

## AN ANALYSIS OF PIRACY PROVISIONS UNDER NIGERIA'S SUPPRESSION OF PIRACY ACT 2019\*

### Abstract

*Nations in the Gulf of Guinea have recognized the need for regional cooperation in order to effectively combat maritime piracy. However, a foundation of a strong legal framework is required to adequately combat piracy. The Suppression of Unlawful Acts against the Safety of Maritime Navigation to which Nigeria domesticated in 2019 was a watershed enactment as it finally brought clarification on whether the offence of sea piracy had domestic legislative provision in Nigeria. This paper explores key provisions on piracy under SPOMO Act and dovetail how the law has addressed maritime piracy incidents. It found that the current regime has brought about a decline in the activities of pirates through regional collaboration. It also found that partial enforcement of legislative provisions by courts will remain a clog to eradicating piracy incidents in Nigeria. The paper adopted the doctrinal method of legal research, it benefitted from works of legal experts.*

**Keywords:** Maritime Piracy, Suppression of Piracy Act 2019, Nigeria

### 1. Introduction

Nigeria, as a coastal state, is party to international conventions and agreements related to marine security and law of the sea, including the United Nations Convention on the Law of the Sea (UNCLOS). Piracy has had a high economic on Nigeria. This has caused the country to lose \$25.5 billion annually.<sup>1</sup> These costs include increased shipping insurance premiums, the deployment and/or use the navy and of naval assets, coast Guards and ransom payments. The International Maritime Bureau issued reports in 2022<sup>2</sup> that in Nigeria,<sup>3</sup> pirates are frequently well-armed and vicious, and they have attacked and hijacked ships and kidnapped personnel near or far from the coast, rivers, anchorages, ports, and adjacent waters. Incidents have also been reported up to 261 nautical miles from the shore. In general, all waters in and around Nigeria remain dangerous and many occurrences may have gone undetected and unreported. Kidnapping for ransom is the most dangerous threat to crews engaged in navigation. Vessels are recommended to take extra precautions in these high-risk areas. Tankers have previously been hijacked and part of their cargo (gas/oil) stolen.<sup>4</sup> Piracy and other criminal activities at sea are serious hazards to seafarers' safety and wellbeing. According to the IMB, 135 crew men were stolen from their ships in 2020.<sup>5</sup> This is a traumatic experience for the individuals involved and has a chilling effect on the willingness of seafarers to work in affected areas. Notable incidents of piracy include the hijacking of the 13 Aris off the coast of Somalia in 2017<sup>6</sup>, which marked the first hijacking of a commercial vessel in the region since 2012.<sup>7</sup> This incident highlighted the persistent threat of piracy in the western Indian Ocean.

### 2. Exploring Piracy Provision of the Suppression of Unlawful Acts (SUA) Convention

The Suppression of Unlawful Acts (SUA) Convention is a series of international treaties aimed at addressing various forms of unlawful acts against the safety of maritime navigation and fixed platforms on the continental shelf. Among these acts is piracy. The SUA Convention, specifically the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Protocol), includes provisions related to piracy.<sup>8</sup> It defines and criminalizes acts of piracy.<sup>9</sup> The SUA Protocol defines piracy as any illegal acts of violence or detention or any act of depredation committed on the high seas or in a place outside the jurisdiction

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<sup>1</sup>O.J. Anyanwu, U. Melvin., Eko-Raphaels & ors, 'Sea Piracy and Armed Robbery in the Gulf of Guinea and Its Effect on Shipping Cost and Nigeria's Economic Growth' in *Oceanogr Fish Open Access J* 14(4): OFOAJ.MS.ID.555894 (2022) available at <https://juniperpublishers.com/foaj/pdf/OFOAJ.MS.ID.555894.pdf> last accessed on 10/09/23.

<sup>2</sup>ICC International Maritime Bureau, 'Piracy and Armed Robbery Against Ships', available at <https://www.icccs.org/reports/2022%20Annual%20IMB%20Piracy%20and%20Armed%20Robbery%20Report.pdf> last accessed on 10/09/2023.

<sup>3</sup>*Ibid*, Particularly Lagos /Apapa, Off Bayelsa / Brass / Bonny Island / Port Harcourt.

<sup>4</sup> *Ibid*

<sup>5</sup>Anna Cummins, 'Crew released without ransom after ship hijacked off Somalia', available online at <https://edition.cnn.com/2017/03/17/africa/somali-pirate-mt-aris-13-crew-released/index.html> last accessed on 10/09/2023.

<sup>6</sup> *Ibid*

<sup>7</sup> *Ibid*

<sup>8</sup> Article 3(1).

<sup>9</sup> *Ibid*

of any state.<sup>10</sup> The SUA Protocol provides a clear and concise definition of piracy, similar to UNCLOS, making it easier for states to identify and prosecute pirates. The SUA Convention allows for universal jurisdiction, meaning any state can prosecute pirates regardless of their nationality or where the crime occurred. The Convention further complements UNCLOS by providing a more specific legal framework for addressing piracy, helping to fill gaps and ambiguities. The SUA Convention's piracy provisions largely mirror those of UNCLOS. While this can provide clarity, it also leads to duplication and potential confusion in enforcing anti-piracy measures.<sup>11</sup> The SUA Protocol primarily applies to acts of piracy on the high seas or in areas beyond national jurisdiction, potentially limiting its effectiveness in cases where piracy occurs in territorial waters.<sup>12</sup> Recall the Somali pirates hijacked the MV Maersk Alabama off the coast of Somalia. U.S. Navy SEALs later rescued the ship's captain.<sup>13</sup> The pirates involved in this case were prosecuted in U.S. courts under the SUA Convention, among other laws.<sup>14</sup> Again, in the Arctic Sea, a cargo ship, was hijacked in the Baltic Sea. The hijackers were captured and prosecuted in Russia.<sup>15</sup> The SUA Convention's piracy provisions played a role in the prosecution. The piracy provisions of the Suppression of Unlawful Acts (SUA) Convention, as outlined in the Suppression of Unlawful Acts (SUA) Protocol, provide a clear and internationally accepted definition of piracy, allowing for universal jurisdiction. However, there is some overlap with UNCLOS, and the convention's applicability is primarily focused on the high seas. Despite these limitations, the SUA Convention has been used effectively in prosecuting pirates involved in high-profile cases, contributing to international efforts to combat piracy.

### 3. SPOMO Act: Analysing Key Provisions on Piracy

Section 3 of the Suppression of Piracy and other Maritime Offences (SPOMO) Act defines piracy in line with Article 101 of UNCLOS, while section 4 details the meaning of maritime offences incorporating Article 3 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention). The said section 3 of the SPOMO Act defines piracy as a violent attack on a ship by another ship on the high seas for personal gain. It must be mentioned that SPOMO Act was a watershed enactment as it finally brought clarification on whether or not the offence of sea piracy is defined in any domestic enactment. It also confers on the Federal High Court original jurisdiction to entertain cases of piracy, armed robbery and other unlawful acts at sea.<sup>16</sup> Section 36(12) of the 1999 Constitution of Nigeria is settled that, no person can be convicted of a criminal offence save, where an extant law provides for such offence. The seeming controversy was heightened by Section 216(h) of the Merchant Shipping Act (MSA) 2007 which appeared to domesticate the SUA Convention, 1988 and the Protocol thereto contrary to the Constitution.<sup>17</sup> Under the Suppression of Piracy and Other Maritime Offences (SPOMO) Act of 2019 what constitutes piracy has been addressed at the policy level. Penalties under the SPOMO Act include life imprisonment upon conviction.<sup>18</sup> Section 12(1) prescribes the punishment of life imprisonment and a fine of not more than 50,000,000 million naira (US \$50,000), including restitution to the owner or forfeiture to the Federal Government of Nigeria. Despite this laudable provision, the court in *Federal Republic of Nigeria v Binaebi Johnson & Co.*,<sup>19</sup> handed down a paltry \$22,000 as fine. This is miscarriage of justice and retracts from the well-meaning provisions of the law. This deviation from the express provisions of the law has the capacity to embolden acts of piracy in Nigerian waters. The judiciary is a necessary partner in the administration of maritime laws in Nigeria. Therefore, it would be counterproductive to have the same judiciary inhibit the eradication of piracy. The judiciary must therefore stand up to its statutory duties as stipulated by the constitution.

<sup>10</sup> Article 3(1)

<sup>11</sup> Anete Logina, 'The international law related to maritime security : an analysis of its effectiveness in combating piracy and armed robbery against ships', available online at [https://commons.wmu.se/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1143&context=all\\_dissertations](https://commons.wmu.se/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1143&context=all_dissertations) last accessed on 27/09/2023.

<sup>12</sup> *Ibid*

<sup>13</sup> Karan C, 'The Story of Maersk Alabama Container Vessel', available at <https://www.marineinsight.com/marine-piracy-marine/the-story-of-maersk-alabama-container-vessel/> last accessed on 27/09/2023.

<sup>14</sup> *Ibid*

<sup>15</sup> Luke Harding, 'Was the cargo ship Arctic Sea really hijacked by pirates?' available at <https://www.theguardian.com/world/2009/sep/24/arctic-sea-russia-pirates> last accessed on 27/09/2023.

<sup>16</sup> V. Onyegbado, 'Suppression of Piracy and Other Maritime Offences Act 2019: A Review,' <https://www.internationallawoffice.com> accessed 28 July, 2021.

<sup>17</sup> VN. Enebeli and D.C. Njoku, 'A Critical Appraisal of the Anti-Piracy Law of Nigeria', *Journal of Law, Policy and Globalization* (2021) 113: 57.

<sup>18</sup> Section 12(1) which provides that (1) A person who commits an act of piracy, armed robbery at sea or any other unlawful Punishments for piracy, 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 and a fine of not more than N50,000,000, in addition to the restitution to the owner or forfeiture to the Federal Government of Nigeria whatever the person has obtained or gained from the commission of the crime.

<sup>19</sup> Suit No.FHC/PH/62c/2020 (Unreported).

It is interesting to note that section 12 (5) stipulates a 15-year term of imprisonment without an option of fine for the aiding and abetting by a government official or an officer. It is being alleged in several forms and on social media that the military aids and abets criminals in Nigerian waters. Section 17(5) (a-d) of the SPOMO Act enjoins law enforcement agencies to investigate, execute search warrants, arrest, and provide evidence for the prosecution of pirates in Nigeria. Collaboration is key in the discharge of the investigatory responsibilities contained in the law. In a related subsector, inter organisational wrangling amongst sister agencies led Igbokwe<sup>20</sup> to remark that;

The failure or neglect or delay by NNPC/NAPIMS and NMA/JOMALIC to work together for the full implementation of the Act in order to actualise the enormous benefits in the Act for the development of indigenous shipping capacity and the economy, leaves a sour taste in the mouth. It has to change immediately if we do not want to continue to be a laughing stock among the comity of nations and disturb the growth of the local shipping industry. Cabotage works well in Malaysia, USA and Brazil according to the laws of those lands, and the case of Nigeria should not be different. Selah! The different relevant government agencies in the implementation of the Act especially NMA, JOMALIC, NIWA, NNPC/PPMC/Navy should freely have access to each other's information and documents on their activities and on vessels' ownership, seamen's nationality, qualification, employment and shipyards capability etc.

The key institutional organisations include the Nigerian Maritime Administration and Safety Agency (NIMASA),<sup>21</sup> the Minister of Blue Economy, and the Nigerian Navy.<sup>22</sup> It is submitted that, the presence of cooperation remains critical to achieving the objectives of anti-piracy policy in Nigeria, especially with NIMASA, Navy, FHC and shipping companies including master, ship owner or manager, crew representative, cargo representative, insurers, and a legal practitioner (save in privileged circumstances), under section 16 a legal duty is imposed to make prompt report incidents of piracy.

#### **4. Addressing Piracy under the SPOMO Regime**

Nigeria as a country has taken measures to combat the menace of piracy and other forms of criminalities at sea, including deploying naval and coast guard assets. The awareness in the maritime domain and response capabilities have improved through international partnerships and regional cooperation within the Gulf of Guinea. Piracy remains challenging issues due to the complex maritime environment in the Gulf of Guinea. Nigeria, in collaboration with neighboring states and international organisations, continues to enhance maritime security efforts and develop legal frameworks to address these threats. To successfully combat the hydra headed monster of piracy, only purposive interpretation of the legal framework by enforcement stakeholders and collaboration can bring about a desired result. The SPOMO Act, in particular, outlines the legal procedures for prosecuting and punishing offenders, including the possibility of life imprisonment upon conviction.<sup>23</sup> Efforts have been made to raise awareness among seafarers, ship-owners, and the general public about the risks of piracy in Nigerian waters. This includes disseminating information on safety measures and reporting procedures. Piracy in the Gulf of Guinea has been a significant maritime security concern for several years.<sup>24</sup> The Gulf of Guinea region, located along the west coast of Africa, has been plagued by various maritime crimes, including piracy, armed robbery at sea, and kidnapping activities. Addressing these issues requires a multi-faceted approach involving multiple countries, international organizations, and regional coordination.<sup>25</sup> Countries in the Gulf of Guinea have recognised the importance of regional cooperation in effectively combating maritime crimes. The Yaoundé Code of Conduct, signed by several West and Central African nations, is a notable regional agreement aimed at enhancing maritime security. It promotes information sharing, coordination of maritime patrols, and other joint operations in combating piracy. Coastal states in the region conduct joint naval operations and patrols to deter and respond to maritime criminal activities. These operations often involve multiple countries working together to secure their maritime boundaries.<sup>26</sup> Many countries in the Gulf of Guinea

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<sup>20</sup>M. Igbokwe, *op cit*.

<sup>21</sup> The Act was enacted in 2007 for Promotion of Maritime Safety and Security, Protection in the Maritime Environment, Shipping Registration and Commercial Shipping, Maritime Labour, the Establishment of Nigerian Maritime Administration and Safety Agency; and for Related Matters.

<sup>22</sup> Established by the Nigerian Navy Act 1964.

<sup>23</sup> E. O. Babatunde, M. M. Abdulsalam, 'Towards Maintaining Peacefulness of the Sea: Legal Regime Governing Maritime Safety and Security in Nigeria', in *Beijing Law Review* > Vol.12 No.2, June 2021 available online at <https://www.scirp.org/journal/paperinformation.aspx?paperid=109624> last accessed on 02/10/2023.

<sup>24</sup> *Ibid*

<sup>25</sup> Sulaimon Salau and Adaku Onyenucheya, 'Kidnaping in Gulf of Guinea highest in history', available at <https://guardian.ng/business-services/maritime/kidnaping-in-gulf-of-guinea-highest-in-history/> last accessed on 02/10/2023.

<sup>26</sup> *Ibid*

have established specialized law enforcement units for maritime security, for instance, the Nigerian Navy's Special Boat Service (SBS). This unit is trained and equipped to handle maritime threats swiftly.<sup>27</sup> Gulf of Guinea countries collaborate with international partners, such as the European Union (EU), the United States of America, and INTERPOL, to improve their capacity to disengage piracy and other forms of criminalities at sea. International naval forces and organizations provide support through training, intelligence sharing, and patrols.<sup>28</sup> Many of the said countries have made or updated their respective legal enactments to criminalise piracy at sea. They have also established legal mechanisms for prosecuting and adjudicating cases related to maritime crime. Information sharing centers, like the Regional Maritime Information Fusion Centre (RMIFC) in Ghana and the Maritime Domain Awareness for Trade - Gulf of Guinea (MDAT-GoG), facilitate the exchange of information among countries and organizations involved in maritime security.<sup>29</sup> Challenges persist in the Gulf of Guinea, including the vast maritime expanse, porous borders, corruption, and the adaptability of criminal gangs. However, the combined efforts of international partners in addition to regional governments have contributed to some successes in lowering the piracy occurrence metrics in our regional waters. Ongoing cooperation and sustained efforts are essential to further enhance maritime security and safety in our regional waters.<sup>30</sup>

## 5. Conclusion

In summary, the historical overview of maritime international law in Nigeria highlights the transition from the ambiguous era of regulations to this current era of maritime laws, including adherence to international conventions. The persistent challenges of piracy and other forms of criminalities at sea in our region have prompted responses and efforts to strengthen maritime security, safety and enforcement of law within Nigerian waters. The Gulf of Guinea, accounts for over a high percentage of all reported piracy incidents worldwide in 2022.<sup>31</sup> Many factors account for piracy in the Gulf of Guinea, they include; weak maritime law enforcement and security, poverty, unemployment and corruption, porous borders among others. The Gulf of Guinea is a rich region in terms of natural resources, including oil, gas, and minerals. This makes it a target for pirates and robbers who are seeking to steal these resources or extort money from ships that are transporting them. However, these regions in the recent times have witnessed a decline in piracy.<sup>32</sup> Nigeria has been dealing with the issue of piracy and armed robbery in its maritime waters for quite some time. The enforcement procedures and mechanisms related to combating piracy in Nigeria's waters involves a combination of domestic legislation, international cooperation, coastal guides and naval operations. Nigeria has enacted various laws and regulations to address piracy at sea. The key legal framework includes the Nigerian Maritime Administration and Safety Agency (NIMASA) Act,<sup>33</sup> the Suppression of Piracy and Other Maritime Offences (SPOMO) Act<sup>34</sup>, and the Nigerian Navy Act.<sup>35</sup> These laws provide a legal basis for prosecuting individuals involved in piracy and other forms of criminalities in maritime sector. The Navy in Nigeria plays a central role in coordinating anti-piracy efforts. It often works in conjunction with other security agencies, such as the Nigerian Maritime Administration and Safety Agency (NIMASA), the Nigerian Police Force, and international partners. While national laws must clearly designate the authority responsible for prosecuting maritime crimes. These authorities should be adequately equipped and trained to handle complex cases involving piracy. In some instances, specialized units or teams may be necessary to address the unique nature of these crimes. In addition, Nigeria has established special courts to handle piracy and maritime-related cases.<sup>36</sup> These courts are equipped to ensure accelerated trials and also ensure that no backlog of cases related to piracy is outstanding. However, the courts must decisively apply the SPOMO Act provisions without regard to political pressure and undue adherence to technical justice.

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<sup>27</sup>Center for International Maritime Security, 'Obangame Express 2014: Together. Forward. Slowly.' Available at <https://cimsec.org/tag/africa-partnership-station/> last accessed on 02/10/2023.

<sup>28</sup> *Ibid*

<sup>29</sup>Maritime Security, 'Annual Report', available at [https://www.mica-center.org/wp-content/uploads/2022/02/Bilan\\_annuel\\_2021\\_EN.pdf](https://www.mica-center.org/wp-content/uploads/2022/02/Bilan_annuel_2021_EN.pdf) last accessed on 02/10/2023.

<sup>30</sup> *Ibid*

<sup>31</sup>Amani Africa, 'Briefing on Maritime Security in the Gulf of Guinea', available at <https://amaniafrica-et.org/briefing-on-maritime-security-in-the-gulf-of-guinea/> last accessed on 10/10/2023

<sup>32</sup> United Nations, 'Ongoing Decline in Gulf of Guinea's Piracy, Armed Robbery Encouraging, But Support Needed to Fully Implement Yaoundé Architecture, Briefers Tell Security Council', available at <https://press.un.org/en/2023/sc15331.doc.htm> last accessed on 10/10/2023.

<sup>33</sup> The Act was enacted in 2007 for Promotion Of Maritime Safety and Security, Protection in the Maritime Environment, Shipping Registration and Commercial Shipping, Maritime Labour, the Establishment of Nigerian Maritime Administration and Safety Agency; and for Related Matters.

<sup>34</sup> UNCLOS was domesticated via the Suppression of Piracy and other Related Offences Act 2019.

<sup>35</sup> 1964.

<sup>36</sup> Section 251(1) of the constitution of the Federal Republic of Nigeria vest exclusive jurisdiction over maritime related offences in the Federal High Court and Section 5(3) of Suppression of Piracy and Other Maritime Offences Act 2019