



FINAL REPORT

ARTISANAL FISHING ZONE ISSUES IN THE REPUBLIC OF THE GAMBIA

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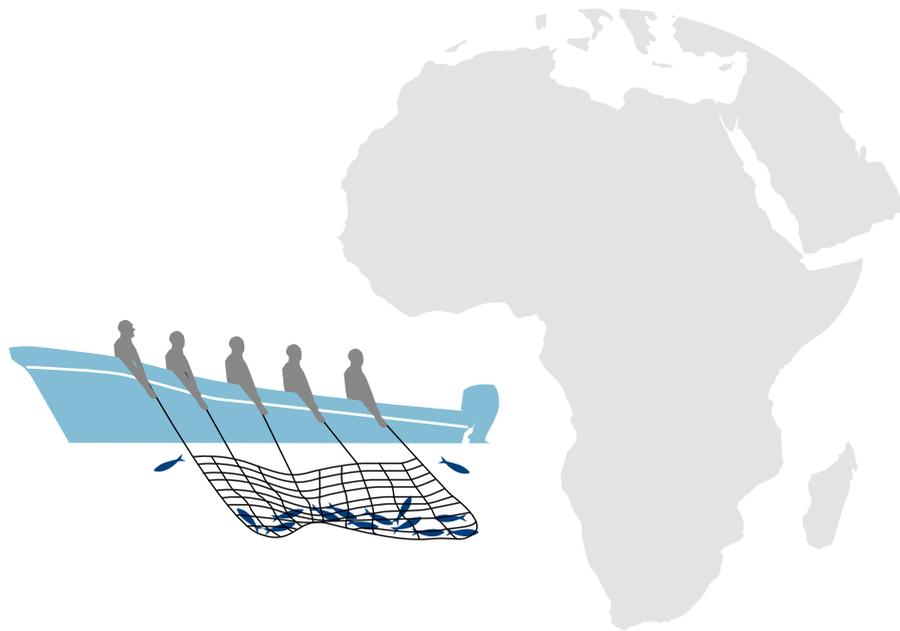
AU	African Union
CCLME	Large Marine Ecosystem of the Canary Current
CCRF	Code of Conduct for Responsible Fisheries
COMHAFAT	Ministerial Conference on Fisheries Cooperation among African States bordering the Atlantic Ocean
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization of the United Nations
FC	Fisheries Code
FMP	Fisheries Management Plan
GDP	Gross domestic product
GMD	Gambia Dalasis (Gambian currency)
GT	Gross tonnage
ICCAT	International Commission for the Conservation of Atlantic Tunas
IPOA-IUU	International Plan of Action to Combat IUU Fishing
IUU	Illegal, Unreported and Unregulated
LSFV	Large Scale Fishing Vessels
MCS	Monitoring, Control and Surveillance
NPOA-IUU	National Action Plan to Combat IUU Fishing
PFRS	Policy Framework and Reform Strategy for Fisheries and Aquaculture in Africa
PSM	Port State Measures
PSMA	Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (FAO 2009)
SFPA	Sustainable Fisheries Partnership Agreement (EU fishing agreements with third countries)
SRFC	Sub-Regional Fisheries Commission
UNCLOS	United Nations Convention on the Law of the Sea
UNFSA	United Nations Agreement on Straddling Fish Stocks and Migratory Fish Stocks (1995)
VGSSF	Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication
VMS	Vessel Monitoring System

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CONTEXT

In recognition of the key role that the artisanal fisheries sub-sector plays in socio-economic development, including food and nutritional security, and in the fight against poverty, the United Nations General Assembly has declared the year 2022 as the “International Year of Artisanal Fisheries and Aquaculture” (IYAFA 2022). IYAFA 2022 is part of the United Nations Decade of Action for Family Farming (UNDAF 2019-2028) and is aimed at achieving the Sustainable Development Goals (SDGs) by 2030, in particular SDG 14.b. SDG 14.b. is particularly important as it calls on states to “Ensure access to marine resources and markets for small-scale fishers”.

In this perspective, the African Confederation of Professional Artisanal Fisheries Organisations (CAOPA), with the support of the Coalition for Fair Fisheries Agreements, commissioned a report of the regulation of artisanal fishing zones in order to document the difficulties encountered by artisanal fishers in the maritime waters under Gambian jurisdiction. It should be noted that this exercise was carried out in a context of movement restrictions imposed by the fight against the Covid 19 pandemic, which has affected the entire value chain of fisheries products.

METHODOLOGY

The methodological approach consisted of a synthesis of the literature combined with an exploration of the study area and the collection of field data. These data were mainly collected from CAOPA representatives. Other information came from the personal database of the consultant, who has held important positions in sub-regional and international fisheries institutions.



Photo by Mamadou Aliou Diallo.

The Gambia's exclusive economic zone (EEZ) is 22,650 km², only 14 % the size of Senegal.

INTRODUCTION

The Gambia is surrounded by Senegal, except for its western part with a very short coastline of about 80 km (one of the shortest in Africa). The country is located in the highly productive upwelling area of the Atlantic Ocean and in the Canary Current Large Marine Ecosystem (CCLME) region. The marine and estuarine productivity of the waters under Gambian jurisdiction is also enhanced by the huge annual nutrient inputs from the River Gambia, which is lined with mangroves on both sides, over an area of up to one hundred and fifty (150) kilometres inland. The estuarine areas cover a dense forest of mangroves (67,000 hectares) which are breeding, spawning and nursery grounds for important species of fish, shrimp and other valuable aquatic organisms. Due to seasonal upwelling and river flows, the waters of The Gambia are highly productive, supporting several pelagic and demersal species including cephalopods and crustaceans.

The Gambia's exclusive economic zone (EEZ) is 22,650 km² (only 14% the size of Senegal), of which 10,650 km² is the fishing economic zone, and its continental shelf is about 4,000 km².

In The Gambia, the livelihoods of approximately 200,000 people are indirectly dependent on the fishing sector and related activities. The artisanal sub-sector directly and indirectly employs between 25,000 and 30,000 people, while about 2,000 people work in the industrial sub-sector. The artisanal sub-sector is estimated at 1702 boats and 1410 fishers (2006 statistics). Some 4234 fishers were engaged in artisanal fishing in 2016. The total contribution of the fisheries sector to the national gross domestic product (GDP) is about 12%. This percentage is likely to be a significant underestimate as the only statistical data collected is for inshore fishing in the Atlantic; many fish are unloaded in foreign ports or purchased directly from vessels before the catch is weighed.

In its National Development Plan (2018 to 2021), The Gambia planned to increase exports of fish and fishery products by 32-43%.

The total value added (VA) of the fisheries value chain is GMD 2.8 billion or EUR 51 million. This total VA represents 6.5% of the country's GDP and 33% of the GDP of agriculture and fisheries. Fishing is thus one of the three major economic sectors of the

country after agriculture and tourism, and is the livelihood of over 200,000 Gambians who depend on it. This assertion contrasts with the fact that The Gambia is one of three countries (along with India and Vietnam) in the world where a thriving global fishmeal and fish oil industry is growing alarmingly, damaging marine ecosystems to feed the burgeoning aquaculture industry.

Fisheries resources are the main source of protein for the diet of the vast majority of Gambians, with national per capita fish consumption estimated at 25 kilograms per year around the coastal areas and 9 kilograms in the inland areas. Artisanal fishing is therefore responsible for about 93.5% of the national catch (according to the 2008 assessment), making it the backbone of food and nutrition security in the Republic of The Gambia, especially when more than 50% of the population depends on fish as a source of animal protein.

Furthermore, it should be noted that the Gambian fisheries regulations which date from 2007 (Fisheries Act) and 2008 (Fisheries Regulations), deserve to be revised to comply with the legal and political commitments on fisheries made by the Republic of The Gambia at sub-regional, regional and international levels after these dates.

It is in this context that the regulation of artisanal fishing zones is analysed in the Republic of The Gambia, in order to better understand the shortcomings and gaps that need to be addressed in order to guarantee the rights of artisanal fishers “to safe and just living conditions and, where appropriate, preferential access to traditional fishing grounds and resources within waters under national jurisdiction” (Article 6.18 CCPR).

The present report is structured in two main parts, which respectively present the international and regional regulations on fishing zones applicable in the Republic of The Gambia (**Part I**), and the national regulations on fishing zones, including the shortcomings that have been identified; recommendations are made to encourage better consideration of the specificities of artisanal fisheries in the regulation of maritime zoning (**Part II**) Some of the international legal instruments relevant to fisheries areas are binding, while others are voluntary.

PART I.

INTERNATIONAL AND REGIONAL REGULATIONS OF FISHERIES ZONES APPLICABLE IN THE REPUBLIC OF THE GAMBIA

The Republic of the Gambia has ratified most of the international conventions relating to fisheries and the conservation of natural resources and has joined certain regional cooperation organisations, competent in the cooperation and sustainable management of fisheries resources (ICCAT, COMHAFAT, SRFC). It has signed a bilateral fisheries agreement with Senegal.

SECTION I.

INTERNATIONAL LEGAL INSTRUMENTS AND INSTITUTIONS RELEVANT FOR FISHING AREAS

1.1 International legal instruments relevant to small-scale fisheries

1.1.1 Binding international legal instruments

- United Nations Convention on the Law of the Sea 1982 (UNCLOS);
- 1995 Agreement on Fish Stocks;
- Agreement on Compliance with Conservation and Management Measures of High Seas Fishery Resources (FAO Compliance Agreement, 1993);
- Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA, FAO 2009).

1.1.1.1 United Nations Convention on the Law of the Sea (UNCLOS)

UNCLOS provides, inter alia, rules for the delimitation of areas within and outside maritime waters under national jurisdiction. The provisions on the territorial sea including internal waters and the contiguous zone (Part II of UNCLOS) are the most important for small-scale fisheries, as these are mainly and traditionally conducted in maritime areas within 12 nautical miles of straight baselines. The correct delimitation of these straight baselines by a country is crucial as they are the starting point for calculating the width of national maritime spaces (Article 7). The Convention enshrines the territorial extension

of the competence of States, through the establishment of an exclusive economic zone (EEZ) of 200 nautical miles and recognises the sovereignty but also the responsibility of the coastal State for the management of fisheries resources in waters under national jurisdiction.

Concerning artisanal fisheries, UNCLOS does not expressly use the words “artisanal fisheries” but uses the terms “... coastal fishing communities ...” (Art. 61 para 3). The absence of the term “artisanal fisheries” is understandable because the socio-economic role of artisanal fisheries for States has evolved since the adoption of UNCLOS in 1982, and has become strategic for the food and nutritional security of populations and the fight against poverty.

Furthermore, Article 73 of UNCLOS provides that in the event of a fishing violation in its maritime waters under national jurisdiction, the coastal State, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources of the EEZ, may ascertain and sanction any fishing vessel. Such sanctions may not include imprisonment, unless otherwise agreed between the coastal State and the flag State concerned, or any other corporal punishment. This provision is important to remember because many artisanal fishers report legally unfounded abuses, especially when they are prosecuted for an unauthorised fishing offence.

The Republic of The Gambia ratified UNCLOS on 22 May 1984, making it the first member state of the Sub-Regional Fisheries Commission to do so.

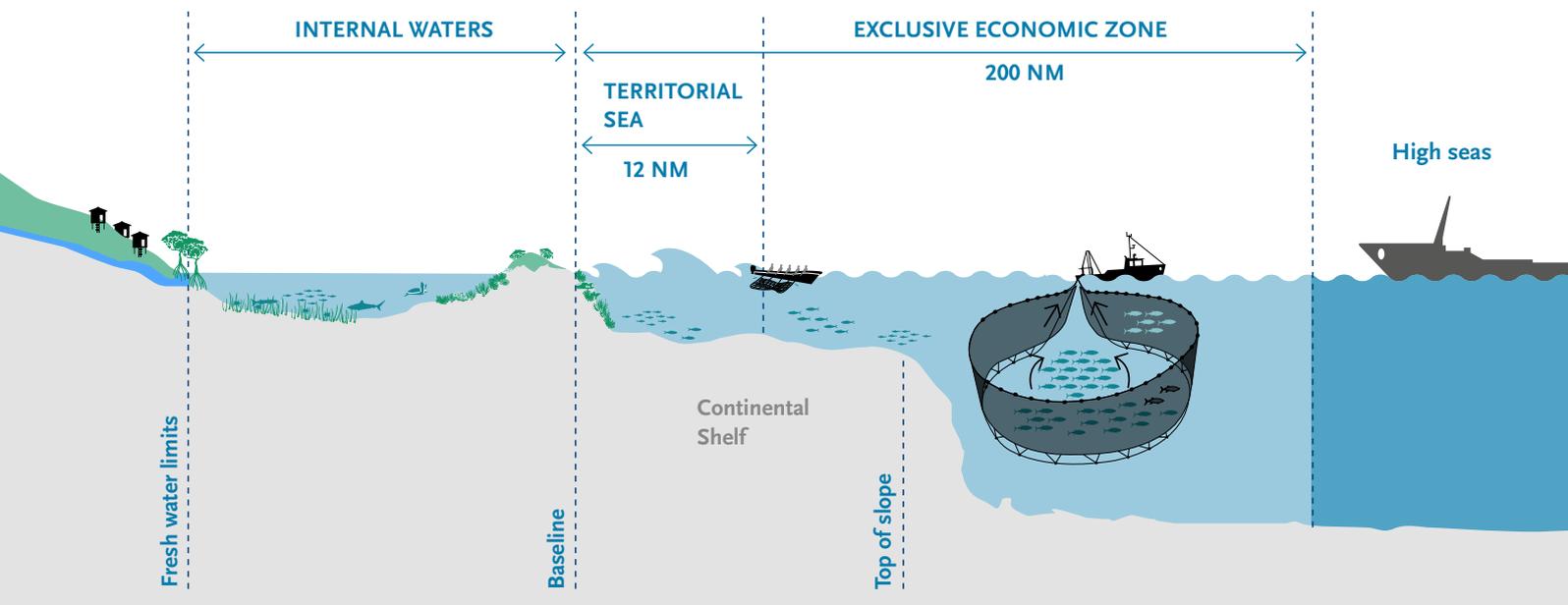


Figure 1 Delimitation of maritime spaces under international law

1.1.1.2. Agreement to promote compliance by fishing vessels on the high seas sea of international conservation and management measures (so-called Compliance Agreement, 1993)

Artisanal fishermen are, in principle, supposed to operate in the coastal zone. However, increasingly, due to the scarcity of fish resources, they are moving away from the coast to fish. In this context, the so-called Compliance Agreement is likely to apply to artisanal fisheries. Indeed, this agreement applies to all fishing vessels that are used or intended to be used for fishing on the high seas. A party may exempt from the application of this agreement fishing vessels entitled to fly its flag of less than 24 metres in length, unless it determines that such an exemption would undermine the object and purpose of the agreement.

The Republic of The Gambia is not a party to the so-called Compliance Agreement. However, the Fisheries Act, 2007, expressly cites this Agreement in its Part I concerning general provisions. It also refers to this instrument in Section 43 requiring a licence issued by the Director of Fisheries for all vessels wishing to operate on the high seas, as well as requiring compliance with high seas conservation and management measures for fisheries resources by all vessels in accordance with the 1993 FAO Compliance Agreement.

1.1.1.3. United Nations Agreement on Straddling Fish Stocks and highly migratory fish stocks (UNFSA, 1995)

The UNFSA contains specific provisions that refer to artisanal fishing areas. According to the Agreement, as part of their mission to conserve and manage straddling and highly migratory fish stocks in areas under national jurisdiction, coastal States shall, inter alia, “... take into account the interests of fishermen engaged in artisanal and subsistence fishing” (Article 5 para j.)

In addition, UNFSA establishes an obligation to cooperate in the establishment of conservation and management measures for the fish stocks in question, placing a responsibility on States to take into account the special needs of developing States, including “... the need to avoid undermining subsistence and small-scale commercial fisheries in developing States, and to ensure access to such fisheries by women, small-scale fishers and indigenous peoples, in particular in small island developing States. (Article 24 2(b)).

The Republic of The Gambia is not a party to the United Nations Agreement on Straddling Fish Stocks and Migratory Fish Stocks, 1995. However, the Fisheries Act, 2007, expressly cites this Agreement in Part I concerning general provisions. It also refers to this instrument in Section 43 requiring a licence issued by the Director of Fisheries for all vessels wishing to operate on the high seas, as well as requiring compliance with high seas conservation and management measures for fisheries resources by all vessels in accordance with UNFSA, 1995.

1.1.1.4. Agreement on Port State Measures to prevent, deter and eliminate IUU fishing (PSMA, FAO 2009)

PSMA is the main international legal instrument to combat illegal fishing. The agreement highlights the particular needs of developing States in relation to the implementation of port state measures. To this end, the Parties to the Agreement provide for assistance to be provided either directly or through the FAO, other United Nations specialised agencies or other appropriate international organisations or bodies, including regional fisheries management organisations (Art. 21). PSMA applies to any vessel used or intended to be used for fishing, including support vessels, carrier vessels and any other vessel directly engaged in such fishing. (Article 3).

However, artisanal fishing vessels, although considered as fishing vessels according to the UNCLOS definition, receive special treatment in the application of PSMA, which requires cooperation through agreements or arrangements between neighbouring states for the control of artisanal fishing vessels, so that they do not engage in illegal fishing.

Small-scale fishing ports are not covered by PSMA.

The Republic of The Gambia acceded to PSMA in 2016, becoming the 25th country to do so and allowing the Agreement to enter into force.

1.1.2 International non-binding legal instruments

- the Code of Conduct for Responsible Fisheries (CCRF, 1995);
- Voluntary Guidelines for Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication (VGSSF, 2014);
- the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2001).

1.1.2.1 Code of Conduct for Responsible Fisheries (CCRF)

The CCRF provides for preferential access to artisanal fishers in waters under national jurisdiction. The Code declares that States must guarantee the rights of artisanal fishers “to safe and just living conditions and, where appropriate, preferential access to traditional fishing grounds and resources within waters under national jurisdiction” (**paragraph 6.18 CCRF**).

1.1.2.2 Voluntary guidelines for sustainable fisheries in the context of food security and poverty eradication (VGSSF or SSF Guidelines)

Building on **paragraph 6.18 of the CCRF**, the Small-Scale Fisheries Guidelines assert that States should consider “the establishment of specific measures in favour of small-scale fishers, including the creation and effective protection of exclusive fishing zones for small-scale fisheries. This must be given due consideration before any agreement on access to resources is concluded with third countries and third parties” (**paragraph 5.7 VGSSF**).



Photo by Agence Mediaprod.

The Gambia does not have a National Action Plan on IUU fishing, neither a structure in charge of MCS.

Preferential access for artisanal fisheries under VGSSF may take the form of exclusive or restricted access for artisanal fishers. Restricted or prohibited access to a specific artisanal fishing area may limit or prohibit a number of persons or groups of persons, vessels or fishing gear in a specific area. Regulations may expressly or tacitly identify the permitted areas in which artisanal fishing operations may be carried out and define the conditions of access. For example, for The Gambia, the coastal exclusion zones for artisanal fishing are within 12 nautical miles but there is no specific text assigning zones to artisanal fishing.

1.1.2.3. International plan of action to prevent, counteract and eliminate illegal, unreported and unregulated fishing (IUU) (2001)

The reminder here of the IPOA-IUU is important in that this basic instrument for combating IUU fishing, encourages States to ensure the full participation and involvement of all **interested stakeholders**, including artisanal fishing communities in all their programmes and projects to combat illegal fishing. It clarifies the respective roles of coastal, port, flag and market States in their obligations to combat illegal fishing regardless of the area where the offence is committed.

The Republic of The Gambia does not have a National Action Plan on IUU fishing (NPOA-IUU), and it is important to note that the country does not have a structure in charge of monitoring, control and policing of fisheries (MCS) as is the case in most countries of the sub-region. This seems incomprehensible for a country that is drastically facing illegal fishing due to insufficient technical, operational, financial and human resources.

Indeed, the MCS Unit is a service of the Fisheries Directorate which is in charge of the administrative management of the MCS (licences, VMS, observers, training, statistics)

and dockside inspections of fishing vessels. The MCS maritime operational missions are carried out by the French Navy.

1.2 International institutions relevant to small-scale fisheries

In addition to international legal instruments on fisheries, there are international organisations with competence for fisheries, whose decisions are binding on contracting states. This is the case of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Conversely, other international institutions, notably the Fishery Committee for the Eastern Central Atlantic (CECAF/FAO), make recommendations to their member states. ICCAT and CECAF are cited in this report because their resolutions and recommendations apply to artisanal fisheries operating in their respective areas of competence and are **legally binding** on the contracting parties (with the exception of CECAF recommendations).

1.2.1 International Commission for the Conservation of Atlantic Tunas (ICCAT)

ICCAT's geographical competence extends to the Atlantic Ocean and adjacent seas and the management of the tuna and tuna-like resources therein.

These two institutions have not taken any specific protection measures for artisanal fishers who now operate in increasingly remote areas and fish for tuna species that are not very abundant in industrial tuna fisheries (small tunas, swordfish, sailfish, etc.). However, it is worth noting certain relevant ICCAT recommendations for the exercise of small-scale tuna fishing, in particular

- **ICCAT Resolution 2015-13**, which applies to the entire ICCAT area of competence, sets out the criteria for allocating fishing opportunities in the Atlantic:
 - taking into account the interests of inshore fishers engaged in artisanal, subsistence and small-scale fishing.
 - the needs of coastal fishing communities that are heavily dependent on fishing the stocks.
 - the needs of coastal States in the region whose economies are heavily dependent on the exploitation of living marine resources, including those under ICCAT's jurisdiction.
- **Recommendation No. 2014-09 on minimum standards for the establishment of a vessel monitoring system in the ICCAT Convention area**, which requires each contracting party, cooperating non-contracting party, entity or fishing entity to implement a vessel monitoring system for its commercial fishing vessels greater than 20m between perpendiculars or 24m in overall length.
Fishing vessels must be equipped with an autonomous system capable of automatically transmitting a message allowing continuous monitoring of their position.
- **Recommendation No 2013-13 concerning the establishment of an ICCAT record of vessels of 20 metres or more in overall length** (hereinafter referred to as “large-scale fishing vessels” or “LSFVs”) **authorised to operate in the Convention area**,

which prohibits LSFVs not included in the record from fishing for, retaining on board, transshipping or landing tuna or tuna-like species. Each Contracting Party, Cooperating non-Contracting Party, Entity or Fishing Entity shall forward to ICCAT the list of LSFVs authorised to operate in the Convention area.

The Republic of The Gambia is not a formal contracting party to ICCAT, but became one as a result of the Sustainable Fisheries Partnership Agreement (SFPA) with the EU. Indeed, this Agreement provides fishing opportunities for tuna and tuna-like species in accordance with Article 9 of Regulation (EU) 2017/2403 on the sustainable management of external fishing fleets, which states that “a Union fishing vessel may carry out fishing operations in the waters of a third country on stocks managed by a regional fisheries management organisation (RFMO) only if that third country is a contracting party to that RFMO”.

The conservation and management measures adopted in the ICCAT multilateral framework are binding on all parties and therefore apply to EU fishing vessels wherever they operate. In the event that a SFPA/Protocol is concluded between the EU and The Gambia, the conditions of access governing the fishing opportunities granted to EU tuna vessels should be aligned with the various relevant ICCAT conservation and management measures in force and already transposed into EU regulations.

1.2.2. FAO Committee for Eastern Central Atlantic Fisheries (CECAF)

CECAF, an advisory body to the FAO, is very important for artisanal fisheries. Indeed, one of the three working groups (the Scientific Sub-Committee/SCS) of this institution, has been doing research since 2015, on emerging aspects of artisanal fisheries, including the implementation of the Voluntary Guidelines to Secure Small-Scale Fisheries.

CECAF’s geographical competence extends to 21 coastal States from Morocco to Angola. Since the adoption of UNCLOS in 1982, CECAF has focused its work primarily on coastal areas within the exclusive economic zones.

The Republic of The Gambia is a member state of FAO and therefore of CECAF.



Since 1982, CECAF has focused its work primarily on coastal zones within exclusive economic zones.

Photo by Mamadou Aliou Diallo.

SECTION II.

REGIONAL LEGAL INSTRUMENTS RELEVANT TO ARTISANAL FISHERIES ZONES

The main regional legal instruments relevant to our study are

- Policy Framework and Strategy for Reform of the Fisheries and Aquaculture Sector in Africa (PFRS) ;
- Treaty establishing the Economic Community of West African States (ECOWAS);
- the Convention for the Determination of Minimum Conditions of Access to and Exploitation of Fishery Resources within the Maritime Areas under the Jurisdiction of SRFC Member States, revised and adopted in June 2012 (MCA Convention);
- the 1993 Convention on Sub-regional Cooperation in the Exercise of the Right of Hot Pursuit at Sea and its 1993 Protocol on Practical Arrangements for the Coordination of Surveillance Operations in the Member States of the SRFC.

2.1 Legal instruments of relevant African regional organisations

2.1.1. Policy Framework and Reform Strategy for Fisheries and Aquaculture in Africa (PFRS) (PFRS)

The Policy and Strategy Framework for Fisheries and Aquaculture Reform in Africa (PSFRFA) is the African Union's strategic policy document for the sector. It contains an important component on the promotion of sustainable artisanal fisheries in Africa, which takes into account the FAO SSF Guidelines. The alignment of African States' sectoral policies with the PFRS could provide them with a coherent and internationally recognised instrument for sustainable fisheries governance, including that of small-scale fisheries.

2.1.2. Treaty of 28 May 1975 establishing the Economic Community of West African States (ECOWAS), revised 24 July 1993

The Economic Community of West African States (ECOWAS) is still timid in issuing fisheries regulations or guidelines. It is jointly implementing the Regional Programme for the Improvement of Regional Fisheries Governance in West Africa (PESCAO) with the FAO and the European Union. This project aims to improve ecosystem knowledge and scientific advice as well as the management and resilience of small pelagic fisheries.

However, the Treaty establishing ECOWAS deserves to be recalled in particular in that Article 25 (c) provides for the strengthening of cooperation between “[...] its Member States with a view to developing agriculture, forestry, livestock and fisheries, with the aim of ensuring: [...] the development and protection of marine and fisheries resources. On this basis, and in view of its status as a regional economic integration organisation, ECOWAS could institute a specific regulation on artisanal fisheries that grants fishing zones reserved for professionals in the artisanal sub-sector.

The Republic of The Gambia is a Member State of ECOWAS.

2.2. Agreement on the determination of minimum access conditions and exploitation of fisheries resources within maritime areas under the jurisdiction of SRFC Member States, adopted in June 2012 (MAC Convention)

The MAC Convention, a regionally agreed and harmonised instrument for fisheries regulation, contains special provisions applicable to artisanal fisheries (Sub-title II of the MAC Convention). These relate to the definition of artisanal fisheries, the obligation to register, identify and mark artisanal fishing vessels, the regulation of access to artisanal fisheries and the protection of artisanal fisheries through fisheries monitoring, control and surveillance systems. Article 20 on the characterisation of artisanal fisheries, mentions in its paragraph 1 that artisanal fisheries are carried out, among others, in a zone close to the shore; this is without prejudice to the specific options provided for by the national legislations of the SRFC Member States.

Gambian legislation defines artisanal fishing as fishing in coastal or inland waters with motorised or non-motorised vessels, and includes “commercial fishing”. It is important to note that the Fisheries Code refers to “subsistence fishing” as traditional fishing for personal consumption only, which excludes any possibility of sale or display for sale or barter for the purpose of processing the fish caught.

The fishing area as a criterion for defining an artisanal fishing operation is therefore well taken into account in the Gambian national legislation.

Among the minimum information that must be included in artisanal fishing authorisations, the MCA Convention does not include a section on authorised fishing zones. Does this mean that the MCA Convention allows free access to all fishing zones for fishing vessels operating in waters under the national jurisdiction of its member states?

The Republic of The Gambia signed the MAC Convention on 8 June 2012.

2.3. Convention on sub-regional cooperation in the exercise of the right of (Convention on the Right of Pursuit, 1993) and its Protocol on the practical # arrangements for coordinating the operations of monitoring in the SRFC Member States (Protocol on the Right of Pursuit, 1993)

The Convention on the Right of Pursuit and its Protocol define the general principles governing the right of pursuit exercised by any State Party, in respect of any foreign vessel flying the flag of non-member States of the SRFC and operating in waters under its national jurisdiction which, after the usual unsuccessful summonses, attempts to evade control by an aircraft or vessel in the service of that State. All foreign vessels, including small-scale fishing boats, are concerned. They constitute an application of Article III of UNCLOS.

The Republic of The Gambia has ratified the Convention on the Right of Hot pursuit and its Protocol on Practical Arrangements for Coordination of Surveillance Operations in the Member States of the SRFC.

These instruments are implemented through cooperation between the Member States;

this has materialised, among other things, through the establishment of the Unit for the Coordination of Surveillance Operations (UCOS) based in Banjul (Republic of The Gambia), which has now become the Department of the SRFC in charge of Monitoring, Control and Surveillance of Fisheries Development (MCSD).

SECTION III.

BILATERAL FISHERIES ACCESS AGREEMENTS

Fishing vessels of foreign nationality may be authorised to operate in waters under Gambian jurisdiction under bilateral or multilateral access agreements or arrangements with other States or associations representing owners or charterers of foreign fishing vessels. Such agreements shall include an obligation on the part of the foreign State or association to ensure compliance with the terms of the agreement and national legislation including the allocation of fishing rights of such vessels in Gambian waters.

The foreign vessels benefiting from fishing opportunities are mainly vessels bound by bilateral cooperation agreements, namely

- (i) the Senegal-Gambia Fisheries Agreement; and
- (ii) The Gambia-EU Sustainable Fisheries Partnership Agreement (SFPA).

3.1. Gambia – Senegal

The **Senegalese-Gambian Convention in the field of maritime fisheries of 14 April 2008** allows, in its article 1, reciprocal access to the fisheries resources of the two countries for nationals of the artisanal fisheries. The latter are obliged to land their catches in the country where they are based. Article 2 stipulates that vessels flying the flag of either State are considered national vessels respectively.

A new **Framework Agreement on Fisheries and Aquaculture between the Government of the Republic of Senegal and the Government of the Republic of The Gambia signed in Banjul on 24 March 2017**, sets out the new framework for cooperation on artisanal and industrial fisheries. **It will last four years.**

The Protocol for the application of the said Agreement in terms of fishing and aquaculture also dated 24 March 2017 stipulates that the conditions for the exercise of artisanal fishing in the waters under the jurisdiction of either State is authorised under the same conditions as nationals (Article 2 of the Protocol). Within this framework, the fishing opportunities offered to Senegalese industrial vessels in 2019 amount to :

- Fourteen (14) vessels, all shrimp boats;
- Two (2) other Senegalese vessels lined up as foreign vessels in joint ventures, targeting demersal species.

Artisanal fishing opportunities are granted to Senegalese motorised vessels with engine power between 40 and 60 hp. The vessel of each State making the innocent passage



Photo by Mamadou Aliou Diallo.

The surveillance structures of The Gambia and Senegal should provide each other with assistance and rescue at sea.

through the waters under the jurisdiction of the other State shall, in particular, inform the national department-responsible for surveillance in order to communicate its position by radio and cross at a steady speed, except in cases of force majeure, as fishing speeds are prohibited (Article 13 of the Protocol).

The surveillance structures of the two countries should provide each other with assistance in search and rescue at sea, and regularly exchange information on safety at sea, particularly in relation to small-scale fisheries (Article 17 Protocol).

It should be noted here that between The Gambia and Senegal, there are real risks of IUU fishing by Senegalese industrial fishing vessels that regularly cross The Gambia's EEZ. It should also be noted that foreign vessels licensed in The Gambia, which find the Gambian EEZ too narrow, also covet the same resources available in Senegal's neighbouring waters and also present a threat to Senegal.

3.2. Gambia-EU Sustainable Fisheries Partnership Agreement (SFPA)

As a signatory to the Cotonou Agreement signed on 23 June 2000 between the members of the African, Caribbean and Pacific (ACP) Group of States and the European Community, The Gambia is a beneficiary of the European Development Fund (EDF). Under the second phase of the 11th EDF, the National Indicative Programme (NIP) for 2017 - 2020; the country has an indicative allocation in terms of programmable resources of €117 million which are intended to finance the following themes:

- governance, rule of law, security,
- inclusive sustainable growth and job creation,
- renewable energy, climate change, infrastructure.

Under this Agreement, the EU has obtained in 2019: 24 fishing licences, including 3 demersal vessels, 21 tuna vessels (8 pole-and-line vessels and 13 purse seiners) and in 2020: 26 fishing licences, including 12 purse seiners, 8 pole-and-line vessels, 2 support vessels and 4 demersal vessels. All of these European vessels fish beyond 12 nautical miles from the baselines.

PART II.

NATIONAL REGULATIONS ON FISHING ZONES

SECTION I.

PRESENTATION OF THE NATIONAL REGULATIONS ON ZONES OF ARTISANAL FISHERIES IN THE REPUBLIC OF THE GAMBIA

In the Republic of The Gambia, the fisheries sector is under the responsibility of the Ministry of Fisheries and Water Resources. This activity is managed by the Fisheries Department (FD) within the Ministry.

The country has a fisheries policy document dating from 2018, which aims to promote “*Environmentally and economically sustainable fisheries that provide food and nutritional security for the population in a prosperous and stable society*”. This document covers 11 priority areas of which **Policy 2 (Sustainable Management of Small-scale Marine Fisheries)** is worth mentioning. Indeed, among the indicators of success of this Policy is evidence of the protection of the artisanal fisheries zone from industrial fishing and land grabbing to ensure that the legitimate rights of artisanal fishers are not violated.

The Gambia has two fisheries management plans, including the Sole Fishery Management Plan, which contains important provisions on fishing areas. The full implementation of these plans is limited by technical, financial and institutional shortcomings. It would also be important to ensure that their implementation is subject to a regular monitoring and evaluation process.

The Management Plan for the Sole, formally adopted in January 2012, was developed with the support of the *BaNaaFaa* project. Commissions have been established for the implementation of this Plan, both at national (National Commission) and local (strongly structured local commissions at landing sites) levels. The difficulty now lies in the implementation of the measures that have been decided. These management measures include the respect of minimum landing sizes, the required approval for the use of driftnets, the **permanent ban on fishing within 01 nautical mile**, the ban on night fishing from April to October. Discussions are underway for the extension of the closed

fishing area to **2 nautical miles**. The Republic of The Gambia therefore already has some experience in terms of developing FMPs.

The Republic of The Gambia has adopted a National Biodiversity Strategy and Action Plan (2015-2020) to promote effective conservation, management and development of fisheries in inland and marine waters.

With regard to the Gambian regulations relevant to artisanal marine fisheries, there are several texts.. Only those that are relevant to the challenges faced by artisanal fishers in the fishing areas are analysed in this report.

1.1. Law n° 6 of 2007 of 8 October 2007 on the Fisheries Code, the Regulation of 01 August 2008 on Fisheries, amended in 2019

Law No. 6 of 2007 of 8 October 2007 on the Fisheries Regulations was supplemented in 2008 and 2019 by implementing regulations (Fisheries Regulations of 1 August 2008, amended in 2019) which define the practical conditions for the application of elements set out in the Law.

1.1.1. Law n° 6 of 2007 of 08 October 2007 on the Fisheries Code (FC)

The 2007 Fisheries Code provides some important definitions, including:

- **Artisanal fishing** “being fishing in coastal or inland waters with motorised or non-motorised vessels, and includes commercial fishing.” However, this Code does not set out any requirements in terms of compliance with the conditions of access to and exercise of fishing with regard to subsistence fishing;

- **Fishing zones** as all maritime areas under the jurisdiction of The Gambia in accordance with international law, but also inland waters. It is worth noting here the problematic meaning given to the “high seas” as being the area “...outside the jurisdiction of any single nation, including the exclusive economic zone”. This is at odds with the provisions of Article 86 of UNCLOS, concerning the scope of application of Part VII on the high seas;

Furthermore, the Code does not specify the distances allowed for each type of fishing (artisanal and industrial), it simply differentiates between fishing areas that are merged with waters under national jurisdiction and those that are outside them. This might suggest that it is only the content of the fishing licence that could determine the authorised fishing area.

In addition, the Fisheries Code contains provisions that reflect the priority that The Gambia gives to fishing communities. In particular, these include:

- (I) The creation of a Fisheries Advisory Committee established in accordance with the Act (Part III). This Committee has adequate representation of all stakeholders to carry out its advisory role on all matters relating to the sector; however, it is not yet fulfilling its mandate and only meets on an ad hoc basis. The difficulty is that



Photo by Agence Mediaprod

A Coordinating Committee was set up in 1995 to discuss safety at sea issues between national authorities and artisanal fishing organisations.

it appears to be combining the functions of both the National Advisory Licensing Committee and the Fisheries Advisory Committee.

- (II) The establishment of a fisheries development fund to promote fisheries development in the Republic of The Gambia, in particular small-scale fisheries and cooperative enterprises; the Fisheries Development Fund is not yet in place.
- (III) The primacy given to the interests of small-scale and subsistence fisheries, and measures to reduce, as far as possible, fishing conflicts between sea users; this should be done when formulating and implementing fisheries conservation, management and development measures.
- (IV) The possibility for the Minister in charge of fisheries to declare any area under national jurisdiction as a special management area for the purposes of Community fisheries as well as for artisanal or subsistence fishing operations.

In addition, there appears to be a National Artisanal Safety at Sea Coordinating Committee (NASSCC), not provided for in the CP, which was set up in 1995 to discuss safety at sea issues between national authorities and leading artisanal fishing organisations. This Committee has developed a sea survival training programme for artisanal fishers to avoid accidents at sea and to acquire survival techniques in the event of an accident at sea.

With regard to the conditions of access to resources, the Fisheries Code establishes the authorisation regime for national and foreign vessels fishing in waters under national jurisdiction and for national vessels fishing on the high seas. Any fishing activity carried out in waters under Gambian national jurisdiction or outside of them requires the issuance of a fishing authorisation or licence.

A fishing licence is required for both artisanal and local industrial fishing. For fishing rights of foreign vessels in Gambian sub-jurisdictional waters, the Fisheries Code requires the existence of a prior fishing agreement between The Gambia and the flag state or a structure representing it.

1.1.2. April 2008, as amended in 2019, on application of Law No. 6 of 8 October 2007 on the Fisheries Code

The 2008 Fisheries Regulations include provisions on Artisanal Fisheries, **conservation measures** such as fishing area restrictions, gear restrictions, protected species and minimum fish size.

In these regulations, fishing area restrictions are made according to the type of fishing and the tonnage of the vessel, as fisheries conservation measures. These limitations are set out as follows:

- a) Small-scale fishing vessels and licensed sport fishing vessels are authorised to fish **within 12 nautical miles** calculated from the low water mark;
- b) Fishing vessels ≤ 250 GRT must fish **beyond 12 nautical miles** calculated from the low water mark;
- c) Fishing vessels of more than ≥ 250 GRT may not fish with nets **within 15 nautical miles** of the low water mark.

In sum, **the areas reserved for artisanal fisheries** can be summarised as follows:

- Within 12 nautical miles from the low water mark;
- The estuary;
- The Gambia River;
- Tributaries/belongings.

In addition, it is important to highlight **here some significant amendments made in 2019 to the 2008 Fisheries Regulations**. In relation to this report, these include the following:

- **The replacement of the method of calculating the volume of the vessel.** It is no longer the gross registered tonnage (GRT / TJB) but the gross tonnage (GT / JB) . This appears to be to comply with the *International Convention on Tonnage Measurement of Ships*, which was adopted by the International Maritime Organisation in 1969 and entered into force on 18 July 1982. This amendment will have an impact on the conditions of access to resources for industrial fishing vessels and may further push the fishing areas allowed to them further out to sea. Indeed, in the Republic of The Gambia, fishing zones are defined by reference to the gross tonnage of the vessel, the method of calculation of which is now less favourable to them.
- **A proportion of 10% of the landings of vessels** that have fished on the high seas shall be **allocated to Gambian government institutions** designated from time to time by the Minister in charge of fisheries.
- **The obligation for all fishing vessels authorised to fish in the Gambian EEZ to be equipped with the Automatic Identification System (AIS).** This measure is therefore applicable to artisanal fishing vessels operating without zone limitation in waters under Gambian jurisdiction.

- **The legal regime for the different fishing zones is set out in the 2019 Fisheries Regulations.**
 - The permanent ban on fishing **within the 01 nautical mile zone calculated from the low water mark**, foreseen in the Sole Management Plan adopted in January 2012, is introduced in this Regulation.
 - All fishing operations, including artisanal fishing, are prohibited **within the 02 nautical mile zone calculated from the low water mark**. This applies to the period **from 1 May to 31 October each year**.
 - The ban on monofilament in waters under Gambian jurisdiction is legally established.
 - Industrial fishing vessels of **less than 50 gross registered tonnes (GRT)**, other than small-scale fishing vessels, sport fishing vessels or semi-industrial fishing vessels, may now **fish beyond 9 nautical miles calculated from the low water mark**.
 - Trawlers and semi-industrial fishing vessels of **50 GRT or less** may not be authorised to fish **within 07 nautical miles of the low water mark**. To benefit from this regime, they must be registered in The Gambia and land their catches in that country.

SUMMARY OF FISHING ZONES IN THE REPUBLIC OF THE GAMBIA

- 1) **Low water mark up to 1 nautical mile:** special management area as provided for in the Sole Management Plan (Regulation - 2019 amendment).
- 2) **Low water mark up to 02 nautical miles:** Prohibition of artisanal fishing from 01 May to 31 October each year (Regulation - 2019 amendment).
- 3) **Low-water mark up to 07 nautical miles:** fishing ban for trawlers and semi-industrial fishing vessels of **50 GRT or less** (Regulation - 2019 amendment).
- 4) **Low water mark up to 09 nautical miles:** fishing authorisation possible for industrial fishing vessels of **less than 50 gross registered tonnage (GRT)** (Regulation - 2019 amendment).
- 5) **Low-water mark up to 12 nautical miles:** area reserved for small-scale fishing (Regulation 2008)
- 6) **Beyond 12 nautical miles:** industrial fishing zone (Regulation 2008).
- 7) **Beyond 15 nautical miles:** fishing zone for fishing vessels of more than ≥ 250 GRT using nets as fishing gear (Regulation 2008).

Penalties for non-compliance with the fishing zones (fishing without authorisation or fishing not in accordance with the provisions of the licence) are provided for in the Fisheries Code. **12,483€** for local fishermen (see **Table 1 on the following page**).

Table 1 Regulation of penalties for non-compliance with fishing zone provisions

FISHING REGULATIONS 2008, amended in 2019	FISHERIES CODE 2007		Infringement	Categories of ships concerned	Level of seriousness of the offence	Persons incriminated	Administrative fines / penalties	
	Articles	Title					Minimum	Maximum
Part XI Section 68	Part VII Section 35 (4)	Licensing provisions for local fishing vessels	Non-compliance with the conditions set out in the licence	Local industrial fishing vessels Local artisanal fishing boat	Not specified	Captain, Shipowner & Charterer	12.483 € or Prison 1 year	24.965 € 3 years or fine + prison
	2019 Regulations, Section 7	Part VIII Section 39 (9) and Part IX Section 43 (8)	Licensing provisions for foreign fishing vessels	Non-compliance with the conditions set out in the licence	Foreign industrial fishing vessels Foreign artisanal fishing vessels	Not specified	Captain, Shipowner & Charterer	82.218 € or Prison 5 years
		Part IV Section 14 (3)	Fisheries Development, Management and Conservation / Special Management Area	Non-compliance with the conditions set out in the licence	Local and foreign industrial and artisanal fishing vessels	Not specified	Captain, Shipowner & Charterer	16.644 € or Prison 3 years

SECTION II.

SHORTCOMINGS AND DIFFICULTIES IN THE APPLICATION OF THE NATIONAL REGULATIONS ON ARTISANAL FISHING AREAS

Several sources of conflict in the fishing zones have been identified in the Republic of The Gambia. The origins of these disputes are varied and can be summarised as follows:

- Predominance of non-Gambians in the fishing sector (ownership of fishing vessels and processing plants; landing of most Gambian fish and processing outside the country);
- Lack of surveillance on the high seas;
- Conflicts between foreign pirate ships and national fishermen;
- Conflicts between industrial and artisanal fishermen over fishing areas (non-respect of regulatory zones);
- Conflicts between active gear (which moves to catch fish) and passive gear (which is fixed and waits for the fish to come and bite);
- Conflicts relating to the types of fishing gear used in the same fishing area (e.g. use of longlines);
- Ignorance of regulations;
- Insufficient enforcement of conservation measures/regulations;
- Non-compliance with management measures in fishing areas;
- Inadequate or non-existent repair and maintenance infrastructures for machinery and equipment of artisanal fishing boats (inland and maritime);
- Lack of vigilance, inattention, negligence and navigational errors;
- Insufficient communication between the administration and the fishing industry;
- Stress, work pressure and fatigue;
- Non-compliance with working conditions on board;
- Insufficient training;
- Inappropriate decisions by the fisheries administration;
- Poor fishing practices;
- Competition on well-targeted fisheries.
- Insufficient safety at sea and lack of social security (life and health insurance) for artisanal fishermen;
- Use of nets with illegal mesh sizes, targeting demersal fish when the licence is for shrimp fishing;
- Use of beach seines;
- Poaching by industrial trawlers in the artisanal fishing zone;
- Fishing pressure especially on small pelagics due to high demand from fishmeal and oil factories.

It should be noted here that The Gambia does not have a specific structure (directorate or division) in charge of artisanal fisheries. The Gambia also does not have an autonomous fisheries research institute, and this subject is the responsibility of one of the divisions of the Fisheries Department, which has a limited number of staff.

2.1. Insufficient regulation of access to Gambian fishing grounds

Access to fishing zones for national or foreign vessels regularly established in The Gambia is subject to obtaining a fishing licence, as mentioned above. However, this is normally conditional on compliance with certain requirements which are sometimes non-existent or of equivocal application. These include:

- 1) an inadequate legal regime for access to fishing zones for foreign vessels;
- 2) the obligation to apply for prior authorisation before the acquisition or conversion of all vessels, including fishing boats;
- 3) the registration and marking of such vessels and fishing gear;
- 4) mandatory registration of artisanal fishing vessels;
- 5) the obligation to apply for authorisation to fish on the high seas or in the fishing zones of another coastal State;
- 6) the difficult application of conservation measures to small-scale fisheries.

2.1.1 Inadequate legal regime for access to fishing zones for foreign vessels

In the Republic of The Gambia, three types of resource access rights apply to fishing areas. These are:

- a) the “**Joint Venture**” which enshrines a **private fishing agreement between two companies** (one Gambian and one foreign) to create a fishing company under Gambian law. It allows a local fishing licence to be obtained after the vessel has been registered with the Maritime Authority. This type of access right is decried by professionals because it allows foreigners to benefit from national fisheries resources in a roundabout way. This is the case of chartering contracts which are developing rapidly and controversially in the sector, allowing foreign fishing vessels to benefit from the same fishing regime as nationals, without any objective to improve the fisheries sector in The Gambia contrary to the provisions of the Fisheries Code.

In effect, the chartering contract consists of the provision of one or more vessels by a foreign fishing company (charterer) to a coastal country’s fishing company (charterer) in return for payment. In most cases, the vessel is registered as a national vessel, although it retains its foreign flag. In The Gambia, for example, many foreign companies enter into chartering arrangements whereby foreign-flagged vessels catch a share of the resources in The Gambia’s EEZ, in collaboration with local companies. The lack of control over these types of arrangements reduces the amount of resources available to local fishermen.

These agreements should therefore be regulated in a **participatory manner** to ensure that access to coastal marine resources is regulated in the context of chartering agreements and that foreign operators do not exploit this loophole in the regulations to take resources to which they would not normally have access. This position was supported by the 66th session of the UN Committee on Economic, Social and Cultural Rights in October 2019. Furthermore, should



Photo by Mamadou Aliou Diallo.

The Compensatory Agreement should enable The Gambia to address its lack of knowledge of fisheries resources.

the joint venture regime not be converted into a sustainable fisheries partnership agreement regime, since practice shows that these are usually foreign companies in disguise but subject to local fishing laws?

- b) the “**Letter of Fishing Agreement**” which concerns reciprocal agreements such as the one between Gambia and Senegal. It allows for reciprocal considerations, for example in terms of fisheries surveillance and safety at sea through joint surveillance operations between the two countries, and the exchange of information/intelligence and expertise; but this collaboration in practice is not very real: the Gambians do not have a fishing fleet in Senegal. As with companies subject to the local joint venture regime, Senegalese companies operating under the Letter of Fishing Agreement should also be subject to the same regime as the Sustainable Fisheries Partnership Agreement.
- c) the **Compensatory Agreement**, which concerns agreements with the European Union. These agreements should enable The Gambia to address its lack of knowledge of fisheries resources, weak fisheries monitoring, control and surveillance system, weak management systems for shared stocks, continued degradation of the coastal marine environment and weak human, technical and institutional capacity of stakeholders. But apparently these weaknesses persist. There is therefore a need to assess the actual impacts of this type of agreement.

2.1.2. Confused regulation of fishing areas

The definition of regulatory fishing zones was specified in the 2008 Regulations (Section 68) and amended by the 2019 Regulations (Section 7). These new regulatory fishing area delimitations reduce the maritime space dedicated to artisanal fisheries. These are:

- the existence of an area beyond 9 nautical miles from the low water mark where vessels > 250 GRT would be allowed to fish. This would mean that the latter

vessels would be able to fish in the maritime area **between the 12 nautical miles from the low-water mark** provided for in the 2008 Regulation and **the so-called 9 nautical miles** provided for in the 2019 Regulation, **thus reducing the area reserved for small-scale fishing by 3 nautical miles.**

- the introduction of a **fishing zone beyond 7 nautical miles from the low-water mark**, intended for trawlers and semi-industrial fishing vessels of **50 GRT or less**. However, this notion of “semi-industrial fishing” is not provided for in the 2007 Fisheries Code or its 2008 implementing regulation. It is found for the first time in the 2019 Regulation without any indication of its definition. Furthermore, this admission of a fishing zone beyond 7 nautical miles would be equivalent to **a loss of 5 nautical miles in the maritime space reserved for artisanal fisheries.**

This multiple division of fishing zones could prove counterproductive in a country that still suffers from a deficit in terms of human, organisational, operational and technical capacity to manage the fisheries resource sustainably. They could also be sources of conflict during control operations.

2.1.3. Silence in the fisheries regulations concerning the mandatory prior authorisation before the import, construction or acquisition of a new vessel or fishing gear or its conversion into a fishing vessel

The requirement for prior application for the acquisition or conversion of a vessel or fishing gear is not mentioned in the Gambian fisheries legislation. This would suggest that the Ministry in charge of fisheries could not prohibit the exercise of fishing activity when the vessel has been built, purchased, transformed or converted without prior authorisation; the only requirement provided for by these texts being to register in the register of vessels held by the Fisheries Department and to visibly display the identification marks of the vessel.

This is all the more regrettable as one of the major difficulties encountered by artisanal fishermen at sea is their safety, which begins with the use of boats that comply with international standards. In practice, we were told that fishing boats were built, bought or converted and sometimes launched without prior authorisation from the administration. This could be explained by:

- ignorance of fishing regulations;
- The informality of the artisanal fisheries sub-sector;
- The lack of expertise within the fisheries administration to ensure the technical safety inspection of fishing vessels (it is this administration that issues the artisanal fishing licence).

In these circumstances, in the Republic of The Gambia, around 1410 people work on board fishing vessels that do not comply with the legal instruments regulating the design, construction and equipment of fishing vessels, despite the fact that this country has acceded to the 1974 International Convention for the Safety of Life at Sea and its 1978

Protocol (SOLAS 74/78). The Gambia's regulations in this area require comprehensive reform to bring them into line with the international measures set out in the "Cape Town Agreement on the Implementation of the Protocol of 1993 to the 1977 Convention on the Safety of Fishing Vessels", not yet ratified by the Republic of The Gambia.

2.1.4. Difficulties related to the obligation to register and mark all small-scale fishing boats

In accordance with the Merchant Shipping Code, the Maritime Administration is responsible for conducting all procedures relating to the registration and marking of Gambian vessels, including fishing vessels that wish to operate in waters under Gambian jurisdiction.

Registration must precede authorisation, but the two systems are complementary:

- Registration of a ship is the process by which a country gathers information about the ship and grants it its flag, which allows the ship to navigate in international waters but implies that it is subject to the national legislation of the country in question;
- Authorisation is the procedure for granting already registered vessels a licence or permit to engage in a specific fishery or related activities.

However, in the Republic of The Gambia, the completeness of registration requirements is still incomplete. The norm is to request information on the characteristics of the vessel (such as length, tonnage and engine power), the IMO number, and information on the legal or natural person registering the vessel. But the Republic of The Gambia does not request the name and nationality of the beneficial owner of the vessel. Furthermore, the registration requirements for vessels engaged in related activities are not as comprehensive as those for fishing vessels. It is therefore strongly recommended that the legal regime for fishing vessels be aligned with that for vessels engaged in related activities.

2.1.5 Ineffectiveness of the existence of national registers of fishing vessels

In the Republic of The Gambia, a local vessel is only allowed to fish in waters under Gambian jurisdiction if it is **registered** and has obtained the status of a responsible vessel. Registration is also mandatory for foreign fishing vessels. **Registration of vessels is the responsibility of the Gambian Maritime Administration under the Merchant Shipping Code Act 2013.**

The obligation for the fisheries administration to keep 4 records of fishing vessels is prescribed by the FC and its regulations:

- I. a register of fishing authorisations;
- II. a register of fishing vessels;
- III. and a register of commercial fishing vessels;
- IV. and a register of vessels authorised to fish on the high seas.

Since, according to Section 2 of the Fisheries Code, “artisanal fishing” is carried out with vessels and includes commercial fishing, the Fishing Vessel Register and the Commercial Fishing Vessel Register probably refer to the Industrial and Artisanal Fishing Vessel Register, as long as these vessels are engaged in fishing operations for commercial purposes and not for subsistence. It should also be noted that there is no register of IUU fishing vessels in The Gambia.

However, these registers are still not legally established. They should therefore be established and maintained by a regulation, ensuring that the authority responsible for their technical management, operation and exchange of information is specified and that the information to be included for each type of vessel is specified: for example, information on the beneficial owner of the vessel to ensure that the person under whose name the vessel is registered has no legal, personal, financial or other links with owners or operators found guilty of IUU fishing, and that he/she exercises full control over the vessel.

These registers should be established in cooperation and coordination between the fisheries and maritime authorities throughout the registration process and contain a list of all fishing vessels, including subsistence vessels, authorised to fish in waters under national jurisdiction and beyond. The concern here is that the Republic of The Gambia, like other states in the sub-region, is struggling to control the number of artisanal fishing vessels (no reliable census) and does not at present control the entry and exit of artisanal fishing vessels. These registers of vessels, as well as the fishing licences issued to them, should be published as part of the obligation of public dissemination of information by the flag and coastal states to facilitate controls and reduce the incidence of corruption.

It is also regrettable that the registration fees for artisanal fishing vessels are more expensive than those for industrial fishing. Indeed, artisanal fishing boats have to pay fees as follows:

1. **Fishing vessels = 500 dalasis (8.5 euros)/year**
2. **Commercial artisanal fishing vessels =**
 - **Motorised: 750 dalasis (13 euros)/year;**
 - **Non-motorized: 500 dalasis (8.5 euros)/year;**
 - **Other types of boats: 300 dalasis (5 euros)/year.**

2.1.6 Weaknesses in the monitoring, control and surveillance system

Gambian legislation does not provide a definition of IUU fishing.

Section 39 of the 2008 Regulations provides for the refusal, suspension or withdrawal of a fishing authorisation in the event of participation in IUU fishing operations in waters under national jurisdiction, in international waters or in the waters of another State. It therefore also does not provide for any cooperation measures in the event of IUU fishing, including:

- exchange of information with neighbouring countries in the fight against IUU fishing;
- participation in joint surveillance operations;



Photo by Mamadou Aliou Diallo.

Monitoring of artisanal fishing is difficult because of the multiplicity of landing points and the weak organisations of the actors.

- cooperation in setting up a sub-regional training and capacity building programme for managers, observers and surveillance officers;
- notification to the flag State in case of arrest of a foreign vessel (UNCLOS 73.4; ITLOS Opinion 2015);
- Detention and measures to facilitate the return of any ship that has committed an offence in the maritime area under the jurisdiction of another Member State, in accordance with the Convention on the conditions of access to the SRFC (Article 25).

Furthermore, it is important to note that although the Republic of The Gambia acceded in 2016 to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA, 2009), the provisions of the Agreement have yet to be incorporated into Gambian law. It is worth noting that Section 41 of the Fisheries Code provides for a 72-hour prior declaration for a foreign vessel seeking to enter waters under Gambian jurisdiction, but does not prescribe provisions for exit.

Also, the application of technical monitoring measures (gear, catch sizes) at the level of artisanal fishing remains very difficult because of the multiplicity of landing points, the weak organisation of the actors and the limited means of control available to the administration.

From an institutional point of view, the Republic of The Gambia has only provided for the creation of a Fisheries Advisory Committee which appears to perform the functions of both a national advisory committee for the allocation of licences and a national advisory committee for boarding. This posture of this Committee does not favour transparency in the allocation and publication of licences granted and the publication and monitoring of sanctions imposed in cases of illegal fishing in waters under Gambian jurisdiction.

This Committee should rather focus on giving advice to the Minister in charge of fisheries on general issues and certain technical matters such as: the conduct of fishing, the marketing of fisheries products and on technical management measures that may be taken (use of total allowable catches; fisheries development, management and development strategies; fisheries development and management plans).

RECOMMENDATIONS FOR THE REPUBLIC OF THE GAMBIA

In order to facilitate and secure access to fishing areas for artisanal fishing boats, the following recommendations are made:

- 1. Urgently update** the national legal framework on fisheries by:
 - adhering to relevant international instruments, including:
 - the FAO Compliance Agreement of 1993,
 - the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA, 1995),
 - FAO Agreement on Port State Measures, (PSMA 2009);
 - introducing the provisions of the above international instruments into national fisheries legislation;
 - adopting a regulation on the establishment and operation of national registers of fishing vessels (local artisanal and industrial; and foreign artisanal and industrial);
 - conducting a registration process for the artisanal fishing fleet and artisanal fishing communities;
 - revising the different access regimes (types of fishing agreement) for foreign fishing vessels;
 - aligning the legal regime of fishing vessels with that of vessels engaged in related activities;
 - creating a national advisory licensing commission and a national advisory boarding commission.
- 2. Translate fisheries regulations** into languages that are understood by the fishing communities and adapted to their level of education in order to better achieve the objectives of protecting artisanal fishermen;
- 3. Promote the institution** by ECOWAS of a specific regulation on artisanal fisheries which grants fishing zones reserved for professionals in the artisanal sub-sector;
- 4. Establish conflict prevention** and resolution mechanisms, and an emergency relief mechanism to anticipate potential conflicts (territoriality/migration of fishermen) and to rescue artisanal fishermen in distress;
- 5. Strengthen the co-management approach** with a view to encouraging the administration and coastal communities to further promote co-management of resources at local and national level;
- 6. Strengthen the technical capacities** of institutions and artisanal fishermen to ensure the implementation of national fisheries regulations, particularly with regard to the obligation of prior safety inspection of fishing vessels;
- 7. Professionalise the artisanal fishing trades** to respect the value chain and regulate each trade in the sub-sector (carpenter, handler, fishing dock manager, mechanics, fishmongers, processors, etc.).

CONCLUSION

The Republic of The Gambia has a maritime fishing zone legally reserved for artisanal fishing within 12 nautical miles from the low water mark. However, this remains compromised by two new fishing zone delimitations foreseen in the 2019 Regulations which risk curtailing this protected area.

These are:

- The maritime zone **beyond 9 nautical miles** from the low water mark where vessels > 250 GRT are allowed to fish.
- The maritime zone located **beyond 7 nautical miles** from the low-water mark where, unofficially, a zone is established for, among other things, semi-industrial fishing. It should be noted that this type of fishing is not defined either in the Fisheries Code or in the 2008 Regulation.

The possibility for industrial vessels to operate in areas frequented by artisanal fishermen could explain the recurrent conflicts at sea. In addition, there are other factors such as:

- the inadequacies or gaps in the definition and implementation of the conditions of access to fisheries resources, particularly those relating to the safety of fishermen and their boats;
- the lack of professionalism in the artisanal fisheries sub-sector;
- the informality of the artisanal fisheries sub-sector;
- the lack of involvement and participation of fisheries professionals in the definition of policies and regulations that concern them.

In addition, the different access regimes for foreign fishing vessels should be examined to see the feasibility of turning them into partnership agreements for sustainable fisheries.

Thus, the Republic of The Gambia has only provided for the establishment of a Fisheries Advisory Committee. This appears to perform the functions of both a national advisory commission for the allocation of licences and a national advisory commission for boarding. It should therefore be reviewed to ensure greater transparency in the management of licences and sanctions for illegal fishing in waters under Gambian jurisdiction.

With these shortcomings effectively addressed, artisanal fisheries will have textual and spatial recognition and this will provide more opportunities for development.

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