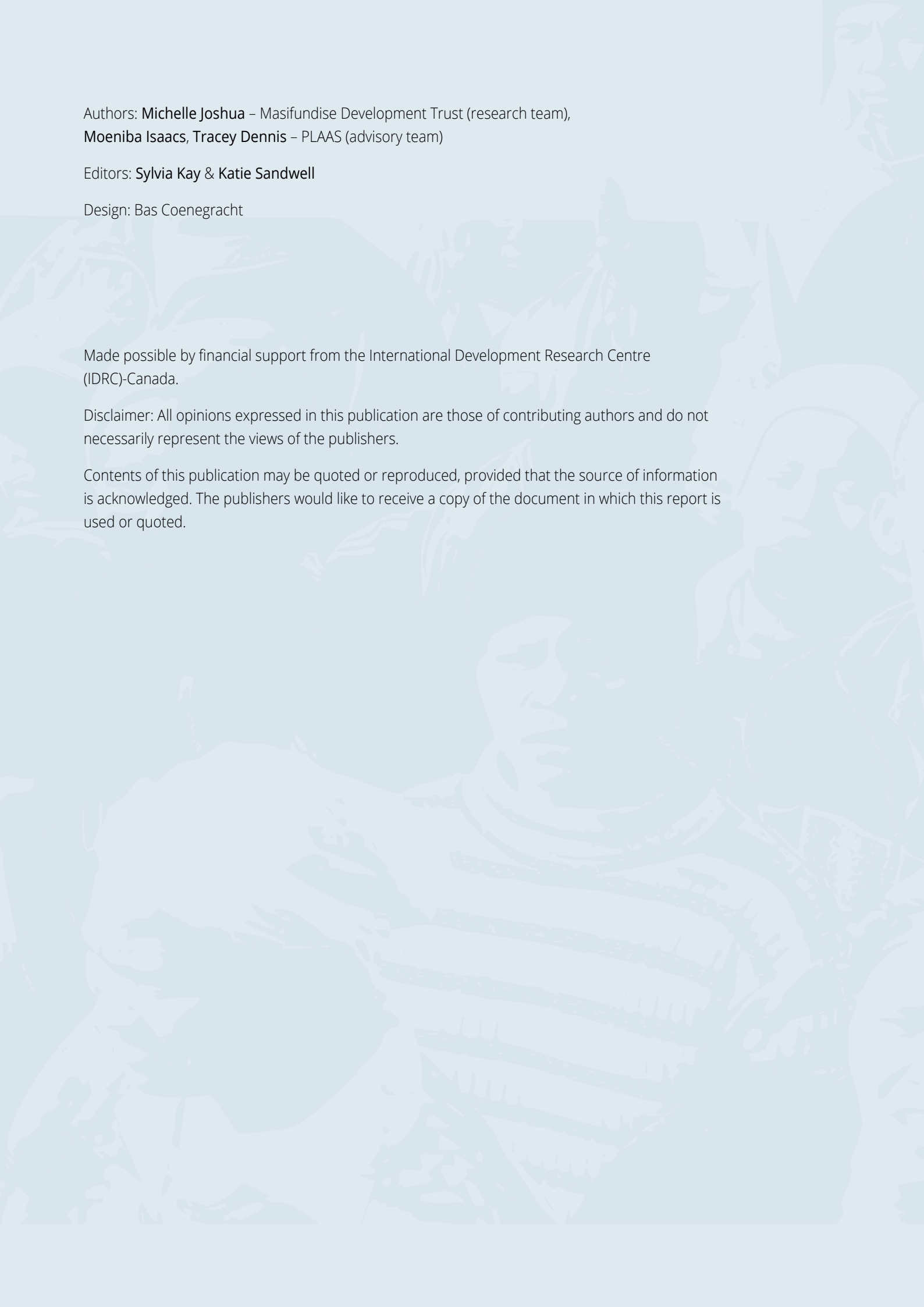




Bottom-up Accountability Initiatives to Claim Tenure Rights in Sub-Saharan Africa:

Country Report on South Africa



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List of Acronyms

ANC	African National Congress
BOR	Bill of Rights
CCMA	Commission for Conciliation, Mediation and Arbitration
CNC	Cape Nature Conservation
CL	Coastal Links
DA	Democratic Alliance
DAFF	Department of Agriculture, Forestry and Fisheries
DEA	Department of Environmental Affairs
DEAT	Department of Environmental Affairs and Tourism
DENEL	Name of the weapon testing plant in Arniston
DG	Director General
EC	Eastern Cape
EEU	Environmental and Evaluation Unit
FAO	Food and Agriculture Organisation
IR	Interim Relief
ISC	Integrated Steering Committee
ITQ	Individual Transferable Quota
KZN	Kwazulu Natal
LRA	Land Restoration Act
LRA	Labour Relations Act
LRC	Legal Resources Centre
MCM	Marine Coastal Management
MDT	Masifundise Development Trust
MLRA	Marine Living Resources Act
MPA	Marine Protected Areas
NEMPAA	National Environmental Management: Protected Areas Act
ORC	Overberg Review Committee
OTB	Overberg Testing Base
PMG	Parliamentary Monitoring Group
RSA	Republic of South Africa
SAHRA	South African Heritage Resources Agency
SSF	Small- Scale Fishing
VGGT	Voluntary Guidelines
WFF	World Wide Fund for Nature
WFFP	World Forum for Fisher Peoples
WSSD	World Summit on Sustainable Development

Summary of the research

This section summarises an on-going action-research project run by Masifundise Development Trust (MDT), an NGO working to empower Small-Scale Fishers (SSF) in the Republic of South Africa (RSA). The research examines the ways in which in one community, Arniston in the Western Cape's South Coast region of South Africa, access to tenure rights are impacted by various governance arrangements. The research project uses the FAO Voluntary Guidelines on the Responsible Governance of Tenure of land, fisheries and forests in the context of national food sovereignty (hereinafter 'the tenure guidelines' or VGGT) as a tool to assess the impact of various governance frameworks on small scale fishing communities and uses the guidelines to empower communities to protect their tenure rights in the context of promoting their food sovereignty. This research unpacks the experiences of a small-scale fishing community who face different struggles as a result of governance structures impinging on their fishing rights and food sovereignty. This community is adjacent to a Marine Protected Area (MPA) and this case illustrates how MPAs impact small scale fishers' tenure rights, and how communities resist and negotiate the challenges of exclusion. Furthermore, this research examines other governance frameworks such as the soon to be implemented Small-Scale Fishing (SSF) policy and how it complements the rights enshrined in the VGGT.

Preliminary findings suggest that the fishers have great insight into the ecosystem and, because it is their only source of income, they have great respect for marine resources and the protection thereof. Their historical tenure arrangement, which was more collective than individual, ensured food sovereignty for the entire community and protected their human dignity as a people. Crime was almost non-existent and the general wellbeing of the community was marked by a harmonious life style where they were all equals. Their daily catch and fish was freely bartered with neighbouring farmers for vegetables and sometimes meat. According to members of this fishing community, Arniston used to have a rich tradition of making sour fig jams. These jams would be sold at community festivals. Today the farms are privately owned and the fishers need to get permission from the farmer, and a permit from Cape Nature Conservation (NCC), to be able to continue to make the jam. They feel that they are being squeezed out of their tradition and culture. In the view of this fishing community, today players like Government and conservation agencies have impinged on their tenure, as well as their fishing rights and food sovereignty. They believe that, without the interference of new policies and legislature, Arniston would have been a thriving community today.

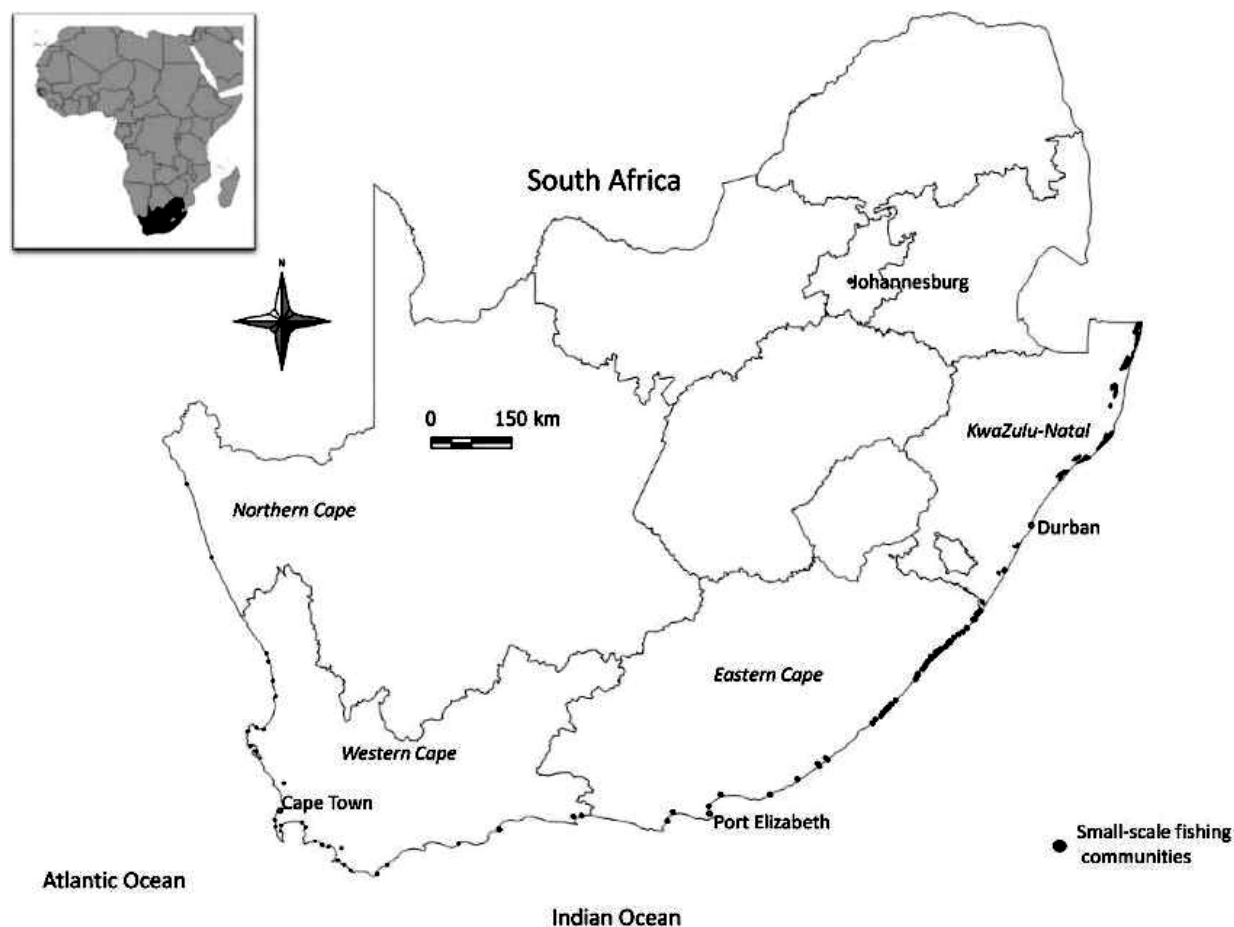
Further to this, the research shows that the impacts of decisions made outside of the discussions with the fishing community of Arniston continue to jeopardize their access to food sovereignty and are in direct opposition to their basic human rights to food, security, freedom etc. They are extremely vulnerable, especially during the winter months as they can no longer access the vywes (fishing traps made with rocks) to harvest fish trapped in them. The women have also lost access rights and freedom to access intertidal resources, and therefore food security, during winter months.

They also fear that now that the 2016 elections are over, the Department of Agriculture, Forestry and Fisheries (DAFF) may not have the political will to implement the SSF policy. Over the past 3 years most members of this community feel that they have seen great injustices in the rights allocation system and fear that they might be excluded when the right under the SSF policy is implemented. They also feel that they have been done an injustice by their forefathers who allowed DENEL to erect a weapon testing plant so close to their community. Amidst contradicting views on the

effect of DENEL on their fish stock, most of the current generation strongly feel that the relationship between DENEL and the community must be revisited and, as will be read in sections four and five of this report, they have engaged in actions and negotiations with DAFF to demand some accountability in this respect. In a nutshell, most members of this community identified the following as a threat to their future as a traditional fishing village:

- No access to food during winter months;
- Less fish in the fishing grounds due to military testing;
- No access to land and sea;
- Women are denied access to food in the intertidal zone during low tide;
- Community has become divided with an increase in intra-community conflicts;
- Education is affected during times of military testing due to lot of noise and disturbance;
- Fishers are criminalised for exercising their customary rights to land and sea;
- Customs and traditions are compromised;
- Fishers are unemployed during times of military testing because they are not allowed to engage in their livelihood activities;
- Environmental destruction because of military testing (fires, noise and air pollution, destruction of fishing grounds).

Figure 1
Map of the South African coastline



Source: M. Sowman et al. / Marine Policy 46 (2014) 31–42

1 Introduction

1.1 Background and context of the research

South Africa is situated on the southern tip of Africa. Its coastline stretches almost 3,000 kilometres (1,864 miles) from the desert border with Namibia on the Atlantic (western) coast, southwards around the tip of Africa and then north to the border with Mozambique on the Indian Ocean. The country's coastal waters are marked by two ocean currents, including the cold Benguela which sweeps up from the Antarctic along the Atlantic coast laden with plankton, providing for rich fishing grounds and the warm north-to-south Mozambique-Agulhas current on the east coast. These two currents have a major effect on the country's climate, with the ready evaporation of the eastern seas providing generous rainfall while the Benguela current retains its moisture to cause desert conditions in the west¹.

Busy harbours exist at Richards Bay and Durban in KwaZulu-Natal, East London and Port Elizabeth in the Eastern Cape, and Mossel Bay and Cape Town in the Western Cape. The newest commercial port, the Port of Ngqura, off the coast from Port Elizabeth is currently the deepest container terminal in sub-Saharan Africa. There are only two major rivers in South Africa: the Limpopo, a stretch of which is shared with Zimbabwe; and the Orange (with its tributary, the Vaal), which runs with a variable flow across the central landscape from east to west, emptying into the Atlantic Ocean at the Namibian border.

1.2 Small-scale fisher struggles in South Africa

Upon examination of any small-scale fishing community along South Africa's coast line, rivers, lakes or estuaries, one will discover that there has been a long and troubled history related to tenure rights. Despite records and oral history accounts of marine resource being used along the coast, small-scale fishers have faced on-going exclusion from key marine resources on which they have historically depended for their food sovereignty, livelihoods and culture.

During South Africa's colonial and 'apartheid' years (a system of white minority rule involving the institutionalized oppression, marginalization and disenfranchisement of those categorized as 'black', 'coloured' or 'Indian'), many small-scale fishers endured forced removals from key coastal land while white South Africans were given preferential access to key resources and had the opportunity to live along the best stretches of coastline South Africa had to offer. Many of these lands were critical not only to access fishing grounds but also to maintain a historical connection to land traditionally used for grazing, forestry and planting crops.

With the end of apartheid, South Africa's first democratic elections in 1994, and the adoption of the new Constitution in 1996, a process of redress, reconciliation and nation building was begun. However, despite the government's pledge to redress past injustices to those marginalized under apartheid, structural conditions of inequality still remain deeply entrenched in South Africa's society and many small-scale fishers remain marginalized in the new South Africa. Fishers have, for example, typically been left out of key decision making processes to declare sections of the coast Marine Protected Areas (MPA's) which in South Africa are predominantly no-take zones that exclude all fishers from harvesting marine resources along the rocky shores and fishing off the coast. Besides MPA's, tenure rights have been compromised due to growing tourism, industrialization and weapon testing.

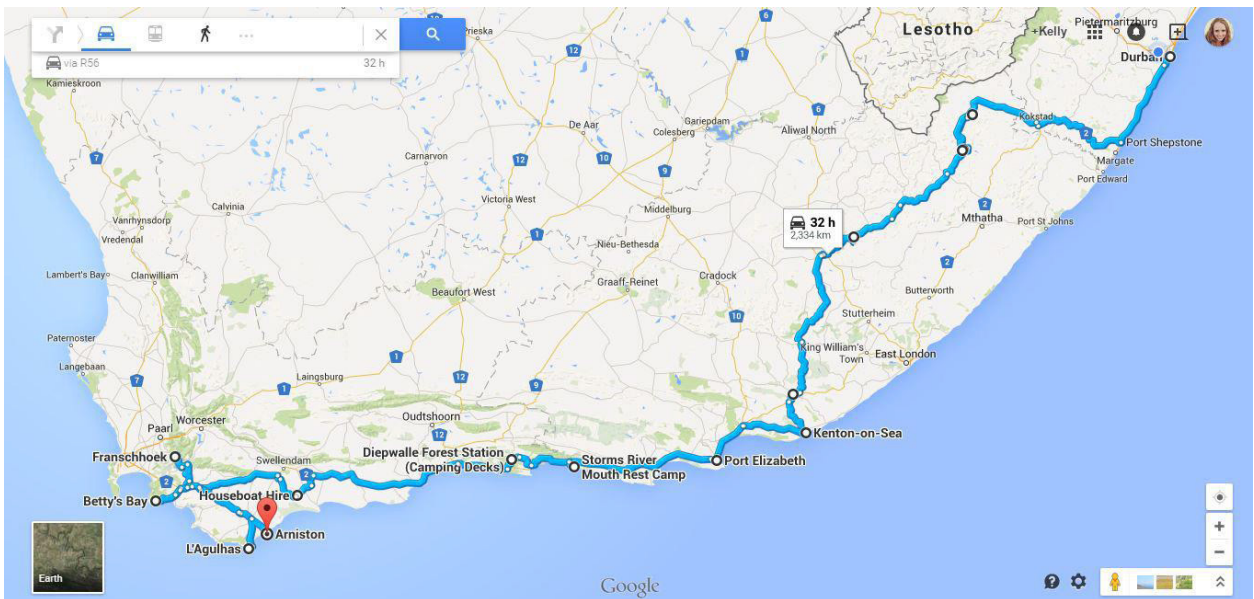
1.3 Masfundise and its engagements in defending community customary land rights/fisheries rights

Masfundise works with previously disadvantaged and traditional fishing communities who are dealing with the impact that the past and current fishery management regime has had on the social, cultural and economic life in their communities. Our development objective is to contribute towards the eradication of poverty and the promotion of food sovereignty in small-scale fishing communities by advocating for peoples' social and economic rights, with a focus equitable access to marine resource for livelihoods purposes. Masfundise has been working in the fishing communities of South Africa for 15 years and is currently serving as the International Secretariat of the World Forum of Fisher Peoples (WFFP). Today, we work in close to 100 fishing communities along all four coastal provinces of our country. Over the years, we have supported and worked closely with fishing communities on a daily basis so that they can advocate for their constitutional rights, and in particular their Human Rights in terms of Article 1 of the African Charter on Human and Peoples' Rights. In 2004, we assisted fishers in the Western Cape to establish Coastal Links, an organization that represents more than 4,000 members nationwide. Masfundise serves as the secretariat of Coastal Links, which informs and shapes our national programme.

1.4 The Tenure Guidelines and their relevance in the current South African context

Given the disconnect between our progressive legislation and the reality on the ground, this research project is highly relevant and crucial in the current context. As South Africa prepares for the roll-out and the implementation of the Small-Scale Fishing (SSF) policy in 2017, organizations such as Masfundise have an obligation to assist and empower our Coastal Links members to navigate this new terrain. The new terrain speaks directly to what the Tenure Guidelines promote and how they can be used to empower communities.

Figure 2
Map of Western Cape Site highlighting Arniston



Source: Google Maps

Under the new SSF policy, communities will need to establish for themselves what their tenure arrangements will be and unravel and unpack the myriad of governance frameworks that affect them. For example, on the Eastern Cape (EC) coast, communities must navigate the SSF policy, MPA legislation, tribal authorities, and local municipalities as well as liaising with the various governmental departments on their implementation with the Department of Agriculture, Fisheries and Forestry (DAFF) responsible for SSF policy and the Department of Environmental Affairs (DEA) overseeing the Marine Protected Areas (MPA's). In addition to this, many communities have successfully won land claims over protected areas which, in accordance with prescribed legislation on the Land Restitution Act (LRA), are governed by communal property associations. As one can imagine, it is a plethora of policy arrangements and overlapping legislative frameworks that confuse and contradict each other. Further complications arise when, for example, only some members of a community are marine resource users and therefore need different tenure arrangements to those who, for example only use the land.

As the VGGT are implemented in the context of international and national legal instruments and commitments, these various frameworks will be of key importance especially as the South African Constitution also obliges the state to take consideration of international law. Thus precedent set on the recognition of tenure rights internationally is of relevance. In addition, communities will need to be empowered to navigate the inevitable conflicts and politics around establishing their own tenure arrangements. The Tenure Guidelines will assist communities and grass roots organizations such as ours to find their way.

Figure 3
 Arniston next to the De Hoop Nature Reserve



Source: De Hoop Nature Reserve

2 The case study, research problem and questions

2.1 The case study: Fishing communities of Arniston, Overberg region, Western Cape

Arniston is a coastal community in the Overberg region on the Cape south coast, close to Cape Agulhas, the southernmost tip of Africa where the Indian and Atlantic oceans meet. It has a population of 1,677, and more than 90% of households are 100% dependent on marine living resources.

The first ancestors of the present fishing community of Arniston/Waenhuiskrans settled in the region in about 1850, probably as descendants of freed slaves. Arniston has a long, rich oral history of fishing dating back generations, with a section of the old fishing village declared a heritage site by the South African Heritage Authority (SAHA). Waenhuiskrans / Arniston is surrounded by stretches of land which are gradually being consolidated to become part of a conservation area that will stretch from Cape Agulhas to Cape Infanta. This will include the almost 36,000 hectares of De Hoop, where Armscor, now called DENEL established a missile test range in 1984. A marine reserve stretching 12 kilometres into the sea was declared in 1986².

When a portion of the fishing grounds was declared a protected area for weapon testing in 1983 the community resisted.³ As reported in the Cape Times, one fisherman argued that, “surely we people who earn our livelihood from fishing should be heard in the matter? We are fisherfolk and this is our home”⁴. Severe restrictions were placed on commercial and recreational fishing: during testing periods, commercial fishing was prohibited within a 5 kilometre-wide strip of sea extending 10 kilometres along the coast. This affected not only those who relied on fishing for a living but recreational fishermen as well⁵. Despite the protests, the proposal went ahead and the holiday-home owners, farmers and small fishing community were greatly affected.

The decision to establish a weapons testing range adjacent to the Arniston community was made in a clandestine manner. The Cape Department of Nature and Environmental Conservation, which owned much of the land, was not informed of the proposal until one week before the announcement. The provincial opposition spokesperson for nature conservation highlighted the undemocratic nature of the proposal when he said, ‘It would appear that Armscor had hoped to complete the deal before the matter became public, specifically to circumvent public debate. Where the relocation or siting of a missile testing range can affect landowners, involve the relocation of communities, deprive fishermen of their livelihood and hold enormous consequences for conservation, the public has a right to be informed’⁶. The announcement sparked enormous public outcry, which prompted the government to appoint a committee of enquiry into the environmental implications of the weapons testing range.

The committee of enquiry, known as the Hey Committee, eventually supported the establishment of the weapons testing range with an understanding that a standing committee will be appointed and charged with reviewing all management plans and policy documents relating to the De Hoop Nature Reserve, to report any deviations from the Hey Committee’s recommendations to the council, and to ensure that proper records were kept of management plans, policy documents and approved variations of the Hey Report⁷. In 1995, the Cape Nature Conservation officials concluded that they were satisfied that Armscor activities had not had an adverse effect on the environment. In fact, they argued that its presence had benefited the environment since the reserve and the marine reserve were enlarged and some types of fish had increased in number. They reported good co-operation between themselves and the Armscor subsidiary Denel. Dr. Hey also indicated that Armscor/ Denel had met all the recommendations of his committee’s report⁸. Yet many of the current generation of fishers feel that the weapon testing plant threatens their livelihoods and are calling for a review of the situation.

Arniston was selected as a case study for this action research because of its long history as a fishing community. Today, local traditional fishermen catch predominantly line fish using hand lines. Women have traditionally been involved in the pre- and post-harvest work but have also harvested inter-tidal resources like hardes, abalone, ailekrukkel, periwinkle etc. for basic food sovereignty. In addition, the community has a tradition of harvesting sour fig fruits from a coastal plant growing in the surrounding veld from which they make an edible jam. This sour fig is also used for medicinal purposes.

Arniston is one of 16 coastal communities who form part of Coastal Links network in the Western Cape Province of South Africa. In Arniston, the livelihood prospects of the community remain limited, particularly for women and youth as very little gainful employment exists outside of fishing which, as discussed, is severely compromised. Through this action research project, Masifundise seeks to strengthen its gender work within the Arniston Coastal Links branch so that the women can re-gain their confidence and their right to the inter-tidal marine resources within the new tenure arrangement.

2.2 The research problem and questions

Despite the new constitution protecting the human rights of all South Africans, small-scale fishers continue to be marginalized. The Marine Living Resources Act, 18 of 1998 (MLRA)⁹ for example, only recognised 3 sectors of fishers in South Africa: commercial, recreational and subsistence. Those who fish and sell to sustain their livelihoods were excluded. It also excluded those involved in post harvesting and other activities like bait preparation, cleaning, processing and marketing, mostly activities that women were involved in. In 2002, small-scale fishers gathered at the World Summit on Sustainable Development (WSSD) to discuss fishing policy. This triggered a civil society process to address small-scale fishing in South Africa. In 2005, the government adopted long-term fishing policies that once again excluded small-scale fishers. Later that year, Masifundise Development Trust together with traditional fishers and the Legal Resources Centre took the matter to the Equality Court which ordered that a new policy be developed to secure rights for small-scale fishers. It also called for interim relief measures to be put in place for the fishers while the new policy was being developed.

In 2007, the Department of Environment Affairs and Tourism (DEAT) convened a National Summit on small-scale fisheries to start the policy development process. The Summit elected a national task team with representatives from fishing communities to oversee the process of developing a small-scale fisheries policy and to ensure that their issues and concerns would be addressed.

In June 2012, the small-scale fisheries policy was finally adopted by the cabinet. The new small-scale fisheries policy differed substantially from the Individual Transferable Quota (ITQ) system, which was based on an individual system while the new policy is by nature more developmental and community focussed. The policy aims to provide rights to small-scale fishing communities and to ensure that they have equal access to marine resources (tenure rights). It recognizes that this sector was left behind in the past. It introduces new ways to approach the small-scale fisheries sector and specifically focuses on human rights, gender and development. The state has a key facilitating role to ensure that all objectives of the policy are achieved.¹⁰

In 2015 the Department of Agriculture Forestry and Fisheries (DAFF) began the implementation of the Small-scale Fisheries (SSF) policy which, after almost ten years of Interim Relief (IR), remains highly anticipated. Unfortunately, in the long wait for this implementation plan, IR brought more frustration than relief to many fishers. While traditional small-scale fishers originally advocated for IR, the system became riddled with problems of corruption and irregularities causing many small-scale fishers, yet again, to be denied access to marine resources.¹¹

To date, the draft regulations on how communities can establish co-operatives under the new small scale policy, along with the constitution for co-ops and lists of de-commercialised, commercialised and prohibited species, have been finalised but not made public. Masifundise and our partners, PLAAS, the EEU at UCT and the Legal Resources Centre (LRC) have commented on the draft. One of the issues causing most concern to us is that the

new regulation does not reflect the spirit in which the policy was written. In fact, if implemented along the lines of the current regulations, it will further marginalize small scale fishers, especially women. Further to this, it also does not reflect the sentiment and objectives of the Tenure Guidelines.

Hence, it can be said that, besides the weapon testing, the small-scale fishers of Arniston face the on-going challenge of recognition and gaining access to fishing rights. Despite being bonafide fishers, they have been dropped off the list for the interim relief permits due to corruption and mismanagement in DAFF. With the implementation of the SSF policy, the fishers in Arniston should have an opportunity to establish new tenure arrangements, which identify who are the fishers, where they can fish and what will be in their basket of resources. After years of conflict within the community due to IR, a process whereby the tenure guidelines can assist the fishers in navigating this tricky process is much needed and as will be seen in sections three, four and five of this report, our accountability strategy in this action research will focus on assessing the MPA, DENEL, MLRA and the SSF Policy.

As such, the following **research questions** have been identified:

- 1 What are the traditional and historical patterns of fisheries tenure arrangements of the Arniston community?
- 2 How have these arrangements and relationships been impacted by the nature reserve, weapon testing and other threats to fishers' livelihoods?
- 3 How has the community of Arniston negotiated and resisted these challenges?
- 4 What would the ideal governance of tenure be for the fishers of Arniston?
- 5 How can both the rights and responsibilities inherent in tenure relations be managed in a complex, multi-resource user and stakeholder environment?
- 6 How can the SSF policy contribute towards gender equality in Arniston through the new tenure arrangements?
- 7 What creative steps and mechanisms can be put in place to work towards enhancing gender equitable access to resources through the tenure system?

Picture 1

Reginald, a Coastal Links member and fisher describes life after the Nature Reserve was established. His presentation depicts how their catch had become limited.



Source: Photograph by MDT

3 The research methodology

This participatory action research used workshops, focus group discussions, in-depth interviews, life histories, mapping exercises, as well as stake holder analysis to gather the needed data. Each of these research methods is described in more detail below.

3.1 The research tools and techniques

A **series of workshops** on the research thematic were organised, including a **national VGGT workshop** where two participants from Arniston attended. This allowed them to build their knowledge on the VGGT and to better assess if the provisions and principles of the VGGT have been applied in the case of Arniston.

This experience also equipped them to share with their peers in a number of **local area meetings**. In the first of these meetings on 7 July 2015, two participants who attended the National VGGT Workshop shared the outcomes. Their report laid a good base for the inception of the workshop. Fishers were astounded to hear what the VGGT entails and how it is meant to assist them to secure a better livelihood. They were especially pleased to note that all was not lost, and that there was space for them begin to engage DAFF where they feel they have examples from their practices, like the fish kraal and the angling, that can contribute towards sustainable and equitable practice in the context of food sovereignty.

The second local area meeting on 1 August 2015 was attended by 24 members of Coastal Links from Arniston and had a good representation of men, women and youth. It involved a collective timeline and mapping exercise that gave the group a common understanding of their history and helped them to identify and agree on when, why and what brought change in their community and in their livelihoods. This exercise of looking back was very effective as it further helped them recall which species they traditionally harvested in their fishing area and gave them insight into some of the opportunities that could become available with the implementation of the small-scale fisheries. The method of **peer education** is powerful in our context because fishers generally suffer from low self-esteem and struggle to express themselves confidently. These local area meetings give them the opportunity to do so and are still on-going.

Oral history interviews with families were conducted. During this reporting period, we conducted 2 family interviews which lasted between 60 and 90 minutes per interview. Even though we requested that a senior and current fisher, together with a female in the family, be present for the interviews, we only managed to get this composition in 1 of the 2 families we interviewed. In the second family, the son and father were very shy and moved in and out of the room. The son had also just returned from almost 14 hours at sea in which he had not caught anything, so his spirits were rather low. He did not want to be bothered and we respected that. The women, aged 82 had much to say, but asked not to be photographed.

While the interview with the 1st family focussed on fishing, the interview with the 2nd family focussed more on the role that women used to play in the community. We learnt about the abundance of inter tidal species and how women and even the children after school hours and during school holidays would go to the fish traps to remove fish. Families ate fish every day and all day – every meal was a fish meal. For vegetables, they would walk to neighbouring farms to barter fish for vegetables and, if they were lucky, for meat. Sadly, these days ended when the MPA was erected. When times are really tough, fishers are forced to try to get to the fish traps without being caught. It was evident that this was forcing the fishers to become criminals.

Focus groups with men, women and youth are being held where we are able to share and discuss gender specific issues and ask more focussed questions based on what came out of an initial workshop. This method is proving good, as we find that women are speaking more freely than they did when they were in the workshop

with the men. This also affords them the space to speak about their role in their families and in fishing, and it has given us the opportunity to affirm their role and to help them see its economic value. Focus group discussions were conducted on the basis of a **discussion guide** with 6 thematic sections.¹²

Stakeholder Analysis. Even though Arniston is primarily a fishing community, over the years, it has become a great holiday destination and many foreigners annually flock to the shores of this quaint fishing village. The fishers interact and engage with a range of stakeholders ranging from the South African Heritage Resources Agency, (SAHRA), Western Cape Heritage, Kassiesbaai Ratepayers Association (made up of owners of the holiday homes), ISC (Intergovernmental Steering Committee), DENEL Committee (only boat owners+ DENEL) and DAFF. In the coming months, we will engage with some of the relevant stakeholders in the project to get their view and understanding on tenure rights.

3.2 The research participants

Thus far, all of the participants in this research project reside in Arniston. They all come from fishing families and have lived in Arniston all their lives. With the exception of one participant, all are members of Coastal Links. During the next phase of the project, we will begin to interact with other stakeholders like the Municipality, the principal of the only school in Arniston, the Overberg Review Council (ORCC) and even with DENEL and DEA.

3.3 The research challenges

We experienced a setback at the outset of the research project in April 2015, when the project staff member earmarked to manage the project from Masifundise's side resigned and a replacement had to be found at short notice. Given this new development regarding our human resources and the fact that the financial resources were limited, we decided to focus only on one community instead of two.

A current challenge is to keep the community interested and committed to the project. After almost 10 years of struggle for recognition (see section 4.2.3), their morale has been dented, especially over the past 3 years when their names were removed from the IR fishing list. They are questioning how another set of voluntary tools can assist them when their rights as set out in South African constitution are not protected and respected by Government.

Since the Arniston community's primary source of income is through fishing, we understand their frustration. While law enforcement may vary along the coastline, it is very well enforced in Arniston. Fishers dare not go to sea without the necessary access permits. Even though law enforcement officials are all too familiar with the need to fish, they too have to do their jobs. Some small-scale fishers however accuse them of being inconsistent and favouring those who can compensate them behind closed doors. Further to this, the expense of traveling to the DAFF offices in an attempt to sort out errors made by DAFF is also costly. Over the years DAFF have insisted that fishers communicate with them directly, thus limiting Masifundise's ability to get issues resolved on behalf of communities who live miles away from the DAFF offices.

As the issue with the MPA and DENEL is critical and sensitive for the community, it was important that we not instil false hope that the project will get rid of DENEL or suddenly allow them access to the MPA. It was important that we discuss the methodology with them and explain what action research entails. Together we agreed that this research would employ a participatory action research methodology which entailed a multi-pronged approach. This process is one of strategic and collective reflection, leading to action and followed by more collective reflection. This was important to explain, as most communities' prior experience was with academic research, in which they rarely saw any outcomes from the questions or reflections they were asked to share.

4 Access to and governance of land and fisheries resources in Arniston

4.1 Mapping shifting trends in access by the fishing communities

The fishers recall that **pre 1970**, they practised a nomadic lifestyle of fishing and cattle farming. Fishing was seasonal and their fishing methods can be traced back to their ancestors, the Khoi. Proof of this is evident in the traces of shell middens and fish traps in the area. The fishers used row boats to go to sea and were not limited by any regulations. Following the drowning of fisherman James Hartnick in Arniston, safety regulations on boats were increased.

During the period **1970-1990**, fishers recall that there were no size allocations to the fish catch, but that fishers inherently knew what size was good and had a way of just looking and knowing. The fishers had open access to any area in the ocean where the fish were caught on boats owned by community members. The fish caught were for feeding households with most household's daily food intake coming from the ocean. The community was very unified during this time, and the youth made pocket money by helping out with post fishing activities at the harbour and the slip way area. Fishermen, women and youth were all involved in fishing activities and the processing and drying of fish was done by the women. During this period, they used nets and a hand line and land marks – hills and dunes - were used to guide them. The fishers describe it as a time when there was plenty of fish and no laws. Many fish were caught with approximately 12 boats per day and fishers went to the ocean more than once a day. All species were plentiful. There was no Nature Reserve and so they walked all along the sea with nets and used mountains and dunes for landmarks. The fish traps were also emptied and the only method of cleaning and processing the fish was by using a knife.

The role of women in the fishing sector was clearly defined. The women were regarded as the ones who got the day started and were referred to as the 'alarm clocks' in the households. Many women recall seeing their mothers rise early in the morning to start wood stoves to get the coffee going. They would get their husbands / partners out of bed, get lunch packs ready for the day at sea and when the men were off to sea, they would get the children ready for school. They were involved with the cleaning and processing of fish when it was landed after the day's fishing.

However, **in 1984** the situation started to change as areas were closed because of DENEL and the MPA and, with time, more and more restrictions were imposed on the fishers. **By 1994**, the fishing areas were declared inaccessible and new laws were implemented. The boats had to have area numbers and skippers needed licensed tickets. The fishers had to sign agreements and provide data lists to the Marine Coastal Management (MCM). Political party interference became prevalent and **in 1995** new laws were introduced regulating the permitted fish catch for species like yellow tail, cape salmon, cob, romans, etc.

In 1996, DENEL, then named Overberg Testing Base (OTB), started testing in the ocean due to too many veld fires and animal deaths while testing weapons on land. Sea areas were demarcated for weapons testing by Overberg Testing Base, and the fishers started to notice a decline in their catch. **In 1998**, a physical wired fence dividing DENEL from Arniston was erected in the water. **By the year 2000**, the marine resources had declined drastically and the once thriving fishing community started to struggle in poverty.

Between **the years 2000 and the present (2016)**, the fishers have been fishing for survival. With every season, their struggle to feed their households increases. They are being crippled by the restrictions limiting their livelihoods. Currently, they need a permit for everything - even for angling from the coast. The women who used to harvest the inter-tidal species need permits as well. They are not able to afford the permit costs. The majority of

the fishers now serve as crew on the vessels of those who have commercial licenses, but even when they get a chance to go to sea, they often return empty-handed because of the scarcity of fish.

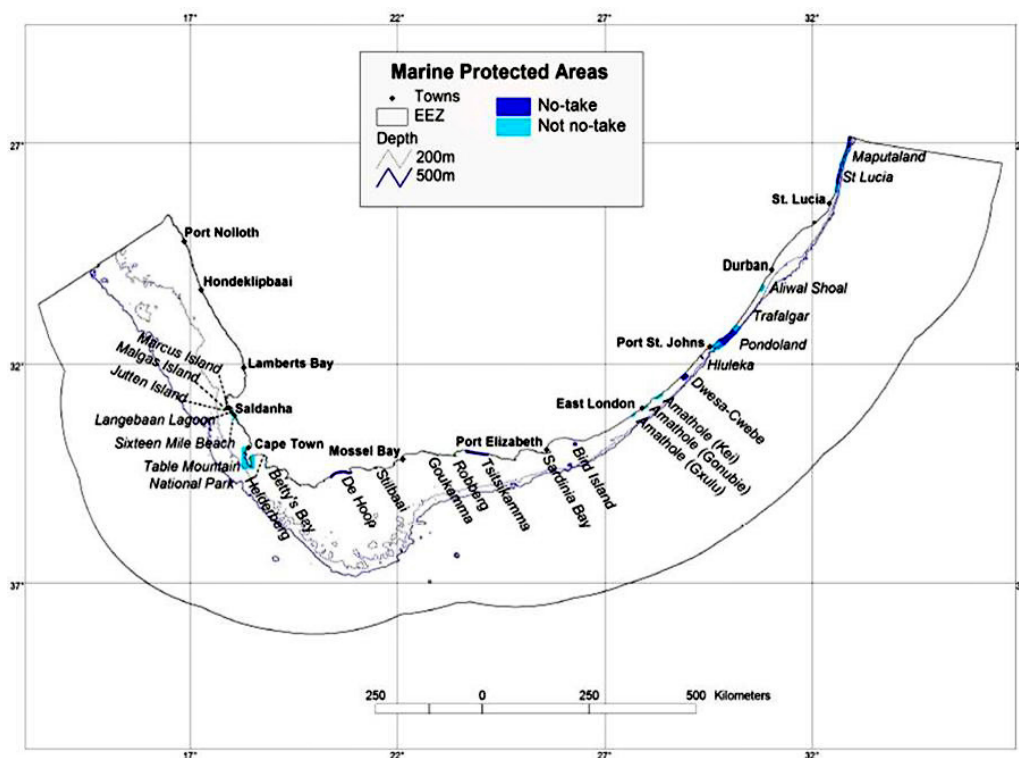
4.2 Actual situation of access to land and Fisheries in the different research communities

4.2.1 Local challenges in accessing marine resources

An exercise was undertaken whereby community members were asked about what locally affects their access to marine resources. They identified the following factors as impacting on their livelihoods:

- **The local inspector at the harbour:** Since the person is an employee of DAFF, he has to do his job and implement the law. Small-scale fishers understand this but it is frustrating when they see the inspector be lenient with others and compromise fairness.
- **Private homeowners, mostly foreigners, belonging to the Rates Payers Association:** It's challenging for the fishing community because in some cases, many of their homes remain locked up for most of the year and are easily targeted for theft. In other cases, they want to develop their property outside of the aesthetics of the community.
- **Facilities at the harbour, most notably the tractor needed to support their vessel into and out of water:** The tractor is not owned by the fishers, so their fishing activities are determined by the availability of the owner. If there were issues between him and the SSF, he would refuse to assist them, thus resulting in them not being able to go fishing.
- **Weapon testing plant owned by DENEL:** This is destroying their fishing grounds and their fish stock.
- **Local municipality:** Nepotism and cronyism at local government level as well as political interference during elections has been challenging for the fishers, especially since they do not all belong to the ruling party.
- **Theft and crime:** The high rate of crime and theft at holiday homes have ruined the reputation of the town and made many cancel their holidays. The women, dependant on the domestic work opportunities, lose out.
- **Tourism:** The fishers feel exploited by the manner in which Arniston is being marketed. People come for the beauty of the small, quaint fishing village without knowing the real story and suffering of the people. The Arniston hotel is a particular point of contention. The fishers stated that before the hotel was built, they could easily access the sea. The area which the hotel owner now claims as his parking lot was where the community used to congregate to lay out their nets and check them before immersing them into the water and lay them out to dry afterwards. Net fishing was their main source of winter food, involved many, and provided for the entire community. This space has now gone. Most of the fishers' partners, spouses or children also work at the hotel and the owner is known to be rather rude towards his workers. The fishers further claim that the hotel owner interferes with nearly all of the development plans in the area e.g. local seafood restaurants and the museum and information centre, diverting opportunities and initiatives away from fishers.
- **Recreational anglers:** The recreational anglers are those who have access to modern vessels, viz. ski boats. They come to Arniston during weekends and festive seasons and are able to get to the fish banks faster than the small-scale fishers with their traditional vessels. By the time that fishers arrive, the recreational fishers are returning for their second trip. Even though they should not be able to sell, they do, and they are supplying the local market before the fishers can get back to shore.
- **Cape Agulhas municipality:** The fishers feel that despite the fact that Arniston is primarily a fishing community, they have very little control about the issues that affect the sea and their livelihoods.

Figure 4
Marine Protected Areas in South Africa



Source: Sowman et al 2014

4.2.2 The responses of local people

Due to the increase in intra-community conflicts and poverty, the Arniston community has become more vulnerable and many doubt whether it can be restored to its former harmonious state. For many, it is a case of mere survival. Stories of small-scale fishers not being able to go to sea for weeks on end are extremely concerning. As the fishers become more impoverished, crime and drug usage is on the increase as drugs are used to deal with the stress of not being able to provide for their families. The increase in theft and burglary of holiday homes in the area has also led community members to blame each other's children. There is a sense that community life is unravelling.

Amidst this however, there remains a group who are trying very hard to stay within the framework of the law and who are still hoping that the SSF policy will bring the necessary justice to and restoration of their tradition. It is very humbling to see them remain steadfast when they have so much against them. It is this group that remains keen to engage with DENEL, DAFF and DEA towards a fair resolution. They are challenging the current agreements, equip themselves with knowledge and information on the SSF Policy, the Guidelines on SSF, even the VGGT, and are seeking to participate in the discussions on how the use of resources can be managed more equitably.

Still, the degree of division and conflict among family members and even people of the same race and culture due to fish allocations, access to land, development and employment opportunities is alarming. The research has shown that even though they all agree that the government's introduction of regulation was and continues to be detrimental, they agree for different reasons. While the SSF are fighting for the recognition and protection of their tradition and culture, the commercial fishers want the government (DAFF) to relax their application costs and general restrictions on catch size and species. While the SSF feel that bomb testing by DENEL is greatly responsible for the shortage of stock, the commercial fishers' response is that they are adequately compensated by DENEL. The SSF feel that the monetary compensation is inadequate for the loss of a resource while testing. The commercial fishers (boat owners) feel differently because they gain 50% of the compensation while the remaining 50% is shared between 8 SSF fishers who currently make up the crew.

4.3 Evaluation of relevant fisheries related governance frameworks and policies in South Africa based on the Tenure Guidelines

In this section of the report, we discuss the various legal frameworks governing fisheries and related tenure rights in South Africa, including the MPAs, the provisions in the South Africa Constitution pertaining to the tenure rights of small-scale fishing communities. These frameworks are assessed against the standards set by the Tenure Guidelines.

4.3.1 Marine Protected Areas in South Africa

South Africa has 24 gazetted MPAs, 23 of which are along the coast and comprise a total of 23.17 per cent of the coastline in South Africa (Sink et al 2014). Despite an array of progressive legislation that protects the rights of small scale fishers, most fishers living adjacent to MPAs have so far been excluded from the governance process and are denied their customary right to fish and harvest marine resources.

South Africa has committed itself to many conventions, protocols and agreements relevant to MPAs and has promulgated policies and legislation to give effect to these instruments. Several environmental policies and laws have a bearing on how MPAs are identified, planned, managed, monitored and governed.¹³ These laws, while concerned with promoting environmental conservation and management, all require that various social sustainability principles, including equitable access to resources, the sharing of benefits from protected areas, and the active participation of indigenous peoples and local communities, be upheld in planning, management and decision-making processes, in line with the Constitution of South Africa and the Bill of Rights.

A key requirement in all cases is the consideration of human rights and needs, especially in light of the need for redress, when pursuing environmental, conservation and fisheries management goals. Despite the above policies which stipulate that fishers' rights need to be protected in the management of MPAs and a people centred approach to planning and managing MPAs must be adopted, MPA management remains top down and devoid of democratic governance and co-management systems. For example, at an MPA forum hosted in 2015 by the World Wild Fund for Nature (WFF) and the Department of Environmental Affairs (DEA), fishers only made up a small minority of those present. The majority of stakeholders present at the only nationwide forum for MPAs were conservation scientists, government officials, researchers and conservation authorities. The dominant

BOX 1

SSF sector's journey of Allocation of Fishing Rights in SA

Pre – 1994 Apartheid era and colonial governance.

1998 – 2005 Fishing rights allocated under the Marine Living Resources Act(MLRA): SSF sector excluded.

2006 High Court Ruling – MLRA unconstitutional and in violation of human rights

2007 – 2012 SSF participate in policy writing

2007 – on-going Interim Relief (IR) until SSF policy implementation

2012 National Small Scale Fisheries Policy adopted by government

May 2014 MLRA amended, to include SSF

2016 Commencement of policy implementation

ideology of the conference was that of a conservationist agenda devoid of community participation and inclusion. It was clear that small-scale fishers were seen predominantly as a hindrance to conservation objectives and were mainly mentioned as a compliance threat. Despite legislation that protects fishers from this exclusion, researchers spoke about 'Operation

Phakisa' a high level and fast track plan by the government (backed by conservation scientists) to expand the coastal and offshore MPA network in South Africa. At this forum Masifundise, Coastal Links and our partners at the Environmental Evaluation Unit (EEU) at the University of Cape ran a session on the need to include communities and take a people centred approach. This was received with some criticism but a lot of enthusiasm so one can be hopeful that with enough political will, mobilization of small scale fishers, and hard work the tide can turn on MPA governance in South Africa.

BOX 2

Key Legal Frameworks and Policies

• Marine Living Resources Act

The Marine Living Resources Act (MLRA) was introduced in 1998.¹⁶ This Act gives the Minister the responsibility to develop a system of access to marine resources and tenure for fisheries in South Africa. Following on from this act, three types of fishery sectors in South Africa are officially recognized: the commercial, subsistence and recreational sectors. The majority of traditional SSF were left out of this system, as it followed a largely business orientated model, using individual quotas to allocate fishing rights and sparking division and conflict within the community. It did not recognize the unwritten customary tenure systems and rights of the local communities, who live on communal land and who live according to systems of customary law. Furthermore, it also excluded those involved in post harvesting and other activities like bait preparation, cleaning, processing and marketing.

In response, Masifundise Development Trust (MDT) together with the Legal Resources Centre took the matter to the Equality Court. In 2007, the court ruled in favour of the fishers and ordered the Minister to develop a fisheries policy that would secure the rights of small- scale fishers. In order for a SSF policy to be enacted, the MLRA needed to be amended to give recognition to the SSF sector. On the 15 – 16 October 2013, the Parliamentary Monitoring Group (PMG)¹⁷ invited various players in the SSF sector to make submissions on the MLRA amendments, including representatives from Coastal Links and MDT Director, Naseegh Jaffer. In his presentation, Naseegh drew attention to critical amendments to the MLRA that are urgently needed in order to:

- Recognise collective rights – as opposed to individual quotas at community level;
- Enable fishers to earn an income throughout the year via a multi-species approach;
- Promote conservation of marine living resources through the “preferential” fishing zones and co-management;
- Lead to women’s empowerment, income generation, job creation and local economic development especially in rural coastal towns

All the amendments to the MLRA were accepted and more than two years later, in January 2016, the regulations were signed off. We await the finalizing of the MLRA shortly. This will bring much needed relief for the SSF in South Africa, including for the Arniston fishers, who had been affected by the establishment of the

De Hoop MPA. In this MPA, they not only lost access to this fishing ground but their traditional fishing practice, using a special fish trap known as the 'vywe', was also rendered illegal, making them feel like criminals whenever they tried to access the traps.

- **Small-Scale Fisheries Policy**

In 2007, the Department of Environment Affairs and Tourism (DEAT) convened a National Summit on small-scale fisheries.¹⁸ The Summit elected and mandated a national task team with representatives from fishing communities to oversee the process of developing a small-scale policy for the marginalized and excluded fishers in South Africa. Small-scale communities advocated for a paradigm shift in fisheries governance, demanding the introduction of a new, human rights based approach to fisheries and started lobbying for a new system of tenure for the SSF sector. This demand was taken into consideration and a SSF policy was developed and finally adopted by the Cabinet in June 2012.

This policy presents a new vision for fisheries tenure for South Africa. Firstly, it states that the tenure system should be based on respecting the human rights of the users. Secondly, it should be community based, not based on individual rights only. It will recognise any customary systems of rights that have existed since before the MLRA. It should also take consideration of the areas in which small-scale fishers have lived and fished and adopt an area-based approach that aims to give fishers rights and responsibilities in these areas. Thirdly, it seeks to ensure that the new tenure systems are based on gender equity and promote benefits for women. Lastly, it should contribute to food security and poverty eradication.

The SSF policy therefore envisages that small-scale fishers will come together and form a legal entity in each fishing community. They will then apply to the Minister for recognition as a small-scale fishing community. They will form a local co-management committee and will then develop a management plan for their area in a participatory way, based on a multi-species approach that considers the local ecosystem and the sustainability of harvesting of each species. The committee will also consider the histories, culture and customs of each area. Special plans will be developed to add value to the catch in such a way that local jobs are created for women and youth. This includes controlling the marketing of the catch rather than handing the catch over to the large companies to market. In this way it is envisaged that steadily, over time, the benefits of fishing will be spread amongst a growing group of people at community level. The state has a key facilitating role to ensure that all objectives of the policy are achieved.

As the implementing authority, the DAFF released its proposed set of rules for a new system of tenure in SSF in March 2015. To our dismay, the regulations did not capture the spirit in which the SSF policy was conceptualised. It alludes to a top down approach, giving all the power to the Minister to decide how many people will get access and what species they will catch. In these draft regulations, DAFF has decided that the tenure system will not be community based, it will be group based with the Minister deciding how many groups will be allocated tenure rights in each area. Each group that wants to get access must register themselves as a Cooperative under the terms of the Cooperative Act. The DAFF regulations do not oblige the cooperatives to promote gender equity, or the rights of youth and children but just indicate that this would be something the cooperatives should consider. Also, the DAFF regulations as they stand do not recognise any pre-existing tenure rights such as customary tenure rights. Instead, they propose a one size fits all approach to tenure for the whole coastline. Masifundise and Coastal Links have submitted comments responding to the draft regulations. Word from DAFF on this matter is that the regulations were finalised in January 2016. We have requested a copy but have yet to see it.

- **Interim Relief**

In 2007, the Equality Court ordered that a new policy be developed to secure rights for small-scale fishers who were excluded from the Long Term Rights Policy - 2005. It further ordered that an Interim Relief (IR) system be implemented in the Western Cape and Northern Cape provinces to allow fishers an opportunity to access temporary rights to marine resources whilst the new policy was being developed.

To begin with, Masifundise was involved with the department in identifying the fishers, finalizing permit conditions etc. Unfortunately, no one could have imagined that development of the SSF policy could stretch over a 10 year period. With each local and provincial political election, the SSF policy process was compromised. High staff turnover together with a lack of sufficient human resources allocated to the SSF Department further aggravated this. Unfortunately, in the long wait for this implementation plan Interim Relief brought more frustration than relief to many fishers.

The delay in implementation has compromised the livelihoods of the fishers and aggravated divisions in the fishing community amongst those who should be receiving relief, and those who are gaining access to IR through unscrupulous political efforts. Until the policy is implemented, fishers are restricted by regulations. Their traditional tenure arrangements have been replaced by IR, and for those who fall out of the system, a recreational permit is required. In the case of some towns like Arniston, permit cost and travelling cost to purchase the permit are a real challenge while restrictions around catch type, size and harvest time, together with the closure of traditional fishing areas due to the MPA and the ammunition testing plant, present additional obstacles and lead to further marginalization.

Picture 2

Group photo with Delphine Ortega from La Via Campesena



source: Masifundise

BOX 3 DENEL

Denel SOC Ltd, a South African state-owned aerospace and defence technology conglomerate, was established in 1991. It was created when the manufacturing subsidiaries of Armscor were split off in order for Armscor to become the procurement agency for South African Defence Force (SADF), now known as the South African National Defence Force (SANDF), and the manufacturing divisions were grouped together under Denel as divisions. The Denel Overberg Test Base, is a weapons systems testing facility in the Overberg region on the south coast of South Africa near Arniston. Initially used to test the South African series of Israeli-South African missiles, it is now used by a variety of countries and foreign clients, including those from Germany¹⁹, Czech Republic, Singapore, UK, Sweden, Turkey and Spain,²⁰ in addition to serving the needs of the RSA Department of Defence.²¹ DENEL prides itself as a preferred test venue for international defence forces and the armaments industry to carry out performance evaluations and any combination of air, ground and sea flight tests.

DENEL claims to have a close relationship with the children of the Arniston fishing community and supports a number of projects, including at the local primary school and crèche. The fishers in Arniston, however, tell a different story. According to them, after being declined permission to erect a weapons testing facility close to a local fishing community in Cape Town, DENEL, then known as Armscor, earmarked a piece of open land near Arniston which the fishers use to gain access to their traditional fishing grounds and fish traps. At first, the community were unhappy and expressed their concerns. Eventually they conceded that DENEL could erect their testing range with the understanding that the testing would happen only on land, not in the ocean. According to the community, DENEL confirmed that they would test on the land and would compensate the community²² through educational opportunities for their children and job creation. However, after a number of 'veld' (field) fires in the area due to the testing on the land, and the cancellation of the contract in 1992, DENEL shifted its weapons testing to the sea without any consultation with the community. The community claims that their constitutional rights were violated to accommodate demand from foreign clients.

The Arniston fishers argue that the establishment of DENEL testing site has infringed on their livelihoods since it is believed²³ to be a major cause of the diminishing fish stock. In establishing DENEL, the state did not consider the existing tenure arrangements of the community of Arniston. They did not communicate adequately and seek solutions with the community. The VGGT are an important tool that the community can use since they speak about the recognition of and respect for legitimate tenure rights. The Arniston SSF have proven evidence of their legitimate tenure rights and are preparing to use it as they plan their engagement with DENEL around the issue of consultation, information sharing, recognition and better compensation.

4.3.2 MPAs and tenure rights in South Africa

According to interviews with community members, it was clear that, in the past, they had open access to their fishing grounds and were accustomed to fishing as far as their boats and fuel would take them. However, since the MPAs were instituted, fishing is much more complicated due to the strict regulations for which a permit must be bought to catch any kind of fish. Furthermore, the quantity of permitted fish catch is not always enough to feed the family. The direct impacts of such permit requests weighed more heavily on the women who used to fish from the shores but are no longer allowed to do so because they do not hold the required permit (initiated with the institution of the MPAs). In order to survive, some of the fishers were covertly fishing without permits, but this also represents a problem because if someone is caught while fishing without a permit, court cases are usually opened by officials, often resulting in very costly fines.

This notwithstanding, advocates of MPAs' tend to present the system as one without flaws. The fishers view it differently as it prevents them from accessing their livelihoods. Coastal and marine spaces are often characterized by complex systems of 'sea tenure' which are important to map and use in decision-making around MPA regulations. The Arniston SSF concluded a mapping exercise during one of their workshops and are ready to participate in a discussion with the DEA and DENEL if given the opportunity. The fishers believe that this can lead to recognizing and developing stronger governance and accountability systems, including community-led management and co-management as well as capacity building designed to enable communities to establish, claim and strengthen their rights and fulfil their responsibilities with respect to other sectors. At the same time, it is recognised that there are power differentials within communities that also need to be addressed. MPA practice must move towards greater equity and participation, both as an end in itself, and as a means to more sustainable conservation and management.

4.3.3 Provisions in the South Africa Constitution which recognize and guarantee the tenure of small-scale fishing communities

Before 1994, South Africa had a state-imposed system of tenure that often disregarded customary systems of tenure. With the adoption of the South African Constitution of 1996, it has been recognised that tenure rights stem from both customary and state law.¹⁴ Along with the strong human rights foundations contained in the Bill of Rights,¹⁵ this obliges the government to put in place systems of tenure that address past injustices and discrimination, promote human dignity, aim to eliminate inequality, promote and protect women's rights, do not discriminate against any marginalised groups, and that will protect and contribute towards food sovereignty. These legal provisions now require policy mechanisms in order to be implemented effectively. To date, this has

Picture 3

Rowina from Arniston during a protest action at the DAFF offices



Source: Photograph by MDT

however not occurred and urgent action is required to guarantee the protection of customary tenure rights, incorporate the excluded, and ensure an equitable and sustainable approach to small-scale fisheries governance.

Since the principles enshrined in the VGGT are the same as those of the South African Constitution, the Arniston community are confident and determined to use the VGGT to highlight how their rights are being violated, including also in a letter commenting on the draft regulations around the proposed MPAs:

In line with the Voluntary Guidelines on the Responsible Governance of Tenure in Land, Forestry and Fisheries in the Context of National Food Security (VGGT's) endorsed by the 38th (Special) Session of the Committee on World Food Security (CFS) on 11 May 2012, inclusive of our Government, the lack of meaningful consultation in this process from the proposed zonation to the spatial mapping has deprived us the opportunity to engage around these proposed MPA's. As highlighted in the General Principles of the VGGT's, section 3A of the General Principles, in section 3.1 and section 3.1.1 states that Government should: "Recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights (Food and Agriculture Organisation of the United Nations, 2012). As cited in the Peoples Manual on the Voluntary Guidelines on the Responsible Governance of Tenure, "Fishing communities have a long history of tenure based on customary and traditional fishing rights, which are closely linked to land. Their relationship with natural resources and the territory is a source of cultural identity, knowledge and spirituality, while also being related to their survival (International Planning Committee for Food Sovereignty, 2016).

4.4 Conclusions on the situation of the governance of / access to Fishery resources for people in Arniston.

Most members of the Arniston Fishing community claim that their failure to secure fishing rights in the Long Term Fishing Rights process in 2005, the establishment of the MPA, and the arrival of DENEL, were all imposed on them thus denying them of their Constitutional Right to be consulted, and to exercise their choice of occupation. The approach was a 'top down', approach that lacks transparency and does not respect their legitimate tenure rights. After 10 years of struggle to maintain their rich fishing tradition and identity, little remains to remind the Arniston fishing community of how things were before institutions like DAFF, DEA and DENEL entered their waters. This once closely knit community is now divided as they struggle to survive. Those who were successful in the 2005 allocations process still enjoy the benefits of access, while those excluded fought for the MLRA to be amended and for legal recognition. They participated in the draft of the new SSF policy, and are patiently waiting for it to be implemented in the hope that it will restore their way of life and dignity.

Since South Africa has committed itself to many International conventions, protocols and agreements²⁴, it is tempting to assume that all its citizens, especially the poor, are protected. This is not the case. Instead, the poor, in the case of Arniston, feel these laws are interpreted and implemented to advance and promote environmental conservation at the expense of social sustainability principles, including equitable access to resources, sharing benefits from protected areas and the active participation of indigenous peoples and local communities. They feel far removed and excluded from planning, management and decision-making processes and that the South African constitution is failing them.

The Arniston fishers are looking to the Voluntary Guidelines on Tenure (VGGTs), the Voluntary Guidelines on Small-scale Fisheries (VG SSF) and the SSF policy for support, justice and for their constitutional right to be implemented. The Arniston fishers are hoping that the implementation of these guidelines will promote a human rights-based approach to fishing thus recognising their right to be recognised and respected as human beings, and their right to a livelihood. They believe that this is their only hope for vindication in their struggle to protect their tradition and culture. DAFF must be held accountable for the implementation of the general principals listed in the VGGTs and as the state, DAFF should take steps to identify, record and give respect to legitimate tenure rights holders. They should also safeguard them and protect them from abuse and threats and take steps to

avoid conflict between different rights holders. The Principles of Implementation in the VGGTs are in accordance with the human rights already prescribed in the South African Constitution.

It is now crucial for small-scale fishing communities up and down the coast to urgently review the new draft regulations in the light of the VGGT principles and content. They need to ensure that all fishers in their communities participate in discussions about how they wish to access marine resources in the future and what principles they wish to see in their new system of tenure. Together they need to describe the tenure system of the past and how it shaped their access to resources. Together with DAFF they need to debate and develop new systems of tenure that will best respect, protect and fulfil both the human rights in our Constitution and implement the principles of the VGGTs.

5 Our accountability strategy and the action research process

Before the Arniston Community joined Coastal Links and Masifundise in 2006, this small remote fishing village which is almost 100 % dependent on fishing for their livelihoods felt hopeless in their fight to secure the necessary right to fish. Once they started interacting with other SSF communities from along the coastline they then became confident, strengthened and supported by the knowledge that they were no longer alone and that the information they were getting through CL and MDT was empowering them to assert their rights and restore their dignity. MDT soon learnt that even though their struggle was similar to other coastal communities, their limited access to marine resources was intensified by their fishing ground being grabbed marine protection, nature conservation and for the testing of military weapons.

Taking into consideration the government's failure to implement the SSF policy after it was gazetted in 2012, and the disrespect shown towards the fishers when no explanation was offered for excluding some of them from the IR, the Arniston fishers took part in an action to occupy the entrance hall of the DAFF's office and demand to have the DAFF Director General address them. This action was planned for the 27 November 2014. When DAFF failed to comply with the commitment they made while negotiating with a delegation who met with the DG, and in light of the fact that the fishers and MDT had written numerous letters and emails to DAFF with no response forthcoming, the Arniston fishers requested a special meeting with the National Chairperson of Coastal Links and MDT and its director. This meeting took place on 17 November 2015.

After expressing their frustration with the process and broken promises made by DAFF the previous year, the Arniston fishers informed participants at the meeting of their plan to do something big to get DAFF's attention. They shared their decision to block the harbour at Arniston and to prevent all vessels - commercial and recreational - from going to sea. They called on the support of Masifundise and all the other Coastal Links branches in the Western Cape. MDT assured them of their support and because other Coastal Links branches were also facing similar problems with the IR process, a telephone conference was planned with the Western Cape Coastal Links leadership, where Arniston fishers shared their thoughts and plans. After some discussion, it was decided that on 28 November 2015, community representatives from all communities around the Western Cape would congregate in Arniston to join the action and be part of the handover of a Memorandum, addressed to the Director General (DG) of the DAFF. They gave the DG seven days to respond. To date, all they received was an acknowledgment of receipt of the Memorandum.

When the national Coastal Links leadership met between the 26th and 29th of September 2016, they noted that processes were taking too long to be finalized and that action was needed. They confirmed that the SSF sector has been patiently waiting for recognition since 2005. They felt that over the years, they have contributed to the development of the International Guidelines for SSF, the national SSF Policy and the VGGT. And while all these documents and policies speak about the protection of basic human rights, SSF continue to struggle to survive. Local and national action was planned. Two letters were dispatched to the Minister informing the Minister that the SSF sector will take drastic action should he not respond to their demands. This resulted in mini-hearings conducted by the Parliamentary Portfolio Committee on Fishing on 25 November 2016. The Masifundise director, Naseegh Jaffer and a delegation of Coastal Links members held presentations while a group of Coastal Links members protested outside the Parliament building.

Table outlining different actions for accountability

ISSUE	ACTOR	ACTION
<p>Access to traditional fishing grounds restricted through the establishment of the DE HOOP MPA.</p>	<p>DEA</p>	<p>Letter to DEA on 12 May.</p> <p>Quoted General Principles of the VGGT, section 3A of the General Principles, in section 3.1 and section 3.1.1 states that Government should: “Recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights (Food and Agriculture Organisation of the United Nations, 2012)‘.</p> <p>As cited in the Peoples Manual on the Voluntary Guidelines on the Responsible Governance of Tenure, “Fishing communities have a long history of tenure based on customary and traditional fishing rights, which are closely linked to land. Their relationship with natural resources and the territory is a source of cultural identity, knowledge and spirituality, while also being related to their survival (International Planning Committee for Food Sovereignty, 2016).</p> <p>A letter to follow up on these comments is being discussed with the SSF for drafting.</p>
<p>Testing of foreign military weapons in the waters traditionally used by SSF</p>	<p>DENEL</p>	<p>Using the VGGT:</p> <ul style="list-style-type: none"> • Investments: Page 10 of the User Guide speaks to the importance of ensuring that investments do not harm the environment, respect human rights and provide guarantees against the loss of legitimate tenure rights. Thus the testing of military weapons in Arniston waters should not be at the expense of the Arniston fishing community. Due consideration should be given to the loss of food sovereignty as a result of this practice. • Ancestral Rights: The testing of military weapons in Arniston waters undermines the recognition of the community’s rights to their ancestral land and their right to be protected against any forced eviction. Page 7 of the User Guide reaffirms the importance of the principle of prior and informed consent in such situations. <p>A letter to DENEL was discussed and drafted, requesting a meeting to discuss the current relationship between them and the Arniston community. The SSF will be seeking participation in the committee that DENEL claims exists. This committee apparently coordinates activities between DENEL and the SSF. The letter was sent to DENEL in February 2017 [see Appendix 1].</p>

<p>Access to the marine resources through the implementation of the SSF policy</p>	<p>DAFF</p>	<p>Actions between DAFF and the fishers are on-going. Through the recent verification process, the SSF picked up discrepancies in how DAFF was proceeding. They will be using section 3 of the General Principles of the VGGT as they prepare to appeal DAFF's failure to recognise them.</p> <p>Section 3 - States should: • RECOGNIZE AND RESPECT all legitimate tenure rights and the people who hold them • SAFEGUARD legitimate tenure rights against threats • PROMOTE AND FACILITATE the enjoyment of legitimate tenure rights • PROVIDE access to justice when tenure rights are infringed upon • PREVENT tenure disputes, violent conflicts and opportunities for corruption</p> <p>Non-state actors (including business enterprises) have a responsibility to respect human rights and legitimate tenure rights.</p> <p>The appeals process is being finalised. More than 100 fishers appealed and are awaiting DAFF's announcement.</p>
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Source: constructed by Masifundise

Even though they face many day to day challenges, the Arniston fishers are prepared to become familiar with the VGGT and the SSF policy document in order to understand what rights and protection the documents afford them and to quote the terminology in correspondence and communication with DAFF and other relevant stakeholders as they lobby for policy change. At this point, all focus is on the implementation of the SSF policy and since there is great synergy between the principles in the policy and the VGGT, the Arniston community feel further empowered by the tools provided in the VGGT to put pressure on DEA, DENEL and DAFF to bring about the desired outcomes.

This action research project has enabled SSF to gain awareness of their rights, the legal frameworks that affect them, the policy instruments they can make use of, and the mechanisms of accountability to target. At a Provincial VGGT workshop supported by FAO in May 2016, which two Arniston fishers attended, the participants deepened their understanding of the VGGT. At a September 2016 workshop, the Arniston SSF community representatives completed an exercise where they looked at how their access to land and marine resources were impacted on by local, provincial and national / global influences. The three South African departments that they view as the main actors responsible for this frustration and limiting their access to marine resources are DAFF, DEA and DENEL. The particular issue, actor responsible, and actions undertaken to address these issues and hold these actors to account are summarized in the table below.

The Arniston fishers have yet to receive a positive response to the actions taken thus far. As may have been noted, the first two actions were 12 months apart. During this 12 month period, numerous emails, letters, and even physical visits to the DAFF offices in Cape Town - almost 3 hour's drive from their home, all at their own cost - has brought them no relief. With the second action which targeted the harbour in Arniston, the DG response was disappointing, leaving fishers with very little hope. Further to this, SSF doubt whether DAFF are even aware of the contents of the VGGT and that they are seriously in breach of the principles outlined in the guidelines. If anything, DAFF's lack of response to the actions has led many to believe that the state does not have the political will to respond to the issue of the SSF.

6 Conclusions and recommendations

Information gathered thus far suggests that Arniston, like so many other small, remote coastal towns will remain hidden away without the support of development organisations like Masifundise and Coastal Links. Their isolation, and limitations of technology, makes it almost impossible for them to remain abreast and able to engage with policies and laws that are meant to benefit and protect them. Communications sent from the DAFF office to fishers are mostly

in English and difficult for them to comprehend. If not for their relationship with MDT and this project, the Arniston fishers would not have been in the know regarding the SSF policy, the VGGT, and the Voluntary Guidelines on SSF.

Helping them recall their past tenure on land and fishing arrangement has helped to energize them to remain positive and has encouraged them by reinforcing the value of their indigenous knowledge, renewing their confidence and self-worth. Showing them that they are protected by international laws is keeping them committed to this research project.

In terms of moving forward, we need to continue to build the capacity of the community with knowledge around their customary rights to land and marine tenure. We need to empower their understanding of the relevant policies pertaining to their livelihoods and help them see the parallels between the SSF Policy and the VGGT and guide them on how they can use these to bring about change.

Further to this we need to make good of their strategy to start communicating with DAFF around the VGGT and how they see how their rights to tenure are violated. Given the political space that we are currently in as a country and the community's vulnerability in that all their actions have failed, we feel the need to spend more time in the community on this project.

For the upcoming phase, the Arniston fishers will be part of a greater action with Coastal Links to force DAFF to implement the SSF policy urgently and they will use their knowledge of the VGGT to help assert their rights.

<http://masifundise.org/small-scale-fishers-hope-for-justice-after-parliament-protest/>

<http://masifundise.org/arniston-to-use-international-guidelines-for-local-development/>

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Annex 1

Letter to DENEL in February 2017

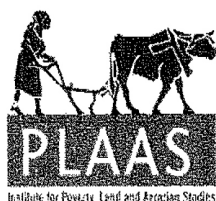


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2 February 2017

Ms Bridget Salo
Deputy Chief Executive Officer
DENEL – Overberg Testing Range

Dear Ms Bridget Salo

Over the past 18 months, we the members of Coastal Links Arniston SSF (small – scale fishers), have been part of an action research project funded by the Canadian International Development Agency (CIDA) and Food First Information and Action Network (FIAN), to see how we can better access our marine resources so that our livelihoods can be improved. We are doing this in partnership with Dr Moeniba Isaacs from PLAAS, based at the University of the Western Cape and Michelle Joshua from Masifundise Development Trust.

The action research centres around the Voluntary Guidelines on the Responsible Governance of Tenure in Land, Forestry, and Fisheries in the Context of National Food Security (VGGT's) endorsed by the 38th (Special) Session of the Committee on World Food Security (CFS) on 11 May 2012. Our Government participated in this process.

Through this project, we have come to understand the importance of meaningful, on- going consultation. We have worked through the VGGT, and based on, *section 3A of the General Principles, in section 3.1 and section 3.1.1. Government should: "Recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights (Food and Agriculture Organisation of the United Nations, 2012),*

we would value an opportunity to meet with you so that we can begin to revisit the current relationship and agreement you have with the SSF of Arniston.

Further to this, we believe that we have customary rights to our historical fishing land, and the Peoples Manual on the Voluntary Guidelines on the Responsible Governance of Tenure states, *"Fishing communities have a long history of tenure based on customary and traditional fishing rights, which are closely linked to land. Their relationship with natural resources and the territory is a source of cultural identity, knowledge and spirituality, while also being related to their survival"* (International Planning Committee for Food Sovereignty, 2016).

We hereby request a meeting with you and our partners Masifundise and PLAAS to further discuss the contents of this letter and work towards an improved agreement and relationship for the SSF of Arniston.

I look forward to hearing from you.

Thank you

Rovina Mathinus
Chairperson: Coastal Links - Arniston

Endnotes

- 1 Brand South Africa, "South Africa's geography" <https://www.brandsouthafrica.com/south-africa-fast-facts/geography-facts/south-africas-geography>. Accessed 21 September 2017
- 2 <http://arnistonalive.org.za/info/history-geskiedenis>
- 3 Pedersen C, 2015, Increased use of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests among Civil Society Organisations and grassroots organisations in South Africa
- 4 McKenzie, P. (1998) 'Weapons Testing: Its Impact on People and the Environment'. In Cock, J. (eds) From Defence to Development: Redirecting Military Resources In South Africa. IDRC: 85-97.
- 5 Hey, D.(1983) Report on the environmental Implications of the proposed Experimental Weapons Test and Evaluation Facility Between Waenhuiskrans and Cape Infanta, Bredasdorp. Cape Town.
- 6 McKenzie, P. (1998) 'Weapons Testing: Its Impact on People and the Environment'. In Cock, J. (eds) From Defence to Development: Redirecting Military Resources In South Africa. IDRC: 85-97.
- 7 African Wildlife 1983:38
- 8 personal communication, 1995
- 9 www.gov.za/sites/www.gov.za/files/a18-98.pdf
- 10 1. To adopt an integrated and holistic approach based on human rights principles; 2. To recognise an approach that contributes to food security, local socio-economic development and poverty alleviation; 3. To promote biodiversity and sustainable use and management of marine resources and ecosystems; 4. To recognise that social, cultural, economic and ecological parts of small-scale fisheries systems are all linked; 5. To ensure that co-management empowers through education, training and skills development; 6. To promote effective participation in policy development, management and decision-making; 7. To promote equity and preferential access for small-scale fishers to critical infrastructure and amenities such as land and at landing sites; 8. To ensure participation of small-scale fishing communities in planning and implementation of MPAs by parastatal conservation agencies. It argues strongly for preferential tenure rights for small-scale fishers. Most of these principles are also addressed in the VGGT.
- 11 See an article published in the Daily Maverick on the current issues with Interim Relief "Something fishy: After nine years of destructive policy delays, fishers vow to take action"
- 12 The first section was dedicated to preliminary information and the aim was to establish how fishing and non-fishing activities of the community are affected by seasonality and what the relation was between the catch and the fish consumed in the family. The second section was about the daily activities of the women and men, and the goal was to understand the pattern of everyday life of both women and men in different times of the years. This section helped in directing the next questions regarding the main fishing and non-fishing activities performed by the women and their perception of the difference between their activities and men's activities. The third section was dedicated to the main fishing related activities performed by women, processing and marketing, with the aim to determine the degree of involvement and/or interest of women in performing post-harvesting activities and what the main issues were the women and the community face in relation to these activities. The fourth section aimed to determine what resources were available for women and the community. It was also helpful to determine whether women have access an opportunity to use a resource without having decision power upon its use or control / full authority of decision making upon use of the resource regarding the resources mentioned. The fifth section encompassed questions on non-fishing activities. This helped identify alternatives for diversification from fishing, which could be already in the ideas of the women. It also aimed to explore what are the obstacles they are facing in performing these non-fishing activities. The final section allowed the women speak about their view of the community as a whole, and to express their major concerns and hopes for the future of the community.
- 13 These include the National Environmental Management Act (1998) which sets out the framework for how the environment should be managed; the Marine Living Resources Act (1998) which has recently been amended as of 2014 and now means that NEMPAA embodies the legal mandate for establishing and managing MPAs in South Africa; the National Environmental Management: Protected Areas Act (2003); the Biodiversity Act (2004); and the Integrated Coastal Management Act (2009).
- 14 Constitution of the Republic of South Africa, no.108,1996
- 15 <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng-02.pdf>
- 16 Marine Resources Act, no. 18, 1998
- 17 Notes in Naseegh Jaffers submission to Parliamentary Portfolio Committee on: Marine Living Resources Bill 2013
- 18 This department has since split and is now: The Department of Forestry and Fisheries (DAFF) and the Department of Environmental Affairs (DEA), DAFF are responsible for implementing the new policy and handle all matters related to small-scale fisheries, however DEA handle all marine protected areas which too impact small-scale fishers
- 19 DENEL is also partner of German Rheinmetall Denel Munition (Pty) Ltd: https://www.rheinmetall-defence.com/en/rheinmetall_defence/company/divisions_and_subsidiaries/rheinmetall_denel_munition/index.php
- 20 Germany for testing Exocet, Sea Sparrow, Taurus[5] and IRIS-T[6] missiles Czech Republic Singapore for testing Iгла missiles[7] The UK for evaluation of the Denel Rooivalk helicopter Sweden for testing the RBS15 MK3[8] and CAMPS[9] Spain for integration of the Taurus missile on the F-18. Turkey, the Turkish Navy held a live fire exercise in May 2014 during which two frigates and a corvette fired various missiles and guns.[10]
- 21 For more information on DENEL, please visit: www.denel.co.za/about-us/company-profile and www.denelotr.co.za/about-us/history--milestones.
- 22 <https://www.iol.co.za/capetimes/fighter-planes-flip-over-fynbos-1080867>
- 23 Unfortunately there is no study to show the relationship between DENEL and fish stock depletion. While several studies show a depletion of stock, none of it points to DENEL as the source. It is typical for communities like Arniston to be targeted for this kind of violation because oral history and storytelling is their way of recording. Masifundise is currently changing this through an APP called Abalobi.
- 24 www.fao.org/cfs/home/activities/vggt/en/



TNI is an international research and advocacy institute committed to building a just, democratic and sustainable planet. For more than 40 years, TNI has served as a unique nexus between social movements, engaged scholars, and policy makers. It works to strengthen international social movements with rigorous research, reliable information, sound analysis and constructive proposals that advance progressive, democratic policy change and common solutions to global problems. Through its Agrarian and Environmental Justice Project, TNI works with rural social movements to defend and claim their economic, social and cultural rights to land and related natural resources.



FIAN is an international human rights organization working for the realization of the right to adequate food. It consists of national sections and individual members in over 50 countries around the world. FIAN strives to secure people's access to the resources that they need in order to feed themselves, now and in the future, and cooperates with peasant organizations around the world. Since 2006, FIAN facilitates the IPC for Food Sovereignty working group on land and territory. In this role, FIAN facilitated the civil society process of participating in the development and negotiation of the Tenure Guidelines.



PLAAS of the University of the Western Cape in South Africa is a world leading research institute that conducts and coordinates research across the African region. It is the region's leading research institute working on land issues and land governance. PLAAS collaborates closely with ISS in The Hague especially around the Land Deal Politics Initiatives (LDPI, www.iss.nl/ldpi).



The critical agrarian studies cluster in ISS has been in the cutting edge of research on global land deals, and has spearheaded innovative initiatives that bridge together academic, policy and grassroots activist circles. It is an institutional co-anchor for the global network of academics working on land deals, the Land Deal Politics Initiatives (LDPI – www.iss.nl/ldpi).



Masifundise is a South African organization working with disadvantaged and traditional fishing communities. It dealing with the impact of the current fishery management regime on the social, cultural and economic life in their communities aims to contribute to the eradication of poverty and promotion of food sovereignty in small-scale fishing communities by advocating for peoples' social and economic rights, including the right to equitable access to marine resources. Masifundise emphasizes capacity building of coastal communities so that they themselves can engage in processes to reach this objective. In recent years Masifundise has been helping communities to deal with the impact of the current fishery management regime on social, cultural and economic life.



International Development Research Centre
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