

IN THE EASTERN CAPE HIGH COURT

CASE NO:

In the matter between

BORDER DEEP SEA ANGLING ASSOCIATION

First Applicant

KEI MOUTH SKI BOAT CLUB

Second Applicant

NATURAL JUSTICE

Third Applicant

GREENPEACE ENVIRONMENTAL ORGANISATION

Fourth Applicant

and

MINISTER OF MINERAL RESOURCES AND ENERGY

First Respondent

**MINISTER OF FISHERIES, FORESTRY AND
ENVIRONMENT**

Second Respondent

BG INTERNATIONAL LIMITED

Third Respondent

**SHELL EXPLORATION AND PRODUCTION SOUTH
AFRICA BV**

Fourth Respondent

IMPACT AFRICA LIMITED

Fifth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

LAGI TORIBAU



do hereby make oath and declare as follows:

1. I am an adult male and interim executive director of the Fourth Applicant. I have the necessary authority to institute this litigation on behalf of the Fourth Applicant.



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2. The contents of this affidavit are true and correct and fall within my personal knowledge, unless otherwise stated or clear from the context.
3. I have read the final draft of the founding affidavit of the First Applicant and confirm that the statements in so far as they relate to the Fourth Applicant are true and correct.
4. Greenpeace Environmental Organisation NPC, also known as Greenpeace Africa ("GPAF"), is a civil society organisation working towards the achievement of environmental rights and social and environmental justice in communities across South Africa. GPAF's campaigns use peaceful, creative confrontation to expose environmental injustices around the world and develop solutions for a green and peaceful future. Our vision is an Africa where people live in harmony with nature in a peaceful state of environmental and social justice.
5. GPAF is opposed to the Third to Fifth Respondents' exploration for oil and gas at the proposed location along the Wild Coast, and the consequent extraction of those resources. It associates itself with the contentions and allegations made and advanced by the First Applicant.
6. Greenpeace's motivation for opposing these intended actions by the Third to Fifth Respondents' is annexed as "TB1".
7. The Fourth Applicant requests that this Honourable Court grant the relief sought as per the notice of motion.


LAGI TORIBAU


I hereby certify that the deponent has acknowledged that he:

- (a) knows and understands the contents of this affidavit;
- (b) has no objection to taking the oath;
- (c) considers the oath to be binding on his conscience.

Thus signed and sworn to before me, at ^{ROSEBANK} ~~Cape Town~~ on 29 November 2021.

[Handwritten signature]
71163 711
COMMISSIONER OF OATHS

NAME: *Madlopha*
CAPACITY: *Const*
ADDRESS: *15 Sturdee Ave*
AREA: *ROSEBANK*

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
2021 -11- 29
CSC
ROSEBANK
SUID-AFRIKAANSE POLISIEDIENST

[Handwritten mark]
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Greenpeace Africa (“GPAF”) is an independent environmental campaigning organisation with a vision of “an Africa where people live in harmony with nature in a peaceful state of environmental and social justice”. In South Africa, GPAF campaigns for public and private bodies to take urgent action to address the climate crisis, including advocating for a just transition from fossil fuels to renewable energy and energy efficiency. Our campaign work also stands to protect the rights and health of affected frontline communities that are directly impacted by fossil fuel operations. As such the planned seismic survey by Shell Exploration and Production, falls right within Greenpeace Africa’s mandate.

Alignment to 1.5 degree Celsius Target

GPAF has campaigned extensively against South Africa’s continued reliance on fossil fuels such as coal and gas. GPAF continues to engage with the government on the necessity to mitigate temperature increases below the politically endorsed scientific consensus of 1.5 °C above pre-industrial levels. In April 2021, GPAF conducted analysis to lobby the Department of Forests, Fisheries and Environment (DFFE) to strengthen South Africa’s Nationally Determined Contributions (NDCs) to align with what is required by science to avoid a potentially catastrophic overshoot of the 1.5 °C temperature goal and what is considered South Africa’s fair share range.

It is critical to recognise the recent findings by the Intergovernmental Panel on Climate Change (IPCC) that the global carbon budget may be exceeded by 2030 and that it is pivotal that carbon majors (the top 100 companies that are responsible for 71% of global emissions since 1988¹) cease further coal, oil and gas exploration. In considering this urgent interdict application, it is critical to take into account the recent judgement in *Milieudefensie et al. v. Royal Dutch Shell plc*² on 26 May 2021, compelling Royal Dutch Shell to reduce its GHG emissions throughout its supply chain by 45% relative to 2019 by 2030, this suggests that the planned seismic exploration by Shell off the Wild Coast is in contradiction of the judgement and in fact Shell should not explore for oil and gas in the oceans anymore at all.

Risk of Environmental Pollution

GPAF recognises that Shell’s efforts will not cease at exploration, but that they have every intention to extract and refine any oil or gas resources they may find along the Wild Coast. As such, the risk of water pollution remains a very real threat. GPAF has campaigned on the dangers associated with the production and transportation of fossil fuels, the potentially devastatingly negative impacts became clear in the response efforts around the Mauritius oil spill and uMbilu oil spill. The Wild Coast has not been spared in the scourge of oil spills in our oceans having experienced an oil spill merely a month before the planned

¹ Griffin. P. et al (2017) “The Carbon Majors Database”, CDP Worldwide. [Accessed 17 August 2021] URL available [here](#)

² “*Milieudefensie et al. v. Royal Dutch plc.*” (2021), *The Hague Court of Appeal*, C/09/571932 / HA ZA 19-379 *Climate Change Litigation database [Online]*. Available at: http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20210526_8918_judgment-2.pdf (Accessed 16 August 2021).

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seismic activity. The well-being of marine life and communities remain threatened by the risk of oil spills that is inevitable when working with fossil fuels.

Fisher Communities and the marine life that they rely on

GPAF has campaigned on the protection of artisanal fishing communities extensively in Senegal and South Africa. The planned seismic survey will have direct and dire impacts on the socio-economic standing of the communities of eXolobeni, Nqamakwe and Port Saint Johns which depend heavily on eco-tourism and fishing for their continued survival.

Seismic activity and noise has been proven to have drastically negative impacts on marine biodiversity and well-being. Exploration Right 12/3/252, Transkei & Algoa area which encompasses approximately 42, 838km² is home to a multitude of Marine Protected Areas (MPAs)³ including; Agulhas Front, Port Elizabeth Corals, Amathole off-shore, Dwesa-Cwebe, Hlukela, Pondoland, Trafalgar, Protea Banks and Aliwal Shoal. The Black Mussel Cracker, Stonebream and South Africa's national fish, the Galjeon, amongst others, are indigenous to this region and may be lost forever due to these unnecessary activities. The Wild Coast's pristine beaches and biodiversity attract millions of tourists every year. Seismic surveys have been linked to decreased sightings of marine life⁴ and decreased catch rates for commercial fishing⁵. Their subsequent absence from our marine environment will have direct and dire consequences on the livelihoods of these communities. The needs of these communities far outweigh the interests of carbon majors such as Shell.

GPAF challenges the planned seismic survey by Shell on the basis that it is misaligned to what is required to mitigate extreme climate variations associated with carbon emission and will permanently alter the social fabric of these fragile regional economies that depend severely on the ecological environment, which they inhabit. The seismic survey will endanger the livelihoods of the communities that depend so greatly on the biodiversity of the Wild Coast, and may have potentially devastating consequences on the marine life of the area. Particularly in terms of whales, seismic activity can damage their hearing, ability

³ Department of Forests, Fisheries and Environment (2019) "South Africa increases marine protection by new representative network of Operation Phakisa: Oceans Economy" [Media Release]. URL available [here](#). The signed declaration can be found [here](#).

⁴ Kavannagh, A et al.(2019) ,"Seismic surveys reduce cetacean sightings across a large marine ecosystem", Scientific Reports, URL available [here](#).

⁵ Fishwell Consulting (2019) "Multiple – Before After Control Impact analysis of the effect of a 3D marine seismic survey on Danish Seine catch rates" Phase I Summary available [here](#), Phase I,II, III summary available [here](#).

The research found catch rates for whiting declined by 99.5%, and flathead catch rates declined by 71%.

"Overall the M-BACI analyses provide robust evidence for a negative impact of seismic acquisition on whiting catches in the Danish Seine Fishery up to approximately 100 days following the MMS"



to communicate, disrupt diving behavior, feeding and migration patterns. There are increasing indications that this could cause serious injury to whales. It may also disrupt reproductive success.

We believe that this matter is urgent, and all seismic survey activities should be halted with immediate effect.

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