



Fisheries Violations: Improving Prosecution Success in the Western Region of Ghana



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Cover Photo: Participants of a Prosecution chain meeting in prayer

Cover Photo Credit: Bernard Yankum

List of Acronyms

AG	Attorney General
ASP	Assistant Superintendent of Police
CRC	Coastal Resources Centre
EPA	Environmental Protection Agency
FiC	Fisheries Commission
FoN	Friends of the Nation
FWG	Fisheries Working Group
GCLME	Guinea Current Large Marine Ecosystem
ICFG	Integrated Coastal and Fisheries Governance
LI	Legislative Instrument
MCS	Monitoring Control and Surveillance
MuGPS	Marine Unit of the Ghana Police Service
RCC	Regional Coordinating Council
SM	SustainaMetrix
SSNIT	Social Security and National Insurance Trust
US	United States
USAID	United States Agency for International Development
WF	World Fish
WNC	Western Naval Command

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1.0: BACKGROUND AND INTRODUCTION

The Integrated Coastal and Fisheries Governance (ICFG) Initiative popularly referred to as Hen Mpoano¹ is a four year program supported by the U.S. Agency for International Development (USAID). It is implemented through a Cooperative Agreement with the Coastal Resources Center (CRC) at the University of Rhode Island (URI) with Friends of the Nation (FoN), WorldFish and SustainaMetrix as Key implementing partners. The Initiative contributes to USAID Strategic Objectives for Biodiversity Conservation and Food Security as well as making significant contributions to Ghana's National Strategies for Biodiversity and Wetlands Conservation, Climate Change Adaptation, and Fisheries and Aquaculture Sector Development Program.

The Initiative operates principally in the Western Region, and it is designed to establish strong linkages to governmental coordinating bodies and policy makers at the national level and to the region-wide Guinea Current Large Marine Ecosystem (GCLME). The Program activities are concentrated in the six coastal districts of the Western Region where the communities and the local governments are the intended primary beneficiaries.

The goal of the Initiative is to support the government of Ghana in achieving its development objectives of poverty reduction, food security, sustainable fisheries management and biodiversity conservation by contributing to the vision of: *'Ghana's coastal and marine ecosystems are sustainably managed to provide goods and services that generate long term socio-economic benefits to communities while sustaining biodiversity.'*

As part of the support to improve governance within the fisheries sector, the ICFG Initiative conceptualized an innovation to bring together the different institutions with mandates to ensure sustainable fisheries in Ghana to strategize on effective enforcement of the fisheries laws in the Western Region.

In March 2011, the Hen Mpoano Initiative facilitated discussions amongst relevant stakeholders to enhance prosecution success of fisheries related cases. Hitherto, the success of Fisheries prosecution was nothing to write home about due to uncoordinated efforts by the institutions involved. As a result, fishermen kept on with their illegalities, although the Fisheries Act and Regulations were in place to deter them.

The Initiative organized a 3 half-day training workshop for stakeholders, including the Fisheries Commission, Ghana Navy, Ghana Police, Attorney General's Department, and others to discuss issues within the sector and deliberate on how to improve on prosecution success. This was followed by two different review sessions. In order to achieve increased success rate of prosecution, diverse methodologies were employed during the capacity building workshops and review meetings. 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

¹ Hen Mpoano is the Fante Translation of Our Coast

presentations, brainstorming, discussions, as well as questions and answers (Q and A). Participants shared wide range of perspectives and analyses on issues that emerged from the presentations.

2.0: THE FISHERIES LAWS: FOCUS ON ENFORCEMENT AND PROSECUTION

The Fisheries Act 625 of 2002 and Fisheries Regulation (L.I 1968) of 2010 are the major tools in place to regulate the fisheries industry in Ghana. The Fisheries Act 625 was passed in 2002 and provides the framework for fisheries governance in Ghana which was experiencing among others, increasing use of unsustainable practices among the various fishing fleets in Ghanaian fishing waters. For almost a decade the law did little to stop this worrying trend due to the absence of a regulation which would give meaning to the law. In the absence of such a regulation most fisheries violations brought before the courts were not effectively prosecuted due to ‘technicalities’.

Through stakeholders’ efforts and extensive advocacy by civil society, the fishery regulations, LI 1968 was passed in August 2010 to support and give meaning to the Act 625 of 2002. The enforcement of the fisheries laws did not take off smoothly after the passage of the LI 1968 as this was met with lots of resistance and agitation by the fleets. While the agitations went on, some fishermen continued with the illegal practices with impunity while others got arrested by the Navy or other law enforcement agencies. Such offenders were usually prosecuted in the courts. However, in the Western Region, a huge disconnect in the prosecution chain remained a challenge to successful prosecution. This was the basis for the intervention by the Integrated Coastal and Fisheries Governance (ICFG) Initiative, popularly known in Ghana as the Hen Mpoano Initiative.

2.1: Institutions with Mandates: Actors and their roles

Several actors and institutions such as the Fisheries Commission, Ghana Navy, Ghana Police Service, as well as the Ministry of Justice and Attorney-General are involved in ensuring successful prosecution of fisheries related cases. Their functions are elaborated below:

2.1.1: Fisheries Commission

The State Agency mandated to regulate and manage the utilization of the Fishery resources of the Republic and co-ordinate policies in relation to them. Its Monitoring Control and Surveillance (MCS) unit has the responsibility of monitoring, control and surveillance of the fishing operations within the fishery sector and making arrest of fisheries infractions. However, it has no power to prosecute these infractions at the courts. It is therefore expected that after arrest has been made they cooperate with the Ghana Police and Attorney-General’s Department for prosecution.

2.1.2: Ghana Navy

This is the State Security Agency mandated to ensure security of the territorial waters of the republic of Ghana and fulfills among a broad range of roles the monitoring, control and surveillance of fishing activities. It has the powers of arrest and collaborates with the Fisheries Commission.

2.1.3: Ministry of Justice and Attorney-General

This Ministry is mandated to ensure compliance of law and has a judiciary division made up of the courts. It also has the Attorney-General's department that exists to ensure equality of access to justice and treatment before the law for all citizens, to promote by law, social justice to facilitate the operations of a fair, efficient and transparent legal system and to propagate a culture of due process and legality for these purposes. It assists both the Police and Fisheries Commission to prosecute fisheries infractions at court.

2.1.4: Ghana Police

A State security Agency mandated among other duties to prevent and detect crime, to apprehend offenders and to maintain public order and safety of persons and properties. During arrest, a Miranda-warning² or rights (also known as caution statement) is issued by the Police Officer to the offender. The Ghana Police Service has recently established a marine unit to be responsible for offshore activities.

3.0 HEN MPOANO'S INTERVENTION

The ICFG (Hen Mpoano) Initiative, through a careful analysis of why prosecutions of fisheries violations were largely unsuccessful, concluded on three major issues. That the Institutions:

1. In the prosecuting chain did not know exactly what they were prosecuting.
2. Were working exclusively with little cooperation with others
3. Had inadequate understanding, knowledge or the ecological bases of the laws as well as happenings in the sector which prompted the inclusion of certain clauses in the laws.

Based on the identified gaps, the Initiative began its intervention with a training workshop for the identified institutions. The training workshop was held from March 15-17, 2011 at the Western Naval Command Headquarters, Sekondi, with participants drawn from Circuit Court Judges, State Attorneys at the Western Regional Coordinating Council (RCC), Regional Police Command (Western Region), Fisheries Commission, Western Command of the Ghana Navy and Environmental Protection Agency (EPA).

The objective of the workshop was to ensure that the prosecution of fisheries violations in the Western Region of Ghana is effectively and efficiently handled through a team approach among various institutions. Prior to the presentations and discussions, the expectations of the participants were elicited.

² You have the right to remain silent; Anything you say can and will be used against you in a court law: You have the right to talk to a lawyer and have him present with you while you are being questioned: If you cannot afford to hire a lawyer, one will be appointed to you before any questioning if you wish. If you give up on your right to remain silent, and later wish to stop answering questions, no further questions will be asked.

Participants' expectations at the First Workshop

- Effective collaboration among stakeholders
- Overcome challenges in the prosecution of fisheries cases
- Efficient handling of cases of violation of the fisheries laws and regulations
- Establishment of good communication links among stakeholders
- Identification and knowledge of the roles and responsibilities of agencies and institutions involved in fisheries enforcement
- Acquiring insight into the Fisheries Regulation
- Being acquainted with the system for preparing prosecution
- Fast track prosecution of fisheries cases

Figure 1 Expectation of participants at the first workshop

The purpose of the workshop and an overview of the Hen Mpoano Initiative were presented by Mr. Mark Fenn – Program Director of the ICFG (Hen Mpoano) Initiative. Importantly the ICFG Initiative was being implemented among other objectives to:

- contribute to achieving key results in the reform of Ghana's fisheries sectors
- strengthen capacities of institutions to improve policies, actions and development for improved and well managed fisheries and
- improve the socio-economic well-being of coastal communities through diversification of livelihood.

Topics discussed at the 3-half day workshop centered on:

- Fisheries Sector Review
- Reality Check within the Fishing Communities (the 'Blame Game')
- Fisheries Violations in Ghana
- Challenges and Experiences of the Navy in arrests at sea
- Monitoring Control and Surveillance

The key challenges were noted to include, but not limited to the following:

- Inadequate naval personnel and equipment
- Ignorance of the laws, portrayed by arrested fishermen.
- Fear of arrest by fishermen at the sight of naval officers at sea causes them to jump into the deep sea to escape arrest. This behavior by fishermen divert naval officers' mission at sea to save lives instead of arresting defaulting fishermen.
- Unwillingness on the part of arrested fishermen to surrender their boat. These results in towing of boats to the harbor. However, the towing ropes are sometimes cut and the fishermen bolt away.
- Non-prosecution of cases of arrested fishermen dampens moral of naval officers who risk their lives on the deep seas.
- Political influence
- Intrusion of Chinese vessels

Some concerns, agreements, and recommendations were discussed and captured for improvement in prosecution success.

Comments and Recommendations

- There is the need for collaboration amongst the prosecutors in order to avoid conflict of information in presenting fisheries cases to the court.
- Participants and other stakeholders must be given the necessary trainings, documents, materials, tools and equipment necessary to enhance their work as professionals during investigations of such sort. This is because majority of investigators and prosecutors do not have enough training on the fisheries law. This could result in fisheries cases avoided or left unattended to due to fear of exposure of their incompetence as a result of the ignorance of the fisheries laws.
- There is the urgent need for increased sensitization, awareness raising and educational campaigns on the Fisheries Regulations and Act to fisher folks since ignorance of the law is no excuse, and yet most of them are ignorant
- A suggestion was made for Fisheries Commission technical officers to be trained as prosecutors through in-depth knowledge of the L.I., noting that for instance, institutions like the Environmental Protection Agency (EPA) and Social Security and National Insurance Trust (SSNIT) have staff that are trained as prosecutors to handle institutional cases.
- In such cases as fishermen arrested at sea for having light-fishing equipment like switch boards, cables, and a generator, but without a bulb (probably thrown into the sea) such fishermen could be arrested
- Details of issues of the intensity of light not permitted for fishing purposes could be referred to in section 11 of the Fisheries Regulation, 2010.

Figure 2 Comments and Recommendations during the first workshop

3.1: Major Sections of the Laws and Regulations that Received Attention

Participants were facilitated to discuss the Fisheries Regulation 2010 and the Fisheries Act 625, taking cognizance of some of the sections. Most important of the sections considered were those that dealt with prohibitive fishing methods;

- *Light Fishing (Section 11):*

Sub-regulation (1) – A person shall not within the fishery waters of this country

(a) Use any fishing method that aggregates fish by light attraction including use of portable generator, switchboard, bulbs, beyond 500 watts or bulbs whose cumulative light intensity

attracts fish and long cable to facilitate light production or any other connivance for the purpose of aggregating fish by light

- *Transshipment of Fish (Section 33):*

Sub-regulation (3) – A person shall not transfer fish from one canoe to another canoe or from a semi-industrial to a canoe except in areas where there are no safe landing facilities and with the consent of the owners.

- *Dumping of Fish (Section 32):*

Sub-regulation (1) – A person fishing

(a) Under the authority of a license issued for commercial fishing shall not dump from any vessel, fish that has been caught which is suitable for human consumption; or

(b) For personal use or for seafood shall not dump fish that is suitable for human consumption

- *Use of Obnoxious Chemicals (Section 11):*

Sub-regulation (1) – A person shall not within the fishery waters of this country

(c) Use explosives, obnoxious chemicals and any other prohibited fishing methods which render fish more easily caught

Constraints in the prosecution chain such as arrest procedures, preparation of dockets, influences and punishments were also thoroughly discussed among participants; and this led to an agreed roadmap to a successful prosecution.

3.2: Roadmap to Successful Prosecution of Fisheries Cases (From Arrest to Prosecution)

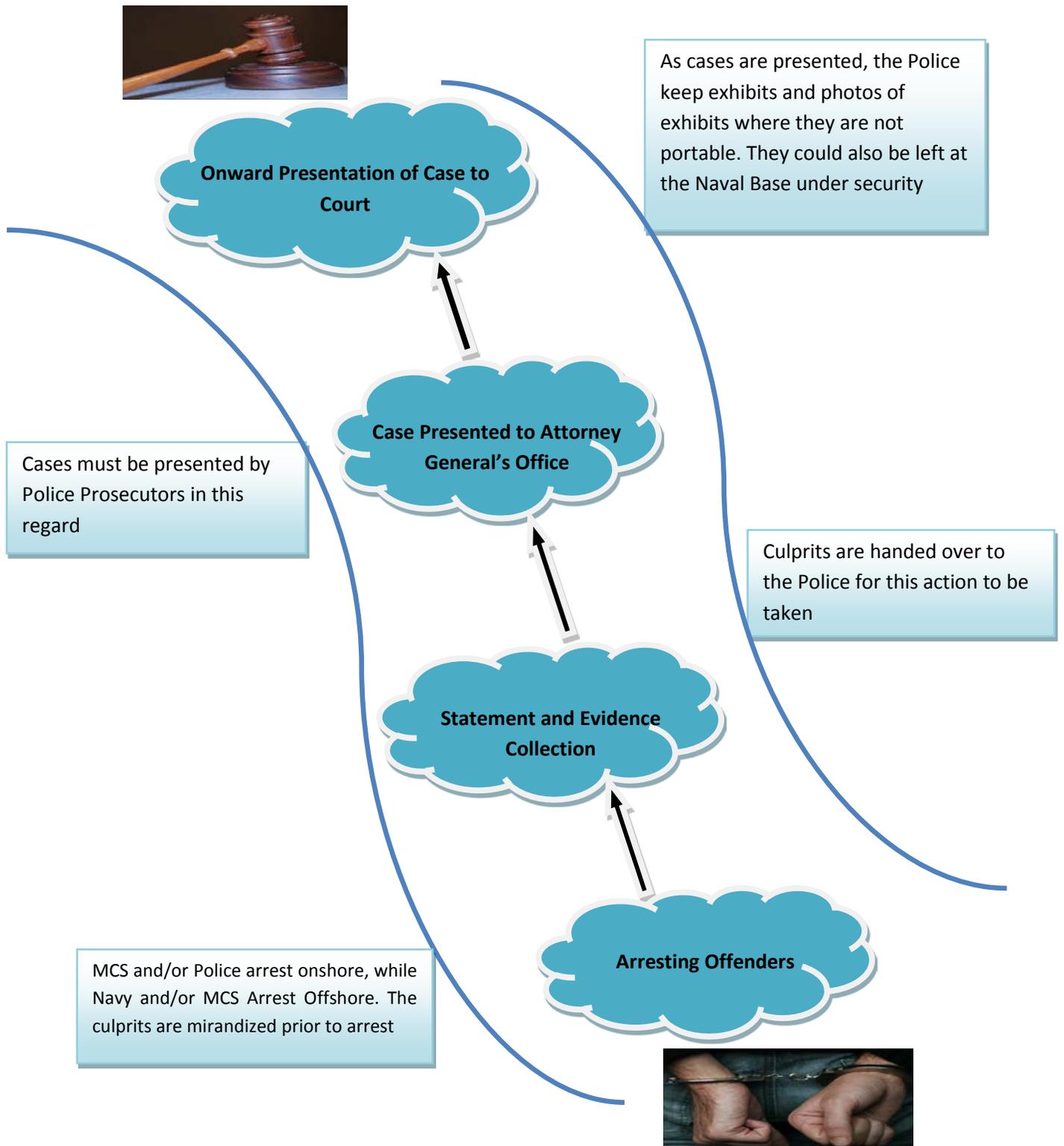


Figure 3 A roadmap to successful prosecution

4.0: REVIEW OF FISHERIES CASES

After the 3-day training workshop, the actors applied the lessons learnt from the workshop.

4.1: First Review Meeting

Ten months after the training workshop, a second workshop was organized by the Hen Mpoano Initiative to review fisheries cases that ensued after the training workshop, and also to identify the roles played by the various institutions which ensured the successful prosecution of these fisheries violations. This meeting took place at the Western Naval Command (WNC) Headquarters in Sekondi on January 18, 2012.

Ms Pat Klinogo, the Chief Attorney of the Attorney General's Department in Sekondi, during the meeting reviewed a catalogue of fisheries cases dealt with by her office or which were before court and others yet to be arraigned before court. These cases are detailed in Appendix 1. It was revealed that since the first training workshop. The number of arrests of fisheries violations shot up dramatically in the Western Region. In the first half of 2011, a total of 36 fisheries violations were recorded. Out of these, 16 had been sent to court, with 5 convictions while 11 cases were on-going as of the end of December 2011.

4.1.1: Experiences of Institutions on Prosecuted Cases

At review meeting, the discussions centered on roles played by the various actors; as well as experience of others during this period of prosecution. Lessons and viable recommendations were noted by the actors.

The Ghana Navy and the MCS unit of the Fisheries Commission were commended for the improved collaboration with the AG's Office in prosecuting fisheries cases. The police were, however, urged to improve on its relationship with the office of the Attorney General in dealing with fisheries cases. The A-G's Department attributed the relatively high success in prosecution of fisheries cases to the high level of collaboration and co-operation among all the institutions in the enforcement chain and the understanding of their roles and duties which they gained at the first workshop in 2011. The other actors viewed the success to have stemmed from improved collaboration between the Navy, Fisheries Commission and Police in getting the right evidences that are tenable in court as well as well-prepared dockets. These institutions also made themselves available as prosecution witnesses. In years past, these same institutions reluctantly provided evidence in court.

As part of lessons learnt, a judge pointed out an appeal for 'no case' which was put forward by a defense counsel in a case of use of undersized meshed net. This was based on the fact that the court had not seen the said net being measured. He noted that, though the appeal was over ruled, efforts must be made for the nets to be brought to court or the court moves to where the net is to measure it in future cases. In another instance, a portion of the net could be cut and brought to the court as exhibit or a photographic evidence of the net being measured with all parties including the offender certifying the authenticity of the picture.



Figure 4 Experience sharing on prosecution cases by actors

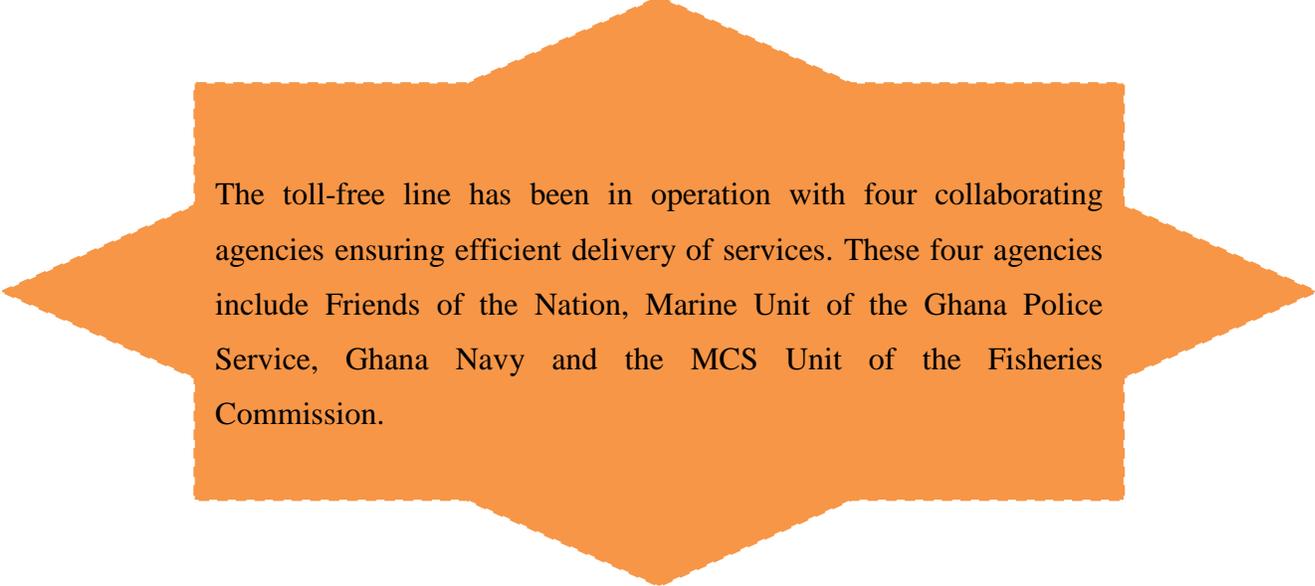
4.2: *Second Review Meeting*

On December 18 2012 (i.e. 11 months after the first review meeting), a second and final review meeting was held. The Ghana Air Force was invited as a new entrant in fisheries enforcement.. This meeting elaborated among others;

- Food insecurity posed by the current state of Ghana’s Fisheries
- The extent of progress made by the Marine Police with regards to their engagements with Fishing Communities to socialize their mandates with the fisher folks
- Overview of violations, arrests and cases before of prosecuted at the court. to date.
- Constraints, Challenges and Lessons Learned
- Way forward.

Explaining the state of Ghana’s Fisheries, Mr. Kofi Agbogah, the current Chief of Party (CoP) of the Hen Mpoano Initiative gave a graphical indication of the trend of Fisheries (which captured the hearts of all participants) and the urgent need for some actions to bring about restoration of the industry which employs 10% of Ghana’s population. He emphasized the need to ensure sanity in the Fisheries sector.

Towards this the Initiative was working to obtaining a toll-free³ line in collaboration with the Fisheries Commission.



The toll-free line has been in operation with four collaborating agencies ensuring efficient delivery of services. These four agencies include Friends of the Nation, Marine Unit of the Ghana Police Service, Ghana Navy and the MCS Unit of the Fisheries Commission.

Regarding the progress made by the Marine Police, ASP Emmanuel Addae expressed sincere gratitude to the ICFG Initiative for supporting them to interact with the coastal communities. He added that the knowledge gained from Hen Mpoano concerning the ecological justification of the laws was a very important tool since it helped them socialize their mandates with the fishing communities. The interactions with the communities also improved their understanding of the nuances of the fishing industry and how to deal with the fishermen's behavior. He noted that the operations of the Marine Police would nine cases were on-going with the go a long way to strengthen the prosecution chain and improve the collaborative management of the Fisheries sector.

4.2.1 Review of Cases

Reviewing cases of fisheries violations as of December 2012, the A-G Department reported on the offense of fishing without licenses nine cases were on-going while 5 cases yet to be presented to court on the account of light fishing (Appendix 1).

³ The Toll-free line is **080010063**; and allows everyone including fishermen to call and report all illegal cases at sea. This would improve upon the collaborative management of Fisheries Resources. All calls are directed to one collaborating agency, and will automatically be forwarded to the other agencies, one after the other in case of no response.



Figure 5 : A State Attorney presenting the state of Fisheries Cases during the 2nd Review meeting

The Fisheries Commission noted some by challenges to include the constant changing of police officers handling fisheries cases. Additionally, ineffective communication between the Fisheries Commission and the Navy was noted as affecting the prosecution of cases. Some points of note include:

- The first point of contact when an arrest is made is the charge office/complaint unit
- Police officers are expected to keep exhibits, however where exhibits are not portable they 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 Fisheries Commission 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.

Throughout the interactions with the various actors, it was realized that the Ghana Air Force could play a very vital role with their surveillance air craft and could capture images and record happenings off shore which could serve as evidence in the prosecution process. They were therefore considered for inclusion in the Fisheries Working Group (FWG⁴).

4.3: Success Stories

Through the intervention of the Hen Mpoano Initiative the prosecution chain was strengthened in the Western Region of Ghana.

Success of Fisheries Offences Prosecution in the Western Region, Ghana

- Taking cue from Hen Mpoano's intervention, a similar stakeholders meeting was conducted at the national level by Fisheries Commission in April 2011, with institutions including the Fisheries Commission (Monitoring, Control and Surveillance Unit) the Police, Navy, Attorney General's Department, EPA staff and other Civil Society groups.
- Fishermen in the Western Region have gotten to know that the State is up and doing when it comes to prosecution of fisheries violations and hence have become conscious of possible arrest and prosecution when they indulge in illegal practices. This awareness alone is deterrent enough and if it spreads throughout the coast this will be the beginning of winning the battle for sustainable fishing among the fishing fleet.
- The prosecution chain has been strengthened. All actors are fully aware of their respective roles, which has helped minimized conflicts of interests.
- As part of efforts to increase the prosecution success, the Hen Mpoano Initiative assisted the newly formed Marine Unit of the Ghana Police (MUGPS) to undertake education and sensitization durbars in communities, churches, market places and other public gatherings. This has influenced fisher folks' commitment to voluntary compliance of the Fisheries laws.

⁴ The FWG consists of various stakeholders in the Western Region relevant to the Fisheries Industry, and they play an advisory function to the Regional Fisheries Commission.

Appendix 1: FISHERIES CASES AS AT SEPTEMBER 2012

No	OFFENCE	OUTCOME OF PROSECUTION	SENTENCE OR ORER
Completed cases			
1	Light Fishing	Convicted	Fined, 100 penalty units, lights and generators confiscated
2	Light Fishing	Convicted	Fined 100 penalty units lights and generators confiscated
3	Light Fishing	Convicted	As above
4	Light Fishing	Convicted	As above
5	Fishing without license	Acquitted	200 penalty units or GHC 2,400 each or in default 1 year In Hard Labour (IHL)
6	Proceeding to sea without engineer's certificate (2 counts)	Acquitted	
7	Using undersize mesh net	Acquitted	
8	Fishing without license Using undersize mesh net	Convicted	500 penalty units or GHC 600.00 fishing vessel and all equipment forfeited 100 penalty units or GHC 1,200.00 or in default 12 months IHL. Appealed, H/C allowed appeal, state applied for review. Casa adjourned sine die
9	Fishing within prohibited zone SECTION 81(3) Act 625	Convicted	US\$10,000 each or 3 yrs IHL Appealed, pending
9	Fishing within prohibited zone SECTION 81(3) Act 625	Convicted	US\$10,000 each or 3 yrs IHL Appealed, pending
10	Fishing within prohibited zone S. 81 (3) Act 625	Convicted	US\$ 10,000 each or 3 yrs IHL Appealed, Pending
11	Fishing without license, use of undersize net. Section 461 (1) Act 625 and Reg. 12 (1) (a) of LI 1968	Convicted	50 penalty units or in default 1yr IHL. Vessel forfeited. 100 penalty units or 2yrs IHL
12	Light fishing	Convicted	100 penalty units Generators and lights forfeited
13	Light fishing	Convicted	50 penalty units or in default 2yrs I. H. L Generators, bulbs and lights forfeited to state
14	Light fishing	Convicted	50 penalty units or in default 2yrs I.H. L Generators, bulbs and lights forfeited to state
15	Light fishing	Convicted	50 penalty units or default 2yrs I.H.L. Generators, bulbs and lights forfeited to State.
16	Light fishing	Convicted	50 penalty units or default 2yrs I.H.L Generators, bulbs and lights forfeited to state.
17	Light fishing	Convicted	50 penalty units or default 2yrs I.H.L Generators, bulbs and lights forfeited to state
18	Possession of prohibited Fishing gears Sec. 135 (1) of Act 625 and Reg. 11 (1)	Convicted	50 penalty units each or default 12 months IHL – bulbs, generators, Cables forfeited to the State.

No	OFFENCE	OUTCOME OF PROSECUTION	SENTENCE OR ORER
Cases yet to be Presented			
1	Light Fishing	Cases not yet presented	
2	Light Fishing		
3	Light Fishing		
4	Light Fishing		
5	Light Fishing		
On-going cases			
1	Fishing without license	In all these cases, prosecution had closed its case and the accused were called upon to open their defense. They have appealed against the ruling to open their defense. The appeal is pending before the High Court.	
2	Fishing without license		
3	Fishing without license		
4	Fishing without license		
5	Fishing without license		
6	Fishing without license		