

## Inputs for Fisheries Report: The Right to Food and Securing Sustainable Small-Scale Fisheries

For attention: The United Nations Special Rapporteur on the Right to Food

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### Introduction

Failure to adopt a human rights-based approach to ocean and fisheries governance is impacting small-scale fishers' right to adequate food and undermining the sustainability of small-scale fisheries.

### The main challenges facing small-scale fishers in South Africa in securing the Right to Food and sustainable small-scale fisheries

1. Implementation of Blue Growth policy in South Africa, known as the 'Operation Phakisa Ocean Economy', is marginalising small-scale fishers (SSF) through the power disparities, politics and the specific methodologies that are used in ocean and coastal governance and development. In particular, the way in which the neo-liberal, capitalist state is conceptualising the ocean as 'open access', enabling powerful industrial interests to capture ocean and coastal development opportunities, undertake coastal and offshore mining and oil and gas exploration and, in the process, undermine SSF tenure rights, is most concerning (Sowman, Mbatha and von Holdt 2023).
2. South Africa is currently implementing an aggressive, fossil fuel exploration and production policy in South Africa. 98% of South Africa's Exclusive Economic Zone (EEZ) has been allocated to oil and gas companies in concessions (CER 2017). In the past 18 months the State has approved six oil and gas exploration applications for environmental authorization that include both seismic surveys and exploratory drilling and two more are currently under consideration. This is in addition to two existing production rights. Oil and gas exploration and production has known impacts on small-scale fisheries (Andrews *et al* 2021). This is threatening the sustainability of small-scale fisheries and has dire consequences for small-scale fishers who depend on access to the marine resources for their livelihoods and the material basis of their culture. In this context, their right to food is indivisible from their other human rights such as their right to a safe and healthy environment, their right to dignity, to practice their occupations and their cultural and customary rights. These applications have failed to recognise and respect the SSF customary and cultural rights in the ocean commons with concomitant impacts on the human rights of small-scale fishers (<https://oneoceanhub.org/publications/a-seismic-shift-a-coalition-of-fishing-communities-activists-and-lawyers-has-come-together-to-keep-the-coasts-and-oceans-of-south-africa-free-of-the-destructive-blue-economy-agenda>). This is contrary to the VG Tenure, the SSF Guidelines, the CBD articles 8j and 10c. The Minister of Energy and Minerals has openly criticized the fishers' as being "anti-development" for their stance against fossil fuel exploration in their traditional fishing grounds. This is in violation of the rights of indigenous fishers to choose their own path to development as protected in the UNDRIP, African Charter on Human and People's Rights.
3. Planning for the expansion of marine transport, ports and energy infrastructure fails to consider the environmental impacts on neighbouring coastal communities and ecosystems. EIAs are undertaken on a narrow, project specific basis without regarding the dynamic nature of ocean and coastal ecosystems and adequately assessing the cumulative impacts associated with these developments. The interdependence of the right to a healthy environment and to sustainable development has been confirmed in Constitutional jurisprudence (*Fuel Retailers Case 67/06, ZACC 13 (2007)*), but is not being adhered to by the national authorities in decision-making processes regarding the issuing of environmental authorizations and permits.

4. Fisheries policy continues to prioritize industrial fishing fleets over small-scale, artisanal fleets. This is evidenced in issues such as the failure to prioritise and give preferential access to small-scale fishers to near shore species through measures such as priority or exclusive zones, and in the continued permits issued to the industrial trawl sector that enables them to catch snoek (*Thyrites atun*), as bycatch. Snoek is a staple food security specie.
5. The national fisheries authority has failed to implement a co-management approach to SSF fisheries governance despite this principle being entrenched in the Policy for Small-scale Fisheries adopted in 2012 and in the International Small-scale Fisheries Guidelines.
6. Women's contribution to the value chain in the traditional line fish sector provides multiple sources of food to different groups in a community but is not factored into fisheries policy making and rights allocation.
7. Small-scale fishers lack adequate cold storage, infrastructure and access to space for post-harvest activities that would enable them to maintain the quality of their fish, thereby enhancing food security.

Small-scale fishers have responded to these challenges with extensive advocacy strategies and transdisciplinary collaborations with NGOs and marine (fisheries and biodiversity sciences) and social scientists (Sunde 2022, Pereira and Erwin 2023, One Ocean Hub Coastal Justice Network 2023). They have achieved notable successes in building solidarity through litigation. In particular, three High Court Judgements handed down in the past 18 months address the right to adequate consultation, recognition of customary rights and the impact of Oil and Gas exploration on the human rights of small-scale fishers, including the right to food (*Sustaining the Wild Coast NPO and Others vs the Minister and Others 2021 (3491/2021)*, *Christian Adams and Others versus the Minister and Others (1306/2022)*, *Sustaining the Wild Coast and Others ZAECMKHC 2022*).

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## References

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