

LEGAL FRAMEWORKS TO PREVENT AND ADDRESS GENDER BASED VIOLENCE IN THE SOUTH AFRICAN MINING INDUSTRY

WEBBER WENTZEL AND THE SAIMM ESGS GENDER
EQUITY ALLIANCE



Kate Collier



Siya Ngcamu

WEBBER WENTZEL
in alliance with > Linklaters

The Gender Equity Alliance (GEA) is a subcommittee of the ESGS Committee that serves as a collaborative platform that fosters dialogue, knowledge-sharing, and actionable change to promote an inclusive and equitable mining industry.

Vision: "To make gender diversity a lived reality by fostering an inclusive, equitable, and thriving mining industry."

Core Values:

- Equity driven - We advocate for gender equity as a foundation for sustainable growth, innovation, and inclusion across the mining industry
- Knowledge-sharing - We believe informed dialogue and accessible information empower stakeholders to take meaningful action on gender diversity
- Constructive Engagement - We foster respectful, open conversations among diverse stakeholders to build common ground and inspire collective progress
- Collaboration Orientated - We support partnership and cross-sector collaboration by creating space for dialogue, shared learning, and alignment around best practices
- Evidence-Informed - We promote the use of data and lived experience to guide discussions, highlight gaps, and inform decision-making across the sector

We believe **Real transformation** requires accountability, advocacy and collaboration across all stakeholders.

Key Messages:

- Progress toward gender equity requires collaboration, commitment, and a shared sense of responsibility across the industry.
- Gender equity is not just the right thing to do, it is a smart business strategy that unlocks opportunities, drives better decisions, and ensures industry-wide progress

Strategic Goals:

- Promote gender equity for growth & innovation
- Advocate for systemic policy change
- Provide data-driven insights

The Gender Equity Alliance supports an industry where everyone has equitable opportunities to lead, innovate and succeed.

Legal framework

Constitution

Section 9 of the Constitution of the Republic of South Africa, 1996

Employment Equity Act

Section 6 of the Employment Equity Act, 55 of 1998

Code of Good Practice

Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace

ILO Convention C190

C190 - Violence and Harassment Convention, 2019 (No. 190)

PEPUDA

Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000



Legislative framework

MHSA – broad obligations to identify and respond to hazards.

MHSA COP: Code of practice on Management of GBVF, Safety and Security Challenges in the SA Mining industry

- Acknowledges that GBVF is a profound and widespread problem in SA.
- MHSC research and study in 2013 found that violence and sexual harassment is a recurrent problem for and a threat to the health, safety and security of female worker in the SA mining industry. Policies and procedures for management of violence and sexual harassment were either non-existent or obsolete and ineffective. **Physical violence and sexual harassment at work, particularly at a mine, should be recognised as a serious prevalent problem requiring specific regulatory interventions.**
- Warrants implementation of robust, multi-faceted preventative measures at primary, secondary and tertiary levels of intervention.
- Prevention strategies should include a combination of workplace policies and procedures based on a sound legislative, regulatory and enforcement framework

ESG considerations

- UN Sustainable Development Goals (Goals 5 and 16 in particular)
- Initiative for Responsible Mining Assurance Standard for Responsible Mining
 - Workplace Violence Prevention, Grievance Mechanisms and Security Arrangements



Practical considerations:

Balance of internal and external focus areas

- **Internal** – primarily employment law driven read with safety obligations in the MHSAA
 - Swift investigation
 - Keeping complainants and witnesses safe
 - Fair processes
 - Consistent, communicated and enforced policies - policies which set out what the **employer can do to hold employees accountable**
 - Reasonably practicable measures for physical safety in the workplace
- **External** – in addition to internal, guided by MHSAA obligations (specifically the COP)
 - Engagement with communities and support to the State
 - Involvement in successful prosecutions and reporting on this
 - Support to survivor support initiatives
 - Tracking of data and reporting – using data to deal with causes.

Recognizing that conduct **outside of the workplace can impact the workplace** and if employers are to really take a lead in dealing with this harm, need to be empowered to deal with conduct that could impact the workplace, even if occurs outside of the workplace.

When employers have clear policies in place, these are known to employees, courts have upheld the ability of employers to take decisive action to deal with gender-based violence.

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Case Study

Campbell Scientific Africa (Pty) Ltd v Simmers and Others (CA 14/2014) [2015] ZALCCT 62 (23 October 2015)

KEY QUESTION

Can an employer discipline an employee for acts of GBV even if these are not physical and if they occur outside of the normal workplace?

Yes

- Seniority of the perpetrator over the victim is not needed to establish harassment and parties do not need to be co-employees
- Conduct does not need to be physical and it can be a once off incident
- Employees are entitled to a right to dignity and integrity in the workplace – and conduct that opportunistically singles out an employee violates these rights

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Case Study

Mtsewu and Anglo American Platinum (Dishaba Mine) (2025) 46 ILJ 441 (CCMA)

KEY QUESTION

Can an employer discipline an employee for acts of GBV that occur outside of the workplace and whilst there are still pending criminal proceedings?

Yes

- Victim of GBV and the perpetrator were in a romantic relationship, and worked together. Perpetrator assaulted victim until her death whilst at the victim's home.
- CCMA found that employers have a legitimate interest in such matters, especially where both the perpetrator and victim are employees – despite the incident occurring outside of work hours
- Being criminally charged does NOT preclude the employee from also facing disciplinary action
- Dismissal was an appropriate sanction.

Note: Perpetrator is currently on trial for the murder of the victim.

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KEY TAKEAWAYS

1

Deal with GBV as a workplace issue
(even if it occurs outside of the workplace)

2

Take action against perpetrators
of GBV – including taking steps to provide
information to the State to assist with
prosecutions

3

Provide assistance to victims of GBV within their
workplaces

4

Ensure the safety of its workplace by dealing with GBV
as a form of misconduct



Thank You - Q&A

JOHANNESBURG

90 Rivonia Road
Sandton
Johannesburg
2196, South Africa
T +27 11 530 5000

CAPE TOWN

15TH Floor, Convention
Tower
Heerengracht,
Foreshore
Cape Town
8001, South Africa

T +27 21 400 6000

WEBBER WENTZEL

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