

INDIGENOUS NEGOTIATIONS CASE STUDY

Mining in the Eastern Cape Province, South Africa

Prepared by Mr. Sinegugu Zukulu

1. The Negotiation Challenge

The government is imposing a heavy minerals mining project at Xholobeni, a community located on the northeastern coast of the Eastern Cape province in South Africa. The mining project is backed by an Australian mining company, MRC (Mineral Resources Commodities). The Xholobeni community is opposed to it. The community has been opposing this proposed mine for almost two decades, through various strategies, yet the government is determined to see this project through despite community opposition. The government justification is that the mine will create the much needed jobs and bring about economic growth in the province and the country. The government is now resorting to labelling those opposed to the mine as being anti-development.

The argument of the community against this proposed mine is about ecological sustainability, as preserving the ecosystems intact leads to climate change adaptation through conservation and protection of biodiversity and water resources, and marine life. The anti-mining stance helps the people meet more of the Sustainable Development Goals outlined by the UN for 2030. Protecting the land helps both the current and future generations to produce their own food, have adequate water supply and sustainable marine resources. With mining there is likely a negative impact on all these.

2. Context

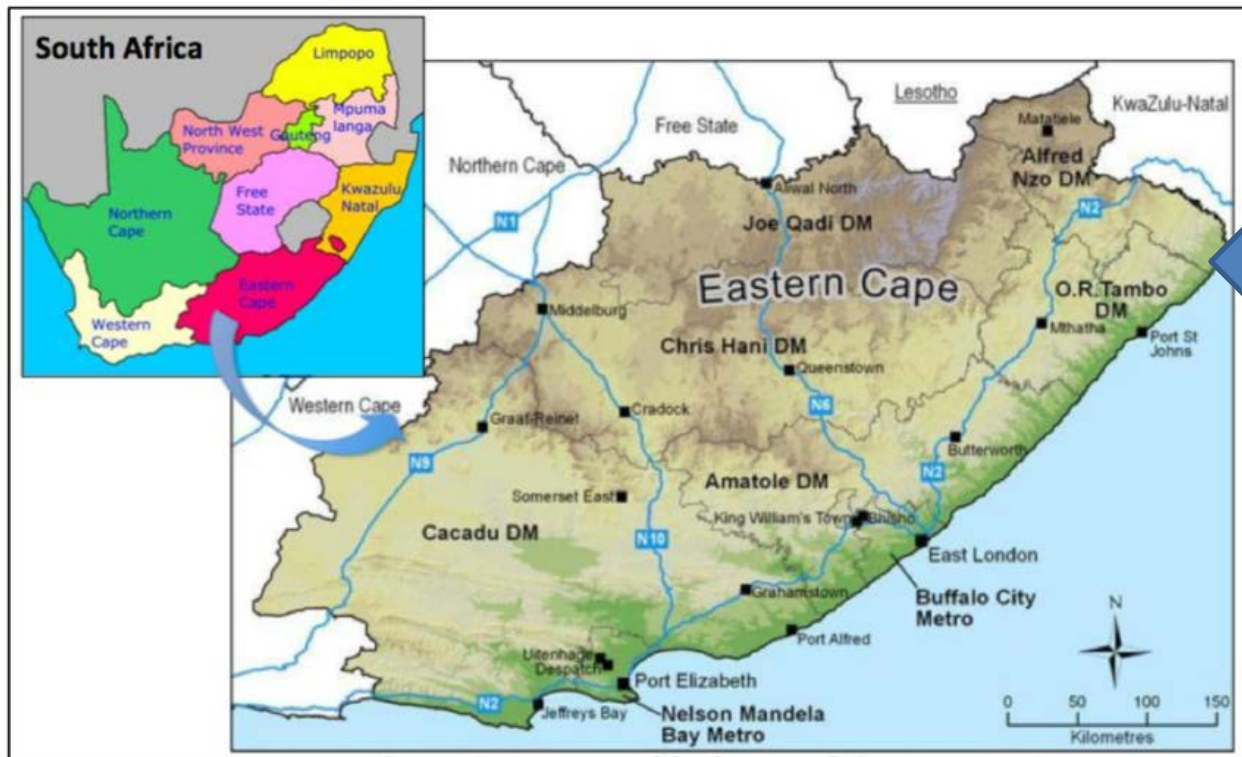


Figure 1: The Xholobeni community is located on the northeastern coast of South Africa's Eastern Cape province.

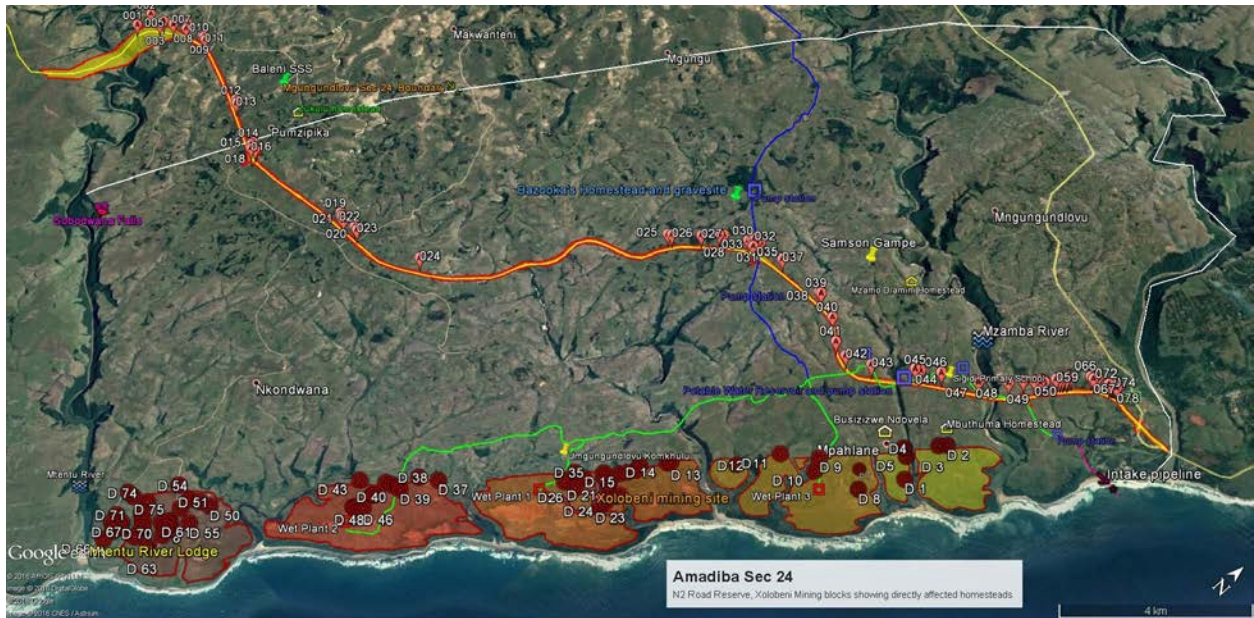


Figure 2: This map illustrates prospective mining activity in the Xholobeni landscape. Shaded areas along the coast represent areas to be mined, while red dots represent homesteads directly affected by proposed mining.

People and Communities

The coastal belt which the Xholobeni community is part of is known as Mngungundlovu Administrative Area. There are roughly 4,000 people within this area, living in communities spread sparsely throughout the coastal belt, between Mzamba river in the north and Mtentu river in the south. The landscape of Xholobeni is hilly with rolling hills.



Figure 3: Typical settlement patterns in Xholobeni include sparsely populated landscapes.

The area of Mngungundlovu on the coast has very low education levels. On a rough estimate only about 5% of the population have finished secondary schooling or above. The majority of elders in the community

have no schooling at all. It is encouraging to see an increasing number of young people who may now speak English as it means there is hope for tourism development in the local environment.

The people of Mgungundlovu (Xholobeni) are dependent on farming the land for their livelihoods. People plant various crops including maize, which is a staple diet for most if not all the people in the area. Other crops include, beans, potatoes, sweet potatoes, taro yams, pumpkins etc. People also keep livestock as a form of livelihood. Livestock is used in various rituals and cultural practices including bride price negotiations. The biggest tracts of land in the community are reserved for grazing of livestock.

The people of Xholobeni are AmaMpondo, who are an indigenous people who reside in the Eastern Cape Province of South Africa. Xholobeni is identified as an area where the Mpondo Uprising of 1958-1961 broke out. This was the war to protect the land against apartheid policies of land dispossession by the apartheid government. Close to 30 people were arrested and hanged in Pretoria back then. So everything that threatens land security is looked at through the spectacles of what happened during Mpondo uprising.



Figure 4: Farming in Xholobeni traditionally involves the use of livestock.

Governance and Decision-Making

The indigenous people of Mpondoland (AmaMpondo) live under a dual system of governance, i.e., a traditional leadership system and democratic dispensation. The people of Mpondoland were the last piece of South Africa to be annexed and put under colonial government in 1894. This means that when democratic era dawned in South Africa in 1994, the people of Mpondoland had been under western rule for just 100 years. Though affected by both colonial rule and apartheid policies up until 1994, people were never removed from their land. They remained governing their day-to-day affairs through their traditional system of governance. This is a system that enforces a bottom up process of decision making. From the lowest level, people are governed sub-headmen or sub-headwoman, then Headmen or Headwoman, then Chief, then finally the King or Queen.

In this system people are free to participate in all decision-making processes through communal gathering. All decisions taken about land use are put through this decision-making process, which guarantees people's participation through community gathering at the traditional court systems. This system

empowers people's right to concern for any development. This is the system that recognizes people's right to say no. This bottom up systems enforces people's decisions in all matters that pertain to land.

On the other hand, the people of Mpondoland are also subject to South Africa's democratic government through the electoral system. They vote for national government, then provincial government, then district municipal Government, then local municipal government, and then finally ward councilors at the lowest level. This system of government uses proportional representation through electoral system. On the ground there is clear competition between the two systems of government as people often have to choose between ward councilor or traditional council. This system allows government to make decisions on behalf of the people through parliamentary representations. Budgets for service delivery and governance are passed down from national government to the lowest level.

When it comes to decision making process, there is always a conflict between these two forms of government. The community on the ground expects their decisions to be respected by government while government on the other hand expects people to listen to government aspirations, as they ostensibly undertaken for the public benefit. People claim to own the land through their traditional system and as such expect to have the final say on how their land should be used. These different ways of making decisions normally lead to conflicts between government and community when there are different views about proposed development projects.

Legal Framework

There are various pieces of national legislation that are relevant to the Xholobeni case study.

The Constitution protects the right of the people to a healthy environment.

THE SOUTH AFRICAN CONSTITUTION BILL OF RIGHTS:

SECTION 24

OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

"Everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."

The community's opposition to mining is therefore in line with this section of the constitution, meaning their argument is therefore constitutionally sound.

There is also IPILRA (Interim Protection of Informal Land Rights Act), which says people who live on the land decide communally how to manage its resources].

INTERIM PROTECTION OF INFORMAL LAND RIGHTS ACT (NO. 31 OF 1996):

"To provide for the temporary protection of certain rights to and interests in land which are not otherwise adequately protected by law; and to provide for matters connected therewith."

This is the single most important act relevant to this case. It gives people a right to consent in all matters that relate to the land they occupy. This is the law that the Xholobeni people have used to argue in court for their right to say no to mining. The only challenge with this act is that it is an interim act that gets signed into law every year until a similar, similar permanent law comes to pass.

AMAMPONDO CUSTOMARY LAW:

The law of the indigenous people of Mpondoland, like any other indigenous customary laws, enforces a bottom up process of decision making process. The people of Xholobeni have used this system to oppose the planned mining. They have taken decision in their own traditional court to say 'NO TO MINING'. This customary law is recognized by the constitution.

This is the basis of argument in the IPLRA Act. Customary law is the only voice of the people and could be a very powerful voice when backed by constitution and legal statutes.

3. Key Actors in the Xholobeni Struggle

- Amadiba Crisis Committee (ACC): A community based organization formed by people opposed to mining.
- Mgungundlovu Traditional Council (headed by the Headwoman Cynthia Baleni): the first applicant is the right to say no court case.
- Sustaining the Wild Coast (SWC): an NGO that has been working and supporting Xholobeni people in the struggle against mining.
- AIDC (Alternative Information Development Centre): another NGO that works to support the Xholobeni struggle.
- ACCODA (Amadiba Coastal Community Development Association) Trust: a Xholobeni Community Trust responsible for all development work in the coastal community.
- Legal team: Richard Spoor Attorneys and Legal Resource Centre
- XOLCO (Xolobeni Empowerment Company): This is a “black economic empowerment company” that is in partnership with MRC/TEM in the application for a mining license.
- MRC (Mineral Resources Commodities): The mining company applying to mine at Xholobeni.
- TEM: South African Subsidiary of MRC company.
- DME: Department of Minerals and Energy, which is responsible for issuing a mining license.
- Mbizana Local Municipality: The local municipality under which Xholobeni falls.
- Kingship of Mpondoland: King and Queen of Mpondoland, the traditional governing body under which Xholobeni falls under.
- SAHRC: South African Human Rights Commission.
- Amnesty International: An international NGO that has taken interest in the campaign against mining at Xholobeni. Nonhle Mbuthuma-Forslund, who is the spokesperson of ACC, is now ambassador for Amnesty International for that same reason.

4. The Negotiation Process

Strategies employed to entrench the community position of 'NO TO MINING'

When the mining company MRC first came to Xholobeni, people were intentionally left in the dark. As an example, during the prospecting stage, dust monitors that were erected within the community were said to be equipment to test for cell phone signal. The prospecting itself was said to be an attempt by national government to understand what lies underneath the surface. People who questioned the rumours about mining were told there is no plan to mine. These lies might have been a strategy of those employed the mining company in order to quiet opposition to the projects.

The true intention to mine in the area first came to light for everyone to see during the community public participation meetings. Even then it is important to mention that many meetings were held away from Xholobeni. Only one meeting was set aside for the Xholobeni area, where it was not taken to the

traditional court but was held at the local school. When this meeting finally got to the community, people began hearing about the plans to mine despite promises made to them that there will be no mining on their land. This saw the first physical fight between the proponents and anti-mining group.

People then started asking questions - they asked the mining company where else this type of mining was being done. They were told that the nearest place is Richards Bay, in the neighboring province.

TRIP TO RICHARDS BAY

The mining company hastily arranged a sanitized marketing trip for community members to Richards Bay. The community members are each bought a full suit of clothing and on the journey to and from Richards Bay entertained with liquor and offered R400 each for "expenses". This trip was organized in such a manner that it arrived in Richards Bay very late, with only one hour available for the tour. They were taken to the mining operation and the smelter. The group demanded to see and meet with people who live adjacent to the mine but this was refused with reason that it was too late to do that. They returned back to Xholobeni without meeting the communities.

During the report back meeting, the visit was slammed by those who went as nothing short of a marketing trip by the mining company. One person who went on the visit told the gathering that they had been bribed, and he took money out and threw on the ground for everyone to see, telling people that he may not be bribed to accept mining. They also reported that they were not given an opportunity to meet communities that live around the mine. The community gathering therefore took a resolution to organize another trip to meet communities that are neighboring the mine in Richards Bay.

A second trip to Richards Bay was organized by the community, and the following findings were heard from Richards Bay community:

- Before mining started in Richards Bay the community was the fruit basket of the province, but as soon as mining started the dust from the mining operation led to fruit trees stopping to produce fruit.
- The raw mineral being transported by pipes from tailing dams sometimes creates tremors as it is being pushed through the pipes, and as a result the walls and foundations of some houses have begun to crack. When people go to the mine they are told to produce evidence that links the mine to the cracking of houses. Some people said they have been told that their houses crack because they are either old or badly built. Xholobeni people were even shown houses that had fallen down due to these cracks.
- People also complained of chest related pains due to inhalation of dust laden air. When people protest and march to the mine they are told to go to their Traditional Leader. On arrival there, police are invited to arrest them.
- People complained that there is so much dust in the air that they now hang their laundry indoors.
- Some people would take water to wash the walls of their houses to show how much dust is coating the walls.
- The people of Richards Bay told Xholobeni community members that the mining company has built them very beautiful schools, but there are very few kids in these schools. People choose to send their kids to other places where there is no mining because kids in the local schools are suffering from chest related ailments due to amount of dust flying around.

Therefore given these findings people of Xholobeni took a decision that mining is not good for their land.

FORMATION OF ACC (AMADIBA CRISIS COMMITTEE) IN JULY 2007

The community of Xholobeni decided to establish the Amadiba Crisis Committee as a reaction. This was a strategic decision to ensure that the reaction to the emerging crisis was well coordinated and led by appointed people. This community organization has massively grown to be known all over the world. It is now very popular and known to all communities affected by mining, as it leads the struggle against mining. This also helps to protect the image of the traditional council as a home of all people - it would have been wrong for the struggle to be led by the traditional council, as that would have alienated those in favour of mining from coming to the court. The ACC was established to be composed of both elders and young people. This helped to ensure the ACC appeals to both young and old.

MEDIA ENGAGEMENT

The media engagement in the struggle of Xholobeni people has been so effective that media is seen as both a partner and ally. The Xholobeni struggle against mining has been and continues to be covered by media. This includes filming and/or documentaries on Xholobeni, print media, television news and programmes, like national TV channels as well as international TV coverage, and radio programmes.

In 2007 and 2008, the Xholobeni story was a leading environmental story in South Africa. When a community member was killed in March 2016, the media coverage increased and peaked as the leading environmental matter in the South Africa. Media coverage has been one of the strongest strategies to scare government from forcing mining into Xholobeni. Media has ensured that politicians are called to account for their actions in Xholobeni. The key goal throughout has been ensuring voices of ordinary people are heard. UNEP (UN Environmental Programme) has also sent a journalist from 'The Guardian' newspaper to document the struggle.

DOCUMENTING THE STRUGGLE

The community contracted the pro-bono services of a social worker who feels passionately about conservation of the local landscape. He has been very effective in keeping together all media coverage and notes of event. He has compiled all our reports into a Human Rights Commission report and also a report to the Presidency. He has now published a book that tells the story of our struggle. This process of keeping records has ensured that even when we have to go to court we know where to find all the documents. The book helps in telling our story.

LEGAL STRATEGY

The Xholobeni community has put together a strong legal team to ensure a strong case, if the need should arise to go to court. They are represented by Legal Resource Centre, an NGO that voluntarily came forward when they saw the story in the news. They fundraise for their legal fees to help communities access justice. The second firm working with Xholobeni is the law firm of Richard Spoor Inc. Richard Spoor first came in as a pro-bono advisor to the community with years of experience dealing with mining companies. He is also a human rights lawyer who is able to use the Bill of Rights to protect interests and the land of the people. The third partner in the legal team is Henk Smith, who started getting involved while working for Legal Resource Centre and continued even thereafter.

THE HUMAN RIGHTS COMMISSION

A report was filed with the South African Human Rights Commission about how the proposed mine is disrupting social fabric and causing conflict within the Xholobeni community. The Human Rights Commission and the King of Mpondoland decided to visit Xholobeni to investigate and listen to the people. The people explained how their human rights are being trampled in the process and that the application to open a mine should be stopped if peace is to be maintained in the area. The Human Rights Commission findings came out positive for the community. It confirmed that the proposed mining has led to human rights being trampled by the Department of Minerals and the mining company.

RESEARCH AND PUBLICATIONS INSTITUTIONS

Various universities at both the national and international level have sent researchers who have used the Xholobeni struggle as a case for their Masters and PhD thesis. The story of Xholobeni is now well known in the world of academics because of these efforts.

POLITICAL ADVOCACY

The community has successfully deployed comrades from the ACC into political positions. This is being done to make sure that the voice of the ACC is also represented and heard inside municipal chambers. This also ensures that the community has a representative inside political circles to hear what decisions are being taken about the community land.

PARTNERSHIP AND EXCHANGE WITH OTHER MINING AFFECTED COMMUNITIES

As soon as the story of Xholobeni was seen in the media, organizations that work with mining affected communities started inviting ACC leaders to their gatherings to talk about the Xholobeni experience. Participating in these gatherings helped ACC leadership to gain confidence and realize how people out there appreciate the struggle being waged. This participation has further demonstrated how many other communities are facing similar challenges that appreciate the strength and courage of Xholobeni people. This appreciation from outside has given Xholobeni people more courage to continue the fight. In turn, the story has of Xholobeni has become an inspiration to many other communities.

ENVIRONMENTAL STRATEGY

The Xholobeni land falls into an area of unique and significant biodiversity called the Pondoland Centre of Endemism (PCE). The PCE is a very small biodiversity hot spot of about 1880 km². It has about 200 endemic plants, which make it a critical ecosystem that has to be conserved. It is an excellent resource for ecotourism development which the community choose over mining.

ARCHEOLOGICAL ARGUMENT

The entire coastline of Xholobeni is littered with massive archeological heritage sites containing evidence of human settlement that dating back to 500,000 years ago. It is protected by law and should not be disturbed or mined. Some of these tools are lying bare on the surface, begging for protection. Our coastline is the only place in the world where sites that were occupied during the last Ice Age. In the rest of the world, such sites are under water, as they got flooded when sea level rose as glaciers were melting. Mining along the coast would destroy all these sites which are of global significance.

MARINE LIVING RESOURCES ARGUMENT

The entire coastline of Xholobeni is part of the Mpondoland Marine Protected Area and therefore should not be mined as that would surely impact on estuarine environment which are fish hatchery areas.

GRANT THORNTON COST-BENEFIT ANALYSIS OF MINING VERSUS ECOTOURISM

In 2003, Wild Coast Conservation Projects contracted Grant Thornton to do a cost-benefit analysis study of mining versus ecotourism. This study showed without any doubt that the value of mining and ecotourism were equal in a period of 22 years. Given that ecotourism is viable for a much longer period than mining (as mined resources eventually run out) it became clear that ecotourism is the preferable option. We continue to use this study to support our argument.

SOIL STUDY BY A SOIL SCIENTIST STUDY FROM UNIVERSITY OF KWAZULU-NATAL

The media coverage brought many people offering their free services to help us fight off the threat of mining. One of the people who contacted us is a Durban-based soil fertility specialist. He performed tests that found that the mineral that they want to mine is key to plant growth. After mining it will be impossible

to rehabilitate the area, as the soil will be too poor to support plant growth. This scientist is on standby to be the witness in court if need be to attest to these findings.

LAND AS SOURCE OF LIVELIHOOD

The most common of the arguments used by all members of the community is that ‘land is life’. Food is derived from the land. In local language people say ‘Sidlumhlaba,’ (we eat the land), which means that our food is from the land, so we can’t give away our source of livelihood. The food, medicine, grazing of livestock, natural resources such as building material all come from the soil. Without the land we are nothing.

Counter strategies by the mining company and government

The mining company and various government departments also had a counter strategies to force people to accept mining.

MRC or Government Strategy	ACC Reaction
Employment of EIA (Environmental Impact Assessment): EIA practitioners said their assessment may strengthen the community stance to say “no.” Lawyers argued that doing EIA is a legal requirement so they should be allowed.	The community said ‘NO’. They cannot allow an EIA to happen on the land. They said allowing EIA practitioners into their land is like sending negotiators to negotiate the bride price while the lady has not agreed to marry you. Because they reject mining, they reject any EIA associated with the mining.
Reconstitution of XOLCO: In reaction to criticism that XOLCO does not represent the community, the XOLCO was reconstituted with new members.	The community maintained that XOLCO is not known in the traditional court so may not claim to represent the people who did not get involved in its formation.
The establishment of trust: Trust were set up in the community by pro-mining members of the community. They were established in order to facilitate development in the community. This was a plan to control all communities.	These trusts are known as pro-mining lot trusts. They are not known in traditional court as they were not established there. The rest of the community was not consulted in their formation.
Cooption of traditional leaders: Leaders are made directors of the mining company and directors of XOLCO. The Chief was brought a 4x4 vehicle.	Those traditional leaders who have thrown in with mining applicants when mining is being discussed in the community cannot be regarded as traditional leaders. They are recognized as mining proponents.
Disingenuous representation of community support: MRC submitted to government a list of 3087 names as names of people who are in support of mining. They also provided a list of 28 people who they say are the only people opposed to mining.	We asked our legal team to get hold of this list. On scrutinizing it found that our names were on the 28 names opposed to mining. When going through the other list we found that some of our names were also among the 3087. MRC was forced to withdraw this list as fraudulent.
Nepotism: Government jobs are reserved for only those who are pro-mining.	The community got NGOs to assist the anti-mining or ACC people to also get jobs. There are also efforts to fight against job reservation where possible.
Bribery: Government sponsored solar panels and solar geysers are given only to pro-mining community members.	The community fought back against this favoritism – in one village a group started attacking and smashing all solar geysers during

	the night, which spread fear among those who are pro-mining.
Police harassment of ACC members	Cases opened against police abuse in the IPID (Independent Police Investigative Directorate).
Violence: Christmas shooting by pro-mining lot in Mdatya village in 2015.	Case opened with the Police to lay charges against assaulters. Case in progress now.

New strategies employed to by the community

TOURISM DEVELOPMENT AND AGRICULTURAL DEVELOPMENT

ACC followers or people fighting against mining have seen it as an obligation to show a practical demonstration of the preferred development of ecotourism and agriculture. As a result, the ACC revived and leased out the Mthentu Lodge, which was derelict for a number of years. They also leased out Mthentu Campsite, which was also in state of disrepair. These are now up and running. Proceeds from these ventures are divided among villages for further ecotourism ventures development. Also, all coastal villages have put money together to fence off all the coastal land targeted for mining as grazing camps for the local livestock. Crop farming has been revived to plant more supplies of sweet potatoes which are being taken to the Durban informal market.

RIGHT TO SAY NO COURT CASE

After almost two decades of the community saying “no” to mining, and the government failing to listen, the community of Xholobeni decided to take the matter to court for a declaratory order for their right to say no. This in simple terms, the community wanted the high court to declare whether the community has a right to say no. The court ruled that the community does have the right to say no. This judgement came out in November 2018. This was seen as a huge blow to the government drive to have all mineral mined. The Minister of Mineral resources openly criticized this as being a problem for the government. The Department therefore filed an intention to appeal the judgement but is yet to file arguments. This has hugely boosted the struggle of the people against mining.

TRADITIONAL SONGS COMPOSED IN THE COMMUNITY AGAINST MINING

The community has composed countless songs that are sung in the community during traditional gatherings which openly challenge the government attempts to destabilize the social fabric and harmony in the community. Some songs are about traditional leadership that is not leading by an example but causing conflict or dividing the community. Others are about the mine that has divided the community and caused conflict. Others are about the behavior of those who are pro-mining. People have even gone to the extent of naming their dogs with names of the opposite side.

5. Current situation on the ground

The current Minister of Minerals and Energy has decided that he will do a survey in order to find out if the majority of people are opposed to mining in the community. In his justification, he says this in compliance with the court judgement. The ACC asks how, as this seems to be appealing the court’s judgement. The ACC also makes the point that there are 72 homesteads in the area targeted for mining. 68 of the 72 homesteads were applicants in court for the right to say no. Why is there a need for another survey when people who would be directly affected have spoken? The response from the minister is that this mining would influence far more than the 72 homesteads, and therefore a survey should include more people. In the eyes of the community, this is a plot to get more people who are not directly affected to help him arrive at his required decision. This matter is being handled by the legal team for the community interest, which has already written a letter to the minister demanding that he give legal basis for his survey. The first company approached to do the survey declined, on the basis of this being human rights violation.

Xholobeni community members are now waiting for the minister to appeal or force his planned survey, which shall surely be challenged in court.

6. Broader Implications

The most important lessons learned in this is that it is always very important for an indigenous community faced with a negotiation challenge to be united under one vision. The community needs to be very clear about what they want to happen on their land. Trying to speak in one voice is very critical but almost impossible. Community visioning exercises can be done when there is no issue coming to the community. A grand vision for sustainability that accommodates the interests of not only the current generation but also future generations are vital.

A second lesson is that people need to safeguard their traditional leadership, ensuring never to give all the power of decision making to one individual. The participatory democratic decision-making process or bottom-up process of indigenous people is very critical. It has to be made very clear that traditional leaders have no right to make decisions on behalf of the community without the community's full participation and consent. Leading by consensus is always the best way of decision-making for indigenous people.

Thirdly, documenting the story of the community and building a case for the court cases from the very onset is very critical. Archiving of all the documents, reports, articles and film coverage cannot be over emphasized. There must also be a well-kept documentation trail that can be reached by researchers and media people.

Last but not least, no one can or should fight the struggle alone. Partnerships and networking are very crucial. Fight the war in all fronts. Get the story told, get the voices of the ordinary people out. Let people own the struggle.

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Mining in the Eastern Cape Province, South Africa – Appendix

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Additional Photos



Figure 5: Typical landscape in the Xholobeni community.



Figure 6: Traditional attire of the AmaMpondo people.

Timeline of Events Relevant to Mining in the Xholobeni Community

Date	Significant moments.	Eco-tourism incidents	Xolobeni/Tormin Mining incidents
1988 - 1995	Significant deposits of heavy minerals identified on Eastern Seaboard of South Africa, including Saint Lucia and Transkei Wild Coast. Richards Bay Minerals seeks rights to Saint Lucia deposits and acquires prospecting rights for Xolobeni Mineral Sands deposits.	After strong campaign from Environmental lobby RBM is refused mining rights for St Lucia, and instead it is declared a World Heritage Site (now iSmangaliso Wetland Park)	Unknown.
1996	RBM decide to close down Mineral Exploration Department and relinquish prospecting rights for Xolobeni Mineral Sands. .		Mark Caruso visits Xolobeni with South African authorities and potential local partners with a view to acquire a stake in TEM and raise capital for mining venture. Transworld Energy and Minerals (Pty) Ltd acquire prospecting rights for Xolobeni.
1997	South African Cabinet agree to formulation of Wild Coast Strategic Development Initiative (SDI).		Department of Trade and Industry (DTI) formulate the first draft and see mineral sands deposits as potential key driver of development. It is reasonable to suggest that this was welcomed by MRC
1998	European Union and Dept of Environmental Affairs and Tourism (DEAT) negotiate international aid package to invest in Wild Coast Project, to unlock eco-tourism as an	<i>AmaDiba</i> Adventures is founded, with PondoCrop as enabling NGO who	Unknown

Date	Significant moments.	Eco-tourism incidents	Xolobeni/Tormin Mining incidents
	alternative driver for sustainable development.	assist with conceptualising and planning.	
1999	<p>Cabinet reassign Wild Coast SDI to Dept of Environmental Affairs and Tourism (DEAT) and four strategic objectives defined:</p> <ol style="list-style-type: none"> 1. Creation of a Pondo Park around Mkambati Reserve. 2. N2 shortcut between Port Shepstone and Mthata packaged within an ambitious Public Private Partnership known as the N2 Wild Coast Toll Road. 3. Four year EU program to identify and stimulate tourism based community development. 4. Port St Johns to be economic development node. 	<p>Pondocrop, Triple Trust Organisation and Wilderness Foundation are subcontracted by DEAT for various capacity building tasks to develop community based eco-tourism</p>	Unknown.
2000		<p><i>AmaDiba</i> Adventures flourishing. Win special R750,000 Presidential Award as most promising community based eco-tourism initiative.</p>	Unknown.
2001		<p><i>AmaDiba</i> Adventures continues to thrive. Employ a skilled administrator to market the enterprise</p>	<p>Mark Caruso acquires MRC Ltd, and commences draft of prospectus. In May 2001 MRC shareholders approve acquisition of 49% interest in TEM, and further 5% if a Bankable Feasibility Study is undertaken. TEM commence prospecting activities, taking a 60 tonne bulk sample from</p>

Date	Significant moments.	Eco-tourism incidents	Xolobeni/Tormin Mining incidents
		and manage the money.	Kwanyana Block. Negotiations proceed with DTI for loan.
2002	<p>South Africa hosts the World Summit on Sustainable Development. Controversy over mining vs ecotourism for Wild Coast becomes public with announcement that SAEDF approve R18 million loan to TEM for seed capital.</p> <p>Save the Wild Coast is formed as voluntary civil society organisation to oppose the Xolobeni mining venture and the N2 Wild Coast shortcut insofar as its alignment will render coastal dune mining feasible.</p>		Mark Caruso announces deal with East London Development Zone Corporation for site for a smelter.
2003	<p><i>AmaDiba</i> Adventures continues to thrive, but tensions surface in community over mining. Headman Mandoda Ndovela speaks out against prospecting activity. He is fatally shot shortly thereafter but the murderer is never arrested.</p>	<p>Zamile Qunya continues to run <i>AmaDiba</i> Adventures, chair the <i>AmaDiba</i> Community Development Trust and “manage” the relationship with mining interests. He assures that it is “only prospecting” and that no decision for mining will take place unless the</p>	<p>Xolco is formed with Zamile Qunya, Maxwell Boqwana and Patrick Caruso as first directors. MRC announces substantial upgrade of resource estimate. Mark Caruso assures that “major benefits” will flow to local community. Xolco becomes a prospective BEE partner with options of 15% of shares with Qunya and Boqwana as directors. (Patrick Caruso resigns). Mark Caruso claims that Xolobeni venture will not have any negative impact on eco-tourism and with approval of N2 shortcut MRC’s share price rises.</p>

Date	Significant moments.	Eco-tourism incidents	Xolobeni/Tormin Mining incidents
		<p>community are fully behind it, and certainly not at the expense of eco-tourism. However, tensions between himself, the EU Project manager Dave Arkwright and PondoCrop directors simmer, and problems in <i>AmaDiba</i> Adventures management become critical when a major theft of over R400,000 is finally uncovered. Forensic investigations commence. Qunya resigns in December as director of Pondocrop</p>	
2004	<p>National Elections. New Minister of Environment and Tourism takes up case against mining, and champions the Pondo Park and commits himself to a thorough evaluation of</p>		<p>Feb. John Barnes appointed General Manager of TEM replacing Allan Luscombe.</p>

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	<p>objections to the N2 Toll road. Eventually sets aside the Record of Decision due to fatal flaw of lack of independence of EIA consultant, Bohlweki and Associates. Owner Rufus Maruma was found to also be a director of Stewart Scott International, a member of the N2 Wild Coast Consortium. Minister allows for a resubmission that corrects that fatal flaw.</p>		
<p>2005</p>	<p>February. Alistair Ruiters, Director General of DTI, announces his resignation from government to enter Private Sector and establishes Ehlobo Heavy Minerals (Pty) Ltd with Rafiq Bagus, former advisor to Minister of DTI.</p>	<p>Ms Cathy Kay of Wildlife and Environment Society of SA's (WESSA) visits communities with film crew. During the visit she suggests to local residents that a trip to Richards Bay Minerals be arranged in order for them to fly over the area so they can see for themselves the actual scale of what a dune mining operation would look</p>	<p>Many local meetings held at Xolobeni by TEM/Xolco. Individuals carefully selected to attend. Local headman for Kwanyana co-opted to support mining. Qunya and Patrick Caruso get wind of this and with Max Boqwana hastily arranges a sanitised marketing trip before WESSA is able to. The group are each bought a full suit of clothing and on the journey to and from Richards Bay entertained with liquor and offered R400 each for "expenses".</p>

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		<p>like. Local botanist Tony Abbott discovers stone age tools in Xolobeni dunes which many feel is enough to end mining. Minister Van Schalkwyk enthuses.</p>	
2006	<p>August. Save the Wild Coast reinvents itself as Sustaining the Wild Coast and gears up to tackle the Xolobeni Mining scheme as well as the fresh proposal for the N2 Toll Road.</p>	<p><i>AmaDiba</i> Adventures goes into terminal decline with the manager Velaphi Ndovela, suspended by Qunya who is still a director.</p>	<p>MRC and Ehlobo Heavy Minerals reach agreement which gives EHM a controlling share of MRC Resources (Pty) Ltd which owns rights to Xolobeni and Tormin Mineral Sands projects.</p> <p>August. Qunya brothers stop Dr Kathy Kuman's paleontological research team guided by Sinegugu Zukulu, who are investigating extent and nature of stone age artefacts discovered in Xolobeni dunes. Kuman contacts Clarke who commences a human rights-based conflict resolution intervention with Zukulu. Over following months a growing number of local residents confide their fears and anxieties about the intimidation and oppression by the Qunya brothers, who have by now openly aligned themselves with the mining, while sabotaging the ecotourism.</p>

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			<p>Human Rights Attorney Richard Spoor engaged to advise Clarke and Zukulu on how to protect community from methods used by mining companies to obtain manipulated consent. Clarke writes to Mark Caruso to confront him with the on-the-ground realities. Media start to investigate. Hitherto the Sigidi and Mntentu residents, on the two extremities of the mining tenement were known to be overwhelmingly opposed to the mining venture. However, the sentiments of the residents of three villages in between (Mdatya, Kwanyana, and Sikombe) were untested, and assumed to be the power base upon which the Qunya brothers were building the fortunes of Xolco.</p> <p>A mediation meeting with John Barnes (TEM) Max Boqwana (Xolco) and local residents arranged by Clarke and Zukulu. Barnes answers very awkward questions frankly, assuring the community of his goodwill and sincere intent to bring jobs and development. Serves notice that a Mining Rights Application will be lodged in 2007. Afterwards it emerges that Boqwana tried to influence community reps against working with Clarke, and Boqwana avoids any further</p>

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			<p>interaction in the mediation process.</p> <p>Alistair Ruiters, in response to negative press assures that no final agreement has been reached between EHM and MRC, and that he will be informed by Clarke's report on outcome of allegations of human rights violations.</p> <p>Mark Caruso expresses confidence in Xolco and Qunya, notwithstanding media expose.</p> <p>XolCo directors Qunya and Boqwana resign and co-opt other local leaders as directors to give pretence of community control.</p>
2007			
1 st Quarter	<p>February. Media start probing more deeply.</p> <p>Alistair Ruiters withdraws EHM from deal with MRC.</p> <p>29 March. Mining Rights Application lodged.</p>		<p>Feb. XolCo become the sole empowerment partner to take a 26% share in terms of provisions of the Mining Charter.</p> <p>MRC/TEM contract Mixael de Kock of Maverick Communications to manage Public Relations. Corporate Brochure explaining ambitions and values produced.</p>
2 nd Quarter	<p>April. First draft of complaint to Human Rights Commission lodged alleging violation of right of access to information and freedom of expression. Investigation commences.</p> <p>May. Public Consultation for Mining rights application process commences</p>		<p>Barnes evades efforts by Clarke to alert him of tensions and anger.</p>

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	<p>facilitated by GCS Consultants.</p> <p>Clarke applies to DME for access to Mining Rights Application, suspicious about terms of Shareholding Agreement between MRC, TEM and Xolco.</p> <p>18 June. Scorpion Dimane publicly confronts Qunya's, Xolco and TEM about the false claims in Brochure.</p> <p>Tribal authority calls mining party to come and explain themselves at a follow up meeting scheduled for 28 June.</p> <p>25 June. Access to MRA granted and in Shareholder Agreement, discover SGF Secretaries is party to agreement, as financier of loan to Xolco to purchase its allocated share. However, shareholders of SGF Secretaries are not disclosed, and Tuffias Sandberg auditors are listed as directors as nominees.</p> <p>28 June. Mining party do not attend follow up meeting.</p> <p>Angry residents propose that dust monitoring equipment be ripped out in protest but lawyer advises against this and instead the meeting decide to form a Crisis Committee to channel grievances and complaints to Human Rights Commission.</p> <p><i>AmaDiba</i> Crisis Committee commences its program of action.</p> <p>Some dust monitors are removed at night in</p>		<p>Barnes is seen driving in the area and had evidently chosen to deliberately shun the call by Tribal Authorities to give account.</p> <p>Barnes does not respond at all to Clarkes report and fails to explain whether Bashin Qunya was acting on his instructions.</p>

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	<p>clandestine manner. Suspicions point to Zamokwake Qunya, TEM's employee, in apparent attempt to focus blame on local residents. Clarke reports this to John Barnes.</p>		
<p>3rd Quarter</p>	<p>July. ACC is formed by community to oppose the proposed mine. Substantially expanded complaint lodged with HRC. South African Council of Churches mandate Clarke (via Sustaining the Wild Coast) to engage in peace building efforts to resolve tensions and conflicts. August. Mediation by King and Queen commences to defuse conflict and channel anger. When Bashine Qunya is confronted by Clarke about his unauthorised removal of dust monitors he all but admits to having done this.</p> <p>September. King and Queen pay unprecedented visit to Umgungundlovu Komkulu. Some 2000 people present. Overwhelmingly critical of mining in general and Qunya's in particular. HRC attends to monitor process.</p>		<p>2nd July. TEM and Xolco contrive a completely false statement claiming full support from local leaders for mining. Clarke speaks to consultants to complain about the gross deceit. John Barnes declines invitation to attend Royal Imbizo, stating confidence in XolCo to represent their interests. Barnes shows no interest in holding a disciplinary enquiry to call witnesses to testify against an employee who has clearly committed a dismissible offence.</p>
<p>4th Quarter</p>	<p>October. HRC report published. Finds consultation process flawed and government authorities DME and DEAT "not on the same page". And recommends a meeting of all relevant govt departments; an audit of the legal</p>		<p>Barnes again does not return urgent call from Clarke to try to establish ground rules to avoid violent conflict. Patrick Caruso refuses to engage</p>

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	<p>procedures followed; an intervention to educate community about their rights and responsibilities. 7th November. Jethro Tull in concert, publicly endorse the SWC campaign against the mining the Wild Coast.</p> <p>15 November. Final round of Public Consultation Process commences for consultants to present preliminary findings of the EIA process. Zamile Qunya physically ejects leading Crisis Committee member (Nonhle Mbuthuma) from a meeting at Xolobeni High school because she questions why the meeting is not held at the Komkhulu as per custom.</p> <p>27 November. Anonymous tip-off from govt official to urge ACC to apply for access to report from DEAT official commenting on Draft EIA.</p> <p>28 November. Mining Weekly reports that MRC/TEM have withdrawn their application and will reconsider after further discussions.</p> <p>11 December: Mining Weekly report that 50 protestors bussed to Pretoria to march to DME offices with petition of “4000 local residents” urging the DG to approve the mining rights to create jobs and uplift them.</p> <p>19th December. ANC Elective Conference at Polokwane ends with Jacob Zuma</p>		<p>with Clarke either but Mark Caruso calls Clarke on 28 November and a channel of communication is opened.</p> <p>Mark Caruso denies the report, and angrily denounces the South African media for spreading lies. PR Consultant Mixael de Kock fires MRC as client.</p>

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	<p>elected as ANC president and fundamental changes in political leadership ensue. 21 December. Deadline for written comments on EMP. Comments from DEAT officials are collated into a report but the document is not submitted before the deadline, remaining on file until discovered three months later</p>		
2008.			
1st Quarter	<p>Jan. Scorpion Dimane dies unexpectedly. His death leaves ACC leaders very fearful.</p> <p>Feb. Carte Blanche (Current Affairs investigative program on TV) starts probing the story.</p> <p>March. MRC announces award of Tormin Mining Rights but no word on Xolobeni mining rights, (which were expected in January). PAIA Application made for DEAT Report on Environmental Management Plan.</p>		<p>Clarke informs Mark Caruso of death and challenges him to act to ensure the climate of fear is changed. He expresses condolences and concern.</p> <p>Mark Caruso and John Barnes refuse to be interviewed and decline their right to reply to questions.</p>
2nd Quarter	<p>8 April. DEAT approve application for access to their comment on EMP. Contents explain why MRC/TEM may have had considered withdrawing the MRA, and why any DME official intent on awarding the mining rights would want the report to be suppressed. The non-submission is acknowledged,</p>		<p>Mark Caruso responds promptly to email informing him of the discovery of the report, but questions how Clarke was able to gain access to such <i>“highly confidential material”</i> and goes on the offensive.</p>

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	<p>and DME is compelled to consider the discovered report.</p> <p>20 April Carte Blanche broadcast.</p> <p>22nd April. HRC subpoena Ministers of DEAT, DME and Land Affairs to a special hearing to explain why their respective departmental officials have failed to comply with the HRC' request for documentation to prove their compliance with legislation.</p> <p>5th May. Another march is planned on the streets of Pretoria to hand over petitions to the Ministers of Minerals and Energy (Buyelwa Sonjica) and Transport (Jeff Radebe) respectively. A group of <i>AmaDiba</i> residents are bussed to Pretoria again to demand that the Mining Rights are awarded and the N2 Toll Road approved. However it subsequently emerges that many members of the group were lured under false pretences by Qunya, and told that it was a protest against the lack of municipal service delivery.</p> <p>June. Marine and Coastal Management Bill is tabled in House of Assembly and passes into law. This legislation precludes dune mining in areas zoned as marine protected areas, as has the Xolobeni coastline on the Wild Coast.</p>		

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3 rd Quarter	<p>15 July. Limited mining rights awarded only for Kwanyana Block, but no public announcement is made by DME.</p> <p>19th July. Wild Coast and South Coast residents join forces in an historical “Beach Walk/March” from Mzamba to Mnyameni Estuaries. Massive public opposition demonstrated against the mining rights.</p> <p>15 August. Minister Sonjica pays a special visit to Xolobeni JSS together with high ranking politicians and officials to announce the government’s determination to award mining rights. She is confronted with stiff opposition and protest by local residents. Print and electronic media capture her on record making what turn out to be career limiting comments. The ACC insist that their voice has been unfairly overwhelmed by outsiders bussed in for a political jamboree. The Minister agrees to consult further.</p> <p>21st August. A group of top DME officials, return to Mgungundlovu Komkulu for a meeting with ACC, Tribal Authority and local residents. The Qunya’s are not welcome, and the ACC shows determination to assert their constitutional rights. The officials return to Pretoria with message to Minister Sonjica that they</p>		<p>MRC’s share price take a beating, dips below 10c, which was its initial listing price in 2001.</p> <p>4th August: Finally MRC is first to publicly announce the award of mining rights, leaving DME grasping for explanations as to why local residents had to learn of the award of mining rights from an Australian website rather than from their own government.</p> <p>MRC announce the suspension of mining rights. TEM retrench Zamokwake Qunya, but thanks to his brothers political connections he is immediately employed by local Mbizana Municipality as a tourism officer.</p>

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	<p>have been unable to convince the local residents that the mining will be of benefit to them, and that she will have to return herself to try again.</p> <p>15th September. Minister Sonjica returns, without political razzmatazz. Tries valiantly to convince the residents of Government good intentions, but the ACC have on this occasion invited the King of amaMpondo to send a representative as well. Minister Sonjica is forced to acknowledge that consultation has been inadequate, and undertakes to hold off from signing the Environmental Management Plan until further consultation with King, Chief and Community has been undertaken. The spokesperson for the community Samson Gampe thanks her, but advises that more consultation is not going to change their minds. "We don't want mining on our lands. Not now or ever in the future", to rapturous applause.</p> <p>18th September. Mining rights for Kwanyana Block duly suspended. But celebrations marred by news that entire student body of Xolobeni JSS have been beaten by police the day before.</p> <p>Clarke investigates and reports the matter to educational authorities and</p>		

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	Independent Complaints Directorate.		
4 th Quarter	<p>October. The Legal Resources Centre lodge further submissions to substantiate objections to the award of mining rights on behalf of the ACC.</p> <p>November. To crown off the year, SABC TV's environmental program <i>50/50</i> organise to pre-record an outside broadcast from the <i>AmaDiba</i> Community, to celebrate an amazing victory for local residents and civil society. Producer Don Guy's film "Pondo People" is shown to local residents to much excitement (subsequently winning him the SAB Environmental Journalist of the Year award in the Television Category).</p> <p>1st December. <i>50/50</i> broadcast aired on SABC 2.</p>		<p>28 November MRC also report that their partnership with Morodi Holdings, their empowerment partner in the Tormin venture on Cape West Coast, has been terminated and that XolCo will assume the BEE equity share instead. Zamile Qunya and Maxwell Boqwana make no effort to broadcast this news to the Xolobeni community.</p>
2009	<p>DME show no enthusiasm for hastening the appeals process. In May National Elections take place and Jacob Zuma is elected President. He redeploys Buyelwa Sonjica to a reconfigured Ministry of Water and Environmental Affairs, and Minister Susan Shabangu to an unbundled ministry of Mineral Resources (without Energy).</p> <p>August Dept of Mineral Resources (DMR) finally provide LRC with responses from TEM and Xolco to the objection. These include an</p>		

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	<p>obviously fraudulent list of 3087 local residents which Xolco and TEM claim as evidence of “free and informed consent” to the mining venture. Signatures have been forged, including that of Sinegugu Zukulu whose name is found on the list.</p>		
2010	<p>Feb: Eventually DMR convenes oral hearings under a Special Task Team appointed by the Director General to advise on objections. The hearings are adjourned after 20 minutes due to failure by DMR to provide members with voluminous documents in time for them to read them. It is never reconvened, but the Special Task Team nevertheless issues its report in May 2010 and effectively finds the ACC’s grounds for objection valid. However DMR hesitates to give the LRC the report until threatened with High Court Action. It is handed over in October</p> <p>19 April DWEA DDG give Environmental Authorisation for N2 shortcut</p>		
2011	<p>February. Minister Shabangu continues to prevaricate on deciding whether to uphold the objections, and revoke the mining rights, despite promising to do so.</p> <p>April Richards Bay Minerals disclose that they have no interest in Xolobeni since surrendering prospecting</p>		

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	<p>rights in 1996 and had rejected MRC’s request to use smelter at Richards Bay when approached (contrary to what TEM claimed). May Local Government Elections take place. Local residents who are directly affected by the mining scheme nominate anti-mining candidates to represent them in the Mbizana local municipality. Despite opposition in the four affected wards from independent candidates allied to Zamide Qunya the anti-mining candidates defeat his candidates with overwhelming majorities. However, the defeated candidates refuse to accept the democratic will of the residents and try to disrupt the Mbizana municipality “to make it ungovernable”. They do not succeed.</p> <p>23 June. Jabulani Mboyisa dies, aged 36.</p> <p>28 June. Clarke lodges complaint with Public Protector against retiring DG of DMR Sandile Nogxina for allegations of failing to declare conflicts of interest, bribery and intimidation, and with Cape Law Society against attorney Maxwell Boqwana for improper conduct. Public Protector escalates complaint to National Directorate of Public Prosecutions. Cape</p>	<p>June. <i>AmaDiba</i> community engage in partnerships to revive eco-tourism centred around Mntentu Hutted Camp.</p> <p>September. South Coast and Wild Coast residents again march/walk together across Mzamba river to celebrate revival of</p>	<p>TEM fail to meet the deadline and request additional 180 days to comply. Granted by Department of Minerals. June. Clarke mandated by ACC to lodge complaint with Public Protector against Minister Shabangu for failing to make a decision on objections to mining rights. Evidently prompts Minister Shabangu into action and she announces that she has upheld the objections and revokes the mining rights. It has taken the Government nearly three years to arrive at the decision. However she leaves the back door open by allowing TEM to revive the mining rights if they manage within 90 days to satisfactorily comply with concerns expressed by environmental authorities (the very concerns expressed in the DEAT report that was mysteriously not submitted before the 21 Dec 2007 deadline). Certain members of pro-mining group concede that they have been defeated and decide to “take out insurance” by acknowledging “dirty tricks” used by leaders of mining and N2 Toll road lobby against ACC members.</p>

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	<p>Law Society acknowledges the complaint and commence disciplinary procedures.</p> <p>July. Clarke meets with Mixael de Kock who is now prepared to go on record to describe his experience with Patrick Caruso and explain why he fired MRC as a client.</p>	<p>eco-tourism. 50/50 feature it again.</p> <p>Attention shifts to N2 Wild Coast road and SWC launches “Too Great a Toll” fundraising campaign to ensure a High Court challenge is mounted against the Ministers rejection of all objections to the environmental authorisation</p>	<p>Dec. Clarke calls Mark Caruso to ask him if MRC still have ambitions to mine at Xolobeni; whether MRC is willing to assist in investigations into allegations against Advocate Nogxina; and to offer him opportunity to redeem MRC’s tarnished reputation as reflected in the historical record thus far.</p> <p>Caruso is friendly but adamant that MRC “will have the last word” and will be mining at Xolobeni. Contemptuously dismisses efforts to try and root out corruption stating “the whole of Africa is **** corrupt. If we lock up the Director General his successor is simply going to continue to steal whatever is still left to steal”.</p> <p>Recommends that Clarke reads Charles Darwins “Voyage of the Beagle”, as it shows that “it’s all about survival of the ***** fittest”!</p>
2012			19 Feb. Blue Bantry Investments formed with

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	<p>March. Deadline for revival of mining rights expires. 29 March. Notice of motion filed by Cullinan and Assoc to oppose Env Authorisation for N2 shortcut.</p> <p>23 May. Public Consultation meeting held at Komkulu. <i>AmaDiba</i> residents reject mining but invite Andrew Lashbrooke to come with any other proposal for development besides mining. XolCo is publicly repudiated for claiming to represent community.</p> <p>24 May. MRC confronted at Bizana meeting about efforts made by pro-mining agents to undermine Traditional Leaders by trumping up charges against them to have them arrested and thus removed from playing a leadership role.</p> <p>June. Objections lodged against Mineral Prospecting Rights by ACC, King of amaMpondo and Wild Coast Sun. Comprehensive report compiled for Office of the Presidency, to complain about manifest failure by government to ensure cooperative governance.</p> <p>9 August. SABC 1 Current Affairs program "Cutting Edge" broadcast hard hitting report on mineral prospecting rights application. Zamokwake Qunya is confronted on camera with allegations of</p>		<p>Qunya and Boqwana as directors. MRC announce that they intend reapplying from scratch for prospecting rights for Kwanyana Block, implicitly acknowledging that their first attempt failed to convince Government that the mining development was ecologically sustainable, and would not cause harm to the environment. Andrew Lashbrooke says MRC is a mining company and has no other offer to make.</p> <p>Lashbrooke acknowledges awareness of the plot but denies playing any part in the plan.</p> <p>Lashbrooke responds to objections with legal denialism and defensiveness (appendix 14). Significantly states that the Cape Law Society is not pursuing complaint against Max Boqwana stating "there is no case to answer". This proves to be untrue.</p> <p>6 August. MRC announces appointment of Lashbrooke as CEO and Caruso reverts to Chair. September MRC CEO announces loan agreement with Blue Bantry Investments for R1 Million immediately and R13 Million to be paid before the end of December 2012, claiming it</p>

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	<p>using his company vehicle as a private taxi.</p> <p>26 August. Zamokwake Qunya blocks Clarke and passengers on road to Xolobeni to try to prevent them from driving to meet Belgian tourists at Mntentu. Issues Clarke with a death threat. Charges of intimidation are laid with police. Qunya appears in court. Trial remanded to 30 Jan 2013. Faces a possible jail term. His brother Zamilé tries to persuade prosecutor to drop the case.</p> <p>October. MRC/TEMR serves notice that it has amended its Prospecting Works Program and decided it needs to drill test holes to take samples.</p> <p>27 November. Letter from Cape Law Society stating that Max Boqwana is failing to respond to disciplinary procedures and is under warning.</p> <p>28 November 2012. Eastern Cape Regional Mineral Development and Environment Committee (RMDEC) convenes to question objectors to MPR.</p> <p>4 December 2012. RMDEC announces decision. Direct's TEMR to re-consult with <i>AmaDiba</i> coastal residents because they have amended their Works Program to include drilling which was not originally envisaged. RMDEC decision deferred</p>		<p>will be “to the immediate benefit of the <i>AmaDiba</i> Community”.</p> <p>21 December 2012. Special General Meeting of MRC shareholders held in Perth. Additional directors are appointed. No announcement made about the requirement to re-consult. Mark Caruso instead states “<i>the Company also believes that there is a change in the mindset of all interested and affected parties to genuinely assess the development potential of the world class Xolobeni Project. Given the near term development and robust economics of Tormin and the significant latent value of Xolobeni, the company remains undervalued by any financial investment metric.</i>”</p>

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	<p>until that process has occurred.</p> <p>6 December 2012. Clarke consults with <i>AmaDiba</i> residents at Komkulu. Informs them of Blue Bantry loan, and decision of RMDEC. Receives mandate to lodge complaint with Australian NCP for failure of MRC to disclose this, and with the South African authorities.</p>		
2013	<p>24 March. Alton “Ndazabe” Jola assassinated at his home.</p> <p>October. Sanral holds meetings with Sigidi and Mdatja communities. Alli makes extravagant promises.</p>		<p>Injection of cash from investors to get Tormin mine operational.</p> <p>Tormin mine development start in April, desperate to commence production to generate desperate revenue for MRC shareholders.</p>
2014	<p>Nov. Cllr Dimane tries to get Mashona Wetu to sign affidavit. Refuses.</p> <p>The Shore Break has international release in Amsterdam.</p>		<p>March Minister Susan Shabangu opens Tormin Mine, https://www.miningreview.com/shabangu-opens-mineral-commodities-tormin-mine/, 12 Sept. Andrew Lashbrooke resigns. Meets with Clarke to reflect. Explains that his dispute with Caruso is due to be heard on Cape High Court in July 2015, and that application has been made for oral evidence to be led, which will allow for Caruso to be cross examined.</p>
2015	<p>March. MRC/TEM under threat of losing prospecting rights for Xolobeni, launches an entirely fresh mining rights application, with new</p>		<p>In 2015, in a letter to stakeholders, Caruso suggested that he would rain hellfire upon his community-based critics, borrowing</p>

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	<p>EIA practitioner Piet Badenhorst. This third attempt met with determined refusal by community.</p> <p>April. The Amadiba Crisis Committee, alarmed by the sudden illness of another of their founding stalwarts, induna Mpotomela 'Bhalasheleni' Mthwa just prior to the first public consultation meeting on 8th April 2015, expelled the EIA consultants when they came to commence the requisite public consultation process. Balasheleni dies in Murchison Hospital. Foul play suspected and matter reported to SAPS. Toxicology tests done, but investigation not followed up.</p> <p>May. Consultants attempt to return to commence their "scientific studies", Amadiba coastal residents, supported by their headwoman Duduzile Baleni and the Traditional Council of the Umgungundlovu Komkhulu, refuse them access to their communally owned land, angering senior Chief Lunga Baleni, who had by that stage been co-opted by Qunya and Mark Caruso with share offers and a new Ford Ranger 4x4. ACC supporters attacked with pangas and shots fired. Temporary interdict obtained from Umtata High Court. After negotiations</p>		<p>from the famous (though inaccurately quoted) biblical lines delivered by an assassin character in Quentin Tarantino's movie Pulp Fiction: "And I will strike down upon thee with great vengeance and furious anger..." Digging his hole deeper, he continued: "I am enlivened by [the] opportunity to grind all resistance to my presence and the presence of MSR into the animals [sic] of history as a failed campaign".</p>

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	<p>between the parties, mutual agreement reached to withdraw the application to ease tensions.</p> <p>Dec reign of terror by pro-mining thugs loyal to disgraced Chief Lunga Baleni commenced, resulting in residents fleeing their homes and sheltering in ravines and woodlots at night. A group of local residents returning from an urgent meeting at the Komkulu were attacked and physically assaulted. Four men were arrested and charged with assault, robbery and attempted murder, and spent two weeks in jail, while their attorney argued that “exceptional circumstances” existed to grant them bail. He succeeded but not before an unprecedented five court days for the bail hearing.</p>		
<p>2016</p>	<p>8 Jan. Court appearance for suspects accused of assault and attempted murder of anti-mining villagers after ‘reign of terror’ over Christmas long weekend,. 22 February. ACC gather to stop TEM consultants from entering mining area to commence EIA process. Consultants are a no-show. 23 March. Bazooka Radebe, ACC chair is gunned down by two men posing as policeman. Massive media coverage ensues. 2 April. Bazooka’s funeral takes place. Journalists</p>		<p>Sept Environmental authorities conducted a search-and-seizure operation at Tormin. The company is faces criminal charges for allegedly causing environmental degradation.</p>

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	<p>assaulted afterwards by pro-mining group when visiting dunes.</p> <p>28 June. Nonhle speaks at Amnesty International conference in Johannesburg, after showing The Shore Break.</p> <p>July. Strategy session on N2 saga. Agree to commission transport economists to reassess viability of N2 shortcut, given changed economic circumstances.</p> <p>Expose in Noseweek of "Oz Cowboys trash SA environmental laws.</p> <p>Sept.</p>		
2017	<p>14 January. Samson Gampe's funeral at Sigidi.</p> <p>6 April. SANRAL's CEO visits Komkhulu to angry reception. Promises made.</p> <p>12 October. N Gauteng hears interlocutory application by SANRAL to contest Sinegugu's locus standii before Judge Tuchen.</p>		<p>Feb. W Cape High Court hears review application from MRC/MSR seeking a declaratory order to the effect that, because of the "One Environmental System" for mining which government introduced in December 2014, full environmental authority for mining now vests with the Department of Mineral Resources.</p>
2018	<p>20 Feb. Concourt hears arguments over succession dispute between Princess Wezizwe Sigcau and Minister of COGTA.</p> <p>23-24 April. Amadiba application for declaratory order on Right to Say NO to mining heard in N Gauteng High Court before judge Anneli Basson.</p>		<p>ACC terminate the meeting insisting that any discussion about land matters must</p>

Date	Significant moments.	Eco-tourism incidents	Xolobeni/Tormin Mining incidents
	<p>7 May. Historic R5 billion settlement on Silicosis class action case reached between mining industry and claimants.</p> <p>8 August. Mantashe serves notice that he intends to extend moratorium for further two years.</p> <p>11 September. Concourt dismisses Princess Wezizwe’s appeal. Finds for Government.</p> <p>23 September. Gwede Mantashe visits Xolobeni to “consult”. Meeting ends in chaos, and Richard Spoor is arrested after trying to intervene to restore order.</p> <p>25 September. Richard appears in Bizana magistrates court charged with assault.</p> <p>27 September. Gwede announces new Mining Charter at media conference. Xolobeni issue features as major Q&A item.</p> <p>16 October: Premier of “Dying for Gold” in Bizana.</p> <p>20 October. First gathering of Friends of Xolobeni, in Johannesburg.</p> <p>23 October Richard Spoor appears in Bizana Magistrates to answer charges of assault, incitement to violence and refusing to obey an order of a police officer.</p> <p>22nd November. Judge Annali Basson hands down judgement and grants the relief sort with costs. No mining can commence</p>		<p>properly take place at Mgungundlovu Komkhulu.</p>

Date	Significant moments.	Eco-tourism incidents	Xolobeni/Tormin Mining incidents
	<p>without Free Prior and Informed Consent. 23 November. Gathering of all SLAPP suit targets, in Cape Town to develop strategy. 3 December High Court Review finally commences in N Gauteng High Court before Judge Cynthia Pretorius.</p> <p>11 December. Mantashe meets ACC members and attorneys at Wild Coast Sun. 12 December. Mantashe speaks at book launch of “The Future of Mining in SA: Sunset or Sunrise”. Xolobeni features as main discussion point.</p>		
2019	<p>10 Jan. ACC lawyers meet Mantashe and his special advisor Sandile Nogxina in Durban to negotiate. Mantashe insists he can't be stopped from visiting anywhere unless by court interdict. 16 Jan. Minister Mantashe pays third visit to Xolobeni. Announces plan to survey opinion.</p>		<p>Minister's “third coming” meeting again ends in chaos. Jan Abbott roughed up by police. Following day SAHRC commences contact with stakeholders with a view to intervene to de-escalate conflict.</p>

Additional Legal Frameworks Relevant to the Negotiation

1) Marine Living Resources Act 18 OF 1998:

To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa; and to provide for matters connected therewith.

Related to this act is the declaration of Marine Protected areas of which Xholobeni coastline falls into Pondoland Marine Protected Area. *“NOTICE DECLARING THE PONDOLAND MARINE PROTECTED AREA UNDER SECTION 43 OF THE MARINE LIVING RESOURCES ACT, 18 OF 1998.*

Published under Government Notice 694 in Government Gazette 26430 dated 4 June 2004.

Commencement date: 4 June 2004 (Regulations 8, 9 & 10 shall commence on 31 December 2004) I, Marthinus van Schalkwyk, the Minister of Environmental Affairs and Tourism, hereby declare the Pondoland Marine Protected Area in terms of section 43, and to prescribe the management and protection measures for the Pondoland Marine Protected Area in terms of section 77(2)(x)(i), of the Marine Living Resources Act, 18 of 1998 ("the Act") as set out in the Regulations in the Schedule, below.

Schedule:

To protect the marine environment and the marine biodiversity within the Pondoland Marine Protected Area; to allow over-exploited species of fish a sanctuary in which to recover and breed; to promote and regulate eco-tourism activities and scientific research in a way that does not adversely affect the marine environment and biodiversity of the Pondoland Marine Protected Area and to prescribe penalties for contraventions.

The entire Xholobeni coastline that government wants to have mined is part of the Pondoland MPA (Marine Protected Area), therefore does not deserve to be mined.

2) Heritage Act 25 of 1999:

This legislation aims to promote good management of the national estate, and to enable and encourage communities to nurture and conserve their legacy so that it may be bequeathed to future generations. Our heritage is unique and precious and it cannot be renewed.

The entire coastal stretch of land that is targeted for mining has heritage sites that bear stone age tools that date back to 500 000 years ago, therefore are protected by law, and could not be mined.

3) NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT ACT 24 OF 2008: *To establish a system of integrated coastal and estuarine management in the Republic, including norms, standards and policies, in order to promote the conservation of the coastal environment, and maintain the natural attributes of coastal landscapes and seascapes, and to ensure that development and the use of natural resources within the coastal zone is socially and economically justifiable and ecologically sustainable; to define rights and duties in relation to coastal areas; to determine the responsibilities of organs of state in relation to coastal areas; to prohibit incineration at sea; to control dumping at sea, pollution in the coastal zone, inappropriate development of the coastal environment and other adverse effects on the coastal environment; to give effect to South Africa's international obligations in relation to coastal matters; and to provide for matters connected therewith.*

The area targeted for mining is part of the coastal zone protected by this act therefore would be illegal to mine.

4) National Environmental Management: Biodiversity Act No 10:

The Act provides for the management and conservation of South Africa's biodiversity within the framework of the National Environmental Management Act, 1998; the protection of species and

ecosystems that warrant protection; the fair and equitable sharing of benefits arising from bioprospecting involving indigenous ...Apr 5, 2018

The Xholobeni coastal stretch targeted for mining falls into the area of the Pondoland Centre of Endemism Biodiversity hotspot as declared by IUCN (Global Conservation Union). There are 2000 indigenous plants found here of which 200 are endemic to this part of the world. Therefore it deserves to be conserved under this act.