

369. Interpretation.

Interpretation.

PART XVI—MARITIME SECURITY

369. (1) In this Part -

“armed robbery against ships” means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, directed against persons or property on board such a ship, within territorial waters or waters under Kenya’s jurisdiction;

“piracy” means -

(a) any act 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) against another ship or aircraft, or against persons or property on board such ship or aircraft; or

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any voluntary act of participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; or

(c) any act of inciting or of intentionally facilitating an act described in paragraph (a) or (b);

“pirate ship or aircraft” means a ship or aircraft under the dominant control of persons who -

(a) intend to use such ship or aircraft for piracy; or

(b) have used such ship or aircraft for piracy, so long as it remains under the control of those persons;

“private ship” and “private aircraft” means a ship or aircraft that is not owned by the Government or held by a person on behalf of, or for the benefit of, the Government; and

“UNCLOS” means the United Nations Convention on the Law of the Sea, 1982.

(2) Piracy committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft is assimilated to piracy committed by a private ship or aircraft.

(3) This Part applies to aircraft only when they are on the high seas, that is to say, in those parts of the sea to which Part VII of UNCLOS is applicable, in accordance with Article 86 of UNCLOS.

Act 4 of 2009 - MERCHANT SHIPPING

370. Hijacking and destroying of ships.

Hijacking and
destroying of

Offences Against Safety of Ships

ships.

370. (1) Subject to subsection (5), a person who unlawfully, by the use of force or by threats of any kind, seizes a ship or exercises control of it commits the offence of hijacking a ship.

(2) Subject to subsection (5), a person commits an offence if he unlawfully and intentionally -

(a) destroys a ship;

(b) damages a ship or its cargo so as to endanger, or to be likely to endanger, the safe navigation of the ship;

(c) commits, on board a ship, an act of violence which is likely to endanger the safe navigation of the ship; or

(d) places or causes to be placed on a ship any device or substance which is likely to destroy the ship or is likely so to damage it or its cargo as to endanger its safe navigation.

(3) Nothing in subsection (2) (d) is to be construed as limiting the circumstances in which the commission of any act may constitute -

(a) an offence under subsection (2) (a), (b) or (c); or

(b) attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting, or being of and part in, the commission of such an offence.

(4) Subject to subsection (5), subsections (1) and (2) shall apply -

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

(b) whether any such act as is mentioned in those subsections is committed in Kenya or elsewhere; and

(c) whatever the nationality of the person committing the act.

(5) Subsections (1) and (2) shall not apply in relation to any warship or any other ship used as a naval auxiliary or in customs or police service, or any act committed in relation to such a warship or such other ship unless the -

(a) person seizing or exercising control of the ship under subsection (1), or committing the act under subsection (2), as the case may be, is a Kenyan citizen;

(b) act is committed in Kenya; or

(c) ship is used in the customs service of Kenya or in the service of the police force in Kenya.

(6) A person who commits an offence under this section shall be liable, upon conviction, to imprisonment for life.

(7) In this section -

“act of violence” means any act done -

(a) in Kenya which constitutes the offence of murder, attempted murder, manslaughter, or assault; or

(b) outside Kenya which, if done in Kenya would constitute such an offence as is mentioned in paragraph (a); and

“unlawfully” -

(a) in relation to the commission of an act in Kenya, means so as (apart from this Part) to constitute an offence under the law of Kenya; and

(b) in relation to the commission of an act outside Kenya, means that the commission of the act would (apart from this Part) have been an offence under the law of Kenya if it had been committed in Kenya.

Act 4 of 2009 - MERCHANT SHIPPING

371. Offences of piracy and armed robbery.

Offences of piracy and armed robbery.

371. Any person who -

(a) commits any act of piracy;

(b) in territorial waters, commits any act of armed robbery against ships

shall be liable, upon conviction, to imprisonment for life.

Act 4 of 2009 - MERCHANT SHIPPING

372. Endangering safe navigation, threats, etc.

Endangering safe navigation, threats, etc.

372. (1) Subject to subsection (8), it is an offence for any person unlawfully or intentionally to -

(a) destroy or damage any property to which this subsection applies; or

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

where the destruction, damage or interference is likely to endanger the safe navigation of any ship.

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

(3) Subject to subsection (8), it is an offence for any person intentionally to communicate that which he knows to be false in a material particular, where the communication of the information endangers the safe navigation of any ship.

(4) It is a defence for a person charged with an offence under subsection (3) to prove that, when he communicated the information, he was lawfully employed to perform duties which consisted of or included the communication of information, and that he communicated the information in good faith in performance of those duties.

(5) A person commits an offence if -

(a) in order to compel any other person to do or abstain from doing any act, he threatens that he or some other person will do in relation to any ship an act which is an offence by virtue of section 372(2)(a), (b) or (c); and

(b) the making of that threat is likely to endanger the safe navigation of the ship.

(6) Subject to subsection (8), a person commits an offence if -

(a) in order to compel any other person to do or abstain from doing any act, he threatens that he or some other person will do an act which is an offence by virtue of subsection (1); and

(b) the making of that threat is likely to endanger the safe navigation of any ship.

(7) Except as provided by subsection (8), subsections (1), (3), (5) and (6) applies whether any such act as is mentioned in those subsections is committed in Kenya or elsewhere and whatever the nationality of the person committing the act.

(8) For the purposes of subsections (1), (3) and (6)(b), any danger, or likelihood of danger, to the safe navigation of a warship or any other ship used as a naval auxiliary or in customs or police service is to be disregarded unless the -

(a) person committing the act is a Kenyan citizen;

(b) act is committed in Kenya;

374. Application.

Application.

Ship and Port Facility Security

374. Sections 375 to 380 shall apply to -

(a) the following types of ships engaged on international voyages -

(i) passenger ships, including high-speed passenger vessels;

(ii) cargo ships, including high-speed craft, of 500 tons or more; and

(iii) mobile offshore drilling units; and

(iv) port facilities serving such ships engaged on international voyages;

(b) port facilities within the territorial limits of Kenya that serve a ship or a mobile offshore drilling unit, of a type specified in paragraph (a); and

(c) fixed and floating platforms within Kenyan continental waters.

(2) Sections 375 to 380 shall not apply to -

- (a) warships; or
- (b) naval auxiliaries; or
- (c) other ships that are
 - (i) owned or operated by the Government; and
 - (ii) used on Government non-commercial service; or
 - (iii) pleasure vessels .

375. Interpretation.

Interpretation.

375. In sections 374 to 380 -

"Code" means the International Code for the Security of Ships and of Port Facilities, as adopted on 12 December 2002, by resolution 2 of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974;

"declaration of security" means an agreement reached between a ship and either a port facility or another ship with which it interfaces, specifying the security measures each will implement;

"maritime security incident" means -

(a) a threat of unlawful interference with maritime transport made, and the threat is, or is likely to be, a terrorist act; and

(b) if an unlawful interference with maritime transport is, or is likely to be, an attack of organised intimidation then the unlawful interference is a maritime security incident;

"port" includes an area of water or land and water (including any buildings, installations or equipment situated in or on that water), intended for use either wholly or partly in connection with the movement, loading, unloading, maintenance, or provisioning of ships, and includes -

(a) areas of water, between the land of the port and the open waters outside the port, intended for use by ships to gain access to loading, unloading or other land based facilities; and

(b) areas of open water intended for anchoring or otherwise holding ships before they enter areas of water described in paragraph (a);

"port facility" means a location, as determined by the Director-General, where the ship-port interface takes place, and includes areas such as anchorages, waiting berths and approaches from seaward, as appropriate;

"port facility security assessment" means an assessment of the security of a port facility carried out in accordance with section 15 of Part A of the Code;

"port facility security plan" means a plan developed to ensure the application of measures designed to protect the port facility and ships, persons, cargo, cargo transport units and ship's stores within the port facility from the risks of a

security incident;

"recognized security organization" means an organization with appropriate expertise in security matters and with appropriate knowledge of ship and port operations authorized to carry out an assessment, a verification, or an approval or a certification activity, required by this Act or by Part A of the Code;

"ship" means every description of boat or vessel used in navigation, whether or not it has any means of propulsion, and includes -

(a) a barge, lighter, or other like vessel;

(b) a hovercraft, wing in ground or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;

(c) a submarine or other submersible;

(d) a high-speed craft; or

(e) a mobile offshore drilling unit that is not on location;

"security level" means the qualification of the degree of risk that a security incident will be attempted or will occur; and

"ship security plan" means a plan developed to ensure the application of measures on board the ship designed to protect persons on board, cargo, cargo transport units, ship's stores, or the ship from the risks of a security incident.

376. Designated authority.

Designated authority.

376. (1) The Authority is the designated authority for Kenya in terms of section 4 Part B of the Code.

(2) The principle duties of the designated authority are to -

(a) undertake activities necessary for the effective implementation of the Code and in particular -

(i) with respect to port facilities within the territorial limits of Kenya, ensure that -

(aa) port facility security assessment are carried out, reviewed and approved in accordance with regulations made by the Minister;

(bb) port facility security plans are developed, implemented, maintained and approved in accordance with regulations made under this Part;

(ii) with respect to Kenyan ships, ensure that -

(aa) ship security assessment are carried out, reviewed in accordance with regulations made under this Part;

(bb) ship security plans are developed, implemented, maintained and approved in accordance with regulations made under this Part;

- (b) specify, in accordance with regulations made under this Part, the appropriate security level for -
- (i) port facilities within Kenya; and
 - (ii) ships -
 - (aa) registered in Kenya;
 - (bb) using port facilities within territorial limits of Kenya;
 - (cc) conducting ship to ship activities within Kenyan continental waters; and
 - (dd) mobile offshore drilling units that are on location within Kenya continental waters;
- (c) approve -
- (i) any ship security plans in accordance with regulations for the purpose; and
 - (ii) any amendment to an approved ship security plan that is specified in regulations as requiring the approval of the designated authority;
- (d) specify and communicate the measures that must be addressed in a port facility plan or a ship security plan for each security level;
- (e) determine -
- (i) whether a declaration of security is required; and
 - (ii) the requirement of any declaration of security;
- (f) approve -
- (i) any port security assessment carried out by a recognised security organisation in accordance with regulations;
 - (ii) any port facility plan in accordance with regulations; and
 - (iii) any amendment to an approved port facility plan that is specified in regulations and requiring the approval of the designated authority.
- (g) exercise all control measures specified in the regulations;
- (h) authorise recognised security organisations in accordance with regulations made under this Act;
- (i) undertake any functions or duties specified in regulations made under this Part; and
- (j) carry out any lawful directions as may be given by the Minister.

377. Delegation by Director-General.

Delegation by
Director-
General.

377. (1) The Director-General may in writing and with the approval of the Minister, delegate all or any of his powers and functions under section 376 to a

person who -

- (a) satisfies the criteria prescribed in regulations made under this Part; and
- (b) is engaged by a recognised security organization.

(2) The Minister may determine in writing that an organisation is a recognised security organisation.

(3) In exercising the powers or functions delegated under subsection (1), the delegate shall comply with any directions given by the Minister.

378. Regulations.

Regulations.

378. (1) The Minister may make regulations for all or any of the following purposes -

(a) prescribing, or providing for the fixing of, fees and charges payable in respect of security functions provided by, or security activities undertaken by, a government department or government agency;

(b) prescribing the security requirements for a ship or port facility, including, but not limited to -

(i) a declaration of security, a ship security plan;

(ii) a port facility security plan;

(iii) an assessment of a ship security plan or a port facility security plan;

(iv) an identification system for accessing a specified port security area or a specified port facility;

(c) providing for any other matters that are contemplated by, or necessary for giving full effect to, the provisions of this section or for its due administration.

(2) Any regulations made under this section may prescribe offences and penalties for contravention of, or non-compliance with, their provisions.

379. Exemptions.

Exemptions.

379. (1) The Director-General may, if he considers it appropriate and on such conditions as he considers appropriate, exempt any person, ship, or port facility from a requirement specified in regulations made under section 378.

(2) The Director-General may not grant an exemption under subsection (1) unless he is satisfied in the circumstances that -

(a) the exemption will not breach Kenya's international obligations under any maritime convention; and

(b) one or more of the following conditions apply -

(i) the prescribed requirements have been substantially complied with and that further compliance is unnecessary;

(ii) the action taken or provision made in respect of the matter to which the prescribed requirements relate is as effective or more effective than actual compliance with the prescribed requirements;

(iii) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or

(iv) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and

(c) the risk to safety will not be significantly increased by the granting of the exemption.

(3) The number and nature of any exemptions granted under subsection (1) shall be notified as soon as practicable in the Gazette.

(4) Nothing in this section shall apply in any case where a maritime rule specifies that exemptions may not be granted.

380. Extension of application.

Extension of application.

380. (1) If the Director-General has reasonable cause to believe that a security risk exists that may warrant the extension of this section to a ship or port facility to enhance ship or port security or to prevent organised intimidation, the Director-General may -

(a) conduct a security assessment of that ship; or

(b) require a security assessment of that ship to be carried out.

(2) For the purposes of subsection (1), reasonable cause to believe that a security risk exists may be based on the -

(a) receipt of threat or security information; or

(b) results of a security assessment of a ship under this section.

(3) If, following a security assessment under subsection (1), the Director-General considers that the section should be extended to a ship or class of ship, the Director-General shall make a recommendation to that effect to the Minister.

(4) Following a recommendation by the Director-General under subsection (3), the Minister may extend the application of this section to a ship or port facility by notice in the Gazette.

(5) A Gazette notice under subsection (4)—

(a) shall -

(i) clearly identify the ship or port facility concerned;

(ii) state which sections of this section apply to that ship or port facility; and

(iii) state, the time period for the extension of this section; and

(b) may cover -

(i) more than one ship or port facility; and

(ii) any combination of ships and port facilities.

(6) For the purposes of subsection (1) to (5) -

“port facility” means a port facility that is not included in section 374, and includes fixed and floating platforms and mobile offshore drilling units referred to in section 374.

(7) For the avoidance of doubt, the Minister may not extend the application of this Part to—

(a) warships;

(b) naval auxiliaries; or

(c) other ships that are -

(i) owned or operated by the Government; and

(ii) used on government non-commercial service; or

(d) pleasure vessel as defined in section 2.

Act 4 of 2009 - MERCHANT SHIPPING

381. Seamen’s identification document.

Seamen’s
identification
document.

381. (1) The Minister may, by regulations made under this Part, require crew members on vessels calling at Kenyan ports to carry and present on demand any identification that the Minister may consider necessary, having regard to the relevant Convention.

(2) Regulations may establish the proper forms and process that shall be used for identification and verification of crew members.

Act 4 of 2009 - MERCHANT SHIPPING

382. Automatic identification system.

Automatic
identification
system.

382. (1) Subject to subsection (2), all ships engaged on international voyages, while operating on the navigable Kenyan waters, shall be equipped with and operate an automatic identification system under regulations prescribed by the Minister, but this section shall not apply to -

(a) ships of war and troop ships;

(b) cargo ships of less than five hundred tons;

- (c) ships not propelled by mechanical means;
- (d) wooden ships of traditional build;
- (e) pleasure vessels not engaged in trade; and
- (f) fishing vessels.

(2) The Minister may

(a) exempt a vessel from subsection (1) if the Minister finds that an automatic identification system is not necessary for the safe navigation of the vessel on the waters on which the vessel operates; or

(b) waive the application of subsection (1) with respect to operation of vessels on navigable waters of the Kenya specified by the Minister if the Minister finds that automatic identification systems are not needed for safe navigation on those waters.

(3) The Minister may make regulations prescribing any of the following -

(a) requirements for the operation and maintenance of the automatic identification systems so required under this section;

(b) matters that are required to be prescribed to give effect to this Part; and

(c) anything that may be necessary or convenient to be prescribed for carrying out or giving effect to the relevant conventions on security.

383. Long-range vessel tracking system.

Long-range vessel tracking system.

383. (1) The Authority may develop and implement a long-range automated vessel tracking system for all vessels in Kenyan waters that are equipped with the Global Maritime Distress and Safety System or equivalent satellite technology.

(2) The system shall be designed to provide the Authority with the capability of receiving information on vessel positions at interval positions appropriate to deter transportation security incidents.

(3) The Authority may use existing maritime organisations to collect and monitor tracking information under the system.

