

A Seismic Shift

A coalition of fishing communities, activists and lawyers has come together to keep the coasts and oceans of South Africa free of the destructive Blue Economy agenda

To Hell with Shell!” This was the rallying call of small-scale fishing communities and indigenous coastal communities in South Africa as they mobilized support for their struggle against illegal oil and gas exploration over the past few months.

In November 2021, the indigenous amaXhosa communities and small-scale fishers living along the eastern seaboard of South Africa became aware that the international petroleum giant Shell and its local business partner, Impact Africa, intended to commence seismic blasting of a large section of the Indian Ocean. Living on their ancestral lands along a beautiful coastline, these communities have fished sustainably and cared for their natural resources since time immemorial.

The identities and culture of the coastal amaXhosa are closely entwined with this ocean. It is a sacred place,

South Africa have been concerned about how the Blue Economy agenda is being implemented. In the past decade, since the Rio+20 Development Conference, the country has prioritized the economic exploitation of the ocean, fast-tracking oil and gas exploration, industrial aquaculture, marine shipping and transport. Plans for the building of new ports, the expansion of existing harbours and the building of sub-sea gas pipelines have been approved, while tenders for floating gas platforms and powerships are currently being considered.

Simultaneously, there has been an explosion of applications for off- and on-shore prospecting for heavy minerals. Large tracts of the coastline on the western seaboard are already wall-to-wall with mining operations that leave little, if any, space for the small-scale fisheries sector to access this coast. Purportedly to balance this economic exploitation with environmental protection, the Department of Fisheries, Forestry and Environment (DFFE) adopted a Marine Spatial Planning Act, which came into effect in 2021. However, this Act is yet to be implemented. In this policy gap, the DFFE has expanded the coverage of marine protected areas, while the Department of Minerals and Energy is awarding permits for offshore and coastal prospecting and mining at a fast pace.

Operation Phakisa has enabled the cutting of policy red tape and the fast-tracking of environmental authorizations. This contradicts the country’s climate change and carbon emissions policy commitments, its environmental practices and the principles of equality and social justice underpinning the Bill of Rights in the Constitution.

Ocean grabbing

Against this backdrop of ocean and coastal grabbing, small-scale artisanal fishers have been fighting for the

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the great home of their ancestors; it represents the material basis of their livelihoods; and is a source of spiritual healing and well-being. Yet, unbeknown to them, under the auspices of the South African version of the ‘Blue Economy’—known locally as ‘Operation Phakisa’, meaning ‘hurry up’ in one of the indigenous languages—the national government has allocated exploration permits in 98 per cent of the country’s exclusive economic zone (EEZ). This application for an exploration permit by Impact Africa in 2013, subsequently renewed twice, is just one of many applications granted with little or no public participation and consultation.

As is the case in many countries, small-scale fishing communities in

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A protest against the seismic survey outside the court in Cape Town, South Africa. For the first time, the country's courts recognized the intangible cultural beliefs of small-scale fishing communities that the ocean is the sacred home of their ancestors

recognition of their fishing rights since the first democratic elections in 1994. Despite the introduction of a human-rights-based policy for small-scale fisheries in 2012 and a legal framework that recognizes the rights of small-scale fishing communities in 2014, most small-scale artisanal fishers in South Africa are still struggling for the full and effective enjoyment of their rights. This is evidenced in the fact that despite the recognition of small-scale fishing rights, Shell and Impact Africa failed to inform and consult the small-scale fishers as part of the mandatory environmental planning and public participation process. This process is a must for the environmental authorization for exploration or prospecting activities.

While the United Nations climate change summit was wrapping up in Scotland in November 2021 and the call to end all fossil fuel extraction was sounding around the world, Shell and Impact Africa announced their intention to start seismic blasting in order to ascertain the potential for oil and gas extraction on this coast. According to the application for this exploration right, the seismic survey proposed would involve extremely loud (220 decibels) underwater explosions or discharges at intervals of 10-20 seconds. These explosions would

continue 24 hours per day for four to five months. The approved application indicated that a vessel would tow an airgun array with 12 or more lines of hydrophones spaced 5-10 m apart and 3-25 m below the water surface. In this instance, the array could be upwards of 12,000 m long and 1,200 m wide.

Small-scale fishers along this coastline immediately joined other coastal communities, a local environmental organization, activists, academics, researchers and South African citizens in calling on the Minister of Minerals and Energy and the Minister of Fisheries, Forestry and the Environment to suspend the seismic survey, but to no avail. Within an exceptionally short period of time, with support from the Legal Resources Centre, an NGO working on human rights, together with a leading human rights law firm, two of the local indigenous coastal communities and small-scale fishers launched an application for an urgent interdict to stop the seismic survey.

The applicants indicated their intention to also lodge a review of the decision by the Minister of Minerals and Energy on the grounds that Shell had been granted this exploration right without undertaking an Environmental Impact Assessment (EIA). Instead, the company had

developed an Environmental Management Plan (EMP), which included mitigation measures that were considered outdated and they had failed to consult the applicant communities adequately.

This application garnered support from a wide range of social movements, civil society organizations, research institutions, academics and users of the ocean. Initially expressed as a call for ocean environmental protection, a vibrant campaign soon emerged that combined concerns about the environment and climate justice with the livelihoods and human rights of the small-scale fishing communities. Privileged middle-class surfers, recreational fishers and ocean lovers calling to save the whales, turtles, fish and other marine creatures of special concern joined in support of the marginalized, and Black rural communities that stand to be most impacted by this seismic survey. Assistance came from several organizations including Natural Justice, the One Ocean Hub Coastal Justice Network, Masifundise and Coastal Links.

The human rights lawyers crafted their case based on the lack of adequate consultation of the communities living along this coastline. They argued that these communities have customary rights. The authorization to the

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companies had failed to consider these rights, including to their intangible culture. Moreover, it had not adequately considered the evidence of the impacts of the seismic surveys on fisheries and the marine environment, according to the petitioners.

Ten leading experts in marine science supported the struggle; the latest scientific evidence on the impact of seismic blasting was put before the court, together with affidavits from these communities and social science experts, attesting to the significance of the ocean for their spiritual and cultural identity and their livelihoods. The activists ensured that the voices of the small-scale fishers are heard across

the plethora of scientific papers cited. The legal material included an expert affidavit with embedded links to three transdisciplinary artistic media. These highlight the intangible heritage, eco-cultural values and the deep emotional and spiritual connections that span the near-shore and off-shore ocean environment.

At the heart of the court papers was the call for an ecosystem-based approach to ocean governance, respecting the human rights of local communities and adopting a precautionary approach, given the paucity of scientific data on the impact of seismic blasting on ocean life. Due to the COVID-19 restrictions, the court proceedings were held online. This enabled a wider audience to observe the court proceedings. On 28 December 2021, the court decided in favour of the coastal communities and small-scale fisher applicants. It ordered the seismic survey be stopped.

The judge ruled that the consultation process was inadequate and “substantially flawed”. For the first time in South Africa, the court recognized the small-scale fishing communities’ intangible cultural beliefs that the ocean is the sacred home of their ancestors. The judge made special mention of the constitutional obligation to respect the cultural beliefs and practices of the applicant fisher communities. Both the Minister of Minerals and Energy and Shell appealed against this order. After their appeal failed, they have subsequently launched their review of the minister’s decision to grant this exploration permit. This matter will be argued in court in two months’ time.

A week after this High Court judgement, a notice circulated on social media drew attention to the fact that a company called Searcher Geodata intended to commence a 2D and 3D seismic survey off a large section of South Africa’s west coast along the Atlantic Ocean. Like Shell, this company had been awarded an exploration permit but had not conducted an EIA. The proposed survey area overlaps with the prime fishing grounds of the small-scale and commercial fishing industry and lies adjacent to 30 small-scale fishing communities. These communities had no knowledge of such a survey. It subsequently emerged that while the commercial fishing sector had been consulted, the small-scale fishing communities had not.



Fishers land their catch at Lamberts Bay on the West Coast, South Africa. Ordinary citizens are becoming aware of how small-scale fishers are the soul of vibrant, healthy coastal communities, providing food and defending the oceans

Solidarity protests

As happened in the Eastern Cape, protests erupted across the coastline. Ocean activists and supporters mobilized themselves across major socioeconomic and geographical differences. They stood in solidarity with the local small-scale fishing communities. Once again the same group of lawyers, legal activists and NGOs supported the communities.

Small-scale fishing communities on the West Coast mobilized and began working with scientists and academics to develop affidavits demanding that the survey be stopped immediately. In this case, they argued that their right to be consulted had been violated. They insisted their rights to adequate food, work and livelihoods had been undermined, along with their rights to their culture; and that the survey would inflict irreparable harm on the marine environment. They launched an application for an urgent interim interdict to stop the survey and review the authorization of this permit.

On 24 February 2022, small-scale fishers from up and down the coast stood side-by-side with environmental justice activists and other supporters outside the High Court in Cape Town, demanding the recognition of their

human rights and their right to protect and defend the ocean. On 1 March, the judge ruled in favour of the small-scale fishing communities and noted that the company had failed to consult them adequately. The court prohibited Searcher Geodata from continuing with the seismic survey, pending the outcome of a review of the Minister's decision to grant the company a permit without an EIA.

Although the immediate danger of the oil and gas prospecting has diminished, the threats presented by these planned seismic surveys have revealed the pitfalls in South Africa's Blue Economy policy. A powerful wave of social solidarity is moving across the South African coastline, bringing with it a new understanding of the centrality of the ocean in sustaining life on this planet. For the first time in South Africa, ordinary citizens are becoming aware of the importance of small-scale, artisanal fishers as defenders of our ocean environment; as providers of food; and as the soul of vibrant, healthy coastal communities. The International Year of Artisanal Fisheries and Aquaculture (IYAFA 2022) has started on a very powerful note, ushering in the potential for a seismic shift in ocean and coastal governance in South Africa. 3

For more



Court judgement for the Shell case

<https://cer.org.za/virtual-library/case-watch/challenges-to-shells-seismic-blasting-on-south-africas-wild-coast-december-2021>

Court judgement for the Searcher Geodata case

<https://cer.org.za/virtual-library/judgments/high-courts/christian-john-adams-others-v-minister-of-mineral-resources-and-energy-others-west-coast-seismic-blasting-part-a-interdict-march-2022>

Reaffirming Rights

<https://www.icsf.net/samudra/reaffirming-rights/>

Policy for the Small Scale Fisheries Sector in South Africa

https://www.gov.za/sites/default/files/gcis_document/201409/35455gon474.pdf