

# Differences and Similarities between Gulf of Guinea and Somalia Maritime Piracy: Lessons Gulf of Guinea Coastal States Should Learn from Somali Piracy

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## Abstract

Maritime piracy in African waters started to flourish in 21<sup>st</sup> century when Pirates focus their activities in the two sides of the Continent. Between 2005 and 2012 piracy activities were rampant in the Horn of Africa and the East Africa Coastal waters. Thereafter, piracy activities prospered in West Africa Gulf of Guinea States. To date the same are still persisting in the Gulf of Guinea Coastal States. The impact brought by African piracy to the shipping industry and maritime transportation at large, have touched a range of nations from developed countries to the developing countries. Because of that, the International and Regional communities set up strategies to fight and repress piracy activities within the Continent. Maritime piracy is a crime and was firstly considered as crime by the customary international law even before codification of the same in 1958 Geneva Convention on the High Seas and later the 1982 United Nations Convention on the Law of the Sea. The United Nations Convention on the Law of the Sea (UNCLOS) has not set for the punishment of pirates but it has rest to the individual countries to prosecute and punish piracy offenders according to the laws of a particular country. In defining what constitutes acts of piracy, the UNCLOS does not consider acts committed within the territorial waters of a State to be piracy, instead, it considers only those acts that are committed on the high seas for the private ends. The International law perception of what constitutes acts of piracy lead the governments of Gulf of Guinea coastal states to be solely responsible for maritime security of their countries as well as eliminating piracy acts happening in their area. Different from piracy off the coast of Somalia, a stateless country, Gulf of Guinea countries have stable governments and thus the principle of sovereignty applies. Despite the differences in nature for the acts of piracy that are happening in the two regions of the African continent, the same are still falling under the same umbrella of criminality of the acts of piracy. So whatever the differences there are still some similarities which basing on the same, the other part of the continent (West Africa) should draw the attention from, and copy the strategies of combating and eliminating acts of piracy in their region. This paper focuses on differences and similarities between Gulf of Guinea piracy and piracy off the coast of Somalia, what lessons Gulf of Guinea Coastal States should learn from Somali piracy for them to effectively combat and eliminate piracy activities within their area.

**Keywords:** Piracy, Crime, Gulf of Guinea, Somalia.

## 1. Introduction

While the world considering maritime piracy as a universal crime falling under universal jurisdiction and struggling to eliminate acts of piracy happening in the gulfs of Aden and Guinea and elsewhere in the world, the same appears to have inner most differences which, if not properly handled the world will please itself that it has finally eliminated piracy activities while the reality is in fact the opposite. Or just like the HIV virus which are overwhelmed by the ARV's intake but if the patient stops taking ARV tablets the HIV virus rejuvenate and multiply in double. What the author is trying to say is that the combat of maritime piracy activities and the strategies put forward should focus on the different nature of the activities happening in a certain area, thereafter, strategize on the same. Piracy, though being a criminal act all over the world and having uniform effects in the maritime industry and shipping transportation, cannot be combated under uniform strategies. Piracy off the coast of Somalia and that off the coast of Guinea have evidenced some differences. This paper is going to analyze those differences and similarities and finally is going to suggest proper legal ways to combat and eliminate acts of piracy.

## 2. Differences between piracy in the Gulf of Guinea and piracy off the coast of Somalia

Acts of piracy are not new into the shipping transportation or carriage by sea, it has been there for centuries and happens everywhere though rarely happened in African waters until the years 2005 and onwards. Piracy in Africa became rampant from 2008 to date although in Somali waters the acts were eliminated in 2012. Piracy in Africa has been termed to be unique due to its nature compared with piracy acts happening in other areas of the world. The uniqueness of it comes from the causes, nature and modus operandi. This uniqueness has also been caused by different features of piracy between Gulf of Guinea and off the coast of Somalia. This part is going to analyze those differences between piracy activities taking place on the Eastern and Western waters of the African Continent.

### *2.1 Difference in Pirates' hijacking purposes*

Gulf of Guinea piracy and piracy off the coast of Somalia have evidenced difference in hijacking purposes. Somali pirates' focus was on hijacking vessels and its crew members for ransom purpose. The practices are that, after the hijack, pirates will anchor the vessel and hold its crew hostages pending negotiations for ransom amount in exchange of the vessel, cargo and crew. In its 2014 Piracy and Armed Robbery against Ships Report, the ICC IMB recorded a total number of 555 hijacking and attempted incidents by Somali pirates to have occurred between January 2010 and December 2014<sup>1</sup>. In the year 2010 Somali pirates successfully collected a total of 44 ransom payments amounting to \$238 million with average of \$5.4 million per each ransom.<sup>2</sup> Apart from that, in 2011 a total of 31 ransoms were paid to Somali pirates totaling \$159.62 million with an average of \$4.97 million per each ransom collected.<sup>3</sup> Again the 2012 State of Piracy Report reveals that the cost of ransom and associated payments was \$31,750,000 to a total of 8 ransoms on average of \$3,968,750 per each ransom paid.<sup>4</sup> The 2013 report shows that during the material year the estimated ransom paid to pirates is \$21.60 million<sup>5</sup> and in the year 2014 the ransom and associated payments was estimated to cost \$200,000 and \$1,000,000 for the release of 18 hostages from MV Asphat Venture and MV Albed respectively in 2014. Both vessels sunk while in pirates' hands.<sup>6</sup> There was no ransom payment effected during the year 2015.<sup>7</sup>

In addition to that, the Somali pirates are good at holding seafarers in hostage for the exchange of ransom payment for their release. Report<sup>8</sup> shows that a total number of 111 hostages are recorded to have remained from 2010 – 2012 incidents, 117 were thought to be released and 54 hostages remaining as of May 1, 2014 held for a duration of 1,016 days. Moreover, 108 seafarers were in pirates' hostage in 2015 in Somalia whereby 78 of these were aboard vessels hijacked during the material year. In another report it is reported that 26 crew members of Naham 3 who were under pirates' custody since March 2012 have been, together with the 4 remaining Thai crew members of Prantalay 12 who were held hostage since 2010, released on 25 February, 2015 after 1,774 days in pirate hands.<sup>9</sup>

The central focus of pirates in the Gulf of Guinea on the other hand, is not kidnap for ransom. As they are operating in the area where there are stable central governments and in port policing they lack the capacity of the hijacked vessels and crew for a long time. Also because of the wide area of their operations where the targeted waters are used for the international voyage as well as voyage within the region unlike Somalia where the targeted waters are only traversed routes for international voyage. Pirates in the Gulf of Guinea invade the vessels enroute as well as vessel anchored for un-loading of the imported refined petroleum or awaiting for the loading of the crude oil for export. So their style only involves few kidnaps and ransoms. The wider operation is focusing on robbery and oil theft particularly oil cargo aboard the vessel in order to be sold in the black market. They are not much interested in holding hostage crew members for ransom. Crew members can be detained aboard the hijacked vessel for some few hours or days pending the siphoning of oil cargo and other valuables and equipment. Few of them can be held hostages for ransom as an exchange for their release. Their style involves robbery, kidnap and theft as hereunder discussed.

#### *2.1.1 Robbery*

Incidents of robbery in West Africa waters are normally happening towards the anchored vessels. The several occasions involves pirates armed with guns and knives that are used to threaten crew members during the robbery as well as defending themselves in case of any attempt to capture them. In some instances the robbers do not intend to engage the crew but rather to sneak inside and steal some cash, property and other valuable things and then slip away. In other instances the robbers engage crew members of the hijacked vessel, holding them for some time during their operation in the vessel and later, after they finish their activities, free them while themselves abandoning the vessel. Ocean beyond piracy 2012 report referred to this as 'subsistence piracy'.<sup>10</sup> The research by the United Nations Office of Drugs and Crime estimates that between \$10,000 and \$15,000 worth of goods are

<sup>1</sup> ICC IMB, "ICC IMB Piracy and Armed Robbery against Ships – 2014 Annual Report". January, 2015 available at: [www.hellenicshippingnews.com/wp-content/uploads/2015/01/2014-Annual-IMB-Piracy-Report-ABRIDGED.pdf](http://www.hellenicshippingnews.com/wp-content/uploads/2015/01/2014-Annual-IMB-Piracy-Report-ABRIDGED.pdf)

<sup>2</sup> Ocean Beyond Piracy, 'State of Maritime Piracy 2012 Report'. Page 10 available at: [www.oceanbeyondpiracy.org/sites/default/files/ecop2012final\\_2.pdf](http://www.oceanbeyondpiracy.org/sites/default/files/ecop2012final_2.pdf)

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Ocean Beyond Piracy, 'State of Maritime Piracy 2013 Report'. Page 8 available at: [www.oceanbeyondpiracy.org/sites/default/files/attachments/SoP2013-Digital.pdf](http://www.oceanbeyondpiracy.org/sites/default/files/attachments/SoP2013-Digital.pdf)

<sup>6</sup> Mathew R. Walje, et al, 'The State of Maritime Piracy 2014 Report'. Ocean Beyond Piracy page 20. Available at: [www.oceanbeyondpiracy.org](http://www.oceanbeyondpiracy.org)

<sup>7</sup> Ocean Beyond Piracy, 'The State of Maritime Piracy 2015 Report'. Ocean Beyond Piracy. Available at: [www.oceanbeyondpiracy.org/reports/sop2015/east-africa](http://www.oceanbeyondpiracy.org/reports/sop2015/east-africa)

<sup>8</sup> State of Maritime Piracy 2013 supra. Page 2

<sup>9</sup> Lloyd's list, 'Somali's Free Fishing Crew after Four Years'. March 03, 2015 available at: [Iss-sapu.com/news/view/1687.html](http://Iss-sapu.com/news/view/1687.html)

<sup>10</sup> Ocean Beyond Piracy, 'State of Maritime Piracy 2012 Report'. Available at: [oceanbeyondpiracy.org/sites/default/files/attachment/View%20Full%20Report\\_0.pdf](http://oceanbeyondpiracy.org/sites/default/files/attachment/View%20Full%20Report_0.pdf). Page 15

stolen per pirate attack in the Gulf of Guinea.<sup>1</sup> Basing on this, the Ocean Beyond Piracy 2013 estimated a total value of between \$180,000 and \$270,000 were lost per a total number of 18 incidents during the material year.<sup>2</sup> In addition to that \$364,000 and \$1,131,000 for stolen ship stores and equipment and personal effects respectively is recorded for the year 2014.<sup>3</sup> Moreover, \$400,000 is estimated to be cost involving the stolen goods and valuables happening in different 8 robbery incidents reported during robbery in 2015.<sup>4</sup>

### 2.1.2 Kidnap for Ransom

For kidnap and ransom purposes the West Africa pirates copying the tactics of the East Africa pirates, hijacking the vessel and taking crewmembers hostage to unknown places in exchange for the ransom amount for their release. However, kidnap for ransom incidents are not severe in the Gulf of Guinea as the waters are guarded by navy. So, normally kidnap does not last for a long time as in Somalia because it is difficult to do that in a place where the central government is stable. The hostage taking is extended to the employees of the foreign oil companies operating in West African countries rich in oil such as Nigeria, and released after those companies have paid some requested amount of money. However, this is typically associated with the class struggle of MEND group against the Nigerian government. A total number of 73 crewmembers were held hostage during the year 2013<sup>5</sup>. It is difficult to get a certain amount of ransom for their release since in the Gulf of Guinea there is a tendency of unrevealing the ransom amount for fear of vessels being under investigations which normally take long time and also for the fear of increasing insurance premium. The Ocean Beyond Piracy 2013 report came up with an estimate of \$1.57 million as a total cost of ransom and recovery.<sup>6</sup> Also, the report<sup>7</sup> shows that a total ransom amount of \$1,680,000 was paid to pirates for the release of 21 out of 27 crew members estimated to be taken hostage during the year 2014. Apart from that, \$1.6 million is estimated as costs for ransom paid to pirates for the release of 44 crew members who were taken hostage in 12 different piracy incidents occurred during the year 2015.<sup>8</sup>

### 2.1.3 Oil theft

The Gulf of Guinea is an increasingly busy maritime region for the transportation of a number of valuable commodities such as gold, iron ore, agricultural products, et cetera. It is as well the primary route to and from major oil producing countries such as Angola and Nigeria. In addition, with new discoveries of offshore oil in Ghana, Ivory Coast and Liberia there is an expectation of the increase of tanker traffic<sup>9</sup>. Therefore pirates in the Gulf of Guinea are mainly focusing on oil theft that anticipated by the presence of black market for fuel. The ships are hijacked for the purpose of stealing the vessel and unloading its cargo.

Oil theft has been the primary target for the Gulf of Guinea pirates and it is widely operated, whereby the pirates, normally armed by machine guns and other fire weapons hijack vessels underway or anchored and siphon the refined oil cargo carried onboard. Once the vessel is hijacked, the crew members are normally forced to navigate the same to unknown places where the oil cargo can either be siphoned to another vessel or to a storage facility on land. The stolen oil is directed to the black market to be sold there. Analysis of the stolen goods cost ranges between \$10.1 million to \$30.27 million<sup>10</sup>, with the majority taken from estimates of the oil theft from tankers stolen in 2013. The underwriting representatives from Lloyds and International Underwriting Association's company comprised in the Joint War Committee estimates that between \$2 million and \$6 million worth oil is stolen per one pirate attack in the Gulf of Guinea.<sup>11</sup> In 2014 the oil theft by pirates is estimated to be between \$11,519,000 and \$13,038,000.<sup>12</sup>

Most of the pirates in the Gulf of Guinea are opportunists and they sometimes apply all the three models. While the primary source of piracy acts is the oil cargo, pirates can apply robbery tactics and take some crew members hostage. The figures reveal that the primary focus is on stealing oil cargo to be sold in the black market. Gulf of Guinea piracy is associated with criminal activities ashore, operating in this way, the same is posing more

<sup>1</sup> UNODC, 'Transnational Organized Crime in West Africa: A Threat Assessment'. Page 51 February 2013 available at: <http://www.unodc.org/toc/en/reports/TOCTAWestAfrica.html>

<sup>2</sup> Ocean Beyond Piracy, 'The State of Maritime Security 2013 Report'. Page 62 available at: [www.oceanbeyondpiracy.org/sites/default/files/attachments/SoP2013-Digital.pdf](http://www.oceanbeyondpiracy.org/sites/default/files/attachments/SoP2013-Digital.pdf)

<sup>3</sup> Ocean Beyond Piracy, 'State of Maritime Piracy 2014 Report'. Page 52 available at: [oceanbeyondpiracy.org/sites/default/files/attachments/StateofMaritimePiracy2014.pdf](http://oceanbeyondpiracy.org/sites/default/files/attachments/StateofMaritimePiracy2014.pdf)

<sup>4</sup> Ocean Beyond Piracy, 'State of Maritime Piracy 2015 Report'. Available at: [oceanbeyondpiracy.org/reports/sop2015/west-Africa](http://oceanbeyondpiracy.org/reports/sop2015/west-Africa)

<sup>5</sup> Ocean Beyond Piracy, 'The State of Maritime Security 2013 Report'. Supra

<sup>6</sup> Ibid

<sup>7</sup> 'State of Maritime Piracy, 2014 Report' supra page 54

<sup>8</sup> Ocean Beyond Piracy, supra

<sup>9</sup> Nick Berg (Editor) 'Piracy's persistence in the Gulf of Guinea' African Defence Review. Available at: <http://www.africandefence.net/piracys-persistence-in-the-gulf-of-guinea/>

<sup>10</sup> State of Maritime Piracy 2013 supra, page 54

<sup>11</sup> 'Lloyd's Market Joint War Committee', available at: [http://www.lmalloyds.com/web/market\\_places/marine/JWC/Joint\\_War.aspx](http://www.lmalloyds.com/web/market_places/marine/JWC/Joint_War.aspx)

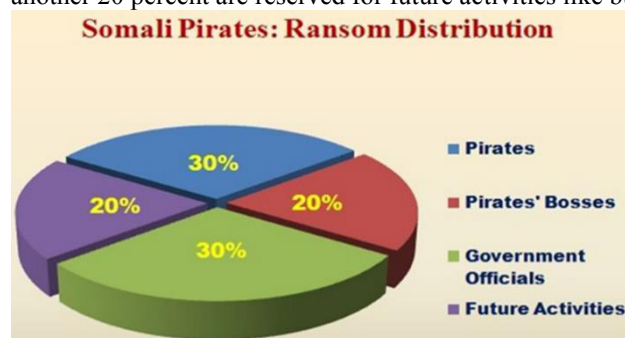
<sup>12</sup> State of Maritime Piracy 2014 Report supra, page 51

direct threat to the littoral communities and regional states than Somali piracy does.

## 2.2 Differences on the sovereignty of States

Another difference between Somali piracy and Gulf of Guinea piracy is that all Gulf of Guinea countries are sovereign states. They have governments in control and the International law permits them to deal with piracy activities according to the laws of the land. United Nations Convention on the Law of the Sea (1982) expressly provides for the States to cooperate to the fullest possible extent on the repression of piracy activities on the high seas or other areas beyond the jurisdiction of any State.<sup>1</sup> The Convention has further given powers of seizure of pirate ship or aircraft to States, and allowing the same to arrest and prosecute offenders according to their respective laws. It provides that: 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.<sup>2</sup>

In addition to that, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention), 1992 provides for the State parties to the Convention to either prosecute a person who commits offences falling under the Convention, or to extradite that offender to another country that requested his/her extradition.<sup>3</sup> The SUA Convention have cleared the gap created by the UNCLOS especially on the definition of what constitutes acts of piracy. It covers offences that are conducted in territorial waters and consider them as piracy.<sup>4</sup> It expressly provides that “this Convention applies if the ship is navigation of is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States”. Basing on this provision the Gulf of Guinea sovereign States are duty bound to take part on suppressing piracy activities happening in the high seas beyond the jurisdictions of any State as per the UNCLOS, and within their waters as per SUA Convention. The countries are rich in resources and their governments are functioning democratically. Unlike Somalia, the failed State which was for decades in a disaster of political and social dysfunction. It was not easy for the failed State like Somalia to combat piracy activities happened to its waters and beyond because there was no stable government. When piracy erupted the local leaders were part of it and they would observe pirates docking the hijacked vessels and holding crew members hostage without taking any action, actually they condone to the piracy activities and their share is 30 percent of the ransom money obtained while the rest goes to pirates themselves (30 percent), Pirates’ bosses (20 percent) and another 20 percent are reserved for future activities like buying weapons et cetera<sup>5</sup> as narrated in the pie below:



Source: Spiegel online

Somalia had nothing, no guards, no navies but Gulf of Guinea countries have a small navy though with less capacity to fight such organized piracy acts; however, due to some political and legal weaknesses the Gulf of Guinea States still have to clean their houses wisely for the better fight of piracy activities. Most of the existing penal laws within the region have, for a long time not properly addressing crime of piracy regardless of being signatory to the United Nations Convention on the Law of the Sea (UNCLOS), 1982 and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention), 1992. Some, for example Nigeria, does not have piracy law regardless of the pressure of piracy the country is facing. Since 2008 when the Nigerian Federal Government started to make a move through Nigerian Maritime Administration and Safety Agency (NIMASA) on drafting and enactment of the Piracy and other Unlawful Acts at Sea (and other

<sup>1</sup> Article 100 “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 other State.

<sup>2</sup> Article 105

<sup>3</sup> Articles 5&6

<sup>4</sup> Article 4

<sup>5</sup> Old Sailor, ‘Somali Pirates: How Ransom Collected is Spent’. December 7, 2008 available at: <http://www.marinebuzz.com/2008/12/7/somli-pirates-how-ransom-collected-is-spent/>

related offences) Bill, aiming at fully implementing piracy provisions of the UNCLOS and SUA Convention,<sup>1</sup> until April 2016 Nigeria does not have Anti-Piracy legislation. NIMASA is still sensitizing to the Stakeholders and members of the National Assembly about the Bill and the importance of the same to be passed into an Act of parliament.<sup>2</sup>

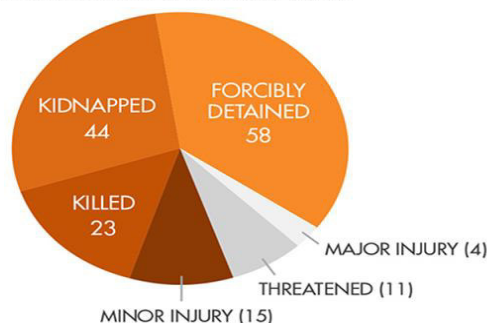
### 2.3 Differences on the impacts brought by Somali piracy and Gulf of Guinea piracy

Piracy off the coast of Somalia and that of Gulf of Guinea differs on direct impact to the shipping transport and the global market. While piracy off the coast of Somalia disrupts the flow of goods and commodities through one of the world's most important trade gateways (Suez Canal), the increase of insurance premium, expenses of evasive shipping routes, additional security guards on board vessels expenses and expenses for naval forces cost the global economy billions of money every year. The statistics by the Ocean Beyond Piracy show that from the year 2011 to 2015 the total estimated costs is \$16,859,069,138 whereby costs for ransom is estimated to be \$213,970,000; naval forces is estimated to cost \$4,423,400,000; security equipment and guards is estimated to cost 4,152,000,000; Re-routing costs estimation is \$888,772,660; the increased speed costs is \$5,361,926,478; estimated costs for prosecution and imprisonment is \$50,000,000 and for the insurance related costs is \$1,769,000,000.<sup>3</sup> Unlike Horn of Africa, Gulf of Guinea piracy disrupts the oil market and the shipping transportation of the same. West Africa is rich of oil and is contributing to the global energy market. The area has the capacity of supplying 30% of the United States oil market and 40% of Europe's oil market. According to different sources the Gulf of Guinea produces more than three millions barrels of oil a day, which is equivalent to 4% of the global total to be destined to Europe and USA.<sup>4</sup> Nigerian pirates and bunkers steal an average of 100,000 barrels of oil per day, causing the increase on global energy prices and costing the Nigeria government \$12 billion in annual oil revenue.<sup>5</sup>

### 2.4 Differences on the modus operandi

The differences between piracy in the Gulf of Aden and that in the Gulf of Guinea also lie on the modus operandi. Pirates operating in the Gulf of Guinea coastal states are severely violent, their actions involve beatings, torture, assaults and killing. In the year 2015 alone forty four (44) among 1,225 crew members faced with piracy threats and attacks were kidnapped, fifteen (15) were exposed to minor injuries, other four (4) crew members sustained major injuries and twenty three (23) faced death.<sup>6</sup> The following pie shows state of violence faced by seafarers.

DIRECT VIOLENCE AGAINST SEAFARERS



Source: *Ocean Beyond Piracy 2015 Report*.

In the 2014 report one seafarer was reported dead while in 2013 two seafarers incurred death and twelve (12) nonfatal injuries incurred by seafarers.<sup>7</sup> The increasing violent method used by these groups is believed to be part of a conscious "business model" adopted by them, in which violence and intimidation plays a major role.<sup>8</sup> On the other hand, piracy off the coast of Somalia is violent free, the only focus is to hijack and hold crew hostage

<sup>1</sup> Presented by Michael Igbokwe in his paper titled "Recent Developments in Nigerian Maritime Law and Practice: Piracy and Unlawful Acts at Sea". June, 2012. Maritime Seminar for Judges. Pages 10&11

<sup>2</sup> Xinhua, "Nigeria Calls for a Quick Enactment of Anti-Piracy Law". 12 April 2016. Available at: [news.Xinhuanet.com/English/2016-4/12/c\\_135269163.htm](http://news.Xinhuanet.com/English/2016-4/12/c_135269163.htm)

<sup>3</sup> These costs have been summed up from the Ocean Beyond Piracy Reports of 2011 to 2015 available at: <http://oceanbeyondpiracy.org>

<sup>4</sup> Latest News, 'Insight Piracy – Gulf of Guinea'. Updated on 4 March 2015, available at: [skuld.com/topics/voyage---port-risks/piracy/overall/piracy---gulf-of-guinea/latest-news](http://skuld.com/topics/voyage---port-risks/piracy/overall/piracy---gulf-of-guinea/latest-news)

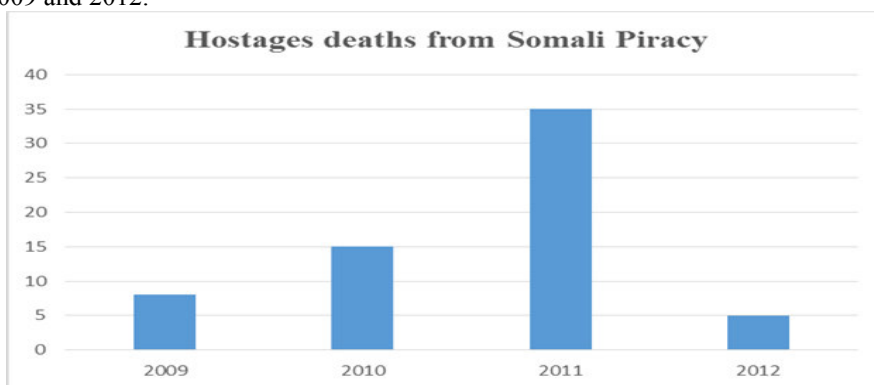
<sup>5</sup> Major Bryan Abell, 'Nigeria versus Somali Piracy: Eight Differences You Need to Know'. November 18, 2013 available at: [captain.gcaptain.com/Nigerian-versus-somali-piracy-eight-differences-you-need-to-know](http://captain.gcaptain.com/Nigerian-versus-somali-piracy-eight-differences-you-need-to-know)

<sup>6</sup> Ocean Beyond Piracy, "The State of Maritime Piracy 2015" supra

<sup>7</sup> Ocean Beyond Piracy of 2013 and 2014 supra

<sup>8</sup> Skuld, 'Insight: Piracy – Gulf of Guinea'. Updated on April 6, 2016 available at: [skuld.com/topics/voyage---port-risks/piracy/overall/piracy---gulf-of-guinea/general-information](http://skuld.com/topics/voyage---port-risks/piracy/overall/piracy---gulf-of-guinea/general-information)

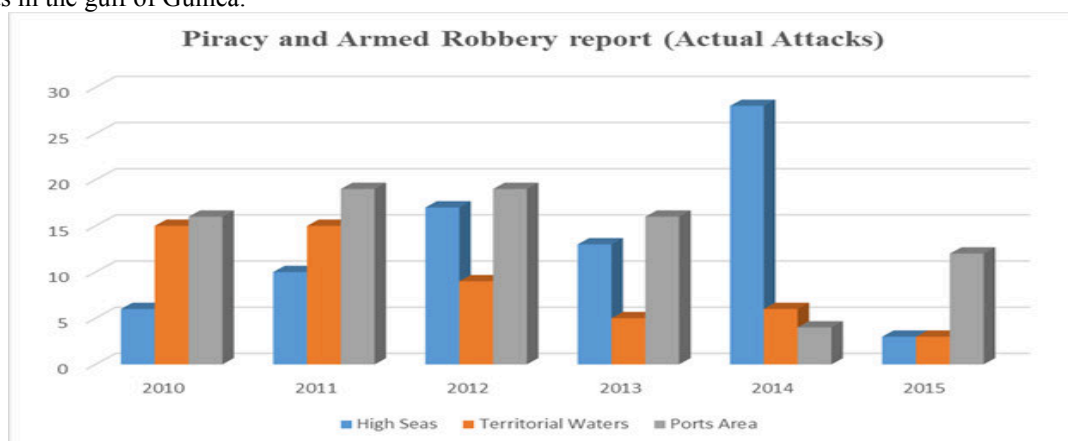
for an exchange of ransom amount shipping companies ordered to pay. Crew members are not exposed to unnecessary violence and the vessels are not subject for destruction of their equipment. The number of killings and torture recorded is so minimal compared to that done by pirates in the Gulf of Guinea. There are violence and deaths reported to be incurred by seafarer' victims of pirate attacks off the coast of Somalia. Most of these occurred during the rescue by naval forces whereby seafarers are used as a shield by pirates. In the 2011 Ocean Beyond Piracy report five (5) deaths of seafarers were reported upon which two died during the rescue, one died of sustained gun wounds and other two died during captivity.<sup>1</sup> Only one death reported incident in 2014<sup>2</sup>, and no confirmed death reported in 2013.<sup>3</sup> From 2009 to 2012 the highest death rate reported is thirty five (35) crew members which happened in 2011. Pirates off the coast of Somalia are known for being non-violent, the fatality mostly happened during the rescue operations. Naval forces at some point have been condemned of their actions towards the attacked vessels; one seafarer, a victim of piracy says: "what they did is terrible and wrong when the navy attacked our vessel. We may have been much more thankful if the pirates brought us to Somalia and they pay the ransom. No one could have been killed from our crew."<sup>4</sup> The chart hereunder shows crew members death rate between 2009 and 2012.



Source: Ocean Beyond Piracy 2012 Report

### 2.5 Piracy incidents conducted in high seas versus incidents conducted within territorial waters of a State

Pirates' attacks in the Gulf of Guinea mainly occur within territorial waters and in ports area though not restricted only to territorial waters and ports area. The statistics of actual attacks show that in 2014 events taken place in the high seas exceeded those happened in territorial waters and within the ports, but in the remaining years events occurred within ports area are many compared to those in the high seas. The following chart shows the piracy events in the gulf of Guinea.



Source: IMO Reports

The vessels are attacked while underway or when docked waiting for offloading or loading, oil cargo are siphoned, crew property and cash are stolen et cetera. Piracy off the coast of Somalia however, often happens in the high seas. The scope of piracy attacks in West Africa restricted the deployment of international naval forces to guard the area since the principal of sovereignty is applied. Maritime security and port security control of a sovereign coastal State is under the jurisdiction of such particular coastal state. In Somalia the situation is different,

<sup>1</sup> Ocean Beyond Piracy 2012 report supra. Page 7

<sup>2</sup> Ocean Beyond Piracy 2014 report supra

<sup>3</sup> Ocean Beyond Piracy 2013 report supra at page 39

<sup>4</sup> Ibid at page 8

the country was stateless whereby no government was in place, and the transitional government was unable to solely control piracy activities. Moreover, the scope of application of Somali pirate attacks were mostly in the high seas; basing on that, the international naval forces were deployed to guard the area as urged by the United Nations Security Council's Resolutions 1816 of 2 June 2008<sup>1</sup>, 1846 of 2 December 2008<sup>2</sup>, 1851 of 18 December 2008<sup>3</sup>, concerning piracy situation off the coast of Somalia. The United Nations called upon all States and Organizations with the capacity to actively participate in the fight against piracy activities off the coast of Somalia.

### *2.6 Differences in the applicability of laws*

There are differences on the applicability of laws to try piracy offenders. In response to Somali piracy, the international community deployed naval task forces from twenty nine (29) Nations to combat piracy in the area. In absence of judicial system in Somalia, other countries have devoted to prosecute suspected pirates. With the aid of the United Nations Office for Drugs and Crime and the United Nations Development Programme, prisons were built in Seychelles and Somalia itself. Tanzania, Kenya and Mauritius have volunteered to prosecute and incarcerate piracy offenders using their national laws as per UNCLOS piracy. All countries that volunteered to prosecute Somali suspected piracy have from 2009 amended their laws to incorporate UNCLOS piracy provisions into their laws. In 2010 Tanzania amended section 66 (1) and section 342 of its Penal Code cap 16 of the Revised Laws of Tanzania and the Merchant Shipping Act, 2003 respectively to incorporate piracy provisions as per UNCLOS and associated crimes. In 2009 Kenya effected amendments to its Merchant Shipping Act, cap 389 to incorporate piracy provisions as per the UNCLOS.<sup>4</sup> Moreover, the amendments was effected to the Seychelles laws in 2010 for the same purpose, to provide for the offence of piracy and to capacitate its court to have jurisdiction over the offences of piracy.<sup>5</sup> Mauritius and Somalia have also inaugurated new piracy laws in 2011<sup>6</sup> and 2012<sup>7</sup> respectively. The new laws are in conformity with the UNCLOS provisions of piracy especially on the definition of what constitutes piracy provided under Article 101 of the Convention. After these amendments and inauguration of new laws by all the five countries, the courts of the same have been able to conduct prosecutions of piracy cases emanating from Somali waters towards their respective waters. However, the punishment differs from one country to another ranging from a number of years of incarceration to the life sentence.

The situation is different in West Africa piracy, particularly in Nigeria whereby piracy seems to be legal or not yet illegal (one can say). Despite having a sizeable navy and judicial system that is functioning, Nigeria has not yet incorporated UNCLOS piracy provisions or even implement piracy laws of its own. The complete absence of laws governing the safety of marine navigation explains the non-existent prosecution rate in Nigeria.<sup>8</sup> Other Gulf of Guinea countries have piracy provisions in their laws but differs from that of Article 101 of the UNCLOS. Benin Maritime Code stipulates for the offence of piracy and the acts of a crew member of the same ship towards the ship captain are considered as piracy.<sup>9</sup> This is different from UNCLOS where there must be two ships involved, a pirate ship and the attacked ship. Although the Benin Constitution gives all ratified Conventions and Treaties by Benin, upon publication, an authority superior power over that of the municipal laws<sup>10</sup> but it is not clear on whether Benin courts have jurisdictions to hear and determine offences committed on the high seas. Ivory Coast,<sup>11</sup> Ghana<sup>12</sup> and Togo<sup>13</sup> have provisions of piracy under their laws the punishment of which, ranges from ten years imprisonment to death penalty. The laws permit the courts to have jurisdiction over offences committed on territorial waters of the respective States. Despite of having piracy provisions in their laws, the same are different from the provision of piracy stipulated in the UNCLOS. UNCLOS have obligated States to cooperate in the fullest possible extent to fight for piracy,<sup>14</sup> but it did not obligate States to seize and retain pirate ship or Aircraft<sup>15</sup> as it uses the word "shall" in article 100 and the word "may" in article 105. So States have discretion on whether to

<sup>1</sup> The UN decided that the States cooperating with the Somalia Transitional Government would be allowed for a period of six months, to enter Somalia territorial waters and use all necessary means to repress acts of piracy and armed robbery at sea, in a manner consistent to the provisions of International law.

<sup>2</sup> The UN Security Council decided that during the next 12 months to deploy naval vessels and military aircraft, as well as seizing and of disposing boats, vessels, arms and related equipment used for piracy.

<sup>3</sup> *ibid*

<sup>4</sup> Sections 369 and 370

<sup>5</sup> Sections 4 and 65 of Act No. 2 of 2010

<sup>6</sup> Piracy and Maritime Violence Act, 2011

<sup>7</sup> The Law on Combating Piracy, Law No. 52 of 2012

<sup>8</sup> Bryan Abell, *supra*

<sup>9</sup> Article 643 of Benin Maritime Code 2011

<sup>10</sup> Article 147 of the Constitution of the Republic of Benin

<sup>11</sup> Article 228 (1) & (2) of Marine Merchant Code 1961 and Article 15 of the Penal Code

<sup>12</sup> Section 193 and 194 of Ghana Criminal Code, No. 29 of 1960

<sup>13</sup> Articles 147-155 of the Togolese Merchant Marine Code, No. 129 of 1971

<sup>14</sup> Article 100 of UNCLOS

<sup>15</sup> Article 105 of UNCLOS

seize the pirate ship and /or its cargo or not. And since all Gulf of Guinea States are sovereign, there is no room for a coalition in West Africa since all countries like the coalition formed of Somali piracy issues.

### *2.7 Differences in the approaches of combating piracy*

The differences between Somali and West Africa piracy have driven the different approaches in combating the same. The Somali piracy crisis is mitigated by International Community. Through a call from the United Nations Security Council, States with strong navy power joined forces by providing military vessels to guard the area where piracy activities were rampant. The United Nations Security Council urged States to volunteer to prosecute the apprehended offenders by naval forces. Responding to the call, and by adhering to provisions of article 100 of the UNCLOS<sup>1</sup>, Kenya, Tanzania, Seychelles, Mauritius volunteered to prosecute suspected pirates in their courts of law. The agreements were entered between these countries and the countries of the naval forces on the transfer of the apprehended suspected pirates by their navies for prosecution. The United Kingdom, United States of America, France and Denmark entered into these agreements with Kenya, Tanzania, Seychelles and Mauritius. Regional efforts came later but to the great extent supported by the International Organizations. To the present, still there are naval forces stationed along the area guarding and combating pirates, also prosecution of piracy cases is still pending in different countries' courts of law, Tanzania, Kenya, Seychelles, Mauritius and Somalia. So the fight for repression of Somali piracy was international wise, the burden of fighting and eliminating acts of piracy was not left to Somalia or Gulf of Aden countries or the East African Coastal States which affected by Somali piracy.

Regional efforts are currently leading the fight of piracy in West Africa. In November 2011, the United Nations Secretary General, Ban Ki-moon assembled a team to examine the situation in the Gulf of Guinea.<sup>2</sup> In that meeting, it was agreed for the affected West African countries to form a united front.<sup>3</sup> The Economic Community of West African States (ECOWAS), Economic Community of Central African States (ECCAS) and the Gulf of Guinea Commission (GGC) responded to resolutions and have formulated strategies to combat piracy. Although there are aids from the International Community these are mostly through bilateral contracts and partnerships. Through West and Central Africa Organizations, they have formulated a Code of Conduct setting out blue prints for fighting acts of piracy and other maritime security related offences. Despite all these efforts, piracy in West African regions still persists.

### *2.8 Differences on the efficacy of the criminal business*

West Africa piracy seems to be more lucrative business than Somali piracy. Hijacking an entire tanker and siphoning its oil cargo is far more efficient criminal business than the Somali pirates' style of hijacking a vessel for ransom. It takes very short time for West Africa pirates to profit out of the crime and probably within a week if the buyer of the stolen fuel was arranged beforehand. It is estimated that, since the year 2010, 117,000mt of product worth approximately \$100 million has been stolen in the Gulf of Guinea.<sup>4</sup> Even if they hijack a vessel and held its crew members hostage, it is hard for pirates in West Africa to retain the same for a long time because they lack resources of keeping a ship and crew members. Also because West African countries are sovereign and their governments are stable, there is always navy and police patrol along the coast. But in Somalia, a pirate has to negotiate for a ransom which takes about a year or more to get the ransom money. Somali pirates could held the hijacked vessel a shore and its crewmembers somewhere as long as they wish until their mission is accomplished, without any interference from the police or navy because there was no effective coast guard.

### *2.9 Differences in understanding motivations behind piracy activities*

There is knowledge deficit in the Gulf of Guinea relating to the dynamics, causes and consequences of attacks and how to implement policies to successfully resolve the situation. The absence of focused attention given to maritime insecurity in the area is also part of difficulty in Gulf of Guinea countries. There is laxity in ports security control and the entire territorial waters. This makes it easier for criminal gangs to execute their mission. Also, unlike Somali piracy which its funders are said to be inter alia Somali diaspora who offer funds, equipment and information in exchange for a cut of the ransoms, and others participating in negotiations and translations,<sup>5</sup> piracy in the Gulf of Guinea is unknown of its attackers' motivations, their funding, the interface between criminal, opportunists and political groups. It is only said, narratively, that Movement for Emancipation of Niger Delta

<sup>1</sup> "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."

<sup>2</sup> Republic Togolese; "Gulf of Guinea needs regional anti-piracy strategy". 29-02-2011 Retrieved on 29-02-2011

<sup>3</sup> Ibid

<sup>4</sup> Mark Naftalin, 'In the Same Boat? Contrasting Piracy in West and East Africa'. 5 December 2013 available at: [www.isn.ethz.ch/Digital-library/Articles/Detail/?id=173814](http://www.isn.ethz.ch/Digital-library/Articles/Detail/?id=173814)

<sup>5</sup> NBC News, "Somali Piracy Backed by International Network" updated on 12/10/2008. Available at: [nbcnews.com/id/28158455/ns/world\\_news-africa/t/somali-piracy-backed-international-network/#.WC5W9YVOKmQ](http://nbcnews.com/id/28158455/ns/world_news-africa/t/somali-piracy-backed-international-network/#.WC5W9YVOKmQ)



(MEND) is a source of piracy activities off the coast water of West Africa States but it is not clear and is actually unknown whether there is, apart from MEND, independent criminal gangs executing crimes in the coastal waters of Gulf of Guinea countries. Moreover, although the grand corruption by port officers and police in Nigeria is mentioned to contribute to the challenges of eliminating acts of piracy, there are still unknown networks of support and the complicity of national authorities. Even the number of reported incidents is not much clear as only few incidents are reported. It is estimated that between 50 percent and 80 percent of incidents are going unreported and thus not documented.<sup>1</sup> There is no central reporting procedure in the place unlike in the Somali piracy case where there is a clear picture of how the incidents are reported.

### *2.10 Differences in importance of shipping business*

The Gulf of Guinea is not an integral part of the international shipping channels as the waters of the Horn of Africa. All ships traversing the Suez Canal between Indian Ocean and Mediterranean Sea must pass through the Gulf of Aden. A lot of ships choose this route because it is the shortest route between East and West and it saves a lot of running costs compared to the Cape of Good Hope route.<sup>2</sup> Because of this, a lot of shipping companies are affected by piracy activities taking place off the coast of Somalia as the area is an important shipping route. On the other hand, ships only pass through Gulf of Guinea while doing business specifically in West Africa. Most of the ships attacked are either on port area waiting for loading the oil cargo, unloading cargo or are underway with crude oil cargo aboard the vessel. Mostly the business involves the oil product which is rich in West Africa Region.

### **3. Similarities of Gulf of Guinea piracy and piracy off the coast of Somalia**

Apart from the foregoing differences there are also similarities present especially on the criminality of the acts of piracy, some of the causes of piracy and the danger of it for the safety of navigation. The following discussion is based on those comparative similarities.

#### *3.1 criminality of the acts of piracy*

Although there are differences between Gulf of Guinea piracy and piracy off the coast of Somalia as aforementioned analysis entails, there is one big similarity between the two, that is, the criminality of the piracy activities. Piracy is an offence under the international law and municipal laws as well; it has been declared as an enemy of all mankind (piracy *jure gentium*) and has been firstly declared as such under the customary international law even before the codification of it in 1958 Geneva Convention on the High Seas.<sup>3</sup> Because of that, it has been and actually it is subject to the universal jurisdiction. Sir Charles Hedges in showing that piracy attracts universal jurisdiction was once held that the king of England hath not only an empire and sovereignty over the British seas, but an undoubted jurisdiction and powers, in concurrency with other princes and States, for the punishment of all piracies and robberies at sea, in the most remote parts of the world; so that if any person whatsoever, native or foreigner, Christian or infidel, Turk or pagan, with whom we hold trade and correspondence, and are in amity, shall be robbed or spoiled in the narrow seas, or the branches thereof, either on this or the other side of the line, it is piracy within the limits of your enquiry and the cognizance of this court.<sup>4</sup> In spite of the universality of the crime of piracy, perpetrators of the same are prosecuted under the municipal laws of a country rather than the international law. And these are not necessarily the same.

The definition of piracy under the 1958 Geneva Convention on the High Seas was adopted by the United Nations Convention on the High Seas (UNCLOS) 1982. Under this convention piracy has been termed as:

- (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 air craft, or against persons or property onboard such ship or an 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 intentionally facilitating an act described in subparagraph (a) or (b)

According to the UNCLOS definition, piracy is confined into the acts committed in high sea only, with the other elements of a presence of a private ship or an aircraft, and the commission should be against another ship or persons or property therein committed for the private ends not public ends or gain and any inciting acts or an intentional facilitation of the piratical acts. Having satisfying all the above mentioned elements then there is piracy.

<sup>1</sup> *ibid*

<sup>2</sup> Ashraf Ghazy, 'the Suez Canal: The Invaluable Shipping Shortcut'. Available at: [https://www.porttechnology.org/technical\\_papers/the\\_suez\\_canal\\_the\\_invaluable\\_shipping\\_shortcut/](https://www.porttechnology.org/technical_papers/the_suez_canal_the_invaluable_shipping_shortcut/)

<sup>3</sup> Article 15

<sup>4</sup> *Rex v. Dawson* 8 william III, 1695, 13 State Trials 451 (1816)

Apart from the International Conventions, acts of piracy have been criminalized in the municipal laws as well where by majority have included acts of hijacking and hostage taking as offences prosecutable and punished by the law. The two associated crimes are not universal crimes under the international convention or even international customary law. Most of States have provisions of crime of piracy in their penal laws however, the characteristics of the offence and the degree of punishment are not necessarily to be the same. They can differ from one legislation to another. This is vividly observed in provision of laws currently enforced by the coastal states of the Gulf of Guinea rather than East African coastal States. For example the Benin Maritime Code contains provisions which criminalize acts of piracy, however, there is no provision in the Benin Maritime Code that provides for the punishment of piracy offence, rather it stipulates that, any individual convicted for the crime of piracy or an accomplice thereof shall be sentenced in accordance with the provisions of the Benin Penal Code.<sup>1</sup> It expressly says: Anyone who was convicted of the crime of piracy is prosecuted and punished in accordance with the provisions of the penal code. The same penalties are applied to the accomplices of the acts referred to in article 643 of this code. The competent tribunal may order the confiscation and sale of the pirate ship for the benefit of the State. The Nigeria Merchant Shipping Act is not explicit because it gives the Minister the discretion to make regulations at any time he deems fit. It expressly provides: The Minister may make such regulations as he deems necessary, or expedient for the purpose of carrying out the provisions of this Act.<sup>2</sup> Also there is no legal framework for the prevention of unlawful acts. Even the Convention for Suppression of Unlawful Acts against the safety of navigation (SUA Convention) which has been mentioned in the Merchant Shipping Act has not been incorporated into the national laws of Nigeria. And the punishment of the offence of piracy is death penalty for the most of Gulf of Guinea Coastal States' penal laws like Ghana, Togo and Ivory Coast.

This is different from East African Coastal States like Kenya, Tanzania, Somalia, Seychelles and Mauritius where the maximum punishment for the offence of piracy is life imprisonment.

### *3.2 The danger posed to maritime security*

Acts of piracy, since its beginning which is traced back to when man started using the sea as a means of transportation, have posed a great danger to maritime navigation and security at large. The ships, cargoes and seafarers operating aboard the ships have been regarded as targets for attacks and hijack by the gangs of robbers and thieves. At the beginning the gangs of robbers were focused on stealing personal belongings from unlocked and untended cabins whilst alongside in certain ports but, in these decades piracy actions are conducted in a more organized way and in its growth using more advanced weapons and modern technology speed boats and other accessories associated thereto that enable the pirates to board the targeted vessel and accomplish their mission. Threats, force and violence is part of the piracy mission and seafarers have been directly affected much by these conducts. This is uniform whenever and wherever happened around the world and it will remain to be the same and stagnant, so it is not about Somali piracy and piracy in the Gulf of Guinea coastal states alone. The target should be on the fight of crimes of piracy beginning with the legal wing on the prosecution and punishment; as well as other wings.

### *3.3 The narrative causes of piracy in both sides of the continent.*

The similarity on the causes of piracy off the coast of Somalia and off the coastal states of Gulf of Guinea are basing on the local social groups reacted towards certain actions believed to be a source of their life hardship. Local fishermen in Somalia and MEND group in the Niger Delta in Nigeria are termed to be sources of piracy activities in Africa. However, it is obvious that there are other criminal gangs apart from the gangs organized by MEND and Somalia fishermen, fully participating in this criminal business in Africa. Also, there are other factors contributing to persistence of maritime piracy as per the hereunder discussion.

#### *3.3.1 The narrative root causes of piracy off the coast of Somalia*

The narrative causes of Somali piracy is said to be illegal fishing conducted by foreign trawlers in Somalia territorial waters and dumping of toxic wastes in Somali waters by the European big shipping companies. All these activities have contributed much to the hindrance of the local fishermen to earn the living. More than \$300m worth of tuna, shrimp, lobster and other sea-life is being stolen every year by vast trawlers illegally sailing into Somalia's unprotected seas.<sup>3</sup> The aggrieved local fishermen reacted to the massive illegal fishing operated by foreign trawlers into Somali territorial waters and wastes dumping exercised by big vessel companies to the Somali waters. These activities took advantage of Somalia political instability that left Somali waters unprotected. Ahmedou Ould-Abdallah, the former UN envoy for Somalia stated that, "because there is no (effective) government, there is... much irregular fishing from European and Asian Countries".<sup>4</sup> The UN Food and Agricultural Organization said in

<sup>1</sup> Article 644 of Benin Maritime Code 2011

<sup>2</sup> Article 216 (1) of Merchant Shipping Act, 2007

<sup>3</sup> "Johann Hari: You Are Being Lied to About Pirates". Huffingtonpost.com. 13 April 2009. Retrieved 27 March 2011.

<sup>4</sup> "UN envoy decries waste dumping off Somalia". Middle-east-online.com. 26 July 2008. Retrieved 27 March 2011.

2005 that around 700 trawlers with foreign flags were involved.<sup>1</sup> In addition to that, it was reported that the UN has reliable information that European and Asian companies are dumping toxic and nuclear wastes off the Somali coastline.<sup>2</sup> As a result the coastal population began to sicken. At first they suffered strange rashes, nausea, and malformed babies. Then after the 2005 tsunami, hundreds of the dumped and leaking barrels washed up on shore. People began to suffer from radiation sickness, and more than 300 died.<sup>3</sup>

Seeing that foreign ships are marvelously fishing in their waters, and big shipping companies spoiled the waters by dumping wastes, local fishermen formed groups to attack foreign ships as a way of defending their territorial waters. According to a 2008 BBC report, the Somali pirates can be divided into three main groups: - local fishermen, considered to be the brains of the pirates' operations due to their skill and knowledge of the sea; ex-militiamen, who previously fought for the local clan warlords, or ex-military from the former Barre government used as the muscle; and technical experts, who operate equipment such as GPS devices<sup>4</sup>

In 2009 a survey by Wardher News, an independent Somali news-site found that nearly seventy percent (70%) of the local coastal communities at the time, strongly support the piracy as a form of national defense of the country's territorial waters.<sup>5</sup>

### 3.3.2 *The root causes of acts of piracy in the Gulf of Guinea*

Piracy in the Gulf of Guinea is powered by political conflicts and insurgency and the Movement for the Emancipation of Niger Delta (MEND) in their claims against the Nigerian government to address social inequalities and political differences, absence of security structure, corruption in the oil sector and weak law enforcement to mention the least.

#### 3.3.2.1 *Political conflict, insurgency and MEND movement*

Nigeria has been faced by a decade-old conflict between insurgents, the Nigerian state and oil corporations. The economic dispossession and political marginalization by the Nigerian government ignited the society of people in Niger Delta, the focal point of oil resources, to oppose the Nigeria government claiming the control over their oil resources. The western oil companies were sabotaged by tapping oil pipelines and selling oil in the oil black market. This conflict engineered by Movement for the Emancipation of Niger Delta (MEND) was increasingly involved in criminal activities to the coast area beyond the Niger Delta. MEND stretches its arms to engage in piracy as a way of gaining power to facilitate the in-land criminal enterprises to fight the Nigerian government<sup>6</sup>. These activities of MEND and other groups spread to the entire coast of the Gulf of Guinea. Actually the Niger Delta conflict plays a big role in the presence of piracy in the Gulf of Guinea.

#### 3.3.2.2 *Corruption*

Corruption activities in the oil sector have been directly linked to the piracy in the Gulf of Guinea. The inhabitants of this region depend largely on oil revenue, but due to the corruption activities in this sector, only a small percentage of revenue reaches the local population. The Gulf of Guinea has eight states rich in oil that produce a total of 5 million barrels of oil per day<sup>7</sup> and Nigeria alone produces 2.3 million barrels of oil per day<sup>8</sup> Weak and corrupt government officials rely on the profits of the oil companies coming from exporting oil to overseas. This leads to mismanagement of resources in the region<sup>9</sup>.

Absence of security structure and ineffective of port and coastal patrol in the area has led to the influx of piracy activities in the area. Local navies and police marine are ill equipped and are less concerned about the events since the stolen goods from ships have insurance cover and insurance companies pay the value amount of the stolen goods. These local navies and police marine are easily bribed by pirates not to make often patrols over the area. So because of this the local navies become worthless<sup>10</sup>.

#### 3.3.2.3 *Weak law enforcement*

The weak law enforcement is directly connected to corruption, allegedly mainly on the law enforcers. Majority of law enforcers are condemned to indirectly support piracy activities along the coastal water of West Africa by not responding positively to the events and accepting bribes from the offenders. Pirates take this as an advantage to keep on their actions against vessels. Most of West Africa citizens have the least favourable view of the integrity of their law enforcement agencies, and the majority of them who came across the police felt compelled to pay

<sup>1</sup> UN Security Council, Report of the Secretary General on the protection of Somali natural resources and waters, 25 October 2011, S/2011/661, available at: [http://www.un.org/gu/search/view\\_doc.asp?symbol=S/2011/661](http://www.un.org/gu/search/view_doc.asp?symbol=S/2011/661).

<sup>2</sup> Abdullahi, Najad (11 October 2008). "Toxic waste' behind Somali piracy". English. Aljazeera.net. Retrieved 27 March 2009.

<sup>3</sup> "Johann Hari: You Are Being Lied to About Pirates". Huffingtonpost.com. 13 April 2009. Retrieved 27 March 2011.

<sup>4</sup> Hunter, Robyn (28 October 2008). "Somali pirates living the high life". BBC. Retrieved 20 November 2008.

<sup>5</sup> "Johann Hari: You Are Being Lied to About Pirates". Huffingtonpost.com. 13 April 2009. Retrieved 27 March 2011.

<sup>6</sup> Christos Kyrou and Kaade Wallace, The Gulf of Guinea: Maritime Piracy's New Global Nerve Centre. Available at: [http://www.fairobserver.com/region/middle\\_east\\_north\\_africa/gulf-guinea-maritime-piracys-global-nerve-center-18429/](http://www.fairobserver.com/region/middle_east_north_africa/gulf-guinea-maritime-piracys-global-nerve-center-18429/)

<sup>7</sup> ibid

<sup>8</sup> ibid

<sup>9</sup> Tepp, 'The Gulf of Guinea: Military and Non Military Ways of Combating Piracy' page 191

<sup>10</sup> Fiorelli, 'Piracy in Africa: The Case of the Gulf of Guinea' KAIPTC occasional paper no. 37

bribe to the police to escape liability<sup>1</sup>.

The law enforcement does not end with the police. It involved a number of public officials and the legislation itself. It is common for public officers to accept bribes for the offenders to escape punishment. Nevertheless, majority of these countries for a long time have no provisions of law providing for the offence of piracy and have not yet domesticated provisions of piracy stipulated in the United Nations Convention on the Law of the Sea, 1982.

#### 4. Conclusion

Despite the differences and similarities of piracy activities happening in these two sides of the African Continent, piracy acts off the coast of Somalia, to the greater extent have been eliminated. Thus there is a need for the Gulf of Guinea States to learn from Gulf of Aden (Somali) piracy on how it was eliminated. Through the similarity of the criminality of the piracy actions, using international conventions and municipal laws together with other preventive measures as hereunder analyzed.

*i. The presence of naval patrol to deter and fight pirates.*

In Somalia the International naval patrols in the Gulf of Aden and the Indian Ocean helped to a greater extent the elimination of piracy activities. The European Union naval forces' operation Atalanta, NATO's operation ocean shield and the US-led combined Task Force 151 are at the fore front of this naval action in collaboration with maritime stakeholders through information sharing. Individual countries including Russia, China and India have also placed their naval forces particularly within the Internationally Recommended Transit Corridor (ITRC) to ensure that the busy shipping route operates securely.

*ii. Implementation of Best Management Practices (BMP) by the majority of the ship owners for vessels traversing the high risk area of the Indian Ocean.*

The Best Management Practices guidelines were formulated by the International Shipping Organizations and navies. They were designed to provide shipping companies and seafarers with advice on how to avoid hijack. It is estimated that the vessels which apply the Best Management Practice guidelines are four times less likely to be hijacked.<sup>2</sup>

*iii. The Private armed Security Guards aboard the vessels*

The presence of private security guards aboard the vessels has proved efficiency on the fight of piracy in the Gulf of Aden. Although many countries, at the beginning, were reluctant to deploy these armed guards on vessels flying their respective flags and although the legal status of the same is in question, and although there is an ambiguous situation between the ship captains' roles and responsibilities versus the private security companies roles arising out of the situation where security of the vessel is at risk or in danger; these private armed guards are increasingly regarded by the shipping industry and policy-makers as an effective deterrent of piracy actions. The Gulf of Guinea coastal states should consider the private security guards aboard the vessels entering their waters, as they will help them in cooperation with the Maritime Security Organs of a particular State to eliminate and deter the pirates of the Gulf of Guinea.

*iv. Regional capacity building and prosecution of piracy perpetrators*

The International support, particularly for improvement of legal systems and prison capacities in Eastern and Southern Africa's littoral States has allowed for increased prosecution and imprisonment of the pirates. The United Nations Office for Drugs and Crime and the United Nations Development Programme have done a great job in helping the Eastern and Southern African countries which volunteered to prosecute piracy offenders. The improvement of prison infrastructure, the amendments and/or promulgation of piracy provisions into their penal laws incorporating the United Nations Convention on the Law of the Sea's piracy provisions have helped these States to uniformly prosecute and imprison pirates committed crimes off the coast of Somalia. The United Nations Security Council's resolutions urged the International Community at large and the Regional Countries in particular to cooperate in eliminating and suppressing Somali pirates. The outcome of which regional countries entered into agreements with countries deploying naval forces for the exchange/transfer of the suspected. Also the Eastern and Southern African countries entered into Memorandum of Understanding concerning maritime security of their States. Moreover, there was establishment of piracy information centres for easily tracking and recording of events. Each one of these has yielded positive outcomes resulting into elimination of piracy activities in the area.

The Gulf of Guinea coastal States have also entered into the Memorandum of Understanding (Yaoundé Agreement) for combating piracy within the region. And through Individual partnerships with the Western Countries such as the United Kingdom, France, and the United States of America, regional navies have been

<sup>1</sup> UNODC, Transnational Organized Crime in West Africa: A Threat Assessment. Page 56 available at: <http://issuu.com/openbriefing/docs/organized-crime-in-wst-africa>

<sup>2</sup> Adjoa Anyimadu, 'Maritime Security in the Gulf of Guinea: Lessons Learned from the Indian Ocean'. 2 July 2013. Chatham House Africa 2013 available at: [https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0713pp\\_maritimeSecurity\\_o.pdf](https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0713pp_maritimeSecurity_o.pdf)

capacitated. However, the implementation of the Yaoundé Agreement has been covered by internal frictions and challenges that need to be addressed or else piracy in the region will continue to flourish. It is impossible for the international community to intervene the situation because, unlike Somalia, the Gulf of Guinea coastal states have stable sovereign government. So without their willingness to welcome foreign aids and assistance nothing can be done. Allegations concerning some government officials to engage in corruption practices, maritime boarder conflicts, unwillingness to share information, are some of the things that hindering the fight against piracy in the region. There is still a challenge of ensuring the suspected pirates are subject to the appropriate justice. There is lack of clear system of passing suspected criminals apprehended at sea. Without prosecution of the apprehended suspects the efforts to combat piracy will not succeed. Up to now only few suspects have been taken to court in West Africa but the majority are not prosecutable for the lack of proper law to try and incarcerate them.

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