

HEN MPOANO INITIATIVE

REPORT ON REVIEW MEETING ON ADJUDICATION OF FISHERIES CASES UNDER FISHERIES ACT 2002, ACT.625& LI 1968



By: Friends of the Nation & Coastal Resources Centre

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Western Naval Command Headquarters, Sekondi

List of Acronyms

| | |
|-------|--|
| AG | Attorney General |
| CSO | Civil Society Organization |
| CRC | Coastal Resources Centre-Ghana |
| EPA | Environmental Protection Agency |
| FoN | Friends of the Nation |
| FiC | Fisheries Commission |
| ICFG | Integrated Coastal and Fisheries Governance |
| LI | Legislative Instrument |
| MCS | Monitoring Control & Surveillance |
| Q&A | Questions and Answers |
| RCC | Regional Coordinating Council |
| USAID | United States Agency for International Development |
| USA | United States of America |
| WR | Western Region |

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1.0 Introduction and Background

This report is the output of a one-day review meeting organized for judicial partners and stakeholders in the fisheries sector on adjudication of cases under fisheries Act 2002, Act 625 & L.I 1968. The meeting was held on January 18, 2011 at the Western Naval Command Headquarters, Sekondi.

The report summarizes objectives of the review, methods of delivery, detailed session delivery, way forward, and conclusion.

In all twenty-three (23) participants attended the meeting. Participants were mainly drawn from the following stakeholder group: Circuit court judges, High Court Judges, State Attorneys-RCC, Judicial Department-Regional Police, Fisheries Commission and Western Naval Command. **The detailed list of participants with their location and contact details can be found in appendix 1.**

1.1 Workshop Objectives

The main objective of the training program was:

The revision of fisheries cases in the year 2011 in the Western Region and the roles played by the various institution which ensured the successful prosecution of these fisheries violations.

1.2 Methods Used

The facilitators used a combination of methodologies that enhanced effective impact and transfer of competence and skills. This elicited inputs and promoted sharing of experiences among participants throughout the sessions. The structure used to deliver the sessions included interactive presentations, brainstorming, discussion and questions & answers (Q&A).

An open forum was created for participants to come out wide range of perspectives and analysis on the issues that emerged from the presentations.

2.0 Detailed Session Delivery

2.2 Opening Session: Introductory Remark

In his opening remarks, Donkris Mevuta, Executive Director of FoN reminded everyone present of the state of fisheries industry in Ghana. He indicated that the use of illegal methods for fishing has been going on for several years thereby given fisher a sense of legitimacy to use them. It has therefore been difficult to put a stop to these practices in the Region. He also stated that 90% of Hen Mpoanos efforts have been to promote voluntary compliance but acknowledged that without the enforcement the law would not serve as a deterrent for those who engage in the illegal activities hence the organization of the meeting to bring about an effective and efficient prosecution of fisheries violation in the Western Region.

2.3 Issue identification

Participants at this point discussed some challenges and proposed solutions to some of the problems made at the maiden meeting in 2011. The key challenges and proposals are listed below.

2.3.1 Key Challenges

- Inadequate naval personnel and equipment
- Ignorance of the law(Fisheries Reg.2010,LI 1968)
- Fishermen's fear of being arrested upon sighting naval vessels at sea
- Refusal of arrested fishermen to surrender their vessels
- Political interference demoralizes the Navy

2.3.2 Proposals

- The Naval command makes arrests
- FiC compose statements
- Statement made available to the Ghana Police Service
- Police prosecutors to present case to the AG's office for onward presentation to court
- The first point of contact when an arrest is made is the charge office /complaint unit
- Police to keep exhibits, however if exhibits are not portable it could be left at the Naval base under security

- By law there is a procedure for taking statement from offenders
- Caution statement are taken in the presence of an independent witness
- The master/in-charge of the boat writes the statement
- A Police officer must be present during inspection of exhibits by the Navy and the FiC after an arrest has been made.
- Preparation of docket must contain all details of what constitutes illegal fishing methods
- Witnesses must have a dialogue with prosecutors for directions before presenting evidence in court.
- At the issuance of an order of release by a law court, a vessel must be released without the prohibited exhibits or confiscated materials.

Questions, Comments and Suggestion

A participant asked if the court is obliged to release vessels together with illegal gears seized upon request by the accused person whilst the trial is on-going. It was answer that the law currently doesn't oblige judges to keep such gears under confinement and that the onus lies on the judges to use their discretion whether to release it or not. Illegal gears released to accused are however done conditionally and the accused are made to sign bonds to make these gears available upon request by the court or in default be punished.

2.4 Review of Fisheries cases since the LI 1965 was passed

Ms Pat Klinogo, the chief Attorney of the attorney general's department, Sekondi read out a catalogue of fisheries cases dealt with by her office or which were before court and others yet to be tendered before court. ***See Appendix 2 for details of the catalogued cases.***

2.4.1 Experiences of institutions on cases prosecuted

This section details the experiences gathered by the various institutions involved at various stages in the prosecutions of these cases

Attorney General's Dept

Ms. Klinogo commended the Navy and the MCS unit of the FiC for the improved collaboration with the AG's Office in prosecuting fisheries cases. She however urged the police to improve on its relationship with her office in dealing with fisheries cases. She also noted that the improvement in the number of fisheries cases successfully prosecuted can to a large extent be attributed to the enactment of the LI 1965.



Judges

A judge pointed out an appeal of no case put forward by a defense counsel on a case of Undersized net based on the fact that the court had not seen the said net being measured. He stated that though it was over ruled , effort might either be made for the nets to be brought to court of the court moves to where the net it to measure it in future cases. In another vein, a portion of the net could be cut and brought to the court as an exhibit or a photographic evidence of the net being measured with all parties including the offender certifying the authenticity of the picture.

FiC

- The constant changing of police officers handling the cases affected the work of Fisheries officials.
- Ineffective communication between the FiC and the Navy also affected the prosecution of the cases
- Fish caught with illegal nets seized being left with offenders demoralizes FiC officials. This was however clarified that because fish is highly perishable, its market value is estimated and given to the court. Upon conviction, the value of the fish is added to the fine imposed.

2.4.2 Questions and comments

- Seth Avoke of FiC-Accra commended efforts being made by stakeholders in the western region to ensure the efficient and effective prosecution of fisheries offenses. He however wondered why such effort is not in the public domain. He stated that this could encourage other regions to learn and adapts practices being implemented in the Region. There was a suggestion that the media be invited to subsequent meetings so that they could highlight the efforts being made.
- A participant asked what happens to confiscated items. It was answered that they are sometimes auctioned and proceeds sent to the consolidated fund. It was suggested that offenders be fined to pay for the market value of the confiscated items which will serve as an extra deterrent as well as revenue for the state. This according to a judge could only be done if the law is amended and suggested that a proposal on this could be sent to parliament.
- There was also a suggestion that a proposal be sent to parliament asking for an order for vessels to put on-board their licenses before embarking on a fishing expedition.
- A question was asked why the Agos office was not dealing with compounding. It was answer that an order from the Director of FiC was sent to her office not to deal with compounding.

2.5 Presentation on trawling

Theodore Kwadjosse of the FiC MCS gave a brief presentation on the work of trawlers and the effects it is having on fishing in the Western Region. He described trawling as a type of fishing that involves dragging a fishing net through the water behind one or more boats. He said currently, from evidence gathered, the trawlers are using one boat and the nets are either bottom set or a pelagic set.

Current happenings off the coast of Cape Three Points are that these trawlers are fishing in the 30m exclusive zone and worst still are fishing on rocky sea beds which are feeding grounds for several species of fish both young and matured. This he said has brought about a lot of complains from artisanal fishermen who believe there isn't much being done to curb the situation.



Discussions

After discussions on the possible ways of dealing with this situation, it was agreed that the best way is to station an enforcement unit on the ground who will be given the

necessary logistics to help them make arrest or gather the necessary evidence to help arrest offenders.

2.6 Way Forward

Kyei Yamoah of FoN facilitated this session with the aim of bringing out views of how to improve on prosecution of fisheries offenses. These are the conclusions drawn after deliberations:

- FiC to send an application for repossession of confiscated items to the court after three months of passing judgment with no appeal being made.
- Report of this meeting to be sent out to all relevant stakeholders
- Efforts be made to get information to the media on effort being made at prosecuting fisheries offenders.

2.7 Information on the setting up of a Marine Police

Mark Fenn of CRC briefed participants on the formation of a marine police in the country. He said the unit of the Ghana Police is to be set up to police various fish landing sights with the main aim of deterring fishermen from going to sea with illegal gears etc. and if need be make arrest of those who engage in illegal methods of fishing. He said although there have been a delay in the setting up of the unit, the police command has now selected a number of in service police officers who will make up this unit.

The unit which will work together with the MCS unit of FiC is going to receive training from the Hen Mpoano initiative on the regulation governing the fisheries sector and the biological justifications for them.

2.8 Recommendations

Participants made a number of recommendations to help improve on the management of fisheries and to help prevent the use of illegal methods for fishing.

- There was a proposal that a naval vessel sporadically checks boats leaving or entering the fishing harbor.
- That the evidence of trawlers fishing in the 30m exclusive zone gathered by the hen Mpoano team be given to the Director of FiC so that the suspected trawlers could be given firm warnings to desist from their illegal actions
- Try and avoid political interference with the checks at the fishing harbor

2.9 Conclusion

Donkris Mevuta thanked all participants for making the program a successful one and said the Hen Mpoano initiative will try and make it a regular feature in the region and asked for their support.

Appendix 1 List of Participants

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| 22. | KWESI | BOAKYE | | 020-811402 |
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FISHERIES CASES COMPLETED

| | NAME OF ACCUSED | NAME OF VESSEL | OFFENCE | OUTCOME OF PROSECUTION | SENTENCE OR ORDER |
|----|-----------------|----------------------|--|---|--|
| 1 | KOJO NTIWAH | Nyame ne me Boato | Light fishing | convicted | Fined, 100 penalty units, lights & generators confiscated |
| 2. | GEORGE THOMPSON | Nyame na Ohwe nyimpa | Light fishing | convicted | Fined 100 penalty units lights & generators confiscated |
| 3 | KWESI ENTSIL | Nyame Tease | Light fishing | convicted | As above |
| 4. | Zhang Bo & 1 or | Nana Anoa 1. | (1) Fishing without licence (2) Proceeding to sea without engineer's certificate (2 counts) (3) Using undersize mesh net | - Acquitted - Acquitted - Convicted | 200 penalty units or GH¢2,400.00 each or in default 1 year IHL each |
| 5. | Kweku Essoun | Maame Adwoa efrim | 1. Fishing without licence 2. Using undersize mesh net | Convicted | 500 penalty units or GH¢500.00 fishing vessel and all equipment forfeited. 100 penalty units or GH¢1,200.00 or in default 12 months IHL |

FISHERIES CASES ON GOING

| | NAMED OF ACCUSED | NAME OF VESSEL | OFFENCE | STAGE OF PROSECUTION |
|----|---------------------|--|---|---|
| 1. | LI Jinci & ors | 1. Star of Hope 2. MV Sekondi | Fishing within Prohibited Zone Section 81 (3) Act 625 | Prosecution & defence closed case, for addresses on 24/1/2012 |
| 2. | Philip Bentum | Shidaa aha Yehowa | Possession of prohibited fishing gear Sec. 135 (1) of Act 625 & Reg. 11 (1) (a) of L.I 1968 | Prosecution closed on 22/12/11, defence to open On 30/1/12 |
| 3. | Nana Essel | Stena bulk | Fishing without licence, use of undersize net Sec.46 (1)Act 625 & Reg. 12 (1) (a) of LI 1968 | <i>Prosecution closed case. No case submitted</i> Submission over ruled Defence to open, accused absent Bench warrant Issued for arrest adjourned to 3-2-12 |
| 4 | Kwamena Badu 9 ors. | Haleluja, Great Messiah, Tumi wura, Bofo Nye Nyame, Nana Aba Ogyetsiwa | Fishing without licence Sec. 46 (1) Act 625 | Prosecution closed case. Submission of no case made over ruled. Appeal filed, not yet heard |
| 5. | Alorwu Ziga & 1 or. | God is King | Fishing without licence Sec. 46 (1) Act 625 | Prosecution closed case Submission made & over ruled. Defence appealed, Appeal not yet heard |
| 6. | Kweku Essoun | Maame Adwoa Efirim | Fishing without licence, use of undersize net Sec. 46 (1) Act 625 Reg. 12 (1) (a) of L.I 1968 | Convicted, vessel forfeited, appealed, High Court allowed appeal State applied for review adjourned to 31/1/12 |

CASES YET TO BE PRESENTED

| | NAME OF ACCUSED | NAME OF VESSELS | OFFENCE |
|----|-------------------------|--|---------------|
| 1 | Kwa Aluku & 5 ors. | <u>3 vessels</u> 1. Nana Kwesi Ewusi 2. Nyame na Ohyira Nyimpa 3. Nyame ye Otumfo | Light fishing |
| 2. | Egya Kow & 3 ors. | <u>2 vessels</u> 4. Nana Abena Atta 5. Nana Lowyer Kasa | Light fishing |
| 3. | Kwabena Odea | <u>1 vessel</u> 6. Nyame na Ohwe Nyimpa | Light fishing |
| 4. | John Mensah & 5 ors | <u>3 vessels</u> 7. Aseada Nka Nyame (STC) 8. Aseada Nka Nyame (Victory) 9. Shamo Quaye | Light fishing |
| 5. | Kobina Appa | <u>1 vessel</u> 10. Nana Daduwa | Light fishing |
| 6. | Samuel Essuman & 5 ors. | <u>3 vessels</u> 11. Nyame Tumi 12. Saudi Arabia 13. Saboo | Light fishing |
| 7. | Kwesi Atta & 3 ors | <u>2 vessels</u> 14. All is good 15. Sea never dry | Light fishing |
| 8. | Kofi Abaka & 5 ors | <u>3 vessels</u> 16. Nothing late 17. Nyomo Wako 18. Nyame na Ohyira nyimpa | Light fishing |
| 9. | Mohammed Kwofie & 1 or | <u>1 vessel</u> 19. | |

