

**Submissions from UNODC-Counter Piracy programme to the Universal Periodic Review of Somalia**

**Introduction**

The UNODC Counter-Piracy Strategy recognises two fundamental facts. First that the only viable long-term solution to solving the Somali piracy problem lies in the restoration of law and order in Somalia (including its waters). Second, that that solution is some years off.

The European Commission and UNODC launched this joint programme in 2009 to enhance criminal justice capacity among Somalia's neighbours and ensure that the trial and imprisonment of suspected pirates passed to them is humane and efficient and take place within a sound rule of law framework. UNODC is also investing in the long-term solution: the restoration of the rule of law in Somalia.

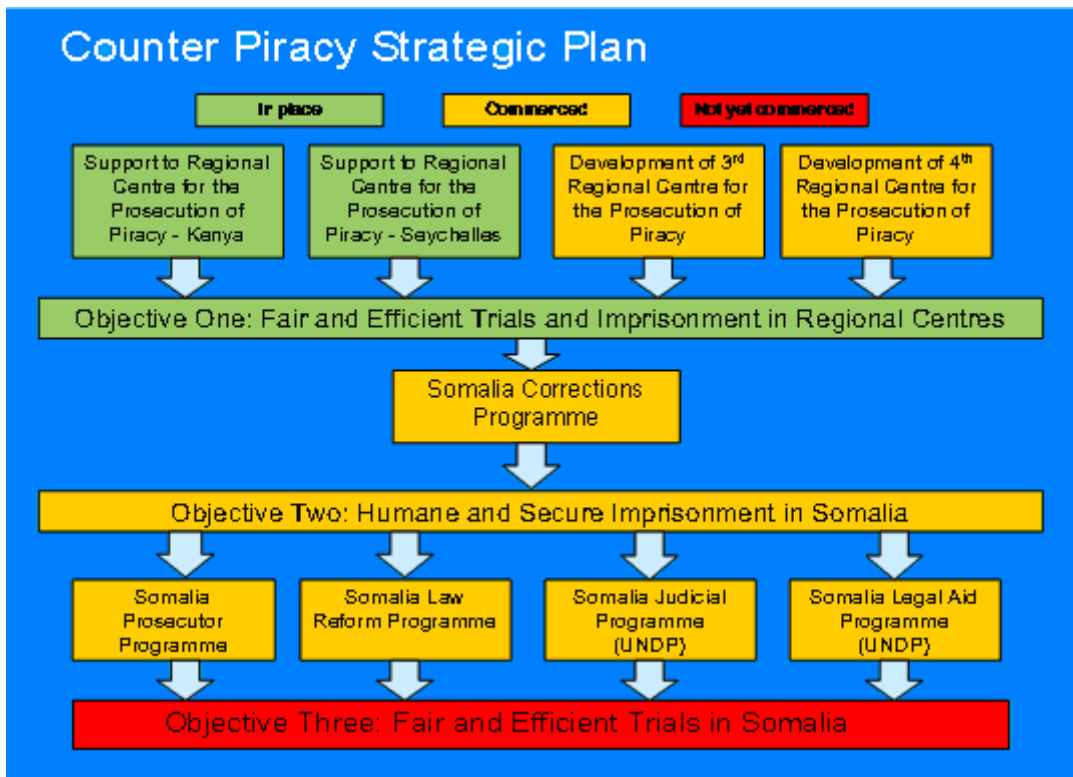
The Programme operates from UNODC's Regional Office for East Africa in Nairobi and maintains close ties with the navies who carry out the enforcement operations (notably the EU forces conducting Operation ATALANTA), the donor community and the criminal justice authorities in those states who are playing a part in the fight against piracy. The Programme employs experts in the full range of criminal justice disciplines who have developed expertise in piracy cases. The Programme also draws on other specialist staff within UNODC ROEA and from HQ in Vienna.

**Programme Strategy**

The UNODC Counter-Piracy Programme has three objectives:

**Objective One: Fair and Efficient Trials and Imprisonment in Regional Centres**

Few regional states have an effective deep water naval capability and they therefore rely on foreign navies to act against piracy or at least to assist their own forces with long range detection. Those foreign navies require access to regional states that can deliver fair and efficient prosecutions and imprisonment if the effect of their naval operations is to be maximized. When requested, UNODC visits regional states to assess their preparedness to deal with piracy cases (whether the result of arrests by domestic law enforcement authorities or by foreign navies) and to advise them on measures they might take to improve their readiness. UNODC has donor funding to assist regional states to improve their capability to prosecute piracy, particularly where the state agrees to take suspects arrested by foreign navies for trial.



Although UNODC support to the Regional Centres for the Prosecution of Piracy concentrates on improving capacity for piracy trials, the delivery strategy ensures that this investment benefits the criminal justice system as a whole through access to training, introduction of improved practices and infrastructure investment.

UNODC will train and provide logistical support to the prosecutors of Somalia in order to allow for:

- a. The fair and efficient trial of those charged with offences;
- b. Transfers of suspected pirates arrested by navies to Somalia for trial.

The principal requirements are (a) specialist courses in Piracy and organised crime; Forensic techniques; Advocacy and case preparation; Prosecuting sexual offences. These will be run in country by funded UNODC instructors and local university staff and; (b) minimum transportation assets: prosecutors currently fail to reach court because they have no vehicles.

The Programme will commence in Somaliland and Puntland where relations with the Ministries of Justice are good and where there is a high level of local commitment.

### **Objective Two: Humane and Secure Imprisonment in Somalia**

UNODC seeks to improve the correction regimes in Somalia for two reasons. First, to ensure secure and humane imprisonment for those sentenced by local Somali courts. Second, improvement to the imprisonment regimes offers the possibility that those convicted of piracy in regional states may be transferred back to Somalia to serve their sentences.

UNODC has an ongoing \$3.6 million programme which seeks to ensure that international standards will be respected in the prison system in Somalia. This project seeks support for an element of this programme relating to the:

1. Secure and humane imprisonment of those sentenced by local courts;
2. Transfer of Somali pirates convicted in other states.

Work will centre on a new prison in Hargeisa, Somaliland, which has been built to international standards but yet to be occupied. There is still significant building work to be done as well as staff training and the establishment of prison routines in this prison.

In parallel with the activation of the new prison, UNODC will work on the other detention facilities in Puntland and Somaliland to bring them closer to international standards. The primary focus will be Bosasso prison where pirates transferred by a small number of foreign navies are held before and after trial in extremely poor conditions.

The entire programme runs for three years, which is a reflection of both the extremely low levels of staff training, and the habitability of the buildings, but also the difficult working conditions in the country. This aspect of the programme, which is Phase 1, can be delivered within 12 months, as work has already begun with UNODC programme development seed money.

### **Objective Three: Fair and Efficient Trials in Somalia**

In the long term, Somalia's recovery will require the establishment of an effective rule of law framework. Currently, many areas of Somalia have no functioning criminal justice system. However, there are areas where UN initiatives have delivered marked improvements in the quality and delivery of justice. UNODC has assumed responsibility for two areas of Somali criminal justice development: the training of prosecutors and law reform initiatives. In conjunction with other UN agencies, UNODC will build upon recent successes to improve the performance of the criminal justice system.

The criminal and procedural codes of both Somaliland and Puntland are critically out of date and contain numerous inconsistencies and deficiencies, which increase the challenge of effectively prosecuting pirates.

At present the prosecution of pirates and those engaged in illegal fishing is hampered by inadequate criminal laws and, in the absence of laws for them to enforce, the efforts of other agencies to improve the effectiveness of coastguards and police forces will be substantially undermined. UNODC will support the existing Law Reform Commissions in both Somaliland and Puntland to re-draft the criminal and procedural codes in order to ensure that they support all criminal proceedings but particularly piracy trials and other prosecutions related to the activities of the coast guards, including illegal use of Somali maritime claims.

The programme will provide administrative, technical and infrastructure support to the two Law Reform Commissions who continue to take the lead in national law reform. This project will bolster the professional and legal expertise of the Law Reform Commissions, through the provision of international consultants selected in consultation with the Commissions.

The situation beyond Somaliland and Puntland is very much worse. There has been an almost total absence of law reform and existing codes are barely sufficient to support the operation of the criminal justice system. Work will begin from UNODC's offices in Nairobi with the TFG to identify the principal deficiencies and rectify them using international consultants.

### **Piracy Prisoner Transfer Programme**

This Programme forms part of the UNODC Counter Piracy Programme Strategy.

The proposed programme delivery concentrates on six related areas. To succeed in transfer of prisoners and re-building the wider criminal justice sector delivery in all areas is necessary, but timelines and delivery pace will differ in each area, according to the availability of funds, the capacity of the Somali counterparts to absorb support and timing of certain essential milestones.

#### ***Area 1 Personnel and Training***

Activities include: Recruitment, training of local prison staff, Recruitment and payment of international mentors, Establishment independent prison oversight committee, Identification and training of associated judges and prosecutors

#### ***Area 2 Construction, Refurbishment and Procurement***

Activities include: Construction of two prisons at separate locations and procurement of equipment and vehicles in support of prison operations; Construction of two associated prison farms to support the prison and staff and assist in the development of alternative livelihoods; Construction of two associated courtrooms adjacent but outside the prisons for hearings related to high security prisoners whose movement presents a substantial security risk

#### ***Area 3 Operations***

The activities include: Support for operations in existing prisons where pirates are held; Operation of the new prisons; Operation of the prison farms ; Support to and expansion of rehabilitation programmes ; Support to associated judicial hearings

#### ***Area 4 Law Reform***

Expansion of the law reform programme to support prisons and transfers

#### ***Area 5 Monitoring***

Monitoring of the prison to ensure that it is being run in accordance with international standards and that transferred prisoners are being held for the appropriate term

#### ***Area 6 Prisoner Transfers***

Assisting regional states with the organisation and funding of flights to transfer prisoners from regional states to Somalia

#### **Associated Legal Issues**

Prisoner Transfers are governed by the domestic laws of the sending and receiving states and (often) by bilateral treaties. Certain international human rights instruments may also apply. In addition, some of the transfer arrangements between arresting states require the prosecuting state to seek the agreement of the arresting state before transferring convicted pirates to Somalia.

UNODC is working with the TFG and the regional authorities of Somalia to help them draft and implement appropriate domestic law provisions. This work is being done in cooperation with Working Group II of the Contact Group on Piracy off the Coast of Somalia.

#### **Possible Early Prisoner Transfers**

UNODC will engage with the relevant authorities to try and identify more immediate solutions to prisoner transfers to Somalia.