

# Complaint to the Canadian Ombudsperson for Responsible Enterprise regarding Reconnaissance Energy Africa Ltd.'s human rights abuses in Namibia

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April 9, 2024

Office of the Canadian Ombudsperson for Responsible Enterprise  
Attention: Sheri Meyerhoffer

Dear Ms. Meyerhoffer:

Re: Complaint regarding Reconnaissance Energy Africa Ltd.'s human rights abuses in Namibia

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Please accept this letter as a Complaint to the Canadian Ombudsperson for Responsible Enterprise (“**CORE**”) regarding the conduct of Reconnaissance Energy Africa Ltd. (“**ReconAfrica**” or the “**Company**”).

This Complaint is filed by the International Human Rights Program at the University of Toronto Faculty of Law (“**IHRP**”) on behalf of harmed communities in Namibia represented by Saving Okavango's Unique Life (“**SOUL**”). SOUL will be referred to in this complaint as the “**Complainant**.” The information provided in this complaint is true to the best of the Complainant's knowledge.

## I. OVERVIEW

1. The Complainant files this complaint with the CORE to request that it investigate ReconAfrica for the adverse human rights impacts of their oil and gas exploration activities, as outlined below, in violation of internationally recognized human rights instruments. The Complainant further requests that the CORE make recommendations that ReconAfrica implement the measures requested in this Complaint to cease the human rights abuses and remedy harm arising from such abuses.
2. As further explained below, ReconAfrica committed human rights violations by establishing oil and gas drill sites, executing exploration activities at drill sites, and conducting seismic testing without consultation with or securing consent from appropriate parties, including Indigenous communities, and in a manner that failed to respect the human rights to health, food, water, housing, and a clean, healthy, and sustainable environment, in contravention of international human rights instruments. As a result, local communities have suffered harms such as:
  - Encroachment on and use of land without consultation or consent, and resulting damage to community members' crop fields and homes;
  - Damage to protected conservancies and forests, including to local vegetation and animal populations; and

- Possible contamination of water resources and resulting impact on the health of community members.

## II. PARTIES TO THE COMPLAINT

### A. ReconAfrica

3. ReconAfrica is a Canadian junior oil and gas company engaged in the identification and exploration of assets in Namibia and Botswana.<sup>1</sup> It is headquartered in Calgary, Alberta and publicly listed on stock exchanges in Canada (TSXV), the United States (OTCQX), and Germany (FWB).<sup>2</sup>
4. ReconAfrica was originally incorporated under the *Company Act*, RSBC 1996, c 62 on June 23, 1978 as “Lund Enterprises Corp.” On August 30, 2019, the company completed a reverse takeover transaction with 1163631 B.C. Ltd., a company incorporated under the *Business Corporations Act*, SBC 2002, c 57, and changed its name to “Reconnaissance Energy Africa Ltd.”<sup>3</sup>
5. Through its wholly-owned subsidiaries, Reconnaissance Energy Namibia (Pty) Ltd. and Reconnaissance Energy Botswana (Pty) Ltd., ReconAfrica holds petroleum exploration licenses for more than eight million acres of the Okavango Region, which spans the Namibia-Botswana border.<sup>4</sup>

### B. The Complainant

6. SOUL is an alliance of concerned citizens, local Indigenous peoples, impacted communities, and civil society organizations in Namibia’s Kavango regions. The alliance is the public face of community resistance to ReconAfrica’s activities.
7. SOUL has been authorized by concerned community members in Kapinga Kamwalye Conservancy, Ncaute Community Forest, Ncumcara Community Forest, Likwaterera Community Forest, and Muduva Nyangana Conservancy and Community Forest (the “**Community Members**”) to act as their appointed representatives for Community Members

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<sup>1</sup> Reconnaissance EnergyAfrica, “Amended and Restated Annual Information Form for the Financial Year Ended December 31, 2020” (filed on May 19, 2021), online <[https://www.banktrack.org/download/annual\\_report\\_2020\\_97/amendedaif.pdf](https://www.banktrack.org/download/annual_report_2020_97/amendedaif.pdf)>.

<sup>2</sup> Halifax Examiner, “A Calgary company is drilling for oil in the world’s largest protected international wildlife reserve; these Nova Scotians are trying to stop it” (October 8, 2021), online <<https://www.halifaxexaminer.ca/environment/a-calgary-company-is-drilling-for-oil-in-the-worlds-largest-protected-international-wildlife-reserve-these-nova-scotians-are-trying-to-stop-it/>>.

<sup>3</sup> Reconnaissance EnergyAfrica, *supra* note 1.

<sup>4</sup> *Ibid* at p. 8 and 13.

in this matter. A letter, dated November 20, 2023, confirming the Community Members' consent to SOUL filing this Complaint is attached at **Appendix A**.

### III. BACKGROUND

#### A. The Kavango region and communal land in Namibia

##### *i) The Kavango Region*

8. The Kavango Zambezi Trans Frontier Conservation Area (“**KAZA TFCA**”) is located within the Kavango and Zambezi river basins, where Angola, Botswana, Namibia, Zambia and Zimbabwe converge.<sup>5</sup> The international transboundary conservation area promotes a common vision of supporting sustainable livelihoods through coexistence and utilization of resources for the benefit of the local communities. On August 18th, 2011, the governments of the five partner countries signed a treaty outlining their shared commitments to various objectives to, among other things, conserve and manage shared natural resources and cultural heritage, as well as protect wildlife and provide and restore migratory routes.<sup>6</sup>

**Figure 1** below is a map of KAZA TFCA, including Namibian territory falling inside KAZA TFCA.

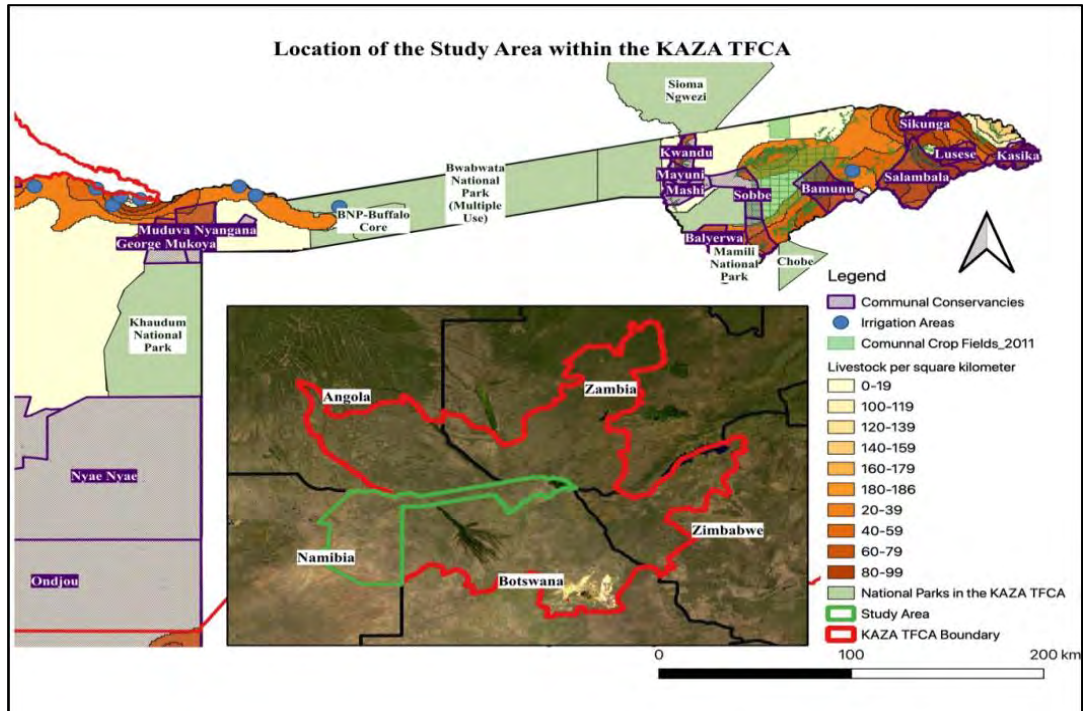


Figure 1: KAZA TFCA Map (Source: Stoldt and Göttert)

<sup>5</sup> KAZA, “Kavango Zambezi Transfrontier Conservation Area”, online <<https://www.kavangozambezi.org/>>.

<sup>6</sup> KAZA, “Kavango Zambezi Transfrontier Conservation Area”, online <<https://www.kavangozambezi.org/partner-countries/>>.

9. With a total area of around 520,000 km<sup>2</sup>, KAZA TFCA encompasses national parks, community forests, conservancies, wildlife management areas and communal lands, including 3 United Nations Educational, Scientific and Cultural Organization (“UNESCO”) World Heritage Sites - Victoria Falls, Okavango Delta, and Tsodilo Hills.<sup>7</sup>
10. The KAZA TFCA is home to the world's largest population of African elephants, as well as significant numbers of buffalo, hippopotamus, lion, giraffe, eland, zebra, spotted hyena, and leopards.<sup>8</sup> The Okavango Delta and its watershed (the area affected by ReconAfrica) harbor various threatened and endangered species, including cheetahs, African wild dogs, and several species of rhinoceros facing extinction.<sup>9</sup> The delicate balance between biodiversity and freshwater supply is crucial for maintaining transboundary ecological connectivity, safeguarding wildlife populations, and ensuring the flow of benefits to communities.<sup>10</sup>
11. The area is traditionally occupied by Indigenous groups such as the San and Bantu Indigenous peoples who live on communal land.<sup>11</sup> The KAZA TFCA also encompasses an array of protected conservancies and community forests. Among these, in the Kavango East region, are the Kapinga Kamwalye Conservancy, Muduva Nyangana Conservancy, George Mukoya Conservancy, Joseph Mbambangandu Conservancy, and Shamungwa Conservancy,<sup>12</sup> as well as Likwaterera Community Forest, Ncaute Community Forest, and Ncumcara Community Forest.<sup>13</sup>
12. As further elaborated below, ReconAfrica’s oil exploration license primarily encompasses the ecologically delicate and safeguarded KAZA TFCA, and the Company’s operations both threaten and have adversely impacted the conservation of wildlife, sustainability of the ecosystem, and the socio-economic welfare of communities in the area.

### ***ii) Communal Land***

13. Thirty-nine percent of the land area in Namibia is communal land.<sup>14</sup>

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<sup>7</sup> WWF, “WWF in KAZA”, online <[https://www.wwfnamibia.org/programmes/wwf\\_in\\_kaza/](https://www.wwfnamibia.org/programmes/wwf_in_kaza/)>.

<sup>8</sup> KAZA, *supra* note 5.

<sup>9</sup> Greenpeace, “5 Reasons to Save the Okavango Delta”(March 31, 2021), online <<https://www.greenpeace.org/africa/en/blogs/13418/5-reasons-to-save-the-okavango-delta/>>.

<sup>10</sup> KAZA, “Kavango Zambezi Transfrontier Conservation Area”, online <<https://www.kavangozambezi.org/wildlife-and-nature/>>.

<sup>11</sup> Minority Rights Group, “Namibia”, online <<https://minorityrights.org/country/namibia/>>.

<sup>12</sup> NACSO Namibian Association of CBNRM Support Organisations, “Registered Communal Conservancies”, online <<https://www.nacso.org.na/conservancies/>>.

<sup>13</sup> NACSO Namibian Association of CBNRM Support Organisations, “Community Forests”, online <<https://www.nacso.org.na/community-forests/>>.

<sup>14</sup> Other land area consists of freehold title by held individual landowners or companies.

14. Communal land is owned by the state and held in trust for local communities. These customary tenure rights are secured by group membership.<sup>15</sup>
15. Households in communal areas have private tenure rights to their homes, crop fields and livestock pastures. These areas are held as customary land rights under the *Communal Land Reform Act 5 of 2002* (“**CLRA**”). Private rights to communal land do not amount to outright ownership but are defined by the rights to exclude and include others. This type of tenure is informal, and land rights are not recorded in a formal written form. Communal land cannot be sold or held as freehold title, with some exceptions. Transfers of use rights must go through the traditional authorities and the Land Board.<sup>16</sup>
16. Traditional authorities are legal entities led by headmen or headwomen who are empowered to ensure observation of customary law, assist the local government with the development of land-use plans, and confirm that communities are using natural resources sustainably.<sup>17</sup> In most communal areas, traditional authorities control the allocation and use of land, applying customary law under the oversight of the Land Boards. Land Boards control the allocation of customary land rights by the traditional authorities.<sup>18</sup>

### ***iii) Community Forests***

17. Communal lands can also contain community forests – areas over which local communities have obtained the rights to manage and develop forests for the purpose of conserving soil and water resources, maintaining biological diversity, and using forest produce in a manner that is compatible with the forest's primary role as the protector and enhancer of the natural environment.<sup>19</sup> Individuals who live within the community forests are referred to as members (“**Members**”). Community forests typically contain an area where Members live and cultivate food (a “**Settlement Zone**”) and an area that is uninhabited but managed for the benefit of the present and future generations of Members (“**Protected Zones**”).
18. Community forests are managed and governed by Village Development Committees (“**VDCs**”) and a Forestry Management Committee (“**FMC**”), respectively. VDCs manage the daily activities of villages within the community forest and assist Members with determining the development needs of each community. They act as a liaison between the Members and the FMC or other third parties.<sup>20</sup> The FMC is a ten-person board elected by Members, governed by the Ministry of Environment, Forestry and Tourism (“**Ministry of**

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<sup>15</sup> See: Wolfgang Werner, *Land Governance on Communal Land in Namibia*, (Namibia: Legal Assistance Centre, 2021) at 4 and 13, online: <[https://www.lac.org.na/projects/lead/Pdf/Land\\_Governance\\_on\\_Communal\\_Land.pdf](https://www.lac.org.na/projects/lead/Pdf/Land_Governance_on_Communal_Land.pdf)>.

<sup>16</sup> *Ibid* at p. 4 and 31.

<sup>17</sup> Legal Assistance Centre, “Role of Traditional Authorities in Promoting Sustainable Use of Namibia’s Natural Resources,” online: <[http://www.lac.org.na/news/probono/ProBono\\_46-TAs\\_NATURAL\\_RESOURCES.pdf](http://www.lac.org.na/news/probono/ProBono_46-TAs_NATURAL_RESOURCES.pdf)>.

<sup>18</sup> Werner, *supra* note 14 at p. 4-5.

<sup>19</sup> *Forest Act*, 2001, GN 138/2002, s 10(1) [*Forest Act*].

<sup>20</sup> Affidavit of Paulus Siwegedi Kampanza, sworn on November 9, 2023 at para. 8 [Kampanza Affidavit, Appendix K].

**Environment**”), and empowered by the *Forest Act, 2001* to represent the interests of Members in the daily management and long-term planning of the community forest.<sup>21</sup> Under the legislative framework, the FMC is required to develop a Forest Management Plan, which is a document that provides an inventory of forest produce (i.e. vegetation), states how such forest produce is being used, outlines management objectives and methods for achieving those objectives, and identifies the FMC members.<sup>22</sup> The FMC is authorized to grant permits to companies to allow work in the Settlement Zone after consultation with VDCs and Members. The granting of such a permit primarily depends on whether the company’s proposed activities align with the purpose of the community forest, the goals of the Forest Management Plan and the priorities of affected villages.

#### ***iv) Community Conservancies***

19. Communal lands may also fall under a community conservancy, which is a legal body created by application to the Ministry of Environment under the *Nature Conservation Amendment Act (No. 5 of 1996)*.<sup>23</sup> The aim of a conservancy is to protect the environment and implement measures for the sustainable use of resources by managing natural resources, creating designated zones (such as the settlement zone and wildlife zone - similar to community forests), and working with other bodies, such as traditional authorities, regional councils, directorate of forestries, Namibian police, and other stakeholders, to promote sustainable development. The conservancy also protects a range of animal species.<sup>24</sup>
20. The community or communities that apply for conservancy formation set the conservancy’s boundaries, define the conservancy membership, elect a committee to represent the members, establish a constitution that provides the conservancy’s objectives, develop a benefit distribution plan that indicates the main objectives for community benefit, and develop a game management and utilization plan that outlines how wildlife resources will be managed.<sup>25</sup> Conservancy and local community members engage with the management committee through annual general meetings, interim meetings, a formal complaint process, and informal communications.<sup>26</sup>
21. Conservancies are different from community forests. The focus of a community forest is on the management of natural vegetation. In contrast, conservancies promote community-

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<sup>21</sup> *Ibid* at para. 2.

<sup>22</sup> *Forest Act* at Article 12(1).

<sup>23</sup> Affidavit of Muyemburuko Max Kangwaka, sworn on November 10, 2023 at para. 2 [Kangwaka Affidavit, Appendix E]; Ministry of Environment and Tourism “*Guidelines for Management of Conservancies and Standard Operating Procedures*” at p2, online: <<https://www.meft.gov.na/files/files/Guidelines%20for%20Management%20of%20Conservancies%20and%20SOPs.pdf>>.

<sup>24</sup> Kangwaka Affidavit, Appendix E, *supra* note 23 at para. 4.

<sup>25</sup> Ministry of Environment and Tourism Development, *supra* note 23 at p. 2 & 16.

<sup>26</sup> Affidavit of Hamutenya Thomas Muronga, sworn on November 9, 2023 at para. 5 [Muronga Affidavit, Appendix C].



based management of wildlife and the development of tourism.<sup>27</sup> All residents within a community forest are members of the forest, and have member's rights, whereas not all residents of conservancies are Members thereby limiting their activities and access to forest product.<sup>28</sup> As a result of these differences, communities may apply for dual designations, as both a conservancy and community forest.

## B. Environmental Protection and the ECC Process

22. As an initial step, all oil and gas companies operating in Namibia enter into a Petroleum Agreement with the State and obtain a Petroleum Exploration License (“**PEL**”).<sup>29</sup> According to the *Petroleum (Exploration and Production) Act*, the Minister of Mines and Energy is responsible for issuing a PEL authorizing the company to conduct exploration activities within specified areas of land.<sup>30</sup>
23. Namibia enshrines environmental protection as a fundamental principle within its constitution and is a State party to several international environmental treaties.<sup>31</sup> Other legislation that make up the framework within which petroleum exploitation must take place include the *Environmental Management Act*<sup>32</sup> and the *Water Resources Management Act*.<sup>33</sup>
24. The *Environmental Management Act* was enacted to enable Namibia to carry out the country's international obligations with respect to the environment. Key principles of environmental management include the sustainable utilization of natural resources for the benefit of both present and future generations, promoting community involvement in natural resource management, and conducting assessments for activities with potentially significant environmental impacts.<sup>34</sup>
25. Under the *Environmental Management Act*, no individual or company is permitted to engage in activities involving land use and transformation, industrial processes, water use and disposal, or resource extraction without holding an Environmental Clearance Certificate (“**ECC**”).<sup>35</sup> As a company seeking to perform such activities, ReconAfrica would be required to obtain an ECC using the following process:

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<sup>27</sup> Conservation and the Environment in Namibia, Travel News Namibia, “Community Forestry in Namibia Integrated Forest Management”online: <<https://www.travelnewsnamibia.com/community-forestry-in-namibia-integrated-forest-management/>>

<sup>28</sup> <https://www.nacso.org.na/community-forests>.

<sup>29</sup> *Petroleum (Exploration and Production) Act*, 2 of 1991, Article 13.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Namibian Constitution*, Art. 95.

<sup>32</sup> *Environmental Management Act* 7 of 2007 [*Environmental Management Act*].

<sup>33</sup> *Water Resources Management Act* 11 of 2013 [*WRM Act*].

<sup>34</sup> *Environmental Management Act*, *supra* note 32 at Art. 2.

<sup>35</sup> *Environmental Management Act*, *supra* note 32 at Art. 27.

- a) Depending on the extent of the environmental impact, the Environmental Commissioner (“**Commissioner**”)<sup>36</sup> determines whether an Environmental Impact Assessment (“**EIA**”) is required and informs the Company about the scope and procedure for conducting the assessment.<sup>37</sup> The company would then produce an EIA that contains an assessment of the nature, extent, duration and significance of the impacts on the environment of its proposed activities.<sup>38</sup> The EIA must also include an Environmental Management Plan (“**EMP**”) that stipulates the measures the company will take to address the adverse environmental impacts identified in its EIA and any specific permits or approvals that may be required.<sup>39</sup>
- b) Where an EIA is required and the activities in question involve high-impact developments on communal and conservation land (such as exploratory oil and gas activities), the company applying for the ECC must engage in timely consultation with interested and affected parties, including local and Indigenous communities, experts, scientists and nongovernmental organizations.<sup>40</sup> The consultation process must give these stakeholders an opportunity to review the EIA report and submit written comments. The list of interested and affected parties and their comments on the company’s EIA are included in the company’s application for the ECC.<sup>41</sup>
- c) The final EIA report containing the impact assessment, list of the interested and affected parties consulted, their comments, and the EMP constitutes the total application for an ECC that is provided to the Commissioner.<sup>42</sup> On the basis of this information, the Commissioner decides whether to grant or refuse the ECC application.<sup>43</sup> An ECC becomes effective from the date it is granted with a validity period not exceeding three years.<sup>44</sup>
- d) The Commissioner retains the authority to cancel or suspend an ECC in cases where the ECC or the *Environmental Management Act* are violated.<sup>45</sup> Should the company seek to amend the ECC, they are required to engage in the consultation process again. An amendment cannot be used to cover new exploration projects.<sup>46</sup>

26. Concurrently, under the *Water Resources Management Act*, a company must apply to the Ministry of Agriculture, Water, and Land Reform (“**Ministry of AWLR**”) for a water use and

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<sup>36</sup> *Ibid* at Arts.17 and 32.

<sup>37</sup> *Ibid* at Art.17.

<sup>38</sup> *Environmental Impact Assessment Regulations 2012*, s. 15(2)(h) [*EIA Regulations*].

<sup>39</sup> *Ibid* at s. 8.

<sup>40</sup> *Ibid* at s. 21.

<sup>41</sup> *Ibid* at s.23 and 24.

<sup>42</sup> *Environmental Management Act*, *supra* note 32 at Art. 32.

<sup>43</sup> *Ibid* at Art. 37.

<sup>44</sup> *Ibid* at Art. 40.

<sup>45</sup> *Ibid* at Art. 42.

<sup>46</sup> *Ibid* at Art. 39.

disposal permit prior to the drilling of test wells (also known as boreholes).<sup>47</sup> A company may not abstract or use water without first obtaining these permits.<sup>48</sup> Applying for a water use permit requires conducting an environmental impact analysis of the proposed abstraction on the environment, water users and water resources.<sup>49</sup> Additionally, the process must consider the existing water use by any traditional community and the extent of customary rights and practices in relation to the water resource. Continuous monitoring and testing of the water after usage is required under the water use and disposal permits once obtained.<sup>50</sup>

### C. ReconAfrica’s Operations in Namibia

27. ReconAfrica’s activities in the region between 2019 to the present, which are the subject of this Complaint, are as follows:

- a) In January 2015, ReconAfrica entered into a Petroleum Agreement with Namibia’s Ministry of Mines and Energy, pursuant to which a Petroleum Exploration Licence was granted (“**PEL 73**”).<sup>51</sup> **Figure 2** below is a map showing the region covered by ReconAfrica’s PEL 73.<sup>52</sup>

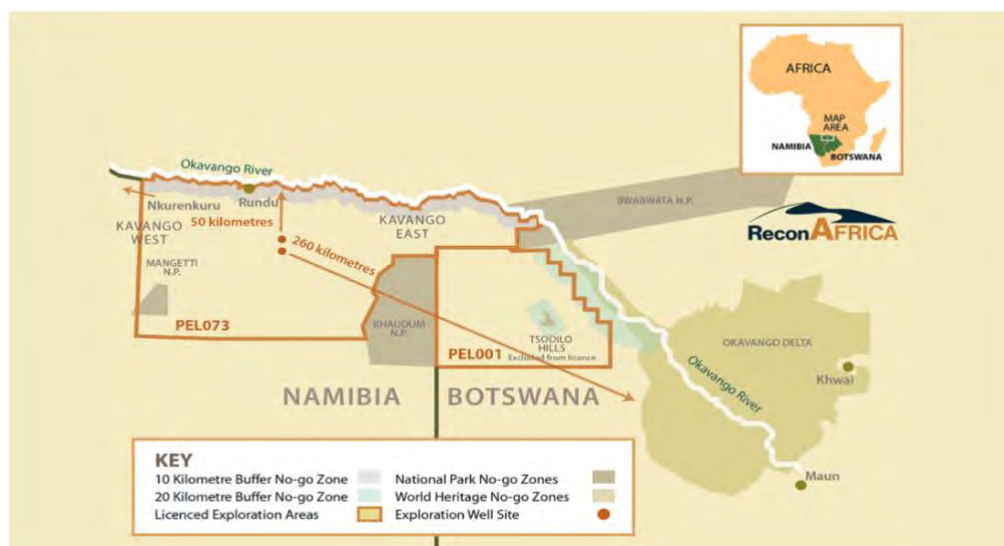


Figure 2: PEL 73 Map (Source: Oil Field Africa)

<sup>47</sup> WRM Act, *supra* note 33 at Art. 44.

<sup>48</sup> *Ibid* at Arts. 44 and 56.

<sup>49</sup> *Ibid* at Art. 45.

<sup>50</sup> *Ibid* at Art. 123.

<sup>51</sup> Ministry of Mines & Energy and NAMCOR, “Hydrocarbon License Map” online: <[https://www.namcor.com.na/wp-content/uploads/2020/06/Lic\\_Map\\_01112019-Received-22012020.pdf](https://www.namcor.com.na/wp-content/uploads/2020/06/Lic_Map_01112019-Received-22012020.pdf)>; See also: Jeffrey Barbee and Laurel Neme, “Oil company accused of drilling in African wildlife reserve, offering jobs for silence,” *National Geographic* (13 December 2021) online: <<https://www.nationalgeographic.com/animals/article/oil-company-reconafrika-accused-of-drilling-in-african-wildlife-reserve>>.

<sup>52</sup> ReconAfrica, Kavango Basin, online: <<https://reconafrika.com/operations/kavango-basin>>.

- b) In order to commence drilling on the land licensed under PEL 73, ReconAfrica needed to obtain an ECC from the Ministry of Environment.<sup>53</sup> According to the Company, it began conducting its 2019 EIA process for the drilling of test wells in September 2018 (the “**2019 EIA**”).<sup>54</sup>
- c) In June 2019, ReconAfrica submitted its 2019 EIA, which included an EMP (the “**2019 EMP**”), as part of its application for an ECC.<sup>55</sup> Notably, ReconAfrica neglected to consult with local communities or include an interested and affected parties list in its final ECC application.

**Figure 3** below is a map identifying ReconAfrica’s initially proposed drill locations near Kawe (6-1) and Mbambi (6-2).

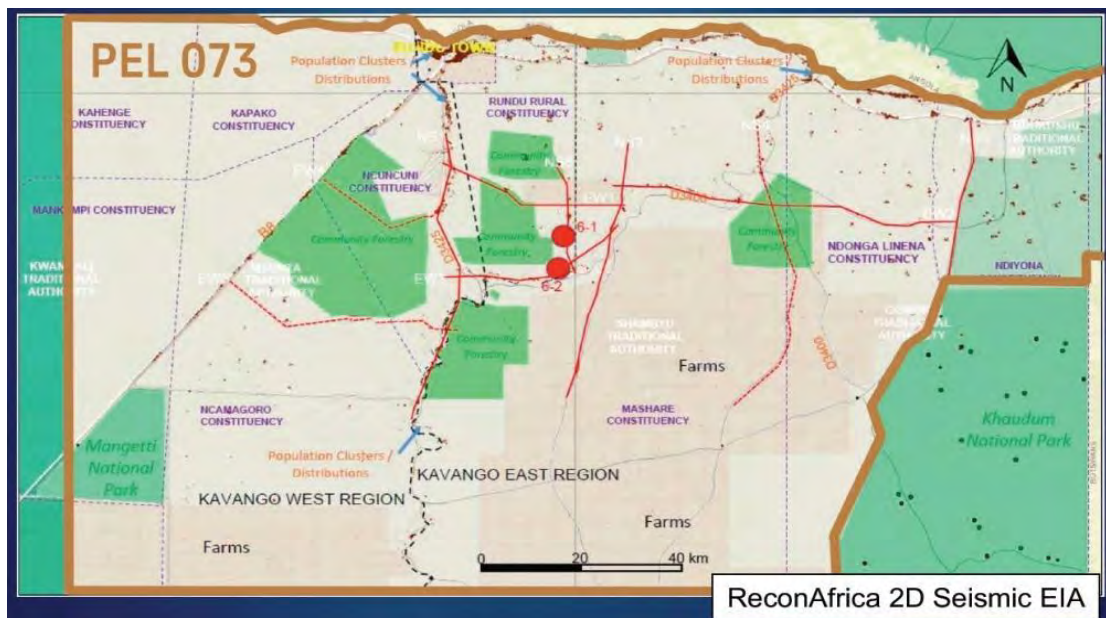


Figure 3: Proposed locations of Kawe and Mbambi drill sites

- d) The Minister granted ReconAfrica an ECC for well drilling - despite the deficiencies in ReconAfrica’s EIA process - in August 2019, which was valid until August 2022 (the “**2019 ECC**”).<sup>56</sup> The 2019 ECC authorized ReconAfrica to drill test wells in the Kavango region, on the condition that the Company obtain land rights from the

<sup>53</sup> *Environmental Management Act*, supra note 32 at Arts. 27 and 32.

<sup>54</sup> ReconAfrica letter to the United Nations Human Rights Special Procedures, January 14, 2022, online: <<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?qlid=36756>>.

<sup>55</sup> Risk-Based Solutions (RBS), 2019. Environmental Management Plan (EMP) Report Vol. 3 of 3 to Support the Application for Environmental Clearance Certificate (ECC) for the Proposed Petroleum Exploration Operations (Drilling of Stratigraphic Wells) in Petroleum Exploration License (PEL) 73 Covering Blocks 1719, 1720, 1721, 1819, 1820 and 1821, Etosha Basin, Kavango West and East Regions, Northern Namibia [2019 EMP Vol. 3].

<sup>56</sup> Environmental Clearance Certificate for the Proposed Petroleum Exploration Operations, issued by the Ministry of Environment, Forestry and Tourism, August 26, 2019.

communal Land Board and water use and disposal permits from the Ministry of AWLR before commencing drilling operations.<sup>57</sup> The 2019 EIA indicated that the drill sites would be situated beyond the boundaries of the Kapinga Kamwalye Conservancy (the “**KKC**”). However, following the approval of their 2019 ECC, ReconAfrica’s drill site was relocated inside the conservancy.<sup>58</sup>

- e) Also in August 2019, the Company began conducting seismic surveying in Mbambi, located in the KKC.<sup>59</sup> Seismic surveying uses sound energy to map geological structures and involves large trucks pounding weighted plates into the ground.<sup>60</sup> ReconAfrica did not have an ECC to commence seismic surveying in the region and had not conducted consultations nor received consent from Indigenous peoples in the area.
- f) In November 2020, ReconAfrica began clearing land and vegetation in the village of Kawe, situated within the Ncaute Community Forest (“**NCF**”), for its first drill site, under the 2019 ECC (the “**First Drill Site**”).<sup>61</sup> The Company did not have the land rights required from the communal Land Board to commence these activities, and had not consulted with Indigenous peoples.<sup>62</sup>
- g) In January 2021, ReconAfrica began drilling at the First Drill Site, under the 2019 ECC.<sup>63</sup> At the time of commencing drilling activities, ReconAfrica did not have the land rights required from the communal Land Board and had not conducted consultations.<sup>64</sup> The Company also did not receive water use and disposal permits until June 2021 in violation of laws mandating prior authorization for water extraction and wastewater disposal.<sup>65</sup> ReconAfrica also failed to follow the standard procedure of lining drilling waste pits with an impermeable plastic liner to prevent groundwater contamination.<sup>66</sup>

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<sup>57</sup> *Ibid* at pg. 5.

<sup>58</sup> Risk-Based Solutions (RBS), 2019. Environmental Impact Assessment (EIA) Report, Vol. 2 of 3 Report to Support the Application for Environmental Clearance Certificate (ECC) for the Proposed Petroleum Exploration Operations (Drilling of Stratigraphic Wells) in Petroleum Exploration License (PEL) 73 Covering Blocks 1719, 1720, 1721, 1819, 1820 and 1821, Etosha Basin, Kavango West and East Regions, Northern Namibia [2019 EIA Vol. 2]. See section 4.3.2 Important Areas (Habitats) which fails to mention the Kapinga Kamwalye Conservancy.

<sup>59</sup> Muronga Affidavit, Appendix C, *supra* note 26 at para 11.

<sup>60</sup> American Petroleum Institute, “Seismic Surveys 101”, November 8, 2016, online: <<https://www.api.org/news-policy-and-issues/blog/2016/11/08/seismic-surveys-101>>.

<sup>61</sup> ReconAfrica, ReconAfrica begins 450 km 2D seismic program; Kavango Basin, Kalahari Desert, January 18, 2021, online: <<https://www.newswire.ca/news-releases/reconafrika-begins-450-km-2d-seismic-program-kavango-basin-kalahari-desert-838154304.html>>; See also Barbee and Neme, *supra* note 51.

<sup>62</sup> *Ibid*.

<sup>63</sup> Kangwaka Affidavit, Appendix E, *supra* note 23 at para. 13.

<sup>64</sup> *Ibid*.

<sup>65</sup> Barbee J., “Parliamentary Report on Petition to Stop Oil drilling in the Okavango” at pg. 19 online: <<https://www.documentcloud.org/documents/22082077-parliamentary-report-on-petition-to-stop-oil-drilling-in-the-okavango-1>> (see 3.14 Hearing with the Ministry of Agriculture, Water and Land Reform).

<sup>66</sup> Jeffrey Barbee and Laurel Neme, “Test drilling for oil in Namibia’s Okavango region poses toxic risk,” *National Geographic* (March 12, 2021) online: <<https://www.nationalgeographic.com/animals/article/test-drilling-oil-namibia-poses-water-risk>>.

- h) Also in January 2021, ReconAfrica began clearing land for a second drill site in Mbambi, situated within the KKC, under the 2019 ECC (the “**Second Drill Site**”).<sup>67</sup> However, drilling at the Second Drill Site contravened the 2019 EIA, which indicated that the Second Drill Site would lie outside the boundaries of the KKC.<sup>68</sup> Additionally, the Company did not have the land rights required from the communal Land Board to commence these activities, and had not consulted with Indigenous peoples.
- i) In March 2021, ReconAfrica applied for another ECC by submitting an EIA for seismic surveying (the “**2021 EIA**”)<sup>69</sup> and associated EMP (the “**2021 EMP**”)<sup>70</sup>, although it had already begun conducting seismic surveying in August 2019 without the required ECC.<sup>71</sup> In July 2021, the Commissioner issued the ECC permitting seismic surveying in July 2021, with validity until July 2024 (the “**2021 ECC**”).<sup>72</sup> The ECC was granted without adequate consultation of affected parties directly impacted by seismic surveying.
- j) Under the 2021 ECC, ReconAfrica conducted a number of seismic surveys between 2021 and 2023 in the following areas: Likwatera Community Forest, Ncaute Community Forest, Ncumcara Community Forest, Khaudum North Complex Conservancy, and Kapinga Kamwale Conservancy, including the villages within their respective boundaries.<sup>73</sup> However, these operations were conducted in violation of the 2021 ECC that restricts seismic activities to existing roads to prevent damage to communal land, crop fields and vegetation, and implements a buffer zone to prevent damage to sensitive infrastructure.<sup>74</sup>

**Figure 4** below is a map of the conservancies, community forests and villages impacted by ReconAfrica’s exploration activities.

<sup>67</sup> Affidavit of [REDACTED] sworn on November 9, 2023 at para 6 [Witness 7 Affidavit, Appendix O].

<sup>68</sup> 2019 EIA, Vol 2, *supra* note 58. See also Barbee & Neme, *supra* note 61.

<sup>69</sup> Risk-Based Solutions (RBS), 2021. Final Environmental Impact Assessment (EIA) Report to Support the Application for Environmental Clearance Certificate (ECC) for the Proposed 2D Seismic Survey covering the Areas of Interest (AOI) in the Petroleum Exploration License (PEL) No.73, Kavango Sedimentary Basin, Kavango West and East Regions, Northern Namibia, online: <[https://www.documentcloud.org/documents/20690901-2250\\_vol\\_2\\_of\\_3\\_eia\\_report\\_for\\_the\\_proposed\\_2d\\_seismic\\_survey\\_of\\_aoi\\_in\\_pel\\_73\\_kavango\\_east\\_and\\_west\\_regions\\_march\\_2021](https://www.documentcloud.org/documents/20690901-2250_vol_2_of_3_eia_report_for_the_proposed_2d_seismic_survey_of_aoi_in_pel_73_kavango_east_and_west_regions_march_2021)> [2021 EIA].

<sup>70</sup> Risk-Based Solutions (RBS), 2021. Final Environmental Management Plan (EMP) Report to Support the Application for Environmental Clearance Certificate (ECC) for the Proposed 2D Seismic Survey covering the Areas of Interest (AOI) in the Petroleum Exploration License (PEL) No. 73, Kavango Sedimentary Basin, Kavango West and East Regions, Northern Namibia [2021 EMP].

<sup>71</sup> Muronga Affidavit, Appendix C, *supra* note 26 at para 11.

<sup>72</sup> Environmental Clearance Certificate for the Proposed Seismic Survey, issued by the Ministry of Environment, Forestry and Tourism, July 2, 2021 [2021 ECC].

<sup>73</sup> Affidavit of [REDACTED] sworn on November 8, 2023 at para 5 [Witness 1 Affidavit, Appendix D]; Kangwaka Affidavit, Appendix E, *supra* note 23 at para 19; Affidavit of [REDACTED] sworn on November 8, 2023 at paras 8, 9 and 10 [Witness 2 Affidavit, Appendix H]; Kampanza Affidavit, Appendix K, *supra* note 20 at paras 12, 13, 16, 22 and 26; Affidavit of [REDACTED] sworn on November 9, 2023 at para 6 [Witness 5 Affidavit, Appendix L]; Affidavit of [REDACTED] sworn on November 9, 2023 at para 12 [Witness 6 Affidavit, Appendix M].

<sup>74</sup> 2021 ECC, *supra* note 72.

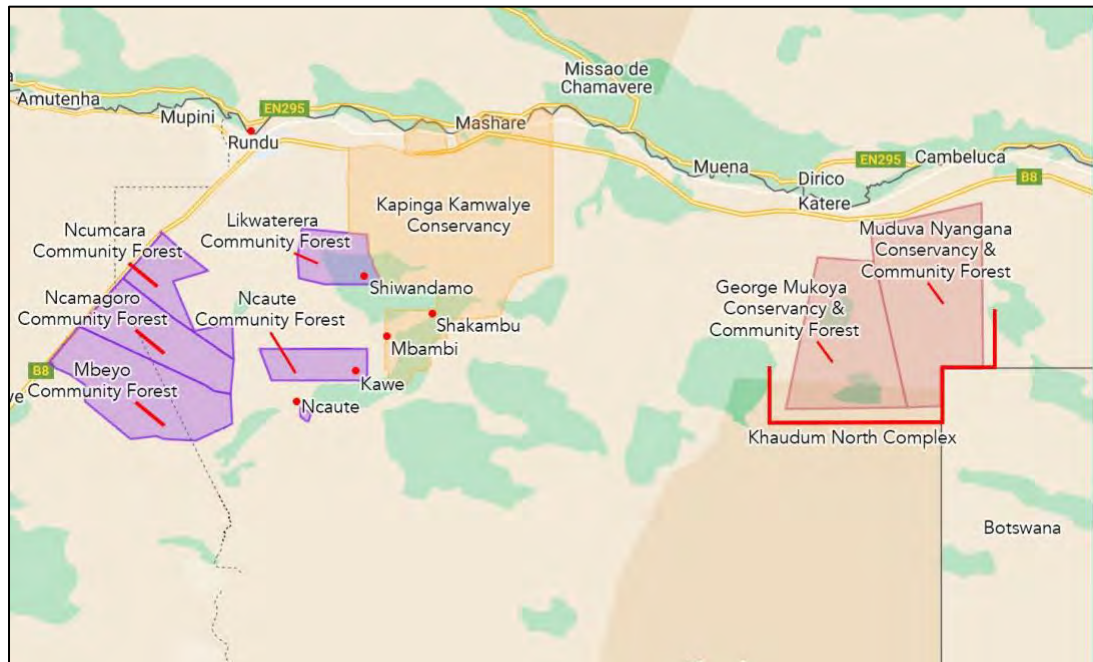


Figure 4: Conservancies, Community Forests, and villages affected by ReconAfrica operations

- k) In May 2021, ReconAfrica began drilling at the Second Drill Site, under the 2019 ECC.<sup>75</sup> The Company did not have the necessary land rights, water use and disposal permits, or permission from the KKC management committee, and the Company had not conducted consultations with local communities, nor received consent from affected Indigenous peoples. Moreover, the drilling waste pit located on the Second Drill Site also lacked the plastic liner required to prevent drilling waste fluid from contaminating the soil and water.<sup>76</sup>
- l) In June 2022 ReconAfrica filed an amendment to their 2019 ECC to commence an additional 12-well drilling project.<sup>77</sup> According to the *Environmental Management Act*, such an amendment cannot be used to cover new drilling projects and ReconAfrica was required to apply for a new ECC.<sup>78</sup> Furthermore, in filing an amendment to the 2019 ECC, the Company excluded communities near the drill sites from registering

<sup>75</sup> ReconAfrica, “First section of the second well provides further confirmation of a working petroleum system”, June 3, 2021, online: <<https://reconafrika.com/wp-content/uploads/ReconAfrica-Press-Release-060321.pdf>>.

<sup>76</sup> Halifax Examiner, “A Calgary company is drilling for oil in the world’s largest protected international wildlife reserve; these Nova Scotians are trying to stop it”, October 8, 2021, online: <<https://www.halifaxexaminer.ca/environment/a-calgary-company-is-drilling-for-oil-in-the-worlds-largest-protected-international-wildlife-reserve-these-nova-scotians-are-trying-to-stop-it/>>.

<sup>77</sup> Windhoek Observer, “Recon Namibia to hear fate this month...as local organisation claims violation of rights”, online: <<https://www.observer24.com.na/recon-namibia-to-hear-fate-this-month-as-local-organisation-claims-violation-of-rights/>>.

<sup>78</sup> *Environmental Management Act*, *supra* note 32 at s. 39.

as interested and affected parties, which is a requirement for amendment applications.<sup>79</sup>

- m) On June 15, 2022, the Commissioner issued an amended 2019 ECC (“**2022 Amended ECC**”), despite the above-mentioned deficiencies.<sup>80</sup> ReconAfrica commenced drilling on June 25, 2022 in Makandina,<sup>81</sup> a town in the Kavango region (the “**Third Drill Site**”) but notably this drill site was also established without land rights and proper consultation with Indigenous peoples prior to drilling.<sup>82</sup>
- n) On August 11, 2022, the Commissioner granted a three-year extension to the 2019 ECC valid until August 2025,<sup>83</sup> authorizing ReconAfrica to continue drilling test wells in the Kavango region.<sup>84</sup>
- o) Following the public outcry regarding ReconAfrica’s amendment process<sup>85</sup> - which should not have been used to cover new drilling projects - ReconAfrica applied for a new ECC, despite the Company already having commenced activities under the 2022 Amended ECC. This new ECC for its 12-well drilling project was granted on July 4, 2023 with validity until July 2026 (“**2023 ECC**”).<sup>86</sup>

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<sup>79</sup> Namibia Economist, “Judgement reserved in ReconAfrica’s environmental clearance certificate vs environmentalists case” (May 2, 2023) online: <<https://economist.com.na/78947/headlines/judgement-reserved-in-reconaficas-environmental-clearance-certificate-vs-environmentalists-case/>>

<sup>80</sup> Namibia Economist, “Economic and Social Justice Trust appeals against Canadian oil drillers in Kavango East and West” (March 8, 2023) online: <<https://economist.com.na/77648/environment/economic-and-social-justice-trust-appeals-against-canadian-oil-drillers-in-kavango-east-and-west/>>. See also New Era Publication Corporation, “Recon ready to oppose appeal of clearance certificate” (March 9, 2023) online: <<https://neweralive.na/posts/recon-ready-to-oppose-appeal-of-clearance-certificate>>.

<sup>81</sup> ReconAfrica, ReconAfrica provides update on drilling and new seismic results (November 9, 2022) online: <<https://reconafica.com/wp-content/uploads/ReconAfrica-Press-Release-110922.pdf>>.

<sup>82</sup> Namibia Economist, *supra* note 79; Muronga Affidavit, Appendix C, *supra* note 26 at para 18.

<sup>83</sup> Mining and Energy, “ReconAfrica secures ECC three-year extension” (August 17, 2022) online: <<https://miningandenergy.com.na/reconafica-secures-ecc-three-year-extension/>>.

<sup>84</sup> ReconAfrica, “ReconAfrica announces extension of Environmental clearance certificate to August 26, 2025” (August 17, 2022) online: <<https://www.newswire.ca/news-releases/reconafica-announces-extension-of-environmental-clearance-certificate-to-august-26-2025-864074362.html>>.

<sup>85</sup> ReconAfrica, “ReconAfrica provides update on complaint” (July 19, 2022) online: <<https://reconafica.com/wp-content/uploads/ReconAfrica-Press-Release-071922.pdf>>; See also: *Ncumcara Community Forest Management Association v The Environmental Commissioner* (HC-MD-CIV-MOT-GEN-2022/00289) [2022] NAHCMD 380 (29 July 2022), online: <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://media.namibii.org/files/judgments/nahcmd/2022/380/2022-nahcmd-380.doc&ved=2ahUKEwj4hcTc\\_q2FAxXnFDQIHW8dC\\_4QFnoECCYQAQ&usq=AOvVaw3FopKgeoZYm5OCHUDQvAp1](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://media.namibii.org/files/judgments/nahcmd/2022/380/2022-nahcmd-380.doc&ved=2ahUKEwj4hcTc_q2FAxXnFDQIHW8dC_4QFnoECCYQAQ&usq=AOvVaw3FopKgeoZYm5OCHUDQvAp1)>.

<sup>86</sup> ReconAfrica, ReconAfrica receives environmental clearance certificate to drill 12 new wells in the Kavango basin, Namibia” (July 12, 2023) online: <<https://www.newswire.ca/news-releases/reconafica-receives-environmental-clearance-certificate-to-drill-12-new-wells-in-the-kavango-basin-namibia-854222522.html>>; See also ReconAfrica, “ReconAfrica announces the filing of quarterly financial reports and an operational update” (November 29, 2023) online: <<https://reconafica.com/wp-content/uploads/RA-Announces-the-Filing-of-Quarterly-Financial-Reports-and-an-Operational-Update.pdf>>.



28. At the time of filing this Complaint, ReconAfrica continues to operate in the Kavango region and has begun clearing additional land, with a multi-well drilling program planned for June 2024.<sup>87</sup> The Company’s PEL 73 was extended on January 30, 2024 and continues to be valid until January 29, 2026.<sup>88</sup> ReconAfrica has also applied to the Commissioner for an amendment to the well locations in its 2023 ECC.<sup>89</sup>

**Figure 5** below is a chart containing the most up-to-date list of proposed ReconAfrica drill locations from the Company’s application for its 2023 Amended ECC.<sup>90</sup>

No.	Well Reference No.	Latitude	Longitude	Description	Status and Priority Rating
1.	D1	18°16'44.8394"S	19°31'53.6353"E	Ncamagoro Community Forest	Proposed Well Priority No. 3
2.	D2	18°19'36.1605"S	19°33'25.2871"E	Mbeye Community Forest	
3.	D3	18°26'12.2958"S	19°41'37.2901"E	Gcaru Village Well Site	
4.	D4	18°33'19.6969"S	19°42'43.7835"E	Naingopo Village Well Site	Proposed Well Priority No. 3 Alternative to D5 (Priority No. 1)
5.	D5	18°35'54.6514"S	19°44'37.8243"E	Gwatjinga Community Forest	Proposed Well Priority No. 1
6.	D6	18°35'32.4710"S	19°54'10.1501"E	Farm 1529	
7.	G1	18°14'37.5326"S	19°44'30.2843"E	Hamwiyi Village Well Site	Proposed Well Priority No. 3
8.	G2	18° 27' 21.9731"S	19° 57' 33.3907"E	Farm 1562	Proposed Well Priority No. 2
9.	G3	18°24'18.2999"S	20°0'39.7775"E	Farm 1564	Proposed Well Priority No. 3
10.	G4	18°26'37.2785"S	20°4'52.2771"E	Farm 1565	Proposed Well Priority No. 1
11.	G5	18°26'35.5441"S	20°10'27.7691"E	Farm 1567	Proposed Well Priority No. 1
12.	G6	18°26'24.1417"S	20°18'33.8072"E	Farm 1572	
13.	G7 (New)	18° 22' 37.1943" S	19° 49' 58.9914" E	Ncaule Settlement	Proposed Well Priority No. 1
14.	G8 (New)	18° 21' 59.4882" S	19° 47' 16.7652" E		

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*Figure 5: Prospective ReconAfrica drill locations identified in its 2023 Amended ECC Application*

<sup>87</sup> ReconAfrica, Multi-well Drilling Portfolio in the Kavango Basin Namibia (March 2024), slide 4 online: <<https://reconafrika.com/wp-content/uploads/ReconAfrica-Corporate-Presentation-031424.pdf>>.

<sup>88</sup> ReconAfrica, “ReconAfrica announces a licensing update” (December 21, 2023) online: <<https://reconafrika.com/wp-content/uploads/ReconAfrica-Announces-Operational-Update-Licensing-Update-Filing-Update-Update-On-NAMCOR-Transaction.pdf>>.

<sup>89</sup> Risk- Based Solutions (RBS), 2023. Updated Background Information Document (BID) for Updated Environmental Impact Assessment (EIA) and Updated Environmental Management Plan (EMP) to Support the Application for Amendment of the Environmental Clearance Certificate (ECC) No.2300571 for Drilling of the Proposed Multiple Exploration and Appraisal Wells with Supporting Infrastructures such as Borrow Pits, Access Roads, and related Services in Kavango Sedimentary Basin (KSB), Petroleum Exploration License (PEL) No.73, Kavango East and West Regions, Northern Namibia.

<sup>90</sup> Risk- Based Solutions (RBS), 2023. Updated Background Information Document (BID) for Updated Environmental Impact Assessment (EIA) and Updated Environmental Management Plan (EMP) to Support the Application for Amendment of the Environmental Clearance Certificate (ECC) No.2300571 for Drilling of the Proposed Multiple Exploration and Appraisal Wells with Supporting Infrastructures such as Borrow Pits, Access Roads, and related Services in Kavango Sedimentary Basin (KSB), Petroleum Exploration License (PEL) No.73, Kavango East and West Regions, Northern Namibia, pg.8.

29. Experts have expressed strong criticism of ReconAfrica’s operations in the Kavango region, citing concerns of inadequate evaluations of the ecosystem and the possible socioeconomic and environmental effects on local communities, archaeological sites, and ground and surface water.<sup>91</sup>
30. Furthermore, international organizations such as the International Union for the Conservation of Nature<sup>92</sup> and UNESCO have warned against allowing ReconAfrica to continue its operations within the region. Most recently, UNESCO adopted the following decision during its 45<sup>th</sup> session of the World Heritage Committee, calling for an EIA that corresponds to international standards.

“The advancement of the oil and gas exploration activities within the Okavango River Basin in Botswana and Namibia is of great concern given the significant risks the expansion of these activities and any eventual exploitation of reserves would pose to the interconnected water system and the ecosystem.”<sup>93</sup>

31. As will be further elaborated in this Complaint, ReconAfrica’s activities have caused or contributed to damage to the environment, communal land, and homes, and has potentially contaminated potable water sources. Such conduct by ReconAfrica has threatened and/or prevented access to adequate food, water, income, and housing for local communities, as well as adversely affected the right to a clean, healthy and sustainable environment. The Company’s activities were conducted without consultation and consent from affected Indigenous communities, contrary to the principle of free, prior and informed consent.

#### IV. THE CORE MANDATE

32. The CORE mandate, as established by the Order in Council 2019-1323 (“**Order in Council**”), provides that the Ombudsperson reviews complaints concerning alleged human rights abuses by Canadian companies operating abroad in the garment, mining, and oil and gas sectors.<sup>94</sup>
33. “Human rights abuse” is defined in section 1(1) of the Order in Council as “an adverse impact on an *internationally recognized human right* — including any of the human rights that are referred to in the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and*

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<sup>91</sup> The Globe and Mail, “Canadian oil firm’s consultant sparks controversy by attacking African environmentalists”, February 2, 2021, online: <<https://www.theglobeandmail.com/business/article-canadian-oil-firms-consultant-sparks-controversy-by-attacking-african/>>.

<sup>92</sup> IUCN World Conservation Congress motion, “Protecting the Okavango from oil and gas exploitation” (October 4, 2021) online: <<https://www.iucncongress2020.org/motion/136>>.

<sup>93</sup> UNESCO Decision 44 COM 7B.80, Okavango Delta (Botswana) (N 1432), online: <<https://whc.unesco.org/en/decisions/7796/>>; See also: UNESCO State of conservation of properties inscribed on the World Heritage List at p. 9, online: <<https://whc.unesco.org/document/199654>>.

<sup>94</sup> Order in Council P.C. 2019-1323, s. 4 [Order in Council].

*Cultural Rights*” (emphasis added).<sup>95</sup> Moreover, the Operating Procedures for the Human Rights Responsibility Mechanism of the CORE (the “**Operating Procedures**”) defines “internationally recognized human right” as including, but is not limited to, the rights included in the aforementioned human rights instruments and the *United Nations Declaration on the Rights of Indigenous Peoples*. The Operating Procedures clarifies that a “human rights abuse” is “an adverse impact on an internationally recognized human right includes an action that removes or reduces the ability of an individual or community to claim their human rights.”<sup>96</sup>

34. The CORE was created to, amongst other things, promote the implementation of the United Nations Guiding Principles on Business and Human Rights (“**UN Guiding Principles**”) and the Organisation for Economic Cooperation and Development’s OECD Guidelines for Multinational Enterprises (“**OECD Guidelines**”).<sup>97</sup> The Order in Council provides that these documents must guide the CORE in discharging its mandate.<sup>98</sup>
35. As discussed below, the Complainants submit that ReconAfrica is a Canadian company operating abroad in the oil and gas sector and the Company has engaged in conduct that constitutes a human rights abuse as defined by the Order in Council and Operating Procedures. Thus, as per section 4 of the Order in Council, it is within the CORE mandate for the Ombudperson to review such a complaint.<sup>99</sup>

## V. RECONAFRICA’S HUMAN RIGHTS VIOLATIONS

36. As stated above, ReconAfrica received its PEL 73 in 2015, and began its oil exploration activities in 2019. Despite the various safeguards in place in Namibian law to protect the environment and local communities in the context of extractive activities, ReconAfrica not only violated such requirements imposed by domestic laws and regulations but also violated international human rights law in the course of its operations in the Kapinga Kamwalye Conservancy (including Mbambi and Shakambu villages), Ncaute Community Forest (including Kawe and Ncaute villages), Ncumcara Community Forest, Likwaterera Community Forest (including Shiwandamo village), Khaudum North Complex (composed of George Mukoya Conservancy and Muduva Nyangana Conservancy), and surrounding areas.

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<sup>95</sup> *Ibid* at s. 1(1).

<sup>96</sup> Operating Procedures for the Human Rights Responsibility Mechanism of the Canadian Ombudsperson for Responsible Enterprise (CORE) at s. 2 [CORE Operating Procedures].

<sup>97</sup> Order in Council, *supra* note 94 at s. 4(a).

<sup>98</sup> *Ibid* at s. 5.

<sup>99</sup> *Ibid* at s. 4.

## A. ReconAfrica has a responsibility to respect human rights.

37. Under the UN Guiding Principles and OECD Guidelines, ReconAfrica has a responsibility to respect human rights and should address adverse human rights impacts that it is involved in.
38. The scope of the UN Guiding Principles and OECD Guidelines are intended to include businesses like ReconAfrica. The UN Guiding Principles apply to “all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.”<sup>100</sup> The OECD Guidelines specify that the recommendations contained therein are addressed to “multinational enterprises,” a term that is applied broadly.<sup>101</sup>
39. Both instruments provide that business enterprises should “respect human rights” contained in the International Bill of Human Rights – consisting of the *Universal Declaration of Human Rights* (“UDHR”), the *International Covenant on Civil and Political Rights* (“ICCPR”), and the *International Covenant on Economic, Social and Cultural Rights* (“ICESCR”) – and the principles concerning fundamental rights set out in the International Labour Organization’s *Declaration on Fundamental Principles and Rights at Work*.<sup>102</sup> Business enterprises may need to consider additional standards where the rights of individuals belonging to specific groups or populations are at risk, such as Indigenous peoples. In this respect, both the UN Guiding Principles and the OECD Guidelines point to UN instruments that have elaborated on the rights of Indigenous peoples such as the *UN Declaration on the Rights of Indigenous Peoples* (“UNDRIP”).<sup>103</sup>
40. Respecting human rights under both the UN Guiding Principles and OECD Guidelines means that business enterprises “should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”<sup>104</sup> Business enterprises have a responsibility to “[a]void causing or contributing to adverse human rights impacts” through their own activities and “prevent or mitigate adverse human rights impacts”

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<sup>100</sup> United Nations Human Rights Office of the High Commissioner, “Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy” Framework,” (United Nations: New York and Geneva, 2011), at p. 1 [UN Guiding Principles].

<sup>101</sup> OECD, “OECD Guidelines for Multinational Enterprises on Responsible Business Conduct”, Chapter I at 12 [OECD Guidelines].

<sup>102</sup> UN Guiding Principles, *supra* note 100 at Principle 12 and Commentary on Principle 12 at 13-4 and OECD Guidelines, *supra* note 101 at Commentary on Chapter IV: Human Rights at 25-6.

<sup>103</sup> UN Guiding Principles, *supra* note 100 at Commentary on Principle 12 at 14 and OECD Guidelines, *supra* note 101 at Commentary on Chapter IV: Human Rights at 26.

<sup>104</sup> UN Guiding Principles, *supra* note 100 Principle 11 at 13 and OECD Guidelines, *supra* note 101 at Chapter IV. Human Rights at 25.

that are linked to their operations, such as through third parties.<sup>105</sup> Business “activities” include both actions and omissions.<sup>106</sup>

41. Addressing adverse human rights impacts requires taking adequate measures for the identification, prevention, mitigation and remediation of the impact.<sup>107</sup>
42. ReconAfrica’s responsibility to respect human rights endures regardless of whether its operations conform to Namibian laws or are otherwise supported by the Government of Namibia or other entities. Respect for human rights is a global standard of expected conduct that exists “independently of States’ abilities and/or willingness to fulfill their [own] human rights obligations”<sup>108</sup> and “over and above compliance with national laws and regulations protecting human rights.”<sup>109</sup> The Commentary on Chapter IV: Human Rights in the OECD Guidelines further provides that:

“A State’s failure either to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights.”

43. Even where the Government of Namibia’s actions directly or indirectly support or sanction ReconAfrica’s activities, such as issuing environmental clearance certificates or providing express approvals by government Ministries, ReconAfrica remains responsible for its violations of human rights.

## **B. ReconAfrica’s activities violated Indigenous peoples’ right to provide or withhold free, prior and informed consent**

### ***j) UNDRIP and the Principle of Free, Prior, and Informed Consent***

44. The UNDRIP is a human rights instrument that affirms rights of Indigenous peoples which “constitute the minimum standards for the survival, dignity and well-being of the [I]ndigenous peoples of the world.”<sup>110</sup> As stated above, ReconAfrica has a responsibility to respect the

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<sup>105</sup> UN Guiding Principles, *supra* note 100 at Principle 13 at 14 and OECD Guidelines, *supra* note 101 at Chapter IV: Human Rights at 25.

<sup>106</sup> UN Guiding Principles, *supra* note 100 at Commentary on Principle 13 at 15 and OECD Guidelines, *supra* note 101 at Commentary on Chapter IV: Human Rights at 26.

<sup>107</sup> UN Guiding Principles, *supra* note 100 at Commentary on Principle 11 at 13 and OECD Guidelines, *supra* note 101 at Commentary on Chapter IV: Human Rights at 26.

<sup>108</sup> UN Guiding Principles, *supra* note 100 at Commentary on Principle 11 at 13 and OECD Guidelines, *supra* note 101 at Commentary on Chapter IV: Human Rights at 25.

<sup>109</sup> UN Guiding Principles, *supra* note 100 at Commentary on Principle 11 at 13 at 13.

<sup>110</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, A/RES/61/295*, 2 October 2007 at Art. 43, online:

rights enshrined in international human rights instruments, including UNDRIP, where its operations affect Indigenous peoples. Former Special Rapporteur on the rights of Indigenous peoples, James Anaya, noted that:

**“...the Guiding Principles apply to advance the specific rights of indigenous peoples in the same way as they advance human rights more generally when those rights are affected or potentially affected by business activities, including extractive industries.”**<sup>111</sup> (emphasis added)

45. Moreover, Canada affirmed the applicability and implementation of UNDRIP in its domestic law by passing the *United Nations Declaration on the Rights of Indigenous Peoples Act* in June 2021.<sup>112</sup> Among other things, the Government of Canada is obligated to take all measures necessary to ensure that the laws of Canada are consistent with the UNDRIP.<sup>113</sup> This imposes a duty upon CORE to consider the UNDRIP in carrying out its mandate and reviewing this complaint as the CORE is an organization created by an Order in Council, a statutory instrument.
46. Exploration and extractive activities undertaken can implicate Indigenous peoples’ rights to property, culture, religion, and non-discrimination in relation to lands, territories and natural resources, including sacred places and objects; rights to health and physical well-being in relation to a clean and healthy environment; and rights to set and pursue their own priorities for development, including the development of natural resources, as part of their fundamental right to self-determination.<sup>114</sup>
47. The means by which Indigenous peoples exercise these substantive rights is through the principle of free, prior and informed consent (“**FPIC**”).<sup>115</sup> The requirement of FPIC is found in Articles 10, 19, 29 and 32 of UNDRIP. Specifically:
  - FPIC is required when Indigenous peoples are relocated from their lands, which includes agreement on just and fair compensation and, where possible, the option of return for the Indigenous peoples concerned.<sup>116</sup>

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<[https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)> [UNDRIP].

<sup>111</sup> U.N., Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, A/HRC/21/47 (July 6 2021) at para. 55.

<sup>112</sup> *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14, online: <<https://www.canlii.org/en/ca/laws/stat/sc-2021-c-14/latest/sc-2021-c-14.html>> [UNDRIP Act].

<sup>113</sup> *Ibid* at s. 5.

<sup>114</sup> Anaya, *supra* note 111 at para 135.

<sup>115</sup> *Ibid* at para 49. See also: OHCHR, Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples, U.N. Doc. A/HRC/39/62 (August 10, 2018) at p. 13, online: <<https://www.ohchr.org/en/documents/thematic-reports/free-prior-and-informed-consent-human-rights-based-approach-study-expert>>.

<sup>116</sup> UNDRIP, *supra* note 110 at Art. 10.

- Consultation with the objective of consent is required before adopting legislation or administrative policies that affect indigenous peoples.<sup>117</sup>
  - FPIC is required when hazardous materials are stored or disposed of on Indigenous peoples' lands.<sup>118</sup>
  - Consultation with the objective of consent is required before undertaking projects that affect indigenous peoples' rights to land, territory and resources, including mining and other utilization or exploitation of resources.<sup>119</sup>
48. Where the principle of FPIC is violated - either by taking Indigenous peoples' cultural, intellectual, religious and spiritual property or confiscating, taking, occupying, using or damaging Indigenous peoples' lands, territories and resources without their free, prior and informed consent - UNDRIP requires redress for such harms.<sup>120</sup>
49. The specific requirements of FPIC are a function of the rights implicated and the potential impacts upon them,<sup>121</sup> but in any event must be conducted in good faith,<sup>122</sup> and encompass the following elements.
- **The ability to grant or withhold consent must be free.** The consultation process should not include intimidation, coercion and pressure, including harassment and violence.<sup>123</sup> Indigenous peoples should have the freedom to be traditionally represented in accordance with their own laws, customs, institutions, and protocols, and be able to direct the consultation process through those representatives.<sup>124</sup> Private companies that are engaged in extractive projects should defer to these Indigenous decision-making processes without attempting to influence or manipulate the consultation process.<sup>125</sup> Indigenous peoples should be free to set expectations and contribute to the selection of methods, timelines, locations and evaluations.<sup>126</sup>

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<sup>117</sup> *Ibid* at Art. 19.

<sup>118</sup> *Ibid* at Art. 29.

<sup>119</sup> *Ibid* at Art. 32(2).

<sup>120</sup> *Ibid* at Arts. 11 and 28.

<sup>121</sup> Anaya, *supra* note 111 at para. 64.

<sup>122</sup> U.N., "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People," James Anaya, A/HRC/12/34 (July 15, 2009) at para. 46.

<sup>123</sup> Jessie Hohmann and Marc Weller, *The UN Declaration on the Rights of Indigenous Peoples: A Commentary* (2016) at 250.

<sup>124</sup> OHCHR, *supra* note 115 at para. 20.

<sup>125</sup> Anaya, *supra* note 111 at para. 67.

<sup>126</sup> OHCHR, *supra* note 115 at para. 20.

- **Consultations should occur prior to the authorization or start of the activities.** Involving indigenous peoples as early as possible in the process should provide the time necessary for Indigenous peoples to absorb, understand and analyze the information, and conduct their own decision-making process.<sup>127</sup> In the context of extractive activities, consultation should occur during the planning phase of the project, and development plans should not start before the completion of the process of consultation, as some may produce irreversible damage to the Indigenous peoples concerned.<sup>128</sup>
  - **Indigenous peoples should receive objective, accurate and clear information.** This includes information about the nature, size, pace, reversibility, and scope of the proposed project, the reasons for launching it, its duration, and a preliminary assessment of its economic, social, cultural, and environmental impact. The information must be presented in a manner and form understandable to Indigenous peoples, including translation into a language that they understand,<sup>129</sup> and using culturally appropriate procedures that respect the traditions and forms of organization of the Indigenous peoples concerned.<sup>130</sup>
50. The duty to consult under UNDRIP should not be read as requiring mere consultation but as preserving Indigenous peoples' ability to object to and decline the implementation of activities as a means of guaranteeing the effective protection of Indigenous peoples' fundamental rights.<sup>131</sup> While the duty to consult is one that rests with the State, business enterprises that seek to execute projects in extractive industries that affect Indigenous peoples have an independent responsibility to ensure adequate consultation procedures have been undertaken and consent has been obtained under equitable and fair terms that speak to compensation, mitigation measures, and benefit-sharing that is proportionate to the impact on the affected Indigenous party's rights.<sup>132</sup>
51. Consultation and consent are not envisioned as a one-time event but rather a qualitative process of dialogue and negotiation over the course of a project, from planning to implementation, through which Indigenous peoples have the opportunity to influence the outcome of the decision-making process, make different proposals, or suggest a different method of going about the project.<sup>133</sup>

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<sup>127</sup> *Ibid* at para. 21.

<sup>128</sup> Hohmann and Weller, *supra* note 123 at 250.

<sup>129</sup> *Ibid* at 250-1; OHCHR, *supra* note 115 at para 22.

<sup>130</sup> Hohmann and Weller at 251.

<sup>131</sup> *Ibid* at 251-4; OHCHR, *supra* note 115 at paras 24-26.

<sup>132</sup> Anaya, *supra* note 111 at para 68.

<sup>133</sup> OHCHR, *supra* note 115 at para 15.



52. Businesses in the extractives industry have a propensity to have a disproportionate, often devastating, effect on the rights of Indigenous peoples. The adverse impact on rights flows not only from individual extractive activities but from the entire business model. The former UN Special Rapporteur, James Anaya, describes this model as follows:

“It is a model in which the initial plans for exploration and extraction of natural resources are developed by the corporation, with perhaps some involvement by the State, but with little or no involvement of the affected [I]ndigenous community or people. The corporation controls the extractive operation and takes the resources and profits from it, with the State gaining royalties or taxes, and [I]ndigenous peoples at best being offered benefits in the form of jobs or community development projects that typically pale in economic value in comparison to the profits gained by the corporation. It is a model of colonial overtones, in which [I]ndigenous peoples see their territories again encroached upon by outsiders who control aspects of their habitats and take from them, even when done with the promise of corporate social responsibility.”<sup>134</sup>

53. Consultation and consent are thus presumptively a requirement for resource extraction projects that take place within officially recognized or customary land use areas of Indigenous peoples, that impact areas of cultural significance, or that have a bearing on natural resources that are traditionally used by Indigenous peoples in ways that are important to their survival.<sup>135</sup>

***ii) ReconAfrica's operations violate the rights of Indigenous Peoples***

**a. Seismic surveying and drilling operations in the Kapinga Kamwalye Conservancy, including Mbambi and Shakambu**

54. The Kapinga Kamwalye Conservancy (the “**KKC**”) is a conservancy in the Kavango-East region. Members of KKC include Indigenous San and Bantu people who have occupied the land for several generations and have customary rights to the land.<sup>136</sup> They practice traditional rituals and depend on traditional healers who use medicine made up of the plant life found within KKC.<sup>137</sup> The KKC is overseen by a management committee that implements decisions made by members of the 27 villages located within the KKC, which include Mbambi and Shakambu, and ensures that decisions and projects undertaken align with the goals of the KKC benefit distribution and game management and utilization plans.<sup>138</sup>

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<sup>134</sup> Anaya, *supra* note 111 at para 74.

<sup>135</sup> *Ibid* at para 65.

<sup>136</sup> Kangwaka Affidavit, Appendix E, *supra* note 23 at paras 2 & 5.

<sup>137</sup> Muronga Affidavit, Appendix C, *supra* note 26 at paras 2-3.

<sup>138</sup> *Ibid* at para 5.

55. In August 2019, ReconAfrica conducted its first seismic survey within the KKC without consultation with or obtaining consent from affected communities, including the KKC management committee.<sup>139</sup> Seismic surveys use sound energy to locate geological structures that may contain energy resources beneath the earth's surface. Often used in oil and gas exploration, seismic surveys use massive thumping trucks to repeatedly pound heavy, accelerated weighted plates into the ground to generate seismic waves.<sup>140</sup> The Chairperson of KKC's management committee, Hamutenya Thomas Muronga ("**Mr. Muronga**"), learned about the seismic surveys upon receiving several complaints from villagers - including Indigenous community members - within the conservancy. Mr. Muronga's visit to the affected areas revealed that ReconAfrica had created new roads within conservancy boundaries (instead of using existing roads), damaged crop fields and other conservancy land, and left seismic beacons along the testing paths.<sup>141</sup>
56. In addition to conducting seismic surveys, ReconAfrica established a drill site on land within the KKC's boundaries in or around May 2021 without consulting or obtaining consent from Indigenous peoples or the KKC management committee.<sup>142</sup> The 2019 EIA for this Second Drill Site in Mbambi indicated that the drilling location would be situated beyond the boundaries of the KKC. However, ReconAfrica moved the drill site five kilometres into this protected conservation area without consulting the KKC management committee or updating the 2019 EIA. The clearing created for this drill site was approximately the size of five football fields and included pits that later held waste liquids without protective lining to prevent ground contamination as per standard practice.<sup>143</sup> To erect the site, ReconAfrica seized and cleared land used by Indigenous villagers to grow crops and raise cattle.<sup>144</sup> The land continues to be cleared and fenced off to date. Photos of the Second Drill Site, taken on November 9, 2023, can be found in the affidavit of Leitago Narib, attached at **Appendix B**.
57. ReconAfrica's seismic survey activities, drilling operations, and disposal of waste liquids engage both Article 32(2) and 29 of UNDRIP, which requires the FPIC of affected Indigenous peoples.
58. On several occasions, the KKC management committee attempted to engage with ReconAfrica about the Company's activities and gather information about the same, but effective consultation that accords with the spirit of UNDRIP was not achieved. Among other things, Mr. Muronga and others attempted to attend multiple meetings hosted by

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<sup>139</sup> *Ibid* at para 11.

<sup>140</sup> An image of ReconAfrica seismic survey machine can be found in Frack Free Namibia's press release, online: <[https://n-c-e.org/sites/default/files/2021-10/FFN\\_press%20release\\_seismic%20surveying\\_5%20October%202021.pdf](https://n-c-e.org/sites/default/files/2021-10/FFN_press%20release_seismic%20surveying_5%20October%202021.pdf)>.

<sup>141</sup> Muronga Affidavit, Appendix C, *supra* note 26 at paras 11-12.

<sup>142</sup> *Ibid* at paras 6-7.

<sup>143</sup> Barbee and Neme, *supra* note 51.

<sup>144</sup> Muronga Affidavit, Appendix C, *supra* note 26 at para. 8.



between Mr. Muronga and a member of an ally organization that the Company had intercepted. The ReconAfrica representative refused to clarify for Mr. Muronga how ReconAfrica came to possess these communications, causing Mr. Muronga to fear for his privacy and safety.<sup>150</sup>

Affidavits from Mr. Muronga and Witness 1 are attached at **Appendix C and Appendix D**, respectively.

59. As contemplated by UNDRIP, the lack of consultation and FPIC contributed to an adverse impact on the right to land, territory, and resources of the Indigenous peoples located in the KKC. Over 65% of the people who live in or near Mbambi are part of the San community. These Indigenous communities practice traditional rituals as part of their culture and daily life, and depend on plant-based medicine and traditional healers when they are ill. ReconAfrica's activities hindered the KKC's ability to protect villagers' crops and the native vegetation used for food and traditional medicines that ReconAfrica uprooted to clear land. These activities removed the only source of food and traditional medicine of the Indigenous villagers, threatening their survival, and disrupting their traditional lifestyle.
60. Where attempts at consultations were organized by ReconAfrica, incomplete and inaccurate information was provided, the meetings often occurred after activities commenced, and tactics such as intimidation and bribery were used to prevent Indigenous villagers from making inquiries. These meetings lacked the cooperative nature consultations must embody. It follows from this evidence and the fact that ReconAfrica did not explicitly request consent that obtaining consent was not the true objective of these meetings. Consent was also not provided with respect to the waste liquids, as required under Article 29 of UNDRIP.
61. The adverse impact on rights contained in Article 29 (right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources) and Article 32 (right to approve projects affecting their lands or territories and other resources) calls for redress under Articles 28 and 32. Namely, ReconAfrica should provide just, fair and equitable compensation in the form of monetary compensation and/or other sufficient redress. Further, ReconAfrica should undertake appropriate measures to mitigate adverse environmental, economic, social, cultural or spiritual impacts.

**b. Seismic surveying and drilling operations in Ncaute Community Forest, including Kawe and Ncaute**

62. In early January 2021, ReconAfrica initiated drilling operations at the First Drill Site on communal land in the village of Kawe - located inside NCF - which entailed clearing native vegetation, drilling test wells, and storing contaminated waste liquid in inground drill pits.<sup>151</sup>

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<sup>150</sup> Muronga Affidavit, Appendix C, *supra* note 26 at paras. 23-25.

<sup>151</sup> Kangwaka Affidavit, Appendix E, *supra* note 23 at para 13.

63. After drilling operations started, ReconAfrica held its first meeting with local communities and stakeholders on January 22, 2021 (the “**January 2021 Meeting**”) in Rundu.<sup>152</sup> Holding the meeting in Rundu, approximately 100 kilometers away from the First Drill Site, prevented many community members from attending since many Indigenous villagers lack transportation to urban centers. Those who attended could not effectively participate because the meeting was conducted in technical English rather than a native language, in contravention of the requirements of informed consent. Further, ReconAfrica did not provide objective, accurate and clear information about the scope of the project or its potential impact on Indigenous land. When asked directly, the Company did not answer questions about how the project would impact the livelihood of Indigenous villagers and benefit local communities.<sup>153</sup>
64. To request further information after the January 2021 Meeting, Muyemburuko Max Kangwaka (“**Mr. Kangwaka**”), contacted Dr. Sindila Mwiya, a consultant hired by ReconAfrica. Mr. Kangwaka is an Indigenous member of the Kawe community and, at the time, was the Chairperson of the Kavango East and West Regional Conservancy and Community Forest Association, an organization representing conservancies and community forests throughout the region where ReconAfrica was drilling. According to Mr. Kangwaka, Dr. Mwiya’s response not only evaded his questions but also disparaged his Indigenous identity, calling him “ignorant, utterly blind and stupid.” A copy of this correspondence is attached as Exhibit “B” to the affidavit of Mr. Kangwaka found in **Appendix E**.
65. Mr. Kangwaka also recounts attempts by ReconAfrica to thwart his efforts to raise awareness about the Company’s activities and engage with the predominantly Indigenous community residing near the First Drill Site and Second Drill Site:<sup>154</sup>
- a) In 2021, ReconAfrica offered Mr. Kangwaka employment, implying that it was contingent upon his agreement to discontinue consultation efforts. Mr. Kangwaka declined this offer.
  - b) On March 25, 2022, police officers interrupted a meeting Mr. Kangwaka organized for community members to discuss ReconAfrica. The officers searched Mr. Kangwaka, seized his phone, and detained him without cause for eight hours. Mr. Kangwaka now fears that the police are surveilling him and other community members who oppose ReconAfrica’s activities on behalf of ReconAfrica and he is concerned for his safety.

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<sup>152</sup> *Ibid* at para 13.

<sup>153</sup> *Ibid* at para 14.

<sup>154</sup> *Ibid* at para 18.

- c) In June 2022, Mr. Kangwaka was denied access to a meeting organized for Kawe community members despite being a farmer in the Kawe community and a member of a conservancy management committee.
  - d) Beginning in December 2022, Mr. Kangwaka was the victim of four break-and-enters in his home in Rundu. Mr. Kangwaka believes these incidents are connected to his ReconAfrica activism work.<sup>155</sup>
66. Notably, ReconAfrica did not include an interested and affected parties list (“**I&AP List**”) when applying for its 2019 ECC - under which the Company commenced operations at the First Drill Site. In June 2022, a group of interested parties asked ReconAfrica for a copy of the I&AP List that should have been included with the Company’s 2019 ECC Application. The list sent in response by ReconAfrica consultant, Dr. Mwiya, was identical to a list of politicians and locals (including an individual who was deceased at the time<sup>156</sup>) contained in registers for two meetings held by ReconAfrica in the towns of Rundu and Nkurenkuru in May 2019. Given that Rundu and Nkurenkuru are over 100 kilometers away from the First Drill Site, it is clear that ReconAfrica did not meet with locals who were in fact interested and affected by the drill site, and instead the Company retroactively and improperly created an I&AP List two years later. A copy of the purported I&AP List provided by ReconAfrica in 2022 is attached at **Appendix F**. Copies of the registers of meetings held in Rundu and Nkurenkuru by ReconAfrica, which contain the same list of names as the I&AP List, are attached at **Appendix G**.
67. Concurrent with ReconAfrica’s operations at the First Drill Site, ReconAfrica also trespassed on and damaged the lands and homes of Indigenous peoples in the village of Ncaute, located in NCF, without engaging in consultation or obtaining FPIC, contributing to a violation of the rights enshrined in UNDRIP. For example:
- a) XXXXXXXXXX (“**Witness 2**”) is a member of the Indigenous Shambyu community living on communal land in Ncaute. She observed ReconAfrica performing seismic surveys on her land during five separate incidents in 2022 without her consent.<sup>157</sup> The succession of surveys resulted in damage to the witness’s home, destruction of her fruit plants and trees, and a severe reduction in available grass for raising cattle, representing the only food source for her and her family. Prior to the seismic surveys, Witness 2 attended a meeting held by ReconAfrica in the summer of 2021. During this meeting, ReconAfrica informed attendees that they were conducting oil exploration activities but did not state that they would be accessing and using communal land. ReconAfrica also assured attendees that their operations would

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<sup>155</sup> Jeffrey Barbee, “Canadian oil company pauses controversial drilling in Namibian wilderness,” *National Geographic* (June 27 2023), online: <<https://www.nationalgeographic.com/animals/article/canadian-oil-company-reconafrika-pause-drilling-namibia>>.

<sup>156</sup> The Namibian, “Shambyu leader Queen Ribebe has died,” *The Namibian* (June 16 2015), online: <<https://www.namibian.com.na/shambyu-leader-queen-ribebe-has-died/>>.

<sup>157</sup> Witness 1 Affidavit, Appendix D, *supra* note 73 at para. 8-10.

not cause damage to the village or harm the community. Witness 2 was not given an opportunity to ask questions during the meeting, and when community members tried to ask questions, ReconAfrica ended the Meeting. A copy of Witness 2's Affidavit is attached at **Appendix H**.

b) Indigenous San community member [REDACTED] ("**Witness 3**") also occupies land in the village of Ncaute. In April 2023, ReconAfrica built roads across his land to provide access to the Kawe and Mbambi drill sites. ReconAfrica did not seek to obtain FPIC as required by Article 32(2) but provided an English consent form to Witness 3, which the Company presented as an offer of compensation in exchange for permitting the Company to build these roads. ReconAfrica did not explain that the Company would use the land for seismic testing and that such testing would damage the land. Nor did the Company provide the promised compensation for its use of the land. The inaccuracy of the information provided, in a language that the witness did not understand, falls short of meeting the information requirements of FPIC. As a result of these actions, Witness 3 lost land that was vital to his traditional way of life.<sup>158</sup> A copy of Witness 3's Affidavit is attached at **Appendix I**.

c) [REDACTED] ("**Witness 4**") is a farmer from the Nyemba community in Ncaute. He and his family live on land that has been passed down via customary tradition through generations of his family. In early 2021, he observed ReconAfrica trespassing and damaging his land without his permission. Thereafter, he attended meetings hosted by ReconAfrica for his village, but he was not provided with accurate information that detailed the extent of the project activities or the land damage that would be caused. ReconAfrica told the witness that the use of his land would be temporary and not cause any damage. At the time he was asked to sign a document in English seeking his consent for use of his land and promised compensation in return. Witness 4 was not advised of how much compensation he would receive. Today, this witness has a permanent public road running through his land instead of the temporary passageway discussed. Consequently, this witness's crop yield has decreased, leaving his family with insufficient food for the foreseeable future. The compensation that the Company provided afterwards was merely \$N1,116 (\$81 CAD), and was not just, fair, equitable or equal to the value of the land lost and the sustenance it provided as required by Article 28 of UNDRIP.<sup>159</sup> A copy of Witness 4's Affidavit is attached at **Appendix J**.

68. In most of the instances outlined above, ReconAfrica did not engage Indigenous community members in a consultative process in accordance with UNDRIP. Where ReconAfrica spoke with individuals, the Company did not provide the time, information and space required to make an informed decision. In these cases, the absence of FPIC and consultation undermines Indigenous peoples' rights of self-determination, land use and land ownership,

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<sup>158</sup> Affidavit of [REDACTED] sworn on November 9, 2023 at para. 7-11 [Witness 3 Affidavit, Appendix I]

<sup>159</sup> Affidavit of [REDACTED] sworn on November 9, 2023 at para. 8-11 [Witness 4, Affidavit, Appendix J].

and the unique nature of Indigenous peoples' connection with their land. Moreover, ReconAfrica's attempts to stifle, subvert, and circumvent FPIC demonstrates blatant disregard for the vulnerable Indigenous populations that will feel the greatest adverse effect of the Company's activities on their rights.

### c. Seismic surveying in the Ncumcara Community Forest

69. In the Kavango-West region, Ncumcara Community Forest aims, amongst other things, to preserve the land and natural resources within the forest for present and future generations of registered community members. Indigenous San and Bantu people are Members who have lived in the Settlement Zone of Ncumcara Community Forest for several generations. Migration into these communities is not permitted.<sup>160</sup> Members typically build homes, cultivate crops, practice traditional rituals, and maintain a cemetery where their forefathers and recently deceased Members are buried.<sup>161</sup> Traditional healers also practice in the Ncumcara Community Forest, using leaves and roots from plant life found in the settlement zone and protected area to prepare medicines.<sup>162</sup> Companies in the oil and gas sector have not been permitted to work in Ncumcara Community Forest because their activities contravene the aims of the Forest Management Plan and provisions 24(1) and (2) of the *Forestry Act, 2001*.<sup>163</sup>
70. Between 2021 and 2023, ReconAfrica conducted three rounds of 2D seismic surveys inside Ncumcara Community Forest without consulting and obtaining consent from Members of the FMC.
71. ReconAfrica conducted its first set of seismic surveys in Ncumcara Community Forest in November 2021. The Company conducted this initial seismic survey along forest "cutlines," commonly known as "fire breaks," which are thirty-meter-wide strips of forest cleared of all vegetation to act as a natural fire management system. This was an invasion of communal land historically occupied by the Indigenous Members that dwell in Ncumcara Community Forest. Before commencing the seismic survey, ReconAfrica did not: i) consult with or receive consent from the FMC or affected Indigenous communities; ii) contact the Ministry of Environment, Forestry and Tourism or the FMC to inform these governing bodies of their intended activities; or iii) apply for or receive the harvest permit required for activities that uproot plant life.<sup>164</sup>

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<sup>160</sup> Kampanza Affidavit, Appendix K, *supra* note 20 at paras 3 & 4.

<sup>161</sup> *Ibid* at para 6.

<sup>162</sup> *Ibid* at para 7.

<sup>163</sup> *Ibid* at para 9. See also: *Forest Act*, *supra* note 19 at s. 24(1) and (2): "(1) Forests and forest produce shall, in Namibia, subject to the permission of the owner of the land or the management authority of a classified forest and to the terms of a licence issued under this Act, be used in accordance with an applicable management plan. (2) No person shall (a) destroy or damage vegetation or harvest forest produce; (b) carry out any activity for the purpose of mining minerals; (c) build a road, building or structure; (d) disturb or remove soil; or (e) carry out agricultural activities or graze animals; in a classified forest unless he or she has been authorised to do so by a management plan, a forest management agreement or a licence issued under this Act."

<sup>164</sup> Kampanza Affidavit, Appendix K, *supra* note 20 at para. 11-13.



72. According to the Vice Chairperson of the FMC, Paulus Siwegedi Kampanza (“**Mr. Kampanza**”), following the first seismic survey, he saw that ReconAfrica cut down plants and trees along a wide path, which they lined thereafter with beacons for seismic testing (“**Seismic Lines**”). These Seismic Lines cut across Indigenous peoples’ crop fields, harming young crops that farmers use for food. ReconAfrica had also cut into the protected area of the Community Forest to create a gravel road to access the beacons laid along the Seismic Lines.<sup>165</sup> A map depicting the Seismic Lines, including those that cut across the Community Forest, is attached as Exhibit “C” to the Affidavit of Mr. Kampanza at **Appendix K**. Exhibit “D” to Mr. Kampanza’s affidavit includes photos depicting the Seismic Lines in the forest, including across two crop fields, and the beacons laid across the Seismic Lines.
73. ReconAfrica conducted the second set of seismic surveys in the Ncumcara Community Forest in April 2022. The Ministry of Environment, Forestry and Tourism permitted ReconAfrica to engage in seismic activities within the thirty-meter-wide firebreaks, primarily because doing so would also help maintain the existing cutlines.<sup>166</sup> However, ReconAfrica cut through protected areas of the forest - not along existing cutlines, as required by the ministry - and created new paths through virgin forests.<sup>167</sup>
74. Neither the FMC nor Indigenous communities were consulted before the second set of seismic surveys occurred, and neither group consented to ReconAfrica’s activities.<sup>168</sup> Rather, ReconAfrica attempted to obtain consent from the FMC after the second round of seismic surveys had already begun. During a meeting in October 2022, members of the FMC met with a ReconAfrica representative to ask questions about ReconAfrica’s past, current and future activities, details of the seismic surveys and results, the short- and long-term impact on the forest and the approximate amount of oil and gas ReconAfrica anticipated extracting based on their preliminary research of the area.<sup>169</sup> Rather than answer these questions, the representative discussed the benefits of seismic testing and presented the FMC with a consent form for approval without providing any opportunity for the FMC to absorb, understand, and analyze the information, and conduct their own decision-making process. Notably, the consent form was back-dated to October 18, 2020.<sup>170</sup> The FMC refused to sign the consent form because ReconAfrica had already conducted the seismic surveys and because these activities conflicted with the goals of the Forestry Management Plan and the purpose of the community forest scheme.<sup>171</sup> A true copy

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<sup>165</sup> *Ibid* at para 23.

<sup>166</sup> *Ibid* at para 14

<sup>167</sup> *Ibid* at para 15.

<sup>168</sup> *Ibid* at para 16.

<sup>169</sup> *Ibid* at para 19.

<sup>170</sup> *Ibid* at para 15.

<sup>171</sup> *Ibid* at para 21.

of the back-dated consent form is attached as Exhibit “A” to the affidavit of Mr. Kampanza at **Appendix K**.

75. ReconAfrica conducted the third round of seismic surveys in 2023. These surveys were conducted inside the community forest, and the Company again disregarded the requirement of consulting with the FMC, VDCs, and Indigenous members and the principle of FPIC.
76. ReconAfrica pursued and executed its surveys in a manner that denied Indigenous peoples their right to “determine and develop priorities and strategies for the development or use of their lands or territories and other resources,” as per Article 32(1) of UNDRIP. ReconAfrica chose not to engage Indigenous communities and VDCs in designing and implementing a plan for exploring their resources that would cause the least destruction to their lands, including herbs and plants vital to sustenance and cultural practices. Instead, the Company conducted seismic surveys without regard for Indigenous residents, their representatives and their decision-making processes, which is a clear violation of their rights to own and use their lands and their right to self-determination.

d. Seismic surveying in the Likwaterera Community Forest, including Shiwandamo

77. In early 2022, ReconAfrica cleared land and conducted seismic surveys in Likwaterera Community Forest, which includes the village of Shiwandamo, without the consultation and consent of the Indigenous occupants.
78. XXXXXXXXXX (“**Witness 5**”), a member of both the Indigenous San and Bantu communities, occupied farmland located in Likwaterera Community Forest that ReconAfrica cleared to create roads for the seismic surveys. ReconAfrica did not consult Witness 5 or inform him that the Company would be occupying, using, and damaging his land. After clearing the land of native vegetation, ReconAfrica organized a meeting with the community, during which Witness 5 attempted to obtain information about the impact of seismic surveys on underground water, community trees, and resources. ReconAfrica informed Witness 5 that their activities will not negatively impact groundwater, but did not provide environmental assessments or explain how they arrived at that conclusion. Moreover, Witness 5 has received reports of damage to neighbouring water basins and the death of fish populations in nearby water sources. He has also observed a drastic increase in cattle deaths. These stories and observations lead him to believe that the information provided by ReconAfrica is inaccurate.<sup>172</sup> In an August 2023 meeting with the Likwaterera Community Forest Management Committee, ReconAfrica falsely stated that no harm arose from previous seismic testing, which further supported Witness 5’s suspicions that the information received was not truthful.<sup>173</sup> A copy of Witness 5’s Affidavit is attached at **Appendix L**.

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<sup>172</sup> Witness 5 Affidavit, Appendix L, *supra* note 73 at paras 6-11 and 14.

<sup>173</sup> *Ibid* at para 11.

79. In February 2022, [REDACTED] (“**Witness 6**”), a member of the Indigenous San community, attended a meeting organized by ReconAfrica for the residents of Shiwandamo village, which is situated inside the Likwaterera Community Forest. Although ReconAfrica informed villagers that they would drill additional boreholes and conduct seismic surveys, potentially damaging their homes and farmland, the Company prevented any meaningful dialogue and denied requests for further information. When Witness 6 asked questions at the meeting, ReconAfrica’s representatives threatened legal action against him.<sup>174</sup> A copy of Witness 6’s Affidavit is attached at **Appendix M**.

e. Seismic surveying in Khaudum North Complex

80. Khaudum North Complex Conservancy is comprised of Muduva Nyangana Conservancy and Community Forest and George Mukoya Conservancy and Community Forest in the Kavango East region. In October or November 2022, ReconAfrica conducted seismic thumping in the Khaudum North Complex without permission from the conservancy committees and forest management committees. These activities required the removal of native vegetation and threatened the well-being of protected animal species found within the area.<sup>175</sup> Local and Indigenous communities inhabiting and surrounding the area were excluded from the consultation process and did not provide permission, violating the requirements of both the ECC Process and UNDRIP.

**C. ReconAfrica’s activities violated the right to an adequate standard of living**

81. Article 11 of the ICESCR recognizes the right of everyone to an adequate standard of living for themselves and their family.<sup>176</sup> The Committee on Economic, Social and Cultural Rights (“**ESCR Committee**”) has explained that the right to an adequate standard of living as found in the ICESCR is intentionally expansive and specifies “a number of rights emanating from, and indispensable for, the realization of the right,” including:

- The right to safe and clean drinking water and sanitation;
- The right to adequate housing;and
- The right to adequate food.<sup>177</sup>

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<sup>174</sup> Witness 6 Affidavit, Appendix M, *supra* note 73 at paras 8-11

<sup>175</sup> Kangwaka Affidavit, Appendix E, *supra* note 23 at para 19.

<sup>176</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966, Art. 11, online: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> [ICESCR].

<sup>177</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water: Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights* (20 January 2003) at para 3 [General Comment No. 15].

82. As will be explained further below, ReconAfrica’s activities have adversely impacted each of these rights and the Company has not adequately addressed such impacts nor have they provided adequate remedy.

***i) ReconAfrica’s activities violate the right to adequate and safe drinking water***

a. The right to water

83. The UN General Assembly has recognized that all persons have a “right to safe and clean drinking water and sanitation that is essential for the full enjoyment of life and all human rights.”<sup>178</sup> The right to water is also intricately connected to the right to the highest attainable standard of health<sup>179</sup> and the rights to adequate housing and adequate food under ICESCR.<sup>180</sup> The ESCR Committee has also stated that the right to water should be seen in conjunction with the right to life and human dignity, as “one of the most fundamental conditions for survival.”<sup>181</sup>

84. Safe water is crucial for preventing dehydration-related deaths, reducing the risk of water-related diseases, and meeting essential needs such as consumption, cooking, and personal hygiene. Priority must be given to personal and domestic uses of water (e.g. drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene) to prevent starvation and disease, as well as water required to meet the core obligations of each of the rights in ICESCR.<sup>182</sup> Safe water for personal or domestic use must be free from microorganisms, chemical substances, and hazards that could endanger human health. Water must also be sufficient, safe, physically accessible, affordable, and have an acceptable colour, odour and taste.<sup>183</sup>

85. The ESCR Committee’s *General Comment No.15 on the Right to Water* clarifies that the obligation outlined in Article 1 of the Covenant, which prohibits depriving a people of their means of subsistence<sup>184</sup>, encompasses adequate access to water for both subsistence

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<sup>178</sup> General Assembly Resolution 64/292, The Human Right to Water and Sanitation, (July 28, 2010) at para 1.

<sup>179</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health: Art. 12 of the International Covenant on Economic, Social and Cultural Rights* (11 August 2000) at paras 11, 12 (a), (b) and (d), 15, 34, 36, 40, 43 and 51 [General Comment No. 14].

<sup>180</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing: Art. 11 of the International Covenant on Economic, Social and Cultural Rights* (13 December 1991) at para 8 (b) [General Comment No. 4]; See also: Report by Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari (E.CN.4/2002/59), submitted in accordance with Commission resolution 2001/28 of 20 April 2001. In relation to the right to adequate food; See also: Report by the Special Rapporteur of the Commission on the right to food, Mr. Jean Ziegler (E/CN.4/2002/58), submitted in accordance with Commission resolution 2001/25 of 20 April 2001.

<sup>181</sup> General Comment No. 15, *supra* note 177 at para 3.

<sup>182</sup> *Ibid* at para 6.

<sup>183</sup> *Ibid* at para 12.

<sup>184</sup> ICESCR, *supra* note 176 at Art. 1.

farming and for securing the livelihoods of Indigenous peoples.<sup>185</sup> Given that sustainable access to water resources is essential for agriculture and the right to adequate food, attention should be given to ensure that disadvantaged and marginalized farmers have equitable access to water and water management systems.<sup>186</sup>

86. Indigenous peoples face numerous other challenges that undermine their access to clean water and proper sanitation. Such challenges stem from the pollution of available water resources due to the lack of consultation regarding policies and projects affecting their water and sanitation rights, as well as land and water grabbing caused by mining operations and deforestation. Moreover, illnesses caused by a lack of access to safe drinking water and sanitation continue to increase among Indigenous peoples, particularly among children, including respiratory, skin, invasive bacterial and intestinal infections, dental diseases and reproductive health problems.<sup>187</sup>
87. Necessary means must be implemented to ensure that Indigenous peoples enjoy their human rights to safe drinking water and sanitation, including intercultural dialogue that is respectful of their ancestral worldviews, knowledge, and practices.<sup>188</sup> According to the UN Special Rapporteur on the human right to safe drinking water and sanitation, effective participation of Indigenous peoples in the management of water in large territorial spaces, including river basins or aquifers that extend beyond the boundaries of their territories, requires Indigenous representation in decision-making bodies on an equal footing with the non-Indigenous populations involved.<sup>189</sup>
88. Businesses have an impact on the enjoyment of the right to water. The UN Special Rapporteur on Safe Drinking Water and Sanitation explains that in order to “identify, prevent, mitigate and account for how businesses address their adverse impacts on human rights, business enterprises should carry out human rights due diligence as per principle 17 of the UN Guiding Principles.<sup>190</sup> Steps involve establishing internal monitoring and evaluation systems to assess and report on performance, including through dialogue with stakeholders (such as affected communities and Indigenous populations).<sup>191</sup> Additionally,

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<sup>185</sup> General Comment No. 15, *supra* note 177 at para 7.

<sup>186</sup> Report of the Special Rapporteur on the human rights to safe drinking water and sanitation: Human rights to safe drinking water and sanitation, 16 July 2018, A/73/162 ¶39

<sup>187</sup> Report of the Special Rapporteur on the human rights to safe drinking water and sanitation: Human rights to safe drinking water and sanitation for Indigenous Peoples: state of affairs and lessons from ancestral cultures A/HRC/51/24

<sup>188</sup> Report of the Special Rapporteur on human rights to safe drinking water and sanitation: Human rights to safe drinking water and sanitation of Indigenous Peoples: state of affairs and lessons from ancestral cultures A/HRC/51/24

<sup>189</sup> Report of the Special Rapporteur on human rights to safe drinking water and sanitation: Human rights to safe drinking water and sanitation of Indigenous Peoples: state of affairs and lessons from ancestral cultures A/HRC/51/24

<sup>190</sup> Report of the Special Rapporteur on the human rights to safe drinking water and sanitation: Human rights to safe drinking water and sanitation, 16 July 2018, A/73/162 ¶39

<sup>191</sup> Report of the Special Rapporteur on the human rights to safe drinking water and sanitation: Human rights to safe drinking water and sanitation, 16 July 2018, A/73/162 ¶39

preserving natural water resources from harmful contamination requires stringent controls on the use of water for industrial purposes, with a particular focus on extractive industries in rural areas.<sup>192</sup>

89. Strategies to ensure sufficient and safe water for present and future generations may include:
- (a) reducing depletion of water resources through unsustainable extraction, diversion and damming;
  - (b) reducing and eliminating contamination of watersheds and water-related ecosystems;
  - (c) monitoring water reserves;
  - (d) ensuring that proposed developments do not interfere with access to adequate water;
  - (e) assessing the impacts of actions that may impinge upon water availability and natural ecosystem watersheds;
  - (f) reducing water wastage in its distribution;
  - (g) response mechanisms for emergency situations; and
  - (h) establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programs.<sup>193</sup>

b. ReconAfrica failed to obtain necessary water use and disposal permits and potentially exacerbated water scarcity in the region

90. ReconAfrica failed to obtain the necessary water use and disposal permits required by law prior to drilling. As stated in ReconAfrica's summary of drilling permit requirements in its 2019 EIA, Vol. 2<sup>194</sup> and mitigation measures in its 2019 EMP, Vol. 3,<sup>195</sup> the drilling of boreholes requires licences from the Ministry of AWLR, as well as permission from affected communities. However, Namibia's Minister of AWLR, Calle Schlettwein, explicitly stated that ReconAfrica failed to secure the required permits for water use and disposal prior to drilling.<sup>196</sup> Specifically, ReconAfrica began drilling operations in Kawe in January 2021, but

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<sup>192</sup> Report of the Special Rapporteur on the human rights to safe drinking water and sanitation: Human rights to safe drinking water and sanitation of indigenous peoples: state of affairs and lessons from ancestral cultures, 27 June 2022, A/HRC/51/24 ¶69 See also Report of the Special Rapporteur on the rights of indigenous peoples: Extractive industries operating within or near indigenous territories, July 11, 2011, A/HRC/18/35 ¶¶30, 31 and 33.

<sup>193</sup> General Comment No. 15: The right to water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), 20 January 2003, U.N. Doc. E/C.12/2002/11 at para 28.

<sup>194</sup> 2019 EIA, Vol. 2, *supra* note 58 (See Section 2.4 and Table 3.3).

<sup>195</sup> 2019 EMP, Vol 3, *supra* note 55 (See Table 3.11).

<sup>196</sup> Neme, L., & Barbee, J., "Members of Congress urge investigation into Okavango Oil Exploration", National Geographic (June 23, 2021) online: <<https://www.nationalgeographic.com/animals/article/us-concerns-grow-over-oil-exploration-in-the-okavango-region/>>; Shihepo, Timo, "Namibia: ReconAfrica's water drilling illegal – Schlettwein," *The Journal of African Elephants* (December 15 2021), online: <<https://www.africanelephantjournal.com/namibia-reconaficas-water-drilling-illegal-schlettwein/>>; Shihepo, Timo, "Canadian company exploring for oil in Namibia in

did not receive permission to use water until June 2021<sup>197</sup> - six months after commencing operations - in violation of laws mandating prior permits for water extraction.<sup>198</sup>

91. Schlettwein confirmed that his ministry had initially not issued the water permit and that ReconAfrica was not supposed to drill without it:<sup>199</sup>

“They did it illegally. We had called them in. We reiterated that the rule is they should not drill for water without any permit. We threatened not to issue a permit anymore if they carried on like that.”<sup>200</sup>

92. Officials from the Ministry of AWLR were denied entry to the ReconAfrica drill sites, which further demonstrates the company’s lack of compliance with securing the necessary water permits prior to drilling.<sup>201</sup>
93. Since ReconAfrica commenced its operations, witnesses in Shiwandamo attested that village dams responsible for water collection sustained damage from the impact of heavy thumping. As a result, the time required to fill these dams has increased to three days, compared to the previous duration of just five hours.<sup>202</sup> This has heightened concerns about the depletion of water resources, especially given the region’s existing water scarcity.<sup>203</sup>
94. ReconAfrica has failed to implement strategies aimed at ensuring sufficient water availability, as indicated in the company’s 2021 EMP for seismic surveying, such as monitoring water reserves and implementing safeguards including implementing buffer zones to prevent activities like seismic testing from causing damage to sensitive

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*battle for credibility*”, *News 24* (December 16 2022), online:

<<https://www.news24.com/fin24/companies/amabhungane-canadian-company-exploring-for-oil-in-namibia-in-battle-for-credibility-20221215>>.

<sup>197</sup> Barbee, *supra* note 65; See also: National Geographic Interview with Minister C. Schlettwein, online:

<<https://www.documentcloud.org/documents/20521755-media-response-page1-national-geographic-oil-exploration-in-the-kavango-basin-17-march-2021-final-1>>.

<sup>198</sup> *WRM Act*, *supra* note 33 at Art. 44.

<sup>199</sup> Chairperson of the Parliamentary Standing Committee on Natural Resources, Tjekero Tweya, adjourned a presentation at a public hearing for 15 minutes after the Agriculture Ministry failed to provide proof of when it received an application and granted water permits to ReconAfrica, video available online:

<<https://www.facebook.com/watch/?v=414973063332287>>.

<sup>200</sup> Shihepo, *supra* note 196.

<sup>201</sup> Parliament of Namibia National Assembly Standing Committee on Natural Resources, Report of the petitions by the Okavango’s Unique Lifestyle (SOUL), civil society organizations in Namibia and Friday’s for Future of Windhoek to stop oil drilling in the Okavango at 26, online: <<https://www.documentcloud.org/documents/22082077-parliamentary-report-on-petition-to-stop-oil-drilling-in-the-okavango-1>>; Shihepo, *supra* note 196.

<sup>202</sup> Witness 6 Affidavit, Appendix M, *supra* note 73 at para 14.

<sup>203</sup> Witness 7 Affidavit, Appendix O, *supra* note 67 at para 15.

infrastructure (such as water collection dams), impeding water availability and disrupting natural watersheds.<sup>204</sup>

95. ReconAfrica's conduct not only violates national laws, but also fails to respect internationally recognized human rights, contrary to its responsibilities under the UN Guiding Principles.<sup>205</sup>

c. ReconAfrica failed to properly line mud pits, potentially resulting in hazardous fluids contaminating water sources

96. A mud pit (or pond) is a pit in the ground used to hold discarded drilling fluid - used in the process of drilling boreholes - and waste materials. As these fluids can be harmful, Canadian oil companies face stringent regulations governing mud pits, including where such pits can be constructed and how drilling fluid must be stored and disposed of.<sup>206</sup> An important method of protecting water sources from contamination from drilling fluids is the use of mud pit lining. ReconAfrica's 2019 EMP submitted in support of its application for its 2019 ECC states that mitigation measures shall be taken to prevent hazardous substances soaking into the soil<sup>207</sup> and explicitly states that ReconAfrica's procedures will include "...scrap[ing] all waste that has collected in the pond and dispose of these and the pond lining at a suitable site."<sup>208</sup> Furthermore, in October 2020, ReconAfrica's spokesperson claimed that "toxic drill cuttings from the oil test wells will be managed in lined pits, cleaned, and disposed of offsite as per company and regulatory requirements."<sup>209</sup>
97. Despite ReconAfrica's obligations to protect water sources and the Company's stated methods for doing so, ReconAfrica has neglected to line its drill mud pits.<sup>210</sup> This deficiency was exposed in a National Geographic article published on February 23, 2022 containing photos of unlined mud pits from the First Drill Site.<sup>211</sup> A copy of this article is attached at **Appendix N**. In response, ReconAfrica claimed that their drilling fluids were "100% organic and biodegradable" and therefore no liner was required.<sup>212</sup> However, regardless of the fluid's composition, it remains essential for the Company to line their mud pits with impermeable layers as water injected into the formation during well drilling resurfaces as a

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<sup>204</sup> 2021 EMP, *supra* note 70 at 70 (Table 3.11: Mitigation EMP measures for protection of surface and groundwater and water supply infrastructure protection).

<sup>205</sup> UN Guiding Principles, *supra* note 100 at Principle 23.

<sup>206</sup> *Oil and gas Conservation Rules*, Alta Reg 151/1971, online: <<https://canlii.ca/t/562jc>> and Alberta Energy Regulator Directive 050, pdf: [<https://static.aer.ca/prd/documents/directives/Directive050.pdf>].

<sup>207</sup> 2019 EMP, Vol. 3, *supra* note 55 (See Table 3.11: Mitigation measures for surface and groundwater protection as well as general water usage).

<sup>208</sup> *Ibid* at 41, s. 4.1 (Rehabilitation and Monitoring).

<sup>209</sup> Barbee J. & Neme L., "Test drilling for oil and gas begins in Namibia's Okavango region", *National Geographic* (January 28, 2021), online: <<https://www.nationalgeographic.com/animals/article/oil-gas-test-drilling-begins-namibia-okavango-region>>.

<sup>210</sup> Also referred to as "waste pits" or "reserve pits"

<sup>211</sup> Barbee and Neme, *supra* note 66.

<sup>212</sup> Drilling mud (or drilling fluid) is the common term for the fluid used in the process of drilling a well.



hypersaline brine<sup>213</sup> containing rock cuttings, volatile compounds, heavy metals, and naturally occurring radioactive materials.<sup>214</sup> To date, ReconAfrica has not released test results that show that the wastewater is safe nor has the Company provided the name of the product used to allegedly seal the pits.

98. Numerous individuals residing near ReconAfrica's drill sites have raised concerns that the Company has contaminated groundwater sources used for drinking, cooking, sanitation, watering crops and raising livestock.<sup>215</sup> Specifically, since ReconAfrica began its drilling activities, changes have been observed in the water extracted from local boreholes. The water has developed a distinctly salty taste, potentially caused by salinization. In addition, the water appears cloudy, and exhibits an unnaturally warm temperature.<sup>216</sup> This demonstrates an alteration of the water's composition and raises concerns about its safety and suitability for consumption. As a result, Indigenous communities have legitimate concerns that ReconAfrica is releasing toxic waste into the underground water supply, compromising the integrity of water sources and endangering human health.

## ***ii) ReconAfrica's activities violated the right to food***

### **a. The right to food**

99. As stated above, the right to food is derived from the right to an adequate standard of living established under Article 11 of the ICESCR. The ESCR Committee underscores that the human right to adequate food is paramount for the enjoyment of all rights and applies to everyone without discrimination. Adequate food, as outlined by international standards, must first and foremost be sufficient, nutritionally adequate, and safe to ensure freedom from hunger.<sup>217</sup> This entails both availability and accessibility of food.<sup>218</sup> Available food must meet dietary requirements, be free from harmful substances, and align with cultural norms.<sup>219</sup> Furthermore, availability extends to feeding oneself directly from productive land or other natural resources.<sup>220</sup> Accessibility implies sustainability and physical accessibility

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<sup>213</sup> "Brine" refers to all saline geological formation water resulting, obtained, or produced in connection with the exploration, drilling, or production of oil or gas.

<sup>214</sup> Saving the Okavango's Unique Life, "ReconAfrica fails to place a leak proof lining system in the drilling fluid containment pond", online: <<https://savetheokavango.com/wp-content/uploads/2021/05/DRILLING-MUD.pdf>>.

<sup>215</sup> Witness 1 Affidavit, Appendix D, *supra* note 73 at paras 11-13; Witness 5 Affidavit, Appendix L, *supra* note 73 at paras 12-14; Witness 6 Affidavit, Appendix M, *supra* note 73 at paras 13-16; Witness 7 Affidavit, Appendix O at para 15-17.

<sup>216</sup> Witness 6 Affidavit, Appendix M, *supra* note 73 at para 13.

<sup>217</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 12: The Right to Adequate Food: Art. 11 of the International Covenant on Economic, Social and Cultural Rights* (May 12, 1999) at para 8 [General Comment No. 12].

<sup>218</sup> *Ibid* at para 8.

<sup>219</sup> *Ibid* at para 10 and 11.

<sup>220</sup> *Ibid* at para 12.

to food for all, including marginalized and vulnerable groups and present and future generations.<sup>221</sup>

100. In realizing the right to adequate food, key concepts such as food security and food sovereignty must be considered. Food security entails ensuring sustainable access to food for present and future generations, while food sovereignty emphasizes the right of peoples to define their own food and agriculture systems.<sup>222</sup> According to the Special Rapporteur on the right to food, every individual, alone or in community with others, has a right to physical and economic access at all times to sufficient, adequate and culturally acceptable food that is produced and consumed sustainably, preserving access to food for future generations.<sup>223</sup> Individuals can secure access to food through various means, including by earning incomes from employment or self-employment, through social transfers, or by producing their own food, provided they have access to land and other productive resources.
101. The adoption of UNDRIP marked a significant milestone in acknowledging the collective right to food on a global scale.<sup>224</sup> This recognition is evident in the preamble, which emphasizes the importance of collective rights for Indigenous Peoples' existence, well-being, and integral development, with the right to food being among these essential rights. Indigenous peoples' right to food holds a significant cultural dimension relevant in terms of food choices, preparation and means of acquisition.<sup>225</sup> Culturally appropriate foods, such as those obtained through agriculture, hunting, and fishing, are integral to cultural identity. Subsistence relies heavily on Indigenous peoples' rights to lands, territories and resources, which are often held collectively.<sup>226</sup> Violations of the right to food occur when access to land, fishing or hunting areas is denied, when there is a lack of access to adequate and culturally acceptable food, or when food sources are contaminated.<sup>227</sup>
102. Addressing discrimination in access to food involves securing ownership rights to land and property, safeguarding access to natural resources, and respecting and protecting sources of income that enable access to food.

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<sup>221</sup> *Ibid* at paras 7 and 13

<sup>222</sup> *Ibid* at para 7.

<sup>223</sup> *Ibid* at paras 6 and 7.

<sup>224</sup> UNDRIP, *supra* note 110.

<sup>225</sup> UN, "The Right to Food and Indigenous Peoples, Joint Brief", online: <[https://www.un.org/esa/socdev/unpfii/documents/Right\\_to\\_food.pdf](https://www.un.org/esa/socdev/unpfii/documents/Right_to_food.pdf)>.

<sup>226</sup> *Ibid*.

<sup>227</sup> Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria. Cited as: Communication No. 155/96.

## b. ReconAfrica's activities damaged land and impeded food sovereignty and security

103. In the Kavango region, the availability of food depends upon inhabitants being able to sustain their livelihood through cultivation<sup>228</sup>, raising livestock,<sup>229</sup> and the gathering of veld food.<sup>230</sup> These agricultural activities provide access to food for sustenance and generate income. Approximately two-thirds of all rural households rely on farming as their primary source of subsistence.<sup>231</sup>
104. The activities carried out by ReconAfrica have directly impacted Indigenous communities' ability to access sufficient, adequate and sustainable food by impeding their access to land and other vital resources, such as water. Indigenous communities have reported cases of ReconAfrica clearing land for seismic testing without prior and informed consent.<sup>232</sup> Seismic thumping machines repeatedly pounded heavy, accelerated weights into the ground, causing damage to topsoil and vegetation that serve as a food source for local farmers.<sup>233</sup> Since the passage of ReconAfrica's machinery, locals have reported dry soil conditions and a significant decline in their crop yields. Moreover, ReconAfrica's damage to bushes and vegetation has limited cattle's access to grazing.<sup>234</sup> Witness 4, a farmer belonging to the Indigenous Nyemba community, stated that after ReconAfrica performed seismic testing on his farmland in Ncaute, he could no longer harvest groundnuts and his mahango yield had reduced significantly. Given that his crops and animals are the only source of food for him and his family and they do not have sufficient income to buy food, they have not had adequate food to consume.<sup>235</sup>
105. Additionally, by clearing vegetation, fruit trees and native plants for the purposes of drilling boreholes and creating roads encased in cement in areas traditionally used for farming and animal grazing, ReconAfrica has further disrupted cultivation.<sup>236</sup> Witness 3, a farmer belonging to the Indigenous San community, had his land in Ncaute cleared by ReconAfrica to build a crossroad, spanning approximately six to eight kilometers and consisting of three

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<sup>228</sup> Crops cultivated in the Okavango include: maize, groundnuts, fruit, pumpkin, sugar cane, and beans. Mahangu (also known as pearl millet) is the dominant crop, planted on about 95% of all cultivated land.

<sup>229</sup> Livestock raised includes cows, goats, sheep, chicken, and donkeys.

<sup>230</sup> Africa Synthesis Report: People in Lockdown, Extractives in Business, Namibia: Case study on oil and gas exploration by Frack Free Namibia: Dispossession and violations in Recon Africa's Kavango Oil and Gas exploration, online: <<https://miningpandemic.org/wp-content/uploads/2022/06/Case-Study-Namibia-Fracking-English.pdf>>

<sup>231</sup> Mendelson J., Land Use in Kavango. February 2009 RAISON (Research and Information Services of Namibia), online: <<https://www.raison.com.na/sites/default/files/Land%20use%20in%20Kavango%20past%2C%20present%20and%20future.pdf>>.

<sup>232</sup> Witness 4 Affidavit, Appendix J, *supra* note 159; Witness 2 Affidavit, Appendix H, *supra* note 73; Witness 7 Affidavit, Appendix O, *supra* note 67.

<sup>233</sup> Frack Free Namibia, Press Release (October 5 2021), online: <[https://n-c-e.org/sites/default/files/2021-10/FFN\\_press%20release\\_seismic%20surveying\\_5%20October%202021.pdf](https://n-c-e.org/sites/default/files/2021-10/FFN_press%20release_seismic%20surveying_5%20October%202021.pdf)>.

<sup>234</sup> Witness 7 Affidavit, Appendix O, *supra* note 67 at para 8.

<sup>235</sup> Witness 4 Affidavit, Appendix J, *supra* note 159 at para 11.

<sup>236</sup> Witness 7 Affidavit, Appendix O, *supra* note 67 at para 9.

roads.<sup>237</sup> These roads created by ReconAfrica without Witness 3’s permission are now used by both the Company and the public and cannot be used for farming, thus resulting in reduced crops.<sup>238</sup> Given that his crops and animals are the only source of food for Witness 3 and his family, their access to adequate food has been impaired by ReconAfrica’s activities.

106. Finally, there have been concerns that the potential impact of ReconAfrica’s activities on water sources are harming cattle. [REDACTED] (“**Witness 7**”), a farmer living in Mbambi within the KKC, has reported that although he previously used water from a borehole drilled by ReconAfrica, he stopped collecting water from this borehole after learning from his neighbor that six cows had passed away since consuming water from that borehole. Furthermore, as his home is located only 2.5 kilometers from the borehole, Witness 7 fears that ReconAfrica’s borehole will contaminate his water supply.<sup>239</sup> Food security is highly dependent on the availability of water resources that are free from harmful substances and contamination.<sup>240</sup> Contamination of topsoil and water would endanger the land’s long-term sustainability, impeding future generations’ ability to engage in sustainable agricultural practices and disrupting traditional means of food production and livelihoods.<sup>241</sup> A copy of Witness 7’s affidavit is attached at **Appendix O**.

### ***iii) ReconAfrica’s activities violate the right to adequate housing***

#### **a. The right to housing**

107. Article 11(1) of the ICESCR provides that individuals have a fundamental right to “an adequate standard of living for himself and his family, including adequate ... housing, and to the continuous improvement of living conditions.”<sup>242</sup> According to the ESCR Committee, the right to adequate housing should not be interpreted in a narrow or restrictive sense. The right applies to everyone and entitles every woman, man, youth, child and family to live somewhere in “security, peace and dignity” regardless of age, economic status, group or other affiliation or status and other such factors.<sup>243</sup> More specifically, it consists of the right to gain and sustain a safe and secure home and community in which to live in peace and dignity.<sup>244</sup> The right not to be subjected to arbitrary or unlawful interference with one’s

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<sup>237</sup> Witness 3 Affidavit, Appendix I, *supra* note 158 at para 7.

<sup>238</sup> *Ibid* at para 11.

<sup>239</sup> Witness 7 Affidavit, Appendix O, *supra* note 67 at para 17.

<sup>240</sup> Witness 5 Affidavit, Appendix L, *supra* note 73 at para 15.

<sup>241</sup> Esterhuyse S., “Potential groundwater contamination from oil drilling in the Okavango”, Science Direct, October 2023, online: <<https://www.sciencedirect.com/science/article/pii/S1474706523000748#bib2>>.

<sup>242</sup> ICESCR, *supra* note 176 at Article 11.

<sup>243</sup> General Comment No. 4, *supra* note 180 at paras 6-7.

<sup>244</sup> Kothari, M., “Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Report of Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living” (7 February 2008) UN Doc A/HRC/7/16 at para 4.

privacy, family, home or correspondence also constitutes an important dimension in defining the right.<sup>245</sup>

108. To determine whether housing is “adequate,” consideration must be given to seven factors<sup>246</sup> – three of which are particularly relevant to the present case:

- **Legal security of tenure:** Legal security of tenure guarantees legal protection against forced eviction, harassment and other threats. All persons should possess a degree of security of tenure regardless of which form of tenure applies, including occupation of land or property or living in an informal settlement.<sup>247</sup> While States have a responsibility to take immediate measures aimed at conferring legal security of tenure upon persons, business enterprises should refrain from infringing upon such security of tenure in their dealings and operations.
- **Availability of services, materials, facilities and infrastructure:** An adequate house must contain specific facilities that are essential for health, security, comfort and nutrition including sustainable access to safe drinking water.<sup>248</sup> Thus, it is important for business enterprises to not impede access to clean drinking water by contaminating the water source.
- **Location:** Housing is not adequate if it is cut off from certain essential services and facilities or located in polluted or dangerous areas. Specifically, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.<sup>249</sup> Thus, businesses have a responsibility to ensure their activities do not cause such pollution, especially where the adverse consequence negatively affects residents’ health.

109. The UN Special Rapporteur on Adequate Housing explains that:

“[w]hile States retain the primary responsibility for ensuring that private actors respect human rights, [...] **business enterprises have a responsibility to respect all human rights, including the right to adequate housing**. This responsibility is the basic expectation society has of business, and it is recognized in a broad range of soft law instruments.” (emphasis added)<sup>250</sup>

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<sup>245</sup> General Comment No. 4, *supra* note 180 at para 9.

<sup>246</sup> *Ibid* at para 8.

<sup>247</sup> *Ibid* at para 8(a).

<sup>248</sup> *Ibid* at para 8(b).

<sup>249</sup> *Ibid* at para 8(f).

<sup>250</sup> OHCHR, *Fact Sheet No. 21 (Rev.1): The Right to Adequate Housing*, (November 1 2001) at 36, online: <<https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-21-rev-1-human-right-adequate-housing>>.

110. Business enterprises engaged in development projects, especially those involved in the oil and gas sector, can have a negative impact on the right to adequate housing, “especially those involving resource extraction such as gas and oil, which may force residents to move or cause environmental degradation.”<sup>251</sup>

**b. ReconAfrica’s activities have adversely impacted housing by damaging land and homes, and possibly contaminating water resources**

111. As stated previously, ReconAfrica’s activities have caused damage to farmland and homes when clearing land and conducting seismic testing. These activities have affected local farmers’ ability to cultivate land necessary for food and subsistence<sup>252</sup> and damaged their homes.<sup>253</sup> These impacts have the potential to drive individuals away from their homes, in the event the damage worsens or the land becomes uncultivable (assuming affected individuals have somewhere to relocate). If relocation is not possible, affected persons may lose access to the materials and infrastructure necessary for adequate housing.

112. Additionally, ReconAfrica’s failure to line mud pits may be contaminating water sources and harming the environment through the release of hazardous materials. Possible contamination of water sources means residents lack a key facility necessary to meet the standard of adequate housing. It may also mean that residents are located in or near polluted or dangerous areas, further undermining the adequacy of their housing.

**D. ReconAfrica’s activities violated the right to health**

***j) The right to health***

113. Article 12 of ICESCR recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>254</sup> The right to health embraces a wide range of socio-economic factors that promote the conditions in which people can lead a healthy life and extends to the underlying determinants of health, including access to safe and potable drinking water.<sup>255</sup> According to the ESCR Committee, the right to health in all its forms and at all levels contain four interrelated and essential elements: availability, accessibility, acceptability, and quality. Underlying determinants of health, such as safe and potable water and adequate sanitation facilities, must be: available in sufficient quantity; be

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<sup>251</sup> *Ibid* at 36.

<sup>252</sup> Witness 4 Affidavit, Appendix J, *supra* note 159 at paras 10-11; Witness 2 Affidavit, Appendix H, *supra* note 73 at para 11-1; Witness 7 Affidavit, Appendix O, *supra* note 67 at paras 6-10.

<sup>253</sup> Witness 2 Affidavit, Appendix H, *supra* note 73 at paras 11-12; Witness 1 Affidavit, Appendix D, *supra* note 73 at paras 6-7.

<sup>254</sup> ICESCR, *supra* note 176 at Art. 12.

<sup>255</sup> General Comment No. 14, *supra* note 179 at para 4.

within safe physical reach (including in rural areas); be respectful of the culture of individuals, minorities, peoples and communities; and be of good quality.<sup>256</sup>

***ii) ReconAfrica violated the right to health by potentially adversely impacting water sources***

114. As stated above, numerous community members in the Kavango region have complained of possible contamination of groundwater sources used for drinking, cooking, sanitation, watering crops and raising livestock. Since ReconAfrica began its activities, changes have been observed in the water extracted from local boreholes, including changes to the taste, look, and temperature.<sup>257</sup> The seriousness of the impact to water quality is evident, as testimonies point to adverse effects on human health and livestock well-being.<sup>258</sup> There has been an increase in livestock deaths following consumption of water from ReconAfrica's borehole located in the villages of Mbambi and Likwaterera.<sup>259</sup> Moreover, the health of Indigenous communities is increasingly at risk, with locals falling ill after drinking water from local boreholes. Reports indicate cases of sickness among community members, including symptoms like vomiting, diarrhea, abdominal pain, and weakness, all linked to the consumption of local groundwater.<sup>260</sup>
115. The increase in livestock fatalities and cases of illness among local communities underscores the urgency of investigating the safety and suitability of the water supply. A thorough analysis and remedial action are needed to address any potential consequences associated with water pollution. Despite promising boreholes to local communities, ReconAfrica will have added no benefit regarding access to drinking water if the groundwater is contaminated by ReconAfrica's careless disposal of drilling wastewater.

**E. ReconAfrica's activities violated the right to a clean, healthy and sustainable environment**

***i) The right to a clean, healthy and sustainable environment***

116. The U.N. General Assembly ("UNGA") and Human Rights Council recognized the right to a clean, healthy, and sustainable environment on July 26, 2022.<sup>261</sup> The right to a healthy environment intersects with, and is encompassed within, various rights including the rights

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<sup>256</sup> *Ibid* at para 12.

<sup>257</sup> Witness 6 Affidavit, Appendix M, *supra* note 73 at para 13.

<sup>258</sup> Witness 6 Affidavit, Appendix M, *supra* note 73 at para 15; Witness 5 Affidavit, Appendix L, *supra* note 73 at para 14; Witness 7 Affidavit, Appendix O, *supra* note 67 at para 17.

<sup>259</sup> Witness 7 Affidavit, Appendix O, *supra* note 67 at para 16; Witness 5 Affidavit, Appendix L, *supra* note 73 at para 14.

<sup>260</sup> Witness 5 Affidavit, Appendix L, *supra* note 73 at para 14; Witness 6 Affidavit, Appendix M, *supra* note 73 at para 13.

<sup>261</sup> UNGA, *The human right to a clean, healthy and sustainable environment*, U.N. Doc. A/HRC/RES/48/13 (2021); See also UNGA, *The human right to a clean, healthy and sustainable environment*, U.N. Doc. A/76/L.75 (2022).

to life, health, water, and adequate standard of living. The right to life includes the right to enjoy a life with dignity, which is predicated on a clean, healthy, and safe environment and access to food and water.<sup>262</sup>

117. According to the ESCR Committee, “the right to health embraces a wide range of socioeconomic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as... a healthy environment.”<sup>263</sup> The HRC has recognized that “environmental degradation, climate change, and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”<sup>264</sup> Similarly, the ESCR Committee has recognized that certain enumerated rights, including the rights to food and water, must be protected for both present and future generations.
118. Ensuring preservation of biodiversity and the ecosystem is intricately connected to protecting human rights, according to the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.<sup>265</sup> Biodiversity refers to “the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems,”<sup>266</sup> and involves “plant, animal, and microorganism communities and the nonliving environment interacting as a functional unit.”<sup>267</sup> Biodiversity contributes to the productivity and stability of the ecosystem and thus directly supports the full enjoyment of human rights, such as the rights to life, health, and an adequate standard of living. To safeguard human rights, it is crucial that economic development refrain from exploiting natural ecosystems, and that such activities be sustainable, which means they “protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.”<sup>268</sup>
119. Changes to migratory routes have a direct impact on wildlife movement and, consequently, influence regional biodiversity. For example, the *Convention on the Conservation of*

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<sup>262</sup> UN Human Rights Committee, *General Comment No. 36: Right to life (Article 6)* (September 3 2019) at paras 3, 26 and 62 [General Comment No. 36].

<sup>263</sup> General Comment No. 14, *supra* note 179 at para 12.

<sup>264</sup> General Comment No. 36, *supra* note 262 at para 62.

<sup>265</sup> Knox, John H., *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/HRC/34/49 (19 January 2017).

<sup>266</sup> The Convention on Biological Diversity of 5 June 1992 (1760 U.N.T.S. 69) at Art. 2, online: <<https://www.cbd.int/convention/articles/default.shtml?a=cbd-02>>.

<sup>267</sup> Millennium Ecosystem Assessment, *Ecosystems and Human Well-being: Synthesis* (Island Press, Washington, D.C., 2005), at 1.

<sup>268</sup> UN General Assembly, *Transforming our world : the 2030 Agenda for Sustainable Development*, A/RES/70/1 (21 October 2015) at Goal 15 (Biodiversity and Ecosystems), online: <<https://sdgs.un.org/topics/biodiversity-and-ecosystems>> [UN SDGs].



*Migratory Species of Wild Animals* (“**CMS**”) State of the World’s Migratory Species Report states that migratory species are of ecological, economic and cultural importance and perform a variety of functions, ranging from regulating ecosystems through predation, to the positive impacts of grazing animals on grassland biodiversity.<sup>269</sup> The changing of migratory routes can therefore have long-term negative effects on the species’ population longevity and on the livelihoods of the surrounding farming communities. For example, barriers, such as border fences, prevent wildlife from moving freely within transboundary protected areas, such as the KAZA TFCA. The UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment stressed that businesses should respect human rights in their biodiversity-related actions, including by complying with the UN Guiding Principles in all actions affecting biodiversity and ecosystems.<sup>270</sup>

120. The right to a healthy environment also requires the adoption of measures against environmental health hazards, including by formulating and implementing policies “aimed at reducing and eliminating pollution of air, water and soil.”<sup>271</sup> Pollution and toxic substances violate a wide range of human rights, including the rights to life, health, water, food, housing, cultural rights, adequate standard of living, the rights of the child and the rights of Indigenous peoples.
121. Procedural obligations in relation to environmental protection include duties to:
- (a) assess environmental impacts and make environmental information public;
  - (b) facilitate public participation in environmental decision-making, including by protecting the rights of expression and association; and
  - (c) provide access to remedies for harm.<sup>272</sup>
122. The ESCR Committee has recognized that Indigenous Peoples are often “disproportionately affected by the adverse impact of business activities ... particularly in relation to the development, utilization or exploitation of lands and natural resources.”<sup>273</sup> UNDRIP affirms the right of Indigenous peoples to their territories and lands, making

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<sup>269</sup> UN Environment Programme, *UN Landmark report: The world’s migratory species of animals are in decline, and the global extinction risk is increasing* (February 12, 2024), online: <<https://www.unep.org/news-and-stories/press-release/landmark-un-report-worlds-migratory-species-animals-are-decline-and>>.

<sup>270</sup> Knox, *supra* note 165 at para 72.

<sup>271</sup> *Ibid* at para 20 and 21.

<sup>272</sup> UN Human Rights Council, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/HRC/25/53 (December 30, 2013) at para 29.

<sup>273</sup> UN Committee on Economic, Social and Cultural Rights, *General comment No. 24: State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities* (August 10, 2017) at para. 8.

protection of the environment part of the minimum standards for their survival, dignity, and well-being.

**ii) ReconAfrica failed to properly assess environmental impacts**

123. Under Principle 18 of the UN Guiding Principles, the corporate responsibility to respect human rights entails due diligence in identifying and assessing any actual or potential adverse impacts.<sup>274</sup> This involves evaluating the human rights situation before undertaking any business activity, identifying affected parties, and paying attention to vulnerable and marginalized groups.<sup>275</sup> Carrying out due diligence consists of conducting environmental impact assessments through consultation with affected groups and relevant stakeholders.<sup>276</sup>
124. ReconAfrica failed to conduct proper human rights due diligence prior to commencing activities. The ECC process in Namibia is one form of due diligence with respect to environmental protection, but as previously stated, there have been serious deficiencies in ReconAfrica's 2019 ECC for the drilling of test wells and its 2021 ECC for seismic testing, including concerns of inadequate EIA evaluations of the ecosystem and the possible environmental effects from its operations. Among other things:
- a) ReconAfrica failed to discuss potential environmental, health, and socio-economic harms during public consultations and denied local and Indigenous peoples the opportunity to provide FPIC.<sup>277</sup>
  - b) ReconAfrica failed to include a list of interested and affected parties for its 2019 EIA, demonstrating a lack of inclusivity and transparency in the assessment process.<sup>278</sup>
  - c) ReconAfrica's 2019 EIA failed to conduct a need and desirability analysis, and did not address how its proposed activities align with the mandate of the KAZA TCFA in the sustainable management of the ecosystem.<sup>279</sup>

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<sup>274</sup> UN Guiding Principles, *supra* note 100 at Principle 18 at 19.

<sup>275</sup> OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, Principle 18 at 36, online: <[https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf)>.

<sup>276</sup> *Ibid* at Principle 18, Q.42 at 43.

<sup>277</sup> Barbee J. & Neme L., "Oil company exploring in sensitive elephant habitat accused of ignoring community concerns," *National Geographic* (May 11 2021), online: <<https://www.nationalgeographic.com/animals/article/oil-company-reconafrika-accused-of-ignoring-communities-concerns>>. See also: Kangwaka Affidavit, Appendix E, *supra* note 23 at para 20; Kampanza Affidavit, Appendix K, *supra* note 20 at para 13; Muronga Affidavit, Appendix C, *supra* note 26 at para 16.

<sup>278</sup> Mayer, L. R., "ReconAfrica is on the defensive in a new case that could help put an end to the company's 'pure exploitation' of Namibia's people and our shared planet," *Re: wild* (March 31, 2023), online: <<https://www.rewild.org/news/reconafrika-is-on-the-defensive-in-a-new-case-that-could-help-put-an-end-to->>.

<sup>279</sup> Natural Justice, "Comments on the Final Environmental Impact Assessment Report to Support the Application for Environmental Clearance Certificate (ECC) for the Proposed 2D Seismic Survey covering the area of interest (AOI) in the Petroleum Exploration License (PEL) No. 73, Kavango Sedimentary Basin, Kavango West and East Regions,

- d) The 2019 EIA failed to identify affected communal conservancies and failed to include mitigation measures needed for biodiversity conservation.<sup>280</sup>
- e) The 2019 EIA is based on an inadequate environmental baseline survey<sup>281</sup>, as the report does not address the negative impacts on wildlife.<sup>282</sup> For instance, ReconAfrica failed to consider the impact of noise and seismic surveying on various migratory species, such as elephants.<sup>283</sup>
- f) The 2019 EIA failed to mention how the project will impede Namibia's ability to mitigate and adapt to climate change and lacks assessment of the potential impacts on future generations' ability to manage and benefit from natural resources.<sup>284</sup>

125. ReconAfrica's failure to conduct due diligence, as well as its operations inside conservancies and community forests, not only violated the 2019 ECC and 2021 ECC but also caused damage to the environment:

- a) The Company's decision to clear land in the Khaudum North Complex conservancy, without permission from the conservancy management committee and forest representatives failed to take into consideration the protection of flora, including species of fruit trees and vegetation.<sup>285</sup> This is not surprising given that ReconAfrica's EIA failed to demonstrate how oil and gas exploration supports the conservancy's work in protecting biodiversity.
- b) By cutting through the Ncumcara Community Forest and creating so-called "firebreaks", ReconAfrica violated the Forestry Management Committee's mandate that prohibits the destruction of vegetation.<sup>286</sup>
- c) The loud thumping generated by the seismic surveys conducted by ReconAfrica in conservancies threatened protected species found within the conservancy, as well as

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*Northern Namibia*", online: <<https://naturaljustice.org/wp-content/uploads/2021/07/Namibia-Recon-Africa-2D-Survey-Comments-FINAL.pdf>>.

<sup>280</sup> Kihumba L., "An Uncertain Future for the Okavango," Birdlife international, May 4, 2023, online <<https://www.birdlife.org/news/2023/05/04/an-uncertain-future-for-the-okavango-2/>>.

<sup>281</sup> Smit E., "WWF wants no more piecemeal EIAs for ReconAfrica" *Namibian Sun* (February 9 2021), online: <<https://www.namibiansun.com/news/wwf-wants-no-more-piecemeal-eias-for-reconafrika2021-02-09>>.

<sup>282</sup> Natural Justice, *supra* note 279.

<sup>283</sup> Hübschle A. & Rathmell S., "Canadian firm ReconAfrica's quest for Namibian oil and gas poses seismic risk to elephant behaviour", *Save the Elephants* (June 3 2021), online: <<https://www.savetheelephants.org/news/canadian-firm-reconafrika-s-quest-for-namibian-oil-and-gas-poses-seismic-risk-to-elephant-behaviour/#main>>.

<sup>284</sup> Natural Justice, *supra* note 279.

<sup>285</sup> Kangwaka Affidavit, Appendix E, *supra* note 23.

<sup>286</sup> Kampanza Affidavit, Appendix K, *supra* note 20.

disrupted vegetation, undermining conservation efforts.<sup>287</sup> Specifically, elephant migratory routes have been disrupted due to the activities of ReconAfrica causing adverse impacts on the ecosystem and livelihoods of nearby farming communities.

- d) ReconAfrica's failure to line its drilling waste pits with impermeable liner and failure to obtain the necessary water use and disposal permits prior to drilling have potentially contaminated groundwater and topsoil.<sup>288</sup>

**iii) ReconAfrica failed to make environmental information public**

126. Businesses must provide information that is sufficient to evaluate the adequacy of mitigation measures.<sup>289</sup> ReconAfrica neglected to provide sufficient answers regarding the impact of their activities on underground water and topsoil.<sup>290</sup> When asked, ReconAfrica representatives stated that their activities do not negatively impact the environment, which contradicts reports from affected communities and conservancy leaders, as discussed above, regarding ReconAfrica's conduct. During meetings, ReconAfrica quickly dismissed any objections and refused to answer questions about how the Company's drilling project will negatively impact and benefit local communities.<sup>291</sup> Moreover, representatives of ReconAfrica have reacted to questions from conservancy leaders in a hostile manner.<sup>292</sup>
127. Concerns are further exacerbated by the inconsistency between the information provided by ReconAfrica and the Company's actual actions.<sup>293</sup> As previously stated, ReconAfrica has neglected to line its drill mud pits used for dumping, despite claiming that lining would be used in their 2019 EMP.<sup>294</sup> The company claims that no liner is required because it has been using an 'organic' water-based drilling fluid, but has failed to provide any information regarding how this can be true (given the inherent risks associated with drilling) or the details of the drilling fluid used. A farmer claimed to have seen "trucks with tanks carrying waste material from the Mbambi and Kawe drill sites.... And knows that waste water is mixed with toxic chemicals during the drilling process and has reason to believe that these chemicals are polluting underground water."<sup>295</sup>
128. In an attempt to prove that the wastewater is in fact healthy for the environment, ReconAfrica claimed that the water will be donated to local communities as a fertilizer, but

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<sup>287</sup> Kangwaka Affidavit, Appendix E, *supra* note 23.

<sup>288</sup> Shihepo, *supra* note 196; Barbee, *supra* note 277.

<sup>289</sup> UN Guiding Principles, *Supra* note 100 at Principle 17 at 17.

<sup>290</sup> Witness 5 Affidavit, Appendix L, *supra* note 73 at para 10.

<sup>291</sup> Kangwaka Affidavit, Appendix E, *supra* note 23 at para. 14.

<sup>292</sup> *Ibid* at para. 15.

<sup>293</sup> Muronga Affidavit, Appendix C, *supra* note 26 at para 11.

<sup>294</sup> Barbee and Neme, *supra* note 66. See also: 2019 EMP, Vol. 3, *supra* note 55 at 41 (Rehabilitation Commitment and Process, Step 2: Remove all waste and unwanted materials).

<sup>295</sup> Witness 5 Affidavit, Appendix L, *supra* note 73 at para.13.

without any test results released to communities.<sup>296</sup> Furthermore, ReconAfrica claimed that landfarming had been safely conducted on the First Drill Site. However before the growing of crops can take place, a scientific study needs to demonstrate that the soil is uncontaminated and suitable for landfarming and no such study has been disclosed.<sup>297</sup>

129. The company's 2021 EMP for seismic testing also suggests establishing a groundwater monitoring system during and after exploration activities, with results to be shared with the affected communities and landowners.<sup>298</sup> However, the company has failed to share any such information with local and Indigenous communities.<sup>299</sup>

***iv) ReconAfrica neglected to facilitate public participation in environmental decision-making***

130. Businesses should communicate information with affected stakeholders in a manner that is accessible to its audience and consult with them regarding potential projects that may affect them.<sup>300</sup> Communication can be carried out through in-person meetings, formal reports and online dialogues, but it must demonstrate transparency and accountability to impacted groups and stakeholders.<sup>301</sup> As previously stated, ReconAfrica has failed to consult local communities and has instead actively blocked their participation.
131. As mentioned above, the Company neglected to include an I&AP List for the 2019 EIA, despite it being mandated by law, and thereby excluded local and Indigenous communities with knowledge of and interest in environmental issues from the process.<sup>302</sup> Similarly, ReconAfrica did not follow the required consultative process for the additional 12 well drilling project and instead filed an amendment to their 2019 EIA, as a means of avoiding consulting community members and excluding an interested and affected parties list. This is in clear violation of the ECC process, as amendments do not cover new exploration projects.
132. ReconAfrica also refused to communicate with conservancy leaders. In February 2021, Mr. Muronga, Chairperson of KKC asked representatives at the Second Drill Site why they had

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<sup>296</sup> Stop ReconAfrica! "Fact Sheet April 2022", online: <<https://www.nafsan.org/wp-content/uploads/2022/04/ReconAfrica.pdf>>.

<sup>297</sup> NBC Digital News, "ReconAfrica's horticulture and agronomic garden at Kawe Village doing well" (June 29 2022), online: <[https://www.youtube.com/watch?v=RsidVei7U\\_k](https://www.youtube.com/watch?v=RsidVei7U_k)>.

<sup>298</sup> 2019 EMP, Vol. 3, *supra* note 55 (See Table 3.11: Mitigation measures for surface and groundwater protection as well as general water usage, at point 13).

<sup>299</sup> Witness 5 Affidavit, Appendix L, *supra* note 73 at para 12.

<sup>300</sup> UN Guiding Principles, *supra* note 100 at Principle 21 at 23.

<sup>301</sup> UN Guiding Principles, *supra* note Principle 21 at 23.

<sup>302</sup> Barbee J. & Neme L., "Oil drilling, possible fracking planned for Okavango region—elephants' last stronghold", *National Geographic* (October 28 2020), online: <<https://www.nationalgeographic.com/animals/article/oil-drilling-fracking-planned-okavango-wilderness>>; See also: Africa Press, "ReconAfrica operated without land certificate" (November 24 2021), online: <<https://www.africa-press.net/namibia/all-news/reconafrika-operated-without-land-certificate>>;

*Muller v ReconAfrica* (Class Action Complaint for Violation of the Federal Securities Law) at 24, online: at <<https://www.classaction.org/media/muller-v-reconnaissance-energy-africa-ltd-et-al.pdf>> [Class Action Lawsuit].

not been consulted prior to cutting roads through protected land, conducting seismic testing, and drilling, despite these questions the employees refused to talk to him.<sup>303</sup> Similarly, in December 2021, when Mr. Kangwaka, Chairperson of the MNC, requested a meeting with ReconAfrica his request was denied on the basis that the company had “concluded all formal stakeholder engagements for the year.”<sup>304</sup> A copy of this correspondence is attached as Exhibit “C” to Mr. Kangwaka’s affidavit attached at **Appendix E**. This response was surprising given that ReconAfrica had already commenced drilling operations without consulting with the regulatory body tasked with protecting the environment.

133. ReconAfrica has also denied conservancy leaders and villagers access to publicly held meetings. In June 2022, ReconAfrica spokesperson, H. Namudjebo denied Mr. Kangwaka access to a meeting organized by the Farmer’s Union Association. This was done to prevent the Chairperson from sharing his opinion about the proposed extractive activities with other farmers.<sup>305</sup> Where affected individuals are permitted to attend meetings, there is often no opportunity to ask questions and voice opinions and in many cases, the Company fails to disclose the entirety of their projects.

## **VI. RIGHTSHOLDERS HAVE NOT RECEIVED ADEQUATE REMEDY**

### **A. The Right to Remedy**

134. The right to an effective remedy is a human right that entails responsibility for businesses as articulated in the UN Guiding Principles.<sup>306</sup> In the case at bar, CORE must consider the remedies expressed in the UN Guiding Principles and, by extension of Principle 12, those called for in the UDHR, ICESCR, and UNDRIP.
135. Article 8 of the UDHR recognizes the right to an effective remedy by national tribunals when an individual’s fundamental rights are violated. With respect to the ICESCR the ESCR Committee has noted that states must provide “appropriate means of redress, or remedies” for aggrieved individuals or groups.<sup>307</sup> Such remedies may be judicial or administrative.<sup>308</sup>
136. Under UNDRIP, the adverse impact on Indigenous peoples’ rights calls for redress under both Articles 28 and 32(3), which includes restitution and/or fair and equitable compensation and mitigation of the enduring adverse environmental, economic, social, cultural or spiritual

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<sup>303</sup> Muronga Affidavit, Appendix C, *supra* note 26 at para 9.

<sup>304</sup> Kangwaka Affidavit, Appendix E, *supra* note 23 at para 16.

<sup>305</sup> *Ibid* at para 18.

<sup>306</sup> UN General Assembly, *Human rights and transnational corporations and other business enterprises: Note by the Secretary-General, A/72/162* (18 July 2017) at para 14, online: <<https://digitallibrary.un.org/record/1298796?ln=en&v=pdf>>.

<sup>307</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 9: The domestic application of the Covenant*, E/C.12/1998/24 (3 December 1998) at para. 2.

<sup>308</sup> *Ibid* at para. 9.

impact. Compensation under Article 28 may materialize in the form of land or resources that are equal “in quality, size and legal status,” monetary compensation, or other appropriate redress.<sup>309</sup>

## **B. Effective Remedy under the UN Guiding Principles**

137. Mitigation of harm and access to effective remedies are core components of the UN Guiding Principles. Business enterprises should have remediation procedures in place to satisfy their responsibility to respect human rights under this instrument.<sup>310</sup>

138. A business at risk of causing or contributing to an adverse human rights impact should cease or change the responsible business activity.<sup>311</sup> Where an actual adverse human rights impact occurs, businesses should provide for or cooperate in their remediation through legitimate processes.<sup>312</sup>

139. Business enterprises should establish or participate in effective grievance mechanisms that identify adverse human rights impacts and enable remediation early and directly.<sup>313</sup> To be effective, grievance mechanisms are:

- Legitimate, whereby the mechanism implements policies and processes required to address the needs of people who may be at heightened risk of vulnerability or marginalization, drawing on, amongst other things, meaningful consultation with rights holders;<sup>314</sup>
- Transparent, including ongoing and proactive engagement with rights holders using various channels;<sup>315</sup>
- Accessible, which means the mechanism is known to all stakeholder groups, confidential, user-friendly, and dialogue-based, and rights holders are not at risk of retaliation;<sup>316</sup>

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<sup>309</sup> UNDRIP, *supra* note 110 at Arts. 28 and 32(3).

<sup>310</sup> UN Guiding Principles, *supra* note 100 at Principle 15.

<sup>311</sup> OHCHR, *supra* note 175 at 18.

<sup>312</sup> UN Guiding Principles, *supra* note 110 at Principle 12 at 13 and Principle 22 at 24.

<sup>313</sup> *Ibid* at Principle 29 at 31 and Commentary on Principle 29 at 31-32.

<sup>314</sup> *Ibid* at 33 (Principle 31); OHCHR, *Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms: Report of the United Nations High Commissioner for Human Rights, A/HRC/44/32* (19 May 2020) at para 7.4.

<sup>315</sup> OHCHR, *supra* note 314 at para 11.1 and 11.2.

<sup>316</sup> *Ibid* at para 8.1-8.9

- Predictable whereby rightsholders are provided with comprehensible procedures that clearly state the available outcomes and the means of implementing and monitoring those outcomes;<sup>317</sup>
  - Equitable, seeking to ensure aggrieved parties have reasonable access to information, advice and expertise, such as legal advice, and addressing power imbalances between rights holders and business enterprises so that rights holders can participate fairly and confidently in grievance processes;<sup>318</sup>
  - Rights-compatible, ensuring that outcomes and remedies are adequate, effective, prompt, and accord with internationally recognized human rights, and; (a “**Rights-Compatible Remedy**”);<sup>319</sup>
  - A source of continuous learning;<sup>320</sup> and
  - Focused on engagement, dialogue, and consultation with stakeholder groups where operational-level grievance mechanisms are used.<sup>321</sup>
140. Under the UN Guiding Principles, remedies should aim to counteract or correct any human rights harms that have occurred. Affected groups should be able to seek, obtain, and enforce a range of remedies depending upon the circumstances, since a combination of remedies may be required to fulfill the objective. Further, remedies for human rights abuses serve interrelated purposes under international human rights law and a mix of remedies may be required to address preventive, redressive, and deterrent elements.<sup>322</sup> Businesses should consider the opinion of the affected party about the choice of effective remedy.<sup>323</sup>
141. The substantive form of these remedies will vary and may include apologies, restitution, rehabilitation, financial or non-financial compensation, punitive sanctions, and harm prevention.<sup>324</sup> To be considered effective, each remedy must include specific characteristics, taking into account the circumstance. Restitution must involve restoring the rights-holder to their position before the human rights violation. In the case of a business causing pollution, the enterprise should restore the environment as part of the “polluter pays” principle.<sup>325</sup> Where the rights holder seeks compensation, the award should be fair

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<sup>317</sup> UN Guiding Principles, *supra* note 110 at 33 (Principle 31).

<sup>318</sup> OHCHR, *supra* note 314 at para 10.1

<sup>319</sup> UN Guiding Principles, *supra* note 110 at 34 (Principle 31); OHCHR, *supra* note 314 at para 12.1

<sup>320</sup> UN Guiding Principles, *supra* note 110 at 34 (Principle 31).

<sup>321</sup> *Ibid* at 34 (Principle 31).

<sup>322</sup> *Ibid* at 38-40.

<sup>323</sup> OHCHR, *supra* note 175 at p 64.

<sup>324</sup> UN Guiding Principles, *supra* note 100 at 27 (Commentary on Principle 25).

<sup>325</sup> UN General Assembly, *supra* note 306 at para 44.



and proportional to the magnitude of the pecuniary and non-pecuniary harms.<sup>326</sup> Private compensation agreements should be signed in circumstances where the aggrieved party has access to adequate and objective information about all aspects of the agreement, including the implications of confidentiality and legal waivers, in accordance with Guiding Principle 31(d).<sup>327</sup> Punitive or exemplary compensation may be appropriate when a business engages in wilful and repeated human rights abuses.<sup>328</sup> Rehabilitation can also serve as an effective remedy where, for instance, business operations displace people or damage land beyond restoration. In such instances, a suitable alternative piece of land may be an appropriate remedy.<sup>329</sup> Satisfaction can be awarded in multiple forms, such as stopping ongoing human rights abuses, a public apology, and civil, administrative or criminal sanctions against the business. Many of these remedies will deter other businesses that seek to engage in similar activities. However, it is also important to consider other methods of ensuring non-repetition, such as contractual clauses, regulations and sanctions for non-compliance.<sup>330</sup>

### **C. ReconAfrica has not provided effective remedies**

142. In most cases, witnesses whose rights were impacted by ReconAfrica's drilling activities, seismic surveys, and operations, have not received a remedy for the violations of their human rights.
- a) Witness 1, Witness 2, Witness 3, Witness 5, Witness 6 and Witness 7 have not received any form of compensation or redress for damage to their family-occupied lands and homes.
  - b) Mr. Kangwaka states that ReconAfrica has not adequately restored the land to its original condition following the removal of vegetation to create pathways for machinery passage.
  - c) Mr. Muronga and Witness 5 state that ReconAfrica did not restore protected species, such as native fruit trees after conducting seismic testing.
  - d) Mr. Kampanza states that Recon has failed to provide monetary compensation for the damage caused to Community Forest beneficiaries.
  - e) Witness 6 has not received any form of redress for his and his families stomach issues after drinking polluted water, impacting his access to adequate water and standard of health. Similarly, Witness 5 and other members of his village have not received

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<sup>326</sup> *Ibid* at para 45.

<sup>327</sup> *Ibid* at para 46.

<sup>328</sup> *Ibid* at para 47.

<sup>329</sup> *Ibid* at para 48.

<sup>330</sup> *Ibid* at para 53.

compensation after falling ill due to consuming contaminated water, nor have they received compensation for their loss of cattle.

143. Where compensation was offered, such as in the case of Witness 4, he was required by ReconAfrica to sign a document in English, which he did not understand. Witness 4 was not aware of the amount of compensation he would receive prior to signing the document. He eventually received N\$ 1,116 (CAD \$79.80) for permanent roads built on his family's land, but this was wholly inadequate, as it merely paid for about one month's worth of rice for his family and nowhere near covered the losses he and his family have suffered. Witness 4 states that he accepted the inadequate compensation out of fear that it would be the only form of compensation he would receive.
144. The meager compensation provided by ReconAfrica is not a Rights-Compatible Remedy. It does not meet the test of "just, fair, and equitable" compensation equal to the value of the land lost, as required under Article 28 of UNDRIP. This amount of compensation does not meet the standard intended by the UN Guiding Principles of compensation that is fair and proportional to the magnitude of the harm suffered.<sup>331</sup> Further, Witness 4 was not provided with "adequate and objective information" about all aspects of the private compensation agreement as is recommended in such situations.<sup>332</sup> Nor did Witness 4 have reasonable access to information, advice and expertise such as legal advice during this process as called for by Guiding Principle 31(d).

### **C. Complaints and Actions in Other Forums**

145. ReconAfrica's illegal conduct has been the subject of complaints in other forums, such as the Namibian High Court, the US Securities and Exchange Commission, the British Columbia Securities Commission, Namibia's Parliamentary Standing Committee, and the Human Rights Council. However, these forums either cannot or are unlikely to provide effective remedy to the rightsholders for the harms discussed in this complaint.

#### ***j) Complaints to Securities Commissions and Investor Class Action Lawsuits***

146. In a complaint to the US Securities and Exchange Commission and the British Columbia Securities Commission, an anonymous whistle-blower claimed that ReconAfrica violated securities laws by withholding crucial information about its plans to look for oil and gas deposits, in an effort to increase the company's stock price.<sup>333</sup> Following the complaint, three class action lawsuits were filed against ReconAfrica in Brooklyn, New York by shareholders who alleged that ReconAfrica issued misleading statements to investors regarding the

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<sup>331</sup> *Ibid* at para 45.

<sup>332</sup> *Ibid* at para 46.

<sup>333</sup> Barbee J. & Neme L., "Oil exploration company in Okavango wilderness misled investors, complaint to SEC says," *National Geographic* (May 21 2021), online: <<https://www.nationalgeographic.com/animals/article/oil-exploration-company-in-okavango-wilderness-misled-investors-sec-complaint-says>>

viability of their oil and gas wells<sup>334</sup> and their intention to use fracking techniques to extract these resources.<sup>335</sup> The first lawsuit, filed by Eric Muller on behalf of himself and other persons and entities, was voluntarily dismissed in 2021. The remaining two class action cases were consolidated into one suit in 2022 and have since been settled.<sup>336</sup> The consolidated lawsuit sought a remedy for harms endured by investors but did not apply to those who have suffered human rights abuses in the Kavango region as a result of the company's operations.

### ***ii) Parliamentary Standing Committee***

147. Namibia's Parliamentary Standing Committee on Natural Resources (the "PSC") investigated ReconAfrica in 2021 and 2022 in response to a petition, submitted by SOUL and Fridays for Future, calling on the PSC to terminate ReconAfrica's drilling activities.<sup>337</sup> The PSC's investigation found that ReconAfrica was engaged in oil and gas exploration activities without appropriate land-use permits, as required by law.<sup>338</sup> Following its investigation, the PSC reprimanded local Communal Land Boards for not holding ReconAfrica accountable for its illegal actions,<sup>339</sup> and made recommendations about how the project should proceed, highlighting that ReconAfrica's future explorations must be completed with the approval of landowners, communities, and the Traditional Authorities.<sup>340</sup> However, the PSC did not penalize ReconAfrica for violating Namibian law, suspend or terminate the project, or provide a remedy for past harms.

### ***iii) Appeal of the Environmental Clearance Certificate amendment to the Ministry of Environment, Forestry & Tourism***

148. On June 22, 2022, the Legal Assistance Centre ("LAC"), a public interest law centre based in Windhoek, assisted the Forestry Management Committee of the Ncumcara Community Forest, the Muduva Nyangana Communal Conservancy, the Kavango East and West Regional Conservancy and Community Forest Association, and the Katope Community Forest (together referred to as the "Coalition") in filing an appeal of the Environmental

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<sup>334</sup> Sole S. and Shihepo T., "Canadian company exploring for oil in Namibia in battle for credibility" *Ama Bhugane* (December 15 2022), online: <<https://amabhugane.org/stories/canadian-company-exploring-for-oil-in-namibia-in-battle-for-credibility/#:~:text=After%20acquiring%20the,on%20any%20find.%E2%80%9D>>; Class Action Lawsuit, *supra* note 302.

<sup>335</sup> Sole S. & Shihepo T., *supra* note 334.

<sup>336</sup> ReconAfrica, "ReconAfrica announces proposed settlement of class action lawsuits" (February 28 2024), online: <<https://www.newswire.ca/news-releases/reconafrika-announces-proposed-settlement-of-class-action-lawsuits-828479696.html>>.

<sup>337</sup> Barbee, *supra* note 65.

<sup>338</sup> Barbee J. & Neme L., "They ripped through a protected wilderness to find oil. Instead, they found trouble", *National Geographic*, March 28, 2023, online: <<https://www.nationalgeographic.com/animals/article/oil-drilling-reconafrika-okavango-watershed-protected-wilderness>>; See also: Africa Press, *supra* note 302.

<sup>339</sup> Barbee and Neme, *supra* note 338.

<sup>340</sup> Wells, C., NAMPAPR, online: <<http://www.nampapr.com.na/?p=10697>>.

Commissioner's decision to amend ReconAfrica's Environmental Clearance Certificate ("ECC") and extend the company's drilling rights to new areas (the "Appeal").<sup>341</sup> On April 24, 2023, nearly a year after the appeal was filed, a hearing was held to discuss the Appeal during which the Ministry pledged to respond to the Appeal by May 2023. To date, the Coalition has not received a response to the Appeal, and the process remains stalled until the Ministry responds. The remedy sought by the Coalition is a reversal of the decision to amend the ECC concerning ReconAfrica's drilling license; the Appeal cannot provide a remedy to the complainants for past human rights violations.

#### ***iv) Human Rights Council Special Procedures***

149. In 2021, the UN Working Group on Business and Human Rights, the Special Rapporteur on the Rights of Indigenous Peoples, and the Special Rapporteur on the Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, and Healthy Environment (together, "**Special Procedures**") received a complaint from SOUL concerning ReconAfrica's violation of the human rights of Indigenous San people in Namibia and Botswana. The independent experts in Special Procedures have a mandate to bring awareness to human rights issues - such as, sending communications to governments and other actors about alleged human rights violations, engaging in advocacy, monitoring situations via country visits, and providing advice to Governments for technical cooperation - but they are not empowered to administer effective, legally enforceable remedies.<sup>342</sup>
150. In November 2021, the Special Procedures forwarded communications to the governments of Botswana, Namibia, and Canada, as well as the National Petroleum Corporation of Namibia and ReconAfrica, reporting on the allegations received, requesting clarification regarding the allegations, and drawing attention to the international human rights instruments and standards relevant to the allegations (the "**Communications**").<sup>343</sup>
151. In a response dated July 2021, the Government of Canada pointed to the CORE as one of its non-judicial dispute resolution mechanisms explicitly established to review human rights abuses stemming from the operations of Canadian oil and gas companies active abroad and noted that the CORE had not received an admissible complaint about ReconAfrica's activities to date. The Canadian government reiterated its expectation that all Canadian companies working abroad respect human rights, and operate in accordance with internationally recognized guidelines and in consultation with host governments and local communities.<sup>344</sup> To date, the Special Procedures have not publicly documented additional

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<sup>341</sup> Kampanza Affidavit, Appendix K, *supra* note 20.

<sup>342</sup> OHCHR, Submission of information to the Special Procedures, online: <<https://spsubmission.ohchr.org/>>.

<sup>343</sup> OHCHR, Communication Report and Search, online: <<https://spcommreports.ohchr.org/TmSearch/RelCom?code=BWA%203/2021>>.

<sup>344</sup> Permanent Mission of Canada to the United Nations and the World Trade Association, *Responses by the Government of Canada to the Joint Communication from Special Procedures*, AL CAN 7/2021 No GENEV - 7690(17 November 2021), online: <<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36757>>

communications or replies, nor have they publicly documented recommendations regarding remedies or the administration of any remedies by the Namibian government, Canadian government, or ReconAfrica.

## **VII. ADMISSIBILITY CRITERIA MET**

152. This complaint and the human rights violations discussed therein meet the CORE admissibility criteria.

153. The CORE admissibility criteria are as follows:

5.7 A complaint will be considered admissible when the Ombud is satisfied there is sufficient information regarding the following admissibility criteria:

5.7.1 What is complained about is allegedly an abuse of an internationally recognized human right;

5.7.2 The alleged human rights abuse arises from the operations abroad of a Canadian company in the garment, mining, or oil and gas sectors; and,

5.7.3 What is complained about allegedly took place after May 1, 2019, or if it allegedly occurred before May 1, 2019, it is continuing at the time of the complaint.<sup>345</sup>

154. As discussed above, ReconAfrica's activities violate several human rights recognized in international instruments embedded in CORE's mandate, which satisfies the first element of the admissibility criteria.

155. Also established above, ReconAfrica is a junior oil and gas company incorporated under the *Business Corporations Act*, SBC 2002, c 57, and the human rights abuses alleged in this complaint arose from ReconAfrica's operations abroad, meeting the second admissibility criteria.

156. Finally, the human rights abuses claimed in the attached affidavits took place after May 1, 2019, and are continuing at the time of the complaint, which satisfies the third criterion.

## **VIII. INVESTIGATION CRITERIA MET**

157. In deciding how to proceed with this complaint, the Ombud may decide to conduct an investigation using independent fact-finding where investigation criteria are met pursuant to section 7(b) of the Order in Council.

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<sup>345</sup> CORE Operating Procedures, *supra* note 96 at s. 5.7.

158. In deciding whether to investigate a complaint, the Ombud considers the overall context of the complaint and relevant factors including whether:

- The complaint is frivolous or vexatious;
- The complaint is being reviewed or has been reviewed, in another forum.
- The Canadian company has already provided a satisfactory response or remedy to the allegations in the complaint;
- Relevant information is likely to be available;
- Effective remedy is likely to be available; and
- An investigation is likely to lead to unacceptable risk to the complainant or others.<sup>346</sup>

159. The complaint meets the investigation criteria as follows:

- a) The information provided above demonstrates that criteria (a) and (d) have been met. The complaint is neither frivolous nor vexatious, and relevant information is likely to be available, demonstrated through the attached affidavits. Additional information is likely available in the public domain.
- b) The complaint is not being reviewed in another forum. As discussed in section VI.(C), the specific abuses alleged in this complaint have not been discussed in another forum.
- c) ReconAfrica has not provided a satisfactory response or remedy to the allegations in this complaint. Individuals who attempted to obtain responses through consultation meetings or by contacting ReconAfrica directly have received no response or received responses that do not address the issues at hand. Where compensation has been promised, the affected parties did not receive compensation or received woefully inadequate compensation for the magnitude of the harm.
- d) An effective remedy is likely to be available as the Ombud may make recommendations to the Minister of International Trade for trade measures, including denial or withdrawal of existing trade advocacy support, and/or refusal of future trade advocacy and financial support.
- e) To prevent recourse to the witnesses by ReconAfrica, the affidavits have been anonymized and their identities concealed. Thus, conducting a review is not likely to

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<sup>346</sup> CORE, *Initial Assessment Report: Walmart Canada Corp.*, File number: 220851 at para 15, online: <[https://core-ombuds.canada.ca/core\\_ombuds-ocre\\_ombuds/activities-walmart-activitie.aspx?lang=eng](https://core-ombuds.canada.ca/core_ombuds-ocre_ombuds/activities-walmart-activitie.aspx?lang=eng)>.

lead to unacceptable risk to the Complainant or the community the Complainant represents.

## IX. CONCLUSION AND RELIEF REQUESTED

160. Based on the information provided in this complaint, the Complainant requests that CORE investigate ReconAfrica to determine the extent of their human rights abuses in Namibia. These violations encompass the principles outlined in the UNDRIP, particularly with respect to the duty to consult and the principle of FPIC. Furthermore, they contravene rights enshrined in the ICESCR and UNGA Resolution 48/13, including the right to an adequate standard of living and the right to health, and the right to a safe and healthy environment, respectively.
161. Oil and gas exploration activities in the Kavango region have already resulted in adverse impacts. A copy of a chart providing an overview of affiant testimonies, as referenced throughout this Complaint, attached at **Appendix P**.<sup>347</sup>
162. To effectively prevent further harm and protect the well-being of Namibia's citizens, environment, and resources, we encourage CORE to investigate ReconAfrica's activities in Namibia and to issue a final report containing the following recommendations:
- a) Immediate cessation of ReconAfrica's activities in Namibia.
  - b) Call for ReconAfrica to restore conservancy land and community forests to their original state prior to commencing operations.
  - c) Call for compensation for the damage caused to land and water resources, including the loss of an adequate standard of living for affected communities.
  - d) Call for ReconAfrica to provide compensation for damage to homes, land, and pollution of water.
  - e) Call for ReconAfrica to cover medical treatment to address health concerns.
  - f) Call for compensation for medical conditions resulting from the contamination of underground water resources.
  - g) Any further recommendations deemed necessary by the Complainant or appropriate by CORE.
163. The Complainant reserves the right to include any additional information they shall deem necessary to support this Complaint.

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<sup>347</sup> Chart: Overview of Witnesses Interviewed

The Complainant looks forward to receiving communication from CORE regarding the next steps in addressing this complaint. The IHRP and the Complainant are prepared to offer any additional assistance that may be needed.

Best Regards,

**James Yap, Acting Director**  
International Human Rights Program  
University of Toronto Faculty of Law  
78 Queen's Park  
Toronto, Ontario M5S 2C5  
416-946-8229  
james.yap@utoronto.ca



## LIST OF APPENDICES

<b>Appendix</b>	<b>Document</b>
A	SOUL Consent Letter, dated November 20, 2023
B	Affidavit of Leitago Narib, sworn April 5, 2024
C	Affidavit of Hamutenya Thomas Muronga, sworn November 10, 2023
D	Affidavit of [REDACTED] (Witness 1), sworn November 3, 2023
E	Affidavit of Muyemburuko Max Kangwaka, sworn November 10, 2023
F	Interested and Affected Parties List provided by ReconAfrica on May 24, 2022
G	Register for ReconAfrica PEL 73 Meeting in Nkurenkuru on May 9, 2019 and Register for ReconAfrica PEL 73 Meeting in Rundu on May 10, 2019
H	Affidavit of [REDACTED] (Witness 2), sworn November 8, 2023
I	Affidavit of [REDACTED] (Witness 3), sworn November 9, 2023
J	Affidavit of [REDACTED] (Witness 4), sworn November 8, 2023
K	Affidavit of Paulus Siwegedi Kampanza, sworn November 9, 2023
L	Affidavit of [REDACTED] (Witness 5), sworn November 9, 2023
M	Affidavit of [REDACTED] (Witness 6), sworn November 9, 2023
N	Jeffrey Barbee & Laurel Neme, "Canadian oil company illegally bulldozes protected land in Africa, <i>National Geographic</i> (23 February 2022)
O	Affidavit of [REDACTED] (Witness 7), sworn November 9, 2023
P	Chart: Overview of Witnesses Interviewed

# APPENDIX A



Saving Okavango's Unique Life (SOUL), Windhoek, Namibia

Monday, November 20, 2023

International Human Rights Program (IHRP)  
University of Toronto Faculty of Law  
27 King's College Circle  
Toronto, ON M5S 1A1

SOUL is a coalition of community and civil society organisations operating in Namibia's Kavango regions. The coalition, representing community members across the region, is the public face of community resistance to exploitation and oppression by Canadian oil company ReconAfrica.

SOUL has been authorised by concerned community members in Kapinga ka Mwalye Conservancy, Ncaute CF, Ncumcara CF, Likwaterera Community Forest and Muduva Nyangana Conservancy and Community Forest to act as their appointed representatives in the matter concerning ReconAfrica. These Community members consent to SOUL filing this complaint with the Canadian Ombudsperson for Responsible Enterprise on their behalf.

SOUL has been the vehicle for community complaints to the Namibian Parliamentary Standing Committee and other public statements. Organising under the umbrella of SOUL gives community members the ability to criticise the company while not exposing themselves to retribution. The company's history of violating the rights of community members and journalists speaks to the prudence of this tactic.

SOUL represents community members across the license area who ask for accountability from Canadian company ReconAfrica.

Warmest Regards,

Rob Parker, Rinaani Musutua  
SOUL

Two handwritten signatures in black ink. The first signature is a stylized, cursive "RP" with a horizontal line underneath. The second signature is a more fluid, cursive signature that appears to read "Rinaani Musutua".

## **APPENDIX B**


## AFFIDAVIT OF LEITAGO NARIB

I, LEITAGO NARIB, of the City of Windhoek in the Region of Khomas, Namibia, make oath and say:

1. I am the Founder of Leitago Digital, a Namibian company that provides media and communications production services and consultation for media outlets, non-profit organizations, and businesses. As such, I have knowledge of the matters contained in this affidavit.
2. On November 9, 2023, I travelled to the location of Mbambi in the Zambezi Region of Namibia, where I personally took a series of photographs using a camera.
3. The photographs capture Reconnaissance Energy Africa Ltd. (“ReconAfrica”)’s oil drill site situated at the Mbambi 6-1 location.
4. Copies of these photographs are attached as **Exhibits** to this affidavit:
  - a) **Exhibit A** depicts the entrance to ReconAfrica’s Mbambi 6-1 drill site.
  - b) **Exhibit B** and **C** depict ReconAfrica’s fenced Mbambi 6-1 drill site.
  - c) **Exhibit D** depicts tanks located on ReconAfrica’s Mbambi 6-1 drill site.
  - d) **Exhibit E** and **Exhibit F** depict machinery located near ReconAfrica drill site.
5. I am the rightful owner of the photographs mentioned above and testify to their authenticity.
6. I confirm that the photographs accurately represent the scene as observed by myself at the time of capture on November 9, 2023. The photographs have not been altered, tampered with, or manipulated in any way, and the photographs present a true and unaltered depiction of the original image taken.
7. In swearing this affidavit, I understand and agree that my affidavit may be used by members of the International Human Rights Program at the University of Toronto Faculty of Law in Canada, Saving Okavango’s Unique Life, and/or Economic & Social Justice Trust in relation to filing a potential complaint with the Canadian Ombudsperson for Responsible Enterprise (“CORE”) with respect to alleged harms connected to ReconAfrica’s operations in the Kavango Region in Namibia (“CORE Complaint”). I make this affidavit in support of the CORE Complaint and any other advocacy pursuits these groups may pursue.
8. At the time of affirming this affidavit, I am not physically present before the commissioner of the affidavit, but am linked with the commissioner using video

technology and the process described for remote commissioning of affidavits is being used.

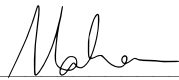
AFFIRMED remotely by Leitago Narib of )  
of the City of Windhoek, in the Region of )  
Khomas, Namibia before me at the City of )  
Toronto in the Province of Ontario, )  
on April 05, 2024 in accordance )  
with O. Reg. 431/20, Administering )  
Oath or Declaration Remotely. )

  
\_\_\_\_\_  
*A Commissioner for Taking Affidavits, etc.*

  
\_\_\_\_\_  
LEITAGO NARIB



EXHIBIT "A" to the Affidavit of LEITAGO NARIB

A handwritten signature in cursive script, appearing to read "Maher".

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*A Commissioner for Taking Affidavits, etc.*





EXHIBIT "B" to the Affidavit of LEITAGO NARIB

A handwritten signature in cursive script, appearing to read "Mahesh".

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*A Commissioner for Taking Affidavits, etc.*



EXHIBIT "C" to the Affidavit of LEITAGO NARIB

A handwritten signature in cursive script, appearing to read "Maher".

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*A Commissioner for Taking Affidavits, etc.*



EXHIBIT "D" to the Affidavit of LEITAGO NARIB

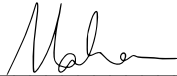
A handwritten signature in cursive script, appearing to read "Maher".

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*A Commissioner for Taking Affidavits, etc.*



EXHIBIT "E" to the Affidavit of LEITAGO NARIB

A handwritten signature in cursive script, appearing to read "Maher".

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*A Commissioner for Taking Affidavits, etc.*





EXHIBIT "F" to the Affidavit of LEITAGO NARIB

A handwritten signature in cursive script, appearing to read "Maher".

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*A Commissioner for Taking Affidavits, etc.*



# APPENDIX C

## AFFIDAVIT OF HAMUTENYA THOMAS MURONGA

I, Hamutenya Thomas Muronga (Government ID: 84040510477) of the Village of Gonghwa, in the Region of Kavango-East, make oath and say:

1. I am the Chairperson of the Kapinga Kamwalye Conservancy and Secretary for Kavango East and West Conservancy and Community Forestry Association, as such have knowledge of the matters contained in this affidavit, except where stated to be based on information and belief, in which case I believe them to be true.
2. I oversee the Management Committee (the “Committee”) of the Conservancy, which implements decisions made by members of the Conservancy and ensures that decisions and projects undertaken align with the Conservancy Management Plan (the “Plan”). The goals of the Plan include conserving the land and natural resources for the present members and future generations of the 27 villages that reside within the boundaries of the Conservancy.
3. The members of villages inside the Conservancy (the “Villagers”) have possessed their land for many generations. They consider themselves to be Indigenous and practice traditional rituals as part of their culture and daily life. Villagers typically depend on traditional healers when they are ill and use plant-based medicine. Over 65% of the people who live in or near Mbambi are part of the San tribe.
4. I am a member of the Chief royal family of the Sambyu Traditional Authority. As a result, I have customary rights to the land in the Sambyu area.
5. I engaged with Villagers through the Annual General Meeting, interim meetings and the complaint process. The process allows Villagers to submit their concerns to the Committee, which will raise the complaint to the Chairperson for investigation. Informally, however, Conservancy members are allowed to speak with me directly about their concerns.
6. Villagers began approaching me on or about February 2019 with concerns about the activities of Reconnaissance Energy Africa Ltd. (“ReconAfrica”) in their villages. I was told that ReconAfrica employees and one representative from the Tribal Authority approached the Headman of several villages to recruit labourers for ReconAfrica’s approved project. At meetings organized by the Headmen, Villagers asked ReconAfrica questions about the project and employment details but ReconAfrica refused to answer questions.
7. Approaching Villagers with a representative from the Traditional Authority provides ReconAfrica with an air of authority and credibility. Villagers therefore believed that ReconAfrica had appropriate approvals for their project. However, the Tribal Authority does not have the power to approve commercial work within Conservancy boundaries; only the Committee can permit such projects.
8. Villagers also told me that when clearing land for their drill site, ReconAfrica destroyed land used for animal grazing and crop land. The company also destroyed forests of native fruit trees that Villagers depend on for food.

9. Once the Committee and I became aware of these complaints, we decided to investigate. The Committee Treasurer, the Secretary and I went to ReconAfrica's drill site in Mbambi, located on Conservancy land, to ask representatives why the Committee was not consulted prior to ReconAfrica cutting roads through protected land, setting up machines, and drilling. Employees at the site refused to speak to me and asked me to leave. I was told that I need to visit another city, Rundu, to schedule a meeting with ReconAfrica's management team at their office. I was appalled by their refusal to speak with representatives of the Conservancy, despite operating on Conservancy land. I provided my contact information and asked that a representative of ReconAfrica contact me immediately.

10. In response to this incident, ReconAfrica's lawyer called me to offer me a job acting as a liaison between the company and the Villagers. I believe that they offered me this job to stop me from pursuing the matter.

11. When ReconAfrica's seismic testing started in August 2019, the number of complaints from Villagers escalated. Villagers placed additional pressure on the Committee to aggressively investigate. Their concerns were heightened because the information that they were receiving from ReconAfrica did not mirror ReconAfrica's actions. For instance, ReconAfrica explained that the seismic surveys would be conducted along existing roads. In reality, the company created new roads, harming Conservancy land and Villagers' crop fields in the process.

12. When I visited these areas, I saw the new roads that ReconAfrica had opened, the damaged crop fields, and the seismic beacons left on the testing path.

13. I joined four villagers in making a complaint to ReconAfrica about their damaged or destroyed crop fields. ReconAfrica explained that they implemented a complaint process for damage due to seismic testing. ReconAfrica employees recorded the names of the Villagers and promised to contact the Villagers to begin this process. The Villagers were not contacted by ReconAfrica.

14. ReconAfrica reached out to only a few Villagers and members following the destruction of their homes and crops and offered a nominal amount of money. However, it was clear to me that in each of the cases I learned about the money paid was wholly insufficient to begin covering the costs of the damage caused by ReconAfrica. Based on my conversations with them, I understand that the complainants who accepted money from ReconAfrica out of fear that it would be their only opportunity to receive *any* compensation, however little at the time.

15. In September 2019, the Committee and I met with the Governor, Minister of Energy and Mining, and ReconAfrica. The Committee came prepared with a presentation and questions aimed at clarifying the following issues for Villagers:

1. How did ReconAfrica acquire permission to drill on Conservancy Land without working with the Committee?
2. When was consultation completed with Villagers?

3. What are the negative impacts of the project for the Conservancy and our Villagers?

16. ReconAfrica refused to provide answers at this meeting but promised to provide answers at a later time. The company has not followed through on this promise.

17. Over the last few years, I attended meetings hosted by ReconAfrica in neighbouring villages to hear the information they were providing community members and ask questions. For example:

18. In 2019, I attended a meeting in Makandina, where ReconAfrica was supposed to explain, in detail, how seismic testing is conducted. Instead, ReconAfrica's employees discussed the benefits of seismic testing and encouraged Villagers to cooperate. The presentation lasted for 45 minutes. Although ReconAfrica stated that villagers could ask questions for 15 minutes, they avoided the questions asked and did not answer them.

19. On or about April 2019, I also attended meeting Guarc but there was no opportunity to ask questions.

20. I attempted to attend a number of other meetings but they were postponed, cancelled, or moved at the last minute.

21. In June 2022, the Committee and our allies submitted an appeal to the Environmental Commissioner amendment of ReconAfrica's Environmental Clearance Certificate ("ECC"). In response, ReconAfrica publicised that it was hosting a series of meetings at scheduled dates and times. However, with the exception of one gathering, all of these meetings occurred at a time that was different from the stated time.

22. When these meetings did not transpire, I emailed the General Manager of ReconAfrica several times to schedule a meeting. ReconAfrica ultimately attended a meeting but refused to answer any questions until the pending appeal was settled.

23. ReconAfrica hosted a subsequent meeting in Rundu for all farmers (the "Rundu Meeting"). When I attended the Rundu Meeting, ReconAfrica's staff initially attempted to prevent me from joining the meeting but relented once attendees protested.

24. Like previous meetings, the agenda for the Rundu Meeting consisted of a 45-minute presentation that focused on the benefits of ReconAfrica's activities. During the 15-minute question and answer period, ReconAfrica refused to discuss issues with their ECC.

25. Notably, a representative from ReconAfrica approached me with her phone during this meeting and showed me that she had private intercepted communications between myself and a colleague from an ally organization. However, she refused to explain how my private messages came into her possession. This interaction made me worried about my privacy and safety.

26. I would like to see ReconAfrica's activities come to an end. The information they provide is often untrue and their process lacks transparency. I would like the ongoing harms to Villagers ended, to have the Conservancy land restored, and for Villagers who were harmed to receive adequate compensation.

27. In swearing this affidavit, I understand that and agree to members of the International Human Rights Program at the University of Toronto Faculty of Law in Canada, Saving Okavango's Unique Life, and/or Economic & Social Justice Trust filing a complaint with the Canadian Ombudsperson for Responsible Enterprise ("CORE") with respect to the harms I have suffered ("CORE Complaint"). I make this affidavit in support of the CORE Complaint and any other advocacy pursuits these groups may pursue.

28. I consent to my name [and location] being shared in the CORE Complaint. I understand that by sharing my name/location in the CORE Complaint, the fact of my participation in the CORE complaint, along with the contents of this affidavit, may become public.

SWORN before me in person at the City of Rundu, in the Kavango-East Region of Namibia, this 10th day of November 2023.

  
\_\_\_\_\_

*A Commissioner for Taking Affidavits, etc.*

  
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HAMUTENYA THOMAS MURONGA

# APPENDIX D



## WITNESS 1

### AFFIDAVIT OF

I, [REDACTED] of the Village of Shakambu, in the Region of Okavango-East, Namibia, make oath and say:

1. I am a farmer and belong to the Bantu community, and as such have knowledge of the matters contained in this affidavit, except where stated to be based on information and belief, in which case I believe them to be true.
2. I am fluent in the following languages: Rumanyo, Rusambyu and English.
3. I currently live in a house with my family consisting of 5 people and my children on a plot of land in Shakambu, the size of 100 square meters. This land has been passed down by customary tradition from my grandmother to my mother to me and I am the third generation.
4. My family and I use this land to grow crops and raise animals. We grow mahango, maize, tomatoes and we raise pigs. These crops and animals are the main source of food for me and my family.
5. I first learned about the operations of Reconnaissance Energy Africa Ltd (“ReconAfrica”), in early 2021 when ReconAfrica workers cleared the roads in my village in preparation for the passing of seismic thumping. I witnessed and heard the seismic machine, as it passed on the public road beside my house.
6. My house is made from mud and trees and has been damaged by Recon’s activities. I have not been compensated by ReconAfrica for the damage caused to my home.
7. Additionally, I can confirm that the houses of others in my community have been damaged, and some members of my community have had their fields damaged due to seismic thumping cutting lines through their fields.
8. I have never been contacted by ReconAfrica or invited to a consultation meeting by ReconAfrica to learn about the project nor did I see any advertisements for consultations in the newspaper or posted in my local community.
9. In September 2021, a representative of ReconAfrica came to my house. He asked me to stop working with the Kapinga Kamwalye Conservancy, which opposed ReconAfrica’s activities. He told me that if I stopped protesting ReconAfrica’s operations, ReconAfrica would offer me a job. I did not accept the offer.
10. I participated in a meeting organized by the local communities and the Kapinga Kamwalye Conservancy forest in September 2022. This meeting was held after the seismic thumping. During this meeting, ReconAfrica falsely claimed that their activities do not cause any harm or damage. ReconAfrica did not provide an opportunity to community members to ask questions or voice our concerns.
11. Water in my community is scarce. I have learned from members of the Kauwe village, which is 12km from where I live, that their water tastes salty and oily. Kauwe village is 12 km from a ReconAfrica drill site, therefore I am worried that ReconAfrica is releasing toxic substances into the underground water.
12. I fear that ReconAfrica’s continued operations will contaminate my water, which I retrieve from a well located 500 meters from my home in the village of Shakambu. I use this water for sanitation,

drinking, food, and for my livestock. If ReconAfrica contaminates this water source, my family and I will not have access to clean drinking water or clean water for my livestock. As we rely on our livestock for food, any detriment to their health will negatively impact our access to food.

13. I am worried that ReconAfrica's operations will continue to damage my home and may contaminate the water my family and I rely on. I want ReconAfrica to stop operating in Namibia.

14. In swearing this affidavit, I understand and agree to members of the International Human Rights Program at the University of Toronto Faculty of Law in Canada, Saving Okavango's Unique Life, and Economic & Social Justice Trust filing a complaint with the Canadian Ombudsperson for Responsible Enterprise ("CORE") with respect to the harms I have suffered ("CORE Complaint"). I make this affidavit in support of the CORE Complaint.

15. I consent to my name being shared in the CORE Complaint. I understand that by sharing my name in the CORE Complaint, the fact of my participation in the CORE complaint, along with the contents of this affidavit, may become public.

16. I acknowledge that I have received a copy of this affidavit.

SWORN before me at the City of Rundu, in the Region of Okavango-East, Namibia, this 8th day of November, 2023.

  
\_\_\_\_\_

*A Commissioner for Taking Affidavits, etc.*

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# APPENDIX E

## AFFIDAVIT OF MUYEMBURUKO MAX KANGWAKA

I, Muyemburuko Max Kangwaka (Government ID: 84020211574) of the Shamambungu village, in the Region of Okavango East, Namibia make oath and say:

1. I am the Chairperson of the Muduva Nyangana Conservancy, a position I have held for eight years, and the former Chairperson of the Kavango East and West Regional Conservancy in Namibia. I am also a member of the Bantu community in Shamambungu, as such, I have knowledge of the matters contained in this affidavit, except where stated to be based on information and belief, in which case I believe them to be true.

2. A conservancy is a legal body with a mandate under the Ministry of Environment, Forestry and Tourism (the "**Minister**"). Under the Nature Conservation Ordinance, community members may together file an application with the Minister to form a conservancy. Community members set out the conservancy's constitution, committees, members and boundaries. Once the conservancy is approved, members of the conservancy, who are its beneficiaries, elect a Chairperson, Secretary, and Treasurer.

3. Members of the conservancy include one member from the Traditional Authority, which is an authority that handles issues related to land, illegal fencing, sand mining, settling, and illegal grazing, and the Headwoman/Headman, who is responsible for connecting the Traditional Authority and administration with the conservancy.

4. The aim of a conservancy is to conserve and protect the environment and practice sustainable use of resources by managing natural resources, creating designated zones (such as the settlement zone and wildlife zone), and working with other bodies, such as traditional authorities, regional councils, directorate of forestries, Namibian police, and other stakeholders, to promote sustainable development. The conservancy also protects a range of species, including, among others, elephants, leopards, giraffes, lions, cheetahs, hyenas and protected bats.

5. As leaders of the conservancy, we are the voice of our members and local communities. We represent the conservancy at the local, regional, and national level. Our members include Indigenous San and Bantu people who live in the conservancy. I am a member of the Bantu community as well, my land has been passed down by customary tradition through my family for three generations.

6. Conservancy leaders are guided by the Constitution of the Republic of Namibia, the Forestry Management Act, Communal Land Reform Act, and Traditional Authority Act. We have a mandate to monitor our land to ensure business and activities carried out on the land comply with our resource management plans and do not defeat the purpose of the conservancy.

7. For example, we oversee which activities cannot be carried out in a conservancy under various Namibian laws, including the Forestry Management Act, Nature Conservation Act, and Communal Land Reform Act, such as, among other things, prohibitions against:

- Destroying vegetation;
- Harvesting forestry product;
- Carrying out activities for the purpose of mining minerals;
- Building a road or any other structure;

- Disrupting or removing soil;
- Fencing communal land and restricting residents' access to natural resources, building materials, forestry fruits, or other activities.
- Carrying out agricultural activities or grazing without written consent from the Forest Management Committee.

8. Muduva Nyangana Conservancy ("MNC") is located in the Kavango-Zambezi Transfrontier Conservation Area - a UNESCO World Heritage Site - and consists of 1500 hectares of land, which border traditional tribes, a national park, and Botswana. Attached as **Exhibit "A"** to this affidavit is a map of the conservancy area showing its boundaries.

9. The MNC does not have any fencing around its boundaries because we coexist with the wildlife. It is important for us to allow the flow of wildlife and enable our children to see and live near animals.

10. Although there is no fencing around the conservancy, there are demarcations and signs, which identify where the conservancy starts and ends, as well as signs identifying exclusive wildlife areas and other zones within the conservancy.

11. There are eight villages and four sub-villages inside the MNC. Settlements inside the conservancy consist of members who have registered with the conservancy. Most people living in the conservancy do not work and live off the land through farming, cultivating and harvesting. There is no access to hospitals or clinics, so our members rely on their Indigenous knowledge about the medicinal properties of plants and trees.

12. In light of the foregoing, including the purpose and importance of our conservancy, I am very concerned about the activities of Reconnaissance Energy Africa Ltd. ("**ReconAfrica**") in our region and the harms the company is causing to the environment and our local and Indigenous communities.

13. Beginning on or around early January 2021, ReconAfrica initiated drilling operations in the village of Kawe. There was no consultation of local communities prior to the operations. Rather, ReconAfrica held its first meeting with local communities and stakeholders on January 22, 2021 *after* drilling operations were already underway (the "**January 2021 Meeting**").

14. Although the January 2021 Meeting was purported to be for the purposes of informing the community about ReconAfrica's activities in the Okavango region, it became clear to me from attending the meeting that ReconAfrica did not intend to actually engage the community. For example:

- The January 2021 Meeting, which pertained to the Kawe drilling operations and people living in Kawe village, took place in the city of Rundu. This prevented many community members in Kawe from participating because they were unable to travel to Rundu.
- The January 2021 Meeting was held in the English language despite the fact that most local and Indigenous communities communicate in local languages and many do not understand English. This prevented concerned community members from expressing their concerns to ReconAfrica during the meeting.
- During the January 2021 Meeting, representatives of ReconAfrica refused to answer questions. I asked ReconAfrica, during the meeting, how their drilling project will impact

our livelihood and benefit local communities. ReconAfrica refused to answer my questions and quickly shut down any objections.

15. Following the January 2021 Meeting, ReconAfrica advised us to contact their representative, Dr. Sindila Mwiya, if we have inquiries about the project. On January 22, 2021, I sent Dr. Mwiya an email expressing my concerns regarding the inadequate consultation process, potential negative impacts of land clearing and seismic testing on drinking water, residential homes, and protected species. Dr. Mwiya's response to me not only failed to fully answer my questions, but mocked my Indigenous status and degraded me by calling me ignorant, utterly blind and stupid. A copy of this correspondence is attached as **Exhibit "B"** to this affidavit.

16. My attempts to ensure that the conservancy and the communities we represent are meaningfully consulted by ReconAfrica have been thwarted at every instance. In December 2021, I wrote a letter to ReconAfrica as the then-Chairperson of the Kavango East and West Regional Conservancy to request a meeting with ReconAfrica. ReconAfrica's response letter, dated December 22, 2021, denied my request for a meeting because they had purportedly "concluded all formal stakeholder engagements for the year." A copy of this response letter is attached as **Exhibit "C"** to this affidavit.

17. It was shocking to me that the company had claimed to conclude stakeholder engagements without giving the conservancy - whose very purpose was to represent affected stakeholders - the opportunity to make an informed decision about ReconAfrica's operations on our land.

18. Moreover, ReconAfrica has actively attempted to raise awareness about its operations in our community and fulfill my duties as a conservancy leader. For example:

- On March 25, 2022, I was detained by police for unknown reasons while holding a meeting with community members about ReconAfrica. I was kept in a cell for approximately eight hours without explanation. My cell phone was confiscated and inspected by the police. This instilled a fear in me that I was being surveilled by police on behalf of ReconAfrica and made me afraid for my safety.
- In or around June 2022, I was denied access to a meeting organized by the Farmer's Union Association by ReconAfrica spokesperson, H. Namudjebo, despite the fact that I am a farmer myself. I believe ReconAfrica did not want me attending this meeting to prevent me from communicating with other farmers about my concerns about ReconAfrica's drilling activities.
- In 2021, ReconAfrica offered me a job in exchange for my silence regarding the operations of ReconAfrica inside the Kavango East conservancy, where I currently live in the village of Shamambungu.

19. In October/November 2022, ReconAfrica conducted seismic thumping and wildlife monitoring survey activities within the Khaudum North Complex conservancy. Seismic surveying requires the removal of vegetation to establish pathways to enable the passage of machinery. The loud thumping generated by the seismic surveys poses a threat to the well-being of protected species found within the conservancy.

20. Under Namibia's Environmental Management Act, any development on conservation land must include an environmental impact assessment during which the local and Indigenous communities, as well as other stakeholders must be consulted before the Ministry issues an environmental clearance certificate ("ECC"). However, in the case of ReconAfrica, local and Indigenous communities were excluded from

this consultation process and ReconAfrica was nonetheless given an ECC, in violation of our right to consultation.

21. ReconAfrica must consult the Indigenous people of the Okavango. The Kavango Conservancy wishes to see remediation from ReconAfrica for the harms carried out by ReconAfrica, including, among other things, compensation, formal apology, and call upon ReconAfrica to rehabilitate the land, restoring it to its previous condition.

22. I believe that foreign investors must safeguard the use of conservancy land and prioritize environmentally friendly projects that preserve resources for future generations. We fear potential long-term damage if the company continues its activities and we wish for ReconAfrica to leave Namibia.

23. In swearing this affidavit, I understand that and agree to members of the International Human Rights Program at the University of Toronto Faculty of Law in Canada, Saving Okavango's Unique Life, and/or Economic & Social Justice Trust filing a complaint with the Canadian Ombudsperson for Responsible Enterprise ("CORE") with respect to the harms I have suffered ("CORE Complaint"). I make this affidavit in support of the CORE Complaint and any other advocacy pursuits these groups may pursue.

24. I consent to my name and location being shared in the CORE Complaint. I understand that by sharing my name and location in the CORE Complaint, the fact of my participation in the CORE complaint, along with the contents of this affidavit, may become public.

25. I acknowledge that I have received a copy of this affidavit.

SWORN before me in person at the City of Rundu, in the Kavango-East Region of Namibia, this 10th day of November 2023.



*A Commissioner for Taking Affidavits, etc.*



MUYEMBURUKO MAX KANGWAKA

This is EXHIBIT "A" referred to in the Affidavit of MUYEMBURUKO MAX KANGWAKA

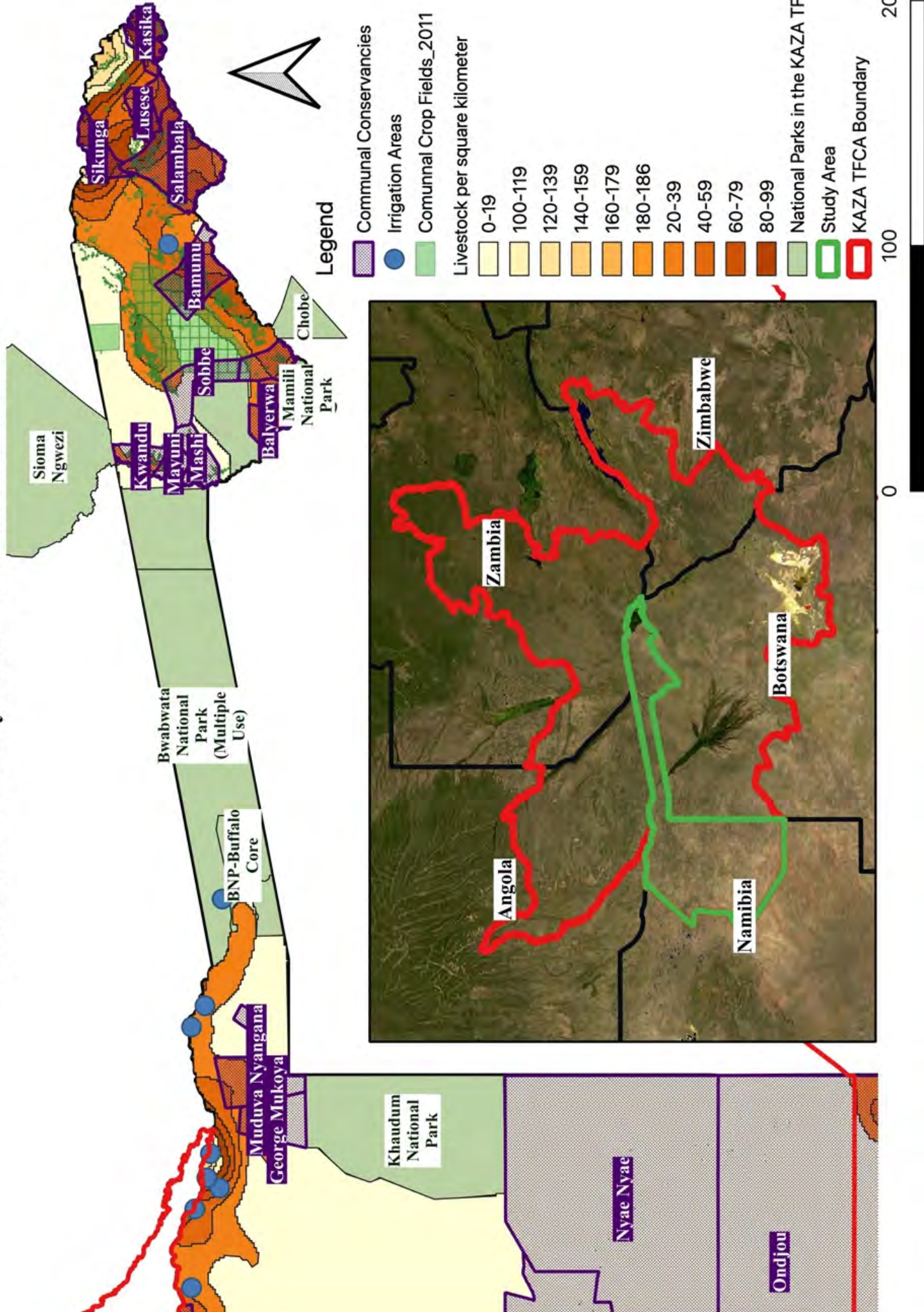
Sworn before me on this 10<sup>th</sup> day of November 2023

A handwritten signature in black ink, appearing to be 'A. M.', written above a horizontal line.

*A Commissioner for Taking Affidavits, etc.*



# Location of the Study Area within the KAZA TFCA



This is EXHIBIT "B" referred to in the Affidavit of MUYEMBURUKO MAX KANGWAKA

Sworn before me on this 10<sup>th</sup> day of November 2023



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*A Commissioner for Taking Affidavits, etc.*

Max Muyemburuko Chairperson

----- Forwarded message -----

From: Max Muyemburuko <[max.muyemburuko@gmail.com](mailto:max.muyemburuko@gmail.com)>  
Date: Thu, 1 Apr 2021, 22:05  
Subject: Fwd: Questions  
To: <[Jasmine.Pazzano@globalnews.ca](mailto:Jasmine.Pazzano@globalnews.ca)>

Dear Jasmine

----- Forwarded message -----

From: Max Muyemburuko <[max.muyemburuko@gmail.com](mailto:max.muyemburuko@gmail.com)>  
Date: Sun, 28 Feb 2021, 11:17  
Subject: Fwd: Questions  
To: <[Christopher.cunningham3@sky.uk](mailto:Christopher.cunningham3@sky.uk)>

Dear Chrissy

See respond from Dr. Sindila Mwiya

Regard  
Max Muyemburuko

----- Forwarded message -----

From: Max Muyemburuko <[max.muyemburuko@gmail.com](mailto:max.muyemburuko@gmail.com)>  
Date: Tue, 26 Jan 2021, 11:47  
Subject: Fwd: Questions  
To: Jeffrey Barbee <[jeffrey.barbee@gmail.com](mailto:jeffrey.barbee@gmail.com)>

Hy Jeffy

Find the forward email from Dr. Mwiya

----- Forwarded message -----

From: Dr Sindila MWIYA <[frontdesk@rbs.com.na](mailto:frontdesk@rbs.com.na)>  
Date: Tue, 26 Jan 2021, 07:50  
Subject: RE: Questions  
To: Max Muyemburuko <[max.muyemburuko@gmail.com](mailto:max.muyemburuko@gmail.com)>  
Cc: <[marvinconsultants@outlook.com](mailto:marvinconsultants@outlook.com)>

Dear Max,

Please see my responses to your question in red below. Please note that I hold a PhD and you can call me Sindila but cannot refer to me as Mr Mwiya in case you did not know the difference. I know how much you respect foreigners and nonindigenous people in your circles, but do not forget that even the rural people of Kavango West

and East that you think need support from your foreign experts have far much great knowledge and insight about their area than a foreigner and nonindigenous person will ever learn or claim to know about the local areas. Leaner to respect your own people first and their great wisdom in local knowledge, in the same way they are respecting you. It is so disheartening for you to think that local people of Kavango West and East cannot decide on what is best for their areas or regions.

Yes, I know that on Social Media you have been behaving as if you are the spokesperson for the Office of the Environmental Commissioner or MEFT to which you are not, while at the same time you are offering foreign international media companies and Interested parties (foreigners) for translations and guiding them around the project area with your fees quoted in USD as per your recent previous quotation.

Just like the other many so called non-profits that have emerged and are now using the project, the Okavango River, the Okavango Delta, San People and the non-existence so called sensitive environment as backdrop for soliciting donations to the NGOs and for friends and family not necessary for the rural people of Kavango West and East who are swimming in inherited generation poverty, you also seems to have taken the project as new business opportunity. However, in most instance, you are just being used by those non-profits bodies that are making more money through EUR and USD donation receipts based on your uninformed noise rattle.

It is really a shame and answers to your questions are provided below in full technical detail.

Many thanks,

**Dr. Sindila Mwiya**

*PhD, PG Cert, MPhil, BEng (Hons), Pr Eng*

International Resources Consultant /Founder RBS CC & FGN (Pty) Ltd

**Risk-Based Solutions (RBS) CC, Consulting Arm of Foresight Group Namibia (FGN) (Pty) Ltd**

**Investments and International Resources Technical Consultants in Petroleum/Mining/Energy/ Environmental**

**Assessment /Property Development/ Programmes and Projects Management/ Training/ Research**

**41 Feld Street Ausspannplatz**

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**P. O. Box 1839, WINDHOEK, NAMIBIA**

**Tel: +264 - 61- 306058; FaxMail: +264-886561821**

Mobile: +264-811413229; Email: [smwiya@rbs.com.na](mailto:smwiya@rbs.com.na)

Global Office / URL : [www.rbs.com.na](http://www.rbs.com.na)

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**Foresight Group Namibia (FGN) (Pty) Ltd** – *Perfecting the Future*

**Risk-Based Solutions (RBS) CC** – *Delivering the Solutions*

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**From:** Max Muyemburuko <[max.muyemburuko@gmail.com](mailto:max.muyemburuko@gmail.com)>

**Sent:** Friday, 22 January 2021 2:28 PM

**To:** [smwiya@rbs.com.na](mailto:smwiya@rbs.com.na)

**Subject:** Questions

Dear Dr. S. Mwiya

May you highlight me on this questions as in the meeting i did not get chance to ask this.

1) In the scoping report there is no discussion or investigation of the effects of seismic testing on shallow water wells in the region. Hundreds of small communities line the roads that ReconAfrica wants to shoot seismic lines on with huge “thumper” trucks. According to the Canadian province of New Brunswick’s Conservation Council, seismic testing can damage the wells people get their drinking water from, and has led to the loss of water in at least 60 homes there. They say that only by doing baseline (before-seismic) water testing at every well location, then doing it after the seismic testing can any possible damage or pollution from the activity be understood. There is no attempt by Mr. Mwiya to do any baseline water tests at all and he does not even consider this possible impact in the context of the extremely shallow groundwater level (less than 30m deep) in most of their license area. A link to this serious issue in Canada is here: <https://tinyurl.com/y4rygzld>

*You article link is 100% irrelevant to the proposed scope of work, source energy and receivers to be used for the proposed 2D Seismic survey. In your so called reference document and I quote “Use of **explosive devises**, which create shot-holes in the ground, can create access to surface contaminants into groundwater if not properly filled in, and it is possible seismic waves sent out by thumper trucks can mobilize sedimentation into a well or cause well integrity problems.*

*There are no explosive devices whatsoever that will be used as the source of energy for the proposed survey. The source of energy for the proposed survey will be free weight drop from the Explorer with wireless geophones. The survey will use existing roads and I did not see any boreholes in Kavango West and east located in the middle of roads. If there are issues with existing boreholes designs integrate, then that should have happened when these roads were constructed using very heavy compacting road construction equipment. Additionally, these roads are today being used by all types of*

vehicles at presents and some vehicles are even heavier than the proposed survey tracks. Seismic survey have been successfully conducted in Namibia before and I have been involved in Maltahöhe survey conducted in 2007 and Kavango West Region survey conducted in 2017 and both surveys had no environmental issues whatsoever and I know what I am talking about and I studied geophysics including seismic survey.

2) The lack of ability for people to travel and be an active part of this process is extremely limited right now given the current COVID crisis. Given the limitations of gathering to only fifty people and the EAP's unwillingness to live stream public consultations means that the vital inclusion of registered interested and affected parties, and community meetings to help local people understand this process cannot go ahead freely. We ask that this application be put on hold until such a time after the pandemic when local people can be informed and have their input registered.

I am so shocked that in your right mind you think local people in Kavango East and West Regions do not know what they want in their lives and the type of development projects they would like to see in their area. Why should you expect privileged foreigners who do not even know where Ncute is located or where the Area of Interested is situated and have already made-up their mind that the Proponent is drilling on the Banks of the Okavango River and inside the Okavango Delta to now be advisers to the local communities. Well attended public meetings have been organised by the Regional Councils and Traditional Authorities, and the local communities fully supports the developments being proposed in their areas. The application is indeed going ahead and has nothing to do with COVID.

3) The piecemeal approach of ReconAfrica to the mandated EIA process, starting with the previous EIA for the current well drilling program, and then continuing with this next one for seismic surveying seems tailored to slowly ratchet up approval of this project in an effort to get approvals without looking at the project as a whole. I feel that an Integrated Environmental Assessment is needed to fully inform the decision making process. This would mean setting aside the last EIA and creating a whole-project approach that looks at the entire life cycle of this development, from exploration, surveying and eventually even production and how the environmental effects of it can be taken into full account.

It very sad to see that people like you Max Muyemburuko who have zero experience or training in oil and gas exploration now want to be overnight experts. What you are proposing is absolutely irrelevant. Mr. Max, Oil and Gas exploration is not want think it is and let not try to be clever on highly technical issues that you do not understand. Despite the fact that it fully explained in the Draft Scoping Report, some stakeholder including yourself, have already made-up their mind based on social media uninformed and opportunistic donation-based business postings that is claiming that there is fracking taking place on the Banks of the Okavango River and the Okavango Delta. The current project activities are greenfield exploration. In brief oil exploration involves, application for license, geophysical desktop study to look for areas of interest within the license area, if the sedimentary basin is known, seismic survey is implemented to search for potential reservoir structures and if found exploration well drilling is conducted. If there is a discovery, then appraisal drilling is conducted to assess the economics of the discovery and possible development options. Each of the exploration stage requires separate EIA to be conducted. And fracking which is used in water abstraction is a production method after a commercial discovery of oil or gas in a

reservoirs with limited permeability. ReconAfrica only has geophysical data-based confirmed basin and the current ongoing drilling of the stratigraphic well is meant to validate and confirm the presence of the sedimentary basin they named Okavango Basin to be followed by 2D seismic survey. Over the last 15 years, I have been involved in eight (8) offshore well drilling operations in Namibia and plenty more minerals and petroleum exploration projects that I am current supporting and also being supported by many other consultants in different parts of the onshore and offshore Namibia and where the investors have promoted the potential of their exploration projects to international markets. This project is no difference, it just an exploration project with assumed sub-knowledgebase and an overall knowledge-base that must be de-risked in order to improve the boundary conditions that underscores the exploration knowledge-base model objectives.

4) On page 80 Table 3.2 of the scoping report Mr. Mwiya states that “No removal of protected species or mature trees are anticipated because the activity will require the widening the existing tracks as may be applicable.” This is unacceptable, considering there are a number of protected species in the license area and they plan to run huge trucks 450km through deep bush, widening roads as they go. This is obvious from the photo of Line EW5 on Plate 1.24 on page 37 of the Scoping Report, where hundreds if not thousands of trees will have to be cleared over many kilometers to widen the road for the huge trucks. There are no studies to say whether nesting birds will be killed, what kind of plants will have to be destroyed and where, what indigenous trees might be killed and most especially some of the tracks they want to use are in the bed of the Omatako river, meaning this activity would definitely fall within 100meters of a watercourse, see Plate 1.21 page 34, where the line is right next to the riverbed. It is clear that this rushed scoping report is designed to eliminate the need for environmental oversight like the Forestry Act, 12 of 2001 and The Nature Conservation Ordinance 4, 1975. What are the long-term implications of these new wide roads on poaching? On illegal plant harvesting? Mr. Mwiya doesn’t include any data about this at all and due to this we ask you to set aside this ECC request.

Max, you wrote and quote: *“This is unacceptable, considering there are a number of protected species in the license area and they plan to run huge trucks 450km through deep bush, widening roads as they go”*. Are you okay and do you really understand and see images provided and what is proposed or you are just trying to seek some limelight out of nothing and out of a project that you absolutely do not understand at all. Existing roads and tracks do not have trees because the trees were cleared when the roads and tracks were constructed, in case you do not know and there no need to widen any road unless requested as part of the CSR. It is really sad to see this so low level of ignorant environmental advocacy that you are displaying. How do you expect to have hundreds if not thousands of trees to be cleared over many kilometres to widen the roads that are already existing as shown in Plates 1.1-1.24. This is utter blindly stupidity and nonsense of the highest level I have never ever seen that you even decide not see the clear images provided Plates 1.1-1.24 and still write trash to me about clearing exiting roads and tracks, what is wrong with you?

5) In Texas 142 homes were damaged by seismic testing like the sort ReconAfrica wants to carry out along the settled roads of Kavango East and West. Hundreds, perhaps even thousands of homes, many made from mud or light brick and concrete, are within a hundred meters of the roads that ReconAfrica wants to shoot their seismic test lines on. Serious home damage may occur and Mr. Mwiya has not mentioned anything about this in the draft Scoping Report, an egregious error that should disqualify this

report and again, necessitates a strategic environmental management plan in order to understand the full affects of this operation on the people and the environment of Namibia. Learn more about the dangers of seismic testing in the USA at this link: <https://tinyurl.com/yxnsmg74>

Seismic survey have been successfully conducted in Namibia before and I have been involved in Maltahöhe area in 2007 and Kavango West Region 2017. Please read the attached really academic research conducted by the United State Geological Survey on seismic survey not your subjective and selective unpublished useless links. The proposed survey will even use a much small vehicle as the an energy source compared to the Vibroseis covered in the study attached.

6) From the day oil and/or gas is discovered to the day the first electricity is generated from it is around eleven years, compared to around five months for solar or wind, according to the South African CSIR. Given the dire state of climate change, and the abundant wind and sun resources in Namibia, it is baffling to understand why this plan is being pursued at all, locking the country into decades of oil and gas dependence at a time when we have passed peak oil with low prices and with many countries phasing out oil and gas for renewables. According to the Act, alternative energy systems must be explored in the EIA, which hasn't been done, either in this EIA or the first one for the exploration drilling.

Max, this is not your question, it has been copied from previous communications that were send to me by some foreigners and local conflicted NGOs who do not even know where Kavango Region is located. The EMA Act 2007 does not state that, alternative energy systems must be explored in the EIA, its states that alternative project development options mut be explored to which such alternatives have been explored indeed. Please read the reports properly, I know that you are already blinded by preconceived, unfounded and being used by foreigners and NGOs whom themselves are making a lot money through donations and in name of fighting for the local people and the environment while you are just running around promoting their unfounded agendas, it like stock exchange in case you do not know.

In conclusion, it is indeed with great sadness that after 30 years of independence we still have so called indigenious enlightened people but without independent mind and still depend on Eurocentric and colonial thinking even when it is obvious that they are being used by those they think are behind them, really sad and sand indeed. Having worked in the most remote areas of both Kavango West and East Regions in the last five (5) years undertaking petroleum aerial gravity and magnetic surveys, ground seismic surveys and geochemical soil sampling for oil and gas feeding bacterial profiling operations, I have come across families who twice a week leave their woody and grassy homesteads in so called "sensitive environment" and walk for four (4) hours one way to reach the nearest public school where they could fetch water, came across homestead dilapidated to the state that makes your heart sink, came across many educated local people without jobs and with no prospects of emerging out the cycle of multiple generational poverty, came across young people with no any other economic opportunity whatsoever except cattle herding, grass and wood harvesting, came across young people with HIV / AIDS and have stopped taking their antiretroviral therapy due to lack of food or could not reach the nearest clinic in the general area because it is just too far to reach on foot and I have driven through extreme sandy poor access tracks connecting majority of the villages, it is appalling to see that those with no knowledge whatsoever about oil and gas exploration that could uplift the living



standard of the local people and the nation as whole in an event of a commercial oil or gas discovery want see the current status core of underdevelopment and poverty prevailing in both the Kavango West and East Regions centred on inherited generational poverty while themselves thrives in name of environmental protection.

It is high time that Governments in Africa and especially Southern Africa, Namibia included, move swiftly to regulate the emergence of opportunistic foreign funded environmental clique movements because for one to choose the World-renowned Okavango Delta, Okavango River as well as the San People as the backdrop for personal fund-raising campaigns and drives for donations to the so called "non-profits" and for own personal, family and friends incomes, while the majority of Namibians in Kavango West and East where the true project is situated continue to languish in poverty and illiteracy is unacceptable, Mr Max and you should know better.

Certain blinded local people are being used by hypocritic foreign-based entities and individuals funding opportunistic environmental privileged cliques movements that are aimed at sabotaging national developmental programmes, while their own countries continue to produce oil and gas, generate electricity from coal and will continue to emit tones of greenhouses gases into the atmosphere for many decades to come, are indeed guilty of promoting environmental protection-based colonialism and perpetuating current and future generational poverty in Kavango West and East. It is typical of the colonial times, when religious books were waved in villages, jungles, savannahs, wetlands, and deserts while at the same time those who were waving the religious books were busy harvesting local resources including slaves and today environmental placards and online messaging are being pushed by opportunistic environmental messiahs benefiting or wanting to benefit in the name of environmental protection through donations and for their own personal, family and friends incomes drives, while the local masses continue to swim in multiple generational poverty. The advocacy space has become crowded with environmental champions including opportunistic and blinded local people seeking some limelight.


Regard  
Max Muyemburuko  
Chairperson  
Kavango East and West Regional Conservancy and Community Forestry Association

--  
Regard

M. Muyemburuko K.  
Chairperson  
Muduva Nyangana Conservancy & Community Forest  
Cell: 081 3539 749  
P.O Box 344  
Rundu/ Namibia

This is EXHIBIT "C" referred to in the Affidavit of MUYEMBURUKO MAX KANGWAKA

Sworn before me on this 10<sup>th</sup> day of November 2023

A handwritten signature in cursive script, appearing to read 'Ken', is written above a horizontal line.

*A Commissioner for Taking Affidavits, etc.*



Reconnaissance Energy Namibia (PTY) LTD

**Mr Max Muyemburuko**

**Chairperson**

**Kavango East and West Regional Conservancy and Community Forestry Association**

**P.O Box 344**

**Rundu**

21<sup>st</sup> December 2021

Dear Sir

Your request for a meeting with ReconAfrica is noted. We hereby wish to inform you that the company has concluded all formal stakeholder engagements for the year. As such, we will engage your organization for a meeting in the foreseeable future.

Wishing you a merry Christmas and a prosperous New Year.

Kind regards

A handwritten signature in black ink, appearing to read 'Mwanachilenga', with a stylized flourish at the end.

**Robert Mwanachilenga**

**General Manager : Reconnaissance Energy Namibia**

Cc : Marvin Sanzila

# APPENDIX F

**RECONAFRICA STRATIGRAPHIC DRILLING - PEL 93  
STAKEHOLDER REGISTER - 2019**

	<b>NAME</b>	<b>ORGANISATION</b>	<b>CONTACT</b>	<b>COMMENTS</b>
<b>1</b>	Dr. Roy McG. Miller	Consulting Geologist		
<b>2</b>	Hon. Sirka Hausiku	The Hon. Governor Nkurenkuru Kavango West Region		
<b>3</b>	Hon. Esra Kakukuru	Mpungu and Nkurenkueru Constituency Kavango West Region		
<b>4</b>	Hon. Joseph Sikongo Sivako	Musese, Tondoro and Mankumpi Constituency, Kavango West Region		
<b>5</b>	Hon. Frieda Siwombe	Kapako and Ncamagoro Constituency , Kavango West Region		
<b>6</b>	Hon. Rosa Kayanda Kavara	Ncuncuni Constituency		
<b>7</b>	Mr Sindemba Petrus	Chief Executive Officer (CEO) Municipality of Nkurenkuru, Kavango West Region		
<b>8</b>	Ukwangali Traditional Authority	Nurenkuru and Mpungu, Kavango West Region		
<b>9</b>	Queen Angeline Ribebe	Sambyu Tribe, Ncuncuni, Kavango West Region		
<b>10</b>	Chief Alfons Kaundu	Mbunza Tribe Ncuncuni, Kavango West Region		
<b>11</b>	Sikongo S	KWRC		
<b>12</b>	Shandjimi ES	NK.TC		
<b>13</b>	T.K Shiudifonya	KWRC		
<b>14</b>	L.S Muha	KWRC		
<b>15</b>	Mrasi Hangura	KWRC		
<b>16</b>	A.P Shikongo	Nampol		
<b>17</b>	EM Nambara	KWRC		









18	RI Haruwodi	NTC		
19	Matheus K. Singambure	KWRC		
20	Nghilukilua R	R		
21	J.K Sikondo	KWRC		
22	T.N Hamutumua	KWRE: DEAC		
23	H.H Ausiku	Office of the Govenor		
24	Sindimba PS	NKU TK		
25	Ndadi Reino	MOHSS NK. NKHC		
26	Stefanus KNI	Driver		
27		National Youth Council		
28	Ritha Sindjenga	KWRC		
29	Kudumo Sakeus	KWRC		
30	Zoka Andreas	Swapo Party		
31		LC		
32	N.M Nulemi	Farmer		
33	Mpani Katewa	KWRC		
34	Kudumo J.	Nampol		
35	Fransiska Hamutenya	KWRC		
36	Andreas S. Ngahanzi	Governor's Office		
37	Isak Veijo	Farmer		
38	Karapo HZ	MOEAC		
39	Isak Kandingu	R.T.C		
40	Ikevali F.M	Divundu CF		
41	Mushambe Sebastian Divundu CF			
42	Timea Ngwiri	MOHSS		
43	Likuwa Eugen	KERC		
44	Dinyando Josef	DYC		
45	Gilbert Likando	UNAM		
46	Thihuru J.H	KERC		
47	Mr F. Kapapero	MOEAC		
48	Ms C. Kafuro	COSDEC		

49	Mr S. K Rengura	MOEAC		
50	Mr G.G Thikusho	AMTA		
51	Mr MH. Wakuomo	RTC		
52	R.S Mayumbelo	261 BN		
53	Capt. VR Hangula	261 BN		
54	Ludwig Thikusho	HENC		
55	HON. Mavara Nkore	KERC		
56	MR. AN Mashimbo	DVC		
57	Hon. Victoria Kauma	KERC		
58	Shikongo M.	KERC		

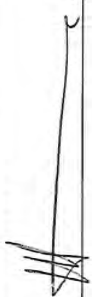




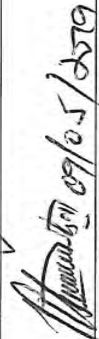


# APPENDIX G



Location Map Oil Exploration Updates by Reconnaissance  
 Energy PEL 73 Meeting 9th May 2019- Pahukeni Pension  
 Hotel -Nkurenkuru


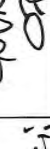
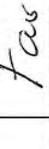

Name	Organization	Contacts	Signature
Inkonggo JS	KWRC	0812202560	
Shandjimi ES	NK. TC	0811479731	
T.K Shudifonyo	KWRC	0811534888	
L.S. Muya	KWRC	0812269717	
MIRASI HANGURA	"	0817800635	
A.P. SIKUSURU	Nampal	0817153241	
EM Nambara	KWRC	0811701231	
RI HARUWODI	NTC	0812845564	

Location Map Oil Exploration Updates by Reconnaissance  
 Energy PEL 73 Meeting 9th May 2019- Pahukeni Pension  
 Hotel -Nkurenkuru


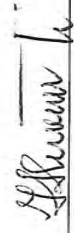
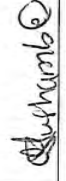





Name	Organization	Contacts	Signature
Mathew K. SINGAMBINGI	KWRC	0815759773	
Nghilukilua R	R	08163355801	
JIK SIKONISO	KWRC	08115243417	
TN Hamutunua	KWRE : DEAC	0811485200	
H.H. Anukha	Office of the Governor	0812924111	
SINSIMBA PS	NKUTIC	0812183607	
Ndadi Reimo	MCHSS NK.NK.HC	0812115517	
Stefanus KM	Driver	0812589986	



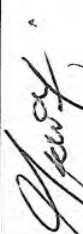







Location Map Oil Exploration Updates by Reconnaissance  
 Energy PEL 73 Meeting 9th May 2019- Pahukeni Pension  
 Hotel -Nkurenkuru

Name	Organization	Contacts	Signature
Franciska Hemudeng	KURC <del>MOEA</del>	0811533370	
ANDRAS S. NGAKANZI	GOVERNOR -> OFFICE	0811671276	
Isak Vejo	Farmer	0814230797	
Karapo H.P.	MOEA	0811544750	





Location Map Oil Exploration Updates by Reconnaissance  
 Energy PEL 73 Meeting 10th May 2019 - Rundu - Maria  
 Mweringere Road Government Office Park

Name	Organization	Contacts	Signature
Mr Isaac Kandingu	R. T. C	0811487990	
Mr Ikevati F.M	Dvundu C.F.	0818712775	
Mr MASHIMBE SESANSIANG M	DVUNDU C.F	0812139141	
Ms. Timen Ngwiri	MDITSS	0811270249	
Mr Likwya Eugen	KERC	0814866247	
Mr DINYANOO JOSEF	DVC	0818165971	
Prof. Gilbert Likando	UNAM.	0811499801	
Hon THAKHURU J.H.	KERC	0811502951	

Location Map Oil Exploration Updates by Reconnaissance  
 Energy PEL 73 Meeting 10th May 2019- Rundu- Maria  
 Mweringere Road Government Office Park

Name	Organization	Contacts	Signature
Mr. F. KAPAPERO	MOEAC	081500522	
Ms C. Kaburo	COSDEC	0811472456	
Mr S. K. Rengwa	MOEAC	0811497146	
Mr. G. G. THILUSHO	AMPA	0811251486	
Mr M.H. WAKUUNU	ATC	0813125862	
R.S. MUYIMBELO	261 BN	08159674	
Capt VIK HAN GULA	261 BN	08/2231331	
Mr LUDWIG THILUSHO	ICENC	0811780561	

Location Map Oil Exploration Updates by Reconnaissance  
 Energy PEL 73 Meeting 10th May 2019- Rundu- Maria  
 Mweringere Road Government Office Park

Name	Organization	Contacts	Signature
HON. MAVACA NKOLE	KERC	0811572280	
Ms. AN Mupfema	DVC	081281268	
Hon. Victoria Kwana	KERC	081563979	
* Mwikongo, M.	KERC	0212392701	

# APPENDIX H



## WITNESS 2

### AFFIDAVIT OF

I, [REDACTED], of the Village of Ncaute, in the Region of Okavango-East, Namibia, make oath and say:

1. I am a farmer and belong to the Shambyu community in Ncaute, and as such have knowledge of the matters contained in this affidavit except where stated to be based on information and belief, in which case I believe them to be true.
2. My native language is Shambyu. I can also speak, understand, read and write some English, but I am not fluent.
3. I currently live in a house with my children, grandmother, siblings, and aunts on a plot of land approximately 100 square meters in size in Ncaute. This land has been passed down by customary tradition from my grandfather to my parents to me.
4. My family and I use this land to grow crops and raise animals. We grow mahango, maize, ground nuts, fruit and pumpkin and we raise cows, goats, chicken and donkeys on this land. These crops and animals are the main source of food for me and my family.
5. I first learned about the operations of Reconnaissance Energy Africa Ltd ("ReconAfrica"), in or around early 2021 when I witnessed them driving around my village. I was told this was ReconAfrica by other community members. I also learned from community members that ReconAfrica had begun drilling in Kawe.
6. In or around summer 2021, I was advised by my church leaders that ReconAfrica will be holding a meeting with the community (the "Meeting"). I attended this Meeting, during which ReconAfrica:
  - Stated that they were in Namibia to find oil and gas.
  - Stated that they will be in Namibia for 5-6 years.
  - Told us that they will not damage our village or harm our community.
  - Did not state that they will access or use our land.
  - Told us that they would provide job opportunities to our community members.
7. I was not given an opportunity to ask questions during the Meeting. When community members tried to ask questions during the Meeting, ReconAfrica ended the Meeting.

8. In or around summer 2022, ReconAfrica drove onto my land and performed seismic testing. I told the individual on my land to leave and fix any damages. This individual told me that he worked for ReconAfrica, but he did not leave.

9. ReconAfrica did not notify me that they will be using my land nor did I see any advertisements for consultations in newspapers or otherwise posted in my community. ReconAfrica did not ask for my permission to use my land. I was not consulted about ReconAfrica's use of my land at any time prior to ReconAfrica performing seismic testing on my land.

10. ReconAfrica continued to use my land for seismic testing 3-4 more times in 2022. I did not provide permission for ReconAfrica to use my land at any time and I did not sign any document to that effect.

11. While performing seismic testing on and/or near my land, ReconAfrica caused the following damages:

- ReconAfrica destroyed my field, such that I did not have adequate grass for my animals to graze or for my family to use for our grass roof.
- ReconAfrica destroyed our fruit plants.
- ReconAfrica cut down trees on my land.
- ReconAfrica caused the walls of my home to crack.

12. I was not provided any compensation from ReconAfrica for these harms. My house is still damaged to this day and my family and I do not have enough food.

13. Given that my family and I rely on our crops and animals for food, we have not had enough food to feed my family. We have tried to buy food from shops but we do not have enough money to buy enough food for the family. Since ReconAfrica damaged our lands, my family and I have gone hungry.

14. I am worried that ReconAfrica's operations will continue to damage my land and cut down trees. I fear that ReconAfrica could cause problems with our water and soil.

15. ReconAfrica came into our community and acted like they own our homes. I want ReconAfrica to stop operating in Namibia.

16. In swearing this affidavit, I understand and agree to members of the International Human Rights Program at the University of Toronto Faculty of Law in Canada, Saving Okavango's Unique Life, and Economic & Social Justice Trust filing a complaint with the Canadian Ombudsperson for Responsible Enterprise ("CORE") with respect to the harms I have suffered ("CORE Complaint"). I make this affidavit in support of the CORE Complaint.

17. I do not consent to my name being shared in the CORE Complaint and wish to remain anonymous because I fear retaliation from ReconAfrica.

18. This affidavit has been interpreted to me in Rukwangali by Bonifatitius Hausiku Haingura.

19. I acknowledge that I have received a copy of this affidavit.

SWORN before me at the City of Rundu, in the Region of Okavango-East, Namibia, this 8th day of November, 2023.

  
\_\_\_\_\_



*A Commissioner for Taking Affidavits, etc.*



# APPENDIX I

AFFIDAVIT OF [REDACTED]

I, [REDACTED] of the Village of Ncaute, in the Region of Kavango-East, Namibia, make oath and say:

1. I am a farmer in Ncaute and I belong to the San community, and as such have knowledge of the matters contained in this affidavit, except where stated to be based on information and belief, in which case I believe them to be true.
2. I speak the following languages: Rukwangali, Rumanyo, Afrikans, and Thimbukushu.
3. I currently live with my family consisting of my wife and seven children in a house on a plot of land approximately three to four square kilometers in the Ncaute village (my "Land"). This Land has been passed down by customary tradition from my grandparents to my parents to me. I have had customary usage of the Land for the past 26 years.
4. My family and I use this Land to grow crops and raise animals. We grow sogum, ground nuts, and maize and raise cattle, goats, horses and chickens. These crops and animals are the main source of food for my family and me. We also sell some cattle and harvest for income.
5. I first learned about the borehole drilling operations of Reconnaissance Energy Africa Ltd ("ReconAfrica") in 2021 from someone who had attended a ReconAfrica meeting. I personally attended four meetings held by ReconAfrica in the village Foreman's house on or around 2021 and 2022. I was informed of these meetings by the Foreman, which is customary practice.
6. During these meetings, ReconAfrica told us that their oil exploration in the region would benefit the community, including the creation of job opportunities. However, no employment opportunity from ReconAfrica ever materialized for me.
7. On or around April 2023, ReconAfrica built a crossroad through my land consisting of three roads that are approximately six to eight kilometers long leading in various directions. I understand that these roads were built to provide access to the Kawe and Mbambi drill sites and Ncaute. The roads built by ReconAfrica on my Land are now used by the public as well as ReconAfrica.
8. Prior to building these roads, ReconAfrica visited me on or around February 2023 and asked me to sign a document written in English, which I could not read (the "Document"). A member of my village who worked for ReconAfrica explained the contents of the Document to me. The representative said that if I signed the Document, I would receive compensation in exchange for permitting ReconAfrica to build roads on my Land. The representative did not tell me that this would become a public road or that the road would be used for seismic testing. ReconAfrica did not provide me with a copy of the Document.
9. ReconAfrica then built the road and began using my Land for seismic testing but did not provide me with any compensation. As of the date of this affidavit, I still have not received any compensation.
10. ReconAfrica did not have my permission to use my Land because any consent I provided to them was based on the understanding that I would receive sufficient payment. Had I known that ReconAfrica would not pay me, I would not have signed the Documents.
11. Additionally, I did not know ReconAfrica's use of my Land would cause damage because ReconAfrica did not tell me this at the time they provided the Documents. As a result of ReconAfrica performing seismic testing and building roads on my Land, I lost a portion of my crops and there has

been theft of my cattle. Building the roads and the seismic testing also caused damage to the cattle kraal on my Land.

12. Given that our crops and animals are our only source of food, my family and I may have less food to consume following this year's harvest.

13. I have also recently been hospitalized for three months and my health is poor. I need the money for my treatments and to pay for my children's education. I am worried about my future and the future of my children.

14. I want ReconAfrica to compensate me.

15. In swearing this affidavit, I understand and agree to members of the International Human Rights Program at the University of Toronto Faculty of Law in Canada, Saving Okavango's Unique Life, and Economic & Social Justice Trust filing a complaint with the Canadian Ombudsperson for Responsible Enterprise ("CORE") with respect to the harms I have suffered ("CORE Complaint"). I make this affidavit in support of the CORE Complaint.

16. I do not consent to my name being shared in the CORE Complaint and wish to remain anonymous because I fear retaliation from ReconAfrica.

17. This affidavit has been interpreted to me in Rukwangali by Bonifatius Hausiku Haingura.

18. I acknowledge that I have received a copy of this affidavit.

SWORN before me at the City of Rundu, in the Region of Kavango-East, Namibia, this 9th day of November, 2023.

  
\_\_\_\_\_  
A Commissioner for Taking Affidavits, etc.



# APPENDIX J

## WITNESS 4

### AFFIDAVIT OF

I, [REDACTED], of the Village of Ncaute, in the Region of Okavango-East, Namibia, make oath and say:

1. I am a farmer and belong to the Nyemba community in Ncaute, and as such have knowledge of the matters contained in this except where stated to be based on information and belief, in which case I believe them to be true.
2. I speak the following languages: Rukwangali, Rumanyo, and English.
3. I currently live in a house with my son, mother, father, siblings, nephews, and grandmother on a plot of land in Ncaute. This land has been passed down by customary tradition from my grandmother to my father to me and I am the third generation.
4. My family and I use this land to grow crops and raise animals. We grow mahango, maize, ground nuts, sugar cane, and beans and we raise cows, goats, sheep and donkeys on this land. These crops and animals are the main source of food for me and my family. We also sell our cattle for income.
5. I first learned about ReconAfrica's operations in or around early 2021 when I witnessed them driving over our field and clearing land around us. At that time, I told the individual on our land that he did not have permission to be there. He claimed that he works for ReconAfrica and that ReconAfrica sent people to our home to discuss their use of our land, but I can confirm that no one from ReconAfrica contacted me or my family prior to this incident in 2021.
6. After the above incident, I was advised by my church leader that ReconAfrica will be holding a meeting with the community (the "**First Meeting**"). I have never been contacted by ReconAfrica or otherwise invited to a consultation meeting hosted by ReconAfrica to learn about their project prior to the First Meeting. I did not see any advertisements for consultations in newspapers or otherwise posted in my community.
7. I attended the First Meeting, during which ReconAfrica representatives:
  - o Stated that they will be using part of the land in Ncaute to perform soil and seismic testing.
  - o Stated that they would perform their testing by driving on small roads. They did not tell us that they will be entering or using our land.
  - o Told us there would be no damage to our land.
  - o Told us that they would create jobs and raise the standard of living in our community.
8. After the First Meeting, ReconAfrica visited my family and asked us to sign a document (the "**Document**"). ReconAfrica explained that by signing the Document we would be providing permission to ReconAfrica to temporarily use our land for seismic testing. They stated that any testing will not damage our land. They also stated that we will receive compensation as a result of ReconAfrica using our land but the Document did not state the amount of compensation. I signed the Document based on the



understanding that ReconAfrica would use my land temporarily, that ReconAfrica will not damage my land, and that ReconAfrica will provide sufficient payment for the use of our land. I did not receive a copy of the Document I signed.

9. After I signed the Document, ReconAfrica offered me and my family N\$ 1,116. My family and I protested the insufficient amount and told ReconAfrica that they do not have permission to use our land. ReconAfrica stated that they will use our land anyway and that we could not do anything about it because we already signed the Document.

10. Thereafter, ReconAfrica began seismic testing on our land. Contrary to their statements at the First Meeting and at the time that I signed the Document, ReconAfrica damaged 16 hectares of our land between 2021 and 2022. The machines they used created a road through our land that is used by the public up to now to cross our land without our permission.

11. Our harvest has drastically decreased since ReconAfrica performed seismic testing on our land. We can no longer harvest ground nuts and our mahango yield is very low. Given that our crops and animals are our only source of food, my family and I have had less food to consume. We do not have sufficient income to buy food from shops. In fact, the amount of N\$ 1,116 provided by ReconAfrica was used to buy food and feed our family for only one month.

12. Additionally, ReconAfrica has not kept its promises regarding creating job opportunities and raising the standard of living in our community.

13. I believe that ReconAfrica did not provide me with the information I needed to decide whether to sign the Document. If I had known that ReconAfrica would damage our land and fail to adequately pay us for use of our land, I would not have signed the Document.


14. I am worried that ReconAfrica's operations will continue to damage my land and impact my ability to grow crops, raise animals, and access food. I want ReconAfrica to stop operating in Namibia.

15. In swearing this affidavit, I understand and agree to members of the International Human Rights Program at the University of Toronto Faculty of Law in Canada, Saving Okavango's Unique Life , and Economic & Social Justice Trust filing a complaint with the Canadian Ombudsperson for Responsible Enterprise ("CORE") with respect to the harms I have suffered ("CORE Complaint"). I make this affidavit in support of the CORE Complaint.

16. I do not consent to my name being shared in the CORE Complaint and wish to remain anonymous because I fear retaliation from ReconAfrica.

17. I acknowledge that I have received a copy of this affidavit.

SWORN before me at the City of Rundu, in the Region of Okavango-East, Namibia, this 8th day of November, 2023.

  
\_\_\_\_\_

A Commissioner for Taking Affidavits, etc.

  
\_\_\_\_\_



# APPENDIX K

## AFFIDAVIT OF PAULUS SIWEGEDI KAMPANZA

I, Paulus Siwegedi Kampanza (Government ID: 77122010155) of Twenty Mile (Ncumcara) Village, in the Region of Kavango-West, make oath and say:

1. I am the Vice Chairperson of the Forestry Management Committee, and as such have knowledge of the matters contained in this affidavit, except where stated to be based on information and belief, in which case I believe them to be true.
2. The Forestry Management Committee (“FMC”) is an elected ten-person board governed by the Ministry of Environment, Forestry and Tourism (the “**Ministry**”), and empowered by the Forest Management Act of 2001. The FMC represents stakeholder interests in the daily management and long-term planning of the Ncumcara Community Forest (the “**Community Forest**”).
3. The aim of the community forest framework is to preserve the forest for present and future generations of registered community members (“**Members**”). Members are considered beneficiaries of the forest and the resources held within its boundaries.
4. Only individuals who reside in the villages that are within and surrounding the Community Forest can become Members. These Indigenous San and Bantu people have lived in their communities for several generations; migration into these communities is not permitted.
5. The Community Forest is divided into two zones – settlement zone and protected area. The boundaries of the Community Forest are identified by cutlines, which are thirty-meter-wide strips of forest cleared of all vegetation in order to manage and inhibit fires.
6. Members of the Community Forest can request permission from the Headman of each village to reside within the settlement zone, who then submits that request to FMC. Once approved, Members typically build homes, cultivate crops, practice traditional rituals, and maintain a cemetery where their forefathers and recently deceased Members are buried.
7. Traditional healers also practice in the Community Forest, using leaves and roots from plant life found in the settlement zone and protected area to prepare medicines.
8. Village Development Committees (“VDCs”) manage the day-to-day activities of villages within the Community Forest. VDCs also assist Members with determining the development needs of each community and act as a liaison between the Members and the FMC or other third parties who aim to support village development.
9. The FMC grants permits to companies to work in the settlement area. Company approval is dependent on whether their proposed activities contravene the purpose of the Community Forest and the goals of the Forest Management Plan. Companies in the oil and gas sector have not been permitted to work in the Community Forest as per section 24(1) and (2) of the Forestry Management Act of 2001.

10. Reconnaissance Energy Africa Ltd. (“**Recon**”) has conducted three 2D seismic surveys (“**Surveys**”) in the Community Forest.

11. In November 2021, Recon conducted its first Survey along the cutlines of the forest. It is my understanding that Recon brought the Survey machines to the cutline sites and informed the VDCs that they required casual labour to assist them. In an effort to monitor Recon and to provide some benefit to their own villages, the VDCs agreed to source labour from their communities.

12. Recon did not contact the Ministry or the FMC prior to beginning the 2021 Survey. They did not apply for or receive a harvest permit, which would be required for any activities that uproot plant life.

13. Recon did not consult with or receive consent from Members or the FMC prior to the 2021 Survey.

14. In April 2022, Recon contacted the Ministry before conducting Surveys under the pretence that Recon would perform maintenance activities on the firebreaks and cutlines, and employ Namibians as casual labourers. The Ministry assisted Recon with engaging the VDCs to solicit employees, presenting their role as forest guides.

15. Recon exceeded the parameters of the stated project by cutting down forests outside of existing cutlines and carving a three-meter-wide path from Ncamagoro Community Forest, through the protected area of the Community Forest, and into the state forest.

16. The FMC was not consulted and did not provide consent to the 2022 Surveys. After Recon cut through the Community Forest, the VDCs reported Recon’s activities to the FMC. The FMC reached out to the Legal Assistance Centre (“**LAC**”) to assist us in stopping Recon’s Surveys.

17. In October 2022, four members of the FMC and I attended a meeting with M.K. Shitunda, a representative of Recon. Shitunda requested the FMC’s consent for the 2022 Surveys that had already occurred. Shitunda described the benefits that would accrue to the Members and VDCs, and insisted that Recon obtained permission from the Traditional Authority and Regional Counsels. Shitunda presented a consent form for our approval that was backdated to October 18, 2020. Attached as Exhibit “A” is a true copy of the consent form provided by Shitunda to the FMC. Attached as Exhibit “B” is a true copy of the attendance list for the October 2022 meeting signed by each attendee.

18. The FMC explained that the Traditional Authority does not oversee the Community Forests and their alleged consent has no bearing on whether Recon is permitted to work inside the area.

19. The FMC questioned Shitunda about Recon’s past, current and future activities, the expected results of the Surveys, their method of execution, the short and long-term impact of Surveys on the forest, and the approximate amount of oil and gas Recon anticipated extracting

based on their preliminary research of the area. Shitunda was unable to answer any of the questions asked.

20. The FMC also explained our process to Shitunda, noting that our trustee-like position requires the FMC to maintain the forest for present and future beneficiaries. We empower the VDCs and Members to determine their development needs and assist them in reaching their objectives by providing funding and building relationships with stakeholders and third parties. We explained that if Recon wished to provide a benefit to the villages within the Community Forests, the FMC would facilitate consultations with all Members and VDCs to identify their development goals and support Recon in working with the VDCs to develop and execute a plan.

21. The FMC refused to sign the consent form because Recon already conducted the Surveys. Further, we would not give consent to any Surveys because these activities conflict with the goals of the Forestry Management Plan and the purpose of the community forest scheme.

22. I visited the Community Forest on February 11, 2022 to view the harm to the Community Forest caused by Recon. I saw that plants and trees were cut down along a wide path lined with beacons for seismic testing (“**Seismic Lines**”). These Seismic Lines cut across Members’ crop fields, harming young crops that farmers use for food. Attached as Exhibit “C” is a true copy of a map depicting the Seismic Lines in Namibia, including the Seismic Lines that cut across the Community Forest. Attached as Exhibit “D” are true photos of the Seismic Lines cut into the forest, including two crop fields, and the beacons that were laid across the path.

23. Recon has also cut into the protected area of the Community Forest to create a gravel road to access the beacons laid along the Seismic Lines. Attached as Exhibit “E” is a true copy of a map of Namibia where I have drawn a line to indicate the placement of the gravel roads that cut into the Community Forest.

24. I understand that the Counsellor for the Constituency in which the Community Forest is located has denied that Recon created these Seismic Lines in the Community Forest. However, I do not believe this is a true statement because the Counsellor acted as a spokesperson for Recon at that time and received beneficial treatment from Recon in the form of boreholes that were drilled near his home that provide easy access to water.

25. I also understand that after the meeting between Shitunda and the FMC, representatives from Recon met with Members of one village. This was not a meeting to consult with Members about seismic testing but rather to discuss shelter for casual labourers.

26. Recon conducted a third Survey in 2023, which the Members learned about when they heard the Survey machines in the Community Forest. Again, the FMC, VDCs and Members were not consulted and did not give their consent to Recon. The Ministry was also not consulted and did not approve of Recon’s 2023 Surveys.

27. During this Survey, Recon contacted the Headman of one village to request casual labourers. I understand from the Headman and some Members that these labourers were

instructed not to discuss their roles as Recon employees with anyone who enquired about their activities.

28. In each instance where Recon has hired Members for casual labour, the company has held out to Members that employment would result in a succession of short-term, lucrative opportunities that would economically benefit their communities. However, the promised future employment positions never materialized, and Members were employed in one-time positions for three-to-five day terms that did not provide sustainable employment for Members.

29. On June 22, 2022, the LAC helped the FMC, Muduva Nyangana Communal Conservancy, Kavango East and West Regional Conservancy and Community Forest Association, and Katope Community Forest (the “**Coalition**”) file an appeal of the Environmental Commissioner’s decision to amend Recon’s Environmental Clearance Certificate, which extended Recon’s drilling rights to new areas (the “**Appeal**”).

30. A month later, the LAC assisted the Coalition with filing an urgent stay of the Environmental Commissioner’s decision. On July 29, 2022, the High Court of Namibia dismissed our application finding that the Coalition is required to wait for the Minister’s response to the Appeal.

31. A hearing to discuss the Appeal occurred on April 24, 2023, at which time the Ministry pledged to respond to the Appeal by May 2023. The Coalition has not received a response to our Appeal as of the date of this affidavit. The Appeal does not concern remedy for past harms caused by Recon.

32. Recon is continuing to act by force, without regard to the wishes and consent of Indigenous Members, VDCs, the FMC and all affected stakeholders. The company must be stopped so we can restore and preserve the land and natural resources for present and future generations.

33. One of the remedies that the FMC and I seek from Recon is compensation for the damage that Recon has caused, which we will use to the benefit of the Community Forest beneficiaries.

34. In swearing this affidavit, I understand that and agree to members of the International Human Rights Program at the University of Toronto Faculty of Law in Canada, Saving Okavango’s Unique Life, and/or Economic & Social Justice Trust filing a complaint with the Canadian Ombudsperson for Responsible Enterprise (“**CORE**”) with respect to the harms I have suffered (“**CORE Complaint**”). I make this affidavit in support of the CORE Complaint and any other advocacy pursuits these groups may pursue.

35. I consent to my name and location being shared in the CORE Complaint. I understand that by sharing my name and location in the CORE Complaint, the fact of my participation in the CORE complaint, along with the contents of this affidavit, may become public.

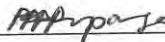
36. This affidavit has been interpreted to me in Rukwangali by Bonifatius Hausiku Haingura.

37. I acknowledge that I have received a copy of this affidavit.

SWORN before me in person at the City of Rundu, in the Kavango-East Region of Namibia, this 9th day of November 2023.

  
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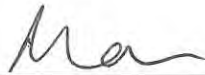
*A Commissioner for Taking Affidavits, etc.*

  
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PAULUS SIWEGEDI KAMPANZA

This is EXHIBIT "A" referred to in the Affidavit of PAULUS SIGWEGEDI KAMPANZA

Sworn before me on this 9<sup>th</sup> day of November 2023

A handwritten signature in cursive script, appearing to read 'Ma', written above a horizontal line.

*A Commissioner for Taking Affidavits, etc.*



PHASE II: STRATIGRAPHIC WELL DRILLING AND 2D SEISMIC SURVEY ACTIVITIES



FIELD MEETING TRACKER

WAS THE TRADITIONAL AUTHORITY (TA) INFORMED ABOUT THIS MEETING? Detail Name NAME & CONTACT HEADMAN/WOMAN:	NAME & CONTACT: TRANSLATOR NAME & CONTACT: PERSON THAT PREPARED THESE MINUTES	GPS Coordinates: 218.1190° E 019.55076° Line: KUNNUGARO FORESTRY OFFICE
	2780523 SHITANDA NIK	

Ref	Questions / Comments/ Issue raised	Type of Meeting, Venue, Date and Time	Response Given in Meeting where relevant	Action item
		Type of meeting: Seismic Activity Venue: KUNNUGARO Date: 10/6/2020 Time: 13:35 hrs	request to forestry office to work on signage for forestry to do pruning and drive the Explorer 868. Maybe can appoint the members of forestry to pruning.	
		Type of meeting: Venue: Date: Time:		

This is EXHIBIT "B" referred to in the Affidavit of PAULUS SIGWEGEDI KAMPANZA

Sworn before me on this 9<sup>th</sup> day of November 2023

A handwritten signature in cursive script, appearing to read "Man", written above a horizontal line.

*A Commissioner for Taking Affidavits, etc.*

PHASE II: STRATIGRAPHIC WELL DRILLING AND 2D SEISMIC SURVEY ACTIVITIES



Engagement Tracking Register

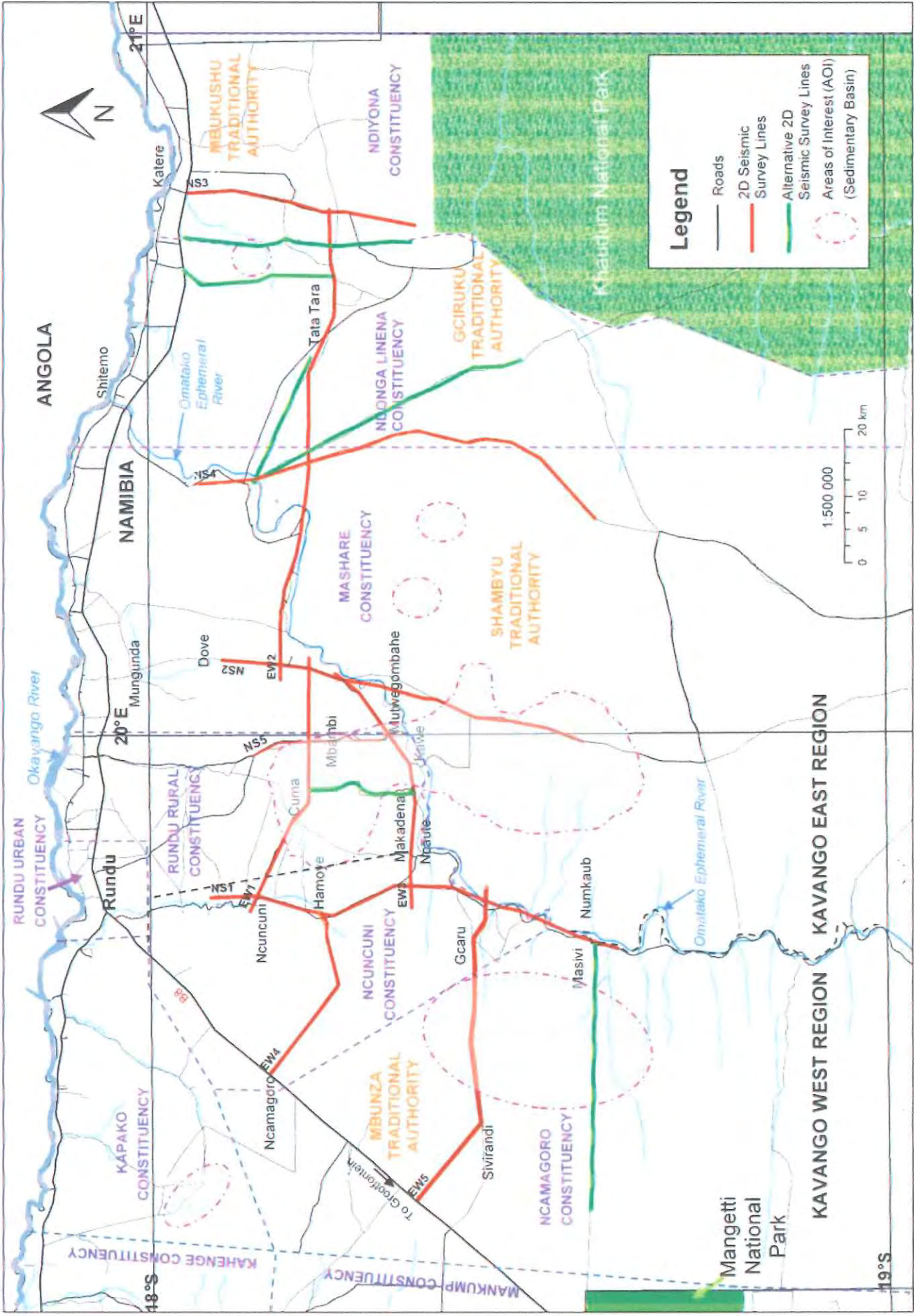
Name and Surname	Village	Contact Number	Signature
Stutunda NTK	Ncumu Cora CF	0812780523	
Kuwaja Laurentia	Ncumu Cora CF / Vice Chairperson	0813427143	Kuwaja
Musonga Elizabeth	Ncumu Cora CF	0715703581 Secretary	Musonga
Kampanza Paulus	Ncumu Cora CF	Additional member 0817351783	
Ndjamla Joseph	Ncumu Cora CF	Chairperson 0816270052	

This is EXHIBIT "C" referred to in the Affidavit of PAULUS SIGWEGEDI KAMPANZA

Sworn before me on this 9<sup>th</sup> day of November 2023

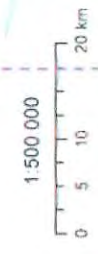
A handwritten signature in cursive script, appearing to read "M. M.", is written above a horizontal line.

*A Commissioner for Taking Affidavits, etc.*



**Legend**

- Roads
- 2D Seismic Survey Lines
- Alternative 2D Seismic Survey Lines
- Areas of Interest (AOI) (Sedimentary Basin)



ANGOLA

NAMIBIA

KAVANGO EAST REGION

KAVANGO WEST REGION

Mangetti National Park

Khaidum National Park

Shitemo

Katere

Dove

Mungunda

Rundu

Ncuncuni

Ncamagoro

Kahenge

Tata Tara

Mbambbi

Cuma

Hamofe

Ncuncuni

NCUNCUNI

MBUNZA

NCAMAGORO

MANKUMP

NGONGA LINENA

MASHARE

Muwegombabe

Makadenal

Ncaute

NCUNCUNI

MBUNZA

NCAMAGORO

NCAMAGORO

NCAMAGORO

NCAMAGORO

GCIRUKU

SHAMBYU

Mbambbi

Cuma

Hamofe

Ncuncuni

NCUNCUNI

MBUNZA

NCAMAGORO

NCAMAGORO

NCAMAGORO

NDYONA

MASHARE

Muwegombabe

Makadenal

Ncaute

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MBUNZA

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NCAMAGORO

NCAMAGORO

GCIRUKU

SHAMBYU

Mbambbi

Cuma

Hamofe

Ncuncuni

NCUNCUNI

MBUNZA

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NDYONA

MASHARE

Muwegombabe

Makadenal

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GCIRUKU

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Mbambbi

Cuma

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MBUNZA

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This is EXHIBIT "D" referred to in the Affidavit of PAULUS SIGWEGEDI KAMPANZA

Sworn before me on this 9<sup>th</sup> day of November 2023

A handwritten signature in cursive script, appearing to read 'M. K.', written above a horizontal line.

*A Commissioner for Taking Affidavits, etc.*

























This is EXHIBIT "E" referred to in the Affidavit of PAULUS SIGWEGEDI KAMPANZA

Sworn before me on this 9<sup>th</sup> day of November 2023

A handwritten signature in cursive script, appearing to read "Maha", written above a horizontal line.

*A Commissioner for Taking Affidavits, etc.*

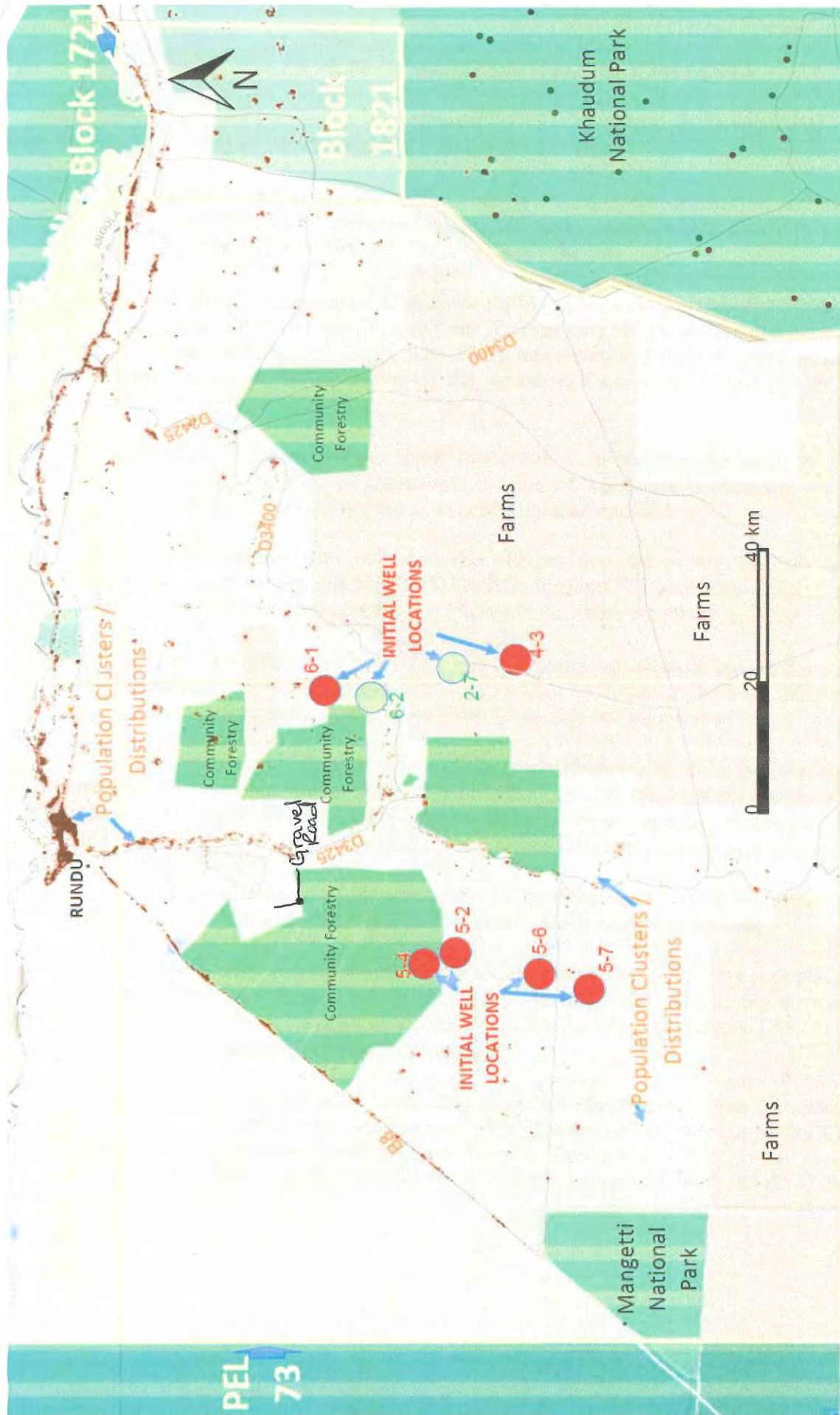




Figure 4.1: Population density, roads and socioeconomic setting around PEL 73 covering Block 1719, 1720, 1721, 1819, 1820 and 1821 and the well locations (Data Sources: [www.kavangozambezi.org/en/](http://www.kavangozambezi.org/en/)- argjis Accessed, March 2019).

# APPENDIX L

AFFIDAVIT OF 

I  of the village of Likwaterera, in the region of the Okavango-East, Namibia,  make oath and say:

1. I am a farmer and a volunteer in the Likwaterera community forest. I belong to both the San and Bantu communities, and as such have knowledge of the matters contained in this affidavit, except where stated to be based on information and belief, in which case I believe them to be true.
2. I am fluent in the following languages: Rumanyo, Ruciriku, Rukwangali and English.
3. I currently live on community land that has been passed down by customary tradition from my grandparents to my parents to me. My ancestors have been occupying 4-5 hectares of community land since 1972. I am the fourth generation.
4. My family and I use this land to grow crops and raise animals. We grow mahango, beans, nuts, maize and raise cattle, goats and pigs. These crops and animals are the main source of food for myself and my family.
5. The Likwaterera community forest lies within the Kavango-Zambezi Transfrontier Conservation Area. I help manage vegetation and bushes. We are concerned with the loss of local trees, such as the Mopane and the Camel thorn. As a forest volunteer, I am in charge of taking care of the forest, trees, species, and control firebreaks to prevent fire.
6. I first learned about the operations of Reconnaissance Energy Africa Ltd (“ReconAfrica”), in early 2022 when ReconAfrica workers entered the community forest and my farming land, without my permission, to remove bushes and cut lines for a road in preparation for seismic testing. ReconAfrica recruited people from my community forest to clear the way for the machines to pass.
7. I had never been contacted by ReconAfrica nor invited to a consultation meeting to learn about the project prior to ReconAfrica commencing seismic testing.
8. ReconAfrica has not offered me any compensation or any other remedy for entering my Land and damaging it by seismic testing.
9. After our patrol guard responsible for the community forest confronted ReconAfrica workers about clearing bushes, a company representing ReconAfrica organized a meeting in April 2022 (“April 2022 Meeting”). I attended the April 2022 Meeting which was held in the community forest office. The goal of the meeting was to tell us about ReconAfrica’s activities on community forest land.

10. During the April 2022 Meeting, I asked ReconAfrica about the impact of their activities on underground water, community trees, and resources. The ReconAfrica representatives responded that their activities do not negatively impact underground water. However, I have been informed by people from the Likwaterera community and the Kavango Association, who witnessed the extensive damage caused to water basins, the death of fish, and the drying up of land in Nigeria due to oil and gas excavation. I am worried that ReconAfrica is not being truthful and transparent about the impact of their operations and I fear that our community will experience negative effects similar to those experienced in Nigeria.

11. In August 2023, ReconAfrica invited the Likwaterera community forest management committee for a public meeting held by ReconAfrica to demonstrate their aerial land survey activities, which were aimed to replace seismic thumping (the "**August 2023 Meeting**"). ReconAfrica stated that they intend to use advanced technologies to prevent potential damage to the land. However, during the August 2023 Meeting, ReconAfrica falsely stated that no harm was caused by previous seismic testing, which made me uncomfortable.

12. I am worried that ReconAfrica may be contaminating my water supply. I use underground water from a local well for drinking, sanitation, food and raising cattle. I have heard from community members in Kaparara and Shiwandamo that their underground water supply tastes saltier since Recon began drilling near the village. I have been informed that water samples have been collected, however no results have been released. My land is situated 10km from the Mbambi drill site and I am worried that our underground water supply is or will also be contaminated.

13. I have seen trucks with tanks carrying waste material from the Mbambi and Kauwe drill sites. I was informed that these trucks have been hired by ReconAfrica. I know that waste water is mixed with toxic chemicals during the drilling process and have reason to believe that these chemicals are polluting my underground water.

14. As of September 2023, there has been a drastic increase of cattle deaths. A family member has had 20-40 cattle die due to unknown reasons after the cattle drank water from a local borehole. I have consumed water from the same borehole and have experienced sickness such as vomiting, pain in the stomach and weakness. I know of other members of my village who have fallen ill after drinking the water from this borehole.

15. I believe a foreign company must improve the livelihood of people and protect local resources. There has been no benefit by ReconAfrica to the community. Instead, ReconAfrica has damaged our lands and is contaminating our underground water supply and the Okavango basin.

16. In swearing this affidavit, I understand and agree to members of the International Human Rights Program at the University of Toronto Faculty of Law in Canada, Saving Okavango's

Unique Life, and Economic & Social Justice Trust filing a complaint with the Canadian Ombudsperson for Responsible Enterprise (“CORE”) with respect to the harms I have suffered (“CORE Complaint”). I make this affidavit in support of the CORE Complaint.



17. I do not consent to my name being shared in the CORE Complaint and wish to remain anonymous because I fear retaliation from ReconAfrica.

18. I acknowledge that I have received a copy of this affidavit.

SWORN before me at the City of Rundu, in the Region of Okavango-East, Namibia, this 9th day of November, 2023.

  
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*A Commissioner for Taking Affidavits, etc.*

  
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## **APPENDIX M**

AFFIDAVIT OF [REDACTED]

I, [REDACTED] of the Village of Shiwandamo, in the Region of Kavango-East, Namibia, make an oath and say:

1. I am a farmer and a member of the Indigenous San community in Shiwandamo, and as such have knowledge of the matters contained in this affidavit, except where stated to be based on information and belief, in which case I believe them to be true.
2. I speak, understand, read and write the following languages: Rumanyo and English.
3. I have lived in a house on a plot of land (my "Land") for 14 years in Shiwandamo with my mother and sisters. This Land has been passed down by customary tradition through my family for many generations, including from my grandfather to my father to me.
4. My family and I use the Land to grow mahangu and maize crops and raise cattle, goats, donkeys, pigeons, and chickens. Our crops and livestock are our main source of food; however, we sometimes sell our crops or livestock if we require money in emergency situations.
5. We use groundwater to drink, cook, bathe, water our crops and hydrate our livestock. We access the groundwater through a tap that is connected to a pump located in the village.
6. I first learned about the drill sites in Kawe and Mbambi owned and operated by Reconnaissance Energy Africa Ltd. ("Recon") when representatives from Recon visited my village to discuss the 2D seismic surveys (the "Surveys").
7. It is my understanding that representatives from Recon requested the Headman in Shiwandamo to gather the community members for a meeting. When the Headman announced the meeting to the Village, he explained that Recon will be conducting Surveys in Shiwandamo because of the drilling that is happening in Mbambi. I attended the meeting, which was held at the Headman's home in February 2022 (the "Meeting").
8. At the Meeting, I met with people who said they were representatives from Recon and wore shirts with Recon's logos printed on them. These representatives told us about three active drilling sites that they owned, including the drilling sites located in Kawe and Mbambi. They also informed us that they will be drilling two more boreholes in the future. They mentioned that the boreholes may be drilled in Ukwangali and Mbunza, however, they did not provide a date when the future boreholes will be drilled or provide any additional details about those activities. They showed us diagrams of the oil and gas extraction process and the bombs that they would use to break the rocks.
9. The Recon representatives explained that they will be conducting Surveys using large machines that will pass by our homes and through our fields. They also gave us pamphlets that contained pictures of the machinery and indicators that will be used to conduct the Surveys.
10. Recon told the attendees that the machines may crack the walls or foundation of our homes and our fields may be flattened. We were told by Recon that if our fields or homes are impacted by the Surveys, we should contact Recon for compensation. To process our complaints, we would be given a number that corresponded with each crop field and contact information so we could submit a complaint. We were also told that Recon would visit our homes with consent forms for us to sign.



11. Following Recon's presentation, community members and I asked questions during the Meeting to clarify the information provided. Recon responded to our questions by stating that if we continue to ask questions and insist on understanding the process, they will sue us through the Namibian court system.

12. The Recon representatives did not tell us the value of the compensation that they would give us if our homes or fields were impacted. Recon did not provide contact information or crop field identification numbers at the meeting or at any time thereafter. Recon also did not invite me to share my concerns at or since the meeting. I have not given my consent and would not give my consent for Survey machines to pass through my family's ancestral land.

13. Since March 2022, after the Surveys occurred, the groundwater that my village and I use for drinking, cooking, bathing, watering our crops, and feeding our animals appears contaminated. The water tastes extremely salty and has a cloudy colour. When I place bottles filled with water in the fridge, they remain warm or hot, even when cooled for an extended period of time.

14. Our village also has three dams that hold water from the pumps for storage and use. Prior to the Surveys, it took five hours to fill these dams. Since the Surveys, the dams now take up to three days to fill. I believe the element that carries the water from the pump to the dam may have been damaged by the impact of the Surveys.

15. Since March 2022, my mom, sisters, community members and I have experienced stomach-borne illnesses such as diarrhea and cramps.

16. My family and I are worried that our illness will become worse if we keep using this water for drinking, cooking, and bathing. However, we have no other source of water.

17. In addition to other remedies, I want compensation to allow my family and I to visit a doctor to get medical attention for our stomach problems and any other issues we may have as a result of drinking this water.

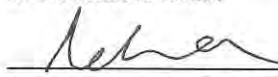
18. In swearing this affidavit, I understand that and agree to members of the International Human Rights Program at the University of Toronto Faculty of Law in Canada, Saving Okavango's Unique Life, and/or Economic & Social Justice Trust filing a complaint with the Canadian Ombudsperson for Responsible Enterprise ("CORE") with respect to the harms I have suffered ("CORE Complaint"). I make this affidavit in support of the CORE Complaint.

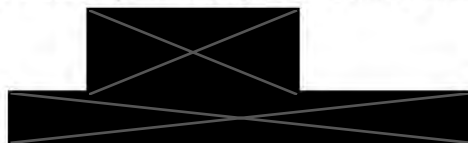
19. I do not consent to my name being shared in the CORE Complaint and wish to remain anonymous.

20. This affidavit has been interpreted to me in Rumanyo by Bonifatitius Hausiku Haingura.

21. I acknowledge that I have received a copy of this affidavit.

SWORN before me in person at the City of Rundu, in the Kavango-East Region of Namibia, this 9th day of November 2023.

  
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A Commissioner for Taking Affidavits, etc.



# APPENDIX N

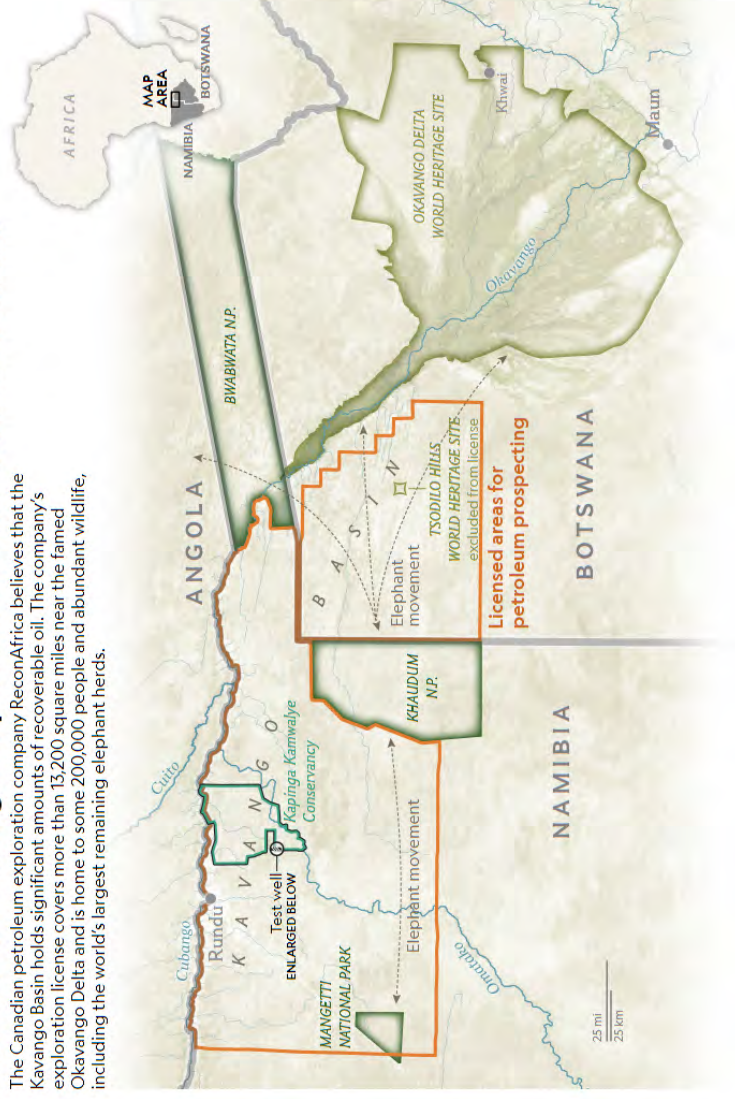


These are just the latest in a string of violations by ReconAfrica in the company's controversial 10-year, \$1-billion search for oil and gas in Namibia. On January 26, the Legal Assistance Centre, a Namibian human rights organization, filed a complaint with the country's environment ministry on behalf of community members, demanding an investigation.

Six families told the Legal Assistance Centre that ReconAfrica representatives "entered their properties without permission, concluded seismic survey activities, and compelled them to sign papers without explaining their contents before leaving," according to the complaint. It further alleges that people's homes were damaged by the thumping and that the company's surveyors cut "new roads in virgin territory without consulting local communities."

### Licenses for oil and gas exploration in Namibia and Botswana

The Canadian petroleum exploration company ReconAfrica believes that the Kavango Basin holds significant amounts of recoverable oil. The company's exploration license covers more than 13,200 square miles near the famed Okavango Delta and is home to some 200,000 people and abundant wildlife, including the world's largest remaining elephant herds.

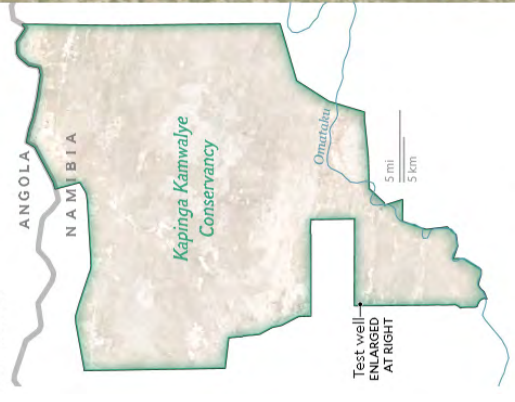


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**Test well drilled inside conservancy**

This satellite image from November 13, 2021 shows a ReconAfrica test well inside Kapinga Kamwalye Conservancy, whose leaders say the company undertook drilling without first securing necessary permissions.



Christina Shintani, NGM Staff.  
 Sources: Planet Labs PBC; Green Marble; Protected Planet; Hydrosheds; NAMICOR; Department of Mines, Botswana



**JANUARY 2015**

ReconAfrica receives oil exploration license from Namibia's mines ministry covering 9,800 square miles.

**AUGUST 2019**

Namibia's environment ministry issues environmental permit for test wells. Land rights and water use and disposal permits are required before work can begin.

**NOVEMBER 2020**

Land clearing for first test well, at Kawe, is under way.

**2021**

**JANUARY**

ReconAfrica starts drilling at Kawe without the required land rights or water permits. It does not line waste pit with plastic against groundwater contamination but claims other measures taken.

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ReconAfrica clears land for second test well, in a wildlife conservancy near Mbambi, without requiring land rights.

**APRIL**

Farmer at second drill site sues ReconAfrica, alleging it seized his family's land illegally

**MAY**

Whistleblower files complaint with U.S. securities regulators alleging ReconAfrica has intentionally misled investors.

Drilling at second well begins, without the necessary land rights, permission from the conservancy, and water permits.

**JUNE**

Namibian Parliament begins hearings questioning ReconAfrica's activities.

Two members of U.S. Congress urge the Department of Justice, SEC, and others to investigate whether ReconAfrica violated Namibian or U.S. laws.

ReconAfrica announces it has "formally received all water well regulatory approvals for drilling operations." The government has not responded to requests to confirm.

ReconAfrica retroactively applies to regional communal land board for land rights for its two test wells.

**JULY**

ReconAfrica receives environmental permit for seismic survey, which restricts where and how it can be conducted.

Seismic survey begins.

**SEPTEMBER**

National Geographic confirms waste pit at second test well also lacks plastic liner.

Seismic survey machinery flattens farmland in Hamweyi, in violation of environmental management plan that forbids driving in communal fields.

Land board retroactively approves land rights for Kawe well site.

**OCTOBER**

Photos show roads cleared through untouched forest for the seismic survey in violation of environmental permit that restricts routes to existing roads.

Class action lawsuit alleges ReconAfrica violated U.S. securities laws.









ReconAfrica located its second test well in Namibia in Kapinga Kamwalye Conservancy. Leaders of the wildlife refuge say the company lacks their permission to drill here. NATIONAL GEOGRAPHIC

In George Mukoya Conservancy, a new road had been cut through the refuge. “They just drove straight through the bush,” says Frank Steffen, head of the Editors’ Forum of Namibia, who visited the conservancy last November. “They often didn’t follow any kind of road at all.”

The company didn’t just violate its permit—it broke the law under Namibia’s Communal Land Reform Act (<https://www.documentcloud.org/documents/21095188-communal-land-reform-act-5-of-2002>), says Max Muyemburuko, chairperson of Kavango East and West Regional Conservancy and Community Forest Association, which oversees conservancies in this part of the country. Any company planning to work in a conservancy must get approval from its leaders (<https://www.documentcloud.org/documents/21095188-communal-land-reform-act-5-of-2002#document/p22/a2062044>).

“They opened a new road for seismic [surveying] in the conservancy without prior written consent from the conservancy management body,” Muyemburuko says. Muyemburuko told National Geographic last year (<https://www.nationalgeographic.com/animals/article/oil-company-reconafrika-accused-of-drilling-in-african-wildlife-reserve>) that representatives of ReconAfrica sought to buy his silence and that of another critical colleague by offering them “help.”

Neither the company nor the ministry responded to questions about cutting or widening new roads. Last June, ReconAfrica said (<https://www.nationalgeographic.com/animals/article/us-concerns-grow-over-oil-exploration-in-the-okavango-region>) in a statement that its work in





“land had been taken without any consultation whatsoever.” (The company has said it had documented permission” from the local traditional leader to clear the Mbambi farmer’s land, but Namibian law also requires permission from the regional land board, which ReconAfrica does not have, according to Thomas Muronga, a member of the board and chairperson of the conservancy where ReconAfrica illegally drilled its second well.)

“It’s concerning that Recon is marketing the project as full steam ahead with so many open questions as to the legality of their operations,” Erica Lyman (https://law.lclark.edu/live/profiles/281-erica-lyman), a law professor and director of the Global Law Alliance for Animals and the Environment at Lewis & Clark Law School, in Portland, Oregon, said in an email. “It seems that the wheels of justice in Namibia need to catch up.”

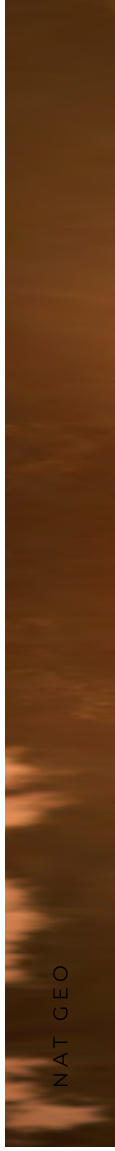
Standing in front of his wooden fence under the shade of a big tree last September, Chiwerda grew agitated as he talked about ReconAfrica. Flinging his faded blue cap to the ground, he shouted, “They take my land, they take my life!”

Wildlife Watch is an investigative reporting project between National Geographic Society and National Geographic Partners. Funded by the National Geographic Society, the project focuses on wildlife crime and exploitation. Read more Wildlife Watch stories here (https://www.nationalgeographic.com/animals/topic/wildlife-watch), and learn about National Geographic Society’s nonprofit mission at natgeo.com/impact (https://www.nationalgeographic.com/impact). Send tips, feedback, and story ideas to NCP.WildlifeWatch@natgeo.com (mailto:NCP.WildlifeWatch@natgeo.com).

**Jeffrey Barbee** (https://jeffreybarbee.com/) is a science writer, photojournalist, and documentary filmmaker, whose documentary *The High Cost of Cheap Gas* (https://youtu.be/qUVjs0b49o4), about fracking for oil and gas, has been translated into six languages and won numerous awards. He’s the founder of *Alliance Earth* (https://allianceearth.org), an independent environmental and science reporting initiative that collaborates with news organizations around the world.



## More News



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**TEST DRILLING FOR OIL IN NAMIBIA'S OKAVANGO REGION POSES TOXIC RISK (HTTPS://JEFFREYBARBEE.COM/TEST-DRILLING-FOR-OIL-IN-NAMIBIAS-OKAVANGO-REGION-POSES-TOXIC-RISK/)**

*The petroleum exploration company ReconAfrica doesn't appear to have taken what experts say is a key step to prevent contamination of groundwater.*

**READ MORE (HTTPS://JEFFREYBARBEE.COM/TEST-DRILLING-FOR-OIL-IN-NAMIBIAS-OKAVANGO-**

**REGION-POSES-TOXIC-RISK/)**



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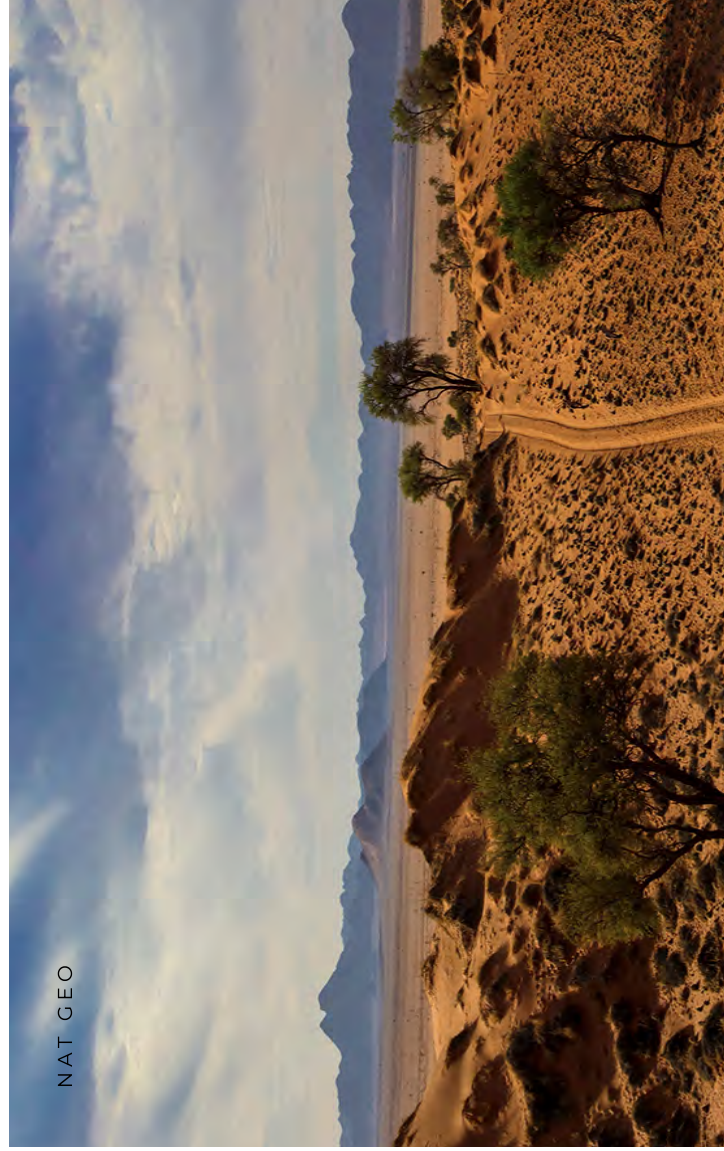


[HOME](https://www.youtube.com/channel/UCjefybarbee)

**OIL COMPANY EXPLORING IN SENSITIVE ELEPHANT HABITAT ACCUSED OF IGNORING COMMUNITY CONCERNS (HTTPS://JEFFREYBARBEE.COM/OIL-COMPANY-EXPLORING-IN-SENSITIVE-ELEPHANT-HABITAT-ACCUSED-OF-IGNORING-COMMUNITY-CONCERNS/)**

*Namibians allege ReconAfrica disposed of wastewater unsafely, without permits, and ignored concerns about potential impact of oil drilling on water and wildlife.*

READ MORE (HTTPS://JEFFREYBARBEE.COM/OIL-COMPANY-EXPLORING-IN-SENSITIVE-ELEPHANT-HABITAT-ACCUSED-OF-IGNORING-COMMUNITY-CONCERNS/)



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NATIONAL GEOGRAPHIC: MEMBERS OF CONGRESS URGE INVESTIGATION INTO OKAVANGO OIL EXPLORATION (HTTPS://JEFFREYBARBEE.COM/30-MEMBERS-OF-CONGRESS-URGE-INVESTIGATION-INTO-OKAVANGO-OIL-EXPLORATION/)

National Geographic reporting spurs a bipartisan call for "a thorough and coordinated investigation" by federal agencies.

READ MORE (HTTPS://JEFFREYBARBEE.COM/30-MEMBERS-OF-CONGRESS-URGE-INVESTIGATION-INTO-

OKAVANGO-OIL-EXPLORATION/)



THE GUARDIAN

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MOZAMBIQUE: THE SECRET RAINFOREST AT THE HEART OF AN AFRICAN VOLCANO (HTTPS://JEFFREYBARBEE.COM/MOZAMBIQUE-THE-SECRET-RAINFOREST-AT-THE-HEART-OF-AN-AFRICAN-VOLCANO/)

A 'dream team' of scientists scaled Mount Lico and found a wealth of new species. Like a villain's fortress in an old James Bond movie, Mount Lico rises vertically from the land around it, the ancient centre of a volcano with the forest nestled in its crater.

READ MORE: HTTPS://JEFFREYBARBEE.COM/ZEAMPLOVEBARBEE.COM/FORNTAIN-HEART-OF-AN-AFRICAN-VOLCANO/ALLY-BULLDOZES-PROTECTED-LAND-IN-AFRICA/2/)

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## **APPENDIX O**

AFFIDAVIT OF [REDACTED]

I, [REDACTED] of the Village of Mbambi, in the Region of Okavango-West, Namibia, make oath and say:

1. I am a farmer in Mbambi, and as such have knowledge of the matters herein referred to and as such have knowledge of the matters contained in this affidavit except where stated to be based on information and belief, in which case I believe them to be true.
2. I speak and understand the following languages: Rukwangali, Rumanyo, Nyemba, Afrikaans and English.
3. I currently live with my family consisting of my father, mother and three siblings in a house on a plot of land the size of eight square kilometers in the Mbambi village inside the Kapinga Kamwalye Conservancy (the "Land"). This Land has been passed down by customary tradition, from my grandparents to my parents to me. I am the third generation and eldest among my siblings.
4. My family and I use the Land to grow crops and raise animals. We grow mahango, maize, tomatoes, cabbage, soka, and pumpkins and we raise cows and goats. These crops and animals are the main source of food for my family and me. We also sell our cattle and harvest for income.
5. I first learned about operations of ReconAfrica Energy Africa Ltd ("ReconAfrica") in 2019 after hearing from Mbambi community locals that they were promised jobs by ReconAfrica. I also remember reading an article in a newspaper that mentioned ReconAfrica was taking community member's land for drilling purposes without permission in Mbambi and without the prior consultation with the Headwoman.
6. In the beginning of 2020, workers from ReconAfrica entered my Land, without permission, to clear bushes and vegetation for the purpose of building roads, each with a width of 3 meters intended to allow for the passage of machinery to conduct seismic testing.
7. I was not consulted about ReconAfrica's use of my land at any time prior to ReconAfrica performing seismic testing on my land. Testing was carried out without my prior consent and I only learned of the seismic testing when I saw the machinery conducting thumping on my Land. I felt the shaking and heard the noise caused by the seismic machines passing.
8. Since ReconAfrica performed seismic testing on our Land, I have noticed that our soil is dry and our harvest yield, including from our fruit-bearing plants, has drastically decreased. Additionally, ReconAfrica's removal of bushes has limited our cattle's access to grazing. Given that our crops and animals are our only source of food, my family and I have had less food to consume and less harvest to sell, which also negatively affects our livelihood.
9. In 2020, ReconAfrica cleared the natural vegetation and local plants on my Land and drilled a borehole. The borehole is surrounded by cement which further impedes my use of the Land.
10. In 2020, my family and I submitted a letter to ReconAfrica regarding the fact that we did not consent to ReconAfrica's use of our Land and demanding ReconAfrica stop drilling on our Land. We requested that ReconAfrica either provide compensation or restore it to its original state. However, we never received a response from ReconAfrica regarding our letter.

11. In September 2020, my family and uncle, Andreas Sinonge, commenced court proceedings against ReconAfrica on behalf of the Kalenga family for the harms caused by their drilling of the borehole on my Land. As of today, I have not received any compensation or remedies. I want ReconAfrica to pay compensation for the Land that has been destroyed and to restore my Land to its original condition.

12. I was not consulted about ReconAfrica's use of my Land at any time prior to ReconAfrica clearing and drilling on my land. Drilling was carried out without my permission. ReconAfrica only spoke to traditional leaders about clearing the area. However, they did not consult or inform my family, who rightfully occupy and use the Land.

13. In August 2023, after the boreholes had been drilled by ReconAfrica, the Headman in Mbambi informed the community that the Minister of Agriculture, Water and Land Reform was organizing a meeting with the participation of ReconAfrica. I attended this meeting, during which ReconAfrica instructed the community on responsible maintenance and proper utilization of its borehole. These instructions included not tampering with or stealing the borehole's pumping system. This meeting did not give attendees an opportunity to voice their concerns about ReconAfrica's drilling or potential contamination of groundwater in the region.

14. I believe there is corruption among the traditional authorities. My cousin previously held the role of the traditional Headwoman. However, she was dismissed from her position after openly expressing her opposition to ReconAfrica's operations. I believe ReconAfrica bribed community members to appoint a new Headman who would support ReconAfrica's interests.

15. Water in our community is scarce. I rely on water for drinking, sanitation, washing food, and raising cattle. I have no access to treated water. I mainly rely on the water from the local government drilled borehole. I am afraid the water will dry out in the future. The government has already added more pipes to increase water absorption for their boreholes located in Mbambi.

16. I have previously used water from ReconAfrica's borehole. However, I stopped using this borehole in 2022, after learning from my neighbor that six of his cows have passed away since consuming water from ReconAfrica's borehole. Additionally, I have learned from members in other communities that their water tastes salty since ReconAfrica began operating in their community.

17. I am worried that ReconAfrica is releasing toxic waste into the underground water supply. ReconAfrica's borehole is located only 2.5 km from my home and I fear that ReconAfrica's borehole will contaminate my water supply. I fear becoming sick from drinking contaminated water in the future and worry about the long term effects.

18. I am worried that ReconAfrica's operations will continue to damage my land and impact my ability to grow crops, raise animals, and access food and water. I want ReconAfrica to stop operating in Namibia.

19. In swearing this affidavit, I understand and agree to members of the International Human Rights Program at the University of Toronto Faculty of Law in Canada, Saving Okavango's Unique Life, and Economic & Social Justice Trust filing a complaint with the Canadian Ombudsperson for Responsible Enterprise ("CORE") with respect to the harms I have suffered ("CORE Complaint"). I make this affidavit in support of the CORE Complaint.



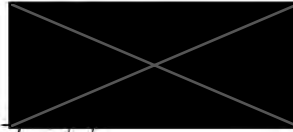
20. I do not consent to my name being shared in the CORE Complaint and wish to remain anonymous because I fear retaliation from ReconAfrica.

21. I acknowledge that I have received a copy of this affidavit.

SWORN before me at the City of Rundu, in the Region of Okavango-East, Namibia, this 9th day of November, 2023.

  
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*A Commissioner for Taking Affidavits, etc.*



# APPENDIX P

Witness	Title/Affiliation	Indigenous community	Brief testimony	Location for the harm occurred	Rights Affected	Concerns	Wishes
1	Farmer	Bantu	Damage to home caused by seismic testing. Testing done without consultation or consent. Recon has not provided any compensation or other remedy.	Shakambu	Destruction of property (right to adequate housing)	Fears further damage to home, contamination of water	Wants Recon to stop operating in Namibia
2	Farmer	Shambyu community	Seismic testing carried out on land without consultation or consent; damage to home and land caused by destruction of access to food for family and cattle. Recon has not provided any compensation or other remedy.	Ncaute	FFIC, right to adequate housing, and right to food.	Fear of lack of food, hunger, pollution to water and soil	Wants Recon to stop operating in Namibia
3	Farmer	San	Signed an English-language contract with Recon representatives to allow Recon use of his property, but did not know what they would be doing nor that it would cause damage. Damage to land and decrease in crops. Recon has not provided any compensation or other remedy.	Ncaute	FFIC	That his remaining land may not provide sufficient crops for food and for the additional money he requires for medical attention. Also fears not receiving compensation.	Wants compensation.
4	Farmer, Farmer, community volunteer	Nyemba community San, Bantu	Seismic testing carried out on land without consultation or consent; damage to land caused by testing and building of road; decrease in crops and access to food; received insufficient compensation.	Ncaute	FFIC, right to adequate housing, and right to food.	Worried about damage to land, crops, lack of access to food	Wants Recon to stop operating in Namibia
5		San, Bantu	Cutting lines in community forest without consultation or consent; clearing of bushes; damage to land and water from local borehole. Recon has not provided any compensation or other remedy.	Likwalera Community Forest	environment, and right to water, health and sanitation.	Fears contamination of water and community resources	
6	Farmer	San	Seismic testing without consultation or consent; health issues from water contamination.	Village of Shwandamo	FFIC and right to water, health and sanitation.	Additional and more severe health issues.	Wants medical attention for his present condition and to determine the extent of the health issue for himself and his family. Restore the water.
7	Farmer	San	Seismic testing carried out on land without consultation or prior consent; clearing of land and drilling of boreholes; testified to bribing of Head Women. Recon has not provided any compensation or other remedy.	Mbambi	FFIC, right to adequate housing, and right to water, health and sanitation.	Fears contamination of water; loss; farm; fear of becoming sick; fear of further damage to land, cattle; ability to harvest food.	Wants Recon to stop operating in Namibia
Hamutenya Thomas Muronga	Chair of Kapiriga Mvake Conservancy, Farmer	Members of the Chief Royal Family of the Sambu Traditional Authority	Lack of consultation or consent prior to drilling or seismic testing; attempted arrest; provided details about meetings hosted or cancelled by Recon. Recon has not provided any remedy.	Village of Gorghwa	FFIC, and right to a clean, healthy and sustainable environment (present and future generations).	Destruction of their way of life; harm to the environment; harm to the food and water supply for his community; harm to conservancy land held for present and future generations.	Wants Recon's drilling to stop.
Muyemburiko Max Kangwaka	Chairperson of the Mvake Conservancy	Bantu	Lack of prior consultation; threats from Recon representatives; denied access to community meetings; conservancy boundaries; Recon has not provided any remedy.	Shamambungu	FFIC, and right to a clean, healthy and sustainable environment (present and future generations).	Damage to conservancy	Wants Recon to leave Namibia. Asks for apology, and to determine the extent of the health issue for himself and his family. Restore the water.
Paulus Swagedi Kampanza	Vice Chairperson, Forestry Management Committee	Represents Community Forest. Members who are both Bantu and San	Destruction of the Community Forest without consultation or consent. Ined community members under false pretenses; Recon's attempt to obtain backdated consent. Recon has not provided any remedy.	Ncumcara	FFIC, and right to a clean, healthy and sustainable environment (present and future generations).	That Recon will continue to pursue its corporate strategies and objectives be any means necessary regardless of consent and that these activities will result in further damage to the CF and harm to present and future CF Members.	Wants Recon's activities to end; for Recon to restore the CF and for Recon to provide compensation which will be held in trust for the CF Members.