

## **Large Scale Prosecution of Somali Piracy Suspects: What Have we Learned?**

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The use of the Regional Prosecutions Model to address Somali Piracy was adopted largely by default. In 2006, when the first suspected pirates were captured at sea off the coast of Somalia, few anticipated the scale on which this would be repeated over the next seven years. States with navies operating in the Indian Ocean looked for local prosecution options in preference to transporting suspects long distances to the state of the vessel they had attacked or the vessel that had detained them. The first state to take suspected pirates (from the United States) was Kenya who received 10 in 2006 but in the following years transfers were also made to the Seychelles and Mauritius. By 1 July 2013, Kenya had received 157, the Seychelles 133 and Mauritius and Tanzania 12 each, most from international navies but some (in the case of the Seychelles and Tanzania) arrested by their own maritime forces.

Suspected pirates were also being transferred back to the states of detaining vessels (for example the Netherlands, Spain and United States) or arrested on land in Somalia and tried by the courts there. However it is the regional prosecutions in Kenya, Mauritius and Seychelles that have attracted the most comment and from which a number of conclusions can be drawn.

The Regional Prosecutions Model brought with it certain risks for the detaining states. Many had their own political and legal obligations to ensure that the investigation, trial and imprisonment process in the state to which they were transferring the detained piracy suspects met certain standards. For the largest organization involved in the detention operations at sea, the European Union Naval Forces (EUNAVFOR), the obligations placed upon them by the European Convention on Human Rights were paramount but for

others it was the International Covenant for Civil and Political Rights, 1966, the Standard Minimum Rules for the Treatment of Prisoners, 1955, and other international instruments.

Concerned that the states to which the suspects were to be transferred might not be able to meet these standards or more generally be able to support the piracy trials, the detaining states and organizations provided assistance directly to Kenya, Seychelles, Mauritius and Tanzania to assist them. Support was delivered bilaterally and through regional and international organizations (including the Indian Ocean Commission, INTERPOL, East African Community and International Maritime Organization) although the largest program of investigation, trial and imprisonment support was delivered by the United Nations Office on Drugs and Crime through its Regional Office in Eastern Africa. The resulting program of support extended to the training and resourcing of police officers, prosecutors, judges and prison staff, the provision of new police, court and prison infrastructure and direct trial support including witness travel to trial, interpretation, and funding of defence lawyers.

Other trial options were considered. In his report of 24 January 2011<sup>2</sup>, the Secretary General's Special Advisor on Legal Issues Related to Piracy off the Coast of Somalia, Jack Lang, set out to identify any additional steps that could be taken to assist states to prosecute and imprison persons who engaged in piracy. He made 25 recommendations, many of which have been taken forward, including the wider criminalization of piracy, the hearing of evidence by video link, the onward transfer of convicted pirates to prisons in Somalia and increases in the court and prison capacity of prosecuting states in the region. His final recommendation was to strengthen the rule of law in Somalia by establishing three specialized piracy courts, one each in Somaliland and Puntland and a third 'extraterritorial Somali specialized court'<sup>3</sup> which he proposed should be located at Arusha in Tanzania. Subsequently, in the Secretary General's Report on Specialized Anti-Piracy Courts,<sup>4</sup> the thinking narrowed further. The notion of an international court was set aside and the emphasis placed on the provision of additional support to Kenya,

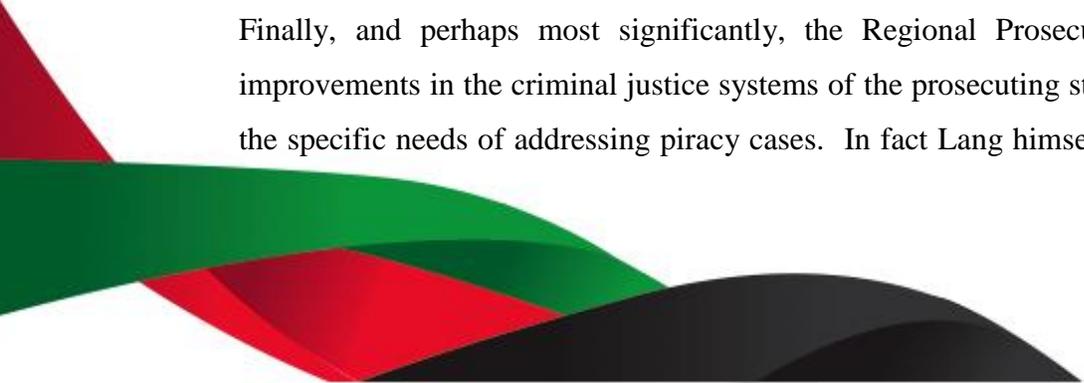
Mauritius, Tanzania, Seychelles and Somalia in their work to accept suspected pirates and process them through their existing criminal justice systems.

This ‘Regional Prosecution Model’, characterized by the use of existing domestic criminal justice infrastructure to address this crime, can now be seen to have offered some significant advantages. First, it was fast to set up. The first transfers occurred within weeks of UNODC’s trial support beginning because there was no need for front-end construction, legal drafting or extensive recruitment.

Second, the regional prosecutions model has proved to be cost effective. UNODC estimates the total value of trial support delivered to regional states under its program to be around U.S. \$9 million, or less than \$30,000 per suspect prosecuted in the region. This figure is in sharp contrast to the cost of the naval missions (estimated at \$1.9 billion in 2011 alone<sup>5</sup>). The contrast is even sharper in comparison to international court options. Lang estimated the cost of his proposed three specialized piracy courts at \$25 million over three years<sup>6</sup> - a considerable saving on the lessons of the International Criminal Court (\$900 million for one verdict<sup>7</sup>) and the International Criminal Tribunal for Rwanda (\$1 billion for 27 verdicts<sup>8</sup>) suggest his forecast may have been modest.

Third, the approach was adopted in the full understanding that it needed to be underpinned by a consideration of the human rights of the accused and the need for a fair and efficient trial and humane and secure imprisonment. Just as states put great effort into ensuring the naval operations were effective, so they took a close interest in the character of the criminal justice process after transfer. The resourcing of UNODC’s work to support the trials reflected the shared understanding of both the detaining and prosecuting states that international standards on fair treatment were applied and that they had to be met.

Finally, and perhaps most significantly, the Regional Prosecution Model has seen improvements in the criminal justice systems of the prosecuting states that go far beyond the specific needs of addressing piracy cases. In fact Lang himself recognized the value



of the proposed specialized piracy courts as a ‘*model...to drive forward reform of the penal system and eventually strengthen the judicial system as a whole*’<sup>9</sup>. When the last piracy prosecution is complete, Kenya, Mauritius and Seychelles will all be left with new modern courtrooms, designed to ensure they are appropriate and sustainable. Seychelles and Mauritius will have modern prison accommodation while Kenya and Tanzania will have seen improvements to eight large prisons. A body of expertise in the investigation and prosecution of transnational organized crime has been developed in Kenya, Tanzania, Seychelles and Mauritius and the prison services will have been exposed to training in modern correctional practices. Other long term benefits shared between the four states include an entirely new police radio system, a court case management system, a center for the investigation of transnational organized crime, the Automated Fingerprint Identification System, refurbished police stations, new police and prison vehicles, dogs and handlers trained to detect explosives, substantial support for legislative reform and the benefits of training and mentoring. In Somalia three prisons will be opened, police and coastguard stations, two Ministries of Justice and a court built, and hundreds of police officers, prosecutors, judges and prison staff trained. This support, delivered bilaterally and through INTERPOL, IMO, EU and UNODC, has brought about improvements beyond the narrow crime of piracy and beyond the end of the last prosecution.

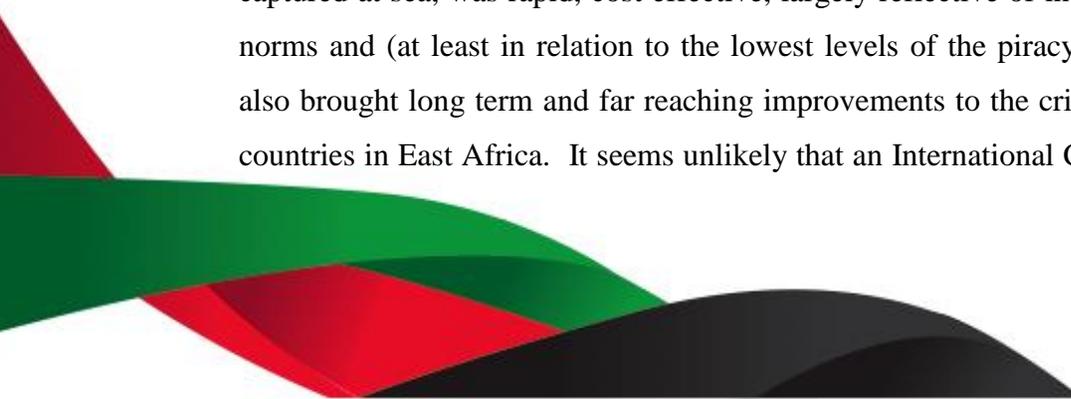
Just as the international community can point to the advantages of the Regional Prosecutions Model, so it should reflect on some of its shortfalls. First, while the volume of prosecutions over four years (1,300) under the Regional Prosecutions Model is impressive, the figure does not include a single organizer, financier or coordinator of piracy. While the young men in boats have been investigated, prosecuted and imprisoned in large numbers, those behind the crime have been left largely unscathed. As of June 2013, UNODC is able to identify fewer than half a dozen successful prosecutions of organizers and financiers. In part this is because these individuals do not expose themselves to universal jurisdiction in the same way that the men in the boats do but largely it is because the task of identifying, investigating and seizing those who control piracy from afar is substantially more complex.

Second, the essential preconditions to Somali piracy remain largely unchanged. In much of Somalia male youth are unemployed, desperately poor, disaffected, armed and conditioned to the use of violence. They have access to boats, a major shipping route, ships for which ransoms are nearly always paid, and anchorages where ships can be held for years while negotiations continue. Despite the best efforts on the international community, much of Somalia's north-eastern coast lies beyond the rule of law and looks set to do so for many years. Somali piracy is currently artificially suppressed by international naval patrols, private armed security on likely target vessels and the prosecution and imprisonment of those that are captured at sea but there is no reason to suppose it would not blossom if one or more of those measures were to ease.

Finally, it must be acknowledged that the 1,300 young men serving sentences, of which many will not live to see the end, and the many hundreds more killed at sea should have been leading the economic development of the poorest areas of Somalia. The impact of losing so many of the economically active from subsistence communities is difficult to judge but can only be detrimental.

## **Conclusion**

When piracy began off the coast of Somalia seven years ago, few had seen it coming. The coordinated response of the international community both at sea (with the navies of the European Union, NATO, China, Iran, Russia, the US and others de-conflicting their operations) and in the police stations and courtrooms of the world is without precedent. The international community came together to address this particular aspect of Somali lawlessness (some say because of its impact on commercial interests) with resources and determination. The Regional Prosecutions Model, settled upon to deal with those captured at sea, was rapid, cost effective, largely reflective of international human rights norms and (at least in relation to the lowest levels of the piracy hierarchy) efficient. It also brought long term and far reaching improvements to the criminal justice systems of countries in East Africa. It seems unlikely that an International Court Model would have



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been able to boast any of these characteristics. However it must also be acknowledged that while a fair and efficient trial process for the young men who attacked vessels, took crew hostage and tortured them has been largely delivered, the Regional Prosecutions Model cannot address the apparent impunity of those who organize piracy nor bring about the changes in the characteristics of life in Somalia which tempt some young Somali men to take to the seas to hunt ships and hostages.

### **Endnotes**

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<sup>2</sup> United Nations, *Letter dated 24 January 2011 from the Secretary-General to the President of the Security Council, S/2011/30*, 2011.

<sup>3</sup> Report of the Secretary-General on specialized anti-piracy courts in Somalia and other States in the region, 20 January 2012, S/2012/50, (The Lang Report) page 37.

<sup>4</sup> *Ibid.*, page 38.

<sup>5</sup> *The Economic Cost of Somali Piracy 2011, Working Paper*. One Earth Foundation, 2011.

<sup>6</sup> The Lang Report, page 44.

<sup>7</sup> Silverman, J. *Ten years, \$900m, one verdict: Does the ICC cost too much?*, [www.bbc.co.uk/news/magazine-17351946](http://www.bbc.co.uk/news/magazine-17351946), (accessed 28 June 2013), 2012.

<sup>8</sup> Hironelle News Agency, 'Rwanda: Cost of the ICTR to reach \$1 billion by the end of 2007', <http://allafrica.com/stories/200605120745.html>, (accessed 28 June 2013), 2006.

<sup>9</sup> The Lang Report, page 39.

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