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From: **Natural Justice, The Green Connection and Masifundise Development Trust**

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Dear Environmental Assessment Practitioner,

COMMENTS ON THE DRAFT SCOPING REPORT FOR THE PROPOSED OFFSHORE WELL DRILLING EXPLORATION ACTIVITIES IN BLOCK DEEP WATER ORANGE BASIN, WEST COAST OF SOUTH AFRICA

A. INTRODUCTION

1. These submissions are made by Natural Justice, The Green Connection and Masifundise (Organisations) in response to the Draft Scoping Report (DSR) published for comment by SLR Consulting South Africa (EAP) for the proposed exploration drilling project in Block DWOB, off the West Coast of South Africa.

2. We understand that Total Energies EP South Africa (TEEPSA) has applied to drill additional exploration and appraisal wells offshore within licence Block DWOB. The eastern boundary of the Licence Block is located offshore in the West Coast between Saldanha Bay and Kleinzee. The extent of Block DWOB is 29 869 km2 and the northern boundary of the Licence Block is located along the

international boundary with Namibia. According to the DSR, TEEPSA proposes to drill up to 7 wells in the southern Area of Interest (AOI), in water depths ranging from 500 m to 3 900 m.

3. Natural Justice: Lawyers for Communities and the Environment is a non-profit organisation specialising in environmental and human rights law in Africa – with a focus on the pursuit of social and environmental justice for local and indigenous communities. Natural Justice offers support to local and indigenous communities impacted by the ever-increasing demand for land and natural resources.

4. The Green Connection is a registered non-governmental organisation, that believes economic growth and development, improvement of socio-economic status and conservation of natural resources can only take place within a commonly understood framework of sustainable development. It aims to provide practical support to both the government and non-governmental/civil society sectors, which are an integral part of sustainable development

5. Masifundise is an organisation that works towards the empowerment and capacity building of small-scale fishing communities across South Africa, with a vision of a just society based on the principles of food sovereignty with emphasis on social, economic, climate, and environmental justice for small-scale fishing communities. The organisation believes that the voices of those who use and depend on ocean resources to support their livelihoods should be included and prioritised in decision-making processes that affect them.

6. The organisations have an interest in this project, in the interests of protecting the environment, in the interests of protecting the local and indigenous peoples and communities who will be impacted, as well as in the public interest.

B. OBJECTION TO THE EXPLOITATION OF OIL AND GAS RESOURCES

7. The extraction, processing, storage, transport and end-use of oil and gas from the proposed exploration operations, and intended eventual exploitation, will result in unacceptable significant emissions of greenhouse gases (GHGs), increasing atmospheric GHG levels and resulting in increased adverse impacts on human health and well-being and on the environment (species and ecosystems). Impacts on human health and well-being are likely to include (among others) impacts from increased adverse environmental effects, impacts on food availability and affordability, loss of property due to sea-level rise, direct impacts of catastrophic weather events, and deterioration in physical and mental health and well-being. Environmental impacts are likely to include (among others) increased temperatures, worsening and prolonged droughts, longer and more intense heatwaves, increases in extreme weather events, increased ocean acidity, decline in ecosystems and habitat, and increased rates of species extinction.

8. These impacts are significant and unacceptable.

9. Exploitation of oil and gas resources, which is intended as the eventual outcome of this process, is not needed or desirable. Globally, the total proven oil and gas reserves exceed what it would be possible to combust while still implementing the global GHG emissions reductions necessary to

limit the increase in global average temperatures to 1.5°C above pre-industrial levels. Investing in more oil and gas exploration and new resource discoveries will inevitably lead to greater production and increased GHG emissions, which is counterproductive at a time when it is critical to reduce emissions.[1]

10. As a party to the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, South Africa has committed to limiting the increase in the global average temperature to well below 2°C and to pursue efforts to limit the temperature increase to 1.5°C. South Africa is not, however, on track to meet these commitments. According to the Climate Action Tracker, (as at November 2023) "*South Africa's climate policies and commitments need substantial improvements to be consistent with the Paris Agreement's 1.5°C temperature limit*."[2] If all countries followed South Africa's "insufficient" approach to climate mitigation, "*warming would reach over 2°C and up to 3°C*."[2] Approving more oil and gas projects, including offshore exploration and production, would push South Africa further away from achieving its international climate commitments.

11. As the public trustee of the environment generally, of biological diversity, of protected areas, and of coastal public property, the State must take measures to ensure that our oceans are used, managed, protected, conserved and enhanced in the interests of the whole community, for the benefit of present and future generations. The phase out of oil and gas is urgently needed to avert the climate crisis, to protect and promote the State's obligations to provide basic necessities such as water, food, shelter and an environment that is not harmful to health or well-being.

12. Given this, the exploration and exploitation of oil and gas is not needed, is undesirable, is locally and globally irresponsible, is contrary to South Africa's international climate change and biodiversity commitments and contravenes the State's obligations under section 24 of the Constitution. Natural Justice, The Green Connection and Masifundise object to the authorisation of the proposed exploration activities.

C. COMMENTS ON THE DRAFT SCOPING REPORT

13. NEED AND DESIRABILITY

13.1. The DSR deems the proposed exploration project in keeping with and in furtherance of plans and policies that are related to economy, energy, climate change, and resources, in South Africa.[3] The DSR further states that the proposed exploration project is consistent with the National Environmental Management Act 107 of 1998 (NEMA) principles, as well as the

[1] Mark New and Shayan Barmand "Evidence that current proven reserves of oil and gas exceed CO2 budgets consistent with the Paris Agreement temperature targets" 2022, African Climate and Development Initiative, University of Cape Town.
[2] Climate Action Tracker https://climateactiontracker.org/countries/south-africa/ Accessed on 19 February 2025.
[3] The DSR paragraph 5.1.

2014 Regulations published in terms of NEMA.[4] On the contrary, the proposed project is at odds with the legislation, policies and plans.

13.2. Section 24O of the NEMA requires that a competent authority considering an application for an environmental authorisation must take into account 'all relevant factors'. Regulation 18 further requires that the need for and desirability of the project be taken into account. Item 2(f) Appendix 2 states that the scoping report must include 'a motivation for the need and desirability for the proposed development including the need and desirability of the activity in the context of the preferred location.' A Guideline on Need and Desirability was published in 2017 in terms of section 24J of the Act.

13.3. It is consequently clear that a scoping report must itself describe the need for and desirability of a project, in full. Whilst this assessment is also required at the EIA stage, in order for a scoping report to be accepted by the Competent Authority, it must include a full motivation for the project. In our submission, the description on need and desirability in the DSR falls short of this requirement.

<u>Energy policies</u>

13.4. TEEPSA relies on the following sources of energy policy to evaluate the projects' need and desirability: (i) the Integrated Resource Plan 2023 (IRP), (ii) an IPPP 'Bid Window' 2 GW of gas-generated electricity capacity in December 2023; (iii) the Gas Master Plan (2024); and (iv) the Upstream Petroleum Resources Development Act 23 of 2024 (UPRDA). However, reliance on these policies is flawed, for the following reasons:

13.4.1. To begin with, South Africa does not have an energy policy as the DMRE has failed to develop an Integrated Energy Plan in terms of section 6 of the National Energy Act 34 of 2008 (which entered into force on 1 April 2024). In the absence of this plan, 'energy policy development' and planning has proceeded in an incoherent fashion through two published versions of an 'Integrated Resource Plan', which is itself authorised on the tenuous foundation of 'Regulations on New Generation Capacity' published under the Electricity Regulation Act 4 of 2006. These regulations and thus the IRP itself, can only apply to new forms of electricity regulation. Any mention of gas for any purpose other than electricity regulation in the IRP published in 2010 and 2019 is therefore *ultra vires* and cannot be used to make any pronouncements on South Africa's policy on gas development.

13.4.2. Second, the 'Integrated Resource Plan 2023' is a draft and has not been finalised.

13.4.3. Third, the UPRDA is not yet operational and there is no date as to when it will come into force.

[4] The DSR paragraph 5.2.

13.4.4. Lastly, the applicant has failed to consider whether the development of indigenous gas resources aligns with basic instruments of economic policy.

Economic policies

13.5. The DSR mentions the just energy transition, but makes no effort to consider the substantive content and requirements for a just energy transition, and the work of the Presidential Climate Commission in this regard, and how this project would contribute towards any such transition.

Climate policies

13.6. The applicant submits that the projects are not incompatible with South Africa's climate change policies. However, this is problematic for the following reasons:

13.6.1. The DSR argues that there is a distinction between an assessment in respect of exploration activities and that of production activities. It cites the Supreme Court of Appeal (SCA) in *Minister of Mineral Resources and Energy & Others v Sustaining the Wild Coast NPC*[5] as well as the Norwegian Supreme Court judgments as authority for the argument that exploration activities generally do not have major GHG-related impacts.[6] The DSR's main argument is that the proposed exploration project is in line with climate change policies.[7] However, the DSR makes it very clear that the envisaged EIA process will only assess impacts associated with the exploration phase of the project. This does not align with what was said in *Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others*[8] when the court recognised the critical importance of assessing a project's impact on climate change. It held that a comprehensive assessment that looks at the entire lifecycle of the proposed project must be conducted at the initial stage of the project. Accordingly, we submit that the need and desirability of this project must be assessed on the basis of the exploration and production phases of the project, in the context of climate change.

13.6.2. It is a universally accepted scientific fact that greenhouse gas emissions contribute to climate change and that human activities (extraction and burning of fossil fuels) contribute the most amount of greenhouse gas emissions.[9] It must also be accepted that exploration has as its goal to lead to exploitation. If it did not, the applications for authorisations would not have been made. Exploitation is the reasonably foreseeable outcome of the application, and consequently, an impact associated with exploration.

[5] *Minister of Mineral Resources and Energy and Others v Sustaining the Wild Coast NPC and Others* (58/2023; 71/2023; 351/2023) [2024] ZASCA 84; 2024 (5) SA 38 (SCA) (3 June 2024).
[6] The DSR paragraph 5.1.3.
[7] Ibid.
[8] [2017] 2 All SA 519 (GP).
[9] Paris Agreement 2015; Ripple WJ et al "World Scientists' Warning of a Climate Emergency" 2019; Ripple WJ et al "The 2023 state of the climate report: Entering Uncharted Territory" 2023; The 2014 report on the UN Intergovernmental Panel on Climate Change.

13.6.3. The DSR misconstrues the SCA judgment insofar as it relates to exploration activities for oil and gas within the context of South Africa's international commitments on climate change. The SCA was merely taking exception to the High Court making a finding in respect of whether or not "authorising new oil and gas exploration, …" complies with South Africa's climate change commitments, it did not make a determination as to whether or not exploration and/or production of oil and gas contributes to climate change. The SCA would have erred if it had found that exploration and/or production of oil and gas does not contribute to climate change. This is because it is a globally accepted scientific fact that the extraction and use of fossil fuels (coal, oil, natural gas etc.) is a major contributor to climate change.[10] Save to say the SCA judgment is being appealed at the Constitutional Court under case no. 196/2024.

13.6.4. Regardless of the DSR interpretation of the SCA judgment on exploration of oil and gas in relation to climate change, it does not exempt the applicant from complying with the requirement to conduct a comprehensive lifecycle assessment that considers the entire life-cycle of the proposed project. The applicant's attempt to separate the exploration and production phases to avoid climate scrutiny is legally untenable.

13.6.5. The judgment of the Norwegian Supreme Court in *People v Arctic Oil* has also been widely criticised as regressive and perpetuating a model of extractivism driven by the global North.

13.7. It is our submission that proper consideration of and compliance with, NEMA principles and Guidelines on Need and Desirability will reveal that the proposed project is neither needed nor desirable.

14. **ENVIRONMENTAL IMPACTS AND RISKS TO MARINE LIFE**

<u>The ESIA must comprehensively assess cumulative impacts to marine life</u>

14.1. Licence Block DWOB lies within the Orange Basin, which extends from South Africa as far north as international boundary with Namibia.[11] The Block has been subjected to multiple previous exploration activities, including 2D and 3D seismic surveys. The Scoping Report acknowledges the past and possible future exploration in nearby blocks, including further proposed exploration well drilling in the Namibian extent of the Orange Basin.[12] Beyond exploration, there is the intended realisation of production in the license block if a significant discovery is made. The same holds true in other blocks in the Orange Basin in both South African and Namibian waters, meaning that the area could continue on a path to high offshore oil and gas industrialisation.

[10] *Ibid*.
[11] The DSR at iii.
[12] The DSR at 289-290.

Despite the high volume of past, current, and potentially future oil and gas exploration activities in the region, the DSR appears not to prescribe a comprehensive assessment of the cumulative marine impacts of the project in conjunction with other activity the area and does not assess all “past, present and reasonably foreseeable future developments or impacts”. NEMA, together with the EIA Regulations, requires that EIAs include, amongst other things, an assessment of the nature, extent, duration and significance of the consequences for or the impacts on the environment of that activity, including the cumulative impacts.

14.2. The CBAs for the Area of Interest were designated in part because of their overlap with Leatherback turtle migration routes and Loggerhead hatching dispersal corridors.[13] However, the DSR states that "the abundance [of turtles] in the project area is unknown but expected to be low" (p. 192), and later says "Turtle occurrence in the project area is also possible but abundances are similarly expected to be low." (p. 217). The report should not downplay impacts to turtles because of their low abundances because both species in the area are endangered, and so low numbers in the area might be because of their small populations and not an indication of how important the habitat is to the species. The designation of the CBAs indicates that the AOI is, in fact, an important area for turtles.

14.3. The ESIA must confirm whether there have been any previous drilling activities in the block, and in doing so must also evaluate whether there are any existing well plugs in the block, and if any exist, the ESIA should assess their condition. Concrete used in well casings and plugging degrades over time, especially in seawater. Consequently, the ESIA must account for the cumulative effects of the degradation of existing plugs resulting from prior exploration endeavours. These impacts should be taken into consideration alongside ongoing and forthcoming activities.

14.4. The Scoping Report declines to assess the cumulative environmental impacts that could arise from further exploration or production activities in the area. Instead, the Scoping Report maintains that while the EIA does consider the cumulative impacts as part of the planned exploration program, it “does not aim to identify or assess the impacts or benefits of possible future exploration or production activities or outcomes, as these critically depend on exploration results and are not reasonably foreseeable at this stage.”[14]

14.5. It is reasonably foreseeable that the proposed exploration activities may lead to eventual production activities, as is their intent. The AOI overlaps with CBA 1 Natural and CBA 2 Natural areas. The DSR notes that, while drilling is allowed, "Petroleum production is, however, classified as 'not compatible' in CBAs".[15] If production is a non-compatible use, then exploratory drilling similarly should not be permitted.

14.6. Similarly, it is reasonably foreseeable that proposed or approved seismic surveys (TGS Orange Basin Reconnaissance Permit); exploration (Deep Water Orange Basin Licence Block

[13] The DSR at 226.
[14] The DSR paragraph 49.
[15] The DSR at 228.

12/3/343; TotalEnergies EP South Africa Block 567; Sezigyn ER340; PEL39 in Namibian waters); and production (Sunbird and PetroSA Block 2A) could contribute, along with the proposed exploration, to additive stressors on marine life in the region. Inshore to License Block in the Orange Basin, Eco (Atlantic) Oil & Gas has already commenced with exploratory drilling in Block 2B (as of October 2022).[16]

14.7. The cumulative impact of increased background anthropogenic noise levels in marine environments is an ongoing and widespread issue of concern. Impacts across large spatial scales or multiple species are rarely considered, but recent research indicates that repeat seismic surveys reduce cetacean occurrence across large marine ecosystems.[17] Repeat seismic surveys may also disrupt fish migration patterns, as is suspected in Southern Namibian tuna fishing grounds, where catches have severely declined since 2011, and in 2017 dropped off to non-commercial catch rates.[18]

14.8. The ESIA must assess the immediate and chronic impacts of cumulative sonar and seismic surveys and drilling activities in the area, not just from a singular exploration project. The ESIA must carefully examine the full footprint of impacts from sonar surveys and drilling activities in the context of their additive nature. We further submit that although VSP activities are to be undertaken, they are not included in the Environmental and Social Interaction Matrix. Similarly, one of the parameters for the underwater noise modelling study is "Undertake detailed marine noise modelling predictions for a sonar survey (multibeam echo-sounder) at two depth scenarios",[19] but sonar surveys are not otherwise described in the DSR and are excluded from the Environmental and Social Interaction Matrix.[20]

14.9. The ESIA must also provide a comprehensive explanation of the baseline environment, which includes analysis of past impacts and current threats in conjunction with the impacts that are likely to result from the proposed activities. Despite this requirement, the Scoping Report fails to list in the Marine Ecology Impact Assessment any analysis of the cumulative impacts of climate change in conjunction with the impacts of the proposed exploration activities.[21]

<u>The project would carry an unacceptable risk of a catastrophic oil spill</u>

14.10. Exploratory well drilling can have devastating, widespread consequences to marine life and coastal communities.

[16] https://thelundingroup.com/lundin-group-of-companies/africa-energy-corp/news/africa-energy-commences-operations-on-block-2b-off-122637/.
[17] A. S. Kavanagh et al., Seismic surveys reduce cetacean sightings across a large marine ecosystem, 9, Sci. Rep., 19164 (2019).
[18] Russell, D. 'Assessing the Impact of Seismic Surveys on South African Fisheries' (5 April 2018) at 6. Available online at: www.rfalliance.org.za/wp-content/uploads/2018/10/Assessing-Impact-of-Seismic-Surveys-on-South African-Fisheries-April-2018.pdf.
[19] The DSR at 324.
[20] The DSR at 300.
[21] The DSR at 325-26.

14.11. One of the greatest environmental threats from offshore drilling operations is a major spill of crude oil and/or natural gas occurring either from a loss of well control or blow-out.

14.12. Exploratory drilling carries an increased risk of blow-out. The risk of a catastrophic oil spill is highest at the exploratory drilling stage, and despite reassurances from regulators and companies, happen all too often. For example, the 2010 BP Deepwater Horizon was an exploratory well 1,500 metres deep that spilled 200 million gallons of oil into the Gulf of Mexico, with devastating impacts on ocean ecosystems, the livelihoods of coastal communities, and the tourism industry. The spill caused the massive killing of marine mammals,[22] fish,[23] and birds.[24] The Gulf region experienced precipitous and long-term declines in fisheries and tourism revenue; in the 10 years after the spill, commercial and recreational fishing industries alone lost roughly 25,000 jobs and $2.3 billion in industry output.[25] BP and its partners have spent over 70 billion dollars to mitigate the disasters impacts.[26]

14.13. The Deepwater Horizon disaster is not anomalous. At least 711 offshore blowouts and/or well releases have occurred world-wide since 1955,[27] though this is certainly an underestimate given data gathering limitations and records, not to mention releases from abandoned wells. Other major well blowouts include the 126-million-gallon Ixtoc I exploratory well blowout in 1979 in the Gulf of Mexico, the Chevron Campos Basin well rupture in deep waters off the coast of Brazil in 2011, and the ongoing 19-year Taylor Energy spill, which continues to leak as much as 700 barrels (bbl) of oil each day into the Gulf of Mexico.[28]

14.14. As energy companies increasingly move to drilling in deeper waters globally,[29] they are creating even more risk of another catastrophic spill. Drilling in deeper waters raises the risk of accidents due to higher bottom water pressure as well as higher pressure within the

[22] Lori H. Schwacke et al., Health of Common Bottlenose Dolphins (Tursiops truncatus) in Barataria Bay, Louisiana, Following the Deepwater Horizon Oil Spill, 48, Environ. Sci. Technol., 93–103 (2014).
[23] Cameron H. Ainsworth et al., Impacts of the Deepwater Horizon oil spill evaluated using an end-to-end ecosystem model, 13, PLoS ONE, e0190840 (2018).
[24] J. Christopher Haney, Harold J. Geiger & Jeffrey W. Short, Bird mortality from the Deepwater Horizon oil spill. II. Carcass sampling and exposure probability in the coastal Gulf of Mexico, 513, Mar. Ecol. Prog. Ser., 239–252 (2014).
[25] Christa Court et al., Effects of the Deepwater Horizon Oil Spill on Human Communities: Catch and Economic Impacts, in Deep Oil Spills: Facts, Fate, and Effects 569–580 (Steven A. Murawski et al. eds., 2020), https://doi.org/10.1007/978-3-030-11605-7_33.
[26] Mark Schleifstein, BP and its partners have spent $71 billion over 10 years on Deepwater Horizon disaster, (April 18, 2020) https://www.nola.com/news/business/bp-and-its-partners-have-spent-71-billion-over-10-years-on-deepwater-horizon-disaster/article_ca773cc0-80f4-11ea-8fbe-ffa77e5297bd.html#:~:text=Follow%20Mark%20Schleifstein,business%20lawsuits%20clogged%20federal%20courts.
[27] SINTEF Offshore Blowout Database, , SINTEF (2021), https://www.sintef.no/en/projects/2021/sintef-offshore-blowout-database/.
[28] Andrew L. Mason, An Integrated Assessment of Oil and Gas Release into the Marine Environment at the Former Taylor Energy MC20 Site, https://repository.library.noaa.gov/view/noaa/20612.
[29] Steven A. Murawski et al., Deepwater Oil and Gas Production in the Gulf of Mexico and Related Global Trends, in Scenarios and Responses to Future Deep Oil Spills: Fighting the Next War 16–32 (Steven A. Murawski et al. eds., 2020), https://doi.org/10.1007/978-3-030-12963-7_2.

oil and gas pockets. The deeper the well, the higher the likelihood of encountering high pressure/high temperature hydrocarbon bearing formations like that involved in the Deepwater Horizon disaster.[30] By definition, a blowout is the uncontrolled release of crude oil and/or gas from a well after pressure control systems have failed. The higher hydrocarbon formation pressures faced in deep sea drilling mean pressure control systems must be stronger than those in many shallower drilling scenarios to withstand and counteract these extreme conditions.[31]

14.15. While the Deepwater Horizon disaster occurred during "deep" exploratory drilling (800-2400 m depth), Total plans to drill as deep as 3900 m, extending past the "deep" drilling range and into the "ultra-deep" range (below 2400 m depth).[32]

14.16. The probability of industry-reported serious accidents, fatalities, injuries, explosions, or fires grows by 8.5 percent with every additional 100 feet (~30 m) of depth at which an offshore platform operates.[33] This means that the risk from drilling the deepest well proposed for the Licence Block (3900 m) could increase the risk of a serious accident by over 680% compared to the well at issue in the Deepwater Horizon accident (given that the Macondo 252-1 well was in waters 1500 m deep).[34]

14.17. High technological and logistical barriers to accessing and capping deep well blowouts or leaks also increase risks. Increasing depth means increasingly cold temperatures, increasingly higher pressures, and increasingly difficult working conditions that necessitate the use of specialised remotely-operated vehicles capable of withstanding high bottom water pressures (as would be the case in the deeper sections of the area of interest).[35]

14.18. The EIA must address all of the above considerations, along with complete modelling of worst-case scenarios should a blow-out occur. Accurate modelling of the fate of oil or gas condensate from a well blowout or leak must consider the depth of the emission, its force and maximum quantities emitted given realistic timeframes for gaining control of the well, the depth of the well, and the density of released hydrocarbons. The oil spill modelling must also incorporate results of laboratory analyses of the target hydrocarbons.

[30] United States National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Macondo: The Gulf Oil Disaster : Chief Counsel's Report (2011); F. William M. Pinkston & Peter B. Flemings, Overpressure at the Macondo Well and its impact on the Deepwater Horizon blowout, 9, Sci. Rep., 7047 (2019).
[31] P. K. Mishra, Ultradeepwater Cementing: Challenges and Solutions (2006), https://onepetro.org/speidtc/proceedings-abstract/06IDTC/All-06IDTC/139728; Zhaoguang Yuan, Yahya Hashemian & Daniel Morrell, Ultra-deepwater blowout well control analysis under worst case blowout scenario, 27, J. Nat. Gas Sci. Eng., 122–129 (2015).
[32] Jason Lavis, Shallow, mid to ultra deepwater definitions, Drillers (2018), https://drillers.com/shallow-mid-to-ultra-deepwater-definitions/.
[33] Lucija Muehlenbachs, Mark A. Cohen & Todd Gerarden, The impact of water depth on safety and environmental performance in offshore oil and gas production, 55, Energy Policy, 699–705 (2013).
[34] Earl Boebert & James M. Blossom, Deepwater Horizon: A Systems Analysis of the Macondo Disaster (2016).
[35] The Challenges of ROV Operations at Sea, Deep Ocean Education Project , https://deepoceaneducation.org/resources/the-challenges-of-rov-operations-at-sea/.

The ESIA must accurately describe up-to-date environmental baseline conditions

14.19. Appropriate and up-to-date scientific information should be available to inform a comprehensive assessment of impacts, before a decision can be made whether to authorise a harmful activity. A comprehensive and accurate assessment of the potential impacts requires a robust understanding of the current state and potential stressors. Without a thorough understanding of the current state and potential sensitivities of marine ecosystems, it is not possible to evaluate the significance of future impacts accurately and to accurately assess the cumulative environmental effects.

14.20. Section 2(4)(a)(vii) of NEMA provides that sustainable development requires the consideration of all relevant factors, including "that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions". In *WWF South Africa v Minister of Agriculture, Forestry and Fisheries and others*, the Court found that "[p]otential errors are 'weighted in favour of environmental protection', the object being 'to safeguard ecological space or environmental room for manoeuvre.'"[36]

14.21. The precautionary approach is applicable to limits on available information during both exploration and production phases, as confirmed by the court in *Sustaining the Wild Coast NPC and others v Minister of Mineral Resources and others*.[37]

14.22. The proposed activity, along with other marine exploration, production, and mining activities off the West Coast, can significantly increase the intensity of environmental stressors on the broader regional ecosystem. This could alter the current risk status to marine biodiversity and climatic conditions, given the uncertainty and poor knowledge of the extent of species-level and ecosystem-level impacts.

14.23. We note that, generally, for marine mammals, the DSR acknowledges a lack of available population and distribution information but goes on to conclude that encounters are likely to be rare.[38] The report should explain why encounters are anticipated to be rare given the significant uncertainty.

14.24. The ESIA should not rely on outdated information and data from previous environmental impact assessments for other marine exploration, production, and mining activities off the West Coast. If the ESIA does not incorporate a comprehensive and up-to-date understanding of the regional environmental trends within the offshore areas demarcating the Orange Basin, there is a risk that it will miss critical interactions and fail to implement effective mitigation strategies.

[36] *WWF South Africa v Minister of Agriculture, Forestry and Fisheries and Others* (11478/18) [2018] ZAWCHC 127; [2018] 4 All SA 889 (WCC); 2019 (2) SA 403 (WCC) (26 September 2018) at para 104.
[37] *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Others* (3491/2021) [2022] ZAECMKHC 55
[38] The DSR at 206-207 (Bryde's whale); 212 (Dusky dolphins); 213 (Beaked whales); Id. (Other Delphinids).

15. **IMPACTS ON CHILDREN AND FUTURE GENERATIONS**

15.1. The DSR fails to align with Section 24 of the Constitution, which guarantees every individual, including children, the right to an environment that is not harmful to their health or well-being. Furthermore, Section 28(2) of the Constitution mandates that a child's best interests must be of paramount importance in every matter concerning them. The proposed DWOB project undermines these constitutional protections by increasing the risk of climate-induced disasters, pollution, and food insecurity, all of which disproportionately impact children.

15.2. The DSR further violates constitutional and legislative obligations. NEMA codifies the precautionary principle Section 2(4)(a)(vii), which requires that where there are risks of serious or irreversible harm, precautionary measures must be taken. The DSR fails to apply this principle in its assessment of the climate impact of the project, thereby contravening NEMA's environmental sustainability framework. Additionally, the Environmental Impact Assessment (EIA) Regulations, 2014, require that a full lifecycle assessment be conducted at the scoping phase; however, the DSR improperly defers climate considerations to a later stage which is inconsistent with the *Earthlife Africa* judgment.

15.3. South Africa is a signatory to the United Nations Convention of the Rights of Children (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) both of which obligate the state to safeguard children from environmental harm. The DSR does not engage with these binding international instruments, nor does it assess the disproportionate impact that climate change, exacerbated by fossil fuel exploration, will have on children. South Africa's commitment under the Paris Agreement necessitates the transition away from fossil fuels, a commitment the proposed project undermines by facilitating continued carbon emissions.

15.4. The principle of intergenerational equity, recognized in both domestic and international law, requires that natural resources be utilized in a manner that does not compromise the ability of future generations to meet their needs.[39] This principle was affirmed in *Cancel Coal case*,[40] where the court ruled that energy projects must be assessed in their entirety, considering their long-term environmental and health impacts.

15.5. The court further held that "...From the foregoing, it is clear that the said impugned decisions would impact negatively on the rights of children under section 24 and 28 of the Constitution in the absence of cogent facts to the contrary. In that regard, the first and second respondents, who bore the onus, did not discharge the obligation to show that, in the event that there would be limitations of the said right, that such limitations were reasonable and justifiable."

[39] The UNFCCC embeds intragenerational equity within the international climate changeregime as a founding principle. Article 3 frames the concept in terms of the need to "*protect the climate system for the benefit of present and future generations of humankind*"

[40] *African Climate Alliance and Others v Minister of Mineral Resources and Energy and Others* [2024] ZAGPPHC 1271

15.6. Judge Van der Westhuizen, in his judgment, emphasized that decisions enabling fossil fuel expansion inherently impact the rights of both present and future generations.

15.7. The failure of the DSR to plan for a comprehensive assessment of the climate implications of the project in the next phase contravenes this jurisprudence. This ruling reinforces that any decision facilitating fossil fuel development must undergo strict scrutiny in relation to its impact on children's environmental and health rights.

16. SOCIO-ECONOMIC IMPACTS

16.1. The DSR provides an outline of the socio-economic profile of the communities that will be affected by the proposed projects. In doing so, statistical information relating to poverty levels, unemployment figures and the reality of generalized inequality persistent within such affected communities is laid out. However, even at this early speculative and scooping stage, the DSR seems to conclude that the proposed project will inject positive economic activity/benefit that will aid in the alleviation of poverty, unemployment and inequality.

16.2. However, research has noted socio-economic impact trends that contradict such a conclusion or anticipation. For instance, countries rich in extractive resources tend to have higher levels of inequality notwithstanding that extractive activities, such as the one proposed in the DSR, are presented as economic boosters for the benefit of not just affected larger communities but also of other smaller vulnerable constituents such as small-scale or artisanal fishers. Further, notwithstanding extensive extractive projects in South Africa, the country is still blighted by relatively slow GDP growth, gross inequality and entrenched poverty. Most of the South Africa population has failed to benefit from natural resource wealth, with other sections of society (fishing communities in particular) actively harmed through the process of offshore oil and gas extraction. The DSR must revise its envisaged modelling and underlying scooping premises so as to make room for a rigorous assessment of whether indeed the proposed project will yield actual extensive local social and economic benefits to the areas in which the projects is scoped to take place or affect.

16.3. There is a disjuncture between the anticipated socio-economic benefit of the project and the actual reality that is the low to no benefit outcome of such offshore oil and gas projects. Where some minor benefit may be plausible or foreseen with reference to other similar projects, this will take years to manifest and as such, the DSR must provide modelling for socio-economic impacts to especially small-scale fishers and ocean-dependant communities in the event of extended, renewed and continued offshore oil and gas activities that this proposed exploration activity may necessitate.

16.4. The DSR also makes reference the availability of services and infrastructure to support and supply the project. It is stated that:

'South Africa has existing ports and facilities (including Saldanha, Cape Town and Mossel Bay) and operators which service the Oil and Gas industry. The proposed operations are largely similar to existing operations serviced by South African ports and service providers. As offshore activities and associated demand for services increases, it is expected that more service providers will enter the market'.

16.5. It goes on to say that:

'None of the required logistics / support operations are of such a nature, frequency or duration that they would place undue pressure on local infrastructure that also supplies other users'.

16.6. While the DSR claims that 'more service providers will enter the market' as 'offshore activities and associated demand for services increases', this claim will require technical and socio-economic assessment and cannot be presented as a general expectation or outcome. This is so because, oil and gas companies will not necessarily purchase or engage the services of local suppliers since so many of the oil and gas companies have preferential suppliers, and thus there is often little beneficial socio-economic impact on local economies and port services. The question of who will and who can enter the economies of supporting specialized goods and services to oil and gas companies must be assessed against the background of the stark picture of severe local community inequity provided by the DSR's statistical data on education, unemployment and inequality. This reality has to be factored into the socio-economic assessment as it pertains to port infrastructure and the assumption of a boost to local economies.

16.7. The Fisheries Assessment must also study the cumulative impacts of multiple offshore oil and gas activities/projects that are in proximity of each other (the current proposed one included) on commercial and small-scale fisheries. In addition, the assessment must take into account the potential socio-economic impacts in the events of oil spills and similar hazardous incidents and not merely assert the assumption of an 'unlikely event of a major spill'. Further, the potential extension in the duration of the proposed activity should also be considered. It is our submission that cumulative impacts, oil spills and extension in the duration of proposed activity must be central to the study of the socio-economic impacts of this project.

16.8. The socio-economic impact assessment should also study local and national community discourse pertaining to climate change and how this proposed project may play into existing adversarial views and objections to projects of this nature. This study must also consider and assess the risk of South Africa breaching domestic and international climate change obligations by expanding offshore oil and gas activities through the granting environmental authorisations.

16.9. As it pertains to impacts on social cohesion and the preservation of an intact social fabric, the socio-economic assessment must study the impacts of such project in light of such projects consistently attracting protest, litigation, strained social relations and even divisive behavioural patterns between communities and state officials and between competing interest groups within the larger South African community.

17. **IMPACTS ON CULTURAL HERITAGE**

17.1. The DSR is fundamentally flawed in its treatment of cultural heritage impacts. While the report acknowledges that the project may affect cultural and heritage resources, it fails to provide a transparent and legally compliant methodology for identifying and consulting affected communities. The absence of a comprehensive list of community groups to be engaged in the heritage impact assessment process deprives I&APs of their right to meaningful participation. This omission violates the EIA Regulations, 2014, which require that all relevant facts pertaining to the application be made available to I&APs. Without access to a detailed consultation framework, stakeholders cannot adequately assess whether the process is inclusive or whether key cultural groups have been excluded.

17.2. By relying solely on the EAP's discretion to identify I&APs, the DSR fails to ensure that key cultural heritage stakeholders are meaningfully engaged. This approach risks excluding Indigenous groups and small-scale fishing communities, whose cultural practices and livelihoods are directly tied to the affected marine areas. In *Sustaining the Wild Coast*[41] , the Eastern Cape High Court held that public participation was inadequate where stakeholder identification relied on a limited database of previously engaged parties and lacked transparency in its selection process. By replicating these flaws, the DSR undermines the legitimacy of its cultural heritage assessment, as it does not disclose how affected communities were identified, whether traditional leaders and knowledge holders were consulted, or how their cultural heritage concerns will be addressed.

17.3. The West Coast of South Africa has a deeply rooted history of small-scale fishing, where marine biodiversity is integral to the cultural identity and livelihoods of coastal communities. The potential environmental degradation caused by offshore drilling (through seismic blasting, disruptions to fish populations, and increased pollution risks) threatens these communities' ability to continue their traditional practices. The failure of the DSR to assess how damage to marine ecosystems may undermine cultural heritage is a direct violation of NEMA. Section 2(4)(a)(iii) of NEMA mandates that environmental management must ensure that the disturbance of cultural heritage sites is avoided or, where unavoidable, minimized and remedied. The DSR does not meet this legal threshold, as it fails to recognize the cultural significance of marine landscapes and biodiversity to affected communities.

17.4. The NHRA[42] reinforces the need for a proper assessment of cultural heritage resources. The Act defines heritage resources as including not only tangible sites but also places of oral tradition and landscapes of cultural significance. The preamble of the NHRA emphasizes the importance of safeguarding heritage resources so that they may be preserved for future generations. However, the DSR fails to incorporate this broader definition of cultural heritage and does not engage with the legal requirement that any development likely to impact heritage sites be subjected to a thorough Heritage Impact

[41] *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy* [2022] ZAECMKHC 55
[42] National Heritage Resources Act 25 of 1999

Assessment (HIA). By omitting an evaluation of the project's effect on culturally significant marine species, coastal landscapes, and sacred sites, the report does not comply with the NHRA's provisions.

D. CONCLUSION

18. The DSR fails to adequately identify several issues/potential impacts that are critical for an environmental impact assessment. Key issues such as cumulative impacts to marine life, unacceptable risk of oil spill, up to date baseline conditions, etc., are either overlooked or insufficiently addressed. Consequently, the DSR does not provide a clear framework for assessing the full range of potential impacts that may result from the proposed project.