



THE GREEN CONNECTION

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Is operation Phakisa contributing to Ecocide in South Africa?

Green Connection Tribunal on the Blue Economy:

Background:

The Blue Economy is an attempt to exploit the ocean's natural resources in a way that is unsustainable in terms of its impacts on the ecology, the people, and long-term livelihood survival.

In South African, the blue economy program is called operation Phakisa. Part of Operation Phakisa is to focus on offshore oil and gas exploration. The Green Connection does not believe that offshore oil and gas will yield any benefits for coastal communities dependent on the sea for their livelihoods. In South Africa, the Green Connection believes that there is a high risk of destroying marine ecology due to offshore oil and gas exploration and production. Such risks could undermine and destroy the livelihoods of many coastal communities and might be classed as ecocide. Internationally, there is a movement to make ecocide an international crime. Ecocide: "unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts".

Coastal communities' voices have been marginalized in many of the issues that affect them. This includes access to food, failure to recognize their livelihoods, failed public participation, flawed environmental impact assessments and meaningful implementation of the small-scale fisheries policy. This has been highlighted in legal cases such as the recent oil and gas exploration case by Shell on the Wild Coast and Searcher on the West Coast.

The Objective of The Oceans Tribunal:

The Green Connection hosted an Oceans Tribunal in September 2021. The aim of the tribunal was to provide a platform for coastal communities to speak about the challenges that the oil and gas could pose to their livelihoods. Communities gave testimony on how they have not been included in discussions, despite having the rights in law on paper, and their understanding of how they have and will be affected by the oil and gas industry.

The Tribunal included community representatives from different parts of the South African coast, who attended physically in Cape Town as well as hearings that took place in five additional physical venues around the coast and linked virtually to the main Cape Town venue. The hybrid event enabled speakers, and community leaders from different parts of



the world as well as locally to participate. Translation was provided to enable all to contribute fully.

The program included presentations on some of the technical aspects such as the economics of oil and gas, the climate change impacts, the social impacts as well as some of the fishers' issues in their respective communities such as offshore oil and gas exploration & climate change. Speakers also included some local and international perspectives – from other parts of Africa and also from India – on how oil and gas exploration and production impacts their communities.

A high-profile panel acted as a jury in the case, added gravitas and gave advice based on their experience and expertise. We are handing this statement by the jury panel over to President Ramaphosa, in his role as the chair of South African Climate Change Commission and we request that the recommendations of the tribunal be adopted as government makes decisions about oil and gas exploration and production.

Sincere regards,



Lisa Makaula

Tribunal Coordinator



Liz McDaid

Strategic Lead

Biography of Jurists

Allison Tilley – An attorney specializing in transparency and accountability issues. She has litigated on transparency and whistleblowing issues in a number of high-court matters. She is the coordinator of the Judges Matter campaign which is a project for the Democratic Governance and Rights unit at the University of Cape Town.

Lorreta Ferris - Is an environmental scholar and a lawyer who is currently a professor of Law at the institute of Marine & Environmental Law at the University of Cape Town, she has published widely in environmental law, environmental justice and environmental human rights for environmental damage, compliance as well as enforcement of environmental law, trade and environment.

Nnimmo Bassey – A director of an ecological think – tank Health of Mother Earth Foundation. He was also the member of steering committee of Oilwatch International and was Chair for Friends of The Earth International (FOEI) from 2008 to 2012 and a director of Nigeria's Environmental Rights Action. A writer of a poetry book "We thought it was oil but it was blood" (Kraft Books 2002.)

Jesu Rethinam – has been an active part of the Indian's civic action movements especially involved in feminist dialogue and advocacy as well as campaigns around fish workers, coastal and marine issues. She is also a pioneer in having initiated the Coastal Action Network in Southern Indian State of Tamil Nadu and heads SNEHA an organisation working for rights of fishers and other coastal agricultural communities.



For more information, please visit our website and contact us on the email below:

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Attention: Lisa Makaula (March 2022)

THE GREEN CONNECTION

OCEANS TRIBUNAL ON SMALL SCALE FISHERS AND OIL AND GAS

21-22 September 2021

STATEMENT BY PANEL OF JURISTS

Introduction

This tribunal was hosted to give small-scale fishers (and fishing-dependent community members) a platform to voice their concerns regarding oil and gas exploration and associated developmental activities in South Africa oceans and on its coastline, and in particular their concerns regarding the current and potential future impacts that such activities have on their livelihoods, culture and well-being. Community members affected by shale gas fracking and coastal mining also voiced their concerns.

Themes from testimonies

Having listened to community representatives from various coastal communities around South Africa, the Tribunal notes the following common themes:

Inadequate consultation and lack of transparency

'Speak with us, not about us'

- Coastal community members, including small-scale fishers and women dependent on fishing, do not feel that they are meaningfully consulted regarding proposed oil and gas exploration and development. In some instances, small-scale fishing communities are not consulted at all. Complaints focussed on the manner in which consultations are carried out, a lack of effective engagement, limited or no opportunity to develop the necessary skills and understanding needed to participate meaningfully, and a belief by these communities that the views expressed by them are not taken seriously and have no influence on the decision-making process.
- Another emerging theme is that these communities do not believe that there is sufficient transparency in government policy and decision-making processes. Policy



and decisions are made by government officials far removed from those whose livelihoods are being undermined or are at risk of being destroyed. Concerns were also raised that those standing to benefit from the oil and gas exploration and development (including multinational and private shareholders) often staying hidden behind the corporate veil. Communities believe that those with vested financial and other interests in oil and gas exploration and developments are given favourable treatment by government officials and consultants, while impacted and potentially impacted community members are side-lined and their concerns ignored or downplayed.

Real threat to livelihoods

'No fish No eat'

- Community members who rely on the ocean for their livelihoods, and whose access to fish has been negatively impacted by decades of industrial fishing depleting fish stocks, see oil and gas exploration and development (such as gas powerships and pipelines) as a threat to their livelihoods. These threats include ecological devastation should major oil spills pollute the ocean and coastline, and the risk of gas powerships permanently operating in ports scaring fish away from traditional fishing grounds. Concern was expressed that livelihoods would be further undermined or destroyed by such activities, impacting most heavily on those community members, and especially women, who depend almost entirely on fishing and subsidiary activities to put food on the family table and send their children to school. Subsidiary activities include the preparation or sale of fish and other marine living resources, as well as activities dependent on tourism (such as community fishing guides).

Concern about environmental impacts

- Concerns were also expressed over current and potential future pollution impacts on marine ecosystems and the broader environment from oil and gas exploration and development. Issues of concern include the depletion of fish stocks (and other marine living resources), migration of fish away from traditional and customary fishing areas, habitat loss, as well as broader ecosystem impacts as a result of the warming of the oceans as a result of climate change. These current and potential future impacts are seen as interrelated to the livelihoods of the communities (i.e. could undermine or destroy their livelihoods).

Erasure historical, traditional and customary coastal fishing rights

'We want our oceans back and we want it back now!'

- Concern was raised over historical erosion of historical, traditional and customary coastal fishing rights (whether by being denied access to historical, traditional and



customary fishing areas falling under a mining right, or through conservation efforts excluding them from such areas), and further concern was voiced over the extent to which such rights could be further eroded by oil and gas exploration and development. Community members spoke of historical, traditional and customary fishing being conducted sustainably, and felt that their deep historical, traditional knowledge and wisdom of fishing and the oceans is not valued by consultants and government, but is largely ignored. Community members lamented the loss of customary ways of fishing, as well a fear that historical, traditional and customary fishing rights would be lost (as has been experienced in relation to some protected areas). Concern was expressed that whenever decisions are made by those in authority, such customary rights and practices are not taken into account.

Emotional/Cultural Connection to the Ocean or ‘sense of place’

‘The ocean belongs to us, we will never give up’

- Community members spoke of their deep historical and cultural connection to the ocean, or emotional attachment, and viewed oil and gas exploration and development as an affront to their ‘sense of place’, in other words to their emotional attachment to the oceans (place attachment) and the cultural and heritage value (place meaning) that the oceans hold. They argue that these activities risk undermining or destroying their sense of place. Community members felt that their emotional and cultural connection to the oceans is not taken into account in policy and decision-making processes.

More ‘Invisibilisation of Women’

‘Without women in fisheries there is no fish in the market/home’

- Women’s role in prelanding, landing and post landing, collecting and cleaning, supply and value chain activities are totally not recognised and they are made more and more invisible. The present policies make them more invisible by alienating them from the value and supply chain in fisheries and make them more vulnerable.

Tribunal Observations and Comments

The South African Constitution enshrines the foundational principles of accountability, responsiveness and openness. Section 24 provides that everyone has the right to an environment that it not harmful to their health or well-being, and to have the environmental protected, for the benefit of present and future generations, through reasonable legislative and other measures that: prevent pollution and ecological degradation; promote



conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. Section 27 guarantees the right to sufficient food and water. Section 33 recognises the right to procedurally fair decision-making processes. Environmental principles that organs of state are required to take into account in environmental decision making are set out in section 2 of South Africa's National Environmental Management Act (NEMA), which among other things provides that: the participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured; and that decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including historical, traditional and customary knowledge and wisdom.

South Africa's policy regarding oil and gas exploration and development is expressed in the 1998 White Paper on Energy Policy, which among other things sets out government's policy approach to the promotion, development and regulation of oil and gas exploration and development. The White Paper expresses the view that the successful exploitation of oil and gas resources would contribute to the growth of the economy and relieve pressure on the balance of payments. Implementation of this policy is being driven at a national level through Operation Phakisa ("hurry up"), which focusses on unlocking the economic potential of South Africa's oceans in order to contribute to Gross Domestic Product (GDP), and is presented as a unique opportunity to address issues such as poverty and unemployment. One of the sectors targeted for implementation in Operation Phakisa is the oceans economy, with offshore oil and gas exploration selected as one focus area. A 2014 report entitled *Unlocking the Economic Potential of South Africa's Oceans – Offshore Oil and Gas Exploration Final Lab report* was produced following a consultative process with certain stakeholders (but which process did not include many non-governmental organisations or fishing communities), and the vision set out in this report is that:

South Africa should... create an environment that promotes exploration... in order to drill 30 exploration wells in the next ten years... while simultaneously maximizing the benefits for South Africa.¹

This tribunal was hosted at a time when the global community is grappling with the existential threat of climate change emergency. The UN Secretary General has described

¹ At p18.



the International Panel on Climate Change's (IPCC) recent 6th Assessment report as a 'code red for humanity', and has pointed out that decisive action is required to limit global warming to 1.5°C. This report indicates that it is unequivocal that human influence has warmed the atmosphere, oceans and land, and that many changes due to past and future greenhouse gas emissions are irreversible for centuries to millennia, especially changes in the ocean, ice sheets and global sea level. The International Energy Agency (IEA) has also recently indicated that in order to meet net zero emissions by 2050, no new oil, gas or coal developments should be approved. At the time of the tribunal, the South African government was in the process of refining its Nationally Determined Contributions (NDCs) to reduce national emissions and adapt to the impacts of climate change in accordance with its obligations under the Paris Agreement.

Based on the testimonies provided by community members to the Tribunal, it is evident that - notwithstanding environmental rights enshrined in the Constitution and environmental principles that promote public participation and recognise historical, traditional and customary knowledge and wisdom - the voices of small-scale fishers and fishing-dependent communities are not being heard by government in both policy and environmental decision-making processes. Operation Phakisa is being implemented through projects and programmes focussed on GDP and economic growth, which treat the ocean as a commodity which can be partitioned and exploited, mostly for the benefit of multinational corporations and other elites, with little or no benefits accruing to affected fishers and communities. These communities do not stand to share in the profits of such activities, while mostly highly-skilled jobs will be created that small-scale fishers and fishing-dependent communities are not qualified for. The policy to promote and accelerate oil and gas exploration and development, developed without taking the views of affected communities and women into account, is outdated and incompatible with the climate emergency. The current trajectory of the South African government in promoting and accelerating oil and gas exploration and development will exacerbate climate change by unlocking more fossil fuels for production and broader use in the economy, and is likely to lead to heightening inequalities through commodification of the ocean commons, pollution and displacement of small-scale fishers and fishing-dependent communities: a blue apartheid.



Key insights

- Fishers and fishing-dependent communities, including women, have not been adequately consulted by government in its development of policy regarding the oceans and coasts. The policy as set out in Operation Phakisa's 'ocean lab' report fails to take into account or make adequate provision for the economic, social and cultural needs of fishers and fishing communities. Instead, the policy seeks to commodify the oceans and coasts by encouraging accelerated oil and gas exploration for the benefit of a corporate and political elite, with few if any benefits flowing to those most at risk of being negatively impacted.
- Consultations carried out in environmental authorisation processes relating to oil and gas exploration (and associated activities) either fail to engage with those most likely to be impacted by the negative consequences of such activities, or where consultation is carried out it is not done through meaningful engagement that draws on the historical, traditional, customary and cultural knowledge and wisdom of fishers and fishing communities. Instead of being seen as an opportunity for meaningful engagement, such consultations tend to be 'tick-box' exercises, with the views expressed simply attached to a public participation annexure to environmental impact reports.
- Fishers and fishing communities depend almost entirely on the oceans and coasts for their livelihoods, and the risk of the ocean and coastal ecosystems being damaged through pollution as a consequence of oil and gas exploration (and associated activities) poses a real threat to their ability to put food on the table and send their children to school. It is noted that the traditional livelihoods and cultural practices of these communities have already been severely impacted by centuries of colonisation and apartheid, and through the overexploitation of marine living resources by industrial fishing. The livelihoods, cultural practices and attachment to place of these communities are particularly vulnerable to additional negative impacts.
- Experience in other African countries (such as in Mozambique and Niger Delta) shows that small-scale fishers and fishing-dependent communities seldom benefit from the discovery and exploitation of oil and gas. Such developments have a tendency to result in displacement of these community members, inhibit access to historical, traditional and customary fishing grounds, exacerbate economic and social inequalities, and increase the risk of conflict.



Key Recommendations

The Tribunal makes the following key recommendations:

- That Operation Phakisa be revisited and reformulated, following in depth and meaningful consultation with fishers and fishing communities who depend on the oceans and coast for their livelihoods, and who have a deep historical and cultural connection with the ocean and coast. A new Oceans and Coastal Governance policy based on consultations with fishing communities should be developed that recognises the rights of fishers, and which draws on the historical, traditional and customary way of life, knowledge and wisdom of these fishers and fishing communities, and which seeks to preserve the oceans and coast as a shared resource for the benefit of current and future generations, rather than commodifying the ocean and coast, and their resources, for exploration, expansion and exploitation by a corporate and political elite.
- That government declares a moratorium on further oil and gas exploration, and embraces the opportunity to craft a new economy based on renewable energy, and which serves the interests of current and future generations of South Africans through a transparent, inclusive and just transition.
- That the right to fish and other marine living resources be recognised and respected by government, and that small-scale fishers and communities (including first nations) are not denied access to and control over the land of their forebearers.

Jury signatures

Alison Tilley

A handwritten signature in black ink, appearing to read 'Alison Tilley', with a long horizontal flourish extending to the right.

Loretta Feris



Jesu Rethinam

Jesu Rethinam

Nnimmo Bassey

Nnimmo Bassey

