

**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION, GRAHAMSTOWN)**

Case No: \_\_\_\_\_/2021

In the matter between:

<b>SUSTAINING THE WILD COAST NPC</b>	First Applicant
<b>MASHONA WETU DLAMINI</b>	Second Applicant
<b>DWESA-CWEBE ASSOCIATION</b>	Third Applicant
<b>COMMUNAL PROPERTY</b>	
<b>NTSINDISO NONGCAVU</b>	Fourth Applicant
<b>SAZISE MAXWELL PEKAYO</b>	Fifth Applicant
<b>CAMERON THORPE</b>	Sixth Applicant
<b>ALL RISE ATTORNEYS FOR CLIMATE AND THE ENVIRONMENT NPC</b>	Seventh Applicant

and

<b>MINISTER OF MINERAL RESOURCES AND ENERGY</b>	First Respondent
<b>MINISTER OF ENVIRONMENT, FORESTRY AND FISHERIES</b>	Second Respondent
<b>SHELL EXPLORATION AND PRODUCTION SOUTH AFRICA B V</b>	Third Respondent
<b>IMPACT AFRICA LIMITED</b>	Fourth Respondent
<b>BG INTERNATIONAL LIMITED</b>	Fifth Respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

**REINFORD SINEGUGU ZUKULU**

do hereby make oath and say:

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- 1 I am an adult male residing at Baleni village which forms part of the Amadiba Traditional Community in Winnie Madikizela-Mandela Local Municipality in the Eastern Cape.
- 2 I am a director and the Programme Manager of the First Applicant. I am duly authorised to depose to this affidavit on behalf of the First Applicant.
- 3 Save to the extent that the context indicates otherwise the facts deposed to herein are within my personal knowledge and belief. To the extent that I make legal submissions in this affidavit, I do so on the advice of my legal representatives, whose advice I believe to be correct.
- 4 In this affidavit, I will use the following terms:
  - 4.1 NEMA is the National Environmental Management Act 107 of 1998.
  - 4.2 MPRDA is the Mineral and Petroleum Resources Development Act 28 of 2002.
  - 4.3 ICMA is the Integrated Coastal Management Act 24 of 2008.
  - 4.4 NEMBA is the National Environmental Management: Biodiversity Act 10 of 2002.
  - 4.5 An EMP is an environmental management programme or plan whether under the MPRDA or NEMA.

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- 4.6 An EA is an environmental authorisation under NEMA.
- 4.7 Shell means the Third to Fifth Respondents collectively unless the context indicates otherwise.

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## **I. OVERVIEW**

- 5 The Wild Coast is a place of stunning natural beauty. Unlike other coastal stretches in South Africa, indigenous people have maintained continuous possession of this land despite waves of colonial and Apartheid aggression. This is no accident. Our ancestors' blood was spilt protecting our land and sea. We now feel a sense of duty to protect our land and sea for future generations, as well as for the benefit of the planet.
- 6 Our land and sea are central to our livelihoods and our way of life. Over generations we have conserved them, and they have conserved us. This is not merely a matter of nutrition and income, though it certainly is that. Some of our ancestors reside in the sea, and our traditional healers and pastors use the sea to heal us and to connect us with God.
- 7 We believed that our Constitution would enshrine the rights our ancestors died to secure so that we would not have to make such sacrifices.
- 8 Section 24 of the Constitution's guarantee of environmental protection for the sustainable benefit of current and future generations does exactly this. Parliament passed the National Environmental Management Act to give this right meaning for South African communities.

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- 9 Multinational corporations now wish to blast our sea every ten seconds for five months with air gun bursts between 220 and 250 decibels – louder than a jet plane taking off – that will be heard underwater more than 100 kilometres away. They want to do this for one reason – to look for oil and gas that they can profit from while worsening the planet's climate crisis.
- 10 They are entitled to apply for permission to do so, and should receive the approvals if they can meet the NEMA's requirements.
- 11 But that is not what they are doing.
- 12 After receiving an Exploration Right without any meaningful community engagement eight years ago, they are now rushing to blast our seas without any environmental authorisation under NEMA on a month's notice. They do so without even an environmental impact assessment. They do so even though they were told nearly a decade ago to seek a NEMA approval.
- 13 Their conduct is literally criminal under both the NEMA and the MPRDA. We ask this Honourable Court to protect Wild Coast communities, the environment, and our Constitution by stopping them from proceeding – first on an interim basis, and then on a final basis.
- 14 In the following, we set out the reasons we ask this Court to do so in more detail.

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## **II. PARTIES**

15 In the following section I cite the parties and explain their interest in these proceedings.

### **a. Applicants**

- 16 The First Applicant is Sustaining the Wild Coast NPC ("SWC"), a non-profit company duly incorporated in terms of the laws of South Africa, with registration number 2007/012219/08, and with its registered address at 7 Upper Quarterdeck Road, Kalk Bay, Western Cape. SWC works to promote sustainable livelihoods that construct, rehabilitate and protect the natural environment on the Wild Coast. SWC acts in the public interest and in the interests of protecting the environment, particularly along the Wild Coast.
- 17 The Second Applicant is Mashona Wetu Dlamini, a resident of Sigidi village in the Umgungundlovu Community, which forms part of the Amadiba traditional community. Mr Dlamini is a traditional healer and member of the Council of the iNkosana (headwoman) of Umgungundlovu, Duduzile Baleni. Mr Dlamini acts on his own behalf, on behalf of traditional healers along the Wild Coast, on behalf of the Umgungundlovu Community, in the public interest, and in the interests of protecting the environment.

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- 18 The Third Applicant is the Dwesa-Cwebe Communal Property Association ("the Dwesa-Cwebe community"), a juristic entity established under the Communal Property Association Act 28 of 1996 that holds land that was stolen from the Dwesa-Cwebe community under colonialism and Apartheid and successfully restituted to the community under the Restitution of Land Rights Act 22 of 1994. Its physical address is the Community Liaison Office situated at the gate of the Dwesa-Cwebe Nature Reserve. The Dwesa-Cwebe community acts in the interest of its members and in the interest of protecting the environment.
- 19 The Fourth Applicant is Ntinsidiso Nongcavu, a fisher from Port Saint Johns who acts on his own behalf, on behalf of fellow Wild Coast fishers, in the public interest, and in the interest of protecting the environment.
- 20 The Fifth Applicant is Sazise Maxwell Pekayo and the Sixth Applicant is Cameron Thorpe. They are both fishers from Kei Mouth in the Eastern Cape who are part of a local Cooperative, Kei More Fisheries. They act on their own behalf, on behalf of their community, on behalf of fellow Wild Coast fishers, in the public interest, in the interest of protecting the environment.
- 21 The Seventh Applicant is All Rise Attorneys for Climate and Environmental Justice NPC ("All Rise"), a law clinic and a non-profit company duly incorporated in terms of the laws of South Africa, with registration number 2019/305876/08, and with its registered address at 2nd floor offices, 29 Degrees South, 7 Umsinsi Junction, Dube City, Dube Trade Port, La Mercy, KwaZulu-Natal. All Rise

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represents communities fighting against and affected by climate change. All Rise acts in the public interest and in the interest of protecting the environment.

**b. Respondents**

- 22 The First Respondent is the Minister of Mineral Resources and Energy, cited in his capacity as the Minister responsible for the MPRDA. For purposes of this application the address of the First Respondent is care of the State Attorney, 29 Western Road, Central, Gqeberha. No relief is sought against the First Respondent in this application.
- 23 The Second Respondent is the Minister of Environment, Forestry and Fisheries, cited in her capacity as the Minister responsible for the NEMA, ICMA and the NEMBA. For purposes of this application the address of the Second Respondent is care of the State Attorney, 29 Western Road, Central, Gqeberha. No relief is sought against the Second Respondent in this application.
- 24 The Third Respondent is Shell Exploration and Production South Africa BV, a company with limited liability and a share capital, which has its registered office at Twickenham Building, 57 Sloane Street, Bryanston, Johannesburg. Shell's attorneys of record, Shepstone and Wylie Incorporated, have agreed to accept service on Shell's behalf at 24 Richefond Circle, Ridgeside Office Park, Umhlanga Rocks.

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- 25 The Fourth Respondent is IMPACT AFRICA LIMITED ("Impact Africa"), a company with limited liability and a share capital, which has its registered office at 6th Floor, 119 Hertzog Boulevard, Foreshore, Cape Town.
- 26 The Fifth Respondent is BG International Limited ("BG International"), an external company with limited liability, incorporated under the laws of England and Wales with registration number 00902239, which conducts business in South Africa and is registered in terms of the Companies Act, 2008 as amended, in South Africa with registration number 2021/812959/10 with its registered address at Twickenham Building, The Campus, 57 Sloane Street, Bryanston, Gauteng Province.

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### **III. JURISDICTION**

- 27 Shell's proposed seismic surveys are to be conducted in terms of an exploration right granted under section 79 of the MPRDA in 2014 (I traverse the history of the exploration right more fully in Part V below).
- 28 In respect of the exploration right, Shell is to undertake exploration for hydrocarbon reserves in the Transkei and Algoa areas which are off the coast of the Eastern Cape province.
- 29 These exploration areas encompass, among others, Gqeberha (formerly Port Elizabeth), Port Alfred, East London and Port St Johns. These areas fall within the above Honourable Court's geographical jurisdiction.
- 30 The seismic surveys which the Applicants wish to interdict are to be undertaken within the above Honourable Court's geographical jurisdiction.
- 31 This Court is vested with the necessary jurisdiction to hear this application.

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#### IV. WILD COAST COMMUNITIES AND THE SEA

- 32 The EMPr says very little about communities on the Wild Coast. We are described merely as 'subsistence fishers' who have been 'forced to adopt' a subsistence lifestyle. I note that we reject this characterisation. As appears below and in the affidavits attached, small-scale fishing communities across South Africa litigated to force statutory recognition of our rights as fishing communities. The Dwesa-Cweba community then fought to compel the State to recognise and support customary fishing rights. Along the Wild Coast, we are customary fishing communities. If Shell had bothered to consult with us, they would know this.
- 33 Turning back to the EMPr, there is some discussion of the seafood that we harvest, but no discussion whatsoever about traditional healing or any cultural or spiritual issues relating to the sea. The only heritage concerns mentioned in the EMPr relate to shipwrecks. The only specific attempt to consult with traditional communities was to engage with 'traditional monarchs' and a certain Mr Richard Stephenson who was purportedly mandated to represent four 'Transkei Kingdoms'. I note that the relevant footnote only notes three 'Kings' engaged with, and excludes the Kingship of Eastern Mpondoland, the Kingship with jurisdiction over my community. I discuss this issue in more detail below.
- 34 As communities were not engaged in this process, it is necessary to set out the accounts of the various community applicants in this matter here. I start with my own community.

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**a. Amadiba**

- 35 My family has lived in what is now known as the Amadiba traditional community for several generations. Amadiba stretches from the Umtamvuna river (the border between the Eastern Cape and KwaZulu-Natal) to the Mtentu river, and runs about 20 kilometres inland. It is divided into two administrative areas (often called headmanships) under two iNkosanas (headmen). The inland area, where I am from, is called Dangeni. The coastal area is called Umgungundlovu. As noted above, Mr Dlamini is mandated to represent the Umgungundlovu community. He has, in turn, mandated me to depose to this affidavit. His confirmatory affidavit is attached.
- 36 I do not know when my family first arrived here. We have lived here for more than a century, and perhaps for two. To my knowledge, my great-grandfather was born in Amadiba. Beyond that I do not know. What I do know is that this is the only home that my family has known. Mr Dlamini is also unable to recall when his ancestors arrived in Mpondoland.
- 37 In the face of the widespread dispossession of black people's land, we are proud that my ancestors fought to protect our land. They did so most famously in the Mpondo Revolt.
- 38 As is often the case with Indigenous peoples, the land belongs to us, but we also belong to the land. It sustains us and is central to our identity. Because of this,

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we have very strict rules about consultation and decision-making in our community that all emphasise the importance of seeking consensus, especially in matters related to land use and governance. This commitment to our customary law has led to us resisting the imposition of top-down developments that did not follow our customary law such as the proposed Xolobeni mine and the N2 Toll Road that would slice our community in half.

39 I was born in the Jama village in 1969. Jama is about 15 kilometres from the shoreline. From my earliest days we would walk down to the sea to collect its healing waters and sacred sands. We would also go down to harvest mussels and catch fish, sometimes camping by the coast to spend more time there. My mother's grandfather would go down to the ocean every month to cleanse himself for healing purposes.

40 From a young age I developed a passion for conservation from my elders and from my land. This has developed into a lifelong commitment to conservation, as appears from my CV attached hereto marked **SZ1**.

41 My love of the sea is no exception in my community. The sea plays an important role in my community's way of life.

42 It is a key part of our livelihoods. We collect mussels, limpets, oysters and crayfish. We also fish for a range of species, including the famous King Fish as well as garrick, kob, and shad and others.

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- 43 This seafood forms a vital part of our diet, and contributes to the fact that our community has some of the lowest rates of hunger in South Africa.
- 44 The seafood also provides us with income as we are able to sell our catches to tourists and neighbours with cash.
- 45 We are currently working with the Department of Forestry, Fisheries, and Environment to establish cooperatives that will enable us to reach new markets. I note that this is a welcome development that resulted from the Dwesa-Cwebe's long struggle for community recognition. We in Amadiba are grateful for their work to defend our rights, which I set out in more detail below.
- 46 Given the significance that the sea plays in supporting our livelihoods, we are trained to participate in conservation and sustainable harvesting on our land and in our sea from a young age. We are the conservationists of the sea in our area, using practices handed down to us over generations. We work with the Eastern Cape Parks and Tourism Agency to conserve the Pondoland Marine Protected Area.
- 47 We are, of course, very concerned that the proposed seismic survey will have an impact on our ability to sustain ourselves from the sea. I accept that the proposed seismic survey will be to the south of Amadiba. But that does not mean we will not be affected. Cold water currents carry fish to us from the area that will be

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surveyed. I discuss the impacts – and how a NEMA process would address them – in more detail below.

- 48 Our livelihoods are not our only concern. The sea plays an important role in our cultural expression. It is sacred to us.
- 49 The sea and its sand are known to have healing properties amongst our people. Traditional healers will often rely on the sea for their treatments, particularly to clean themselves and patients. Accessing the sea forms part of their training. Traditional healers also go to the sea to commune with ancestors who summon them to give advice. Some of these ancestors reside in the sea because they loved the sea in life. Others reside in the sea because they died in it. As with the relocation of graves on land, it is considered very important not to disturb these ancestors through pollution or other disturbances. We are concerned that the seismic blasts will upset our ancestors, and we are disturbed by the fact that the companies did not see fit to consult with us.
- 50 I note that Amadiba is not unique in its cultural and spiritual relationship with the sea – this is common amongst coastal Mpondo communities.
- 51 African Independent Churches rely on the sea for rituals such as baptisms.
- 52 I note that we are concerned that the proposed seismic survey is negative for our climate. The surveys are done to enable the extraction of fossil fuels. This is very

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troubling to us as we strongly believe that the South African state should be joining global efforts to address climate change, both for the good of the planet as a whole but also for our own well-being. This is all the more reason that it is deeply concerning that this exploration intends to go ahead when its EMPr was developed 8 years ago, in spite of the rapid developments in climate science that have taken place in this time, which have demonstrated that the climate implications of all activities must be considered. The High Court in 2016 in *Thabametsi* set a precedent that environmental authorisation should not be granted in the absence of a climate change impact assessment. It is therefore inconceivable, unreasonable and irrational that exploration for oil and gas would be conducted in 2021 without a climate change impact assessment.

53 I note that we are already seeing signs of climate change in Amadiba. Our agriculture is becoming more challenging as we experience much more unpredictable weather patterns and more extreme weather events such as more droughts and heavier downpours of rain. Our livestock are sick more often. Our chickens – which used to only get sick in August or September with seasonal migrations – now get sick all year around. As a coastal community, we are very concerned about the prospect of rising sea levels. As indigenous peoples, we feel responsible for conserving the planet for ourselves and humanity.

54 All of these concerns should be understood in the context where domestic and international law is increasingly recognising the rights of indigenous peoples to self-determination. Shell's process proceeds without any recognition of these

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rights. Instead, Shell acts like the colonial and Apartheid powers that came before them by only approaching Kings and assuming that they can speak for all their subjects. The Kings' purported representative stated that "the Kings and their traditional councils (with Richard Stephenson mandated to communicate on their behalf in this matter) were the correct structures to work through as representative of the people." Even this (flawed) approach was not followed, with Shell's consultants merely noting a request for five additional meetings to be held without appearing to hold them or to respect the Kings' position that their "support is conditional to ongoing consultation and open communication between all the role players in this project in the future." I am not aware of any such ongoing consultation, and the 2020 audit does not mention Kings or communities at all.

55 I note that the EMPr records that Mr Stephenson claimed to represent Princess Wezizwe Sigcau from the Royal Family with jurisdiction over Amadiba. I have spoken with Princess Sigcau and she denies ever giving such a mandate to Mr Stephenson, who she only remembers from an attempt to develop a commercial bamboo project. We will file an affidavit from Princess Sigcau in due course.

56 I note that I only learned about the seismic blasting plan when SLR's notice was placed in the media. I do not know any member of our community who was aware of the application to blast our seas.

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**b. Dwesa-Cwebe**

- 57 The Third Applicant is the Dwesa-Cwebe Communal Property Association. The Dwesa-Cwebe community is made up of seven villages – Mendwane, Hobeni, Cwebe, Ngoma, Ntlangano, Mpume and Ntubeni – which border the Dwesa-Cwebe Reserve. The Reserve is situated along the coast on which the proposed seismic surveys are to be performed. The Dwesa-Cwebe CPA is the owner of the Dwesa-Cwebe Reserve.
- 58 Members of the Dwesa-Cwebe community have enjoyed customary law rights of access to the marine resources in the Reserve for well over a century. Forcefully relocated to land adjacent to the Reserve from 1900 to 1950, the community lost access to significant portions of their ancestral land and were prohibited from exercising their customary law rights of access to the marine resources inside the Reserve.
- 59 The villages that comprise Dwesa-Cwebe are historically fishing villages. Members of the community have relied, and continue to rely, on the sea for sustenance mainly through fishing and harvesting mussels. For many inhabitants of these villages, which are some of the poorest in the country, fish and mussels are their only source of protein.
- 60 Some members of the community also sell some of their sea harvests to tourists in the area as a means of making a living. Through adherence to their time-

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honoured traditions, the community's fishing practices are sustainable and pose no great risk to marine life in the area.

- 61 The ocean is indeed an integral part of the community's cultural identity and customary system.
- 62 The proposed seismic surveys, however, threaten great disruptions to the prevailing ecological, marine life, and socio-economic conditions in and around the Dwesa-Cwebe community.
- 63 I attach the affidavit of Mncedi Mhangala which sets out their case in more detail and ask that it be incorporated herein.

**c. Port St Johns**

- 64 The Fourth Applicant is Ntsindiso Nongcavu. His affidavit is attached and I ask that it be incorporated herein. In the following I summarise it briefly.
- 65 Mr Nongcavu is a fisherman from Port Saint Johns. He was born in Sicambeni village, which borders the Silaka Reserve where his ancestors were forcefully removed in the 1940s.
- 66 He has fished since he was 12 and now makes his living from fishing. As with his parents and grandparents before him, he follows his community's customary sustainable fishing practices.

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67 Mr Nongcavu explains that the sea is important to his community as a site where ancestors reside and traditional healers work. The sea also plays a key role in the growing tourism enterprises in his community.

68 Mr Nongcavu is concerned that the sound blasts may kill marine species or force them to migrate. He notes that when a large and noisy ship docked near his community, no fish were caught until after the ship left. Mr Nongcavu is also concerned that this is a step towards Shell's production in our seas, which will worsen climate change and may lead to polluted seas.

**d. Kei Mouth**

69 The Fifth and Sixth Applicants represent fishers at Kei Mouth along the Wild Coast. Their affidavits are attached and I ask that they be incorporated herein. In the following I summarise them briefly.

70 Both are members of the Kei More Fisheries Co-operative, and fish to sustain their families.

71 They confirm that their communities rely on the sea for cultural and spiritual practices.

72 They were not consulted in the EMPr process, and were surprised to learn of the Exploration Right eight years after it was granted.

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73 They support the relief sought by the Applicants.

**e. Sustaining the Wild Coast**

74 Sustaining the Wild Coast seeks to support Wild Coast communities' struggle for self-determination and conservation.

75 Our work to date has focused on Amadiba, but our support to tourism sees opportunities for sustainable livelihoods created for homesteads along the entire stretch of the Wild Coast.

76 SWC has witnessed and supported the hard work and determination of Amadiba residents to protect their land and livelihoods from coastal dune mining for 14 years, and their commitment to develop ecotourism and agroecology as drivers for sustainable development. The Amadiba area is a cultural landscape of huge historic and significance being one of the few places in South Africa where the indigenous inhabitants were not dispossessed by colonial settlement or apartheid betterment schemes.

77 The Amadiba area – as well as the entire Wild Coast - is also an area of profound environmental significance. There are very few places in South Africa where there is such an abundance of plant biodiversity, intact grassland, coastal, estuarine, river and marine ecosystems. The grasslands alone are significant carbon sinks which help to sequester carbon in our rapidly warming world. The

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Mpondoland Centre of Endemism is one of 35 global biodiversity hotspots and exposing the coastline and ocean of this gem to the risk of environmental destruction would be a desecration. The Agulhas current renders the ocean off the Wild Coast one of the richest marine environments in the world and also renders it highly risky for mineral extraction. An oil spill in the vicinity of this powerful current would be a catastrophe for the entire East Coast of South Africa and particularly to the residents of the coastal villages of the Eastern Cape. Grassroots, community owned and managed ecotourism is alive and well and growing along the Wild Coast. Visitors come from all over the world to enjoy our stunning land. They come to swim in the sea and our famous waterfalls that fall directly into the ocean. They come to witness the world-famous sardine run and the shoals of predator fish and mammals that follow the sardines. The Eastern Cape, with its significant natural resources on land and offshore offers government an opportunity to explore new and more sustainable systems of developing rural economies in contrast to the extractive models of development that have dominated in South Africa. However, the seismic survey is one step in the government's plan for industrial development in the Eastern Cape and offshore that will create some jobs and GDP but have significant and lasting negative impacts on the rich natural resources of the Eastern Cape Coast which constitutes its greatest and enduring wealth, if developed with sustainability as a fundamental principle.

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78 The struggle of the Amadiba community to resist coastal dune mining for nearly 20 years is illustrative of the government's disregard for the rights of rural communities and its attempts to impose largescale, top-down "development" projects on communities whilst disregarding or underemphasising the negative impacts of these projects on the communities' land-based livelihoods and the environment that sustains them. This does not bode well for the residents of the Wild Coast who stand to lose a lot and gain little nothing from the exploitation of offshore fossil fuels.

**f. All Rise**

79 All Rise: Attorneys for Climate and Environment Justice supports communities to defend their environment. The affidavit of Ms Lihle Mbokazi is attached and I ask that it be incorporated herein.

80 Ms Mbokazi notes the central role that the sea plays in customary livelihoods and cultural practices.

81 She then notes that public participation is a fundamental aspect of any NEMA environmental authorisation process. If followed properly this engagement would have either resulted in more effective mitigation measures with greater credibility, or it may have resulted in the project not being approved.

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- 82 The lack of any environmental impact assessment processes results in mistrust by the local community. This results in years of hardship and, in some areas in which she has worked, violence. All Rise accordingly supports our relief.

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## **V. BLASTING OUR SEA...IN ORDER TO DRILL IT**

83 In this section I set out the history of the Exploration Right that Shell intends to exercise shortly and describe the proposed activities. I do this entirely from Shell's documentation because none of the Applicants have been consulted regarding the Exploration Right or its impact.

84 I note that we are not asking this Honourable Court to adjudicate the merits of what ought to happen. I merely set out the impacts to highlight how important the NEMA process is and the harm that will result if it is not followed.

85 In 2013, Impact Africa Limited prepared an application for an Exploration Right to use seismic surveys to seek out oil and gas reserves in terms of section 79 of the MPRDA. The application was accepted by the Petroleum Agency of South Africa ("PASA") on 01 March 2013. The Exploration Right sought covered several proposed Exploration Areas between Port Elizabeth and Ramsgate.

86 A public comment period was opened for interested and affected parties to raise issues between 22 March and 12 April 2013.

87 A draft EMPr was made available for public comment between 24 May and 24 June 2013, and a few comments were received.

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- 88 A final EMPr was produced on June 2013. It was approved by PASA with very few conditions on 09 September 2013. It was subsequently approved by the Deputy Director-General of Mineral Resources and Energy on 17 April 2014 and the Exploration Right was granted on 29 April 2014.
- 89 The EMPR and its annexures are quite lengthy. I therefore do not attach it here. I have instructed my legal representatives to engage with the Respondents with a view to reaching agreement on how best to present the EMPr to this Honourable Court.
- 90 The EMPr provided for three key activities that were meant to commence in 2014 and to take three years:
- 90.1 Airborne geophysics surveys;
  - 90.2 Seismic surveys; and
  - 90.3 Sampling the seabed.
- 91 As this application deals with attempts to commence the seismic survey, I deal only with that aspect of the Exploration Right.
- 92 At the outset, I note that it is important to remember that this exploration is not done purely for scientific inquiry. The entire purpose of the exploration is to seek out oil and gas with a view to drilling and producing it in our seas. No consideration is given to this aspect in the EMPr. There is specifically no

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meaningful consideration of whether the harms the survey will cause are justifiable in the context where production would intensify climate change.

- 93 I believe this is particularly important as, according to an October 2021 report by the International Energy Association entitled *Net Zero by 2050: A Roadmap for the global energy sector*, there should be no investment in any new oil or gas projects from 2021 onwards if we have any chance of limiting the rise in global temperatures to 1.5 degrees Celsius. It is therefore irrational and irresponsible for South Africa to contemplate any new oil and gas projects at all at this point in time. This is a further reason that the passage of time of eight years between the completion of the EMPr and their planned execution is so problematic.
- 94 Turning to the survey itself, a seismic survey uses shock waves generated by an 'airgun array' to investigate underground properties. In this case, the survey will map out potential opportunities to drill for oil and gas under our seas.
- 95 As noted in the EMPr, the airgun array's 'emissions' will be between 220 – 250 decibels at the source. To understand how loud this is, the Honourable Court should appreciate that a jet plane produces 120 decibels when taking off, a jackhammer produces 130 decibels, and fireworks and gunshots produce 140 decibels. 150 decibels will burst a human's eardrum, while 185 – 200 decibels will kill a human being.

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- 96 Given how loud this is, it is no surprise that the sounds are "often audible to ranges of 50-75 km and that detection ranges can exceed 100 km with efficient propagation or in deep water."
- 97 As the EMPr notes, there is 'limited information' on the impact of underwater noises on humans, and vertigo and 'discomfort effects' have been noted for human divers.
- 98 The EMPr assesses the potential impact on various marine life.

### **Plankton**

- 99 Plankton form an essential part of the marine food chain, and are key to the sustainability of fisheries. The EMPr suggests that plankton 'are not known to be affected by seismic surveys', though it also notes that seismic firing might result in 'pathological injury or mortality' citing limited sources from 1971, 1992, and 1994. The EMPr specifically relies upon research that suggested it would be unlikely for any impact outside of 10 metres. Based on these sources, the impact on plankton is deemed to be 'negligible' and no mitigation measures are proposed.
- 100 While the EMPr notes that seismic surveys should avoid concentrated spawning by 50 km, the EMPr says no active avoidance of spawning grounds is deemed necessary.

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101 The EMPr is out of step with more recent scholarship that found impacts on plankton at over 1km away. This study found decreased zooplankton abundance and noted that larval krill were killed by the blasts.<sup>1</sup>

102 This harm is not addressed by the EMPr, but would be by a NEMA process.

### **Invertebrates**

103 Regarding invertebrates, the EMPr again notes that there is 'little published information.' It also notes that giant squid strandings due to 'severe internal injuries' have occurred following seismic surveys. Despite this, the potential for impacts is deemed 'negligible.'

### **Fish**

104 The impact on fish has also received limited study. The majority of studies considered the impact of seismic blasts on captive fish. These experiments revealed results including transient stunning and injuries to hearing organs. Potential impacts are listed as 'pathological trauma or mortality' with indirect effects of 'reduced catches resulting from changes in feeding behaviour or vertical distribution.' Notably, 'information on feeding success of fish (or larger predators) in association with seismic survey noise is lacking.' The EMPr notes

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<sup>1</sup> McCauley, R., Day, R., Swadling, K. et al. Widely used marine seismic survey air gun operations negatively impact zooplankton. Nat Ecol Evol 1, 0195 (2017). <https://doi.org/10.1038/s41559-017-0195>.

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the potential for significant impact in breeding populations, but does not propose any specific mitigation to address this risk.

- 105 The intensity of the seismic blasts on fish are assessed as 'high', but the impact is deemed negligible or low because of the short-term period of the blasts.

### **Cetaceans**

- 106 The EMPr itself begins its discussion of impacts on cetaceans (whales and dolphins) by expressing that:

*"When discussing the potential effects of seismic surveys on marine mammals we should bear in mind the lack of data, and resultant uncertainty, concerning the auditory capabilities and thresholds of impacts on the different species encountered and the individual variability in hearing thresholds and behavioural responses which are likely to influence the degree of impact (Luke et al. 2009; Gedamke et al. 2011). This uncertainty and variability can have a large impact on how risk to marine mammals is assessed. Assessing the impact of seismic activity on populations in the Agulhas system is further hampered by a poor understanding of the abundance and distribution of many of the species found here." [Emphasis added]*

- 107 The EMPr's own statement that it is challenging to assess risk to marine mammals due to seismic surveys should dictate that the precautionary principle of environmental law should be invoked when contemplating activities with material impacts on cetaceans. Instead, in spite acknowledging the above uncertainties and challenges in assessing risk, the EMPr goes on to make express statements about high, medium, and low risk scenarios for cetaceans. As stated in the EMPr, the proposed Exploration Area lies within the migration

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paths of humpback whales and adjacent to nearshore areas frequented by southern right whales. The EMPr goes on to state that, while the survey's timing in the summer months means that encounters with migrating whales should be minimal, some humpbacks on their return journey in November or December may still be encountered. It also acknowledges that the survey is likely to "frequently encounter resident odontocetes such as common dolphins and pilot whales which are present year-round and may encounter sperm whales in offshore areas". It goes on to expressly acknowledge that 'the impact of potential physiological injury to both mysticete and odontocete cetaceans as a result of high-amplitude seismic sounds is deemed to be of a high intensity, but would be limited to the immediate vicinity of operating airguns within the survey area'. While the EMPr proclaims that the risk is reduced to low with mitigation, it is not clear how this conclusion was reached given the EMPr's statements of uncertainty as to how to assess risk. A 2021 study on Deep Sea Mining and related activities states that "Anthropogenic underwater noise is recognized by science and a wide range of international organizations as a major threat to marine life. There is solid evidence that noise emissions from vessels and active acoustic exploration (e.g. sonar and seismic surveys), which are relevant to DSM activities, have significant harmful effects on marine species."<sup>2</sup>

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<sup>2</sup> Risch, Denise & Belin, A. & Entrup, N. & Leaper, R. & Panella, E. & Taylor, B. & Weilgart, Lindy & Werner, S.. (2021). Underwater Noise - The neglected threat to marine life.

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**Statement of Doctors Elwen and Gridley**

108 I note that Dr Simon Elwen and Dr Tess Gridley, two leading marine experts, have prepared a joint statement regarding the proposed seismic survey. I ask that it be incorporated herein.

109 I highlight two themes from their statement:

109.1 The first is that they emphasise what is already evident from the EMPr: there are significant knowledge gaps regarding the impact of seismic surveys on marine life. Unlike the EMPr, they argue that the precautionary approach set out in NEMA suggests that a lack of knowledge on impacts should weigh against the survey, not in favour of it.

109.2 The second is that they highlight numerous studies that have been published since the EMPr that better explain the harm that will result from the seismic survey.

110 I believe that their report underscores the need for a NEMA environmental authorisation process before any seismic survey may occur.

**Timeline continued**

111 In the following I set out what has happened since the EMPr was approved.

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- 112 In December 2014 PASA recommended that the buffer area around marine protected areas be reduced from 10 km to 5 km.
- 113 It is unclear what happened between 2014 and 2020 beyond some 2D seismic surveys under a 'standalone Reconnaissance License' and the purchase of some licensed data, as well as the transfer of the Exploration Right to Shell.
- 114 In 2017, an application to renew the Exploration Right was made. It was granted on 20 December 2017 and executed on 25 May 2018. It was due to expire on 13 March 2020, but a further renewal was sought.
- 115 While this application was pending, an 'audit' was conducted in 2020 regarding the Exploration Right. As no activities had taken place, no meaningful information can be gleaned from this audit report. In the words of the report, the "compliance audit against the EMPr was largely not applicable, since no activities in respect of the Transkei Algoa Exploration Right have commenced at the time of reporting."
- 116 The further renewal was presumably granted as SLR announced that a survey would be undertaken under Exploration Right 12/3/252 on 29 October 2021.
- 117 This announcement was placed in newspapers on 02 November 2021.

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118 I first came to know about the announcement when it reached wide circulation after being posted on oceansnotoil.org on 04 November 2021.

119 I registered as an interested and affected party on 07 November 2021 as appears from **SZ2**. From this time, I supported the petitions in circulation that were part of a mass campaign that mobilised to ask the Ministers of Mineral Resources and Energy and of Forestry, Fisheries and the Environment to pause the proposed activities. Approximately 379 000 people signed a Change.org petition to this effect, and a further 37 160 objection comments were made through the *Dear South Africa* online public participation mechanism at the time of signing this affidavit. It is worth noting that this mass outcry speaks to a key purpose of public participation, namely to promote the legitimacy and acceptance of a decision - both of which are clearly absent among the South African public in relation to Shell's proposed activities on the Wild Coast.

120 I was genuinely hopeful that the state would intervene to protect our constitutional rights.

121 On 17 November 2021 I engaged with committee members of executive committee of the Amadiba Crisis Committee, an unregistered association formed within Amadiba to campaign for sustainable development and against imposed development. After briefing the committee members, they decided to join the campaign to call on the state to stop the seismic surveys. On 19 November 2021, the Crisis Committee made a Facebook post calling on the state to take action.

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This post received wide circulation, and lead to several communities reaching out to myself and the Committee to express their desire to challenge Shell.

122 On 22 November 2021 the Crisis Committee invited members of the Umgungundlovu community to gather to discuss matters including the Shell litigation. At this meeting the community decided to mandate Mashona Wetu Dlamini and Richard Spoor Inc, Attorneys to represent them in challenging Shell's proposed activities.

123 After this decision, Richard Spoor Inc, Attorneys engaged with Cullinans Attorneys, the attorneys for the Applicants in case number 3865/2021, who briefed them on the letters of demand that were being sent. We were then planning on joining the litigation brought by Cullinans' clients. Over the weekend of 27 – 28 November 2021 two things became apparent that lead to a change in approach:

123.1 It became clear that we would not be able to prepare community affidavits in time to participate in the other application.

123.2 The relief sought by those applicants did not cover the relief that we wanted to seek.

124 We accordingly set to preparing our own papers as quickly as possible, and have filed this application as soon as we could. This account is confirmed by the affidavits of Mashona Wetu Dlamini and Nonhle Mbuthuma.

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## **VI. BLASTING THE SEA REQUIRES BOTH THE MPRDA AND THE NEMA**

125 Shell has an exploration right in terms of the MPRDA together with an approved environmental management programme in terms of that same Act.

126 Shell does not have an environmental authorisation in terms of the NEMA.

127 In terms of both section 5A of the MPRDA and 24F of the NEMA Shell may not commence using its exploration right. Indeed, both the MPRDA and the NEMA make it an offence for Shell to commence its activities without an environmental authorisation.

128 This position is quite clear from the plain text of both the MPRDA and the NEMA. I am advised, however, that Shell may attempt to argue that it is somehow exempt from these obligations because it's MPRDA EMPr was transformed into a NEMA environmental authorisation. This argument is contrived. While this is a legal point that will be addressed by counsel, I deal with it briefly here.

### **a. What did the MPRDA require?**

129 In 2013, section 39(2) of the MPRDA required an applicant for an exploration right to prepare an EMPr. An EIA was not necessary except for applicants for mining rights and production rights.

130 Section 39(2) provided for the following requirements in an EMPr:

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130.1 the establishment of baseline environmental information;

130.2 an assessment of the likely impact of activities on the environment, socio-economic conditions, and any “national estate referred to in section 3(2) of the National Heritage Resources Act”;

130.3 the development of an environmental awareness plan to help employees “avoid pollution or the degradation of the environment”; and

130.4 describe how pollution and environmental degradation would be controlled or remedied.

131 Regulation 52 of the MPRDA Regulations did not add any meaningful requirements to these requirements aside from the consideration of cultural heritage and the requirement to propose mitigation measures to minimise adverse impacts and benefits.

**b. What does a NEMA Environmental Authorisation require?**

132 Section 5A of the MPRDA provides that no exploration activities can occur without an environmental authorisation.

133 Section 24F of the NEMA prohibits the commencement of any listed activity without an environmental authorisation.

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- 134 Under both sections, Shell requires an environmental authorisation to commence its exploration activities.
- 135 As it does not have one, this Honourable Court should not permit it to proceed with its planned seismic survey.
- 136 I note that this is no academic matter. NEMA's environmental protections are distinct from the MPRDA's. They are better. If this is contested counsel will address this point in argument with reference to the relevant statutes, regulations, and other policy instruments.
- 137 Section 12 of the NEMA Amendment Act 62 of 2008 provides that an EMPr approved under the MPRDA prior to the commencement of the Amendment Act (on 08 December 2014) "must be regarded as having been approved in terms of (NEMA)."
- 138 We submit that this text means what it says – an approved EMPr granted under the MPRDA before 08 December 2014 is deemed to be an approved EMPr under the NEMA after 08 December 2014.
- 139 It has been argued that this deeming provision transforms an MPRDA EMPr into a NEMA environmental authorisation. We anticipate Shell taking this point. I note that in response to a public comment on the draft EMPr questioning whether Shell had sought an EA in terms of NEMA, Shell's consultants alleged that an

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EA in terms of NEMA was not required before commencing with mining activity if authorisation was granted in terms of the MPRDA.

140 Shell placed reliance on the Constitutional Court's decision in *Maccsand v City of Cape Town* to support its position. However, this position is untenable.

141 Neither the Supreme Court of Appeal nor the Constitutional Court actually dealt with the question. Instead, it was the High Court per Davis J which held that section 24(8)(a) of NEMA requires that notwithstanding any authorisation granted under any other law, an EA under NEMA had to be obtained before mining activities could be undertaken. This finding was left undisturbed on appeal by the Supreme Court of Appeal and the Constitutional Court both of whom decided the *Maccsand* matter on different bases, which were purely technical in nature.

142 I note six other points that support our position that NEMA environmental authorisations are required:

142.1 Firstly, the NEMA defines EMPRs and environmental authorisations separately. They simply do not – and cannot – mean the same thing.

142.2 Secondly, prior to the One Environmental System both NEMA EAs and MPRDA EMPRs were required. It is therefore inconceivable that an EMPr would transform into an EA.

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142.3 Thirdly, section 24N(1) of NEMA provides that the Minister of Mineral Resources and Energy may require the submission of an EMPr “before considering an application for an environmental authorisation”. Plainly, that an EMPr may be required prior to an application for an EA being considered must mean that the deeming provisions of section 12 of the NEMA Amendment Act do not transform an EMPr under the MPRDA into an EA under NEMA.

142.4 Fourthly, Parliament passed an Act to amend the MPRDA to introduce a new section 38B specifically providing in 38B(1) that an EMPr granted before 07 December 2014 “shall be deemed to have been approved and an environmental authorisation been issued in terms of the National Environmental Management Act, 1998.” This section has not yet commenced. I note that this section would be superfluous if section 12 of the NEMA Amendment Act did what is argued. I note that it is clear that this is no mistake. This is so because the Mineral and Petroleum Resources Development Amendment Bill 15 of 2013 amended the text of the current, inoperative section 38B(1). This Bill was passed by both houses of Parliament, but was sent back to Parliament by the President on the grounds that its constitutionality was in question and the public participation process had been inadequate. The Bill is still pending before Parliament, and it is clear that the executive has consciously decided to wait until section 38B(1) is amended by the Bill or another Bill before bringing it into operation.

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142.5 Fifthly, given their sensitive, Parliament specifically regulated marine ecosystems with their own legislation: the National Environmental Management: Integrated Coastal Management Act 24 of 2008 ("ICMA"). ICMA does not provide for its own environmental authorisation process. Instead it provides for additional factors to be weighed up in the NEMA authorisation process. If NEMA need not be complied with, Shell will also escape compliance with ICMA.

142.6 Finally, in weighing up competing interpretations I am advised that the Constitution must be considered. While I deny that there is any ambiguity in the statutes, if there was it is plain that the interpretation that gives better effect to constitutional rights is that the NEMA must be complied with.

143 Plainly Shell requires an environmental authorisation to proceed with their activities. They do not have one. They should not be allowed to proceed.

144 Counsel will expand upon this issue point in argument.

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**VII. AN INTERIM INTERDICT IS JUSTIFIED IN PART A, AND A FINAL INTERDICT IS JUSTIFIED IN PART B**

145 This is an application that seeks an urgent interim interdict in Part A pending an application for a final interdict in Part B. In the following section, I demonstrate how the requirements for interim and final interdicts are met.

**a. We have a prima facie right and a clear right**

146 The relationship that we have with the sea is forms an integral part of our culture and our livelihood. Not only does the sea provide us with sustenance, it also allows us to commune and connect with our ancestors who once trod the same path as us.

147 Our relation to the sea is sacred and our fishing and harvesting practices, which strike an ecological balance between our needs and the need to protect the marine life, have maintained this harmonious relationship to date.

148 The EMPr acknowledges that the "East Coast, particularly the Transkei coastal area, is home to a large poor rural community that is directly reliant on the coast/marine resources to supplement their livelihoods". Despite this acknowledgment, the EMPr, on the basis of limited study on the impact of the intensity of the proposed seismic surveys on fish, concludes that the impact is deemed negligible or low because of the short-term duration of the surveys.

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- 149 Our right to culture under section 30 of the Constitution will be adversely affected by the proposed seismic surveys, as will our section 24 right to environmental protection.
- 150 It is also inarguable that the proposed seismic surveys will have an adverse effect on the environment. We have the right under section 32(1)(e) of NEMA to act in the interest of protecting the environment.
- 151 The conclusion reached by the EMPr in respect of the impact of the surveys on fish in the Exploration Areas does not adequately account for the risk of 'pathological trauma or mortality' or a change in the behaviour or migratory patterns of fish in the Exploration Areas and the resultant impact on the marine ecosystems in those areas.
- 152 The EMPr also does not adequately address the risk of serious impacts to zooplankton from the proposed seismic surveys, which pose potential risks to the increasingly fragile marine food chains in the Exploration Areas. Nor does it explain and address the challenges that it itself alludes to with respect to assessing risk to highly sound sensitive cetaceans.
- 153 I am advised that the Constitutional Court in 2016 ruled that "[a]nimal welfare is connected with the constitutional right to have the 'environment protected . . . through legislative and other means'. This integrative approach correctly links the suffering of individual animals to conservation, and illustrates the extent to

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which showing respect and concern for individual animals reinforces broader environmental protection efforts.”<sup>3</sup> The physiological and other risks to cetaceans such as whales and dolphins (and any other marine animals) through the survey process therefore directly impinges on our constitutional right to a healthy environment enshrined in section 24 of the Constitution.

**b. We apprehend irreparable harm if an Interim Interdict is not granted, and there will be harm if a final interdict is not granted**

154 Should an interim interdict not be granted and should the blasting go ahead in the absence of an environmental authorisation as planned, we contend that there will be irreparable harm on two levels:

154.1 Firstly, this disrespect for our ocean and our culture by a corporation which has failed to even consult us will cause irreparable harm to us on a spiritual and cultural level through upsetting our ancestors as discussed above.

154.2 Secondly, even from the MPRDA's limited environmental process back in 2013, the EMPr reveals harm that will occur from the blasting. This harm is purportedly planned to be mitigated, but cannot be denied. There is a significant difference between harm being “mitigated” and harm being “repaired”. This likelihood of harm is exacerbated by the fact that the EMPr

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<sup>3</sup> *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* (CCT1/16) [2016] ZACC 46 at para 58.

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is out of date with current research as set out in the statement by Doctors Elwen and Gridley.

155 Once the blasting of the sea commences, damage will be irreversible. The Constitutional Court's interpretation of section 24 of the Constitution is such that harm to individual marine animals falls within its remit.

156 In the absence of an environmental authorisation under NEMA, it is also difficult to see how or if any environmental damage or harm caused by the seismic surveys can in fact be mitigated against as alleged. As mentioned above, the EMPr fails, in particular, to clearly demonstrate how its proposed mitigation measure will limit the physiological impacts of seismic blasts on cetaceans given its statement that it is challenging to assess risk in the context of cetaceans.

157 Further, the ultimate intention of the exploration process – to ultimately pave the way for drilling for oil and gas – cannot be ignored, particularly so soon after COP26 when countries committed to more ambitious nationally determined contributions by the end of 2022.

158 Ultimately, this Honourable Court should have regard to the precautionary principle and halt the harm.

**c. The balance of convenience favours the Applicants**

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159 A requirement for an interim interdict is that the balance of convenience favours granting the interim interdict.

160 I submit that the balance of convenience favours the Applicants.

161 We have established that a NEMA authorisation is a requirement, or at least that it is likely that this Court will find that it is a requirement in Part B. If this Honourable Court permits the companies to proceed with their seismic blast programme, this will be entirely unlawful and cause unknown harm to the environment that would be prevented or mitigated if a NEMA process had been followed.

162 The NEMA process will provide for significantly more procedural protection for the Applicants and other indigenous communities. It will also provide for more robust substantive considerations, including heritage, culture, socio-economic rights, climate change, and, importantly, ICMA's careful protection of our sensitive marine areas. It also provides for an appeal to a regulator whose mandate is to protect the environment rather than to promote resource extraction at all costs: the Minister of Forestry, Fisheries, and the Environment.

163 Significantly, the Department of Forestry, Fisheries and Environment this year affirmed that importance of assessing the impact of noise on marine environments in the Karpowership decision to refuse to grant an environmental authorisation in the context of a gas to power project, stating that:

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*".. (ii) The actual and potential impacts on the environment as well as socio-economic conditions could not be properly evaluated (particularly insofar as small-scale fisheries are concerned), especially because of the lack of a proper underwater noise impact study and the contradictory information that was made available. iii. The effects of activities on the environment could not receive adequate consideration because one of the major impacts, underwater noise generation, was not fully investigated..."<sup>4</sup>*

164 It could be that the NEMA process results in a refusal to award an authorisation, which means that there will be no seismic survey. Or it could be that more robust mitigation protections are in place. Either way, it is clear that the environment and communities will be better protected and harm either prevented or mitigated. Permitting a project to go ahead in the absence of an environmental authorisation negates this very purpose of the environmental authorisation process.

165 It is also important to remember that Shell's activities would be criminal under both the NEMA and the MPRDA. The fact that they may be able to subsequently defend against future charges due to *mens rea* is all the more reason to grant the interdict before the harm occurs.

166 On the other hand, the companies received their exploration right eight years ago. They were supposed to have commenced the three-year programme in 2014. They have only seen fit to use it now. This means that their activities will

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<sup>4</sup>[https://www.dffe.gov.za/sites/default/files/legislations/EIAapplicationgaspowershipprogramme\\_saldanhabaydecision.pdf](https://www.dffe.gov.za/sites/default/files/legislations/EIAapplicationgaspowershipprogramme_saldanhabaydecision.pdf)

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proceed as planned in 2013 despite new research regarding the impacts of seismic studies and developments in climate science that have been published since. The inconvenience of being delayed for a month or so pending the hearing of Part B pales in comparison to the harm suffered by the Applicants and the environment.

167 The fact that Shell was not involved from the beginning is neither here nor there. They knew that the right was first granted in 2013 and had barely been exercised since. They knew or ought to have known a NEMA environmental authorisation was required to exercise their right. This is particularly so in circumstances where the Western Cape High Court held that NEMA EAs are a requirement for MPRDA activities in 2010, and the companies elected to ignore this decision for over a decade. I note that the EMPr specifically considered the Maccsand case and elected to choose an interpretation that did not require NEMA compliance. Not to mention the fact that the MPRDA has prohibited exploration activities without a NEMA authorisation since 2014.

168 I note that since 2013 the companies renewed their right without any notice to the general public or communities – twice – and gave notice of their intention to exercise their right a mere 29 days before commencing their blasting. It is also notable that Shearwater Geoservices announced its award of the contract to undertake the blasting in question on 18 October 2021. This also demonstrates Shell had finalised commencement plans for the surveys well before notice of their intention to exercise their right was given.

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**d. We have no alternate remedy**

169 There is simply no alternative remedy to an interim interdict or a final interdict available to the Applicants.

170 The relevant state regulators have been asked to intervene. They have declined.

171 We are not able to prevent the companies from commencing as we have had to do with mining companies because the activities are not on our land.

172 Subsequent criminal prosecution – even a private prosecution – will not cure the damage done. Especially where Shell will have a credible defence that it lacked *mens rea* in committing the offence if their criminal conduct is not stopped by this Honourable Court.

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**VIII. BIOWATCH APPLIES**

173 We have brought this application in the interests of communities, the environment, and in the public interest.

174 We do so with such meagre resources we do not yet know if we will be able to pay our lawyers.

175 We have been forced to bring this application because of the state's failure to uphold the Constitution or our environmental legislation.

176 If the application is not successful, we submit that the *Biowatch* rule should apply and that we not be mulcted for costs.

177 Counsel will expand upon this point in argument.

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**IX. THIS MATTER IS URGENT**

178 This matter is urgent. Shell is about to start firing incredibly loud air guns in our sea every ten seconds, or has started already. This conduct is harmful and plainly unlawful.

179 As I noted above, none of the applicants were aware of the 2013 application for an exploration right. I only came to learn of the plan to conduct the seismic study from media reports in early November 2021, and other applicants learned later.

180 We have given a full explanation for why we have come to Court now. We are rural communities who were not previously legally represented on this issue.

181 Given the late hour, we have attempted to provide the Respondents sufficient time to respond. If a *rule nisi* is granted tomorrow for a date after 13 December 2021 then we will engage with the Respondents to arrange a later date for the answering papers to be filed.

182 I note that the issue to be decided is a crisp one: is an environmental authorisation required or not?

183 The Applicants tender their full cooperation in having the final interdict determined as quickly as possible.

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184 It may be that the survey has started as I sign this affidavit. I submit that this does not mean that the matter is not urgent. The harm caused by the survey will be different each day as it reaches different areas and populations.

## X. CONCLUSION

185 In the circumstances, the Applicants pray for the relief sought in our notice of motion, including costs with the costs of two counsel.



**REINFORD SINEGUGU ZUKULU**

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he knows and understands the contents of this affidavit was signed and sworn to at Port Edward on this the 02 of December 2021 in accordance with the provisions of Regulation R128 dated 21 July 1972 as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR 774 of 23 April 1982.



**COMMISSIONER OF OATHS**

SOUTH AFRICAN POLICE
STATION COMMANDER
2021 -12- 02
PORT EDWARD
KWAZULU-NATAL

# R. Sinegugu Zukulu | Curriculum Vitae

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## CAREER OBJECTIVE

- I aspire to ensure protection of Ecological Infrastructure for climate change adaptation of all.
- To ensure protection of Ecological Infrastructure (Mountains, rivers and wetlands) to sustain the flow of ecosystem goods and services for both people and nature.
- To encourage participation of local communities in biodiversity conservation as a tool to improve livelihoods (wildlife economy and or biodiversity economy).

## TERTIARY EDUCATION

University of Stellenbosch – Mphil. Environmental Management, 2008 – 2011

University of Transkei-----BA Ed Education (History and Geography) 1991---1994

## HIGH SCHOOL EDUCATION

BALENI HIGH SCHOOL, in Bizana EC.—Matric (Biology, Mathematics, Physical Science, Geography, English, IsiXhosa) 1990.

## Skills & Abilities

- Climate change adaptation and mainstreaming in development plans.
- Landscape approach to Catchment restoration and landscape management.
- Management and Implementation of EPWP Projects (Working for Water).
- Community Natural Resource Management: Rangelands and livestock management
- Biodiversity Conservation and protection on communal lands areas.
- Project Management (Design, Planning, and implementation): WASH, WfW, Red Meat market access etc.
- Report Writing.
- Community coherence, Social Facilitation, Community Mobilisation and Conflict Resolution.
- Eco-tourism development (tourist guide training, Home stay development etc).

### A. WORK EXPERIENCE

EMPLOYER	POST HELD	DATE FROM	DATE TO	REASON FOR LEAVING
Conservation South Africa (CSA)	Programme Manager: uMzimvubu catchment	Jan 2013	Dec 2018	Fieldwork in the Wild Coast
Indalo Yethu Trust	Stakeholder and Partnerships manager	Oct 2010	Dec 2012	Indalo Yethu Trust closed down
Sustaining the Wild Coast (SWC)	Community Coherence Manager	Jan 2009	Dec 2009	Funding ended
Endangered Wildlife Trust	Conservation Leadership Manager	June 2007	Dec 2008	To be closer to home for struggle against mining at Xolobeni

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SANBI	Environmental Education Officer	Oct 2006	May 2007	Head hunted by EWT for a Manager position
Asizame Landscaping	Project Manager	Sept 2005	Sept 2006	End of contract
Kearsney College	Geography Teacher	Jan 1998	Aug 2005	Changed to environment sector

## **CURRENT AND PREVIOUS WORK ON CONSERVATION**

- UMzimvubu Catchment Restoration and uMzimvubu Catchment partnership chairmanship for six years (2013-2018).
- Guiding Climate change mainstreaming into ANDM IDP including Mbizana LM.
- Have trained and mentored about 50 tour guides, and Field guides, nationally.
- Documentation of Indigenous knowledge of Herbalists on indigenous or medicinal plants
- Convener of Amadiba Tourism development plan
- Leader in the conservation and protection of Pondoland Centre of Endemism.
- Youth Capacity building on Land stewardship (Biodiversity, Environmental management, Eco-tourism, Indigenous knowledge, Agro-ecology etc)

## **Audio-visual products developed on biodiversity protection in the Wild Coast:**

1 Shot a Film on Indigenous Knowledge in 2010: "Nature's Pharmacy"  
Interviewing herbalists in Pondoland about their Knowledge of medicinal plants. <https://vimeo.com/12582565>

2 Published a book in 2012 on "Medicinal and Charm plants of Pondoland"  
(recording indigenous knowledge of herbalists).

3 Guiding tourists sharing Indigenous Knowledge of Mpondoland:  
<https://plantabundance.wordpress.com/2012/06/13/plants-of-pondoland/>

## **INTERNATIONAL PARTICIPATION**

Represented South Africa and presented in the Following International Conferences:

- Conservation International Training of Indigenous People Conservation Leaders on negotiations held in Nanyuki, Kenya in July 2018, and March 2019 in Il Ngwesi Eco Lodge in Laikipia.
- Conservation Stewardship Programme meeting in Colombia March 2017
- Conservation International Learning week meeting in Rio, Brazil in 2015
- Community Stewardship Programme conference in Ecuador in 2008
- International Association for Impact Assessors (IAIA) 2010 in Pretoria
- Geography Olympics in Gdynia (Poland) in 5-10 August 2004

## **LEADERSHIP, AWARDS AND ACHIEVEMENTS**

- Winner of EC MEC Award for Tourism (Lilizela Award)
- Winner of 2019 Ecologic Award in the Eco-Warrior category
- Finalist in 2018 Ecologic Awards in the Eco-Warrior category.

- Nominated as a finalist in 2015 Conservationist of the Year for the SATY Awards ([www.youtube.com/watch?v=Csa2SZqgu74](http://www.youtube.com/watch?v=Csa2SZqgu74))
- Board member of Siyazisiza Trust (2016-Present)
- Board Member of Global Environment Trust (GET) (2010-Present)
- Board member of Sustaining the Wild Coast (SWC) (1996-Present)
- Board member of Wild Coast Sun Mbizanan Development Trust (2006-2007)
- Board Member of Pondo CROP (2000-2004).
- Chairperson of uMzimvubu Catchment Partnership programme (34 organizations)
- Appointed member of Geography Standards Generating Body (SGB) by South Africa Qualifications Authority (SAQA).
- Board Member of THETA (2007-2010).

## **Voluntary work for the protection of biodiversity**

- Spearheaded Tourism development through village based accommodation for the Pondoland Wild Coast
- Devised strategies to ensure voice of the people is heard to the outside world.
- Mentored young people to become stewards of the local biodiversity as guides and ecowarriors.
- Fight against threat of FRACKING in Matatiele and elsewhere, to protect water resources.

## **Published work**

TITLE	PUBLISHER	NUMBER OF TITLES OR BOOKS
IN SEARCH OF GEOGRAPHY: Grades 7-12 (about 11 different textbooks)	OXFORD UNIVERSITY PRESS	2000-2005
What Works for Us – A SA Country Report on Tactics, Tools and Methods for Integrating the Environment Into Decision Making –DBSA	International Institute of Environment and Development London	2009
Medicinal and Charm Plants of Pondoland	SANBI (South African Biodiversity Institute)	2012

## **Publications that mention my contribution to conservation**

- Mkambati and the Pondoland Wild Coast (Foreword) by Div de Villiers and John Costello
- The Promise of Justice (struggle of AmaMpondo to protect their land) by John G. I. Clarke
- Plants in Peril: Domitilla Raíomondo et al.

## References:

- 1) Sheila Berry: Board Member of Global Environment Trust (GET): cell 082 292 7328  
[sheila.berry@globalenvironmentaltrust.org](mailto:sheila.berry@globalenvironmentaltrust.org)
- 2) June Josephs-Langa: CEO of Indalo Yethu: cell 083 236 1825; [june.josephs@gmail.com](mailto:june.josephs@gmail.com)
- 3) Jane Zimmerman: Managing Director of Siyazisiza Trust: Cell 083 255 6797  
[jane@siyazisiza.org.za](mailto:jane@siyazisiza.org.za)
- 4) Sarah Frazee: CEO of Conservation South Africa: Cell 082 823 9785  
[sarah@meatnaturallyafrica.com](mailto:sarah@meatnaturallyafrica.com)



**Subject:** Fwd: Indian Ocean exploration in the Eastern Cape.  
**Date:** Wednesday, 01 December 2021 at 20:48:28 South Africa Standard Time  
**From:** Sinegugu Zukulu  
**To:** Johan Lorenzen  
**Attachments:** image030911.png, image082641.png, image082641.png, image083394.png, image422967.png, image654313.png, image911059.png, image935544.png

**From:** Eloise Costandius <[ecostandius@sirconsulting.com](mailto:ecostandius@sirconsulting.com)>  
**Date:** Mon, Nov 8, 2021, 10:00 AM  
**Subject:** RE: Indian Ocean exploration in the Eastern Cape.  
**To:** Sinegugu Zukulu <[zukulusinegugu@gmail.com](mailto:zukulusinegugu@gmail.com)>

Good day Sinegugu

I can confirm that we have registered you on the stakeholder database for the proposed speculative 3D seismic survey off the Southeast Coast of South Africa.

Kind regards



**Eloise Costandius**  
Associate Environmental Consultant

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lain



RSZ  
NF

**From:** Sinegugu Zukulu <[zukulusinegugu@gmail.com](mailto:zukulusinegugu@gmail.com)>  
**Sent:** Sunday, 07 November 2021 5:52 PM  
**To:** Eloise Costandius <[ecostandius@sirconsulting.com](mailto:ecostandius@sirconsulting.com)>  
**Subject:** Re: Indian Ocean exploration in the Eastern Cape.

You don't often get email from [zukulusinegugu@gmail.com](mailto:zukulusinegugu@gmail.com). [Learn why this is important](#)  
Dear Eloise

Could you please register me as affected and interested party in the off shore exploration along Eastern Cape shoreline.

Regards

Sinegugu