

## Power in Place: Protecting living law and local knowledge in coastal planning processes

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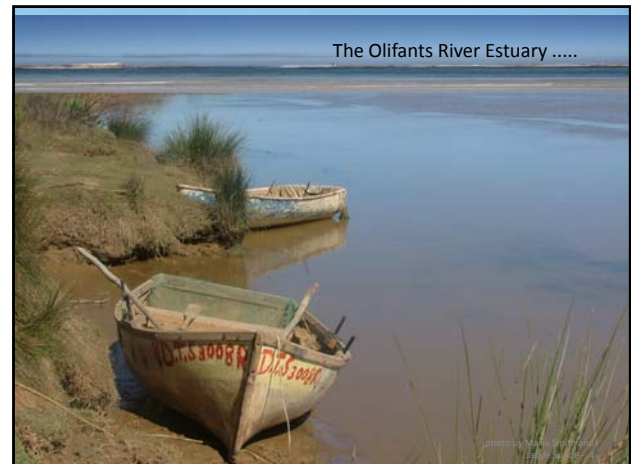
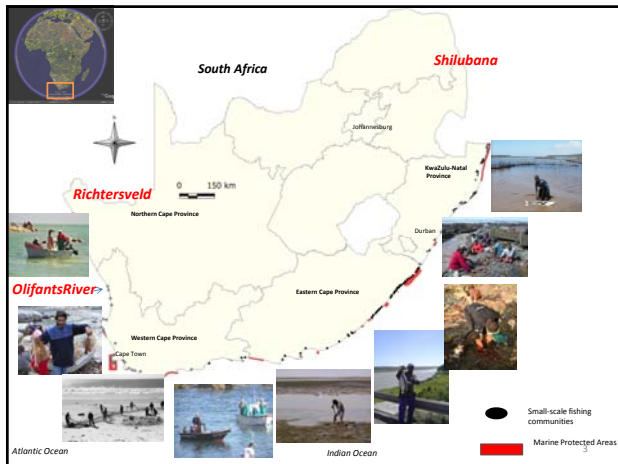


photo by Dirk Trotskie - 1

## Background and Introduction

- 1) the Olifants River traditional net fishing community illustrates how traditional fishing communities in South Africa are challenging the dominant fisheries and integrated coastal management paradigm
- 2) they are arguing for an alternative, community-based approach that recognises customary fisheries systems, values fishers' knowledges and enables legitimate governance to emerge from local experiences
- 3) they are claiming their rights to participate in the current planning processes for the estuary
- 4) living customary law is now recognised as a source of law in the South African legal system and this has implications for the process and content of ICM and fisheries policy and legal frameworks

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The Olifants River Estuary .....

photo by Mark Spangenberg  
Bridle Studio - 4



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Oom Sekkie Africa - 6







## Apartheid fisheries

- Prior to 1994 fishing industry was dominated by predominantly white-owned commercial companies, until 1990's no black fishers were allocated fishing rights
- Management very centralised, top down
- Industry had close ties with government
- Economic efficiency model influenced scientists

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## Post Apartheid

- Democratic elections in 1994 ushers in law reform
- 1998 new fisheries legislation: Marine Living Resources Act
- MLRA aimed to bring about transformation in the industry but geared towards big companies, and black empowerment in commercial sector
- left overs for small scale, artisanal fishers
- statutory system only recognised three fisheries: – commercial, recreational and subsistence

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## Law reforms and new policies post Apartheid

- New policies did not make provision for traditional artisanal fishers – subsistence was narrowly interpreted and managed through a permit system
- Exemption permits – left with crumbs –our customary and local rights ignored
- Individual rights approach – a few fishers were allocated individual quotas

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## Fishers' resisted the new policy

2002 – fishers organised supported by Masifundise  
 2004 - Coastal Links, a network of community-based fisher organisations  
 2005 – twenty communities and 5000 fishers launch of institutional interdict in Equality Court

## South African Fishers:

### "PROTECTING OUR LIVELIHOOD"



## 2005 - fishers on their way to Parliament



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## Olifants River ICM process

- 2005 Department unilaterally declared phasing out all fishing on the estuary – a nursery ground for line – fish caught elsewhere on the coast by the commercial industry
- 2007 Introduced an estuary management planning process as part of an integrated coastal management policy – added weight to their plan to phase out

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- Stakeholder meetings were held in the nearby historically white coastal town, not at the estuary where the community live
- The local fisher and land claimant community were not invited to the first meeting
- The Stakeholder consultation process was driven by conservation orientated consultants who proposed a vision and strategic objectives for the estuary : “a haven for wildlife and visitors”
- Proposed to establish a statutory Marine Protected Area with no fishing for 18km up river

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Fishers sought legal advice and support from LRC Masifundise and the EEU at the university supported them in writing letters of protest, asking for meetings with the government officials and providing background documentation to challenge this estuary management plan



Henk, Yana, Nico, Sylvester, Hahn - 22



Kathy Thomas and Oorn Pieter Cloete - 23

## The fishers' claims.....

- We are not ordinary 'stakeholders'
- ICM planning and biodiversity protection principles cannot ignore our land and fishing rights
- We have customary fishing rights
- Our customary rights must be considered as must our fishing rights in terms of the new small-scale fisheries policy

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## What are our customary rights?

- The SA Constitution and the bill of rights recognise customary law
- 2003 constitutional court in Richtersveld insisted that **local living customary law** trumps codes; [what are customary rights: in Shilubana four factors for determining law provided]
- Followed legal precedents Calder, Delgamuukw, Mabo and Amudo Tijani
- Endorois decision of 2010 recognises exclusive property rights based on African Charter rights of culture, development and resource use

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A process of 'good governance of tenure' in fisheries starts with the recognition of living customary law, namely the local rules of resource access and use, including extent and to what ends.

Local law shapes local systems of decision-making and dispute resolution.

These local knowledge systems and scientific knowledge may not coincide, requiring participatory processes of knowledge sharing resulting in normative and objective standard setting for resource management

Local law making would then be augmented with statute law derived from the Constitution.

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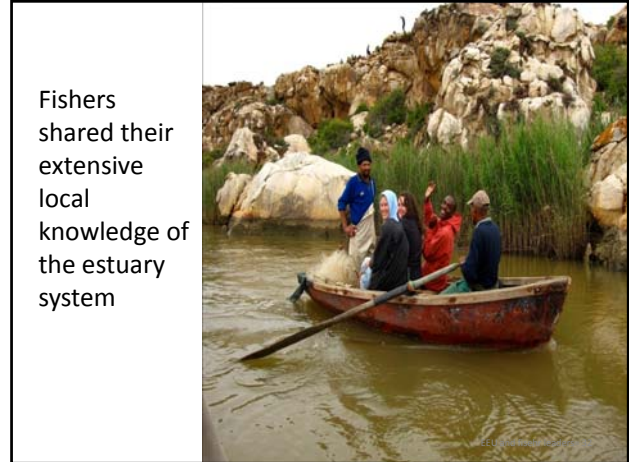
## What we did...

- Action- research partnership to collect oral histories from the elders, women and fishers, video story telling...
- Process of empowering fishers, validating their local knowledge and enabling them to state and assert their customary rights and practices
- First time in South Africa that a community has begun to assert their customary fishing rights in this way

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Fishers shared their extensive local knowledge of the estuary system



### The fishers' message to the Government

- Our local system cannot be boxed
- The dominant approach: ICM, EAF, commercial fisheries must accommodate us on our terms
- For ICM process to be legitimate it must start at local level – governance starts here ....
- Statutory law must accommodate customary law
- Stakeholder and permit process denies us our rights

### Our local way and lessons

- Continuing risking; striving for participation and legitimacy
- Legal environment beginning to recognise us
- Governance starts with local relations and rules that emerge through local use, access and control

