



I recently visited the Eastern Cape for the occasion of my eldest son's wedding. It is the first time I had visited beautiful Morgan Bay, and we ventured up the coast into the former Transkei for some sightseeing. At one point we deviated onto a very small dirt track (fortunately we had a 4x4 vehicle) and arrived at a small cove amongst the dunes. I noticed large areas of the beach were covered in a crust of shiny black sand which, when I picked it up, felt quite heavy.

The penny dropped: this was the heavy, titaniferous metal sand that is the subject of the recent judgement in the Xolobeni mining case, whereby the High Court ruled in favour of the customary Umgungundlovu community, who opposed the mining of the dunes to recover the heavy minerals.

This led me to read several articles around the matter, which illustrated the diversity of views surrounding the issue and the judgement. This then made me realize that the divergence of views on issues such as this one may be driven by specific mandates, or by misunderstandings by various parties within the debates, about the complexity of the situation (one we have come to know is particular to South Africa).

It would not be prudent of me to opine on any of the issues raised, but I did think it useful to ponder a few questions that arise from both the underlying issues and the judgement. From there, it is up to you, the reader, to decide whether we, as a society, can stand far enough back to make informed and objective decisions, and whether the Institute has a role to play in assisting in dialogue on issues which, at the end of the day, are in the national interest. Perhaps the SAIMM can also facilitate processes by which we try to gain a deeper understanding of these issues at times opposing perspectives, so that we may meet each other more readily in a place of mutual understanding and respect.

First, let's revisit the issue of sustainability.

From the report of the World Summit on Sustainable Development, held in Johannesburg in 2002, the Summit declared 'We commit ourselves to building a humane, equitable, and caring global society, cognizant of the need for human dignity for all' and that 'we assume a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development – economic development, social development and environmental protection – at the local, national, regional and global levels'.

Firstly, these statements should be at the heart of whatever opinion one develops around the Xolobeni case, in providing a framework for our opinions. Secondly, I have found, in some instances, that people cling to these pillars of sustainable development without extending them into a discussion of 'what happens when the mining is finished?' Sometimes, the issue of sustainable development is linked to the life of the mine, without any consideration of the post-mining landscape. Clearly this is incorrect, and thus, in our work within the SAIMM, we have identified, and continue to identify, sustainability as extending the economic benefits of current mining into matters of environmental care, such that social development can provide ongoing livelihoods for communities on whose land mining has taken place. This includes the provision of improved land use – defined collectively with stakeholders – and local industrialization, and the provision of services and infrastructure, as well as educational, training, and development opportunities. Sometimes economic benefit and environmental care are totally at loggerheads and irreconcilable in the short term. Economic benefit cannot replace sense of place, connection to the land, or reverence for sacred spaces.

The question that should therefore be considered is 'does the judgement (for or against) support these objectives?'

Turning to the issue itself, the first consideration is that of consultation. The Mineral and Petroleum Resources Development Act (MRPDA) outlines a process in terms of 'consultation' which must be followed and demonstrated. If it can be demonstrated that due process has been followed, then the holder of the mineral right has precedence over the landowner or surface right holder, because the minerals, in terms of the Act, belong to the State. Thus, to use the word 'trump' (with a small 't'), the MRPDA trumps the rights of the surface rights holder. This, in itself, raises important questions.

First, if the surface rights holder is a private person or freehold owner, then while the interests of this (juristic) person (such as a farmer) may be compromised, currently, compensation based on 'fair value' may be applied, which may satisfy the landowner for the temporary or permanent loss of the land.

Secondly, however, if the land is owned by a community, and is termed 'customary land' (being lands held by a community, or tribal lands that may have emanated from a 'homeland'), the issue arises 'who is the landowner, and what rights are ceded by individuals to that representative?' This is a very different case, because the issue of freehold ownership may not be important to the people, for whom the more important issue is the traditional occupation of the land over many generations, and the ancestral rights that go with that. Furthermore, their rightful representation may be called into question.

So, the issue here is whether the notion of compensation and removal from traditional land is appropriate in a complex societal and cultural landscape?

If this 'trumping' can result in people being relocated against their will, then there is an important land ownership issue that must link to the policy of 'expropriation without compensation' and surrounding debate, which goes beyond the generally accepted idea of taking land from owners or rights holders who are not using the land productively, but instead involves people who believe their land value lies in traditional history and ancestry, upon which it is almost impossible to place a price.

President's Corner (continued)

The economic development debate needs to centre on the sustainability of the project(s) and their potential impact on sustainability, in its broadest conceptualization. This would mean, on the one hand, assessing accurately the economic gain in terms of employment for the 15-year life of the project, and the benefits that would accrue to the communities (and the local, provincial, and national economy), compared to the alternative use of the lands and region. Clearly in the latter case, a do-nothing option would yield little beyond what is currently the case (in an area of relatively high unemployment). However, we find ourselves with two Phakisa projects fighting for space: the Mining Phakisa wanting to mine and create mining employment, and the Oceans Phakisa which is focused on eight areas that are estimated to create one million jobs by 2033. In particular, these relate to Small Harbours and Coastline Development, Coastal and Marine Tourism, Skills Development and Capacity Building, Aquaculture, and Research Development and Innovation, all of which are applicable in the Eastern Cape.

The question is, can these two Phakisas live side by side in this area, and if not, which one 'trumps' the other? In a complex world of growing need for radical cooperation and collaboration, can we imagine a way in which the objectives of these two Phakisas, rather than competing to 'trump' one-another, collaborate to strengthen each other? This is a paradigm of creativity that has not yet been explored.

The issue of economic development and sustainable livelihoods is fundamental to these discussions. Commentaries from some quarters have indicated that this judgement could herald the end of mining investment in South Africa, because it will mean that communities have the precedent of stopping mining investment and creating uncertainty. This argument may be an argument of convenience, or it may be an argument that is backed by potential investors who would rather invest in an easier environment. The question ought to be, would you rather invest in a country that respects the democratic rights of its citizens and its communities, and ensures fair and meaningful engagement such that we create a successful and stable South Africa, or one that prefers to drive the economic benefit pillar at the expense of the other two?

The environmental restitution matters are huge in this case, especially given the relatively short mining life. One must be certain that there is the realistic opportunity to rehabilitate the pristine landscape of the Wild Coast to its original condition in a short period of time. This involves more than taking sand, processing it, and putting it back (later) where you found it. Projects known to the author have messed up the repositioning of fertile soil, resulting in rehabilitated areas being taken over by alien species. Clearly, serious questions need to be asked, not only of this project but of all concurrent rehabilitation projects as to the sustainability of the rehabilitated land, and the creation of standards and guidelines that are not just a preserve for consultants. That there is at least one such massively successful rehabilitation project evident in the Richards Bay Minerals forests that should show us a methodology and bring hope for the way forward, given the right stakeholder involvement and levels of commitment from all.

It is clear that this case has raised not only many issues but, more importantly, aroused many differing opinions that do not reflect our collective desire for a sustainable future for our country, our industry, and our citizens.

Is it not realistic to think that we can stand back from the rhetoric and mandates, and take a collective long-term view that will satisfy the needs and aspirations of all the people of South Africa, respecting their needs, and creating a better future for all?

Because this project is close to the ocean, and because the ocean is such a restful and emotionally restoring entity, here is a poem to reflect its endurance, and how we can learn from that; especially that we may learn to listen.

The Sea (Bronagh M. Dunne, 2018)

Ever changing, constant
rhythmic and random
silence, full of sound
like cold water
soothes my soul.
Gull cry awakens
saline cleanses
and vastness dwarfs
as I sit and breathe
the hearty air.
Sometimes I talk
and the waves listen
but mostly the waves talk
while I sit still
and listen.

Our Institute is about mining and metallurgy. Were it only that, in this case we would be thinking what kind of bucket-wheel excavator to use, and what form of dense media or gravity separation plant to use.

The world has changed: we have many other issues to consider, and we have not even spoken about Industrial Revolution 4.0!

A.S. Macfarlane
President, SAIMM