



# THE ROLE OF THE FISHERIES OUT-OF-COURT SETTLEMENT COMMITTEE AND ITS LEGALITY UNDER THE FISHERIES ACT AND OTHER LAWS OF GHANA.

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**Abstract:** The fisheries sub-sector is one that contributes greatly to the economies of Ghana and the West African subregion. However, illegal and environmentally harmful fishing methods, which are rife in this region, largely affect the potential of this sub-sector to rake in more resources. The regulatory institutions in Ghana have responded by establishing an out-of-court settlement committee to hear and settle matters relating to illegal and environmentally harmful practices in fishing. There are, however, many potential constitutional and legal challenges to the creation and functioning of the committee. This article identifies these and proposes ways of resolving them to streamline its operations and ensure that it achieves the broader aim of generating twenty (20) percent of national revenue from the sub-sector.

## 1. Introduction

The Fisheries Act, 2002 (Act 625) empowers the Fisheries Commission to establish such committees as are necessary for the performance of its statutory functions. It is perhaps in exercise of this power that the Fisheries Out-of-Court Settlement Committee has been established by the Commission to adjudicate offences arising in the fisheries sector. The article seeks to examine the constitutionality of the Fisheries Out-of-Court Settlement Committee and to determine whether or not the Fisheries Commission has the authority to set up this body with all its concomitant powers. It argues that the Committee's formation infringes upon the exclusive prosecutorial powers of the Attorney-General and also encroaches on the powers of the courts, thereby making its formation unconstitutional. It also argues that offences arising in the fisheries sector are not capable of being settled by any out-of-court settlement mechanism, based on the posture of Ghana's alternative dispute resolution laws.<sup>1</sup> This makes recourse to the Committee to settle disputes in the fisheries sector unlawful. Additionally, the paper highlights some of the challenges that confront the Fisheries Out-of-Court Settlement Committee, namely political interference and the absence of strong enforcement mechanisms which, besides its blatant unconstitutionality, contribute largely to its inefficiency.

While pointing out the illegalities and challenges that confront the Committee, the paper identifies potential solutions that can help forestall these challenges, namely the establishment of a Fisheries Court and the amendment of the Alternative Dispute Resolution Act, 2009 (Act 798) to allow for the settlement of fisheries-related disputes out of court.

## 2. Contribution of Fisheries Sector to the Economy

Fisheries and aquaculture contribute an estimated USD 24 billion to the larger African economy<sup>2</sup>. In addition to contributing to food and nutrition security, the fisheries sector—subcategorized into artisanal, semi-industrial or local industrial and industrial fishing based on the scale of production—serves as a source of employment, particularly for people who live along the coast. As at 2015, the fisheries sector in Ghana employed about 2.4 million individuals—approximately ten (10) percent of the population and about twenty (20) percent of the active labour force—with the small-scale fisheries sector (artisanal fishing) contributing an estimated three (3) percent to the national GDP and generating revenue of USD 341,000,000 annually<sup>3</sup>. The Ministry of Fisheries and Aquaculture Development (MoFAD) recorded the total value of marine fish production as of September 2019 as USD 3,607,576,286.44, while the inland sub-sector recorded GHS 716,065,125.67 for the same period<sup>4</sup>. The Environmental Justice Foundation (EJF) reports that the sector currently employs more than 2.7 million people and brings in over USD 500,000,000 in revenue annually.<sup>5</sup>

## 3. Regulatory and Institutional Framework for the Fisheries Sector in Ghana

The fisheries sector is regulated by domestic legislation, guidelines and directives issued by the Ministry of Fisheries and Aquaculture Development (MoFAD) and various international instruments.<sup>6</sup> The legal framework for the sector is established by the Fisheries Act, 2002 (Act 625) as amended by the Fisheries (Amendment) Act, 2014 (Act 880), the Fisheries Regulations, 2010 (L.I. 1968) as amended by the Fisheries (Amendment) Regulations, 2015 (L.I. 2217) and the National Premix Fuel Regulations, 2016 (L.I. 2233).

The institutional framework for the fisheries sector comprises the Ministry of Fisheries and Aquaculture Development and its related agencies — the Fisheries Commission and the National Premix Secretariat. The Ministry of Fisheries and Aquaculture Development is responsible for the management of fisheries resources and the development of the fishing industry in Ghana.

The Fisheries Commission (“the Commission”), established in 1993 by Act 625, is guided by the policies and regulations of MoFAD and is responsible for monitoring, control, surveillance, evaluation and compliance functions in all areas of fisheries development and management in Ghana, including fish health, post-harvest activities, safety and quality assurance. The Commission is also tasked with making recommendations to MoFAD to inform future policies, including proposing legislative reforms where applicable. For operational purposes, the Commission is sub-divided into divisions, units and committees.

## 4. Establishment of the Fisheries Out-of-Court Settlement Committee

### 4.1 Legislative and Regulatory Framework/ Legal Mandate

The Fisheries Act mandates the establishment of a Fisheries Settlement Committee, to be made up of not less than three and not more than five persons chosen from among the members of the Commission, to hear and settle complaints from persons aggrieved in respect of matters arising from or related to the fishing industry<sup>7</sup>. The

<sup>2</sup> The World Bank Group. (2012). Africa Program for Fisheries. <https://www.worldbank.org/en/programs/africa-program-for-fisheries#:~:text=Since%202005%2C%20the%20Africa%20Program,new%20hope%20to%20coastal%20communities>.

<sup>3</sup> USAID. (2015). The Importance of Wild Fisheries for Local Food Security: Ghana. <https://biodiversitylinks.org/projects/completed-projects/measuring-impact/resources/the-importance-of-wild-fisheries-for-local-food-security/the-importance-of-wild-fisheries-for-local-food-security-ghana/view>.

<sup>4</sup> Ministry of Finance. (2020). Ministry of Fisheries and Aquaculture Development, Budget Statement. <http://www.mofep.gov.gh/>

<sup>5</sup> Environmental Justice Foundation. (n.d.). What We Do. <https://ejfoundation.org/what-we-do/ocean/ghana>.

<sup>6</sup> The international instruments that regulate the fisheries sub-sector in Ghana include: The International Convention for the Conservation of Atlantic Tunas (ICCAT), 1966 and the United Nations Convention on the Law of the Sea (UNCLOS), 1982.

<sup>7</sup> Section 10(1), Fisheries Act, 2002 (Act 625).

functions of the Fisheries Settlement Committee as established under section 10 of the Act are *subject to the rights and powers of the Court*<sup>8</sup> (emphasis added).

The Act does not expressly establish a Fisheries Out-of-Court Settlement Committee. However, in the exercise of its functions, the Commission is empowered by section 9 of Act 625 to establish committees that are considered necessary by the Commission for the effective implementation of its functions. The Commission's mandate under Section 9 enables it to establish committees other than those specifically stated in the Act. The Fisheries Out-of-Court Settlement Committee may derive its legal force from this provision.

#### 4.2 Composition of the Fisheries Out-of-Court Settlement Committee

Act 625 dictates that any committee that is established pursuant to section 9 of the Act may consist solely of members of the Commission or a combination of members and non-members of the Commission.<sup>9</sup> The Act limits the composition of the Fisheries Settlement Committee to members of the Commission<sup>10</sup>. The composition of the Fisheries Out-of-Court Settlement Committee is, however, diverse. The Committee is made up of representatives of the Fisheries Commission, a representative of the Office of the Attorney-General, a Police Prosecutor and a representative from the Ghana Navy and the Marine Police<sup>11</sup>. It is unclear whether the Commission has replaced the Fisheries Settlement Committee established by Act 925 with the Fisheries Out-of-Court Committee which is currently in operation.<sup>12</sup>

Geographically, the Fisheries Out-of-Court Settlement Committee operates in the two major port cities — Takoradi and Tema. The Committee functions as a *quasi-court*, with the powers of the courts, and adjudicates all fisheries-related offences without recourse to the courts.<sup>13</sup> The operations of the Fisheries Out-of-Court Settlement Committee are not supervised by the courts. The Committee does not communicate its investigations to the court or refer cases to the court for a determination as to whether the cases may legally be settled out of court. Instead, the Committee, on its own, conducts investigations, invites the offenders to the proceedings, pronounces judgments and imposes fines.<sup>14</sup>

### 5. Legal Issues or Challenges Posed by the Fisheries Out-of-Court Settlement Committee

As previously implied, the Fisheries Out-of-Court Settlement Committee has usurped some powers of the court. The mandate of the Fisheries Out-of-Court Settlement Committee has also interfered with the powers of other state agencies. The scope of some of these interferences is discussed below.

#### 5.1 Power of the Attorney-General to Prosecute Offences

The functions of the Fisheries Out-of-Court Settlement Committee annex the exclusive powers of the Attorney-General to prosecute crimes. The 1992 Constitution of Ghana vests prosecutorial power solely in one entity — the Attorney-General. Article 88(3) of the Constitution provides that the Attorney-General shall be responsible for the initiation and conduct of all prosecutions of criminal offences. In the case of *Elikplim Agbemava v. Attorney-General*; *Alfred Tuah-Yeboah v. Attorney-General* and *Nana Asante Bediatuo v. Attorney-General*

<sup>8</sup> Section 10(2), Fisheries Act, 2002 (Act 625).

<sup>9</sup> Section 9(2), Fisheries Act, 2002 (Act 625).

<sup>10</sup> Section 10(1), Fisheries Act, 2002 (Act 625).

<sup>11</sup> Ministry of Food and Agriculture. (n.d.). Overview of Monitoring, Control and Surveillance Division (MCS) of the Fisheries Commission. <http://mofa.gov.gh/site/media-centre/agricultural-articles/322-overview-of-monitoring-control-and-surveillance-division-mcs-of-the-fisheries-commission>. See also: Afedzi Abdullah (2021). Fisheries crimes and prosecutions: Has Ghana's Alternative Dispute Resolution (ADR) proven effective? <https://www.modernghana.com/news/1063130/fisheries-crimes-and-prosecution-has-ghanas-alte.html>.

<sup>12</sup> An interview with one Eric Mawuko Atsiayorme of Friends of the Nation reveals that the Fisheries Settlement Committee as established in the Fisheries Act transmogrified into the Fisheries-Out-of-Court Settlement Committee, and that the Committee has essentially gravitated towards the settlement of such disputes relating to the fisheries industry as are referred to it by the court.

<sup>13</sup> Fisheries Act, 2002 (Act 625), Section 10.

<sup>14</sup> Friends of the Nation. (2017). Strengthening the Prosecutorial Chain Working Meetings. The USAID/Ghana Sustainable Fisheries Management Project (S-FMP). International Journal of Novel Research and Development (www.ijnrd.org) University of Idaho, Idaho State University, Coastal Resource Center, Graduate School of Oceanography, University of Rhode Island and Friends of the Nation. [https://www.crc.uri.edu/download/GH2014\\_POL078\\_FON\\_FIN508.pdf](https://www.crc.uri.edu/download/GH2014_POL078_FON_FIN508.pdf). Page 23.

(consolidated),<sup>15</sup> the Supreme Court, per Anin Yeboah JSC (as he then was), noted that “criminal proceedings, both summarily and on indictments are all initiated at the instance of the Attorney-General who under article 88(3) exercises exclusive powers.” The prosecutorial power of the Attorney-General stems from the Constitution and cannot be modified by a subsidiary legislation.

On the authority of the Constitution, the Attorney-General may delegate his prosecutorial powers to another person or entity. Article 88(4) provides that all offences prosecuted in the name of the Republic of Ghana shall be at the suit of the Attorney-General or any other person authorized by him in accordance with any law. Hence, any exercise of prosecutorial power must be at the instance of the Attorney-General or any person authorized by the Attorney-General. As with the prosecutorial, the power to delegate same rests exclusively with the Attorney-General.

The Attorney-General may by an executive instrument enable any person, body or entity to mount prosecutions on behalf of his office.

Section 56 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) provides as follows:

- (1) *Subject to article 88 of the Constitution, the Attorney-General may, by executive instrument appoint generally, or for a specified class of criminal cause or matter, or for a specified area, public officers to be public prosecutors, and may appoint a legal practitioner in writing to be a public prosecutor in a particular criminal cause or matter.*
- (2) *A public prosecutor appointed under subsection (1) may appear and plead before a Court or Tribunal designated by the Attorney-General in the executive instrument or in writing.*
- (3) *The Attorney-General may give express directions in writing to the public prosecutor.*

In exercise of the powers conferred under section 56, the Attorney-General has passed a number of executive instruments appointing various entities to mount prosecutions on behalf of his office.

By the Appointment of Public Prosecutions Instruments, 2010 (E.I. 38), the Attorney-General delegated his prosecutorial powers to lawyers employed by the Electricity Company of Ghana to act as prosecutors in respect of any action that arises from offences related to the supply of electricity.

Under the Appointment of Public Prosecutors Instrument, 2004 (E.I. 5), the Attorney-General also delegated his prosecutorial powers to lawyers employed in the Internal Revenue Service<sup>16</sup>, the Customs, Excise and Preventive Service and the Value Added Tax Service to serve as prosecutors in respect of any action that arises under:

- (a) the Internal Revenue Act, 2000 (Act 592)<sup>17</sup>;
- (b) the Customs, Excise and Preventive (Management) Law, 1993 (PNDCL 330)<sup>18</sup>;
- (c) the Value Added Tax Act, 1998 (Act 546)<sup>19</sup>; and
- (d) any other enactment that relates to their respective Service.

Similarly, the Appointment of Public Prosecutors Instrument, 2013 (E.I. 6) appointed lawyers employed by the National Lottery Authority<sup>20</sup> as public prosecutors in respect of any action that arises in relation to national lottery cases.

Historically, any attempt to exercise the prosecutorial powers of the Attorney-General without the appropriate legal authority has been resisted by the courts as being incompetently instituted. The Court of Appeal, in the case of *Osei Kwaku and Another v. Georgina Konadu Kusi*<sup>21</sup>, held unequivocally that an application which sought to invoke the criminal jurisdiction of the courts was fundamentally flawed for not having complied with the

<sup>15</sup> *Elikplim Agbemava v. Attorney-General and Alfred Tuah-Yeboah v. Attorney-General and Nana Asante Bediatuo v. Attorney-General* [2018] DLSC3048.

<sup>16</sup> Now Ghana Revenue Authority.

<sup>17</sup> Ghana Revenue Authority Act, 2009 (Act 791) as amended.

<sup>18</sup> Customs Act, 2015 (Act 891) and Excise Duty Act, 2014 (Act 878).

<sup>19</sup> Value Added Tax Act, 2013 (Act 870).

<sup>20</sup> *The Republic v. National Lottery Authority, Ex Parte Scancom Gh. Ltd.* Civil Appeal No. HI/211/2015.

<sup>21</sup> *Osei Kwaku and Another v. Georgina Konadu Kusi* [2005] DLCA 6562.

mandatory constitutional and statutory provisions, either by bringing the application by the Attorney-General personally or by proving that the application was initiated with his authority under law. In arriving at this conclusion, the Court of Appeal, per Gbadegbe JA (as he then was), had this to say:

*I am of the view that since the section on which the appellants relied created a criminal offence that is to be tried summarily, then for the court to have entertained it, the matter must have come before it in compliance with the provisions contained in the Criminal Procedure Code (Act 30) on summary trials (See: Part 111 of Act 30 sections 163-180). I have no doubt that the nature of the process taken out by the appellants precluded the court below from complying with the said mandatory provisions regulating the procedure in summary trials.*

*The result in my thinking therefore is that the application before the court below which sought to invoke its criminal jurisdiction was one that was incompetently instituted and thus rendered the proceedings before the court bad at law. I think that this was a clear instance of proceedings having been instituted without complying with essential statutory conditions, namely the bringing of such an application by the Attorney-General personally or proving that the application was initiated with his authority made under law.*

The question that arises is whether Parliament can purport to delegate this power on behalf of the Attorney-General. In the case of *Eric Akwetey Siaw and Two Others v. Tetteh Siaw-Sappore and Two Others*<sup>22</sup>, the Court of Appeal attempted to distinguish between an offence created under the Criminal Offences Act, (Act 29) and an offence created by other enactments. The Court also drew a distinction between criminal offences and “other offences”. The Court of Appeal, speaking through Dordzie J.A (as she then was), had this to say:

*Distinction must be drawn between offences created by the Criminal and Other Offences Act and offences created by enactments other than the Criminal and Other Offences Act. In offences created by the Criminal Act, the court exercises its penal jurisdiction in the public interest; therefore, the State and for that matter the Attorney-General steps in to investigate a particular complaint and prosecutes in appropriate cases. In dealing with offences that arise from civil litigation such as contempt and intermeddling, as in this case, the court’s concern is punishing for breaches of court orders or undertakings for the benefit of parties. In modern development of the law, other common law jurisdictions have shifted from describing breaches in civil litigation, which we may refer to in this jurisdiction as quasi-criminal, as offences or crime.*

The Court further cited section 1 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) in support of its reasoning that prosecution of offences created under legislation other than Act 29 need not be initiated by the Attorney-General:

*(1) A criminal offence under the Criminal Offences Act, (Act 29) 1960 shall be enquired into, tried and dealt with in accordance with this Act.*

*(2) An offence under any other enactment shall, subject to that enactment, be enquired into, tried and dealt with in accordance with this Act.*

*I am sure it is in avoidance of errors, the like counsel for the respondents fell into, that Section 1 of the Criminal and Other Offences (Procedure) Act was split into subsections to make its wordings clearer. Section 1 (1) clearly specifies that offences created by the Criminal and Other Offences Act, (Act 29) 1960 shall be enquired into and dealt with in accordance with the procedure provided under Act 30. Subsection 2 as can be seen from the quote above takes care of ‘other offences’ and says the enquiring into and trial under Act 30 shall be subject to the enactment that created that offence.*

A careful reading of the judgment reveals that what the Court identified as offences arising from civil litigation or civil offences are in fact civil wrongs and not offences. Act 625 does not create civil wrongs; instead, it creates offences which are punishable on conviction to the payment of a fine or to a term of imprisonment. It follows that the prosecutorial powers of the Attorney-General created under Act 29 become operative when an offence is committed under Act 625.

As previously stated, the power to delegate prosecutorial power rests exclusively with the Attorney-General, who may exercise that power by means of an Executive Instrument. Parliament possesses no legal mandate to delegate the Attorney-General's powers. Any attempt to do so is a usurpation of the Attorney-General's powers and a contravention of the Constitution. Without any legal authority, neither the Marine Police nor any other entity<sup>23</sup> can purport to prosecute fisheries-related offences on behalf of the Attorney-General.

### 5.2 Judicial Functions of the Law Courts

It is trite knowledge that criminal jurisdiction is vested in the courts. The Constitution provides in article 19(3) that "a person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court" (emphasis added). Evident in this provision is the role of the court in a criminal trial. Where a crime is committed, it falls within the jurisdiction of the court, not any other adjudicatory body.

Act 625 recognizes the jurisdiction of the courts to preside over criminal cases when it provides in section 115 that:

*An act or omission in contravention of a provision of this Act committed:*

- (a) *by a person within the fishery waters; or*
- (b) *outside the fishery waters by a Ghanaian citizen or a person ordinarily resident in Ghana; or*
- (c) *by a person on board a local fishing vessel, shall be dealt with in such court as the Chief Justice may determine except that where a foreign fishing vessel is involved, the matter shall be dealt with by the High Court and the judicial proceedings shall be taken as if the act or omission had taken place within the jurisdiction of Ghana.*

*(2) Where an authorized officer or an observer is exercising outside the fishery waters a power conferred on the officer or observer in accordance with this Act, any act or omission of a person in contravention of a provision of this Act, shall be deemed to have been committed within the fishery waters.*

*(3) Notwithstanding any other law to the contrary, an information or charge in respect of an offence under this Act may be laid at any time within one year of the commission of the offence.*

The establishment of the Fisheries Out-of-Court Settlement Committee and its apparent powers are contemptuous of the court's jurisdiction as section 115 of the Act clearly confers jurisdiction on the courts to deal with any act or omission committed in contravention of a provision of the Act by a person within the fishery waters; or outside the fishery waters by a Ghanaian citizen or a person ordinarily resident in Ghana; or by a person on board a local fishing vessel. This is also inconsistent with section 10 of the Act, which stipulates that the functions of the Fisheries Settlement Committee as established thereunder are without prejudice to any right of action to the courts.

In exercising its criminal jurisdiction, a court may, on its own or upon application by a party, refer a matter to out-of-court settlement provided the matter is capable of being settled out of court. Section 73 of the Courts Act, 1993 (Act 459) provides that:

*any court, with criminal jurisdiction may promote reconciliation, encourage and facilitate a settlement in an amicable manner of any offence not amounting to felony and not aggravated in degree, on payment cases of compensation or on other terms approved by the court before which the case is tried, and may, during the pendency of the negotiations for a settlement, stay the proceeding for a reasonable time and in the event of a settlement being effected shall dismiss the case and discharge the accused person (emphasis added).*

This provision emphasises the argument that operation of the Fisheries Out-of-Court Settlement Committee without reference to the court is an attempt to usurp the court's powers.

### 5.3 Can a matter arising out of a fishery-related activity be settled out-of-court considering section 1 of the Alternative Dispute Resolution (ADR) Act?

<sup>23</sup> Ministry of Food and Agriculture. (n.d.). Overview of Monitoring, Control and Surveillance Division (MCS) of the Fisheries Commission. <http://mofa.gov.gh/site/media-centre/agricultural-articles/322-overview-of-monitoring-control-and-surveillance-division-of-the-fisheries-commission>. (The Monitoring, Control and Surveillance Division of the Fisheries Commission)

It is important to consider whether a matter arising out of fishing activities can be lawfully settled through an alternative dispute resolution mechanism, as per the disputes to which the law is applicable. The Alternative Dispute Resolution Act, 2010 (Act 798) is very emphatic on its applicability.

First, we must determine whether the Fisheries Out-of-Court Settlement Committee mirrors an alternative dispute resolution mechanism. Act 798 defines alternative dispute resolution as “*the collective description of methods of resolving disputes otherwise than through the normal trial process*”<sup>24</sup>. This broad definition covers the operations and procedures of the Fisheries Out-of-Court Settlement Committee.

Section 1 of Act 798 excludes the application of alternative dispute resolution to matters relating to:

- a) *the national or public interest;*
- b) *the environment;*
- c) *the enforcement of the Constitution; or*
- d) *any other matter that by law cannot be settled by an alternative dispute resolution method.*

The impact of activities in the fisheries and aquaculture sector on the environment was not lost on the framers of Act 625. The Fisheries Commission is charged under section 2 of the Act to correlate fisheries with other uses of water and environment protection, particularly with respect to fish resources and the food chain in rivers, lagoons, lakes and the continental shelf along the coast of the country. In addition, the Commission is composed of, inter alia, representatives of various Ministries, including the Ministry responsible for Environment.

The Act further provides that an application for a licence for an aquaculture project or recreational fishing shall be made to the Commission and shall be accompanied by an environmental impact assessment<sup>25</sup>. Moreover, the Act mandates an aquaculture operator to carry out all operations in conformity with prescribed standards relating to aquatic environmental protection, quality of produce and hygienic methods.

These provisions lend credence to the argument that the environment is directly impacted by commercial fishing and aquaculture activities, making fishing and its related activities matters of environmental concern. As a result, a matter arising out of the Fisheries Act cannot, by virtue of Act 798, be settled by any means other than the normal trial process; that is, through the court system. The policy considerations for which matters relating to the environment are removed from the applicability of Act 798 would be defeated if matters affecting the fisheries industry and the environment are left to the sole discretion of the Fisheries Out-of-Court Settlement Committee.

#### 5.4 Political Interference

The Alternative Dispute Resolution system established under the Fisheries Out-of-Court Settlement Committee is prone to political interference from various state and non-state actors<sup>26</sup>. The decisions of the Committee have often been interfered with by Ministers and other government officials.

The Fisheries (Amendment) Act, 2014 (Act 880) imposes a minimum fine of USD 1,000,000 on all offenders under Act 625. However, it has been reported in various instances that the Minister scaled down the fines imposed on a fishing vessel by the Committee to an amount thought by the Minister to be reasonable. In 2015, a report issued by USAID in connection with the Sustainable Fisheries Management Project (SFMP) noted several instances of political interference<sup>27</sup>; in some cases, fines imposed by the Fisheries Out-of-Court Settlement Committee were not paid in full, while in other cases the Minister of Fisheries accepted less than the amount imposed.<sup>28</sup>

<sup>24</sup> Section 135, Alternative Dispute Resolution Act, 2010 (Act 798).

<sup>25</sup> Section 60(1), Fisheries Act, 2002 (Act 625).

<sup>26</sup> Akpalu, W., Eriksen, S., & Vondolia, G. (2018). The Fisheries Sector in Ghana, A Political Economy Analysis. <https://www.nupi.no/Publikasjoner/CRISTin-Pub/The-Fisheries-Sector-in-Ghana-A-Political-Economy-Analysis>.

<sup>27</sup> Friends of the Nation. (2017). Strengthening the Prosecutorial Chain Working Meetings. The USAID/Ghana Sustainable Fisheries Management Project (SFMP). Narragansett, RI: Coastal Resources Center, Graduate School of Oceanography, University of Rhode Island and Friends of the Nation. [https://www.crc.uri.edu/download/GH2014\\_POL078\\_FON\\_FIN508.pdf](https://www.crc.uri.edu/download/GH2014_POL078_FON_FIN508.pdf). Page 8.

<sup>28</sup> Abdullah, A. (2021). Fisheries crimes and prosecutions: Has Ghana's Alternative Dispute Resolution (ADR) proven effective? <https://www.modernghana.com/news/1063130/fisheries-crimes-and-prosecution-has-ghanas-alte.html>.

In an article published in 2021,<sup>29</sup> Afedzi Abdullah identifies several instances of political interference with the mandate of the Fisheries Out-of-Court Settlement Committee. He recounts that on April 12, 2015, an industrial trawler named Jin Hai 608 (AF 745), belonging to Itavan Ventures, was arrested for taking on board undersized fish. The case was settled out of court on April 23, 2015, where the offenders were expected to pay a fine of GHS 38,799 and USD 250,000. However, the culprit paid GHS 200,000, which was accepted by the Minister of Fisheries.<sup>30</sup> Eric Mawuko Atsiayorme of Friends of the Nation recounts an instance where the Committee, in compliance with the statutorily required minimum fine for the particular infraction, imposed a fine of USD 1,000,000 but the Minister at the time accepted payment to the tune of a meagre GHS 6,000.<sup>31</sup>

The author further cites the example of the Lu Rong Yuan 959 (AF 741). This industrial trawler belonging to Rockpoint Co. Ltd was arrested on April 11, 2015 for taking on board undersized fish. Again, instead of paying the GHS 47,980 and USD 250,000 fine imposed by the out-of-court agreement, the culprit paid GHS 200,000 which was accepted by the Minister of Fisheries.<sup>32</sup>

### 5.5 Enforceability of Judgments, Rulings or Orders

In terms of enforcement of its judgments, because the Fisheries Out-of-Court Settlement Committee is not clothed with judicial powers, the offenders often default on the fines imposed by the Committee. Since the Committee is without a policing unit, there is no way of ensuring compliance with the Committee's orders.

According to the 2015 Baseline for Prosecution: Summary of Fisheries Arrests and Prosecution in the Western and Eastern Commands published by the USAID Sustainable Fisheries Management Project, many of the orders made by the Committee are often not complied with by the offenders. In some cases, the fines imposed are too low to serve as a deterrent, while in other cases there is political interference from other entities.<sup>33</sup>

### 5.6 The Legality of Compounding Offences

Some supporters of the Committee have premised its authority to settle criminal disputes on section 116 of Act 625, which appears to allow for the civil resolution of otherwise criminal offences in the fisheries sector by compounding offences.

An act is said to be compounded when the offending party admits either in writing or otherwise to the commission of the offence and pays a "penalty" in order to avoid prosecution.

Section 116(1) of Act 625 provides that the Commission may, where it is satisfied that a person has committed an offence under the Act and the person has in writing admitted to having committed the offence and expressed willingness that the offence be so dealt with, compound the offence by accepting from the person, on behalf of the Government, a sum of money not less than the minimum penalty specified for the offence plus the fair market value of any fish caught illegally, and the sum when paid shall immediately be paid into the Fisheries Development Fund.

The act of compounding offences by the Committee offends the Criminal Offences Act, 1960 (Act 29). Act 29 defines compounding thus: "a person compounds a criminal offence if that person offers or agrees to forbear from prosecuting or giving evidence against a person on a criminal charge, in consideration of money, or of a valuable thing, or of a personal advantage or an advantage to any other person."<sup>34</sup>

<sup>29</sup> Abdullah, A. (2021). Fisheries crimes and prosecutions: Has Ghana's Alternative Dispute Resolution (ADR) proven effective? <https://www.modernghana.com/news/1063130/fisheries-crimes-and-prosecution-has-ghanas-alte.html>.

<sup>30</sup> Abdullah, A. (2021). Fisheries crimes and prosecutions: Has Ghana's Alternative Dispute Resolution (ADR) proven effective? <https://www.modernghana.com/news/1063130/fisheries-crimes-and-prosecution-has-ghanas-alte.html>.

<sup>31</sup> An interview with one Eric Mawuko Atsiayorme of Friends of the Nation reveals that the Fisheries Settlement Committee as established in the Fisheries Act transmogrified into the Fisheries-Out-of-Court Settlement Committee, and that the Committee has essentially gravitated towards the settlement of such disputes relating to the fisheries industry as are referred to it by the court.

<sup>32</sup> *ibid*



The Committee has no legal power to compound offences without recourse to the courts. The Criminal Offences Act, 1960 (Act 29) criminalizes the act of compounding offences.

By section 234 of Act 29, a person who, without leave of a Court, compounds a criminal offence commits a misdemeanour. The Fisheries Out-of-Court Settlement Committee is not a court. It can neither make an order allowing a person to compound a fisheries offence, nor can it by itself compound an offence without reference to the court. The provision in section 116 is another attempt to usurp the court's powers under section 234 of Act 29.

## 6. Addressing the Challenges

### 6.1 Establishment of a Fisheries Court

The establishment of a Fisheries Court will address almost all the challenges posed by the operations of the Fisheries Out-of-Court Settlement Committee. Act 625 conceives the possibility that the Chief Justice may establish a court to preside over disputes arising from the Act.<sup>35</sup> The Chief Justice is empowered under the 1992 Constitution and the Courts Act, 1993 (Act 459) to create divisions of the High Court. A case may be made for the creation of a Fisheries Division of the High Court, which will exercise jurisdiction over criminal matters presented to the Committee.

As previously established, the operations of the Committee have proven vulnerable to political interference.<sup>36</sup> The establishment of a permanent Fisheries Court will divest state and non-state actors of the power to interfere with the investigations and prosecution of fisheries-related offences. Furthermore, the autonomy of the courts will enable the enforcement of the courts' judgments or orders without external pressure or influence.

### 6.2 Amendment of the Alternative Dispute Resolution Act, 2010 (Act 798) to Expressly Permit Out-of-Court Settlement of Matters Affecting the Fisheries Industry

The discussion above supports an amendment of the Alternative Dispute Resolution Act, 2009 (Act 798) to expressly exclude fisheries activities from the list of subject matters that cannot be resolved through Alternative Dispute Resolution. Such an amendment of Act 798 will enable disputes arising out of fisheries activities to be resolved out of court without breaching the existing Alternative Dispute Resolution legislation. The existing legislative framework does not support resolution of environmental disputes by any means other than adjudication by the courts.

## 7. Conclusion

This article has examined the constitutional paradoxes presented by the operations of the Fisheries Out-of-Court Settlement Committee and proposed solutions that will enable the Committee to operate within the framework of the law.

It has been argued that the powers exercised by the Fisheries Out-of-Court Settlement Committee conflict with the authorized powers of multiple state agencies— the exclusive power of the Attorney-General to initiate and conduct prosecutions of criminal offences, the exclusive power of the courts to adjudicate and determine the rights and liabilities in criminal disputes, as well as the power of the courts to refer matters to out-of-court settlement.

<sup>35</sup> Section 115(1), Fisheries Act, (2002) Act 625.

<sup>36</sup> Akpalu, W., Eriksen, S., & Vondolia, G. (2018). The Fisheries Sector in Ghana, A Political Economy Analysis. <https://www.nupi.no/Publikasjoner/CRIStin-Pub/The-Fisheries-Sector-in-Ghana-A-Political-Economy-Analysis>.

See also: USAID. (2015). The Importance of Wild Fisheries for Local Food Security: Ghana. <https://biodiversitylinks.org/projects/completed-projects/measuring-impact/resources/the-importance-of-wild-fisheries-for-local-food-security/the-importance-of-wild-fisheries-for-local-food-security-ghana/view>.

The existing structure of the Committee does not, however, prevent the Committee from presiding over disputes affecting the fisheries industry altogether. The Committee may continue to operate without any further legislative adjustments to the existing structure, provided that the Committee is rebranded to settle only civil complaints brought before it and that the Alternative Dispute Resolution Act, 2009 (Act 798) is amended to allow matters affecting the environment to be resolved out of court. Further, upon the establishment of a permanent Fisheries Court by the Chief Justice, all disputes affecting the fisheries industry which are criminal in nature will be directly determined by the Fisheries Court.

