

THE PIRACY AND MARITIME VIOLENCE BILL
(No. XXVIII of 2011)

Explanatory Memorandum

The main objects of this Bill are to provide, or make better provision, for –

- (a) the prosecution of piracy and related offences pursuant to the obligations of Mauritius under the United Nations Convention on the Law of the Sea 1982;
- (b) the handing over to Mauritius of persons suspected of having committed acts of piracy, maritime attack and related offences, pursuant to agreements or arrangements with the European Union or other States, for the purposes of investigation and prosecution;
- (c) admissibility, with leave of the Court, of an out of Court statement in criminal proceedings under this Act, where the maker of the statement is not available to give evidence; and
- (d) the repatriation of non-citizens suspected of having committed offences, or the transfer of persons convicted of offences, under this Act.

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ARRANGEMENT OF CLAUSES

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A BILL

To provide a comprehensive framework for prosecuting in Mauritius persons suspected of having committed piracy and related offences

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Piracy and Maritime Violence Act 2011.

2. Interpretation

In this Act –

“Court” means the Supreme Court or the Intermediate Court, as the case may be;

“Director of Shipping” has the same meaning as in the Merchant Shipping Act;

“EEZ” has the same meaning as in the Maritime Zones Act;

“forfeiture order” means an order made by the Court under section 9;

“high seas” –

(a) has the same meaning as in UNCLOS; and

(b) includes the EEZ;

“maritime zones”, “territorial sea”, “internal waters”, “archipelagic waters” and “historic waters” have the same meaning as in the Maritime Zones Act;

“master” has the same meaning as in the Merchant Shipping Act;

“Minister” means the Minister to whom responsibility for the subject of shipping is assigned;

“pirate ship or aircraft” has the same meaning as in UNCLOS;

“ship” includes every description of watercraft, including non-displacement craft, WIG craft and seaplanes, used or capable of being used as a means of transportation over water;

“UNCLOS” means the United Nations Convention on the Law of the Sea, which has force of law pursuant to section 3 of the Maritime Zones Act and Articles 100 to 107 of which are set out in the Schedule;

“warship” has the same meaning as in UNCLOS.

3. Piracy and maritime attack

(1) Any person who commits –

- (a) an act of piracy; or
- (b) a maritime attack,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 60 years.

(2) A police officer may –

- (a) on the high seas or in the territorial sea, or the internal, historic and archipelagic waters of Mauritius; or
- (b) in any other place outside the jurisdiction of a State,

stop, board, search, detain or seize a pirate ship or aircraft, or a ship or aircraft taken by and under the control of pirates, arrest any person suspected of having committed an offence under this Act and seize any property on board which is suspected to have been used in connection with the commission of an offence under this Act, and may use such force as may be necessary for that purpose.

(3) In this section –

“act of piracy” means –

- (a) an illegal act of violence or detention, or any act of depredation 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 persons or property on board such ship or aircraft, as the case may be; or
- (ii) against a ship, aircraft, persons or property on board the ship or aircraft, as the case may be, in a place outside the jurisdiction of a 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; or
- (c) any act of inciting or of intentionally facilitating an act described in paragraph (a) or (b);

“maritime attack” means –

- (a) an illegal act of violence or detention, or any act of depredation for private ends by the crew or the passengers of a private ship or a private aircraft, and directed –
 - (i) against persons or property on board a ship or aircraft, as the case may be; or
 - (ii) against a ship or aircraft, as the case may be; or
- (b) any act of inciting or of intentionally facilitating an act described in paragraph (a),

within the territorial sea or the internal, historic and archipelagic waters of Mauritius.

4. Hijacking and destroying ships

(1) Subject to subsection (4), a person who unlawfully, by the use of force or by threats of any kind, seizes a ship or exercises control of it, shall commit the offence of hijacking a ship.

(2) Subject to subsection (4), a person shall commit an offence where he unlawfully and wilfully –

- (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 to so damage it or its cargo as to endanger its safe navigation.

(3) Subject to subsection (4), subsections (1) and (2) shall apply –

(a) whether the ship referred to in those subsections is in Mauritius or elsewhere;

(b) whether any act referred to in those subsections is committed in Mauritius or elsewhere; and

(c) irrespective of the nationality of the person doing the act.

(4) 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 doing the act under subsection (2), as the case may be, is a Mauritius citizen;

(b) the act is committed in Mauritius; or

(c) the ship is used in the service of the Mauritius Police Force, in Mauritius.

(5) Any person who commits an offence under this section shall, on conviction, be liable to penal servitude for a term not exceeding 60 years.

5. Endangering safe navigation

(1) Subject to subsection (7), any person who –

(a) destroys or damages any property to which this subsection applies; or

(b) interferes with the operation of any such property,

shall, where the destruction, damage or interference is likely to endanger the safe navigation of a ship, commit an offence.

(2) Subsection (1) applies to any property used for the provision of maritime navigation facilities, including any land, building, ship, apparatus or equipment so used, whether it is on board a ship or elsewhere.

(3) (a) Subject to subsection (7), any person who intentionally communicates information which he knows to be false in a material particular, where the

communication of the information endangers the safe navigation of a ship, shall commit an offence.

(b) It shall be a defence for a person charged with an offence under paragraph (a) 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 he communicated the information in good faith in performance of those duties.

(4) A person who, in order to compel any other person to do or abstain from doing any act, threatens that he or some other person will do, in relation to a ship, an act which is an offence by virtue of section 4(2)(a), (b) or (c), where the making of that threat is likely to endanger the safe navigation of the ship, shall commit an offence.

(5) Subject to subsection (7), a person who, in order to compel any other person to do or abstain from doing any act, threatens that he or some other person will do an act which is an offence by virtue of subsection (1), where the making of that threat is likely to endanger the safe navigation of a ship, shall commit an offence.

(6) Except as provided by subsection (8), subsections (1), (3), (4) and (5) shall apply whether any act referred to in those subsections is committed in Mauritius or elsewhere and whatever be the nationality of the person committing the act.

(7) For the purposes of subsections (1), (3) and (5), 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 Mauritius citizen;
- (b) the act is committed in Mauritius; or
- (c) the ship is used in the service of the Mauritius Police Force.

(8) It shall be an offence for any person in Mauritius to induce or assist the commission, outside Mauritius, of any act which would but for –

- (a) section 4(4), be an offence under that section; or
- (b) subsection (7), be an offence under this section.

(9) Any person who commits an offence under this section shall, on conviction, be liable to penal servitude for a term not exceeding 60 years.

6. Master's power of delivery

(1) 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 ground to believe that any person on board the ship has –

- (a) committed any offence under section 3, 4 or 5;
- (b) attempted to commit such an offence; or
- (c) aided, abetted, counselled, facilitated, procured or incited the commission of such an offence,

in relation to any ship, other than a warship or other ship used as a naval auxiliary, he may deliver that person to the Commissioner of Police in Mauritius or to the proper officer in any other Convention State.

(2) Where the master of a Mauritius ship intends to deliver any person in Mauritius or any other Convention State in accordance with subsection (1), he shall notify the Director of Shipping, if the delivery is to be in Mauritius or, if delivery is to be in another Convention State, to the proper officer in that State –

- (a) of his intention to deliver that person; and
- (b) of his reasons for intending to do so.

(3) A notification under subsection (1) shall be given –

- (a) before the ship has entered the Exclusive Economic Zone of Mauritius or the other State concerned; or
- (b) if, in the circumstances, it is not reasonably practicable to comply with paragraph (a), as soon as reasonably practicable, but not later than 72 hours in advance, before the ship enters the territorial waters of Mauritius.

(4) Where the master of a Mauritius ship delivers any person to the Commissioner of Police in Mauritius or to the proper officer in any other State under subsection (1), he shall –

- (a) make to the Commissioner of Police, if the person is to be delivered in Mauritius, or, if the person is to be delivered in another State, to a proper officer in that State, such oral or written statements relating to the alleged offence as the Commissioner of Police or that officer, as the case may be, may reasonably require; and
- (b) deliver to the Commissioner of Police or the appropriate officer, as the case may be, such other evidence relating to the alleged offence as is in his possession.

(5) In this section –

“Convention State” means a State in which the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 is in force.

7. Jurisdiction

(1) Notwithstanding any other enactment, prosecution for an offence under this Act shall, at the sole discretion of the Director of Public Prosecutions, take place before a Judge without a jury or the Intermediate Court.

(2) Notwithstanding any other enactment, the Intermediate Court shall have jurisdiction to inflict penal servitude for a term not exceeding 40 years where a person is convicted of an offence under this Act.

8. Arrangements for handing over and transfer of suspected persons

(1) The Minister may, after consultation with the Minister to whom the responsibility for the subject of home affairs is assigned, enter into an agreement or arrangement with another Government or an international organisation with a view to providing for –

- (a) a framework for the handing over of persons suspected of having committed offences under this Act to Mauritian authorities for purposes of investigation and eventual trial in Mauritius;
- (b) the repatriation of persons referred to in paragraph (a) where they are not prosecuted or convicted in Mauritius, and the post-trial transfer of persons convicted of offences under this Act; and
- (c) any related matter.

(2) Notwithstanding any other enactment, an agreement or arrangement entered into under subsection (1) shall have effect, in relation to the –

- (a) pre-trial or post-trial transfer of any person suspected of having committed any offence under this Act;
- (b) trial of persons suspected of having committed an offence under this Act.

(3) The agreement entered into with the European Union for the transfer of suspected pirates on 14 July 2011 shall be deemed to have been made under subsection (1).

9. Forfeiture

(1) Where a person is convicted of an offence under section 3, 4 or 5, the Court shall make an order that any ship, mode of conveyance or property, used in, or in connection with, the commission of such offence, be forfeited to the State, unless the owner of the ship, mode of conveyance or property or the person legally entitled to its possession establishes, to the satisfaction of the Court, that the ship, mode of conveyance or property was used in or in connection with the commission of the offence without his knowledge or connivance.

(2) Any ship, mode of conveyance or property forfeited by an order made under subsection (1), shall vest absolutely in the State.

(3) The vesting shall take effect where –

- (a) no appeal has been made from the conviction or forfeiture order within the statutory time limit, on the expiration of the delay for such appeal;
- (b) an appeal has been made against the conviction or forfeiture order, upon the final determination of such appeal affirming or upholding the forfeiture order.

(4) Where any ship, mode of conveyance or property is vested in the State by an order made under subsection (1), the Court shall cause such ship, conveyance or property to be sold by public auction and the proceeds of the sale shall be credited to the Consolidated Fund.

(5) This section shall be in addition to and not in derogation from the Court's powers to order the estreatment or forfeiture of any property in pursuance of its power under any other enactment.

10. Regulations

The Minister may, for the purposes of this Act, make such regulations as he thinks fit, including regulations for giving effect to an agreement or arrangement entered into under section 8.

11. Consequential amendments

(1) The Courts Act is amended –

- (a) by repealing section 134;
- (b) in section 161B, by adding, after the words “sexual case”, the words “or any witness in relation to an offence under the Piracy and Maritime Violence Act 2011”;

- (c) in sections 181B, 181C and 181E, by adding the words “in civil proceedings”;
- (d) by inserting, after section 188B, the following new section –

188C. Admissibility of out of Court statement in piracy cases where maker is unavailable

(1) In any criminal proceedings under the Piracy and Maritime Violence Act 2011, a statement made out of Court shall be admissible as evidence, with leave of the Court, of any matter stated when –

- (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter;
- (b) the person who made the statement is identified to the Court’s satisfaction; and
- (c) one of the 5 conditions specified in subsection (2) is satisfied.

(2) The conditions referred to in subsection (1)(c) are that the person who made the statement –

- (a) is dead;
- (b) is unfit to be a witness because of his bodily or mental condition;
- (c) is outside Mauritius and it is not reasonably practicable to secure his attendance;
- (d) cannot be found although such steps as is reasonably practicable to take to find him have been undertaken; or
- (e) through fear, does not give or does not continue to give oral evidence in the proceedings, either at all or in connection with the subject matter of the statement.

(3) Where a statement is admitted in evidence under subsection (1) any evidence which, if that person had been called as a witness, could have been admissible for the purpose of

impeaching or supporting his credibility, shall be admissible for that purpose.

(4) In assessing the weight, if any, to be attached to a statement admitted in evidence under subsection (1), the Court shall have regard to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

(2) The Criminal Procedure Act is amended, in the Fifth Schedule, by inserting, in the appropriate alphabetical order, the following item –

Piracy and Maritime Violence Act 2011;

(3) The Deportation Act is amended in section 2, in the definition of “prohibited immigrant”, by adding, after the word “immigration”, the words “or who has been transferred to Mauritius under the Piracy and Maritime Violence Act 2011”.

(4) The Merchant Shipping Act is amended –

(a) by repealing sections 213 to 216;

(b) in section 224 –

(i) in subsection (1), by inserting, after the words “in the course of any”, the word “civil”;

(ii) in subsection (2), by repealing paragraph (c), the semicolon and the word “and” at the end of paragraph (b) being deleted and replaced by a full stop.

(5) The Mutual Assistance in Criminal and Related Matters Act is amended, in section 2, by deleting the definition of “foreign state” and replacing it by the following definition –

“foreign State” –

(a) means a State other than Mauritius, and every constituent part of such State, including a territory, dependency, protectorate, which administers its own laws relating to international co-operation; and

(b) includes a foreign Government or international organisation with which Mauritius has entered into an agreement under the Piracy and Maritime Violence Act 2011;

(6) The National Coast Guard Act is amended –

- (a) in section 6(1), in paragraph (c), by inserting, after the words “illegal activity”, the words “, including any act of piracy or maritime attack referred to in the Piracy and Maritime Violence Act 2011”;
- (b) in section 12(1), in paragraphs (h) and (i), by inserting, after the words “illegal activity”, the words “, including any act of piracy or maritime attack referred to in the Piracy and Maritime Violence Act 2011”.

(7) The Police Act is amended, in section 9, by inserting, after subsection (1), the following subsection –

(1A) The Police Force may exercise any of the duties referred to in subsections (1)(b), (c) and (k) in the maritime zones of Mauritius and, for the purposes of the Piracy and Maritime Violence Act 2011, in the high seas.

12. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SCHEDULE

[Section 2]

United Nations Convention on the Law of the Sea

Article 100

Duty to cooperate in the repression of piracy

All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

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).

Article 102

**Piracy by a warship, government ship or government aircraft
whose crew has mutinied**

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

Article 103

Definition of a pirate ship or aircraft

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 104

Retention or loss of the nationality of a pirate ship or aircraft

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 105

Seizure of a pirate ship or aircraft

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.

Article 106

Liability for seizure without adequate grounds

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure.

Article 107

Ships and aircraft which are entitled to seize on account of piracy

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.
