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# Ensuring Effective Prosecution of Maritime Crimes in the Gulf of Guinea: A Focus on Côte d’Ivoire and Sierra Leone

**Naila Salihu and Kwaku Danso**

## ABSTRACT

The Gulf of Guinea is experiencing a surge in the incidence of maritime crimes in recent years. This development has been attributed to multiple challenges that include high rates of youth unemployment in the littoral states of West and Central Africa, state capacity weakness, and the absence of appropriate legislation to prosecute maritime crimes. Aside from the threat they pose to the security of states and societies in the region, the effect of marine-based criminality on shipping and insurance is undermining the attraction of the Gulf of Guinea as a major ecosystem for maritime commerce. Ongoing efforts aimed at countering the menace are invariably hampered by inadequate and inappropriate legislations that undermine the basis for due process and effective prosecution of illegal operators. Currently, many countries in the region have yet to adopt specific legal frameworks that ensure effective prosecution of maritime crimes. With a focus on Côte d’Ivoire and Sierra Leone, this study was conducted to identify the main challenges impeding effective prosecution of maritime crimes in the GoG, and to explore alternate options through which it is possible to enhance prosecution in the maritime domain of countries in the region. Among other challenges, the paper identified inadequate and inappropriate legislations, the lack of specialized knowledge, ineffective inter-agency collaboration, and the failure to sign, ratify or domesticate international conventions as major impediments. The paper argues that the development of effective legal frameworks applicable to maritime crime prosecution is fundamental to the delivery of maritime security governance in the Gulf of Guinea.

**Keywords:** *Maritime Crimes, prosecution, legal regimes, jurisdiction, Yaoundé Protocol*

## INTRODUCTION

States in the Gulf of Guinea (GoG) are grappling with a diversity of maritime crimes that run the gamut from illegal, unreported and unregulated fishing (IUU), to illegal oil bunkering and kidnapping for ransom. While maritime piracy and sea robbery rank prominently among the driving causes of insecurity and threat to international shipping in the region, efforts to counter them are invariably hampered by inadequate and inappropriate legislations that undermine the basis for due process and effective prosecution of illegal operators. Moreover, most GoG countries, including Côte d'Ivoire and Sierra Leone, have yet to adopt/strengthen specific legal frameworks that ensure effective prosecution of maritime crimes, just as they yet to domesticate many critical provisions of relevant international conventions they have ratified. As Okafor-Yarwood and Pigeon<sup>1</sup> observe, "not a single country in the Gulf of Guinea has domesticated all provisions of UNTOC [United Nations Convention against Transnational Organized Crime], a fundamental framework designed to address all transnational organized crimes including piracy, IUU fishing, illegal migration, and narcotics trafficking, which are all pervasive in the region." As such, occasional instances of arrests are hardly prosecuted. Indeed, with the exception of two instances of successful prosecution<sup>2</sup> of piracy by Nigeria under its new maritime law, the Suppression of Piracy and Other Maritime Offences Act of 2019 (SPOMO Act), "no conviction for piracy has ever been recorded in any country in the entire region"<sup>3</sup> despite the escalating incidence of piracy in the GoG, particularly since 2018. According to a 2018 report by the International Chamber of Commerce's International Maritime Bureau (ICC-IMB), for example, maritime-related attacks in the GoG more than doubled in 2018 relative to 2017 figures, while the region accounted for all six hijackings worldwide, 13 of the 18 ships fired upon, 130 of the 141 hostages taken globally, and 78 of 83 seafarers kidnapped for

ransom<sup>4</sup>. These attacks have combined to transform the waters of the GoG into a hotbed of pirate activity.

If the dysfunctions in the legal infrastructures of countries are not addressed to improve their chances of successful prosecutions, it is unlikely that achievements made in enhancing the enforcement capacities of security agencies such as navies, coast guards and marine police will be optimised. In fact, improved efforts at apprehending offenders will be undermined, and the overall security situation in the region might deteriorate further as a consequence. Suppressing illegal activities in the waters of the GoG, thus, requires a robust legal framework that supports effective prosecution as part of comprehensive criminal justice and security systems that leverage the complementary roles played by both state and non-state actors in the provision of maritime security governance. This, in turn, requires a thorough understanding of the problem militating against the judicial system to prevent or counter illicit activities in the waters of the GoG.

This paper examines the main challenges impeding effective prosecution of maritime crimes in the GoG, using Côte d'Ivoire and Sierra Leone as case studies. Particular attention is given to national legal infrastructures and judicial capabilities in these and other GoG countries, with the aim of exploring alternate ways through which the legal frameworks and capacities applicable to maritime crimes prosecution could be enhanced. Following this introduction, the paper highlights the main maritime crimes prevalent in the region. This is followed by a discussion of how these crimes are tackled and how the limitations in existing legal frameworks, hinder effective prosecution of illegal operators. The next section examines measures being adopted to address the existing gaps in legal infrastructures, and suggests specific policy-relevant recommendations on how the prosecution of maritime crimes could be enhanced. The paper is based on primary data gathered through

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<sup>1</sup>Okafor-Yarwood, I. and Pigeon, M. (2020). Stable seas: Gulf of Guinea. Report published by One Earth Future. P. 15.

<sup>2</sup>In August, 2020, a Nigeria court made a landmark judgement in which it convicted three pirates hijacking the tanker MV Elobey VI off Equatorial Guinea. Retrieved from <https://www.reuters.com/article/nigeria-security-piracy-idINL8N2FE35O>

This first conviction under the Suppression of Piracy and Other Maritime Offences Act of 2019 (POMO Act), was followed by the sentencing of ten pirates to twelve years' imprisonment for kidnapping the crew of the fishing vessel Hailufeng in May, 2020. Retrieved from <https://www.maritime-executive.com/article/nigerian-court-sentences-10-pirates-to-12-years-in-prison>

<sup>3</sup>UNODC. (2021). Pirates of the Niger Delta: Between blue and brown water. Retrieved from [https://www.unodc.org/res/piracy/index\\_html/UNODC\\_GMCP\\_Pirates\\_of\\_the\\_Niger\\_Delta\\_between\\_brown\\_and\\_blue\\_waters.pdf](https://www.unodc.org/res/piracy/index_html/UNODC_GMCP_Pirates_of_the_Niger_Delta_between_brown_and_blue_waters.pdf)

<sup>4</sup>ICC-IMB. (2018). Piracy and armed robbery against ships. London: ICC-International Maritime Bureau. Retrieved from <https://www.icc-ccs.org/reports/2018-Q2-IMB-Piracy-Report.pdf>

field research conducted in Free Town, Sierra Leone, and Abidjan, Côte d'Ivoire in June, 2021, involving in-depth interviews with state agencies and non-state actors<sup>5</sup>. The empirical data was complemented by data gathered through desk research.

## Maritime Crimes Prevalent in the GoG

Maritime crimes in the GoG manifest in a variety of forms. The territorial waters and Exclusive Economic Zones (EEZs) of Nigeria, Benin, Ghana, Côte d'Ivoire, Sierra Leone and Togo are considered particularly susceptible to piracy and armed robbery at sea, kidnapping for ransom, IUU fishing, smuggling and trafficking in humans, and other transnational organized crimes that include the trafficking of counterfeit items, narcotics, and arms. These crimes pose a major threat to maritime security, including international shipping, in the Gulf of Guinea, with critical implications for the economic development of the entire region.<sup>6</sup> Although multiple maritime crimes are perpetrated in the waters of the GoG, countries in the region are particularly susceptible to piracy, while field IUU fishing and drug trafficking feature as the most prevalent illicit acts committed within the maritime domain of Sierra Leone and Côte d'Ivoire.<sup>7</sup> Other unlawful acts recorded include arms trafficking, armed robbery, human trafficking and smuggling, and marine pollution and dumping of toxic waste.

### Piracy

Maritime piracy is an unlawful act of violence or detention committed against a ship or aircraft, or against persons or property for private ends outside a state's territorial jurisdiction, thus beyond 12 nautical miles (nm) off its coast<sup>8</sup>. In the GoG, piracy represents a form of organized crime, involving land-based financiers and organizers, mother ship operators, suppliers, pirate crews, hostage negotiators and money launderers.<sup>9</sup>

Although the overwhelming majority of crimes recorded in the waters of the GoG are technically armed robbery at sea, as they occur within the territorial waters of states, they are often categorized as acts of piracy. Invariably, piracy in the GoG involves a group of armed men staging attacks against oil and gas infrastructure to modern-day criminal groups taking foreign crewmembers for ransom from international vessels transiting off the West and Central African coasts.<sup>10</sup> Piracy remains a major source of threat to maritime commerce in the region. In 2020, for example, about 49 shipping crew were kidnapped for ransom in the GoG and held captive on land for up to six weeks while 32 seafarers were kidnapped between March and June 2020.<sup>11</sup> In the first quarter of 2021, according to an IMB<sup>12</sup> report, the region accounted for the most incidents, including all 40 kidnapped crew as well as the sad fatality of a crew member onboard one ship.

Although acts of piracy have been historically low in the waters of both Côte d'Ivoire and Sierra Leone, recent trends suggest that pirates are expanding their activities from the 'hub' in Nigerian waters to other parts of the region, accentuating the susceptibility of all the littoral states in the GoG to the menace. The May, 2020, capture of the Chinese fishing trawler Hailufeng 11 within the Ivorian EEZ, as well as the hijacking of the product tanker, MTB Ocean<sup>13</sup>, by pirates in January 2022, 54 nautical miles south of the Port of Abidjan, in Côte d'Ivoire, reflect this trend. While Côte d'Ivoire recorded two cases of piracy in 2016 and 2020, there has been no prosecution due to the absence of appropriate legislation.

Three main types of piracy are noted in the region. These are deep offshore pirates who possess the capacity to operate far from the coast of West Africa and often target international shipping traffic<sup>14</sup>. This category of pirates has become increasingly sophisticated, they often exhibit the capacity to take more hostages per attack. They are also expanding their geographic reach further into the

<sup>5</sup>These involved offices such as, the Office of National Security (ONS), National Drug Law Enforcement Agency (NDLEA), the Sierra Leone Maritime Administration, and local fisherfolks in Aberdeen, Free Town. In Abidjan, the following institutions were interviewed: Direction Générale des Affaires Maritimes et Portuaires; Cellule Nationale de Traitement des Informations Financières; Institut de Sécurité Maritime Interrégional; Port Autonome d'Abidjan; Groupe de Sécurité Portuaire de la Gendarmerie Nationale; Direction de l'Aquaculture et des Pêches; Ministère de la Justice et des Droits de l'Homme; Bureau Central National and Unité de Lutte contre la Criminalité Transfrontalière and Interpol.

<sup>6</sup>KAIPTC (2021). Maritime criminality in West Africa: Setting the periscope on maritime Zones E and F.; FAO (2020). Fight against illegal, unreported and unregulated fishing in West Africa: A Regional Challenge. Retrieved from: <https://www.fao.org/3/cb1767en/CB1767EN.pdf>

<sup>7</sup>The field research conducted in Sierra Leone and Côte d'Ivoire identified these crimes as the most prevalent in the two countries, although other maritime crimes were also reported.

<sup>8</sup>United Nations (1982). United Nations Convention on the Law of the Sea. Retrieved from: <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXI/XXI-6.en.pdf>

<sup>9</sup>UNODC (2013) Transnational Organized Crime in Eastern Africa: A Threat Assessment, September.

<sup>10</sup>UNODC (2020). Pirates of The Niger Delta: Between Blue and Brown Water.

<sup>11</sup>International Maritime Bureau (2020). Piracy and Armed Robbery at Sea against ship. January-December 2020

<sup>12</sup>Ibid

<sup>13</sup>Schuler, M. (2022). Pirates Attack Bunker Tanker Off Ivory Coast. Captain. Retrieved from <https://gcaptain.com/pirates-attack-bunker-tanker-off-ivory-coast-report/>

<sup>14</sup>UNODC (2020)

region, including Côte d'Ivoire, when incidents were previously concentrated in Nigerian waters.<sup>15</sup> The second category relates to the coastal and low-reach pirates who mostly operate up to 40nm from shore, primarily targeting local fishing vessels.<sup>16</sup> These pirates usually operate close to their hideouts, or bases, onshore and have a limited operational range capacity. They target mostly fishing vessels operating along the coast, oil and gas support vessels, and cargo vessels and tankers, engaging in sabotage operations. Their modus operandi includes looting, racketeering and kidnapping for ransom, focusing more on local crew than on foreign seafarers.<sup>17</sup> The third category composed largely of riverine criminals who are often referred to locally as 'pirates', though their criminal activity does not fall under the UNCLOS definition of piracy. They mostly operate in the waterways or creeks within the Niger Delta, where they target local passenger vessels, as well as engage in other crimes.<sup>18</sup> These groups pose a more immediate security threat to local populations than to international vessels and their crews. While Sierra Leone and Côte D'Ivoire remain susceptible to piracy, it is IUU fishing that represents the most frequent unlawful acts committed in the maritime area of these countries.

## Illegal, Unreported and Unregulated Fishing

The West African coastal region has long been regarded as one of the most fertile fishing regions in the world.<sup>19</sup> Fishery stands out as a vital component of the surrounding ecosystem central to the economic activities of most coastal communities in the region, including Sierra Leone and Côte D'Ivoire. The fisheries sector provides livelihoods for millions of people in the GoG, and remains a critical source of food security in the region. Fish serves as an important source of food for over 400 million people in Africa, providing over 22% of the protein intake in sub-Saharan Africa, while serving as the single most important source of animal protein for the majority of people in Sierra Leoneans and Côte D'Ivoire.<sup>20</sup> The sector also offers employment opportunities with over 12.3 million people employed as fishers or processors<sup>21</sup>. It also represents an important foreign exchange earner for the littoral states. For example, the fisheries sector in Côte D'Ivoire generates 66 billion CFA francs annually, while Abidjan serves as the largest tuna handling port in Africa. In Sierra Leone, the

sector is estimated to "employ 500,000 of the West African nation's nearly 8 million people, representing 12% of the economy, while providing "80% of the population's protein consumption"<sup>22</sup> However, the contribution of the fisheries sector to the economies of countries in the region is being undermined by IUU, which is depleting fish stocks and threatening livelihoods and economic security in the GoG. West Africa has become one of the world's main locations for IUU fishing, with almost 40 per cent of the fish caught in the region taken illegally.<sup>23</sup> IUU fishing in Sierra Leone and Côte D'Ivoire is characterized inter alia by activities such as illegal transshipment, fish "laundering", unauthorized fishing, gear use and/or prohibited techniques, excessive and/or prohibited bycatch, unauthorized or undeclared catches, and fishing in prohibited areas or during the prohibited season. The widespread plunder of fish particularly by foreign trawlers, Chinese fishing vessels, in particular, continues unabated, while overfishing by illegal foreign and local actors has resulted in persisted low catch and plummeting fish stock in both countries, and, with it, declining revenues and rising food insecurity. According to President Julius Maada Bio, the President of Sierra Leone, the country loses \$50m a year to IUU fishing<sup>24</sup>. Chinese companies are estimated to own 40% of industrial fishing licenses in Sierra Leone. While these licenses are legal, the Chinese operators are often accused of paying meagre fees for their permits and under-declaring their catch, which often involves illegal industrial-scale fishing that pillages fish populations.

The devastating impact of the foreign fleets is being exacerbated by marauding fishing trawlers from other West African countries, including Guinea and Liberia, which are accused of catching juvenile fish in protected breeding grounds. This, together with the activities of semi-industrial vessels which use illegal monofilament nets and engage in poaching in estuaries, is destroying the fisheries industry in Sierra Leone, and with it, the livelihoods of people in littoral communities.

An emerging local dimension of the criminality in Sierra Leone's fisheries sector, which become

<sup>15</sup>UNODC (2020).

<sup>16</sup>Ibid

<sup>17</sup>Ibid

<sup>18</sup>Ibid

<sup>19</sup>Merem, E. C., Twumasi, Y., Wesley, J., Alsarari, M., Fageir, S., Crisler, M., Romorno, C., Olagbegi, D., Hines, A., Ochai, S., Nwagboso, E., Leggett, S., Foster, D., Purry, V., & Washington, J. (2019). Analyzing the tragedy of illegal fishing on the West African coastal region. *International Journal of Food Science and Nutrition Engineering*, 9(1): 1-15. DOI: 10.5923/j.food.20190901.01

<sup>20</sup>Belhabib, D., Sumaila, U. R., & Pauly, D. (2015). Feeding the poor: contribution of West African fisheries to employment and food security. *Ocean & Coastal Management*, 111, 72-81; Seto, K., Belhabib, D., Mamie, J., Copeland, D., Vakily, J. M., Seilert, H., & Pauly, D. (2017). War, fish, and foreign fleets: The marine fisheries catches of Sierra Leone 1950–2015. *Marine Policy*, 83, 153-163.

<sup>22</sup>Yeung, P. (2022, February 1). Illegal overfishing by Chinese trawlers leaves Sierra Leone locals 'starving'. *The Guardian*. Retrieved from: <https://www.theguardian.com/environment/2022/feb/01/sierra-leone-families-starving-chinese-trawlers-industrial-overfishing-destroying-lives>

<sup>23</sup>Merem, E.C et al (2019). Analyzing the Tragedy of Illegal Fishing.

<sup>24</sup>Yeung, P. (2022, February 1). Illegal overfishing by Chinese trawlers leaves Sierra Leone locals 'starving'. *The Guardian*. Retrieved from: <https://www.theguardian.com/environment/2022/feb/01/sierra-leone-families-starving-chinese-trawlers-industrial-overfishing-destroying-lives>

evident in the course of the field research in that country, involves the outright stealing of fish caught by small-scale fishers. This crime mostly involves the youth, who wait patiently on the beach for the catch. Once the net is dragged close to the beach, they rush into the shallow water and literally take out as much fish as they can and quickly retreat into the community. According to the fisherfolks interviewed at the Aberdeen, in Free Town, some of the petty criminals inform and draw in their friends by taking pictures of the catch and transmitting them to their friends through social medial platforms such as WhatsApp. This draws in more people to partake in the crime, thereby depriving the fisherfolks the fruits of their labour. The occasional visits by the police, according to the fisherfolks, has yielded virtually no result in terms of ending the practice.

The inability of the police to provide security at the landing sites is emblematic of the broader criminal justice system in arresting and prosecuting offenders of maritime crimes. Sierra Leone and Côte D'Ivoire, like their counterpart elsewhere in the GoG, lack the requisite assets and capabilities to effectively secure their vast waters and long coastlines, implying that they are often unable to keep pace with maritime-based criminality. For example, the Sierra Leonean authorities have 'only a single [functional] patrol vessel' to patrol its 406 km of coastline, and, hence, obviously ill-equipped to fight IUU.<sup>25</sup> The problem is further compounded by the lack of efficient fisheries management systems, corruption and weak institutions that allow foreign firms to plunder marine resources. Some of the Chinese trawlers, even in instances where fisheries licenses are duly obtained, use banned fishing equipment, attack local fisherfolks and destroy their nets,<sup>26</sup> transship fish illegally at sea onto large cargo ships, refuse to stop for inspection by fisheries patrols, and often get off the hook by bribing state officials.<sup>27</sup>As a result, overfishing and illegal activities by foreign vessels are driving many species towards extinction and destroying the livelihoods of fishing communities in Sierra Leone and Côte D'Ivoire, just like other countries in the region. In most cases, the illegally caught fish is often destined for EU and Asian markets and there are links between vessels involved in IUU fishing and other forms of organized crime at sea such as drug trafficking, which is also prevalent in Côte D'Ivoire

and Sierra Leone.<sup>28</sup>

## Drug Trafficking

Although the consumption of illegal drugs in Sierra Leone is considered low, the country's weak legal regimes, lax regulations, corruption, and porous maritime borders are being exploited by South American criminal networks as well as actors from West Africa. Similarly, Côte d'Ivoire, due to its central geographical position in West Africa and porous borders, is particularly vulnerable to drug trafficking and other forms of transnational organized crime.<sup>29</sup> The activities of Criminal groups from Colombia and Mexico, in particular, are threatening to draw Sierra Leone and Côte d'Ivoire into the southern hub of drug trafficking in West Africa, which is currently made up of Benin, Togo, Ghana, and Nigeria.<sup>30</sup> Although empirical cases remain sporadic, there are concerns that these countries may be used as a distribution centre by South American drug cartels for drugs destined for European and North American markets. While Sierra Leone currently plays a minor role in the global cocaine or heroin-trafficking trade, the growing and trafficking of cannabis remain a critical concern. The cannabis produced in Sierra Leone is transported to other parts of West Africa and further afield mostly using maritime routes.<sup>31</sup> Findings from the field research show that the cultivation of cannabis is competing with food production, thereby threatening food security in the country. In Côte d'Ivoire, on the other hand 'cannabis cultivation has increased substantially in the wake of Cote d'Ivoire's cocoa crisis' with overall trade on the ascendancy<sup>32</sup>. The country also serves as a transit point for synthetic drugs, which are imported mainly from the Middle East and South America.<sup>33</sup> Côte d'Ivoire is also a transit country for cocaine originating from Latin American destined for the European North American markets.<sup>34</sup> While the problem is on the ascendancy in both Sierra Leoneans and Côte d'Ivoire, the lax legal regimes and the institutional incapacities that typify the criminal justice system, particularly in Sierra Leone, continue to impede effective prosecution of offenders.

<sup>25</sup>Allison, S. (2019). Stemming the tide of illegal trawling in Sierra Leone. ISS. Retrieved from <https://issafrica.org/iss-today/stemming-the-tide-of-illegal-trawling-in-sierra-leone>

<sup>26</sup>Ibid.

<sup>27</sup>Merem, E.C et al (2019). Analyzing the Tragedy of Illegal Fishing.

<sup>28</sup>Yeung, P. (2022, February 1). Illegal overfishing by Chinese trawlers.

<sup>29</sup>UNODC. (2022). UNODC commits to supporting the Government of Côte d'Ivoire against transnational organized crime and terrorism. Retrieved from <https://www.unodc.org/westandcentralafrica/en/cote-divoire-and-unodc-against-toc.html>

<sup>30</sup>Interview with a senior official of the Sierra Leone National Drug Law Enforcement Agency, June 2021.

<sup>31</sup>Ibid.

<sup>32</sup>Global Organized Crime Index on Côte d'Ivoire. Retrieved from [https://ocindex.net/country/cote\\_d\\_ivoire](https://ocindex.net/country/cote_d_ivoire)

<sup>33</sup>Ibid.

<sup>34</sup>Ibid.

## Challenges and Limitations in Legal Frameworks

That illicit activities are common and widespread in the waters of the GoG seems incontrovertible. Yet, arrests, prosecutions, and convictions of offenders are rare. In Sierra Leone, for example, IUU fishing and drug trafficking by sea are widely reported as common unlawful acts committed in the maritime domain of the country. Yet, as Marta Chantal Ribeiro observes in her recent review of the legal system relating to the fight against crime at sea in Sierra Leone, “till the present no case on drug trafficking by sea was brought before the courts and only one case on IUU fishing was sentenced”<sup>35</sup>. Both Sierra Leoneans and Côte D’Ivoire lack adequate and appropriate legislations applicable to the maritime arena, as well as adequate capabilities and capacities to ensure effective law enforcement presence at sea. Thus, even in the rare instances where arrests are effected hardly are suspects prosecuted. The problem to a large extent has its roots in ‘sea-blindness’ on the part of these states, which limits their appreciation of the critical role of the ocean and maritime governance in shaping their strategic and economic security. This underpins the more specific legal limitations relating to inadequate or inappropriate legislation; the failure to sign, ratify or domesticate relevant international conventions or their specific provisions; lack of specialized knowledge concerning specific maritime crimes; corruption; lack of role clarity and ineffective interagency collaboration if the fight against maritime crimes. These challenges are discussed in turn.

### Inadequate and Inappropriate Legislations

The legal systems of most countries in the GoG, including Sierra Leoneans and Côte D’Ivoire, are characterised by inadequate and inappropriate legislation in that there is lack of national laws governing the crimes of maritime piracy and armed robbery at sea, and the punishment for such crimes. States are in charge of prosecuting pirates based on their domestic laws. However, most states, including Sierra Leoneans and Côte D’Ivoire, do not have specifically promulgated or stand-alone legislations against piracy and other maritime crimes. As such, the relevant legal provisions applicable to specific threats in the maritime area are often not up to date with evolving nature of piracy and armed robbery at sea. Moreover, existing maritime-related laws in Sierra Leoneans and Côte D’Ivoire are not well-

defined. This challenge makes effective maritime law enforcement and prosecution of suspected offenders nearly impossible. According to many research participants, the current sanction regimes for maritime crimes are also not deterrent enough. These challenges combine to deny countries the legal basis for due process and the rule of law in the prosecution of persons suspected of committing maritime-related offences. Moreover, there is a lack of a clear system for passing suspected criminals apprehended at sea to law enforcement agencies on land, implying that the process of deterrence usually stops in the GoG’s waters.

The successful prosecution of any crime depends, foremost, on the ability to establish jurisdiction over the suspects, followed by the gathering of adequate evidence to prove the crime. The main challenge in West Africa is that most countries are now developing new laws or revising existing ones to address maritime crimes. For example, Côte d’Ivoire adopted a maritime code in 2017 that codifies all existing maritime laws and expands the scope of maritime crimes.<sup>36</sup> There are also ongoing processes to develop a comprehensive maritime strategy.

### Lack of Specialised Knowledge or Capacity

Closely related to the issue of inadequate and inappropriate legal frameworks is the lack of specialized knowledge regarding the right legislations and legal procedures applicable to specific offenses on the part of designated officials or actors. Piracy in the GoG has evolved into a transnational criminal enterprise that is usually organised in nature and, therefore, requires effective law enforcement mechanisms and techniques for gathering useful evidence against pirate kingpins, investors, and money launderers. Prosecution lies in the mandate of the justice system. However, in most instances, judges are not trained to hear and determine cases involving maritime cases and, therefore, lack the experience required.<sup>37</sup> The arrest and prosecution of pirates are, therefore, often difficult. Both Sierra Leone and Côte d’Ivoire lack the requisite expertise in terms of prosecutors, magistrates or judges with specialties in handling specific maritime crimes such as piracy, IUU or marine pollution. As such, they often lack the appetite to prosecute maritime crimes.<sup>38</sup> Often, most of the arrested suspects are released due to delays in the legal process due to insufficient

<sup>35</sup>Ribeiro, M. C. (2021). Legal Analysis in Sierra Leone: Overall analysis of the existing legal system regarding the fight against crime at sea. Preliminary Report (2).

<sup>36</sup>Republic of Côte d’Ivoire (2017) Law no. 2017-442.

<sup>37</sup>Interview with a senior justice official in Abidjan, June 2021

<sup>39</sup>Scott (2014), op. cit.

judicial officers with the requisite competencies for dealing with maritime crimes. As the trials prolong, suspects are released on grounds of breaches of their fundamental human rights given that they are often held in detention much longer than the required period provided by law.<sup>39</sup>

Specifically, most of the GoG countries lack the requisite human and material resources to monitor and enforce fisheries management regulations. This has contributed to the escalation in the use of illegal fishing methods in the region. Per international law of the sea, crimes related to fisheries are punished with fines. Most states in the region have imposed fines in their fisheries regulations to deal with IUU. However, the challenge has been the meagre nature of the fines vis-a-vis the magnitude of financial transactions in IUU. These provisions have also created avenues for corrupt practices between culprits of IUU and fisheries regulatory institutions in Sierra Leone and Côte d'Ivoire, for example. Huge amounts of monies are often thrown at fisheries agencies by the owners and operators of fishing vessels implicated in IUU in order to influence their decisions.<sup>40</sup> As a result, most cases of IUU and other maritime crimes in these countries are hardly determined in the statutory courts, as authorities invariably deal with them administratively through the imposition of fines.<sup>41</sup>

In spite of the capacity gaps in the prosecution of maritime crimes, not much has been done to integrate the role played by civil society organisations (SCOs) in the process of justice delivery and the provision of security governance in the maritime arena. A major reason is that non-state actors such as coastal communities or small-scale fisherfolks are perceived mainly as objects and not subjects of maritime security and justice administration, thereby foreclosing their potential contributions with the changing context of security in the maritime space. CSO and coastal communities are both objects and subjects of security and justice whose role should be recognised, for example, through intelligence gathering and community policing, particularly as pirate activities often begin on land.

In addition, the criminal justice systems, require significant investments in the development of expertise and consistent and reliable sources of funding and other resources to

investigate, charge, and prosecute pirates.<sup>42</sup> This is particularly critical when it comes to the arrest and prosecution of the kingpins and funders of maritime crimes.

### *Failure to Sign, Ratify or Domesticating International Conventions*

Another critical source of the problem relates to the fact that most GoG countries, including Sierra Leone and Côte d'Ivoire have yet to sign, ratify or domesticate specific international conventions or specific provisions that are critical to the suppression of illegal activities at sea. For example, Sierra Leone has yet to sign, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988), the 1988 SUA Convention, for short, which is already in force at the international level. This undermines the efficacy of the State to suppress maritime crimes, including IUU and drug trafficking in its EEZ or the high seas, particularly when foreign nationals are involved.

### *Ineffective Inter-Agency Collaboration and Disharmony of Interests*

While many aspects of the fight against piracy are being strengthened, inter-agency collaboration and effective information-sharing remain critical hurdles in the prosecution of maritime crimes. There is also concern that ship owners, insurance carriers, and private security companies are often uncooperative where investigations are concerned.<sup>43</sup> Information sharing across agencies is often hampered by unhealthy competition, corruption on the part of state officials and the lack of information management skills. Prosecution of maritime crimes is often impeded by difficulties relating to data sharing and information exchange with naval forces. Another impediment relates to corruption, especially by highly placed politicians and law enforcement officials who connive with pirates and other criminals.<sup>44</sup>

Other challenges relate to technical competency around evidence gathering from witnesses and victims. This is a vital element without which it is unlikely to prosecute perpetrators.<sup>45</sup> However, the piecing of evidence and gathering of witnesses remains a major challenge that presents a significant hurdle

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<sup>40</sup>Interviews in Abidjan, June 2021.

<sup>41</sup>Interview with a judge in Abidjan June 2021

<sup>42</sup>Ibid.

<sup>43</sup>Scott, K. (2015). Prosecuting Pirates: Lessons Learned and Continuing Challenges

<sup>44</sup>Organized Crime and Corruption Reporting Project. (2020). Corruption and poverty made West Africa hot spot for piracy. Retrieved from <https://www.occrp.org/en/blog/12933-corruption-and-poverty-made-west-africa-hot-spot-for-piracy>

in the effort to successfully prosecute maritime crimes.<sup>46</sup> Crime scene investigations have been challenging as law enforcement agencies such as the marine police and navy often lack the requisite training on incidence scene preservation. Over the years, Interpol and UNODC have provided training and simulation exercises on maritime crime prosecution to strengthen maritime law enforcement capabilities in West Africa, with specific capacity-building programmes on crime scene investigation, preservation of evidence and collection, database management for officers from Senegal, Nigeria, Togo, Benin, Côte d'Ivoire.<sup>47</sup> These have contributed to improving the expertise of these personnel.<sup>48</sup>

### Weak Sanctions or penalty Regimes

In addition, the nature of punishment for piracy and armed robbery at sea across the region appears not to be deterrent enough. For example, in Sierra Leone and in Côte d'Ivoire, penalties sometimes involve small fines, which are often perceived as a slap on the wrist, although attract terms of imprisonment, based on the gravity of the offense. In Côte d'Ivoire, for example, the maximum fine is 200 million CFA francs, which appears rather meagre relative to the huge financial transactions and gains in pirate activities.<sup>49</sup> The famous *Probo Koala* incident is a case in point. In August 2006, a notable case of maritime crime, known as the Probo Koala incident or the Trafigura case, occurred in Côte d'Ivoire. The incident involved the dumping of toxic waste shipped from Amsterdam to Abidjan by Trafigura, one of the world's leading oil trading companies. The incident resulted in the death of Ivorian citizens, while about 108,000 persons sustained varying degrees of injuries.<sup>50</sup> Clearly, the ship and the companies involved flouted several international conventions on maritime and environmental protection, including the 1973 International Convention for the Prevention of Pollution from Ships, as amended by the 1978 Protocol (MARPOL); the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; and the 1991 Bamako Convention on the Ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa. Yet, no prosecutions were effected as the Ivorian government agreed to a settlement in which Trafigura was to pay €152

million for the construction of a waste treatment plant and assist the recovery operations. The government dropped any present and future criminal or civil liability claims against Trafigura and released its imprisoned personnel. However, Trafigura stressed that the payment did not imply the recognition of any sort of responsibility, nor liability in the matter. Following the questionable action by the Ivorian government, in November 2006, some 30,000 affected Ivoirians brought a civil lawsuit to the High Court of Justice in London seeking compensation in excess of £100 million. In September 2009, another agreement was reached to settle the case with the payment of £28 million by Trafigura (approximately £1, 000 for each claimant).<sup>52</sup>

### Review and Adoption of New frameworks

It is obvious that legislations in most West African states are not up to speed nor effective for preventing and countering maritime criminality in the region. The legal regimes, as Sierra Leone and Côte d'Ivoire demonstrate, are underdeveloped, outdated, or non-existent. These constraints, and the state and human security outcomes to which they give rise have impelled states in the region to develop comprehensive legal regimes by either revising existing laws or developing new ones. These processes provide opportunities for adopting new laws and building capacities of states institutions to play meaningful roles in dealing with maritime crimes. In June 2019, for example, Nigeria adopted POMO to tackle piracy.<sup>53</sup> The new act is in keeping with the Yaoundé Code of Conduct, which was adopted by ECOWAS, ECCAS and GGC to guide regional stakeholders in their efforts at addressing maritime crimes in the GoG.<sup>54</sup>

Certainly, the SPOMO serves as a veritable laboratory for the other countries seeking to revamp their legal infrastructures in order to bring them up to speed with the evolving maritime crimes that are threatening state and human security in the region. Although Sierra Leone and Côte d'Ivoire have yet to adopt similar legislation, efforts are being made to review and reconfigure the legal frameworks in these countries in order to ensure effective responses to maritime crimes.

Sierra Leone is currently conducting a comprehensive analysis of the existing legal system regarding the fight

<sup>47</sup>Interview with officials of Interpol, Abidjan June 2021

<sup>48</sup>Interviews with officials of Interpol, Abidjan June 2021.

<sup>49</sup>Interview with a maritime law expert in Abidjan.

<sup>50</sup>Cardesa-Salzmann, A. (2015). The Trafigura Case, EJOLT Factsheet No. 45, 8 p.

<sup>51</sup>Rapport de la Commission Internationale d'Enquête sur les déchets toxiques déversés dans le district d'Abidjan' (19 February 2007) . Available at <http://www.dechetstoxiques.gouv.ci/pdf/RAPPORT%20DE%20LA%20COMMISSION%20INTERNATIONALE%20D'ENQUETE%20SUR%20LES%20DECHETS%20TOXIQUES.pdf> (Accessed on September 7, 2021)

<sup>52</sup>Cardesa-Salzmann (2015). Op. cit.

<sup>53</sup>Federal Republic of Nigeria (2019). Suppression of Piracy and other Maritime Offences Act

<sup>54</sup>Hosking, B. (2021). Escalation of west African piracy causing concern. Maritime Risk International. Available at <https://www.standard-club.com/fileadmin/uploads/standardclub> (Accessed on July 18, 2021)



against crime at sea that will form the basis for the adoption of new legislation or the revision of current provisions. Also, the Government of Sierra Leone has established a Joint Maritime Committee (JMC), which is constituted by the Office of National Security (ONS), the Ministry of Defence – Navy, the Sierra Leone Maritime Administration (SLMA), the Sierra Leone Ports Authority (SLPA), among others. The JMC is mandated to coordinate maritime resources and activities. In spite of the salience of such interventions, effective maritime crime prosecution remains a critical challenge in Sierra Leone, Côte d'Ivoire, and other GoG countries, owing to the challenges highlighted above.

### Prospects for Enhancing the Prosecution of Maritime Crimes in the GoG

In order to enhance the potential for effective maritime crimes prosecution in the littoral states of West Africa and the wider GoG region, the following policy-relevant recommendations are proposed:

- GoG states, particularly those yet to do so, should conduct comprehensive reviews of their legal frameworks in order to bring them up to speed with the changing nature of maritime crimes, by fostering effective understanding of the challenges militating against maritime crime prosecution and what needs to be done;
- States in the region should adopt new and appropriate legislations in cases where it is proving difficult to adapt current provisions to the growing complexities of maritime crimes;
- Specialised capacities should be built or developed within the criminal justice system in order to enhance the expertise and experiences required for effective prosecution of specific maritime crimes;
- Specialisations in legal expertise should be accompanied by role clarity among institutions and actors within the criminal justice system in order to specify who does what, when, and how, and to avoid unhealthy competition and duplication of resources;
- Targeted investments based on consistent sources of funding in the infrastructures and logistics for law enforcement should be prioritized by states, as logistical inadequacies remain a common challenge in the region;
- State institutions should recognize and encourage the complementary roles played by civil society groups and communities, including small-scale fisherfolks, in crime prevention and prosecution in the maritime space as communities are increasingly emerging as subjects of justice and not merely objects of justice;
- Information sharing and management should be streamlined in order to enhance information flows needed for effecting arrest and prosecution of offenders in the maritime domain;
- States in the region should adopt a zero-tolerance

attitude towards corruption at all levels, while stiffer sanctions for crimes should be imposed; and

- States should prioritize the primacy of prevention that obviates the need for crime-fighting and prosecution by broadening economic opportunities for the youth, as an example.

### Conclusion

Piracy and armed robbery at sea are not only on a steady rise in the GoG, they are also emerging as a major source of threat to state and human security in the region. Yet, GoG states are confronted with multiple challenges in their response to these threats. Among the challenges being encountered, inadequate or inappropriate legal frameworks for prosecution remain prominent. Related to this are issues around the relevant national legal infrastructures for effective investigation and prosecution of maritime crimes in compliance with international law and in keeping with the rule of law. There are also challenges relating to judicial cooperation among relevant stakeholders that stem partly from the lack of effective information sharing and information protection that is often exacerbated by widespread corruption within the criminal justice system. Without effective legal frameworks and prosecutorial mechanisms, it is unlikely that the surging rates of maritime crimes will be averted, and the threats they pose to security will metastasise or multiply as a consequence. Overcoming these challenges requires multiple interventions of which an overhaul of the legal systems in GoG states or the adoption of new legal frameworks in the fight against maritime crimes seems inevitable.

## About the Centre

Kofi Annan International Peacekeeping Training Centre (KAIPTC) is an ECOWAS Centre of Excellence that provides globally recognized capacity for international actors on African peace and security through training, education and research to foster peace and stability in Africa.

[www.kaiptc.org](http://www.kaiptc.org)

## About the Project

The three-year project on “Enhancing Regional Research, Capacity Building and Convening of Stakeholders towards a Safer Maritime Domain in the Gulf of Guinea”, covers the coastal countries in West and Central Africa and is being implemented through three key approaches: research, dialogue and capacity building. The project is primarily aimed at promoting a safer maritime security domain in the Gulf of Guinea. Knowledge-based products highlighting key maritime security issues are part of the research outputs in an effort to raise awareness at a policy, technical and operational level. Overall, the project recognizes that piracy and armed robbery in the Gulf of Guinea continue to be significant threats not only to the economies of Guinea countries, but also regional and international shipping, necessitating a harmonized regional response to counter these threats.



