

## Shifting gear?

**Not enough progress has been made in reallocating quotas to previously disadvantaged groups in the South African fishery industry**

The African National Congress (ANC) contested the April 1994 elections in South Africa on the basis of a vision of 'a better life for all', to be achieved through its people-centred Reconstruction and Development Programme (RDP) policy framework. This created expectations that many in the 'marginalized' fishing communities would secure their own fishing rights and small businesses. It was hoped that the revised fisheries policy would deliver on these expectations, while, at the same time, maintain an internationally competitive fishing industry.

Due to pressure from established economic interests, in 1996 the new government shifted its macroeconomic policy to a 'homegrown' structural adjustment programme called the Growth, Employment and Redistribution (Gear). The new framework abandoned the key principles and policies of the RDP, and instead adopted neoliberal economic principles, including privatization, subsidy removal and downsizing of the public sector; and encouragement of small black entrepreneurs.

Gear was aimed at achieving equity and redistribution through economic growth and job creation. The authors of Gear imagined poverty alleviation would be achieved through the 'trickle-down' effect of a new group of entrepreneurs who would establish labour-intensive small, medium and micro-enterprises (SMMES).

This was in direct contrast to the RDP's approach of redistributing wealth through interventionist State policies based on socialist ideology. The shift to Gear resulted in large numbers of bona fide fishers being excluded from the formal allocation process because they could not demonstrate their

entrepreneurship through being able to complete application forms and engage in related bureaucratic procedures without help.

In order to understand how the transformation process was supposed to contribute to poverty alleviation, one needs to understand the capital-accumulation/wealth-generation and safety-net functions of enterprise development and job creation. In this article, we will use the concepts of poverty, vulnerability and entrepreneurship to look at the contribution (or failure) of fisheries to the improvement of the livelihoods of coastal communities, including the proposed mechanism of co-management.

The shift in macroeconomic policy was an important factor in relation to 'transformation' of the fisheries sector in that the focus for transforming the sector moved from re-allocation of access rights to one of promoting black economic empowerment (BEE). BEE was focused mainly on addressing racial and gender imbalances within the industry.

It took the form of offering ownership of shares in established enterprises to historically disadvantaged individuals (HDIs) organized in empowerment groups and/or labour unions, transferring technical and management skills to HDIs, and promoting HDI employees to positions of management decisionmaking.

### **New fishing rights**

The focus was not on the vulnerability of the workers within the existing established companies under BEE schemes, and new rights holders and the SMMES that were established after achieving access to fishing rights.

'Transformation' is not defined in the Marine Living Resources Act (MLRA) of 1998 or in any other legislative or policy document. The vision of the government's new policy is probably what was meant by 'transformation' in the Act:

*the marine resources are a national asset and part of the heritage of the people of South Africa, present and future, and should be managed and developed for the benefit of the country as a whole, especially those communities whose livelihoods depended on these resources; and that the allocation of the resources would be made on an equitable basis, with a view to ensuring the long-term sustainability of the resources and their healthy condition for present and future generations.*

Two approaches to transformation were being used: the broadening of access rights to new rights holders (individuals and companies) through State intervention (external transformation); and market-led change within State BEE policy (internal transformation). The Department of Environmental Affairs and Tourism (DEAT), a branch of Marine and Coastal Management (MCM), was given the responsibility for external transformation.

The new Constitution with its 'Bill of Rights' and the new fisheries policy paved the way for new entrants to the sector, but MCM struggled with managing and administering the process. A complicating factor was that the sector was already oversubscribed—making space for new entrants would have required cutting existing allocations. Internal transformation was to take place through market-based reforms within companies through change in ownership, giving workers more benefits and share schemes, assisting in the empowerment of new rights holders, and so on.

This market-based intervention had an impact on the extent of State intervention from the start, leaving little room for a more community-based empowerment option for transformation in the industry. The responsibility of the State through MCM is to ensure that equity and redistribution are achieved without endangering the economic stability of the

industry and sustainability of the resource.

From the very beginning, it was clear that the goals of transformation would be in conflict with the principles of resource management since meeting the expectations of the many potential new entrants would not be in line with the limited room for expansion that sustainable resource management entailed. Adding to this was the fear among the established companies that allowing too many new entrants could create chaos and result in economic instability in the industry. Several factors impeded—or were used to block or slow—transformation, especially by those already in the industry.

The following were the constraints to transformation in the early years:

**Unwilling sellers, unwilling buyers:** As a matter of principle, HDIs and HDI groups were unwilling to 'buy' fishing rights that they felt they had been dispossessed of under apartheid. There were expectations that government would put this travesty right by simply taking these rights back from established companies and redistributing them to HDIs after the advent of democracy. The established companies were equally unwilling to share, sell or give up their fishing rights, arguing that they had spent decades building up their companies.

**Foot-dragging tactics:** Established companies used foot-dragging tactics to delay redistribution by employing leading lawyers to find loopholes in the new fisheries policy and to litigate on all large-scale cuts in their quota allocations. Many courts ruled in favour of the established industry, hindering government from taking large portions of their quota allocations to accommodate new entrants to the industry.

**Court challenges on administrative grounds:** Numerous allocations by the former Quota Board under the old Sea Fisheries Act were successfully challenged in court on administrative grounds from 1993, following the promulgation of the 1993 Quota Board guidelines. The constitutional entrenchment of the right to just

administrative action reinforced the strength of administrative remedies, as evidenced by the number of court cases after 1996. For example, the first quota allocations made under the MLRA were successfully challenged and set aside for reconsideration on various administrative grounds.

**Alliances between large companies and labour unions to oppose transformation:** Established companies were able to secure the support of their largely black labour unions to oppose transformation using the slogan “A cut in our quota allocations will result in a cut in jobs”. The unions (especially the Food and Allied Workers’ Union—FAWU) traded their support for maintaining existing quota allocations for better working conditions and improved benefits for their members (pension funds, shareholding schemes, medical aid, and improved health and safety).

The irony was that FAWU is an affiliate of the Congress of South African Trade Unions (Cosatu), one of three partners in the ruling ANC Alliance. The alliance between unions and employers against redistribution of fishing rights further marginalized poor bona fide fishers who had expected fishing rights after apartheid.

**Constitutional protection of property rights:** The Constitution provides that

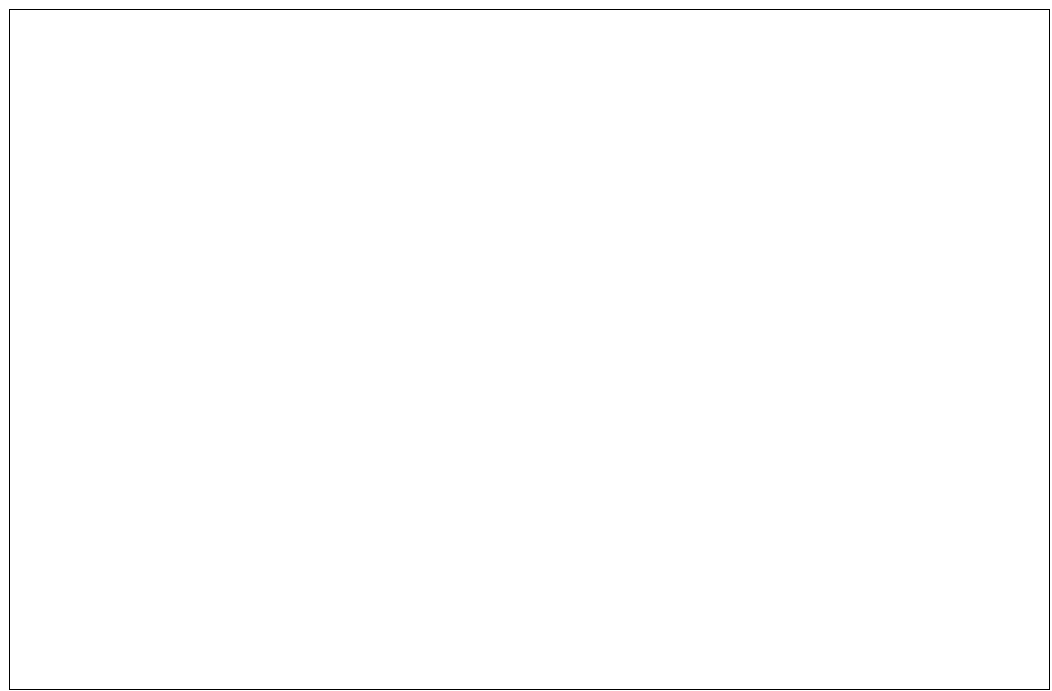
nobody may be deprived of property except in terms of law of general application (the ‘property clause’). This, together with the government’s commitment to support market forces, effectively gave established companies a veto against the reform of the fishing industry.

Most established companies claim to have implemented internal changes that meet the requirements provided by DEAT guidelines. The established industry quickly responded to internal transformation requirements.

For example, Oceana Fishing Group sold half of its equity to a black empowerment consortium, while Premier Fishing shares ownership with Sekunjalo and Pamodzi/Foodcorp owns Marine Products.

Allowing a larger degree of black ownership strategically put such companies in positions of strength for maintaining or even increasing their quota holdings, since most of these empowerment groups had good political connections.

Companies like Sea Harvest and Irvin & Johnson started on a fairly small scale, offering limited shareholding ownership for employees at favourable prices. Although employee shareholding



constituted a small percentage of the total stock, the symbolic effect was considered important. The established companies wasted no time in bringing in HDI leaders in an attempt to transform the leadership structures of their companies.

**W**ithin the labour unions, this was regarded as a window-dressing exercise, since some of these individuals were given the privileges of power but not the right to make crucial decisions.

The major dilemma that faced many new entrants was the lack of infrastructure (vessels, processing facilities and marketing networks) and business knowhow. A possible, seemingly obvious, solution to this dilemma was the formation of joint ventures and business partnerships as promoted by the new fisheries law (the MLRA).

In spite of all this, most new entrants complain that there has been no change in the power dynamics in the industry as a whole or within individual companies. Since established companies own most of the infrastructure, they retain control of fishing, processing and marketing operations, even where new entrants have entered into joint ventures with them.

The prices charged for these services make it very difficult for new entrants to

succeed. Established companies recoup their transaction costs through reduced prices for fish from new entrants or inflated costs for their services. The top management of most companies remains largely white.

Where blacks have been given top positions, their ability to make management decisions is frequently constrained or absent. Most 'internal transformation' appears to be window dressing.

The lack of infrastructure and business knowhow among new entrants and the lack of real black ownership and power within established companies leaves black workers and entrepreneurs vulnerable to manipulation and exploitation. Eventually, everyone, including the established companies, had to accept that some re-allocation of rights was unavoidable. MCM's major indicator of transformation has been quantitative—that is, the number of new individuals (mostly HDIs) or HDI fishing companies that have been granted access rights. MCM's stated achievements after 10 years of 'transformation' are, for example, in the abalone, West Coast rock lobster, small pelagic and deep-sea hake fisheries.

#### **Commercial allocation**

In the abalone fishery, the number of rights holders increased from five in 1992 to 271 in 2002. The five original

quota-holding companies retained 49.5 per cent of the total commercial allocation, while original abalone divers received 17.5 per cent. The 228 new entrants under the limited commercial category got the remaining 33 per cent in allocations of 202 quotas of 430 kg and 26 quotas of 200 kg. Individuals held 95 per cent of the limited commercial allocations.

**A** total of 87.5 per cent of the companies holding commercial abalone quotas were classified as SMMES. According to DEAT, 90 per cent of the global abalone total allowable catch (TAC) was allocated to SMMES in 2002.

In the West Coast rock lobster fishery the number of rights holders increased from 39 in 1992 to 745 in 2002. While the top 10 companies held 57 per cent of the quota in 1992, this had been reduced to 36 per cent in 2002.

Ninety per cent of right holders were classified as SMMES and 66 per cent of these companies were HDI-owned. In 2003, a further 274 individuals were awarded limited commercial fishing rights in the east of Cape Hangklip area. In the limited commercial sector, the allocations ranged from 200 kg to 1.5 tonnes (average: 712 kg).

A total of 91.5 per cent of the limited commercial quota was awarded to HDI or HDI-owned micro-enterprises. Thus, 70 per cent of the global TAC was HDI-controlled. Whereas there were only 12 rights holders in the small pelagics sector in 1990, by 2002, the number had grown to 91 sardine and 70 anchovy rights holders. About 85 per cent of these were considered to be SMMES. Furthermore, 73 per cent of the rights holders were HDIS and these held 75 per cent of the pelagic TAC. Most of these got 0.3 per cent of the TAC as their annual quota for the duration of the medium-term rights.

This means the access of HDI rights holders to the pelagic sector had increased tenfold (from 7 per cent to 70 per cent) over the 10 years 1992–2002. Despite this, the established companies have maintained their allocation (in terms of volume) of anchovy and sardine due to the increase in TAC. While only 21 predominantly white-owned companies had rights to exploit deep-sea hake in 1992, the number

of rights holders had increased to 56 by 2000. The top five companies held 92 per cent of the TAC in 1992.

This had been reduced to less than 74 per cent by 2002. Furthermore, government claims that the large companies had been compelled to transform in terms of their ownership and management structures. In addition, 42 per cent of companies in the sector were classified as SMMES, and 74 per cent of rights holders were deemed to be majority HDI-owned and managed by 2002. According to DEAT, HDI shareholding in the sector had increased from 0.5 per cent in 1992 to 25 per cent in 2002.

These reported results need to be compared to the extent of internal transformation that took place within the established companies, that is, the link between HDI ownership and quota allocation. External transformation is directly linked to internal transformation and it is situated in the need to maintain stability and efficiency within the fishing industry.

A consequence of the direct link between internal and external transformation means that there was very little TAC left for MCM to allocate to the new entrants. The industry's long-term economic viability could have been compromised by the short-term political goal of MCM—that is, to show the extent to which it has allocated rights to new entrants.

Impressive as these figures would appear, they do not describe the realities on the ground. The guidelines for award of medium-term rights outlined the objectives and assessment principles for re-allocation of fishing rights as being: “ability of applicants to invest in the industry and to demonstrate that they would be actively involved and committed to the industry”; “past performance and capacity to harvest and process the resource”; “potential for significant impact on local community economies and development”; and “the degree of risk of new entrants becoming paper quota holders”.

#### **Categoric commitment**

DEAT categorically stated that while the department was committed to bringing in

new entrants into the industry, the potential of such new entrants to enter, participate in and share the risks of the industry had to be examined in the light of the degree of their knowledge, experience, their fishing plans and business acumen.

**I**t was further stated that where joint ventures had been entered into, these had to be capable of validly empowering the rights holders.

In reality, most new entrants are finding it very difficult to establish themselves in the industry. A number of reasons have been put forward for the problems they are encountering:

- the quotas that they receive are too small to set up, establish and operate economically viable fishing businesses;
- banks do not accept fishing quotas as collateral for loans, making it difficult to raise investment capital;
- new entrants lack the technical and managerial skills to survive in the industry and no assistance is being provided in this regard; and
- it is very difficult for new fishing companies to compete with or break into the monopolistic

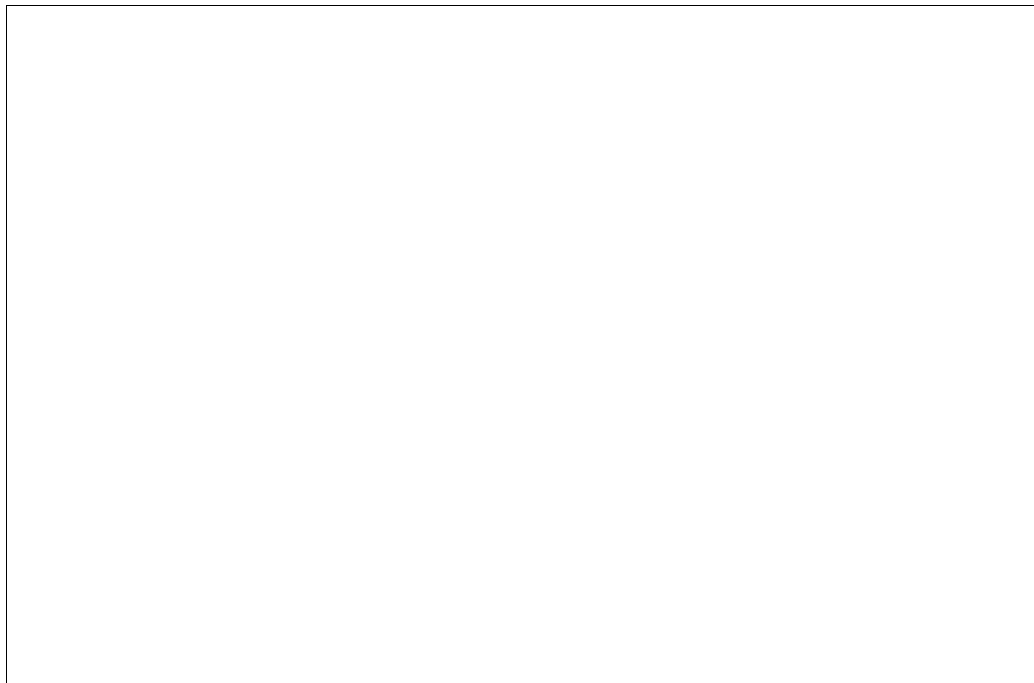
business systems and structures that established large companies have created and fiercely guard in order to maintain their competitive advantage.

In view of the foregoing, the new entrants have adopted four main survival strategies:

- entering into joint venture agreements involving catching or processing or marketing with established companies;
- pooling their quotas with other right holders and jointly obtaining a vessel to exploit the pooled quota;
- selling their fishing rights outright to someone (usually an established company) with the ability to make use of the quota as their own (such rights holders are referred to as 'paper quota holders'); and
- acquiring fishing rights for several species (if they own a vessel) in order to create an economically viable quota 'package'.

**Active participation**

Because the first three strategies are the most common, the number of rights holders actively taking part in fishing



operations is actually at least 50 per cent lower than the official number of rights holders. One analysis suggests that approximately 25 of the 51 new anchovy fishing rights holders sold their quota to vessel owners or processing companies. This accounted for about 25 per cent of the TAC.

**I**n deep-sea hake trawling the 53 rights holders have been consolidated into less than 20 operational clusters through joint venture agreements. Joint-venture arrangements were being used by both sides for their own benefit.

For new entrants, this would demonstrate that they were actively involved in the industry, while, for the established companies, joint ventures provide increased raw material for processing. If the motivation for joint ventures was the transfer of skills in management and operations, it has rarely been successful—most new entrants are not gaining any skills that would enable them to stand on their own as independent and thriving companies.

As pointed out earlier, government's policy goal was to award rights to new (mainly black) entrepreneurs. In turn, these could form viable fishing businesses in rural coastal areas and so contribute towards poverty alleviation by creating jobs. Little progress has been made so far.

Apart from the lack of skills transfer, another major stumbling block has been that the sizes of quotas that have been awarded to most new entrants do not meet the criteria of being minimum viable quotas (MVQ). For example, most new entrants in the abalone and West Coast rock lobster fisheries were awarded quotas under the 'limited commercial' category.

Under this category, the maximum size of individual quotas is 430 kg (minimum 200 kg) for abalone and 1.5 tonnes (minimum 200 kg) for West Coast rock lobster.

The rights holders point out that these quotas are fished up within a month or two. Since one fisher could not apply to fish for more than one species, there was no other source of livelihood as soon as the annual quota had been exhausted.

In the small pelagics, most new entrants got quotas equivalent to 0.3 per cent of the TAC. In an industry based on high-volume, low-profit economics, such quota sizes are hardly big enough as basis for investment and future planning.

MVQs were seen as being necessary if government intended to eliminate 'paper quotas'. The pooling of quotas by some new entrants could be seen as an attempt to create MVQs. But most new entrants were very unwilling to pool quotas.

As entrepreneurs, they would prefer to go it alone, but they face enormous constraints such as lack of capital, infrastructure, support systems and skills. An economic sectoral study of the industry concluded that pooling of resources (as most new entrants were forced to do) went against that grain of entrepreneurship that is usually based on taking business risks.

By allowing too many rights holders into the industry and spreading the cake too thin without any support systems, the government had set up the new entrants for failure. As a result, the majority of new entrants have been forced, *de facto*, to become paper quota holders or have been forced to make investments that were not based on firm business calculations, but rather to demonstrate activity with their quotas in order to qualify for the next round of quota allocation. The non-viable quotas made new entrants vulnerable and easy targets for exploitation by those in more powerful positions.

External transformation primarily focused on allocating fishing rights to established industries and to SMMES. In the process, a large number of bona fide fishers had fallen by the side, as they could not get into either of these groups.

#### **Interim relief**

In the 1990s, the government had attempted to include this group through various interim relief measures, such as the community quotas of 1993, subsistence permits to fishers in the Western Cape in 2001, the Eastern Cape and KwaZulu-Natal, and linefish interim relief measures in 2003. The abolishment of the subsistence sector for abalone and West Coast rock lobster and

institutionalization of the 'limited commercial' category in the Western Cape resulted in most members of this group being excluded.

**I**n a province where livelihoods from the sea has been extremely important historically and culturally, this is proving absolutely debilitating for such coastal communities. It is this category of bona fide fishers (who had been excluded through the formal processes) that are currently in litigation with government over their rights to a livelihood from fishing.

The basis of the litigation is that government should recognize and protect their historical and cultural rights (and entitlement) to a livelihood from fishing (with an option to sell their catch) as provided for under the Constitution.

Additionally, they argue that the transformation process that favoured commercial enterprises has so far been unsuccessful in job creation in their communities. They propose that a two-mile zone should be allocated exclusively for coastal communities for livelihood purposes. Most of those who are supposedly benefiting from internal transformation efforts in established companies describe the changes that have taken place as 'cosmetic' and mere 'window dressing'. The external transformation efforts of the State aimed

at increasing the numbers of new entrants to the fishing industry. However, since most of the beneficiaries have been allocated economically unviable quotas, the result has been a multiplicity of 'paper quota holders' who usually sell their rights to the established companies. Both internal and external transformation can thus largely be labelled as cosmetic.

The lack of clear transformation objectives in government and its inability to provide direction for transformation for the established companies gave the companies *carte blanche* to restructure their enterprises the way they chose to. Many have, therefore, merely tinkered with their existing profiles in order to create the impression that they have changed.

The lack of real change within established companies can be attributed to the lack of political will on the part of the State to force through real changes using quotas as leverage. The introduction of neoliberal macroeconomic policy enhanced the position of established companies by providing them with the argument that their ability to change the way they do business was limited because stability is vital for them to remain internationally competitive in the age of globalization.

#### **Assessment needed**

A future direction for fisheries in South Africa must be based on an assessment of how effectively internal and external



transformation processes have addressed poverty, job creation and entrepreneurship. Government's policy for poverty alleviation has been through promotion of SMMES that could new create jobs. This has not been much of a success.

**W**ith regard to the workers within the established companies, the process of negotiation between labour unions and established companies, which started in 1995 to improve working conditions and secure jobs for workers, seems to have run its course.

According to FAWU, many permanent jobs are being lost in the fishing industry. Established companies have followed the trend towards casual, temporary and contract employment. Women engaged in processing fish have been most affected by 'casualization' in the industry.

A number of interventions are necessary in order for genuine transformation to occur and the fishing industry to contribute towards poverty alleviation. Many of the new operators in the industry did not have any access to credit (other than the value of the quota when sold). Government intervention is necessary to support new entrants in becoming more competitive and visible in the industry through providing access to affordable sources of capital.

There is an urgent need to establish training, especially in entrepreneurial skills. If the aim is to level the playing field, MCM has a responsibility to provide training, in co-operation with non-governmental organizations (NGOs) and other interested parties. Training should be a requirement for all successful new applicants. The established industry should be made to share in this responsibility.

One way of addressing the training needs of the new entrants is the introduction of a resource fee for leasing a fishing right, which can be used for capacity-building programmes for new entrants. A resource fee is a means by which society can benefit from giving the fishing industry the privilege of using a limited national resource. Since most of the marine resources in South Africa have been utilized to the maximum capacity, only a

few can be given commercial fishing rights.

Such a tax could be used for general development projects like education, health and housing, and the provision of welfare, especially in fishing communities that unsuccessfully applied for fishing rights.

It is clear from the experience of the last 10 years that there is a definite need for institutional support to new entrants. Interestingly, such an approach was used in the 1940s by the government of the time. The Fishing Industry Development Corporation (FIDC) was established to, among other things, establish rivals to Irvin & Johnson in the deep-sea hake trawl fishery by granting fishing rights to a limited number of rights holders in order to enable them to develop vertically integrated, economically viable companies. What later became Sea Harvest only materialized because the FIDC was able to support skills development and provide capital. Similar human and financial support is needed for emerging companies to be able to ably compete with established companies.

Although a verification unit was established for the technical vetting and verification of applications for medium-term rights, it appears that no unit has been in place thereafter to audit progress in internal transformation in established companies and ensure new entrants are genuinely engaging in the industry. Such a unit is supposed to have been vital for vetting this progress as part of the process for awarding the proposed long-term rights from 2006.

In order to avoid having the kind of 'fox in the henhouse' situation that led to the Enron scandal in the United States, it is important that the verification unit is completely independent. An independent verification unit must have the ability to audit internal transformation within companies, joint ventures, as well as 'paper quota holders' in a credible and transparent manner.

#### **Bona fide fishers**

The inshore resources could have largely been left aside for bona fide fishers. Government could have used this as a

bargaining chip against the arguments of the established companies for maintaining their rights in the commercial sector.

**T**his would have gone a long way in providing a source of livelihoods and so contribute towards poverty alleviation for these fishers and their communities.

Regarding capital-intensive fisheries, government could have followed the advice from the Access Rights Technical Committee and acknowledged that it would be very difficult to transform these fisheries.

Instead, these fisheries could have been seen as a generator of funds for the development of coastal communities or society at large by imposing a special levy on fishing rights, like the resource tax charged in Namibia.

Established companies would most likely have argued that they already pay tax on profit and a levy on fishing rights would thus be unfair. It is clear, though, that, under the medium-term rights, established companies were willing to buy and pay for fishing rights under many different arrangements. By institutionalizing transformation through, for example, a Trust Development Fund, the transaction costs for the established industry to acquire

access rights would have been substantially lower.

In South Africa, as elsewhere in the world, fisheries co-management has become a frequently used term to refer to involvement of fishers and fishing communities in order to improve their livelihoods in a consultative/ collaborative manner. However, as with the concept of transformation, there is no clear definition of co-management in a South African context, even though it appears to be seen as a panacea by government and academia for the sustainable utilization of fisheries resources and the economic development of fishing communities.

Experiences so far with fisheries co-management in South Africa indicate that the existing co-management arrangements have primarily focused on management of the fish resources rather than being a mechanism for facilitating economic development within fishing communities.

#### **Livelihoods issue**

Except for KwaZulu-Natal, the government has generally not taken its responsibility for collaborative management seriously. In addition, one cannot expect poor communities and individuals to buy into the concept if they cannot see that it would improve their livelihoods. Thus, it will be important that

poverty reduction strategies are embedded in co-management arrangements.

**T**he government's intention for the redistribution of fishing rights was for fish resources to contribute towards poverty alleviation in coastal communities. Allocating fishing rights to new entrants was a necessary step to start addressing the legacy of apartheid's economic and social deprivation of black communities.

The shift to Gear meant that government's poverty alleviation approach focused on poverty prevention (through SMMES) and poverty reduction (through job creation). It envisaged giving fishing rights to entrepreneurs within fishing communities who could start businesses using their rights, thereby creating jobs within these communities. While rights would act to reduce poverty for the rights holders and entrepreneurs, the creation of jobs would prevent poverty for a few. It is clear, though, that the market solution (Gear) has been insufficient in effective transformation and contributing towards poverty alleviation in coastal communities. It is imperative, at least for the time being, that government should still play an interventionist role in order to ensure that transformation genuinely contributes to poverty alleviation.

This article by Moenieba Isaacs (misaacs@uwc.ac.za), Programme for Land and Agarian Studies (PLAAS), University of the Western Cape, Mafaniso Hara (mhara@uwc.ac.za), PLAAS, and Jesper Raakjær Nielsen (jrn@ifm.dk), Institute for Fisheries Management and Coastal Community Development, Denmark, was first published in *Policy Brief*, No. 16, August 2005