Tanzania's Legal Framework on Sea Piracy: An Obligatory But Inconsistent Model

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Criminal Law and Sea Piracy

TANZANIA’S LEGAL FRAMEWORK ON SEA PIRACY
An Obligatory but Inconsistent Model

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Freiburg-Germany
In Loving Memory of a remarkably righteous and courageous person-

AMEN
Contemporary maritime piracy is a complex phenomenon which requires efficient legislative and judicial systems as well as joint deliverance in eradicating it. Maritime piracy is not an isolated phenomenon; rather it encompasses political, economic and social aspects. Therefore, an all-encompassing approach on land is vital in supplementing law enforcement mechanisms at sea. This work explores Tanzania’s criminal justice, law enforcement framework and human rights considerations in combating piracy. In assessing the state, internationally recognized norms and standards in human rights and cooperation will be considered.
**ABBREVIATIONS AND ACRONYMS**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AC</td>
<td>Appeals Court of England</td>
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<td>BYIL</td>
<td>British Yearbook of International Law</td>
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<tr>
<td>CAT</td>
<td>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment</td>
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<td>CHRRAGG</td>
<td>Commission for Human Rights and Good Governance of Tanzania</td>
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<td>CJ</td>
<td>Chief Justice of England</td>
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<td>Code of Conduct</td>
<td>The Djibouti Code of Conduct</td>
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<td>Code of Practice</td>
<td>Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ships</td>
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<td>CRC</td>
<td>United Nations Convention on the Rights of the Child</td>
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<td>DPP</td>
<td>Director of Public Prosecution</td>
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<td>EAPCCO</td>
<td>East Africa Police Chiefs Co-operation Organization</td>
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<td>EEZ</td>
<td>Exclusive Economic Zone</td>
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<td>Ex. D</td>
<td>Exchequer Division of England</td>
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<td>ICC</td>
<td>International Chamber of Commerce</td>
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<td>ILR</td>
<td>International Law Reports</td>
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<td>IMB</td>
<td>International Maritime Bureau</td>
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<td>IMO</td>
<td>International Maritime Organisation</td>
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<td>INTERTANKO</td>
<td>International Association of Independent Tanker Owners</td>
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<td>MoU</td>
<td>Memorandum of Understanding</td>
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<td>QB</td>
<td>Queen’s Bench</td>
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<td>TFG</td>
<td>Somali Transitional Federal Government</td>
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<td>TOC</td>
<td>Tanganyika Order-in-Council</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNSC</td>
<td>United Nations Security Council</td>
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<td>US</td>
<td>United States of America</td>
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<td>WW1</td>
<td>First World War</td>
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A: GENERAL OVERVIEW OF TANZANIA

I Geography

The sovereign state of Tanzania is located between Longitude 29° and 41° East and Latitude 1° and 12° south. It is comprised of two constituent entities namely Tanzania Mainland (formerly known as Tanganyika) and Tanzania Zanzibar (Zanzibar). The latter is located about thirty-seven kilometers east of Tanzania Mainland across the India Ocean. Territorial waters of Tanzania cover 59050 square kilometers. Inland waters include three of the largest lakes in Africa, namely Lake Victoria, Lake Tanganyika and Lake Nyasa. Tanzania’s coastline covers 1424 kilometers and the maritime claims include 12 nautical miles of territorial sea and 200 nautical miles of exclusive economic zone (EEZ).

II Historical Background

1. Political Background

During the colonial era Tanzania Mainland was under the Germany before it was handed over to Britain under the League of Nations mandate following the defeat of German in the First World War (WW1). It became independent in 1961 and one year later it became a Republic. Zanzibar was a British protectorate under the Arab Sultanate and became independent in 1963. The post-independence minority rule was overthrown in 1964 and Peoples’ Republic of Zanzibar was established. In the same year Peoples’ Republic of Zanzibar and Republic of Tanganyika united to form the United Republic of Tanzania. Notwithstanding the union, Zanzibar still retains autonomy over issues commonly known as “non-Union matters.” The caveat is entered that this work concerns itself with the legal framework of Tanzania Mainland however where appropriate reference will also be made to the legal position in Tanzania Zanzibar.1 With respect to matters of international

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1 It should be noted that Tanzania Mainland and Tanzania Zanzibar share only the union matters. According to the First Schedule of the Constitution of the United Republic of Tanzania as amended these matters include: The Constitution of Tanzania and the Government of the United Republic,
relations and international instruments the jurisdiction is exclusively vested in the United Republic of Tanzania. Therefore, it is the United Republic which has the mandate to ratify international instruments.\(^2\)

2. Legal Background

Tanzania’s legal system is overwhelmingly based on the English common law. The common law of England, doctrines of equity and statutes of general application were imported into the territory of Tanganyika in 1920 through the *Tanganyika Order-in-Council (TOC)*. It made the common law of England applicable to Tanganyika as of 22 July 1920 and empowered the King to promulgate other Orders and Ordinances for Tanganyika. The Penal Code of Tanganyika, which was modeled on the Indian Penal Code, was imported into Tanganyika in 1930 and prescribed the offence and punishment for piracy occurring within Tanganyika’s territorial waters or committed by a citizen of Tanganyika. Moreover, the Penal Code stipulated that it did not affect and criminal liability against Common Law (of England).

The TOC also established a High Court for Tanganyika and extended to it English court practices and procedures.\(^3\) The appeals from the High Court of Tanganyika were heard and determined in the Court of Appeal for Eastern Africa. The decisions of the Court of Appeal for Eastern Africa had *precedent* effect and were binding upon all courts in East Africa.

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Footnotes:


1954 the Court of Appeal for Eastern Africa acknowledged that the charge of *piracy jure gentium* was an unusual in the East African Territories.\(^4\) However, the Court affirmed that the courts within the “power, authority or jurisdiction of the Admiralty” had powers to try a case of piracy committed on the high seas pursuant to Admiralty Offences (Colonial) Act of 1849 and Courts (Colonial) Jurisdiction Act of 1874.\(^5\)

### III: Legislative System

Tanzania follows a “dualist” as opposed to “monist” approach in incorporating international legal instruments into domestic laws. Thus, an agreement that is ratified by the government does not generally have a binding effect except where the Legislature has explicitly incorporated it by way of local enactment.\(^6\) This procedure equally applies to any regional or multilateral agreements. It is equally noteworthy that the nature of Tanzania's government, constitutional setting and legal system impacts the *modus operandi* of the laws stemming from international obligations.

Jurisdictions within the sovereign state of Tanzania is charted out in the Constitution of the United Republic of Tanzania of 1977 (the Union constitution) as amended. From the arrangement of the Union Constitution there are union matters and non-union matters. Union Matters are governed by the Government of the United Republic of Tanzania and non-union matters falls in the exclusive jurisdiction of the Government of Zanzibar. There is no provision for concurrent jurisdiction.\(^7\) A matter is either exclusively for Zanzibar or it is for the Union. It is the Union government which has the mandate to ratify international treaties.\(^8\)

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\(^5\) It should be noted that the alleged piracy took place upon the high seas to wit in the Gulf of Oman implying that it took place upon waters within the power, authority, or jurisdiction of the Admiralty.


\(^7\) See *SMZ vs Machano Hamis Ali and Others* (Criminal Application No 8 of 2000). The case is available at [http://www.saflii.org/tz/cases/TZCA/2000/1.html](http://www.saflii.org/tz/cases/TZCA/2000/1.html) last visited on 08 December 2009

\(^8\) See Article 63(3) of the Constitution of the United Republic of Tanzania of 1977 (as amended)
On the basis of that duality and the established fact of exclusive jurisdiction of the Government of Zanzibar over all non-Union Matters in Zanzibar it is logical to conclude that sovereignty is divisible within the United Republic of Tanzania. Therefore, in order to determine which of the two governments exercise sovereignty over any given matter one has to determine whether it is union or non-union matter. Criminal matters are non-union matters except where they are associated with the union matters. Therefore, each of the two Governments in the United Republic has exclusive jurisdiction in criminal matters in its own sphere. All criminal matters in Tanzania Mainland are defined, triable and punishable in accordance with the Penal Code while those in Zanzibar are regulated by the Penal Decree. It is an obvious outcome that the two entities have different legal framework as regards piracy occurring territorially.

IV. Magnitude of Piracy in Tanzania’s Territorial waters

In the period between January –September 2005 -2009, Tanzania experienced 34 piratical attacks, the third highest toll suffered by individual countries in Africa in the same period.\(^9\) Dar es Salaam port is reported to have experienced third highest piratical attacks among ports and anchorages in the world in the period between January 2008 and September 2009.\(^10\) For the period between January and September 2005-2009 out of the overall ships attacked by pirates worldwide, three (3) were of Tanzania nationality.\(^11\) Among all the attacks that occurred between January and September 2009 no attacked ship was controlled or managed in Tanzania. While the pirates in Somalia use sophisticated weapons, pirates in Tanzania mostly use knives and attack ships when they are anchored. In most cases piratical acts were reported to the authorities but no actions were taken. It should be noted that for statistical purposes in this paragraph actual and attempted attacks whether the ship

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9 Somalia experienced 112 attacks and Nigeria experienced 93 attacks (see Report for the Period of January-September 2009 of the ICC International Maritime Bureau on Piracy and Armed Robbery Against Ships at pages 6-7

10 see Report for the Period of January-September 2009 of the ICC International Maritime Bureau on Piracy and Armed Robbery Against Ships at p 11

11 Ibid at pp 18-19
is berthed, at anchor or at sea were included. It also included acts of armed robbery against ships.

In the year 2006 out of 5648 unlawful acts of violence reported nationwide two (2) were piratical acts while in the year 2007 the number of piratical acts increased to 9 out of 8306 acts of violence reported nationwide. Tanzania have had prosecuted cases relating to destruction of vessels and illegal deep sea fishing, but no direct piracy cases. The patterns of piratical acts occurring in territorial waters of Tanzania and those acts against ships of Tanzania’s nationality involve both territorial and extraterritorial dimensions. Thus there need to be both municipal and international mechanisms to tackle the problem especially with the reported indication that the Somali pirates are extending their attacks off the east and south coast including off Tanzania, Kenya, Seychelles, and Madagascar. However, the fact that most ships attacked are not controlled or managed by countries which are actually located in piracy prone zones may have effect in their willingness to devotedly cooperate in counter-piracy mechanisms advocated by countries whose ships are largely affected. This may create tendencies of viewing piracy not as a collective problem but rather one belonging to those countries whose ships are largely victimized. This trend differs the one regarding terrorism whereby Kenya and Tanzania quickly embarked in the war against terror by passing legislations partly because they had them themselves experienced fatal terror attacks with the bombing of US embassies in their respective countries.

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15 For example, in the period between January and September 2009 while 50 victim ships were controlled or managed in Germany, 41 in Greece, only 1 victim ship was managed or controlled in Ethiopia, 1 in Kenya, 1 in Nigeria, and no victim ship was managed in Somalia or Tanzania. (See the Report for the Period of January-September 2009 of the ICC International Maritime Bureau on Piracy and Armed Robbery Against Ships at pp 21&22

16 On August 7 1998 US embassies in Dar es Salaam and Nairobi were simultaneously bombed killing at least 212 people and injuring at least 4000. Most of the causalities were citizen of Kenya and Tanzania. In 2002 Tanzania enacted Anti Terrorism Act (Act No 21 of 2001); Kenya’s Suppression of Terrorism Bill of 2003 was rejected over concerns of human rights violations.
B: LEGAL FRAMEWORK ON PIRACY

I: International Customary Law

Piracy is not a new phenomenon and the existing law in the management of piracy has a long genealogy. Piracy, in the customary law perspective, warrants universal jurisdiction since it is a crime to the international community as a whole.\textsuperscript{17} In the same light, the perpetrators of piracy are considered \textit{hostis humani generis}—enemies of all mankind, and are thus susceptible to prosecution by any nation. Recognized as such in customary international law, piracy \textit{jure gentium} would be triable and punishable under the domestic criminal law of any country irrespective of any domestic statute or judicial precedent. The customary framework with respect to the crime of piracy is thus a definable, universal and obligatory norm.

II: Common Law Approach

Common law jurisdictions have been reluctant to accept automatic assimilation of customary international law into their domestic criminal laws.\textsuperscript{18} Common law judiciaries, particularly English courts, have handled the assimilation of customary international law with great caution. They argue that inasmuch as the development of customary international law largely remains the consequence of international behaviour of the Executive, in which neither the Parliament nor the Judiciary need have played any part, it would be odd if the Executive could, by means of that kind, amend or modify criminal law. Citing political accountability, regularity and legal certainty, they argue that power to create crimes should be regarded as reserved exclusively to Legislature. Such strict view of the English courts is likely to be followed by other common law countries like Tanzania which imported English common law, doctrines of equity and statues of general application.\textsuperscript{19}

\textsuperscript{17} See \textit{Re Piracy Jure Gentium} [1934] Appeal Court (AC) 586 at 689
\textsuperscript{19} This system of law was imported by the British during the era of colonialism into the territory of Tanganyika (now Tanzania Mainland) in 1920 through the \textit{Tanganyika Order-in-Council}
Such approach would limit Tanzania's international obligation to exercise jurisdiction against pirates in the absence, as it stands, of a clear and consistent statutory framework.

However, the doctrine of customary international law on piracy remains, in the absence of domestic statutory framework, vague and powerless. It is impractical to confer jurisdiction over foreigners on high seas without legislation to that effect. Admittedly therefore, courts in countries like Tanzania whose domestic laws are not exhaustive and are not accurately stating the present international law as regards piracy may resort to customary international law in so far as customary law may enlarge the definition of piracy. This would allow reference to extraneous sources and techniques of constructions not normally incident to the interpretation of a statute.

III: Statutory Approach

Piracy *jure gentium* is an offence defined by international law and is distinguishable from municipal law variations on the theme of piracy. According to international law the criminal jurisdiction of municipal law against piracy is ordinarily restricted where piracy is committed on its *ferra firma* or territorial water or against its own ship, and crimes committed by its own nationals wherever committed. Seemingly, this was the approach adopted in the enactment of section 66 of the Penal Code of Tanzania which deals with the offence of piracy. Law makers did not seem to cover piracy *jure gentium* in section 66 of the Penal Code. It has excluded in its scope piracy committed in the high seas by foreign pirates.

Since the offence of piracy in Tanzania is a creation of the statute- Penal Code- one must look to the terms of the statute for a definition of its nature. Per terms of the Penal Code of Tanzania, its effect was limited territorially, and so was the nature of the offence of piracy. It has been solidly argued that a distinction should be drawn between the sort of

20 See *R vs. Keyn* (1876) 2 Exchequer Division (Ex D), 63 203 per Lord Cockburn Chief Justice
21 See *Re Piracy Jure Gentium* [1934] A.C 594
22 Chapter 16 of the Laws of Tanzania
23 See sections 6, 7, 66 of the Penal Code
situation where a crime is to be regarded as an offence wherever it is committed and the
sort of statutory offence which is created only in relation to a particular place. But pirates
are hostis humani generis, thus they committed an offence against the moral law not
thought of having territorial limits. It follows therefore that piracy is conceived by common
law, the basis which Tanzania's courts may assume jurisdiction regardless of statutory
limits. Admittedly, it is not always an easy venture to disentangle statute and common
law.

IV: Tanzania’s Incorporation of International Framework on Piracy

(1): Incorporation of International Treaties

The current international legal framework to counter piracy is founded on United Nations
Convention on the Law of the Sea (UNCLOS), Geneva Convention on the High Seas of
1958 and the largely ignored Convention for the Suppression of Unlawful Acts Against the
Safety of Maritime Navigation of 1988 (SUA). Under this framework piracy consists of
any criminal acts of violence, detention, or depredation committed for private ends by the
crew or the passengers of a private ship or aircraft that is directed on the high seas against
another ship, aircraft, or against persons or property on board such ship or aircraft.

Although member states thereto are called to cooperate, the enforcement of such norms is
hampered in practice. The predicament is associated with treaty exceptionalism and the soft
law effect of the same. Normally treaties are not binding except for parties thereto and
treaty execution is fairly limited in dualist countries.

Tanzania was the 24th state to ratify UNCLOS, the second earliest after Egypt among 17

24 See generally: Bank voor Handel en Scheepvaart NV vs. Slatford [1953]1 Queens Bench (QB)
25 Note that the Penal Code (Chapter 16 of the Laws of Tanzania) does not preclude any liability, trial or
punishment for an offence against the common law (See its section 3-(1)-(a).
26 It contained a Protocol Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on
the Continental Shelf. A second protocol was adopted in 2005 but it is not yet in force. The 2005
protocol to SUA covers acts of terrorism committed on the high seas
27 See Article 101 the UNCLOS
28 Tanzania ratified UNCLOS on 30 September 1985. See
December 2009
states from the Western Indian Ocean, Gulf of Aden and Red Sea areas which adopted the Djibouti Code of Conduct in January 2009.\textsuperscript{30} However, UNCLOS was shelved for twenty (20) years before its provisions regarding piracy were progressively incorporated into domestic legislation pursuant to the Merchant Shipping Act of 2003. Also Tanzania has ratified SUA Convention of 1988 but not its Protocols of 1988 and 2005 nor the SUA Convention of 2005.\textsuperscript{31} Therefore, except for the extension sought by the additional protocols thereto, Tanzania may exercise jurisdiction over pirates when they have been caught in high seas or international waters. Tanzania is also vested with jurisdiction by virtue of ratifying the Geneva Convention on the High Seas of 1958 to use enforcement powers over private ships not belonging to the capturing state (executive jurisdiction).\textsuperscript{32}

With regard to piracy committed in the high seas, Tanzania has enacted a law (Merchant Shipping Act, 2003) covering both Tanzania Mainland and Zanzibar.\textsuperscript{33} The law progressively incorporates the provisions of the UNCLOS into Tanzania’s domestic laws. Since this is direct incorporation of the provisions a treaty ratified by the Government of the United Republic, it has shifted implementation of its provision from the Executive act to the legislative one. It should be noted that since the provisions of the Merchant Shipping Act merely defines piratical offences, the manner in which pirates will be prosecuted and punished remains within the exclusive criminal regulatory framework of the two entities of the Union unless the matter finds its way to the Court of appeal which is a Union matter.

\textbf{(2) Tanzania’s Obligations pursuant to United Nations Security Council Resolutions and the Djibouti Code of Conduct}

\begin{itemize}
\item[29] Egypt ratified UNCLOS on 26 August 1983. See \url{http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm} last visited on 9 December 2009
\item[30] The meeting was convened by IMO in Djibouti to address the problem of piracy and armed robbery against ships off the coast of Somalia and in the Gulf of Aden, has adopted a Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden
\item[31] See \url{http://www.imo.org/includes/blastDataOnly.asp/data_id%3D26857/status-x5.11.09.xls} last visited on 9 November 9, 2009
\item[33] See Part XVII of the Merchant Shipping Act, 2003
\end{itemize}
(a) United Nations Security Council Resolutions

The resurgence of the critical sea piracy phenomena off the Horn of Africa especially in the Gulf of Eden has proved that several aspects in the international legal framework need to be expanded. There should be a determined shift from theory to practice and the link between piracy and other criminal phenomena be thoroughly considered. The United Nations Security Council (UNSC) passed three resolutions in 2008 specifically to tackle the issue.\textsuperscript{34} The UNSC authorized states and regional organizations cooperating with the Somali Transitional Federal Government (TFG) in the fight against piracy to enter into the territory and territorial water of Somalia to counter piracy and to use all necessary means to repress acts of piracy.\textsuperscript{35}

Obviously, the means employed to repress piracy pursuant to such Resolutions have to conform to international law. \textsuperscript{36} Reasonable inference would suggest that by international law it includes human rights law which includes among other principles, presumption of innocence and fair trial. The matter attracts the debate whether the determination to fully eradicate piracy by all means should supersede human rights consideration. There is not a clear-cut answer to this. However, human rights principles are mainly the creatures of treaties as interpreted by courts in most cases, thus it may be argued that since the respect of and observance of human rights is the fulfilment of the treaty obligations, then the call under Chapter VII by UNSC should prevail over other obligations as per Article 103 of the UN Charter. That however, would be a fundamental misconception as human rights are meant to be inherent and not mere creatures of treaties. Thus, if Tanzania chooses to

\begin{footnotesize}
\textsuperscript{34} See UNSC Resolution 1816 (2008), UNSC Resolution 1846 (2008) and UNSC Resolution 1851 (2008). Note that the Resolutions have been renewed by UNSC Resolution 1897 (2009) for a period of twelve month until 29 November 2010. See \url{http://www.un.org/News/Press/docs/2009/sc9799.doc.htm} last visited on 8 December 2009

\textsuperscript{35} See UNSC Resolution 1846 (2008) and UNSC Resolution 1851 (2008)

\textsuperscript{36} See paragraph 9 of UNSC Resolution 1846 (2008) which states “Calls upon States and regional organizations that have the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and relevant international law by deploying naval vessels and military aircraft, and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery off the coast of Somalia, or for which there is reasonable ground for suspecting such use” (Emphasis of the Author)
\end{footnotesize}
cooperate in suppressing piracy off the Somali coast pursuant to the abovementioned Resolutions it should stick to the internationally recognized human rights principles and standards, because that is what seems to be meant by in accordance with relevant international law.

(b) Djibouti Code of Conduct

By being one of the founding signatories to the Djibouti Code of Conduct, Tanzania recognized the extent of the problem of piracy and armed robbery against ships off the coast of Somalia and in the Gulf of Aden and declared its intention to cooperate to the fullest possible extent in the repression of piracy and armed robbery against ships. Thus, it offered to fully cooperate in the arrest, investigation, and prosecution of persons who have committed piracy or are reasonably suspected of having committed piracy. Despite the willingness, the extent of achievement remains to be measured as available resources at disposal are known to be scarce in the country. The main investigation machinery—the Police Force—still retains its colonial model and its mandate is not incorporated with human rights ideals.\(^\text{37}\)

Although there are progressive laws in place to criminalize piracy and armed robbery against ships,\(^\text{38}\) the enabling trend is not adequate and does not, in several aspects, coincide with the standard of international law.\(^\text{39}\) The condition of prisons and detention centers, for example, are reported to be harsh and inmates complained of inadequate food and medical services. Attributable to the unwarranted delays of prosecutions the overcrowding amounts up to 193 percent in Tanzania Mainland.\(^\text{40}\) With such shocking statistics it is doubtful whether the means employed by Tanzania to arrest and prosecute pirates as


\(^{\text{38}}\) The Merchant Shipping Act (2003)

\(^{\text{39}}\) The Djibouti Code of Conduct requires the means used to suppress piracy and armed robbery against ships to be consistent with international law.

pursuant to the Code of Conduct would be consistent with international law.

3: Multifaceted Approach

(a) Related Laws

Whether within the Tanzania territory, or off the Somali Coast, the legal efforts to counter piracy will be fruitless if the means employed isolate the political and economic dimension of the issue. It is also a correct submission that over the long term the efforts to suppress piracy must be concentrated on land, not solely at sea. Thus, the role of justice should complement that of sailors and snipers. With the lessons learned from the dynamics of piracy off the coast of Somalia with coordinated modus operandi, advanced technological strategies and financial variables, the manifestly willingness of Tanzania to counter piracy territorially should start before the problem becomes too complex to tackle. Eradication of piracy in Tanzania and high seas cannot be solely achieved by the Penal Code and the Merchant Shipping Act, rather the web of laws in place, such as the Anti-Money Laundering Act\(^1\), The Economic and Organized Crime Control Act\(^2\), Extradition Act\(^3\), The Proceeds of Crime Act\(^4\), Prevention of Terrorism Act,\(^5\) and Mutual Assistance in Criminal Matters Act\(^6\), must be well coordinated to collectively tackle the socio-economic aspects of piracy.

(b) Law and Politics

Law cannot be divorced from politics. The political dimensions of piracy are worth consideration whenever the legal efforts are employed. In the absence of the permanent

\(^1\) Act No 12 of 2006, The Act applies to Mainland Tanzania as well as Tanzania Zanzibar
\(^2\) Act No 13 of 1984, The Act applies to Mainland Tanzania only
\(^3\) Chapter 368 of the Laws of Tanzania, The Act applies to Mainland Tanzania as well as Tanzania Zanzibar
\(^4\) Act No. 25 of 1991, The Act applies to Mainland Tanzania as well as Tanzania Zanzibar
\(^5\) Act No 21 of 2002, The Act applies to Mainland Tanzania as well as Tanzania Zanzibar
\(^6\) Act No. 24 of 1991, the facilitation of the provisions of the Act is based on reciprocity. Therefore, its provisions are applicable only where the Minister is satisfied that similar provisions have been made by a foreign country. See Section 3-(1) of the Act
international court to try pirates, and the unlikelihood that world’s navies will be patrolling off coasts and high seas eternally, the long-term solution should be to maintain peace and help lawless countries to restore order and justice. Also, law enforcement mechanisms seeking to maintain justice and order, must meet the internationally recognized human rights standards otherwise they will defeat their purpose. Thus, treating *hostis humani generis* during arrest, investigation, trial or imprisonment in an inhuman manner should not be justified. It is the challenge for Tanzania and all the willing states that the fight against piracy should go further than mere enactment of laws; rather the law enforcement and judicial systems must also be improved to meet the international standards.

V: Tanzania’s Legal Framework on Piracy

(1) Penal Code (Chapter 16 of the Laws of Tanzania)

(a) Scope

The statutorily criminalization of piracy in Tanzania is traceable back in 1945.⁴⁷ From then until the enactment of the Merchant Shipping Act in 2003, the Penal Code was the sole legislation which defined and criminalized piracy. The criminalization of piracy pursuant to the Penal Code was and still is, however, with considerable territorial limits. The Penal Code applies under territorial limits. According its provisions, a judge or magistrate in Mainland Tanzania shall try the offence of piracy when, among other circumstances, piracy occurred within the territorial waters.⁴⁸ By territorial waters it is reasonable to conclude that it means territorial waters of the United Republic and that would include territorial waters of Zanzibar.⁴⁹

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⁴⁷ See Section 66 of the Penal Code of 1945 which contains similar provisions of Section 66 of the Penal Code of 1980 (as amended by Act No. 14 1980), the current Penal Code also contains exactly similar Provisions with the substitution of the word Tanganyika with the word(s) United Republic/Tanzania (See section 66-(1) (a) and (b)

⁴⁸ See Section 6-(a) of the Penal Code which reads… “The jurisdiction of the Courts of Mainland Tanzania for the purposes of this Code extends to (a) every place within Mainland Tanzania and within territorial waters”.

⁴⁹ See also Section 3 of the Interpretation of Laws and General Clauses Act (Act No 30 of 1972) which defines Territorial Waters as *any territorial or inland waters of the United Republic [of Tanzania]*
The territorial limits of the offence of piracy are eroded in certain stipulated circumstances. The Courts of Mainland Tanzania may exercise jurisdiction when an act of piracy is committed against a ship registered in the United Republic of Tanzania, or against persons or property on board that vessel. Thus regardless of nationality of the offender or the part of the sea where the act of piracy occurred, the Courts in Mainland Tanzania are vested to try the person if it will be established that the ship or vessel concerned was duly registered in Tanzania.

A citizen of Tanzania, either from Mainland Tanzania or Zanzibar shall be guilty of the offence of piracy if s/he does any act of violence against any vessel. Admittedly, Zanzibar is not a sovereign state and thus no one can be a de jure citizen of Zanzibar. It is not clear, however, if the person committing piracy as such is the “citizen” of Tanzania Zanzibar and the act of piracy occurred outside Tanzania Mainland say in the coast of Zanzibar can be tried in the courts of Tanzania Mainland. The difficulty of determining jurisdiction particularly regarding courts of Tanzania Mainland arises because the provision of the Penal Code broadly stipulate that a citizen of Tanzania (from Tanzania Mainland or Zanzibar) can commit piracy as abovementioned, but the provisions of the same legislation which gives jurisdiction to courts of Mainland Tanzania narrowly confines itself to “offences committed by a citizen of Mainland Tanzania in any place outside Mainland Tanzania”.

It appears that the courts of Mainland Tanzania are also conferred with jurisdiction to try the offence of piracy occurring outside the territorial waters of Tanzania if the act constituting piracy as defined by the Penal Code is committed partly within the territorial

50 According to Section 13-(1) of the Merchant Shipping Act (2003) a ship or vessel is eligible for registration in Tanzania if it is wholly owned by either national (s) of Tanzania or individuals or corporations owning ships hired out on bareboat charters to nationals of Tanzania, individuals or corporations in bona fide joint venture shipping enterprise relationships with nationals of Tanzania
51 See Section 66-(1)(a) of the Penal Code
52 See Section 66-(1)(b) of the Penal Code
53 See SMZ vs Machano Hamis Alli and Others (Criminal Application No 8 of 2000)
54 See Section 6 (b) of the Penal Code
waters and partly outside such territorial limits or high seas.\textsuperscript{55} The person committing piracy in that manner shall be punished on conviction in the same manner as if such piracy had been committed wholly within the territorial waters. It is worth emphasis that for liability to stand in that case the act constituting piracy must be directed against a ship or vessel registered in the United Republic or against persons or property thereof, or if the piratical act was committed by a citizen of Tanzania. However, liability under this regime is suggestive rather than mandatory as the founding provision states “\textit{such act may be tried and punished}…”\textsuperscript{56}

The Penal Code also criminalizes voluntary participation in the operation of a vessel or an aircraft for piratical purposes.\textsuperscript{57} However, the legislation appears to give discretion to the judges and magistrates to determine what amounts to \textit{unlawful act of violence} as it refrains to explicitly list acts that would, if directed against a ship, vessels, persons or property, amount to piracy.\textsuperscript{58} In assigning meaning to unlawful meaning of violence the presiding magistrate or judge is supposed to be guided by principles of construction of written laws with regard to Tanzanian conditions.\textsuperscript{59} In the course of the discretionary endeavour the magistrate should not apply any principle of strict construction relating to penal legislation.\textsuperscript{60}

Refraining to explicitly list the acts that would amount to piracy may attract double jeopardy and thereby infringe one of the core criminal justice principles- \textit{ne bis in idem}. Inference drawn from the vague expression \textit{unlawful act of violence} suggests that there is an independent act or series of acts such as assault, breaking, murder or arson directed against a person, property or vessel which if done in the prescribed circumstances amount to piracy. Therefore, there is no act in itself called piracy although there is an offence of

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{55} See Section 7 of the Penal Code which states “\textit{When an act which, if wholly done within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction any part of such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction}”
\item \textsuperscript{56} Ibid
\item \textsuperscript{57} See Section 66-(1)(c) of the Penal Code
\item \textsuperscript{58} See Section 66-(1)(c) of the Penal Code in its entirely
\item \textsuperscript{59} See Section 4 of the Penal Code
\item \textsuperscript{60} Ibid
\end{itemize}
\end{footnotesize}
piracy. There is a real likelihood therefore that, a prosecutor would include the charge of piracy with other acts which actually are mere elements of piracy and thereby subject the offender to double jeopardy.

(b) Punishment

Upon conviction, the person found guilty of piracy is liable for the imprisonment for life.\textsuperscript{61} Since the Penal Code does not explicitly specify acts that would constitute piracy, it is not clear what would be the position in cases where the act constituting piracy would, in itself, attract death penalty. It is likely, for example, that the offender, by his unlawful act of violence, inflicts grievous bodily injury on a person in a vessel registered in Tanzania and s/he is later charged for piracy and after 9 months\textsuperscript{62} in the middle of the trial the victim dies of the wounds.\textsuperscript{63} Obviously, the charges will be amended to include the charge of murder then the question arises what will be the position upon conviction of the offender on the two charges. It should be noted that murder is punishable by death penalty in Tanzania.\textsuperscript{64}

The Penal Code is silent on attempted piracy. But the general inference of the penal law suggests that attempted piracy is punishable in Tanzania.\textsuperscript{65} Thus, a person in the ship or vessel registered in Tanzania is guilty of attempted piracy if for example, with intention to commit piracy, begins to put his intention into execution by say loading the gun, and manifests his intention by some over act like start pulling the trigger, but does not fulfil his intention of shooting by circumstances independent of his will. Upon conviction, the

\begin{itemize}
  \item \textsuperscript{61} See Section 66-(1) of the Penal Code
  \item \textsuperscript{62} According to Section 205 of the Penal Code, a person is deemed to have caused the death of another person if the death caused by the direct act or commission occurs within a year and a day from the day which the unlawful act contributing to the cause of death was done.
  \item \textsuperscript{63} According to Section 203 of the Penal Code a person is deemed to have caused death if (a) s/he inflicts bodily injury on another in consequence of which that other person undergoes surgical or medical treatment which causes death; in this case it is immaterial whether the treatment was proper or mistaken if it was employed in good faith and with common knowledge and skill (b) if s/he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as his/her mode of living (c) .......... (d) if by any act or commission s/he hastens the death of a person suffering under any disease or injury which apart from that act or commission would have caused death
  \item \textsuperscript{64} See Section 197 of the Penal Code
  \item \textsuperscript{65} See Section 380 of the Penal Code
\end{itemize}
offender of attempted piracy is liable to imprisonment for seven years.\textsuperscript{66}

**c) Powers of the Director of Public Prosecution**

Prosecution of the person who commits piracy as defined by the Penal Code cannot be commenced unless the Director of Public Prosecution (DPP) consents.\textsuperscript{67} The power of the DPP with regard to piracy proceedings was not accidentally conferred upon. The nature of the crime of piracy puts public interests at stake as it may, at its critical level, involve political and diplomatic dynamics as it may involve foreigners and such aspects as payment of ransoms. Therefore criminal proceedings concerning piratical acts are likely to affect Tanzania’s relations with foreign states and external tranquillity.\textsuperscript{68} In that light there has been a statutorily established procedural requirement that any proceeding for the trial of any foreigner who commits an offence within territorial waters of Tanzania shall not be instituted in court except with the leave of the DPP and upon his/her certificate that it is expedient that such proceedings should be instituted.\textsuperscript{69} Also the nature of the crime of piracy involves complex legal issues and processes. Thus, the power of the DDP was put in place to prevent any possible abuse of ends of justice or legal process and to protect public interests.

It is noteworthy that in all his/her endeavours, the DPP is required to have regard to public interest, interests of justice and the need to prevent abuse of the legal process.\textsuperscript{70} However, in the absence of clear definition of public interest and the broad discretion conferred upon the DPP, his/her power to commence or terminate piracy proceedings is unreasonably wide. It should be noted that even the Court can not review the decision of the DPP not to commence piracy proceedings. It is equally the abuse of the ends of justice for the law to

\textsuperscript{66} Section 382 of the Penal Code reads, *Any person who attempts to commit an offence of such a kind that a person convicted of it is liable to the punishment of death or imprisonment for a term of fourteen years or more, with or without other punishment, is guilty of an offence and is liable if no other punishment is provided, to imprisonment for seven years.*

\textsuperscript{67} See Section 66-(2) of the Penal Code (Chapter 16 of the Laws of Tanzania)

\textsuperscript{68} The Title under which the offence of piracy falls in the Penal Code reads “Offences Affecting Relations with Foreign States and External Tranquility”

\textsuperscript{69} See Section 94-(1) of the Criminal Procedure Act (Act No 9 of 1985)

\textsuperscript{70} See Section 90-(3) of the Criminal Procedure Act (Act No 9 of 1985)
explicitly stipulate that the DPP is subject to directions and control of the President.\(^\text{71}\) That allows political aspects to prevail over purely judicial matters.

(c) Piracy and Armed Robbery

(aa) Definitional Scope

In principle, the definition of piracy under the Penal Code is identical to the definition of “Armed Robbery against Ships” adopted by International Maritime Organisation (IMO) in the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships (The Code of Practice).\(^\text{72}\) Both instruments cover unlawful acts of violence directed against ship (or vessels), persons or property on board such ships within state’s jurisdiction. The terms which defines armed robbery against ships in the Code of Practice are also similar to the definition of armed robbery in the Penal Code except that the latter clearly prescribes that the offender should have stolen and/or assaulted a person before or after the violence and s/he must have been armed with any dangerous or offensive weapons.\(^\text{73}\) The latter proposition therefore excludes situations where passengers or crew members of the ship are held hostages solely for demanding ransoms or for expression of grievances. The contexts of violence against ship in Tanzania between 2005 and 2009 as reported by ICC International Maritime Bureau suggest that they categorically fall in the ambit of armed robbery pursuant to the Penal Code. In most reported cases the offenders are armed with knives and steal the cargo.\(^\text{74}\)

\(^\text{71}\) Section 95 of the Criminal Procedure Act (Act No 9 of 1985) states: In the exercise of the powers conferred upon him under this section, the Director of Public Prosecutions shall have and exercise and exercise his own discretion and shall not be subject to directions or control of any person except the President.

\(^\text{72}\) Article 2.2 of the Code of Practice defines Armed Robbery against Ships as “any unlawful act of violence or detention or any act of depredation or threat other than an act of piracy directed against a ship or against persons or property on board such ship, within a States jurisdiction over such offences”.

\(^\text{73}\) See Section 285 and 287-(2) of the Penal Code (Chapter 16 of the Laws of Tanzania)

\(^\text{74}\) For example, on 14 February 2009 five robbers armed with knives boarded Safmarine Zambezi at anchor in Dar es salaam. They tied up two duty crew, took their personal belongings and then opened a container and stole the cargo. (See The Report for the Period of January-September 2009 of the ICC International Maritime Bureau on Piracy and Armed Robbery Against Ships at item 5 in page 63. The report is available at [www.icc-ccs.org](http://www.icc-ccs.org)
(bb) Punishment

Prosecuting a “pirate” for armed robbery instead of piracy pursuant to the Penal Code is advantageous because it fills the *lacuna* in cases where the offence of “Piracy” cannot stand because the ship concerned is not registered in Tanzania and the person committing the offence is not a citizen of Tanzania. This is evidently reasonable because out of 34 ships attacked in Tanzania between 2005 and 2009 only 3 had been registered in Tanzania.\(^{75}\) In cases where the ship concerned is registered in Tanzania or the act is committed by a Tanzanian, the choice of offence to charge with a person who commits an act of violence against the ship and person(s) onboard has consequences on the severity of the punishment. If the person is found guilty and convicted for “piracy” s/he shall be liable to life imprisonment while if s/he is found guilty and convicted for “armed robbery” the liability ranges from fifteen years (with corporal punishment) to life imprisonment.\(^{76}\)


(a) Piracy: Definitional Scope

Tanzania substantially incorporated the provisions of Article 101 of UNCLOS through the Merchant Shipping Act of 2003. It is a *prima facie* political progress in recognition and fulfilment of international obligation in combating the long-outlawed enmity of mankind-piracy. Seemingly, the provisions of the legislation appear to serve as a general policy against piracy rather than alluring judicial enforcement to the problem. The legislation confines itself to the definitional ambit of piracy and does create the offence nor does it provide for punishment. Except for the overall title preceding the whole part of the legislation which reads *Offences Against the Safety*, nothing in the entire provision criminalizes piracy. It should be noted that according to the methods of statute interpretation in Tanzania titles and introductory words do not constitute part of statute.\(^{77}\)

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\(^{76}\) See Section 66-(1) and 287-(2) of the Penal Code (Chapter 16 of the Laws of Tanzania)

\(^{77}\) See Section 8 of the Interpretation of Laws and General Clauses (Act No. 30 of 1972) which reads “
If at all piracy is to be regarded as an offence in the statute is by its vague mention in section 344-(2) (a) of “any offence under section 341 or 342”, the former being the provision which covers piracy. But as a matter of law and practice charges must point out the provision which is contravened by the offender. For this case, it should be section 341 and relying on any other section would be defective in criminal proceedings. The vagueness of the legislation has exculpatory effect to persons who commit piracy and prosecuted under the legislation. This is in the light of the canon of construction of penal statutes which requires interpretation to be in favour of the accused in case of such vagueness. The canon requires the judiciary to adhere to precise prescription of the specific provision instead of to the meaning induced from the general purpose or legislative intention of the statute.79

(b) Implications on Criminal Proceedings

The omission to explicitly criminalize and provide for punishment against piracy is a fundamental setback in engaging judicial mechanisms in suppressing the problem. As it stands, pirates will be acquitted or discharged for judicial technicalities. Courts have long been wedded with the principle of nullum crimen sine lege which means that no conduct may be held criminal unless it is precisely prescribed in a penal law. Similar to that is a well established principle that no person may be punished except in pursuant with the statute which prescribes a penalty-nulla poena sine lege.80 Even in the ancient Roman jurisprudence which suggested unlimited discretion of the judiciary for extraordinary offences, there was definite insistence on the precise prescription of both offence and penalty.81 It follows, therefore, that strict adherence to prescription by the statute is of paramount importance in the judicial process in matters which implicate criminal

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78 Section 344 generally covers Master’s Powers of Delivery. The section confers powers upon the Master of a ship to deliver the person who committed offences in the ship to appropriate authorities in Tanzania.
80 Ibid at p.28
81 Ibid at p.29
Hence the Merchant Shipping Act of 2003 does not precisely prescribe the offence and penalty for piracy, the judiciary will most likely construe that the Legislature did not intend to attribute criminal responsibility with its provisions on piracy. Pursuant to the principle of legality the judiciary is required to avoid the derivations of wide meanings which express the general policy of a statute and adhere to its explicit prescription.\textsuperscript{82} The inference that the Legislature did not intend to criminalize piracy per Merchant Shipping Act is well established because it did explicitly criminalize and penalize the offence of hijacking which falls in the same part with the provision covering piracy in the legislation.\textsuperscript{83}

The abstinence is further manifested by the lesser sentence it attracts for not prescribing the punishment for ‘piracy’. The legislation provides that a person who commits an offence against it, for which no specific is provided, shall be liable to a fine of not less than one thousand US dollars or to imprisonment for a term not exceeding six months or both such fine and imprisonment.\textsuperscript{84} If it is established that piracy is an offence pursuant to the legislation, the legislature will be responsible for setting double standard of penalty which will have the effect of labelling piracy in high seas as a “high class” crime. While a person who commits piracy contrary to the Penal Code is subjected to life imprisonment; the person who commits “piracy” contrary to the Merchant Shipping Act is liable for only six-month imprisonment or can secure his/her liberty by paying the prescribed fine. The latter sentence falls far below the severity of penalties given to pirates worldwide and thus manifestly infringes the deterrent effect which those penalties seek.\textsuperscript{85} Hence it solidifies the inference that the legislation merely intended to provide a definitional scope of piracy and

\textsuperscript{82} Ibid at p.37
\textsuperscript{83} See section 342- (6) which states A person who contravenes the provisions of this section, commits an offence under this section and shall be liable upon conviction to imprisonment for life.
\textsuperscript{84} See Section 401-(1) of the Merchant Shipping Act (Act No 21 of 2003)
\textsuperscript{85} In Kenya for example the punishment for piracy is life imprisonment (see http://www.cphpost.dk/news/international/89-international/45494-kenya-agrees-to-take-captured-pirates.html last visited on 14 December 2009). Equally the punishment for piracy in the United States is life imprisonment (See http://209.85.135.132/search?q=cache:lBhlwRmY5M0J:online.wsj.com/article/SB123923550659203341.html+The+punishment+for+piracy+against+U.S.+ships+or+persons+is+life+in+prison.+&cd=2&hl=en&ct=clnk last visited on 14 December 2009)
not to punish piracy by the provisions of the Merchant Shipping Act.

As far as piracy is concerned, the Merchant Shipping Act did not seem to opt for judicial mechanism in repressing and eradicating the problem. The legislation progressively highlights the ingredients of piracy as recognized by international law as it considerably reproduces the provisions of UNCLOS with regard to piracy. One can reach to the conclusion that the Legislature placed priority to the solution of the problem in the high seas and in places outside the jurisdiction of any state, and not on land, at least not in Tanzania’s land. That means the role of warships, snipers and sailors were more appreciated instead of prosecutors, magistrates and judges. The trend does not seem to infringe UNCLOS whose article 105 is not mandatory but rather suggestive as it provides…*The courts of the State which carried out the seizure may decide upon the penalties to be imposed.*\(^6\) The trend, however, infringes Tanzania’s obligation towards the Djibouti Code of Conduct on which it was one of the first nine signatories. Among other obligations the Code requires signatories to ensure that persons committing or attempting to commit acts of piracy are apprehended and prosecuted.

In the wake of rampancy of acts of piracy and armed robbery in territorial waters and the high seas off the coast of Somalia, UNSC adopted resolution 1846 (2008) calling upon states to use all necessary means to repress the acts of piracy and armed robbery at sea in the area. Unlike the soft law regime, the UNSC Resolution binds Tanzania to implement its obligations under it. To implement its obligation under the Resolution the sole legislation that could possibly be embarked is the Merchant Shipping Act of 2003. While by *all necessary means* one would reasonably include bringing the pirates to justice, the Merchant Shipping Act is not without confines to that effect. The part of the legislation which covers piracy is limited to acts occurring in the high seas and places outside the jurisdiction of any

\(^6\) The whole Article 105 of UNCLOS reads “*On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.*”
state. Therefore, if at all piracy is an offence pursuant the legislation, the aspects of all necessary means pronounced in the Resolution can not be implemented if the acts of piracy occurred within the territorial waters of Somalia except where the act of piracy is committed by the citizen of Tanzania, where criminal responsibility will be laid pursuant to the Penal Code.

It is manifestly obvious that the Merchant Shipping Act was crafted in the light of UNCLOS and therefore refrains to extend jurisdiction beyond the high seas or international waters. It did not anticipate the situation where a state consents to the repression of piracy in its territorial waters like Somalia pursuant to UNSC Resolution 1846 (2008). The abstention is justifiable since the UNSC Resolution came into force five years after the enactment of the Merchant Shipping Act. Before the UNSC Resolution, the enforcement jurisdiction by any state could not validly extend to territorial waters of Somalia even in cases of hot pursuit of a pirate vessel. Also prior to the UNSC Resolution state practice suggested that states were against the extension of enforcement jurisdiction to territorial waters of the state mostly affected by piracy. Indonesia, for example, had previously rejected suggestions of extending other states’ enforcement jurisdiction to counter piracy within those parts of the Malacca Straits falling within its territorial waters.

Therefore, the Merchant Shipping Act was a bona fide reflection of the well-established principle of non interference in the internal affairs of a sovereign state. Although the Merchant Shipping Act does not fit in the context set by UNSC Resolutions regarding Somalia, it was created in the light of then widely celebrated reluctance to extend the definition of piracy to acts of violence in the territorial waters of a failed state. Such an extension was firmly opposed and China went further to warn against considering the UNSC Resolutions 1816, 1838, 1846 and 1851 as a precedent. It is thereby argued that if

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87 See Section 341-(3) of the Merchant Shipping Act (Act No 21 of 2003)
88 See Section 66-(b) of the Penal Code
89 See Article 111 of UNCLOS
the definition of piracy is to be broadened, the task should not be vested in the UNSC rather, it should be incorporated into a new treaty. The proponents of the reluctance point out that the prerogatives vested with the UNSC to determine the use of force does not extend to legislative role.

However, the Merchant Shipping Act progressively places Tanzania in a position to possibly arrest people who commit acts of piracy in the territorial waters and the high seas off the coast of Somalia. The legislation provides that the master of any ship can handle over a person who has committed, attempted, or taken part in the act of piracy or hijacking to the police officer or immigration authorities in Tanzania. However, the provision seems impractical in the real sense. It is a key ingredient of piracy that the crew or passengers committing piracy to be in dominant control of the (pirate) ship. Thus it is impractical that the master of the ship will be able to take the pirates all the way from the high seas off the coast of Somalia to Tanzania without subjecting oneself to unlawful acts of violence.

The Merchant Shipping Act refrains to confer jurisdiction upon Tanzania's courts to try and punish piracy committed in the high seas by foreigners unless such an offence was committed on board Tanzanian ship. This defeats the concept of universal jurisdiction which has long been attached to the offence of piracy by law of nations. The legislation opted to assign jurisdiction upon Tanzania's courts only in cases where a citizen of Tanzania commits piracy in the high seas. With the rampancy of piracy in the high seas worldwide in which only four victim ships were of Tanzanian nationality, the legislation contributes to impunity for pirates who should otherwise be tried universally under the law of nations. This is an indication of part fulfillment of international counter piracy obligations by Tanzania.

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92 See the whole Section 344 of the Merchant Shipping Act (Act No 21 of 2003)
93 See Article 103 of the UNCLOS and Section 341-(1) (c) of the Merchant Shipping Act (Act No 21 of 2003)
94 See section 406 of the Merchant Shipping Act (Act No 21 of 2003)
(3) Tanzania’s Legal Framework with Respect to Offences associated with Piracy

(a) Forfeiture and Confiscation of Proceeds of Crime

Pirates often attack ships and rob properties therein. In some cases, a ransom is paid for safe release of crew members or passengers onboard. Proceeds of piracy are used to finance more attacks or are laundered to conceal criminality. Tanzania’s legal framework is considerably well tailored to tackle these secondary offences. Thus, any property that is derived or realized from the directly or indirectly from the commission of piracy is liable for forfeiture or confiscation upon conviction of the pirate. Tanzania can also execute forfeiture order issued by a foreign country if the order is duly registered pursuant to the laid down procedure. The law confers powers upon court to lift the corporate veil in determining issued related to the involved property. Thus, in assessing the proceeds of the piratical act, the court may treat as property of the “pirate” and that is subject to her/his effective control whether or not s/he has right, interest, power or privilege in the property.

(b) Anti-Money Laundering

Laundering of proceeds of piracy is statutorily prohibited and punishable in Tanzania. Thus, a person is criminally liable for money laundering if s/he converts, transfers, transports, transmits or acquires property with knowledge that such property is the proceeds of piracy for the purpose of concealing or disguising its illicit origin. A person is equally liable if s/he assists a “pirate” to evade the legal consequences related to the proceeds of piracy. The anti-money laundering legal framework represents a crucial step to prevent

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95 See Section 91-(1) of the Proceeds of Crime Act (Act No 25 of 1991). Note that “serious offence” includes, per section 6 (b), any “Specified Offence” the latter is defined in Section 3 to include the offence of Money laundering, which according to the Money Laundering Act covers the predicated offence of “Piracy”
96 See Section 18-(1) and (2) of the Proceeds of Crime Act (Act No 25 of 1991)
97 See Section 23-(1) (a) and (b) of the Proceeds of Crime Act (Act No 25 of 1991)
98 See Section 12 of the Anti-Money Laundering Act (Act No 12 of 2006). This Section must be read together with Section 3 which defines “Predicate Offence” to include “Piracy”
99 See Section 12-(b)-(d) of the Anti-Money Laundering Act (Act No 12 of 2006)
100 Section 12-(b) of the Anti-Money Laundering Act (Act No 12 of 2006)
the cycle of crimes which flourish piracy. However, it is favorably effective only in circumstances where the pirates use formal institutions to transfer or acquire property or ransoms. Proceeds of piracy can be easily concealed or laundered if the pirates opt for informal banking arrangements such as *hawala system*\(^\text{101}\) which are anonymous and require minimal documentation. It is thus a challenge for the Tanzania’s law enforcement machinery to supplement the progressive law to trace undocumented transactions of the proceeds of piracy honored by trust.

**c) Prevention of Terrorism**

International law suggests a fundamental distinction between piracy and terrorism. In the legal and conceptual context terrorism, unlike piracy, requires the existence of a political or ideological motive. At the Tanzania’s national level the fundamental legal distinction of the two phenomena are clearly stipulated. Generally, motive to commit an offence is immaterial in Tanzania’s criminal justice unless the motive is expressly declared to be an element of the particular offence.\(^\text{102}\) However, the Prevention of Terrorism Act expressly prescribes that an act shall constitute terrorism only if the act is committed with a terrorist intention.\(^\text{103}\) Moreover, its provisions are overriding as they have effect notwithstanding any inconsistency with any other law in Tanzania.\(^\text{104}\)

However, the distinction must not dismiss the possibility of a nexus between piracy and terrorism in the laws of Tanzania. At its highest level, the laundering of proceeds of piracy can seriously destabilize economic or social structures of a country. Therefore in case where it is established that such destabilization was intended by the offender in the course of committing the piratical act the crime would constitute terrorism according to the provisions of the Prevention of Terrorism Act.\(^\text{105}\) Tanzania’s Legislature had contemplated the link between piracy and money laundering as it explicitly prescribed that piracy is a

\(^{101}\) It is an informal remittance system which allows the transfer of funds both domestically and internationally without using formal financial institutions. The transaction is secured by the trust between the parties with no legal means of reclamation

\(^{102}\) See Section 10-(2) and (3) of the Penal Code (Chapter 16 of the Laws of Tanzania)

\(^{103}\) See section 4-(2) of the Prevention of Terrorism Act (Act No 21 of 2002)

\(^{104}\) See Section 11 of the Prevention of Terrorism Act (Act No 21 of 2002)

\(^{105}\) See Section 4-(2) (b)(iii) of the Prevention of Terrorism Act (Act No 21 of 2002)
“predicate offence” to money laundering. Similarly, provision or collection of proceeds of piracy to fund terrorist acts is punishable as terrorism. However, it remains the discretion of the courts to determine the prerequisite *mens rea* where it is alleged that the piratical act constituted terrorism. The contexts of the piratical acts in Tanzania are far below the terrorist threshold however, the current legal framework is solidly tailored to tackle the issue.

106 See Section 3 of Anti Money Laundering Act (Act No 12 of 2006)
I: Introduction

The Djibouti Code of Conduct which Tanzania is a signatory requires the participating counties to adhere to international law when affording their cooperation in various aspects of counter piracy. Since international law encompasses customary law and treaties which protect and guarantee human rights and fundamental freedoms, it is reasonable to conclude that Tanzania must accord persons who have committed piracy or are reasonably suspected of having committed piracy right to a fair trial. That is to say, they must be presumed innocent, accorded minimum rights recognized in criminal justice and tried in a public hearing before an independent and impartial court within a reasonable time. This part observes Tanzania’s criminal and justice system to determine its consistence/y and conformity to international law in the course of repressing piracy.

II. Arrest

(1) Competent Authorities

The laws of Tanzania confer powers of arrest to designated public authorities as well as private persons. In principle police officers, immigration officers, member of Tanzania
intelligent security services, justices of peace and even private persons can arrest a person who have committed piracy or is reasonably suspected of having committed piracy, subject of course, to some limitations.\textsuperscript{112} The matter is well established if the person is suspected to have committed piracy within the territory of Tanzania. In that incidence, even the magistrate can arrest the suspect if the act occurred within local limits of his/her jurisdiction.

The Tanzania’s legal framework provides for the possibility of competent authorities to arrest pirates outside Tanzania. The Criminal Procedure Act provides that a police officer or a private person may, without warrant, arrest any person whom he reasonably suspects of having been concerned in any act at any place out of Tanzania.\textsuperscript{113} The core qualification is that the offender must be liable to be apprehended and detained in Tanzania, and that the act concerned, if committed in Tanzania, would have been punishable as an offence. Regardless whether piracy is a punishable under the Merchant Shipping Act, the suspects of piracy are liable to be apprehended and detained in Tanzania pursuant to abovementioned provision because piracy is punishable under the Penal Code, and Tanzania is duty bound internationally to arrest, investigate and prosecute pirates.\textsuperscript{114} The circumstance in which a pirate can be arrested by Tanzania’s authorities outside Tanzania is where there is or there will be reciprocal provision in any contiguous country which authorize the police of Tanzania to enter such country in pursuit of a person who has committed piracy \textit{by law of nations} in Tanzania.\textsuperscript{115} Also a police officer or immigration officer may arrest a person reasonably believed to have attempted to commit, participated or committed piracy and is delivered by the master of the ship involved.\textsuperscript{116}

\begin{itemize}
\item \textsuperscript{112} See Section 28-(2) of the Prevention of Terrorism Act (Act No. 21 of 2002), See also section 47 of the Magistrates’ Courts Act (Act No 55 of 1963).
\item \textsuperscript{113} See Section 14 -(f) of the Criminal Procedure Act (Act No 9 of 1985)
\item \textsuperscript{114} Inference drawn from the UNSC Resolution 1846 (2008) at paragraph 10-(b) \textit{all necessary means}, and the obligations stipulated in the Djibouti Code of Conduct- \textit{to fully co-operate in the arrest, investigation and prosecution of persons who have committed piracy or are reasonably suspected of having committed piracy}
\item \textsuperscript{115} See Section 3 of the Fugitive Offenders (Pursuit) (Act No 1 of 1969). The section applies only to extradition crimes. According to the Extradition Act (Act No 15 of 1965) Piracy \textit{by laws of nation} is an extradition crime.
\item \textsuperscript{116} See Section 344-(2) and 344-(8) of the Merchant Shipping Act (Act No 21 of 2003)
\end{itemize}
The international trend, however, shows that the counter piracy mechanisms pertain to navies. This is likely to generate detrimental consequences in the judicial proceedings because navies are generally not trained to carry out judicial procedures such as collecting evidence and receiving confessions. Tanzania is not an exception to the phenomenon. The only venue which would allow navies to exercise the duties and powers of a police officer is in case of occurrence of a riot or disturbance of peace and the military forces are called out for service in aid of the “civil” authority.\textsuperscript{117} The prerequisite for the deployment of the military in aid of the civil power is the establishment that the riot or disturbance of the peace is likely to be beyond the powers of the civil authorities to suppress or prevent. In such case, although they assume powers and duties of a police officer, the forces can only act militarily and are individually liable to obey the orders of their superior officers.\textsuperscript{118} Considering the contextual elements of piratical acts it is difficult to establish that they would give rise to riot or disturbance of the peace beyond the capability of the police force to prevent or suppress. Moreover, even where the circumstances call for the deployment of the military in such civil duty it is unlikely to serve the judicial ends because the military force will be under the order and supervision of their superiors who are most likely not trained to perform judicial duties such as collection of evidence and receiving confessions. The power to receive confessions is exclusively vested upon police officers, magistrates and justices for peace.\textsuperscript{119}

\textit{(2) Illegal Arrests}

The legal framework impliedly prohibits the use of force in the course of criminal justice. The law bars the admission of evidence obtained by force.\textsuperscript{120} But any confession obtained on ground of threat will be accepted in court unless the court is of the opinion that the threat

\textsuperscript{117} See Section 21-(1) and 22 of the National Defence Act (Act No 24 of 1966). The Act extends and applies in Tanzania Mainland as well as Zanzibar.
\textsuperscript{118} See Section 22 of the National Defence Act (Act No 24 of 1966)
\textsuperscript{120} See Section 27 of the Evidence Act (Act No 6 of 1967); The Act is applicable to all judicial proceedings in Tanzania

Mainland in or before the High Court and all magistrates’ courts except Primary Courts,
was likely to cause untrue admission.\textsuperscript{121} The solidly established principle is that the conviction on a retracted or repudiated or both retracted and repudiated confession will follow only where the court is satisfied that the confession cannot but be true.\textsuperscript{122} However, courts are given absolute discretion to admit evidence which contravenes or failed to comply with the law if it is in the public interest.\textsuperscript{123} The standard of determination is that of balance of probability. By setting such low threshold, the law gives a room for arbitrary discretion whereby the rights of persons charged with piracy will be prejudiced when public interest is inappropriately invoked as justification. The usurping of rights of those accused of piracy in the name of public interest is likely to be measured in low standard due to the fact that Tanzania has not ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT). According to Tanzania's criminal procedural law, a person suspected of committing piracy whose arrest contravenes the well-established standards of arrests can institute civil suit against the arresting person or authority.\textsuperscript{124} Generally, the arresting office will not be criminally responsible on the ground of illegal arrest, although s/he may be subjected to disciplinary action.\textsuperscript{125}

\textbf{(3) Public Interest}

The constitution of Tanzania allows derogation from basic rights of the individual in public interest.\textsuperscript{126} However, the highest court in the land set a principle that any law that allows derogation should not be arbitrary, and it should be proportional in the sense that the limitation should not be more than reasonably necessary. It is suggestible, therefore, that the procedure in allowing the derogation should not be arbitrary, unfair or unreasonable. It is true pirates are enemies of mankind, but not always acts of piracy can reasonably be

\textsuperscript{121} See Section 29 of the Evidence Act (Act No 6 of 1967); The Act is applicable to all judicial proceedings in Tanzania Mainland in or before the High Court and all magistrates' courts except Primary Courts.

\textsuperscript{122} The Courts in Tanzania have been widely citing with approval the decision of the Supreme Court of Uganda in \textit{Matovu Musa Kassim vs Uganda} (Criminal Appeal No 27 of 2002) which laid down the principle.

\textsuperscript{123} See Section of 169 of the Evidence Act (Act No 6 of 1967); The Act is applicable to all judicial proceedings in Tanzania Mainland in or before the High Court and all magistrates' courts except Primary Courts.

\textsuperscript{124} See Section 6-(3) (c) of the Criminal Procedure Act (Act No 9 of 1985).

\textsuperscript{125} See Section 6-(2) and 6-(3) (a) of the Criminal Procedure Act (Act No 9 of 1985).

\textsuperscript{126} See Article 30-(2) of the Constitution of the United Republic of Tanzania of 1977 (as amended)
construed to endanger the interests of defence, public safety, public order, public health, public morality, development or public benefit. The typical captured suspected pirates are young boys without sophisticated weaponry. It is reportedly that the masterminds of the crime are not on trial.\textsuperscript{127} Therefore, the courts should exercise due diligence in allowing derogation of pirate's human rights and fundamental freedoms on the basis of public interest or national security. The derogation should only stand if the court is satisfied after considering all material points and the surrounding circumstances of the case that the national security or public interest reasonably and manifestly attracts prevalence over fundamental freedom of a suspect or an accused.

III. Bail

Bail is a qualified right in Tanzania. Under certain circumstances bail is prohibited. Hence, the person will not be admitted to bail if the unlawful act constituting piracy s/he committed in Tanzania or elsewhere would, if committed in Tanzania, be construed to endanger national safety and interest.\textsuperscript{128} However, the prohibition follows if the person has been charged under the National Security Act. Also a suspect of piracy will be denied bail if the piratical act s/he committed constitute the act of terrorism.\textsuperscript{129} It is possible for the piratical act to constitute terrorism in Tanzania because the law broadly define terrorism to include an act or threat of action which involves serious bodily harm, serious damage to property, or endangers person's life if the act or threat is done with a terrorist intention.\textsuperscript{130} It should be noted that this is only applicable if the terrorist act constituting piracy is committed by a Tanzanian within or outside Tanzania.\textsuperscript{131} Or where the terrorist act is committed by a non Tanzanian in what is construed and gazetted as an “act of international terrorism”\textsuperscript{132}

\textsuperscript{128} See Section 19 of the National Security Act (Act No 3 of 1970)
\textsuperscript{129} See Section 148-(5) of the Criminal Procedure Act (Act No 9 of 1985) as amended by Section 149 of the Prevention of Terrorism Act (Act No 21 of 2002)
\textsuperscript{130} See Section 4-(3) (a), (b) and (c) of the Prevention of Terrorism Act (Act No 21 of 2002)
\textsuperscript{131} See Section 2- (2) and 4-(1) of the Prevention of Terrorism Act (Act No 21 of 2002)
\textsuperscript{132} See Section 12-(7) of the Prevention of Terrorism Act (Act No 21 of 2002)
The laws on piracy in Tanzania do not prescribe the acts that constitute piracy. However, inference can be drawn from the wording of the provisions that cover the offence of hijacking that act of violence (which is a core ingredient in the offence of piracy) means any act done in [or outside] Tanzania which constitutes the offence of murder...\(^{133}\) If that is a correct proposition, it means any person who is accused of committing a piratical act which constitute the offence of murder cannot, according to Tanzania's laws, be admitted to bail.\(^{134}\) Equally a person will not be granted bail if the piratical act for which s/he is charged consists of a serious assault or threat of violence to another person or if the pirate was in possession of firearm or an explosive.\(^{135}\) According to the provisions of the Children and Young Persons Act, a juvenile under the age of sixteen charged for piracy under the Penal Code would not qualify for release on bail because the penalty for such offence(s) exceeds seven years imprisonment.\(^{136}\) However, the Inspector General of Police is required to ensure that the juvenile is prevented while in custody from associating with adult offender unless such adult is a relative.\(^{137}\)

The nature, means and circumstances under which the acts of piracy are committed further complicates the issues related to bail even if the concerned piratical act is bailable. For foreign pirates who are tried in Tanzania it is difficulty to be released on bail on their recognizance because their appearance on trial cannot be reasonably guaranteed. By virtue of their status it is difficult to monitor their movement as they are likely not to be in possession of authentic identification and permanent residential address. Also releasing the suspects of piracy on bail in a foreign land without well established arrangement on their welfare and protection would subject them into engaging in more crimes and endanger their safety. The issue is further complicated with the fact that it is difficulty for the foreign persons accused of piracy to execute bond on the property involved in the commission of the offence, for example the pirate ship, because it is a subject matter and part of evidence in the material case. Taking of properties involved in the crime of piracy as bond for bail is likely to deprive the rights of bonafide third parties whose ships, aircrafts or properties

\(^{133}\) See Section 342-(7) (a) and (b) of the Merchant Shipping Act (Act No 21 of 2003)

\(^{134}\) See Section 148-(5) (a) of the Criminal Procedure Act (Act No 9 of 1985)

\(^{135}\) Section 148-(5) (e) of the Criminal Procedure Act (Act No 9 of 1985)

\(^{136}\) See Section 4 of the Children and Young Persons Act (Chapter 13 of the Laws of Tanzania).

\(^{137}\) See Section 5 of the Children and Young Persons Act (Chapter 13 of the Laws of Tanzania).
were used in committing the crime without their knowledge of facts about the crime.\textsuperscript{138}

Moreover, officials in their respective embassies or consulates would, in principle, be not allowed to be sureties of the persons accused of piracy because of the former cannot be held responsible by the virtue of their diplomatic immunities when the accused jump bail.

\textbf{IV Juvenile Proceedings}

If the dynamics of piracy in the Gulf of Eden represents a phenomenon in the region, it can be concluded that most pirates in action are juveniles.\textsuperscript{139} This calls for application of human rights as regards juveniles in criminal proceedings. In Tanzania no criminal responsibility can be attributed to a person under the age of twelve years who commits a piratical act unless it is established that s/he had the capacity to know that s/he ought not to commit the crime.\textsuperscript{140} Moreover, any criminal proceeding that involves an accused person under the age of sixteen years is supposed to he conducted in juvenile court.\textsuperscript{141} In that case the proceedings will be conducted in a different building or room from that in which the ordinary sittings of the court are held. However, since the nature of piracy often involves joint acts and the Penal Code criminalizes conspiracy juvenile pirates are likely to be jointly charged with adult pirates in which case the former’s rights to a separate proceeding will be derogated.\textsuperscript{142} It should be noted that the Merchant Shipping Act is silent on conspiracy to commit piracy.

In case where a juvenile is convicted for piracy in which no homicide resulted the court may order his/her conditional discharge on own recognizance, with or without sureties, to be of good behavior and to appear for sentence when called upon at any time during such period, not exceeding three years.\textsuperscript{143} Sentencing imprisonment for a juvenile under the age

\begin{itemize}
\item[\textsuperscript{138}] This will contravene Article 105 of UNCLOS which requires the courts to exercise due regard to the rights of third parties acting in good faith when such courts determine actions to be taken with regard to ships, aircrafts or properties involved in the commission of piracy.
\item[\textsuperscript{140}] See section 15-(2) of the Penal Code (Chapter 16 of the Laws of Tanzania)
\item[\textsuperscript{141}] See section 3-(1) of the Children and Young Persons Act (Chapter 13 of the Laws of Tanzania)
\item[\textsuperscript{142}] Ibid
\item[\textsuperscript{143}] See section 18-(1) of the Children and Young Persons Act (Chapter 13 of the Laws of Tanzania)
\end{itemize}
of sixteen is the matter of last resort. It could only happen if none of other legally suitable methods are available.\textsuperscript{144} However, alternative punishment seems to apply only where a juvenile is convicted of an offence other than homicide or other than an offence punishable with imprisonment for a term exceeding seven years.\textsuperscript{145} The fact that piracy is punishable for life imprisonment under the Penal Code, suggests that a juvenile pirate will be liable for imprisonment regardless of his/her maturity. In that case however s/he may be committed to custody to an approved school. As far as practically possible, where a juvenile pirate is sentenced to imprisonment s/he shall not be allowed to associate with adult prisoners even those s/he was jointly charged with.\textsuperscript{146} As far as Merchant Shipping Act is concerned the juvenile pirate would qualify for alternative punishment other than imprisonment if the piratical act did not result to homicide because the penalty prescribed for piracy therein is less than seven years.\textsuperscript{147} Equally, a juvenile would qualify for alternative punishment other than imprisonment in case of attempted piracy under the Penal Code because the punishment thereof does not exceed seven years.

The safeguards for the rights of juvenile are not in all cases strictly observed in Tanzania. Although Tanzania has ratified the Convention on the Rights of the Child (CRC), it has not enacted a domestic legislation to incorporate the standards, measures and safeguards of CRC. The Government of Tanzania has acknowledged the severe problem of holding juveniles together with adult prisoners.\textsuperscript{148} There are also reports of beating and sexual abuses on juveniles both in police custody and prisons.\textsuperscript{149} As of December 2008 there was

\begin{itemize}
  \item \textsuperscript{144} See section 22-(2) of the Children and Young Persons Act (Chapter 13 of the Laws of Tanzania). Alternative methods include discharging the juvenile without making any order; ordering the juvenile to be repatriated; ordering the juvenile to be handed over to the care of a fit person or institution or ordering the juvenile be committed to custody to an approved school
  \item \textsuperscript{145} See section 23 of the Children and Young Persons Act (Chapter 13 of the Laws of Tanzania)
  \item \textsuperscript{146} See section 22-(3) of the Children and Young Persons Act (Chapter 13 of the Laws of Tanzania)
  \item \textsuperscript{147} Since the Act did not prescribe penalty for piracy the offender is liable for six month imprisonment or fine at the tune of $1000 or both imprisonment and fine ( See section 401-(1) of the Merchant Shipping Act (Act No 21 of 2003)
  \item \textsuperscript{149} In Zanzibar police officials fired officer Pandu Ndame for the rape of a 13-year-old; school girl at the police station; There was also a case of rape of a 15-year- old female prisoner, and the investigation of the rape of a schoolgirl inside a police station. (See the 2008 Human Rights Report: Tanzania by the US Department of State (Bureau of Democracy, Human Rights and Labor available at http://www.state.gov/g/drl/rls/hrrpt/2008/af/119028.htm )
only one facility for convicted juveniles which were mainly used for male convicts while male juveniles awaiting trials were held in one of five remand homes.\textsuperscript{150} Juveniles are not often accorded legal representation in criminal proceedings and there is a considerable lack of qualified personnel for the welfare of juveniles.\textsuperscript{151} Steps have been taken to improve juvenile and adult prison conditions with the establishment of the Department of Public Complaints. The unit is vested with the responsibility to visit detainees and prisoners with a view to identify core problems and to seek durable solutions.\textsuperscript{152}

\textbf{V: Investigations}

Counter piracy mechanisms in waters have long been overwhelmingly executed by navies. However, with the escalating trend to shift the solution from sea to land, the role of other authorities, other than navies has also been appreciated. Increased prosecutions of pirates call for the role of trained investigators to ensure justice is manifestly and effectively done. In Tanzania, general investigative powers are vested with the police force. Pending current reforms, police officers have even been carrying out prosecution roles as public prosecutors. Police officers are conferred with powers to arrest, search, seize offensive weapons, grant bail, collect evidence, and to receive confessions.\textsuperscript{153} Therefore, the police force would play a vital role in the process of prosecuting pirates. However, Tanzania’s investigative machinery is less likely to cope with the contemporary piracy dimensions unless the personnel and facilities at their disposal are improved especially with the sophisticated Somali piracy extending south off Somali coast. With the ratio of one policeman for three thousand people (1:3000) Tanzania’s police force is far below the

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\textsuperscript{150} According to the Report of the Commission for Human Rights and Good Governance (CHRAGG) published in July 2009, out of eighty one (81) detention facilities which CHRAGG visited only four (4) had separate facilities for juveniles.


\textsuperscript{153} See Section 14, 24, 27, and 64 of the Criminal Procedure Act (Act No 9 of 1985); Section 27 and 28 of the Evidence Act (Act No 6 of 1967).
\end{flushleft}
international standard and does not guarantee efficiency in combating crimes.\textsuperscript{154} Shortage of personnel is not the sole problem of Tanzania’s police, but there are also concerns about the level of investigative skills and inefficiency in collecting evidence. Tanzania’s police force concedes that in 2007 out of 88,527 reported criminal incidents only 30,946 were taken to court of which thirty percent (30\%) were successful while eleven percent (11\%) of the cases were dropped for lack of evidence.\textsuperscript{155} Therefore there need to be comprehensive improvements in the Tanzania’s police force to effectively contain escalating piracy in territorial waters of Tanzania and high seas.

The current investigative and judicial burden in carrying out criminal justice in Tanzania implies potential reluctance to receive piracy offenders other than those apprehended and detained by Tanzania’s authorities. Delayed investigations and shortage of judicial facilities and personnel lead to lengthy pre-trial detention and overcrowding of detention facilities. According to the Ministry of Home Affairs (Tanzania), the detention facilities in Tanzania currently accommodate 45,000 inmates while the holding capacity is 22,669 inmates.\textsuperscript{156} In the worst scenario the overcrowding is higher for 1295.5 percent and detention condition remain life threatening and harsh.\textsuperscript{157} The average waiting time from apprehension to completion of trial is estimated at five years and there were complaints that some inmates have spent more than ten (10) years in remand awaiting completion of investigations.\textsuperscript{158}

\textsuperscript{154} The International Ratio is 1: 400-700, and the ratio in developed countries is 1: 250-350. See the Tanzania’s Police Crime Report 2007 at http://www.policeforce.go.tz/index.php?option=com_content&task=view&id=218&Itemid=74 (last visited on 24 November 2009)
\textsuperscript{156} See the website of the Ministry of Home Affairs at http://www.moha.go.tz/index.php?option=com_content&view=article&id=20&Itemid=11 (last visited on 24 December 2009)
\textsuperscript{158} See Tanzania Human Rights Report 2007, Incorporating Specific Part on Zanzibar at page 26. The report was prepared by Legal and Human Rights Centre (LHRC) and Zanzibar Legal Service Centre. It is available at http://alpha.web2-netshine-hosting.co.uk/~lhrc/index2.php?option=com_docman&task=doc_view&gid=13&Itemid=56 (last visited on 4 December 2009) See also http://www.state.gov/g/drl/rls/hrrpt/2008/af/119028.htm (last visited on 04 December 2009)
Inasmuch the Tanzania’s justice system is bearing a huge burden it would overload the system if it seeks to receive offenders outside its territorial jurisdiction either for prosecution or serving of sentences. The possibility of receiving pirates convicted in other countries should not be dismissed merely because it falls outside the scope the Mutual Assistance in Criminal Matters Act. It should be born in mind that such Act does not prevent the provision of criminal assistance by Tanzania arranged independently of its scope.\(^{159}\) And any arrangement that would accord suspected or convicted pirates special treatment over other Tanzania’s inmates will likely spark massive protests. Special treatment in prison accorded to former government officers had in the past sparked nationwide protests with inmates boycotting court sessions and going on hunger strike.\(^{160}\)

**VI Jurisdiction of Courts**

In Tanzania the deliverance of justice is wholly and exclusively vested by Constitution in the Judiciary.\(^{161}\) Jurisdiction to try and punish piracy differs depending on the nature and circumstances under which the acts constituting piracy occurred or the manner which proceeds of piracy were acquired. For piracy as defined under the Penal Code, the district courts and resident magistrates’ courts have original jurisdiction and the proceedings thereof are limited and regulated by the Criminal Procedure Act.\(^{162}\) As for piracy occurring in the high seas or international waters or committed in the foreign port or ship by a Tanzanian and the offender is found within the jurisdiction of court in Tanzania, such courts shall have jurisdiction to try the offence as if such offence was committed on board a Tanzanian ship within the limits of its ordinary jurisdiction.\(^{163}\) In case where the offender is not a citizen of Tanzania the proceedings shall not be commenced without the consent of the DPP.

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\(^{159}\) See section 5 of the Mutual Assistance in Criminal Matters Act (Chapter 254 of the Laws of Tanzania)


\(^{161}\) See Article 107A of the Constitution of the United Republic of Tanzania of 1977 (as amended)

\(^{162}\) See section 37 (a) of the Magistrates' Courts Act (Act No 55 of 1963)

\(^{163}\) See section 406 (a) and (b) of the Merchant Shipping Act (Act No. 21 of 2003)
For piratical act which constitutes terrorism the case would be triable and punishable by the High Court.\textsuperscript{164} Since the legislation which seeks to prevent terrorism is applicable in Tanzania Mainland and Tanzania Zanzibar, it suggests that by High Court it refers to the High Court of Tanzania and, the circumstances determine, the High Court of Zanzibar. In such situation no prosecution can be instituted except by or with the consent of the DPP. There may be a case in which a person is found in possession of or having control over any property which was acquired during the commission of piracy or by way of purchase with funds obtained through ransoms paid for piratical act.\textsuperscript{165} The judicial authorities may choose to try the offence as an economic crime in which case the prosecution and determination of penalty will be held by the High Court sitting as the Economic Crimes Court. Also no trial in that respect may be commenced unless the DPP consents.

\textsuperscript{164} See section 34-(1) of the Prevention of Terrorism Act (Act No 21 of 2002)
\textsuperscript{165} See the First Schedule S-4(1)(b) and S-4(2)(b) of the Economic and Organized Crime Control Act (Act No 13 of 1984)
D: EXTRADITION AND MUTUAL ASSISTANCE ON PIRACY: TANZANIA’S FRAMEWORK

I. Extradition

Piracy by law of nations is an extradition crime in Tanzania.\textsuperscript{166} Thus where there is bilateral agreement between Tanzania and the country in which piracy (as defined by law of nations) was committed, the suspect, accused, or convict thereof who is in or is suspected of being in Tanzania shall be liable to be arrested, detained and surrendered. The law resolves any contention over issues of jurisdiction as it clearly prescribes that liability to that effect lies whether there is or is not any concurrent jurisdiction in a court in Tanzania over the crime of piracy.\textsuperscript{167} The warrant to arrest the “pirate” shall be issued on information and evidence or proceedings which justify the issue of the warrant. However, the law seems to usurp the judicial role in matters of justice and places it to political figures instead. Under the law the Minister responsible for legal affairs may cancel the warrant of arrest issued by the magistrate against the suspect of piracy whose surrender is sought, and thereby order his/her discharge.\textsuperscript{168} Except where the alleged crime is of political character (piracy is far less likely to fall in this category), there is no well-established procedure or guidelines to ensure that the discretion of the Minister is not arbitrary, unfair or unreasonable.

The willingness of the states to cooperate to repress piracy through extradition is not without difficulty. The first problem is related to reciprocity required in extradition process. For many states extradition remains bilateral treaty based, rather than offence based and with no specific recognition accorded to piracy. No so many such agreements do exist among the countries which should be engaged in the frontline in the fight against piracy due to their proximity to the area largely affected by the crime-off the Somali coast.\textsuperscript{169} Also

\begin{itemize}
\item \textsuperscript{166} See the Schedule of the Extradition Act (Act No 15 of 1965)
\item \textsuperscript{167} See Section 4-(b) of the Extradition Act (Act No 15 of 1965)
\item \textsuperscript{168} See Section 6 (2) of the Extradition Act (Act No 15 of 1965)
\item \textsuperscript{169} For example Ethiopia which is a signatory to the Djibouti Code of Conduct has only extradition agreements with Djibouti and Sudan among all signatories of the Code. A relatively limited range of countries have extradition arrangements with Kenya. See http://www.iss.co.za/pubs/Other/ahsi/Goredema_Botha/pt1chap5.pdf (last visited on 16 November
\end{itemize}
some states’ laws on extradition are based on outdated model which relatively limit the arrangements of extradition agreements.\textsuperscript{170} The willingness to fight piracy is further contradicted with the existence of death penalty in some countries like Tanzania.\textsuperscript{171} Therefore, extradition requests are likely to be denied by the sending state if the piratical acts under which the extradition is sought attract death penalty to the offender in the receiving state. It is noteworthy that among the 17 states which adopted the Djibouti Code of Conduct 4 countries have outlawed death penalty\textsuperscript{172}, 4 countries sanction death penalty by law but has not been the practice for more than ten years (\textit{de facto} ban)\textsuperscript{173} and 9 countries permit death penalty.\textsuperscript{174} Tanzania’s legal framework on extradition could also be supplemented by other schemes which favorably incorporate streamlined process for extradition. By virtue of its membership of Commonwealth Tanzania could engage other members in the fight against piracy through the London Scheme which binds Commonwealth States.\textsuperscript{175}

\section*{II Mutual Assistance in Criminal Matters}

Tanzania’s legal framework accommodates mutual provision and obtaining of assistance in substantial and incidental aspects of piracy. Aspects covered by the framework include evidence, identification of suspects or witnesses, confiscation or forfeiture of property, recovery of pecuniary penalties, provision and service of documents and investigations.\textsuperscript{176} However, the required reciprocity associated with the framework is likely to hinder the

\begin{itemize}
\item \textsuperscript{170} See for example the Kenya’s Extradition (Commonwealth Countries) Act (Chapter 77) and the Extradition (Contiguous and Foreign Countries) Act (Chapter 76).
\item \textsuperscript{171} In Tanzania there is a \textit{de facto} ban on death penalty because although death penalty is sanctioned by law there has not been execution for more than ten years. See \url{http://www.infoplease.com/ipa/A0777460.html} last visited on 8 December 2009
\item \textsuperscript{172} Djibouti, France, Seychelles and South Africa; See \url{http://www.infoplease.com/ipa/A0777460.html} last visited on 8 December 2009
\item \textsuperscript{173} Kenya, Tanzania, Madagascar and Maldives; See \url{http://www.infoplease.com/ipa/A0777460.html} last visited on 8 December 2009
\item \textsuperscript{174} Comoros, Egypt, Ethiopia, Jordan, Oman, Saudi Arabia, Somalia, Sudan, and Yemen; See \url{http://www.infoplease.com/ipa/A0777460.html} last visited on 8 December 2009
\item \textsuperscript{175} Five states which adopted the Djibouti Code of Conduct in January 2009 are members of the Commonwealth (South Africa, Kenya, Maldives and Seychelles)
\item \textsuperscript{176} See Section 4 (a)-(j) of the Mutual Assistance in Criminal Matters Act (Chapter 254 of the Laws of Tanzania)
\end{itemize}
implementation of the willingness to repress piracy by judicial enforcement. For example, the willingness by Tanzania to engage in mutual assistance in criminal aspects of piracy with Kenya will be rendered nugatory because there is no mutual assistance legal framework in Kenya.\(^{177}\) In the lack of such reciprocity, Tanzania should fulfill its obligation to repress through regional arrangements such as the East Africa Police Chiefs Co-operation Organization (EAPCCO). The latter provides a broad platform on which police agencies pledges to cooperate in the exchange of crime rated information, technical assistance and crime prevention.\(^{178}\) By virtue of their memberships to the Commonwealth five among 17 states which adopted the Djibouti Code of Conduct in January 2009 are bound by the well-established framework on mutual assistance in criminal matters\(^{179}\). The Harare Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth. The framework sufficiently accords supplementary assistance in criminal matters among Commonwealth members where other mechanisms are rifled.

**III Hot Pursuit**

By being an extradition crime in Tanzania, *piracy by law of nations* allows any contiguous country to authorize Tanzania’s police to enter such country in pursuit of pirate upon satisfaction that there exists or will exist, in such country, reciprocal provision made by or under law.\(^{180}\) The prescription *piracy by law of nations*\(^{181}\) implies that the authorization to pursue by Tanzania’s police may also stem from the commission of piracy in the high seas. Although the law allows exceptions and conditions for the framework, it is *prima facie* evident that it requires reciprocal provision or legitimate promise of enactment by the contiguous country. This infers that the pursuit will be legitimate only in the existence of the reciprocal legislation or an agreement made by or under the legislation and therefore excludes memoranda of understanding (MoUs) entered between countries which are not derived from a particular legislation. This negates the possibility of Tanzania’s police to

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177 See [http://www.iss.co.za/pubs/Other/ahsi/Gorekema_Botha/p1chap5.pdf](http://www.iss.co.za/pubs/Other/ahsi/Gorekema_Botha/p1chap5.pdf) at p 45 (last visited on 16 November 2009)

178 See [http://www.iss.co.za/pubs/Other/ahsi/Gorekema_Botha/p1chap5.pdf](http://www.iss.co.za/pubs/Other/ahsi/Gorekema_Botha/p1chap5.pdf) at p 44 (last visited on 16 November 2009)

179 Tanzania, Kenya, South Africa, Maldives and Seychelles

180 See section 3 of the Fugitive Offenders (Pursuit) Act (Act No. 1 of 1969)

181 See the Schedule of the Extradition Act (Act No 15 of 1965) which prescribes extradition crimes.
pursue pirates in territories where there is no legislative machinery to enact reciprocal provisions like Somalia. It remains a challenge, therefore, for the willing states to build the capacity of the Somali Transitional Federal Government (TFG) to establish stable legislative machinery which accommodates reciprocity in the fight against piracy. Once such legislations are put in place, the capacity of the enabling authorities should also be strengthened otherwise the whole machinery will be ineffective. To exemplify the need of effective authorities, a pirate who is to be extradited to Somalia would be discharged if s/he is not conveyed out of Tanzania within one month after the date of the order of his/her extradition.182

The legal venue that allows pursuit of persons who commit piracy by law of nations by Tanzania’s police solely applies in duo basis and does not seem to provide a venue for a third party engagement. Even the exceptions and modifications that may be sought to relax the framework must be founded on such reciprocal provision made by or under the particular legislation in the contiguous country.183 Therefore the framework cannot apply in circumstances where the agreement is entered between Tanzania and another state for the benefit of another state(s). The defect is curable under the Chapter VII UNSC Resolutions like Resolutions 1846 of 2008 which authorizes cooperating states to territorial waters of Somalia for the purpose of repressing acts of piracy. However, such resolutions are not eternal and the dynamics of piracy change with time, it is therefore ideal for states whose proximity attracts prone to piracy to enact sustainable reciprocity of legislations which accommodate bilateral mechanisms to counter piracy. This approach is worth consideration because, as International Maritime Bureau (IMB) concedes, the majority of attacks against ships take place within the territorial waters of states.184

IV Tanzania’s Police Officers Serving in a Foreign Country

182 See section 15-(1) of the Extradition Act (Act No 15 of 1965)
183 Note that the Minister responsible for legal affairs in Tanzania may, by order published in the Government Gazette, the framework for pursuit apply with exceptions, conditions or qualifications [(See section 3 of the Fugitive Offenders (Pursuit) Act (Act No. 1 of 1969)
Tanzania’s police officers are statutorily allowed to serve in a foreign country.\textsuperscript{185} The condition precedent for such service is that the requesting state must prove that there exists or will exist reciprocal arrangements made by such country in favour of the Government of Tanzania.\textsuperscript{186} Such provisions must be or will be made in the law of the requesting country and must confer upon Tanzania’s police officers powers and duties of police officers in such country. Moreover, such provisions must enable courts of such country to hear and determine charges and inflict penalty against Tanzania’s police officers in their acts which would be offences if they were committed in Tanzania.\textsuperscript{187} Like in the case of pursuing pirates in the territorial waters of another country, mechanisms under this provision requires a stable legislative and judicial systems with clear powers to enact laws and well-established courts. This framework can not be capitalized to arrest pirates in failed states like Somalia whose legislature and judiciary do not meet the threshold stipulated in the Tanzania’s law.

Equally, the framework negates the legality of arrest of pirates by Tanzania’s police officers operating in the ship whose nationality is the country with reciprocal arrangement, if the arrest is done in the territorial waters of a third state which has no reciprocal arrangement with Tanzania. In that case the act of arrest by Tanzania’s police officer(s) will be \textit{utra vires} because the framework is founded on duo basis. In case of the arrest of pirate(s) made in the high seas by Tanzania’s police officers onboard a ship whose nationality is the country with reciprocal arrangement, the prosecution of the pirate(s) involved will depend on the attribution of command of the Tanzania’s police officer(s).

Generally, Tanzania’s police officers working outside Tanzania are statutorily required to be under the orders of Tanzania’s superior commander and are subject to the laws of Tanzania as regards policing.\textsuperscript{188} In that case the resulting prosecutions and determination

\textsuperscript{185} See Section 91-(1) and (2) of the Police Force and Auxiliary Services Act (Chapter 322 of the Laws of Tanzania). The provisions apply for countries sharing borders with Tanzania; however the Minister responsible for legal affairs may declare any country to be a neighboring country for the purposes of the Act.

\textsuperscript{186} See Section 91-(1) of the Police Force and Auxiliary Services Act (Chapter 322 of the Laws of Tanzania).

\textsuperscript{187} See Section 94 (a)-(c) of the Police Force and Auxiliary Services Act (Chapter 322 of the Laws of Tanzania)

\textsuperscript{188} See Section 93-(1) of the Police Force and Auxiliary Services Act (Chapter 322 of the Laws of Tanzania).
for penalty may be held in Tanzania because the effective control of Tanzania’s authority over the police officers is well attributable. The prosecution and the determination of penalty thereto will be consistent with the provisions of UNCLOS which confers discretion on courts of the state which carried out the seizure and arrest to decide upon the penalties to be imposed upon arrested pirate(s). However, the law regulating external policing provides the possibility of Tanzania’s police officers to be under the control of the superior commander of the country with which Tanzania has entered reciprocal arrangement. Since effective control of these police officers is not attributable to Tanzania in that case, it implies that no consequential prosecution can lie in Tanzania against the arrested pirate(s) in the light of Article 105 of UNCLOS—which in principle requires the state which carried out the seizure or arrest to determine penalty to be inflicted on such pirate(s).

The laws regulating pursuit of offenders and external policing would apply in case the Minister responsible for legal affairs is satisfied that there will be a law in the foreign country which will regulate reciprocal arrangements accordingly. However; both laws do not prescribe the guidelines for such discretionary powers. Therefore, it solely rests on the Minister to determine on a matter which is, in its nature, anticipatory. In Tanzania, no prosecution is invalidated solely for reason of illegal arrest however this might allure constitutional or civil proceedings in cases where the anticipation of the Minister is unreasonable or is exercised arbitrarily or tyrannically. This could happen in cases where there were no reasonable or probable cause to believe that such reciprocal law would be enacted within a reasonable time and the consequential prosecutions thereof ends in favour of the pirate(s) in which case the whole process causes serious denial of justice to the arrested pirate(s).

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189 See Section 105 of UNCLOS
190 See Section 93-(1) of the Police Force and Auxiliary Services Act (Chapter 322 of the Laws of Tanzania)
191 See Section 3 of the Fugitive Offenders (Pursuit) Act (Act No. 1 of 1969) and 91-(1) and (2) of the Police Force and Auxiliary Services Act (Chapter 322 of the Laws of Tanzania)
CONCLUSION

The use of arms to on merchant vessels has, in the past, been ruled out as the way to fight piracy. The use of arms, it was stated, escalates the violence from pirates and increases the risks to crew members. The proposition suggests that nonviolent measure should prevail in the fight against piracy. Inflicting violence to pirates does not go to the roots of piracy and does not break the chain of incidental crimes which flourish piracy. The financiers of piracy and people who launder ransoms obtained from piracy are barely the ones committing the acts of piracy themselves. Therefore, the fight against piracy should be concentrated on the land and not at sea. Harmonized body of laws should be put in place at the national and regional levels which tackle both substantial and incidental aspects of piracy. However, this cannot be achieved if the investigative and judicial systems do not guarantee efficiency and conformity to human rights. As it was observed by then U.N. High Commissioner for Human Rights Mary Robinson when law and order has broken down individuals feel that they can commit atrocious crimes without fear of legal sanction. If the legislative, investigative and judicial machineries permit impunity for principal and accessory piracy cycles of crime will flourish and create long term socio-economic chaos. Judicial mechanisms in dealing with the dimensions of piracy would remedy the other mechanisms, like payment of ransoms, which are themselves “fuelling the growth of piracy”. Full eradication of piracy can be achieved with devotion to increase the capacity of judicial systems and law enforcements to deter and prevent piratical attacks in light of international law and human rights law. However, political, economic and social stability remains the long term solution to the problem.

192 See the International Association of Independent Tanker Owners (INTERTANKO) statement cited in the Report for the Period of January-September 2009 of the ICC International Maritime Bureau on Piracy and Armed Robbery Against Ships at p 41. The report is available at www.icc-ccs.org
193 Ibid
195 Mary Robinson, Genocide, War Crimes, Crimes Against Humanity, 23 Fordham International Law Journal 1999, at pages. 275, 277, & 278
196 See paragraph 2 of UNSC Resolution 1846 (2008):
ANNEX

PERTINENT LEGAL PROVISIONS

PENAL CODE

Piracy

66-(1) Any person who—

(a) does any unlawful act of violence against a ship or vessel registered in United Republic or against persons or property on board that ship or vessel; or

(b) being a citizen of Tanzania does any unlawful act of violence against any ship or vessel or against any person or property on board that ship or vessel; or

(c) Voluntarily participates in the operation of a ship, vessel or aircraft for the purpose of doing any act referred to in paragraph (a) or (b),

shall be guilty of the offence termed "piracy" and shall be liable on conviction to imprisonment for life.

(2) No prosecution under this section shall be commenced without the consent of the Director of Public Prosecutions.

Punishment for Murder

197-Any person convicted of murder shall be sentenced to death

Definition of Robbery

285 Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony termed "robbery"

Punishment for robbery

286. Any person who commits robbery is liable to imprisonment for twenty years and If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he is liable to imprisonment for life, with or without corporal punishment.

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(1)……

(2) If the offender is armed with is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the assault, he uses any personal violence to any person, he is liable to
imprisonment for life, but in any case, to a term of not less than seven years and not exceeding twenty years, with corporal punishment.

**MERCHANT SHIPPING ACT**

**Piracy**

341.- (1) In this Part-
“Piracy” means-
(a) any act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed-
(i) against another ship or aircraft, or against persons or property on board such ship or aircraft; or
(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any voluntary act of participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; or

(c) any act of inciting or of intentionally facilitating an act described in paragraph (a) or (b);

“pirate ship or aircraft” means a ship or aircraft under the dominant control of persons who-
(a) intend to use such ship or aircraft for piracy; or
(b) have used such ship or aircraft for piracy, so long as it remains under the control of those persons; and

“private ship” and “private aircraft” means a ship or aircraft that is not owned by the Government or held by a person on behalf of, or for the benefit of, the Government.

(2) Piracy committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft is assimilated to piracy committed by a private ship or aircraft.

(3) This part applies to aircraft only when they are on the high seas, that is to say, in those parts of the sea, to which Part VII of the United Nations Convention on the Law of the Sea 1982 is applicable in accordance with Article 101 of that Convention.

**Hijacking**

342.- (1) Subject to subsection (5), a person who unlawfully and intentionally, by the use of force or by threats of any kind, seizes a ship or exercises control of it, commits an offence of hijacking a ship.

(2) Subject to subsection (5), a person commits an offence if he unlawfully and intentionally-
(a) destroys a ship;
(b) damages a ship or its cargo so as to endanger or to be likely to endanger the safe navigation of the ship;
(c) does on board a ship an act of violence which is likely to endanger the safe navigation of the ship; or
(d) places or causes to be placed on a ship any device or substance which is likely to destroy the ship or is likely so to damage it or its cargo as to endanger its safe navigation.

(3) Nothing in paragraph (d) of subsection (2) shall be construed so as to limit the circumstances in which the commission of any act-
(a) may constitute an offence under paragraphs (a), (b) or (c) of subsection (2); or
(b) may constitute attempting or conspiring to commit, or aiding, abetting, counseling, procuring or, inciting, or being part in, the commission of an offence under paragraphs (a), (b) or (c) of subsection (1);

(4) Subject to subsection (5), subsections (1) and (2) shall apply-
(a) in respect of the ship referred to in those subsections whether is in Tanzania or elsewhere;
(b) whether any such act as is mentioned in those subsections is committed in Tanzania or elsewhere; and
(c) whatever the nationality of the person committing the act.

(5) The provisions of subsections (1) and (2) shall not apply in relation to any warship or any other ship used as a naval auxiliary or in customs or police service, or any act committed in relation to such a warship or such other ship unless-
(a) the person seizing or exercising control of the ship under subsection (1), or committing the act under subsection (2), as the case may be, is a Tanzanian citizen;
(b) the act is committed in Tanzania; or
(c) the ship is used in the customs service of Tanzania or in the service of the police force in Tanzania.

(6) A person who contravenes the provisions of this section commits an offence under this section and shall be liable upon conviction to imprisonment for life.

(7) In this section-
"act of violence" means-
(a) any act done in Tanzania which constitutes the offence of murder, attempted murder, manslaughter, or assault; or
(b) any act done outside Tanzania which, if done in Tanzania would constitute such an offence as is mentioned in paragraph (a); and

"unlawfully" means-
(a) in relation to the commission of an act in Tanzania, the omission of an act which constitutes an offence under the law of Tanzania; and
(b) in relation to the commission of an act outside Tanzania, the commission of the act that would have been an offence under the law of Tanzania if it had been committed in Tanzania.

(8) The Minister may make regulations to provide for ships and port security.

(9) In making regulations under subsection (8), the Minister shall have regard to the provisions of International Convention for the Safety of Life and Sea, 1974.

343.- (1) Subject to subsection (8), it shall be an offence for any person involving unlawfully or intentionally

(a) to destroy or damage any property to which this subsection applies; or
(b) to interfere with the operation of any such property, if the destruction, damage or interference is likely to endanger the safe navigation of any ship.

(2) The provisions of subsection (1) shall apply to any property used for the provision of maritime navigation facilities, including any land, building or ship so used, and any apparatus or equipment so used, whether it is on board a ship or elsewhere.
(3) Subject to subsection (8), it shall be an offence for any person intentionally to communicate information that endangers the safe navigation of any ship.

(4) It shall be a defence for a person charged with an offence under subsection (3) to prove that, when he communicated the information, he was lawfully employed to perform duties which consisted of or included the communication of information and that the information communicated was in good faith in performance of those duties.

(5) A person commits an offence if-
(a) in order to compel any other person to do or abstain from doing any act, he threatens that he or some other person will do in relation to any ship an act which is an offence by virtue of section 342(2)(a), (b) or (c); and
(b) the making of that threat is likely to endanger the safe navigation of the ship.

(6) Subject to subsection (8), a person commits an offence if-
(a) in order to compel any other person to do or abstain from doing any act, he threatens that he or some other person will do an act which is an offence by virtue of subsection (1); and
(b) the making of that threat is likely to endanger the safe navigation of any ship.

(7) Except as provided for by subsection (8), the provisions of subsections (1), (3), (5) and (6) shall apply in respect of any such act as is mentioned in those subsections whether is committed in Tanzania or elsewhere and whatever the nationality of the person committing the act.

(8) For the purposes of subsections (1), (3) and (6)(b), any danger or likelihood of danger, to the safe navigation of a warship or any other ship used as a naval auxiliary or in customs or police service shall be disregarded unless-
(a) the person committing the act is a Tanzanian citizen;
(b) the act is committed in Tanzania.

Master’s Power of Delivery

344. (1) This section shall have effect in any proceedings before the Court
(2) Where the master of a ship, wherever that ship may be, and whatever the State (if any) in which it may be registered, has reasonable grounds to believe that any person on board the ship has -
(a) committed any offence under section 341 or 342;
(b) attempted to commit such an offence under section 341 or 342; or
(c) aided, abetted, counseled, procured or incited, or been at and part in, the commission of such an offence, in any ship other than a warship or other ship used as a naval auxiliary or in customs or police service, he may deliver that person to an appropriate officer in Tanzania or any other Convention country.

(8) In this section -
"appropriate officer" means -
(a) in relation to Tanzania, a police officer or immigration officer; and
(b) in relation to any other Convention country, an officer having functions corresponding to the functions, in Tanzania, either of a police officer or of an immigration officer; and