

## Child Piracy in East Africa

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Modern day piracy is a crime that may be prosecuted under universal jurisdiction. The United Nations Convention on the Law of the Sea defines piracy as consisting of:

- (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).<sup>1</sup>

In recent years piracy has become a problem in specific areas of the world especially off the coast of Somalia which is a major shipping route. In 2013 alone the International Chamber of Commerce Commercial Crime Services reported that there were 206 incidents, including 11 hijackings.<sup>2</sup> In a country where the GDP per capita is \$600<sup>3</sup> and the life expectancy is around 50 years,<sup>4</sup> compared to Malta where the GDP per capita is \$26,100<sup>5</sup> and the life expectancy is 80 years,<sup>6</sup> piracy presents a lucrative opportunity to make money. Ransom payments made to Somali pirates may reach up to \$150 million in just one year.<sup>7</sup>

One of the major problems within the issue of piracy is the presence of child pirates. As with the problem of child soldiers in other parts of the world, the number

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<sup>1</sup> United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, Article 101

<sup>2</sup> --, 'Piracy & Armed Robbery News & Figures' (ICC Commercial Crime Services, 2013) <<http://www.icc-ccs.org/piracy-reporting-centre/piracynewsfigures>> accessed 25 November 2013

<sup>3</sup> As estimated in 2010 by Index Mundi <[http://www.indexmundi.com/somalia/gdp\\_per\\_capita\\_\(ppp\).html](http://www.indexmundi.com/somalia/gdp_per_capita_(ppp).html)> accessed 25 November 2013

<sup>4</sup> As estimated in 2012 by Index Mundi <[http://www.indexmundi.com/somalia/life\\_expectancy\\_at\\_birth.html](http://www.indexmundi.com/somalia/life_expectancy_at_birth.html)> accessed 25 November 2013

<sup>5</sup> As estimated in 2012 by Index Mundi <[http://www.indexmundi.com/malta/gdp\\_per\\_capita\\_\(ppp\).html](http://www.indexmundi.com/malta/gdp_per_capita_(ppp).html)> accessed 25 November 2013

<sup>6</sup> As estimated in 2012 by Index Mundi <[http://www.indexmundi.com/malta/life\\_expectancy\\_at\\_birth.html](http://www.indexmundi.com/malta/life_expectancy_at_birth.html)> accessed 25 November 2013

<sup>7</sup> C Helman, 'The Profits Of Piracy' (Forbes, 2010) <<http://www.forbes.com/2010/04/15/pirates-somalia-shipping-insurance-business-logistics-piracy.html>> accessed 25 November 2013

of captured pirates which are under 18, some even as young as 14, is ever increasing. Like child soldiers, child pirates are preferable to adult pirates as they are cheap, easily brainwashed, and easily replaced. Many times they are press ganged into joining the pirates or else have no other option available to them. The situation of these child pirates is dire. They are victims of the situation they are born into. Youssef M aged somewhere around 16, whilst standing trial in Germany described how he ended up working with pirates:

He said no one went into detail about exactly what the job would entail. Strange men brought him out to a hijacked fishing dhow, where Youssef M. claims to have met the other alleged pirates in the courtroom for the first time. "It was only on board the dhow that I realized we were supposed to hijack a cargo ship," he said. "No one mentioned in my presence that there was a possibility of getting arrested by an international naval coalition... I did not think very hard about whether I should participate... Nevertheless it seemed as if everything had been planned ahead of time and I had no choice".<sup>8</sup>

One of the major problems with child pirates is what is to be done with them once they are captured. Although they are victims of the situation, they must also be held accountable for their piratical acts. The United Nations Convention on the Rights of the Child (UNCRC) declares in Article 1 that a child is anyone who is under eighteen years of age.<sup>9</sup> States that capture child pirates are free to prosecute them under their own jurisdiction, however articles 36, 37, and 40 of the UNCRC make it clear that a child cannot be treated to the same judicial measures as an adult person.<sup>10</sup> Different States have different laws regarding the criminal responsibility of minors and there is no agreement in International Law about the criminal responsibility of children who infringe International Humanitarian Law.<sup>11</sup> Countries are also bound by the International Labour Organization in dealing with child pirates, as piracy is considered one of the worst forms of labour and therefore 'nations have a responsibility to remove children from the line of work.'<sup>12</sup> The problem is exacerbated by the fact that piracy in itself is a complex problem as it takes place outside of national borders.

Due to the complex legal situation, many times when child pirates are captured they are not prosecuted and instead a catch and release method is used. The children are stripped of arms and weapons then taken back to their home country where they will inevitably find themselves back in the piracy business. This catch and release method is not a sustainable one as it is simply encouraging the pirate king pins back on land to use more and more child pirates as they know that once they are captured

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<sup>8</sup> --, 'A Precedent or a Farce? Court Faces Daunting Hurdles in Hamburg Pirate Trial' (Spiegel Online International, 2011) <<http://www.spiegel.de/international/world/a-precedent-or-a-farce-court-faces-daunting-hurdles-in-hamburg-pirate-trial-a-740122.html>> accessed 27 November 2013

<sup>9</sup> United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990), Article 1

<sup>10</sup> Ibid, Articles 36, 37 and 40

<sup>11</sup> D Fritz, 'Child Pirates from Somalia: A Call for the International Community to Support the Further Development of Juvenile Justice Systems in Puntland and Somaliland' (2012) <[http://law.case.edu/journals/JIL/Documents/\(16\)%20Fritz%20Corrected.pdf](http://law.case.edu/journals/JIL/Documents/(16)%20Fritz%20Corrected.pdf)> accessed 27 November 2013

<sup>12</sup> M Noble-Hearle, 'Child pirates: A world away from play' (Dalhousie University, 2013) <<http://www.dal.ca/news/2013/03/20/young-pirates-on-the-high-seas-.html>> accessed 25 November 2013

they will simply be returned to their country. These child pirates need to face prosecution, however it must be made clear that they cannot be prosecuted on the same terms as adult pirates.

At the UN Contact Group on Somalia Piracy at the Danish Foreign Ministry, Professor Michael Scharf of Case Western Reserve University and Professor Milena Sterio of Cleveland State University addressed the delegates present about the problems of child piracy. Scharf and Sterio proposed a new five pronged approach for the international community to deal with child pirates:

First, States need to conduct medical and dental examinations to determine the age of pirate defendants before they are subjected to trial. Second, juvenile pirates need to be detained and tried separately from adults, and subjected to shorter prison terms, followed by efforts at rehabilitation, education, and job training -- so that they don't return to piracy. Third, States that prosecute pirates need to consider the use of children in piracy as an aggravating factor in sentencing. Fourth, States should prosecute the separate crime of recruitment and use of child pirates as a crime against humanity. Finally, the International Criminal Court should consider prosecuting pirate kingpins responsible for recruiting and using child pirates using the recent Lubanga precedent, where the ICC convicted a war lord for the recruitment and use of child soldiers.<sup>13</sup>

Defeating the problem of child pirates will not be easy. European and American courts are not the best places to prosecute child pirates as it is a culture that is entirely different from their home life, leading to confusion on the part of the minors and difficulty in integrating them into the society. Courts have been set up in Kenya, the Seychelles, and Mauritius that specifically target pirates. However these courts are still not the ideal place to prosecute child pirates. Many defendants complain of the conditions inside the prison and minors are prosecuted alongside adults, which is not a situation that is to be encouraged as under the UNCRC, minors are entitled to separate judicial proceedings and legal representation. In Kenya, there is no legal representation available specifically for minors and when a minor commits a crime with an adult, the minor goes to court with the adult. Apart from this, many minors awaiting trial remain in pre-trial detention in the same facilities where adults are kept. In the Seychelles, many times the age of the minors is simply acknowledged without considering the implications of the minor age of these pirates. The best place to prosecute the child pirates would be in their own homeland where it would be easy to reintegrate them into the culture however the unavailability of courts or resources in countries where most of the child pirates come from, such as Somalia, is a deterrent to this.

Prosecuting child pirates is a way to sustain responsibility for these pirates, however it is not the best solution. The lucrative profits that one can make through piracy will keep attracting the youth of impoverished countries in East Africa. Child pirates need to be reintegrated and rehabilitated into their own country and provided with alternatives to piracy. This entails the cooperation of governments, human rights organizations, and children's rights organizations, and the development of

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<sup>13</sup> --, 'Law Professor Addresses UN' (School of Law Case Western Reserve University) <<http://law.case.edu/Home/News/tabid/251/vw/1/ItemID/244/Default.aspx>> accessed 27 November 2013

programmes to help prevent the recruiting of child pirates and rehabilitate those that are captured and returned,<sup>14</sup> such as The Romeo Dallaire Child Soldier Initiative.<sup>15</sup>

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<sup>14</sup> S Whitman, H Williamson, M Sloan, L Fanning, 'Dalhousie Marine Piracy Project: Children and Youth in Marine Piracy - Causes, Consequences and the Way Forward' (Marine Affairs Program Technical Report 5, 2012)

<<http://reliefweb.int/sites/reliefweb.int/files/resources/Children%20and%20Youth%20in%20Marine%20Piracy.pdf>> accessed 27 November 2013

<sup>15</sup> The Romeo Dallaire Child Soldier Initiative < <http://www.childsoldiers.org/>> accessed 27 November 2013