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# Fishing for equality: Policy for poverty alleviation for South Africa's small-scale fisheries



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## ABSTRACT

With the advent of democracy in South Africa there were great expectations that poor coastal fishing communities would gain legal access to coastal resources historically relied on for food and livelihoods. However, a failure to formally recognise the small-scale fisheries sector and adequately cater for them in the post 1994 law reform process, precipitated legal action by a group of fishers against the Minister (George K and others vs. the Minister of Environmental Affairs and Tourism) in 2005.<sup>1</sup> This court action resulted in a ruling by the Equality Court in May 2007 that required the Minister responsible for fisheries to develop a policy that would address the needs of this hitherto excluded group and immediately provide 'interim relief' through access to marine resources. This paper reports on the final policy (promulgated in June 2012) that emanated from a five year policy development process largely driven by civil society, NGOs and researchers. It highlights key principles and provisions in the new policy that signal a paradigm shift in the governance of small-scale fisheries in South Africa – from a largely resource-centred approach to one that is more people-centred, and which recognises fisher rights as human rights, as well as the important role that marine resources can play in poverty alleviation. It concludes by exploring some of the implementation challenges.

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## 1. Introduction

The advent of democracy in South Africa in 1994 precipitated a law reform process that sought to address past injustices and give voice to marginalised communities. This process was guided by the new South African Constitution (1996) which was underpinned by a set of human rights principles contained in the Bill of Rights [1]. The marginalisation of fishers along the South African coast stemmed from their systematic exclusion from the marine commons following decades of industrialisation, institutionalised racism, and increasing privatisation of marine resources through the use of policy mechanisms such as quotas. The new ANC-led government was faced with a huge challenge of transforming an industry where ownership of marine resources was vested in a handful of white-owned companies. This process took place in a complex policy environment that included balancing South Africa's reintegration into the global economy and adoption of neo-liberal economic policies with the socially-orientated policies of the Reconstruction and Development Programme (RDP).

Amongst poor coastal fishing communities, there were great expectations that the new democratic government would deliver on its promise to facilitate the 'upliftment of impoverished coastal communities through improved access to the marine resources' [2: 104]. Furthermore, the ANC position document asserted that 'Marine resources must be managed and controlled for the benefit of all South Africans, especially those communities whose livelihood depends on resources from the sea ... The democratic government must assist people to have access to these resources' [2: 2.10.7]. Thus there was an expectation that fisheries resources would contribute to poverty alleviation and job creation as access was improved, rights restored and resources redistributed to poor coastal fishing communities.

However, despite a progressive Constitution that requires the protection and respect of a range of socio-economic and environmental rights, and the recognition of 'living customary law',<sup>2</sup> the traditional small-scale fisheries sector in South Africa continues to be marginalised. Decisions regarding rights of access, use of resources and institutions for management of marine resources remain centralised, and a powerful market-based ideology influences the governing system in favour of commercial fishing

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<sup>1</sup> George K and others vs. the Minister of Environmental Affairs and Tourism 2004 (EC1/05).

<sup>2</sup> 'Living customary law' is the term used by the Constitutional Court in South Africa to refer to customary law that is "actually observed by the people who created it", as opposed to 'official customary law that is the body of rules created by the State and legal profession' [3]

interests [4]. Policy reforms during the period 1998–2006 led to improved access to marine resources for black entrants and a few well positioned members of fishing communities that had been historically excluded, largely through joint ventures and shareholder positions in previously white-owned companies. However, these reforms were considered to be ‘window dressing’, rather than meaningfully restoring the historic fishing rights of coastal communities in South Africa, or addressing their socio-economic needs [5]. In particular, coastal communities in the Eastern Cape and KwaZulu-Natal experienced considerable exclusion due to their geographic isolation and the largely subsistence nature of fisheries production in these regions.

Consequently, failure to formally recognise the small-scale fishers and adequately cater for them in the post-apartheid law reform process led to legal action by a group of fishers in the Western Cape Province against the Department of Environmental Affairs and Tourism (DEAT) Minister (George K. and others vs. the Minister of Environmental Affairs and Tourism 2004).<sup>1</sup> Mobilisation of the fishers was supported by the Masifundise Development Trust (MDT), a non-governmental organisation (NGO) that focused on empowering coastal fishers to claim their rights to marine resources, as well as by the Legal Resources Centre (LRC), an NGO that led the litigation. A key argument underlying this case was that government’s failure to recognise this group and allocate appropriate fishing rights had violated their fundamental Constitutional rights, and resulted in significant socio-economic hardship. A ruling by the Equality Court in May 2007 required the Minister responsible for fisheries to develop a policy that would address the needs of this excluded group and immediately provide ‘Interim Relief’ (IR) through access to marine resources until such time as the policy was finalised.

This paper reports on the final policy (promulgated in June 2012) that emanated from a five year policy development process largely driven by civil society, NGOs and researchers. It highlights key principles and provisions in the new policy that signal a paradigm shift in the governance of small-scale fisheries in South Africa – from a largely resource-centred approach to one that is more people-centred, and which recognises fisher rights as human rights, as well as the important role that marine resources can play in poverty alleviation. It concludes by exploring some of the implementation challenges. The paper begins by outlining some of the dominant discourses in the fisheries management literature with respect to poverty and resource use and degradation and highlights new narratives that are emerging amongst scholars, NGOs, fishers and development agencies alike regarding the critical role that small-scale fisheries contribute to poverty alleviation, economic development and more recently the realisation of human rights. Focusing on South Africa’s fishing sector, it sketches developments in policy and law post 1994, and the on-going struggles of poor and marginalised fishers to gain access to historic fishing rights and grounds. The events leading up to the formulation of a new small-scale fisheries policy, as well as the process of developing this policy are discussed. This is followed by a brief overview of the key principles and progressive provisions in the policy that signal a significant shift in approach to fisheries management in the country. Finally the paper considers the extent to which this new policy might deliver on its promises of redress, poverty alleviation, socio-economic development and the realisation of human rights, and explores what the key barriers to implementation are likely to be.

Information and insights contained in this paper are based on the direct involvement of the first three authors in the policy development process through serving on the National Task Team and the Technical Task Team over a period of approximately three years. This involved participation in over 25 meetings and workshops with Task Team members, review of minutes of meetings, government and research reports, email discussions, draft policy

documents as well as comments from the public on a draft version of the policy. All authors have also been involved in several roundtable meetings and workshops with NGOs and fisher representatives to discuss the draft and final policies and explore implementation mechanisms and possible challenges.

## 2. Contribution of small-scale fisheries to poverty alleviation and food security

One of the overriding arguments in the conventional fisheries literature has been that open access resource regimes will lead to destruction of the marine commons and ‘ruin for all’ [6]. The theory behind the argument is that failure to limit entry and impose restrictions will lead to overexploitation of resources, loss of diversity, destruction of habitat, and eventually the collapse of the resource. Another often quoted argument is that poor and marginalised communities are likely to overexploit resources beyond sustainable levels due to their desperate circumstances, and thus contribute to the destruction of resources and the exacerbation of their own poverty [7,8]. From this perspective, a ‘rights-based approach’ which seeks to limit access and maximise economic benefits is considered the most efficient and ecologically sustainable option [9,10,11]. This approach has been given effect through a range of rights-based management regimes, all predicated upon models of economic efficiency with a form of private user rights as their primary policy mechanisms.

More recently, the rights-based approach has been critiqued for failing to address the underlying critical policy issue of how best to ensure that rents from fisheries contribute to economic growth and welfare [8,12]. Proponents of the ‘wealth-based approach’ to fisheries management argue that the main role of the world’s fisheries should be to capture the wealth of the oceans and turn it into an economic surplus to potentially drive economic growth and poverty alleviation through multiplier and redistributive effects [8,13,14]. The foundation of a wealth-based approach to fisheries management is ‘rent’. According to this view, current rights-based approaches provide only a partial solution to the destruction of wealth in fisheries, and such arrangements continue to evolve. These authors argue that the rights must be clearly specified and supported by appropriate fiscal, legal, and other institutions that legitimise and protect their operation (ibid). A wealth-based approach requires a policy framework that gears all aspects of fisheries governance towards maximising the contribution of rent to wealth creation – this includes “the legal regime; fiscal measures; the organisational arrangements (including the nature and structure of the management bodies and the line ministry); the nature of management mechanisms and instruments; indicators; the nature of research support; the organisation of communication principles and processes between the administration, research, and the profession; the design of fish information systems and so on” [8: 276–7].

The wealth-based approach to management is currently being promoted within Africa by the World Bank and its regional fisheries governance partners, the African Union and the New Partnership for Africa’s Development (NEPAD). Proponents argue that this approach will lead to economic growth and broad societal benefits through job creation, contribution to Gross Domestic Product (GDP), value adding, and local socio-economic development for the poor. They also claim that it recognises the role small-scale fisheries can play in poverty alleviation by creating more efficiency along the value chain. Although this approach would also encourage the creation of small and medium enterprises, in practice these economic opportunities are often taken up by local elites in a community, and entail competition in the open market against more powerful players. They seldom lead to benefits for the poorer sectors of society [15,16].

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