

Improvident Law

Legal improvidence has led to fishers in South Africa being denied access to the waters of protected areas

I am called a pirate.” This declaration came from Donovan van der Heyden, a fisherman from South Africa, who was addressing audiences in Hyderabad during the 11th session of the Conference of Parties (COP11) to the Convention on Biological Diversity (CBD) in October 2012.

‘Pirate’ is the misnomer employed by the South African authorities to refer to someone who ‘steals’ marine resources, van der Heyden explained. But the law that declares his activities

fishing company to fish in the MPA for the next 30 years. The officials reasoned that the company had been given fishing rights before the act was formulated and hence its rights could not be snatched away suddenly. Ironically, though, the officials had no qualms about annulling the fishing rights of the fishers of van der Heyden’s village, who had traditionally enjoyed access to the very same waters.

The coloured people of Hout Bay do not have motor boats to go beyond the MPA to fish; thus, in order to sustain their livelihoods, they have to work on the boats of richer people. In this little village in post-apartheid South Africa, the rich are still predominantly white. “The government has made us work on white people’s boats, forcing us into enslavement once again. This is South Africa’s second wave of apartheid,” says van der Heyden.

Hout Bay is a microcosm of South Africa; people from diverse racial backgrounds reside in the village, which is populated by around a few hundred people. “Because of this representative nature, most research case studies use Hout Bay as a sample,” points out van der Heyden. What goes wrong here is more likely to go wrong elsewhere in the country, he adds.

Fishing for sustenance

“The people from the village fish for sustenance and not for profits, unlike the fishing and tourism industries. The waters beyond the MPA have only a high-priced species of fish. But what can we do with that? We need local fish and lobster to feed on. We

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illegal—the Marine Living Resources Act governing the country’s marine protected areas (MPAs)—does not coerce him into abiding by it blindly.

A revised act was mandated in 2000. But the amendment to the original legislation, which was construed during the apartheid regime, did little to change the law’s discriminating characteristic, claims van der Heyden.

The declaration of van der Heyden’s home region of Hout Bay as an MPA was soon followed by the entry of private companies into the no-take zone and permission for recreational fishing and tourism, while the waters of the MPA remained beyond the reach of the fishing community that had been fishing in the area for centuries. The act granted rights to a large

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are not in the fish trade," explains van der Heyden.

In order to sustain themselves, people like van der Heyden are forced to go to sea at night, which is dangerous even for those who have fished in those waters all their lives. They are also often caught, forced to pay fines and declared as 'pirates'. Resentment is thus brewing among the fishers.

Led by van der Heyden and without any organizational funding support, the residents of Hout Bay were able to persuade the government to eject the fishing company from the MPA in 2010, which had been operating in its waters for 19 years. "We have continued to fish in the protected waters because that is the only way we can sustain ourselves. The fish population has not been affected in all these years. Isn't that example enough to prove we are not the cause for depletion of fish stocks?" van der Heyden asks. "So why not make it legal to fish here and save us from the trauma of being forced to break the law, pay fines and bribe our way through our daily lives?"

Nico Waldeck, who also works with fishermen, shares a similar experience from Ebebhaesar, a fishing town in the Western Cape. There, unlike in Hout Bay, the government consulted with the fishing community before declaring a protected zone. But the consultation was superficial, claims Waldeck. "They gave us their tongues and not their ears," he says, adding that the reservations of the people were never taken into account. Langerbay, a holiday destination, was thrown open to recreational fishing though it was closed for traditional fishing communities. In this case too, the non-protected waters were beyond the reach of traditional fishing boats. "Pesticide effluents from agricultural land adversely affect the marine resources. But that has been overlooked. Only fishers, who fish to sustain themselves, have been targeted," says Waldeck, indicating the improvidence of the law.

Since South Africa's fishermen are not well organized in all regions, it is difficult to fight the marine protection law on a national scale. The application



SERGE RAEMAERKERS

A South African lobster fisherman. Not being in the fish trade, most fishermen depend on local species for their subsistence

of the law also varies from region to region, making it all the more difficult for fishing communities to engage in a united battle. 3

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Marine Protected Area Management in South Africa: New Policies, Old Paradigms