



stop illegal fishing



STOP ILLEGAL FISHING
CASE STUDY SERIES **14**

September 2018

Prosecution of Tawariq 1

Facilitated by regional and international cooperation

Background

The Deep Sea Fishing Authority (DSFA) a shared management mechanism between authorities of Mainland Tanzania and Zanzibar, oversees fisheries in Tanzania's exclusive economic zone (EEZ).

Much like the whole East African region, Tanzania has limited surveillance capability, leaving vast areas of its EEZ open to illegal, unreported and unregulated (IUU) fishing. In 2010, the Government estimated that about 200 foreign vessels were fishing illegally in Tanzania's offshore waters, causing the loss of millions of dollars in revenue.

In 2001, Southern African Development Community (SADC) Member States adopted the SADC Protocol on Fisheries that paved the way for the 2008 SADC Statement of Commitment on IUU Fishing. This is evidence that there is growing concern for how IUU fishing affects the sustainability of fisheries, the economy of the region and the African continent.

In March 2009, South Africa, Mozambique, Tanzania and Kenya embarked on the first multilateral fisheries patrol in the Western Indian Ocean. Twelve days into the month-long voyage, 180 nautical miles off the coast of Tanzania, a suspicious vessel was spotted on the radar of the South African Environmental Protection Vessel, the *Sarah Baartman*.

After visually identifying the tuna longliner as *Tawariq 1*, and observing that no flag was hoisted, the patrol team tried unsuccessfully to establish radio contact. The *Tawariq 1* turned off its radar and sped up, ignoring calls to stop for an inspection. After several attempts to intercept, the *Sarah Baartman* eventually caught up and inspectors boarded the vessel. They found more than 260 tonnes of fresh and frozen fish (including tuna and shark fins) and no valid licence to fish in Tanzanian waters.

The captain claimed there was only 70 tonnes of fish on board, and that it had been caught outside of the EEZ, although he could not give specific coordinates. Meanwhile, the inspectors found fresh offal, indicating that large amounts of fish had been caught recently, and coordinates on the GPS plotter showing that the vessel had entered the Tanzanian EEZ two days earlier.

STOP ILLEGAL FISHING CASE STUDIES aim to:

Define best practice by analysing practical examples of different approaches in the fight against IUU fishing. They also demonstrate the magnitude of activities and partnerships underway to stop illegal fishing and provide the basis for policy advice.

This data was later erased along with all information on the radar and computers; however, a quick-thinking fisheries inspector took photographs during the inspection showing the GPS positions.

The *Tawariq 1* was escorted to port in Dar es Salaam, where the captain Hsu Chin Tai and his crew were detained by local police. Two days later, the Tanzanian authorities arrested the agent, Zhao Hanqing, a Chinese national and owner of the Kenyan company *Sunflower Trade Ltd*, and the alleged owner, Hsu Shen Pao. No flag State came forward and admitted to having flagged the vessel so it remained stateless.

The evidence obtained was proclaimed inconclusive, prompting the Government to send a formal request for legal assistance to the Food and Agriculture Organization (FAO), the Governments of Norway and Mozambique and Stop Illegal Fishing. Mozambique sent their monitoring, control and surveillance (MCS) specialist to make an initial assessment and a Norwegian-funded mission followed, with a team consisting of an Australian naval architect, a Norwegian fleet manager and two special agents (an IT and a fisheries law expert) from National Oceanic and Atmospheric Association (NOAA).

In August 2009, the team conducted their investigation, carrying out a survey of the vessel, an assessment of the value of

the catch and an analysis of the evidence reconstructed from the vessel's computer and electronic equipment. They discovered a web of contradictory information about the identity of the vessel, all pointing to different nationalities, including Malagasy, Korean, Filipino and Omani. The international radio call sign (IRCS) was that of *Bu Young No. 68*, a name also found embossed on the vessel, the port of registry given as Busan, South Korea. To complicate things further, *Bu Young No. 68* was previously named *No. 11 Insung*, a name still found on lifebuoys, the service record of one of the life rafts and several other documents. According to the IOTC, the former name of *Tawariq 1* was *Odine Malagasy*, a vessel registered in Madagascar, however this name was nowhere to be found, and the team were unable to determine the vessel's true identity.

The hearing continued for nearly three years and was at one stage referred to a lower court. The Government decided to stop the process and claimed "no prosecution". The vessel owners and Oman Government attempted to negotiate an out-of-court settlement, offering to accept the confiscation of the catch and boat if the identity of the owner was kept hidden. Eventually, they came to some sort of agreement. During this time, the captain and crew were held in jail, in violation of international law¹. It was not until July 2011 that 31 of the 36 suspects, crew members of Chinese, Vietnamese, Indonesian and Kenyan nationality, were released. Tragically, a member of the crew died in prison.

Finally, in February 2012, the High Court delivered a verdict of guilty, ordering the vessel to be forfeited to the Government. The captain, agent and owner were found guilty of fishing without a licence in the Tanzanian EEZ and each sentenced to pay 1 billion Tanzanian shillings (USD 625 975). The captain was fined a further 20 billion Tanzanian shillings (USD 12 519 500) for the offence of pollution.



Drivers

The signing of the *SADC Statement of Commitment on IUU Fishing* showcased the increased awareness of the economic implications of IUU fishing to the region and sparked the realisation that one way forward in combatting IUU fishing is through multi-agency cooperation.

The political will of the four countries participating in the Regional Patrol and the ability of South Africa to provide a modern patrol vessel were vital to the success of this case.



Key features and outcomes

- **The strong level of support shown by the Government of Tanzania** following the arrest, particularly that of President Jakaya Mrisho Kikwete and Minister for Livestock and Fishing Development, Mr John Magufuli, was vital in encouraging the team to persevere with the case over the years it took for the prosecution.
- **The four-nation transboundary fishing patrol** was key to the arrest of the *Tawariq 1* and highlights the advantages and benefits of transboundary collaboration.
- **International cooperation** brought together the experience and expertise needed to support Tanzania in the successful prosecution of this case, a reminder that IUU fishing is a global issue which can be tackled if international partners are unified in the attempt to eradicate it.
- **The application of international instruments** was essential to the prosecution. The UN Convention on the Law of the Sea was applied with respect to a foreign vessel fishing in Tanzanian waters without authorisation. The joint MCS patrol was empowered by the SADC Protocol on Fisheries and the SADC Ministers' Statement on IUU fishing.
- **The long-term detainment** of the crew in jail during court proceedings required food, medical care and interpretation which was expensive for the Tanzanian Government. The death of one crew member in prison highlighted the tragic nature of IUU fishing cases.

Challenges

- **Identifying vessels involved in illegal fishing** is complicated by the deliberate efforts made by the operators to disguise the identity of their vessels and the lack of documentation on board.
- **Lack of trained personnel** to conduct IUU fishing investigations and **lack of institutional capacity** to support enforcement actions can limit operation potential.
- **The determination of the owners and flag State to remain unknown** was such that they stalled the court case and jeopardised the lives of the crew members.
- **DSFA legislation was weak on fisheries offences** such that only the Section dealing with pollution

Lessons learned

- **Regional cooperation and information sharing** can be a cost effective and efficient support to MCS operations. A drive towards regional collaboration and shared MCS platforms may hold the key to better deterrence and fisheries compliance.
- **IUU fishing links to other crimes under different legislations**, such as pollution regulation, immigration or maritime laws. Pursuing the offenses in all these areas can increase penalty level and consequently increase deterrence.
- **Carrying out an inventory of the vessel immediately on arrest** is important to secure all evidence and vital information before operators have the chance to destroy it.
- **Only key players should be detained for the court case**, crew members should be released in line with international legislation.
- **Court staff and judges' level of expertise in fisheries-related crime** could be enhanced by an educational programme, focusing on fisheries legislation and related infringements, the importance of fisheries management to the country, the economic gains that can be made from illegal fishing and the requirement for strong penalties to deter other IUU fishers.

could be used by the prosecution in advocating for conviction.

- **The time taken for the prosecution was far too long**, a swift outcome is essential to provide a deterrent and to avoid long and costly court cases.
- **External pressure to withdraw from the court case** came from the Oman Government who offered USD 300 000 to facilitate an out of court negotiation.
- **Transparency and conflict of interest during the court case**, contributed significantly to the delay of the trial.
- **The language barrier** was very gruelling as the testimony had to be translated into four different languages.

Policy implications

- The ongoing formulation and implementation of regional frameworks to provide a coherent approach to deter and eliminate IUU fishing, and in doing so increase awareness of the need to strengthen regional cooperation is required.
- A global record including photographs of industrial fishing vessels would assist in identifying offending vessels.
- Implementation of international law into domestic legislation, including on Port State Measures² regulations is needed.
- The regional bodies that have taken the first steps in cooperating and collaborating need to consolidate these partnerships in agreements and contracts that will strengthen their standing against IUU fishing and its associated crimes.
- Fines and penalties should be substantial enough to act as effective deterrents to illegal operators.

Players involved

- **The Government of South Africa** provided the environmental protection vessel and personnel for the multilateral patrol.
- **The Governments of Mozambique, Tanzania and Kenya** provided inspectors for the joint patrol.
- **The Government of Tanzania** led the case from the outset.
- **The Government of Mozambique** provided an MCS specialist to lead the investigations into the case.
- **The Government of Norway** provided financial support and expertise to the investigation.
- **NOAA** supplied two special agents who were key to the investigation.
- **Stop Illegal Fishing** helped to rally international and regional support and provided technical support to assist Tanzania.

Further Information



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Next steps

In the push to eradicate IUU fishing, the following steps need to be taken:

- Tanzania needs to sign and implement the **Port State Measures Agreement** as a crucial step in their common fight against IUU fishing.
- **The Regional Monitoring, Control and Surveillance Coordination Centre (RMSCC) of SADC**, on track to be set up in Maputo, will strengthen SADC regional collaboration and create sustainable partnerships in improving MCS and for the coordination of joint patrols.
- **Capacity building** to improve the knowledge and skills of prosecutors and magistrates in international and national fisheries legislation.
- **Internationally consistent best practice and penalties** need to be agreed on in consultation with experts that are fair, and representative of the crimes committed by the offenders.



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Footnotes

¹ United Nations Convention on the Law of the Sea. Article 73: Enforcement of Laws and Regulations of the Coastal State.

² FAO (2009) Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.



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