

Spreading the Net

Civil society representatives in South Africa are committed towards the implementation of the FAO SSF Guidelines, based on a human-rights approach

On 8 May 2015 the two ICSF members in South Africa hosted an informal workshop on the implementation of the Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines), adopted by the Food and Agriculture Organization of the United Nations, in 2014. The workshop brought together representatives from non-governmental organizations (NGOs), activists, academics and researchers who have been working on various aspects of small-scale

those more orientated to promoting the role of SSF in marine biodiversity conservation.

The implementation of the SSF Guidelines in South Africa has the advantage that the international advocacy processes that contributed towards their adoption were mirrored by a similar process in the country, which drew on the content of the international advocacy campaigns. In 2007, small-scale fishers in South Africa began advocating in earnest for a national SSF policy. Representatives from a national SSF fisher organization, Coastal Links, together with the Masifundise Development Trust, an NGO, participated actively in the preparatory workshops prior to the Bangkok SSF conference in 2008, as well as in the processes in 2010 of the International Collective in Support of Fishworkers (ICSF) and in the FAO Committee on Fisheries (COFI) side events and meetings organized by civil society in the process of developing the SSF Guidelines.

In 2012, Masifundise hosted the civil society organization (CSO) national consultative workshop on the development of the SSF Guidelines in South Africa. Subsequently, the CSO Synthesis document was developed, negotiations finalized and the SSF Guidelines adopted by COFI in 2014.

New SSF policy

In South Africa a new small-scale fisheries policy was developed over a period of five years and finally gazetted in 2012. In May 2014 the Marine Living Resources Act of 1998 was amended to include small-scale fisheries within the ambit of the statutory legislation and provision

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fisheries (SSF) in South Africa for some time.

Although small, the group represented a rich body of expertise and knowledge on key aspects of the SSF Guidelines. It comprised persons with experience in both marine and inland fisheries, experts working on issues of governance at both international and national levels, a leader in the SSF fisher social movement, researchers and academics with expertise on food security, fisheries value chains, climate change, inland fisheries and aquaculture, marine protected areas (MPAs), customary rights and gender relations. This informal civil society platform reflects a broad range of perspectives from those focusing on building the social movement of SSF fishers to

This article is by **Jackie Sunde** (jsunde@telkomsa.net), Member, ICSF

made for the Minister to allocate rights to small-scale fishing communities in line with this policy.

Yet, notwithstanding this close synergy between the national and international advocacy struggles to develop the SSF Guidelines and policy on SSF in South Africa, the challenge of now interpreting and then implementing the SSF Guidelines in the context of national legislation remains extensive. There has been very little engagement between the State fisheries department and civil society, specifically on the implementation of the SSF Guidelines and the task of now interpreting them in this context looms large. Similarly, while there is a high level of awareness about the SSF Guidelines at a very broad level amongst the SSF fishing communities, very little work has been done to articulate precisely what the principles of the SSF Guidelines would mean in practice. This task now has a sense of urgency as the department responsible for fisheries management, the Department of Agriculture Forestry and Fisheries (DAFF), has recently released a draft set of regulations which outline the policy mechanisms whereby the new SSF policy will be implemented.

This set of draft regulations thus embodies the approach to governance and management of SSF in the larger context of the fisheries sector in the country; it prescribes tenure arrangements, the type of user rights that will be allocated, the legal entity that will hold these rights, the way in which management plans will be developed, and the powers that co-management committees will have and also addresses the approach to women and marginalized and vulnerable groups.

In effect, the regulations comprise the core mechanism whereby the principles and objectives of any guiding framework and policy would be operationalized.

Suddenly, civil society in South Africa is faced with crunch time. We have a very brief window of opportunity to participate in a consultative process to decide if

these regulations will capture the spirit of the SSF Guidelines, the spirit of the South African constitution and the vision that inspired the development of the SSF policy.

Both the SSF Guidelines and the Voluntary Guidelines on Tenure Rights are aspirational documents developed within an international human-rights framework. Similarly, the South African Constitution is an aspirational document that sets a specific national standard for the recognition of, and respect for, human rights. Likewise, both the focus and strength of the SSF policy gazetted by the DAFF in 2012 is that it speaks to these human-rights aspirations: it commits to redress and restitution for past injustices and aims to implement a human-rights-based approach to fisheries; but precisely how this will happen is not elaborated in the document.

The focus of the discussion of the workshop hosted by ICSF thus centred around the question: what would a human-rights-based approach to SSF look like in practice? The first step is to interpret the SSF Guidelines in the context of national legislation and policy. The workshop commenced with an input and discussion on this in the context of the 'voluntary' nature of the SSF Guidelines.

JACKIE SUNDE



Coastal Links' leaders debate their tenure options. This small civil society group remains committed in its efforts to imagine that a different fisheries sector is possible

In South Africa, although the SSF Guidelines themselves have not been incorporated into national legislation, there are a few provisions in them that are already law in South Africa. The Constitution includes provisions on equity and the State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. It includes recognition of customary law and customary rights arising in terms of customary systems of law and recognition of women's rights to equality and non-discrimination.

The Constitution places an obligation on the State to take steps to realize the eradication of inequities and discrimination. The Constitution includes a range of freedoms and then makes specific provision for the freedom to choose one's trade and occupation and for the right to fair labour practices.

Section 24, of particular relevance to fisheries governance and marine biodiversity, provides for the right (a) to an environment that is not

does not limit property to land and is of critical relevance to the tenure rights of SSF and coastal communities as it obliges the State to undertake reforms to bring about equitable access to all South Africa's natural resources.

Further, the State must "take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis. A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress. A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress".

Other basic human rights such as the provisions on housing, water and sanitation and healthcare, food and social security are of direct relevance. Access to justice, adequate information and just administrative action are addressed in the Bill of Rights. Of direct relevance to the approach to implementation of the SSF Guidelines, the Constitution requires the State to adopt co-operative governance. Most significantly, the Constitution obliges the State to take into consideration both international soft and hard law and to consider foreign law where relevant.

Constitutional provisions

The Constitution obliges the State to develop legislation to give effect to these Constitutional provisions and human rights. Despite this legal imperative, the national statute on marine resources, the MLRA, failed to accommodate SSF and hence small-scale fishers used the Constitutional provisions of food security and right to their occupation to launch court action in 2005. This subsequently led to an Equality

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harmful to the people's health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that— (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Section 25 provides for the property and tenure rights of all and obliges the State to take active measures to ensure redress for past racially based injustices. This section

Court order that began the process of developing a new SSF policy for the country. This human-rights basis to the current policy thus provides a firm grounding in human rights for the implementation of the SSF Guidelines.

Although civil society has been involved in this struggle for nearly a decade, we have yet to put a clear set of recommendations on the table of what a human-rights-based implementation plan would look for in the very varied and diverse ecosystems and socio-ecological communities along our coastline. This was the challenge facing the group that met last month. The debate centred around what type of user rights would maximize equity. How do we support a policy shift from very centralised, top-down governance approach to a more community-orientated, co-management-based system?

Making the shift from an individual transferable quota system wherein the neoliberal conception of privatised individual rights has dominated, to a more communally based interpretation of sharing and caring for the marine commons for the greater public good is not easy within the dominant, market-driven paradigm that exists. It raises critical questions about the limitations of government policy alone in engineering change in the social relations of power, and the need for strong social partners who are committed to an alternative vision of race, gender, class and other social relations. As those present at the meeting shared their concerns about implementation from the particular perspective of their current area of work, the extent of the complexity of this task emerged.

The impact of several decades of an industrially-oriented fisheries framework, within which a wealth-based user rights system of individual transferable quotas, coupled with individual rights tied to effort controls, has led to fronting and paper quotas—and the concentration of wealth is keenly felt. Legal reforms have merely transformed the racial profile of the class relations, with little real social transformation

trickling down to the poorest black SSF communities who have historically always been marginalized. Organized labour has supported the industrial sectors' rationale for its position on transformation: maintain the status quo in terms of the allocation of fishing rights and promote transformation vertically within the industrial sector which can add more value, rather than redistributing access horizontally.

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The implementation of the SSF Guidelines and the new policy poses a significant challenge to this position as it raises the question: where is the fish for the SSF basket going to come from? Inevitably, it demands a redistribution of the total allowable catch and total effort in favour of the SSF sector; however, the State has yet to negotiate this shift with the industrial sector. As pointed out by participants in the meeting, this will have significant implications for labour in the industrial sector, in itself raising thorny issues regarding how to implement a human-rights-based approach where promoting access for some will have job losses and potential food security impacts for others. In some instances, those who will lose out are the families and relatives of those who will gain.

Class and race

In some coastal towns, the intersection of class and race continues to shape relations between boatowners and crew very tightly. It is apparent that giving crew access rights in a community-based approach will not necessarily transform the social relations of power that are closely tied to ownership of the means of production, in this case, in the form of ownership of vessels. For the traditional line fishers along the Cape coast, the issue of what form

JACKIE SUNDE



Fishing community members of Dwesa Cwebe Marine Protected Area in South Africa map out their tenure with government officials

that has historically been closely entwined with the political economy of land occupation and ownership in the country. Through colonial and apartheid systems of marine and land spatial planning, access to, and control over, both land and other natural resources has been racially skewed. White capital has appropriated and steadily privatized the commons. A racially discriminatory colonial administration began a process of dispossession on land in the 1880s that gained strength through legislative provisions such as the Native Land Act of 1913 and the Native Administration Act of 1927. This was further entrenched by the apartheid legislation of the 1950s and 1960s.

While these acts served to restrict coloured and African tenure rights along the coast in terms of access to land for residential and business purposes as well as access to harbours, jetties and slipways for launching boats as well as engaging in marketing of fish, a series of racially based acts and regulations began to steadily shape both the class and racial profile of the fisheries.

Artisanal and small-scale fishing communities—some of whom fished for local sale whilst others were more commercially orientated—found themselves marginalized. Both the land, agrarian and fisheries legal reforms post-apartheid after 1994 failed to address this marginalization and this legacy now weighs heavily on the SSF sector.

Systematic underdevelopment

This marginalization is most pronounced in the rural regions of the coastline, particularly in the provinces of the Eastern Cape and Kwa-Zulu Natal where the opportunistic declaration of MPAs adjacent to the African homelands during the height of apartheid has resulted in the systematic underdevelopment of these coastal communities. As a result, the SSF sector in South Africa now comprises an extremely diverse, complex profile. It includes small-scale fishers in the Western and Northern Cape who target high-value species and have

the tenure rights should take is additionally complex: how to balance the demand from fishers for an area-based approach that recognizes their historical rights in a given locality with their equally strong right to be mobile and target migratory line fish stocks along the coast, also part of their cultural practice.

The SSF Guidelines have drawn heavily on their sister document, the VG Tenure Guidelines, negotiated within the framework of the Committee on World Food Security in 2012, under the new rules of engagement with civil society that enabled a highly participatory process. Most significantly, the definition on tenure adopted through this process is an extremely progressive one: it defines tenure as how people, communities and others gain access to land and other natural resources. This definition enables a strategic focus on the social relations of power that lie at the heart of fisheries: who gets access to what. This puts the issue of these social relations centre stage.

The process of negotiating the tenure relations and system that will be brought into being through the implementation of the new SSF policy in South Africa—and, it is hoped, thus the implementation of the SSF Guidelines—thus lies at the very heart of implementation. South Africa has a very complex, layered and plural system of marine and fisheries tenure

interacted with the large industrial fishing and marketing companies to a considerable extent over the past decades, albeit from a position of relative powerlessness and exclusion, to the primarily subsistence-oriented and very rurally isolated communities of the Eastern Cape who live adjacent to vast stretches of coastline that are either no-take MPAs or where access is restricted to recreational and subsistence fishing, with limited market presence. In these areas many of the communities live on communally owned land and have local customary systems of law and governance.

According to their customary systems of law, they have customary rights to natural resources within their territories. Within their customary systems of tenure, individual rights are recognized and protected, nested within the broader communal right which is a function of the larger group. In this context, a broad-brush 'one-size-fits-all' approach to SSF implementation that forces a form of community-based quotas allocated to co-operatives (as is currently proposed in the DAFF draft regulations) will be most inappropriate.

Due to the exclusion of small-scale fishers from the long-term rights allocation processes post-democracy, the small-scale fishers have come to associate the individual quota system as synonymous with exclusion and inequity. They have, therefore, demanded a community-based access rights system. Regrettably, the interpretation of different user rights approaches has been reduced rather crudely in the public domain to one of 'individual rights' versus 'community rights'. Many of the fishers who did get individual fishing rights through the allocation of rights, coupled with those who have received an interim individual right, are reluctant to now move towards a 'community-based right' as they fear they will lose their individual benefits. The challenge now lies in developing the local legal entity and institutional arrangements that will protect individual rights within a

broader community-based legal entity and communally held right.

Perhaps the greatest challenge facing civil society is how to position itself in relation to the issue of the contribution of the SSF Guidelines and SSF policy towards poverty eradication and food security more broadly. Now that the time has come to identify who is 'in' the fisher community and who is 'out', the question arises as to how to ensure that benefits will accrue to the other residents of these villages, who do not meet the defining criteria of eligibility to be part of the 'fishing community' but who nonetheless also live in these coastal fishing villages and towns.

In the more rural areas, access to marine resources and the ability to harvest in times of food insecurity has been an important safety net for many dwellers. The proposed regulations will, however, close off the commons to an exclusive user group or groups and this safety net will no longer be available to the broader community. The implications of the choice of user-rights mechanisms and how they are defined and managed thus has important wider implications for how poverty and food security issues are addressed. While the intention of the SSF Guidelines and VG Tenure Tights is to recognize tenure rights *in the context of poverty eradication and food security*, this aspect requires careful interpretation and elaboration in each context. It is on these challenging policy choices and positions that both the fisher social movement and its civil society partners must now focus. They have committed to meet regularly in their efforts to imagine that a different fisheries sector is possible and to spread the potential of the human-rights-based net of the SSF Guidelines as far, as deep and as wide as possible along the coastline of South Africa. 📌

For more



www.daff.gov.za/daffweb3/Branches/Fisheries-Management/Marine-Resource-Management/Smallscale
Department of Agriculture, Forestry and Fisheries, South Africa

www.nda.agric.za/doaDev/sideMenu/fisheries/21_HotIssues/April2010/Small%20Scale/38536_6-3_AgriculForFishCV01.pdf
Proposed Regulations Relating to Small-scale Fishing