



Nigeria runs an import-export dependent economy. The country derives 75% of its consumption from its imports. Its economy also thrives on its export of crude oil and liquefied natural gas to countries across the globe. Water transportation is the means through which the country conducts these imports and exports. The high presence of maritime activities in Nigeria has increased the incidence of maritime piracy and other maritime offences which now threatens national security, economic prosperity,<sup>1</sup> and the safety of lives and properties of international merchants across its territorial and surrounding global waters. The poverty of the Nigerian population and their desire for financial gain, the weakness in water policing, the deficiencies of the legal environment and the lack of a response mechanism to counter piratical activities has been the root causes of the significant increase of piracy in Nigeria and the Gulf of Guinea. To combat this menace, the National Assembly enacted the Suppression of Piracy and other Maritime Offences Act (SUPMOA). This paper examines the provision of the Act, its shortcomings and the challenges to be faced in enforcing its provisions.

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<sup>1</sup> In 2019, the Secretary-General on the activities of the United Nations Office for West Africa and the Sahel (UNOWAS) had reported that Nigeria lost about N2.8 billion to piracy and other maritime offences in 2018. - <https://www.premiumtimesng.com/news/headlines/304717-nigeria-lost-2-8-billion-to-oil-related-crimes-in-2018-un.html> accessed on 22nd June, 2020.

## **Piracy in Nigeria and the Gulf of Guinea**

Nigeria has been reported as the piracy hotspot with the highest incidence of maritime piracy and armed robbery at sea in 2018 and 2019 with fears that a lot more incidence that occurred in the country remains unreported.<sup>2</sup> The IMB Piracy Reporting Centre (PRC) received 162 incidents of Piracy and Armed Robbery against Ships worldwide in 2019, compared to 201 for 2018. The 2019 figures are broken down as 4 vessels hijacked, 17 attempted attacks, 130 vessels boarded, 11 vessels fired upon and 134 crew taken in 19 separate incidents. Despite the overall piracy incidents decline in 2019, there was an alarming increase in crew kidnappings across the Gulf of Guinea. The Gulf of Guinea accounted for over 90% of global crew kidnappings with 121 crew taken in 2019 compared to 78 in 2018. All 4 vessel hijackings that occurred in 2019 happened in the region.<sup>3</sup>

## **The Suppression of Piracy and other Maritime Offences Act (SUPMOA)**

The SUPMOA was enacted by the National Assembly and assented to by the President on 24th June, 2019. The Act domesticated the United Nations Convention on the Law of the Sea (UNCLOS), 1982,<sup>4</sup> the Convention for the Suppression of Unlawful acts against the Safety of Maritime Navigation (SUA), 1988 and its protocol and other related matters. Prior to its enactment, it has been impossible to maintain criminal action against pirates and maritime offenders in Nigeria despite its huge presence and deep negatives on the economy of Nigeria. Attempts at maintaining actions against suspects failed due to the absence of laws codifying maritime offences in the country. Although, the Merchant Shipping Act attempts to codify the Convention for the Suppression of Unlawful acts against the Safety of Maritime Navigation (SUA), 1988 and its protocol. Its purported domestication was short of the constitutional requirements for the domestication of international laws<sup>5</sup>, hence, the Convention could not be enforced in Nigeria.

It must be stated that several countries across the world have domesticated antipiracy laws. Nigeria is however the first country to enact an antipiracy law in

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<sup>2</sup> Nigeria recorded the highest attacks in the world, with 48 and 35 actual and attempted attacks in 2018 and 2019 respectively.

<sup>3</sup> <https://iccwbo.org/media-wall/news-speeches/unprecedented-number-of-crew-kidnappings-in-the-gulf-of-guinea-despite-drop-in-overall-global-numbers/> accessed on 22nd June, 2020.

<sup>4</sup> The SUPMOA provides for the prosecution and punishment of piracy and other maritime offences as this is not provided for in the UNCLOS.

<sup>5</sup> Crimes are required to be codified with their punishment prescribed before they can have the force of law.

West Africa. International customary law recognizes piracy as a crime punishable by individual states.<sup>6</sup> The United Nations Convention on the Law of the Sea (UNCLOS), 1982 reflects the position of customary international law.<sup>7</sup>

## Definition of Piracy

Piracy is defined in the United Nations Convention on the Law of the Sea (UNCLOS), 1982. The UNCLOS defines Piracy as:

Piracy consists of any of the following acts:

a) any illegal acts of violence<sup>8</sup> or detention, or any act of depredation, committed for private ends<sup>9</sup> by the crew or the passengers of a private ship<sup>10</sup> or a private aircraft, and directed-

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<sup>6</sup> Scholars, such as, Phillip De Souza and Alfred Rubin, do not regard piracy as an international crime. Alfred Rubin views piracy as a municipal law crime. To him, the only question of international law in piracy is the extent of a state's jurisdiction to apply its criminal law to an accused foreigner acting outside the territorial jurisdiction of the prescribing state. See Phillip De Souza, *"Piracy in the Graeco-Roman World"*, Cambridge University press and Alfred Rubin, *"The law of Piracy"* (2nd e.d) New York Transnational Publishers, 1998. In 1932, Harvard University legal researchers concluded that piracy was not an international crime but was merely a basis for extraordinary jurisdiction in every state to prosecute suspected pirates (Harvard Research in International law, Draft convention on Piracy with Comments, 1932). Thus, supporting the position of international customary law. The views of the Harvard Research Group influenced the work of the International Law Commission (ILC) in drafting the 1958 Convention on the High Seas.

<sup>7</sup> Under Article 105 of the UN Convention on the Law of the Sea (UNCLOS), any state may seize a pirate ship or aircraft - or a ship or aircraft taken by pirates - and arrest the persons and seize the property on board. In turn, the courts of the state which carried out the seizure may subsequently decide upon the penalties to be imposed; and may determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties. Any warship or military aircraft, or other clearly marked government vessel may seize pirates (Article 107). In October 2011, the General Assembly called upon "States to take appropriate steps under their national law to facilitate the apprehension and prosecution of those who are alleged to have committed acts of piracy" (resolution 64/71, paragraph 72) and urged "all States, in cooperation with the International Maritime Organization, to actively combat piracy and armed robbery at sea by adopting measures, [...] and **by adopting national legislation**"( paragraph 74).

<sup>8</sup> The proscription of piracy to 'illegal' acts of violence is ambiguous. It has been pointed out that this ambiguity could be interpreted to mean that some acts of violence are legal even when carried out in the same context. It is difficult to discern whether the term "illegal" contemplates the concept of "legal" violence by insurgents.

<sup>9</sup> The Act just like the Convention fails to clarify what private ends mean. This has spurred debates. Barrios reports that UNCLOS excludes attacks that are politically motivated. For example, he claims that maritime terrorism, such as environmental attacks with hijacked oil tankers, do not fall within the realm of UNCLOS. Guilfoyle challenges this, asserting that —private ends must be interpreted broadly to mean any action that lacks state sanction. He draws on the Belgian Court of Cassation's ruling in *Castle John v. NV Mabeco* (1986), wherein Greenpeace protestors boarded and damaged two ships on the high seas, reportedly to draw attention to the environmental damage caused by ships discharging waste into the sea. The court ruled that violence by the occupants of one

- (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).<sup>11</sup>

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private vessel against another vessel, even as a form of political protest, furthered private ends and constituted piracy. To him, a non-private act must directly relate to the interests of, or impinge upon, the state or state system; Erik Barrios, *Castling a Wider Net: Addressing the Maritime Piracy Problem in Southeast Asia*, 28 B.C. INT'L & COMP. L. REV. 149, 153; Douglas Guilfoyle, *Piracy off Somalia: UN Security Council Resolution 1816 and IMO Regional Counter-Piracy Efforts*, 57 INT'L & COMP. L.Q 690, 693 (2008). The latter position seeing 'private ends' as those activities which are lacking 'state sanction' was also adopted by the US Court of Appeals in *The Institute of Cetacean Research v. Sea Shepherd Conservation Society*, Case No. 12-35266, US Court of Appeals for the Ninth Circuit, which 'defines acts taken for private ends as those not taken on behalf of a state'. However, the Supreme Court untimely denied the review. Whichever way, there have been resistance by several commentators on the exclusion of terrorist and political activities and actions having state sanctions from the definition of piracy. They have argued that it would be self-defeating to restrict the definition of piracy to commercially motivated acts when acts meant to promote terror or political objectives can pose a similar threat to safety at sea. The increase in political motives inextricably linked to illegal activities at sea has been canvassed to support this position. In the Niger Delta, for instance, the rebels justify their recourse to piracy by citing political objectives (rebel to political corruption). Similarly, pirates in Somalia have used their ransom money to advance their own extremist political objectives. It is also possible to have state sponsors of piracy, just the same way states have been sponsoring terrorism over the years. This restriction of piracy to act committed for private end is therefore inappropriate.

<sup>10</sup> Another alleged shortfall of UNCLOS is that it indicates that there must be two ships or an aircraft and a ship involved for an act to be regarded as piracy.

<sup>11</sup> Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). N.B. - Section 3 of the SUPMOA 2019 retains the definition of piracy provided under UNCLOS (1982). The definition shows the distinct characteristics that distinguish piracy from any other form of maritime violence. Firstly, piracy must be committed in the high seas outside the jurisdiction of any state. This distinguishes piracy from the crime of armed robbery against ships that is committed in the jurisdiction of a coastal state. Secondly, piracy must be committed for private ends. This limits the crime of piracy to acts that are committed purely for personal gain. It excludes acts that are motivated by ideology, religion, or politics. Thirdly, there must be two ships involved for a crime to fulfill the definition set forth in article 101. This is often referred to as the two "ship rule." Fourthly, piracy can only be committed by crew and passengers of a private ship (i.e., not military and government-owned ships or ships in government service except crew has mutinied (see article 103 UNCLOS)). The definition in Article 101 of UNCLOS has obvious limitations. There have been attempts to ameliorate the obvious limitations and deficiencies by expanding and modifying the definition of certain crimes that may well cover acts of piracy as well as the jurisdiction of states in other international instruments to deal with such crimes. The most significant of these instruments is the SUA Convention. Although the SUA Convention does not directly address piracy, it covers a wide

The definition of piracy describes it to include; kidnapping of people for ransom, murder, seizure of items or the ship, sabotage leading to the sinking of the ship, among others.

### ***Application of the Act***

The Act applies to:

- i. Ships or aircraft navigating in, on or above Nigerian territorial and internal waters or on or above international waters.
- ii. Fixed or floating platforms in, on or above Nigerian territorial and internal waters or on or above international waters.

The application to a person, ship or aircraft in, on or above international waters is limited to:

- a) Piracy; and
- b) In the case of any other offence under the Act -
  - i. where the alleged offender is found outside Nigeria but is in the territory of a State Party to the SUA Convention or any other similar Convention where Nigeria is a party.
  - ii. Where the offence was committed on board a vessel flying the flag of a Party to the SUA.<sup>12</sup>

### ***Prosecution<sup>13</sup>***

The Act authorizes the Attorney-General of the Federation, any law officer designated from the Attorney-General of the Federation's office and NIMASA with the consent of the Attorney-General of the Federation to prosecute all offences under the Act.<sup>14</sup>

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range of offences (listed in article 3) that constitute maritime violence including terrorism. The offences listed therein cover acts of piracy.

<sup>12</sup> Section 2 of the SUPMOA 2019

<sup>13</sup> Section 5(1) of the SUPMOA 2019

<sup>14</sup> The prosecution of suspected pirates by the Attorney-General of the Federation, law officer in the office of the Attorney General and NIMASA is quite commendable. Trials by trained law officers would help minimize the escape of suspects from prosecution under the law considering its restrictive definition of piracy. However, it appears that there might be human rights complications in the prosecution of non-nationals going forward. These suspected pirates are most likely to lack the know-how on how to get representation for their defence. Although, the ACJA provides for the need to inform defendants of their right to be represented and the need to be provided

## ***Jurisdiction<sup>15</sup>***

The Act gives the Federal High Court exclusive jurisdiction to hear and determine any matter under the Act.<sup>16</sup>

## ***Seizure of Vessel or Aircraft used for maritime offences<sup>17</sup>***

The Act permits relevant authorities to seize pirate controlled ships or aircrafts or ships/aircrafts connected with an offence under the Act. This seizure may be effected in Nigeria, in, on or above international waters or in, on or above a place beyond the jurisdiction of any country. However, the right to arrest and prosecute pirates and maritime offenders arrested in territorial waters or in any place outside the jurisdiction of Nigeria's territorial waters is subject to the rights of third parties acting in good faith.<sup>18</sup>

## ***Custody and preliminary inquiry into the facts of the offence<sup>19</sup>***

A person arrested can be detained in custody for a reasonable period of time or measures to ensure his presence when needed can be taken to enable any criminal or extradition proceedings to be instituted against him. During this period, the Act mandates that preliminary inquiry be made into the facts of the offence. This is to be conducted in accordance with the Constitution and other relevant laws. The alleged offender must be permitted to communicate with and be visited by the

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legal aid when they are unable to secure the services of a lawyer, this is not the practice in our courts. The Act should have reemphasized the need to provide representation for suspected pirates.

<sup>15</sup> Section 5(2) of the SUPMOA 2019

<sup>16</sup> The Federal High Court being a specialized court dealing with similar matters appears to be the most appropriate court to handle the complicated task of trying cases that emerge from the exploding piracy crisis. The court, however, continues to struggle with its own backlog of criminal and civil cases. This additional jurisdiction would increase the backlogs of cases in the court. The court is also to face challenges in providing translation services for defendants and witnesses and settling the cost of procuring such interpreters.

<sup>17</sup> Section 7 of the SUPMOA 2019

<sup>18</sup> In effect to this provision, the federal government recently handed over the fishing vessel 'Marine 707,' suspected to be carrying out illegal activities in the Gulf of Guinea to the Ghanaian authorities for further investigation. Nigeria also handed over 51 crew members, including 48 Ghanaians and three South Korea nationals to the government of Ghana and Korea respectively. Although, no act of piracy was uncovered upon investigation, the federal government handed over the suspects for further investigation. Nigeria would most likely not intend to prosecute non-nationals because of the risk, cost of prosecution and cost of maintenance involved during incarceration. Convicted pirates have a history of bringing claims of asylum or non-refoulement obligations to avoid returning to their countries upon serving their jail terms. Countries may also refuse to repatriate their citizens upon consideration of the cost and lack of prosecutorial framework for piracy in their state. All these would create unintended cost and decadence for Nigeria on the long run.

<sup>19</sup> Section 9 of the SUPMOA 2019

representative of his country or if he is a stateless person, the representative of the country he habitually resides.<sup>20</sup>

The court can grant an order made pursuant to an ex-parte application for the detention of a detainee for a period not exceeding 90 days. The order can be renewed for a similar period until the investigation and detention is dispensed with.<sup>21</sup>

### ***Punishment<sup>22</sup>***

The Act provides that a person who commits an act of piracy, armed robbery at sea or any other unlawful act under this Act, whether or not he was armed with a firearm or other weapon during the commission of the offence is liable on conviction to life imprisonment, a fine of N50,000,000 (Fifty Million Naira) and restitution to

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<sup>20</sup> It is commendable that the Act has addressed issues of inability to establish the identity and nationality of captured individuals as they are unlikely to possess identification.

<sup>21</sup> The possible detention of a suspect for 90 days which can be further extended is too long. By the time the trial starts, the multinational crew may be scattered around the world and unavailable. The vessel and cargo attacked would most likely also be held as evidence during this period. This could lead to the deterioration of cargoes and hinder the use of the ship for cargo transportation until the case is over. Also, this raises issues of violation of international human right laws requiring persons to be brought before a court of law within reasonable time or be released pending trial. Such release may be conditioned by guarantees to appear for trial - Article 5(3) of the ECHR, Article 9 (3) ICCPR of the International Covenant on Civil and Political Rights, Article 7 of the African Charter on Human and Peoples Right. There is need to reduce the possible days of detention. There should also be a holistic adoption of remote hearing procedures in the FHC. This would help solve issues of distance and unavailability of attacked crew members. Failure to do this would eventually lead to the release of suspected pirates as evidence to secure their conviction would be most likely unavailable. Affected ship owners may also refuse to report the violations as it would put unnecessary hold on their business.

<sup>22</sup> The huge imprisonment terms and fines imposed by the Act should serve as a deterrence for would be offenders. However, considering the long imprisonment term, Nigeria needs to improve the facilities of its correctional centers to meet international standard. This is to avoid possible human right violations and to ensure that pirates and other maritime offenders are imprisoned in facilities that would aid their rehabilitation process. This later reason is to be taken seriously because most pirates upon release may seek asylum or non-refoulement in countries where they served their jail terms on the ground that their life would be endangered if they return to their country as fellow culprits would see them as source for their exposure. A reliable rehabilitation process is the only way to avoid increased decadence and pollution of societal values by ex-convicts.

the owner or forfeiture to the Government.<sup>23</sup> The Act also punishes attempt to commit, facilitate, aid, abet, conspire or participate in piracy and other maritime offences.<sup>24</sup> A person who attempts to commit any act of piracy is liable on conviction to a fine of at least N100,000,000 or to imprisonment of at least 12 years. If the attempt is to commit a maritime offence or any other unlawful act, such person is liable on conviction to a fine of at least N75,000,000 and to imprisonment of 10 years. The Act makes a person who aids, abet, conspire, counsel or procure the commission of any maritime offence under the Act or becomes an accessory after the fact to any maritime offence liable upon conviction to a fine of at least N75,000,000 and an imprisonment of at least 12 years.<sup>25</sup>

### ***Institution of Civil Action***<sup>26</sup>

The Act permits aggrieved persons who suffered loss or damage to property, loss of life or injury to institute civil action against persons convicted for piracy or other maritime offences punishable under the Act.<sup>27</sup>

### ***Reporting of incidents of piracy, maritime offences and other unlawful offences***

Persons having knowledge of a maritime incident is obligated to make a report to any relevant authority and NIMASA without delay.<sup>28</sup> The Act requires NIMASA to make and send reports of incidents, the actions taken and the result of any extradition proceedings or legal proceedings taken against such offender without delay in the required formats to the Secretary-General of the International Maritime Organization.<sup>29</sup> The Act makes liable upon conviction to a fine of at least N5,000,000 any person having information that is material to prevent the commission of an offence under the Act or would secure the apprehension, prosecution or conviction of an offender under the Act.<sup>30</sup>

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<sup>23</sup> Section 12 of the SUPMOA 2019

<sup>24</sup> Section 10 of the SUPMOA 2019

<sup>25</sup> Section 13 of the SUPMOA 2019

<sup>26</sup> Section 13(4) of the SUPMOA 2019

<sup>27</sup> Civil claims ought to only be permitted where the restitution ordered by the court does not offset the loss incurred by the vessel owner, shipper or consignee or where only forfeiture of the pirates' vessel to the government is ordered by the court.

<sup>28</sup> The Act permits a joint report or an additional comment to an existing report for persons having knowledge of the incidence.

<sup>29</sup> Section 16 of the SUPMOA 2019

<sup>30</sup> The Act excludes legal practitioners who obtained information in privileged circumstances such as disclosures made by client while seeking legal advice or in the contemplation of a suit and without intent of furthering a criminal purpose.

### ***Institutional framework for maritime protection***<sup>31</sup>

The SUPMOA 2019 has empowered NIMASA, the Nigerian Navy, and the Attorney-General of the Federation to collaborate and ensure the effective implementation and enforcement of this Act.

The Act provides that law enforcement agencies may initiate, develop or improve on specific training programmes for its officers charged with the responsibility of preventing, detecting, investigating, eliminating and prosecuting maritime crimes in Nigeria.<sup>32</sup> Consequently, the problem of lack of skilled personnel in the anti-piracy war can be avoided.<sup>33</sup>

The Agency is required to establish a fund to be known as the Piracy and Maritime Offences Fund to be used in the implementation of the Act.<sup>34</sup>

### **Conclusion:**

In just about a year of the enactment of the SUPMOA 2019, the first sets of suspected pirates are to be prosecuted under the law. The enactment of a national legislation prohibiting piracy in Nigeria and the huge punishment provided by the law should serve as deterrence to pirates and potential pirates. The possibility of prosecution by law officers in the office of the AG and NIMASA is also a great introduction as prosecution would be done by specialized personnel. The Act also provides for the training of personnel involved in its enforcement. The Fund created by the Act and its clearly spelt out means of realization is wonderful introduction as this would cater for the cost of training and prosecution of maritime offenders in Nigeria. However, a lot of issues in UNCLOS were retained in the Act. Several other challenges that can be faced in the enforcement of anti-piracy laws were left unattended to. Hopefully, we expect to see a decline in the number of maritime

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<sup>31</sup> Section 17 of the SUPMOA 2019

<sup>32</sup> Section 17 (6) of the SUPMOA 2019

<sup>33</sup> It must be emphasized that there is great need to educate military personnel involved in the arrest of pirates. The reason is that military personnel have little training in the preservation and collection of evidence and respect for rights. For example, in a particular case suspected pirates were captured by a German warship. The captain ordered their skiff sunk and weapons dumped into the sea for security reasons, complicating the subsequent Kenyan prosecution. Also, the violation of the rights of non-nationals can create international human right concerns.

<sup>34</sup> It is to be funded by money approved by the Federal Government for the implementation of the Act, donations, 35% of the proceeds of sale of anything seized or forfeited under the Act, contribution from the NIMASA Maritime Fund and contribution from the Cabotage Vessel Financing Fund under the Coastal and Inland Shipping (Cabotage) Act - Section 19 of the SUPMOA 2019

offences in Nigeria and the Gulf of Guinea especially from Nigerian nationals if the Act is well implemented.

This paper was authored by **A.O. OGUNBAMERU** who carries on his legal practice at the law Firm of Femi Atoyebi & Co.