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CHANGING COASTAL ACCESS PATTERNS

A study of the Richards Bay coast

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Environmental Management

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LIST OF ABBREVIATIONS

| | |
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| ABS | Access and Benefit Sharing |
| BEE | Black Economic Empowerment |
| CBD | Convention on Biological Diversity |
| CPR | Community Property Rights |
| CSR | Corporate Social Responsibility |
| DEAT | Department of Environmental Affairs and Tourism |
| EKZN Wildlife | Ezemvelo KwaZulu-Natal Wildlife |
| IDP | Integrated Development Plan |
| MCM | Marine and Coastal Management |
| MLRA | The Marine Living Resources Act 18 of 1998 |
| MPA | Marine Protected Areas |
| NBF | National Biodiversity Framework |
| NBSAP | National Biodiversity Strategy and Action Plan |
| NEM:ICM | The National Environmental Management Integrated Coastal Management Act 24 of 2008 |
| NEMA | The National Environmental Management Act 107 of 1998 |
| NEM:BA | The National Environmental Management Biodiversity Act 10 of 2004 |
| NEM:PAA | The National Environmental Management Protected Areas Act 57 of 2003 |
| NGO | Non Governmental Organisation |
| PAJA | Promotion of Administrative Justice Act 3 of 2000 |
| PRA | Participatory Rural Assessment methods |
| RBM | Richards Bay Minerals |
| RDP | Reconstruction and Development Plan |
| SADC | Southern African Development Community |
| SFTG | Subsistence Fisheries Task Group |

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ABSTRACT

Access to the coast and to its resources is important for a variety of users. Public rights to access are recognised in common law and in various international commitments, forming part of many environmental laws worldwide. The importance of equitable access to natural resources is also recognised through international and South African literature and through new approaches to conservation and mining which attempt to shift such activities as these (i.e. activities that impact on the social environment) to become more people-centred, equitable and just. Similarly, the importance of deriving equitable benefits from these resources is therefore also emphasised. However, access to the coast and to its resources remains constrained for many users in various coastal areas of South Africa.

The overall aim of this dissertation is therefore to contribute to the understanding of access patterns along a section of the Richards Bay coast in South Africa and how these patterns are affected by mining and conservation. The primary objectives, which will assist in the achievement of this aim, include, identifying relevant stakeholder groups and the benefits they derive from the coast and its resources, and reviewing the change in access patterns over time with a specific focus on identifying and discussing the factors that enable and constrain stakeholders' access to the Richards Bay coastal area. Secondary objectives include gaining an understanding of the perceptions of stakeholders with regards to efforts undertaken by the mining and conservation sectors to offset the loss of access which has resulted from their activities, and to assess the extent to which post-1994 policy and legislation objectives have been met. Data was collected through a review of the relevant literature, and through field work, which included a stakeholder analysis, focus group meetings, semi-structured and informal interviews, participant observation, as well as the use of Participatory Rural Appraisal (PRA) techniques, aerial photographs and GIS software.

Through the findings, the dissertation identifies a need for enhanced coastal access in the study area. Various factors either constrain or enhance this access for the various stakeholders. Several of the constraining factors additionally lead to implications which further restrict coastal access for stakeholders. Two broad groups of factors, namely, overarching (higher order) factors and lower order factors, are also identified. With

regards to the benefits which the mining and conservation sectors have attempted to provide in lieu of lost access, it appears that local indigenous people mostly perceive themselves as unable to benefit from these sectors' efforts. Several other issues highlighted through the dissertation, include, the need for alternative livelihoods, the problem of mussel poaching and a need for increased communication between stakeholders and, the mining and conservation sectors. Ultimately, the study highlights the need for an integrated, holistic management approach to the coast and to issues of coastal access. In terms of new, more people-centred approaches to conservation and mining, the dissertation demonstrates that although many improvements have been made in comparison to pre-1994, a disjuncture does still exist between rhetoric and practice. Similarly, with regards to policy and legislative promises, although numerous provisions recognise and promote the need and right of access, this is limited in practice due to a lack of capacity and co-operative governance.

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CHAPTER ONE

1. INTRODUCTION

1.1 Background and rationale

Coastal zones can be defined as the interface between the land and water' (Nelson, 2008: 1) or 'The set of landward systems whose functioning and use directly affects the marine environment and the set of marine systems that exist in proximity to land' (Brown et al, 2002: 3). They are important for their ecological, social and economic roles (Nelson, 2008). They offer numerous benefits to users including a variety of goods and services such as food, recreation, agriculture, port facilities, conservation, and ecological services. The coast is also a place of cultural, spiritual, educational and scientific significance (South African Coastal Information centre, 2005). Its value is therefore considerable and access to it and to its resources is important. However, because of the numerous benefits offered by the coast, it is increasingly under pressure for development and utilization, such as for mining, coastal developments, forestry and conservation. In many instances this results in limited or no access for certain users, whilst others have access and are able to reap the benefits. Access patterns are thus often inequitable (Department of Environmental Affairs and Tourism (DEAT), 2005).

This continues to be a problem in many countries. Access to the coast in the United States, for example, is a controversial issue because of the various competing users (Mongeau, 2003). As with other parts of the world, increased purchasing of shorefront property has resulted in restricted public access to the coast. Subsequently, clashes have ensued between private and public users whilst the government has tried to provide for the high demand for recreational access, and simultaneously attempted to accommodate shorefront property owners (Mongeau, 2003). In addition, privatisation of the coast has led to restricted and lost access for indigenous' communities which depend on the coast and its resources (United Nations Environment Programme

This term is used, in the context of this thesis, to distinguish between local cultural groups of native origin historically long-associated with a geographical area and local urban communities which settled in an area as a result of a country's historical colonisation.

(UNEP), 2002). In Africa, inequitable land distribution, ownership and tenure patterns due to past colonial discriminatory policies and practices as well as gender discrimination have also significantly affected access to land and resources (UNEP, 2002).

In terms of South Africa, uncontrolled, haphazard development has taken place along the coast (Hauck and Sowman, 2001; DEAT, 1998), contributing to the problem of restricted coastal access. Mining and conservation activities within the coastal zone have also influenced access patterns. Mining has historically, and still today, hampers access to large stretches of coast in South Africa. For instance in the Northern Cape, there is an abundance of offshore and onshore diamond deposits and thus there is a well developed and dominating mining sector which limits public coastal access (CSIR, 2004). Conservation in South Africa has largely benefited elitist minority groups and often restricted access to the coast and its resources for a number of users, particularly for local indigenous communities (Sunde and Isaacs, 2008; DEAT, 2005).

Furthermore, the legacy of colonial rule and apartheid in South Africa has contributed significantly to the disadvantage of certain groups in society, whilst simultaneously benefiting others in a system regarded as inequitable, unequal and unjust (iSimangaliso Wetland Park, 2008; DEAT, 2006; uMhlathuze Municipality, 2002). Policies and laws enacted at the time of apartheid in South Africa meant that access to the coast and its resources was limited to a minority of the population (Hauck and Sowman, 2001). This inequality caused frustration, resentment and conflicts over access to and benefits from resources.

The transition to democracy in 1994 resulted in the promulgation of a variety of laws and policies to redress past inequalities (DEAT, 2005; Hauck and Sowman, 2001), such as the Constitution Act 108 of 1996, Marine Living Resource Act 18 of 1998, National Environmental Management Act 107 of 1998, the White Paper on Sustainable Coastal Development (2000) and the newly promulgated National Environmental Management: Integrated Coastal Management Act of 2008, all of which promote improved and equitable access to the coast and its resources as well as a more sustainable use of resources.

In addition to these laws, a number of recent international conventions and agreements, in combination with human rights movements globally, have called for a greater recognition and incorporation of principles of social justice, and more specifically, equitable access to and benefits from natural resources (Secretariat of the Convention on Biological Diversity (SCBD), 2005; Whiteman and Mamen, 2002; Kapelus, 2002; Allison and Ellis, 2001; Clark, 1992). The mining and conservation sectors in South Africa (as well as internationally) have responded through various initiatives to provide equitable access and benefits to local indigenous communities affected by their activities (DEAT, 2005; Kapelus, 2002).

Nevertheless, access to the coast and its resources remains an issue in South Africa that needs greater attention (South African Coastal Information Centre, 2005). In addition, limited research has been undertaken on coastal access, particularly in South Africa. This dissertation seeks to contribute to the understanding of coastal access patterns in South Africa primarily through the identification and understanding of the factors that influence access in a negative or positive manner in selected study areas. This study forms a part of a larger project (the South African Netherlands Program on Alternatives in Development Research project - SANPAD - funded by the National Research Foundation and Netherlands Research Programme on Alternatives in Development) which examines access to the South African coast and the attainment of policy goals post apartheid, specifically investigating ways in which access has been reconfigured and governed since 1994 in order to analyse these trends and their underlying drivers.

Identifying the factors that enable or restrict the ability of stakeholders to access the coast and its resources, within a particular social and political-economic context, is an important component of this study. In order to identify and understand these factors, it is necessary to investigate access patterns and how they have changed over time, at the local level. This is especially significant in terms of land-use activities (such as mining, and conservation), which play a significant role in facilitating or restricting access to the coast and its resources. Where access has been lost due to these sector activities, it is important to identify the initiatives and measures undertaken to compensate this loss. Understanding how access patterns have changed and how this has affected stakeholders, as well as understanding the measures put in place to compensate loss of

access is important to inform coastal management and policy. It is also important to assess the perceptions of affected stakeholders with regards to these efforts because where stakeholders do not perceive themselves as benefiting, this could have significant implications for resolving conflict, sustainability, successful conservation of coastal resources, fairness and justice.

Consequently, this study focuses on access patterns and the factors that affect stakeholders' ability to access and derive benefits from a stretch of coast in the Richards Bay area on the northern KwaZulu-Natal coast (Figure 1), It also examines the mining and conservation activities operating in this area, in order to determine the ways in which these sectors contribute to shaping access patterns. Other issues addressed in this study include a review of stakeholders' perceptions with regards to the efforts taken by the mining and conservation sectors to offset their loss of access, as well as a review and assessment of the legislation and policy framework governing access to the coast, and the extent to which these policies and legal provisions are implemented.

Due to the large size of the study area, the interest of this dissertation is in obtaining an *overview* of the access issues prevalent in this area. Thus, the study does not attempt to measure the level of *access* but rather attempts to provide an understanding of access patterns along this part of the coast and identify and understand the factors that shape access patterns.

1.2 Aims and objectives

The overall aim of this research is to contribute to an understanding of access patterns along a section of the Richards Bay coast and how these patterns are affected by mining and conservation, with a specific focus on the identification, examination and discussion of factors that facilitate or restrict access to the coast and its resources.

The main objectives that will aid in the achievement of this aim include:

- To identify all relevant stakeholders or stakeholder groups and the benefits that each stakeholder or group derives from the coast and its resources. These benefits will include both the consumptive and non-consumptive benefits derived.

- To provide a review of how access patterns in the area have changed over time, including schematic representations of access patterns for the different stakeholder groups.
- To identify and discuss the factors that enable or restrict stakeholders' access to the coastal area under investigation.

The secondary objectives will be:

- To gain an understanding of the perceptions of stakeholders with regards to the efforts undertaken by the mining and conservation sectors to counteract or offset the loss of access resulting from their activities; and
- To assess the extent to which post-1994 policy and legislation objectives have been met.

1.3 The study area

The study area is located on the north coast of KwaZulu-Natal and spans the coastline between the Maphelane Nature Reserve (in the north) and the furthest southern Mbonambi local municipality boundary (Figure 1). It is roughly 50 km in length and is situated close to Richards Bay town and port, which is located south of the study area (Figure 1) and was chosen particularly because of mining and conservation activities taking place in the area. It was also selected because of the presence of two coastal indigenous communities (Sokhulu and Mbonambi), as well as other coastal stakeholder groups. The latter group includes the local (urban) Richards Bay community, the recreational anglers and the recreational 4 x 4 users. This stretch of coast has a number of additional important characteristics, whose presence also contributed to the decision to locate the study along this coastline. A background and thorough description of the study area and its characteristics, is provided in Chapter 4.

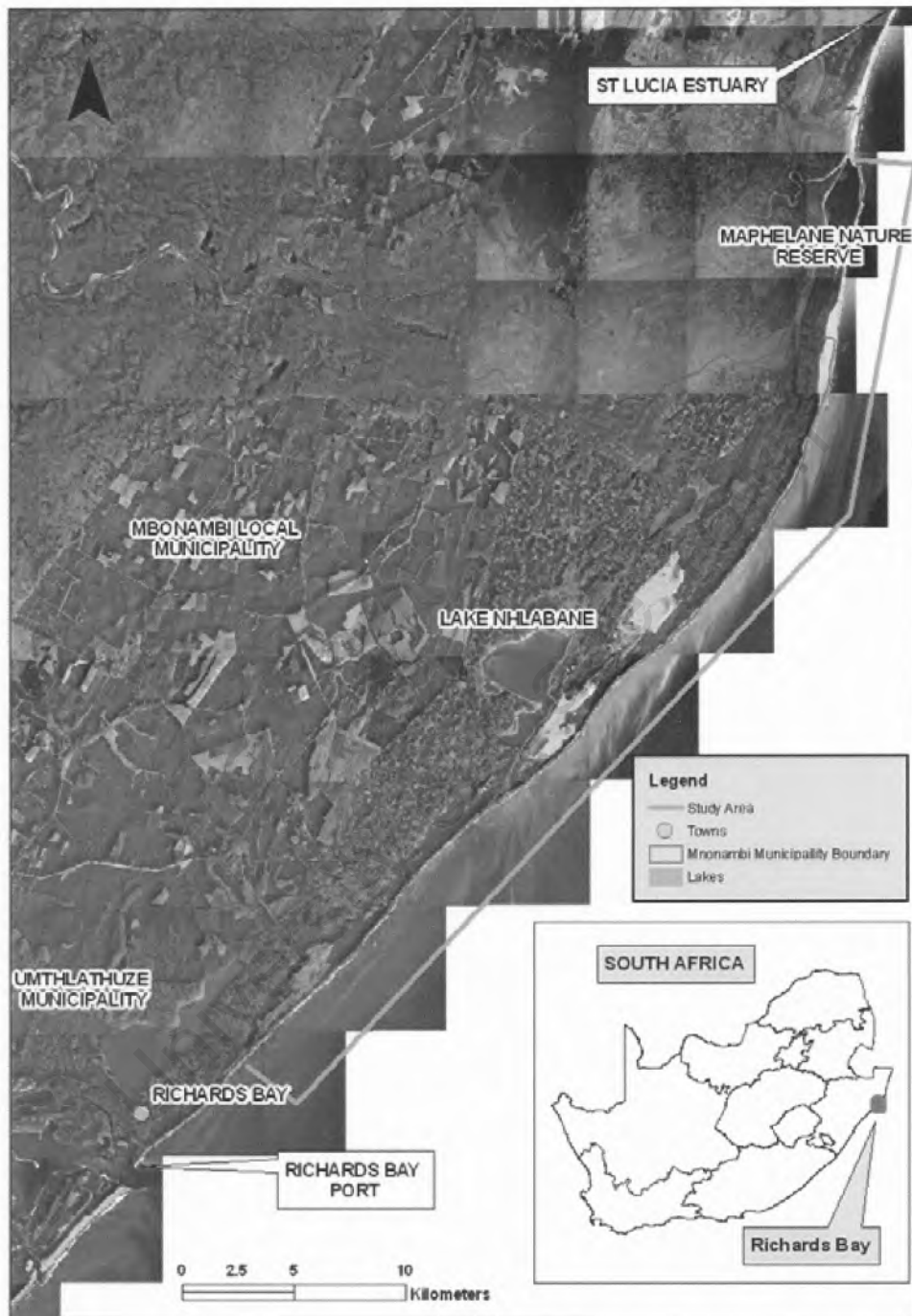


Figure 1: Map showing study area stretching (approximately) from Maphelane Nature Reserve in the north to the boundary of the Mbonambi local municipality (just north of the Richards Bay harbour).

1.4 Methodology

Information for this study was obtained mainly from a review of relevant literature and field work. During the field work, a number of methods were employed. These included (a) a stakeholder analysis, (b) the use of semi-structured interviews, (c) the use of focus group meetings, (d) to a lesser extent, the use of informal interviews and participant observation, and (e) the use of Participatory Rural Appraisal (PRA) techniques, in combination with aerial photographs, and GIS software. These methods were used to gather and analyse information in order to inform and meet the objectives of this study. The data collected to inform this study was mostly qualitative, and often relates to the *perceptions* of various stakeholders; who raised concerns and issues of importance to them.

1.4.1 A review of relevant literature, legislation and policy

A review of the literature was undertaken which largely focused on the public nature of the coast and the importance of coastal access, the theoretical ideas underpinning the notion of access (including literature on property rights and access theory), and a review of social justice and indigenous cultural justice literature. A review of the general coastal access issues prevalent in the international context as well as in the South African context (including issues related to mining and conservation) was also undertaken. This literature review provided the background information necessary to understand coastal access issues generally, and in South Africa more particularly, as well as provided the conceptual framework for the study. It addressed both the international and local context and included a review of formal publications, grey literature, government reports, and internet sources. A review of international policy instruments relevant to coastal access and management as well as South African policies and legislation was also undertaken. The literature review provided a framework for the study, guiding the eventual analysis and discussion of the findings.

1.4.2 Overview of field work

The field work undertaken for this study included two field visits to Richards Bay, over a two month period, at which time information was gathered, interviews were conducted and focus group meetings were held. Each of these methods will be discussed below. This fieldwork was undertaken in conjunction with a researcher working on a related

project (funded by the *Western Indian Ocean Marine Science Association - WIOMSA*) undertaken by the Environmental Evaluation Unit. The first visit took place in February 2009 as part of the initial scoping phase of the project, and lasted a few days. During this visit, key stakeholders were identified and informal interviews were conducted to gather information about the study area and stakeholders. This was followed by a second field visit (of two weeks) in April 2009 at which time formal interviews, focus groups and the gathering of further information were undertaken. Due to the presence of the two indigenous local coastal communities, Sokhulu and Mbonambi, the field visit also included the formal introduction of the project and researcher to the Tribal Councils of these two communities. This provided formal approval, in terms of the community's viewpoint, for research to take place and for interviews and focus groups to be held with community members.

1.4.2.1 Stakeholder analysis

One of the first steps in this study was to undertake a stakeholder analysis. A stakeholder analysis is a process by which qualitative information is gathered and analysed in order to establish whose interests should be considered when undertaking a project and what those interests are (Schmeer, 1999). Stakeholder analysis and identification is important because it provides a better understanding of the project's social and institutional context (Renard, 2004). This was therefore used to identify the relevant stakeholders and their historical and current interests in the coast and its resources, as well as the benefits they derive from the coast and its resources. In the case of this study, this was limited for the most part to those whose access has been *affected*, and who therefore wanted greater access. Stakeholders that *impact* on coastal access were also acknowledged; however, due to the need to stay within the scope of a mini-dissertation, the identification of these stakeholders focus on only two stakeholder groups, namely; the mining and conservation sectors. These were also two of the most dominant sectors which had historically affected coastal access in the area. Analysis and discussion was focused on the first type of stakeholders i.e. primary stakeholders, in the context of this study. Schmeer (1999) suggests several important steps in a stakeholder analysis, which were utilized in this study to identify the relevant stakeholders (as revised from Schmeer, 1999). These are listed below:

- Defining the purpose of the analysis and selecting an issue on which the analysis is based: The stakeholder analysis was therefore focused on a specific issue, namely, access to the coast and to its resources.
- Defining the main concepts and ideas related to coastal access and compiling and reviewing related information: This was undertaken through the literature review explained above.
- Identifying key actors with a vested interest in terms of the focus of the study. This was undertaken in the initial scoping field visit. Primary stakeholders were thus identified through a combination of literature review, local knowledge and chain referrals resulting from interviews with known stakeholders.
- Developing standard questionnaires for interviewing key stakeholders (analysing their interests): Standard questionnaires as well as flexible lists of questions (Appendix 2 and 3) were developed for the stakeholder groups. This will be discussed further below under semi-structured interviews and focus groups.

1.4.2.2 Semi-structured interviews

Semi-structured interviews were undertaken with members of each primary stakeholder group identified during the stakeholder analysis (Appendix 1). These allow the interviewer to ask more probing questions in response to unclear answers (Gray, 2004) or to explore additional and unexpected information. The use of partially structured interviews thus ensures that the interview stays focused but also enables conversation and discussion by participants (The World Bank, 2009a). Therefore, although an interview schedule was formulated for different stakeholder groups (Appendix 2), questions were open-ended, enabling discussion and greater flexibility. Several of these interviews were conducted over the telephone due to travel and time restrictions. Twenty-four semi-structured interviews were undertaken.

1.4.2.3 Focus group meetings

Three focus group meetings were held with members of the local communities. According to Gray (2004), focus groups allow for a diversity of opinions, views and perceptions to be openly voiced; furthermore, group dynamics can stimulate new perspectives important to the study. Two focus groups were held in Sokhulu, one of

which was informal. One focus group was held in Mbonambi. These focus group sessions were each approximately six hours in length and made use of Participatory Rural Assessment (PRA) methods and a list of open-ended questions to guide and focus the discussion (Appendix 3). This enabled flexible discussion, participation and openness. PRA techniques will be explained further below.

Focus groups were held at the Mbonambi tribal court and at the Sokhulu tribal court, respectively. Even though the first focus group at Sokhulu was informally and spontaneously held, it was found to be a good opportunity to gather information on the perceptions and opinions of the community members present. This initial information was then used to further inform the compilation of the formal focus groups and key informant questionnaires.

1.4.2.4 The use of PRA techniques in combination with available aerial photographs and GIS software

PRA techniques were largely used to understand, describe and represent the changes in access patterns over time. This technique was supported by the use of various aerial photographs and GIS software. Digital copies of the most recent (2005) gee-referenced aerial photographs for the area were obtained from the Department of Land Affairs in Mowbray. Digital GIS data was also obtained for the area; this was overlaid onto the aerial photographs using Arc GIS software, in order to depict landmarks such as main roads and schools. This map was then printed and used for the PRA mapping technique carried out during the focus groups and with certain key stakeholders. Community sketch mapping facilitates community members in developing schematic spatial representations of the area (Asia Forest Network, 2002); this was therefore used to show the change in access over time. The schematic figures were then displayed as part of the findings. Three other types of PRA techniques were used, namely, time lines, list making and systems diagrams. These are explained as follows according to the Asia Forest Network (2002): Time lines allow for participants to identify important historical events, systems diagrams can be used to illustrate the user groups and the interaction between these groups and list making is a collaborative process which allows the identification of resources. Therefore time lines can be used to show the main events that demonstrate the changes in access over time, systems diagrams can be used to

² This was an un-planned meeting with no previously-prepared interview schedule or questions.

illustrate the local institutional context and interactions between the various institutions, and list making can be used to document the types of resources harvested, classifying them to show which were historically harvested and which are now available (thus demonstrating a change in resource access).

1.4.3 Analysis of the data

Ideas from the literature, and in particular the theoretical work of Ribot and Peluso (2003) on access theory, were used to guide the analysis in this study. Drawing on this literature, several steps from access theory were adopted and adapted for this study. The steps are: (1) The identification of the benefits which each stakeholder/group derives from the coast and its resources, (2) investigating how access patterns have changed over time (3) the 'mapping' of factors according to various given categories, in order to identify and analyze the factors that enable and restrict primary stakeholders in their ability to access the coast and its resources (4) understanding the impact of mining and conservation on coastal access.

In addition, Whiteman and Mamen's (2002) indigenous cultural framework of justice (in combination with other social justice literature) was drawn on in considering local indigenous community perceptions of compensation efforts from mining and conservation sectors, in lieu of lost access. Information used to inform these steps was based on stakeholders' perceptions as well as factual information (where possible). This analysis was constrained to the indigenous local communities because data collected was not sufficient to allow for this analysis in terms of the other stakeholder groups as well.

Analysis of the data gathered was carried out through the breaking down of data in a process of thematising and categorizing, allowing for the systematic identification of key thematic areas, and the subsequent building up of data in novel ways that allow for elaborating and interpreting (Terre Blanche and Durrheim, 1999). Information was thus grouped according to various themes, which enabled analysis and the identification of linkages between the data. The findings were then discussed in terms of the ideas explored in the literature review, especially those in the access literature and social and indigenous cultural justice literature.

1.5 Limitations of the study

1.5.1 Short time frames and limited travel to the study area

Due to the six month time frame associated with a master's mini-dissertation, the study was constrained in the ability to probe further into particular issues, for example, the disjuncture between the initiatives undertaken by the mining company to benefit the local communities, and the sense of injustice and lack of benefit which these stakeholders feel. The study was also constrained in the ability to undertake more in-depth fieldwork. Travel to the study area was limited to two field trips, the first for scoping and the latter to conduct interviews, focus groups and the gathering of data.

Furthermore, time was constrained by the need to appear before and be accepted by the Tribal Councils of both the Mbonambi and Sokhulu communities. Permission from these Tribal Councils was required in order to hold formal focus groups and key informant interviews within the communities.

1.5.2 Sample size

Although the study attempted to focus on and target resource users, the sample size used for focus groups and interviews in each stakeholder group was limited due to time and cost constraints (refer to Appendix 1).

1.5.3 Scope

This research focused (due to time and cost constraints) on two of the dominant sectors operating in this area, namely mining and conservation. However, the presence of other sectors (stakeholders which impact on access to the coast and its resources), is recognised and the links between these various sectors in providing or restricting coastal access and benefits. The study also focuses on the indigenous local communities more than on the general Richards Bay public, recreational anglers and recreational 4 x 4 users in the discussion of justice principles and their implications (Chapter 6), due to the fact that data collected provided information largely focused on these communities, rather than the other stakeholders.

1.5.4 Language

Language was a further limitation to the study. Zulu is the common language in the rural coastal communities surrounding Richards Bay. A translator was used to translate all questions into Zulu and interpret the respondent's answers into English. Some information may have been lost during this process.

1.5.5 Questionnaires

Questions were pilot tested at the outset of the second field visit and were amended in the light of the feedback. In addition, some questions were not applicable or had already been answered through discussion, and questions often needed to be simplified.

1.5.6 Focus Groups

Time constrained the focus group discussions. Consequently, although all questions were answered, lengthy explanations given in response to certain questions (where the members felt that the issue was particularly important) constrained the time which could have been spent on the other questions and issues. Therefore answers were not always probed to obtain specific in-depth information due to the limited time available to cover all the questions set out.

The first focus group held in Sokhulu was informally held. It was organised as part of the WIOMSA project, and occurred during the scoping visit rather than during the formal trip undertaken for the purpose of gathering information, carrying out interviews and focus groups. It included members of the subsistence mussel and line-fishing committees, and was organised through the EKZN Wildlife community field extension officer. General, informal and open ended questions (not pilot tested) were asked, followed by an informal discussion. A possible further limitation to this focus group was the presence of one of the Maphelane Nature Reserve officials. The Maphelane Nature Reserve official had previously been one of the authority figures in conflict with members of the community, prior to the start of the subsistence program.

The second focus group in Sokhulu was dominated by a particular man, who frequently answered questions before they were completed. The researcher and facilitator attempted to encourage others to voice their opinions, and approximately half way through the focus group some of the other men got more involved. The women were

less vocal in the presence of men; this was obviously a constraining factor. It would have been better if a separate focus group had been held for them.

1.5.7 Limitations of literature

The literature on access theory is limited due to the concept being relatively recent, especially in terms of physical access and the ability to benefit. Literature on benefit sharing is also limited as it tends to focus on genetic resources rather than on general or coastal resources.

1.5.8 Qualitative data

Much of the information gathered during this study relies on stakeholders' perceptions and opinions. A large amount of this information could not be substantiated through official reports or quantitative data. This information often highlights different perceptions of reality or contradicting statements. Thus, the findings generated from this study should be regarded as preliminary. Similarly mapping was largely based on Participatory Rural Appraisal methods, such as community or stakeholder sketching; this was the most sensible method to use in terms of obtaining information from the local communities but also due to limitations in time and scope of study. Thus these diagrams are more schematic than spatially accurate, however, to all intent and purposes they do serve to convey changes in access over time.

1.6 Research ethics

This research dealt chiefly with people; ethics were therefore considered and incorporated when undertaking the study, specifically in the case of interviews and focus groups.

The Tribal Authorities of both communities involved in the research, were approached, and formal consent to work within the communities was obtained after an explanation of the project was given. Participants were told that responding to questions was voluntary, as was participation, and that anonymity would be preserved if that was their wish. A description of the aims and objectives of the research as well as of the information required was provided prior to conducting the fieldwork. The communities requested that the researcher return to the communities and present the findings once the study was

completed. Stakeholders were promised a copy of the final study. Informed consent (according to Gray, 2004) is obtained through providing the information mentioned above. All parties in this study consented to participation.

1.7 Structure of the dissertation

This dissertation consists of seven Chapters structured as follows. Chapter 1 is an introductory Chapter which provides background information on coastal access and builds a rationale for this project. It provides the overarching aim and objectives of this project and explains the methods used to meet this aim and the various objectives. It introduces the reader to the study area and explains the limitations of the study, ending with an overview of the ethics considered and a breakdown of the dissertation.

Chapter 2 reviews literature pertinent to the public nature of the coast, the importance of access, the theoretical and conceptual notions defining the notion of access and which underpin the study, and lastly the various access issues pertinent internationally and in the South African context.

Chapter 3 provides a review of relevant policy and legislation, including international instruments and South African laws and policy relevant to coastal access.

Chapter 4 provides a detailed and comprehensive description of the study area, which explains the various important features of this coastal area and provides the background to the study.

Chapter 5 presents the findings of the study grouped under key thematic areas. The main themes include: the identified stakeholders for the area and the benefits they derive from the coast and its resources; an overview of how access patterns have changed for these stakeholders; and their perceptions of initiatives undertaken by mining and conservation to counteract their loss in access and benefits.

Chapter 6 discusses the findings presented in Chapter 5, drawing on the theoretical literature presented in Chapter 2. It also discusses the disjuncture between legislation

and policy relevant to access to the coast, and what is happening in reality. Lastly, it presents the conclusion of the study and dissertation

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CHAPTER TWO

2. A REVIEW OF ACCESS LITERATURE: THEORETICAL IDEAS AND GENERAL TRENDS

As presented in Chapter 1, a key focus of this study is to contribute to the understanding of patterns of access along the coast of South Africa, specifically through the assessment of factors that influence these patterns. This Chapter examines: the public nature of the coast and the importance of coastal access for a variety of users, specifically coastally dependent communities. Thereafter, key theoretical ideas which underpin the study (primarily property rights, access theory, and social and indigenous cultural justice theory) will be used to investigate and build a notion of access within the context of this study; including the ability of stakeholders to benefit in lieu of lost access. Lastly, a review of access issues highlighted in the international as well as South African literature will be discussed.

2.1 The public nature of the coast, the right to access and the importance of access

The public nature of the coast has been evident in the past, and is still apparent today. Historically, the sea was important for a variety of activities ranging from transport to trade to the provision of food; as a result, development and settlements became concentrated along the coastal zone (European Commission, 1999). Coastal areas are still significantly important today and the majority of the world's population live within this area (Nelson, 2008).

Coastal access has been historically crucial in order to access the sea for travel purposes, as well as for harvesting of marine and coastal resource; whereas in recent decades, coastal access has been additionally recognised as extremely important for

recreation, tourism, and health, as well as for their associated benefits (Peter Scott Planning Services Ltd et al, 200e).

According to Navarro (2000), the notion of public access to the coastal zone originated in Roman law through the Public Trust Doctrine, which recognised the seashore as *public* and ensured that basic public *rights of access* to it were secured. These rights were considered as essential to sustain people's livelihoods (through access to marine resources and to the shore for subsistence) and commerce, and included 'the right to navigation, fishing, accessing ports, using riverbanks for the purpose of tethering vessels and offloading cargo, using highways, and accessing and using the seashore to the highest tide' (Navarro, 2000; 5).

The Public Trust Doctrine became part of the common law of many countries; underlying the right to public coastal access (Peter Scott Planning Services Ltd et al, 2006). It is now an international environmental law principle which is included in many of the laws created by different countries, for instance, The National Environmental Management Act of 1998, in South Africa", where it emphasizes the right of people to have the environment held in public trust for them and emphasizes that the beneficial use of environmental resources serve the public interest. It can be used in a court of law to prevent development which may negatively impact access for the public, thus protecting access rights (Hildreth, 1993), but is also used as a basis to inform and support legislation that secures citizens with a statutory protected right to coastal access (Navarro, 2000), which is largely thought to be the most effective way of securing public rights of access (Clark, 2008). In this way, the right of public coastal access is recognised in both the common law and statutory law of many countries (Navarro, 2000).

However, although many countries traditionally had rights of public access, through Roman law, many lost them over time as private property rights gained more importance. For example, Denmark and Sweden both had traditional rights of access

Peter Scott Planning Services Ltd. et al (2006) compiled and edited the study 'Coastal Access in selected European Countries'. This report was commissioned by the Landscape and Recreation Division of the Countryside Agency in the United Kingdom and was prepared in order to inform options for enhancing access to the coasts of England.

⁴ Section 2, (4) (o)

called 'Allemansrätten'; which allowed citizens to walk, cycle, ski, camp, sail and to pick wild products. These rights were retained by Sweden but lost in Denmark (Peter Scott Planning Services Ltd et al, 2006).

Countries that historically lost rights of public access or that lacked them from the start are now recognizing the value of the coast and the importance of reinstating these rights, in order to provide equitable coastal access. Peoples' rights to coastal access are thus increasingly recognised. Quotes such as 'Public access to and along the waterfront is a social value' (Navarro, 2000; Hi) and 'Free access to its coastline should be the birthright of an island race' (Natural England, 2007: vi), emphasize the right, need and importance of the public to have access to the shoreline and to its resources. This trend can be seen internationally, as well as locally.

For example, in New Zealand, the maintenance and enhancement of public access along the coast is considered a matter of national importance (Auckland Regional Council, 2008). The high value placed on the coast and access to it can also be seen through the various measures taken by different countries to maintain access for its citizens. A study undertaken by Peter Scott Planning Services Ltd et al (2006) explains that in Europe most coastal areas are in some form of public ownership or stewardship chiefly to protect their ecological and recreational value as well as to safeguard access. This may be in the form of national parks, such as in Sweden, or shoreline protection zones and Maritime Public Domains, such as in France. Furthermore, various countries are increasingly acquiring additional coastal lands and using other mechanisms in order to secure or regain public access rights to the shore. Examples of the latter include the introduction of new legislation, access agreements, land purchases and planning measures to enhance access to coastal areas. The United States and New Zealand are other countries which have similarly developed legislation and programs, protecting public access to coasts (Clark and Hilton, 2003; Navarro, 2000; Pogue and Lee, 1999)

In terms of the importance of access in developing countries, Stiedl (2000) explains that physical access along the coast is essential primarily in terms of enhancing basic needs such as food and livelihoods, but also social needs such as education and health care. The example provided is that of indigenous communities on the Nicaraguan Atlantic Coast. Physical access, in the form of better footpaths and roads, for these communities,

may lead to better access to benefits such as better education and opportunities to participate in economic activities which can lead to a reduction in poverty. Improved access may thus be an important element in improving the livelihoods of these communities (Stiedl, 2000). Clark and Hilton (2003) suggest that facilitated access to various coastlines can ensure the well-being of all groups of people.

Access to natural resources is crucial to poverty reduction because it contributes to the ability of people to live and generate income as well as contributing to possible economic development (Allison and Ellis, 2001). Furthermore, people's livelihood resilience is dependent on the ability to recuperate after natural or market shocks; this can be strengthened through greater access to capital assets, i.e. natural resources (Baumann, 2002).

Furthermore, it has increasingly been recognised that the ability to access and benefit from natural resources, will act as an incentive for people to act responsibly, becoming stewards of the resource and leading to a more sustainable approach to resource use and conservation (Danida, 2007; Allison and Ellis, 2001). Therefore, the socio-cultural and environmental impact of enhanced access to natural resources can be considerably positive (Stiedl, 2000).

As seen from the above, the importance of access to natural resources and more specifically, to the coast, is being recognised internationally and various initiatives to safeguard public coastal access are being undertaken. In terms of the South African context, the importance of public coastal access is emphasized throughout the White Paper for Sustainable Coastal Development in South Africa (DEAT, 2000). Although this policy will be discussed in greater detail in Chapter 3, it is worthwhile to note that it highlights the public nature of the coast and the importance of South Africans having rights to access and benefit from the coast and its many resources (DEAT, 2000). Building on this policy, South Africa has enacted a new law (the National Environmental Management: Integrated Coastal Management Act of 2008), providing legislative mechanisms to enhance access to the coast. A study undertaken by DEAT (2005) further recognises the importance of fair and equitable access to coastal natural

^s A South Africa Country Study (2005), undertaken as a situational assessment in order to inform the South Africa's National Biodiversity Strategy and Action Plan (NBSAP).

resources and informal resource use as a vital livelihood element for the poor. It also emphasizes the importance of land-use activities to consider the importance of coastal access for the various users (DEAT, 2005).

2.2 Key theoretical ideas underpinning the study

Drawing on the literature review, and particularly on the work of several central authors, such as Ribot and Peluso (2003) and Whiteman and Mamen (2002), a number of key theoretical ideas were identified which serve as a framework to guide the study. These are centred chiefly on the concepts of property rights, access theory and social and indigenous cultural justice.

2.2.1 The Notion of access

The notion of access is generally explained in the property rights literature, which associates access with a 'right to use' a resource or an area (Charles, 2002; Ostrom, 2000; Schlager and Ostrom, 1992). The right to use, (and therefore access) is secured through property rights (Ann, 2008). Property rights provide the authority to carry out actions related to a particular domain (Ostrom, 2000). ^{An} owner of property rights possesses the consent of fellowmen to allow him to act in particular ways' (Demsetz, 1967; 347). Therefore, a property right usually refers to a socially acknowledged and supported right, whereby that acknowledgement may be given through legal means, custom or convention (Ribot and Peluso, 2003). Property rights therefore provide a bundle of rights that provide or restrict the right to access (Ribot and Peluso, 2003; Ostrom, 2000; Schlager and Ostrom, 1992). In order to prevent the degradation of common pool resources⁶ (see Hardin's (1968) theory on the tragedy of the commons) specifically through open access, several property rights regimes exist (Ostrom, 2000; Coastal Resources Co-Management Research project, 1998). The different property rights regimes include private property, state or public property, and lastly communal property regimes. Each of these regimes recognises and gives the *right* to access a resource or area.

* Common pool resources include natural resources, such as fish stocks, other marine and wildlife, and forests Which are not owned by individuals but are shared by a community or group of users' (Coastal Resources Co-Management Research project, 1998; 1).

The notion of access is expanded by Ribot and Peluso (2003; 153) who define access as the ability to derive benefits from things'. This definition firstly expands the notion of access from the ability to *physically* access natural resources, to the ability to *derive benefits* from natural resources, and secondly suggests that the notion of access should be broadened from one centred on the *tight to benefit*, to the *ability to benefit*. In this context, property rights is only one of the factors, within a wider range of institutional, social and political-economic relations and discursive strategies (factors) that enables people's ability to access and benefit from resources. Other examples of factors include capital, technology and knowledge. According to these authors, the notion of access therefore refers to a 'bundle of powers', rather than the bundle of rights' suggested through the property rights literature (for instance, in Ostrom, 2000; Schlager and Ostrom, 1992).

These factors are the *strands* within the bundles of powers, the *nodes* in webs of access, within a particular social and political-economic context (Ribot and Peluso, 2003). Individuals or groups may have diverse bundles of power and can draw on the different strands (factors) within these bundles, in order to gain, maintain or control access to resources and gain benefits (Ribot and Peluso, 2003). These strands therefore provide stakeholders with access to the coast and its resources and heighten their ability to benefit from these resources. Access via rights is *one type* of strand. Thus, when assessing the access patterns of a particular area, it is not only necessary to determine and assess the *rights* that provide access, but also to identify and assess the other factors that facilitate access.

In addition, other definitions shape the notion of access. These are reviewed below.

2.2.2 Other definitions of access

The Access and Benefit Sharing (ABS) discourse, stemming largely from the Convention on Biological Diversity (CBD), defines access largely as it refers to genetic resources. According to the CBD, access is a term which describes the access given by a particular country (a 'Contracting Party to the CBD') to a genetic resource which originated in that country, to another country (also a 'Contracting Party to the CBD')(Secretariat of the Convention on Biological Diversity, 2006 (SCBD); DEAT, 2005). Much of the literature and work done on access is also concerned with the access and benefit sharing of

genetic resources; often building on the work of the CBD (for instance, Crouch et al, 2008; Tvedt & Young, 2007; Gupta, 2004;; Artuso, 2002; Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization' SCBD, 2002).

However, in terms of South Africa, the study undertaken by DEAT (2005) as part of the National Biodiversity Strategy and Action Plan (NBSAP) development process, emphasizes that in the country's context, the notion of access should be broadened in order to encompass the 'rights to use a wide range of resources, such as species, land, water and protected areas' (DEAT, 2005;70). This is due to the fact that South Africa has a historical legacy of inequity which, with the transition to democracy, needs to be redressed. There is thus a significant need for redress, redistribution and equitable access to resources (DEAT, 2005). The notion of access therefore needs to be interpreted beyond the limited CBD definition to encompass equitable access to natural resources rather than just genetic resources (DEAT, 2005).

2.2.3 Access analysis

Ribot and Peluso (2003) provide a useful analytical framework which may be used to identify and assess the variety of factors (including property rights) enabling various actors to access and benefit from natural resources. This access analysis framework (Ribot and Peluso, 2003) is described below.

Access analysis involves the 'mapping' of factors (i.e. a mapping process). This is preceded by the identification of stakeholders and the benefits they derive from the coast and its resources. Benefits are important to consider because the various actors identified may rely on these benefits, fight over them or cooperate over them. Access analysis suggests a range of categories for the factors that can be used to guide the mapping process.

These categories can be broadly grouped into firstly, rights-based access (including illegal access) which enables access to be gained directly, and secondly, structural and relational access factors, which reinforce access gained directly through the former. A person may have the right to benefit, but may be unable to do so because he does not have access to these other types of factors. Examples of rights based factors of access

include legal access and illegal access. Examples of structural and relational factors of access include: (1) technology, (2) capital, (3) markets, (4) knowledge and discursive practices', (5) authority (includes the institutional factors), (6) social identities, and (7) other social relations.

Allison and Ellis (2001) in their work on sustainable livelihoods, corroborate that access is enabled or hindered by policy, social relations (including gender, class, age and ethnicity), and organizations (including state agencies, local administration, associations and NGOs). However, these authors refer to institutions as referring to tenure (property), legal access (through rules and customs) and markets, which is different to Ribot and Peluso above (2003) where institutional factors may be classed under their authority category (e.g. organizations like state agencies, associations with authority etc), property and legal access can be classed under rights based access, and market under the structural and relational mechanisms category. It will thus be used in this manner (as in Ribot and Peluso, 2003) for the purpose of this study.

Ribot and Peluso (2003) also suggest that there are two types of social actions, namely access control and access maintenance, and that an actor may hold a bundle of powers that comprises of both control and maintenance. Understanding which stakeholders control access and which maintain access and how, is important in understanding the access patterns of an area.

2.2.4 Access analysis in the context of this study

Access is often negatively as well as positively determined through, for instance, transforming policies and legislation, or institutions and organizations (Glavovic, 2006). The study thus attempts a broad analysis, investigating access across multiple stakeholders and groups, and focussing on factors that *both* enable (e.g. permits to harvest a resource) and restrict access (e.g. ranging from physical barriers to decisions taken and social factors such as poverty). Consequently, the framework of access analysis suggested by Ribot and Peluso (2003) above will be used as a guide in order to identify and understand the factors that influence coastal access within a particular

⁷ Discursive practices, refers to the manner in which communication of information, knowledge and meaning is shaped. Ribot and Peluso (2003) provide as an example, the manner in which a term used (e.g. the 'global commons') can create universalizing categories and naturalize the interventions of NGOs around the world, in the name of environmental protection.

sociocultural, political and economic context in South Africa, namely the Richards Bay coastal area.

In addition, supplementary factors which may be added to guide the mapping process include those suggested by Peter Scott Planning Services Ltd et al (2006), as key factors which may influence the availability and quality of coastal access. These include (1) landscape characteristics (such as cliffs, bays, industrialized coastal zones, land-use) and constraints (such as erosion of beaches); (2) the socio-political background of a country — this refers to a country's (or more specifically, a study area's) cultural and socio-political background and history in terms of access.

These additional factors are relevant to the study context and will thus be incorporated into the frame provided by Ribot and Peluso (2003) in order to guide the analysis of the study findings through the mapping of factors that may affect or enhance both access to the coast and its resources, and the ability of people to benefit from these.

2.2.5 The notion of equitable benefits

The importance of benefiting equitably from accessing resources is mostly acknowledged and called for through the concept of benefit sharing as part of the ABS literature, stemming from the CBD. Benefit sharing may be defined as the action of giving a portion of advantages/profits derived from the use of ...genetic resources or traditional knowledge to the resource providers, in order to achieve justice in exchange' (Schroeder, 2007: 207). Thus, (similarly to the notion of access) this is mostly concerned with genetic resources. This terminology is also widely used in the literature, for instance, in Crouch et al, 2008; Tvedt & Young, 2007; Gupta, 2004; Artuso, 2002).

However, the CBD does recognise the need for equitable benefits through its Program of Work on Protected Areas. Therefore, this concept (access and benefit sharing) is recognised in a context other *than* that of genetic resources. As with the notion of access, DEAT (2005; 70) also recognizes that in the country's context, the equitable benefit sharing definition should be broadened, thus encompassing the right to 'benefit from a wide range of resources, such as species, land, water and protected areas', including genetic resources. This definition thus not only recognises the importance of

the right to equitable benefits from the use of resources other than genetic resources, but also from protected areas.

As discussed above, the right to access (and therefore to *benefit*) is usually acquired through legal rights, such as property rights (Ribot and Peluso, 2003). However, in South Africa, most local indigenous communities were historically displaced from areas which they were traditionally using and benefiting from, and which traditionally belonged to them (iSimangaliso Wetland Park, 2008; DEAT 2005; African Institute of Corporate Citizenship, 2001). In various areas, this displacement occurred for the development of mining operations or the formation of nature reserves and parks (iSimangaliso Wetland Park, 2008; Mostert and Fitzpatrick, 2004). Principles of ethics and justice, however, call for some form of compensation in exchange for using resources which one does not own (Schroeder, 2007). This dissertation therefore suggests that the above definitions may be broadened (in terms of the South African context) to encompass the importance and right of stakeholders to benefit equitably from the activities which have historically caused them a loss of access.

Thus, in the context of this dissertation, the ability to benefit will also refer to stakeholders' perceptions of the measures provided in compensation for loss of access.

2.2.6 *Compensating lost access*

International commitments, movements and legislation together with the transition to democracy in South Africa and its associated plethora of legislation (all based on principles of justice), have called for the greater promotion of equitable access and benefits and for redressing historical injustices, especially in terms of conservation and mining (Danida, 2007; DEAT, 2005; SCBD, 2005; Kapelus, 2002; Allison and Ellis, 2001; Clark, 1992). Conservation and mining sectors control access to land and natural resources, but must also maintain their own access rights, and one form of access maintenance is the execution of duties to *preserve these rights* (Ribot and Peluso, 2003). The combination of international and national pressures with the realisation that these new approaches lead to less conflicts, have resulted in the mining and conservation sectors recognising the importance of *offsetting* local communities' loss of access through the distribution of benefits. Through these efforts, conservation and especially mining can retain their rights of access to land and natural resources. For

instance, in South Africa, the mining sector must allocate a certain amount of resources to local communities, in order for the company to retain its rights to mine, and to safeguard the ability to receive new rights in the future (Kapelus, 2002). This is according to the Mineral and Petroleum Resources Development Act 28 of 2002, which requires the conversion of old order rights to new order rights. Conditions for conversion include community development (see Chapter 3). Similarly in the case of conservation, parks need to demonstrate their ability to consider and benefit local communities and contribute to local upliftment through (for example) eco-tourism ventures, in order to safeguard their protected area from possible future development (iSimangaliso Wetland Park, 2008).

However, these efforts may not be sufficient for local communities to perceive themselves as 'benefiting'. Maiese (2003), suggests that when principles of social justice are not in operation (for example, when institutions are unjust or unfair); confidence in these responsible institutions is undermined, leading to people feeling alienated. This can result in local communities withdrawing their commitments to, and support of, those institutions. Whiteman and Mamen (2002) add that if principles important to an indigenous cultural framework of justice are not satisfied, conflicts have a greater potential of arising due to the perceived injustice felt by indigenous communities. This dissertation therefore proposes that if a process or outcome (associated with an activity or institution) is *perceived* as being unjust by local communities, it may restrict the ability of these stakeholders to *perceive themselves* as benefiting from that activity or institution. This study draws on social justice theory and aspects of the framework proposed by Whiteman and Mamen (2002), to discuss the perceptions of local stakeholders with respect to the efforts taken by these sectors and to their own ability to benefit from these various efforts. As stated earlier in Chapter 1, this is an important consideration because a perceived lack of benefits may have implications, for conflict and sustainability. Principles of social justice and indigenous cultural justice are explained below.

2.2.7 Social Justice

Social justice is concerned with fairness (Maiese, 2003) and is an umbrella term that includes a number of principles of justice often used to judge what is fair or 'even-handed' (Singer, 2002, Floyd and Johnson, 2002)). According to Singer (2002), these

principles can be grouped into two important categories, namely historical principles and time-slice principles. It is important that both viewpoints be considered in order to obtain a clear idea of what can be conceived as fair or unfair by different stakeholders or stakeholder groups. Where time-slice principles of justice look at the existing distribution and ascertain whether it is fair, regardless of past events, historical principles of justice look further than the present situation (also considering past events) in order to ascertain whether a distribution of goods is just or unjust (Singer, 2002). Inequality and unfair distribution of benefits is often a result of past events, such as colonialism (Pogge, 2005). In agreement with these authors, this dissertation acknowledges the importance of reviewing the historical background of a situation in order to understand perceptions of justice of stakeholders, to a process or distribution.

The justice principles most relevant to this study include the principles of procedural, interactional and distributive justice.

Distributive justice refers chiefly to the fairness of the outcome of a process in the eyes of those affected by that outcome. This is mainly centred on economic outcomes, for instance, the *fair share* of the economic benefits of mining or the level of impacts on traditional subsistence economies (Maiese, 2003; Whiteman and Mamen, 2002). Distributive justice thus particularly emphasizes the need and right for a fair distribution of benefits gained. If the earth and its resources are seen as belonging to mankind in common (Singer, 2002), then the negative impacts of an activity (e.g. mining) must also be distributed evenly in order to satisfy the principle of distributive justice.

Distributive justice can also refer to obtaining a fair share of natural resources. Pogge (2005) uses John Locke's work (Second Treatise on Civil Government, published in 1690) to explain that if in a state of nature people are entitled to a fair share of the common natural resources, then anyone who deprives others of their proportional share (this share is referred to by Locke as 'enough and as good') harms them. The process or outcome is then unjust. Similarly (according to Pogge, 2005) a process or system (e.g. political system like Apartheid in South Africa) which results in the worst off under that system being poorer or less advantaged than they would have been in a state of nature with a proportional share of resources, is unjust. In this case, the better-off enjoy vast benefits in the use of a natural resource base, whilst the worse off are excluded (without

compensation) from these benefits. This can be seen in various places today. An example is conservation areas. In the past, the decision to form conservation areas favored an elite set of stakeholders whilst reducing benefits for non-elites, who additionally often bore the costs (Hauck and Sowman, 2003; Ferraro, 2002). These benefits were reduced through reduced and restricted access to natural resources, and forced removals (Hauck and Sowman, 2003). On the other hand, unrestricted access can also violate principles of social justice. Singer (2000) recognises that the use of resources, without restriction, can deprive others of the right to use these resources and result in a different type of distributive injustice. The use of these finite resources needs to be distributed in an equitable way.

O'Neill (2000) discusses the problem of boundaries in the context of justice, and argues that 'those who see boundaries as the limits of justificatory reasoning will not take seriously — indeed may not be able to acknowledge — either the predicaments of those who are excluded or the alternatives for those who have been included'. These boundaries may once again be seen in the context of protected areas declared in the past which resulted in high costs for those excluded. Similarly, Apartheid set boundaries which excluded the majority, disadvantaged, black population. These boundaries limited reasoning, lessening the ability of people to perceive the predicaments of those excluded. Boundaries are therefore an important consideration when assessing 'fairness' of historical and present situations, as well as in understanding perceptions of justice, by those that were excluded or included.

Procedural justice and interactional justice broadly refer to the need for fairness, and the more informal need for honesty, transparency and respect in decision making processes (Whiteman and Mamen, 2002). Procedural justice is thus concerned with fair practices (Floyd and Johnson, 2002), and the importance of perceived fairness in reaching an agreement or making a decision (Whiteman and Mamen, 2002). It emphasizes the fact that people will accept a decision or end result (even if unfavourable) of a process, if that process is considered to have been fair (Whiteman and Mamen, 2002). Interactional justice refers to the manner in which stakeholders are treated by decision makers; this incorporates the aspects mentioned above, as well as politeness, kindness, and consideration (Whiteman and Mamen, 2002; Blodgett, et al, 1997). These principles are

all concerned with concepts of equity, fairness, equality and need (Maiese, 2003). They thus emphasize and *underpin* the right to equitable access and benefits.

However, these principles may not satisfy all dimensions of justice for local indigenous communities which have an indigenous cultural worldview different to a conventional justice view; conflicts may consequently arise (Whiteman and Mamen, 2002). This is often the case with mining and 'fortress style' conservation projects which occur on indigenous land and affect local communities.

2.2.8 The Indigenous Cultural Framework for Justice

In view of the above problem, Whiteman and Mamen (2002) argue that elements of justice should be broadened to incorporate the indigenous cultural perspective in order to reduce the potential for conflict through a greater understanding of what is perceived as just by indigenous communities. An indigenous cultural framework for justice is therefore proposed (according to Whiteman and Mamen, 2002) and is explained below:

In terms of distributive justice, the indigenous cultural framework of justice (Whiteman and Mamen, 2002) proposes the inclusion of social, environmental and spiritual dimensions in addition to the economic outcomes. The social dimension refers to the societal outcomes of a process. This is because large developmental activities often result in negative social impacts for the communities. Recognition of these local communities' rights is also important to their perception of distributive justice (for instance rights to land). Ecological outcomes are also important to consider because the environmental impacts of an activity such as mining is usually considerable; degradation will affect communities' perceptions of justice because of the interrelationships between these communities and their bio-physical environment. Linked to this element, is the spiritual dimension which encompasses outcomes which are just in terms of indigenous spirituality (which is often linked to the land). This refers to religious sources residing in the local ecology, such as the ancestral and spiritual world.

In terms of procedural justice, the framework (Whiteman and Mamen, 2002) proposes understanding its conventional elements (voice, choice and feedback) from an indigenous cultural perspective. For instance, the framework emphasises not only the ability to influence decision making through traditional knowledge but also the right to

make joint decisions and the ability to get feedback which takes into consideration indigenous values (social, ecological and spiritual). In addition, rights to meaningful consultation and participation should be formally recognised and upheld. In terms of interactional justice, the framework proposes that perceptions of communities are influenced by the degree of cultural respect demonstrated, the degree of trust in place and whether historical conflicts over resources are acknowledged by actors (such as corporate sectors) and whether efforts at reconciliation have been made.

2.3 A review and discussion of coastal access issues: International and South African trends

The coast is an important place for a wide variety of activities; subsequently access to the shore is often a difficult problem (Rubin and Nixon, 1990). In reviewing literature concerned with access to natural resources (including coastal resources), a number of issues were identified. These are discussed below, firstly in terms of the international context and secondly, in terms of the local South African context.

2.3.1 Coastal access: International context

The various access issues identified through the international literature are discussed in this section.

2.3.1.1 Changes in land-use and competing users

A study of coastal access in Europe (Peter Scott Planning Services Ltd et al, 2006), revealed that coastal areas of various countries are under pressure for development from various land-uses adjoining the coast. These include urban developments, military uses, industrial land-uses, agriculture, tourism, recreation, and nature conservation. Coastal areas in other parts of the world are also under pressure from mining (Coughanowr et al, 1995). Some of these activities and land-uses hamper public access to the coast (Clark and Hilton, 2003). For instance, coastal access is not guaranteed to New Zealand's entire Auckland coast; there are high levels of urbanization and coastal developments occurring along this coastline (Auckland Regional Council, 2008). Similarly in Norway, public access is being threatened by commercial developments and privatization; public access to the shore has steadily been reduced through piecemeal developments (particularly in Oslofjord — a popular coastal area) (Directorate for Nature

Management, 2008). This development has resulted in long stretches of coastline becoming private with little or no access (Directorate for Nature Management, 2008). The competition over various uses may result in conflict between land-uses and users, which may also subsequently result in restricted access (Peter Scott Planning Services Ltd et al, 2006).

For the purpose of this study¹⁸, a larger focus is given to mining and conservation land-uses, and their impacts on access to the coast and to its resources.

(a) Conservation

Due to their important value, coastal areas are often protected through national parks, natural heritage areas such as Ramsar sites, nature reserves, marine protected areas and sanctuaries. However, conservation has historically strived to protect resources and their environments by limiting access (World Resources Institute, 2003). Although public access and enjoyment of the natural and cultural values of conservation areas is promoted in many coastal areas today, some wildlife reserves and sanctuaries still restrict or prohibit access to protect certain species (Peter Scott Planning Services Ltd et al, 2006).

Historically, a largely scientific, protectionist, nature-focused and top down approach to conservation was used, which often excluded consideration of local people's needs (Phuthogo and Chanda, 2004; Christie et al, 2003; Brown, 2002; Hackel, 1999). This has historically constrained access for local, poor and marginalised indigenous communities that have traditionally accessed the coast and its resources and that depend on the coast for livelihoods (Sunde and Isaacs, 2008; Brown, 2002). Removal of traditional rights of access to the coast and its resources by external parties has resulted in frustration and resentment leading to conflicts, as evidenced in various parts of the world (Christie, in press. retrieved on 12/09/2009; Weladji and Tchamba, 2003; Ferraro, 2002). Especially in developing countries the costs of establishing protected areas that limit access to valuable goods and services greatly affects livelihoods (Brown, 2002; Ferraro, 2002). This can undermine local support for conservation (Sunderland, 2008; Brown,

These are two dominant sectors within the study area, both of which have historically affected coastal access. The dissertation was also limited to these sectors due to limitations in scope of a mini-dissertation.

2002; Ferraro, 2002). Furthermore, conservation areas often limit the ability of local people to benefit, because the wealthy are typically those that enjoy the benefits while the poor bear the costs (Ferraro, 2002). Research has indicated that traditional small-scale fisher communities living adjacent to or in Marine Protected Areas (MPAs) often receive few benefits but bear the costs of conservation (Suede and Isaacs, 2008).

(b) *Mining*

Mining is a large-scale economic activity that can significantly affect coastal access for a number of users. Such activities often lead to conflict, specifically with the local communities whose resources have either been placed under threat through the mining venture or alternatively whose access to these resources has been compromised due to the mining operations (The World Bank, 2009b; DEAT, 2005; Whiteman and Mamen, 2002). These communities see mining operations as directly impacting on their local environment and on their lives and cultures (Whiteman and Mamen, 2002). Mining has also resulted in the forced resettlement of many local communities (African Institute of Corporate Citizenship, 2001), negatively impacting subsistence activities, particularly for those resettled further away from the resource they depend on (Whiteman and Mamen, 2002). Therefore, mining may significantly affect the livelihoods of coastal communities through restricting access to coastal resources and may, through its operation and eventual closure, infringe on important human rights (The World Bank, 2009b). Furthermore, benefits of such large scale industries were (and in some cases, still are) often privatized whilst marginalised communities shoulder the socio-environmental costs (Umali, 2005).

The combination of these negative impacts can often result in hostilities which may become explosive, for instance, resulting in lawsuits, blockades and protests; conflicts over minerals can therefore produce significant costs to both sides (Whiteman and Mamen, 2002).

2.3.1.2 Physical landscape constraints and technology

Physical landscape constraints may refer to natural hazards such as eroding and collapsing cliffs (Peter Scott Planning Services Ltd et al, 2006), as well as topographical constraints which restrict access to the shore. For instance, along the Nicaraguan

Atlantic coastline, topography and vegetation significantly affect access patterns (Stiedl, 2000).

With regards to technology, landowners often seek to prevent access through the use of unlawful signs and the use of fences or other barriers (Peter Scott Planning Services Ltd et al, 2006). In Norway, fences or other barriers are often put up illegally (Directorate for Nature Management, 2008). According to Ribot and Peluso (2003), a fence is a simple type of technology which controls access, firstly, through the fact that it acts as a physical barrier to people, but also through the intent which it communicates to people, of restricting access.

Technology may also facilitate or restrict the ability to physically reach the coast and its resources (Ribot and Peluso, 2003), for instance, through the availability and quality of roads. For instance, most of the Nicaraguan Atlantic Coast is inaccessible by road and much of it has no roads at all: people are forced to use trails and travel via water using the lagoons and rivers (Stiedl, 2000). There are a few main strategic roads but these have few secondary roads branching off them and those that exist are usually as a result of mining or forestry activities in an area and are often not-maintained once these companies leave (Stiedl, 2000). Poorly maintained access routes or paths are also a problem in European countries (Peter Scott Planning Services Ltd et al, 2006). Roads therefore affect the number of people that may reach remote localities (Ribot and Peluso, 2003)

2.3.1.3 Legal and institutional constraints

The study conducted by Peter Scott Planning Services Ltd et al, (2006), revealed that complex legislation in some countries may contribute to a restriction in access, for example, due to different land-uses and ownership regimes.

Additionally, the capacity of responsible authorities to manage access to the coast and to its resources, in order to achieve managed and equitable access, is often a problem (Peter Scott Planning Services Ltd et al, 2006). A further problem of access, associated with authorities' lack of capacity, is that even though there are several activities that result in restricted access, there is little or no monitoring of firstly, the state of access and

secondly, the relevant provisions of legislation, policy and planning measures along coastlines (Clark and Hilton, 2003).

Authorities may significantly contribute to the lack of access, through the decisions they make. For instance, in Norway, even though building is prohibited in the 100m zone, local authorities have granted exemptions from this rule in many areas (Directorate for Nature Management, 2008). The World Resource Institute (2003), provides a further example by stating that rules on quantities, times and who can harvest resources are usually decided by technical staff who are typically focused on recreational and commercial fishers rather than subsistence users; resulting in inequitable access to resources.

2.3.1.4 Unequal power relations

A common factor hindering a person, group of people or a community from accessing and benefiting coastal resources and areas is unequal power relations that may exist between those wishing to access the coast and powerful agencies, organisations or even actors within the community that control each access group (Ribot and Peluso, 2003). Power may be defined as the ability to impose ones will' (Reed, 1997: 567). Agrawal and Gibson (1999), suggest that in terms of conservation, local groups usually have the least power compared to other parties. It follows therefore, that they may have the least ability to benefit. On the other hand, even when power is devolved, for example, from the state to a local community, more powerful actors may be able to manipulate this devolution in order to benefit themselves or those they choose (Ribot and Peluso, 2003; Shackleton et al, 2002). Decision-making powers and benefits can become controlled by a group of elites, whilst others only receive some benefits or none at all; this is often the case in systems of traditional leadership (Shackleton et al, 2002). Reed (1997) suggests that power relations may also alter the outcome of collaborative efforts (e.g. co-management) or even prevent this action; those who hold power may resist its redistribution and this affects collaboration.

2.3.2 Coastal access: South African context

It is important to recognise that even though the problems highlighted above are similar to those found in developing countries (Department of Environmental Affairs and Development Planning, 2005; Hauck and Sowman, 2001), there is a significant gap

between developed and developing countries in terms of coastal access and problems associated with coastal access. For instance, a culture of respect for the countryside combined with responsible behaviour and country-wide access rights in many European countries (Peter Scott Planning Services Ltd et al, 2006), is very different to third world countries where poverty, inequity and crime are all factors that contribute to irresponsible behaviour, and restricts public coastal access. Some of the main issues of access prevalent in South Africa and identified in the local literature, are therefore discussed below.

2.3.2.1 Changes in land-use and competing users

Demand for coastal land for residential and recreational development along the South African coast is increasing and affecting patterns of access (EEU, 2008). In the Western Cape, the demand for coastal resorts, golf courses, residential areas and retirement homes has resulted in significantly restricted coastal access for a number of stakeholders (Department of Environmental Affairs and Development Planning, 2005). Rising coastal populations is an additional problem as it results in a greater demand for space (South African Coastal Information Centre, 2005). Two land-uses which have a significant effect on coastal access patterns in South Africa are conservation and mining.

(a) Conservation

In South Africa, the protectionist conservation approach combined with colonial and apartheid legacies have marginalized traditional resource users (Sunde and Isaacs, 2008; DEAT, 2005; Phuthego and Chanda, 2004; Hauck and Sowman, 2001). Many of the conservation areas in South Africa consist of land previously belonging to local communities which were forcibly removed during apartheid. This has led to decades of antagonism with parks authorities who are regarded as indifferent to their impoverishment and reluctant to share resources (DEAT, 2005). It has also resulted in negative patterns of resource use (Phuthego and Chanda, 2004). For instance, because people were forcibly removed from their land to make way for game reserves and parks, they eventually became poachers on their own land, harvesting resources 'illegally' (DEAT, 2005, Harris et al, 2003). This 'illegal' nature has often led to destructive methods of harvesting, causing long term damage to natural resources (Harris et al, 2003). 'Poaching', is still a considerable conservation problem today. Certain types of rocky inter-tidal organisms are over-exploited by subsistence and semi-commercial

harvesting; similarly, traditional 'illegal' harvesting for medicinal plants is often destructive, resulting in plant mortality (DEAT, 2005). Thus, the lack of a comprehensive social component (i.e. an understanding of complex social factors at play) in conservation has consequently led to a negative effect on natural resources.

(b) *Mining*

Access to coastal areas in South Africa, is restricted not only due to mining operations and their associated security measures, but also because of the large stretches of concession land fenced off to protect the resource. For example, in the Northern Cape of South Africa, the majority of the population does not have access to the coast (CSIR, 2004). The growth-orientated paradigm, which was popular since the 1950s, encouraged large-scale projects such as mines in spite of the negative ecological and social impacts identified; often ignoring the expense to the local communities and subsequently contributing to greater social and economic inequality (DEAT, 2005). Although this has been recognised as no longer sustainably viable as a long term strategy (DEAT, 2005), its legacy has left many impoverished communities with limited access to natural resources, or destroyed resources. Furthermore, where mining restricts or prohibits access to large stretches of coast, marine and coastal resources cannot be used sustainably for the socio-economic benefit of the local people (CSIR, 2004). Lack of access can restrict the ability for development of other economic activities such as tourism, thus limiting the ability of people and communities to benefit and to be economically sustainable over the long term (CSIR, 2004).

2.12.2 Physical landscape constraints and technology

Several areas along the South African coastline are inaccessible due to topography and lack of development (DEAT, 1998). For instance, coastal access is restricted in the former Ciskei, which is among the poorest areas in South Africa (DEAT, 1998). Coastal access is also restricted along the Wild Coast; a largely undeveloped, rugged and isolated coastal region where access and thus development are restricted through topography (DEAT, 1998). Poor road infrastructure may also significantly restrict public access to the South African coast, as is the case along the Namaqualand coastal region and the West Coast (DEAT, 1998).

2.3.2.3 Legal and institutional constraints

Laws and regulations can also limit access to the coast and its resources. For instance, South Africa has promulgated a plethora of legislation which can be used to declare protected areas and MPAs; in this way conserving biodiversity, but often restricting access to the coast and its resources. Some of these include the National Environmental Management: Protected Areas Act, 57 of 2003 and the Marine Living Resources Act 18 of 1998 (see Chapter 3), as well as a variety of provincial ordinances. Another example is the Control of Vehicles in the Coastal Zone Regulations (2001) promulgated under NEMA (1998) (refer to Chapter 3). The regulations prevent the use of vehicles on the beach except under special circumstances (Mbonambi and uThungulu Municipalities, 2002), subsequently constraining coastal access.

Another form of legal restriction is evident through the process of land restitution which has been a key concern since the advent of democracy in 1994 (DEAT, 2005). Where this land is located within a conservation area (for example) a formal agreement is made between the communities and the conservation agencies (DEAT, 2005). However, claimants may be awarded title, but are not permitted to physically occupy the area and title deeds are registered with restrictions of use (iSimangaliso Wetland Park, 2008). This is an example of having the right to access but the inability to benefit from this right through legal and rights based restrictions.

As discussed in the international literature above, access may also be significantly affected by decisions taken by authorities, as well as by their lack of capacity in managing access to the coast and its resources, in addressing competing needs of conservation and livelihoods, and in implementing and enforcing legislative provisions (DEAT, 2005). An example is the decisions made in South Africa concerning the allocation of rights to resources, where historically, access was not equitably distributed between resource users (Harris et al, 2003).

2.3.2.4 The sociocultural history of South Africa

The colonial and apartheid legacy in South Africa resulted in the majority of South Africans being dispossessed from their land and subsequently denied access to land and natural resources (DEAT, 2005). In KwaZulu-Natal, for instance, people were resettled from their traditional lands, and land previously used for hunting and grazing

was taken over and partitioned for commercial farming and the establishment of reserves (Dahlberg, 2005). Prime land and resources were therefore limited to elite groups (Dahlberg, 2005). There is thus a great need to redress the skewed access patterns resulting from these past legacies (iSimangaliso Wetland Park, 2008; Faasen, 2006; DEAT, 2005).

2.3.3 Outcomes of restricted access

Restricted access due to the various factors and land-uses listed above can often be a major factor contributing to rural poverty, particularly in developing countries (Baumann, 2002). The poor are increasingly living in areas of 'high ecological vulnerability and relatively low levels of resource productivity', which combined with little access and rights to natural resources in these areas significantly contributes to poverty (Baumann, 2002; 3). In South Africa, a large proportion of people are directly dependent on natural resources to meet their basic needs. If access to these resources is lost, those that most depend on them will become vulnerable because their livelihoods will have been negatively affected (Dahlberg, 2005).

Stiedl (2000) reminds us, however, that improved access can also be negative if not supported through other management measures. Utilization of terrestrial, coastal and marine ecosystems, as well as their related resources, is often little, inappropriately or completely unmanaged (DEAT, 2005), resulting in, for example, open unrestrained resource use. The solution rather lies in approaches which call for managed sustainable access; whereby improved access is also accompanied by proper planning, management, and other mechanisms to ensure sustainability (Navarro, 2000; Stiedl, 2000).

2.3.4 New approaches to natural resources management and mining

2.3.4.1 Mining

Historically, most mining companies have given a lesser priority to the management of local community social impacts, in comparison with health, safety and environmental priorities (Centre for socially responsible mining (CSR), 2004). Socially significant issues have mainly been considered at the project approval stage through social and environmental impact assessments; however, this has started to change with the advent of corporate social responsibility and sustainable development paradigms which stress

the need for social as well as environmental performance (CSR, 2004; Hamann, 2004). Corporate social responsibility (CSR) is underpinned by notions of ethics, human rights, sustainable development and justice (Kapelus, 2002), and challenges companies to ensure that the benefits accruing from mining, are maximized in a sustainable way' and that the impacts of mining are mitigated so that local communities are advantaged by the presence and operation of the mine during and after its life time (The World Bank, 2009b). Social, as well as environmental, performance is especially important for mining companies because of their temporary nature and the impacts (both social and environmental) associated with mine closure (Hamann, 2004). Through CSR, mining companies can provide both direct and indirect benefits for local communities through the provision of employment, skills transfer, and the improvement of infrastructure, the implementation of beneficial community-based projects, the improvement of health and education facilities and enabling business opportunities (The World Bank, 2009b).

However, where the mining companies do undertake various efforts to improve their environmental and social performance, issues of trust between the company and the community can make this problematic (CSR, 2004). This is illustrated in a study by CSR (2004) where the community attributes better social and environmental performance to stricter regulatory controls rather than voluntary efforts. This leads to the additional problem of communication, as communities do not always appear to be well-informed about the range of initiatives that mines take to improve their performance. On the other hand, where companies promote the CSR initiatives which they undertake, whilst the local communities are in reality feeling little benefits, CSR can be considered as a smokescreen (Hamann, 2004), and the economic benefits from mining are therefore small in reality.

2.14.2 Conservation

The combination of the various issues associated with conservation, and global questions of social justice and sustainable development, has prompted a new people-centred conservation viewpoint (Sunde and Isaacs, 2008) and the recognition that improved access in and to conservation areas, as well as more equitable access to resources and equitable benefits, will yield better results than approaches that prevent access (Isaacs, 2006; Christie et al, 2003; World Resources Institute, 2003). There has thus been a paradigm shift from state-centred control, towards approaches that give

local people a much greater role (Shackleton et al, 2002). Various approaches have increasingly incorporated concepts of equitable access and benefits, becoming, to a greater extent, people-centred. The ecosystems approach to conservation and the sustainable livelihoods approach both recognise that access to resources is critical for livelihoods (SCBD, 2009; Allison and Ellis, 2001). These also recognize the importance of recognizing local communities' rights (SCBD, 2009; Allison and Ellis, 2001). In the context of the coast, integrated coastal management emphasizes the conservation of common property resources for the public's access and use (Clark, 1992). It also recognises the rights of traditional resource users and advocates for a multiple use management approach to coastal resource systems with the goal of securing greatest benefits to local communities through the equitable sharing of resources (Clark, 1992).

It is also increasingly recognized that conservation which involves communities, creates benefits for those communities, and that these will act as incentives for communities to act responsibly as stewards of the resource (for instance, by giving them rights over the resource), subsequently reducing conflicts and illegal activities (Hauck and Sowman, 2001; Allison and Ellis, 2001). Various other benefits have been observed from such approaches, for instance, in many places, local people previously thought of as poachers or criminals are now recognised as rightful resource users (Shackleton et al, 2002).

Shackleton et al (2002:1) however argue that although these various reforms aim to increase participation of local users in decision making and their ability to benefit, by the devolution of power from state to local organisations, 'the reality rarely reflects this rhetoric'. In most instances, the state retained key aspects of the management authority; whilst in other cases, communities initially responded well to the new approach as it was an improvement on the restrictive regimes of the past; however found over time that policies only yielded limited benefits, inadequate to maintain the initial enthusiasm (Shackleton et al, 2002). In such cases, the perceived benefits from conservation are therefore small in reality.

With respect to the South African context, the new approach to conservation has led authorities and institutions (such as Marine and Coastal Management — MCM) to recognize the need for social policies and actions that address the needs of the poor and

those who depend on natural resources (Isaacs, 2006). However, several problems persist. Isaacs (2006), for instance, argues that authorities still adopt a resource-orientated approach to conservation with limited understanding and capacity to achieve social objectives. In terms of the benefits arising from conservation areas and their equitable distribution, Sunde and Isaacs (2008; 3), point out that even though current discourses on MPAs in South Africa emphasize equitable benefits it 'fails to acknowledge the political economy of marine resource control and access in South Africa'. In this way, MPAs contribute to the further exclusion of traditional fishers and undermine traditional livelihoods (Sunde and Isaacs, 2008).

2.4 Conclusion

This literature review has highlighted the public nature of the coast and examined the notion of access which broadly encompasses equitable physical access to the coast and to coastal resources, as well as, the ability to equitably benefit from the coast and its resources. This ability to benefit includes the perceptions of stakeholders regarding the benefits provided by mining and conservation; benefits granted in an effort to counterbalance losses in access (see section 2.2.5 and 2.2.6). Important principles which *underpin* these ideas include those highlighted through property rights literature, access theory and social justice and the indigenous cultural framework of justice. A review of the frameworks which will be used to guide the discussion of this study's findings was therefore also undertaken. Lastly, general coastal access issues discussed in the international, as well as national literature were reviewed. This highlighted new, more socially-relevant approaches to mining and conservation which attempt to be more equitable, just and provide equitable access to and benefits from natural resources

CHAPTER THREE

3. POLICY AND LEGISLATIVE REVIEW

A number of policy and legislative instruments exist at the international, regional and national level, which are relevant to coastal management and in particular to coastal access as defined in Chapter 2⁹. This Chapter provides a broad review of the relevant international conventions, policies and protocols that underlie the various South African laws and policies enacted, as well as a review of those laws and policies relevant to coastal access.

3.1 Relevant international obligations and agreements

South Africa is party to a number of international conventions and agreements that address issues of coastal access. The most relevant (which promote the principle of equitable access and the importance of equitable benefits both directly and indirectly) include the Code of Conduct for Responsible Fisheries (1995), Agenda 21 (1992) and the Convention on Biological Diversity (1992).

The Code of Conduct is not a legally binding international instrument and was approved by cabinet in 2002 (Witbooi, 2006; Van der Linde, 2006). It provides a number of principles for conservation and management of fisheries which advocate for conservation that considers social factors in addition to environmental and economic factors, conservation that is based on both scientific evidence as well as traditional knowledge, and the protection of livelihood and preferential access rights of fishers, especially subsistence fishers (Van der Linde, 2006). In addition, the code¹⁰ provides that policy, legislation and institutional frameworks adopted to regulate access to coastal resources and to achieve sustainable and integrated use of these resources should take

⁹ (1) physical access to the coast, (2) physical access to coastal resources, and (3) the ability to benefit from the coast and its resources (including the concept of equitable benefits in lieu of lost access)

¹⁰ Article 10.1 of the Code, on the integration of fisheries into coastal management.

into account the needs of coastal communities, their rights and their customary practices.

Agenda 21 (1992) is an agreement developed by the United Nations and adopted by the South African government (along with other governments worldwide). It provides actions to be taken by UN organisations and by any other major organisation or group that impacts on the environment and promotes sustainable development. Chapter 17 of Agenda 21 is particularly relevant as it pertains to the protection of oceans and coastal areas, as well as to the protection, rational use and development of their living resources. It promotes the implementation of new approaches to coastal management that are integrated, participatory, precautionary and support sustainable development. It also recognises the importance of coastal resources for coastally dependent and subsistence communities, the importance of environmental education and the importance of local capacity training and building.

The 1992 Convention on Biological Diversity (CBD)¹¹ promotes the conservation and sustainable use of biodiversity. In addition, it also promotes the equitable sharing of benefits arising from the use of genetic resources (CBD, 1993). This convention additionally recognises (through its *Program of Work* on protected Areas) the important relationship between local people and protected areas, and acknowledges that failure to address people's needs, can lead to conflicts (SCBD, 2005). The program provides a number of goals and targets to enable local communities in and adjacent to protected areas to benefit equitably. The most important of these are goals 2.1 and 2.2. Goal 2.1 is to promote equity and benefit sharing. This entails the establishment of 'mechanisms for the equitable sharing of both costs and benefits arising from the establishment and management of protected areas' (SCBD, 2005; 2). Goal 2.2 is to enhance and secure the involvement of local communities, indigenous communities and other relevant stakeholders. This involves the 'full and effective participation of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, consistent with national law and applicable international obligations, and the participation of relevant stakeholders, in the management of existing, and the establishment and management of new protected areas' (SCBD, 2005; 2).

¹¹ Ratified by South Africa in 1995

3.2 Relevant regional instruments

Regional co-operation is important to South Africa, which is a member of the Southern African Development Community (SADC) (DEAT, 2005). Consequently South Africa has signed a number of SADC protocols (DEAT, 2005). These include the SADC Protocol on Mining (1997) and the SADC Protocol on Fisheries (2001). The first aims to ensure that the region's mineral resources are developed to improve the living standards of people throughout the SADC region (Van der Linde, 2006). It provides several principles for mining, including that 'Member States shall promote economic empowerment of the historically disadvantaged in the mining sector' (Article 2). The Protocol was ratified by South Africa in 1999 and it came into force in 2000. The SADC Protocol on Fisheries was ratified by Cabinet in 2003. It highlights the importance of fisheries for the socio-economic well-being and livelihood of people (Van der Linde, 2006) and its goals include promoting food security, promoting livelihoods of fishing communities and ensuring sustainable use of marine resources, with the added goals of alleviating poverty and generating economic opportunities (VWitbooi, 2006). It also calls for increased equality, access and support for subsistence fishers (principles and Article 12 of the SADC Protocol on Fisheries).

3.3 Relevant South African legislation and policy

The apartheid era in South Africa produced various policies and statutes that resulted in a system of inequality and marginalization for the majority of South Africans (Glazewski, 2005, Hauck and Sowman, 2001). The advent of democracy in 1994 resulted in a new legal system, which attempted to right past wrongs, and particularly redress social inequity. One of the first products of this change was the promulgation of a variety of national policies and laws to promote fairness, equity and equality (Hauck and Sowman, 2003), for instance, the Constitution of South Africa (108 of 1996), the National Environmental Management Act (107 of 1998), The National Environmental Management Protected Areas Act (57 of 2003) and the Marine Living Resources Act (18 of 1998). These attempted to strike a balance between the conservation and development needs of South Africans (Sunde and Isaacs, 2008). According to Sunde and Isaacs (2008), in the context of marine resources, this is also demonstrated in the Reconstruction and Development Programme (RDP) of 1994, which states that 'marine

resources must be managed and controlled for the benefit of all South Africans, especially those communities whose livelihood depends on resources from the sea', that the democratic government must assist people to have access to these resources', and that 'legislative measures must be introduced to establish democratic structures for the management of sea resources' (RDP, 1994). However, according to Hauck and Sowman (2003), the institutionalisation and implementation of these various policies and laws is limited due to a lack of institutional capacity and inadequacy of mechanisms for implementation. This section reviews the relevant post-apartheid legislation and policies relevant to access and to benefits from coastal and marine resources. This provides the basis for assessing the disjuncture between policy and practice in Chapter 6.

3.3.1 Constitution of the Republic of South Africa Act 108 of 1996

The Constitution is the supreme law of South Africa, providing a framework for all other laws. In terms of the environment, it provides the people of South Africa with an environmental right (section 24 of the Bill of Rights)¹². Because this right is underpinned by principles of sustainable development, it imposes a Constitutional duty on the State to protect the environment through measures that secure ecologically sustainable use of natural resources whilst promoting reasonable social development. Through this right the Constitution encourages greater equity and access to resources in conservation, and promotes an approach that is not solely centred on the ecological component of the environment, such as previous fortress-style approaches to conservation (Hauck and Sowman, 2003). In addition, the Constitution promotes principles of human rights, equality and justice (e.g. in section 27, 36, 38). Section 9 of the Constitution stipulates that 'equality includes the full and equal enjoyment of all rights and freedoms'.

- ¹², (1) everyone has the right:
- (a) to an environment that is not harmful to their health or well being; and
 - (b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that:
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic development and social development' (Constitution of the Republic of South Africa Act 108 of 1996)

The Constitution also protects the right to property (section 25). As the right to access is considered as being secured through the acquisition of property rights (And, 2008; Glazewski and Witbooi, 2005; Ribot and Peluso, 2003; Ostrom, 2000), the property right given by the Constitution is important in safeguarding access rights. The Constitution also provides principles of co-operative governance. It obligates all spheres of government to observe and adhere to these co-operative governance principles (section 40 and 41). Additionally the Constitution provides that 'everyone has the right to administrative action that is lawful, reasonable and procedurally fair (section 33). To give effect to these rights, a number of laws were subsequently enacted.

Schedule 4 of the Constitution states that the environment, nature conservation (excluding national parks, national botanical gardens and marine resources) and tourism are under national and provincial concurrent jurisdiction. The Constitution makes it clear that conservation and exploitation of marine resources are a *national* competence; management and control of marine resources being co-ordinated at national level (Glazewski, 2005). This provision prevents tensions between provincial and national levels of government, reducing the problem of over-lapping jurisdictions and lack of co-operative governance, and promoting integrated management. The White Paper on Marine Fisheries Policy for South Africa (1997) additionally states that the biological and life history characteristics of fisheries make it that (in almost all cases) regional management cannot guarantee sustainability of the resource, and thus that national competency is crucial to manage marine resource as a whole. On the other hand, this constitutional provision also exacerbates the complexity of institutional arrangements for coastal and fisheries resources in South Africa, which tend to be unclear and confusing (Hauck and Sowman, 2003). Additionally, purely national responsibility can lead to poor enforcement of regulations and management plans at the local level due to insufficient capacity (for instance, in terms of Marine Protected Areas). Enhancing the role of local and provincial government, through clearly delineated scopes of functions and administrative competence (for each level), can also be important to long term sustainability (Katzschner et al, 2005). Local government and traditional authorities are important for the management of coastal resources and areas (Hauck and Sowman, 2003).

3.3.2 Just administrative action and The Promotion of Administrative Justice Act (PAJA) Act 3 of 2000

The Promotion of Administrative Justice Act 3 of 2000 (PAJA) was enacted to give effect to the constitutional right for just administrative action (section 33 of the Constitution). Much of the legislation examined in this chapter empowers the various levels and departments of the state to make certain decisions. PAJA and its constitutional counterpart are therefore important in the context of access to resources because many key decisions taken by organs of State, for instance the allocation of access rights (e.g. fisheries), fall within the ambit of administrative actions (Glazewski and Witbooi, 2005). Decisions that affect access rights to coastal resources thus need to comply with the provisions of this law (Glazewski and Witbooi, 2005), or can be contested in a court of law.

3.3.3 The National Environmental Management Act 107 of 1998 (NEMA)

The National Environmental Management Act (NEMA) is a statute, which 'creates the fundamental legal framework that ensures the concretisation of the environmental rights guaranteed in section 24 of the Constitution' (Van der Linde, 2006: 31). In its preamble, NEMA reaffirms the State's responsibility to 'respect, protect, promote and fulfil the social, economic and environmental rights of everyone' and to 'strive to meet the basic needs of previously disadvantaged communities', thus calling for justifiable social and sustainable development. NEMA includes a number of international environmental law principles important to the notion, right and significance of coastal access and the factors that affect it, in particular, the Public Trust Doctrine principle. These principles are listed below (section 2).

- '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;
- 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'; and
- 'Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination'.

In addition:

- 'Community well-being and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means';
- 'The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment';
and
- There must be intergovernmental coordination and harmonisation of policies, legislation and actions relating to the environment'.

These principles are to serve as guidelines for organs of State in their decision-making (Glazewski, 2005). While these principles reflect international trends, they are also specific to the South African context in that they reflect the need to redress apartheid (Glazewski, 2005). NEMA also promotes the importance of co-operative governance by providing procedures for its achievement (Chapter 3). Co-operative governance, between different levels of government is important for equitable coastal access, because it can lead to a more integrated management of the coastal zone. This is beneficial to coastal access and to its enhancement in a managed and sustainable manner.

3.3.4 *The Control of Vehicles in the Coastal Zone Regulations (Government Notice No. 1399 of 21 December 2001)*

Prior to 2001, the absence of regulations that applied holistically and uniformly to the entire coast controlling off-road vehicle use, resulted in damage to ecologically sensitive areas; a problem which was acknowledged widely (Schlacher et al, 2007; Schlacher and Thompson, 2007; Moss and McPhee, 2006; Mbonambi and uThungulu Municipalities, 2002). Regulations for the control of vehicles in the coastal zone were consequently promulgated under section 44 of NEMA in 2001 and amended in 2004, prohibiting the use of vehicles in the coastal zone. Vehicle use is only allowed if it constitutes a permissible use, if it is authorized with a permit, or if it is exempted under regulation 3 as amended (Glazewski, 2005).

Regulation 4 provides the permissible uses", whilst regulation 6 gives the circumstances under which a permit may be granted (Glazewski, 2005), including for: 'carrying out a non recreational activity in terms of a right, permit or exemption granted under the Marine Living Resources Act'; 'scientific research'; tourism business': 'accessing private property, provided there is no reasonable access to the property; 'producing an advertisement, feature film, still photograph or a television programme', 'access by a physically disabled person' and 'carrying on an organized recreational sport fishing competition' (Glazewski, 2005; 317).

3.3.5 The Marine Fisheries White Paper of 1997 and the Marine Living Resources Act 18 of 1998 (MLRA)

The political transformation in South Africa resulted in firstly, the formulation of a national policy (the Marine Fisheries White Paper in 1997) and secondly, the Marine Living Resources Act of 1998. The White Paper emphasized that access to marine living resources had historically not been equitable and just, and subsequently that transformation in the South African fishing industry was needed (Glazewski, and Witbooi, 2005; Hauck and Sowman, 2003). The key values, which thus underpinned the White Paper, according to Glazewski and Witbooi (2005:406), included:

- 'the use of marine resources in a manner that optimises long term social and economic benefits to the nation;
- the management and development of fisheries in compliance with the Constitution;
- the promotion of fair and equitable access to marine resources'.

It therefore acted as a precursor to the Marine Living Resources Act (MLRA). The MLRA provides measures for the conservation of marine resources and for access to, utilization, exploitation and protection of these resources. It is based on three main pillars, namely social equity, ecological sustainability and economic stability (Hauck and

¹³" (a) the use by any person of any vehicle -
(ii) on private land by the owner or with the permission of the owner or lawful occupier of that land;
(b) the use of any vehicle within a boat launching site in accordance with the licence issued in terms of regulation 7 for that boat launching site, provided that a vehicle may be used on a private slipway in respect of which a lease has been granted in terms of the Seashore Act, 1935 (Act No. 21 of 1935);
(e) the use of a vehicle in the coastal zone by members of the National Sea Rescue Institute or Lifesaving South Africa in the public interest."

Sowman, 2003). Building on the White Paper, it promotes the need to address historical imbalances and achieve equity within the fishing industry (section 2 (j)). The Minister is obligated to consider these objectives when making decisions (Sunde and Isaacs, 2008). In addition, the MLRA provides that the management and control of marine resources be undertaken in a fair and equitable way for the benefit of all South African citizens (Van der Linde, 2006). Therefore, the Act seeks to promote socio-economic benefits for coastal communities (Hauck and Sowman, 2003). Additionally, subsistence fishers were historically not acknowledged in domestic legislation and had no legal access rights (Hauck and Sowman, 2003). The MLRA was the first statute that formally recognised this sector in fisheries.

The MLRA places the authority for the granting of rights and the management of marine resources (inshore and coastal) in the hands of the Minister of Environmental Affairs and Tourism (Sunde and Isaacs, 2008). This is provided for under Section 18 of the Act, which states that no person can undertake subsistence fishing (as well as commercial fishing) unless a right to undertake this activity is *granted* by the Minister. Furthermore, the right granted may only be *exercised* if a permit is issued (section 13). Subsistence permits may only be transferable with the permission of the Minister (section 19), whilst no recreational fishing permit is transferable (section 20). In addition, section 24 allows the minister to reduce rights allocated (e.g. the total allowable catch).

Therefore, the Act restricts access to marine resources to those who have been granted a right as well as a permit to exercise that right; and further restricts how that permit and right may be transferred. However, the Act is progressive in the sense that the Minister is legally obliged to have regard to the need of new entrants, (especially those coming from historically disadvantaged sectors of society), and to consider principles of equity, and fairness when granting rights (section 18). In this way, greater equitable access is promoted for marginalised groups.

Other sections of the Act further support the upliftment of historically disadvantaged communities and promote rights of access. For instance, section 19, which states that the Minister may (in order to achieve the objectives in section 9(1) of the Constitution) establish subsistence zones; declare a specific community as a fishing community whereby its members may be declared as subsistence fishers; may declare any other

person to be a subsistence fisher; or declare any other fishing, related activity or exercise of other rights to be prohibited in this zone (section 19(1)).

Marine protected areas (MPAs) are provided for under Chapter 4 (section 43) of the MLRA. The Minister has the power to declare an area as protected and the Act states that no person may fish or attempt to fish in an MPA, or take any other fauna or flora, unless granted permission by the Minister. Chapter 5 of the Act restricts the type of gear which may be used to catch fish or harvest marine living resources (section 45).

3.3.6 *The White Paper for Sustainable Coastal Development (2000) and the National Environmental Management: Integrated Coastal Management Act 24 of 2008 (NEM:ICM)*

According to Glazewski (2005), the sea and seashore were classified as *res omnium communes*, under Roman law; this meant that the coast was open to the enjoyment of all and furthermore, that it could not be acquired for private property. This concept was modified by Roman-Dutch law which classified this area as *res publicae*, thereby vesting the ownership of the area in authorities which must act as custodians of the area, for the use and benefit of all people (Glazewski, 2005). These concepts were included in the Sea Shore Act of 1935¹⁴. However, although the Seashore Act protected the public interest by providing rights to the sea and sea-shore, and by preventing private ownership of it, it did not provide for public access to the sea-shore (Glazewski, 2005). For instance, during the time of apartheid access to the seashore was prevented for black sectors of society through privatisation or State ownership of land *adjacent* to the seashore (Hauck and Sowman, 2003). In addition, no integrated policy framework existed for the sustainable use, management and development of the coast and its resources (Hauck and Sowman, 2003). The White Paper therefore outlined a vision for the coast together with principles, goals and objectives, subsequently introducing a new approach to coastal management (Glavovic, 2000). The Policy advocated numerous shifts in emphasis from previous management efforts, including:

- 'The importance of recognizing the value of coastal ecosystems as a cornerstone for development' because our coast provides a range of aesthetic, cultural, educational, scientific, and spiritual benefits';

¹⁴ Now repealed by the National Environmental Management: Integrated Coastal Management Act 24 of 2008

- a shift from old approaches resulting in a more people centred policy; and
 - a new style of management which advocates cooperation and integration.
- (Glavovic, 2000: 263)

In its vision for the coast, the policy sets out several ideas. Those most relevant to coastal access include; that the people of South Africa 'seek an equitable balance of opportunities and benefits' throughout the coast, and that they 'strive for sustainable coastal development....in the interests of all South Africans' (DEAT, 2000; 6). The principles which underlie the policy (relevant to coastal access) include (DEAT, 2000: 6):

- The coast must be retained as a national asset, with public rights to access and benefit from the many opportunities provided by coastal resources'
- 'Coastal management efforts must ensure that all people, including future generations, enjoy the rights of human dignity, equality and freedom'.

The policy emphasizes the importance of enhanced access to coastal resources (Hauck and Sowman, 2003). It also contains several important goals. Those relevant to this study include the goal of physical access (Goal 81), which is to ensure that the public has the right of physical access to the sea, and to and along the sea shore, on a managed basis', secondly, the goal of equitable access (Goal B2), which is 'to ensure that the public has the right of equitable access to the opportunities and benefits of the coast, on a managed basis', thirdly, the goal of historical and cultural heritage (Goal B3), which is to 'preserve, protect or provide historical and cultural resources and activities of the coast' and lastly, the goals of coastal economic development (Goal C1), which is 'to promote the diversity, vitality and long-term viability of coastal economies and activities, giving preference to those that are distinctly coastal or dependent on a coastal location' (DEAT, 2000: 8).

The National Environmental Management: Integrated Coastal Management Act 24 of 2008 (NEM: ICM), gives legal effect to these policy provisions. Its purpose includes ensuring socially, economically and ecologically justifiable and sustainable use of natural resources in the coastal zone, and the definition of rights and duties with regards to coastal areas. Its preamble recognises that economic, social and environmental benefits of the coastal zone were unfairly distributed in the past, therefore calling for equity and reform, and its objects include: providing for co-ordinated and integrated coastal zone

management in accordance with principles of co-operative governance; preserving, protecting and extending the status of coastal public property, recognising that this property is held in trust by the State on behalf of the people of South Africa; and securing equitable access to the benefits and opportunities arising from coastal public property (section 2). The Act also provides numerous important provisions.

Part 1 of Chapter 2 deals with the declaration of coastal public property; it defines coastal public property¹⁵, and provides for extending it, by giving the Minister the power to declare any State-owned land as coastal public property. This declaration may be for several purposes, including, for the improvement of public access to the seashore (section 8(a)) and in order to facilitate the achievement of any of the objects of this Act (section 8 (d)) as described above. Part 1 also provides for the acquisition of land by the State (section 9), which may then be designated for certain purposes (section 10). The latter provides the Minister with the power to designate State-owned land vested in the national and provincial government, for the purpose of facilitating the issues mentioned in section 8 above. This land is subsequently regarded as coastal public property (section 10 (5)). The Act specifically stipulates that 'ownership of coastal public property vests in the citizens of the Republic and coastal public property must be held in trust by the State on behalf of the citizens of the Republic' (section 11), thus recognizing the public nature of the coast. This section further provides that this property is 'inalienable and cannot be sold, protecting the rights of citizens to coastal access. The State is

¹⁵ Coastal public property consists of—

- (a) coastal waters;
- (b) land submerged by coastal waters, including—
 - (i) land flooded by coastal waters which subsequently become s part of the bed of coastal waters; and
 - (ii) the substrata beneath such land;
- (c) any island, whether natural or artificial, within coastal waters ,
- (d) the seashore,
- (e) the seashore of a privately owned island within coastal waters ;
- (f) any admiralty reserve owned by the State;
- (g) any state-owned land declared under section 8 to be coastal public property; or
- (h) any natural resources on or in—
 - (i) any coastal public property of a category mentioned in paragraph (a) to (g)
 - (ii) the exclusive economic zone, or in or on the continental shelf as contemplated in sections 7 and 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), respectively: or
 - (iii) any harbour, work or other installation on or in any coastal public property of a category mentioned in paragraphs (a) to (h) that is owned 30 by an organ of state. (as adapted from section 7, this definition does not encompass the exclusions included in the original definition)

Coastal Public property therefore replaces the sea and seashore (as defined in the Sea Shore Act).

therefore designated as public trustee of coastal public property and is legally assigned the responsibility of ensuring that this property is 'used, managed, protected, conserved and enhanced in the interests of the whole community' and that 'reasonable legislative and other measures' are taken to 'conserve and protect coastal public property for the benefit of present and future generations' (section 12). The right of coastal access is further legally supported and provided through section 13, which stipulates that all people in South Africa have the right to 'reasonable access to coastal public property' and are 'entitled to use and enjoy coastal public property', provided this use does not negatively affect the rights of other members of the public to use and enjoy it, hinder the State in its duty to protect the environment or cause a negative effect. However restrictions on access are allowed for in this section, particularly where coastal public property forms part of a protected area or where it is necessary to protect the environment (section 13 (2)). It further states that no fee can be charged for access to coastal public property without the Minister's approval; although protected areas, harbours and leased areas are exempt (section 13(5)).

In addition, in contrast to the Seashore Act, this Act places a legal obligation on each municipality whose area includes coastal public property, to designate strips of land as coastal access land for the purpose of securing public access (Part 3, section 18). Members of the public may therefore use this land to gain access to coastal public property. Special management areas may also be designated and declared by the Minister, in order to facilitate the management of coastal resources by a local community or promote sustainable livelihoods for local communities (section 23).

Lastly, the Act provides responsibilities for municipalities in terms of the coastal access land designated in terms of section 18. These include ensuring that entry points are signposted, that facilities are available which promote access, that rights of the public to use and access coastal public property are protected and enforced and that the land is maintained to ensure the public has the ability to access (section 20).

3.3.7 The National Environmental Management: Biodiversity Act 10 of 2004 (NEM:BA)

National Environmental Management: Biodiversity Act 10 of 2004 (NEM:BA) provides for the access to and use of indigenous biological resources in a sustainable manner and

for the fair and equitable sharing of benefits (between stakeholders), arising from the use and bioprospecting of indigenous resources (DEAT, 2005). This is centred on genetic resources and subsequently on the concept of Access and Benefit Sharing (ABS) (Chapter 6). This study focuses on access and the ability to benefit from coastal resources, rather than genetic resources. However, this Act is still relevant in terms of the fact that a broader definition of equitable access and benefit sharing is recognised for the South African context, than one purely constrained to genetic resources. This broader explanation of these concepts is echoed in the National Biodiversity Strategy and Action Plan (NBSAP), which is considered as forming the basis of the National Biodiversity Framework (NBF), whose formulation and implementation is in turn, called for through the National Environmental Management Biodiversity Act (DEAT, 2005). This Act also provides for co-operative governance and has included important provisions for consultation and public participation (section 47 and section 99).

3.3.8 National Environmental Management: Protected Areas Act 57 of 2003 JNEM:PAA)

Although the study area consists of a nature reserve, which forms part of a Marine Protected Area rather than a protected area (land based park), aspects of this Act are important because it makes numerous provisions for ensuring equitable benefits to local adjacent communities; thus contributing to their upliftment. In comparison, its marine counterpart (the MLRA) significantly lags behind (Sunde and Isaacs, 2008). A broad overview of National Environmental Management: Protected Areas Act 57 of 2003 (NEM:PAA) will therefore be given. NEM:PAA provides for the protection and conservation of ecologically viable areas, intergovernmental cooperation and public consultation concerning protected areas (DEAT, 2005). Its objectives include promoting 'sustainable utilization of protected areas for the benefit of people' and participation of local communities in the management of protected areas'. Part 3, section 23 provides that nature reserves can be declared for several reasons; this includes to provide for a sustainable flow of natural resources and services to meet the needs of local communities, and to enable the continuation of traditional consumptive uses in a Sustainable way. It provides for co-management agreements between authorities and local communities, which can include arrangements for benefiting, use and access from and to natural resources (DEAT, 2005).

3.3.9 The Mineral and Petroleum Resources Development Act 28 of 2002

The Mineral and Petroleum Resources Development Act 28 of 2002 guarantees sustainable development in the development of minerals and petroleum resources, promotes local and rural development and the social upliftment of communities affected by mining, and commits to the eradication of all forms of discriminatory practices in the mineral and petroleum industries (Van der Linde, 2006). Its objectives include expanding opportunities for historically disadvantaged people to benefit from the exploitation of mineral resources, promoting employment, advancing social and economic welfare of all South Africans and ensuring that holders of mining and production rights contribute towards the socio-economic development of the area in which they are operating. In terms of the mining rights awarded to mining companies (such as RBM), it is important to note that (according to section 43) the holder of this right remains responsible for any environmental liability, pollution or ecological degradation, until the Minister has issued a closure certificate. The Act also requires the conversion of old order mining rights to new order mining rights. This together with the broad-based socio-economic empowerment charter resulted in a 'BEE scorecard', which assists companies to transform their old rights (Hamman, 2004). This scorecard provides a list of important aspects which need to be considered and fulfilled, for the transformation of rights. These include items such as community and rural development and human resource development.

3.4 Relevant KwaZulu-Natal provincial legislation

Various provincial legislations are relevant to this dissertation, and will now be discussed briefly.

3.4.1 The KwaZulu-Natal Planning and Development Act 5 of 1998

The KwaZulu-Natal Planning and Development Act 5 of 1998 provides for development and planning to be comprehensive, instead of ad hoc (Glazewski, 2005). It also encourages environmental consideration by promoting an environmental ethic of sustainable use' (Principle 14) and promotes an integrated approach (Chapter 4), emphasizing that Development Plans should be promoting development which is harmonious, co-ordinated, and in the spirit of sustainable development (Glazewski, 2005). These provisions are significant for the management of the province's coastline,

in the sense that it promotes sustainable and integrated development. This is important for a holistic approach to coastal management and development, important for equitable coastal access.

3.4.2 The Kwazulu-Natal Nature Conservation Management Act 29 of 1992

The Kwazulu-Natal Nature Conservation Management Act 29 of 1992 provides for the declaration of nature reserves including community conservation areas (section 2). It also makes provisions for the restriction of entry into game reserves and parks except through a permit or through permission from the Director or any officer authorised by him to grant such permission (section 7). It also provides for the protection and conservation of indigenous animals and plants, as well as for the conservation of fishery resources, and regulates use of these resources through permits. Section 99 states that the Department may grant exemption from any of these provisions to tribes in a specified area. Sections 4 to 6 of this Act were repealed by the Kwazulu-Natal Nature Conservation Management Act 9 of 1997.

3.4.3 The Kwazulu-Natal Nature Conservation Management Act 9 of 1997

The Kwazulu-Natal Nature Conservation Management Act No. 9 of 1997 formed new authorities, allowing for the effective management of nature conservation and of conservation areas in the province. It also established Ezemvelo KZN Wildlife (a combination of the old Natal Parks Board and Kwazulu Nature Conservation Department). This body was appointed to be in charge of the daily operations required for nature conservation (Copley, 2009), and is now the primary institution with jurisdiction over the coast and its resources in the province. This Act also provides for the declaration of protected areas, and the amendment of their boundaries (section 3).

3.4.4 The Kwazulu-Natal Nature Conservation Amendment Act 5 of 1999 and the Kwazulu-Natal Nature Conservation Amendment Act 7 of 1999

The Kwazulu-Natal Nature Conservation Amendment Act 5 of 1999 sets penalties for anyone who gathers indigenous plants or indigenous animals inside a protected area (section 50). This Act also makes provisions for the gathering of specially protected indigenous plants, or hunting of indigenous animals by traditional healers (section 64). These activities may only be carried out through the possession of a

permit. Traditional hunts are similarly restricted to holders of the relevant permit; the permit is valid for one traditional hunt which is restricted to a specific area and a specified period (section 72). The KwaZulu-Natal Nature Conservation Amendment Act 7 of 1999 together with the KwaZulu-Natal Nature Conservation Act 5 of 1999 replaced the Natal Nature Conservation Ordinance 15 of 1974, and legislated the protection of biodiversity whilst detailing the provisions for related permit systems (Copley, 2009).

3.5 Key policy and legislative principles

The above review of relevant policy and legislation has highlighted and emphasized a number of key principles and values.

3.5.1 Co-operative governance and integration

The need for all spheres of government (local, provincial and national) and all forms of policy and legislation to be coordinated and harmonised is emphasized through most of the above laws. This is important for an integrated approach to coastal management, beneficial to the enhancement of managed and equitable coastal access.

15.2 Sustainability

This is the most prominent principle. In the context of this study and the above laws, sustainability is advocated in conservation, mining and use of the coast. Therefore, these activities are required to consider social factors as well as environmental and economic factors, and specifically should take into account the needs of the local people and communities.

3.5.3 The right of access to the coast

The coast is highlighted as a national asset, vested in the citizens of South Africa. The *right* to reasonable physical access and benefits to and from the coast is emphasized. Similarly, the *right* to sustainably use coastal resources is significantly recognised through the above legislation.

3.5.4 The need to promote equitable access and benefits: Equity, transformation and a more people-centred approach

The above laws advocate the sustainable use of resources in order for all people (specifically the historically disadvantaged) to attain greater and more equitable access and benefits, economic empowerment (e.g. through rural and community development), training and capacity building, and environmental awareness and education. They also advocate for the protection and enhancement of livelihoods, and the consideration of coastally dependent communities and their needs. The need to *promote* equitable access and benefits is thus significantly emphasized.

Post-1994 South African policies and laws thus recognise the importance of natural resources for different sectors of society, but especially for those dependent on these resources for their livelihood. They therefore attempt to provide for reform in terms of social justice and sustainability, promoting managed access to natural resources whilst simultaneously promoting the conservation of these important resources.

CHAPTER FOUR

4. A DESCRIPTION AND BACKGROUND OF THE STUDY AREA

As introduced in Chapter 1, the study area is located close to the town of Richards Bay, on the north coast of KwaZulu-Natal spanning the coastline between the Maphelane Nature Reserve (in the north) and the furthest southern Mbonambi local municipality boundary (Figure 2).

Over the past 28 years, Richards Bay (Figure 2) has grown from a small town to one with a well developed industrial base (Aniruth and Barnes, 1998) with the main socio-economic activities of the Zululand Coast occurring around this area (South African Coastal Information Centre, 2005). Many of these activities, such as mining and conservation, occur within its coastal zone, which can be described as 'a flat coastal plain interspersed with dune cordons, often greater than 150m in height' (Anderson, 2003; 2); comprising relatively pristine indigenous forest dune cordons in the north and casuarina plantations and disturbed dune forests to the south (uMhlathuze Municipality, 2002).

The report 'Economic and Environmental Feasibility for possible Recreational Use Areas in the Mbonambi Municipal Area (Mbonambi and uThungulu Municipalities, 2002), identifies a number of significant characteristics of this coastline. These characteristics, (together with some supplementary ones identified through the literature and through the field trips), formed the basis for the decision to locate the study area along this coastline. The significant attributes along this coastline include: (1) the close proximity of the coastal zone to the Richards Bay urban area and the low level of development along this coastline, (2) The presence of rural coastal communities, (3) the presence of mining along this coastline (4) the presence of several mussel ledges along the coastline and the existence of a Co-management Project and lastly, (5) the presence of the Maphelane Nature Reserve. These will now be introduced and discussed.

4.1 The close proximity of the Richards Bay urban area

The Richards Bay urban area, together with the nearby town of Empangeni, is where most of the local demand for recreational use and access to the coast comes from (Mbonambi and uThungulu Municipalities, 2002). There are various recreational sectors including recreational shore angling, ski boat fishing, snorkelling, spear-fishing, crayfishing and day visitors. Shore fishing is one of the most important recreational activities along this coast. Prior to the Control of Vehicles in the Coastal Zone Regulations, this coastline was also well-known for its 4 x 4 enthusiasts. Most locals living in this area owned 4 x 4s for recreational use but also for the ability to reach various parts of the coastline, which was otherwise difficult.

An added trait of this coastline, which is significant, is the low level of residential and commercial development along it. Even though it is abundant in natural assets and is recognised as having significant potential to be developed into a place of importance, this coastline is relatively undeveloped, isolated, unknown and largely inaccessible from the nearby N2 (Mbonambi Municipality, 2008). There is little tourism, no resorts (apart from Maphelane Nature Reserve in the north), or coastal gated estates and developments, such as one sees along many other parts of the South African coast. This can largely be attributed to the presence of mining along the coast.

4.2 Coastal communities

The presence of two large rural coastal communities is a significant characteristic. These are the Mbonambi community (under the Mbonambi Traditional Authority) in the south and Sokhulu community (under the Sokhulu Traditional Authority) in the north of the study area (Figure 2). These communities both fall under the Mbonambi Local Municipality, which in turn falls under the uThungulu District Municipality. The Mbonambi Municipality is located north of the uMhlathuze Municipality which contains the town of Richards Bay (Figure 2). Archaeological research as well as oral histories, indicate that both chiefdoms were established around the late 1700s before the time of Shaka Zulu; Mbonambi origins are the same as the Mthethwa, falling under the Nguni clan, Amalala-Nguni (Anderson, 1996). Currently the Mbonambi Traditional Authority extends over 8145 ha whilst the Sokhulu Traditional Authority extends over an area of

14877 ha (Mbonambi Municipality, 2008). There is some uncertainty about where the historical dividing area between both communities was, as both claim part of the others land (oral history collected by present author).

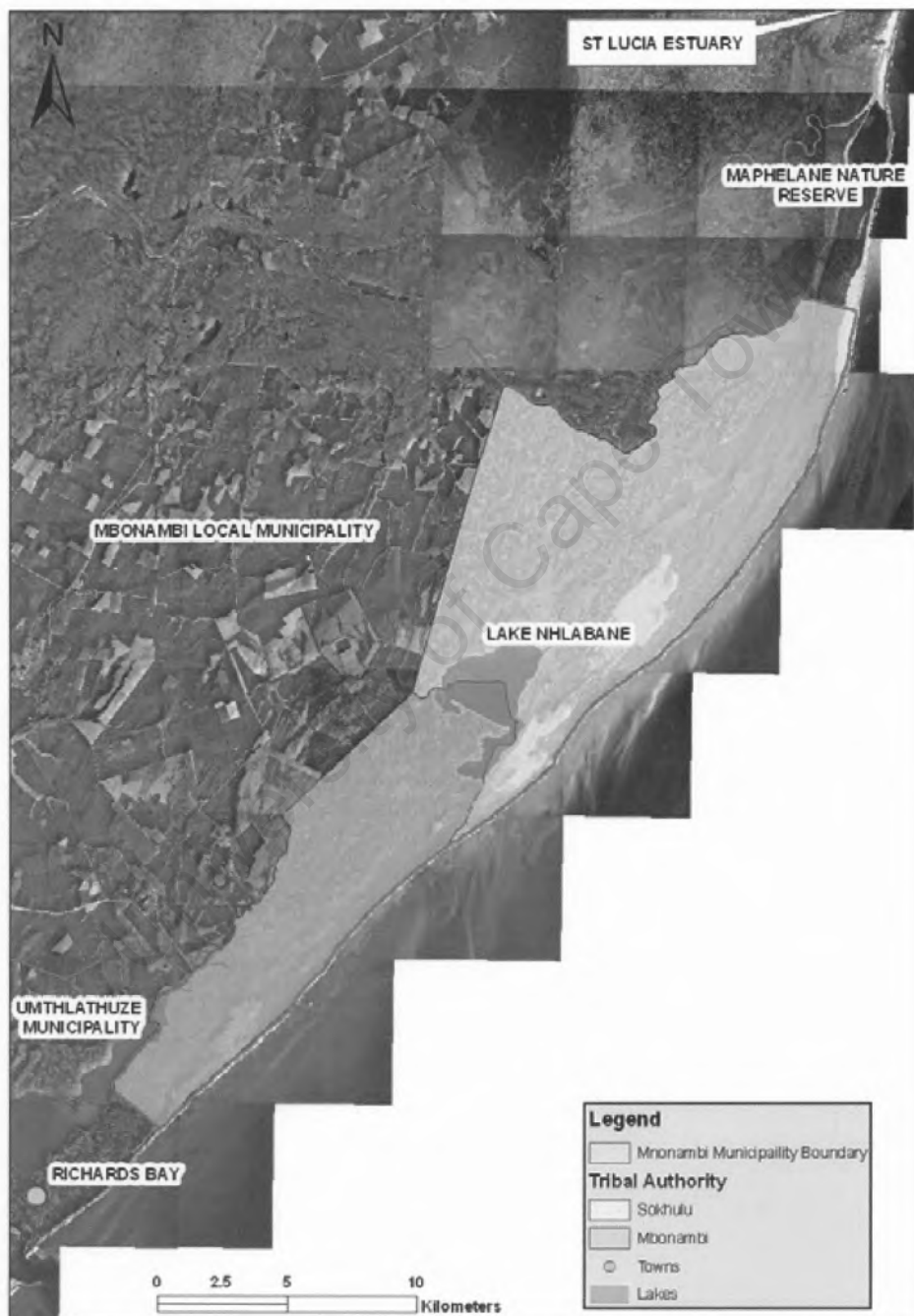


Figure 2: Location of the Mbonambi and Sokhulu Tribal Authorities in the study area

The social fabric of the study area is additionally complicated by the fact that both communities were resettled further inland in the late 1920s (Submission to the Minister by the Sokhulu and Mbonambi land claimants in terms of section 42D of the Restitution of Land Rights Act of 1994, 2005) Land has been claimed by both communities. The Mbonambi land claim was approved a few months ago but the post settlement agreement still needs to be fulfilled (Informant' ^s 33, 2009, pers. comm) and no title deed has been given (Legal representatives of the Mbonambi community, 2009, pers. comm.). The Sokhulu claim is still being finalised, as the claim needed to be revisited (Informant 33, 2009). Both Traditional Authorities are lead by an iNkosi (chief), counseled by a set of ward leaders or iziNduna, Communities traditionally and historically (up to hundreds of years ago) harvested resources along this coast for subsistence purposes as well as for traditional medicines (Sunde & Isaacs, 2008: Harris et al, 2003; uMthlathuze Municipality, 2002).

The municipality, within which both communities are situated, comprises of a large population (estimated at 106943 people in 2009), whilst unemployment is very high (approximately 59%): in the poorest council wards, it was estimated (2001) that 85% earned less than R1600/month (Mbonambi Municipality, 2008). Communities are thus in need of both economic and employment opportunities (Mbonambi Municipality, 2008; Mbonambi and uThungulu Municipalities, 2002). Research conducted by the Mbonambi and uThungulu Municipalities (2002) indicated that arts, crafts and informal trading form part of the local communities' economies; traditional communities generally have little to no income and the local economy is therefore largely subsistence. Collection, and often overexploitation, of resources occurs in rural areas such as these, firstly in terms of meeting peoples own nutritional, medicinal, housing and energy needs, and secondly, to meet demands that may occur from the more developed areas, in this way generating some income (uMhlathuze Municipality, 2002).

4.3 Ongoing mining along the coastline

The presence of Richards Bay Minerals (RBM) within the coastal area is a further important characteristic of the area (Mbonambi and uThungulu Municipalities, 2002).

¹⁶ A list of the Informants interviewed as part of the study can be found in Appendix 1

RBM17 was established in KwaZulu-Natal in 1976 (RBM Sustainable Development Report, 2007) after exploration of the deposit in 1968 (Wipplinger, 1998), It undertakes the mining of the mineral-rich coastal dunes situated to the north and the south of Richards Bay and is a leading producer of titania slag, high purity pig iron, rube and zircon (Williams and Steenkamp, 2006). The mining is considered to be contributing to the value of the area's coastal zone because of its associated production, exports, job creation and training (Mbonambi and uThungulu Municipalities, 2002).

The dune mining and mineral extraction from the dunes occurs through the processes of dredging and concentration. This process is explained by Williams and Steenkamp (2006). A large pond (approximately 50 hectares in size) is created in the dunes through the pumping of freshwater from the nearby Lake Nhlabane; the dredger and concentrator plant float on this pond (Plate 1 and 2). The dredger removes the material from the dune face and the sand subsequently collapses into the pond forming slurry which is passed through to the floating gravity separation plant. As the dredger removes material, tailings left as a result of the separation process are simultaneously stacked at the back end of the pond. The pond is thus constantly moving in a forward direction as dredging advances at approximately one metre per day. The tailings generated through this process, make up approximately 95 per cent of the original sand; they are subsequently used to recreate the rehabilitated dunes behind the mining operations (Wipplinger, 1998). Therefore mining and rehabilitation are continuously ongoing processes; as a new area is mined, rehabilitation starts behind it.

RBM comprises two companies, namely Tisand (Pty) Ltd and Richards Bay Iron and Titanium (Pty) Ltd (RBIT) and is jointly owned by Rio Tinto plc and BHP Billiton.



Plate 1: RBM Dune mining on the north coast of KwaZulu-Natal (ORI, 2009)



Plate 2: Dredger and floating gravity separation plant (Williams and Steenkamp, 2006)

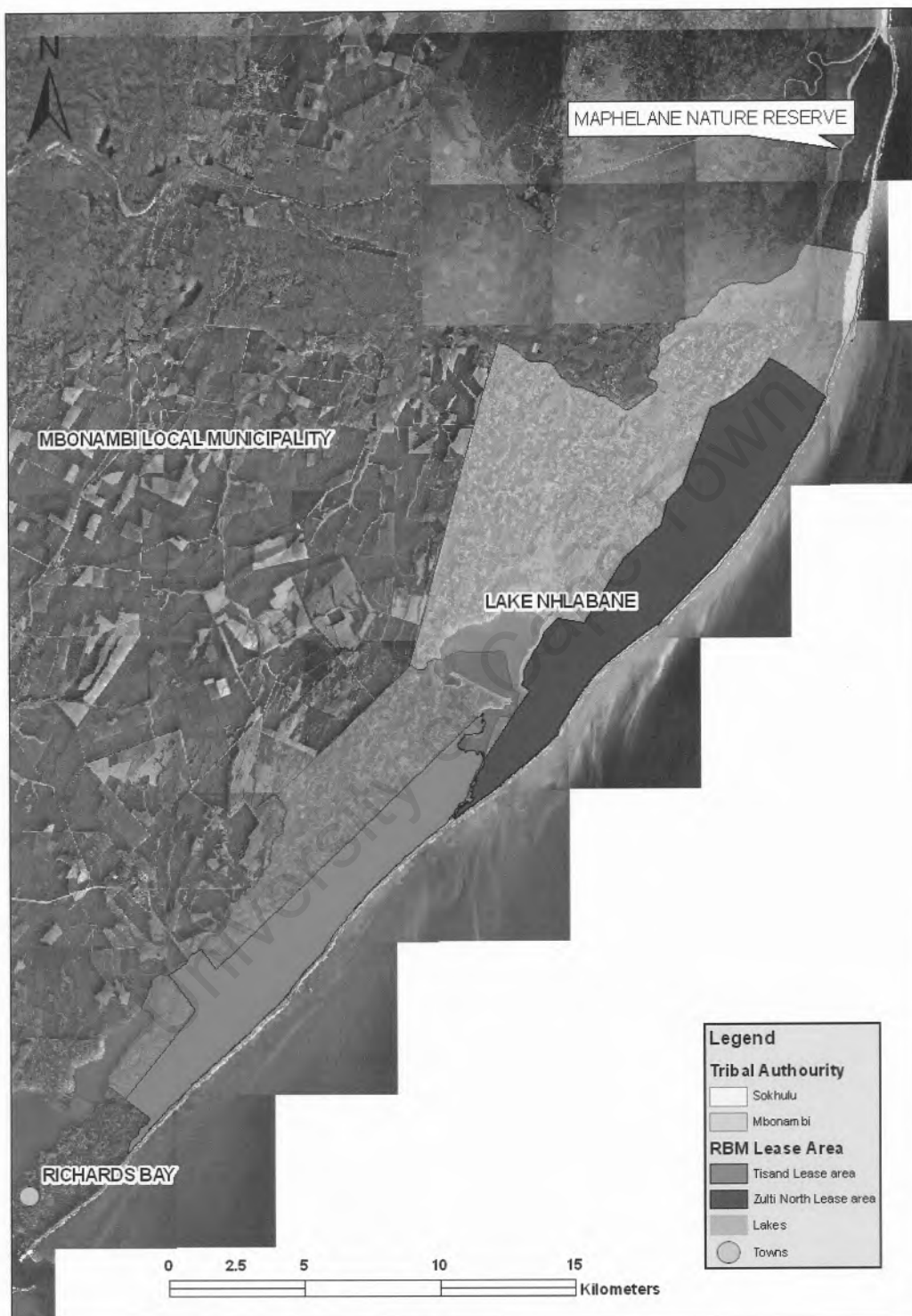


Figure 3: RBM lease areas; Tisand and Zulti North

Figure 3 shows the lease areas (within the study area) where Richards Bay Minerals has mining rights (i.e. Zulti North and Tisand). RBM is situated in the Mbonambi Traditional Authority area which is where mining commenced originally (Figure 3). This is in the Tisand lease area; it has recently progressed into the Sokhulu Traditional area, which is the Zulti North lease area (Figure 3).

RBM is considered to create considerable economic activity and revenue, generating direct job opportunities and stimulating the growth of supporting service industries (Mbonambi IDP review, 2008). In terms of its social contributions, RBM is recognised for the various social upliftment initiatives, which it has undertaken (Mbonambi IDP review, 2008). According to Williams and Steenkamp (2006), RBM has significantly contributed to the welfare of neighbouring communities which have benefited through its social investment program. This program consists of business development, education, health care, water, sanitation, agriculture, as well as other more specific initiatives and is evident in the many schools, clinics and social programs in place (Mbonambi IDP review 2008; Williams and Steenkamp, 2006). RBM has been said to have transformed the local communities into 'thriving communities', providing jobs and training to the local population, building skills, and achieving a 'sense of community and achievement within the region' (Trade and Investment KwaZulu-Natal, 2006). RBM's social investments are thus recognised widely as having significantly benefited the surrounding areas and communities (Forstater, 2009; Trade and Investment KwaZulu-Natal, 2006; Williams and Steenkamp, 2006; Wipplinger, 1998). These various projects are also displayed widely, in the Rio Tinto corporate report, on the RBM website, and on large boards alongside any RBM assisted development project (Kapelus, 2002). The latter is especially dominant in the two community areas (Personal observation, 2009). At the time of the study, the company had just initiated a BEE deal with the communities. Although this is a requirement for the conversion of old mining rights to new order mining rights, RBM has strived to ensure direct ownership in the communities, making them shareholders in the company. This will allow the communities to benefit financially. For example, money generated from mining will be set up in a trust to facilitate various community projects and initiatives (Informant 18, 2009).

4.4 Mussel ledges, subsistence and the Sokhulu Mussel Co-management Project

Another feature of this coastline identified by the Mbonambi and uThungulu Municipalities (2002) is the presence of ledges along the coast. These are favoured by recreational anglers as shore fishing positions as well as by recreational mussel harvesters and subsistence Sokhulu mussel harvesters (Plate 3). Historically, people from the local indigenous communities nearby would harvest along this coastline for subsistence purposes; the people of Sokhulu (for instance) have been harvesting for as long as living memory (Napier et al, 2005). However, most subsistence harvesters¹⁸ were not formally recognised and were classified together with recreational fishers; the associated permit limited harvesting for personal consumption only (Sunde and Isaacs, 2008) and came with a fee (World Resources Institute, 2003). Subsistence Fishers were finally recognised through the Marine Living Resources Act (MLRA) 18 of 1998, and a Subsistence Fisheries Task Group (SFTG) was established to provide guidance on management of this sector. In the absence of a clear policy to allocate resources to this sector, several communities and individual fishers were allocated interim relief to harvest resources (Sunde and Isaacs, 2008).

The Sokhulu Mussel Co-management Project was initiated in 1995 to give community members' managed access to the intertidal mussels, which they historically harvested, and to line fishing (uMhlathuze Municipality, 2002). However, the project actually originated due to growing concerns from conservation authorities concerning the 'illegal' mussel stripping along the coastline (Harris et al, 2003). The community had been restricted from harvesting through legislation which required the purchasing of a recreational permit; this resulted in large scale poaching taking place by those who

¹⁸ A subsistence fisher is defined as 'a natural person who regularly catches fish for personal consumption or for the consumption of his or her dependants, including one who engages from time to time in the local sale or barter of excess catch, but does not include a person who engages on a substantial scale in the sale of fish on a commercial basis' (MLRA 18 of 1998; 12).

This definition was elaborated on by the Subsistence Fisheries Task Group (SFTG) as follows 'subsistence fishers are poor people who personally harvest marine resources as a source of food or sell them to meet the basic needs of food security; they operate on or near to the shore or estuaries, live in close proximity to the resource, consume or sell the resources locally, use low- technology gear (often as part of long-standing community- based or cultural practice) and the kinds of resources they harvest generate only sufficient returns to meet the needs of food security' (SFTG, 2000:iii)

depended on the resource (Napier et al, 2005). Research was initially undertaken in 1994 to study and monitor the harvesting of inter-tidal mussel stocks; however this brought to light the continuous conflict and violent clashes between law enforcement staff and mussel harvesters (Sunde and Isaacs, 2008). The project was thus initiated to address these problems and a joint committee was formed comprising Sokhulu harvesters (mainly women), officials and staff from the provincial conservation authority (EKZN Wildlife) and researchers from the University of Cape Town (Harris et al, 2003).

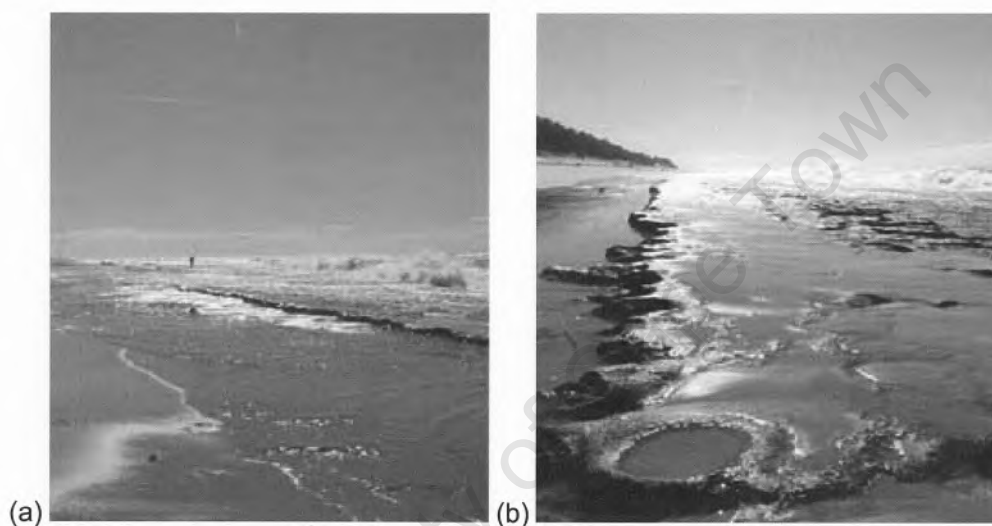


Plate 3: Mussel ledges along this coastline; (a) and (b)

With regards to access, this committee is responsible for deciding how the allocated quota will be used and implemented (intertidal only). For instance, the committee decides how many times a month harvesters may harvest, and the quantity which they may harvest (Informant 6, 2009). They also manage community fisher lists, including the determination of priority permit recipients if the amount of harvesting permits need to be limited (Informant 6, 2009). A subsistence zone for mussel harvesting was established at Dingini, comprising an area of approximately 2 km of rocky ledges (on which mussels are found at low tide); this was later expanded to a 10.5 Km area (World Resources Institute, 2003). As part of the project, this area was restricted to Sokhulu subsistence harvesters only (Mbonambi and uThungulu Municipalities, 2002). The purpose of the project was 'first, to investigate the extent and impact of subsistence harvesting on the coast between Maphelane Nature Reserve and Richards Bay; second, to provide subsistence gatherers with legal access to a traditional resource; third, to

assess sustainable levels of subsistence harvesting and finally, to facilitate co-management of the mussel stocks by the subsistence gatherers and the management authority` (Harris et al, 2003; 62). Additional elements to the project included firstly, the joining of traditional gillnets harvesters to the more predominant line fishing group (see Plate 4), as this type of fishery was being phased out by the authorities, and secondly, the extension of the project (in terms of the line fishing) to the Mbonambi community (Sunde and Isaacs, 2008).



Plate 4: Mbonambi subsistence line fisher

After the implementation of the MLRA, EKZN Wildlife was awarded the contract to manage the Subsistence Fisheries Programme in the province and the Subsistence Unit was established (Sunde and Isaacs, 2008). According to Harris et al (2003), the project has yielded various benefits; Joint decision making about activities within the subsistence zone has been and is still currently taking place, relations between conservation authorities and harvesters have been improved, poaching and unsustainable resource use has decreased, the community has been provided with legal

access and sustainable levels of harvesting have been determined. The project has also yielded various additional benefits to harvesters, monitors and committee members, such as improved skills in literacy, administration, finance and fisheries management (Harris et al, 2003). The project has been considered a great success (Napier et al, 2005; World Resources Institute, 2003; Harris et al, 2003).

4.5 The Maphelane Nature Reserve and iSimangaliso Wetland Park

The Maphelane Nature Reserve is an unfenced reserve which forms part of the Greater St Lucia Wetland Park, recently renamed as the iSimangaliso Wetland Park and managed by the iSimangaliso Wetland Park Authority. It is situated (Figure 4) on the south bank of the Mfolozi river mouth and is the southernmost camp in the Wetland Park (iSimangaliso Wetland Park, 2008). The reserve was established in 1984 (Harris et al, 2003) and forms part of the land which the Sokhulu people claim to have used before they were resettled; traditionally supplying fish and shellfish to the community (World Resources Institute, 2003). This can be seen by the many burial sites of their ancestors in the reserve (World Resources Institute, 2003).

Many local people, such as those from the Sokhulu community, were forcibly displaced and relocated during apartheid for conservation, protectionist reasons. As a consequence of these displacements, conservation is commonly synonymous with social dislocations and alienation from land for many people living in the area still today (iSimangaliso Wetland Park, 2008). With the advent of democracy in 1994, several claims have been lodged¹⁹ for land within the park and the park has also become committed (according to various international and national commitments and legal obligations) to 'deliver benefits to communities living in and adjacent to the Park by facilitating optimal tourism and related development' (iSimangaliso Wetland Park Authority, 2009, pers. comm.).

¹⁹ With the Commission on Restitution of Land Rights

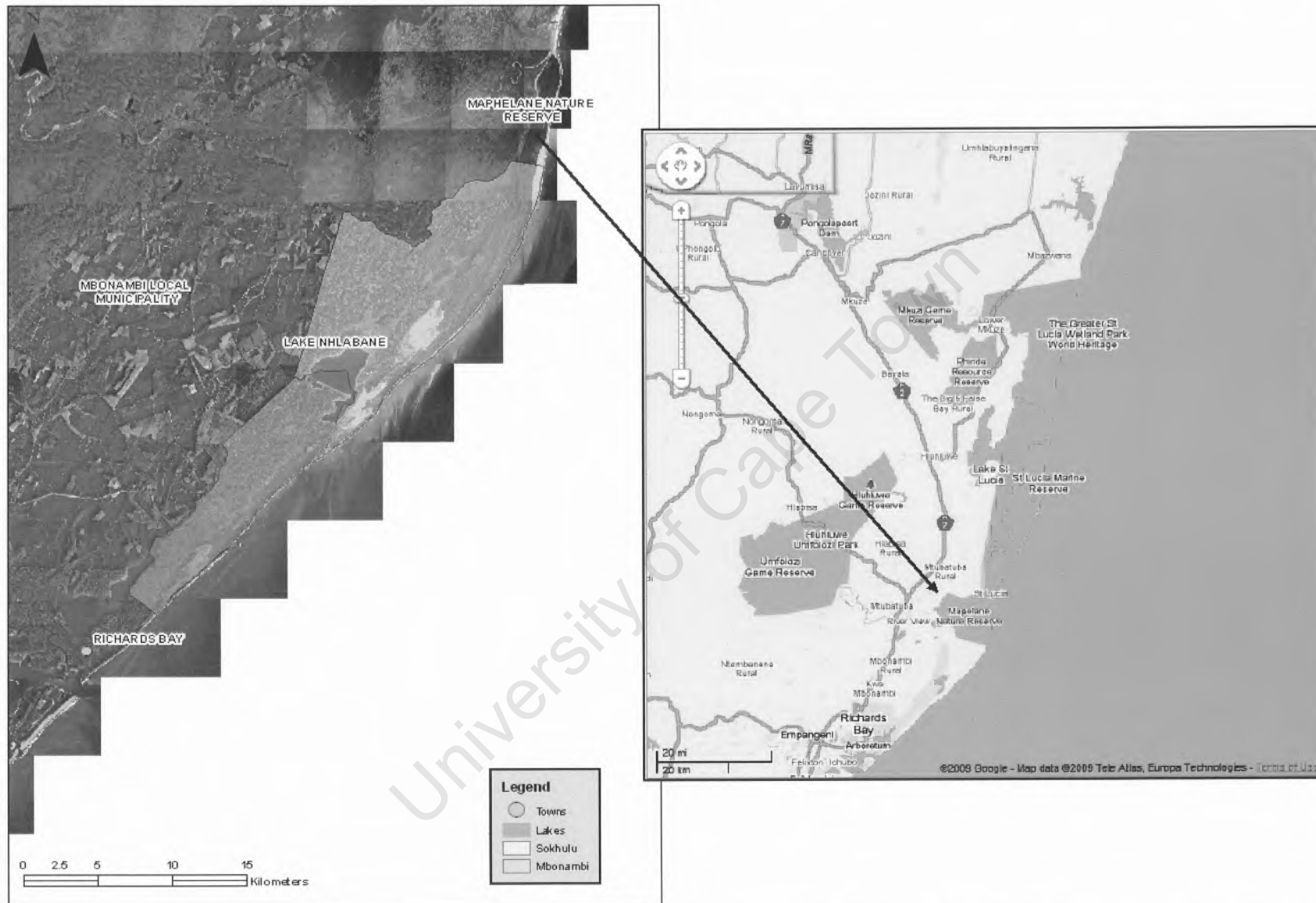


Figure 4: Location of the Maphelane Nature Reserve and iSimangaliso Wetland Park (The old 'Greater St Lucia Wetland Park World Heritage site)

The park authority employs a social, economic, environment and development strategy in order to achieve social and economic empowerment goals whilst conserving its valuable ecological diversity (iSimangaliso Wetland Park Authority, 2009, pers. comm.). They have thus implemented several programs to attain these goals and objectives. Land claimants as well as communities living in and adjacent to the park participate and benefit from these various programs (e.g. local economic development programs). Strategies and programs include ownership, job creation, training, and procurement, crafts initiatives, managed access to natural resources, agricultural programs, such as community food gardens, and environmental education and awareness (especially in local schools) (iSimangaliso Wetland Park Authority, 2009, pers. comm.).

Sokhulu has been successful in terms of its claim for land within the park and thus benefits as both a land claimant and an adjacent community. As a land claimant, the community becomes mandatory partners in private sector tourism investment in the Park; this partnership provides them with equity shareholding in the business, jobs and skills development opportunities, support (through financial and legal advice) and the procurement of goods and services (iSimangaliso Wetland Park Authority, 2009, pers. comm.). Co-management agreements include title to land without physical occupation. Thus this loss of benefits is compensated through the various forms of remuneration mentioned above (e.g. revenue sharing, mandatory partner status, jobs) (iSimangaliso Wetland Park Authority, 2009, pers. comm.).

CHAPTER FIVE

5. FINDINGS OF THE STUDY

The findings presented below are based largely on interviews and focus group meetings held (Appendix 2 and 3) with informants from the various stakeholder groups (Appendix 1) in the study area. Interviews were also undertaken with representatives of the mining (RBM informants) and conservation (EKZN Wildlife and iSimangaliso Wetland Park informants) sectors (Appendix 1 and 2).

5.1 Stakeholder identification

Five primary stakeholder groups were identified during the initial scoping visit conducted in February 2009. An initial list of stakeholders was developed based on a review of literature relevant to the study area, discussions with EKZN conservation officials and researchers that had worked in the area. These stakeholders were confirmed and expanded during the second field visit to the area in April 2009. Primary stakeholders were identified as those stakeholders that require access to the coast and whose access has been or is being affected by various factors, especially by mining and conservation activities. The five stakeholder groups identified include (1) the general Richards Bay public, (2) the 4 x 4 users (a group of stakeholders that also includes motor bikers and quad bikers), (3) coastal recreational anglers, (4) the Mbonambi community and, (5) the Sokhulu community (Figure 5).

5.2 The benefits derived by each stakeholder group from access to the coast and to its resources.

Each stakeholder group was asked to identify the benefits that they derived historically as well as the benefits they presently derive from their ability to access the coast and its resources (see Figure 5). This information was gathered through the two community focus group meetings as well as through interviews held with key informants from the different stakeholder groups. Information was also gathered from literature based on previous work undertaken in the area.

5.2.1 The Sokhulu and Mbonambi communities

Information gleaned through the above methods indicates that the Sokhulu and Mbonambi communities enjoyed many benefits from being able to access the coast and its resources prior to the first land-use changes that occurred around the late 1920's to the early 1930's. In terms of livelihoods, the harvesting of several resources (marine and forest) provided consumptive benefits as well as non-consumptive benefits. Many people's livelihood depended completely on the ability to harvest these resources. Harvesting was a necessity, not a luxury. Several historical transcripts as well as academic research and literature document how marine resources (especially mussels) were an important part of the local people's livelihoods (Sunde and Isaacs, 2008; Harris et al, 2003; Amafa KZN, recordings of oral history, 1994). Therefore, there was, and still is, to a large degree, a high level of dependence on marine and forest resources; especially the former (also see Russel et al, 1999). Natural resources provided non-consumptive benefits in the sense that surplus resources could also be sold or bartered for other important resources such as maize or money. Furthermore, natural resources additionally yielded medicinal benefits. Therefore, resources such as wood could be sold, traded or used (e.g. for fires and building houses), whilst berries and various plants, or marine resources, were used as a source of food and/or as a medicinal ingredient. The shells from certain marine resources were also used to make necklaces. In addition, people had unrestricted access to the coastal land and could thus farm livestock and crops on this land.

The ability to freely physically access the coast also yielded various benefits. For instance, members of the communities traditionally used sea water to clean out their stomachs. Various religious ceremonies, such as baptisms, are also conducted on the beach, and the coast yields social benefits such as swimming and being able to "sit in nature" (Informant 60, 2009). Traditional healers used the coast for traditional teaching and ceremonies. The use of the sea by traditional healers stems from a belief that the spirit of their ancestors is in the sea. In addition, indigenous people feel that there is a close relationship between them and nature, for instance with the beach, coastal forest, and other coastal resources. The coast is thus of intrinsic value and also yields historical heritage benefits. Where access to the coastal area is possible, these benefits are still attainable.

5.2.2 The general Richards Bay public, anglers and 4 x 4 users

Feedback from interviews with the above three stakeholder groups indicated that for the general public, family outings, camping and other social and cultural benefits were obtained from the ability to freely drive along the beach and access the stretch of the coast under consideration (prior to the Control of Vehicles in the Coastal Zone Regulations of 2001). These benefits are mostly lost now due to these regulations (2001) and the increasing crime which restricts the ability of these stakeholders to access this stretch of coast (Mbonambi and uThungulu Municipalities, 2002). Furthermore, prior to the 4 x 4 regulations, anglers could easily and freely access coastal resources; both recreational and competitive anglers benefited from this unrestricted access. These benefits are both social, from the ability to participate in a sport (competitive anglers), as well as consumptive (in the case of social recreational anglers). Anglers can still enjoy these benefits, however with more difficulty as areas are harder to reach. For the recreational 4 x 4 users, benefits from driving on the beach were obtained prior to the establishment of the regulations. Presently, these stakeholders can no longer drive on the beach.

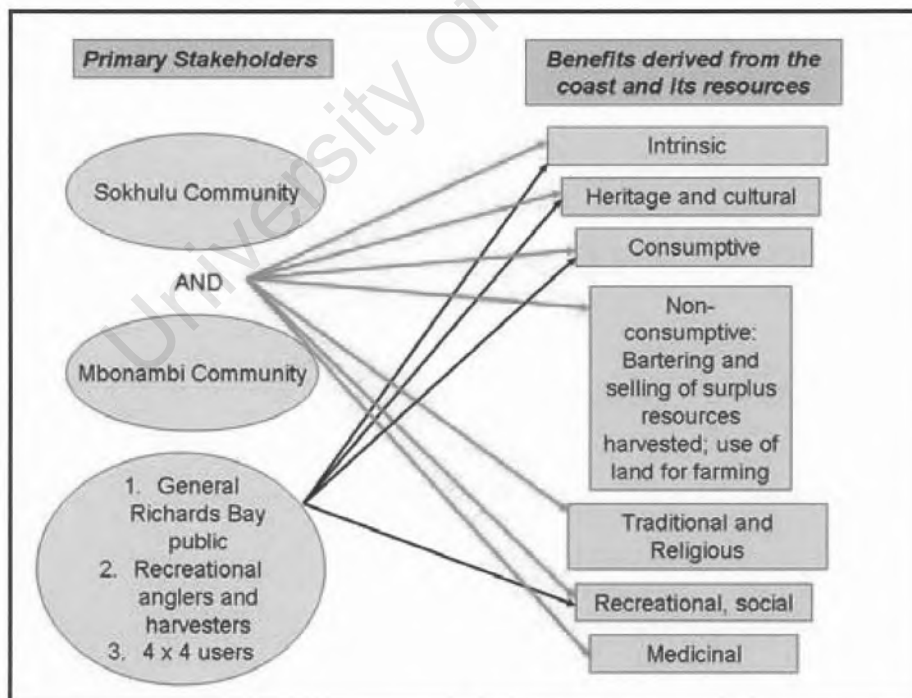


Figure 5: A schematic representation of the primary stakeholder groups identified through the study and the benefits they derive from the coast and its resources.

5.3 A review of institutional arrangements relevant to coastal access in the study area

The coastal zone of KwaZulu-Natal comprises a wide and complex range of institutions and agencies. The KwaZulu-Natal Provincial Coastal Committee (PCC) is the legally-mandated stakeholder forum which unites and embodies these numerous actors (Celliers et al, 2006) in order to achieve sustainable coastal development. It represents members of the national government, the district and local government, the provincial government, the civil society and parastatals. This committee allows for a higher degree of interaction and understanding, between actors, acting as a vehicle for progress (Celliers et al, 2006).

Marine conservation and management is a national competency falling under DEAT; within this department, this responsibility is given to Marine and Coastal Management (MCM) (Sunde and Isaacs, 2008). Although MCM is responsible for the implementation of legislation, a confusing institutional arrangement whereby most MPAs are managed by SAN Parks (the authority in charge of MPAs before the MLRA came into effect) or by other agencies, has resulted in management without authority over legislation, and relative neglect of MPAS (Sunde and Isaacs, 2008). In KwaZulu-Natal (and in the case of the study area), there are two implementing agencies, namely, Ezemvelo KwaZulu-Natal Wildlife (EKZN Wildlife) and iSimangaliso Wetlands Park Authority.

EKZN Wildlife is the primary institution with jurisdiction over the coast and its resources in this area. The Natal Parks Board was the authority that initially exercised legal authority over the parks and coastal resources in the province (World Resources Institute, 2003); however, after the advent of democracy in 1994, it amalgamated with the former KwaZulu Directorate of Nature Conservation to form EKZN Wildlife. This agency is now the provincial conservation body in KwaZulu-Natal (Sunde and Isaacs, 2008) and is thus the authority responsible for the monitoring, control and the enforcement of laws and regulations related to marine resources, conservation areas, the conservation of coastal resources, and vehicle use along the KZN coast. They have also been awarded the contract for managing and monitoring the subsistence fishing program active in the province through the establishment of a Subsistence Fishing Unit. The local joint subsistence co-management committees (mussel and line fishing)

communicate with the Subsistence Fisheries Unit (under EKZN Wildlife) and both structures interact with the Tribal Council, thus providing communication on access issues. These two committees are in charge of deciding the total allowable catch, identifying subsistence collectors, issuing harvest permits, determining the harvesting schedule and hiring monitors to record and monitor the collection of resources (World Resources Institute, 2003; Harris et al, 2003).

With regards to the iSimangaliso Wetland Park, the iSimangaliso Wetland Park Authority was established as the dedicated management authority in terms of the promulgated World Heritage Convention Act (1999) and the Regulations (2000). They are thus the authority dealing with the day to day management of the park, including issues related to land claims, communication and beneficiation arrangements, and partnerships with local affected indigenous communities. EKZN Wildlife, on the other hand, is responsible for the day to day conservation management and compliance on the ground.

The uThungulu District municipality is also involved with aspects of coastal management; although to a lesser degree because of a lack of capacity and lack of priority. For instance, the municipality has developed a coastal management program which recognises the coast as a vital and complex asset of the district, and which attempts to align with the District's IDP and Spatial Development Framework in order to achieve integrated coastal planning and management that can harness the coastal assets and services in an efficient and equitable manner, and ensure the sustainable development of the coast and its people (uThungulu District Municipality, 2004). The local Mbonambi municipality has had little involvement in coastal management, however, the new NEM:ICM Act specifically places responsibility on local municipalities to implement various provisions of the new Act.

In terms of communication arrangements which may affect coastal access, RBM and EKZN Wildlife or iSimangaliso Wetland Authority officials (from the Maphelane Nature Reserve) interact directly with the Tribal Council in Sokhulu. In Mbonambi, a committee elected under the Tribal Council has been in place to communicate with RBM on behalf of the Tribal Council. However, in both cases, feedback to the community in terms of initiatives that may affect their coastal access is the responsibility of the Tribal Council.

This is a significant problem as the broader community is subsequently often left ignorant.

5.4 Changes in access patterns over time

A number of significant events have occurred along this coastline since the 1920's. These need to be reviewed in order to develop an understanding of how patterns of access have changed for the various stakeholders, and subsequently, to better understand the context of present access patterns. In addition to the descriptive accounts found below, time lines (in table format) (Table 1 and 2) were also used to summarize and elucidate these key events.

5.4.1 The Sokhulu and Mbonambi communities

5.4.1.1 A review of historical access patterns

Prior to the development and initiation of conservation regulations and land-use activities (1920's to early 1930s) such as forestry, mining and conservation, members of the Sokhulu and Mbonambi communities were free to harvest resources on land that belonged to the community. Harvesting from a wide variety of coastal as well as marine resources was common (Sunde & Isaacs, 2008; Harris et al, 2003). Marine resources included fish, different species of inter-tidal organisms (such as crabs and mussels) sea lice, limpets, squids, sting rays, octopus and east coast rock lobsters. The communities would also fish in the river and estuary at Nhlabane which, at that stage was still open to the sea. They could freely hunt in the coastal indigenous forests and harvest a variety of tree and plant species for various uses. 'There were no formal laws, rules or regulations; we were taking what we wanted' (Informant 1, 2009). Only a few informal laws existed, such as those pertaining to the size of a catch (below a certain size, one could not harvest a fish or a mussel). Hunting of animals such as different types of antelope, wild pigs and monkeys was also limited to the times permitted by the iNkosi. In Mbonambi, interviewees also spoke of harvesting according to moon cycles and the flowering of specific flowers.

Although physical access to the coast has never been easy for the community members, due to the terrain and topography, both communities were historically situated much

closer to the beach than they are presently. This enabled easier access to coastal resources. Furthermore, there were no land-use activities or regulations that restricted their ability to physically access the coast (e.g. mining and forestry) or their ability to benefit from the physical use of this land (e.g. for farming).

The first recreational permit system to regulate the harvesting of mussels resources on a non-visitors basis (i.e. monthly and seasonal), was established in 1923 (Oceanographic Research Institute (ORI), 2009, pers. comm; Department of Natal Fisheries, 1925). There was no consultation associated with the implementation and enforcement of this permit, and its associated restrictions. These permits needed to be purchased and limited harvesting to a certain quantity of mussels per day (Harris et al, 2003). Subsequently, this had a very negative impact on people's ability to access and benefit from marine resources; especially because very few could afford the permit (World Resources Institute, 2003).

Forestry activities started in the area around the early 1930's (Harris et al, 2003). This is corroborated by the Department of Forestry's annual reports (Department of Forestry, 1931). Historical interview transcripts (Amafa KZN, recordings of oral history, 1994) from Sokhulu and Mbonambi, as well as the interviews conducted for this study, explain that a white man came to the area in the late 1920's (before forestry activities were initiated) and convinced people to move further inland because the sand was being denuded by the wind and needed to be stabilized properly through the plantation of trees. Thus the area was thought to be unsuitable for human habitation. However, as time went by, people were not allowed to go back to their land, access was closed and the land became owned by the government. This is corroborated by the submission made to the Minister by the Sokhulu community land claimants in terms of section 42D of the Restitution of Land Rights Acts, no 22 of 1994 (2005), which states that the tribe was removed around the late 1920s and also in 1936 to 1937. Forestry activities are cited as the reason for removal.

The date may also be corroborated by the formal submission made to the Minister by the Mbonambi land claimants explaining that the people of the Mbonambi community were removed more than once in different years; the early phases of removal being in 1926. Thereafter, removals took place again in the 1950s and in 1974. Historical interview

transcripts (Amafa KZN, recordings of oral history, 1994), interviews and focus group meetings conducted for this study also explained that once people were removed from their land, a fence was put up around the forests and a group thought to have been called General Government (GG) forestry introduced and enforced regulations that restricted access to the coastal forest area. Because the local community was afraid of white people, rules were obeyed. According to the Sokhulu people, after the iNkosi complained on behalf of the people, ladders were put up so that people could access the coast and its resources. However, people were no longer allowed to harvest from the forest, or use their land for farming (and other beneficial uses). This piece of history, however, could not be supported by documented evidence.

From the time of removal, the distance to the coast combined with the topography of the area made access to the beach and the ability to benefit more difficult than it had previously been, for these communities. Furthermore, the combination of the recreational permit and the greater presence of people along this coastline (with the advent of forestry activities) meant that greater enforcement and monitoring were enabled. Foresters and recreational harvesters would also often harass the community members (World Resources Institute, 2003) and local people found harvesting without a permit were arrested (Harris et al, 2003).

According to the people of Sokhulu, a private operator referred to as the Ski Boat Club started controlling access to the coast around the 1950's or early 1960's. This could not be confirmed by official documentation. At this time, Sokhulu members remember white people arresting black² people at the beach for insignificant reasons. Subsequently, it became difficult to physically go to the coast and enjoy benefits, such as sitting on the beach. Community members would be chased away, or alternatively the local people would run away from fear of white people, and traditional activities were not allowed on the beach.

In 1976, when mining activities were initiated (RBM Sustainable Development Report, 2007), the fences were removed. One of the older Sokhulu iNduna spoke of how the

²⁰ The term "black" is a generic term in South Africa for those ethnic groups identified by apartheid policy as "Indian", "African" or "Coloured" (Erasmus, 2001).

state had warned the iNkosi not to interfere with the mining and how the people of Sokhulu subsequently believe that RBM prevented them from claiming rights to their own land. This operation had been contrary to the rationale initially articulated by government with regards to the afforestation of the land [formal submission made to the Minister by the Sokhulu land claimants in terms of section 42D of the Restitution of Land Rights Act, no 22 of 1994 (2005)]. There was a clear level of dissatisfaction at the process taken to establish mining activities. Furthermore, the mining company restricted their physical access to the area through the security measures taken. According to interviewees from both communities, access paths were also destroyed through mining activities and people had to forge new ones once the mining had moved on along the coast. Mining moreover resulted in the destruction of the original indigenous forest resources upon which the communities depended. People also felt that RBM's activities affected fish populations in the Nhlabane estuary and river (Informant 35, 2009). A combination of this and later conservation restrictions resulted in people being restricted in their ability to fish in the estuary and river.

By the 1980s, the permit restrictions had led to large scale poaching which considerably damaged the mussel resources (World Resources Institute, 2003). It also resulted in a significant feeling of oppression in the communities. Maphelane Nature Reserve was established in 1984 (Harris et al, 2003). Although the Sokhulu people had already been displaced from the land, the park significantly reduced access for community members. People had previously been able to harvest marine resources anywhere and Maphelane was one of the historical and traditional harvesting areas (World Resources Institute, 2003). The establishment of the reserve also meant that a greater amount of law enforcement and park personnel were around to apprehend local people harvesting without a recreational permit, thus increasingly reducing their access to resources (World Resources Institute, 2003).

Through these various events, both communities were significantly affected in their ability to benefit from the coast and its many resources. Table 1, shown below, presents a summary of these important events.

Table 1: Key historical events that affected access for the local communities

| Date | Events |
|--|---|
| Both chiefdoms are established ± late 1700s. | <ul style="list-style-type: none"> • Open, unrestricted and free access to the coast and its resources. • Communities were settled closer to the coast. |
| 1923 | <ul style="list-style-type: none"> • Recreational Permit system is established for the harvesting of mussels |
| Late 1920's | <ul style="list-style-type: none"> • First phase of removals due to forestry activities; communities are both resettled inland making access more difficult • Fences are erected, the land becomes state owned and is controlled by General Government (GG) forestry. • New rules and regulations pertaining to access: no harvesting of forest resources. |
| ± 1930 | <ul style="list-style-type: none"> • Forestry activities start. • Community members are harassed when going to the beach. • More monitoring and enforcement of the recreational mussel permit. People found harvesting without one are arrested. • Second Phase of removals for the Sokhulu community members (1936-1937) |
| ± 1950/1960s | <ul style="list-style-type: none"> • Ski Boat Club starts controlling the coast and its resources. • Arresting and chasing of local people. • Second phase of removals for Mbonambi community members (±1950) |
| ±1974 | <ul style="list-style-type: none"> • Third phase of removals for Mbonambi community members |
| 1976 | <ul style="list-style-type: none"> • Mining starts. • Physical access becomes more restricted through activities and the destruction of historical access paths. • Destruction of forest resources. |
| 1980s | <ul style="list-style-type: none"> • Large scale poaching • More arrests and conflicts |
| ± 1984 | <ul style="list-style-type: none"> • Maphelane Nature Reserve is established. • Access is further restricted to a traditional area. |

Main historical access points to the coast

(a) Sokhulu

Based on PRA methods held with the community, some of the historical (prior to removal in the late 1920s) access paths and access points are graphically portrayed in Figure 6. According to community interviewees, most people would access the coast through the areas geographically closest to them, for instance Zamela and Ntanganene (Figure 6). These were areas where people lived and could freely harvest resources; Zamela was an especially important area for the harvesting of resources for traditional medicine. Other than these areas, the main areas along the coast used by the community also included Bhahu (a forest area used for farming and collecting of resources for traditional medicines by inyangas (traditional healers); and on its coastal part, for fishing), Maphelane and Zavini (one of the main harvesting areas in the past but now part of the Maphelane Nature Reserve). Mgcobi was a coastal dune area where people would hunt (Figure 6). Dingini, Njokanjane and Dawson's rock (an area under Mbonambi) were additional areas where people would historically harvest mussels (Figure 6).

In terms of access paths, most areas used before the late 1920s had access paths to them. These are shown on the map in green as the most direct routes to the main coastal access areas (Figure 6).

Mbonambi

PRA methods were also used with the Mbonambi community in order to graphically display some of their historical (prior to removal in the late 1920s) access paths and access points (Figure 7). Similarly to the Sokhulu community, the Mbonambi community would use the area nearest to them for resource harvesting. Areas from which the community would access the coast included, Mzingazi, Nzalabantu, Nkunzebomvu (Mbonambi), Nhlanzini, Gointethe and Ezindabeni (Figure 7). Coastal access paths from these areas were roughly direct. Access points included Dawson's rocks and Nhlabane, as well as Njokanyane (an area under Sokhulu) (Figure 7). Some of the other main access points are shown on the map as corresponding with the villages (Figure 7). For both communities, however, the coast (prior to their removal in the late 1920s and to the initiation of forestry and mining activities in 1930 and 1976 respectively) was a freely physically accessible area with no boundaries.

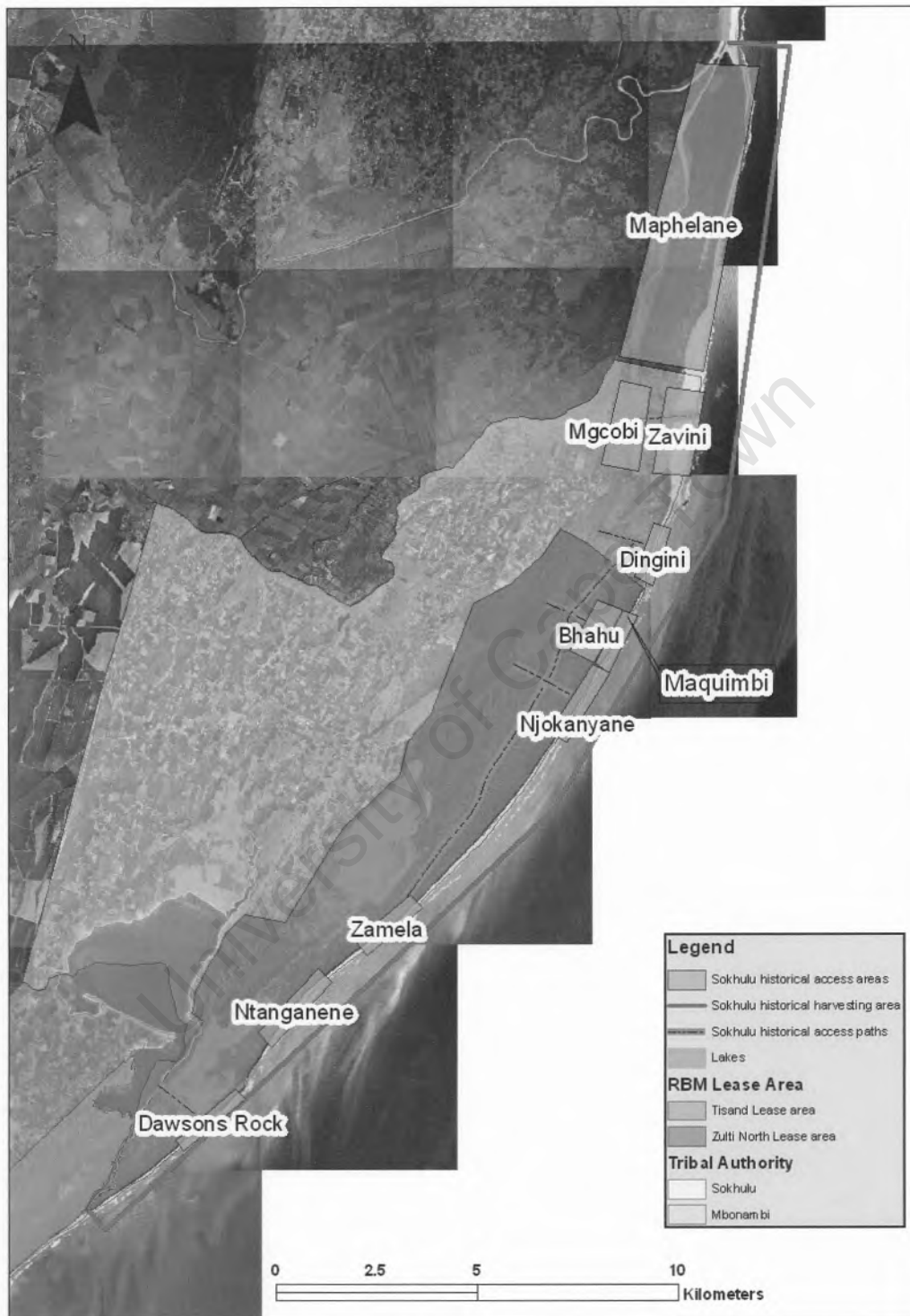


Figure 6: Historical (pre-late 1920s) schematic representation of access paths and access areas for the Sokhulu community.

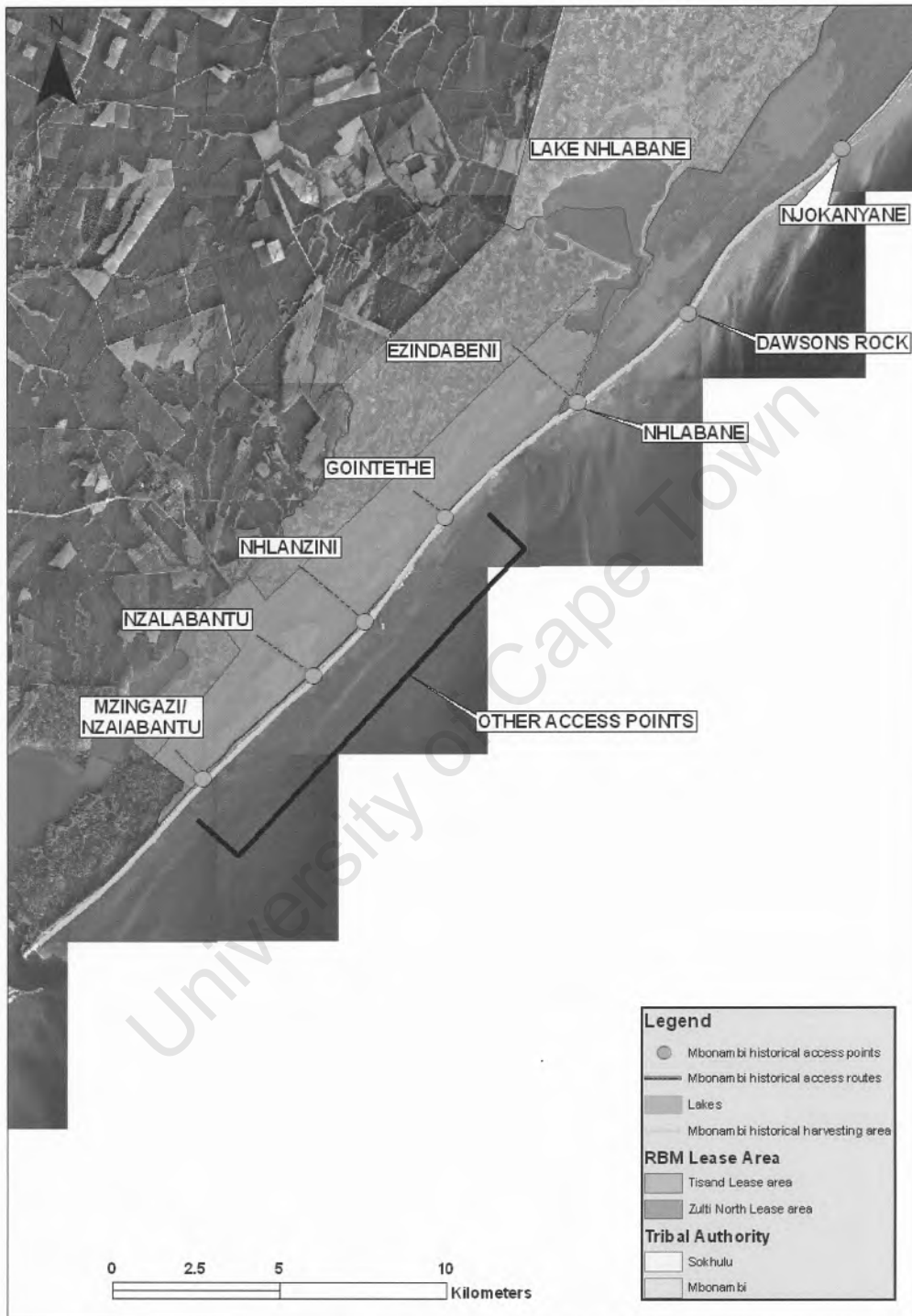


Figure 7: Historical (pre-late 1920s) schematic representation of access paths and access points for the Mbonambi community.

5.4.1.2 A review of present access patterns

Physical access to the coast

In terms of how physical access has improved for the local communities, local people now (post-1994) feel they have a right to go to the coast and enjoy its benefits; they believe they have a right to physical access and to be at the beach. The Sokhulu people also now have free physical access to the Maphelane reserve. This is a significant improvement to the years of apartheid restrictions. However, whilst the communities can now access the beach by using RBM roads, they no longer enjoy easy access on community developed paths. The use of RBM's roads results in further, more roundabout, travelling distances. Furthermore, roads are perceived as unreliable due to their temporary nature and often un-maintained state, and are often closed. The distance to the coast (as opposed to when the communities lived closer to the beach), as well as the physical mining activities, makes access additionally difficult for the communities. People cannot walk through mining areas for safety and control reasons. Their coastal access is thus restricted. RBM's motivations (conversely) are centred on responsibility for people's safety and the ability to hand over the land to the community sooner if the rehabilitation is not interfered with.

Resource access

(a) The Subsistence fishing program

Sokhulu subsistence harvesters were awarded a formal right to access two marine resources (mussels and certain line fish) through the Sokhulu Mussel co-management project. This is controlled and entails a permit system which sets certain parameters and limits, for instance, restrictions pertaining to areas where they can harvest, quantities²¹, times (mussels) and size. The permits are free of charge but are limited in terms of the number allocated to the community through the SFTG-determined criteria (e.g. only non-pensioners may receive the permit). Presently, a hundred and five subsistence intertidal permits and thirty-nine subsistence line fishing permits are being used in this community. These restrictions and criteria are in place in order to allow resource use to be sustainable; however, this means that a large portion of Sokhulu does not have access to coastal resources. Furthermore, although some access has been given through the project, the community is still unable to harvest other historically

²¹ Line fishers can harvest 10 fish per day, whilst mussel harvesters can harvest once a month (except in June, July and August), and may harvest 22kg of mussels each.

harvested marine resources. Also, although they are legally allowed to sell their surplus (after meeting basic needs) within a 20km radius, this is discouraged. Curiously, EKZN Wildlife catch and effort reports show a difference between permits awarded and those used over the years, especially for line fishing (EKZN Wildlife, 2009). This low level of permit usage is difficult to explain (EKZN Wildlife, 2009).

In terms of the Mbonambi community, the project allows a number of people the right to fish for subsistence. The same restrictions as those mentioned above are applicable. Ninety permits have currently been awarded to line fishers. With regards to mussel harvesting, however, rights have not been allocated to this community due to it being initially questionable whether the community did historically harvest mussels or not. Access to mussels as well as other historically harvested resources is therefore currently prohibited. Local Mbonambi interviewees acknowledged, however, that many people did harvest large quantities of mussels without permits (illegally).

(b) Indigenous forest resources

Other than marine resources, only resources harvested for medicinal purposes are still gathered from the existing forest. These are harvested 'illegally' along the coast as the Sokhulu inyangas know of no permit system and are not represented by a committee to interact and communicate with EKZN Wildlife. Interviewees spoke of fights in the past which ensued when inyangas attempted to harvest in EKZN Wildlife controlled areas. According to them, the only time that inyangas are 'legally' able to harvest on EKZN Wildlife property is when they can go practice 'uswela' (the King's tradition) once a year to harvest traditional plants and trees. However, this differs from what Maphelane (EKZN Wildlife) officials said when interviewed as part of the study. According to them, as long as a proper process is followed (that is, approaching the authorities and obtaining permission to harvest for traditional medicines), then harvesting is possible. When the researcher informed the Sokhulu interviewees that they could have access to the indigenous forests' resources (plants and trees) if they asked permission from EKZN Wildlife, they were very surprised and doubtful.

Mbonambi inyangas felt similarly restricted in their ability to access resources and admitted to harvesting 'illegally'. RBM similarly seems open to the idea of allowing managed access to forest resources. For instance, staff spoke of how people from

Mbonambi were called to gather medicinal plants before an area was cleared and burned in preparation for mining, thus providing some access. Ultimately, however, people from both communities still feel very restricted and unsure about the legal opportunities available for the harvesting of traditional forest resources. Harvesting of traditional forest resources subsequently appears to be very vague.

Main current access points to the coast

Although access points are still the same for the Mbonambi community, most of the historical access paths have been destroyed (Figure 10). The people are thus mostly limited to using RBM's roads which are unreliable and lengthy. The case is similar for the Sokhulu community (Figure 8).

Subsistence fishermen and mussel harvesters are also both restricted to designated areas (Figures 8, 9 and 10). The Sokhulu subsistence line fishing area stretches approximately from Njokanjane to just before the Jolly Robino access point in the south (Figure 8). The mussel harvesting area stretches approximately from an area just before Mthiyane to a point (south) after Njokanyane (Figure 9), whilst the Mbonambi line fishing area stretches approximately from Dawsons's Rock to Five-mile (Figure 10).

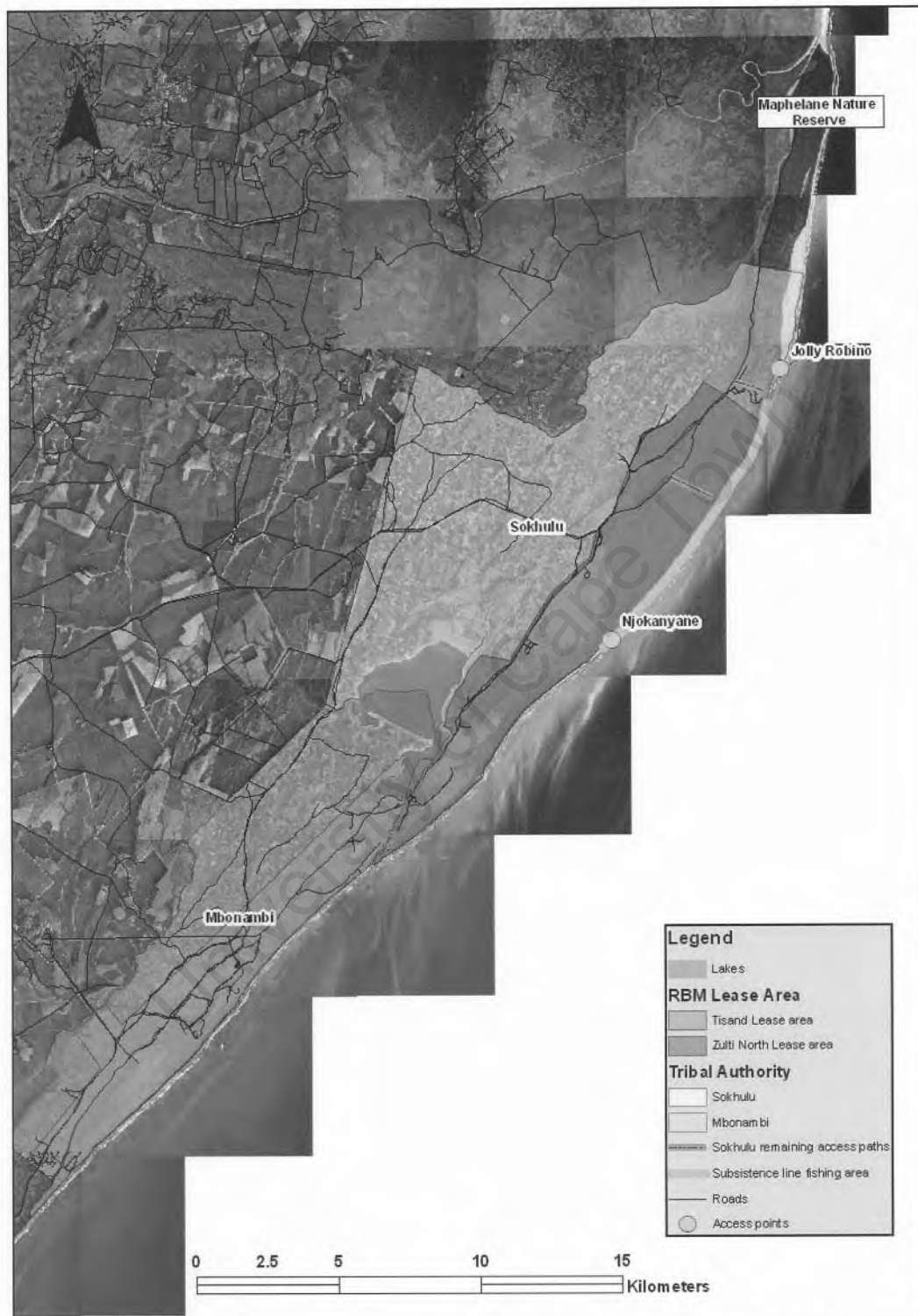


Figure 8: Present coastal access and fishing area for Sokhulu Line Fishers.

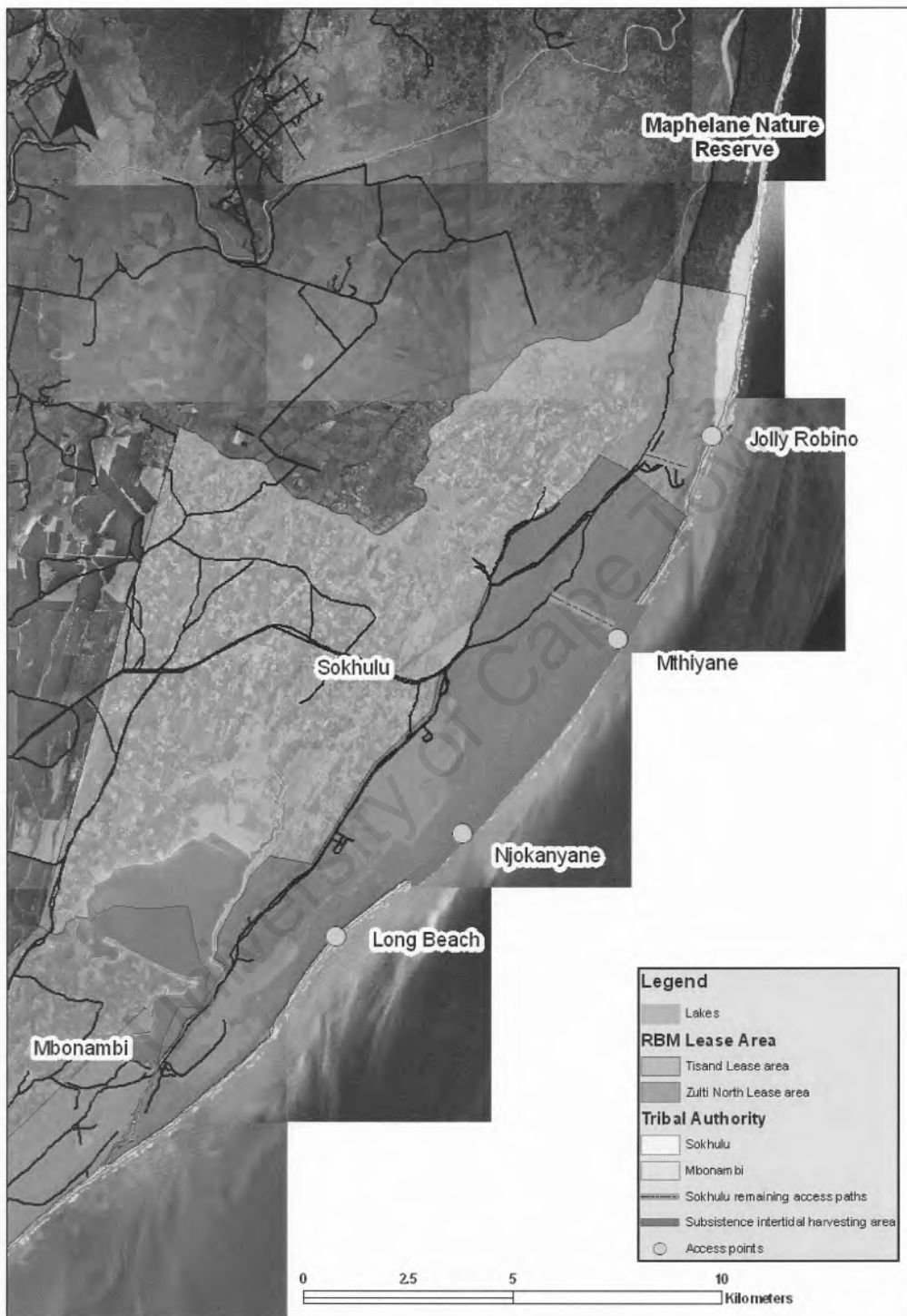


Figure 9: Present coastal access and harvesting area for the Sokhulu Mussel harvesters.

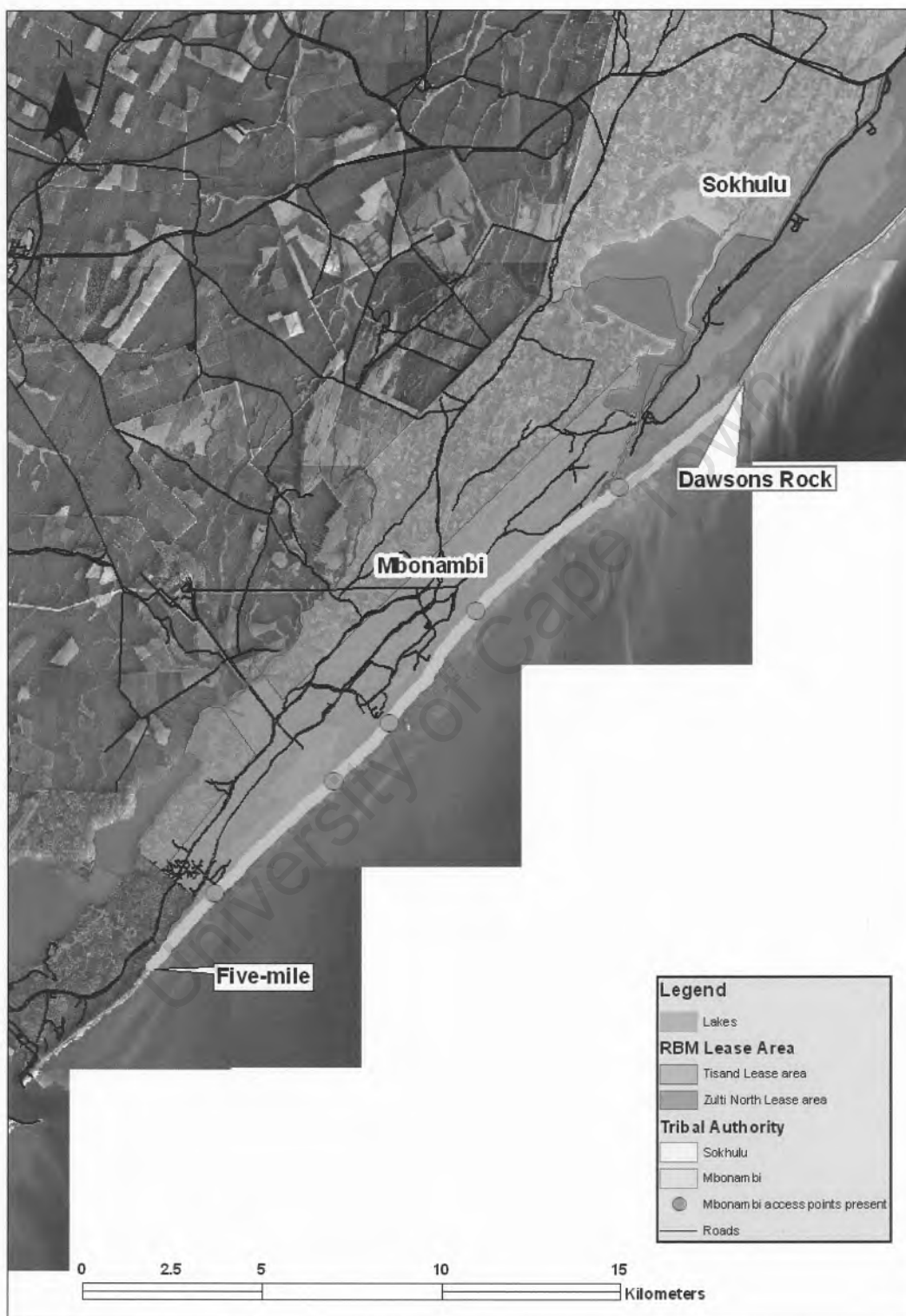


Figure 10: Present coastal access and fishing area for the Mbonambi line fishers.

5.4.1.3 A review of benefits in lieu of lost access

The ability to benefit from the RBM mining operations

As discussed in Chapter 4, RBM is well known and recognised for its many efforts to contribute to the socio-economic upliftment of local communities. These include a number of initiatives that seek to assist communities to benefit from the presence of the company, as well as from the surrounding resources (Forstater, 2009; Williams and Steenkamp, 2006; RBM, 2006; Kapelus, 2002; Wipplinger, 1998). However, the decision to allow mining has also resulted in several negative impacts on their ability to benefit. For instance, although RBM undertakes a world renowned indigenous forest rehabilitation program, it will take many years for the forest to reach full rehabilitation (Informant 13, 2009). In addition two thirds of the forest has not been rehabilitated, but has rather been planted with casuarina trees. In the meantime, the local communities are restricted in their ability to use and benefit from this forest. Furthermore, when the two land claims are finalised, the land still cannot be handed over completely to the communities until all mining and rehabilitation has been completed (Informant 13, 2009; the submission made to the Minister by the Sokhulu community land claimants in terms of section 42D of the Restitution of Land Rights Acts, no 22 of 1994 [2005]). This will still take up to 45 years in Sokhulu. In this way, the communities are still unable to benefit from the use of their historical coastal land. This also limits the ability of the land to be developed in terms of (for example) tourism, for the economic benefit of the local communities. The mining right also affects the ability of the communities to benefit in the sense that it can cause delays in improvements and development in the communities. This is because the introduction of new infrastructure into the lease area requires the mining permit to be amended so as to accommodate the proposed infrastructure (Informant 20, 2009). For instance, interviewees from the Kwambonambi municipality spoke of a proposal by the uThungulu District Municipality to build a reservoir tank to provide Sokhulu with water. However, because this was on a RBM lease area, the municipality had to wait for the DME's approval. This delayed bulk water supply for two years.

The ability to benefit from the Maphelane Nature Reserve (iSimandaliso Wetland Park)

The Sokhulu people benefit from the Maphelane Nature Reserve in a three main ways. In the first place, they are able to enter the reserve for free. Secondly, an arrangement is in place for levies to be paid to the community from the reserve. These levies are

generated through the entry fees charged to tourists at the park gate. Certain rules and regulations exist for the use of this money, for instance, it may not be handed over as cash in order to prevent powerful individuals from controlling it (Informant 4, 2009). The money is thus held in trust by EKZN Wildlife to provide funding for various community projects chosen by the Tribal Council. It is thus an effort to compensate the people of Sokhulu for their forced displacement and to enable them to benefit from the land, and the presence of the park. Lastly, because Sokhulu is adjacent to the iSimangaliso Wetland Park, the community is entitled to significant benefits from the park in terms of the CBD program of work recommendations. These recommendations call for the establishment of mechanisms to ensure equity and sharing of benefits arising from the establishment and management of a protected area, as well as the full involvement of local communities (Chapter 3 and Chapter 4). Park Authorities have identified Sokhulu as one of their beneficiary communities and have recently entered into a Memorandum of Agreement with the Tribal Authority (Sunde and Isaacs, 2008). This agreement requires the iSimangaliso Wetland Park to ensure equitable sharing of benefits accrued from the development of the park, with Sokhulu (Sunde and Isaacs, 2008). Additionally, co-management arrangements are being initiated with the community (Informant 2, 2009) and whilst the scheme is in infancy stage, it is seen as a positive step towards addressing concerns.

However, although the community is recognised as land owners in the iSimangaliso Wetland Park, they may not occupy or use the land, and in this way are limited in their ability to benefit. Furthermore, at the time of this study, the above levies had still not been paid to the community and used for community development projects. This system of fee payment has been in place for the past 9 years; therefore a large amount of money is not being used to benefit the community (Informant 4, 2009). In addition, members of the community seem to be unaware of any additional beneficiary rights they may have as a community living adjacent the Wetland park (also see Sunde and Isaacs, 2008).

5.4.2 The general Richards Bay public, anglers and 4 x 4 users

5.4.2.1 A review of historical access patterns

According to the various people interviewed, historical access (as far back as the 1970s) to the coast and its resources was always difficult. For instance, the physical character of this coastal area has always been a major barrier. As described in Chapter 4, the coast was and still is largely comprised of indigenous coastal forest and large dunes and is undeveloped, pristine, remote and isolated. This lack of development can mostly be attributed to the presence of mining activities, but also to the presence of vast commercial plantation forests along the coast. Since vehicular use on the beach was historically allowed (pre-2001), the lack of development and the physical nature of the coastline was not as significant a barrier in the past. As long as an access road could be found, one could drive along the beach with little problem. Beach driving was therefore unrestricted and uncontrolled up to 1994 (Celliers et al, 2004); as a result, several Richards bay locals living in and around this area owned 4 x 4s, motorbikes or quad bikes for recreational use as well as for the ability to reach various parts of the coastline. Members of the public often drove to favourite coastal areas for camping over weekends and public holidays. Recreational angling also became popular along this coastline as anglers could easily drive along the beach to favourite fishing spots. The use of 4 x 4 vehicles thus became a part of the culture of the area and access was thus chiefly limited to those who possessed these types of vehicles. Unrestricted vehicle use also enabled boat launching along the coastline to be easy and unhampered.

Access roads to the beach were mainly a product of mining and forestry activities in the area. Thus these sectors played an important role in historically enhancing access. However, around the mid 1970s, forestry roads became controlled with boom gates²², subsequently forcing users to obtain permission as a necessary step towards obtaining access. In this way, access was restricted. RBM started mining the coastal dunes in the area in 1976. From this time onwards, informal roads were made by the company on the outer boundaries of the mining area as well as around the rehabilitation area. These (in conjunction with forestry roads), were used extensively by the general public, 4 x 4 users, and anglers. Nevertheless, roads changed as mining changed. Access through these roads was therefore not constant or stable. Roads were also few, and of those that

²² This could not be confirmed through documented evidence

existed, many were unmaintained, and subsequently in severely degraded conditions; some of them to the degree that not even 4 x 4 vehicles could make use of them. Access was also affected through the actual mining operations, which (as described in Chapter 4), consists of a large area and progresses forward constantly.

For the elite group of people that could afford 4 x 4 vehicles, their ability to drive along the coast was often also affected by beach erosion. This coastline has always been highly susceptible to erosion (Kapp, 2009, pers. comm.), which frequently resulted in damaged access ramps and eroded beach strips.

Several other events had an effect on coastal access for these stakeholders (physical coastal access, as well as access to coastal resources). Maphelane Nature Reserve was established in 1984 (Harris et al, 2003) and access to that particular stretch of coast was restricted; however, on the other hand, it allowed controlled access through proper access roads and points, and the additional benefit of amenities (for e.g. a camping area and self-catering accommodation).

In 1994, EKZN Wildlife introduced the beach driving permit, in accordance with the 1994 National General Policy (Celliers et al, 2004). At first this permit could be obtained through a minimal fee of R20 (Informant 24, 2009); however over time this increased, and the permit became increasingly restricting, constraining access initially only at Maphelane Nature Reserve, but eventually all the way south to the rest of the coast. Therefore, whereas people were never controlled in the past and could drive and camp anywhere along the coast, this permit and the eventual promulgated Control of Vehicles in the Coastal Zone Regulations (2001) significantly affected their ability to physically access the coast and its resources. These regulations completely restricted the use of 4 x 4s and other vehicles on the beach. It only allowed for a few uses under which permits could be applied for (Chapter 3) and for a few exemptions.

Similarly to physical coastal access, access to coastal resources was unrestricted in the past (excepting in terms of certain species). This changed when recreational mussel permits were implemented by the province in 1921, for visitors, and in 1923, for seasonal or monthly harvesters (Department of Natal Fisheries, 1925). Recreational fishing permits were implemented in 1998, as a result of the MLRA (ORI, 2009, pers. comm.).

Table 2: Key historical events that affected access for the General public, anglers and 4 x 4 users

| Date | Events |
|-----------------|--|
| ± 1921 and 1923 | <ul style="list-style-type: none"> • Recreational mussel permits are introduced |
| 1970s | <ul style="list-style-type: none"> • Apart from topography and nature of the area, physical access to the coast and its resources was open, unrestricted and free • Unrestrained use of 4 x 4 vehicles on the beach (limited to those who could afford this type of vehicle) |
| ± mid 1970s | <ul style="list-style-type: none"> • Forestry roads become controlled with boom gates |
| ±1976 | <ul style="list-style-type: none"> • Mining starts, contributing (together with forestry) to enhanced access through the establishment of new roads • However, roads change regularly and activities resulted in closed areas and roads |
| 1984 | <ul style="list-style-type: none"> • Maphelane Nature Reserve is established. • Access to the area becomes restricted through a gate fee • However, the reserve also provides amenities previously non-existent |
| 1994 | <ul style="list-style-type: none"> • Beach driving permit |
| 1998 | <ul style="list-style-type: none"> • Recreational fishing permits |
| ± 2001 | <ul style="list-style-type: none"> • Control of Vehicles in the Coastal Zone Regulations |

Main historical access points to the coast

Prior to the 4 x 4 regulations (in 2001), the main access points to the beach were those situated at Kwambo ramp, five-mile, Nhlabane, Nyokanyane, Mthiyane, Maphelane and South Mussel Board; these all had access roads (Figure 11). These access points were important as they allowed people to get onto the beach and drive up and down the entire stretch of coast. For instance, from five-mile, people could drive all the way north up to Maphelane Nature Reserve. Due to this ability to drive freely along the coast, less access points were required and used.

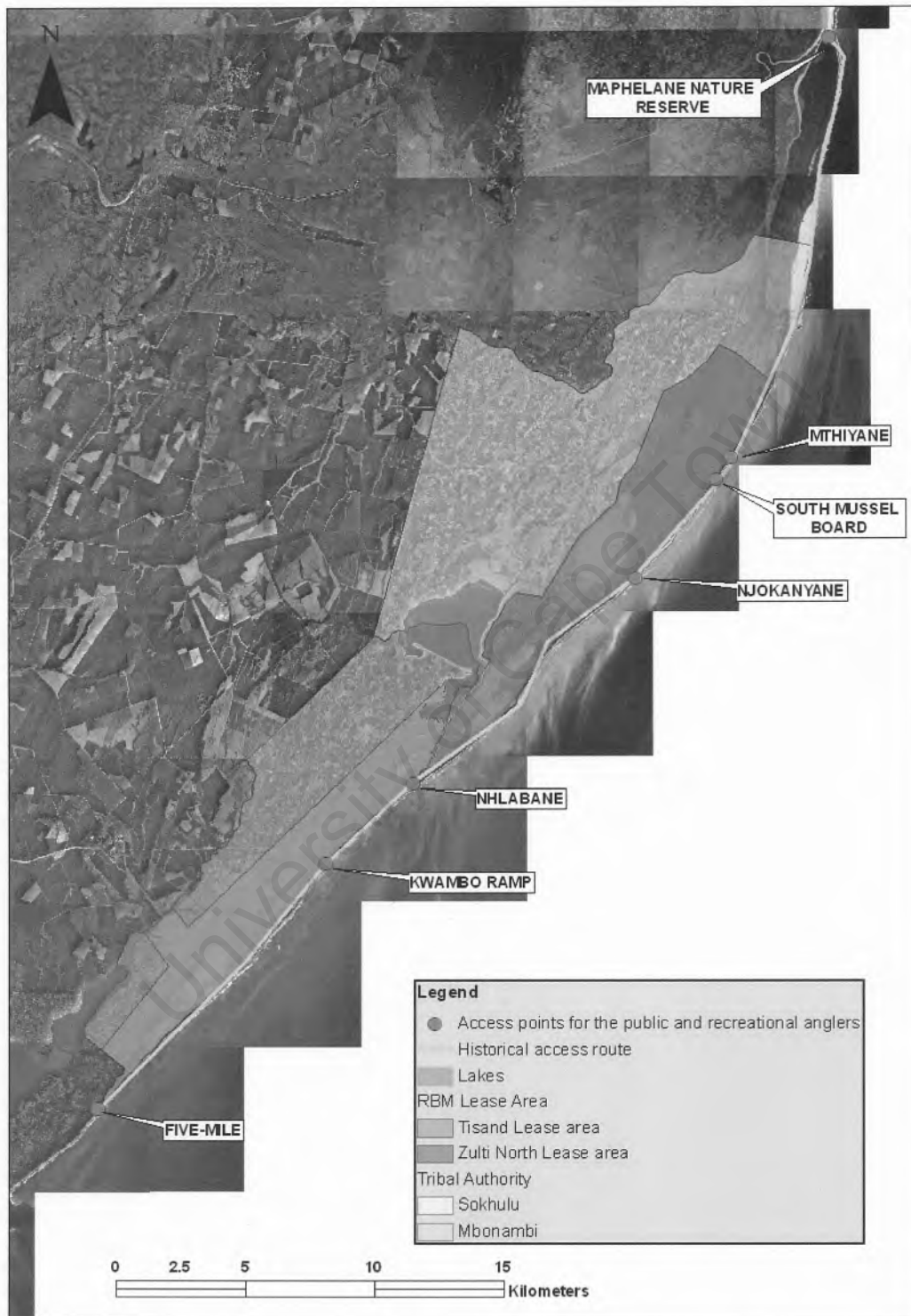


Figure 11: Historical access points for the general public, 4 x 4 users, and recreational anglers and harvesters.

5.4.2.2 A review of present access patterns

Physical Access

(a) Mining activities

As in the past, mining limits access in the sense that many of these roads are changing constantly. Currently, the pond moves at around 1m per day, roads therefore change on a two or three month basis. The same issues affecting access which are prevalent with the local indigenous communities are also problematic for this group of stakeholders (for instance, road closure, lack of development, operational area through which access is difficult, safety restrictions). The entire pond area is unsafe and thus restricted (with signs and monitoring personnel during the day) and any roads too close to the activities are dangerous due to the machinery, vehicles and associated activities. This deters many people from using these roads to reach the beach. However, some individuals are encouraged by the presence of RBM staff, which provides them with a sense of security. These people thus often take the risk of using the roads in this area and their access is subsequently enhanced in this manner. This is possible because although the area is restricted, RBM does not have the capacity to prevent people from using the area unless they completely close off a road. The mining and rehabilitation operations are mobile and large and are thus not conducive to being fenced off or to having constant patrolling security guards. In this sense, RBM does allow greater access because there are little or no physical barriers to prevent access to the area being mined and rehabilitated. RBM also enhances coastal access through a partnership effort with the uThungulu District Municipality to maintain the road to Lake Nhlabane, one of the main access points.

(b) Maphelane Nature Reserve (iSimanqaliso Wetland Park)

Maphelane contains prime fishing areas, amenities and a relatively well maintained road that allows for easier access than other informal sand roads. However, an admission fee needs to be paid in order to enter the reserve. Boat launching is also restricted to one registered boat launching site at Maphelane.

(c) The nature of the coast

Beach erosion affects coastal access. Storms damage and erode away access ramps onto the beach and the ramps are not maintained. This makes access to the beach difficult for disabled people and competitive anglers (who have vehicular access to the

beach under certain conditions, for instance, for the competitive angling national competition).

(d) The Control of Vehicles in the Coastal Zone Regulations

As a result of these regulations, stakeholders can no longer drive along the beach from access points in order to reach specific areas along the coast, and walking to these areas is not viable because of the extensive length of the coastline. Existing access points to the coast are thus not sufficient to provide the ability to easily access all parts of the coast. For instance, anglers are forced to walk long distances in order to reach prime fishing spots (up to tens of km). Especially in competitions, this becomes problematic. For the public, the social activity of driving along the beach on the weekends, with associated camping and enjoyment of nature, has mostly disappeared. 'The 4 x 4 ban changed the whole way of life in Richard's Bay' (Informant 25, 2009). Recreational 4 x 4 users and quad bikers are now restricted to using mine roads, coastal dunes and the indigenous forest 'illegally'.

Associated enforcement and control of these regulations also affect access in the sense that they are discouraging to coastal users. For instance, if a vehicle's front wheels are encroaching on the beach, the owner is given a two thousand rand fine (Informant 5, 2009). The permits that are available (under the exemptions and uses described in Chapter 3), such as one for national angling competitions, come with restrictions such as time (one can only drive 3 hours before and 3 hours after low tide) and speed. The only area where vehicle use is still permitted (other than in terms of the uses above), is at Maphelane Nature Reserve. Permits are allocated on a 'first come, first serve' basis and cost roughly R250 in addition to a deposit for the labelling of the vehicle. Only three permits are available per day. These are old concessions and are regulated by similar rules as the above permits. Therefore, physical access is still today restricted, firstly, to the elite group of people who are able to afford a 4 x 4 vehicle (or other off-road vehicles such as quad bikes and motorbikes), and secondly, now, through the regulations that limit this group of users from accessing several areas along the coastline. Only those who are able to afford the above permit may access a part of the coast through the use of 4 x 4 vehicles. Nevertheless, this group is also restricted through distance, speed and tide regulations.

(e) Crime

Restricted access to the coast and its resources cannot only be attributed to the ban of vehicles on the beach; crime in this area has also played a significant role. The main Richards Bay beaches are not considered safe and the more rural access points up north are considered even less secure. There have been (over the years as well as recently) several cases of crime in the area (Ramsamy, 2009a ; Waterworth, 2008). Most common are break-ins of cars left parked at access points, whilst owners are far down the beach. Since public presence along the coast has been significantly reduced over time (since the promulgation of the Control of Vehicles in the Coastal Zone Regulations), crime has increased. 'Our lives are at risk because of the limited access to the shoreline' (Ramsamy, 2009b: 1). Prior to the vehicle regulations, the public and the anglers felt that they had security in numbers.

(f) Lack of development

The lack of development in the area has also contributed to this lack of safety and thus lack of access, because it contributes to the isolated, remote nature of this area. One cannot 'just throw a line off a pier' (Informant 25, 2009), as along the south coast. The use of 4 x 4 vehicles is needed to reach access points because of the inferior state of access roads. Roads are also still informal, often in sand, unmarked (with directional signs) and apart from a few, are not maintained permanently. In addition, access points have no or little facilities such as parking areas and security guards, and there is no cell phone reception to improve safety.

Resource access

Access to coastal resources is regulated through regulations and a permit system. Anglers are required to apply for a yearly recreational fishing permit (under the MLRA, 1998). A permit is also required for any competitions within the boundaries of iSimangaliso Wetland Park. Recreational mussel harvesters can also obtain a recreational permit to harvest. These recreational permits are easily obtainable and the cost is considered as reasonable by most anglers. However resource access (abundance of marine resources, such as various types of fish and mussel resources) is thought to be affected by large scale poaching and commercial fishing.

Main current access points to the coast

The main access points today include those at Alkandstrandt, five-mile, Kwambo-ramp, Nhlabane, Caserinas, Long beach, Njokanjane, South mussel board, Mthiyane beach camp, Jolly Robino and Maphelane (Figure 12). All are informal access points except for Alkandstrandt, 5 mile and Maphelane.

The main access points for the Richards Bay community are Alkandstrandt (the main beach) and five-mile. However, safety is a considerable problem there, with an incident of murder and robbery about a year ago at Alkansdstrandt beach (Waterworth, 2008). Dunes have collapsed at five-mile due to erosion (see Plate 5) and crime is prevalent here. However, there is an informal parking area and recently, a security guard. Safety is also a concern at other access points.



Plate 5: Five-mile beach, showing dune slumping and beach damage

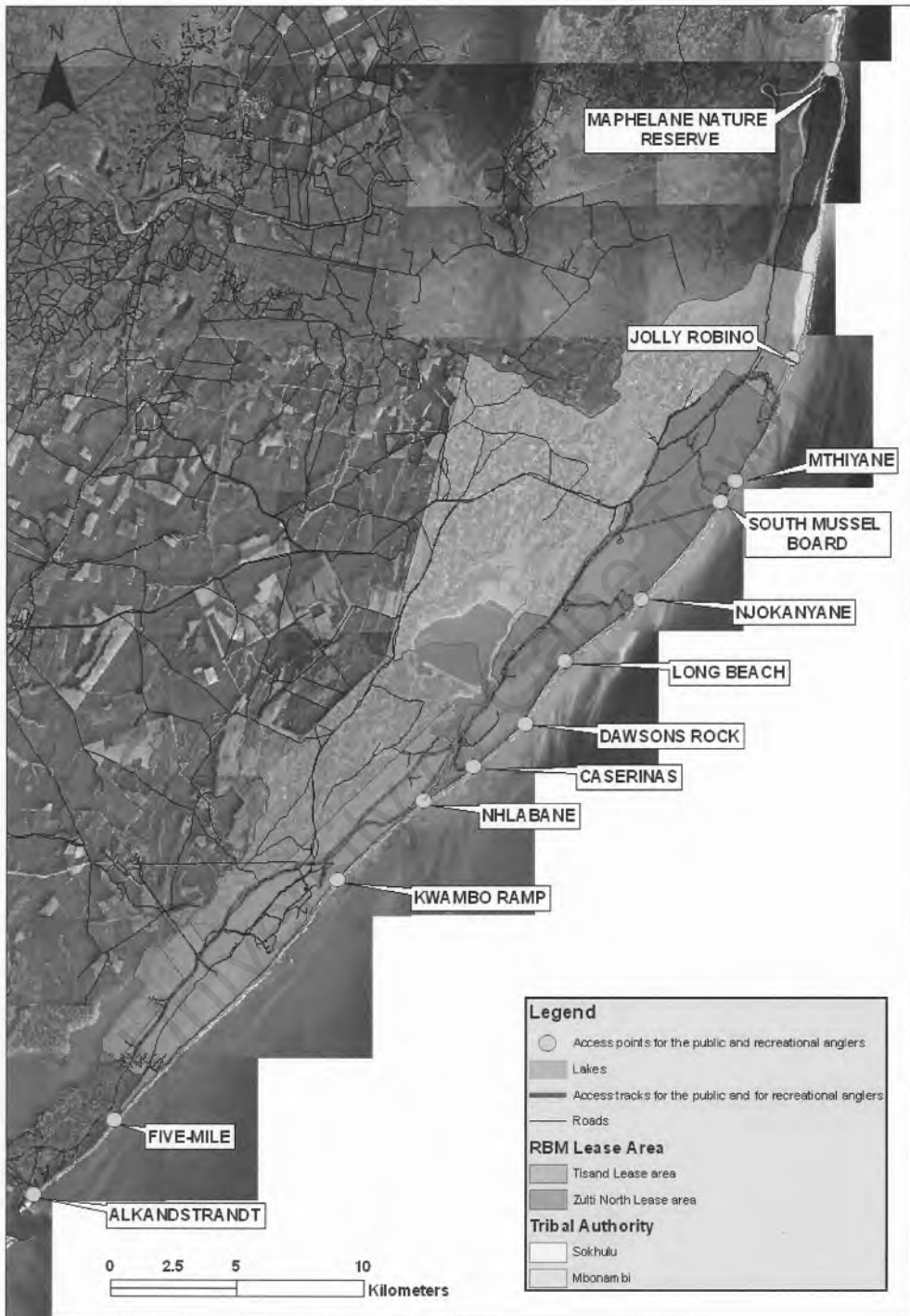


Figure 12: Current access roads, tracks and points for the general public and recreational anglers and harvesters.

Between five-mile and Kwambo ramp is a large area forming part of the Mbonambi community area. Access is therefore restricted, unless one negotiates with community people to be able to go through their land. Kwambo ramp is still used today but can only accommodate a few vehicles in terms of parking. At the time of the fieldwork for this study, the road to this access point could not be found as the roads had changed and some had been closed due to the mining activities (Plate 6). The distances between access points are very large, for example, it is one hour's walk between the Kwambo ramp access point and the next access point (Nhlabane) (Figure 12).



Plate 6: An example of road closure due to mining

Lake Nhlabane is a popular access point (see Plate 7). As mentioned above, the road up to the lake has recently been upgraded through a RBM-Municipality partnership and can now be used by most cars. It is currently the most accessible point. A parking area has also been supplied on the beach so that users can see their cars when on the beach or whilst fishing (Plate 8).



Plate 7: Lake Nhlabane (the estuary) on the left and the sea on the right

On the other hand, this access point has also been vulnerable to incidences of crime. An angler from the nearby community was recently murdered here (Ramsamy, 2009b and 2009a). Njokanjane and Mthiyane (also called lighthouse bay) are other popular access points and good fishing areas.



Plate 8: Parking area at Nhlabane

Kwambo ramp, Nhlabane, Njokanjane, Mthiyane and another point called Dawson's rocks (Figure 12) have been suggested by anglers as the five main access points to be developed in discussions with uThungulu District Municipality. However, a road would need to be made to Dawson's as there is currently none.

The roads to Alkenstrandt, 5 mile, Lake Nhlabane and Maphelane are the best roads and do not require a 4 x 4 vehicle, Other than these, only those used by RBM are maintained. Only two access points allow vehicles to drive along the coast, behind the beach, in this way allowing vehicles and people to access more than one point. These are at Njokanjane and a point close to the South Mussel board (Figure 12).

5.5 Stakeholder perceptions of efforts undertaken by mining and conservation to enhance access or offset loss of access

An important finding of this study is the degree to which stakeholders used the interview and focus group opportunities to air their grievances, specifically with regards to the efforts taken by RBM and the conservation sector to enhance or compensate loss of access. These are presented for each sector.

5.5.1 The Sokhulu and Mbonambi communities

5.5.1.1 Mining

Research undertaken for this study (including interviews with the general Richards Bay public and Richards Bay Minerals, and a review of press releases, academic and grey literature) yielded a great deal of positive feedback concerning what RBM was doing for the communities. However, in the communities themselves, interviews and focus groups indicated that different perceptions exist.

In Sokhulu, members of the community provided contrasting perceptions about RBM's efforts. For instance, the iNkosi (Amafa KZN, recordings of oral history, 1994) once spoke of how the mining in the area had been very helpful for the community. 'Because of that, we are fully supportive of what RBM is doing and we have good relations with them.' Even though there are people who think RBM is not helpful, I think RBM plays a big role in helping the community.' 'When we need something, we can always go and ask RBM and they do it.' Although they suggest that RBM should do more, other high ranking individuals in the community such as the iziNduna, presently agree that RBM has provided many benefits to the community, such as building and renovating schools and building the community tribal court. Similarly, high ranking individuals in the community are aware of the BEE deal and feel positive towards it.

In contrast, when asked about the BEE shareholder deal with RBM, the broader Sokhulu community replied that they were unaware of such a scheme. Furthermore, although members of the Sokhulu community acknowledged that RBM provided a few job opportunities, they felt that RBM was not providing as many benefits as outsider perception, and as publicised to the external public. There is a perception that RBM preferentially employs people from the Mbonambi community. Mbonambi is seen as benefitting more. In addition, this is perceived as unjust given that the mining is currently taking place on Sokhulu communal land. Local community interviewees in Sokhulu additionally felt that although RBM provides some help, such as renovating and painting schools, there is very little support and tangible benefits for the community. Subsequently, the community feels that it does not make sense for the company to say they are assisting them. There is a sense of resentment towards the company for the money that they are making mining on land that traditionally belonged to Sokhulu. This sense of resentment may be a combination of firstly, the fact that the Sokhulu community's land claim has still not been fully finalised and approved, and secondly, the fact that the community is extremely poor. They therefore feel entitled to more benefits from the company.

Contrary to the perception of the Sokhulu people, however, the Mbonambi interviewees felt that very few people in their community were given jobs through the mining. They believe that RBM hires people from the outside; that these people come into their community and rent from local Mbonambi people, and that this enables the company to claim they are providing jobs in the community. The predominant view in Mbonambi is a strongly negative one against RBM; they do not see themselves as benefiting from the presence of the company in any way. The buildings constructed by RBM are thought to be poor quality and they feel that the company is lying about what they are doing for the community. This has resulted in the community seeking legal action (Legal representatives of the Mbonambi community, 2009, pers. comm.). The Mbonambi interviewees also had the perception that the few people who have tried to help them over the years were 'stolen' away by RBM and offered shares or jobs in the company. They thus felt that RBM had tried to make them voiceless.

Additionally, interviewees from both communities were resentful towards the company for the destruction of the coastal forests, they felt that this together with the mining activities was affecting the health of the local people. Although RBM ecologists do not believe that mining operations can be polluting to the local communities, people did feel that pollution associated with mining was having an impact on their natural resources (e.g. water) and on their health. A sense of resentment also stems from the fact that the company mines where graves are situated'.

In terms of physical access, although certain interviewees from outside the community were of the opinion that RBM's roads had increased access for the Sokhulu and Mbonambi people, the local people were of a different opinion. They claimed that RBM did not make new roads after it destroyed their historical access paths whilst mining. The roads that are available are roads made to facilitate the mining activities; they exist or are made by default. Interviewees thus felt that RBM should have made direct paths to the beach for them. Local people have a fear of being caught cutting vegetation, in an attempt to re-open previous access paths, and subsequently being arrested by EKZN Wildlife. They are therefore restricted to using RBM's roads, which is perceived as constraining their coastal access.

5.5.1.2 Conservation

A common viewpoint experienced in both communities (especially with individuals who have not been given rights) is the lack of understanding of the 'formal rights' concept. They were previously able to harvest and fish for subsistence; they therefore do not understand why they are now being regulated and why 'rights' are needed to use land resources which they see as 'theirs'. The result is ongoing poaching of the resource. Furthermore, those who do have a legal right feel that what they are now able to obtain, although better than nothing, is very little in comparison to the past when they could historically depend on large quantities of a wide variety of resources. Due to the various

²³ RBM's policy is to only excavate burials that are threatened by mining activity if over 50% of the skeleton remains and if a grave is visible. These excavations are undertaken in agreement with the tribal authorities and remains are returned to their locations once the dune has been rehabilitated (Anderson, 1996).

restrictions and regulations, harvesters therefore do not see themselves as benefiting much currently (also see Sunde and Isaacs, 2008). They would like higher quantities, larger subsistence areas and the ability to harvest at least Mice a month (mussel harvesters). Especially for subsistence line fishers, the restriction in area is frustrating as fish are migratory and they cannot follow them (for instance, to Maphelane where they historically used to fish). There is additionally a negative perception towards tourists and recreational harvesters. Community line fishers and mussel harvesters felt that rules and regulations were more stringent for subsistence users than recreational harvesters.

In Sokhulu, the harvesters are additionally restricted and aggrieved by the ongoing poaching. They felt that while they obeyed rules and regulations, ultimately outsiders were able to come and destroy the resource. Harvesters often see poachers; however, they claim to have recreational permits. The area allocated to Sokhulu harvesters has not been formalised and there is currently no enforcement to stop other people harvesting from the ledges. Harvesters therefore felt frustrated with EKZN Wildlife, whom they feel should be helping more with the enforcement, compliance and policing. On the other hand are the Mbonambi people who feel very restricted in terms of resource access. According to the interviewees, people are not happy and are subsequently poaching. They believed that this was due to the fact that EKZN Wildlife never educated the people of Mbonambi, as they did in Sokhulu.

Harvesters from both communities also felt that the issues brought up with EKZN Wildlife were always the same because these issues were not being attended to. They do not get any feedback. Due to these various issues, people do not feel that they are able to *fully* exercise their rights.

From EKZN Wildlife (the Subsistence Unit)'s perspective, a process has been initiated to legally designate these areas as subsistence zones where harvesters will be given exclusive extraction rights; however, this will still take some time. In the meantime, beach signage is being remade (the old ones having been washed away in the 2007 storms) in order to notify the public about the whereabouts of the subsistence zone and to request them not to harvest in the area. With regards to poaching, the response was one of surprise. They did not know that poaching had become such a problem along this coastline and acknowledged that a social survey needed to become an important

part of the subsistence program as they had tended to focus more on the biophysical aspects. Although they were unaware of the Mbonambi people's feelings of alienation from the mussel project, an application for intertidal fishery in Mbonambi has been initiated by the subsistence unit and was, at the time of this study, being finalised.

On the positive side, the Sokhulu fishers and mussel harvesters did acknowledge that the project gave them some access and enabled them to sit down with officials and discuss issues and concerns; something they had previously been unable to do. Although they are not happy with everything, they at least now feel as though they have a voice.

In terms of Maphelane Nature Reserve and the greater park, there seems to be a gap between information provided by Simangaliso Wetland Park and the local interviewees' perceptions (also see Sunde and Isaacs, 2008). Focus group meeting and interviews demonstrated that the community did not feel as though they benefited much. Although the park has yielded job opportunities, people felt that this had not been enough and that those employed were mostly outsiders. With regards to the levies, the people of Sokhulu were under the impression that the Tribal Council wanted the Maphelane representatives to hand over the money in cash, and that this was the reason for the delay in the process. On the other hand, several high ranking community members thought that EKZN Wildlife did not want to give them the money due to the strict demands associated with this transfer. According to the EKZN Wildlife representative (Informant 4, 2009) in charge of community levies all that is required for the money to be utilised is for the traditional authority to choose a project to be funded and allocate two or three people to be trained from the community. However, according to this interviewee (informant 4, 2009), the traditional authority has been unable to do this for the past 9 years, each time claiming that they are not ready or sufficiently organised. EKZN Wildlife is in turn concerned that this blockage of the benefit stream will result in a poor relationship with the people of Sokhulu who will not perceive themselves as benefiting from the parks presence.

5.5.2 The general Richards Bay public, anglers and 4 x 4 users

5.5.2.1 Mining

The prominent perception amongst these stakeholders is one that assumes that benefits to coastal access yielded by RBM (through new access roads) were mainly associated with other reasons; RBM is not seen as having taken these measures to *particularly* enhance access for the various stakeholders (except for the road to Nhlabane). They are just by-products of their activities. In spite of this, however, it is acknowledged that RBM has increased access to fishing areas and has been helpful, especially in comparison with the conservation sector that is perceived as not having helped them at all.

In terms of what RBM does for the general public, the company is perceived as doing only what needs to be done to look good' (Informant 26, 2009). Stakeholders feel that RBM should do more. In addition, they felt that although the company displays many adverts and billboards, this is mostly for show; they do little to help the local communities.

5.5.2.2 Conservation

Even though the vehicle use permit at Maphelane Nature Reserve provides an opportunity for stakeholders to access the coast and its resources, several interviewees voiced the concern that the method of allocation was suspicious. There is a lack of trust towards the management authorities (EKZN Wildlife).

In terms of the subsistence program, these stakeholders (especially the anglers) felt that the project has not been effective or sustainable over the long-term. Mussels along this coastline are thought to have been healthier and more abundant in the past compared to how they are now. For instance, according to a member of the Zululand Angling Association, started fishing 20 years ago, at this stage we couldn't walk onto the ledges because they were covered with mussels; this resource is now completely depleted" (Informant 24, 2009). Perceptions about the subsistence project are negative; poaching is thought to be worse than ever and it is believed that the depletion of resources will affect access and the ability of stakeholders to benefit to and from these resources in the long term.

However, although some members of EKZN Wildlife agree that mussel stocks appear to have significantly decreased *generally* along the coast, stock assessments from the project do show that mussels stocks in the *subsistence zone* have successfully increased since the project's inception (EKZN Wildlife, 2008),

5.6 Perceptions of additional problems experienced by stakeholders

5.6.1 Conflicts that affect access

The Sokhulu community members felt that there were often conflicts at the coast between black and white people because of the ongoing crime in the area. Tourists and recreational fishers thus often see them as criminals and harass them. These conflicts often discourage community members from being able to stay at the beach (Sunde and Isaacs, 2008).

Mbonambi interviewees felt that the co-management subsistence project had not addressed the politics in place between the two coastal communities. Mbonambi claims that Sokhulu land was traditionally theirs. Therefore many of the areas claimed by Sokhulu as historical harvesting areas are also claimed by the Mbonambi people for mussel harvesting. The result is that Mbonambi people do not see themselves as benefiting from the project and this is contributing to the ongoing poaching of mussels.

The gap between what RBM is publicly claiming to have done for the Mbonambi community, on one hand, and what the people of Mbonambi are saying on the other hand, has resulted in a significant conflict between these two stakeholders. At the time of the study, Mbonambi had filed a court case against RBM (Legal representatives of the Mbonambi community, 2009, pers. comm.). This ongoing conflict is preventing the community from perceiving themselves as being able to benefit from the presence of RBM in the coastal zone.

5.6.2 Local institutional structures that affect access

In terms of municipalities, a common problem which emerged from the informant interviews is lack of capacity. This is problematic, for instance, in the enforcement of legislation (e.g. the provisions of the new ICM Act). Furthermore, local municipalities seem to be more reactive than proactive. A lack of co-operation also exists between

municipalities and traditional structures (traditional leadership), this makes development and communication difficult (Informant 23, 2009). Funding is an additional problem, as it is often allocated elsewhere, with few resources allocated to the coast. For instance, at the time of the study, the uThungulu District Municipality was struggling to obtain funding to upgrade their coastal management plans (under the ICM Act) (Informant 20, 2009). These plans are important for the enhancement of coastal access in the area.

A lack of capacity and co-operation is also evident between higher levels of government. For instance, permit applications submitted to MCM by KZN Wildlife subsistence unit were sent back to the unit with incorrect information twice in a row (Informant 6, 2009). This can be problematic for fishers and compliance staff. Furthermore, MCM's lack of policy to address people living adjacent or in MPAs is also seen as a significant barrier to benefits for the local people (Sunde, 2009, pers. comm.). MCM is perceived as uninformed with regards to international conventions (and their associated obligations) that attempt to protect local communities and subsistence people's rights (Sunde, 2009, pers. comm.).

Anglers interviewed supported the fact that a lack of co-operation and capacity existed between different government agencies, and that this affected their present coastal access. For instance, the administration associated with obtaining a beach driving permit for angling competitions, combined with the lack of co-operation and capacity between MCM and EKZN Wildlife, often results in anglers not obtaining permits on time for national competitions.

Interviewees also felt that although EKZN Wildlife did have some enforcement and compliance capacity in the sense that they have patrols along the beach and can arrest law breakers, this coastline is still too large for the agency to fully have monitoring and compliance effectiveness. They rely considerably on citizens to be whistleblowers. Although the vehicle regulations were, in themselves, a good initiative for the purpose of conservation, an EKZN Wildlife official (Informant 5, 2009) admitted they had impacted their ability to regulate poaching along the coastline. In the past, the general public and anglers would often scare poachers away through their presence or report them to authorities, thus assisting in the monitoring of the coastline. However, as mentioned previously, the ban has resulted in a much more remote coastline, and this combined

with a lack of capacity in the agency has resulted in difficulties in regulating the large scale poaching taking place.

In terms of structures within the local communities, the Sokhulu interviewees' perception is that high ranking community members have different views on RBM's efforts because a large amount of money is given by RBM to the Tribal Council (through levies and so on). This money cannot be accessed by harvesters, fishers and the rest of the Sokhulu community. Most people do not even know about it. Benefits are therefore not well distributed and people feel that only the rich benefit. At the time of field work, participant observation as well as interviews with other stakeholders' yielded similar information, in the sense that powerful groups within the community attempted to control benefits. This is also significant in the case of the Maphelane levies. Local people therefore felt that greater communication and co-operation was necessary between the community and the Tribal Council because they are the ones that hold power in the community, and they are also the ones that external parties such as RBM and Maphelane talk to. In Mbonambi, there seemed to be a similar problem, in terms of benefits and communication, although to a lesser extent.

5.7 Perceptions of stakeholders to coastal access

Anglers, 4 x 4 users and members of the public feel that physical access is very restricted and should rather be fair, allowing people to use and access the coast and its resources. Although stakeholders acknowledge that irresponsible user behaviour led to the need for regulations, they do consider that in the context of this coastline's characteristic, a complete ban of vehicle use on the beach is unreasonable and too restrictive. Controlled beach driving is seen as the best alternative along this coastline. As one angler said, *'If an area was designated for driving, the regulations would be supported'*. *'Vehicle use should be managed correctly, not just a blanket ban'*. Especially in terms of the high occurrences of crime along this coast, access points with 1km vehicle use areas in either direction, were suggested as a good solution. Several studies and reports have been undertaken over the years with regards to the possibility of designating recreational use zones²⁴. However, little success has come from these,

²⁴ The Economic and Environmental Feasibility for possible Recreational Use Areas in the Mbonambi Municipal Area report (Mbonambi and uThungulu Municipalities, 2002).

many of them having been rejected by government. Currently, several negotiations between anglers and the uThungulu District Municipality have taken place, however these are still in infancy stage (Ramsamy, 2009c).

In terms of resource access, although subsistence harvesters understand the conservation approach to resources, they feel that commercial harvesters are the ones causing large scale degradation of resources. Also, although they have received rights to access resources, post-1994, and thus their access has been enhanced, it is still heavily constrained through the many stringent rules and regulations.

Several interviewees have further suggested that the subsistence program should either be a stepping stone to alternative forms of livelihoods or should form only one of the assets that contribute to the communities' livelihood. As with research conducted by Sunde and Isaacs (2008), community people felt that there were few opportunities for alternative livelihoods and this is something that needed attention. A number of other initiatives are therefore needed to provide income and take the pressure off an already pressured resource. Although a crafts project was initiated in the past (World Resources Institute, 2003), this was unsuccessful. According to a representative of the EKZN Wildlife subsistence unit (Informant 6, 2009), alternative livelihoods have been placed on the new work plan for the next 3 years and a budget has been set aside for it. This is recognised as important as the resources cannot sustain intense harvesting.

5.8 Conclusion

As a result of the various historical events along this stretch of coast, the two coastal communities were largely restricted in their ability to access the coast and its resources. With the advent of democracy, this lack of access was improved. However, these stakeholders are still restricted in their ability to access coastal resources, in particular due to the mining and conservation activities along this coast. Whilst several initiatives have been undertaken by these two sectors to compensate loss of access, perceptions of these stakeholders revealed a perceived lack of benefits. Access was unrestricted in the past for the other stakeholders groups. However, a combination of post-1994 legislation with the physical nature of the coast, active mining and conservation activities and the increasing crime, has resulted in more constrained coastal access for the

general public, recreational anglers, and 4 x 4 users. Perceptions of interviewees revealed a need for mechanisms to improve coastal access as well as the need for greater managed, equitable coastal access for all stakeholders. Other problematic areas highlighted through the findings include institutional capacity and communication problems at government level as well as at local level, and the need to address the conflicts which affect coastal access and the ability of stakeholders to benefit from the coast and its resources.

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CHAPTER SIX

6. DISCUSSION

This dissertation has reviewed the historical events and patterns of access that have contributed to the current access patterns in the study area. In this way, it has reviewed the various factors that have affected coastal access along this stretch of coast. It also investigated the perceptions of stakeholders towards efforts undertaken by mining and conservation sectors to compensate and offset loss of access due to their respective activities. It has tried to establish whether stakeholders do in fact perceive themselves as benefiting from these activities. Additionally, it reviewed perceived problems of access and perceptions about coastal access in the context of this coastal area. This section will now refer to the literature and theoretical ideas introduced in Chapter 2 to discuss the findings. In particular, the main theoretical ideas developed by Ribot and Peluso (2003), to understand and analyse access, are used to guide the identification and categorization of factors that restrict and enhance coastal access in the study area. Secondly concepts of social and indigenous cultural justice (primarily based on Whiteman and Marren, 2002), are used to better understand the stakeholders' perceived inability to benefit from conservation and mining initiatives. It is important to read the following sections bearing in mind the constraints of this research (refer to Chapter 1, section 1.5). Further in-depth research is required to confirm the study's results and conclusions.

6.1 Access controllers

Several access controllers exist in this area. Access controllers are those stakeholders which have the right and ability to mediate access by others (Ribot and Peluso, 2003). Access maintainers are those stakeholders which must undertake specific actions to maintain the access granted to them by access controllers (Ribot and Peluso, 2003). Historically and currently, access controllers have mainly included the forestry sector, mining sector, MCM and the Natal Parks Board (now EKZN Wildlife). iSimangaliso Wetland Park Authority is another access controller. In addition, the Sokhulu and Mbonambi subsistence joint management committees can also now be seen as access

controllers through the responsibilities allocated to them, It is important that these access controllers are recognised in order for access patterns to this coastline to be better understood. The manner in which each of these stakeholders controls access is discussed under the various factors that enable or facilitate this access.

6.2 Factors affecting stakeholders coastal access

The various factors which influence access to the coast can be classified under different categories; guided chiefly by Ribot and Peluso's work on access analysis (2003). In this way, key factors playing a role in constraining or enabling coastal access in the study area are highlighted and discussed. Factors are discussed firstly under enabling access factors and secondly, under restricting access factors. In addition, this study's analysis has identified two different levels of factors, namely higher order overarching factors and lower order factors. These will be discussed last.

6.2.1 Enabling access factors

6.2.1.1 Rights

For all of the stakeholders in this study, the ability to *directly* access and benefit from the coast and its resources is derived from the possession of rights. These various rights are a type of factor that enables access. Rights based access may be *legal*, in the sense that these rights (e.g. permits, property rights and title deeds) provide legal direct access and are sanctioned by law, custom or convention; or *illegal*, in the sense of illegal direct access to resources (not sanctioned by law and society) (Ribot and Peluso, 2003).

(1) Legal access

Legal access to resources may be acquired through obtaining a permit. A permit is a type of right (a legal factor) which provides this access. The Sokhulu and Mbonambi communities gained a legal right to directly access certain coastal resources via a subsistence permit implemented through the Sokhulu Mussel Co-management Project. Legal rights shape who gains, controls and maintains access (Ribot and Peluso, 2003). In this case, MCM and EKZN Wildlife are, to a large extent, access controllers, because the former allocates the subsistence rights, whilst the latter ensures implementation, management and enforcement. The mussel harvesters and line fishers gained access (and thus the ability to benefit) through the project and its permits. They maintain access

through adherence to permit conditions and restrictions, and a few have (to a degree) become access controllers themselves through the formation of a joint committee and the devolution of management responsibilities to that committee (see Chapter 4). However, committee members are only access controllers for as long as MCM and EKZN Wildlife agree that harvesting can take place, therefore the state and its agencies still remain the real access controllers.

With regards to recreational harvesters, recreational permits provide legal rights to access marine living resources. These are obtainable from EKZN Wildlife (the enforcement agency and thus the access controller). Beach driving permits at Maphelane allow vehicular coastal access to a select few. Once access is gained through the purchase of these permits, it is maintained through adherence to attached permit conditions, rules and regulations.

Furthermore, a variety of laws, policies and 'soft' law instruments (Chapter 3) also provide legal rights to access coastal resources. These act as legal factors that facilitate access. In particular, NEMA, the NEM:ICM Act, and the MLRA enable stakeholders to access and benefit from the coast and its resources. The CBD Program of Work (an international programme implemented at national and local level) is a 'soft' law instrument that — since South Africa is a signatory to the CBD — places a moral obligation to conform to its principles and requirements. These provide numerous provisions for enhanced access and equitable benefits. In the case of the Sokhulu community, the CBD Program of Work places pressure on the iSimangaliso Wetland Park to provide benefits to this adjacent and claimant community. NEMA, the NEM:ICM Act, and the MLRA provide the people of South Africa with a public right to coastal access, as well as rights to coastal marine resources and to benefits accruing from the use of coastal land and resources. In terms of both communities, the MLRA led to the recognition of subsistence harvesters for the first time in South Africa. The recognition of this sector contributed to several communities (Sokhulu and Mbonambi included) being allocated interim relief to harvest resources. Provisions encapsulated in the new NEM:ICM Act have potential for enhancing coastal access for South Africans, and thus of empowering historically disadvantaged groups. This law will be important for improving coastal access in Richards Bay for the various stakeholders. Provisions such as those for the declaration of coastal public property are significant along this coastline,

because it will lessen future privatisation of the coastline, thus protecting the rights of access for stakeholders to this coastline. The ownership of coastal public property is vested in the citizens thus further safeguarding the right of the public to access the coast and its resources. In addition, coastal public property may be declared for the improvement of public access to the sea shore. This is important in terms of the limited public access along this coast. Most importantly, the Act also imposes a legal obligation on each municipality to designate strips of land as coastal access land for the purpose of securing public access and places a legal obligation on municipalities to provide facilities on this land, such as signposts and other facilities that promote access. This is extremely significant in the context of the Richards Bay coastline which is extremely isolated and undeveloped. These provisions could thus significantly improve access to the coast and in so doing may decrease crime in these designated coastal access areas (due to an increase in people and thus a greater security in numbers). In terms of Sokhulu and Mbonambi, the Act provides for the designation of special management areas in order to facilitate management of coastal resources by local communities. This could significantly improve access and perceptions of benefits for the two communities.

Nevertheless, it is important to note that the extent to which these legal and policy provisions have been (and will be) implemented may be limited. This will be discussed in a later section below. Laws generally allocate access control to state agencies.

(2) *Informal access and illegal access*

Poaching of the mussel resource, in the context of the local communities, stems from a traditional practice. This practice gave an informal right to access and benefit from natural resources. Poaching also stems from other factors, such as poverty and lack of alternative livelihoods. This right is both a legal and illegal factor providing access to coastal resources because on the one hand, it is sanctioned by custom and convention within the local communities who believe they have always had rights to the coast and its resources, but on the other hand, it is not socially sanctioned by the state or the broader society from whose perspective, poaching constitutes illegal access.

6.2.1.2 *Structural and relational access factors*

The *right* to access is given by formal or informal rights, as demonstrated above. However, the *ability* to access and benefit is enabled or constrained by the specific

context (social, cultural, economic, and political) in which the coastal users and coastal resources are found (Ribot and Peluso, 2003). A stakeholder may have a legal right to access coastal resources, however, if relational or structural factors are not in place, this may affect his or her ability to benefit from a resource. The following relational and structural factors facilitate coastal access in various ways in the study area.

The presence of mining, conservation and other land-use activities, such as forestry, along this coastline have, to a degree, facilitated physical access to an extremely undeveloped and isolated coastline, for the general public and for recreational harvesters. They have done so through the construction of roads and the establishment of amenities (in the case of Maphelane Nature Reserve).

(2) South Africa's socio-political background

The transition from apartheid to democracy in South Africa facilitated access to natural resources because it resulted in a greater recognition of local indigenous communities' rights to access and benefits. In the context of the study area, this is seen through the efforts progressively being made to enable communities to utilize and benefit from these rights. For instance, the Sokhulu co-management project, the corporate social responsibility initiatives and the initiatives underway to enable the Sokhulu community to benefit from the iSimangaliso Wetland Park, are all examples of efforts taken to increase the local communities' access to, and benefits from, coastal resources. In addition legal mechanisms (above) have been implemented to increase equitable access and benefits for the public and safeguard public rights to coastal access.

(3) Access to technology

One of the technologies that facilitates the ability of all stakeholders in the study area to *physically reach* the coast and its resources, and thus allows them to benefit, is roads. As mentioned above, these have largely been a product of forestry and mining activities. Similarly, 4 x 4 vehicles can be considered a form of technology that enables stakeholders to reach the coast and benefit from its resources. This form of technology was a greater facilitating access factor prior to the vehicle regulations, in 2001, as it enabled access to the entire coastline. However, it is still a facilitating factor because the nature of the coast (i.e. the topography and undeveloped nature, as well as the informal

nature of the roads) makes it necessary for stakeholders to use 4 x 4 vehicles in order to access most areas. Therefore access to this form of technology significantly facilitates coastal access for some stakeholders in the study area.

(4) Access to capital

Access to capital is a factor that enables coastal resource access in the study area because it allows people to purchase things that may enhance this access. For the general public, the anglers and 4 x 4 users, this entails the purchase of 4 x 4 vehicles, fishing equipment, beach driving permits at Maphelane, recreational permits and the payment of gate fees at Maphelane. For the local subsistence fishers in Mbonambi and Sokhulu, access to capital enables them to purchase fishing rods and equipment, which in turn enables them to use their subsistence permit (their legal right) in order to harvest certain marine resources and benefit from them. Although local people are still extremely poor in both communities, the majority of line fishers have managed to access sufficient capital to purchase the necessary equipment needed.

The fact that RBM has access to capital is also a factor that enables the local communities as well as the general public to benefit, for instance, through corporate social responsibility and investment programs

(5) Access to knowledge and discursive practices

Access to knowledge and discursive practices are factors which can shape and influence resource access and benefit streams on a large scale (Ribot and Peluso, 2003). For instance, access to knowledge has enabled the local communities to claim their land. The co-management project has also provided increased knowledge for the communities, especially Sokhulu. The involvement of the communities in the research and monitoring has increased their knowledge of the resource and of conservation. Subsequently this access to knowledge has increased their ability to benefit from the mussel resources, through their consequent conservation and sustainable use of it. The fact that the mining and conservation sectors have had access to knowledge has also indirectly resulted in the communities benefiting because it has facilitated these sectors in their understanding of the historical, cultural and traditional meaning of this coastal land and its resources for the communities. An understanding of historical events also contributes to a better understanding of the local communities (e.g. apartheid,

resettlement) by these sectors. For instance, it highlights and explains the sense of entitlement by the communities to profits made and benefits accrued from the use of the land and its resources by these sectors (especially mining). Discursive terms such as those found in new approaches to conservation and mining (refer to Chapter 2) also act to enable local indigenous communities to benefit because they highlight the need of these communities to benefit and have equitable access to resources, something these sectors did not do in the past.

(6) Access to authority

Where there is access to authority through institutions or direct relationships, access to resources and areas is enhanced. In the case of the local communities investigated, in particular the Sokhulu community, access to EKZN Wildlife was strengthened (due to the fact that the project was initiated by EKZN Wildlife and was focused on this community). The communities have access to EKZN Wildlife through the joint management committees in place. This allows them to have a voice which they did not have before and allows them to be partial access and resource controllers as they are responsible for determining the implementation of the allocated quota and are also responsible for managing fisher lists and determining priority permit recipients. They are also users of resources and in this way they are further able to benefit. Shackleton et al (2002) suggest that where people have alliances with NGOs or other influential groups, they secure greater control, access and benefits. In the case of these communities (especially Sokhulu), access and involvement with the research group and monitoring programme which led to the co-management project, was a significant factor for strengthening access to authority, and subsequently for facilitating access to resources and enabling harvesters to benefit from these resources.

(7) Access through social status and identity

The findings demonstrate that access through social identity is an important factor which significantly increases the ability of certain privileged persons to benefit. This is especially the case in Sokhulu, but also, to a lesser degree, in Mbonambi. People with status in the communities are mainly the chief and his iziNduna. Because methods of communication with the local communities in the study area customarily entails primary communication with the traditional authorities (in keeping with respectful and traditional conduct) and because authorization needs to come from them for most initiatives in the

community, these privileged individuals are able to control benefit streams from both the mining and the conservation sectors, and are thus in a position to receive and access significant benefits in comparison to the broader community. For example, these individuals have significant access to knowledge which (as seen from above) is an important factor in gaining and maintaining access and benefits.

(8) Access via negotiation of other social relations

Access for the general public, recreational harvesters and the two indigenous communities in the study area, is also enhanced through other social relations. Patronage of, and obligation to these stakeholders (through policies and law) by RBM, translates into corporate social responsibility programs, the BEE deal and other investments to benefit stakeholders. An example (in terms of the general public and anglers) is the fact that the road to Nhla bane was constructed and is maintained by RBM in conjunction with the municipality. EKZN Wildlife also has an obligation to Sokhulu (through the Maphelane levies), in this way benefiting the community. Furthermore, social relations through the co-management project yielded a decrease in conflict and legal rights to access certain resources for both communities. A decrease in conflict enhanced the communities' ability to benefit from being at the coast and harvest resources (i.e. without being chased away).

6.2.2 Constraining access factors

6.2.2.1 Rights and other legal factors

Legal factors (sanctioned by law, custom or convention) play a key role in constraining access to coastal resources and areas. The establishment of legal rights, for instance, restricts access for the public, 4 x 4 users, recreational harvesters and the two coastal communities.

(1). Land-use rights

Although this study focuses on current factors that limit and facilitate coastal access, a number of land-use rights, awarded in the past to various land-use activities, act as factors that currently restrict the ability of stakeholders to access and benefit from coastal resources today. For instance the rights awarded to conservation (EKZN Wildlife), mining and forestry have affected the abilities of local resource users and recreational users to access the coast. These rights hinder development in these areas

(for the benefit of all stakeholders) and the ability of the local communities to use their own land and benefit from it.

(2). Informal access

Informal access may also constrain access to and, the ability to benefit from, coastal resources. In terms of the study area, the historical practice that makes poaching socially acceptable in the local communities (for all those that do not possess legal rights), as well as illegal informal access (stemming from, for instance, poverty) has resulted in decreased and degraded mussel stocks along this coastline. This in turn impacts on the ability of the Sokhulu legal' harvesters to benefit (if poaching occurs within their subsistence zone) and on the ability of recreational harvesters to benefit. In the long term, these poaching activities will also restrict access to the resource for the poachers themselves. As explained under 6.2.1, this form of access is both legal and illegal.

(3). The Sokhulu co-management project

The Sokhulu co-management project may also be seen as a legal factor, restricting access in two ways. Firstly, the criteria established to decide which members of the community will receive access to the resource is a restricting factor to those that do not qualify, for instance, pensioners who still wish to gain access to mussels as they claim such access is an important part of their livelihoods. Secondly, EKZN Wildlife did not initially consider the politics involved between the two communities and the Mbonambi claim to intertidal fisheries resources; partly as a result of this, large scale poaching has resulted. This restricts resource access for the Sokhulu harvesters as well as for recreational mussel harvesters. In the long term, this poaching will also restrict access for the Mbonambi harvesters, as the resource will be depleted.

(4). Permits

Permits are constraining legal factors as they are all issued with conditions which impose restrictions on resource users. Although these are lamely observed in order to maintain access, they limit stakeholders' ability to fully benefit from the coast and its various resources. For example, harvesters interviewed in Sokhulu do not perceive themselves as significantly benefiting due to restrictions on bag limits and times of

harvesting per month. Permits are also a restricting factor for those individuals who cannot obtain them.

(5). Legislation and policy

Legislation, and its associated enforcement and control measures, restricts access to resources and coastal areas for various stakeholders. Examples include the recent regulations for the control of vehicles in the coastal zone under NEMA. While there were sound conservation reasons for introducing these regulations, the findings of this study indicate that greater efforts should be made to cater for the needs of recreational users to access their favourite angling and recreational sites. Another example is the MLRA. Although this law recognises subsistence fishers as a category of fishers, this sector of fishers is severely constrained in terms of their access to marine resources by comparison to the recreational and commercial fishers (Russel et al, 1999). Rules and regulations governing access to marine resources are stringent (e.g. rules pertaining to subsistence) and act as a restricting factor. The disjuncture between policy and practice (Hauck and Sowman, 2003) also reduces the ability of stakeholders to benefit (see section 6.6.4).

6.2.2.2 *Structural and relational access factors*

Structural and relational access factors have also decreased stakeholders' access and their ability to benefit.

(1). Landscape characteristics and constraints

This study has clearly shown that the physical nature of this coastline is a restricting factor to coastal access. This is similar to coastlines around the world (Peter Scott Planning Services Ltd et al, 2006; Stied!, 2000) and around other parts of South Africa (DEAT, 1998). The lack of development, isolation, lack of access points, erosion and presence of large dunes, along this coastline, all act to restrict physical access to the coast. These problems are in keeping with several international and local issues of access described in the literature (Peter Scott Planning Services Ltd et al, 2006; Clark and Hilton, 2003; Coughanowr, 1995). The distance to the coast is a significant restricting factor for the local communities. Lack of physical access additionally leads to limited resource access.

(2). Land-use activities

The two main land-use activities considered as part of this study include mining and conservation. These land-use activities have been shown, through the findings, to significantly affect physical access to coastal areas and to coastal resources through their operations, presence and regulations.

(3). South Africa's socio-political background

Apartheid led to loss of communal land to land-use activities, such as mining and conservation. Subsequently, it has contributed to the impoverishment and disadvantage of local indigenous communities. This is still evident today in the Sokhulu and Mbonambi communities. Information obtained through this study indicates that this impoverishment and disadvantage has contributed to exacerbate social and environmental issues, such as poaching, conflicts and increased crime in the area. In this way, access to coastal resources has been, and is constrained, for all stakeholders.

(4). Technology

As in other countries (Stied, 2000), roads (a form of technology) are a factor that restricts access. Although these have been provided de facto via mining and forestry activities, roads have been few, inconsistent and have not been in good condition. This makes physical access difficult for those using cars. This is especially a problem for stakeholders that do not have access to a 4 x 4 vehicle (another form of technology). For the local indigenous communities, historical paths have been lost due to mining (refer to Figures 8 and 10) and the use of new roads lengthens their route to the coast considerably. The entrance gate at Maphelane as well as the mining pond (and all its associated vehicles, equipment and machinery) are also technological factors which control and restrict coastal access. The current lack of beach signage is also a restricting factor for mussel harvesters, as it allows recreational people to harvest in an area specifically allocated to the project. Moreover, the lack of amenities such as parking, security, and cell phone reception all contribute to a lack of safety for all stakeholders, thus restricting their physical access.

(5). Lack of access to capital

For all stakeholders, excluding the community of Sokhulu, an entrance fee needs to be paid in order to gain access to the Maphelane Nature Reserve. Furthermore beach

driving permits and 4 x 4 vehicles must be purchased for beach and most road access. These are both expensive and thus not accessible for the majority of public. For those that do not have access to capital, access is thus constrained. Access is also constrained because of a lack of capital, for subsistence harvesters. Their permit only allows them to harvest mussels or certain species of fish, of a certain size. In order to harvest other historically harvested resources, such as east coast lobster, a recreational permit must be bought. Most community members cannot afford this permit. Therefore most subsistence harvesters do not have access to these other historically harvested resources. Furthermore, subsistence fishers require access to capital to purchase fishing equipment. The poverty levels in the communities (Mbonambi municipality, 2008) indicate that many would not be able to afford this expense. This could be a potential explanation for the low subsistence line fishing permit usage. Thus, some of the local fishers may be allocated a right by EKZN Wildlife, but may not be able to utilize it. Subsequently, a lack of access to capital hinders resource access in the study area.

(6). *Lack of access to knowledge and discursive practices*

Discursive practices and discourse shape communication, knowledge and meaning. This may, for instance, include the use of attractive concepts to foster a favourable view of a project, making it more appealing. The use of discourse was seen in several ways in the study area, where discursive practices limit the ability of others to benefit. For instance, discursive practices are used to promote a better corporate image but may mask important problems. For instance, RBM highly publicises what it is doing for the communities, however, at community level people do not feel as though they are benefiting. This discourse may be masking these issues and thus hindering possible efforts to breach the gap between the company and the communities, particularly Mbonambi. In this way, benefits to the communities are limited.

Another example is the 'conservation discourse'. Although in South Africa this has become more people-centred, the ecologically-centred discourse still legitimizes state control over resources, resulting in centralised and science-based management (Hauck, 2008; Isaacs, 2006; Shackleton et al, 2002). Subsequently, in practice, the social aspects around conservation are still neglected in comparison to the bio-physical aspects; this consequently limits the ability of stakeholders to benefit.

Discourse can also be used to control benefits. An example pertains to individuals in powerful positions in the local communities who use discourse to control benefits and benefit streams (e.g. gatekeepers). They (for instance, the traditional authorities of the two communities) emphasize the need for all external parties (e.g. RBM) to contact them first and to communicate directly with them rather than engage with the broader community. In this way, knowledge and benefits are controlled because the community remains mostly ignorant about what they are entitled to, or about what these external stakeholders are offering or doing..

Lack of access to knowledge also prevents the communities from being empowered with knowledge of their rights and what they are entitled to (see also Sunde and Isaacs, 2008). Lastly, the lack of access to knowledge for the inyangas pertaining to opportunities available for legal harvesting of resources (through EKZN Wildlife) is restricting their access and benefits.

(7).The effect of authorities and institutions

Both the conservation and mining sector are important players economically. They therefore have privileged access to the authorities or institutions that formulate and implement legal measures that enable or constrain access. This privileged access can affect the ability of stakeholders (the general public, local communities, anglers) to benefit because they do not possess the same access to these institutions. As suggested in the literature (DEAT, 2005; Clark and Hilton, 2003), authorities and institutions are also a factor that restricts access in the sense that these authorities and institutions lack administrative capacity, co-operation between themselves, and enforcement capacity (e.g. lack of enforcement to prevent mussel poaching). This contributes to stakeholders not being able to access or benefit from the coast and its resources.

(8). Social status and identity

As mentioned above, under discursive practices, local privileged individuals in the community use their social status to control knowledge and thus benefits. Benefits are subsequently not experienced at lower levels in the community, often to the degree that people are unaware of what they are entitled to. These high powered individuals are also in a position to block benefits to the whole community, for instance, in the case of the

Maphelane levies. Another instance of social identity restricting access is through the exclusivity of nature reserves (Ribot and Peluso, 2003; Ribot, 1995) such as Maphelane. Although the Sokhulu community does have free entrance, they are unable to harvest in the reserve. Mbonambi has no access to the reserve, unless individuals can afford the gate fee, which is unlikely. This differs from tourists and recreational harvesters who are able to access the reserve (through access to capital) and harvest marine resources through recreational permits. In a general sense as well, local indigenous community members are restricted in their access in comparison to recreational harvesters. Furthermore, the criminal activities experienced along this coastline (refer to sections 5.4.2 and 5.6.1) are often perceived to be associated with members of these two communities (Sokhulu and Mbonambi). This causes conflict with other stakeholder groups (e.g. the general Richards Bay public), which in turn impacts on these communities' ability to freely enjoy the coast and its benefits.

6.3 Implications of restricted or lost access

Loss of access and restricted access along this coast has resulted in significant impacts. Factors that have caused loss of, or restricted, access along this coast, have (in certain cases) led to the formation of new constraining access factors or to the intensification of other restricting access factors. A main example of this is the Control of Vehicles in the Coastal Zone Regulations (a legislative factor). These regulations resulted in prohibited or limited physical coastal access. On their own, as well as in combination with other restricting factors (such as the lack of adequate and direct roads to the coast), they had several social effects which further affected access to the coast. An example, in the context of the inadequate system of roads, is the longer (more roundabout) travelling distances in comparison to driving straight along the coast. This in turn affects the ability of competitive anglers to participate in competitions. It also discourages many members of the public from using and enjoying the coast. The regulations, in combination with the lack of development along this coast also contribute to the isolated nature of the coast, resulting in higher crime rates and less safety. Crime is thus a partial knock on factor as a result of the regulations. This yet again discourages anglers and members of the public from accessing the coast and has subsequently resulted in a loss of social benefits and outdoors culture. An additional side effect of the regulations is that quad

bikers are now using the coastal dunes and indigenous forests (even the rehabilitation areas) for recreation, causing significant ecological impact.

The 4 x 4 regulations have also resulted in increased poaching partly due to the limited presence of officials and recreational users on the beach. EKZN Wildlife's enforcement officers now possess the only vehicles patrolling the beach, whereas in the past, many vehicles would drive along the coast, monitoring and reporting poaching to officials. However, poachers are now forewarned when hearing or seeing a vehicle; they know that only EKZN Wildlife vehicles are allowed on the beach. Therefore, once officials are gone, the poaching continues. Poaching is thus increasing because of a lack of monitoring capacity and a lack of people on the beach.

Loss of access to historically harvested resources as well as poverty and a lack of alternative livelihoods have also contributed to the increasing problem of poaching. Especially in Mbonambi, the lack of access to education, income and livelihood opportunities, in combination with a lack of recognition in terms of their historical rights to harvest mussels, is leading to a degraded resource along this coast. This will eventually reduce access to the resource for all stakeholders. In conclusion, the consequence of these restricting factors is a significant lack of access and benefits for the various stakeholders.

6.4 Overarching factors that affect access

Through the identification, analysis and discussion of the various factors that restrict and facilitate access, two main groups of factors have emerged. The first are overarching factors, which may also be referred to as higher order factors, and the second, lower order factors. Overarching factors refer to the broader level decisions which were taken in the study area, and which affected access. These decisions include the decision to mine, enable forestry, to establish a nature reserve, and subsequently an MPA, and the decision to appropriate local community land for state ownership, forestry use and control. Most of these decisions occurred with little consultation, particularly those which took place during apartheid. Another example of overarching factors is legislation. Overarching factors impact access on a larger scale and subsequently result in the formation of lower order factors. For instance, the decision to establish the reserve

resulted in other restricting factors (lower order) such as, the entrance gate and entrance fees (i.e. technology and capital), restrictions on resource access as well as restricted physical access through lack of legal rights. Thus, access to the coast and its resources is only possible for those individuals who have access to facilitating factors, such as capital to purchase rights and gain entrance. Nevertheless, this access is still more limited than before the decision to establish a nature reserve.

Therefore, a constraining overarching factor will impinge on facilitating lower order access factors. In other words, regardless of how much a stakeholder may have access to a facilitating (lower order) factor (such as capital), if an overarching constraining factor (e.g. a decision) is present, access and benefits will be limited for that stakeholder.

6.5 Perceptions of compensating measures

As mentioned above in section 6.2 and 6.4, decisions taken by powerful actors have resulted in loss of access to, and benefits from the coast in the study area; effects that stakeholders are still currently experiencing. Over the past few years, these actors have attempted to compensate for this loss of access and benefits as a result of various international and national pressures. A significant finding of the study, however, is that, in spite of these efforts, stakeholders do not see themselves as benefiting much or even at all from these compensatory measures. Using the concepts of social and indigenous cultural justice introduced in Chapter 2, the study now attempts to understand why indigenous communities perceive such benefits to be low, and suggests potential reasons for this. However, it is important to note that further research is required in order to support these various suggestions.

The focus in this section of the dissertation has been on the indigenous local communities (Sokhulu and Mbonambi) due to the fact that data collected emphasized this disparity dominantly in these communities, rather than in all stakeholder groups. This was a significant finding which emerged from the data. Data collected on the other stakeholder groups was not sufficient and not feasible to attempt this analysis.

Understanding the high degree of resentment harboured towards RBM (in the case of Mbonambi) and the perceived lack of ability to benefit from the mining company's

endeavours (in the case of both communities) may be attempted through various rationalizations. The simplest explanation is that the company is not doing what it is publicising, as claimed by the Mbonambi legal representatives (see Chapter 5). Other possible explanations are reviewed below. Various reasons may also be suggested to explain the perceived lack of benefits from the conservation sector (Maphelane and EKZN Wildlife).

6.5.1 Perceived lack of Social and Indigenous cultural Justice

Literature related to this subject (Maiese, 2003; Whiteman and Mamen, 2002) suggests that when principles of justice have not historically or are not currently being satisfied by the institutions concerned, people are unsupportive of these institutions' activities and conflicts may occur due to people's sense of perceived injustice. Perceptions of justice, in particular distributive justice, can thus be used to evaluate initiatives such as corporate social responsibility and investment, because it assesses the relationship with external parties (Husted, 1998). It can subsequently also aid in understanding the inability of stakeholders to perceive themselves as benefiting from these ventures.

6.5.1.1 The mining sector Richards Bay Minerals

Keeping in mind the historical background of the mining in relation to these two coastal communities, namely (1) that mining occurred and is occurring on land that traditionally belonged to the communities, but from which they had been earlier removed, and (2) that mining still uses part of the communities' current land (as it falls within their lease area), these theoretical ideas can be used to guide the discussion of the Mbonambi and Sokhulu communities' perceptions towards RBM and explain their perceived lack of benefits.

Distributive and procedural justice

In terms of economic outcomes, local people from both communities felt that, whilst they are in poverty, RBM is making large amounts of money. They also felt that their land, water and health were being polluted from mining activities, that they had lost important forest resources and that an influx of foreigners had disturbed their sense of community. Thus, they were not only receiving very little in terms of a fair share to economic benefits generated from the mining, but also that they were receiving an unfair level of mining-associated impacts. The resultant feeling is one of unfairness, inequity and resentment.

In effect, these views show that people do not perceive principles of distributive justice to have been satisfied. It is therefore important that both direct and indirect economic impacts and benefits are considered by RBM, in order to understand the communities' perception of injustice.

Ecological, societal and spiritual outcomes of a process should also be considered (in accordance with indigenous cultural justice). Whiteman and Mamen (2002) suggest that ecological, societal or spiritual degradation due to mining will affect people's perceptions of distributive justice and will thus contribute to a sense of injustice. Environmental impacts of RBM mining are significant for the communities in the sense that the indigenous coastal forest is being destroyed. Although RBM has an ongoing world renowned rehabilitation program, this study suggests that the destruction of the original forest is contributing to the level of injustice felt by the community people, in particular Mbonambi, where the mining started initially. In addition, the rehabilitation only covers a small part of the original forest area. The rest is re-forested with commercial plantation trees. Local ecology is at the foundation of indigenous management approaches (Whiteman and Mamen, 2002); this needs to be considered and understood to a greater extent. An increase in awareness with regards to the rehabilitation could perhaps also lessen the sense of ecological injustice.

The influx of foreigners to the communities as a result of mining and the perceived health effects of mining (both social outcomes) may further contribute to the communities' sense of injustice (particularly Mbonambi). Because of the unresolved nature of both claims²⁵, communities have also had little formal societal recognition of their rights. This legal recognition is important for perceptions of distributive justice as it affirms the communities' rights to natural resources and to have a say in ecological outcomes (Whiteman and Mamen, 2002). In addition, these land rights (once settled) will not provide decision making power in terms of the mining and its ecological outcomes (Submission in terms of section 42D of the Restitution of Land Rights Act of 1994, 2005). The lease area remains the responsibility of RBM and will only be signed over when all mining and rehabilitation is completed (Informant 13, 2009; Mineral and

²⁵ The Mbonambi land claim was approved a few months ago but the post settlement agreement still needs to be fulfilled and no title deed has been given. The Sokhulu claim is still being finalised, as the claim needed to be revisited.

Petroleum Resources Development Act of 2002, section 43). An agreement with these land owners should ideally be made in the future for the management of the land, in order to move towards greater perceptions of justice.

Additionally, even though RBM possesses a policy for the excavation and re-interment of graves, mining in an area where historical graves are situated is a problem from the perspective of the local people. This may be a negative perceived spiritual outcome of mining, contributing to a belief of injustice.

In terms of procedural justice, the decision to allow mining in 1976 took place at a time of apartheid where consultation with the local indigenous communities was non-existent or minimal. Communities had no legal rights to participate in or influence decision-making and traditional knowledge on the value of the indigenous forest was not recognised. Currently, the communities still do not have powers to influence decisions associated with mining activities. The combination of historical and currently perceived procedural injustice may be affecting the communities' view of the company. However there is now a level of consultation that takes place between the company and the community, and a general, informal recognition of the communities' rights (a positive societal outcome of the mining in terms of the indigenous cultural definitions of distributive and procedural justice). Furthermore, a new venture (the BEE deal) will formally recognise the community as shareholders in the company, thus providing them with a sense of recognition and involvement, whilst enabling them to benefit financially as shareholders through a trust. This is a step towards enabling a greater feeling of procedural and distributive justice. Nevertheless, it is important to remember that the communities have had a sense of injustice for the past 33 years.

Interactional justice

Both communities complained that RBM's publicity efforts portrayed a highly favourable picture of the company, their efforts and of their relationship with the communities. This appeared inconsistent with the communities' perceptions of the company and of what the company was doing for them. This contributes to their unfavourable view of the company (in particular Mbonambi) and their sense of injustice.

6.5.1.2 *The conservation sector: Maphelane and EKZN Wildlife*

In the context of this study area and the history of conservation in the area (i.e. the establishment of Maphelane Nature Reserve on traditional Sokhulu land and the initiation of the co-management project), the theoretical concepts associated with social and indigenous justice can also be used to discuss the perceptions of the Sokhulu community with respect to benefits from the Maphelane reserve (and ISimangaliso Wetland Park) as well as from the Sokhulu co-management project.

Distributive justice

In terms of the Sokhulu co-management project, a sense of distributive injustice could be influencing the ability of subsistence harvesters to perceive themselves as benefiting from the project. This stems from the perception that recreational harvesters have a greater ability to benefit from coastal resources (in terms of how much, where and how frequently they can harvest). Thus, the decisions associated with the allocation and rules governing these two sectors have resulted in an outcome which is perceived by the harvesters as inequitable and unfair. Furthermore, the decision to provide Sokhulu mussel harvesters, but not the Mbonambi harvesters, with legal access to resources is perceived as distributive injustice from the perspective of the Mbonambi people.

With regards to Maphelane Nature Reserve, the establishment of the reserve negatively impacts on subsistence activities, and results in negative societal (lack of formal self-determination and land rights), spiritual (the appropriation of land on which ancestors were buried) and economic outcomes (lack of perceived benefits from the reserve). New thinking and new initiatives over the last decade (on the part of the reserve and park authority) have attempted to enhance equity and improve benefits, in comparison with the unfair distribution of benefits in the past. The community's rights have been formally recognised (societal recognition) and an arrangement is in place for them to receive economic benefits. However, the fact that the levies (stemming from the gate fee charged to visitors) have still not been distributed to the community and thus no financial benefits have been experienced (from the levies) by all levels of the community contributes to people's sense of distributive *injustice* and thus to their perceived lack of benefits from the reserve and the greater park. This is similarly the case for other ISimangaliso Wetland Park Authority initiatives which are not felt at the broader community level. Therefore, although efforts to right past wrongs have been initiated,

distributive injustice is still felt whilst the result of these efforts remains intangible for the broader community.

Procedural justice

Although, the process through which the co-management project was initially established (i.e. with a good deal of consultation and participation) was perceived to be fair, an important perception amongst subsistence harvesters is that similar problems raised over and over again with EKZN Wildlife are not being addressed. Procedural justice issues are particularly important in natural resource decision-making and can impact both the degree of confidence in decision makers as well as the degree of acceptance of the actual decisions (Lawrence et al, 1997). This could thus currently be leading to a sense of procedural injustice which may in turn affect the harvesters' perceptions of being able to benefit from this project.

The decision to establish Maphelane in 1984 took place under similar circumstances to that of mining discussed above. The process was unfair as it involved no or little consultation with the local communities and no recognition of their customary rights. However, their right to the Maphelane land is now formally recognised and the implementation of development initiatives and levies shows a commitment to treat them as land owners. Consultation is also currently occurring. Nevertheless, although co-management initiatives have been started, no joint management and decision-making system is currently in place to provide the community with authority in terms of decision-making. This may contribute to their sense of injustice.

6.5.2 The impact of power relations on Questions of access

The economic power held by these two sectors in comparison to the local communities could be enabling a sense of resentment which may affect their perceived ability to benefit from these sectors' efforts. In addition, for both RBM and Maphelane (iSimangaliso Wetland Park authority and EKZN Wildlife) another explanation for the communities' perceived lack of benefits may be linked to the issue of power relations; a problem which has been mentioned several times in this study and which is acknowledged in the literature as having the ability to affect access to coastal resources and benefits (Ribot and Peluso, 2003; Shackleton et al, 2002; Agrawal and Gibson, 1999). Traditional institutions are not necessarily based on fair and democratic principles

(Danida, 2007) and, according to Ribot and Peluso (2003), these non-state authorities (e.g. community leaders) can often control resources, thus allocating access only to certain individuals or groups in the community (such as, to family members). This could explain why the Sokhulu community has a different perception towards RBM and Maphelane in comparison to its leaders who do see benefits accruing from these two institutions. It could also explain why in both communities, people do not see labour opportunities and other such benefits. These opportunities and benefits seem to be controlled and thus limited to a few privileged families or individuals with direct access to the company or to a related authority (Informant 34, 2009). Shackleton et al (2002) suggest that checks and balances be put in place to ensure that benefits and decision making pertaining to benefits do not become controlled by these community elites.

6.5.3 The manner in which corporate social responsibility is undertaken

Kapelus (2002) suggests another potential reason for this perceived lack of benefits, centred on the way that a company operates its CSR programs. Whilst vocabulary around CSR advocates for partnerships, which requires trust and the ability to hand over control, this manner of doing things typically contradicts mining companies' usual problem solving approach (Kapelus, 2002). Therefore in spite of new thinking, approaches and efforts, mining companies (similarly to conservation institutions) tend to hold on to a technocratic, linear approach which can result in local communities feeling alienated even when they are enjoying the benefits of these institutions. This could be the case between RBM and the Sokhulu and Mbonambi communities, and could thus be a reason for the perceived lack of benefits.

6.5.4 Lack of communication

An additional potential reason for the communities' perceived lack of benefits, is that RBM, iSimangaliso Wetland Park Authorities, and EKZN Wildlife officials tend to communicate primarily with the community leaders or sub committees, due to traditional customs of respect. These traditional authorities often do not communicate well with the wider community (Sunde and Isaacs, 2008). This may result in a lack of awareness which may subsequently lead to the resentments and negative perceptions identified in the research. Greater communication structures need to be implemented to ensure that all members of the community are empowered with knowledge.

6.5.5 Lack of present benefits in comparison to past benefits

The benefits which the communities are now able to obtain from the coast are much less in comparison to what they could historically harvest. In the past (prior to 1921), communities based their entire livelihood on natural coastal resources. The subsistence project, for instance, provides the communities with legal access to coastal resources but this access (ten fish a day for line fishers and 2kg of mussels once a month for mussel harvesters) is small in comparison to the past. People tend to think the past was better. This could be a reason for the communities' perceived lack of benefits. Similarly, the mining provides some economic benefits, but as seen from this study, people do not significantly perceive themselves as benefiting by comparison to past benefits gained from the coast and its resources prior to the mining activities.

6.6 Difficulties in implementing new thinking and legislative provisions

6.6.1 The disjuncture between new rhetoric and practice in conservation

The Sokhulu co-management project has yielded improved and more equitable access to marine resources, and has subsequently been a significant improvement in comparison to previous protectionist, fortress style approaches. Similarly, efforts are being made by the iSimangaliso Wetland Park to benefit the adjacent community. These initiatives have attempted to shift the approach to conservation in the study area towards the more people-centred and participatory approach to conservation encapsulated in the literature (SCDB, 2007; Danida, 2007; Phuthego and Chanda, 2004). However in spite of this, stakeholders have indicated that conservation still remains more scientific and nature-focused in practice, than balanced between the social and the natural. This is in agreement with Isaacs (2006). DEAT (2005) suggests that in order for conservation to be successful and ensure equity and sustainability, it must consider social issues and must become socially relevant. Other key problems evident from the study's findings include the ongoing poaching (which results from a complexity of factors such as lack of environmental awareness, education, monitoring, enforcement and poverty) and the inability of the communities to perceive themselves as benefiting much from conservation initiatives. In terms of the subsistence project, Shackleton et al (2002) suggest that new initiatives (such as these) are initially well received because they are an improvement on the past, but that over time, enthusiasm for the project would diminish as benefits would be limited. This seems to be the case in Sokhulu and could

highlight the need for greater participation and communication between harvesters and EKZN Wildlife, but also the need for alternative livelihoods. A strategy at national and provincial levels is required to identify and develop sustainable alternatives for rural people, in order to lessen the reliance on natural resources (DEAT, 2005). Cruz (1996) suggests that programs must be designed to address local needs, when managing biodiversity; or conservation may not be successful over the long term. In the context of this study, this does not only include the development of alternative livelihoods, but also the recognition of the Mbonambi people's rights to harvest, their education and increased environmental awareness as well.

In terms of indigenous forest resources, the study has shown (in agreement with DEAL 2005) that there is a great need to understand the demand of traditional healers and to assist them to harvest sustainably.

64.2 The disjuncture between new rhetoric and practice in mining

The issues identified in this study seem to be in keeping with several mining-associated issues identified in the international and local literature²⁶ (CSR, 2004; Hamann, 2004; Whiteman and Mamen, 2002). For instance, although the company has moved towards a socially and environmentally responsible approach through CSR and attempted to benefit the local communities through its various programs and investments, various informants believe that CSR publicity used by the company is considered as a smokescreen; different in reality to practice. This has led to conflict with the local Mbonambi community. Lack of trust and communication thus remain issues for RBM. From the local community's perspective (especially Mbonambi), RBM mining has impacted on their livelihoods and lives (in keeping with mining issues presented in The World Bank, 2009b and Whiteman and Mamen, 2002). CSR (2004) suggests that building and maintaining trust can be done through greater active dialogue with stakeholders whereby issues of concern are raised and most importantly are responded to, and related actions are followed through. Thus, a review of the company's communication methods may be needed, in order to ensure reaching the majority of the population in an open and transparent manner which can build trust over the long term. Mining companies often make the mistake of relying primarily on a tribal authority as the representative of the local communities; this becomes problematic as the community is

²⁶ See Chapter 2

often left ignorant (Hamann, 2004). Therefore, greater attention should perhaps be given to overcoming these local power structures. A greater level of building mechanisms to educate local people and give them a greater understanding of the mining, its impacts, benefits (initiatives and ventures) and mitigation options is also needed.

In terms of physical access, RESIN is not restricting access through the fencing of large concession areas, as in other parts of South Africa (CSIR, 2004); however, it is limiting access through its activities and its changing roads, and also limits the ability for development along the coast, which impacts the ability of all stakeholders to benefit.

6.6.3 The need for an integrated approach to coastal access

The study calls attention to a need for an integrated approach in all spheres relating to coastal access and its associated benefits. The coast is a complex zone of numerous uses and users; it therefore needs to be approached in a holistic, participatory, flexible and integrated manner (Turner et al, 1998; Post and Lundin, 1996; Clark, 1992). For instance, there is a need to identify primary stakeholders, understand the livelihood needs of these different coastal users and how historic land-use decisions have impacted on their ability to access the coast and its resources today. Another example refers to the subsistence project. There appears to be a greater need for integration of recreational fishers, harvesters and the general public, in order to increase awareness around the project and reduce conflict with the subsistence users. Consequently, there is a need to bring all coastal resource (forest and marine) users and stakeholders together to create greater communication and co-operation between them; possibly through a multi-stakeholder forum. A multiple use management approach is also needed (Clark, 1992) and problems associated with the coast (e.g. poaching) need to be treated in the context of the coast's complexity. Similarly, factors that restrict access to the coast cannot be treated in isolation, since this study has demonstrated an often closely linked relationship between factors, to the point where a variety of factors may cause the occurrence of a new restricting factor which then contributes and intensifies the total lack of access (and so on in a complex weave of restricted access). In addition, institutions should work together more to combine and co-ordinate efforts so as to maximize the ability of stakeholders to benefit equitably from access to the coast and its benefits. Provisions of the new NEM:ICM Act are an important step towards attaining co-ordinated and integrated coastal zone management.

6.6.4 Disjuncture between legislative and policy rhetoric, and practice

When analysing the findings with respect to the four principles identified as part of the legislative and policy review (Chapter 3), it is evident that principles articulated in policy and law differ to reality. The reasons for this disjuncture may be broad and many. The study has demonstrated that policy and legislative provisions are not always being implemented. This is in agreement with Hauck and Sowman (2003) who suggest that the extent to which South African policies and laws have been successfully institutionalised and implemented is limited. In general, the disjuncture may also be attributed (in terms of government departments and agencies) to a lack of capacity, co-ordination and co-operation. Thus, co-operative governance, although significantly highlighted in most legislation, is still elusive for most state departments. A further principle – sustainability – is encapsulated in most mining and conservation policies and legislation (e.g. in the iSimangaliso Wetland Authority mission and goals [iSimangaliso Wetland Park Authority, 2009] and in the RBM Sustainable Development report [RBM, 2006]). In practice, both sectors attempt to consider social factors in addition to ecological and economic factors (as evidenced through their various programs and initiatives). However, as mentioned before, social considerations still appear to lag behind. The promulgation of legislation (e.g. the Control of Vehicles in the Coastal Zone Regulations) without the full consideration of social factors, in a particular local, social, environmental and economical context, is an example. The protectionist, ecological approach dominated this decision. Because the social context is not sufficiently addressed, problems such as poaching arise and are difficult to resolve. An ecological, protectionist approach to this problem is not the way forward (increased enforcement, arrests), as the resource is still being degraded. In terms of mining, the perceived lack of benefits on the ground also point to the social context not being fully understood by the company.

Numerous laws and policies call for access rights and the right to equitable benefits. Access rights have been given to both communities, in terms of the subsistence programme, and in terms of their recognition as beneficiary communities with respect to mining and conservation, and to the public (e.g. through legislation). However, these rights are limited through various factors. For instance, Sowman (2006), points out that although there has been some progress in formalising the subsistence-fishing sector, the granting of access rights for subsistence fishers has been slow. This can be attributed to a lack of clear policies and management protocols for the subsistence sector, as well as

to a lack of institutional capacity. These factors thus need to be understood and considered in order to safeguard these rights for the public and the local communities. Constraints to this right are often put in place to ensure sustainability, but are (in some cases) considered by the affected stakeholders as unreasonable, too restrictive and therefore not in the spirit of the law. In terms of the 4 x 4 vehicle regulations, for instance, access rights of stakeholders are impacted through a blanket ban which does not provide any alternative mechanisms for gaining access. This does not respect the rights of South Africans to access the coast and be able to benefit from it.

Legislation and policy promulgated post-1994 advocates for a more people-centred and participatory approach to natural resource management. It is based on principles of equitable access to, and benefits from, such resources. However, the perceived lack of benefits found in this study as well as previous work undertaken in the area (Sunde and Isaacs, 2008) suggest a gap between policies in place to ensure benefits from the MPA and the actual implementation and realization of these benefits for marginalised groups in the broader Sokhulu community. The case is similar in terms of the mining and its equitable distribution of benefits. Furthermore, Sunde and Isaacs (2008) suggest that the participatory, people-centred approach has filtered more into policy and practice for terrestrial parks, whilst no specific policy exists for the management of marine protected areas. There therefore appears to be a disjuncture in translating national legislation into policy commitments in terms of MPAs; most of the CBD Program of Work compliance, for instance, is driven by terrestrial parks (Sunde and Isaacs, 2008).

Legislation also encourages environmental education and awareness. Although initiatives are in place to promote these goals, the study demonstrates that greater efforts need to be made.

decision-makers. A review of the literature also demonstrates a need for conservation and mining sectors to shift their approaches in order to become more participatory and people-centred. However, although both sectors in the study area have demonstrated through their intent, various initiatives and consultation with stakeholders, commitment and progress towards this goal, a gap still exists between rhetoric and practice. Similarly, although policy and legislative promises provide many provisions for equitable access and benefits, a disjuncture between these provisions and practice has also been identified.

The inability of stakeholders to perceive themselves as benefiting from compensatory measures and initiatives offered by the mining and conservation sectors is a significant problem identified through the study. Thus, although RBM, EKZN Wildlife and iSimangaliso Wetland Park Authority have developed programmes such as development programmes (building and renovation of schools and clinics) and the payment of gate levies, to compensate for lost access, these benefits were not perceived as real and benefiting the community. The study therefore suggests that if principles of social and indigenous justice are not considered and addressed, this may affect stakeholders' ability to perceive themselves as benefiting. Other factors which are suggested as contributing to this perceived lack of benefits include power dynamics, lack of communication with the broader beneficiary communities, a lack of present benefits in comparison to benefits obtained prior the conservation and mining activities were initiated, and the manner in which corporate social responsibility is carried out. The study thus suggests that, regardless of whether benefits are present, if such factors are not considered and addressed, beneficiary communities may still perceive a lack of benefits.

Ultimately, however, the study demonstrates that if social components are not adequately considered, people's ability to access and benefit from the coast and its resources, and their ability to perceive themselves as benefiting, may be hindered. The study, therefore, also highlights the complex nature of the coast and thus the need for an integrated, holistic approach to issues and factors that affect coastal access patterns and the sharing of equitable benefits.

Through this study, a number of areas that require greater attention, analysis and investigation have been identified. These areas need to be addressed in order to

enhance stakeholders' ability to access and benefit from the coast and its resources. These issues also need to be addressed so that resource managers and decision-makers involved in these processes can be better informed of the range of issues and subsequently make more informed decisions. Addressing many of these issues are beyond the scope of this study, although the study has attempted to understand some of them through the use of various theoretical concepts and ideas. Nevertheless, their identification is sufficient to communicate to the mining and conservation sectors, as well as to the state, the presence of problematic areas that require thorough and in-depth attention. Areas that require greater research and attention are listed below.

The perceived lack of benefits and the negative perception of RBM by the Mbonambi community in comparison to the company's corporate sustainability report, corporate investment program and publicised community outreach initiatives emphasises a very large gap between company efforts and programs and what is experienced on the ground. Although this same problem is felt to a much lesser degree in Sokhulu, it is still present (in particular at broader community level). This issue may be understood through various potential explanations (see section 6.5 above) but requires further attention and research in order to prevent conflict and safeguard the ability of the communities to benefit from the mining. Similarly, the information provided by the iSimangaliso Park Authorities in terms of their efforts and programmes aimed at enabling adjacent and claimant communities to benefit, seems to differ from the perceptions of the local community and thus needs greater attention and investigation in order to promote awareness and access, as well as to safeguard sustainability.

Another important issue that should be addressed by RBM to improve relations with the local communities (especially Mbonambi) pertains to the perception of local community members that the mining is causing severe pollution, subsequently affecting their health and land. This differs from what RBM ecologists believe. Although this issue has not been focused on to a large degree in this dissertation, it is a general issue highlighted through the findings which requires attention. This issue could thus perhaps be addressed, first of all through monitoring programmes that involve local communities, and secondly through improved communication where results of the monitoring are fed back to the community, building their awareness and knowledge, and subsequently

increasing their trust in the company and in the mining activities. This has important implications for reduced conflicts and improved relations.

A further issue that requires attention and in-depth investigation is the lack of knowledge the community members have about anything related to large financial initiatives, such as the RBM BEE deal, the land claims and the CBD Program of Work recommendations that place certain obligations on EKZN Wildlife and the ISimangaliso Wetland Park Authority. As noted above (section 6.5.2), this could be due to power dynamics. Power relations and dynamics within the local communities is the next area which requires further consideration and examination by RBM and the conservation sector (EKZN Wildlife and isimangaliso Wetland Park Authority) in order to allow people to benefit more equitably and equally. Privileged Individuals or groups (of superior social status) have been suggested (through this dissertation) as potential barriers to access and equitable benefits for the broader communities in the study area. It is therefore important that external parties find ways to communicate with and reach the broader communities in their efforts to benefit the communities. However, it is also important to recognise the powerful forces against this, and the resources secured by those in the community with stakes in RBM.

Additional issues that require further exploration include the lack of clear legal rights (e.g. permits) to harvest, for traditional healers, and secondly, the ongoing poaching and its associated social, economic and political reasons. Furthermore, the implementation of various alternative livelihood initiatives, preceded by an in-depth social study of this coastal area and the two coastal communities is required in this area, in order to alleviate the pressure on marine resources.

In terms of physical access, this study suggests that the ban of vehicles along the coast be revisited in order to allow for the designation of appropriate coastal stretches where vehicular access onto the beach is allowed, subject to rules and regulations. However this recommendation is made recognising the need for further ecological, social and economic research.

A general issue identified in this study, as well as other studies (for instance, in Sunde and Isaacs, 2008; Hauck and Sowman, 2003) is the gap between policy and legislative

provisions and practice. This needs to be addressed by state departments, in conjunction with greater co-ordination and co-operation between all concerned institutions (state, RBM, EKZN Wildlife and iSimangaliso Wetland Park Authority), in order to achieve the best possible solutions to coastal access problems.

Further research is lastly, but very importantly, required regarding the multiplicity of factors (higher and lower level) affecting access and the interdependency between them, specifically taking into consideration other land-use activities excluded from this study (e.g. forestry), so that access patterns can be better understood and subsequently enhanced.

This dissertation has therefore provided an overview of access patterns in the study area and acts as an initial step towards a greater focus on coastal access issues in Richards Bay and in South Africa.

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APPENDIX 1: LIST OF INFORMANTS

| <i>List of Interview Informants</i> | | |
|--|-----------------------|--|
| | Name | Position |
| Sokhulu | | |
| Informant 1 | Mr Mthiyane | iNduna |
| Informant 2 | Mrs Mhlongo | Municipal Councillor for Sokhulu - Mrs Mhlongo |
| Mbonambi | | |
| Informant 3 | Mr Mpangele | iNduna |
| Informant 4 | Mr Mthiyane | Municipal Councillor for Mbonambi - Mr Mthiyane |
| EKZN Wildlife | | |
| Informant 4 | Sipho Mbuyisa | Community conservation officer, St Lucia |
| Informant 5 | Frans Mthembu | District Conservation Manager |
| Informant 6 | Gillian Rhodes | Subsistence Fisheries |
| Informant 7 | Jean Harris | RCE (coast) |
| Informant 8 | Cedric Coetzee | General manager coast |
| Informant 9 | Skumbuzo Mkwanazi | Field Extension Officer |
| Informant 10 | Terrence Shozi | Conservation manager Maphelane |
| Informant 11 | James Mthiyane | Field Ranger |
| Informant 12 | James Mpanza | Manager |
| RBM | | |
| Informant 13 | Michelle Boshoff | RBM ecologist |
| Informant 14 | Sicelo Benghu | Community relations |
| Informant 15 | Makhosathule Myesa | Community relations |
| Informant 16 | Andrew Denton | General manager, Strategy and Business Development, former ecologist |
| Informant 17 | Gavin Anderson | Archeologist |
| Informant 18 | Thabi Shange | General manager, strategic affairs |
| Informant 19 | Fundi Dlamini | Compliance specialist |
| uThungulu District Municipality | | |
| Informant 20 | Hennie Smit | Chief planner |
| Informant 21 | Brenda Strachan | Planning and development |

| KwaMbonambi Municipality | | |
|---|------------------|---|
| Informant 22 | Sipho Mthiyane | Community development worker |
| Informant 23 | Thula Biyela | Assistant development manager |
| Recreational Anglers, 4 x 4 users and the general public | | |
| Informant 24 | Jimmy Hill | Recreational angler |
| Informant 25 | Barry Tedder | Recreational angler |
| Informant 26 | Sandi Camminga | Member of the public |
| Informant 27 | | Recreational angler |
| Informant 28 | Steward Williams | Recreational angler and quad biker (recreational 4 x 4 enthusiast prior to the 4 x 4 regulations) |
| Informant 29 | Michael Stratton | Recreational angler |
| iSimangaliso Wetland Park Authority | | |
| Informant 30 | Nerosha Govender | Research |
| Other | | |
| Informant 31 | Jacki Sunde | Masifundise |
| Informant 32 | Dr Frans Kapp | Port and Coastal Engineering |
| Informant 33 | Mr Dlamini | Department of Land Claims |
| Informant 34 | Phillie Mbatha | University of Cape Town |

| Focus Group Meetings | |
|---|--|
| | Position |
| Sokhulu: First focus group meeting | |
| Informant 35 | Chairperson of the line fishing committee |
| Informant 36 | Member of the line fishing committee |
| Informant 37 | Line fish monitor and harvester |
| Informant 38 | Line fish monitor |
| Informant 39 | Member of the mussel committee |
| Informant 40 | Mussel committee deputy chairperson |
| Informant 41 | Member of the mussel committee |
| Informant 42 | Member of the mussel committee |
| Informant 43 | Mussel monitor, harvester and monitor supervisor |
| Informant 44 | Mussel monitor and harvester |
| Informant 45 | Mussel monitor and harvester |
| Informant 46 | EKZN Wildlife official |
| Informant 47 | EKZN Wildlife Field extension officer |

| Sokhulu: Second focus group meeting | |
|--|---|
| Informant 48 | Mussel committee (Vice-Chairperson) |
| Informant 49 | Mussel committee (Chairperson) |
| Informant 50 | Mussel monitor supervisor |
| Informant 51 | Mussel collector |
| Informant 52 | Mussel committee |
| Informant 53 | Mussel collector |
| Informant 54 | Secretary (mussel committee) |
| Informant 55 | Line fish committee and inyanga |
| Informant 56 | Line fishing committee (secretary) |
| Informant 57 | Fishing committee |
| Informant 58 | Fishermen |
| Informant 59 | Line Fish committee (chairperson) |
| Mbonambi | |
| Informant 60 | Line fisherman |
| Informant 61 | Line fisherman |
| Informant 62 | Line fisherman |
| Informant 63 | Committee (subsistence fishing), Line fisherman |
| Informant 64 | Deputy Chairperson for Line fishing and Line fisherman |
| Informant 65 | Traditional Healers' Chairperson for KwaMbonambi |
| Informant 66 | Chairperson for Line fishing at Mbonambi |
| Note: | Even though only one formal inyanga was present at both focus group meetings, most of the people present at these meetings had in-depth knowledge as to the resources harvested or customs practised by inyangas. This can possibly be attributed to traditional learning passed down from family members that were inyangas, such as grandparents. |

APPENDIX 2: SEMI-STRUCTURED KEY INFORMANT INTERVIEWS

Key Informants (Communities): Councillors, Ndunas (Headmen) in each community

General:

1. What role do you play in the community?

Historical Information:

Prior to 1933 forestry activities:

2. Who owned the coastal land in this study area?
3. Was the community able to access the coast/beach?
4. What was the coast/beach used for by the community?
5. Did the community harvest resources? If so, what resources were harvested?
6. What were these resources used for?
7. What benefits did the community derive from the ability to access the coast and its resources?
8. Were there specific rights (formal and/or traditional) that determined who could access the coast and its resources?
9. If these rights were traditional or customary, could you elaborate on their nature, for instance, who granted them, what rules applied?

Forestry started in the area around 1933 approximately:

10. Did the development of forestry change how and where the community could access the beach?
— If yes: How did access to the coast change?
11. Did forestry change how the community could harvest resources?
— If yes: How did access to resources change?
12. Were there specific rights (formal and/or traditional) existing/ established at this time (\pm 1933) that determined who could access the coast and its resources?
13. If these rights were traditional or customary, could you elaborate on their nature, for instance, who granted them, what rules applied?

Mining activities started in 1976:

14. Did mining activities change how and where the community could access the coast/beach?

- If yes: How did access to the coast change?
15. Did mining activities change how the community could harvest resources?
- If yes: How did access to resources change?
16. Were there specific rights (formal and/or traditional) existing/established at this time (\pm 1976), that determined who could access the coast and its resources?
17. If these rights were traditional or customary, could you elaborate on their nature, for instance, who granted them, what rules applied?

Conservation (EKZN Wildlife) and the establishment of Maphelane Reserve in 1984

18. Did conservation (prior to 1984) change how and where the community could access the coast/beach?
- If yes: How did access to the coast change?
19. Did conservation (prior 1984) change how the community could harvest resources?
- If yes: How did access to resources change?
20. Were there specific rights (formal and/or traditional) existing/ established at this time (prior 1984) that determined who could access the coast and its resources?
21. If these rights were traditional or customary, could you elaborate on their nature, for instance, who granted them, what rules applied?
22. Did the establishment of the reserve (1984) change how and where the community could access the coast/beach?
- If yes: How did access to the coast change?
23. Did the establishment of the reserve (1984) change how the community could harvest resources?
- If yes: How did access to resources change?
24. Were there specific rights (formal and/or traditional) existing/ established at this time (1984) that determined who could access and/or harvest these resources and access the coast?
25. If these rights were traditional or customary, could you elaborate on their nature, for instance, who granted them, what rules applied?

Current information:

26. What is the current situation with regards to access to the coast and harvesting of coastal resources?

27. What are the current rights (formal/traditional) that determine who can access the coast, access its resources and harvest them?
- Who holds these rights and who issues them?
 - In terms of what legislation/or customary law are they issued?
28. Are people able to exercise their rights and derive benefits? If not, what are the factors that prevent them?
29. What are the factors that affect the community's ability to access the coast?
30. What are the factors that affect the community's ability to access coastal resources?
31. What are the tools that are used to manage access to the coast and by whom (what institution/agency/council)?
32. What are the tools that are used to manage access to coastal resources and by whom (what institution/agency/council)?
33. Are there conflicts related to accessing the coast and to accessing its resources in this area?

Benefits:

34. What kind of benefits does the community obtain from the Reserve?
- How are these benefits distributed?
 - Who benefits most from the Nature Reserve?
35. What kind of benefits does the community obtain from Conservation in general?
e.g. The subsistence project?
- How are these benefits distributed?
 - Who benefits most from?
36. What kind of benefits does the community obtain from the Mining in the area?
- How are these benefits distributed?
 - Who benefits most from the Mining activities?
37. What costs or losses have been incurred by the community in terms of (e.g.) loss of access to food, livelihoods, and products due to conservation?
38. What costs or losses have been incurred by the community in terms of (e.g.) loss of access to food, livelihoods, and products due to mining?

39. Do you feel that the community would have been better off if the mining and nature reserve had not been established in this area?
40. What is your view on access to the coast and its resources?
41. What do you think of the ICM Act and the tools it provides for increased physical access?

Local Institutional Structures

42. What kind of institutional structures are in place at the local level?
43. Is there co-operation between these multiple structures in terms of access and benefit sharing?
44. What are the broader institutional structures that these local structures are nested in? (including your organisation)
45. How does your organisation interact with these structures? Is there co-operation?
46. How do these local institutional structures affect access to resources and to the coast?
47. What are the difficulties that they experience managing access at local level?
48. What actions are taken to address these local difficulties?

Key Informants (RBM, EKZN Wildlife, Maphelane Reserve)

1. What organization do you represent?
2. What is your position in the organisation?
3. What kind of coastal resources does your organization use/manage? Since then?
4. What part of the coast does your organisation use/manage/own?

Historically (when your organisation's activities first started i.e. conservation, mining, establishment of nature reserve)

5. What kind of relationship did your organization have with the coastal communities in this area (Mbonambi and Sokhulu)?
6. What kind of relationship do you now have with these communities?
7. How was this part of the coast used (before your organisation's activities started in the area/prior 1933), and by whom (which stakeholder groups)?

The primary stakeholders identified in this study include:

- a. Mbonambi Community
- b. Sokhulu Community
- c. 4 x 4 users

- d. Anglers
 - e. Richards Bay general public
8. How has physical access to the coast changed in this area since your organisation initiated its activities (before and after)?
 9. How has access to coastal resources changed in this area since your organisation initiated its activities (before and after)?

Currently:

10. How does your organization manage physical access to this coastal area?
 - a. What tools are used?

Please elaborate on:

 - The names of (e.g.) the relevant policies, permits, national, provincial or local acts?
 - The sections of those (e.g.) acts, plans or policies, that this organisation is responsible for?
 - b. Who is responsible for enforcing these tools?
 - What is the role of the different government spheres in their enforcement?
 - c. Does the enforcement agency have enforcement and compliance capacity?
 - d. Are stakeholders compliant with rules and regulations?
 - e. How are these tools enforced?
11. How does your organization manage access to the coastal resources in the area?
 - a. What tools are used?

Please elaborate on:

 - The names of (e.g.) the relevant policies, permits, national, provincial or local acts?
 - The sections of those (e.g.) acts, plans or policies, that this organisation is responsible for?
 - b. Who is responsible for enforcing these tools?
 - What is the role of the different government spheres in their enforcement?
 - c. Does the enforcement agency have enforcement and compliance capacity?
 - d. How are they enforced?

- e. Are stakeholders compliant with rules and regulations?
- f. What are the procedures that need to be followed in order to obtain subsistence licenses? (*For EKZN Wildlife*)
- g. What are the procedures that need to be followed in order to obtain recreational licenses? For *EKZN Wildlife*)

Local Institutional Structures

- 12. What kind of institutional structures are in place at the local level?
- 13. Is there co-operation between these multiple structures in terms of access and benefit sharing?
- 14. What are the broader institutional structures that these local structures are nested in? (including your organisation)
- 15. How does your organisation interact with these structures? Is there co-operation?
- 16. How do these local institutional structures affect access to resources and to the coast?
- 17. What are the difficulties that they experience managing access at local level?
- 16. What actions are taken to address these local difficulties?
- 19. Is there co-operation between the different spheres of government and authority bodies?
- 20. Do they each have distinct responsibilities and enforcement roles?

Factors:

- 21. What in your opinion are the main factors (not restricted to your organisation) that facilitate access to this area?
- 22. What in your opinion are the main factors (not restricted to your organisation) that facilitate access to coastal resources in this area?
- 23. How does this differ from factors facilitating access in the past (prior to ±1933 forestry activities to the present)?
- 24. What in your opinion are the main factors (not restricted to your organisation) that restrict access to this area?
- 25. What in your opinion are the main factors (not restricted to your organisation) that restrict access to the coastal resources in this area?
- 26. How do these differ from factors restricting access in the past (just prior to ±1933 forestry activities to the present)?

Legislation:

27. Which national, provincial and local acts or by-laws are most relevant to physical access to the coast and access to its resources? Please elaborate.
28. Which levels of government are responsible for their enforcement, what are their roles?
29. What has changed post 1994 in terms of this legislation, has greater access to the coast been provided?
30. Which national, provincial and local acts or by-laws are most relevant to access to coastal resources? Please elaborate.
31. Which levels of government are responsible for their enforcement, what are their roles?
32. What has changed post 1994 in terms of this legislation, has greater access to coastal resources been provided?
33. How does the communal land rights act facilitate access?

Future Plans and ICM Act:

34. Do you know of any future plans to improve access to the coast and its resources, especially in terms of the new NEM:ICM Act?
35. Can you elaborate on them?
36. Do you know of any future plans that may affect access to the coast and its resources?
37. Can you elaborate on them?
38. What do you think of the ICM Act and the tools it provides for increased physical access?
39. What is your view on access to the coast and its resources?

Benefits and costs:

40. What kind of benefits do the identified stakeholders obtain from your organisation's activities in the area?
 41. How are these benefits distributed ?*Does the whole community know about the benefits/or just a group of elites?*
 42. Who benefits most from your organisations activities?
 43. What costs or losses have been incurred by these stakeholders in terms of access to food, products and livelihoods, due to your organisations activities?
- Specifically the communities?

Key Informants (Municipalities — Kwambonambi, uMhlatuze and Uthungulu)

General:

1. What is your position in the municipality?
2. What part of the coast does this municipality manage?

With regards to the study area:

Management:

3. How does this municipality manage physical access to this study area's coastline?
 - a. What tools are used?

Please elaborate on:

 - The names of e.g. the relevant policies, national, provincial or local acts?
 - The rules, regulations or sections of those e.g. acts, plans or policies, that this municipality is responsible for?
 - b. Who is responsible for enforcing these tools?
 - c. Does the enforcement agency have enforcement and compliance capacity?
 - d. How are they enforced?
 - e. Are stakeholders compliant with rules and regulations?
4. How does this municipality manage access to the coastal resources in the area?
 - a. What tools are used?

Please elaborate on:

 - The names of e.g. the relevant policies, legislations, permits?
 - The rules, regulations or sections of those e.g. acts, plans or policies, that this municipality is responsible for?
 - b. Who is responsible for enforcing these tools?
 - c. Does the enforcement agency have enforcement and compliance capacity?
 - d. How are they enforced?
 - e. Are stakeholders compliant with rules and regulations?

Stakeholders:

The primary stakeholders identified in this study include:

- Mbonambi Community
 - Sokhulu Community
 - e• 4 x 4 users
 - ◆c Anglers
 - Richards Bay general public
5. How has physical access to the coast changed for these stakeholders from the time prior to the ±1933 forestry activities to the present?
 6. How has access to coastal resources changed for these stakeholders from the time prior to the ±1933 forestry activities to the present?
 7. In the past (the time prior to the ±1933 forestry activities to the present) what kind of relationship did this municipality have with the coastal communities in this area (Mbonambi and Sokhulu)?
 8. What is the nature of the relationship now?
 9. Historically (prior ±1933 forestry activities in the area), how was this part of the coast used, and by whom (which stakeholder groups)?
 10. Historically (prior ±1933 forestry activities), who owned this part of the coast?
 11. When were Mbonambi and Sokhulu resettled?
 12. What and was claimed along this part of the coast? (Show on a map)
 13. Does this include Maphelane? Can Sokhulu get that and back?
 14. What is the settlement/ agreement with the communities in terms of the land claims? — How do they benefit (lease agreements etc)?

Factors that affect access:

15. What in your opinion are the main factors (not restricted to your organisation) that facilitate access to this area?
16. What in your opinion are the main factors (not restricted to your organisation) that facilitate access to coastal resources in this area?
17. How does this differ from factors facilitating access in the past (prior to ±1933 forestry activities to the present)?
18. What in your opinion are the main factors (not restricted to your organisation) that restrict access to this area?

19. What in your opinion are the main factors (not restricted to your organisation) that restrict access to the coastal resources in this area?
20. How do these differ from factors restricting access in the past (prior to ±1933 forestry activities to the present)?

Legislation:

21. Which national, provincial and local acts or by-laws are most relevant to physical access to the coast? Please elaborate,
22. Which level of government or agency is responsible for enforcing these laws, what is their role?
23. Which national, provincial and local acts or by-laws are most relevant to access to coastal resources? Please elaborate.
24. Which level of government or agency is responsible for enforcing these laws, what is their role?
25. What has changed post 1994 in terms of this legislation, has greater access to the coast and coastal resources been provided?
26. How does the communal land rights act facilitate access?

Local Institutional Structures:

27. What kind of institutional structures are in place at the local level?
28. Is there co-operation between these multiple structures in terms of access and benefit sharing?
29. What are the broader institutional structures that these local structures are nested in? (including your organisation)
30. How does the municipality interact with these structures? Is there co-operation?
31. How do these local institutional structures affect access to resources and to the coast?
32. What are the difficulties that they experience managing access at local level?
33. What actions are taken to address these local difficulties?
34. Is there co-operation and integration between the different spheres of government and authority bodies?
35. Do they each have distinct responsibilities and enforcement roles?

Future Plans and ICM Act:

36. Does this municipality have future plans to improve access to the coast and its resources, especially in terms of the new NEM:ICM Act?
37. Can you elaborate on them (e.g. who *will be responsible for implementing them, time span of project*)?
38. Are there future plans for this area, which may affect access to the coast and its resources?
39. Can you elaborate on them (e.g. *who will be responsible for implementing them, time span of project*)?
40. What do you think of the ICM Act and the tools it provides for increased physical access?
41. What is your view on access to the coast and its resources?

Benefits and costs:

42. What kind of benefits do you think the identified stakeholders obtain from the conservation and mining activities in the area?
43. How are these benefits distributed?
44. Who benefits most from these activities?
45. What costs or losses have been incurred by these stakeholders in terms of access to food, products and livelihoods, due to these activities?
 - Specifically the communities?

Key Informants (General public)

General:

1. What organisation/association do you belong to?
2. What is your position in the association?

The primary stakeholders identified in this study include:

- Mbonambi Community
- Sokhulu Community
- 4 x 4 users
- Anglers
- Richards Bay general public

Historically:

3. How has physical access to the coast changed for these stakeholders from the time prior to the ±1933 forestry activities to the present? In particular the general public.
 - a. What were the factors that facilitated physical access?
 - b. What were the factors that restricted physical access?
4. How has access to coastal resources changed for these stakeholders from the time prior to the ±1933 forestry activities to the present? In particular the general public.
 - a. What were the factors that facilitated access to resources?
 - b. What were the factors that restricted access to resources?
5. In the past, what kind of relationship has the general public in Richards's bay and the surrounding areas had with the coastal communities in this area (Mbonambi and Sokhulu)?
6. What is the nature of the relationship now?
7. Historically (prior ±1933 forestry activities in the area), how was this part of the coast used, and by whom (which stakeholder groups)?
8. Historically (prior±1933 forestry activities), who owned this part of the coast?
9. Prior the 4 x4 regulations, where in the study area were the coastal access points to the main areas used by the general public?

Presently:

10. Where in the study area are the current coastal access points to the main coastal areas used by the general public?
11. Where in the study area are the designated public access areas / points, if any?
12. If none, where would the public want public coastal designated areas?
13. How is physical access to the study area currently affected and by whom (organisation)?
 - a. What are the factors that currently facilitate physical access?
 - b. What are the factors that currently restrict physical access?
14. Can you elaborate on how the 4 X 4 regulations specifically affect access to the coast for the public?

15. What are the tools currently used to manage physical access and by what agency/organisation?
16. How is access to the coastal resources in the study area currently affected and by whom (organisation)
 - a. What are the factors that currently facilitate access to resources?
 - b. What are the factors that currently restrict access to resources?
17. What are the tools currently used to manage access to resources and by what agency/organisation?

Future Plans:

18. Do you know of any future plans to improve access in this area; especially in terms of the new NEM:ICM Act?
19. Can you elaborate on them?
20. Do you know of any future plans which may affect access to the coast and its resources in this area?
21. Can you elaborate on them?
22. What do you think of the ICM Act and the tools it provides for increased physical access?
23. What is your view on access to the coast and its resources?

Benefits and costs:

24. What kind of benefits do you think the identified stakeholders obtain from the conservation and mining activities in the area?
25. How are these benefits distributed?
26. Who benefits most from these activities?
27. What costs or losses have been incurred by these stakeholders in terms of access to food, products and livelihoods, due to these activities?
 - Specifically the communities?

Key Informants (Recreational Anglers)

1. What is the name of your association/organisation?
2. What is your position in the association?

The primary stakeholders identified in this study include:

- Mbonambi Community
- Sokhulu Community
- 4 x 4 users
- e Anglers
- Richards Bay general public

Historically:

3. How has physical access to the coast changed for these stakeholders from the time prior to the ±1933 forestry activities to the present? In particular the anglers.
 - a. What were the factors that facilitated physical access?
 - b. What were the factors that restricted physical access?
4. How has access to coastal resources changed for these stakeholders from the time prior to the ±1933 forestry activities to the present? In particular the anglers.
 - a. What were the factors that facilitated access to resources?
 - b. What were the factors that restricted access to resources?
5. In the past (from the time prior to the ±1933 forestry activities to the present), what kind of tools were used to manage physical access and by what agency/organisation?
6. In the past (from the time prior to the ±1933 forestry activities to the present), what kind of tools were used to manage access to resources and by what agency/organisation?
7. In the past (from the time prior to the ±1933 forestry activities to the present), what kind of relationship have anglers had with the coastal communities in this area (Mbonambi and Sokhulu)?
8. What is the nature of the relationship now?
9. Historically (prior ±1933 forestry activities in the area), how was this part of the coast used, and by whom (which stakeholder groups)?
10. Historically (prior ±1933 forestry activities), who owned this part of the coast?
11. Prior the 4 x4 regulations, where in the study area were the coastal access points to the main areas used by anglers?
 - a. *Rock* (from beach)
 - b. *Boat*

Presently:

Physical Access:

12. Where in the study area are the current coastal access points to the main coastal areas used by anglers?
 - a. *Rock (from beach)*
 - b. *Boat*
13. Where in the study area are the designated public access areas / points, if any?
 - a. *Rock (from beach)*
 - b. *Boat*
14. If none, where would anglers want public coastal designated areas?
 - a. *Rock (from beach)*
 - b. *Boat*
15. How is physical access to the study area currently affected and by whom (organisation)?
 - a. What are the factors that currently facilitate physical access?
 - b. What are the factors that currently restrict physical access?
16. Can you elaborate on how the 4 X 4 regulations specifically affect access to the coast for anglers?
17. What are the tools currently used to manage physical access and by what agency/organisation?

Access to Coastal Resources:

18. What species did anglers historically (from a time before the ±1933 forestry activities to the present) catch?
19. What species are you presently allowed catching? (discuss any changes over time in access to the various marine resources)
20. How is access to the coastal resources in the study area currently affected and by whom (organisation)
 - a. What are the factors that currently facilitate access to resources?
 - b. What are the factors that currently restrict access to resources?
21. What are the tools currently used to manage access to resources and by what agency/organisation?

Legislation:

22. Which national, provincial and local acts or by-laws are most relevant to physical access to the coast? Please elaborate.

23. Which level of government or agency is responsible for enforcing these laws, what is their role?
24. Which national, provincial and local acts or by-laws are most relevant to access to coastal resources? Please elaborate.
25. Which level of government or agency is responsible for enforcing these laws, what is their role?
26. What has changed post 1994 in terms of this legislation, has greater access to the coast and coastal resources been provided?

Institutional:

27. What are the procedures that need to be followed in order to harvest coastal resources and access the coast?
28. What authority manages permit application and granting of permits?
29. What are the rules and regulations that anglers must adhere to?
30. What authority manages monitoring of permits and compliance with rules and regulations (enforcement)?
31. Does this authority have enforcement capacity and effectiveness?
32. Is there co-operation between the different spheres of government and authority bodies?
33. Do they each have distinct responsibilities and enforcement roles?

Future Plans:

34. Do you know of any future plans to improve access in this area; especially in terms of the new NEM:ICM Act?
35. Can you elaborate on them?
36. Do you know of any future plans which may affect access to the coast and its resources in this area?
37. Can you elaborate on them?
38. What do you think of the ICM Act and the tools it provides for increased physical access?
39. What is your view on access to the coast and its resources?

Benefits and costs:

40. What kind of benefits do you think the identified stakeholders obtain from the conservation and mining activities in the area?
41. How are these benefits distributed?
42. Who benefits most from these activities?
43. What costs or losses have been incurred by these stakeholders in terms of access to food, products and livelihoods, due to these activities?
 - Specifically the communities?

Key Informants (4 x 4 users / Quad bike users)

1. What is the name of your association/organisation?
2. What is your position in the association?

The primary stakeholders identified in this study include:

- Mbonambi Community
- Sokhulu Community
- 4 x 4 users
- Anglers
- Richards Bay general public

Historically:

3. How has physical access to the coast changed for these stakeholders from the time prior to the ±1933 forestry activities to the present? In particular the 4 x 4 users.
 - a. What were the factors that facilitated physical access?
 - b. What were the factors that restricted physical access?
4. In the past (from the time prior to the ±1933 forestry activities to the present), what kind of tools were used to manage physical access and by what agency/organisation?
5. Historically (prior ±1933 forestry activities in the area), how was this part of the coast used, and by whom (which stakeholder groups)?
6. Historically (prior ±1933 forestry activities), who owned this part of the coast?
7. In the past (from the time prior to the ±1933 forestry activities to the present), what kind of relationship did 4 x4 users have with the coastal communities in this area (Mbonambi and Sokhulu)?
8. What is the nature of the relationship now?

9. Prior the 4 x4 regulations, where in the study area were the coastal access points to the main areas used by 4 x 4 users?

Present Access:

10. Where in the study area are the current areas used by 4 x 4s and 4x 4 Associations?
11. Where in the study area are the current designated access points, if any?
12. How is physical access to the study area currently affected and by whom (organisation)?
 - a. What are the factors that currently facilitate physical access?
 - b. What are the factors that currently restrict physical access?
13. Can you elaborate on how the 4 X 4 regulations specifically affect access to the coast for anglers?

Institutional:

14. What are the tools currently used to manage physical access and by what agency/authority/organisation?
15. What are the procedures that need to be followed in order to obtain access to the coast with 4 x 4s?
16. What authority manages permit application and granting of permits?
17. What are the rules and regulations that 4 x4 users must adhere to
18. What authority manages monitoring of permits and compliance with rules and regulations (enforcement)?
19. Does this authority have enforcement capacity and effectiveness?
20. Is there co-operation between the different spheres of government and authority bodies?
21. Do they each have distinct responsibilities and enforcement roles

Future Plans:

22. Do you know of any future plans to improve access in this area; especially in terms of the new NEM:ICM Act?
23. Can you elaborate on them?
24. Do you know of any future plans which may affect access to the coast?

25. Can you elaborate on them?

26. What do you think of the ICM Act and the tools it provides for increased physical access?

27. What is your view on access to the coast and its resources?

Benefits and costs:

28. What kind of benefits do you think the identified stakeholders obtain from the conservation and mining activities in the area?

29. How are these benefits distributed?

30. Who benefits most from these activities?

31. What costs or losses have been incurred by these stakeholders in terms of access to food, products and livelihoods, due to these activities?

- Specifically the communities?

University of Cape Town

APPENDIX 3: FOCUS GROUP MEETING QUESTIONS

Focus Group Questions with communities

PRA methods:

- a. Show a map of the study area; explain that questions pertain to this area.*
- b. Draw on map / use community sketching so that community answers the following questions partly by drawing along the coastline study area to show historical patterns of access and use.*
- c. List Making*
- d. Discussion*
- a Systems Diagram - this technique will be useful to illustrate interaction between the committee, harvesters and community and the coastal resources (question 26)*
- f. Timelines - To represent changes in access of resources/physical access/main events over time (Historical track of access)*

General Historic Questions

Before land-use activities (prior ± 1933) - Forestry, Mining, Conservation

1. Who owned the coastal land? (e.g. State, community at Maphelane etc)
2. Was the community able to get to the coast/beach? If so where (access points) and how (access routes)?
3. What was the coast/beach used for by the community?
4. Was the community able to harvest resources — If yes: What were the resources harvested and where?
5. What were the resources used for?
6. What were the benefits gained from harvesting these resources?
7. Were there specific rights (formal/traditional) that determined who could access the coast and harvest its resources?
8. If these rights were traditional or customary, could you elaborate on their nature, for instance, who granted them, what rules applied?

Forestry developed around 1933, what changed?

9. Did forestry change how the community could go to the coast/beach and where they could go?
10. Did forestry change how the community could harvest resources?
11. Were there specific rights (formal/traditional) that determined who could access the coast and harvest its resources?
12. If these rights were traditional or customary, could you elaborate on their nature, for instance, who granted them, what rules applied?

29. What are they used for?
30. What are the benefits that the community derives from these resources?
31. Who are the different stakeholder groups inside the community accessing the coast and using these coastal resources?
32. Who are the different stakeholder groups outside the community accessing the coast and using these coastal resources?
33. Where (access points) and how (access routes) do you currently access the coast?
34. What are the benefits that the community derives from physically being able to get to and be at the beach?
35. Are there specific rights (formal/traditional) that determine who can access the coast and harvest its resources?
36. If these rights are traditional or customary, can you elaborate on their nature, for instance, who grants them, what rules apply?
37. What are the main things (factors) that change the way you access the coast (restrict & facilitate)?
38. What are the main things (factors) that affect the way you access coastal resources (restrict & facilitate)?
39. Are people able to exercise their rights and derive benefits?
40. Are there conflicts related to getting to the coast and accessing the resources in this area?

Focussing on present-day mining

41. Does mining currently affect how the community can go to the coast/beach and where they can go (in the study area)?
42. Does mining currently affect how the community harvests resources?

Focussing on present-day conservation measures

43. Does Maphelane nature reserve currently affect how the community can go to the coast/beach and where they can go?
44. Does Maphelane Nature Reserve currently affect how the community harvests resources?
45. Does EKZN wildlife conservation currently affect how the community can go to the coast/beach and where they can go?

46. Does EKZN wildlife conservation currently affect how the community harvests resources? — e.g. in terms of fisheries resources

Benefits (trade offs)

47. How does the community benefit from mining in the area?

- How are these benefits distributed within the community?
- Who benefits the most?

48. How does the community benefit from conservation in the area (generally, like fisheries, and Maphelane)?

- How are these benefits distributed within the community?
- Who benefits the most?

49. Is the subsistence program working? What do you think of the poaching that is occurring?

50. What costs or losses have been incurred by the community in terms of (e.g.) loss of access to food, livelihoods, and products due to conservation and mining?

51. What is your view on access to the coast and its resources?

Local Institutional Structures

52. What kind of institutional structures are in place at the local level?

53. Is there co-operation between these multiple structures in terms of access and benefit sharing?

54. How do these local institutional structures affect access to resources and to the coast?

55. What are the difficulties that they experience managing access at local level?

56. What actions are taken to address these local difficulties?