



IMO INTERNATIONAL MARITIME LAW INSTITUTE



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LAWS OF KENYA
Bill No. 1 OF 2007
PIRACY AND MARITIME OFFENCES ACT

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EXPLANATORY NOTE

Introduction

“In the eyes of many of the law enforcement agencies, life at sea is a lot cheaper than life ashore”¹

This statement reflects the true state of affairs as far as international commitment to combat the evil of piracy and maritime violence is concerned. In 2005 alone, piratical attacks worldwide resulted in the following tragic consequences: 453 persons taken hostage or kidnapped, 24 injured, 12 missing, 182 ships boarded, 19 ships fired upon, and 23 ships hijacked.²

The primacy of security in the International maritime community’s list of concerns over the last five years has resulted in an extensive programme to revitalize the legal framework of maritime security in International Law. This legal framework today consists principally of provisions found in three conventions: the United Nations Convention On the Law of the Sea (1982 UNCLOS), The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) 1988, and the International Convention for the Safety of Life at Sea (SOLAS) 1974. In 2005, IMO adopted wide ranging amendments to SUA and earlier in 2002 a comprehensive package of SOLAS amendments relating to maritime security were also introduced. The above mentioned Conventions touch on maritime security issues but regrettably do not specifically address the growing problem of piracy and maritime violence.

¹ Sinister Seas “Part II- Pirates” Dir. Roel Oostra. 1 episode, Close Up. NOB. The Netherlands. 10 Feb 2000 as cited in *The Rising Tide Of Modern Piracy and Maritime Violence* by Stephen E Spratt. At p (vii)

² ICC International Maritime Bureau Piracy and armed robbery against ships: annual report 1 Jan – 31 Dec 2005

Furthermore, any international perspective on piracy will be complicated by the “confusion” of International Law- both as codified in the Convention of the Law of the Sea (1982 UNCLOS), and as customary law- and domestic laws. Alongside the analytical desirability of reconciling international and municipal law there exists a practical requirement for international action for at least two reasons. Firstly, although piracy is essentially a local phenomenon, it tends to occur in parts of the world where resources to deal with it are scarce, and some international, or at least regional, mechanism is therefore necessary to enhance these resources. Secondly, the victims of piracy are usually the ship, its crew and cargo owners living in countries far away from those in which the offences took place.³

The executive council of the Comité Maritime International (CMI), at its Nov 1997 meeting, approved a proposal made by the Maritime Law Association of USA to consider formation of a working group to be charged with drafting a Model National Law concerning piracy.

The principal objective of the draft Model National Law is to ensure that no act of piracy or maritime violence falls outside the jurisdiction of affected states to prosecute and punish these crimes or, alternatively, to extradite for prosecution in another state. It may be noted, however, that the legal inability to effectively prosecute the accused in several recent incidents, notably the case of the ALONDRA RAINBOW in 1999, illustrates the need for a Model National Law.

The second objective of the draft Model National Law is to ensure that it will assist in giving full effect

- (a) to the provisions relating to piracy contained in 1982 UNCLOS

³ “Piracy At Sea”, Eric Ellen Q.P.M., IMB, at p29

(b) to the 1988 Convention for the Suppression of Unlawful Acts against Safety of Navigation (SUA Convention) for those states which have ratified or accede to the convention.

A third objective is that the provisions of the SUA Convention (and, where appropriate the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988-SUA Protocol) will also be uniformly applied as national law in those states enacting the Model National Law and which are not parties to either the convention or protocol.

Finally, the draft Model Law seeks to ensure that all incidents falling under its definitions of crime of piracy and maritime violence are reported to the proper national authorities and that this information is in turn, relayed onward to the competent International Organization⁴

Piracy-The history

As has been observed elsewhere, piracy may well be the world's oldest third oldest profession, medicine being the second oldest.⁵ Piracy is an age old offence. References to it were made in Justinian's Digest in 529 AD, in King John's Ordinance of 1201, and in numerous European Laws from then on. Britain's first Piracy Act came in 1698 and was followed by further Acts in 1721, 1837 and 1850. The Territorial Waters Jurisdiction Act of 1878 finally preserved the offence of piracy *jure gentium* under English Law.⁶

Piracy is most familiar to us from the romantic literature of our childhood, in the form it took in the 17th to 19th centuries when pirates operated from distant ports or uninhabited coasts and islands, preying on the commercial explorers of a period when most navies lacked the skills and equipment to dominate the oceans. Sometime States even licensed

⁴ CMI YB 2000 at p 415

⁵ D. Botting, *The Pirates*, Time Life Books, Amsterdam, 1978, p 22, cited in "Piracy At Sea", Eric Ellen Q.P.M., IMB, at p 131

⁶ Territorial Waters Jurisdiction Act 1878, 41 &42 Vict.,C.90, *ibid*, p 131

piratical acts: corsairs were commissioned to commit piratical acts against the enemies of their country.⁷ Pirate ships, once captured, could be commissioned as privateers to plunder ships of the same flag as the original attackers; in retaliation. However, this practice was ended by the Treaty of Paris in 1856.⁸

According to Mr. John Grissim of the Washington Post:⁹

Piracy has been a fact of marine life ever since humans first took to the seas. In Roman times, Julius Caesar was captured and held prisoner by pirates. During the Dark Ages (476-1000 AD), sea raider were the scourge of the coastal walled cities of Greece. Throughout the middle Ages, the Vikings were most feared pirates of the Baltic and North Seas. From 700 A.D. to the early 18th century, Muslim Pirates, the corsairs, held sway along North Africa's Barbary Coast from Algiers to Tripoli, while in the Far East the pirate chieftain Ching Yih terrorized the East and South China Seas in the late 1700s. In the new world, the heyday of piracy dawned early in the 16th century. For nearly two centuries the Spanish Main, notably the Caribbean Sea was a rich and bloody hunting ground, giving rise to rogues gallery of notorious characters that included Henry Morgan, Blackbeard (Edward Teach) and the Buccaneers of Hispaniola.

Piracy has adapted to modern technical, political, economic and social developments and still flourishes, albeit in new forms which require new means for its suppression. Not only are pirates a threat to the existing global economy they also frequently resorted to such unbridled savagery in the attacking and plundering of vessels, crew and passengers without discrimination that they have come to be regarded as *hostes humani generis*¹⁰, enemies of the whole human race. It was accepted, therefore, by all States that jurisdiction over piratical acts should be universal, that is to say that the vessels of any State could apprehend them and that any State into whose jurisdiction the pirates were brought or found could try and punish them under its laws, even though the offence had

⁷ H.A Smith , The Law and Custom of the Sea, Longmans, Green & Co. Ltd., London, p 402, *ibid*, p132

⁸ Declaration of Paris 1856 'General Treaty of Peace between France, Great Britain and Russia', British & Foreign State Papers, Vol. 46, p 26, *ibid*

⁹ "Yo-Ho-Ho, a Ski Mask and Gun: Modern Day Pirates are Terrorizing the High Seas." Washington Post June 22, 1997, as cited in The Rising Tide Of Modern Piracy and Maritime Violence by Stephen E Spratt. At p 2

¹⁰ C.J.Colombos, The International Law of the Sea, Longmans, Green & Co. Ltd., London, 1962, p 406, *opcit*, p 135

been committed beyond the generally accepted scope of national jurisdiction, namely, at that period, on the high seas. The basis of the international law establishing piracy *jure gentium* was to protect community interests in economic development and humanitarian standards.

Controversy, however, still surrounds the jurisprudential basis of this universal jurisdiction. Some take the view that despite the uniqueness of its designation by international customary law as an offence against the whole human race, piracy is not a crime. The compilers of the Harvard Research Draft on the subject commented that it is not a crime against the law of nations but generates a unique solution – a special ground of jurisdiction permitting the exercise of a states own national laws , the actual exercise of jurisdiction being dependent on the will and national laws of States.¹¹ Others doubt whether it can be regarded as a crime because of the absence of any international criminal court or a treaty to which all states are a party; other writers, on the other hand, have no hesitation in referring to it as a crime, because of the heinous nature of the acts performed, and in attributing the basis of universal jurisdiction to this perception.¹²

Piracy- Definition

Piracy and maritime violence are large, complex and multi-faceted problems, requiring a “ground up” approach before any realistic solution can be determined. As with many other types of ungainly problems, a simple three-step process may be employed to assist in affecting a resolution. First, the issue must be identified and substantiated. An inherent part of this process is the definition and common understanding of exactly what the problem is. Second, common and consistent laws and procedures must be established and incorporated by the various States involved. Upon completion of the first two steps, methods of enforcement must be established and put into motion.

¹¹ Harvard Research in International Law, Draft Convention on Piracy with comments, AJIL, Vol.26, 1932, Supplement, p 749

¹² League of Nations Committee of Experts for the Progressive Codification of International Law so categorized it; League of Nations Document, vol. 5 , 1926, P 2, Reprinted in AJIL, Vol.20, 1926, p223, as cited in opcit, p136.

As piracy has already been established as a very real threat to modern shipping, the next integral step is the determination of a common definition of what piracy actually is. Once this common understanding has been achieved, nations can accurately determine not only how often these incidents occur, but also come to a consensus on how to adequately manage and combat them on an international scale.

The word pirate is derived from the Greek word “peiran,” which means, “to attempt to attack”. The Encyclopedia of Nautical Knowledge defines piracy as:

Depredations on property, pillage, or robbery conducted on the high seas in defiance of all constituted authority and law.

The ICC-IMB defines piracy as “an act of boarding or attempting to board any ship with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act”¹³

Attempts to clarify the situation by codifying the international law of piracy in the 1958 Geneva Convention on the High Seas and the 1982 UNCLOS have further confounded matters since the definitions adopted are narrow ones, not consonant with all States’ laws, and have been expressed in somewhat ambiguous terms. First, it limits piracy to crimes committed against private property or citizens. Second, the act must occur in international waters. Third, greed must be the motivating factor behind the crime.¹⁴ However the 1982 UNCLOS definition is perhaps the most comprehensive definition currently available.

Every State can promulgate its own laws on piracy, applicable, of course, only to its own nationals or to ships or persons found within its own jurisdiction or vessels registered under its flag. These may conform to the international definition of the offence or piracy *jure gentium*. Every State is entitled, but not obliged, to assume jurisdiction over pirates’ *jure gentium* on the high seas. States can prescribe their own penalties; these are not laid down by international law.¹⁵

¹³ ICC-IMB 1998 Piracy Report 1

¹⁴ Pirates and Privateers, Cindy Vallar., <http://www.cindyvallar.com/modern3.html>>1st December 2006

¹⁵ D.P.O’Connell, in Shearer, ed, The International Law of the Sea, Clarendon Press, Oxford, 1984, p 996.

English courts assert jurisdiction over piracy *jure gentium* under common law and tend to think of it as sea term for robbery, which covers any violent dispossession of a master of his ship, including by crew or passengers who subsequently convert the vessel to felonious purposes. In *RE Piracy Jure Gentium 1934*¹⁶ court found that frustrated attempts to commit piracy also constituted piracy, without actual robbery occurring.

The need for States, as ultimate enforcers of laws relating to piracy, to have consensus on a common legal definition of the crime of piracy can not be over emphasized. Lack of a common definition has lead to situations where pirates have escaped punishment for their crimes due to the differing legal definitions of the country that has custody.

Piracy- Horn of Africa

Increased incidents of piracy and maritime violence in the Horn of Africa, off the Coast of Somalia, are raising not only regional but international concern. According to the ICC-IMB report for the period 1st Jan to 31st Dec 2005 there were 35 reported incidents of maritime attacks off the Coast of Somalia.

The UN Security Council through resolution S/Res/1519(2003), recognized that the situation in Somalia constitutes a threat to international peace and security in the region, established a monitoring group to investigate, interalia, the violations of the arms embargo covering access to Somalia by land, air and sea.

In their report to the Security Council, the monitoring group confirmed that, due prevalence of acts of Piracy, they regarded Somalia's coastal and off shore waters as dangerous for innocent passage of fishing vessels, traditional boats, yachts and commercial vessel traffic. The monitoring group said that those waters had acquired a fearsome reputation and classified them as some of the world's most dangerous.¹⁷

¹⁶ In re Piracy Jure Gentium , 1934, A.C.586, opcit, ref 12.

¹⁷ UN Security Council Document S/2005/625, dated 4th October 2005.

The 24th session of the IMO Assembly in November-December 2005 adopted a resolution on *Piracy and armed robbery against ships in waters off the coast of Somalia*.

The said resolution condemned and deplored all acts of piracy and armed robbery against ships and appealed to all parties, which may be able to assist, to take action, within the provisions of international law, to ensure that all acts or attempted acts of piracy and armed robbery against ships are terminated forthwith; any plans for committing such acts are abandoned; and any hijacked ships are immediately and unconditionally released and that no harm is caused to seafarers serving in them.

Governments were strongly urged to increase their efforts to prevent and suppress acts of piracy and armed robbery against ships and, in particular, to co-operate with other Governments and international organizations in relation to acts occurring or likely to occur in the waters off the coast of Somalia.

The United Nations Security Council, during its 5387th meeting held on 15th March 2006 urged Member States to use naval vessels and military aircraft in the fight against piracy and armed robbery off the coast of Somalia.

The full text of the paragraph, from the minutes of aforementioned meeting concerning piracy and armed robbery is as follows:

"The Security Council takes note of Resolution A.979 (24) adopted on 23 November 2005 at the twenty-fourth session of the International Maritime Organization biennial Assembly, concerning the increasing incidents of piracy and armed robbery against ships in waters off the coast of Somalia. The Council encourages Member States whose naval vessels and military aircraft operate in international waters and airspace adjacent to the coast of Somalia to be vigilant to any incident of piracy therein and to take appropriate action to protect merchant shipping, in particular the transportation of humanitarian aid, against any such act, in line with relevant international law. In this regard, the Council welcomes the communiqué of the IGAD Council of Ministers' meeting in Jawhar

on 29 November 2005, which decided to coordinate its strategies and action plans to face this common challenge in close collaboration with the international community. The Council further urges cooperation among all States, particularly regional states, and active prosecution of piracy offenses."

Then again the problem of piracy and maritime violence is not limited to the waters adjacent to the Somali coast. Recent attacks off the coast of Kenya and in Tanzanian waters were reported in Lloyd's List, 4th Jan 2006 (59074).

The unabated influx of arms and ammunition into war torn Somalia from Ethiopia, Yemen and Eritrea coupled with infighting between warlord clans has turned Somalia into a safe heaven for not only terrorists but also pirates. With no effective governmental structure in place and no regulatory authority in respect of maritime affairs, transiting ships have become easy, convenient targets. In fact, pirates have now become innovative and not only loot ships and their crew but are increasingly resorting to hijacking ships and holding crew hostage for ransom.

The Inter Governmental Authority on Development (IGAD) consisting of Regional East African Nations with their headquarters in Nairobi is working relentlessly to bring stability and sustainable peace in Somalia. Kenya has played a pivotal role in monitoring maritime safety in coalition with allied forces. So grave is the problem that the UN Security Council on recommendations of monitoring group approved deployment of military and naval forces to instill security in the region. In 2005 US naval ship, Winston S Churchill, while conducting anti piracy patrols arrested 12 pirates on board a pirate vessel who were flown to Mombasa to be prosecuted, of which 10 were repatriated without trial.

The fundamental point here being that all actions to combat piracy will be rendered nugatory unless there is effective, clear and distinct domestic legislation establishing unambiguous law and procedure, in place to ensure that the perpetrators are prosecuted, convicted and the sentences form an effective deterrent.

To that end the Model National Law on Piracy has provided a concise National Law frame work for adoption by states *mutatis mutandis* which will ensure uniformity to a certain extent of definition, procedure, reporting and punishments for offences of piracy and maritime violence.

Piracy-Kenya

Certainly, piracy is an international problem, which demands the world's attention. Regional and bilateral agreements clearly have a place in this work and can help reduce the occurrence of trans-boundary crime. The key, however, is activity on a national level. It seems clear that municipal legislation is the true fulcrum for the problem, and that much of the weakness of anti-piracy responses may be traced to the lack of attention paid to domestic piracy law.¹⁸

Kenya which has been the forerunner in the establishment of regional peace and stability is, due to its adjacent coastline with Somalia, probably the nation most affected by increased instances of piracy prevailing off the coast of Somalia. Vessels calling on the ports of Mombasa from Europe via Suez Canal or those from the Middle East and Indian sub continent have been subjected to frequent piratical attacks. Early this year a passenger liner *seabourne spirit* on its approach journey to port of Mombasa was attacked and it is only due to the use of onboard acoustic device that she managed to escape or the world may have witnessed a repeat of the *Achille Lauro* incident .

The subsequent categorizing of these waters as extremely dangerous by ICC-IMB and other international bodies has drastically affected trade and tourism in Kenya with ship owners and passenger liners diverting to alternative ports.

To help combat this scourge the Kenyan Government has increased anti piracy patrols and installed marine surveillance radar stations along the coastline. The joint allied force consisting of Kenya and US navy have conducted number of joint anti piracy operations.

¹⁸ Samuel Pyeatt Menefee, *Anti-Piracy Law in the year of the Oceans: Problems and opportunity*, ILSA Journal of International Comparative Law, Spring, 1999.

The US Government in recognition of Kenya's efforts presented the Kenya Navy with six patrol crafts and necessary training to combat piracy and maritime violence.

The offence of piracy is defined at section 69 of the Penal Code (Cap63, Laws of Kenya) as:

69. (1) Any person who, in territorial waters or upon the high seas, commits any act of piracy *jure gentium* is guilty of the offence of piracy.

(2) Any person who, being the master, an officer or a member of the crew of any ship and a citizen of Kenya—

(a) unlawfully runs away with the ship; or

(b) unlawfully yields it voluntarily to any other person; or

(c) hinders the master, an officer or any member of the crew in defending the ship or its complement, passengers or cargo; or

(d) incites a mutiny or disobedience with a view to depriving the master of his command, is guilty of the offence of piracy.

(3) Any person who is guilty of the offence of piracy is liable to imprisonment for life.

The Constitution of Kenya vests the Chief Magistrates Court with the jurisdiction to deal with offences of piracy. Evidently, the above definition is narrow in its scope and application and is not supported by special provisions in the Criminal Procedure Code nor the Evidence Act.

Kenya acceded to the 1982 UNCLOS and SUA Convention both of which are yet to be domesticated into national legislation. Together, the said conventions (and where appropriate the SUA protocol, 1988) provide a legal regime to combat instances of piracy and maritime violence which provisions have been laid out in the CMI Model National Law on Piracy and Maritime Violence.

The draft bill on Piracy and Maritime Violence based on CMI Model National Law incorporating also the IMO Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships will equip law enforcement agencies and prosecutors with the necessary ‘ammunition and adequate fire power’ to effectively deal with the scourge of piracy, while ensuring conformity with international conventions and uniformity with other states.

This is the most effective approach to the real problem now facing the international community, a uniform national legislation defining the crimes of piracy and maritime violence, with the requirement to report the circumstances of any known incidents as well as to prosecute or extradite suspected offenders coming within national jurisdiction. The Model National Law has the greatest potential to make a real and lasting contribution towards combating the problem. If the said Model Law would be received and incorporated into domestic legislation of various States, pirates would then be left with no place to hide.

Piracy – Recent Developments

The focus here is on the new Protocol of 2005 to the SUA Convention, which has introduced a number of far-reaching provisions in an attempt to make the regime more comprehensive. The SUA Convention and its Protocol 1988 were developed in the wake of the hijacking of the Italian cruise liner *Achille Lauro* in October 1985. After the 9/11 terrorist attacks IMO Legal Committee undertook the amendment of SUA Convention in a process that began in early 2002 and ended in late 2005. SUA Protocol 2005 represents a substantial expansion of the provisions found in the original Convention.

Most significant among the amendments is the expansion of the definition of offences to include unlawful acts that are motivated by the intent to intimidate a population or to compel a government to do or abstain from doing any act, involving the transportation on board a ship of certain types of materials or weapons, and involving the unlawful and

international transportation of a person on board a ship that has committed an act that constitutes an offence under SUA Convention or any of the UN anti – terrorism treaties.

Article 8 *bis* contains provisions that specify the conditions under which the forces of a State party may board a ship flying the flag of another State party when there are reasonable grounds to suspect that the ship or person on board is committing, has committed, or will commit an unlawful act according to the Convention.

The aim of the IMO Legal Committee work was to ensure that the legal framework put in place by IMO continues to provide an adequate basis for the arrest, detention, extradition and punishment of perpetrators of maritime offences acting against shipping or fixed platforms or when using ships to perpetrate acts of maritime violence.

These recent, post Model National Law, amendments have necessitated appropriate and corresponding change to the said Model Law incorporating the provisions of 2005 SUA Protocol, in particular those expanding the scope of its application in respect of maritime offences, i.e., Articles *3bis*, *3ter* and *3 quarter*

This approach will incorporate all elements of the piracy provisions in 1982 UNCLOS and the offences listed in Article 3 of SUA Convention as amended by the 2005 SUA Protocol when it enters into force. This way the Model Law will introduce a “catch – all” concept of maritime violence in inclusive terms wherein it provides for the merging of anti-piracy and anti-terrorism interests.¹⁹

¹⁹ Max Mejia Jr. and Dr P K Mukherjee, *The SUA Convention 2005: a critical evaluation of its effectiveness in suppressing maritime criminal acts*, (2006) 12 JIML, at p 185

LAWS OF KENYA

Bill NO 1 of 2007

PIRACY AND MARITIME OFFENCES ACT

ARRANGEMENT OF SECTIONS

Section

PART I ~ PRELIMINARY

- 1—Short Title
- 2—Commencement
- 3—Savings
- 4—Interpretation

PART II~ OFFENCES

- 5—Piracy
- 6—Maritime Criminal Acts
- 7—Offences Committed with intent to intimidate, compel, etc.
- 8—Attempt, conspiracy, abetment
- 9—Threat to commit an offence
- 10—Exceptions
- 11—Acts to protect person, etc

PART III~ JURISDICTION

- 12—1982 UNCLOS
- 13—Maritime offences committed within Kenya
- 14—Ships registered in Kenya
- 15—accused in lawful custody
- 16—accused is Kenyan national
- 17—when offences committed on board foreign ships
- 18—Trial *in absentia*
- 19—Protection of human rights

PART IV~ ARREST

- 20—Powers to board and arrest
- 21—Right of visit
- 22—Seizure of pirate ship

PART V~ EXTRADITION

- 23—Extraditable offences
- 24—Request for extradition by other States

PART VI~ PUNISHMENT, FORFEITURE AND RESTITUTION

- 25—Punishment for piracy
- 26—Punishment for maritime criminal act
- 27—Persons with juridical personality
- 28—Punishment for death, injury, damage to property
- 29—Civil remedies
- 30—Forfeiture
- 31—Rights of victims and mortgagees
- 32—Disposal of ships, cargo, goods, etc.
- 33—Waiver of port charges, etc
- 34—Rights and remedies of injured person

PART VII~ REPORTING OF INCIDENTS

- 35—Persons whose duty it is to report
- 36—Report to be made without delay
- 37—Joint reports
- 38—Failure to report
- 39—Continuous reporting by Kenya Maritime Authority
- 40—Reports to be confidential

PART VIII ~ MISCELLANEOUS

- 41—Regulations

LAWS OF KENYA
Bill No. 1 OF 2007
PIRACY AND MARITIME OFFENCES ACT

Commencement: 2007

A Bill for

AN ACT of Parliament to amend and consolidate the law on offence of piracy, maritime violence and certain other maritime criminal acts committed onboard a ship and in respect thereof, to give effect to the relevant provisions of United Nations Convention on Law of the Sea (1982), Rome Convention for the Suppression of Unlawful Act Against the Safety of Maritime Navigation (1988), Rome Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf (1988), Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation(2005) and Protocol to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on The Continental Shelf; and for matters incidental to and connected with the foregoing.

ENACTED by the Parliament of Kenya as follows-

PART I ~ PRELIMINARY	
Short Title	1. This Act may be cited as the Piracy and Maritime Offences Act, 2007 .
Commencement	2. This Act shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.
Savings	3. (a) This Act does not apply to:

<p>Interpretation</p>	<ul style="list-style-type: none"> (i) a warship; or (ii) a ship owned or operated by a state when being used as a naval auxiliary or for customs or police purposes; or (iii) a ship which has been withdrawn from navigation or laid up. <p>(b) Nothing in this Act affects the immunities of warships and other government ships operated for non-commercial purposes.</p> <p>4. In this Act, except where the context otherwise requires-</p> <ul style="list-style-type: none"> (a) “ship” includes a vessel of any type or other water craft whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft. (b) “transport” means to initiate, arrange or exercise effective control, including decision-making authority, over movement of person or item. (c) “serious injury or damage” means: <ul style="list-style-type: none"> (i) serious bodily injury; or (ii) extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss; or (iii) substantial damage to the environment, including air, soil, water, fauna, or flora. (d) “BCN weapon” means: <ul style="list-style-type: none"> (i) “biological weapons”, which are: <ul style="list-style-type: none"> (1) microbial or other biological agents, or toxins whatever
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	<p>their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or</p> <p>(2) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.</p> <p>(ii) “chemical weapons”, which are, together or separately:</p> <p>(1) toxic chemicals and their precursors, except where intended for:</p> <p>(A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or</p> <p>(B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or</p> <p>(C) military purposes not connected with the use of chemical weapons and not dependant on the use of toxic properties of chemicals as a method of warfare; or</p> <p>(D) law enforcement including domestic riot control purposes,</p> <p>as long as the types and quantities are consistent with such purposes;</p> <p>(2) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (ii) (1), which would be released as a result of the employment of such munitions and devices;</p> <p>(3) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (ii)(2).</p> <p>(iii) nuclear weapons and other nuclear explosive devices.</p>
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Piracy	<p>(e) "toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.</p> <p>(f) "precursor" means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multi component chemical system.</p> <p>(g) "person" The term person as used in this Act includes, where applicable, entities having juridical personality as well as individual natural persons.</p> <p>(h) "maritime structure" includes any floating or fixed artifact that is connected to the seabed, other than a ship at anchor or temporarily moored.</p> <p style="text-align: center;">PART II ~ OFFENCES</p> <p>5. (a) "Piracy" is committed when any person or persons:</p> <p style="padding-left: 40px;">(i) engages in piracy as the act is defined by Article 101 of the 1982 Convention on the Law of the Sea.</p> <p style="padding-left: 40px;">(b) Piracy is also committed when any person or persons, for any unlawful purpose, intentionally or recklessly:</p>
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<p>Maritime Criminal Act</p>	<ul style="list-style-type: none"> (i) engages in an act constituting piracy under the Penal Code (Cap. 63 Laws of Kenya): or (ii) engages in an act held to constitute piracy by a decision of the Court of Appeal currently in force; or (iii) engages in an act deemed to be piratical under customary international law. <p>6. (a) “Maritime criminal act” is committed when, for any unlawful purpose, any person or persons, intentionally or knowingly and without regard to the consequences:</p> <ul style="list-style-type: none"> (i) injures or kills any person or persons in connection with the commission or the attempted commission of any of the offences set forth in Section 5,6 and 7; or (ii) performs an act of violence against a person or persons on board a ship; or (iii) seizes or exercises control over a ship or any person or persons on board by force or any other form of intimidation or by deception; or (iv) engages in an act resulting in unlawful detention of a person or a ship; or (v) destroys or causes damage to a ship or ships cargo, an offshore installation, or an aid to navigation; or (vi) employs any device or substance which is likely to destroy or cause damage to a ship, its equipment or cargo, or to an aid to navigation; or (vii) destroys or causes damage to maritime navigational facilities, or interferes with their operation, if that act would be likely to endanger the safe navigation of a ship or ships; or (viii) engages in an act involving interference with navigational, life support, emergency response or other safety equipment, if
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	<p>that act would be likely to endanger the safe operation or navigation of a ship or ships or a person or persons on board a ship; or</p> <ul style="list-style-type: none"> (ix) communicates information which that person knows to be false, thereby endangering the safe navigation of a ship; or (x) endangers or damages the marine environment, or the coastline, maritime installations or facilities, or related interests of any State; or (xi) engages in any of the acts described in paragraph (i)-(x) above, to the extent applicable, where such acts involve a maritime structure or affect a person or persons on a maritime structure; or (xii) obtains possession of a ship or maritime structure, wherever located, by theft or deception; or (xiii) obtains possession of a ship's tackle, equipment or appurtenances, having substantial aggregate value, wherever located, by theft or deception; or (xiv) obtains possession of a ships cargo while on board and having substantial aggregate value, by theft or deception; or (xv) obtains possession by theft or deception, committed on board a ship or maritime structure, of property having substantial value that belongs to the owner of the ship or structure or to any person legitimately on board whether or not engaged in the service of the ship or maritime structure; or (xvi) knowingly receives possession of and/or converts any property, acquired by unlawful means, described in subparagraphs (xii)- (xv) above, of this Section; or (xvii) engages in an act constituting an offence under Article 3 of the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; or (xviii) engages in an act constituting an offence under Article 2 of
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<p>Offences committed with intent to intimidate, compel</p>	<p>the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.</p> <p>7. Any person commits an offence within the meaning of this Act if that person unlawfully and intentionally commits any of the following acts:</p> <p>(a) when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act:</p> <p>(i) uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage: or</p> <p>(ii) discharges , from a ship , oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a)(i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or</p> <p>(iii) uses a ship in a manner that causes death or serious injury or damage; or</p> <p>(iv) threatens, with or without a condition , as is provided for under national law, to commit an offence set forth in subparagraph (a)(i),(ii) or (iii); or</p> <p>(v) engages in any of the acts described above (i)-(iv), to the extent applicable, where such acts involve an offshore installation or affect a person or persons on an offshore installation</p> <p>(b) transports on board a ship:</p>
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<p style="text-align: center;">Attempt, Conspiracy, Abetment,</p>	<ul style="list-style-type: none"> (i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national laws, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or abstain from doing any act; or (ii) any BCN weapon, knowing it to be a BCN weapon as defined in Section 4 (d); or (iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; or (iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose. <p>8. Any person also commits an offence within the meaning of this Act if that person:</p> <ul style="list-style-type: none"> (a) attempts or conspires to commit offences set forth in Sections 5,6 and 7 or any unlawful effort intended to aid, abet, counsel or procure the commission of any of these offences; or (b) participates as an accomplice in an offence set forth in Sections 5,6,7
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<p>Threat to commit</p> <p>Exceptions</p> <p>Acts to protect persons etc</p>	<p>or sub section (a) of this section; or</p> <p>(c) organizes or directs others to commit an offence set forth in Sections 5,6,7 or sub section (a) or (b) of this section; or</p> <p>(d) contributes to the commission of one or more offences set forth in Sections 5,6,7, or subsection (a) or (b) of this section, by a group of persons acting with a common purpose, intentionally and either:</p> <p>(i) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence set forth in Section 5,6 or 7; or</p> <p>(ii) in the knowledge of the intention of the group to commit an offence set forth in Section 5,6 or 7</p> <p>9. A threat to commit any of the offences listed in Sections 5, 6 or 7 shall constitute a maritime criminal act.</p> <p>10. Notwithstanding the definitions in Sections 5, 6 or 7 reasonable acts to rescue a person or to recover stolen property or to regain lawful control of a ship or offshore installation shall not constitute piracy , maritime violence or an offence within the meaning of this Act.</p> <p>11. Notwithstanding the definitions in Sections 5, 6 or 7 reasonable or proportionate acts to protect a person, ship or offshore installation, or related property against piracy or maritime violence shall not be held to constitute maritime criminal acts or acts of piracy within the meaning of this Act.</p>
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<p>1982 UNCLOS</p> <p>Maritime offences committed within Kenya</p> <p>Maritime Zones Act Cap 371</p> <p>Ships registered in Kenya</p> <p>Accused in lawful custody</p> <p>Accused is Kenyan national</p>	<p style="text-align: center;">PART III ~ JURISDICTION</p> <p>12. Jurisdiction to prosecute an offence of Piracy as defined in Section 5(a)(i) shall lie as set forth in the relevant Convention.</p> <p>13. The offences defined in Sections 5(b), 6, 7 or 8 shall be prosecuted if committed within the territory, internal waters or territorial sea of Kenya, and to the degree that the exercise of national jurisdiction is permitted by the Maritime Zones Act (Cap 371), the 1958 Geneva Conventions on the High Seas and Contiguous Zone or the 1982 Convention on the Law of the Sea, within the Exclusive Economic Zone, continental shelf, contiguous zone of Kenya, and on the high seas or in any place outside the jurisdiction of any state.</p> <p>14. The offences defined in Part II shall be prosecuted if committed:</p> <p style="padding-left: 40px;">(a) on board or against a ship registered in or entitled to fly the flag of Kenya, wherever located; or</p> <p style="padding-left: 40px;">(b) on or against an offshore installation licensed by or operating within the jurisdiction of Kenya.</p> <p>15. Jurisdiction to prosecute shall also lie when the person accused of committing an offence defined in Part II is apprehended or is held in lawful custody in Kenya.</p> <p>16. Jurisdiction to prosecute shall also lie when the person accused of committing an offence defined in Part II is a citizen or national of Kenya, or is a foreign national resident in Kenya, or is a stateless person.</p> <p>17. Jurisdiction to prosecute shall also lie when an offence defined in Part II is</p>
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<p>When offences committed on board foreign ships</p>	<p>committed on board a foreign-flag ship, where:</p> <p>(a) Kenya Maritime Authority, Kenya Police, Kenya Navy or Kenya Ports Authority have been requested to intervene by the State whose flag the vessel is entitled to fly, or the shipowner, or the Master or other person on board the ship; or</p> <p>(b) the commission of that act or a collateral act has disturbed the peace and tranquility of a port or place under national jurisdiction of Kenya.</p>
<p>Trail <i>in absentia</i></p>	<p>18. Trial of an alleged offender <i>in absentia</i> shall be allowed as permitted under relevant Laws of Kenya.</p> <p>19. Any prosecution under this article shall ensure the protection of the human rights of the alleged offender.</p>
<p>Protection of human rights</p>	<p style="text-align: center;">PART IV ~ ARREST</p>
<p>Powers to board and arrest</p>	<p>20. (i) Subject to Section 3, every Police Officer or every Commissioned Officer of the Kenya Navy may, in respect of offences under this Act, board a ship and arrest without a warrant any person:</p> <p>(a) committing or on reasonable grounds that such a person has committed or was involved in the commission of an offence under this Act; or</p> <p>(b) upon having been requested to intervene by State whose flag the vessel is entitled to fly, or the shipowner, or the master or other person on board the ship.</p>

<p>Right of visit</p>	<p>(ii) Where any person is arrested under subsection (i), he shall, without undue delay be remanded in custody at the nearest police station.</p> <p>21. On the high seas, or in any other place outside the jurisdiction of any State, Subject to Section 3, every Commissioned Officer of the Kenya Navy on board a Kenya Navy warship or other Government ship or aircraft may upon reasonable grounds for suspecting that a foreign ship is engaged in piracy board such ship and proceed to verify the ship’s right to fly its flag.</p>
<p>Seizure of pirate ship</p>	<p>22. On the high seas, or in any other place outside the jurisdiction of any State, Subject to Section 3, every Commissioned Officer of the Kenya Navy on board a Kenya Navy warship or other Government ship or aircraft may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under control of pirates, and arrest the persons and seize the property on board.</p>
<p>PART V ~ EXTRADITION</p>	
<p>Extraditable offences</p>	<p>23. Extradition from Kenya may take place when another State has jurisdiction over the offences defined in Part II. The possession of jurisdiction by Kenya shall not, subject to the provisions of relevant Laws of Kenya, preclude the extradition of an alleged offender to another State under appropriate circumstances.</p>
<p>Extradition (contiguous and foreign countries) Act Cap 76</p> <p>Extradition (Commonwealth countries) Act Cap 77</p> <p>Request for extradition by other States</p>	<p>24. If another State having a direct connection to the incident or other substantial interest claims jurisdiction with regard to a maritime criminal act or an act of piracy, and the alleged offender is not promptly brought to trial in Kenya, the alleged offender may, subject to the provisions of relevant Laws of Kenya, be extradited to the requesting State. If multiple States with reasonable jurisdictional claims make requests for extradition</p>

	<p>in the absence of a trial in Kenya, the alleged offender may, subject to the provisions of relevant Laws of Kenya, be extradited to one of the requesting states.</p>
	<p>PART VI ~ PUNISHMENT, FORFEITURE AND RESTITUTION</p>
<p>Punishment for piracy</p>	<p>25. An individual found guilty of the crime of Piracy shall be subject to imprisonment for life and/or a fine of not more than Kshs 1 million (Kenya Shillings One Million),in addition to any restitution or forfeiture which may be required , or any other penalties which might be imposed under relevant Laws of Kenya.</p>
<p>Punishment for maritime criminal act</p>	<p>26. An individual found guilty of a maritime criminal act shall be subject to imprisonment for a term of not more than 10 (ten) years and/or a fine of not more than Kshs 500,000.00 (Kenya Shillings five hundred thousand), in addition to any restitution or forfeiture which may be required , or any other penalties which might be imposed under relevant Laws of Kenya.</p>
<p>Persons with juridical personality</p>	<p>27. An entity with juridical personality found guilty of the crime of piracy or maritime criminal act shall be subject to a fine of not more than Kshs 5 million (Kenya Shillings five million), in addition to any restitution or forfeiture which may be required, or any other penalties which might be imposed under relevant Laws of Kenya.</p>
<p>Punishment for death, injury, damage to property</p>	<p>28. In cases where any person is injured or killed, or property is lost or damaged in connection with an incident of piracy or maritime criminal act, the person found guilty of the crime shall also be liable to whatever criminal penalties which may exist under relevant Laws of Kenya for injury, death, loss or damage.</p>

<p>Penal Code Cap 63</p>	<p>29. In cases where any person is injured or killed, or property is lost or damaged, in connection with an incident of piracy or maritime criminal act, the person found guilty of the crime shall also be liable to whatever civil remedies are available under relevant Laws of Kenya.</p>
<p>Civil Remedies</p>	
<p>Forfeiture</p>	<p>30. Where ships, cargo, goods or equipment have been employed in or were subject of maritime criminal acts or acts of piracy, such property shall be liable to forfeiture to the State exercising criminal jurisdiction to prosecute the offender(s). However, stolen or misappropriated property shall in all cases be returned to the person(s) having title to or legal custody of the property at the time it was stolen or misappropriated. Any mortgagee of such property may assert claim under relevant Laws of Kenya for payment of the current mortgage obligation.</p>
<p>Rights of victims and mortgagees</p>	<p>31. Where ships, cargo, goods or equipment employed in or the subject of maritime criminal acts or acts of piracy are liable to forfeiture to the State exercising criminal jurisdiction to prosecute the offender(s), such property shall be restored as expeditiously as possible to the person having lawful title to or custody of the property, unless the state proves the willful complicity of such person in the act of piracy or maritime violence. If such person is denied return of such property, any mortgagee of the property shall be entitled to recover payment of the current mortgage obligation out of the proceeds of sale of the property at a public judicial sale under relevant Laws of Kenya, with the remaining balance being forfeit to the State, unless the State proves the willful complicity of such mortgagee in those maritime criminal acts or acts of piracy.</p>
	<p>32. Where ships, cargo, goods or equipment have been wrongfully taken by person(s) subsequently convicted of maritime criminal acts or acts of piracy but such ships, cargo, goods or equipment have not been employed</p>

<p>Disposal of ships, cargo, equipment .</p>	<p>in the commission of such crime(s):</p> <p>(a) Such property if unconverted shall be returned to its owners or custodians upon proof of ownership or lawful custody.</p> <p>(b) Converted property shall be sold at public judicial sale and the proceeds distributed to the lawful claimants according to admiralty/maritime law, with any balance remaining being forfeited to the state.</p> <p>(c) Items not claimed within the period established by law may be subject to public judicial sale, or transfer to a fund for financing State or regional action to fight maritime criminal acts or acts of piracy.</p>
<p>Waiver of port charges, etc</p>	<p>33. Port expenses and other dues normally chargeable during detention for investigation or prosecution of maritime criminal acts or acts of piracy shall be waived; such port expenses or other dues normally chargeable may be recovered as restitution owed by the successful prosecuted offender(s).</p> <p>34. Nothing in Sections 22 through 30 shall compromise or affect any right or remedies which a person injured in the course of maritime criminal acts or acts of piracy might otherwise assert against any perpetrator of the act or acts.</p>
<p>Other rights and remedies of injured person</p>	<p style="text-align: center;">PART VII ~ REPORTING OF INCIDENTS</p> <p>35. Any incident which may constitute piracy or maritime criminal act shall be reported by the following, as applicable:</p>

<p>Persons whose duty it is to report</p>	<p>(a) the Master or senior surviving officer is to report as soon as possible:</p> <ul style="list-style-type: none"> (i) where the victim ship is registered in Kenya; to the Kenya Police or Kenya Maritime Authority if the incident occurred within the territory, internal waters or territorial sea of Kenya, or to the coastal State nearest to the position of the incident. (ii) Where the victim is a foreign-flag ship; to the Kenya Police or Kenya Maritime Authority if the incident occurred within the territory, internal waters or territorial sea of Kenya and to the Administration of the flag State. <p>(b) the ship security officer (“SSO”),</p> <p>(c) the company security officer (“CSO”), shipowner, agent or manager,</p> <p>(d) the port facility security officer (“PFSO”),</p> <p>(e) the crew representative or seafarers’ trade union,</p> <p>(f) the cargo representative,</p> <p>(g) the insurers,</p> <p>(h) the harbour master or port authority,</p> <p>(i) the vessel traffic management system (“VTS”) authority,</p> <p>(j) the Criminal Investigations Department of the Kenya Police,</p> <p>(k) the Kenya Navy,</p> <p>(h) the Kenya Ports Authority, or</p> <p>(l) other persons having knowledge of the incident.</p> <p>Each person or entity listed above has the obligation to report every known incident. This obligation may be met by filing a joint report, or by forwarding and commenting upon a report on the occurrence made by another listed person or entity.</p> <p>36. Reports shall be made without delay and as soon as possible following receipt of knowledge of the incident. Reports shall be sent to the Kenya Maritime Authority and shall be in the form provided for in Annex A to this Act.</p>
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<p>Report to be made without delay</p>	<p>37. Each person or entity listed above has an obligation to report every known incident. This obligation may be met by filing a joint report, or by forwarding and commenting upon a report on the occurrence made by another listed person or entity.</p>
<p>Joint reports</p>	<p>38. Persons or entities listed in Section 32 (a)-(g) above having knowledge of but failing to report an incident may be subject to an appropriate civil penalty</p>
<p>Failure to report</p>	<p>39. The Kenya Maritime Authority shall be under a continuing duty to make reports without delay and in the required formats to the ICC International Maritime Bureau (ICC-IMB), International Maritime Organization (IMO) and the International Criminal Police Organization (INTERPOL).</p>
<p>Continuous reporting by Kenya Maritime Authority</p>	<p>40. The facts of the occurrence of an incident lie in the public domain but the content of all incident reports made under Section 32 may be held confidential and not be made open to public</p>
<p>Reports to be confidential</p>	<p style="text-align: center;">PART VIII ~ MISCELLANEOUS</p>
<p>Regulations</p>	<p>41. The Minister may by notice in the Gazette make regulations for giving effect to this Act and, in particular, but without prejudice to the generality of the foregoing power, such regulations may provide for:</p> <p style="padding-left: 40px;">(a) the implementation of international conventions and regional treaties relating to maritime offences to which partner States are a party to;</p>

	<ul style="list-style-type: none">(b) a Code of Practice for the investigation of the crimes of piracy and maritime violence;(c) establish rules of engagement for law enforcement agencies or joint task forces deployed on anti-piracy patrols;(d) prescribe the forms required to be used under this Act;(e) anything which is required to be prescribed for the purposes of this Act.
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LAWS OF KENYA
Bill No. 1 OF 2007
PIRACY AND MARITIME OFENCES ACT

ANNEX A

**FORMAT FOR REPORTING TO IMO THROUGH KENYA MARITIME
AUTHORITY OR INTERNATIONAL ORGANIZATIONS**

1. Ship's name and IMO number.
2. Type of ship.
3. Flag.
4. Gross tonnage.
5. Date and time of incident.
6. Latitude and Longitude.
7. Name of Area.
8. While sailing, at anchor or at berth?
9. Method of attack.
10. Description / number of suspect craft.
11. Number and brief description of pirates /robbers.
12. Any other information(e.g. language spoken).
13. Injuries to crew and passengers.
14. Damage to ship (which part of ship was attacked?).
15. Brief details of stolen property or cargo.
16. Action taken by master and crew.
17. Was incident reported to the coastal Authority and by whom.
18. Reporting State or International Organisation.
19. Action Taken by coastal State.
20. Official seal, Signature, designation and date.