

GOOD GOVERNANCE AS A SUSTAINABLE SOLUTION FOR MARITIME PIRACY AND ARMED ROBBERY AGAINST SHIPS ON AFRICA’S COASTAL WATERS: THE CASES OF SOMALIA AND THE GULF OF GUINEA

Caroline Wamaitha Gichuri

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ABSTRACT

In 2007 the world's attention suddenly shifted to Africa. It was not a heart-wrenching humanitarian crisis that the international community was responding to like has been the case in the past, but rather a global peace and security threat of piracy emanating from the coastal waters of Somalia, a country barely recovering from the devastation of decades of civil war and State failure.

In the five years that followed pirates from Somalia strategically attacked merchant vessels plying the critical sea routes in the Western Indian Ocean, especially the Gulf of Aden, critically threatening hydrocarbon energy supply to Europe and North America. Besides, by 2012 Somali piracy cost the world economy an estimated US \$ 12 billion. These costs, particularly attributable to raised shipping insurance premiums, change of trading routes and costs of ship and crew protection measures, inevitably steeply increased the cost of international trade of which about 80% by volume is carried by sea.

In 2012, even before the international community could sigh with relief after somewhat containing piracy off the coast of Somalia, siren bells were going off in the West Coast of Africa as piracy and armed robbery against ships soared to unprecedented levels in the Gulf of Guinea which is critical to global and regional hydrocarbon energy supplies. Nigeria, Africa's largest and the world's sixth largest oil producer, came into sharp focus as the epicentre of piracy and armed robbery against ships in the region. Studies show that piracy and armed robbery against ships are costing the country more than US \$ 5 billion a year on account of increased freight costs.

As of early 2017, there were strong indications of resumption of Somali piracy should the containment measures at sea be relaxed, while the situation in the Gulf of Guinea remained largely uncontrolled.

Studies on piracy in Africa's coastal waters conclude that lasting solution to these maritime security problems lie onshore. This research comparatively analyses piracy off the coast of Somalia and Gulf of Guinea piracy and armed robbery against ships in the context of internal governance problems. This research provides a different perspective of understanding maritime insecurity on Africa's coastal waters by demonstrating that on both the East and West coasts of Africa, piracy and armed robbery against ships are principally caused by bad governance mainly characterised by corruption. As this study will demonstrate, unlike popular perception, good governance can exist in the absence of a stable national government and vice-versa.

Keywords: *piracy, armed robbery against ships, public sector, corruption, good governance, sustainable.*

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SUPERVISORS

Dr. Aref Fakhry, World Maritime University

Ms. Valentina Germani, United Nations Division of Ocean Affairs and Law of the Sea

LIST OF ACRONYMS

i.	ACHPR	-	African (Banjul) Charter on Human and Peoples' Rights
ii.	ARIN-WA	-	Asset Recovery Interagency Network for West Africa
iii.	AU	-	African Union
iv.	BIMCO	-	Baltic and International Maritime Council
v.	BMP	-	Best Management Practices to deter Piracy off the Coast of Somalia and in the Arabian Sea
vi.	CARIN	-	Camden Assets Recovery Inter-Agency Network
vii.	CESR	-	Centre for Economic and Social Rights
viii.	CPI	-	Corruption perception index
ix.	CTF	-	Combined Task Force
x.	DFID	-	Department for International Development
xi.	ECOWAS	-	Economic Community of West African States
xii.	EIMS	-	ECOWAS integrated maritime security strategy
xiii.	EITI	-	Extractive Industries Transparency Initiative
xiv.	EU	-	European Union
xv.	EUNAVFOR	-	European Union Naval Force
xvi.	G8	-	Group of Eight nations
xvii.	GISIS	-	Global Integrated Shipping Information System
xviii.	ICC	-	Information Coordination Centre
xix.	ICCPR	-	International Covenant on Civil and Political Rights
xx.	ICESCR	-	International Convention on Economic Social and Cultural Rights
xxi.	ICGN	-	Integrated coastguard function network
xxii.	ICU	-	Union of Islamic Courts
xxiii.	ILA	-	International Law Association
xxiv.	ILO	-	International Labour Organization
xxv.	IMB	-	International Maritime Bureau
xxvi.	IMO	-	International Maritime Organization
xxvii.	INTERPOL	-	International Criminal Police Organization
xxviii.	IRIN	-	Integrated Regional Information Networks
xxix.	JTF	-	Joint Task Force
xxx.	LGA	-	Local government area
xxxi.	MEND	-	Movement for the Emancipation of the Niger Delta
xxxii.	MLA	-	Mutual legal assistance
xxxiii.	MNC	-	Multi-national corporation
xxxiv.	MOWCA	-	Maritime Organisation for West and Central Africa
xxxv.	NATO	-	North Atlantic Treaty organization

xxxvi.	NDA	-	Niger Delta Avengers
xxxvii.	NDDC	-	Niger Delta Development Commission
xxxviii.	NDVS	-	Niger Delta Volunteer Service
xxxix.	NIMASA	-	Nigerian Maritime Administration and Safety Agency
xl.	NM	-	Nautical miles
xli.	NNPC	-	Nigerian National Petroleum Corporation
xl ii.	OBP	-	Oceans Beyond Piracy
xl iii.	PCC	-	Public Complaints Commission
xl iv.	PSC	-	Private security companies
xl v.	ReCAAP	-	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
xl vi.	RMAC	-	Regional Maritime Awareness Capability
xl vii.	SAA	-	Secure Anchorage Area
xl viii.	SEMG	-	Somalia and Eritrea Monitoring Group (UN Monitoring Group in Somalia and Eritrea)
xl ix.	SERAC	-	Social and Economic Rights Action Centre
l.	SNM	-	Somali National Movement
li.	SPDC	-	Shell Petroleum Development Corporation
li i.	TFG	-	Transitional Federal Government
li ii.	T.I.	-	Transparency International
li v.	UK	-	United Kingdom
li v.	UN	-	United Nations
li vi.	UNCAC	-	United Nations Convention against Corruption
li vii.	UNCLOS	-	United Nations Convention on the Law of the Sea
li viii.	UNCTOC	-	United Nations Convention against Transnational Organised Crime
li x.	UNDOALOS	-	United Nations Division of Ocean Affairs and the Law of the Sea
li x.	UNDP	-	United Nations Development Programme
li xi.	UNEP	-	United Nations Environment Programme
li xii.	UNODC	-	United Nations Office on Drugs and Crime
li xiii.	UNSC	-	United Nations Security Council
li xiv.	UNSOM	-	United Nations Assistance Mission in Somalia
li xv.	UPR	-	Universal Periodic Review
li xvi.	US	-	United States of America
li xvii.	USD	-	United States of America dollar

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INTRODUCTION

In realising the aspirations of the 2015 Sustainable Development Goals (SDGs), the link between sustainable development and maritime security cannot be over-emphasised. For the prosperity of countries, especially the developing and least developing States, it is necessary to ensure that international trade, on which global economic development is mainly dependent, is unimpeded and continues to flourish.

In the last decade, crimes of piracy and armed robbery against ships have emerged as serious global threats to maritime navigation. At a time when 80 to 90 per cent (%) of international trade is carried by sea, these crimes constitute significant threats to global trade and consequently economic development of relevant States.¹ Particularly affected is the movement of imports and exports between countries. Understandably, the cost of shipping has in the last few years soared for some critical shipping routes considered high-risk for attacks, thus translating to increased cost of trade for specific geographic regions and the global market in general.

Besides international trade, piracy and armed robbery against ships constitute direct threats to local economies of coastal States. This is owing to safety and security concerns that these crimes create in the coastal areas, hence impeding ventures for optimization of blue ocean economic opportunities.

The focus of this research is on piracy and armed robbery against ships on the East and West African seaboard, respectively, in the waters off the coast of Somalia and the Gulf of Guinea region.

This research acknowledges the plethora of scholarship and discourses on the issue of maritime criminality, particularly piracy and armed robbery against ships in the waters off the coast of Somalia and the Gulf of Guinea. Most scholarly works and expert advisories on the issue opine that the current counter-measures only provide temporary relief from attacks; and that long-term solutions for these maritime security threats lay in addressing the root causes of the crimes, majorly poverty and inadequate economic opportunities in Somalia; and inequity in distribution of socio-economic benefits arising from petroleum resources exploitation in Nigeria. The latter is the epicentre of piracy and armed robbery against ships in the Gulf of Guinea.

While this research affirms the stated observations of scholars and experts, it nonetheless offers a different perspective for analysing and addressing the root causes of piracy and armed robbery

¹ International Bank for Reconstruction and Development / The World Bank, *The Pirates of Somalia: Ending the Threat, Rebuilding a Nation* (Washington, D.C., 2013).

against ships in Africa's coastal waters, besides exploring long-term solutions for these security threats. This study demonstrates that governance problems, especially bad and weak governance, are at the core of the break-out of piracy off the coast of Somalia, particularly the epoch between 2005 and 2012; and the exacerbation of piracy and armed robbery against ships from 2010 to date.

Consequently, this research is invested in critically examining the role of good governance in sustainably suppressing piracy and armed robbery against ships on Africa's coastal waters. In so doing this research comparatively studies the cases of piracy off the coast of Somalia and the Gulf of Guinea in order to establish the veracity of the perception that good governance in a State is predicated on the existence of a central government.

While this research acknowledges that piracy and armed robbery against ships has not only affected Africa's coastal waters but is also a problem in the coastal waters of South East Asia, especially the Strait of Malacca, the former has become the focus of the international community owing to the evident inability of the relevant epicentre States, namely Somalia and Nigeria; and the neighbouring regional States to effectively suppress the crimes.

While the South East Asian States affected by piracy and armed robbery against ships in the Strait of Malacca have succeeded in controlling the problem on their own through cooperation under the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) which was launched in November 2006;² the African States affected by piracy and armed robbery against ships have seemingly failed to effectively tackle these crimes.

Recent reports on the situation off the coast of Somalia, particularly the reports of the United Nations (UN) of 7 October 2016 and April 2017, respectively, as well as the report of the International Maritime Organization (IMO) on acts reported during March 2017;³ indicate that piracy in the area remains potentially eruptive despite more than 7 years of combined counter-piracy interventions by regional and extra-regional States and the shipping industry, and the re-establishment of a central government in Somalia since 2004.⁴

² Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia "About ReCAAP Information Sharing Centre". Available at http://www.recaap.org/about_ReCAAP-ISC (accessed on 4 April 2016).

³ Security Council resolution 843 (2016); United Nations Office on Drugs and Crime (UNODC), "UNODC Chief urges greater vigilance in face of increased attacks by Somali pirates", 4 April 2017; and International Maritime Organization, *Reports on Acts of Piracy and Armed Robbery against Ships: Issued monthly - Acts reported during [March, April and May 2017]*, (London, 2017).

⁴ Stephanie Hanson and Eben Kaplan, "Somalia's Transitional Government", Council on Foreign Relations, May 2008.

In the case of the situation in the Gulf of Guinea, as of April 2016 the maritime safety and security situation in the area had substantively deteriorated as the intensity of the attacks and violence escalated to unprecedented levels.⁵ The worsening safety and security conditions in the Gulf of Guinea since that time portray the dismal effect of the concerted measures that have been progressively effected in the region for more than 5 years to counter the perennial risks of piracy and armed robbery against ships.

The apparent failure by relevant African littoral States to reign in piracy and armed robbery against ships has provided an opportunity for escalation of incidents of these crimes from simply national and regional threats to international security and safety concerns, particularly on shipping, thus necessitating the intervention of the international community of nations and the global shipping industry.

The foregoing unfortunate set of circumstances provide an explanation for the existence of the dreaded phenomena of piracy off the coast of Somalia and piracy and armed robbery against ships in the Gulf of Guinea. Although the current counter-measures have succeeded in suppressing these maritime security threats to a reasonable extent, their current effect remains highly reversible.

I. Legal Problem for Research: Unsustainability of the Current Counter-Measures for tackling Piracy and Armed Robbery against Ships

Although it is common knowledge that pirates and armed robbers originate from and have their operation bases on land territories of respective countries, particularly Somalia on the East African seaboard and Nigeria on the West African seaboard, most of the counter-measures developed and currently applied by the shipping industry and cooperating States to tackle the crimes of piracy and armed robbery against ships, are aimed at combating these crimes at sea.

Currently, the main counter-measures applied to suppress piracy off the coast of Somalia include:

- i. Joint military operations, especially, the European Union Naval Force (EUNAVFOR) Operation Atalanta; North Atlantic Treaty organization's (NATO's) Operation Ocean Shield; and Combined Task Force (CTF) 151;
- ii. Development of the Best Management Practices to deter Piracy off the Coast of Somalia and in the Arabian Sea (BMP). The BMP was developed by the shipping industry in conjunction with the European Union (EU) and NATO task forces operating in the Gulf of Aden;

⁵ S/PRST/2016/4.

- iii. Adoption of self-protection measures for ships, including, employment of private military security armed guards on board navigating ships, and target hardening; and
- iv. Adoption of a regional cooperation framework, namely, the Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, which was adopted in 2009 in Djibouti ('Djibouti Code of Conduct').

Meanwhile the main counter-measures applied to suppress piracy and armed robbery against ships in the Gulf of Guinea include:

- i. Joint military operations between neighbouring States, particularly, the successful operation conducted jointly by Benin and Nigeria in 2011;
- ii. Increased State naval patrols especially by Nigeria which has been active in this regard;
- iii. Naval assistance from the international community where Benin, Ghana, Liberia, Nigeria and Senegal have benefited from the assistance of the EU and the United States of America (US). On its part Nigeria benefited from the installation of sensors along its coastline under the Regional Maritime Awareness Capability (RMAC) program supported by US and the United Kingdom (UK). Also, several resolutions and programs funded by the African Union (AU), UN, EU, IMO and the Group of Eight nations (G8) have been launched in the Gulf of Guinea region;
- iv. Regional States' engagement of private maritime security firms. In 2013 many of these firms collaborated with the Nigerian Navy to launch the Secure Anchorage Area (SAA) which provides security to vessels in a designated area off the port of Lagos. Moreover, the Nigerian Maritime Administration and Safety Agency (NIMASA) and the government of Togo, respectively, engaged the services of private security firms to guard their ports;⁶
- v. Adoption of self-protection measures by ships voyaging the region, including, employment of private military security contractors by oil companies in Nigeria to guard ships transiting the Niger Delta; and target hardening modifications on ships; and
- vi. The launch of various maritime security cooperation initiatives by regional cooperation bodies in West and Central Africa, including, the Code of Conduct concerning the Repression of Piracy, Armed Robbery against Ships, and Illicit Maritime Activity in West and Central Africa, which was adopted in 2013 in Yaoundé, Cameroon ('Yaoundé Code of Conduct').

While the above-listed counter-measures have achieved varied levels of success in suppressing piracy and armed robbery against ships in the Gulf of Guinea, the sustainability of the success is

⁶Adeniyi Adejimi Osinowo, "Combating piracy in the Gulf of Guinea", *Dryad Maritime*, 27 February 2015. Cf. Lanre Arotimi, "Maritime Security: Navy Raises the Alarm over Fake Agencies", 27 August 2016.

in doubt because these counter-measures are simply restraint strategies that have led to the achievement of temporary deterrence of pirates and armed robbers.

Although these counter-measures have contained the maritime security situation in the risky areas of Africa's coastal waters, they have not eliminated the threat of piracy and armed robbery against ships in the East and West African seaboard. This is because the counter-measures have failed to address the source of the security problems which is the existence of operational onshore organised criminal networks in Somalia and Nigeria, respectively. These criminal syndicates actively maintain their illicit financial enterprises, including employing pirates and armed robbers for offshore vessels' attacks, without any meaningful interference from relevant law enforcement authorities. In fact, as this research demonstrates, the law enforcement authorities have, in many cases, been complicit in the operations of the criminal syndicates.

The existence of organised criminal networks onshore and their subsequent movement offshore for execution of crimes demonstrates the inability and in some cases the unwillingness and unreadiness of respective littoral States of Somalia and Nigeria, to tackle criminality and maintain security onshore. Poor security onshore on the mainland ends up manifesting at sea as piracy and armed robbery against ships, besides other maritime crimes.

It has been observed that 'good order at sea is a reflection of good order within States, and conversely, disorder within States will most likely find expression in maritime security threats, or ..., promote the escalation of such threats'.⁷ Unchecked criminality and hence insecurity onshore that ends up manifesting at sea, reflects problems in a State's onshore processes of law enforcement. Consequently, a sustainable solution to offshore criminality and insecurity would require a review of onshore governance by a State, particularly, the implementation of a government's executive function of enforcement of laws.

Through a critical legal analysis, this research explores the centrality of onshore good governance in sustainably suppressing piracy and armed robbery against ships in Africa's coastal waters, specifically the waters off the coast of Somalia and the Gulf of Guinea region.

Although governance is a ubiquitous social science concept, legal academic scholarship and discourse on the concept remains scarce. This is despite the executing authority of governance in contemporary society, namely, government, having its foundation in the natural law social contract theory.⁸

⁷Kamal-Deen Ali, *Maritime Security Cooperation in the Gulf of Guinea* (Leiden, Koninklijke Brill NV, 2015).

⁸ "Classical Theory of Government and the Social Contract", 6 August 2016. Available at http://www1.udel.edu/johnmack/frec406/theories_of_govt1.html, accessed on 8 August 2016.

Thereby, a critical legal appraisal of public governance and maritime insecurity requires that the concept of governance and its relationship to law enforcement and security be substantively analysed.

II. Chapter Breakdown

For critical legal examination of centrality of onshore good governance in sustainably suppressing piracy off the coast of Somalia; and piracy and armed robbery against ships in the Gulf of Guinea region, this research is broadly divided into two parts.

The first part, that is, Part I, will provide a critical study of Somali piracy and Gulf of Guinea piracy and armed robbery against ships in the context of governance challenges that have been experienced in the respective States of Somalia and Nigeria.

The second part, that is, Part II, will critically examine the centrality of onshore good governance within the epicentre States of Somalia and Nigeria, in sustainably tackling piracy and armed robbery against ships off the coasts of these States and the regional waters of the East and West coasts of Africa.

Parts I and II are further divided into substantive chapters and sections for more nuanced discussions on governance and maritime security.

Part I is thematically divided into Chapters 1.0 and 2.0. Chapter 1.0 will at the outset provide an analysis of the concept of governance in the public sector. These discussions will be followed by a critical study of the development of Somali piracy in the context of the governance challenges that the country experienced in the aftermath of the collapse of the Somali central government in 1991.

The discussions of this chapter are divided in two sections, that is, sections 1.1 and 1.2. Section 1.1 will analyse the concept of governance in the context of government of a sovereign State. This section will assess three situations of public sector governance, namely, good, bad and weak governance. Section 1.2 will critically study the connection between piracy off the coast of Somalia and onshore public governance in Somalia.

Chapter 2.0 will provide a critical study of Gulf of Guinea piracy and armed robbery against ships in the context of governance challenges that have been experienced in Nigeria. The substantial discussions of this chapter are essentially divided into two sections. Section 2.1 will analyse the development of contemporary piracy and armed robbery against ships in Nigeria; and

its connection to militancy in the Niger Delta. Section 2.2 will critically discuss the nexus between maritime criminality in the Gulf of Guinea and its connection to governance challenges in Nigeria's Niger Delta.

Part II of this research, as stated hereinabove, will critically examine the centrality of onshore good governance, within the epicentre States of Somalia and Nigeria, in sustainably tackling piracy and armed robbery against ships off the coasts of these States and the regional waters of the East and West coasts of Africa. Similar to the format adopted in discussions in Part I, the discussions in this part will be done under two chapters, namely, Chapters 1.0 and 2.0.

Chapter 1.0 will critically study the effect of bad governance, particularly corruption in public governance, in the development and persistence of organised criminal networks (with transnational links) in Somalia, specifically in Puntland; and Nigeria, specifically in the Niger Delta. This critical examination will be conducted in two sections.

Moreover, the discussions of this chapter will also demonstrate that apparent capacity challenges in the law enforcement sectors of the respective States have significantly contributed to the inability of the governments of the respective territories to sustainably tackle organised crimes of piracy and armed robbery against ships, hence causing these crimes to persist.

Section 1.1 will critically examine the effect of corruption in public governance in Somalia, on the growth of organised crime of piracy in the waters off the coast of Somalia. Section 1.2 will critically study the effect of corruption in public governance in Nigeria, on the growth of organised crimes of piracy and armed robbery against ships.

Chapter 2.0 will provide an analytical legal study of measures for ensuring good governance through the promotion of its key principles of the rule of law, accountability and transparency; and hence realisation of sustainability of interventions for solving maritime security problems of piracy and armed robbery against ships in Africa's coastal waters.

In so doing Section 2.1 will analyse the legal measures for ensuring good governance in Somalia and thereby realisation of sustainable solutions for piracy off the coast of Somalia. Section 2.2 will analyse the legal measures for ensuring good governance in Nigeria and thereby realisation of sustainable solutions for piracy and armed robbery against ships in the Niger Delta which is the epicentre of maritime criminality in the Gulf of Guinea.

III. Literature Review

Most publications on the issue of piracy off the coast of Somalia and piracy and armed robbery against ships in the Gulf of Guinea have extensively examined the manifestation of the phenomena and the counter-measures in place for tackling the crimes.⁹ The persistence of these crimes have rightly been blamed on strategies that only focus on tackling the crimes at sea without addressing the root causes underlying the manifestation of the criminality.¹⁰

Moreover, existing scholarship advances arguments rationalising the break-out of piracy off the coast of Somalia and the persistence of piracy and armed robbery against ships in the Gulf of Guinea.

In the case of piracy off the coast of Somalia, justifications of poverty and lack of economic alternatives in the aftermath of the collapse of the central government of Somalia have been advanced in an attempt to explain the reasons why some Somalis ventured into piracy.¹¹ This situation has popularly been referred to as the Robin Hood narrative. Schneider and Winkler advance two main arguments in support of the Robin Hood narrative.

The first argument they advance is that Somali piracy developed as a ‘defensive measure’.¹² In the aftermath of the collapse of the central government of Somalia in 1991, regional authorities intent on protecting Somalia’s coastal waters from dumping of toxic waste and illegal plunder of the areas abundant fishery resources, recruited young men to serve as coastguards and protect the coastal waters and its resources.

The second argument propounded by Schneider and Winkler is that piracy was a survival means of last resort for the local Somali population faced with poverty and scarce economic opportunities.¹³ This reasoning is backed by Pattison who notes that ‘extreme poverty of much of Somalia’ at the time would justify a resort to piracy.¹⁴

⁹ James Kraska, *Contemporary Maritime Piracy: International Law, Strategy and Diplomacy at Sea*, (Santa Barbara, California, 2011); and Supra note 7.

¹⁰ Christian Bueger, “The Decline of Somali Piracy – Towards Long Term Solutions”, 1 September 2013; and Freedom C. Onuoha, “Piracy and Maritime Security in the Gulf of Guinea: Nigeria as a Microcosm”, *Aljazeera Centre for Studies*, (June 2012). See also supra note 7.

¹¹ Patricia Schneider and Matthias Winkler, “The Robin Hood Narrative: A Discussion of Empirical and Ethical Legitimizations of Somali Pirates”, *Ocean Development and International Law*, vol. 44, No. 2 (May 2013).

¹² Ibid, p. 6.

¹³ Ibid.

¹⁴ James Pattison, “*Justa piratica*: the ethics of piracy”, *Review of International Studies*, vol. 40 (Issue 4), (October 2013), p. 8.

However, the geographic prevalence of piracy on Somalia's coastline suggests that Somali piracy existed and flourished principally owing to governance challenges as opposed to the purported desperation of the impoverished local Somali population. In this regard, Menkhaus points out that governance existed in Somalia despite the collapse of the country's central government.

In Menkhaus' view the collapse of the central government did not result in the country falling into absolute anarchy but rather it caused 'the country to effectively split into three' regions organised on clan-system, namely, the north-western State of Somaliland; the north-eastern State of Puntland; and the territory of South-Central Somalia.¹⁵ Bueger backs this observation with his remark that these three regions provided governance within their territories, including basic law enforcement, which was provided 'through the rudimentary policing and judicial capacities of the regional governments'.¹⁶

Nonetheless, differences in the quality of governance in the respective regional states of Somalia is advanced as the reason for the breakout of Somali piracy. This is especially the case for the dreaded seven-year period between 2005 and 2012 when piracy off the coast of Somalia posed a real threat to international peace and security; and endangered merchant vessels' navigation in the critical sea lanes in the Western Indian Ocean.

Moreover, Ahmed observes that during the stated seven-year epoch of maritime insecurity off the coast of Somalia, Somaliland remained unaffected while Puntland emerged as the epicentre, hotspot and main enclave of piracy in the region.¹⁷ Ahmed attributes the relative calm experienced in Somaliland to 'stability and governance achieved by the regime'.¹⁸

The prevalence of piracy in Puntland and the notoriety of the regional state as the epicentre of Somali piracy has been blamed on bad governance which caused the state to be captured by corrupt and criminal entities. In this respect, Percy and Shortland note that 'piracy took off in earnest when the Puntland government became unable to pay its security forces in April 2008, allowing pirates to capture governance in this region'.¹⁹

Percy and Shortland further observe that accountability and the rule of law in Puntland were undermined by impunity facilitated by rampant corruption in the state. For instance,

¹⁵ Ken Menkhaus, "Governance without Government in Somalia: Spoilers, State Building and the Politics of Coping", *International Security*, vol. 31, No. 3 (Winter 2006/2007), (January, 2007), p. 13.

¹⁶ Supra note 10, p. 13.

¹⁷ Fatma Ahmed, "Unravelling the Puzzle of Piracy: A Somali Perspective", Institute for Peace Research and Security Policy, University of Hamburg, Working Paper 6 (November 2013).

¹⁸ Ibid, p. 25.

¹⁹ Sarah Percy and Anja Shortland, "The Business of Piracy in Somalia", DIW Berlin, Discussion Papers (August 2011), p. 27.

‘[o]ccasional arrests and detentions [were] easily resolved with a small bribe, and backhanders ensured good relations with the Puntland administration. Pirate enterprises (especially those with clan links to the Puntland government) [were] therefore ... able to operate mostly with impunity’.²⁰

Likewise, scholars have put forward arguments, based on socio-economic inequities, rationalising the development of piracy and armed robbery against ships in the Gulf of Guinea whose epicentre, major hotspot and primary enclave is the Niger Delta region of Nigeria.

Lopez-Lucia observes that the prevalence of piracy in the Gulf of Guinea is strongly connected to protests by local militias in the Niger Delta. The militia oppose the ‘marginalisation and unequal distribution of oil revenues at the expense of the majority of people living in extreme poverty’ especially in the oil-belt region of the Niger Delta.²¹ Here most locals endure squalor and neglect by the federal government despite the region being the main source of Nigeria’s oil wealth.

Ichalanga and Whitman and Suarez similarly opine that the involvement of the local militia groups in piracy and armed robbery against ships is an attempt at evening the apparently distorted socio-economic scales of national resource allocation.²²

An introspective analysis of the social injustices in the oil-rich Niger Delta reveals that corruption is at the core of the problems. Montclos argues that ‘it is not poverty that explains maritime piracy in the Niger Delta, but political corruption and the oil wealth that attracts all sorts of thieves, blue and white collar alike’.²³ Likewise, Murphy states that piracy in the Gulf of Guinea ‘has its origins in the political corruption in Nigeria, that feeds off the nation’s oil wealth’.²⁴

Despite the social injustice narrative posited in legitimising piracy and armed robbery against ships in the Gulf of Guinea, an analysis of the conduct and trends of these crimes demonstrates that most of those involved in piracy and armed robbery against ships in the region are criminals

²⁰ Ibid, p. 28.

²¹ Elisa Lopez-Lucia, “Fragility, Violence and Criminality in the Gulf of Guinea”, *Rapid Literature Review* (University of Birmingham), (July 2015), p. 26.

²² Claude Kirongozi Ichalanga, “Perspectives from Central and West Africa”, in *Piracy in Comparative Perspective: Problems, Strategies, Law*, Charles H. Norchi and Gwenaële Proutière-Maulion, eds. (Paris; Oxford; Portland, Oregon, Editions A. Pedone & Hart, 2012); and S. Whitman and C. Suarez, “The Root Causes and True Costs of Marine Piracy”, Dalhousie Marine Piracy Project, p. 27.

²³ Marc-Antoine P. Montclos, “Maritime Piracy in Nigeria: Old Wine in New Bottles?”, *Studies in Conflict & Terrorism*, vol. 35 (2012), pp. 531-541.

²⁴ Martin N. Murphy, “The Troubled Waters of Africa: Piracy in the African Littoral”, *Journal of the Middle East and Africa*, vol. 2 (May 2011), pp. 65 – 83.

whose profit-oriented aim is absolutely at odds with the alleged social justice activism of the local militias of the Niger Delta.

Whitman and Suarez observe that pirates and armed robbers in the waters off the coast of Nigeria and the Gulf of Guinea are driven by '[g]reed-based motives and opportunism'.²⁵ The authors further note that organized pirate gangs continue to adapt their techniques to exploit the instability and insecurity caused by protesting armed militia groups in the Niger Delta, besides taking advantage of Nigeria's weak law enforcement in the region.²⁶

Moreover, in Hasan's view the existence of black markets in West Africa, including in Nigeria, is a factor sustaining piracy in the Gulf of Guinea.²⁷ Supposedly, oil cargo stolen from hijacked vessels is sold in the black market. Hasan further notes that this illicit piracy-based business 'originally began during the Niger Delta insurgency' and intensified in the years that followed.²⁸

The foregoing discussions have revealed that scholarship on the issue of piracy armed robbery against ships on the East and West African seaboard has analysed the root causes of these crimes. The above-discussed literature has revealed that corruption, particularly in Somalia's Puntland's administration and Nigeria's national oil sector, is the principal precipitator of these crimes.

The present research project is built on the above-discussed scholarship. This study seeks to coalesce the different aspects of piracy and armed robbery against ships on Africa's coastal waters in order to precisely contextualise the existing knowledge and scholarship that has addressed separate segments of the issue of piracy and armed robbery against ships; its root causes and the factors underlying the root causes.

By comparatively analysing the problem of piracy off the coast of Somalia and Gulf of Guinea piracy and armed robbery against ships in the context of governance problems, especially bad and weak governance experienced in the respective epicentre States of Somalia and Nigeria, this research provides a comprehensive understanding of the problem of maritime insecurity on Africa's coastal waters. This research will demonstrate that on both the East and West coasts of Africa, the problems of piracy and armed robbery against ships are principally caused by bad governance.

²⁵ Supra note 22 (S. Whitman and C. Suarez).

²⁶ Supra note 22 (S. Whitman and C. Suarez), p. 29.

²⁷ Sayed M. M. Hasan, "The Adequacies and Inadequacies of the Piracy Regime: A Gulf of Guinea Perspective", Master of Laws thesis, University of Western Sydney (March 2014).

²⁸ Ibid, p. 93.

This study will demonstrate how public sector corruption, including State capture; and impunity condoned or practiced by public officials, have enabled the endurance of piracy and armed robbery against ships. Consequently, this has rendered the current counter-measures, which are mostly aimed at fighting the crimes at sea, ineffective in sustainably providing a long-term solution for the crimes.

This research essentially argues that tackling bad governance in the public sector, by addressing corruption and impunity, is critical in sustainably tackling piracy and armed robbery against ships; thus ensuring enduring maritime security in the East and West African coastal waters.

Therefore, this being a legal research project, the study proposes a sustainable solution from a legal perspective. The law is central in ensuring onshore good governance within the epicentre States of Somalia and Nigeria. Thus, this study will analyse measures for ensuring onshore good governance in the sated States through the promotion of the principles of the rule of law, accountability and transparency.

IV. Research methodology

The nature of this study is that of an empirical legal research project. This research applies an explanatory research design in discussing the persistence of threats of piracy off the coast of Somalia; and piracy and armed robbery against ships in the Gulf of Guinea.

Despite more than seven years of concerted application of intensive counter-measures by the international community and the shipping industry,²⁹ there still exists a significant risk of resumption of Somali piracy should there be withdrawal of any one of the main counter-piracy measures at sea.

The situation is similar in the Gulf of Guinea, where more than five years after the United Nations Security Council (UNSC) was seized of the matter of piracy and armed robbery against ships in the Gulf of Guinea,³⁰ these crimes remain unabated and instead they have intensified in the level of violence involved.³¹

In seeking to establish the existence, extent and implications of the connection between piracy and armed robbery against ships on the one part; and governance on the other part, this study utilises a multi-method research methodology which incorporates qualitative and quantitative research techniques. Qualitative methods are used to link occurrences of piracy and armed

²⁹ Security Council resolution 1816 (2008).

³⁰ Security Council resolution 2018 (2011).

³¹ S/PRST/2016/4.

robbery against ships in the waters off the coast of Somalia and the Gulf of Guinea, to governance problems experienced in the respective States of Somalia and Nigeria.

Quantitative methods, including study of the prevalence statistics on Africa's coastal waters, are used to demonstrate that the majority of attacks on the East African seaboard emanate from Somalia, while most incidents of maritime criminality, especially armed robbery against ships, in the Gulf of Guinea emanate from Nigeria.

Further, quantitative methods, on the one hand, are used for a contextual comparative study of the regional states within Somalia at the material time, so as to reveal that most of the piracy attacks originated from Puntland. On the other hand, quantitative methods are used in the study of prevalence of piracy and armed robbery against ships in Nigeria in order to establish that most attacks are linked to the Niger Delta, a region that is directly adjacent to Benin which borders Togo. Thus, the Niger Delta's geographic location within the Gulf of Guinea is strategic in the area being a hotspot for attacks and primary enclave for pirates and armed robbers who operate in the wider Gulf of Guinea.

Furthermore, through a study and analysis of the social and political situations of Puntland and the Niger Delta this study will demonstrate that bad and weak governance practices resulted in uncontrolled criminality within Puntland and the Niger Delta. The pervasive onshore criminality was exploited by criminals who found it convenient and financially lucrative to operate criminal syndicates onshore that are responsible for organising offshore attacks on cargo vessels for the purpose of hostage taking and theft of oil-cargo, respectively.

For critical study of the effectiveness of the current counter-measures in sustainably tackling piracy off the coast of Somalia; and piracy and armed robbery against ships in the Gulf of Guinea, this research utilises quantitative techniques in describing the extent of success of the present interventions.

Qualitative methods are used in explaining why the success of the current counter-measures is temporary, by demonstrating that the present interventions only provide strategies to tackle piracy and armed robbery against ships in the ocean; thus leaving the onshore bases and operations of the criminal syndicates overseeing the crimes, uninterrupted.

Further, this study utilises qualitative analytical methods to demonstrate why the issues of governance and not the existence of a typical government, is at the core of maritime criminality and the apparent inability to sustainably suppress piracy and armed robbery against ships. In so doing, this research juxtaposes and comparatively studies the situation of Somalia, that did not have a typical functional government in place at the time piracy broke out off its coast; against

the situation of Nigeria that has had a stable functional government but is seemingly unable to reign in wanton criminality off its coast. Consequently, this research will prove that governance can exist without a typical central government in place.

Also, this study will show that effective governance, meaning good governance, needs not so much the existence of a typical functional central government in a State, but a change of attitude, first, by those exercising responsibilities of governance and, second, by the public over whom governance is exercised. That change of attitude can be fostered through institutionalisation, adherence and implementation of good governance practices of observing the rule of law, accountability and transparency in all public sector operations.

Moreover, a combination of quantitative and qualitative analytical skills is utilised in demonstrating how the law can be an effective tool in ensuring good governance and hence sustainable maritime security off the coasts of Somalia and Nigeria. This objective is achieved through an analytical legal study of measures for ensuring good governance.

PART I

PIRACY AND ARMED ROBBERY AGAINST SHIPS IN AFRICA'S COASTAL WATERS AND THE CONNECTION TO GOVERNANCE CHALLENGES

Analysts of the maritime security challenges that have plagued shipping and navigation on the East and West African sea boards, that is, piracy in the waters off the coast of Somalia ('Somali piracy') and armed robbery against ships in the Gulf of Guinea ('Gulf of Guinea armed robbery'), respectively, have long established that these are land-based problems which manifest themselves at sea.³² The occurrence of these maritime security problems at sea has generally been attributed to the inability of the respective States constituting the epicentres of these maritime security problems, to effectively police their national territories, both land and water, and contain criminality thus preventing criminals from venturing into the sea and perpetrating crimes.³³

Further, studies on Somalia and Nigeria as the epicentre States of the respective maritime security problems of piracy and armed robbery against ships on Africa's coastal waters, reveal that the inability of these States to contain criminality on land that ends up manifesting itself at sea, is embedded in significant public governance challenges that these respective States have encountered.³⁴

This part will provide a critical study of Somali piracy and Gulf of Guinea piracy and armed robbery against ships in the context of the governance challenges that have been experienced in the respective States of Somalia and Nigeria. Chapter 1.0 will critically discuss the case of Somalia while chapter 2.0 will critically examine the case of Nigeria.

³² Supra note 17, p. 8; Supra note 19, pp. 1&2; and Supra note 7, pp. 161 – 163.

³³ Supra note 19, p. 2; and Supra note 6, respectively.

³⁴ Supra note 19, p. 22; and Cristina Barrios, "Fighting piracy in the Gulf of Guinea: Offshore and onshore", European Union Institute for Security Studies, May 2013.

CHAPTER 1



(Map of Somalia showing Somaliland, Puntland, and Southern Somalia also known as South-Central Somalia)³⁵

1.0 ANALYSIS OF THE CONCEPT OF GOVERNANCE AND ITS IMPLICATIONS ON PIRACY OFF THE COAST OF SOMALIA

This chapter will provide a critical study of Somali piracy in the context of governance challenges that have been experienced in Somalia. The study will be preceded by an analysis of the concept of governance in the public sector.

The discussions of this chapter are divided in two sections, that is, sections 1.1 and 1.2. Section 1.1 will analyse the concept of governance in the context of government of a sovereign State. This section will assess three situations of public sector governance, namely, good, bad and weak

³⁵ Available at <http://cimsec.org/searching-somali-coastguard/7776> (accessed on 5 May 2016).

governance. Section 1.2 will critically study the connection between piracy off the coast of Somalia and onshore public governance in Somalia.

1.1 ANALYSIS OF THE CONCEPT OF GOVERNANCE IN THE CONTEXT OF GOVERNMENT OF A SOVEREIGN STATE

Definition of Governance

The concept of governance lacks a standard definition. It has been defined variably in various sectors and contexts, including in the public sector.

For instance, the United Nations Development Programme (UNDP) defines governance as “the exercise of economic, political and administrative authority to manage a country’s affairs at all levels”.³⁶ The World Bank, in one context, defines governance as “the manner in which power is exercised in the management of a country’s economic and social resources for development”.³⁷ In another context, the World Bank defines governance as ‘... the manner in which public officials and institutions acquire and exercise the authority to shape public policy and provide public goods and services’³⁸

Further, in its discussions on the impact that corruption in government has on public governance and development,³⁹ the World Bank provided a similar, but simpler, definition of ‘governance’ as follows:

‘... the way in which public institutions perform their functions in a country...’⁴⁰

Since this research is concerned with the manner in which government officials exercise the authority of their offices in discharging their duties to the public, in this case being suppression of crime and provision of security, a suitable definition of governance for the purpose of this research would be: *the manner in which public officials and institutions exercise the authority entrusted to them by the public in the performance of their obligations to the public*. This definition is derived from the two World Bank definitions stated above.

³⁶ Supra note 7, p. 260.

³⁷ Ibid.

³⁸ Kaufmann, Daniel, Aart Kraay and Massimo Mastruzzi, “Governance Matters III: Governance Indicators for 1996 – 2002”, (2003) Policy Research Working Paper, 3106 (The World Bank Group publication), p. 6.

³⁹ The World Bank Group, *Corruption and Governance*. Available at <http://lnweb90.worldbank.org/eca/eca.nsf/Sectors/ECSPE/E9AC26BAE82D37D685256A940073F4E9?OpenDocument>. Accessed on 1 October 2016.

⁴⁰ Ibid.

The definition adopted in this study is preferred because although the term *governance* is a sociological concept, its operation in society has to be in conformity with the law.⁴¹ One of the popular theories of contemporary government is based on legal theory, particularly, John Locke's social contract theory. According to Locke's theory people in society form government to make and enforce laws that the people commit to obey in order to avert uncertainty and anarchy associated with life in the state of nature.⁴²

Governance without Government: The Case of Somalia

The popular view of public governance seemingly presupposes the existence of a standard State authority, that is, a government, to which 'all men' surrender their state of nature perfect freedom 'to order their actions, and dispose of their possessions and persons as they think fit, within the bounds of the law of Nature, without asking leave or depending upon the will of any other man',⁴³ in order to 'obtain benefits of government'.⁴⁴ The government has traditionally served two major purposes, namely, maintaining order by providing basic security for the preservation of life and property; and 'providing public goods'.⁴⁵

However, the case of Somalia being a failed State following the 1991 collapse of its central government, challenges this popular view of public governance.⁴⁶ Although faced with total collapse of their central government, two neighbouring regions in Somalia, namely, Somaliland and Puntland, succeeded at establishing governance within the failed State.⁴⁷

The existence of governance in Somaliland and Puntland in the failed and war-ridden State of Somalia, resonates with Menkhaus' observation that communities 'that have been cut off from an effective state authority – whether ... because of protracted warfare, or because of vested local and external interests in perpetuating conditions of state failure – consistently seek to devise arrangements to provide for themselves the core functions that the missing state is supposed to assume, especially basic security'.⁴⁸

Moreover, the establishment of governance systems in Somaliland and Puntland in the aftermath

⁴¹ John Locke, *Two Treatises of Government, Vol.V* (London, England, Thomas Tegg, W. Sharpe and Son, G. Offor, G. and J. Robinson, J. Evans and Co.; Glasgow, Scotland, R. Griffin and Co.; and Dublin, Ireland, J. Cumming; 1823), e-book, p. 106; and Daudi M. Nyamaka, "Social Contract Theory of John Locke (1632 – 1704) in the Contemporary World", Saint Augustine University of Tanzania (Summer, June, 2011), pp. 1-14.

⁴² Ibid.

⁴³ Supra note 41: John Locke (1823).

⁴⁴ Kenneth Janda and others, *The Challenge of Democracy: American Government in Global Politics, The Essential*, Ninth edition Australia, Brazil, Japan, Korea, Mexico, Singapore, Spain, United Kingdom, United States; Cengage Learning, 2012), e-book, p. 8.

⁴⁵ Ibid; and Supra note 15, p. 75.

⁴⁶ Supra note 17, p. 12.

⁴⁷ Supra note 15, pp. 75 - 82.

⁴⁸ Supra note 15, p. 75.

of Somali State failure lends credence to ‘the obvious but often overlooked observation that local communities are not passive in the face of [S]tate failure and insecurity, but instead adapt a variety of ways to minimize risk and increase predictability in their dangerous environments’.⁴⁹

While Somaliland and Puntland succeeded in establishing governance, in contrast, the neighbouring territory of South-Central Somalia was characterised with chaos and lack of governance for nearly the entire epoch of the infamous Somali piracy, except for a brief period of six months when some semblance of security and order was enforced by the Union of Islamic Courts.⁵⁰

The contrasting socio-political situations of Somaliland and Puntland on the one hand; and South-Central Somalia on the other hand, can be attributed to legitimacy and local ownership of governance in the former; and political unrest, division and fragmentation that reigned in the latter.⁵¹

This research will demonstrate that the volatile situation in South-Central Somalia was a complex combination of good governance and lack of governance.

Relationship between Governance and Security: the African Context

The relationship between governance and security in the African context has been succinctly captured in academic scholarship as follows: ‘governance, rather than government, more accurately captures the dynamics of security and insecurity on the African continent’.⁵²

Assessment of Governance

Literature discussing public leadership and governance often assesses the quality of public governance as either ‘good’ or ‘bad’.⁵³

1.1.1 What is Good Governance?

Definition of Good Governance

The term *good governance* has been used with great flexibility depending on the particular context and overriding objective sought.⁵⁴ For the purpose of this research, the definition

⁴⁹Ibid.

⁵⁰Edward R. Lucas, “Somalia’s ‘Pirate Cycle’: The Three Phases of Somali Piracy”, *Journal of Strategic Security*, vol. 6, No. 1 (Spring, 2013), pp. 55 – 63, at pp. 59&60.

⁵¹Supra note 15, p. 82; and Supra note 17, p. 17.

⁵²Supra note 36.

⁵³ Ludger Helms, ed., *Poor Leadership and Bad Governance: Reassessing Presidents and Prime Ministers in North America, Europe and Japan*, (Northampton, Massachusetts, Edward Elgar Publishing Limited, 2012), e-book, pp. 1-9.

⁵⁴United Nations Office of the High Commissioner on Human Rights, *Good Governance and Human Rights* (2016).

proffered by Johnston will be utilised. Johnston defines good governance as ‘legitimate, accountable and effective ways of obtaining and using public power and resources in the pursuit of widely-accepted social goals’.⁵⁵

Assessment of Good Governance

According to Johnston, the concerns and objectives of good governance in this context are ‘justice and the search of a good life’ in society.⁵⁶ The attainment of these objectives is dependent upon governance embracing three interdependent principles, namely, the Rule of Law, transparency and accountability.⁵⁷

Consequently, it may be inferred that good governance in a particular society is determined by the existence of these three values in its public administration. These principles are both technical and legal terms.

The rule of law is a legal concept whose meaning has always been contested.⁵⁸ However, simply put it refers to ‘the ascendancy of law as such and of the institutions of the legal system in a system of governance’.⁵⁹ Waldron observes that the ‘most important demand of the rule of law is that people in positions of authority should exercise their power within a constraining framework of well-established public norms rather than in an arbitrary, ad hoc, or purely discretionary manner on the basis of their own preferences or ideology.’⁶⁰

Transparency is a term of art first coined by the World Bank in the 1990s in the course of its work of tackling corruption in ‘its loan-giving to nations’.⁶¹ This term has been viewed within international relations discourses as a norm of ‘public value for nations’.⁶² In this regard, Finel and Lord reportedly provide ‘the most comprehensive definition of transparency’⁶³ as follows:

“Transparency comprises the legal, political, and institutional structures that make information about the internal characteristics of a government and society available to actors both inside and outside the domestic political system. Transparency is increased by any mechanism that leads to the public disclosure of information, whether a free press, open government, hearings, or the

⁵⁵ Michael Johnston, “Good Governance: Rule of Law, Transparency and Accountability”. Available at <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan010193.pdf>. Accessed on 30 September 2016.

⁵⁶ Ibid, p. 2.

⁵⁷ Ibid.

⁵⁸ R.H. Fallon, Jr., “The Rule of Law as a Concept in Constitutional Discourse”, *Columbia Law Review*, vol. 97, No. 1 (January 1997), pp. 1-56, at p. 1.

⁵⁹ Edward N. Zalta, ed., *The Stanford Encyclopedia of Philosophy*, (Fall edition, 2016). Available at <http://plato.stanford.edu/archives/fall2016/entries/rule-of-law/>. Accessed on 3 October 2016.

⁶⁰ Ibid.

⁶¹ Carolyn Ball, “What is Transparency?”, *Public Integrity*, vol. 11, No. 4 (2009), pp. 293 – 308, at p. 295.

⁶² Ibid, p. 297.

⁶³ Supra note 61, p. 298.

existence of nongovernmental organizations with an incentive to release objective information about the government.’⁶⁴

Accountability is a socio-legal concept. The definition of accountability provided by Bovens is instructive. He defines accountability as follows:

‘... a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences.’⁶⁵

Interdependence of the Principles of Good Governance

Johnston observes that the three principles of good governance are interdependent. In particular, he states as follows:

‘... accountability requires transparency, both function best where laws are sound and widely supported [, which are critical prerequisites for the respect of the rule of law], and the equitable enforcement of those laws raises major questions of accountability and transparency ...’⁶⁶

The relationship between Good Governance and Security in a Sovereign State

‘In essence, good governance creates order within a State thereby enabling the delivery of effective security. It also empowers a State to work more closely with regional partners in pursuing common security objectives.’⁶⁷

The substantive chapters of this research will critically analyse the centrality of onshore good governance within the States of Somalia and Nigeria, in sustainably tackling piracy and armed robbery against ships emanating from and concentrated in the coastal waters of these States.

1.1.2 What is Bad Governance?

Definition of Bad Governance

One of Helms’ two definitions of ‘bad governance’, which is clearly the direct opposite of the definition of ‘good governance’ provided above, is preferred for the purpose of this study.⁶⁸ In the context of this study Helms defines bad governance as ‘... violations of central norms of

⁶⁴ Supra note 61, p. 298.

⁶⁵ Mark Bovens, “Analysing and Assessing Accountability: A Conceptual Framework”, *European Law Journal*, vol. 13, No. 4 (July 2007), pp. 447 – 468, at p. 450.

⁶⁶ Supra note 55, p.2.

⁶⁷ Supra note 36.

⁶⁸ Supra note 53, p. 5.

liberal democracy or democratic governance, such as transparency, procedural fairness or accountability.⁶⁹

As this research will demonstrate, the definition of bad governance fits the assessment of governance in Puntland during the infamous Somali piracy period. Bad governance, which connotes the absence of good governance, including the absence of the rule of law, facilitated Somali piracy in Puntland.

In addition, the definition of bad governance aptly describes the quality of governance in Nigeria, particularly the Niger Delta region of Southern Nigeria, which is reportedly the epicentre of attacks of piracy and armed robbery against ships in the Gulf of Guinea.⁷⁰

Assessment of Bad Governance

Given the definition and principles indicative of good governance, in contrast bad governance may be indicated by the erosion of good governance principles in a society's public administration owing to existence of particular negative factors impacting on good governance. The negative factors that erode the principles of good governance and hence foster bad governance are corruption and impunity.

'Corruption' is traditionally defined as the "abuse of public office for private gain."⁷¹ However, corruption has reportedly taken a new and worse image of '[S]tate capture' particularly in transition economies. Hellman and Kaufmann, who view State capture as a 'form of grand corruption', define it as 'the efforts of firms to shape the laws, policies and regulations of the state to their own advantage by providing illicit private gains to public officials'.⁷²

'Impunity' is defined in the Black's Law Dictionary as '[e]xemption or protection from penalty or punishment'.⁷³

Interdependence of Factors of Bad Governance

Transparency International observes that corruption is widespread because of impunity which enables the corrupt to 'get away with it', that is, escape penalty or punishment.⁷⁴ Moreover, the

⁶⁹ Ibid.

⁷⁰ Supra note 7, p. 129.; and UNODC, *Transnational Organized Crime in West Africa: A Threat Assessment* (Vienna, 2013).

⁷¹ Daniel Kaufmann, "Myths and Realities of Governance and Corruption". Available at <http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/2-1-Governance-and-Corruption-Kaufmann.pdf>. Accessed on 3 October 2016.

⁷² Joel Hellman and Daniel Kaufmann, "Confronting the Challenge of State Capture in Transition Economies", *Finance and Development*, vol. 38, No. 3 (September 2001).

⁷³ Henry C. Black, *Black's Law Dictionary* (Minnesota, West Publishing Co., 1968).

World Bank observes that bad governance ‘is associated with corruption, distortion of government budgets, inequitable growth, social exclusion’ and ‘lack of trust in authorities’.⁷⁵

The substantive chapters of this research will provide a critical analysis of the situations of corruption and impunity in the public administrations of Somalia and Nigeria, and their consequential grave impact on the respective countries’ maritime security situations.

1.1.3 Case for Assessment of Governance as Weak Governance

However, this research also proposes a third category of governance assessment, that is, weak governance. This is where a public authority, although possessing the three main principles of good governance, is nonetheless unable to effectively perform its functions owing to genuine incapacities such as lack of technical skills and appropriate infrastructure for maintaining security, thus experiencing the results of bad governance in society, mainly, insecurity.

The situation of weak governance partly contributed to insecurity in Somalia that manifested as Somali piracy. This is also currently the case for many Gulf of Guinea States, including Nigeria, that are unable to effectively patrol their coastal waters and ensure maintenance of order and security at sea.

The substantive chapters of this research will critically analyse the implications of weak governance on Somalia’s and Nigeria’s capacity to effectively suppress maritime criminality.

Implications of Bad and Weak Governance on Maritime Security

Weak law enforcement and corruption can be blamed for weak and bad governance, respectively; and the consequent insecurity resulting in the emergence of piracy and armed robbery against ships, amongst other organised crimes. This is because inability to enforce the rule of law, accountability and transparency, as well as entrenchment of impunity, provide a conducive spawning ground for criminality. Improvement of laws and enforcement capacities of legal institutions are key factors in improving law enforcement leading to the achievement of the rule of law, accountability and transparency which promote order and security in a State’s territory, both onshore and offshore.

⁷⁴ Transparency International, “No Impunity: the power of accountability”, 14 January 2015.

⁷⁵ Supra note 39.

1.2 PIRACY OFF THE COAST OF SOMALIA AND PUBLIC GOVERNANCE CHALLENGES IN SOMALIA

This section will attempt to answer the question ‘Is piracy off the coast of Somalia the result of the collapse of the central government of Somalia or the outcome of lack of good governance?’ Piracy studies have identified five main triggers of the crime, namely, geography; weak law enforcement; maritime insecurity; economic dislocation; and cultural acceptability.⁷⁶ Although it would appear that most of these factors existed in Somalia prior to the State failure,⁷⁷ it is arguable that the subsequent collapse of the Somali central government provided an opportunity for the synchronisation of these factors;⁷⁸ and subsequently the realisation of the infamous Somali piracy.⁷⁹

In fact, several experts argue that the infamous Somali piracy problem has resulted from ‘the lack of an effective central government in Mogadishu, tied with limited economic opportunities throughout the country.’⁸⁰ In this regard, United Nations Office on Drugs and Crime (UNODC) observes that Somali piracy is ‘a direct product of the social and political chaos that’ prevailed in Somalia subsequent to the collapse of the central government.⁸¹

Moreover, the argument that links piracy off the coast of Somalia to the collapse of the country’s central government, is the basis for the academic debate on justification of piracy off the coast of Somalia. Proponents of this debate argue that piracy developed because of two main reasons, first, as a defensive measure by Somalis against external invasion and destruction of their coastal fishery resources.⁸² Second, piracy was a survival means of last resort for the local Somali population faced with poverty and limited economic opportunities in the aftermath of the Somali State failure.⁸³

⁷⁶ Supra note 10: (Christian Bueger, 2013).

⁷⁷ At least the factors of geography, weak law enforcement and maritime insecurity pre-existed prior to the 1991 collapse of Somalia’s central government. First, the opportunity of geography is provided by the Gulf of Aden on which Somalia’s coastline lies; and consequent proximity to critical international shipping lanes for commercial vessels, especially in the Suez Canal and the Bab-el-Mandeb strait (See, Security Council resolution 30 (2011), para. 28). Second, law enforcement in Somalia appears to have become noticeably weak starting 1989 following the outbreak of armed conflict between the Somali government forces and a growing number of clan-based liberation movements (See, World Bank Group, “Conflict in Somalia: Drivers and Dynamics”, January 2005, pp. 9&10). Third, maritime insecurity, posed mainly by armed sea robbers, existed in Somalia since the late 1980s (See, Security Council resolution 229 (2006), paras. 77&78).

⁷⁸ Security Council resolution 229 (2006), para. 80.

⁷⁹ Supra note 50, pp. 55&56.

⁸⁰ Christopher Alessi and Stephanie Hanson, “Combating Maritime Piracy”, *Council on Foreign Relations*, (March 2012).

⁸¹ UNODC, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (Vienna, 2010).

⁸² Stig J.Hansen, “Private Security and Local Politics in Somalia”, *Review of African Political Economy*, No. 118 (2008), pp. 585 – 588; and Supra note 78 .

⁸³ Supra note 11, p. 187.

However, the inconsistent geographical prevalence of Somali piracy along Somalia's coastline seems to suggest otherwise. Although the collapse of the central government provided an opportunity for the outbreak of piracy, while poverty provided an economic incentive for the pirates' involvement in the criminal activity, it appears that governance challenges, especially the lack of good governance, became the ultimate driver of the infamous Somali piracy.⁸⁴

The discussions in this section will critically analyse the implications of governance, within the three regional authorities in Somalia, on the prevalence of the infamous Somali piracy. The discussions will demonstrate that the pervasiveness of piracy in Puntland and South-Central Somalia was caused by bad governance in the regions, while the absence of piracy in Somaliland is attributable to good governance in that regional state.

1.2.1 Implications of Governance in Somaliland on Somali Piracy: A Case of Good Governance

Somaliland is located on the north-western side of Somalia. It became a self-declared State in 1991.⁸⁵ This was following a civil war that began in May 1988 between the Somali government's military and a Somali liberation movement known as the Somali National Movement (SNM), which resulted in a catastrophe.⁸⁶ Reportedly, the government forces 'committed atrocities against civilians' and an estimated 50,000 to 60,000 Somalis, mainly from the Isaaq clan died.⁸⁷ 'These atrocities fuelled the Isaaq clan's demand for secession.'⁸⁸

After the collapse of the central government in 1991, Somaliland 'unilaterally declared independence'.⁸⁹ However, to date it has not received recognition of its status from the United Nations.⁹⁰ The UN adheres to the principle of territorial integrity as sanctioned by UN Member States, and hence considers Somalia as a single territorial entity.⁹¹

Following the collapse of the central government, Somaliland experienced a turbulent period of political crisis and armed conflicts from 1991 to 1996.⁹² However, the leadership was able to

⁸⁴ Supra note 17, pp. 9&11; and Supra note 19, p. 3.

⁸⁵ The World Bank Group, *Conflict in Somalia: Drivers and Dynamics*, January 2005 [The World Bank, *Conflict in Somalia: Drivers and Dynamics*, (January 2005), p.9.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Supra note 85, p.6; and Supra note 15, p. 81.

⁹⁰ Supra note 85, p.6.

⁹¹ Ibid.

⁹² Supra note 15, p. 91.

restore law and order thereafter, and to some extent establish democratic governance.⁹³ Since then Somaliland has enjoyed good governance, with impressive economic and political success. Menkhaus elaborates on Somaliland's successes as follows:

‘It maintains a high level of public security – most of Somaliland is as safe as anywhere in the Horn of Africa. Economic recovery in Somaliland has been equally impressive, with millions of dollars of investments by the Somali diaspora in service sector businesses and real estate; Somaliland has attracted thousands of migrant laborers and hundreds of business investors from both southern Somalia and Ethiopia. Somaliland has also built up a modest but functional state structure, with ministries, municipalities, police, and a legislature, all performing at variable but not inconsequential levels.’⁹⁴

Menkhaus further observes that at the time of the infamous Somali piracy, much of Somaliland's budget was derived from customs revenues collected at the seaport at Berbera; import taxes and landing fees.⁹⁵ Most of that budget was ‘devoted to the military, in the form of salaries to demobilized militiamen’.⁹⁶ Moreover, the regional government of Somaliland built ‘functional ministries, a public school system, a respected police force, and municipal governments that in a few instances have been among the most responsible and effective formal administrative units in all of Somaliland and Somalia’.⁹⁷

Menkhaus furthermore observes that since the year 2000 ‘Somaliland has consolidated its state-building accomplishments in an impressive manner...’.⁹⁸ Importantly, it ‘made an imperfect but successful transition from clan-based representation to multiparty democracy, holding local, presidential and legislative elections; ...’.⁹⁹

The coastal waters of Somaliland remained unaffected by the infamous Somali piracy. This, as Ahmed observes, has been attributed to ‘the stability and governance achieved by the regime. Therefore, this indicates that the social and political conditions in the regions where piracy is prevalent, particularly eastern and southern coastal waters off Somalia, to some degree facilitate pirates to operate unfettered’.¹⁰⁰ Consequently, this position counters the popular view perpetuated mostly by the Robin Hood narrative, that Somali piracy developed as a result of the desperate conditions of life in Somalia, denoted by widespread poverty and extreme dearth of economic opportunities, that accompanied the collapse of the central government.

⁹³ Supra note 17, p. 12.

⁹⁴ Supra note 92.

⁹⁵ Supra note 92.

⁹⁶ Supra note 92.

⁹⁷ Supra note 92.

⁹⁸ Supra note 92.

⁹⁹ Supra note 92.

¹⁰⁰ Supra note 17, p. 16.

Nevertheless, Menkhaus observes that Somaliland's successes have not been without challenges, including impediments to good governance such as corruption.¹⁰¹ In particular, Menkhaus makes the following observations that relate to the prevailing situation in 2007, at the time he wrote his academic paper and also the nascent period of the infamous Somali piracy:

‘For all its successes, Somaliland has also had its share of setbacks since 2003. Domestically, it faces worrisome challenges. Internal political divisions between the government and opposition remain acute, resulting in sporadic efforts by the government to repress the media and jail critics; Islamic radicals assassinated five foreign aid workers in a four-month span in late 2003 and early 2004, temporarily damaging Somaliland's reputation for security; a military standoff with Puntland over control of parts of Sool region remains unresolved; the majority of the population of Sool and Sanaag regions express support for a united Somalia rather than Somaliland; and poor performance by the government, including corruption in the judiciary, has reduced public confidence in the state. Since 2006, the ascent of the Islamist movement in Mogadishu has been a major new threat to Somaliland's stability—the Islamists maintain a strong network of supporters in parts of Somaliland and have a powerful interest in discrediting the secessionist government. The Somaliland government is poorly equipped to cope with an internal Islamist challenge due to a lack of resources, corruption, and strong pressures from clans to protect their lineage members from state arrest and prosecution.’¹⁰²

Notwithstanding the setbacks to good governance, it is commendable that at the height of the infamous Somali piracy, Somaliland provided a fascinating contrast to the conflict-ridden region of south-central Somalia, an area that was ‘marked by the absence of governance (and the presence of Al-Shabaab)’¹⁰³.

1.2.2 Implications of Governance in Puntland on Somali Piracy: A Case of Bad Governance

Puntland is a non-secessionist, autonomous region in north-eastern Somalia.¹⁰⁴ Reportedly, it declared itself an autonomous state in August 1998, partly to avoid clan warfare that had engulfed southern Somalia at that time.¹⁰⁵ Puntland has provided refuge for many Somalis fleeing violence in southern Somalia.¹⁰⁶

Menkhaus observes that out of the three regional administrations in Somalia, ‘Puntland is the most legitimate functional regional polity’.¹⁰⁷ Menkhaus additionally observes that Somaliland

¹⁰¹ Supra note 15, p. 92.

¹⁰² Ibid.

¹⁰³ Security Council resolution 30 (2011), para. 19

¹⁰⁴ Supra note 15, p. 83. Although Puntland developed as an autonomous region, it has since variably referred to itself as a semi-autonomous region and part of the area of the Mogadishu-based Federal Government of Somalia. See, Mikolaj Radlicki, “Who really rules Somalia? – The tale of three big clans and three countries”, *Mail & Guardian Africa*, 19 May 2015.

¹⁰⁵ “Puntland profile”, *British Broadcasting Corporation*, 4 February 2016.

¹⁰⁶ Ibid.

¹⁰⁷ Supra note 15, p. 84.

and Puntland are the only post 1991 regional polities ‘that have achieved much functional capacity’.¹⁰⁸

However, despite its commendable administration and relative stability, Puntland was the epicentre of the infamous Somali piracy notwithstanding ‘its declared commitment to eradicate piracy from its soil’.¹⁰⁹Reportedly the villages of Eyl, Hobyo and Gharardeere were pirate strongholds, and their adjacent territorial waters served as anchorage bases for the vessels hijacked by the Somali pirates until the latter concluded ransom negotiations.¹¹⁰ Percy and Shortland observe that ‘piracy took off in earnest when the Puntland government became unable to pay its security forces in April 2008, allowing pirates to capture governance in this region.’¹¹¹ This resulted in an exponential growth of crime in Puntland, including piracy.

The capture of governance in Puntland by Somali pirates was aided by the business structure of Somali piracy which had ‘features of mafia-style organized crime groups’.¹¹² Such criminal groups can ‘co-exist with legal structures, often in symbiosis’ as was the case in between Somali pirates and the administration in Puntland.¹¹³ Percy and Shortland observe that symbiosis is ‘more likely to occur (in weak and strong states alike) when organized criminal activity minimizes violence and provides public goods ... In other words, there can be little incentive for governments to alter criminal businesses that do not cause excessive violence’.¹¹⁴ In the case of Puntland, the Somali pirates were providing ‘the one public good neither the state itself nor the international community [had] been able to provide: jobs, and the money necessary to create a local economy that would not exist without piracy.’¹¹⁵

Consequently, accountability and the rule of law was undermined by impunity facilitated by rampant corruption. ‘Occasional arrests and detentions [were] easily resolved with a small bribe, and backhanders ensured good relations with the Puntland administration. Pirate enterprises (especially those with clan links to the Puntland government) [were] therefore ... able to operate mostly with impunity.’¹¹⁶

Moreover, transparency, especially as promoted by a free press, is under threat in Puntland. This is because although Puntland’s charter provides for freedom of the press; and private

¹⁰⁸ Nonetheless, Menkhaus also makes the observation that ‘the Rahanweyn Resistance Army’s administration of Bay and Bakool regions in 1998-2002 and the Benadir Regional Authority in 1996 – showed some initial promise. See, Supra note 15, p. 83.

¹⁰⁹ Supra note 103, paras. 19 -21.

¹¹⁰ Supra note 19, p. 6; and Supra note 17, p. 18.

¹¹¹ Supra note 19, p.3.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Supra note 19, p. 20.

¹¹⁵ Supra note 19, p. 22.

¹¹⁶ Supra note 19, p. 22.

broadcasters are licensed and permitted to operate, the state authorities have reportedly resorted to detaining journalists and closing media outlets.¹¹⁷ Additionally, no ‘newspapers are currently published in Puntland’.¹¹⁸

In addition, Somali piracy in Puntland significantly benefited from cultural acceptability by the local Somali community. Percy and Shortland observe that Somali piracy hierarchy was grafted ‘on to the hierarchy of existing clan structures in Puntland’, hence aiding the durability of the infamous Somali piracy.¹¹⁹ Moreover, piracy was ‘profitable for many in Puntland, providing jobs and investment capital, raising local wages and alleviating poverty through redistribution of profits in the wider clan ... Accordingly, there ...[was] little incentive for local Somalis to end piracy’.¹²⁰ In this regard, UN made a similar observation about community support in Puntland for piracy, as follows:

‘With the industrialization of the phenomenon and especially the emergence of new professions (intermediaries, negotiators, and interpreters), the Somali population is increasingly dependent on piracy. The economy, which basically depends on export of livestock (camels, sheep) to the Gulf countries, remittances from the diaspora and port operations, is gradually relying on support for the pirates by entire villages, now with the approval of some clan chiefs and even some members of the diaspora. The risk of reaching a point of no return is emerging, with the creation of a veritable mafia, piracy-driven economy and the deep disintegration of Somali society, which is built on fragile local arrangements.’¹²¹

However, with time piracy developed a destructive effect on social life in Puntland’s Somali community leading to waning support and growing disapproval of piracy among sections of the community.¹²² In 2011 the UN elaborated on the damaging effect of piracy and the consequent Somali community’s condemnation of piracy, with mixed reaction, as follows:

‘... Young pirates who have acquired wealth are now challenging the authority of the Elders and their private militias are competing with loyalist security forces. In Garacad, the Elders oppose the pirates and make the population aware of the harmful effects of piracy (alcohol, prostitution), which are contrary to Islamic teaching. The authorities in Garowe say that they rely on clan chiefs in conducting awareness campaigns among the population in order to discourage any would-be pirates. It is the Elders who reportedly obtained the release of the Puntland Minister of Maritime Transport, Ports and Counter-Piracy, who was kidnapped by pirates during a communication operation. Other clan chiefs prefer to side with (rather than alienate) the pirates and even support them (in order to share in their revenues).’¹²³

¹¹⁷Supra note 105.

¹¹⁸ Ibid.

¹¹⁹ Supra note 19, pp. 15 – 18.

¹²⁰ Supra note 19, p. 27.

¹²¹ Supra note 103, para. 16.

¹²² Supra note 103, para. 22.

¹²³ Ibid.

1.2.3 Implications of Governance in South-Central Somalia on Somali Piracy: A Complex Case of Good Governance and Lack of Governance

Unlike Somaliland that boasted noticeable state-building accomplishments, the region of south-central Somalia was marred with disorder, armed conflicts and diplomatic impasse after the 1991 State failure.¹²⁴ Moreover, Ahmed observes that ‘the political dynamics of south-central Somalia [varied] from those in Puntland, as the political powers [in the latter were] fragmented and divided across the region’.¹²⁵ Some districts such as Galmudug and Ximan-Xeeb self-declared themselves semi-autonomous States.¹²⁶

Lucas observes that piracy in the region commenced about the year 2005 when there was noticeable surge in incidents of piracy off the coast of Somalia from the frequency that had been previously witnessed since the 1990s.¹²⁷ The year 2005 marked the beginning of the 7-year era of the infamous Somali piracy. However, the pirates’ reign of criminality was quickly subdued when the Union of Islamic Courts (ICU) gained control of most of southern Somalia in June 2006.¹²⁸ The ‘Ayr sub-clan was at one point the backbone of the ICU’ during its reign in southern Somalia.¹²⁹

The ICU moved swiftly to restore governance and security in the region, hence repressing Somali piracy. In this respect, Lucas elaborates as follows:

‘In an effort to restore peace and security, the ICU removed the system of roadblocks in Mogadishu, as well as the “ubiquitous piles of rubbish that had blighted the city for a decade or more....”... The ICU also publicly “declared war” on piracy, which they viewed as contrary to Islamic law... In November 2006 the ICU went so far as to retake the hijacked cargo vessel, Veesham I, rescuing the crew unharmed and injuring two of the pirates. The crew was subsequently released without a ransom being paid. As a result of the ICU’s efforts, piracy off Somalia’s Indian Ocean coast declined from thirty-five reported incidents in 2005, to only ten in 2006. Furthermore, the attack on the Veesham I was one of only two successful hijackings to take place in 2006 after the ICU came to power.’¹³⁰

Menkhaus observes that the ICU’s control over southern Somalia and its consolidation of power in Mogadishu and surrounding areas, provided a new source of law and order that tamed the lawlessness that was prevalent in the region and other ungoverned areas within Somalia.¹³¹ The ICU tried to restore security by tackling both blue-collar and white-collar crimes in the region.

¹²⁴ Supra note 15, p. 92; and Supra note 19, p.5.

¹²⁵ Supra note 17, p. 17.

¹²⁶ Ibid.

¹²⁷ Supra note 50, p. 59.

¹²⁸ Ibid.

¹²⁹ Security Council resolution 413 (2013), p. 119.

¹³⁰ Supra note 50, pp. 59&60. See also Supra note 19, p. 13.

¹³¹ Supra note 15, p. 89.

Combating blue-collar crimes included tackling the most dangerous and endemic street-crime in Mogadishu of kidnapping for ransom; while stemming white-collar crime included issuance of an edict phasing out the environmentally destructive trade of charcoal export; and cracking down on the trafficking and trade of illegal drugs.¹³²

Nonetheless, the reduction of piracy in south-central Somalia during the ICU's tenure may not be wholly attributable to the seemingly effective governance of the ICU.¹³³ This period of piracy reduction coincided with the monsoon season.¹³⁴ Piracy has been noticed to decrease during the monsoon season because the harsh weather conditions then significantly impact pirate operations in the ocean.¹³⁵

However, the period of order and security brought about by ICU's governance of the region was short-lived.¹³⁶ Just six months after their assumption of control of southern Somalia, the ICU was ousted in December 2006 by Ethiopian security forces.¹³⁷ The Ethiopian forces removed ICU from power at the behest and in support of the TFG in order to reinstate the TFG in the region where the capital of Somalia, that is, Mogadishu, is located.¹³⁸ Until then the TFG, which was formed in 2004 and was the first internationally recognized government of Somalia in the aftermath of the 1991 State failure,¹³⁹ reportedly had no control of any territory in Somalia.¹⁴⁰

Subsequent to the ouster of the ICU and reinstatement of the TFG, piracy resurged in southern Somalia.¹⁴¹ The resurgence of piracy has been attributed to TFG's inability to exercise effective governance in the region owing to its inter-factional fighting.¹⁴² Consequently, Somali piracy in the region steadily increased until 2011 when counter-piracy operations, involving a combination of increased naval patrols and improved defenses onboard merchant ships,¹⁴³ started yielding success of drastically suppressing piracy in the waters off the coast of Somalia.¹⁴⁴

Besides the ICU's ouster in December 2006, resurgence in piracy in southern Somalia after this time has been attributed to a relocation of some of Puntland-based pirates to the region following

¹³² Supra note 15, pp. 89&90.

¹³³ Supra note 17, p. 15.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Supra note 50, p. 60.

¹³⁷ Ibid.

¹³⁸ Ibid; and Supra note 17, p. 15.

¹³⁹ Christopher L. Daniels, *Somali Piracy and Terrorism in the Horn of Africa* (Lanham, Maryland; Toronto; Plymouth, Scarecrow Press) e-book, p. 148.

¹⁴⁰ Supra note 17, p.15.

¹⁴¹ Ibid.

¹⁴² Supra note 50, pp. 58&59.

¹⁴³ Supra note 50, p. 62.

¹⁴⁴ Ibid.

Puntland's administration's crackdown on piracy in its territory.¹⁴⁵

The Link between Somali Piracy in Southern Somalia and Terrorism

Despite the absence of governance following the ouster of the ICU and the return of violence in southern Somalia, piracy seemed to thrive in the region.¹⁴⁶ The flourishing of piracy in the region has been attributed to the presence of the terrorist group Al-Shabaab in the area who provided security necessary for piracy operations.¹⁴⁷

Although officially Al-Shabaab, being Islamist insurgents, were opposed to piracy, a crime that attracted a severe punishment under Sharia law, there appeared to be local complicities between the pirates and the Al-Shabaab.¹⁴⁸ It has been suggested that an agreement may have been reached between the pirates and the terrorists under which the Al-Shabaab may have guaranteed 'tranquility for the pirates in return for a portion of their ransom money'.¹⁴⁹ This situation reinforces the observation made by Percy and Shortland that while 'total disorder is bad for piracy, moderate order is better than moderate disorder for the pirate business'.¹⁵⁰

Moreover, UN observed that the passive collusion between the pirates and the Al-Shabaab, 'for example in the region of Kismayo, further destabilize[d] Somalia by facilitating the recruitment of insurgent militias as well as weapons trade in violation' of an existing embargo at the time.¹⁵¹

CONCLUSION

This chapter has discussed the concept of governance in the public sector. It has assessed good, bad and weak governance and analysed the elements of these situations of governance in the public sector.

Also, this chapter has critically discussed the development of piracy off the coast of Somalia in the context of governance challenges that were experienced in Somalia in the aftermath of the collapse of the country's central government in 1991.

The foregoing discussions have demonstrated that Puntland's emergence as the epicenter, hotspot and primary enclave for piracy off the coast of Somalia, resulted from bad governance in

¹⁴⁵ Supra note 103, para. 24.

¹⁴⁶ Supra note 103, para. 19.

¹⁴⁷ Supra note 103, paras. 19 and 24.

¹⁴⁸ Supra note 103, para. 24.

¹⁴⁹ Ibid.

¹⁵⁰ Supra note 19, p.14.

¹⁵¹ Supra note 103, para. 24.

the regional state. Bad governance in Puntland was characterised by grand corruption, specifically state capture; and impunity especially for the high-level perpetrators of piracy including financiers and leaders of the piracy syndicates.

Present counter-piracy measures implemented by States and the shipping industry have contributed to suppression of the infamous Somali piracy, hence gradually restoring tranquillity and security the once dangerous waterways off the coast of Somalia. In 2016, the UN Secretary-General commended the interventions of States and the shipping industry in effectively suppressing piracy and contributing to deterrence of would-be pirates. In particular, he stated as follows:

‘... Most international ships have deterred pirate attacks through situational awareness and assertive responses in accordance with IMO guidance and its Best Management Practices for Protection against Somalia-based Piracy. It is clear that the combined presence of naval warships, the implementation of the Best Management Practices, the presence of armed guards on ships and the prosecution and detention modalities supported through the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia are succeeding as a deterrent against attacks on large commercial vessels. Pirate activity against such vessels has been effectively suppressed.’¹⁵²

However, the UN Secretary-General warned that the success achieved in suppressing Somali piracy was reversible. This is because, the organised criminal piracy syndicates that were responsible for employing and equipping the pirates who wreaked havoc off the coast of Somalia, between 2005 and 2012, remained undisturbed and resilient.¹⁵³ Also, although high-jacking of large commercial vessels almost ceased by 2012, attacks against smaller vessels, continued.¹⁵⁴

Only six months after the UN Secretary General expressed fears of resurgence of piracy attacks off the coast of Somalia, Mr. Yury Fedotov, the UNODC Chief, warned of certain resurgence of piracy off the coast of Somalia following a spate of recent piracy attacks.¹⁵⁵ Recounting three attacks on vessels since 13 March 2017, on 4 April 2017 Mr. Fedotov affirmed that “following a lull of five years, it is clear that Somali pirates are resurgent and intent on continuing attacks on commercial shipping”.¹⁵⁶

Although the stated recent vessel attacks off the coast of Somalia signify a likely return of piracy off the coast of Somalia, an analysis of facts of the specific attacks reveals that the application of

¹⁵² Security Council resolution 843 (2016), para. 4.

¹⁵³ Ibid, para. 60.

¹⁵⁴ Ibid.

¹⁵⁵ Supra note 3 (UNODC).

¹⁵⁶ Ibid.

a combination of the current anti-piracy measures discussed hereinabove; including active and passive measures, as well as naval rescues by multi-national naval forces patrolling off the coast of Somalia; enabled most of the vessels that were attacked to evade hijacking, in contrast to the situation prevailing during the infamous Somali piracy period between 2005 and 2012.¹⁵⁷ The table below provides statistics on the resurged attacks of piracy and armed robbery against ships off the coast of Somalia, reported between March and May 2017.

(Table of IMO statistics of March, April and May 2017)

Month	Location of Incident	Indian Ocean	Arabian Sea	East Africa
March 2017	International waters		1 (07.03.2017)	
	Territorial waters		2 (30.03.2017) (14.03.2017)	
April 2017	International waters		2 (08.04.2017) (15.04.2017)	
	Territorial waters		3 (01.04.2017) (14.04.2017) (22.04.2017)	
May 2017	International waters		1 (31.05.2017)	
	Territorial waters			

Further, out of the nine attacks on vessels stated in the table above, four of these attacks resulted in successful seizure, either by boarding or hijacking.¹⁵⁸ However, unlike the prior trend during the infamous Somali piracy epoch when many of these vessels and their crew would be held hostage, at times for several months, and Somali pirates' demand of ransom payment for their release; the four vessels seized in 2017 by suspected Somali pirates or armed robbers, were either released or rescued, within at most a few days, without ransom being demanded by the attackers.¹⁵⁹ This is an indication of the reduction in scale of the resurging piracy and armed

¹⁵⁷ International Maritime Organization, *Reports on Acts of Piracy and Armed Robbery against Ships: Issued monthly - Acts reported during [March, April and May 2017]*, (London, 2017), Annex I, p. 1.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

robbery against ships off the coast of Somalia, in comparison to the infamous Somali piracy period.

Though the current counter-piracy interventions have successfully repressed the infamous Somali piracy that ended in 2012, and they have also been successful in subduing recently resurged piracy and armed robbery attacks off the coast of Somalia, the resurgence of the attacks, albeit on a comparatively smaller scale, is an indication of the possible reversal of the achievements gained over the infamous Somali piracy, and hence a demonstration of the unsustainability of the current counter-piracy measures.

It has been widely reiterated that the long-term, hence sustainable, solution to piracy off the coast of Somalia, lays onshore.¹⁶⁰ It is recommended that high-ranking piracy syndicate heads, that is, pirate leaders and financiers, be genuinely investigated, prosecuted and sentenced; and that regional countries should strengthen their capacity to monitor and control financial entities operating in their jurisdictions in order to stem laundering of proceeds of crime.¹⁶¹ The latter will disrupt the flow of piracy proceeds, hence creating a disincentive for the piracy syndicates to continue operations and recruitment of more piracy perpetrators.

However, although UN and other reports have over the years provided information on whereabouts of pirate leaders; and the financial information regarding the sources of possible instrumentalities for financing piracy, as well as information on suspected financial investments of the proceeds of piracy in Somalia, regional and overseas countries;¹⁶² there has been inaction on the part of the identified States in taking the requisite legal steps against the suspected pirate leaders and their illicit finances.¹⁶³

This inaction is attributable to interconnected bad and weak governance problems of impunity, corruption and lack of capacity to effectively carry out the requisite legal action.¹⁶⁴ A critical discussion of onshore bad and weak governance problems and their enduring influence in the subsistence of piracy off the coast of Somalia follows in Chapter 1 of Part II of this research.

¹⁶⁰ Security Council resolution 843 (2016), paras. 30 and 31.

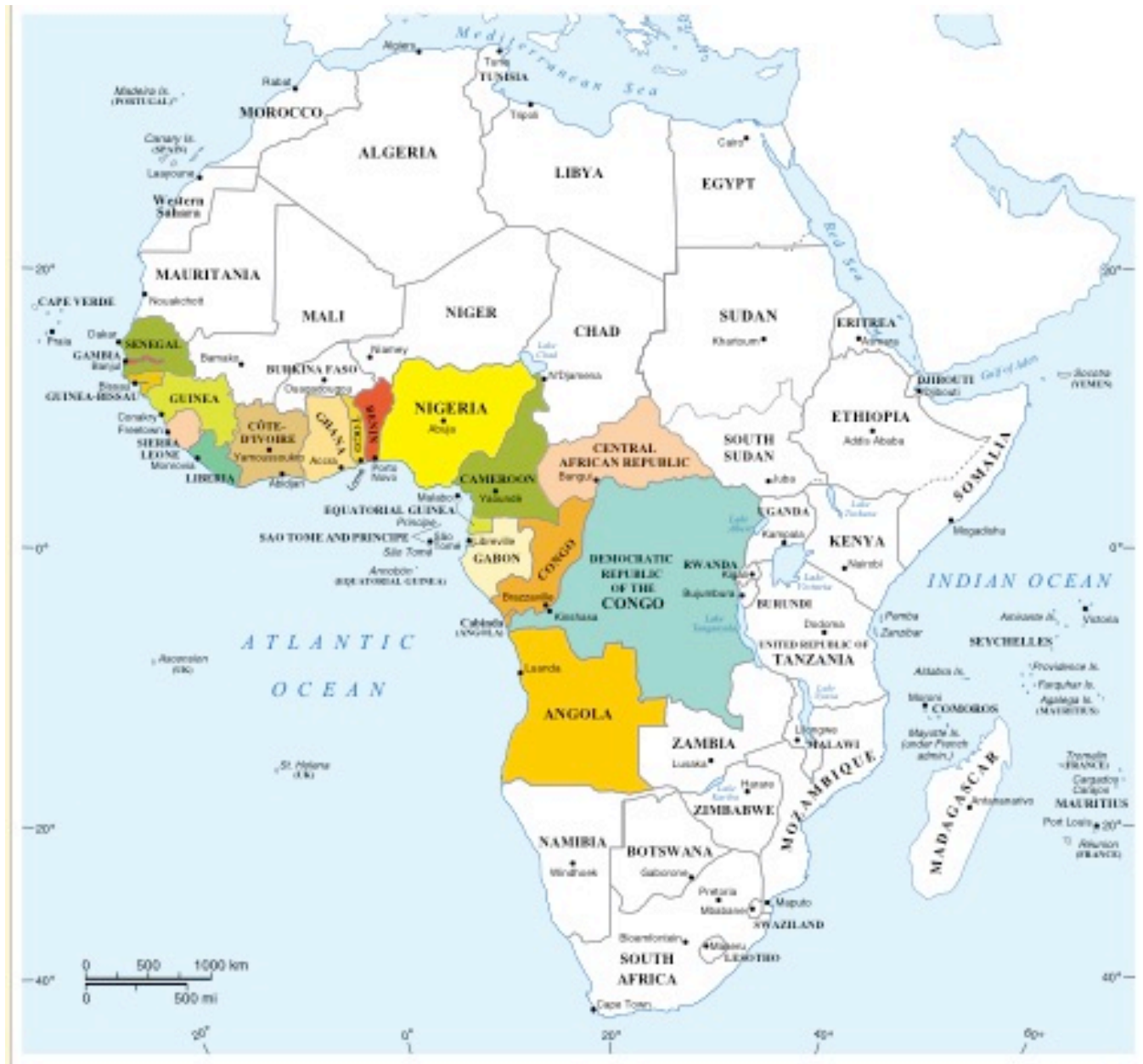
¹⁶¹ Ibid, para. 30.

¹⁶² Security Council resolution 726 (2014), para. 61; p. 115, para. 82; p. 137, para. 86; and p. 184, paras. 205 – 207.; Security Council resolution 544 (2012), p. 209, para. 30.; George Kiourktsoglou and Alec Coutroubis, “Somali Piracy: Understanding the Criminal Business Model”, in *Piracy at Sea*, Maximo Q. Mejia Jr., Chie Kojima and Mark Sawyer, eds., WMU Studies in Maritime Affairs 2, (Berlin, Heidelberg: Springer, 2013), e-book, pp. 272 & 273.

¹⁶³ Willis Oketch, “How Kenya invited and hosted Somali pirates”, *Standard Digital*, 24 May 2015.

¹⁶⁴ Supra note 160, paras. 8 and 31.; and Security Council resolution 726 (2014), paras. 58 – 65. See also, Paul M. Wambua, “The Jurisdictional Challenges to the prosecution of piracy cases in Kenya: mixed fortunes for a perfect model in the global war against piracy”, *WMU Journal of Maritime Affairs*, vol. 11, Issue No. 1 (April, 2012).

CHAPTER 2



(Map of Africa. Highlighted territories are Gulf of Guinea littoral States. The coastal arc of the Gulf of Guinea is 6,000 km. It stretches from Senegal in West Africa to Angola in Southern Africa)¹⁶⁵

¹⁶⁵ Freedom C. Onuoha, "Oil Piracy in the Gulf of Guinea", in *Conflict Trends*, Vasu Gounden, ed., Issue 4, 2012, p. 28.

2.0 PIRACY AND ARMED ROBBERY AGAINST SHIPS IN THE GULF OF GUINEA AND GOVERNANCE CHALLENGES IN NIGERIA

This chapter will provide a critical study of the development and persistence of maritime security threats of piracy and armed robbery against ships in the Gulf of Guinea, whose main source is evidently Nigeria. As discussed in the preceding chapter on Somali piracy, maritime security threats reflect land-based governance challenges. In this regard, Ali notably observes that ‘good order at sea is a reflection of good order within States, and conversely, disorder within States will most likely find expression in maritime security threats, or at the very least promote the escalation of such threats.’¹⁶⁶ Thereby, this chapter will critically discuss how good governance challenges in Nigeria, particularly in the Niger Delta region, have contributed to increased levels of piracy and armed robbery against ships in Nigeria and the Gulf of Guinea region especially since 2010.

While the first chapter demonstrated that governance, and indeed good governance, can exist in a State lacking a central government or relevant governance institutions; this chapter demonstrates the converse, that is, the existence of a seemingly stable central government like that of Nigeria, with seemingly effective functioning State governance institutions, does not necessarily connote the existence good governance throughout the country.

Discussions of this chapter are essentially divided into two sections. Section 2.1 will analyse the development of contemporary piracy and armed robbery against ships in Nigeria; and its connection to militancy in the Niger Delta. Section 2.2 will critically discuss the nexus between maritime criminality in the Gulf of Guinea and its connection to governance challenges in Nigeria’s Niger Delta.

2.1 *THE DEVELOPMENT OF CONTEMPORARY PIRACY AND ARMED ROBBERY AGAINST SHIPS IN NIGERIA: THE CASE OF THE NIGER DELTA REGION*

Nonetheless, although the triggers may be similar, the root causes of Somali piracy and Nigerian piracy and armed robbery against ships contrast. As earlier discussed, the emergence of Somali piracy was blamed on the widespread ravaging poverty and lack of economic opportunities in the country following the 1991 collapse of the Somali central government and the subsequent outbreak of inter-clan civil war. However, the emergence of piracy and armed robbery against ships in Nigeria, particularly in the Niger Delta region, has been justified on the basis of apparent

¹⁶⁶ Supra note 7, p. 259.

imbalance and inequality in allocation of national resources, particularly economic revenue generated from development of oil resources found in the region.

Neethling observes that a clear link exists ‘between a feeling of alienation and marginalisation on the part of some inhabitants of the Delta region and the occurrence of militancy and criminality in the Delta region ... and this extends to piracy in the Gulf of Guinea on a broader scale’.¹⁶⁷ In Ichalanga’s view, pirates attempt ‘to viciously even the scales’.¹⁶⁸

The major hotspots of piracy and armed robbery against ships in the Niger Delta region identified by Nigeria’s Navy and the International Maritime Bureau (IMB) are ‘Brass (located on the southwestern tip of the Niger Delta in Bayelsa state) and off Bonny (the entrance to the sea ports of Onne and Port Harcourt in Rivers state on the south coast of the Niger Delta)’.¹⁶⁹ These hotspots are located in two of the four states constituting the core oil belts of the Niger Delta.¹⁷⁰ The other two major oil belts in the region are Delta and Akwa Ibom.¹⁷¹

Is piracy and armed robbery against ships in Nigeria only confined to the Niger Delta region?

While the focus of this research is on Nigeria’s Niger Delta as the epicenter of most attacks of piracy and armed robbery against ships in the wider Gulf of Guinea region, this should not be misconstrued as an assertion that the Niger Delta is the sole source of maritime crimes in Nigeria. Other than the Niger Delta states, majority of piracy incidents in Nigeria’s coastal waters also occur around Lagos.¹⁷²

However, piracy and armed robbery operations in Lagos area and the Niger Delta area, have no known links and they are observably distinct from each other. Firstly, as Jimoh observes, pirates and armed robbers around Lagos are mostly opportunistic, and they mainly engage in petty theft

¹⁶⁷ Theo Neethling, “Piracy around Africa’s West and East Coasts: A Comparative Political Perspective”, *Scientia Militaria South African Journal of Military Studies*, vol. 38, No. 2 (2010), p. 99.

¹⁶⁸ Claude Kirongozi Ichalanga, “Perspectives from Central and West Africa”, p. in *Piracy in Comparative Perspective: Problems, Strategies, Law*, Charles H. Norchi and Gwenaële Proutière-Maulion, eds. (Paris; Oxford; Portland, Oregon: Editions A. Pedone & Hart, 2012), Ch. 9, p. 190.

¹⁶⁹ Dirk Steffen, “A Niger Delta Militant Group Declares War on the Nigerian Navy”, *Center for International Maritime Security*, 30 April 2016. See also, Jimoh Akinsola, “Maritime Piracy and Lethal Violence Offshore Nigeria”, (2015), p. 8. Available at <https://www.ifra-nigeria.org/publications/e-papers/nigeria-watch-project/79-jimoh-akinsola-2015-maritime-piracy-and-lethal-violence-offshore-in-nigeria> (accessed on 9 November 2016).

¹⁷⁰ Sofiri Joab-Peterside, Doug Porter, and Michael Watts, “Rethinking Conflict in the Niger Delta: Understanding Conflict Dynamics, Justice and Security”, Working Paper No. 26, Department of Geography, University of California, Berkeley, USA, (2012), p. 6.

¹⁷¹ Ibid.

¹⁷² Baltic and International Maritime Council (BIMCO) and others, *Guidelines for Owners, Operators and Masters for Protection against Piracy in the Gulf of Guinea Region*, (IMO website, 2016), p. 4; and International Maritime Bureau (IMB), *Piracy and Armed Robbery against Ships: Report for the period 1 January – 31 March 2016*, (IMB website, 2016), p. 18.

such as stealing valuables on board ships.¹⁷³ Also, IMO has noted that most of the attacks in Lagos are armed robberies.¹⁷⁴ Nonetheless, this observation does not obviate the fact that there are violent piracy and armed robbery attacks in Lagos' coastal waters.

For at least three years now, IMB has observed that armed robbers around Lagos 'are often well armed, violent and have attacked, hijacked and robbed vessels [or] kidnapped [crew] along the coast, rivers, anchorages, ports and surrounding waters'.¹⁷⁵ Regarding past piracy attacks in the high seas adjacent to Lagos' waters, IMB noted that attacks were reported as far as 170NM from the coast of Lagos.¹⁷⁶ Moreover, in many of those attacks, 'pirates hijacked the vessels for several days and ransacked the vessels and stole part [of its] cargo usually gas oil'.¹⁷⁷

In contrast, pirates and armed robbers in the Niger Delta region are mostly in organised criminal groups which have links to militant groups in the region and transnational criminal connections in the wider Gulf of Guinea region.¹⁷⁸ Their attacks are usually violent and demonstrate sophistication including use of modern weapons and equipment in the execution of their attacks, compared to the sea bandits around Lagos.¹⁷⁹ This is because, unlike the Lagos sea bandits who seem to target any ship with valuable cargo or items, the Niger Delta sea bandits appear specialized with the main aim of stealing oil cargo, and in recent years kidnapping for ransom.¹⁸⁰ Petroleum cargo theft is comparatively sophisticated in execution, as it requires expertise and use of relevant equipment to enable ship-to-ship transfer of the stolen petroleum cargo.¹⁸¹ Importantly, Otto observes that the attackers seem to acquire important intelligence from complicit government officials, which they use 'to hijack vessels and sail them away for purposes of cargo theft via ship-to-ship transfers and lightering activities, as well as selective use as mother-ships [in] perpetrating other attacks'.¹⁸²

2.1.1 From Militants to Sea Bandits: The Emergence of the Niger Delta Militants and their Resort to Piracy and Armed Robbery against Ships

Piracy and armed robbery against ships in Nigeria is a product of onshore militancy in the Niger Delta. Deen observes that the latter has its 'roots in agitations over the management of oil and

¹⁷³ Supra note 169 (Jimoh Akinsola), p. 5.

¹⁷⁴ Supra note 172 (BIMCO and others).

¹⁷⁵ Supra note 172 (IMB). See also IMB 'Piracy and Armed Robbery against Ships Report' for the years 2015, 2014 and 2013, respectively.

¹⁷⁶ Supra note 172 (IMB).

¹⁷⁷ Supra note 172 (IMB).

¹⁷⁸ Supra note 70 (UNODC), pp. 47 – 50.

¹⁷⁹ Ibid; and supra note 173.

¹⁸⁰ Supra note 173; and supra note 23, p. 534.

¹⁸¹ Lisa Otto, "Maritime Crime in Nigeria and Waters Beyond Analysing the Period 2009 to 2013", *African Journals Online*, vol. 45, No. 1 (2015), pp. 22 & 23.

¹⁸² Ibid; and Supra note 70 (UNODC), pp. 50 and 51.

gas resources' in the oil-rich Niger Delta.¹⁸³ As Neethling observes, this agitation results from a 'feeling of alienation and marginalization on the part of some inhabitants of the Delta region' in the allocation of revenue and benefits accruing from the development of the abundant oil resources in the region.¹⁸⁴ Likewise, Aghedo and Osumah observe that the 'Niger Delta militancy was driven by the demands of remediation of environment and distributive equity'.¹⁸⁵ At this juncture, a discussion of the emergence of militancy in the Niger Delta is necessary.

Is it 'militancy', 'insurgency' or 'terrorism'? : Classification of Niger Delta Protests

Although some literatures refer to the violent protests over resource management and development in the Niger Delta interchangeably as 'militancy', 'insurgency' and / or 'terrorism', this research prefers ascription of the term 'militancy' to the violent protests.¹⁸⁶ English dictionary definitions of these terms supports this preference.

The Oxford Advanced Learner's Dictionary defines 'insurgency' as 'an attempt to take control of a country by force'.¹⁸⁷ It defines 'terrorism' as 'the use of violent action in order to achieve political aims or to force a government to act'.¹⁸⁸ Lastly, it defines 'militancy' as the fact of 'using, or willing to use, force or strong pressure to achieve your aims, especially to achieve social or political change'.¹⁸⁹

Hence, from the foregoing definitions as well as the purpose of the Niger Delta protests, that is, use of armed force and violence in order to pressure the government of Nigeria to attend to the socio-economic predicament on Niger Delta communities; the protests qualify to be classified as acts of 'militancy' and not 'insurgency' or 'terrorism'.

Historical Background of the Emergence of Niger Delta Militants

The agitation over equitable and sustainable development of Nigeria's oil resources in the Niger Delta, and distributive equity in the allocation of benefits, mainly revenue, accruing from the exploitation of the oil resources; as well as the complex politics surrounding them, have a long and deep history.

Aghedo and Osumah observe that earlier in time the Niger Delta communities engaged mainly in

¹⁸³ Supra note 7, p. 264.

¹⁸⁴ Supra note 167.

¹⁸⁵ Iro Aghedo and Oarhe Osumah, "Insurgency in Nigeria: A Comparative Study of Niger Delta and Boko Haram Uprisings", *Journal of Asian and African Studies* (February 2014), p. 5.

¹⁸⁶ Supra note 7, pp. 129 – 144; and Freedom C. Onuoha, "The Resurgence of Militancy in Nigeria's Oil-Rich Niger Delta and the Dangers of Militarisation", *Al Jazeera Centre for Studies*, (June 2016), pp. 1 - 9.

¹⁸⁷ Albert S. Hornby, Anthony Paul Cowie and Jack Windsor Lewis, *Oxford Advanced Learner's Dictionary, International Student's Edition*, 7th ed. (London, Oxford University Press, 1974), p. 775.

¹⁸⁸ Ibid, p. 1528.

¹⁸⁹ Supra note 187, p. 930.

peaceful protests involving adoption of ‘legal instruments, party formation, and dialogues in the 1970s’; in an attempt to compel the government to address the scourge of poverty and underdevelopment in the oil rich region.¹⁹⁰

Later, most significantly starting in 2006, the protests took a coercive dimension with revolts by armed militia who resorted to hostage-taking of expatriate employees of petroleum multinational corporations (MNCs) operating in the region; and attacks on oil facilities owned or operated by MNCs in the area.¹⁹¹

Nonetheless, concerns by the Niger Delta communities over development of the region preceded protests for equity in sharing of benefits derived from exploitation of the region’s oil resources. The 1966 revolt, led by Major Isaac Adaka Boro and the Niger Delta Volunteer Service (NDVS), ‘over the deprivation and neglect of the Ijaw areas of the Niger Delta’ marks the earliest instance of militancy demanding the development of the Niger Delta region.¹⁹² This insurrection demonstrates the long history of Nigeria’s government apparent neglect of the development needs of the Niger Delta region.

During the 1966 revolt militants demanded for separation or autonomy of the region because of the government of Nigeria’s apparent reneging on a pre-independence undertaking, following a recommendation by the 1958 Willink Commission established by the colonial government, of dedicating exceptional attention to the development needs of the Niger Delta region.¹⁹³ The Willink commission (‘the commission’) found that the region needed to be declared a special area for development because of its vulnerability to neglect owing to its ‘harsh geographical terrain that makes development initiatives more expensive and difficult’.¹⁹⁴

In response to the recommendation of the commission, Watts and Ibaba observe that ‘the Nigerian government established the Niger Delta Development Board (NDDDB). However, democratization, a fundamental requirement made by the commission for the enhancement of development and mitigation of ethnicity-based political domination, was not realized in post-independent Nigeria. Consequently, the Niger Delta was neglected and deprived.’¹⁹⁵ Initially, the leaders of the communities in the Niger Delta seemingly resorted to non-confrontational processes to compel the government to honour its pre-independence undertaking.¹⁹⁶ However,

¹⁹⁰ Supra note 185.

¹⁹¹ Ibid; and Ukoha Ukiwo, “From ‘Pirates’ to ‘Militants’: A Historical Perspective on Anti-State and Anti-Oil Company Mobilization among the Ijaw of Warri, Western Niger Delta”, *African Affairs*, vol. 106, No. 425 (2007), pp. 587 – 610, at p. 604.

¹⁹² Michael J. Watts and Ibaba Samuel Ibaba, “Turbulent Oil: Conflict and Insecurity in the Niger Delta”, *African Security*, vol. 4 (March 2011), p.7.

¹⁹³ Ibid, p.8; & endnote 17.

¹⁹⁴ Supra note 192, p.8.

¹⁹⁵ Ibid.

¹⁹⁶ Supra note 192, pp.8 and 9.

when the government remained adamant, apparently rendering these peaceful processes unsuccessful, insurrection broke out with demands for the separation or autonomy of the Niger Delta region.¹⁹⁷

The 1966 militancy failed to achieve the goal of capturing the government's attention to address the Niger Delta's development needs.¹⁹⁸ Similarly unsuccessful were the protests, both peaceful and violent, by Niger Delta communities that followed for years thereafter.¹⁹⁹ The communities, most noticeably the Ijaw, continued protesting against what they perceived as economic and political marginalization;²⁰⁰ alienation in the distribution of benefits accruing from petroleum resource exploitation;²⁰¹ destruction of livelihoods and the environment by wanton oil pollution;²⁰² widespread poverty;²⁰³ and the apparent general insensitivity of the government to the plight of the Niger Delta communities.²⁰⁴

Aghedo and Osumah observe that although the 'Niger Delta contains crude oil which since 1970 generated over US\$400 billion in revenue for Nigeria and more billions in profits for oil companies', the region's communities seem to endure devastating poverty and pollution.²⁰⁵ This 'paradox stirred militancy in the region which initially adopted legal instruments, party formation, and dialogue in the 1970s and armed rebellion in the early 2000s with hostage-taking and attacks on oil facilities.'²⁰⁶

The Rise of the Movement for the Emancipation of the Niger Delta (MEND)

The year 2006 marked an unprecedented shift in the level of mobilization and tact employed by the Niger Delta protesters. The apparently drastic activities of a new armed militant group referring to itself as the Movement for the Emancipation of the Niger Delta (MEND) was a game changer in the level of hostilities employed by protesters in the already turbulent socio-political environment of the Niger Delta. Importantly, Ukiwo observes as follows:

'In January 2006 militants belonging to the Movement for the Emancipation of the Niger Delta (MEND) attacked naval officers protecting a Shell complex near Warri (Nigeria's second most important oil city) and captured four expatriate workers. The group also claimed responsibility for an explosion on a Shell pipeline in the same area. While observers were still trying to unravel MEND's origins, it gunned down 14 soldiers deployed in the area and two civilians. Hopes that

¹⁹⁷ Supra note 192, pp.8 and 9.

¹⁹⁸ Ibid.

¹⁹⁹ Supra note 192, pp. 5 - 9.

²⁰⁰ Supra note 191 (Ukoha Ukiwo), pp. 591 – 596.

²⁰¹ Supra note 167.

²⁰² Integrated Regional Information Networks (IRIN), "Slippery justice for Niger Delta's polluted communities", (Port Harcourt, Nigeria) 30 November 2011.

²⁰³ Supra note 185.

²⁰⁴ Supra note 192, pp. 8 - 10.

²⁰⁵ Supra note 185.

²⁰⁶ Ibid.

the end of the crisis was in sight when the hostages were released at the end of January fizzled out in mid-February when soldiers bombed a barge allegedly used for illegal oil bunkering in the Ijaw village of Okerenkoko, near Warri. Although there was no loss of life, members of the community lost their properties and sources of livelihood. MEND retaliated by bombing Shell's oil terminal at Escravos, blowing up two pipelines and an oil tanker, and kidnapping nine expatriate staff of Wilbros, the American servicing company at the Shell facility. MEND also shot down a military aircraft sent on a surveillance mission. The crisis sent shockwaves through the world market as the resultant drop of around 500,000 barrels per day (bpd) in Nigeria's oil production forced up oil prices. In April 2007 MEND, which has grown stronger and continues to undermine the authority of the Nigerian state, claimed that it would soon stop Nigeria's oil exports.²⁰⁷

The rise of MEND has not only been attributed to the government's apparent indifference to the long neglected social, economic and political conditions of the Niger Delta, but also as a consequence of the government's long-time use of lethal force to suppress protests in the Niger Delta.²⁰⁸ MEND, which combines 'militant action with a political rationale'²⁰⁹, emerged in 2005 from Warri, a city in Delta State, as prominently an Ijaw militant group.²¹⁰ However, it later formed networks with several militant organizations in the Niger Delta region, consequently emerging as a 'pan-delta militant coalition',²¹¹ and took up 'agitations of the Niger Delta people for resources control'; equitable sharing of national revenue generated from exploitation of petroleum resources found in the region; compensation for oil pollution; 'and the wider struggles in Nigeria for democracy and good governance'.²¹²

For example, 'MEND declared it would embark on "Operation Black Mamba Strike" by 10 March 2006 if the federal government [would] not accede to the demand of the Niger Delta oil-producing states for 25 percent derivation revenues. The threat was in response to the stalemate at the National Political Reform Conference (NPRC), where northern delegates had objected to a recommendation to raise the percentage of revenue allocated on the basis of derivation from 13 to 25 percent. The objective of Operation Black Mamba was to cripple Nigeria's oil production and export capacity by preventing delivery of one million barrels per day. It also threatened to attack Shell if the company refused to abide by a court ruling which asked the oil giant to pay the sum of US\$1.5 billion to some communities affected by environmental degradation as a result of Shell's oil exploration.'²¹³

The High Court of Nigeria in Port Harcourt awarded the stated sum of US\$ 1.5 billion as

²⁰⁷ Supra note 191 (Ukoha Ukiwo), pp. 587 and 588.

²⁰⁸ Supra note 192, p.3.

²⁰⁹ Israel Adoba, "Why is Hostage Taking Prevalent in the Niger Delta? A Critical Analysis of the MEND Operations in Nigeria", Master of Arts thesis, Coventry University (August 2014), p. 27.

²¹⁰ Supra note 191 (Ukoha Ukiwo), p. 605.

²¹¹ Supra note 209.

²¹² Supra note 191 (Ukoha Ukiwo), p. 606.

²¹³ Ibid.

damages on 24 February 2006.²¹⁴ The High Court's judgment was issued to enforce a resolution of the House of Representatives directing Shell Petroleum Development Company of Nigeria Limited ('Shell Nigeria') to pay to the Ijaw community members, identifying themselves as 'Ijaw Aborigines of Bayelsa State', the said sum in 'damages/compensation for environmental degradation' of the community's territories by the company's oil exploitation activities.²¹⁵

Since 2006, particularly the period between 2006 and 2009, MEND confronted the Nigerian military and was largely responsible for major disruptions to oil production and related energy development activities in the Niger Delta.²¹⁶ The militia group once stated that its main objective is 'to destroy the capacity of the Nigeria government to export oil'.²¹⁷ Adoba notes that the militia group utilises 'economic sabotage as its fundamental method of operation'.²¹⁸ The militia group's *modus operandi* has involved other criminal activities in pursuit of its ultimate aim of liberating 'the Niger Delta and its people from the vicious grip of the multinational oil companies and a corrupt and irresponsible government'.²¹⁹ These have included 'hostage taking of foreign workers from the multinational oil companies ... and influential indigenes of the Niger Delta that have a symbiotic relationship with the oil companies and the Government',²²⁰ oil bunkering,²²¹ destruction of oil infrastructure,²²² and involvement in 'several aspects of extortion and buying peace' by oil companies and the government.²²³

Moreover, the *modus operandi* of MEND also includes piracy and armed robbery against ships with transnational links.²²⁴ In this regard, Jimoh importantly observes as follows:

'Another political dimension is the possibility of using illicit money from piracy activities to fund armed struggle in the Niger Delta. From 2006, the Movement for the Emancipation of the Niger Delta (MEND) fought for an increased share of the region's wealth and was responsible for some of the piracy attacks reported by IMB. Despite a multi-million dollar rehabilitation program, many of these militants still resorted to armed sea piracy after the amnesty granted by the federal

²¹⁴ *Chief (Dr.) Pere Ajuwa & Others -vs- Shell Petroleum Development Company of Nigeria Limited, SC.290/2007*. Available at <http://www.nigeria-law.org/LawReporting/2011/December%202011/16th%20December%202011/Chief%20Dr.%20Pere%20Ajuwa%200&%20Anr%20v%20The%20Shell%20Petroleum%20Development%20Company%20of%20Nigeria%20Ltd.pdf> (accessed on 12 November 2016).

²¹⁵ Ibid. Reportedly, as at October 2013, the judgment had not yet been executed as an appeal against the decision launched by Shell Nigeria was still pending in the Court of Appeal. See, Deborah D. Adeyemo, "Transitional Justice after the Military Regimes in Nigeria: A Failed Attempt?", Master of Laws Research paper, University of the Western Cape, (October 2013), p. 51.

²¹⁶ Supra note 170, p.5.

²¹⁷ Supra note 209, p.33.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Supra note 209, p.34.

²²¹ Supra note 209, pp.34 - 37.

²²² Supra note 186 (Freedom C. Onuoha), p. 4.

²²³ Supra note 209, p.34.

²²⁴ Supra note 169 (Jimoh Akinsola), p. 6.

government in 2009. While MEND may not have been a pirate group, it nevertheless established links between pirate gangs, some segments of Niger Delta militants, and powerful transnational mafias.²²⁵

However, the militia group's involvement in criminality in pursuit of its aim has invited controversy over the genuineness of its crusade of seeking social justice for the people of the Niger Delta.²²⁶ Jimoh observes that the involvement of a militia group, such as MEND, in maritime criminality has been necessitated and seemingly justified as a means of raising funds, albeit illicitly, to finance their social cause in the Niger Delta.²²⁷

Further, Adoba, while referring to arguments advanced by Bushra and Naanem, observes that the criminal activities have been necessitated by the inequalities and social injustices perpetuated by the oil MNCs and the State authorities and its institutions.²²⁸ The actions of these entities seemingly create a hostile society inhospitable to peaceful conflict resolution means. Thereby, resistance groups such as MEND find that the most effective strategy of drawing the government's attention to their predicament is to engage in criminality in the hope that it will compel the government to eventually heed their pleas in an attempt to put an end to the criminality.²²⁹

This strategy seemingly paid off because following MEND's violent and costly attack in June 2008 on 'a floating production storage and offloading vessels' ('the Bonga incident') located 120 kilometers offshore and owned by the Royal Dutch Shell, the government invited leaders of MEND for ceasefire negotiations.²³⁰ The ceasefire negotiations yielded an amnesty agreement. In this regard Ali makes the following observations about MEND's seeming success on getting the attention of the Nigerian government; and the conditions for the amnesty deal:

'The Bonga incident heightened global fears that even deep-sea energy installations were not safe from insurgents and terrorists. In a statement MEND affirmed that its grand objective was to disable oil export operations [. It] described the attack as a humiliating security breach for the Nigerian military, and warned that MEND's "next visit [would] be different." Soon after, the Nigerian government and MEND group leaders came to the negotiation table and ... entered into an amnesty pact. The arrangement involved insurgents laying down their weapons in return for monthly allowances and skills training. ... The amnesty led to the demobilization of insurgent forces and of the organizational structure of MEND, ...'²³¹

Ali further observes that by August 2010 militant attacks had decreased and 'many militants,

²²⁵ Ibid.

²²⁶ Supra note 209, p.34.

²²⁷ Supra note 169 (Jimoh Akinsola), p. 6.

²²⁸ Supra note 209, pp. 34 and 35.

²²⁹ Ibid.

²³⁰ Supra note 7, pp. 131 and 132. *See also*, Ursula Daxecker and Brandon Prins, "Financing Rebellion through Maritime Piracy", *Political Violence @ a Glance*, (August 2015).

²³¹ Supra note 7, pp. 132 and 133.

including some senior commanders, were embracing the amnesty program'.²³² Nonetheless, it would seem that the success of the amnesty program was short-lived, since as Ali notes 'the amnesty arrangement became tenuous thereafter, partly because the amnesty "cake" had not been shared among all actors (and certainly not in amounts satisfactory to all members of the insurgency). ...'²³³

Subsequently, splinter groups announced their intention to resume violent protests. 'So-called "third-phase militants", demanding to be included in the amnesty process', started launching sporadic attacks, particularly in Bayelsa state.²³⁴ UNODC has observed that some of these 'third-phase militants' could be 'new entries hoping to receive the benefits of demobilizing, including training and job placement.'²³⁵

The Rise of the Niger Delta Avengers (NDA) and other Armed Militant groups

The rise of a new armed militant group, namely, the Niger Delta Avengers (NDA), in 2016 has stocked fears of resurgence of militancy in the Niger Delta similar to that orchestrated by MEND between 2006 and 2009.²³⁶ This new militia group, whose origin is stated to be Warri South West local government area (LGA) in Delta state, reportedly emerged in or around January 2016.²³⁷ The militia group has publicly claimed that its first attack was on 10 February 2016 on the Bonny Soku Gas Line in Bayelsa state.²³⁸ Moreover, NDA attacks are believed to be responsible for the reduction of Nigeria's oil production capacity from about 2.2 million barrels per day, in or about February 2016, to about 1.4 million barrels per day, by the end of May 2016.²³⁹

NDA is stated to be pursuing the following objectives: to cripple Nigeria's economy; to force 'the government to negotiate on their demands in a "sovereign national conference"; to have re-allocation of ownership of oil blocks in favour of the people of the Niger Delta; to attain autonomy or self-determination for the Niger Delta.²⁴⁰ The objectives of the NDA seem to mirror the combined objectives of its predecessor militant groups discussed hereinabove, namely, MEND and the 1966 militants led by Major Boro and NDVS. It may be inferred from this situation that the previous militant groups may have been unsuccessful in achieving the main goal of improvement of the Niger Delta's socio-economic plight. Hence, the people of the Niger

²³² Supra note 7, p. 133, fn.95.

²³³ Ibid.

²³⁴ Supra note 70 (UNODC), p. 52.

²³⁵ Ibid.

²³⁶ Supra note 186 (Freedom C. Onuoha), pp. 3 – 5.

²³⁷ Dirk Steffen, "Who are the Niger Delta Avengers?: Lifting the veil on the Delta's militants", *Maritime Security Review*, 14 June 2016.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Ibid.

Delta, having learnt from experiences of MEND that use of violence was seemingly effective in getting the government's attention, once again decided to mobilize themselves and form yet other armed militant groups, including NDA, to pressure the government to attend to their pleas.

Steffen observes that within the first half of 2016, various armed militant groups including NDA had launched attacks on several oil MNCs infrastructure within the Niger Delta. He notes that their modus operandi has mostly involved destruction of petroleum development infrastructure. Nonetheless, he observes that at least one militant group has engaged in kidnapping of crewmembers of a ship. In particular, Steffen states as follows:

‘Some 21 attacks/clusters of sabotage took place against oil and gas infrastructure in the Niger Delta between 15 January and 10 June 2016. The NDA have directly claimed responsibility for 13 attacks/clusters of attacks between 10 February and 1 June 2016, nine of which were in the Warri/Escravos/Forcados area and four in the Brass/Nembe area. They have also retrospectively claimed responsibility for four further attacks between 15 January and 9 February (three in Warri/Escravos area and one in the Brass/Nembe area). Of the 17 attacks claimed by the NDA, 15 were in swamp/inshore areas, one was coastal (Forcados export pipeline on 10 February) and one was close offshore (Chevron Okan field valve platform). No one has been killed in the attacks on the oil and gas infrastructure; all targets were unmanned and unguarded. The NDA have not claimed responsibility for any kidnappings so far.

The hitherto unknown “Red Egbesu Water Lions” (Egbesu is an Ijaw war deity) claim association with the NDA and have also claimed responsibility for one attack in Bayelsa state (South Ijaw LGA), but there has been no reciprocal “acknowledgement” by the NDA. Two attacks (on 20 and 22 May –against the Escravos-Lagos gas line near Ogbe-Ijoh and Brass-Tebidaba pipeline), during the grace period of an NDA ultimatum are unclaimed. Additionally, on 9 June 2016, a Nigerian Petroleum Development Company crude oil pipeline line in Warri South West LGA was blown up by unidentified attackers.

“General Ben” of the Concerned Militant Leaders (CML) claimed responsibility for the kidnapping of five crew members from the LEON DIAS on 31 January 2016; he later also claimed association with the Indigenous People of Biafra (IPOB) movement (denied by IPOB and the Nigerian Army) and with NDA (not acknowledged by the latter). The NDA have not carried out (or claimed responsibility for) any maritime attacks, although they issued a warning to ship operators on 22 April 2016. In total, 15 individuals have been arrested so far by the Nigerian military in connection with the attacks, but their association with the NDA is unproven.²⁴¹

It is important to clarify that the foregoing observation is not in any way an absolution of NDA from involvement in piracy and kidnappings. Their participation in these maritime crimes is being monitored and studied. For instance, in the same article where the above quote was extracted, and also in a seemingly contradictory earlier article,²⁴² Steffen notes that NDA are suspected to be engaging in these illicit maritime activities. Similarly, Risk Intelligence, a company specializing in providing advice on security threats and risks, notes that there are

²⁴¹ Supra note 237.

²⁴² Supra note 169. In this article Steffen states that ‘NDA had already claimed responsibility for the hijacking of the tanker LEON DIAS on 29 – 31 January and the subsequent kidnapping of 5 crewmembers’.

concerns of NDA's possible involvement in piracy and kidnappings of crewmembers.²⁴³

2.1.2 The Nexus between Militancy in the Niger Delta and Piracy and Armed Robbery against Ships in Nigeria and the Greater Gulf of Guinea

Incidences of piracy and armed robbery against ships in the Gulf of Guinea mostly have their origin in Nigeria's Niger Delta.²⁴⁴ Most of these attacks from the Niger Delta have been linked to the armed militant groups protesting onshore against the predicament of the oil-rich region and its people, starting with MEND.²⁴⁵ Although this research focuses on MEND as a major actor in development of the current problem of piracy and armed robbery against ships in Nigeria and the greater Gulf of Guinea, it does not purport to link all incidents of these forms of maritime criminality in the entire Gulf of Guinea to MEND.²⁴⁶ This research acknowledges the fact that there are other active militant groups, albeit comparatively smaller, in neighbouring countries, including Cameroon,²⁴⁷ and other organized criminal networks operating in or with links to nearby countries such as Benin, Cote d'Ivoire, Togo, Guinea and Sierra Leone;²⁴⁸ that have been perpetrating piracy and armed robbery against ships in the waters off the coasts of these countries and the wider Gulf of Guinea area.²⁴⁹

• Initial Phase (1990s – about 2007): Armed Robbery against Ships

Although, piracy in the Gulf of Guinea dates back to the late 1990s apparently predating the emergence of MEND and NDA, nonetheless, it is reported that most of the attacks on vessels, until the period between 2005 and 2007, mainly constituted of incidents of armed robbery against ships.²⁵⁰ In this regard it is observed that two-thirds of 'attacks during this period took place in ports and anchorages, interspersed with a limited number of robberies in the territorial sea'.²⁵¹ The modus operandi of the armed robbers usually involved incidents of petty crime including: attacking and dispossessing 'shipping crew of cash, cargo and valuable, when the vessel is at anchor or in harbour, but mostly close to shore'²⁵²

Ali refers to this phase of attacks as 'opportunistic sea robbery'. He clarifies that the description of these phase of attacks 'as "opportunistic" is not about the capability of the actors but to

²⁴³ Risk Intelligence, "A guide to militant, ex-militant and activist groups in the Niger Delta", 8 June 2016.

²⁴⁴ Supra note 7, pp. 135 - 147.

²⁴⁵ Supra note 70 (UNODC), pp. 4 and 47.

²⁴⁶ Supra note 24, p. 75. Also, some pirates reportedly come from Angola's Cabinda region which is stated to experience resource- based conflicts similar to the Nigeria's Niger Delta. See, supra note 10 (Freedom C. Onuoha), p. 8.

²⁴⁷ Supra note 7, p. 146.

²⁴⁸ Supra note 7, pp. 137 - 147.]. See also, Supra note 70 (UNODC), pp. 50 and 51.

²⁴⁹ Supra note 7, pp. 135 - 147.

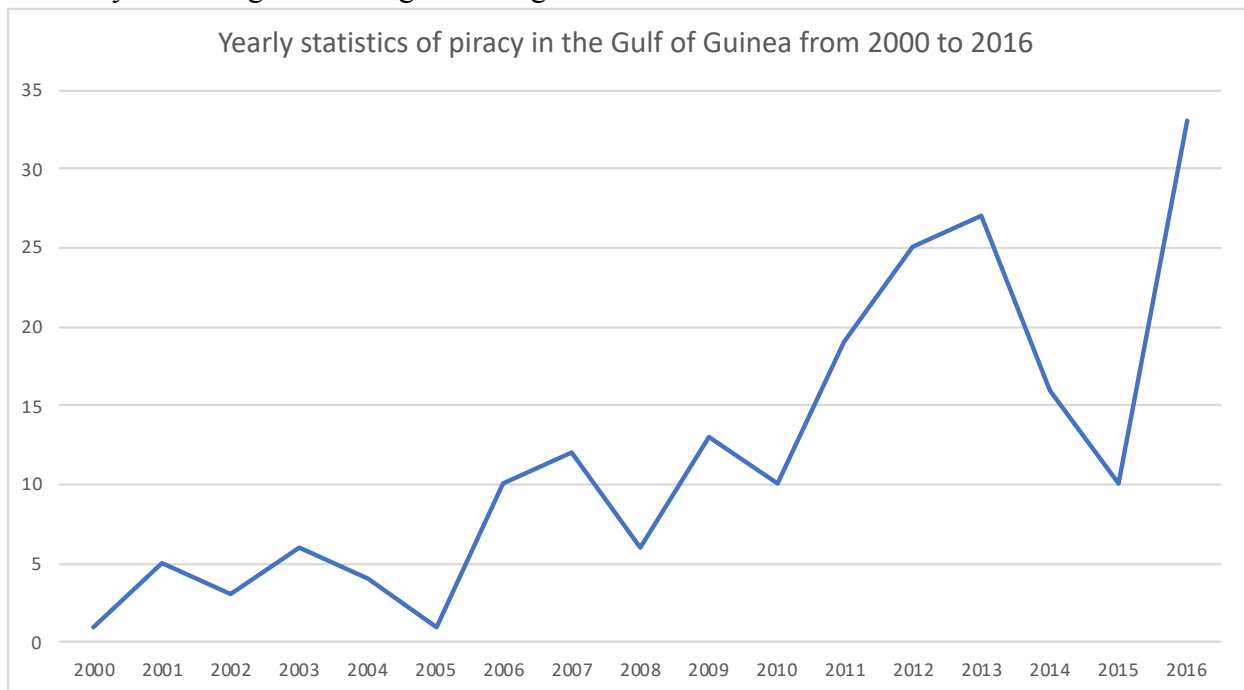
²⁵⁰ Supra note 7, p. 135.

²⁵¹ Ibid.

²⁵² Supra note 10 (Freedom C. Onuoha), p. 5; and Supra note 23, p. 534.

highlight the fact that robberies were conducted as subsidiary activities.²⁵³ The attention of [the militants] during this period was on attacking offshore platforms; some ships, however, [would be] hijacked and crews kidnapped for ransom'.²⁵⁴

At least from 2000, relevant statistics have indicated that in the Gulf of Guinea incidents of armed robbery against ships are more than those of piracy.²⁵⁵ Nonetheless, since 2006 a marked increase in piracy cases, compared to previous years, has been recorded.²⁵⁶ This fact is demonstrated in the table herein below. As discussed above in this chapter, the marked increase of piracy in the Gulf of Guinea since 2006, coincides with the unprecedented increase in armed militancy in the Niger Delta region of Nigeria.



(Graph developed using statistics obtained from IMO situational reports available on GSIS)

- **Current Phase (2010 – to present date): Piracy and Armed Robbery against Ships**

Daxecker and Prins, quoting statistics from the International Maritime Bureau (IMB) Piracy Reporting Center, observe that while piracy attacks generally in the Gulf of Guinea dropped by approximately 75 percent between 2008 and 2011, piracy incidents started escalating in the

²⁵³ See also, supra note 70 (UNODC), p. 47.

²⁵⁴ Supra note 7, p. 135.

²⁵⁵ International Maritime Organization Global Integrated Shipping Information System (IMO GISIS), *Piracy and Armed Robbery against Ships: Recent Incidents* (IMO website, 2016).

²⁵⁶ Ibid.

waters off the coast of Nigeria starting 2010.²⁵⁷ Similarly, as stated hereinabove, the UNSC observed that since 2010 incidents of piracy and armed robbery against ships in the Gulf of Guinea have risen significantly.²⁵⁸

Ali notes that in 2010 there was a transition from militancy to ‘full-scale piracy’ in Nigeria, which he refers to as a ‘post-amnesty phenomenon’, following the withdrawal of some militant entities from the amnesty pact of 2010, and further disintegration of the pact thereafter.²⁵⁹ Ali further makes the following observations:

‘Attacks became more prevalent from 2010 through to 2013. They also became more brazen, as indicated by the chasing of and firing on Elbtank Germany for over an hour and the shadowing of Cape Bon for two days, in February and March 2011, respectively.’²⁶⁰

The modus operandi of the pirates and armed robbers during this time was apparently more advanced compared to that of the armed robbers during the initial phase, that is, prior to 2008. By 2011 piracy activities included kidnapping for ransom, arms smuggling, hijacking of oil vessels and oil cargo theft.²⁶¹ However, pirates seemed more interested in hijacking oil tankers and theft of its oil cargo, an activity commonly referred to as ‘petro-piracy’ or ‘oil piracy’.²⁶²

Although the modus operandi of Nigerian and Gulf of Guinea pirates seems similar to that of the Somali pirates, that is, hijacking of vessels; the two differ in terms of aim and manner of implementation.²⁶³ Somali pirates mainly hijacked vessels with the aim of kidnapping the crew for ransom.²⁶⁴ Hence, it was paramount to keep the crewmembers alive and safe in order for them to receive the ransom payments.²⁶⁵ However, in the case of vessel hijacking by Gulf of Guinea pirates where theft of the cargo is the target, the pirates view vessel crew as an impediment which ought ‘to be offloaded as quickly as possible. As a result, many of these attacks involve violence’.²⁶⁶

The preference of pirates and armed robbers for targeting and attacking vessels carrying oil is driven by the booming black market for fuel in West Africa.²⁶⁷ Notably, it is reported that Nigeria has a thriving black market in the Niger Delta, ‘which is reported to involve officials at

²⁵⁷ Supra note 230 (Ursula Daxecker and Brandon Prins).

²⁵⁸ Security Council resolution 45 (2012), para. 5.

²⁵⁹ Supra note 7, p. 137.

²⁶⁰ Ibid.

²⁶¹ Supra note 23, p. 534.

²⁶² Supra note 70 (UNODC), p. 45; supra note 181, pp. 16 – 20; and supra note 165, p. 29.

²⁶³ Supra note 165, p. 29.

²⁶⁴ Supra note 70 (UNODC), pp. 49 and 50.

²⁶⁵ Charles Marts, “Piracy Ransoms – Conflicting Perspectives”. Available at http://oceansbeyondpiracy.org/sites/default/files/ransom-charlie_marts.pdf, (accessed on 19 November 2016).

²⁶⁶ Supra note 70 (UNODC), p. 50.

²⁶⁷ Supra note 70 (UNODC), p. 45.

all levels of government, selling oil to customers across Nigeria and in neighbouring countries'.²⁶⁸ Pirates, especially those operating near Nigeria's coastal waters, for instance, along the Bight of Benin; seem to dispose of their stolen oil cargo in the Niger Delta's black market.²⁶⁹ Almost all of these pirates are apparently Nigerian.²⁷⁰

Moreover, the seeming high traffic of vessels containing imported refined petroleum products approaching Nigeria's coast and the consequent congestion of these vessels at the coast, provides an opportunity for pirates and armed robbers to steal the petroleum products and sell them in the black market.²⁷¹ Although Nigeria is the largest oil producer in the Gulf of Guinea,²⁷² it has significantly low refinery capacity.²⁷³ Therefore, crude oil from Nigeria is exported to foreign countries for refining, then imported into the country and sold at government subsidized rates.²⁷⁴ UNODC observes that almost all of the petroleum fuel utilized in the country is imported.²⁷⁵ It has been observed that the process of importation of refined petroleum to Nigeria provides 'ample opportunity for corruption, theft and piracy of all sorts'.²⁷⁶

Nonetheless, in May 2016 it was reported that the Gulf of Guinea pirates were increasingly adapting to kidnapping for ransoming of commercial vessels' sailors rather than stealing oil cargoes.²⁷⁷ This has been attributed to two main reasons, first, the fact that tumbling global oil prices experienced around that time made crude oil harder to sell and less profitable for the pirates.²⁷⁸ Second, improved patrolling in the Gulf of Guinea, especially of Nigerian waters,²⁷⁹ resulted in a significant decline in the hijacking of oil vessels.²⁸⁰ Reportedly, the pirates had to abandon hijacking of oil vessels and turn to kidnappings, since the latter is faster to accomplish than the former; and also fetched an attractive sum of money as 'ransom payouts were as high as \$400,000 for a single incident'.²⁸¹

The increasing incidents of piracy and armed robbery against ships in Nigeria's Niger Delta quickly interspersed to several neighbouring countries, including Benin, Cameroon, Togo and

²⁶⁸ Georgina Nicoll, "Combating Piracy and Oil Theft in Nigeria", Maritime Security Challenges Conference, 22 May 2012.

²⁶⁹ Supra note 70 (UNODC), p. 50.

²⁷⁰ Ibid.

²⁷¹ Supra note 27, p. 92.

²⁷² Nigeria accounts for 47% of the Gulf of Guinea's total oil supply. See, Chatham House, "Maritime Security in the Gulf of Guinea", Report of the conference held at Chatham House, London, UK, 6 December 2012, p. 1.

²⁷³ The Maritime Executive, "Oil Soaked Pirates in Gulf of Guinea", 15 March 2014.

²⁷⁴ Ibid.

²⁷⁵ Supra note 70 (UNODC), p. 46.

²⁷⁶ Supra note 273. See also, supra note 70 (UNODC), pp. 45 & 46.

²⁷⁷ The Maritime Executive, "West African Pirates switch to Kidnapping", 3 May 2016.

²⁷⁸ Jonathan Saul (Reuters), "West Africa pirates switch to kidnapping crew as oil fetches less", 3 May 2016.

²⁷⁹ Oceans Beyond Piracy (OBP), "The State of Maritime Piracy 2015: Piracy and Robbery against Ships in the Gulf of Guinea", 2015.

²⁸⁰ Supra note 278.

²⁸¹ Ibid.

Cote d'Ivoire.²⁸² Further, the organization of piracy and armed robbery against ships criminal networks expanded. The criminal networks, mostly from Nigeria's Niger Delta,²⁸³ developed transnational links within the region and overseas.²⁸⁴ This has been the case especially for piracy involving oil theft.²⁸⁵ In this regard Onuoha importantly observes as follows:

'It is believed that a powerful transnational mafia – people with vast knowledge of the operation of the oil industry – is financing and facilitating the operations of pirates that target oil tankers, by giving them vital information such as names of ships, the course they will take, value of cargo and extent of insurance cover ...'²⁸⁶

Furthermore, Ali seems to place the time of emergence of piracy transnational networks in the Gulf of Guinea to be about the year 2011, as evidenced by the hijacking of a vessel named Duzgit venture.²⁸⁷ In this respect the following observation by Ali is instructive:

'The second piracy trend that became apparent in the Benin onslaught was the emergence of a growing transnational criminal network in the Gulf of Guinea. This is evident from the hijacking of Duzgit Venture. ... The captain was forced to sail the vessel all the way to the coast of Gabon, where the pirates planned to transfer the oil into a barge. When the pirates failed to meet the barge, the captain was forced to sail off [to] Warri, Nigeria, to lighten the cargo. After a series of unsuccessful attempts to do so, the pirates disembarked into fast boats, kidnapping the captain and another crewmember. Clearly, the pirates were in cahoots with other actors about four thousand kilometers away from the point of hijack, and to meet them they sailed the commandeered ship across the coastal waters of five states.'²⁸⁸

Transnational dimensions of current piracy and armed robbery incidents in Nigeria

Oil bunkering, one of the major crimes that fuels piracy and armed robbery against ships in the Niger Delta and the wider Gulf of Guinea region, reportedly involves actors beyond Nigeria and the region.²⁸⁹ Bunkering is defined as theft and sale of crude oil in big quantities, and it can be done on land or at sea.²⁹⁰

Sea-based bunkering, which involves theft of oil from hijacked tankers, is one of the factors sustaining piracy and armed robbery against ships in the Niger Delta and beyond.²⁹¹ Montclos observes that bunkering in the Niger Delta is an organised 'international business where

²⁸² Supra note 7, pp. 137-144. See also, supra note 165, p. 31.

²⁸³ Supra note 70 (UNODC), p. 47.

²⁸⁴ Supra note 7, pp. 137 - 140.; and Supra note 23, p. 534.

²⁸⁵ Supra note 10 (Onuoha), p. 6. See also, supra note 165, pp. 28 – 35, at p. 32.

²⁸⁶ Supra note 10 (Onuoha), p. 6.

²⁸⁷ Supra note 7, p. 140.

²⁸⁸ Ibid. See also supra note 70 (UNODC), p. 50.

²⁸⁹ Supra note 23, p. 534.

²⁹⁰ Ibid; and Matthew Pickin, "Effects of Illegal Oil Bunkering in Nigeria", p. 1. Available at https://www.academia.edu/4911647/Effects_of_Illegal_Oil_Bunkering_and_Piracy_in_Nigeria?auto=download. Accessed on 13 December 2016.

²⁹¹ Ibid (Pickin), pp. 5&6.

Lebanese or Eastern European “traders” finance tankers and export oil to [black market] refineries in countries like Ivory Coast or Senegal’.²⁹²

The ‘Nigerian partners’ in the oil bunkering business are able to successfully carry out theft of oil products from hijacked vessels owing to collusion of local coastal communities, who, in exchange of a bribe’, aid and abet the perpetrators in accessing oil theft opportunities. Also, complicit Navy officials play a role when they accept bribes to allow the perpetrators to carry out oil theft from hijacked vessels, which can take days, without disturbance.²⁹³

Moreover, Admiral Osinowo of the Nigerian Navy observes that although ‘Nigerian nationals have been most involved in the region’s piracy, other Africans, Eastern Europeans, and Filipinos have been arrested in [the Gulf of Guinea] waters for crude-oil theft, illegal bunkering, and attacks on shipping. In March 2014, ... [two] Britons, employees of a UK-based maritime security firm, were arrested with 12 Nigerians for attempting to offload crude [oil] from a vessel that itself had been seized for stealing oil’.²⁹⁴

2.2 THE LINK BETWEEN GULF OF GUINEA PIRACY AND ARMED ROBBERY AGAINST SHIPS; AND LACK OF ONSHORE GOOD GOVERNANCE IN NIGERIA’S NIGER DELTA

As stated herein above, most incidences of piracy and armed robbery against ships in the Gulf of Guinea originate from Nigeria’s Niger Delta.²⁹⁵ A greater proportion of these attacks from the Niger Delta have been linked to the armed militant groups protesting onshore against the predicament of the oil-rich region and its people.²⁹⁶

Bad governance underlies the outbreak and persistence of piracy in the Gulf of Guinea region. Despite vast petroleum resource endowment of most of the Gulf of Guinea States, most of these countries ‘parade worst indices of human development such as high unemployment and poverty generated by bad governance’.²⁹⁷ The decline of opportunities for ‘legitimate livelihood amidst affluence’ and the attendant social and economic inequalities makes recruitment for violent conflicts or participation in criminality, including piracy, an attractive option for some of the

²⁹² Supra note 23, p. 534.

²⁹³ Supra note 23, pp. 534 & 535.

²⁹⁴ Supra note 6 (Osinowo).

²⁹⁵ Supra note 7, pp. 135 - 147.

²⁹⁶ Supra note 70 (UNODC), pp. 4&47.

²⁹⁷ K. Wardin and D. Duda, “Characteristics of Piracy in the Gulf of Guinea and its Influence on International Maritime Transport in the Region”, in *Marine Navigation and Safety of Sea Transportations: STCW, Maritime Education and Training (MET), Human Resources and Crew Manning, Maritime Policy, Logistics and Economic Matters*, Adam Weintrit and Tomasz Neumann, eds. (Taylor & Francis Group, LLC: Boca Raton, London, New York, Leiden, 2013), Chapter 4, pp. 177 – 184, at p. 181.

young people in the region.²⁹⁸

Instructively, Ali makes the following observation:

‘It is important to note that the difficulty in responding to maritime security threats is really a manifestation of land-based governance limitations. ... good order at sea is a reflection of good order within States, and conversely, disorder within States will most likely find expression in maritime security threats, or at the very least, promote the escalation of such threats. ... In essence, good governance creates order within a State, thereby enabling the delivery of effective security’.²⁹⁹

It follows that bad governance ashore in Nigeria’s oil-rich Niger Delta which results in conflicts over resources and the consequent rise of armed militia; and the Nigerian government’s apparent inability to effectively tackle and quell the conflicts, has resulted in weak security in the Niger Delta and made the area a conducive environment for the growth of runaway criminality onshore.³⁰⁰ This onshore criminality has eventually spilled over to the sea, as evidenced by the persistent problem of piracy and armed robbery against ships in the Gulf of Guinea, most of which is linked to resources conflict in the Niger Delta and predominantly linked to Nigerian pirates.³⁰¹

As the above discussions have demonstrated, a link exists between maritime security problems of piracy and armed robbery against ships in the Gulf of Guinea, and lack of good governance onshore in Nigeria’s Niger Delta. This section will critically discuss the justification provided by communities for resort to piracy owing to governance-related socio-economic problems; and thereafter provide a critical appraisal of governance in the Niger Delta and its contribution to the problem of piracy and armed robbery against ships in the Gulf of Guinea.

A Critical Appraisal of Governance in Nigeria’s Niger Delta; and Piracy and Armed Robbery against Ships in the Gulf of Guinea

Piracy, armed robbery against ships and other maritime security problems in the Gulf of Guinea primarily derive from lack of good governance, comprising weak and bad governance, that results from ‘precarious legal frameworks, poor law enforcement, and widespread corruption in the region’.³⁰²

In Nigeria federal, state and local authorities have been determined to be part of the problem.³⁰³ Instructively, Dambazau describes the governance problem in Nigeria as follows:

²⁹⁸ Ibid.

²⁹⁹ Supra note 7, pp. 259&260.

³⁰⁰ Supra note 7, pp. 131 - 144.

³⁰¹ Supra note 70 (UNODC), pp. 4, 47 & 50.

³⁰² Supra note 34, p. 3; Supra note 7, pp. 259-265; and Supra note 10, p. 8. See also, supra note 70 (UNODC), p. 54.

³⁰³ Supra note 34, p. 3.

‘While several factors could have contributed to Nigeria’s security situation today, there is no doubt that poor governance and lack of effective leadership at all levels of governance are central in attempting to explain the problem. About fourteen years after the return of democracy in 1999, Nigeria’s democratic transition does not appear to be consolidating due to lack of transparency, accountability, rule of law, and the genuine demonstration of leadership capacity to protect fundamental human rights.’³⁰⁴

This subsection will provide a critical analysis of the governance problems underlying piracy and armed robbery against ships in the Gulf of Guinea region, with a focus on Nigeria, which is reportedly the spawning ground of pirates and armed robbers in the region.³⁰⁵

Piracy and armed robbery against ships in Nigeria are mostly attributable to the turbulence in the Niger Delta, owing to widespread and deeply-seated resentment the local communities harbor against the government for long-standing social exclusion and economic marginalization of the oil-rich area. Charlebois precisely describes the socio-economic situation in the Niger Delta as follows:

‘The Niger Delta is located in the south-eastern part of Nigeria, bordering the Gulf of Guinea in the Atlantic Ocean, and constitutes nine of the 36 states in Nigeria ... It is home to approximately 30 million people. The vast riches of petroleum resources in the Niger Delta lie in stark contrast to the extremely high levels of poverty of those living in the area. The extraction of petroleum resources constitutes roughly 80% of federal government revenues, yet barely a fraction of this is reinvested in the area while extensive environmental damage from the oil industry threatens the lifestyles of the Niger Delta inhabitants ... Corruption, theft, pollution, unemployment, and bad governance have created levels of frustration that have increasingly resulted in attacks on shipping and offshore petroleum activities ... Most people living in the Niger Delta have been stranded and left behind by decades of oil bonanza.’³⁰⁶

2.2.1 Bad Governance in Nigeria and Piracy and Armed Robbery against Ships in the Niger Delta

Bad governance in Nigeria has been characterized by lack of transparency, accountability, and rule of law in public administration.³⁰⁷ This has resulted in the weakening of government institutions and leadership thereof, hence enabling corruption and impunity to thrive.³⁰⁸ The weakening of government institutions owing to corruption has evidently left the government vulnerable to capture by criminal elements, particularly in respect of administration over the

³⁰⁴ Abdulrahman Dambazau, “Nigeria and Her Security Challenges”, *Harvard International Review*, vol. 35, No. 4 (Spring 2014).

³⁰⁵ Supra note 7, p. 129.

³⁰⁶ Jamie Charlebois, *Pirate Economics: The Economic Causes and Consequences of Contemporary Maritime Piracy in Sub-Saharan Africa* (Halifax, Dalhousie University, 2012), p. 23.

³⁰⁷ Supra note 304.

³⁰⁸ Ibid.

country's vast oil resources and law enforcement.

- **Implications of Corruption on Governance and Maritime Security in Nigeria**

Corruption in Nigeria's oil sector and among government officials responsible for law enforcement has negatively impacted maritime security in the country.

Firstly, as discussed in section 2.1 above, corruption led to the mismanagement of Nigeria's oil sector, and eventually the emergence of protesting armed militant groups that began attacking oil cargo and other commercial vessels off the coast of Nigeria and spread to other areas in the wider Gulf of Guinea region. As earlier discussed, the mismanagement led to the systemic socio-economic marginalisation of the Niger Delta by previous governments and hence widespread poverty as well as social and environmental devastation was experienced in the region. This led to protests by communities and subsequently the emergence of armed militant groups that engaged in oil theft and smuggling, rationalizing their criminal activities as 're-appropriation of wealth and as a form of protest'.³⁰⁹

Corruption in Nigeria's oil sector has resulted in bad governance as indicated by undermining of transparency, accountability and the rule of law. Regarding lack of transparency, in its 2013 report assessing transnational organised crime in West Africa, UNODC noted that in 2012 the Nigerian parliament had uncovered a massive fuel subsidy fraud.³¹⁰ As noted in subsection 2.1.2 above, although Nigeria is the largest oil producer in West Africa, it imports almost all of its domestically consumed oil-based fuel. This is owed to the country's insufficient crude oil refining capacity.³¹¹ Thereby, crude oil from the country is exported to refineries in foreign States and then imported back into Nigeria as refined petroleum.³¹² The refined petroleum is then sold at government-subsidized rates.³¹³

Pursuant to an unjustifiable steep increase in the amount the government spent on subsidies between 2009 and 2011, the Nigerian parliament conducted investigations on the national fuel subsidy in 2012. The findings of the investigations revealed massive embezzlement and fraud, symptomatic of immense corruption, in the management of the national fuel subsidy program. UNODC captured these findings as follows:

³⁰⁹ Supra note 70 (UNODC), pp. 45 & 46.

³¹⁰ Ibid.

³¹¹ Supra note 70 (UNODC), p. 46.

³¹² Supra note 273.

³¹³ Ibid.

‘Between 2009 and 2011, the amount the government paid in subsidies tripled, from US\$5 billion to more than US\$15 billion. Clearly, legitimate consumption did not increase at this pace during this period...

From January through April 2012, the Nigerian Parliament conducted a series of investigations. It found:

- The number of fuel importers increased from six in 2006 to 140 by 2011.
- Many of these new “importers” had no permits, no storage tanks and no experience in oil trading.
- While Nigerians consumed only 35 million litres of fuel per day, subsidies were being provided for 59 million litres per day.
- US\$6 billion had been defrauded from the country’s Petroleum Support Fund in 2011.

A very wide range of techniques were used to defraud the fund, from crude embezzlement to methods that may be technically legal. For example, it appears that some importers collected the subsidy through “round-tripping”: i.e. exporting and re-importing the same fuel.³¹⁴

Secondly, corruption in Nigeria’s Niger Delta has been demonstrated by the complicity and /or compromise of government officials who subvert crackdown and enforcement of judicial measures and criminal sanctions against criminal networks behind piracy and armed robbery against ships.³¹⁵ This has negatively impacted the country’s maritime security by undermining accountability and promoting impunity.³¹⁶ Montclos captures the problem of complicity of security agents and political leaders in the Niger Delta as follows:

‘Moreover, the role of the Nigerian government is quite ambiguous, since some of its members collude with the rebels. Security forces (Police, Navy, and Army) do not only attack the militants; they also participate in bunkering and piracy. As for the corrupt governors of the oil-producing Rivers, Bayelsa and Delta States, they use gangsters to get rid of opponents, yet fund the dominant People’s Democratic Party (PDP). In other words, the Nigerian state is very active because it is itself involved in maritime piracy.’³¹⁷

Similarly, Barrios observes as follows regarding State security agents’ complicity, impunity, lack of rule of law and accountability in the Niger Delta:

‘State authorities indirectly or directly bear responsibility for the lack of rule of law due to their collusion with the criminal networks. These networks have hierarchies and godfathers, which are run in parallel to (or as part of) official structures. Andrew Mwangura, General Secretary of the Seafarers Union of Kenya, has called them ‘the enablers’, [that is] individuals who help strategise, conceive and sponsor the attacks through mafia-like networks. Criminal activities are then broadened to include oil and drug trafficking and money laundering. Although the public authorities are often aware of these ‘enablers’, they all too frequently operate undisturbed for

³¹⁴Supra note 70 (UNODC), p. 46.

³¹⁵Supra note 70 (UNODC), p. 50.

³¹⁶Supra note 23, p. 538.

³¹⁷Ibid.

years and occasionally move abroad (including to the EU) to seek and find refuge for their fortunes ... and themselves.³¹⁸

2.2.2 Weak Governance in Nigeria and Piracy and Armed Robbery against Ships in the Niger Delta

Unlike bad governance which, as demonstrated in foregoing discussions, results from deliberate illegal activities or lack of political will to take action against the subversion of good governance principles in public leadership and administration, it would seem that weak governance emanates from the inability or diminished capacity of State authorities acting in good faith, to effectively enforce the law thus comprising the State's ability to promote accountability and eradicate impunity.³¹⁹ Such weak governance, demonstrated by weak law enforcement, has been attributed to inadequate legal frameworks; lack of appropriate technical skills and know-how; and lack of appropriate infrastructure.³²⁰

The challenge of weak law enforcement in tackling maritime security problems in the Niger Delta seems persistent to date as indicated by the following recent observation:

‘The government counter-offensive is taking place on water as well as land. On 20 May, President Buhari restated to the Chief of Naval Staff (CNS) his directive to deal ruthlessly with the NDA and other militant groups responsible for the continuing attacks on oil and gas installations in the Delta. Translating the presidential directive into immediate military success will not be easy, given the Nigerian Navy's lack of suitable vessels. Last year, CNS Vice-Admiral Ibok-Ete Ekwe Ibas lamented that the navy is unable to fulfill its constitutional obligation to defend the country's territorial waters because more than 50 percent of its fleet is in disrepair due to negligence... Not much has changed since then, as the National Economic Council confirmed in May 2016 that “the government does not have adequate operational vessels to patrol and secure the network of pipelines in the Niger Delta.” ... Therefore, deploying the military into the region's difficult terrain without the right mix of equipment and forces could turn a minor assignment into a monumental disaster.’³²¹

Further, Nigeria suffers judicial incapacities in tackling piracy and armed robbery against ships. First, it currently lacks legislation that specifically criminalises and penalises piracy and armed robbery against ships.³²² However, the constituent components of these crimes are criminalised in its federal penal law consisting of the Penal Code (Northern States) Federal Provisions Act (No. 25 of 1960) that applies to the Northern States; and the Criminal Code Act (1916) (Chapter 77),

³¹⁸ Supra note 34, p. 3.

³¹⁹ Supra note 21, pp. 9&10; and supra note 34, p. 3.

³²⁰ Ibid.

³²¹ Supra note 186 (Onuoha).

³²² UNODC, *Regional Programme for West Africa 2016 – 2020* (Dakar, 2016), p. 60.

which applies to the Southern States.³²³ This has resulted in ineffective prosecution of pirates and armed robbers, weak penalties and judicial processes.³²⁴

Furthermore, it has been observed that the lack of prosecution powers of the navies, coast guards and other maritime security agencies of West and Central African States, coupled with insufficient numbers of judicial officers has impeded effective realisation of criminal accountability of pirates and armed robbers who are arrested. In this regard, Osinowo, a Nigerian Rear Admiral, makes the following observations regarding limited law enforcement capacity in the regional States and its particular implication in law enforcement in the Niger Delta:

In many [S]tates, navies, coast guards, and maritime security agencies lack prosecution powers and rely on the police and other agencies for such a vital element of the enforcement cycle. In the restive Niger Delta, for example, trial for many suspects of oil theft and piracy comes several months after arrest due to insufficient availability of judicial officers. During that time, challenges in the preservation of evidence and limitations of detention periods often weigh in favor of the suspects who regain freedom soon after arrest.³²⁵

CONCLUSION

This chapter has provided a precise chronological history of the development of piracy and armed robbery against ships in the Gulf of Guinea. This account has concentrated on the connection between the development of these maritime crimes and militancy in the Niger Delta, particularly from 2006 to date. The focus of the foregoing discussions on maritime criminality and militancy in the Niger Delta was influenced by the strategic role of the Niger Delta as the epicentre of piracy and armed robbery against ships in the Gulf of Guinea.

Moreover, this chapter has demonstrated that the spike of incidents of piracy and armed robbery against ships in the Gulf of Guinea was linked to the transition in the Niger Delta from militancy to full-blown piracy following the disintegration of the amnesty pact of 2010. That year the Government of Nigeria offered amnesty to militants of the Niger Delta who would cease hostilities against petroleum MNCs and their infrastructure. Nigeria's economic mainstay is

³²³ OBP, "Nigeria Piracy Law". Available at <http://oceansbeyondpiracy.org/piracy-law-database/west-africa/nigeria> (accessed on 6 December 2016). *See also*, International Labour Organization (ILO), "Nigeria> Criminal and penal law". Available at http://www.ilo.org/dyn/natlex/natlex4.listResults?p_lang=en&p_country=NGA&p_count=255&p_classification=01.04&p_classcount=9 (accessed on 6 December 2016).

³²⁴ *Supra* note 6 (Osinowo).

³²⁵ *Ibid.*

crude oil exploitation and the militants' attacks were costing the government immense financial losses resulting from interruptions of oil-development activities.

Despite the West African region having several impressive suppression programmes for piracy and armed robbery against ships in the Gulf of Guinea, the progressively deteriorating maritime security situation in the region reveals that the ongoing interventions have failed to effectively and sustainably contain the maritime criminality rampaging the Gulf of Guinea.

First, at the basic level, the littoral States in whose maritime spaces the crimes of armed robbery against ships and piracy are committed have yet to start prosecuting the perpetrators of these crimes, owing mainly to absence of legislation specifically proscribing these crimes and providing for their punishment. 'This in itself creates a vicious cycle, as noted by Ian Millen, CEO of Dryad Maritime, ... "You're not seeing the pirates and criminals captured and brought to account. That's a risk-reward ratio that is pretty good for the pirates," ...' ³²⁶

Second, despite the above-discussed legal challenge, the Gulf of Guinea littoral States also suffer from a myriad of financial and logistical limitations that have compounded their ineffectiveness in tackling maritime criminality off their coasts. Chief among the limitations is inadequate maritime capacity. Hasan and Hassan observe as follows regarding the wanting maritime security regulation and infrastructural situation of most Gulf of Guinea littoral States:

'... In many cases, pirates have been found to be better equipped than naval patrols. Pirates have been able to exploit this weakness and stage attacks without fear of government intervention. The lack of effective maritime policies among the Gulf of Guinea states has also allowed pirates to operate successfully. Most of these states have inadequate policies on maritime security and lack adequate anti-piracy legislation authorising the enforcement of legal actions against piracy and the prosecution of pirates. At the bilateral level, efforts have primarily focused on improving security in the region. However, these security cooperation efforts have been short lived, with no planned continuance...' ³²⁷

Third, although there have been many commendable instances of cooperation and collaboration at the bilateral and regional levels in tackling piracy and armed robbery against ships, some of which have borne fruitful results such as the 2011 Nigeria-Benin joint naval operations discussed hereinabove,³²⁸ such instances have been too few and inconsistently implemented at the regional level so that their net effect on the region's maritime security challenges appears unimpactful. The main concern has been the seeming slow progress made by the Economic Community of

³²⁶ Ayesha Kajee, "Maritime Security and Piracy in West Africa", Afro-Middle East Centre, 2016.

³²⁷ Sayed M. Hasan and Daud Hassan, "Current Arrangements to Combat Piracy in the Gulf of Guinea Region: An Evaluation". *Journal of Maritime Law and Commerce*, vol. 47, No. 2 (April 2016), pp. 215 - 216.

³²⁸ Security Council resolution 45 (2012), para. 18.

West African States (ECOWAS), the regional organisation mandated to ensure peace and security in West Africa, in fully operationalising the ECOWAS integrated maritime security strategy (EIMS), a strategy with the potential to effectively contain the region's maritime insecurity.

Hasan and Hassan pointedly attribute the slow progress of regional organisations such as ECOWAS, to lack of political will between the neighbouring littoral States in effectively cooperating to address their common problems of maritime criminality. In particular, Hasan and Hassan substantiate as follows regarding the littoral States' political will for regional cooperation:

‘One major impediment to increased cooperation is the issue of national sovereignty. Many regional states view regional cooperation measures as an opportunity to enhance their national sovereignty or as a risk to the same. The relations between regional neighbours are also affected by political problems such as international territorial disputes (such as between Nigeria and Cameroon) and maritime border disputes (such as between Ghana and Cote d’Ivoire). Such tense relationships hamper the exchange of information. In many cases, regional responses have been uncoordinated, thereby limiting the intended outcomes...’³²⁹

As pointed out by Hasan and Hassan above, one serious consequence of the breakdown of political relations and cooperation between the regional States is the severity of information exchange mechanisms which are crucial in identifying, monitoring and dismantling criminal networks and operations in the region. This situation undermines the tremendous success that the region would have attained in ‘[b]reaking the cyclical chain of attacks on shipping in a cost-effective manner’³³⁰ through capacity enhancement in ‘profiling maritime crime and sharing information among stakeholders in the region. Such capacity growth would involve monitoring transiting vessels, their crews, and their ownership with a view to profiling suspicious vessels and individuals, including activities in coastal communities. A watch list for suspect vessels as well as human accomplices ... [would then] ... be developed, updated, and shared’.³³¹

Fourth, the undisturbed existence of the thriving oil black markets in the West African region creates a strong incentive for continuation of piracy and armed robbery attacks that mainly target petroleum laden vessels. Such a situation diminishes gains made in the region's counter-piracy operations. Breaking this cyclic crime affair crucially requires removal of profit-of-crime by dismantling the region's oil black market operations and networks. Nigeria's Admiral Osinowo's proposals in this regard are most insightful. In particular, Admiral Osinowo posits that an ‘international campaign to close off markets and financial [centres] to stolen oil and its proceeds would raise the cost of stealing from the Gulf of Guinea. This would require more concerted

³²⁹ Supra note 327.

³³⁰ Supra note 6 (Osinowo).

³³¹ Ibid.

efforts between Central and West African states and their global partners to identify and sanction criminal networks involved in the laundering of proceeds from piracy and related crimes. Sanctioning vessel owners and organizations known to be the beneficiaries of proceeds from [vessels'] attacks and oil theft would be extremely useful [;] and yet is a significant gap in the collaboration between the EU, Asian, and African states.³³²

Lastly, the interventions of the international community, including the shipping industry, have proved unsuccessful in effectively deterring pirates and armed robbers from attacking vessels in the Gulf of Guinea. This is because the interventions have 'been excessively focussed on security concerns [at sea] rather than on addressing the root causes of piracy on land, such as poor governance, poverty and lawlessness'.³³³

Consequently, Chapter 2 of Part II of this research provides critical legal discussions on the centrality of good governance, including addressing impunity and social injustices causing poverty and unrest as a result of corruption and misuse of public resources, in sustainably tackling maritime criminality by promoting good governance virtues of transparency, accountability and the rule of law.

³³² Ibid.

³³³ Supra note 327.

PART II

TOWARDS A SUSTAINABLE SOLUTION TO PIRACY AND ARMED ROBBERY AGAINST SHIPS ON AFRICA'S COASTAL WATERS:

THE CENTRALITY OF GOOD GOVERNANCE

This part will provide a legal study of the centrality of onshore good governance, within the epicentre States of Somalia and Nigeria, in sustainably tackling piracy and armed robbery against ships off the coasts of these States and the regional waters of the East and West coasts of Africa. The discussions of this part are broken down into Chapters 1 and 2.

Chapter 1 will provide an exhaustive critical study of the effect of bad governance, particularly corruption in public governance, in the development and persistence of organised criminal networks (with transnational links) in Somalia, specifically in Puntland; and Nigeria, specifically in the Niger Delta.

Nonetheless, the discussions herein will also demonstrate that apparent capacity challenges in the law enforcement sectors of the respective regions have significantly contributed to the inability of the governments of the respective territories to sustainably tackle organised crimes of piracy and armed robbery against ships, hence causing these crimes to persist.

Chapter 2 will provide an analytical legal study of measures for ensuring good governance through the promotion of its key principles of the rule of law, accountability and transparency; and hence realising sustainability of interventions for solving the perennial maritime security problems of piracy and armed robbery against ships in Africa's coastal waters.

CHAPTER 1

1.0 LEGAL ANALYSIS OF THE CENTRALITY OF ONSHORE GOOD GOVERNANCE IN SUSTAINABLY COMBATING MARITIME PIRACY AND ARMED ROBBERY AGAINST SHIPS IN AFRICA'S COASTAL WATERS

Criminal activities of piracy in the waters off the coast of Somalia and piracy and armed robbery against ships in the Gulf of Guinea, developed from major governance problems in public administration in the respective countries of Somalia and Nigeria. These governance problems, mainly characterised by public sector corruption, resulted in compromised and weakened law enforcement in Puntland and the Niger Delta, respectively, hence facilitating the growth of unabated criminality in these areas, which was subsequently manifested at sea as the infamous Somali piracy and Gulf of Guinea piracy armed robbery against ships, respectively.

Section 1.1 will critically examine the effect of corruption in public governance in Somalia, on the growth of organised crime of piracy in the waters off the coast of Somalia. Section 1.2 will critically study the effect of corruption in public governance in Nigeria, on the growth of organised crimes of piracy and armed robbery against ships in the Gulf of Guinea.

1.1 **CORRUPTION IN PUBLIC GOVERNANCE IN SOMALIA AND GROWTH OF THE ORGANISED CRIME OF PIRACY IN THE WATERS OFF THE COAST OF SOMALIA**

Piracy in the coastal areas of Somalia: initially a common maritime security threat

Piracy in the waters off the coast of Somalia, which reportedly dates back to the central government's 1991 collapse,³³⁴ emerged from and thrived in Somalia's coastal regions that had semblance of stability but where governing institutions were weak.³³⁵ These regions included the

³³⁴ Stig J. Hansen, "The Dynamics of Somali Piracy", *Studies in Conflict and Terrorism*, vol. 35, Nos. 7 – 8 (2012), pp. 523 & 529; and Martin Murphy, "Concerns, Consequences and Resolutions to Somali Piracy" in *Piracy in Comparative Perspective: Problems, Strategies, Law*, Charles H. Norchi and Gwenaële Proutière-Maulion, eds. (Paris; Oxford; Portland, Oregon, Editions A. Pedone & Hart, 2012), Ch. 4, pp. 73 – 90, at p. 74.

³³⁵ Ibid (Hansen), p. 526.

east coast of Puntland; and Haradhere-Hobiyo area.³³⁶ During the 1990s piracy was done on small-scale just for the subsistence of the perpetrators and incidents were sporadic.³³⁷

As discussed in chapter 1 of Part I of this study, piracy networks abhorred regions that were plagued by conflict, since piracy networks thrive in places with security, usually provided by complicit local law enforcement officials, where their kidnapped crew and hijacked vessels will be safe from attacks, thieves and other criminals.³³⁸ The main pirate areas of the subsequently developed and infamous Somali piracy of the mid 2000s were Sanaag (contested between the two entities Somaliland-Puntland); Bari (a part of Puntland); Nugal (also a part Puntland); and Mudug.³³⁹ Piracy in Somaliland, which was comparatively minimal, especially occurred in the less controlled areas on the border with Puntland.³⁴⁰ Moreover, the following specific locations have at various times reportedly served as pirate dens: Eyl, Garacad, Hobyo, Haradheere and Mogadishu.³⁴¹

Since the regional administrative territories affected by piracy in the waters off the coast of Somalia, namely Puntland, Somaliland and Mogadishu (in south-central Somalia), had extremely inadequate capacity to suppress the crime, at various times they engaged the services of private security companies (PSCs) to help them prevent piracy and illegal fishing in their coastal waters.³⁴² One common service provided by the PSCs was training of the regions' local security forces to build their capacities to tackle maritime security threats.³⁴³

However, while Somaliland, and to a limited extent South-Central Somalia (during the short-lived reign of the ICU),³⁴⁴ registered notable success in suppressing piracy in their coastal waters,³⁴⁵ Puntland degenerated into a notorious haven for pirates.³⁴⁶ The transformation of Puntland from a territory committed to suppressing piracy, to a sanctuary for pirate networks is attributable to 'pirate-financed corruption', especially state-capture by pirate syndicates that occurred in 2008.³⁴⁷

³³⁶ Supra note 334 (Hansen), pp. 525 - 526.

³³⁷ Supra note 334.,

³³⁸ Supra note 336.

³³⁹ Ibid.

³⁴⁰ Security Council resolution 30 (2011), para. 21.

³⁴¹ Supra note 17, pp. 16 – 18.

³⁴² Supra note 82 (Hansen), p. 585.

³⁴³ Ibid, pp. 585 & 594.

³⁴⁴ Supra note 50.

³⁴⁵ Supra note 334, p. 528.

³⁴⁶ Supra note 340, paras. 19 – 21.

³⁴⁷ Supra note 19, p. 21.

Effects of State-Capture in Puntland on Somali Piracy:

1.1.1 State-Capture in Puntland and the Upsurge of Somali Piracy in 2008

Data from IMO indicates a steep increase in incidents of Somali piracy between 2008 and 2009,³⁴⁸ which was ‘the second and largest wave of Somali piracy’³⁴⁹. This wave of increased maritime criminality coincided with a surge in onshore criminality, ‘driven by the collapse of the Puntland police when the Puntland authorities failed to pay them. In this sense the second wave [of Somali piracy] started because of ... increased opportunity due to the collapse of local police in a relatively peaceful part of Somalia, a collapse that also created an onshore crime wave. Piracy continued to expand due to the profitability and the ransoms that fed the pirate industry from 2008 and onward’.³⁵⁰

A public finance crisis in Puntland left its government unable to pay its security forces in April 2008.³⁵¹ Subsequently, a month later in May 2008 the second and largest wave of Somali piracy commenced, marked by an unprecedented steep increase in piracy incidents.³⁵² Percy and Shortland theorise that Puntland’s inability to pay its security forces allowed pirates to capture governance in this region.³⁵³

The breakdown of law enforcement in Puntland consequent to the government’s inability to pay its security forces effectively paralysed law and order in Puntland which is ‘a relatively peaceful part of Somalia’,³⁵⁴ as indicated by the increase of onshore criminality.³⁵⁵ The resultant environment was conducive for Somali pirates as it allowed them to operate without fear of sanctions.³⁵⁶ This state of affairs seemingly enabled ‘a build-up of organized violence which emerged strongly after May 2008’ in the form of the largest wave of the infamous Somali piracy.³⁵⁷

Capture of governance in Puntland, fueled by piracy-financed corruption, led to the subversion of governance in various ways.³⁵⁸ Firstly, local law enforcement officials would be bribed to allow Somali pirates and their networks to conduct their operations.³⁵⁹ This led to widespread

³⁴⁸ IMO, *Reports on Acts of Piracy and Armed Robbery against Ships: Annual Report – 2015*, (London, 2015).

³⁴⁹ Supra note 334 (Hansen), p. 526.

³⁵⁰ Ibid.

³⁵¹ Supra note 334 (Hansen), pp. 527 & 530.

³⁵² Timothy Besley, Thiemo Fetzer and Hannes Mueller, “The Welfare Cost of Lawlessness: Evidence from Somali Piracy”, 1 October 2012, p. 4.

³⁵³ Supra note 19, p. 3.

³⁵⁴ Supra note 334 (Hansen), p. 526.

³⁵⁵ Supra note 352, p.4.

³⁵⁶ Ibid.

³⁵⁷ Ibid.

³⁵⁸ Supra note 19, p. 21.

³⁵⁹ Ibid.

corruption such that when the government resumed paying its security forces corruption had become entrenched in law enforcement.³⁶⁰ Also, meager remuneration of law enforcement agents seems to have contributed to entrenchment of corruption.³⁶¹ In this respect, Percy and Shortland importantly observe as follows:

‘With police officers earning less than \$50 a month, successful pirates can buy off local forces if they cannot avoid them altogether. Occasional arrests and detentions are easily resolved with a small bribe and backhanders ensure good relations with the Puntland administration. Pirate enterprises (especially those with clan links to the Puntland government) have therefore been able to operate mostly with impunity. Even if Puntland authorities thought that piracy was undesirable (and given its victimless nature, this is unlikely), they are being paid off to prevent any enforcement.’³⁶²

Secondly, political leaders and senior government officials were compromised with fortunes of piracy to subvert accountability and promote impunity of pirates and their criminal leaders. In this regard, in 2010 the UN Monitoring Group in Somalia and Eritrea, also known as Somalia and Eritrea Monitoring Group (SEMG), succinctly demonstrated in its report the corrupting effect of Somali piracy on Puntland’s leadership and the resultant capture of the region’s administration by piracy networks, that has undermined piracy suppression efforts. Importantly SEMG stated as follows:

‘The most obvious symptom of the war economy is piracy: attacks on shipping off Somalia increased in 2009, despite the presence of international naval forces offshore. The increase has been driven in part by the remarkable success rate of Somali piracy in 2008 (38 per cent of all ships attacked were hijacked), its high profitability and relatively low risks. But it is also a reflection of the complicity of senior figures in the Puntland administration. Several candidates in the leadership contest of January 2009, which saw Abdirahman Faroole accede to the Puntland presidency, accepted significant campaign contributions from pirate leaders. Several notorious pirate leaders remain at liberty in Puntland, and senior officials have at times intervened to secure the liberty of kinsmen detained during the course of counter-piracy operations. Meanwhile, international counter-piracy operations have driven some pirate activity back to ungoverned central Somalia.’³⁶³

1.1.2 State-Capture in Puntland and Corrosion of the Rule of Law and Accountability

In addition, capture of governance in Puntland resulted in undermining of the rule of law and genuine accountability, since the regional administration was prompt to arrest, prosecute and convict low-level piracy perpetrators, while demonstrating unwillingness to similarly deal with high-ranking piracy leaders. The evident double standards in law enforcement has promoted impunity for pirate leaders and their syndicates. In this regard SMEG observed as follows:

³⁶⁰ Ibid.

³⁶¹ Ibid.

³⁶² Supra note 19, pp. 21 - 22.

³⁶³ Security Council resolution 91 (2010), p. 7.

‘137. In contrast with central Somalia, where piracy may be accurately described as a product of statelessness and warlordism, in north-eastern Somalia it benefits from the patronage and protection of State institutions. After 12 years of relatively positive evolution in Puntland, the newly established administration of Abdirahman Mohamed “Faroole” is nudging Puntland in the direction of becoming a criminal State. Monitoring Group investigations ... have confirmed that senior Puntland officials, including President Faroole and members of his Cabinet, notably the Minister of the Interior, General Abdullahi Ahmed Jama “Ilkajiir” ... and the Minister for Internal Security, General Abdillahi Sa’iid Samatar, have received proceeds from piracy and/or kidnapping.

138. There have been some indications during the course of the mandate that Puntland has made increased efforts in the battle against piracy. During the course of 2009, President Abdirahman Mohamed “Faroole” has publicly condemned piracy on several occasions and the authorities have arrested and convicted a number of pirates, seizing weapons and equipment. In spite of these gestures, however, pirate activity off the coast of Puntland has increased, senior pirate leaders remain at liberty and without apparent fear of arrest, and in some cases the Puntland authorities have extended protection to pirate militias.

139. Probably the most notorious pirate leader in Puntland goes by the name Abshir Abdillahi “Boyah”... In previous reports, the Monitoring Group has identified Boyah as a principal organizer and financier of pirate activity in 2008. Independent and intelligence reports received by the Monitoring Group have confirmed his involvement in piracy. Boyah himself has publicly admitted to being the commander of a maritime militia consisting of approximately 500 pirates. By Boyah’s own account, his militia is responsible for hijacking between 25 and 60 shipping vessels since the mid-1990s, including the Japanese-owned chemical tanker Golden Nori (28 October 2007) and the French luxury yacht Le Ponant (4 April 2008), for which Boyah received \$1.5 million and \$2 million respectively in ransom payments.

140. The Puntland leaders not only are well aware of Boyah’s activities but also tolerate them. In April 2009, two foreign journalists separately interviewed Boyah, one of whom acknowledged the assistance of President Faroole’s son Mohamed (now the President’s media adviser) in arranging the meeting... For the other interview, Boyah was obliged to “cut right through a crowd of Puntland soldiers” in order to enter a local restaurant... In an interview in August 2008 with Garoowe- online, a website affiliated with the current Puntland administration, Boyah claimed that Puntland leaders were complicit in piracy and received 30 per cent of ransom payments. In May 2009, Boyah attended a ceremony with local government officials in Eyl, where he claimed that, together with 180 of his militia, he had realized that piracy was unlawful and had ceased his activities. The Puntland authorities have since made no move to apprehend him and declined to respond to a Monitoring Group request for information concerning measures taken to curb his activities.³⁶⁴

1.1.3 State-Capture in Puntland and toleration of Somali Piracy in a Symbiotic Relationship

There are indications that capture of governance resulted in the evolution of the relationship between Somali pirates, on the one part; and Puntland’s local government, foreign government and non-government players, on the other part; into a stable symbiotic relationship ‘where the

³⁶⁴ Supra note 363, paras. 137 - 140.

costs of altering the relationship are greater than the benefits of doing so'.³⁶⁵ Percy and Shortland make the following important observations about symbiosis between Somali pirates and Puntland's government, and the consequent capture of governance in Puntland:

'In Somalia, stable symbiosis has included pirates, local authorities, and even international authorities. Puntland is becoming increasingly corrupted by the proceeds of piracy ... "the fact that ransom money touches so many hands in northeastern and central Somalia creates a serious disincentive on the part of leaders of those regions to address the problem ... the autonomous state of Puntland in northeast Somalia is becoming a pirate version of a narco-state." The UN monitoring group in the area notes that the administration of General Abdirahman Mohamed 'Faroole' is "nudging Puntland in the direction of becoming a criminal State" with several key officials receiving payments from piracy ... Our evidence demonstrates that Puntland's governmental structures have been subverted by pirate-financed corruption... there was a major breakthrough for piracy at the point when the Puntland government lost its grip on its budget and ceased paying its security forces in April 2008...'³⁶⁶

Example of symbiosis at the domestic level:

• **Relationship between Puntland's administration and Somali pirate leaders**

The symbiotic relationship, bred by widespread corrupting effect of illicit proceeds of Somali piracy, has been demonstrated in Puntland's administration by appointment of government officials linked to Somali piracy networks and intent on corroding rule of law and criminal accountability. This ensured impunity for pirate leaders and undisturbed continuation of their criminal operations with the full knowledge and evident acceptance of Puntland's government.

Pirates have funded the election campaigns of major political leaders in Puntland who appear supportive of piracy. This has ensured the loyalty of the top leaders of Puntland to pirate leaders, and hence continued protection for the pirates, their syndicates and operations. In this regard SEMG reported that Puntland's former president, namely Abdirahman Mohamed "Faroole", benefited immensely from enormous piracy funds to his election campaign in the region's 2008 elections.³⁶⁷ This generous piracy funding seemingly played a significant role in his presidential election victory.³⁶⁸

Further, another contestant in the presidential elections, namely Abdullahi Ahmed Jama "Ilkajir", likewise received hefty political campaign funding of US \$ 200,000 from a known pirate leader, namely Hanaano.³⁶⁹ However, Ilkajir lost the presidential election to Faroole whose much larger

³⁶⁵ Supra note 19, p. 4.

³⁶⁶ Supra note 19, p. 21.

³⁶⁷ Supra note 363, p. 41.

³⁶⁸ Ibid.

³⁶⁹ Ibid.

political campaign funding, mainly from pirates' donations, critically contributed to his election victory.³⁷⁰ Nevertheless, President Faroole appointed Ilkajir to a key cabinet position of Minister for the Interior with a mandate over national security matters.³⁷¹

The relationship between Hanaano, a known pirate leader, and Minister Ilkajir benefited the former immensely. Firstly, the Minister appointed the known pirate leader to the government position of Eastern Sanaag Coastguard Commander.³⁷² Secondly, in September 2009 Ilkajir promptly spearheaded interventions by the Puntland government to have pirates, belonging to Hanaano's militia group, released from detention in Egypt.³⁷³ The Government of Egypt released and repatriated the pirates to Puntland.³⁷⁴

The pirates had been handed over to Egyptian authorities in August 2009 by their kidnapped victims who were Egyptian crew of 2 hijacked vessels known as *Mumtaz 1* and the *Samara Ahmed*.³⁷⁵ The kidnapped Egyptian crew had revolted and overpowered their pirate captors whom they subsequently handed over to the Egyptian authorities.³⁷⁶

Furthermore, on '30 November 2009, Puntland security forces reportedly arrested Omar Hassan Osman "Baqalyo" in Boosaaso on charges unrelated to piracy'.³⁷⁷ However, on 5 December 2009 Baqalyo was released supposedly by order of Ilkajir, Puntland's Minister for Interior.³⁷⁸

- **Relationship between the Transitional Federal Government of Somalia and Somali pirate leaders**

Besides Hanaano, other prominent pirate leaders benefited from official government protection. One such pirate leader is Mohamed Abdi Hassan "Afweyne", who is described as 'one of the most notorious and influential leaders of the Hobyo-Harardheere Piracy Network'.³⁷⁹ He reportedly enjoyed the protection of both the Puntland government and the Transitional Federal Government (TFG) of Somalia, until his arrest in Belgium. Afweyne was lured to travel to Belgium in 2013 with a fake promise of making a documentary about his life where he was arrested for 'hijacking the Belgian dredger ship Pompei and kidnapping its crew of nine in 2009

³⁷⁰ Ibid.

³⁷¹ Ibid.

³⁷² Ibid.

³⁷³ Ibid.

³⁷⁴ Ibid.

³⁷⁵ Ibid.

³⁷⁶ Ibid.

³⁷⁷ Ibid.

³⁷⁸ Ibid.

³⁷⁹ Security Council resolution 544 (2012), para. 50.

and participating in a criminal organization’.³⁸⁰

In April 2012 Malaysian immigration authorities identified Afweyne to be ‘travelling on a Somali diplomatic passport to visit his wife and family living abroad’.³⁸¹ A diplomatic passport is ordinarily issued to high-ranking government officials; diplomats; and representatives of a State abroad. Such passports are usually used for the purpose of official foreign travel of a diplomatic nature or to an official diplomatic post abroad.

When Malaysian government authorities questioned Afweyne about his diplomatic status and purpose of his trip, he produced ‘an apparently official document issued by the Director of the Transitional Federal Government Presidency (Chief of Cabinet), Mohamed Moalim Hassan, with knowledge of Transitional Federal Government President Sheikh Sharif Sheikh Ahmed. The document stated that Afweyne was involved in counter-piracy activities on behalf of the Transitional Federal Government for “Himan and Heeb” region’.³⁸²

Subsequently, upon Afweyne’s return to Somalia a week later, the TFG of Somalia gave him the status of a Somali diplomat ‘and corresponding possession of a diplomatic passport issued by [the TFG] officials, with the authorization of [then TFG] president Sheikh Sharif Sheikh Ahmed...’³⁸³ This demonstrated that Afweyne enjoyed protection from the highest echelons of the TFG of Somalia.³⁸⁴ The TFG president informed that ‘Afweyne’s diplomatic status was one of several inducements intended to obtain the dismantling of his pirate network’.³⁸⁵

Example of symbiosis at the International level: The United Kingdom’s unwillingness to take Legal Action against Pirates and their Networks

The United Kingdom (UK) has partnered with Somalia, the regional States and international naval forces in suppressing Somali piracy at sea and addressing the sources of the problem on land.³⁸⁶ Therefore, it is baffling when SEMG identifies UK as promoting impunity for Somali pirates by actions and omissions aimed at shielding the pirates and their networks from criminal accountability. Importantly SEMG observes as follows regarding UK’s ambivalent conduct in respect to its responses to Somali piracy:

³⁸⁰ Associated Press, “‘Notorious’ Somali pirate leader arrested, lured to Belgium with movie project”, Global News, 14 October 2013.

³⁸¹ Supra note 379.

³⁸² Ibid.

³⁸³ Ibid.

³⁸⁴ Ibid.

³⁸⁵ Ibid.

³⁸⁶ UK, Foreign & Commonwealth Office and Ministry of Defence, *2010 to 2015 government policy: piracy off the coast of Somalia*, (London, 8 May 2015).

‘Conversely, the UK has failed to pursue law enforcement investigation against alleged Somali pirates and their associates in at least 6 different opportunities where it has potential criminal jurisdiction... Furthermore, the British Government has blocked UN Security Council efforts to designate senior Somali pirate leaders for targeted sanctions, apparently at the behest of powerful domestic interests in shipping, crisis and risk management consultancies, maritime law and insurance, and private maritime security companies (PMSCs) who indirectly derive significant profits from the Somali piracy phenomenon... These enterprises, which predominate with respect to Somali hijacking cases, also possess much valuable information and intelligence on Somali pirate groups, negotiators and networks - including details of financial and communication arrangements. This information is rarely, if ever, released for the purposes of criminal prosecution or the imposition of targeted sanctions, whether inside or outside the UK, ... raising serious questions and concerns, especially when UK residents or nationals are found to be involved in Somali piracy activities...’³⁸⁷

1.2 CORRUPTION IN PUBLIC GOVERNANCE IN NIGERIA AND GROWTH OF ORGANISED CRIMES OF PIRACY AND ARMED ROBBERY AGAINST SHIPS IN THE GULF OF GUINEA

Corruption in Nigeria’s federal government, especially in the management of the oil sector, is a significant contributing factor to the Niger Delta militancy. The militiamen vengefully attack oil infrastructure and oil vessels in an attempt to sabotage the country’s oil-dependent economy. This is because in the view of the Niger Delta communities, the government’s development of the vast oil resources in their region has not benefited the local communities which continue to endure devastating socio-economic conditions, especially diminished livelihoods owing to long-time oil pollution; and enduring poverty.

Nonetheless, UNODC observes that the ‘line between political and criminal activity has always been blurry’.³⁸⁸ This is because following the amnesty offered to the Niger Delta militants in 2009, ‘virtually all of the recognized leadership laid down their arms’ and the armed militia uprisings ‘effectively came to an end in 2011’.³⁸⁹ However, some militia groups that still claimed to be fighting ‘for the cause’ reportedly continued with petroleum theft, even going beyond Nigeria’s territory, after 2011.³⁹⁰

The post-amnesty attacks lack justification and qualify as greed-based criminal attacks since they are unrelated to the community protests. This is because all the recognised leaders of the militant groups, and consequently their militiamen, fighting for the cause of the Niger Delta communities

³⁸⁷ Supra note 379, para. 30.

³⁸⁸ Supra note 70 (UNODC), p. 46.

³⁸⁹ Ibid.

³⁹⁰ Ibid.

reportedly ceased hostilities after the 2009 government offered amnesty.³⁹¹

This sub-section will critically analyse the role of corruption in Nigeria as a factor in the emergence of piracy and armed robbery against ships in the Niger Delta region; and as a factor enabling the persistence of these maritime crimes in the region.

1.2.1 Corruption as a Factor in the emergence of Piracy and Armed Robbery against Ships in the Niger Delta Region

Montclos argues that ‘it is not poverty that explains maritime piracy in the Niger Delta, but political corruption and the oil wealth that attracts all sorts of thieves, blue and white collar alike’.³⁹² Likewise, Murphy importantly notes that piracy in the Gulf of Guinea ‘has its origins in the political corruption in Nigeria, that feeds off the nation’s oil wealth’.³⁹³

As discussed in chapter 2 of Part I of this research, turmoil has been a characteristic feature of the Niger Delta region for decades, owing to the unrelenting protests of communities objecting Nigeria’s previous governments’ socio-economic marginalisation of the oil-rich region.³⁹⁴ Also, the communities have been protesting discriminatory policies that deny them equal ‘access to positions of authority and prevent people from participating in shaping the rules that govern their lives’.³⁹⁵

The Niger Delta communities have for long felt cheated out of the immense socio-economic benefits that ought to accompany oil resource development in their region.³⁹⁶ It has been observed that corruption ‘aggravates feelings of being cheated, especially when the rulers live like kings amid extreme want. In spite of the substantial flow of oil money to state and local governments, many communities see no sign of government presence in terms of development projects. This intensifies a sense of hopelessness and mistrust that for the most aggrieved people leads to a call to arms’³⁹⁷, hence militancy and subsequently piracy and armed robbery against ships in the region.

• Synopsis of Corruption in Nigeria’s oil sector

Nigeria’s President Muhammadu Buhari has referred to the high level of corruption in the country’s oil sector as ‘mind-boggling’.³⁹⁸ For instance, an official audit reportedly done in

³⁹¹ Ibid.

³⁹² Supra note 23, p. 535.

³⁹³ Martin Murphy, “The most lucrative piracy in the world: Tanker and crew taken off Togo”, 1 September 2012.

³⁹⁴ UNDP, *Niger Delta Human Development Report* (Abuja, 2006), p. 12.

³⁹⁵ Ibid, pp. 3 & 12.

³⁹⁶ Supra note 394, p.iii.

³⁹⁷ Ibid.

³⁹⁸ Conor Gaffey, “Nigeria’s Oil Corporation withheld 16 Billion from State in 2014: Auditor-General”, Newsweek,

March 2016 revealed that the State-owned oil company, that is, NNPC, ‘withheld over \$25 billion from the public purse between 2011 and 2015. Meanwhile cartels involving government officials, militants and oil employees stole tens of thousands of barrels of crude [oil] each day’.³⁹⁹

Despite Nigeria’s efforts at curbing corruption in its oil sector, including by adopting and implementing the Extractive Industries Transparency Initiative (EITI),⁴⁰⁰ it has been observed that most ‘government agencies, including the one that collects taxes, do not make their budgets public. Nor do most state and local governments, which suck up about half of public revenues’.⁴⁰¹

Corruption in Nigeria has resulted to colossal misappropriation of revenue generated from oil resource development, leading to scarcity of resources necessary for social and economic development of the ordinary citizens. It is estimated that the poverty rate in the country is about 62 per cent and life expectancy at birth is approximately 52 per cent.⁴⁰² However, poverty is worse in the oil-belt region of the Niger Delta where, in 2015, it was reported that approximately 70% of the population was living below the poverty line.⁴⁰³

- ***Synopsis of the impact of corruption on Niger Delta communities***

Moreover, mismanagement of the oil sector owing to corruption and weak governance, have resulted in little government oversight and protection against environmental damage occurring from oil resource exploitation, particularly oil spills.⁴⁰⁴ In the Niger Delta, the impact of pollution resulting from oil spills has been devastating. ‘Mangrove forests are being obliterated, fish and shellfish are dying off, and whole ecosystems are collapsing’.⁴⁰⁵ The United Nations Environment Programme (UNEP) assessed oil pollution in Ogoniland in the Niger Delta region to be enormous and that the ‘environmental restoration of Ogoniland could prove to be the world’s most wide-ranging and long term oil clean-up exercise ever undertaken if contaminated drinking water, land, creeks and important ecosystems such as mangroves are to be brought back to full, productive health’.⁴⁰⁶

15 March 2016.

³⁹⁹ E.A.D.W., “How Nigeria is fighting corruption”, The Economist, 26 July 2016.

⁴⁰⁰ The World Bank / IBRD-IDA, “Anti-corruption”, 28 November 2016.

⁴⁰¹ Supra note 399.

⁴⁰² UNDP, “About Nigeria”. Available at <http://www.ng.undp.org/content/nigeria/en/home/countryinfo/> (accessed on 15 December 2016).

⁴⁰³ Available at <http://www.dw.com/en/oil-spills-keep-devastating-niger-delta/a-18327732> (accessed on 15 December 2016).

⁴⁰⁴ Ibid.

⁴⁰⁵ Ibid.

⁴⁰⁶ UNEP, *UNEP Ogoniland Oil Assessment Reveals Extent of Environmental Contamination and Threats to Human Health*, 4 August 2011.

Long-time oil pollution in Ogoniland resulted in ‘the destruction of the traditional local economic support system of fishing and farming’.⁴⁰⁷ Moreover, destruction of biodiversity attributable to oil pollution has ‘rendered the agricultural sector, which is the largest employer of labour in Ogoni, unprofitable. Hence, most of the youth and women have become jobless since their local economic support system of fishing and farming is no longer sustainable’.⁴⁰⁸ These circumstances have created a desperate socio-economic situation in the Niger Delta and ensuing resentment from the struggling local population. This dire situation has been exacerbated by corruption in the management of oil-revenue, causing the communities to live in extreme want while their leaders enjoy affluence.⁴⁰⁹

The socio-economic plight of the communities in the Niger Delta and the apparent neglect by the government explain the communities’ defiance against the government and oil MNCs, evidenced by resort to armed protests and militancy;⁴¹⁰ as well as the attraction to crimes, including piracy and armed robbery against ships.⁴¹¹ In this respect, Nigeria’s President Muhammadu Buhari importantly observes as follows:

‘The resultant inequality in society – with extreme mass poverty living side by side with islands of stupendous unearned riches – has led to frustration, hopelessness and despair, and laid the foundation for militancy and insurgency.’⁴¹²

However, on a positive note, the government of Nigeria has taken commendable steps towards addressing the socio-economic plight of the Niger Delta communities. First, it established the Niger Delta Development Commission (NDDC) in 2000.⁴¹³ In 2004 the NDDC prepared a draft master-plan for the socio-economic improvement of the region, which would be implemented over a 15-year period.⁴¹⁴ Second, the government created the Ministry of the Niger Delta Region in 2009 to handle infrastructural development in the region.⁴¹⁵

⁴⁰⁷ Legborsi S. Pyagbara, “The Adverse Impacts of Oil Pollution on the Environment and Wellbeing of a Local Indigenous Community: The Experience of the Ogoni People of Nigeria”, paper presented at the International Expert Group Meeting on Indigenous People and Protection of the Environment, Khabarovsk, Russian Federation, 27 – 29 August 2007, pp. 8 – 10.

⁴⁰⁸ Ibid, p. 10.

⁴⁰⁹ Supra note 395.

⁴¹⁰ Martin N. Murphy, “Petro-piracy: predation and counter-predation in Nigerian waters”, in *Modern Piracy: Legal Challenges and Responses*, Douglas Guilfoyle, ed. (Cheltenham; Northampton, Massachusetts, Edward Elgar Publishing Limited, 2013), Ch. 4, pp. 61 – 90, at pp. 70 – 74.

⁴¹¹ Supra note 272, p. 12.

⁴¹² President Muhammadu Buhari, “My plan to fight corruption in Nigeria”, in *Against Corruption: a collection of essays*, (Prime Minister’s Office, 10 Downing Street, London, 12 May 2016).

⁴¹³ P.O. Oviasuyi and Jim Uwadiae, “The Dilemma of Niger-Delta Region as oil Producing States of Nigeria”, *Journal of Peace, Conflict and Development*, Issue 16 (November 2010), pp. 110 – 126, at p. 121.

⁴¹⁴ Ibid.

⁴¹⁵ Ibid, pp. 121 - 122.

Nonetheless, the two development programmes have been criticised for producing minimal positive impact on the intended people of the Niger Delta.⁴¹⁶ This criticism emanates from a number of factors in the management and implementation of the programme, including duplicity of efforts owing to the similarity of the projects the two programmes have separately launched.⁴¹⁷

Further, the Nigerian government requested UNEP for an environmental assessment of Ogoniland in the Niger Delta.⁴¹⁸ UNEP conducted the requested assessment and provided a report to the government in August 2011.⁴¹⁹ The government of Nigeria has embarked on implementation of the recommendations made in UNEP's 2011 report as demonstrated by commissioning of a '\$ 1 billion clean-up and restoration programme of the Ogoniland region' in June 2016.⁴²⁰ Furthermore, the government is developing financial and legislative frameworks that will enable it to fully implement UNEP's recommendations.⁴²¹

The following optimistic remark made in August 2016 by Erik Solheim, UNEP's environment chief, demonstrates that the government clean-up and restoration programme has started yielding success:

"I am impressed by the developments we've seen towards an environmental clean-up in Ogoniland. During my recent visit there I could sense the momentum - and expectations - of the Ogoni people to once again have their home clean, healthy and safe. The inauguration of the clean-up project was undoubtedly a historic moment for the region."⁴²²

1.2.2 Corruption as a Factor enabling the Persistence of Piracy and Armed Robbery against Ships in the Niger Delta Region

It has been observed that maritime crime 'flourishes under complicit governance and is limited under effective rule of law'.⁴²³ Moreover, the 'Queer Ladder theory assumes that organized crime thrives in context where the government's capacity to dictate and sanction abnormality and

⁴¹⁶ International Crisis Group, "Curbing Violence in Nigeria (III): Revisiting the Niger Delta", Africa Report No. 231, 29 September 2015, pp. 6 – 9.

⁴¹⁷ Festus Owete, "Most Niger Delta projects have no impact on people – Ministry", Premium Times, 23 August 2016.

⁴¹⁸ UNEP, *UN Environment's Ogoniland Assessment back in spotlight* (Nairobi, 4 August 2016).

⁴¹⁹ Ibid.

⁴²⁰ Ibid.

⁴²¹ Ibid.

⁴²² Ibid.

⁴²³ US Department of State, "United States Counter Piracy and Maritime Security Action Plan, June 2014", June 2014.

crime is poor, where public corruption is endemic and where legitimate livelihood opportunities are slim... Under these circumstances, the incentive to indulge in life of crime is high, while deterrence from criminal living is low' thereby creating room for organised criminal activities to prevail with impunity.⁴²⁴

It has been observed that the Niger Delta governors, Nigeria's security forces as well as NIMASA have been involved in piracy and oil-bunkering. In this regard Montclos explains as follows:

'... the role of the Nigerian government is quite ambiguous, since some of its members collude with the rebels. Security forces (Police, Navy, and Army) do not only attack the militants; they also participate in bunkering and piracy. As for the corrupt governors of the oil-producing Rivers, Bayelsa and Delta States, they use gangsters to get rid of opponents, yet fund the dominant People's Democratic Party (PDP). In other words, the Nigerian state is very active because it is itself involved in maritime piracy.

An analysis of governmental agencies says a lot in this regard. The Army, to start with, often concludes shady deals with the "militants" to share the booty and negotiate a status quo. Just to give one example out of many: a leaked Military Intelligence Investigation Report of November 2007 recently revealed that the current National Security Adviser to President Goodluck Jonathan, General Andrew Azazi, who was chief of army staff at the time, facilitated the release and even promoted officers who sold weapons to Henry Okah's brother, a kingpin of the MEND... General Andrew Azazi was not removed from his post and still advised President Goodluck Jonathan before the crucial elections of April 2011.

... [The Nigerian navy has been implicated in corruption, piracy and oil theft]... Its implication was so visible that in 2004, President Olusegun Obasanjo had to dismiss two rear admirals who were involved in the disappearance from Navy custody in Warri of a Russian tanker full of stolen crude oil. Today, insiders in the Navy, Customs, and Port Authorities still inform pirates and militants on the location of boats and the value of their cargo. Some of them even provide copies of the bills of lading... After the end of the military regime in 1999, [NIMASA] was revitalized and infiltrated by corrupt politicians like James Ibori, the embattled governor of Delta State, extradited from Dubai to London on various charges of money laundering. Thus in 2008, the Director General of NIMASA, Raymond Temisan Omatseye, was nominated on Ibori's recommendation. In late 2010, he was eventually arrested by the EFCC (Economic and Financial Crimes Commission) over allegations of fraud, contract inflation, and financial mismanagement. He was replaced by Ziakede Akpobolokemi, a close friend to one of the leading figures of MEND, Government Ekpemepulo, popularly known as "Tompolo"!⁴²⁵

Similarly, Hasan observes that the involvement of the State, particularly through its leadership and law enforcement agents, in piracy and oil bunkering has diminished motivation for

⁴²⁴ Victor E. Assi, Offiong I. Amah and Sunday O. Edeke, "Oil Theft and Corruption: Pathways to Underdevelopment in the Niger Delta", *Research on Humanities and Social Sciences*, vol. 6, No. 3 (2016), p. 72.

⁴²⁵ Supra note 23, p.538.

combating these organised crimes, thus enabling impunity to flourish. Particularly Hasan states as follows:

‘It is believed that highly placed individuals are part of the organised syndicate involved in oil thefts and piracy in the Niger Delta region. The arrest of the former Minister of Interior, Captain Emmanuel Iheanacho, for alleged theft of petroleum products is evidence of ... corruption. It has been reported that security operatives traced some stolen petroleum products and vessels hijacked by pirates to his company premises, Integrated Oil and Gas Limited...’⁴²⁶

The observations made by Montclos and Hasan on the apparent endemic challenges of corruption and organised crime in Nigeria’s oil sector, have been reflected in Ford’s analytical commentary on the recent situation of corruption in the country’s oil sector.⁴²⁷ The commentary followed the revelation by Nigeria’s auditor general that in 2014 \$16 billion of the country’s oil revenue ‘went missing’.⁴²⁸ In part Ford’s commentary reads as follows:

‘It [that is, oil on Nigeria,] also encourages corruption and organised crime to such an extent that other African governments warn of the need to avoid becoming "another Nigeria"... President Buhari was elected last March on a platform to tackle this crime but similar promises by his predecessors have had virtually no impact.’⁴²⁹

In a nutshell, corruption and organised crime, including piracy, oil bunkering and other forms of oil theft, are indicative of bad governance in Nigeria generally and the Niger Delta specifically, as demonstrated by unabated national revenue misappropriation and impunity. Thereby, long-term, hence sustainable, solution for these organised crimes lays in embracing good governance in public administration. Instructively, Montlclos comments as follows:

‘To combat piracy, crime, and the politics of “godfatherism,” the ultimate and long-term solution is eventually to fight against corruption, both at the state level and within so-called civil society. Indeed, impunity and the diversion of public funds are the heart of the matter... The problem is that regional governors who sponsor crime are not accountable. As maritime piracy is only one of many symptoms of a mafia-like political economy, the solution certainly rests in the improvement of local governance.’⁴³⁰

CONCLUSION

This chapter has critically analysed the effect of corruption in public governance on the development and prevalence of piracy off the coast of Somalia; and piracy and armed robbery against ships in the Gulf of Guinea.

⁴²⁶ Supra note 27, p. 62.

⁴²⁷ BBC, “Buhari’s battle to clean up Nigeria’s oil industry”, 15 March 2016.

⁴²⁸ Ibid.

⁴²⁹ Ibid.

⁴³⁰ Supra note 23, p. 540.

In the situation of piracy off the coast of Somalia, this research has demonstrated that grand corruption and capture of governance in Puntland resulted in the erosion of rule of law and accountability in the regional state. The result was impunity for piracy perpetrators; toleration of the crime of piracy; and the development of a symbiotic relationship between State machinery and piracy leaders, at the regional, national and international levels.

In the case of piracy and armed robbery against ships in the Gulf of Guinea, this research has established the link between corruption in Nigeria's oil sector and maritime criminality, especially petro-piracy, in the Niger Delta which is the epicentre of piracy and armed robbery against ships in the Gulf of Guinea.

National oil sector corruption resulted in the marginalisation of communities in the Niger Delta. Although the Niger Delta is Nigeria's oil-belt, the community has not experienced the socio-economic benefits resulting from oil resources exploited in its region. The residents of the region live in deplorable environmental conditions arising from wanton destruction of their land and pollution of their water bodies caused by irresponsible and negligent oil exploitation activities. Moreover, most residents wallow in poverty despite oil resources mined in the region elevating Nigeria to be Africa's first and the world's sixth largest oil producer.⁴³¹

⁴³¹ Nigerian National Petroleum Corporation (NNPC), "Oil Production", 2016.

CHAPTER 2

2.0 TOWARDS A SUSTAINABLE SOLUTION: LEGAL STUDY OF MEASURES FOR ENSURING GOOD GOVERNANCE AND SECURITY OF AFRICA'S COASTAL WATERS

This research argues that the law is central in ensuring good governance and order in society which is manifested by existence of security onshore and offshore.

This chapter will provide a legal study of critical measures, based on law, for ensuring good governance through the promotion of its key principles of rule of law, accountability and transparency; and hence sustainable solution to security problems of piracy and armed robbery against ships on Africa's coast waters. These key measures are effective law enforcement; human rights; and an ombudsman. Section 2.1 will critically analyse these measures in the case of Somalia, while section 2.2 will analyse the measures in the case of Nigeria.

2.1 LEGAL STUDY OF MEASURES FOR ENSURING GOOD GOVERNANCE IN SOMALIA AND SUSTAINABLE SOLUTION TO PIRACY IN THE WATERS OFF THE COAST OF SOMALIA: ANALYSIS OF OPPORTUNITIES AND CHALLENGES

2.1.1 Effective Law Enforcement

(a) Effective prosecution of piracy

Although Somalia is a State Party to the 1982 United Nations Convention on the Law of the Sea (UNCLOS),⁴³² it lacks specific national legislation criminalising piracy pursuant to Article 101 of UNCLOS.⁴³³ Crimes constituting piracy are prosecuted as alternative crimes under the Somali Penal Code.⁴³⁴

⁴³² UN Division of Ocean Affairs and Law of the Sea (UNDOALOS), "Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements". Available at http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm (accessed on 13 December 2016).

⁴³³ Security Council resolution 843 (2016), para. 29; and Afyare Elmi and Ladan Affi, "Report: Barriers to Developing Anti-Piracy Law in Somalia", Al Jazeera Centre for Studies, 20 November 2014, p. 3.

⁴³⁴ Ibid (Elmi & Affi).

The lack of specific legislation significantly limits Somalia's capacity to effectively enforce criminal accountability against leaders and other high-ranking officials of piracy networks. However, Somaliland and Puntland have enacted specific legislation criminalising piracy, respectively, The Law for Combating Piracy, Law No. 52/2012; and Puntland Piracy Law, No. 18 (2012).⁴³⁵ These regional states have arrested and prosecuted suspected pirates, and subsequently transferred the convicts to prisons of the Federal Government of Somalia.⁴³⁶ Nonetheless, these regional governments, just like the Federal Government of Somalia, are yet to prosecute leaders and high-ranking officials of piracy networks.⁴³⁷

A critical legal appraisal of the 2013 announcement of amnesty for Somali pirates

The Federal Government of Somalia's grant of amnesty to pirates arguably counters piracy prosecution efforts necessary for enforcing criminal accountability and deterrence. In February 2013 Somalia's President Hassan Sheikh Mohamud issued an official letter indicating 'that the Federal Government of Somalia had conducted "indirect" negotiations with the pirates through "the elders" and confirmed his intention to offer an amnesty for "young" pirates, without further' details.⁴³⁸ The letter indicated that pirate "kingpins" were excluded from the amnesty.⁴³⁹ The SEMG expressed concern that the 'steps described by the President could lead towards a general policy of amnesty for Somali piracy'.⁴⁴⁰

While it may be contended that Somalia's immediate need of restoring peace and building stability in the State recovering from at least two decades of State failure and civil war influenced its decision to grant amnesty to young pirates, such amnesty granted without any rationale for exclusion of pirate kingpins; and requirement for "some form of accountability" from the reprieved young pirates undermines the rule of law and effective pursuit of accountability.

Moreover, it could be argued that Somalia's grant of amnesty was an abrogation by the State of its international customary law duty to prosecute or extradite perpetrators of piracy.⁴⁴¹ This is because piracy is recognised as an international crime that possesses the legal status of *jus cogens*, hence placing obligation *erga omnes* upon States to either prosecute perpetrators of this crime under universal jurisdiction or extradite them.⁴⁴²

⁴³⁵ UNODC, *Piracy Prisoner Transfer Programme*. Available at <https://www.unodc.org/unodc/en/piracy/piracy-prisoner-transfer-programme.html> (accessed on 13 December 2016).

⁴³⁶ Security Council resolution 843 (2016), para. 36.

⁴³⁷ Security Council resolution 413 (2013), para. 65; and *Ibid*, paras. 7&8.

⁴³⁸ Security Council resolution 413 (2013), para. 59.

⁴³⁹ *Ibid*.

⁴⁴⁰ *Ibid*.

⁴⁴¹ Cherif M. Bassiouni, "International Crimes: 'Jus Cogens' and 'Obligatio Erga Omnes'" *Law and Contemporary Problems*, vol. 59, No. 4 (Autumn, 1996).

⁴⁴² *Ibid*, pp. 65 – 66; and International Law Commission (ILC), *Draft Articles on the Law of Treaties with*

However, a contrary view has been advanced in scholarly discourse regarding the nature of the obligation to prosecute pirates. Karim views that under treaty law, specifically UNCLOS, the obligation to prosecute pirates is ‘discretionary’ rather than binding.⁴⁴³ In support of this claim Karim cites the interpretation of the International Law Association (ILA) regarding the obligation of States to prosecute pirates under Article 14 of the High Seas Convention, which ‘has been reproduced verbatim in Article 100 of UNCLOS’.⁴⁴⁴ The stated interpretation of the ILA reads as follows:

“[The High Seas Convention] does not determine the obligation of States to punish piracy nor does it stipulate that they should include and punish the crime of piracy in their Codes and Laws ... Article 14 of the Geneva High Seas Convention, 1958, only establishes that States should co-operate in every possible way in prevention of piracy, and even that only on the high seas or other places which do not come under the jurisdiction of any State. Consequently, States did not feel obliged to punish specially this crime in their domestic laws.”⁴⁴⁵

Nonetheless, this thesis avers, in contrast to Karim’s view, that although Article 14 of the High Seas Convention, and likewise Article 100 of UNCLOS, only establishes a duty of all States to cooperate in repression of piracy, this does not imply that in so doing Article 100 vitiates the non-derogable legal obligation upon States to prosecute or extradite pirates, arising from the fact that the international crime of piracy possesses the status of *jus cogens*.⁴⁴⁶ The duty of cooperation on States is related to, rather than distinct from, the duty on States, borne out of a common interest of the international community of States to prohibit piracy,⁴⁴⁷ to prosecute or extradite pirates that any or all cooperating States may arrest in the high seas.⁴⁴⁸

The duty of cooperation has been reiterated in UNSC resolutions on the piracy situation in Somalia; and forms the basis for cooperation among States in international military naval patrols that have been key in repressing the infamous Somali piracy. Besides international cooperation in military naval patrols, States also cooperated in prosecution of pirates arrested in the high seas. The pirates were handed over to regional States for trial subsequent to transfer agreements concluded between the arresting States and the regional States.⁴⁴⁹ Still, some of the arrested

commentaries, 1966, p. 248. See also *Prosecutor v. Anto Furundžija, ICTY, para. 155*.

⁴⁴³ Md. Saiful Karim, “Is there an International Obligation to Prosecute Pirates?”, *Netherlands International Law Review*, (2011), p. 396.

⁴⁴⁴ Ibid.

⁴⁴⁵ Ibid.

⁴⁴⁶ Supra note 442 (ILC, 1966), pp. 247&248; and supra note 441, p. 63.

⁴⁴⁷ Selina Maclaren, “Entrepreneurship, Hardship, and Gamesmanship: Modern Piracy as a Dry Endeavor”, *Chicago Journal of International Law*, vol. 14, No. 1 (2013), p. 357.

⁴⁴⁸ ILC, *Article concerning the Law of the Sea with commentaries*, 1956, p. 282; and supra note 442 (ILC, 1966), p. 248.

⁴⁴⁹ Milena Sterio, “A Report on the Possibility of Future Somali Piracy Prosecutions in Mauritius”, *EJIL: Talk!*, 26 December 2012.

pirates were prosecuted by the States of the arresting military navies such as The Netherlands, Germany and France.⁴⁵⁰

However, as ILA observes, some States may have been misinformed as to the exact intention of Article 100 of UNCLOS. These States seem to be under the wrong impression that the requirement for cooperation in repressing piracy in the high seas discharged States from their obligation *erga omnes* to prosecute or extradite perpetrators of the *jus cogens* crime of piracy. The ILC has clarified that States ‘are not competent to derogate at all [from *jus cogens* rules] by a treaty arrangement, and ...[such rules]... may be changed only by another rule of the same character’.⁴⁵¹

Regarding improvement of law enforcement capacity to ensure accountability, the Federal Government of Somalia as well as Somalia’s regional administrations are developing their maritime and justice sectors with the assistance of the UN and EU.⁴⁵² This has included training offered in Somalia and at UN in New York, US.⁴⁵³ Also, Somali law enforcement personnel have received training from the International Criminal Police Organization (INTERPOL) to build their criminal investigation capacity.⁴⁵⁴

Likewise, UNODC has in the recent past ‘provided maritime law enforcement and engineering and communications mentors who delivered on- the-job training and mentoring to Somali maritime police and coastguard units’.⁴⁵⁵ The UN Division of Ocean Affairs and the Law of the Sea (UNDOALOS), similar to UNODC, has focussed its assistance on improving maritime legal governance challenges in Somalia.

Since 2014 UNDOALOS has been assisting the Federal Government of Somalia, particularly its legislators and government officials, to build their legal capacity regarding the rights and duties stipulated in UNCLOS, including suppression of piracy and other maritime security threats.⁴⁵⁶ This assistance is provided through a programme funded by the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia (hereinafter referred to as ‘the Trust Fund’).⁴⁵⁷ In addition, UNDOALOS has assisted the Somali government in re-evaluating its legal and institutional framework on ocean affairs with a view of identifying gaps and proposing

⁴⁵⁰ Robin M. Warner, “The Prosecution of Pirates in National Courts”, *Emirates Lecture Series 109* (2013).

⁴⁵¹ Supra note 442 (ILC, 1966), p. 247.

⁴⁵² Security Council resolution 843 (2016), para. 16.

⁴⁵³ Ibid, paras. 16 and 21.

⁴⁵⁴ Ibid, para. 22.

⁴⁵⁵ Supra note 452, para. 16.

⁴⁵⁶ UNDOALOS, *DOALOS’s support to the New Partnership for Africa’s Development (NEPAD)*, (May 2015 – April 2016), p. 1. Available at <http://www.un.org/en/africa/osaa/pdf/unsystemfolder/2016/ola-doalos.pdf> (accessed on 31 May 2017); and supra note 453.

⁴⁵⁷ Ibid (UNDOALOS).

improvements.⁴⁵⁸ Besides, in 2015 a special strategic fellowship programme was launched in UNDOALOS with financial assistance from the Trust Fund.⁴⁵⁹ Between April and July 2016, two Somali government nominees were trained under this programme at UNDOALOS, in New York, USA.⁴⁶⁰

(b) Effective maritime policing

Moreover, Somalia has inadequate maritime policing capacity in terms of skills and resources, hence limiting its capacity to monitor piracy activities and conduct arrests of criminals.⁴⁶¹ However, the Federal Government of Somalia is developing a coastguard policy framework with the technical assistance of the United Nations Assistance Mission in Somalia (UNSOM) and ‘the European Union Mission on Regional Maritime Capacity-Building in the Horn of Africa. UNSOM established a sub-working group under the naval coastguard working group on 12 October 2015. The aim of the sub-working group was to develop a plan to train and equip, referred to as the Naqude [Captain] plan, for the Somali coastguard.’⁴⁶²

Further, with assistance from international partners and the UN, the Federal Government and the regional states of Somalia are engaged in initiatives aimed at building their maritime security capacities.⁴⁶³ This will be achieved by building maritime operations centres, the first of which has been established in Somaliland under the command of the Somaliland coastguard.⁴⁶⁴ The purpose of the centres is ‘to provide Somali maritime institutions with greater situational awareness and improve communications in coastal areas and between local maritime security institutions and international naval forces, while increasing knowledge of local maritime crime issues’.⁴⁶⁵

(c) Confronting organised crime

The federal and regional governments of Somalia are yet to ‘seriously’ prosecute leaders of piracy criminal networks, particularly those that have been specifically identified.⁴⁶⁶ These leaders reportedly remain free within Somalia and their criminal networks remain undefeated, hence posing a risk of return to piracy.⁴⁶⁷ This failure to prosecute has been attributed to lack of

⁴⁵⁸ Ibid.

⁴⁵⁹ Ibid; and supra note 452, para. 21.

⁴⁶⁰ Supra note 452, para. 21.

⁴⁶¹ Supra note 452, paras. 20 & 31.

⁴⁶² Supra note 452, para. 14.

⁴⁶³ Supra note 452, paras. 15&16.

⁴⁶⁴ Supra note 452, para. 15.

⁴⁶⁵ Ibid.

⁴⁶⁶ Supra note 438, para. 65.

⁴⁶⁷ Supra note 452, paras. 7-8; and Ibid.

political will stemming from ‘limited financial resources, jurisdictional barriers’, among other reasons.⁴⁶⁸

Moreover, Somali pirate networks still hold pirates within Somalia who continue to be released upon payment of ransom.⁴⁶⁹ In this case a genuine attempt at tackling piracy networks in Somalia would be demonstrated by the government, with international assistance if need be, tracking down these piracy networks hideouts; arresting the kidnappers; and facilitating unconditional release of the kidnapped crew.

It has been suggested that imposition of UN sanctions on relevant Member States, including Somalia, may persuade the latter and other UN Member States (‘where some pirates reside, travel or hold bank accounts’ and other assets) to prosecute ‘identified pirate leaders, financiers and facilitators’ hence ending the impunity they enjoy.⁴⁷⁰

Further, Somalia is neither a State Party to the 2000 UN Convention against Transnational Organised Crime (UNTOC); nor does it have national legislation addressing organised crime. It has been observed that impunity perpetuated by lack of criminal accountability, has allowed pirates to invest in new forms of business, both legal and illegal, to launder their proceeds and gain further profit.⁴⁷¹ Moreover, ‘investigations into the finances of pirates and former pirates have revealed significant sums of money circulating inside and outside Somalia, financial dealings with Somali politicians, money-laundering [overseas], bank accounts of pirate leaders, financiers and facilitators held in Somalia and [in foreign States]...’⁴⁷²

Therefore, it is crucial for Somalia to enact legislation tackling organised crime in order to effectively pursue criminal accountability against leaders of piracy networks. Also, it is necessary for Somalia to enact anti-money laundering policies and legislation in order to proscribe and disrupt proceeds of crime flowing to the country to sustain the organised criminal syndicates and its members.

However, as Lindley observes, complexities associated with the widespread *Hawala* system, that is, ‘a legitimate form of informal banking that operates in Somalia, which also is regarded as a conduit for money laundering by criminals’; presents Somalia, a country already ‘plagued by challenges of governance’, with a difficult uphill-task of ‘establishing the necessary infrastructure to regulate underground financial transfers, without [penalising] those who use the

⁴⁶⁸ Supra note 438, para. 66.

⁴⁶⁹ Supra note 452, paras. 3&66.

⁴⁷⁰ Security Council resolution 726 (2014), para. 58.

⁴⁷¹ Ibid, para. 59.

⁴⁷² Ibid, para. 61.

system legitimately'.⁴⁷³ To overcome this challenge, the 'Somali Money Services Association, in coordination with UNODC, is developing a code of conduct to ensure money transfer services in Somalia meet international standards'.⁴⁷⁴

Moreover, it is important that Somalia ratifies the UNCTOC in order to benefit from the assistance of other States Parties in tackling transnational aspects of piracy and other transnational organised crimes. Similarly essential is the need for Somalia to enter into bilateral and multilateral agreements on judicial cooperation in criminal matters, in order to pursue fugitives who may be hiding abroad; access important evidence in the custody of foreign States; and recover proceeds of the crime of piracy stashed abroad. As stated above, these agreements include treaties on mutual legal assistance (MLA), extradition and asset recovery.

(d) Tackling corruption

Somalia continues to struggle with endemic corruption. Government officials have reportedly benefited from corruption, engaged in money-laundering and worked with criminal networks to transfer abroad profits made from illegal or unlawful activities.⁴⁷⁵ This state of affairs has provided opportunities for rampant money laundering.⁴⁷⁶

In Somalia the police are responsible for investigating financial crimes, including corruption and money laundering.⁴⁷⁷ Nonetheless, they lack the requisite capacity, including financial, technical, and human resources, to investigate suspected money laundering.⁴⁷⁸ Somalia does not have an institutional authority responsible for tracking, seizing or freezing proceeds of crime. Also, Somalia should enact legislation on tracing and forfeiture of proceeds of crime.⁴⁷⁹

In tackling corruption and improving transparency of government transactions, the Federal Government of Somalia's ministries and agencies have increased cooperation with the country's 'Financial Governance Committee, a body mandated to review concession and public procurement contracts at or above a value of \$5 million'.⁴⁸⁰ Also Somalia's ministry of finance has increased its cooperation with the international donor community, including UK's

⁴⁷³ Jade Lindley, *Somali Piracy: A Criminological Perspective* (London, New York: Routledge, 2016), p. 185.

⁴⁷⁴ Ibid, p. 186.

⁴⁷⁵ Supra note 423.

⁴⁷⁶ Ibid.

⁴⁷⁷ Ibid.

⁴⁷⁸ Ibid.

⁴⁷⁹ Ibid.

⁴⁸⁰ Ibid.

Department for International Development (DFID),⁴⁸¹ to implement public financial management reforms.⁴⁸²

Although not a State Party to either the UNCTOC or the 2003 UN Convention against Corruption (UNCAC), Somalia has nevertheless cooperated with foreign law enforcement agencies on investigations concerning kidnapping and piracy.⁴⁸³ Moreover, in February 2006 Somalia signed, but is yet to accede to, the 2003 African Union Convention on Preventing and Combating Corruption.⁴⁸⁴ However, to effectively tackle corruption, money laundering and other economic crimes, Somalia needs to join UNCTOC and UNCAC to benefit from synergy and assistance of other States in addressing these cross-border economic crimes.⁴⁸⁵

Also, Somalia should enact legislation criminalising corruption, money-laundering and other economic crimes. The legislation should establish an independent office specialised in investigating and prosecuting corruption in the public sector.⁴⁸⁶ The Provisional Constitution of the Federal Republic of Somalia, at Article 111C, provides for the creation of an Anti-Corruption Commission. In February 2016, Somalia made progress in this regard by holding a public consultation workshop on Anti-Corruption Commission Establishment Act.⁴⁸⁷

Moreover, it is essential for the Somali government to equip its law enforcement and judicial authorities with resources and capacity required for effective investigation and prosecution of economic crimes, including, adequate staffing, regular training and funds.⁴⁸⁸

(e) Outreach programme

An outreach programme will be crucial for Somalia when it embarks on prosecution of piracy leaders. Their prosecution is likely to be met with resistance from communities that benefited from the public goods that Somali piracy provided.

This likelihood has been evidenced by protest marches that were held in Somalia following the arrest in October 2013 of renowned pirate leader Afweyne and his ‘business partner and former “President” of the self-declared autonomous region of Himan and Heeb, Mohamed Abdullahi

⁴⁸¹UK, Department for International Development (DFID), *DFID’s Anti-Corruption Strategy for Somalia*, (London, January 2013), para. 7.

⁴⁸² Supra note 423.

⁴⁸³ Ibid.

⁴⁸⁴ African Union (AU), “List of Countries which have Signed, Ratified / Acceded to the African Union Convention on Preventing and Combating Corruption”. Available at https://www.au.int/en/sites/default/files/treaties/7786-sl-african_union_convention_on_preventing_and_combating_corruption_21.pdf (accessed on 15 December 2016).

⁴⁸⁵ Supra note 423.

⁴⁸⁶ Ibid.

⁴⁸⁷ Federal Republic of Somalia, Ministry of Justice, *Information: Anti-corruption*, (Mogadishu, 18 February 2016).

⁴⁸⁸ Supra note 423.

Moalim-Aden “Tiiceey”, upon their arrival in Brussels, Belgium.⁴⁸⁹ Belgian authorities accused Afweyne of involvement in the 2009 hijacking of Belgian stone carrier Pompeii.⁴⁹⁰ Tiiceey was accused of facilitating ransom payments and other activities on behalf of Somali pirates.⁴⁹¹ Importantly, UN SEMG observes as follows regarding the protests:

‘48. The exceptional arrest and detention of the pirate leader and his accomplice caused much misunderstanding among the Somali population, in particular in Himan and Heeb, where both men were operating. Several protest marches were held in the capital, Adado, in October and November 2013, with tens to hundreds of people, often women and children, holding posters with Afweyne’s picture and asking for him to be freed, stating that he was not a pirate, but a businessman...

49. Religious men and individuals with disabilities who attended a rally held in Adado on 23 November 2013 to protest against the “unlawful” arrests stated that individuals with disabilities throughout Himan and Heeb, who had greatly benefitted from Afweyne’s generosity, were suffering and called for the immediate and unconditional release of the two men...’⁴⁹²

2.1.2 Ensuring Human Rights

Serious human rights concerns in Somalia have been noted particularly over the country’s record on civil and political rights.⁴⁹³ Despite being a State Party to the 1966 International Covenant on Civil and Political Rights (ICCPR), Somalia has been accused of infringing on freedom of expression provided for in Article 19(2) of the ICCPR, and enshrined in Article 18 of Somalia’s Provisional Constitution.

Reportedly, sometimes individuals have been ‘restricted from criticizing the government. Persons often lacked the ability to criticize authorities without reprisal, particularly to criticize officials’ alleged corruption; their capacity to deal with security matters; and their mental and physical fitness to govern’.⁴⁹⁴ Somali federal and regional authorities temporarily closed media organisations for various supposedly unsubstantiated reasons including, national security concerns; and defamation of the president and other leaders.⁴⁹⁵ Moreover, it has been observed that the federal government and regional authorities have acted with impunity and subjected journalists to violence, harassment, arrest, and detention.⁴⁹⁶

⁴⁸⁹ Supra note 470, para. 47.

⁴⁹⁰ Ibid.

⁴⁹¹ Ibid.

⁴⁹² Supra note 470, paras. 48 - 49.

⁴⁹³ UK, DFID, *Operational Plan 2011-2016: DFID Somalia* (London, December 2014), p. 18; and infra note 494.

⁴⁹⁴ US Department of State, “Somalia 2015 Human Rights Report: Executive Summary”, pp. 17 – 20. Available at <https://www.state.gov/documents/organization/252939.pdf> (accessed on 11 December 2016).

⁴⁹⁵ Ibid.

⁴⁹⁶ Ibid.

However, the Somali government is taking progressive steps to protect the rights and dignity of journalists and ensure a free press by enacting the Somali National Media Law.⁴⁹⁷ Among other things, the legislation provides that ‘every suspect would be brought before a competent judge within 48 hours, that no one would be subjected to torture or inhumane treatment, and that the right to legal representation and a fair trial ... [is] guaranteed’.⁴⁹⁸

Moreover, during Somalia’s Universal Periodic Review (UPR) session in January 2016, the government stated that although it continued to experience a challenge in preventing killings of journalists, ‘the Office of the General Prosecutor had taken steps to prevent perpetrators from enjoying impunity and freedom. It had conducted investigations into the killings of journalists to bring suspects before courts of law’.⁴⁹⁹ Also, the government informed that it had ‘taken some steps to prosecute and punish officials’ for human rights abuses.⁵⁰⁰

The progressive steps notwithstanding there remain significant challenges for Somalia to overcome, including translating the federal government’s ‘commitments to uphold human rights into action in the context of [the prevailing situation of] weak control over its security forces’.⁵⁰¹ Initial steps have been taken in this regard ‘in terms of developing security and justice sector development plans which, in the longer term, will assist with arresting’ human rights abusers.⁵⁰²

2.1.3 Importance of an Ombudsman

The Provisional Constitution of Somalia, at Article 111J, provides for the establishment of the Office of the Ombudsman. However, the ombudsman’s office is yet to be physically created.

The provision further stipulates that the ombudsman shall be nominated by the president of the Federal Republic of Somalia, acting in accordance with the recommendations of the country’s Judicial Service Commission.

The ombudsman will complement efforts of the Somali government aimed at improving accountability and the rule of law, by investigating and recommending for prosecution State officers and public servants suspected of abusing their powers for unlawful acts such as corruption.

⁴⁹⁷ UN Human Rights Council (HRC), *Somalia: Report of the Working Group on the Universal Periodic Review*, A/HRC/32/12 (13 April 2016), para. 24.

⁴⁹⁸ Ibid.

⁴⁹⁹ Supra note 497, paras. 1 & 25.

⁵⁰⁰ Supra note 493 (UK, DFID).

⁵⁰¹ Supra note 493 (UK, DFID), p. 19.

⁵⁰² Supra note 493 (UK, DFID), p. 19.

2.2 LEGAL STUDY OF MEASURES FOR ENSURING GOOD GOVERNANCE IN NIGERIA AND SUSTAINABLE SOLUTION TO PIRACY AND ARMED ROBBERY AGAINST SHIPS IN THE GULF OF GUINEA: ANALYSIS OF OPPORTUNITIES AND CHALLENGES

2.2.1 Effective Law Enforcement

(a) Effective prosecution of piracy and armed robbery against ships

Although Nigeria is a State Party to UNCLOS it lacks specific national legislation criminalising piracy pursuant to Article 101 of UNCLOS.⁵⁰³ Likewise, despite its membership of the IMO, Nigeria is yet to enact legislation specifically criminalising armed robbery against ships in accordance with the guidance in paragraph 2.2 of the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships which was adopted on 2 December 2009 by resolution A.1025 (26) of the Assembly of the IMO ('the IMO Code of Practice').

Recently, about 19 January 2016, Nigeria's Director of Prosecutions of the Federation observed that 'the paucity of judicial precedents on piracy in Nigeria suggests clearly that the prosecution of such offences is nearly absent'.⁵⁰⁴ The dearth in prosecution has been chiefly attributed to lack of legislation specifically criminalising and penalising these piracy and armed robbery against ships, as well as inadequate judicial capacity to undertake effective prosecutions. In this respect UNODC importantly stated as follows in 2016 in the context of its four-year regional strategy for assisting West African States to combat crime:

'Assessments and fact-finding missions by UNODC in the region determined that currently no State bordering the Gulf of Guinea possesses the necessary combination of jurisdictional provisions, offence-creating legislation, and judicial capacity needed to undertake prosecutions against piracy'.⁵⁰⁵

In the case of Nigeria, owing to lack of specific legislation expressly criminalising and penalising piracy and armed robbery against ships, prosecutors resort to charging persons arrested on suspicion of committing these maritime crimes, with similar albeit comparatively lesser alternative crimes stipulated in the laws of Nigeria. These alternative crimes attract low

⁵⁰³ Supra note 432.

⁵⁰⁴ UNODC, "UNODC supports Nigeria on piracy and maritime crime". Available at <https://www.unodc.org/westandcentralafrica/en/nigeria-maritime-crime-training.html> (accessed on 26 January 2017).

⁵⁰⁵ Supra note 322, p. 20.

penalties that do not create meaningful deterrence for future perpetrators of crimes of piracy and armed robbery against ships. In this regard, Nigeria's Director of Prosecutions importantly commented as follows:

'The challenge of narrowing facts of particular offences of piracy to existing law is most harrowing for the prosecutors. In some cases, the facts may have to be used to state lesser offences and the suspect escapes appropriate criminal sanctions. This consequently erodes confidence of the public.'⁵⁰⁶

Likewise, Nigeria's security agents have expressed similar concern over legislative and judicial challenges compromising effective prosecution of pirates. In particular, Rear Admiral Adeniyi Adejimi Osinowo commented as follows regarding law enforcement challenges in Nigeria, specifically in the Niger Delta region and neighbouring States, in tackling piracy and other maritime crimes:

'Frustration over the lack of effective prosecution of pirates and maritime criminals is prevalent in many Central and West African states. This stems from an absence of requisite domestic laws for prosecuting piracy and, in other instances, weak penalties and judicial processes. In many states, navies, coast guards, and maritime security agencies lack prosecution powers and rely on the police and other agencies for such a vital element of the enforcement cycle. In the restive Niger Delta, for example, trial for many suspects of oil theft and piracy comes several months after arrest due to insufficient availability of judicial officers. During that time, challenges in the preservation of evidence and limitations of detention periods often weigh in [favour] of the suspects who regain freedom soon after arrest.'⁵⁰⁷

The Nigerian government, with the assistance of the international community, is tackling capacity challenges that have weakened its aim of establishing criminal accountability for piracy and other maritime crimes. Specifically, in January 2016 the UNODC with the financial support from the US Department of State, trained more than 30 Nigerian law enforcement and judicial officers 'consisting of Federal High Court Judges, Federal Prosecutors, ... [NIMASA] legal officers, [and the] Nigerian Navy,' on the international legal framework on piracy and maritime crime.⁵⁰⁸ The training was intended to build capacity of relevant officers in investigating, prosecuting and adjudication of piracy and other maritime crimes.⁵⁰⁹ Moreover, the need to forge regional cooperation among nations in the Gulf of Guinea was discussed at the training.⁵¹⁰

Further, in improving its capacity to effectively prosecute piracy, Nigeria is in the process of developing specific piracy legislation by the introduction of the Piracy Bill, 2016 for debate at its

⁵⁰⁶ Supra note 504.

⁵⁰⁷ Supra note 6 (Osinowo).

⁵⁰⁸ UNODC, "Nigeria", 28 January 2016.

⁵⁰⁹ Ibid.

⁵¹⁰ Ibid.

national assembly.⁵¹¹ The bill is reportedly an initiative of NIMASA.⁵¹² However, the bill is exclusively focussed on piracy while omitting armed robbery against ships. Considering the fact that Nigeria suffers most from cases of armed robbery against ships, as evidenced by the comparatively higher number of attacks in its port area,⁵¹³ it is imperative that crime of armed robbery against ships is included in the bill.

A critical legal appraisal of the 2009 amnesty and pardon for Niger Delta militants

On 25 June 2009 Nigeria's presidency granted amnesty and unconditional pardon to all persons who were involved in militant criminal conduct in the Niger Delta.⁵¹⁴ The amnesty and pardon were proposed and approved as a solution to 'end years of attacks on the region's beleaguered oil industry.'⁵¹⁵ Restoration of peace and security in the oil-belt region was paramount for Nigeria whose economy is mainly dependent on exploitation of oil resources for revenue generation.

This 'rapprochement was influenced by the increasing threat posed by insurgents [led by MEND,] to oil security, as epitomized by ...[MEND's] ... successful attack on the floating production, storage, and offloading unit (FPSO) Bonga in 2008... The attack had serious implications for Nigeria, the wider Gulf of Guinea, and beyond. The Bonga attack marked a peak in a series of threats to energy security in the Gulf of Guinea, and it opened a new chapter in global asymmetric threats'.⁵¹⁶ Reportedly, at the time militant attacks on Nigeria's oil installations and infrastructure had reduced the country's oil production to 1.3 million barrels per day from its capacity of 2 million barrels per day.⁵¹⁷

While declaring the amnesty and pardon, the late President Yar'Adua was quoted as saying that, "I am hopeful and confident that by the end of this year, we will have a secure and stable environment in the Niger Delta".⁵¹⁸ Hope for a secure environment in the Niger Delta seemed realizable by the end of 2009 as demonstrated by a decline in militant activities by MEND.⁵¹⁹ 'Interestingly, in that period piracy attacks in the Gulf of Guinea decreased, from a high of sixty incidents in 2007 to fifty in 2008, reaching lower figures in 2009 and 2010...' ⁵²⁰

⁵¹¹ Available at <http://nass.gov.ng/document/download/8204> (accessed on 28 August 2016).

⁵¹² Moses Ebosele, "NIMASA canvasses early passage of anti piracy law", The Guardian, 13 April 2016.

⁵¹³ This has been deduced from analysis of statistics provided by IMO and IMB on piracy and armed robbery against ships. See, <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Reports/Pages/Default.aspx>; and <http://www.icc.se/wp-content/uploads/2016/07/2016-Q2-IMB-Piracy-Report-Abridged.pdf>, respectively, accessed on 2 November 2016.

⁵¹⁴ BBC, "Nigeria offers militants amnesty", 26 June 2009.

⁵¹⁵ Ibid.

⁵¹⁶ Supra note 7, p. 131.

⁵¹⁷ Supra note 514.

⁵¹⁸ Ibid.

⁵¹⁹ Supra note 7, p. 133.

⁵²⁰ Ibid.

Nevertheless, the relative security realised by the end of 2009 was short-lived as in 2010 attacks of piracy and armed robbery attacks in the Gulf of Guinea surged.⁵²¹ Ali explains that the resumption of the attacks was a result of the subsequent tenuous amnesty arrangement, ‘partly because the amnesty “cake” had not been shared among all actors (and certainly not in amounts satisfactory to all members of the insurgency)...’⁵²² Consequently, ‘[s]plinter groups announced an intention to resume normal campaigns, and in the remainder of 2010 piracy attacks became prevalent once again...’⁵²³ The worrying security situation in the Niger Delta has remained largely unchanged since then.⁵²⁴ Clearly, the 2009 amnesty programme for ending militant attacks on the oil industry and consequently insecurity in the Niger Delta was unsustainable.

Nonetheless, the failure of the 2009 amnesty pact is not a determination that amnesty is ineffective in creating deterrence and enabling sustainable repression of crime. Although traditionally associated with and considered an objective of criminal prosecution, deterrence may also be achieved through grant of amnesty where ‘amnesty is conditional on disarmament and non-recidivism’.⁵²⁵ Although the 2009 amnesty pact was conditional on the ‘repentant’ militants ‘laying down their weapons in return for monthly allowances and skills training’,⁵²⁶ it appears that this condition was ineffectively enforced. The subsequent threats by some militants’ leaders of resumption of attacks demonstrates that ‘the militants may not have surrendered all their arms’.⁵²⁷

Moreover, the 2009 ‘Niger Delta amnesty [was] largely flawed on ... grounds of accountability’.⁵²⁸ The Belfast Guidelines on Amnesty and Accountability propose ‘[k]ey elements of an effective [non-legal] accountability process’, such as amnesty, ought to include the following: ‘investigating and identifying individuals or institutions that can be held to account for their decisions, actions or omissions’; ‘holding these individuals or institutions to account through a process in which they are to disclose and explain their actions’; and ‘subjecting such individuals or institutions to a process through which sanctions can be imposed on individuals and reforms imposed on relevant institutions. Appropriate sanctions may include imprisonment, exclusion from public office, limitations of civil and political rights, requirements to apologise, and requirements to contribute to material or symbolic reparations for victims’.⁵²⁹

⁵²¹ Supra note 258. See also supra note 7, p. 133.

⁵²² Ibid.

⁵²³ Ibid.

⁵²⁴ Supra note 322; and OBP, “Piracy and Robbery against Ships in the Gulf of Guinea: 2015”. Available at <http://oceansbeyondpiracy.org/reports/sop2015/west-africa> (accessed on 9 September 2016).

⁵²⁵ University of Ulster, “The Belfast Guidelines on Amnesty and Accountability”, 2013, p. 9.

⁵²⁶ Supra note 7, p. 132.

⁵²⁷ Michael Nwankpa, “The Politics of Amnesty in Nigeria: A Comparative Analysis of the Boko Haram and Niger Delta Insurgencies”, *JTR*, vol. 5, Issue 1 (Special Issue, February 2014), p. 72.

⁵²⁸ Ibid, p. 74.

⁵²⁹ Supra note 525, pp. 7&8.

(b) Effective maritime policing

Nigeria is planning to improve its law enforcement capacity in policing its coastal waters. The improved maritime policing is intended to be realised through the creation of a national coastguard service. The country's national assembly is debating the Nigerian Coast Guard Bill, 2008 (SB. 107).⁵³⁰ This proposed law will establish the Nigeria Coast Guard whose maritime security responsibilities will include 'assisting appropriate authorities for the insurance of the security of the sea ports'.⁵³¹ Presently, maritime security in Nigeria's coastal waters has been the responsibility of the Nigerian Navy and NIMASA.⁵³²

Nonetheless, opinion on the necessity of a national coastguard service for Nigeria, is divided. NIMASA's former Director-General, namely, Mr. Patrick Akpobolokemi, held the view that the creation of the coastguard service would constitute 'duplication of functions and waste of meagre public funds'.⁵³³ Mr. Akpobolokemi averred that 'efforts should be intensified to strengthen the existing relationship between the agency and the Nigerian Navy' in their on-going work of ensuring maritime security in Nigeria's coastal waters.⁵³⁴

On its part the Nigerian Navy has lamented its declining ability to secure the country's coastal waters through effective maritime policing, owing to inadequate resources. In 'August 2015 Vice-Admiral Ibok-Ete Ekwe Ibas who is the Chief of Naval Staff, conceded that "the Nigerian Navy [...] is unable to fulfil its constitutional obligation of defending and protecting the country's territorial waters because more than half its fleet is broken down."⁵³⁵ Relatedly, in May 2016, Vice-Admiral Ibas commented that the Nigerian Navy needed improved government funding in order to effectively tackle the current challenges confronting the Navy, including, 'the resurgence of militancy and the high rate of piracy in Nigeria's maritime territory'.⁵³⁶

(c) Confronting organised crime

Piracy in West Africa is deeply intertwined with the 'booming black market for fuel in West Africa'⁵³⁷, where the latter offers the incentive that sustains the former.⁵³⁸ Nigeria has not only

⁵³⁰ Available at <http://nass.gov.ng/document/download/1059> (accessed on 30 September 2016).

⁵³¹ Ibid.

⁵³² Patrick Z. Akpobolokemi, *Enhancing Nigerian Navy Operations through Effective Inter-Agency Cooperation*, paper presented by the former Director-General of NIMASA during the Chief of the Naval Staff Annual Conference in 2014 at the Reverton Hotel, Lokoja, Kogi State, Nigeria. Available at <http://www.navy.mil.ng/PAPER%204%20-%20ENHANCING%20NIGERIAN%20NAVY%20OPERATIONS%20THROUGH%20EFFECTIVE%20INTER-AGENCY%20COOPERATION.pdf> (accessed on 30 September 2016).

⁵³³ National Mirror, "Nigeria doesn't need a Coast Guard, says NIMASA", 26 October 2012.

⁵³⁴ Ibid.

⁵³⁵ Supra note 169 (Steffen).

⁵³⁶ NAN, "Navy has capacity to contain maritime crimes – Ibas", The Guardian, 22 May 2016.

⁵³⁷ Supra note 70 (UNODC), p. 45.

⁵³⁸ Supra note 273.

been associated with most cases of organised crimes of piracy and armed robbery against ships in the Gulf of Guinea,⁵³⁹ but also most of the illegal trade of oil in the black market in West Africa.⁵⁴⁰

Reportedly, the black market in the Niger Delta provides a ready market for oil stolen from cargoes in the Gulf of Guinea by pirates and armed robbers,⁵⁴¹ as well as that acquired through onshore oil bunkering.⁵⁴² Oil bunkering in Nigeria is reportedly a massive transnational organised crime involving foreign investors; and complicit law enforcement officials and community members.⁵⁴³ Moreover, the location of this critical black market in the Niger Delta presupposes that pirates operating in the Gulf of Guinea, especially in the Bight of Benin, need efficient links to this black market to enable the prompt disposal of stolen oil cargo.⁵⁴⁴ The necessary links that develop in order to enable quick sale of stolen oil, provides yet another basis for this research's significant attribution of persistent Gulf of Guinea piracy to onshore criminality in Nigeria.

To date there has not been any reported prosecution of leaders of piracy or armed robbery against ships syndicates. However, Nigeria has severally demonstrated its intention of holding to account organised crime leaders. For instance, in April 2016, Nigeria's navy issued a warrant for the arrest of a suspected pirate kingpin, namely, Charles Ekpemefumor, also known as Charles Parker.⁵⁴⁵ The suspect is wanted for allegedly masterminding the hijack of a product tanker flagged by Panama, namely, MAXIMUS,⁵⁴⁶ in the high seas approximately 77 NM south of Abidjan, Côte d'Ivoire, on 11 February 2016.⁵⁴⁷

Moreover, Nigeria's security forces have continued effective monitoring and investigation of leaders of criminal networks of piracy and armed robbery against ships. In January 2017 the Joint Task Force (JTF) codenamed 'Operation DELTA SAFE', tracked down and overpowered two suspected notorious waterway criminals, in Bayelsa State.⁵⁴⁸ One of the suspects was allegedly "engaged in high profile kidnapping, killing of security personnel in ambush, piracy,

⁵³⁹ Supra note 70 (UNODC), pp. 47 & 50; and European Commission, "Joint Communication to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions: Elements for the EU's Strategic Response to the Challenges in the Gulf of Guinea", 18 December 2013, p. 4.

⁵⁴⁰ Supra note 70 (UNODC), p. 50; and Chip Cummins, "A Nigerian Cop Cracks Down on a vast Black Market in Oil", *The Wall Street Journal*, 13 April 2005.

⁵⁴¹ Supra note 70 (UNODC) (2013), pp. 50 & 51.

⁵⁴² Supra note 23, p. 534.

⁵⁴³ Ibid.

⁵⁴⁴ Supra note 70 (UNODC), p. 50.

⁵⁴⁵ Akintayo Eribake, "Navy declares suspected pirate, Charles Parker, wanted", *Vanguard*, 28 April 2016.

⁵⁴⁶ Ibid.

⁵⁴⁷ IMO, *Reports on acts of piracy and armed robbery against ships, Issued monthly - acts reported during February 2016* (London, 2016), p. 1.

⁵⁴⁸ Ebenezer Adurokiya, "JTF kills 2 kidnap kingpins in Bayelsa", *Nigerian Tribune*, 24 January 2017.

armed robbery and other criminal activities” at various times.⁵⁴⁹ Unfortunately the criminal accountability of the two high-level suspects and their organisations will never be established because they were fatally shot by JTF troops in the course of the military security operation.⁵⁵⁰

Besides pursuing leaders of organised criminal syndicates of piracy and armed robbery against ships, Nigeria seeks to ensure that the perpetrators of these crimes do not benefit financially from their criminal ventures. In pursuit of this aim Nigeria has enacted the Money Laundering (Prohibition) Act of 2011 (MLPA).⁵⁵¹ In particular, Section 15 of MLPA criminalises the conversion or transfer of resources derived directly from participation in an organized criminal group, and various stipulated crimes, including kidnapping, robbery and piracy.

However, the MLPA is only the recent one in time of several legislative initiatives for tackling money laundering in Nigeria, dating back to 1989.⁵⁵² Reportedly, the National Drug Law Enforcement Agency Decree 48 of 1989 was the first legislation in Nigeria to proscribe the offence of money laundering.⁵⁵³ However, as is apparent from its title, the scope of this piece of legislation was limited to addressing the offence money laundering in the context of proceeds from illegal drugs trade, to the exclusion of other crimes.⁵⁵⁴ This limitation necessitated the enactment of the Money Laundering Decree 3 of 1995. ‘This Decree was [subsequently] amended by the Money Laundering (Amendment) Act of 2002, 2003, 2004 and 2011. The ... [MLPA] ... repealed all the previous legislation and made comprehensive provisions on limitation of cash payments, duty to report international transfers, customer due diligence, reporting [of] suspicious transaction reports, mandatory disclosures, ...’ among other restrictions and requirements necessary to check money laundering activities.⁵⁵⁵

Despite the numerous legislative initiatives and developments discussed above, sadly their implementation and consequent impact on organised crime in Nigeria seems dismal as organised crime is endemic in Nigeria’s social and political structures.⁵⁵⁶ For instance, Clapham observes that a very high proportion of the global highly systemised organised crime ‘is laundered through

⁵⁴⁹ Ibid.

⁵⁵⁰ Ibid.

⁵⁵¹ Available at <https://lawpadi.com/wp-content/uploads/2015/08/Money-Laundering-Act-2011.pdf> (accessed on 22 February 2017).

⁵⁵² Wahab Shittu, “National and Cross Border Investigation and Prosecution of Money Laundering Crimes”, p. 11. Available at <http://unilag.edu.ng/opendoc.php?sno=25454&doctype=pdf&docname=National%20and%20Cross%20Border%20Investigation%20and%20Prosecution%20of%20Money%20Laundering%20Crimes> (accessed on 22 February 2017).

⁵⁵³ Ibrahim A. Abubakar, *Anti-Money Laundering and Counter-Terrorism Financing: Law and Practice in Nigeria*, (Lagos: Malthouse Press Limited, 2015), p.240.

⁵⁵⁴ Ibid.

⁵⁵⁵ Ibid.

⁵⁵⁶ Chatham House, “Tracing the Origins of Nigerian Organized Crime: politics, corruption and the Growth of Criminal Networks”, 6 May 2016, p. 4.

the Nigerian state; it is either state money, such as proceeds from the oil industry, or the abuse of state power in order to facilitate criminality.⁵⁵⁷

Consequently, Shittu views legislation relating to organised crime, especially the aspect of money laundering, no matter how effective, as simply ‘good theory on paper’ whose implementation in domestic legal systems in many African countries, including Nigeria, and eventual effectiveness as manifested by prosecutions, depends on a conglomerate of crucial social, economic and judicial dynamics.⁵⁵⁸ Importantly, Shittu notes as follows:

‘It can be said that these recommendations constitute good theory on paper but the implementation of [the] same in domestic legal systems in Africa [,] including Nigeria [,] may depend on other variables including political and economic indices on ground. These indices may arise from lack of the requisite political will by the ruling class to deal with the scourge as well as the absence of economic blue print of the ruling party and effective programmes of the government at state and local government levels on corruption and related offences. It may also depend on the commitment to ethical standards by stakeholders in the judiciary including a conducive atmosphere in the financial and regulatory sphere to deal with money laundering. These extraneous factors [,] including the coercive machinery in place [,] may be more important than the existence of effective legislations against money laundering.’⁵⁵⁹

Owing to transnational links that have been attributed to Gulf of Guinea piracy and armed robbery against ships emanating from Nigeria,⁵⁶⁰ international judicial cooperation in criminal matters is critical in sustainably tackling these organised crimes. Such cooperation enables trans-border collection of evidence and arrest of suspects for effective and prompt investigation and prosecution of the criminal syndicates within Nigeria and their affiliates in neighbouring West African States and further abroad.⁵⁶¹ For this purpose the membership of Nigeria and most of the West African States, including all the 25 Member States of the Yaoundé Code of Conduct,⁵⁶² to the UNCTOC presents these countries with the benefit of cooperation of States Parties to this international convention, in effectively combatting transnational organised crime.⁵⁶³

⁵⁵⁷ Ibid.

⁵⁵⁸ Supra note 552, p. 24.

⁵⁵⁹ Ibid.

⁵⁶⁰ Part I, Chapter 2 of this thesis.

⁵⁶¹ Supra note 552, p. 23.

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Available at http://www.imo.org/en/OurWork/Security/WestAfrica/Documents/code_of_conduct%20signed%20from%20ECOWAS%20site.pdf (accessed on 6 March 2017).

⁵⁶³ UNODC, *Manual on Mutual Legal Assistance and Extradition*, (UN, New York, 2012), p. 7. Sourced from https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf, site last accessed on 24 February 2017.

Since financial benefit is the chief motivation for engaging in crime, including organised crime,⁵⁶⁴ effective hence sustainable tackling of transnational organised crime activities necessitates that criminals are deprived of their proceeds of crime, through confiscation and recovery of the illicitly acquired assets.⁵⁶⁵ This outcome critically depends on international inter-State judicial cooperation in conducting investigations to enable tracing, identification and confiscation of proceeds of transnational organised criminal activities.

Besides, Nigeria is part of regional conventions that provide for judicial cooperation on criminal matters among Member States, specifically on mutual legal assistance and extradition. In this regard, Nigeria is party to the ECOWAS Convention A/P1/7/92 on Mutual Assistance in Criminal Matters; and the ECOWAS Convention A/P1/8/94 on Extradition.⁵⁶⁶

Further, Nigeria is party to multilateral non-binding mechanisms of cooperation for tackling transnational crime. Firstly, Nigeria is party to the Yaoundé Code of Conduct which expresses the intention of its signatory States, to cooperate, particularly in law enforcement efforts, ‘in the repression of transnational organized crime in the maritime domain’.⁵⁶⁷

Secondly, Nigeria benefits from the informal international cooperation networks provided under the Camden Assets Recovery Inter-Agency Network (CARIN). CARIN is ‘an informal network of expert practitioners from the law enforcement and judicial sectors on criminal assets tracing, freezing, seizure and confiscation’.⁵⁶⁸ It was established in 2004 within the European Union (EU).⁵⁶⁹ However, owing to its proven popularity it has since expanded beyond the EU States and currently links practitioners from 53 jurisdictions and 9 international organisations.⁵⁷⁰ ‘This has resulted in the establishment of other regional asset recovery inter-agency networks or ARINs.’⁵⁷¹ Nigeria is a member of the Asset Recovery Interagency Network for West Africa (ARIN-WA).⁵⁷²

⁵⁶⁴ UNODC, “Introduction to money-laundering”. Available at <https://www.unodc.org/unodc/en/money-laundering/introduction.html>, site last accessed on 10 December 2016.

⁵⁶⁵ Commission of the European Communities, “Proceeds of organised crime: Ensuring that “crime does not pay”, 20 November 2008, p. 3.

⁵⁶⁶ Nigeria, Federal Ministry of Justice, *Requests for Mutual Legal Assistance in Criminal Matters: Guidelines for authorities outside of the Federal Republic of Nigeria*, (Abuja, 2013), p. 10.

⁵⁶⁷ Article 2, Yaoundé Code of Conduct.

⁵⁶⁸ Available at https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_4-6.pdf (accessed on 12 December 2016), p. 160.

⁵⁶⁹ Ibid.

⁵⁷⁰ Europol, Camden Assets Recovery Inter-Agency Network (CARIN) leaflet. Available at <https://www.europol.europa.eu/publications-documents/camden-asset-recovery-inter-agency-network-carin-leaflet> (accessed on 27 February 2017).

⁵⁷¹ CARIN, “Other International CARIN type networks”. Available at <http://carin-network.org/other-information> (accessed on 12 December 2016).

⁵⁷² Organization of American States (OAS), “Initiative to Establish an Asset Recovery Inter-Agency Network (ARIN) in the Caribbean Region”, p. 9. Available at <http://www.cicad.oas.org/apps/Document.aspx?Id=4034>

From the foregoing, it is evident that Nigeria has established comprehensive legal measures for tackling organised crimes of piracy and armed robbery against ships, including national legislation; membership to relevant international conventions; and multilateral cooperation networks. However, despite these wide-ranging measures piracy and armed robbery against ships still persist in Nigeria, indicating that the sources of these crimes remain undisturbed. This situation evidences a problem in governance, particularly the processes of implementation of these legal measures by public officials in the three arms of government responsible for law enforcement.⁵⁷³ The governance problem has been majorly attributed to compromise of law enforcement officials through corruption.⁵⁷⁴ Organised crime and corruption exist in a complex symbiotic relationship and are mutually reinforcing.⁵⁷⁵

(c) **Tackling corruption**

Certainly, the long-term solution to Gulf of Guinea piracy will require, among other things, ‘oil sector transparency and anti-corruption reform’.⁵⁷⁶ Organised crime thrives on corruption.⁵⁷⁷ This involves illicit links between organised criminal syndicates, on the one part; and law enforcement and public officials, either by compromise of the latter by the former or collusion between both, on the other part.⁵⁷⁸

Nigeria has had a long history of corruption and paradoxically a comparatively long track record of corruption-tackling initiatives. Supposedly between USD 300 and 400 billion ‘of public funds have been lost to corruption since Nigeria’s independence in 1960.’⁵⁷⁹ For years Nigeria has had laws and anti-corruption agencies established to tackle corruption but they seem to have had little impact as the country was consistently perceived by the global business community,⁵⁸⁰ notably represented by the Transparency International (T.I.) annual corruption perception index (CPI), as highly corrupt. This is indicated by the country’s consistent extreme low-ranking in the first decade of reporting of T.I.’s CPI results, particularly the period between 1996 to 2005.⁵⁸¹

(accessed on 6 March 2017).

⁵⁷³ Transparency International (T.I.), “Organised crime, corruption, and the vulnerability of defence and security forces”, September 2011, pp. 6 – 13.

⁵⁷⁴ Ibid, pp. 9 – 13.

⁵⁷⁵ Supra note 573, pp. 6-8.

⁵⁷⁶ Supra note 273.

⁵⁷⁷ United Nations Interregional Crime and Justice Research Institute (UNICRI), “Organized Crime and Corruption”. Available at http://www.unicri.it/topics/organized_crime_corruption/ (accessed on 12 December 2016).

⁵⁷⁸ Etannibi E. O. Alemika, ed., *The Impact of Organised Crime on Governance in West Africa*, (Abuja: Friedrich-Ebert-Stiftung, 2013), p. 48.

⁵⁷⁹ David Cameron’s foreword in *Against Corruption: a collection of essays*, (Prime Minister’s Office, 10 Downing Street, London, 12 May 2016).

⁵⁸⁰ Ibid.

⁵⁸¹ T.I., “Corruption Perceptions Index”. Available at https://www.transparency.org/research/cpi/cpi_1998/0/ (accessed on 19 March 2016).

In T.I.'s observation, the lower-ranking countries in CPI 'are plagued by untrustworthy and badly functioning public institutions like the police and judiciary. Even where anti-corruption laws are on the books, in practice they're often skirted or ignored. People frequently face situations of bribery and extortion, rely on basic services that have been undermined by the misappropriation of funds, and confront official indifference when seeking redress from authorities that are on the take.'⁵⁸²

The above observation succinctly captures the corruption situation in Nigeria discussed herein-above in Chapter 1, of Part II of this research. Specifically, corruption is demonstrated in Nigeria's mismanagement of resources and revenues from the oil sector; as well as its law enforcement's wanting response to the situation of militancy and organised maritime crime in the Niger Delta, owing to complicity of officials. In this regard, Nigeria's President Muhammadu Buhari importantly notes that the dire corruption situation in the country was caused by ' "a complete lack of political will to strengthen these agencies and to faithfully enforce the laws." These laws were ignored with impunity and procurements were made with a complete disregard for due process.'⁵⁸³

However, in the last ten years Nigeria's CPI has gradually improved as indicated by the country's increasing score on 'cleanliness', denoting a perception of lessening corruption in the country.⁵⁸⁴ This may imply that the country is effectively tackling corruption, albeit slowly. However, it appears that the overall portrayal of lessening of corruption in Nigeria, as indicated by T.I's annual CPI ratings of corruption, could be misleading. This is because corruption in Nigeria's oil sector, which is the second largest contributor to the country's GDP and accounting for more than 80% of its foreign exchange earnings,⁵⁸⁵ remains uncontained.⁵⁸⁶ In this respect, Nigeria's President Buhari recently stated as follows:

'Paradoxically, corruption flourished and eventually became a way of life under the supposedly accountable democratic governments of the past 16 years during which, by one calculation, the nation earned more revenue than in all the previous 80 years combined.'⁵⁸⁷

Nigeria suffers no dearth of requisite legislation and relevant implementation institutions and resources to genuinely tackle corruption and ensure good governance.⁵⁸⁸ What lacks is political

⁵⁸² T.I., "Putting the scores in context". Available at http://www.transparency.org/news/feature/corruption_perceptions_index_2016#table (accessed on 19 March 2016).

⁵⁸³ Supra note 579.

⁵⁸⁴ Supra note 581.

⁵⁸⁵ Supra note 412.

⁵⁸⁶ Ibid.

⁵⁸⁷ Ibid.

will necessary to realise effective law enforcement and hence curb corruption.⁵⁸⁹ Brinkerhoff defines political will as ‘the commitment of actors to undertake actions to achieve a set of objectives – in this instance, reduced corruption – and to sustain the costs of those actions over time.’⁵⁹⁰ At the outset, this definition presents complexity in ascertainment owing to the fact that the concept of political will involves inherently intangible phenomena of intent and motivation, which the term ‘commitment’ denote.⁵⁹¹ Brinkerhoff observes that these phenomena are ‘hard to assess accurately or objectively and are prone to manipulation and misrepresentation.’⁵⁹²

Nonetheless, Brinkerhoff provides a solution to the inherent challenge of accurately and objectively assessing the existence of political will, by unpacking this concept into its seven meaningful constitutive components capable of objective measurement.⁵⁹³ These components are as follows: government initiative; choice of policy or programme based on technically sound consideration and analysis of options, anticipated outcomes, and cost or benefits; mobilisation of stakeholders; public commitment and allocation of resources; application of credible sanctions; continuity of effort; and learning and adaptation.⁵⁹⁴

The stated components relate to important processes and actions that a government, across its three arms, ought to put in place to effectively check corruption. In the case of Nigeria, the public would be able to accurately assess the extent of their government’s commitment to tackle corruption, by assessing the government’s discharge of responsibilities under each of the seven components in the implementation of responsibilities under the relevant anti-corruption laws. This will enable stakeholders and members of the public to not only evaluate the government’s anti-corruption record, but also precisely determine weaknesses and shortfalls of the government’s anti-corruption efforts for future improvement and sustainability of anti-corruption measures.

(d) Outreach programme

The UNSC has observed that in order to enhance maritime security in the Gulf of Guinea, the regional States need to take measures to ‘develop land-based patrolling, surveillance and

⁵⁸⁸ Ibid.

⁵⁸⁹ Ibid.

⁵⁹⁰ Derick W. Brinkerhoff, “Unpacking the concept of political will to confront corruption”, Chr. Michelsen Institute (CMI), No.1, May 2010.

⁵⁹¹ Ibid.

⁵⁹² Ibid.

⁵⁹³ Ibid.

⁵⁹⁴ Ibid.

information-gathering systems'.⁵⁹⁵ One of the measures proposed is promotion of 'public outreach programmes to encourage port workers, fishermen, waterfront communities and seafarers to observe, record and report to coastguards and law enforcement authorities'.⁵⁹⁶ A fairly common example of a public outreach programme adopted by many states worldwide,⁵⁹⁷ and which would be suitable for the Niger Delta maritime crime problem, is community policing. Community policing is essentially collaboration between the police and the community to identify and solve the community's problems. 'With the police no longer the sole guardians of law and order, all members of the community become active allies in the effort to enhance the safety and quality of [neighbourhoods]'.⁵⁹⁸

The success of public outreach programmes, including community policing, critically depend on positive relations between law enforcement agents and the public.⁵⁹⁹ The positive relations foster the necessary community support that law enforcement agents need to sustainably tackle organised crime by identifying the criminal syndicates and prosecuting their leaders. Law enforcement agencies can attain the latter only when there is trust between them and the public which enables necessary communication exchange and cooperation in security matters between the two entities.⁶⁰⁰

However, it would seem that Nigeria's public perception of the country's police as being corrupt and incompetent has caused distrust between the police and the public. The result has been the public's lack of confidence in the police, thus poor relations between these two entities. In this regard, Dambazau importantly observes as follows:

'The major personal security challenge for Nigeria is not in the prevalence of crime, because as Emile Durkheim, the 19th century French philosopher, argued in his famous book [']The Division of Labor in Society['], crime is a normal phenomenon in all societies. The main concern is the perception of the general public towards Nigeria's police, which has undoubtedly earned the reputation of being a brutal, corrupt, and inefficient law enforcement institution... Aside from the poor relationships between the public and the police, the quality of police personnel, equipment, and facilities is extremely poor, and the combination of these factors makes it impossible to rely on police services in enforcing law and order.'⁶⁰¹

⁵⁹⁵ Supra note 258, para. 59 (f).

⁵⁹⁶ Ibid.

⁵⁹⁷ Gorazd Meško and Goran Klemenčič, "Rebuilding Legitimacy and Police Professionalism in an Emerging Democracy: The Slovenian Experience", in *Legitimacy and Criminal Justice: An International Perspective*, Tom R. Tyler, ed. (New York: Russell Sage Foundation, 2007), Ch. 6, pp. 84 - 114, at p. 97. See also, Tim Newburn and Peter Neyroud, eds., *Dictionary of Policing*, (Oxford, New York: Routledge, 2013), p. 187.

⁵⁹⁸ US Bureau of Justice, Community Policing Consortium, *Understanding Community Policing: A Framework for Action* (Washington D.C., 1994), p. vii.

⁵⁹⁹ Portland State University, "Decreasing Crime by Increasing Involvement: A Law Enforcement Guidebook for Building Relations in Multi-Ethnic Communities", 2011, p. 10.

⁶⁰⁰ US Department of Justice, *Community Outreach Programs* (Eastern District of Louisiana). Available at <https://www.justice.gov/usao-edla/community-outreach-programs>, accessed on 27 November 2016.

⁶⁰¹ Supra note 304.

Dambazau further observes that the poor relations between Nigeria's police and public have made it difficult to adopt the concept of community policing as the latter is 'based on the idea that "the police are the people and the people are the police"'.⁶⁰²

The strained relationship between Nigeria's law enforcement agents and the local communities in the Niger Delta is palpable. The local community leaders in the Niger Delta have expressed support for NDA's criminal attacks on petroleum infrastructure instead of cooperating with local law enforcement agents to curb these criminal activities.⁶⁰³ In this respect, the president of the Ijaw Youth Congress reportedly stated thus: 'Until the issues of resource control that the Niger Delta people have been fighting for since 1960 are addressed ... there can be no peace...'.⁶⁰⁴

As discussed in section 2.2.1 in Part I of this research, the local community leaders' support for militia attacks is borne out of deep-seated resentment harboured by Niger Delta communities, over successive governments' failure to address their demands for 'equitable distribution of the income generated by oil and gas production and for remedial action to counter the effects of gas fracking and other forms of pollution in the environmentally damaged delta region'⁶⁰⁵.

Consequently, in order to build positive relations and trust between the police and Niger Delta communities, it is integral that the Nigerian government demonstrates good governance by tackling corruption not only in the area of law enforcement but also in the petroleum sector.⁶⁰⁶

2.2.2 Ensuring Human Rights

While this study has demonstrated that Somali piracy was chiefly attributable to bad governance practices, specifically corruption and impunity resulting in state capture, as opposed to the ravaging poverty and dire socio-economic conditions caused by decades of civil war and lack of a central government; maritime security problems of piracy and armed robbery against ships in the case of the Gulf of Guinea have been demonstrated to be direct results of decades of socio-economic rights infringements in Nigeria's Niger Delta. The latter is the epicentre of these maritime crimes in the Gulf of Guinea. The infringement of socio-economic rights in the Niger Delta region has been mainly attributable to bad governance practices of previous governments in the management of the oil sector, particularly public sector corruption and impunity.

⁶⁰² Ibid.

⁶⁰³ Jo Harper, "Niger Delta Avengers promise to up pipeline attacks in Nigeria", Deutsche Welle, 28 May 2016.

⁶⁰⁴ Ibid.

⁶⁰⁵ Ibid.

⁶⁰⁶ Supra note 304.

Specifically, the Niger Delta communities have for decades decried their political and socio-economic marginalisation in management and enjoyment of benefits arising from exploitation of the vast petroleum resources found in their region. Part I, Chapter 2 of this study, demonstrated that the militancy in the Niger Delta region and the consequent increased cases of armed robbery against ships and piracy in Nigerian waters and Gulf of Guinea, respectively, was partly a reaction to the long-standing socio-economic marginalisation of the oil-belt region. This marginalisation has not only resulted in the social and economic devastation of the region's communities, as demonstrated by widespread poverty, but also destruction of its environment.⁶⁰⁷ The latter has resulted in the loss of economic opportunities of communities which once thrived on economic exploitation of the land and adjacent water bodies which now lie wasted by years of extensive water and land pollution caused by petroleum resource exploitation activities of oil MNCs.⁶⁰⁸

Nonetheless, the membership of Nigeria to treaties promoting socio-economic rights, including the 1966 International Convention on Economic Social and Cultural Rights (ICESCR); and the 1981 African (Banjul) Charter on Human and Peoples' Rights (ACHPR), seems like a progressive step towards ensuring economic and social rights to its citizens. Moreover, Nigeria charted the path for African states in the constitutional recognition of fundamental objectives and directive principles that would guide the attainment of 'national' targets of social well-being, social justice, political stability, and economic growth in accordance with the espoused vision of the Preamble to the [1979] Constitution.⁶⁰⁹ Specifically, these objectives and principles were stipulated in Chapter II of the 1979 Constitution, and similarly reiterated in Chapter II of the current constitution promulgated in 1999 (hereinafter referred to as 'the Constitution').⁶¹⁰

While these objectives and principles were intended to guide stated policy on realisation of the benefits of social and economic rights for the national good, this noble intention seems to be curtailed by a claw-back constitutional provision, specifically, Article 6(6)(c), that essentially renders them non-justiciable by excluding the jurisdiction of the judiciary on matters pertaining to the implementation of Chapter II of the Constitution. In particular, Article 6(6)(c) of the Constitution reads as follows:

'6. ...
(6) The judicial powers vested in accordance with the foregoing provisions of this section –
...

⁶⁰⁷ Supra note 413, p. 111.

⁶⁰⁸ John Vidal and Jesse Winter, "Anger over enduring 'environmental horror' in oil-rich, polluted Niger Delta", *The Guardian*, 9 November 2015.

⁶⁰⁹ Dejo Olowu, "Human Rights and the Avoidance of Domestic Implementation: The Phenomenon of Non-Justiciable Constitutional Guarantees", *Saskatchewan Law Review*, vol. 69, No. 39 (2006), p. 56.

⁶¹⁰ Ogugua V. C. Ikpeze, "Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development", *Development Country Studies*, vol. 5, No. 18 (2015), p. 52.

(c) shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution; ...⁶¹¹

In this regard, Olowu importantly observes as follows:

‘While those fundamental objectives could have been hailed as one of the most innovative dimensions in the history of constitution making in Nigeria, they have been rendered worthless platitudes because of their inherently emasculated constitutional status... Why is this so? As lofty as those provisions might seem, the bottom is knocked out of their legal value by an overriding provision of the same constitution:

...

It naturally follows from the above ouster clause [Article 6(6)(c)] that all the promises of the objectives and principles in Chapter II of the Nigerian Constitution are of no better purpose than the British coronation oath: mere moral appeal.⁶¹²

The following dictum of the Nigerian Court of Appeal in its 1991 judgement in the case of *Chief Uzoukwu & Others v. Ezeonu II, Igwe of Atani and Others*,⁶¹³ issued in consideration of corresponding provisions on social and economic rights in the 1979 Constitution, best exemplifies the mere declaratory nature of the socio-economic rights outlined in the fundamental objectives and directive principles of Chapter II of the Constitution:

“[t]here are other rights which may pertain to a person which are neither fundamental nor justiciable in the court. These may include rights given by the Constitution as under the Fundamental Objectives and Directive Principles of State Policy under Chapter II of the Constitution.”⁶¹⁴

However, about a decade later the Nigerian Supreme Court, by innovative judicial interpretation of the law in the 2002 case of the *Att. Gen., Ondo State v. Att. Gen., Fed’n of Nig.*,⁶¹⁵ found that despite *prima facie* non-justiciability of the rights contained in the fundamental objectives and directive principles in Chapter II of the Constitution, federal states were duty-bound to act in accordance with them. Moreover, the Supreme Court found that through legislative action the directive principles could be translated into socio-economic rights capable of legal enforcement. In particular, the court stated as follows:

‘As to the non-justiciability of the Fundamental Objectives and Directive Principles of State Policy, s. 6(6)(c)... says so. While they remain mere declarations, they cannot be enforced by

⁶¹¹ Available at <http://www.justice.gov.ng/images/Downloads/Constitution/Nigerian%20Constitution.pdf> (accessed on 1 May 2017).

⁶¹² Supra note 609, pp. 56 – 57.

⁶¹³ (1991) 6 N.W.L.R. (pt 200) 708 (Nig. C.A.).

⁶¹⁴ Ibid, pp. 761 & 762.

⁶¹⁵ (2002), 9 Sup. Ct. Monthly 1 (Nig. Sup. Ct.) [*Ondo State*].

legal process but would be seen as a failure of duty and responsibility of State organs if they acted in clear disregard of them...the Directive Principles can be made justiciable by legislation.⁶¹⁶

The requirement for legislation is critical not only for transforming otherwise declaratory constitutional provisions into justiciable socio-economic rights, but also, for giving the force of law to international treaties on socio-economic rights that Nigeria is party to. Firstly, the transformation of otherwise declaratory provisions into justiciable rights is demonstrated by the enactment of the Niger-Delta Development Commission (Establishment) Act, Act No. 6, 2000 (NDDC Act). This piece of legislation enabled the creation of a specific government department through which the Federal government could implement programmes for social and economic well-being of the Niger Delta people.

The creation of NDDC was necessitated by the long-time agitations of the people of the Niger Delta region for equity in the redistribution of the national cake, given that the national government generates most of its revenue from the region's oil wealth while its people wallow in poverty and dismal social-economic development.

The development projects of the NDDC include marine and onshore infrastructure development, provision of essential social amenities to the communities and environmental natural disaster mitigation initiatives.⁶¹⁷ Since its creation, NDDC is stated to have 'awarded 8,557 projects of which 3,424 projects have been completed and handed over to communities and States. There are 2,257 on-going projects whilst 2,506 are yet to be started'.⁶¹⁸ Also, programmes have reportedly been developed covering various social aspects, including, healthcare, education, information communication technology and environmental restoration.⁶¹⁹ For instance, available records reveal that 1.2 million patients from the region have received medical care since inception of the healthcare programme; while the education programme has provided financial scholarships to 1,066 graduate students and 345 post-graduate students.⁶²⁰

Secondly, the role of legislation in giving international treaties the force of law is best illustrated by a judicial finding in the *Ogoniland case*⁶²¹ which considered legal accountability of the Federal Republic of Nigeria for violation of socio-economic rights enshrined in the ACHPR. The

⁶¹⁶ Supra note 609, p. 59.

⁶¹⁷ Nsima U. Ekere, *Assessment of NDCC's Successes and Shortcomings to date*, Federal Republic of Nigeria (NDDC), Port Harcourt, 2017.

⁶¹⁸ Ibid.

⁶¹⁹ Ibid.

⁶²⁰ Ibid.

⁶²¹ *Decision Regarding Communication 155/96, (Social and Economic Rights Action Centre [SERAC]; and Centre for Economic and Social Rights [CESR] v. Nigeria). Case No. ACHPR/COMM/A044/1, 30th Ordinary Session, 27 October 2001, Banjul, Gambia*, para. 41.

Nigerian legal system adopts a dualist approach to the application of international law.⁶²² Dualism requires that for an international treaty to have the force of law in a State, it has to be formally incorporated into domestic law through an act of parliament.⁶²³ Accordingly, the socio-economic rights stipulated in the ACHPR became legally effective and justiciable in Nigeria by enactment of the African Charter on Human Peoples' Rights (Ratification and Enforcement) Act, CAP 10 LFN 1990 (hereinafter referred to as 'the ACHPR Act'). However, the Nigerian parliament is yet to enact legislation domesticating the ICESCR to give it the force of law in Nigeria.⁶²⁴

In 1996, complainants representing the Ogoni people, namely SERAC and CESR, filed a Communication at the African Commission on Human and People's Rights (the 'African Commission') alleging violation of particular socio-economic rights of the Ogoni people which are provided in the ACHPR. The Communication alleged that the military government of Nigeria had been 'directly involved in oil production through the State oil company, the Nigerian National Petroleum Company (NNPC), the majority shareholder in a consortium with Shell Petroleum Development Corporation (SPDC), and that [the] operations [had] caused environmental degradation and health problems resulting from the contamination of the environment' [in Ogoniland]...'⁶²⁵ The Communication further alleged that these oil production activities of the consortium in Ogoniland ... were carried out 'with no regard for the health or environment of the local communities.'⁶²⁶

In a decision rendered in 2001, the African Commission found Nigeria to be in violation of Articles 2, 4, 14, 16, 18(1), 21 and 24 of the ACHPR.⁶²⁷ These provisions particularly covered the following socio-economic rights: right to health, clean environment, housing, food and life.⁶²⁸ It is noteworthy that the institution of the *Ogoniland case*, prompted the government of Nigeria to take administrative measures to address the plight of the Ogoni people.

In 2000 'President Obasanjo established the NDDC as a federal governmental agency mandated to develop the Niger Delta so as to ensure greater autonomy to the Ogoni people over the resources of the region in which they live. The objectives of the NDDC are ... in part aimed at

⁶²² Section 12 (1) of the Constitution.

⁶²³ Carolyn A. Dubay, "General Principles of International Law: Monism and Dualism", *International Judicial Monitor*, (Winter Issue, 2014).

⁶²⁴ Stanley Ibe, "Beyond justiciability: Realising the promise of socio-economic rights in Nigeria", *African Human Rights Law Journal*, vol. 7, No. 1 (2007), pp. 225-248, at p. 233.

⁶²⁵ Donald K. Anton and Dinah L. Shelton, *Environmental Protection and Human Rights*, (New York: Cambridge University Press, 2011), p.260.

⁶²⁶ Ibid.

⁶²⁷ Supra note 621, p. 15.

⁶²⁸ Supra note 624, p. 245.

accomplishing some of the measures recommended by the [African] Commission.’⁶²⁹ Further, in ensuring equitable allocation of financial benefits derived from the oil resources exploited in the Niger Delta, ‘each oil producing state receives a 13 per cent derivation of the oil revenue produced within its borders’.⁶³⁰ Furthermore, the NDDC receives ‘an additional USD 1 billion in annual funding to implement social and economic development projects’.⁶³¹

Nonetheless, the disbursement of enormous federal development funds seems to have had dismal impact on the socio-economic lives of the Niger Delta communities. A ‘ministerial technical audit committee on the contracts awarded by the Ministry of Niger Delta between 2009 and 2015 has ...[revealed that]... most of the contracts awarded by the ministry in the oil-rich region had no impact on the people’.⁶³² The Niger Delta region reportedly continues to suffer from ‘endemic poverty and dismal federal government services’.⁶³³ The following observations, made in a 2016 economic and business analysis report on Nigeria, best illustrate the deplorable socio-economic situation that the people of the oil-rich Niger Delta continue to exist in:

‘Endemic corruption and environmental devastation caused by decades of oil spills remain largely unaddressed. State and local governments offer few social services, and Niger Delta residents continue to seek direct payments and other assistance from oil companies. Some oil companies have implemented their own socio-economic development programs to assist local communities, but the virtual absence of concerted government attention to the needs of these communities means many of them remain angry and resentful of oil production activities in their region.’⁶³⁴

2.2.3 Importance of an ombudsman

The Public Complaints Commission (PCC) constitutes the ombudsman of Nigeria. The PCC is an independent institution established by the PCC Act, Chapter 377 of the laws of Federal Republic of Nigeria, 2004.⁶³⁵ The Act vests PCC with powers to inquire into complaints made to it by members of the public pertaining to any administrative action taken by any level of government; public institutions; public and private corporations; and any official of any of the aforementioned entities.⁶³⁶

⁶²⁹ Frans Viljoen, “The African Human Rights System and Domestic Enforcement”, in *Social Rights Judgments and the Politics of Compliance: Making it Stick*, Malcolm Langford, César Rodríguez-Garavito and Julieta Rossi, eds. (New York, Port Melbourne, Delhi: Cambridge University Press, 2017), Ch. 11, pp. 351 – 398, at p. 372.

⁶³⁰ US Department of State, “Nigeria: Bureau of Economic and Business Affairs 2016 Investment Climate Statements Report”, 5 July 2016.

⁶³¹ Ibid.

⁶³² Supra note 417.

⁶³³ Supra note 630.

⁶³⁴ Supra note 630.

⁶³⁵ PCC, “*Public Complaints Commission, FCT Office*”. Available at <http://www.pccfct.gov.ng> (accessed on 2 May 2017).

⁶³⁶ Ibid.

The ombudsman plays a significant role in enforcing accountability; preventing corruption; safeguarding human rights; and redressing maladministration in the public service.⁶³⁷ Olowu classifies ombudsman institutions among national human rights institutions.⁶³⁸ He further states that an ombudsman institution could quite innovatively be a quasi-judicial mechanism for adjudication of socio-economic rights violations reported in public complaints.⁶³⁹

Key to protecting the independence of the ombudsman is ensuring that the ‘office of the ombudsman ...[is]... responsible for its own budget and not ... [subordinated]... to another ... department for funding. [However,] with a lack of resources to fulfil the mandate of the post, it is often only personal will that sustains the ombudsman in the job’.⁶⁴⁰ In the case of Nigeria, the independence of PCC is at risk of political interference following a government decision to put the institution’s budget under the control of the Nigeria National Assembly, sometime in 2014.⁶⁴¹ Sure enough, the National Assembly substantially reduced the financial allocation of PCC causing the institution to suffer immense budgetary shortfalls that affected its functioning. One of the immediate consequences was PCC’s struggle in paying staff salaries since 2014, culminating in the reported shutting down of PCC offices countrywide in 2016.⁶⁴²

Thereby, for the PCC to effectively perform its functions of tackling corruption and ensuring protection of human rights, which are crucial for accountability in the public sector, PCC ought to be granted financial independence by allowing the institution control over its budget. This will guarantee that the PCC is free from intimidation and frustration as it investigates and adjudicates over public complaints against unscrupulous public officials and government institutions.

CONCLUSION

This chapter has discussed key measures, based on law, for ensuring good governance and security on Africa’s East and West African seaboard. The key measures are effective law enforcement; ensuring human rights; and an effective ombudsman office.

These measures, if genuinely and consistently implemented, will not only institutionally entrench accountability, transparency and rule of law in public administration in Somalia and Nigeria, but

⁶³⁷ Akpomuvire Mukoro, “The Ombudsman Phenomenon in African States Public Service”, pp. 4 & 6. Available at <http://unpan1.un.org/intradoc/groups/public/documents/AAPAM/UNPAN029881.pdf> (accessed on 12 December 2016).

⁶³⁸ Supra note 609, p. 72.

⁶³⁹ Supra note 609, p. 66.

⁶⁴⁰ Rick Stapenhurst and Sahr J Kpundeh, eds., *Curbing Corruption: Toward a Model for Building National Integrity*, (Washington, D.C., World Bank, 1999), p. 139.

⁶⁴¹ Evelyne Okakwu, “Nigeria’s Ombudsman shuts down, unable to pay salaries”, Premium Times, 20 October 2016.

⁶⁴² Ibid.

also lead to equity in national resources allocation. Likewise, opportunities for impunity and corruption will be significantly reduced resulting in repression of organised crimes of piracy and armed robbery against ships in the two countries.

Good governance will steeply raise the cost of engaging in maritime crimes while significantly diminishing profits to be realised from the crimes. This is because good governance values of transparency, accountability and rule of law create an unfavourable social, economic and political environment for criminals and their enterprises, which frustrates the business of organised criminality and forces the criminal syndicates to abandon their illicit activities.

CONCLUSION

This research has investigated the role of governance in sustainably suppressing maritime crimes off the coast of Somalia and in the Gulf of Guinea. This research has proved that lasting solutions to piracy and armed robbery against ships will essentially derive from the respective epicentre States of Somalia and Nigeria. It has been demonstrated that bad governance in these States lie at the core of piracy and armed robbery against ships in the corresponding East and West African seaboard.

In so doing, this research has comparatively discussed the development of piracy off the coast of Somalia and piracy and armed robbery against ships in the Gulf of Guinea, in the context of governance challenges experienced in the respective epicentre countries. Public sector corruption has mainly characterised bad governance in these countries.

In the case of Somalia, contrary to popular perception, the notorious piracy incidents experienced between 2005 and 2012 were not prevalent throughout the Horn of Africa. Rather, they emanated from and mainly thrived in Puntland while the other regional States of Somalia were generally free of piracy.⁶⁴³ State capture in Puntland critically entrenched the business of piracy in the regional state and sustained the prevalence of the corresponding attacks in the Western Indian Ocean during the stated seven-year epoch.⁶⁴⁴ Particularly in 2008 when piracy proceeds started paying salaries of the regional state's security forces, the pirate leaders gained effective control and critical influence over the state's administration.⁶⁴⁵ It is from this time that piracy was officially condoned and affirmed in Puntland to the extent that the state's economy was dependent on money generated from piracy.⁶⁴⁶ Piracy proceeds were depended upon for the delivery of fundamental government functions such as security and employment; and generation of auxiliary revenue streams necessary to sustain a local economy.⁶⁴⁷

Moreover, this research has revealed that capture of governance in Puntland was aided by the business structure of Somali piracy. The piracy business operated like mafia-style organised crime syndicates.⁶⁴⁸ Such criminal syndicates tend to exist in symbiosis with a state's legal structures.⁶⁴⁹ Co-existence of Puntland's legal apparatus and piracy criminal groups, arising from

⁶⁴³ Supra note 17, pp. 9, 11 & 16; and Supra note 19, p. 3.

⁶⁴⁴ Supra note 19, p. 3; and Supra note 334 (Hansen), p. 526; and Supra note 352, p. 4.

⁶⁴⁵ Security Council resolution 91 (2010), paras. 137 - 138.

⁶⁴⁶ Supra note 19, p. 21; and supra note 103, para. 16.

⁶⁴⁷ Supra note 19, p. 22.

⁶⁴⁸ Supra note 19, p. 3.

⁶⁴⁹ Ibid.

the state's acceptance and reliance on proceeds of piracy, resulted in the erosion of the rule of law and accountability in the state.

While the regional administration was eager to arrest, prosecute and convict low-level piracy perpetrators, senior piracy leaders remain undisturbed in Puntland. In fact, the state's political leaders received regular allocations from piracy ransom payments.⁶⁵⁰ Also, appointment of people linked to piracy into senior government positions in Puntland, undermined accountability and institutionalised impunity for piracy leaders and their illicit businesses.

Additionally, the UN's effort to investigate international networks of piracy financiers and beneficiaries have been hampered by non-cooperation of identified key States such as the UK.⁶⁵¹ Nonetheless, the action of Belgium in 2013 of arresting, prosecuting, and in 2016 convicting and sentencing a top pirate leader, namely, Mohammed Abdi Hassan also known as 'Afweyne', creates hope for criminal accountability of piracy leaders, organisers and financiers.⁶⁵²

This research recommends that States need to genuinely consider the issue of accountability of top piracy leaders. It is clear from the existing circumstances off the coast of Somalia that the present containment measures cannot be sustained indefinitely.⁶⁵³ So long as piracy leaders and their local and international networks remain unconquered then piracy will inevitably resume as soon as the containment measures are withdrawn.⁶⁵⁴

In the case of Nigeria, the issue of corruption in the country's oil-sector and subsequent decades of marginalisation of inhabitants of the country's oil-belt region of the Niger-Delta, fuelled resentment of the Niger-Delta locals. Militia groups, notably MEND and NDA, emerged to protest inequities in the distribution of socio-economic benefits resulting from exploitation of the region's vast oil resources. However, criminal networks behind piracy and armed robbery against ships have found it rewarding to exploit the Niger Delta's communities' grievances about the marginalisation of the region.

Moreover, militancy in the Niger-Delta has encouraged widespread criminality in the region. Nigeria has repeatedly failed to contain growing criminality in the Niger-Delta which has also benefited from the booming black market in West Africa. Law enforcement agents in the Niger Delta and the neighbouring countries are aware of the existence of black markets in their respective territories but are evidently unwilling to take meaningful action to disrupt the illicit businesses.

⁶⁵⁰ Security Council resolution 91 (2010), paras. 137-140.

⁶⁵¹ Security Council resolution 91 (2010), para. 30.

⁶⁵² Part II, Ch. 1, Sec. 1.1 of this study.

⁶⁵³ Security Council resolution 843 (2016), para. 5.

⁶⁵⁴ Security Council resolution 843 (2016), paras. 4, 5 & 60.

Nonetheless, this research has demonstrated that Nigeria's inability to rein in militancy and criminality in the Niger-Delta is in part attributable to weak governance arising from the diminished capacity of State authorities, acting in good faith, to effectively enforce the law and contain criminality.

Weak governance experienced by Nigeria in tackling maritime criminality in the Niger Delta region, is evidenced by lack of relevant legislation and inadequacy of infrastructure and appropriately skilled technical staff, all of which are necessary for tackling piracy and armed robbery against ships. Also, the region's tough terrain makes it difficult for government security agents to access pirates' and armed robbers' hideouts and enclaves.

Notwithstanding the country's challenges of weak governance, the problem of corruption not only in the oil sector but also in the security and law enforcement sectors, hinders Nigeria from realising even the least benefit accruing from application of its limited resources in tackling piracy and armed robbery against ships in the Niger Delta.

Firstly, complicit political leaders and government officials, who are responsible for respectively promoting and enforcing the law in the Niger Delta, accept pay offs from sponsors of maritime crimes in order to shield them from criminal accountability, including arrest and prosecution.⁶⁵⁵ Such a situation undermines the rule of law and promotes impunity for criminal masterminds.⁶⁵⁶

Secondly, the long-time mismanagement of Nigeria's oil sector has resulted in inadequate government oversight over the environmental damage caused by irresponsible oil exploitation, most noticeable the oil spills prevalent in the Niger Delta land and water bodies.⁶⁵⁷ As this study has shown, oil pollution in Ogoniland in the Niger Delta has resulted in the destruction of agricultural farms and fishing grounds on which majority of the local population depends on for economic livelihood and sustenance. Resultantly, most of the youth have been left jobless and struggling socio-economically. The struggle for basic survival has made the Ogoniland locals increasingly resentful of the national government as proven by the notorious militant attacks on oil exploitation infrastructure in the Niger Delta and oil cargo vessels in the Gulf of Guinea.

⁶⁵⁵ Supra note 23, p. 538.

⁶⁵⁶ Supra note 34, p. 3; and supra note 27, p. 62.

⁶⁵⁷ Supra note 403.

Commentary on the Sustainability of Current Suppression Measures in the Waters off the Coast of Somalia and the Gulf of Guinea Region

Despite the seeming effective suppression of piracy in the waters off the coast of Somalia, it is probable that the attacks will resume if the stop-gap measures are withdrawn. The onshore criminal syndicates that oversaw piracy simply diversified to other criminal ventures while awaiting any opportunity to recommence their old trade. For instance, the reported hijacking of foreign fishing vessels off the coast of Somalia in 2015, specifically in the months of March and November, demonstrates the high likelihood of resumption of piracy.⁶⁵⁸

Moreover, Denmark's withdrawal in November 2016, coupled with the decision of other NATO countries to withdraw from the naval military missions in the Horn of Africa, elicited concern of re-emergence of piracy.⁶⁵⁹ This is because it is the international naval missions of NATO and other cooperating foreign States that have contained the piracy situation in the Horn of Africa. The capacity of Somalia to check piracy emanating from its territory remains substantially unchanged from what it was at the peak of Somali piracy between 2005 and 2012.

In the Gulf of Guinea case, regional and international efforts have not taken place in earnest. For instance, the Information Coordination Centre (ICC) envisaged under the Yaoundé Code of Conduct will only be operationalised in 2017. Additionally, States are yet to amend their national laws in tandem with the provisions of UNCLOS and the IMO Code of Practice to enable harmonisation of regional efforts. For instance, Nigeria and most Gulf of Guinea States are yet to specifically criminalise piracy and armed robbery against ships in conformity with definitions of these crimes provided by the Yaoundé Code of Conduct which mirrors provisions of UNCLOS and the IMO Code of Practice, respectively. This harmonisation of States' criminal laws would enable regional parity of countermeasures, including investigations and prosecutions, which is essential for suppression of piracy and armed robbery against ships throughout the region.

Nonetheless, there have been notable efforts, albeit few, made by the Gulf of Guinea States in tackling maritime crimes in the region. Particularly, cooperation of neighbouring States in conducting joint naval patrols have helped, to some extent, in deterring piracy and armed robbery attacks. This has been the case for instance in Nigeria, Benin and Togo.

Unfortunately, instead of occasioning sustained suppression of attacks, the patrols seem to have dispersed criminals further away from the regions of constant surveillance, into the high seas and waters of littoral States with limited capacities to monitor their coastal waters. Also, pirates and

⁶⁵⁸ Abdiqani Hassan, "Somali pirates hijack Iranian fishing vessel with 15 crew, says official", Reuters, 23 November 2015.

⁶⁵⁹ Ray W., "Denmark pulling out of the fight against Somali pirates", CPH Post Online, 21 November 2016.

armed robbers have been observed to resume their attacks whenever the naval patrols are reduced.⁶⁶⁰ Moreover, increased law enforcement patrols by Nigerian authorities, as well as the dipping oil prices experienced earlier in 2016, have notably resulted in the highly adaptable pirates and armed robbers diversifying their business model to include kidnappings for ransom.⁶⁶¹

Will the Djibouti and Yaoundé Codes of Conduct live up to their intended purpose as long-term solutions to piracy and armed robbery against ships?

As discussed in this research, the regional States impacted by piracy off the coast of Somalia and piracy and armed robbery against ships in the Gulf of Guinea have developed long-term strategies for countering piracy and armed robbery against ships embodied in non-binding codes of conduct, respectively, the Djibouti and Yaoundé Codes of Conduct. That notwithstanding, there are reasons to doubt that these regional initiatives will ultimately lead to sustainable suppression of piracy and armed robbery against ships in the East and West African seaboard.

First, although the respective Codes of Conduct, in keeping with the definition of piracy in Article 101 of UNCLOS; and armed robbery against ships in paragraph 2.2 of the IMO Code of Practice, provide for investigation and prosecution of direct perpetrators of piracy and armed robbery against ships besides indirect perpetrators who facilitate commission of the crimes, the latter of which may include onshore financiers and planners of these illicit activities; neither Codes of Conduct create a binding obligation on States to investigate and prosecute as provided. This is because while the regional States have engaged in investigation and prosecution of pirates and armed robbers arrested at sea, who are merely dispensable ‘foot soldiers’ in the pecking order of organised criminal networks, there are still no known criminal accountability actions against leaders of piracy and armed robbery syndicates who are responsible for planning and financing the perpetration of the crimes.

Second, effective regional cooperation in the Gulf of Guinea is undermined by lack of political will of the littoral States. This is demonstrated by undue delay in operationalisation of the promising counter-measures contemplated under the well-crafted regional cooperation frameworks for combating piracy and armed robbery against ships. Examples include non-activation of the Integrated Coast Guard Function Network (ICGN) sea operation under the IMO and Maritime Organisation for West and Central Africa (IMO/MOWCA) Memorandum of Understanding; the pending operationalisation of EIMS under the ECOWAS Maritime Security Strategy and Maritime Plan; and the limited implementation of the Yaoundé Code of Conduct.

⁶⁶⁰ Supra note 6 (Osinowo).

⁶⁶¹ Supra note 524 (OBP).

Last, the undisturbed existence of the booming oil black market in the West African region points to lack of political will of the regional States. Despite decades of existence of the black market and the established connection it has to piracy and armed robbery against ships, West African States are yet to take any meaningful action of cooperation to shut down this illegal business enterprise. Closing down the black market and scaling up investigations and arrests in the affected States would deny trading opportunities in stolen oil cargo besides steeply raising the risks for engaging in petro-piracy. Such a move would significantly diminish profits from crime while raising punishment for engaging in criminality, thus discouraging and deterring would be perpetrators from engaging in petro-piracy.

- **Impunity bears the greatest hindrance**

Challenges of prosecution, although attributable to insufficient appropriately skilled judicial officers and legal incapacities occasioned by a dearth of relevant legislation, are mostly associated with impunity demonstrated by unwillingness of State authorities to act against leaders of organised criminal networks responsible for piracy and armed robbery against ships. This has been the case in Somalia where crime lords are identified in public UN documents but the State authorities attempt to shield them from criminal accountability.

For instance, the UN monitoring group on Somalia in its public report of 2006 to UNSC, identified Afweyne (also known as Mohamed Abdi Hassan) as the head of financial operations of a pirate group known as the Somali Marines.⁶⁶² However, instead of facing criminal sanctions from Somali authorities, Afweyne received a pardon in 2010 from President Mohamed Aden Tiicey of the region of Adado and the administration of the TFG of Somalia. In the same year, the TFG of Somalia issued Afweyne with a diplomatic passport as a reward for his involvement in anti-piracy activities.⁶⁶³ The pirate leader even made a public announcement denouncing piracy in January 2013. He brazenly stated as follows "I have given up piracy and succeeded in encouraging more youth to give up piracy ... This came as a result of my efforts for a long period. The boys also took the decision like me. It was not due to fear from warships, it was just a decision".⁶⁶⁴

However, in October 2013 Afweyne was lured to travel to Belgium with a fake promise of making a documentary about his life.⁶⁶⁵ Upon his arrival in Brussels airport he was promptly arrested and charged with 'hijacking the Belgian dredger ship ... [, the *Pompei*,] and kidnapping its crew of nine in 2009 and participating in a criminal organization'.⁶⁶⁶ Apparently, Afweyne

⁶⁶² Security Council resolution 229 (2006), para. 90.

⁶⁶³ Abdi Sheikh, "Somali pirate kingpin 'Big Mouth' quits after naval crackdown", Reuters, 11 January 2013.

⁶⁶⁴ Ibid.

⁶⁶⁵ Supra note 380.

⁶⁶⁶ Supra note 380.

and his criminal group extorted a ransom of approximately 2,000,000 Euro.⁶⁶⁷ In March 2016, Afweyne was convicted of the crimes and sentenced to 20 years in prison.⁶⁶⁸ The court also ordered him to pay 20,000 Euro to the Dutch captain of the *Pompei* and his family.⁶⁶⁹

In the case of Nigeria, the complicity of the State, through its political leadership and law enforcement agents, in piracy and oil-bunkering demonstrates unwillingness to combat these organised crimes. This has undermined accountability and the rule of law while encouraging impunity for perpetrators of these crimes.⁶⁷⁰

Furthermore, the apparent failure by the Federal Government of Nigeria to take firm and far-reaching legal action against high-ranking government officials involved in the plunder of the country's oil sector diminishes incentive for the lower level technical staff to refrain from engaging in corruption. Therefore, despite the country's successive governments' measures of setting up anti-corruption agencies, the failure to punish senior government officials implicated in the national oil sector corruption has made the vice highly attractive to other government officials in all cadres, including those in the naval, customs and ports services.⁶⁷¹

Legal perspective of good governance as a sustainable solution to piracy and armed robbery against ships: What role can the law play in instilling good governance?

As discussed herein above, the law enforcement sector is critical for security. Good governance, anchored on the tenets of the rule of law, accountability and transparency, is the basis of effective law enforcement and hence security. Also, as indicated above in discussions on the social contract theory of government, the exercise of the authority of government in discharging its duties to its citizens, that is, governance, has to conform to the law. Therefore, this makes the law indispensable to good governance which is demonstrated by good order and security in a State.

Consequently, for a State to realise good governance the legislature has to timely enact sober laws which promote the principles of good governance; then these laws have to be objectively implemented by the executive. Besides, the judiciary has to be fiercely independent and impartial in enforcing the laws regardless of any political pressure to shield from justice senior government officials accused of public sector corruption.

⁶⁶⁷ DPA, "Former Somali piracy kingpin lured into Belgium, jailed", News24, 14 March 2016.

⁶⁶⁸ Ibid.

⁶⁶⁹ Ibid.

⁶⁷⁰ Supra note 27, p. 62.

⁶⁷¹ Supra note 23, p. 50.

Challenges of anti-corruption agencies

While the importance of anti-corruption agencies in ensuring accountability and transparency in government operations cannot be overstated, their existence has not deterred public sector corruption. Today, several countries with seeming credible anti-corruption institutions experience alarming levels of corruption. This is because the anti-corruption agencies lack independence in their constitution and operations from the executive and in some cases parliament, hence enabling political interference from these arms in the agencies' efforts to investigate and act against senior government officials and the political elite implicated in public sector corruption.

Also, anti-corruption agencies lack domestic political ownership in many Third World countries, a factor that crucially undermines political will to tackle corruption.⁶⁷² For a considerable number of developing countries, establishment of domestic anti-corruption institutions was a matter of apparent politico-economic coercion by intergovernmental financial lenders, mainly the World Bank, which they suspiciously perceived to be propagating selfish political and economic strategies of the developed Western States to developing States using extensions of loans and other financial facilities as enticements.⁶⁷³ The result was resentment from many docile developing States who failed to genuinely realise the need for such entities, but nevertheless set up anti-corruption agencies to conform with the prerequisites for loans and other financial facilities offered by the intergovernmental financial lenders. This state of affairs explains why it is common in multi-ethnic countries in Africa for a leader under investigation for corruption to politicise and ethnicise the process; and rally the support of members of his community in protest of the investigation which the leader will convince his community supporters is nothing but persecution of one of their own.⁶⁷⁴

Today, in many developing countries including those in Africa, revelations made by anti-corruption agencies in exposing government corruption are less utilised in pursuing accountability through criminal prosecution; but rather used in political forums, especially of opposing political forces which would be aiming at national leadership by demonstrating the ineffectiveness and ills of an incumbent regime to tackle public sector corruption and ensure public funds are used for public good.

⁶⁷² Odd-Helge Fjeldstad and Jan Isaken (2008), "Anti-corruption Reforms: Challenges, Effects and Limits of World Bank Support", 2008. Available at <https://www.cmi.no/publications/file/3134-anti-corruption-reforms-challenges.pdf> (accessed 12 December 2016).

⁶⁷³ Council on Foreign Relations, "The World Bank and Corruption". Available at <https://www.cfr.org/background/world-bank-and-corruption> (accessed on 12 December 2016).

⁶⁷⁴ Madeline Bunting, "Corruption has to be confronted from the grassroots", The Guardian, 6 May 2011.

The arms of government function as checks and balances on each other, to guard against excesses in the exercise of public authority. For these arms to function effectively and yield good governance, there needs to be independence in theory and in practice in their functioning. Otherwise, there is risk of negative influence that may compromise transparency and breed corruption and impunity in government operations. As discussed above in Part II, Chapter 2, sub-section 2.2.3, a key element for ensuring independence in practice is an entity's control over its funding and budget.

Also, anti-corruption agencies generally react to acts of corruption that have been attempted or committed. A reactive approach to tackling corruption may not be effective in the long-run because anti-corruption agencies will tend to be a step behind corruption suspects and perpetrators. As an organised criminal activity, public sector corruption has the characteristic of being able to evolve as future perpetrators devise advanced methods of carrying out and benefiting from corrupt practices. In such a case the perpetrators may get away with the crime as anti-corruption agencies play catch-up.

Consequently, this research proposes institutionalisation of the anti-corruption fight throughout all spheres and levels of public sector administration, besides devolving responsibility for tackling corruption and holding the government accountable, all the way to the individual citizen. This will result in the institutionalisation of political will to fight corruption, and make a government's anti-corruption measures transparent, ascertainable and measurable by the ordinary citizen.

Such a situation will provide a system for the public to critique a government's performance and genuineness in tackling corruption. Equally, this will facilitate a bottom-up system for the public to assess the effectiveness of the fight against public sector corruption and demand a government's accountability starting with the local political and government officials, up to those in the highest echelons of judicial, executive and legislative arms of government.

Likewise, such a move will gradually result in change of a society's culture and perception of corruption and corrupt public officials. It is only when society becomes intolerant to corruption and corrupt public officials and politicians are shunned that public sector corruption can be sustainably suppressed; and public funds and other resources optimally utilised. This will lead to improved socio-economic life in a nation as essentially demonstrated by improved livelihoods and dignified lives of the lowest and most vulnerable in society.

Confronting Organised Crime

The continued existence of organised criminal networks within Somalia present a high likelihood of resumption of Somali piracy should the offshore containment measures be withdrawn. The

government of Somalia is yet to take meaningful action against organised criminal syndicates despite their leaders and sponsors being known and traceable.

At the outset, Somalia is yet to join the major international and regional legal frameworks for tackling transnational organised crime and money-laundering; and enact domesticating legislation criminalising these crimes. Joining these treaty regimes will provide Somalia access to assistance and cooperation of States Parties in identifying and disrupting financial flows of piracy finances and the criminal syndicates responsible for piracy. This is critical in disrupting piracy onshore and significantly reducing its chances of resumption.

Similarly, in Nigeria piracy and armed robbery against ships is sponsored by organised criminal groups which benefit from illegal trade of stolen oil cargo in the black market. The major share of West Africa's black market is in Nigeria.⁶⁷⁵

Nonetheless, unlike Somalia, Nigeria has actively monitored and investigated criminal networks sponsoring piracy and armed robbery against ships. Moreover, as discussed in Part II, Chapter 2, Section 2.2, Nigeria is party to the main international and regional legal frameworks for combatting transnational organised crime; and has domesticated these treaties in its national laws.

Notwithstanding Nigeria's impressive judicial and legislative developments on organised crime, these developments have had dismal impact on criminality in the country including in the Niger Delta. Organised crime is endemic in the country's social and political structures. As a result, Nigeria's judicial and legislative efforts at tackling organised crime are now viewed as 'good theory on paper'.⁶⁷⁶

For Nigeria's judicial and legislative developments to meaningfully benefit the country's fight against organised crime and money-laundering, the State's political leadership needs to demonstrate genuine political will to shun impunity and uphold the rule of law and accountability for masterminds of corruption and organised crime regardless of their social class and political influence.

Law and Governance in Somalia

Somalia suffers from a lack of adequate legislation and consequent implementing institutions to ensure good governance. This is understandable given the fact that the country is gradually rebuilding itself after decades of State failure that had been preceded by several years of bad

⁶⁷⁵ Supra note 70 (UNODC), p. 50.

⁶⁷⁶ Supra note 552, p. 24.

governance, marked by widespread corruption, systemic discrimination along clan lines, and political patronage under president Siad Barre's regime.

Currently, UNODC, UNDP, international organisations and foreign cooperating States are working with the Federal Government of Somalia and the regional states in developing relevant legislation; creating implementing institutions; and improving the country's judicial capacity for effective law enforcement. Sadly, as demonstrated above, even where institutions are available, for instance a police force and local courts, Somalia authorities have perpetrated impunity by shielding criminals from accountability.

Moreover, Somalia lacks an anti-corruption agency to monitor the government's exercise of authority in management of public resources. This has provided an opportunity for unrestrained embezzlement of public funds. For instance, during the years 2013 and 2014 the central bank of the federal government of Somalia 'was severely criticized for the fact that 80% of withdrawals were made by individuals and not used for governance or the provision of services'.⁶⁷⁷

Law and Governance in Nigeria

Although the Nigerian State has remained intact and functional since independence in 1960, it has been on the brink of fracture. This is because of political and State instability occasioned by military coups and bad governance under various military dictatorship regimes, which caused epochs of socio-political instability in Nigeria from 1966 to 1999 when democratic rule was restored.⁶⁷⁸ The periods of instability prior to democratic rule have been blamed for fostering corruption in the country.

During the military dictatorship regimes in Nigeria, rule of law, accountability and transparency in government operations were deficient. This provided an opportunity for unscrupulous leaders to embezzle State resources and misappropriate public funds through corruption. Since then corruption has been difficult to tackle and uproot from the Nigerian State. Corruption caused systemic marginalisation and discrimination in sharing of national resources whose effect has proved daunting to reverse as manifested by the crisis in the Niger Delta where communities of the oil-rich region languish in poverty despite the fact that the region's immense petroleum resources position Nigeria as the world's sixth largest crude oil exporter. Regrettably, even where an entity is established to ensure equity in public resources allocation, such as the NDDC that was founded in 2000, corruption and lack of transparency in its operations compromise its efficiency.

⁶⁷⁷ Bertelsmann Stiftung's Transformation Index (BTI), "Somali Country Report", 2016, p. 14.

⁶⁷⁸ Adeyinka Theresa Ajayi and Emmanuel Oladipo Ojo, "Democracy in Nigeria: Practice, Problems and Prospects", *Developing Country Studies*, vol. 4, No. 2 (2014), pp. 107 – 125, at p.112.

Additionally, complicity of law enforcement officials in NIMASA and the Nigerian Navy has been blamed for the persistence of piracy and armed robbery against ships in the Niger Delta. These officials have been reported to receive bribes and provide criminals with crucial logistical and other information on ships in Nigeria's coastal waters, thus enabling attacks on the ships. Also, despite having knowledge of the key leaders of piracy and armed robbery criminal organisations, law enforcement agents are incentivised against investigations and prosecutions by illicit payments from these criminal leaders.

For good governance to thrive in Nigeria, anti-corruption agencies in the country need to be empowered and granted independence by allowing them control over their resources, especially funds. Moreover, the judiciary in Nigeria needs to sustain judicial activism in championing of economic and social rights to ensure that it holds the government accountable for wrongs regarding public resource allocation and equitable development. Championing for these causes currently is made difficult by the fact that the Nigeria constitution does not specifically provide for economic and social rights as stipulated in ICESCR.

Moreover, even where Nigeria is obligated under treaty law to enforce its obligations under the ICESCR, the realisation of these economic and social rights through judicial action may be compromised by the executive's arguments of judicial restraint in the interference of executive functions of government because the judiciary arguably does not possess the requisite technical know-how to make decisions with budgetary implications on resources allocation; and which involve competing policy choices.⁶⁷⁹

⁶⁷⁹ Salma Yusuf, "The Rise of Judicially Enforced Economic, Social and Cultural Rights: Refocussing Perspectives", *Seattle Journal for Social Justice*, vol. 10, Issue 2, Article 3 (April 2012), pp. 753 – 791, at 762.

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