



The Wild Cost of Oil Exploration: Operation Shell

Advancing the good governance of South Africa's natural resource and environmental management for broad-based development.

**A research report by Good Governance Africa
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Executive Summary

Recent significant oil and gas discoveries seen in the Karoo Basin and the Wild Coast of South Africa have sparked a national debate that raised questions about climate change mitigation and adaptation, and the potential negative impact on local ecologies and communities. Specifically, oil exploration off the Wild Coast, using seismic blasting tests by Shell South Africa, a multinational energy company, in October 2021 highlighted critical governance issues related to natural resource and environmental management, as well as whether meaningful consultation processes with affected communities had taken place. Through pressure from interested and affected parties, the Makanda High Court in Gauteng province granted an interdict against the proposed seismic blasting by Shell. The research presented in this report included fieldwork studies among interested and affected communities in the Wild Coast, key informant interviews, as well as a review of relevant documentation and legislation.

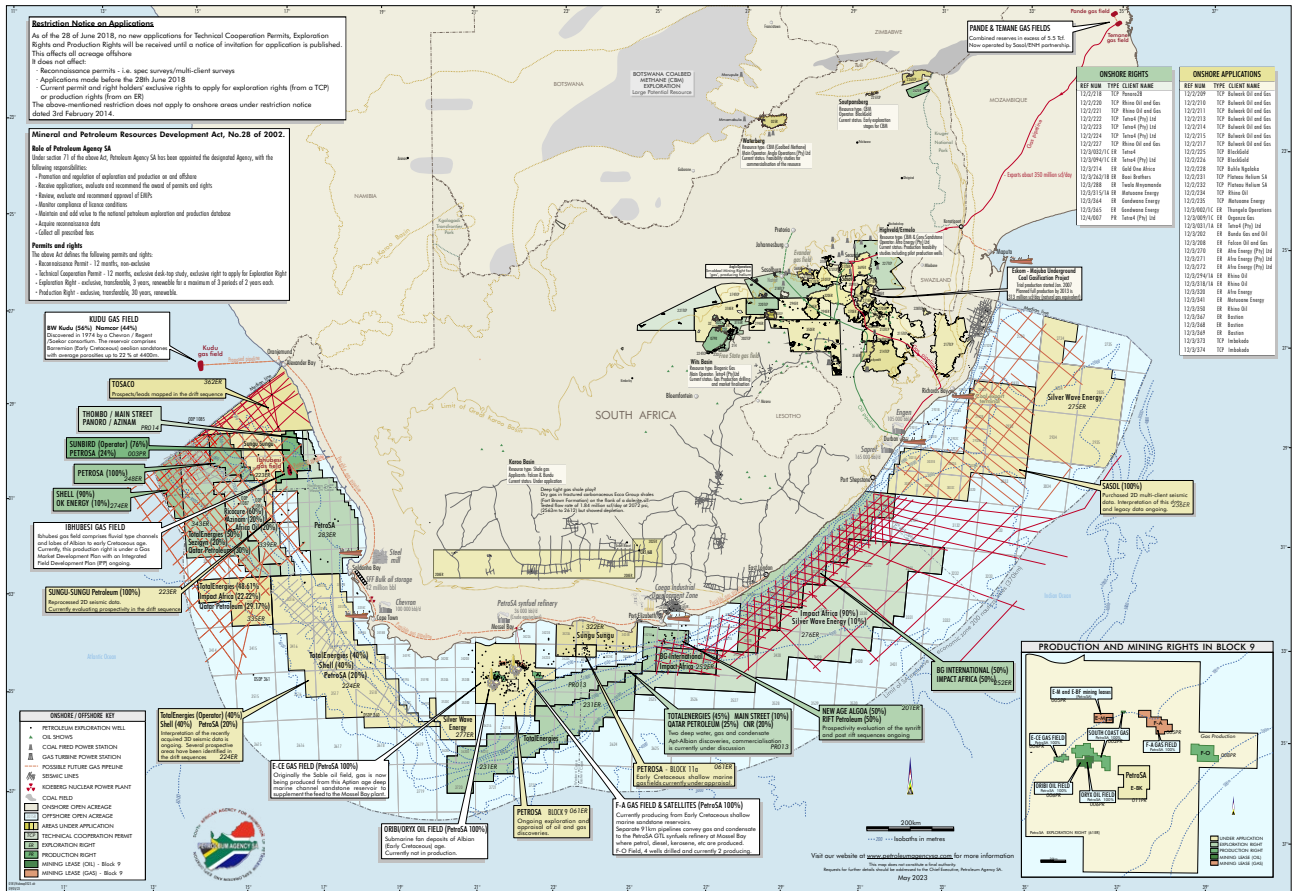
Our preliminary research findings show shortcomings in legislation governing the environmental management of mining, particularly discrepancies within the Mineral and Petroleum Resources Development Act, 2002 (MPRDA) and the National Environmental Management Act (NEMA), 1998, and their subsequent amendments. The seismic survey was legally disputed on the basis that it did not obtain environmental authorisation in terms of NEMA. Second, it revealed the inadequate consultation process with interested and affected parties. In closing, relevant governing departments need to better align and streamline regulatory frameworks that administer the implementation of mining application approvals and management of environmental authorisations. This requires department personnel to have an in-depth knowledge of the legislation and be strongly capacitated to administer relevant regulations accurately and consistently. Multinational corporations need to improve their consultation process mechanisms and gain a better understanding of the environmental context and affected communities. At the centre of improving South Africa's socio-economic conditions, is the political will to strengthen good governance, transparency, and accountability mechanisms.

Recommendations

- Greater efforts must be allocated towards streamlining mining and environmental management legislation, particularly the MPRDA and NEMA. This requires limited ministerial discretion in granting mining and exploration rights, and clear processes delineated in law rather than in regulations.
- An improved system of stakeholder mapping by multinational corporations ahead of exploration activities. This requires an in-depth analysis of affected and interested parties, particularly in understanding the traditional and socio-economic circumstances of affected communities. Additionally, this can be achieved through identifying relevant and active community members who can authoritatively speak to the concerns of community members outside of traditional leaders.
- Facilitate physically accessible meeting points for consultation processes that have adequate notification procedures with appropriate communication and transportation provisions.
- Conduct thorough research and analysis regarding environmental impact assessments with leading environmental scientists and relevant industry experts. This will assist with better comprehending the potential detrimental environmental impacts and enable companies to source more appropriate technologies to carry out exploration activities.
- Relevant governing departments must be transparent about alternative forms of socio-economic developments proposed by interested and affected parties as appropriate for these parties' own livelihoods and cultural benefits.

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PETROLEUM EXPLORATION AND PRODUCTION ACTIVITIES IN SOUTH AFRICA



Graphic: PASA petroleumengencyosa.com

Introduction

South Africa’s total prospective hydrocarbon resources are estimated at 27 million barrels and 60 trillion cubic feet on the south, west and east coast regions.¹ Since 2013, offshore oil and gas exploration has expanded, with significant discoveries and exploration activities by major multinational energy and petroleum companies seen in Mossel Bay, Karoo Basin and the Wild Coast, among many other regions. The oil and gas focus, supported by *Operation Phakisa*, is a cross-sector programme that engages various stakeholders to implement initiatives and provide rapid development of the offshore oil and gas sector by creating an environment that promotes exploration and ultimately builds the ocean’s economy.² The establishment of the *Phakisa* lab in 2014, a multi-stakeholder group, provided a detailed problem analysis, priority setting, intervention planning and implementation plan for creating an ocean economy through

oil and gas exploration and production. Consequently, there has been a rapid increase in the application and granting of offshore exploration rights and licences over the past decade.

While prospects of an ocean economy could unlock more investment towards economic growth and development, historical accounts of mineral discoveries and production have not *consistently* turned to meaningful economic growth and development in South Africa. A phenomenon known as the *Resource Curse*, originally coined by development scholar Richard Auty in 1993, with the first econometric work on the subject published in 1995 by economists Jeffery Sachs and Andrew Warner³, appears to have afflicted South Africa. The *resource curse* is the paradoxically negative impact of a country’s natural resources on its economic, social, and political well-being. Since 1993, many scholars have contributed to the academic literature exploring the

1 According to the [Petroleum Agency of South Africa](#). Agency responsible for the promotion and regulation of offshore exploration and production.
 2 Ken Findlay, “Operation Phakisa and Unlocking South Africa’s Ocean Economy,” *Journal of the Indian Ocean Region* 14, no. 2 (May 4, 2018): 248–54, <https://doi.org/10.1080/19480881.2018.1475857>.
 3 Jeffery D. Sachs, Andrew M. Warner. 1995. “Natural Resource Abundance and Economic Growth.” National Bureau of Economic Research: Working Paper Series. 5398.



Above: Nguni cow roams freely on the Wild Coast, Eastern Cape.

nature of this relationship between mineral extraction and development in resource-rich countries. South Africa's poor socio-economic trajectory⁴ is partly explained by this phenomenon, albeit being endowed with the world's largest reserves of platinum group metals, manganese, among the largest gold, diamonds, chromite ore and vanadium deposits.⁵ Increasingly, climate change and environmental considerations have been integral, in part, to *reversing the resource curse* to build resilient economies that are environmentally and socially sound.

The recent significant oil and gas discoveries and exploration plans referenced above sparked significant national debate pertaining to climate change mitigation and adaptation, given the importance of the latter in building resilient communities. Notably, attempted oil exploration off the Wild Coast, using seismic blasting tests⁶ by Shell South Africa, a multinational energy and company, in October 2021 raised critical governance issues related to natural resource and environmental management, including the extent to which meaningful consultation processes with affected communities were followed. Through pressure from interested and affected parties, the Makhanda High Court in

the Eastern Cape Province granted an interdict against the proposed seismic blasting by Shell in late December 2021.⁷

This research report examines South Africa's political economy that has informed the current relationship between Shell and relevant government departments and the governing party by reviewing and assessing publicly available documents and media reporting on the subject. Using open-source and publicly available information, it interrogates the interplay between natural resource governance and environmental concerns by assessing whether sufficient economic value has been attributed to local environmental health and if the project application process fully followed mining and environment regulations. Importantly, through primary fieldwork research, it assesses the processes in which local communities were consulted and whether the consultation processes were in line with local development plans. This included qualitative interviews that took place in June 2023 with community members and relevant stakeholders of Port St Johns, Amadiba and Port Edward within the Wild Coast region. The field research findings will be presented in summary format, highlighting key concerns of community members and stakeholders interviewed.

4 Ainsley D. Elbra. 2013. "[The forgotten resource curse: South Africa's poor experience with mineral extraction.](#)" Elsevier Resources Policy, Volume 38, no4(2013):549-557.

5 Ross Harvey, "Mineral Rights, Rents and Resources in South Africa's Development Narrative," Occasional Papers (Johannesburg, 2015), http://www.saiia.org.za/doc_download/918-mineral-rights-rents-and-resources-in-south-africa-s-development-narrative.

6 Seismic blasting tests refers to underwater explosions or discharges at intervals of 10 to 20 seconds which continue 24 hours per day for up to five months.

7 Jerome Amir Singh, "Seismic Surveys: What Constitutes Meaningful Consultation?," *Quest* 18, no. 1 (2022), <https://journals.co.za/doi/pdf/10.10520/ejc-quest-v18-n1-a2>.



Above: Mtentu River in Umgungudlovu, Eastern Cape.

Background and Project Status

In early 2013, Impact Africa Limited, a UK-based oil and gas exploration company, applied for an Exploration Right in terms of section 79 of Mineral and Petroleum Resources Development Act, 2002⁸. As part of this application, an Environmental Management Programme (EMPr)⁹ as required under the National Environmental Management Act 107 of 1988 (NEMA) was submitted for approval in terms of the then section 39 of the MPRDA. This exploration area comprised license blocks 3425D, 3426C and 3426D – (Algoa Exploration Area) and 3327B, 3327D, 3327D, 3427B, 3328 (AC), 3228 C and D, 3229 (A-C), 3129D, and 3130 (A-C) (Transkei Exploration Area). This exploration right covered exploration areas between Port Elizabeth and Ramsgate. Upon submission, the Petroleum Agency of South Africa (PASA) accepted the application in March 2013 and required a public participation process to be conducted between March and April 2013. Subsequently, a draft EMPr was made available for public comment between May and June 2013.

In April 2014, Minister of Mineral Resources and Energy and PASA issued Impact Africa with an exploration right and renewed it 2017 and 2020. The second renewal was effective for a period of two years from August 2021. Shell South Africa, as operator of the exploration right, intended to conduct seismic surveys in abovementioned blocks. The process of 3D seismic surveying involves extremely loud underwater

explosions or discharges at intervals of 10 to 20 seconds which continue 24 hours per day for four to five months. However, recent studies¹⁰ have seismic surveys “would have no discernible effect on zooplankton biomass on a regional scale.”¹¹ Additionally, the EMPr detailed that a vessel will tow an airgun array with up to 12 or more lines of hydrophones spaced to 5 to 10 meters apart and between 2 to 25 meters below the water surface. The array can be upwards of 12000 meters long and 1200 meters wide.

In December 2021, in an open letter¹² addressed to the President and Ministry of Mineral Resources and Energy and Ministry of Forestry, Fisheries and the Environment, leading marine scientists expressed concerns about harmful impacts on marine ecosystems and coastal communities that could result from offshore seismic surveying. The letter highlighted the growing body of scientific research that points to the immediate and long-term and largely irreversible damage of seismic surveying. This includes marine creatures that are acoustically sensitive, such as whales, dolphins, and plankton, among others, that make up valuable marine ecosystems upon which coastal communities and economies depend.

Subsequently, urgent interdict applications¹³ were brought forward challenging the seismic surveying on behalf of interested and affected parties including local

8 Republic of South Africa. 2014. [Mineral and Petroleum Resources Development Act 28 of 2002](#).

9 Environmental Resources Management. 2013. Impact Africa. [Transkei and Algoa Exploration Areas: Environmental Management Programme](#). Final Report.

10 For example: Richardson, A.J., Matear R.J., Lenton A., 2017. [Potential Impacts on zooplankton of seismic surveys](#). The Australian Petroleum Production and Exploration Association. CSIRO, Australia.

11 Compton, R and Loureiro, A. 2023. [A drop in the ocean](#). Africa in Fact – Africa’s Energy Transition.

12 South African Marine Scientists. 2021. [Open Letter](#) to South African President Cyril Ramaphosa Minister Gwede Mantashe - Minister of Mineral Resources and Energy, and Minister Barbara Creecy - Minister of Forestry, Fisheries and the Environment.

13 High Court of South Africa. Eastern Cape Division, Grahamstown. [Case No: 3491/2021](#). Official application.



Above: A view of the Indian Ocean in Umgungudlovu, Eastern Cape.

associations, human and environmental justice organisations and residents of the Wild Coast region. Concurrently, protest action organised by relevant environmental groups such as Greenpeace Africa, Eastern Cape Environmental Network, and South Durban Community Environmental Alliance was gaining significant international media coverage¹⁴. In the application for an interim interdict, applicants outlined inconsistencies between MPRDA and NEMA, among other issues which will be analysed later in this report.

In the application for an interim interdict, applicants outlined that the exploration right was granted without any meaningful community engagement¹⁵, environmental impact assessment and no specific consideration of whether the survey's likely harms are justifiable in the context where production would intensify climate change. Hence, deeper concerns around climate change mitigation and commitments were raised in understanding and examining how the EMPr was approved. According to the marine scientists, the EMPr was drafted by consultants with no formal marine biological training and therefore did not take

any new marine ecological and social impact evidence into account. Specifically, the EMPr was assessed to be outdated and lacked validity regarding proposed acoustic buffers and times and places to avoid when sensitive species are most likely to be impacted in marine protected areas.¹⁶

Upon several court hearings, an interdict judgment in December 2021 was delivered by the Eastern Cape Division of the High Court interdicting Shell from undertaking seismic survey operations under exploration right 12/3/252.¹⁷ Subsequently, Shell and Impact Africa appealed the judgement, and the High Court dismissed the application in February 2022. To date, the Makhanda High Court in the Eastern Cape ruled that the exploration right granted to Impact Africa and Shell was unlawful because no meaningful consultation was conducted with interested and affected parties prior to granting the exploration right. Lastly, DMRE failed to sufficiently account for factors such as community cultural rights and environmental harm in the initial granting of the right.

¹⁴ [Last-minute attempt to stop Shell's oil exploration of whale breeding grounds](#). The Guardian. December 2021.

¹⁵ Acton, H., 2022. [Flaws in SA's environmental law to come under spotlight in Shell SA court review](#). Good Governance Africa.

¹⁶ South African Marine Scientists. 2021. [Open Letter](#) to South African President Cyril Ramaphosa Minister Gwede Mantashe - Minister of Mineral Resources and Energy, and Minister Barbara Creecy - Minister of Forestry, Fisheries and the Environment.

¹⁷ High Court of South Africa. Eastern Cape Division, Grahamstown. [Case no: 3491/2021](#). Judgment.

Snapshot of South Africa's Political Economy and Shell South Africa

The first organised search for hydrocarbons by the Geological Survey of South Africa occurred in the 1940s, where Soekor (Pty) Ltd, a state-owned oil and gas exploration entity, began its search in the onshore areas of the Karoo, Algoa and Zululand basins.¹⁸ Upon the passing of a new Mining Rights Act in 1976, offshore concessions were granted to several international companies such as Total, Gulf Oil, Superior and Shell among many others. This led to the first offshore well being drilled in 1969 and the discovery of gas and condensate in the Pletmos Basin by Superior. The exploration drilling was most active from 1981 to 1991 during which period approximately 181 exploration wells were drilled.¹⁹ Considering the political sanctions against South Africa in the 1970's, international companies gradually withdrew, despite further encouraging discoveries.

The oil and gas industry has been largely shaped by the country's history and its development originates in the production requirements of the mining and agricultural sectors. Its subsequent development was largely shaped and aided by various governments' import substitution industrialisation policy. The oil and gas industry has become increasingly capital-intensive, with investments in automation technology substituting labour, though significant parts of the operation still rely on human input. Therefore, ensuring sound employer-employee relations is critical for a stable supply of oil and gas. After South Africa gained its independence in 1994, offshore areas were opened to international investors through the first licensing round for oil blocks. South Africa's mining sector, being the fifth biggest mining sector in the world remains at the heart of the country's economy.

The socio-political ambition of the South African state, post-1994, following the demise of the Apartheid regime, was to redress injustices and promote substantive equality and inclusive economic growth. Part of this ambition included the crafting of new minerals governance policy, legislation and regulations that essentially placed subsoil mineral wealth under the jurisdiction of the state as a custodian thereof for the benefit of all citizens who are the intended beneficiaries of this wealth. The legislation has not been without

controversy, and the industry is struggling under the weight of macroeconomic and policy headwinds. Nonetheless, in 2021 alone, the extractives industry contributed R480.9 billion towards gross domestic product (GDP), employed over 400 000 people and contributed R78.1 billion in taxes to the country.²⁰ Notwithstanding the serious socio-economic challenges, including slow GDP growth, energy availability, logistics infrastructure collapse, growing crime severity, severe inequalities and high levels of unemployment, natural resources management has been "at the centre of decision-making processes where political, economic, environmental and social ends meet, if not collide."²¹

Shell has been operating in the country since 1902 with its main business activities in retail and commercial fuels, lubricants and oils, aviation manufacturing and upstream exploration. In 1991, ahead of the 1994 first democratic elections, Shell convened to a meeting with more than 20 leaders across the political spectrum to create a set of scenarios to map out how post-1994 South Africa should develop.²² Since then, it has played a critical role in the country's development as a primary oil company and corporate citizen.

Historically, Shell has been the subject of major controversies related to environmental concerns and human rights violations in countries it's operated in globally. In the South African context, Shell was one of the major supporters of the apartheid system by supplying oil and gas to the military and police.²³ This demonstrates Shell's long-cemented influence and power within the country's political economy. Ahead of the new democratic South Africa, international environmental and human right groups boycotted Shell's sponsorship of an environmental and conservation festival in New Orleans, United States because it was contradictory to its practices.²⁴ This was illustrative of Shell's reputational management tactic to mask its questionable activities.

Notably, Shell's operations in the Niger Delta further illustrate how Shell had not been a responsible corporate citizen. Between 2004 and 2007, numerous leaks occurred in the Niger Delta and December 2011, Shell began to document

¹⁸ South African Agency for promotion of Petroleum Exploration. Petroleum Agency SA: Explore South Africa.

¹⁹ Ibid.

²⁰ Minerals Council South Africa, Facts and Figures 2021, Minerals Council South Africa, May 2022.

²¹ Reed, D., De Wit, M. 2003. Towards a Just South Africa. The Political Economy of Natural Resource Wealth. WWF Macroeconomics Program and CSIR-Environmentek.

²² Shell South Africa. [40 Years of Shell Scenario: 1972-2012](#).

²³ Stop Apartheid. 1990. [Boycott Shell Bulletin](#). No. 16 Spring.

²⁴ Ibid.



Above: Landscapes in Mtentu, Eastern Cape.

oil spills occurring in the region. The impact of the oil spills and water pollution caused substantial environmental damage that resulted in unsafe water for drinking, fishing, agriculture, and recreation. UN Environment Programme found that residents of Ogale were drinking water from wells contaminated with hydrocarbons.²⁵

In 2015, Ogale and Bile communities filed for legal action in the UK to hold Shell and the Shell Petroleum Development Company of Nigeria (SPDC), the Nigerian subsidiary, accountable for environmental damage because of oil pollution. In 20016, the London High Court ruled that Shell did not have a duty of care for the people affected by the operations of SPDC. Additionally, in 2018, the Court of Appeal found that the English courts do not have jurisdiction over the claims due to a lack of evidence demonstrating sufficient direction and control of the UK and Netherlands-based parent company over its Nigerian subsidiary SPDC. In 2021, the UK Supreme Court ruled that claims made by the Nigerian citizens against Shell and its subsidiary can be allowed and that Shell is responsible for negligence of SPDC. As such, Shell was ordered to pay an undisclosed amount to the farmers who claimed that the oil spill ruined livelihoods in the village²⁶.

Shell has continued to use these tactics as a vehicle to garner public interest and reestablish its political ties within the South African context too. Shell's contested exploration

activities can be traced back to 2011, which reveals how the multinational has continued to compromise environmental and social considerations by leveraging questionable relationships with the ruling party and associated government departments.

Fracking up the Karoo: Shale gas exploration

In 2011, Shell proposed to prospect a total of almost 100,000km² made up of three segments of about 30,000km² respectively in the ancient Karoo Basin to locate and extract shale gas via a method known as hydraulic fracturing or “fracking”. Fracking is a process that involves pumping millions of litres of pressurised water, sand, and chemicals into the ground to extract the gas.²⁷ The shale rock is fractured, releasing the gas for pumping to the surface. The chemicals are carcinogenic, endocrine disrupting and toxic. Therefore, the risk of water and soil contamination became a major concern. Fracking's possible environmental impact led to concerned environmental groups, farmers and community members calling for Shell and the Department of Mineral Resources at the time to stop the exploration project. Preliminary investigations into Shell's application process revealed that it was not fully compliant with the law. This also brought to light the questionable political relationship Shell has with the governing party, African National Congress (ANC).

²⁵ Siyobi, B. and Obisie-Orlu, V. 2022. [Shell judgement shows that environment matters](#). Good Governance Africa.

²⁶ Ibid.

²⁷ Zoback, M., Kitasei, S., Copithorne, B. 2010. Addressing the Environmental Risks from Shale Gas Development. Briefing Paper 1. World Watch Institute – Natural Gas Sustainable Energy Initiative.

Shell South Africa and Thebe Investment Corporation

Founded in 1992, Thebe Investment Corporation (Thebe Investment), an investment arm of the ANC, established and owned energy company, Tepco, where Shell secured a deal with Tepco to embark on refinery processing. In 2001, a joint venture with Tepco was formed in aviation and commercial fuels.²⁸ This was followed by Thebe Investment initially acquiring a 25% interest in Shells' Marketing business and Thebe Investment officially became Shell's local empowerment partner.²⁹ The Batho Batho Trust, a community-based trust, was the initial shareholder of Thebe Investment and currently holds the largest stake at 51%.

During the protest action by environmental and human rights groups and public against Shell in October 2021, the ANC received a R15 million donation from the Batho Batho Trust. This appears to be a clear indication of conflict of interest. Additionally, Minister Gwede Mantashe of the DMRE also serves as the national chairperson the National Executive Committee of the ANC. Ultimately, Minister Mantashe is a key decision maker who holds power and influence over resource wealth management and granting of exploration rights. To this end, Minister Mantashe made alarming remarks related to the backlash encountered from environmental and human rights groups. In a media briefing given in December 2021, he stated that the protest action against the proposed seismic survey were "unrelenting attacks on oil and gas developments in South Africa".³⁰ This further highlighted the significant political power Shell has in influencing important decision-making processes that impact South Africa's political economy.

Mining Regulation: Shortcomings in the MPRDA and NEMA

The Shell case further revealed concerning discrepancies and shortcomings in legislation governing the environmental management of mining. The seismic survey was legally disputed on the basis that it did not obtain environmental authorisation in terms of NEMA.³¹ While Shell's EMPr was approved in 2014³² by the DMRE in terms of section 39 of the MPRDA, Shell, the Department of Environmental Affairs (DEA) and the DMRE contend that this approval excludes the

application of NEMA, given that it was granted prior to the 2008 NEMA Amendment Act (NEMAA) coming into effect September 2014, post the approval of the EMPr in April 2014.³²

One Environmental System

In efforts to streamline the environmental management of mining licence application and granting processes, incremental amendments were made to both the MPRDA and NEMA, respectively. This was to address the issue of cumbersome and uncoordinated approval and management processes for exploration, prospecting, and mining licences. For instance, "mining companies had to make submissions to multiple authorities, with sometimes conflicting requirements".³³ As such, in 2008, the One Environmental System (OES) was introduced, to facilitate an integrated mining environmental management system that set out to align the MPRDA and NEMA's environmental requirements.

Through this System, applicants for a mining right or permit are first required to follow the MPRDA approval process upon which approval has been granted by the Minister of the DMRE, the NEMA requirements are followed. NEMA requirements include but are not limited to Environmental Authorisation processes in terms of the Environmental Impact Assessment Regulations. This process is also administered by the DMRE; however, the Minister of DEA is the appeal authority for these decisions. Ultimately, the new OES transferred full responsibility to the DMRE to grant, monitor and enforce the environmental authorisations for prospecting and mining operations. This was challenged by environmental and community interest groups given that the DMRE's priority mandate is to promote mining and did not initially prioritise environmental compliance responsibilities. Indeed, this appears to be a weak governance arrangement in that the DMRE has little incentive to apply the environmental law.

Zooming in on the Shell case, the commencement of the One Environmental System meant that section 39 of the MPRDA on which the EMPr was approved had been repealed.³⁴ However, due to the interim timelines entailed in the new system, it became unclear which statutes governed environmental approval. This "obscurity is attributable to the complex, inconsistent and defective transitional

28 Shell South Africa. 2015. [Shell South Africa and Thebe Investment Corporation announce merger of multinational rand downstream entities.](#)

29 Ibid.

30 Minister Gwede Mantashe: Developments in the upstream petroleum industry. Media statement on the developments in the upstream petroleum industry. [Media Briefing](#). Department of Mineral Resource and Energy. December 2021.

31 Republic of South Africa. [National Environmental Management Act](#). No 107 of 1998. 1998.

32 Acton, H., 2022. [Flaws in SA's environmental law to come under spotlight in Shell SA court review.](#) Good Governance Africa.

33 Ibid.

34 Ibid.

arrangements in the various amendment acts. Thus, the statuses of environmental approvals obtained under the pre-integrated system will be a key dispute in the review of Shell's exploration right.³⁵

While section 12(4) of NEMAA provides that an EMPr approved in terms of the MPRDA before implementation of the 2008 NEMAA must be regarded as being approved under NEMAA. Yet, the section does not make it evident that a deemed EMPr approval under the MPRDA is equivalent to an environmental authorisation under NEMAA. Additionally, the EMPr approval is only one element of a rigorous NEMA regulatory framework and therefore it is unclear whether section 12 (4) of NEMAA merely approves the EMPr as a component part, or whether it creates a complete authorisation.

Community Participation and Engagement: Key Findings

In acquiring a mining right, mining companies ought to conduct meaningful consultation³⁶ with interested and affected parties as required by MPRDA. The amended regulation states that:

- Within 14 days after accepting an application lodged in terms of section 16, 22 or 27, the Regional Manager must in the prescribed manner -
 - make known that an application for a prospecting right, mining right or mining permit has been accepted in respect of the land in question; and (Section 10(1)(a) substituted by section 7 of Act 49 of 2008 with effect from 7 June 2013)
 - call upon interested and affected persons to submit their comments regarding the application within 30 days from the date of the notice.
- If a person objects to the granting of a prospecting right, mining right or mining permit, the Regional Manager must refer the objection to the Regional Mining Development and Environmental Committee to consider the objections and to advise the Minister thereon.³⁷

As such, meaningful consultation is the willingness to consult in good faith, in a way that gives interested and affected parties all relevant information and reasonable time to make

informed decisions regarding the impact of proposed mining exploration and activities.

Between 12 – 14 June 2023, Good Governance Africa conducted interviews in Umgungudlovu, Dwesa-Cwebe, Port Edward and Port St Johns with relevant stakeholders and community members. The interviews were an hour long and they were conducted in a safe and secure environment where participants felt safe to respond to the series of questions pertaining to the Shell case. Participants were encouraged to share their experiences and understanding of Shell's proposed exploration activities. The key findings are shared in summary form highlighting key takeaways from participants. Representatives of Umgungudlovu, Dwesa-Cwebe and Port St Johns indicated that Shell's exploration right was invalid because communities were not adequately consulted, and the court ruled that Shell's consultation process was inadequate and substantially flawed.³⁸

Several issues were identified, pointing to weaknesses in Shell's consultation process. Shell failed to conduct a thorough stakeholder analysis. Shell's EMPr identified interested and affected parties through the analysis of stakeholders and potential stakeholders engaged in similar studies previously conducted in the areas. However, members of the fishing community were not included in this list. Additionally, the court indicated that the identification process excluded traditional communities which would significantly be impacted by the seismic surveying. In response to this, Shell claimed that interested and affected parties were allowed to register themselves following the newspaper advertisements that were published. However, the notification procedure was ineffective and did not reach all interested and affected parties. An active member of the Umgungudlovu community highlighted that:

- Community members were not aware of the proposed seismic surveying. They received information about the proposed exploration on social media platforms at a later stage.
- The group consultation meeting was held in Lusikisiki and was therefore inaccessible to most community members in Umgungudlovu. Lusikisiki is approximately 324 kilometres away ~ an estimated 5-hour drive from Umgungudlovu.

³⁵ Ibid.

³⁶ Ibid.

³⁷ The Republic of South Africa. [Mineral and Petroleum Resources Development Act 28 of 2002](#).

³⁸ High Court of South Africa. Eastern Cape Division, Grahamstown. [Case no: 3491/2021](#). Judgment.



Above: Local fishermen in Umgungudlovu, Eastern Cape.

- There was no provision of transportation made for community members that were interested to attend the consultation meeting.
- Community members expressed that proposed exploration activities would compromise the future revenue-based on eco-tourism as most community members livelihoods depend on small-sale fishing.

The consultation process disregarded indigenous community custom. Shell indicated that it consulted with traditional leaders and assumed that traditional leaders would speak on behalf of the community members. This highlights the problematic nature of a top-down approach to decision-making and overlooks nuances in customary law and its practice. In theory, custom requires that there are multiple levels of authority, and decision making extends upwards through households, extended family, clan name and to the wider community³⁹. The court assessed Shell’s consultation process to constitute negligence, as relying

on chiefs to make decisions on behalf of their ‘subjects’ was “reminiscent of tactical colonial and apartheid-era distortions of custom.”⁴⁰ An active member of Amadiba Crisis Committee indicated that:

- “The monarchs were the only community leaders that were consulted. This is unconstitutional because community members were not considered.”
- “Our land is not owned by traditional leaders, the land is owned by the people, by us.”
- “This is what also creates tension between us and the traditional leaders.”
- Cultural practices and spirituality are deeply connected with the ocean. Hence the need to protect cultural rights that were not accounted for.
- The Eastern Cape is an important fishing zone. People and communities on the wild coast rely on fishing to support their livelihoods. This is the reason why the seismic survey was not accepted. It will destroy marine life.

³⁹ Claassens, A and Boyle, B., 2015. *A Promise Betrayed: Policies and Practice Renew the Rural Dispossession of Land, Rights and Prospects*. SAIIA.

⁴⁰ Acton, H. 2022. *Meaningful consultation with communities: what does it mean?* Good Governance Africa.

Conclusion

This report examined South Africa's historical political economy trajectory that has informed the current relationship between Shell. It then interrogated the interplay between natural resource governance and environmental concerns by assessing how the offshore oil prospecting application process failed to fully follow mining and environment regulations. Importantly, through confirmatory primary fieldwork research, it assessed the processes in which local communities were not adequately consulted and how the consultation processes were not congruent with local development plans proposed by the communities in the Wild Coast.

Evidently, a top-down approach in the execution of exploration projects has fallen short in many aspects. This was illustrated in the Shell case and how the exploration activities were approved without a holistic stakeholder engagement process. Reworking a coherent, clear, and streamlined mining and environmental management regulation is central to administering mining rights that are agreed upon by all stakeholders involved. To realise South Africa's development goals, a more inclusive approach to resource governance and environmental management will be key to ensuring broad-based development from all future mining projects.



Above: Sonwabo Ngcambu stands proudly next to his tour business' sign board in Port St Johns, Eastern Cape.



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