

**The Implementation of the Bill of Rights for Sustainable Development by the  
Department of Mineral Resources (DMR): A Case Study of Xolobeni Mining  
Project in the Mbizana Local Municipality, Eastern Cape, South Africa**

**By**

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## **ABSTRACT**

Due to high levels of poverty in rural areas of South Africa, proposals that seek to bring about 'sustainable development' to these areas often encourage widespread enthusiasm. On the other hand, due to the contested nature of the 'sustainable development' concept – as a result of its focus on increasing development, while protecting the environment - conflicts and claims for human rights have also become common in these situations. It is important to understand the origins of these conflicts and claims for human rights, as well as what their possible impacts are on local livelihoods and natural resources.

This research uses the case of a proposed mining for minerals in sand dunes in Xolobeni, Wild Coast, to explore the manner in which claims for the violation of human rights and the implementation of such rights for sustainable development by the Department of Mineral Resources (DMR) were viewed by opponents of the venture, the Amadiba Crisis Committee (ACC) and the Xolobeni Local Community (Xolco) a company that represents communities that supported the mining project. Additionally, this research explores the role of external stakeholders, such as government, environmental organizations and mining companies in the mining saga in Xolobeni. Unpacking these different roles and arguments is important for forging the way forward in both safeguarding the land and natural resources of the area, as well as dealing with local poverty.

The research also illustrated how the Xolobeni community organised themselves and protested against development that intended to force them to relocate from their ancestral land without proper consultation. Issues of human rights, sustainable development and environmental protection also formed part of the discussions in this research. While the mining project had stalled, it emerged that the majority of respondents in the area did not want the mining project to proceed.

## DECLARATION

I, Nomsa Virginia Sibane, hereby declare that this dissertation titled, “The Implementation of the Bill of Rights for Sustainable Development by the Department of Mineral Resources (DMR): A Case Study of Xolobeni Mining Project in the Mbizana Local Municipality, Eastern Cape, South Africa” is the result of my own effort and investigation except where stated and that it has not been submitted for a degree to any University other than the University of Fort Hare.

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## **DEDICATION**

This is to dedicate this work to my late mother-in-law Mrs Eva Sibane and my mother Mrs Nombulelo Mtsolo – ndithi kuwe Tshawekazi nazo iziqhamo zengqeqesho nemithandazo yenu. Let the glory be to our Lord Jesus Christ of Nazareth who said in His Word “I can do all things through Christ who strengthens me for what is impossible with men is possible with Him. Furthermore, he says “Fear not for I am with you”.

## DEFINITION OF KEY WORDS

**Public Administration:** Public Administration is a cooperative group effort in a public setting that covers all three branches, namely, the executive, legislative and judicial and their interrelationship has an important role in the formulation of public policy, and as such is part of the political process.

**Sustainable Development:** Sustainable development is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

**Environmental Protection:** A practice of protecting the natural environment at individual, organizational and governmental levels for the benefit of both the natural environmental and humans.

**Human Rights:** Human rights are moral principles that set out certain standards of human behaviour. They are regularly protected as legal rights in national and international law. These rights are also rights inherent in human beings, whatever their nationality.

**Environmental Impact Assessment:** EIA is a tool or a formal process used to predict the environmental consequences (positive or negative) of a plan, policy, program or project prior to the implementation decision. EIAs propose measures to adjust impacts to acceptable levels or to investigate new technological solutions. Although an assessment may lead to difficult economic decisions and political and social concerns, EIAs protect the environment by providing a sound basis for effectiveness and sustainable development. The purpose of the assessment is to ensure that decision-makers consider the environmental impacts when deciding whether or not

to proceed with a project. It is important to note that EIAs require completion prior to project construction.

**Consultation:** A meeting in which people or groups have a discussion before decisions are made concerning a possible project.

**Public Participation:** Public participation is the process by which public concerns, needs, and values are incorporated into governmental and corporate decision-making. It is also two-way communication and interaction, with the overall goal being better decisions that are supported by the public.

**Poverty Alleviation:** Poverty alleviation is an intervention strategy that aims to relieve the impact of poverty and to assist people in escaping the cycle of poverty. It is also aimed at providing sustainable economic and social intervention.

**Unemployment:** Unemployment is a situation where someone who wants full time employment cannot get it.

**Renewable natural resources or minerals:** Resources that are naturally replenished on a human timescale such as sunlight, wind, rain, et cetera.

**Non-Renewable Natural Resources:** Any natural resource from the earth that exists in limited supply and cannot be replaced if it is used up or any natural resource that cannot be replenished by natural means.

**Mining:** Mining is the process of business of extracting ore or minerals from the ground

## LIST OF ACRONYMS

IUNA	Initiative of the United Nations Association
DMR	Department of Mineral Resources
MPRDA	Minerals and Petroleum Resources Development Act
NGO	Non- Governmental Organisation
ACC	Amadiba Crisis Committee
LRC	Legal Resource Centre
MDGs	Millennium Development Goals
ACHPR	African Charter on Human and People's Rights
ACHR	American Convention on Human Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
NEMA	National Environmental Management Act
SDIs	Spatial Development Initiatives
RDP	Reconstruction and Development Programme
EXCO	Premier and Executive Committee
DGs	Director Generals
HODs	Heads of Departments
MMC	Mayor & Mayoral Committee

PGDS	Provincial Growth and Development Strategy
SDF	Spatial Development Framework
DME	Department of Minerals and Energy
TEM	Transworld Energy and Minerals
UNHROHC	United Nations Human Rights Office of the High Commissioner
ANC	African National Congress
ARDEDEAT	Annual Report, Department of Economic Development, Environmental Affairs and Tourism
GEAR	Growth, Employment and Redistribution
DEDEA	Department of Economic Development and Environmental Affairs
ECA	Environmental Conservation Act
CVTEEC	Conversion of the Treaty Establishing the European Community
WSSD	World Summit on Sustainable Development
UNCHE	United Nations Conference on Human Environment
UNEP	United Nations Environmental Programme
IUCN	International Union for Conservation of Nature and Natural Resources
WWF	World Wildlife Fund

UNCED	United Nations Conference on Environment and Development
GDP	Gross Domestic Product
NAEP	National Environmental Action Plans
PGM	Platinum Group Metal
USA	United State of America
EIA	Environmental Impact Assessment
BRI	Bill of Rights Institute
CSR	Corporate Social Responsibility
BEE	Black Economic Empowerment
MPA	Pondoland Marine Protected Area
DEAT	Department of Environmental Affairs and Tourism

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## **CHAPTER ONE: INTRODUCTION AND OVERVIEW**

### **1.1 INTRODUCTION**

This cases study deals with a myriad of complex but real life problems which are closely connected, viz, the Bill of Rights for sustainable development, human rights, the mandate of the Department of Mineral Resources (DMR), coordination among the five departments connected to the problem, namely the National Department of Environmental affairs (DEA), the National Department of Economic Development, the National Department of Water Affairs, the National Department of Tourism and the Eastern Cape Provincial Department of Economic Development, Environmental Affairs and Tourism (DEDEAT). The case study makes many important recommendations and suggestions based on the case study of Xolobeni mining project in the Mbizana Local Municipality and concludes that environmental issues and economic development cannot be separated from the issue of human rights.

The literature has been extensively referred to and the policy implications have been examined in-depth. The need for consultation with the local people has been brought out very clearly and forcefully without which the adoption of any act or force of the army could be in fructuous. The case study refers to the case of the mining project under reference that is still inoperative. At the backdrop of this assessment is the lack of understanding and sincere application of the techniques.

The recommendations made in this case study are very pertinent: unless we educate communities about the interconnectedness between sustainable development, environmental protection and human rights, bring out Acts or legislation in simple language, instill coordination among the concerned departments, promote dialogue between community members and government, encourage mining owners to undertake corporate social responsibility activities much before commencing the mining operations - the clash between people and those wanting to promote mining operations would continue to be there.

The study further unravels, through the data presentation chapter, how case studies can serve as important tools to understand the problems of public administration. The case study in question has been brought through ninety (90) responses (out of one hundred questionnaires that were sent to the envisaged participants), and highlighted the fact that the residents in the mining areas attach a great emotional importance to their ancestral land and consider the need for development a less important issue. This should be seen in the backdrop of the fact that the residents in the mining area (Xolobeni and the surrounding areas) do not have access to electricity, education and potable water. They do not have access even to traditional means of communication. Then there are serious questions coming in the way of acceptance of the proposal of the mining project by the residents – Pondoland being declared as the Marine Protected Area (MPA).

The case study brings out some revealing conclusions: the mining project has disturbed peace, not only in Xolobeni but also in the surrounding areas, stability and

enhanced conflicts. However, given the improvements suggested in this case study, the residents would still like the project to be carried out.

## **1.2. MOTIVATION AND BACKGROUND TO THE STUDY**

The motivation to conduct this study was triggered by a desire to make a follow up on the arguments and the manner in which communities in Xolobeni and the surrounding areas, given their high levels of illiteracy and poverty, were able to express their views for and against the proposed mining project, after they were summoned to present themselves before the Eastern Cape Provincial Legislature Portfolio Committee on Economic Development, Environmental Affairs and Tourism (DEDEAT). These views were clearly articulated before the Eastern Cape Legislature Portfolio Committee in 2008 when the Portfolio Committee was requested by one of the portfolio committee members as Members of the Eastern Cape Provincial Legislature (MPLs), to intervene in the matter between these groups on conflicts that had a potential to cause violence in the area.

At the time there were unconfirmed reports that one of the community members was killed as a result of conflicts that erupted due to the introduction of the proposed mining in the area. The resistance for the mining project caused divisions amongst the communities in the area, resulting to the formation of two opposing groups, namely, the Amadiba Crisis Committee (ACC) and the Xolobeni Local Community (Xolco). The formation of the ACC was based on the claims that their rights had been violated in that they have not been properly consulted and the process of

introducing the mining establishment to the area was flawed - flawed in the sense that they claimed that the Environmental Impact Assessments (EIAs) submitted to the Department of Mineral Resources (DMR) were not transparent about the impacts of the mine in the area and the document that contained signatures of the people who support the mine included people who died more than decades ago. With the assistance of the local non-governmental organisation (NGO) in the area, headed by a social worker who works in the area and the support of elderly people who were familiar with the protests that took place in the Mpondo area in the mid-70s, the Amadiba Crisis Committee was able to approach the South African Human Rights Commission (SAHRC) to intervene in the alleged violation of their rights which included inter alia, the right to the property, the right to a safe and healthy environment, the right to their land and the right to be consulted on issues that affect them.

During a preliminary visit to Xolobeni in 2011 it was intriguing to note how elderly people (who include a ninety-year Mr Bhalasheleni) memorised a collection of events that took place in the 1970s when they were protesting imposed development in the Mpondos. These people were also instrumental in the stoppage of the Xolobeni mining project convincing their youth about the importance of preserving the land for agriculture rather than compromising it for mining. They also encouraged their youth to stand up for their rights in what belongs to them, stating that the soil will never be depleted through agriculture.

The Xolobeni Mining Project is named after one of the villages (Xolobeni) due to its closest proximity to the area that is earmarked or identified for the mining development and this study will always refer to it as the Xolobeni mining project instead of mentioning the surrounding areas. Xolobeni is situated along the Wild Coast in the Mbizana Local Municipality (referred to as a small pot) under the Alfred Nzo District Municipality in the former Transkei of the Eastern Cape in South Africa (referred to as Pondos in the next section). The nature of Xolobeni's location to the Wild Coast combined with the manner in which communities close to the Wild Coast fear the negative impacts that the proposed mining might have on the Wild Coast due to the ecotourism venture that is in the area, is the crux of this study.

The researcher was also interested to ponder on the reasons why some of the communities in Xolobeni treasured and valued the Wild Coast and the ecotourism venture - while some treasure development, with a specific focus on the manner in which communities represented by the Amadiba Crisis Committee attracted the attention of different stakeholders involved in this mining, referring to the Bill of Rights as the basis for their objection for the mining proposal.

The study does not cover much detail on Xolco activities as they neither approached the courts of laws nor the South African Human Rights Commission for intervention in the matter due to the outstanding requirements of the Environmental Impact Assessment (EIA). The stakeholders involved were the National Department of Mineral Resources (DMR), the Eastern Cape Provincial Department of Economic Development, Environmental Affairs and Tourism (DEDEAT), non-governmental

organisations, environmentalists, House of Traditional Leaders, the Amadiba Crisis Committee, Xolobeni Local Communities and Xolco and their roles in the mining project in Xolobeni are included in this study.

The experiences that were shared by elderly people to the Xolobeni youth in resisting the mining project as opposed to development that is viewed to be destructive to the environment, necessitates the inclusion of a brief background of the Mpondos to shed light to the reader who is not familiar on the setting of the rural areas in the South African context as South Africa is dominated by areas of this nature which makes it difficult for it to bring development to such areas. The intention of this exploratory case study therefore is to adequately answer the questions “What was the role of the Department of Mineral Resources [DMR] in ensuring that the Bill of Rights was implemented? What measures were taken by departments to ensure that existing policies in relation to the Bill of Rights were implemented? What were the roles of communities in exercising their rights to protect their environment and their human rights?”

In setting the stage for the implementation of the Bill of Rights for sustainable development by the DMR, it is important to recognise that while the roots of the concept of sustainability can be traced back to ancient times, present circumstances warrant analysis. Population growth, increase in consumption and the reality that crucial resources such as wood, coal and oil are at a premium validates the need to consume and protect resources in a sustainable way. South Africa is experiencing drastic growth in production, consumption and wealth creation due to the country’s

growing economy. Sustainable development is critical to meet the needs of the present without compromising the ability of future generations to satisfy their own requirements.

On the other hand, respect for and enforcement of human rights is a precondition for sustainable development, resulting to the stoppage of the mining project. This implies that without acknowledging and acting to defend the rights of people, sustainable development is not possible and that poverty eradication without empowerment is unsustainable (Robinson, 2010). Furthermore, by effectively linking human rights and sustainable development, the increasing state of uncertainty for the environment that surrounds and nurtures us is given a human face, directly impacting the well-being of all while the linkage between human rights and sustainable development provides a basis for the establishment of rights-based approach to environmental protection (Robinson, 2010).

South Africa is known for its abundance of mineral resources and it is estimated to have the world's fifth largest mining sector (followed by Russia, Australia, Ukraine and Guinea) in terms of gross domestic product value and its mining companies are key players in the global industry. South Africa holds the world's largest reported reserves of gold, platinum group metals, chrome ore and manganese ore, and the second largest reserves of zirconium, vanadium and titanium (Pocket Guide to South Africa, 2012/13). Nearly 100% of South Africa's cement and building aggregates are made locally and 80% of the country's steel is manufactured locally from coal-fired power stations. Dividing this wealth amongst the South African societies requires a

clear balance between sustainable development, human rights, environmental protection and public administration which yields good governance to ensure equal distribution of wealth and unskewed economy.

In the light of the above, the Department of Mineral Resources (DMR) is tasked with promoting and regulating the country's minerals and mining for transformation, growth and development. Its ultimate goal is to ensure that all South Africans derive sustainable benefit from the country's mineral wealth. The DMR's small-scale mining strategy provides a framework for creating a sustainable sector that is characterised by growth and development, and contributes to rural development, job creation and poverty alleviation through community-linked small, medium and micro-enterprise projects (DMR Strategic Plan, 2011-2014).

The DMR's Strategic Plan further mentions that the Minerals and Petroleum Resources Development Act (MPRDA), Act 28 of 2002 provides the regulatory framework for equitable access to and sustainable development of the nation's mineral resources and related matters. The DMR's constitutional mandate is found in Section 24 of the Constitution which states that:-

*“Everyone has the right to: an environment that is not harmful to the 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 ‘right’ that is mentioned in the above clause is contained in Chapter 2 (Bill of Rights) of Constitution 108 of 1996 of the Republic of South Africa. In this context the Bill of Rights can only be properly understood as a part of the Constitution as a whole and as a significant element of the Constitution’s project of transforming South African society and the country’s political and legal systems. For the first time in South Africa’s history, the franchise and associated political and civil rights were accorded to all citizens irrespective of their race. A Bill of Rights was put in place to safeguard human rights, ending centuries of state-sanctioned abuse (Motala and Ramaphosa, 2002).

The Bill of Rights applies to all law and binds the legislature, the executive, the judiciary and all organs of state. Secondly, a provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right or any duty imposed by the right. Thirdly, when applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2) , a court: in order to give effect to a right in the Bill must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1) and lastly; a juristic person is

entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and nature of that juristic person (De Waal and Currie, 2007).

In the same clause the DMR is constitutionally mandated to secure ecologically sustainable development. It is argued in the document “Sustainable Development: From Brundtland to Rio (2012)” that sustainable development remains fundamentally an environmental issue as it is intended to encompass environment, economy, and social issues and it has been subject to competing agendas. These different agendas prevailed in the Rio Declarations and Agreements, and continue to influence international discussions and relations. Developing countries’ original agenda of trade liberalization, debt relief, poverty reduction, and an increase in development assistance was developmentally focused. These competing agendas also underline the difficulties in integrating economic, environmental, and social concerns and demonstrate how interpretation of sustainable development is subject to the prevailing controversy.

This chapter therefore presents a brief background of the study, defines the different types of implementation of the Bill of Rights for sustainable development, environmental rights and environmental protection link up, and research problem, the research objectives and the significance of the study. The importance of implementation of the Bill of Rights for sustainable development on mining project as well as the challenges and impact on the residents are discussed. The literature review, research methodology, ethical considerations, scope and limitations of the study, clarification of concepts and terms as well as the preliminary framework for

the research are also be discussed. This research seeks to unravel the extent to which sustainable development, human rights, environmental rights and environmental protection interrelate, as many authors agree (Holden, 2007) that these concepts are inextricably linked and that environmental issues add a new dimension to the problem of human rights.

Robinson (2010) asserts that the easiest way to understand the linkages between these four concepts is to take any local or global issue which is currently considered a challenging state of affairs or that of the Xolobeni Mining Project and analyze it in terms of the following questions: Who benefits from this situation? What are the negative consequences of this situation and who is bearing the burden? Are the interests of the actors identified equally represented in the decision-making process and; Will the consequences of this event and the actions taken to moderate it, have an impact on future generations?

The reason for the Department of Mineral Resources (DMR) to implement the Bill of Rights for sustainable development in Xolobeni was informed by the above questions and the realization that the then Department of Minerals and Energy failed to properly consult with the communities who are directly affected by the establishment of the proposed mining project in the area. Pillay (2014) attests to this when she says that it is people who are at the centre of sustainable development: human beings who are entitled to certain basic living conditions.

The Constitution suggests that none of the rights in the Bill of Rights is superior to others, which implies the need for the continuous balancing inter alia, of economic, environmental, social and cultural interests (Glazewski, 2005). Furthermore, Glazewski argues, fundamental rights and freedoms are not absolute because their boundaries are set by the rights of others and by the legitimate needs of society. The Department of Mineral Resources, by implementing the Bill of Rights for sustainable development in Xolobeni, was attempting to balance these issues although the protagonists of the proposed mining project continue to balk at the fact that the license was revoked until the environmentally-related requirements are met.

Glazewski (2000) mentions that the Rio Declaration on Environment and Development emphasises that there should always be a relationship between environmental protection, development, economic growth and human rights, all of which are essential to life. Principle 1 of the Declaration states that human beings are at the centre of concern for sustainable and are entitled to a healthy and productive life in harmony with nature. Principle 9 of the Declaration points out that in order to achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies (Fuggle and Rabie, 2009).

The recent protests that have taken place in Xolobeni during 2015 and have seen both protagonists and antagonists of the proposed mining project at one another's throat is testimony that efforts to balance the four concepts are a cause for concern.

With the support of the protagonists of the project the Australian company is back, trying to fulfil the requirements of the environmental impact assessment for the project. On the other hand, the antagonists of the project, with the support of the Legal Resource Centre and an environmentalist NGO in Xolobeni, are barricading every effort to access the mining spot. This research attempts to determine whose rights were violated and tries to determine to what extent the Department of Mineral Resources tried to implement the Bill of Rights for sustainable development in the area.

Section 38 of the South African Republic Constitution (Constitution 106 of 1996), the interpretation clause, says, that in interpreting the Bill of Rights, the courts must promote the values that underlie an open and democratic society based on human dignity, equality and freedom, and must consider international law. The objects of the Constitution (including the object of sustainability), must furthermore be taken into account when developing the common law or customary law (Ajoku, 2014).

Globally, the linkage of the four concepts (environmental protection, development, economic growth and human rights) mentioned above was initiated by the Stockholm Conference on Environmental Development in 1972 and was furthered by the Rio Declaration in 1992. This resulted in many countries (including South Africa) to insert in their constitutions environmental rights clauses in order to achieve the goals of sustainable development, as for instance, section 24 of the South African Constitution (Constitution 108 of 1996) (Glazewsky, 2005).

### **1.3. THE BRIEF BACKGROUND OF THE HISTORY OF PONDOS IN XOLOBENI**

As it has been mentioned in the previous paragraphs that there is a need to include this section in order to shed light with the reader on the nature of rural of areas in South Africa and how this links to the Xolobeni mining project in terms of implementing sustainable development by the Department of Mineral Resources (DMR) it is imperative to begin with the discussion on the legacy of apartheid. It is vital to first outline the background of the communities in Xolobeni who are directly affected by the proposed mining project as well as to furnish the reader with a brief pre-colonial and colonial history of the communities (referred to as Pondos) in Xolobeni. This will help to understand the forces that caused the Department of Mineral Resources (DMR) to abrogate the mining license that it had earlier been awarded to the Australian mining company (TEM). These forces involved their social life and status; their land; their economy; their politics and also reflect the impact of colonialism on their lives. This brief outline is taken from a journal whose author is unknown.

The Xolobeni communities form part of Pondo people who are commonly known as 'Pondos' who form part of the Xhosa national group but have their own culture and customs. They are known for their strong tribal ties and firm unity that stems from deep roots in their past, their incorporation into the Cape Colony in 1894 never took away their sense of Africanism. Although Pondoland was among the last areas to be

annexed in South Africa, it was not conquered by force of arms, and hardly affected by white settlement.

Annexation had both a negative and a positive impact on the socio-economic and political history of the Pondo people. A positive impact was in the area of education, most Pondo people being educated, whereas negatively, annexation threatened their unity. Pondos had always observed and respected their culture and customs and used to share food, shelter, cattle, clothing, household utensils and weapons.

Many authors (Motala and Ramaphosa, 2005) agree that without land one cannot possess a sense of belonging and ownership, produce food and own livestock. The Pondos therefore resisted the authority of the Nationalist Party when they passed the Native Land Act of 1913, not because they loved to disobey authority but because they had to protect what was theirs, their identity. The core bases of Pondo's economy were land and livestock and although not all Pondos were rich but they owned some property in the form of fields, cattle, goats, sheep, hoes, ploughs, etc.

The fields provided them with maize, which was and still is their staple food. Cattle were of central importance to their religious practices in addition to their economic value to them. Pondos, like most other nations throughout the world, depended entirely on the land. Livestock was and is still an important aspect of their wealth. While goats, sheep, pigs, hens, ducks and geese were part of their animal

husbandry, the number of cattle one owned was the measure of wealth in the Pondo society. Cattle were also traded for commodities such as guns and agricultural implements.

While status played a very important role in the homesteads of the Pondo people and while the father has always been regarded as the head of the family one should also bear in mind they were a clan who believed in the hierarchy of chief and headmen. The paramount chief, as the head of the clan, could speak with authority. The Pondos are brought up and taught to understand that the land belongs to no one, it being a gift from Qamatha (the Supreme Being) to the paramount chief. Nevertheless, the paramount chief would consult the elders of the tribe and the ancestors before taking any crucial decision. This implies that the chief authority was represents the will of the people as a whole. This is why the Pondos resisted when the Bantu Authorities Act of 1951 was implemented and imposed to them.

### **1.3.1 Pre-Colonisation of Pondos**

Colonization had a negative impact on the lives of Pondos in that the exclusive rights to cultivate certain arable areas were now granted through magistrates. Their dispossession caused the Pondo people to submit themselves to white control and supremacy, as Africans could not hold title to land. This brought about a drastic change in the socio-political history of the Pondos. Paramount chiefs were no longer

in control but were told by the colonizers how to lead their own people and administer land. The mining industry turned Pondo men into migrant labourers and demarcation was imposed immediately after annexation so as to categorise people according to their ethnic groups.

The National Party came to power in 1948 there was a socio-economic and political shift in the history of South Africa. The indigenous people of South Africa became aliens in the land of their birth. They were victimized and discriminated against on racial, gender, social, economic and political grounds. The Pondos are also included in this victimization despite their confidence in their kings, chiefs, headmen before the imposition of Bantu Authorities by the Nationalist government. They strongly believed in their dynasty and are more amenable to rule by hereditary chiefs than other, less unified tribes and were therefore more likely to resist the 'new' authorities.

In the light of the above, one may say that colonialism destabilized the Pondo people's socio-economic and political system. Pondos believed in their own culture and tradition. They measured their wealth by the large areas of land and the large numbers of livestock, which they owned. Culture and tradition, or land and livestock were central to their life.

The struggle for human rights is a struggle born out of anger – anger at injustice, anger at inequality, anger at cruelty, anger at humiliation. Yet the formulation of a constitution, and especially of the parts dealing with the protection of human rights, has to be undertaken with serenity (Sachs, 1992). Furthermore, since human rights

are for all - what we are seeking is a set of principles and procedures that will guarantee dignified and secure lives for everybody, not just for ourselves and our children, but for those who are causing us hurt, and their descendants, as well.

Sachs (1992) and many authors assert that apartheid did not just fail, it damaged each and every one of us, oppressor and oppressed alike. The Bill of Rights was established to ensure that there is no abuse by a majority of groups or individuals that basic liberties are guaranteed by whoever may be in power. Sachs continues by saying that a constitutional mechanism to ensure that the inequalities of our society are dealt with in an orderly, progressive and principled way. Therefore we need concepts and procedures that help remove injustice, develop stable institutions and allow a truly united nation to evolve. The basic theme is that we must not only provide an institutional framework within which power is to be expressed, but also a mechanism to ensure that rights are enjoyed.

The intellectual battle today is all about the exercise of power. Nothing is said about the enjoyment of rights. The problem is not simply to open up or to restrain the exercise of power. It is to guarantee the affirmation of rights (Glazewski, 2000). The Freedom Charter was always a people's rights rather than a people's power document. It called for freedom of expression, pluralism and an open society in which the basic needs of the people would be attended to.

It will not be proper to address human rights issues without mentioning community-based involvement and conservation. The colonial approach to conservation excluded rural communities from protected areas. The underlying philosophy of community-based involvement in conservation is to include communities in conservation, not only by letting them participate in the management and benefits of formally established protected areas, but also in the management of heritage sites and in nature conservation generally (Glazewski, 2000).

Glazewski, (2000) further mentions that historically, conservation and wildlife protection in Southern Africa aimed to preserve pockets of biodiversity while at the same time protecting the interests and powers of European governments. The creation of southern Africa's conservation estates was seldom done in consultation with people who lived in or along their borders and seldom earned the consent or respect of these people. This approach to conservation emerged from a realization by colonial administrators that their hunting actually resulted in the decline and possible extinction of many wildlife species. The result was legislation to conserve wildlife, making subsistence hunting illegal and entrenching recreational hunting as a socially exclusive activity. This causes intense conflict between conservationists and local people, human rights violations, and the erosion of indigenous wildlife management systems.

Conservation soon became charged with political conflict. These social conflicts inevitably threatened the future of protected areas, and this has been one of the major reasons for the recent popularity of a new approach. The new model entails

allowing communities access to natural resources from which they previously had been barred; sharing revenue from the use of natural resources with communities; making conservation pay for costs of wildlife management as well as community development programmes; involving communities in decision-making; and recognizing communities' historical rights of tenure to resources and land (Glazewski, 2000).

Glazewski (2000) further argues that one of the most important limitations in the national park or preservationist approach, is that central government assumes control of the land and resources on the assumption that it does so more effectively than local authorities or structures. He advocates devolution as the fundamental point of departure to assist in the transition from the apparent non-sustainable preservationist approach to that of the sustainable exploitation of natural resources. Ultimately, this transition depends on returning control of resources, particularly the land, to those who depend on it, as well as the decentralization of power to local communities. It must be pointed out that not only land, but all natural resources, are at issue.

Coupled with land claims/rights is the issue of water in rural areas. The antagonists of the Xolobeni mining projects claim that the proposed establishment of the mining in the area will exacerbate the water problems. Glazewski (2000) attests to this when he says that the history and pattern of human settlement in southern Africa has been closely linked with the availability and supply of water, especially fresh water.

He further argues that the arid and semi-arid characteristics of the sub-continent determined the locality of the pastoralists and nomadic inhabitants prior to white colonization, and played a central role in determining subsequent land-use patterns. The later settlement pattern of the white colonists was largely dictated by the availability of water, along with the location of minerals.

The Water Services Act (Act 108 of 1997) sets the framework for the supply of water and sanitation services (which is lacking in Xolobeni) by local authorities and gives effect to the constitutional right of access to water services and it must be seen also in the context of the Constitution, particularly the right of access to sufficient food and water, as well as other relevant legislation. The Act is also underpinned by the constitutional imperative to 'heal the divisions of the past and 'to improve the quality of life of all citizens. Do the communities in Xolobeni find it so in their current state of affairs?

The history of the allocation of South Africa's scarce water resources reflects the consequences of the apartheid ideology as much as land allocation. Glazewski argues that the Act sets out to redress these past social imbalances while respecting the constitutional right to property and while taking cognizance of the public environmental interest. Are the communities in Xolobeni protected by this clause? Furthermore, the National Water Act and the Water Services Act must accordingly be seen to take into account the Constitutional imperative to have the environment protected through reasonable legislative measures to guarantee environmental rights.

Having highlighted the importance of accessibility to water as a right for all, it is well to note that while Xolobeni is lacking development, still depends on the ground water for survival. The Water Act of 1956 covers ground water and differentiates between private and public water and streams. The Act defines public water as the water that flows or is found in or derived from the bed of a public stream, which was in turn defined as a natural stream of water flowing in a known and defined channel, if such water could be used for irrigation on two or more pieces of riparian land.

#### **1.4 PROBLEM STATEMENT**

The Bill of Rights is the cornerstone of democracy in South Africa. It enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality and freedom. The preliminary study undertaken in Xolobeni in the Year 2011 revealed that the Department of Mineral Resources, as the custodian of mining licenses failed to ensure that the human rights of the communities in Xolobeni were protected by allowing them to participate in the proposed mining project in the area, as required by the Minerals and Petroleum Development Act, Ac 73 of 2002, resulting in the stoppage of the proposed mining project in the area. Instead of putting the rights of people at the centre of development the Department decided on a development that was allegedly detrimental to the needs of those communities who opposed the proposed mining project (Fuggle and Rabie, 2009).

The opponents of the mining projects strongly believe that issues of environmental concerns are not always taken seriously by governments and sometimes bring about development that is unsustainable for future generations. Development is conflictual in nature and therefore triggers a discourse on the relationship between sustainable development and the natural environment.

Muradian et al (2003) further mention that courts of laws are now faced with a challenge of having to solve disputes that emanate from lack of respect by governments for human rights of the very people who voted them into power. In most cases these people win the battle for human rights while some do not because of the power of governments to impose the development they have given the go-ahead (Muradian, Martininez-Alier and Correa, 2003).

The Constitution of the Republic of South Africa (Constitution 108 of 1996) significantly included the Bill of Rights in the Constitution to ensure that every citizen of South Africa enjoys these rights. Section 24 of the Constitution mentions that everyone has the right to an environment that is not harmful to their health or wellbeing and everyone must 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 (Fuggle and Rabie, 2009).

The debate on these two concepts is polarised in two major schools of thought (Banks, 2008). There are those who hold that development is necessarily predatory to the natural environment (Bebbington, *et al.*, 2008). Others, however, argue that development is not necessarily a threat to the natural environment. In fact, they say, development and nature can be complementary. This school does not deny that past development did degrade the natural environment, but they believe that a balance between development, nature and human rights can be struck: one that sees development and environment flourishing in symbiosis while human rights are respected.

The sustainability school commends living in harmony with nature. At the centre of this debate is the issue of rights, namely, human rights and environmental rights. The Constitution of the Republic of South Africa is clear on the importance of human rights and that the courts of law in the country should treat human rights as a serious component of the law.

## **1.5 RESEARCH OBJECTIVES**

- To assess the role of the DMR in ensuring a balanced implementation of the Bill of Rights for sustainable development.
- To investigate measures taken by other departments involved in the mining project to ensure that existing policies in relation to the Bill of Rights and the

protection of the environment were implemented for sustainable development.

- To identify the role of the other stakeholders, namely, traditional leaders, environmentalists and those communities who are indirectly affected by the mining project in Xolobeni.
- To investigate the role of communities in exercising their rights to protect their environment and their human rights?
- To determine the extent to which the local communities were consulted in the proposed establishment of the mining project.

## **1.6 RESEARCH QUESTIONS**

- What was the role of the Department of Mineral Resources (DMR) in ensuring that the Bill of Rights was implemented?
- Were there any measures taken by other departments involved in the mining project to ensure that existing policies in relation to the Bill of Rights and the protection of the environment were implemented for sustainable development?
- What is their role of the municipality and the provincial departments in the Xolobeni mining project?

- What are the roles of the other stakeholders, namely, traditional leaders, environmentalists and those communities who are indirectly affected by the mining project in Xolobeni?
- What were the roles of communities in exercising their rights to protect their environment and their human rights?
- To what extent did the communities ensure that they succeed in protecting their environment and their human rights?

## **1.7 SIGNIFICANCE OF THE STUDY**

This study is significant because it taps vastly on the importance of practically integrating environmental rights into human rights and how these rights can bring stability in the communities when they are promoted, respected and protected by the state. While issues of human rights are widely debated and theoretically form part of many countries' agenda, they are rarely integrated into environmental issues to ensure sustainable development. In addition to the existing knowledge, this study will also investigate pertinent issues directly related to public administration as a discipline. The recommendation to include environmental issues in public administration pertains to both the discipline and local, provincial and national administrative behaviour.

This research, due to its breadth of scope, is likely to promote and trigger further debate and investigation within and across disciplines and fields. As evidenced by the supporting literature review, this research is not really a new line of enquiry as previous research has been conducted in this field.

## **1.8 LITERATURE REVIEW**

The inclusion of human rights into development discourse has brought along a certain language of rights. This brings a moral resonance to development rhetoric and makes it hard to avoid in today's discourse. In the rights-based approach it is the person's government that assumes the duty carrying position but most of the time they said government does not have the resources to fulfil this role. This is where the NGOs come and try to help governments fulfil their roles and duties to their people by giving them resources. These resources can be monetary or, more sustainably training to governmental service providers (Midgley, 2015).

Various studies have examined reasons behind the implementation of the Bill of Rights for sustainable development on mining projects in South Africa. The factors affecting the implementation of the Bill of Rights on mining and its impacts on the residents have been argued differently from one researcher to another. Some researchers grouped the factors into political, economic and social factors while others see it as a means of exploitation of mankind or total slavery just as South Africans have been treated during the apartheid.

For sustainable development to be practical there is a need for good governance as there is a close relationship between good governance and public administration, human rights, sustainable development and environmental protection. Good governance assists states to understand the interconnectedness between sustainable development, human rights and environmental protection. The section on literature review will assist this research to discuss how many authors have argued this interconnectedness although some writers see a conflict between these phenomena (Kabumba, 2005).

Kabumba argues that development should be pursued before attention is paid to good governance. Other writers see a relationship between the two phenomena. They put emphasis on good governance, which forms the basis of, and accompanies, sustainable development. However, the pursuit of the two faces many problems such as impatience on the part of the governed and, in some cases, the rulers; greed and corruption. The communities in Xolobeni were somewhat impatient with the development that is introduced to them through mining and resorted to resist it rather than sacrificing their environment for development.

## **1.9 RESEARCH METHODOLOGY**

The research methodology employed in this study was well structured or planned to clearly distinguish between methodology and methods, approaches and instruments, styles of research and ways of collecting data (Cohen, Manion and Morrison, 2007). Wisker, (2008) states that methodology is the rationale supporting the choice of

methods and is based on a researcher's world view. The continuum of beliefs that underpin and inform the chosen methodologies, and therefore the methods and interpretation of data, ranges from perceiving the world to be fixed and knowable (positivism) or constructed (constructivism).

For the purpose of this research, this section focuses on the research design which comprises of quantitative and qualitative research design, the research instrument, technique, delimitation of the study, population and sampling as well as sampling techniques. Data analysis procedures were also used to provide effective ways of looking at the relationship between dependent and independent variables. This study employed both qualitative and quantitative research methodologies.

### **1.9.1 Research Design**

The strength of qualitative research is its ability to provide complex textual descriptions of how people experience a given research issue. It provides information about the human side of an issue – that is, the often contradictory behaviours, beliefs, emotions, and relationships of individuals (Nyamongo, Ryan 2001). Qualitative methods are effective in identifying intangible factors, such as social norms, socio-economic status, gender roles, ethnicity, and religion, whose role in the research issue may not be readily apparent. When used along with quantitative methods, qualitative research can help us to interpret and better

understand the complex reality of a given situation and the implications of quantitative data (Bernard 1995).

Wisker, (2008) mentions that researchers may combine both methodologies (qualitative and quantitative) because the results of qualitative research can be measured to some extent in quantitative data and responses in a questionnaire or survey can be set against the results achieved and the number produced can be quantified. However, qualitative research explores the richness, depth, and complexity of phenomena and is interested in how individuals understand themselves and make meaning out of their world (McBurney and White 2007).

Qualitative research methodology is carried out when the researchers wish to understand meanings, interpretations, and/or look at, describe and understand experience, ideas, beliefs and values – intangibles such as these (Wisker 2008). Qualitative research method is a type of scientific research. In general terms, scientific research consists of an investigation that seeks answers to questions systematically; uses a predefined set of procedures to answer the question; collects evidence; produces findings that were not determined in advance and lastly produces findings that are applicable beyond the immediate boundaries of the study (Wisker, 2008). In addition, triangulation also forms part of this research.

The use of triangulation or mixed methods has become increasingly popular in public administration because it combines the benefits of qualitative and quantitative methods (Ricucci, 2010). Ricucci further mentions that reliance on a combination

of data types (triangulation) increases validity as the strength of one approach can compensate for weaknesses in another approach. Riccucci makes the point that there is more insight to be gained from the combination of qualitative and quantitative research than from either form by itself. Their combined use provides an expanded understanding of research problems. Ehrlich and Joubert, (2007) unduly questioned the utility of mixed methods, given that this approach blends the underlying assumptions of divergent epistemic traditions.

Yang, Zhang and Holzer, (2008) argue that mixed methods are appropriate and should be relied upon for public administration research. These authors point out that some scholars will continue to argue that the use of quantitative and qualitative paradigms are incompatible due to their mutually exclusive epistemological and ontological assumptions – therefore using different methods will lead to essentially different observations of the same phenomenon.

Gadgett (1998) describes triangulation in qualitative research as the convergence of multiple perspectives that can provide greater confidence that what is being targeted is being accurately captured. Triangulation helps to collect information in different ways and the means through which data is collected has an effect on the findings (Laws, Harper and Marcus (2003). Thus the concept of triangulation is sometimes used to designate a conscious combination of quantitative and qualitative methodology, but the key to triangulation is to see the same thing from different perspectives and thus to be able to confirm or challenge the findings of one method with those from another (Laws et al., 2003).

This research also used the constructivism paradigm because this paradigm is concerned with generating theories, using small samples, focusing on rich and subjective data, producing qualitative data where reliability is low and validity is high. This paradigm better describes this study, since from it, flows the design and methods to be used, the data analysis and its validity or reliability. Similar to interpretivism, constructivism believes that human beings construct knowledge and meaning from experience and from relationships between things, people and events.

In order to obtain a better, more substantive picture of reality, triangulation is a preferred technique in this research as it includes multiple data collection procedures, multiple theoretical perspectives and multiple analysis techniques. The use of multiple research design strategies increases the depth of understanding during investigation (Berg, 2004).

Berg, (2004) further argues that the decision to discuss field research strategies under the broad umbrella of ethnography ensured inclusion of a wide combination of elements such as direct observation, various types of interviewing, listening, document analysis and ethno-methodological experimentation. This study adopted aspects of ethnography to interview people who are most knowledgeable about their culture. The instruments or methods that inform the methodology employed are discussed below:-

### **1.9.2 Population, Sampling and Sample Size**

In survey research, care must be taken in selecting respondents as well as in formulating the questions to be asked. Population refers to the whole group whose characteristics are to be estimated by using a selected group or sample whose characteristics are to be measured. According to Neuman (2011) population is the entire set of objects and events of group of people, which is the object of research and about which the researcher wants to determine some characteristics.

It is difficult to include every member of the population in conducting research. It is for this reason that researchers select a subgroup from the population known as sample. Babbie (2008) defines sampling as the process by which some elements of a given population are selected as representative of the target population. According to Bartlett, Kotrlik and Higgins (2001) a researcher decides the sample size based on many factors such as time available, budget and degree of precision. However, the minimum sample size for any given population is 100 (Sudman, 1970). Therefore, taking this into consideration, 100 participants were taken as a sample size for this study.

In order to capture the views of the communities of Xolobeni, this study used a sample size that served as representatives of all these communities (young and old, gender and disposable income) as it is assumed that all these communities are directly or indirectly affected by the proposed mining project in Xolobeni. The target

population of 100 participants therefore were included as a representation of all those who are involved in this mining project and were also included with interests in the proposed mining project. The area is highly rural and therefore, the researcher met participants who are illiterate – the intention was to include all such participants in the study.

### **1.9.3 Methods of Data Collection**

In this study, the data were collected through self-administrative questionnaires and personal interviews. Questionnaires were distributed to a selected representative sample of communities of Xolobeni in the Mbizana Local Municipality. A questionnaire is a written document containing a set of questions and other type of items designed to solicit information appropriate for analysis and is usually answered by the respondents (Babbie, 2010:25).

#### *1.9.3.1 Surveys*

Surveys were used in this research in order to gain a comprehensive and detailed view of issues in the mining project in Xolobeni comprehensive. Denscombe, (2001) maintains that surveys can provide a wide and inclusive coverage and assist in bringing things up to date. Surveys usually relate to the present state of affairs and involve an attempt to provide a snapshot of how things are at the specific time at which the data is collected. In the sense that to survey carries with it the meaning 'to look', survey work inevitably brings with it the idea of empirical research. It involves

the idea of getting out of the chair, going out of the office and purposefully seeking the necessary information out there.

Surveys are associated with acquiring information 'straight from the horse's mouth' in a purposeful and structured way. As a consequence, survey research tends to focus on data more than theory – although, of course, good survey research is not entirely devoid of theory. It is a matter of emphasis. Although surveys come in a wide variety of forms, this research used questionnaires that were distributed to the targeted stakeholders during the data collection period. Survey questions were divided into two basic categories: open-ended and closed-ended.

#### *1.9.3.2 Questionnaires*

Questionnaires comprise both open-ended questions and closed-ended questions (Shepard, 2002:46). Open-ended questions allow respondents to provide answers in their own words while closed-ended questions permitted respondents to select a response from specific list provided by the researcher and they are easy to quantify. Open-ended questions allow respondents to express their feelings and thoughts freely and they also offer information in areas that might not have been foreseen by the researcher (Sarantakos, 2005:245).

The open-ended question permits respondents to answer more completely and allows them to reveal the reasoning behind their answers. Using open-ended

questions makes it more likely that the questionnaire will discover something not anticipated by its designers (McBurney, White 2007: 246). Surveys are a widely used method of gathering scientific information. Often the purpose of a survey is simply to determine how people feel about a particular issue and it may attempt to find out the effect of some event on people's behaviour. In addition, surveys provide an opportunity to examine correlations among the participants' responses and to look for possible patterns of cause and effect. A major function of surveys is to dispel myths (McBurney, White 2007).

### 1.9.3.3 *Interviews*

Interview is the process of asking questions by the interviewer from the participants and it may be carried out either face-to-face or by telephone (Babbie, 2010:274). In this study, personal interviews among other types or methods of conducting interviews were adopted to collect data for this study. This technique permits participants to express their perception and opinion regarding the Implementation of the Bill of Rights for sustainable development at Xolobeni mining project in the Mbizana Local Municipality, Eastern Cape, South Africa.

Interviews form part of the face-to-face interviews because, as Descombe puts it, they do not involve much technical difficulty. They were also used because the nature of this study necessitates detailed information to be supplied by interviewees and because this study covers issues that might be considered sensitive or rather personal. This calls for careful handling and perhaps some coaxing in order to get

the informant to be open and honest (Wisker, 2008). There are some advantages attached to conducting interviews, e.g., consent to take part. An agreement to be interviewed generally means that there is informed consent. The interview is not done by secret recording of discussions or the use of casual conversations as research data. It is clearly a meeting intended to produce material that will be used for research purposes – and the interviewee understands this and agrees to it.

The interviewee's words can be treated as 'on the record' and 'for the record'. In the research interview there is a general understanding that the words can be used by the researcher at some later date and that the talk can be taken as a genuine reflection of the person's thoughts, rather than being a joke or a 'wind up'. It is possible for the interviewee to stipulate that his or her words are not to be attributed to him or her, or not to be made publicly available. The point is, though, that unless the interviewee specifies to the contrary, the interview talk is 'on record' and 'for the record'. It is to be taken seriously (Denscombe, 2001).

Wisker, (2008) maintains that interviews can be used to gather information to supplement information provided in a questionnaire; to help pilot a questionnaire (interview a few people to test out the areas and questions); to follow up a questionnaire (select whom to interview for in-depth or variety of responses following the broader information produces in a questionnaire).

Structured interviews will also be used as some of the communities in Xolobeni are presumably illiterate. Structured interviews rely upon the interviewer to complete a set of structured questions with multiple-choice responses, and asking questions according to a set (rather like a questionnaire, but completed by the interviewer after questioning the interviewee). A structured interview with closed questions can lead to clear responses, making analysis simpler, but can also be too guiding and limiting – it might not capture feeling (Wisker, 2008).

Semi-structured, open-ended interviews will also form part of this research because they manage to address both the need for comparable responses – that is, the same questions being asked of each interviewee – and the need for the interview to be developed by the conversation between interviewer and interviewee – which is often rich and rewarding (Wisker, 2008).

#### *1.9.3.4. Face-to-face Interviews*

Face-to-face interviews will be conducted with a purposively selected sample of the following stakeholders: traditional leaders in Xolobeni, environmental groups involved in this project, Ward Councillors and DEDEAT (Department of Economic Development, Environmental Affairs and Tourism) officials. Face-to-face interviews allow the researcher to carefully select potential respondents to make sure all parties will be represented among the responses. A required number of males and females can be ensured and a suitable balance of age bands can be guaranteed through this method. Appropriate numbers of ethnic groups and earning categories can be incorporated with a minimum of likely redundancy. There is an efficiency built into

this form of data collection despite its time consuming and possibly expensive nature (Denscombe 2001).

#### *1.9.3.5. Focus Groups*

Focus groups will be used (perhaps minimally) where communities for and against the project are separate. This will help to probe the gap between what people say and what they do (Flowerdew, 2004). It will also assist in gauging views of respondents relative to the changing situation at Xolobeni. Wisker, (2008) mentions that respondents in focus groups feel valued because their views are being sought in relation to a development or change, and they often also change and become more self-aware and reflective because of being involved in the focus group.

### **1.10 DATA ANALYSIS**

Data analysis is a crucial element in conducting research. It refers to the process of bringing order, structuring and analysis of vast amounts of data into sensible and logical output for easy understanding. According to Babbie, (2008) data analysis is a process, which involves the process of breaking data down into smaller units to reveal their characteristics, elements and structure. The Statistical Package for Social Sciences (SPSS) was used to analysis of the data. The reason for using this package is because it is simple, easy to work with and it is specifically designed for social science research.

SPSS will generate descriptive statistics such as percentages, tables, graphs and charts. These statistics will be used to show and explain the various trends obtained. According to Shepard (2002) descriptive statistics refer to information that can be organized, summarized and presented in rather simple and direct ways.

### **1.11 LIMITATIONS OF THE STUDY**

A limitation to this study concerns accessibility. Scheduled appointments with the communities in the region were made through the House of Traditional Leaders which liaises with the traditional leaders in Xolobeni. The traditional leaders then summon an 'imbizo' to meet in a traditional leader's house. These arrangements take time to be finalized. The risk of meeting with two divergent groups was a challenging consideration and the fact that the mining project is not yet established poses a danger to everyone undertaking research in the area.

### **1.12 ETHICAL CONSIDERATION**

Researchers, in the performance of their research work, are required not to abuse participants in the process of conducting research, hence the need for ethical consideration. If one were to ask a group of researchers who the most important persons are in the conduct of research, they would probably reply in unison: "the participants" This is because qualitative research taps into the lives and problems that triggered the study and therefore the success of the study is partly dependent on the availability and willingness of participants.

Informed consent is a necessary research pre-condition for this study. Emphasis will be placed on accurate and complete information so that subjects fully comprehended the investigation and will be able to make a voluntary, informed decision about their participation. Participants are legally and psychologically competent to give consent and they will be sensitised about their liberty to withdraw from the investigation at any time (Stead and Struwig, 2001).

Informed consent has three major elements: the type of information needed from the research subject; the degree of understanding that the subject must have in order to give consent; the fact that the subject has the choice of whether or not to give consent. All participants must understand that information. The information must be in the participants' own language, at his/her level of understanding and in his vocabulary, not in technical language or professional jargon.

In order to understand ethics as a concept it is important for one to understand the Bill of Rights that is entrenched in the Constitution of the Republic of South Africa (Constitution 108 of 1996). Pera and Van Tonder, (2009) define a bill of rights as a legal document in which the fundamental values and needs of the population or nation are entrenched against violation by government. It may also specify certain actions that are desired of the government (the so-called vertical relationship) but it goes further and recognises that the private abuse of human rights may be as injurious as violations perpetrated by the state.

Van der Walt and Van Der Rensburg, (2010) mention that there are three fundamental ethical principles that should guide researchers, viz, respect for persons, beneficence and justice which (Pera and Van Tonder, 2009) also highlighted. These principles, they argue, are based on the human rights that need to be protected in research, namely, the right to self-determination, to privacy, to anonymity and confidentiality, to fair treatment and to protection from discomfort and harm. The right to be protected from discomfort and harm is not only meant for participants but for the researcher too.

Self-determination implies that an individual has the right to decide whether or not to participate in a study, without the risk of penalty or prejudicial treatment. In addition he/she has the right to withdraw from the study at any time, to refuse to give information or to ask for clarification about the purpose of the study. The researcher must respect this right by avoiding any form of coercion. The principle of justice includes the subject's right to fair selection and treatment. The researcher must select with fairness the study population in general and the subjects in particular. The researcher should select the participants for the reasons directly related to the study problem, and not because they are readily available or can be easily manipulated.

Qualitative research is often regarded as non-invasive because it involves neither intervention nor treatment, but qualitative researchers nevertheless enter the participants' lives (Van der Walt and Van Rensburg, 2006). Entering the lives of

participants necessitates informed consent from these participants. The things that participants must be fully informed about include the purpose of the research; the method and procedure to be followed; the duration of the study; the nature of the participation expected of the participants; the way in which the results will be used and disseminated; the identity of the researcher; possible side-effects and detrimental aspects and the manner in which confidentiality and privacy will be secured (Pera and Van Tonder, 2005).

By its very nature qualitative enquiry risks exploring as yet unresolved issues which can upset the participants (Van der Walt and Van Rensburg, 2006). In this study the researcher will ensure that each interview is properly managed in order to avoid harming participants. Questionnaires will be carefully structured and participants will be monitored for any signs of distress as the intended study involves a mining project that has not been established yet due to outstanding environmentally-related issues.

### **1.13 CONCLUSION**

The constitutional mandate of the Department of Mineral Resources (DMR) is clear that it should ensure communities of the right to an environment that is not harmful, as spelled out in Section 24 of the Constitution. Imposing development through the establishment of the proposed mining project in Xolobeni in spite of resistance that

has been demonstrated by the opponents of mining project in the area is questionable.

The principles of human rights, according to section 24 of the Constitution 108 of 1996 of the Republic of South Africa, the right to life and the right to development cannot be realised in the absence of the right to a healthy environment. In practice, work towards sustainable development is increasingly recognising the importance of a human rights approach. This should not be surprising because the protection of human life in relation to life, health, culture and living standards is central to any social, environmental or economic programme. The Constitution guarantees a variety of personal rights and government has established the South African Human Rights Commission to ensure fulfilment of these rights.

As much as these rights are guaranteed the state has a responsibility to find a way of balancing these competing rights while socio-economic rights are also fulfilled. Governments should realise that environmental, socio-economic rights and development are inextricably linked and therefore there should be a symbiotic relationship between these concepts with the state ensuring the balance between them. To a remarkable degree many courts have come to recognise that human rights include environmental rights. This is evident in Xolobeni where the proposed mining project had to be stopped after the court ruled that the EIA processes were not properly followed.

The next chapter discusses the implementation of human rights for sustainable development by the Department of Mineral Resources, beginning with a brief interpretation of the Constitution in terms of human rights.

#### **1.14 CHAPTER OUTLINE**

Chapter One: Introduction, Background and Motivation to the Study

Chapter Two: Literature Review

Chapter Three: Research Methodology

Chapter Four: Data Presentation, Interpretation and Analysis

Chapter Five: Summary, Conclusion and Recommendations

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## CHAPTER TWO: LITERATURE REVIEW

### 2.1 INTRODUCTION

The literature search and review is a crucial element of the research process – it frequently means the difference between a focused, thorough and well-designed study and one that is fragmented, incomplete and poorly planned (Van der Walt and Van Rensburg, 2006). Literature review is important in that it discloses appropriate theoretical structure of the study, verifies research that other researchers have already done and provides latest research material for the readers (Cottrell and McKenzie, 2011).

This chapter begins with the debate on the concepts of mining, conflict, sustainable development and environmental protection as the most focal concepts of this study. The literature review included the work of Bebbington A, Bebbington DH, Burneo, Hojonosa and Warnars (2008) on these concepts. The discourse on the relationship between these concepts is quite contentious and controversial.

The debate is governed by two major schools of thought (Banks, 2008) that are relevant for Xolobeni case study. There are those who hold that development is necessarily predatory to the natural environment (Bebbington et al., 2008). Others (Muradian, Martinez-Alier and Correa, 2003), however, argue that development is not necessarily a threat to the natural environment. In fact, they say, development

and nature can be complementary. This school of thought now advocates sustainable development. This school does not deny that past development degraded the natural environment, but believes that a balance between development and nature can be struck: one that sees development and environment flourishing in symbiosis. The sustainability school recommends living in harmony with nature and triggers debate on environmental politics.

The concept of sustainable development combines two elements, that of development and that of environmental protection. Sustainable development may be defined as development which meets present needs without compromising the ability of future generations to meet their needs (Campbell, 2006). It encompasses social, environmental and economic dimensions (NEMA, Act 107 of 1998). Development always requires participation since it does not take place in a vacuum, but in an inhabited space. It is important to remember that public participation is needed to highlight the importance of local natural resources in people's subsistence livelihoods. Development options should consider livelihoods to be important. Development should not take place at the expense of peoples' livelihood.

### **2.1.1 The Link between Environmental Protection, Human Rights and Sustainable Development**

The interrelationships between human rights and the environment are integrally and indivisibly part of sustainable development. The linkage is central to efforts to move

towards a green economy that will deliver benefits to the international community's goals in addressing food, energy and water security needs and in achieving sustainable development and the Millennium Development Goals (MDGs). United Nations Environmental Programme (UNEP) describes the green economy as an economic system that recognizes the properties of healthy ecosystems as the backbone of economic and social well-being and as a precondition for poverty alleviation (Sustainable Development from Brundtland to Rio Report, 2012).

Furthermore, efforts to encourage sustainable development must recognize the relationship between human rights and the environment and ensure that their mutual benefits are realized. Without integrating human rights and environmental protection, sustainable development and the green economy will not succeed. The linkage figured prominently in the United Nations Conference on the Human Environment, held in Stockholm in 1972, and later in the 1992 Rio Earth Summit and the 2002 World Summit on Sustainable Development, as well as in the case law international courts, such as the International Court of Justice (Fuggle and Rabie, 2009).

Sustainable development as expounded in Agenda 21 is also clearly based upon the idea that nations must recognize the community of interests uniting humanity, that calls in turn for the richer countries to pay for the agreed incremental costs of activities designed to implement the principles of sustainable development that will enhance not only local but global conditions of life. In the same vein, efforts to encourage sustainable development must recognize the relationship between human

rights and the environment and ensure that their mutual benefits are realized (Sustainable Development from Brundtland to Rio Report, 2012).

On the other hand, consideration for environmental problems in a human rights framework requires more than what is currently available in the case law. To this end, the specificities of the precautionary approach should be integrated in the human rights analysis to allow, inter alia, supervisory organs to take preventive measures, or to stop a potentially harmful activity before it gets under way even in cases where the potential threat has not yet been formally proven (United Nations Environmental Programme, 2012). The DMR failed to take drastic steps in aligning itself with the recommendations made by the Department of Environmental Affairs not to issue the license to the outstanding requirements of the EIA.

The UNEP Document (2012) continues by mentioning that this stems from the need to recognize that environmental harm is potentially very likely to affect a great number of individuals in many countries, and very often also carries irreversible consequences for both human beings and life-support systems. This is not to deny that all violations of human rights leave permanent moral or physical scars, but to acknowledge the specificities of environmental challenges and to appreciate the ways through which the linkage of environmental and human rights concerns come to enhance each other.

Environmental protection is first ascertained as a universal concern which warrants consideration within a human rights context; hence, international environmental law

and human rights law have intertwined objectives and ultimately strive to produce better conditions of life on earth (Cullet, 1995). Du Plessis (2008) attests to this when he says that since the 1970s, global environmental calamities and augmented consciousness of the state of the environment resulted in a particular awareness of people's environmental rights and these feature in a number of state constitutions and international law instruments.

Coupled with environmental and human rights is the fact that some fundamental rights may be worthless when not guaranteeing a means of formal participation by right-holders in their implementation because public participation in environmental decision-making relates to the notion of participatory and environmental justice and often comes to the fore in academic analyses of environmental rights (Du Plessis and Smit, 2006).

Fuggle and Rabie, (2009) further mentions that at the regional level, the linkages between human rights and the environment have been recognized in binding agreements, such as the African Charter on Human and People's Rights (ACHPR), the European Convention on Human Rights (ECHR), the American Convention on Human Rights (ACHR), and the United Nations Economic Commission for Europe (UNECE)'s Convention on Access to Information (UNECECAI), Public Participation in Decision-Making and Access to Justice in Environmental Matters (usually known as Aarhus Convention).

At the national level, lawmakers in many countries have drafted constitutional and legislative provisions setting forth the right to an environment of a specified quality, such as healthy, safe, secure, clean, or ecologically sound. Some 130 constitutions in the world, including the overwhelming proportion of those amended or written since 1970, include a State objective to protect the environment or a right to a safe, healthy, ecologically balanced environment (Fuggle and Rabie, 2009).

The protection of the environment and the promotion of human rights are increasingly seen as intertwined, complementary goals, and as fundamental pillars (for instance, economic, political, social pillars) of sustainable development and these field share a core of common interests and objectives indispensable for sustainable development. Sustainability must be incorporated into an accounting system that measures the currently unaccounted for economic losses that are experienced by using renewable and non-renewable resources in the environment. By incorporating these losses into all levels of economic accounting, all parts of the economic sectors can make informed decisions that support long-term sustainable development and help strengthen human rights affected (Fuggle and Rabie, 2009).

If the enjoyment of human rights depends on environmental protection, in turn, environmental protection depends on the exercise of certain human rights, such as the rights to information, public participation in decision-making and access to justice. Furthermore, local communities play a vital role in preserving the resources upon which they depend. Allowing those potentially affected to participate in decision-making processes concerning harmful activities may prevent or mitigate the

threatened harm and contribute to public support for environmental action, as well as lead to better decisions consistent with sustainable development (Glazewski, 2000).

Sachs (2002) attests to this when he says that States are not exempt from human rights and environmental obligations in their development projects: 'the absence of regulation, inappropriate regulation, or a lack of supervision in the application of extant norms may create serious problems with respect to the environment which translate into violation of human rights. Human rights tribunals have made it clear that the State may be responsible, whether pollution or other environmental harm is directly caused by the State or whether the State's responsibility arises from its failure to regulate private-sector activities properly.

Furthermore, Sachs, (2002) continues, human rights instruments require States not only to respect the observance of rights and freedoms but also to guarantee their existence and the free exercise of all of them against private as well as State actors. Thus any act or omission by a public authority which impairs guaranteed rights may violate a State's obligations. This is particularly important in respect to the environment, where most activities causing harm are undertaken by the private sector.

Sachs, (2002) conclusion is that where no specific quality of environment is constitutionally guaranteed, national courts may still have jurisdiction to judge governmental action or inaction with reference to environmental laws and standards. Environmental protection laws, in many, if not most states, provide for citizen

lawsuits as a means of enforcing legislative and regulatory standards. Such suits have played a significant role in enforcing clean air and water acts as well as endangered species laws. As with human rights litigation, citizens sue the government to secure its performance of mandatory duties under the law.

Preservation, conservation and restoration of the environment are a necessary and integral part of the enjoyment of; inter alia, the rights to health, to food and to life including a decent quality of life. The close link with these rights clearly shows that a right to environment can easily be incorporated into the core of the human rights protection whose ultimate purpose is the blooming of the personality of all human beings in dignity. Environmental protection is intrinsically related to a number of other human rights and emerges as a precondition and an outcome of the enjoyment of many rights (Sachs, 2002).

The right to environment requires States to refrain from activities harmful to the environment, and to adopt and enforce policies promoting conservation and improvement of the quality of the environment. Secondly, it appears on several counts that the right is not purely an individual right: one may single out the rights of future generations whose interests must be taken into account but whose individual members cannot be identified, or focus on more precise claims relating in particular to displaced indigenous people facing the total loss of their cultural, social and physical environment (Fuggle and Rabie, 2009).

The other issue that has been raised by Sachs (2002) is the link between the protection of the environment and development and says that this was first envisaged in a binding instrument in the African Charter. At the UN level, the references to a right to environment have become less and less clear over the last twenty years, even though a great number of instruments do acknowledge that the relationship between human rights and environmental protection and conservation of the environment have become, over the years, intrinsically enmeshed with development.

If people may have been able to speak of environmental protection as such at the 1972 Stockholm Conference on the Human Environment, everything today tends to be put under the heading of sustainable development that supposedly reflects the integration of developmental and environmental concerns. The concept of sustainable development, however welcome it may be in allowing all countries, official and private agencies, to speak the same language and share the same rhetoric, is not well defined and clearly ambiguous in its orientation (Sachs, 2002).

In most of the recent documents, what is meant by development is not the comprehensive process involving social, economic and cultural elements that was outlined in the Declaration on the right to development, but mainly economic growth. What is at stake in the Rio Declaration is the relationship between economic growth and environmental protection rather than development, human rights and the environment (Fuggle and Rabie, 2009).

Sachs (2002) on the other hand further argues that economic growth is seen as the first element in the relationship between development and environment and that the human rights dimension is left aside although human rights should constitute an essential means and end of development. Furthermore, in spite of the discrepancy in the various formulations and the diverse legal status of the instruments at stake, all of these arguments together reveal the existence of a basic aspiration around the world to a global environment conducive to life on earth and a local environment free from unacceptable degradation.

Above all, the fact that the content of the right recognized does differ significantly, particularly between instruments in the environment-development field or human rights is no bar to international law recognizing environmental protection and conservation as one of its fundamental tenets. The formulation of the right as a plain 'right to environment' is no more imprecise than a right to a healthy or clean environment as these qualifying adjectives are themselves vague and subject to divergent interpretations (Kidd, 1997).

However, the major drawback of the healthy, clean or decent environment formulations is that they have been promulgated mainly by northerners focusing on a particular set of problems closer to them. Banks (2008) also argues that human rights and the environment are inextricably linked and in respect to sustainable development, natural allies. The interrelationship between human rights and the environment forms an integral and indivisible part of sustainable development.

The question that follows is: 'What are environmental rights?' What are human rights? Many authors have different definitions of these terms and state that at a superficial level and in a collective sense environmental rights refer to the basic rights contained in the environmental clauses of instruments such as the international Bill of Rights, regional human rights instruments and domestic constitutions and therefore environmental rights can be defined as 'basic rights to a qualified environment beneficial to human life and well-being that belong to members of existing and future generations (Du Plessis and Smit, 2006).

Environmental and human rights problems in South Africa have undoubtedly been exacerbated by past apartheid policies. Environmental justice broadly exhorts that nature's gifts, should be equitably distributed and that certain sectors of society should not bear an unequal brunt of negative environmental impacts (Glazewski, 2002). Bad town planning and racially discriminatory urban designs during apartheid ensured that previously disadvantaged communities felt most of the negative impact of environmental degradation. Most black designated residential areas were located close to dumping sites, mines or industrial areas. Today most communities situated in these areas continue to be exposed to environmental hazards without adequate access to essential services such as adequate sanitation, quick and safe transport, safe and healthy working environments.

Saidi, (2010) argues that the present government is faced with the challenge of redressing the imbalances of past environmental policies in the face of a rapidly growing population. In this regard, solutions to proper environmental management

depend on cooperative governance between everyone involved in environmental issues including all three spheres of government, civil society organizations, international organizations and the private sector. Public participation is also essential in improved environmental management. Experience has shown that policies developed and implemented without the full participation of stakeholders, particularly the poor and socially deprived groups, lack the element of sustainability.

Furthermore, domestic environmental laws of all countries, South Africa included, have been profoundly influenced by international law. Most environmental problems transcend political boundaries and global trends and pressures have driven the development of national laws. Section 24 of the 1996 Constitution (Constitution 108 of 1996) stipulates that everyone has the right to an environment that is not harmful to their health or well-being, and the right to have the environment protected, for the benefit of the 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 and social development. The State is required to respect, protect, promote and fulfil this right (Glazewski, 2005).

The researcher is of the opinion that the Rio Declaration on Environment and Development emphasizes that there should always be a relationship between environmental protection and development, both of which are essential to life. Fuggle and Rabie (2009) concurs with Principle 1 of the Declaration which states that human beings are at the centre of concern for sustainable development and are

entitled to a healthy and productive life in harmony with nature. They also point out that Principle 9 of the Declaration indicate that in order to achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies. This principle highlights the importance of encouraging public awareness and participation by making environmental information widely available.

Fuggle and Rabie (2009) Article 12 of the International Convention on Economic, Social and Cultural Rights (ICESCR), also provides for the right to environment. It stipulates steps to be taken by each State Party to achieve the full realization of this right, which include amongst others: those steps necessary for the improvement of all aspects on environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational and other diseases. Similar views are echoed in Article 25 of the Universal Declaration of Human Rights and Article 24 of the African Charter on Human and People's Rights.

Environmental rights pose a major challenge globally and South Africa is no exception. All countries, especially the developing countries are faced with a major challenge of ensuring that there is balance between environmental rights and economic development. Linking economic development with environmental rights creates a rights-based approach to environmental protection that places the people harmed by environmental degradation at its centre (Fuggle and Rabie, 2009).

Sub-section (a) of s 24 provides that everyone has the right to an environment that is not harmful to their health or well-being". Sub-section (b) of s24 has a socio-economic character as it imposes a constitutional imperative on the State to secure the right of individuals 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 right to a healthy environment contained in sub-section (a) of the environmental clause extends health rights beyond s 27(1) of the Bill of Rights, which is limited to the provision of health care services. A particular environment may be damaging to people's health, yet not necessarily infringe a person's right to health care services. Therefore, should atmospheric pollution or the placement of disposal sites be subjected to constitutional challenge on the grounds that people's health is being damaged, the challenge would have to be brought in terms of the environmental clause and not in terms of s 27 (Ranis, 2004).

Ranis, (2004) mentions certain aspects of various sections in the Constitution saying that another important aspect created by s 24(a) is the right to an environment that is not harmful to individual's health and their well-being. A person's well-being is harmed if his/her interests are harmed. If the environment harms one's interests and those interests are not protected elsewhere in the Constitution, one would use the environmental clause to seek redress. People do not only have an indirect interest in

the environment, they also have a direct one, that is, a clean and undisturbed environment that secures other things of value such as, good health or tourist-related income.

Sub-section (b) of the environmental clause has a socio-economic character and also imposes a constitutional imperative on the State to secure the rights of individuals through reasonable legislative and other measures. The Grootboom case stated that what constitutes reasonable legislative and other measures had to be determined in the light of the fact that the Constitution created different spheres of government, namely, national, provincial and local. A reasonable programme had to allocate responsibilities and tasks to the different spheres of government and ensure that appropriate financial and human resources are available. The case also highlighted the point that both the content and the implementation of a right should be reasonable (Glazewski, 2005).

Sub-section (b) of the environmental clause further goes on to state that pollution and ecological degradation need to be prevented and that conservation needs to be promoted. Where pollution matters are concerned, this could be achieved through protecting the least impacted systems at first, as this will be cost-effective and addressing the problem of the more impacted or polluted systems at a later stage.

Section 32(1) of the Bill of Rights states that “everyone has the right of access to any information held by the State and any information that is held by another person that is required for the exercise and protection of any rights” (Donald, 2002). The right of

access to information is key to the realization of the right to a healthy and protected environment. Although this right does not refer to the environment in particular, it is nevertheless pertinent to environmental concerns. In articulating environmental rights, this will give individuals access to information and standing to challenge perceived violations and seeking remedies to prevent the environmental degradation. Enabling citizens to become involved and informed decision-makers is an essential part of the State's comprehensive approach to protecting the environment.

Donald (2002) continues to say that the environmental clause has further been concretized in the set of Environment Management Principles, which underpins the National Environmental Management Act (NEMA) 107 of 1998; the substantive environmental statute passed by the government of South Africa. Government is also in the process of striving to change people's attitudes towards the environment, which have been strongly influenced by the past when environmental concerns were viewed by many as concerns of the privileged only.

The 1996 RDP document states that poverty is the single greatest burden of South Africa's people and is not only the direct result of the apartheid system but affects millions of people, the majority of whom live in the rural areas. Statistics South Africa (2006) reveals that at least 17 million people survive below the Minimum Living Level in South Africa, and of these at least 11 million live in rural areas and it is not merely the lack of income which determines poverty but an enormous proportion of very basic unmet needs as well. The Apartheid system also pushed millions of black

South Africans into overcrowded and impoverished reserves, homelands and townships and created the injustices of forced removals and the historical denial of access to land.

Donald (2002) mentions that South Africa as a constitutional democracy strives to serve all the people in the country as it comes from a long history of division and conflict. Throughout the years of colonialism and Apartheid, the State played a key role in maintaining inequality and protecting the privileges of a minority. Since the birth of democracy in 1994, the country has faced incredible challenges to overcome the legacy of the past and meet the needs of people today. Apartheid has left the country not only divided, but also very unequal too (Constitution 108 of 1996, Republic of South Africa).

The White Paper on Reconstruction and Development (RDP, 1996) reveals that in most towns and cities, the landscape still shows a society with huge inequalities and sharp differences between rich and poor. A typical South African town has a formerly white area where the central business district is situated, which is well developed and compares well with any developed country. On the outskirts of the developed part of the town, one would typically find formerly Coloured and Indian townships, with a much lower level of development.

Further away from town, one will find African townships. This is where the poorer parts of the communities live and it is still almost exclusively African. Very few of these settlements have proper water and sanitation. Most of the roads are not tarred

and there are few health facilities and very few supermarkets, banks and other services like fire stations, ambulances, schools, sports fields. Such community halls as there are, are of a totally different quality from those in the formerly white areas – if they exist at all (Holden, 2007).

As revealed in the 1996 RDP White Paper, the history of South Africa has been a bitter one dominated by colonialism, racism, apartheid, sexism and repressive labour policies and the economy was built on systematically enforced racial division in every sphere of the society. The result is that poverty and degradation exist side by side with modern cities and a developed mining, industrial and commercial infrastructure. Apartheid has not only left the country with underdeveloped and under resourced rural areas but also with underdeveloped Bantustan areas.

The White Paper further also mentions that farm workers and people who live in rural areas enjoy little or no access to government services and have little opportunity to lift themselves out of poverty. There are huge differences in the quality of education that different classes of people have access to and many schools still lack basic facilities like electricity, running water, libraries and laboratories. There is a legacy of schools in rural areas producing mostly children who do not proceed beyond primary school. The majority of the adult population is unskilled and very few people have tertiary qualifications that will help them to find work in a globally competitive and modern economy.

In terms of wealth, the South African society is still divided along racial lines and while a small minority of formerly disadvantaged people has managed to become economically empowered, the majority is still living in poverty. Around half of the country's people survive on less than R430 per month (StatsSA, 2011). StatsSA further reveals that above all, South Africa is characterized by uneven development with extreme poverty in many parts of the country and basic infrastructure is lacking in the poorer areas of most provinces. In all provinces the spatial distribution of resources is extremely uneven.

Last but not least, the apartheid legislation has distorted access to natural resources, denying the majority of South Africans the use of land, water, fisheries, minerals, wildlife and clean air. Furthermore, South Africa's apartheid policies, combined with the under-regulated activities of local and transnational corporations, contributed to the degradation of environmental resources, including soil, water and vegetation. They encouraged the misuse of fertilizers and pesticides. They placed workers' lives at severe risk because dangerous practices and substances were inadequately monitored (mining in South Africa remains an extremely dangerous job). Poverty and environmental degradation have been closely linked.

Xolobeni, the study area for this research also falls under the description and the nature of rural areas as outlined above. The researcher's interest in pursuing this study was triggered by a number of gaps that were identified by the researcher in a study that she conducted in Xolobeni during the years 2009 to 2013 among them a gap in the analysis of the alleged violation of human rights of people in the area by

the then Department of Minerals and Energy – currently known as the Department of Mineral Resources (DMR).

### **2.1.2 Challenges Faced by the South African Government Post-1994**

It has been estimated that more than half of the world's population lives within 60km of the coastline, the special areas where land and sea meet, and that more than 3 billion people rely on coastal and marine habitats for their livelihoods. In South Africa, equivalent data estimates that 30% of the population lives within 60 km of the coast (Glazewski, 2000). It is evident that the coastal zone is the focal point for virtually the whole spectrum of human activities including industrial activities, offshore and coastal mining, transport (including port-related activities), near-shore and deep-sea fishing, residential and holiday housing, as well as recreational activities. The information below, as cited from 2012/13 document for Mbizana Local Municipality indicates that:-

- The coast provides the main economic gateway for South Africa's industrial and trade activity. A significant feature is that certain coastal areas within South Africa are subject to immense development pressures, particularly those of economic activity and urbanization. The coastal zone is regarded as nodal area for the future of economic development in the country. Significantly, five out of eight of the national Spatial Development Initiatives (SDIs) are in the coastal zone.

- The coastal zone is also a sought-after location for property owners in the wealthier sector of the populace, and coastal towns and their perimeters have seen unprecedented development resulting in large tracts of the South African coastline being irreversibly altered and compromised for future generations. Apart from these socio-economic considerations, it must be borne in mind that the ecologically diverse 3 200km long South African coastline is generally accepted as being a special area for a variety of reasons: it interfaces the marine and terrestrial environment; it has a wide variety of unique ecosystems, including ecologically sensitive and vital estuarine habitats; and most importantly coastal resources and systems provide direct and indirect economic goods and services to a variety of users.

The National Environmental Management Act (NEMA) 107 of 1998 refers to the coast as sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands and similar systems that require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure. Furthermore, the environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage (Fuggle and Rabie, 2009)

The pressure of human activity in the coastal area results in conflicts around land-use activities as well as undesirable and environmentally detrimental impacts. These range from inappropriately located industrial activities, townships and

recreational amenities to informal roads on coastal farms, excavations, removal of vegetation, construction of footpaths, walkaways and so on. Moreover, the last few decades have seen an unprecedented migration to the major coastal cities of Durban, East London, Port Elizabeth and Cape Town, resulting in increasing pressure on coastal resources and ecosystems.

The challenge that faces the South African government is to build a strong economy that can provide jobs and opportunities for all the people. This is a long-term project and there are many other things that need to be done to make sure that government creates a better life for people by providing better access to services, health care, education and employment opportunities. The South African government developed many policies that target poverty and development and its vision is still based on the Reconstruction and Development Programme (RDP) that was developed in 1994 (Kamleshan, 2015).

The RDP Document (1996), on the other hand, is based on six important and inter-linked principles (to mention a few):

- sustainable and integrated development which aims to achieve economic growth, social development and environmental protection;
- people-driven development - with the belief that development has to be driven by the people so that consultation is a key element of any developmental programme - without consultation the government cannot be sure that it is meeting the needs of people in the best possible way;

- peace and security for all - the development of one community cannot be at the expense of another;
- nation-building - coming from a divided past, we can only meet the challenges as one nation with a common set of goals and one agenda for action;
- reconstruction - while there are many things that must be changed in the societies, reconstruction should always be linked to development without simply changing the faces at the top but also to develop the country to meet the needs of the people who have been most disadvantaged;
- democracy - reconstruction and development can only take place in a democratic South Africa. Democracy is not only about voting once every five years in an election, it is about building mechanisms which allow people to participate, to give advice to government, to be consulted on decisions and to get reports on progress. It is important to note that all the laws that have been developed since the RDP began are anchored on the RDP.

Le Roy (2006) is of the opinion that the above principles suggest that government has the responsibility to make policies and laws about the rights and responsibilities of citizens and have in place institutions that will assist the society to fulfil them. The Constitution of South Africa sets the rules for how these laws can be met and how government works through these institutions and the three spheres of government as follows:-

**Table1: The Involvement of the Three Spheres of Government in Sustainable Development (SOURCE)**

<b>Sphere</b>	<b>Legislature</b>	<b>Executive</b>	<b>Administration</b>
National	Parliament	President & Cabinet	Director Generals (DGs)
Provincial	Legislature	Premier & Executive Committee (EXCO)	Heads of Departments (HODs)
Local Government	Council	Mayor & Mayoral Committee (MMC)	Municipality

Table 1 above has been developed for the purposes of the study and is in no way a deviation from the current structure of the three spheres of government as they appear in the Constitution. Secondly, the Judiciary is also defined as part of government, but it is an independent institution so that courts can protect citizens without being influenced or pressurized by government. The independence of the Judiciary is a cornerstone of constitutional democracy and it guarantees the supremacy of the Constitution. It has not been included because it is not formally part of the policy-making or implementation machinery of government.

### **2.1.3 The Role of Departments in the Implementation of Laws and Policies**

Each government department in all the nine provinces of the Republic of South Africa is responsible for implementing the laws and policies decided on by Parliament or the Cabinet. Government departments are headed by a Director-General and employ Directors or Managers and public servants (staff) to do the work of government. Some departments only exist at national level because they deal with issues that concern the whole country. Examples of such departments are Defence, Foreign Affairs, Water and Forestry, Science and Technology, Trade and Industry, Minerals and Energy, Public Enterprises, Home Affairs and Public Service and Administration. Other departments have national and provincial departments because they deal with direct provincial service delivery (Le May, 2006).

It is also important to note that provincial or local government may not do anything that is against the laws or policies set down by national government. Each province has to develop a Provincial Growth and Development Strategy (PGDS) that spells out the overall framework and plan for developing the economy and improving services. Provinces also have a Spatial Development Framework (SDF) that says where and how residential and business development should take place and how the environment should be protected (Le Roy, 2006).

#### **2.1.4 The Role of the Department of Mineral Resources (DMR) in Contributing to the Economy**

The Department of Mineral Resources (DMR) aims to formulate and implement policies to ensure optimum use of the country's mineral resources. Through the Mineral and Petroleum Resources Development Act (MPRDA), Act of 2002 the DMR recognizes that mineral resources are the common heritage of all South Africans; promotes the beneficiation of minerals; guarantees security of tenure for existing prospecting and mining operations; ensures that historically disadvantaged individuals participate more meaningfully; promotes junior and small-scale mining. In terms of this Act, new order rights may be registered, transferred and traded, while existing operations are guaranteed security of tenure. Mining rights are valid for a maximum period of thirty (30) years and renewable for another thirty (30) years, while prospecting rights are valid for up to five (5) years and renewable for another three (3) years (Le May, 2006).

#### **2.1.5 The DMR deems the Role of Small-Scale Mining in Community Upliftment Job Creation and Poverty Alleviation as Critical**

The small-scale mining sector is faced with many challenges such as lack of access to finance and markets, shortage of skills and inadequate or non-compliance with regulatory requirements, all of which the DMR is working towards addressing. The small-scale mining sector has historically mainly comprised alluvial diamond and in-land salt mining, but lately the bulk of the demand for small-scale mining ventures is

associated with industrial commodities, such as slate, sand, clay, sandstone, dolerite and granites for the production of infrastructural development products such as tiles, clay and cement bricks, aggregates and dimension stone for cladding (Lodge, 2003).

It is essential that small-scale miners in South Africa become integrated into the greater South African mining community and the mainstream economy. Government has taken active measures to promote the development of this sector. The DMR assists aspiring small-scale miners in: establishing legal entities; guiding towards the identification of mineral deposits; doing environmental impact assessment, feasibility and market studies; legal and contractual arrangements and mineral rights; developing mining equipment.

#### **2.1.6 The Role of the Department of Environmental Affairs**

For the purposes of the development of South Africa's ocean management policy, Government has been mindful of its Constitutional, international law objectives and domestic responsibilities. South Africa has embraced sustainable development and integrated planning in pursuing oceanic environmental integrity (White Paper on National Environmental Management of the Ocean, 2014 accessed on 13/06/2015 at [www.environment.gov.za](http://www.environment.gov.za)).

South Africa's ocean policy takes cognizance of the following responsibilities in the marine area under its national jurisdiction: implementation of measures to address

the sustainable use of resources; implementation of measures to address the maintenance of biological diversity; implementation of measures to undertake research and monitoring; integration of management of its ocean environment by pursuing coordinated sectoral development while adopting a precautionary approach; implementation of measures to address pollution of the ocean environment from both land and sea-based sources; coordination and harmonization of policies, legislation and actions leading to the environment at an intergovernmental level and; realization that global and international responsibilities relating to the marine environment must be discharged in the national interest.

The White Paper further mentions that ecosystem degradation, climate change and the identification of economic development opportunities have triggered a fundamental shift in international ocean management strategies in recent years. Further, sovereign States are increasingly moving towards coordinated or integrated management approaches premised on the regulation of all sectoral activities within their marine environment. This approach is based on the relationship between the totality or combined impact of human resource usage and its associated cumulative impacts on the marine environment. The implementation of an ecosystem-based ocean management approach will enhance South Africa's ability to manage and effectively respond to existing ecosystem degradation and improve and encourage the sustainable use of national and trans-boundary shared resources.

It is envisaged that the following principles will inform the development of the proposed ocean environmental legislative process:

- the sustainable use and management of ocean resources and ecosystem services in order to benefit present and future generations;
- the protection of biodiversity in the ocean environment and the conservation of marine ecosystems; the application of a precautionary approach to sustainable use and conservation; the prevention, avoidance and mitigation of pollution and adherence to the 'polluter-pays' principle;
- the strengthening of human capacity to deal with a changing environment, including the impacts of climate change such as increases in sea-surface temperature, sea-level rise and ocean acidification;
- the identification of economic opportunities which contribute to the development needs of the poor and vulnerable within the population ensuring human dignity; the promotion of collaboration and cooperative governance; and the promotion of an ecosystem and earth system approach to ocean management.

Within the framework of the overarching goal of sustainable development, government has identified seven strategic goals for achieving environmental sustainability and integrated environmental management. These goals are interdependent and implementation must address all of them to be effective. It is vital to recognize that environmental concerns and issues cut across various sectors

and functions. Therefore, sustainable and integrated management of the environment depends on cooperation and initiatives from all sectors of society. Many supporting objectives address functions of other government departments that impact on the environment and will require their cooperation and commitment for effective implementation.

These strategic goals and their supporting objectives address the major issues government faces in its drive to achieve sustainable development and ensure an integrated system of environmental management and are as follows:

(a) Effective Institutional Framework and Legislation: create an effective, adequately resourced and harmonized institutional framework and an integrated legislative system, and build institutional capacity.

(b) Sustainable resources use and impact management: promote equitable access to, and sustainable use of, natural and cultural resources, and promote environmentally sustainable lifestyles, integrate environmental impact management with all economic and development activities to achieve sustainable development with the emphasis on satisfying basic needs and ensuring environmental sustainability, ensure wise use of non-renewable resources taking account of the interests and needs of present and future generations, all environmental impacts related to resource exploitation, the potential for developing alternative sources and technologies with lesser environmental impacts before the resources are exhausted, the carrying capacity of the environment and concerns for the maintenance of biodiversity, the potential for developing alternative sources and technologies with

lesser environmental impacts, to ensure the integration of environmental considerations into macro-economic and resource planning, to investigate and establish mechanisms that will ensure that investment policies and programmes do not result in the transfer of ownership of all the nation's natural and cultural resources and land, equitable access to these resources and land.

(c) Holistic and integrated planning: develop mechanisms to ensure that environmental considerations are effectively integrated into the development of government policies and programmes, all spatial and economic development planning processes, and all economic activity;

(d) Participation and partnerships in environmental governance: establish mechanisms and processes to ensure effective public participation in environmental governance;

(e) Empowerment and environmental education: promote the education and empowerment of South Africa's people, increase their awareness of, and concern for, environmental issues, and assist in developing the knowledge, skills, values, and commitment necessary to achieve sustainable development;

(f) Information management: develop and maintain mechanisms to increase access to information and ensure effective management of environmental information;

(g) International cooperation: develop mechanisms to deal effectively and in the national interest with international issues affecting the environment.

### **2.1.7 Involvement of Xolobeni Communities in Human Rights**

The human rights issue in Xolobeni involves various stakeholders including the then Department of Minerals and Energy (DME), currently known as the Department of Mineral Resources (DMR), the local authorities in Mbizana Local Municipality, interest groups and communities in Xolobeni who were and still are for or against the proposed establishment of a mining project in the area. Their arguments were and are still based on the alleged failure by the Department of Minerals and Energy to properly consult them before awarding the mining license to the Australian company; that caused the stoppage of the proposed mining project in the area to date.

In 2005, the Minister of the National Department of Minerals and Energy (DME), now known as the Department of Minerals and Petroleum Resources, announced that an Australian company, Transworld Energy and Minerals (TEM) was to establish a mining development project in Xolobeni to mine red sand dunes which are contained within five blocks, each named after the river at its southern boundary. These blocks were Mtentu, Sikombe, Kwanyana, Mnyameni and Mphalane. According to the Minerals and Petroleum Resources Development Act (Act 28 of 2002), the Department of Minerals and Energy was the sole custodian of the mining licenses and therefore the only Department that issues mining licenses.

The then Department of Minerals and Energy and the proponents of the proposed mining project advocated for development in the area as they strongly believed that

development could decrease the high levels of under-development, unemployment and poverty in the area. On the other hand, the opponents of the project strongly believe that the establishment of the proposed mining project will be detrimental to their ecosystem, citing four inter-linked issues, namely: lack of consultation about development strategies that will affect environmental protection in Xolobeni, communal land rights, threats to livelihood and the lack of legitimacy of those who ostensibly represent the community.



Figure 1: The Red Sand dunes in Xolobeni (Picture taken by the researcher).

This study was triggered by Gildenhuys's (1988) argument that public administration centres on executive governmental institutions – where public administration happens. He says that the politics-administration dichotomy emphasises the locus of public administration. Gaps that were identified in the case study of Xolobeni

centre on the existence of a politics-administration dichotomy that has dominated the arguments around the lack of respect for human rights in the area.

It is to these executive governmental institutions that communities look for implementation of what is legislated by the electorate. In the same vein, communities hold the executive responsible for any failure to hear their voice in times of trouble. Literature reviewed in the case of the proposed mining project in Xolobeni reveals that communities in the area blame the Department of Minerals and Energy (now known as the DMR) for violating their human right to sustainable development by awarding the mining licence without their consent.

Human rights are entrenched in the Constitution (Constitution 108 of 1996) and are complemented by the Promotion of Justice Act (PAJA Act 3 of 2000) which spells out the ambit, content and application of the rights and duties contained in the constitutional right. The rights concept forms the basis for all administrative actions and the provisions laid down in PAJA give content and meaning to these rights. The purpose of PAJA is to promote just administrative action by regulating the administration and thereby creating a culture of accountability, openness and transparency (Fuggle and Rabie, 2009). PAJA gives effect to the scope and meaning of the constitutional right by prescribing certain procedures which administrators or officials must follow in the performance of their daily functions, notably those related to fair procedure and the provision of reasons for administrative action.

The polarization between the two divergent groups in Xolobeni demonstrates how ordinary rural people organized to defend their respective understanding of democratic decision-making and the violation of their human rights in the context of development. This polarization caused the then Department of Minerals and Energy to realize that the process of issuing the mining license to the Australian company was flawed, and they withdrew the license to allow for further investigation and proper consultation. Perusal of the debates is now possible through the book entitled “Environmental Politics” – The Case of Xolobeni Mining Project in Mbizana Local Municipality, Eastern Cape, South Africa” by Nomsa Virginia Sibane.

While the researcher’s previous study used the lenses of environmental politics from the perspective of environmental protection, the current study will look at the role of the Department of Mineral Resources (DMR) in the violation of human rights in the name of sustainable development, using the lenses of public administration.

#### **2.1.8 Public Administration**

Public administration concerns the management of the affairs of government and its primary institutions. Central to the term’s meaning are the execution and implementation of public policy (Le May, 2006). The Department of Mineral Resources is also one of the government departments responsible for the implementation of public policy and legislation including inter alia, the implementation of the Minerals and Petroleum Resources Development Act (Act 28 of 2002). Implementation of this Act should be done without violating the Bill of Rights as

administration must adhere to the rules, regulations, and procedures developed to manage the affairs of government (Le May, 2006).

A negative connotation associated with administration is the concept of red tape or the excessive use of rules and regulations and insistence on cumbersome and often self-serving procedures. These rules and regulations sometimes seem to be developed by and for the convenience of administrators more than for the public (Le May, 2006). In the case of the Xolobeni mining project, the then Department of Mineral Resources, as the custodian of mining licenses, issued the prospecting license to the Australian company, that being convenience for the administrators but nevertheless tampering with the human rights of people in the area.

Issuing of the license by the Department of Mineral Resources (DMR) was and is still highly contested in Xolobeni. Le May (2006) mentions that bureaucracy is the administration of large-scale organisation through departments and their agencies (in government such sub-divisions are often called bureaus) that are managed by a set of appointed officials who follow established routines or standard operating procedures. Public policy on the other hand refers to the decisions made by government, to a purposive course of action taken by governmental actors in pursuing solutions to perceived problems in many respects; it is public administration's very reason for being (Burns and Beukes, 2006).

Public administration is to ensure the implementation of policy. Public policy frequently requires the creation of governmental organisations, agencies, bureaus, or departments to carry out policy decisions or directives. Burns and Beukes (2006) maintain that public administration is responsible for the implementation of legislation promulgated in the national, provincial and local spheres of government.

In implementing legislation public administrators are involved in diverse topics such as trade and industry, health, education, the environment, the provision of social services, et cetera. The definitions of public administration or administration as given by Burns and Beukes inform this study because the conflicts that arose in Xolobeni, resulting in the claim made by the local communities to have their rights considered in the proposed mining establishment in the area was caused in the national Department of Minerals and Energy (DME). The need for the DME to enforce human rights is accounted for in Burns and Beukes's definition.

Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles: promotion of high standard professional ethics; promotion of economic, efficient and effective use of resources; development-oriented public administration; impartial, fair and equitable provision of services and without bias; people's needs must be responded to, and the public must be encouraged to participate in policy-making (Constitution 106 of 1996).

The Constitution of the Republic of South Africa (Constitution 106 of 1996) further makes it clear that public administration must be accountable, transparent, and fostered by providing the public with timely, accessible and accurate information and lastly it must be broadly representative of South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

Section 195 (2) further mentions that these principles apply to administration in every sphere of government, all organs of state and all public enterprises. The domain of the administration is served by civil servants therefore the failure, success and implementation of policy lies in the hands of administrators. The State, through its departments, is responsible for a professional, impartial and efficient public administration that abides by the rule of law. This role is not only regulatory but also managerial one (Kettl, 2002).

The State has to guarantee a certain quality of its staff and an equal quality of standards across all public administration settings (Kettl, 2002). Given the case of the Xolobeni mining project and Kettl's argument one would want to know the quality of staff who advised the Minister on issues resulting in the withdrawal of the mining license due to the realisation that no proper consultation was made before issuing the license to the mining company. There are several reasons why State employees should not be considered merely as the State's employees. Gildenhuis, (1988) suggests that servants of the State have to achieve a number of targets that differ

from those in ordinary labour relationships. Among these targets, the following can be enumerated:-

- To establish mechanisms of control and accountability in order to prevent abuse of public powers and mismanagement of public resources.
- To give legitimacy to the public administration in the eyes of citizens and taxpayers in order to build up public confidence in the administration and in the end, in the state as a whole.
- To distinguish as far as possible a public domain of politics from a public domain of administration, as the underlying logic in each domain is different, just as their sources of legitimacy are also different (Gildenhuis, 1988).

Public administration is faced with various challenges because people are aware of their environment and environmental governance has been the subject of numerous scholarly writings and the concept is now firmly established both in international and domestic law; hence the development of the national environmental laws (Ricucci, 2010). Academically, the field of public administration supports and promotes a variety of research traditions. Some are wholly quantitative whereas others are qualitative and some are mixed. Conflict and dissonance continues among scholars as well as practitioners over the relevancy and applicability of the various research or epistemic approaches (Ricucci, 2010).

Many authors have written about public administration debating whether it is an art or a science, whether it is based on fact or value and whether it has a paradigm. Riccucci (2010) argues that public administration lacks a paradigmatic base because of the very nature of the field, which is applied and thus characterized by experience and practice. In fact, if it was not for Woodrow Wilson on his works on public administration around the Year 1887, many authors claim there would be no public administration. Moreover, the practices and institutions that control and drive these experiences and practices are imbued with politics, which further precludes the field from acquiring its own paradigm.

Another interesting debate about public administration is whether public administrators are trained or are born leaders. It might be necessary to relate this debate to the principles of public administration reflected in section 195 of the Constitution. Another feature of public administration is its dichotomous nature with politics, which is what distinguishes public administration from business administration. Public administration is about the political process. The next discussion concerns the relationship between public administration and human rights.

### **2.1.9 The Relationship between Public Administration and Human Rights**

Different authors define the concept of human rights differently and the strong claims made by the doctrine of human rights continue to provoke considerable scepticism and debates about the content, nature and justification of human rights (Devenish,

1998). Devenish further argues while the consensus is that human rights encompass a wide variety of rights, the precise meaning of the term 'right' is controversial and is a subject of continued philosophical debate.

Although some authors, among them Mubangizi (2005), agree that there is no final definition of this concept, the United Nations Declaration of Human Rights defines human rights as moral principles or norms that describe certain standards of human behaviour and are regularly protected as legal rights in national and international law. Laws are in place to protect people's rights, but these laws are challenged or overturned if they fail to protect the natural rights of the individual (Burns, 1996). Furthermore, such rights are applicable everywhere and at every time in the sense of being universal and they are egalitarian in the sense of being the same for everyone. The definition by the United Nations Declaration of Human Rights therefore puts the obligation of the protection of human rights squarely on the State.

Devenish, (1998) mentions that the sacred rights of mankind are not to be discussed among old parchments, or musty records. They are written, as by a sunbeam, in the whole of human nature, by the hand of divinity itself and can never be erased or obscured by mortal power. The United Nations Declaration of Human Rights attests to this when it says that human rights should not be taken away except as a result of due process based on specific circumstances since they are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because he/she is a human.

The Declaration further maintained that to violate someone's human rights is to treat that person as though she or he were not a human being. To advocate human rights is to demand that the human dignity of all people be respected. In claiming these human rights, everyone also accepts the responsibility not to infringe on the rights of others and to support those whose rights are abused or denied (UN Conference, 1993). Above all, human rights are inherent in all human beings regardless of their nation, location, language, religion, ethnic origin or any other status while they also require empathy and the rule of law and impose an obligation on people to respect the human rights of others.

Flowers (2010) concurs with the United Nations Human Rights Declaration when he says that human rights are both inspirational and practical and that human rights principles hold up the vision of a free, just and peaceful world and set minimum standards for how individuals and institutions everywhere should treat people. Human rights also empower people with a framework for action when those minimum standards are not met, for people still have human rights even if the laws or those in power do not recognize or protect them (Flowers, 2010).

As this research proceeds, the human rights issue will be further investigated since a preliminary study undertaken in Xolobeni revealed that communities there and in the wider areas were and are still divided with a strong belief that their rights have were violated by the Department of Mineral Resources (DMR) in the name of sustainable

development, subsequently thwarting the plans of this department to bring development through the proposed mining project to the area.

Mubangizi, (2005) speaks of fundamental human rights, basic human rights and common rights, mentioning that human rights and fundamental freedoms allow us to fully develop and use our own human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual needs. Mubangizi, (2005) further maintains that these rights are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection.

In a general sense, human rights are understood as rights that belong to an individual as a consequence of being a human being and for no other reason (Mubangizi, 2005). Clearly then, human rights are those rights one possesses by virtue of being human and one need not possess any other qualification to enjoy human rights other than the fact that he or she is a human being. That is why there is a growing international recognition of the universality, interdependence and indivisibility of human rights.

Mubangizi, (2005) further argues that the idea of equality is a reflection of the concept of men and women created in the image of God and endowed with worth and dignity as the foundations of a comprehensive human rights system. In the light of the above, this research will first trace the origins of human rights with reference to the Constitution of the Republic of South Africa (Constitution 106 of 1996) and analyse the political dispensation in South Africa to see how the concept of human

rights emerged so as to be included in the Constitution as a cornerstone of democracy.

Reference will also be made to the rights of various institutions and departments in protecting and/or violating human rights in their efforts to provide service delivery in the name of sustainable development. Specific reference will be made to the Department of Mineral Resources (DMR). In order to understand how violation of human rights impacted the communities in Xolobeni, and led to the stoppage of the proposed establishment of the mining project, it is important to begin with a brief discussion of the political dispensation in South Africa.

#### **2.1.10 The Political Dispensation in South Africa**

Following the release of Nelson Mandela in South Africa and the unbanning of the African National Congress (ANC) in 1990, a system of representative government was negotiated, leading to the national elections in 1994 which placed the ANC in power (South African Constitution, 1996). The 1996 Constitution states that at the time of negotiations, legislative authority in South Africa was vested in a tri-cameral Parliament in which white, coloured and Indian people had representation in separate chambers. This Parliament excluded black people, who were considered citizens of a number of independent and self-governing states scattered around the country and whose political rights were meant to be realised in those States.

The Constitution further reveals that the adoption by the tri-cameral Parliament of an interim Constitution on 22 December 1993 brought into legal existence the constitutional agreement reached after months of negotiations. When it came into operation on 27 April 1994, the Interim Constitution brought about the final demise of the tri-cameral constitutional system and the apartheid order that it had upheld.

The Year 1994 did not only place the ANC in power but South Africa became a democratic country after it had been marked by deep divisions between its indigenous people and those of European extraction (Le Roy and Saunders, 2006). A European settlement was first established at the Cape of Good Hope by the Dutch East India Company in 1652 for the provisioning of its ships bound for the East. As the settlement grew into a colony and expanded northwards, bringing the colonists into conflict with the indigenous population, European dominance was gradually extended and entrenched.

During the centuries that followed, black people were mostly excluded from representative government and denied many of the rights and privileges enjoyed by the country's white inhabitants (Constitution of South Africa, 1996). The concept of equal rights for all came to the fore in the last decade of the 20<sup>th</sup> century, after a long struggle to achieve these rights.

The International Convention on the Suppression and Punishment of the Crime of Apartheid denounced apartheid as a crime against humanity in that it violated international law. Accordingly, it is difficult to see how anyone could talk of human

rights protection in South Africa during that period. More importantly, it is difficult to comprehend how the courts could protect human rights while at the same time trying to enforce such draconian and discriminatory legislation.

Mubangizi (2005) mentions that the kind of legislation in place is linked to the type and system of government that is in place and therefore a new Constitution was drafted which rejected the unrestrained power of the Apartheid State and opted for a State system in which power was directed and constrained by law. Chapter 2 of the 1996 Constitution of the Republic of South Africa contains the Bill of Rights which is defined as a cornerstone of democracy in South Africa and it enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality and freedom.

In line with the United Nations Declaration of Human Rights, the Bill of Rights contained in Chapter 2 of the Constitution declares that the State must respect, protect, promote and fulfil the rights in the Bill of Rights by applying it to all law and that it must bind the Legislature, the Executive, the Judiciary and all Organs of State. Without tracing the operations of the tri-cameral government in the apartheid era in detail (as they are not part of this research) it is clear that a certain group's rights were ignored in the type of government that was in power at the time (Heywood, 2007).

South Africa, as a federal system of government, is given effect through institutions of various kinds (Le Roy and Saunders, 2006). Le Roy and Saunders argue that in a federation, as in other forms of constitutional government in the twenty-first century,

the presumptive framework for the organization of these institutions, although imperfect, is the allocation of public power between three branches of government: the Legislature, the Executive and the Judiciary. Further, each of the branches serves a particular purpose to which its structure, powers and mode of operation are adapted.

Le Roy and Saunders (2006) also mention that all these institutions too have rights entrenched in their respective operational legislation, which more often than not clash with the human rights entrenched in the Bill of Rights. The Department of Mineral Resources, necessitated by its obligation to bring development to Xolobeni, deemed it necessary to give an Australian company the right to establish a mining establishment which, it thought was to bring development in the area.

It is unfortunate that (as Le Roy and Saunders correctly put it) a federal system of government, by contrast involves at least two (as in Botswana) or three spheres of government (as in South Africa) within the same polity, each with a direct relationship with the people or a part of them and each with a degree of constitutional autonomy.

Le Roy and Saunders (2006) further argue that the existence of the different spheres of government has consequences for the structure and operation of institutions. Firstly, it may involve some interdependence of the institutions of the respective spheres, while at the same time insisting on the accountability and responsiveness of each sphere to the people whom it serves.

Section 24 of the Constitution further extends the issue of rights to the right of people to the environment by mentioning that ‘everyone has a right to an environment that is not harmful to their health or well-being and further, 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 of natural resources while promoting justifiable economic and social development. It is on the basis of the recognition of human rights and the rights to the environment that the communities for and against the mining development in Xolobeni started their arguments. That is why the linkage of human, political, and economic rights to sustainable development is a point of departure for this research.

#### **2.1.11 The Integration of Human Rights, Politics, Economy and Sustainable Development**

The discussion of this topic begins with the concept of human rights due diligence which has risen to prominence as a potential tool for meeting the twin challenges of shaping better business behaviour and providing access to justice for victims when businesses fail to meet the standards set by society. As outlined by De Schutter, Ramasastry, Taylor and Thompson (2012), this concept is helpful because it demonstrates how each stakeholder’s rights are important in the event of disputes that emanate from the exercise of these rights.

The capacity of States to protect human rights has not kept pace with the expansion of global economic activity. As businesses have gained greater economic rights, access to markets and mobility, governments have increasingly failed to find a good balance between the power of business and the duty of the State to protect human rights (De Schutter, Ramasastry, Taylor and Thomposon, 2012). De Schutter et al argue that in theory, victims of harm caused by or contributed to by businesses may complain to governmental authorities and seek redress but those appeals are stymied by the absence of formal remedies within the home State of the victim or the business. Put simply, there is often no recourse for victims of human rights abuse.

Business enterprises have a responsibility to respect human rights and States have a duty to ensure that they do so by taking appropriate steps to prevent, investigate, punish and redress human rights abuse through effective policies, legislation, regulations and adjudication (De Schutter et al, 2012).

Energy production has been, and still is, one of the main contributing factors to the social and economic development of South Africa. It has lent prosperity and security to the country by providing heat and power for industry, transportation, and household use and the sector has been largely driven by economic and political forces which have had a profound impact on energy policies (Winkler, 2006). The then Department of Minerals and Energy (DME), currently known as the Department of Mineral Resources (DMR) was the custodian of these policies for the regulation of energy and minerals which include mining resources.

On 10 May 2009 President Zuma announced his new Cabinet and the appointment of, amongst others, the Minister of Energy in terms of Chapter 5 (The President and the National Executive). The new portfolios of some of the Ministers necessitated a re-organisation, renaming and establishment of new departments (Annual Report, 2012/13: Department of Energy). Subsequent to this announcement, the Department of Mineral Resources was established following the split of the Department of Minerals and Energy, which resulted in two independent departments.

The 2012/13 Annual Report of the Department of Mineral Resources reveals that in 2004 the legislative framework of the mining industry changed drastically with the promulgation of the Minerals and Petroleum Resources Development Act, 2002 (Act 28 of 2002). One of the major objectives of this Act was to incorporate the principles that pronounce mineral resources of South Africa to be the common heritage of all South Africans and that the State is their custodian, based on the internationally accepted right of the State to exercise sovereignty over its wealth, natural resources and economic activity, as prescribed in the United Nations Resolution 1803 of 1962 and the subsequent United Nations Charter of Economic Rights and Duties of States.

Furthermore, the Minerals and Petroleum Resources Act's objectives give effect to section 24 of the Constitution of the Republic of South Africa (Act 108 of 1996) by ensuring that the nation's minerals are developed in an orderly manner while promoting justifiable social and economic development. This section further states that everyone has the right to an environment that is not harmful to their health or

well-being and that everyone has the right 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 lastly, secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Many authors such as Winkler, (2006); Saidi, (2010), suggest that the responsibility of ensuring the protection of the environment lies squarely with the State. Whether the State, through various departments which include the Department of Mineral Resources, in its quest for economic growth and sustainable development, is able to honour this responsibility without tampering with human rights, is an issue that will be investigated in this research.

Section C of Agenda 21 emphasises that environmental protection is an integral part of sustainable development and that the environment is threatened in all its biotic and abiotic components. Agenda 21 further mentions that business and industry, including transnational corporations, play a crucial role in the social and economic development of each country. A stable policy regime enables and encourages business and industry to operate responsibly and efficiently and to implement longer-term policies.

Increasing prosperity, a major goal of the development process, is contributed primarily by the activities of trading, employment and livelihood opportunities. Business opportunities available to societies contribute towards their professional

development, strengthening their economic role and transforming social systems (Agenda 21). On the other hand, the Agenda 21 continues, business and industry, including transnational corporations, should recognise environmental management as among the highest corporate priorities and as a key determinant of sustainable development.

In recent years the relationship between human rights and environmental issues has become an issue of vigorous debate. The link between the two emphasises that a decent physical environment is a precondition for living a life with dignity and worth (Iceland Human Rights Centre, 2013). Respect for human rights and fundamental freedoms are essential for achieving sustainable development. Unfortunately, the human right to a healthy environment is controversial because it has individual as well as collective aspects (Schutter, Ramasastry, Taylor and Thompson, 2012).

They also maintain that the concept of human rights due diligence has risen to prominence as a potential tool for meeting the twin challenges of shaping better business behaviour by only providing access to justice for victims when business fails to meet the standards set by society but also a means by which business enterprises can identify, prevent, mitigate and account for the harms they may cause, and through which judicial and regulatory bodies can assess an enterprise's respect for human rights.

Traditionally, human rights protect the population against abuses of the State and the State has the obligation to respect, protect and fulfil human rights (Kamga and Ajoku,

2014). Kamga and Ajoku, (2014) mention that in recent years the power of Transnational Companies (TNCs) has grown so that some of them are stronger than the governments of the countries which host them. As a result such companies constitute an important threat to human rights. From this perspective, extractive industries can be involved in various human rights violations in various developing countries and this raises questions about the human rights responsibilities of multinational companies. The next paragraph discusses the background of South Africa's democratic transition and the manner in which transnational companies penetrated South Africa.

#### **2.1.12 The Background of South Africa's Democratic Transition: 1994-2013**

South Africa's democratic transition in 1994 created expectations of a dramatic turnaround in economic performance. Trade and financial sanctions and internal political opposition to the apartheid government contributed to the poorest growth performance since the World War and the removal of these constraints was widely expected to transform the country's economic performance (Du Plessis and Smit, 2006).

The poor economic performance necessitated South Africa to try to attract foreign direct investment from external countries since the growing prosperity was needed to sustain the political transition. Investment is estimated to be consistent with a neoclassical supply-side model of the South African economy (Du Toit and Moolman, 2009). Du Toit and Moolman argue that in the neoclassical tradition,

policy must allow for a profit-maximising and cost-minimising decision-making process by firms, where supply-side factors such as taxes, interest rates and funding in the broader sense, play a significant role. Further, they say, internal and external financial constraints have an enormous influence on South Africa's gross domestic fixed investment.

In the light of the above, this research will assess the role of the Department of Mineral Resources in compromising the rights of communities in Xolobeni by reason of the sustainable development that would result from awarding the mining license to the Australian company and its envisaged contribution to the country's gross domestic product. Investment is an important component of gross domestic product (GDP). Given its crucial role, investment has been an important topic in the economic research agenda (Van Eyden, 2012).

The Eastern Cape is rated as one of South Africa's poorest provinces incorporating large areas of South Africa's former homelands while the metropolitan economies of Port Elizabeth (Nelson Mandela Bay) and East London (Buffalo City Metropolitan area) are based primarily on manufacturing, the most important industry being the motor manufacturing. The Eastern Cape Province is the hub of South Africa's automotive industry (2012/13 Annual Report, Department of Economic Development, Environmental Affairs and Tourism)

As an emerging democracy, South Africa had to contend with the demands of national issues such as rising unemployment, poverty and inequality, and

acknowledging the expectations of the electorate which were raised by a successful democratic election (Bhorat and Kankup, 2006). At the same time, South Africa had to become a contender in the globalised world of capital, trade and technology flows, as it subscribed to the World Bank and IMF's requirements of reducing national debt, fiscal prudence, increasing economic growth and liberalizing the economy (Bhorat and Kanbup, 2006).

Government expenditure was deracialised and became more redistributive in the post-apartheid period with a greater portion of the budget earmarked for the poor (Seekings and Nattrass, 2005). The newly elected democratic government was clear that poverty eradication was a crucial issue and it subscribed to the World Summit for Social Development's Copenhagen declaration of reducing poverty (1995). South Africa is a signatory to many of the global agreements on children, women and older people.

These agreements directly target certain sectors of society that have been historically marginalised in the past, namely, women, children, youth, and the poor and rural communities. South Africa is also committed to the Millennium Development Goals (MDGs). These MDG targets include: halving poverty reduction by 2015, provision of universal primary education in all countries, the reduction of infant and under-five child mortality rate by two thirds and the reduction of maternal mortality by three fourths.

Seekings and Nattrass (2005) are of the opinion that the Growth, Employment and Redistribution (GEAR) policy is an orthodox macro-economic framework introduced in 1996 which proposed labour market reforms, privatisation, trade liberalisation, and a reduced budget deficit. According to Seekings and Nattrass (2005), only the latter two were achieved. They contend that the pattern of labour market reforms certainly contributed to GEAR not meeting its targets. GEAR's main aim was to focus on increasing economic growth and improving job creation.

The latter has been difficult to achieve because there are always more work seekers than there are jobs. For the period 1995 – 2002, using the expanded definition of unemployment, Bhorat and Kanbup (2005) indicate that the economy created 1.6 million jobs. However, the same period produced 5 million new job seekers. In short, the South African employment growth was insufficient relative to the growth in the labour force. Communities in Xolobeni might have expected to benefit from development agendas but even now the area is highly impoverished and highly underdeveloped.

A worldwide trend particularly in developing countries is to recognize the link between human rights and environmental rights. South Africa, like many other developing countries such as Brazil, India and Namibia included an environmental right in its first democratic Constitution. By including environmental rights as fundamental justiciable human rights, environmental considerations had to be

accorded appropriate recognition and respect in the administrative process in South Africa (Glazewski, 2005).

The Constitution of the Republic of South Africa (Constitution 108 of 1995), section 195 requires that public administration be governed by the democratic principles and values enshrined in the Constitution and that it be accountable, transparent, and efficient and that it should involve public participation. Section 195 thus sets a yardstick for decision-making from a good governance perspective. Feris (2010) contends that these values include the values enshrined in the Bill of Rights.

The nexus between section 195 and the Bill of Rights is created in section 8(1) of the Bill of Rights which binds the legislature, the executive, the judiciary and all the organs of state. Section 7(2) of the Bill of Rights provides that the state must respect, protect, promote and fulfil the rights in the Bill of Rights (Feris, 2010). These two sections confirm that governance should accord with the Bill of Rights. The nature of conflicts in Xolobeni originated in the understanding that the State must keep to its responsibility to protect its citizens even as it brings development that is sustainable and ensures environmental protection.

Government, in its development efforts, puts people in the centre of development (anthropocentrism). This is attested to by the National Environmental Management Act (Act 107 of 1998) which maintains that 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 lastly secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

On the other hand, the earth's ability to sustain life is decreasing day by day. This is evidenced by a report of the Living Planet Index which indicates that bird, mammal, reptile, amphibian and fish population species have declined by about 40% over the past thirty years and the ecological footprint which measures the pressure placed by humans on the above populations by consumption of renewable natural resources, shows that humanity's ecological footprint grew to exceed the earth's ecological carrying capacity by 20% (Feris, 2010)

## **2.2 THE BILL OF RIGHTS**

### **2.2.1. Introduction**

Van der Walt and van Rensburg, (2010) define literature review as the sources that are effective in providing the in-depth knowledge that the researcher need to study the selected problem. They further mention that a literature review is an organized written presentation of what has been published on a topic by scholars and its purpose is to convey to the reader what is currently known regarding the topic.

In Chapter One it was revealed that the constitutional mandate of the Department of Mineral Resources ((DMR) is entrenched in section 24 of Constitution 108 of 1996. This section is part of the list of rights contained in the Bill of Rights and it is the cornerstone of the Constitution 108 of 1996 of the Republic of South Africa (Botha, 2011). Botha further mentions that since 1994 the new constitutional order has changed the orthodox and traditional rules of statutory interpretation forever and now there is a new methodology and a different framework, viz, a supreme Constitution, human rights, constitutionalism, and fundamental values. This chapter will therefore look at the importance of the Bill of Rights (as contained in Chapter 2 of the Constitution) in relation to the implementation of human rights by the Department of Mineral Resources (DMR) for sustainable Development in Xolobeni, which reads as follows:-

*“The Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedoms. The state must respect, protect, promote and fulfill the rights in the Bill of Rights. The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36 which states that the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account the nature of the right”*  
*(Constitution 108 of 1996: 6).*

### **2.2.2 The Structure of the Bill of Rights**

The South African Bill of Rights is constructed in a manner to give effect to the transformative vision of the Constitution and sets out a unique human rights vision. Its breadth of application to both the state and, in many cases, to private parties and the range of rights protected it, establishes the Bill of Rights as a post-liberal text aimed at facilitating the social and economic transformation of South Africa while protecting the human dignity of all, as contained in section 10 of the Constitution which states that everyone has a right to human dignity (Motala and Ramaphosa, 2002).

Currie and De Waal (2007) attests to this when they say that the affirmation of human dignity as a foundational value of the Constitutional order places the legal system firmly in line with the development of constitutionalism and that human dignity is considered to be what gives a person their intrinsic worth. Furthermore, human dignity is a source of a person's innate rights to freedom and to physical integrity, from which a number of rights flow. The value of human dignity is safeguarded and promoted by the recognition of a right to dignity in the Bill of Rights.

When confronted with the question of whether law or conduct is in breach of the Bill of Rights, several preliminary questions arise. First, a court must ask whether the person or organization which claims that their rights have been infringed or violated is entitled to the protection provided by the Bill of Rights and whether the person or organization which wishes to approach the court has standing to bring the case (De

Vos, Freedman, Brand, Gevers, Govender, Lenaghan, Mailula, Ntlama, Sibanda and Stone: 2014).

Currie and de Waal (2007) say that the Bill of Rights applies directly or indirectly to a legal dispute. It applies directly when a right of a beneficiary of the Bill of Rights has been infringed by a person or entity on whom the Bill of Rights has imposed the duty not to infringe the right; during the period of operation of the Bill of Rights and in the national territory. It applies indirectly if these elements are not present because all law must be developed, interpreted and applied in a way that conforms to the Bill of Rights. Botha (2011) supports this when he says that interpretation of statutes, or perhaps more precisely, the juridical understanding of legislation deals with the body of rules and principles used to construct or justify the correct meaning of legislative provisions to be applied in the practical situations.

De Vos *et al* argue that while most of the rights in the Bill of Rights are granted to everyone, including non-citizens, some are specifically restricted and there are complicated rules to determine whether juristic persons can claim the protection of the Bill of Rights. Once the court has established that the person or organization which claims that their rights have been infringed is covered by the Bill of Rights, it must ask whether the person or organization which is alleged to have infringed the rights is bound by the Bill of Rights. The South African Bill of Rights does not bind only the state but, when applicable in accordance with complicated provisions in the Constitution, also private individuals and organizations.

Different authors (Botha, 2011; Currie & de Waal, 2007; de Vos, 2014) define the Bill of Rights in different ways. Currie and de Waal (2007) say that the narrowest conception of the Bill of Rights is that it is a 'charter of negative liberties' in that it is intended to protect individuals against state power by listing rights that cannot be violated by the state, either by means of law or through the conduct of state actors (this is the vertical relationship between individuals and the state). A Bill of Rights that has solely vertical application will place duties on the state not to violate the rights of individuals. It will not place any similar duties on individuals.

### **2.2.3 The Importance of Human Rights and Section 24 of the Constitution**

The Constitution guarantees a variety of personal rights which Currie and De Waal (2007) refer to as legal rights with a correlative relationship in that if A has a legal right to something; this postulates that B has a legal duty to A to uphold that right. A is therefore a beneficiary of the right and B is the duty-bearer in respect of the right. The Constitutional mandate of the DMR that is entrenched in Section 24 of Bill of Rights which reads: Environment:

*'Everyone has the right to an environment that is not harmful to their health or well-being; and to have environment protected for the benefit 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 and social development'*

While the National Environmental Management Act, Act 108 of 1998 defines the 'environment' as the surroundings within which humans exist and that are made of the land, water and atmosphere of the earth, Fuggle and Rabie (2009) argue that there is no general agreement on exactly what the concept 'environment' encompasses. Furthermore, curiously enough, its meaning is simply taken for granted and many commentators and even official publications discuss environmental problems without attempting to define it.

The adoption of the 1996 Constitution resulted in two advancements in environmental protection in South Africa. The first, and of major significance, was the inclusion of an environmental right through the above section and second, it resulted in a more coordinated and integrated approach to environmental protection at national level (Fuggle and Rabie, 2009). Prior to the inclusion of the environmental right in our Constitution and subsequent incorporation into our framework law, only one previous attempt was made to create an environmental right or entitlement in South Africa. This entitlement was included in a draft bill that ultimately became the Environmental Conservation Act.

Ramaphosa and Motala (2002) refer to the Constitution as a 'political document' in that it must be moulded to reflect present-day realities. This suggests that the Bill of Rights contained in Chapter 2 must also reflect these realities and a provision in the Constitution must be interpreted in a way that is consistent with the overall purpose and objectives of the Constitution itself.

Fuggle and Rabie (2009) argue that the entrenched right contained in section 24 is of vital importance to environmental law since it guarantees the right of everyone to an environment that is not harmful to health or well-being and to the protection of the environment, for the benefit of present and future generations. The exercise of this right contained in section 24 is strengthened by section 33 (which states that 'everyone has the right to administrative action that is lawful, reasonable and reasonably fair and everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

For one to understand the meaning and implications of section 24 in relation to the implementation of human rights by the Department of Mineral Resources (DMR) it is best to first understand the application of the Bill of Rights, as contained in Chapter 2 of the Constitution. Firstly, the Bill of Rights is constructed in a manner to give effect to the transformative vision of the Constitution – sets out a unique human rights vision (De Vos, Freedman, Brand, Gevers, Govender, Lenaghan, Mailula, Ntlama, Sibanda and Stone: 2014). Its breadth of application to both the state and, in many cases, to private parties and the range of rights protected in it – establishes the Bill of Rights as a post-liberal text aimed at facilitating the social and economic transformation of South Africa while protecting the human dignity for all.

During the late seventies and eighties in particular, the unsystematic application of the rules and principles was criticised by academics and traditionally, interpretation of statutes in South Africa was saddled with unnecessary and unacceptable baggage

(Botha, 2011). The acceptance of legitimacy of the new supreme Constitution may have been compromised if the application of the fundamental rights was hampered by the orthodox interpretation of ordinary legislation.

Botha (2011) believes that it is not that simple to interpret legislation as this requires more than merely reading the provision. For instance, section 11 of the Bill of Rights in the Constitution reads 'everyone has the right to life'. Does the supreme Constitution guarantee immortality? Botha maintains that this is absurd since we all know that it is a biological impossibility. But then what does section 11 mean? Since the right to life forms part of an enacted law text, how do courts construe it?

Courts may come up with different meanings or interpretations of this section. The gist of the matter is that the Amadiba Crisis Committee (opponents of the proposed mining project in Xolobeni) approached the courts of law in order to determine if their stand against the mining project alleging inter alia, that their rights were violated was valid or not. The court ruled in their favour and the mining license had to be revoked by the DMR in an effort to implement the human rights for sustainable development.

Holden (2007) does not counter argue Fuggle and Rabie's assertions but correctly argues that according to the Court's analysis of environmentally-related cases submitted to it, what is immediately apparent from section 24 is the explicit recognition of the obligation to promote justifiable economic and social development.

Economic and social development is essential to the well-being of human beings but development cannot subsist upon a deteriorating environmental base. Unlimited development is detrimental to the environment and the destruction of the environment is detrimental to development. Furthermore, the Constitution recognises the interrelationship between the environment and development and also NEMA, which was enacted to give effect to section 24, embraces the concept of sustainable development and requires that the interests of the environment be balanced with socio-economic interest.

## **2.3 THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

### **2.3.1 Introduction**

Chapter 9 of the Constitution 108 of 1996 shows the establishment of state institutions which are referred to as Chapter 9 institutions in order to strengthen constitutional democracy in the Republic. These are the Public Protector, the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Electoral Commission and the Auditor General (Botha, 2011).

The South African Human Rights Commission (SAHRC) is the national institution established to support constitutional democracy and it is committed to promote respect for, observance and protection of human rights for everyone without fear or

favour. It also has a specific responsibility to promote and monitor the implementation of the Promotion of Access to Information Act, Act 2 of 2000 (Botha, 2011).

### **2.3.2 The Functions of the South African Human Rights Commission (SAHRC)**

Section 184 of the Constitution 108 of 1996 states that the South African Human Rights Commission (SAHRC) must promote respect for human rights and a culture of human rights; promote the protection, development and attainment of human rights; monitor and assess the observance of human rights in the Republic. The SAHRC has the powers (as regulated by national legislation, necessary) to perform its functions, including the power to investigate and to report on the observance of human rights; to take steps to secure appropriate redress where human rights have been violated; to carry out research and to educate.

Each year, the South African Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.

Chapter 9 institutions share two roles: that of checking or monitoring government and that of contributing to transformation of South Africa into a society in which social justice prevails (Brand *et al*, 2014). In the case of Xolobeni the South African

Human Rights Commission played an active role and succeeded in subpoenaing the Department of Mineral Resources (DMR) on the basis of violation rights in Xolobeni resulting to the withdrawal of the mining license ([www.google scholar](http://www.google scholar): accessed on 12 June 2015).

The Constitution 108 of 1996 and Brand *et al* (2014) are clearly articulate that these institutions are independent non-judicial institutions and do not play the same role as the judiciary in enforcing the Constitution but Brand *et al* argue that it is not clear how these institutions fit into the traditional separation of powers model. While they are independent from the other branches of government, they are also accountable to the National Assembly. Furthermore these institutions can make findings and recommendations but, unlike the judiciary, they do not have the power to review and set aside legislation or the actions of the executive although they are important tools to monitor the state's realisation of individual's rights in terms of its constitutional obligations.

Brand *et al* further maintain that institutions set up to safeguard and promote democracy and the rights required to safeguard that democracy can only do their work if they enjoy a certain level of independence from the legislative and executive branches of government. However, these institutions are not judicial in nature and usually do not enjoy the same kind of institutional independence as that enjoyed by the judiciary in a democratic state.

In South Africa these institutions find themselves in a precarious situation. On the one hand, they have to act as watchdogs to prevent the abuse of power, often by state entities, and are required to act in a scrupulously fair and impartial manner. On the other hand, these institutions are often also required to work with the legislature and the executive and may have to rely on their cooperation to get things done (Brand *et al*, 2014).

## **2.4 THE ROLE OF THE HUMAN RIGHTS COMMISSION**

Over and above the functions of the Human Rights Commission mentioned above, the Human Rights Commission has to play an active role to ensure the strengthening of democracy. The South African Human Rights Commission made an intervention to determine whether the necessary legal processes have been followed regarding the mining application as prescribed by MPRDA as well as the Mining Charter (Human Rights Commission Report, 2007). The Commission received a complaint in the Year 2007 with allegations that individual rights of the community in Xolobeni have been violated as follows:-

- Section 10: Human dignity: The right to have the inherent dignity of persons respected and protected in that persons perceived to be opposed to the mining proposal have been defamed by slanderous rumours and insinuations.
- Section 16: Freedom of expression: The right to freedom of expression, including freedom of the press and media in that agents of the mining

company on several occasions sought to prevent or restrict journalists from freely canvassing opinion, obtaining information and reporting and residents have been prevented from freely seeking media coverage.

- Section 17: Assembly, demonstration, picket and petition: The right, peacefully and unarmed, to assemble and present petitions.
- Section 24: The right to an environment that is not harmful to people's health and wellbeing, 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.

## **2.5 POLICY PROVISIONS ON THE INTEGRATION OF HUMAN RIGHTS TO ENVIRONMENTAL RIGHTS**

Section 5(1) of the Minerals and Petroleum Development Management Act, Act 28 of 2002 stipulates that a prospecting right, mining right, exploration right or production rights granted in terms of this Act is a limited real rights in respect of the Mineral or petroleum and the land to which such right relates. Section 5(2) says that the holder of a prospecting right, mining right, exploration right or production right is entitled to the rights referred to in this section and such other rights as may be granted to, acquired by or conferred upon such holder under this Act or any other law.

Section 5(3) says that subject to this Act, any holder of a prospecting right, a mining right, exploration right or production right may: enter the land to which such right relates together with his or her employees, and may bring onto that land any plant,

machinery of equipment and build, construct or lay down any surface, underground or under sea infrastructure which may be required for the purposes of prospecting, mining, exploration or production.

Section 5(4)(c) says that no person may prospect for or remove, mine, conduct technical cooperation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without notifying and consulting with the land owner or lawful occupier of the land in question. Section 6(1) and 6(2) respectively say that subject to the Promotion of Administrative Justice Act, Act No 3 of 2000, any administrative process conducted or decision taken in terms of this Act must be conducted or taken, as the case may be, within a reasonable time and in accordance with the principles of lawfulness, reasonableness and procedural fairness. Any decision contemplated in subsection 6(1) must be in writing and accompanied by written reasons for such decision.

In the light of the above it is clear that the DMR, in its quest to implement human rights for sustainable development in Xolobeni, it is faced with challenges of complying with the provision of legislation affecting the mining project. It must be noted that the proposed mining project was stopped in Xolobeni and the matter is *subjudice* and this study therefore is unable to make a judgement as to who was responsible for the stoppage but it is worth looking at what are the policy provisions in terms of implementing human rights for sustainable development in the area as

three parties are involved, the Australian mining company, the DMR and communities who are for and against the mining project.

The National Environmental Management Act, Act 107 of 1998 requires that the cumulative impact of a proposed development, together with the existing development on the environment, socio-economic conditions and cultural heritage must be assessed. The cumulative effect of the proposed development must naturally be assessed in the light of existing developments. It is not enough to focus on the needs of the developer while the needs of the society are neglected (Fuggle and Rabie, 2009).

Furthermore, Holden (2007) concurs with Fuggle and Rabie (2009) when he says that one of the purposes of public participation provision of NEMA is to afford people the opportunity to express their views on the desirability of a development that will impact on socio-economic conditions. This study investigates whether the DMR was able to afford people the opportunity to express their views on the proposed mining development and what steps were taken to ensure that the communities in the area are aware of the mining project.

Furthermore section 34 states that everyone has the right to have any dispute that can reasonable by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. If

the DMR has a responsibility to ensure job creation, economic growth and development through mining and this development is contested by communities in Xolobeni which right supersedes one another in these rights? In order to answer this question it is important to look at the different definitions of rights.

The Free dictionary defines right as conforming with or comfortable to justice, law or morality or; something that is due to a person or governmental body by law, tradition or nature; something, especially humane treatment, claimed to be due to people/animals by moral principle. It is also a privilege, prerogative. A privilege usually suggests an advantage or opportunity not enjoyed by everyone. Communities in Xolobeni have a right to refuse or contest the proposed mining project because this entitlement is entrenched in the Constitution which serves to safeguard all the rights contained in it. They have a right to refer their dissatisfaction to the courts of law. On the other hand the DMR has a right to bring development to all communities – this development is contested because it comes through mining.

In bringing development through mining certain processes have to be followed. These processes are articulated clearly in the National Environmental Management Act (NEMA), Act 107 of 1998. In addition and complementary to sound environmental management and conservation strategies, environmental protection is often afforded through law (Fuggle and Rabie, 2009). NEMA provides that:

*‘environment’ means ‘the surroundings within which*

*humans exist and that are made up of: the land, water and atmosphere of the earth, micro-organisms, plant and animal life; any part or combination of and the inter-relationships among and between them....'*

At national level (South Africa), three legislative mechanisms exist to afford protection to the environment. The first mechanism is the constitutional entrenchment of environmental issues through either a rights-based or regulatory approach in the Constitution. The second legislative mechanism is to protect the environment through environmental framework legislation and the third mechanism is to adopt specific environmental legislation that can cover a range of environmental media. In most jurisdictions, a combination of all three mechanisms is utilised to protect the environment.

## **2.6 DISCUSSION OF RELATED CONCEPTS TO THE IMPLEMENTATION OF HUMAN RIGHTS**

The literature reviewed in this study also includes the discussion of various concepts which involves mining, public administration, human rights, environmental impact assessment (EIA), public participation, sustainable development and environmental protection as well as the Welfare Model Approach or the rights-based approach. .

This study therefore will also identify which statistical knowledge exists in relation to the research topic. Possible gaps and errors in the published research may be identified and where necessary a consensus on relevant issues will be reached to justify the relevance of the proposed research. There is also a need to begin a discourse about the impact of mining on the lives of the communities in Xolobeni and in that connection it is well to note how mining has affected communities in different countries.

The purpose of this chapter therefore is to conduct a critical analytical appraisal of recent scholarly work on the topic and to consider the different views of civil society and the State involved in the quest to end the violation and ensure the protection of human rights (Van Der Walt and Van Rensburg, 2010). This chapter will also consider the literature on foreign trade liberalization (with specific reference to South Africa) as a tool that is used by developing countries to bring development to their citizens in an effort to reduce poverty, increase employment and reduce inequality. The discussion will be followed by a critical analysis of the impact of development on human rights.

The neoliberal discourse is relevant to this research since it is understood that the Australian company approached the South African government through the Department of Mineral Resources (DMR) for a mining license in terms of the existence of foreign trade agreements concluded between South Africa and international countries. Although many authors (Thirlwall, 2013; Montiel, 2006 and

Thurlow, 2006) agree that foreign trade does not benefit poor or underdeveloped countries, it does act as an important engine of growth for countries at different stages of development, not only by contributing to a more efficient allocation of resources within countries, but also by transmitting growth from one part of the world to another.

Equally, not all countries necessarily share equally in the growth of trade or its benefits. There are both static and dynamic gains from trade and trade provides a vent for surplus production. Thirlwall (2013) also emphasizes that static gain from trade stems from the basic fact that countries are differently endowed with resources (natural and acquired) and because of this the opportunity cost of producing products varies from country to country. As well, important dynamic benefits from trade consist of the stimulus to competition, the acquisition of new knowledge, new ideas and the dissemination of technical knowledge, the possibility of accompanying capital flows through foreign direct investment and changes in attitudes and institutions.

Thirlwall (2013) mentions that the doctrine of foreign trade holds that it enhances welfare and growth and this doctrine has a long ancestry dating back at least to Adam Smith who said that:-

*“Between whatever places foreign trade is carried on, they all derive two distinct benefits from it. It carries the surplus part of the produce of their land*

*among them, and brings back in return something else for which there is a demand. It gives value to their superfluities, by exchanging them for something else, which may satisfy part of their wants and increase their enjoyments.*

*By means of it, the narrowness of the home market does not hinder the division of labour in any particular branch of art or manufacture from being carried to the highest perfection. By opening a more extensive market for whatever part of the produce of their labour may exceed home consumption. It encourages them to improve its productive powers and to augment its annual produce to the utmost, and thereby to increase the real value of wealth and society”.*

It is the aim of every State to augment its annual produce in order to increase the real value of wealth and society. The questions that arise are: who benefits from this annual produce? Is it the poor or the rich becoming richer? At what level are human rights violated and compromised through this arrangement? What measures are taken to ensure that human rights are protected in the process of increasing the real value of wealth and society?

### **2.6.1 Conflict Related to Mining and its Impact on Indigenous People**

The literature reveals that there are many reasons for conflicts related to mining. Martinez-Alier, (2002) speaks of the clash between economy and environment. He mentions that consumption drives economy and several objections arise, investments are essential outlets for capital whether in resources extraction, in the production of capital goods or in consumer goods.

Martinez-Alier, (2002) further shows how poor people have defended the environment in rural areas based on these clashes. So for example at a Peoples' Gold Summit in San Juan Ridge, California, held in June 1999 people asked for a moratorium on the exploration of gold because commercial gold mining projects are often on indigenous lands. This summit called for support for the self-determination of indigenous people for the recovery, demarcation and legal recognition of tribal and indigenous peoples' lands and agreed that mining damages landscapes, habitats, biodiversity, human health and water resources.

By violating the community's land rights mining companies violate the right to life of those indigenous people, whose relationship to land is central to their spiritual identity and survival. Water especially is contaminated by cyanide, acid mine drainage, heavy metals and mercury from mining. Moreover, mining changes the hydrological cycle and water sources are drastically depleted by pumping water from

aquifers. The Summit argued that life, land, clean water and clean air are more precious than mining. All people depend on nature for life.

They also claimed that the right to life is a guaranteed human right and that there is a responsibility to protect all of nature for present and future generations. Martinez-Alier, (2002) attests to what other authors (Holden and Jacobson, 2007) have argued, that mining violently uproots and destroys the spiritual, cultural, political, social and economic lives of people as well as the entire ecosystems. Historic and current destruction caused by mining is greater than any value mining may generate.

According to Environmental Science for Social Change (1999) as soon as a mining company merely explores an area, indigenous people in the local communities sense danger. This document holds that societies affected by mining should be provided with information pertaining to the likely consequences of a mining project. Holden refers to this as information provided to indigenous people or communities.

The Mining Minerals and Sustainable Development Document defines 'indigenous people' as those people who have a historical continuity with pre-invasion and pre-colonial societies on their territories and that consider themselves distinct from other sectors of the societies now present in those territories or parts of them. If the members of the community are denied any information about the risks of the project they are being asked to consent and make decisions that involve a degree of uncertainty (Holden and Jacobson, 2007).

A strong civil society in rural communities could serve to close and even prevent the information gap commonly found between indigenous people and mining project proponents (Holden, 2005). The Philippines provides examples of communities where a strong civil society serves to link family and State. The discord between indigenous people and the mining-based development in the Philippines is mediated by two noteworthy factors in Filipino civil society. They are the non-governmental organisation (NGO) movement and the Roman Catholic Church. The Philippines is known to have one of the most dynamic non-governmental organisation (NGO) communities in the world (Holden and Jacobson, 2007).

The asymmetry of information between indigenous people and mining project proponents can be reduced by strong civil society prevalent in the communities, especially in rural areas (Holden and Jacobson, 2007). Holden cites an example of the Philippines where there is high prevalence of strong civil society that exists between the family and the state, sometimes referred to as a strong assertive civil society. Holden also mentions with respect to the discord between indigenous people and the mining-based development paradigm in the Philippines, that there are two salient dimensions of Filipino civil society that warrant attention: that country's non-governmental organisation (NGO) movement and the Roman Catholic Church. Philippines are known to have one of the most dynamic nongovernmental organisation (NGO) communities in the world.

These NGOs were influential in a constitutional ruling against the establishment of a mining project in the Philippines. That decision was a serious blow to the efforts of the Philippine government to encourage more mining investment in the country. Before the ruling, the centrepiece of the Philippine government's policy had been to revitalise investment in the mining industry. The ruling invalidated that policy and development paradigm was placed on hold. Holden and Jacobson, (2007) believes that third parties such as NGOs can play a role in levelling the power balance, the playing field, between communities and mining companies during the community consultation process.

The Roman Catholic Church is a profoundly important institution in the Philippines. Holden and Jacobson, (2007) dates the Church's involvement in civil society to the early Spanish colonial era: as early as the 1570s the Church stood up for the right of the native population. Throughout the Spanish colonial period the population remained staunchly Catholic and, in general, continued to believe and to expect that the Church would defend their rights and protect them. The Church is an active and important institution and it shows no shyness or reluctance to enter into the civil society realm. Holden et al., 2007 also suggest the importance of allowing indigenous people to consent or object to the location of mining projects within their area since they do have definite beliefs, values and political ideas or ideological convictions (Heywood, 2007).

Heywood argues that ideas and ideologies influence political life in a number of ways. In the first place, they provide a perspective through which the world is understood and explained. People do not see the world as it is, but only as they expect it to be; in other words, they see it through a veil of ingrained beliefs, opinions and assumptions. Whether consciously or subconsciously, everyone subscribes to a set of political beliefs and values that guide their behaviour and influences their conduct.

Mining presents communities with opportunities for economic and social development, and with negative environmental and social impacts. The positive impacts of mining, says Holden, may include increased access to jobs, healthcare, education and sanitation. Mining companies can rightfully claim that they bring into the community roads, schools, and health services, many of the amenities of modern living, and that they create jobs and inject money into the local economy.

However, mining can also have devastating impacts on human health, local systems, social structures, production systems, and cultural traditions, physical displacement, demographic shifts due to influx of workers, and a rapid shift from subsistence farming and hunting to dependence on a cash-based economy. If indigenous communities can approve of, or reject, a mining project, they are placed in a situation where they can shape the development of the mining activity. This could lead to a more sustainable form of development, in which short-term mining interests do not

compromise the community's longer-term needs for survival. The consent of indigenous people gives the mining company a 'social license' to operate.

The consent by indigenous people allows the company to improve its relationship with the community and thereby to lessen the risk of incurring costs due to conflict and delay (Holden and Jacobson, 2007). While some authors (Barnett, 2008, Guither, 1972, Holden, 2008 and Walton, 2007), believe that mining has multiple negative effects on the natural environment but the dilemma is that development is also essential for the communities. Others (Bebbington et al., 2008) hold that mining is only for business profit.

Not only mining companies, however, but government too makes money from mining. Whilst governments do benefit from mining projects, the bone of contention is that mining has so often delivered adverse social, environmental and economic effects for the many, but only significant gains for the few (Bebbington et al., 2008).

Bebbington et al., (2008) explore the contested arguments about the implications of mining for development and suggest that there are many reasons to expect that mining will continue to trigger protest. They also maintain that not all conflict around the extractive industry results in civil strife. Many conflicts are instead socio-environmental struggles over the control of space, the governance of territory, access to land and water resources, the defence of human and citizenship right, and dissatisfaction over the distribution of mineral rents.

## **2.6.2 The Discourse on the Relationship Between Development and the Environment**

According to Gilpin (2007) the discourse on the relationship between development and the natural environment is quite contentious and controversial. The debate is polarised in terms of two major schools of thought. The one argues that development is necessarily predatory to the natural environment as it thrives on depleting the natural resources while on the other argue that development is not necessarily a threat to the natural environment. In fact, development and nature can thrive together.

The latter school of thought is now associated with the broader concept of sustainable development. Gilpin (2007) notes that whereas the protagonists of sustainable development do not deny that past development did degrade the natural environment, they claim that a balance between development and nature can be struck: one that sees development and environment flourishing in symbiosis.

The sustainability school advocates living in harmony with nature. Instead of taking conflicts as an ever present and necessarily a problem, as an indicator of development gone wrong, they should be seen as potentially creative. Jacobson (2008) documented the conflicts that arose whilst the Phillipian government attempted to accelerate the growth of the nation's economy by encouraging the extraction of its mineral resources by multinational corporations. Jacobson (2008) is of the view that mining might not diminish but if fact increases poverty and social

exclusion, and unless that is addressed, violence will continue and efforts to develop the economy will go nowhere.

Reiner, (2002); Ross, (1999) mention that mineral extraction may create an 'enclave economy' with isolated pockets of wealth hardly linked to the rest of the national economy. Reiner, (2002); Ross, (1999) also maintain that mineral expansion opens up theoretically urgent questions about neo-liberalisation, democracy and the state, as well as the relationships between social movements and political economy.

Reiner, (2002); Ross, (1999) also assess the parts played by different actors within these relationships, with a particular focus on international financial institutions, the industry, social movements and activist organisations and networks. Mining's environmental effects disrupt the resources upon which people depend for their subsistence, and even displaces them, thus generating grievances among people that serve to generate further conflict (Muradian et al., 2003).

Mineral resources are often extracted by foreign companies that do not invest their profits in the communities where they operate, so leaving weak economies and incompetent governments in many regions of Africa. Without responsible administration, people are driven to violence, ethnic conflict and civil war (Quilligan: Our Common Interest: The Commission for Africa: A Review). Some authors (Bebbington, Hinojosa, Denise Humphreys Bebbington, Burneo and Warnars:

2008: 887) believe that the existence of conflict around mining should not be a surprise and suggest that, notwithstanding nuanced conceptual arguments about the potential benefits of mining, there are many reasons to expect that it will continue to face opposition.

To the professional, westernised and activist eye, it might seem obvious that large-scale mining is bad for human development and as a result it has been associated with palpably unsustainable patterns of development and growth. Sibanda (2008) agrees and maintains that conflicts (especially those related to mining) are normally based on human needs and at local level they tend to be over allocation, distribution and management of natural resources.

Gilpin (2007) further mentions that the general characteristics of conflicts include their occurrence at varying levels of complexity. Conflicts may simply be about land boundaries, or they can be as complex as disputes over the level of pollution of a river and its impact on the health of the communities downstream, to be determined only by biological testing of the water and the humans involved. The next section briefly discusses environmental protection and environmental impact assessments (EIAs) as concepts of great importance to this study.

### **2.6.3. Environmental Protection and Environmental Impact Assessment (EIA)**

Although the term 'environment' is widely used, it means different things to different people. Different professions attach specific connotations to the term. Different countries also understand the meaning of this term differently. This may be because the negative effects of socio-economic development vary from country to country (Fuggle and Rabie, 2009). This was evidenced in the case of the Kyoto Protocol when the United States of America refused to ratify the treaty, mainly because it believed that the targeted emission reductions were so steep that they would produce a severe economic slump. Environmental protection was compromised because of economic development.

The debate on environmental protection involves the 'brown' and 'green' perspectives which project different views about environmental protection. The 'brown' perspective argues that human beings are an integral and indivisible part of the earth system and that social issues may not be separated from the environment (Fuggle & Rabie, 2009). Such social issues as are added to the environmental debate include imbalances in patterns of production and consumption resulting in unequal access to opportunities, resources and services.

The green perspective on the other hand addresses only the 'green' environmental agenda, that is, the biotic (living) and abiotic (non-living) ecosystem elements. It also covers issues such as environmental degradation, protection of threatened

species and ecosystems, vulnerable habitats and biodiversity, eradication of alien, invasive species and maintenance of ecosystem services.

The issue of future generations brings about a paradox in that if the environment is not protected, how can development be sustainable? What is the measuring tool used to measure sustainability? Which arguments must be supported? Must it be those that support environmental protection or those that support sustainable development? To address this some authors (as this literature review will reveal) recommend a symbiotic relationship between development and the environment.

Section 24(a, b) of the Constitution (Constitution 108 of 1996) emphasizes that everyone or every citizen has the right to an environment that is not harmful to their health or well-being and secondly; that environment must be 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.

Section 10 emphasizes that everyone has inherent dignity and the right to have their dignity respected and protected. This rightly places humans at the centre of every development. Fuggle and Rabie (2009) contend that environment is a relational concept because it denotes a relationship between man and his surroundings. In terms of the National Environmental Management Act (NEMA) – Act 107 of 1998 environment refers to the surroundings within which humans exist and these

surroundings are made up of: the land, the water and the atmosphere of the earth; micro-organisms, plant and animal life, et cetera. At the national level three legislative mechanisms exist to afford protection to the environment.

The first mechanism is the constitutional entrenchment of environmental issues through either a rights-based or regulatory approach in the Constitution. The second legislative mechanism is to protect the environment through environmental framework legislation and the third mechanism is to adopt specific environmental legislation that can cover a range of environmental media. In most jurisdictions, a combination of all three mechanisms is utilized to protect the environment ([www.wikipedia.28/05/2014](http://www.wikipedia.28/05/2014)).

Fuggle and Rabie, (2009) argue that prior to 1990 environmental protection in South Africa was mainly regulated in an uncoordinated and reactive manner through legislation regulating specific environmental media. This is evidenced by the existence of almost a hundred laws at national level dealing directly or indirectly with environmental protection. It is true that the adoption of the 1996 Constitution was a milestone for South Africa because its adoption resulted in two advancements in environmental protection in South Africa. The first and of major significance was the inclusion of an environmental right through section 24 of the Constitution. The second comes with a more coordinated and integrated approach to environmental protection at national level.

Prior to the inclusion of the environmental right in the Constitution and subsequent incorporation into the framework law, only one previous attempt was made to create an environmental right or entitlement in South Africa with the provision that every citizen is entitled to a clean and healthy environment. This entitlement was excluded from the final version. The summits that took place in different years and different places are a testimony to the fact that humans are at the centre of development. Most countries from all corners of the world had representations at the environment and development summits that were held in Stockholm (Sweden) in 1972, Rio de Janeiro (Brazil) in 1992, and Johannesburg (South Africa) in 2002.

These summits called on countries to formulate and implement a policy framework for integrating environmental concerns and sustainability issues in development planning. Across Africa and in most developing countries in other parts of the world, the policy instrument that has been adopted in response to this call is the environmental impact assessment (Saidi, 2010). EIA is a tool or a formal process used to predict the environmental consequences (positive or negative) of a plan, policy, and program or project prior the implementation decision. EIAs propose measures to adjust impacts to acceptable levels or to investigate new technological solutions. Although an assessment may lead to difficult economic decisions and political and social concerns, EIAs protect the environment by providing a sound basis for effectiveness and sustainable development.

The purpose of these assessments is to ensure that decision-makers consider the environmental impacts when deciding whether or not to proceed with a project. It is

important to note that EIAs require completion prior to project construction ([www.wilkepedia 13/06/2016](http://www.wilkepedia 13/06/2016)). It may be argued that section 10 of the Constitution has resulted in a polarized concept of sustainable development due to the belief that development should take place but not at the expense of the environment. In South Africa, EIAs had been conducted on a non-mandatory basis as part of integrated environmental management (IEM) since the mid-1970s. Sandham et al maintain that EIA became a legal requirement for a wide range of projects in September 1997 in terms of Sections 21, 22 and 26 of the Environmental Conservation Act (ECA) No. 73 of 1989.

The competent authorities for the administration of EIAs are the nine provincial departments of Environmental Affairs, and for certain projects, usually larger and/or trans-boundary in nature, the National Department of Environment and Tourism. The National Environmental Management Act 107 (NEMA) of 1998, promulgated after EIAs became mandatory, makes provision for EIAs, and new regulations under the relevant sections of NEMA were published for comment in June 2004 for anticipated promulgation in 2005. Until these are promulgated, EIAs continue to function under the current EIA regulations.

EIAs for mining activities are required in terms of Section 107 (1) of the Mineral and Petroleum Resources Development Act (South Africa, 2004), while the Department of Minerals and Energy is the competent authority (Sandham et al). The categories of activities that require EIAs in South Africa are listed in the EIA regulations (South

Africa, 1997). Furthermore, the EIA regulations provide a detailed description of the EIA process to be followed, containing all but one of the generic phases of EIA, i.e., screening, scoping, consultation, impact prediction, alternatives, mitigation, review, decision-making and appeal, with the exception of post-decision monitoring.

The scoping report must include a brief description of the project and of how the environment may be affected, a description of environmental issues identified, a description of all alternatives identified, and an appendix containing a description of the public participation process followed, including a list of interested parties and their comments. After considering the scoping report the relevant authority may issue authorization without conditions, contained in a record of decision (ROD). In case information contained in the scoping report is considered to be insufficient, the relevant authority may request that information in the scoping report be supplemented by a full environmental impact assessment, to be submitted as an Environmental Impact Report (EIR).

It must be noted here that EIA practice in South Africa has evolved to the point where much of the EIA process is included in the scoping report e.g., impact identification and mitigation, environmental management steps and extensive public consultation, in order to short circuit a potentially drawn-out administrative procedure. Consequently, many scoping reports take on the form of a 'beefed-up' scoping or a 'mini-EIA'. Whilst the EIA regulations provide all the procedural requirements that should be followed while conducting EIAs in South Africa, a largely

qualitative picture of EIA practice has emerged from discussions and interviews with government officials, consultants and NGOs (Fuggle & Rabie, 2009).

The key defining feature of sustainable development is emphasis on the integration of environmental objectives into non-environmental policy sectors. This entails a fundamental recognition that the environmental sector alone will not be able to secure environmental objectives, and that each sector must therefore take on board environmental policy objects if these are to be achieved. This is perhaps the most important general environmental policy axiom of the 1980s and 1990s, and a central element of the concept of sustainable development (Lafferty and Hovden, 2003).

Lafferty and Hovden (2003) further mention that although conceptual issues relating to Environmental Policy Integration (EPI) have received relatively little treatment, EPI has been the subject of much debate in academic and policy-making circles and that it is a defining feature of sustainable development. Fuggle and Rabie (2009) argue that one disadvantage with EPI is that it may be taken to signify an environmental policy objective that is not clearly connected to broader sustainable development objectives. However, it is quite clear that successful EPI is an essential and indispensable part of the concept of sustainable development. Therefore, although EPI does not in itself constitute sustainable development, it is semantically inconsistent to conceive of sustainable development without successful EPI.

The Maastricht Treaty of 1993 established that environmental considerations must be integrated into other policies, and in the Amsterdam Treaty of 1997 the principle

is brought to the fore by being assigned its own article (Article 6) in the Consolidated Version of the Treaty Establishing the European Community (CVTEEC). The European Union has been, and still is, a major driving force for EPI, at least with respect to political commitment (Lafferty and Hoveden, 2003).

Lafferty and Hovden (2003) believe that the separation of conservation from development together with narrow sectoral approaches to living resource management, are at the root of current resource problems. The Environmental Action Plan, adopted in 1973, mentions that the environment cannot be considered as external surroundings by which man is harassed and assailed, it must be considered an essential factor in the organisation and promotion of human progress.

It is therefore necessary to evaluate the effects on the quality of life and on the natural environment of any measure that is adopted or contemplated at national or community level. This clearly introduces a more holistic approach to environmental problems where non-environmental policy-areas need to consider environmental effects. The Rio Declaration and Agenda 21 discuss integration of environmental concerns across a broader spectrum of sectors. Lafferty and Hovden, (2003) mention that for a policy to be integrated, three criteria need to be satisfied: comprehensiveness, aggregation and consistency. Comprehensiveness refers to time, space, actors and issues.

Aggregation refers to the evaluation of policy from an overall perspective and consistency implies that the different components of an integrated policy are in accord with each other. Consistency applies across different departments and different levels of governance. On this basis Lafferty and Hovden, (2003) define an integrated policy as one where all significant consequences of policy decisions are recognised as decision premises, where policy options are evaluated on the basis of their effects on some aggregate measure of utility, and where the different policy elements are in accord with each other.

Lafferty and Hovden, (2003) further mention that the fundamental premise of keynote documents such as the Brundtland Report, Agenda 21 and strategy documents of the European Union, is that environmental policy for too long has been treated as a peripheral concern for policy- makers in general, and in particular for those sectors with no obvious and explicit responsibility for environmental issues.

There are various ways in which human actions may damage the interrelationships between people and nature. Some types of damage are more serious than others because the effects cannot be reversed – either by human beings or by nature (Fuggle and Rabie, 2009). In the second half of the 20<sup>th</sup> century the relationships between human beings and their environment became a topic of widespread concern. Scientific and popular books (for instance, First and Second Reports of the Club of Rome – Limits to Growth; United Nations Report: The Future of the World Economy) have been published, governments have issued policy statements, and

the world's major religions have made declarations formally stating the moral responsibilities their adherents have towards the earth.

It is now universally accepted that according to present trends, we must expect the world, and South Africa, to become more crowded, more polluted, less ecologically stable and more vulnerable to natural hazards in the years ahead. These trends reduce the quality of life for all people (Goldsmith and Warren, 1993). There are two components to environmental deterioration, one is the depletion of essential resources for the maintenance of present-day lifestyles, the other is the deterioration and destruction of natural processes which ultimately sustain life on earth. Both are aggravated by an increasing human population (Fuggle and Rabie, 2009).

National economies generate large quantities of different types of emissions, effluents, and solid waste. Increases in population growth (social causes) and the process of industrialisation (economic causes), have put increased pressure on natural resources and have increased the generation of enormous quantities of waste, in solid, liquid or gaseous forms which result in environmental degradation and pollution on global, regional and local scales (Fuggle and Rabie, 2009). South African history also abounds with examples of tribal, individual and governmental attempts to regulate and reduce environmental degradation.

#### **2.6.4 Sustainable Development, Public Participation and the Environment**

The concept of sustainable development combines two elements, that of development and that of environmental protection. Sustainable development may be defined as development which meets present needs without compromising the ability of future generations to meet their needs. This aspiration contains within it two key concepts, namely, the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority must be given and secondly, the idea of limitations imposed by the state of technology and social organisation on the environment's ability to meet present and future needs.

The concept encompasses more than merely the environment, so for present purposes the focus should be on environmental sustainability – the idea or goal of utilising the environment in a way which both meets human needs and ensures the environment's indefinite preservation. It also encompasses social, environmental and economic dimensions (NEMA, Act 107 of 1998). Development always requires participation since it does not take place in a vacuum, but in an inhabited space.

Development options should consider livelihoods to be important. Development should not take place at the expense of peoples' livelihood; that is, their livelihood should not be compromised in the name of development. This study therefore will also look at the level of involvement by the people of Xolobeni in the consideration of the proposed mining project.

Wotshela, (2008) mentions the importance of environmental justice if development is to be sustainable and not challenged and opposed. Where public participation is avoided, sustainability is uncertain. Sustainability concerns development's impacts on all aspects of human life to ensure the resolution of various competing goals, and the simultaneous pursuit of economic prosperity, environmental quality and social equity (Vancock, 2007). Sustainable development is a broad concept evoking a wide array of views and interests including the notions of weak sustainability, strong sustainability and deep ecology.

Various views also reveal a strong tension between eco-centrism and anthropocentrism. The sustainable development mantra enjoins current generations to take a systems approach to growth and development and to manage natural, produced and social capital for the welfare of their own and future generations. Sustainable development is said to set limits on the developing world (United Nations Division for Sustainable Development, 2002).

In an effort to balance development and environment, the Brundtland Commission was established in 1992 to address growing concerns about the accelerating deterioration of the human environment and natural resources. In establishing the Commission, the United Nations General Assembly recognised that environmental problems were global in nature and determined that it was in the common interest of all nations to establish policies for sustainable development. The Brundtland Commission passed certain resolutions in the process of preparing the document

known as the 'Environmental Perspective to the Year 2000 and beyond'. These resolutions included the proposal of long-term environmental strategies for achieving sustainable development to the Year 2000 and beyond (Fuggle and Rabie, 2009).

The Brundtland Commission defines sustainable development as a pattern of resource use that aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but also for generations to come. Sustainable development ties together concern for the carrying capacity of natural systems with the social challenges facing humanity. The field of sustainable development can be conceptually broken into three constituent parts, namely, environmental sustainability, economic sustainability and socio-political sustainability. Given that the proposed establishment of the mining project in Xolobeni is to bring development in the area, its sustainability, in regard to its possible impact environmentally, economically and socio-politically, must be ensured. If not, disaster looms.

It is against the background of impending environmental and social disasters that the world met in Johannesburg from 26 August to 4 September 2002 for the World Summit on Sustainable Development (WSSD), to reassess humankind's impact on the environment and to devise programmes and actions aimed at addressing these adverse impacts in order to ensure the survival of both humankind and the environment (Fuggle and Rabie, 2009). In 1972 the United Nations Conference on

the Human Environment (UNCHE) firmly established environmental concerns as international, social, economic and political issues (Fuggle and Rabie, 2009).

The Conference endorsed environmental policy to be a universal concern amongst nations, and so created a place for environmental issues on many national political agendas where they had been previously neglected. In addition, it also resulted directly in the establishment of the United Nations Environmental Programme (UNEP) as a cross-cutting programme to coordinate environmental policy and activities (Strydom and King, 2009).

Although the political enthusiasm for environmental issues generated by the United Nations Conference on Human Environment (UNCHE) was short-lived due to the 1973 oil crisis, international environmental initiatives were revived again in the 1980s with the publication of the World Conservation Strategy in 1980 by the United Nations Environmental Programme (UNEP), the International Union for Conservation of Nature and Natural Resources (IUCN) and the World Wildlife Fund (WWF). The United Nations played a key role in the promotion of sustainable development as the development, environment and economic blueprint for human survival by convening the United Nations Conference on Environment and Development (UNCED, also known as the Earth Summit) held in Rio de Janeiro in 1992.

The Bill of Rights enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. The state has a responsibility to respect, protect, promote and fulfil the rights in the Bill of Rights. The World Summit on Sustainable Development (WSSD) that was held in Johannesburg in 2002 came up with an Implementation Plan which shows clearly that respect for human rights and fundamental freedoms are essential for achieving sustainable development.

The Plan stresses the importance of action at the national level for successful development. Key components of the Plan include good governance, the rule of law, gender equality and an overall commitment to a just and democratic society (Fuggle and Rabie, 2009). Fuggle and Rabie, (2009) further mention that the Plan also emphasizes the importance of promoting public participation in environmental decision-making. Public participation is today a legal requirement or prerequisite for governmental decision-making not only in South Africa but in most of the Western world (Creighton, 2005).

South Africa (like the thirty-five European countries) is signatory to the 1998 Aarhus Convention, formally known as the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making, and Access to Environmental Matters which took effect in 2001. Those signatory governments commit to take steps to ensure public participation and access to information in all environmental decision-making. Public participation is also a

prerequisite for international economic development project funding by the World Bank and the various regional banks (Fuggle and Rabie, 2009).

For the establishment of the proposed mining project in Xolobeni to succeed it is necessary that communities in the area be afforded an opportunity to participate in the decisions that directly affect them so that their concerns, needs and values are incorporated into governmental and corporate decision-making. The two-way communication and interaction rather than a top-down communication by the DME to the communities of Xolobeni, with the overall goal of better decisions that are supported by the communities and other interested parties, is suggested as a preferred method for the sake of development and environmental protection in the area.

Achievement of the stated goals of the proposed development in Xolobeni is possible because public participation applies to administrative decisions and it is not just about providing information to the public. Secondly, if the DME wants to bring development certain aspects including culture must be considered. Due to its highly rural nature, Xolobeni is dominated by communities who are highly rural, traditional and possess certain beliefs, values and political ideas that unite them in preserving their culture. Although the vast majority of these communities are illiterate they possess certain political ideas that are rooted in a history of imposed developments in the area of Pondoland (Heywood, 2007).

Creighton, (2005) contends that there is interaction between the organisation making the decision and people who want to participate because there is an organised process for involving the public, not something that happens accidentally or coincidentally and the participants have some level of impact or influence on the decisions being made. In order for public participation to be practical communities or the public should have a say in decisions about actions that affect their lives because they have an expectation that the public participation process will communicate their interests.

The public participation process provides participants with the information they need to participate in a meaningful way and it communicates to them how their input affected the decision (International Association for Public Participation, 2000). Creighton, (2005) argues that the theory is that elected officials make the important decisions and then hold the bureaucracies or the executive accountable for implementing these decisions. Today, however, the executive branches of governments make numerous decisions on an everyday basis – administrative decisions that have the gravest import for the societies these bureaucracies serve. In an age when even elected representatives bemoan their inability to control the bureaucracies, the role of the bureaucracy in decision-making is a major challenge to democratic theory.

This challenge is further broadened by the cadre deployment system that is currently in place in our governments as the elected officials depend on the advice given by

the bureaucracy. The literature reviewed in Xolobeni reveals that the then Minister of Minerals and Energy, Susan Shabangu realised that there were flaws in the environmental impact assessment report submitted to the department by the Australian company after the prospecting licence was awarded to this company. The question is 'who advises the Minister?'

It is definitely the executive or the so-called experts in the field of mining. The hidden premise of leaving it to the experts is that experts are somehow superior in discerning what is right for society. Experts cannot make decisions without assigning a weight of priority to competing values that society believes is good. When decisions are made about what level of health or safety risk is 'acceptable', how much is 'reasonable' to pay to protect an environmental resource, or how costs should be distributed among various classes of people (Lockie, Franettovich, Petkova-Timmer, Rolfe and Ivanova, 2009).

Literature reviewed reveals that from 1910 to 1990 mining legislation showed little or no concern for environmental conservation. The first serious environmental concern reflected in mining legislation was evidenced only in 1977 when the Mines and Works Act 27 of 1956 was amended to enable the then Minister of Minerals and Energy Affairs to make regulations regarding the conservation of the environment at or near mines or works, including the restoration of land on which activities in connection with mines or works are performed or have been performed. (Fuggle and Rabie, 2009).

On 1 January 1992, the Minerals Act 50 of 1991 came into operation. The objectives of the Act were to ensure the optimal exploitation of minerals, to ensure the health and safety of miners and people involved in mining operations and to ensure that the orderly use and rehabilitation of the surface of land during and after mining has taken place. The introduction of this Act marked a notable change in environmental legislation in South Africa. The Mineral Resources and Petroleum Development Act (Act 73 of 2002) replaces the Minerals Act and has now placed an obligation on all mineral right holders to have an approved Environmental Management Plan (EMP) and to notify and consult with the landowner or lawful occupier of the land in question (Fuggle and Rabie, 2009).

The mineral-right holder has a duty to comply with the approved EMP. The MPRDA provides the necessary legal framework to progress towards mining and environmental sustainability and it focuses on the sustainable development of the mining industry because sustainability is vital to the development of any country, which directly relates to that country's survival. This is in line with the Earth Summit that was held in Brazil in 1992 which concentrated on sustainable development and highlighted the effects of environmental degradation.

The objectives of the MPRDA are, *inter alia*: to recognise the internationally accepted right of the State through the DME (as the custodian of mining licences) to exercise sovereignty over all mineral and petroleum resources within the Republic; give effect to the principle of the State's custodianship of the nation's mineral and

petroleum resources; substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to gain access to mineral and petroleum resources; promote employment and advance the social and economic welfare of all South Africans; give effect to section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development; and ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating (Fuggle and Rabie, 2009).

The Australian company that received a prospecting licence in Xolobeni had to see its licence being withdrawn by the DME because it could not meet these objectives. The stalling of the proposed mining followed. The company was unable to convince the department in terms of the requirement to remain responsible for any environmental liability, pollution or ecological degradation and the rehabilitation of the affected surface once mining operation would cease.

Section 45(1) of the MPRDA provides that if any prospecting, mining, reconnaissance or production operations cause or result in ecological degradation, pollution or environmental damage which may be harmful to the health or well-being of anyone, and require urgent remedial measures, the Minister may direct the holder of the relevant right, permit or permission to: investigate, evaluate, assess and report on the impact of any pollution or ecological degradation; to take such measures as

may be specified in such directive; and complete such measures before a date specified in the directive (Lockie *et al*, 2009).

The then Minister of the DMR, Suzan Shabangu had to withdraw the license awarded to the Australian company after she realised that the contract had 'flaws'. The question is – why did she only discovered that after the awarding of the licence? This brings us back to the credibility of the executive discussed above. The company could not produce an environmental risk report as required by the EIAs.

These requirements must be met before the commencement of the project. In addition to the EIA requirements provided under MPRDA, the Minister of Environmental Affairs and Tourism (DEAT) has in terms of section 24(5) read with section 44 of the NEMA promulgated new EIA regulations, which are provided for in Regulations 385 which provides for the main administrative and procedural aspects of the EIA regulations, while Regulation 386 contains the schedule of activities in respect of which a basic assessment is needed prior to the commencement of the relevant activities. Regulation 387 contains a schedule of activities in respect of which a scoping and EIA assessment is needed prior to the commencement of the relevant activities (Lockie *et al*, 2009).

Not only did the company need to meet the above-mentioned requirements but it had to explain and commit itself as to how it intends to deal with water pollution. Water

has been called mining's most common casualty and the impact mining has on water sources must be carefully weighed up. The regulations issued in terms of the Water Act prescribed that the person who is in control of a mine or works and the person who intends to establish a mine or works must furnish the Director-General of Water Affairs with certain information relating to that mine or works.

A number of important obligations are laid upon the manager of a mine or works: he or she is responsible for the compilation of a plan which must depict all works constructed for the control of water on the surface of a mine or works and contain a list of prescribed details. He or she must, moreover, cause effective measures to be taken to prevent effluent, including water pumped from underground or which flows naturally from a mine or works, flowing or seeping beyond the boundaries of the property on which the mine or works is situated (Manson, 2013).

Development is conflictual since it destroys some things and creates others. It may undermine social relationships in a society and trigger conflict. Development is a process that raises expectations and brings change to a society that may result in conflicts and disagreements, either within the community or between communities, or between the communities and the planners. Although on the surface it might look as if people are competing over resources, the real causes of the conflict are usually deeper. The actual cause might be that the community needs to be involved, recognised and/or acknowledged in the development that is taking place. Therefore

if the planner does not address such needs, a seed of bitter conflict would have been sown (Holden, 2007).

Sustainable development may serve to avoid conflict due to environmental problems. Environmentally caused conflicts tend to erupt in poor countries which are not in a position to implement sustainable development. It is therefore necessary to note that development can have negative environmental impacts, which can lead to conflicts, and the conflicts could result in further environmental degradation a vicious cycle (Bebbington et al., 2008). Bebbington further asks whether these conflicts change the course of relationships between mining and development, or whether, instead, they are merely parts in plays scripted by mining companies and Ministries of Finance and of Energy and Mines. The question is all the more relevant, given the fractures that frequently exist among participants in the conflicts so as to prevent them from building and sustaining more integrated narratives on mining and development.

This study does not focus on forced removals but it must be noted that Xolobeni had been involved in land claims (Hon. Matomela, MPL - Eastern Cape Provincial Legislature; Personal Comm.12/08/2011). People are more reluctant in such areas to being moved or relocated away from what they claim communal and ancestral lands. Hon. Matomela mentioned that if one approaches communities in the rural areas suggesting development, they will ask you “if you have seen this fertile land of ours, why don’t you then assist us to work it?” It is not possible for them to give up

on their ancestral land – especially if consultation is top-down. He said that these people only listen when the approach is from bottom up.

When indigenous communities are properly consulted, they are placed in a situation where they can shape a development and help to ensure a more sustainable form of development, in which the short-term mining interests will not compromise the community's longer-term needs for survival. The consent of indigenous people gives the mining company a 'social license' to operate. This allows the company to improve its relationship with the community and thereby lessen its risk of incurring costs due to conflicts and delay. A common perception is that the money benefits the company and the government, therefore, the few, while the many experience only its adverse environmental and economic effects (Bebbington et al., 2008).

Mining can indeed have a devastating impact on human health, local ecological systems, social structures, production systems, cultural traditions and introduce physical displacement, demographic shifts due to an influx of workers, and a rapid change from subsistence farming and hunting to dependence on a cash-based economy (Durand et al., 2008). Mining may in fact increase poverty and social exclusion and if so, violence will continue as illustrated in the case of Papua New Guinea.

Heywood, (2007) holds that liberals are convinced of the need for government and they are also acutely aware of the dangers that government embodies. In their view, all governments are potential tyrannies against the individual. On the other hand, they maintain, this is based on the fact that government exercises sovereign power and so poses a constant threat to individual liberty. Heywood's view suggests that it is impossible for governments not to tamper with people's human rights in one way or another in a democratic government and that the existence of conflicts between governments and civil society due to human rights violation is unavoidable.

Liberals fear arbitrary government and uphold the principle of limited government because they believe that government can be limited or tamed through the establishment of constitutional constraints and democracy. In a sense the constitution constitutes the rules that govern the government itself (Heywood, 2007). Within the constitution is the existence of the bill of rights which entrenched individual rights by providing a legal definition of the relationship between the individual and the State, suggesting a controversial relationship between the two caused by the fact that people are not a single entity but rather a collection of individuals and groups, possessing different opinions and opposing interests. This was also the case with the Xolobeni mining project.

### **2.6.5 The Implementation of Human Rights Laws in Balancing Issues of Sustainable Development and Environmental Protection**

Sustainability and sustainable development are defined in different ways. Some say that sustainability is the ability to maintain a certain status or process in existing systems and believe that the most frequent use of the term 'sustainability' is connected to biological or human systems in the context of ecology (Cullet, 1995). The ability of an ecosystem to function and maintain productivity for a prolonged period is helped by people maintaining a sustainable lifestyle. Some divide sustainability into different types, viz, human, economic, social and environmental sustainability. All are required to maintain the entirety of life on earth though they are interconnected.

Human sustainability involves good productive health and safe childbearing because those that reproduce have the responsibility of caring for their children, giving them access to proper education, and promoting their health and wellness. At some point, the children should master enough skills and knowledge to be able to sustain their own way of life. It is at that point that they are considered as productive human capital, people who can go through the process of reproduction and rearing. As long as this process is maintained at a rate that all human systems can support, human sustainability should be no cause for concern. The Constitution puts human needs at the centre of development and this is linked to human rights (Fuggle and Rabie, 2009).

Economic sustainability is to dispose a set of amount of capital for a certain period. Those who consume capital must also conserve it so that they will continue to enjoy it towards the end of the specified period. This means that we must preserve all our resources as we consume them so that human beings in the future can enjoy them as well. To achieve this, we must regenerate our resources at a rate that is equal to or faster than our consumption.

Social capital is an important aspect of sustainability because it is through communities and civil societies that humankind can easily and expansively work together. Without proper levels of social capital, it is easily depleted and violence and mistrust can take over. When that happens, societies and everything else that depends on them will be destroyed. Through proper maintenance of and adherence to laws, rules, and values that societies have developed for the common good, social sustainability can be achieved (Holden and Jacobson, 2007).

Environmental sustainability is important because it involves natural resources that human beings need for economic or manufactured capital. Materials are taken from nature and used to meet human needs. If nature is depleted faster than it can regenerate, human beings will be left without raw materials. Furthermore, environmental sustainability also involves ensuring that waste emissions are at volumes that nature can handle. If not, all humans and other living things on earth can be harmed to the point of extinction (Bebbington, 2008).

The four types exist within each other's realms and they are interdependent. We, as humans, are considered individually as private goods whose value is defined by our level of health, skills, knowledge, education and leadership. We exist within the economy as economies exist entirely within societies. Societies, in turn, exist totally within the realm of the environment, there is a need therefore to make sure that all aspects of human life within economies and societies are managed in a manner that will not destroy the environment which everything on earth is dependent on.

The Brundtland Report (1987) holds that all definitions of sustainable development require that we see the world as a system and goes on to define sustainable development as 'the development that meets the needs of the present without compromising the ability of the future generations to meet their own needs'. It contains within it two concepts, viz: the concept of needs, in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

#### **2.6.6 Sustainable Development and Economic Growth**

Growth is necessary, but it will be unsustainable in the long run unless it is both socially inclusive and environmentally sound (World Bank, 2011). Inclusive green growth requires tackling political economy constraints, overcoming deeply entrenched behaviors and social norms, and developing innovative financing

instruments to change incentives and promote innovation – and thus address the market, policy, and institutional failures that lead to the overuse of natural assets.

Although, over the last decades, economic growth has lifted more than 660 million people out of poverty and raised the income levels of millions more, there is no denying that growth has often come at the expense of the environment. A variety of market, policy and institutional failures have allowed the Earth's natural capital to be used in ways that are economically inefficient and wasteful, without sufficient reckoning of the true social costs of resource depletion and without adequate re-investment in other forms of wealth. These failures threaten the long-run sustainability of growth and progress made in terms of social welfare.

Despite the gains from growth, 1.3 billion people do not have access to electricity; 2.6 billion have no access to sanitation, and 900 billion lack safe, clean drinking water. In other words, growth has not been inclusive enough. Economic and social sustainability, as well as social and environmental sustainability have been found to be not only compatible, but also largely complementary. Economic and environmental sustainability, have not been so since environmental awareness (World Bank, 2011).

The future wants well-designed green policies that will improve social welfare, taking into account not only present but future generations. Greening growth requires

policies that are as such good for growth, as well as for the environment, such as reforming energy subsidies or trade barriers that protect pollution-intensive sectors. It entails politically difficult reforms in the patterns of pricing, regulation, and public investment, and it calls for complex changes in behaviors and social norms. Importantly green growth requires knowing when to go for the political expedient rather than the economically optimum.

The World Bank's New Report 'Inclusive Green Growth: The Pathway to Sustainable Development' outlines a three-pronged strategy for greener growth:-

- Prong 1: Tailor national inclusive growth strategies to a country's circumstances, with an emphasis on maximizing local and immediate benefits and avoiding lock-in. Optimal solutions will differ across countries with varying degrees of institutional capacity, transparency accountability and civil society capacity.
- Prong 2: Promote efficient and sustainable decision-making by policy-makers, consumers, and the private sector. The UN Statistical Commission adopted the System of Environmental and Economic Accounting as an international standard in February 2012, providing a broadly agreed methodology. Neglecting natural capital, like neglecting human and physical capital, is bad economics and bad for growth.
- Prong 3: Meet up-front capital needs with innovative financing tools. Given the scarcity of fiscal resources, governments and multilateral financial

institutions must work urgently to increase the role of the private sector in green investment.

In the same vein, green growth policies are no panacea for structural shortcomings in an economy: environmental measures cannot offset macro-economic instability, distorted labour markets, poorly regulated financial systems or hostile business environments. Moreover, while green growth can be made affordable, achieving a green economy overnight cannot. Rapid shifts would entail much slower growth at least in the short to medium run.

Drexhage and Murphy (2010) in their paper 'Sustainable Development: From Brundtland to Rio 2012' mention that it is generally accepted that sustainable development calls for a convergence between three pillars of economic development, social equity, and environmental protection. Sustainable development is a visionary development paradigm; and over the past 20 years governments, businesses and civil society have accepted sustainable development as a guiding principle, made progress on sustainable development process. Yet the concept remains elusive and implementation has proven difficult.

Unsustainable trends continue and sustainable development has not found the political entry points to make real progress. As a result climate change has become the de facto proxy for implementation of the sustainable development agenda but the framework of the climate change negotiations are not always the appropriate forum

for broader strategic discussions of sustainable development. What this means that the environment will continue to face challenges in the name of development.

Drexaghe and Murphy (2010) hold that while sustainable development is intended to encompass three pillars, over the past twenty (20) years it has often been compartmentalized as an environmental issue. Added to this, and potentially more limiting for the sustainable development agenda, is the reigning orientation of development as purely economic growth. This has been the framework used by developed countries in attaining their unprecedented levels of wealth, and major and rapid developing countries are following the same course.

#### **2.6.7 South Africa as a Developmental State**

Ranis, (2004) is of the opinion that recent literature has contrasted Human Development (HD), described as the ultimate goal of the development process, with economic growth, described as an imperfect proxy for more general welfare, or as a means toward enhanced human development. Further, this debate has broadened the definitions and goals of development but still needs to define the important interrelations between human development and economic growth – to the extent that greater freedom and capabilities improve economic performance, human development will have an important effect on growth.

Human development in Ranis's paper finds its theoretical underpinnings in Sen's capabilities approach which holds 'a person's capability to have various functioning vectors and to enjoy the corresponding well-being achievements' to be the best

indicator of welfare. This perspective shifts the analysis of development to the vector of not only attributes (as is the more traditional utilitarian or even the original basic needs view of human welfare e.g. income, education, health, but also the vector of possible opportunities available to individuals in a particular state. Naturally, there is a link between the two – the opportunities are affected by certain attributes of the individual: a starving or uneducated person would have fewer choices than a healthy, educated person. Yet the capabilities approach goes far beyond individual attributes to analyze the role of the social environment in human choice and agency: an individual in an open, free society would enjoy a larger set of potential functioning than one in a closed, oppressive society (Ranis, 2004).

However, while capabilities make an appealing goal for development, they are notoriously difficult to measure in that the full set of possible human functioning's is almost by definition unobservable. The first major attempt to translate the capabilities approach into a tractable ranking of nations came in the UNDP Human Development Report. The object of this Report was to capture better the complexity of human life by providing a quantitative approach to combining various socio-economic indicators into a measure of human development (UNDP, 1990).

Although there is an ongoing debate on the usefulness of the Human Development Index as a measure of welfare, the contents of the UNDP Report were in contrast to the perceived prevailing wisdom in development economies, as embodied in World Development Reports, whose excessive preoccupation with GNP growth and

national income accounts has supplanted a focus on ends by an obsession with merely the means. Since poorer households spend a higher proportion of their income on goods which directly promote better health and education, economic growth whose benefits are directed more towards the poor will have a greater impact on human development, via increased food expenditure as well as on education. The effects of economic growth on government's human development expenditures are bound to complement private expenditure channels.

In fact, Ranis (2004) believe that most effects of economic growth on Human Development are likely to flow through government budgetary expenditures, central or local. However, the strength of this effect depends entirely on the effectiveness of expenditure targeting and delivery. The government must identify priority sectors such as primary education and health that have the highest potential for Human Development improvement. Government expenditure for Human Development should be distributed predominantly to low income groups and areas since it is here that the highest marginal impact will be felt. Government must also have the institutional capacity to efficiently allocate the expenditures.

Ranis, (2004) are of the opinion that many authors have demonstrated that the effectiveness of public expenditure is conditional on the quality of governance, with government accountability likely to play an important role. Many authors assert that policies also need to consider other forces that will influence development, especially people's meaningful participation in the processes that shape their lives because it is

anticipated that ambitious and fully integrated policies can provide strong leverage for advancing Human Development.

The 2013 Human Development Report maintains that greater progress in human development is both possible and imperative but accelerated progress will require coordinated policy measures across development fronts. One of the most important of these is equity because more equitable societies fare better in most aspects of well-being and are more sustainable.

Equity and sustainable human development requires systems of public discourse that encourage citizens to participate in the political process by expressing their views and voicing their concerns. Participation and inclusivity, valuable in their own right, also improve the quality of policies and their implementation and reduce probability of future upheaval. Failure to build an accountable and responsive polity may foment or instigate discontent and civil strife. This can derail human development. Further, history is replete with popular rebellions against unresponsive governments, as unrest deters investment and impedes growth and governments divert resources to maintaining law and order.

People should be able to influence policymaking and results, and young people should be able to look forward to greater economic opportunities and political accountability. Exclusion from this process limits people's ability to communicate

their concerns and needs and can perpetuate injustices. Governments that do not respond to citizens' needs or widen opportunities for political participation risk losing their legitimacy. Demand for participation grows as people become more educated and more connected (UNDP, 2013). Citizens have challenged governments to address the social consequences of their policies, pointing out that the burden of austerity is borne disproportionately by the poor and socially disadvantaged.

Other major issues are environmental and demographic change. Countries need to act during brief windows of opportunity to avoid high costs in forgone human development. The UNDP (2013) Report further mentions that most of the opportunities for sustaining and even accelerating the momentum in human development lie in the hands of national governments but in an increasingly globalized world, governments do not act alone. Some of the characteristics of developing countries are manifested in the form of low income, low living levels, inadequate housing, poor health and inadequate or non-existent public services. Developing countries also have low labour productivity because of the lack of complementary factors, such as capital and experienced management to raise it.

Most developing countries have very high population rates too, with high birth rates and declining death rates. They also have a shorter life expectancy than developed countries, which translates to a smaller percentage of the population being available for labour. There exists a lot of diversity amongst the developing nations. Perhaps, it will be difficult to generalize such differentiated countries. South African citizens

favour democracy, but with weak predispositions in favour of participation it remains questionable how vigorously they would defend its abuse. Such qualifications about civic propensities deserve emphasis at a time when antipathy to liberalism in elite political circles has become pervasive (Lodge, 2003).

Lodge (2003) argues that despite the refrain frequently sung by South African politicians that the country's Constitution is among the most democratic in the world many of the rights and entitlements that have been legislated as a result of its provisions remain more notional than real. Further, the inefficiency of the judicial system as well as the expense of using it effectively continues to prompt large number of poor people to resort to unofficial and often extremely brutal vigilante justice.

There is evidence of a slow increase in the State's capabilities, though government capacity falls short of what is needed to make legislated rights and entitlements realities in the everyday lives of citizens (Lodge, 2003). Be it as it may, citizens remain favourably inclined towards democracy, even though for a substantial minority it has yet to become the only game in town which suggests the vulnerability of democracy in South Africa. As Lodge puts it, the quest for the South African government to become a developmental state might be seen as a result of this vulnerability because despite an authoritarian state tradition there has been plenty of evidence of a lively associational life within black communities over generations.

There is also the emergence of various forms of civil society groupings and much debate about whether the emergence of these civil society groupings will usher in a new era of revived democracy and governance (Keeley and Scoones, 2003). These authors also allege that much of the discussion on this fails to examine the social and political nature of civil societies, and how these relate to the State and is geared to more ideological, programme commitments for the benefits of community-based organizations, NGOs and other civic groups as democratic forces.

An important question arises about the degree to which environmental groups are entering a new arena for policy influence that is created by the withdrawal of command-and control state regulation, the apparent failure of formal international environmental agreements and the emergence of international trans-border dimensions of environmental change (Keeley and Scoones, 2007).

The apartheid state was not totalitarian; its retention of a racially circumscribed democracy as well as its own bureaucratic limitations meant that many areas of social life maintained their autonomy (Lodge, 2003). Black South Africans tended to organize their lives outside the State rather than around it, and much associational life tended to compensate for the State's inattentiveness to their needs rather than seek control of public resources. On the other hand, there is much talk of the importance of policy – getting things right in terms of policy frameworks and it is seen to be central to much development effort (Keeley and Scoones, 2007).

In the area of land and natural resources management this is seen as particularly key, as a whole range of policies impinge on it e.g. agricultural services, environmental protection, and land tenure. Keeley and Scoones (2003) maintain that this brings in a range of different actors from within and outside government, from local bureaucrats to global conventions and initiatives, in both the formulation and implementation of policy. In order to understand such policy processes, we must ask how policies are framed, who is included and who is excluded in the process, which actors and which interests are dominant, and how policy changes over time.

It is in the interest of this study to assess the manner in which rural people are affected by these policies in terms of their human rights. What role is played by various actors mentioned above which also include the various departments in the violation of human rights – due to differing interests demonstrated by these different actors?

A developmental state plays an active role in guiding economic development and using the resources of the country to meet the needs of the people. A developmental state tries to balance economic growth and social development. It uses state resources and state influence to attack poverty and expand economic opportunities. In all countries the state plays some role in shaping the structure and output of the .of fiscal and monetary policies and direct state ownership of key industries. The degree of state intervention depends on whether a government chooses to leave economic development and redistribution to the whims of the free market, or to be a more interventionist or developmental state.

The State has to play a role in keeping our economy competitive and close to the leading edge in the global development of knowledge and technology. The State also has to be able to control its vast resources and directly apply them to the strategic tasks that will enable us to meet our goals. Before engaging into a discussion on the pre-1994 historical perspective of South Africa it is important to first look at the characteristics of a developing country as South Africa declared its status as a developing country in 1994.

### **2.6.8 A Brief Economic History of South Africa and the Apartheid Economy**

Some background on South Africa's complex racial makeup and economic development is essential to understanding its economy today. The first Europeans to settle in South Africa were the Dutch who established a permanent settlement in the 1650s as a port of call for ships making the long voyage to wealthy spice-producing colonies in Indonesia. When the Dutch arrived, Khoikhoi, San and Bantu-speaking peoples occupied the area (Du Plessis and Smit, 2006).

Initially, the relatively low population density kept conflict between the newcomers and the native inhabitants to a minimum. The white population then sharply increased by the immigration for a substantial number of French Protestants (Huguenots), escaping persecution in France. The influx intensified competition for land and resources. By 1800, the predominantly farming colony at the Cape numbered about 20,000 Europeans, 26,000 slaves, and a number of tribal Africans.

In 1806, during the Napoleonic Wars, the British seized the Cape and assumed permanent possession following the European peace in 1815. British rule brought change to the Cape. The British abolished slave trading in 1807, and slave ownership was outlawed in 1828. The interventionist policy led much of the white Dutch-speaking population – known as Boers (farmers) or Afrikaners – to migrate or ‘trek’ out of Cape Colony and into Natal, the adjacent territory to the east. The subsequent British annexation of Natal in 1843 precipitated a further trek into the interior, establishing two independent republics: the Orange Free State and the Transvaal, which were generally recognized as sovereign during the 1850s (Du Toit, Moolma, 2009).

During the same period, African power too was on the rise as the warrior King Shaka forged several chiefdoms into the military powerful Zulu kingdom. Friction over land inevitably increased, but ultimately European access to superior military technology settled the conflict between Black and European factions and the Boers assumed ascendancy. While Africans and Europeans struggled over agricultural land, the discovery of substantial precious mineral deposits set the Dutch-speaking Boer population in conflict with the Anglos, profoundly changing the structure of the South African economy and society. The advent of the coordinated system of apartheid increased distortion in the South African economy and created political and economic tensions that would inevitably lead to the system’s undoing (Du Plessis and Smit, 2006). It was the quintessence of an interest group state, the beneficiaries of which were the main backers of the National Party.

South Africa's democratic transition in 1994 created expectations of a dramatic turnaround in economic performance. Trade and financial sanctions and internal political opposition to the apartheid government had contributed to the poorest ten-year growth performance since the Second World War and the removal of these constraints was widely expected to transform the country's economic performance (Du Plessis and Smit, 2006).

The challenge for South Africa's social transformation has been to break away from "Trickle-Down Economics" approach which produced the growth path that was responsible for the skewed pre-1994 distribution of wealth and led to job losses, informalisation of work, economic marginalization and underdevelopment with a decline or lack of significant improvement in incomes of the poor and wealth remaining in the hands of a few (Heywood, 2007).

The 1990s marked a turning point for South Africa. The country emerged from apartheid and re-entered the global economy after more than a decade of isolation. However, the new democratic government inherited the challenges of slow growth and severe poverty and inequality, thus demanding a shift in the country's development path (Thurlow, 2009). In 1995 the government unveiled its Growth, Employment and Redistribution (GEAR) strategy whose objective was to establish a fast-growing economy that creates employment and encourages a redistribution of income in favour of the poor.

South Africa managed to dramatically reinsert its economy back into the world trade environment in the mid-1990s following a long period of internal political difficulties and international reactions to the apartheid regime. Since the early 1990s the South African government has faced major economic policy challenges to change the institutional structure of the economy and adapt the trade policy regime to the new agenda and structures. The renewed openness to trade since the mid-1990s provided South Africa with an opportunity to gain from the world trading environment.

The gains from trade arise from creating a competitive tradeable sector that responds to changes in world demand patterns and the world architecture of global supply chains. Over a longer historical perspective, South Africa has developed from its status as a colony based on its resource endowments, in agricultural land and mineral resources. South Africa's mineral endowments in particular mineral resources have provided a major starting platform in tradable for over a century (OECD, 2009).

South Africa is well-known for its natural resources but is it able to utilize these resources for the benefit of the poor without tampering with their human rights? Secondly, is it able to attract foreign investment without tampering with human rights? This is a conundrum as the two cannot be separated due to the close connection that exists between them.

Trade liberalization has been at the centre stage of South Africa's post-apartheid development strategy (Thurlow, 2006) due to the challenges facing the country, namely, poverty, unemployment and inequality that are worsening year by year, as also in effectiveness of policies related to trade liberalization in addressing these challenges. Many authors argue that trade liberalization did not contribute much to addressing this triple challenge.

Van Tonder and Pera (2009) list three types of human rights, as conferred by the Bill of Rights in Chapter 2 of the Constitution (Constitution 106 of 1996). These are the first (blue rights), second (red rights) and third generation (green rights) human rights. They briefly mention that first generation human rights are those fundamental rights which the government may not violate and include the right to life, the right to human dignity, the right to privacy and the right to language and culture.

Second generation human rights are those rights where obligation is placed on the government to render assistance and these include the right to work, education, etc. The third generation rights generally pertain to groups. These include the right to an environment that is not harmful to one's health or well-being. Under this right a duty is placed on the State to prevent pollution (amongst other things) for the benefit of present and future generations.

The rights conferred by the Bill of Rights are not absolute but may be limited under certain circumstances, the manner in which these rights have been categorized not only by van Tonder and Pera, but also as they are reflected in the Bill of Rights, presupposes an imminent conflict due to the commitments that governments make to their people, promising fulfilment of rights.

While this study will not dwell much on the first and second generation rights but focus often on third generation human rights, it will be necessary to refer to them so as to understand why the communities in Xolobeni strongly believed that the proposed mining project not only threatened the environment but their lives as well. Their claim of violation of their human rights is justified by Chapter 2 of the 1996 Constitution of the Republic of South Africa (Constitution 106) and it cannot be denied that while they are entrenched in the Constitution they do trigger many conflicts and are subject to challenge once the State fails to honour them or violate them.

Many authors (Alston and Goodman, 2013) argue that it is not enough to note the specific violations but to understand them in their wider political, social, economic or in some cases, even military context. The next section therefore discusses the large range of issues that are implicated in human rights doctrine and discourse, internationally, regionally and nationally as well as the impact of trade liberalization and economic growth on poverty alleviation. This is because many developed and developing countries believe that through development poverty can be reduced and

because in some cases development taps into the human rights of communities who are targeted to benefit from this development.

### **2.6.9 Liberalisation and Poverty Alleviation in the International Context**

African countries have, in the 1960s and 1970s, been very sceptical about the virtues of free trade. Since the 1980s, they have shown more interest in multilateral trade as well as negotiation (Teweldemedhin, 2010). This reflects the combined effect of three factors, namely, dissatisfaction with the slow pace of regional integration, the belief that trade (if well managed), could play a critical role in confronting the development challenges facing the continent, and the widespread view that multilateral trade could promote as well as spur regional integration efforts.

Teweldemedhin further argues that by increasing competition, multilateral trade liberalization could force African governments to intensify regional integration efforts so as to reduce transaction costs through the development of infrastructure. Further, during the last decade trade policy in South Africa has undergone several changes that include multilateral reductions in tariffs and subsidies through the country's World Trade Organisation (WTO) commitments, the signing of Free Trade Agreements (FTAs) and more recently, negotiations around future commitments to liberalization both at multilateral level as well as regional level.

These simultaneous developments have had an important influence on both *de facto* protection in the South African economy, as well as on welfare improvement. South Africa has undertaken several major economic reforms and, among these, import liberalization was a principal component. This reform, along with complementary changes in industrial policy and technology, was aimed at making South African industries more efficient, updating technology and competitiveness (Teweldemedhin, 2010).

Another major challenge for the world is to reduce greenhouse emission. To sustain progress in human development, far more attention needs to be paid to the impact human beings have on the environment. Only a few countries are able to produce high levels of human development without exerting unsustainable pressure on the planet's ecological resources. Meeting this challenge on a global scale requires that all countries adjust their development pathway: developed countries will need to reduce their ecological footprint, while developing countries will need to raise their Human Development Index (HDI) value without increasing their ecological footprint.

The 2011 Human Development Report reveals that while environmental threats such as climate change, deforestation, air and water pollution and natural disasters affect everyone, they hurt poor countries and poor communities most. Further climate change is already exacerbating chronic environmental threats and ecosystem losses are constraining livelihood opportunities, especially for poor people. A clean and safe environment should be seen as a right, not a privilege.

The Report further highlighted that equity and sustainability are inextricably linked. Sustainable societies need policies and structural changes that align human development and climate change goals through low emission, climate-resilient strategies and innovative public-private financing mechanisms. Most disadvantaged people contribute little to global environmental deterioration, but they often bear the brunt of its impacts.

Choudhri, Faruquee and Tokarick (2006), in their analysis of how monetary policy affects the macroeconomic costs of liberalizing trade, argue that there are two distinct strands in the extensive literature on the economic effects of trade policy. One strand is mainly concerned with the long-run effect of trade policy on economic welfare and employs international trade models with flexible prices to determine this effect. In this analysis trade liberalization generally enhances welfare by improving economic efficiency. The other strand uses macroeconomic models with nominal rigidities to examine the short-run consequences of trade policy on variable such as output, employment and the current account.

They further maintain that the response of macroeconomic variables to trade liberalization depends, among other things, on monetary policy. They also found that flexible exchange rates (with a constant price level) involve a lower loss than fixed exchange rates under nearly all plausible parameterizations, level targeting rule with the interest rate as an instrument. This rule performs better than both regimes, in the sense that it leads to a smaller transitional loss.

In fact, a sufficiently weak interest rate response to the price level can come close to duplicating the flexible wage-price equilibrium (that estimates transitional dynamics) and entails little or no work on estimating the short-term costs of this policy macroeconomic adjustment cost. The authors argue that trade liberalization offers long-run efficiency benefits, but may also give rise to costly short-run macroeconomic adjustment and their paper focuses on the case of an economy that is well integrated into global financial markets. The estimates in their paper are derived for a small developing economy that initially has higher trade restrictions in the form of tariffs than the rest of the world.

Feraboli, (2008) investigates the economic implications of induced trade liberalization on aggregate economic performance as well as its effects on welfare and income distribution of heterogeneous households. He argues that this is done by introducing heterogeneous households into a standard neoclassical dynamic computable general equilibrium model and assert that trade liberalization reduces government revenue due to reduced import tariff duties. Therefore a possible resulting drop in government transfers could make results ambiguous, particularly for households which rely heavily on transfers.

In addition, low income households can probably not exploit the benefits of increased incentives for investment and will therefore have problems utilizing the full potential of trade liberalization. The model used by Jordan is implemented by means of the mathematical software Gauss and by employing the relaxation algorithm proposed

by Trimborn. This allows for simulation exercises regardless of the dimension of the state space. The simulation results indicate changes in per capita level of welfare between 0.03% and 0.19% providing evidence that trade liberalization has indeed a different impact across heterogeneous households.

More precisely, low income households gain even slightly more from trade liberalization in terms of welfare, since they can overcome losses in transfers by an increasing wage income due to aggregate capital accumulation. However, income inequality increases, since high income households can exploit the benefits of increased incentives for investment. This results in higher capital income and, therefore a widening income gap. South Africa has undertaken several major economic reforms and, among these, import liberalization was a principal component.

The reform, along with complementary changes in industrial policy and technology, was aimed at making South African industries more efficient, updating technology and competitiveness (OECD, 2006). These economic reforms face major criticism from different scholars and philosophers who question the impact of liberalization in improving the economy. Anti-globalization advocates argue that openness to trade increases poverty and that trade liberalization and the systematic dismantling of trade barriers will lead to high unemployment, less economic growth and high food prices.

Advocates of trade liberalization have argued that it ensures availability of food and boosts rural incomes, thereby reducing poverty in the poorest countries. Most economists accept that, in the long run, open economies fare better in aggregate than do closed ones and that relatively open policies contribute significantly to development (Winters, 2007). Winters further argue that in the shorter run, one of the steps towards openness – trade liberalization – harms poorer actors in the economy, and that, even in the longer run, successful open regimes may leave some people behind in poverty.

Liberalization, by its nature implies adjustment and so is likely to have distributional impacts, but to what extent are the poor likely to suffer adverse effects? This question suggests that development comes at a price that in most cases is paid by the poor. The aim of every country is to increase growth and its link to trade liberalization cannot be ignored in asking whether liberalization aids growth and whether growth aids poverty alleviation.

Thurlow, (2009) notes that trade liberalization has been at the center of South Africa's post-Apartheid development strategy but the country has failed to generate pro-poor growth, with both unemployment and inequality worsening over the past years. There has been little decline in poverty while it is higher-income households that derive greater benefit from further liberalization. Furthermore, while there may not be a trade-off between trade reform and poverty reduction, the country should

not rely on further liberalization to generate pro-poor growth or address the prevailing inequalities.

In the long run, economic growth is key to the alleviation of absolute poverty. It creates the resources to raise incomes, and even if 'trickle down' is insufficient to bring the benefits to the poor; governments will have greater scope for stronger redistributive measures when income is higher and growing faster (Thurlow, 2009). The next question that arises is: If governments take stronger redistributive measures when income is higher and growing faster, what role will it play to ensure that those communities who have no income also benefit from redistributive measures without tampering with or violating the human rights of those communities?

The above question leads us to a discussion on the strategies that are used by governments to alleviate poverty. Landman, (2003) mentions that the single most important issue facing South Africa ten years after the transition to democracy is to break the grip of poverty on a substantial portion of its citizens. Approximately 40% of South Africans are living in poverty – with the poorest 15% in a desperate struggle to survive. This means that approximately eighteen (18) million out of forty five (45) million people have not experienced the benefits of our newly found freedom. These are 2003 statistics. It is doubtful whether they would be better today.

The debate on poverty can be approached from different perspectives and at different levels. The earlier ideological debate between capitalism or socialism, or a possible 'Third Way', has subsided since the democratization process in Eastern Europe gained momentum. Even with regard to the current dominant model of a liberal free market economy in the world, one could follow alternative routes. On the one hand, the fundamental principles of the current macro-economic model could be questioned and rejected as such. On the other hand, even if the reality of the current dominant model is accepted in a more pragmatic approach, critical challenges and questions could be raised with regard to the complexities, the contradictions and side-effects of this model (Ranis, 2004).

Ranis (2004) argue that high growth will certainly help to roll back poverty but it might exacerbate inequality and the next question is 'which one gets the priority?' Furthermore, even if the higher growth path is accepted as an important instrument to eradicate poverty, a large portion of the country's citizens would need the support of special programmes to alleviate the worst poverty in order to help them to survive.

Such economic growth will not just happen of its own accord but it will need careful management of the macro economic variables as well as growth-inducing measures. This will have to include fiscal discipline; monetary stability; enhanced productivity; restructuring to remove obstacles to investment and growth; reduced transaction costs and many other measures. Currently investment in South Africa is primarily driven by the private sector. Over the last few years the business sector has

frequently provided more than 100% of national net savings, with dissaving by the public sector bringing the net national figure down to 100% (Eyden, Aye and Gupta, 2012).

Landman (2003) further claims that a nation can only invest what it saves, except when additional investment is financed by foreigners. Low savers like South Africa thus need foreign investment to overcome the shortage of local saving. If a nation can attract money from foreigners, good and well; if not, the country is forced to use its own saving very prudently. In a country with insufficient saving like South Africa, government dissaving is – even if understandable – not necessarily desirable.

Eyden, Aye and Gupta, (2012) add that investment spending is an important component of Gross Domestic Product (GDP). Households, governments and businesses invest when they set aside a share of their current income in order to acquire capital assets whose returns promise to increase their incomes in the future. Given its crucial role, investment behaviour has been an important topic in the research agenda.

#### **2.6.10 Human Rights into Development Discourse**

Iceland Human Rights Centre document (2013) mentions that human rights discourse came into global prominence after the United Nations adopted the

Universal Declaration of Human Rights in 1948. This was the first global recognition that all humans are entitled to rights. Human rights became a focus of major debate in the West and in Communist states during the Cold War and human rights organizations used to focus primarily on documenting human rights violations on the civil and political level. These organizations did not focus solely on human rights violations but also on social, economic and cultural rights.

The evolution of human rights organizations and development organizations and the western idea that rights are asserted through responsibilities, duties, transparency, trust and accountability have led to the development of the rights-based approach and these rights were linked to democracy, human rights, sustainability and development, leading to the recognized interdependence of these rights. This further led to the linkage between human rights and development and enabled policy makers and developers to incorporate a rights-based approach in their policies.

#### **2.6.11 The Welfare Model or the Rights-Based Approach**

The Welfare Model has taken root in Western developmental practices since the 20<sup>th</sup> century. In the welfare model, poverty is defined as the absence of a public good or knowledge. If the State or another vehicle such as a Non-Governmental Organisation (NGO) provides the absent good, then poverty can be alleviated and development will occur. It is believed that thousands of Rands have been poured into this approach. However, despite some achievements there has not been success with this model.

The gap between the rich and the poor is widening and according to the World Development Report (2006), nearly half of the world's population lives on less than one Rand a day. Furthermore, this model lacks a way to hold governments accountable for their actions or inaction. It fails to address government's inability to meet their citizens' rights either because of lack of funding or knowledge. It also constructs the poor as objects of charity, predetermining their roles in civic society.

Due to the failures of the welfare model NGOs re-evaluated and have taken a more a rights-based approach to development. In this model, instead of the poor being constructed as objects of charity they are constructed as actors or rights-holders. The NGO's role is to help the poor overcome obstacles blocking their rights and to give governments the tools and training to provide these rights.

The inclusion of human rights into development discourse has also brought along a certain language of rights. This brings a moral resonance to development rhetoric and makes it hard to avoid in today's discourse. In the rights-based approach it is the person's government that assumes the duty carrying position but most of the time the said government does not have the resources to fulfil this role. This is where the NGOs come and try to help governments fulfil their roles and duties to their people by giving them resources. These resources can be monetary or, more sustainably training to governmental service providers.

Currently there is an under-fulfilment of human rights which has been linked with poverty. Poverty refers to assessed standard of living, health and well-being. These

are social and economic human rights, also known as second-generation rights, which have just recently been included in development discourse. First generation rights or civil and political rights have dominated public policy in the past. However, with poverty on the rise and public policy failing, social and economic rights are becoming increasingly important in the development of policies.

Affluent or rich countries feel they should help the poor countries out of charity or humanity. The rights-based approach works to shift the paradigm away from charity and towards a moral duty imposed by international consensus concerning human rights. NGOs are adopting the full spectrum of human rights in their development policies. Using human rights as their driving force they are using rhetoric to develop a modus operandi that made political human rights effective.

Since the 1990s there has been a trend for NGOs and development donor agencies to combine the idea of development and human rights in the human-rights based approach to development. Although there has been an undertone of development within the association with human rights before, it has been since the end of the 20<sup>th</sup> century that there are known links of development and human rights in the same efforts. This practice includes NGOs that are geared towards development as well human rights.

The human rights-based approach to development theories seeks to advance the Millennium Development Goals (MDGs). MDGs are the goals set forth by the United

Nations member states to work for the alleviation of extreme poverty, fighting of disease and other global problems.

### **2.6.12 John Locke and Thomas Hobbes Theories**

Thomas Hobbes and John Locke are of the opinion that in natural law when people are confronted with the violations of human rights as in religious theocracies that violate women's rights or in countries that allow sweatshops to trample on workers' rights, they feel compelled to protest the injustice of those practises and to change them for the better (Moschella and George (2015)).

John Locke and Thomas Hobbes are founders of liberal political philosophy, the philosophy of individual rights and limited government. This is the philosophy on which the American Constitution and all Western political systems today are based Moschella and George, (2015). In some of his writings (for instance, Second Treatise of Government) Locke uses natural law to ground his philosophy but there are many different interpretations of the natural law. Some people say that Locke's political philosophy is not based on natural law but on natural rights, like the philosophy of Thomas Hobbes. This is probably the greatest controversy in Locke's interpretation today. Natural theories hold that human beings are subject to a natural law. Morality is fundamentally about duty, the duty each individual has to abide by the natural law (Moschella and George, 2015).

Thomas Hobbes created a new approach when he based morality not on duty but on right, each individual's right to preserve himself, to pursue his own good – essentially to do as he wishes. One characteristic of a rights theory is that it takes man to be by nature a solitary and independent creature, as in Hobbes's state of nature. In Hobbes's state of nature, men are free and independent, having a right to pursue their own self-interest, and no duties to one another (Moschella and George, 2015). The moral logic is something like this: nature has made individuals independent; nature has left each individual to fend for himself, nature must therefore have granted each person a right to fend for himself. This right is the fundamental moral fact, rather than any duty individuals have to a law or to each other.

The priority of individual right reflects our separateness, our lack of moral ties to one another. According to Hobbes, one consequence of this is that the state of nature is a 'war of all against all': human beings are naturally at war with one another. Individuals create societies and governments to escape this condition. Society is not natural to man, but the product of a 'social contract' – a contract to which each separate individual must consent. The sole purpose of the contract is to safeguard the rights of each citizen (Moschella and George, 2015).

This is the basic recipe for the political philosophy of liberalism – Locke's philosophy. Locke speaks of a state of nature where men are free, equal and independent. He champions the social contract and government by consent. He goes even farther than Hobbes in arguing that government must respect the rights of individuals. It was Locke's formula for limited government, more than Hobbes's that inspired the

American Founding Fathers. The Founding Fathers, in the Declaration of Independence, speak of both natural rights and natural laws. Locke does like wise. Natural right and natural law may be combined, but if they are, one must take precedence over the other. Either the individual's right, or his duty to moral law, must come first.

In Chapter Two of the Second Treatise of Government, Locke asserts that men in the state of nature are free and equal and at liberty to do as they wish, but only within the bounds of the law of nature. This limitation separates Locke from Hobbes. Hobbes had argued that freedom and equality, and the priority of individual right, meant that individuals in the state of nature could pursue their survival and interest without limitation. They had no duty to respect the rights of others. This is why the state of nature was a state of law. Locke's claim is that individuals have a duty to respect the rights of others, even in the state of nature.

The difference with Hobbes is clearest in Locke's argument about property. Hobbes and Locke agree that individuals have a right to property in the state of nature, but Hobbes denies that individuals have any duty to respect the property of others. This makes property more or less useless in Hobbes's state of nature. Locke says individuals have a duty to respect the property (and lives and liberties) of others even in the state of nature, a duty he traces to natural law. Natural law and natural rights coexist but natural law is primary, commanding respect for the rights of others.

Here, then, is the issue in the natural law-natural right dichotomy: if individual right is primary, can individuals have any duty to respect the rights of others? If the fundamental moral fact is the individual's right to 'look out for number one,' where would a duty to respect others come from? Hobbes finds no such duty, for it would restrict the individual's liberty and his right. Locke argues for a duty for others' right, but traces it to natural law, not right. Locke's view is the view most of us share – I have rights, but 'my right to swing my fist ends where your nose begins'. We typically think of individual rights as being coupled with a responsibility to respect the rights of others. Locke's argument suggests that this responsibility depends upon duty and natural law, not individual right, as the bases of morality.

There is a potentially serious loophole in Locke's argument. In Chapter Two of the Second Treatise, they say that the individual only has a duty to respect others' rights when his own preservation comes not in competition. If my life is threatened, I need not respect anyone else's rights, is as violent and desperate as Hobbes said it was, with everyone under continual threat of death, Locke's duty to respect the rights of others would essentially vanish (Moschella and George, 2015). Some have argued that this is Locke's true meaning. In the beginning of the Second Treatise, Locke seems to claim that the state of nature is a place of peace and harmony. Later, however, he makes it clear the state of nature was actually insecure, with people's rights under continual threat.

Conditions drive men to form a social contract for their protection. If Locke's state of nature is as violent as Hobbes's, it could mean that Locke's natural duty to respect

others amounts to little or nothing, that the individual's right to fend for himself is primary after all, and that Locke is much closer to Hobbes than he seems. Locke's argument is based on rights rather than law, but he understands the rights differently: perhaps rights imply reciprocity or mutual respect among individuals.

For contemporary Americans, one reason for studying Locke (together with Hobbes) is to understand the character of liberalism. A liberal system such as ours enshrines individual rights, but its health depends upon people exercising those rights responsibly. It depends on people talking seriously their duty to respect the rights of others. Many observers believe that while Americans today and even South Africans for that matter, are eager to claim their rights, too few are willing to shoulder the attendant responsibilities.

## **2.7 CONCLUSION**

Although the Human Rights Commission visited the area of Xolobeni in response to a complaint that was submitted to them in 2007, no action has been taken based on the recommendations the Human Rights Commission made to the communities in the area. Brand *et al* (2007) argues that the independence of institutions supporting and safeguarding democracy is often negatively affected by the fact that they are perceived and function in practice as institutions that form part of the government. Furthermore, where for example, the Human Rights Commission or the Electoral Commission is seen as being part of the government, this will place pressure on

such institutions to cooperate with the government of the day to align themselves with the interests of the government.

This, in turn, means that it would be more difficult for such institutions to act without fear, favour or prejudice to hold the government accountable. Institutions called on to make findings against the government or to act against its interest will only be able to do so if they are really capable of acting impartially and independently. Whether this is true or not is an area for future research.

The World Summit on Sustainable Development held in 2001 mentioned that it was nearly thirty-two years then since the United Nations Stockholm Conference of 1972 put environmental issues on the international agenda. Since then there has been much hard work to protect and improve the environment globally, nationally and locally. The Constitutions of various countries including South Africa contain a clause on environmental rights but it is clear that in all parts of the world our environment is under threat and that many problems are becoming more serious. These problems include the following: failure to place constraints on national strategies that may lead to unsustainable growth and failure to ensure the implementation of national framework laws and enforcement strategies as National Environmental Action Plans (NAEP).

Lately, most democratic countries have strategies and legislations in place to ensure not only promotion and protection of human rights but also to achieve the goals of sustainable development at minimal expense for the environment but these countries

find it difficult to implement what is contained in these documents. It is failure to implement such strategies and legislations that has led to calls for a new approach to sustainable development, as suggested by many students of environmental law. The next chapter gives an overview of the implications of the implementation of the Bill of Rights on mining.

## **2.8. AN OVERVIEW OF THE IMPLICATIONS OF THE IMPLEMENTATION OF THE BILL OF RIGHTS ON MINING**

### **2.8.1 Introduction**

This section gives in-depth coverage of the implementation of the Bill of Rights on mining industries for sustainable development in South Africa and other countries' perspectives. It also focuses on the implementation of the Bill of Rights on mining, mineral resources, land and revenues for sustainable development in some selected developing and developed countries. It discusses the international perspectives on mining conflicts, effects of Corporate Social Responsibility (CSR), corporate citizenship (CC), Corporate Social Investment (CSI) and Sustainable Development (SD) on local communities' trust of mining companies. In addition, the administration of community (mining) royalties during apartheid period in South Africa, policy provisions in the Department of Mineral Resources (DMR) were also discussed.

## **2.8.2 An Overview of the Implications of the Implementation of the Bill of Rights on Mining, Land and Revenues for Sustainable Development in South Africa**

The implementation of the Bill of Rights on mining projects for the sustainable development of the rural communities in South Africa cannot be underestimated as its benefits could bring about a better understanding and opportunities to the community members and mining owners as well as the mining workers. Mnwana, (2015) “in post-apartheid South Africa, states that communal land which falls under the former ‘homeland areas has increasingly become a focal point of mineral development strategy. This emanates from the country’s geological advantage: specifically, the existence of the Bushveld Complex, an enormous multi-layered, ore-bearing, underground rock formation and in fact, it spreads over more than 65,000km<sup>2</sup>, spanning two of the country’s most rural provinces such as North West and Limpopo” (Mnwana, 2015). More importantly, Cawthorn, 2010:205) also reveals that it is widely believed that “there are enough platinum deposits in the Bushveld Complex to supply world demands for many decades or even a century”.

Evidently, the growth of mining sectors particularly in North West and Limpopo Provinces “with over 80% of the world’s known Platinum Group Metal (PGM) reserves; South Africa’s Bushveld Complex has contributed significantly to the massive platinum boom over the past two decades, and has overtaken gold as the major player in the country’s mining sector. South Africa’s platinum mining industry has recently drawn the world’s attention for being a hot spot for wage-related strikes” (Mnwana, 2015).

Sadly, it is very important to stress that despite the existence of the implementation of Bill of Rights across the nation which safeguards the rights of the mining owners and mining workers from conflicting among one another and significantly gives room for both of them to interact effectively and work together under conducive working conditions for the purpose of achieving their organizations goals and objectives, the opposite is the case. Initially, in South Africa among other African countries which include Nigeria and Ghana, the distribution of mineral resources by nature have caused several havoc to many nations including United State of America (USA) et cetera.

There has been much evidence of conflicts on the establishment of mining projects in South Africa notably, at Xolobeni in the Eastern Cape Province of South Africa where the rights of community members were violated and impotently, “the validity of the environmental assessment procedure itself was questioned due to the pro-development focus of those carrying out the assessment (Kamleshan, 2015). In addition, Kamleshan further stressed that important irregularities were found within the Environmental Impact Assessment (EIA) studies, and the process was criticized for being incomplete, providing inadequate information, and insufficient opportunities for community interaction in the decision making process.

Similarly, “at the apex was the Marikana Massacre in August 2012: members of the South African Police Service opened fire on striking mine workers at the Lonmin Mine, North West Province, a massacre which left 44 people dead and many others

injured (Chinguno, 2013 cited in Mnwana 2015 ). The growing concern is that the platinum mining industry in post-apartheid South Africa is characterised by fragmented and precarious work (Chinguno, 2013:33 cited in Mnwana. 2015). As such, like gold mining, it relies on a massive African migrant labour force, low wages, and poor working and living conditions to bolster its profits (Mnwana and Capps, 2015” cited in Mnwana, 2015).

The literature has shown that in South Africa, gold as one of the most important mineral resources has fueled the development of large urban industrial centers (Mnwana 2015). But the increased attention paid to platinum post-apartheid has shifted the geographical focus to rural areas. The vast area spanned by the platinum-rich Bushveld Complex, often called ‘the platinum belt’, is overlaid by rural communal lands, which fall under the political jurisdiction of traditional – ‘tribal’ – authorities (Classens, 2014). It must be mentioned at this juncture that “all former ‘homeland’ areas including Xolobeni in South Africa, rural communities bear the legacy of apartheid, having fallen under the ‘independent homelands’ of Bophuthatswana and Lebowa, respectively. These labor-sending areas are characterized by, among other things, extreme poverty, massive unemployment, poor education standards, and a shortage of basic services (Mnwana and Capps, 2015).

The geographical shift coincides with post-apartheid legislation attempts to redefine residents in these communal areas as ‘traditional communities’ under chiefs.

Several pieces of legislation that significantly enhance the powers of traditional leaders (chiefs) have emerged over the past decade. These include the Traditional Leadership and Governance Framework Act of 2003 (Act 41 of 2003), the Communal Land Rights Act of 2004 (Act 11 of 2004) and the Traditional Courts Bill (B15 - 2008). Studies show that these laws and bills on traditional leadership tend to impose colonial ethnic identities on rural residents by establishing the current traditional authorities in exactly the same boundaries as the apartheid 'tribal' ('Bantu') authorities (Classens, 2014; Classens and Matlala, 2014).

These laws are criticized for fortifying the powers of local chiefs and tribal councils over communal property, particularly land and mining revenues, and making downward accountability impossible to realize (Classens and Matlala, 2014; Classens, 2014; Mnwana, 2014b cited in Mnwana, 2015). Chiefs have become the mediators of mineral-led development and mining deals. Local conflict has intensified over the past few years in communal areas on the mineral resources zone (Mnwana, 2012). Some scholars observe that the escalating conflict epitomized a resurgence of ethnic identities in post-apartheid South Africa (Manson, 2013).

Mnwana, (2015) "argued that the expansion of mining into rural communal land in the former 'homeland' areas of South Africa generates intense intra-community struggles over mining, land and revenues. Mnwana also argued on a detailed ethnographic case study of Sefikile village in the Bakgatla-ba-Kgafela traditional authority area, North West Province, to illustrate how the post-apartheid

government's mineral policy reform has failed to cater to the complex character of rural communities on whose land platinum mining expands.

This, in turn, has fueled inter-group disputes at the village level. The empirical findings drawn from Sefikile, a village that hosts one of the oldest platinum mines in South Africa, reveal intense struggles over land, mining revenues and public services. Such struggles are fought mainly through distinct group identities such as social markers of exclusive group rights. Mnwana, (2015) also argued that the state's attempt to include 'traditional communities' in South Africa's post-apartheid mining industry has failed to grasp the complex group identities at the village level, therefore fueling tension.

Moreover, the rapid mineral policy reform that has taken place in numerous developing countries, which has helped to attract significant investment, has largely excluded the interests of local communities (Mnwana, 2015). The tendency of the state is to focus merely on promoting large-scale mining activities and neglecting the welfare of local communities in the area where these activities create tension between management and local residents (Hilson and Yakovleva, 2007: 99).

### **2.8.3 The Implementation of the Ogoni Bill of Rights (OBR) on Mineral Resources in Nigeria and the Ogoni Demands**

As observed worldwide, Bills of Rights and Declarations are instruments that give voice to the peoples' circumstances and, in most cases, make demands on governments and authorities (Senewo, 2015). For example, the United States of America's Bill of Rights of 1791 largely written by James Madison sought to curtail certain governmental powers while protecting individual liberties (Bill of Rights Institute (BRI), 2010 cited in Senewo, 2015). Same instances apply to the OBR.

However, although Bills of Rights like the United States' are always directed at government, the OBR was the first of its kind to be directed at both government of Nigeria and transnational oil-prospecting companies such as Shell. Saro-Wiwa's linkage of the Nigerian nation state to Shell made them prime precursors of the Ogoni situation, in which case, both parties were liable for the environmental and human rights conditions existent in Ogoni (Saro-Wiwa, 1995).

Movement for the Survival of the Ogoni People (MOSOP), through Saro-Wiwa, challenged Nigeria and multinational oil-prospecting industries like Shell's environmental and human rights consciousness; making the nation, her leaders, and multinational oil industries realize that the Ogoni struggle for survival was, according to William Boyd, "an ecological more than a political one" (Saro-Wiwa, 1995: xi). By

this action, the Ken-led MOSOP elevated the Ogoni people and their circumstances from local to both national and international status.

According to Bob, (2005:55), “by 1995, MOSOP had propelled the Ogoni to the front ranks of activism on two fronts, human rights and the environment”. It was a non-violent activism that went down the annals of Nigeria’s history books as effective though minuscule (Bob, 2005). Professor Claude Ake, a renowned Nigerian scholar (he died in plane crash November 7, 1996) summed Saro-Wiwa’s positioning of Ogoni succinctly in his famous quote,

*“MOSOP and Ogoniland must survive and flourish for the sake of us all. For better or worse, MOSOP and Ogoniland are the conscience of this country. They have risen above the slave culture of silence. They have found courage to be free and they have evolved a political consciousness which denies power to rogues, hypocrites, fools, and bullies. For better or worse, Ogoniland carries our hopes. Battered and bleeding, it struggles on to realize our promise and to restore our dignity. If it falters, we die.” (Okonta and Douglas, 2001:4” cited in Mnwana, (2015).*

Saro-Wiwa, (1995) emphasised that “Professor Claude Ake’s summation underscored the importance of Ogoni struggle not only to the Ogoni nationality but also to the entirety of the Niger Delta and other voiceless ethnic minorities in Nigeria. According to Okonta and Douglas (2001:4), it was a non-violent struggle “to put an end to tyranny, a struggle for the soul of Nigeria and its future”. Saro-Wiwa’s

determination, vis-à-vis MOSOP, to lift the Ogoni people from the shackles of governmental and multinational oil-extracting companies' (example, Shell) bondage and exploitations earned him and eight other Ogonis (the Ogoni 9) unjustified death by hanging at the Port Harcourt Maximum Prison on November 10, 1995.

One of the most important instruments Saro-Wiwa's MOSOP used to front the struggle for the survival of the Ogoni people, confront tyranny, lay down frameworks for other agitating instruments in the Niger Delta, and up the struggle the souls of Nigeria and her future was the Ogoni Bill of Rights (OBR) (Bob, 2005; Civil Liberties Organization (CLO), 1996; Mbeke - Ekanem, 2000; Igbara and Keenam, 2013; Manby, 1999; Movement for the Survival of Ogoni People (MOSOP), 1992; Okonta and Douglas, 2001; Saro-Wiwa, 1995).

#### **2.8.4 International Perspectives on Mining Conflicts**

Banks, (2005) examines at length these dynamics, drawing heavily on the effects of large-scale mining in Melanesia, contending that local community members who are also landowners complain that mining in their area brought about tremendous fear due to the rapid influx of migrants, referred to by the locals as people we do not know. For Banks, (2005:189 cited in Mwanza, 2015), mining-induced migrant influx not only leads to extensive breakdown of social cohesion but can also deteriorate traditional forms of government.

In natural resource-rich sub-Saharan Africa, studies have shown that the absence of direct community control remains a major driver of communal resistance and socio-political conflict (Ikelegbe, 2005; Obi, 2008; De Koning, 2008). Other reasons include:

- (1) environmental degradation (Lockie et al., 2009:330);
- (2) poor communication between mine management and surrounding communities (Hilson, 2002: 65);
- (3) a lack of compensation for operating mining activities on indigenous lands (Clark and Clark, 1999:193; Warden-Fernandez, 2001:16; Crawley and Sinclair, 2003:364);
- (4) mining companies that fail to secure social licenses (Holden 2005:432); and
- (5) forced relocations of indigenous communities from their ancestral lands to make way for new activities (Clark and Clark, 1999:193).

#### **2.8.5 The Effects of Corporate Social Responsibility (CSR), Corporate Citizenship (CC), Corporate Social Investment (CSI) and Sustainable Development on the Local Communities' Trust of Mining Companies**

Despite companies' championing Corporate Social Responsibility (CSR), Corporate Citizenship (CC), Corporate Social Investment (CSI) and Sustainable Development (SD), the situation remains tense (Mnwana, 2015). This impasse has earned the extractive industries a bad reputation and significantly diminished local communities' trust of mining companies (Harvey, 2013).

Although South Africa's mining companies, such as small Australia Mining Company which is notably known as Mineral Commodities (MRC) and its local subsidiary, Transworld Energy and Mineral Resources (TEMR) in the Mbizana Local Municipality, Eastern Cape, South Africa which specifically focused on "Xolobeni Heavy Mineral Sand Project" with major products including titanium, ilmenite, zircon, rutile et cetera (Kamleshan. 2015) and particularly those in the platinum industry, have reportedly demonstrated some commitment towards their CSR obligations, it has not been genuine towards the social well-being of the communities on whose land they operate (Mnwana, 2015). As such, the character of CSR, explains Hamann, (2004:288), traditionally manifested itself as philanthropic initiatives premised on competitive efforts at gaining improved image and reputation. Moreover, continues Hamann, (2004:288):-

Not only did this manifestation of CSR prevent a sincere, proactive engagement with the underlying causes of social problems in the area but the competitive element also helped to obstruct the establishment of improved collaboration between local actors.

Fig (2005) also observes that the business community in South Africa generally prefers the concepts of CC and CSI rather than CSR. Though also important, CC and CSI pose a challenge of power imbalance and superficial policy implementation, since, as Fig, (2005:601) also asserts, they ask no questions about legacy, memory, history, justice, or moral and ethical responsibilities of the business. In fact, this very

weakness in CSI and CC could be quite detrimental to indigenous communities who live close to the operations of the mining industry.

It is behind the backdrop of this impasse that the post-apartheid state in South Africa has introduced drastic mineral policy reforms (Mnwana, 2015). Such reforms not only did away with mineral rights as a form of private property, but introduced a range of measures through which rural communities can participate in the mining industry (Mnwana, 2015). Mnwana, (2014a) argue that these 'new' policy measures have led to a significant control of mineral wealth by a few traditional communities in South Africa.

However, community control of mining revenues through local chiefs exposes local communities to serious paradoxes, including conflict and inequality, especially when exposed to the challenge of distributing mineral resource wealth (Mnwana, 2014a: 840).

### **2.8.6 Traditional Communities and South Africa's Mining Industry, Minerals and Petroleum Resources Development in South Africa**

The inclusion of rural communities in South Africa's mining industry must be seen in the light of the post-apartheid state's redress mission (Mnwana, 2015). In addition, Mnwana argued that "the ANC Government has, in an attempt to redress past

injustices, introduced some radical legislative and measures in the mining sector and stressed further that the key issues the state sought to address were the historical racial exclusion of Africans from mine-ownership structures, and the relationships between the mining companies and local communities.

The key piece of legislation in this regard is the Minerals and Petroleum Resources Development Act of 2002 (Act 28 of 2002, or the MPRDA) and its accompanying regulations (Mnwana, 2015). This legislation also drives the inclusion of traditional communities in South Africa's platinum industry. Through this legislation, the state has promoted a range of measures, including Black Economic Empowerment (BEE) mine-community partnerships, continued royalty payments, and social labour plans as requirements for mining companies (Mnwana, 2015).

Communities which previously received royalty payments for mineral rights on their land have been encouraged by the state to convert their royalties into equity shares. Several communities on the platinum belt have converted their royalty payments into equity stakes and also entered into other complex deals with mining companies who operate on their land. Local chiefs, as assumed custodians of communal resources, have become mediators of mineral-led development and mining deals" (Mnwana, 2014b).

### **2.8.7 The Administration of Community (Mining) Royalties During Apartheid the Period in South Africa**

The administration of community (mining) royalties remains a debatable conflicting issue within some parts of highly deposited mineral resources in the areas such as Xolobeni Mining Project in the Mbizana Local Municipality, Eastern Cape and Platinum belt of Sefikile village in the North West Provinces of South Africa. “In order to effectively discuss the administration of community (mining) royalties during the Apartheid period in South Africa, this study would draw attention from the study conducted according to Mswana, (2015), on “mining and ‘community’ struggles on the platinum belt: A case of Sefikile village in the North West Province, South Africa”. Mswana pointed out that “during Apartheid, community royalties were kept under custodianship of the Bophuthatswana President, Mr Lucas Mangope, as a trustee.

These royalties, amounting to hundreds of millions of rand, were kept in the so-called ‘D-accounts’ (development accounts) administered by the President’s office through a complex system of financial controls. The communities on whose behalf these accounts were held made formal requests through their tribal councils to the offices of local magistrates whenever they wanted to utilize money in these accounts. When the ‘homelands’ were dismantled in 1994 more than 800 D-accounts were transferred to the office of the Premier of the North West Province. Since 1994 these accounts, worth more than R500 million, have never been audited and millions have gone missing (City Press, 2012).

Some communities have levelled serious allegations of corruption and mismanagement against the former Premier and senior officials in the North West Government (City Press, 2012). These allegations are still under investigation. An element which complicates the mining-related conflict on the platinum belt is the ambivalence in the definition of 'community' in the mining legislation. The original version of the Minerals and Petroleum Resources Development Act (MPRDA) (2002) defines the community as a coherent, social group of persons with interest of rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law.

Through this definition the Act grants communities a range of measures including a referent right to prospect and mine minerals on the land they occupy and continuation of royalties. This definition has changed twice since then. The MPRDA amendment of 2008 provides that a 'community' means a group of historically disadvantaged persons with interests or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law.

The second amendment of MPRDA in 2014, which President Jacob Zuma refused to endorse and returned to Parliament, defines a community as a coherent, social group of persons within a district municipality as defined in the Local Government: Municipal Structures Act 1998 (Act No. 117 of 1998), with interests or rights in a

particular area of land which the members have or exercise communally in terms of an agreement, custom or law”.

In the North West Province alone, several indigenous communities have entered into complex arrangements with mining companies - including royalty conversions and BEE partnerships. These ‘traditional communities’ include: the Bafokeng, Bakgatlabala- Kgafela, Bapo-ba-Mogale and Bakubung-ba-Ratheo. These deals have encountered numerous controversies and contention among the ‘tribal’ elite and vicious opposition from ordinary village residents. Such paradoxes primarily emanate mainly from the highlighted pieces of legislation that empower chiefs’ control over communal property (Mnwana, 2014b). Moreover, in defense of their rights to land and mineral wealth, rural residents on the platinum belt continue to refute the state’s imposition of amorphous colonially derived ‘tribal’ identities upon them (Classens, 2014).

For mining companies, these controversies render the task of identifying the legitimate ‘community’ and authentic representative extremely challenging. It is behind the backdrop of this challenge that the ANC government has passed laws (like the TLGFA and MPRDA) that secure the position of chiefs and ‘legitimize’ their assumed role as custodians of communal property. This strategy, although vigorously opposed at grassroots, seems to work well for mining capital. Companies do not have to engage directly with thousands of rural residents before turning

communal grazing fields into massive open pits and multiple shafts: they just obtain the approval of the chief and the tribal council.

Evidently, Sefikile, claims by state officials, chiefs and mine officials have shown that proper procedures were followed and community members were properly consulted and gave consent to the development of a mine have been violently contested by ordinary villagers. Usually, villagers claimed to know very little or nothing about the complex mining deals or the social and economic impact of mining. This is why village level struggles over mining connect to contestation over land (Mnwana and Capps, 2015).

The case village of Sefikile, in the Bakgatla-ba-Kgafela traditional authority area of North West Province, is relevant to evaluate the consequences of the post-apartheid policy changes and how they influence ordinary residents over property rights and mining benefits. It is very important at this juncture that the author of this study therefore, agreed with all the opinions raised by Mnwana that despite there are a lot of controversies over property rights and mining benefits of the residents, yet the residents rights were violated and contrary to the bill of rights Act of South Africa.

### **2.8.8 Policy Provisions in the Department of Mineral Resources (DMR) in South Africa**

It has been observed that many authors have written several articles relating to policy provision in the Department of Mineral Resources in developing and developed countries. South Africa, as one of the developing countries, has been seen as a country with hugely mineral deposited nation. Literatures have also shown that South Africa is regarded as the second largest country in the world with highly deposited mineral resources.

Policy provision in the Department of Mineral Resources (DMR) with particular emphasis to the issuing of licensing for the establishment of mining either by local citizens or foreign investors has not been an easy task at all. There has been several conflicts between the mining owners and community members on the implementation of the mining policy provided to guide the conduct of the mining operations in South Africa. It is very sad to say that at current democratic dispensation in South Africa, policy provided by the government has raised a lot of debates and arguments nationally and internationally.

Evidently, in order to bring peace and stability to nation, the government of South Africa has tremendously held several meetings with the mining stakeholders including the Minister of Mineral Resources on what should be done to amend or adjust the policy so that there will be peace, stability and tranquillity in the mining and mineral industries in South Africa. In an attempt to do this, according to the

Department of Minerals and Energy (DMR) (1998), “the Minister requested the Department of Minerals Resources to consider certain adjustments to the document in line with his budget speech in the National Assembly on 21 May 1997.

The views of stakeholders, such as small-scale miners, environmental groupings and communities, who felt that they were not properly consulted by the Steering Committee, as well as the outcomes of other policy processes (for instance, CONNEP) were also considered in the final editing of the document. The document was then ratified and signed by the Minister of Minerals and Energy as a Green Paper on Minerals and Mining Policy for South Africa. In addition, DMR, (1998) reveals that the Green Paper is organised into six main themes covering the issues which have been identified by the Steering Committee in the process of consultation.

These are:

- Business Climate and Mineral Development, which looks at the continuation of policy conducive to investment and includes a section on Mineral Rights and Prospecting Information which proposes changes to the system of access to, and mobility of, mineral rights;
- Participation in Ownership and Management, which examines racial and other imbalances in the industry;
- People Issues, which looks at health and safety, housing needs, migrant labour, industrial relations and downscaling;
- Environmental Management;
- Regional co-operation; and

- Governance.

Each chapter and subchapter contains a general background to the particular issue, a statement of intent (policy objective), the views of the different stakeholders and, finally, the policy statements by Government (DMR, 1998). Policy-making occurs in a dynamic setting, and minerals and mining policy, which is necessarily broad in its scope, needs to be coordinated with other policies which properly fall within the remit of other forums. Reference is therefore made in the document to matters that need to be considered by other policy forums, such as the Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa (DMR, 1998).

### **2.8.9 Business Climate and Mineral Development**

According to DMR (1998), the Chapter One of the Green Paper covers seven topics relevant to the climate for mining business and mineral development in South Africa and these are stated below as follows:

Section 1.1 stresses the importance of a stable macro environment for economic growth in which measures that encourage investment in mining, as in other industries, are adopted.

Section 1.2 is concerned with fiscal policy as an integral part of mining and minerals policy. Several aspects of exploration and mining which have a major bearing on fiscal policy are raised together with policy proposals that are prerequisites for minerals development. The Commission of Inquiry into Certain Aspects of the Tax

Structure of South Africa (Katz Commission) is currently considering mining taxation and the taxation of mineral rights. In due course the Commission's findings should be considered in conjunction with the broad objectives of minerals and mining policy.

The topics of taxation of mineral rights and allocations from national revenue collection to provinces in which mining takes place are raised in section 1.3 and in Chapter 6, respectively.

Section 1.3 deals with mineral rights and prospecting information. The nature, scope and content of rights to prospect and mine are central to any policy on minerals and mining. It has been contended that the system of mining and mineral rights currently in place in South Africa has frustrated new investment. Equally, however, others have argued that the legislative framework has helped materially in the exploration and mining of South Africa's unique mineral deposits.

In reaching policy conclusions Government must weigh these and other contending views. In order to improve current arrangements, Government will seek changes and adjustments that are conducive to increased minerals investment and address past racial inequity without disturbing investor confidence in the mining industry in South Africa. Several new proposals are put forward.

Section 1.4 focuses on small-scale mining and puts forward a number of policy proposals directed at encouraging and facilitating the development of the small-scale exploration and mining sectors.

Section 1.5 looks at mineral beneficiation in broad outline. Several policies aimed at the development of South Africa's mineral wealth where this is economically justifiable are proposed.

Section 1.6 takes the view that in the area of mineral marketing, policy should endorse market principles and provide for Government to play a supportive role.

The last section focuses on research and development infrastructure conducive to the optimal development of the country's resources. A number of policies directed at stimulating such development and ensuring the continuing competitiveness of the minerals industry are proposed.

## **2.8.10 Investment and Regulatory Climate**

### *2.8.10.1 Contextual*

The review of Green Paper according to DMR (1998), also shows that the Investment and Regulatory Climate stipulates that:

1. The South African mining industry, one of the country's few world-class industries, has the capacity to continue to generate wealth and employment opportunities on a large scale.
2. Mining is an international business and South Africa has to compete against developed and developing countries to attract both foreign and local investment.

Many mining projects in South Africa have tended to be unusually large and long term, requiring massive capital and entailing a high degree of risk.

3. South Africa has an exceptional minerals endowment, and in several major commodities has the potential to supply far more than the world markets can consume.
4. As articulated in its Macroeconomic Strategy, Government has committed itself to a continuing process of economic liberalisation, thus strengthening the competitive capacity of the economy, fiscal and tariff reform and bureaucratic deregulation. These are essential steps towards enhancing the country's competitiveness, attracting foreign direct and portfolio investment and creating a climate conducive to business expansion. The mining industry among others will benefit in the long term from these developments.
5. By its very nature the mining industry has the potential to endanger human health and safety as well as the physical environment. It is the responsibility of Government to establish a regulatory framework that minimises such dangers without imposing excessive cost burdens on the industry and thereby jeopardising its economic viability.

#### *2.8.10.2 Intent*

Government will create a stable macro-environment that supports economic growth and in which business, subject to appropriate regulation, can operate profitably, be

internationally competitive and satisfy their shareholders' and employees' expectations. In this way Government will encourage investment in mining as in other industries (DMR, 1998). In addition, Government will facilitate access to business opportunities and resources to those previously excluded, including helping equip such individuals/groups with the necessary skills to enable them to compete effectively in the market-place (DMR, 1998).

### *2.8.10.3 Policy Requirements*

#### *(a) Views of the investment community and mining companies*

Furthermore, DMR, (1998) also emphasises that the views of the investment community and mining companies' policy requirement shall contain the following:

- The distinctive characteristics of the mining industry need to be recognised in the formulation of the policy and regulatory framework. The framework must be consistent and stable so that investors can be confident in their financing decisions and the industry can be confident about its continuing ability to do business profitably.
- Investors place a high premium on macro-economic, political and social stability, as well as smoothly functioning labor relations.
- Foreign investors need the freedom to repatriate profits and capital.
- South African-based mining companies wish to see a speeding-up in the comprehensive dismantling of foreign exchange controls.
- Investors need security that they will be allowed to exercise their rights to exploit minerals, subject to statutory requirements.

- Non-confidential and publicly available information about the minerals sector needs to be well organized so that it is readily accessible to investors.
- New investors need opportunities for access to mineral rights.
- The cornerstones of any policy to promote investment must be market principles and economic efficiency.
- The nature of international mineral markets and of South Africa's mineral resources must be taken into consideration when promoting investment, including the effect of increased supplies on prices.

#### 2.8.10.4 *Other views*

While views shall include (DMR, 1998):

- Equitable access to all natural resources is required, based on economic efficiency and sustainability.
- The creation of wealth and employment is required for the economic empowerment of communities, both directly and through the multiplier effect. This is especially relevant in the underdeveloped regions of the country.
- Investment incentives and promotional activities should be cost-effective and should not lead to inequitable demands.

## **2.9 Policy Proposals**

- Government will seek to create a macro and regulatory environment conducive to economic growth and development, in which the mining industry can make effective use of its human and capital resources.
- Through the new Labour Relations Act and the specific industry-level and workplace structures it creates, Government will facilitate improved industrial relations in the industry.
- Government will seek to ensure, within the constraints of its available resources, the efficient provision and functioning of the physical, social and institutional infrastructure necessary for the competitiveness of the mining industry.
- Government will ensure the effective organisations and accessibility of public information about the minerals sector.
- Government will aim to lower barriers to entry to prospective new investors in the industry”.

## **2.10 CONCLUSION**

This chapter gave a detailed exploration of literature on conceptual and theoretical discussions related to the implementation of Bill of Rights on mining and mineral industries. The chapter commences by describing implications of the implementation of the Bill of Rights on mining. Most importantly, the section reviewed various implications of the implementation of the bill of rights on mining, land and revenues

for sustainable development in South Africa. The also discussed various causes of mining conflicts both nationally and internationally.

In addition, issues related to South Africa's mining companies such as small Australia Mining Company which is notably known as Mineral Commodities (MRC) as well as sustainable development was also discussed, the administration of community mining royalties during apartheid period in South Africa and legislation used in awarding of mining licenses and in relation to the protection of Human Rights were critically discussed. The next chapter gives a detailed analysis on the research methodology.

## **CHAPTER THREE: RESEARCH METHODOLOGY**

### **3.1 INTRODUCTION**

This chapter focuses on the research design and methodology employed in conducting the study. It also deals with the focus and scope of the research. It then describes the research design, data collection, research instrument, as well as sources of data, which are primary and secondary data. In addition, the limitation of the study are also discussed.

Many authors (Stead and Struwig, 2001) agree that the choice of techniques depends on the willingness of the researcher to accept the assumptions underlying each set of tools. Researchers who use quantitative tools, techniques that emphasize measuring and counting are called positivists and those who prefer the qualitative tools of observation, questioning, and description are called naturalists or interpretivists. Positivists and naturalists differ in their assumptions about what is important to study, what can be known and what research tools and designs are appropriate, and what standards should be used to judge the quality of the research. Taken together, these assumptions are termed research paradigms or research philosophies (Neuman, 2011).

This study uses both paradigms in order to address the research questions and objectives that this study sought to investigate and explain. This direction is also

necessitated by the concern raised by Henning (2004), that most students struggle to motivate the reasoning for their design and to locate the design in tradition and argues that what their problems amount to is a void in understanding the level of social research that requires *argument of methodology*. She blames most academics and puts it squarely to their shoulders that they have neglected to create a learning environment that is conducive to methodological reasoning.

This study would not attempt to compensate for Henning's concerns the researcher feels obliged to first outline some methodological perspectives about the quantitative and qualitative research paradigms and their origins by engaging the discourse by different authors not only about the roots of positivism and interpretivism but also how each of them has been criticized. Ritchie and Lewis (2004), suggest that despite their different origins and assumptions, both qualitative and quantitative research methods have unique and valuable contributions to make to social science practice.

This study research questions included inter alia, the role of different stakeholders directly affected by the proposed mining project in Xolobeni; the extent to which their human rights were violated; and the manner in which the Department of Mineral Resources (DMR) attempted to implement the Bill of Rights for sustainable development in Xolobeni.

The literature review has shown how environmental rights are intrinsically linked to human rights and how different authors have argued that the Bill of Rights, as enshrined in the Constitution, not only in South Africa, but worldwide, implies that every right begins with the protection of the environment and that for the success of economic growth and development policies every country has to ensure that development is sustainable and that the human rights of the communities affected are protected.

As it has been alluded to in the previous chapter, investigating and assessing the degree to which the Department of Mineral Resources tampered with the human rights of communities in Xolobeni and the response of these communities when they realized this violation is a daunting exercise as this involves touching into people's involvement in fighting a battle without any other resource than reliance on courts for justice in matters involving government departments and their violation of rights.

### **3.2 Focus of the Research Study**

The study investigates the variables or effects and implications of the "implementation of the Bill of Rights for Sustainable Development on Xolobeni Mining Project in the Mbizana Local Municipality, Eastern Cape, South Africa". These variables can either be incentives or obstacles faced by the residents in order to promote the social and economic development of the communities of Xolobeni.

### 3.3 The Scope of this Research

The scope of the study covers a wide range of Xolobeni community cultures, behavioural traits and wide resistance to imposed development.

#### 3.3.1 The Study Area

The study was carried out in the Mbizana Local Municipality which covers the major towns of Xolobeni communities. The figure 1 below shows in the districts in the Eastern Cape Province of South Africa where Xolobeni Mining Project is located.

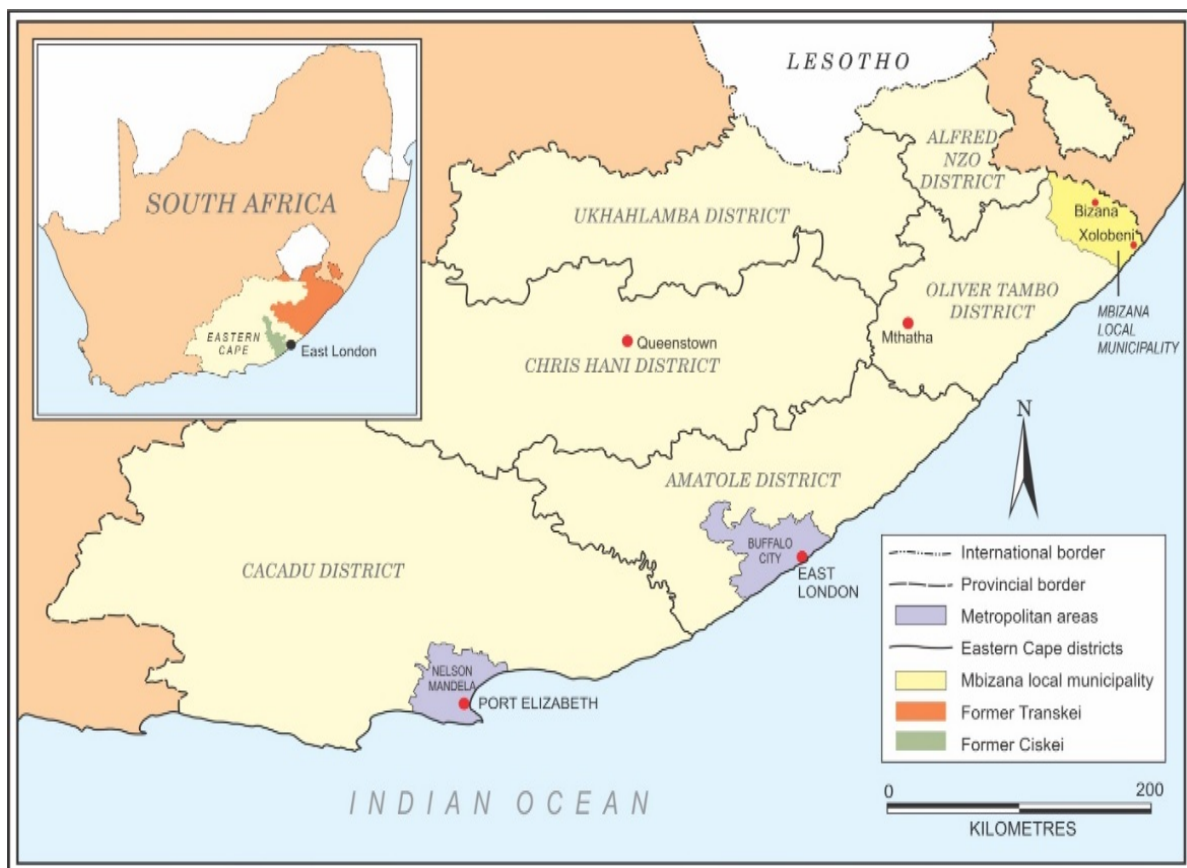


Figure 2: A Map showing districts in the Eastern Cape, South Africa

Below is a brief explanation on the background of the Study Areas in relation to Figure 1, map: Districts in the Eastern Cape Province of South Africa.

### *3.3.1.1 Brief Background of the Study Area*

This section focuses on the Xolobeni area and how the antagonists of the proposed mining project supported their claim that those who supported the mining project were not directly affected by the mining project due to the fact that they are located far from where the mining project is proposed. The Mpondos' previous experience in perishing imposed developments was noted earlier. This chapter gives a brief discussion of the study area and a brief explanation of political matters before and after 1994 when the Republic of South Africa became a democratic country.

To investigate and assess the degree to which the Department of Mineral Resources tampered with the human rights of communities in Xolobeni as well as the response of these communities when they noted that the violation is a daunting exercise as it involves reaching into people's difficult battle without any resources other than reliance on justice through the courts of law which must uphold the law and defend their rights also, when violated by government. It is on this note that this section also focuses on some of the controversial issues that caused pandemonium between the mining owners and communities of Xolobeni in the Mbizana Local Municipality.

The chapter also explains how the Eastern Cape Province was formed and how the homelands were incorporated into the new Province of the Eastern Cape. The reasons for the formation of new local and district municipalities and their roles in relation to the study area are encapsulated in this chapter. The roles of the National

Department of Mineral Resources (DMR) and the National Department of Environmental Affairs and Tourism in relation to mining are also highlighted in this chapter.

The last paragraphs of this chapter concern the population in terms of age distribution, unemployment levels, literacy levels, health care facilities, transport facilities and access to water in the context of Mbizana Local Municipality under which the Amadiba Tribal Authority falls. A brief history of the colonization of Mbizana and the former Transkei has also been included in order to provide a broader understanding of Xolobeni and its surrounding villages directly affected by the mining project.

### *3.3.1.2 The Incorporation of Transkei and Ciskei into the Eastern Cape Province*

Before 1994 the Eastern Cape Province incorporated two former homelands, Transkei and Ciskei, within overall borders (Bottaro, Visser and Worden, 2007). However, deep divisions between South Africa's indigenous people and those of European extraction dominated the history of South Africa. The Year 1994 marked the transition from an apartheid South Africa to the democratic Republic of South Africa.

Democracy in the Republic of South Africa necessitated transition from homelands to provinces. There are three spheres of government in South Africa. In 1994 the Transkei and Ciskei were incorporated into the Republic of South Africa and formed the Eastern Cape Province with one administrative capital in the Eastern Cape at Bhisho. The Eastern Cape is also regarded as one of the poorest provinces in South Africa. This is largely due to the poverty found in the area of the former homelands of Transkei and Ciskei, where subsistence agriculture predominates (White Paper on Local Government, 2011). These former homelands were known for their environmental friendly projects such as the Wild Coast. These projects attract interest not only in South Africa but also from foreign countries and in many cases they become hot spots for sustainable development.

Xolobeni is situated on a coastal strip approximately two hundred kilometres south of Durban. It is located between Mzamba and Mtentu Rivers, covering some 2 867 hectares of land. This land is rich in the production of vegetables, mielies and yams that are sometimes sold to the outside market. The area lacks water, electricity, roads, clinics, hospitals and high schools. There are few schools to serve the communities and children as young as six years walk kilometres to school. Most residents live in mud houses.

Communities in Xolobeni and the surrounding areas spend time cultivating the fields. Making use of the 2011 Mbizana Local Municipality's IDP, the paragraphs that follow discuss the population age distribution, unemployment levels, literacy levels,

health care facilities, transport facilities and access to water in Mbizana Local Municipality,

#### *3.3.1.3 Population Age Distribution in Mbizana Local Municipality*

The population in the Mbizana Local Municipality is very youthful with over two-thirds falling within the age group of 18-35 years. Mbizana's population has a large number of school-going children aged between five years and nineteen years. Mbizana Municipality is a rural municipality (98, 5%) with over 250 settlements that are mainly villages and just over 5% of its households residing in the urban centre and peri-urban areas of Bizana, Mzamba and the Wild Coast. Approximately 48% of the population in Mbizana Municipality is in the economically active age group of 15-64 years (Mbizana IDP Review, 2010/11).

#### *3.3.1.4 Unemployment Levels in Mbizana*

The unemployment rate in Mbizana Local Municipality is estimated to be 57, 2% (StatsSA, 2006). This situation is compounded by lack of efficiencies in the primary sectors like agriculture and mining in terms of their contributions to employment and growth in the local economy. Government and domestic services are the largest (55%) providers of current employment followed by wholesale/retail at 19% and financial services with 11% (StatsSA, 2006).

### *3.3.1.5 Literacy Levels in Mbizana*

Literacy (age 20, completed Grade 7 or higher) averages 48% compared to the provincial and national averages of 63% and 72%, respectively. About 17% of schools in Mbizana have access to electricity while approximately 31% have access to water. The majority of schools make use of pit latrines.

### *3.3.1.6 Health Care Facilities in Mbizana*

In terms of health care the area has two hospitals at Mbizana and Greenville and eighteen clinics. With regard to the spread of clinics and health facilities, the dispersed or scattered rural settlement pattern makes it extremely difficult to render an effective service (Department of Health, 2008). Many of the clinics have no doctors, insufficient medicines and inadequate equipment. The majority of the clinics in the rural areas have no access to telephone communication and electricity and there is poor water supply. The mobile clinics operate from the district hospitals usually on a weekly or bi-weekly basis.

### *3.3.1.7 Transport Facilities in Mbizana*

Access constraints play a major role in Mbizana, rural access roads being in a state of concern. The residents of rural settlements which include Xolobeni do not have transport to the clinics and hospitals. This therefore necessitates development in the area as suggested by the then Minister of the Department of Minerals and Energy during the announcement of the proposed mining project in Xolobeni. The

communities of this area either sacrifice their ancestral lands for development or continue to face the high levels of poverty.

### *3.3.1.8 Access to Water in Mbizana*

For water the area depends on windmills, boreholes, reservoirs, springs, hand pumps, weirs, dams and stock dams. About 89% of households depend on natural sources of water, namely, rivers and dams and people have to carry water to their houses. Except for the towns of Bizana, no sanitation is available in the area. Very few households have access to electricity or gas. Most households use candles and paraffin.

In 2008 the United Nations, through a project that was facilitated by the Eastern Cape Parks, identified the Wild Coast, under which Xolobeni falls, as an effective network of protected areas. The plans of the project included the removal of alien vegetation; implementation of fire management plans and eco-tourism activities for the area. Economically, the area had mineral resources of 313 million tonnes, at 5.4% heavy minerals with an ilmenite grade of 2.9% containing 16.9 million tonnes of heavy minerals (De Wet, 2009). This ranks Xolobeni as one the most important undeveloped strategic resources of heavy minerals in the world.

The South African Institute of Minerals estimates that the heavy minerals industry can be highly lucrative; its return on capital is the best in the mining industry. Translated into economic terms the global value of the titanium industry is thought to

be around \$7 billion. Titanium is primarily derived from ilmenite, and is used in laptops, paint, jet engines, artificial joints and spacecraft. Because of its high strength to weight ratio titanium is used to construct the chassis and other components of jets.

In order to understand the context in which environmental politics erupted in the area as a result of the proposed mining project, reference has been made to the area as the Amadiba local community. There is no history readily available on Xolobeni specifically as an area but the sub-topics outlined below indicate the richness of the ecosystem in the area based to the environmental concerns of the Amadiba Crisis Committee (ACC). The Amadiba local community includes the surrounding areas of Xolobeni (Sigidi, Mdatya and Kwayana) that were directly affected by the proposed mining project in the area (Figure 4, below).

The population age distribution, unemployment levels, literacy levels, health care facilities, transport facilities, access to water have been briefly discussed in the context of Mbizana Local Municipality under which the Amadiba Tribal Authority falls. A brief history of the colonisation of Mbizana and the former Transkei has also been included in this section in order to provide a broader understanding of Xolobeni and its surrounding villages that were directly affected by the mining project.



Figure 3. The Study Location - Xolobeni and the villages in proximity to the proposed dune fields

Pondoland has a rich cultural history (De Villiers & Costello (2006). The land in close vicinity to the coast has been sparsely settled for at least the past two thousand years. The reason for this is primarily the poor grazing and poor soils that make the area less attractive to resident Agri-pastoralists. Based on archaeological discoveries including shell middens and rock art, low-scale exploitation by hunter-gatherers has occurred throughout the Pondoland region for at least the past 150 000 years. The Khoisan people were widespread in the area until they were virtually wiped out in the late 1800s (De Villiers and Costello, 2006).

The Pondoland Marine Protected Area, (MPA) is situated along the Eastern Cape coast between Port Edward and Port St Johns (that is, Mzamba River to the Mzimvubu River). It stretches for 90 km along the coast and extends to the 1000m depth contour (10-15 km offshore) and thus includes an area of approximately 130 000 hectares (Mann, 2000). The area includes a rich diversity of marine and estuarine habitats and associated species, many of which are endemic to the south-east coast of southern Africa. The Pondoland Marine Protected Area (MPA) was proclaimed on 4 June 2004 in Government Notice No. 694, to form part of a larger network of MPAs in Southern Africa (Figure, below). The proclamation of this MPA contributes towards meeting the requirements of the World Summit for Sustainable Development (Mann, 2000).

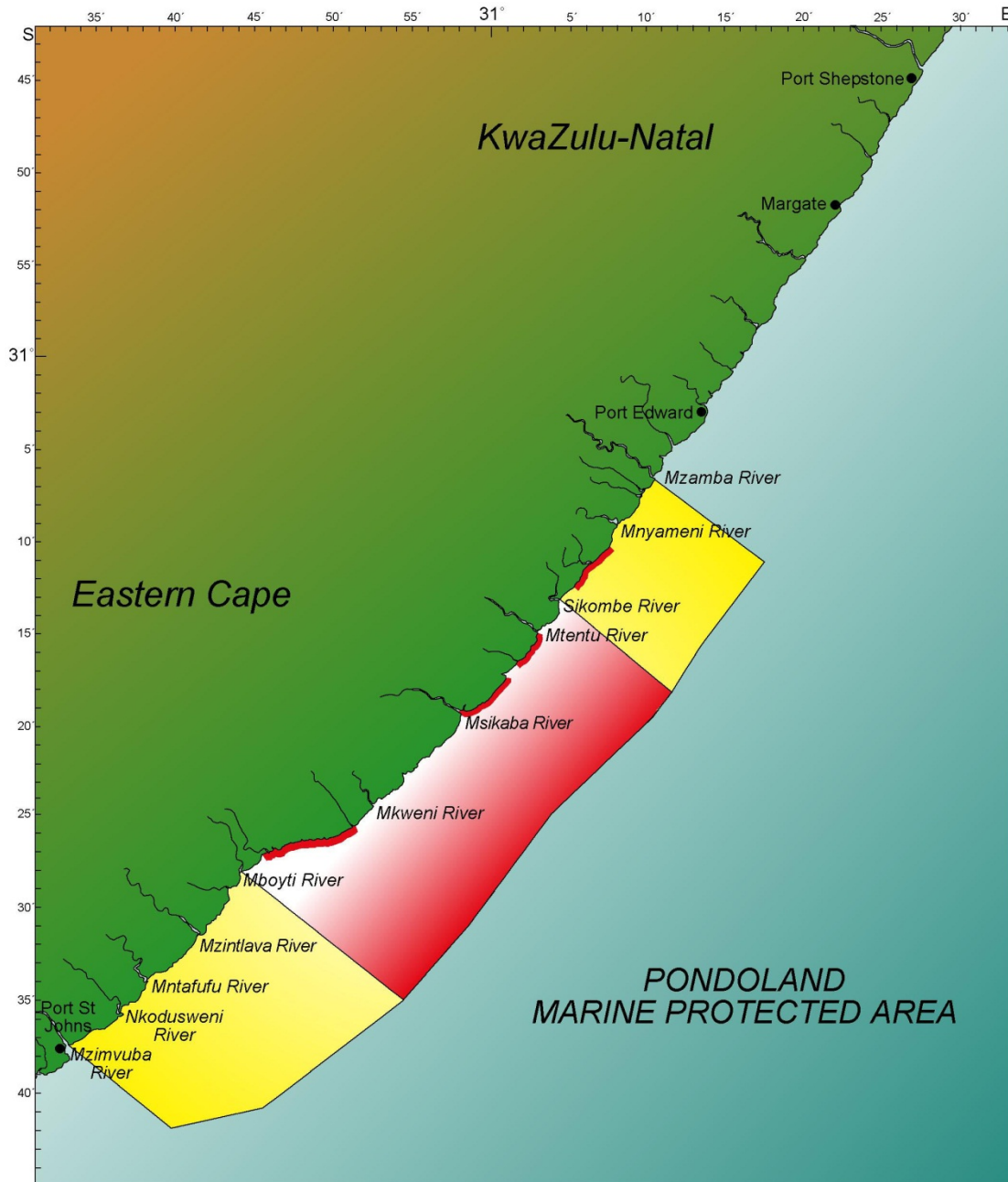


Figure 4. Map of the Pondoland Marine Protected Area. Source Eastern Parks and Tourism (2011)

There are 43 known estuaries in the Pondoland MPA with some of the larger, better known systems including (from north to south): Mzamba, Mpahlane, Mnyameni, Kwanyana, Sikhombe, Mtentu, Msikaba, Mkweni, Lupatana, Mkozi, Mbotyi, Mzintlava, Ntafufu, Nkodusweni and Mzimvubu (Bennie, 2010). These estuaries

range from small coastal streams to large permanently open tidal estuaries. Estuaries form an interface between the terrestrial drainage system and the sea and are thus susceptible to changes far inland.

The northern parts of the Pondoland coast near Mzamba and Mnyameni are characterised by outcroppings of Cretaceous Mzamba sediments which are rich in marine fossils. The coastline in this region consists mainly of sandy beaches with a few rocky outcrops (Department of Environmental Affairs and Tourism (DEAT), 2008). Further south and inland, the coast is dominated by marine-cut benches of the quartzitic Msikaba Sandstone Formation. In parts such as the Xolobeni area, between the Mzamba and Sikombe Rivers, these platforms are overlain by sand dunes of up to 80 m in height which form part of the Berea Red Sand Formation (De Villiers and Costello, 2006). These sands contain high concentrations of ilmenite and rutile which have sparked off mining interest and resulted in environmental politics in the area.

Mbizana is situated in Eastern Pondoland in the former Transkei of the Republic of South Africa. The area's history will briefly illustrate how Mbizana came to be part of Pondoland. People living in Pondoland are known as amaMpondo or Pundos. Mbizana Local Municipality is a Category B municipality situated within the Alfred Nzo District of the Eastern Cape Province. The Local Government Municipal Structures Act 117 of 1998 defines the Category B municipality as a municipality with a collective executive system combined with a ward participatory system. It includes

the main town of Mbizana and surrounding small towns such as Mount Frere, Mt Ayliff, Mzimvubu, Lusikisiki, Qumbu, Tabankulu, Qumbu, Tsolo, Libode and Port St Johns (Mbizana IDP, 2010-11).

Mbizana Local Municipality had an estimated population of 246 516 people in 2006, living in 46 730 households (StatsSA, 2006). This represents an estimated household average of five persons per household. The population density is estimated to be eighty four (84) persons per square kilometre. The first magistracy for this part of East Pondoland was established at Ntsingixi, 6km distant, in 1894 and later was moved to the present site of Mbizana (Standard Encyclopaedia, 1974).

The area of Mbizana was a victim of colonisation. Colonization started during the 1850s when the Mpondo state became a target for Natal's efforts to enlarge its borders. The arrival of missionaries in Pondoland facilitated colonisation. Missionaries were not the only Europeans to live and work within independent African states. Various white frontiersmen, some of whom were fugitives from the Cape, travelled overland among African people, trading luxury items like glass beads, cloth and firearms for local products such as cowhides, ostrich feathers and ivory (Stapleton, 2001). These frontiersmen were influential in the history of the Mpondo Kingdom.

Apartheid governments have allowed the Pondo Chiefs a much greater measure of control over the tribal structure than elsewhere. Missionaries, most of them from the Wesleyan Church, exercised great influence over the principal Chiefs. Chiefs' sons, the heirs to chieftainship, were trained at the homes of the white missionaries, many living with them as members of their families. On the completion of their apprenticeship, they returned to their people, bringing vigour and a new approach to the conduct of chieftainship (Mbeki, 1964).

### *3.3.1.9 The Environmental Impact Assessment and Human Rights Claim in*

#### *Xolobeni*

Environmental Impact Assessment (EIA) lies at the heart of the contestation about rights that erupted in the face of the Xolobeni mining development project. The Australian mining company, Transworld Energy and Minerals (TEM) failed to adequately meet the requirements of the EIA, a tool that was to be used to ensure sustainable development and environmental protection in the area. This triggered claims that the human rights of the communities opposed to the mining project were violated.

This attracted the interests of various actors involved in this proposed mining development project. Communities in Xolobeni and the surrounding areas believed that their rights were being violated when the then Minister of Minerals and Energy, Buyelwa Sonjica, wanted to forcefully impose the so-called development through mining in the area, with little regard to their needs and those of future generations.

Reference in this chapter is made to the manner in which environmental impact assessment has played a role in ensuring sustainable development globally and in Southern Africa. Environmental Impact Assessment is a tool that is used in South Africa through the Minerals and Petroleum Resources Development Act 28 of 2002 to ensure sustainable development and maximum participation of communities in all development projects that take place.

TEM believed in the coexistence of the mining project along with an existing tourism project that was declared through the Pondoland National Park and that was planned to raise the profile of the ecotourism potential of Xolobeni. The South African National Parks Agency (SANPARKS) assumed overall responsibility for this national conservation area. The National Department of Environmental Affairs and Tourism (DEAT) was the main driver of this initiative (De Wet, 2009).

The role of the National DEAT is that of ensuring compliance with legislation, namely, NEMA and other related legislation. It is on this strength that the Department of Minerals and Energy (DME), as the relevant authority to authorise the mining development in Xolobeni, requested the National DEAT to comment on the EIA/EMP report that TEM submitted to the DME. This was in compliance with the processes described in the processes in the Minerals and Energy Act 28 of 2002.

National departments that sometimes use the fact that their laws supersede those of the provinces find themselves on occasion in a court of law to settle a dispute (Fuggle and Rabie, 2009). Even if national departments have the right to pass laws, communities must be properly consulted to avoid unnecessary conflict between them and the State. Proper consultation is necessitated by the fact that communities have rights which must be respected as these rights are entrenched in the Bill of Rights. The issues highlighted by the Amadiba Crisis Committee (ACC), the group opposed to mining in the area and the Xolobeni Local Communities (Xolco), included lack of consultation, sustainable development versus environmental protection, concerns for ancestral land and future generations.

These issues are by no means unique. Both within the country and internationally there are examples of the same challenges in cases in which mining has been proposed as the preferred development path. Such cases are gaining prominence in international development discourse, which is moving towards the promotion of good governance in the natural resource sector (South African Institute of International Affairs, 2011). The importance of this global shift is underpinned by the recognition that mineral resources, when governed optimally, have the potential to uplift the often-depressed economies of developing countries and thereby contribute positively to economic growth and human development (De Wet, 2009).

Public policy has been largely concerned with economic growth because increased national incomes translate into increased household incomes and hence increased

standards of living. By 1992, as reflected by the global interest in the Biodiversity Convention in Rio de Janeiro, public policies started to take sustainability issues into account (Fuggle and Rabie, 2009).

The Economic Commission for Africa (ECA), through its Sustainable Development Division (SDD), has been involved in the promotion of a number of policy instruments and analytical tools aimed at demonstrating the linkages and enhancing the integration of the different dimensions of sustainable development (Lafferty, 2003). Sustainable development has become one of the most popular concepts in the evolution of ideas about managing the environment. Sustainable development would serve to prevent the polarisation of development and environmental protection, and would demonstrate these interests to be reconcilable.

The bottom line to economic growth is that various commercial and governmental practices cannot be sustained and that if these practices are continued, countries face a wide range of catastrophes – not just for members of species but for the life on the planet (Van de Veer and Pierce, 2003). Van de Veer and Pierce (2003) further argue that controversy swirls around whether these practices – typically defended in the name of economic growth should be altered and constrained.

It is a fact that when mining companies approach governments for the purpose of mining or extraction of mineral resources, governments see this as an investment

that benefits their countries in terms of contributing to their gross domestic product (GDP), of course at the expense of communities where these mineral resources are to be extracted. Campbell confirms this when he says that countries with economies dependent on one or a few primary commodities, particularly high-value resources such as oil and other minerals, are often poor and have weak and less accountable governance systems.

Environmental Impact Assessment (EIA) is also being promoted as a policy instrument for integrating environment and development issues at all levels and for achieving sustainable development (DEAT, 1997). The purpose of environmental impact assessment is to provide information for decision-making on the environmental consequences of proposed actions and to provide environmentally sound and sustainable development through the identification of appropriate enhancement and mitigation measures. Environmental Impact Assessments are also important to ensure that biodiversity concerns are included in public consultation exercises for the proposed development (Gallagher and Werksman, 2002).

The 1997 South Africa's White Paper on Environmental Management Policy states clearly that should an economically viable ore body be discovered in a sensitive area, approval to mine should be subjected to a full environmental impact assessment provided for in the Minerals and Petroleum Resources Development Act 28 of 2002. The EIA is a step within the Integrated Environmental Management

procedure to ensure that potential impacts on biodiversity are assessed and reflected in the planning processes.

The limitation or shortcoming of the EIA is that it is conducted after the prospecting right has been awarded for the development project but the mining licence cannot be issued before the EIA requirements are met. The Department of Minerals and Energy (DME) is mandated to administer the MPRDA and other applicable legislation to ensure the granting of prospecting and mining rights in terms of the Act; to promote mineral development including urban renewal, rural development and economic empowerment; address past legacies with regard to derelict and ownerless mines and enforce legislation regarding mine rehabilitation by means of regulated environmental management plans; and to coordinate and liaise with national, provincial and local government structures for efficient governance.

The purpose of the DME's mandate, as stated in the 1997 South Africa's White Paper on Environmental Management Policy, is to provide equitable access to and sustainable development of the nation's mineral and petroleum resources and to address matters related to this; to impose royalties on the extraction of South Africa's mineral and petroleum resources; and to prescribe the administration procedures in respect of mineral royalties imposed by the MPRDA.

A mineral royalty is an instrument that provides that owners of mineral resources be compensated for the depletion of their non-renewable resources by the mining companies. Human rights violation begins and ends with the question of who is the owner of the land where these mineral resources are? Who is going to suffer the consequences of mining, given that both the State and the nation are custodians of the mineral resources?

Section 63 of the National Environmental Management Act 107 of 1998 requires that the National Department of Environmental Affairs and Tourism as the competent authority that ensures compliance with legislation take into account additional criteria before the DME, as the licence awarding authority, can grant an environmental authorisation in terms of the Act for activities located in the coastal zones. The DEAT has, as its core business, a responsibility to market South Africa as tourism destination of choice. The South African National Biodiversity Institute is an institute under the DEAT and its core mandate is to monitor biodiversity in South Africa by running rehabilitation programmes that systematically target threatened ecosystems. The DEAT supports the same goals.

The Provincial Department of Economic Development and Environmental Affairs (DEDEA) is the relevant authority to handle all applications in this regard. TEM, in its EIA report submitted to the DME which was subsequently channelled to the above departments for comments, could not meet the requirements, resulting in the delay

on the part of the Department of Minerals and Energy to authorise the mining of sand dunes in Xolobeni.

The State has certain priorities which include poverty alleviation, sustainable development of its economy and social development of its people. The eradication of poverty is an indispensable requirement for sustainable development. At the same time, pronounced income and wealth inequality impedes sustainable development so as to distort the utilisation of society's productive resources, frustrate the growth potential of a country and jeopardise the sustainability of environmental wellbeing (South Africa Human Development Report, 2003).

To balance these priorities with the needs of communities and those of future generations remains a challenge to most governments. Over and above these challenges, the politics surrounding these issues not only involve the State and communities directly affected, but also other interested and affected parties. Interested and affected parties participate in order to make a contribution, to obtain a benefit or to be an observer. These parties' contributions are to either protect or promote something (NEMA, Act 107 of 1998).

The United Nations Conference on Human Environment resulted in the creation of the United Nations Environmental Programme (UNEP) as the leading global environmental authority. The mission of UNEP is to provide leadership and

encourage partnerships in caring for the environment by inspiring, informing and enabling nations and peoples to improve their quality of life without compromising that of future generations (Fuggle and Rabie, 2009).

The International Union for the Conservation of Nature (IUCN) was founded in 1948 to influence and assist societies in conserving the diversity of nature and to ensure the sustainable and equitable use of natural resources. The Union created a conservation network which comprises one hundred and ten (110) governments, almost 1 000 non-governmental organisations (NGOs) and some 10 000 scientists and experts from 181 countries (Fuggle and Rabie, 2009). This was followed by a number of unions and conferences that were determined to form a coalition towards the protection and conservation of the environment.

Many countries depend on one or just a few primary commodities, particularly high-value resources such as oil and coal. The poverty that dominates in some countries and their desperate need for foreign currency caused protection of the environment to frequently lose out to development, where these were in competition (Bennie, 2010). The section that follows discusses issues of environmental politics, sustainable development and environmental protection in the regional context and also points out how development becomes sustainable when the environmental impact assessment tool is in place and properly monitored.

### *3.3.1.10 Environmental Impact Assessment (EIA) and the SADC Region*

Bryant and Bailey, (1997) contend that the world is wracked by environmental crises but the question is whose crises are they? The question focuses attention squarely on issues of social, cultural, political and economic causality. The SADC region is also affected by environmental issues. This means that efforts must be made to ensure that environmental issues are considered when economic development policies are formulated and implemented. The best tool to ensure that economic development policies are implemented is the environmental impact assessment. Based on the apparent environmental degradation emanating from economic activities, the SADC region proposed to harmonise the EIA process (Kibbassa, 2009). It is envisaged that the EIA would compel decision makers to assess and defend their choices in terms of economic, social and environmental sustainability.

SADC has also developed a document on the Policy for Sustainable Development towards equity-led growth and sustainable development in Southern Africa. The gist of the policy is that EIAs should contain clear methodologies for ensuring participation of all stakeholders especially local communities. The Policy for Sustainable Development also states clearly that EIAs shall be a mandatory requirement to ensure that environmental concerns receive due and balanced consideration in reconciling urgent development needs and long-term sustainability before a final decision is made (Fuggle and Rabie, 2009). Environmental politics encompasses all these concepts.

At the regional level, the Southern African Development Community (SADC) commits itself to implementing norms set at global, regional or sub-regional level. African countries, to varying degrees, have also undertaken initiatives and actions to include the formulation of policies, enactment of legislation and establishment of institutional frameworks for EIA. Further, a number of Southern African countries have adopted country-specific regulations, procedures and sectoral guidelines for key sectors of the economy (Kibbassa, 2009). Some degree of awareness and capacity has been built and the process is gradually becoming more integrative and inclusive.

#### *3.3.1.11 Environmental Impact Assessment (EIA) in South Africa*

This section, while it discusses the concept of EIAs, also discusses human health in environmental assessment because NEMA emphasises that people should be put in the centre of development. Human health goes beyond placing people at the centre of development. Environmental Impact Assessment (EIA), in conjunction with the Constitution, Act 108 of 1996 and the National Environmental Management Act 107 of 1998 have been used as a tool to ensure that sustainable development goals are achieved in terms of sustaining the environment.

The purpose of EIAs is to ensure informed decision-making on the environmental consequences of proposed actions and to promote environmentally sound and sustainable development through the identification of appropriate enhancement and mitigation measures (Ayre and Callway, 2005). At the global level, Agenda 21

emphasises the importance of integrated environment and development decision-making and promotes the use of EIA and other policy instruments for this purpose. South Africa aligns itself with Agenda 21 in Chapter 1 of NEMA.

During the Year 2006, the National Department of Environmental Affairs and Tourism (DEAT) released the Regulations in Terms of Chapter 5 of the National Environment Management Act 107 of 1998 which served to regulate the relevant processes for activities requiring environmental authorisation, for the purposes of fulfilling the obligations for environmental impact assessment as required by NEMA (Fuggle and Rabie, 2009). The Regulations outline the steps to be taken by impact assessment practitioners.

One of those is that notices must be provided to potential interested and affected parties through notice boards placed conspicuously within the area where the activity is to take place through newspaper advertisements. Written notice must also be given to the owners or occupiers of land adjacent to the proposed activity. Fuggle and Rabie (2009) further mention that NEMA includes the Environmental Management Plan which any party planning to engage in activities that affect the environment, such as mining, must compile for the purpose of assessing the environmental, cultural, social and economic impact of development projects. The Environmental Impact Assessment also serves as a means to introduce environmental considerations into project planning processes.

The Minister of the Department of Mineral Resources (DMR), being the custodian of mining licences, after having satisfied him/herself of the contents of the EIA, will then award the mining licence to the applicant. The Department of Mineral Resources (DMR) is the only government department that has power to award prospecting rights and mining licences to mining companies. In the case of Xolobeni, the Eastern Cape Province's Portfolio Committee on Environmental Affairs felt that the Department of Minerals and Energy side-lined it in the process of awarding the prospecting licence to Transworld Minerals and Energy (TEM). Xolco, the group that supported the mining project in Xolobeni alleged that the Minister of Minerals and Energy, Susan Shabangu, rescinded the mining licences because some of the steps in the EIA process were not followed.

In the South African context and in much of the developing world, assessing human health effects is made more complex by the general health status of the population, the prevalence of diseases such as tuberculosis and HIV/AIDs and in many cases inadequate access to primary healthcare (Fuggle and Rabie, 2009). The South African Constitution as aligned with Principle 1 of the Rio Declaration on Environment and Development, states clearly that everyone has the right to an environment that is not harmful to their health and well-being. At the centre of this statement is the right of people to have an environment that is protected for the benefit of present and future generations. Environment and human health and well-being are to be understood in the context of sustainable development (Chapter 2, Constitution 108 of 1996).

The National Environmental Management Act 107 of 1998 articulates several principles. Principles 2 and 3 state that environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably. Principle 3 maintains that development must be socially, environmentally and economically sustainable.

The environment is a functional area of concurrent national and provincial legislative competence, and all spheres of government and all organs of state must cooperate with, consult and support one another. Moreover, at all levels government decisions should follow upon and consider the inputs of those who are affected by them. Community participation is the creation of opportunities to enable all members of a community to actively contribute to and influence the development process and to share equitably in the fruits of development (United Nations, 2002).

Section 4(f) of NEMA also provides that participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.

Section 4(o) of the National Environmental Management Act 107 of 1998 protects communities in that the environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage. Durand et al. (2008) argue that attempts of government departments to engage mining companies in the rehabilitation of the environment have been frustrated because of their refusal to take responsibility for acid mine drainage and other environmental and health problems associated with mining.

Before and during the apartheid era the government of the day nurtured its relationship with the mining industry, which benefited both parties (Durand et al., 2008). Both parties benefited economically from this relationship, while the government turned a blind eye to the environmentally and socially harmful practices of the mines. Durand et al. (2008) further argue that mining companies have held their production costs artificially low by opting for deflection of certain costs such as the rehabilitation of the environment and social welfare to the state and third parties. Many gold mines were abandoned before the full environmental and socio-economic impacts caused by them became evident. Mining companies responsible for causing damage to the environment have ceased to operate, or no longer exist and cannot be compelled to remedy these impacts.

### **3.4 The Study Unit**

The study focuses on the field of Public Administration, covering the Mbizana Local Municipality, Eastern Cape, South Africa. The implementation of the Bill of Rights for Sustainable Development by the Department of Mineral Resources (DMR) in other municipalities in South Africa were omitted in order to reduce variability of units under study. The following section discusses the research design.

### **3.5 THE RESEARCH DESIGN**

It is important to note that, as Cohen, Manion & Morrison, (2008) suggest, planning the research methodology necessitates clarity and distinction to be made between methodology and methods, approaches and instruments, styles of research and ways of collecting data. Wisker, (2008) also confirmed that methodology is the rationale supporting the choice of methods and is based on a researcher's world view. The continuum of beliefs that underpin and inform the chosen methodologies, and therefore the methods and interpretation of data, ranges from perceiving the world to be fixed and knowable (positivism) or constructed (constructivism). This study therefore employed both qualitative and quantitative research methodologies.

Nyamongo and Ryan (2001) argue that the strength of qualitative research is its ability to provide complex textual descriptions of how people experience a given research issue. It provides information about the human side of an issue – that is, the often contradictory behaviours, beliefs, emotions, and relationships of individuals.

Qualitative methods are effective in identifying intangible factors, such as social norms, socio-economic status, gender roles, ethnicity, and religion, whose role in the research issue may not be readily apparent. When used along with quantitative methods, qualitative research can help us to interpret and better understand the complex reality of a given situation and the implications of quantitative data (Bernard, 1995).

Researchers may combine both methodologies (qualitative and quantitative) because the results of qualitative research can be measured to some extent in quantitative data and that responses in a questionnaire or survey can be set against the results achieved and the number produced can be quantified (Wisker, 2008). However, qualitative research explores the richness, depth, and complexity of phenomena and is interested in how individuals understand themselves and make meaning out of their world (McBurney, White 2007). Qualitative research methodology is carried out when researchers wish to understand meanings, interpretations, and/or to look at, describe and understand experience, ideas, beliefs and values – intangibles such as these (Wisker 2008).

Furthermore, Wisker (2008) believes scientific is not only relevant for an investigation that seeks answers to questions systematically but also uses a predefined set of procedures to answer the question; collects evidence; produces findings that were not determined in advance and lastly produces findings that are applicable beyond the immediate boundaries of the study. As Riccucci, (2010) suggests that the use of triangulation or mixed methods has become increasingly

popular in public administration because it combines the benefits of qualitative and quantitative methods, triangulation will also form part of this research.

Relying on a combination of data types (triangulation) increases validity as the strength of one approach can compensate for the weaknesses of another approach. By this she (Ricucci, 2010) makes the point that there is more insight to be gained from the combination of both qualitative and quantitative research than either form by itself. Their combined use provides an expanded understanding of research problems. Some authors (Ehrlich and Joubert, 2007) have questioned the utility of mixed methods, given that this approach blends together the underlying assumptions of divergent epistemic traditions.

Mixed methods are appropriate and should be relied upon for public administration research (Zhang and Holzer, 2008). These authors point out that some camps will continue to argue that the use of quantitative and qualitative paradigms are incompatible due to their mutually exclusive epistemological and ontological assumptions – therefore using different methods will lead to essentially different observations of the same phenomenon.

Gadgett (1998) concurs with the above mentioned authors when he cites the importance of triangulation in qualitative research as the convergence of multiple perspectives that can provide greater confidence that what is being targeted is being accurately captured. Triangulation, Gadgett argues, helps to collect information in different ways and the means through which data is collected has an effect on the

findings. Thus the concept of triangulation is sometimes used to designate a conscious combination of quantitative and qualitative methodology, but the key to triangulation is to see the same thing from different perspectives and thus to be able to confirm or challenge the findings of one method with those from another (Laws *et al.*, 2003).

The concept of triangulation is sometimes used to designate a conscious combination of quantitative and qualitative methodology, but the key to triangulation is to see the same thing from different perspectives and thus to be able to confirm or challenge the findings of one method with those from another (Laws *et al.*, 2003). Triangulation allows researchers to be more confident of their results. This is the overall strength of the multi-method design. Triangulation can play many other constructive roles as well. It may stimulate the creation inventive methods and new ways of capturing a problem, to balance with conventional data-collection methods (Strydom and King, 2009).

The quantitative and qualitative research methods will support each other and enhance the credibility of this research and it is on this note that the researcher of this research work therefore concurs with these authors (Yang *et al.*, 2008) when they say that public administration may benefit greatly from more conscious efforts to apply multiple paradigms in a research project.

This research used the constructivism paradigm because this paradigm is concerned with generating theories, uses small samples, data are rich and subjective, produces

qualitative data, reliability is low, and validity is high and generalizes from one setting to another. This paradigm better describes this study, since from it, flows the design and methods to be used, the data analysis and its validity or reliability. Based on similar beliefs as interpretivism, believes that human beings construct knowledge and meaning from experience and from relationships between things, people, events.

The use of multiple research design strategies increases the depth of understanding an investigation (Berg, 2004). Berg, (2004) further argues that the decision to discuss field research strategies under the broad umbrella of ethnography ensures inclusion of a wide combination of elements such as direct observation, various types of interviewing, listening, document analysis and ethno-methodological experimentation. This study will adopt aspects of ethnography to interview people who are most knowledgeable about their culture. The instruments or methods that inform the methodology employed and discusses underneath as follows:-

### **3.5.1 Philosophical Discourse on Positivism and Interpretivism**

Hennink, Hutter and Bailey, (2011) believe that a primary focus of qualitative research is to understand behavior, perceptions or experiences. However, understanding can be viewed from two different perspectives: from that of the researcher using their own frame of reference on the issues, which is referred to an understanding; and from those of the study population by identifying their perspectives on the research issues, which is referred to as *Verstehen*. The concept

of *Verstehen* is central to qualitative research as it means 'studying people's lived experiences which occur in a specific historical and social context (Hennink et al., 2011). It refers to understanding the life of the people whom you study from their own perspective, in their own context and describing this using their own words and concepts.

Ritchie and Lewis, (2003) suggest that social research should explore 'lived experiences' in order to reveal the connections between the social, cultural and historical aspects of people's lives and to see the context in which particular actions take place. However, Max Weber in Ritchie and Lewis (2003) rather than taking a strictly interpretivist stance, tried to build a bridge between interpretivist and positivist approaches. He believed that an analysis of material conditions (as would be undertaken by those using a positivist approach) was important, but not sufficient for a full understanding of people's lives. Instead, he emphasized that the researcher must understand the meaning of social actions within the context of the material conditions in which people live.

Max Weber distinguishes two types of understanding: direct observational understanding and explanatory or motivational understanding because he noted that there is a key difference in the purpose of understanding in the natural and in the social sciences. In the natural sciences, the purpose is to produce law-like propositions whereas in the social sciences, the aim is to understand subjectively meaningful experiences. Ritchie and Lewis, (2003) agree with Max Weber when

they argue that the school of thought that stresses the importance of interpretation as well as observation in understanding the social world is known as 'interpretivism' which has been seen as integral to the qualitative tradition.

The interrelatedness of different aspects of people's lives is a very important focus of qualitative research and psychological, social, historical and cultural factors are all recognized as playing an important part in shaping people's understanding of their world (Henning, 2004). Qualitative research practice has reflected this in the use of methods which attempt to provide a holistic understanding of research participants' views and actions in the context of their lives overall (Henning, 2004)

It is important to note that both paradigms have faced criticism from different philosophers because of the divergent views they hold. Positivists assume that reality is fixed, directly measurable, and knowable and that there is just one truth, one external reality (Neuman, 2011). According to Neuman many people ask whether the social sciences are real sciences like the natural sciences e.g. physics, chemistry and biology. The meaning of science significantly shapes how we do social scientific research.

One thing is clear, Neuman continues: the many studies in the sociology and philosophy of science tell us that the practice and meaning of social science are more nuanced and complex than what most people think. Moreover, the modern

philosophy of science does not destroy sociological science; it does not say that science is impossible, but gives us a more flexible picture of what science is. In the same vein Hennink, Hutter and Bailey, (2011) maintain that positivism is often criticized for its assumptions about objective measurement which essentially separates the researcher from the researched and fails to acknowledge the interactive and constructive nature of data collections. Furthermore, this minimization of subjective perspectives has potentially 'produced research with human respondents that ignores their humanness' and positivism does not account for the contextual influences on people's lives, focusing only on capturing facts.

Creswell, (2014) argues that knowledge in the positivist world view is conjectural and anti-foundational in that absolute truth can never be found and thus evidence established in research is always imperfect and fallible. Being objective is an essential aspect of competent inquiry: researchers must examine methods and conclusions for bias. For example, standard of validity and reliability are important in quantitative research. Research, he maintains, seeks to develop relevant, true statements, ones that can serve to explain the situation of concern or that describe the causal relationships of interests. In quantitative studies, researchers advance the relationship among variables and pose this in terms of questions and hypothesis.

Hennink et al., (2011) argue that the interpretive paradigm emerged largely in response to the drawbacks of positivism and has several distinguishing features. The interpretive aspect means that the approach seeks to understand people's lived

experience from the perspective of people themselves, which is often referred to as the '*emic*' or the 'inside' perspective. This involves studying the subjective meaning that people attach to their experiences; so rather than focusing on facts (as in the positivist paradigm) qualitative researchers seek to understand subjective meaningful experiences and the meaning of social actions within the context in which people live.

The interpretive paradigm therefore emphasizes the importance of interpretation and observation in understanding the social world, which is an integral component of qualitative research. Furthermore, Hennink *et al* continue: the interpretive paradigm recognizes that reality is socially constructed as people's experiences occur within social, cultural, historical or personal contexts. The interpretive approach recognizes the importance of these broader contexts on people's lives and questions whether the behavior of people can really be studied outside the context in which they live.

Finally, the interpretive paradigm acknowledges that people's perceptions and experiences of reality are subjective; therefore there can be multiple perspectives on reality, rather than a single truth as proposed in positivism. It is also important to note that the interpretive paradigm also questions the notion that research is truly value-free, and that researchers have no influence on data collection or interpretation; instead, it highlights the inherent subjectivity of humans, both as study participants and researchers, and acknowledges that the background and values of a researcher do influence the creation of research data.

This is not to suggest that the interpretive and positivist paradigms appear complete opposites; the divergence between the two paradigms is not always as distinct as it may appear (Hennink et al., 2011). Creswell, (2014) attests to this when he says that the two approaches are not as discrete as may at first appear and qualitative and quantitative approaches should not be viewed as rigid, distinct categories, polar opposites, or dichotomies.

Instead, they represent different ends on a continuum because a study tends to be more qualitative than quantitative or vice versa. Mixed methods research, Creswell says, resides in the middle of this continuum because it incorporates elements of both qualitative and quantitative approaches, the idea being that all methods have bias and weaknesses, so that the collection of both quantitative and qualitative data neutralizes the weaknesses of the two kinds of data.

Triangulating data sources (also adopted in this study) – a means for seeking convergence across qualitative and quantitative methods also helps. Moreover, by the early 1990s, mixed methods turned toward the systematic convergence of quantitative and qualitative databases, and the idea of integration in different types of research design emerged (Creswell, 2014).

Creswell, (2014) states that mixed methods research is an approach to inquiry involving the collection of both quantitative and qualitative data, integrating the two

forms of data, and using distinct designs that may involve philosophical assumptions and theoretical frameworks. Moreover, the core assumption of this form of inquiry is that the combination of qualitative and quantitative approaches provides a more complete understanding of a research problem than either approach by itself.

This study also uses triangulation as triangulation is one of the methods that form part of qualitative research data collection as qualitative researchers want to make sense of feelings, experiences, social situations, or phenomena as they occur in the real world, and therefore want to study them in their natural setting (Terre Blanche, Durrheim and Painter, 2012). Terre Blanche *et al* maintain that triangulation entails collecting material in as many different ways and from as many diverse sources as possible. This can help researchers to 'home in' on a better understanding of a phenomenon by approaching it from several different angles.

Qualitative research focuses on understanding social phenomena and providing rich verbal descriptions of settings, situations, and participants and that the qualitative approach includes a number of different methods. Therefore the next section explains the techniques that were employed to find answers to the questions that were asked in this research in some detail.

### **3.6. METHODOLOGICAL APPROACH TO THE STUDY**

The aim of the study conducted was to examine the effects and implications of the implementation of Bill of Rights for Sustainable Development and how its impact on Xolobeni Mining Project affects the Mbizana Local Municipality in the Eastern Cape Province of South Africa. The objectivities in conducting this research was to find out” the opinions of the residents on the implementation of Bill of Rights concerning the proposes Xolobeni mining project in the Mbizana Local Municipality in order to make recommendations to the municipality on how to improve the quality of lives of the people in the communities.

#### **3.6.1 Ethnographhy**

According to Ary, Jacobs and Sorensen (2010), ethnography (sometimes called field research) is an in-depth study of naturally-occurring behaviour within a culture or social group. Xolobeni is currently one of opposition between the two divergent groups. This research uses ethnography to observe group behaviour as it occurs naturally in the setting, without any simulation or imposed structure. Ary et al., (2010) mention that in the social science ethnography requires a variety of data-gathering procedures, such as prolonged observation of the setting, interviewing members of the culture and studying documents and artefacts so that researchers can interpret the data in the context of the situation in which they gathered the data.

### 3.7 POPULATION AND SAMPLING

According to Neuman (2011), population is the entire set of objects and events of group of people, which is the object of research and about which the researcher wants to determine some characteristics. Many authors including Joubert and Ehrlich, (2010) have questioned the necessity of interviewing everyone in the study population for the purposes of investigating a subject matter and suggest that it would be too cumbersome, expensive and well-nigh impossible. Besides not being practical, it is not necessary to study all individuals in the study population – rather a sample (subset or subgroup) of individuals can be studied closely, ensuring that good quality information is obtained. If done properly, sampling is more cost-efficient in getting the information we want than by studying everyone.

Sampling is the process of selecting a few (a sample) from a bigger group (the population) to become the basis for estimating or predicting the prevalence of an unknown piece of information, situation or outcome regarding the bigger group. A sample is a subgroup of the population one is interested in (Kumar, 2012). In order to capture the views of the communities of Xolobeni, this study employed convenience non-probability sampling to select some of the member of the communities which include the gender, young and old people and also considering some variables such as their disposable income as it was envisaged that all communities were directly or indirectly affected by the proposed mining project in the

area. Babbie (2008) defines sampling as the process by which some elements of a given population are selected as representative of the target population.

According to Bartlett, Kotrlik and Higgins (2001) a researcher decides the sample size based on many factors such as time available, budget and degree of precision. However, the minimum sample size for any given population is 100 (Sudman, 1970). Therefore, taking this into consideration, ninety (90) participants were taken as a sample size for this study. In order to capture the views of the communities of Xolobeni, this study used a sample size that served as representatives of all these communities (young and old, gender and disposable income) as it is assumed that all these communities are directly or indirectly affected by the proposed mining project in Xolobeni. The target population of ninety participants therefore were included as a representation of all those who are involved in this mining project and were also included with interests in the proposed mining project. The area is highly rural and therefore, the researcher met participants who are illiterate – the intention is to include all such participants in the study.

The sample of about ninety (90) participants therefore included a representation of all those who were involved in this mining project and those who had different interests in the proposed mining project. As the area is highly rural, it was expected that the researcher would meet participants who are illiterate – and such participants were meant to participate in the study.

### **3.7.1 Sampling Technique**

According to Cooper and Schindler (1998) in order to secure sample, it is important to consider elements such as population, sampling frame, type of sample, size needed and the cost involved. This study used the convenience sampling technique to select the respondents for this research project. The reason of using this technique is that the researcher could not find the data base of the mining workers in the study area and as the period of conducting this research, there was on-going conflicts between the mining owners, mining owners and the communities of Xolobeni in the Mbizana Local Municipality, Eastern Cape Province of South Africa.

Convenience sampling is used when members of the population are chosen based on their relative ease of access. According to Kalof, Dan and Dietz (2008:45) convenience sampling is non-probability sampling technique where subjects are selected because of their convenient accessibility and proximity to the researcher.

### **3.7.2 Methods of Data Collection**

In this study, the data were collected through self-administrative questionnaire and personal interview. Questionnaires were distributed to a selected representative sample of communities of Xolobeni in the Mbizana Local Municipality. A questionnaire is a written document containing a set of questions and other type of items designed to solicit information appropriate for analysis and is usually answered by the respondents (Babbie, 2010).

### 3.7.2.1 Surveys

Surveys were used in this research in order to see issues in the mining project in Xolobeni comprehensively and in detail (Denscombe, 2001). Denscombe also maintains that surveys cover a wide and inclusive range of data and assists in bringing things up to date. Surveys, as alluded to in the previous chapter, usually relate to the present state of affairs and involve an attempt to provide a snapshot of how things are at the specific time at which the data are collected. In the sense that to 'survey' carries with it the meaning 'to look', survey work inevitably brings with it the idea of empirical research. It involves the idea of getting out of the chair, going out of the office and purposefully seeking the necessary information out there.

Furthermore, Denscombe (2001) argues that surveys are associated with getting information 'straight from the horses' mouth', and more than this, the research is purposeful and structured. As a consequence, survey research tends to focus on data more than theory – although, of course, good survey research is not entirely devoid of theory. It is a matter of emphasis. Although survey comes in a wide variety of forms, this research used questionnaires that were distributed to the targeted stakeholders during data collection period. Survey questions were divided into two basic categories: open-ended and closed-ended. An open-ended question permits the respondents to answer in their own words whilst a closed-ended question limits the respondents to alternatives determined in advance by the questionnaire's designers.

The open-ended question permits respondents to answer more completely and to reveal the reasoning behind their answers. Using open-ended questions makes it more likely that the questionnaire will discover something not anticipated by its designers (McBurney and White, 2007). Surveys are a widely used method of gathering scientific information. Often the purpose of a survey is simply to determine how people feel about a particular issue and may attempt to find out the effect of some event on people's behaviour. In addition, surveys provide an opportunity to examine correlations among the participants' responses and to look for possible patterns of cause and effect. A major function of surveys is to dispel myths (McBurney and White 2007). For the purpose of this study, the researcher administered questionnaires to ninety (90) respondents.

#### *3.7.2.2 Interviews*

Terre Blanche, Durrheim & Painter, (2012) are of the opinion that conducting an interview is a more natural form of interacting with people than making them fill out a questionnaire, do a test, or perform some experimental task, and therefore it fits well with the interpretive approach to research. It gives the researchers an opportunity to get to know people quite intimately, so that he/she can really understand how they think and feel. Interpretive approaches see interviews as a means to an end, namely, to try to find out how people really feel about or experience particular things, and will therefore try to create an environment of openness and trust within which the interviewee is able to express herself or himself authentically.

Interviews are probably the most common form of qualitative data collection because they generally take the form of a discussion between the interviewer and the interviewee about the research topic (Joubert and Ehrlich, 2010). Furthermore, the interviewer has to direct the discussion to some extent so that the required information can be obtained, but respondents are allowed to talk and cover the area in their own terms and from their own perspective because this information is generally used when detailed information is needed from individuals. The major advantage is that it gives the respondent the opportunity for personal explanation and detailed responses.

Interviews also included telephone interviews to save time and cost of travel were part of this research and face-to-face interviews were also conducted because as Descombe puts it, they do not involve much technical paraphernalia or accessories in order to collect the information – they are only be used as a tool and ability to conduct a conversation. They were also used because the nature of this study necessitated detailed information to be supplied by interviewees voluntarily and also because this study covered issues that were considered sensitive or rather personal.

These issues called for careful handling and perhaps some coaxing in order to get the informant to be open and honest. As suggested by Wisker (2008) earlier, there are some advantages attached to conducting interviews, e.g., consent to take part. An agreement to be interviewed generally meant that there was informed consent. Wisker continues, the interview is not done by secret recording of discussions or the

use of casual conversations as research data. It is openly a meeting intended to produce material that will be used for research purposes – and the interviewee understands this and agrees to it.

The interviewee's words can be treated as 'on the record' and 'for the record'. In the research interview there is a general understanding that the words can be used by the researcher at some later date and that the talk can be taken as a genuine reflection of the person's thoughts, rather than being a joke or a 'wind up'. It is possible for the interviewee to stipulate that his or her words are not to be attributed to him or her, or not to be made publicly available. The point is, though, that unless the interviewee specifies to the contrary, the interview talk is 'on record' and 'for the record'. It is to be taken seriously (Denscombe 2001).

Interviews were used to gather information to supplement information provided in a questionnaire; to help pilot a questionnaire (interview a few people to test out the areas and questions); to follow up a questionnaire (select whom to interview for in-depth or variety of responses following the broader information produces in a questionnaire).

Structured interviews were also used as some of the communities in Xolobeni were presumably illiterate. Structured interviews rely upon the interviewer completing a set of structured questions with multiple-choice responses, and asking questions

according to the order of these questions (rather like a questionnaire, but completed by the interviewer after questioning the interviewee). A structured interview with closed questions can guide the responses clearly, making analysis simpler, but can be too guiding and limiting – it might not gather feeling (Wisker 2008).

Part of this research was semi-structured and open-ended interviews because these two methods managed to address both the need for comparable responses – that is, the same questions being asked of each interviewee – and the need for the interview to be developed by the conversation between interviewer and interviewee – which is often rich and rewarding.

### *3.7.2.3 Face-to-face Interviews*

As alluded to in the previous chapter, when conducting a study, it is important to define clearly the group about which we want to gather information and draw conclusions (Joubert & Ehrlich, 2010). Face-to-face interviews were conducted on a purposively selected sample of the following stakeholders: traditional leaders in Xolobeni, environmental groups involved in this project, Ward Councillors and DEDEAT (Department of Economic Development, Environmental Affairs and Tourism). Face-to-face interviews were adopted in this study because this method allowed the researcher to select carefully their potential respondents so that they get responses from just those people needed to fill necessary quotas.

A required number of males and females ensured a suitable balance of age bands in this method. Appropriate numbers of ethnic groups and earning categories can be incorporated with a minimum prospect of redundant material. There is an efficiency built into this form of data collection despite its expensive nature (Denscombe 2001).

#### *3.7.2.4 Focus groups*

The focus group method involves a number of people meeting in a group where the participants talk to one another with the guidance of a facilitator. The purpose is to gain insight into the attitudes, perceptions and opinions of participants on a pre-arranged topic. Focus groups can produce results that directly represent how people as they attempt to describe the social situation (Joubert and Ehrlich, 2010). Moreover, people are often stimulated by the discussion, and reveal facts and opinions that they might not otherwise have chosen to reveal. It may also give group members the chance to clarify their attitudes and belief.

Because of the nature of violence in Xolobeni, focus groups were used minimally as part of the interviews by separating those who are for and/or against the project. This helped to probe the gap between what people say and what they do (Flowerdew and Martin 2005). This also assisted in gauging the respondents' attitude to a changing situation of Xolobeni. Berg (2004) mentions that respondents in focus groups feel valued because their views are being sought in relation to a development or change and they often also change and become more self-aware and reflective because of being involved in the focus group.

### **3.8 LIMITATIONS OF THE STUDY**

As it was mentioned in Chapter One the limitation that was envisaged in this study was the accessibility of the area of Xolobeni. At the time of going to the field the communities were very violent because it was at the time when the Australian Company through Xolco (the BEE Company representing the communities who want the mine) was in the process of submitting the requirements of the EIA that was outstanding.

Scheduled appointments with the communities were made through the Provincial House of Traditional Leaders who in turn communicated with the traditional leaders in Xolobeni. Communities were then summoned to an 'imbizo' (local gathering) to meet in the home of the traditional leader. These arrangements took a long time to be finalized. The risk to set up appointments with the two divergent groups in the area was also considered as a challenge to this study and the fact that the mining was not yet established posed a danger to everyone undertaking research in the area.

### **3.9 ETHICAL CONSIDERATION**

In order to understand ethics as a concept it is important for one to understand the Bill of Rights that is entrenched in the Constitution of the Republic of South Africa (Constitution 108 of 1996). Van Tonder and Pera, (2009) define a Bill of Rights as a legal document in which the fundamental values and needs of the population or

nation are entrenched against violation by government. It may also specify certain actions that are desired of the government (the so-called vertical relationship) but it goes further and recognises that the private abuse of human rights may be as injurious as violations perpetrated by the state.

For this reason the Bill of Rights also protects individuals against abuses by other individuals (the so-called horizontal relationship). Researchers, in the performance of their research work are also required not to abuse participants in the process of conducting research, hence the need for ethical consideration. If one were to ask a group of researchers who the most important person when conducting research, they would probably reply in unison: “the participants”. This is because qualitative research taps into the lives and problems that triggered the study and therefore the success of the study is partly dependent on the availability and willingness of participants.

Van der Walt and van der Rensburg, (2010) mention that there are three fundamental ethical principles that guide researchers, viz, respect for persons, beneficence and justice which Van Tonder and Pera, (2009) above have highlighted. These principles, they continue, are based on the human rights that need to be protected in research, namely, the right to self-determination, to privacy, to anonymity and confidentiality, to fair treatment and being protected from discomfort and harm. The right to be protected from discomfort and harm is not only meant for participants but the researcher is also entitled to this right.

Self-determination implies that an individual has the right to decide whether or not to participate in a study, without the risk of penalty or prejudicial treatment. In addition he/she has the right to withdraw from the study at any time, to refuse to give information or to ask for clarification about the purpose of the study. The researcher must respect this right by avoiding using any form of coercion. The principle of justice includes the subject's right to fair selection and treatment. The researcher therefore selected with fairness the study population in general and the subjects in particular. The researcher also selected the participants for the reasons directly related to the study problem, and not because they were readily available or could be easily manipulated.

Qualitative research is often regarded as non-invasive because it involves neither intervention nor treatment, but qualitative researchers nevertheless enter the participants' lives (Van der Walt and Van Rensburg, 2010). Entering the lives of participants in Xolobeni necessitated informed consent from these participants. The things that participants were fully informed about included the purpose of this research; the modus operandi; the duration of the study; the nature of the participation expected; the method and procedure to be followed; the way in which the results were to be used and disseminated; the identity of the researcher; possible side-effects and detrimental aspects and the manner in which confidentiality and privacy were to be secured (Pera and Van Tonder, 2005).

By its very nature qualitative enquiry risks exploring as yet unresolved issues which can upset the participants (Van der Walt and Van Rensburg, 2006). In this study the researcher ensured that each interview is properly managed in order to avoid harming participants. Questionnaires were carefully structured and participants were monitored for any signs of distress as the intended study involved a mining project that had not been established yet due to outstanding environmentally-related issues.

Struwig, (2011) emphasises that informed consent is a necessary research precondition for this research. Emphasis was placed on accurate and complete information so that subjects could fully comprehend the investigation and were able to make a voluntary, informed decision about their participation. Participants were legally and psychologically competent to give consent and they were sensitised about their liberty to withdraw from the investigation at any time.

He further mentions that informed consent has three major elements: the type of information needed from the research subject; the degree of understanding that the subject must have in order to give consent; the fact that the subject has the choice of whether or not to give consent. Above all participants must understand that information. The information must be in the participants' own language, at his/her level of understanding and in his vocabulary, not in technical language or professional jargon.

### **3.10 CONCLUSION**

This chapter has presented a brief sketch of the context in which Xolobeni is to be understood. The chapter also highlighted various ecological species found in and around Xolobeni in the context of Pondoland as a basis for environmental concerns raised by the Amadiba Crisis Committee (ACC). It helped us to understand that the people of Xolobeni share in a proud legacy, politically, in terms of its chieftaincy. Culturally Xolobeni's people take pride in a tradition largely shared by Xhosa and Pondo tribes. An integral part of that tradition demands respect for the area in which people live on ancestral land that should in no way experience desecration but, instead be respected and preserved.

The natural environment, with its rivers and natural resources that served previous generations should be maintained to serve present and future generations. The traditionally, agricultural foundations of Mpondo life, however, highly valued, have not sufficed to provide the population with sufficient employment and income levels. Illiteracy, poverty and insufficient access to modern infrastructure cries out for development such as would enhance the well-being of the population.

The background sketched suggests that there are factors that would cause concern about the introduction of modern mining operations in the area and as such might call for any development that would provide impetus for local economic development. Clearly, the introduction of any industrial mining development would

have to take this background into consideration and would require careful preparation, negotiation and participation by all stakeholders in the area if it is to be introduced successfully.

This chapter provided a summary survey of the international, regional and national legislation promulgated to ensure compliance with the requirements of the EIAs. It also showed how the Environmental Impact Assessments served as an important tool to ensure environmental protection. Before decisions are taken on which measures to implement for remediation and closure as stipulated in the EIAs, the objectives that need to be achieved with the implementation of such measures must be established and agreed on.

This is also in line with the MPRDA Regulations for mine closure which state that the land must be rehabilitated, as far as is practicable, to its natural state, or a predetermined and agreed standard or land use which conforms to the concept of sustainable development. Such objectives would include, from a generic perspective that the immediate harm to human health and safety must be eliminated.

The Minerals and Petroleum Resources Development Act 28 of 2002 is the only South African Act that specifically mentions the end point of remediation. The Act stipulates that interested and affected parties must be involved in the agreement on future land use of areas impacted by mining. This is further attested to in Regulation

56 of the Mineral and Petroleum Development Regulations (MPDRA). Xolobeni's mining project too, before it can meet with approval, must meet the requirements of the EIA and NEMA.

The essential conditions of a proper EIA were not met and they played a part in the conflict about the Xolobeni mining project, as did a perceived lack of consultation. Given the manner in which the then Minister, Susan Shabangu withdrew the licence and later opened the doors for applications to be submitted by interested companies, the basis of the arguments by the conflicting groups and the fact that the mining project stalled in Xolobeni suggest that proper EIA processes were not followed in Xolobeni. The next chapter discusses the contents of the data collected in the field work conducted in Xolobeni. The next chapter gives a detailed data presentation, interpretation and analysis on the data collected.

## CHAPTER FOUR: DATA PRESENTATION, INTERPRETATION AND ANALYSIS

### 4.1. INTRODUCTION

This study investigated the nature of conflicts that arose in Xolobeni due to the proposed mining project in the area. The researcher was also interested to know what the views and perceptions of the communities were, given that the prospecting license was withdrawn by the Department of Mineral Resources (DMR). Various stakeholders were targeted including the traditional authorities, environmentalists, the groups that were for and against the mining project, departmental officials and a councillor. An 'imbizo' (official gathering /meeting) was called by traditional chieftaincy. The venue for 'imbizo' was where the group that was against the mining project was based.

The levels at which development in the area impacted on the environment were of interest to the researcher. Issues of consultation, development and the environment were included in the questionnaires.

Doing research in Xolobeni was not easy because of the following reasons:

1. The issue of mining in the area was and is still controversial because the mining license that was withdrawn by the then Department of Mineral Resources (DMR) had a condition that after a period of three months (ninety days), any company interested to undertake mining in the area could apply, including the Australian company whose licence was

withdrawn. When the researcher visited the area (July, 2015) it was just after the DMR held a meeting with the communities in Xolobeni and the surrounding areas – still trying to persuade the communities to accept the mining project (as alleged by the opponents of the mining project) on the basis that development is necessary for the area.

2. On the other hand, those who supported the mining establishment felt comfortable that at least the minimum requirement of completing the EIA process was met at this stage. During this crucial field work the researcher was allowed to go to the mining spot. I say this is crucial because the researcher was not allowed to visit the site in 2011 as many researchers are also prohibited to go to the mining site.
3. The researcher succeeded in convincing the participants to complete the questionnaires after long deliberations with the communities. When asked about the existence of Xolco, their response was that Xolco did not exist.
4. During the fieldwork the researcher was informed that one of strong opponents of the mining died suddenly due to natural causes.

Access to Xolobeni for research purposes was and is still a daunting task as the researcher was required to knock to different offices seeking access to the area. Eventually the researcher was allowed to conduct field work in the area with strict measures that she was not allowed to go to the mining site. At the time the researcher was hosted by Ms Nonhle Mbuthuma, who is the secretary of the

Amadiba Crisis Committee and who is the spokesperson of the communities in Xolobeni.

When officials from both the National Department of Mineral Resources (DMR) and the Provincial Department of Economic Development, Environmental Affairs and Tourism were contacted for interviews they were reluctant to discuss the matter on the mining project in Xolobeni stating that there are still continuous engagements with the communities in the area and they referred the researcher to departmental website which didn't yield any assistance for this study.

Efforts to contact supporters of the mine were almost fruitless but few of them were able to complete the questionnaires and when the researcher visited their homes they said that they want the mine because the area is impoverished. Mr Zeka, who is one of the supporters of the mining informed the researcher that they are waiting patiently for the completion of the EIA process which will determine whether the mining project will take place or not but insisted that the nature of violence that takes place in the area is worrisome. The majority of the communities who were willing to participate in the study were those who do not want the mining project in Xolobeni.

As it has also been mentioned earlier the area is dominated with violence such that the roads to Xolobeni were barricaded with stones and tyres to prevent government officials who want to visit the area for the purpose of convincing communities there to accept the mining project. To indicate the escalating levels of violence in the area the leader of the Amadiba Crisis Committee, Mr Radebe who is affectionately known

as “Bazooka” was assassinated in his house in front of his children by unknown people and no arrests have been made yet. Those who oppose the mining project live in fear of their lives but maintain that they will never allow the mining project to take place in Xolobeni (Daily Dispatch, 20/03/2016).

Latest developments in the area are that the Australian mining company has withdrawn the mining license (Daily Dispatch, 05/07/2016). When Ms Mbuthuma was interviewed by the researcher after the withdrawal of the license by the mining company she said that the group that opposes the mining is firm in its position that no mining will ever take place in Xolobeni.

This chapter presents the analysis and interpretation of quantitative and qualitative data collected. Qualitative data was first coded using content coding to change it to descriptive data while all quantitative data was analysed using SPSS. The analysis of the results from the field work undertaken in Xolobeni was also revealed. This study utilised secondary data, which included documents from the Department of Mineral Resources (DMR), the National Department of Environmental Affairs, the Eastern Cape Provincial Department of Economic Development, Environmental Affairs and Tourism (DEDEAT), Minutes of the Eastern Cape Provincial Legislature Portfolio Committee on Environmental Affairs and Transworld Minerals and Energy (TEM). The presentation in this chapter is divided into two sections, namely, demographic information and information about the views of both groups on how conflict erupted between the Amadiba Crisis Committee (ACC) and Xolobeni Local Community (Xolco).

This chapter also presents and discusses the findings on the roles played by various actors, namely, the Department of Mineral Resources, the National Department of Environmental Affairs, the Provincial Department Economic Development, Environmental Affairs and Tourism, traditional authorities, environmentalists, the ACC and Xolco in the stalling of the proposed mining development in Xolobeni. The extent to which the different groups were consulted is also revealed in this chapter. Findings derived from questionnaires and interviews conducted with the two divergent groups in Xolobeni, namely the Amadiba Crisis Committee (ACC) that is against the mining project and the Xolobeni Empowerment Company (Xolco) that supports the mining project, the traditional leadership, environmentalists, the Provincial Department of Economic Development and Environmental Affairs (DEDEA), ward committee members are also presented in this chapter.

The Department of Mineral Resources (DMR) has since 2014 established an office in Port Elizabeth. Information obtained in a meeting that was held in July 2015 between the DMR and the Eastern Cape Provincial Portfolio Committee indicated that the DMR is conducting meetings with the surrounding communities in an effort to assist in the establishment of the mining project. In July 2015 during the field work in Xolobeni Nonhle Mbutuma indicated in an interview with the researcher that communities in Xolobeni confirmed the meeting held with the DMR as part of the consultation process. The antagonists of the mining project affirmed their position that they do not want the mining project in Xolobeni.

It was in the interest of the researcher to also have the views of Transworld Energy (TEM) the Australian company, but to no avail. The study therefore has depends mainly on the secondary data which the Legal Resource Centre confirmed as authentic source of information (refer to Chapter I). Reference is also made to the research methodology of the study and includes the methods and techniques that were explored during data collection in Xolobeni.

The secondary data which included the Environmental Impact Assessments (EIAs) which the Australian mining company submitted to the Department of Economic Development and Environmental Affairs (DEDEA) assisted the researcher to understand responses provided by the participants in relation to the secondary data collated. Written responses of both Departments of Mineral Resources (DMR) and the National Department of Environmental Affairs and Tourism (DEAT) to the Environmental Impact Assessment (EIA) and the Environmental Management Plan the Australian company (TEM) submitted proved to be true.

However, participants, especially those who did not support the proposed mining project in Xolobeni, contended that they needed closure of this mining saga. The positive spinoffs of the proposed mining project in Xolobeni were that the area has become an attraction to researchers. John Clarke who is the social worker in the area confirmed that it is always interesting to read how newcomers to the Xolobeni story make sense of the Xolobeni project.

Visits to the study area revealed that many people were directly affected by the proposed mining development project in Xolobeni. This was evidenced by the mistrust and distress demonstrated during the interview process. Samples of key informants that were selected from the various actors involved in this project, namely: Xolco, Amadiba Crisis Committee, environmentalists, traditional leaders, municipal ward committee members and officials from the Department of Economic Development and Environmental Affairs were able to show how the proposed mining project impacted on their lives. They showed this by agitating for the closure of the mining saga. Convenience sampling technique was utilised to select both the respondents and participants from the Xolobeni residents enabled the researcher to make conclusion and recommendations for the study.

The study self-administered well-structured questionnaires to one hundred 100 respondents and the all the questionnaires were returned to the researcher. Some of the respondents had to be assisted to complete the questionnaires due to their high levels of illiteracy. Included in the sample were three senior citizens from the various villages whose ages ranged between (80-90) years. They also revealed that they were among the indigenous people of Xolobeni who were against the establishment of the proposed mining project in the area.

The most important element that was revealed among the respondents (especially those who were against the mining project in Xolobeni (the Amadiba Crisis

Committee) was that they cannot compromise their ancestral land for development in the area even though they recognised a need for development. The researcher was also informed that Mr Balasheneli – a stalwart supporter of the group opposes the mining project in Xolobeni passed on in May 2015. The antagonists still stand firm that they do not want mining project in the area.

The area heavily depends on windmills, boreholes, reservoirs, springs, hand pumps, weirs, dams and stock dams for water. None of the residents in these areas have access to electricity except for the school in Sigidi village. For charging their cellular phones, residents depend on this school. It was surprising to discover that the tour guide, Nonhle Mbutuma had a cellular phone, car charger just in case visitors with cars arrive in the area. She charged her cellular phone in our car. Most households use candles, wood and paraffin. During the field work in 2015 the researcher was informed that solar panels were installed in Xolobeni after a meeting that was held with the then Eastern Cape Premier, Ms Noxolo Kiviet. Communities were promised that they will all receive these solar panels but it is alleged that they were later received by those communities who support the mining. Those who are against the mining project have still not received them.

Snowball sampling that was primarily used enabled the researcher to obtain access to Xolobeni. Also, a letter of reference was requested from the Department of Local Government for access to the tribal authority to seek permission to conduct research

in the area. Focus groups for and against the mining project assisted in gauging the respondents' reactions to the changing situation of Xolobeni.

The study also revealed that Pondoland was declared as the Marine Protected Area (MPA) and includes a rich diversity of marine and estuarine habitats and associated species, many of which are endemic to the south-east coast of southern Africa. Failure of Transworld Minerals and Energy (TEM) to comply with the requirements of EIAs contributed to further resistance against the mining project in Xolobeni. Interviews conducted with the group that was against the mining development (the ACC) and the finding revealed that they wanted closure on the mining project because they do not want it, even if TEM can meet the EIA requirements.

It is important to note that the ACC echoed the concerns the National Department of Environmental Affairs and Tourism (DEAT) raised in a letter written to Transworld Energy and Minerals (TEM). DEAT also recommended that the issues outlined in the letter must be taken into consideration by DME before considering granting the mining licence. The strength of these arguments lies in the Minerals and Petroleum Resources Development Act 28 of 2002 and the National Environmental Management Act 107 of 1998.

## 4.2 DATA PRESENTATION

In this study, the researcher describes the data collected from respondents directly in order to draw facts from the respondents before data is interpreted and analysed.

## 4.3 DATA PRESENTATION AND ANALYSIS OF THE RESULTS

### 4.3.1 Presentation of Data and Analysis of Demographic Information

The demographic information provided insight into how different groups influence and react to the implementation of the Bill of Rights on sustainable development. The study covered demographic information regarding both the Xolobeni communities and mining owners in Mbizana Local Municipality. Xenobeni communities' information comprised of gender, age and educational level, while the firm information was comprised of age and an insight of the mining project.

**Table 4.1 Demographic Information**

<b>Measuring Group</b>	<b>Frequency</b>	<b>Percentage (%)</b>
Community Member	70	78
Community Representative Leader	5	6
Traditional Leader	5	6
Environmentalist	2	2

Ward Committees	4	4
Provincial Department officials	4	4
<b>Total</b>	<b>90</b>	<b>100</b>

### Comments

Table 4.1 above, shows that 70(78%) of the respondents were community members, 5(6%) were community representative Leaders, 5(6%) were traditional leaders, 2(2%) were environmentalists, 4(4%) were ward committees while 4(4%) were the Provincial Department officials. This confirms that in Xolobeni all these respondents were duly involved in the controversy over the proposed mining project.

**Table 4.2. Ages Distribution**

Age	Frequency	Percentage (%)
18-25	40	44
26-33	33	37
34-41		
42-49	-	
50>	17	19
<b>Total</b>	<b>90</b>	<b>100</b>

## Comments

Table 4.2 above shows the age distribution of the respondents. It shows that 40(44%) of the respondents were between (18-25) years, 33(37%) were (26-33) years while 17 respondents representing 19% were above 50 years. It is clear that the majority of residents in Xolobeni are young people and therefore the high rate of unemployment in the area might be seen as a detriment to development.

**Table 4.3 Gender Distribution**

<b>Gender</b>	<b>Frequency</b>	<b>Percentage (%)</b>
Females	56	62
Males	34	38
<b>Total</b>	<b>90</b>	<b>100</b>

## Comments

Table 4.3 above shows the gender distribution of the respondents. It shows that 56(62%) of the respondents were females while 34(38%) were males.

The table above indicates that Xolobeni is dominated by females with 62% and the number of males is low.

### 4.3.2 Educational Background Information of the Respondents

**Table 4.4 Educational Level**

<b>Level of Education</b>	<b>Frequency</b>	<b>Percentage (%)</b>
Grade 1-7 completed	66	73
Grade 8-12 completed	14	16
Tertiary institution completed	8	9
Attended but Drop out from Tertiary institution	2	2
Never attended tertiary institution	0	
<b>Total</b>	<b>90</b>	<b>100</b>

#### **Comments**

Finding according to table 4.4 above shows that the majority 66 of the respondents representing (73%) completed Grade 1-7, 14(16%) completed Grade 8-12 and they were awarded Matric certificates at the completion of their primary education, 8(9%) of the respondents completed Tertiary institution and they were awarded degree certificates at the end of their tertiary education while 2(2%) among the responded reveals that they attended tertiary institution but drop out because of financial constraints.

**Table 4.5 Educational Qualifications Obtained**

<b>Educational Qualification</b>	<b>Frequency</b>	<b>Percentage (%)</b>
Primary Certificate	80	89
Secondary Certificate	-	-
Diploma Certificate	-	-
Degree Holder	8	9
None Degree Certificate	2	2
<b>Total</b>	<b>90</b>	<b>100</b>

**Comments**

Table 4.5 above shows that the vast majority 80(89%) of the respondents have primary education certificates, none of the respondents have both the secondary and Diploma certificates. In addition, the also reveals that 8(9%) of the respondents have degree certificates while only 2(2%) among the respondents said that they did have degree certificates.

### 4.3.3 Employment Information of the Respondents

**Table 4.6 Employment Levels**

<b>Employment Level</b>	<b>Frequency</b>	<b>Percentage (%)</b>
Unemployed	78	87
Employed	12	13
<b>Total</b>	<b>90</b>	<b>100</b>

The above table 4.6 shows that 78(87%) of the respondents were unemployed young and able people of the community which was due to high level of illiteracy and inadequate new establishment of Small and Medium Enterprises (SMEs) within the Mbizana Local Municipality in the Eastern Cape Province of South Africa while 12(13%) of the respondents have jobs which was to their exposure and small awareness of advertised job from the newspapers.

### 4.3.4 Interpretation and Analysis of Peace Stability in Xolobeni

**Table 4.7 Community Members' Views on Peace and Stability in Xolobeni**

<b>Measuring Group</b>	<b>Frequency</b>	<b>Percentage (%)</b>
Agree	67	74.4
Disagree	12	13.3

Partially Agree	6	7
Partially Disagree	4	4.4
Uncertain	1	1.1
<b>Total</b>	<b>90</b>	<b>100</b>

### Comments

Table 4.7 indicates that 67 (74.4%) of the Community Members' agree that before the proposed mining project in Xolobeni was established, there was peace in the area and only 22(24.7%) of the respondents disagreed with this view with 1% who was uncertain about what to say about the mining.

**Table 4.8 Community Representative Leaders' Views on Peace and Stability**

<b>Measuring Group</b>	<b>Number of Respondents</b>	<b>Percentage (%)</b>
Agree	67	74
Disagree	12	13
Partially Agree	6	7
Partially Disagree	0	0
Uncertain	5	6
<b>Total</b>	<b>90</b>	<b>100</b>

## **Comments**

Table 4.8 indicates that 67(74%) of the community representative leaders' agree that before the proposed announcement of the mining project in Xolobeni there was peace and stability in the area and 18 representing (20%) of the respondents disagreed with this view with 5% who was uncertain about what to say about peace and stability of the proposed mining.

### **4.3.5 Analysis of The nature of Conflicts that led to the Stalling of the Mining Project in Xolobeni**

This study also investigated the nature of conflicts that led to the stalling of the mining project in Xolobeni. Secondary data consulted revealed that there were conflicts in the area. The statements made by the Amadiba Crisis Committee that "the Amadiba Crisis Committee (ACC) is now planning a huge celebration and plans to reconstitute themselves and the Amadiba Peace and Development Committee to facilitate healing and peace building in a community that was once a peaceful haven, but which has over the past five years seen constant tension and conflict" (Business Day, 30/09/2008, Page 12), indicated that there was peace in the area before the then Minister of Mineral Resources, Buyelwa Sonjica made an announcement of the proposed mining project in Xolobeni.

In fact, 60% of the respondents also revealed that although they were at loggerheads over the mining issue, communities in Xolobeni remained on good

terms because they were blood relatives. One respondent said that the leaders of both groups were cousins. The respondent maintained that communities in the area only fight when the issue over the mining project emerges. One of the objectives of this research was to investigate the role of different stakeholders in the proposed mining in Xolobeni. The data collected revealed that in reality each stakeholder played a role in stalling the project in the area.

The opponents to the mining were of the view that the establishment of the mining project was not the answer to the poverty and underdevelopment levels in the area. This was based on the opponents' belief that mining will pollute the area and will force most of the families to be relocated to other areas away from their ancestral land. The opponents of the mining project were also of the opinion that development can be brought to the area but not through mining. The opponents presented a united front against mining as they believed that there was not enough consultation when the mining project was proposed. Hence, they requested the then Minister of the Department of Minerals and Energy to withdraw the mining licence as a measure to halt the mining project in the area.

**Table 4.9 Perception of the Community Representative Leaders' on the Conflicts Arising from the Award of the Mining Licence in Xolobeni**

<b>Measuring Group</b>	<b>Number of Respondents</b>	<b>Percentage (%)</b>
Agree	46	51
Disagree	20	22
Partially Agree	14	16
Partially Disagree	5	6
Uncertain	5	6
<b>Total</b>	<b>90</b>	<b>100</b>

### **Comments**

The table above indicates that the majority 46(51%) of respondents agreed that conflicts in the area of Xolobeni erupted after the proposed mining project in the area was announced while 39(44%) disagree.

The antagonists of the proposed mining project in Xolobeni saw the contested development that came through mining of red sand dunes in the area. They said that mining would result in their removal from their ancestral lands. Research has shown that development that is unsustainable does not accommodate future generations.

Results of the data collected revealed that the antagonists of the proposed mining project treasured their ancestral lands. For them the value of development did not warrant the sacrifice of their ancestral lands.

Proponents of the mining project in Xolobeni, on the other hand, strongly believed that development was the answer to the high levels of poverty, unemployment and under development in the area. They believed that the area will not be polluted by the mining because stringent measures were going to be in place through compliance with the EIA to curb mining-related sicknesses. One of the respondents mentioned that the stumbling block to the mining was the finalisation of the environment impact assessment processes by the consultants employed by the Australian company.

They believed that once this requirement was met the mining project would take place in the area. They also believed that all the stakeholders were properly consulted. This group was of the opinion that although both groups remain at loggerheads over the mining issue, there was and still is peace in the area because they are related to one another.

### 4.3.6 Analysis of the Respondents Opinion on the Support for the Proposed Mining Project

**Table 4.10 Respondents Opinion on the Support for the Proposed Mining Project**

<b>Measuring group</b>	<b>Frequency</b>	<b>Percentage (%)</b>
Agree	51	57
Disagree	27	30
Other	12	13
<b>Total</b>	<b>90</b>	<b>100</b>

#### **Comments**

The table above indicates that the majority 51(57%) of respondents agree to support the proposed mining project in Xolobeni while only 27(30%) of the respondents disagree to support the proposal.

In addition among other 12(13%) of the respondents were the government officials and they indicates that they strongly believed in own opinions that there is a need for development in the area. Furthermore, among other 12(13%) of the respondents were also the traditional leaders who were rather neutral about the establishment of

the mining project as they indicated that they were not sure if the mining will bring development or not in the area.

#### 4.3.7 Analysis of the Respondents from the Department of Mineral and Energy’s concerning the withdrawal of Mining License

**Table 4.11 The Department of Mineral and Energy’s withdrawal of Mining License**

Measuring group	Frequency	Percentage (%)
Agree	66	73
Disagree	24	27
Other	0	
<b>Total</b>	<b>90</b>	<b>100</b>

The table 4.11 above indicates that the majority 66(73%) of respondents were happy with the withdrawal of the mining licence while 24(27%) of he respondents totally disagree. Xolco believed that this would give TEM enough time to respond to the EIA requirements. The ACC claimed victory over the withdrawal of the mining licence. There was no clear indication on the role of each stakeholder as the respondents were reluctant to clearly divulge their views as the proposal of the mining project in Xolobeni was still controversial. The majority indicated that they were satisfied that the Minister withdrew the mining license.

Females, mostly unemployed, comprised part of the majority 66(73%) of the respondents also express their feelings that they were happy with the withdrawal of the mining license.

On the role of the municipality and councillors, the majority (51.1%) of the respondents were uncertain of the role of councillors while the minority (33%) indicated that the role of councillors is not clear after the 2013 municipal elections. Two percent (2%) among the respondents said that the councillors and the municipality encouraged development through mining and 13.33% did not respond to this question. The majority (86.67%) of the respondents agreed that they were directly affected by the mining.

#### 4.3.8 Analysis of the Impact of Mining Development to the Youth of Xolobeni

Measuring group	Frequency	Percentage (%)
Agree	17	19
Disagree	63	70
Partially Agree	5	6
Partially Disagree	3	3
Uncertain	2	2
<b>Total</b>	<b>90</b>	<b>100</b>

**Table 4.12 Impact of Mining Development to the Youth of Xolobeni**

## **Comments**

Table 4.12 shows the impact of mining development to the Youth of Xolobeni in the Mbizana Local Municipality, Eastern Cape, South Africa. The above table shows that the majority 71(79%) of the respondents said that the proposed impact of mining would not bring development to the Youth of Xolobeni while 17(19%) agree that the proposed impact of mining would bring development to the Youth of Xolobeni. On the issue of development in the area of Xolobeni the majority 71(79%) of the respondents were of the opinion that mining will not bring development to their area.

## **4.4 FINDINGS AND DISCUSSION**

This section seeks to analyse the findings from the secondary data extracted from various documents of the Department of Mineral Resources (DMR), the Provincial Department of Economic Development and Environmental Affairs (DEDEA), traditional leadership, environmentalists, National Department of Environmental Affairs and Tourism (DEAT), the Amadiba Crisis Committee (ACC) and Xolobeni Local Community (Xolco) and the data collected from the selected interviewees in the area will also be discussed in this chapter.

The interviews conducted in Xolobeni indicated that the majority seventy-two (72) out one hundred (100) participants did not want the mining project in Xolobeni. Sixty-six (66) of the interviewees indicated this although the area was underdeveloped and

needed development. However, development should not come through the proposed mining development project in the area. Some of the participants advised that they were being punished by the government because they did not want the mining development project. Traditional leaders interviewed were rather uncertain if the proposed mining development project will bring development to the area. Although they demonstrated their uncertainty, it was clear that they preferred to engage in agriculture.

The Ward Councillors interviewed responded that they would like to see development in the area but cannot do anything if the communities do not want mining. They said that Xolobeni was included in the development plans of both the local municipality and national departments but due to unavailability of funds development in Xolobeni was delayed. Community representatives echoed what was said by the Ward Committee members. Councillors were not readily available at the time of research.

Four officials from the Provincial Department of Environmental Affairs (DEDEA) indicated that the area of Xolobeni was in need of development. They also advised that some communities in Xolobeni received assistance in terms of agricultural material from the Department. Boards showing funding from the Department were visible as the researcher proceeded through the villages. Also, the group that supported the mining was patient and prepared to wait for the environmental impact assessment report. The results of the interviews indicated that the majority of participants in the study did not want the proposed mining project in Xolobeni.

The refusal of the selected participants to accept the mining project in the area was based not only on the protection of their ancestral land but also on the protection of the environment in the area (Bennie, 2010). Section 32 of the National Environmental Management Act 107 of 1998 expressly grants wide standing to groups that seek to protect the environment or monitor the use of natural resources.

It states that any person or group of persons may seek appropriate relief in respect of any breach of any provision of a specific environmental management Act, or any other statutory provision concerned with the protection of the environment or the use of natural resources – in that person's own interest; in the interest of, or on behalf of, a person who is, for practical reasons, unable to institute such proceedings; in the interest of or on behalf of a group or class of persons whose interests are affected; in the public interest and in the interest of protecting the environment (Van de Veer and Pierce, 2003). Given that the participants in Xolobeni were illiterate, it is a testament to the tenacity of the opponents that they succeeded in halting the mining project in Xolobeni.

Furthermore, many authors argued that proponents of development often portrayed the debate about the mining as being a dispute between the 'greenies' who are opposed to development and those who would bring development and economic enhancement, yet there are grave environmental concerns about the mining venture. Environmentalists who were interviewed agreed that the proposed mining development project would cause harm to the ecosystem in Xolobeni.

To reduce the issue to 'greenies' versus sustainable development might be to overlook other key considerations such as land rights, suitable and meaningful consultation, the appropriateness of sustainable development agendas within the local and regional context, the appropriate use of natural resources, the distribution of wealth obtained from these, how to create opportunities for the improved livelihoods of rural communities that were poorly skilled. These are complex issues that not only South Africa is grappling with, but the world as well.

These issues are also the reason that the National Environmental Management Act 107 of 1998 in conjunction with the Environmental Impact Assessment (EIA) processes and the Minerals and Petroleum Resources Development Act 28 of 2002, in the South African context, make provisions that accommodate issues of consultation and involvement of communities in the decisions that will directly impact on their livelihoods. At the international level, the global agenda for biodiversity in impact assessment resulted in the formation of treaties which included, inter alia, the United Nations Conference on the Human Environment (the Stockholm Conference) in 1972, the United Nations Conference on Environment & Development (the Rio/Earth Summit) in 1992 and the Convention on Biological Diversity (CBD) which was ratified by more than two hundred countries.

The ratification of these treaties aimed at the conservation of biodiversity through measures for in-situ and ex-situ conservation using the environmental impact assessment tool which would ensure the promotion of measures to ensure that future generations will benefit from today's biological resources. Use of

Environmental Impact Assessment tool has been and is still encouraged in countries which do not have them in place (although EIAs have been highly criticised) to avoid or minimize significant adverse impacts on the environment.

Xolobeni faces severe unemployment and poverty. The vast majority sixty-six (66) out of one hundred (100) participants in this study were unemployed. Poverty is the inability to attain minimal standard of living or meet a person's basic needs but to the group who opposed the mining project, poverty was preferred to sacrifice of their ancestral lands in the name of development. This group rejected development despite the fact that they agreed with the then Minister of Minerals and Energy that the area is severely poverty stricken and underdeveloped. Their belief was that the government is responsible for bringing development in the area rather than depending on multinational companies to do so.

The group that supported the mining project believed that there would be sustainable development in the area when they indicated that the area would not be polluted by the mining and they believed that conflict was unavoidable because every community member of Xolobeni was directly affected by the mining. Many authors like Reiner, (2002) and Ross, (1999) argued that sustainable development may serve to avoid conflict due to environmental problems and environmentally caused conflicts tend to occur in poor countries which are not in a position to implement sustainable development.

It is therefore necessary to note that development can have negative environmental impacts, which can lead to conflicts, and the conflicts could result in further environmental degradation, creating a vicious cycle. The bone of contention in Xolobeni was about the development that would sustain both present and future generations because the reality is that the area is lacking facilities such as hospitals, clinics, roads, electricity and proper schools.

While mining can be disastrous, the fact that governments are unable to fulfil their responsibility of service delivery gives multinational companies an opportunity to exploit the wealth that is in these countries to the detriment of poor communities. It is unfortunate that those who suffer in this process are the disadvantaged local communities who do not benefit but instead countries where mining takes place see their economy growing enormously. All that they can do is to unite and fight for their ancestral lands, resulting in unnecessary conflicts that could have been avoided had the communities been consulted timeously and informed at an early stage.

#### **4.5 CONCLUSION**

This chapter examined secondary data obtained from various departments and stakeholders involved in the mining project in Xolobeni. The data revealed that while the area of Pondoland was declared a marine protected area (MPA) promoting ecotourism in the area, there was a dire need for development in the area with Departments of Environmental Affairs, both national and provincially, ensuring that

concerns of all stakeholders are properly addressed. It is possible to conclude from the Department of Mineral Resources' approach to the Xolobeni Mining Project that even in cases in which the community consultation process is undisputed; the Department is not compelled to decide in line with the consensus reached by the community.

This recognition is based on the Department's refusal to revoke the mining rights based on the Amadiba community's overwhelming opposition to the mine. This raises the issue of the extent to which the Department of Mineral Resources (DMR) is required to take the opinions of local communities into consideration when deciding on mineral rights. Had Transworld Energy and Minerals fulfilled the environmental requirements, the mineral rights could have been awarded regardless of the community's dissent. Surely the legal requirement of community consultation should ensure that the Department of Minerals and Energy considers the opinions of local communities when decisions on mining rights are taken. If their opinions are not considered this legal provision becomes a mere formality rather than a guarantor of community rights to consultation and participation.

Secondly, the fact that the same Department of Mineral Resources (DMR) went ahead to award the mining licence to Transworld Energy and Minerals (TEM) despite recommendations made by both the Departments of Environmental Affairs nationally and provincially can be construed as a lack of good intergovernmental relations in South Africa. It is understood that DME has the responsibility of considering the

country's overall national economic development but this should not be done at the expense of parties affected by the mining development.

This chapter also examined the data that were collected in Xolobeni as to the views of the different communities and various stakeholders who were directly affected by the proposed mining project in Xolobeni. The analysis revealed that conflicts in the area, although they were minimal, were the result of inadequate consultation for those who do not support the mining project and fear of removal from the ancestral land. The group that supported the mining project strongly believed that the mining project will bring development in the area. This group also believed that the EIA report will yield positive results and the mining in Xolobeni will take place once this requirement is met.

While mining has not taken place yet in the area, it is interesting to note that the area is highly underdeveloped, lacking services like clinics, schools, water, roads and is beset with high unemployment levels (as revealed by data collected in the area) which is dominant amongst youth and females. Dependability on social grants was also revealed in the data collected. This leaves room for further research as to whether the high birth rates among young girls in the country are related to social grants.

The discussion in this chapter contained details of the data collected in Xolobeni and the views of all the targeted participants in the area. Discussion on how the issues of sustainable development, the environment and conflict link to the objectives of this study including the levels of consultation have also been outlined in this chapter. The next chapter gives a thorough summary, conclusion and recommendations of the study.

## **CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS**

### **5.1 INTRODUCTION**

This chapter concludes the study. It starts by giving a summary and conclusion to the study. This followed by policy implication and recommendations to the municipality, policy-makers, government and Xelobeni communities.

### **5.2 SUMMARY AND CONCLUSION TO THE STUDY**

The overall purpose of this research has been to understand the impact of the implementation of the Bill of Rights for Sustainable Development in the Mbizana Local Municipality, Eastern Cape Province of South Africa, the role of different departments, interested and affected parties in the mining project.

The study revealed the need and interest to conduct further research in Xolobeni as it is difficult to exhaust the legal wrangle that arose due to the proposed establishment of a mining project in the area. The Chapter also presented the approach in which this study was going to employ, the problem statement, objectives and questions raised in order to describe the situation in Xolobeni as it unfolds. Issues of ethical consideration also formed part of Chapter One.

Series of testimonies concerning this study was shown and supported by literature with the fact that environmental issues and economic development cannot be separated from the issue of human rights. Secondly, while governments always identify a need for rural economic development they also need to ensure that human rights are protected, as suggested by the Constitution. The nature of the Constitution necessitates public participation in all issues of development and therefore failure to consult communities lead to what the communities who are affected by such development see as the violation of human rights.

In addition, this study further discussed the implementation of the Bill of Rights on mining industries for sustainable development in South Africa and other countries' perspectives. The study also explained in detail the economic and social hardships faced by many residents more especially in African countries where mining and mineral resources were hugely deposited such as South Africa, Nigeria, Ghana et cetera.

Most importantly, many people sacrificed their lives and struggled for their fathers' land in order to sustain their families. Unfortunately, many of them have been restricted from fighting for their human rights. Undoubtedly, many literatures have shown that the implementation of the Bill of Rights on mining industries, mineral resources, land and revenues for sustainable development would increase a nation or nations' productivity. Internationally, implementation of Bill of Rights, mining conflicts, and effects of Corporate Social Responsibility (CSR), Corporate Citizenship

(CC), Corporate Social Investment (CSI) and Sustainable Development (SD) on local communities' trust of mining companies has been recognized as global challenges but only African challenges. In addition, the administration of community (mining) royalties during apartheid period in South Africa, policy provisions by the Department of Mineral Resources (DMR) in South Africa has also played a significant role in the establishment of conducive policies that would bring about growth and development to the country.

The study used both quantitative and qualitative methods of data collection otherwise called triangulation. This research design was employed in this study for the purpose of getting in-depth understanding about the research work. The study used quantitative research design where questionnaires as a research instrument were self-administered to collect first-hand information from the respondents. In addition, qualitative research design was also adopted by the researcher for the purpose of conducting interviews. Population and sampling as well as sampling technique were also discussed. All the data collected in Xolobeni was presented and interpreted and as well analysed using descriptive statistics. The results of the study confirmed that the majority of the youths in the study area were unemployed and lack of education and health facilities were some of the challenges they are facing in the area.

The mining project has, to this day, not been established in Xolobeni due to the high contestation by the opponents in the area. It has been revealed in the media (Daily

Dispatch dated March 2016) that the leader of the Amadiba Crisis Committee was assassinated ruthlessly in his home. It was speculated that his death is related to the mining establishment. The opponents of this mining still maintain that the struggle to oppose the mining will continue (telephone interview with Nonhle Mbuthuma, 27 March 2016).

The next question that one will ask is that “how many more deaths must take place in order to solve mining saga in Xolobeni? This is the area for further research.

### **5.3 THEORETICAL IMPLICATIONS**

Thomas Hobbes is of the opinion that when people are confronted with the violations of human rights as in religious theocracies that violate women’s rights or in countries that allow sweatshops to trample on workers’ rights, they feel compelled to protest the injustice of those practises and to change them for the better. This study revealed that the population of Xolobeni is dominated by females. One might ask a question as to what extent could the human rights be violated, specifically women? Locke’s argument is based on rights rather than law, but he understands rights differently. In his opinion, rights imply reciprocity or mutual respect among individuals, in a way that Hobbes failed to see. These theories have assisted this study because human rights, environment and sustainable are inextricably linked. This therefore suggests that there should be a reciprocal relationship between these three concepts.

#### **5.4 IMPLICATIONS OF THE POLICY**

Many authors among which is Fuggle and Rabie, (2009) have raised concerns about the fragmented legislation in South Africa that the law that affects the Department of Mineral Resources overlaps to the Department of Environmental Affairs and the Department of Economic Development. When it comes to the awarding of mining licenses the Department of Environmental Affairs will emphasise compliance of the EIA processes that must be followed as specified in the National Environmental Management Act (Act 107 of 1998) and the Minerals and Petroleum Development Act (Act 28 of 2002) without violating the human rights of the people who are affected by the mining proposals. On the other hand, the mandate of the Department of Economic Development is to ensure development in the country.

For instance nationally there are five separate departments that are involved in economic development and environmental protection respectively: the Department of Environmental Affairs, the Department of Economic Development, the Department of Mineral Resources and the Department of Tourism respectively. In the Eastern Cape all these mandates are housed in one department, viz, the Department of Economic Development, Environmental Affairs and Tourism. In the case of the Xolobeni mining project all these departments must account or at least have a say on what could be best solution to the mining saga.

The opponents of the mining project in Xolobeni often argue that they strongly believe that their rights are being violated. Unfortunately, the government has discovered a gap in this area and proposing for a quick decision in order to turnaround the gap to long term investment opportunities which would bring about growth and development to the area. "How does one practically strike a balance in this paradox is the area of future research".

## **5.5 RECOMMENDATIONS**

### **5.5.1 Educating Communities**

Government should try as much as possible to educate her citizens particularly on economic and social benefits that the establishment of mining and several mineral industries in South Africa would bring to the nation. She should always ensure that the citizens demands are met and request are granted on time to avoid anarchy.

### **5.5.2 Laws and Regulations**

There is a lot of jargon contained in the legislation that community members are unable to understand. Therefore, governments should ensure that these laws are interpreted to them in a clear language and express in a simple terminology so that they would be able comprehend easily to prevent future arguments.

### **5.5.3 Policy Makers and Government Departments**

Given the nature of fragmented legislation in South Africa, Interdepartmental relations should be maintained in order to avoid stifling development which may result to one department claims that they are not under the jurisdiction of a particular mandate.

### **5.5.4 Community Members and the Government**

To maintain peace and orderliness as well as fairness among the community members of proposed mining industries in South Africa, every member of the communities should be aware of any proposed policy that will be passed to both the community members and the mining owners. Possibly, there should have been an initial dialogue between the government and inhabitants of the mining land. This initial dialogue would definite prepared the mind of the community members about the opportunities that the mining would bring to them such as employment opportunities, stable income, improved standard of living et cetera. This dialogue would also be an eye-opener for the government to know the opinions of the community members concerning the proposed mining industry, either they are willing to accept the establishment of the mining or mineral industries in their area or not. Also, government should inform them that the mining industries would undoubtedly provide all the necessary safety measures for preventing all environmental hazards.

### **5.5.5 Community Members and Mining Owners**

Just as aforementioned, to avoid unforeseen chaos in the country especially between the community members and mining owners, government should create a good atmosphere environment through a better understanding of a clearly stipulated Bill of Rights that will clearly define each benefits that would be awarded to each party over a certain period of time in form of “royalties”. It must be mention again at this point that to avoid discrepancies among these two parties, government should urgently come in and encourage them to embrace a dialogue in order to settle any differences before it is escalated to killings of the innocent souls and distructions of properties and finally bringing fear to the entire nation.

### **5.6 FURTHER RESEARCH**

This study suggests that other study related to this research topic could be conducted possibly to include two to three Provinces in South Africa where mining and mineral industries are established. Importantly, a comparative study could be conducted by focusing on mining and mineral industrial related issues in South Africa. Other research study could be conducted by comparing other countries mining and mineral related issues to South Africa perspective.

## **5.7 CONCLUSION**

This chapter gave a critical conclusion to the data findings. It highlighted that the study has both theoretical and practical implications. Mining owners, community members and policy makers are going to benefit from this study. This study recommends the following to the mining owners: a clear strategy; develop a positive attitude. With a view to address policy challenges, the following recommendations were made to the government: government policies, laws and regulations should be made very clear and interpreted in a simple clear language without bias to anyone.

The chapter highlighted that future research should cover other mining and mineral industrial sectors of the economy while concentrating on the implementation of Bill of Rights.

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