



09 November 2014

**ISSUES OF CONSIDERATION ON THE FISHERIES INTERNATIONAL  
AGREEMENTS REFERRED TO THE PORTFOLIO COMMITTEE ON AGRICULTURE,  
FORESTRY AND FISHERIES**

**1. The Referred International Agreements**

1.1 International Agreements that are tabled in Parliament for approval should be accompanied by an Explanatory Memorandum and a Draft Resolution from Cabinet regarding the proposed ratification of, or accession to, the specific international Agreement.

The three International Agreements that were tabled in Parliament by the Department of Agriculture, Forestry and Fisheries (hereinafter referred to as DAFF or the Department) and referred to the Portfolio Committee for approval, namely, Agreement for the Establishment of the Indian Ocean Tuna Commission (IOTC); Convention for the Conservation of Southern Bluefin Tuna (CCSBT) and the United Nations' Food and Agriculture Organisation (FAO) Agreement on Port State Measures to prevent, deter, and eliminate illegal, unreported and unregulated fishing (IUU) (Port State Measures on IUU Fishing), were not accompanied by any Draft Resolution.

1.2 The copies of the Agreements have no letterheads of the organisation or custodians, have not been signed and some are not dated. Parliament is supposed to receive copies of the actual Agreements that the country will be signing into.

1.3 As the tuna Agreements are quite old (CCSBT entered into force in 1994 and the IOTC in 1996), it is possible that there might have been amendments to the original Agreements and other States/Parties might have since acceded to the Agreements. This kind of information has not been provided by DAFF. For example, although the CCSBT was initiated by Japan, Australia and New Zealand, as per the referred copy, the Fishing Entity of Taiwan, Indonesia and the Republic of Korea have since joined the Convention as Members.

1.4 In terms of the FAO's Port State Measures on IUU Fishing, which was approved by the FAO (92 countries) in 2009, the Department did not highlight the fact that the Agreement will only enter into force after 25 parties have signed the Agreement. Currently, 11 countries have ratified the Agreement; Mozambique being the 11<sup>th</sup> country to ratify the Agreement on 19 August 2014 and the third African country after Gabon and Seychelles. The Department must also explain the basis for the decision to accede to, rather than ratify, the Agreement.

## 2. The Explanatory Memorandum

According to the Department of International Relations and Cooperation (DIRCO) and as stated in Rule 306 (2) of the National Assembly (NA), the Explanatory Memorandum must:

- i. Briefly set out the history, objective and implications of the Agreement;
- ii. Indicate recommendation (s) of the Cabinet;
- iii. Include the legal opinions of the State Law Advisors of the Department of Justice and Constitutional Development (DOJCD) and of the State Law Advisors of DIRCO as to whether the Agreement is consistent with the domestic laws of the Republic, including the Constitution; with the international obligations of the Republic; and with international law in general;
- iv. State whether the Agreement has self-executing provisions that will become law in the Republic in terms of Section 321(4) of the Constitution upon the approval of the Agreement by Parliament;
- v. Give an account of the projected financial and other costs of the Agreement for the state; and
- vi. Contain all other information that is needed by the National Assembly in order to make an informed decision.

2.1 The above requirements were also outlined in the correspondence to DAFF from the Chief State Law Advisor at DIRCO, dated 09 March 2012. The correspondence on the opinion on international law also outlined the general process that the Department should follow to get approval for accession to the Agreement on Port State Measures on IUU Fishing. The Explanatory Memorandum accompanying the Agreements does not fulfil the provision of NA Rule 306(2), despite DAFF having received inputs from DIRCO and DOJCD to assist them. The absence of the required information hinders the NA from making an informed decision on the Agreements.

2.2 While the IOTC and the CCSBT relate to tuna and tuna-like species, they are two different Agreements that address different aspects, are administered differently and will have different requirements upon accession. Therefore, it is expected that the Explanatory Memorandum should have included a clear briefing on each Agreement instead of combining them in one paragraph, and it would have helped if for each Agreement, DAFF provided information as set out in DIRCO's Ratification/Accession Procedures and the National Assembly's Rule 306(2) as previously outlined.

2.3 It should be noted that very little is said about the Port State Measures on IUU Fishing on the Explanatory Memorandum except that South Africa is already implementing National Port State Measures. Similar information as required for the IOTC and CCSBT as per DIRCO's Ratification/Accession Procedures and the National Assembly's Rule 306(2) should have been provided as well for this Agreement.

2.4 While the Department highlighted increased foreign revenue and employment opportunities if South Africa accede to the Agreements, it did not address implications for vulnerable groups (i.e. the elderly, the young, the poor, etc.);

additional human and financial capacity as the country's ports are likely to be open to more foreign vessels; implications for national security as officials at Fisheries do not work 24 hours but an 8-hour day. Most illegal activities at sea take place during the night; an example was made in the Research brief that was previously circulated to Members, of illegal activities at Houtbay Harbour.

2.5 The Explanatory Memorandum is misleading in mentioning that Membership to the CCSBT 'would allow South Africa to table its concerns and to influence decisions taken at these regional fisheries management organisations (RFMOs)'. Cooperating Non-contracting Parties such as South Africa are allowed to actively participate and table proposals in all the discussions of the CCSBT but are not allowed to vote. The legal opinion of the State Law Advisor from DOJCD, dated 26 August 2010, point number 2, referred to the same matter.

2.6 In addition to the above, the Explanatory Memorandum also mentioned that in accepting the FAO's Port State Measures on IUU Fishing, South Africa will have an opportunity to make use of the assistance that is offered by the FAO to developing States. However, the Agreement mentioned assistance to developing States but priority is given to Least Developed States and Small Islands; and South Africa does not fall into that category. This is also the case with the IOTC in terms of financial support to attend sessions.

2.7 The Explanatory Memorandum mentioned that when the Port State Measures on IUU Fishing enters into force, it will deny access to fishing ports to ships that are involved in illegal fishing. Does this mean that South Africa currently allows vessels that are involved in illegal fishing into the country's ports? In the same Memo, the Department also highlighted that South Africa is quite advanced in implementing Port State Measures. The Department must explain what it is doing in terms of Port State Measures.

### **3. Legal Opinions**

3.1 Legal opinions of the State Law Advisors from DOJCD and DIRCO did not accompany the international Agreements when they were tabled or referred to the Committee but these were later forwarded to the Portfolio Committee upon request.

3.2 The submitted legal opinions were all provided and signed a few years ago as follows:

- IOTC signed in September 2008 (DOJCD) and June 2009 (DIRCO).
- CCSBT signed in September 2010 (DOJCD) and August 2011 (DIRCO).
- Ports State Measures for IUU Fishing signed in September 2011 (Office of the Chief State Law Advisor in Cape Town) and March 2012 (DIRCO).

3.3 It is possible that certain developments have since taken place in terms of the country's international agreements, other international obligations and possibly, domestic laws since the legal opinions were provided as far back as 2008. This is a serious matter which the Department needs to address before the Agreements can be approved.

- 3.4 The Department must indicate the implications of the legal opinions being signed a few years ago, for example, the IOTC legal opinions were provided in 2008 and 2009. At that time, the Fisheries Management Branch was the Marine and Coastal Management (MCM) Division of the former Department of Environmental Affairs and Tourism (DEAT). The Department should explain the implications of this in terms of the administration of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which has since 2014, been amended to accommodate smallscale fisheries, which constitute some vulnerable groups; and the Proclamations that have been signed between 2009 and 2014 to transfer some of the functions of MCM from DEA to DAFF (Fisheries Management Branch).
- 3.5 Notwithstanding the outdated legal opinions that confirmed that the contents of the Agreements are not in conflict with domestic law of South Africa, international law and other international obligations of the country, the Agreements are not only about the potential for increased allowable catch for the country, but effective management, long-term conservation and sustainable use of living marine resources and ecosystems. The President has recently launched Operation Phakisa, whose first phase will focus on unlocking the economic potential of the country's oceans. Some of the Programme plans include drilling of at least 30 deep-water oil and gas exploration wells within the next 10 years to exploit offshore fossil fuels along the country's coastline. The procedure has been linked in some countries, to negative environmental impacts and loss of marine life.
- 3.6 During the launch of Operation Phakisa, a development of a new Oceans Act was also mentioned, a draft of which is expected by 2015. DAFF should brief the Committee on the proposed Oceans Bill, the Department's role in Operation Phakisa and explain if what is planned for Operation Phakisa will not be in conflict with some of the International Agreements.

#### **4. Financial Implications**

- 4.1 In terms of financial implications, the Department only indicated the annual membership fees for the IOTC and the CCSBT and reported that there will be no financial implications for the Port State Measures as South Africa is a member of the FAO, which is the custodian of the Agreement. The IOTC membership fees have been presented in United States of America dollars (USD) while the CCSBT fees are presented in Australian dollars (AUD) with some arbitrary conversion into South African Rands (ZAR).
- 4.2 The actual amount in each case will always depend on the foreign exchange rate at the time of reporting, or in the case of accession, the time of acceptance of the accession instrument by the relevant parties. Therefore, where foreign currency is used, DAFF should always include a conversion into local currency (Rands) and the date in which the conversion was made. This is especially important for Parliament, which approves and passes the Department's budget. For example, at the time of writing this paper, the rand value for membership to the CCSBT was approximately R700 000 per annum and for the IOTC was from approximately R337 500 to R394 000 per annum.

4.3 As South Africa has been a Cooperating and Non-contracting Party to the 2 tuna Agreements and has reportedly been implementing Port State Measures, this means that the Department has been involved in certain activities including compliance to regulations. However, on accession, the country may need to be involved in additional activities and subjected to more compliance measures particularly regarding Port State Measures. In this regard, there will be financial implications for additional and qualified personnel, as well as appropriately equipped vessels including personnel to operate the vessels.

## **5. Specific Issues on the International Agreements**

The IOTC and the CCSBT deal with technical matters relating to the conservation and management of tuna species in the Indian Ocean and adjacent seas and the southern Bluefin tuna, respectively. In all sessions of the IOTC and CCSBT; each Member shall be represented by one delegate who **may** be accompanied by an alternate and by experts and advisors. All the expenses incurred by attending and taking part in these sessions, are the responsibility of respective governments.

In the Explanatory Memorandum, the Department has mentioned that on accession to the IOTC, relevant officials should be appointed from DAFF to represent South Africa in the meetings. These should constitute a Commissioner, Fisheries Officer, Fisheries Researcher, Compliance Officer and an International Relations Officer. In this regard, as a Cooperating Non-contracting Party to the IOTC, the Department should:

5.1 Indicate if DAFF currently has qualified personnel to assume the listed positions (5) to represent the country at the IOTC upon accession. Indicate how many experts (researchers/scientists and specialists) does the Department have on Indian Ocean tuna and tuna-like species as well as the southern Bluefin tuna; what their positions are and the Directorate(s) in which they are based in the Department.

5.2 As South Africa has been, and still is, a Cooperating and Non-contracting Party to the IOTC and CCSBT, indicate who was previously and is currently representing the country as delegates (including alternates, experts and advisors) in the IOTC and CCSBT sessions; the designated representatives' area(s) of expertise in each case; and outline the role and responsibilities of each of the designated representatives in the RFMOs' meetings.

5.3 Where a South African delegate has been accompanied by an alternate; experts and advisors, the Department must indicate if all the accompanying people were from DAFF or outside DAFF. If some accompanying people were from outside DAFF, indicate who is liable for the costs of their travel expenses. Department must also provide an approximate all-inclusive budget for the participation of designated representatives in the IOTC and CCSBT meetings.

5.4 Indicate if, on previous meetings, any financial assistance has been received by some DAFF officials to attend the IOTC meetings through the Meeting Participation Fund for representatives from developing States. If not, the Department must provide an explanation.

- 5.5 The next IOTC meeting will be on 08 December 2014 at the Seychelles; DAFF must provide details of the meeting and indicate how many representatives it will be sending to the meeting including their details and representative capacity.
- 5.6 The southern Bluefin tuna is classified as Critically Endangered on the International Union for the Conservation of Nature (IUCN) Red List of Threatened species, which may affect allocations of total allowable catch (TAC) in future. The TAC will depend on fish stock numbers, their sustainability and other factors. South Africa's current TAC is **40 tons** per year, and the CCSBT has indicated that this will increase to **150 tons** if it accedes to CCSBT by May 2015. The 150 tons is still a pittance when it is compared to, for example, 750 tons (smallest allocation in the Members states) for Indonesia, 4 737 tons for Japan and 5 665 tons for Australia. DAFF must explain these anomalies and also indicate the annual membership fees that are paid by the original Members of the Commission (e.g. Australia and Japan) who are getting substantial TACs.
- 5.7 Provide details of employment of South Africans that is currently gained from the 40 tons TAC for the southern Bluefin tuna and what will be possible gains from a 110 ton increase if the country accede to the CCSBT. The Department must also provide details of the fishery including vessels that are active in the fishery as some vessels may be registered in South Africa but owned by foreign nationals, who in some cases, also employ personnel from their countries.
- 5.8 Provide similar details as in 5.7 above for the IOTC including the current TAC for the country.
- 5.9 In terms of monitoring, control and surveillance (MCS) to ensure effective implementation of the International Agreements and to prevent IUU fishing, the Department must indicate the number of vessels that it currently has and state whether these are all appropriately equipped with qualified personnel and equipment to carry out all its obligations.
- 5.10 Among other things, the Port State Measures on IUU Fishing requires that Parties to the Agreement ensure that Inspectors in all ports are properly trained taking into account the training guidelines as outlined in Annex E of the Agreement. As the Department has indicated that the country is advanced in implementing Port State Measures, it must indicate who is responsible (name(s) and position in the Branch) for training inspectors in all the designated fishing ports (name the ports). Also indicate how many training sessions are done per year and what the financial implications are.
- 5.11 In a 2011 gap analysis that was conducted by the Pew Environment Group (an independent, non-profit organisation based in the US) to identify specific gaps in Port State Measures adopted by 10 tuna RFMOs as they compare to the FAO Port State Measures, and to make clear recommendations on how they could be strengthened, the research found that, with the exception of the IOTC, overall, the tuna RFMOs did not meet the new international minimum standards

that are set by the FAO Agreement on Port State Measures on IUU Fishing. The analysis showed the following gaps:

- few requirements to share information between States and RFMOs;
- inadequate designation of ports for entry of foreign vessels;
- poor prior-to-entry information requirements for vessels approaching ports;
- insufficient restrictive measures for IUU fishing vessels, e.g. denial of port services, landing or trans-shipping;
- generally weak inspection systems; and
- limited duties for flag States to cooperate with Port State actions.

5.12 In light of the above, the Department must indicate, as a Cooperating party to some of the tuna RFMOs, how it is addressing the identified weaknesses.

5.13 Indicate the minimum qualification requirements for Inspectors in terms of the Port State Measures and indicate the number of qualified Inspectors that currently performs the necessary inspections in all designated fishing ports.

5.14 Provide details and outline the role of other agencies such as the National Ports Authority and the South African Maritime Safety Association (SAMSA) in terms of Port State Measures and other ocean-related activities; and how their activities are implicated by the International Agreements.

## **6. Other Issues**

6.1 DAFF including the Fisheries Branch has a general challenge in terms of technical skills capacity, which may compromise the Department's ability to effectively implement the provisions of the International Agreements. In this regard, the Department must explain the penalties that are associated with contravening the provisions of the Agreements and the implications of not meeting some of its obligations e.g. regular and prompt reporting as required in all the Agreements.

6.2 Where the Department does not have the required scientific and technical expertise to carry out some of the provisions that are entailed in the International Agreements, the Department must indicate additional financial implications for either hiring the required personnel or using consultancy services. Where consultants are used, the Department must indicate for how long and specify for which specific activities are consultants used.

6.3 The Department must indicate plans that are in place to ensure that certain personnel within the Fisheries Branch are being capacitated to be able in the near future, to carry out those responsibilities that are currently commissioned. If there are plans, specify the financial implications; when these plans were initiated and implemented; and by when the Branch is expected to be fully capacitated, notwithstanding the turnover rate of scientists and/or researchers.