



LEGAL RESOURCES CENTRE

NPO No. 023-004

PBO No. 930003292

3rd Floor Greenmarket Place • 54 Shortmarket Street • Cape Town 8001 • South Africa • www.lrc.org.za

PO Box 5227 • Cape Town 8000 • South Africa • Tel: (021) 481 3000 • Fax: (021) 423 0935

Our Ref: WW/HS/SJF

24 May 2013

The Director-General
Department of Agriculture, Forestry and Fisheries

For attention:
Mr Dennis Fredericks
DIRECTOR: INSHORE FISHERIES MANGEMENT
3rd Floor
Foretrust Building
Cape Town

By email: DennisF@daff.gov.za

Copy: Mr S Sibiyia
Small-Scale Fisheries Management

By email: SandileS@daff.gov.za

Dear Mr Fredericks

COMMENTS ON THE DRAFT MLRA AMENDMENT BILL

1. The Legal Resources Centre (LRC) is an independent non-profit public interest law clinic which uses the law as an instrument of justice. It works for the development of a fully democratic South African society based on the principle of substantive equality, by providing free legal services for the vulnerable and marginalised, including the poor, homeless, and landless people and communities of South Africa who suffer discrimination by reason of race, class, gender, disability or by reason of social economic or historical circumstances.
2. In the area of land and other resource reform, the LRC's work has a strong focus on law and policy reform and active collaboration with other stakeholders. Relevant litigation with which the LRC has been actively involved are:

2.1. Kenneth George and Others v Minister of Environmental Affairs and Tourism, EC 1/2005. 2 May 2007 ("KG 1")

2.2. *Kenneth George and Others v Minister of Agriculture , Forestry and Fisheries*, EC 1/05 30 April 2010 (“KG 2”)

2.3. *S v Gongqose and 2 Others* E382/10 22 July 2012 (unreported)

2.4. *Alexkor Ltd v The Richtersveld Community* 2004 (5) SA 460 (CC)

3. The LRC writes on the instructions of Masifundise Development Trust and Coastal Links, two organisations who represent small scale fishing communities along the coastline of South Africa.
4. The LRC’s interest in submitting these comments also relates to our representation of the fishers who challenged the Minister in the Equality Court in 2005 and again in 2010. That litigation culminated in the small scale policy which was finally gazetted in June this year and which is the subject of these amendments. It is our duty to report to our clients whether the Minister is complying with the Court Order, handed down on 2 May 2007, compelling the Minister to

“develop a new legislative and policy framework to accommodate traditional fishers more effectively. The framework will be developed taking into account the principles and objectives contained in section 2 of the Act and should take into account international and national legal obligation and policy directives to accommodate the socio-economic rights of these fishers and to ensure equitable access to marine resources for those fishers”.

5. The amendments to the MLRA fall within the parameter of the Court Order in ensuring that the rights of our clients, including the communities represented by Masifundise and Coastal Links, are realised.
6. Moreover, we represented the members of the Hobeni fishing community who defended themselves against the charge of intention to fish illegally in terms of the MLRA on the basis that they had a constitutionally protected right to do so arising from their community’s customary system. We will also have to report to them whether the MLRA will continue to infringe upon these rights in a manner inconsistent with the Constitution. These clients have instructed us to challenge the MLRA on its current version.
7. It goes without saying that all our clients are anxious to see the new small scale policy implemented to have their rights realised. They have already waited too long. Given that fishing is, for many of them, a matter of life and death, the urgency of this process can hardly be over-emphasized. However, they are as anxious to see the policy implemented properly both through a dedicated implementation plan and through the thoughtful amendment of the MLRA.

8. Our submissions attached hereto deals with the following issues:

- 8.1. Introduction: the perceived need to amend the MLRA prior to implementation of the SSFP
- 8.2. Procedural objections
- 8.3. The need for the MLRA to facilitate effective implementation of the SSFP in the long run
- 8.4. The Minister's duty under the Constitution, the MLRA and customary law
- 8.5. The consideration of international and foreign law
- 8.6. Section specific comments

Yours sincerely

LEGAL RESOURCES CENTRE

Per:

WILMIEN WICOMB