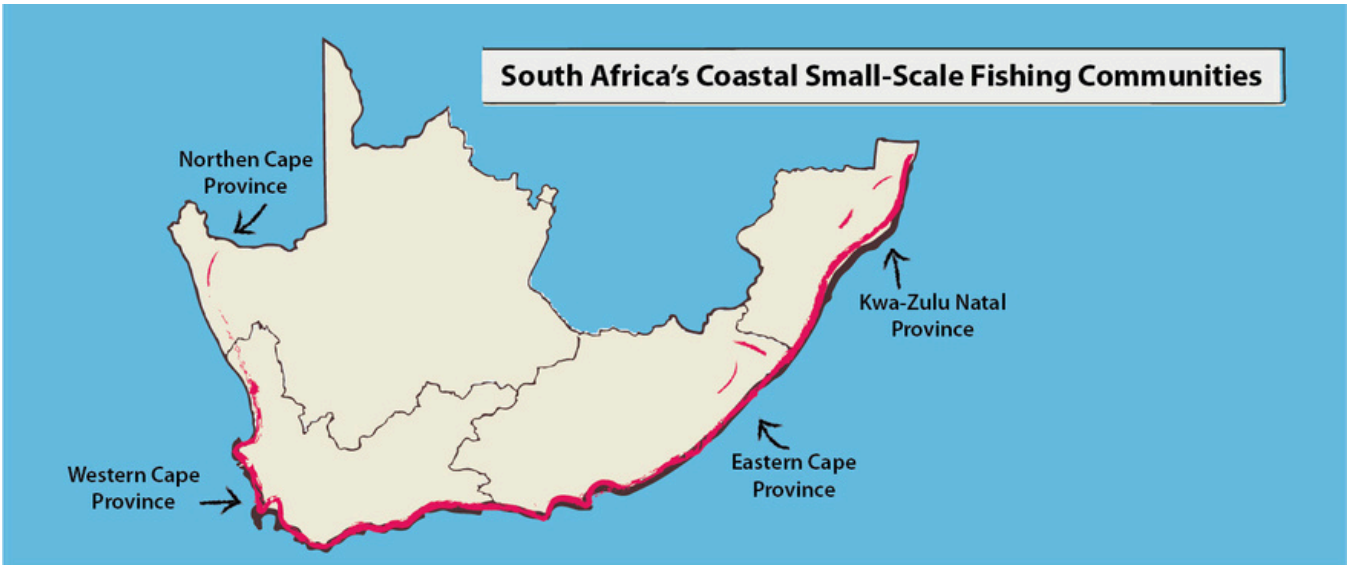
The plight of customary fishing communities in South Africa



By Anthea Christoffels-Du Plessis
Faculty of Law, Nelson Mandela University, South Africa

Photo: *Map of coastal small-scale fishing communities, South Africa, 2026. © Anthea Christoffels-Du Plessis*

The South African coastline covers over 3,000 kilometres in four coastal provinces (Northern Cape, Eastern Cape, Western Cape and Kwa-Zulu Natal), yielding profits for the industrial fishing industry and sustaining communities' livelihoods (Rice et al., 2017; Isaacs et al., 2022). Heritage-rich fishing communities reside along these coastal areas of South Africa. Indigenous fishing communities in South Africa have been fishing for generations (Policy for the Small Scale Fisheries Sector in South Africa, 2012).

Although fishing has been a historical custom and expression of these communities' culture, it is trite that these Indigenous coastal fishing communities have suffered continuous marginalization at the behest of South Africa's past and present governmental regimes (Sowman et al., 2014). These traditional Indigenous fishing communities have continued to regulate their access to and use of the natural environment, including harvesting marine resources from the adjacent coast despite exclusion from formal recognition in the law (Hauck & Sowman, 2005). After lengthy litigation, the Supreme Court of Appeal in 2018 recognised for the first time the customary fishing rights of the Dwesa-Cwebe communities in the Eastern Cape Province South Africa (Gongqose v Minister of Agriculture, Forestry and Fisheries; Gongqose v S 2018 (5) SA 104 (SCA), 2018).

Location:
Coastal provinces, South Africa

Ecosystem type:
Marine, brackish

Main gear:
Cast net, gillnet, hook and line, seine net, traps, recreational fishing gears

Target species:
fish, lobster, seaweed, abalone, mussels, oysters, hake

Vessel type:
Canoe, wooden, fibreglass (7-9.8m in length, travelling no further than 15 nautical miles from port)

Number of fishers:
29,000, of whihc about 30-33% are women

The primary legislation regulating all fishing rights in South Africa (the Marine Living Resources Act 18 of 1998 (MLRA) identifies and includes the fishing rights of Indigenous fishing communities merely as part of small-scale fishing rights when the Marine Living Resources Amendment Act, 2014 was passed to legally recognise the small-scale fishing rights regime (Christoffels-Du Plessis, 2025). In 2017, the former Department of Agriculture, Forestry and Fisheries reported that there are more than 300 fishing communities in South Africa (Christoffels-Du Plessis, 2025). This estimation has almost doubled since 2002 at the time when researchers identified only 147 fishing communities in South Africa (Clark et al., 2002a; Isaacs et al., 2022). Despite the introduction of the small-scale fisheries policy and the 2014 Amendments to the governing law, the MLRA, South African legal framework, in its present form, does not properly recognise or protect the rights of customary fishing communities as a sui generis (distinct or separate) class of fishing rights. It is submitted that, without properly recognising customary fishing rights as an independently defined class of rights, distinguishing it from the aforesaid categories, it will remain unclear how many of these recorded 300 fishing communities are indeed customary fishers. Thus, there is a disparity and uncertainty concerning customary fishing rights in South Africa as a result of a gap in the law (Christoffels-Du Plessis, 2025).

Justice in context

Types of justice:

- **Distributive**
- **Social**
- **Economic**
- **Market**
- Infrastructure/wellbeing
- **Regulatory**
- **Procedural**
- Environmental
- COVID-19 related
- Other

Before the amendment of the MLRA in 2014, the definition of the term “subsistence fisher” was premised on an indigent person who harvested marine resources using low technology for personal sustenance and potentially as a source of income (Witbooi, 2005). The term “artisanal fisher”, although not found in legislation, was used by the Equality Court in George v Minister of Environmental Affairs and Tourism, 2005. The elements of the incorporated terms “small-scale fisher” and “small-scale fishing community” are defined similarly to the aforementioned terms and they emphasize fishing with low-technology fishing equipment as a means of survival and involving limited trading of fish as a means to maintain their livelihoods (George v Minister of Environmental Affairs and Tourism, 2005). This, in itself, is problematic because customary rights to other natural resources, such as minerals, enjoy specific and exclusive protection and inclusion in the respective legislative frameworks governing the rights to use those natural resources (Christoffels-Du Plessis, 2025). Furthermore, while the Constitution 1996, as the supreme law, has already endorsed customary law as an independent source in

Definition of small-scale fisheries

Small-scale fishing means “the use of marine living resources on a full-time, part-time or seasonal basis to ensure food and livelihood security.” (Policy for the Small Scale Fisheries Sector in South Africa, 2012). A small-scale fishing community means a group of persons who have historically been, small-scale fishers and regard themselves as a small-scale fishing community; with shared aspirations, interests or rights in small-scale fishing and been involved in small-scale fishing but due to forced removals, tied to waters or geographic area, were denied from or still operates where they previously enjoyed access to fish, communally in terms of an agreement, custom, or law [Section 1 Marine Living Resources Act, 1998 (as amended)].

Justice in context

Targeted legislative, policy and institutional measures must be drafted and implemented in consultation with Indigenous communities in order to afford proper recognition of and adequate protection for customary fishing rights in the existing fisheries legal framework (Christoffels-DuPlessis et al., 2022). This can and must be achieved in compliance with the Bill of Rights enshrined in the Constitution,1996.

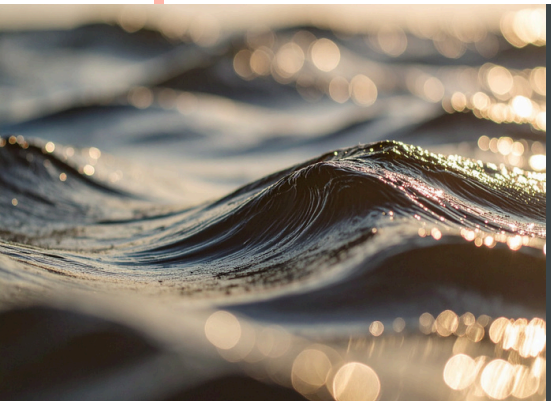
the constitutional legal order, equal to the common law and statutory law, it is anomalous that customary fishing rights have not enjoyed recognition and protection in the fisheries legal framework, as a right parallel to other fishing rights provided for in the law (Christoffels-Du Plessis, 2025). This is particularly so because dualism has always been a feature of South African law. South African fishing rights were historically focused solely on the regulation and advancement of commercial fishing rights (Christoffels-Du Plessis, 2025). The democratic era introduced, for the first time in the fisheries regulatory framework, the concept of subsistence fishing rights – a first articulation of fishing rights to accommodate traditional fishing communities (Witbooi, 2005). These Indigenous fishing communities, who have historically been fishing for generations as part of their culture to support their livelihood, needed more substantive protection of their rights in the law. The 2007 Equality Court order in the George case set out specific guidelines in terms of which the new traditional-fishing-rights landscape had to be developed and recognised (Isaacs et al., 2022; Christoffels-Du Plessis, 2025). It is, however, clear that the current government has made limited progress in its transformation of the fishing industry by seeking to dress up traditional fishers to operate on a basic community-type business model through the co-operatives that are awarded the current small-scale fishing rights (Christoffels-Du Plessis, 2025).

Dealing with injustice

Notwithstanding the various judicial rulings recognizing and protecting the customary fishing rights of traditional Indigenous fishing communities, from 2005 to 2022 (see Gongqose v Minister of Agriculture, Forestry and Fisheries; Gongqose v S 2018 (5) SA 104 (SCA); Coastal Links Langebaan v Minister of Agriculture, Forestry and Fisheries [2016] ZAWCHC 150; [2017] 2 All SA 46 (WCC); George v Minister of Environmental Affairs and Tourism [2006] ZASCA 57; 2005 (6) SA 297 (EqC) [recognition of traditional fishing rights cases]; see also Adams v Minister of Mineral Resources and Energy [2022] ZAWCHC 24; Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy 2022 (2) SA 585 (ECG) (28 December 2021) [failure to meaningfully consult with Indigenous fishing communities on developments]), which gave impetus to the Policy for the Small-Scale Fisheries Sector in South Africa, no further meaningful changes to the law have been implemented to specifically address the recognition of customary fishing rights (Christoffels-Du Plessis, 2025). Until the Marine Living Resources Act, 1998, is amended to grant recognition of, and protection to, customary fishing rights as a distinct and sui generis class of small-scale fishing rights, the prevailing marginalization and prejudice suffered by the Indigenous fishing communities will continue.

Sources

- Adams and Others v Minister of Mineral Resources and Energy and Others (1306/22) [2022] ZAWCHC 24 (1 March 2022), Saflii.org ___ (2022). https://www.saflii.org/za/cases/ZAWCHC/2022/24.html
- Christoffels-Du Plessis, A. (2025). Customary fishing rights in South African fisheries law [Doctoral Thesis]. http://hdl.handle.net/10948/72044
- Christoffels-DuPlessis, A., Erinosho, B., Major, L., Morgera, E., Sunde, J., & Vermeylen, S. (2022). Navigating a Sea of Laws: Small-Scale Fishing Communities and Customary Rights in Ghana and South Africa. In The Palgrave Handbook of Blue Heritage (pp. 325–356). Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-99347-4_18
- Clark, B. M., Hauck, M., Harris, J. M., Salo, K., & Russell, E. (2002). Identification of subsistence fishers, fishing areas, resource use and activities along the South African coast. South African Journal of Marine Science, 24(1), 425–437. https://doi.org/10.2989/025776102784528574
- Constitution of the Republic of South Africa, 1996, (1996). https://www.justice.gov.za/constitution/SAConstitution-web-eng.pdf
- Department of Agriculture, Forestry and Fisheries. (2012). Policy for the Small Scale Fisheries Sector in South Africa. South African Government. https://www.gov.za/sites/default/files/gcis_document/201409/35455gon474.pdf https://www.saflii.org/za/cases/ZAECMKHC/2022/55.html
- George v Minister of Environmental Affairs and Tourism, (Equality Court: Western Cape High Court 2005).
- Gongqose v Minister of Agriculture, Forestry and Fisheries; Gongqose v S 2018 (5) SA 104 (SCA), (Supreme Court of Appeal, South Africa 2018). https://www.saflii.org/za/cases/ZASCA/2018/87.html
- Hauck, M., & Sowman, M. (2005). Coastal and fisheries co-management in South Africa: an overview and analysis. South African Journal of Environmental Law and Policy Volume, 12(1), 1–21. https://hdl.handle.net/10520/AJA10231765_69
- Isaacs, M., Hara, M., Dennis, T., Rouhani, Q., Mannarino, C., & Jaffer, N. (2022). A Situational Analysis of Small-Scale Fisheries in South Africa: From Vulnerability to Viability. https://www.masifundise.org/wp-content/uploads/2022/10/A-Situational-Analysis-of-SSF-in-South-Africa_V2V-Working-Paper-No.-2022-9.pdf
- Marine Living Resources Act, 1998, Lawlibrary.org.za. https://lawlibrary.org.za/akn/za/act/1998/18/eng@2016-03-08
- Marine Living Resources Amendment Act 5 of 2014. https://www.gov.za/documents/marine-living-resources-amendment-act-0
- Parliamentary Monitoring Group “Small-Scale Fisheries Policy Implementation; Fishing Rights Allocation Process 2020: DAFF Progress Report” (7 November 2017) https://pmg.org.za/committee-meeting/25420/
- Regulations Relating to Small-Scale Fishing, 2015, (2016). https://www.gov.za/sites/default/files/gcis_document/201603/39790gon229.pdf
- Rice, W. S., Raemaekers, S. J.-P. .N., & Sowman, M. R. (2017). Understanding bycatch using an EAF approach: The case of the Olifants estuary small-scale gillnet-fishery, South Africa. Ocean & Coastal Management, 149, 22–32. https://doi.org/10.1016/j.ocecoaman.2017.09.016
- Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others (3491/2021) [2022] ZAECMKHC 55; 2022 (6) SA 589 (ECMk) (1 September 2022), Saflii.org ___ (2021).
- Sowman, M., Sunde, J., Raemaekers, S., & Schultz, O. (2014). Fishing for equality: Policy for poverty alleviation for South Africa’s small-scale fisheries. Marine Policy, 46, 31–42. https://doi.org/10.1016/j.marpol.2013.12.005
- Witbooi, E. (2005). Fishing Rights: A New Dawn for South Africa’s Marine Subsistence Fishers. Ocean Yearbook Online, 19(1), 74–104. https://doi.org/10.1163/22116001-90000262



How to cite

Christoffels-Du Plessis, A. (2026). The plight of customary fishing communities in South Africa. In: Kerezi, V. & Chuenpagdee, R. (Eds.) Blue Justice For Small-Scale Fisheries: A Global Scan, Volume 4. TBTI Global Publication Series, St. John's, NL, Canada.