

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

Disclaimer

ABSTRACT

In 2007

SUPERVISORS

Dr. Aref Fakhry, World Maritime University

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

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
xlii.	OBP	-	Oceans Beyond Piracy
xliii.	PCC	-	Public Complaints Commission
xliv.	PSC	-	Private security companies
xlv.	ReCAAP	-	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
xlvi.	RMAC	-	Regional Maritime Awareness Capability
xlvii.	SAA	-	Secure Anchorage Area
xlviii.	SEMG	-	Somalia and Eritrea Monitoring Group (UN Monitoring Group in Somalia and Eritrea)
xlix.	SERAC	-	Social and Economic Rights Action Centre
l.	SNM	-	Somali National Movement
li.	SPDC	-	Shell Petroleum Development Corporation
lii.	TFG	-	Transitional Federal Government
liii.	T.I.	-	Transparency International
liv.	UK	-	United Kingdom
lv.	UN	-	United Nations
lvi.	UNCAC	-	United Nations Convention against Corruption
lvii.	UNCLOS	-	United Nations Convention on the Law of the Sea
lviii.	UNCTOC	-	United Nations Convention against Transnational Organised Crime
lix.	UNDOALOS	-	United Nations Division of Ocean Affairs and the Law of the Sea
lx.	UNDP	-	United Nations Development Programme
lxi.	UNEP	-	United Nations Environment Programme
lxii.	UNODC	-	United Nations Office on Drugs and Crime
lxiii.	UNSC	-	United Nations Security Council
lxiv.	UNSOM	-	United Nations Assistance Mission in Somalia
lxv.	UPR	-	Universal Periodic Review
lxvi.	US	-	United States of America
lxvii.	USD	-	United States of America dollar

2.1!	<i>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</i>	89!
2.2!	<i>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</i>	99!
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INTRODUCTION

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 criticall

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

- 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

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***

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

III.

'[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

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 i

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.

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.

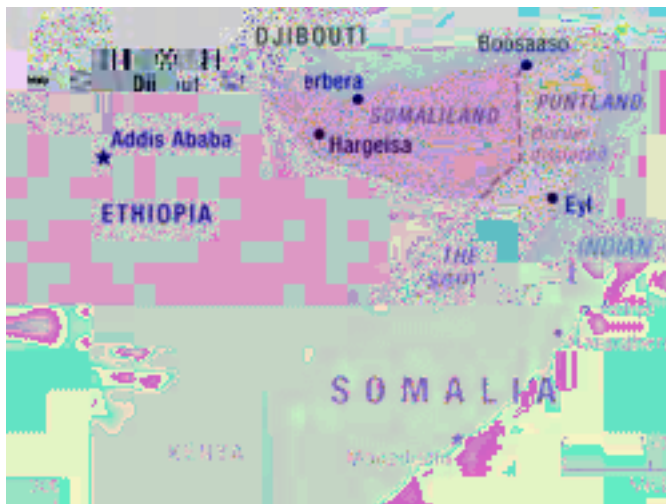
PART I

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

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 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'.

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?

existence of nongovernmental organizations with an incentive to release objective information

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

1.2 PIRACY OF

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 o

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

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’.

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,

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.

Combating blue-collar crimes included tackling the most dangerous and endemic street-crime in
M

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 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

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

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

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”, *Scie(e) 4 (l) -4 (l) -4 (l) -4*

such as stealing valuables on board ships.¹⁷³

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

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 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

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

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

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

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:

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

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 s

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

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

‘While several factors could have contributed to Nigeria’s security situation today, there is no doubt that po

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

‘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

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

which applies to the Southern States.³²³ This has resulted in

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

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

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

east coast of Puntland; and Haradhere-Hobiyo area.³³⁶

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

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

'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

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 'Farooq' 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

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 I* 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***

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:

‘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

reportedly ceased hostilities after the 2009 go

March 2016 revealed that the State-

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.

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-

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

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

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 cooperate 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

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

However, as ILC 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 f (onne)4 (d) -10 (t) -2 (r)-7 (a) 4 (i) -2 (ni) -2 (ng) -11 cs 0 0 0 sc q 0.24 0 090 -464 (.) Tj ET

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,

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

system legitimately'.⁴⁷³ To overcome this challenge, the 'Somali Money Services Association, in

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

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

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

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

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:

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

Nevertheless, the relative security realised by the end of 2009

(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).

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.

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 tacklin0 Tm /in0 0.24 C

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

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

In T.I.'s observation, the lower-ranking countries in CPI 'are plagued by untrustworthy and

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

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

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 for

(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

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

accomplishing some of the measures recommended by the [African] Commission.’⁶²⁹ Further, in ensuring equitable allocation

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,

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

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

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.

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

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/TT4 1Tf [(a4 18 583.92cm BT 50 0 0 50 225 -1674 T

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 of

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-

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, subsection 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

government of Somalia is yet to take meaningful action against organised criminal syndicates

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

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