EVALUATION OF NIGERIAN LEGAL FRAMEWORK FOR EFFECTIVE PROSECUTION OF MARITIME CRIMES AND PROPOSALS FOR REFORM.

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ABSRACT

This thesis is an exploratory work made up of two parts. The first part examines how prosecution can be an effective tool in the fight against maritime crimes in Nigeria. The nature of maritime crimes envisaged in this work is not limited to Piracy and Armed robbery at sea. But a lot of other illicit activities which do not form part of the popular newspaper headings.

Chapter one will equally analyze the enabling laws for prosecution of maritime crimes, in Nigeria, its adequacy and suitability, current situations in Nigeria, challenges to prosecution of maritime crimes and then attempt to proffer lasting solutions and a way forward.

Part two will look at the alternative means of tackling and curtailing maritime issues as against criminal prosecution in addressing the maritime crimes that would be more cost effective and at the same time feasible. This is aimed at exploring more preventive measures, appraising the nature of crimes, and determining the enabling and driving factors of maritime crimes.

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DISCLAIMER

The views expressed herein are those of the author and do not necessarily reflect the views of the government of Nigeria, united nations ,The Nippon foundation of Japan, or any other institution.

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1. Chapter 1

1.1 NIGERIA AND MARITIME CRIMES

Nigeria contains of half the population of the Gulf of Guinea region, and contributes more than half of the regional GDP. Crude Oil accounts for 95% of Nigeria's foreign exchange earnings and up to 80% of budgetary revenues. It is the most important industry in the entire region and for two decades has been threatened by transnational organized crime.[1]

Piracy and maritime crimes in Nigeria have remained relentless and constituted a major threat to international trade, navigation, welfare of seafarers and development of Nigeria and the countries on the Gulf of Guinea generally. The new reports issued by the international Maritime Bureau (IMB)[2] an organ of the International chamber of commerce show that piracy, kidnapping and other vices are on the rise. Twenty four Pirate incidents were recorded as occurring within Nigeria alone in the first quarter of 2016. This has shown an increase in piratical attacks in the region as against the incidents in 2015.

Ambassador Michael Sison, United States Deputy Representative to the United Nations at the United Nations Security Council Open Debate on Peace consolidation in West Africa in New York on April 2016, highlighted that, Nigeria is losing about USD 1.5 billion monthly to

[1] International Maritime Bureau Report on Nigeria (2006) http://www.IMB.org

[2] Ibid

piracy, armed robbery at sea, smuggling and fuel supply fraud as maritime crimes in the Gulf of Guinea

environment, awareness of the actors and most importantly, how the situation has evolved.

1.2 Mmaritime Crime: Domestic Problem

Most crimes at sea start on land. Man lives on land and not at sea. While the Gulf of Guinea provides an ideal shipping and fishing venue, its complicated geographical terrain aids the ease with which robbers disappear along the coastline after an attack.[10] This exposes the vulnerability of the sea as well as the lack of sophistication and wherewithal of law enforcement agents to monitor illegal activities in the area, showcasing further,the weakness and capacity limitations of the Gulf of Guinea countries to handle the challenges.

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Government must make more conscious effort to pursue more effective enforcement actions against piracy network on land. For example, “the black markets”, the illicit markets where pirated goods (especially oil) are sold around the world, remains greatly uninhibited. Enforcement of regulations against these organized crimes is encouraged. It is worthwhile for such criminal gangs to be stamped out[13]

1.3 Maritime Crimes Prosecution in Nigeria.

Inadequate laws and incapacity of government agencies have hindered effective prosecution of pirates and maritime criminals in Nigeria. Similar situation exist in many central and West African States. The absence of enabling municipal laws for prosecuting pirates, sea robbers and other criminals at sea pose a huge challenge, compounded by weak penalties and weak judicial processes within the country.[14]

In Nigeria, although, the Navy and NIMASA are responsible for the regulation of maritime activities and patrol on the sea, they lack prosecution powers and rely on the police, Civil defence and the Federal Ministry of justice and other agencies for such indispensable part of the criminal Justice system. [15]

This group often comes from isolated coastal communities, where there are critical economic situations and limited prospects.[25] This picture closely portrays the situation in the Niger Delta and even in the coastal areas around Lagos ports, where pollution of the environment and general deprivations, deny local citizens of their means of livelihood which is usually farming and fishing. Often occasioning their resort to criminal activities.

The second category is the organized pirates. This group employs a higher level of sophistication, ambition, resources and frequently relies on violence. Their attacks involve high level hijackings, kidnappings, cargo theft or holding cargo vessels and crew for ransom. These organized pirates often have links to organized criminal gangs[26]

piracy in the region in the 1989s[31].The hike in piracy in the last two decades involved a high level sophistication, organization and violence. According to the UN assessment mission in the Gulf of Guinea both national and international interlocutors have expressed the view that organized criminal organization is responsible for many of the pirate attacks[32].

Piracy is therefore one component of the larger transnational organized crime networks that are active in oil bunkering,[33] trafficking in cocaine children, counterfeit medicines, tobacco and hard drugs across the region. Young unemployed men are frequently lured into these criminal networks by promised riches, fast money and power such that piracy gangs are increasingly compose of younger members.

of toxic waste, maritime terrorism, hostage taking and vandalism of offshore infrastructure.[37]

Due to Political instability, absolute underdevelopment, and dire economic situations, as well as vulnerabilities to land -based internal sources of threats, Security in the GoG maritime domain is generally underrated and conceptualized principally in land based terms. This current maritime security challenges along the gulf of Guinea have now stimulated a serious change fundamentally, in the understanding of threats to the sub region that has gained a great strategic political and economic interest.[38]

A wide range of maritime threats as listed above, have posed a great threat to lge

sources. It ranks among the top five percentile of the petroleum producing regions for exploration and production investment worldwide.[40]

The GoG accounts for about 86% of Africa's energy reserves and its primary consumption is just about 3.55 of Africa's fossil energy requirements as at 2013. Angola, Equatorial Guinea, Gabon, and Nigeria holds about 90% of the regions proved reserves while Cameroon, Ghana Sao Tome and Principe, and code D'Ivoire accounts for the remaining 10%.[41]

3.1 IUU FISHING.

Preserving and securing energy resources in the Gulf of Guinea especially in Nigeria is a huge challenge but far from being the only security concern existent in the country. Protection of fish stocks occasioned by the hike in IUU fishing is an evolving challenge of its own. The waters off West Africa are endowed with the world's richest concentration of fin fish, crustaceans and molluscs. Ironically, its fishing communities are among the poorest and most impoverished in the world, due to their vulnerability to IUU fishing by foreign vessels.[42]

IUU fishing has become an easy and highly lucrative business due to the lack of monitoring and enforcement mechanisms in West Africa,

Pirates in the Niger Delta have frequently attacked trawlers at sea. The pirates operate with speed boats fully armed with automatic weapons.[51] They steal fish as well as seize trawlers and demand ransom for the release of such trawlers. Fishing companies are forced to pay such ransom. During the piracy incidents, electronic equipment, drums of lubricating oils and cash (money) are removed on board the trawlers. Trawlers are also faced with high insurance premiums as brokers have become more reluctant to cover these vessels.

3.3 Other Illicit Criminal Activities on the Maritime Domain

The other types of illicit activities on the maritime scene would be grouped under transnational organized crime and include: Illegal dealing in arms and drugs, trafficking ,human trafficking which can be tied to organized criminal groups ,habour/port security challenges in addition to the major challenge of Piracy which undermine other marine commercial interest, threatening livelihoods and most worrisome, scaring away potential investors, as well as remaining a challenge to the economic and political stability of the country.

Given the complexities of national, regional, continental and global sources and ramifications of maritime insecurity in the GoG, sustainable solution will only arise from a comprehensive understanding, mobilizing and harmonizing of actions at the different levels. The challenge is to implement actions, i

enables them to move fast, transform and to be controlled from multiple locations. The illicit trafficking and misuse of firearms is intrinsically linked to these criminal organizations and networks: as facilitators of violent crimes, as tools to perpetrate power, and as lucrative trafficking commodities, that fuels armed conflicts, crime and insecurity. Most often these crimes are intertwined, such as human, firearms and drug trafficking.[55]

The consequences of firearms violence cannot be overemphasized, while the death toll in the context of armed conflict is well known, more lives are lost worldwide from non-conflict firearms events. The greatest danger

drugs and persons, international law enforcement cooperation; adoption of new frameworks for mutual legal assistance, extradition and provision in respect of human trafficking[60]must be enforceable by the state parties.

4.0 Legal Frameworkon Piracy.

The major International legal framework on piracy is the UNCLOS .For the offence of armed robbery at sea, the SUAor8(e s)-5(ts)-5(ts)-5(ts)-10(A)8(aj)-9-32(.F1a)1

evolved, the UNCLOS[62]provided a definition and scope of piracy under Article 101 thus:

a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i). against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;

b) Any act of voluntarily participation in the operation of a ship or of an aircraft /hc8on585.42 .1c8on87 0 595.25 842 reW*nBT/F2 14 3- G[734-3(s87 0 595.25 8

the two ship requirement. The UNCLOS provision is inadequate due to the reasons stated below:

A). Article 101 applied only to offense committed on the high sea. Offenses committed inside the jurisdiction of any state are excluded from the scope of this article.

B)

Furthermore, several international organizations have adopted other definition to conceal the inadequacy of the UNCLOS provisions on piracy. These however, remain as soft law until they are applied to the Criminal legal systems in the home countries but it have resulted in a lot of difficulty in its application and enforcement which has led to

recognized in customary international law as the international crime per excellence to which universality applies.[91]

Pirates were considered outlaws even before the evolution of modern international law.[92] It was recognized that every state has the prescriptive, adjudicative and enforcement jurisdiction over all piratical acts on the high seas even in the absence of any link with the offence perpetrators, and the victim.[93]The national court therefore pays a very important role in cases within universal jurisdiction also. A state in the exercise of the universal jurisdiction carries out action on behalf of the global community against enemy of mankind in the interest of public order. Article 105 allows for the exercise of jurisdiction but does not impose an obligation to prosecute pirates in domestic courts. Such obligation is therefore discretionary both under UNCLOA and the HSC.

However, while the UNCLOS does not impose an obligation on member states to set in motion the role of their national courts for the persecution of pirates, the SUA Convention does. It does not leave the question to the political determination of member States. The SUA Conventions provision to extradite or prosecute clearly imposes an obligation on states to take affirmative action with regards to maritime offences.

5.0 FACTORS DRIVING INSURGENCY.

In recent times, piracy has become a business venture for criminals. It has become a very lucrative venture with huge turn over in millions of Naira

[91] .Bassiouni, supra note 40 at 110-11

[92] . Kenneth C. Randal, Universal Jurisdiction under International law 66 TEX.L.REV.785, 791 (1988) Note 40 at 791.

[93]MANUAL OF PUBLIC INTERNATIONAL LAW 365 (MAX Sorensen ed,1968)

results.

The United Nations very recent release was that Nigeria was losing $1.5 billion monthly to piracy, armed robbery at sea and fuel supply fraud. That Nigeria sells crude and import products into Nigeria is for corrupt tendencies. That Nigeria cannot manage the petroleum subsidy regime h is a result of corruption.[99]Corruption in the Niger Delta is the root cause of the youth's restiveness.

Several ad-hoc government intervention programmes have not impacted on the rural dwellers. Many managers of these ad-hoc agencies, who mostly are from the Niger Delta, saw such funds as their share of the national cake. Unfortunately governments acquiesce to it with little or no monitoring of such programmes has also led to a lot of lapses and mismanagement where the poor has nothing at all and the rich gets richer[100].

5.1 Possible Solution.

Government should plan development programmes for communities hosting critical energy infrastructure who live in abject poverty and squalor alongside opulent and affluent oil companies' settlements. The government should invest in the construction of refineries and

Large scale corruption has been identified as a major deriving force towards maritime crimes. Huge sums of monies are laundered through the international financial system; providing a huge source of virtually untraceable funds which is then be used by criminals to bribe government officials, bypass established financial controls, and could be used to fund additional illegal activities in the EEZ[101].

To truly tackle youth restiveness in the Niger delta, the listed areas must be addressed. While the Amnesty program may have seemed successful at the time ituave0887 0 5( )-267e0887(nt)-7(er)5(og)1duc(es)-5(s)-,267e0887(nt)cthe

Massive unemployment is another major challenge contributing to the raising incidents of piracy in the Niger Delta., Unemployed youths are readily available for recruitment into crime. These youths who are attracted to promises of riches turn out as the foot soldiers that are utilized in the perpetration of maritime crimes in Nigeria.

5.2 The Socioeconomic impact of the Crude Oil in Nigeria.

In appraising the factors that drive crime in the Niger delta, a brief understanding of the history of the Nigerian black gold and its contribution in the formation of the Niger delta is imperative in other to be able to find a lasting solution to the crises which has not only ruined the peace and stability of the Niger delta region but which is greatly threatening the peace and stability of the entire nation.

With the discovery of oil in Oloibiri in 1956, Shell BP (as it then was) sinking 17 oil wells in Oloibiri resulting in the exploration yielding over 20 million barrels of crude oil[103]It is assumed that the Niger delta would be a gigantic economic reservoir of national and intentional significance following the discovery of its wealth of oil and gas. One would expect that in exchange for the vast output of the natural resources from its land should be explosive revenue that would result in rapid socioeconomic developments and noticeable transformation within the Delta itself.[104]

But in reality, administrative neglect, crumbling social infrastructure and services, massive unemployment, overwhelming corruption, social

[103](Keshi and Whatts,2008) Curse of the Black Gold: 50 years of oil in the Niger delta: Brooklyn power house.

[104](UNDP 2006) Niger Delta Human Development Indices report.

deprivation, abject poverty, filth and squalor in addition to endemic conflict has become the bane of the Niger Delta of Nigeria[105].The highlighted situations, especially the lingering crises in the region contribute to the scourge of maritime piracy in two main dimensions. First, the widespread militant attacks and sabotage of oil installations and facilities has led to a situation where security interest and attention has been on the protection of these strategic facilities to the detriment of a more comprehensive policing and patrol of the Nigerian territorial waters.[106]This could explain the reason behind the unhindered piratical attacks on fishing trawlers and cargo vessels.

The second reason which seems more fundamental is the proliferation of arms and light weapons as a direct consequence of the crises in the Niger Delta region. Efforts on the part of the security personnel to check oil bunkering activities have further triggered resistance on the part of the bunkers who recruit and arm youths to sustain their lucrative trade. The

utilized and unrealized.[108]Beyond the rich oil and gas deposits, the Niger delta is blessed with arable land for agricultural purposes, extensive forests excellent fisheries from their abundant sea body, and a large labour force.[109]

In contrast however, the potential for economic growth and sustainable development has been replaced by abysmal economic and social conditions of absolute neglect by existing policies and actions subjecting the locals to abject poverty and suffering in the midst of plenty, evoking the feeling that the oil and gas endowments is rather a curse and a double edged sword[110].

inclusive goals of human development.[113] Such unsustainable plans included the following:

The 1957 Willinks Commission of inquiry set up to recommend the best strategies for the development of the region which has the most difficult terrain in the country[114]The commission recommended that owing to the fragile ecology and the peculiar developmental challenges facing the Niger delta, special focus and considerations should be given to facilitate the development of the area. It concluded by stating that “a feeling of neglect and a lack of understanding was widespread….a case has been made out for special treatment of the area. This is a matter that requires special effort because the region is poor, backwards and neglected” That

tackle the developmental problems of the region. The board was also ineffective and was subsequently dismantled[118].

would support buoyant culture.[123] The Changes in the development initiatives have continued with each successive government and the most felt being that under the late President Y'ardua administration which introduced the amnesty programme in 2002.

5.3 Consequences of Oil Exploration on Niger Delta.

Multinational oil companies like shell, chevron, Mobil, ELF, Agip, and Texaco among others are present in the Niger delta and have been involved in some ventures with the Federal government in connection with oil exploration, exploitation and production.[124] However a juxtaposition of their operations and human deprivation in the region has indicated that the oil companies have contributed largely to the poor physical and human growth of the affected communities. Including, the non observation of human rights, non compliance with environmental standards for exploration and ex0 G[d-4(v)18(r)-5(on,)esjuo restitution for damages.

The oil Companies, particularly shell has operated in the region for over 30 years without appreciable control or environmental regulation to guide their activities.[125]

The oil poured into the swamp and Creek, covering the area in the thick slick of oil and killing the fish that the people depend on for food and for their livelihood.[126] The spill was investigated by a local NGO, the center for Environment, Human rights and Development (CEHRD) which reported that the spill had resulted in the dearth and damage to a number of species of fish that provide the protein needs of the local community including widespread damage to Mangroves which are an important breeding ground.[127]

The pipe that burst was the responsibility of shell Petroleum Development Company which failed to take any action from the time of the burst till 7th of November, 2008 in contravention of Nigerian Oil industry regulations[128]neither did the federal regulators take any action or step. “The Creek is dead was the conclusion of the CEHRD”[129]

Poverty has become a way of life due to economic stagnation, agricultural underdevelopment from soil infertility resulting from the high and persistent pollution of he 0.7local 4ionfhe 0.7l#Aθ'õ¿'%„%]ÐÑFRQFOXVLRQRIwYXÅNz

isolation and poor communication; government insensitivity; unhealthy environment and malnutrition.[130] Such conditions affect most members of the affected communities because it is not only income poverty that is the problem but a total lack of access to social and physical infrastructure.

The traditional form of work in the Niger delta has become quite unattractive because of weak earnings relative to the oil sector and such apathy has led the youths into crime.[131]

To begin to stem the tide of piracy and other maritime crimes, through prosecution, adequate legal framework must exist to define crimes and punish criminal activities in the country. Currently, the unavailability of

It is therefore doubtful, whether the procedure adopted in domesticating the SUA in Nigeria is right in the light of the following provisions:

Section 12 of the 1999 constitution provides that "No treaty between the Federation and any other country shall have the force of law unless to the extent to which any such treaty has been enacted into law by the National Assembly".

In reliance on this provision, the Supreme Court of Nigeria held in the case of **REGISTERED TRUSTEE OF THE National Association of Community Health Practitioners of Nigeria &Ors V Medical and Health Workers Union of Nigeria**.[137]That:

"I*n essence, what the legislature meant or intended is that for a treaty to be valid, and enforceable, it must have the force of law behind it,i.e it must be supported by a law enacted by the National assembly, not bits and pieces of provisions found here and there in the other laws of the land, and not specifically so enacted to domesticate it, to make it a part of our law, to interpret similar provisions, as being part of International Labour Organization Conventions just because they form parts of some other enactments like the African charter of Peoples Rights etc will not be* WROHUDWHG ´[138]

In a similar vein, the supreme Court held in **Abacha v. Fawehinmi**[139] that ³%HIRUH LWV HQDFWPHQW LQWR *National assembly, an* ODZ E\ *international treaty has no such Force of law as to make its provisions* MXVWLILDEOH LQ RXU FRXUWV *jurisdiction to* VWLF FR *construe or apply a treaty: nor could it incorporate treaties; save the law*

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of the land. They have no effect upon the citizenry rights and duties in co P P R Q O D Z R U V W D W X W H ´

The purport of the above is that Nigeria needs to domesticate any international treaty by first enacting same by an Act of the National assembly into the laws of the land.

6.2 Analysisof Maritime National Lawsin Nigeria.

For the purposes of this research, the following relevant laws regulating maritime activities in Nigeria will be considered: These are some of the laws that relate to breach and contravention of laws;

Coastal and inland Shipping (CABOTAGE) Act 2003

Merchant Shipping Act 2007

NIMASA ACT 2007.

International Convention for the Safety of Life at Sea (Ratification and Enforcement) Act, 2004.

Nigerian Territorial waters Act 1967.

The major problems with these laws are that most of their provisions are archaic, obsolete and do not even contain provisions criminalizing or punishing acts of Piracy or the related offences of armed robbery at sea, or other illicit activities at sea.

6.3 THE LAWS.

The Merchant Shipping Act was updated in 2007. Part XI relates to the safety of Maritime navigation. Section 215 provides that at "the commencement of this Act, the following Conventions Protocols and their amendments relating to Maritime Safety shall apply:

(a) International Convention for the Safety of Life at Sea, 1974(SOLAS);

(b) Protocol Relating to the International Convention for the Safety of Life at Sea, 1988 and *Annexes* I to V thereto;

(C) International Convention on Standards of Training Certification and Watch Keeping of Seafarers, 1978(STCW) as amended;

(d) International Convention on Maritime Search and Rescue, 1979 (SAR);

(e) International Labour Organization Convention (No. 32 of 1932) on Protection against Accident of Workers Employed in Loading or Unloading Ships (Dockers Convention Revised 1932);

(j) International Convention on Maritime Satellite Organization, 1976 (lNCMARSAT) and the Protocol thereto;

(g) The Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 and its Protocol of 1990;

(h) Convention for the Suppression of Unlawful Acts against the Safety of

Maritime Navigation, 1988and the Protocol thereto;

(i) International Convention on Salvage, 1989;

(j) Placing of Seamen Convention, 1920;

(k) International Ship and ports Facility Security (lSPS) Code; and

(1) International Convention for Safe Containers, 1972.

216.-(1) the minister shall be responsible to make regulation for the application of the provision of such convention.

It therefore, domesticated the IMO Convention for the suppression of Unlawful Acts against the safety of maritime Navigation (1988) and its related Protocol on Fixed platforms.

While this is a laudable development, the procedure and process of ratification in this sense does not compel with the constitutional provisions to enable it enjoy local application. Incorporation by reference through amendment is not proper in Nigeria. Moreover, the second argument against section 215(h) MSA on the procedure of domestication

‘ includes an act (other than an act of piracy under this Act) committed by any person or group of persons if that person or group of persons unlawfully and intentionally:

(a) Seizes or exercises control over any ship or a fixed platform by force or threat thereof or any other form of intimidation; or

(b) performs an act of violence against a person on board a ship or a fixed platform if that act is likely to endanger the safe navigation of that ship; or

(c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship or destroys a fixed platform or causes damage to it which is likely to endanger its safety; or

(d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or

(e) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or

(f) Destroys or strongly damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or

(g) Communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or

(h) Falsely pretends to have suffered or become a victim of any of the acts stated in (a), (b),(c) and (d) above whether or not the false pretence is for the purpose of demanding or receiving ransom or other monetary payment; or

(i) When the purpose of the act, by its nature or context, is to intimidate a population, or to compel a Government in Nigeria or an international organization to do or abstain from doing any act:

(a) uses against or on a ship or on a fixed platform or discharges from a ship or a fixed platform any explosive, radioactive material or BNC weapon in a manner that causes or is likely to cause death or serious injury or damage; or

(b) Discharges, from a ship or a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (h)(i) herein, in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or

(c) Uses a ship in a manner that causes death or serious injury or damage; or

(d) threatens, with or without a condition (whether as to ransom or otherwise), aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the unlawful acts set forth herein if that threat is likely to endanger the safe navigation of the ship in question or the safety of a ship or a fixed platform; or

j) Transports on board a ship:

be used in a nuclear explosive activity or any other nuclear activity not under safeguards to an International Atomic Energy Agency comprehensive safeguards agreement; or

(iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose; Provided that it shall not be an offence under this Act if any item in j(ii) or j(iii) is transported to and from the territory of or under the control of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where the resulting transfer or receipt or the holding of such items is not

Contrary to the State Party's obligations under that Treaty; or

(k) Transports another person on board a ship knowing that the person committed an act that constitutes an offence defined as unlawful act under this Act or intending to assist that person to evade criminal prosecution; or

(l) Injures or kills any person in connection with the commission of any of the offences set forth above or;

(m) Attempts to commit, or participates as an accomplice in, or organizes or directs others to commit an act set forth herein or contributes to the commission of one or more of the offences set forth herein by a group of persons acting with a common purpose intentionally and either (i) with the aim of furthering the criminal activity or criminal purpose of the group where such activity or purpose involves the commission of an offence set forth herein or in the knowledge of the intention of the group to commit an offence set forth herein.

Part 3 provided for punishment and penalties for the different offences under the Bill including Forfeiture, restitution, death penalty (if death resulted from the crime), life imprisonment and fines, depending on the gravity of the offense. It also has provisions on extradition of offenders

and the inclusion of the offences of unlawful act as extraditable offences in certain cases and the procedure for extradition. Part 4 deals with enforcement by enforcement or authorized officials boarding ships to search on reasonable suspicious grounds, the procedure for such searches and the stringent Measures of safeguards against abuse of the powers are also provided for.

The challenge to the operationlization and enforcement of this bill is that it has not being passed into law by the National Assembly of Nigeria .A major amendment of the bill was undertaken by NIMASA in conjunction with officers drawn from the relevant stakeholder under the auspices of the Embassy of the United States of America in Nigeria. The amendment is with a view to ensure that new and emerging trends in the area of maritime safety and security are covered.

Section 36(12) of the constitution provides that no person shall be punished for a crime unless such is defined in a written law and the punishment for the offence is expressly provided. This has in most cases truncated the prosecution of maritime crime offenders since there is no provision of the law punishing Maritime crimes or even defining the offences.

Take for instance, Section 1 of the Terrorism Act 2011 ,provides that kidnapping of a person, seizure of an aircraft, ship, their diversion or use for some crimes, supply or use of weapons, Explosives or nuclear, biological or chemical weapons without lawful authority are offences. Similarly, Section 15 of the money laundering Act,2011 makes piracy an offence punishable with 5 to 10 years imprisonment but the meaning of piracy is not stated in the Act contrary to Section 36(12) of the 1999 Constitution.

An examination of most maritime laws indicate that their provisions are obsolete, archaic, not up to date and do not address current challenges in the maritime front, especially the modern ways of prosecuting and penalizing arrested pirates due to the absence of the needed exhaustive legal framework.

7.0 Legal G

Licence (OPL) is required to prevent the escapee of petroleum into any water, will, spring stream, river, lake, reservoir estuary, or harbour. The drilling Regulations further authorizes inspectors to examine the premises of the holder of the OM or OPL to ensure that such persons who fail to comply with the drilling regulations may be prosecuted.[162]The DPR also has the power to seal up premises, seize offending substances, impose fines and require cleanup of environmental damage. Violators are at risk of fines and in most cases, a shutdown of the polluting facility until there is compliance.

8.0 Formulation of Policies, National Framework

Successfully fighting the scourge of maritime crimes would involve the formulation and enforcement of national anti piracy laws which would clearly define acts under criminal headings and prescribe in clear terms, the full penalties for same. In addition, the mechanism for enforcement should be included.

The IMO in recognizing the importance of domestic laws in the prosecution of pirates passed Resolution A.1025 (26) which encourages states to ratify enabling legislation that would codify their jurisdiction over piracy and establish procedures to facilitate the prosecution of pirates at sea. The Resolution further recommends guidelines for piracy investigation strategy. Some of their suggestions include that the state that own the attacked ships should initiate investigations for piracy incident while the state whose territorial waters the incident occurs should bear responsibility to investigate armed robbery at sea.[163]

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[162] Federal Environmental Protection Agency Act 1998

[163] International Maritime Organization(IMO) Code of practice for the investigation of the crimes of piracy and armed Robbery against Ships, IMO Assembly Res.A.1025 (26)(Dec,2,2009)

In actualizing this dream, state parties should ratify and domesticate relevant international instruments on piracy, IUU fishing, and pollution trafficking and other illicit crimes at sea. This should further involve the mechanisms that would tackle corruption which has become quite endemic in it become quite

Thus every coastal state has a legal responsibility by way of a duty of care to provide proper and adequate security for maritime traffic in its territorial waters.[170]

This duty involves maintaining security and order at sea, and securing states internal waters and port facilities as well as individual territorial waters by employing necessary available mechanisms, to enhance security at the national level and then at the regional level. This is the "Doctrine of Responsibility".[171]

In accordance with UNCLOS, every state should maintain proper and adequate security and the states that fail in this duty may be liable for breach of that duty of care to victims of maritime crimes in their territorial waters and port facilities [172] GoG states, especially Nigeria should adopt a zero tolerance policy to all forms of offshore bunkering activities. The surge in maritime crimes in GOG is inextricably linked to the illegal activities in the oil industry in that region.

Enforcing an aggressive anti-smuggling measures with zero tolerance. Smuggling is the backbone of criminality against vessels and seafarers. This is because the clandestine nature of smuggling which is carried out to evade payment of customs and port duties are often conducted sneakily without security detection, thereby creating the propensity for criminal activities which leads to attacks on vessels. [173]

9.0 Towards a Robust National Legal Framework.

[170]Herbet Anyim, The Legalities of the Gulf of Guinea : http://cimsec.org/legalities-gulf-guinea-maritime-crime-suggested-solutions/11783

[171] Ibid at 530

[172] ibid

[173]Herbet Anyim, The Legalities of the Gulf of Guinea : http://cimsec.org/legalities-gulf-guinea-maritime-crime-suggested-solutions/11783

9.1 Code of Practice For Effective Prosecution Of Maritime Crimes In Nigeria

The IMO Maritime Safety Committee (MSC) has assisted member states to develop a Code of Practice to aid investigation of maritime piracy[176].The Code of practice recommends that states should adopt legislation to establish their jurisdiction over piracy and armed robbery against ship, including laws for prosecution of maritime crimes offenders[177]

States are urged to implement through domestic laws the provisions of the UNCLOS and the SUA Convention relating to piracy. This code of practice also provided guidelines for the training of investigators, and investigative strategy. It provided a framework for a systematic and careful collection of evidence, including photographs, and videotape, individual witness accounts, detailed forensic examination of scenes of crime, and search of intelligence databases.[178]

States are further encouraged to connect counter piracy naval patrols to boarder efforts with the aim of strengthening maritime security. Efforts to suppress illegal smuggling and narcotic trafficking can be utilized in deterring and defeating piracy. A situation worked out in 2009 when the UNODC in July of that year issued guidance for countries requesting transfer of pirates to Kenya. This was developed in conjunction with the Kenya Department of Public prosecutions, the EU/Kenyan Forces, and a

[176] IMO Doc. A. 1025 (26), Code o Practice for Investigation of Crime of Piracy and armed Robbery against Ships, January 18,2010, which updated the Code of Practice of January 22,2002.

[177] IMO Doc .A. 1025(26) 3.1

[178] Ibid 5.2

prosecutors are not persecutors, it is pointless to undertake a case which

It is worthy of note, that even where there is applicable law to proceed against pirates, the capacity is most times unavailable to undertake the crucial duty. One notable development in this regard is the statement of the then NIMASA DG where he alleged that even though arrests are made, the suspects are quickly released soon after and they always go back to the crime.[181] Experts on maritime law and security have argued for an overhaul of the nations municipal laws which are inadequate in the face of the growing challenges of maritime crimes in the country.

It is important to point out however that the problem in the maritime industry in Nigeem0 g0 Go98(m)5.65D5(ar)-8(i)10(t)-7(i)10(m)-7(e)15( )] TJETQ.1Tu 0

pirates and other maritime criminals apprehended within Nigeria t

internationally and otherwise. Most worrisome, is the level of impunity with which these attacks are carried out on the coastal areas of the states on the Gulf of guinea.The pirates appear to operate in organized syndicates. Generally, they are composed of Maritime militia. Which conducts the attacks; a ground militia which handles pre and post capture logistics, and a figurehead responsible for financing.[192] Ransom are usually paid in cash and are distributed among pirates in accordance to their position within the organization[193]

It has been widely contended that pirates off the coast of Nigeria and the wider GoG operate with sophisticated weapons and appears to be very organized,on that point,Tony Attah of Shell petroleum stated that,

“it is a highly organized criminal phenomenon involving a parallel industry with a developed supp-37(pos)14q0.0000mAPeumh r95sticiàl95

apprehended ones most time are the laborers in the field who may be referred to as the foot soldiers.

This can be an effective tool in the fight against maritime insecurity. A plea bargain, agreement, deal, plea, or copping a deal, is any agreement in a criminal case, between the prosecutor, and defendant where by the defendant agrees to plead guilty to a particular charge in return for some concession from the prosecutor.

Plea bargain has been part of Nigerian law for some time now. it was incorporated into the Nigerian Administration of Criminal Justice Act passed by the National Assembly, which came into effect on the 15th of May,2015 to ensure efficient management of criminal Justice institutions ,speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of suspects, defendants and victims.[203]

One of the gaps filled by the ACJN is the introduction of the plea bargain as one of the possible pleas available to an accused person (defendants) into its principal legislation a model to be adopted by other states in the Federation. Plea Bargain emerged in Nigeria with its introduction in the EFCC Act 2004 in Section 13(2). It was employed with a view to expeditiously recover funds looted by public officers. In other words, plea bargain was born out of expediency. That same desperation was similarly responsible for the Lagos State version of Plea bargain in 2007.[204]

Practice of Plea bargain is rooted in common law, from the medieval English Common law courts of guilty Pardons to accomplices in felony case. In modern times however, the significance it has gained can be traced to the United States of America,[205] on account of its efficiency; Plea bargain has won the endorsement of the itdB0.00000887 0 595.25 842 reW*nBT/F2

as “an essential component of the administration of criminal Justice.[206]

(b) Where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representatives ,or

(c) Where the defendant in a case of conspiracy has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of the crime, by providing relevant information for the successful prosecution of other offenders.

Sub section 2 (a) makes it clear that a crime that is provable is not subject to plea bargain. In all cases, there is a consideration for which the state would make a bargaining. Like in any contract, adequacy is not an issue. This rests the concern of the public on the question of justice being for sale. Rather than let criminals walk free from their crimes due to insufficient evidence, or dehumanize them perpetually as awaiting trial inmates, in prisons, it suffices to bargain a plea with them and dispose of the matter.

There is however no standard definition of plea bargaining among practitioners, the definition of plea bargain varies depending on the jurisdiction and on the context of its use.[210]

trial.[211] Authors such as John H Langbein called plea bargaining "Condemnation without adjudication."[212]

As an alternative to a trial mode of procedure, plea bargaining presents itself as an economic method of criminal justice. It provides the means of disposing of cases with less expenditure of time and money than full scale trail. Practitioners endorse plea bargaining as an essential component of the criminal justice system which is an effective way of reducing their caseloads while at the same time doing justice.[213]

11.0 Strengthening of all relevant institutions.

The point has been that GoG countries are generally weak to exercise effective control over their coastal and deep offshore territories[214] the challenge is even more daunting given the large expanse of coastal waters to cover and the limitation of their mostly small boats and poorly equipped national navies that most times have to engage better equipped and ruthless criminal groups. This issue is compounded more by internal political instability which frequently provides the motive for non state groups to engage in criminal and violent actions.

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[211] See the recent case of the USA v John Walker Lyndh, where upon Plea Bargaining consented to by US pres

Ignorance or a lack of quick impact response to maritime security challenges could undermine fiscal survival and threaten domestic security and stability. Another reason heightening the intractability of maritime insecurity is the long history of Policy blindness otherwise referred to as sea blindness towards coastal waters. A key element to addressing maritime crime will be for regional States to build capacity and political will to investigate and prosecute those responsible for maritime crime. This includes flag States taking responsibility to pursue investigations into attacks against ships. Arrests alone are insufficient; it must be followed by prosecution.

To tackle maritime crimes in a sustainable manner in Nigeria and the wider Gulf of Guinea. The key institutions whose charge it is to maintain security and enforce law and order must be strengthened. Poor funding has being one of the major handicaps to the fight against insurgency on the maritime front. The GoG countrieslack significant naval or coast guard capability to constitute effective counter piracy measures against the lingering maritime crimes.[215]

Until recently, the focus of the countries in the GoG has been on land based threats en-GB

regulations of necessary resources required to establish and exercise credible presence on the territorial waters.

Thus what obtains currently in terms of Maritime security does not seem effective to fight, control and deter criminal elements and social movements whose activities now threaten security and peace of the affected areas. Indeed, some military responses, where they exist, appear to worsen the security situation mainly by increasing the risk of weapons proliferation and deepening human rights abuse. The implication is that these abuses would heighten resentment and invariably fuel insecurity.[217]

To put the current situation into perspective, a recent report by Chatham House noted "the high rate of piracy in the GoG represented a significant ratio of attacks in African waters, due to unsuccessful counter piracy operations."[218] The realization however, is that the impact of poorly executed military responses hugely influences instability and there is need for a reform in strategies.

As has been earlier argued, these attacks in the Gulf of Guinea, which have caused harm to crew members, vessels and maritime navigation generally are not opportunistic, but a well orchestrated action by networks of local and international criminal gangs often acting with the connivance of citizens and government officials in the GoG countries. These attacks are symptomatic of deeper government and security dilemmas which the countries face both individually and collectively. Irrespective of situations which provoked the level of insecurity now witnessed, the realization is that any creative and sustainable solution

[217]ibid

[218]Chatham house Report Supra..

must inc

capability of member countries in combating piracy and armed robbery and cooperate with organizations and like minded parties.[223]

Re-CAAP's success in combating non –state threats to intercontinental sea-based commerce is through information sharing functions.[224] The organization maintained enviable transparency in the presentation of its information and maintained an excellent resource called the s" which quantifies several aspects of a pirate or criminal incident. For instance on the 9th of October, 2013, at 5.30 PM, it reported that the Diana 4, a Thai ship carrying petroleum products, encountered pirates. The organizations response to pirate incidents is to inform immediately the Malaysian Maritime Enforcement Agency (MMEA),even though Malaysia is yet to accede to the agreement. Such activeness and alertness could be applied in the GoG to tackle the festering scourge of maritime crimes at sea.

12.2 Case of the Strait of Malacca

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