

In the Wake of the Ancestors, Dreaming of a Sacred Sea: Beyond the Battle against the Oil and Gas *Phakisa* Imaginary

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Abstract

The offshore oil and gas stream of the South African government's economic development imaginary, Operation Phakisa, is escalating reconnaissance and exploratory activities. Oceans Not Oil has emerged as a key campaign in response to Phakisa's petro-enclosure of the ocean commons. Considering carbon emission-induced changes and collapse of ecologies in the ocean, there is an urgency to profoundly rethink imaginaries of the sea as resource and commons. This fast-tracked oil and gas Phakisa vision is shaping problematic relations of domination – over the ocean and its marine others, interested and affected parties, ocean-users, intangible heritage, legislature, the precautionary principle and its opposing logic, and over future generations' wellbeing. This article relates how convergence of subsistence fishing collectives, coastal civil society groups, scientists, and academics with resistance by First Nation and indigenous, small scale fisher, and traditional healer collectives and their oppositional discourses to Phakisa have questioned its jurisprudence and undermined the state's claim to it being a sustainable transitional decarbonisation strategy. The aim of the paper is to show the development of a counter-imaginary; one giving visibility to an atavistic environmentalism demanding an ocean-centred approach to energy provision and which refuses the trade-offs of exacerbated global warming impacts, environmental harms, and cultural dispossession of the state pursuit of more oil and gas.

Keywords: Operation Phakisa, offshore oil and gas, ocean, dispossession, Oceans Not Oil, social opposition, intangible heritage, resistant counter-imaginary, South Africa, global warming, litigation



Figure 1. Protesters crossing the Mzamba River during the nationwide Oceans Not Oil protest, 5th of December 2021

Introduction

People don't eat fish, they eat oil. How do they eat oil? They eat oil. Because countries that trade with oil, that is the rich oil deposits, are rich and people there are better off. We don't go and drink oil, but oil you eat because it is part of your trading system. It provides resources and you grow as a country (Minister of Minerals and Energy, Gwede Mantashe 2022).

'It was the summer of 2021 when the largest environmental campaign in South Africa's history was launched. On the beaches of the Eastern Cape, activists, academics, subsistence farmers, fisherfolk, traditional healers and lawyers rolled up their trousers and waded into the ocean, all in the name of safeguarding our marine heritage' (Bloom 2021). The Oceans Not Oil protest rallied at 70 events coastwide against a reconnaissance seismic survey, in search of petroleum within the seabed offshore of the ecologically sensitive Pondoland, known as the Wild Coast, of South Africa (Figure 1. shows the protest walk in Pondoland). The seismic survey would be conducted for Royal Dutch Shell P.L.C. subsidiary, BG International, Shell

Exploration and Product SA (Shell) and local consortium, Impact Africa Limited. The effect of the protest was widespread civil society mobilization across Africa, and internationally (Healy 2022) against Shell and further petroleum development; local Shell outlet boycotts; an advisory by the Scientific Advisory Group on Emergencies (S.A.G.E.) against the survey (Singh, le Roux & Naidoo 2022) and two urgent court interdicts, one of which succeeded in setting aside Shell's reconnaissance permit and all subsequent renewals with costs. For this landmark ruling, discussed later, Shell, Impact Africa and Minister of Mineral Resources and Energy Gwede Mantashe have been granted leave to appeal, at time of writing.

What so many protesters were attempting to make visible, was not only Shell and Impact Africa's public accountability but more specifically, meaningful reassociation of the marine environment to paradigms of relation and critical care. In South Africa, the sea is invested by many with sacredness from ancestral power, a site for spiritual grounding and healing (Sibeko 2020). The ocean is venerated with multiple, individuated spiritual ideologies (Ngobese 2018), with its value held by past, present, and for future generations (Deacon *et al.* 2004).

The ocean, that is viewed as '*our Great Home*' (Coastal Links Eastern Cape, Amadiba Crisis Committee & Dwesa-Cwebe Communal Property Association 2021) by so many who waded into it that day, is experiencing record and unprecedented warming (Climate Change Institute 2023) since it has absorbed over ninety percent of the excess heat trapped by human emissions of greenhouse gases (g.h.g.) (Masson-Delmotte *et al.* 2018). Scientific consensus warns that continued oil and gas exploration and production exacerbates effects to ocean warming (Rogelj *et al.* 2018), its consequential sea level rise (Tokarska *et al.* 2019), acidification (Feely, Doney & Cooley 2009) and oxygen loss (Alteri, Nelson & Gedan 2019) already disrupting global weather, impacting ocean and terrestrial biodiversity (Moore 2018). For contributing scientists to the S.A.G.E. advisory, this ultimately means '*destroying the fisheries and marine tourism industries of all countries, including South Africa, resulting in devastating job losses, food insecurity, and other adverse socioeconomic consequences*' (Singh, le Roux & Naidoo 2022:13).

This article is based on data obtained in South Africa, dating from 2016 to the present, during fieldwork as a filmmaker on two documentaries centred around the risks of the offshore oil and gas stream of the South African government's economic development imaginary, Operation Phakisa

(O.O.G. Phakisa). The first documentary was *Becoming Visible* (2018) and the work-in-progress is entitled *Blue Burning*. Research for the former investigated the dangers posed by unilateral traumatizing noise exposure from marine seismic surveys to many marine species, and the vulnerability of local fishery-based livelihoods to these impacts. Fieldwork for the latter has involved 49 semi-structured interviews of registered offshore oil and gas sector interested and affected parties (I.&A.P.) for the Eni/Sasol; Total E. & P. South Africa B.V. offshore applications and Shell/ Impact Africa Ltd as the case unfolded. The networking involved, the relations formed, the intra-actions (Barad 2007) in the fieldwork for *Becoming Visible*, and responses to the film itself, became instrumental in founding the Ocean Not Oil coalition. Acknowledging responsibility for the ‘worlds that are produced through research practices’ (St. Pierre, Jackson & Mazzei 2016), the author has been an active participant in the coalition ever since.

This article draws on a decolonial ecofeminist framework from a marine and climate justice perspective (Widener 2018). It is selected for its capacity to address the colonising agency of a petro-extractivist imaginary on ocean governance systems (Ødegaard & Andía 2019; Bond 2019), on the storied sea of affected communities (Gómez-Barris 2017); recognises the relations of ocean to intangible heritage (Minguzzi 2021); and respects pluralism of cosmologies (Plumwood 2009b). The article will not engage in the full extent of diverse, still-evolving factors in the socio-political resistance to O.O.G. Phakisa, but is rather it’s a modest contribution focused on central factors that have brought convergence to the Oceans Not Oil movement as a web of resistance against the determinism and implacability of a state petro-imaginary articulated as ‘sustainable economic development’ (D.E.A. *et al.* 2010). As such it makes a contribution to debates about the ‘creeping jurisdiction’ (Kwiatkowska 1991), the ‘last great dispossession’ (Satgar 2022) of the ocean commons through political abuse. It takes a non-instrumentalist definition of the ocean commons as a cultural process by which communities agree that life-sustaining ocean provisions should be held in common and work together to preserve them (Linebaugh 2009).

The aim of the paper is to show the development of a counter-imaginary, which gives visibility to an atavistic environmentalism demanding an ocean-centred approach, which refuses the trade-offs of exacerbated global warming impacts, environmental harms, and cultural dispossession of the state pursuit of more oil and gas.

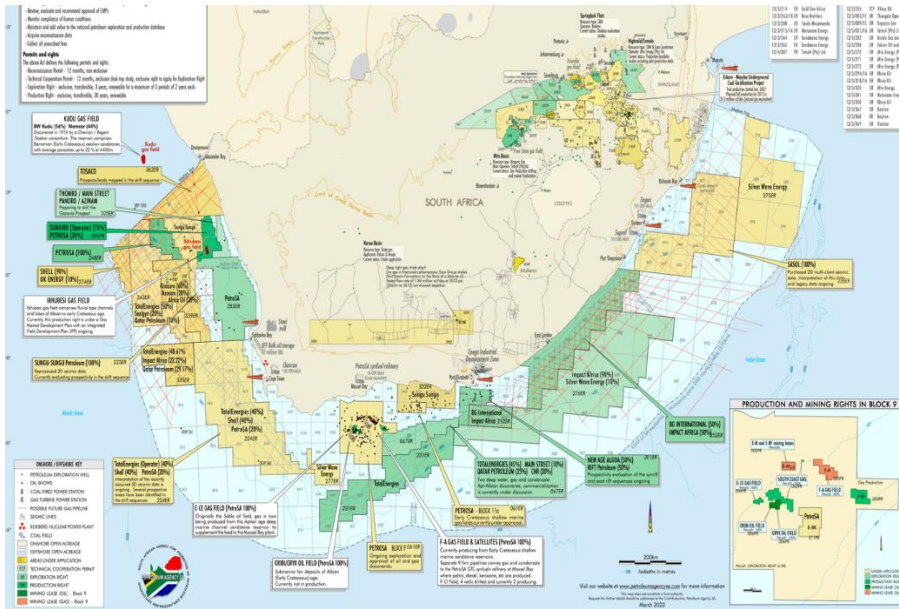


Figure 2. Petroleum Agency South Africa (March 2023) showing current petroleum exploration and production activities. Source: P.A.S.A. website

Ocean Territorialisation

The coast of South Africa is necklaced with shell middens, and Mesolithic fish traps which speak of an ancient ocean commons and a coastline as source of sustenance, cultural expression and identity for the First Indigenous Peoples, the KhoiSan Peoples (Lichtenstein 1812) and those that came after (Bloem 2021c). Even older, the oceanic ancestral home for modern homo sapiens lies half engulfed by sea-level rise at the end of the last glacial period (Bailey & Cawthra 2021), with only artefacts such as the ‘*stingray sculpture*’ (Helm *et al.* 2020) revealing the sophistication of early cultural practices and their link to the sea. The rate of inundation by the sea across the extremely wide continental shelf, the Agulhas Plain, might have been ‘*sufficient to have a disruptive impact within a human lifetime*’ (Bailey & Cawthra 2021). That inundating ocean is now integral to the culture and religion of many Southern African Nguni people as a place where the ancestors reside and where they must be honoured (Boswell 2022). On the seaward side of the continental shelf, oil conglomerate Total’s first drilling attempt for oil and gas was halted

in 2014, due to unanticipated oceanic turbulence affecting the integrity of their rig (*Offshore Engineer* 2018). Five years later, with rig improvements, they announced a gas-condensate discovery (Total Energies 2019), which President Cyril Ramaphosa described as a ‘*catalytic find*’ (Republic of South Africa 2019).

If the sea is discursively constituted (Oppermann 2019), petroleum oil, too, carries a cultural logic of an imaginary in its own right (Wilson, Carlson & Szeman 2017). O.O.G. Phakisa was envisioned ‘*to realize the potential of the gas reserves in the country and to contribute to the transition to a low carbon economy*’ (D.E.A. 2014), aiming to sink 30 new offshore oil and gas wells by 2030. Phakisa means ‘hurry up’ in Sesotho. A political mapping of the ocean commons assigned 93% (Walker 2018) of its 1.5 million km² magnitude to O.O.G. Phakisa’s oil and gas zoning (see Figure 2.), granting license holders ‘*primary use*’ (D.F.F.E. 2023). This ocean-future-making coloniality is legitimized as a just and sustainable means to reduce foreign oil and gas dependence, and a panacea for flagging state power generation (D.F.F.E. 2022). Current estimates of South African offshore petroleum potential place oil resources at 26.5 billion barrels (equivalent to 118 years of oil consumption) and 60 trillion cubic feet of gas (equivalent to 11 billion barrels of oil and 375 years of gas consumption (D.F.F.E. 2022). Further, state intention is to ‘*maximise*’ utilization of these reserves; and to create ‘*an enabling environment*’ for offshore oil and gas development (D.F.F.E. 2023)¹.

Jurisprudence of Entitlement

In the same year that O.O.G. Phakisa was launched 2014, the Department of Mineral Resources rationalised the offshore oil and gas permitting system through a policy called The One Environmental System. This removed the need for environmental impact assessments (E.I.A.) to be done for offshore seismic surveys by repealing sections of the Mineral and Petroleum Resources Development Act (38 and 39) and listed activities from the Environmental Impact Assessment regulations promulgated in terms of the National Environmental Management Act (N.E.M.A.) (Bloem 2021b). So,

¹ The veracity of these volumes is called into question by the discrepancies within the Gas Master Plan Basecase Report itself (D.M.R.E. 2021).

Shell were permitted to arrive, ready to operate, without meaningful public consultation seven years later (Bloem 2021b), despite amendments reinstating requirements for an E.I.A. for seismic surveys having been made earlier that year (D.M.R. 2020).

Making the Minister of Forestry, Fisheries and Environment head of Operation Phakisa, with the strategic objective to grow offshore gas and oil-based development in South Africa is also antagonistic to sound environmental management function as provided for in Section 24 of the Bill of Rights (The Constitution of the Republic of South Africa 1996). The Department of Environment has only appellate jurisdiction over the O.O.G. Phakisa regulatory regime (Humby 2015) since the competent authority for environmental authorisation for offshore oil and gas became the Department of Mineral Resources. The Centre for Environmental Rights, a founder organisation to the Oceans Not Oil coalition, critiqued the One Environmental System in 2013, noting the conflicts of interest between mining and its obligations under N.E.M.A., plus the lack of human resource capacity to effectively implement N.E.M.A. and the E.I.A. regulations (Centre for Environmental Rights 2013).

O.O.G. Phakisa's influence over ocean governance has been read as 'capture' (Fonseca 2016; Sunde 2022). Further enabling regulatory lacunas include the exclusion of any overarching ocean governance under which O.O.G. Phakisa sits (Celliers 2017). After brushing aside the National Environmental Management of the Ocean white paper (Republic of South Africa. 2014), the Department of Environment authored the alternative Marine Spatial Planning Act, gazetted only in April 2021, after having removed justice (D.E.A. 2017; 2016), equity and transformation (D.E.A. 2016) from its framework (Sunde 2022). According to numerous critiques, it hasn't balanced its economic goals with ecological-social responsibility, has no appeal mechanism nor ongoing public participation process mechanisms (Findlay 2017; Lombard 2017; Roux 2017; Celliers 2017). In her Working Paper *Operation Phakisa and the Missing Mandate* (2022) environmental scientist Jackie Sunde questions the legitimacy of ministerial authority when the necessary ocean governance framework required to implement constitutionally enshrined environmental rights is not being implemented. Sunde asks: When and where did Parliament take the decision that ocean oil and gas exploration could continue 'in the meantime' without this imperative governance framework? (Sunde 2022).

Marine seismic surveys detonate extremely loud sound and pressure waves blasted from towed air-gun arrays every 10 seconds, 24 hours a day, can continue for months at a time and have been recorded over 3,000 km from the operating survey (Hildebrand 2005). As a geophysical means to determine oil and gas plays in the sea bed, this high intensity sound reaches 220dB or more (McCauley, Fewtrell & Popper 2003), producing chronic acoustic, behavioural and physical disturbance across the entire marine ecosystem². Many marine animals rely extensively on underwater sound, because of wide variances in marine visibility, for communication, reproduction, finding prey or foraging, avoiding predators, larval orientation, and navigation (Montgomery *et al.* 2006; Vermeij *et al.* 2010; Mooney, Yamato & Branstetter 2012).

The deregulation of environmental oversight on seismic airgun reconnaissance effectively lubricated the entry of multinational oil companies onto the South African coast, by reducing authorisation timeframes and public consultation barriers, merely requiring the less stringent environmental management plan (E.M.P.) (Surban 2016). This was evidenced by two more applications in 2021, that each produced an E.M.P. for enormous survey applications in snoek and tuna fishing grounds on the West Coast, namely Searcher Geodata U.K. Limited and Searcher Seismic Australia (Searcher) (permit area 297 089 km²) and Spectrum Geo Limited (Spectrum) (permit area 180 000 km²). More on this later.

Oceans Not Oil

During 2016, the Schlumberger seismic survey offshore of KwaZulu Natal was granted an extension into the whale migration period (Olbers *et al.* 2017). Coincidental to this was the highest-ever recorded whale and dolphin strandings along this coast, including a mass stranding and suspected barotrauma to a True's Beaked whale (Olbers *et al.* 2017). Barotrauma is linked to increased levels of anthropogenic sound indicating that the whale

² The depth and range of effects from seismic surveys to different species is extensive. Here are some studies: Gordon *et al.* 2007; Hildebrand 2006; Braithwaite, Meeuwig & Hipsey 2015; Fewtrell & McCauley 2012; Carroll *et al.* 2017a; 2017b; Pichegru *et al.* 2017; Koper & Plön 2012; Dunlop *et al.* 2016).

either experienced underwater blast pressures or ascended too quickly for physiological adaption from a deep water dive (Fernández 2005; Hildebrand 2005). Public mistrust over the state's capacity to regulate offshore seismic survey's escalated (Carnie 2016; Kockett 2016; *Cape Argus* 2016).

In light of the increased prospecting activities on the East Coast and the potential risks to sea-dependent livelihoods and marine life, a meeting called by groundWork and its partner non-profit organization, the South Durban Community Environmental Alliance (S.D.C.E.A.), in 2018, brought together twenty-two delegates, with eleven organizations represented. The diverse range of attendance included fisherfolk formations, legal, marine science, environmental justice, nature conservation, film production and coastal watchdog organizations as well as individual on-the-ground activists. All were registered as O.O.G. Phakisa application Interested and Affected Parties (I.&A.P.). The meanings of the offshore oil and gas threat for each differed in context to relations to the sea, previous struggles against dispossession of ancestral coastal land, tangible and intangible heritage, existing fence-line experiences to major oil-from-gas producer Sasol or coal mines, practices of marine conservation, as well as relations with the state (GroundWork 2018). Land-based national campaigns included Life After Coal, anti-fracking, One Million Climate Jobs, The South African Food Sovereignty Campaign and marine campaigns of Only This Much motivating to increase formal state marine protection from an inadequate 0.4% to 5% and more, Coastal Links and Masifundise that promote and secure sustainable livelihoods for small-scale fishers and South Durban Community Environmental Alliance's fight for subsistence fisher's rights (Sunde & Erwin 2020). There was deep group understanding of state harnessing of sustainability rhetoric to legitimise carbon-intensive development and how it marginalizes anti-capitalist politics or transformation of extractivism (Stephenson, Doukas & Shaw 2012).

The consensus was that O.O.G. Phakisa's institutional force was mediating collective life, namely that a) the Petroleum Agency South Africa (P.A.S.A.) would continue to expedite the issuance of oil and gas licenses, and the Department of Mineral Resources (D.M.R.) environmental authorizations, in due disregard of the environmental concerns raised by I.&A.P.s; b) fear the mining culture of legislative non-compliance and lethargic enforcement by government would extend to the offshore sector, but with graver consequences due to the fragility of dynamic marine

Beyond the Battle against the Oil and Gas Phakisa Imaginary

ecosystems; c) a sense that public consultation processes were tokenistic (Vilardo *et al.* 2020; Ingelson & Nwapi 2014) and environmental assessors, who are paid by the developers, were compromised; d) that there weren't enough local baseline studies of deep ocean environments to set the context for any anticipated impacts and to mitigate against them; e) government interdepartmental communication was lacking (Sunde 2022); f) there was a lack of consolidated emergency contingency plan for oil spills in South African seas and g) while customary rights for local communities are upheld by law, they end at the shoreline and do not extend offshore, thus limiting the claims that local communities have over the areas being exploited for oil and gas (GroundWork 2018).

'Oceans Not Oil' was the name unanimously chosen for the umbrella body that would build a critical mass of activists, legal support and scientists opposing offshore Phakisa and institute a campaign to address all these concerns (GroundWork 2018).



Figure 3. Traditional healers and fisherfolk marching against offshore oil and gas, Durban

A clear demand was framed as the cessation of all oil and gas activity in the South African ocean commons. The structural policy and legislation change sought would require an advocacy strategy to lobby parliament and government on reform, with equal emphasis on livelihoods, biodiversity impacts, environment, conservation and climate change (GroundWork 2018).

Additional convergence was built through youth inclusion and collective action, and the commonality of resisting the potential for devastating pollution of the ocean by O.O.G. Phakisa. Many communities maintained they had been excluded from consultations, and, if they were consulted, all presentations were highly technical and in English – a theme that has emerged in all three court cases to date. Alliances grew from a total context of what was being resisted by centring distributional and intergenerational equity and procedural, ecological, and climate justice (Bennett *et al.* 2019); and the necessity of arguing for energy alternatives. Escalations in application permitting filling in the marine commons necessitated collaborations within the broader South African anti-oil and gas, climate justice, and ocean advocacy groups, N.G.O.s (e.g. Coastal Justice Network; The Green Connection; Extinction Rebellion; Xolobeni Crisis Committee and Greenpeace), which dovetailed with their own campaigns and stood in solidarity on submissions and protest actions.

Conspicuously, the deep attachment to the ocean and intangible heritage, linked to some of the oldest practices in the world (Helm *et al.* 2020; 2019), contesting the notion of sea as mere resource or property (Sowman *et al.* 2014; Minguzzi 2021), remained unrecognized in the O.O.G. Phakisa decision-making processes throughout.

Defending the Ocean Commons

The first legal case to challenge the Phakisa extractivist drive involved Italian multinational oil company Eni's local subsidiary Eni South Africa BV, and chemicals and energy company Sasol South Africa Limited. In the public domain at the time was news of Eni facing charges of bribery connected to its joint purchase of a Nigerian offshore oil field for \$1.3 billion with Shell in 2011 (Reuters 2018b; 2018a). Sasol's Secunda factory operates the largest single point source of greenhouse gases (g.h.g.) in the world and is the second biggest source of g.h.g. on the African continent (Sasol 2020). Eni and Sasol

Beyond the Battle against the Oil and Gas Phakisa Imaginary

had partnered to drill up to six exploration and appraisal wells ‘*in an area of extremely dynamic coastal processes*’ (S.D.C.E.A. 2021:117) offshore of Kwa Zulu Natal in L-shaped Exploration Right 236 (E.R.236). After significant effort by Oceans Not Oil affiliates to inform and mobilise the eastern seaboard coastal community, a hundred written comments were submitted in response to the application. The application was nevertheless authorised, which garnered forty-seven appeals by a diverse spread of organisations and individuals. These were dismissed by the Minister of the Forestry, Fisheries and Environment, Barbara Creecy, in favour of Eni and Sasol. On 15 June 2021, S.D.C.E.A., supported by Natural Justice, Green Connection and represented by Cullinan and Associates, filed a judicial review at the High Court, Pretoria, challenging this.

S.D.C.E.A.’s founding affidavit fundamentally challenges the Phakisa regulatory framework on major substantive issues, with ten grounds of review. These grounds tilled the soil for the two cases that came in quick succession thereafter, namely *Sustaining the Wild Coast NPC and Others v. Minister of Mineral Resources and Energy and Others* (28 December 2021), and *Christian John Adams and Others v. Minister of Mineral Resources and Energy and Others* (1 March 2022). S.D.C.E.A.’s legal advisors believe it has potential to set ground-breaking precedents on ‘*how (and whether if at all) deep sea exploration and production in South Africa will be conducted*’ (Natural Justice & S.D.C.E.A. 2021), Eni and Sasol’s attorneys have, to date, delayed in filing their answering papers (Desmond D’Sa, personal communication, 2 May 2023). In February 2022 Eni transferred its entire participating interest in ER236 to Sasol Limited and exited the upstream business in South Africa (Eni 2022), but remains party to the South Durban Community Environmental Alliance *et al. v Minister of Environment, Forestry and Fisheries & Others* (2021) case (29433/21). Development in E.R.236 remains stalled.

This founding affidavit highlights how they deemed the Minister of Forestry, Fisheries and Environment to have failed to comply with her legal obligations to manage, protect and conserve South Africa’s environment and natural resources. It also queries the P.A.S.A. acting outside of its advisory role by accepting and approving the Final Scoping Reports and application for environmental authorisation; and claims public participation process was procedurally unfair since it was all in English. S.D.C.E.A. questions the irrational, artificial distinction in the South African authorising process

between oil exploration and production, since both are phases in a single process to find useable hydrocarbon reserves, explaining the separation leads to a failure to take relevant impacts of production into account. Justifying the inadequate consideration of the need and desirability of the project, S.D.C.E.A. cite the 2019 Integrated Resource Plan findings that the prescribed 3000MW of gas for South Africa's future energy mix represents '*low gas utilization, which will not likely justify the development of new gas infrastructure and power plants predicated on such sub-optimal volumes of gas*' (D.M.R.E. 2019).

Methane is a far more powerful greenhouse gas than carbon dioxide and the radiative forcing of methane gas means its larger global warming role than coal or oil '*for any possible use of natural gas*' (Howarth 2014:1), therefore reducing methane emissions quickly slows global warming (I.P.C.C. 2018; Yang, Hastings-Simon & Ravikumar 2018). Plans are well developed for an expanded national, natural gas infrastructure, involving 3500kms of gas-pipeline networks along the South African coastline, port facilities and liquefied natural gas power plants (D.M.R.E. 2021), all of which will take years to build and even longer to become profitable (Fitzgerald, Braunger & Brauers 2019).

Operation Phakisa will never reach its target of 30 wells, nor convert gas to 3000 megawatts electricity, by 2030. Only two exploration wells, and one pilot, have been drilled since 2014 (D.F.F.E. 2023). High expenditure exploration wells take up to ten years or more to complete, with no profits; extraction anything from twenty to fifty years for completion, while costs are recovered and profits generated (MacFayden & Watkins 2016). Total's exploration right is the only one in the process of the transitioning to a production right (D.F.F.E. 2023) at time of writing. Delays affecting O.O.G. Phakisa oil and gas production ambitions risk inconsistency with the South Africa's binding carbon budget peak-plateau-decline emissions trajectory, pushing peaking well past Net Zero in 2050; maintaining existing carbon lock-in inequalities whilst generating new ones (Atteridge & Strambo 2020; Kartha *et al.* 2019). For S.D.C.E.A conducting a climate impact assessment for the petroleum development application was a substantive obligation on the minister in the wholistic and precautionary interests of all living coastal species, as per the Integrated Coastal Management Act (N.E.M.:I.C.M.A.) (S.D.C.E.A. 2021) to inform her decision to authorise. S.D.C.E.A. argued that the minister did not apply her mind to consequences of offshore

operations to global warming, and the resilience of the project to increasing weather extremes in the area.

Of Frequent Storms and Huge Anomalous Waves

Eni and Sasol's exploratory drilling would be at ultra-depths between 3.9 and 5.1 kilometres below the ocean surface, in one of the most powerful currents in the world (Branch *et al.* 2022). Glickson *et al.* (2014) warn there has never been an effective mechanical recovery of a large marine oil spill. Also with greater depth comes greater risk of accidents, spills and fire (Muehlenbachs, Cohen & Gerarden 2013). Deep-sea scientists Cordes *et al.* make it clear that '*the frequency at which accidental discharges of crude oil occur in offshore waters suggests they can be expected during 'typical' operations*' (E. E. Cordes *et al.* 2016:13). S.D.C.E.A. contends the minister failed to appropriately engage the option of protecting marine and coastal environments as an interdependent whole, by not going ahead. The affidavit claims failure by the minister to look beyond the unsupported statement in the Environmental Impact Report that the 'no-go' option would result in the loss of economic and social benefits from lost energy production. Instead S.D.C.E.A. claim that the no-go option creates a nett gain since marine ecosystems and livelihoods would be protected.

Perturbed by the proficiency of the oil spill modelling for the Environmental Impact Report (E.I.R.) that assessed impacts on the marine environment to be low should a well-head blowout occur, Oceans Not Oil founding member, WildOceans, supported S.D.C.E.A., by obtaining international expert review (Cordes 2020) from Erik Cordes, co-lead to the Deep-Ocean Stewardship Initiative Oil and Gas Working Group. He, together with forty-five scientists, went on to appeal to the minister, urging a precautionary approach. That the oil spill modelling underwent no further appraisal by the minister, especially considering the absence of an Oil Spill Contingency plan, justifies further grounds for review.

The minister and the director general are required to act as public trustees of coastal public property established to protect sensitive coastal ecosystems, entitlements to South African citizens. Also they are mandated to take an eco-centric approach and apply a greater degree of protection to these areas, but fell short in their duties, according to S.D.C.E.A. There are seven protected marine areas in near proximity of the drill sites, promulgated

to safeguard the endangered Coelacanth, shallow water corals, migratory routes for sardines ('the Sardine Run'), southern Right and humpback whales, loggerhead and leatherback turtles, shark, fish and many more species with differing threat statuses. A confirmatory mapping by climate, risk and G.I.S. specialist David Ogier, argues oil discharges impacts would not be insignificant as suggested in the E.I.R., but would have a '*high chance of reaching coastal areas in which Marine Protected Areas are located*' (S.D.C.E.A. 2021: 153).

How '*species that migrate through this neighbouring ocean constitute important parts of the identity of coastal communities*' (S.D.C.E.A. 2021: 146), and how they might be held in narrative histories or sustainable use by these communities in terms of intangible heritage, were neglected by the minister. This neglect is strategically presented by S.D.C.E.A. as a significant ground for review, because erasure and marginalisation of non-western epistemologies of the ocean has provenance in South Africa (Sibeko 2020). Colonial dispossession, the apartheid policy of exclusion, from access to the ocean and coastal resources, forced removal to make way for nature reserves (Wares 2022), plus systematic exclusion of fishers from historic fishing and ocean tenure rights resulted in significant socio-economic privation (Sowman & Sunde 2021; Sunde & Erwin 2020). Sowman *et al.* (2014) have shown that the redress from poverty alleviation, that should have come to small-scale fishers with the advent of democracy in South Africa in 1994, didn't. This lack of recognition of their fundamental human rights led to mass, then legal, action by fisher collectives, supported by the Oceans Not Oil founding affiliates Masifundise Development Trust and the Legal Resources Centre, eventually contributing to the development of the small scale fisheries policy in 2012 (Sowman *et al.* 2014). Finally, between 2018 and 2020 the Minister of Forestry, Fisheries and Environment granted fifteen year rights to new small scale fishing cooperatives (D.F.F.E. 2020), however tens of thousands of subsistence and traditional fishers highly dependent on ocean resources remain unrecognised, and so marginalised from resource access, in the regulatory system (Sunde & Erwin 2020).

The Great Place

The ocean-commons-centred narrative emerging from the urgent court interdict that stopped Shell and Impact Oil's seismic survey at sea, came

Beyond the Battle against the Oil and Gas Phakisa Imaginary

from the fishers, traditional healers and activists who brought the application namely, Oceans Not Oil affiliate Sustaining the Wild Coast together with the Dwesa-Cwebe Communal Property Association, fishermen Ntsindiso Nongcavu, Sazise Maxwell Pekayo and Cameron Thorpe, Amadiba traditional leader and healer Mashona Wetu Dlamini and All Rise Attorneys for Climate and Environmental Justice, who identified a real threat of irreparable harm to marine life, a negative impact on small-scale fishers' livelihoods and local embedded spiritual connections and long-standing customary practices with the sea. By contrast the respondents highlighted the long term economic beneficiation from the project, suggesting that the applicants were anti-development (Bloem 2021c). Counsel for the applicants argued that their development plans were clear:

They want to be able to develop in this area from their natural resources in a manner that suits them and allows them to participate in the eco-tourism that they are party to. They want to be able to practice the spiritual freedoms without intervention from these companies, and most importantly, they want to be included in the consultative process and not be an afterthought in the process in the context of South Africa (Bloem 2021c).

The court held that no formal analysis of the need and desirability had been done to substantiate these claims of economic development, job creation, economic stimulus nor details of how Shell's survey uplift the socio-economic circumstances of most South Africans. It also ruled that the onus was on Impact and Shell to prove that the precautionary principle should not be applied in the face of any differing expert opinion on whether mitigation for seismic surveys was effective or not. (Bloem 2021a)

Similar to the Eni/Sasol case, grounds for review included procedural unfairness; failure to take account of the entire ocean community, including ocean inhabitants under the N.E.M:I.C.M.A.; climate change impacts and the irrational separation of the purpose of offshore oil and gas operations. The High Court paid special attention to the communities' cultural identity and customary system acknowledging, '*the sea is integral to who they are, they have over time developed sustainable fishing practices which pose no great risk to marine life in the area*' (Bloem 2021a:10). Heed was paid to the lack of meaningful public participation, that the chiefs and kings

Shell consulted did not have a legal right to speak for their communities. The court ruled to set aside Shell and Impact Africa's exploration right and any subsequent renewals from 2017 and 2021 (Bloem 2021a).

Kinders Van Die See

The third case mentioned earlier, which went to appeal, involved a massive seismic survey spanning the West Coast, from the Namibian border in the north to Cape Agulhas in the south. It was brought by small scale fisherman Christian John Adams along with a number of West Coast small-scale fishing communities, indigenous communities, N.G.O.s Green Connection and Coastal Links Langebaan and other interest groups, against Searcher which had refused to halt operations during court proceedings. Again, judgement found a prejudiced methodology of consultation, this time designed to exclude the illiterate, the poor and the small-scale fishers after deeming these fisheries not directly affected (Thulare 2022).

The fishers' catch location records, plus snoek movement data, provided proof that as affected parties they had a right to consultation. The centrality of snoek to small scale fisherfolk for food and livelihood security on the West Coast was not respected, nor the unique ethos and identity, oral history, indigenous knowledge systems, rituals, beliefs, and fishing practices associated with this fishery, nor even economic '*spin-offs*' of the '*advancement of this tradition*' (Thulare 2022). The potential for cumulative impacts from multiple surveys, identified by existing O.O.G Phakisa applications, were not taken into account. Justice Thulare acknowledged the '*survival of the fishing industry is a matter of national importance*' (Thulare 2022). The judge called for a precautionary approach. Justice Thulare found that the apprehension of irreparable harm by the applicants was well founded and dismissed the appeal by Searcher with costs. Searcher Seismic is applying to do another survey (E.I.M.S. 2022).

Conclusion

In response to the Oceans Not Oil sustained popular mobilisation and anti-oil-and-gas alliance formations, and in denial of the depth of pluralism in its broad cohesion, Minister Mantashe characterized activism opposing the promise of economic development from the Shell seismic survey as '*apart-*

Beyond the Battle against the Oil and Gas Phakisa Imaginary

heid and colonialism of a special type, masqueraded as a great interest for environmental protection' (Steyn 2021). This gave rise to a reasonable apprehension of bias in the case, confirming that lodging an appeal to him would have been futile (Bloem 2021c). Investigative journalist Susan Comrie has highlighted that the Batho-Batho trust, which funds the ruling party, African National Congress (A.N.C.), owns thirteen percent of Shell's downstream business via Thebe Investment Holdings (Comrie 2022). Political economist Patrick Bond (2022) notes the potential for benefits from a donation of \$130,000 to Ramaphosa's 2017 presidential election campaign by Impact Oil and Gas Limited's chairman, Johnny Copelyn. Reflecting on the Shell court case, sustainable development specialist Hali Healy concludes that *'the State cannot be depended upon to protect the interests of rural communities, or to deliver societal transformation, let alone decolonisation. The onus instead lies with the strength of civil society, backed up by the protective powers of an independent South African judiciary'* (Healy 2022:128).

The importance of the litigation to date is its challenge to O.O.G Phakisa's pollution on a constitutional basis (Shift 2022). It adds to the ongoing climate justice critique of Operation Phakisa (Solomon 2018; Masie & Bond 2016). Responding to these cases has increased procedural expertise and media skills within the Oceans Not Oil coalition, also contributing to popular learning processes in the resistance to offshore oil and gas collective (Darcy & Cox 2022). To date this has significantly raised the financial, reputational and political costs of these offshore projects and mired them. The subaltern, grassroots resistance to the O.O.G. Phakisa-imaginary has provoked a rejoinder from the A.N.C., whose Policy Discussion Papers of May 2022 proposed the stratagem of *'opposing politically'* (A.N.C. 2022:147) those who oppose oil and gas. This emerging authoritarianism is redolent of political economist Michael Watt's warning that the continental shelf becomes, *'the forcing house for the development of deepwater and ultradeepwater oil and gas production'* (Watts 2014: 202).

The Oceans Not Oil collective has demanded a critical reflection on those which and who are the most threatened and disadvantaged by O.O.G. Phakisa operations. Interested and affected parties have demanded the right to determine a 'no-go' option, contextualising the benefits to a life-enabling commons and dangers averted by not proceeding with offshore oil and gas development. The Oceans Not Oil collective has given visibility to tradi-

tional and fisher communal values that exist outside the logic of extractivist developmentalism, to recall sustainable practices and a culture of the sacral, inviolable sea. The transformative agency of the Oceans Not Oil collective is in an activism that has shown the most effective alternative to O.O.G Phakisa's despoiling monopolisation is a true democratisation of the life-enabling commons, and the creation, at pace, of a counter-imaginary which recognises relational connections to an ecological community requiring spiritual and moral consideration.

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Janet Mary Solomon

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