SAMUDRA Monograph

Social relations and dynamics shaping the implementation of the Voluntary Guidelines on Small-scale Fisheries (SSF Guidelines) in South Africa

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Abbreviations and Acronyms

ANC	African National Congress
CBD	Convention on Biological Diversity
DAFF	Department of Agriculture Fisheries and Forestry
DDG	Deputy Director General
DEA	Department of Environmental Affairs
DEAT	Department of Environmental Affairs and Tourism
DSBD	Department of Small Business Development
DLA	Department of Land Affairs
DTI	Department of Trade and Industry
FAO	Food and Agricultural Organisation of the United Nations
FRAP	Fishing Rights Allocation Policy
ICSF	International Collective in Support of Fishworkers
IDP	Integrated Development Plan
ILO	International Labour Organisation
KZN	KwaZulu-Natal
LRC	Legal Resources Centre
MCM	Marine and Coastal Management
MLRA	Marine Living Resources Act 18 of 1998
MPA	Marine Protected Area
NEMA	National Environmental Management Act 107 of 1998
NGO	Non-Governmental Organisation
NTT	National Policy Task Team
PDI	Previously Disadvantaged Individual
SFTG	Subsistence Fisheries Task Group
SSF	Small-scale Fisheries
UN	United Nations

EXECUTIVE SUMMARY

Interviews with key respondents drawn from Small-scale fisheries (SSF) fishing communities, fisher leaders, government, NGOs, fisheries stakeholders and research institutions together with a review of current literature provide evidence that there are huge challenges facing the SSF sector in South Africa. In particular, a range of unequal power relations shape the location of SSF fishers within the political economy of fisheries and impact the way in which the Voluntary Guidelines for Securing Sustainable Small-scale fisheries in the context of Food Security and Poverty Eradication (SSF Guidelines) and the SSF policy are being interpreted and will be implemented. Racial, class, gender and historical rural-urban divides intersect these power relations and shape the experiences of different groups of SSF fishers and their communities. These intersectionalities have shaped responses to historical power relations as well as shaping how SSF communities have responded to developments in the post-democracy period.

Power relations in the fisheries sector in South Africa operate on both a symbolic and material level: the way in which the SSF is conceptualised and perceived by policy makers is structured by a neo-liberal narrative of economic value and development. This has shaped and continues to shape the interpretation of both legislative and policy imperatives at a national level. Further, both the policy and the management domains are structured by the unequal power relations between the industrial sector and the SSF. The close relationship between the ruling party, the fisheries administration and the captains of industry creates the co-management conditions required by the industrial sector to ensure that they benefit from any policy that is introduced to address the SSF—from Interim Relief to the new SSF policy implementation plan. Their continued control over the means of production, made possible through the DAFF's failure to apportion equitable and adequate resource access to the SSF and to introduce mechanisms to enable SSF communities to control a segment of the value chain, leaves the SSF very vulnerable. It would appear that notwithstanding commitments to the SSF Guidelines and the SSF Policy, the policy trajectory for the future is 'business as usual' in South Africa.

The government's failure to put mechanisms in place to ensure transparency and accountability within the fisheries administration has created a culture in

which corruption, cronyism and political influence has thrived. This lack of ethical governance is mirrored in community level organisations, particularly in the Western and Northern Cape, where a lack of democratic practice and sound checks and balances has enabled several individual leaders to become involved in deals with marketers that compromise their legitimacy. In this environment the lack of legitimacy of both government and community level institutions had enabled a pervasive perception of lawlessness.

In addition to key class and racial fissures, the SSF sector is structured by patriarchal gender relations that continue to shape the underlying dynamics in communities. While a superficial impression of shift is created by the visibility of a few prominent women leaders, deep-seated patriarchal relations continue to influence how men in fisher organisations and communities perceive women's rights to resources and to controlling these resources.

The historical marginalisation of the Bantustan regions of the country, predominant in the KZN and Eastern Cape provinces, continues to shape the current context. SSF fishing communities in these provinces remain ultra vulnerable due to their lack of voice and the unequal provision of services in these regions. The heavy handed attitude of the conservation authorities in these provinces towards the SSF fishers, who they do not accept as having legitimate rights, exacerbates the situation. Communities living in or adjacent to MPAs and the iSimangaliso World Heritage Site are most vulnerable in this regard. Lack of high level inter-sectoral policy cohesion and a total absence of policy guiding the management approach to these communities are noted.

In all provinces, across the SSF sector, the historical power relations and the marginalisation and exclusion of SSF fishers from equitable access to marine resources and from participating in management and conservation of these resources have left this sector struggling for their livelihoods. In the current context, this appears to shape how these SSF communities approach the issue of resource sustainability. The lack of direct attention to, or clearly articulated concern about resource sustainability or conservation amongst SSF fishers is very noticeable. Understandably, in this still highly insecure, unequal and much contested terrain, SSF fishers remain focused on their struggles to achieve secure access to resources and their basic food security, with the consequence that the issue of resource sustainability remains neglected.

In summary the following key challenges are identified:

- Lack of data and information about the SSF
- The power of politics influencing the governance of SSF
- The macro-economic role and perceived value of the SSF sector

- Political allegiances, cronyism and corruption in the governance of fisheries
- The bias and lack of transparency in the Fishing Rights Allocation Process (FRAP) and Apportionment Process
- Insecure tenure rights in the SSF
- Top-down, controlling approach to the management and regulation of the SSF
- Fragmentation, lack of organisation and solidarity amongst fisher organisations
- Victimization and undermining of the SSF by the commercial sector and its allies
- Confusion regarding cooperatives: collective action or business as usual?
- Gender inequities and patriarchal perspectives towards women
- Unequal power relations within the value chain
- Unequal, unfair and unsafe labour practices within the SSF
- The attitude towards fishers' knowledge and the control of information and data
- Vulnerability to climate change and other social and environmental impacts
- Absence of policy coherence, institutional coordination and collaboration
- Lack of capacity and associated empowerment capabilities

While there are no government or civil society initiatives to implement the SSF Guidelines in South Africa underway, this research has highlighted a number of potential **key entry points** that offer strategic opportunities to strengthen compliance with the principles of the SSF Guidelines and the SSF policy. Several respondents have pointed to issues of particular importance and have highlighted a few programmes that are either underway or at the point of commencing that provide very important guidance.

These **key entry points** include the following:

- Building SSF capacity for self-governance
- Building democratic, transparent and accountable organisations
- Ensuring political voice and representation of SSF fishers
- Creating a civil society platform for the implementation of the SSF Guidelines
- Developing human rights-based monitoring capacity
- Enhancing cohesion, institutional collaboration and integration

In conclusion, this research has highlighted the importance of contextual analyses of social relations of power prior to the implementation of the SSF Guidelines. If goals such as promoting poverty eradication and food security, eliminating discrimination and ensuring inclusivity and equity are to be achieved, then it becomes necessary to ensure that a baseline understanding of the social relations and dynamics in the fisheries sector is available and that strategic priorities are identified accordingly. This exploration of the power relations that have historically structured the fisheries in South Africa and that continue to impact the livelihoods of SSF communities underscores the need to ensure that these unequal power relations are placed centre stage in any plan of action in order to ensure that the human rights and freedoms of SSF fishing communities are realised.

SECTION 1:

1.1 INTRODUCTION

"We are caught in a net"….This is the lament of a fisher leader in South Africa on the way in which the complex interplay of power relations in the political economy of the fishing industry is impacting their lives as small-scale fishers. Many fishers up and down the coast express a sense of despair in the face of what appears to be deepening levels of inequity and marginalisation within the fisheries sector, with the associated social vulnerabilities that accompany this: high levels of poverty, debt, corruption, food insecurity, sexual violence, drug and alcohol addition, crime, conflict and depression. Environmental changes in the marine and coastal environment exacerbate their vulnerability to these political and social challenges. While the problems that are cited by the fishers on the Western seaboard differ from those in the Eastern Cape and Kwa-Zulu Natal, a common theme expressed by fishers, NGO activists and researchers is a perception of a growing gap between the visionary and aspirational human rights-based content of the Constitution and the reality that they face on the ground every day.

On the brink of the implementation of the new South African Policy on Small-scale Fisheries (SSF Policy) and the Voluntary Guidelines on Small-scale Fisheries one might think that hopes would be running high. The adoption of the **Voluntary Guidelines for Securing Sustainable Small-scale Fisheries** in the Context of Food Security and Poverty (SSF Guidelines) by the Committee on Fisheries (COFI) of the Food and Agriculture Organisation (FAO) has been lauded as a significant turning point for small-scale fishing communities world-wide. Similarly the gazetting of the new small-scale policy in South Africa is noted as an important shift in policy (pers.comm Fredericks 2015). Contrary to these hopes, the legacy of the past, the apartheid past as well as the post-apartheid period of neo-liberal transformation, and the way that these legacies interact with and shape the present has left fishers and some other actors in the small-scale sector despondent. Conflict within and between fishing communities and between these communities and the State at different levels is increasing. This monograph aims to try and understand this context in which the SSF Guidelines will be implemented and to explore the social relations that are shaping the fisheries sector. It highlights potential entry points that might maximise the contribution these guidelines can make towards the realisation of the principles underpinning

the guidelines, most notably, the equitable and sustainable use and governance of marine resources in the context of poverty eradication and food security.

1.2 BACKGROUND TO THIS STUDY

In July 2014 the International Collective in Support of Fishworkers (ICSF), hosted an international workshop on implementation of the SSF Guidelines entitled "*Towards SociallyJust and Sustainable Fisheries: ICSF Workshop on Implementing the FAO Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines)"* (ICSF 2014). Participants at this workshop highlighted the need to ensure that implementation strategies adopt a transformative agenda that recognizes that social power relations are invariably skewed against women and other vulnerable and marginalised groups. It was felt that to implement the goals, priorities and objectives of the SSF at the national level, it will be important to have context specific social analyses of issues pertaining to power relations. In particular, if goals such as promoting poverty eradication and ensuring inclusivity and equity are to be achieved, then it becomes necessary to ensure that a baseline understanding of the social relations and dynamics in the fisheries sector in each country is available and informs activities, monitoring and evaluation. Integral to the goal of targeting the most vulnerable and marginalised persons and eliminating discrimination will be the need to have adequate understanding of the power relations and intersectionalities that shape access to and control over marine and other resources according to gender, age, race, ethnicity, labour and migratory status, disability, geographic location and other characteristics relevant in national contexts.

In order to contribute towards the development of a sound body of information upon which the foundation of the SSF Guidelines implementation action plan can be built, ICSF has embarked on a number of national studies in order to promote deeper understanding of the social relations shaping small-scale fisheries (SFF) in different contexts. This study focuses on South Africa.

Like small-scale fishers elsewhere in the world, small-scale fishers in South Africa are largely poor and food insecure (Clark *et al* 2002). However, as argued by De Greef (2013), "what sets them apart is their unique historical context, which saw the creation of an entire class of marginalised fishers along racial lines during, and indeed before, Apartheid." (De Greef 2013:13). While it is now recognised worldwide that SSF are very dynamic, complex systems, often in flux, a number of specific socio-political drivers have catalysed far reaching change in this sector in South Africa in the past decade. In some instances this change is orientated towards the principles of the Guidelines while in other arenas it

appears to entrench and often deepen existing historical inequities and further undermine the human rights of small-scale fishing communities. The South African government, through its international liaison directorate, has publically committed its support for the SSF Guidelines within the context of the FAO Committee OnFisheries (COFI), and in the context of the African Union and AU IBAR fisheries policy processes (pers.comm Garcia 2016). In addition, the Minister responsible for Fisheries in the Department of Agriculture, Forestry and Fisheries (DAFF), Minister Zokwana, has also publically voiced his support for the implementation of the SSF Guidelines (WFFP 2014). While the overlap with the SSF Policy is noted, there has as yet been no specific discussion within DAFF SSF Directorate on the implementation of the SSF Guidelines (pers.comm Smith 2016).On the eve of the implementation of the SSF Guidelines, coinciding with the implementation of a new policy for SSF in South Africa (DAFF 2012), this monograph seeks to document and analyse the social relations that shape this sector, with a view to contributing towards the full and effective implementation of the principles of the SSF Guidelines.

1.3 APPROACH, METHODOLOGY AND SCOPE

This study provides a contextual analysis of some of the key social relations and associated social dynamics that shape the South African seascapes within which the implementation of the SSF Guidelines will take place. The structure and thematic content of the SSF Guidelines provides the broad framework for this study: it uses the principles and the key focus areas of the SSF Guidelines as the matrix upon which discussion is based, traversing the intersectionalities highlighted in literature and human rights based instruments such as gender, race, class, ethnicity, age, migratory and labour status and urban-rural divides. The key thematic areas include the following:

1. Governance of tenure and resource management
2. Social Development, employment and decent work
3. Value chains, post harvest and trade
4. Gender Equality
5. Disaster risks and climate change
6. Policy coherence, institutional coordination and collaboration

Issues related to food security and poverty eradication are cross-cutting and the position of vulnerable and marginalised groups is highlighted. In the South African context inland SSF fisheries have been particularly marginalised and remain a very vulnerable group (Britz *et al* 2015, Tapela *et al* 2015). Whist the study does not focus on inland fisheries reference is made to this important sector requiring specific policy and management interventions and integration in compliance with the SSF

Guidelines. A recent in-depth study of inland fisheries has been completed and the need for a policy framework for this sector has been identified. While the process of policy development has commenced, it is at a very initial stage. There is a need for this policy process to be integrated with the SSF policy and for overall policy coherence in future. It is noted that the inland SSF fishing communities have been subjected to and continue to experience many of the unequal power relations described in this research.

The study is structured in the following sections:

The **first section** commences with a discussion of the historical context and legacy of colonialism and apartheid and the intersecting racial, ethnic, class, gender and other social relations of power that were established during these regimes. These social relations have shaped the fisheries in this country and their legacy continues to exert significant structural and symbolic power within the SSF and fisheries as a whole.

The **second section** describes this legacy at the dawning of democracy in 1994, exploring the way in which the reform policies of this period re-structured the fisheries sector but with a differentiated impact on these power relations and the various groupings within the SSF.

The **third section** outlines the way in which some SSF fishers have responded to the continuing marginalisation of the sector, describing the mobilisation of fishers in the Western Cape and the advocacy actions that culminated in the adoption of the new policy on SSF in South Africa. It explores the way in which fishers have asserted the legitimacy of their own laws, both customary and others. The escalation of poaching and its relationship with the SSF sector is explored. This section identifies the dominant social relations within and between key social actors in the fisheries sector that shape how the policy development process and forthcoming implementation is being perceived.

The **fourth section** explores the key challenges identified by respondents in this study in the face of the implementation of both the policy on SSF and the SSF Guidelines. Selected examples of projects that are attempting to tackle these issues are highlighted. Recommendations identify potential entry points for the effective and equitable take up of the Guidelines and suggest some strategic interventions that might begin to address the most pressing social issues facing the most vulnerable and marginalised fishing communities.

The **fifth section** identifies the existing legislative and policy frameworks which provide the backdrop to the implementation of the Guidelines. It highlights the

intersection of the Guidelines with key national level legislation which provides legal traction for the Guidelines, dispelling notions that the Guidelines are 'voluntary' in the South African context. This section includes an Annexure of the legislative and policy framework that can be used as a tool to promote cross sectoral coordination and monitor compliance.

This is not an exhaustive study, but draws on existing scholarship and other documentation that provides glimpses into the state of the SSF and insights into the social and political ecology within which the implementation will evolve. I am indebted to the many activists, fisher leaders and scholars working in the fisheries and marine resource governance sector across many different organisational contexts and disciplinary perspectives who have provided analyses of social relations in their work and have contributed many insights towards understanding the political, social, economic and cultural workings of power in these social relations which result in the inequities and exclusion that exist within the small-scale sector. Accordingly this work draws on a range of perspectives and social theories in the attempt to understand the social relations at play in the South African context however the story of the SSF that is collated and painted here is my own. It is inevitably coloured by my position as a white researcher and activist, structured by my middle class position and location in an academic environment and similarly gendered by my being a woman. It draws on a social constructionist approach to understanding the workings of power as they are expressed through the intersectionalities of various social relations in this context (Boryczka and Disney 2015).Importantly, while it rests heavily on an interpretation of the political economy of the current context as one deeply structured and constrained by neo-liberalism, it assumes an understanding of power that is dialectical and highlights the agency of people to resist in various ways and to reconfigure the power relations within which they live.

This is primarily a desk top study. In addition to a review of popular literature and media, selected face to face and telephonic interviews were conducted with 14 key informants (3 women and 11 men) in the sector using an unstructured interview schedule (see Annexure 2). Questions were selectively used depending on the nature of the stakeholder's involvement in the sector. A very short electronic survey was circulated to 20 key actors in the SSF. However, this was not a successful method of data collection with a very limited response rate.

1.4 DEFINITIONS OF SMALL-SCALE FISHERIES

The concept 'small-scale fishers' is simultaneously a referent for a category of fishers, a created identity, an imagined class and symbol of same-ness in the ever

changing complex contested space and structure of the marine commons of South Africa. The current definitions of 'small-scale fisheries', 'small-scale fisher' and 'small-scale fishing community' are products of specific power relations and historical processes of struggle by different groups of coastal land owners and marine resource users, constructing their identities to achieve different outcomes at various times (van Sittert 2003). As this paper will show, a review of the policy discussions about the definition of SSF in South Africa is illustrative of the ways in which different groups project divergent identities at different times in their histories in attempting to assert their power or resist the power of others. Even within the short space of time since the SSFP was gazetted in 2012, the interpretation of 'small-scale' has shifted from "*we don't want to be rich we just want access to the sea'* (pers.comm Johnston 2006), to some small-scale leaders demanding the right to become 'big fish'. The demand has also shifted from demanding access to just the near shore resources to access to off-shore resources currently fished by the industrial sector (DAFF Apportionment Meeting, Nov 2015). The interpretation of the legal definition of 'small-scale' in the MLRA Amendment Act 5 of 2014 is still uneven across State and non-state actors. Despite the adoption of a definition that emphasises food security and livelihoods, some officials continue to ask the fishers "*why call yourselves small when you should be big*?" (DAFF official, Stakeholder meeting, The Ritz Hotel, 2013). A recent handbook released by the Department makes repeated reference to the "business" of SSF and one section is entitled "Making small-scale big" (DAFF 2016). This appears to be interpreted in different ways. The SSF Directorate interpret it as expanding the sector and recognition of the substantial role it does play, and can play, in promoting food security and livelihoods, while others see it as scaling up.

For the purpose of this paper, the definition used is that of the Policy on SSF (DAFF 2012).

In this policy, small-scale fishers means:

"persons that fish to meet food and basic livelihood needs, or are directly involved in the harvesting/ processing/ marketing of fish, traditionally operate on near shore fishing grounds, predominantly employ traditional low-technology or passive fishing gear, usually undertake single day fishing trips, and are engaged in the sale or barter or are engaged in commercial activity" (DAFF 2012:V).

Small-scale fisheries sector means:

"*that sector of fishers who employ traditional or passive gear and engage in a range of labour intensive harvesting, processing and distribution technologies to harvest marine living resources on a full time, part-time or seasonal basis in order to ensure food security"(DAFF 2012:V).*

It needs to be noted that currently this policy definition continues to exclude inland SSF fisheries (Britz *et al* and Tapela *et al,* 2015). The historical marginalisation of these fishers coupled with a severe lack of policy coordination has left these fishers in a policy vacuum. As noted above, while policy processes have begun with regard to this sector these remain in their infancy and there is considerable work to be done to enable them to be integrated into the framework established for the marine sector.

Although a range of fisheries policy documents refer to 'the small-scale sector' and 'small-scale fisheries' in South Africa as if this was a homogenous entity, the fishers comprising this sector are an extremely diverse group who, as a result of the historical political economy of the fisheries coupled with geophysical differences, operate within different eco-systems, governance systems, cultural systems and, until recently, fairly separate market chains. Although the latter is changing as the market penetrates the more rural and under-developed areas of the Eastern Cape and Kwa-Zulu Natal, three regions can be discerned, namely the Northern and Western Cape SSF, the Eastern Cape SSF and the SSF in KwaZuluNatal (KZN). There are considerable differences within these regions influenced by the legacy of racial spatial planning, urbanisation, the presence of MPAs, as well as by the availability of high value species in some regions but not others, availability of infrastructure such as landing sites and the historical presence of organisations supporting the sector. Notwithstanding these internal differences, from the perspective of the social relations operating in this sector this distinction might be helpful. The political economies of SSF in these three regions remain markedly different and, from the perspective of the local fishing communities, really comprise three different 'SSF worlds' in one and a "miscellany of fisheries systems" (Gammage 2015:13). This has implications for the political power and organisation of fishers across the country and for fisheries governance (Sowman 2011).

1.5 HISTORY OF THE DEVELOPMENT OF SMALL-SCALE FISHERIES IN SOUTH AFRICA

The South African coast embraces a rich heritage of marine biodiversity and a wide variation in marine ecosystems, evidenced in the differences in the way in which coastal dwellers have interacted over time with their marine environments along the country's shores. All along the South African coastline, men, women and children have historically harvested a range of marine resources for their basic sustenance and livelihoods. Signs of this can be seen in the fish traps, archeological middens and archival records and also through the vestiges of customary practices that remain. Marine resources have been

harvested by the SSF for consumption, for livelihoods, for local barter, for medicinal purposes, and as part of cultural and spiritual practices (Masifundise 2010). They have been exploited for commercial purposes since the 17th century (Wardlaw-Thompson 1913).

South Africa has a lengthy legacy of inequity and injustice in the management of marine resources (Hauck and Sowman 2003, van Sittert *et al* 2006, Isaacs 2006, Sowman *et al* 2014). Similarly, the inland SSF fisheries have been subject to considerable inequity and policy neglect (Britz *et al* 2015). The current social relations within which the SSF sector is located have their roots in this legacy and in the struggles of poor communities to secure access to food and establish livelihoods within the context of colonialism, apartheid and the neo-liberal post-apartheid period. Mutually constituting and inter-twined relations of class, race, gender and in some instances, ethnic discrimination, are woven into this context. It is essential to outline these social relations of the past in order to understand the present. In the words of fisheries historian Lance van Sittert "Those who cannot remember the past are condemned to repeat it" (van Sittert 2002).

Along the north-eastern coastline of South Africa, in what is today known as Kwa-Zulu Natal (KZN) province, there is extensive archaeological and ethnographic evidence that indicates that fishing was an important activity in the lives of the Tsonga people of the Kosi Bay region and in the production and reproduction of many of the Southern African Bantu tribes who settled further south along the Natal coast (Whitelaw 2009). Further east, the available records indicate that as early as 700 AD some Khoisan were present along the Eastern Cape coast and although they did not settle permanently, they were likely to have been the first users of marine resources in this region (Palmer *et al.* 2002). This coastline was subsequently settled by the Bantu-speaking Nguni peoples in the late Stone Age (Parsons 1982:34). AmaThembu and amaMpondo moved from Natal into this area approximately between 1100 and 1300 AD while another group of the Mpondo moved southwards. It is evident that prior to the arrival of the first European travellers and missionaries in the 17th century, amaXhosa and amaMpondo living in the Eastern Cape coastal region were already harvesting inter-tidal resources and using spears to spear fish in both estuaries and in tidal pools (Shaw in Hammond Tooke 1937:98). Trade between amaMpondo and amaXhosa in "rare shells and sharkskin for field medicine" is noted (Peires 1989: 108). Travellers along this Eastern Cape coast in the early 16th and 17th century make reference to the presence of fish garths and traps (Shaw and van Warmelo 1981:360). Along the Cape northern and western shores there is evidence that the coastal dwelling branch of the Khoisan, known historically as the 'strandlopers' (walkers along the coast), depended on a range of marine resources

(Parkington 1977). Little is known of the social relations of these pre-colonial societies. However, it was these indigenous peoples that were present along the shores of South Africa when the Dutch settlers arrived at the Cape in 1652.

1.5.1 The introduction of fishing regulations in the Cape colony

In 1652 the Dutch colonialists took occupation of the Cape. Van Riebeeck's diaries provide the perspective of the Dutch occupiers on seeing the local inhabitants' fishing practices for the first time. The Commander's Journal indicates the presence of 'Strandlopers' or 'Watermen' "fishing after a fashion" and the 'Vischmans', "professedly fishermen, and expert in the use of the hand line and spear" (Wardlaw Thompson 1913:33). As early as 9 April 1652 (three days after Van Riebeeck's arrival), the Commander's first Placaat or Edict contained a provision stating: "…no fishing, therefore, and no thawing of nets shall be allowed except by consent of the Commander after having consulted with the Council" (Wardlaw Thompson 1913:4-5). Subsequently a series of restrictions were introduced to control fishing. As early as 1657 these restrictions were used to ensure that fishing activities met the needs of the newly established colonial settlement, initially restricting fishing to ensure that the local freemen would contribute towards the establishment of agriculture and then subsequently to assist with supplying fish to the Dutch station (Wardlaw Thompson 1913:7-8). By 1708 the demand for fish had escalated so much that slaves were allowed to fish on Sundays and to sell their catches. Kolbe who arrived in 1705 and remained at the Cape for some time described the indigenous inhabitants fishing practices. "The Hottentots in every kind of fishing outdo the Europeans about the Cape. They fish both in the sea and in the Rivers…..Many of them are Fishermen by profession and maintain their Families by the trade. … They take fish by the Angle, the Net, the Spear or Pointed Rod, and by Groping or Tickling" (Kolbe (1705) in Wardlaw Thompson 1913:34).

Responding to the demand for fish from the early Dutch controlled colonial station at the Cape, fishers gradually established small hamlets along the coast and an artisanal, boat-based small-scale fishery emerged along the Western seaboard in the 17th century (van Sittert 1992, Dennis 2010). These communities were a heterogeneous mix of local 'coloured' fishers of mixed racial origin, in part descendants of indigenous Khoisan, in part Malay slaves, castaways as well as European immigrants who survived the many shipwrecks along the notoriously treacherous Cape coast.

The British lifted all the existing restrictions after they took over occupation of the Cape in 1805 and it would appear that for the next century there were few

restrictions on fishing in the Cape (Wardlaw Thompson 1913:21). Records suggest that fishing became one of the few options available to freed slaves following the emancipation of slavery; as a result in the mid 1800's a rural class of poor landless families apparently settled along the Western Cape coast, eking out an existence where they could get access to vacant land and depending on fishing for their livelihoods (van Sittert 1994, Sunde 2003, Dennis 2010). Archival research and oral histories indicate that these small-scale fishing communities in the Western Cape evolved distinctive customary fishing practices and associated cultural identities (van Sittert 2003, Dennis 2010, Williams 2013, Sunde *et al.* 2013).

Van Sittert (1992) has outlined the processes of proletarianization that took place in the Western Cape where many of these rural dwellers intersected closely with the development of the commercial agricultural industry and subsequently the demand for labour from the fishing industry along this western seaboard (van Sittert 1992, 2003). By the early 1900s a complex array of marine tenure arrangements had emerged in the coastal and estuarine waters of the Cape (van Sittert 1992, Sunde *et al* 2013). These arrangements were a hybrid mix of local customs and rules overlaid with Colonial provincial administrative regulations that aimed to regulate the type of gear permitted and create a system of zonation that would protect the local fishery from outside competition (van Sittert 1992, 2002).

In contrast to the Cape, where the local fishers became subject to the reach of the various colonial authorities as early as 1652, the majority of the coastal dwellers along the eastern seaboard of the country continued to access and use marine resources in accordance with African customary systems (Sunde 2014). Early travellers recorded the existence of groups of people fishing along the coast using a wide range of technologies, from the fish traps of the Tembe-Tsonga in the north to the more isolated hand line fishing activities along the Eastern Cape coast (Bigalke 1973, Shaw and van Warmelo 1981, Whitelaw 2009). Although primarily herders and pastoralists, there is evidence that the tribes that settled in the coastal region, amaMpondo, amaBomvana and amaGcaleka, have used marine resources for a range of uses as far back as living memory extends (Hammond-Tooke 1974, Hunter 1933 in Hunter 1979). In the words of a local fisherman from Dwesa-Cwebe

"People started fishing long before white man came. The white man had just new ways of fishing that were easier. We used to take a certain tree, the ntozani tree or the Mtombe or the mnimkulu tree and we made ropes from it and added hooks. Then came the whitemen with their rods. They would throw away lines that got knotted and our parents picked these up, untied it and started using this. That is how we got introduced to those techniques" (pers.comm fisherman 2012)

1.5.2 Entering a new phase: the establishment of a national fisheries governance system

In the late 1890's the colonial administration began extending its control over natural resources and introduced a range of restrictions on hunting, forestry and fisheries, signalling the colonial administration's interest in controlling these resources (Tropp 2006, Sowman *et al.* 2011). During the following decade interest in fisheries grew. Following an official Enquiry into Fisheries, recommendations were placed before Parliament concerning the examination and charting of fishing grounds and the appointment of a Marine Biologist as a Fisheries Expert, such efforts all aimed at developing the colonial fisheries "along modern lines". A Marine Biologist was subsequently appointed and in 1896 a Fisheries Committee or Advisory Board was formed to assist him in his work (Wardlaw Thompson 1913:29-30). Trawlers began working the Cape waters and set the scene for the emergence of what was to become the industrial fishing industry.

In the period up until Union in 1910 and including the immediate period after Union, provincial regulation persisted, albeit it of varying strength depending on the proximity to the centre in the Cape. Commenting on the role of the State in these early years in the establishment of the industry, van Sittert (2003) observes that the colonial state was a weak one, with a limited reach. "Local users had effective day-to-day control over the resource free from official surveillance and exploited it in accordance with the logic of a folk biology uncontested by marine science" (van Sittert 2003:210).

From the 1930s however the State embarked on a determined path towards shifting the locus of governance firmly in its favour. In terms of the Sea Shore Act of 1935 the authority to manage fisheries shifted from the provinces to the State as the State attempted to gain a measure of control over the lucrative and rapidly expanding industrial fishing sector, located along the Western seaboard. This Act established the State President as the owner of all coastal waters.

The growing racial bias and segregationist thinking of the State is evident in the administration of marine resources during this period. The State embarked on the progressive and simultaneous introduction of legislative and policy mechanisms that favoured established white, industrial fishing interests (Van Sittert 1992). A series of regulations placed increasing restrictions on African and coloured subsistence and artisanal fishers in the Cape and brought them under the control of the industrial sector, steadily eroding the customary access and use rights of these local fishers (van Sittert 2003).

The marked differences between the Northern and Western Cape small-scale fisheries sectors and those of the eastern seaboard and their location within the political economy of the country can be traced in part to the diverse marine ecosystems along the coast which enabled very different interactions between the indigenous coastal dwellers and their marine environment. In part however, these differences clearly have their origins in the approach of the colonial authorities to the customary practices and systems of law of the African communities living in this region which persisted, interfaced with apartheid management and statutes and have subsequently continued to various degrees (Hauck and Sowman 2003, Sunde 2014b).

Historian Jeff Peires (2013) confirms that prior to the Colonial occupation of the Cape there were few constraints to either mobility or the use of land and other natural resources in the Eastern Cape. In contrast, the 18th century and 19th centuries were a period of enormous upheaval, change and conflict for the peoples of the Eastern Cape (Peires 1989, Delius 2008). The movement of the colonial forces eastwards led to conflicts between amaXhosa and the colonialists and in the 19th century both the Eastern Cape and Natal were brought under colonial control (Delius 2008:221 in Sunde 2014b).

The colonial authorities adopted varying approaches to the issue of how to rule the territories that they had occupied. Initially the British adopted a policy of direct rule in the Eastern Cape Colony, aimed at breaking down the power of chiefs and traditional authority through the imposition of magistrates. There was no recognition of customary law and colonial interpretations of the law were applied to African subjects (Delius 2008:221). This approach differed from that adopted in the north east in Natal, where the Natal colonial authorities adopted a system of indirect rule. As the Cape Colony expanded its territories in the area east of the Kei River, known as the Transkei during the mid-1800s, it gradually altered its policy, developing what is regarded as a hybrid policy combining elements of both direct and indirect rule (Delius 2008:222). "Recognition was afforded to customary law but only where it was not deemed to be 'repugnant' to civilized standards" (Delius 2008: 222).

In 1885 the Cape Government Proclamation 140 of 1885 extended laws of the Cape to United Transkeian Territories. As a consequence, a number of regulations applicable to the fisheries and marine resource use in the Cape came to apply to the Eastern Cape coast. Due in part to the very rural landscape and lack of enforcement mechanisms, local residents of this coast appear to have had little if any knowledge of these regulations and continued to practice their customary systems of harvesting with little enforcement by the authorities (Bigalke 1973, Vermaak and Peckham 1996 in Sunde 2014b).

1.5.3 Racially-based spatial planning and the consequences for social relations along the coast

A very diverse set of fishing practices existed in the small-scale fisheries at the time of Union in 1910: a growing artisanal, largely boat-based sector on the western seaboard, and a predominantly shore-based subsistence sector along the remainder of the coast, operating in many instances within well-established African customary legal systems, with a set of tenure entitlements and layered decision-making structures that differed vastly from statutory notions of the origins of rights and authority (Sunde *et al* 2013).

The racially discriminatory policies of the Colonial and then early Union government were extended in the years following Union. The rural areas of the country were impacted by a series of laws and policies aimed at shaping the labour needs of the capitalist apartheid state and simultaneously managing 'the native question' which in turn shaped access to and use of natural resources in these areas (Fay 2003 in Sunde 2014b). An understanding of these mechanisms used by the State is necessary to frame subsequent discussions on the current power relations and social exclusion operating along the shores of the country. Within the fisheries sector along the Western seaboard, with its rich marine upwelling system, the lucrative capital intensive, White dominated industrial fisheries grew in strength, supported by the apartheid state (van Sittert 1992, 2003)[1]. Similarly, the inland mining and agricultural interests and needs of white capital were supported during the first half of the century with a range of policy and legislative interventions that served to ensure a steady supply of labour (Beinart and Bundy 1987 in Sunde 2014b). The Native Trust areas, later known as Bantustan reserves, in Eastern Cape and KwaZulu-Natal, provided the labour for the industrial expansion of the country, but these areas themselves remained undeveloped rural reserves, their coastlines later providing ideal natural laboratories for the growing marine science industry. This opportunistic use of these reserved areas has emerged subsequently in the writings of many marine scientists and conservationists who refer to the role of these areas as "providing a reference point for measuring exploitation of natural resources" (Siegfried 1977 in Fay et al.

[1] Both the terms 'industrial fisheries' and 'commercial fisheries' are used in this document to refer to the large, capital-intensive fisheries. In South Africa the term 'commercial rights' is used in policy and official documents to refer to the rights that this sector hold. The term 'industrial' is used deliberately however in this document to highlight the contrast between the SSF fishers who do engage in commercial activities but are not embracing an industrial model of development as opposed to the current industrial fisheries sector which adopts a neo-liberal economic industrial growth and wealth-orientated approach.

2002:95). As commercial exploitation of the marine and coastal areas grew around the urban centres, so did the attachment to these reserves as 'pristine natural environments' and "the last line of defence" that should be retained as reserves to protect inter-tidal biodiversity and act as breeding and nursery grounds to supply the fisheries needs of the fishing industry elsewhere. Local marine resource users were regarded as primitive destroyers of nature. The lasting legacy of the racist, colonial conservation narrative describing African users of natural resource as 'destructive natives' (Tropp 2006), is evidenced in the following correspondence sent to the Secretary for Native Affairs in Pretoria in 1934 by a local magistrate. The letter supports a request for regulations prohibiting the catching or collection of a range of organisms, except under permit issued by the district magistrate, for the stretch of coastline in the Eastern Cape known as the Transkei. This request was supported both by the Director of Fisheries Survey of the time and by this local Magistrate who states

> *"This aims at eliminating the danger of the depleting your coast of such shellfish by native invasions from adjoining native territories where shellfish have become almost extinct. I have received numerous complaints of natives crossing over to our coast and carrying away sacks of every edible matter they can find on the rocks at low tide. I have observed this disastrous consequence of the wholesale and promiscuous stripping of the rocks in native territories, and I feel sure Dr van Bonde will agree that no fishing may be expected on the coast where their food has been exterminated, and even an unreasonable negrophilist would not advocate the killing off of the fish food at the expense of the very numerous native fishermen. If measures are taken to guard against this menace, if only to protect shellfish from Kentani to East London, it will materially assist to resuscitate the good fishing on our shores, but prohibition further afield might improve our coastal fishing to the extent of some places on the South Coast of Natal where stripping of rocks is not tolerated"* (1/NQL, Vol 62 3/6/3 in Emdon 2013).

The Native Land Act of 1913 and the Native Administration Act of 1927 paved the way for an approach to the governance of African communities which continues to this day and which has patterned marine and coastal resource use in very specific, racially based ways. This policy of separate development whereby areas of the country set aside under the Native Land Act would eventually come to be self-governed as black 'homelands' also referred to as 'Bantustans' impacted the Eastern Cape and Kwa-Zulu Natal considerably. Many of these Bantustan areas lay adjacent to the coast in the outlying rural areas but excluded the developed urban centres.

The Native Administration Act 38 of 1927 "set out to define a distinct administrative and legal domain for Africans drawing on highly authoritarian

understanding of chiefly rule as a model" (Delius 2008:223). This act gave chiefs the authority to impose controls over the rural population and was a significant mechanism of power used in the process of re-shaping traditional authority. It recognised 'Native law and custom' as the legal means for dealing with disputes in which native interests predominated (Delius 2008: 223). It went hand in hand with "an evolving system of customary law that entrenched the powers of the supreme chief and supported a highly authoritarian interpretation of chiefly powers" (Chanock 2001 in Delius 2008:223-224). The Native Trust and Land Act of 1936 consolidated the establishment of Native reserves (Sunde 2014b).

In 1948 the National Party introduced a new approach to the system of racial separation that had gained ground since the turn of the century. It aimed to create "a distinct domain for African society" and asserted that the institution of chieftainship was the cornerstone of such a society (Delius 2008:229). Towards this end it introduced the Bantu Authorities Act in 1951 which defined tribal authority in such a way that it further distorted the power and authority of chiefs, lessening their dependence on their subjects and granting them new powers (Delius 2008:229). Headmen were now subject to the chiefs and the chiefs themselves became, to a large extent, instruments of control for the apartheid system (Delius 2008). The Act involved the demarcation of new Tribal Authority boundaries, in many instances drawing arbitrary boundaries around communities (Claassens 2008).

Following the election of the National Party to power in 1948 the racially based approach to governance gathered weight and in this process, the expression of power through the use of law by the dominant regime is evident (Cousins 2007). In addition to the Bantu Authorities Act of 1951 which shaped governance in the coastal Bantustan areas, a key legal mechanism of governance that came to have wide reaching influence on marine resource management and conservation particularly for Coloured, African and Indian coastal communities was the Group Areas Act of 1950. This Act, implemented over several years, led to the forced removal of thousands of coloured, Indian and African South Africans from land that they had historically occupied along the coast. In doing so they lost not only their tenure security to land but also their tenure of marine resources within the waters that they had traditionally occupied and fished in for their livelihoods (Sunde 2003). In terms of the Group Areas Act many beaches and coastal areas were declared 'whites only' and restrictions were placed on access to the beach for 'non-white' persons. All along the coastline, in areas other than those already defined as Native Trust reserves, black communities experienced this loss of access to their livelihoods with associated impacts on

their culture and customary practices and community cohesion (Walker 2008). The racial spatial planning established by the above-mentioned policies was further extended with the introduction of specific racially-based legislation to turn the Western and Northern Cape into a 'coloured labour preference zone'. This policy contributed extensively to the current socially skewed demographic profile of the country with its associated social consequences. As a result of these laws, the Western Cape and Northern Cape, where the lucrative industrial fishing industry is based, were inhabited largely by persons defined by the State as 'coloured' and white persons. In contrast, the other two coastal provinces where dominated by black African persons, with a significant Indian population in Kwa-Zulu Natal as a result of the introduction and use of Indian labour in the sugar cane fields.

1.5.4 Marine protected areas as a mechanism of power in the marine commons

In the relatively early days of the apartheid regime in the 1960s, the conservation of marine resources in South Africa was influenced by the call of the International Union for the Conservation of Nature (IUCN), for the establishment of MPAs (Faasen 2006). In the next decade there were further calls for the establishment of MPAs all along the coastline (Attwood *et al.* 1997:343). The promulgation of the Sea Fisheries Act of 1973 signalled a response to these calls and a new approach to statutory management and regulation of both fisheries and marine conservation. This Act provided for the establishment and management of marine reserves in terms of Article 10. In 1976 a Marine Reserve Committee was established to "Investigate and recommend guidelines on Marine reserves" in terms of this Act (Attwood *et al.* 1997:343). This committee recognised the dual objectives of MPAs: protecting and enhancing marine species resources (Attwood *et al.* 1997:343). Statutory provision for the protection of marine areas was also covered in a range of other legislation introduced in the 1970s including the National Parks Act (1976) and several provincial nature conservation ordinances.

This new wave of conservation thinking influenced marine resource management and dovetailed closely with apartheid spatial planning (Sunde 2014b). A considerable proportion of the coastal land vacated in terms of either forestry conservation or racial segregation laws was opportunistically declared part of the national conservation estate, either as part of marine reserves or contiguous marine and terrestrial reserves. The histories of all of the major MPAs in South Africa promulgated prior to 1994 are thus shaped by the racially based removals in the apartheid land and seascape (Sunde and Isaacs 2008, Sowman *et al.* 2011). Approximately 56 small-scale fishing communities live in

or adjacent to these Marine Protected Areas (Sunde 2014a). The socio-economic impact from dispossession has not been calculated. However, Fay (2011) has estimated the cost of dispossession of eco-system services to the communities of Dwesa-Cwebe as a result of the no-take MPA. He estimated that in 2009, just 8 years after the signing of their Settlement Agreement, the costs to the communities in foregone marine and forestry ecosystem services could be valued as high as 17 million (Fay 2011).

Scott (2013) notes that the close relationship between colonial and apartheid fisheries managers and the marine science community was the 'golden era of marine science' in South Africa in which marine and fisheries scientists followed their passions with little awareness of the social injustices in which their work was located (Scott 2013). During the apartheid era fisheries management relied on collaboration between fisheries managers and scientists, with the managers increasingly willing to listen to scientific advice (van Sittert 1995, Payne and Bannister 2003 in Scott 2013:364). In contrast, fishers' local knowledge has historically not been included in management decisions. On the contrary, there has been a very pejorative attitude towards fishers' local knowledge (Sowman 2011).

Following the introduction of the Sea Shore Act in 1935, the Apartheid regime subsequently introduced a range of fisheries management laws and policies that steadily formalised the white industrial fisheries sector in the Western Cape such as the Sea Fisheries Act of 1940, Sea Fisheries Act of 1973 and Sea Fisheries Act of 1988 (Hauck and Sowman 2003, van Sittert 1992). The introduction of the individual quota system as a mechanism for allocating access rights to high value species, located predominantly on the western seaboard, enabled the steady privatisation of the marine commons as a select group of white owned commercial companies gained control over the most lucrative resources through this quota system (Van Sittert 2002). A number of Provincial fisheries regulations remained alongside the management controls introduced by the national Department of Sea Fisheries. These provincial regulations did make provision for subsistence or 'non-commercial' fishing however, because the regulations did not clearly define what the terms 'own use' and 'non-commercial purposes' meant. The categories of subsistence and recreational were not clearly distinguished from one another (Hauck and Sowman 2003:42-43). As a consequence of the lack of clear legal definition, small-scale fishers, whether artisanal or subsistence orientated, were often subject to arrests, fines and prosecution for failing to comply with the existing regulations (Hauck and Sowman 2003:43, Isaacs 2003). Small-scale fishers, comprising a mixed group on a continuum from those who fish only for their own consumption (predominantly in the Eastern Cape and KZN) to

those who worked in part for the commercial industry but fished on the side to supplement their meagre wages, existed on the margins of the formal fisheries sector without recognised rights.

The way in which colonial and apartheid capital controlled the establishment of the fishing industry along the western seaboard and systematically eroded the access rights of local artisanal fishers is apparent in the social and economic relations that have continued to shape access in this industry. These relations spilled over into a range of other relations shaping fishers' lives, to their access to vessels, to credit and loans, to the nature of the employer – employee relationship. In some instances it shaped access to housing in coastal towns, women partners' access to seasonal work, access to childcare facilities, access to transport to the cities and access to information (Masifundise 2010). As will be discussed in the following sections, the introduction of the individual quota system, as a mechanism for allocating fishing rights, became intertwined with these social and economic conditions prevailing in Northern and Western Cape fishing communities, exacerbating social conflicts and dividing communities between those who were able to get access and those who did not.

During the 1980s the Apartheid regime embarked on a process of seeking support from the coloured and Indian populations in an effort to bolster their power in the face of growing international criticism of racial discrimination and increasing resistance within the country. Through a complicated system of separate race-based administration the vote was extended to the coloured and Asian population. In the Western Cape the State also embarked on a strategy of wooing elites in the coloured fishing sector, selectively allocating them quotas and fishing rights during the 1980s (pers. comm Johnston 2016). This added to the complexity of the already racially divided fishing industry that was subsequently inherited by the democratic government in 1994.

1.5.5 The intersections of gender with race and class in the history of small-scale fisheries

Historically the fishing sector in South Africa as a whole has been much gendered, with distinct gendered roles and attitudes (Sunde 2008, Masifundise 2010, Groenmeyer 2015). Women from small-scale fishing communities up and down the entire coast have always played a role in the harvesting and processing of marine resources and in the livelihoods of their households, yet the image of the 'fisherman' remains the dominant one in fisheries. The nature of women's roles differs considerably from province to province where it intersects with

racial, ethnic and distinctive cultural patterns. On the eastern seaboard in KZN, Tsonga and isiZulu women can trace their harvesting of inter-tidal resources back to several centuries (Hauck *et al* 2014, Sunde 2013). IsiXhosa women along the Eastern Cape coast, living within traditional authority areas, have been harvesting mussels and other inter-tidal resources to feed their families for hundreds of years. In these areas women and young girls are the primary harvesters and many families depend on these resources for protein (Mbatha 2013, Emdon 2013, Sunde 2014b). Children have also played a significant role in the harvesting of marine resources for food in the isiXhosa coastal villages in this province (Calvo-Ugarteburu 2010).Groenmeyer (2015) observes that African women living in rural South Africa faced particular restrictions in that they were not permitted to enter urban areas without a residential permit. They were therefore restricted to the Bantustans where they cared for children and their aged relatives (Groenmeyer 2015). "Women with the requisite work permits were employed as housemaids, housekeepers or nannies in the homes of urban and rural white families. The migrant labour system, in addition to restricting job opportunities for women, reinforced patriarchal traditional practices by extending the authority of the traditional chiefs and their control over women living in the Bantustans. The multiple burdens of gender, race and class discrimination consigned black women to the lowest rungs of the socioeconomic ladder" (Groenmeyer 2015:8).

In the Western and Northern Cape provinces women have traditionally played a key role in the pre and post harvesting activities associated with the catching of line fish, net fish and rock lobster by male partners and family members. With the establishment of the industrial sector, many of them worked as seasonal workers in the industrial processing and packing plants (Groenmeyer 2015). Groenmeyer's work on employment of women in the fisheries sector of the Western Cape highlighted the fact that "the feminization of labour at the bottom of the supply chain, and the forced informality of work allows employers to flout all responsibility. Employers renege on responsibility for meeting workers' needs of healthcare, pensions, maternity, leave time, compensation for on-the-job accidents, and workforce training. The removal of limits on working hours has particularly burdened women, since they continue to bear most of the responsibility to raise children and care for the sick and elderly, though they have entered the workforce in large numbers" (Groenmeyer 2015:9).

The impact of South Africa's entry into the global markets has meant a reduction in the employment opportunities for women in these provinces as much of the fish and seafood is now caught and processed off shore or shipped live to northern markets (Masifundise 2010).

SSF fishers in rural areas were particularly vulnerable as most of them were very cut off from the political mobilisation taking place in opposition to the Apartheid regime in the urban areas. In some rural fishing towns in the Western and Northern Cape, particularly those with large fish processing facilities, some fishworkers working for the industrial fishing sector were unionised and interacted with the democratic resistance movement. However, in general the union movement did not include those who were considered small-scale fishers.

In the Eastern Cape and KZN, customary tenure systems predominated but fishing rights derived from these systems were not recognized in most places with the exception of Kosi Bay where the local provincial conservation authority did initially recognize the existence of a traditional governance system (Sunde 2013). Many fishers continued to harvest according to these customary practices, running the risk of being caught (Harris *et al* 2007). In these systems of living customary law, tenurial rights relevant to the use of marine resources are embedded in the customary governance system which provides the social and institutional frame for marine resource tenure relations, rather than the existence of distinctive fisheries institutions and processes (Sunde 2014b). As such, rights to access and use these resources were embedded in local social relations that varied greatly along the coastline. Within this context, rights emerged through local systems of shared access and use within membership of specific kinship and tribal groups. These rights were a function of one's membership of and status within the group and as such were governed by the layered mechanisms for decision-making and accountability that mirrored the layered nature of the rights (Okoth-Ogendo 2008 in Claassens and Cousins 2008:100-102, Sunde 2013, Sunde 2014b). While there are many similarities between the systems of customary law and governance established by the isiXhosa speaking tribes of the Eastern Cape and the isiZulu speaking fishing communities of KZN there are also considerable cultural differences between these groups which shape the distinctive social and cultural relations within which fishing takes place in these regions.

SECTION 2:

2.1 INTRODUCTION

As can be seen from the preceding discussion, small-scale fishers inherited a very geographically uneven, capitalist-orientated and deeply racialised legacy of marine resource governance at the dawn of democracy in South Africa. With the election of the first democratic government in 1994, there were high hopes that the legal and policy reforms promised by the ruling African National Congress (ANC) would introduce a new paradigm for the governance of marine resources with a much more socially inclusive and developmental orientation (Isaacs 2004).

In 1996 the new Constitution of South Africa was adopted. The Constitution includes a Bill of Rights which contains key provisions aimed at promoting equity and eliminating all forms of discrimination. Following the adoption of the Constitution it became unlawful for either the state, private companies or individuals to "unfairly discriminate directly or indirectly against anyone on oneor 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" (Constitution of SA 1996). Importantly, while it was acknowledged that the State would not be able to address the legacy of discrimination over-night, the State committed to take reasonable legislative and other steps to progressively realise the freedoms and provisions in the Bill of Rights.

2.2 THE FISHERIES REFORMS OF THE DEMOCRATIC TRANSITION PERIOD

Shortly after coming to power the new government established the Fisheries Policy Development Committee with the explicit aim of reforming the fisheries and revising the Sea Fisheries Act of 1988. There was extensive political lobbying by different fisher constituencies during this period of policy development. The ANC actively engaged with the black small-scale fishers in the Western Cape who had been regarded as 'poachers' by the apartheid regime. These fishers called themselves 'informal' fishers as they continued to be excluded from formal recognition, even after the reform process in 1998 (pers.comm Johnson 2016). During this period of lobbying one of the key leaders of one of the groups of informal fishers, Andy Johnston, began working closely with a range of international social movements on issues of food security and small-scale fisheries. Inspired by the political organisation of these groups, he established the South

African Artisanal Fishers Association and subsequently many of the informal fishers referred to themselves as 'artisanal fishers' and began demanding legal recognition (pers.comm Johnson 2016) .

An enquiry into the socio-economic conditions of fishing communities along the West Coast of the Western Cape was initiated by the Department of Fisheries in response to the increase political focus on the fishing sector. This report identified poverty, insufficient housing, alcoholism, unemployment and illiteracy as pertinent features of most coastal communities along the West Coast (Schutte 1994 in Isaacs and Hara 2015:8).This led to the recommendation that Fishers' Community Trusts should be set up to address poverty in fisher households in all coastal communities (Isaacs and Hara 2015:8). Subsequently community quotas were allocated to 34 community trusts in the Western Cape. These quotas comprised the relatively high value species of Hake, West Coast Rock Lobster and pelagic fish. The quota conditions enabled the Trusts in effect to sell the quota back to established companies for a relatively low price and to use the income as a form of relief for the fishers (Isaacs 2003, Isaacs and Hara 2015). This social relief intervention was characterised by mismanagement, corruption and elite capture of the benefits and impacted very negatively on fisher households. The scheme was subsequently disbanded (Isaacs and Hara 2015:10). The lack of capacity within the communities to manage these Community Trusts was noted.

2.3 RACIAL AND CLASS-BASED ALLIANCES POST-APARTHEID

Policy discussions regarding the reform of the existing fisheries legislation in the period between 1996-1998 centred on strategies to change the racial profile of the industry and the need to promote redistribution of wealth in the industrial sector (Hersoug and Isaacs 2001). Notwithstanding these reform imperatives, the influence of neo-liberalism was already apparent at this early stage in the reform processes and the power of a neo-liberal economic policy held sway (Isaacs 2006, Ponte and van Sittert 2006).The industrial fishing companies argued strongly that any radical reforms that included substantive redistribution of access to resources would threaten the economic stability of the industrial sector, thereby placing the employment of thousands of coloured and black workers at risk (Nielson and Hara 2006, Van Sittert 2006, Schultz 2015). Several of the large, white-owned companies invited senior ANC officials to become part of their boards and organised labour was increasingly lobbied by the industrial sector to support them. There was a certain amount of redistribution of resources through the allocations that had started with the pre-democracy coloured elite and now also included the African nationalist aligned coloured and black capital (Ponte and van Sittert 2006:33). However, although the final policy outcomes from this reform

process looked good on paper it is common cause that the power relations behind the scenes between the captains of industry, the new political black elite and organised labour had managed to secure 'business as usual' in an increasingly neo-liberal context (Isaacs 2006, van Sittert 2006).

Importantly in the light of the SSF Guidelines, the Marine Living Resources Act (MLRA) adopted in 1998 states that the Minister must consider the following objectives:

- The need to achieve optimum utilisation and ecologically sustainable development of marine living resources;
- The need to conserve marine living resources for both present and future generations;
- The need to apply precautionary approaches in respect of the management and development of marine living resources;
- The need to utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries and mariculture branches, employment creation and a sound ecological balance consistent with the development objectives of the national government;
- The need to protect the ecosystem as a whole, including species which are not targeted for exploitation;
- The need to preserve marine biodiversity;
- The need to minimise marine pollution;
- The need to achieve a broad and accountable participation in the decision-making
- The need to consider any relevant obligation of the national government or the Republic in terms of any international agreement or applicable rule of international law; and
- The need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry;

2.4 THE MLRA AND THE MISSING FISHERS

The above-mentioned power relations coupled with a failure to understand the diversity within the small-scale led to the marginalisation of small-scale fishers in the MLRA and in the general fisheries policy that was subsequently developed under the ambit of this Act. The MLRA limited access to three types of fishing, namely commercial, recreational and subsistence. The definition of subsistence fishing limited this category to those who fish for local consumption with very

limited local sale, thereby excluding other small-scale and artisanal fishers who did catch and sell in order to sustain their livelihoods, albeit on a small scale (Sowman 2006). This Act also failed to address the impact of apartheid on the customary fishing rights of many traditional coastal communities. Further, the democratic reforms of this period failed to discuss the needs of inland and freshwater SSF within the fisheries sector (Britz *et al* 2015) and this group of fishers was excluded from the policy process entirely.

In 1998 the Deputy Director General of Fisheries set up the Subsistence Fisheries Task Group (SFTG) to make recommendations on the management of subsistence fisheries. The SFTG undertook a survey of small-scale fisheries along the entire South African coast, identifying

approximately 28,000 households and 30,000 fishers who were regarded as 'subsistence' fishers (SFTG 2000, Branch *et al* 2002).

The SFTG found high levels of poverty within subsistence fisheries households across the provinces:

Coastal area	% Food insecure households	% Poor house-holds	Ultra Poor Households
West Coast	43	18	6
South Coast	49	28	16
East Coast	77,6	57	34,6
KZNNatal	45,9	49	19,6

Table 1: Summary of findings by the SFTG pertaining to poverty and food insecurity levels amongst poor fisher households along the South African coastline (Source: Adapted from Branch *et al* 2002:447).

Notably these statistics confirmed that race, class and geographical disparities created by colonial and apartheid racial planning legislation had created gross differences in the SSF sector that required attention at the time that the MLRA was being developed.

Significantly, the SFTG identified a group of fishers that could not easily be accommodated within the narrow definition of 'subsistence' and recommended that the MLRA should be amended to accommodate this category of 'small-scale commercial' fishers (SFTG 2000). No further legislative or policy action was taken with respect to this sector; on the contrary, the sector was

marginalized with no rights having been allocated to subsistence fishers to date. Instead individual permit exemptions to harvest on a very limited subsistence basis were issued in KZN and in the Eastern Cape from 1999 onwards. In KZN fisheries management was devolved to a provincial level and the Ezemvelo Wild Life conservation agency was contracted to manage fisheries. This organisation with a strong conservation approach adopted a policy of identifying those communities that had traditionally harvested marine resources and, within these communities" ring-fencing" the number of subsistence permits allocated (pers.comm Harris 2006). In the Western and Northern Cape the DEAT allocated individual subsistence permits to small-scale fishers that were based on the recreational permit bag limits.

At the time that the SFTG was established, the department facilitated the establishment of the South African Commercial Fishing Corporation (SACF) which operated as a co-operative with over 3000 members organised into 25 cooperatives in fishing villages along the Western, Southern and to a lesser extent Eastern Cape coast. The SACFC was allocated a range of high value quotas. Allegedly the Board of the organisation formed a holding company and through this was able to secure control over the quotas which they essentially sold to the existing industry players. Schultz (2015b) has noted that "the profit-driven legal structure of these enterprises, authoritarian and corrupt practices by individuals at management and board level, lack of organisational capacity among fishers, and negligible support from the government meant that fishers were unable to exercise substantive control, or to benefit equitably from the profits of these companies of which they were the ostensible owners" (Schultz 2015b:80). The SACFC experience left a very bitter taste in the mouths of many small-scale fishers who felt that they had been cheated and let down as the board members who failed to manage the organisation equitably and transparently were never brought to book. Many fishers cite this failed experience of cooperatives as reason for their wariness of these legal entities as a mechanism for holding fishing rights.

Ponte and van Sittert (2006) have argued that "the attempted 'external transformation' of the industry (via the entrance of new players) basically stopped in its tracks in the late 1990s as a result of the failed populist redistribution movement of 1998-99" (Pointe and van Sittert 2006:33). Instead the focus shifted towards what they refer to as "internal transformation"' or the '"blackening' of established players; larger quotas to well-performing black players" under the umbrella of the so-called 'tripod of equity, sustainability and economic stability"' (Ponte and van Sittert 2006:33).

2.5 THE EMERGENCE OF A CLASS OF EXCLUDED 'TRADITIONAL FISHERS'

By 2002 coloured and African small-scale fishers up and down the Western and Northern Cape coast were expressing their anger at not realising any benefits from the SACFC (pers.comm 2002), coupled with the increasing realization that there was not going to be substantive restructuring and transformation of the industry in their favour. In 2001 the Department responsible for the management of fisheries, the Department of Environmental Affairs and Tourism (DEAT), introduced a 'medium term' process of rights allocations aimed at piloting a new rights allocation system for a period of four years. Individuals and registered associations and companies were able to apply for 'limited commercial' rights which would be valid for four years. This only applied to the small-scale fishers in the Western and Northern Cape. In the Eastern Cape and KZN the fishers continued to be allocated individual subsistence permit exemptions with strict bag limits.

Only a very limited number of those small-scale fishers who applied for rights were allocated rights. Where fishers had formed associations to apply for rights the institutional structures established for this purpose were complex and fishers struggled to manage these structures with no capacity building and support provided. Numerous reports of "new entrants' being successful, drawn from the emerging black elites and educated classes were reported (Isaacs 2006). Isaacs and Hara have referred to these as the 'rights grabbers' (Isaacs and Hara 2015:10). This led to increasing frustrations amongst small-scale fishers who approached an established non-governmental organisation, Masifundise Development Trust, to support them in their struggle to challenge these allocations. In 2002 Masifundise began mobilising rural coastal fishing communities around these unfair policy allocations and the failure of the policy reform process to recognise what was articulated as the rights of the bone fide "traditional fishers". Together with another small artisanal fisher organisation based in Cape Town, the Artisanal Fishers Association, they began to link with other organisations previously involved in the mass democratic movement against Apartheid. They organised an International Fishers' Forum at the World Summit on Sustainable Development. Here they linked up with representatives from the World Forum of Fisher Peoples (WFFP) and ICSF for the first time. This exposed the fishers to global fisheries issues, most notably, the way in which the marine commons worldwide were being privatised through neo-liberal policy mechanisms such as Individual Transferable Quotas (ITQs). The fishers were inspired by the way many international organisations articulated the value of the small-scale sector vis-à-vis the industrial sector, how they linked their

struggles to human rights issues and the participatory, community based management approaches proposed by international fisher movements. Issues linked to women's rights, their roles in the fisheries and unequal gender relations within fisheries were highlighted for the first time. Most notably, they recognised the strength in organisation and began to discuss mobilising into a fisher organisation (Sunde 2003).

2.6 LAUNCHING SMALL-SCALE FISHERS' CLASS ACTION

In 2004, Masifundise hosted Fisher Human Rights Hearings that provided a platform for small-scale fishers who regarded themselves as the traditional fishers to voice their struggles and to highlight the human rights issues that they were facing (Masifundise 2004). Following these hearings the Artisanal Fishers Association and Masifundise, together with the support of Legal Resources Centre (LRC), began to prepare for class action litigation in order to challenge the exclusion of these small-scale fishers from the MLRA on the grounds that this was a violation of their rights as traditional fishers.

This process was given momentum when the DEAT released the draft policies for the allocation of long term rights for the period 2006-2016. In 2005 the gazetting of the General Policy for the Allocation and Management of Long Term Fishing Rights (DEAT 2005), created the opportunity for commercial interests to apply for commercial rights in 19 species, including several of the near shore species which had traditionally been harvested by the small-scale sector. Even where the policy included traditional, family based fisheries such as the traditional line fishery, the application and allocation process was a highly complex and competitive one, far from the reality of small-scale fishers. It discriminated against fishers with low levels of literacy. Furthermore, the verification process was not regarded by the fishers as legitimate and the appeal processes were complex and costly (Masifundise 2005). In 2006 the Department allocated individual, commercial rights in terms of this policy, de-coupled from any community-based context for decision-making or accountability (DEAT 2006). Throughout this period annual individual exemption permits continued to be allocated in the other two provinces. A relatively small number of traditional fishers, approximately 820, were successful and were allocated individual rights in the West Coast Rock Lobster industry. In addition, 450 rights holders were individual allocated traditional line fish rights (DAFF 2015). A number of these were traditional small-scale fishers but hundreds of other traditional fishers were not successful and lost the access to the sea that had been the basis for their livelihoods.

The restriction on the number of rights allocated for species in the near shore zone was motivated strongly by marine scientists who argue that most of the species in the near shore zone were maximally or over-exploited. Many traditional small-scale fishers were thus excluded from gaining access to resources or to what they considered to be their traditional fishing grounds (Masifundise 2010). The state has defended its transformation of the fisheries sector by quoting the shifts in the racial profile of the fisheries. The WCRL industry has increased from 39 predominantly white rights holders in 1992 to 237 full commercial west coast rock lobster fishing and 825 near shore commercial fishing rights in the long term allocations of 2006 of which 66 percent were granted to blacks and black owned entities (DAFF 2015).

This long term fishing rights allocation process set the scene for future conflicts in the industry and impacted the social relations of the coastal communities. Overnight neighbours who had similar histories in the fisheries were enemies with one allocated an individual quota to fish in the near shore zone and another not. The emergence of a new class of 'near shore small-commercial rights holders' through this process created a division within communities in the Northern and Western Cape which was keenly felt. "The adoption of the individual rights approach embodied by the individual transferable quota (ITQ) system in the post-apartheid reforms has led to divisions within the community. Fishing rights benefited a small elite and disenfranchised many more fishers for whom fishing was a livelihood, but were excluded from the rights allocations" (Nthane 2015:ii). Research into the impact of these allocations on social cohesion, food security and livelihoods of a traditional West Coast fishing village reveal that this fractured the fishing community and led to household food security and income differences amongst the fisher households (Nthane 2015, Schwartz 2013).

2.7 THE CONSOLIDATION OF MPAS AS THE 'SAFETY BANKS' OF INDUSTRIAL FISHERIES

In addition to the introduction of the new fisheries policies in the early 2000s under the auspices of the MLRA, the DEAT embarked on a process of re-gazetting marine reserves and MPAs in terms of this new statute. However, in contrast to the fisheries policy processes which were subject to some extent to the political pressures of transformation, this process of MPA planning and rezonation was controlled by the marine and conservation scientists in the newly established DEAT and happened largely behind the scenes with no public consultation. Driven in part by the announcement by the marine science community that South Africa was facing a line fish crisis in 2000s, and in part by the parallel land restitution process which was impacting and threatening the future of much of the conservation

estate, the DEAT issued a Gazette in 2000 that introduced new zonation and regulation in several of South Africa's MPAs with no consultation. For example, the Dwesa-Cwebe MPA in the Eastern Cape was declared a 'no-take' MPA, despite the fact that DEAT officials had been party to discussions with the community on their land claim settlement agreement which would give them sustainable use and co-management rights while the reserve remained under conservation status. Behind the backs of the community, the DEAT gazetted the MPA just six months before the community signed their Settlement Agreement (Sunde 2014). This effectively closed off the MPA to the community who had historically depended on marine resources for their livelihoods. Similarly, the Tsitsikamma MPA was declared a 'no-take' MPA, also cutting off a number of local residents from the coastline with which they had a long ancestral association and upon which they depended to supplement their livelihoods (Faasen 2006, Williams 2013). These conservation initiatives were defended by their designers who argued that MPAs were the 'safety banks' of the fisheries sector.

Despite promises that communities would benefit from conservation, an analysis of a range of policy interventions along the KZN coast and the Eastern Cape coast reveals that local communities have been further excluded from access and benefits from the coast since 1994 (Hauck *et al* 2014). Instead of the reform policies of the late 1990s and early 2000s securing redress for previously disadvantaged and dispossessed coastal communities, the particular way in which a neo-liberal development agenda engaged with the legacy of apartheid resulted in deepening social exclusion and increasing contestation over marine and coastal resources (Wynberg and Hauck 2014, Sowman *et al* 2011).

SECTION 3:

'FISHERS' RIGHTS ARE HUMAN RIGHTS'

3.1 INTRODUCTION

This section outlines the way in which SSF fishers responded to the continuing marginalisation of the small-scale fisheries sector following the introduction of the MLRA in 1998. Most notable was the increased mobilisation of a group of fishers in the Western Cape and their advocacy actions that culminated in the adoption of the new policy on SSF for the entire SSF sector in South Africa. This policy process has facilitated the extension of the footprint of fisher organisation along the entire coastline and empowered many fishers to ensure that their voices are heard in policy and management decisions. In the Eastern Cape and KZN several communities have continued to fish according to their customary practices, asserting their customary rights as a strategy of power and resistance in the face of an increasingly repressive authority (Sunde 2013, Sunde 2014b). They have sought the support of the Legal Resources Centre in using the Constitution to challenge this discrimination and to argue the legitimacy of their local system of customary law. Another response that has received considerable attention in the media and literature is the growing number of groups within communities who fish outside of the bounds of the regulatory system and assert their own rights and rules (Hauck 2009, De Greef 2013, Schultz 2015a). Referred to by the mainstream media and fishing authorities as 'poachers', many of these communities are defiant in their resistance to this term, arguing that they have a legitimate right that has not been recognised by the post-apartheid state. These various responses have added to the complexity of the social dynamics in the SSF, changing the social relations of power in new and old ways.

3.2 THE MOBILISATION OF FISHERS TO SECURE THEIR RIGHTS

In the period following the medium term rights allocations in 2002 fishers in small-scale fishing communities in the Western Cape and the Northern Cape began organizing. They submitted many requests to the DEAT to engage with them on the exclusion of bone fide fishers from the rights allocations processes. They requested meetings with the then Director of Marine and Coastal Management (MCM), Mr. Horst Kleinschmidt and with the DG, Dr Monde Mayekiso, but both officials continuously denied that fishers' had a legitimate case. They argued that they had accommodated the small-scale sector by allocating rights to this class

of near shore commercial rights holders and that there were just not enough resources to include additional rights holders.

In 2004 Coastal Links, an umbrella network of 16 coastal fishing communities was launched in the Western Cape. In 2005 the fishers, supported by Masifundise and Artisanal Fishers' Association and with the legal assistance of the Legal Resources Centre launched court action in both the High Court and the Equality Court, arguing that the Long Term Policy was discriminatory and violated their human rights. Known commonly as the Kenneth George versus the Minister matter, this case documented the struggles of artisanal, small-scale fishers using a traditional net fisher, Kenneth George from Simonstown as the main application in this case (Kenneth George EC/107).

Masifundise and Coastal Links used the opportunity provided by the case to launch an advocacy and awareness campaign entitled 'Fishers' rights = human rights'. Through this campaign the organisation worked to raise fishers' awareness of the provisions of the Bill of Rights in the Constitution and how they linked to the demand for recognition of the rights and livelihoods of the fishers. Historically the Artisanal Fishers' Association membership had been drawn from the urban fishing communities of Hout Bay, Ocean View, Kalk Bay as well as several communities on the West Coast and those around Hermanus and Hawston. Masifundise and Coastal Links in contrast, did not work in the urban centres and focused its work in the rural areas where few artisanal fishers had been organized.

Coastal Links and the Artisanal Fishers Association organized a range of advocacy actions: the leadership chained themselves to the gates of the Parliament; they wrote petitions and staged marches to the DEAT fisheries branch, known as Marine and Coastal Management (MCM). During this period they formed an alliance with the Congress of South African Trade Unions (CASATU) who supported the fishers in these actions. In December 2006, desperate after many months of limited food security and increasing poverty, the Coastal Links fishers embarked on a defiance campaign. They informed the Minister of DEAT that they were going to sea in Paternoster in order to feed their families and communities. This protest action received considerable attention in the national media and prompted the DEAT Deputy Director General to respond immediately and begin engaging with Coastal Links and the Artisanal Fishers' Association on how to address the situation. In May 2007 the fishers and the DEAT reached an agreement that was made an order of the Equality Court (Kenneth George EC/106). The Court ordered the Minister responsible for fisheries to develop a new policy that would accommodate the socio-economic rights of these traditional fishers and ensure equitable access to marine resources. It also made provision for an interim relief

measure for a limited number of fishers in the Northern and Western Cape while this process was underway.

Following the signing of the court order, the fisher representatives negotiated the terms of the interim relief order with MCM. The Department insisted on using the recreational permit as the basis of the interim relief permit. Under this system, a limited number of individual fishers, initially only 800 but subsequently increased to 1500 and then 2000 would be allocated a permit exemption to harvest four crayfish per day and a tightly prescribed list of line fish, depending on which area they were in. The fishers and their NGO partners were reluctant to accept this relief package as they did not wish to have an individual permit exemption however having struggled for so long without access to marine resources, the fishers felt that they should accept this package while they negotiated a new small-scale fisheries policy. The first Interim Relief measure was therefore implemented in 2007. This interim relief measure only applied to bone fide fishers in the Western Cape and Northern Cape and initially the criteria for the relief largely excluded women inter-tidal harvesters. It did not apply to the Eastern Cape or the KZN fishing communities at all.

3.3 DEVELOPING A SMALL-SCALE FISHERIES POLICY

At first the Department was slow to respond to the conditions of the Court Order to develop a new SSF policy. Finally, in November 2007, the Department hosted a National Summit on Small-scale Fisheries in 2007. The Summit was attended by approximately 80 fisher representatives (15 to 20 fisher representatives per province. The participants at the summit were regarded as a fair representation of small-scale fishers in the country (McDaid 2014). A Joint National Policy Task Team (NTT) was nominated at the Summit, with representatives from fishing communities in all four coastal provinces. Subsequently a Technical Team (NTT) was established comprising key members of the NTT and additional persons considered as having expertise in SSF. No women fisher representatives were nominated at the Summit. In 2008, ICSF provided funding for Masifundise to host a Gender and Women in Fisheries Workshop. This workshop raised awareness about women's roles and their rights and subsequently members of Coastal Links successfully lobbied the DEAT and the NTT to include a woman representative (Sunde 2008).

Starting at this National Summit, and during the following year in workshops hosted by Masifundise, small-scale fisher representatives from around the country developed proposals for the basis for a new policy (Masifundise 2010).

At these meetings the fishers described the impact that the ITQ system had had on their communities. They articulated very strongly the fact that they did not want an individual permit. Rather they wanted a community-based approach to fisheries management that would ensure that everyone's livelihoods and basic food security would be protected. Through this and related processes the fisher community representatives developed a vision for a new approach to the governance and management of small-scale fisheries in South Africa. This vision was influenced by the Constitution of South Africa which was slowly gaining traction in the country as well as the international advocacy campaigns of the international fisher movements.

The civil society representatives of the fishers in South Africa drew on the content of the international advocacy campaigns to valorize and protect the human rights of small-scale fisheries. The Artisanal Fishers Association, Masifundise and Coastal Links had close links with the World Forum of Fisher Peoples (WFFP) and the International Collective in Support of Fishworkers (ICSF). The call for a human rights-based approach to small-scale fisheries was clearly articulated in the paper on Social Issues in Small-Scale Fisheries that was presented at the 27th session of COFI in March 2007 (FAO/COFI/2007/6). Subsequently proposals to develop strategies for implementing human rights-based approach were made in several regional and international fora, most notably at the 4SSF Conference jointly hosted by the FAO and the Government of Thailand in Bangkok in October 2008. This Conference reaffirmed "that human rights are critical to achieving sustainable development" (FAO 2009a). It was argued that "Given the international consensus to achieve **human rights** for all, the adoption of a human rights approach to improving the life and livelihood of fishing communities should not be seen as a matter of choice but as an obligation" (ICSF, 2008).

The South African fisher organisations and their NGO partner, Masifundise, participated actively in the preparatory meetings to Bangkok and in the international conference. At this conference the international fisher movement released the Bangkok Statement. This statement highlighted the human rights based approach:

"Declaring that the human rights of fishing communities are indivisible and that the development of responsible and sustainable small-scale and indigenous fisheries is possible only if their political, civil, social, economic and cultural rights are addressed in an integrated manner" (WFFP-ICSF 2008).

This strong emphasis on human rights influenced the representatives engaging in the policy development process in South Africa and they argued strongly for a

paradigm shift in fisheries management, calling for a shift to a human rights-based approach to the new policy.

The Equality Court Order was extended in November 2008 as the development of the policy was still incomplete. In December 2008 the Department released the Draft Policy for Medium-Term Subsistence Fishing Rights. This draft was rejected by the NTT and the majority of those who submitted public comments as it did not reflect the proposals submitted by fishing communities during the preceding consultation process. In 2010 a further draft policy was also rejected and the DAFF officials and its civil society partners went back to the drawing board. With the assistance of a pair of neutral facilitators, broad agreement on a draft policy was finally reached in early 2011.

3.4 OBSTACLES TO FINALIZING THE NEW SSF POLICY

Two major obstacles in the development of a new policy were evident from the outset in 2007 when the NTT first met: firstly, the MLRA did not recognize traditional, small-scale or artisanal fishers, therein discriminating against these fishers. Secondly, the fact that the Minister had already allocated fishing rights for many of the species through the General Policy which came into effect in 2006, created a great deal of confusion and uncertainty surrounding the development of a new policy that would allocate access rights for the traditional small-scale sector in a context in which all available effort and catch had already been allocated. The question 'where will the fish come from' was raised repeatedly from the outset. The fishers were very clear with the DEAT representatives that ideally the development of a new small-scale fisheries policy should have been done at the same time as developing the long-term commercial policy so that a holistic approach to fisheries policy could have been developed. This would also have enabled the Department to develop an overall policy that was in line with the international and regional legal agreements that South Africa has signed on the need to develop sustainable and responsible fisheries that also address human dimensions of the marine ecosystem.

The apportionment of resources between the sectors and the question of 'where the fish will come from' has continued to be a thorny and very contested issue and remains unclear, itself indicative of the power relations at stake with this issue. Given the balance of power in the political economy of the fisheries sector as a whole DEAT, and since the split of the departments, now DAFF, have played a balancing game trying to keep their industrial clients happy while also promising the SSF that there will be real redistribution of resources through the implementation of the SSF policy. The fact that they have avoided

this issue since 2007 notwithstanding the Court Order highlights the fact that there is a lack of political will at a high level to redistribute effort and resources to the SSF.

In November 2015 the DAFF held a meeting on this subject for all stakeholders from SSF to SMME and including the industrial sector. They released a document with proposed apportionment figures (DAFF 2015b). While this document suggests a commitment on the part of the DAFF to allocate substantial resources in the near shore, to the SSF this document has not been confirmed. Statements in the media suggest the Minister remains committed to the legal processes of rights allocation that DAFF embarked upon in 2013 with the Fishing Rights Allocation Processes (FRAP) in the sectors where the long term rights allocated in 2006 were expiring. These include key species and fisheries central to the SSF policy resource basket such as traditional line fish, west coast rock lobster, net fish and abalone. To date the Minister has continued to commit to still allocating individual commercial rights to these species, despite requests to commit to a community based approach. This means in effect that the divisive effects of the individual permit system on communities will continue with the absurd situation that fishers now have the choice: apply for an individual long term right to a resource or become a member of your community's application to be declared an SSF community and be given a community allocation to be jointly held and managed by the community co-operative. As the proportion that will be allocated to individual rights and to SSF community rights remains uncertain, fishers are forced to take a gamble. This uncertainty is creating further instability amongst community groups who are desperate to enhance cohesion in anticipation of the formation of their collective entities, not fragment their already tenuous notion of 'community' further.

3.5 THE RESPONSE OF THE INDUSTRY TO THE EQUALITY COURT ORDER

The NTT's work during 2008 was greatly hampered by the threat of court action by the industrial sector. The West Coast Rock Lobster Industrial Association launched court action against the Minister and the fishers during the course of this year (*WCRLA versus the Minister and others 2008*). This industry argued in court that granting the interim relief access to the WCRL would threaten the sustainability of the industry and prejudice the commercial rights holders. In October 2008 the Cape High Court ruled that the Minister had acted correctly in granting relief to the applicants in the Equality Court matter. The applicants subsequently took their case to the Supreme Court of Appeal which confirmed the judgment of the High Court in favour of the SSF fishers.

Notwithstanding this judgement confirming the department's approach, detractors of the SSF sector continue to get coverage in the national media and to make their powerful voices heard. Not surprisingly, one of the most vociferous opponents of the SSF sector is a former DEAT legal advisor who himself now has vested interests in the fishing industry as an advisor to this sector. Shaheen Moolla established a blog for his consultancy in September 2009 and since then has published over 10 entries criticising and undermining the SSF sector. The misinformation and deliberate attempt to undermine the new policy is evident in this small sample of titles on his blog site:

- The Draft Small-Scale Fisheries Policy: A Recipe for Failure, Wednesday, September 15th, 2010
- Opposition to the Small Scale Fisheries Policy Grows, 2010
- Interim Relief Over-catch is 400%, Tuesday, November 23rd, 2010 at 2:52 pm
- The Farce that is Interim Relief Tuesday, November 23rd, 2010 at 8:36 am
- "Something fishing in allocation of interim relief quotas for marine poachers" The Cape Times Dec 10 2010: 6
- Interim Relief Quotas decimates lobster market, Monday, January 3rd, 2011
- Is the Interim Relief poaching crisis South Africa's new Hout Bay Fishing Industries? February 10th, 2011
- Interim Relief Lobster Poaching Crisis, Monday, February 21st, 2011
- MAIL AND GUARDIAN REPORT ON LOBSTER CRISIS, Friday, February 18th, 2011
- Community Quota debate is the same as the Nationalisation "Debate" in mining. Feb 10th 2011
- What are Customary Fishing Rights? Monday, May 28th, 2012

Accessed at Feike Blog www.feike.blog (archives) on 25 January 2016).

More recently Moolla has expressed his discriminatory attitude towards the SSF stating that "The seriously misguided and destructive decision of the Equality Court to grant access to a further 1,000 (now 2,000) 'fishers' to lobster in 2007 marked the collapse of SA lobster stocks. I can unequivocally lay the blame for the collapse of lobster at the door of this misguided judgement," says Moola who adds: "Fish stocks are not meant for social welfare or equal access."

(GroundUp, 11 February 2015). This prejudicial attitude towards those small-scale fishers who are party to the Equality Court order appears to be closely linked to the industrial sectors' attempts to convince the department to avoid radical redistribution of resources to the small-scale sector and rather to follow a neo-liberal, capitalist intensive approach to fisheries management.

These class-based tensions are intersected by on-going racial tensions in the country. As noted, racist legislation led to a predominance of coloured persons in the Western Cape in contrast to other provinces. The impact of this history of racial social engineering is evident in the recent demand by the De Klerk Foundation that the department must remove what they refer to as 'the quotas' that will be forthcoming in the SSF policy implementation as these will "violate the rights of coloured fishing communities". These fears arise in the context of affirmative actions to address the racially skewed access to resources in many sectors. The Minister of Fisheries has responded that these fishing communities will not be disadvantaged (http://ewn.co.za/2015/10/02/Zokwana-fishing-communities-will-not-be-disadvantaged-by-quotas).

3.6 INTERIM RELIEF AND THE TYRANNY OF THE 'KWOTA'

Regrettably the process of developing the SSF policy was extremely slow and time consuming. The release of two drafts during this process that did not satisfy the requirements of the Equality Court Order, coupled with a split in the DEAT in 2009 and the separation of the fisheries management mandate and the environment mandate into two different departments (DAFF and DEA),impacted the pace of delivery. This required the extension of the Interim Relief measure repeatedly for each season commencing in 2007 until the present time. As a consequence, the individual permit allocation of the Interim Relief became institutionalized as opposed to the community-based approach to rights allocations which had been envisaged.

Fisher leaders, DAFF officials and other non-state actors reflect very mixed feelings towards the Interim Relief measure. It is acknowledged that the interim relief measure did bring needed relief for some fishers (Ngqonqwa 2015:33). The Equality Court Order and getting some access to resources appears to have contributed to the empowerment of many SSF fishers who have subsequently participated in the policy development process (Masifundise 2010). Some critics have observed that the public participation processes for the development of the policy and subsequently for the management of the Interim Relief have in fact not been participatory but instead have been captured by certain elites in some communities (Schultz 2015b). The dominance of a neo-liberal narrative of

governance that uses the illusion of public participation as a means of controlling citizens and ensuring the status quo has been noted (Schultz 2015b).

Several commentators have argued that interim relief has been implemented within the dominant power relations of the neo-liberal orientation of the government and the industrial market forces (Isaacs 2011, Sowman *et al* 2014, Isaacs and Hara 2015, Schultz 2015b). As a result, one of the key problems with this measure is that the fishers have been forced to use the existing channels for marketing the WCRL component of this relief package as the catching and processing of this high value species is controlled by a small handful of historically privileged companies. "Many have experienced social and economic challenges such as exploitation by companies exporting West Coast Rock Lobster, who buy interim relief West Coast Rock Lobster at a very low market price" (Ngqongwa 2015:33).

Several fisher leaders and officials attribute some of the increased poaching and conflict surrounding the SSF to the continuation of the Interim Relief individualized approach to fishing (Ngqongwa 2015:33, anonymous fisher leaders 1 and 2, 2016). In 2014, in an attempt to begin to move away from this individual approach, Masifundise and Coastal Links demanded that the DAFF begin to implement a community-based approach. Towards this end, the DAFF began issuing a single community permit to each community, with an identified leader as the 'care-taker' of the permit. Each community is allocated a share of the Interim Relief TAC, which in itself is a share of the total TAC allocated to the near shore, with the other component going to the individual commercial rights holders in the near shore in each zone and then a separate recreational TAC going to this sector. Notwithstanding this shift, many fishers continue to perceive the Interim Relief as a form of 'kwota[2]'. Despite voicing their dislike of the quota system introduced through the medium and long term quota allocations in which 'non fisher''new entrants' and non-deserving elites were believed to have been given access to quotas, and requesting a different system, some fishers still express their wishes for 'a kwota'. One West Coast leader feels that the misperception of the Interim Relief as a form of quota and the hope that the new SSF policy will bring them 'kwotas' is still particularly strong amongst women from Western Cape coastal communities. This leader believes that the experience of the 2002 rights allocation, in which a substantial number of women were part of paper quota holding groups and received some, albeit relatively small dividends, has left

[2] Kwota is the Afrikaans word for a quota which refers largely to the individual transferable quotas allocated by the fisheries department in 2002.

a lasting legacy of false hopes along the coast (pers.comm Norton Dowries 2016). He says that 'kwota' is a dirty word and this false perception must be addressed as part of the roll out of the SSF policy.

3.7 THE ONGOING LEGACY OF PROVINCIAL AND RURAL-URBAN DIVIDES

The NTT process was skewed towards the Western Cape and Northern Cape. These two provinces were represented by two fishers and two fisher organisation representatives but in addition there were two NGO representatives and 2 researchers from academic institutions. In addition, as MCM was located in Cape Town, the officials were all from Cape Town. While there were four community representatives in KZN and three from the Eastern Cape, they had no budget to undertake report backs to their constituencies and in the absence of organisation in these provinces this was an impossible obligation. Despite the civil society representatives repeatedly asking the DEAT from the start to develop a pamphlet in isiXhosa and isiZulu to explain the policy development process to the fishing communities in these provinces, this was not forthcoming. In this way, the inequities between the provinces continued. The fishers in the Western and Northern Cape had the benefit of regular report back workshops and Masifundise was able to raise funds specifically to undertake awareness-raising work about this process and to facilitate a measure of feedback. In contrast this was not always possible in the other areas due to lack of funds and capacity. Inevitably there has been unevenness in the extent to which the policy discussions were fed back to local communities. This in itself has subsequently created unevenness in understandings of the process and the extent to which fishers regard the policy development process as a legitimate, effective and equitable process. Notwithstanding this unevenness, McDaid's (2014) research found that overall fishing communities considered the representation of their interests through their representatives to have been acceptable and legitimate (McDaid 2014).

3.8 CLAIMING POWER AND ASSERTING CUSTOMARY RIGHTS ALONG THE COAST

Closely linked to the marginalization of the Eastern Cape and KZN during the policy process was the way in which the DEAT discriminated against those fishing communities living according to customary law. In May 2009 the fisher representative from KZN, Mr Eric Ngubane, a fisher leader from the Kosi Bay Lakes, made a presentation to the NTT on his communities' customary system of governance and their traditional gear, their wooden fish traps. He requested the department to recognize their customary rights and local system of governance.

The government officials refused to recognize this system. Despite repeated attempts by the civil society representatives to insert recognition of the customary system into the draft policy, this was systematically removed by the DEAT. Subsequently the fishers' legal representatives from the Legal Resources Centre insisted on this being retained in the final draft that was negotiated at the NEDLAC in 2011. The DAFF officials again argued strongly against this, stating that they did not believe that any fishing communities had presented evidence of customary fishing rights (Masifundise 2011).To date the department has consistently denied the existence of customary rights and although this principle was retained in the policy, the subsequent policy implementation plan has not operationalized this principle in any way. On the contrary, the Department has adopted the apartheid state approach to the interpretation of customary law and traditional leadership, by assuming that the Chiefs have authority in relation to customary marine resource practices and have been consulting them in this regard (Sunde 2013 and Sunde 2014b).

Hundreds of men and women fishers in the Eastern Cape and KZN have suffered as a result of this continuing discrimination against customary communities despite the Constitutional recognition of customary law. They have been arrested, prosecuted, fined and imprisoned and three fishers have been killed in conflict with the authorities over their alleged illegal harvesting of resources. However, several of these communities have actively resisted this oppression and have continued to fish according to their customary practices. In the far north of the country, in Kosi Bay where the fisher representative on the NTT was located, the community has refused to comply with the conservation authorities' attempts to formalize their trap fishery. In 2004 they informed the conservation authorities that they were no longer welcome in the area and subsequently the authorities were forced to withdraw from the area (pers.comm Gillian Rhodes, EKZN Wildlife 2013 in Sunde 2013).

In the Dwesa-Cwebe MPA in the Eastern Cape the Hobeni Fishers Association has resisted the authority's failure to recognize their rights. When a group of three fishermen were charged for fishing illegally in the MPA they approached the Legal Resources Centre (LRC) who agreed to defend them on customary grounds. The LRC also launched further legal action to call for a review of the declaration of the MPA in the light of the fact that their Constitutional right to consultation was violated when the Dwesa-Cwebe MPA was declared a no-take MPA without consultation. In their court papers, the communities cited a range of national, constitutional and international human-rights based instruments in support of their claims to their customary rights.

In his judgment, the Magistrate expressed very strong criticism of the conservation authorities for their failure to recognize the livelihood needs of this community. He confirmed that this community had a customary system of law however as a magistrate he did not have the authority to find a national statute unconstitutional but he indicated in his judgment that it was doubtful that the national fisheries law would survive constitutional scrutiny and he urged the parties to appeal this matter in a higher court. He stated "South Africa's new constitutional dispensation began not only a political but also a legal revolution. With the inclusion of a justiciable Bill of Rights in the Constitution, the validity of a wide range of laws, whether public or private, could now be tested against the standards of fundamental human rights" (*State versus Gongqose and others 2012 E 382/10*). This matter has now been heard in the Mthatha High Court. In their judgement the judges in the High Court confirm that the community has customary rights to marine resources, however, they assert that the communities' rights could have been accommodated within the MLRA if the Minister had granted them an exemption to fish in the MPA in terms of Section 81 of the MLRA (*Gongqose and others versus the Minister and others CA&R 26/13*). This matter will now be taken on appeal to the Supreme Court as the community had repeatedly requested access to the sea and the Department had failed to give them an exemption under Section 81. To date the DAFF and DEA have denied that the community have presented evidence of customary rights. It is hoped that a higher court will provide guidance on this matter and how the community's customary rights can be recognised in State law. It remains unclear how the Fisheries Department and Department of Environment (DEA) will reconcile their discriminatory stance in the light of the principles of the new policy and the international VG Tenure and the SSF Guidelines. The SSF Guidelines state that:

States and all other parties, should, in line with national legislation, *"recognize, respect and protect all forms of legitimate tenure rights, taking into account, where appropriate, customary rights, to aquatic resources and land and small-scale fishing areas enjoyed by small-scale fishing communities" (FAO 2014:5).*

The SSF Guidelines thus place an obligation on the State to take proactive measures to protect customary tenure rights, not merely to assume that they are implicitly protected in general legislation.

3.9 POACHING POWER AND THE 'PROTEST ECONOMY'

Since time immemorial there is evidence of fishers having harvested marine resources in contravention of the fishing regulations that pertain to them. It is

recorded that as early as when the Dutch settlement at the Cape was established in the 1650s, local fishers found ways of bypassing van Riebeeck's proclamation that no fishing was to take place unless it was for the service of the Dutch East Indian Company (Thompson Wardlaw 1913). There is extensive oral evidence that as the Colonial and later the apartheid regime steadily extended the net of rules prohibiting African and coloured fishers from fishing freely, many of these fishers began fishing beyond the bounds of the existing legislation. They did not accept the legitimacy of the apartheid fisheries authority and in the words of one fisher "we had our own set of laws" (anonymous fisher leader, 2011). In the words of another fisher 'by day we fished according to their rules, but by night we fished according to our own rules' (anonymous fisher leader, 2011).

Regulations to restrict predominantly black small-scale fishers' access to species that became valuable to the predominantly white-owned industrial fisheries commenced in the Western Cape as early as the 1920s (van Sittert 2003). The subsequent introduction of a range of regulations to cover all the near shore species by the 1980s, coinciding with the racially based spatial planning laws of Apartheid and a host of other discriminatory legislation restricting many Black coastal residents from access to marine resources led to the criminalisation of black fishers. Many fishers were forced to eke out their livelihoods on the margins of the law, trying to avoid being caught and charged with illegal fishing activities. From the 1980s onwards a small minority of these fishers began to benefit from the illegal sale of high value species such as abalone and west coast rock lobster (WCRL). When the MLRA failed to recognise their rights in 1998 many informal fishers who had hoped that they would get legal access were forced to choose between the subsistence permit offered by the post-apartheid state or continue with their dangerous but in some instances lucrative 'informal' activities. This dilemma was particularly pronounced for those involved in the illegal trade of abalone.

Abalone (*Haliotismidae)* also known locally *as* 'perlemoen', is a marine organism found in shallow waters along the South African coast from St Helena on the West coast all the way to the East Coast, north of Dwesa-Cwebe MPA, near Port St Johns (DAFF 2015). Traditional fishing communities along this coastline have historically harvested abalone as part of their basket of resources for their own consumption (Raemaekers 2009). Abalone is considered a delicacy and over the past half century the value of abalone has increased considerably as the export of this resource increased. The commercial diver fishery for abalone started in the 1940s. Over the next few decades this increasingly valuable resource attracted the attention of groups of divers in the Western Cape who began to engage in the lucrative trade of abalone. Subsequently, during the height of apartheid, many

of these racially mixed groups of divers began fishing 'informally' as their fishing activities were not regarded as legitimate. They established informal marketing networks for both local sale and markets for the illegal export of abalone, particularly to the East. Licenses were introduced in the 1950s and management restrictions in 1968 but with the steady increase in the recreational fisheries component, illegal harvesting of abalone increased considerably over the next few decades (DAFF 2015). As with all other sectors, at the dawn of democracy, control of this very lucrative fishery was racially structured: five white-owned companies employed 52 predominantly coloured divers to catch their quotas (Sauer *et al* 2003 in De Greef 2013).

With the pace of reform post the introduction of the MLRA being very slow, many fishers became extremely frustrated and desperate. A considerable number of them then failed to get rights in the 2002 and 2005 rights allocation of processes, effectively excluding them from their traditional means of feeding their families and their livelihoods. The perceived inequalities of these rights allocations processes, including the very bureaucratic application process that alienated those with little education and access to resources, coupled with the perception that many elites and 'new entrants' had gained access to resources contributed towards the fishers' despair. The slow pace of delivery of other social development benefits promised by the ruling government as part of the Reconstruction and Development Plan (RDP), fed into this situation. During this period internationally linked criminal syndicates began offering high prices for abalone and illegal fishery became entrenched in several impoverished communities within a short distance from the urban centre of Cape Town (De Greef 2013). Hauck (2009) has argued that for some communities like Hout Bay, the illegal trade in abalone enabled them to get access to the much needed cash as well as express their protest against the management system which they did not regard as legitimate. "The state's failure to translate the progressive goals of the MLRA into action weakened its legitimacy in the eyes of many fishers, and 'protest fishing'—or openly fishing without valid permits as a form of political action—flourished as a result" (Hauck & Kroese 2006 in De Greef 2013:16). Schultz (2015) has explored this assertion of defiance and protest by fishers further north along the west coast in the town of St Helena where fishers have similarly argued that it is their right to fish (Schultz 2015a).

Kimon De Greef's detailed examination of the illegal abalone fishery in Hout Bay provides substantial evidence of the fact that over the past two decades the harvesting and marketing of high value species has come to play an important social and economic role in several fishing communities. He notes that implementing the SSF policy in this context and removing the influence of poaching in these communities will not be easy (De Greef 2013). He highlights the complexity

of social and economic relations within which poaching takes place and how it is intertwined with the ecological system. Drawing on Steinberg's extensive research into criminal networks in the Western Cape (Steinberg 2005), De Greef explores the linkages between the sophisticated criminal syndicates, known as the Triad gangs who were already operating in the country, and the poaching networks in the Hout Bay fishing village. The Triads were known to be involved in a range of illicit activities from drug smuggling to human trafficking (De Greef 2013:24). According to Steinberg the Triads are linked to the introduction of methaqualone ('mandrax') and crystal methamphetamine ('*tik*') to the local gangs in the Cape and to the trading of these drugs for abalone (Steinberg 2005 in De Greef 2013:24).

The authorities have introduced a number of different management measures in order to address the illegal poaching of abalone over the past two decades, including the introduction of a Territorial User Rights System (TURF) system, in the hope that this would increase a sense of local custodianship over the resource (Hauck 2009, Raemaekers *et al* 2011 in De Greef 2013). However, the deeply entrenched social exclusion, marginalisation and poverty of many of the coastal communities have not been adequately addressed and hence the incentives for poaching have remained (De Greef 2013:27). These social and economic factors appear to continue to drive increased poaching along the coast, with many local leaders reporting that the increasing poaching of and trade in WCRL both on the south coast and the west coast is now also linked to criminal gangs and drug networks (anonymous fisher leader, 2016).

De Greef (2013) describes the unequal social relations and 'poaching hierarchy' that has emerged in the community with persons playing different roles and earning different amounts of money depending on where they were located in this hierarchy. "At the bottom of the scale were carriers, and spotters, usually youths who worked in small teams for older poachers. Deck assistants or *bootsmanne*, were next, followed by skippers who piloted poaching vessels. Divers tended to have even greater status, although this varied according to their age and experience. A small group of boat owners and middlemen occupied the upper echelons " De Greef (2013:50). These fishers frequently cited the perceived injustice of government's actions in treating marginalised fishers as criminals while favouring the large scale industrial fisheries who were perceived to be "raping the seas" (De Greef 2013: 51). While it is difficult to estimate the scale of illegal poaching, De Greef estimated that there were 250 persons directly involved in abalone poaching in Hangberg alone and that this was likely to be supporting approximately 1000 people in this small community (De Greef 2013:66).

The way in which lack of legal access to marine resources increases fishers' vulnerability at sea is starkly obvious from De Greef's work with this local community. In 2015, following the drowning of yet another fisher he interviewed local fishers. He recorded that in 2006 when Leroy Phillips drowned while poaching crayfish, he was the 13th Hout Bay fisherman to drown in an eight month period (De Greef 2015). Since then at least four fishers have drowned while poaching. But "it goes on and on" said Josephs, a local fisherman. "Perhaps 50 people in total. When will it end?" De Greef 2015).

In the past 10 years since the Interim Relief measure was introduced and small-scale fisheries in the Western and Northern Cape received access to a small proportion of the WCRL TAC, complaints of increased poaching have been repeatedly made in the media and in official meetings with the fisheries authorities. The industrial fishing sector, marine scientists and conservation agencies have laid the blame for this increased illegal catch firmly at the door of the Interim Relief (Moolla 2010a, Moolla 2010b, Cape Times 2010, Mail and Guardian 2011, Moolla 2011, WWF 2015).

In trying to understand the social and economic relations and factors driving this alleged illegal catching, discussions with local fisher leaders suggest that there is a need to differentiate between the illegal catching that is taking place on a considerable scale that feeds into the criminal gang networks and the illegal catching that is taking place on a much smaller scale where local fishers are over-catching in order to pay debts and loans to local marketers (confidential discussion with local leaders, West Coast 2016). While the latter may eventually shift and become embedded in a more complex set of linkages to organised crime, and this has clearly happened in some communities, there do still seem to be differences at this state.

3.9.1 THE LINKAGES BETWEEN DEBT, HARVESTING EFFORT AND PATERNALISTIC POWER RELATIONS IN THE VALUE CHAIN

A distinctive pattern of poverty, paternalism, debt and dependency has existed in the small-scale fisheries sector for many decades. In the absence of access to credit or financial services and with the existence of high levels of unemployment or poorly paid waged labour, fishing communities in the Western and Northern Cape have historically been trapped in a web of paternalistic relations of dependency on middlemen and the larger fishing companies. These relations have become institutionalised through the use of a loan system known in the Cape as 'a voorskot' or 'early payment'. A cycle of dependency has been created whereby the industrial companies, represented by a particular marketer, offer

fishers a 'voorskot' or loan at the beginning of the fishing season, prior to the fisher having been able to earn an income. This usually ties the fisher to marketing his or her catch through the said company, at whatever rate the company dictates. With the onset of interim relief the voorskot system has been offered to fisher leaders and, in some instances, to all the fisher members of his or her fishing community as the means whereby fishing companies can secure access to the interim relief catch. These companies then export this catch, enabling them to enjoy the benefit of foreign exchange. Currently fisher leaders are given up to R20 000 for contracting to sell the season's interim relief catch to a particular marketer. This is now accepted practice amongst most of the fishing communities in the Western and Northern Cape. In some instances however, where the fishers and/or their leader gets into debt, they are then required to engage in over-catching in order to repay their debt to the marketer. Based on confidential discussions with various fisher leaders over the past 18 months, it is estimated that over 50% of the fisher leaders in these two provinces are trapped in this sort of relationship. In a few of these communities however, it is alleged but not proven that the leaders are complicit in a more substantial illegal harvesting agreement with the same marketers who are able to market the interim relief over-catch 'legally' through the quotas allocated to the large industrial companies. Those involved in illegal harvesting in the Western Cape are predominantly male due to the male dominated profile of the abalone and WCRL fishery. However several of the leaders who are involved directly with the marketers are 'middle women' (anonymous fisher leaders 2015).

The two industrial companies that currently market the majority of the interim relief in the Western Cape offer a range of additional perks in order to encourage fishers to sell their catch to them. For example, 2Oceans company marketing on the South Coast, a joint venture between Oceana and Freedom Fishing, offers the individual leader R20 000 for securing the catch but then provides all fishers with a funeral policy to the value of R15 000 and provides food parcels to the value of R750 during the off season (anonymous fisher leaders 2016). On the West Coast, the marketer has made a range of offers of social upliftment and assistance but few of these have been forthcoming. Individual leaders are paid approximately R10 000 and the marketer regularly covers the cost of transport to Cape Town for the fisher community to meet with the fisheries authority or participate in protest action (anonymous fisher leader, 2016). It has been alleged that in situations where the resource is scarce in a particular zone pressure from the marketers to repay debt has played a role in the poaching of resources by local fishers in areas other than the area designated on their permit conditions (anonymous fisher leader, 2016). Changes in the seasonal availability

of WCRL have added increased pressure. Prior to Christmas this past season there was no WCRL available in the areas south of Elandsbaai. Fishers who needed cash before Christmas were under pressure to migrate out of their designated area to Elandsbaai where the resource was relatively plentiful (anonymous fisher leader 2016).

It would appear that in each community the particular constellation of factors that has made that community vulnerable to poaching activities differs. In some coastal towns the Group Areas Act forced removals coupled with inadequate housing, poverty driven by retrenchments from the industrial sector and lack of alternatives, coupled with the loss of a sense of ownership over their village due to the influx of holiday makers and the increasing display of wealth disparity between themselves and these outsiders has left residents, particularly the youth, increasingly alienated and angry. Schultz (2015b) has observed that the local economy and culture of St Helena on the West Coast, the heart of the early fishing industry, has been transformed by economic migration, rapacious development and the restructuring of the fishing industry, placing increasing pressure on local households (Schultz 2015:1). He states that many of these fishers have attempted to participate in the more recent engagement with the State through the SSF policy process however they feel that this has failed and "in response to the pressures of what they experience as an unjust political economy, and an illegitimate regulatory regime, many fishers have attempted the route of engagement through public participation. Frustrations that often result from engagement strengthen an existing culture of antagonism towards the rules and authority of the state. In this context, defying fishing regulations (i.e. illegal fishing)is not only a rational pursuit of material benefit—it is also a symbolic expression of a pre-legislative right to the marine commons, of autonomy and dignity, and of antagonism towards the state" (Schultz 2015b:1).

The social relations within the SSF are greatly impacted by the dynamics surrounding the illegal catching and sale of marine resources in very complex ways. These differ from community to community but they are perceived to have a range of impacts: increased conflict, reduced social cohesion, reduced legitimacy of local leaders, loss of values, undermining of education, trade in drugs, corruption of law enforcement officials, lack of trust, transparency and accountability. Positive impacts cited included contribution to food security and ability to 'put food on the table', payment for school fees, improvements to housing, ability to buy presents for family and to assert one's rights and dignity (De Greef 2013, confidential interviews with several fisher leaders, 2016).

In conclusion, this section has explored some of the responses of key social actors in the fishing industry to the legacy that the SSF sector has inherited. These responses in themselves have brought about changes in the social and political power relations in the fisheries sector as a whole and in local fishing communities more specifically. Over the past 15 years small-scale fishers have become organised and have become a more vocal and powerful force in fisheries. Yet despite increased *de jure* recognition and some increased power around the negotiation table due to their political mobilisation coupled with the Equality Court Order of 2007, they remain vulnerable to the powerful industrial interests in a neo-liberal governance climate which appears to favour the 'big fish'. Fishers have used the law in very different ways to strengthen their power: in the Eastern Cape a community has turned to the Constitution and the courts for support in claiming their customary rights. In contrast, the fishers of many communities have turned their back on the statutory system and its mechanisms of power in the form of fisheries regulations and rules. These fishers are defiant in their continued use of marine resources, denying the legitimacy of the existing system of marine governance. While their poaching gives them increased access to economic power and status, they remain increasingly vulnerable to safety risks at sea, to drugs, social conflict and the fragmentation of their communities. Beyond these local communities, a powerful set of social and economic relations has begun to shape the narrative about SSF on the eve of implementation of the SSF policy: on the one hand fishers are increasingly being painted as poachers and lawless destroyers of highly endangered species, they are blamed for precipitating a crisis in the state of several high value marine resources and more recently the policy is accused of racial discrimination against coloured people. Counter-narratives argue that many SSF have historically had customary practices that demonstrate their local stewardship of resources but these have been undermined by apartheid management. Fishers themselves and supporters of the sector argue that they are being deliberately targeted, victimised and blamed for the precarious state of the resources by the industrial forces who wish to draw attention away from their own over-catching and rampant destruction of these resources during the golden days of apartheid as well as more recently (anonymous fisher leader, 2016).

SECTION 4: *WANNEERKRY DIE DISKRIMINASIE EIND? (WHEN WILL THE DISCRIMINATION END?)*

ON-GOING CHALLENGES FACING THE IMPLEMENTATION OF THE SSF GUIDELINES AND THE SSF POLICY

4.1 INTRODUCTION

"*When will the discrimination end?* This was the question of one of the women fisher leaders interviewed for this research. Drawing on the key thematic areas of the SSF Guidelines, this section describes the key social relations and related challenges identified by respondents in this study in the face of the implementation of both the policy on SSF and the SSF Guidelines. This includes responsible governance of tenure, sustainable resource management, social development, employment and decent work, value chains, post-harvest and trade, gender equality, disaster risks and climate change, policy coherence, institutional coordination and collaboration, information, research and communication and capacity-development. Selected examples of projects that are attempting to tackle these issues are highlighted. It then explores potential entry points for the effective and equitable take up of the SSF Guidelines and recommends strategic interventions that might begin to address the most pressing social issues facing small-scale fishing communities for consideration by fishworker organisations and other fisher representatives, NGOs, research institutions, donor organisations and government officials at different levels.

4.2 KEY CHALLENGES IMPACTING THE RESPONSIBLE GOVERNANCE OF TENURE (SSF GUIDELINES 5)

4.2.1 Lack of data and information about the SSF

One of the primary challenges facing the SSF sector in South Africa which impacts governance of the sector is the lack of reliable data and information about this sector. This lack of data on SSF is itself a consequence of the historical marginalisation of this sector within the political economy of the governance and management of fisheries**.** The paucity of reliable data on the SSF makes it difficult for the SSF to demonstrate to policy makers that the SSF sector has the potential to contribute towards food security, poverty eradication and to play a relatively important role in terms of redistributive and multiplier effects across local communities vis-à-vis the commercial sector. In the absence of reliable strong data

about the SSF sector, the commercial sector argues against redistribution on the grounds of its alleged greater importance in terms of its contribution to earning foreign exchange and providing employment. The bias towards the commercial sector, failure to consult SSF fishers and include them in co-management and the on-going marginalisation and criminalisation of many SSF fishers has impacted the validity and reliability of existing data sets. The resultant lack of reliable catch data and stock assessments for near shore resources upon which SSF depend for their livelihoods threatens the sustainable management and utilisation of these resources, thereby jeopardising a key principle underpinning the SSF Guidelines. This data gap is most pronounced in the Eastern Cape.

This lack of data about the SFF creates a very fundamental challenge for the Small-scale Fisheries Directorate officials embarking on the implementation of a new governance and resource management plan for the SSF. "In South Africa, it has been argued that, in addition to the type of management approach, lack of information has been one of the major contributing factors that saw previously disadvantaged-by-apartheid fishers being even further marginalised by a process that sought to solve the problems of imbalance" (DAFF SSF Fisheries official Abongile Nqgonga 2015:39).

The fisheries sector in South Africa is comparatively small next to its African counterparts however, contrary to the perception created in government documents about the fishing industry, the small-scale sector is as large, if not larger than the commercial sector in terms of persons directly involved in fisheries. In 2000 it was estimated that the SSF sector comprised about 28 000 persons and 30 000 households (Branch *et al* 2002). In comparison, it is estimated that the commercial sector provides direct employment to 27 000 people (DAFF 2013).

To date a total of 7333 subsistence permit exemptions to fish have been issued by the State to fishers in the Eastern Cape (approximately 4400) and KZN (2933) since 1999 and approximately 2000 to fishers in the Western Cape and Northern Cape collectively through Interim Relief permits (DAFF 2013). In addition, approximately 2200 fishers have been allocated individual, long term small-scale commercial fishing rights through a separate policy process in 2005-2006. These figures based on subsistence permit exemptions, coupled with the number of interim relief permits under-estimate and continue the invisibility of many fishers in this sector. They fail to include the hundreds of fishers excluded due to the declaration of MPAs as well as many fishers in the former Bantustan areas who have been excluded due to the inadequate capacity of the DAFF personnel in these areas. These fishers are optimistic that the promise of redress in the SSF policy will mean that they are given access through the SSF policy implementation.

The extent to which fishers in the Eastern Cape continue to be prejudiced by the historical attitude towards these provinces in which the former Bantustan areas predominated and the on-going lack of capacity and resources in these areas is revealed in the following admission by a senior person working in the DAFF SSF Directorate:

"In the Eastern Cape, the issuing of exemptions in terms of section 81 of the MLRA has seen many challenges. Currently, there are 85 fishing communities that have been issued with 4141 yearly fishing exemptions from Mzamba to Mossel Bay and these exemptions are distributed by four DAFF Environmental Officers based in Port St Johns, East London and Port Elizabeth. Before the Environmental Officials issue exemptions, they are obligated to formulate criteria that would be used to determine deserving fishers to be issued with exemptions. A challenge with this is that even the criteria are formulated without proper consultation and that the criteria are not based on any available data. Instead, the criteria are made stricter as the number of fishers applying for exemptions increases. The criteria are currently viewed as a tool to regulate or limit the number of exemptions issued regardless of the number of fishers who truly deserve to be issued with exemptions" (anonymous DAFF Official 2015)[3].

No recent reliable figures are available but it is estimated from the recent Expression of Interest (EoI) registration of over 267 communities that the SSF sector involves in excess of 20 000 people (pers.comm Smith 2016). These SSF harvest a range of species including many different species of traditional line fish, net fish species, West Coast Rock Lobster, East Coast Rock Lobster, Abalone, Oysters, white and brown mussels, sand prawns, octopus, red bait and other bait species.

Very regrettably the State does not disaggregate its fisheries data along gender lines so there are no statistics on the number of women fishers or related information on the gendered nature of DAFF's interventions and budgeting priorities. Women fishers are represented in all provinces however there are more women in the Eastern Cape and KZN where they have participated actively in inter-tidal resource harvesting. The relatively high number of women represented in national fishworker organisations supports assertions that women are active in the fishery however these organisations, such as Coastal Links, with an estimated 4800 members have also not disaggregated their records along gender lines (pers.comm with M Gqamlana, Masifundise 2016).

[3] The identity of this official is protected as he/she did not make this statement in their official capacity.

In addition to a lack of data on fisheries catches and stocks, there is a lack of up to date, provincial and country level data on the levels of poverty in fisher households, food insecurity and related socio-economic assets of importance to livelihoods and well-being. Key statistics on vulnerable groups drawn from the national census data do however reveal the intersections of gender, race, class, age and geographical location in shaping experiences of poverty and food insecurity. African women living in rural fishing communities in the two eastern coastal provinces (Eastern Cape and KZN) are likely to be the most vulnerable and marginalised groups in terms of poverty and food insecurity (SA Statistics 2013). Within this subset, key indicators include whether or not they are female-headed households, have access to a social grant, to a household member in employment, household size as well as access to other resources such as drinking water and sanitation (Social Profiles for Vulnerable Groups 2002–2012, Stats SA).

Although there has been a dearth of social science research on the human dimensions of fisheries (Sowman *et al* 2013), several recent research projects have greatly contributed towards broadening the depth of data and information on these dimensions in South Africa specifically and on SSF as linked socio-ecological systems. Specific projects have focused on Poverty in SSF (Isaacs 2011), Fishers Knowledge (Neis and Greene 2015), on the Human Dimensions of the BCLME (Sowman *et al* 2011), on Sharing Benefits from the coast (Wynberg and Hauck 2014), the Human Dimensions of MPAs (Sowman *et al* 2014), the Vulnerabilities of the SSF to Climate Change (Raemaekers and Sowman 2015) and on the Rural Status of SSF (Isaacs and Hara 2015) amongst many other individual research contributions. Yet despite these studies, there is still no comprehensive data base with current socio-economic data that indicates actual poverty and food insecurity levels. However, both DAFF (2015) and Masifundise (2015) are engaged in undertaking a baseline study of SSF communities and it is anticipated that these studies will provide a baseline for the implementation of both the SSF Guidelines and the SSF policy.

4.2.2 The power of politics and the politics of power influencing the governance of SSF

The influence of politics and the power relations that are associated with political influence were identified by most of the respondents in this study as the overwhelming challenge shaping the overall governance of tenure and resource management in the SSF sector in South Africa. These power relations are expressed in many different ways through the political economy and political ecology of the fisheries sector as a whole and the specific location of the SSF

within this. Respondents cited the racist and class-based legacy of colonialism and apartheid coupled with the dominant neo-liberal approach of the current government as the underlying forces that are shaping the approach to governance and the 'politics of governance'. This neo-liberal power is expressed through a range of policy mechanisms and power relations such as prioritising of the commercial rights holders through the FRAP process, the way SSF value vis-à-vis the value of the industrial sector is perceived, cronyism and corruption influencing the transfer of quotas and political influence shaping the registration and verification processes. While respondents noted that these power relations will impact the realisation of the principles of equity, transparency and accountability amongst others, they observed that the impact and consequences of these power relations are experienced differently across the SSF in different provinces, by different racial and ethnic groups. Gender, class and race together with historical geographical disparities intersect in a complex constellation of social relations shaping perceptions of the current state of the SSF. Overall allegations of extensive corruption and mismanagement of high level governance processes beyond the SSF Directorate, coupled with reports of extensive poaching of marine resources contribute to a situation where the rule of law and principles of governance underpinning both the SSF Guidelines and the SSF Policy are considerably compromised.

4.2.3 The macro-economic role and perceived value of the SSF sector

It was observed that one of the key ways in which the power relations in the fisheries are expressed is through governance actors' perceptions of the value of the SSF which are influenced by neo-liberalism. The fisheries sector as a whole contribute less than 1% to the national GDP however in the Western Cape it contributes 2% to the provincial GDP (DAFF 2013). Overall South Africa is a net exporter of fish and fish products and 55% of the commercial trawl catches are exported. In rock lobster, squid, tuna and commercial longline, almost the total production is exported (DAFF 2013). Overall it is estimated that the industrial sector contributes approximately 70% of the economic value of the fishery while the SSF and recreational fisheries contribute the balance however the lack of data makes it nearly impossible to calculate the real value of the SSF.

Long-term commercial rights have been allocated in 22 fishing industries, with just over 2,900 rights holders and about 1,788 vessels. Annual recreational fishing licences total approximately 300 (DAFF 2013). As noted in the preceding section, to date only subsistence permit exemptions and interim relief exemptions have been allocated in the SSF sector.

Policymakers' perceptions of the value of fisheries to the macro-economy favour the industrial sector but are simultaneously very contradictory (Sowman *et al* 2014, Isaacs and Hara 2015). In 2012 the National Planning Commission in the Office of the Presidency released its National Development Plan (NDP 2012) which has been accepted by Parliament as a key strategic document guiding government policy over the next decade and a half. These contradictions are very notable. The NDP states that:

> "while the industry is relatively transformed in terms of black economic empowerment, those historically involved in fishing have frequently been ignored". It goes on to state that "It is fundamental that fishing rights are economically viable and not allocated in a way that threatens compliance. If sustainability is not maintained, the entire fishing industry will collapse and everyone will be affected. Small-scale fisheries cannot be regarded as a way to boost employment. Capital-intensive industrial fisheries offer better salaries and better conditions of employment than small-scale low-capital fisheries. Reducing the rights allocated to industrial fisheries to award them small-scale operations simply cuts jobs.
>
> To retain a viable fishery it is paramount that the resource is protected and managed sustainably. A sophisticated scientific research and monitoring system is essential to this. Traditional fishers must be afforded better opportunities and support. All role players must be subjected to stringent compliance measures that are effectively enforced. Expanded or new fisheries must be sought where ecologically possible. Other economic opportunities must be developed to supplement the livelihoods of fishing communities" (NDP: 2012: 229).

This clearly indicates the bias towards the large industrial sector, despite the fact that much of the rest of the NDP is geared towards supporting small-scale producers in other sectors and promoting food security and alleviating poverty. Notwithstanding this bias towards the industrial sector, the DAFF has committed to supporting the SSF in its Strategic Vision for the coming period (DAFF 2013).

In the past two years, the DAFF SSF Directorate has demonstrated their very strong commitment to promoting the SSF sector (Smith 2015). The Directorate has developed a very comprehensive Implementation Plan for the policy. The first phase of the implementation process is due to start within the first quarter of 2016. The SSF Directorate has contracted the services of a team of service providers who have been contracted to undertake verification, build capacity and facilitate the registration of the SSF cooperatives in each small-scale

community. The commitment of this SSF Directorate to the process has been very strongly and clearly articulated in several public presentations on the SSF policy roll out in the past year (Smith 2015, DAFF 2015) and in the publication of a pocket guide on SSF (DAFF 2016). In this guide the DAFF states that with the SSF policy "DAFF is tipping the scales of justice in favour of communities" (DAFF 2016:5). However, despite these efforts, support for the implementation of the SSF policy appears to still be lacking within the DAFF as a whole. This is evidenced in the small staff allocation to the SSF Directorate (only 11 permanent staff members nationally) and the small budget relative to the size of the sector (Respondents No.1, 8 2016).

Several respondents in this research highlighted the lack of a political champion at senior government level, coupled with the lack of political will to support the SSF as key obstacles impacting the successful implementation of both the SSF Guidelines and SSF Policy (Respondents No. 1,2,4,7,8,13 2016). One social actor in the fisheries sector has questioned why Masifundise and Coastal Links have not used their power gained from the Equality Court Order to challenge the contradictions in this bias as it is reflected in on-going TAC and TAE allocation? He notes "When one big fishing company employing at best 250 workers in the West Coast Rock Lobster Sector is recipient of 238 ton of WCRL and 2 200 Small Scale WCRL fishers, collectively, are recipients of only 235 ton it is clear that a radically inequitable balance in allocation and distribution of WCRL fishing rights exists" (Anonymous respondent 2015).

The relatively higher contribution of fisheries in the Western Cape to the GDP influences the power of this province in the political economy of the fisheries. The fact that this province is governed at provincial level by the opposition party, the Democratic Alliance (DA), is an additional key political factor impacting social relations of fisheries in the province. As noted in Section One, apartheid legislation skewed the racial demographic of the country with the Western Cape comprising predominantly 'coloured' persons. This in turn has shaped the political process, with the province historically being controlled by the largely white dominated opposition. This province is the heart of the fishing industry which has comprised predominantly although not entirely coloured labour. The province ranks high in terms of socio-economic development indicators and hence gaining the coloured vote and control of this province is important to the ruling party. As a result, the SSF sector is impacted considerably by the politics of the day: the ruling party and the opposition use populist policies and promises to woo the predominantly coloured coastal fishing communities while at the same time the same messages are used to woo the African electorate who have migrated to the Western Cape and who now reside in the urban centres, a very small percentage of whom have

worked in the industrial fisheries sector. The SSF is used to promise job creation and poverty alleviation through redistribution and access to fisheries to previously disadvantaged persons. Specifically politicians have used the 'community-based' component in the policy to obfuscate the fact that it is in fact only the *bone fide* fisher component in a 'community' that will be granted SSF rights however this distinction is lost in populist rhetoric about the need to transform the fisheries sector and redistribute resources to 'poor coastal communities'. Admittedly this is a very difficult balance for the DAFF SSF officials themselves to find as they walk the tight rope strung for them by the politicians, encouraging people to support the SSF policy implementation process and become part of 'the big change' (DAFF 2015), despite the fact that the Department has simultaneously acknowledged that "not all registered fishers will get jobs" (Smith 2015).

4.2.4 Political allegiances, cronyism and corruption in the governance of fisheries

The deployment of African National Congress (ANC) cadres to the fisheries department and the close links between senior DAFF Fisheries Branch officials and the ruling party has been cited as a key challenge by respondents. Allegations of political influence, cronyism and corruption have been publically levelled at several fisheries officials and have been the subject of a number of investigations, including an investigation by the Public Protector (Norton 2014).

In 2013, when DAFF announced the outcome of the FRAP line fish applications there was widespread anger and accusations that the authority overseeing this process, the then Acting DDG Mr Desmond Stevens, had influenced the outcome of the process, with over a hundred new entrants emerging as rights holders. Following a vociferous public outcry and the launching of court action, the then Minister of Fisheries ordered a Forensic Audit into the FRAP 2013 process. At a DAFF Parliamentary Portfolio Meeting in 2015, the current DDG of the Fisheries Branch announced that FRAP 2013

"Was found to have been controversial, rotten with allegations and perceptions of Irregularities, manipulation and unlawful decision-making and un-procedural conduct"(extract from these reports as quoted in the letter to the Minister and Portfolio Committee Members from G Simpson, 29 May 2015). In a second Forensic Audit of FRAP 2013 commissioned by DAFF it was found that "Fisheries managers indicated that there were instances of political interference in the process" (extract from these reports are in the letter to the Minister and Portfolio Committee Members from G Simpson, 29 May 2015).

Coastal Links South Africa has persistently accused the DAFF of corruption, citing evidence of the inclusion of non-fishers in beneficiary lists for the Interim Relief. They charge that "interim relief measures are being mismanaged, are riddled with corruption and have fractured fishing communities" (Daily Maverick November 2015). At the opening of the last Interim Relief season they stated that "there are deliberate discrepancies in the Interim Relief system that was having a devastating impact on fishing communities" (Farmers Weekly, 28 November 2015). The on-going impact of the racial tensions in the Western Cape province is felt by fishers on a very local level. In the small fishing hamlet of Vermaaklikheid in the Southern Cape fishers stated that the "politics of the day" played a large role in the region and many of them complained of racism within the community and the fisheries sector (Gammage 2015).

Several respondents cited the close ties between senior ANC leaders and the shareholders and management of several of the large industrial fishing corporations as key social relations that shape the power relations between the SSF and the industrial sector (America 2013, 2014 and Respondent 1, 11, 12). This has influenced how the DAFF have approached both the forthcoming fishing rights allocations to the commercial sectors and the apportionment of TAC and TAE between the commercial sector and the SSF. Two respondents cited the failure of the DAFF to investigate allegations of corruption and document fraud as compromising the accountability and transparency of fisheries governance (Respondent No. 1 and 5).

The expression of political power and influence in the fisheries sector and on the SSF differs from province to province. This was the opinion of Philile Mbatha who cited the distinct way in which racial, ethnic and cultural differences have historically shaped power relations in KZN. Drawing on her extensive research on the conflicts between fisher communities and the two conservation agencies in the northern part of the province, iSimangaliso and Ezemvelo Wildlife (EKZN), Mbatha notes that power relations in this part of the country are extremely complex. Historical power struggles between the Inkatha Freedom Front and the ANC shape the ruling party's approach to the governance of the area. Historical allegiances between political parties and the different conservation agencies as well as between the agencies and the local tribal authorities further complicate the very complex web of institutional and political dynamics in which SSF communities must negotiate for recognition and access rights. A key implication of these dynamics and powerful, high level allegiances for the implementation of the SSF Guidelines and the policy is that "institutions are not properly accountable. While institutional mechanisms are upwardly accountable from

the ground there is little accountability flowing downwards back to the communities"(pers.comm Mbatha 2016).

Extensive corruption at the level of the compliance and enforcement staff with the DAFF in collaboration with fishers has also been documented (Sundström 2015). In his research Sundström describes a range of mechanisms whereby corruption takes place at different levels. It shows how some fishers use money, food and friendship to bribe officials who in return enable either over-catching or information sharing. This research reveals that "widespread corruption increases the costs of remaining honest: Inspectors face a dilemma related to corruption in the judiciary, making the writing of fines useless because these disappear from bribery among clerks and judges in the enforcement chain. Moreover, they face a dilemma of corruption in their organization, where substation managers and actors in top management are engaged in bribery, sending signals that corruption has small consequences" (Sundström 2015:2). This research highlights the impact of corruption on the sustainability of the resource through its impact on good governance.

4.2.5 The bias and lack of transparency in the Fishing Rights Allocation Process (FRAP) and Apportionment Process

In 2011 the DAFF announced that it would be renewing those long term commercial rights that would be expiring in 2013 and in 2015. Subsequently a Draft General Policy for FRAP was released together with a set of sector policies for comment. The decision by the DAFF to go ahead with the FRAP and to still allocate rights in the near shore to individual (small scale) commercial rights holders, prior to finalising the implementation of the SSF policy, has greatly angered fishers. They feel that this reflects the DAFF's wish to continue to prioritise the commercial sector and an individual commercial orientation. Despite reassurances from DAFF that it is committed to the SSF and to apportioning the TAC and TAE between the commercial fisheries and the SSF in accordance with the principles of the SSF policy, the lack of finalisation on this issue is confusing and sends mixed messages (Respondents No. 1, 3, 4, 5, 6, 7, 8, 12 2016). The distinction between the category of commercial fisher referred to as the commercial near-shore rightsholders (who come from the same communities as the SSF fishers and fish in the same near shore areas) and the definition of small-scale fisheries which includes the right to sell on a commercial basis has not been made clear.

This lack of clear definition and split in the allocation of resources between a group of individual rights holders and a community group in the same

constituency creates conflict. It has led to the fracturing of the SSF sector and the emergence of a new, relatively privileged class of SSF fishers within SSF communities (Nthane 2014). This uncertainty feeds a lack of trust and fuels secrecy and individualism within the communities, with many fishers "just doing their own thing, on their own now" (Respondent No. 62016). It also increases conflict between resource users sharing the same resources. Sharief Badrun (WCRL nearshore commercial rights holder representative for Zone E) said at the Apportionment meeting "I am shocked and surprised. You are doing a grave injustice to the nearshore rights holders. We have been meeting with DAFF, we have been asking and asking what's happening? Now we don't feature? I am sure our SSF brothers and sisters don't want to take the fish from our mouths?"…" You have been saying "nothing is cast in stone" but we have been overlooked. You are taking from one Previously Disadvantaged Individual (PDI) to give to another PDI. This is wrong! The SSF are getting a whole basket. We are only getting one" (DAFF Apportionment meeting, November 2015).

Given the statements of support for the SSF in the apportionment document (DAFF 2015), and the statements of support that accompanied the discussion on apportionment made by DAFF officials at the apportionment meeting (DAFF, 25 November 2015), it would appear that the failure to confirm the apportionment proposals rests at a senior level within the Fisheries Branch and suggests that there is a lack of political support for the SSF at a higher level in the department, where the interests of the commercial sector hold sway (Respondents No. 1, 4, 5, 12 2016).

4.2.6 Insecure tenure rights in the SSF

In direct contradiction to the SSF Guidelines and the VG Tenure, SSF fishers in South Africa lack tenure security. While there is some hope that the implementation of the new SSF policy will address this, the current lack of clarity with regard to what will be in the SSF basket creates considerable insecurity of tenure for the SSF communities. It is unclear whether the SSF will get exclusive rights to fish in their traditional fishing grounds although it appears very unlikely. Instead, tenure to the near shore will comprise a basket of different, competing rights-holding entities and users including individual commercial rights holders and community-based cooperatives and, in some instances, recreational permit holders. To date the apportionment of resources across these groups remains highly contested and the Department has failed to be transparent and accountable with regard to how the decision to apportion resources between the commercial and the SSF sector will be determined. When questioned about this by the Parliamentary Committee tasked with oversight on matters pertaining to

Agriculture, Forestry and Fisheries the delegated authority from the department stated

"there is no obligation to announce the splits between the sectors. There is no legally binding obligation. That is the decision of the Minister on when that would be done. The reports Ms Jongbloed is referring to are not regulatory reports, but reports that explain the decision of the Minister and they do not have to be published. If they are published, it is merely the courtesy of the Department. There is no obligation to publish them" (Acting DDG Ms Ndudane Minutes of Parliamentary Meeting PMG 9 February 2016).

The failure of the authorities to undertake a thorough audit of pre-existing rights in different zones and to map the various over-lapping and competing expressions of tenure suggests that the implementation of the SSF policy will be orientated towards establishing a new set of tenure relations, rather than providing redress for those who were dispossessed of their tenure during apartheid and through the neo-liberal, 'post-democracy' allocations of the State in 2002 and 2005. This is contrary to the recommendations of the SSF Guidelines and the content of the SSF policy which includes the recognition of pre-existing rights as an important principle.

As noted in the previous section, until now neither the DAFF nor DEA have recognised the customary rights of SSF communities living in or adjacent to MPAs. This is the subject of litigation in the Dwesa-Cwebe MPA (Minister of DEA versus Gongqose 2012 and Gongqose and others 2015) and it is anticipated that judgment in this matter will provide policy guidance on how customary rights should be recognised in SSF governance in future. In the interim, respondents from the Eastern Cape and KZN note that SSF communities living in or adjacent to MPAs continue to be prejudiced by this uncertainty. They complain that many fishers in these regions have no permits, and those who do have permits operate under very strict subsistence permit conditions that do not enable them to market their catches easily. They contrast the conditions between these provinces and the Western and Northern Cape and express a perception that in the latter two provinces the fishers have access to information and training that is lacking in their regions and that they desperately require (Respondents No.10, 11 and 14 2016).

4.2.7 Top-down, controlling approach to management and regulation of the SSF

The SSF Guidelines urge all parties to recognise that rights and responsibilities come together and States should "involve small-scale fishing communities—with special attention to equitable participation of women, vulnerable and marginalised groups, - in the design, planning and as appropriate, implementation

of management measures, including protected areas, affecting their livelihood options" (SSF Guidelines Section 5.14, FAO 2014:7). Several respondents identified the 'top-down', controlling approach to the regulation of the SSF as a consequence of a neo-liberal approach to governance and the failure for the paradigm shift in management to take root. One example that was provided was the way in which the principle of 'co-management' was being operationalized now and how it was interpreted in the draft regulations published by DAFF in 2015. Fishers feel that DAFF still has an approach to co-management that does not recognise the fishers as equal partners in the management process. Their opinions are not sought on key issues such as the development of permit regulations, rather the DAFF continues, even in the 2016 interim relief process, to impose 'caretakers' on the fishers and to develop permit regulations without input from the fishers themselves (Respondent No. 8 2016). The sequencing of the establishment of 'co-management' committees in the policy implementation process is also of concern. Respondents feel that these committees should be established early on in the process and work closely with the DAFF SSF Directorate in planning the implementation. Instead large multi-stakeholder meetings are held a few times a year to update or brief the SSF, usually in the presence of the commercial sector, and the DAFF is doing much of the planning and preparation for the roll out of the implementation 'behind closed doors'. This suggests a lack of trust between the DAFF and the fishers. It is perceived as DAFF wishing to retain power and control over the process and impacts transparency, accountability and legitimacy of the process.

The DEA and DAFF's failure to recognise customary systems of governance and to impose a very Western dominated approach to fisheries management and marine resource conservation has been noted (Legal Resource Centre 2014, Sunde 2015). One respondent referred to this and cited the example of the fact that his community has repeatedly explained to DAFF and DEA that they have customarily harvested certain inter-tidal resources such as mussels on the full moon, spring tide low when they can access these resources. Women harvesters will walk several miles to the sea once or twice a month maximum to harvest these resources. It is therefore inappropriate to have a daily bag limit for these species. Yet despite repeatedly requesting that this practice be taken into consideration in regulations, they have been ignored with the consequence that several community members have been arrested, detained and prosecuted (Respondent No. 14 2016).

4.2.8 Increasing social conflict and loss of social cohesion

In contrast to the SSF Guidelines that aims to pay due attention to the social and economic development of SSF communities so that they are "empowered and able to enjoy their human rights" (SSF Guidelines Section 6, 2014:8), the governance of

SSF in South Africa to date appears to have undermined the social and economic development of SSF communities. Twelve out of fourteen respondents expressed very deep concern for the current state of the SSF sector, indicating that the social and economic situation in fisheries communities had deteriorated during the long wait for the implementation of the policy. They described a loss of social cohesion, hope and trust (Respondents 2, 3, 4, 5, 6 7, 8, 9, 10, 11, 13, 14 2016). One respondent expressed her heartfelt worries:

"*Baie van die mensekanditniemeerhanteernie. There are just empty promises. Die vertraaging van die proses en die beleidraakverdeeli*NGO*ndermekaar. Die department kriminelemaak van die mens….trust has been lost. Over December and at Christmas time people were desperate…they had to go to look to the marketers. Dit is niemaklikvir die leiers want die gees onder die mense is niemeerdaarnie…*" (Respondent No. 6, 2016).

"Many people cannot take it anymore. There are just empty promises. The delays in the process and the policy is causing division amongst people. The department is creating criminals out of the people …trust has been lost. Over December and at Christmas time people were desperate…they had to go to the marketers. It is not easy for the leaders as the spirit is no longer amongst the people" (Respondent No. 6 2016).

In KZN, the mood is very tense and one respondent reported that the fishers are very stressed. The killing of a fisherman by the conservation authorities last year exacerbated this situation and tensions are running high. The conservation authorities continue to destroy boats and nets that they confiscate if fishers are fishing illegally. The fisher leadership feel the pressure of trying to keep the communities calm and hopeful. The fact that the policy and implementation process has moved very slowly in this province, coupled with the uncertainty as to how the authorities would deal with the iSimangaliso World Heritage Site has left many fishers feeling very insecure. The iSimangaliso authorities have imposed harsh conditions on fishers living in and around the Heritage Site and have consistently refused to engage on this issue. Their senior management failed to meet with the Deputy Minister at an Imbizo (meeting) organised with the fishers last year and this issue has been left hanging (Respondent No. 11 2016). The KZN fishers are anxious about the appointment of a service provider for the implementation of the SSF policy as they fear that the service provider will have close ties with the conservation authorities and that the power relations of the past will continue into the future (Respondent No.11 2016).

One civil society stakeholder respondent observed that there has been a breakdown of trust and there is now a lack of cohesion and a sense of "insider—outsider". There are feelings of mistrust linked to perceptions of exclusion.

This relates to various issues such as racial exclusion where African fishers feel coloured fishers get preference. It also refers toand the interim relief measure where interim relief fishers perceive that the commercial near shore rights holders get preferential treatment (Respondent No.7 2016).

Two respondents in the Western Cape commented that they feel communities have become 'dysfunctional' and there has been a loss of values that used to bind them to one another (Respondent No. 9 and 6, 2016). This breakdown in the social fabric of communities was attributed to the cumulative effects of apartheid dispossession, exacerbated since 1994 by the very long wait and struggle for their rights. Many fishers have become desperate to put food on the table and secure their livelihoods. The presence of the ITQs has created divisions between the "haves and the have nots". The introduction of an individual permit system, coupled with the pervasive neo-liberal individualism in broader society has led to a weakening of the collective fabric and cohesion. There is a shared sense that people are desperate after over 20 years of watching "the rights grabbers"and not being able to realise their rights to their livelihoods (pers.comm Moenieba Isaacs, 2016).

These findings are supported by the findings by Raemaekers and Sowman (2015) in their research into vulnerability in three fishing communities in the Western Cape. In Doringbaai women reported that there has been a change in community values, increasing materialism, criminality and increased poverty, dependency on government grants and a feeling of marginalisation (Raemaekers and Sowman 2015:31).

Researcher Moenieba Isaacs expressed her concern for the implications of this loss of social cohesion for the implementation of the policy and the future sustainable and equitable management of SSF. She notes that in the past the SSF fisher communities were very vulnerable to just accepting and going with whatever they were offered by policy makers in order to try and secure their livelihoods and get a 'piece of the pie'. She cites the failed examples of community trusts and community cooperatives in the 1990s as examples of this. The past years of the ITQ, the growth of individualism and the way in which they have been vulnerable to abuse from elites and unscrupulous marketers have left them with little social cohesion. This has critical implications now for the way in which the policy will be implemented as these communities have little sense of agency or collective action left in order to reinvent themselves as cohesive community entities, they have no self governance. She sees a mismatch between the human rights principles and policy mechanism of a community based legal entity and the ability of communities to implement self governance.

She is not suggesting that they do not have many skills. As they engage in their day to day livelihoods they demonstrate a range of skills of relevance to self governance. She feels however that the gap lies in the way in which these skills are framed. As a key entry point into ensuring implementation these skills need to be described in a language that the fishers' feel comfortable with, not academic planning language. She feels that organisations like Coastal Links and Masifundise have a key role to play here in developing a model that will provide inspiration to fishers to create their own structures of self-governance (pers.comm Moenieba Isaacs, 2016).

4.2.9 Fragmentation, lack of organisation and solidarity amongst fisher organisations

The SSF Guidelines recognise the importance of collaboration amongst fishworker organisations and urges small-scale fisheries stakeholders to promote collaboration, networks and platforms to exchange information (SSF Guidelines 10.6 2014). In contrast, in South Africa there appears to be considerable fragmentation amongst fishworker organisations. A range of new fisher groupings and organisations appear to be emerging in the SSF while others are re-emerging with renewed strength (personal observation at the DAFF Appropriation Meeting, November 2015). This includes the ANC Fisheries Desk, the Mkhonto Wesizwe Military Veterans, the Imizama Yethu Fishers, Khayalitsha Fishers, Mitchell's Plan Fishing Forum and a relatively new group of indigenous Khoisan women from Hout Bay who refer to themselves as a First Nation Indigenous Women Fishers (pers.comm Yon 2015). It is unclear how extensive the membership of these groups is. The established fisher organisations include Coastal Links South Africa, with a membership of 4 800, the Artisanal Fishers Association (membership number not documented), the South African United Fisher Front (SAUFF) (membership not documented), the National Federation of Small-scale Fishers (membership not documented), the Vissers Engine (membership not documented) and the Ocean View Witsands Artisanal Fishers; Assoc (OVWAFA) with an estimated membership of 125 fishers (pers.comm Charles America 2016). Coastal Links and SAUFF both have a national footprint and have organised SSF fishers in the other provinces. The two latter organisations have links with SSF organisations in the other countries on the African continent. Coastal Links is affiliated to the World Forum of Fisher Peoples (WFFP) and has been engaged at an international level in the development of the SSF Guidelines. SAUFF is involved in the on-going continent wide and regional planning processes under the auspices

of the AU and AU-IBAR to develop an African Fisheries Policy Strategy and is also involved in the implementation of the VG Tenure in South Africa (pers.comm Pedro Garcia 2016).

Three respondents commented on the lack of solidarity amongst the fisher organisations and increasing conflict amongst fishers as a result of the FRAP process, the interim relief and marketers playing leaders off against each other, which undermined their political strength and voice as a constituency (Respondents No 4, 7, 9 2016). One respondent commented that he felt that the current climate of uncertainty, unscrupulous lobbying of the leaders by marketers and the on-going slow pace of delivery was undermining fisher organisation in the sector. He said "the market is a road block". The leaders just have "marketing on the mind". He added "the mindset of some leaders is a problem. They just cling to their power. They just want to stay in power". He observed "we can't blame Apartheid anymore. This problem is a democracy thing". In his opinion, one of the problems is that many of the leaders are now benefiting from the Interim Relief as they are getting commission from the marketers. "Government is still giving them gravy by not implementing the policy so they are actually happy with the interim relief" (Respondent No. 8 2016).

One fisher leader (not one of the respondents for this study), has verbalised his anger at the way certain leaders have, in his opinion, used the Equality Court Order to further their own interests. He accuses them of employing "an assortment of dirty tricks…. to deliberately mislead, deceive, to undermine as well as disrupt the coastal and near-coastal communities, by exploiting their distorted version of the Equality Court orders, and by capitalizing upon the desperate poverty, and the hardship suffered by the *bona fide* traditional artisanal fisher folk, and by inciting confusion, chaos, conflict as well as provoking violence, and utter discord among coastal communities". He argues that certain leaders have "blatantly hijacked all aspects of the democratic fishers' representative election process, and quickly held their own secret "election", to put in place, their own good buddies (non fishery-related business people with long-term commercial fishing quotas, yet who have no proven history in the fisheries industry)" (anonymous leader 2011).

Two respondents stated that they felt that the lack of a representative advisory body to engage directly with DAFF was a key challenge facing the sector and contributed to the fragmentation amongst organisations (Respondents No. 7 and 9 2016).

4.2.10 Victimization and undermining of the SSF by the commercial sector and its allies

Three respondents referred to the deliberate undermining of the SSF sector and fisher leaders by the commercial sector, by marketers, marine scientists and certain officials within DAFF (Respondents No, 1, 5, 8, 2016). They suggested there was a deliberate campaign to discredit fishing leaders in the SSF, to paint the SSF sector as an increasingly lawless one and to implicate them in the destruction of the resources. These respondents cite the recent arrests of some SSF fishers for alleged permit violations, the comments in public media about the increasing poaching being linked to the interim relief permits and the misinformation about the policy contents and objectives of the policy that have been circulated. Two respondents quite independently commented that the SSF are being "turned into criminals" (Respondent No, 6 and 8, 2016). In contrast, they argue that the commercial fisheries sector has been given specific favours. For example, commercial line fishers are able to fish in a number of zones and move across these zones freely while interim relief fishers are restricted to their adjacent area. The commercial WCRL rights holders have been given permission to catch their TAC allocations in zones other than the one originally prescribed in their permit conditions but the interim relief fishers have not been granted permission to do this, despite several requests (Respondents No.6 and 8, 2016).

The respondents attribute these examples of continuing discrimination against the SSF to the dominance of a neo-liberal governance regime in the sector which privileges large, capitalist interests. One respondent was particularly concerned that "chaos in the SSF sector" that is resulting from confusion in the sector created by the transition to the new policy, the way in which FRAP and the apportionment process are being managed "suits the industrial sectors' interests. He said he believes that this enables the commercial sector to continue to get away with rampant over-catching themselves. The focus on SSF illegal harvesting detracts attention from their illegal activities and the fronting that is taking place within this sector. He cites the example of the recent allocation of an increase of 11% to the commercial offshore WCRL TAC despite all the concerns expressed by the marine scientists that the resource is in a precarious state. Attention has been diverted from the inconsistency of this TAC increase and instead focus is directed to interim relief and SSF alleged illegal activities (Anonymous respondent 2016).

In contrast to this perspective, one respondent highlighted the way in which the industry appears to be beginning to woo the SSF in anticipation of securing benefits from the SSF through implementation of the SSF policy. References to a 'win- win' partnership between the SSF and industry by DAFF officials in recent

months (Smith 2015 and Middleton 2015) suggest that there is some support for such a partnership amongst certain DAFF officials. SSF fishers and social actors have expressed their cynicism about such a partnership, suggesting that this is merely a strategy on the part of the commercial sector to ensure they secure benefits from the SSF and continue to control the upper reaches of the value chain (Respondents No.1, 2, 4 2016).

4.2.11 Confusion regarding cooperatives: collective action or business as usual?

The DAFF has identified cooperatives as the only legal entity that will be established by SSF communities in 2016 to both hold fishing rights and market catches (DAFF 2015). Many of the fishers who recall the failed interventions to establish Community Trusts in the early 1990s and later the SACFC which was started as a cooperative, are concerned about the establishment of these cooperatives. In particular they are concerned that they might again become controlled by elites. The DAFF has explained their motivation, noting that those national governments as a whole is committed to empowering cooperatives and there are financial and capacity building resources that DAFF can draw on to support the fishers in the process of establishing these cooperatives. In 2009 the DAFF entered into a partnership with the Department of Trade and Industry (DTI) to establish cooperatives in fishing villages and equip them with boats and infrastructure. The lack of policy coherence is evident in the fact that "These co-operatives were just general co-operatives that were set up by the Department of Trade and Industry (DTI), and it was not set up in the context of the SSFP" (Hahn Goliath, The Hook, August 2015). Members of these cooperatives will have to establish new cooperatives for the purpose of implementation of the new SSF Policy and all members will have to comply with the criteria in the policy to qualify as a bone fide SSF fisher. Leaders of existing cooperatives are very frustrated with this as explained Veronica, a leader from Imizama Yethu at a DAFF stakeholder forum. She stated that DAFF and DTI had never informed them that the members of the fishing cooperatives that were given boats and financial support had to be fishers (Fisher leader Veronica, DAFF Stakeholder Forum Ratanga Junction, February 2015).

It is reported that this Fisheries Cluster Project, which targeted and benefitted Western Cape fishing communities invested R11 million in providing vessels to 39 cooperatives (Isaacs and Hara 2015). According to the Minister of DTI, Rob Davies, the aim of this project " is to broaden the participation of small-scale fishing communities to higher commercial value activities in the value chain" (Isaacs and Hara 2015:34). This project is no longer administered by the DTI but

has now been moved to the Department of Small Business Development, a new department established to provide support to small-scale producers (pers.comm Faried Khahn 2015). The project is on hold in SSF communities until the roll out of the SSF policy and the staff in this new Department has been instructed not to engage with SSF communities until then (pers.comm2015). No evaluation of this project is available, however, communities appear to have mixed feelings regarding the outcomes of this project. One fisher leader from Stanford has complained that the community's nine boats are lying idle in the sun and deteriorating due to the fishers' limited access to resources (pers.comm Salie Cyster 2015).

Hahn Goliath, a community leader from Doringbaai has reported on the impact of their cooperatives. "We started in 2009 as a pilot, and I can say that we have learnt a lot from running our co-operatives, which can be applied in the future." He indicated that "through the DTI, we managed to secure R300 000 for each co-operative. At first we wanted to start just one single co-operative, but was told that it would be better if we have more than one co-operative, in order to access more grants from the DTI, instead of just one R300 000," says Goliath. He says they eventually formed 13 co-operatives and managed to access 13 Co-operative Incentive Scheme (CIS) Grants from the DTI. In retrospect he says that he believes that "it is better to have fewer structures to manage the activities of the group, and that is where the secondary co-operative is of great help". In describing their present co-operatives, Goliath believes that they are not very successful, but that they are also not a failure, and that their co-operatives are doing fairly well, under the circumstances. Goliath believes that they could have been more successful in their endeavours if they had more support (Report edited from The Hook, Masifundise August 2015).

4.2.12 Gender inequities and patriarchal perspectives towards women

The SSF Guidelines recognises that achieving gender equality requires concerted efforts and specific measures on the part of States and all parties (SSF Guidelines Section 8 2014). Despite the fact that considerable lip service is paid to gender equity, and women feature prominently in key SSF campaigns of fishworker organisations, very little work has been undertaken on this issue specifically in the South African context. Neither the government department nor the fishworker organisations can provide gendered data on how many women there are in the sector or how many women members are registered with the fisher organisations. Not surprisingly, several respondents highlighted existing gender relations as a key obstacle towards implementation of the SSF Guidelines and the principle of gender equity (Respondents No 5,6,7,13 2016). The way in which this obstacle manifests differs however across different regions.

The full and effective participation of women in fisher organisations and local governance structures is a key challenge in the Eastern Cape and KZN where patriarchal relations have tended to result in men dominating in local level structures. However in these provinces women are actively involved in the direct harvesting of resources and hence men do not question the need for women to be members of the community rights-holding entities. In contrast, in the other two provinces, while women have taken the lead in several fisher organisations in the past decade and to date powerful women leaders remain at the helm of several of the Coastal Links branches, the fisheries remain very male dominated. The position of women in these branches appears contradictory. Although they undertake a great deal of work for the organisations, which is acknowledged by male members, many of the men remain uncertain as to how these women will be included in their legal entities "as they don't go to sea" (Respondent No. 5, 2016). In these two provinces women have been included in the group of persons who received WCRL rights allocations in 2002 and 2006. But many men perceive these women as 'paper quota holders' and they do not believe that they should have received rights as very few of them personally harvest their quotas (Respondent No. 5, 2016).

The issue of women's role and value adding have become fused in popular rhetoric about implementation of the new SSF policy. In particular, fisher leaders are quick to refer to the potential role that women will play in adding value in the future and creating work although, the actual technicalities of this appear to have not been thought through in relation to the structuring of the primary and secondary cooperatives. One exception to this situation is the cooperatives of Buffelsjagbaai where fisher leader, Sara Niemand has been instrumental in supporting the establishment of three women's cooperatives that are involved in value adding to relatively low value interim relief species such as mussels and alikreukel (pers.comm Sara Niemand 2016).

The SSF policy makes provision for the State to adopt specific measures to promote and protect the rights of women. This is in line with the Convention on the elimination of all forms of discrimination against women (CEDAW). However, not withstanding this, the draft SSF regulations do not make it obligatory for a cooperative to ensure gender equity. Rather, this is left to the discretion of an individual cooperative (DAFFc 2015). Given the existing gender relations within the SSF fisheries sector in the Northern and Western Cape, where women experience marginalisation and are not represented in any vaguely equitable proportions, this weakness in the draft regulations will fail to address gender inequity and may have the unintended consequence of exacerbating this, given the existing criteria for recognition as a fisher. In the Eastern Cape and KwaZulu Natal, where women

have traditionally been active in harvesting marine resources, their inclusion in the legal entity will not be a problem. However, their full and effective and equitable participation in the governance of the legal entity demands specific measures. This will require considerable attention in the near future. The depth of the prevailing gender discrimination is yet to emerge as the implementation process has not yet reached the stage of determining who is 'in' and who is 'out' of the community legal entities however it is clear that neither government officials nor male community leaders anticipate taking radical steps to address the past discrimination against women in the sector and ensuring their equal participation in local level rights holding entities.

4.2.13 Unequal power relations within the value chain

The SSF Guidelines state that "all parties should ...(recognize) that there are sometimes unequal power relationships between value chain actors and that vulnerable and marginalised groups may require special support" (SSF Guidelines Section 7 2014:10). The current unequal power relations in the value chain of most of the marine resources harvested by the SSF fishers in South Africa leave these fishers relatively powerless. The SSF fishers are not integrated into the value chain and the little value adding that used to take place has largely disappeared with the introduction of the medium and long term rights, based on an individual permit system and strict regulations regarding the processing of fish. The processing and marketing of many species is now controlled by middlepersons, many of whom work for the larger companies who not only have their own quotas, but also control the lucrative export trade. This is confirmed by WWF in relation to Kogelberg community (WWF 2015). It is similar on the West Coast according to Hahn Goliath who says that currently "they market their high-end value fish stock like rock lobster through intermediaries who work on behalf of the big companies."They sell their linefish "over the scale and get a price per kilogram, and the local fisherman only get about one-third of the value of the fish," says Goliath. Challenges like logistics, finance, volumes, networks, transport, manufacturing standards, SABS approval, business skills and other challenges will have to be addressed and taken head-on, if a successful marketing strategy for small-scale fishers is to be implemented" (The Hook, Masifundise October, 2015).

It has been reported that the WCRL nearshore value chain in the Western Cape is currently controlled by a handful of marketers, some of whom appear to be linked to each other and in turn to the large commercial companies that include Oceana and Lusitania although, the fishers themselves are unclear of the exact links. They all have a similar modus operandi: approaching the SSF fishers well before the opening of the season, at the end of winter when the fishers are often

in debt and desperate for access to cash. Three of the most dominant market operations run by Nic Pruim on the West Coast, 2Oceans on the South coast and Gigan, allegedly also linked to 2Oceans, pay individual community leaders or 'caretakers' a sum of money in order to secure their communities' catch for the season. This amount varies according to the other components in the package. For example, in the current season 2Oceans offer the leaders an additional R20 00 per kilo on top of the R270 paid per kilo for the group's catch. In addition, they offer a funeral policy for all fishers and a food parcel during the off-season ranging in value from R500 –R750. It is alleged that they have invested considerable monies in social upliftment projects in several communities on the South Coast. Nic Pruim on the West Coast allegedly pays leaders R 10 000 and then offers R 270 per kilo. This past season he also offered leaders a deep freezer full of frozen chicken which they could sell and then pay him cost price for this first batch of chickens. In addition to payments to the leaders Pruim has provided loans to fishers in many communities. These are "vookskote" and are then deducted from the final payment to the leaders. He has also made repeated promises of social responsibility investments in the community but to date none of these have materialised (anonymous fisher leaders, 2015).

It is alleged that 2Oceans is a joint venture between Oceana and Freedom Fishing and that the allocation of the ex-Foodcorp WCRL quota to Freedom Fishing was un-procedural and violated the Black Economic Empowerment Code and the DAFF Policy on the Transfer of Fishing Rights (Letter to Minister from G. Simpson 2015). It was allegedly overseen by the former Acting DDG Desmond Stevens, who at the time was also Western Cape Chair and National Treasurer-General of the Umkhonto we Sizwe Military Veterans Association. Freedom Fishing's shareholders include a number of Umkhonto we Sizwe Military Veterans. It also alleged that Stevens himself arranged for more than half of the 2Oceans WCRL allocation to be caught by Interim Relief fishers from the South Coast (Letter to the Minister of Fisheries Simpson, G 2015). Despite these allegations having been made known to the Minister and senior officials there has been no official investigation into these allegations of breaches of the Transfer of Rights Policy. Desmond Stevens is currently the Director of Stakeholder Liaison.

The fishers in the Interim Relief communities are aware that payments are made to their leaders and express mixed opinions about this. Some regard the payments to leaders as payment for the significant amount of work the leaders do in making the marketing arrangements and coordinating the entire process from registration of boats, collection of licenses to on-going liaison with both DAFF and the marketers. Others feel uncomfortable about these payments. However, in the absence of any loan facility designed for fishers they appear

resigned to this unequal relationship of inter-dependence that they and their leaders have with the marketers. One community member has reported that in one SSF community two women who have marketed their own lobster have been harassed by other community members who are tied into debt and agreements with a particular marketer (anonymous community member 2016).

Several fishers cite the inequalities caused by the Group Areas Act and the lack of access to landing sites and harbours as key obstacles to them being able to add value and this further increases their reliance on outside marketers (Respondent No. 8). DAFF has reported that as part of Operation Phakisa, the department is looking at developing small harbours and launching sites that will mainly serve small-scale fishers' operations (DAFF 2015). The department has said that it "aims to make a significant dent to poverty within the small-scale fishing communities and villages and to improve the local economies of fishing communities and villages through improved value chain and linking fishing to other sectors like tourism" (DAFF 2013).

Case Study: Empowering SSF along the value chain: The Kogelberg Small-scale Fishery Improvement Project (FIP)

One innovative and very dynamic project aimed at tackling a range of unequal power relations in the value chain and empowering SSF fishers to address these challenges is the WWF-SA Small Scale FIP. This project was formulated in 2012 by WWF to support the then newly developed Department of Agriculture, Forestry and Fisheries (DAFF) small-scale fisheries policy. The project plan states that there is "growing recognition that interventions aimed at improving the long-term sustainability of the small-scale fisheries sector in the Kogelberg need to explicitly address both environmental and social drivers of unsustainable fishing practices and underdevelopment in this sector" (WWF 2015:2). This project aims to pilot an approach to address key challenges facing the small-scale fisheries sector. Although the local fishers are still awaiting clarity on exactly which resources will be in their 'basket of resources', this project has contributed towards the fishers "getting a better understanding of the barriers to implementing such a policy and can serve as a blue print to guide the implementations of developmental actions required" (WWF 2015:4).

The Kogelberg pilot site work started in June 2013 through a series of community engagement meetings. The project has identified several key entry points into addressing the challenges of implementation, to be applied in a phased approach.

Project coordinator Mkhululi Silandela has explained that empowering women in communities to participate fully in the value chain, coupled with building the capacity of community members to manage their own community based legal entities (CBLE) in a transparent and accountable manner is a priority. Towards this end WWF has embarked on a creative, flexible mix of interventions, drawing on and developing existing methodologies that have proven useful in other contexts and organisations. For example, women from the local SSF community have been supported in establishing a cooperative. They are now receiving capacity—building in how to manage this equitably and how to develop an internal control system (ICS) that will prevent some of the problems of elite capture and corruption reported in previous experiences of community cooperatives. Drawing on experience of ICS systems introduced for other small-scale producers, WWF is assisting the women to develop their own ICS system that will ultimately be able to govern their own cooperative equitably and effectively and comply with the range of requirements of a marketing cooperative such as compliance with the MLRA and other health and safety standards.

They are also supporting the women in integrating into the local restaurant value chain by establishing relationships with restaurants who will buy directly from the local SSF fishers. Simultaneously they are empowering the fishers through their involvement in a pilot Integrated Catch Data Management System (IMS) called Abalobi that will build the capacity of the fishers themselves to document their catches and communicate with the market (see case study in Section 4.6 below). It is hoped that this will also empower the fishers to engage with the scientists about their data.

Source: Mkhululi Silandela, WWF Programme Coordinator, 2016

4.2.14 Unequal, unfair and unsafe labour practices within the SSF

"They call us small-scale fishers but we're dying on a large scale." (Ralph Warner, Hout Bay in De Greef 2015).

The high number of SSF fishers who have lost their lives at sea has made fishers aware of the need to address safety at sea in the implementation of the policy. The high loss of life has impacted the sector heavily particularly in the past decade. The South African Marine Safety Association (SAMSA) is the authority responsible for safety standards amongst the SSF. SAMSA held a Fishing Safety Indaba in Cape Town in 2006. Following the SAMSA Fishing Safety Indaba, SAMSA contracted research into the challenges facing the fisheries sector. The following findings were listed: (fishers): Exploitation and Abuse, The Lack of Organisation Among Fishers, Lack of Business Development Skills Among Fishers, Low Literacy and Numeracy levels, Problems Associated with the New Applications Procedure for Quotas, Lack of Basic Maritime Competencies, Over-dependence on Exhaustible Marine Living Resources" (Tradelane Final Report SFC Pilot Project 2013:2).

In addition to basic standards for safety at sea and the need for training in this regard, several fisher respondents raised concerns about the level of unequal labour relations within the SSF sector. This includes relations between fishers and between fishers and boat owners and how these might be addressed through the policy implementation process. One fisher indicated that in particular he was worried about how boat owners within SSF communities were going to adapt to the principles of the cooperative and to the concept of shared, equitable ownership of assets (Respondent No. 5, 2016). It has been noted that there are often unequal relations between boat owners and crew. In the past these relations were often structured by race and class however with the introduction of the interim relief, many of the boat owners have come from amongst the fishers themselves, resulting in a new set of power relations between community members. "SSF are vulnerable to exploitation by unscrupulous boat owners, marketers and commercial fishing rights holders and their basic conditions of employment may be violated" (WWF 2015:20).

In the absence of a sectoral determination that can guide minimum employment and labour standards that accommodate the unique safety at sea needs of the SSF, they remain very vulnerable (WWF 2015:22). Towards this end WWF Kogelberg FIP aims to develop a project component that will support fishers in implementing fair and safe working conditions in the SSF (WWF 2015:22). This will intersect with the Abalobi IMS project (discussed below in section 4.4.13).

4.2.15 The attitude towards fishers' knowledge and the control of information and data

Until recently scientist and fisheries managers' attitude towards fisher knowledge and involvement in decision-making has been largely negative (Sowman 2011, Raemaekers 2015).Over the past two years however, there has been a steady shift in attitude toward fishers' knowledge, in part through the implementation of several innovative research projects focusing on fishers' knowledge (Neis and Greene 2015, Abalobi 2015). One of these projects, Abalobi, is a SSF owned and managed process. Abalobi project was launched in 2015 by a group of SSF fishers together with their partners at UCT, DAFF and Masifundise. ***Abalobi*** *is a project by the small-scale fishing communities themselves, to own the process of implementing the policy they fought for. The Abalobi app is a one-stop shop for small-scale fishers to record their catches, engage with government, enhance their safety at sea, and add value to their work. It aims to narrow the gap between scientific knowledge and local fisher knowledge.*

Case study: Promoting a community owned Catch Data Information Management System, building trust and promoting sustainable and equitable use of resources

Small-scale fishers have a low carbon footprint and play an important role in the food security, economy and culture of coastal villages, yet they remain a marginalised group in South Africa – lacking rights, a say in the management of their resources, and empowerment in the market chain. Dr Serge Raemaekers is working with fishers and government to develop a smartphone application that will empower the fishers, and possibly change the power dynamics completely in their sector.

The Abalobi app is a one-stop shop for small-scale fishers to record their catches, engage with government, enhance their safety at sea, and add value to their work. It aims to narrow the gap between scientific knowledge and local fisher knowledge.

It was thinking about the challenges of policy implementation that led Raemaekers, together with Abongile Ngqongwa, a fishery manager from the Department of Agriculture, Forestry and Fisheries (DAFF) and fisher and community worker, Nico Waldeck, to the idea of creating a smart phone application (app) to be a one-stop shop for small-scale fishers to record their catches, engage with government at the co-management table, enhance their safety at sea, and explore different value-chain opportunities. The app is called 'Abalobi', the isiXhosa word for small-scale fishers, as referred to in the policy.

"There are two major problems with the small-scale fishing sector that spurred us on to working on the development of Abalobi," says Raemaekers. "The first is the big gap between scientific knowledge and local fisher knowledge. The much contextualised local knowledge does not make its way into fisheries management; but also, the scientific understanding of fish-stock models does not always gel with the local knowledge owned by fishers." Part of what Raemaekers and his team hope to achieve through Abalobi is to build trust between the relevant role players, including government and scientists, creating relationships where groups can work together to complement different knowledge and local data, and to achieve greater understanding of fish resources and of how best to implement policy.

A second gripe for Raemaekers is that small-scale fishers are mostly 'price-takers', stuck in a system of servitude in which they are just working to pay back last year's loans. "These fishers don't often get a good price for their catch.

Even though this is potentially the most sustainable and socially just fishing practice in our inshore waters, these small-scale fishers are not empowered in the value chain." Simple information-sharing and communication between fishers could free them from this trap. As part of the Abalobi project, a chat (smartphone-based instant messaging) integration was developed that allows fishers—who had had no contact with each other previously—to communicate with one another.

Abalobi, which is still in the pilot stage, has a number of planned modules. One of the core modules currently being pilot-tested is Mobile Catch Reporting, through which both fishers and government monitors capture data and access easy-to-understand dashboard analytics. At the moment these processes are separate: the fishers capture their information about a catch, and they own that data. They decide who can see it and how it is to be used. At the same time, government monitors are also capturing data. "The plan is to have regular workshops for engagement between government and fishers, to discuss the data—what the differences are, and why," explains Raemaekers. "We are embarking on a process of building trust, co-producing knowledge, and working together to ensure responsible governance of the sector."

Other modules include a focus on safety at sea, connecting fishers to markets and consumers, and building a knowledge hub for fishers to keep on top of the latest trends and regulations. Raemaekers has been working closely with both the fisher community and the Department of Agriculture, Forestry and Fisheries on Abalobi. The key for him is that this is not an academic exercise, but a community-owned and -led open source project. "This is a really transdisciplinary endeavour," he says. "Abalobi not only brings together scientists, government, industry and community, but also encompasses natural sciences, social sciences and information technology."

The Abalobi project (www.abalobi.info) by Natalie Simon, UCT November 2015.

4.2.16 Vulnerability to climate change and other social and environmental impacts

"We need system change not climate change" (Christian Adams, leader of Coastal Links, 2016).

Several respondents observed that in addition to the range of social and economic problems that SSF fishers are facing, climate and environmental changes appear to be adding to their vulnerability (Respondent No. 5, 7, 14, 2016). In KZN the impact of the drought has been particularly noticeable in the St Lucia region where the closure of the mouth of the estuary has impacted the availability of fish.

Several research reports on climate change impacts on fisheries, including fishers' knowledge have recently been completed (Raemaerkers and Sowman 2015, Gammage 2015). It has been observed that small-scale fishers have contributed little to the causes of climate change but will be amongst the first sectors to feel its impacts (Allison et al 2005 in Raemaekers and Sowman 2015:8). "In reality, vulnerabilities to different socio –ecological stressors are inter-twined and may exacerbate one another" (Raemaekers and Sowman 2015:9). It is further noted that poor communication and a lack of trust between scientists and fishers exacerbates vulnerability to climate change (DAFF Line Fish Report 2016).

Climate Change policy in South Africa is led by the DEA and this department ensures coherence and coordination across all spheres and levels of governance. The Climate change sector plan refers to fisheries and notes the vulnerability of SSF and their contribution to nutrition and livelihoods. Dependence on fisheries makes communities vulnerable (DAFF2015b:8). DAFF is actively engaged in various high level cooperative governance on climate change. This includes the National Committee on Climate Change (NCCC), the Intergovernmental committee on climate change (IGCCC), Ministerial Committee on Climate Change (high level) with active participation of all departments. DEA has developed a National Climate change response strategy with inputs from all NCCC. In addition, DAFF is in the process of developing a plan of action on climate change and this will include a fisheries branch plan of action. To date one workshop has been held with fisheries representatives as part of this process. Small-scale fisheries and in particular, line fishers, have been identified as a particularly vulnerable sector (Report from Stakeholders Workshop, Fisheries Branch, December 2015).

4.2.17 Absence of policy coherence, institutional coordination and collaboration

While most respondents are very aware of the need for policy coherence and inter-sectoral coordination, this remains a key challenge for implementation. The Director of SSF at DAFF acknowledges that this is critical and that DAFF aims to establish partnerships with other departments. However at this stage they have been concentrating on the fishing rights allocation process within DAFF. He says once these first steps are in place they will consider the need to establish partnerships with other departments such as Labour and Social Development. To date DAFF has had a very close partnership with the DTI through the support provided to cooperatives. In future this relationship will be extended to the Department of Small Business Development which is the government department responsible for support to cooperatives in the future. In addition, the SSF Directorate has been making contact with municipalities and Traditional Authorities in order to brief them on the policy implementation process (pers.comm Smith 2016). A huge gap in coherence remains the policy mismatch between DEA and DAFF with regard to the implementation of the SSF policy in communities living in or adjacent to MPAs (Respondents No. 5, 6, 13, 15 2016). The Directorate of SSF acknowledges that this is a key challenge (pers.comm Smith 2016). To date there has been no clarity with regard to how this issue will be addressed and there has been conflict on the ground in several sites including the iSimangaliso World Heritage Site in KZN, Dwesa-Cwebe MPA in Eastern Cape and the Langebaan Lagoon MPA in the Western Cape.

4.2.18 Lack of capacity and associated empowerment processes

Lack of capacity at several different levels and across all thematic areas has been identified as a key challenge impacting the implementation of the SSF Guidelines and the SSF Policy in South Africa (Respondents No. 1,2,3,6,7,8,11,12 2016). This lack of capacity impacts the DAFF SSF Directorate as well as its social partners, the fishers and fisher support organisations. Most notably, several key respondents commented on the lack of capacity within civil society to provide the necessary training and information to the fishers. One fisher respondent felt let down by civil society in this regard (Respondent No.15 2016). Another commented in relation to civil society that "there is no capacity in the sector to counter-balance the power of the commercial sector" (Respondent No.7 2016). As noted above in Section 4.4.3, Dr Moenieba Isaacs has highlighted the lack of capacity within the fisher communities to engage in

self governance. Several other respondents focused on this issue of local level governance, commenting that most of the fisher communities are yet to organise themselves into well structured entities that can partner government through co-management relationships. One respondent was particularly concerned that most of the fishers in the Western and Northern Cape have an 'interim relief and quota mindset'. He felt that there was an urgent need to help the fishers look forward, towards the implementation of the policy which provides an opportunity to get away from this mindset. He identified the need for training on how to establish and manage a cooperative, on how to establish their own markets and support in engaging with the local municipality to ensure that the fishers' needs are reflected in the Integrated development Plans (IDPs) of municipalities (Respondent No. 5 2016).

The SSF Directorate intends to provide a measure of capacity building and support to the SSF community entities through their service providers and through on-going field support. However, the capacity of the Directorate is limited. Currently the Directorate only has 11 permanent posts and 4 additional internships, temporary posts (pers.comm Smith 2016). In addition there are 30 Fisheries Development Workers employed within DAFF that do contribute towards service delivery in the sector. The DAFF Directorate views civil society organisations as key partners in this process of filling the capacity gap. Towards this end the WWF project underway in Kogelberg provides an example of best practice. The Masifundise project funded by the European Union is also seen as an important programme that will play a key role in contributing towards building capacity in the implementation process.

Case study: Job creation and sustainable livelihoods through implementation of the Small-scale Fishery Policy

Masifundise Development Trust and Coastal Links have begun implementation of a three-year project funded by the European Union. The overall objective of this project is to create jobs and secure sustainable livelihoods through implementation of the Small-scale Fisheries Policy in small-scale fishing communities in the Northern, Western and Eastern Cape and KwaZulu-Natal Provinces. Through the implementation of this project Masifundise intend to ensure that Fisher People, including men, women and youth, from 20 fishing communities have increased their skills and capacity to engage in co-management of fisheries and to benefit from job creation via implementation of the SSF Policy.

Key Project Activities

1. Capacity building and empowerment of the CBO Coastal Links South Africa through training sessions, workshops and use of information tools/ manuals. Fieldwork in each of the 20 fishing communities will facilitate knowledge empowerment and skills training.

2. Development of learning and information materials in a popular language to reach and empower the target group; documentation of best case lessons on co-management and co-operatives to enhance partnerships with private and governmental sector associates.

3. Roundtable, meetings and in-field hands on cooperation with key stakeholders and in particular with DAFF.

Estimated Results

1. Formation of empowered co-operatives capable of taking active part in the co-management of fisheries and benefiting from the creation of jobs and livelihood opportunities in 20 fishing communities.

2. Documentation of lessons and best case practises of cooperatives already established in one community in order to scale up and fast track economic development and job creation in other communities.

3. To improve cooperation with DAFF and DTI in order to ensure governmental commitment and human and financial resources for a successful implementation of the SSF Policy including job creation.

Source: Masifundise Development Trust, 2016.

4.3 CONCLUSION AND RECOMMENDATIONS

Interviews with key respondents drawn from SSF fishing communities, fisher leaders, government, NGOs and research institutions together with a review of current literature provides evidence that there are huge challenges facing the SSF sector in South Africa. In particular, a range of unequal power relations shape the location of fishers within the political economy of fisheries and impact the way in which the SSF Guidelines and the SSF policy are being interpreted and implemented. Racial, class, gender and historical rural-urban divides intersect these power relations and shape the experiences of SSF fishers and their communities. These intersectionalities have shaped responses to historical power relations as also how SSF communities have responded to developments in the post-democracy period. These power relations operate on both a symbolic and material level: the way in which the SSF is conceptualised and perceived by policy makers is structured by a neo-liberal narrative of economic value. This has shaped and continues to shape the interpretation of both legislative and policy imperatives at a national level. Further, both the policy and the management domains are structured by the unequal power relations between the industrial sector and the SSF. The close relationship between the ruling party, the fisheries administration and the captains of industry creates the co-management conditions required by the industrial sector to ensure that they benefit from any policy that is introduced to address the SSF—from Interim Relief to the new SSF policy implementation plan. Their continued control over the means of production, made possible through the DAFF's failure to apportion adequate resource access to the SSF and to introduce mechanisms to enable SSF communities to control a segment of the value chain, leaves the SSF very vulnerable. It would appear that notwithstanding commitments to the SSF Guidelines and the SSF Policy, the policy trajectory for the future is 'business as usual' in South Africa.

The government's failure to put mechanisms in place to ensure transparency and accountability within the fisheries administration has created a culture in which corruption, cronyism and political influence has thrived. This lack of ethical governance is mirrored in community level organisations, particularly in the Western and Northern Cape, where a lack of democratic practice and sound checks and balances has enabled several individual leaders to become involved in deals with marketers that compromise their legitimacy. In this environment the lack of legitimacy of both government and community level institutions had enabled a pervasive perception of lawlessness.

In addition to key class and racial fissures, the SSF sector is structured by patriarchal gender relations which continue to shape the underlying dynamics in communities. While a superficial impression of shift is created by the visibility of a few prominent women leaders, deep-seated patriarchal relations continue to influence how men in fisher organisations and communities perceive women's rights to resources and to controlling these resources.

The historical marginalisation of the Bantustan regions of the country, predominant in the KZN and Eastern Cape provinces, continues to shape the current context. SSF fishing communities in these provinces remain ultra vulnerable due to their lack of voice and the unequal provision of services in these regions. The heavy handed attitude of the conservation authorities in these provinces towards the SSF fishers, who they do not accept as having legitimate rights, exacerbates the situation. Communities living in or adjacent to MPAs and the iSimangaliso World Heritage Site are most vulnerable in this regard. Lack of high level inter-sectoral policy cohesion and a total absence of policy guiding the management approach to these communities are noted.

In all provinces, across the SSF sector, the historical power relations and the marginalisation and exclusion of SSF fishers from access to marine resources and from participating in management and conservation of these resources has left this sector struggling for their livelihoods. In the current context this appears to shape how these SSF communities approach the issue of resource sustainability. The lack of direct attention to, or clearly articulated concern about resource sustainability or conservation amongst SSF fishers is very noticeable. Understandably, in this still highly insecure, unequal and much contested terrain, SSF fishers remain focused on their struggles to achieve secure access to resources and their basic food security and the importance of resource sustainability underpinning their livelihoods may be compromised.

In summary the following key challenges are identified:

- Lack of data and information about the SSF
- The power of politics influencing the governance of SSF
- The macro-economic role and perceived value of the SSF sector
- Political allegiances, cronyism and corruption in the governance of fisheries
- The bias and lack of transparency in the Fishing Rights Allocation Process (FRAP) and Apportionment Process
- Insecure tenure rights in the SSF

- Top-down, controlling approach to the management and regulation of the SSF
- Fragmentation, lack of organisation and solidarity amongst fisher organisations
- Victimization and undermining of the SSF by the commercial sector and its allies
- Confusion regarding cooperatives: collective action or business as usual?
- Gender inequities and patriarchal perspectives towards women
- Unequal power relations within the value chain
- Unequal, unfair and unsafe labour practices within the SSF
- The attitude towards fishers' knowledge and the control of information and data
- Vulnerability to climate change and other social and environmental impacts
- Absence of policy coherence, institutional coordination and collaboration
- Lack of capacity and associated empowerment capabilities

4.3.1 RECOMMENDATIONS FOR FUTURE ACTION

While there are no government or civil society initiatives to implement the SSF Guidelines in South Africa underway, this research has highlighted a number of potential **key entry points** that might offer strategic opportunities to strengthen compliance with the principles of the SSF Guidelines and the SSF policy. Several respondents have pointed to issues of particular importance and have highlighted a few programmes that are either underway or at the point of commencing that provide very important guidance. These **key entry points** include the following:

1. **Building SSF capacity for self-governance:** The forthcoming SSF policy implementation process and, in particular, the development of local community-based legal entities, provides a critical opportunity to deepen local democracy and build fishers' capacities for self governance. This requires supportive interventions that will facilitate collective action in a manner that is supportive of fishers' existing skills and provides appropriate level education and training materials. Most importantly, it needs to include consciousness and awareness-raising that enables fishers to become aware of the power in their lives at a personal, organisational and political level. This is particularly important for women, youth and other marginalised and vulnerable groups. Training

and capacity-building interventions focused on assisting them in establishing cooperatives need to enable the fishers to make ethical choices regarding the human rights principles underpinning the SSF Guidelines and the SSF policy and to establish their collective action with regard to compliance with these principles and eliminating these unequal power relations. Towards this end the Masifundise Programme provides an important opportunity to develop human rights-based methodology and a set of resource materials for the implementation process. It will be critical that that there is conceptual coherence between the methodology they develop and implement and that of the DAFF service providers.

2. **Building democratic, transparent and accountable organisations:** Closely linked to the above issue of self governance is the need for interventions that equip SSF fishers with the methodologies and skills to put in place checks and balances that will build the legitimacy of their local organisations and protect them from corruption and abuse of power by elites. Pilot projects such as the Kogelberg Cooperative Project which is developing an internal control system (ICS) and methodology for SSF cooperatives are underway and will contribute towards this objective and provide important lessons that need to be shared across communities. Similarly, the Abalobi project is contributing to the development of transparent, accountable management information systems that will enable SSF communities to manage their own data and accounting systems in accordance with the principles of good governance. Good governance and the elimination of corruption needs to cascade both up and down in fisheries governance across both state and non-state institutions. Fishing communities need knowledge of the Section 9 institutions such as the Public Protector and the Human Rights Commission that exist to promote and protect their rights. Further, they need to be empowered to hold their leaders, business and government officials accountable.

3. **Ensuring political voice and representation of SSF fishers:** The lack of a recognised, standing representative structure for the SSF to engage with DAFF and other government departments contributes to the misinformation and misperception of the sector by policy makers. In contrast to the industrial sector which has multiple avenues through which it engages with and influences government, the SSF fishing communities have very limited avenues for such representation. Lobbying for the establishment of a representative structure that will

meet regularly throughout the implementation process is important. This should be conceptualised in such a way that it enhances co-management processes at local and district level.

4. **Creating a platform for the implementation of the SSF Guidelines**: The SSF communities, their civil society partners and government have the responsibility of establishing a platform to promote the implementation of the SSF Guidelines and the SSF policy. Towards this end it will be necessary for the key fisher organisations such as Masifundise/Coastal Links and SAUFF to address the current issues of fragmentation and the parallel representative processes which are underway on the continent and which create confusion for regional government bodies and donors.

5. **Developing human rights-based monitoring capacity:** This research has highlighted the fact that one of the key problems facing South Africa is that despite a very comprehensive human rights-based legislative and policy framework, the interpretation of this legal framework into practice is where SSF communities become vulnerable. The relative newness of the country's Constitution and lack of experience in interpreting human rights-based legislation amongst key officials, even including DAFF legal advisors, results in gaps between *de jure* rights and substantive rights. This is clearly demonstrated in the way in which the MLRA amendments have been interpreted and translated into regulations for the sector. This will require that civil society support the fishers' through on-going monitoring of the implementation process and where necessary, ensuring that they have access to legal empowerment and legal support in order to challenge any discriminatory interpretations of the law or failure to implement certain legal obligations. Particular attention will need to be paid to indigenous peoples, migrant workers, women and other vulnerable and marginalised groups.

6. **Enhancing cohesion, institutional collaboration and integration:** The human rights-based approach demands a cross-sectoral approach that is relatively new to both government and civil society in South Africa. Historically the mandate for fisheries governance has been interpreted very narrowly and has not required the fisheries administration to engage extensively with other line departments. The full and effective implementation of the range of human rights and freedoms described in the SSF Guidelines demands that DAFF and its civil society partners begin to engage with other department, in particular the Social Development, Health, Labour and Small-Business Development in order to secure the

active interventions of these departments in promoting and protecting the rights of small-scale fishing communities. This requires attention across all spheres and all levels of government including most importantly local and district municipalities. Municipalities have a legal obligation to ensure that local fishing community' needs and interests are reflected in IDPs and service delivery at local level.

SECTION 5: WHAT'S VOLUNTARY ABOUT THE SSF GUIDELINES?

THE LEGISLATIVE AND POLICY FRAMEWORK FOR IMPLEMENTATION OF THE GUIDELINES IN SOUTH AFRICA

5. 1 INTRODUCTION

South Africa has an extensive legislative and policy framework for the governance of marine resources within which the country's commitment to implement the SSF Guidelines is located. This framework includes the obligations that will give the SSF Guidelines legal traction in the context of national legislation and as such, dispels any notion about the compliance with the guidelines being in some way 'voluntary'. Yet despite this comprehensive framework, anomalies do remain in terms of ways in which the law is interpreted and *de jure* rights are not necessarily reflected in the *de facto* interpretation of the law in different contexts. This section identifies the most important legislative and policy frameworks which provide the backdrop to implementation of the Guidelines and the SSF Policy in South Africa. An annexure provides a quick guide to the legislative and policy framework for the implementation of the SSF Guidelines in South Africa (Annexure One).

It needs to be noted that despite a high level commitment from the Minister during a public address, there has been no specific discussion within the DAFF about the implementation of the SSF Guidelines and no plan of action has been developed to date for this specific purpose (pers.comm Smith, January 2016). The Director of the SSF Directorate notes the considerable overlap between the SSF Guidelines and the Policy of SSF and is confident that the approach of the Directorate and the vision for implementation is consistent with the global approach towards providing support to the SSF sector. He observes that ensuring that SSF fishers have secure access to resources and that these resources are sustainably harvested are the cornerstones of the South African policy. The approach of the Directorate towards the SSF Guidelines implementation is that the Directorate must first concentrate on the allocation of fishing rights in accordance with the MLRA Amendment Act and will then be able to focus on establishing partnerships with other departments and ensuring compliance with the SSF Guidelines. In general there seems to be a lack of recognition of the legal obligations to ensure compliance with the key components of the SSF Guidelines which are reflected in national legislation.

5.1.1 The Governance framework for the SSF Guideines and the SSF Policy

The South African Constitution, (South African Government 1996), provides the overarching and supreme legal framework within which the implementation of the SSF Guidelines takes place. There is very close synergy between the key consensus principles underlying the SSF Guidelines and the values and principles in the Constitution which are set out in Chapter one and Chapter Two, known as the Bill of Rights. Like the SSF Guidelines, the scope of the Bill of Rights included State parties and all other non-state actors. While the Constitution enshrines the key values and principles of the governance regime, these are given effect through specific national statutes. Most notable in the context of the Guidelines and the SSF Policy is the Marine Living Resources Act of 1998, as amended in Act 5 of 2014. In addition a range of other legislation covers the core thematic provisions in the SSF Guidelines. Each of these is discussed in turn.

1. Human Rights and Dignity

The SSF Guidelines commence with the **recognition of human rights and dignity,** outlining the call to all parties to recognize the inherent dignity and the equal and inalienable human rights of all individuals, and the need for them to recognize, respect, promote and protect the human rights principles and their applicability to communities of small-scale fisheries.

This principle echoes the Constitution of South Africa, Sections 7-11, which enshrine the human rights of all people in the country and affirm the democratic values of human dignity, equality and freedom. This section thus extends these human rights to all, including migrant fishers who might be residing in the country. Section 7 places an obligation on the State specifically to "respect, protect, promote and fulfil the rights in the Bill of Rights". Like the SSF Guidelines, it also binds all non-state actors including businesses who have a responsibility and obligation to respect human rights.

Chapter 9 in the Constitution makes provision for the establishment of institutions to promote and protect constitutional democracy and human rights. This includes a number of commissions and offices including: the Public Protector (an ombudsman), the South African Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General, the Independent Electoral Commission and the Independent Communications Authority.

Section 27 (2), states that "the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights."

The Constitution also requires of the State to consider international human rights law in the application of law in South Africa.

2. Respect of cultures

The South African Constitution, Sections 30 and 31 promote respect for culture. While this applies to all persons and cultures in South Africa it must be noted that there is a contradiction to the SSF Guidelines on this issue of culture as South Africa has not ratified the Declaration of the Rights of Indigenous Peoples. Nonetheless state and non state parties may not discriminate against such persons in terms of Section 9. The implications of this are discussed further below in the section on vulnerable and marginalised groups. South Africa has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).The Commission for Promotion and Protection of Rights of Cultural, Religious and Linguistic Minorities is a Chapter Nine institution set up with the explicit responsibility of promoting and protecting the right to culture.

3. Non-discrimination

Section 9 (1) of the Constitution states that "Everyone is equal before the law and has the right to equal protection and benefit of the law". Section 9 (2) affirms that "equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken". In addition, Section (3) states that 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. Further, in Section (4) "No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). Like the SSF Guidelines, the government has an obligation to develop national legislation that will prevent or prohibit unfair discrimination.

As noted above, Section 9 of the Constitution makes provision for establishing Section 9 Institutions to protect and promote Human Rights.

Further, the following legislation introduced since 1996 gives effect to this section:

The Promotion of Equality and Prevention of Unfair Discrimination Act (2000) and the Broad Based Black Economic Empowerment Act 46 of 2013.

This principle is given specific legislative effect in the context of SSF by the MLRA objective which aims to "*restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry"* (MLRA Section 2).

4. Gender equality and equity

The equity and non-discrimination provisions of Section (9) of the Constitution protect women from discrimination and aim to promote their equal rights. The state is obliged to take steps to give effect to this. This principle should be given effect in the SSF through the MLRA which aims to "restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry" (MLRA Section 2). The recently amended MLRA Act No.5 has added the following objective:

- the need to promote equitable access to and involvement in all aspects of the fishing industry and, in particular, to rectify past prejudice against women, the youth and persons living with disabilities;

In addition, a range of other legislation has been promulgated in order to promote gender equality and equity in society in general. This includes:

The Promotion of Equality and Prevention of Unfair Discrimination Act (2000),the Basic Conditions of Employment Act, the Government Employees Pension Fund, and the Labour Relations and Employment Equity Acts –which provides for the protection of workers' rights while also allowing for maternity leave and making women a specially designated group in respect of affirmative action; The Choice on Termination of Pregnancy Act (1997), promoting and protecting the reproductive rights of women; The Maintenance Act (1998), which provides women with access to maintenance; The Domestic Violence Act (1998), The Recognition of Customary Marriages Act (1998), an important law that recognises women as adults within a marriage and allows them to contest inheritances; Batho Pele, which provides women with access to basic services; The Government Employees Pension Fund (1996), which provides for the inclusion of women; Social Assistance Act, No. 13 of 2004 provides for social security, with women being able to access the child support grant, the old age pension and grants for people living with disabilities –the child support grant in particular alleviates the care burden on women.

South Africa has also ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Constitution obliges the judiciary

to consider international law in any legal proceedings where international law and jurisprudence is of relevance.

5. Equity and equality

The equity and non-discrimination provisions in Section (9), read with a range of other provisions in the Constitution that promote fair and just treatment of all persons (such as the labour rights provisions, the right to administrative justice) reflect synergy with the SSF Guidelines.

The MLRA No.5 of 2014 (amended) Section 2 states amongst several other objectives

- the need to promote equitable access to and involvement in all aspects of the fishing industry and, in particular, to rectify past prejudice against women, the youth and persons living with disabilities;
- the need to recognise approaches to fisheries management which contribute to food security, socio-economic development and the alleviation of poverty;

Most significantly, from the perspective of the governance of tenure and the recognition of customary tenure rights, the MLRA states that

"The Minister, ***in order to achieve the objectives contemplated in section 9(2) and 39(3) of the Constitution,*** *by notice in the Gazette must (d) must prescribe—*

(i) the process and procedures relating to the allocation and recognition or rights of access to small-scale fishers based within small-scale fishing communities;

(ii) procedures to be applied in the allocation of those rights;

(iii) management of the rights of access;

Section 9 (2) of the Constitution referred to in this instance states:

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken

Section 39 (3) states:

(3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

The MLRA Amendment Act thus places an obligation on the Minister to ensure that any regulations developed by the Minister for SSF must aim to achieve **these particular principles** in the Constitution. This has specific implications for customary communities who live according to customary law, such as many of the communities living adjacent to MPA in the former Bantustans.

6. Consultation and participation

From the outset the South African Constitution addresses the issue of consultation and participation in the section 1 on values and subsequently in section 195. Section 1 states a commitment to "Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, *to ensure accountability, responsiveness and openness"*. Thus, from the outset, the Constitution establishes the principle of an open and accountable government.

The Constitution promotes participation on several levels: that of public participation in the legislature, and in the civil service. In this regard Section 195 stipulates that "people's needs must be responded to, and the public must be encouraged to participate in policy-making", "public administration must be accountable" and "transparency must be fostered by providing the public with timely, accessible and accurate information". These principles apply to "administration in every sphere of government" and public enterprises.

The MLRA includes the specific objective of "the need to achieve a broad and accountable participation in the decision-making processes any relevant obligation of the national government or the Republic in terms of any international agreement or applicable rule of international law" (Section 2).

The National Environmental and Management Act of 1998 Section 2 makes provision for the "full and effective" participation of all citizens in environmental decision-making. The National Environmental Management Protected Areas Act of 2003, amended 2014, sets out standards for consultation regarding establishment of Marine Protected Areas.

Notwithstanding these provisions however, the country's failure to adopt and ratify the UN DRIP makes indigenous peoples vulnerable to the violation of their right to free prior informed consent.

7. Rule of law

Section 1(c) provides for "Supremacy of the Constitution and the rule of law". Section 39 of the Constitution recognises rights arising in terms of statutory law, common law and customary law. Section 211 recognises traditional authority

structures. This creates space for the recognition of rules developed in terms of communities' customary laws and structures in accordance with the Bill of Rights. This resonates with the provisions of the SSF Guidelines and provides a measure of protection for indigenous peoples who have customary laws.

8. Transparency

The values outlined in Section 1 of the Constitution lay the foundation for transparency in that must be "*accountability, responsiveness and openness"*. Further, Section 195 states that transparency must be fostered by providing the public with timely, accessible and accurate information". These principles apply to "administration in every sphere of government" and public enterprises. Section 32 includes the right to access to information, including all information held by government.

9. Accountability

Section 1 of the Constitution identifies accountability as a foundational value. Further provisions are elaborated in Section 195. In addition, the Constitution makes provision for a range of mechanisms and institutions to ensure accountability including the Public Protector. This principle applies to administration in every sphere of government.

10. Economic, social and environmental sustainability

Section 24 of the Constitution provides for the protection of the environment. This section embodies the principles of economic, social and environmental sustainability in its approach in that it emphasises that everyone has the right—

(a) to an environment that is not harmful to their health or wellbeing; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

While it does not apply the precautionary approach at this level, this has been interpreted through national level legislation (the Marine Living Resources Act of 1998, the MLRA) which makes provision for the application of the precautionary

approach. The MLRA also makes provision for the protection of marine resources from over-exploitation.

The MLRA objectives include:

- The need to achieve optimum utilisation and ecologically sustainable development of marine living resources;
- The need to conserve marine living resources for both present and future generations;
- The need to apply precautionary approaches in respect of the management and development of marine living resources;
- The need to utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries and mariculture branches, employment creation and a sound ecological balance consistent with the development objectives of the national government.

11. Holistic and integrated approaches

The SSF Guidelines requests all parties **to** recognize the ecosystem approach to fisheries (EAF) as an important guiding principle, embracing the notions of comprehensiveness and sustainability of all parts of ecosystems as well as the livelihoods of small-scale fishing communities, and ensuring cross-sectoral coordination as small-scale fisheries are closely linked to and dependent on many other sectors. These principles have subsequently been incorporated into both the MLRA and the SSF policy which recognises the EAF approach. The MLRA notes the need to "utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries and mariculture branches, employment creation and a sound ecological balance consistent with the development objectives of the national government" (MLRA Section 2).

12. Social responsibility

This principle aims to promote community solidarity and collective and corporate responsibility and the fostering of an environment that promotes collaboration among stakeholders (SFF Guidelines, 2014). These values are incorporated into a range of different pieces of legislation and policies in South Africa. The African principle and philosophical value of 'ubuntu' underpins the Constitution and has been reaffirmed through several judgements in the Constitutional court. 'Ubuntu', translated literally means "a human being is a human being because of other human beings" (Mokgoro 2012:317 in Sunde 2014). *Ubuntu* is simultaneously referred to as a foundational African value and legal principle (Mokgoro 2011:1), a meta-norm (Bennett 2011:3), "an ancient principle of traditional African methods

of government" (Froneman in Bennett 2011:6). It is interpreted as "a web of values that informs conduct, and fosters group solidarity—the knit between an individual and his or her community; and the interconnectedness of individuals within their communities" (Mogkoro 2011:1). Implicit in this is a duty to ensure that there is sufficient for everyone. As noted by Cornell (2008), citing Judge Sach's Constitutional Court judgement (*Port Elizabeth Municipality),*[4] the ethic of *uBuntu* requires us to go beyond mere legality in giving effect to the principles of social justice.

13. Feasibility and social and economic viability

The SSF Guidelines include the principle of ensuring that policies, strategies, plans and actions for improving small-scale fisheries governance and development are socially and economically sound and rational.

This principle finds expression in the objectives of the MLRA in several instances. As noted above, the MLRA requires

- The need to achieve optimum utilisation and ecologically sustainable development of marine living resources;
- The need to conserve marine living resources for both present and future generations;
- The need to apply precautionary approaches in respect of the management and development of marine living resources;
- The need to utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries and mariculture branches, employment creation and a sound ecological balance consistent with the development objectives of the national government

In addition, the National Economic Development and Labour Council Act (NEDLAC) provided for the establishment of the National Economic Development and Labour Council (Nedlac). This is a forum in which government, labour, business and community organisations negotiate and seek to cooperate, through problem-solving and negotiation, on economic, labour and development issues, and related challenges facing the country.

4 (*Port Elizabeth Municipality v Various Occupiers 2004*).

5.1.2 Cross-cutting themes: the protection of vulnerable and marginalised groups

The SSF Guidelines place emphasis on the needs of vulnerable and marginalised groups (Section 1) While the Constitution of South Africa does not explicitly protect the needs of the vulnerable and marginalised, it provides for the elimination of discrimination and the need to provide redress for those who have suffered discrimination on a range of grounds. This has been given effect through several specific pieces of legislation such as The Older Persons' Act, No. 13 of 2006, aims to establish a framework to empower and protect older persons and to maintain and promote their status, rights, well-being, safety and security (Report on Vulnerable persons 2012).

The Presidency has established a specific focus on vulnerable and marginalised groups including women, youth, children, the elderly and the disabled. Towards this end a specific report on Vulnerable Groups was commissioned in 2012. This report identifies a set of socio-economic indicators to assess and monitor the status of these groups. It highlights the disparities in the well-being of these groups that makes them particularly vulnerable. These indicators will be tracked over time through future national census household surveys and statistics. While this report does not identify SSF specifically, several of the key indicators are of direct relevance to the implementation of the SSF Guidelines and provides conclusive evidence of the intersectionalities of race, class, gender, age and urban-rural location. The report shows that female headed households in rural areas are particularly vulnerable to poverty and food insecurity.

5.1.2.1 The Vulnerability of Indigenous Peoples in South Africa

South Africa has failed to ratify the UN Declaration on the Rights of Indigenous Peoples. Although not recognised as vulnerable by the South African state, neither the constitution nor any other law recognise the Khoisan as indigenous peoples and hence it is likely that they may be vulnerable in the context of small-scale fisheries. A 2005 report by the Special Rapporteur on the Rights of Indigenous Peoples states that Khoisan indigenous people lacked security of tenure and had no job security. The Khoisan indigenous language is not recognised as one of the eleven official languages of South Africa (2015:28).

5.1.2.2 Migrant Workers

While the allocation of fishing rights is restricted by law to South African citizens, there are many migrants from other African countries living in South Africa.

Many of these persons do not have legal papers to remain in the country and it is possible that a migrant worker might work in the SSF without legal recognition. In this instance they may be at risk of limited access to formal employment and workplace discrimination. Particular attention should be given to the areas of working conditions/occupational health & safety. The South African Constitution recognises the rights and freedoms of all people in the country, even if they are foreign nationals. However this provision is dependent on being legally resident in the country (Human Rights and Business Country Guide South Africa 2015:18).

It has been stated in the U.S. Department of State's 2013 Trafficking in Persons Report that South Africa has failed to monitor and investigate labour trafficking in the agricultural, mining, construction and fishing sectors. There have been reports of persons being trafficked and kept in slave like conditions on boats in South African harbours (Human Rights and Business Country Guide South Africa 2015:18).

5.1.2.3 Inland small-scale fisheries

Inland small-scale fisheries are currently not provided for in any legal or policy framework and hence are extremely vulnerable (Britz et *al* 2015).

5.2 RESPONSIBLE FISHERIES AND SUSTAINABLE DEVELOPMENT

5.2.1 Governance of Tenure in small-scale fisheries and resource management

The **SSF Guidelines** recognize the need for responsible and sustainable use of aquatic biodiversity and natural resources to meet the developmental and environmental requirements of present and future generations. Similarly this approach is confirmed in South Africa in Section 24 of the environment which makes provision "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.

This is given further effect in the Marine Living Resources Act of 1988, amended 2014, which includes the key objective "to protect the environment for future generations (MLRA 1998).

The Marine Living Resources Act No.5 of 2014 (MLRA), recognises and defines small-scale fisheries. In the MLRA Section One (1)—

'small-scale fisher' means a member of a small-scale fishing community engaged in fishing to meet food and basic livelihood needs, or directly involved in processing or marketing of fish, who—

(a) traditionally operate in near-shore fishing grounds;

(b) predominantly employ traditional low technology or passive fishing gear;

(c) undertake single day fishing trips; and

(d) is engaged in consumption, barter or sale of fish or otherwise involved in commercial activity, all within the small-scale fisheries sector, and

'small-scale fishing' must be interpreted accordingly;

'small-scale fisheries sector' means that sector of fishers who engage in small-scale fishing;

'small-scale fishing community' means a group of persons who—

(i) are, or historically have been, small-scale fishers;

(ii) have shared aspirations and historical interests or rights in small-scale fishing;

(iii) have a history of shared small-scale fishing and who are, but for the impact of forced removals, tied to particular waters or geographic area, and were or still are operating where they previously enjoyed access to fish, or continue to exercise their rights in a communal manner in terms of an agreement, custom or law; and

(iv) regard themselves as a small-scale fishing community;";

(Section 1)

The MLRA amended in 2014 makes provision for the recognition of SSF. Section 5, 19, (1) of Act No. 5 of 2014: Marine Living Resources Amendment Act, states that:

"The Minister, ***in order to achieve the objectives contemplated in section 9(2) and 39(3) of the Constitution,*** *by notice in the Gazette*

(a) must, subject to any law relating to marine protected areas, establish areas or zones where small-scale fishers may fish;

(b) may, within a prescribed period, recognise a community to be a small-scale fishing community, if the community meets requirements contained in the definition of a small-scale fishing community;

(c) may declare any other fishing or related activity or the exercise of any right of access in an area or zone contemplated in subsection (1)*(a)* to be prohibited;*and*

(d) must prescribe-

(i) the process and procedures relating to the allocation and recognition or rights of access to small-scale fishers based within small-scale fishing communities;

(ii) procedures to be applied in the allocation of those rights;

(iii) the management of the rights of access;

(iv) the criteria and timetable for recognition of small-scale fishers and small-scale fishing communities;

As noted above Section 9 (2) of the Constitution referred to in this instance states:

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken

Section 39 (3) states

(3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

5.2.2 TENURE RIGHTS

A number of Constitutional provisions address the issue of Tenure Rights from different angles. The Constitution aims to secure redress for persons who suffered discrimination under Apartheid. Section 25 states that

25. (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application—

(a) for a public purpose or in the public interest; and

(b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

For the purposes of this section—

(a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and

(b) property is not limited to land.

(5) 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.

(6) 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.

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.

To date the State has failed to recognise the tenure rights of small-scale fishers and fishing communities. It has also failed to restore the tenure rights of communities who were dispossessed of access to the coast and marine resources through racially discriminatory laws and practices. On the contrary, fishers have continued to be deprived of their rights through the imposition of conservation measures such as MPAs without consultation.

Noting that property is not limited to land and this section expressly refers to reforms to bring about equitable access to all South Africa's nature resources, this clause can be assumed to address the tenure previsions outlined in the SSF Guidelines section 5 (a). This remains to be tested in the coming months through the implementation of the SSF policy and may need to be the specific subject of litigation on behalf of fishers whose tenure remains insecure.

The SSF policy contains several key principles that are integral to the human rights-based vision of the SSF Guidelines and specifically to Section 5 on Tenure Governance. These are mirrored in Section 25 of the Constitution. The first of

these is reflected in the overall aim of the SSF Policy, which is stated as

"This policy aims to provide redress and recognition to the rights of Small Scale fisher communities in South Africa previously marginalised and discriminated against in terms of racially exclusionary laws and policies, individualised permit-based systems of resource allocation and insensitive impositions of conservation-driven regulation. In line with the broader agenda of the transformation of the fishing sector, this policy provides the framework for the promotion of the rights of these fishers in order to fulfil the constitutional promise of substantive equality "(DAFF 2012:1).

Further, with reference to the recognition of customary laws and tenure systems, Section 39 (3), the SSF Policy principles state that the State must:

> *a) "recognise the existence of any rights conferred by common law, customary law or legislation to the extent that these are consistent with the Bill of Rights; and*
>
> *b) recognise rights guaranteed by custom and law, and access to and use of natural resources on a communal basis to the extent that these are consistent with the Bill of Rights".*

These principles follow the SSF Guidelines in terms of the commitment to equity and equality, to eliminate discrimination, the commitment to recognise customary rights, and the commitment to eliminating discrimination against women and to taking special measures to promote gender equity.

It is noted that in the MLRA Amendment Act, Section 5 states that:

The recent amendments to the MLRA make provision for the recognition of the tenure rights of SSF through the provision in Section 19 that the Minister

(a) must, subject to any law relating to marine protected areas, establish areas or zones where small-scale fishers may fish;

(c) may declare any other fishing or related activity or the exercise of any right of access in an area or zone contemplated in subsection (1)*(a)* to be prohibited;

Provision 19 c thus contains the possibility that an area may be declared an exclusive or a preferential SSF area and other activities in that area might be prohibited.

5.3 SOCIAL DEVELOPMENT, EMPLOYMENT AND DECENT WORK

A wide range of national legislation and cross-sectoral policies provide the human rights-based policy framework within which SSF fishers' rights to social

security and social development, employment and decent work are protected. The most important line departments in this regard are the Department of Social Development and the Department of Labour. The Social Assistance Act, No. 13 of 2004, provides a safety net for children living in poverty through the Child Support Grant (CSG), Foster Care Grant (FCG) and Care Dependency Grant (CDG).The Department of Social Development is the lead department in securing the needs of vulnerable persons such as elderly, women, youth, children and disabled persons. There have been various policy initiatives in this regard. A year ago a new department of Women was established. This department has developed a Strategy for Women. There is a need to bring the needs of women in SSF fishing communities to the attention of this department which to date has not focused on women in fisheries.

The Constitution encompasses a range of labour rights which include the following:

Section (13) No one may be subjected to slavery, servitude or forced labour. Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

Section (23) (1) Everyone has the right to fair labour practices.(2) Every worker has the right—

(a) to form and join a trade union;

(b) to participate in the activities and programmes of a trade union; and (c) to strike.

(3) Every employer has the right—

(a) to form and join an employers' organisation; and

(b) to participate in the activities and programmes of an employers' organisation.

The Department of Labour has the mandate to promote decent work and protect labour rights and towards this end has effected the following legislation:

- The Basic Condition of Employment Act: Applies to all employers and workers working more than 24 hours per month and regulates leave, working hours, employment contracts, deductions, pay slips, and termination.
- Compensation for Occupational Injuries and Diseases Act: Workers who are affected by occupational injuries and diseases are entitled to compensation.

- Employment Equity Act: Applies to all employers and workers and protects workers and job seekers from unfair discrimination, and also provides a framework for implementing affirmative action.
- Labour Relations Act Applies to all workers and employers and aims to advance economic development, social justice, labour peace and the democracy of the workplace.
- Occupational Health and Safety Act: Aims to provide and regulate health and safety at the workplace for all workers.
- Skills Development Act: Aims to develop and improve the skills of the South African workforce.
- Skills Development Levies Act Prescribes how employers should contribute to the National Skills Fund.
- Unemployment Insurance Fund (UIF).
- The Prevention and Combating of Trafficking in Persons Act.
- Unemployment Insurance Contributions Act which prescribes how employers should contribute to the UIF Contributions fund.
- Unemployment Insurance Act No. 63 of 2001which provides security to workers when they become unemployed.

The Department of Transport is mandated to secure maritime transport rights including safety at sea. The South African Maritime Safety Authority Act of 1998 makes provision for the protection and promotion of safety at sea and the establishment of the South African Maritime Safety Authority (SAMSA). It is responsible for the implementation of current International and National Regulations regarding all fisheries vessels, including recreational vessels.

SAMSA has established the Joint Initiative for Priority Skills Acquisition Chairman's Initiative. The aim of this project is to promote the retention and transfer of skills in the Fishing Industry. The National Fishing Forum (NFF) was established at the National Fishing Indaba in the November of 2011 with the aim of promoting an integrated approach to uplift and ensure development in the Fishing Industry. This initiative was to integrate and co-ordinate government programmes at national and provincial levels and to avoid duplication in the industry. The NFF's mission is to grow, develop and ensure competitiveness of the South African fishing industry.

A Pilot Project was initiated in the Eastern Cape Fishing Communities to retention and transfer of skills in the fishing and maritime industry through the National Fishing Forum under the guidance of SAMSA. This project entitled

"Pilot Project: Sustainable Fishing Communities—National Fishing Forum's Community Cluster" has facilitated the alignment of projects to meet the Social Economic Development and Broad Based Black Economic Empowerment Codes of Good Practices requirements. In total 1028 Training interventions have been held. The number of learners declared competent includes 876 Subsistence Fishers (Tradelane Pilot project report 2013).

The Department of Agriculture, Forestry and Fisheries (DAFF) has established several projects that seek to promote the social and economic development of fishing and coastal communities. In particular, the Working for Fisheries Programme (WFFP) which falls under the auspices of the Expanded Pubic Works Programmes (EPWP) within DAFF is of relevance. The main objective of the programme is to contribute towards poverty alleviation through interventions that are public driven. This includes projects such as the employment of community based catch monitors.

The vision of the programme is to have fishing communities and individuals adopt ecologically sustainable approaches to the management of South Africa's fisheries resources, while improving their livelihoods.

In 2014 DAFF developed the National Policy on Food and Nutrition Security (DAFF 2014). Regrettably this policy makes no reference to small-scale fisheries at all. The Food Security Production Programme in DAFF seeks to link subsistence producers and smallholder producers to government institutions such as government schools (i.e. to supply the School Nutrition Programme), public hospitals and prisons, and in the medium term be a conduit through which food produced by smallholders can be used to meet the nutritional needs of low-income individuals and households in communities at large (DAFF 2013:2). So far this has not linked SSF to these potential markets but this is planned in the coming years.

5.4 VALUE CHAINS, POST-HARVEST AND TRADE

While the Constitution protects the rights of fishers to choose their trade freely and provides for the regulation of a trade, occupation or profession (Section 22), a range of additional legislative and policy provisions provide an enabling environment in which SSF fishers should be able to obtain support for their activities along the value chain. Notably the SSF policy includes the entire value chain within its scope. The State has also introduced specific legislation to promote broad-based Black empowerment through the Broad-Based Black Economic Empowerment Amendment Act of Act 53 (2003) as well as a range of legislation making provisions for the regulation of companies and cooperatives. One of the biggest obstacles however to the implementation of

this legislation and the policy provisions that flow from this is the approach of government to the value of SSF to the macro-economy. As noted in Section Two, a key stumbling block is the perspective incorporated into policy within the National Development Plan (NDP) (2012), which is the policy which frames the strategic approach of government to the economy for the period 2015-2030. In this NDP government acknowledges the importance of rural development however it states very clearly that the commercial fishing sector should be prioritised as it provides employment benefits for the economy. The New Growth Plan and the Industrial Policy Action Plan 2 (IPAP2) have been developed along these lines with a focus on industrial growth. This is a stumbling block for SSF. Nonetheless, a range of other legislative provisions do place an obligation on government to assist SSF and promote their interests and SSF should be encouraged to use these avenues. It is also noted that there are contradictions within the NDP with regard to the promotion of food security and poverty eradication and in some policy contexts the SSF might be able to use these to argue more redistributive and multiplier benefits from support to the SSF sector.

Most importantly, at a local municipal level, the Local Government: Municipal Systems Act 32 (2000) and the Local Government: Municipal Structures Act 117 (1998) place an obligation on local municipalities, through the development of Integrated Development Plans, (IDPs), to identify the needs of local communities and to provide the necessary support and infrastructure to enable their needs to be met and for them to be integrated into the local and regional economy.

At a national level the responsibility of providing support to cooperatives has moved from the Department of Trade and Industry (DTI) SMME support to the Department of Small Business Development (DSBD) Cooperative Incentive Scheme (CIS). SSF will be able to access capacity-building and training support through this scheme.

In 2014 the DEA gazetted the White Paper on National Environmental Management of the Ocean (2014) and in the same year launched Operation Phakisa. The White Paper provides the policy framework within which the State intends to 'unlock economic development opportunities'. It recognises that the country needs to balance the economic opportunities which the ocean space presents with environmental protection. This policy makes provision for the cross-sectoral policy coordination required in the context in which multiple sectors are using ocean resources. It does not make provision for SSF, however, it does provide a means whereby the state can plan for and monitor cumulative impacts of many different uses of marine and ocean resources. Operation Phakisa

was launched by the President in 2014 with the aim of unlocking the potential of the Oceans to contribute 177 Billion rand to the GDP in contrast to the existing 54 Billion (http://www.operationphakisa.gov.za/pages/home.aspx). It is closely aligned to the priorities of the NDP. The Oceans focus of Operation Phakisa was launched in 2014 and involved a wide range of stakeholders in planning a series of interventions. The 'Oceans Economy Lab' prioritised four areas for development including marine transport and manufacturing activities, such as coastal shipping, trans-shipment, boat building, repair and refurbishment; offshore oil and gas exploration; aquaculture and marine protection services and ocean governance. The first phase in this programme is lead by the Department of Environmental Affairs and has included extensive marine spatial planning and the launching of 22 new MPAs. SSF fisher representatives have not been involved in this process although it is alleged that Masifundise/Coastal Links was invited to attend the initial planning meeting.

5.5 DISASTER RISK AND CLIMATE CHANGE

The National Disaster Management Act 57 (2002) provides the framework for the governance of disaster and risk management. South Africa has developed a number of National Disaster Management Plans (DAFF 2013). The climate change policy framework has been developed out of this process. South Africa is party to the UN FCCC, Kyoto Protocol and Paris Protocol (2015). The country has participated actively in the International Planning Commission on Climate Change (IPCCC) and has developed an extensive range of national policy mechanisms in order to address climate change. The DEA has been appointed as the lead agent to promote policy development and to ensure inter-departmental and cross sectoral coordination at all levels and spheres of governance. Towards this end a National Committee on Climate Change (NCCC) has been established together with an Intergovernmental Committee on Climate Change, a Ministerial Committee on Climate Change. These bodies oversee the development of national policy including a National Climate Change Response Strategy and a National Disaster Management Framework. The DAFF has developed a Climate Change Strategy and a Climate Change Sector Plan (DAFF 2013b). This work has now cascaded down to the Fisheries Branch and a Climate Change Task Team has been established and is in the process of developing a Draft Adaptation Strategy. An initial workshop did include representatives from the SSF sector. This workshop has identified the SSF fisheries as vulnerable and in particular, the traditional line fisheries is noted (DAFF 2015c).

References

Attwood, C., Mann, B.Q., Beaumont, J. and Harris, J.M. 1997. Review of the state of marine protected areas in South Africa. *South African Journal of Marine Science* 18: 341–367.

Bennett, T. W. 2008. Official' vs 'living' customary law: dilemmas of description and recognition. Claassens, A. and Cousins, B. (eds.). *Land, Power and Custom: Controversies generated by South Africa's CommunalLand Rights Act*. Pp. 138-153. Cape Town, UCT Press.

Bennett, T.W. 2011. Ubuntu: An African equity. In Diedrich, F. (ed.). *Ubuntu, good faith and equity: Flexible Legal Principles in Developing a Contemporary Jurisprudence*. Pp3-23. Juta, Claremont.

Bennett, T.W. 2012. Access to justice and human rights in the traditional courts of sub-Saharan Africa. In Bennett, T., Brems, E., Corradi, G., Nijzank, L. and Schotsmans, M. (eds.). *African Perspectives on Tradition and Justice*. Pp 19-40. Intersentia Publishing Ltd, Cambridge, UK

Bigalke, E. H. 1973. The exploitation of shell fish by coastal tribesman of the Transkei. *Natural History* 9 (9). Ann Cape Province Museum, East London.

Boryczka, J.M and Disney, J.L. 2015.Intersectionality for theGlobal Age.*New Political Science* 374: 447-457.

Branch, G., May, J., Roberts, B., Russell, E. and Clark, B. M. 2002. Case studies on the socio-economic characteristics and lifestyles of subsistence and informal fishers in South Africa. *South African Journal of Marine Science* 24 (1): 439-462.

Britz, P.J., Hara, M.M., Weyl, O.L.F., Tapela, B. and Rouhani, Q. 2015. Scoping study on the Development and Sustainable Utlisation of Inland Fisheries in South Africa.Volume One. Water Research Commission Report No xxxx/6/15.

Calvo-Ugarteburu, G. and Maya, U. 2010. *Children's utilization of mussels in Coffee Bay and the implications for policy making*. In A Handbook towards sustainable small-scale fisheries in South Africa. Masifundise. Cape Town, South Africa.

Claassens, A. 2008. Customary law and zones of sovereignity: the impact of government policy on whose voices prevail in the making and changing of customary law. In

Claassens, A. and Cousins, B. 2008. (eds.). *Land, Power and Custom: Controversies generated by South Africa's Communal Land Rights Act*. Pp 355-382. Cape Town: UCT Press.

Clark, B. M., Hauck, M., Harris, J.M., Salo, K. and Russell, E. 2002. Identification of subsistence fishers, fishing areas, resource use and activities along the South African coast. *South African Journal of Marine Science* 24: 425-437.

Cousins, B. 2007. More Than Socially Embedded: The Distinctive Character of Communal Tenure' Regimes in South Africa and its Implications for Land Policy. *Journal of Agrarian Change. 7 (3): 281–315.*

DAFF (Department of Agriculture, Forestry and Fisheries). 2011. Unpublished letter to Masifundise entitled *Response to Community Proposal* dated 23 November, 2011. Fisheries Branch, DAFF, Cape Town.

DAFF (Department of Agriculture, Forestry and Fisheries). 2012. Policy for the Small-scale Fisheries Sector in South Africa. Government Gazette, Pretoria.

DAFF (Department of Agriculture, Forestry and Fisheries). 2013a Strategic Plan for the

Department of Agriculture, Forestry and Fisheries 2013/2014 to 2017/18. Department of Agriculture, Forestry and Fisheries. Pretoria.

DAFF (Department of Agriculture, Forestryand Fisheries).2013 b. Draft Climate Change Sector Plan for Agriculture, Fisheries and Forestry. Government Gazette, No 36063. Pretoria.

DAFF (Department of Agriculture, Forestry and Fisheries). 2015a. The Status of South African Marine Resources Report. DAFF, Pretoria.

DAFF (Department of Agriculture, Forestry and Fisheries). 2015b Apportionment Document, DAFF, Pretoria.

DAFF (Department of Agriculture, Forestry and Fisheries). 2015c . *Adaption Priorities in the Small Scale & Linefish Fisheries*: Workshop Report. Fisheries Branch, 10 December 2015.

DAFF (Department of Agriculture, Forestry and Fisheries). 2016. *A Pocket Guide to the Small-scale Fisheries Sector.*Department of Agriculture, Forestry and Fisheries, Pretoria.

Danish Institute for Human Rights and the South African Human Rights Commission. 2015. Human Rights and Business Country Guide South Africa 2015. Pretoria.

De Greef, K. 2013. *The booming illegal abalone fishery in Hangberg: Tough lessons for Small-scale Fisheries governance in South Africa.* Dissertation presented in partial fulfilment of the requirements for the degree of Masters of Science in Conservation, University of Cape Town.

De Greef, K. 2015. Why Hout Bay Fishermen die making a living. GroundUp http://groundup.org.za/media/features/hangberg/hangberg

DEAT (Department of Environmental Affairs and Tourism). 1998. The Marine Living Resources Act 18 of 1998. Government Gazette, Pretoria.

DEAT (Department of Environmental Affairs and Tourism). 2006. General Policy on the Long Term Allocation of Commercial Fishing Rights. DEAT, Cape Town.

Deacon, H. J. and Deacon, J. 1999. Human Beginnings in South Africa: Uncovering the Secrets of the Stone Age. Cape Town: David Philip Publishers.

Dennis, T. L. 2010. *Perceptions of History and Policy in the Cape Agulhas Area: could History influence Policy on Small-Scale Fishing*? Unpublished MPhil Thesis submitted in fulfilment of the requirements to the MPhil (Coursework) degree in Land and Agrarian Studies at the Institute for Poverty, Land and Agrarian Studies, University of the Western Cape.

DTI (Department of Trade and Industry). 2013. Industrial Policy Action Plan (IPAP). DTI, Pretoria.

FAO (Food and Agricultural Organisation). 2012. *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security*. Committee on World Food Security, FAO, Rome, Italy.

FAO (Food and Agricultural Organisation). 2014. Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty.FAO, Rome, Italy.

FAO (Food and Agricultural Organisation). 2007. Social issues in small-scale fisheries. COFI/2007/6. FAO Committee on Fisheries, Twenty- seventh Session, Rome, 5 - 9 March 2007. Rome, Italy.

FAO (Food and Agricultural Organisation). 2009. Securing sustainable small-scale fisheries: bringing together responsible fisheries and social development. COFI/2009/7. FAO Committee on Fisheries, Twenty-eight Session, Rome, 2-6 March 2009. Rome, Italy.

Emdon, L. 2013. *Gender, Livelihoods and Conservation in Hluleka, Mpondoland* c.1920 to the present: Land, Forests and Marine Resources. Masters Thesis, University of Cape Town, Cape Town.

Faasen, Helene. 2006. *Synergies between biodiversity conservation and sustainable rural development of adjacent communities: A case study of the Tsitsikamma National Park*. Thesis presented in partial fulfilment of the requirements for the degree of Master in Science in Conservation Ecology. Stellenbosch: University of Stellenbosch.

Fay, D., Timmermans, H., Palmer, R. 2002. Competing for the forests: Annexation,

demarcation and their consequences from c. 1878 to 1936. In Palmer, R., Timmermans, H., Fay, D. (Eds.), *From Conflict to Negotiation: Nature-Based Development on South Africa's Wild Coast*. Pp. 48-77. Human Sciences Research Council. Pretoria.

Fay, D. 2003. *The Trust is over! We want to Plough! Land, Livelihoods and Reverse Settlement in South Africa's Transkei*. Dissertation submitted in partial fulfilment of the Doctorate of Philosophy. University of Boston, Massachusetts, USA.

Gammage, L.C. 2015. *Considering one's options when the fish leave: Case study of the traditional commercial hand line fishery of the Southern Cape*. Submitted in fulfilment of the requirements for the degree of Master of Science (Biological Sciences). University of Cape Town.

Groenmeyer, S. 2015. The Long Road to Freedom. *Yemaya,* 50, 8-10. International Collective in Support of Fishworkers (ICSF). Chennai, India.

Hammond-Tooke. W.D. 1974. *The Bantu-speaking Peoples of Southern Africa*. Routledge&Kegan Paul. London.

Hammond-Tooke, W.D. 1979. (ed.). *The Bantu-speaking Peoples of Southern Africa*. Routledge&Kegan Paul, London.

Harris, J.M., Branch, G.M., Clark, B.M., and S.C. Sibiya. 2007. Redressing access inequities and implementing formal management systems for marine and estuarine subsistence fisheries in South Africa. McClanahan, T., and Castilla, J.C. (Eds.). *Fisheries Management: Progress towards Sustainability.*Pp 112-135. Blackwell Publishing Ltd., Oxford, U.K.

Hauck, M. and M. Sowman. 2003. *Waves of Change: Coastal and Fisheries Co-management in South Africa*. Cape Town: University of Cape Town Press.

Hauck, M. and Sowman, M. 2003. Co-Management of Marine Resources in South Africa: Policy and Legislative Framework. In Hauck, M. and Sowman, M. (Eds.). 2003. *Waves of Change: Coastal and Fisheries Co-Management in South Africa.*Pp 37-60. University of Cape Town Press. Cape Town.

Hauck, M. and M. Kroese. 2006. Fisheries compliance in South Africa: a decade of challenges and reform 1994-2004. *Marine Policy* 30(1): 74-83.

Hauck, M. 2009. *Rethinking small-scale fisheries compliance*. PhD Thesis, University of Cape Town, South Africa.

Hauck, M., Mbatha, P., Raemaekers, S. 2014. Enhancing benefits to small-scale fishers along the east coast of South Africa. In Wynberg, R and Hauck, M. (Eds.). *Sharing Benefits from the Coast: Rights, Resources and Livelihoods.* UCT Press 2014. Cape Town.

Hunter, M. 1979. *Reaction to Conquest*. Abridged version. David Philip, Cape Town

International Collective in Support of Fishworkers (ICSF). 2008b. Recognizing Rights and Freedoms: Civil Society Statement from Bangkok. *SAMUDRA Report 51:7-9*.

International Collective in Support of Fishworkers (ICSF) 2008. Securing Social, Economic and Cultural Rights of small-scale fishers. Paper presented by Chandrika Sharma at the FAO 4SSF Global Conference on Small-Scale Fishers held in Bangkok, Thailand, October 2008.ICSF, Chennai, India.

International Collective in Support of Fishworkers (ICSF). 2014. "*Towards SociallyJust and Sustainable Fisheries: ICSF Workshop on Implementing the FAO Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines)".* Chennai, India.

Isaacs, M. 2004. *Understanding the social processes and politics of implementing a new fisheries policy, the Marine Living Resource Act 18 of 1998, in South Africa.* PhD Thesis Department of Economic and Management Sciences, School of Government, University of Western Cape.

Isaacs, M. 2006. Small-scale fisheries reform: Expectations, hopes and dreams of 'a better life for all'. *Marine Policy* 30: 51–59.

Isaacs, M. 2011. Governance reforms to develop a small-scale fisheries policy for South Africa. In Chuenpagdee R. ed. *Contemporary visions for world small-scale fisheries* Amsterdam, Netherlands: Eburon.

Isaacs,M. andHara, M. 2015. *Backing small-scale fishers: Opportunities and challenges in Transforming the fish sector.* Rural Status Report 2. Programme for Land and Agrarian Studies, University of the Western Cape.

Masifundise Development Trust. 2005. *Affidavit in Kenneth George versus the Minister of Environmental Affairs and Tourism* (EC 1/2005). Masifundise, Cape Town.

Masifundise Development Trust. 2010. *A handbook towards sustainable small-scale fisheries in South Africa.* Cape Town, Masifundise Development Trust.

McDaid, L. 2014. *Investigation into the nature of fisher community representation in the development of the small-scale fisheries policy in South Africa, identifying challenges and lessons learnt, and their implications for the perceived legitimacy of the policy.* Thesis presented for the Master of Science, University of Cape Town.

Mokgoro, Y. 2011. *Ubuntu* as a legal principle in an ever changing world. In Diedrich, F. (ed.). *Ubuntu, good faith and equity: Flexible Legal Principles in Developing a Contemporary Jurisprudence.* Pp1-2. Juta, Claremont.

Mokgoro, Y. 2012. Ubuntu and the Law in South Africa. In Cornell, D and Muvangua, N. (eds.). *uBuntu and the Law: African Ideals and Postapartheid Jurisprudence.* Pp 317-323. Fordham University Press, USA.

Motsepe Foundation 2013. Doing More with Less: A South African Gender Budget Analysis for Health, Agriculture, Forestry and Fisheries, Energy and Trade and Industry (2012/13).

National Development Plan. 2012.*Our Future Make it Work*. National Planning Commission, 2013.

Nthane, T.T. 2014. *Understanding the livelihoods of small-scale fishers in Lamberts Bay: Implications for the new Small-scale Fisheries Policy*. Thesis submitted for the degree of Master of Philosophy. University of Cape Town.

Ngqongwa, A. 2015. *Small-scale Fisheries in South Africa using Information Management Systems*. Thesis submitted in fulfillment of the requirements of Master of Science, University of Cape Town.

Norton, M. 2014. *At the interface: marine compliance inspectors at work in the Western Cape*. Thesis submitted for the degree of Doctor of Philosophy, University of Cape Town.

Okoth-Ogendo, H. 2008. The nature of land rights under indigenous law in Africa. In Claassens, A and Cousins, B. (Eds.). *Land, Power and Custom: Controversies generated by South Africa's CommunalLand Rights Act*. Pp 95-108. Cape Town: UCT Press.

Palmer, R, Timmermans, H and Fay, D. (eds.). 2002. *From Conflict to Negotiation. Nature based development on the South African Wild Coast*. Human Sciences Research Council, Pretoria and Institute of Social and Economic Research, Rhodes University, Grahamstown.

Parkington, J, 1977. Soaqua: Hunter-fisher-gatherers of the Oliphants river valley. In *African Historical Demography*. University of Edinburgh. Centre of African Studies. Edinburgh.

Parsons, N. 1982. *A New History of Southern Africa*. Macmillan, London.

Peires, J. 1989. *The Dead will Arise: Nongqawuse and the Great Xhosa Cattle-Killing of 1856-7*. Jonathan Ball Publishers, Cape Town.

Peires, J. 2013.*History versus Customary Law: The Case of the Nhlapo Commission (2004-2010)*. Unpublished Paper. University of For Hare, Alice.

Ponte, S. and van Sittert, L. 2006. The Chimera of Redistribution. 'Black Economic Empowerment' (BEE) in the South African Fishing Industry. Danish Institute for International Studies (*DIIS) Working Paper no 2006/32*.

Raemaekers, S. 2009. *Rethinking South Africa's Small-scale Fisheries Management Paradigm and Governance Approach: Evidence from the Eastern Cape*. A thesis submitted in fulfillment of the requirements for the degree of Doctor of Philosophy of Rhodes University in the Faculty of Science.

Raemaekers, S. and Sowman, M. 2015. *Community level socio ecological vulnerability assessments in the Benguela Current Large Marine Ecosystem*. Report prepared for the Food and Agricultural Organisation (FAO) and the Benguela Current Commission (BCC). 140pp. University of Cape Town, South Africa.

Schultz. O.J. 2015 Defiance and obedience: Regulatory compliance among artisanal fishers in St Helena Bay.*Marine Policy* 60(2015)331–337.

Schultz. O. J. 2015. *Power and democracy: the politics of representation and participation in small-scale fisheries governance on the Cape Peninsula*. Doctoral Thesis, University of Cape Town, South Africa.

Scott, D. 2013. Science, transformation and society: a contextual analysis ofSouth Africa's SANCOR-managed marine and coastal research programmes. *African Journal ofMarine Science* 35:3, 361-383.

Shaw. E. M And Van Warmelo, M.J. 1981. The Material Culture of the Cape Nguni. Part 3. Subsistence. In *Anals of the South African Museum*. Vol 58: 3.

South African Government. *Constitution of South Africa* Act 108 of 1996. Government Publications, Pretoria.

South African Government. *Traditional Leadership and Governance Framework Act* 41 of 2003. Government Publications, Pretoria.

Sowman, M. 2006. Subsistence and small-scale fisheries in South Africa: A ten-year review. *Marine Policy* 30 (1): 60-73.

Sowman, M. 2011. New perspectives in small-scale fisheries management. Challenges and prospects for implementation in South Africa. *African Journal of Marine Science* 33: 297-311.

Sowman, M., Hauck, M., Van Sittert, L and Sunde, J. 2011. Marine protected areas management in South Africa: New policies, old paradigms. *Environmental Management* 47(4): 573-583.

Sowman, M., Raemaerkers, S and Sunde, J. 2014a. Shifting Gear: A New Governance Framework for Small-Scale Fisheries in South Africa. In Sowman M. and Wynberg, R. (eds.). *Governance for Justice and Environmental Sustainability. Lessons across Natural Resources Sectors in Sub-Saharan Africa.*Earthscan/Taylor and Francis, London.

SFTG (Subsistence Fisheries Task Group). 2000. *Final Report* .Unpublished. Submitted to Marine and Coastal Management, DEAT, Cape Town.

Sunde, J. 2008. *Coast to Coast: Developing a gender just, equitable and sustainable fisheries policy in South Africa.* Paper presented at the DEAT Third Women and Environment Conference entitled "All Hands on Deck", August 2008, Polokwane, South Africa.

Sunde, J. and Isaacs, M. 2008. *Marine Conservation and Coastal Communities: Who Carries the Costs? A Study of Marine Protected Areas and Their impact on Traditional Small-Scale Fishing Communities in South Africa.* International Collective in Support of Fishworkers, (ICSF), Chennai, India.

Sunde, J., Sowman, M., Smith, H., Wicomb, W. 2013. Emerging proposals for tenure governance in small-scale fisheries in South Africa. *Land Tenure Journal*, 1-13, July 2013. Food and Agricultural Organisation. Rome, Italy. Pages 117-146.

Sunde, J. 2013. *Living customary law along the South African coastline: securing the rights of small-scale fishing communities.* Unpublished Research Report. Legal Resources Centre, Cape Town.

Sunde, J. 2014a. *Customary Governance and Expressions of Living Customary Law at Dwesa-Cwebe: Contributions towards Small-scale Fisheries Governance in South Africa.* Doctoral Thesis, University of Cape Town, South Africa.

Sunde, J. 2014b. *Marine Protected Areas and Small-scale Fishing Communities in South Africa: Promoting Governance, Participation, Equity and Benefit-sharing.* International Collective in Support of Fishworkers (ICSF), Chennai, India.

Sundström, A. 2014. *Covenants with broken swords: Corruption and law enforcement in governance of the commons*. QoG Working Paper Series. The Quality of Government Institute. Department of Political Science, University of Gothenburg, Sweden.

Swartz, E. 2013. *Women and the management of household food security in Paternoster.* Thesis submitted in fulfillment of the Master of Arts, Stellenbosch University.

Tapela, B., Britz, P.J., and Rouhani, Q. 2015. Scoping study on the Development and Sustainable Utlisation of Inland Fisheries in South Africa.Volume Two. Case Studies of Small-scale Inland Fisheries. Water Research Commission Report No xxxx/6/15.

Tradelane 2013. Tradelane Pilot Project Report 2013.

Tropp. J. 2006. *Natures of Colonial Change:* Environmental *Relations in the Making of the Transkei.* Athens: Ohio University Press.

Van Sittert, L. 1992. Labour, Capital and the State in the St Helena Bay Fisheries C. 1856- C.1956. Thesis submitted for the Degree of Doctor of Philosophy, Department of History, and University of Cape Town.

Van Sittert, L. 2002. Those who cannot remember the past are condemned to repeat it: comparing fisheries reforms in South Africa. *Marine Policy* 26: 295-305.

Van Sittert, L., Branch, G., Hauck, M., Sowman, M.2006. Benchmarking the first decade of post-apartheid fisheries reform in South Africa. *Marine Policy* 30(1): 96-110.

Van Sittert, L. 2003. The tyranny of the past: why local histories matter in the South African fisheries. *Ocean and Coastal Management*46 (1-2): 199-219.

Walker, C. 2008. *Landmarked: Land claims and land restitution in South Africa.* Jacana Media, South Africa.

Wardlaw Thompson, W. 1913. *The Sea Fisheries of the Cape Colony*: From van Riebeeck's Days to the eve of the Union. Maskew Miller, Cape Town & Pretoria.

Williams, S. 2013.*Beyond rights: developing a conceptual framework for understanding access to coastal resources at Ebenhaeser and Covie, Western Cape, South Africa.* Thesis presented for the Degree of Doctor of Philosophy at the University of Cape Town, Cape Town.

Whitelaw, G. 2009. An Iron Age Fishing Tale. *Southern African Humanities* 21: 195–212.

Wynberg, R. and Hauck, M. 2014. *Sharing Benefits from the Coast*. In Wynberg, R. and Hauck, M. (Eds). Sharing Benefits from the Coast. UCT Press, Cape Town.

Case law

Kenneth George versus the Minister of Environment and Tourism and Others 2007 (EC 1/2005).

State v. Gongqose plus two Others. 2012 (E382.10) unreported.

Gongqose and Others v State (CA&R 26/13).

Gongqose and Others v Ministers of Agriculture, Forestry and Fisheries and Others (3001/13).

West Coast Rock Lobster Association versus The Minister and others.

ANNEXURE 1:

What's voluntary about the Guidelines? A TOOL for monitoring compliance with the Voluntary Guidelines for Small-scale Fisheries in South Africa.

What's voluntary about the Guidelines? A TOOL for monitoring compliance with the Voluntary Guidelines for Small-scale Fisheries in South Africa

International Collective in Support of Fishworkers (ICSF) 2016
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Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Human Rights and Dignity: **Dignity and right to life**	The Constitution of South Africa Act 108 (1996) includes the Bill of Rights which includes a range of human rights: Section (10) Everyone has inherent dignity and the right to have their dignity respected and protected. Section (11) Everyone has the right to life. Obliges the State to take international law into consideration Regional and International Treaties ratified by South Africa including: Charter of Human Rights	Legislation establishing Section 9 Institutions to protect and promote Human Rights such as: The Public Protector (an ombudsman) The South African Human Rights Commission The Commission for Promotion and Protection of Rights of Cultural, Religious and Linguistic Minorities The Commission on Gender Equality

Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Equality and non-discrimination	International Convention on Socio-Economic Rights Convention on Biological Diversity Convention on the Elimination of All Forms of Discrimination Against Women African Charter on Human Rights Section (9) 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. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection. Section 27 (2), according to which "the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights" referring to health care, food and water, social security	The Auditor-General The Independent Electoral Commission The Independent Communications Authority National Development Plan (2012) In addition to the Section 9 Institutions listed above A range of sector specific national legislation whereby the rights enshrined in the Bill of Rights are given effect The Promotion of Equality and Prevention of Unfair Discrimination Act 4 (2000) The Promotion of Administrative Justice Act 3 (2000) The Broad Based Black Economic Empowerment Act 46 (2013)

Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Equality and non-discrimination	Section (33) (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair. Section (36) (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including— (a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose. (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights	The Marine Living Resources Act 5 (2014) Section 2 (2) *"(k)* the need to promote equitable access to and involvement in all aspects of the fishing industry and, in particular, to rectify past prejudice against women, the youth and persons living with disabilities; *(l)* the need to recognise approaches to fisheries management which contribute to food security, socio-economic development and the alleviation of poverty;" Policy for Small-scale Fisheries (2012)

Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Vulnerable and marginalised groups	The Presidency has recognised the following vulnerable groups: Children Youth Elderly Women Disabled	The Social Assistance Act 13 (2004) The Children's Act 41 (2007) The Older Persons' Act 13 (2006) National Youth Commission Act 19 (1996) The Marine Living Resources Act 5 (2014) Report on Vulnerable Groups by SA Statistics (2012)
Gender Equality	Section (3) 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. SADC Protocol on Gender and Development (2012). African Union Heads of States' Solemn Declaration on Gender Equality in Africa (August 2004)	The Promotion of Equality and Prevention of Unfair Discrimination Act 4 (2000) The Marine Living Resources Act 5 (2014) The Domestic Violence Act 116 (1998) The Criminal Law Amendment Act (Sexual Offences and related matters) 32 (2007) The Protection from Harassment Act 17 (2011) The Recognition of Customary Marriages Act 120 (1998) The Basic Conditions of Employment Act 75 (1997)

Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Gender Equality	Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (AU Women's Protocol) (December 2004) United Nations Convention for the Elimination of all Forms of Discrimination against Women (CEDAW) (December 1995)	The Employment Equity Act 55 (1998) National Development Plan (2012) Women Strategic Plan 2015-2020 Batho Pele Principles (1997)
Respect of cultures	Section (30) and (31) The Right to Culture Section (9) institution: Commission for Promotion and Protection of Rights of Cultural, Religious and Linguistic Minorities	Traditional Leadership and Framework Act 41 (2003) The National Heritage Resources Act 25 (1999)
Consultation and participation	Section (1) includes the values of participation. Section (195) stipulates that "people's needs must be responded to, and the public must be encouraged to participate in policy-making", "public administration must be accountable" and "transparency must be fostered by providing the public with timely, accessible and accurate information". These principles apply to "administration in every sphere of government" and public enterprises. Code of Conduct for Responsible Fisheries (FAO) 1995	National Environmental and Management Act 107(1998) National Environmental Management Protected Area Act 21 (2014) sets out standards for consultation regarding establishment of Marine Protected Areas Marine Living Resources Act 5 (2014) Integrated Coastal Management Act 24 (2008) Policy for Small-scale Fisheries (2012)

Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Rule of Law	Section (1) in the Constitution affirms the Rule of Law Section (39) makes provision for the recognition of common law, customary law and statutory law	Policy for SSF principles (1) and (2)
Transparency	Inherent in the values set out in Section (1) and elaborated in Section (195) which stipulates that "transparency must be fostered by providing the public with timely, accessible and accurate information". These principles apply to "administration in every sphere of government" and public enterprises.	Promotion of Access to Information Act 2 (2000) Annual Division of Revenue Act 1 (2015) Companies Act 61 (2008) Preferential Procurement Policy Framework Act 5 (2000) Competition Act 89 (1998) Public Finance Management Act 1 (1999)
Accountability	Constitution Section (1) recognises the value of accountability at all levels and spheres of government; Section (195) "public administration must be accountable" (216) (1) This requires national legislation to "establish a national treasury and prescribes measures to ensure transparency and expenditure control in each sphere of government	The Public Protector Public Finance Management Act 1 (1999) Ministry of National Planning National Planning Commission Department of Performance Monitoring and Evaluation SA Statistics National Medium term Strategic Framework (MTSF) (2014-2019) Annual Division of Revenue Act 1 (2015) King Report on Corporate Governance 3 (2009)

Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Economic, environmental and social sustainability	Section (24) on Environment	National Environmental Management Act 107 (1998) Marine Living Resources Act 5 (2014) National Biodiversity Act 10 (2004) National Development Plan (2012) White Paper on National Environmental Management of the Ocean (2014) The New Growth Path (NGP), The Industrial Policy Action Plan 2 (IPAP2) King Report on Corporate Governance 3 (2009) Policy on Small-scale Fisheries (2012)
Holistic and integrated approaches	Obliged to consider international law including international customary law such as UNCLOS	National Development Plan (2012) National Medium term Strategic Framework (MTSF) (2014-2019)
Social Responsibility	Obligations arising in terms of Section (9) The Constitutional Court has affirmed the African principle of '*ubuntu*' as a foundational principle for the Constitution.	King Report 1, 2 and 3 on Corporate Social Responsibility Broad Based Black Economic Empowerment Act 46 (2013) Preferential Procurement Policy

Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Feasibility and social and economic viability	Section (24) Environment	National Development Plan (2012) National Environmental Management Act 107 (1998) Marine Living Resources Act of 1998 The New Growth Path (NGP), Operation Phakisa The Industrial Policy Action Plan 2 (IPAP2) The Strategic Plan for the Department of Agriculture, Forestry and Fisheries 2013/14 to 2017/18 King Report 3
Food security	Section (27)(1)(b) of the Constitution of the Republic of South Africa states that, "everyone has the right to have access to sufficient food and water."	The National Policy on Food and Nutrition Security for the Republic of South Africa (2014) National Development Plan (2012) Policy on Small-scale Fisheries (2012)
Eradication of poverty	Section (7),(8) and (9) Section (2)4	National Development Plan (2012)

Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Right to the Environment	Environment 24. Everyone has the right— (a) to an environment that is not harmful to their health or wellbeing; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that— (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.	National Environmental Management Act 107 (1998) National Protected Areas Act of 2003, amended 2014 Marine Living Resources Act of 1998 (2014) National Biodiversity Act 10 (2004) Policy on Small-scale Fisheries (2012) National Heritage Resources Act 25 (1999) White Paper on National Environmental Management of the Ocean (2014). Operation Phakisa

Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Tenure /Property Rights	Property (*25) (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.* *(2) Property may be expropriated only in terms of law of general application—* *(a) for a public purpose or in the public interest; and* *(b) subject to compensation, the amount of which and the time and manner ofpayment of which have either been agreed to by those affected or decided or approved by a court.* *For the purposes of this section—* *(a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and* *(b) property is not limited to land.* *(5) 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.*	Restitution of Land Rights Act 22 (1994) Extension of Security of Tenure Act 62 (1997) Land Reform Act 3 (1996) National Heritage Resources Act 25 (1999) Recognition of Customary Marriages Act 120 (1998) Mineral and Petroleum Resources Development Act 28 (2004) Marine Living Resources Act 5 (2014) Small-scale Fisheries Policy (2012)

Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Tenure /Property Rights	*(6) 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.* *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.*	
Value chains, post-harvest and trade	Section (22) Freedom of trade, occupation and profession *"Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law".*	Broad-Based Black Economic Empowerment Amendment Act of Act 53 (2003) The Cooperative Act 14 (2005) National Small Business Act 102 (1996) Department of Trade and Industry (DTI) SMME support Department of Small Business Development (DSBD) Cooperative Incentive Scheme (CIS) National Development Plan (2012) The New Growth Plan The Industrial Policy Action Plan 2 (IPAP2) Operation Phakisa White Paper on National Environmental Management of the Ocean (2014) Policy on Small-scale Fisheries (2012)

Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Employment and decent work	Section (13) No one may be subjected to slavery, servitude or forced labour. Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law. Section (23) (1) Everyone has the right to fair labour practices. (2) Every worker has the right— (a) to form and join a trade union; (b) to participate in the activities and programmes of a trade union; and (c) to strike. (3) Every employer has the right— (a) to form and join an employers' organisation; and (b) to participate in the activities and programmes of an employers' organisation.	The Basic Condition of Employment Act 75 (1997) Compensation for Occupational Injuries and Diseases Act 130 (1993) Labour Relations Act 65 (1995) Occupational Health and Safety Act 85 (1993) Skills Development Act 77 (1998) The Prevention and Combating of Trafficking in Persons Act. Unemployment Insurance Contributions Act 4 (2002) Unemployment Insurance Act 63 (2001) National Economic Development and Labour Council Act 35 (1994) South African Maritime Safety Authority Act 5 (1998) Policy on Small-scale Fisheries (2012)

Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Employment and decent work	(4) Every trade union and every employers' organisation has the right— (a) to determine its own administration, programmes and activities; (b) to organise; and (c) to form and join a federation. (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1). (6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1). Southern African Development Community's (SADC) Charter of Fundamental Social Rights. Articles 11 and 12 of the Charter establish the rights to improved living and working conditions and the protection of health, safety and the environment.	

Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Social Development	The South African Constitution, Section (27), recognises social security as a right and provides for appropriate social assistance for those who are unable to support themselves and their dependants.	The Social Assistance Act 13 (2004) Policy on Small-scale Fisheries (2012)
Disaster Risk and Climate Change	Section (24) Right to the environment Party to the UN FCCC and Kyota Protocol and Paris Protocol (2015)	Disaster Management Act 57(2002) National Committee on Climate Change (NCCC) Intergovernmental committee on climate change (IGCCC) Ministerial Committee on Climate Change (high level) National Climate Change Response Strategy National Disaster Management Framework Climate Change Task Team (Fisheries Branch) Draft Adaption Strategies for SSF and Line-Fish (DAFF)

Principles in the SSF Guidelines	South African Constitutional recognition of principle	Corresponding national legislation and policy provisions
Policy coherence, institutional coordination and collaboration	Chapter (3) and (7) in the Constitution addresses issues of cooperative governance	Intergovernmental Relations Framework Act 13 (2005) Traditional Leadership and Governance Framework Act 41 (2003) Inter-ministerial committees, MINMECH National Planning Commission Provincial coordination committees Local Government: Municipal Systems Act 32 (2000) Local Government: Municipal Structures Act 117 (1998) Local Government: Municipal Demarcation Act 27 (1998) Policy on Small-scale Fisheries

ANNEXURE 2:

List of stakeholders interviewed

Name	Organisational affiliation
Moenieba Isaacs	Programme for Land and Agrarian Studies, University of the Western Cape
David Gongqose	Fisher leader Eastern Cape
Lindane Ngubane	Field Worker Masifundise KwaZulu Natal
Solene Smith	Fisher leader West Coast
Mkhululi Silandela	Programme Coordinator, WWF
Hendrik Latola	Fisher leader, South Coast and President, National Federation of Small Scale Fishers.
Christian Adams	Coastal Links South Africa Chairperson
Gary Simpson	Fisheries consultant, former Secretary CASATU Fishing Desk
Philile Mbatha	University of Cape Town
Pedro Garcia	Chairperson SA United Fisher Front (SAUFF)
Norton Dowries	Chairperson Coastal Links Western Cape
Lulamile Ponono	Fieldworker, Masifundise Eastern Cape
Andrew Johnston	Chairperson Artisanal Fishers Association
Craig Smith	Director, Small-scale Fisheries Unit , DAFF

SAMUDRA Monograph

Social relations and dynamics shaping the implementation of the Voluntary Guidelines on Small-scale Fisheries (SSF Guidelines) in South Africa

Integral to achieving the SSF Guidelines goal of targeting the most vulnerable and marginalized persons and eliminating discrimination is the need to have adequate understanding of the power relations and intersectionalities that shape access to and control over marine and other resources according to gender, age, race, ethnicity, labour and migratory status, disability, geographic location and other characteristics relevant in each national contexts. This monograph identifies and explores the key social relations and dynamics in the SSF fisheries sector in South Africa impacting the implementation of the SSF Guidelines.

The monograph will be useful for researchers, scientists, fishworker organizations, environmentalists and anyone interested in the protection of marine biodiversity and the promotion of sustainable fisheries management.

ICSF is an international NGO working on issues that concern fishworkers the world over. It is in status with the Economic and Social Council of the UN and is on ILO's Special List of Non-Governmental International Organizations. It also has Liaison Status with FAO. As a global network of community organizers, teachers, technicians, researchers and scientists, ICSF's activities encompass monitoring and research, exchange and training, campaigns and action, as well as communications.