

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION)**

Case No: 5676/2024

In the review application between:

THE GREEN CONNECTION	First Applicant
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NATURAL JUSTICE	Second Applicant
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and

THE MINISTER OF FORESTRY, FISHERIES AND ENVIRONMENT	First Respondent
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THE MINISTER OF MINERAL RESOURCES AND ENERGY	Second Respondent
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THE DIRECTOR-GENERAL: MINERAL RESOURCES AND ENERGY	Third Respondent
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TOTAL ENERGY EP SA BLOCK 567 (PTY) LTD	Fourth Respondent
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**HEADS OF ARGUMENT
ON BEHALF OF THE MINISTER OF FORESTRY, FISHERIES AND
ENVIRONMENT
(FIRST RESPONDENT)**

Table of Contents

INTRODUCTION	3
THE STRUCTURE OF THE HEADS OF ARGUMENT	4
BRIEF FACTUAL MATRIX	5
THE EIA FOR THE EXPLORATION PHASE vs THE EIA FOR THE PRODUCTION PHASE	12
THE SIXTH GROUND OF REVIEW	14
PASA's role in the internal appeal to the Minister	14
The new legislation for the oil and gas sector has solidified PASA's role	18
THE FIRST GROUND OF REVIEW	19
The EIA failed to consider the socio-economic factors of the proposed drilling operation in both the commercial and small-scale fishing sector	19
THE SECOND GROUND OF REVIEW	27
The EIA failed to consider the ICMA factor and discharge of the state's duties as trustee of coastal public property	27
THE THIRD GROUND OF REVIEW	29
The impacts of climate change, GHG emissions, and atmospheric pollution	29
THE FOURTH GROUND OF REVIEW	36
The transboundary EIA of the proposed drilling project	36
The correct approach to interpretation and application of international treaties in terms of the Constitution	41
There is no lacuna in NEMA	44
The vagueness of the interpretation argument	45
The allegation of the existence of customary international law requiring extra territorial assessment	45

THE FIFTH GROUND OF REVIEW	48
The impact of blow-out and oil spill	48
CONCLUSION	53
BIBLIOGRAPHY	54

INTRODUCTION

1. In this application, the Applicants seek to review and set aside the following administrative decisions:
 - 1.1. The third Respondent (“**the DG**”) decision made on 17 April 2023 to grant the fourth Respondent (“**TEEPSA**”) the environmental authorisation (“**EA**”) under s 24 of the National Environmental Management Act 107 of 1998 (**NEMA**) for the listed activities as specified in Listing Notice 1 (GN R.327) and Listing Notice 2 (GN R.984) on the Block 5/6/7 (“**the Block**”) (**Prayer 1**)
 - 1.2. The second Respondent (“**the Minister**”) decision made on 24 September 2023 to dismiss the Applicants’ internal appeal against the DG’s decision to grant the EA (**Prayer 2**)
 - 1.3. Remitting the EA application to the DG for reconsideration (**Prayer 3**) and

- 1.4. The DG and Minister must pay the costs of opposition (**Prayer 4**)
2. The Minister opposed the relief sought by the Applicants and filed the opposing/answering affidavit setting out the basis for opposition.

THE STRUCTURE OF THE HEADS OF ARGUMENT

3. The structure of this head of argument is as follows:
 - 3.1. **First**, we deal with the brief factual matrix;
 - 3.2. **Second**, we deal with the distinction between the oil and gas exploration and the production phase;
 - 3.3. **Third**, we deal with PASA's role during the internal appeal to the Minister (the 6th Ground of Review)
 - 3.4. **Fourth**, we deal with PASA's role under the new legislation governing the oil and gas sector;
 - 3.5. **Fifth**, we deal with the first to fifth grounds of review pleaded by the Applicants and
 - 3.6. **Lastly**, we conclude that the review application should be dismissed with costs.

BRIEF FACTUAL MATRIX

4. The South African waters have a total of 358 drilled wells, with no blowouts or oil spills recorded since 1940s, when the government of the RSA commenced its exploration and production of oil and gas in the ocean.¹
5. On 20 April 2010, the Deepwater Horizon oil spill, known as the "BP oil spill," became the largest marine oil spill in history, occurring in the Gulf of Mexico at a BP facility.²
6. The extent of the damage from the BP oil spill raised awareness among governments and the oil and gas sector regarding the risks of marine oil spills.
7. In 2012, the joint venture of Total SA (40%), Shell (40%), and PetroSA SoC (20%) was granted exploration rights under s 80 of the MPRDA for oil and gas on Block off South Africa's west coast. TEEPSA performed 2D and 3D seismic surveys there.³

¹ Answering Affidavit para 11.

² Answering Affidavit para 18.

³ Answering Affidavit para 20.

8. In 2014, the RSA government adopted Operation Phakisa, an economic program to unlock the RSA's Ocean potential, including oil and gas exploration, potentially contributing up to R177 billion to GDP by 2033.⁴
9. Notwithstanding the absence of any incidents of blowouts or oil spills along the South African coasts since the 1940s, the following measures and legal frameworks have been established to mitigate the risks associated with blowouts and oil spills:
 - 9.1. The RSA is a signatory to the UN's 1972 Stockholm Declaration, allowing it to exploit offshore gas and oil reserves under its environmental laws. NEMA governs, inter alia, offshore oil and gas exploration and production.⁵
 - 9.2. Furthermore, the RSA is a signatory to the Convention on Environmental Impact Assessment in a Transboundary Context ("**the Espoo Convention**"), requiring it to undertake the transboundary EIA if the proposed activity is situated on the border or international water shared by the RSA and Namibia;

⁴ Answering Affidavit para 22.

⁵ Principle 21 states that: *"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction"*.

- 9.3. s 30 of NEMA mandates TEEPSA to take reasonable measures to contain oil spills, clean up, remedy effects, and assess impacts on the environment and public health;
- 9.4. Under NEMA, TEEPSA is obligated to implement measures aimed at preventing, controlling, and minimising blowouts and oil spills. Additionally, TEEPSA is responsible for bearing the costs associated with the remediation of blowouts and oil spills that occur during the exploration and production phases of operations;⁶
- 9.5. s 24N(8) of NEMA holds TEEPSA's directors jointly liable in the event of a blowout or oil spill during the drilling operation;
- 9.6. The 2015, *Regulations pertaining to the Financial Provision for Exploration Operations* mandate TEEPSA to provide financial provisions for managing, rehabilitating, and remediating environmental impacts from exploration or production operations throughout their lifespan and any latent impacts that may arise later;⁷

⁶ The "Polluter Pays Principle" set out in s 2(4)(p) of NEMA states that: "*the cost of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid by those responsible for harming the environment.*"

⁷ AA para 24.

- 9.7. SAMSA, established under the South African Maritime Safety Authority Act 5 of 1998 which falls under the Department of Transport, and other stakeholders reliant on maritime resources have established the Interim Incident Management Organisation (“**IMOrg**”). Its primary responsibility is to manage and respond to oil spills and blowouts along the RSA’s coast;⁸
- 9.8. The South African National Oil Spill Contingency Plan (“**Annexure AA3**” to the Minister’s answering affidavit), which aims to inform the public regarding response strategies to oil spills and associated incidents occurring in the oceans of South Africa, has been established;⁹
- 9.9. The National Disaster Management Act 57 of 2002 has been enacted and established an integrated disaster management policy focusing on disaster risk reduction, severity mitigation, emergency preparedness, effective response, and post-disaster recovery;
- 9.10. s 27 of the National Disaster Management Act allows the Minister to declare a national state of disaster in the event of a blowout and oil spill via a Gazette notice if current laws and contingency

⁸ Answering Affidavit para 32.

⁹ Answering Affidavit para 32.

plans are insufficient or if special circumstances warrant such a declaration.

10. TEEPSA, an entity with a proven record of exploration and production of crude oil and natural gas, in 2019 and 2020, TEEPSA successfully drilled two wells in Block 11B/12B, located off the South Coast (Brulpadda and Luiperd), and achieved a gas discovery.¹⁰
11. For the Block, it has devised a plan to drill an exploratory well between Cape Town and Cape Agulhas, approximately 60 km from the coast at its closest point and 170 km at its farthest, in water depths of 700 m to 3,200m.
12. Should this initial drilling of the well prove successful, TEEPSA intends to proceed with drilling up to four additional wells in designated areas of interest, culminating in a total of five wells.
13. The anticipated duration of the proposed drilling project is approximately 3 to 4 months, with the objective of drilling being to evaluate geological formations that contain commercially viable oil or gas reserves.
14. TEEPSA applied to DMR for EA for listed activities complying with s 24 of NEMA read with the MPRDA and PAJA.

¹⁰ Answering Affidavit para 27.

15. TEEPSA conducted the EIA and submitted all scientific studies for the proposed exploration project to PASA. In return, PASA reviewed the studies and recommended the EA approval under s 24 of the NEMA for the listed activities to the DG, who granted it on 17 April 2023.¹¹
16. Following the EA grant, the Applicants appealed the DG's decision to the Minister under s 43 of NEMA read with the 2014 EIA Appeal Regulation, and the Minister dismissed the internal appeal on 24 September 2023 and confirmed the DG's decision to grant TEEPSA an EA.
17. The Applicants assert that both the DG's decision to grant the EA and the Minister's decision to dismiss an internal appeal must be reviewed and set aside under PAJA for the reasons briefly articulated below:
 - 17.1. PASA should not have responded to the internal appeal to the Minister, rather, it was the responsibility of the DG to respond.
(the 6th Ground of Review)¹²

¹¹ Any activity, including the operation of that activity, which requires an exploration right as contemplated in section 79 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), including associated infrastructure, structures and earthworks.

¹² Supplementary Founding Affidavit paras 8-18.

- 17.2. The EIA failed to consider the socio-economic aspect of the proposed drilling operation in both the commercial and small-scale fishing sector (**the 1st Ground of Review**)¹³
- 17.3. The EIA failed to consider the ICMA factor and discharge of the state's duties as trustee of coastal public property (**the 2nd Ground of Review**)¹⁴
- 17.4. The EIA failed to consider climate change as part of the need and desirability (**the 3rd Ground of Review**)¹⁵
- 17.5. The EIA failed to consider the transboundary EIA of the proposed drilling project (**the 4th Ground of Review**)¹⁶ and
- 17.6. The EIA failed to consider the blow-out and oil spill (**the 5th Ground of Review**)¹⁷
18. Before dealing with the ground of review, we address the distinction between the EIA for the oil and gas exploration phase and production phase.

¹³ Founding Affidavit paras 81-95.

¹⁴ Founding Affidavit paras 96-119.

¹⁵ Founding Affidavit paras 120-143 and Supplementary Founding Affidavit paras 26-65.

¹⁶ Founding Affidavit paras 144-174.

¹⁷ Founding Affidavit paras 175-197 and Supplementary Founding Affidavit para 76.

THE EIA FOR THE EXPLORATION PHASE vs THE EIA FOR THE PRODUCTION PHASE

19. The Applicants' case is premised on the assumption that there exists no distinction between the EIA for the oil and gas exploration phase and production phase and that the FEIAr supporting the EA also encompasses the oil and gas production phase.
20. We submit that the aforementioned assumption is erroneous in both legal and factual contexts:
 - 20.1. The EIA is for listed activities specifically for the proposed well drillings, restricted solely to oil and gas exploration;
 - 20.2. The scope of the EIA for oil and gas exploration encompasses activities such as seismic surveys, exploratory drilling, and preliminary geological studies;
 - 20.3. The data available and presented during the exploration phase is comparatively limited due to the uncertainty regarding seafloor conditions. and
 - 20.4. The environmental impacts are minimal due to minor seafloor disturbance and low emissions.
21. If oil and gas reserves are discovered within the Block, TEEPSA will be obligated to:
 - 21.1. apply for a production right to the Minister;

- 21.2. if PASA accepts the application, TEEPSA is required to apply for the EA for listed activities in terms of s 24 of NEMA for oil and gas production;
 - 21.3. consult with the interested and affected parties, including the fishing sector and other marine users, and
 - 21.4. compile another detailed EIAr with scientific studies dealing with, inter alia, blowouts and oil spills during the oil and gas production stage.
22. Until the oil and gas reserves are discovered within the Block, there are no grounds in law or fact to assume that the IEA encompasses both the exploration and production phases.
23. By way of analogy, we draw the Court's attention to the decision rendered in ***Rustenburg Platinum Mines Limited***,¹⁸ in which the SCA affirmed the distinct and autonomous nature of the prospecting right application, including its EIA process, under s 17 of the MPRDA and mining right application, including its EIA process under s 22 of the MPRDA.

¹⁸ *Rustenburg Platinum Mines Limited and another v Regional Manager, Limpopo Region, Department of Mineral Resources and others* [2022] JOL 56273 (SCA) at para 55.

24. In the context of our case is the EIA for the exploration right under s 80 of the MPRDA, and the EIA for the production right under s 83 of the MPRDA or petroleum right issued in terms of the UPRDA.
25. Based on the above, we submit that the Court must dismiss an assumption that no distinction exists between the EIA for the oil and gas exploration and production phases and that the FEIAr supporting the EA also encompasses the oil and gas production phase.
26. Having elucidated the distinction between the exploration phase of oil and gas and the production phase, we shall now proceed to deal with the grounds of review.

THE SIXTH GROUND OF REVIEW

PASA's role in the internal appeal to the Minister

27. In the internal appeal to the Minister, the Applicants criticise PASA for acting beyond its mandate by attending public meetings held on 19 May 2021 and 21 February 2022, where PASA informed the first Applicant about TEEPSA's EA application and the EIA process to be followed.
28. It is noted in these review proceedings the Applicants now criticise PASA for acting beyond its mandate by filing its submissions/response in the internal appeal to the Minister.

29. The criticism that PASA should not have responded to the internal appeal to the Minister, rather, it was the responsibility of the DG to respond, is unfounded both legally and factually:

29.1. **First**, PASA is the designated agency under s 70 of the MPRDA to accept exploration right applications, the EIAr for offshore oil and gas exploration activities;¹⁹

29.2. **Second**, PASA is mandated under s 71(a) of the MPRDA to promote offshore oil and gas exploration and is the national custodian of petroleum data under the DMR;²⁰

29.3. **Third**, in 2012, PASA accepted and processed TEEPSA's exploration right application for the Block and recommended the grant under s 79 of the MPRDA;

29.4. **Fourth**, PASA complied with s 71(i) of the MPRDA read with Regulation 6 (5) (b) of the 2014 EIA Regulations ²¹ by accepting

¹⁹ s 70 states that *the Minister may designate an organ of State or a wholly owned and controlled agency or company belonging to the State to perform the functions referred to in this Chapter.*

²⁰ s 71 (a) states that: *the designated agency must (a) promote onshore and offshore exploration for and production of petroleum.*

²¹ Regulation 6 (5) (b) of the 2014 EIA Regulations states that *if the Minister responsible for mineral resources is the competent authority in respect of an application, the application must be submitted to the relevant office of the Department responsible for mineral resources as identified by that Department.*

and processing the EA application, reviewed and made recommendations to the DG - the decision maker;²²

29.5. **Fifth**, PASA is an *interested and affected party* that TEEPSA must inform, as mandated by Regulation 4 (2) of the 2014 EIA Regulations, regarding the DG's grant of the EA and the timeframe for appealing the decision to the Minister;²³

29.6. **Sixth**, Regulation 5 of the 2014 EIA Appeal Regulations permits PASA as an *organ of the state* or *interested and affected party* to submit a responding statement within 20 days of receiving the appeal;²⁴

²² s 71 (i) states that *the designated agency must (i) review and make recommendations to the Minister with regard to the acceptance of environmental reports and the conditions of the environmental authorisations and amendments thereto.*

²³ Regulation 4 (2) states that: *The applicant must, in writing, within fourteen days of the date of the decision on the application ensure that - (a) all registered interested and affected parties are provided with access to the decision and the reasons for such decision and (b) the attention of all registered interested and affected parties is drawn to the fact that an appeal may be lodged against the decision in terms of the National Appeals Regulations, if such appeal is available in the circumstances of the decision.*

²⁴ Regulation 5 states that the applicant, the decision-maker, interested and affected parties and organ of state must submit their responding statement, if any, to the appeal authority and the appellant within 20 days from the date of receipt of the appeal submission.

- 29.7. **Lastly**, according to Regulation 7 (3) of the 2014 EIA National Appeal Regulations, PASA is entitled to be notified by the Minister of the appeal decision and the written reasons for a decision.²⁵
30. s 43 of NEMA, read with the 2014 EIA National Appeal Regulations, neither restricts nor precludes PASA from responding to the Applicants' internal appeal.
31. Furthermore, reviewing and setting the EA aside on the basis that PASA filed the responding statement in the internal appeal will violate *Bato's* principle, which states the court ought to exercise caution to avoid overstepping its boundaries in relation to the functions of administrative agencies.²⁶
32. We submit that no case has been established under s 6 of the PAJA to review and set aside the DG's decision to grant the EA and the Minister's

²⁵ Regulation (3) states that: *The appeal authority must reach a decision on an appeal, and notify the appellant, applicant, and any registered interested and affected party, within 20 days of the recommendation on the appeal by the appeal administrator.*

²⁶ See *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and others* 2004 (4) SA 490 (CC) at para 45; *Minister of Environmental Affairs and Tourism and Others v Phambili Fisheries (Pty) Ltd and Another* [2003] 2 All SA 616 (SCA) at paras 52 and 53; *MEC for Environmental Affairs & Development Planning v Clairison's CC* 2013 3 All SA 491 (SCA); 2013 6 SA 235 (SCA) at para 18; *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* 2012 (4) SA 618 (CC) at para 95; *Masuku and others v Minister of Mineral Resources and others* [2022] JOL 56732 (GP) at para 85; and *Mfolozi Community Environmental Justice Organisation and others v Tendele Coal Mining (Pty) Ltd and others* [2023] 3 All SA 768 (KZP) at para 122.

decision to dismiss the internal appeal, therefore, the Court must dismiss the 6th ground of review on this basis alone.

The new legislation for the oil and gas sector has solidified PASA's role

33. The Upstream Petroleum Resources Development Act (“**UPRDA**”)²⁷ passed on 24 October 2024, which removed the regulatory framework for upstream petroleum exploration and production from the MPRDA, articulates the role of PASA in the EA decision-making process for the South African oil and gas sector.

34. s 10 (m) of the UPRDA reiterates PASA's role and mandates and states that: *“the Petroleum Agency must— (m) receive and review applications for environmental authorisations in terms of the National Environmental Management Act and make recommendations to the Minister:”*

35. The party aggrieved by the decision to grant the EA for listed activities pertaining to oil and gas exploration or production must appeal to the Environment Minister in accordance with s 43(1) of NEMA or to the Mineral Resources Minister under s 99 (1) of the UPRDA.

²⁷ Act 23 of 2024.

36. PASA is still required to file its responding statement or submissions in relation to the internal appeals submitted under either of the aforementioned legislations, elucidating its recommendation.
37. In light of the foregoing, it is respectfully submitted that the Applicants failed to establish the grounds for review under s 6 of PAJA, and thus, the Court is compelled to dismiss the 6th ground of review on this basis alone.

THE FIRST GROUND OF REVIEW

The EIA failed to consider the socio-economic factors of the proposed drilling operation in both the commercial and small-scale fishing sector

38. The claim that the EIA neglected the socio-economic factors in both the commercial and small-scale fishing sectors in the event of an oil spill and blowout is legally and factually unfounded.
39. As previously indicated, since the year 1940s and in the aftermath of the 2010 Gulf of Mexico oil spill incident, a total of 358 offshore wells have been drilled in the waters of South Africa for the purposes of oil and gas exploration and production, with no recorded economic losses incurred by the fishermen as a result of blowouts or oil spill.
40. The EIA process indicates that TEEPSA consulted with both the commercial and small-scale fishing sectors, represented by FishSA, SA

Tuna Association; SA Tuna Longline Association, Fresh Tuna Exporters Association, South African Deepsea Trawling Industry Association (“**SADSTIA**”) and South African Hake Longline Association (“**SAHLLA**”) and they were informed that:²⁸

- 40.1. The fishing zones lie beyond the drilling area;
- 40.2. The aquaculture industry will not be affected and
- 40.3. TEEPSA would offer insurance coverage to compensate the fishing sector in the event of a blowout and oil spill.

41. The Fisheries Impact Assessment prepared by *Capricorn Marine* attached to the FEIAR evaluated the impact on commercial and small-scale fisheries during the mobilisation, operational, and demobilisation phases of the proposed 3 to 4-month drilling project.²⁹

42. The report evaluated the safety of the fishing sector during the drilling operation and recommended that TEEPSA implement the following measures: ³⁰

- 42.1. The distribution of notice to the fishing sector three weeks before drilling commencement;

²⁸ Rule 53 record: vol 6, p 2695.

²⁹ Rule 53 record: vol 6, Appendix 12, pp 2554 – 2715.

³⁰ Rule 53 record: vol 6, p 2695.

42.2. The notification must include the coordinates of the drilling area, an overview of the anticipated operational timelines, the measurements of the safety zone surrounding the drilling unit (ranging from 500 meters to 2 km), as well as particulars regarding the movements of support vessels servicing the unit project;

42.3. TEEPSA must request the South African Navy Hydrographic Office (“**SANHO**”) to issue a navigational warning via Navtext and Cape Town radio during the well drilling operation;

42.4. TEEPSA must oversee the lighting on the drilling unit and support vessels to guarantee adequate visibility for fishing vessels and ensure safety operations;

42.5. TEEPSA must notify fishing vessels within 24 nm of the drilling unit about safety requirements via radio unit;

42.6. TEEPSA must establish a grievance mechanism for the fishing sector to report operational grievances. It should also inform them about the process and resources available for resolution in accordance with the Grievance Management Guidelines and

- 42.7. TEEPSA is required to notify the fishing sector upon completion of drilling activities, specifically when the drilling unit and support vessels are no longer located at the specified site.
43. The report further evaluated the safety of the fishing sector in relation to abandoned wells and concluded that the likelihood of imposing danger or risk to the safety of the fishing sector is low.
44. The report recommended that TEEPSA establish a permanent safety zone around these wells and recommended: ³¹
- 44.1. TEEPSA must survey the locations of abandoned wellheads and buoy anchors and accurately chart in conjunction with the SANHO;
- 44.2. TEEPSA must refrain from drilling inside the designated demersal trawl “ringfenced” area or dismantle wellhead structures located within the drilling area.
45. The report assessed the implications of the discharge of drill cuttings in the fishing sector and determined that the probability of significant adverse effects is low.

³¹ Rule 53 record: vol 6, p 2695.

46. The report recommended that TEEPSA must implement the following measures:³²

46.1. Conduct the Remote Operate Vehicle (**ROV**) pre-drilling surveys to gather information on seabed habitats and map vulnerable areas within 1,000 m of a proposed well site;

46.2. Position drilling sites at least 1,000 meters from delicate habitats, species, or fragile structures based on the pre-drilling survey and ROV footage analysis;

46.3. TEEPSA must select drilling fluid additives, considering their concentration, toxicity, bioavailability, and potential for bioaccumulation;

46.4. TEEPSA must use only additives with low toxicity, minimal bioaccumulation potential, and partial biodegradability and keep an accurate register of Material Safety Data Sheets ("**MSDS**") for all chemicals utilised, along with a detailed log of their usage discharge;

46.5. If Non-aqueous drilling fluids ("**NADF**") are utilised for drilling the designated sections, TEEPSA must ensure the regular

³² Rule 53 record: vol 6, p 2696.

maintenance of the onboard solids control package and to refrain from the improper discharge of NADFs cuttings;

- 46.6. TEEPSA must conduct testing of drilling fluids to assess toxicity barite contamination and ensure the absence of oil content in Water Based Mud ("**WBM**") as well as maintain levels below 6% in NADF, thereby ensuring compliance with the specified discharge standards maintained;
 - 46.7. TEEPSA must monitor the cement returns via ROV and stop the cement pumping if substantial discharges are noticed on the seafloor and
 - 46.8. TEEPSA must monitor the hole washout with an ROV to minimise possible fluid discharge.
47. The report evaluated the blowout and oil spill impacts on the fishing sector and indicated an insignificant likelihood of blowout and oil spill occurrences during the drilling operations.
48. Nonetheless, the report further recommended the following measures: ³³

³³ Rule 53 record: vol 6, p 2696

- 48.1. TEEPSA must prepare and implement a Shipboard Oil Pollution Emergency Plan and a well-specific response strategy and plans (Oil Spill Contingency Plan and -Out Contingency Plan).
- 48.2. TEEPSA must consider the South African Marine Pollution Contingency Plan, outlining national policies for managing emergencies, including oil pollution in the marine environment;
- 48.3. TEEPSA must consider the three main components of an Oil Spill Response Plan: Crisis management, spill response and containment, and well management control;
- 48.4. TEEPSA should minimise scheduling drilling operations during the Austral winter, as this is when the risk of shoreline oiling from a blow-out is greatest. If exploration wells are drilled in a sequence during this time, response efforts must be enhanced;
- 48.5. TEEPSA should select response strategies that minimise mobilisation and response timeframes as much as possible. Utilise an optimal blend of local and international resources to ensure the quickest facilitation response;
- 48.6. Coordinate joint oil spill exercises involving TEEPSA and relevant local departments and organisations to evaluate Tier 1, Tier 2, and Tier 3 capabilities responses;

- 48.7. TEEPSA should use low-toxicity dispersants that quickly dilute below acute toxicity thresholds, applying them cautiously with DFFE permission;
- 48.8. When conditions permit, TEEPSA must strive to effectively manage and contain sea spills using suitable recovery methods to reduce the incident's spatial and temporal impacts spill and
- 48.9. In case of a spill, TEEPSA must utilise satellite-based Synthetic Aperture Radar ("**SAR**") to monitor the spill's behaviour and size, optimising response resources.
49. As previously indicated, if oil and gas resources are discovered, TEEPSA is required to apply for a production or petroleum right and to compile the EIA focused on oil and gas production, including socioeconomic studies pertaining to the commercial and small-scale fishing sectors.
50. We argue that the EA grant aligns with the following socio-economic decisions:
- 50.1. The ***Fuel Retailers'*** decision³⁴ in which the Constitutional Court identified the general objective of sustainable development as the integration of socio-economic considerations with environmental

³⁴ The *Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 (10) BCLR 1059 (CC), at para 68.

protection in the process of satisfying people's developmental needs.³⁵

50.2. The ***HTF Developers'*** decision,³⁶ the Constitutional Court emphasised the relationship between the environment and socio-economic growth.

51. We submit that the Applicants have not established a case under s 6 of PAJA, and thus, the court should dismiss this application solely on this basis.

THE SECOND GROUND OF REVIEW

The EIA failed to consider the ICMA factor and discharge of the state's duties as trustee of coastal public property

52. The Applicants contend that the EIA for oil and gas exploration neglected to consider the ICMA factor and discharge of the state's duties as trustees of coastal public property.

³⁵ *Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 (10) BCLR 1059 (CC) and see *B P Southern Africa (Pty) Limited v MEC for Agriculture, Conservation Environment & Land Affairs* 2004 (5) SA 124 (W).

³⁶ *MEC: Department of Agriculture, Conservation and Environment v HTF Developers (Pty) Limited* 2008 (2) SA 319 (CC).

53. We submit that coastal drilling and offshore drilling are two distinct methods for exploring and extracting oil and gas from beneath the surface seabed.
54. The EA was specifically authorised for offshore drilling activities rather than for coastal drilling operations.
55. The proposed drilling area is 60 km from the coast at its closest point and 170 km, and the water depth is approximately 700 m to 3,200 m.
56. The coastal ecosystem and the communities that depend on it will not be impacted.
57. To the degree that the Block coincide with Brown's Bank Coral and the Southeast Atlantic, the areas of interest, or drilling areas, do not intersect with any MPA.
58. The EIA considered the CBAs and EBSAs situated within the vicinity of the Block. Furthermore, the FEIAR mandated a condition that necessitates TEEPSA:
- 58.1. to conduct a pre-drilling site survey using ROV to gather information on seabed habitats, including mapping sensitive and vulnerable areas within 1,000 m of the proposed well and

- 58.2. If sensitive habitats are detected from ROV footage, the well position will be adjusted, or appropriate technologies and monitoring surveys will be implemented to minimise risks and assess potential damage to vulnerable seabed habitats.
59. It is imperative to retaliate that should oil and gas resources be discovered, TEEPSA is obliged to apply for a production or petroleum right and, compile an EIA for oil and gas production and reconsider the ICMA factor and discharge of the state's duties as a trustee of coastal public property.
60. We submit that the Applicants failed to prove that the EIA for oil and gas exploration failed to consider the ICMA factor and the state's duties as trustee of coastal public property, nor did they establish grounds for review under s 6 of PAJA.

THE THIRD GROUND OF REVIEW

The impacts of climate change, GHG emissions, and atmospheric pollution

61. The claim that the EIA for oil and gas exploration failed to consider the climate change, GHG emissions, and atmospheric pollution lacks factual and legal basis.

62. The subsequent legal framework is in place to address the climate change impact GHG emissions, and atmospheric:

62.1. The RSA is a signatory to the Paris Climate Agreement signed on 22 April 2016, committing SA to reduce emissions and adapt to climate change impacts while urging other countries to strengthen their commitments;

62.2. The ***Wild Coast*** review decision³⁷ which requires consideration of climate change for oil and gas exploration authorisations;

62.3. The National Greenhouse Gas Emission Reporting Regulations (2017) These Regulations establish a national reporting system for GHG emissions to maintain a National Greenhouse Gas Inventory, assist South Africa with UNFCCC reporting obligations, and guide legislation and policy development;

62.4. The RSA published its Nationally Defined Contribution (“**NDC**”) The NDC is the cornerstone of each country’s commitment to the objectives of the Paris Agreement and sets out the way it will

³⁷ *Sustaining Wild Coast NPC and others v Minister of Mineral Resources and Energy and others* 2022 (6) SA 589 (ECMk) at paras 120-131.

address climate change (including GHG emission reduction and adaptation).

- 62.5. The National Pollution Prevention Plans Regulations prescribe requirements for pollution prevention plans for GHGs. TEEPSEA must submit plans to reduce GHG emissions and annual progress reports on their implementation;
- 62.6. The Carbon Tax Act³⁸, the South Africa's carbon pricing tool, imposes a tax on GHG emissions that exceed specific thresholds;
- 62.7. The National Climate Change Adaptation Strategy which sets out key areas for achieving climate resilience in the country. It emphasises climate change adaptation, building on principles from South African laws like NEMA and s 24 of the Constitution, which ensures the right to a safe and healthy environment;
- 62.8. The National Guideline for the Consideration of Climate Change Implications in Applications for the EA published by the Minister on 21 June 2021. These guidelines guide considering climate change impacts during the EIA. They also detail the intended

³⁸ Act 15 of 2019.

audience and applicable EIA processes and developments, as well as their scope;

- 62.9. The Just Energy Transition Investment Plan (**JET-Plan**) for 2023-2027 has been adopted and intended to reduce carbon and climate-resilient economy in line with its updated Nationally Determined Contribution (NDC) lodged with the UNFCCC in 2021.
- 62.10. The Climate Change Act,³⁹ enacted on 24 July 2024, which seeks to define, manage, monitor, and implement South Africa's response to climate change.
63. The proposed drilling project's impact on climate change, GHG emissions, and atmospheric pollution was subjected to public participation in compliance with NEMA and the 2014 EIA Regulations.
64. The report titled “***Climate Change and Air Emission Impact Assessment for Exploration well drilling in Block 5/6/7 off the South West Coast of South Africa***,” prepared by SRL Consulting and attached to the FEIAR, assessed the impact on climate change, GHG emissions, and atmospheric pollution.⁴⁰

³⁹ Act 22 of 2024.

⁴⁰ Rule 53 record: vol 6, pp 2918-2973.

65. Regarding air pollution, the report states, inter alia, that:

“Since the proposed operations would be far removed offshore, their contribution of air pollution along the coastline is expected to be low considering the dilution effect due to atmospheric dispersion of the air emission.”

66. Regarding climate change GHG emissions, the report states, inter alia, that:

“Based on the published 2017 National GHG annual Inventory for South Africa, the total CO₂-e emissions from the Project, assuming 5 successful appraisal wells with tests, would contribute approximately 0.07% to the 2017 South African “energy” sector total of 0.41 Gt and represent a contribution of 0.06% to the National GHG inventory total of 0.51 Gt.”⁴¹

67. On page 2968, the report further states that :

“Thus, with the implementation of the mitigation measures, the intensity and magnitude of the GHG impact reduces to very low, with the residual impact reducing to very low significance. The impact of climate change over the lifetime of the Project taking the robustness of the Project into account, is not expected to have a significant impact on the Project. Furthermore, since the Project is of a temporary nature and expected to be completed in the near future, changes in meteorological parameters are not expected to have a significant impact on the Project. “

⁴¹ Rule 53 record: vol 6, p 2968.

68. To mitigate the impact of climate change, GHG emissions, and atmospheric pollution, the report recommended TEEPSA to implement the following measures:

68.1. Implementing a maintenance plan to ensure diesel motors and generators receive adequate care, minimising soot and unburnt diesel emissions while maximising energy efficiency;

68.2. Planning of drilling operations and optimising rig placement, rig movements, and logistics—specifically, the number of trips to and from the onshore logistics base—to reduce fuel consumption and

68.3. Prevention of waste incineration in the port, pending an emissions license for the drilling unit limit;

69. The report suggests these measures for preventing and controlling pollution from oil burning and flaring:

69.1. The optimisation of the well test program to minimise burning during the process test;

69.2. The well testing during the day for better dispersion and optimal combustion, preventing hydrocarbon dropout;

- 69.3. The use a high-efficiency burner for flaring to maximise hydrocarbon combustion and reduce emissions and drop-out during well testing and
- 69.4. The monitoring of the burner for any malfunction or interruption.
70. The report recommended these measures for monitoring and reporting:
- 70.1. Monitoring the volume of fuel consumed and estimating the associated air emissions resulting from fuel combustion following the completion of the designated process operations.
- 70.2. Aligning project GHG reporting with national policy. For GHG, it is necessary to report levels of CO₂, CH₄, and N₂O, which should be calculated based on Tier 2 or Tier 3 methodologies, on an annual basis through the SAGERS system, as mandated by NEM: AQA for oil and gas exploration activities classified under code 1B2, as outlined in Annexure 1 of the amended Regulations.
- 70.3. TEEPSA is required to submit an annual Carbon Tax environmental levy in July of each year following the commencement of operations.
71. It is retaliated that, should oil and gas resources be discovered, TEEPSA must apply for a production or petroleum right. Furthermore, it remains

essential for TEEPSA to conduct an EIA for oil and gas production and consider the impacts of climate change, GHG emissions, and atmospheric pollution during the production phase.

72. We refer the Court to the **SDCEA**'s decision⁴², the North Gauteng High Court refused to review and set aside the EA for the mid-merit gas cycle power plant in Richards Bay, stating that the EIA considered the climate change.
73. We submit that the Applicants failed to prove that the EIA failed to consider climate change, GHG emissions and atmospheric pollution, nor did they establish grounds for review under s 6 of PAJA.

THE FOURTH GROUND OF REVIEW

The transboundary EIA of the proposed drilling project

74. The fourth ground of review is on the basis that a well blow-out and consequent oil spill, posed a risk of oil reaching international waters, the Nambian waters and the Namibian shore and that a transboundary EIR assessing the damage which could be caused in Namibian waters and on the Namibian shore should have been done.

⁴² *South Durban Community Environmental Alliance and another v Minister of Forestry, Fisheries and the Environment and others* [2022] JOL 55917 (GP) at paras 16 to 47 and 51 to 54.

75. The Applicants' ground of review is then that the Final EIR failed to consider the transboundary impacts of an oil spill caused by the Proposed Project. That is not entirely correct, as stated in paragraph 131 of their heads of argument, that the State do not dispute that the impacts on Namibian waters and coastline were not considered. In the appeal decision, the Minister stated that:

"2.70 I have noted the indications in the ESIA report of the possibility of potential impacts on Namibian territorial waters in the event of an oil spill. However I determine that there was no requirement for the applicant to conduct a detailed assessment of any impacts on the Namibian waters, or its coast and coastal communities. I find that this does not render the process deficient."⁴³

76. The Minister thus did consider the potential impacts on Namibian waters and found that a detailed assessment was unnecessary. It is wrong to say that the Final EIR made no assessment of potential impacts on Namibian territorial waters in the event of an oil spill.
77. In paragraph 133 of the heads, the Applicants correctly state that the critical question is whether NEMA should be interpreted to require the assessment of transboundary impacts. From their heads it is clear that neither NEMA nor the EIA Regulations expressly address whether or not

⁴³ Record, p 10300 (Appeal Decision).

an Environmental Assessment must be done to assess the transboundary impacts of a proposed project. The Applicants then set out to determine whether NEMA does require such an Environmental Assessment although NEMA does not contain a requirement to do so. They then embark upon an expansive interpretation exercise, trying to force the objects of integrated environmental management into a requirement of assessment of transboundary impacts, i.e. to seek to interpret NEMA to be applicable outside the borders of the RSA.

It is already submitted at this stage that such an exercise is futile, because NEMA is legislation applicable only territorially within the Republic of South Africa. If any obligation existed to require an extra territorial application of NEMA, it would have had to be found in international law which was incorporated into municipal law in terms of section 231(4) of the Constitution. We say so because the Minister, in exercising her powers to require TEEPSEA to do an EIR assessing impacts of the Proposed Project within Namibia, can only do so in terms of municipal law and specifically in terms of NEMA. No amount of interpretation of NEMA can make international law part of NEMA. Her powers are contained in municipal law and not in international law.

78. But the Applicant argues that there are at least the following obligations relevant to the interpretation of NEMA, namely:

- 78.1. The Abijan Convention;⁴⁴
- 78.2. The Benguela Current Convention;
- 78.3. The UN Convention of the Law of the Sea (UNCLOS);
- 78.4. The General International Law as stated in the *Pulp Mills* case.

79. These treaties and conventions, so the argument goes, require member states to assess the environmental impact of activities which are likely to cause adverse impacts on certain marine and coastal environments. The argument is further that section 233 of the Constitution requires the Court to prefer a reasonable interpretation of legislation which is consonant with international law. South Africa's international obligations, so it is argued, indicate that NEMA must be interpreted as requiring the assessment of transboundary impacts. Therefore, TEEPSA was obliged to assess the transboundary impacts in respect of Namibia. The Director General and the Minister took their decisions without such an assessment.

Lastly, it is argued that Total seeks to create a lacuna in that if the RSA does not require the assessment of transboundary impacts, there is no way to ensure assessment thereof.

80. We submit that this ground of appeal should not be upheld for the following reasons:

⁴⁴ Convention of Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region.

- 80.1. As stated, the Minister derives her powers to grant or refuse the application for an exploration right from municipal law, i.e. sections 79 and 80 of the MPRDA read with NEMA, and not from international law;
- 80.2. The Applicants' endeavour to interpret NEMA with reference to international law is defective;
- 80.3. The international instruments referred to did not become part of the South African municipal law unless they were incorporated into municipal law by legislation as contemplated in section 231(4) of the Constitution, which the Applicants did not show to be the case.⁴⁵
- 80.4. The so-called general rule or customary law relied upon have not been proven to be part of South African law; and
- 80.5. There is no lacuna in NEMA as far as international law is concerned as the matter is dealt with in Chapter 6 of NEMA dealing with the incorporation of international environmental instruments from section 25 and section 27.

⁴⁵ And we submit, is not the case.

The correct approach to interpretation and application of international treaties in terms of the Constitution

81. This subject was dealt with exhaustively by the Constitutional Court in *Zuma v Secretary of the Judicial Commission of Enquiry into Allegations of State Capture Corruption and Fraud in the Public Sector Including Organs of State and Others*.⁴⁶ In this case the relevant unincorporated treaty which was sought to be used for interpretation purposes was the International Covenant on Civil and Political Rights. The court held as follows:

“[108] It is trite that international treaties, like the ICCPR, do not create rights and obligations automatically enforceable within the domestic legal system of the member State that ratifies and signs them. The architecture of international law is constructed around the recognition of State Sovereignty. That is why it is a cardinal tenet of international law, that to be given force and effect on the domestic plain of a dualist State, international treaties must be incorporated into a State’s body of domestic law by way of an implementing provision enacted by that State’s legislature. This principle is put on a textual footing in our own constitution by virtue of section 231(4), which maintains that a South African court cannot treat any international law as directly applicable on the domestic front unless it is first incorporated into domestic law by enactment of national legislation. It is worth noting that while South Africa has signed

⁴⁶ 2021 (11) BCLR 1263 (CC) (Zuma III)

and ratified the ICCPR, it has not incorporated it into domestic law. And, of course, it goes without saying that section 39(1)(b) does not, in and of itself, incorporate international law into domestic law. What this means is that, although the ICCPR binds the Republic at the international level, its provisions, which are not self-executing, do not create domestic rights and obligations that are capable of binding domestic courts or being invoked by litigants in this Court, or any court in this country. Even my Brother accepts, as of course he must, that the ratification of international law instruments does not make them enforceable in our domestic courts, but rather, binds the Republic at the international level.”

The court then goes on to state that the simple truth is that an international treaty not incorporated into South African law, has no place being invoked in a national court, and litigants cannot purport to rely on section 39(1)(b) of the Constitution as the basis upon which to attempt to invoke its provisions.⁴⁷

82. It is furthermore emphasised that no matter which international provision may be relevant, section 39(1)(b) enjoins the court only to “consider” it. What section 39(1)(b) does not do is to import some obligation on our domestic courts to depart from South African constitutional rights jurisprudence merely because similar or duplicative provisions exist, and their interpretations have been propounded, at international level. Treating international conventions as interpretive aids does not entail

⁴⁷ See para 109.

giving them the status of domestic law in the Republic. To treat them as creating domestic rights and obligations is tantamount to incorporating the provisions of the unincorporated convention into our municipal law by the backdoor.

The relation between section 39(1)(b) and section 233 of the Constitution which applies to the interpretation of legislation and requires something quite different of our domestic courts is stated as follows by the court:

“Section 233 is markedly distinct from the interpretive injunction captured in 39(1)(b) of the Constitution. According to the former, when interpreting legislation, courts must “prefer” an interpretation consonant with international law, over any other interpretation. According to the latter, when interpreting the Bill of Rights, our courts need only “consider” international law. Importantly this is not the same as saying that courts are enjoined to defer to international law or prefer an interpretation of rights consonant with it. Once this distinction is properly understood, so can my main point be: international law is an interpretive tool to assist in the interpretation of our Bill of Rights and it does not oblige this court to prefer a position taken in international law...What the ICCPR is not, is some supreme body of law that the Constitution ushers in to trump any and all application of our own domestic law. It must be considered not necessarily preferred.”⁴⁸

⁴⁸ *Ibid* paras 116 to 118.

There is no lacuna in NEMA

83. International obligations and agreements are dealt with in Chapter 6 of NEMA. This chapter sets out a scheme whereby

83.1. The Minister may take steps to recommend to cabinet and parliament accession to and ratification of international environmental instruments to which South Africa is not yet a party.

83.2. Where the Republic is a party to an international environmental instrument, the Minister, after the Republic had become bound to it by means of sections 231(2) and (3) of the Constitution, may publish the provisions thereof in the Gazette.

83.3. Thereafter, the Minister may introduce legislation in parliament or make such regulations as may be necessary for giving effect to an international environmental instrument to which the Republic is a party.⁴⁹

⁴⁹ See section 25(1) to (4) of NEMA.

84. Thus, had there been a desire to have NEMA made applicable to extra territorial assessment of impacts, the Minister would have had to follow the provisions of Chapter 6 of NEMA in order to make it law, which she did not do.

The vagueness of the interpretation argument

85. The Applicants do not state which specific provision of NEMA has to be interpreted so as to include extra territorial assessment of impacts. What the Applicants seek to do is to import into NEMA a substantive provision based on some international instrument which has not become part of South African municipal law. This is not interpretation but legislation.

The allegation of the existence of customary international law requiring extra territorial assessment

86. **The Trail Smelter Arbitration:**

In this arbitration the tribunal set out to apply the law and practice in the United States as well as international law and practice. A question which had to be decided was whether the Trail Smelter should be required to refrain from causing damage in the State of Washington in the future and, if so, to what extent. It also had to decide on whether compensation had to be paid.

The Columbia River has its source in Canada. At Trail in British Columbia the river flows past a smelter located in a gorge where zinc and lead were smelted in large quantities. This had the consequence that sulphur was released into the air which caused damage in the United States. It was a process which happened over many years.

On the basis of interstate decisions in the United States, the tribunal found the basis of those decisions taken as a whole, constitute an adequate base for the conclusion that under the principles of international law, as well as the law of the United States, no state may set as the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to a territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.”

The parties to the arbitration was the United States of America and the Dominion of Canada.

87. The question whether a determination of the impact of the air pollution had to be made before commencing with smelter operations, did not even arise in this case and it is not authority for the proposition of the Applicants.

88. **The case concerning Pulp Mills on the river Uruguay (Argentina v Uruguay)**.⁵⁰

This case was decided on the basis of a treaty between Uruguay and Argentina in respect of a dispute concerning the breach, allegedly committed by Uruguay, of obligations under the Statute of the River Uruguay. This is a treaty signed by Argentina and Uruguay in 1975 referred to in the judgment as the 1975 Statute. In its application, Argentina stated that the breach arose out of “the authorisation, construction and future commission” of two pulp mills on River Uruguay. The 1975 Statute provided for communication and co-ordination between the two states with respect to use of the river. It provided for a body, CARU, as a mechanism established to facilitate co-operation between the parties. One of the provisions of the 1975 Statute was that when the water of the river is to be used for industrial purposes there had to be notice to the other party. Two mills were erected by Uruguay and one of the questions was whether Uruguay complied with its obligations in that regard. Uruguay did an environmental impact assessment consulting with people on both sides of the river which forms the boundary between the two states. Argentina alleged the environmental impact assessment to be defective on the basis of non consultation. It is within this context that the statement which appears at paragraphs 157 and 158 of the applicant’s heads appeared in the judgment of the International Court of Justice. In interpreting Article 41A of the 1975 Statute, the Court made reference to

⁵⁰ ICJ 20 April 2010.

the practice of doing an EIA which may be considered a requirement under general international law to undertake and to assess whether there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context. This EIA was used to inform Argentina in terms of the notification procedure set out in the 1975 Statute. This judgment is not authority to say that a transboundary assessment must be done by virtue of South African state practice and general international law. There is a difference between general international law and customary international law which arises from consistent state practice and underlying *usus* or *opinio juris*.⁵¹

THE FIFTH GROUND OF REVIEW

The impact of blow-out and oil spill

89. The assertion that the EIA disregarded the consequences of a blowout and oil spill is devoid of legal and factual substantiation.
90. Since the 1940s, no blowouts or oil spills have occurred in South African waters. In 2019 and 2020, TEEPSA successfully drilled two wells in Block

⁵¹ See in this regard *S v Petane* 1988 (3) SA 51 (C) at pp 44, 59. Also *Nduli v Minister of Justice* 1978 (1) SA 893 (A).

11B/12B off the South Coast (Brulpadda and Luiperd), achieving a gas discovery without incidents.

91. The Oil Spill Response Limited ("**OSRL**"), a global cooperative dedicated to oil spill response and supported by over 160 oil and energy companies, maintains a facility in Saldanha Bay.
92. IMOrg mandated with the responsibility of managing and responding to oil spills and blowouts along the coastline of the RSA, has been established to deal with blow out and oil spills.
93. The South African National Oil Spill Contingency Plan ("**Annexure AA3**" to the Minister's answering affidavit), the response strategy to oil spills and associated incidents within South Africa's maritime domains, has been compiled.
94. The FEIAR included, inter alia,
 - 94.1. The Oil Spill Modelling Report prepared by HES and ⁵²
 - 94.2. The report was peer-reviewed by PRDW.⁵³ PRDW found, inter alia that :

⁵² Rule 53 record: vol 4, Appendix 7, pp 1697- 1997.

⁵³ Rule 53 record: vol 5, pp 2082-2126.

"the drilling discharges modelling study undertaken by HES for Blocks 5/6/7 has been peer reviewed and is considered to follow best international practise. The results can, therefore, be considered reliable and can be used to inform the ESIA."

95. The report did not exclude the possibility of a blowout and oil spill occurring during the drilling operation.
96. The report addressed a worst-case scenario in the event of a blowout and oil spill, along with the response techniques to be implemented in such situations.
97. The report recommended TEEPSA to take the following measures:
 - 97.1. Prepare and implement a Shipboard Oil Pollution Emergency Plan and a well-specific response strategy and plans (Oil Spill Contingency Plan and Out Contingency Plan).
 - 97.2. TEEPSA must consider the South African Marine Pollution Contingency Plan, outlining national policies for managing emergencies, including oil pollution in the marine environment;

- 97.3. TEEPSA must consider the three main components of an Oil Spill Response Plan: crisis management, spill response and containment, and well management control;
- 97.4. TEEPSA should minimise scheduling drilling operations during the Austral winter, as this is when the risk of shoreline oiling from a blow-out is greatest. If exploration wells are drilled in a sequence during this time, response efforts must be enhanced;
- 97.5. TEEPSA should select response strategies that minimise mobilisation and response timeframes as much as possible. Utilise an optimal blend of local and international resources to ensure the quickest facilitation response;
- 97.6. Coordinate joint oil spill exercises involving TEEPSA and relevant local departments and organisations to evaluate Tier 1, Tier 2, and Tier 3 response capabilities responses;
- 97.7. TEEPSA should use low-toxicity dispersants that quickly dilute below acute toxicity thresholds, applying them cautiously with DFFE permission;
- 97.8. When conditions permit, TEEPSA must strive to effectively manage and contain sea spills using suitable recovery methods to reduce the incident's spatial and temporal impacts spill;

- 97.9. In case of a spill, TEEPSA must utilise satellite-based Synthetic Aperture Radar (“**SAR**”) to monitor the spill's behaviour and size, optimising response resources and
- 97.10. The insurance coverage as required by the *2015 Regulations pertaining to the Financial Provision for Exploration Operations* for blowouts and oil spill incidents.
98. It is retaliated that, should oil and gas resources be discovered, TEEPSA must apply for a production or petroleum right. Furthermore, TEEPSA must conduct an EIA for oil and gas production and consider the impacts of blowouts and oil spills during the production phase.
99. We submit that the Applicants have failed to prove that the EIA disregarded the consequences of a blowout and oil spill, nor has it established grounds for review under s 6 of PAJA.

CONCLUSION

100. For all the reasons set out above, we submit that the review application ought to be dismissed with costs, including costs consequent upon the employment of two counsels.

G L GROBLER SC

L GUMBI

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Chambers

Pretoria and Sandton

31 March 2025

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