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Mining for whom?

A minor field study of the implementation of a legislative reform in the South African mining industry

WHO OWNS THE S.A
MINES?
GIVE THEM TO
GOD'S PEOPLE.

WESTERN CAPS
WANTED MINING RIGHTS,
ORGANISED US TO BE
BBBEE GROUP
"WHAT HAPPENED?"

Abstract

Natural resources hold a great potential for both economic and social development in developing countries. Many countries in Africa today are rich in natural resources but remain poor and underdeveloped. Policies and legislation within this sector need to provide a good framework in order for the natural resources to be properly managed. This report aims at discussing the difficulties in managing natural resources in the specific case of South Africa, and the country's new legislation; the Mineral Petroleum Resources Development Act of 2002. The act shifted the ownership of all the mineral rights to belong to the people with the state as its custodian with the purpose of, among other things, promote black ownership of mineral rights. This report discusses the act from an implementation perspective. The discussion takes its departure in theories on the crucial stages for a successful implementation and possible causes behind implementation difficulties. The study concludes that the objectives have been more difficult to achieve than was expected. The legislation and its implementation process have suffered from both administrative and architectural weaknesses. The study has been carried out in South Africa through interviews with key persons in the mining industry.

Key words: South Africa, implementation, natural resources, racial imbalances, mining

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The MFS Scholarship Programme gives Swedish university students the opportunity to carry out fieldwork in a Third World country. The extent of the work can lead to Bachelors or Masters Degree. The studies focus on areas and issues of relevance for development problems, and are conducted in countries supported by Swedish development assistance.

Sida's main purpose with the MFS Scholarship Programme is to stimulate the students' interest in, and increase their knowledge about, as well as their understanding for, developing countries and development issues. The MFS scholarships provide the students with practical experiences of the conditions of development. A further aim for Sida is to strengthen co-operation between Swedish University Departments, Institutes and organisations in countries in Africa, Asia and South- and Central America.

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1 Introduction

South Africa is one of the largest mineral producers in the world and its mining industry is important because it provides both quantity and a great variety in the minerals produced (Leon, 2009, p. 3). Since the late 19th century the South African economy has been based on the production and exporting of minerals. The minerals have also contributed to the country's industrial development (EN).

Great metal deposits in developing countries along with a continually growing demand for metals in the world creates opportunities for economic growth, social and economic development, if they are properly managed (von Essen et al., 2008). This illuminates the importance of a discussion concerning these problems and initiatives and policies working to change the poor patterns still remaining in many developing resource-rich countries today.

With the apartheid regime coming to an end in South Africa in 1994, the legal structure surrounding the country's minerals has been undergoing major changes. In 2002 negotiations resulted in the Mineral Petroleum Resources Development Act (in this report referred to as the MPRDA or the act). The act put an end to the previous dual system of both private and state owned mineral rights and left room for a system of state custodianship for the benefit of all South Africans (Leon, 2009, p.3).

The need for the recognition of the racial imbalances is shown in the South African society today through disappointing socio-economic figures with high unemployment in the black community, comparatively low human-development index and continually increasing HIV/AIDS infections (Cawood, 2003, p. 201). The mining industry is one of the key industries in South Africa and plays a central role as an employer and in creating wealth and development in the country. Therefore it is important that issues such as inequalities, equity in ownership and racial imbalances are addressed. As an actor in foreign aid in South Africa Sweden may have an interest in looking into these issues.

Within the new mineral policy, national objectives must be supported in mining and hopefully this will be the case even if investors often have a different agenda. Most investors

do recognise the importance of social issues but when investing, security of tenure¹, political and legal stability and returns on their investments seem to be of most importance (Ibid, p.201).

Although the changes in the industry were necessary, change is inevitably difficult and has created tensions. The major concerns at the time of the release of the MPRDA were between the prior existing private owners of mineral rights and the new political regime. The owners of mineral rights demanded constitutional protection of their properties but the new government had gone to election with the promise that mineral rights would be returned to the state (Ibid).

Foreign direct investments in natural resources can have positive effects on the economic and social prospects of a developing country. Unfortunately the difficulties with investing in natural resources and the extractive industry are many. Revenues from investments often go unaccounted for and potential development in the host country is lost (Moran, 2006, p. 75 f.). Written in an article in the *Mail & Guardian*, one of the largest South African weekly newspapers, revenues from many resource-rich African countries have not trickled down to the poor to create development but have rather fuelled a new wealthy elite and sadly many resource-rich countries are found at the bottom of the United Nations Human Development Index (HDI)² (Games, 2010, p.38). This situation can possibly be avoided through finding suitable policies that work in the right directions. With this in mind and the fundamental role the mining industry plays in the South African economy, this thesis aims at discussing the problems and challenges this industry is facing in South Africa. In South Africa I have had the opportunity to meet and interview key persons in the mining industry which I believe has contributed positively to the study and has given me a unique possibility to discuss with key players with great insight in the South African mining industry. This report has been made possible through a scholarship by SIDA (Swedish International Development cooperation Agency) and has been carried out as a Minor Field Study in Johannesburg, South Africa during the period between December 2009 and February 2010.

¹ The security of not being removed from where you prospect or mine, which is important for investors since mining, is a long capital intensive investment (Baxter, 2009).

² The United Nations Human Development Index is a measure of a nation's living conditions, economic and social development (www.ne.se, 2010-08-15) (the author's own translation).

2 Purpose & Research Questions

My questions for the study are the following;

* Which have been the main problems in the implementation of the MPRDA and the mining charter?

* Why have these problems occurred?

2.1 Purpose

The purpose with this report is to investigate the problems and obstacles of the MPRDA's implementation process and discuss what has caused these problems to occur. I seek to describe and analyse this process and situation with departure in the findings from my interviews and the theoretical framework.

One part of my study will focus on the achievements of the objectives of the act and the mining charter. A few of the objectives have specific targets set up while others, for instance those of more socio-economic character, are more abstract and the achievements of these are therefore more difficult to observe. Despite this difficulty the analysis part of the report aims at discussing these objectives in reference to their achievements so far with my interviews as the main source.

3 Delimitations

My delimitation is to focus on the shift in South African mining policy that the new legislation the MPRDA and the document the mining charter signify. The act changed the circumstances for ownership of mineral rights in South Africa and the mining charter has amongst other things a strong focus on Black Economic Empowerment (BEE). Black Economic Empowerment can be referred to as expressed by Roger Baxter at the Chamber of Mines; *“Trying to create a critical mass of black entrepreneurs through black economic empowerment”* (Baxter, 2009). I will be delimited to analysing the implementation process and only in broader terms go into the issue on BEE as a part of the mining charter’s implementation process.

By implementation in this report I am referring to how the act and the mining charter have been put into practice and to which degree the objectives have been achieved. The concept implementation has mainly been operationalized through my interview questionnaire which has been guided by the theoretical framework. I have asked questions about which instruments have been used in the implementation and which have been the major problems in the process and why these have occurred (the complete questionnaire is attached to this report).

4 Method

The research will take form as a case study on South African mining policy. The case is unique in many aspects and an interesting case in the South African context due to for example historical and political aspects and a field study in the country is an appropriate method. The study has an idiographic view since I intend to understand the process, the particular situation and obstacles rather than predict. But the collection of knowledge on the subject demands both a general nomothetic view and an idiographic view (Teorell et al, 2007, p. 41).

The case study has a descriptive and explaining purpose and I do not have intentions to generalise. The study aims at describing a process and explaining causes for the specific process of implementing the MPRDA. In order to explain it has in this study been inevitable to describe. At the beginning of my research the need to understand and therefore describe the process leading up to the implementation was great and a large part of my interviews have focused on this. Although this has not been an extensive part of my report, it has contributed to my general understanding of the process and the South African mining industry. It has been an important part on the way to causality (Teorell et al, 2007, p.23).

The descriptive purpose of the study has resulted in an effect-analysis where consequences of the policy reform are analysed in reference to the effects of the different parts of the reform (Teorell et al, 2007, s. 23). When looking at the effects of the reform I am well aware of the fact that there may be other variables which I am not looking at that may affect the outcome of the MPRDA in terms of effects. There may be a possibility that the purpose of the reform may have been imperfectly directed from the beginning which would affect the outcomes of the reform. There may have been other variables within the mining industry affecting the effects that I have observed which has nothing to do with the MPRDA, such as other reforms within the mining industry or other socio-economic factors that have changed during this time-period. The main purpose of the study is still to study the implementation process of the MPRDA and not to go too deep on the effects of the act.

4.1 Interviews

This study is mainly based on interviews. The interviews are both informant and in-depth and are of a semi-structured character. With this structure I have had an opportunity to ask additional questions, adjust according to the specific situation and the person I am interviewing (Teorell et al. 2007, p. 89). The structure of the interview had to be set with regards to the theoretical framework I am using and to my own pre-understanding on which aspects of the implementation process that are to be studied (Petersson et al. 2003, p. 45). It has been important to keep in mind that the interview-technique used is in accordance with the situation. It has been important to take into account the different factors that may affect the interview; the social interaction, the context in which the interview is held, the person that is being interviewed and also my perspective and what I represent as an interviewer, which can affect the interview (Petersson et al. 2003, p. 48 *f.*). Even if the aim in an interview-situation is to provide a neutral framework where the respondents can express his or her own thoughts, it is important to acknowledge that this neutral framework does not exist (Ibid, p. 41). I have not aimed at “uncovering” an objective truth with my interviews but to interpret and understand the situation from the perspective of the respondents (Ibid, p. 35).

The aim of the interviews has been to contribute to a deeper understanding of the MPRDA and its implementation process. I do not believe it is possible to reach an objective truth but simply to interpret the respondents’ answers and insights, and through this obtain a subjective view of the implementation process. I as a researcher here view the reality from a relative epistemic perspective where ...”the social world must be understood from within, rather than explained from without” (Hollis, 2006, p.16).

My intention has been to interview people from different parts of the mining industry in order to obtain different perspectives, these included; representatives from (i) the Department of Mineral Resources (DMR), (ii) representatives from the large mining companies and, (iii) representatives from labour-unions. My intention of trying to gain knowledge from different parts of the South African mining industry was for me to both acquire a deeper knowledge of the act, because of meagre information on the internet, and to be able to view the implementation of the act on different levels of the industry, because of the possible different obstacles on different levels. The implementation process can also be driven by different actors depending on the context in which the objectives of the act are to be implemented.

4.2 Material

The interviews and documentation collected during my field study has been my main material that I used for my report and the interviews-persons I found on my own, with the help of my tutor in South Africa.

Beyond conducting interviews, I have read supplementary material such as text documents on the process leading up to the legislation change and documents on what has happened the years after. It was easier to access documentation and statistics of this sort when in the field. The purpose of reading supplementary text-documents, beyond the material that is available on the internet, was also to acquire a deeper understanding of the discussion around the decision, the objectives of the reform and the extent of implementation in the mining industry in South Africa since 2002.

5 Background

5.1 Mining legislation prior to 2002

Prior to 2002 and the MPRDA the South African mining industry was regulated by a combination of common law and legislation mainly through the Minerals Act of 1991 (Leon, 2009, p. 3). At this point the mineral rights were both state and private owned with a majority of private white owned mineral rights (White Paper, 1998, p.10).

Under South African common law the owner of the land was also the owner of the minerals in that land and was given the right to prospect and mine (Ibid.), which meant that you were more or less born into your property and mineral right (Cawood, 2009). The duration of mineral rights under the Minerals Act were indefinite and under this system there was very little development in the sector due to a complex system of ownership. To start a mining operation one had to receive permission from all the mineral rights owners in that land, which in most cases was nearly impossible (Cawood, 2009).

5.2 Reforming the industry

The great diversity of the stakeholders and viewpoints has made the changes in South Africa's mineral policy complex (Cawood, 2009, p. 199). The changes that were awaiting the mining industry were to include the recognition of past racial imbalances through for example BEE and the passing of the ownership of all of South Africa's mineral rights to the people of South Africa with the state as its custodian (Ibid, p.203).

5.2.1 The course of action

During the election campaigns preceding the election of 1994 the ANC used the so called Reconstruction and Development Programme (RDP) as a manifesto for change, a document that introduced the codes of the freedom charter in governmental policy. This was a document that called for optimal use of the country's resources through bringing the mineral rights back to the democratic government (Cawood, 2009, p.199).

Released in 1998 was the White Paper on Minerals and Mining Policy, with the proposal of changing the structure of mineral ownership in South Africa to exclusive state ownership of all mineral rights in the country. The policy would oblige the government to ensure security of tenure in mining and prospecting operations, and change the present system of mineral rights ownership with as little interference on the mining industry as possible (Cawood, 2009, p.203).

The White Paper recognised the importance of promoting BEE, improving health and safety for employees in the mining industry and improving human resource development through suitable education and training programs. The paper also stated that the industry has to represent all South Africans in staff. The issues mentioned above, housing and living conditions of mine workers, were to be dealt with through the introduction of social plans to assure the benefits of local communities from mining operations (Cawood, 2009, p. 201-202). In 2002 the MPRDA and the mining charter were passed. Most of the conflicting issues from the Mineral Policy and the first draft of the MPRDA were solved and when implemented in 2004 the MPRDA became the new statutory law on mineral development in post apartheid South Africa (Cawood, 2009, p.202).

5.3 The new legal framework

“Developing an understanding of optimal use of mineral resources under South African Mineral Law”. This is what the new legislation enables through putting an end to the long system of private ownership of minerals. A system where individuals and companies were

able to use this private ownership to put their own individual benefit before the optimal use of minerals for the republic of South Africa (Dissertation Cawood, 2009, p.9).

5.3.1 The MPRDA

With the introduction of a new legal framework for the South African mining industry came new responsibilities and requirements for companies. The shift in mining policy is reflected in the essential principles and objectives of the MPRDA. The fundamental principles being; the change in the order of mineral rights ownership, the promotion of equitable access of mineral resources and information, promotion of economic growth through increased beneficiation of mineral production within South Africa (White Paper, 1998, *passim*).

Beyond these general principles there are several specific objectives formulated; (i) the support of earlier disadvantaged groups to benefit from the exploitation of natural resources in South Africa (ii) support of employment and the development of economic and social welfare of all South Africans (iii) the promotion of economic growth in the republic (iv) the development of the mineral and petroleum sectors in an ecological and sustainable way while promoting legitimate economic and social development (v) ensure that the holders of mineral rights promote socio-economic development of the areas in which they are operating (vi) guarantee security of employees in respect of prospecting, exploration, mining and production operations (vii) recognition of the right of the state to practice sovereignty over the mineral and petroleum resources in South Africa (MPRDA, 2002, p.18).

The new order of mineral rights is meant to promote new and active development of mineral and petroleum properties through a more open mining sector and the free flow of information from the holders of the rights to the state. The new licensing system requires that anyone looking to mine or prospect in South Africa must hold a license to do so, once a holder of mineral rights the minerals must actively be developed according to the different working programmes (Cawood, 2009).

One of the intentions of the MPRDA has been to create opportunities for black business, as well as for small and medium mining enterprises. However the act has created tensions between interest groups within the industry, where it has been argued that the legislation does not deliver the security necessary for long-term investments in South African mining operations (Snowden, RAM, 2008, p.211).

In an ownership perspective the MPRDA is interesting in that way that it does not anywhere state the transfer of mineral rights into state ownership. The act limits the influence of the holders of old-order rights through regulations and state custodianship to the extent that these rights become useless and no longer hold any economic value. This gives the minister and the government more control and influence over mineral rights even if the ownership has not in effect changed (Cawood, 2009).

5.3.2 The Mining Charter

The mining charter for the South African mining industry plays an important role in the new legislation. Although it is not a legally binding document it sets out important targets and objectives for the industry. The mining charter and the mining legislation require that investors in the mining industry go into partnership with black investors on new mining projects (Cawood, 2009, p.202).

After the colonial rule indigenous people were left with very limited social and political rights. The call for equal rights between races was strong and would be communicated through the *Freedom Charter for the democratic South Africa of the future*, this is the document the mining charter is based on. This document emphasised the redistribution of land and wealth from the white minority to all South Africans. The black community had the ambition to empower the black part of the population in key industries such as mining through nationalisation. The mining charter deals with how to expand the opportunities of earlier disadvantaged group in the areas of ownership and management in mining projects, employment, worker and community participation and sets up targets for BEE achievement. The charter seeks transformation in all of the areas with the overall objective to reach empowerment of these groups through a fair market and human rights principles (Cawood, 2009, p. 202). Social and Labour Plans (SLPs) have been introduced in the mining industry through the mining charter. The objectives with the SLPs are to (a) promote employment and to advance the economic and social welfare of all South Africans (b) contribute to the transformation of the mining industry (the targets for BEE) (c) ensure the socio-economic contributions from mining companies towards the communities in which they are operating

(GG, p.22). The SLPs are compulsory for all operating mining companies in South Africa, regardless of the size of the operation or number of employees (CG, p. 2).

6 Theoretical framework

This study will mainly build on the theoretical framework on implementation. Given that my study is an implementation study of a new legislation/policy, a theoretical framework that focuses on the crucial stages of an implementation process is relevant.

The field of implementation of public policy hold an extensive theoretical framework concerning the implementation process, policy formulation, policy design and problems hindering a successful implementation. Therefore it has been necessary to chose only a few theories to guide me in my research and my interviews.

I have mostly used literature written by Daniel A. Mazmanian and Paul A. Sabatier since they are amongst the most famous in the implementation literature and during my research have been recurring in different articles and books. Their theoretical framework corresponds well with my research and has been guiding me in my interviews and later in my analysis. All of the aspects are not reflected in my analysis but the theories I chose to present here have in one way or another guided me in my interviews or in my interpretation of the results from my interviews.

“Implementation is the carrying out of a basic policy decision, usually made in a statute”. If possible this statute identifies the problem(s) to be dealt with in the policy decision/reform, it specifies the objectives that are to be followed, and, in different ways the statute “structures” the implementation process (Mazmanian et al. 1981, p. 5).

6.1 A “second generation” of implementation theory

The implementation field has taken a few turns over the years and theorists have developed their views in different directions, and in many cases the critique of one model has developed a new.

Donald Van Meter and Carl Van Horn view the issues on implementation from factors affecting the implementation process and programme performance and do not focus on the role of actors in the process as many others. They mention the following factors (1) policy standards and resources (basic funds) (2) support for policies in the political environment (3) economic and social conditions, (4) characteristics of the implementing agencies (5) communication of policy standards and other decisions within and among implementing agencies, (6) incentives to promote compliance with policy decisions, and (7) the policy nature of implementing officials.

Mazmanian and Sabatier believe that this and other early implementation theories together make up a practical framework for analysing policy implementation, its complexity and the various factors that can either guarantee or hold back a successful implementation, but the authors direct critique against the frameworks. They believed the theories were missing fundamental principles and in their view further development of the theories was necessary.

The critique has resulted in six main areas which the authors recognise as essential for a “second-generation” framework.

The first is that, more attention and effort is needed to empirically explore the linkage between individual behaviour and the economic, political and legal context the behaviour is occurring in.

The second area derives from the critique that the earlier frameworks strongly underestimated the ability of a statute (an act, law, order, bill) to “organize” the implementation process and that they focus too much on the value of clear and reliable policy objectives, sufficient financial resources, and, to a lesser extent, on the incentives supplied for compliance with the policy objective.

Thirdly, the earlier theories overlook the capacity of a statute to determine (i) the number of veto or clearance points, (ii) the formal access of different actors to the implementation process, and to a certain degree, (iii) the possible policy tendencies of implementing officials. In the fourth area of critique, the authors have identified the earlier theories’ absence of addressing the, what they call, “tractability” or “solvability” of the problems addressed by a public policy. The “tractability” refers to those specific aspects of a social problem that will affect the ability of the governmental institutions to realize the statutory objectives that have been set up, for example, some social problems are easier to deal with than others.

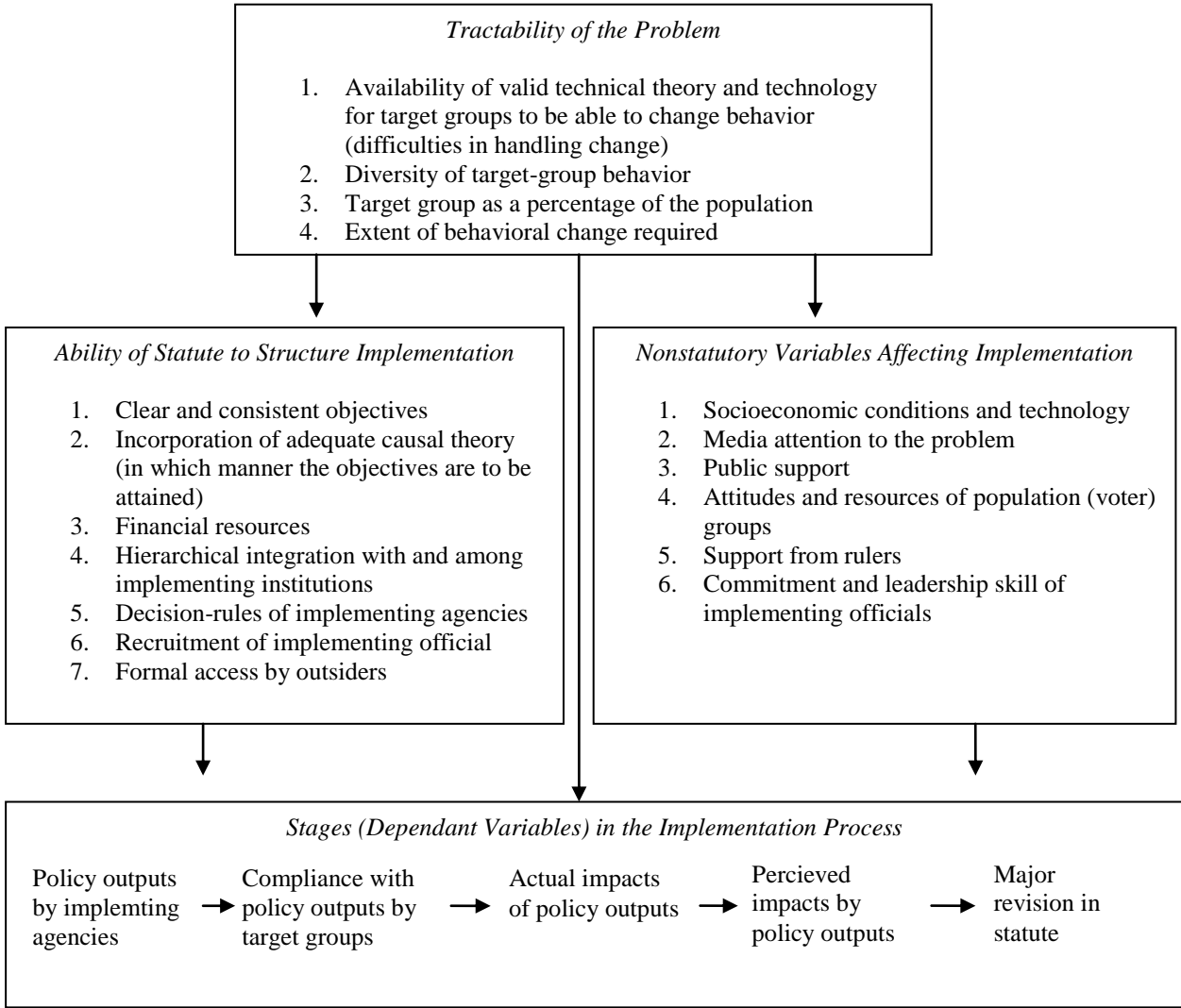
The fifth area relates to the problem of the earlier theories mainly applying to programs of distributing goods and services. These theories have to some extent ignored programs that clearly aim at regulating the behaviour of private actors.

Finally, the earlier theories use more vague categories rather than variables that can easily be operationalized (Mazmanian, et al., 1981, p. 4-5).

The framework of analysis by Mazmanian and Sabatier can be summarized in the diagram below; it shows the three categories of (independent) variables mentioned above, that form the dependent variables.

Figure 1.1

A framework of Analysis



(Mazmanian et al, 1981, p. 7)

6.2 Policy formulation and policy design

Later scholars have ignored the impact of policy formulation and policy design on implementation while earlier theorists blamed the policy design for any failures in the effects on implementation.

An integrated implementation model has been presented by Soren Winter where the first set of factors focus on policy formulation and the policy design. He claims that the prior policy formulation process and conflicts that arise in the policy design process can often be the source of difficulties later in the implementation process. These conflicts also often lead to vaguely formulated objectives and a causal theory that is invalid and show little connection between the resources and goals in the policy design concerned (Peter et al, 2003, p. 208).

The reality of policy intentions and objectives in practice often differ from the intentions on paper due to distortions during the implementation process.

Therefore a central issue in the implementation literature is how these distortions and problems can be addressed through the choice of policy design prior to the actual implementation. Some argue that it is desirable to adapt to certain circumstances during the process. Others argue that it is difficult to address implementation problems beforehand or during implementation due to the inevitable vagueness in policy goals and the conflicts between implementers. Another view is that these difficulties partially can be improved through using the right policy design to commit and build capacity amongst intermediaries and target groups. The capacity instruments can include funding, education and technical assistance. Commitment instruments include publicity of policy goals, incentives to carry out the policy and consequences if failing to act upon the obligations (Handbook of Public Administration, p. 1-2).

Built on several case studies theoretical frameworks have been enabled to point out in which ways that central features of policies limit the implementation. The process can be affected by the following factors; (i) unclear and inconsistent goals, (ii) complex chains of implementation, (iii) indirect control and by non-statutory factors such as intractability of problems and unsupportive political environment.

The implementation literature has often been criticized for overlooking the influence the politics of policy formulation has on the implementation. It has been well documented that it does have an impact and the value of policy instruments are as much formed by the political context in which they operate as by the attributes of the specific instruments (Handbook of Public Administration, p. 1 & 3).

6.3 Policy intentions

The intentions behind the policy shape the goals, political debate and the type of policy to be put in place. Ideas, ideology and social learning influence the contours of policies. How does policy intention then affect implementation? It constructs boundaries on policy instruments and structures through the ideological approach reflected in the policy intention. Two important lessons for policy design is that implementation instruments have to be consistent with the policy intent (goals) and the implementers have to be in support of the policy intention. If the latest criterion is not fulfilled there is a risk that the policy intentions are undermined by the implementers. The policy instruments need to be mixed in the right way so that they support an overall strategy in order to not make purposes work against each other (Handbook of Public Administration, p. 8).

Even if the theoretical framework on policy design and implementation is extensive and provides many understandings of policy design and implementation, it falls short on a few aspects. As written in the Handbook of Public Administration, the theories fail to explain the link between different elements of policy instruments and different implementation challenges. The later implementation literature has improved the recommendations from “clarify and simplify” to more practical guidance on how policy design can create incentives for target-group cooperation and compliance (Handbook of Public Administration, p. 8).

7 Analysis

In the next section of my report I will account for the main areas and opinions that have been brought up during my interviews concerning the implementation process of the MPRDA and the mining charter. The section gives an understanding of the opinions that prevail within the different parts of the mining industry on this specific topic at this point.

In South Africa I conducted all together 17 interviews. The material collected from my interviews was extensive and due to this all of the interviews have not been used explicitly in my report but has contributed to my general understanding. Out of the 17 interviews I have chosen to use 10 of them more or less in my report because they in the best way have helped me to give an answer to my research question. Following is a description of these 10 people that will be used in the following analysis.

Suzan Malebe; the DMR regional office of Gauteng's manager, Nchakha Moloi; chairman in the BEE mining company Motjoli Resources and chairman in the South African Mineral's Development Agency (SAMDA), Peter Leon; a mine lawyer at Weber & Wentzel and mine journalist at the Mail & Guardian, Frederick Cawood; professor in mine surveying and head of the mining school at the University of Witwatersrand in Johannesburg, Roger Baxter; chief economist at the Chamber of Mines³ in Johannesburg, Anton Van Achterberg is a legal advisor at the Chamber of Mines, Jacinto Rocha works at the DMR's head office in Pretoria and has been one of the architects of the MPRDA, Paul Jourdan is a former head of South Africa's national mineral research organization; MINTEK, Eddie Majadibodu is a representative from the largest mine union in South Africa; the National Union of Mineworkers (NUM) and May Hermanus has previously

³ "The Chamber of Mines of South Africa is a voluntary membership, private sector employer organisation founded in 1889" (www.buillion.org.za, 2010-08-15).

worked with the NUM and is now based at the University of Witwatersrand at the CSMI.⁴

7.1 Implementation of the MPRDA

The MPRDA and the mining charter have faced problems throughout the years of implementation. The difficulties that have been observed are both of infrastructural and architectural character. Some of the obstacles can be related to classical implementation problems such as lack in capacity and budget while a few of the problems are more unique for the case. The difficulties of more abstract character have in some cases resulted in more tangible problems such as the well mentioned setback of major delays in the processing of applications for mining licenses.

Problems around funding within the BEE-companies (Moloi, 2010) and the lack in resources within the department has also been observed (Leon, 2010), which can affect the degree of success in implementing the act and the charter. Resources have in two ways been an obstacle for implementation; too few properly qualified people to administer the act and the lacking budget in order to implement the act professionally (Cawood, 2009). Many of the challenges lately can be drawn to those of the implementation and interpretation of the new legislation. One other aspect that has made it difficult to implement the act is the fact that companies had to deal with several different departments in the process (Baxter, 2009). The process becomes inefficient because the different departments have had trouble working together properly (Van Achterberg, 2009) but from within the Gauteng regional office the understanding of the cooperation is different, the department has perceived a good coordination between the different departments and the chamber of mines (Malebe, 2010).

7.1.2 Delays

⁴ Center for Sustainability in Mining and Industry at the University of Witwatersrand in Johannesburg (www.csmi.co.za, 2010-08-15).

In the early days of implementing the MPRDA mining companies experienced long delays in obtaining their converted mineral rights under the regulatory framework. This administrative problem was in the beginning mainly due to the department's underestimation of the amount of applications for transactions. The department did not expect there to be as many applications as there were, which resulted in extensive delays in the conversions (Rocha, 2010). The Department of Mineral Resources (DMR), which is the main department in the South African government responsible for the implementation of the MPRDA, did not have the efficient resources to implement the act. This can further explain the delays that were experienced (Leon, 2010). Nchakha Moloi also recognises the capacity of the government as one of the major problems when implementing the MPRDA. The capacity he refers to is both people's capacity and infrastructural capacity (Moloi, 2010).

At the beginning of the implementation of the act the department introduced a new system which no one had been trained in, a fact which inevitably had an effect on the processing of mining licenses. At this point the department of mineral resources also had to face the problem with people leaving the department to work for the industry, which offered better conditions to the staff that had been trained in the new system. Nchakha mentions that once people got comfortable with the new system, the department was able to catch up with the transactions (Moloi, 2010) and as Suzan Malebe also points out, these challenges were mostly visible in the beginning, due to too few people working to process too many applications (Malebe, 2010). Very few conversions had actually taken place after two years and it was obvious that the department had realized that this was much more difficult than expected (Baxter, 2009). In 2007, 24 % of the applications had been converted and dealt with, which is a fairly low achievement level after three years of implementation. The delays can also be related to the difficulties that the mining companies have experienced in complying with the mining charter (Dawes, 2008, p.1).

According to Peter Leon the transaction period for granting licenses today, in 2010, although improved, is still too long. He believes that this affects foreign investor's interest in exploration in South Africa. Today the exploration expenditures in South Africa are half of what they are in other large mineral producing African countries, which for South Africa is a huge worry (Leon, 2010).

7.1.3 Policy formulation and policy design- *room for interpretation?*

One question to ask in this chapter is whether a different policy design could have helped to avoid some of the problems implementers have come across in the implementation of the MPRDA. What can be understood from the theoretical frameworks is that policies do more than just deal with a course of action. Policies usually contain a set of intentions and goals, a mix of instruments or means to carry out these goals, governmental and nongovernmental institutions in charge of implementing the intentions and distribution of resources. The intention of the policy is further communicated through the labelling of the policy, the language used and the different policy instruments used (Handbook of Public Administration, p. 1).

When studying the implementation of the MPRDA and specifically the delays in the processing of applications for mineral rights, the problem on interpretation emerges.

Opinions have been expressed about the act not being properly formulated at the early stages, which according to the theories on policy formulation may have had an effect on the subsequent process (Jourdan, 2009), and the difficulties and conflicts observed at later stages (Handbook on Public Administration, p. 208).

One problem that this has resulted in is the intentions and objectives often being misinterpreted and the mining companies' difficulties in complying with the mining charter and its objectives (Jourdan, 2009). The nonsufficient guidance from the government on how to interpret the charter and the MPRDA in the beginning of the implementation, and the fact that the understandings of the documents have differed, has caused several problems when integrating the act in company policy. Some companies which, were at the time working with the government, acquired the right guidance initially and the intentions were communicated correctly to these companies, which helped in the implementation of the act (Baxter, 2009).

Suzan Malebe mentions that there has been a general misunderstanding among the main mining companies on what the department want from the SLPs. The government and the regional offices generally want the companies to do more for the local mining communities but the companies often meet this critique saying that the skills are lacking within the communities (Malebe, 2010). According to Peter Leon, one of the reasons for the industry's difficulty in understanding the implications of the mining charter and therefore how to comply with it has been the vague language in which the charter was written. This has resulted in the intentions being vaguely communicated. Leon has observed two levels of obstacles in the implementation of the MPRDA; the first level being the vagueness in the

written language of the mining charter and the second level the imprecision in the regulatory requirements of the MPRDA. Peter Leon means that the language of the mining charter was intentionally vague and that the imprecision has largely affected the understanding of the intentions behind the mining charter and what the charter actually intends to achieve. The haziness in the language can to some extent be explained by the leaking of a discussion document of the mining charter in 2002, an incident that created a rush to reach an agreement and finalize the charter in only six weeks to minimize the damage on the industry. The leaked discussion document demanded 51 % forced sales of existing mining companies to BEE companies by 2014 (Leon, 2010). This created unrest amongst investors, and investments started to flow out of South Africa as many investors saw this as expropriation (Rumney, 2010, p.2).

The vagueness in the regulatory framework of the MPRDA refers to the fact that the act appears to be objective, but when looked upon in more detail it is actually subjective. It is what Peter Leon calls a “*backdoor to discretion*” and the key problems are found in the objectives of socioeconomic character, more specifically 2d and 2f of the MPRDA. These two objectives refer to the act’s aim to substantially and meaningfully expand opportunities for historically disadvantaged groups and to promote employment and develop the economic and social welfare of all South Africans. These vaguely formulated objectives and requirements create problems for mining companies in terms of determining under what conditions they will acquire a mining license. The minister can always at the very end make regards to the above mentioned objectives and not grant them with the license. This generates uncertainty in the mining industry, especially for investors (Leon, 2010).

The problem of interpretation is one of the recurring problems and this challenge returns in the implementation of the SLPs. Here the requirements have not been properly defined and therefore cause confusion. Nchakha means that it is important, when reviewing the mining charter (it underwent its five-yearly review recently), to clarify what is expected from the social and labour plans. This in order to avoid discretion and room for own interpretations by the companies. This will also contribute to the efficiency of the processing of applications, mentioned earlier as another of the major implementation problems (Moloi, 2010).

The objectives of the MPRDA are conflicting. The act wants to achieve security of tenure for investors while keeping the intention of maximizing the development of the sector through

the use of the use-it-or-lose-it principle⁵. Frederick Cawood means that even if the objectives appear contradictory, it is understandable in the context of what happened at the time (Cawood, 2009), where different views and a diversity between stakeholders had to be reflected in the new regulatory framework (Cawood, 2009, p. 199).

The new legislation was a major change in how business would be done in the South African mining industry, and Jacinto Rocha expresses that the department faced resistance from companies due to this, which according to him has been a reason for non-compliance (Rocha, 2010). The new system with the state as custodian over mineral rights is something that is already done in most parts of the world, but the problem in South Africa was that there was already such a large established mining industry which made it harder for the industry to adjust (Baxter, 2009).

7.2 Social and Labour Plans – *the issues on ownership and community development*

The SLPs have as well as the mining charter been object to discussion. It has been discussed whether the mining charter through its SLPs actually make up a legitimate social-contract for mining companies in the communities they are operating. Critique has been directed towards the intentions behind the SLPs, since the documents actually don't entail any real requirement which states that the companies have to allow the communities to benefit directly from mining operations. Peter Leon wrote an article at the end of last year, explaining that one reason for this is that the mining charter's equity ownership target of 26 % by 2014 doesn't obligate companies to include mine workers or communities in the economic benefits of mining (Leon, 2009, p.1).

Nchakha Moloi points out the requirement that companies should set up social and labour plans as a necessity when operating in a community. He believes the plans are important to implement and without a proper plan there should be no license for mining. Without

⁵ The use-it-or-lose-it principle is a principle established to open up for underdeveloped minerals. It says that you actively have to use your minerals, otherwise you risk losing your permit (Cawood, 2009, passim).

involving the communities and ensuring them benefits from the mining operations, the mining communities and the people will continue to oppose to operations. The only way to guarantee a stable democracy in the future and to fight poverty is to bring as many people as possible into economic activities. The level of crime in South Africa can clearly be associated with poverty and unemployment, which causes instability in the country. Even though mining companies certainly don't have the ability to solve these problems on their own, they are large employers and can contribute to moderate the issue on widespread unemployment in South Africa (Moloi, 2010). Even if targets on procurement, housing etc. have been set within the mining charter, the industry is still far from achieving these targets and it is clear that people are frustrated. The MPRDA hasn't addressed the economy and life of the poor people, women and mine workers (Majadibodu, 2010).

How can legislation put enough pressure on companies to commit to these issues without losing mining investors in the country? The companies need to be provided with incentives and clear guidelines for a successful implementation of the objectives and policy decisions (Handbook of Public Administration, p. 1-2). It is of importance that the DMR recognise and solve the problems behind the difficulties of implementation. As Nchakha Moloi mentions, the mining companies can play an important role in the South African economy, but without the proper engagement in socio-economic issues in local communities, environmental issues and ownership transformation, the industry and the country stand to lose a lot.

7.2.1 Implementation of Social and Labour Plans

Many of the obstacles in the implementation process of the MPRDA are focused around the issues brought up in the mining charter, such as the formulation of a social and labour plan. It has been mentioned in many interviews that the main mining companies have not understood what the department of mineral resources wanted from the social and labour plans (Suzan Malebe, 2010). At the same time there is a general feeling that there has been poor guidance on what is expected from the companies when putting together a SLP (CG, p. 1). Peter Leon recognises the model in which the plans are created as the problem. The social and labour plans have only become paper-based exercises with very little connection to a socio-economic transformation objective within the communities. The government has "gotten" it wrong from the beginning in the formulation of the requirements. The social requirements for companies have to be comprehensible and more direct. The problems around the social and labour plans

can be related back to the vagueness in the act, which can be strengthened through bringing clarity to the obligations for companies brought up in the mining charter, through for example the SLPs. Problems of implementation have in many other cases proven to occur because of what was just mentioned; poor guidelines on desired actions (Handbook on Public Administration, p. 1). Even though the institutional capacity is fairly good in South Africa, the implementation problems will remain as long as the policy design is not suitable for the act and the mining charter, and they will not work in the context they are supposed to (Leon, 2010).

Larger mining companies that are constantly under the surveillance of governments and NGOs will walk the extra mile for communities. It is rather the junior mining companies that are the problem and they will have a bigger stake in South African mining in the future with the new legislation (Leon, 2010).

In Gauteng, one of South Africa's nine provinces, there has been around a 50 % achievement of the goals set up in the mining charter, estimates Suzan Malebe. The low level of achievement is, according to Malebe, mainly due to some mining companies not understanding what they actually need to do and the lack of skills within the companies to realise the aims of the mining charter. What she also mentions is that the companies have expressed that the department has been absent and hasn't done enough to help clarify what has been missing in the SLP-part of their application (Malebe, 2010). It has been on rare occasions that the SLP of a major mine has passed through the application process without being returned several times to the applicant. Consultants express that the SLPs could be returned for minor errors such as spelling mistakes and wrongly formatted tables. It seemed as if the department was trying to buy time. Consultants do report though that at the second or third return of the SLP some constructive criticism was given.

The demands from the different regional offices have been reported to vary significantly, which made it even harder for consultants and mines to know what was expected (CG, p. 5). Eddie Majadibodu from the National Union of Mineworkers (NUM) brings up the issue on state capacity in relation to how to interpret the mining charter and the MPRDA; *“you have to engage to implement the act and not avoid how to implement the act. Do we have the same interpretation of the act at the national level as the local level?”* This is an important question to ask since the interpretations on what the act means and its intentions have been different at the national and local level (Majadibodu, 2010).

In 2006 the lack of appropriate guidance on SLPs could no longer be overlooked. The department had to take action. The document named *Social and labour plan guidelines for the mining and production industries* appeared on the department's website. This document was an attempt to clarify the formulation of an SLP. Today the process may take up to 11 months and there are still several resubmissions before getting the SLP approved (CG, p. 4 & 5).

I find it hard to pin down exactly what it is that is causing the inefficiency and why the companies are still facing these difficulties in getting their SLPs approved. The communication must be lacking between the departments and the target groups. There has been a great variety in how the different regional offices have dealt with the application process and how they have decided to communicate with the applicants (CG, p.5). Suzan Malebe feels that procurement, BEE, housing and living conditions are still a challenge for the department and the companies. She mentions that many of the mine workers don't have anywhere to live today which means that the mining companies are not providing enough housing for their workers (Malebe, 2010).

Peter Leon agrees with the unions take on the mining charter that it has not succeeded in empowering mining communities or mine workers. Peter Leon believes this is a failure of the mining charter but Jacinto Rocha, one of the architects of the MPRDA, doesn't agree. He believes the mining charter and the introduction of social and labour plans have created a new situation for local communities. It is wrong to judge only from what has happened since 2004; one should rather ask the question if the SLPs have brought in new elements that in the future will change the lives for the people in the local communities. The mining charter is not aiming at addressing what was not done before 2004, and Jacinto Rocha is sure that in 10 years the situation will be different for local communities (Rocha, 2010).

The mining charter enables the mining companies to empower or enrich only a few individuals at the expense of others, says Peter Leon. These things have to be addressed and communities must have a stake in mining operations. The mining charter has promoted a narrow based elite, one elite has been replaced by another; it advantages few and disadvantages many. The big question that Peter Leon asks the architects of the MPRDA is if this was the intention when drafting the MPRDA and the mining charter. If not, what was the intention (Leon, 2010)?

7.2.2 Formulation

Peter Leon asks the question whether the SLPs are formulated in the right way or if there are other ways that the government could deal with these issues⁶. One of the main problems with the SLPs, as mentioned earlier, have been the poor guidance from government in how to deal with these issues and how to comply with the requirements set up by the government. As long as the requirements are not properly formulated, it will be difficult for companies to engage and to comply with the law, and these issues become easier to ignore (Leon, 2010). It is very important that issues with local communities are addressed in a way so that the mining communities actually will benefit from the mining operations in their communities. When these issues are not addressed properly they cause a lot of frustration, especially among poor people. Frustration is not positive and creates unrest in communities (Moloi, 2010).

7.2.3 Black Economic Empowerment and equity in ownership

Before the MPRDA the South African mining industry was characterised by the traditional large (senior) mining companies. The MPRDA opened up resources that had been locked up in the past and created opportunities for BEE and younger (junior) mining companies to come into existence. A percentage of the shares in mining companies or mining productions had to be sold to BEE companies as an effect of the mining charter (Moloi, 2010).

The issues on equity in ownership and BEE are among the mostly discussed and criticized issues brought up in the mining charter. There are opinions that state that there has been a resistance against BEE and that more inequality has been created within the industry rather than equity in ownership (Leon, 2010). The opinions on the matters differ, and whether equity in ownership has been or will in the future be created, and what this actually entails, can only be discussed and not confirmed.

One important question I have come across in my research, when it comes to ownership and equity is whether ownership actually has been passed on to, and vests within the new BEE companies that have become new shareholders in the industry.

⁶ See the section on policy formulation and policy design in the theoretical framework.

“Generally though these measures (BEE measures) haven’t been as effective as was hoping for when implementing these changes and this is because of a number of reasons” says May Hermanus. She mentions that there has been both a great concern but also a care for expropriation not to affect the investment climate, and that black mining companies have struggled with their financing due to recent financial crisis and are today more or less owned by the banks that lend them the money. There is a huge legacy for these companies, and the access to specific mining skills has been a huge challenge because of the lacking investments in human resources within the black community. It is crucial to make improvements within the educational system for this to change (Hermanus, 2009).

Apart from the lacking resources the BEE companies have also had to face the problem with expensive funding; this has led to difficulties when transferring the ownership on to the BEE companies (Moloi, 2010). The expensive funding is a result of the traditional mining companies’ unwillingness to sell off their shares and they have therefore often sold them over market price; the BEE companies have then ended up with loans and shares that don’t really pay off.

This situation has further resulted in the difficulty in achieving the objective of passing ownership to the black community. Furthermore, the influence the new black shareholders hold in the mining companies is often limited and the ownership is not sustainable (Moloi, 2010). It is difficult to make the ownership vest within the BEE companies when many of them haven’t had the money to finance the business. Peter Leon asks the question if it is possible to make the ownership vest with these companies when they don’t have the money (Leon, 2010). On these premises, is it possible to create equity within the industry?

Peter Leon believes that the MPRDA has not promoted equity in the industry; it has actually created more inequality and the government is not doing much at the moment to address these problems (Leon, 2010). Jacinto Rocha is of the opinion that people have misunderstood the intentions behind the mining charter’s equity measures; it was never the intention that the whole of South Africa would become shareholders as a result of BEE. Therefore people should not be surprised now when there are only a few people whom have become empowered by the BEE section of the mining charter. These people are the black people whom had money from the beginning and therefore were able to invest in mining companies when the MPRDA and the mining charter opened up the industry. He reflects over the change in mindset among the large mining companies rather than over numbers and percentages. Jacinto says that it is possible to reach a target without changing the opinions and minds of

the companies which is not something the department is aiming at; the important goal is to change attitudes. Historically, and still remaining today, is a majority of black mine workers and very few white workers. The opposite is observed on the managerial level, but the situation has improved and today you see black people on this level in the mining industry, the numbers are not sufficient but it is at least something. Jacinto says that asking for equity in five years is asking for too much (Rocha, 2010).

7.2.4 Resistance

The implementation process has been affected by tensions that have been created by resistance. Opinions about a resistance from the industry on issues concerning BEE and black ownership targets in mining companies have been expressed (Leon, 2010).

Tensions have been created by the law but the positive thing now is that the mining companies do understand that they need to transform. The industry believes that the government has been very inefficient meanwhile the government and the communities will say that the mining companies are resisting change (Moloi, 2010).

Even if the different parties are pulling in different directions at this point they are still moving forward. He means however slow, there is still movement and Nchakha believes that the objectives with the MPRDA and the mining charter will be reached in the long run although they have not been achieved yet, in the short run. The long process and the pace that the changes are happening at also create frustration amongst people in the communities, which is not good. If it takes too long, the changes within the mining industry may be completely irrelevant, because it might be too late already (Moloi, 2010).

8 Conclusion

In this section I aim to make a summary of my conclusions of the implementation process of the MPRDA and the mining charter. I will discuss conclusions on the major implementation problems and what has caused these problems to occur.

8.1 Summary of findings – *identification of causes*

Throughout my research I have identified what I believe to be the main causes for the implementation problems of the MPRDA and the mining charter. These causes have been divided into two categories:

Architectural

(i) Vaguely formulated objectives, (ii) vaguely formulated requirements in order to acquire a mining license, (iii) vague and unclear language and therefore misunderstandings and misinterpretations, (iv) wrong design for the purpose.

Administrative/infrastructural

(i) Budget problems (ii) capacity (inexperience and mal-preparation) and knowledge problems within the department and companies (iii) lack in resources among BEE companies (iv) resistance (due to an already very well established mining industry).

8.1.1 Opportunities and bottlenecks

As pointed out above, in the implementation of the MPRDA there's been a combination of severe administrative weakness, vagueness in the regulatory framework of the MPRDA and an imprecision in the language of the mining charter. This combination of problems has created bottlenecks in the implementation process, which has shown in for example the delays in granting mining licenses. These bottlenecks have also delayed and made the understanding of the act more difficult amongst the target groups. This has resulted in the fact that the objectives of the MPRDA have been complicated to put into practice in the mining industry and the implementation has been lacking due to this. The problems of implementation have proven to be both *architectural*; which refers to how the act has been formulated, the design of the act and the language in which the documents were written, and *administrative*; the way the act and the mining charter have been implemented.

The mining sector in South Africa serves great opportunities both within and outside the country. South Africa has a great economic power in the region and on the whole continent which potentially can affect peace, integration and development in Africa (SGU, 2010, p. 12). Therefore a proper engagement and commitment on socio-economic issues that today are problematic within the industry, is crucial.

The discussion on implementation problems in this report has to a large extent been focused around the implementation of the mining charter. Opinions have been expressed that the mining charter has not been fully implemented and the objectives of the charter have not been reached in the short run. Peter Leon expresses that the equity objective of the mining charter has failed, while Jacinto Rocha at the DMR believes the contrary. He says that the equity aspect of ownership in the mining charter was never meant to address the masses but it *has* created opportunities for blacks in the mining industry, which would mean that the charter has not failed according to its objective (Rocha, 2010). The opinions differ and it is difficult to say whether it has succeeded or not in implementing the measures on equity, words stand against words and maybe it is too early to tell. It seems that a new elite has been created through the BEE benefits given in the mining charter and as Peter Leon expressed it "*one elite has been replaced by another*" and the majority of the people have not benefitted from the mining charter and the MPRDA. The question I ask for future research and further discussion on these issues in the context of the MPRDA is; what does creating equity in the words of the act actually mean?

Another conflicting issue brought up earlier is the matter on ownership and whether it actually vests with the new black shareholders. Some opinions say that the ownership has not

been passed on to the black mining companies; this is mainly due to resistance from the big mining houses and financial problems amongst the newly developed BEE companies (Moloi, 2010 & Leon, 2010). It is crucial to make improvements within the educational system for these patterns to change (Hermanus, 2009) and for the black ownership of mineral rights to actually signify something other than numbers.

8.1.2 Looking back and looking forward

There have been conflicts in how the intentions of the mining charter and the MPRDA have been perceived by the target groups; this was mainly due to misinterpretations and lacking communication. The variety in both communication and the desired design and content of the SLPs between the different regional offices must cause confusion amongst applicants. The variety also shows that there is no common view nationally on desired actions or outcomes, which certainly contributes to vaguely communicated objectives.

Mentioned in the theoretical framework is how important it is to have support for the policy objectives in the political environment. This has failed to some extent in the case of the MPRDA because of the poor communication of the act's intentions. The act has met resistance due to this and the companies have experienced difficulties in complying with the objectives. There is a possibility that these problems also can be explained by an absence of a strong enough commitment and application of an underlying theory connected to the process, which could work as a guide.

8.1.3 Future research

Many poor, mainly black communities are short of both finances and education and therefore lack the possibility of gaining from the South African mining industry. This in combination with frustration causes instability which is not positive for the future. The source for the frustration is the fact that mining in South Africa today doesn't contribute enough to the desired, expected and potential community development, and the limited influence of many new BEE companies in the industry.

Throughout my research I have identified four key words of central meaning for the subsequent process of the implementation of the MPRDA. These key words can also play a role in future research on the topic of implementation. The key words are the following; *commitment/engagement* (by all target groups), *transparency* (in the process and the politics surrounding the process), *involvement* (of local communities) and a *mutual understanding*. This last key concept refers to the importance of both having a common national understanding within the department as well as the private sector on the intentions behind the MPRDA.

9 References

Books

Hollis, Martin, 2006. *The philosophy of social science*. Cambridge: University Press.

Mazmanian, Daniel A. – Sabatier, Paul A., 1981. *Effective Policy Implementation*. Lexington Books, D.C Heath and Company: Lexington.

Moran, Theodore H., 2006. *Harnessing Foreign Direct Investment for Development - Policies for Developed and Developing Countries*. Center for Global Development: Washington, D.C.

Petersson, Bo – Robertson, Alexa. 2003. *Identitetsstudier i praktiken*. Författarna och Liber: Malmö.

Register of African Mining, 2008. Resource Information Unit, Snowden.

Teorell, Jan – Svensson, Torsten. 2007. *Att fråga och att svara*. Liber: Malmö.

Essays, Articles & Internet sources

Dissertation Cawood = Cawood, Frederick, 2009. “Developing an understanding of optimal use of mineral resources under South African Mineral Law”.

Cawood, Frederick, 2003. “Keynote Address: The Mineral and Petroleum Resources Development Act of 2002: Likely Impact on black economic empowerment in South Africa”.

CG = Corporate Governance: Social and Labour Plans in the mining sector, 2009. University of Stellenbosch Business School: Stellenbosch.

Daves, Nic, 2008. “Guarantee for Anglo American”, *The Mail and Guardian Online*, 2010-01-22.

EN = Encyclopedia of the Nations South Africa – Mining, www.nationsencyclopedia.com/Africa/South-Africa-MINING, 2010-08-09.

Essen, Carl von – Ericsson, Magnus – Gustafsson, Lennart, 2008. ”Ge gruvkunskap som bistånd”. *Dagens Industri* 2008-10-31. http://www.rmg.se/images/articles/dagens_industri_oct_31_2008.pdf, 2009-09-11.

Games, Dianna, 2010. “Resource rich but still in poverty”, *Mail & Guardian*, 2010-03-26.

GG = Government Gazette, Republic of South Africa, Department of Minerals and Energy,

2004.

Handbook of Public Administration, Policy Design and Implementation: policy design and implementation, SAGE reference online, www.sagereference.com.ludwig.lub.lu.se, 2010-07-30.

Leon, Peter, 2009. "Creeping Expropriation of Mining Investments: an African Perspective", *Journal of Energy & Natural Resources Law*, Volume 27, No. 4.

Leon, Peter, 2007. "A social plan for mining", *The Mail and Guardian Online*, 2010-01-22.

MPRDA =, "Minerals and Petroleum Resources Development Act", Department of Minerals and Energy, 2002.

http://www.dme.gov.za/pdfs/minerals/MPRDA_ACT_28_OF_2002.pdf, 2010-08-15.

Peters B Guy – Pierre Jon, 2003. *Handbook of public administration*.

<http://books.google.se>, 2010-08-15.

Rumney, Reg, 2009. "Nationalisation", *The Mail and Guardian Online*, 2010-01-22.

SGU = Sveriges Geologiska Undersökning, "Strategi för aktörssamverkan inom gruv- och mineralsektorn", MeetingPoints Mining, 2009.

White Paper = "White Paper on Minerals and Mining Policy", Department of Minerals and Energy (White Paper), 1998.

http://www.dme.gov.za/minerals/min_whitepaper.stm, 2010-08-15.

Interviews

Baxter, R. (den 18 Januari 2009). Chief Economist Chamber of Mines. (L. Andersson, Intervjuare)

Cawood, F. (den 9 December 2009). Professor Mine Surveying. (L. Andersson, Intervjuare)

Hermanus, M. (den 10 December 2009). (L. Andersson, Intervjuare) Johannesburg, Sout Africa .

Jourdan, P. (den 9 December 2009). (L. Andersson, Intervjuare)

Leon, P. (den 18 Februari 2010). Mining lawyer and free-lance journalist at The Mail & Guardian. (L. Andersson, Intervjuare)

Majadibodu, E. (den 1 February 2010). National Union of Mineworkers. (L. Andersson, Intervjuare)

Malebe, S. (den 26 Januari 2010). Regional Manager of Gauteng, Department of Mineral Resources. (L. Andersson, Intervjuare)

Moloi, N. (den 4 Februari 2010). (L. Andersson, Intervjuare)

Rocha, J. (den 19 Februari 2010). (L. Andersson, Intervjuare)

Van Achterberg, A. (den 15 December 2009). (L. Andersson, Intervjuare)

10 Appendix

Questionnaire for interviews

- What was the policy for the South African mining sector before the new Mineral Policy of 1998?
- What is your interpretation on what happened between the acceptance of the Mineral Policy in 1998 and the implementation of the MPRDA in 2002?
- Which do you consider being the main objectives of the MPRDA?
- Have there been any obstacles when putting the MPRDA into practice? If so which have been the major conflicts/obstacles? And why do you think these have occurred?
- Has there been a sufficient implementation capacity within the department of minerals and energy? (How many people working with the actual implementation of the MPRDA for example?)
- How has the department worked together with other departments and the mining companies and the chamber of mines?
- In your view, has the implementation/achievement of the objectives of the MPRDA been successful so far, in the short term?
- How has the governmental influence within the South African mining sector changed due to the MPRDA?
- How has the change in governmental influence over mineral rights, in your view, affected the South African mining industry?
- From what I have understood the process of implementing the MPRDA has created some tensions within the sector, what is your take on the long term impact of this and which tensions would you recognise?