in their reports, it just mentions the number of women the industry has employed in a particular period and ends there'*.

The lack of proper categorisation enhanced women's vulnerability as they were not clear on which platforms of justice to approach whenever there were disputes. In mining for instance, participant D stated that,

'We *sometimes do not know where to turn to when we are faced with challenges because of the inappropriate categorisation'.*

Besides their lack of independence, participants also complained about the lack of impartiality of the Minerals Council in adjudicating members' grievances especially one that involved one of their major (male) members.

'*The Minerals Council is both the player and referee, so you always need to tread carefully'*.

If one (especially as a woman) alleged sabotage by one of the enterprise supplier companies, it was difficult to complain to the organisation because it also owed allegiance to the company being complained about (most probably a longstanding member in case of males). As a result, by not recognising women separately (who also often are the 'newcomers' challenging existing players) results in their issues not being adjudicated properly.

5.3.4.4.6 Lack of honest conversations and practical solutions to the effects of the Covid-19 pandemic

As already mentioned above, a lot of things changed during the Covid-19 pandemic. Participants found themselves without appropriate support to respond to the effects of the pandemic. Given the nature of the industry, most of them were engaged in businesses that were site-based which meant that certain ways of adjusting were not compatible with the nature of their work. As participant D argued,

'W*e can't employ the work from home strategy throughout as other professions'.*

Even if they could, most of them still contended that remote working had its own challenges, as it required balancing work with childcare.[541] This created extra strain and pressure on some women who feared losing their contracts. Consequently, due to the uncertainties and anxieties around the new norms, many were silently battling with mental health issues. Reflecting on this, participant C shared her struggle with grief over loss of her parents and going through divorce.

'*I could not find a support network of women with similar experiences and this took a toll on my mental health*'.

[541] During the hard-lockdown, educational facilities as well as child- care facilities among others were closed.

Given that she experienced her loss prior to Covid-19, she wondered how it would have been now under government's restrictions in movement and association. She contended that while the regulations served a purpose, they also quarantined, and promoted the isolation of, many women in the industry.

The next section describes their experiences of gender and advantage as mine business owners.

5.3.5 Gender and its advantage(s) in the ownership and control of mining businesses

While gender was a major source of disadvantage in the mining space, participants also highlighted certain advantages. With the pressure for compliance with the Mining Charter's BEE provision to take up more women, being one was a bonus for those who qualified. According to participant A,

'*if you were good at what you did in your work, your efficiency became an epitome of excellence and placed you at an advantage businesswise'*.

Participant C also collaborated this, citing that on the eve of government's economic policies aimed at the empowerment of the HDSAs such as women, big companies competed for women who have done well.

'*Since we are already few, doing your best in your work exposed you to better opportunities as a woman'*.

Below are some of the other issues that resonated among participants as giving them an advantage as women in their participation.

5.3.5.1 Emotional intelligence

High emotional intelligence was repeatedly cited as one of the assets that made women highly sought after in the industry. While they understand the principle of business as involving profits, they are also concerned about building long-lasting client relationships. At a business level this enables most of them to engage well with their employees and other stakeholders in their projects. As stated by participant B:

'*Sometimes, we are forced to ease tensions and egos when arguments arise in boardrooms for the sake of the completion of the project, we neutralise the masculinity notion of always wanting to prove a point'*.

Put differently, participant A claimed that

'*Women were often sought after in community engagements due to their ability to easily find common ground where views differed'*.

In addition, participant D also found their understanding and maturity as among the traits that made most of them to be easily approachable to employees. This was, however, stated with caution as this could also be easily misunderstood and abused if boundaries were not clear.

Overall, emotional intelligence emerged as a strength that placed women at an advantage as they brought a different skills set to business and the industry at large.

5.3.5.2 Low risk and a likelihood of trustworthiness as compared to men

While some participants felt as though women's low appetite for risk was perceived as a weakness by some males in the industry, others actually found it to be a strength. Given the capital-intensive nature of formal mining, most participants cited having learnt to take calculated risks in projects. As participant C stated:

'*We have all experienced funding challenges along our journeys and this has helped many of us to stay afloat for a very long time'*.

In a concurring view, participant D added that:

'*When big companies were looking for female owned businesses to empower (which is often very rare and competitive), they look at such things*'.

An aptitude for cost effective decisions and strategies was therefore an advantage that many women in business learnt through experiencing difficulties. Sometimes, they were selective of opportunities due to financial constraints and limiting domestic roles. Yet, in the long run, they actually learnt the skill of detecting business viability. With the after-effects of the pandemic, for instance, calculated risk resulted in applying one's mind to a project in order to manage its financial aspects, among other things.

Participants' responses also spoke to the notion that women are less susceptible to corruption as compared to men. As participants' C and D collaborated,

'*Men often approached women to front for them for a reason, sometimes it's not just because they are vulnerable and can be exploited easily. Most of the times it's also because they can be better trusted than men*'.

To clarify this point participant C added that, 'depending on the position, men are also protective of their business interests'. As such, they would prefer somebody they can trust in their businesses, which makes women preferred on that basis.

5.3.5.5 Sensitivity of and to women's issues

The incorporation of women in mining is still a fairly new concept in South Africa, which means there are far fewer women than men in the industry. This means that factors that affect their participation remain sensitive, understated and often not well known. This gave participant E a unique oversight and advantage to make gender her business. Since she is different from others (men), she consults on women's issues that she has experienced and speaks from a female perspective. She is, therefore, invited to host and give talks on issues that men would never fully comprehend nor articulate in the same way a woman would. This aspect of women's advantage may not have been collaborated by other participants, as many other issues were, however, I found it worth mentioning. She stated that:

'*I narrate issues from a woman's point of view and my lived experiences. It is not stories I heard from the media, I saw and went through much of what I talk about in my talks'*.

For example, due to a medical condition, she contemplated a hysterectomy because she constantly needed to use the bathroom and she could not cope in the mine pit.

'*How does a man imagine being in my shoes when he has never had a womb?*'

Among the participants' concerns more generally is a lack of female customised mentorship and support services. Participant E's business concept of providing this is probably among the very few such services in the industry, and she (and other women like her) have succeeded in turning gender disadvantages into advantages. She revealed that when big companies wish to honour women for their contribution to the industry (e.g during women's day), they often invite

her to give talks on gender issues. As a woman, only her and other women with relatable experiences can fully articulate women's issues.

5.4 Findings on gender and its dis/advantages for women's participation and ownership of mining related business

All the participants had experienced both advantages and disadvantages in their participation in business. However, there were more disadvantages and challenges than advantages. This was perhaps due to the nature of the industry and their diverse business interests, which is very important for this study. The variety in their business trades provides a broader set of examples of what women in mining experience, how they navigate different spaces in their participation, and whether they have anything in common. From their responses, they certainly had many challenges in common despite their intersecting differences, e.g. race, class, educational background and so on.

While certain challenges seemed to have applied to those in partnerships only, some were common to all of them. Exclusion from decision-making, for instance, was mainly a challenge for those in partnerships although in this study, it was participant D only. Other forms of disadvantage occurred across different ownership forms. For example, the lack of confidence in women generally came across as a problem they all shared. They had also all experienced funding problems, and limitations around female customised support networks. Importantly, the effects of the Covid-19 pandemic also seemed to be a common challenge to all participants, although they were more severe for those who needed to balance primary care and remote working.

5.5 Race and women's participation in and ownership of mining businesses

The BEE initiative was commended by all the participants for opening up opportunities for black women to enter previously closed spaces, such as mining. None of the participants had experienced any racial challenges within their organisations. They did, however, report experiencing racism when they were dealing with third parties, such as clients and other stakeholders.

Race was, however, not without controversy for unintendedly excluding white women, who equally fit the 'previously excluded' category in this industry. Participant A for example, an

Indian woman classified as a black person under the South African legal framework, found that her racial identity was always an issue in the context of BEE.

'*I was never black enough among white women for purposes of BEE neither was I to many black women to be considered as one of them*'.

Such experiences alerted the participant (A) to a shortcoming of the BEE initiative in the sense that it used race as a sole basis of empowerment. Yet, without relevant expertise and corresponding effort, it was just a 'tick box' exercise as it could not sustain one on mere racial preference. From her transport business, for instance, she observed BEE profiles being used to apply for projects by applicants who did not have any interest in the industry.

'After a successful tender application, some will then subcontract the project to me or others who had the experience and equipment'.

This defeated the noble purpose of the initiative as it exposed many black people, and women in particular, to fronting. Consequently, to counteract the prejudice, she proved herself worthy in her business through hard work and acquiring professional qualifications.

According to participant B, racial discrimination did not necessarily manifest in express terms but through the actions of others. There were pronounced levels of racial favouritism in the business space. She commented on how one of her projects came to a halt over a loose bolt on a tyre, resulting in a workshop on safety being arranged for her. Yet, within the same area and period, another woman (white) had blocked the main road when a trailer accidentally detached itself from her truck and nothing was done to her.

'The inspector simply assisted her to fix the problem on the spot and allowed her to continue with her business as if nothing had happened'.

While she did not have a problem with being trained when she was wrong, the extreme differences in the reaction and response to certain conduct made her feel unfairly treated as a black woman.

'The principles of correction must be standardised and applied universally'.

She also mentioned how they (fellow women of colour) discovered that they were subject to similar, racially motivated treatment.

'*As black women we also share our experiences among ourselves to ask for advice from each other only to discover that most of the times we are the only ones subjected to certain conduct'*.

In funding applications, race was not expressly used to exclude black women, however, participants pointed out how impliedly the terms often dictated their exclusion. In her 13 years of business, participant B stated that only one financial developmental institution responded positively when she needed funding. However, the circumstances leading to the funding were compelling and involved a well-connected white male who motivated why such funding was urgently needed. Developmental financial institutions functioned like banks rather than assisting previously disadvantaged groups in developing their business. They often refused to fund first time female entrepreneurs if the applicant could not afford to pay back the loan or show proof that she was financially sound. As the majority of those who could not afford payment, many black women were left financially excluded.

Participant C was based in a rural area where the majority of black women were even less advantaged. With a high unemployment rate, race was a huge issue that worked both ways, negatively and positively. Depending on their values, some women were willing to front for big companies to escape poverty. This exposed many of them to exploitation, as terms were later changed or not properly explained for them to make informed decisions. With an attractive business profile as a black woman, she too was approached to front for one company that was struggling to secure government tenders. Given the challenges experienced by black women in sourcing funding from financial institutions, she expressed regret for not taking the offer. Participant D on the other hand, had never experienced any racial issues from her business partners.

'*If they had a problem with my race, they didn't show it openly because they never made me feel uncomfortable due to my race'*.

However, she suspected this to have been an issue compounded by her gender when she could not individually secure funding from the bank. Only upon partnering with men (white), one of whom had already existing networks and the required substantial expertise, was the loan application approved.

Participant E did not have any racial disadvantage in her partnership; however, it was an issue with some of her clients and colleagues in other organisations. Having been once referred to as an 'Indian experiment', she was perceived as ignorant about many things.

'*As a woman of colour, there are preconceived biases that you are not knowledgeable, fit, or professional enough to deliver quality services.'*

At such insinuations, the participant cited how she constantly worked hard to prove that her race and gender were not the only reason she was in business.

'*Sometimes I literally cited my key experience and academic background to show them that I am not an act of benevolence'.*

There was also stigma associated with race and gender (black & women) because women always needed to prove that they were not there to fill up the statistical expectations of the BEE policy.

'I personally make it clear that I am not here to tick the BEE box, instead am part of the dialogue to meaningfully contribute to the ongoing conversation'.

5.6 Solutions and strategies for implementation from the participants' perspective

While most participants commended the incorporation of women into mining, the lack of monitoring and evaluation mechanisms had some of the participants discrediting it as a mere tick in the box. They argued that one's gender and racial profile, for instance, did very little to empower a woman who lacked the fundamentals of entrepreneurship. This made their gender and race a very complex issue in their participation as business owners. To address this, they proposed possible solutions and recommended certain strategies for implementation. Some of these are discussed below.

5.6.1 Address women's exclusion in decision-making

Women's exclusion from decision-making platforms and structures was a recurring concern for all participants. They argued that it deprived the industry of important feedback for inclusive transformation and the innovation grounded in their different skills set.[542] In their view, the patriarchal influence of the industry served as the major source of most women's discrimination. They argued that some men still do not think that the mining industry is a space for women resulting in them undermining women's capabilities. Thus, given the varying

[542] For example, it was argued that men were not keen in approving two-piece overalls for distribution as they do not understand women's discomforts and inconveniences associated with use of the traditional one piece.

dimensions of the social order around women's different spaces (home, work or business), participants suggested interventions that were aimed at neutralising men's dominating power. These included interventions from diverse role players and at different levels.

At a domestic level, one participant suggested that parents instil gender neutral values especially in the division of labour in the household. In her view,

'What we see manifesting in the workplaces or business platforms is actual a reflection of how we are socialised as a people'.

It was also suggested that in education, women and young girls be encouraged and supported to pursue STEM subjects from an early age. The curriculum must be designed in such a way that it does not only address the academic aspects. Rather it must also look at complementary skills such as women leadership and other aspects that compensate for their participatory disadvantage. As most of them mentioned, they often found themselves ill-equipped for the industry resulting in '*copying things from men'*, an approach they found not to be always compatible with their circumstances. As result, they are often perceived unknowledgeable and worthy the exclusion.

At a government level, economic policies and other empowerment initiatives must create inclusive platforms that ensure women's effective participation. For instance, instead of focusing on numbers in bringing women on board in mining, attention should rather be more about the quality of empowerment outcomes. The number of women in the industry has increased since the promulgation of the Mining Charter in 2004.[543] However, in practise, the majority of women still experience multiple challenges in their participation in the industry.

At an industry level, the Mining Charter's quota allocation for women must be periodically evaluated and reviewed in accordance with industry performance. As participant B opposed

'*We cannot remain with an allocation of 5 percent for such a long time in procurement as women when we constitute more than 50 percent of the South African population'*.

[543] Facts and Figures, Minerals Council 2021 available at: https://www.mineralscouncil.org.za/industry-news/publications/facts-and-figures.

Some also added that, based on an objective and regular assessment criteria, licences to operate that show no evidence of having supported a women-led business (on a racially balanced proportion), should be subjected to a demerit system, while credit should be given to those that have done so.

5.6.2 Address women's invisibility and non-recognition

Participants expressed a sense of being overlooked or inappropriately recognised by the industry. This led to most of them expressing appreciation of the Mining Charter's fixed share (quota) allocated towards their participation. They however argued that the margin of percentage (5%) for women was small given the proportion of women in relation to men in the country. They also argued that their identities were hidden partly due to the use of collective categorisation used for amorphous disadvantaged groups. They wanted to be referred by terms that precisely define their independence from youth, children or even the general use of the term women. They wanted to be independently identified as business women. Where race was of concern, they suggested that this be recognised too as being a black woman in the industry had its own challenges different from those which women of other races went through.

'*We are swallowed up in collective categorisation such that we fail to account for how much exactly of the allocated quota in that percentage belongs to black women in mining businesses'.*

To address this, they proposed that the Charter be more specific when referring to them (as women entrepreneurs including race if need be). They also suggested that business exhibition programmes be established to showcase women's businesses. They also suggested that the industry creates a data base of women business owners that can be updated regularly.

5.6.3 Reduce women's vulnerability and increase their bargaining power.

It was proposed that the government capacitate women for participation in the industry to create room for fair competition. At present, economic policies aimed at closing the gender gap (in mining) only focused on bringing women on board, and here nothing mattered other than their gender and or race. However, as Participant A added:

'*Respect is earned, so be a woman but also bring something to the table'!*

Due to the lack of required skills and resources, many women suffered stigmatisation and stereotypes around their competence. Most of them were less preferred for support by the

industry's funding institutions and thus got forced into exploitative fronting arrangements. To address this, it was proposed that the government partners with financial developmental agencies and industry players with demonstrated expertise. This partnership could introduce well-funded project incubation programmes, with clear time-frames, to nurture and facilitate skills transfer to women mine entrepreneurs. The programmes should be inclusive in their approach by prioritising extremely marginalised women, such as those based in rural areas and those entering the industry for the first time. It should also investigate the pull and push factors around fronting to establish the causes that feed into the practice as some participants believed:

'No woman or any person would deliberately enter any arrangement that will result in their exploitation'.

To monitor compliance with empowerment quotas, an independent body comprising a seasoned racially diverse group of progressive, qualified, and experienced adjudicators, that accounts regularly to the relevant ministerial portfolios, was recommended. These will ensure evidence-based assessment criteria that grant points or tax rebates to participating companies. At present, the body (Minerals Council, SA)[544] is not independent and is both the referee and player.

'*You can't report them unto themselves neither can you take them to the DMR because they are more less the same people'.*

It was further suggested that government establish and give companies interested in participating in mentorship programmes an incentive for every role played successfully according to the listed key performance areas of mentorship. This would encourage them to support women since this responsibility has impliedly become expected of the private sector to do so. Also, given people's diverse backgrounds and ethical values, women's needs and priorities differ too. Thus, based on the findings on the causes of fronting, the interventions should be substantiated by enhancing women's knowledge around contractual obligations and rights in order to minimise exploitation.

[544] One of the organisation's key role is to facilitate interaction among mining employers to examine policy issues and other matters of mutual concern to crystallise and define desirable industry standpoints. The organisation also acts as a principal advocate for mining in South Africa to government, communicating major policies endorsed by its members. A further vital function of the organisation is to represent some sectors in collective bargaining with organised labour. Consultation and collaboration are voluntary and never encroach on the autonomy of members.

Importantly, the government should also review bureaucratic processes in the application for funding which leaves many women desiring to enter the industry frustrated. Financial Institutions, being the common source of funds, are very sceptic on funding first time female entrepreneurs especially for projects of a big magnitude such as mining. They require demonstrated years of business stability and experience in the industry which makes many women automatically disqualified on the basis that they cannot compete with men on either of these criteria.

5.6.4 Address the lack of confidence in women

Most participants mentioned a lack of confidence in them by clients and sometimes other male colleagues in business. This resulted in most of them being under pressure to prove that they are equally capable as their male counterparts. Addressing this will require a multifaceted approach, such as unlearning certain patriarchal practices and a change of perceptions. However, this cannot be done by women alone. As one of the participants cautioned, often the need to address change is directed to the wrong person.

'*By society's expectations, it is always a woman that needs to adjust and fit into the dominating norm and not the other way round'*.

To remedy this, some participants proposed that men in the industry be the ones to take leading steps to accept women unconditionally as this is how confidence can be developed. The government and industry can create inclusive platforms of networking that proudly display or exhibit women's products and services. The government must advocate for women to make decisions and take leading roles in providing services that they utilise in the industry. This includes the designing and procurement of their Personal Protective Equipment (PPE).

5.6.5 Address the lack of female customised support networks

All the participants expressed concern over the limited access to support networks for women in mining businesses. At the time of the interviews, the only women-centred organisation they relied on for mentorship and other industry related support was WIMSA (Women in Mining South Africa). They all commended its vision and shared how instrumental it was to their growth in their business and careers. It provided a platform for them to open up about the challenges they experienced, to secure opportunities and to exchange ideas on how to navigate the industry. They could also discuss issues that most of them were not comfortable to share in

male dominated spaces. Consequently, to address this challenge, some proposed that as WIMSA grows, it could replicate its services (open satellite offices) at least in each province where it has members. In the short term, the organisation could also host some of its regular seminars in cities other than Johannesburg. Alternatively, as an organisation with a complement of international members, it could invite members from other countries to share ideas on how to establish a firm networking support base.

Another much easier strategy, as one participant suggested, was the introduction of self-care social networks.

'Sometimes simple things like informal networking sessions and showing off our competitive advantage could be all that is needed to inspire each other especially in difficult times'.

Among these, they gave examples of spiritual support networks such as church groups, therapeutic sessions such as Yoga, as well as seeking professional therapy and psychological help. Self-care social networks were recommended for their informal nature which would easily accommodate open lines of communication. Also, as safe spaces that allow women to see life from a different angle, they will be enabled to freely speak about the practical realities of the industry. As most of them indicated,

'In mining platforms, no one was talking about how women business owners were managing remote working and other changes caused by Covid-19'.

These platforms would be very effective if complementary in nature and preferably, address needs that are not covered by existing platforms.

5.7 Views on whether legal solutions were appropriate to address race and gender?

There were divided views among participants on whether the law could offer any solutions to the gender and racial challenges in the industry. Two of the participants were not totally dismissive of the law, however, they found it not to be the best solution. They argued that there were plenty of policies already in place that could address such issues, but that these lacked enforcements.

'We have the Mining Charter in place right now and yet, some companies are still non-compliant and besides, the law took us into a male domain and dumped us at the doorstep with a halfway kind of support'.

They also mentioned some of the stringent bureaucratic processes and bottlenecks caused by the law in applying for government funding, which has resulted in them missing opportunities.

'Which investor wants to wait for three years for you to get funding?'.

Therefore, while they would want a legal solution, they also felt let down and in this industry, in particular, problems with funding were blamed for proliferating cases of fronting.

On the other hand, three of the participants were of the view that the law had been, and would be, very instrumental in addressing the challenges raised for a number of reasons. They pointed to the 1994 political transition that demonstrated a positive impact, especially on the black majority. As Participants B, D and C stated, they were sceptical on what would have been the situation had the law not intervened in many areas of their lives. As one of them elaborated:

'*With an unequal past in terms of gender, political and racial history as a country, how were women or black communities going to enter the mining sector without the law?*'

Consequently, they were in favour of a legal solution for three major reasons: to neutralise the concentration of economic power; to enable accountability (monitoring and evaluation) and, importantly, to establish platforms that could offer women cost effective legal services.

5.7.1 Neutralising economic power concentration

As Ihedure, Tangri and Southall argue, the ANC government's economic redistribution programmes and initiatives would have not been possible without the use of the law.[545] With concentrated economic power prior 1996, it was instrumental in the change of custody and redistribution of the nation's natural resources. As participant D argued:

'If the Mining Charter had not prescribed a minimum quota for women, the industry would have perhaps remained as it was before 1996'.

[545] Southall (note 458 above) 313-328: Tangri and Southall (note 239 above) 699-716, Iheduru (note 428 above) 1-30.

5.7.2 Establishment of legal institutions

The law was also preferred for the introduction of an independent body or an ombudsman that would comprise qualified and ethical adjudicators with a mining background to resolve women empowerment related matters. If possible, this should be subsidised by the government to offer cost effective legal services to women, as most of them currently cannot pursue big companies due to financial constraints.

'*At a regular court, my legal costs were in the millions, so perhaps if we can have institutions similar to the CCMA in mining a lot of women could benefit'.*

Also, given that most women, especially in Africa, are fighting similar challenges in the industry, a collaboration of regional laws was also proposed to address their circumstances. For instance, some of the participants were of the view that where domestic laws failed them, they could look to regional bodies or legal instruments for alternatives.

5.7.3 For monitoring and evaluation purposes

The law was also necessary to monitor and evaluate the Mining Charter's Key Performance Indicators insofar as the number of women doing business with the mines were concerned. The Minerals Council, South Africa publishes annual figures on the number of women who have been absorbed into the mining sector due to existing policies. Therefore, some participants argued against finding the law as '*useless*' because its content was not the problem, rather the lack of enforcement.

'*There are companies that are certified to be fully BEE compliant, but their contracts do not really support transformation or the development of women*'.

It was therefore contended that, though enforcement was a hurdle, the actual compliance was due to the normative power of the law.

Some participants also raised concerns around the lack of data on women doing business with the MCSA. They doubted the authenticity of the figures on women absorbed by the sector because they were not verified by any independent body. The establishment of laws that complemented what was already in existence was therefore encouraged. For example, where there was no data, a legal framework was proposed to establish and guide research that built a solid data base in order to properly plan for women's support. These would include prescribing

enforceable guidelines around developmental vehicles of empowerment availed by government.

5.8 Conclusion

In conclusion, this chapter demonstrated the discrepancies that exist between what is prescribed by law and the practical realities of women in mining related businesses. As demonstrated above, the MPRDA and select provisions of the Mining Charter, for example, advocate for the empowerment of women to promote gender equality in the industry. Yet, their participation and control of businesses remain limited resulting in restricted enjoyment of substantive gender equality in the industry. For example, though participants came from diverse mining backgrounds, their experiences and responses illustrated similar challenges. For instance, they all entered the industry and built their careers (mining) using previous work experience obtained from different professional fields. The chapter also showed how they were all both advantaged and disadvantaged by their gender in their participation in the industry. The disadvantages mostly emanated from their reproductive and domestic roles that created multiple responsibilities and needed to be balanced with business.

In business, some of the gender disadvantages meant that participants could not take on just any business opportunities that were available as they needed to consider several factors. Prior to attending meetings, for instance, depending on the time and venue, they needed to ensure that their children had somebody to take care of them. They also experienced exclusion from decision making and some male clients lacked confidence in them especially on technical issues. The industry further lacked a variety of female customised networking and mentorship platforms to support them in their business. For some based in the rural areas, the cost and access to networking platforms such Zoom, Teams and other services was limited. There were limited funding opportunities as well that worked restricted fair competition. In some cases, race also emerged as a barrier to their participation as they cited stigma and stereotypes associated with inability to render quality services. They were often perceived as less knowledgeable and assumed to have been brought in the industry to meet the requirements of empowerment initiatives such as BEE.

Participants also showed that, to some extent, the industry failed to appropriately recognise and reward their difference. The contribution of women mine entrepreneurs to the industry was often overlooked. Organisations, such as the Minerals Council, did not have a

data base nor account for the number of women it traded with. They were sometimes categorised in collective terms which concealed their actual identity as business owners With the Covid-19 pandemic, participants also found themselves with minimal support to address mental health challenges emanating from remote working and others.

On the other hand, participants shared a few gender-related advantages they had as women which include emotional intelligence, low risk and susceptibility to corruption. Such strengths gave in mine businesses an edge. Consequently, due to their lived experiences, in their proposed solutions some of them did not recommend the use of the law as an alternative solution to their challenges. They argued that though it was instrumental to bringing change in some areas, the failure of implementation rendered the law less effective to cure some of their disadvantages especially the aspect of effective participation in business. Others acknowledged its value but proposed that implementation be done in practice as intended by the lawmakers.

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CHAPTER SIX

WOMEN WORKING IN THE UNDERGROUND SECTIONS OF MINING OPERATIONS

6.1 Introduction

Women in the South African workplace are protected by a plethora of laws. Among these are the Employment Equity Act 55 of 1998 (EEA), the Basic Conditions of Employment Act 75 of 1997 (BCEA) and the Labour Relations Act 99 of 1995 (LRA). These laws seek to protect labour peace and promote a democratised workplace where both employers and employees are free from unfair discrimination. They do this through promoting positive measures aimed at enabling parties to mutually engage each other on matters of mutual interest in a fair and just manner. In addition to employment laws are also industry-related legislation aimed at regulating safety issues around the workplace. These include the Occupational Health and Safety Act 85 of 1993 (OHSA) and in mining, these would include the Mine Health and Safety Act 29 of 1996 (MHSA). As a result of such regulatory framework, the number of female employees in the mining sector has been increasing gradually since 2009.[546] According to the Minerals Council, 34,433 female employees were employed in 2009 and by 2021 the sector had recruited 65,490 female employees which represented 14.3% of the total employees.[547] Further, at the height of the Covid-19 pandemic in 2020, the sector was reported to have hired 957 female employees which increased the number to 62,315. [548]

While there is progressive legislation and an increase in the employment of women, transformation in the industry however remains very slow. This is evident in how the majority of women continue to be subjected to various forms of harm and discrimination, including violence and abuse in the workplace. According to Keetharuth, Benya and Botha, the industry remains a hostile economic environment for women employees in South Africa.[549] This chapter reports on the findings of the empirical study that was conducted on women mine employees from select mining companies. As discussed in more detail in chapter 3, six women were interviewed in this part of the study and this chapter reports on the findings of these interviews. As in the previous chapter, data was collected and is presented here in a unified format,

[546] Minerals Council, Facts and Figure, 2021, 26.
[547] Ibid.
[548] Ibid.
[549] S B Keetharuth 'What happens underground stays underground. A Study of Experiences of Gender-Based Violence and Sexual Harassment of Women Workers in the South African Mining Industry' (2021); Benya (note 503 above) 509-522: Botha (note 100 above) 1-12.

developed into themes. The chapter is arranged as follows: section 6.2 briefly describes the participants' biographical information. Section 6.3 presents an analysis of the recurring thematic issues as raised by the participants. Section 6.4 presents the possible strategies and solutions proposed by the participants that are aimed at addressing some of the issues that they raised. In Section 6.5 I reflect on some of the issues and provide an analysis of the data. The last part, section 6.6, concludes the chapter and also provides a brief summary of this part of the thesis's findings.

6.2 Description of the participants' biographical data

Six South African women between the ages of 27 and 45 participated in the study (five Black Africans and one Indian). They were all full-time employees who had had been exposed to both underground and surface mining operations. They held different qualifications and their mining related experience ranged from one year to eighteen years. With more years in the industry, some moved careers but remained working in the industry. For example, participant C upskilled from being an underground mineworker to become an underground mine medical nurse. They came from professional and skilled backgrounds and were, respectively, a medical nurse, geologist, chemical engineer, instrumentation technician, mining economist and strata controller. They all worked for different mining companies and three of them held leadership positions in their companies albeit non-executive ones.

All participants were unmarried, four had children and two did not have. Their demographic profiles are presented below and for ease of reference they are referred by the alphabet letters of A, B, C, D, E and F.

Participant	Age	Race	Marital status	No. Children	Level of Education	Years of experience	Religion
A	44	B	Divorced	5	BTech	18	C
B	27	B	Single	0	BTech	1	C
C	42	B	Divorced	2	BTech	14	C
D	40	B	Single	1	Matric	10	C
E	42	B	Single	5	Matric	10	Not indicated
F	45	In	Single	0	Bachelors	7	Hindu

Table 6.2.1: Participants' profiles

6.3 Women's experiences of the mine workplace

A number of issues emerged repeatedly across the participants' responses which suggested similarities in the challenges they experienced. Their responses presented the mine working environment as generally hostile to women as employees. The precise words they used to describe the workplace were that it was '*testing*', '*intimidating*', '*unaccommodating*' and a '*very difficult*' one for a woman, especially, to be in on daily basis. They were all concerned about health and safety issues which I unpack later in the discussion. These include violence and abuse, as well as the lack of female customised workplace equipment and facilities. In addition to these, participants also mentioned a general lack of respect for women by men in the workplace. This was compounded by acts of discrimination and the selective application of the law. In other cases, some male colleagues got away with a lot of misconduct. As a result, participants found themselves unprotected both by the law and by their male colleagues and employers. This led to most of them not reporting any misconduct against them.

Participants also mentioned challenges around the irregular hours of work which did not allow or accommodate their other responsibilities such as domestic and maternal duties. Also, due to the longstanding history of male domination and white control, most of them still found themselves excluded from many opportunities and decision-making platforms. They found that masculinity and race still shaped a lot of aspects within the industry's culture. Apart from decision making processes, the implementation of employment equity policies was not consistently followed. Where efforts to implement the law were initiated, these assumed a male influence. For example, all the participants collaborated on the fact that women's grievances were not taken seriously when reported because men protected each other. As Participant B further elaborated,

'*They will not allow one of them to lose his job for a woman*'.

Accordingly, this continued to reinforce their systematic exclusion which eventually restricted their full participation in the workplace as illustrated in the sections below.

6.3.1 Violence and harassment of women

Convention 190 of the ILO recognizes everyone's right to a world of work that is free from violence and harassment.[550] Violence and harassment in the world of work is also recognised as constituting a human rights violation or abuse that threatens equal opportunities.[551] Such conduct is therefore considered unacceptable and incompatible with decent work.[552] In the mining sector, however, gender-based violence and harassment is very common due to, among other factors, the cultural and numerical male dominance in the industry.[553] This is further enhanced by the structural characteristics of an underground mining environment, which tends to be poorly lit with many isolated areas.[554] Yet despite these challenges, neither the Minerals and Petroleum Resources Development Act 28 of 2002 (MPRDA), the Mine Health and Safety Act 29 of 1996 nor the Mining Charter (2004, 2018) incorporate gender-specific occupational health and safety provisions which could specifically compel the industry structurally to accommodate women employees and to prevent or reduce opportunities for violence. Where such provisions do exist, as discussed below, they are rarely enforced. Further, as discussed in chapter 4, there are also legal avenues of recourse after the fact, rather than seeking to prevent violence and harassment.

All of the participants indicated having experienced some form of violence and abuse at some point in their workplaces. These experiences included sexual harassment, retaliation and intimidation, physical aggression, and emotional abuse. This prompted the researcher to enquire if they had reported the incidents to their supervisors to make the environment safer. Only three responded in the positive and others gave numerous reasons why they did not do so. For example, when Participant C once experienced sexual harassment while working underground, her supervisor advised her to accept an apology from the perpetrator before the case was closed. The harassment continued despite the apology because she was later made to share the office with the perpetrator.

In a different incident, as a shop steward, Participant A experienced intimidation and harassment for being outspoken about women's issues in the workplace. She and other women

[550] The Convention was adopted in June 2019, by the International Labour Conference of the International Labour Organization (ILO) of 1935, and came into force on 25 June 2021.
[551] Ibid.
[552] Ibid.
[553] Benya (note 503 above) 509-522.
[554] Keetharuth (note 539 above) above.

raised concerns around discrepancies in remuneration between men and women and their safety in the pits among other issues. To silence her, the supervisor used the issue of her weight as leverage and withdrew her from working underground. She was assigned to work at the surface, a decision she said minimised her chances of promotion. In other words, she was demoted for speaking out on issues that concerned her as an employee. She claimed that the withdrawal had nothing to do with her weight, but was rather a retaliation for her refusal to withdraw from the shop steward position she held in their women-led trade union. To keep her job, she resorted to medical aids to curb her Body Mass Index (BMI)[555] although,

'*I felt as though I was fighting my natural self so that I can be loyal to my supervisor'.*

6.3.2 Hostile working environment

Regardless of the law, over and above their responses in part (i) above, participants expressed attitudes of being undermined as women in various ways. They mentioned a lack of respect for women by male colleagues. Those who held leadership positions, for instance, had to deal with insubordination, physical aggression and retaliation as well. Participant C described how she experienced challenges in giving instructions to male colleagues in her team. She was often undermined (mostly by men) due to her young age and gender. She was called by demeaning words such as '*little girl'* which forced her constantly to fight for her worth. Participant F experienced feelings of low self-esteem and wished she could do something to gain respect. She believed that her gender was the reason she was seen as a mere source of entertainment and not as an employee worthy of respect like others, but felt there was nothing she could do about it. Both participants further shared about how they felt as though they were entrusted with power by being put into leadership positions by their employers, however, this exposed them to vulnerability. Their employers or representatives seldom supported them when they faced challenges in those positions. Since their employers or representatives were men too, participants stated that they always stood by each other no matter the gravity of the complaints. Overall, therefore, most of the participants expressed a sense of defeat, fear, anxiety, and even animosity towards their jobs.

[555] F Q Nuttall 'Body mass index: obesity, BMI, and health: a critical review.' (2015) *Nutrition today, 50*(3), 117. According to Nuttal, BMI stands for Body Mass Index, a measurement that takes into account one's height and weight to produce a calculation of his/her body size. It is not a diagnostic tool or measurement of body fat percentage; however, it can be used to determine how one's body weight is related to their height. In the mining industry this is used to calculate one's fitness and health status to determine their body weight category. The participant's BMI was 40 and the required measure was 5.

6.3.3 Unsafe working environment: Lack of female customised equipment and facilities in the workplace

The mining industry is male dominated and deals with dangerous chemical hazards and objects such as paints, degreasers, welding fumes and ergonomic hazards that involve the lifting of loads. To minimise danger, the OHSA requires that employers provide a healthy and safe working environment that is free of any hazards to employees' health.[556] The Act also stipulates certain duties and responsibilities for employees to observe in order to ensure a safe working environment.[557] Despite these provisions and the fact that women have now been incorporated in mines for a substantial period time in South Africa, participants' responses showed that the majority continue to be exposed to an unsafe working environment.[558] For instance, they raised concerns around the lack of appropriate ablution facilities in the underground sections of the mining workspace. They all confirmed to a lack of 'she bins' for menstrual products and female customised changing rooms in the underground divisions where they worked. According to Participant A's testimony, she and other women were once publicly admonished in a meeting for using pieces of cloth in place of sanitary wear when underground.[559] She expressed feeling insulted and dehumanised by this incident as she stated that the accusations were false and aimed at embarrassing them as women. This was also because, as they were being addressed, their male colleagues were laughing at them.

Apart from the lack of female customised facilities, participants also mentioned the lack of appropriate Personal Protective Equipment (PPE). This is despite the provisions of the MHSA which states that, *'Every manager must ensure that sufficient quantities of all necessary Personal Protective Equipment (PPE) is available so that every employee who is required to use that equipment is able to do so'*.[560] The Act further requires that employees use PPE in the required manner and ensure adequate maintenance of the equipment.[561] However, beyond this stipulation, neither the OHSA nor the MHSA regulate the provision of PPE or promote supplies that suit different gender groups. This is despite a study on the cost, appropriate use and effectiveness of mining PPE that underlined the significant protective role played by PPE for

[556] Section 8 of the Occupational Health and Safety Act, 85 of 1993.
[557] Sections 8 to 12 of the Act.
[558] Mineral and Petroleum, Resources Development Act, 28 of 2002; The Act established the initial Mining Charter of the South African Mining Industry in 2004. The latter introduced a 10 percent minimum target of women employment to core mining operations.
[559] The meeting was aimed at resolving issues around toilet blockages underground and there were three female employees in a team of eight male colleagues when they were being addressed.
[560] Section 6(2) of the South African amended Mine Health and Safety Act (MHSA) No. 29 of 1996.
[561] Ibid.

employees.[562] Thus, there is little to no legal incentive to develop gender-responsive adaptations for women in the mining industry, leaving women particularly vulnerable to an unsafe working environment.[563]

The participants provided several examples of how the mining companies' PPE and infrastructural facilities and services remain male oriented.[564] For example, they mentioned that work suits/overalls, gloves and safety shoes were still designed to suit the male physique. Some participants also mentioned that some of the work suits were still one-piece set which they found not to be user friendly for women. These were also often ill-fitting due to the small sizes and inappropriate dimensions for a female body which caused discomfort. This also exposed them to various safety concerns as ill-fitting PPE does not meet the required standards of protection. Consequently, with ill-fitting and inappropriate PPE, women are mostly exposed and vulnerable to dangerous chemicals and object. As Zungu also argues, this is problematic because PPE is used as a last resort such that when all safety control measures in place fail to prevent exposure to hazardous conditions, it can minimise the impact of danger.[565] It is therefore important that PPE be appropriately designed and carefully selected in line with the nature and risk associated with the hazard(s) to be prevented. Important, but also concerning, is the fact that there have been minimal studies initiated by the government and business on the anthropometrical requirements of women's PPE.[566] Yet, these must equally meet the physical attributes of the individual employees.

6.3.4 Gendered workplace benefits: Lack of female customised facilities in the mine residences

Clause 4.5 of the Mining Charter requires that stakeholders, in consultation with the Mine Health and Safety Council, the Department of Housing and organised labour, establish measures to improve the standard of housing of mine employees.[567] Among the stipulated principles and conditions of housing is the need to convert hostels into family units that provide dignity and privacy for employees.[568] Previously, hostels in the mines accommodated men in

[562] P C Schutte, B Dias, P Chunderdoojh, R M Franz 'Cost, appropriate use and effectiveness of personal protective equipment including footwear for the mining industry. SIM 03 09 04. Report No. 205-0262.
[563] Mangaroo-Pillay and Botha (note 279 above) 475-483: Zungu (note 244 above) 4-9.
[564] M A Hermanus 'Occupational health and safety in mining-status, new developments, and concerns.' (2007) 107 *Journal of the Southern African Institute of Mining and Metallurgy* 531-538.
[565] Zungu (note 553 above) 4-9.
[566] Ibid.
[567] Mining Charter (2004), Clause 2.6 of Mining Charter (2018).
[568] Ibid.

single rooms often situated close to the mining operations for easy access to the workplace.[569] According to some of the participants' responses, the male-oriented model of the housing facilities had not been altered to accommodate the needs of women. Participant E stated that their shared residence of six women (each with own small single room) had one bathroom, a kitchen, and a lounge. As primary caregivers, such an arrangement made it difficult for women to live with their children. Sustaining a sizeable family in a restricted space comes with its own challenges especially where the accommodation is not family oriented. As a result, participant A was forced to rent an extra place for her children since they could not stay together in a single room. Besides, her hostel was far from local schools which required school transport costs from her already strained budget.

6.3.5 Gendered workplace conditions: Irregular hours of work and night shifts

According to Hartley *et al* the Australian mining industry has the highest average weekly hours of work.[570] In the United Kingdom, the industry is ranked second after the agricultural sector in terms of employee working hours.[571] As a developing country, South Africa may not be comparable to such countries, however, all the participants stated that the long and odd hours of work were major challenges for them. The long working hours and the night shifts made it difficult for most women to balance their maternal and other domestic responsibilities. Participant A, for instance, drove long distances weekly to her children, sometimes driving after her 3 AM night shifts. Besides security concerns about driving at night, particularly for a woman, the lockdown regulations had unique challenges too. She was constantly harassed by the police at roadblocks for not adhering to curfew rules as her working hours extended beyond the curfew necessitated by the Covid-19 pandemic. Further, the hard lockdown regulations were even more difficult for her because government instated inter-provincial travel bans. Her vehicle had a different provincial registration number plate from the province of her residence and workplace. This resulted in her being forced to travel outside the hours and zones permitted by the terms of the lockdown. She always needed a traveling permit and or a police affidavit to allow her to visit her children.

[569] Dikane (note 27 above); Meyersfeld (note 23 above) 31-53: Hutt (note 27 above).
[570] L Hartley, H Creed, P Gilroy and D Todd. '*Extended Working Hours.' (2004) Review.* Final Report to the West Australian Government, Perth.
[571] Ibid.

Also, two of the participants indicated having difficulties in maintaining a healthy and balanced life between family, work and studies. They were barely coping with the pressures of parental responsibilities, their workload and other activities they wished to pursue. Participant D wanted to complete her long overdue tertiary qualification which she had constantly postponed due to limited time.

'*It is like my day is not made up of twenty-four hours but just three hours'*.[572]

In light of the above, the BCEA regulates basic conditions of employment by setting rules around working hours, leave days, family responsibility and remuneration among others.[573] This is aimed at making the country meet its obligations under the International Labour Organisation.[574] Section 7 specifically obliges every employer to regulate the working time of each employee with regards to the family responsibilities of such an employee.[575] In other words, the employer is required to consider the circumstances of each employee to afford them appropriate working time ideal to their family responsibilities. Based on the participants' responses (especially those with children), such was not often the case in the mining companies they worked. Most of them revealed that there was no consideration of individual participant's circumstances when it came to the regulation of working time. They all (including men) went underground according to the time slot allocated by the employer and came out as per their schedule. Thus, women with or without children or other family responsibilities, were treated as equal to men as though they all had similar situations.

To address gender based discrimination such as in the above situations, the ILO departs from its previous total prohibition of women from night work in industrious undertakings such as mining.[576] Instead a more gender responsive approach is recommended to promote women's equal access to employment opportunities.[577] By this, the ILO seeks to promote a balance between their protection from harmful working environment and equality. For example, in cases of emergency and where necessary, the government is empowered by law and also required to suspend or prohibit dangerous working environment.[578] This can be done after

[572] Assessing the timeframe, it took the researcher to secure interview schedules with the participants also confirms their tight schedule. For most of them there two or more postponements before the actual interview took place because they were always busy.
[573] Chapter Two and Three of the BCEA.
[574] Preamble to the Basic Conditions of Employment Act.
[575] BCEA, 75, 1997.
[576] Article 3 of Convention 89 of the ILO.
[577] Chapter 4 para 169 of the 2001 ILO Report.
[578] Convention 89 of the ILO.

consultation with the relevant stakeholder (employers and employees' organisations) particularly in case of serious emergency.[579] All the participants had worked in a night shift where the majority in a team were men and or sometimes alone depending on their job descriptions. Most of the participants expressed discomfort at this arrangement but complied because it was common to all employees and they had no option. Thus, when asked if there were any measures taken by employers or the government to safeguard their safety and allay fears in the issues they raised, participants were not sure if their companies adhered to some of the ILO policies. Some also mentioned that there was not much that the government could do either.

6.3.6 Lack of compliance with the law

The BCEA requires an employer to inform employees of their rights as stipulated in the Act and other pieces of legislation.[580] Summaries of certain legislation must be displayed at the workplace in the prescribed form (typically in the form of wall charts) and in the official languages that are spoken in the workplace.[581] The Employment Equity Act and the OHSA (should the employer have more than five employees) also require the obligatory display of employees' rights.[582] The OHSA, however, requires that employers have a copy available on hand at the workplace for their employees even when the total number of employees is less than five.[583] In some cases, it is also required that summary charts of the Safety Act, Skills Development Act and Compensation for Occupational Injuries and Diseases Act 130 of 1993 also be displayed in places regularly visited by employees. Failure to comply with the mentioned laws may incur the employer penalties from the Department of Labour.[584]

In light of the above, some of the participants confirmed the display of legislation at their workplaces, however, they still argued that most of these were general laws that were not specific to women. They also argued that employers seldom complied with the displayed laws which defeated their purpose. For example, a public display of laws that directly apply to women can enlighten those that lack legal background on their rights. A participant whose contract excluded maternity benefits for instance, requested the company policy. She wanted

[579] Ibid.
[580] Chapter 4, section 30 of the Act.
[581] Ibid.
[582] Section 25 of the EEA and section 7 of the OHSA.
[583] Section 7(3) of the Act.
[584]Schedule II of the BCEA.

to understand why her contract did not contain the clause but was denied with no further explanation. To preserve her job, she had to let go of that right and resorted to her annual leave days to cover some of her maternity period.

6.3.7 No avenues of redress

The lack of compliance and flouting of laws also resulted in some not being able to report their grievances because they feared aggravating the situation or victimisation. They argued that women employees were generally unequally treated from their male colleagues and had no alternative avenues of redress. So, whenever they lodged complaints of abuse, they often received unfavourable feedback on their complaints. With the discouragement from their immediate supervisors, they also changed their minds about laying grievances. Sometimes, the total lack of feedback from management caused them to stop reporting any successive incidents of abuse or to withdraw from the existing cases completely. On being asked why they remained in their jobs in such conditions, most of them stated that they were dependent on those jobs. According to Participant B, for instance,

'*We have very few options but to hang in since the law only protects us on paper*'.

They felt unprotected in terms of their physical bodies and emotional wellbeing as employees despite their legally protected right to a safe working environment.[585] For example, the mine tunnels were isolated and dark since the lighting system was poor. Thus, without cameras underground, Participant D also collaborated that,

'When you go underground you are literally on your own'.

Further, in terms of the BCEA, maternity leave benefits are among the very basic provisions of an employment contract.[586] While some companies provide more protection to their employees in their employment contracts, some participants revealed how their employers flouted the law. They offered incomplete protection by completely excluding provisions such as maternity benefits from their employment contracts. This goes against the provisions of the BCEA that requires that a term of an employment contract be favourable to an employee.[587] Participant A, for example, did not understand why basic legal provisions provided excluded

[585] Occupational Health and Safety Act, Mine Health and Safety Act, Basic conditions of Employment Act.
[586] Sections 25 and 26 of the BCEA.
[587] Section 4 of the BCEA.

maternity rights.[588] This amounted to unfair terms of employment and was also unlawful on the part of the employer. Besides, sometimes, basic labour processes were not observed during interviews. In her illustration, participant A revealed a job interview where she was asked if she was done with childbearing. One of the panellists wanted to know the number of 'fat leaves'[589] she had taken at her previous job. The Participant felt attacked as the questions were of a personal nature but responded to them truthfully. She however wondered if such did not contribute to the adverse outcome of her interview since she had the required experience and the job requirements. She also questioned if such interrogations did not promote the discrimination of women in general in the industry.

6.3.8 Unequal opportunities and gender discrimination: pay and promotion

By establishing workplace forums, the LRA's overarching goal, among others, is to promote employee participation in decision-making.[590] However, this is difficult to achieve if women are not given the same recognition as their male counterparts in decision making. As participant B stated,

'We are never equal in the mining industry my sister!'

The participant meant that, as employees, they were never treated equally by their employers and other male colleagues. This was also confirmed by the other participants, especially those who worked in departments that were dominated by men of different races. Three of the participants worked in departments and positions that were dominated by black people (mostly men), while the other half worked in a multiracial, but pre-dominantly, male environment. To expand on the meaning of the above phrase, participants indicated how race and gender were key factors in the way one was treated in the workplace. They also acknowledged the effects of their various differences, such as the level of education and the years of experiences. However, their responses suggested that one's gender or race was more important, especially in determining remuneration. Notwithstanding her level of education and years of experience, for instance, participant A said that her eighteen years of experience and formal qualifications (as an instrumentation technician) still earned her less than her male colleagues (Whites,

[588] Participants stated that Chapters Two and Three of the Act were incorporated in their contracts of employment except for section 25.
[589] These were days granted to someone with overweight challenges to go and work on their weight until it under control or reduced to the one stipulated by the company.
[590] Preamble to the Act.

Indians, and Blacks), yet they all performed the same job.[591] This transgressed the tenets of the Employment Equity Act on the equality of income.[592]

Fair access for women to opportunities of promotion and career progression were rare in most of the participants' companies. These were granted according to race, but very often were based towards gender. Where women were concerned, their progression was often tied to sexual exploitation. According to participants D and F, sexual harassment was used as a tool in exchange for employment promotion, learnership opportunities and general protection while underground. Other participants cited experiences of negative repercussions for declining such advances which included bullying. Concurring with these experiences, participant A recounted how it took her approximately two years to have a three months learnership application process approved. This was after she reported her supervisor to the Human Resource Department for harassment, which created a barrier to promotion. She endured a hostile working environment wherein she was constantly reminded of how she would easily lose her job if she did not 'co-operate'.[593]

Whenever appointed to positions of leadership, women were appointed as ceremonious leaders with no influence in decision-making. Those in leadership positions were not sufficiently supported, forcing them to voluntarily abandon their positions. Participants argued that the wide gap in the ratio between men and women in top leadership positions therefore was not because there were no competent women. Instead, it was because mine management and unions were just not ready to entrust women with authority. Since most employers want to protect their business interests, they are always forced to ignore equity laws to please trade unions at the expense of vulnerable employees such as women.

As discussed at 1.2.1 in chapter 1, race also differentiated employees. Although this applied to black males then, participants' responses confirm that, besides gender, racial exclusion was an additional challenge for those that worked in multiracial environments. Participant B, for instance, was forced to abandon her trade union responsibilities due to

[591] The researcher enquired further from the participant to establish how she knew about the salary discrepancies as this is often confidential information. The participant stated that she was a shop steward in a black dominated trade union in the workplace and her position made her privy to the remuneration details.
[592] Section 27 of the Act and its associated Codes of good practice.
[593] She was forced to take slimming pills which made her dizzy and incapable of fully performing her job. Her job description entailed operating a machine, and this affected her concentration. She continued taking the pills nonetheless as she did not have any other option because her livelihood and that of her kids depended on the job. She refrained from reporting any injuries incurred whilst on duty for fear that if she did, it would be impugned on her weight even though it had nothing to do with it.

victimisation. She was actively involved in the fight for worker's rights in a women (black) dominated trade union. The issues that she and other members advocated for were directly relatable to their own personal experiences as employees. They complained about inequality in remuneration, violence against women from both male colleagues as well as their superiors and the lack of legal protection among others. Her boss (white male) made her working conditions unbearable until she gave up in order to preserve her job. She experienced intimidation just like participant A, (mentioned earlier) whose weight was used as leverage against her. This was despite the fact that she was not the only one in her team and position who had that problem. She stated that there were other colleagues, both men and women, who suffered from the same problem. One of her female colleagues (of a different race) even used crutches to walk due to her weight but was never treated like her.

6.3.9 Bias of trade unions

Trade unions are afforded certain organisational rights in the workplace to promote collective bargaining.[594] The aim is to balance power between employees and employers by allowing employee representation among others. However, most of the participants complained about the bias of male dominated trade unions towards women employees. Their representatives were said to be sometimes conflicted in their representation at disciplinary enquiries, employment recommendations as well as general workers' matters. This often resulted in the unequal treatment of women compared to their male counterparts. According to participant E,

'*They (trade unions) say one thing in public about women empowerment but do another in practice'*.

Participant F also stated that:

'Unions spoke so well about us (women) to the media but when opportunities to empower women within their own ranks opened up, they did not recommend a female'.

Participant B added that:

'*Unions don't want to be led by women'*.

[594] Chapter 3 of the Labour Relations Act.

Participants raised issues around tribalism among trade unionists as another challenge. While some males were equally affected, women were said to bear the most negative effects. This is because, as the most disadvantaged in the industry, they relied on unions for representation on many platforms. As participant C indicated:

'S*ometimes we will be all be eligible for promotion as women but the one with close tribal networks in their ranks got the job'.*

This was also collaborated by two participants (Zulu and Sotho speaking) who were treated as outsiders as they did not originate from the province. This contributed to the male domination of most companies' leadership structures

The next section presents the proposed recommendations of what could be done to address the issues raised by participants.

6.4 What could be done according to participants' views? Strategies and recommendations

Based on their different experiences, participants were divided on whether the law could be recommended as an appropriate and corrective tool for gender and racial discrimination. A few who were in favour of the law argued that, without penalty, it would be difficult to correct wrong behaviour. They chose not to rely on the argument of the lack of enforcement as the reason they would not approach courts for legal recourse. Instead, despite the loopholes in the legal system, they preferred making use of their rights. As participant D emphasised:

'*The law will not act on our behalf as the aggrieved without our action, we must use it ourselves to work for us'.*

However, the majority that were opposed to a legal solution felt as though the law was actually being used as a tool for their discrimination. Some referred to their own practical circumstances of deliberately being given contracts that ignored relevant and applicable labour provisions. Besides, with the power imbalance, some of the participants were not sure if the law could change anything. They argued that companies were well-resourced to fight anything that opposed their interests and women didn't have anything with which to fight. Accordingly, they proposed certain strategies that could be adopted towards addressing one or more of their challenges, as illustrated below.

6.4.1 Violence, abuse and lack of respect for women

The culture of the mining industry is highly patriarchal which influences men's attitude towards the negative treatment of women. As illustrated by some participants, some men still perceive a woman as an object of entertainment rather than an equal human being. This has resulted in some men being unable to value and respect women resulting in incidents of violence and abuse. Some of the participants believed that this was related to levels of education. Accordingly, to correct this behaviour, they proposed the introduction of a minimal level of education for entry jobs. These could be supported by adult professional courses to instil values of respect for colleagues and women, in particular. This was in response to the numerous cases of male insubordination towards women in leadership positions, particularly from men with low levels of education. According to participant C:

'*It is so challenging to work with men that lack formal education'. 'When you give them instructions, they think you are challenging their manhood'.*

She argued that male colleagues with low levels of education think and do things quite differently from those with tertiary qualifications. This was attributed to the lack of exposure to women in leadership positions and, therefore, if such initiatives could be adopted and fully implemented, they were hopeful for improvement in the treatment of women in the workplace. It was, however, noted that challenges were inevitable in correcting the cultural aspects as this entailed people's different values and perceptions and, therefore, there was no guarantee of correction due to varying expectations.

Participants also suggested that high levels of women's abuse were related to both men and some women's limited knowledge of women's rights. Most women did not have a comprehensive understanding of their labour rights. It was proposed that the government empower both men and women with programs that capacitate their legal knowledge on women's rights. For example, the incorporation of a legal course to address women's legal issues in some of their skills development training courses.

6.4.2 Health and safety: Lack of female customised equipment and facilities both in the workplace and mine residences

The challenge of male-oriented infrastructural facilities and services in most mining companies is an age-old problem. The industry was previously solely oriented to male workers, but with the changes in the legal framework, it is expected to transform to accommodate women.

Participants' responses showed that most companies have not yet transformed to address this. Thus, to accommodate women, participants proposed that mining companies adhere to modern infrastructural and occupational standards that cater for all employees in the workplace. Given that some of the companies are unlikely to do so, unless compelled, the government could charge a levy on the operating licenses to address this. Alternatively, a suspension or hefty penalty could be levied on all non-compliant companies to encourage compliance.

6.4.3 To address women's exclusion from general participation as well as decision making. Lack of protection from their male counterparts as well as the law itself

Many women employees in the mining workplace do not work in a healthy and safe space that embraces gender diversity. Participant B shared how their supervisor even restricted them from participating in and celebrating events such as Women's Day at work, despite a circular from the government department to employers to release them for the event:

'*We were just surprised to see other women from other departments wearing T-shirts that we normally wear to commemorate our day and we wondered why we were not told*.'[595]

Therefore, to address this, employers should be encouraged to create and support platforms that amplify women's voices. In fact, participants suggested that if mining companies were serious about women empowerment in the industry, companies could sponsor women related events such as these.

For many participants the problem remained unresolved until there was a fair representation of women across the workforce, especially at leadership levels. This participant suggested that the number of men and women in leadership positions be proportionally balanced in gender and racial terms. This speaks to the implementation of the provisions of the Employment Equity Act on promoting affirmative action plans.[596] These are designed to ensure equal employment opportunities for suitably qualified people from previously disadvantaged backgrounds. They proposed that the positions of leadership, to which women are appointed, be influential to enable them to command meaningful change in the problematic cultures in the workplace. For example, most participants were not comfortable with the imbalance in gender ratios when working underground as this exacerbated incidents of violence. Some also

[595] Participant elaborated how the event was actually announced in many departmental meetings and a male colleague representing their department was present in that meeting but never bothered sharing the announcement with them.
[596] Chapter III of the EEA (1998).

expressed a sense of being overlooked in many engagements, such that arbitrary decisions were taken on their behalf without their input. With a balanced leadership, therefore, they were hopeful that certain challenges would be minimised as this had potential to neutralise dominating power. How this might happen, of course, remains a challenge, but a first step would be the proper implementation of labour law.

6.4.4 Irregular hours of work and night shifts, bias of trade unions and the selective application of the law, as well as the failure of mechanisms that monitor compliance

Although some participants did not recommend a legal solution to their challenges, they were alert to the existence of the law. The reason some did not have trust in the law was because it was not being successfully implemented and enforced. Looking at the initial Mining Charter's scorecard, for instance, there were no proper monitoring and evaluation measures to assess the key performance indicators for effective compliance.[597] Thus, for purposes of regulating employees' working hours and conditions, they proposed that the inspectors, that are deployed to mining workplaces in terms of various pieces of legislation, perform their functions ethically and reliably.[598] In other words, while they commended the efforts of the Department of Mineral Resources to conduct inspections, some felt that these were not enough. The visits were often casual, not consistent, and often with no effect as they lacked follow up. The participants proposed that this be firmed up. Participants proposed that inspectors conduct their duties ethically to ensure compliance with the required legal obligations in the workplace.[599]

This was particularly important in that, in so far as there was often no strict penalty nor punishment in practice for non-compliance, most companies negotiated their way out of any situation. It was therefore argued that the most vulnerable, such as women, are the ones that remain exposed to multiple forms of inequality. Thus, by ignoring laws and/or failing to implement them, employers expose women to different forms of discrimination and render them without effective legal recourse. In the long-run, this gives women an impression that they are not sincerely welcome in the industry, both by their male colleagues as well as by their employers. This also reinforces patriarchal tendencies and stereotypes around gender roles between men and women which continue to manifest in the workplace. Consequently, with

[597] The Scorecard for the Mining Charter (2004).
[598] Sections 63- 67 of the BCEA, Sections 28-30 of the OHSA, section 48-51 of the MHSA.
[599] Ibid.

their limited technical skills many women become exposed to various forms of exploitation and abuse.

6.5 Reflection and Analysis

The South African Constitution deems all people equal before law.[600] It lists several grounds upon which one may be found to have been discriminated against, including race, sex, gender, and pregnancy.[601] In the workplace, there are several employment and industry related laws, such as those mentioned earlier, that aim at facilitating equality, labour peace and safety. Labour peace is promoted by creating an environment that encourages fair labour practices and justice between employers and employees. The Employment Equity Act, for instance, prohibits the discrimination of an employee (or prospective employee).[602] By this, in theory, all people are guaranteed equal treatment, benefit and protection of the law. Yet, according to some participants' responses, basic principles of employment law and constitutional standards of equality have consistently been breached by some employers, for example, where a participant was asked questions around being 'done with childbearing' in an interview.[603] Another participant was also penalised for participating in trade union activities despite the law clearly advocating for free participation.[604] Participants also raised concerns around the selective application of company laws to employees with similar circumstances. This is in breach of the principles of fair labour practices[605] and, clearly, also a frustration of the efforts to democratise the workplace as envisioned by law. This is evidence of poor monitoring and enforcement on the part of the government.

The lack of ablution facilities appropriate to women's needs in the underground sections of the mines was another challenge. Some participants who had been in the industry for a substantially long period had experienced a slow improvement to facilities as basic as these, but problems remained. Equally, a lack of effort to invest in long term solutions that address odd working hours was also problematic. Irregular hours of work and night shifts automatically

[600] Section 9 of the Constitution of the Republic of South Africa, 1996.
[601] Section 9(3) of the Constitution.
[602] Section 51.
[603] This may have been asked in view of the nature of the job and industry but given that child bearing is a natural human process and also in consideration of the history of women in the sector and what the law prescribes, the participant was discriminated against at law. In the context of this study therefore, these are some of the issues that the law should protect to achieve substantive gender equality.

[605] Sections 4 and 15 Labour Relations Act 66 of 1995.

exclude many women from fully participating in the industry. As Lahiri-Dutt points out, long working hours fail to cater for women's other responsibilities outside work, such as family time, and negatively impact on their career choices.[606] Reflecting on some of these factors, therefore, one can understand why some participants' sentiments are that their presence in the industry is taken to be temporary.

'*We are treated as though we are only here (in the mining industry) on a short exercise and not permanently'.*

It also explains why perhaps none of the participants responded positively to the question of whether there were any advantages associated with their gender in the industry.

Also, as discussed in the legal chapter (chapter 4), the mining industry already had a fragmented system prior to the incorporation of women.[607] Racial classification was a major problem that influenced remuneration, promotion and other employment benefits. Accommodation, for instance, was allocated on racial basis with black males staying in hostels. Participants' responses revealed that many of the structural barriers and influences are still in place, except that they now play out differently because of gender. Women have been accommodated in the hostels, but the standards remain non-family oriented. They are single rooms with a shared bathroom and kitchen which Dikane and Meyersfeld criticise as a model of accommodation that is capitalistic and exploitative of the mine employees.[608] It requires employees (mostly black males back then and now women too) to be close to the mines to serve their masters and yet far away from their families. Women, in this case, may have been accommodated but the standard remained one, which was once used to accommodate men. This failed to cater for women's hygienic needs and their maternal roles as mothers. Some failed to live with their children because the space was not family oriented, nor could their salaries sustain another rented space.

Further, participants' responses revealed that, in some cases, it is actually those authorised and entrusted to enforce the law that obstruct successful and appropriate implementation. For instance, instead of punishing wrong conduct, such as sexual harassment, it is the victim that gets to be penalised. As a result, vulnerable female employees in this case were not only fearful of their perpetrators in the workplace but also nervous about seeking

[606] Lahiri-Dutt, & Macintyre (note 24 above).
[607] Chapter 4, paragraph 4.2.
[608] Dikane (note 27 above): Meyersfeld (note 23 above).

recourse through legal means. Importantly, most of them could not engage the institution's grievance reporting structures at all. This precisely captures Nussbaum's observations about women's lack of capabilities and their general experiences in their attempts to enter the world of work.[609] Due to the lack of support, protection and nourishment, that is provided to their male counterparts, they get subjected to physical violence and sexual abuse.[610] More so, women's low levels of literacy, professional and technical education aggravate their circumstances. Sadly, throughout much of these challenges, it is argued that too often they go without effective legal recourse.[611]

Boserup adds that, due to special benefits, women find themselves undesirable for employment especially in large-scale industries such as mining.[612] These include benefits such as maternity leave and other family responsibility related benefits. In a concurring view, Albertyn and Bonthuys point out on how women's reproductive roles and needs decrease their opportunities and desirability for economic participation.[613] This articulation of women's status in economic participation was demonstrated by most of the participants' responses. As stated earlier, for example, one participant was asked in an interview if she was 'done with child bearing' and was not given the post. Another one had an employment contract that totally excluded maternity provisions. She had to rely on her annual leave days to complete her maternity period. This reveals how women are treated as non-equals to men under the law resulting in their inability to exercise the same rights as their male counterparts. Rights such as to enter into contracts as well as the same rights to mobility, right to association just as their male colleagues.[614]

Overall, the interpretation and understanding of the idea of equality applied in most of the participants' companies assumes, at best, a formalistic approach. This is an approach that treats women as if they were the same as men, and that fails to disrupt power dynamics that are often taken for granted and yet, responsible for reproducing and maintaining inequality.[615] As Fraser postulates, formal equality is therefore devoid of concern for individual

[609] Nussbaum (note 142 above) 1-3.
[610] Ibid.
[611] Ibid.
[612] Boserup (note 132 above) 111.
[613] Albertyn and Bonthuys (note 117 above) 250.
[614] Boserup (note 132 above).
[615] Albertyn (note 124 above) 464: Albertyn (note 111 above) 256.

circumstances.[616] It fails to revalue what she calls 'disrespected identities' and their efforts.[617] In the end, this results in most women not being able to even enjoy formal equality in some cases. Where they have equal rights, they are treated unequally and undeserving of respect which results in a lack of appreciation of the existence of the very law that prescribes those rights.

6.6 Conclusion

In conclusion, there have been notable statistical improvements in the employment of women in the South African mining industry.[618] However, participants' responses showed that the industry actually lags behind in many areas in practice. The general pace and standard of transformation does not correspond with the figures officially reported. Also, given the length of period since the official incorporation of women, a lot more should have been achieved by now. At present, participants' responses show that women mine employees remain exposed to various forms of inequality in their participation in the industry. Their challenges include healthy and safety related concerns such as violence and abuse, ill-fitting equipment as well as infrastructural facilities that are not user friendly for women's needs. Most of them also remain excluded from actual participation and decision-making processes. Their maternal roles and responsibilities remain unrecognised resulting in a strained work-life balance due to irregular hours of work. Male dominance and racial discrimination are also still intact. Last, trade union biases in worker representation and the selective application of the law also promotes the lack of respect and legal protection of women as well as the law itself.

[616] N Fraser 'From redistribution to recognition? Dilemmas of justice in a'postsocialist'age.' (2020) *The new social theory reader* 188-196.
[617] Ibid.
[618] Facts and Figures, Minerals Council South Africa, 2021.

CHAPTER SEVEN

WOMEN RESIDING WITHIN MINE HOSTING COMMUNITIES

7.1 Introduction

The development of mine hosting communities is among the priorities of governments, actors in the mining business community (international and domestic), as well as some independent civil society groups. In the business community and at an international level, the International Council on Mining and Metals (ICMM) is one of the institutions that advocates for responsible mining.[619] The organisation lists a set of principles that mining companies must adhere to in order to contribute towards sustainable development.[620] Among these principles, human rights (principle 3), social performance (principle 9) and stakeholder engagement (principle 10) are pertinent to this study. These principles involve developing host communities, community consultation and respect for indigenous people's rights. Principle 10, in particular, requires that hosting communities be engaged or consulted about any mining operations to be done in their area. At a government level, as discussed in chapter 4, South Africa adopted international best practice standards into its domestic laws by reflecting these in its industry Charter, the Mining Charter.[621] In terms of this Charter, companies are required to consult with relevant municipalities, mine communities, traditional authorities and affected stakeholders.[622] The aim is to give communities an opportunity to participate in matters that affect them and to ensure that companies meaningfully contribute towards the development of their hosting communities.[623] One way of doing this is through collaboration on identified projects contained in approved Social and Labour Plans (SLPs).[624]

Since most of the mine hosting communities in South Africa are predominantly located in rural areas, the above principles can go a long way to support the development of hosting

[619] ICMM is a unique industry body of CEO-led leadership international organisation (with headquarters in the UK) that was founded in 2001 to improve sustainable development performance in the mining and metals industry. More information on the organisation is available on: https://www.icmm.com.

[620] ICMM. *Icmm Sustainable Development Framework; International Council on Mining and Metals*: London, UK, 2003; pp. 2–17. The ICMM Principles: 1 – Ethical Business, 2 – Decision-Making, 3 – Human Rights, 4 – Risk Management, 5 – Health and Safety, 6 – Environmental Performance, 7 – Conservation of Biodiversity, 8 – Responsible Production, 9 – Social Performance, 10 – Stakeholder Engagement.

[621] Mining Charter (2004 & 2018) (note 83 above).

[622] Clause 4.4 and 2.5 of the Mining Charters of 2004 and 2018 respectively.

[623] Ibid.

[624] These are agreements entered into between hosting communities and mining companies (published in English and a dominant language commonly used in the community). See chapter 4, Section 4.5.4.

communities.[625] According to Kinnaird, most mine hosting communities in South Africa are located on the Bushveld Complex[626] which runs across much of the country's communal land.[627] In some cases, this land is under the jurisdiction of traditional 'tribal authorities' whose communities have occupied the land for generations.[628] Yet, despite this wealth, many of the mine hosting communities continue to live in grinding poverty.[629] They are unable to benefit meaningfully from their mineral wealth due to a number of reasons which include the absence of SLPs. In most, if not all, the challenges experienced by mine hosting communities, women are among the most affected groups.[630] I suggest this because they are 'invisible, unrecognised, and unknown' even at those community-mining engagement platforms that exist.[631] In contrast, if principles of good governance (some of which are highlighted above) included within the law are complied with in exploiting and administering mineral wealth, there could be a positive impact on women and their communities. If carried out, infrastructural development and other basic amenities would substantially improve the lives of people resident in those communities, including vulnerable groups such as women.

This chapter reports on the findings of the focus group discussions that were held with women in mine affected or hosting communities (the terms mine affected and hosting communities will be used interchangeably throughout the chapter). As shown in the methods chapter, these were conducted in three South African communities that have hosted mining establishments for a substantial period of time.[632] The data collected is presented in an integrated manner according to the relevant thematic issues and it is arranged as follows. Section 7. 2, briefly gives a background and description of the three communities while section 7.3 provides a report and analysis of the thematic issues drawn from the participants' responses. Section 7.4 entails a part on the reflection and analysis of the chapter and section 7.5 concludes the chapter and sums up the findings based on the collected research data.

[625] Mnwana (note 503 above) 500-501.
[626] An enormous multi-layered, ore-bearing, underground rock formation that is rich in mineral wealth.
[627] J A Kinnaird 'The Bushveld large igneous province.' *Review Paper, The University of the Witwatersrand, Johannesburg, South Africa*, (2005).
[628] A Claassens and B Matlala 'Platinum, poverty, and princes in post-apartheid South Africa: new laws, old repertoires.' (2014) 4 *New South African Review* 116.
[629] Corruption Watch: Mining Royalties Research Report (2018): South African Human Rights Commission. (2017). 'National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa'.
[630] Sesele *et al* (note 194 above) 211-219: Mnwana (note 615 above).
[631] Benya (note 23 above) 545-560.
[632] A full description of the communities is provided for in chapter 3.

The following section describes the communities of the research study referred by acronyms such as NM, RC and PM for ease of reference.

7.2 Background and description of the communities

7.2.1 Community 1 (NM)

Community NM is a typical mine hosting community in the northern province of Limpopo. According to its ten participants in the focus group, the community has evolved over time from before mining activities commenced in 2001. The community is under female traditional leadership. An indication of the period of time that the community has lived on the land is a tribal community hall nearby, with '*established in 1952*' written on it. It is likely the community is even older than this. A group of elderly men and women sat close to its entrance, and were introduced to me as the regents of the community's female traditional leader. In addition, the participants, who indicated that they were born and raised in the community, were of advanced ages above their sixties. Livestock such as cattle, goats and donkeys (some in the care of young boys) were seen roaming around the neighbourhood. There are also a few formally built shops and spaza shops at different corners of the community. The community appeared to be quite large compared to the other two communities. It is estimated to be more than 50 kilometres from the nearest town, but within close range (approximately less than 10km) to the closest of the four mines that operated in the area. The community has gravel roads and fairly decent housing, although with a visible number of shacks. There are JoJo water tanks and other forms of water containers at almost every household in the community. Also, as shown below, each household has a rudimentary structure of a pit toilet.

The demographic information of the sampled participants in community NM is summarised in Table 7.2.1. Ten participants aged between 32 and 71 from the community participated in the discussions.

Biographical Variable	Category	Frequency	Percentage (100%)
Age	32 – 41	3	30
	44 - 58	3	30
	60 - 71	4	40
Race	Black African	10	100
Nationality (By birth)	South African	10	100
Marital status	Married	4	40
	Divorced	2	20
	Widowed	2	20
Number of children	0	1	10
	1-2	2	20
	3-5	3	30
	6-8	1	10
	9-11	3	30
Level of education	N3-Electrical	1	20
	N5-Business	1	30
	N6-Business	1	10
	No formal education	1	10
	Standard 4	3	30
	Standard 11	1	10
	Matric	2	20
Employment Status	All unemployed	10	100

Table 7.2.1 1: Participants' demographic data for community NM



Figure 1: Buckets of water refilling (0n 29/09/2021)



Figure 2: The state of roads in some of the parts makes the community inaccessible 15/07/2021)



Figure 3: Almost each and every household has a JoJo water tank (29/09/21)



Figure 4: Containers awaiting refilling (29/09/21)



Figure 5: Due to a lack of water residents still use pit toilets (29/09/21)

7.2.2 Community 2: (RC).

Community RC is also a typical mining community in Limpopo that is situated less than 10 km from the nearest town. This community too was already in existence when mining operations began in the area in 1997. Besides the participants' confirmation of this, there is also evidence of decent houses as in community 1 as shown in Figures 8 and 9. There is a primary school nearby with a sizeable number of children that seemed to be out on a break. Except for the main road that connects the community to the nearest town, the roads are poor and, in some places, these are just pedestrian trails used by residents to access the community. The community is fairly big in size, but smaller than community 1. It is also located not far from the closest mine as the operations were visible from the venue of the discussions. Unlike community 1, this community is not under traditional leadership and participants indicated being under the leadership of a councillor. Although in the same province as community 1, this community is approximately 60 to 70km away from community NM.

The focus group consisted of seven participants, the oldest of which was above 50 years, and indicated having been born and raised in the community which also shows the period of time that the place has been occupied. This information is captured in the biographical Table 7.2.2 below.

Biographical Variable	Category	Frequency	Percentage (%)
Age	24 – 25	1	20
	31-37	2	30
	41 - 71	4	40
Race	Black African	7	70
Nationality (By birth)	South African	7	70
Marital status	Married	5	50
	Single (Never married)	1	10
	Widowed	1	10
Number of children	0-1	1	10
	2-3	3	30
	4-5	1	10
	6-7	2	20
Level of education	Grade 11	4	40
	Grade 12	2	20
	No formal education	1	10
Employment Status	All unemployed	7	70

Table 7.2.2: Participants' demographic data for community RC



Figure 6: Water scarcity has resulted in water rationing and each household waits for its allocated slot for refilling

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Figure 7: Different forms of pit toilets are used due to a lack of running water

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Figure 8: There is a JoJo water tank and a pit toilet in almost every household in the community. There are visible signs of electricity connections but the community has not had electricity for over five years

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Figure 9: A feature visible in almost every household

7.2.3 Community 3 (PM)

Community PM is in Rustenburg, North West province, and differs from the other two communities in several ways. First, it is an informal settlement that evolved after the establishment of mining operations in 1990. Some of the participants that had arrived earlier in the area indicated that the place was initially a farm. Second, most of the participants came from different parts of the country such as KwaZulu-Natal, the Eastern Cape and around the North West in search of economic opportunities. Third, most of the housing structures are informal structures built from corrugated iron sheets (shacks) with poor service delivery. Although this is a feature in the other two communities too, in this community there are no basic services, such as running water and electricity at all. The community was established right next to the mining operations as these were visibly close to the discussion venue, perhaps less than 5km, as shown. The community has its own informal leadership structures which it

preferred for engagements related to its affairs. There was, however, a councillor appointed by the municipality to lead the community. Participants stated that he (the councillor) is not recognised by the community as their leader because he does not reside in the community and, therefore, is not exposed to their daily challenges.

There were 11 participants from this community, of which 5 were men.

Biographical Variable	**Category**	**Frequency**	**Gender** **F**	**M**
Age	24	1		1
	27	2	1	1
	28	1	1	
	34	1		1
	39	2	1	1
	43	1	1	
	45	1	1	
	60	1		1
	70	1	1	
Race	Black African	11	6	5
Nationality (By birth)	South African	11	6	5
Marital status	Married	4	2	2
	Single	6	4	2
	Widowed	1	1	
Number of children	0	2		2
	1-2	4	4	
	3-4	1	1	
	5-6	1	1	
	7-8	1		1
Level of education	Standard 5	2	2	
	Standard 6	1	1	
	Standard 9	1	1	
	Grade 10	1	1	
	Grade 11	2	1	1
	Grade 12	2	1	1
	NQ 6	1	1	
	Master's Degree	1	1	
Employment Status	All unemployed	11		

Table 7.2.3: Participants' demographic data for community PM



Figure 10: The only type of housing available in the community at the time of the interview



Figure 11: The shacks are built quite close to each other



Figure 12: Some of the residential structures are within close range of the mining operations



Figure 13: Poor road network, overcrowded shacks, no sanitation, water or electricity

7.2.4. Overall description of the communities.

As described above, the communities evolved differently and this information is important to the study. It reveals the different levels of impact caused by mining operations on the communities as a whole and women in particular. For instance, in certain parts of community NM, relocations had to be done, despite their lengthy residence in the area, to pave way for mining operations. Some of the participants in other communities did not go through this experience. For women, this is one form of the multiple gendered impacts of mining-related challenges because the burden of relocations mostly fell on them compared to other members of the community. As primary care givers, for example, the challenge of water scarcity, finding new schools for their children, among other things in the newly relocated compounds, are women's responsibility.

Further, community NM is under the leadership of a tribal authority led by a female traditional leader and the other two communities (PM and RC) are not under traditional leadership at all. However, they do have their own informal leadership structures that they recognise for purposes of community engagements. This is important to highlight as it brings out different forms of power that are at play in so far as women were concerned. It also reflects on how leadership structures affect women's participation in the communities. This is discussed in more detail under the thematic issues. Also, the fact that one community is under female traditional leadership is particularly important to the study. Customarily, it is usually men that reign as traditional leaders in most black African communities. Therefore, a female leadership in this context is pertinent to exploring whether women's participation in the industry is any different from the norm.

All communities have at least two mining companies extracting different minerals in their vicinity. Community NM, for instance, has at least four mining companies operating on its tribal land including a government mine. Yet, according to the participants (including their traditional leader), none of the mining companies has a Social and Labour Plan with the community. Participants stated that, in some cases, the companies only made verbal promises that '*they were going to develop the area'* and *'bring jobs'*, but these were never formalised, nor did any of the companies follow up to honour their promises.

Further, all the participants are black African women who stated that they found their race as an additional source of disadvantage, especially in their access to basic services. They stated that their communities have not been developed because they, as black African women, are

treated as less worthy compared to other racial groups. According to them, in mining communities, there are places that are meant for mine bosses and their families and these are well serviced and developed. To the participants, this meant that they are viewed as less important than the women resident at the mine bosses' suburbs. This was particularly emphasised by participants from community PM who argued that:

'*Our surroundings are poorer when compared to the other sections of the neighbourhood where women of other races live'*.

They supported their argument by referring to examples such as not having any schools nearby for their children. The instinct to compare themselves to women of other races in the community highlights these women's intersectional disadvantage. It exposes how race and class (among other factors) differentiate women from each other and, in the end, determine the kind of services a particular group or category of women receives.

The photographic images provided for each community above portray some of the unique challenges experienced by women in the three communities. As already highlighted, the images describe common features that are visible in almost all the households during the data collection. They include JoJo tanks, empty drums and other forms of water containers waiting to be refilled. Due to a lack of running water, the ablution facilities in use are still the rudimentary pit toilets. In communities NM and RC, for instance, most of the houses are fairly decent but, in community PM, accommodation was in corrugated iron makeshift shacks. The informal structures are also built closely together and linked by poor pathways and dusty roads. Some of the communities also appear to have access to electricity by evidence of connected electric poles. Yet, in community PM, participants expressly stated not having had electricity for the past five years.

7.2.5 Summary and comparison of Participants biographic data

Age: Based on the biographic data presented above, participants from community NM comprised a high number of the middle to elderly aged persons. The other communities had a few participants above the age of 50, but were mostly dominated by younger people who were in their mid-20s, late 30s and 40s. The differences in participants' age group exposed different priorities, interests and expectations that women (and men in community PM) had in respect of mining companies. The younger participants, for instance, expected employment opportunities while the elderly prioritised infrastructural development such as schools, health

care centres, road networks and clean running water in their homes. For example, elderly participants from all communities (those that were born and raised in the communities) mentioned having experienced the challenges of poor service delivery for a very long time and wanted change. Thus, the more advanced in age the participants were, the more advantageous they were to the study as they provided a deep well of knowledge about the subject under scrutiny. In other words, with age also came the maturity and appreciation of attending community meetings (NM) despite being excluded based on gender. Age differences also strongly reflected how the political environment in which the different generations grew up shaped their views towards public participation.

Family: The family size distribution across all the communities was small with a few participants in the advanced ages having bigger families of between 9 and 11 children. The largest number of participants had a family size ranging between 0 and 2, followed by those with family size ranging from 3 to 4 children. It was mostly women in the mid and late 20s that accounted for a fewer number of children which might have been attributed to levels of education, exposure, cost of living, care giving roles among other factors.

Educational level: The study also solicited the educational level of the participants in the three communities. Data shows that the majority of the participants held grade 10 and grade 12 certificates. A total percentage of 26% had between Standard 3 and 6 educational level (largely primary school). About 18% of the participants possessed NQF Level between 1 and 3.[633] It was discovered that about 9% of the interviewed participants had no formal education. Only 4% of the participants had either an undergraduate degree or a master's degree. Some even held master's degree and certificates in technical fields such as chemistry and being an electrician respectively. While women's illiteracy or lack of formal education has been identified as the major source of their exclusion in the economy, in these communities most of the participants could at least read and write.

Employment Status: All the participants across all three communities were unemployed. This could have been attributed to a number of factors which included being in a rural setting where employment prospects are very limited. The skills that some participants held might also have been irrelevant to service their local economies.

[633] NQF refers to National Qualification Framework (NQF) which are divisions in the South African educational qualification system consisting of 10 levels divided into three bands. Levels 1 to 4 equate to high school grades 9 to 12 or vocational training, 5 to 7 are college diplomas and technical qualifications, 7 to 10 are university degrees. Higher Certificates and Advanced National (vocational) Certificate.

Race: All the participants were of the black African race. Race is important in this case for the description of the communities because all the three communities predominantly comprised black African women.

Marital Status: As presented in the graphs above, most participants were married, with a few who were unmarried. Marital status was included to give a sense on whether marriage (and other associated factors) differentiates women in mining hosting communities' circumstances or not. This also helped in assessing if there were any women-headed households, of which they were a few across all the communities. I now turn to a discussion of the themes of the research.

7.3 The themes that emerged in the focus group discussions.

At least ten questions were put to the participants to solicit their views on certain issues and most of their responses resonated with each other and across the different communities. Questions included women's expectations and levels of participation in mine-community related engagements, as well as the effects of mining on the communities. The aim was to establish how they were affected by mining operations as women, the extent to which they were able to engage stakeholders to address their problems, and whether their challenges were different from the rest of the community members. Given that the interviews targeted women only, this might have been difficult to ascertain. However, from the responses given by participants in communities NM and PM, most of the results suggested that women have unique challenges in relation to the rest of the people in the communities. Six of the ten participants from Community NM were representatives of different groups of people in their communities.[634] As a result, this exposed them to diverse issues in the community. For example, besides living with a disability, one of the participants also represented the disabled people in her community. Her testimony was therefore not only from a personal experience but also from what she was exposed to through other disabled people in the community. In community PM, the males that had joined the discussions also confirmed that women's challenges in their community were different from theirs and the rest of other residents as shall be shown in the discussions below.

[634] Among the participants, 6 represented the following groups in the community. The disabled, the youth and orphans, the widows and elderly, women entrepreneurs in the community, there was also one that represented the whole community at national level on community related issues especially those that involved mining. Last, women and child headed homes.

The researcher also sought to establish if participants were aware of any Social and Labour Plans (SLPs) that existed between their communities and local mining companies. Where such were in place, how many there were, how these were implemented and so forth. Based on their responses to these questions, the researcher asked about the possible strategies that they would recommend and whether these would include the use of the law. Some were for a legal solution while others were not but, overall, at least eight themes emerged and these are discussed below.

7.3.1 Consultation, participation and Social and Labour Plans (SLPs).

Good governance and participatory democracy are pertinent to transformation and sustainable development. However, their achievement requires among other things effective consultation, which promotes meaningful participation and recognition of those sought to be empowered. These concepts all advance sustainable development in their own diverse ways. Generally, consultation would involve engaging those affected by prospective operations to make submissions regarding a particular matter. In mining, consultations are required for, among other things, developing Social and Labour Plans to guide mine-community development between companies and communities. In *Baleni's* case,[635] for example, the court pointed to several pieces of legislation to emphasise the importance of consultation and participation.[636] For the historically disadvantaged, such as women, this is particularly important to give them a voice in matters that affect them.

Although none of the companies at the time of the interviews were applicants for prospecting or mining rights, the MPRDA however calls for mandatory consultation with affected parties prior to obtaining such a licence.[637] Section 10 of the Act in particular requires that 'consultation with interested and affected parties' be conducted by calling upon such persons to submit comments regarding the application of a mining right within 30 days of such notice.[638] In addition, Regulation 46 of the Act further requires that applicants of mining and production rights develop and submit a Social and Labour Plan (SLP) after consultation and in full cooperation with affected stakeholders.[639] At the time of the interviews, participants stated

[635] *Baleni and Others v Minister of Mineral Resources and Others* 2019 (2) SA 453 (GP).
[636] Section 6 deals with 'Principles of Administrative Justice' in terms of the Promotion of Administrative Justice Act.3 of 2000 (PAJA). Section 24 of the Constitution of the Republic of South Africa, 1996. Section 2 of the National Environment Management Act.107 of 1998 ('NEMA').
[637] Section 16(4)(b).
[638] Act 28 of 2002.
[639] Ibid.

that none of the mining companies in the area were applicants of prospecting or mining rights. It is however not clear how the companies managed to continue to operate in the area for years without SLPs. According to the Guidelines for the submission of SLPs, a holder of a mining right or mining permit, or the manager of any processing plant operating separately from a mine is required to submit to the Director General an annual report.[640] The report must provide details of the extent of the holder's compliance with the provisions of section 2(d) and (f) of the MPRDA. These provisions require that the mining right holder demonstrate a substantial and meaningful expansion of opportunities to the HDSAs through employment creation and the promotion of social and economic advancement of all South Africans.

Yet despite, the Act's emphasis on the importance of consultation to empower parties to make an informed decision, some participants in some communities had never been effectively consulted. Except for participants in community PM that said they had never attended any consultation with mining companies, those from communities NM and RC mentioned having attended some although these were said to be very generic (some said sometimes companies just came and made a lot of promises which did not materialise). Participants from both communities however did not deem these as effective for purposes of making informed decisions. Sometimes the consultations were not aimed at effectively consulting with them on issues of mutual interest. Instead, as one participant in community NM stated, they were meant to '*tell us on what they (companies) wanted to do in our communities'.* In this regard, participants did not regard such meetings as consultations as they were imposed on them.

7.3.1.1 Absence of meaningful participation.

Participation is one of the key tenets of a human rights-based approach to development. According to Pioversan, the concept advocates for democracy in the involvement of the vulnerable groups in society such as women.[641] Through inclusion, non-discrimination and taking the human person as the central figure in development, it is argued that the vulnerable, such as women, should be enabled to find a voice in developmental engagements.[642] Yet, based on the participants' responses many of them had never actively participated in SLP related consultations. As mentioned earlier, participants' responses suggested that there were different

[640] Guidelines for the Submission of a Social and Labour Plan as required in terms of Regulations 46 of the MPRDA.
[641] F Piovesan 'Active, free and meaningful participation in development' in *Office of the High Commissioner for Human Rights, Realizing the Right to Development.* (2013) 25.
[642] Ibid.

types of consultations which included very generic ones. According to participants from some communities (NM and RC), these mainly consisted of introductions wherein new mining companies came to introduce themselves in the communities and, very often, this was normally the first and last time they were seen by communities. Participants stated that these did not involve any formal promises except the verbal promises made by companies on how they were going to develop the area.

Participants from communities RC and PM, in particular, indicated not having participated in any mining related community meetings. While their reasons varied, in community PM, it was because such was apparently never held at all. In community RC, the information around the meetings was not timeously, and often incorrectly, disseminated to them. Those that had attended to the meetings, in community RC, indicated losing interest after a once-off attendance. They argued that some of the meetings ended up turning into political arguments rather than community developmental engagements. Some stated that they stopped upon realising that most of the gatherings yielded nothing in terms of their expectations. Younger participants (between the ages of 21 and 35) hoped to find employment and those in advanced age groups (40 and upwards) wished for business opportunities.

Participants from community NM had all attended at least one mining related meeting. However, they did not perceive these to be meaningful engagements for a number of reasons. The meetings were one-sided as the mining representatives came to tell them about their intentions for their community. They therefore argued that the process was an imposed initiative which did not aim for mutual agreement. As such, they found the exercise less of a consultation as it did not accommodate inclusive participation.

This was collaborated by their traditional leader who also added that, without any formal and mutual agreement, she found it difficult to consider the verbal promises as SLPS and, subsequently, to pursue recourse over failure of implementation. Thus, being in a position of leadership, she contended that that she accounted to the people and therefore could not commit her efforts to where the people she represented were excluded. In practice, such ethical conduct to respect the office she represented and its role is commendable. The decisions she made in her official capacity on behalf of her community determined whether those she represents enjoy their right to equality or not.

Participants also raised concerns around the limited interpretation and understanding of the term participation. They argued that the narrow interpretation implied engaging in talks but

did not extend to mean the fair engagement of women in mining empowerment opportunities. They wanted to be involved in employment and any entrepreneurial opportunities promised by the mines in the meetings the same way men did or at least on fair terms. Opportunities should not be based on connections and unfair advantage, such as paying bribes or misrepresentation of information, which was often the case. However, for this to happen, appropriate recognition and information were key and, without these elements, women lacked the ability to make informed decision which exposed them to numerous incidents of vulnerability. In community NM, participants gave an example of how some women were exploited in a land negotiation deal that was conducted on behalf of one local mine.[643] Some women, including widows, lost their land because they lacked sufficient information to explore their options. Victims were also taken advantage of because they could not read and write. As participants argued, they may not have title deeds to their land as rural residents, but they have their own way of demarcating which piece of land belonged to whom. Therefore, had they been properly advised, they would have considered better options such as leasing the land rather than selling it for an amount inconsistent with its actual value. Consequently, many participants argued that meaningful participation was impossible when and where fundamentals, such as appropriate recognition, were not observed.

7.3.1.2 Non-recognition of women in mine related consultations

Participants stated that community engagements were normally held by representatives of mining companies and the community local leadership. However, just like any public meeting, these are also open to anyone interested member of the community. Participants that indicated having attended some of the meetings said that these were often informal and once off meetings as they were often done by new mining companies that came to introduce themselves in the area. In most of these meetings, participants raised the lack of recognition of women as one of the challenges. In fact, their responses suggested that although most of them attended meetings, none of them have had an opportunity to meaningfully engage. They alleged not having received the same recognition as their male counterparts. In other words, their contributions to the discussions was often never taken into consideration, while those men were. This was collaborated by the traditional leader in community NM. Despite her role and position in the community, she claimed that at one meeting she ended up recusing herself when she realised

[643] A Consulting Firm (Naledi Initiative) was reported to have come into the area and negotiated to buy land from the women in the rural areas for something the participants say was not a fair bargain. They preferred leasing the land rather than selling but they were not informed on the long-term consequences.

that her views were not being taken into account by the mine executives as well as by some of the males from her community.

Furthermore, a rural setting also symbolises dominance of one culture in one area, compared to multiple cultures in urban areas. In a place where there are multiple cultures, there is often a cultural interchange that potentially defuses the dominating one. Although, these were mining communities where people of different backgrounds came to live together, the participants came from traditional black African communities. Most of them upheld patriarchal and cultural practices as part of their value system. Culturally, women cannot address men in public which meant that they could not freely participate in a space where there were men. A good example of this was community PM which had a number of men among the participants. Comparing the liberty in participation between participants, communities NM and RC were more relaxed and jovial than the participants in community PM. In the latter, the men were more vocal about women's challenges in their community than the women themselves. The presence of men among them was, therefore, a huge limiting factor to their participation.

In addition to the above point, culturally, women are subordinate to men, and this means that men (as heads of the household) make decisions for the family, unless there is no adult male in the home. Participants from all the communities indicated feeling caught up in the politics among men. At community meetings for instance, they pointed to how local residents were divided on strategic issues when engaging with mining representatives. The divisions often stalled any projected development while communities fought among each other. Meanwhile, mining operations continued unless the protests were directed at mining companies. In the long run, as women, participants indicated how such disputes affected them since they are expected not to oppose the decisions that men make in public or at all.

7.3.1.3 Lack of and implementation of SLPs

While consultations may have taken place in some communities, all the participants stated that no Social and Labour Plans were concluded in their communities. Some of the responses in communities (PM and RC) suggested that participants had no knowledge of what SLPs were and the purpose thereof. This was partly due to the lack of cooperation from the mine management whom, despite the efforts to set up meetings, did not honour commitments to attend the meetings. In some cases, whenever a representative came for general consultations, they stated that such a person was often unqualified to address their concerns. Sometimes, the appointed official would not have a background on the matter or would be a junior who could

not make any decisions over the issues raised. In Community NM, for example, it was difficult to obtain a meeting date with mine management for purposes of discussing SLPs. The representatives either never came at all or postponed dates indefinitely. In some cases, the only commitments made were informal promises such as:

'*We are going to develop the area when we start operating*'.

Therefore, since these were not officially reduced to writing, participants were not sure if they sufficed as legally enforceable SLPs.

Further, in communities where general meetings were held, participants refused to acknowledge the informal promises as SLPs. They claimed that these were imposed on them since they were mostly not need-based forms of empowerment. In Community NM, participants cited an example of water purification plants that the local mines promised to build. While a few of them were built in some areas, not all of these were working as the project was stopped and they did not know why. In communities NM and RC where skills development programs were introduced, participants alleged these to be incompatible with what the communities required to be economically independent. Most of the courses that were offered to their children were either at an introductory level or on issues that never materialised into anything of benefit beyond the training. Their responses generally confirm the non-existence of operative SLPs in all the communities.

While the participants' concerns around SLPs were noted, the researcher observed that most of them were not expressly asking for women-centred agreements. Instead, they tended to put the welfare of others before themselves, especially their children. This concurs with Bonthuys's view that central to women's gender identity is an altruistic and selfless nature.[644] In most black African communities, this is anchored in the belief that what affects my loved ones affects me too. Thus, as anchors of many households, women play multiple roles to different people in the family. This results in them advocating for forms of gender equality that tend to benefit others more than themselves. Sadly, in so far as this is naturally interwoven with their biological role as mothers, it is also the source of their oppression.[645]

[644] Bonthuys and Albertyn (note 117 above) 248-249.
[645] Barnett (note 1 above) 5; De Beauvoir (note 129 above) 45.

7.3.2 Gendered effects of mining.

Most participants claimed that certain mine related challenges were shared with others in their community. The difference lay not in the nature of the problems but in their differential effects on different people in the communities. These included the scarcity of water and domestic sources of energy, unemployment, the socio-economic impact of migrant labour as well as disruptions to their way of life. As a necessity, everybody in the community needed water to survive but it was mostly a challenge that affected women rather than men. They are the ones responsible for ensuring its availability in many households, especially now that such was no longer within reach as it was before mining operations started. In community RC, participants mentioned that some households had male family members who were employed and thus could afford to buy water. However, as most of the participants were unemployed and some came from female-headed households, they were compelled to walk long distances in search of water.

The deforestation caused by mining operations also resulted in domestic sources of energy, such as firewood, to be scarce. It was also the women and young girls who risked their safety, and even their lives, going up mountains in search of firewood. One participant from community RC was an elderly woman who could not walk long distances anymore. She requested neighbours to go with her 6-year-old girl grandchild to fetch firewood to a distance that took almost three hours to walk there and back. The child was not only vulnerable in the short term, but also suffered possible life altering circumstances in the long term as she had to miss school on some days because her feet were sore.

Participants also mentioned the challenge of high unemployment among the youth as the mining companies mostly employed ‘foreigners’. In this context, foreigners were both South African citizens from outside their communities and non-South Africans from outside the country. Among the participants were different age groups who spoke of different aspirations and expectations. Their age groups meant that they were at different stages of life, with the youth expressing how they wanted to explore different careers. Employment opportunities would expose them to different skills and networks. The older generation, however, preferred projects from the mines. When unemployment in the community is high, everybody is affected. It is, however, of greater concern to women because they are mostly on the receiving end of the social ills unemployment begets. In particular, it results in high levels

of crime in the community, such as violence, which affects their safety as the most vulnerable group.

Participants were also concerned about the disruptions that mining operations caused to their daily and general way of life. Some complained about the noise pollution that affected their children while studying. Some participants in community NM, for example, did not have electricity at home nor were there public libraries their children could access, resulting in the children studying at home during the day. During school examinations, the noise was unbearable making it difficult, if not impossible, for their children to concentrate. This was a particular challenge because, if their children failed in their studies, it was their responsibility to find the resources to enable them to repeat their grades. In addition, their houses were cracking and threatening their safety and that of their children.

As stated earlier, some communities had experienced dislocation to pave way for mining operations and this required residents be relocated. This was a challenge for many women as the assessment for the relocation process was not needs-based. The compensation awarded to most of them did not fully cater for their needs. For instance, some were primary care givers to children and the elderly who used mobile aids such as wheel-chairs. It was therefore difficult to adjust to small compounds where their children could not play freely as they could in their original homes. Some were also women-headed households that struggled to find the manpower to establish new homes of the same standards as their original homes. This made them feel unaccommodated as women as the model of compensation failed to take into account their different needs.

Some participants also found their cultural way of life to be disrupted by mining operations. They could not continue to practise and pass on certain cultural aspects of tradition to their children due to dislocations. As one participant in community NM reiterated, it is not only their land that they lose at relocation, they also lose their cultural identity. Thus, for cultural and religious purposes, there are certain practices that can only be performed at demarcated places and during specific seasons. Besides, from a black African perspective, they are very involved in raising families which becomes their responsibility to pass on their cultural practices to their children.

7.3.2.1 Gendered impact of mining operations: Water and energy problems associated with mining operations)

Water pollution emerged as the main environmental hazard associated with mining operations in the identified communities. As shown in the photographic images of Communities NM, RC and PM above, almost every household had a water tank, buckets and containers piled together for refilling. All the participants attested to this being more challenging for women than everyone else in the community. This is because women are responsible for most of the primary care duties that involve child-care, and other high water and power consumption chores such as laundry, cooking, washing dishes etc. Water, in particular, was found to have been a mining-related problem as, before the mines came, participants pointed to the fact that they had reliable sources in the form of rivers. Participants from community NM, for instance, argued that when the first mining company came into their area it made verbal promises to build a water purification plant that was going to draw water from the dam and distribute it into households. In their testimony, the first general consultation took place in 2003 and by the time of the interview in 2021 this had not materialised.

Participants from Community RC also added that the problem of water in their area was caused by mining operations which use large volumes of water. In their opinion, local rivers had run dry leading to the water rationing that they were experiencing to a point of having to buy water from neighbouring communities. In collaboration, participants from community PM also argued that their community was agriculturally based prior to mining taking over.

Some of the images showed electrical power connections linking households to main power points yet some households still did not have electricity. The lack of a reliable and affordable source of energy in the community was a huge challenge for women. For the same reasons as water, they too are responsible for domestic duties that require the use of energy such as cooking. Participants accredited this to mining due to the deforestation caused by mining companies in paving way for their operations that demand vast land use. As reflected in the participants' biological data, each group of participants had elderly women among them, who were at least above the age of 60 years and who were taking care of grandchildren. One participant from community RC expressed how difficult it was for her to walk long distances for both water and firewood.

The lack of proper drainage systems for mines whose operations ran through community residential areas, such as Community PM (as seen in photo CPMI.3), caused challenges during

the rainy season. Participants from community NM pointed out that water flowed through mining drains into people's homes and nearby water bodies. Such water affected the water table that serviced nearby water bodies. This resulted in pollution, making the water unfit for domestic and animal consumption. In some of the communities, participants also complained about noise pollution that was causing cracks to their house due to the mining operations in the area. In community NM, participants raised concerns around loose stone pebbles that fell from mining operations and affected their safety.

'*There were no safety barriers in place to safeguard our houses or even ourselves from the loose stones'*.

In addition to this, was the issue of sinkholes and other un-rehabilitated mining structures that posed a danger to children. Due to their maternal roles, therefore, women always found themselves on the receiving end of the negative consequences of mining. As one participant reiterated:

'*When houses are not habitable anymore, we are the ones that worry about the safety of everyone in the home'*.

7.3.2.2 The socio-economic effects of the influx of migrant labour on local communities

The influx of migrant labour was a challenge for some of the mining communities. Communities reported that as more people flooded small communities for economic opportunities, certain social ills also thrived. Besides rising levels of unemployment, for instance, prostitution and drug abuse exacerbated various criminal activities. They fuelled gender-based violence and destroyed marriages and families rendering communities unsafe particularly for women and children. As primary care givers, participants cited how women were on the receiving end of raising children born from teenage pregnancies. They also felt the brunt of the effects of such behaviour through caring for persons with HIV/AIDS.

Also, the competition for few employment opportunities strained relations between local people and non-locals. Besides, as the less preferred for manual labour in the mines, participants also complained about being excluded from employment opportunities. Since the interviews were conducted during the Covid-19 pandemic, this could have been also caused by the temporary closure, downsizing and retrenchment of some of the mining companies that operated in their areas as some participants stated. Also, by virtue of being in a rural setting, most participants did not have the work exposure or technical skills required by the mines. This

meant that their opportunities for participation were limited, perhaps mostly to manual labour. As a result of the labour intense nature of mine operations, their opportunities for employment by the mines were extremely restricted compared to those of men. In addition, one participant in community PM that held a Masters' degree in Chemistry claimed to have been struggling to get an internship from the mines, while a certified electrician in community NM also could not secure employment from the local mines.

7.3.2.3 Limited access to basic public services such as health-care services, water and sanitation

The quality of economic infrastructure such as road networks in any community opens up access to other social services and welfare. The roads and power connections in all the communities were of a poor quality, as shown in the images. The roads comprised dusty gravel in many areas such that access by emergency services was restricted especially during the rainy season. In Community PM, participants described how one woman ended up experiencing pregnancy complications when the ambulance could not reach her in time. Also, with medical facilities only located at some distance from the community, many women were unable to access reproductive health-care when needed. In addition, with schools being far away, participants in this community carried heavy the burden of escorting children to school. The shorter routes often passed through bushy and secluded areas that were not safe for grade R children on their own.

Also, without running water, all the communities made use of pit toilets and nearby bushes. This was a hygienic challenge that affected everyone in the community, but it had varying impacts on women. The responsibility for watching over the safety of young children when using such facilities largely lay upon them. Also, as some of them indicated, their primary care role was not only restricted to children. Some had disabled relatives in their care whose wheelchairs and other mobile aids were not compatible with this kind of facilities. Therefore, to get appropriate and adequate services, participants indicated that they had created their own community representative structures. However, mining companies preferred engaging the local municipality for any development related issues, which was against the community's wishes. They were opposed to anything that involved the municipality because the councillor in their area was imposed on them. They claimed that that he was not resident in their area and was very detached from their daily realities. Besides, the avenue preferred by the mines, i.e. the municipality, was not capable of delivering on their demands.

The Municipal Systems Act provides for the rights and duties of members of the local community and, among these, is the right to contribute to the decision-making processes of the municipality.[646] Members can also submit representations and complaints to the municipal council or its authorised political structure.[647] Importantly, the municipality is described as an administrative political structure that represents the government at a local level.[648] Participants in all the communities raised concerns around many issues that they have with local mines in relation to local government. In Community PM, for instance, participants indicated that the mines prefer engaging them through the local municipality and not directly with them (through their own structures). As an informal settlement the mines could be fearing that its evolution falls outside the council's town planning demarcations.[649] Thus, to avoid any legal challenges in the future should the community be occupying unauthorised land mining companies probably preferred that such be initiated by the local municipality. Likewise, in community NM, the traditional leader experienced similar challenges with one government mine operating in her area. As the participants in her area collaborated, the channels of communication chosen by the mine management (which was through the municipality) often did not represent their interests.

7.3.3 Indifference towards the law to resolve their challenges

The law generally serves as a tool to regulate behaviour by setting rules, guidelines and penalties where there has been a contravention. If used objectively and in the right circumstances, it can be a useful resource to correct inequality. However, due to its past as a tool of oppression, many people may still find it difficult to trust the law as a tool for change. Accordingly, participants were divided in their views on whether the law was the best vehicle to address their challenges. The majority, which did not favour a legal solution for most of their problems, provided a number of reasons that related to a lack of trust in the law, the slow pace of judicial processes and procedures, as well as the lack of resources to appoint attorneys to represent them. In community NM, for example, the responses showed that they had more respect for their tribal rules and cultural protocols and structures than the conventional justice system. As one participant stated:

[646] Section 5 of the Municipal Systems Act 32 of 2000.
[647] Ibid (5 (1) (a)(i), (ii).
[648] Preamble to the Act (32, 2000).
[649] The researcher only speculates this based on the fact that one of the participants stated that he arrived from the Eastern Cape in 1978. There could be another (proper) reason why the municipality has not yet provided the community with basic services such as piped water, electricity and proper roads.

'*Our mother (Queen) is the one that can advise if we need to take that route (legal solution) or not*'.

Most participants from other communities also collaborated on their dissatisfaction with the law as they thought that the law was meant to oppress them. It took some of them back to the country's past where the law was used as a tool of oppression. As the leader in community NM expressed herself:

'Given all that we have been through (as black people), we did not expect our own to treat us like this'.

To illustrate her point, she argued that if government could not adhere to its own laws (through its own mining company), how were they going to as ordinary citizens?

The other reason participants did not support a legal solution is because they do not have faith in the independence of the judiciary. To some, the state and the law were one and the same thing and they were sceptic of its ability to deliver justice for them. They also argued that the lengthy legal processes were too slow and ill equipped to address their problems as they needed urgent solutions. Besides, with policies such as the Mining Charter already in place, some wondered what else needed to be done for them to see positive results. Moreover, participants from communities NM and PM refused to be engaged through local municipalities because they saw these to be part of the law. They found their community structures to be more reliable and more likely to work in accordance with their interests than a government institution established by the same law they did not trust. Participants from community PM also referred to an example where the municipality imposed a councillor on them who did not reside in their area. This action made them suspicious of how the law works and resulted in their mistrust in the ability of government institutions to bring about justice for them.

Some of the participants did not advocate for a legal solution because they lacked knowledge around their rights and the legal institutions available to them. As was evident in their responses, they lacked a full understanding of what SLPs were and what purpose they served. Although the long-standing water problem and other challenges could have given rise to delictual claims against the mines in all the communities, none were forthcoming.[650] Instead,

[650] To get a sense on whether the participants were aware of what was happening in other communities in the country around mining related issues, I asked them about the Xolobeni community and its long standing legal battle with the mines. They were not aware of it but they all showed interest to know what was happening and how they could be linked to such communities or any other communities experiencing similar situations around them. They wanted to draw lessons were there similarities and be empowered through other women's experiences.

they expressed a sense of hopelessness over the damage in their communities as a result of mining operations. They expressed fear and anxiety over pursuing mining corporates for redress and did not seem to realise that they might have rights in the circumstances. In addition, for some participants the lack of action was due to limited resources and fear of victimisation from other community members that were benefiting from the mines, especially men, as was shown in community NM.

In contrast, the few that still trusted in the law found the lack of implementation and enforcement to be the problem and not the law *per se*. They argued in favour of laws and policies such as the Mining Charter and argued that it was implementation that was lacking.

7.4 Reflection and Analysis

The term 'community' is generally an umbrella word that covers diverse groups of people from different backgrounds. Depending on the contextual use, it is conveniently used to collectively identify a group of people that is geographically located within the same area or close to each other. The MPRDA's definition describes a community as 'a coherent, social group of persons within a district municipality as defined in the Local Government: Municipal Structures Act 117 of 1998, with interests or rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law'.[651] This means that different groups sharing the same values can exist within a community, but their interests and priorities may differ. Accordingly, mine hosting communities are a constituency of different groups of HDSAs who include black men, women, the youth and the disabled. In these groups are further sub-divisions and in the case of women, for instance, are young girls and the elderly whose interests may, again, differ.

As seen from the participants' responses above, apart from age, women may also have different cultural and religious beliefs that define their worldviews, future plans and career paths. Thus, instead of using the collective view of 'community' in determining what the SLPs or mine-community partnerships should include, the MPRDA and other related laws should specifically categorise women in communities as an independent group whose needs are distinct from that of the general 'community'. For example, the preamble to the MPRDA emphasises the economic empowerment of rural and local mine hosting communities through

[651] Second Amendment to the MPRDA (2014): Mnwana rejects this definition as unable to capture the complex character of the struggles experienced by mine hosting communities at village level.

consultation[652] and reaching consensus with concerned communities in developing SLPs.[653] Yet, in practice, women are technically invisible in the decision-making processes particularly in issues that should be of utmost interest to them. As Benya argues, while the world was outraged over the gruesome massacre of the Marikana mine workers, very little attention was given to the women who supported them with domestic duties on daily basis.[654] By this, she highlights the invisibility of women's contribution to the economy, which has gone unnoticed and financially unrewarded for a very long time.

Rural community consultations are normally conducted in a collective environment which exposes rural women to socio-cultural barriers in voicing their concerns. In his study around women's participation in rural water committees in South Africa, Hemson states that women on the committees were not free to express their views nor to participate in decision-making.[655] His observation is that it felt as though they were only invited to fulfil the required quota as supported by funding agencies and as expected by policy.[656] Mnisi and Claassens express similar sentiments in their research on the nation-wide public consultations around land rights in rural Kwa-Zulu Natal.[657] Since the consultations were conducted in the presence of the traditional leadership, such as chiefs, the cultural decorum and demeanour always prevailed, often to the detriment of women. In such circumstances, meaningful participation is rendered a purely tokenistic exercise that is not empowering because its outcomes lack the input of all those affected by the issue. Likewise, despite what the law prescribes, women in rural mine hosting communities tend to experience the same problems in practice.

Information is important for engaging in meaningful consultation process because it informs the direction of the deliberations between parties. In terms of s 32 of the Constitution and the Promotion of Access to Information Act 2 of 2000, it is a constitutional right to have access to any information held by the State or another person if such is required for the exercise or protection of any rights.[658] This was also emphasised in the landmark case of the Xolobeni

[652] Preamble to the MPRDA.
[653] Mineral and Petroleum Resources Development Regulations Published under Government Notice R527 in Government Gazette 26275 dated 23 April 2004. Commencement date: 23 April 2004. As amended by: Amendment of the Regulations by Government Notice R1288 in Government Gazette 26942 dated 29 October 2004. Commencement date: 29 October 2004. Amendment of the Regulations by Government Notice R1203 in Government Gazette 29431 dated 30 November 2006. Commencement date: 30 November 2006. Amendment of the Regulations by Government Notice R349 in Government Gazette 34225 dated 18 April 2011. Commencement date: 18 April 2011.
[654] Benya (note 23 above) 545-560.
[655] Hemson (note 505 above) 26.
[656] Ibid.
[657] Mnisi and Claassens (note 178 above) 491-516.
[658] Chapter 2 of the Act.

Community.[659] Before the ruling, most communities were unable to engage meaningfully in consultations because they lacked the necessary information. In an effort to afford the Xolobeni community access to information, Judge Tintswalo Makhubele ruled in their favour stating that information was crucial to necessitate meaningful engagement.[660] This was also meant to enhance 'meaningful consultation' which entails a discussion of ideas on an equal footing, considering 'the advantages and disadvantages of each course and making concessions where necessary'.[661] To unpack this, the judge's reference to the phrases 'equal footing', 'considering the advantages and disadvantages' as well as 'making concessions where necessary', cannot only be construed to be restricted to the relationship between the parties in this case - Transworld Energy and Mineral Resources (TEM) and Umgungundlovu Community - in the broader sense. Instead, it should also be analysed from a narrower sense to include all groups of affected parties to enable them to weigh the pros and cons of the operations in so far as they relate to each category that forms part of the broader affected community.

The court's interpretation in the above judgement suggests that, like men, women were placed on an equal footing with the mining company in the consultation process. From a gender perspective, this means that women's views are equally relevant and should be recognised and allowed to inform the terms of the SLPs. This approach is important in the preservation of mine communities' social fabric and basic day to day amenities, such as access to water, public health services and educational infrastructure, among others. For most black African societies where women hold together the family unity of many households, being consulted on matters of interest is important. When the social fabric of these communities is infiltrated by migrant culture and social ills, women tend to be bear the heaviest burden. The negative effects of social ills, such as those related to an increase in prostitution, HIV/AIDS, dysfunctional families, dislocation, and problems with their children's access to education, often tend to be disproportionately shared among and within communities, with women carrying the heavier burden. Environmental effects also affect their access to safe water and the practice of subsistence agriculture as water becomes scarce.

Another challenge to women's participation is when their inclusion in collective terms, such as the 'community', reinforces their subordination and blocks their opportunities to have their issues given appropriate attention. Due to their concealed identity, sometimes, they are

[659] *Baleni v Minister of Mineral Resources* (note 625 above).
[660] Ibid
[661] Ibid.

caught in between different forms of power. In *Mining Forum of South Africa v Minister of Mineral Resources*,[662] for example, the Mining Forum brought an application requesting for an order declaring, among others, that the Minister of Mineral Resources (Minister) acted in breach of his statutory duty in terms of the MPRDA by failing to act against Lonmin for its failure to implement its Social and Labour Plans over the period 2013 to 2017. It was argued that the conduct of the Minister, Lonmin and the other co-respondents were in breach of section 24(b)(iii) of the Constitution.[663] The relief sought included a suspension of Lonmin and its subsidiaries' mining rights. Significant in this case is how different forms of power (that of local traditional leadership, politicians as well as the mining companies) manifested which, unfortunately, also silenced women's voices. First, on proof presented, the court found no evidence of company compliance with community SLPs. Second, the court raised a number of unexplained technicalities relating to who were cited as parties. For example, why was the President of the Mining Forum (which was instructed to represent the interest of the mining Community) cited in his personal capacity as the Applicant. Also, among those cited as the Respondents included the Traditional Council that happened to be the representative of the community and therefore, the Applicant's client.

Further, the Applicant alleged that the Department of Mineral Resources failed to enforce legislative provisions that required a penalty for non-complying mining companies, when such evidence was available. The Respondents, on the other hand, alleged concerns over the second Applicant (in his personal capacity) demanding to have a position created in one of the mining companies and dictated how much he was going to earn in that position. Although the court dismissed most of the allegations brought by the Applicant, this case unmasks the level of conflicts of interest that embroil the leadership of those entrusted to oversee the interests of the community. In another interview aired on a national television, women in one mine hosting community also complained about being side-lined by their representative in the recruitment correspondences with the mine.[664] Although the programme was meant to benefit women, the

[662] *Mining Forum of South Africa and Another v Minister of Mineral Resources and Others* [2019] 2 All SA 485 (NWM).
[663] Section 24 provides that everyone has the right— (a) to an environment that is not harmful to their health or wellbeing; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that— (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.
[664] Mphakathi Community Programme, National TV Channel 157, 18 September 2020 from 5pm -6pm.

representative was a male, which is problematic as he may not understand women's issues as the women do.

While all the above cases (particularly the Xolobeni Community case) symbolise the efficiency of the law in changing the power dynamics between the most powerful (state and mining company) and the less powerful (community), they also magnify women's invisibility. In other words, the law continues to display its tendency to reproduce male power and masculinity as discussed at section 2.3 in Chapter 2. As observed, throughout the legal argument there is minimal emphasis on pinpointing women's concerns separately from those of the community as a whole. For example, there is emphasis on how rural communities are entitled to their ancestral land, graves, environmental justice and so on. Yet, in practice, the particularisation of South African women's interests in relation to their issues of concern has remained invisible. Likewise, civil society interest groups have made efforts to publicise the environmental effects of mining, but only an insignificant part of this work, if any, identities exactly how the non-renewability of minerals or lack of proper mine closures affect women.

According to Mnwana, women in mining communities that subscribe to traditional leadership structures are in even more difficult circumstances.[665] In her illustration, she refers to the Sefikile Community in the North West that lost millions in their equity shares (a part ownership where each member is a fractional owner and initiates the maximum entrepreneurial liability related to a trading concern). Following the post-apartheid administrative changes in the payment of mining royalties, from the custodianship of the trustees to the transfer of the D-accounts (development accounts) to the Premier's office, some tribal mining communities lost what was due to them. Yet in all this, women's interests are neither portrayed nor represented independently as an integral part of the broader affected community, whose interests must be recognised and reported accordingly.[666]

Furthermore, the Minerals Council's 2019 report on the transformation progress for the period between 2010 and 2018 recorded an 89% success rate in mine community development, consultation and collaboration out of total of 100%.[667] This reflects a substantial improvement in mine community transformation in specified areas especially consultation. However, although it is unknown which member companies of the Council participated in the study, the statistics raise many questions. Among these questions, one would seek to understand why the

[665] Mnwana (note 503 above) 500-508.
[666] Ibid.
[667] Minerals Council Facts and Figures, 2020.

country observed several mine related protests from various communities across the country during the said period. More so, how much of the 89 % transformation success rate comprise women?

In summary, the study has revealed that the major source of women in mine hosting communities' disadvantage in participation lies in their lack of independent categorisation. The Mining Charter does not categorise women as an independent group within a bigger community. As a result, while the law acknowledges their existence, albeit in a collective way, its protection sometimes fails to have a positive impact on their situations because their circumstances are unique from those with whom they are collectively grouped. As indicated earlier for instance, the collective term 'community' assumes and gives an impression that women's needs and interests are at one with those of men and other groups that form a community (such as children), when they are not. In practice, and specifically for consultation purposes, the term restricts their participation because it conceals their issues resulting in these being overlooked and lacking appropriate attention. At law, when the courts (lawyers and judges) fail to distinguish women as an independent cluster within a bigger group (community), whose interests and needs are diverse, the interpretation of the law (to women's challenges) will assume a formalistic approach, as seen above. In the end, this will result in the development of incompatible solutions to women's needs and / or a failure on their part to benefit from the mineral wealth of their communities as they should. Legally, this means that the law will not develop progressively in such a way as to much by way of remedy to women's situations (something that was observed and also confirmed by participants in the focus group discussions). In the long term, incompatible solutions and a formalistic interpretation of the law to women's situations result in a lack of gender transformation in the sector.

7.5 Conclusion

This chapter demonstrated that most mine hosting communities in South Africa indeed host substantial deposits of mineral wealth that have the potential to improve the lives of local residents, including women. However, despite the laws in place aimed at facilitating equal participation and benefit of the resources, women remain the most disadvantaged. Among the reasons for this is a narrow understanding and interpretation of the concept of gender equality. Again gender equality assumes a formalistic approach of treating women and men in the same way that is devoid of an understanding of the context of women's participation in community

engagements. For example, women's lack of freedom to freely speak in the presence of men at meetings.

A policy example of this is the Mining Charter's failure to independently categorise women in mine hosting communities as a separate cluster from the community. As discussed in Chapter 4, this has not only concealed their identity, it has also made the quota allocation for the empowerment of hosting communities insignificant and difficult to specifically account for what belongs to women.[668] In terms of the Mining Charter, mining companies operating in mine hosting communities are required to contribute towards the latter's development.[669] To do this mining companies are required to 100 percent comply with approved SLPs.[670] Also, applicants for new mining license are required to contribute 5 percent equity share towards the benefit of hosting communities.[671] However, as revealed from the focus group discussions most communities follow a patriarchal system of leadership which can be problematic for the benefit of women. A collective empowerment allocation assumes and subjects women to a neutral standard of participation against men which be prejudicial to women's participation in practise. Consequently, while judgements such as the Xolobeni case are appreciated for developing the law and making an immense contribution to the development of mine hosting communities, a gendered approach to women's issues still requires further development.

In light of the above, this chapter concludes that women in mine hosting communities remain restricted in their participation in many ways. The majority are unable to meaningfully participate because they are often not consulted, in their capacity as women, to enable them to contribute towards community development in mining related engagements. This touches on their lack of recognition as an integral part of hosting communities. Consequently, though participants said that there were no SLPs for their communities, most probably even if these were in place, they would still exclude women's issues. Further, women also experience the gendered effects of the impact of mining, with the challenge of water scarcity being the most common one. They are also vulnerable to the socio-economic effects of the influx of migrant labour on their local communities. This is worsened by the gendered effects of poverty in their communities where access to basic public services, such as health-care services and sanitation is already limited. With all these challenges, therefore, the lack of law enforcement to address

[668] Mining Charter (note 83 above) Clause 2.1.4.
[669] Ibid Clause 2.5.
[670] Ibid Clause 2.5.2
[671] Ibid Clause 2.1.3.2 (ii).

them has resulted in the majority of participants' indifference towards the law to resolve their challenges.

CHAPTER EIGHT

CORE SUMMARY: CONCLUSIONS, FINDINGS AND RECOMMENDATIONS

8.1 Introduction

'Equality is not simply a matter of likeness. It is, equally, a matter of difference. That those who are different should be differently treated is as vital to equality as is the requirement that those who are like are treated alike. In certain cases, it is the very essence of equality to make distinctions between groups and individuals in order to accommodate their different needs and interests'.[672]

The above excerpt emphasises the importance of paying attention to people's differences when interpreting the concept of equality. It argues against reliance on sameness or likeness as a standard of measure as this can result in the failure to recognise certain needs and interests. Yet, when differences are equally recognised, diverse circumstances are identified, catered for and, where necessary, accommodated accordingly. In other words, it argues for a substantive approach to equality wherein different factors are taken into account when measuring equality. This study investigated the role of the law in advancing substantive gender equality in the South African large-scale mining industry, with a particular focus on the gap between the law and practice. The aim was to establish whether and how the interpretation and understanding of gender equality – through law - can be improved in order for women to enjoy full social and economic participation, recognition and redistribution.

Since the country's introduction of inclusive legislation and economic policies in the mining sector, women have now set foot in the industry. Some are participating as business owners or entrepreneurs and as mine employees. In terms of employment, the country's major mining industry association (Minerals Council, South Africa) claims to have exceeded the minimum quota in the employment of women to core operations or technical skills.[673] Yet, literature and the data obtained during the study show that a substantial number of women mine employees continue to work under hostile conditions. There is also limited information around

[672] *Botha & Another v Mthiyane & Another*, 2002 (1) SA 289 (W) at 319; Chaskalson *et al Constitutional Law in SA*, 14-3.
[673] Minerals Council South Africa (MCSA), Facts and Figures, 2021, 26.

the number of women entrepreneurs and those resident in mine hosting communities that have so far been empowered by the industry. Consequently, through an investigation of the legislation, its implementation and women's experiences in the three broad areas, this study made several discoveries. In this concluding chapter, I provide a summary of insights on the findings, and make conclusions as well as recommendations arising from the study.

8.2. Summary of chapters and insights

Chapter 1 gave context to the study by providing a general historical background to women's journey towards a gender equal society, that is, how they have navigated different spaces and their associated restrictions in participating in those spaces. These included the political space, the mainstream economy, education and the family. In some jurisdictions, for instance, women's political independence as citizens was limited as they were subject to the law but excluded in its text.[674] As a result, many around the world could not exercise their right to vote[675] which aggravated their low status and inferior position in society. They were relegated to nurturing families and other primary care duties. Against this background there has been some progress, but fragments of historic discriminatory practices continue to influence women's unequal recognition and participation in society. In particular, many women today still lack proper recognition and reward for their contribution when entering the world of work. Overall, their capabilities are often not judged according to their qualifications but mostly on their sexual and reproductive roles.

The first chapter, therefore, highlighted the historical legacy of discrimination in the mining industry. It entails the legal ban, racism and the ongoing structural and institutional discrimination which continue to have a bearing on women's participation. The chapter also looked at the industry's economic contribution both pre and post democracy as well as the emergence of new challenges. It further discussed the introduction of inclusive legislation such as the Minerals and Petroleum Resources Development Act 28 of 2002, Broad-based Black Economic Empowerment Act 53 of 2003 and the 2004 Mining Charter.

Expanding on the historical background, chapter 2 reviewed literature and developed a conceptual framework towards an understanding of the concept of gender equality. Several practices and sites that promote women's exclusion in various spaces, such as the gendered

[674] O'Connor (note 2 above) 29.
[675] UN (1949) Report on Political Rights of Women (note 167 above).

nature of the law, were discussed. This usually manifests in politics and the mainstream economy, education, the family and socio-cultural practices, among others. In some countries' mining regimes, for example, the law was used to prohibit women from working underground.[676] The family sphere has served as a breeding ground for women's multiple forms of exclusion due to its nature as a private and intimate space. This is particularly in regard to the exercise of certain socio-cultural practices that have also influenced the framing of the law in some countries. For example, married women's status was culturally and legally merged with their spouses' status in a manner in which afforded them a permanently subordinate position.[677] This meant that they could not do anything without the permission of their husbands. They could not earn nor own an income without their spouses' consent, which affected their economic capabilities, social and legal status in society. As a result, several legal scholars, feminists and civil society groups were inspired to advocate for women's rights.[678] Thus, through different feminist approaches and other scholarly work, several ideas of equality emerged, namely formal, as well as inclusionary and transformative substantive equality.[679] In this study, these ideas were explored and matched against women's practical experiences obtained through interviews and focus group discussions (Chapters 5, 6 and 7).

Chapter 3 provided a description of the methodology and methods that were used to obtain the data. As indicated earlier, the study used mixed qualitative methods which entailed documentary interpretation and analysis, interviews and focus group discussion approach. Chapter 4 engaged the law, policy and institutional framework regulating the South African mining industry and its incorporation of previously excluded groups. With a focus on specific areas of women's empowerment, including ownership, employment equity, and mine community and rural development, it showed how the law played a significant role in facilitating women's inclusion in the industry. Given the country's dark political past, certain economic policies would have been impossible to implement without the intervention of the law.[680] For example, the law enabled the transfer of ownership of shares to historically disadvantaged groups, such as women, in an industry largely owned and or run by multinational

[676] Allexander (note 30 above) 213.
[677] Lober (note 133 above) 1-2.
[678] Boserup (note 132 above); Lober (note 667 above), Barnett (note 1 above); De Beauvoir (note 129 above) 45.
[679] Albertyn (note 124 above) 442-467; Nussbaum (2001) (see note 142 above) 1-3: Fredman (2005) (see note 242 above) 163-190: Fredman (note 111 above) 738; Jagwanth (note 235 above); Albertyn (note 171, 198, 124 above).
[680]Sorensen (note 429 above) 171-190; Southall (note 458 above) 313-328; Southall (note 429 above) 67-84: Tangri & Southall (note 239 above) 699-716.

corporations. As Iheduru adds, the government itself needed the backing of state power (in form of the law) and resources to initiate such strategies for economic redistribution.[681]

Through the law, inclusive legislation and economic policies aimed at addressing past injustices were introduced. For these to be effective in mining, certain legislative provisions had to be aligned accordingly resulting in the annulment of the historical legal ban and the official incorporation of women into the sector.[682] In other words, insofar as women's past restriction from underground work was implemented through the law, it also took the law to enforce their incorporation. Likewise, though allocated in collective terms, the incorporation of women entrepreneurs and those resident in mine hosting communities was also facilitated by law, especially through the Mining Charter (2004, 2018).[683] Therefore, women can now participate in different platforms in the sector although, from what has been observed, practically, they tend to do so from the side-lines. The law has also been critical in establishing platforms and institutional frameworks to examine and provide clarity when legal disputes develop. These include courts of law, as well as independent and specialised dispute resolution institutions to guide and monitor implementation of the relevant provisions in the industry. Under the Department of Mineral Resources, for instance, inspectors are mandated to conduct site visits to the mines or when mine related issues are concerned to inspect and ensure compliance.[684]

Chapters 5 to 7 reported on the findings of the study in line with the objectives and research questions. Chapter 5 specifically focused on interviews with women in ownership of mining businesses. Chapter 6 reported on the findings of the interviews with women who were mine employees, while chapter 7 focused on women resident in mine hosting communities. Most participants' responses reflected the formal and inclusionary approaches to the interpretation and application of the concept of equality in the industry. As described in chapter 2, the formal idea of equality is grounded in equal treatment of all people despite their differences.[685] Thus, by not recognising difference, especially intersectional difference, most participants were subjected to equal treatment regardless of their differences among each other as well as with their male comparators. Women entrepreneurs, for instance, generally expressed

[681] Iheduru (note 428 above) 1-30.
[682] MPRDA (2002) and the Mining Charter (2004) (note 26 above)
[683] It sets minimum quotas for women's inclusion which specify empowerment criterion.
[684] Chapter 5 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996).
[685] Bartlett *et al Gender and law: Theory, doctrine, commentary* (2016) 1; C Barnard and B Hepple 'Substantive equality' (2000) 59 *Cambridge Law Journal* 562; Fredman (note 242 above).
[685] Stancil (note 247 above) 1633-1690; Bartlett *et al.* (note 675 above), Barnard and Hepple ibid 562.

concern over their exclusion in the industry. They claimed that the industry was not receptive to their views and capabilities which resulted in their marginalisation in decision making among other challenges. In illustrating their experiences, some of them mentioned that they felt as though they did not exist in the industry. They gave an example of how they were unaccounted for by the Minerals Council's annual reports.[686] Over the years, the industry's annual report (Facts and Figures) has been limited to providing feedback on the employment of women.[687] There is accordingly limited information on the number of women entrepreneurs or those resident in mine hosting communities that have been supported by the organisation or industry at large. In their view, participants argued that the Minerals Council did not have a database on the number of women mine entrepreneurs it interacted with or supported.

Likewise, women employees indicated that most of their unique differences from men or among themselves were generally not given special attention in the workplace. This concurred with the ILO's findings on gender equality and decent work.[688] It was reported that there continues to be a gap between workers' rights as set out in the international and national standards and the real workers' circumstances.[689] Thus, to protect vulnerable employees, such as women, certain legal provisions were designed to guide employment relationships.[690] The deployment of women to underground mine work, night shifts or related tasks, for instance, requires that employers adhere to required safety standards.[691] Also, by law, pregnant or nursing employees are required to be exempt from duties that expose them or their babies to harm.[692] This forms part of maternity benefits that are legally recognised as a basic working condition.[693] It should, therefore, form part of an employment contract particularly where it applies. Yet, despite the law prescribing such provisions, participants' responses showed that there were still inconsistences in adherence to the required standards by some employers. For

[686] The report is updated and published annually to provide feedback on the achieved goals regarding gender equality in the industry.
[687] Participants referred to the Organisation's Facts and Figures sheet which did not provide any data on women entrepreneurs it supported as it reported annually with women employees.
[688] International Labour Office. Bureau for Gender Equality, & International Labour Office. International Labour Standards Department. (2006). *Gender Equality and Decent Work: Selected ILO Conventions and Recommendations Promoting Gender Equality*. International Labour Organization.
[689] Ibid.
[690] International Labour Organisation, 1935.
[691] Basic Conditions of Employment Act 75 of 1997 (BCEA) Section 2617(1) or her work poses a danger to her health or safety or that of her child; and (b)It is practicable for the employer to do so."
[692] Basic Conditions of Employment Act 75 of 1997 (BCEA) Section 26.
[693] Ibid.

example, one of the participants' employment contract made no provision at all for maternity leave such that she had to utilise her leave days to cover the maternity period.

Women in mine affected communities grappled with their own challenges in so far as the application of the law and the industry were concerned. In the text of the Mining Charter, women in hosting communities are not independently classified to determine their allocation from the collective. As a result, most of them have found themselves overlooked and concealed in the collective categorisation of 'the community' in relation to consultations and other forms of participation. This is particularly important when assessing the gendered impact of mining operations in hosting communities. In community NM, for example, the establishment of mining operations necessitated that certain villages in the community be relocated. Among the residents some women had minor children, some had disabled and the elderly in their care, some were unmarried, besides many other distinguishing circumstances. Yet, during the relocation process, none of these factors were considered by the mining companies. Consequently, instead of a needs-based assessment criterion to determine compensation, a uniform standard of measure was rather used. Where compensation required monetary terms, for example, a flat figure was provided to all the affected without assessing if the amount would cater for both their present and future needs. In the end, most women, in particular, found their needs considerably un-catered for.

In light of the above, participants' experiences revealed diverse challenges that women in mining experience. There were, however, two major challenges that were common to all groups. First, they were all vulnerable to male domination, although the impact varied depending on their space (business, workplace and community). Second, through a demonstration of practical examples and experiences, all groups of women had participants that expressed mistrust in the law. This highlighted the parallel worlds that exist between the law in its form and women's experiences in practice. In other words, while the role of the law is noted, it has not been without shortcomings. Due to its narrow interpretation, lack of implementation and, sometimes, the nature of issues at hand, the law has not been able to facilitate substantive equality for women. In the two court judgements, *Impala Platinum* and the *Xolobeni* cases,[694] the courts redefined, among other aspects, discrimination and consultation respectively. The court's reasoning brought our attention to the important role of

[694] *Impala Platinum Ltd v Jonase and Others* [2018] ZALCJHB 276 (24; *Baleni and Others v Minister of Mineral Resources and Others* 2019 (2) SA 453 (GP).

progressive interpretations by the judges, lawyers and other legal professionals involved in the development of the law.

Also, while employment policies were displayed in some companies, in practice these were not followed. Also, some women expressed concern over the Department of Mineral Resources inspectors' professional conduct, stating that:

'Although inspectors were appointed to monitor compliance, it was often just a tick in the box'.

The law also fell short in addressing patriarchal and other deep-seated socio-cultural practices that instil a lack of confidence in women's abilities in the male dominated industry. Thus, comparing these experiences to what the law provides in theory, one gets a sense that the law may have only broadened the horizons of inclusion to enable women to enter the dominating system, without necessarily addressing the source of their past exclusion and other barriers that continue to limit their full participation. For this reason, many women expressed negative perceptions towards the law's efficacy to facilitate equality. To that end, the role of the law in promoting substantive gender equality means going beyond the mere formal and inclusionary approaches. This would mean adopting the transformative approach which focuses on the impact of the disadvantage on the individual or groups of people to ensure their full economic participation.[695] However, this remains a limited solution as long as it still requires that aggrieved parties (women) approach the courts for implementation. Given that the majority of the participants expressed little to no trust in the law, it is unlikely that they will approach the courts for substantive equality to be achieved. To that end therefore, the next section provides conclusions, findings and recommendations against the study objectives and research questions of each group of participants.

8.3. Women in ownership and control of mining related businesses

The objective of the study on women in ownership and control of mining related businesses was to evaluate their levels of ownership, control, and participation in their businesses. The research questions sought to establish whether women formally own and have legal control over their enterprises. If so, whether they enjoyed actual control and participation and, if not,

[695] Albertyn (note 124 above); Fredman (note 111 above).

what the barriers were? This objective was successfully achieved and enabled the researcher to answer the research questions adequately. Based on the data, most women's levels of control and ownership of businesses were limited. However, this was also dependent on the form of ownership. Those who were sole owners of their businesses, to a greater extent, had and enjoyed control over their businesses. They were able to exercise certain levels of authority in decision-making with minimum limitations. Nevertheless, this was restricted where other parties, beyond their spheres of influence or organisations, were involved. For example, when exploring capital-intense projects most of them required the assistance of financial institutions due to financial constraints. However, with limited property rights they lacked the collateral for funding institutions to mitigate the stringent funding requirements, especially for first time women entrepreneurs.

Women in partnerships also had different levels of control based on their ownership forms. Depending on the power dynamics of their partnerships, some had no control of their businesses at all. On the one hand, despite the majority shareholding status, one participant could not contribute meaningfully to the organisation. She was only consulted after decisions had been taken by other male partners. On the other hand, another participant had equal partnership which allowed her substantial control and ability to fully participate without many limitations. She was well supported by her business partner which made participation within the organisation easier. Important to note, however, is that despite the different forms of ownerships, women entrepreneurs shared common challenges in the industry. Their different ownership statuses revealed diverse forms of power and these determined the extent of control both within and outside their businesses.

Outside their organisations, their challenges in participation were more or less similar. Apart from financial constraints, their primary care roles restricted them from competing for certain opportunities against their male counterparts. Before taking on a project, for example, they first weighed it against so many factors which included finding and paying a helper. They also lacked female customised mentorship and networking platforms where they could be supported in terms of these and other gender related issues unique to women in the industry. As a result, due to some of these pressures, their male clients and colleagues lacked confidence in their ability and capacity to deliver quality services, especially on technical issues.

To respond to the research questions, therefore, women's participation is restricted but those in full ownership of their businesses generally had better levels of control over their

enterprises. For those in partnerships, their levels of control were fully dependent on the form of power existing between them and their business partners. I now turn to a summary of the findings.

8.3.1 Summary of findings

i) Women in mine related businesses are not yet fully in control of their businesses due to the restricting influence of the broader industry community (male dominance). This results in their exclusion from decision-making.

ii) Women still experience a lot of structural barriers in their participation in the industry. Access to credit facilities for their businesses is one such example, but equally, their maternal and reproductive roles also fundamentally restrict their full participation in the industry.

iii) Study showed that women mine entrepreneurs are the most vulnerable of the three groups of women. They are fully exposed to the industry's 'jaws of power' because they directly interact with men that occupy positions of influence in the industry. As a result, they are the ones that constantly at loggerheads with the actual industry decision makers as compared to the other groups of women. This is also compounded by the limited number of women-centred networks of support as those that were in place were mostly in their formation stages which made them lack capacity. In addition, by virtue of that fact that they are in different business spaces, their different experiences create a sense of isolation in certain circumstances.

iv) This group of women also expressed a lack of trust in, and insufficient protection by, the law.

8.3.2 Recommendations

i) To address women's exclusion in decision-making.

- Parents are encouraged to practise cultural change by instilling gender-neutral values where necessary especially in the division of labour within families. This will

encourage society to dispel the association of women with domestic roles, a perception that contributes to women's exclusion in decision-making beyond the family unit.

- The education system must incentivise the study of STEM subjects for women and young girls at an early age. Apart from academic aspects, the curriculum must incorporate complementary skills such as leadership and other aspects that compensates for their participatory disadvantage, especially at decision-making levels. Training is also encouraged to capacitate women with required skills.

- The Mining Charter's quota allocation of women empowerment must be periodically evaluated and reviewed in accordance with industry performance.

ii) To address women's invisibility or non-recognition.

- The Mining Charter should be clear on its categorisation of women. For example, women resident in mining hosting communities should be clearly identified so as compared to their inclusion in the broader cluster such as 'the community'.

- Industry should promote and showcase women's projects both at local and international platforms.

iii) To reduce women's vulnerability and to increase their bargaining power.

- Government should not only focus on closing the gender gap in terms of numbers when absorbing women in the industry, it must match its efforts in capacitating them with required skills, resources and rights-based knowledge to prepare them for fair competition.

- Government should investigate the push and pull factors around fronting to establish the causes that feed into the practice and address them accordingly.

- The government must intervene by reviewing the red tapes around funding of women in the industry.

- The government should appoint an independent body comprising of a seasoned, progressive, qualified, and experienced adjudicators comprising of women of different

races that accounts regularly to the relevant ministerial portfolios to monitor compliance.

To address the lack of female customised support networks.

- Government and the private sector must sponsor or subsidise women's programs hosted by organisations such as WIMSA. Where possible, WIMSA is encouraged to replicate its services in each province where it has a marked presence through membership.

- WIMSA must initiate collaborative networking through working with international or regional organisations with similar vision to share ideas and enlarge their circle of networks and mentorship base.

- Women can also partner with self-care social groups such as spiritual support networks such as church groups, therapeutic sessions such as Yoga, as well as seeking professional therapy and psychological help.

v) To address funding related challenges.

- Government must introduce tax incentives to financial institutions that support women owned businesses.

- Partnerships should be built between financial development agencies and business experts to conduct business incubation programmes that help women with cost effective business models and to learn to identify diverse sources of funding.

- Women themselves can make contributions from their businesses to create a sustainable credit facility. Using their monthly subscriptions, they can introduce a program that monitors and evaluate progress on where each entrepreneur is in terms of finding some stability and weaning them off from the program to accommodate others.

8.4 Women mine employees

The objective of the study on this group of women sought to develop my master's findings on whether women enjoyed substantive gender equality in the mining workplace. Using a desk-top based literature study, my master's thesis had sought to redefine the concept of gender

equality in the South African mining industry. My master's research questions had sought to understand what my findings on women's participation indicate about substantive equality: Whether women were included or not and if they were, do they enjoy full participation? Following the country's introduction of progressive legislation and economic policies, it would have been expected that women (particularly those employed in technical skills duties involving underground work) by then, or even now, should be enjoying substantive (gender) equality in the industry. Yet, from the findings of the study, this was not yet the case as women continued to be marginalized and excluded in their participation. In other words, despite the existence of a regulatory framework they still did not enjoy equal rights as their male counterparts doing the same jobs.

At the time of that study, for instance, some still used improvised facilities and equipment in the underground sections of their workplaces. They lacked female customized ablution facilities that catered for their sanitary needs. Some were using ill-fitting Personal Protective Equipment (PPE) such as gloves, safety shoes and overalls. These were still being designed and manufactured with a male end-user in mind. Some were also exposed to different forms of violence and abuse while working under ground. Importantly, their maternal and domestic roles were not accommodated in their roles as mine employees. Thus, despite the existing legal framework, literature showed that many women mine employees seldom had proper legal recourse to achieve gender equality.

Through the empirical study that was conducted on some of the women mine employees for this thesis, I achieved the objective of testing the findings of my master's dissertation. Though the sample size used was small to generalize the data for the entire industry, the individual experiences of the participants, most of whom had been in the industry for a considerable number of years, was quite informative. As discussed in detail in chapter 6, participants' responses on their general experience of the industry point to an environment that remained unwelcoming for most of them. Despite the evidence of inclusive laws and policies, the issues that emerged demonstrated that the industry has still not reformed to fully accommodate women's needs. Facilities to enable their full participation were still male oriented which made their full participation both difficult and unpleasant.

It also emerged that race and gender remain key determining factors in a number of issues such as promotion, remuneration, and so on. This widened the power imbalance between women and their male counterparts, as well as with their employers. Further, with the biased

representation of trade unions who, in some cases, also discriminated against women, their bargaining power was limited. For some women in leadership positions, there was a lack of support and protection from management when they complained about insubordination and intimidation from their male subordinates. Therefore, while some were appreciative of the role of the law and the little progress it had made, not all of them supported legal interventions to improve the situation.

Some of the participants' responses also revealed new data that has not yet been widely reported. For example, some women were discriminated against for their high body mass index (BMI), even where this had no effect on their work performance. It also emerged that the hostel model of mine housing is now accommodating women. Although participants described a modernly furbished form of accommodation, this revealed different challenges from those experienced by black males as the two groups had different needs.[696] Also, with the effects of the Covid-19 pandemic, women mine employees had unique challenges that were entirely different from their male counterparts. First, during the hard lockdown, schools and day care centres were compelled to shut down in adherence with government's disaster management regulations.[697] This meant that participants could not adopt the 'work from home' idea because their jobs were site based. Subsequently, this paused enormous strain on their roles as primary care givers as some had minor children whom they could not leave at home unsupervised. Overall, these factors hindered the goal of achieving substantive gender equality in the mining workplace.

The next section provides a summary of the findings.

8.4.1 Summary of findings

i) Some employers lack the willpower to genuinely participate in the agenda of gender transformation in the industry.

Examples:

[696] One of the participants was forced to move out of the mine house (they each had a single) and shared the bathroom, kitchen, and dining room with six other women. This was because she could not live with her kids due to the size of the room and unfortunately, sometimes the helper would not come to take care of them at home.
[697] As guided by the Disaster Management Act, 57 of 2002.

- The majority of women confirmed that employee rights were visibly displayed in the workplace but these were not followed in practice.

- Failure to align working facilities and conditions to the required labour and safety standards exposed women to hostile working environments which restricts their full participation. (Most of the employees had been in their companies for a very long time, for example, one of them had been employed for 18 years).

ii) Women's inclusion in the industry remains mostly a compliance exercise for some companies which does not guarantee that the majority of them enjoy full participation.

iii) Substantive gender equality is still a pipe dream for the majority of women in the (mine) workplace as they are still several barriers in their participation.

iv) Due to the lack of respect, support and protection from key stakeholders in the workplace such as employers, trade unions and their male colleagues, the majority of women felt let down by those in power as well as by the law itself.

8.4.2 Recommendations

i) To address the challenge of irregular working hours.

- The industry must adopt and invest in modern technology to free up some time for certain duties and minimise long hours to afford women a work-life balance.

i) To address the lack of respect and abuse of women in the workplace.

- Government in partnership with industry must introduce educational programs tailor-made to address professionalism and ethical relations in the workplace. The aim is to correct patriarchal, socio-cultural practices that fuel the disrespect for and violence against women.

- To counter fears in reporting incidents such as sexual harassment, intimidation and other forms of abuse, it is proposed that the civil society groups assist women to take up related cases.

ii) To address women's discrimination and exclusion in decision making.

- Policy makers must enforce already existing gender responsive employment laws and policies that specifically speak to women's rights in the workplace.
- The implementation of proportional appointment of women to influential leadership positions based on a gender and racially balanced scale (as provided by Employment Equity Law principles) is recommended.

iii) To address non-compliance and flouting of laws.

- While most companies have generally displayed employment laws in the workplace, it is recommended that the mining industry amend some of the displayed laws to be gender responsive.
- Appointed professional inspectors should be fully equipped in knowledge of the industry to monitor compliance in the workplace. Where non-compliance is suspected, it was recommended that government implement penalties on concerned company's operating licenses to deter such misconduct.
- Inspectors' work to be regularly monitored by independent monitoring bodies who will report to the relevant government ministry such as the Department of Labour.

iv) To address ill-fitting PPE

- Allow and support women regulated suppliers of women's PPE (that complies with the biological requirements) to supply PPE.

8.5 Women in mine affected communities

The objective of the study on women in mine affected communities was to investigate the gendered impact of mining related operations in mine hosting communities. In the process, the aim was to also to establish if any Social and Labour plans (SLPs) had been concluded between hosting communities and their respective mining companies. The research questions, therefore, sought to establish what kind of challenges the communities faced, how they affected women

and which type of women? They also sought to establish if any legal commitments had been made to women by mining companies in SLPS? If they were, how these played out in practice in terms of the SLP and whether they were noticed at all?

To answer these, a review of secondary literature and collection of primary data through focus group interviews was conducted. While there might be a general perception that women in mine hosting communities share similar challenges with the rest of the community in so far as mining operations are concerned, this was not the case in practice. Upon visiting some of the communities to conduct focus group discussion, it was established that what might have appeared as common challenges to all actually exposed women to unique and challenging experiences. Participants' individual experiences and illustrations provided deeper insights. For example, the scarcity of domestic energy sources such as water and firewood may be a problem common to all in the community. However, it was particularly a problem with far-reaching consequences to most young girls and women in the community. Given their low status in society and how they are often responsible for primary care duties, the scarcity of these essentials created a vicious cycle of exclusion. They caused women and young girls to endure multiple challenges, such as missing or dropping out of school. This was due to the difficulties of having to concurrently and constantly walk long distances in search of water, firewood and find time to go to school. In the long run, without education, they automatically got excluded from economic participation in the broader mainstream economy.

Given the disadvantaged backgrounds of most of the participants in the investigated communities, formal education and exposure were very critical to neutralising dominant socio-cultural practices. All three communities comprised of mostly black African women with low levels of education, unemployed and often subject to patriarchal practices that restricted their participation in community engagements. For instance, as a sign of respect, most black African cultures require women to be silent and submissive in public meetings which include men.[698] This has a tendency of creating a passive group of citizenry that does not openly engage and express their concerns in public meetings. In this context, this results in women's non-recognition and a lack of proper representation of their concerns at community engagement forums. These concerns include bearing the brunt of socio-economic ills associated with the influx of migrant labour, such as drug abuse, prostitution and other petty crimes that render communities unsafe for women and children in the community. Furthermore, where mining

[698] Mollel and Chong (note 152) 108; Hemson (note 505 above) 24-32; Ojong and Muthuki (note 155 above)170.

operations necessitate relocations, women inevitably carry the burden of disruptions. For example, in some communities unmarried women lacked the manpower and sufficient resources to rebuild their homes to match the previous standards at the new sites. Some women were also primary care givers to the elderly who found that the new compounds did not accommodate their loved ones' mobile aids, such as wheelchairs).

Furthermore, none of the communities appeared to have any SLPs in place despite the numerous mines that operated in each community. Participants also stated that there were no formal legal commitments made to the hosting communities by the mines, except for informal undertakings that never materialized into anything. In some of the communities, the traditional leaders also described the failed efforts and attempts to secure meetings with mine management aimed at following up on the issue of SLPs. Given this apparent lack of SLPs, the question of whether SLPs were complied with in practice could not be accurately established. But even if SLPs did exist, the above factors suggest that they would probably overlook women's issues due to their concealed identity in collective terms, resulting in the lack of meaningful participation.

I now turn to the findings of the study pertaining to this group of participants in the next section.

8.5.1 Summary of findings

i) Like the other two groups, women in mine hosting communities are vulnerable to rich and powerful mining corporates. However, they have an advantage in their collectiveness to neutralize the power and impact of vulnerability if they can be united.

ii) The majority of mining companies in most of the investigated communities were apparently operating without any formal SLPs with the hosting communities.

iii) Women were not recognized in mine-community consultations at all and neither were their concerns. Thus, with low bargaining power, the majority could not benefit from the rich mineral wealth of their communities.

iv) Due to the country's political history wherein the law was used as a tool of oppression, black communities (women in this case) still do not trust in the law's ability to bring about positive change for them. The mining industry, judicial

institutions and personnel all represent the law to them. In their view, the law is not a neutral tool that provides fairness and justice.

8.5.2 Recommendations

i) To address women's exclusion from participation.

- For purposes of mining related engagements, women in communities should be accorded an independent status, not as a collective such as 'community members'. Collective terms hide their identity making them appear as though they benefit in what would have been allocated to the entire community when they don't.

- Government, business and men in communities must recognize women's preferred representative structures of engagement. Thereafter, concerns submitted to those structures should be incorporated into formal engagement processes and decisions agreed upon be implemented as such.

- Meaningful participation for women should not only be evaluated in terms of participation in consultations, it should equally be assessed in terms of access to economic opportunities in the mines and done in transparent manner.

- There is need to explore new approaches to address patriarchal and socio-cultural limitations that obstruct women's freedom in participation, especially in the presence of men. These include arranging separate meetings for men and women if need be.

ii) To address the lack of trust in the justice system.

Due to the political history of the country, some of the participants did not have trust in the law to be able to change or improve their participation in the industry. They argued that in the past the law was used as a tool of oppression and so they still held this view. Addressing these perceptions may require a multifaceted approach which include education on the role of the law and the courts. Education around court processes and procedures is important because some participants found the formality of the processes too slow to address what could be a very urgent matter to them. Collaboration with traditional leadership in matters befitting of their jurisdiction is also another intervention especially with regards to SLP compliance since the

role of traditional leaders is constitutionally recognized.[699] The Queen in community NM, for example, could utilize her authority as a leader (provided within the bounds of the Constitution) to engage the national government and relevant mining companies to come up with legally binding and gender inclusive SLPs. Where communities are not under traditional leadership, government and business can recognize and work together with women's preferred structures of engagement. This will cut down on costs, time and other limitations associated with a formal process of dispute resolution such as a court of law.

iii) To address the lack of SLPs in communities.

Communities (men and women) are encouraged to unite. Listening to men's remarks about women's issues in community PM was evidence of the fact that men were aware of mining-related gendered challenges in their community. Thus, given women's low status in most black African societies and in this industry in particular, unity between men and women is the immediate solution. This will promote cooperation and support for one another in demanding binding and inclusive SLPs from local companies.

8.6 Closing remarks

In closing, the study achieved its objectives and the research questions raised were successfully answered. The first objective sought to evaluate women mine entrepreneurs' levels of control and participation in their businesses. The research question therefore sought to establish if women formally own and have legal control over mining establishments in South Africa? If so, whether they enjoy actual control and participation? If not, what are the barriers? The research findings show that participants' levels of ownership, control, and participation remain generally restricted. Depending on their statuses however, those in sole ownership demonstrated a certain level of ownership and enjoyment of control. This is also limited beyond their organizations due to a number of barriers which include the lack of access to funding. The male dominance characterizing the business environment also exacerbates lack of confidence in women's abilities by male colleagues and clients. Importantly, the burden of primary care and other domestic duties hinder maintaining a balance between family and business. This is further enhanced by the lack of female customized mentorship programmes and platforms.

[699] Section 211 to 212 of the Constitution, 1996.

The second objective sought to develop my Master's findings on whether women mine employees enjoy substantive gender equality in the mining workplace. Despite the Mining Charter's goal to promote the employment of more women to core operations, my findings[700] then revealed that the majority of women did not enjoy substantive gender equality. Most workplace facilities and personal protective equipment were still designed with a male end-user in mind. Underground facilities, for instance, did not have female ablution facilities. While the current findings supported by an empirical study show improvements in certain areas, the majority of women employees continue to experience challenges in participation. Safety and gender-based violence were major concerns to all the participants. They all cited incidents of sexual harassment, intimidation and unfair labour practices due to flouting of labour laws. Women are also excluded from decision-making and career progression opportunities. Those participants also indicated the lack of genuine will by employers to support women. They gave examples of women being appointed to positions of leadership, yet with no power to make meaningful contribution.

The third objective sought to investigate the gendered nature of mining operations, the forms of consultation and the effects on communities to understand how these affect women resident in mine hosting communities. The research questions sought to establish the meaning of gendered equality in terms of participation for women resident in South African mine hosting communities. How are they affected by mining operations and which women? What are the legal commitments made to women by mining companies in SLPS? How do they play out in practice in terms of the SLP? Are they noticed at all? The findings revealed that participation in most mine-community consultations was male dominated. Coupled with the collective categorisation of women in terms such as 'the community', this male domination hindered the achievement of gender equality. It resulted in women's interests being overlooked as it gave an impression that they benefit from the quota allocation meant for communities when, in fact, they did not. Decisions that flow from such consultations also advanced a gendered equality approach that lacks attention to women's challenges. In communities where residents had to be relocated for mining purposes, for instance, some women carried the burden of rebuilding new homes with very little support from mining companies. Given that there were no SLPs in place in most communities, participants lacked formally binding legal agreements to pursue mining companies. Most of the affected women are black South Africans from low-

[700] Mudimba (2017) see note 21 above.

income households with low levels of education. With such profiles, therefore, it was unlikely that participants would pursue mine companies for recourse as they lacked trust in the law among other challenges.

Reflecting on women's historical background on the law and society as discussed in Chapter Two, participants' testimonies reveal a different experience of the law from women of yesteryear. Most legislation today promotes women empowerment and yet, in practice, the enjoyment of some of these (rights) is limited. This has resulted in most women's experience of equality remaining at a very formal level that is devoid of meaningful benefit in practice. Even so, some are yet to experience the formal idea of equality. By this therefore, it is noted that the implementation of some of the above recommendations may yield positive results while some many not. For instance, while the law may offer better interventions to women's participation in some cases, it may also not be able provide solutions in other areas. For example, education around how the law and courts work can be done to assist in empowering women to approach available legal platforms when there is need. However, the decision to change negative perceptions towards the justice system and the will to approach the courts for redress still lies with the women themselves.

Challenges related to patriarchal and socio-cultural restrictions on women's participation may be very difficult to remedy by use of law. The cultural aspects of women being expected not to speak in public in meetings, for instance, may be very challenging to correct and regulate by law. In the alternative, therefore, there may be need to explore different means of intervention for women to communicate their challenges when grouped with men. For consultation purposes, for example, women can be engaged on their own or separately from men. Alternatively, cultural protocols that require women to 'show respect' by remaining silent may need to be publicly suspended during consultations to allow them the freedom to participate.

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APPENDICES

Appendix A1: PIS for women employees



Faculty of Commerce, Law and Management: School of Law
Research conducted by Ms. Prisca Chipo Mudimba
Cell: 0761502946. Email: pcmudimba@gmail.com
Supervisor: Prof. Cathi Albertyn,
Tel: 011 717 8467. Email: Cathi.Albertyn@wits.ac.za **25/09/2019**

Dear Sir / Madam. **(for women employees)**

My name is P. Chipo Mudimba and I am a PhD student in Law at the University of the Witwatersrand. I am investigating the role of the law in advancing substantive gender equality in the South African mining sector. The aim of the research project is to find out if women enjoy substantive gender equality in the mining workplace.

I would like to invite you to take part in an interview on women's participation in mining. This activity will involve answering questions and will take around 1 hour. With your permission, I would also like to record the interview by way of Zoom Meetings.

You will not receive any direct benefits from participating in this research, and there are no disadvantages or penalties for not participating. You may withdraw at any time or not answer any question if you do not want to. The interview will be completely confidential and anonymous as I will not be using your name or any identifying information, and the information you give to me will be held securely and not disclosed to anyone else. I will be using a pseudonym (false name) to represent your participation in my final research report. If you experience any distress or discomfort at any point in this process, we will stop the interview or resume another time. Before the interviews commence, a service with all interested participants will be arranged on convenient dates, time and venue to discuss the process. This is intended to also accommodate those who may need support or counselling services after the interview to feel free to indicate.

If you have any questions during or afterwards about this research, feel free to contact me on the details provided above. This study will be written up as a research report which will be available online through the university library website or my supervisor. If you wish to receive a summary of this report, I will be happy to send it to you. If you have any concerns or complaints regarding the ethical procedures of this study, you are welcome to contact the University Human Research Ethics Committee (Non-Medical), telephone +27(0) 11 717 1408, email Shaun.Schoeman@wits.ac.za

Yours sincerely

_____

Ms. P.C Mudimba

Appendix A2: Interview schedule/guide for women mine employees

Biographical information

Age	
Race	
Nationality;(By birth/descent/Naturalisation)	
Marital status	
Number of Children	
Level of education	
Employment status/position	
Years of experience in current position	
Religion/church (specify)	
Other	

Gender transformation in the Mine Workplace (may cite examples where applicable)

1. What is your general experience of working in the mining sector (surface/underground) as a woman?
2. Do you feel dis/advantaged by your gender to equally participate in your duties as an employee in the workplace? Why? Example?
3. Does your race hinder your ability to equally participate in your duties as an employee in the workplace? Why? Example?
4. How do you cope with the disadvantages you have mentioned above, if any?
5. Does your company policy accommodate women's needs in the workplace?
6. In relation to question (5) above, how do you think your company understands the position of women and tries to address?
7. If you replied no to (5) above, what do you think should be done?
8. In relation to (7) above, what in your view could be the best interventional tool and why?
9. Would you recommend a legal or non-legal intervention? With examples to your recommendations, please state why?

Appendix A3: Consent form for women employees

Title of Project: Redefining gender equality in the mining sector under the current legal framework. A case of select gold and platinum mining companies in South Africa.

Name of researcher: P.C Mudimba

I, ……..., agree to participate in this research project. The research has been explained to me and I understand what my participation will involve. Please circle the relevant options below.

I agree that my participation will remain anonymous YES NO

I agree that the researcher may use anonymous quotes in her research report YES NO

I agree that the interview may be audio recorded through Zoom meetings YES NO

I agree that the information I provide may be used anonymously by other researchers following this project YES NO

Name of participant :……
Signature:……

Date:……

UNIVERSITY OF THE WITWATERSRAND JOHANNESBURG

Appendix B1: PIS for women in ownership of mining companies



Faculty of Commerce, Law and Management: School of Law
Research conducted by Ms. Prisca Chipo Mudimba
Cell: 0761502946. Email: pcmudimba@gmail.com
Supervisor: Prof. Cathi Albertyn, Tel: 011 717 8467. Email: Cathi.Albertyn@wits.ac.za
20/04/2021

Dear Sir / Madam**.** **(for women in ownership of mining companies)**

My name is P. Chipo Mudimba and I am a PhD student in Law at the University of the Witwatersrand in Johannesburg. I am investigating the role of the law in advancing substantive gender equality in the South African mining sector. My research project is to find out if women enjoy substantive gender equality in their participation and control as owners of mining companies.

I would like to invite you to take part in an interview on women's participation, control and ownership of mining companies. This activity will involve answering questions and will take around 1 hour. With your permission, I would also like to record the interview by way of Zoom Meetings.

You will not receive any direct benefits from participating in this research, and there are no disadvantages or penalties for not participating. You may withdraw at any time or not answer any question if you do not want to. The interview will be completely confidential and anonymous as I will not be using your name or any identifying information, and the information you give to me will be held securely and not disclosed to anyone else. I will be using a pseudonym (false name) to represent your participation in my final research report. If you experience any distress or discomfort at any point in this process, we will stop the interview or resume another time. If you need some support or counselling services following the interview, please feel free to indicate. I have information on Organisations offering such services free of charge during weekdays and weekends across the country.

If you have any questions during or afterwards about this research, feel free to contact me on the details provided above. This study will be written up as a research report which will be available online through the university library website or my supervisor. If you wish to receive a summary of this report, I will be happy to send it to you. If you have any concerns or complaints regarding the ethical procedures of this study, you are welcome to contact the University Human Research Ethics Committee (Non-Medical), telephone +27(0) 11 717 1408, email Shaun.Schoeman@wits.ac.za

Yours sincerely

_____

Ms. P.C Mudimba

Appendix B2: Interview Schedule/Guide for women in ownership of mine businesses

Biographical information

Age	
Race	
Nationality;(By birth/descent/Naturalisation)	
Marital status	
Number of Children	
Level of education	
Employment status/position	
Years of experience in business	
Religion/Church (specify)	
Other	

Gender transformation in mine ownership (may you cite examples where applicable)

1. How did you get into mining?
2. What is your ownership status in the organisation (sole proprietor, partnership etc)?
3. In the ownership status you indicated in (2) above, what's your position and role?
4. How much control of the business does your position enable you to do?
5. Do you feel dis/advantaged by your gender in your participation and ownership of the company and if so, how?
6. Has your race been an issue in your participation and ownership of the company and if so, how?
7. If you answered yes to questions (5 & 6) above, what solutions would you recommend? Any strategies you would suggest in the implementation of your recommendations?
8. Would you recommend a legal solution to your answer to (7) above and if so, what would that be?

Appendix B3: Consent form for women in ownership of mine businesses

Title of Project: Redefining gender equality in the mining sector under the current legal framework. A case of select gold and platinum mining companies in South Africa.

Name of researcher: P.C Mudimba

I, ……., agree to participate in this research project. The research has been explained to me and I understand what my participation will involve. Please circle the relevant options below.

I agree that my participation will remain anonymous YES NO

I agree that the researcher may use anonymous quotes in her research report YES NO

I agree that the interview may be audio/video recorded through Zoom YES NO

I agree that the information I provide may be used anonymously by other researchers following this project YES NO

Name of participant :……
Signature:……

Date:……

UNIVERSITY OF THE WITWATERSRAND JOHANNESBURG

Appendix C1: Translated PIS for women in mine hosting communities

Faculty of Commerce, Law and Management: School of Law
Research conducted by Ms. Prisca Chipo Mudimba
Cell: 0761502946. Email: pcmudimba@gmail.com
Supervisor: Prof. Cathi Albertyn, Tel: 011 717 8467. Email: Cathi.Albertyn@wits.ac.za

29/09/2021

Dear Sir / Madam.

Leina lame ke P. Chipo Mudimba ke ithutela Molao kwa Unibesity ya Witwatersrand. Serutwa same sa projeke ya dipatlisiso tse ikaegile ka go batlisisa karolo ya molaong mo tekanyo bong mo setlheng sa meepo mo nageng ya Afrika Borwa.
Ke le laletsa go tsaya go tsaya karolo mo setlhopeng sa dipuisano mabapi le karolo e tsayang ke bo mm emo setheong sa meepo. Mo puisanong ena go tla arabiwa dipotso se baka ura ele nngwe kgotsa tse pedi ka tetla ya lona. Nka itumelela go gatisa puisano ya rona ba mogala wa dieta.
Go tsaya karolo mo puisanong eaa ga se rayang gore go tla nna le dikabelo tse di le lebaganeng. Mme gape ga gona ditla morago tse di tla golebanang ga o sa tseye karolo. Motho mongwe le mongwe onale tetla ya go ikgogela morago nako ngwe le engwe, ke go sa arabe dipotso ha o sa battle. Jaaka puisano etlile go tsaya karolo mo setlhopheng se se riling. Ga ke tshepisi go boloka dikgang tsa puisano ena le botlhoka , mm eke itlama go sireletsa maina a lona morago ga go tsaya karolo. Ke tla netefatsa go sirelatsa maina a lona kgotsa tlhagiso lesedi e le nneileng yon aka nako ya puisano. Tlhagisolesedi e le nneileng yona e bolokesigile ga e kitla e wela diatleng tsa motho ope / kgo e telela go motho mongwe. Ke tlile go dirisa maina a aseng a nnete, boemong ba lona mo repotong ya bofelo ya dipatlisisiso.
Ga o ka iphitlela o sa nnisege kampo o ikutlwa e kare mowa wago wago wa kgorakgotsega, re tla emisa puisano ena kgotse ra e simolola nako ngwe. Pele ga puisano ya setlhopha e simolola, tshebeletso le batsaya karolo ba banoleng kgatlhego e tla bakanyiwa mo nakong. Felong le letlha le tla siamelang mang kaop mang. Maitlhomo / maikelelo a mangwe gape ele go amogela ba tlhokang thuso kgotsa “counselling services” morago ga gore setlhopa se iponatse kwa pele.
Fa o nale dipotso kana ya dipuisano kgotsa morago ga dipuisano ka patlisiso e, lokologa go ikamana le nna mo ditlheng tse kedineileng kwa go dimo. Dipatlisiso tse ditla kwala jaaka “repoto ya dipatlisiso” e ka titlhelelwa mo mofaratlheng gotswa “ university library website” kgotsa ko motsamaising wa me. Fa onale kgatlhego ka go bona tshogobanyo ya repoto, nka itumelela go go romella yona. Fa o nale ditletlebo kgotsa dingongorego mabapi le tsamaiso ya patlisiso e. o amogelesegile go ikamana le “ university Human Research ethics committee(non Medical) Non-Medical), telephone +27(0) 11 717 1408, email Shaun.Schoeman@wits.ac.za.

Yours sincerely

_____

Ms. P.C Mudimba

Appendix C2: Interview Schedule/Guide for women in mine hosting communities
Tlhagiso leseding mabapi le tlhago.

Dingwaga	
Morabe	
Ka naga	
Seemo sa lenyalo	
Palo ya bana	
Boemo ba ga thuto	
Boemo ba bodiri	
Dijara tsa go dula mo mofafeng	
Tumelo (Kerek)	
Dingwe	

Tlhabololo ya bong mo moepong e amang merafe e mabapi

1. Ke mathata afe a bome ba itemogelang ona mo gareng ga morafer?
2. Go ya ka potso ya ntlha ke mathata afe a mangwe a amanang le moepo?
3. Ke sebaka se se kae onna mo morafeng o?
4. A o kile wa tsasyas karole e emalewa mo dipuisanong tse di amang bomme / basadi mabapi le mathata a ba itemogelang ona mo setheong sa moepo?
5. Fa dipuisdano di kile tsa ba teng, a go kile gwa nna le ditshepiso tse di maleba tse moepo kileng wa ditshepisa basadi? Ga dile teng ke eng ditshepiso tseo?
6. Go ya a bong bag ago, o kile wa itemogela dikgwetlho tse di bakiwang ke di khampan tsa meepo? Ke dife dikgwetlho tseo?
7. A okile wa iphitlhela o nale dikgwetlho tse dibakwang ke khampani tsa meepo ka nthla yam mala wa gago?
8. Go ya ka potso ya 6&7 kwa godimo, dikgwetlho tse o itemogelang tse di farologana jang le tsa batho ba bangwe mo morafeng?
9. Ga o arabile ka e mo potsong ya 8 kwa godimo, ke tharabollo efe e o naganang gore go ka tla ka yona go siamisa dikgwetlho tseo?
10. A oka dira kopo ya go thusa ya moko ga go le jalo, goring, le jang?

Appendix C3: Consent form for women in mine hosting communities
Sebopego sa Tumello

Sehlogo sa morero: Redefining gender equality in the mining sector under the current legal framework. A case of select gold and platinum mining companies in South Africa.

Leina la Mmatlisisi: Ms P.C Mudimba

Nna …… ke duela go tsaya karolo mo dipatlisong tsa projekeb ena. Ke Tlhaloseditswe ka patlisiso e. ke tlhaloganya ditlamorago tsa go tsaya karolo. Ka kopo dira tsheketsa mo go tlhokegong ya tlase.

Ke dumela gore tsaya, karolo game go tla nna botlhoko-ina.

Ee Nyaa

Ke dumela gore modira dipatlisiso o tla dirisa mareo a botlhoka ina mo repotong ya dipatlisiso tsa gagwe. Ee nyaa.
Ke dumela gore puisano e gatisiwe ee nyaa.
Ke dumela gore tlhagisolesedi e ke eneetseng etla dirisiwa ke badira dipatlisisiso ba bangwe b aba amegang mo porojekeng ee.
Leina la motsaya karolo.

Signature_____
Letlha_____

'Appendix C 1'



Faculty of Commerce, Law and Management: School of Law
Research conducted by Ms. Prisca Chipo Mudimba
Cell: 0761502946. Email: pcmudimba@gmail.com
Supervisor: Prof. Cathi Albertyn,
Tel: 011 717 8467. Email: Cathi.Albertyn@wits.ac.za

11/11/2021

Dear Sir / Madam. **Women employees**

My name is P. Chipo Mudimba and I am a PhD student in Law at the University of the Witwatersrand. I am investigating the role of the law in advancing substantive gender equality in the South African mining sector. The aim of the research project is to find out if women enjoy substantive gender equality in the mining workplace.

I would like to invite you to take part in an interview on women's participation in mining. This activity will involve answering questions and will take around 1 hour. With your permission, I would also like to record the interview by way of Zoom Meetings.

You will not receive any direct benefits from participating in this research, and there are no disadvantages or penalties for not participating. You may withdraw at any time or not answer any question if you do not want to. The interview will be completely confidential and anonymous as I will not be using your name or any identifying information, and the information you give to me will be held securely and not disclosed to anyone else. I will be using a pseudonym (false name) to represent your participation in my final research report. If you experience any distress or discomfort at any point in this process, we will stop the interview or resume another time. Before the interviews commence, a service with all interested participants will be arranged on convenient dates, time and venue to discuss the process. This is intended to also accommodate those who may need support or counselling services after the interview to feel free to indicate.

If you have any questions during or afterwards about this research, feel free to contact me on the details provided above. This study will be written up as a research report which will be available online through the university library website or my supervisor. If you wish to receive a summary of this report, I will be happy to send it to you. If you have any concerns or complaints regarding the ethical procedures of this study, you are welcome to contact the University Human Research Ethics Committee (Non-Medical), telephone +27(0) 11 717 1408, email Shaun.Schoeman@wits.ac.za

Yours sincerely

_____

Ms. P.C Mudimba

'Appendix C 2'

Interview schedule/guide for women mine employees

Biographical information

Age	
Race	
Nationality;(By birth/descent/Naturalisation)	
Marital status	
Number of Children	
Level of education	
Employment status/position	
Years of experience in current position	
Religion/church (specify)	
Other	

Gender transformation in the Mine Workplace (may cite examples where applicable)

10. What is your general experience of working in the mining sector (surface/underground) as a woman?
11. Do you feel dis/advantaged by your gender to equally participate in your duties as an employee in the workplace? Why? Example?
12. Does your race hinder your ability to equally participate in your duties as an employee in the workplace? Why? Example?
13. How do you cope with the disadvantages you have mentioned above, if any?
14. Does your company policy accommodate women's needs in the workplace?
15. In relation to question (5) above, how do you think your company understands the position of women and tries to address?
16. If you replied no to (5) above, what do you think should be done?
17. In relation to (7) above, what in your view could be the best interventional tool and why?
18. Would you recommend a legal or non-legal intervention? With examples to your recommendations, please state why?

'Annexure C 3'

CONSENT FORM

Title of Project: Redefining gender equality in the mining sector under the current legal framework. A case of select gold and platinum mining companies in South Africa.

Name of researcher: P.C Mudimba

I, ……., agree to participate in this research project. The research has been explained to me and I understand what my participation will involve. Please circle the relevant options below.

I agree that my participation will remain anonymous YES NO

I agree that the researcher may use anonymous quotes in her research report YES NO

I agree that the interview may be audio recorded through Zoom meetings YES NO

I agree that the information I provide may be used anonymously by other researchers following this project YES NO

Name of participant :……
Signature:……

Date:……