

A new apartheid?

The transformation process in South Africa's fisheries is a tale of chaos and corruption

Cape Town, South Africa: the small knot of men hanging around the dock gates hardly attracts a second glance. To the casual observer they are just like any other group of chancers trying their luck for work in the port. However, this group is not just any old flotsam of washed up job hunters. They are members of the Cape Town Harbour Fishermen Co-operative, part of a new quota owning elite in South Africa. They are some of the new quota owners, so-called 'new entrants' to the fishery, and the intended beneficiaries of the transformation processes set in motion in the fishing sector just prior to 1994.

Since 1994 under the leadership of Nelson Mandela, the South African government has been attempting a major restructuring, or transformation of its fishing industry. However, there are three major constraints to achieving transformation.

First, the 'Sunset Clause' in the new constitution requires that no official in the apartheid administration is removed from office for at least five years. Thus there is tremendous administrative inertia to change the status quo. Second, the constitution obliges the government to negotiate transformation with the existing stakeholders. This means that any redistribution of wealth and power must be negotiated with the large fishing companies, and, more importantly, with the financial institutions that are the major shareholders in these industries. The government's ability to deliver transformation is therefore severely restricted by these two aspects of the constitution

In the third place, to a significant number of people, transformation means restitution. In the 1960s, under the Group

Areas Act, large segments of the population were shifted out of their coastal homes to townships several miles in-land. Their movement back to the coast to pursue their former livelihoods was restricted by their geographical isolation, and also by the Pass Laws. They, therefore, expect the restitution of their rights to earn their livelihoods from fishing. Any compromise deal falls short of their expectations.

The Cape Town dock workers are one such group. But these men have neither vessels nor equipment, and have been denied access permits from the Department of Sea Fisheries. They, therefore, have no means to convert their quotas directly into livelihoods. In any case, the token quotas provided to them would not go far amongst the 450 registered members. Most of them live in townships some distance from the coast, and their sole source of meagre income is from uncertain casual work as crew members aboard the longliners and trawlers based in Cape Town Docks. They can not even afford the bus and train fares to come to work each day, let alone the costs of investing in, or running, a small fishing business a basic requirement of the quota application.

Quotas have become the main tool for transformation in the fishing sector. They are the means through which South Africa's fishery wealth is to be redistributed. By making quotas transferable, the system aims for a wider group of new stakeholders to cash in on South Africa's marine wealth.

Unmanageable

However, the system is clearly unmanageable. There are many more applications than available quota, and there is insufficient capacity in the

Department of Marine and Coastal Management to process the thousands of complex application forms.

The quota system is also based on an unrealistic model of the South African fishing sector. First of all, it requires all applicants to establish a commercial company, complete with a business and marketing plan—quotas will thus only be awarded to certain types of corporate structures. Secondly, the geographical, social and economic isolation of fishing communities has resulted in low levels of literacy and education.

Most new quota applicants, therefore, have to seek help to fill in the forms, and this has often led to their applications getting hijacked. In many instances the quota awarded has been of a token amount, and recipients have been advised to sell to larger business interests. This has fuelled the market for paper quotas, and resulted in the access rights merely passing back into the hands of big business.

Ministers' wives, politicians, business leaders and other people of influence have all received handouts of quota ahead of genuine fishermen. The corruption was initiated under the auspices of the Quota Board prior to 1994, and continued by the Fisheries Transformation Council set up by the new Marine Living Resources Act. This has severely discredited the transformation process.

Over the last year, court cases have been filed against the government by former quota holders for illegal and unconstitutional quota allocations. As a result, a significant part of the South African fishing sector has ground to a halt. For example, legal wrangling in 1998 prevented the Minister from allocating new quotas for hake and anchovy for fear of court action from disgruntled former quota holders. It was only a compromise deal with the industry that allowed 40 per cent of the hake quotas to be allocated and fished in 1998/99. Some new entrants had to wait until 17 December, when 75 quotas for 4,000 tonnes of hake were finally allocated. This gave them only around five weeks before the last day of the season. As these quotas were distributed in

quantities of 50 and 100 tonnes, most were quickly sold and passed back into the hands of the large companies.

The 1999 fishing season has also been severely disrupted by court cases. In one such landmark case, in May 1999, it was ruled that the allocation of crayfish quotas for the 1998/99 season (November to July) made by the minister was irregular. This meant that no crayfish quotas could be allocated to small fishermen, but that the lion's share had to be allocated only to the previous recipients. Deputy Minister Mokaba criticized the ruling, pointing out that: we remain with unreconstructed courts they did not look at the intention of the law the interpretation of the court did not take into account the spirit of the new legislation.

The issue of access is fundamental to the transformation process, but there is a wide divergence of view on who should have access. In most fishing communities, it is felt that priority access should be given to those who get their hands wet. They need direct access to the resources in order to earn their livelihoods. For social reformers, access means opening up the fisheries sector to non-white - mainly 'black' - interest groups. For them 'black empowerment' is the main objective. For others, access means having a share of the marine wealth in a form they can use or convert into cash.

The new Marine Living Resources Act is not a very successful attempt to reach a compromise on these divergent views. The Act only recognizes three kinds of fishermen: subsistence fishers, recreational fishers and commercial fishers. Essentially, subsistence and recreational fishers are 'second-class fishers', whose activities and movement in the sector are highly restricted. The Act seriously omits to mention the artisanal fishing sector, or how fisheries can be incorporated into, and contribute to, the development of the wider coastal area.

Wider issues

The issue of quotas goes beyond access rights. According to a senior Fisheries Department Official, quotas are now used to meet three key objectives of South Africa's Marine Living Resources Act: redistributing resource access rights so as

to redress social imbalances in the fisheries sector; ensuring the sustainability of the resource base; and maintaining stability in the industry.

The story of the Cape Town harbour fishermen illustrates how the quota system is, at best, not working, and, at worst, is being used to benefit a few at the expense of the many. Gerry Phakoe, a spokesman for the Cape Town Workers, says angrily, "My father lived Simonstown and was a fisherman. That was until we were forced to move to the townships. We were called bergies (vagrants), and were exploited by the boatowning fishing companies. We have seen our brothers drowned at sea, and die in misery and poverty. However, in 1993, we realized that we had certain rights, and that we could claim these from Sea Fisheries (now the Department of Marine and Coastal Management)."

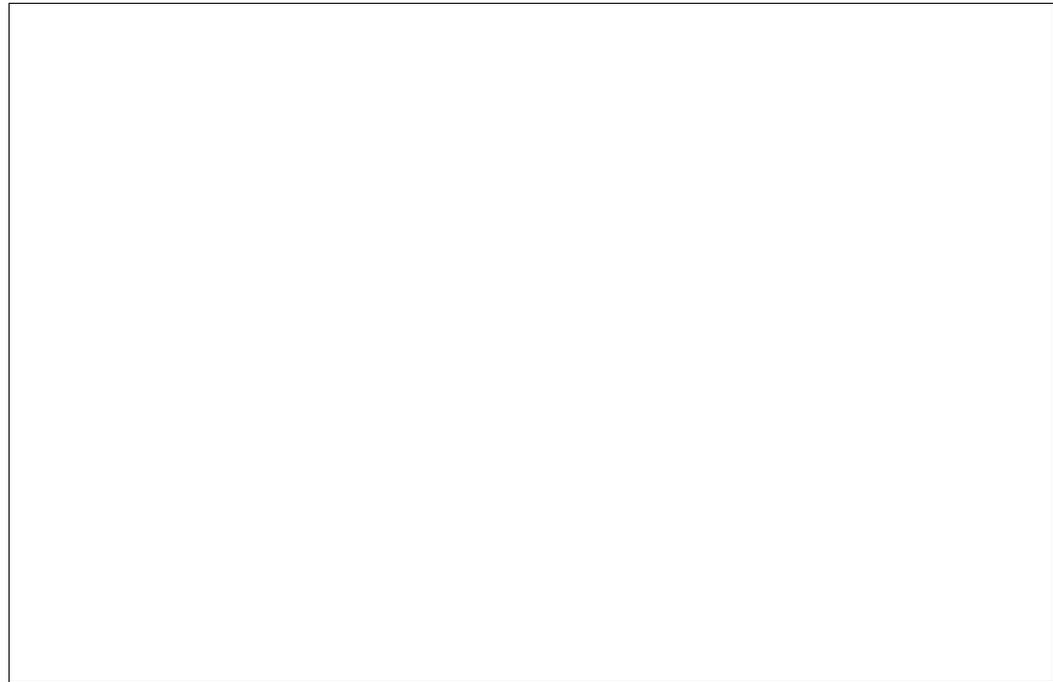
According to Gerry, in 1993, 355 Cape Town Docks fishworkers got together, and, in 1994, they were allocated 63 tonnes of hake quota. This was increased to 951 tonnes, after protests. However, they were denied access permits, and were advised by a senior fisheries official to sell their quota to a company nominated by him. They also sought legal advice, and were advised to set up a 'Community Trust' to invest their quota money in local community services. However, the lawyer they hired, together with the department

official, drew up a flawed document, and, as a result, only a part of the quota money was released - Rand 500,000 (about US\$ 8,500). Each fishworker received Rand 400, and the rest of the money was misappropriated. Frustrated and angry, they attacked the lawyer and broke into the Sea Fisheries offices.

In the court case that followed, their claims against the lawyer and Sea Fisheries officials were over-ruled. A subsequent court ruling declared that quotas could not be allocated to Community Trusts as these were not properly constituted companies. In the course of events, they met up with Andrew Johnston, a lobster fisherman, who was trying to unite all small-scale and 'informal' (unrecognized) fishers under one banner. His vision was to establish a fisherman's co-operative that would act on behalf of its members to acquire and distribute the quota, and process and market the fish catch. He travelled all over the country, and persuaded 17 organizations to join him. These were then registered as co-operatives with the Registrar of Co-operatives.

New company

With legal advice, they set up the South African Commercial Fishermen's Corporation Pty Ltd (SACFC), which applied for quota on behalf of the now 25 members (including the Cape Town Harbour Fishermen Co-operative Ltd).



What the co-operative members did not bank on was the legal and official interpretation of the General and Transformation Criteria for quota applications: that quotas would only be awarded to companies with 'Closed Corporation' or 'Pty' structures. Their lawyer therefore appointed himself as Chief Executive Officer, established a holding company which now owns SACFC, and took control of the business. The company has an authorized share capital of 10,000 shares of Rand 1.00 each, which is distributed amongst the member organizations according to the size of their membership.

According to Matthys Mocke, Chief Executive Officer, in its first year of operation (1998/99), SACFC was allocated quotas for hake (800 tonnes), crayfish (130 + 59 tonnes), and abalone (20 tonnes). It was also allocated 40 squid permits. A business arrangement has been struck with one of the large fishing companies, OCEANA. This has "assisted with cash flow problems", and allowed SACFC to use one of its processing factories.

Yet, shareholders are up in arms. They fear that this is just another ruse to deprive them of their access rights. They have seen quotas hijacked in the past by clever lawyers, school teachers, civil servants and businessmen. In Hawston, for instance, the quota awarded to the Fishers Co-operative was sold off by the person

who applied on its behalf. In Saldanha Bay, Denburg Fisheries Pty Ltd, formed by the local fishermen to apply for quota, has also had its quota hijacked.

The quota allocation system does not take account of the immediate and ongoing needs of the fishworkers and their dependents: fishermen need access to the sea, and regular food and income from fishing activities. The system now in place can, at best, only meet their immediate and short-term needs, if they sell off their quota.

Despite over five years of democratic government and transformation, the pre-1994 status quo prevails in South Africa. Around 70-80 per cent of the ownership of the access rights remains concentrated in the hands of the five largest players. Racial apartheid has been replaced by economic and social apartheid, with coastal communities and local economies still effectively excluded from the fishery.

This article is by Brian O'Riordan, a Member of ICSF