

# HOW BUILDING PRISONS IN SOMALIA PROMOTED THE RULE OF LAW THROUGHOUT EAST AFRICA

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[The Global Rule of Law Exchange](#) ('the Exchange') is a project of the [Bingham Centre for the Rule of Law](#) in London supported by law firm Jones Day. The Exchange aims to address key challenges posed by global development and its relationship to the rule of law. It will consider the place of the rule of law in emerging economies, including on issues such as access to justice, administrative justice and corruption. It will also examine the relationship between formal and informal legal systems and the measurement of success in rule of law interventions.

The Exchange also aims to explore and contribute to the evidence-base on the relationship between development and the rule of law. The Exchange launched a call for practice notes in May 2015 to this end. Among other things, these short documents (around 3,000 words) aim to provide new ideas, identify research gaps and discuss what works and what does not in rule of law interventions. The full list of practice notes touch on a wide array of topics, including corruption, access to justice, legal aid, prison systems and international justice mechanisms, and the impact and measurement of rule of law reforms. The list of published practice notes can be accessed online: <http://binghamcentre.biicl.org/ruleoflawexchange/research-to-practice>

There are two categories of practice notes in the series: '**Comments**' capture those that analyse a discrete rule of law issue or theme (e.g. access to justice) and '**Field Notes**' tend to be papers that present a new approach or framework to studying rule of law and/or provide new evidence (sometimes drawing on the author's own research).

# 'How building prisons in Somalia promoted the Rule of Law throughout East Africa'

## FIELD NOTES

At the peak moment of piracy originating from Somalia in 2011, the United Nations Organisation for Drugs and Crime (UNODC) with the support of various states adopted a new counter piracy approach. Indeed, existing methods centred on engagement with the Somali Federal Government in Mogadishu were proving unsuccessful. The new approach focussed upon engagement with the governments of the breakaway regions of Puntland and Somaliland in an effort to combat piracy at its on-land source.<sup>1</sup> A major provision of these engagement agreements was the construction of prisons within Somaliland and Puntland (the construction was completed by the UN Development Programme), to be run by the regional governments with mentoring from the UN.<sup>2</sup> The purpose was to provide prisons that met minimum human rights and prison standards, so as to allow convicted Somali pirates to return home to serve their sentences. The guarantee of being able to repatriate convicted Somali pirates to their homeland led to an increase in regional prosecutions. This is because it allayed the fears of prosecuting states that engaging in the prosecution of Somali pirates would lead to an overloading of their prison system. This, in turn, led to an increase in the amount of support for policing and judicial institutions being provided to these states by more developed nations.

Through an examination of interviews conducted with investigators, prosecutors, and prison staff involved in the counter piracy programme,<sup>3</sup> this note will briefly explore how the act of providing prisons that met minimum human rights and prisons standards in Somalia had a

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<sup>1</sup> See generally: Memorandum of Understanding between the Republic of Somaliland and the Government of the Republic of Seychelles on the transfer of sentenced pirates 2011; 'Report of the Secretary-General on Specialized Anti-Piracy Courts in Somalia and Other States in the Region' (United Nations Security Council 2012) S/2012/50 paras 9–10; 'Report of the Secretary-General pursuant to Security Council Resolution 1950 (2010)' (United Nations Security Council 2011) S/2011/662 para 67.

<sup>2</sup> See generally: United Nations Office on Drugs and Crime, 'Counter Piracy Programme' (United Nations Office on Drugs and Crime 2009) <[http://www.unodc.org/documents/easternafrika/piracy/UNODC\\_Counter\\_Piracy\\_Programme.pdf](http://www.unodc.org/documents/easternafrika/piracy/UNODC_Counter_Piracy_Programme.pdf)>; United Nations Office on Drugs and Crime, 'Counter Piracy Programme: Support to the Trial and Related Treatment of Piracy Suspects' (United Nations Office on Drugs and Crime 2011) 6 <[http://www.unodc.org/documents/easternafrika/piracy/UNODC\\_Brochure\\_Issue\\_6\\_wv.pdf](http://www.unodc.org/documents/easternafrika/piracy/UNODC_Brochure_Issue_6_wv.pdf)>; United Nations Office on Drugs and Crime, 'Counter Piracy Programme: Support to the Trial and Related Treatment of Piracy Suspects' (United Nations Office on Drugs and Crime 2013) 11 <[http://www.unodc.org/documents/easternafrika/piracy/UNODC\\_Brochure\\_Issue\\_11\\_wv.pdf](http://www.unodc.org/documents/easternafrika/piracy/UNODC_Brochure_Issue_11_wv.pdf)>.

<sup>3</sup> The interviews and observations contained within this paper formed a part of the fieldwork conducted by the author in the Seychelles in January and February 2013. This fieldwork was subject to full ethics review by the Australian National University's human ethics committee. All interviews and observations were confidential in nature, in accordance with this ethics approval. All observation notes and interview transcripts have been retained in accordance with the Australian National University's ethics procedures and can be made available when necessary to confirm information contained within this note. The empirical data was gathered through observations of a piracy trial, time spent with counter piracy personnel in the Seychelles, and confidential interviews with four participants from within investigatory, prison and prosecution services regarding the way in which the law laid out in the various roles in piracy enforcement. For the sake of preserving confidentiality, in the course of this paper all participants will be referred to by female pronouns in the singular and gender neutral pronouns in the collective. Further all participants have had their names replaced by colour identifiers (i.e. Participant Magenta) to ensure confidentiality.

cascade effect on rule of law promotion throughout East Africa.<sup>4</sup> For the purposes of this note, rule of law promotion can be summarised as technical assistance to ensure a stronger, fairer legal system.<sup>5</sup>

## 1. Overview

The construction of prisons in Somalia has been pivotal to the continuation of regional prosecutions of Somali pirates, and thus the development of rule of law supporting programmes and outcomes throughout the region.<sup>6</sup> Two participants went so far as to describe the repatriations to Somalia of convicted pirates as a prosecution “conveyor belt”, their meaning being that the Seychelles was only willing to take pirates for prosecution on the condition that an equal number of pirates could be repatriated to Somalia, so as to avoid prison congestion.<sup>7</sup> The Seychellois fear in this regard is reasonable. Prior to prisoner repatriations, the support for the prosecution of Somali pirates in Kenya was able to do very little to alleviate gross overcrowding of their prisons. This, in turn, compounded human rights violations, some of which were considered to be tantamount to torture.<sup>8</sup> While new Somali prisons were in a nascent stage of development, the EU expressed concerns regarding the value of assurances that these prisons met human rights standards. However, these questions have now been satisfied, as evidenced by EU-captured pirates being repatriated to these Somali prisons.<sup>9</sup> Those working in the counter piracy programme had no such concerns, as evidenced by one interviewee’s views on the prisons not meeting European standards: *“Well it won’t, it’s Northern Africa ... can we say that is good enough and that is good enough for the region? Yes, in my view we can. That wasn’t the case a number of years ago. I think that what the UNODC have done with these prisons is excellent.”*<sup>10</sup>

The question, therefore, is: what has the construction of prisons that meet human rights standards in Somalia done to contribute to rule of law growth in East Africa? One significant response to this is that the mentoring and training programme have advanced the cause of the rule of law. This is because they have taken place in tandem with prison development in the affected nations as a result of the capacity for prosecutions of piracy suspects that these prisons allow. Moreover, these programmes have taken very different forms in Somalia from those in the Seychelles, and the rule of law outcomes have thus, to some extent, differed. In Somalia, mentoring of prison operations has taken place to foster human rights, proceduralise human rights standards in order to normalise them in society, and train law enforcement personnel. In the Seychelles, these programmes have led to up-skilling the police force and the local legal community, as well as improving educational and rehabilitation

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<sup>4</sup> While the interviews and observations focus on the Seychelles, they touch upon other East African jurisdictions including Somalia, Kenya and Mauritius.

<sup>5</sup> For the understanding of the conception of ‘rule of law’ that informs this note see: Simon Chesterman, ‘An International Rule of Law?’ 56 *American Journal of Comparative Law* 331, 341–342.

<sup>6</sup> Tamsin Paige, Interview with Participant Russet, ‘Confidential Interview’ (15 January 2013) 1.

<sup>7</sup> Tamsin Paige, Interview with Participant Magenta, ‘Confidential Interview’ (31 January 2013) 12; Tamsin Paige, Interview with Participant Umber, ‘Confidential Interview’ (24 January 2013) 7; Tamsin Paige, Interview with Participant Cobalt, ‘Confidential Interview’ (1 February 2013) 3; Paige, Interview with Participant Russet (n 7) 1; Paige, Interview with Participant Umber (n 9) 7.

<sup>8</sup> ‘Report of the Secretary-General on Specialized Anti-Piracy Courts in Somalia and Other States in the Region’ (n 1) 21.

<sup>9</sup> United Nations Office on Drugs and Crime, ‘Counter Piracy Programme: Support to the Trial and Related Treatment of Piracy Suspects’ (n 2) 16.

<sup>10</sup> Paige, Interview with Participant Magenta (n 9) 14.

programmes within the prisons. All of these very practical measures, which will be discussed in more detail below, contribute in a very real way to the expansion of the rule of law throughout the region.

## 2. Somalia

The establishment of the rule of law within Somalia has been seen as a key goal of the counter piracy programme since its commencement.<sup>11</sup> In 2011 the decision was made to funnel counter-piracy support for Somalia predominantly through the autonomous regional governments in Somaliland and Puntland, rather than the Somali Federal Government (SFG).<sup>12</sup> This decision was practical in nature as the regional governments had been stable and operating independently for a well over a decade, while the SFG in Mogadishu was still embroiled in the ongoing civil war.<sup>13</sup> The building of prisons, followed by continued oversight so as to ensure that they meet human rights standards, has been a crucial component of attempts to reach these goals. The key enabler has arguably been a practical – and not risk-free – decision by the UN to mentor the regional government officials running these prisons, rather than opting to wholly run the prisons themselves.<sup>14</sup> I would argue that this has been a more successful model. In addition to human rights standards being operationalised and mainstreamed within the prison system, the fact that it is being done by Somalis rather than outside parties, results in greater chances of mainstreaming these standards within society. The mentors are able to explain why these standards are important, and thus play an important role in assisting to create an environment where these standards can be maintained. However, the onus remains on the Somali government officials to ensure that these standards are met and maintained. This model of assistance and accountability allows for redress should there be a failure by those responsible, while still ensuring they have the support they need to do their job.<sup>15</sup>

This same model of assistance and accountability has also been applied to other institutions within the broader rule of law constituency in Somaliland and Puntland. It has led to the establishment of counter piracy departments within regional administrations, which continue to receive training and mentoring from UN personnel on effective policing procedures within a rule of law framework.<sup>16</sup> This assistance is grounded at a very practical level by providing experienced external mentors for Somalis involved in the law enforcement aspects of counter piracy.<sup>17</sup> The assistance provided is broad and driven, in part, by the Somalis themselves.<sup>18</sup>

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<sup>11</sup> Ahmedou Ould-Abdallah, 'Piracy off the Somali Coast: Workshop Commissioned by the Special Representative to the Secretary General of the UN to Somalia - Final Report: Assessment and Recommendations' (International Expert group on the Piracy off the Somali Coast 2008) 41–43; 'Report of the Secretary-General pursuant to Security Council Resolution 2020 (2011)' (United Nations Security Council 2012) S/2012/783 para 74; 'Report of the Secretary-General on Somalia' (United Nations Security Council 2012) S/2012/643 para 94; 'Special Report of the Secretary-General on Somalia' (United Nations Security Council 2012) S/2012/74 para 46.

<sup>12</sup> Paige, Tamsin Phillipa, 'The Impact and Effectiveness of UNCLOS on Counter-Piracy Operations' *Journal of Conflict and Security Law*, DOI: 10.1093/jcsl/krv028 19.

<sup>13</sup> James Kraska, *Contemporary Maritime Piracy International Law, Strategy, and Diplomacy at Sea* (Praeger 2011) 46–48; James Kraska, 'Freakonomics of Maritime Piracy' (2009) 16 *Brown J. World Aff.* 109, 112.

<sup>14</sup> Paige, Interview with Participant Magenta (n 9) 12; Paige, Interview with Participant Russet (n 7) 3; Paige, Interview with Participant Umber (n 9) 8.

<sup>15</sup> Paige, Interview with Participant Cobalt (n 10) 1–2.

<sup>16</sup> Establishment of the Counter Piracy Co-ordination Office (Presidential Decree No. 0194/012012) 2012 (The Republic of Somaliland); Paige, Interview with Participant Magenta (n 9) 17.

<sup>17</sup> Paige, Interview with Participant Magenta (n 9) 17–18.

They are able, for example, to go to a physically present mentor with questions and issues and to receive timely and contextually sound advice on how to deal with them, along with practical material assistance where relevant. This practical assistance ranges from finding donors where they are lacking material resources to operate, providing blueprints for investigative procedure and policy (so as to save them having to ‘reinvent the wheel’), and providing direct training in how to run investigative and law enforcement departments.<sup>19</sup> While all of this assistance is available, the Somaliland and Puntland departments are able to operate autonomously within their own region. Arguably, this allows the Somalis to adapt what they are learning to the specific regional and cultural needs, of which they of course have a much more nuanced understanding.<sup>20</sup>

This autonomy for the Somalis to conduct counter piracy policing procedures within their region, supported by external stakeholders, is balanced by the accountability frameworks incorporated into the agreements for support.<sup>21</sup> These accountability frameworks take the form of performance indicators and markers, which the institution, including law enforcement institutions, and the person in charge are responsible for attaining.<sup>22</sup> Should things not proceed in accordance with these accountability targets, the institution and the people involved face consequences ranging from withdrawal of support and funding, to their removal and replacement.<sup>23</sup> While corruption is still clearly an issue, these arrangements have greatly improved counter piracy operations and the rule of law within Somaliland and Puntland.<sup>24</sup>

### **3. The Seychelles and the broader region**

There are two hurdles to regional prosecutions in the Seychelles and the broader region. On the one hand, there is a lack of willingness of regional states to engage in prosecutions.<sup>25</sup> On the other hand, these states lack administrative and legislative frameworks needed to facilitate relatively expeditious and effective prosecutions once the decision to be involved in counter-piracy operations has been made.<sup>26</sup> The willingness issue was addressed by impressing upon the states in the region the importance – both in terms of international reputation, and internal rule of law advancement – of taking an active part in efforts to combat transnational organised crime.<sup>27</sup> While this approach has not directly led to the growth in the rule of law throughout the region, it has opened the door to addressing key issues of legislative and administrative reform, so as to allow these states to engage in the effective policing of transnational organised crime. These reforms have taken place mainly through training in how to more effectively utilise laws for the purposes desired, and practical administrative and case management training for those involved in counter piracy operations. In the Seychelles,

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<sup>18</sup> *ibid* 18.

<sup>19</sup> *ibid*

<sup>20</sup> Paige, Interview with Participant Magenta (n 9) 18.

<sup>21</sup> *ibid*.

<sup>22</sup> *ibid*.

<sup>23</sup> *ibid*.

<sup>24</sup> Transparency International, ‘Corruption Perceptions Index 2014: Results’ <<https://www.transparency.org/cpi2014/results>> accessed 30 July 2015.

<sup>25</sup> Paige, Interview with Participant Magenta (n 9) 13–14.

<sup>26</sup> *ibid* 8; Paige, Interview with Participant Russet (n 7) 7; Paige, Interview with Participant Umber (n 9) 6; ‘Report of the Secretary-General pursuant to Security Council Resolution 1950 (2010)’ (n 1) 65; Sulakshna Beekarry, ‘Assessing Current Trends and Efforts to Combat Piracy’ (2013) 46 *Case Western Journal of International Law* 161, 171–173.

<sup>27</sup> Paige, Interview with Participant Magenta (n 9) 13–14.

this outside support has also taken the form of legal training and mentoring through the use of seconded British Crown Prosecutors to the Seychelles Attorney General's Department to prosecute pirates and mentor local prosecutors.<sup>28</sup> It has also resulted in the creation of an EUNavFor liaison officer role for the Seychelles and Mauritius to facilitate transfers and address the myriad concerns that arise in handover situations.<sup>29</sup>

In terms of legislative adaptation, a great deal of effort has been dedicated to teaching investigators to apply criminal statutes in an innovative way, so as to allow them to prosecute the transnational organised crime offences when no clear charge exists.<sup>30</sup> As a result, they are able to innovatively adapt generalised criminal charges (such as conspiracy to commit or aiding and abetting), to prosecute attempts and preparatory acts, as well as, potentially, on-land facilitators of piracy. This, in turn, allows for the more efficient use of policing resources that results from a heightened awareness of the charges available, and thus the evidential requirements of their investigations. In terms of administrative reforms, significant efforts have been made in training regional policing and Coast Guard units in case management and evidence handling procedures.<sup>31</sup> The impact has been to facilitate prosecutions through more structured case files and to reduce the rate at which evidence is susceptible to be held inadmissible for not meeting local criminal procedure requirements.<sup>32</sup> All of these initiatives contribute in a very practical way to the expansion of the rule of law in the East Africa region.

In both Kenya and the Seychelles, serious work has been done as a result of the counter piracy programme and the prisoner repatriations agreements, focussed ultimately upon improving conditions and educational programmes in their prisons.<sup>33</sup> In the Seychelles, this has taken the form of the construction of an additional prison wing to improve capacity, ensuring that overcrowding does not become an issue, and the establishment of a four-strand rehabilitation program.<sup>34</sup> The first strand is education, under which the Prisons Service is working with the Ministry of Education to provide educational classes, particularly English language and computer skills classes, to both local and Somali prisoners.<sup>35</sup> The second strand is vocational training, aiming to ensure that, in addition to formal education, the prisoners develop vocational skills which, upon their release, may facilitate their reintegration into society.<sup>36</sup> To this end, the prison has been engaging its inmates in masonry projects, agricultural work and kitchen work, among other vocations, as a part of their routine during their incarceration.<sup>37</sup> The third strand has been the use of behavioural therapy, with psychological therapy allowing inmates to effectively address, deal with, and move past any deep-seated emotional issues that may have contributed to their criminal behaviour.<sup>38</sup> The

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<sup>28</sup> 'Report of the Secretary-General on Specialized Anti-Piracy Courts in Somalia and Other States in the Region' (n 1) 15–16.

<sup>29</sup> Tamsin Paige, 'Fieldwork Observation Notes' 8 January.

<sup>30</sup> Paige, Interview with Participant Magenta (n 9) 2–5 & 10.

<sup>31</sup> Paige, Interview with Participant Umber (n 9) 1–2; Beekarry (n 30) 173–174.

<sup>32</sup> Paige, Interview with Participant Umber (n 9) 3; Beekarry (n 30) 173–174.

<sup>33</sup> United Nations Office on Drugs and Crime, 'Counter Piracy Programme: Support to the Trial and Related Treatment of Piracy Suspects' (n 2) 4–7.

<sup>34</sup> Paige, Interview with Participant Cobalt (n 10) 1–2 & 4; Paige, Interview with Participant Magenta (n 9) 12; Paige, Interview with Participant Russet (n 7) 2.

<sup>35</sup> *ibid.*

<sup>36</sup> *ibid.*

<sup>37</sup> *ibid* 4–5.

<sup>38</sup> *ibid* 5.

final strand of the rehabilitation programme is the spiritual strand.<sup>39</sup> As a part of this element, all inmates have access to the necessary facilities, equipment and religious leaders required for them to practice their faith while incarcerated, should they so desire.<sup>40</sup> The goal of this programme is to provide hope of a life beyond prison and a rehabilitation into society at the end of their incarceration (all inmates are serving 30 year sentences with parole being possible after 15 years).<sup>41</sup> The introduction of these programmes, as a result of the prisoner transfer agreements in the counter piracy programme, have improved prison conditions for Somalis being held in the Seychelles, as well as the local prison population, thus contributing to a fuller realisation of human rights standards and the rule of law in the region.<sup>42</sup>

#### **4. Conclusion**

The decision of the international community to engage with Somaliland and Puntland independently, rather than channelling all support for Somalia through the Somali Federal Government (previously the Transitional Federal Government), has been a very successful one by all external markers.<sup>43</sup> An integral part of that engagement has been UNODC and UNDP developing, and then mentoring, prisons within these two breakaway regions of Somalia. While the goal of this engagement is to maintain the clear reduction in piracy within the region, the development of the rule of law in Somalia was viewed as a crucial component to achieving this goal. This brief note has explored how the provision of Somali prisons that meet minimum human rights and incarceration standards has been a linchpin in the development and growth of the rule of law in a very practical and tangible manner. This has happened not only in Somalia, but also in the Seychelles, Mauritius, Kenya and the broader region. The success of this approach to dealing with transnational organised crime originating from a post-conflict society can serve as an effective starting point for future similar endeavours.

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<sup>39</sup> *ibid.*

<sup>40</sup> *ibid.*

<sup>41</sup> *ibid* 5–6.

<sup>42</sup> Paige, Interview with Participant Cobalt (n 10) 6–7.

<sup>43</sup> See generally: Rob McLaughlin and Tamsin Phillipa Paige, 'The Role of Information Sharing in Counter Piracy in the Horn of Africa Region: A Model for Transnational Criminal Enforcement Operations' (2016) 12:1 *Journal of International Law and International Relations* (Forthcoming).

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