CHALLENGES OF POST-APARTHEID MINING TRANSFORMATION IN SOUTH AFRICA

Izazovi transformacije rudarstva Južne Afrike nakon Aparthejda

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Abstract

This paper discusses the need to accelerate transformation in the mining sector in South Africa using existing laws. The paper finds that the pace of transformation is very slow hence creating a setback for the development and assimilation of the previously disadvantaged people in South Africa. It submits that all the targets specified in various legislation and policies regarding transformation must be met.

Keywords: Implementation, Transformation, Historically Disadvantaged South Africans, Mining industry

1. Introduction

In 1910, the Act of union was passed by the British government in South Africa and this Act brought unity between the British people and Afrikaner (Beck, 2013). The Act had three basic principles which are: “South Africa would adopt the Westminster style of government and would become a unitary state in which political power would be won by a simple majority and in which parliament would be sovereign.” Secondly,
“the question of voting rights for blacks would be left up to each of the four self-governing colonies to decide (the Cape and Natal based their franchise on a property qualification; the Orange River Colony and the Transvaal denied all blacks the right to vote) and that “Dutch and English would be the official languages.”

The Act gave the political power to the white minority which was the National Party (Legassick, 1974). In 1914, white people were earning better wages than the black people who were classified as being uncompetitive in the market (MacKinnon, 2008). The black people lacked requisite skills hence could only work as labourers hence they were paid lower wages (Clark & Worger, 2013). The white were occupying virtually all the managerial positions in the mining companies (Lipton, 1986). In 1948, the National Party was elected into government, this led to racial discrimination and both male and female blacks majority were restricted in the mining industry through policies and laws that isolated them and permanently disadvantaged them to acquire skills to compete (Clark & Worger, 2013).

Undeniably, laws that operated during the apartheid era were discriminatory and only beneficial to the white people (Wolpe, 1972). Also, the Mines and Works Act was passed by the apartheid government and this Act denied black people a meaningful opportunity to participate in the mining sector (Jordaan & Ukpere, 2011). Section 8 (1) of the Act also prohibited women from being employed to work underground in mines. Management employment opportunities were limited to the white people and the top management positions were reserved for white people. Section 12 of the Mines and Works Act of 1911 made a provision that uplifted the poor whites at the expense of the black people by employing large number of unskilled and semi-skilled whites into state and parastatal corporations (Adams, 1993). Certificate of competency could only be possessed by the whites or Cape Coloured people to the exclusion of the black people and this explains the reason why the black majority lacked the necessary skills. More importantly, Black labourers could not occupy top managerial and supervisory positions on the basis that they were denied opportunities to equip themselves with skills, hence they could not walk through the ranks of the managerial positions as their white counter-parts (Cruise, 2011).

The 1911 Mines and Works Act was amended by the Colour Bar Act into the so called “Mines and Works Amendment Act of 1926 (Cruise, 2011). This legislation stated that “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 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” (Cruise, 2011).

In 1994, South Africa became a democratic country and the era of transformation began (Beall, 2005). The African National Congress (ANC) was elected to power. Its followers grew around the country as it began to give hope for restoration of peace and tranquillity to the whole people of South Africa. The issue of transformation was introduced with the aim of providing black disadvantaged people the opportunity of accessing equal rights to the employment opportunities they were denied during the apartheid era (Reed, 2003).

As a responsible government, the ANC requested and demanded that the land should be shared by those who work it. They stood for rights of all people to access houses, works, and security and free and equal education. The charter also addressed
that the “national wealth of the country, the heritage of all South Africans, shall be restored to the people; the mineral wealth beneath the soil, the banks and monopoly industry shall be transferred to the ownership of the people as a whole; all other industry and trade shall be controlled to assist the well-being of the people; all people shall have equal rights to trade where they choose, to manufacture and to enter all trades, crafts and professions. However, nationalisation as well failed.”

The Minerals Act 50 of 1991 was enacted to regulate the mining industry until May 2004. Section 42 of the Act makes provisions for compensation to be paid to the owner of the land by the person who intends to mine on the owner’s land (ACT 50 of 1991). In 1995, BEE (black economic empowerment) and policies and legislation were passed to remedy the apartheid ills. The Employment Equity Act 55 of 1998 was enacted to reduce discrimination in the workplace and encouraged equal and fair employment opportunities to all people of South Africa and also adopted affirmative action measures as contemplated in section 15 of the Act. The aspect of affirmative action provides that “in the event that a white and black person has the same qualification for an employment, the black person must be given preference.” Section 2(b) promotes the employers to effect an affirmative action to redress the ills caused by the apartheid government against the Historically Disadvantaged South Africans.

BBSEE (Broad-Based Socio Economic Empowerment) Act makes the provisions for the black economic empowerment through economic transformation to ensure the meaningful participation of black people in the mining industry (Section 1 of Act 53 of 2003). Further, section 2(c) encourages communities and workers to own enterprise and infrastructure and skills and training of Act 53 of 2003.

Minerals Petroleum Resource and Development Act 28 of 2002 which opened mining opportunities to all were also introduced with specific purpose to make provision for the historically disadvantaged South Africans. The Skills Development Act 97 of 1998 makes it mandatory for the employees to possess skills to ensure that they are productive and competitive. This Act was also enacted with the aim of providing skills on the basis that majority of the black people working in the mining industry do not have sufficient and competitive qualifications for the upper managerial positions in the mining industry. The Act introduced a skills development programme for improvement and skills training and development so that black people can be productive, competitive and employable.

These pieces of legislation were enacted in the post-apartheid era with the intention of providing meaningful participation of historically disadvantaged individuals in respect of the country’s mineral resources.

The objective of the transformation in the mining sector was to ensure 26% of the mining assets transferred to the black-owned firms and that 50% of the mining projects to be transferred to the black firms as well (Iheduru, 2004). However, statistics indicate that less than 5% of management positions, especially the top management levels, were held by HDSA’s (Historically Disadvantaged South Africans) in 2011. This led to public outcry and government scrutiny for slow or poor transformation processes (Commission for Employment Equity (CEE) Annual Report 2013-2014). The Mining Charter 2002 set quantifiable targets for the transformation, requiring that, by October 2009, 15 % of mining equity be held by historically disadvantaged South Africans (Moraka, 2013). The 2002 mining charter set the target of 15% of the mining equity to be held by the HDSA’s but the target had not been reached.

The Broad Based Socio-Economic Empowerment Amendment Charter 2010 was enacted to aid in achieving the target of increasing the HSDA mining equity
ownership to 26% by 2014 (BBSEEC 2010). This target was however not reached, 17.4% was achieved (CEE Annual Report, 2013-2014). Even though laws have been put in place to remedy ills caused by apartheid discriminatory laws, the targets set for transformation are yet to be reached.

The mining sector in South Africa is still finding it difficult to comply with the mining charter’s goals of transforming the mining and ensuring that black disadvantaged people are given opportunities to also compete for the supervisory and managerial positions.

2. Problem statement

South Africa became a constitutional democratic country in 1994. Pieces of legislation were passed to transform the mining industry to ensure that there is a radical restoration of balance and equal opportunities for the benefit of the HDSA’s (Historically Disadvantaged South Africans). However, these pieces of legislation have not yet achieved the purposes for which they were enacted. The target for achievement of 26% HSDA mining equity ownership has not been achieved. This shows poor transformation process and it is evident that implementation of laws and regulations put in place is poor.

3. Methodology

The research methodology used in this paper is non-empirical qualitative approach. The research is library based and relied on the library materials that include: textbooks, reports, legislations, regulations, charters, policies, amendments to the legislations, journals or academic journals, government gazette, constitution, international or national and local journals.

4. The Historically Disadvantaged South African (HDSA’s)

According to the Minerals Petroleum Resources and Development Act 28 of 2002 (MPRDA), historically disadvantaged person in South Africa refers to:

“a) Any person, category of persons or community, disadvantaged by unfair discrimination before the constitution took effect.

(b) Any association, whose majority of members are persons contemplated in paragraph (a).

(c) Any juristic person other than an association, in which persons contemplated in paragraph (a) own and control the majority of the issued capital or members interest and are able to control a majority of the members votes.”

According to BBSEE (Broad-Based Socio Economic Empowerment) Act 28 of 2002 historically disadvantaged South Africans refers to: black disadvantaged people including women, youth, people living with disabilities and those living in rural areas (Sorensen, 2011).

5. Literature review

Slow transformation process in the mining industry in South Africa is a major concern (R Hamann et al; 2008). Laws have been enacted to redress the imbalances
caused by the apartheid era in the mining industry but the implementation process is very slow. Mining Charter 2010 aims to facilitate continuous transformation and development (BBSEEC 2010). The Mining Charter 2010 intends to achieve substantial participation of the HDSA’s mining industries, benefit from the exploitation of mineral resource and to utilize and increase skills development to empower local communities where the mining sector is located (BBSEEC 2010). Therefore, in order to see the achievement of its objectives and vision, the Charter introduced the 26% ownership of the HDASA’s participation in the mining industry; however, the target is yet to be reached as the progress is slow.

The Mining Charter 2010 was enacted to “guide the process of transformation in the mining industry.” It is a document involving multiple role players. The Charter “is meant to achieve the transformation of the industry and it is the first of its kind to be introduced in South Africa.” The Charter aims to address the aspect of beneficiation, promotion of investment in the local enterprises owned by the black people and fulfil the community and socio-economic and developmental needs of the communities. The mining companies have been urged to become part of the implementation progress as the government alone cannot be able to achieve it without other sectors (Du Toit et al. 2008).

Ramatlhodi also indicate that “mining must be used to benefit the majority of the country’s people. We have a collective duty and responsibility to recognise our ugly and unhappy past, and to act in concert to shape our common future…we must engage candidly about the state of the mining industry in South Africa…efforts towards transformation needed to be doubled to regain the confidence of workers and communities in the mining sector.”

In assessing how best the mining companies have embraced transformation, Ramathlodhi “acknowledged that mining companies had embraced transformation, not only as a compliance matter but as a tool for reconciliation and social cohesion…we have a unique opportunity to change this industry for the better, and to ensure that it better represents our ideals and developmental objectives as a country.”

The transformation targets will be achieved if the companies become part and are ready to strictly comply with the government’s transformation agenda. There should be effective regulation adherence, monitoring and compliance outcomes. There should also be punitive penalty for companies that are not participating or implementing transformation agenda.

6. Challenges facing transformation are:

(a) Skills shortage
Most of the historically disadvantaged South Africans are uneducated, lacked experience and are unqualified to fill managerial positions in the mining sector (Moraka, 2014). These are some of the reasons why transformation is very slow in the sector. However, if the main purpose is to transform the industry, then the inexperienced should be guided by those experienced in the managerial positions as a way of grooming them and healing the imbalances of the past on the basis that the growing of the economy do not only require high skills. Even though the lack of skills is a major challenge to transformation, it should not be seen as a threat.

The alleviation of scarcity of skills can be achieved if mining sector complies with the Social Labour Plan and Mining Charter 2010 because these instruments make provisions for the skills that will accelerate skills acquisition, through skills training and
development. When mining is being carried out in a certain community, the company is obligated by Mining Charter 2010 to empower such community with training and skills. However, what has been the trends over the past years are that the mining company does not empower the people with managerial skills, thus when the managerial positions become vacant, these community members are not able to compete for vacant positions. Thus scarcity of managerial skills in the mining industry is deliberately created by the mining companies as they hired the rank and file and illiterates.

(b) Lack of experience from HDSA

The HDSA lack supervisory or managerial experience which will allow them to participate in the upper managerial positions in the mines, however, the basic question is how experience can they acquire requisite experience if they are not given the initiative or opportunity to prove them. They must be given an opportunity and with time, they will be able to perfect their skills and work effectively and efficiently.

7. Transformation interventions in the mining sector in South Africa

(a) Reconstruction and development programme (RDP)

It aimed at redressing the HDSA by introducing economic empowerment to the black communities. The issue of the transformation of industry was also a key aspect as a way of restoring blacks to equal opportunities as white people.

(b) National Development Plan vision 2030

The National Development Plan (NDP) aims to reduce poverty and inequality by 2030. In terms of chapter fifteen of the National Development Plan, the historically disadvantaged people have been subjected to low-skill employment because of the injustices caused by the apartheid government at workplace (National Development Plan 2030). The plan urges sectors to employ and/or implement skills development to redress historical disparities in the workplace in respect of skills (National Development Plan 2030). It promotes the implementation of BBBEE which encourages the mining companies to invest in the enterprises that are being owned by the black people as the form of the empowerment of the HDSA’s (National Development Plan 2030). This is in line with the Mining Charter 2010 vision on the basis that both the Mining Charter and NDP (National Development Plan) support the increase of the black people that own, control or manage enterprises. The Plan and Charter also support preferential procurement in the sectors to the Historical disadvantaged people provided they are qualified or hold necessary documentation of the contract in question (National Development Plan 2030).

The plan encourages the sectors or industries to broaden the opportunities in the workplace for the historically disadvantaged and that employer must spend little training their employees and investing in their long term potential (National Development Plan 2030). It further provides that if the employers train their employees, it will be counterproductive to the development of both the individual and the firm or sector. This is transformational in nature (National Development Plan 2030).
8. Regulations and statutory frameworks for the mining sector

(a) Preferential Procurement Policy Framework Act (PPPFA) of 2000

The PPPFA emanates from the provisions of section 217 of the constitution. It provides that when there is any government contracts, preference must be given to those previously disadvantaged and must do so in consideration of the functionality, price and RDP goals (B-BBEE Procurement, Transformation and Verification).

The provisions of this Act aimed at empowering those historically disadvantaged people and made it clear that when contracts are to be allocated, preference must be given to those categories of persons who were disadvantaged. However, the challenge in this instance is that majority of historically disadvantaged people do not have the necessary capacity or qualification to be awarded such contracts.

(b) Employment Equity Act 1998

In terms of this Act, companies should have the employment equity target both in the junior and senior management. Companies must disclose their plans for employment equity at the management level. The stakeholders aspire to a baseline of 40% HDSA participation in management within 5-years, a target which has not yet been achieved due to reasons discussed earlier. This Act provides in terms of Section 15 (1) of Act 55 of 1998 that the employer should ensure that suitably qualified persons are given equal employment opportunity irrespective of skin colour or gender. By virtue of Section 15 (2) (a) the employer must implement affirmative action measures to eliminate employment barriers such as unfair discrimination and making sure that Historically Disadvantaged South Africans enjoy fair and just employment opportunities at the workplace. This will be beneficial to the qualified black people on the basis that they will be afforded the same opportunity as their white counterparts. More importantly, the Act reiterates the importance of the designated groups as they are those disadvantaged by unfair discrimination in that they must be given equal opportunity as well.

(c) Skills Development Act of 1998

It aims to provide recognised qualifications that are funded by the means of levy-financing scheme and national fund to the HDSA’s in the mining industry so as to equip them with necessary skills. This is done through the adopting of the strategies in the Mining Qualification Authority as a way of empowering workers with necessary skills for occupation.

This Act aims to ensure that employers use the workplace as the active learning environment where employees are equipped with skills and training (Section 2 (1) (a) (i) to provide the employers with necessary skills (Section 2 (1) (a) (ii); to provide opportunities for new entrants in the labour market to gain work experience (Section 2 (1) (a) (iii)) and most to provide HDSA’s with training and education (Section 2 (1) (e).

If the provisions of this Act are effectively implemented by the employers in the mining sector, the transformation progress will speed up and the historically disadvantaged people will be equipped with skills, training and education, enabling them to be competitive and productive at workplace. The employers are further urged to provide opportunities’ for new entrants in order to gain experience so that when a certain managerial position becomes vacant they would have acquired the necessary experience required to compete for such vacancy.
(d) **Broad-Based Black Economic Empowerment Act 46 of 2013**

It aims at redressing the imbalances caused by the apartheid era and create equal opportunities for all people of South Africa and equal sharing of the benefits of the country’s mineral wealth. The B-BBEE introduced the empowerment of black people through ownership of enterprises which are black-owned. Black-owned enterprise was defined “as one that has 51% ownership by black people, with substantial management control of the business.”

This Act encourages the empowerment of the historically disadvantaged South Africans as the owners and managers of enterprises. The Mining Charter 2010 is aimed at empowering HDSAs the empowerment of the black people through ownership of business enterprise and occupying managerial positions in the mining industries. Therefore this Act highlights one of the aims of the Mining Charter by encouraging empowerment of ownership of enterprises by black people as part of transformation to those historically disadvantaged by the Apartheid laws.

(e) **Minerals and Petroleum Resources Development Act of 2002**

It introduced broad-based socio economic empowerment which focuses heavily on the participation of the HDSA in the mining industry. The Act focused on the empowerment of the historically disadvantaged South Africans. Also aims at healing the imbalances of the past. In conformity with the affirmative action, blacks must be given opportunities in the upper positions even if they lack qualifications; they must be supervised by those experienced but with the black man calling the shots.

(f) **Minerals Petroleum Resources and Development Bill 2013**

Minerals Petroleum Resources and Development bill defines beneficiation as “the transformation, value addition or downstream beneficiation of a mineral and petroleum resource (or a combination of minerals) to a higher value product, over baselines to be determined by the Minister, which can either be consumed locally or exported.” Further, that in order to meet the national development plan goals, the minister must promote community beneficiation, ensure sustainable supply of the country’s mineral wealth in the interest of the country and develop capacity (Tucker and Sibusiso Sibisi, 2013).

(g) **Section 23(2) of the MPRDA Bill of 2013**

When the minister grants application for mining rights: he must consider the socio-economic challenges of a particular or specific community and order the holder of the mining right to address such challenges or needs. This might as well benefit the community in terms of their socio-economic needs as it empowers the minister to have discretion as to how the holder of the right is to address such issues.

(h) **Constitution of South Africa 1996**

According to Section 25 of South African constitution 1996, the government has a commitment to restructure the mining industry. The constitution’s goal is to transform the mining industry by promoting equality especially for the HDSA. This is clearly reflected in the Bill of Rights in section 9 which states that all citizens are equal. To realize this equality, the government aims to continue to apply and implement the laws in order to protect the rights of people. Therefore, transformation of the mining industries is also a key aspect of the constitution and only through transformation as a
way of healing apartheid ills will achieve equality in the sector if there is radical transformation implementation (Nthabiseng Violet Moraka 2013).

9. Conclusion

The literature reviewed had revealed that the pace of transformation in the mining industries in South Africa is slow and implementation of laws aimed at the transformation is a major concern. The historically disadvantaged South Africans are not represented at the supervisory and managerial positions in the mining sector. This had led to several pieces of legislation being enacted to redress the imbalances caused by the apartheid depressing laws. The implementation of those laws, however, has been poor as significant progress has not been made.

Faith Bikani, Parliament’s Mineral Resources Portfolio committee acting chairwoman confirmed that transformation progress is poor. She made it clear that she is disappointed with regard to the progress made in terms of transformation in the mining sector and has urged the sector to become an integral part of the implementation process (lekgotla, 2013).

References


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Apstrakt

U radu se razmatraju potrebe ubrzanja transformacije u rudarskom sektoru u Južnoj Africi koristeći postojeće zakone. Smatra se da je tempo transformacije veoma spor što stvara prepreku razvoju i asimilaciji ranije ugroženih ljudi u Južnoj Africi. Rad ističe da svi ciljevi istaktuti u raznim zakonima i politikama a u vezi transformacije moraju biti ispunjeni.

Ključne reči: implementacija, transformacija, istorijski nepovoljan položaj južnoafrikanaca, rudarska industrija