NATURAL JUSTICE

OCEAN JUSTICE

A Guidebook for Small-scale Fishing Communities Seeking Environmental Justice in South Africa

Acknowledgements

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This guidebook aims to empower small-scale fishing and ocean-connected communities to seek "ocean justice" in South Africa – to protect and defend the ocean and all that lives within it and depends on it, to prevent further climate change and ecological collapse, and to promote their ocean heritage and livelihoods.

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Contents

Glossary of terms

Biodiversity:

The variety of life on Earth, which means all the various species of plants, animals, and microorganisms, and the enormous diversity of genes in these species. Biodiversity also includes the different ecosystems on the planet, such as deserts, rainforests and coral reefs.

Climate change:

Climate change is the significant long-term change to normal weather patterns as a result of changes in the atmosphere. Weather refers to conditions over short periods of time, in certain geographical areas, whereas climate refers to long-term regional or even global conditions. Climate change is about the abnormal changes to the climate and how these affect the planet. Climate change is caused by human-induced greenhouse gas emissions above what the earth can naturally cope with. Greenhouse gases (GHGs) include carbon dioxide and methane.

Environmental Assessment Practitioner:

An individual appointed by a developer or company to conduct (including planning, management, coordination, or review) an environmental impact assessment, environmental management programmes or any other appropriate environmental instruments.

Exploration:

Activities undertaken, such as conducting seismic surveys and drilling test wells, to discover if there are minerals and petroleum, including oil and gas.

Fossil Fuels:

Fossil fuels are energy sources found underground, known as “fossils”. As trees and plants die, they break down and become fossilised, and turn into oil, gas and coal. This process takes millions of years. Burning fossil fuels releases greenhouse gases.

Greenhouse gas emissions:

Burning of fossil fuels, and other human activities, such as driving cars and farming release gases into the Earth’s atmosphere. The gases become trapped in the atmosphere leading to a greenhouse effect that increases the temperature of the earth.

Indigenous Biological Resources:

In South Africa, indigenous biological resources include any living or dead plant, animal or any other organism that occurs, or has occurred, naturally in a free state in nature within the borders of South Africa. It includes any derivative and the genetic material of such plants, animals or organisms. Indigenous peoples and local communities often rely on these resources for their livelihoods, medicinal needs and cultural practices, based on their traditional knowledge of the resource. Use of these resources are regulated by the National Environmental Management: Biodiversity Act, ensuring sustainable access and conservation, alongside the protection of the traditional knowledge associated with them.

Marine Protected Areas:

A Marine Protected Area (MPA) is an area of coastline or ocean that is specially protected for the benefit of people and nature. They are set up to preserve the significant biodiversity in the area, and limit the activities conducted within them. This leads to a limit on fishing, tourism, and oil and gas exploration, amongst other activities. In South Africa, MPAs are declared through the National Environmental Management: Protected Areas Act.

Intangible Cultural Heritage:

Also referred to as living heritage is intangible aspects of inherited culture, and may include: (a) cultural traditions; (b) oral history; (c) performances; (d) rituals; (e) popular memory (f) skills and techniques; (g) indigenous knowledge systems; and (h) the holistic approach to nature, society and social relationships.

Mining:

It is the operation or activity in which mineral resources, like coal, sand or diamonds, are extracted from the earth, or from under the ocean floor.

Production:

It is the operation or activity in which petroleum resources, like oil and gas, are extracted from the earth, or from under the ocean floor.

Renewable energy:

Renewable energy comes from natural resources that do not deplete, can "renew" themselves overtime and do not release greenhouse gases. Examples include wind and solar power.

Seismic surveys:

A seismic survey is a method used to explore the underground structure of the Earth to help find resources like oil and gas or understand geological features. This is done by sending sound waves into the ground and measuring how they bounce back.

1. Introduction: Environmental Justice

Environmental justice is a basic human right that empowers individuals and communities to influence and shape decisions which impact the ocean, environment, and their lives. Achieving environmental justice requires meaningful participation in processes and decision-making. Environmental justice, when exercised, serves as a powerful organising tool, mobilising communities to exercise their rights to a healthy environment. Without environmental justice, many people, especially marginalised communities, will be negatively impacted by pollution and environmental degradation.

In this book, you will be able to find the answers to the following questions:

1. What does environmental justice look like for small-scale fishing communities?
2. What are my environmental rights?
3. Which laws and regulations impact my rights?
4. What actions can I take to pursue environmental justice?

Definition and Importance

Definition

Environmental justice is when everyone has equal use, enjoyment and protection of their environmental resources - which includes resources from the land and sea. When decisions are made that impact people and nature, everyone that will be affected by the decisions are represented and consulted, and the ecological, physical, social, political, cultural, economic and other factors are all considered.

Environmental justice is about the process of decision-making and outcome of those decisions. When we hear of a decision that affects the environment, we must ask:

1 FAIRNESS

Was the decision made fair, with no favouritism or discrimination?

3 DEMOCRACY

Were the people's voices heard, and did they have a say in the outcome?

2 REPRESENTATION AND INCLUSION

Was everyone that will be affected by the decision, including those making a livelihood from the ocean, included in helping to reach the decision?

Were they informed of the decision, and the reasons for the decision?

4 SUSTAINABLE

Is this decision in the best interest of the environment, leading to the protection of nature and for current and future generations?

5 HUMAN RIGHTS

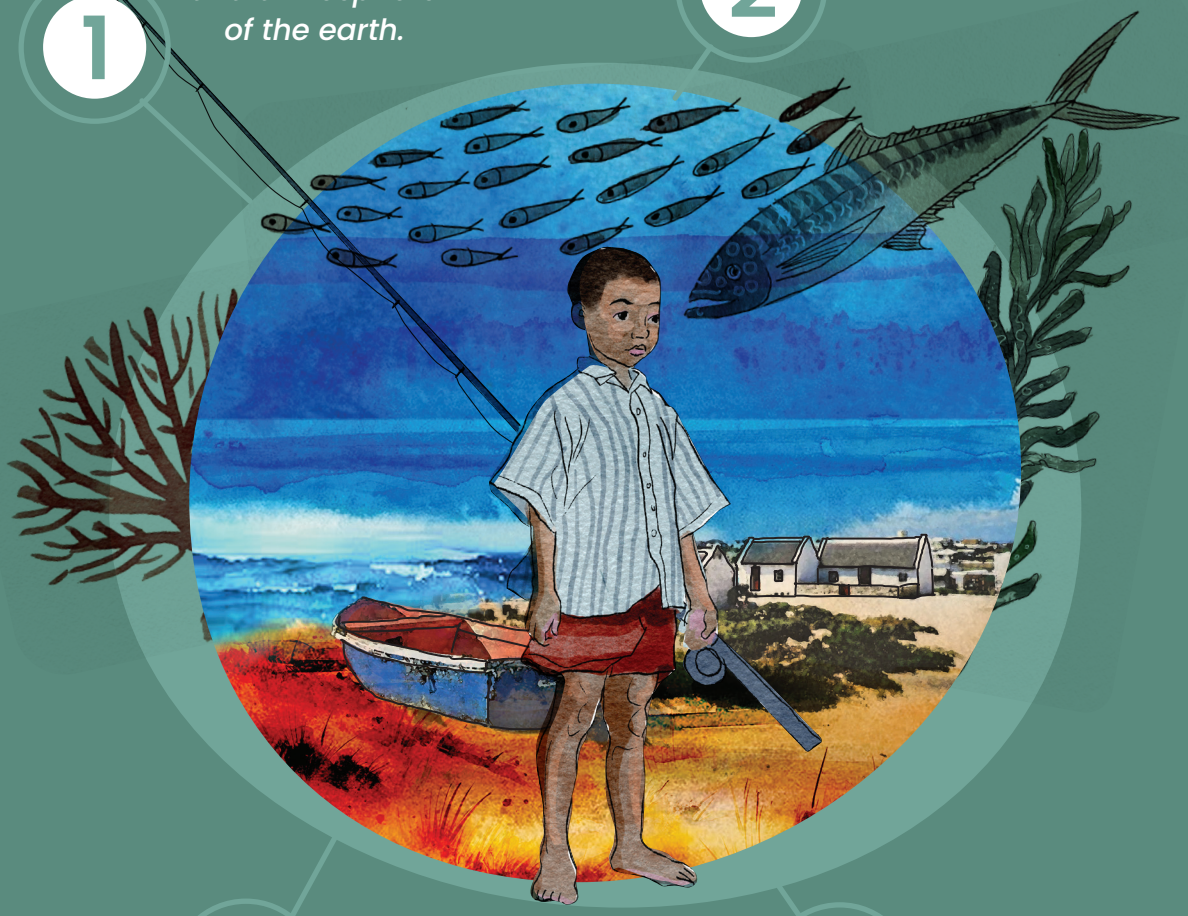
Does this decision protect my human rights?

While we might ask ourselves what impact this decision will have on our communities, we also have to consider the impact on nature. Without nature, humans would not exist. Protecting nature means we are protecting ourselves. This assists with the understanding that humans and nature are interlinked, and therefore impacts on one are felt by the other.

What does “the environment” include?

In South Africa, we are guided by legislation to define “the environment”. Section 1 of the National Environmental Management Act (NEMA) tells us that the environment is the surroundings within which humans exist and it is made up of:

1. *The land, water and atmosphere of the earth.*
2. *Micro-organisms, plant and animal life.*



3. *Any part or combination of (1) and (2) and the interrelationships among and between them.*
4. *The physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being.*

This legal definition shows us that **the environment** is not only the physical world but also the relationships within it, between people, animals, birds, plants and other aspects of nature. There is therefore recognition that our cultures and ways of life can have an impact on nature, and that nature can influence our human health and well-being.

2. My Environmental Rights

International law recognises that for human beings to thrive, we need a clean, healthy and functional environment.[1] This is essential for the enjoyment of fundamental human rights, such as the rights to life, health, food, sanitation, development, and an adequate standard of living.

A clean and healthy environment is globally recognised as being made up of the following elements:

- **Substantive elements** - clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems
- **Procedural elements** - access to information, the right to participate in decision-making, and access to justice and effective remedies, including the secure exercise of these rights free from reprisals and retaliation.[2]

To ensure that individuals and communities enjoy the right to a clean and healthy environment, governments have the following duties:

- The duty to **respect human rights**, a negative obligation, which requires the government to refrain from taking actions that would interfere with or limit the enjoyment of human rights.
- The duty to **protect human rights** against violations by third parties, a positive obligation for government to take measures to ensure that there are no violations to people's human rights.
- The duty to **fulfil human rights**, a positive obligation, which requires the government to undertake measures to ensure all members of society are able to enjoy their rights. These measures include creating policies, strategies, action plans and enacting laws to ensure that people enjoy their rights. This also includes the duty to ensure that enough finances are allocated to implement government policies, plans and strategies.
- The duty to **promote human rights**, a positive obligation, that requires the government, through education, training/teaching, and publications, to promote respect for human rights by all sections of society.

Environmental rights in South Africa are realised by various laws and policies enacted by the government. By understanding and exercising these rights, we can work towards achieving environmental justice.

1 The United Nations General Assembly Resolution passed on 28 July 2022 on the right to a clean and healthy environment.

2 What is the Right to a Healthy Environment? United Nations Information accessed at www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf.

This section explains the laws that may have an impact on and which are relevant for **small-scale fishing communities** seeking environmental justice.

THE CONSTITUTION

Other Environmental Laws

Climate Change Act

Hazardous Substances Act

Animal Protection Act

Marine Living Resources Act

National Environmental Management Act

Specific Environmental Management Acts

Integrated Coastal Management Act

National Water Act

Biodiversity Act

Protected Areas Act

Air Quality Act

Waste Act

Laws that Influence Environmental Management

Energy

Nuclear Energy Act

National Nuclear Regulator Act

Electricity Regulation Act

Planning

Marine Spatial Planning Act

Spatial Planning and Land Use Management Act

Mining and Petroleum

Mineral and Petroleum Resources Development Act

Upstream Petroleum Resources Development Act

Carbon Tax Act

Heritage

National Heritage Resources Act

National laws

The Constitution

The **Constitution**[3] in South Africa is the supreme law which means that no other law, policy or government action can oppose or contradict the Constitution. It also sets out the basic human rights of all people in the country, through the Bill of Rights.

The Constitution gives everyone the following rights related to **environmental justice**:

- **Section 24:** The right to an **environment** that is not harmful to their health or well-being.

> Section 24 tells us that: everyone has the right —
>
> (a) to an environment that is not harmful to their health or wellbeing; and
>
> (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that —
>
> (i) prevent pollution and ecological degradation;
>
> (ii) promote conservation; and
>
> (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

- **Section 9:** Right to **equality.**
- **Section 10:** The right to **dignity** and to have our dignity respected and protected.
- **Section 11**: The right to **life**.
- **Section 15:** The right to freedom of religion and belief
- **Section 17:** The right to assemble, **demonstrate**, picket and to present petitions, peacefully and unarmed.
- **Section 22:** The right to choose our **occupation** freely.
- **Section 27:** The right to access **health care**, sufficient **food** and **water** and **social security.**
- **Section 31:** The right to enjoy our culture, practise our religion and use our language.
- **Section 32:** The right to **access information.**
- **Section 33:** The right to **administrative action** that is lawful, reasonable and procedurally fair.

These are all important human rights to consider when we are seeking environmental justice. There are also other human rights not listed above that we can consider.

3 Constitution of the Republic of South Africa, 1996.

The National Environmental Management Act

The National Environmental Management Act (NEMA)[4] is an important law that builds on the right to a healthy environment in Section 24 of the Constitution. It includes requirements that need to be met when decisions are made that will affect the environment, when an environmental authorisation or other types of permissions are required, and it creates a system for public participation in these decisions.

- NEMA informs us that **environmental justice** must be pursued so that negative environmental impacts are not distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons, and that developments must be socially, environmentally and economically sustainable.
- It also lays out the principle of **sustainable development** and states that sustainable development requires the consideration of all relevant factors, including that the use and exploitation of non-renewable natural resources (like oil, coal and gas) be responsible and equitable and take into account the consequences of the depletion of the resource. Also, that the development, use and exploitation of renewable resources (like solar and wind) and the ecosystems which they are part of do not exceed the level beyond which their integrity is jeopardised.[5]
- NEMA lists certain activities that require environmental authorisation before they can take place.
    - For these activities, an environmental impact assessment (EIA) process is necessary to evaluate and consider the **potential impact on the environment,** ensure that appropriate measures are taken to mitigate negative impacts, and that Section 24 of the Constitution is upheld.
    - It also allows for communities to be involved in **public participation processes** as interested and affected parties before a decision is taken by the competent authority whether to grant environmental authorisation.

Since providing energy uses natural resources such as coal, uranium, oil, gas and water, that can impact the environment (air quality, water availability and quality, biodiversity), the principles and procedures set out in the NEMA are central for ensuring sustainable use of natural resources. This framework protects human rights and the environment, safeguarding it for present and future generations.

4 National Environmental Management Act 107 of 1998.
5 Section 2(4) of the National Environmental Management Act 107 of 1998.

The Mineral and Petroleum Resources Development Act

The Mineral and Petroleum Resources Development Act (MPRDA)[6] regulates all aspects of mineral and petroleum resources in South Africa. This includes offshore extraction from the ocean, in the form of prospecting or mining for minerals, and exploration and extraction of petroleum resources (oil and gas).

- The provisions of the MPRDA tells us that the extraction of mineral and petroleum resources must not result in *unacceptable* pollution, ecological degradation or damage to the environment.
- Activities involving mineral and petroleum resources requires environmental authorisation under NEMA to ensure that the potential consequences for impacts on the environment are assessed, considered, and appropriate measures taken to mitigate negative impacts, when a decision is taken whether to grant a right or a permit.
- This process also requires the development of an environmental management programme (EMPr). An EMPr sets out how the activity must be carried out to prevent and minimise impacts. It is essentially a management plan for the operations.
- The MPRDA acknowledges the importance of environmental justice and preventing environmental harm.

The Integrated Coastal Management Act

The National Environmental Management: Integrated Coastal Management Act's (NEM: ICMA)[7] objectives are to:

- Recognise the ocean and coast as requiring special management.
- Promote the conservation of the coastal environment and seeks to maintain the natural attributes of coastal landscapes and seascapes.
- Ensure that the development and use of natural resources within the coastal zone is socially and economically justifiable, and ecologically sustainable.
- Require that special considerations are taken into account when activities in the ocean and along the coast require environmental authorisation.
- Control dumping at sea, pollution in the coastal zone and inappropriate development of the coastal environment.

The ocean and the coast belong to all people and is held in trust by the State. The Act places a duty on the government to ensure that the coast is managed, conserved and enhanced in the interests of the whole community. The "interests of the whole community" means the collective interests of people and other living organisms that are dependent on the coastal environment.

6 Mineral and Petroleum Resources Development Act No. 28 of 2002.
7 Integrated Coastal Management Act 24 of 2008.

The Protected Areas Act

The National Environmental Management: Protected Areas Act (NEM:PAA)[8] provides for the establishment and management of protected areas on land and in the ocean (such as Marine Protected Areas), including national parks, nature reserves, and wilderness areas; conservation of biodiversity and the protection of natural habitats.

The Act also aims to promote the sustainable use of protected areas for the benefit of people, in a manner that would preserve the ecological character of such areas, and to promote the participation of local communities in the management of protected areas, where appropriate.

The Biodiversity Act

The National Environmental Management: Biodiversity Act (NEM:BA)[9] aims to manage and conserve the biological diversity of South Africa and focuses on the preservation of species and ecosystems, including the sustainable use of indigenous biological resources. Certain marine species are protected under this Act, which restricts whether they can be caught or harvested.

The Air Quality Act

The National Environmental Management: Air Quality Act (NEM:AQA)[10] aims to protect the environment by providing reasonable measures for the prevention of pollution and ecological degradation of the environment. The Act provides norms and standards for regulating air quality.

The Heritage Resources Act

The National Heritage Resources Act[11] requires the state to safeguard heritage resources as well as 'living heritage'. Living heritage is defined as intangible aspects of inherited culture, and may include: (a) cultural traditions; (b) oral history; (c) performances; (d) rituals; (e) popular memory (f) skills and techniques; (g) indigenous knowledge systems; and (h) the holistic approach to nature, society and social relationships.

The Heritage Resources Act also recognises that heritage resources form an important part of the history and beliefs of communities and must be managed in a way that acknowledges the right of affected communities to be consulted and to participate in their management.

The EIA processes under NEMA and the MPRDA should also consider the impacts that the development may have on the heritage of small-scale fishing communities.

8 National Environmental Management: Protected Areas Act 57 of 2003.
9 National Environmental Management: Biodiversity Act 10 of 2004.
10 Air Quality Act 29 of 2004.
11 National Heritage Resources Act 25 of 1999.

Climate Change Act

The President of South Africa assented to the Climate Change Act[12] on 23 July 2024. This is South Africa's first piece of legislation dealing specifically with climate change. It aims to align climate action across all government sectors. The Climate Change Act has now commenced (17 March 2025).

The primary purpose of the Climate Change Act is to develop and implement an effective national response to climate change response. This includes developing a long-term plan for a just transition to a low-carbon and climate resilient economy.

The preamble recognises the constitutional right to a healthy environment and emphasises South Africa's role in the global effort to reduce greenhouse gas emissions.

Upstream Petroleum Resources Development Act

Upstream Petroleum Resources Development Act[13] aims to regulate and accelerate the exploration and production of petroleum resources. The Act was signed into law on 29 October 2024, but is not yet being implemented.

The objectives of the Act are to create a separation of the regulation of the upstream petroleum industry (exploring for and exploiting oil and gas resources) from the regulation of the mining industry, which will continue to be regulated by the MPRDA. The Department of Mineral Resources and Energy intends for the Act to provide for orderly development of petroleum resources and to create an enabling environment for the acceleration of exploration and production of the nation's petroleum resources.

Laws and Policies in Progress

The National Environmental Management: Biodiversity Bill

The Department of Forestry, Fisheries and the Environment published the National Environmental Management: Biodiversity Bill on 27 March 2024 for public comment. The Bill, once approved, will amend and replace the current National Environmental Management: Biodiversity Act of 2004.

The Bill seeks to ensure more effective implementation of the provisions and achievement of the objectives of 2004 NEM:BA; greater protection of species and ecosystems; more flexible management of species and ecosystems; more effective achievement of economic benefits in the biodiversity sector; and transformation of the biodiversity sector. [14]

12 Climate Change Act 22 of 2024.
13 Upstream Petroleum Resources Development Act 23 of 2024.
14 https://www.dffe.gov.za/legislation/gazetted_notices/draft2024nem.biodiversitybill

Legal Principles

Right to administrative justice

Environmental justice emphasises **"just decision-making"** and **"just outcomes"**, ensuring that everyone has a fair say in environmental matters. Similarly, the right to administrative justice applies to **all** decisions made by government, not just environmental decisions. Administrative justice allows us to be part of decision-making, and also to challenge the outcomes (which can include laws) that we do not feel are fair.

According to **Section 33** of the Constitution:

(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair (*just decision-making*)

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

The Promotion of Administrative Justice Act has been created to give effect to Section 33, serving as a powerful legal tool for communities to advocate for efficient administration, good governance, and a culture of accountability, openness, and transparency in public administration.

"Just Administrative Action" means that:

1. When decisions are taken by an administrator, government official or decision-maker (called "administrative action"),
2. they must be **fair and reasonable decisions** that are permitted by the law;
3. and that written **reasons** for decisions must be provided to those affected.

Right to access information

Section 32 of the Constitution states: "Everyone has a right of access to any information held by the state and any information held by another person that is required for the exercise or protection of any rights."

The right to access information enables individuals and communities to obtain information from the government and other public authorities regarding decisions, policies, and actions that impact their lives and rights. This right is essential for ensuring transparency and accountability, empowering people to stay informed about projects or policies that could affect their rights, environment, and well-being. With this knowledge, communities can participate effectively in decision-making, express their concerns, and hold authorities accountable for their actions.

The right to access information is also critical for ensuring public participation processes are fair and inclusive. By having the necessary information, people can meaningfully engage in these processes, with their rights and interests considered. The accessibility of this information — particularly in language and format — is crucial. Authorities and project developers must ensure that information is provided in ways that are easily accessible to all, recognising that not all community members have access to digital platforms like social media, the internet, or email.

3. Developments that may affect my Environmental Rights

All around the world, countries, multinational corporations and companies are continuously searching for natural resources to make profit. Once natural resources are discovered, large-scale development typically follows. The ocean is no exception. The ocean contains many resources, including fish species, but also diamonds, oil and gas, and other natural and mineral resources.

In this section, we will look more closely at the different types of developments currently occurring in South Africa and their impacts on small-scale fishing communities.

Oil and Gas Exploration

Currently, we are seeing an increasing interest in oil and gas exploitation in South African oceans. The activities associated with extracting oil and gas, both in the exploration ('looking for') and production (abstraction) phase, can have consequences for small-scale fishing communities along the South Africa coastline.

The coastline has been divided into large blocks and allocated to various companies for exploration and production purposes. The companies that have obtained exploration or production rights can explore the areas for oil and gas, and if found, production of that oil and gas can begin. Companies first need to determine if there is oil and gas, and whether there is sufficient oil and gas to make it worth their while commercially before they build the infrastructure necessary to extract the oil and gas.

It does not necessarily mean that exploration and production will go ahead in every block, or cover the whole area in a block. However, most of the coastline is divided into blocks and if oil or gas is extracted from multiple blocks along the coastline, the cumulative negative impact on marine resources could be significant.

Petroleum exploration and production activities in South Africa

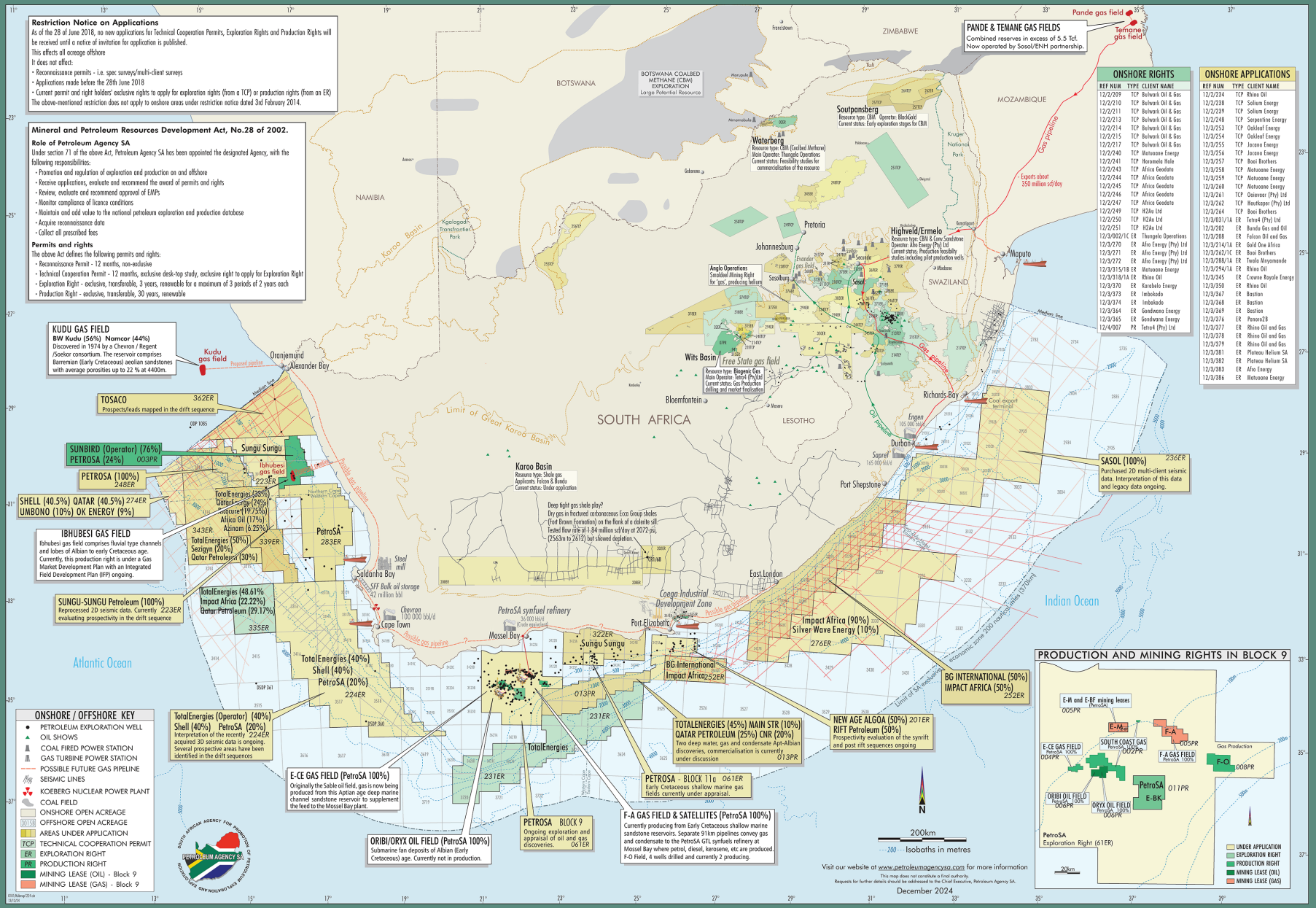
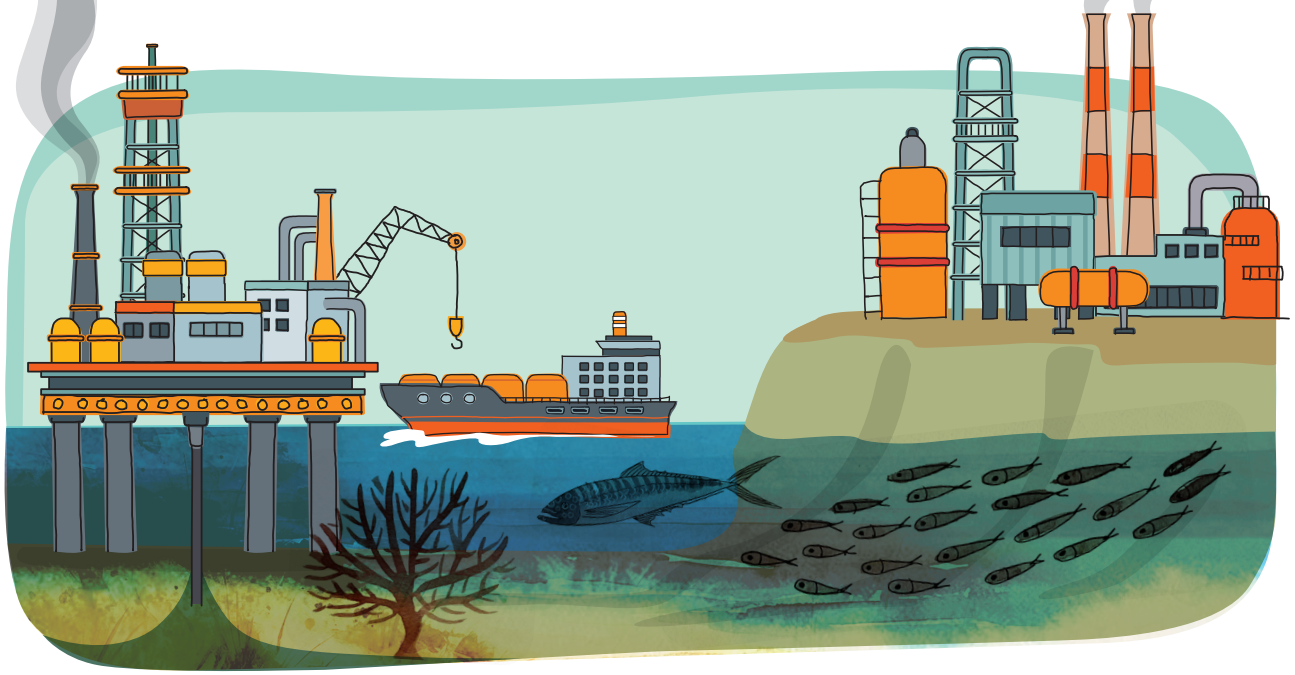


Figure: Map from Petroleum Agency SA showing current exploration and production activities in South Africa as of December 2024.
Source: www.petroleumagencysa.com. (**https://www.petroleumagencysa.com/wp-content/uploads/2024/12/Hubmap1224.pdf**)



Stages of Oil and Gas Exploration and Production

1. **First stage: Seismic Surveys**
These require the use of technology that blasts sound waves into the ocean to assess whether oil or gas can be found under the ocean floor.

2. **Second stage: Test Wells**
If data from the seismic surveys reveals that there might be oil or gas under the ocean floor, test wells are drilled to determine whether this data is accurate.

3. **Third stage: Extraction and Analysis**
Petroleum substances, like oil and gas, are extracted through the test wells, and is analysed. If it is found to be oil or gas in quantities that make commercial extraction a viable business opportunity, the site is converted into a production (abstraction) site.

4. **Fourth Stage: Production**
Further wells are drilled to extract the oil or gas. Oil or gas rigs are built which can then begin to bring oil or gas from under the ocean floor to the surface, where it is processed or sent to land via pipelines or ships.

5. **Last stage: Closure**
Once the oil or gas is fully extracted from the site, the well is closed.

Environmental Authorisation, Licences and Permits

In each stage of oil and gas exploration and production, companies must obtain environmental authorisation, licenses or permits before proceeding. This process is critical as it presents an opportunity for communities to engage, voice their concerns and shape the outcome of the decision. In Section 6 we explore ways to exercise your environmental rights.

Mining

Mining takes place both onshore and offshore. Onshore mining refers to the process of obtaining resources from below the earth's surface, whereas offshore mining seeks to obtain mineral resources from below the ocean floor. Both forms of mining pose risks to the overall health of communities and environment.

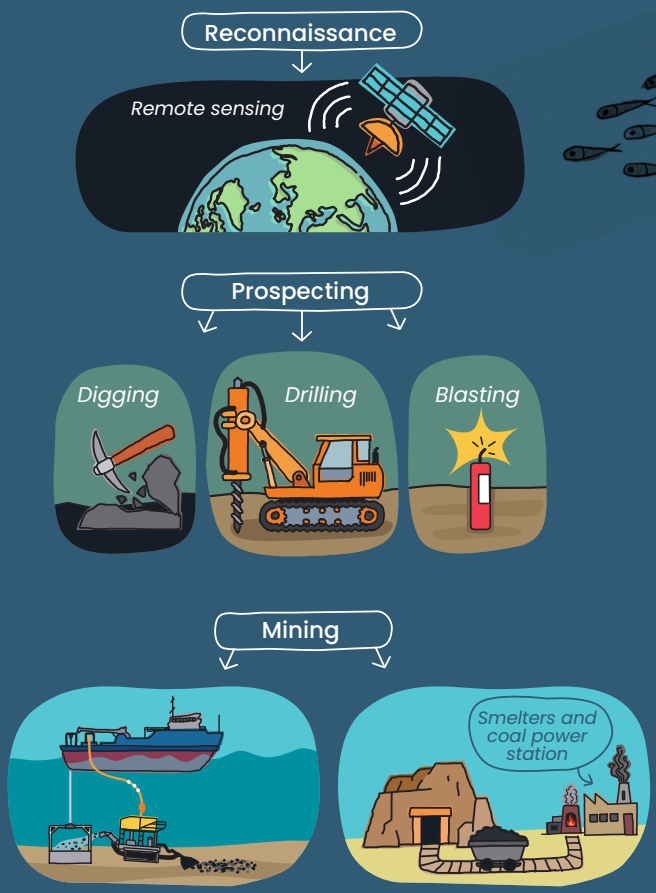
Onshore coastal mining for resources such as coal, precious metals and sand disrupts the environment around it. It has the potential to add chemicals and sediments into rivers and streams which often flow through communities and into the ocean, and can impact fish far from the mine's location.

Similarly, offshore mining for resources like gold, copper and zinc, makes use of large ocean floor mining machinery which has the potential to negatively impact marine life such as plankton, deep-diving marine mammals and benthic and pelagic fish through the destruction of natural habitats and sediment clouds.

MINING

Mining is the process of extracting **mineral** resources, like coal, gold and diamonds, from the earth and under the ocean floor. It involves locating the minerals, and extracting them through drilling, digging and blasting, then transporting them to processing facilities, like smelters and coal power stations.

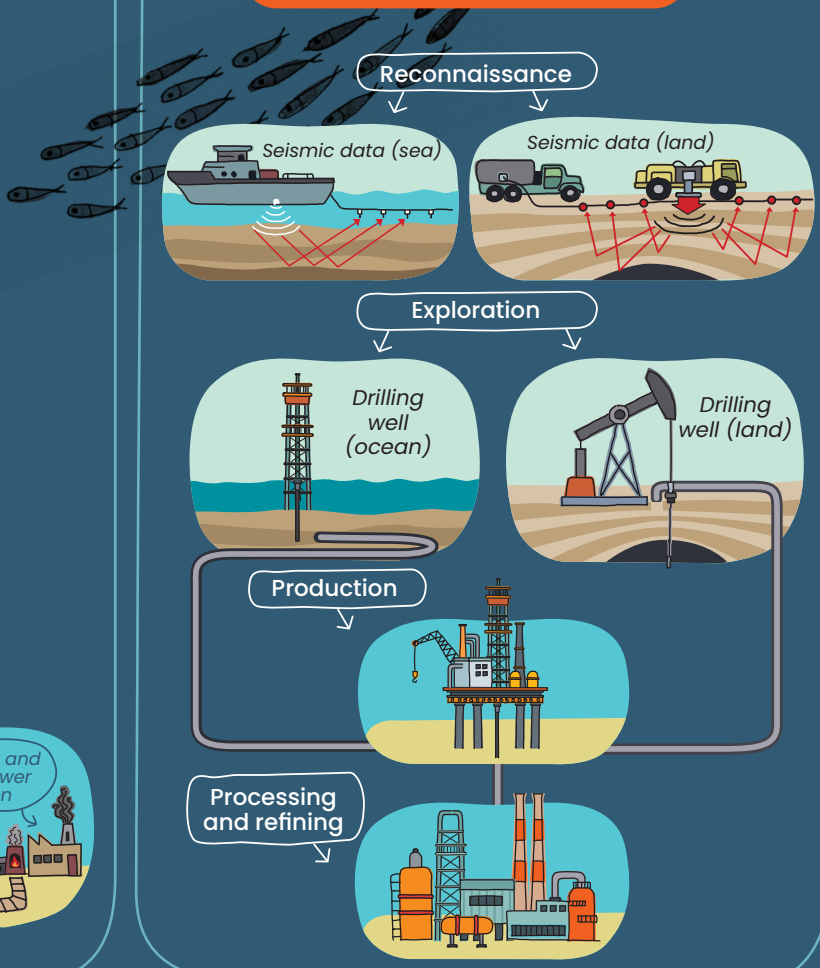
Mining process of extracting mineral resources



PRODUCTION

Production is the process of extracting **petroleum** resources, like oil, gas and condensate, from the earth and under the ocean floor. It involves locating the oil and/or gas, and extracting them through drilling wells. For offshore production, the resources are usually transported via pipelines to the shore, where the oil and gas is further processed.

Production process of extracting petroleum resources



Therefore, mining is about getting mineral resources from the earth, while production is about getting petroleum resources from the earth.

Powerships

What are powerships? Powerships are mobile floating power plants typically deployed following natural disasters or emergency situations to provide emergency electricity, which is generated on the ship. The floating power plant uses Liquefied Natural Gas or another fuel source to generate electricity. They dock at ports and transmit the electricity to the mainland via cables.

Recently in South Africa, Karpowership SA (an affiliate to a Turkish company operating powerships around the world) won a bid to dock three powerships at the ports of **Saldanha, Coega and Richards Bay**, all ports on the South African coastline, via a 20-year contract.

The Karpowership projects have faced much public opposition and legal hurdles. The Department of Forestry, Fisheries and Environment had initially refused Karpowership environmental authorisation for the three projects in July 2021 due to their impact on the environment, fisheries and ecosystems, and the lack of information available for decision-making, as the company had not fully considered all operational impacts. At that point, Karpowership's appeal against the decision failed.

By the end of 2023, Karpowership managed to obtain environmental authorisation, but failed to reach financial close, leading Eskom, the public utility, to withdraw their access to the electricity grid. Additionally, a number of civil society organisations and individuals successfully appealed against the Saldanha Karpowership project, so the environmental authorisation was set aside. The future for Karpowerships in South Africa remains uncertain.

Hydrogen Plants

Many governments and corporations are interested in producing hydrogen as a local energy source, or for export to countries like those in Europe. The process of creating hydrogen requires electricity and water. Hydrogen is extracted from water using electricity to split the water (H_2O) molecules into oxygen and hydrogen. The hydrogen is stored in a fuel cell, which generates electricity. The benefit of hydrogen is that it can be stored for later use or transported elsewhere.

Some of the hydrogen plants proposed in South Africa will be situated in coastal areas, allowing for easy exporting. The deep-water ports of **Saldanha in the Western Cape, Coega in the Eastern Cape and Boegoebaai in the Northern Cape** are regarded as potential locations.

There are different types of hydrogen, the most favourable being "green hydrogen" which is produced using renewable or green energy. However, not all hydrogen is "green". It can also be produced from electricity derived from fossil fuels (for example a coal-fired power plant) which means that the process contributes to carbon emissions and exacerbates climate change. The process of creating the hydrogen also requires a large amount of water. South Africa is regarded as a water stressed country, experiencing droughts and water shortages, therefore it is essential to assess the water requirement of hydrogen projects.

4. Impacts on the Environment and Human Wellbeing

Small-scale fishing communities often find themselves unaware of large-scale projects until they start experiencing negative consequences – such as a sudden reduction in fish in the ocean, pollution caused by oil spills or restrictions on access to fishing grounds. When communities are impacted in these ways, they are experiencing environmental *injustice*.

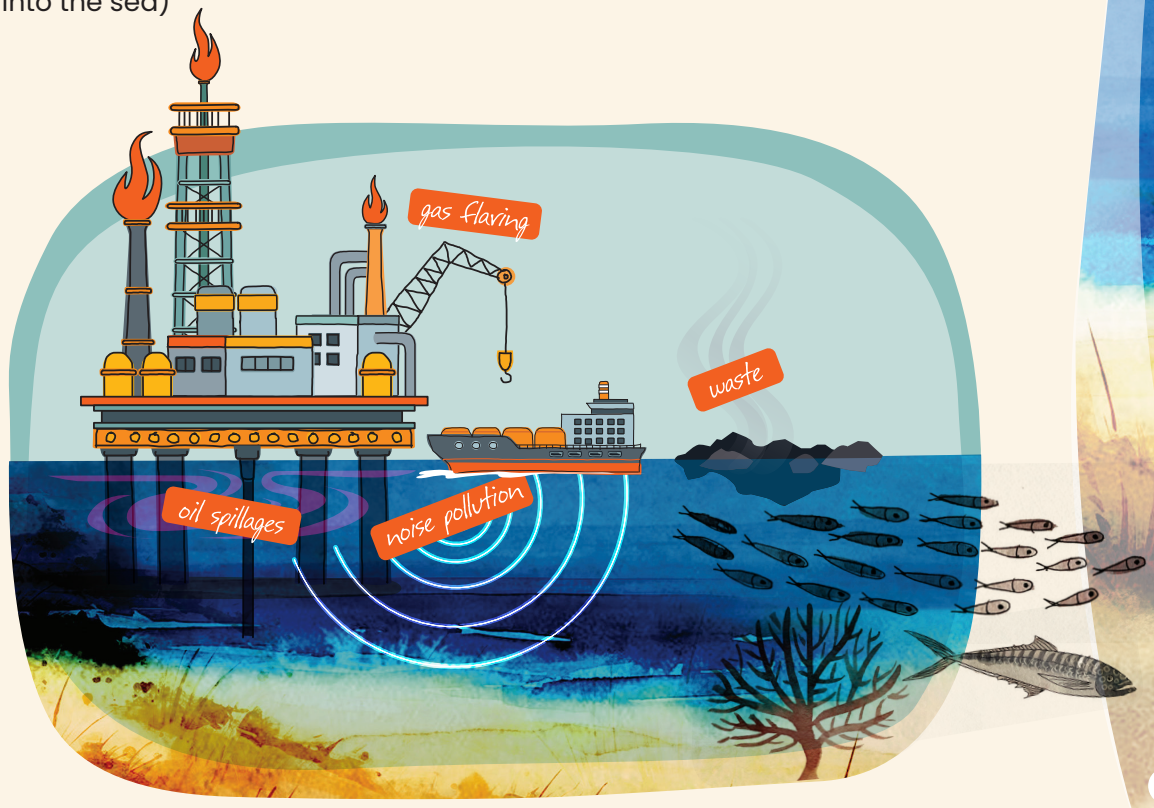
Below are some of the impacts that can be caused by the projects explained in Chapter 3.

Environmental Pollution

During all of the phases in oil and gas activities, mining, powerships and hydrogen plants, environmental pollution can occur. Although companies are legally required to mitigate (reduce or stop) pollution and act when incidents occur, in practice, we have seen that these actions are often insufficient to mitigate and remedy pollution when they occur, leading to serious environmental harm.

Examples of environmental pollution:

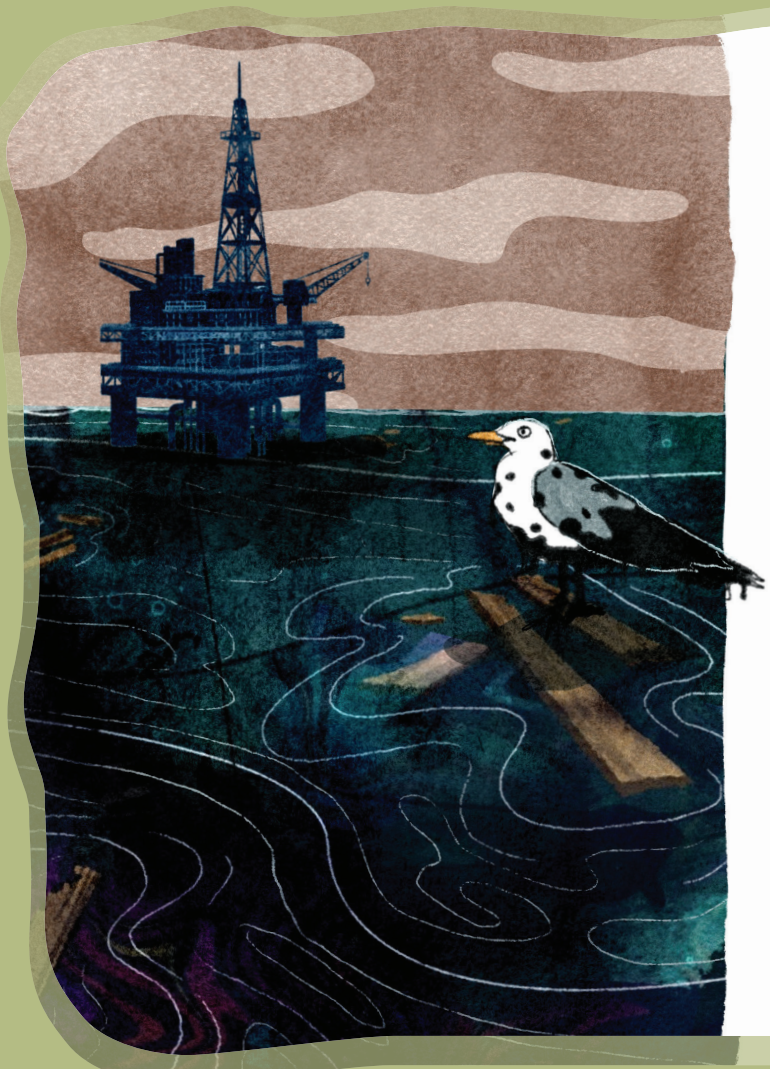
- oil spillages
- gas flaring (causing various gas emissions which include sulphur dioxide, carbon dioxide, hydrocarbons, methane etc)
- noise pollution by, for example, large ships, sea rigs and powerships
- improper waste management (waste waters and solid wastes that are dumped into the sea)



Impacts of Oil and Gas Drilling

When oil and gas drilling occurs, waste is produced. These byproducts produced by drilling, includes crushed material from the drilled hole (called "cuttings") and chemicals used during the process. If oil is found, additional water containing small amounts of oil may also be brought to the surface.

Offshore oil and gas rigs can also release large amounts of toxic materials into the ocean, which can have a significant impact on marine life. Potential emergencies can happen - such as oil spillages that release hazardous chemicals, underwater and surface explosions, and fires that cause harm to people, the environment and property. Catastrophic spills and blowouts are documented threats in offshore drilling operations. Companies are required to have mitigation plans in place for these spills and blowouts.



Case Study: The Deepwater Horizon Oil Spill

The 2010 Deepwater Horizon oil spill in the Gulf of Mexico is an example of how catastrophic oil and gas drilling can be. On 20 April 2010, a drilling rig owned by British Petroleum (BP) exploded, leading to a major spill in the ocean. It took almost five months to seal the well and, and in this time, vast amounts of oil leaked into the ocean, creating one of the worst environmental disasters in recent history. Even after the well was sealed, two years later, there were reports that oil was still leaking.

The spill's impacts were extensive: coastal marshlands died off, there was significant loss to marine life, and large quantities of methane were released into the air. Oil still remains in the ocean and on the seafloor. It not only affected fishers, but also other sectors related to the ocean, such as tourism and conservation.

Biodiversity Impacts

South Africa boasts a wide variety of ecosystems and species, with nine different terrestrial biomes (Fynbos, Grassland, Savanna, Nama Karoo, Succulent Karoo, Forest, Subtropical Thicket, Indian Ocean Coastal Belt, and Desert), a wealth of freshwater ecosystems, diverse and extensive marine ecosystems, and over 95 000 known species of living organisms.[15]

In recent years, there has been considerable loss and degradation of the environment (also known as habitats) that plant, animals and people need to survive. Factors contributing to the loss of habitats include: climate change, unsustainable land-use and ocean-use, inappropriate or poorly-located and planned projects; disruptions to rivers, wetlands and estuaries due to excessive water extraction and pollution; invasive alien species (both plant and animal); destruction and over-harvesting of species, especially in the marine environment; illegal wildlife trafficking and other illegal resource use.[16]

Oil and gas exploration, mining, powerships and hydrogen plants pose additional threats for contaminating the marine environment, impacting fish, birds, turtles, whales, sharks, penguins, coral reefs and other species. These developments may result in the following impacts on marine species:

- Loud noises, human activity and vehicle traffic from drilling disrupting animals' communication, breeding and nesting.
- Fish and other animals moving away from the area.
- Noise affecting fish and marine mammals that are dependent on sound for locating prey, navigating and communicating.

When harm is caused to certain species, it can cascade through an entire ecosystem, threatening overall biodiversity and ecosystem health.

Impacts to Cultural and Spiritual Rights

These developments in the ocean and near the coastline can disrupt the spiritual and cultural way of life of small-scale fishing communities who have a connection to the ocean. These projects can damage cultural and spiritual resources, eroding community members' sense of self, identity and dignity. For instance, harmful developments can cause changes to fish populations and migratory zones leading to the significant loss of traditional, customary and recreational fishing practices. This not only threatens livelihoods, but also weakens communities' spiritual and cultural connection to the ocean.

15 National Biodiversity Framework 2019 to 2024.
16 National Biodiversity Framework 2019 to 2024.

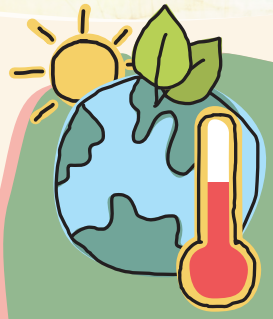
Human and Socio-economic Impacts

Small-scale fishing communities often experience disruptions to their livelihoods and traditional lifestyle due to changes in land and ocean use. Communities may lose income if they rely on tourism or marine-based businesses, which may be impacted by the oil and gas developments. Many people in coastal towns depend on the ocean for a living. Therefore, these projects can pose a serious threat to local economies and the well-being of those who depend on the sea.

Climate Change Impacts

Onshore and offshore mining, powerships generating electricity from fossil fuels and hydrogen derived from fossil fuels, all emit greenhouse gases like carbon dioxide and methane. These gases warm the atmosphere (see the image below). This is called "global warming" and leads to rising temperatures on land and within the ocean. These rising temperatures can cause more catastrophic events like tsunamis, wildfires, storms, mudslides, droughts and heatstroke-related deaths.

The oil and gas industry contributes over 42% of global greenhouse gas emissions, making it a significant driver of climate change.



Why 1.5 degrees matters

Our earth has been warming rapidly since industrialisation in the 1800s when the use of fossil fuels became prominent. Fossil fuels emit greenhouse gases that trap heat in the atmosphere, creating "global warming". The International Panel on Climate Change warns that we must keep global temperature increases to below 1.5°C (compared to preindustrial levels) if we are to avoid catastrophe. A 2°C increase would have severe repercussions for the planet.

Despite international pressure, countries and companies are not doing enough to reduce emissions. If we continue on our current path, global warming will continuously exceed 1.5C. 2024 was the first calendar year which, on average, surpassed 1.5C. We must therefore act now.

To remain below 2°C, a third of oil reserves, half of gas reserves and over 80% of current coal reserves should remain unused from 2010 to 2050. This means that even the oil and gas that has already been discovered cannot be used if we want to prevent a planetary disaster.

Countries like South Africa should, therefore, halt oil and gas exploration and production. However, despite all the warnings, countries and companies are still searching for new oil and gas and we are allowing it.

WHY THE CLIMATE IS CHANGING

How does climate change impact fishing and coastal communities?

As the planet warms, the ocean temperature rises, impacting marine life and habitats crucial to small-scale fishing communities. Fishing communities are already seeing a shift in the migratory patterns of fish, their locations and populations, leading to fewer fish available to catch, directly affecting the livelihoods of fishing communities.

Climate change also drives bigger storms and storm surges, posing risks for fishers as rough seas make their work more dangerous.

Africa is warming faster than the rest of the world and, as a result, is more exposed to climate-related shocks, which include floods, droughts, storms, heatwaves and pests. These events can devastate crops, homes and incomes, driving already vulnerable families into extreme poverty.

Case Study: Durban Floods

In 2022, the city of Durban in South Africa, experienced severe flooding. The area received over 300mm of rain in just 24 hours. This tragic event resulted in 459 people losing their lives and 88 people still missing by the end of May 2022. Over 4000 homes were destroyed, 40 000 people left homeless, and 45 000 people were temporarily left unemployed. The cost of infrastructure and business damage were estimated at around R40 billion.

Research by Wits University identified this as "the most catastrophic natural disaster yet recorded in KwaZulu-Natal (KZN) in collective terms of lives lost, homes and infrastructure damaged or destroyed and economic impact."[17]

Poverty can make the effects of extreme weather events worse as vulnerable communities often live in flood-prone areas, lack strong housing, and cannot afford preventive measures like effective drainage systems. For those affected, the challenges continue long after the flooding has subsided. Many lack insurance, relying on government and donations to rebuild. They may have to relocate, moving farther from essential services. Damage to sewer systems in Durban led to river and ocean pollution, harming fishers and tourism operators. As of 2024, pollution has sporadically closed beaches, reducing tourism and impacting the local economy.

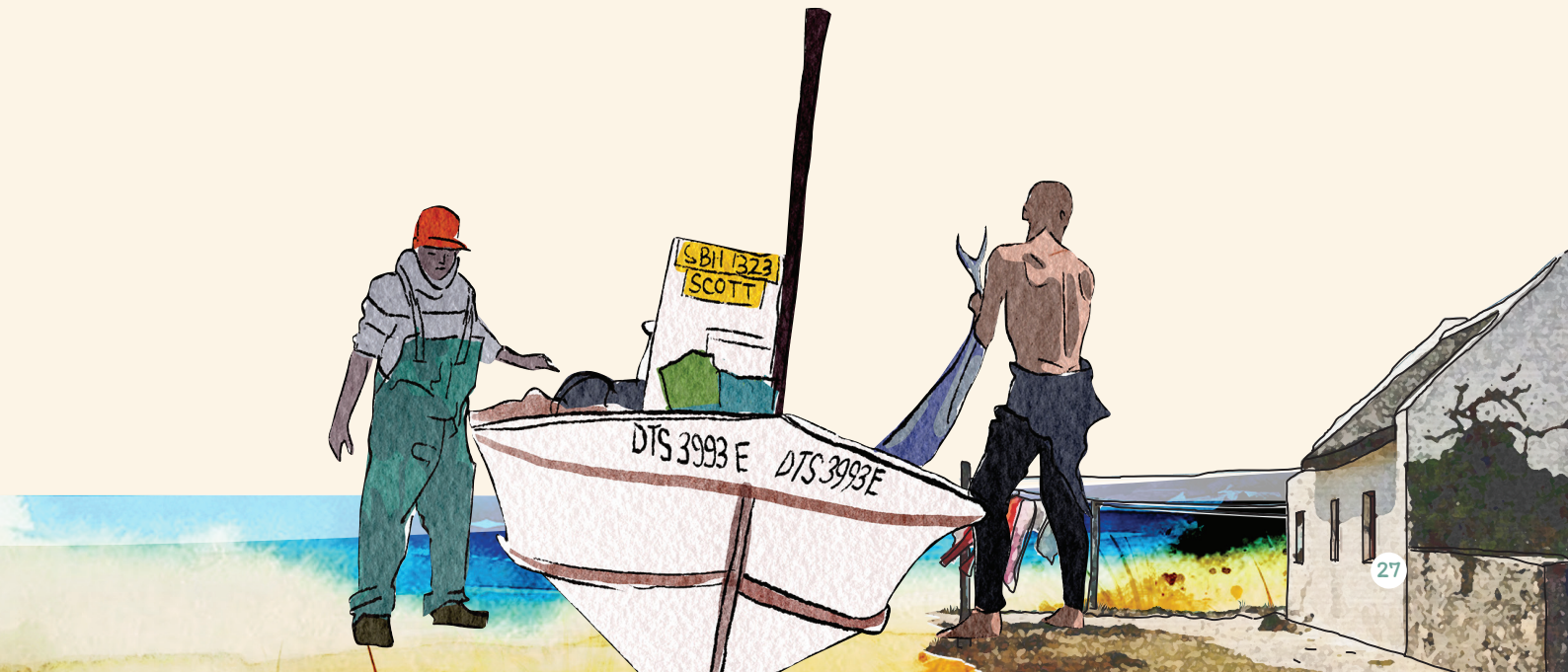
17 https://www.wits.ac.za/news/latest-news/general-news/2023/2023-04/the-2022-durban-floods-were-the-most-catastrophic-yet-recorded-in-kwazulu-natal.html

5. Exercising my Environmental Rights: Getting Involved

The National Environmental Management Act (NEMA) emphasises that environmental justice must be pursued, guiding any development and ensuring that it is socially, environmentally and economically sustainable.

Communities should be informed and consulted before any development takes place. Communities have the right to request information, ask questions and to inform the developer of the impacts of the development on their community. If they believe that their rights are infringed, communities also have the right to take legal action against the developer or government.

In this chapter, you will learn how to participate in decision-making for developments in your area, with a focus on public participation processes for project approvals, as well as understanding law and policy development.



Participating in Environmental Impact Assessments

Environmental Impact Assessments (EIAs) are processes where the future environmental, social and economic impacts of proposed developments are assessed and, where possible, mitigation measures are proposed which would reduce or prevent negative impacts on individuals, communities and the environment. These processes are done by Environmental Assessment Practitioners, who are independent from the developer or project.

EIA processes consider the following impacts that the project will have:

- **Environmental impacts** (on the ocean, water resources, such as rivers, streams, wetlands and underground water, biodiversity, agriculture, air quality, and soil)
- **Social impacts** (on surrounding communities, intangible cultural heritage, health, spiritual displacement, social cohesion, safety and security)
- **Economic impacts** (on livelihoods, the local and broader economy, employment).

An EIA is used by the decision-maker to decide whether to grant environmental authorisation for the development. This decision depends on whether the assessed impacts and recommended mitigation measures are deemed acceptable. The decision-maker, called the competent authority, can be local or national government, depending on the type of activity.

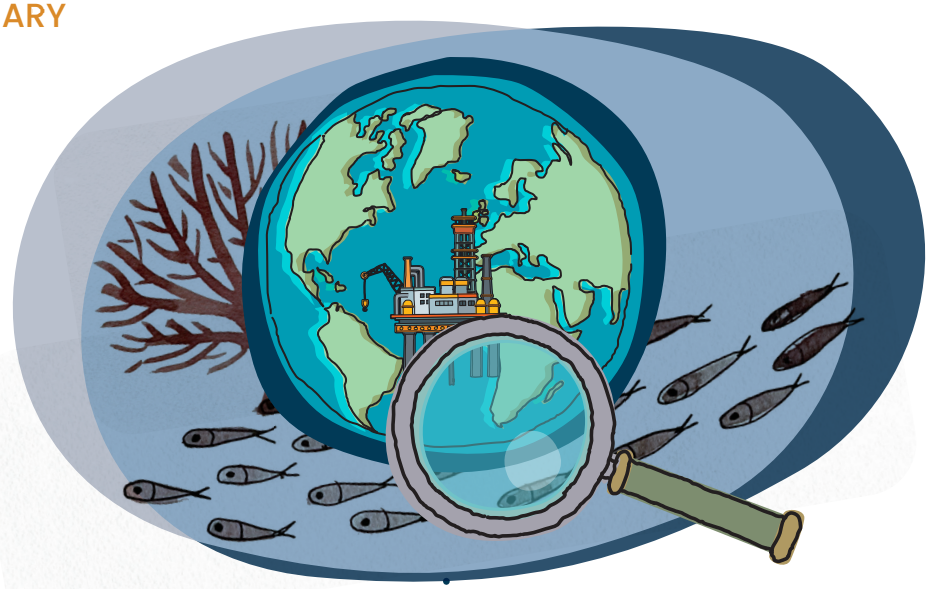
Since 2024, mining companies need both a mining right, mining permit, prospecting right or prospecting permit, as well as environmental authorisation. Similarly, for oil and gas activities, they need a right or permit, as well as an environmental authorisation. This is called the one environmental system.

Types of EIA processes

NEMA lists specific activities that require an EIA. Additionally, the MPRDA regulates mineral and petroleum activities that require an EIA in terms of NEMA.

Activities causing potentially less harm require a Basic Assessment (BA) process and activities potentially causing greater harm require a "Scoping and Environmental Impact Reporting (S&EIR) process", sometimes referred to as a full EIA".

SUMMARY



Basic Assessment Process (BA)

Less harmful activities

1 phase

1 public participation period

Shorter Process (197 days)

Scoping & Environmental Impact Reporting (S&EIR)

More harmful activities

2 phases

2 public participation periods

Longer Process (300 days)

Basic Assessment Process (BA)

Submit application

Notification of basic assessment

Advertisements

Site Notices

Basic information document (BID)

Draft Basic Assessment Report (DBAR)

Made available for public comment

Includes specialist sudies

Public meetings and other meetings

Final Basic Assessment Report (FBAR)

Submitted to the competent authority

Comments and Responses Report

Decision

Total Time
197 DAYS
**unless extended*

Public Comment
30 DAYS

APPEAL

Scoping & Environmental Impact Reporting process (S&EIR)

SCOPING

Submit application

Notification of EIA
Advertisements
Site Notices
Basic information document (BID)

Draft Scoping Report
Made available for public comment
Public and other meetings

Final Scoping Report
Submitted to the competent authority
Comments and Responses Report

Decision on Scoping Report

EIR

Draft Environmental Impact Assessment Report (DEIAR)
Made available for public comment
Public and other meetings

Final Environmental Impact Assessment Report (FEIAR)
Submitted to the Competent Authority
Comments and Responses Report

Decision

Total Time
300 DAYS
**unless extended*

Public Comment
30 DAYS

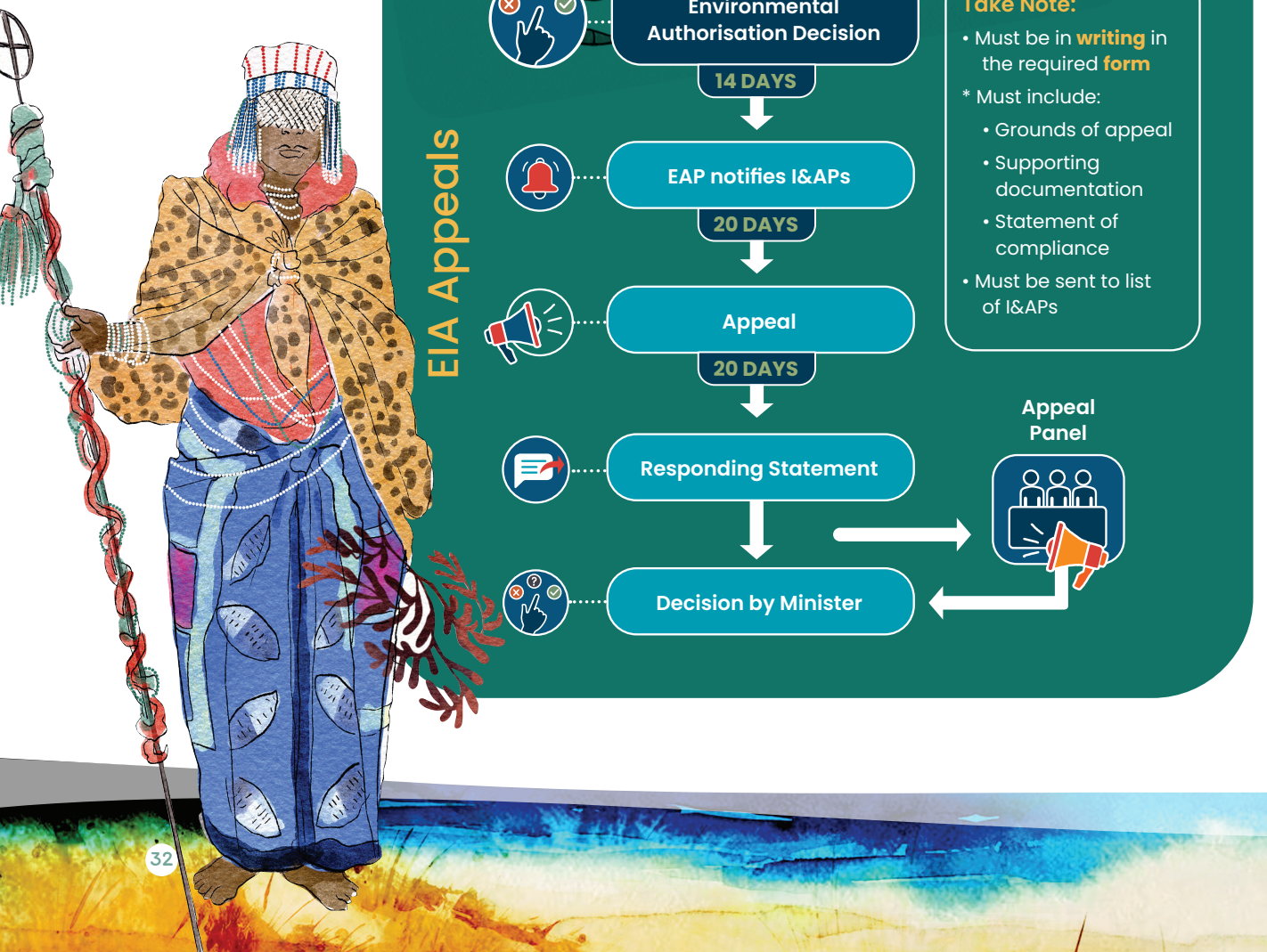
Public Comment
30 DAYS

APPEAL

Appealing an environmental authorisation

Once an environmental authorisation is granted, the decision with reasons must be shared with Interested and Affected Parties (I&AP).

- You can appeal against the environmental authorisation within **20 days** to the Minister of Forestry, Fisheries and the Environment. DFFE is the appeal authority, even if the DMRE granted the authorisation.
- An appeal must be in a **prescribed format**, in the Appeal Form, that can be obtained from DFFE's website.
- When sending your appeal, a copy of the environmental authorisation and proof that you received notification of the authorisation, must be attached to your email.
- It is important to submit an appeal, as it will provide you with an opportunity to go to court if the appeal is rejected.



Getting involved in EIAs

A key component of an EIA is **public participation,** ensuring that the voices of impacted and interested parties are heard throughout various stages**.** This contributes to the process being open, transparent, and credible. It is important that communities are involved to ensure that their environmental rights are upheld.

When a company is embarking on a development that requires an EIA, it will appoint an environmental assessment practitioner (EAP) to oversee the process.

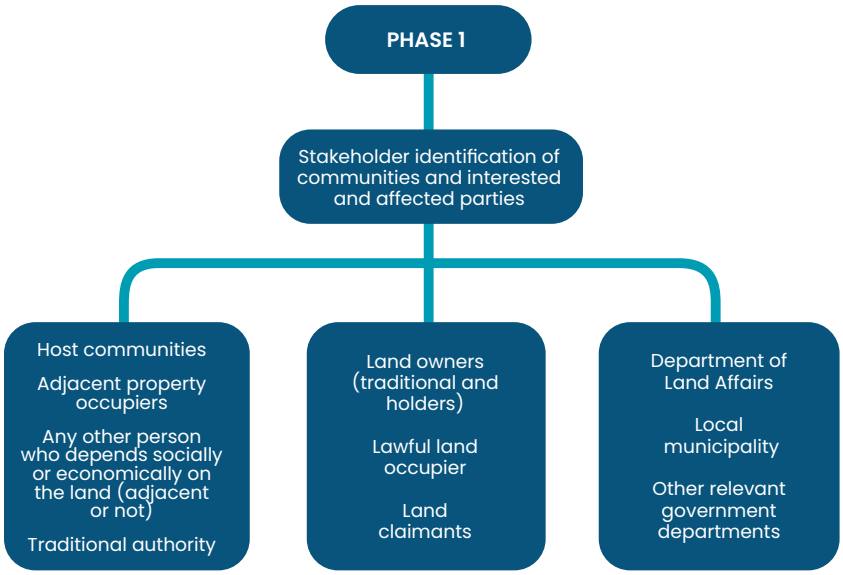
How to get involved:

- **Register as an Interested and Affected Party (I&AP):** As soon as you learn about the development, find out who the EAP is and register by sending them an email. Anyone can register as an I&AP, not just those living near the proposed site.
- **Request Project Documentation:** Documentation related to the project is usually available on the EAP's website. The EAP is also required to provide hard copies at public places, such as libraries.
- **Attend Public Meetings:** Participate in public hearings held throughout the EIA process. Ask questions and express your objections or support during these meetings. The EAP has a duty to listen to your concerns and respond objectively.
- **Submit Written Comments**: At each opportunity during the EIA process, submit written comments to raise your concerns.
- **Seek Assistance if Needed**: If you are unable to write your comments, contact the EAP and ask them to document your concerns verbally.

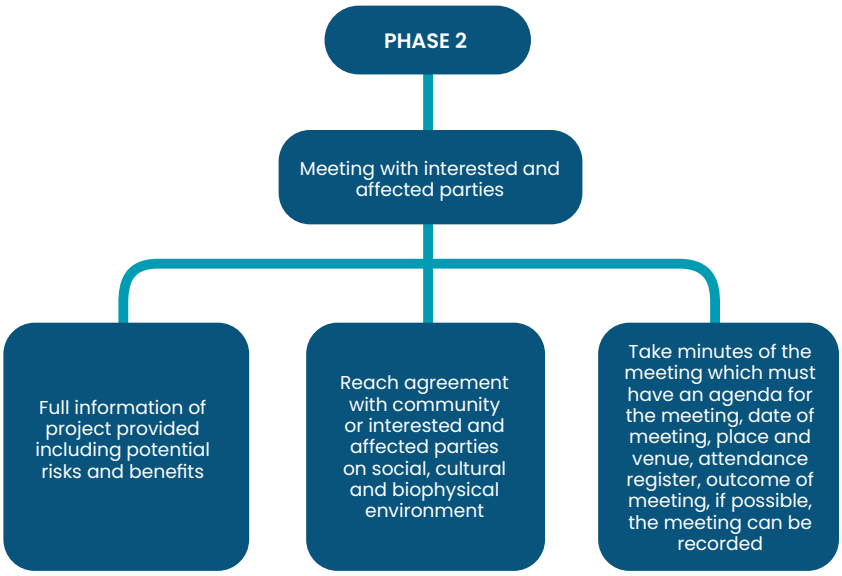
What is meaningful participation in public meetings?

Affected communities should be meaningfully consulted in every step of a project – from the design to implementation and monitoring. This requires adherence to community protocols, values, and traditions, especially when interacting with traditional authorities. A sustainable consultation process broadens the decision-making circle and respects the roles of communities, including their traditional and ecological knowledge and governance systems.

Step 1 – Identifying interested and affected parties



Step 2 – Engaging with interested and affected parties



How to ensure meaningful engagement

By following these steps, community groups can be included in decision-making processes and influence the design of projects to meet the needs of communities who will be affected by them.

1) Community involvement:

- Affected communities should have a significant say in the project, including environmental management and monitoring plans from the very start.
- Project proponents and government authorities must facilitate the involvement of local experts, especially those with traditional knowledge.
- Local experts should be identified and engaged early in the process.

2) Engaging affected communities:

- Developers must actively listen to community concerns and provide objective feedback, incorporating their concerns into the assessment process.
- Public meetings should be conducted in a language understood by participants, with translation provided if necessary.
- Vulnerable groups, including women, the elderly, and youth, should be encouraged to participate and express their opinions.
- Regular feedback should be provided throughout all project stages, ensuring community input is reflected in final policies, plans, or projects. Feedback may be documented in various formats, such as written statements, video, or audio recordings, with community consent.

3) Accessible and understandable information:

- All information regarding a policy, plan, or project, including potential risks and benefits, must be presented in a clear and understandable manner.
- Information should be made available ahead of time in languages spoken by affected communities and in a format that accommodates individuals with disabilities and those who cannot read.

4) Community-Centric Design:

- Policies, plans, and projects should be designed to address the needs and concerns of affected communities. This includes identifying potential risks and incorporating local knowledge and experiences into the development process.
- Community development objectives should guide the formulation of environmental management or monitoring plans.

Public Participation in Making Laws

Public participation is crucial for making, implementing and enforcing laws. When laws are being made, Parliament must engage the public, especially local communities who will be affected by the laws, to ensure that the laws reflect societal goals and values. This involvement is a powerful means for citizens to drive social change, fostering trust and consensus between government and the public.

DIFFERENCE BETWEEN POLICY AND LAWS

LAWS:

Laws set out standards, procedures and principles that must be followed. If laws are not followed, there are consequences for those responsible for breaking them.

POLICY:

A policy outlines what a government ministry hopes to achieve, and the methods and principles it will use to achieve them. A policy document is not a law, but it will often identify new laws needed to achieve its goals.

Stages of creating policies and laws

It is the responsibility of the legislative branch (Parliament) to approve policies and pass new laws to give legal effect to the policies. This is a long and slow process.

1. **Government provides a vision, goals and direction:** The government creates a vision and goals for specific issues, leading to a draft called a Green Paper. This document outlines initial ideas for a law and is shared for public feedback. After gathering input, a more detailed discussion document, called a White Paper, is created, which outlines government policy.
2. **Adoption of white paper:** After thorough debate, the final policy is published as a White Paper. This document serves as a detailed plan that can lead to new laws. It is debated in Parliament and approved by the Cabinet.
3. **Drafting of a Bill:** The White Paper can lead to new legislation. If a new law is needed, the Department or Minister drafts it, initially calling it a draft Bill. Once presented in Parliament, it becomes a Bill.
4. **Passing of a law:** Once a Bill has been tabled, will be given a number and then released as a Bill, for example, B6 of 2024 and go through the process of becoming a law. The Bill is sent to be considered by both houses of Parliament - the National Assembly (NA) and the National Council of Provinces (NCOP) - who will refer it to the relevant Portfolio or Select Committee for consideration. The Constitution requires the National Assembly and the National Council of Provinces to facilitate the participation by the public in their legislative and parliamentary processes. The NA and the NCOP or any of their Committees, receive petitions, representations or written or oral submissions from the public on published bills. This is the best time to lobby for changes or to protest the principles of a Bill. If the Bill involves a matter of high public interest, the NA and the NCOP are required to arrange and facilitate public hearings in all the provinces, to obtain a mandate from the people on whether or not the law should be enacted and in what form. After the public participation process is complete, the NA and the NCOP are required to meaningfully consider all the submissions that were made, and decided to adopt the law with changes, or to reject it, or to send it back to the relevant minister to re-write the bill. If the NA or the NCOP adopt the draft bill, it is then sent to the President to assent to the Bill and sign it. Upon the President's signature, the Bill becomes a law.

5 **Implementation of the law:** After Parliament passes a law or a policy is published, national and provincial ministries are responsible for putting it into action. If needed, local governments can create additional rules to clarify details of the original law.

Why should you participate in the law-making process?

Participating in the law-making process is essential for protecting fundamental human rights. Laws can limit rights, but such limitations must be **reasonable and justifiable** in an open and democratic society. To ensure that laws are fair and do not infringe upon constitutional rights, citizen participation is crucial.

The Constitutional Court (the highest court in South Africa) recently held that:

> "Public participation acts as a safeguard to prevent the interests of the marginalised being ignored or misrepresented. The significance of public participation for the advancement of South Africa's democratic project is underscored by the colonial and apartheid governments' complete disregard of the views of the people in legislating their lives."
>
> *Justice Theron in the Constitutional Challenge to the Traditional and Khoi-San Leadership Act (Mogale and Others v Speaker of the National Assembly and Others).*

Section 72(c) and 118(1) of the Constitution requires Parliament and provincial legislatures to facilitate public participation in the law-making process by providing meaningful opportunities for participation in law-making processes, and ensuring that citizens have the skills needed to effectively participate.

How to participate?

You can make a written submission to a Parliamentary committee or comment on policy when a call is made.

You can attend public meetings held on Bills by Parliament and make verbal submissions.

By doing either of these, you may be able to influence the opinion of committee members who are discussing a piece of draft legislation before it becomes a law.

Keep track and take an interest in the laws, policies and governance of the country to make sure government officials are accountable.

Draft Bills which are available for public comment can be found on the Parliamentary Monitoring Group website at pmg.org.za or in the Government Gazette on the Department of Government Printing Works website at gpwonline.co.za

Accessing Information through PAIA Requests

The Promotion of Access to Information Act (PAIA)[18] gives effect to the right to access information under Section 32 of the Constitution of South Africa.

PAIA Manual: Every public body must have a PAIA manual, which includes details on how to submit an information request and the required forms. You can find these manuals:

- On the public body's website.
- At its head office during business hours.
- By requesting a hard copy, though there may be a cost.
- The contact details for the information officer at each public body will also be included.

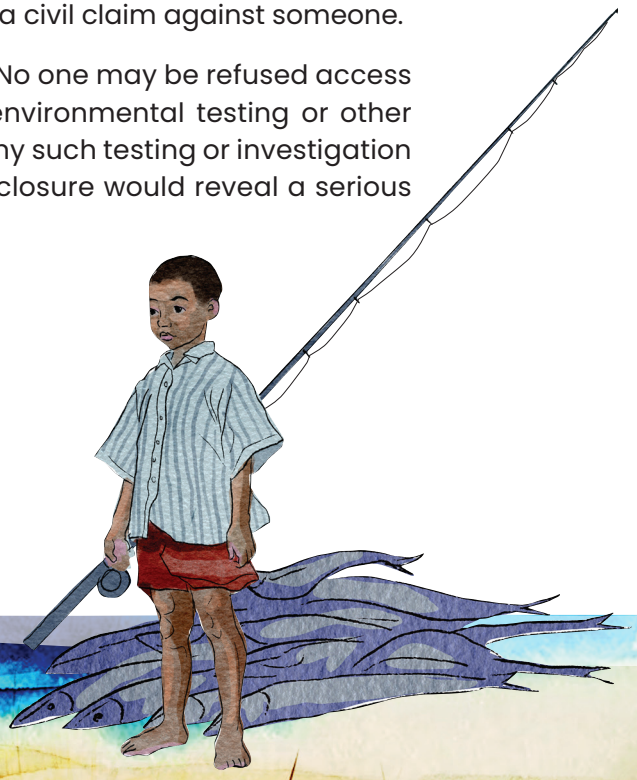
Lodging a Complaint: If a public body does not respond to a PAIA request within 30 days and provides no written reasons for the delay, you can file a complaint with the Information Regulator.

Who Can Request Information: Anyone, whether a citizen or not, can make a request under PAIA, but it must be done using the official form.

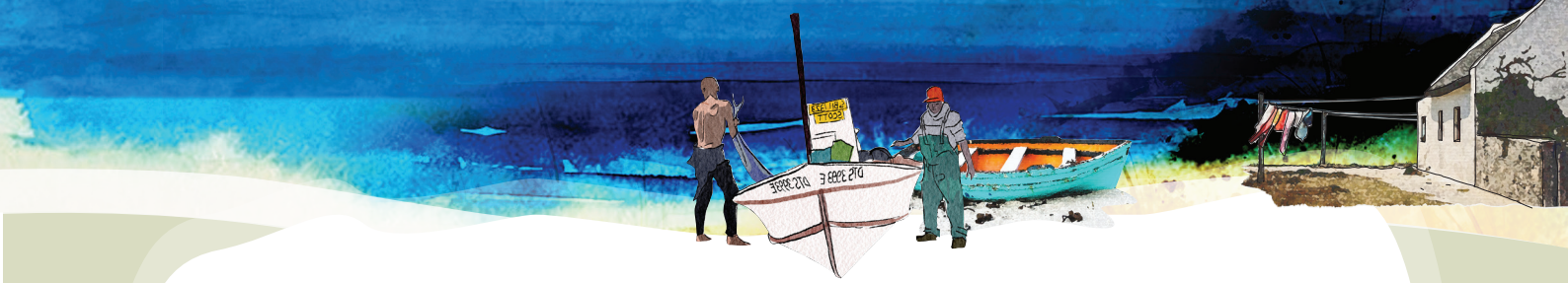
Requesting from Private Bodies: When making a request to a private entity (like an oil or gas company), you must explain why you need the information to protect or exercise another right. This reason must go beyond just the right to access information. For example:

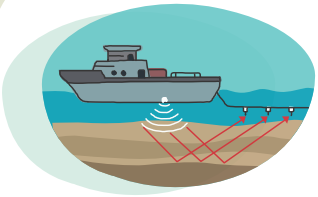
- You might request plans from a company to monitor its pollution impact on your community, protecting your right to a healthy environment.
- You could seek records to determine if you can file a civil claim against someone.

Right to request information about the environment: No one may be refused access to "information about the results of any product or environmental testing or other investigation supplied by a third party or the result of any such testing or investigation carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk."[19]



18 Promotion of Access to Information Act 2 of 2000.
19 Section 36 of Promotion of Access to Information Act 2 of 2000.





Case Study: Fisher communities in South Africa using the law to challenge seismic testing in their oceans

In 2021 and 2022, fishing communities in South Africa, supported by non-profit organisations, took two companies to court who had received permission and authorisation from the government to conduct seismic testing off the coastline of the country.

The first company, **Shell**, with British and Dutch ties, had announced it would start seismic testing off the **Wild Coast** in December 2021, which resulted in two separate cases being brought to court. The first was not successful, but the second one managed to stop Shell from conducting seismic testing until the court was able to look at whether their permit was lawfully obtained.

The second company, an Australian company called **Searcher**, was doing seismic testing off the **West Coast** in 2022 after receiving a reconnaissance permit. Communities on the coastline quickly mobilised to stop further testing and obtained an interdict from the court.

Companies use **seismic testing** to determine whether there are deposits of oil or gas under the ocean floor. Ships which tow high-volume airguns release blasts of sound downward towards the ocean floor, which produces an image that can tell them whether there are oil and gas deposits in a certain area. They then drill "test wells" and extract some of the deposit. They analyse the samples of deposit to determine what it is and how much there is. If they feel like there might be oil or gas in large qualities that make setting up oil and gas rigs profitable, they will start building the infrastructure needed to harvest the oil and gas – including rigs and pipelines, as well as the facilities on shore.

Seismic testing can impact marine life. The fishing communities in these cases believed that their livelihoods and the ocean itself would be worse off after seismic testing, as certain fish species would be negatively impacted. However, there is very little research that has been done that show the actual impact on marine life. Although seismic testing has been going on for decades, researching the impacts of seismic testing is very expensive and only very large companies can afford to do so. Until we know more, we need to act cautiously.

What is clear is that there are certain legal standards that must be met when a company wants to embark on something that could harm the environment and harm the people who rely on the environment for their wellbeing. South Africa has very good environmental laws in place, such as NEMA, to ensure that this harm is minimised, but often companies ignore the law. It requires communities to approach the courts if they feel that the companies are acting unlawfully, such as in the case of Searcher and Shell.

What legal standards did the communities rely on in court to stop the seismic testing?

Harm to livelihoods, culture and heritage and the environment. Fishing communities on the West Coast and Wild Coast of South Africa had been fishing on the coastline for many generations. The ocean is part of their heritage, but also provides them with a livelihood. For some of the communities, the ocean is an important source of spiritual connection. They believe their ancestors reside in the ocean. Their heritage and cultural beliefs deserve to be protected as held by section 31 of the Constitution.

When considering whether to give permission to the companies to do seismic testing, the government is expected to consider community rights and the right to a healthy environment. Communities from the West Coast in the Searcher case and communities from the Wild Coast in the Shell case went to court in two separate instances as they felt that these rights were going to be harmed by Searcher and Shell.

Consultation and public participation. In South Africa, communities have a right to have information provided to them on projects that might impact them – and they have the right to participate in decision-making.

In the cases of Shell and Searcher, neither company conducted very extensive or fair public participation processes. This meant that the opinions of the fishing communities, and the communities who have a connection to the ocean, were not considered. In the case of Shell, the company had only consulted with the chiefs of villages, and not with the communities themselves. The court agreed that this was not sufficient to be regarded as a fair public participation processes.

> "...the community is a separate entity from the Chief and "Chief" does not speak for the community."
>
> (paragraph 93 of **Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others (3491/2021) [2022] ZAECMKHC 55; 2022 (6) SA 589 (ECMk) (1 September 2022))**

What are the key lessons from the court challenges

In both cases, the courts found that the companies had acted unlawfully. The courts recognised the harm that the seismic testing could have for people's heritage and livelihoods, as well as the potential of harm on the environment, and felt that public participation processes were flawed. These successful outcomes tell us the following:

1. **That communities are powerful when they work together,** use the law and assert their rights.

2. **That companies have a duty to do extensive and fair consultation processes** before starting a project. This must look like:
   a. Consultations in the dominant language of the area
   b. With as many affected people as possible, and not just with community leaders
   c. That the views of these communities must be considered
   d. That information must be given to the communities affected.

3. **That government must consider the rights of people who might be affected,** as well as the potential harm to the environment, before allowing projects to go ahead.

Acronyms and abbreviations to note

DFFE	Department of Forestry, Fisheries and the Environment
DMRE	Department of Mineral Resource and Energy
EA	Environmental Authorisation
EAP	Environmental Assessment Practitioner
EIA	Environmental Impact Assessment
I&AP	Interested and Affected Parties
NEMA	National Environmental Management Act
NA	National Assembly
NCOP	National Council of Provinces
MPRDA	Mineral and Petroleum Resources Development Act
PAIA	Promotion of Access to Information Act

Contact details of organisations

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Centre for Environmental Rights
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The Green Connection
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NATURAL JUSTICE