

## INDIVIDUAL TRANSFERABLE QUOTAS, POVERTY ALLEVIATION AND CHALLENGES FOR SMALL-COUNTRY FISHERIES POLICY IN SOUTH AFRICA

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**ABSTRACT** Since the advent of democracy in 1994, the South African government has created an enabling environment for poor people to benefit from new possibilities and opportunities through democratic reforms. Governance reforms in South Africa's fisheries have aimed to broaden access to marine resources, maintain a stable, international competitive fishing industry and to achieve sustainability of marine resources. This paper argues that the Individual Transferable Quota (ITQ) system of allocating fishing rights, which was used to maintain stability in the fishing industry, reform the sector through Black Economic Empowerment (BEE) and reduce poverty through allocating small quotas to new entrants in poor fishing communities, is incompatible with achieving social justice. The goal of social equity is in conflict with achieving sustainability and stability when reallocating fishing rights. The allocation system failed to allocate, recognise and protect the historical and cultural rights of the artisanal and small-scale fishers to practice their livelihoods. This has led neither to social justice, nor benefited the poor, marginalised and bona fide fishers of coastal communities. The fishers left outside the ITQ system reorganised in order to defend their socio-political right to practice their livelihoods and launched a class action case against the rights allocation policy.

### Introduction

Since the early 1900s, the country's fisheries sector has been industrialised. On June 7, 1985, the State President appointed the Diemont Commission to inquire into, and make recommendations on the following: 'the allocation of quotas for the exploitation of the living marine resources, the present management of the fishing industry, the transferability of quotas, the admission of new entrants into the fishing industry, the degree to which the different population groups in the existing and/or recommended dispensation should be allowed as entrepreneurs in the Industry, and measures that should be imposed to ensure stability in the Industry'. (Report of the Diemont Commission 1986: ii). The Diemont Commission recognised that performance and commitment to investment were important criteria for determining access rights in fisheries. The committee recommended that existing rights and allocations of the resource should be allocated to a statutory body (Quota Board) and suggested that the allocation of quotas be entrusted to an independent statutory board that would be appointed by the Minister. The body would be presided over by a person of judicial background and no member could

be state-employed. This recommendation was adopted through the Sea Fisheries Act of 1988, and the Board was instituted on November 11, 1990.

The ITQ system of allocation was introduced in South Africa with the promulgation of the Sea Fisheries Act 12 of 1988 and specifically designed to implement the 200 nautical miles Exclusive Economic Zone. The most significant part of this Act was the establishment of a Quota Board whose primary function was the granting of rights of exploitation to new entrants with an eighty/twenty ratio (eighty per cent of the Total Allowable Catch (TAC) to established companies and twenty per cent to new entrants). The aim of this arrangement was to ensure stability and predictability in the industry, allowing for long-term investment, whilst accommodating new entrants. At this stage in South African fishing history, economic sanctions against the country were at its peak due to the Apartheid policy, along with the devaluation of the rand. Coupled with this was an improvement in catch rates and an increasing demand for hake. The Quota Board allocated a further thirty-eight new entrants as community trusts with the intention of promoting economic development in fishing communities.

The rights to exploit marine resources prior to the 1994 elections were concentrated solely in the hands of white-owned commercial enterprises, resulting in legislation which excluded artisanal, subsistence and small-scale fishers. With the advent of a new Government in 1994 came the promise of a democratic South Africa and the redistribution of resources in all economic sectors including the fishing industry.

The African National Congress (ANC) came into power on the election promises that it made about the Reconstruction and Development Programme (RDP). The programme was an integrated, coherent socio-economic framework which dealt with the consequences of apartheid, and included the alleviation of poverty and addressing the lack of services for the poor majority. The new government set itself the task of formulating a fisheries policy that would address popular expectations for a more equitable redistribution of access rights, while at the same time maintaining an internationally competitive fishing industry. A Fisheries Policy Development Committee was formed to revise legislation, including the reallocation, redistribution and reform in the fishing industry. It also sought to uplift impoverished coastal communities by ensuring that they could gain access to marine resources:

Marine resources must be managed and controlled for the benefit of all South Africans, especially those communities whose livelihood depends on resources from the sea. The democratic government must assist people to have access to these resources. Legislative measures must be introduced to establish democratic structures for the management of sea resources (ANC 1994:104).

Vested business interests succeeded in convincing the government that in order to safeguard the prospects for international investment, there should be no deviation from free market principles. So in 1996, the RDP was dropped in favour of a

home-grown structural adjustment programme called Growth, Employment and Redistribution (GEAR). Two years into democracy, the post-apartheid reform had become a neo-liberal agenda that included privatisation, the removal of government subsidies, downsizing the public sector, and the encouragement of small black enterprises (Bond 2000).

The new fisheries policy overlooked the progressive intentions put forward in the RDP, in favour of neo-liberal policy prescriptions. A fisheries policy was formalised with the passing of the Marine Living Resources Act (MLRA) 18 of 1998.

The fisheries department has made some attempts to address coastal poverty through access rights since the early 1990s. The first attempt was made by the apartheid regime, in the form of community quotas and the establishment of fishing community trusts. This system failed primarily because it was a top-down initiative. Communities were not engaging actively in harvesting or in economic opportunities to reduce poverty; there was elite capture, and there was no support from the state in managing and distributing the funds that were generated. The second attempt was through the MLRA allocating quotas to individuals in coastal communities – here groups had to form small enterprises and companies to apply for fishing rights. The third attempt was in 2000, through the recommendations of the Subsistence Fisheries Task Group to establish fishing forums, but this system was dissolved within six months and fishers had to apply as individuals for medium-term rights allocation. The fourth attempt was through allocating interim rights to groups and individuals who were not incorporated into the medium-and long-term allocations but who were accommodated through interim relief measures. In 2007 the claimants of the litigation in the Equality Court also settled for interim relief permits.

This paper is based on policy research and engagement with South Africa's fisheries sector from 1996 to 2011. I conducted semi-structured interviews with leaders and members of emerging organisations, new entrants, unsuccessful applicants, subsistence permit holders and interim relief permit holders. When fishers launched a class action case against the ITQ allocation of fishing rights in 2004, I attended and participated in many workshops and meetings in coastal communities, which had been organised to support the case. I was then part of the national technical task team that drafted a new small-scale fisheries policy for South Africa as a result of that case.

The first section of this paper situates the relationship between the ITQ system of allocation within the wealth-based and welfare-based models described by Béné (2004) and Béné, Hersoug and Allison (2010). The second section deals with the introduction of ITQs through policy reforms incompatibilities (see Mansfield 2007) in South Africa to achieve stability in the fishing industry and equity through BEE; the rights allocation in post-apartheid reforms from 1998-2020 in the most important commercial species and the impacts of these allocation in fishing communities; and how the ITQ allocations have informed the social relief mechanisms to poor coastal communities through community quotas, subsistence permits and interim relief permits since 1992. Finally, the paper describes how the fishers reorganised to challenge the ITQ system and formed part of the task team to draft a new small-scale policy for South Africa.

## Individual transferable quotas and poverty alleviation

According to McCay (2004) Individual Transferable Quotas create commodities out of the right to catch wild fish and shellfish, and they bring market forces to the allocative task. ITQs were introduced in the late 1980s in South Africa as well as the rest of the world, although they were part of a long history of enclosing the fisheries commons and a process of deepening the role of the market – a response to Harding's (1968) tragedy of the commons. The role of fisheries economists Gordon (1954), Scott (1955) and later, Arnason (1991), all promoted restricted access to marine resources. Key attributes of this system are privatisation of resources, huge profit margins, maximising efficiency and downscaling (Arnason, 1991). ITQs were developed based on 'the persistent failure of fisheries management developed under conditions of a Common Use Rights System of Exploitation (CURSE)' (Symes and Crean (1995:175).

ITQs were introduced as a mechanism for rationalisation, adapting fishing capacity to resources and not as a poverty reduction mechanism per se. By downscaling the fishery and concentrating quotas in fewer hands, more people will be excluded from the fishery, leading to more poverty among those not privileged. In order to reduce poverty, the rent generated should be redistributed in favour of the poor through taxation. Cunningham and Neiland (2005) state that wealth generation is one aspect of poverty alleviation through growth; the other part is to ensure the poor benefit from the wealth. The use of resource rents could be collected in order to fund domestic investment (in, for example, infrastructure and schools) or for the direct benefit of the poor. Another method is to give the poor preferential access to fishing rights (Cunningham and Neiland 2005). Under the ITQs system fixed quantities of the tac are allocated to individuals for a period of time. The concentration of fishing rights is in the hands of fewer most efficient producers, but 'this structural change is usually achieved at the cost of social equity, it always implies an erosion of small-scale family based units and a growth of larger, capitalist enterprises... The sense of social injustice is likely to be intensified where structural reform is brought about by the allocation of individual harvesting rights to common property resource' (Symes and Crean 1995:181).

The poverty dynamics of elite capturing, power struggles, class differentiation and social and economic exclusion (see Béné 2003) within the fishing communities are often ignored by the wealth-based approach. This approach encourages the creation of small enterprises, processing facilities and market access, and many poor fishers do not have these assets or infrastructure and are often unable to access rights (the South African case study is an example of this).

Béné 2003, 2004; Béné, Hersoug and Allison 2010 have made an important contribution in understanding poverty in fisheries and relating it to macroeconomic policies in developing countries, global economic systems and pro-poor models. Béné (2004) attempts to bring the wealth-based approach and the welfare-based approach together when he defines the notion of 'poverty alleviation' in the fishing context as including poverty reduction and poverty prevention. 'Poverty reduction' in this view refers to wealth generation and capital accumulation through investment in fishing and fits into a wealth-based model of understanding poverty.

ty, whereas 'poverty prevention' refers to the economic role of fisheries in helping people maintain a minimum acceptable standard of living and fits into a welfare-based model of understanding poverty. Poverty reduction aims to lift people out of poverty, while poverty prevention aims to prevent people from falling deeper into poverty. The former should lead to economic growth and capital accumulation while the latter aims to mitigate the impact of poverty and reduce vulnerability. In applying the ITQ system of allocating rights system to poor communities to the wealth-based, small quotas would be given to many individuals. In applying the ITQ system to the welfare-based model, there are immediate incompatibilities with the goals of efficiency, stability and social equity (see Mansfield 2007 on a case study on the Western Alaska Community Development Quota). This system would favour a multi-species allocation to collectives (community, group, entity) in preferential economic and access zones to prevent the poor falling deeper into poverty. In South Africa, the fisheries department used the ITQ system to reallocate, redistribute and reform the fishing industry. They allocated to a small group of established companies to achieve economic stability and to a large group of new entrants to achieve social equity and reform in the fishing industry, which fits into the wealth-based model of allocating fishing rights). The multispecies allocation to collectives in poor coastal communities was not considered.

Mansfield (2004:320) argues that 'what makes ITQs different – and what makes a dimension of particularly neoliberal approaches to fisheries governance – is that they marketise allocation of fish catch. Individual fishers receive an initial quota allocation that represents a percentage of the total catch. Each year thereafter, fishers can then either catch that amount, or lease or sell their allocation to other fishers.' ITQ is a form of both privatisation and marketisation, and the system requires strong state involvement and restricted access to small group of individuals and companies. Neoliberalism privatises property rights through individual or collective allocations.

The reaction to some of the social costs of ITQ system has led to the introduction of community based fisheries management and community based management boards in the community quota programme in Alaska and in the Scotia-Fundy district of Atlantic Canada (McCay 2004). Mansfield (2004) reviews the literature of several academic scholars who emphasise property rights, rights-based management, individual behaviour and economic rationality as both the cause and the solutions to fisheries problems. Many of these scholars refer to ITQs as the solution to the property rights dilemmas in fisheries, even former common property supporters, Hanna 1995 and McCay 2001, who favour a hybrid system of allocating fishing rights as long as there is some form of collective decision making within these groups. Fishers in South Africa argued that it was the system of allocation that was the problem, creating a small group of community elite who benefit, whilst the majority of the bona fide fishers are without rights or are forming part of the interim relief permit holders (Isaacs 2003, 2006, 2011a, 2011b – also see discussion under ITQ and social relief). Although collective property is often seen as contrary or alternative to neoliberalism, Mansfield (2004:322) points out that 'the ways collective property is implemented in these fisheries shows that collective privatisations can be a variation of market-based regulation, rather than a

challenge to it.' Regarding individual and collective privatisation of fisheries, what is important to the South African case in Mansfield (2004:323) is that 'different forms of privatisation have different rules associated with them and have different implications for both efficiency and equity – yet all forms entail reducing options for those who once relied on the public fisheries, while giving those who qualify a form of wealth that can lead to further gain.'

### Pre- and post-apartheid fisheries policy reforms

With the establishment of the industrial fisheries 1890-1939, there was a shift from inshore fishing providing food for farm workers to the demand for canned crustacean in Europe. The modernisation of the inshore fishery through canneries along the West Coast resulted in many of the artisanal fishermen entering the rock lobster fishery either full-time or seasonally, whilst others, who were not absorbed in the canneries, were out of work. The fishermen who were willing to move with the canneries were either absorbed as permanent or seasonal migrant workers (Van Sittert 2003). Besides establishing the canning industry, this phase was also characterised by two pioneers, G.D. Irvin and C. O. Johnson. These two fishing entrepreneurs entered into a co-operative agreement and partnership in 1910 and merged as I&J in 1912. This company monopolised the trawling industry. According to Van Sittert (2002), they established white monopoly capital, I&J in 1940, and dominated the national fresh fish through the vertical integration of catching and distribution of trawl fish. The National Party and the Labour Party accused I&J of profiteering at the expense of the poor white Afrikaners. The passing of the Crawfish Export Control Act, No 50, 1934 (CECA), Crawfish Export Act, No 9 of 1940 and Sea Fisheries Act 10 of 1940 prohibited the export of crayfish (rock lobster) without a state licence. These Acts were instrumental in establishing state control over access to the marine resources. The subsequent Fishing Industry Development Act of 1944 was the start of the state social welfare intervention for the poor Afrikaners along the West Coast. The establishments that followed (Marine Products and Suiderland), were known as Afrikaner capital (Van Sittert 2002).

The new Government inherited not only the apartheid legacy of poverty, unemployment, a poor educational system and an unequal distribution of resources, but also the white monopoly and Afrikaner capital deeply entrenched in the established companies. Nielsen and Hara (2006) situate the challenge of transformation in South Africa within the post-colonial fisheries restructuring within the context of other fisheries in the Southern African Development Community (SADC) region (Namibia and Zimbabwe), where fisheries have been dominated by the minority white population. In South Africa, rights holders who do not invest in the fishing industries were known as paper quota holders, and attempts were made to force them to invest or risk losing their quotas rights (see Isaacs, forthcoming), whilst the Namibians legitimised paper quotas and allowed the new rights holders to live off the rent income from their rights, rather than having to compete effectively or efficiently with established companies (Raakjær Nielsen and Hara 2006; Melber 2003). Van Sittert *et al.* (2006) argue that achieving equity,

sustainability and economic stability is difficult in practice as social equity is in conflict with achieving sustainability and stability. The fisheries reform was situated within a neoliberal agenda, and Mansfield (2007) refers to a similar tension in the Western Alaska Community Development Quota as incompatibilities of capitalist expansion and redistributive allocation of community quotas to achieve social justice.

#### *Post-apartheid fisheries reform*

The first step to reforming the South African fishing industry was the creation of the Fisheries Policy Development Council (FPDC) in 1996, which was informed by the RDP. However, the FPDC failed to address the difficult issues of access rights and long-term rights, but rather stressed the importance of equity, sustainability and stability when allocating fishing rights in South Africa. The Marine Fisheries White Paper of 1997 initiated a second step in reforming the fishing industry with a more market-oriented approach that stressed growth before redistribution and fell in line with the government's macro-economic policy, Growth, Employment and Redistribution (GEAR 1996). For the first time there was a significant shift away from redistribution to job creation and economic growth. The third step in reforming the fishing industry was the enactment of the new fisheries law, the MLRA, which created a competitive arena for the allocation of fishing rights.

The South African rights allocation system is based on Individual Transferable ITQs, where the state, through the Department of Agriculture, Forestry and Fisheries (DAFF), decides on the total allowable catch (TAC). Rights holders have a portion of the TAC assigned individually for a period of time (see table 1 below). The allocation of fishing rights through ITQs was formalised with the passing of the MLRA. The new fisheries policy categorised fishers either as commercial, recreational or subsistence. The artisanal, informal, and small-scale fishers were clustered with subsistence fishers.

The policy promoted job creation and security, sound working conditions, and the health and safety of workers. New employment opportunities were drastically needed to cater for the unemployed, the underemployed, and the thousands of new entrants to the labour market. Hence, there was an overarching focus on creating new jobs, not by the state but by entrepreneurs, be they large-scale, small-scale or even micro-businesses. Established fishing companies were encouraged to enter into equity ownership arrangements with black-owned companies, to sell shares to employees and to enter into harvesting and processing joint ventures with small-scale enterprises. The poor, marginalised fishers in coastal communities were encouraged to make use of the new opportunities created by the reform process by forming small enterprises or by applying for access rights as subsistence fishers. ITQs were not allocated to the collective, and everyone who formed part of a collective had to reorganise and apply for quota as an individual.

## Black Economic Empowerment (BEE)

The fisheries department argued that BEE fitted into the government's broader macro-economic policy to reduce poverty. The rationale for allocating rights to both new entrants and established companies was to provide secure and quality jobs based on the government's minimum wage regulatory framework.<sup>1</sup> It was assumed that the benefits of rights allocation and jobs would trickle down to vulnerable coastal communities (Isaacs, Hara and Raakjær Nielson 2007). Given its emphasis on market forces, GEAR sought instead to achieve change by promoting economic growth through supporting established businesses as well as SMMEs, at the same time encouraging BEE. Government thought growth would lead to increased wealth, which would lead to more employment opportunities, which would then trickle down to those at the margins of the economy.

Isaacs, Hara and Raakjær Nielson (2007) argue that the change in macro-economic policy from RDP to GEAR implied a shift in focus from broadening access rights to new rights holders (individuals and companies) through state intervention to achieve BEE in established fishing companies. Fisheries reform has been primarily directed towards achieving racial and (to a minor degree) gender equity in the industry, maintaining economic and business stability for the established fishing companies. This was achieved through offering ownership shares to historically disadvantaged (HD) empowerment groups and/or labour unions and transferring technical and managerial skills to HD employees within established companies. Although BEE became the driving strategy within the reform process following the shift to GEAR, ITQ remained a clear policy objective. The political rationale for giving quotas to new rights holders, while also implementing policies that favoured BEE, was that these new rights holders would, individually or through creating enterprises, form small-scale operations that could create new jobs, thereby expanding employment in fisheries. However, Mansfield (2007: 494) suggests that 'the reason for the quota mechanism is not just the dominant liberal logic but also many recognised that rationalisation is dispossession.'

### *Rights allocation in South Africa 1998-2020*

On October 30 1998, the Minister of Environmental Affairs and Tourism established the Fisheries Transformation Council (FTC) in terms of Section 29 of the MLRA. The FTC taken over some of the functions of the Quota Board, with the difference that this body was politically responsible to the Minister. New entrants could now choose one of two possible routes: they could apply for quotas directly to the Minister or they could lease them from the FTC. The FTC was responsible for the allocation of fishing rights to small and medium-sized entities from previously disadvantaged groups. The goals of the FTC were to facilitate the transformation process and assist in the development and capacity building of new entrants. In 2000, the Minister of Environmental Affairs and Tourism requested the South African Parliament to allow a once off 'roll-over' of fishing rights from the 1999/2000 fishing season to the 2000/2001 fishing season. This was an attempt to design a strategy to institutionalise a process for beginning the transformation of the fishing industry and entrenching economic stability and an environment

in which large fishing companies would feel confident to invest further in infrastructure and jobs, and small companies would be able to develop (Feike 2008:4). In February 2000, the FTC was dissolved as the right allocations in 1998/1999 and 1999/2000 were creating instability, chaos, and allegations of maladministration and corruption (Isaacs 2003; Feike 2008).

Annual fishing right allocations increased economic uncertainty and did not provide black small fishing entrepreneurs with the security needed to raise capital to fund small-scale fishing businesses. It was accordingly decided to allocate fishing rights for a four-year period across all fishing sectors. Of the 5,000 applications, 3,900 were allocated. According to the Marine and Coastal Management (MCM), the allocation of the medium-term (or four-years long) commercial fishing rights aims to empower black South Africans, previously excluded from the lucrative fishing economy (Feike 2008).

In 2005, the South African government allocated long term commercial fishing rights for periods that ranged between eight years to fifteen years. The objective of transformation of equitable participation and the poverty alleviation can only take place in economic growth and stability. In 2006, a total of 3019 commercial fishing rights were allocated.

Table 1: Commercial Fishing Rights Allocated 1992 -2020

| Fishery               | 1992 Rights holders | 2000 Rights holders | Medium Term 2002 | Long Term 2006 | Duration of Right | Vessels | Direct jobs |
|-----------------------|---------------------|---------------------|------------------|----------------|-------------------|---------|-------------|
| WCRL offshore         | 40                  | 203                 | 234              | 812            | 10 years          | 142     | 1,058       |
| WCRL nearshore        |                     |                     | 785              | 245            | 10 years          | N/A     | 3,248       |
| Abalone               | 5                   | 47                  | 273              | 264            | 10 years          | N/A     | 792         |
| South Coast Lobster   | 6                   | 20                  | 16               | 16             | 15 years          | 9       | 441         |
| Pilchards and Anchovy | 124                 | 157                 | 113              | 114            | 15 years          | 137     | 15,133      |
| Hake deep-sea trawl   | 12                  | 59                  | 53               | 52             | 15 years          | 79      | 9,000       |
| Hake inshore trawl    | 11                  | 13                  | 17               | 17             | 10 years          | 31      | 1,480       |
| Hake long-line        |                     | 195                 | 141              | 139            | 15 years          | 80      | 1,495       |

(Source: Isaacs 2003 and forthcoming; Feike 2008:29)

The South African government, through the fisheries department, held up SMMES as a key mechanism for achieving wealth redistribution, job creation, economic growth and poverty alleviation in coastal communities around the coast. In the early 1990s (1992-1998), community welfare organisations and a co-operative system that had emerged from the anti-apartheid movement, applied for fishing rights as Section 21 companies, which are non-profit organisations representing welfare or community interests. This organisational structure followed on from the establishment of community quota organisations from 1993-95 and the RDP forums, community forums concerned with the welfare of the community. The welfare nature of the Section 21 organisations and the co-operative system gave these organisations legitimacy and political support in fishing communities. However, established industries challenged the FTC allocated fishing rights, the allocation to community entities and said that many new entrants were paper

quota holders (entered into catching, processing and harvesting agreements with established companies), who should not be allocated fishing rights.

With the medium term allocations in 2002, only those forming small companies were able to access fishing rights. Many community formed organisations were encouraged to form closed corporations or fishing companies. This shift resulted in elites restructuring community organisations. Many fishers and other poor people in coastal communities applied for limited commercial rights, but only a small number of artisanal fishers were successful. Those who did get rights were not allocated viable quotas. Many bona fide fishers were left out of the system completely and hence no longer had access to the sea. Others were able to exist by working for rights holders in certain sectors at various times of the season, but often had no income during other times of the year (Sunde 2006). Small rights holders were not provided the support (credit, infrastructure, markets) necessary for these enterprises to survive and to thrive. As a result, most smmes have been vulnerable and open to exploitation by established companies to form catching, processing and marketing agreements through joint ventures. The criteria of the application process for establishing a fishing company, business plans and application fee enabled the elite to respond at the expense of marginalised bona fide fishers. The policy of encouraging smmes has also opened the door to elites within communities, who capture the benefits of participation in the industry at the expense of communities and the marginalised bona fide small fishers who were supposed to benefit from transformation. Very few jobs were created and many fishers were left without any access rights.

#### *ITQS as a social relief mechanism*

South Africa has many coastal settlements that depend on the harvesting of marine resources for sale and for direct human consumption. These settlements can seldom be described as 'communities' in the sense of small, spatially defined geographic units with a homogenous social structure and shared norms. The planned establishment of coastal settlements was based on a common model, but 'physical, historical, economic, social and political factors have ensured continuing differentiation, posing different problems which will require distinctive approaches to change' (Lemon 1991:1). Van Sittert (2003) asserts that the concept of 'fishing community' is situated within the industrialisation of the fishing industry between the 1930s and 1960s. This is especially the case on the West Coast of South Africa. In South Africa, many company-established fishing towns have had difficulties in operating as a unit, although some common interests have been managed through democratic or representative organs.

### **Community quotas**

In 1992 the Minister of Environmental Affairs and Tourism established the Schutte inquiry into the socio-economic conditions of fishing communities along the West Coast. The report identified poverty, insufficient housing, alcoholism, unemployment and illiteracy as pertinent features of most coastal communi-

ties along the West Coast (Schutte 1994). Based on this report, the Quota Board recommended the creation of fishermen's community trusts (FCTS) in all coastal communities to address poverty in fisher households. The role of FCTS was to prevent fisher households from falling deeper into poverty, through providing cash payments and food parcels. With the introduction of community quotas in 1992, 10,000 tons of hake, WCRL, and pelagic quotas were distributed to thirty-four community trusts along the coast of South Africa. The state's notion of community quotas was that of independent boat operators linked to the established companies to harvest and process the fish. Earnings were to be given to the Quota Board to distribute to the FCTS. Fisher households were not actively involved in fishing or managing the quotas. The whole community trust system was based on selling the quotas back to the established operators for a (relatively low) price, and using the income as relief support for poor fishers within their fishing communities (Isaacs 2003). So instead of participating in the fishery as quota owners, the poor fishers would be social clients receiving support through what was meant to be a redistribution system. The FCT function did not expand to income generation opportunities and activities for fisher households. FCTS were created without the necessary financial and management support structures (see Schutte 1994), and soon mismanagement of funds, corruption and elite capturing of the benefits impacted on poor fisher households.

After one year (1994) of implementing community quotas, a special committee was established to review the operation of the trusts. The investigating committee said: 'The possible total abrogation of the Community Quota system should be seriously considered' (Schutte 1994:43). If the system were to continue, the committee recommended a more coherent management framework, no cash payment, and the establishment of an umbrella (mother) trust for all the existing community trusts. At the same time, the community quota system was challenged in the Cape Supreme Court and the judgment endorsed the Sea Fisheries Act and said community trusts were not legitimate receivers of quotas. Consequently, most trusts were dissolved. The community quotas were allocated in an unfair manner in that fishermen were denied access to quotas. The trusts comprised farmers, teachers, principals and numerous others who did not make a daily living from the sea. Fishermen argued that these people increased their standard of living at the expense of fishing communities. Hence, the community trusts and their trustees had no accountability to the community (FAWU 1997).

The MLRA failed to respond to the fundamentally heterogeneous social, political and economic nature of fishing communities in South Africa, particularly neglecting the importance of creating institutional structures to interface with poor communities. Also, fishers wanted real rights to actively participate in the harvesting, processing and marketing of their allocation and to not allow established industry to manage their quotas.

## Subsistence Fishers

Although subsistence fishers were given legal status through the MLRA in 1998, a Subsistence Fisheries Task Group (SFTG) was established in 1999 to advise MCM on management (SFTG 2000). The SFTG argued that the current definition of subsistence fishers 'excluded an important group of fishers who might previously have been considered as "subsistence fishers" or "artisanal fishers", but who would prefer to gain commercial rights' (SFTG 2000).

Since 2000, interim relief permits have been allocated to fishers in the Western Cape (Sowman and Cardoso 2010). MCM received 3,431 applications, but only 1,700 permits. The SFTG recommended that a separate subcategory be established to accommodate small-scale fishers who want to sell their catches and, since the MLRA does not make provision for small-scale fishers, they were categorised as 'limited commercial'. Subsistence fishers and interim rights holders who wanted to continue fishing had to commercialise their entities or apply as individuals. Many community welfare organisations were transformed into commercial enterprises (Isaacs 2006).

In 2005/2006, the Long-Term Fishing Rights Policy allocated long-term rights for between eight to fifteen years in twenty-two of the commercial species. The majority of the bona fide fishers were again excluded from fishing rights due to the language (only in English) and the complicated nature of the application forms, and cost. In addition, fishers had to form companies and compete with established companies harvesting for the same resource in the inshore zone. The economic viability of the quota allocation, the lack of technical and management skills, the lack of start-up or investment capital, and the monopolistic business systems and structures of the established companies perpetuated the companies' competitive advantage over the new entrants. Many of the fishers found it difficult to survive without entering into harvesting, processing and marketing agreements with established companies and once the costs were deducted, their income was less than the basic income level of R30,000 per annum in South Africa (Isaacs 2006). Most of the SMMES became more vulnerable as they started to feel the cumulative pressures of the lack of infrastructure to exercise their fishing rights, the business acumen needed to manage the quota, and the start-up capital to acquire the necessary equipment.

The arguments of the fisheries department with regard to interim relief measures and defining subsistence fishers as limited commercial fishers, fits into the ITQ rationale of allocating rights and a wealth-based approach to redistribution. This also fits in with the broader macroeconomic agenda of GEAR of creating small enterprises in communities to address poverty alleviation. The need to clarify access rights to small-scale fisheries and a clear policy directive for addressing food insecurity and poverty, are key (Sowman 2006).

The reform objectives have been based upon narrow-based BEE, rather than on meaningful transformation (see Crosoer, Van Sittert and Ponte 2006), and at the expense of marginalising bona fide fishers whose livelihoods depend on marine resources (Van Sittert *et al.* 2006). The MLRA failed to address the social and economic challenges facing poor communities, especially with respect to

maintaining their livelihoods (also see van Sittert *et al.* 2006). Reform in fisheries was supposed to lead to equal distribution of wealth within the broader society, not just amongst a few individuals (Raakjær Nielsen and Hara 2006). The ANC government mainstreamed economic competitiveness and favoured established companies, and transformation created new elite and has not led to social justice in distribution of wealth (*ibid*).

The wealth-based allocation of rights system, which mainstreams small-scale enterprises, should result in capital accumulation and wealth generation in fisher households and will eventually reduce their poverty. This system failed as many new entrants were allocated unviable fishing rights, most of them were vulnerable, many sold their rights to established companies, and some fell deeper into poverty. At local community level, the wealth-based approach of allocating small quotas to many rights holders resulted in the community elite (teachers, artisans, shop-owners and local councillors) capturing the rights. Many bona fide fishers with limited literacy and numeracy skills were unable to comply with all the formal requirement of the rights allocation process (Isaacs 2003, 2006). The welfare-based approach seems to fit into the collective allocation systems in preferential access zones, with multispecies allocation (according to the draft small-scale policy). This system could provide fishers with safety nets and will reduce vulnerabilities and prevent fishers from falling deeper into poverty.

Since the welfare-based approach promotes multispecies allocation to collective groups in access zones was not an option or considered in South Africa. The fact that artisanal and small-scale fishers were not legally recognised and the social and economic impacts of the ITQ system of allocating rights on fishing communities, resulted in fishers challenging the ITQ system legally to defend their social and political rights to practice their livelihoods.

### **The struggle to access fishing rights**

The struggle for fishermen and rights-holders to implement their rights eventually found political expression. At the World Summit on Sustainable Development in 2002, the Artisanal Fisher Association and the NGO Masifundise aligned in order to challenge the ITQ system of allocation of fishing rights and to fight for the right of artisanal and small-scale fishers to practise their livelihoods. These organisations represented mainly fishers who were successful through the ITQ system, but who were left without rights when community companies entrepreneurised. The organisations also represented the groups who were unsuccessful in accessing rights, interim relief permit holders and many who still wanted access to the marine resources (see Isaacs forthcoming).

The artisanal fishers, together with Masifundise, formed a popular movement to defend their socio-political right to decriminalise their livelihoods (Salo 2007). They used their political and social networks of the anti-apartheid movement to lobby support for the plight of artisanal fishers in the post-apartheid reforms. Advocacy and lobbying also took place at provincial, national and international levels. The National Economic Development and Labour Council (NEDLAC)<sup>2</sup> is the

national body on which both these organisations were represented as members of civil society. At provincial level, they also aligned politically with the regional secretary of the Western Cape's Confederation of South African Trade Unions (Cosatu) and were represented on the Cosatu fishing desk. Both organisations were also represented on the Western Cape equivalent of Nedlac, the Provincial Development Council and were instrumental in formulating the fishing strategy for the Western Cape with the Department of Economic Affairs and Tourism (Isaacs forthcoming).

In 2004, the Artisanal Fisher Association and Masifundise, with the support of academics and lawyers of the Legal Resource Centre, launched a class action suit case against the Minister of Environmental Affairs and Tourism. This case, Kenneth George and Others versus The Minister, used the Constitution and the Equality Act of 2004 to litigate on the social and economic impacts of the reform process (allocation of fishing rights).

The rights of artisanal and small-scale fishers have international civil society support through the representation of the Artisanal Fisher Association and Masifundise on the World Forum of Fisher People (WFFP), the Committee of Fisheries (COFI), and the UN's Food and Agriculture Organisation. Both organisations also have strong links with the International Collective in Support of Fishworkers (ICFS). At the COFI meetings in Rome (2006 to 2007) the representative of Masifundise (Mr Naseegh Jaffer) and the Artisanal Fisher Association (Mr Andy Johnston), through the WFFP body, questioned the South African government representatives on the ITQ policy and the rights of small-scale fishers (see Isaac, forthcoming).

In an out-of-court agreement between Kenneth George and Others versus the Minister of the Department of Environmental Affairs and Tourism, all parties agreed that 1,000 interim relief permits would be allocated in 2006 to fishers who did not form part of the long-term rights allocation. The Order of the Court stated that a 'new policy and legislative process needed to be developed by all parties concerned that would include all traditional fishers in South Africa and accommodate the socio-economic rights of these fishers' (High Court of South Africa 2007). In effect, they were saying that the rights allocation system since post democracy has excluded a group of small-scale fishers. According Raemaekers (2009), the Order of the Court questioned the definitions and principles of the MLRA, as it only legalised subsistence fishers and not small-scale fishers. It further recognised that the small-scale fishers had a claim based on their traditional practices and livelihoods and therefore have special needs in terms of fisheries management and development and could not expect to compete with the established fishing companies for commercial fishing rights.

#### *A new draft small-scale fisheries policy for South Africa*

A joint task team to implement the court order was formed at the Small-scale Fisheries Summit in November 2007,<sup>3</sup> and it was an opportunity for fishers to participate in policy formulation. A national task team (NTT), representing fishing communities, NGOs, academics and government officials, was elected at the

summit, and developed a statement to guide the development of a new small-scale policy process. The statement promoted the following principles:

- The need to adopt and integrated an holistic approach;
- Based on human rights principles;
- A policy that will recognise, protect and support the rights of small-scale fishers to practice their livelihoods;
- An approach that incorporates local socio-economic development and contributes to food security and poverty alleviation;
- The need to adhere to the principle of small-scale fishers participating in policy, management and decision making; and
- Finally, a small-scale policy needs to promote biodiversity and sustainable use.

A National Task Team developed a draft small-scale policy in September 2010. The Department of Agriculture, Forestry and Fisheries.<sup>4</sup> (DAFF) is in the process of finalising the draft small-scale policy after receiving and processing feedback from policy meetings in fishing communities around the coast of South Africa. The United Nations Food and Agricultural Organisation (FAO) Code of Conduct for Responsible Fishers (FAO 1995) and the SADC Protocol on Fisheries guides the draft small-scale policy. Gender equity, food security and poverty reduction are key principles. In addition, the draft small-scale policy's of being supportive of co-management systems and the allocation strategy of collective rights, multi-species allocation and a preferential zone is a paradigm shift from the mainstream ITQ model used in allocating long-term fishing rights in 2006. The policy proposes a shift away from past management approaches to one which emphasises community orientation and establishes mechanisms and structures for a community-based approach to harvesting and managing marine living resources by the sector, and to the allocation of fishing rights to a legal entity closely associated with small-scale fishers. This shift gives preference to the fishers and communities that can demonstrate their historical involvement in the sector and the use of traditional fishing practices (DAFF 2010:34-35).

The challenges facing the draft small-scale fisheries policy include creating those legal entities that are representative of those fishers who were left outside the formal rights allocation process. Isaacs (2011a) shows that fishers who were allocated interim relief permits through the court agreement are becoming the new emerging elite and do not include marginalised fishers with relevant small-scale policy information. In addition, the proposed nature and structure of the legal entities is crucial as many fishers in the draft policy meetings stressed the difference between urban and rural fishing communities.<sup>5</sup> They also mentioned that some of them did reside in the geographical location of the identified community and questioned how these legal entities would benefit or prejudice them.

The policy does not mention what species will be allocated to legal entities.<sup>6</sup> This is crucial as many of the inshore resources are under threat (abalone, West Coast rock lobster and line fish species). Poaching for high value species such as abalone and West Coast rock lobster is occurring at an alarming rate (see Isaacs 2011a and Hauck 2008).

After 20 years of implementing ITQ to commercial rights holders, and interim relief permits, many of the existing rights holders harvesting in the inshore

zone are competing for the same resources as the small-scale fishers that the policy promotes. Most existing rights holders are opposed to the shift from ITQ to collective rights allocation. In the small-scale policy meetings many rights holders articulated their sense of fear about the collective allocation and stated clearly that they wanted to remain small-scale fishers, but as individuals. They do not want to form part of any legal entity or community structures. Fishers also felt that the Equality Court order is imposing a new small-scale policy, with a new allocation system, onto them, and that they were not part of the drafting process.

## Conclusion

Since the 1990s, the rights allocation process has been based on the wealth-based approach, through allocating ITQ to individuals in poor and marginalised coastal communities. The social relief allocations through the subsistence rights and the interim rights (including that of the Equality Court agreement of 2007), were based on the same individual rights allocation approach. It is therefore not surprising that the fishers who were successful with a quota would want to maintain the same system, no matter how vulnerable they are against the established industries competing for the same resources. In 2010, the fisheries department allocated interim relief permits to 1500 fishers. Interim rights were allocated in an ad hoc manner and many recipients were not actively involved in fishing. Although the Artisanal Fisher Association of South Africa and the NGO Masifundise, through Coastal Links<sup>7</sup>, organised fishers along the west and south coasts, they were not successful in including all bona fide fishers.

What is the solution for South Africa? Can the new small-scale fisheries policy combine welfare and wealth-based functions when allocating fishing rights? The mainstream economy favours a wealth-based approach to allocating fishing rights, as do many small rights holders who benefited from the system. Symes and Crean (1995) state that ITQs work best in relatively simple, under exploited fishery, where they can be used to manage the growth and development of the fishery and they are used as an economic management mechanism, not for conservation or social equity. Social justice can only be achieved through institutional reforms, rather than through specific regulatory measures. Former common property resource supporters (Hanna 1995; McCay 2001) are moving towards a hybrid system of allocation, while Mansfield (2007) warns us that a hybrid is filled with internal contradictions, as the contradictions being the outcome of compromise and opposing approaches.

In South Africa, the wealth-based model is favoured above the welfare-based model which means poverty reduction through small enterprises. With the small-scale policy, a paradigm shift to the welfare-based approach is clear, but in reality, many fishers would still prefer to lean towards a wealth-based, individual rights system. A phased in approach towards a welfare-based, community-oriented, collective approach is recommended by some.

The case in South Africa indicates that the protection of the Constitution, the democratic freedoms and abiding by the human rights-based approach are

all necessary steps to ensure the rights of poor people are protected. However, it is not sufficient. In fisheries, hard choices need to be made when addressing poverty, development and sustainability of the resources (Bailey and Jentoft 1990). Firstly, there needs to be the political will to change the allocation paradigm and to support collective allocations to promote a welfare-based approach to address poverty in fishing communities. The critical issues of social and economic justice were the basis of the arguments in the litigation process for the recognition of small-scale fishers and their livelihoods. To protect the livelihoods of fishers the rules of exclusion and 'substractibility' should be applied. Clear rules should be set-up on how the resource should be regulated, who should participate in the harvesting, and who should benefit from the post-harvesting activities.

Key to the exclusion rules is the agency of fishers and organisations to set rules for self-governance. In reality, community organisations and members responded to the rules of the MLRA to commercialise entities to qualify for fishing rights. The history and custom of self-governance systems is absent, and fishers do not have the infrastructure to harvest, market and process. The creation of community organisations or legal entities is crucial, but the nature and structure of these organisations will need the participation and representation of fishers who were left outside the formal rights system. Where necessary, the state, NGOs, and fishers need to be involved in setting-up legal entities in communities to avoid a situation where existing rights holders reorganise and govern legal entities to claim and capture benefits directed to the marginalised fishers. Furthermore, there needs to be directed funding for an infrastructure to harvest, process and market marine resources for the local, regional and where possible, international market.

## Notes

- 1 The Food and Allied Workers' Union (FAWU) claims that there have been job losses and negative changes in employment conditions in the fishing industry. The most vulnerable workers seem to be women, as traditionally they have worked in processing as contract and seasonal workers.
- 2 Nedlac is the vehicle through which government, labour, business and community organisations seek to co-operate, through problem solving and negotiation, on economic, labour and development issues, and related challenges facing the country.
- 3 In November 2007, the Minister of the Department of Environmental Affairs and Tourism hosted a national summit on small-scale fisheries. At this meeting, a group comprising representatives from fishing communities in four coastal provinces were elected and mandated to oversee and develop a policy for small-scale fisheries in South Africa.
- 4 In April 2010, Marine and Coastal Management split into two ministries, the Department of Environment and Water Affairs and the Department of Agriculture, Forestry and Fisheries (DAFF). All the policies, regulations, allocations, management and administration of fisheries will be under the auspices of DAFF.
- 5 On 3 September 2010, the draft small-scale fisheries policy was released for public comments. From 27 September to October 2010 government officials made presentations to small-scale fisher communities along the coast.
- 6 Many of the inshore resources are under threat, which include line fish, high value West Coast rock lobster and abalone.
- 7 In 2004, Masifundise launched Coastal Links to strengthen local leaders' knowledge on fisher rights, gender, allocation regimes, management systems, and developments in the drafting of the new small-scale fisheries policy, through regular workshops in various regions.

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