



*This speech was delivered by Ms. Maria Hoffman, founding member of the Coastal Links South Africa at the 6th General Assembly of the WFFP on 1 September, 2014.*

### **Individual quotas in South Africa – unconstitutional?**

The individual quota system was introduced by the colonial state almost 100 years ago and has been further entrenched since then. Small-scale fishing communities steadily became more and more marginalised while the large-scale industry gained political and financial capital. This pattern even continued after democracy was introduced in 1994. Mrs Maria Hoffman, a long standing leader and a co-founder of Coastal Links - the South African movement of small-scale fisher people - remembers the vibes and hopes in her community when the black population, on Freedom Day in 1994, for the first time vote at a general election. “we were convinced that we would get our rights to the sea back, that our culture and traditions would shine upon our community again... but the law of the new government did not recognise us”.

The first ten years of democracy did not change the tide. In 2005, the government released a new fishing policy that was designed on the principle of individual quota allocations. In the mildest terms, this policy was devastating for the vast majority of the approximately 50.000 small-scale fisher people in the country, and despite comprehensive criticism from fishing communities, the government stood firm on the basic principles. Up to 90% of fisher people had their rights taken away the moment the minister signed off the policy.

Small-scale fishers from Coastal Links, together with Masifundise, responded by launching a class action suit against the government on the grounds that the policy was unconstitutional. The case was taken to the Equality Court, which is a special function of every High Court in South Africa that aims to uphold the equality clause of the Constitution. To carry out its mandate, the Equality Court can resort to a range of orders including the order to implement special measures to address unfair discrimination. This is exactly what happened in 2007, then the court granted a Court Order prescribing the government to develop a new small-scale fishing policy through a participatory approach.

Five long years of participation should it take before the new small-scale fisheries policy was finalised and endorsed by the government, and the participation bore fruits. Coastal Links advocated for a new principle for the allocation of fishing rights, which builds on collective rights granted to communities rather than individual property rights. Besides from winning this important battle, Naseegh Jaffer from Masifundise also points at another important paragraph in the new policy, “with a reference to our Constitution, our government gives recognition to the fact that our fishers were discriminated against in terms of the individual quota system. In other words, this is the same as saying that the individual transferable quota system is unconstitutional”.

Coastal Links and Masifundise is now working together with the government on the implementation of the new policy. This is a process that is not completed over night, and Maria Hoffman has learned that it takes time to change a system that is rooted in colonialism. “First we won against Apartheid, and then we should struggle another two decades to get our fishing rights back. Its been a life-long struggle, but our sons and daughters will now have better opportunities in life. That's really what matters”, says Mr. Hoffman.

For more information:

Coastal Links

Chairperson, Christian Adams

Member of executive committee, Maria Hoffman

Naseegh Jaffer, Masifundise

Further reading:

Emerging proposals for tenure governance in small-scale fisheries in South Africa. Sunde, Jackie and others (2013), University of Cape Town and Legal Resource Centre, Cape Town. In: Land Tenure Journal vol. 1, 2013

Individual transferable quotas, poverty alleviation and challenges for small-country fisheries policy in South Africa. Isaacs, Moenieba (2011), University of Western Cape, South Africa, MAST 2011, 10(2): 63-84.

Fishing rights vs human rights? : South Africa : Fisheries Management. By Naseegh Jaffer and Jackie Sunde

<http://www.icsf.net/en/samudra/detail/EN/2529.html?detpag=mapart>