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FISHERIES PROSECUTION IMPROVEMENT

Policy Discussion Paper



Friends of the Nation

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ABSTRACT

Ghana's Marine fishery is in crisis, recent stock assessments of small pelagics reported that the stocks are severely overfished and that overfishing continues to exacerbate beyond the level of sustainability. Fish landings is all time lowest and many fishers now spend more hours fishing with fewer fish catches. Stakeholder assessment have concluded that weak governance of the sector over the years, has tolerated wasteful over-capacity and widespread Illegal, Unreported and Unregulated (IUU) fishing. The clear manifestation of the weak governance is the frail implementation of fisheries management plans, low enforcement of laws & regulations and low compliance by fishers.

Importantly; fisheries laws, regulations and management plans informed by science is good but will have no value if they cannot be implemented with high compliance and deterrence.

Addressing Ghana's fisheries crisis therefore, require leadership and stakeholder collaborative effort for the application of two cardinal principles; *Voluntary Compliance* and *Deterrence*.

***Voluntary Compliance;** includes the effort to secure the active support of resource users and their willingness to comply with the necessary legal, regulatory and management framework. Key components of voluntary compliance involves openness, transparency and effective communication to carry along the users of the resource in every step in the decision making and the implementation process. **Deterrence:** Involves the coercive power of the state to enforce its laws and regulations. It includes; the show of ability to enforce, power of arrest and prosecution.*

Prosecution is therefore an important element for effective fisheries governance that could contribute immensely to promote responsible fishing. Prosecution processes includes, evidence gathering, Arrest, processing of evidence, adjudication and imposition of sanctions when the laws are violated. The sanctions should be punitive enough to law breakers such that benefits accrued from breaking the law would not be attractive.

Weak prosecution therefore undermines responsible fishing and is the underlying cause of conflicts, blame game and general disregard of the laws governing fishing. The essences of enacting good fisheries laws and fisheries management plans is to implement them to achieve the desired results. Without effective implementation including compliance, deterrence / prosecution the laws and plans have no value.

In view of this, SFMP through FoN provided support for prosecution chain actors through series of review workshops to developed actions to address the gaps identified in the prosecution system for improvements. SFMP through FoN also supported competence-based capacity development effort for the Marine Police Unit (MPU) and Fisheries Enforcement Unit (FEU) to increase deterrence.

1. ISSUE (BACKGROUND)

The importance of Ghana's fisheries sector is being lost since about 2 decades due to weak governance. This has been a major worry to stakeholders because Ghana's marine fish stock, especially the small pelagics stock have declined to the extent that fish landing is all time lowest.

To address the challenges of the weak governance, the Government of Ghana enacted the Fisheries Act 625 passed in 2002 and Fisheries regulation (LI 1968) passed in 2010.

However, implementation of these laws have not been effective. Ghana was shown a 'yellow card' by the European Commission under the European Union (EU) Illegal Unreported Unregulated (IUU) Regulation in 2013, as a result of the government's failure to control the rapid growth of IUU fishing.

Government responded with the development of additional laws, regulation and management plans including the following:

- Fisheries Amended Act 880 passed in 2014
- Fisheries Amended Regulation (LI 2217) passed in 2015
- National Marine Fisheries Management Plan (NFMP 2015-2019)

Also the Fisheries Enforcement Unit (FEU) was established in the year 2013 to support the enforcement of Ghana's Fisheries laws and regulations together with other maritime security duties. However, Marine Police Personnel posted to the FEU had very low knowledge of the fisheries sector and low competence to support effective deterrence.

Therefore, SFMP through FoN began orientation workshops for the prosecution chain actors from 2015 that contributed to identification and development of strategies to address prosecution gaps. SFMP through FoN also conducted series of fisheries enforcement training for the Marine Police personnel and supported them to conduct community engagements to be more visible and active.

The EU 'yellow card' ban was lifted in 2015 when the Ghana showed some level of commitments in addressing the issue of IUU. The lifting of the ban did not mean the issues were completely solved. Because, there have still been challenges for compliance and deterrence of the fisheries laws due to the following underlying issues:

- Though circuit courts have been designated for handling fisheries related offense and infraction, the prosecution system is slow and this tends to discourage or demoralize arresting officers and stakeholders.
- Most judges from the high Courts and the circuit Courts which are designated to adjudicate fisheries cases do not have in general the minimum background on the rationale behind the fisheries legal and regulatory framework to support quick adjudication.

2. PROJECT IMPLEMENTATION STRATEGY

SFMP Project Outline

The objective of SFMP is to rebuild marine fisheries stocks and catches ***through adoption of responsible fishing practices***. Working closely with the Ministry of Fisheries and Aquaculture Development and the Fisheries Commission, SFMP aimed to end overfishing of key stocks important to local food security through:

- Improved legal enabling conditions for co-management, use rights and effort-reduction strategies.
- Strengthened information systems and science-informed decision-making
- Increased constituencies that provide the political and public support needed to rebuild fish stocks.
- Implementation of applied management initiatives for several targeted fisheries ecosystems.

Highlights of key Life-of-Project Results in the M&E Plan of SFMP included the following;

- Management measures in place that allow for the recuperation of tens of thousands of metric tons of food protein supply lost due to severe overfishing and poor management, and a rebound of fish stocks, indirectly benefiting over 130,000 fishermen, fish processors and traders.
- ***Declines in Illegal, Unreported or Unregulated (IUU) fishing due to an increase in arrests and successful prosecutions and improved voluntary compliance.***
- Inclusive participation by under-represented groups, women and youth in decision-making.
- Etc.

Implementation Strategy

The implementation strategy of SFMP included contributions to decline in Illegal, Unreported or Unregulated (IUU) fishing by an increase in arrests and successful prosecutions and improved voluntary compliance.

The key strategic actions employed by SFMP included:

- Prosecution chain workshops to review the prosecution process and develop strategies to address challenges and weaknesses in arrests and prosecutions.
- Prosecution data collation and assessment to develop strategies to address identified weaknesses in prosecutions.
- Implementation of Competence-based capacity development programmes on fisheries enforcement increase in arrests and successful prosecutions and improved voluntary compliance.

3. PROGRESS AND RESULTS

Key progress and results include:

- **Improvement in stakeholder collaboration through Prosecution Chain Review workshops**

To contribute to address the underlying issues and promote effective fisheries prosecution, SFMP through FoN in years 2 and 3 supported annual review workshops for actors in fisheries prosecution chain. This provided a forum for stakeholder collaboration to improve fisheries prosecutors. The prosecution actors engaged in the workshops included representatives from stakeholder institutions indicated in the chart below:

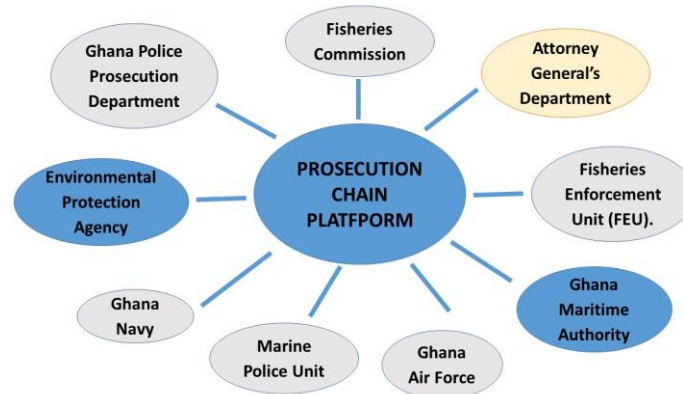


Fig 1: Chart showing stakeholder institutions on the Prosecution chain platform

There were inadequate interactions by the above mentioned stakeholder institutions though they were all working on fisheries prosecution or related issues. The fisheries prosecutorial chain workshops therefore provided the platform for promote inter-agency dialogue and collaboration to support fisheries deterrence processes. The workshops assisted the identification of gaps in the prosecution process and drafted strategies and actions to address the challenges and weaknesses in arrests and prosecutions. The strategic actions included assessment of prosecution data to informed improvements in prosecution

- **Assessment of Prosecution Data to identify areas for improvement.**

SFMP also collated and assessed prosecution data to identify areas for improvement in the prosecution process. The prosecution data collated helped to assess:

- The nature and type of fisheries offences commonly committed by gear type.
- The prosecution status and potential factors of delays.
- The sanctions including the fines imposed and status of payment, etc.

The assessment identified that weak evidence gathering and processing of cases led to some unsuccessful prosecution. The assessment also revealed that most of the fines imposed were not paid by the offenders due to lack of follow-up to claim the fine and or political interferences.

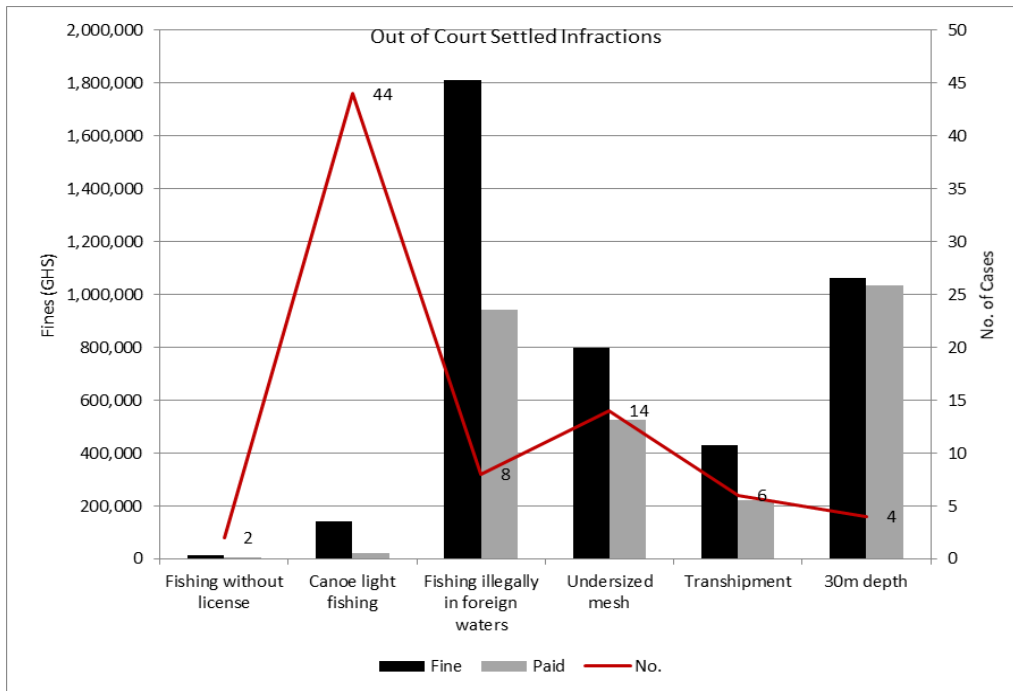


Fig 2: Chart showing cases prosecuted with fines paid

- **Implementation of Competence-based capacity development programmes for improved fisheries enforcement.**

In line with improving prosecution, SFMP through FoN also supported competence-based capacity development effort for the Marine Police Unit (MPU) and Fisheries Enforcement Unit (FEU). The process identified, profiled and processed key Knowledge, Skills and Attitude (KSA) required for effective fisheries enforcement.

For this effort, fisheries induction training curriculum was developed and used for series of training sessions that benefited over 160 MPU and FEU personnel over the period.

Also a Training of Trainers (ToT) Programme was designed by SFMP in partnership with the UNDP Organized Crime Unit to serve as knowledge and skills transfer programme within the police Unit. This has improved competence for evidence gathering to support effective fisheries enforcement.

And the ToT is expected to ensure continuity of capacity development for effective prosecution and Deterrence to contribute to desired responsible fishing.

Challenges and Shortfalls

The major hindrance for the prosecution progress has been the inadequate political commitment and support for prosecution of fisheries offenders. There is low political will for fisheries enforcement because of high political interferences in prosecution processes to favour offenders connected to politicians or are political functionaries. Also there is inadequate resource for enforcement agencies to perform all the required functions because of very low budgetary allocations for enforcement.

4. LESSON LEARNED

1. Prosecution is a collaborative effort and require professionalism and competence.

Provision of adequate deterrence require arrest of violators of fisheries laws and effective prosecution. and is a collaborative effort that require effective actions by all those associated with the prosecution chain.

Also to achieve effective prosecution, high level of professionalism and competence must be exhibited in the rank and file of the key actors. Specifically, in the following areas, evidence gathering, processing of the evidence, presentation of the evidence in Court.

2. Improved Prosecution can contribute to improve compliance and reduce blame game:

Improvement in fisheries prosecution will have significant contribution for improved fisheries management and can help change stakeholders' perceptions, attitudes and contribute to their willingness to act responsibly in the fisheries sector. This will ultimately contribute to increased compliance of fishers.

Effective prosecution increases confidence of local stakeholders in the system and increase their perception that the political context is supportive of sustainable fisheries management. This will reduce the blame game syndrome and promote sustainable fishing.

3. Selective enforcement should be avoided

For the achievement of effective results, selective enforcement sometimes called targeted enforcement should be avoided if possible, because communities' perception of biases is amplified as they see themselves as victims but not perpetrators or breakers of the law. Therefore, lack of equity in enforcement referred to as selective enforcement contributes to conflicts among different sub-sectors and eventually among fishing communities to the detriment of the overall fisheries enforcement process. For example, the issue of illegal transshipment and the endorsement by MOFAD in 2018 has consolidated this perception. Already fisher folks in Elmina had complained about the fact that the FEU never conducted any enforcement operations at the SAIKO landing site for many years before the formalization. But the FEU on some occasions had gone to confiscate illegal nets of canoes and the same landing site but openly ignored the illegal activities on the SAIKO operates at the same landing site. Now with the formalization of transshipment (SAIKO) this perception of selective enforcement is been entrenched.

5. APPLICATION

- **Advocate to reduce political control and interference in prosecution**

There is the urgent need to scale up with advocacy to reduce political control and interference in prosecution system. Political control and interferences has been identified to be contributing to the wide spread irresponsible fishing practices. And this has been a major setback for the SFMP project to achieving responsible fishing.

Involvement of political functionaries and associate in the fisheries industry has increased over the years. Though the enforcement and prosecution actors are supposed to be independent of the political system, this has not been so. Political control including control of resources allocation and political interruption to fisheries enforcement and prosecution processes has been on the ascendency. Also some fishers, who break the fisheries engage the partisan political influence to avoid prosecution. Especially during electioneering periods fisheries enforcement and prosecution is very low due to high control of enforcement and prosecution systems.

- **Improve Competence of the Prosecution chain actors will contribute to improved prosecution and deterrence in Ghana's fisheries sector.**

Though the training of Marine Police personnel has not produced the commensurate level of deterrence and responsible fishing, because political interferences, lack of logistics and weak collaboration. However, Support to the MPU is wealth an important investment that has potentially greater reward. Already some of the SFMP trained MPU personnel have conducted serial important arrest and led the successful prosecution of fisheries cases. The MPU is expected to perform with a little positive enabling environment. There is however the need to continue work on the Marine Police Competence-based process working with UNDP Organized Crime Unit and the Marine Police hierarchy to consolidate the gains made. Series of review meeting could be organised to track and assess the level of implementation and integration of the competence-based capacity programme.

- **Promote transparency and accountability of enforcement and prosecution process**

Promoting transparency and accountability in enforcement and prosecution process is very crucial to sustainable fisheries management. A fair and transparent prosecution programme is essential to the sustainability of the fisheries resources. Because a transparent prosecution process compliments compliance by encouraging more fishers to comply. Those who violate fisheries laws and regulations do not only harm the resources and put the economy at risk; they are unfair to the majority of resource users that do comply. Therefore, those who abide by the laws deserve to know that others who violate the laws would be dealt with and that the standards are consistent and without fear or favour. Those who violate the laws and management

plans do not behave responsibly; by ignoring fishing rules, they gain an unfair of advantage over those fishers who fish in accordance with the rules.

6. NEXT STEPS FOR GHANA

Next steps to improve fisheries prosecution include:

- Institute multi-stakeholder prosecution review and fisheries enforcement coordination platform at the national and regional level with FEU, Prosecutors (Judiciary) and Marine police, CSOs, reps of Fisher association, academia, etc. This will contribute to improve transparency and coordination for effective prosecution of fisheries cases by providing a coordinated platform to discuss, identify and outline strategies to address challenges of fisheries enforcement and prosecution. Such workshops could be used to track fisheries enforcement issues, at both the Eastern and Western commands and develop practical strategies for improved coordination of enforcement activities among the various agencies.