

(Unofficial Translation)
REPUBLIC OF SOMALILAND
LAW ON COMBATTING PIRACY
(PIRACY LAW)
LAW NO. 52/2012

THE HOUSE OF REPRESENTATIVES

- Having Seen: Article 2, 26, 28, 39 of the Constitution of the Republic of Somaliland;
- Having Seen: The forwarded Presidential Decree proposal, reference JSL/M/SHGW/081/2-936/022012 dated 16/02/2012 the purpose of which was to enclose the Law on Combatting Piracy.
- Having Confirmed: The necessity for promulgating the Law for Combatting Piracy so as to suppress and eliminate piracy (*and*) to punish any person who has been proved to have committed acts of piracy;
- Having Considered: the serious dangers pirates pose to the vessels sailing in the Somaliland and the international waters;
- Having Heard: The debates of the Representatives about the Law;
- Convinced of: The need for the Law on Combatting Piracy;

Has passed:

The Law on Combatting Piracy – Law No. 52/2012

Article 1: Title of the Law

This Law shall be titled the **Law on Combatting Piracy, Law No. 52/2012 (Piracy Law)**.

Article 2: Definitions

A. **An act Piracy** means¹ :

¹ The definition Article 101 of the UN Convention on the Law of Sea (UNCLOS) is as follows:

“Piracy consists of any of the following acts:

(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 aircraft, or against persons or property on board such ship or 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 of intentionally facilitating an act described in subparagraph (a) or (b).”

1. Any illegal act of violence or detention or depredation committed by the crew or the passengers of a private ship or a private aircraft or by armed pirates for the purposes of illegal financial gain and directed –
 - a) on the high seas, against a ship or aircraft, or against persons or property on board such a ship or aircraft;
 - b) against a ship, an aircraft, a person or property on board a ship or an aircraft in a place outside the jurisdiction of any state;
 - c) against a ship, an aircraft, a person or property on board a ship or an aircraft within the territorial waters of the Republic of Somaliland.
2. Any act of willful participation² in an act directed knowingly as a pirate's attack against a private ship or private aircraft.
3. Any act which incites or facilitates or aids piracy as defined in Clauses 1 and 2 of this Article.
4. Similarly, any act of piracy directed at or by a warship or military aircraft or a government ship or aircraft whose crew takes over its control by means of a mutiny and commits acts of piracy as defined in *(this)* Article 2 of this Law³.

B. Ship means any sea vessel including ship, boat, speed boat, launch, canoe or any other sea vessels which are used for acts of piracy.

² This Clause deviates from the corresponding provisions in the UNCLOS Article 101(b) definition of Piracy and which states:

“b) any act of voluntary participation in the operation of a ship or an aircraft with knowledge of facts making it a pirate ship or a pirate aircraft.” (*in Somali: fal kasta oo ah ka qaybgel habeynta markab ama diyaarad iyadoo la ogsoonyahay xaqiiqada ah in uu markabku yahay ama diyaaradu tahay mid budcad badeed ah*”.

This UNCLOS provision has as its centre the participation in the operation of a pirate ship/aircraft with the knowledge of the nature of the enterprise and is a separate and different offence from participation in “an attack” or attempted attack. It is similar to the offence of “going equipped” to commit a crime such as theft, robbery or fraud which constitutes in many jurisdictions a separate crime on its own. Participation in an attack or an attempted attack is already covered by Clause 1 read with Articles 71 of the Penal Code (joint participation in a crime), but there is no parallel provision in the Penal Code to a “going equipped” offence that can be used to deal with the participation in the operation of a pirate ship or aircraft as a separate crime. Article 76 of the Penal Code covers cases where two or more persons agree to commit an offence but have not yet committed the offence, but the mere agreement would not incur a punishment although the court may order security measures against the persons. These security measures set out in Article 172 are, however, not serious enough to deal with the UNCLOS Article 101 (b) offences. The public order offence under Article 322, of associating to commit more than one crime which is punishable with imprisonment of 3 to 7 years may fill the gap but it is based on proving an intention to commit more than one crime. In other jurisdictions, cases of conspiracy to commit an offence attract severe punishments. Also Clause 3 of the Law could possibly catch some of the acts of participation in the operation of a ship/aircraft as being acts of aiding or facilitating once the act is committed or attempted (Article 17 and 125 of the Penal Code). Nonetheless, none of these other provisions address adequately the UNCLOS Article 101(b) wording which should be added to this Law as soon as is practicable.

³ This is a poorly drafted Clause.

Article 3: The Purposes of this Law

1. The protection of the security and the preservation of the peace in the Somaliland seas;
2. The safeguarding of the ships sailing in the Somaliland sea and the high seas;
3. Combatting pirates in the Somaliland sea and the high seas;
4. The prevention of the organisation, financing, provision of information to and support of any persons engaged in piracy;
5. The prevention of acts of piracy perpetrated against Somaliland and international commercial enterprises.
6. The investigation, prosecution and imprisonment of those detained for the offences of piracy.

Article 4: Punishment for the Crime of Piracy

Anyone who commits any act of piracy referred to in **Article 2** of this Law shall, unless he has committed murder⁴, be liable to imprisonment from **5 to 20 years**.

Article 5: Jurisdiction of Somaliland Courts

1. An act of piracy at a ship or aircraft owned by⁵ Somaliland shall come under the jurisdiction of the Republic of Somaliland courts unless the ship or aircraft was, at the time of the commission of the offence, situated in the territorial waters of another country or that act is assigned, under international law, to another jurisdiction.
2. Notwithstanding the provisions of any other law and regardless of the nationality of the accused persons, the courts of Somaliland shall have jurisdiction to try any offences of piracy committed within the Somaliland sea or outside the Somaliland sea if committed in an area not falling within the sea of any other country when the Somaliland Coastal Forces detains the accused persons.

Article 6: A Pirate Ship or Aircraft

1. A ship or an aircraft shall be deemed to be a pirate ship or a pirate aircraft if it is under the control of persons who intend to commit the acts of piracy referred to in Article 2 of this Law.
2. Similarly, a ship or an aircraft used for committing acts of piracy as stated above (*Article 2 of this Law*) shall be deemed to be a pirate ship or a pirate aircraft so long as it remains under the control of those who committed the acts.

⁴ As Article 12 of this Law re-confirms the applicability of the Penal Code in matters not specifically dealt with in this special criminal law, crimes of murder arising from acts of piracy shall be dealt with as murder under Article 434 of the Penal Code, which is punishable by death.

⁵ Registered in Somaliland would have probably been more appropriate.

Article 7: Ownership or Loss of the nationality of a ship or an aircraft

A ship or an aircraft may retain its nationality even though it has become a pirate ship or a pirate aircraft. The retention or loss of nationality shall be determined by the law of the state in which they are registered.

Article 8: Search and Seizure of Sea Vessels by the Coastal Guard Force

1. The Coastal Guard Force shall have the same powers⁶ as the Police Force when they are protecting the security and the peace of the sea and the coasts.
2. The Coastal Guards Force of Somaliland shall have the power to seize a ship or an aircraft which is under the control of pirates, or is suspected of being involved in acts of piracy, and is either within the sea of the Somaliland Republic or is outside the sea of the Somaliland Republic but is in a place outside the sea of any other state. They have also the power to arrest any persons caught or are suspected of committing the acts.
3. The Coastal Guards Force Somaliland shall have the power to institute investigations into cases relating to acts of piracy.

Article 9: Infringements by a Master or Officer of a Vessel

1. The master or officer of a Somaliland or foreign owned ship who commits acts of depredation or robbery against a Somaliland or foreign owned ship (or boat)⁷ or against the cargo or passengers aboard the ship shall be punished by imprisonment from 10 to 20 years if the act is one of piracy referred to in Article 2 of this Law.
2. A public officer or a person entrusted with a public service⁸ who performs an act, contrary to the duties of his office, of facilitating piracy or participating in the receipt of the benefits accruing from that act for himself or for a third party or accepts promises shall be punished with imprisonment from 10 to 25 years⁹.

Article 10: Prohibition of Conversion of Imprisonment

The punishment of imprisonment for the offences referred to in this Law shall not be converted¹⁰ into a fine.

⁶ The powers are set out in various laws, but in respect of the investigation of offences, searches, arrests etc. , the principal relevant Law is the Criminal Procedure Code.

⁷ This is unnecessary as the definition of a ship, under Article 2T, includes a boat.

⁸ For the definitions of a “public officer” and “a person entrusted with a public service”, see Article 240 of the Penal Code.

⁹ Such a public officer shall also be subject to an automatic permanent interdiction from public office if he is sentenced to imprisonment of not less than 5 years and to an interdiction for a period of 5 years if he is sentenced to imprisonment of not less than 3 years – Article 102 of the Penal Code.

¹⁰ Such conversion, in any case, was only available, under Article 109 of the Penal Code, for sentences of imprisonment not exceeding one year and in which the factors listed in the Articles 109 and 110 are fulfilled. This Law makes it clear that no such conversions are allowed in any sentences relating to piracy under this Law.

Article 11: Confiscation

A pirate boat, ship or a pirate aircraft and all the proceeds or the benefits obtained from the commission of the offence referred to in Article 2 of this Law shall be confiscated.

Article 12: The Provisions of this Law

The provisions of this Law shall form a part of the Penal Code of the country and shall be read in conjunction with the Penal Code¹¹.

Article 13: Repeals

Articles 205 and 206¹² of the Maritime Code (Legislative Decree No. 1) of 21 February 1959 are hereby repealed. Similarly, all provisions contained in other laws which are contrary to this Law are hereby repealed.

Article 14: Coming into force

This Law shall come into force after it is passed by the Legislative Houses and signed by the President¹³.

C/risaaq Siciid Ayaanle
Xog. Guud ee Golaha Wakiilada

C/raxmaan Maxamed C/laahi (Cirro)
Gudoomiyaha Golaha Wakiilada JSL

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[Note: This Law has been passed by the House of Representatives on 21 February 2012 and by the House of Elders on 15 March 2012 and was signed into law by President on 21 March 2012]

¹¹ Article 12 of the Penal Code already makes a provision for the supremacy of a special law such as this Law which shall prevail over any Penal Code provisions that address the same issue. However Article 14 confirms that the provisions of the Penal Code shall still apply to those matters not specifically provided for in this special law. This Article simply reinstates this position.

¹² Article 205 dealt with piracy committed by masters and officers of Somaliland or foreign ships and Article 206 with mutiny by ship's crew.

¹³ The Law has been signed by the President on 21 March 2011 and has come into force on that date.