THE FISHER PEOPLE TRIBUNAL IN SOUTH AFRICA

PRELIMINARY JURY STATEMENT

(This statement was prepared by the Jury Members for the Fisher People Tribunal)

Tribunal Session:

12-14 August 2024

Cape Town, South Africa

Jury Members:

- Uche Ewelukwa Ofodile
- Ben Cousins
- Miloon Kothar
- Gianni Tognoni
- Makoma Lekalakala
- Andy Johnston
- Paula Satizabal (jury support)

Pre-verdict Statement Issued on:

23 October 2024 at the Fisher Peoples Conference

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Introduction

The South African Fisher People's Tribunal was convened by Coastal Links and Masifundise and held on 12-14 August 2024 at the Holy Trinity Church in Kalk Bay, Cape Town. This was a historical moment for coastal and inland fishing communities in South Africa and globally, following the global mobilisation of Ocean, Waters and Fisher Peoples' Tribunals held since 2020 in Sri Lanka, Thailand, Indonesia, India East Coast, Bangladesh, India West Coast, and Brazil.

The Fisher People's Tribunal is a critical step in the ongoing struggle for the recognition and protection of fisher peoples' rights. It serves as a platform to expose and document human rights violations, reflect on the over 20 years of struggle, and as a celebration of the livelihoods, culture, and invaluable role of traditional and customary, subsistence and artisanal fishers (hereafter referred to as small-scale fishers) as food providers and knowledge holders.

The Jury issues this preliminary statement based on both the charge sheets and the evidence presented by small-scale fishers in the course of the Fisher Peoples' Tribunal. The insightful and moving testimonies of six case studies presented by coastal and inland small-scale fishers themselves form the main basis of this statement and the final verdict that will be released by the Jury in due time. Our statement, at this stage speaks to the problems, challenges and dilemmas currently experienced by small-scale fishers. As we present this statement, we seek to honour the resilience and strength of small-scale fishing communities and reaffirm our commitment to their continued struggle for food sovereignty, climate justice, and the protection of their livelihoods and cultural heritage.

Key emerging issues

The evidence from the Tribunal hearings and supporting documents presented to the jury strongly bear out and support the detailed indictments of actions by the South African government at all levels (national, provincial and local) drawn up by eminent legal teams representing Coastal Links and Masifundise. Taken together, these sources form a strong basis for an overall assessment of the past, present and (potential) future(s).

(i) Sustained mobilisation and advocacy by civil society groupings were required to put a small-scale fisheries policy in place after 1994, and will continue to be necessary

The post-apartheid era beginning in 1994 has seen the advocacy efforts of fishers and their allies in civil society, but few substantive gains as yet. The first legal and policy frameworks in relation to small-scale fisheries adopted in the early years of democracy were highly flawed, and huge efforts were required over many years to make them more progressive and pro-poor in character. This is evident in accounts of various forms of civil society engagement with successive versions of law and policy:

- The need to amend the problematic Marine Living Resources Act of 1998.
- The Fisher People's Human Rights Hearings of 2003.

- Successful litigation arguing that the South African government had failed to formally recognise and provide for small-scale fishers (George K. and others vs Minister of Environmental Affairs and Tourism, 2005).
- The establishment of a National Task Team in 2007.
- Adoption of a progressive and visionary Small-Scale Fisheries Policy (hereon SSF Policy) in 2012.
- Amendment of the Marine Living Resources Act in 2014.
- National Freshwater (Inland) Wild Capture Fisheries Policy (hereon Inland Fisheries Policy) in 2022.
- Successful litigation in 2018 in relation to the need to recognize and support customary rights to fish by rural communities.
- Advocacy to re-do the verification of individuals seeking to be recognized as small-scale fishers in 2019.

Key actors who voiced support for small-scale fishers in these processes of policy engagement were Coastal Links, Masifundise Development Trust, the Artisanal Fishers Association, Trust for Outreach and Education, the Legal Resources Centre, and several academics and researchers. These actors played crucial roles in policy development, litigation and providing evidence of the significance of coastal, marine, and inland spaces, environments, and resources for livelihoods, poverty reduction, and as central to the traditional cultures and ways of life of small-scale fishing communities.

The jury heard compelling evidence that the regulations adopted by the government in 2016 to guide implementation of the 2012 SSF Policy directly contradict and undermine the spirit and workings of this policy. Indeed, the government and its agencies consistently fail to recognise and support small-scale fishers' customary right to fish and to protect the human rights of small-scale fishing communities.

(ii) Progressive policies are contradicted and undermined by regulations and inadequate implementation

The SSF Policy of 2012 has many positive features strongly supported by small-scale fishers and their allies specifically designed to operationalise and promote a human rights-based approach to fisheries. These include preferential access to near shore species, the allocation of multiple species, and a collaborative co-management approach to fisheries, including marine protected areas (MPAs), to ensure sustainability, gender equity and support for building supply chains that result in maximum benefits to small-scale fishing communities.

Despite these exemplary goals, in practice, as revealed by the evidence presented, the implementation of the SSF policy has been exclusionary, discriminatory and led to violations of human rights supposedly guaranteed by the Constitution of South Africa, **failing to**:

- Adopt a community-oriented and participatory approach.
- Grant all small-scale fishers fishing permits to safeguard their access to their traditional fishing grounds.
- Allow small-scale fishers to freely select the community-based legal entity of their own choice and instead impose business-oriented co-operatives, at times forcing the clustering of groups of small-scale fishers living in rural and remote areas into larger cooperative structures.

- Offer adequate processes of training and capacity building required for registration and management of co-operatives, including governance responsibilities and functions.
- Consider the diverse coastal realities of small-scale fishing communities using a one-size-fits all approach to implement the policy, which further marginalises and excludes rural and remote small-scale fishers.
- Offer sufficient information and support for the verification and registration of fishing rights.
- Include and protect the rights of youth, women, and customary small-scale fishers.
- Allocate species to small-scale fishers that align to those present in their fisheries and which have been historically important in local diets and traditions.
- Apportion adequate species allowances to protect coastal food security and ensure the sustainability of small-scale fisheries.
- Offer adequate resources to small-scale fishers as compared to the commercial and recreational sub-sectors.
- Develop mechanisms to ensure that customary rights and customary systems of law are operationalised and integrated in contextually appropriate ways
- Ensure that small-scale fishers' traditional rights are respected within inland and marine protected areas, including Nature Reserves and Marine Protected Areas (MPAs).
- Adequately identify and recognise bona fide fisherwomen as part of the SSF Policy verification and implementation process, leading to exclusion of women.
- Address the particular needs of fisherwomen, including access to traditionally harvested intertidal resources for livelihoods purposes and support towards the development of local value-chain and territorial markets.

In the context of inland fisheries, the evidence presented to the Fisher People's Tribunal indicates that the delays in the implementation of the Inland Fisheries Policy results in the ongoing lack of substantiantal recognition of fishing as a livelihoods activity, denying fishers from secure access and tenure over inland fisheries.

The failures in the implementation of these policies in relation to inland and marine fisheries contribute to the historical marginalisation of small-scale fishing communities in South Africa, driving their criminalisation, displacement and dispossession from their customary use, tenure, and access rights.

(iii) Government is biased towards commercial fisheries and the open access recreational sector

Overwhelming evidence showing a strong governmental bias against small-scale fishers and in favour of both the commercial and recreational subsectors. These include:

- The failure to develop an integrated approach to the governance of fisheries and allocation of fishing rights, instead continuing with a piecemeal approach to small-scale fisheries alongside the continued preferential focus on commercial and recreational fisheries.
- The failure to provide small-scale fishers with preferential access to traditional fishing grounds, despite provision to this effect in amended legislation.
- The failures to apportion viable baskets of species to co-operatives of small-scale fishers which would make them sustainable.
- Requiring that species requested for commercial purposes may not be used for own consumption, and vice versa.

- Issuing own consumption permits based on recreational bag limits.
- Failing to transfer and allocate adequate total allowable effort and total allowable catch timeously from the commercial and recreational sectors to the small-scale sector.
- The failure to recognise the importance of intertidal species such as oysters and mussels for small-scale fisherwomen, customary fishers, and new generations of fishers.
- Introducing capital intensive, high value species in some small-scale cooperative's baskets prior to adequate planning and training to manage the complexities of these fisheries and their value chains (such as squid and abalone ranching).
- A bias towards species development for commercial use in the Western and Northern Capes and a neglect of the development of the basket of species and concession areas for commercial use in Eastern Cape and Kwazulu Natal provinces

The negative impacts of the governmental failures listed above were repeatedly highlighted by fishers. Many of the families of small-scale fishers struggle to sustain their fishing ways of living and to put enough food on the table, and are grossly food insecure.

(iv) Problematic assumptions and biases against small-scale fishers are rooted in fundamental economic policy choices by the post-apartheid state, premised on pro-market and pro-business paradigms

The jury has puzzled over the question of why South African fisheries governance is discriminatory against small-scale fishers in such an overt manner to staggering testimonies of fishers who detailed better conditions, livelihood opportunities, and access to traditional fishing grounds during the colonial and Apartheid era of racialised and socio-economic exclusion. The answer seems to lie in the nature of the compromised transition to democracy in 1994, constraints on the new ruling party, but also the class character of the settlement.

The bias against small-scale fishers appears to reflect many of the basic policy choices made by the new democratic government, which had a neo-liberal character, with a preference for retaining the overall structure of the economy rather than transforming it fundamentally.

Small-scale fishers and farmers, unlike many other countries in Africa and Asia, were greatly reduced in number as a result of massive dispossession during the colonial and Apartheid period and by the growth of large-scale and industrialised fisheries, agricultural, mining and other sectors dominated by the racial elite. Post-apartheid reforms on land and other natural resources fail to provide support to small-scale fishers, and very few have benefitted from redistribution of land.

Pro-business policy choices also underpin the support offered by the government to extractive industries such as mining and fossil-fuel based energy production. In this context, Operation Phakisa, the Ocean Economy Masterplan and the Marine Spatial Planning Bill facilitate the allocation and use of coastal land and ocean space for oil and gas offshore exploration, while failing to recognise the principle of preferential access for small-scale fisheries. As clearly explained to the Jury, extractive industries are currently very active in exploring for, and exploiting onshore, nearshore, and offshore sources of oil and gas, as well as extracting heavy minerals from onshore sands. All these activities benefit large corporations and negatively impact on ocean and riverine environments, biodiversity and abundance of species, as well as on the health, livelihoods, and wellbeing of small-scale fishing communities.

As the hearings' testimonies evidence, this is all taking place in the context of the expansion of coastal grabbing via privatisation of inland and marine coastal areas for tourism, coastal development and exclusionary forms of conservation, which contribute to the displacement and dispossession of marginalised small-scale fishing communities from their traditional lands, coasts and fishing grounds.

(v) Foreign and domestic corporations' impact small-scale fishing communities and their coastal marine and riverine environments in the context of limited recognition of their land rights, legal consultation requirements, and irregularities in environmental impact assessments

The evidence provided pointed out how fishing communities have been consistently opposing extractivism and profit-making in the context of energy production, in particular the expansion of coastal mining, offshore oil and gas explorations through seismic blasting and drilling and green hydrogen. and they were often not properly consulted in the Environmental Impact Assessment (EIA) processes, effectively excluding them from decision-making processes that directly affect their lives and livelihoods, impacting their access to vital resources, deepening existing inequalities.

Furthermore, the government has neglected to properly consider the cumulative impact of extractive activities on coastal communities, particularly the damaging effects on the environment, which directly affects the livelihoods of small-scale fishers. The hearings revealed that the state is prioritising corporate interests in coastal communities, in which the socio-economic and cultural value and significance of small-scale fisheries is completely ignored, resulting in the marginalisation of fishing communities and erosion of access to fishing ground and coastal land. The testimonies also highlight how corporations and actors within the states carried out efforts to dissipate dissent and opposition in coastal fishing communities, providing school supplies or even offering jobs to key fisher leaders, promoting narratives of job creation and deeming environmental, SSF and climate activists "as anti-development".

Based on the evidence presented, the government has failed to uphold the principle of preferential access for small-scale fishers as set out in the SSF Policy. In restricting access to fish the government has made it harder for fishers to sustain their local economies, culture and livelihoods. Combined with the environmental damage caused by unsustainable extractives and industrial practices, this has led to reduced access to the resources essential for their survival. The Tribunal's findings highlight the government's failure to protect the interests and rights of small-scale fishers, leaving them vulnerable to both environmental and economic pressures that threaten their way of life.

(vi) Criminalisation and displacement of small-scale fishing communities via privatisation, fortress conservation and disaster management

Deeply moving and disturbing testimonies of criminalisation and violence towards members of fishing communities were heard at the hearings, including women and youth at the hand of park rangers and conservation authorities, both in the context of inland and coastal fisheries. The lack of proper training and oversight has led to ongoing harassment and violence against small-scale fishers and community members, with no adequate steps taken to investigate, dissuade, discipline, or prosecute rangers involved in these abuses. This failure has further deepened the mistrust between local fishing communities and the authorities.

Moreover, the testimonies highlighted how the government's focus on 'fortress' conservation, which views small-scale fishers as a threat to conservation goals, has resulted in the unjust prioritisation of environmental protection over the rights of these communities. This approach has led to the unreasonable banning of small-scale fishers from key fishing areas within parks and marine protected areas (MPAs), as well as restricting their access to traditional fishing grounds.

The Tribunal also found that both the government and conservation agencies failed to meaningfully consult with small-scale fishers when developing management plans for nature reserves and MPAs. This failure to engage with the affected communities and develop appropriate co-management arrangements has not only disregarded their rights but also contributed to the exclusion of their customary fishing practices from formal recognition for communities that have customary systems of law. Despite the establishment of the small-scale fisheries sector, the government has not taken any steps to review the national legislation pertaining to the declaration of protected areas in light of the policy for small-scale fisheries or to understand or incorporate the customary systems, limiting rather than realising the fishing communities' rights to resources.

Additionally, the government has failed to produce workable regulations, given the geographic and logistical realities of fishing areas. The strict categorisation of species as either for 'own consumption' or 'commercial' has ignored how these fish and mussels sustain families and provide much-needed income. As highlighted in the testimonies from South KZN, displacement of fishers and particularly of fisherwomen and mussel harvesters is also a result of climate change and environmental disaster. In this context, it is important to emphasise the lack of attention towards small-scale fisheries, which are disregarded in the development of climate change adaptation and resilience strategies, and not supported to cope with the impacts of environmental disasters and pollution.

(vii) As outlined in the points above, the human rights and environmental crisis impacting on the lives and livelihoods of the fishers in South Africa calls into question the countries commitment to its Constitutional provisions and international human rights obligations

The testimonies point to the violation of a range of provisions in the South African Constitution and international human rights instruments ratified by South Africa. A more detailed list of these violations will appear in the final verdict of the Jury. We can, however, already identify some key instruments whose provisions the South Africa government and its agencies, as well as foreign and domestic third-party actors have breached due to their treatment of small-scale fishers:

Constitution of South Africa

- Right to Food (Section 27 (1) (b)).
- Right to Culture (Section 30).
- Right to Environment (Section 24).
- Right to Housing and protection from forced evictions (Sections 25 and 26).
- Right to Equality and Non-Discrimination (Section 9).
- Right to Dignity (Section 10).
- Right to Freedom of Trade (Section22).

- Right to Life (Section 11).

Regional instruments

- African Charter on Human and Peoples' Rights.
- Resolution on the Recognition and Protection of the Right of Participation, Governance and Use of Natural Resources by Indigenous and Local Populations in Africa.
- Resolution on a Human Rights-Based Approach to Natural Resources Governance.

International Human Rights Instruments

- International Covenant on Economic, Social and Cultural Rights (ICESCR).
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
- Convention on the Rights of the Child (CRC).
- International Covenant on Civil and Political Rights (CCPR).
- Convention on the Rights of Persons with Disabilities (CRPD).
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
- UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP).
- UN Declaration on the Rights of Indigenous Peoples (UNDRIP).
- UN Basic Principles and Guidelines on Development based Displacement and Evictions.
- FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT).
- FAO Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication.
- Convention on Biological Diversity (CBD).
- Akwe Kon guidelines.
- Tkarihwaié:ri Code of Ethical Conduct.
- Mo'otz Kuxtal Voluntary Guidelines.

The jury notes that small-scale fishers have used litigation as a strategy to protect and uphold their human rights, leading to several legal victories. However, despite these victories strengthening the legal framework protecting fishers' rights, litigation has produced limited positive outcomes for fishing communities, as state authorities have failed to implement the court orders or review legislation impacting fishers in the light of the jurisprudence emerging from these cases.

Conclusion

There is a growing recognition around the world that the capitalist neoliberal model of development is highly flawed and underlies growing disparities between a small global elite of ultra-rich people and the majority of the population. Many voices are calling for radically different approaches that place democratic states, representing the interests of the larger and

more vulnerable section of the population, at the centre of alternative models of development and also alternatives to development. Capitalism and colonialism have also been identified as the root causes of fossil fuel-driven climate change and the ecological crisis, since they promote an extractive approach at the expense of people and the environment. Given that social, economic and environmental crises are getting worse, the search must be for viable alternative policy and implementation frameworks that respect the human rights of small-scale fishers among other marginalized populations.

There is a need to examine the contributions of small-scale fisheries to food security, as well as their significance within wider livelihood strategies, and the sustainability of small-scale fisheries and harvesting practices as guided by traditional and Indigenous knowledge. It is important also to examine the cumulative impacts of different sectors on fish abundance and coastal marine and riverine ecologies. This would help increase the credibility and appeal of alternative policies and demand accountability, justice and reparation from state and third-party actors benefiting from an economy of elite and foreign plunder.

Litigation in defence of rights or in pursuit of justice will remain a key weapon of struggle. In addition to seeking relief, litigation could also be used as a means of mobilising wider support within society for alternative models and policies. However, as noted by the many victories of small-scale fishers in taking the government and corporations to Court, litigation is not enough and other forms of social and political mobilisation are needed.

Preliminary recommendations

The Jury recognises that the South African government, at all levels, must be held accountable for the current crisis through which small-scale fishers demonstrate evidence of negative impacts on constitutional rights. This situation also calls into question South Africa obligations to international human rights instruments.

The South African government needs to recognise the small-scale fishing community as a viable section of the population that requires priority attention to ensure that they live with respect to their dignity and fundamental human rights.

This would involve reconsideration of the government's current high level of support for commercial companies, and its lack of oversight of the recreational sub-sector. As well as calling out the blatant discrimination and uneven impacts on racialised fisherwomen, children and youth.

Fishing communities and their diverse groups and traditional knowledge should be central in the governance of oceans and inland waters. A governance that should grant access, control, autonomy, and sovereignty to fishing communities over their traditional territories. There is a need for a redistributive model of fisheries management that grants small-scale fishing communities the autonomy to develop their own place-based and participatory fisheries management agreements following customary laws.

The South African government should be urged to adopt a conservation approach that respects customary fishing rights, the rights of small-scale fishers and values Indigenous knowledge in protecting biodiversity. This should guide their policies, the expansion of marine protected areas (MPAs) and the violent enforcement of conservation in inland and marine protected areas

is incompatible with a human rights-based approach to small-scale fisheries, threatening the livelihoods and cultures of small-scale fishing communities in South Africa.

It is urgent to establish an inquiry on the use of excessive force by park rangers in protected areas where evidence of killings, shootings and intimidation was presented by the witnesses. Moreover, mobilise against the arming of park rangers and the killing of small-scale fishers, ensuring proper training of rangers and mechanisms to investigate instances of violence.

South Africa needs to respect the provisions of the international human rights instruments it has ratified. South Africa regularly reports to the UN treaty bodies that monitor compliance with these instruments. South Africa is an active participant in the UN's Universal Periodic Review (UPR). South Africa's reports to these UN bodies need to reflect the true situation of small-scale fishers.

While this Fisher People's Tribunal is not operating as a formal judicial body, we feel compelled to issue this statement, based on national and international law and evidence from the testimonies presented to us. We, therefore, offer our statement and call on the South African government to pay serious attention to the findings and urge the government to take concrete and urgent action to fully comply with its national and international commitments.