



ANNEXURE A

RESPONSE OF THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA TO THE COMMUNICATION FROM THE SPECIAL RAPPOREUR ON THE RIGHT TO FOOD REGARDING THE ALLEGED “CRIMINALISATION OF AND USE OF VIOLENCE DIRECTED AT FISHERFOLKS IN THE DWESA-CWEBE WILDLIFE RESERVE AND MARINE SANCTUARY IN THE EASTERN CAPE, SOUTH AFRICA”

In response to the issues highlighted in the letter from the Special Rapporteur (Ref AL ZAF 1/2024), which were also raised by the fisherfolk with South Africa’s national Department of Forestry, Fisheries and the Environment (DFFE), the Government facilitated a meeting on 29 May 2023. This meeting included representatives from the Eastern Cape Parks and Tourism Agency (ECPTA), Masifundise Development Trust (representatives of the Small-scale fishers), Community Property Association, Mpume Traditional Council and the municipal Ward Councilor of the area. The purpose of the meeting was to engage and find workable solutions to the challenges mentioned in the letter.

When dealing with issues of this nature, it is crucial to consider the historical, social and regulatory context of the Dwesa-Cwebe Marine Protected Area (MPA). The Dwesa-Cwebe MPA was designated, along with several other MPAs, on 29 December 2000, as a no-take MPA, meaning no fishing was permitted. It was later acknowledged that at the time of its designation, the local communities were not adequately consulted. During this period, the criminal case involving Mr Gongqose was ongoing in South Africa’s criminal justice system. Government, in consultation with local communities, decided to revise the status of the Dwesa-Cwebe MPA to allow for customary, small-scale fishing while balancing these needs with the conservation objectives of the MPA.

On 6 November 2015, the Dwesa-Cwebe MPA was legally re-declared and rezoned to accommodate customary, small-scale fishing by the local communities. The Dwesa-Cwebe MPA therefore now legally allows small-scale fishing by local communities within the small-scale fishery system adopted in terms of South Africa’s national law governing fisheries, the Marine Living Resources Act, 1998.

The MPA plays a crucial role in conserving fish stocks, aiding in their breeding and recovery, and is thus vital to South Africa’s overall food security framework. One of the stated objectives of the Dwesa-Cwebe MPA is “to facilitate fisheries management by protecting spawning stock, allowing stock recovery and enhancing stock abundance in adjacent areas while accommodating appropriate small-scale fisher and

recreational access to marine resources within certain zones in the Marine Protected Area.” The Government believes that the Dwesa-Cwebe MPA has successfully struck a reasonable balance between supporting customary, small-scale community fishing rights and maintaining the conservation objectives of the MPA.

The judgment by South Africa’s Supreme Court of Appeal in the Gongqose case pertained to the Dwesa-Cwebe MPA regulations before their re-declaration and revision in 2015. In its judgment, the court explicitly acknowledged that the Dwesa-Cwebe MPA regime had since been amended to accommodate customary, small-scale fishing rights.

In regard to specific issues raised in the letter, the following responses and/or observations are made:

- a. **Question:** Please provide any additional information and/or comments you may have on the above-mentioned allegations.

Response: The information provided to the Special Rapporteur does not accurately reflect what occurred. The fishermen were fishing illegally outside the designated times set by the regulations governing the Dwesa-Cwebe Marine Protected Area (MPA), and their presence in the reserve was unauthorised. Ownership of the land does not exempt anyone from adhering to the rules regarding access to the reserve. Night fishing in the area is frequently associated with abalone poaching and abalone poachers often use local fishermen to conceal their illegal activities, compensating them generously for the use of their boats and for providing cover.

- b. **Question:** What specific measures has your Excellency’s Government undertaken to prevent the harassment and criminalisation of small-scale fishing communities in marine protected areas like Dwesa-Cwebe?

Response: The allegations that small-scale fishing communities are being harassed and criminalised are unfortunate and unfounded. The Government has reason to believe that some fisherfolk are involved in illicit fishing activities at night, this is done in collaboration with poachers, mainly sourcing abalone. The ECPTA rangers’ efforts to curb this unlawful activity has resulted in some fisherfolk to lose income from their unlawful conduct, leading to ongoing tensions with law enforcement agencies. To address this, additional ranger capacity has been acquired to enhance compliance and enforcement, as well as to strengthen ongoing education and awareness efforts with local communities. More time will be dedicated to outreach and awareness programs to ensure that local fisherfolk are informed about the rules and regulations.

- c. **Question:** Please outline strategies or programs to engage with Community Property Associations, law enforcement and conservation authorities to foster collaborations with small-scale fisher communities.

Response: This request or suggestion, related to Question 2 above, will be addressed through the defined stakeholder engagement plan, which will be reinforced by the Government in collaboration with the ECPTA. Small-scale fishing monitors have been appointed to assist the fisherfolk. Training and awareness sessions with the local fishing communities around the Dwesa-Cwebe area are planned. The purpose of such engagements will be to discuss concerns and foster improved communication and working relationships between the reserve management and the fishing community.

- d. **Question:** Can you please provide information on any investigations or initiatives aimed at information on any repercussions that the ECPTA rangers who assaulted the victims on 01 February and 11 December 2022 have faced, and measures put in place to prevent the reoccurrence of similar incidents of violence against small-scale fishing.

Response: Two criminal court cases were initiated: one against community members for illegal access and presence in the reserve, and the other against the field rangers for the alleged unlawful shooting of community members. The National Prosecuting Authority (NPA) withdrew the case against the field rangers. The case against the community members is still under consideration by the NPA and the South African Police Services. The court proceedings in this matter are still ongoing.

- e. **Question:** Please indicate what steps or initiatives are being considered or planned to rebuild and strengthen the strained relationship between the government and local communities affected by marine protected area regulations. These could include any initiatives for reaching out to the victims and other community members to address the widespread fear of violence that is directed to those who engage in small-scale fishing.

Response: Investigations have revealed that the fisherfolk involved in illegal fishing in the MPA, particularly the prohibited fishing at night, are armed with rifles and have previously assaulted rangers. It has also been observed that some illegal fishers come from outside the Dwesa-Cwebe area; these individuals are not from the local communities and are therefore not small-scale fishers. The Government, in collaboration with the ECPTA, will explore funding opportunities with a view to appointing additional staff dedicated to strengthening relations with the Dwesa-Cwebe communities, including those who fish.

- f. **Question:** Does your Excellency envisage changes in legislation that better accommodate the traditional fishing rights of local fishing communities while maintaining marine conservation targets?

Response: As mentioned previously, the Dwesa-Cwebe MPA regime has already been significantly modified to accommodate customary, small-scale fishing rights. The Government does not foresee the need for any further regulatory reforms. Instead, programs focusing on advocacy, community awareness, and training should be strengthened to ensure the current system is implemented more effectively with greater local community involvement.

- g. **Question:** Please provide information on any envisaged or undertaken steps to educate small-scale local fishing communities about Gongqose, as well as measures that have been taken to ensure that it is implemented in Dwesa-Cwebe, and small-scale fishers benefit from it.

Response: There have been several sessions where Government officials met with local communities to explain the implications of the judgment. However, Government's efforts are being hindered by certain non-governmental organisations (NGOs) that are incorrectly advising the local community about the judgment and the law governing the Dwesa-Cwebe MPA. The Government has approached these NGOs, urging them to collaborate in providing the communities with accurate information, but these attempts have been unsuccessful. It is unfortunate that these NGOs persist with their advocacy in the local communities, as this has had, and may continue to have, serious consequences for those affected by the misinformation.

- h. **Question:** Please provide information on measures that have been taken to ensure the inclusion of small-scale fisher communities in Dwesa-Cwebe in leadership and decision-making processes and positions, especially concerning the Nature Reserve.

Response: Government convened a meeting on 29 May 2023 with local communities, the communal property association, some traditional and municipal leaders, and several NGOs operating in the area to find a working solution. At this meeting, it was agreed to establish a co-management structure through a land claims process. This process has been initiated, and some Dwesa-Cwebe communities are being duly represented in that structure by one of the NGOs.

Government remains committed to the just treatment of fisherfolk and will continue to work with all involved parties to find a sustainable solution. However, given the importance of the Dwesa-Cwebe MPA for conservation, and as part of the food security framework, law enforcement in this context and eliminating illegal abalone fishing in the area remains a priority for South Africa.