

*Seminar on Enhancing Maritime Security in Africa  
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# **PROSECUTING MARITIME CRIME**

By:

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# Types of maritime crime (1)

- Often directed at vessels or maritime structures, e.g.
  - Piracy – on the “high seas” or in “place outside the jurisdiction of a State”
  - Maritime attack / armed robbery – “within territorial sea or internal, historic and archipelagic waters of a State”
  - Hijacking ships
  - Destroying ships
  - Endangering safe navigation
  - Sailing/fishing in unauthorised area

# Types of maritime crime (2)

- Also includes transnational organised crimes e.g. –
  - transportation of illicit substances (e.g. drug trafficking)
  - Human trafficking
  - Illegal Carrying of Weapons and artillery
- Environmental offences e.g. discharging in ocean waters (marine pollution)

# Offence of piracy at sea

- Most notorious maritime crime & major threat to maritime security
- UNCLOS Article 101 - Definition of piracy

*Piracy consists of any of the following acts –*

- (a) *any illegal acts 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) *on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;*
  - (ii) *against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;*
- (b) *any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;*
- (c) *any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).*

# Challenges in piracy prosecution

- **Main challenges faced:**
  - Inadequate legal framework
  - Inadequate prosecutorial capacity
  - Inadequate judicial capacity
  - Overstretched correctional facilities
  - Lack of local infrastructure (e.g. judicial facilities, ICT technology, etc.)
  - Poorly prepared investigation files
  - Language – need for interpreters
  - Unwillingness of witnesses to testify
  - Inadequate bilateral/multilateral support

# Pre-Prosecution Issues (1)

- **Prerequisites for prosecution of pirates – example of Mauritius:**
  - (1) National engagement/political will to combat piracy
  - (2) EU – UNODC Joint Programme on Support to the Trial and Related Treatment of Piracy Suspects in Mauritius (2010) – Support to police, prosecutors, judicial and prison services, legislative support, court facilities.
  - (3) Agreement with EU (14 July 2011) on Conditions of Transfer of Suspected Pirates and Associated Seized Property from EUNAVFOR to Mauritius and on Conditions of Suspected Pirates after Transfer [Financial support by EU]

# Pre-Prosecution Issues (2)

## (4) Necessary legal regime and framework

- International Conventions – e.g. UNCLOS.
- Need to domesticate international convention (if dualist system) - Mauritius enacted Piracy and Maritime Violence Act 2011 (in force on 1 June 2012) – giving effect to UNCLOS provisions.
- Some additional features: adducing evidence through live video/television link; production of statements of absent witnesses in specified circumstances.

## (5) Training of prosecutors + Anti-Piracy Unit within Office of DPP

# Pre-Prosecution Issues (3)

- **Post arrest issues:**
  - Investigation of offence
  - Evidence gathering (exhibits)
  - Handover of accused parties and detention pending prosecution
  - Rights of accused parties
  - Review of evidence and request for further enquiries by prosecution authority



# Prosecution of piracy

- Lodging of information/charge
- Recording of Plea – Guilty or Not guilty
- Conduct of trial – Onus and standard of proof
- Calling of witnesses and production of documents / exhibits
- Adducing of evidence on every element of offence
- Use of technology (e.g. video link)

# Trial of Somali Pirates in Mauritius (2013)

- *P v Mohamed Ali Abdeoulkader and Ors* before Intermediate Court
- Section 3 of Piracy and Maritime Violence Act 2011
- Charge: Act of Piracy on High Seas

On or about 5 January 2013, the 12 accused did “*on the high seas, around 240 nautical miles off the Somali Coast ... wilfully and unlawfully commit an act of piracy, to wit an illegal act of violence directed against the MSC Jasmine, a Panama flag Merchant Vessel which was proceeding from Salalah/Oman to Mombasa/Kenya ... they fired gunshots and a rocket propelled grenade at the MSC Jasmine.*”

# Highlights of the trial and main challenges faced

- 1<sup>st</sup> prosecution under new law
- Complexity of matter
- 12 Accused parties, each having their own Defence Counsel (legal aid)
- Protracted trial – Objections and motions by Defence
- Use of video link to adduce evidence
- Trial Court's understanding of elements of offence and appreciation of evidence adduced by prosecution

# Judgment of Intermediate Court

- **Judgment given on 6 Dec 2014 - All 12 accused parties found not guilty**
- **Main findings in law:**
  - (1) Co-authorship of 12 pirates not established
  - (2) Failure to prove elements of:
    - “high seas”: EEZ of Somalia did not amount to high seas;
    - “illegal act of violence committed”
  - (3) Non-averment of element “for private ends”
  - (4) Legality of detention at sea - Breach of right to be brought without undue delay before Court

# Appeal

- **Appeal by Prosecution to Supreme Court**

- Judgment in Dec 2015 : Appeal allowed
- Trial Court had been wrong in law:
  - “High seas” was established by evidence;
  - Co-authorship: look at mode of operation as a whole;
  - Court failed to make clear and definite finding on whether accused parties had committed act of violence against ship;
  - Failure to aver “for private ends” did not render information so bad as to render proceedings null;
  - Delay in bringing accused to Court – Material consideration was issue of fairness of trial

# Retrial

- **Retrial before Intermediate Court**

- Judgment in July 2016 – All 12 Accused parties found guilty
- Sentenced to 5 years' penal servitude – Total time spent on remand deducted from sentence
- Time between arrest (Jan 2013) and final disposal of case (July 2016)
- Observations: only trial so far

# Post-prosecution issues

- **Serving of sentence**

- Costs and resources implications for prosecuting state
- Issue of social rehabilitation

- **Transfer of prisoners**

- 2011 Agreement with EU providing for repatriation of transferred persons upon acquittal or non-prosecution and for serving of sentence
- May 2012 – MOU with Puntland and Agreement with Transitional Federal Government for transfer of sentenced prisoners
- 12 convicted pirates sent back to Somalia in September 2016

# Addressing gaps/contradictions in domestic law

- Domestic law should reflect international provisions
- Need for properly drafted laws – clear and simple
- Need to review legislation constantly, in line with international developments and judicial decisions
- Can draw inspiration from model laws OR legislation enacted by other jurisdictions in the region  
E.g. Mauritius, Seychelles, Kenya
- Seek international support for legislative review / drafting



# Concluding Remarks

- Need to have appropriate framework in place –
  - legislative framework;
  - address logistical constraints
  - capacity building: police, prosecution and judiciary
  - international cooperation
- Is there a best prosecution model?
  - National prosecutions?
  - Have regional tribunal?
- Prosecution – crucial step in fight against piracy



**THANK YOU !!!**