



# An Legal Appraisal of the Suppression of Piracy and Other Maritime Offences Act, 2019.

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## Abstract

*Due to its multiple state borders, the Gulf of Guinea presents a number of legal and regulatory challenges when it comes to combating maritime crime. Pirates frequently have more space to operate and more time to pillage and transport stolen goods or abducted people due to the Gulf's extensive coastline. The significant risk that is common in the Gulf of Guinea suggests that anti-piracy measures need to be coordinated more. Armed robberies against ships and maritime piracy have existed worldwide since antiquity. It has thrived primarily in areas where political unrest, a lack of maritime law enforcement, and social and economic issues arise and persist. They pose serious risks to maritime security worldwide, but especially in Nigeria's coastal states, and their incidence or appearance varies slightly from one location to another. Before the Nigerian legislature passed the law to combat the threat of piracy and other maritime offences, it seemed difficult to prosecute those suspected of committing these crimes because there was no domestic law that made them illegal. The Suppression of Piracy and Other Maritime Offences Act of 2019 and the institutional architecture supporting its implementation were evaluated critically in this study. This study adopted the doctrinal research method like statutes, case laws, books, and other legal sources to evaluate the Act. The United Nations Convention on the Law of the Sea (UNCLOS) 1982, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) 1988, and its protocols were made effective and recognised by the Act. This study came to the conclusion that all Nigeria has to establish maritime division courts to handle admiralty cases especially criminal in nature. It is essential to increase regional and international cooperation through resource and intelligence sharing and there is need to improve her domestic governance and security architecture as well*

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## I. Introduction

President Muhammadu Buhari of Nigeria assented to the Suppression of Piracy and Other Maritime Offences Bill in July 2019 thereby enabling Nigeria to establish a domestic legal framework for dealing with piracy and other maritime crimes. The long title of the Act states that it an Act to give effect to the United Nations Convention on the Law of the Sea (UNCLOS)<sup>1</sup> and the SUA Convention<sup>2</sup> in Nigeria. In assenting to the bill, the president successfully concludes almost a decade of advocacy to implement such a law in order to curb and deter sea piracy, armed robbery at sea, and other unlawful acts at sea.<sup>3</sup>

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<sup>1</sup> International Seabed Authority, 'United Nations Convention on Law of the Sea at 40: the Making of UNCLOS,' <https://www.isa.org> accessed 31<sup>st</sup> December 2024.

<sup>2</sup> United Nations Treaty Collections, 'The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 and its Fixed Platforms Located on the Continental Shelf Protocol (subsequently consolidated into the 2005 SUA Convention),' <https://www.treaties.un.org> accessed 1<sup>st</sup> January 2024.

<sup>3</sup> V. Onyegbado, 'Suppression of Piracy and Other Maritime Offences Act 2019: A Review,' <https://www.akabogulaw.com> accessed 1<sup>st</sup> January 2024.

Under section 12(1) of the Constitution of the Federal Republic of Nigeria, 1999, international treaties entered into by Nigeria have no force of law except to the extent to which they have been enacted into law by the National Assembly. Nigeria domesticated the SUA Convention through the Merchant Shipping Act, 2007.<sup>4</sup> Article 3 of the 1988 SUA Convention and its Protocol ((which criminalised maritime-related terrorist acts) was also included in the country's Terrorism (Prevention) Act, 2011<sup>5</sup> and Terrorism (Prevention)(Amendment) Act, 2013.<sup>6</sup> In 2019, Nigeria enacted the stand-alone Suppression of Piracy and Other Maritime Offences Act, 2019 (SPOMO) to give effect to the 2005 SUA Convention in Nigeria.

## **II. Legal Appraisal of the Suppression of Piracy and Other Maritime Offences Act, 2019.**

The SPOMO is the primary legal instrument for the suppression of unlawful acts against the safety of maritime navigation in Nigeria. The instrument has eleven parts and twenty-three sections. Part I of the Act sets out the scope of application. The scope of application of the 2005 SUA Convention (Article 4) was captured in section 1(2)(b) and 1(3)(a) of the Act. The SPOMO seeks to prevent and suppress piracy, armed robbery and other unlawful acts against a ship, aircraft and other maritime craft, howsoever propelled, including fixed or floating platform.<sup>7</sup>

The Act applies to any person on board a ship or aircraft navigating in, on or above the territorial and internal waters of Nigeria or on above international waters; or fixed or floating platform in, on or above the territorial and internal waters of Nigeria or on or above international waters.<sup>8</sup> It also includes circumstances where the offender or alleged offender is found outside Nigeria but is in the territory of a state that is a party to other international maritime conventions.

SPOMO gives effect to the relevant provisions of several international conventions already ratified by Nigeria. It is significant because it has ended the controversy around whether the crime of sea piracy is defined in any local legislation; and the Act bestowed on the Federal High Court exclusive jurisdiction to determine matters of armed robbery and other unlawful acts at sea.<sup>9</sup>

Prior to the enactment of the Act, the prosecution of parties suspected of sea piracy was problematic in Nigeria, as there appeared to be no domestic statute which defined the crime. Under Section 36(12) of the 1999 CFRN, no party may be convicted of a criminal offence unless such offence is defined by an existing law. Although Section 215(h) of the Merchant Shipping Act, 2007 provides that the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988 (SUA Convention) and the protocol thereto have applied since the commencement of the MSA, there were doubts among maritime stakeholders as to whether Section 215(h) thereof sufficiently domesticated the SUA Convention as required by the Constitution in order for the definition of sea piracy contained in the convention to apply. Section 3 of the SPOMO Act has laid this issue to rest by defining 'piracy' as any "illegal act of violence, act of detention or any act of depredation, committed for private ends by the crew or any passenger of a private ship or private aircraft and directed (i) in international waters against another ship or aircraft or against a person or property on board the ship or aircraft; or (ii) against a ship, aircraft, person or property in a place outside the jurisdiction of any state; or (b) act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; and or (c) act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b) of this section."<sup>10</sup>

Section 10 is also relevant. It provides that notwithstanding anything contained in any other Act, a person who commits or attempts to commit, facilitates, aids, abets, conspires, or participates in an act of piracy, or any maritime offence or unlawful act under this Act is liable on conviction to any penalty or punishment as provided for under this Act.<sup>11</sup>

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<sup>4</sup> SPOMO Act, s12(1).

<sup>5</sup> SPOMO Act, s40.

<sup>6</sup> SPOMO Act, s19(g).

<sup>7</sup> SPOMO Act, s1.

<sup>8</sup> SPOMO Act, s2(1).

<sup>9</sup> V. Onyegbado, 'Suppression of Piracy and Other Maritime Offences Act 2019: A Review,' <https://www.akabogulaw.com> accessed 1<sup>st</sup> January 2024

<sup>10</sup> SPOMO Act, s3.

<sup>11</sup> Ibid, s10.

UNCLOS recognizes the duty of states to cooperate in the suppression of acts of piracy in its Article 100 while Article 101<sup>12</sup> defines piracy in identical terms as the SPOMO Act as:

- (a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew of the passengers of a private ship or a private aircraft, and directed:
  - (i) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  - (ii) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 103 of UNCLOS defines pirate ship or aircraft as follows:

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in Article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.<sup>13</sup>

Article 105 gives any State the power to arrest a pirate ship and impose penalties on persons in the following terms:

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting on good faith.<sup>14</sup>

The emphasis in all of these legal provisions is that piracy is committed outside the limits of local jurisdiction and in particular on the High Seas over which every State can exercise jurisdiction.

The SPOMO Act thus vested the Nigerian courts with the powers to try cases of piracy regardless of the locus of the offence, to wit, where it is committed outside the limits of local jurisdiction. This is given further impetus by Section 94 of the Administration of Criminal Justice Act (ACJA) which provides that an offence committed at sea or outside the territory of Nigeria, may be tried or inquired into at any place in Nigeria to which the suspect is first brought, or to which he may be taken thereafter.<sup>15</sup>

Notably, the above definition accords with the universal jurisdiction principle espoused in UNCLOS whereby states may, in accordance with their municipal laws, arrest and prosecute persons, ships or aircraft suspected of committing piracy regardless of whether the pirate or attacked ship flies a foreign flag or has a foreign crew. The definition also covers violent acts committed against property other than ships, such as aircraft and floating and fixed platforms in the Nigerian Exclusive Economic Zone.

Section 4 of SPOMO lists eighteen maritime offences and unlawful acts at sea, which include armed robbery at sea and acts other than piracy committed within Nigeria or its maritime zone.<sup>16</sup> Such acts include the hijacking of a ship, aircraft or fixed or floating platform; the destruction or vandalism of a ship, installation or navigation facility; or interference with the operation of a ship, installation or navigation facility.

Section 12 provides that any person who commits an act of piracy, armed robbery at sea or any other unlawful act under SPOMO, whether or not the person was armed with a firearm or other weapon during the commission of the offence, shall be liable on conviction to life imprisonment and payment of fifty million naira and in addition to restitution to the owner.

Under section 5(2) of the Suppression of Piracy and Other Maritime Offences Act, the Federal High Court, to the exclusion of all other courts, has jurisdiction to hear and determine any matter under the Act. In addition, section 10 provides that, notwithstanding the provisions of any other Act, any person who commits or attempts to commit, facilitates, aids, abets, conspires or participates in an act of piracy or any maritime offence or unlawful act under the act will be liable, on conviction, to any penalty or punishment provided for under the Act. The combined effect of these two provisions appears to be that where an act constitutes an offence under the law,

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<sup>12</sup> UNCLOS III 1982, Art101.

<sup>13</sup> UNCLOS III 1982, Art103.

<sup>14</sup> UNCLOS III, Art105.

<sup>15</sup> ACJA s94.

<sup>16</sup> SPOMO Act, s4.

it cannot be prosecuted in any way other than as set out in SPOMO. Thus, for example, the trial of a case of armed robbery committed on board a ship within Nigerian waters may not be validly heard and determined in the High Court of any state of Nigeria or the Federal Capital Territory, Abuja despite the general jurisdiction of those courts to try cases of armed robbery.

Part II of the Act creates relevant offences in line with the offences created in Articles 3, 3*bis*, 3*quater* and 3*ter* of the SUA Convention and Articles 2, 2*bis* and 2*ter* of the Fixed Platforms Protocol. The offences include offences against the safety of ships,<sup>17</sup> offences in relation to BCN weapons and the use of ships to cause death or injury,<sup>18</sup> offences in relation to transporting BCN weapons on board ships,<sup>19</sup> transporting offenders on board ships<sup>20</sup> and causing death or injury in connection with the commission of offences under the Act or attempting, participating, organising or contributing to the commission of an offence under the Act.<sup>21</sup> Appropriate penalties were also prescribed in compliance with Article 5 of the Convention which obliges States Parties to impose appropriate penalties which take into account the grave nature of the offences.

Part III of the Act vests in the Federal High Court jurisdiction for the trial of offences under the Act.<sup>22</sup> Mandatory and optional grounds of jurisdiction are dealt with in this Part in compliance with Article 6 of the Convention (Article 3 Fixed Platform Protocol) which requires State Parties to establish jurisdiction.

Part IV of the Act covers extradition. In section 11, offences created under the Act are deemed extraditable offences; in section 11(3), the Convention shall serve as extradition treaty where no such treaty exists between Nigeria and a Convention.<sup>23</sup> Section 11(7) deals with the rights of a person in respect of whom an extradition request has been made while section 12 covers the political offence exception rule and in section 14, the obligation of Nigeria to prosecute or extradite an alleged offender is set out. Power is also granted Nigeria in Part IV to refuse extradition where there are grounds to believe an extradition request was made to persecute an offender on grounds of political opinion, gender, race, ethnic nationality, or religion. This Part is in compliance with Articles 10, 11, 11*bis* and 11*ter* of the SUA Convention.

In Part V, the master of a vessel registered in Nigeria may deliver a suspected offender to a Convention State.<sup>24</sup> The Part also makes provision for the formalities to be followed in making such delivery. This is in compliance with Article 8 of the SUA Convention.

The liability (criminal or civil) of legal entities located in Nigeria for offences committed by persons in the management and control of such entities when acting in that capacity is the focus of Part VI of the Act. This Part aims to ensure compliance with Article 5*bis* of the SUA Convention.

Part VII deals with ship boarding, information sharing and mutual assistance.<sup>25</sup> In line with Article 8*bis* of the Convention, this Part contains sections dealing with requests received for boarding Nigeria-flagged ships suspected to be involved in the commission of an offence under the Act, information to be provided in such requests, mode of boarding, authorisations for boarding, detention of suspect ships, and liability for damages and losses in respect of such boardings.<sup>26</sup>

Part VIII deals with powers of arrest, investigation and prosecution. In Part IX, provision is made for necessary amendments in view of the fact that certain provisions of the Act may affect existing Acts, such as the Extradition Act, 1967 and the Terrorism (Prevention) Act, 2011 and Terrorism (Prevention) (Amendment) Act, 2013.

Lastly, interpretations come within the purview of Part X. Effort was, therefore, made in the law to capture the essence of the two international treaties. Other significant provisions of the Suppression of Piracy and Other

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<sup>17</sup> SPOMO Act, s2.

<sup>18</sup> SPOMO Act, s3.

<sup>19</sup> SPOMO Act, s3(2).

<sup>20</sup> SPOMO Act, s4.

<sup>21</sup> SPOMO Act, s5.

<sup>22</sup> SPOMO Act, s6.

<sup>23</sup> SPOMO Act, s11.

<sup>24</sup> Ibid, s16.

<sup>25</sup> Ibid, s19.

<sup>26</sup> Ibid, s20.

Maritime Offences Act include those relating to restitution to owners of violated maritime assets and the forfeiture of proceeds of piracy or maritime offences.<sup>27</sup>

The Act also empowered that Attorney-General of the Federation any officer so designated by the Attorney-General or the Nigerian Maritime Administration and Safety Agency, with the Attorney-General's consent to prosecute offenders. Section 5(1) provides that the Attorney General, any law officer so designated by the Attorney General, or NIMASA, with the Attorney General's consent, are empowered to prosecute offences under SPOMO.

Section 19 of the Act provides that a fund known as the Piracy and Other Maritime Offences Fund (POMO Fund) shall be created by NIMASA.<sup>28</sup> The POMO fund is to be used for the implementation of the Act and the fund shall be credited from money approved by the Federal Government for the implementation of the Act; gifts, financial contributions by beneficiaries of the services of the maritime enforcement agencies; thirty-five percent of the proceeds of sales of any property seized and anything forfeited under the Act, including instruments used in the commission of crimes and criminal activity under the Act; the contribution from the maritime fund under NIMASA Act; and contribution from the Cabotage Vessel Financing Fund under the Cabotage Act 2003. Furthermore, the POMO fund is to be managed by NIMASA.

It is hoped that the POMO fund will not suffer the same fate as the undisbursed Cabotage Vessel Financing Fund (CVFF) created under the Cabotage Act. Suffice to say that the POMO fund is to be disbursed judiciously for the successful implementation of the SUPMOA 2019.

The SPOMO Act 2019 will help to address the lingering issues of piracy and armed robbery at sea which Nigeria has grappled with in recent times. While some of the principles embodied in the Act are understandably untested in the Nigerian courts, the Act is undoubtedly a solid framework for dealing with sea piracy and other unlawful acts at sea.<sup>29</sup>

There are, however, still a number of other issues with the Act. The first has to do with the scope of application of the Act. The scope of application of the Act is provided in Section 2(1). It provides that it applies to any person on board the ship or aircraft while SUA Convention, on the other hand, applies to ships navigating into, through, or from waters beyond the outer limit of the territorial sea of a single State, or beyond the lateral limits of its territorial sea with adjacent States.<sup>30</sup> The scope of application of the SUA Convention was structured to capture ocean going vessels transiting into or out of territorial waters from or to the high seas or navigating through the high seas. The Convention is therefore applicable to offenses committed on the high seas or in an exclusive economic zone (maritime zones outside the territorial sovereignty of coastal states).

The scope of application of SPOMO, on the other hand, is restricted to the country's territorial and internal waters; unless 'international waters' is taken to mean the high seas. The use of the word 'international waters' in the Act, however, appears to be a misnomer as there is no such word in UNCLOS. 'International waters' seems to have been imported from the aviation sector which normally refers to 'international airspace' in defining the paths of airplanes. 'International airspace' covers the contiguous zone, EEZ and the high seas. The Act should have adopted the traditional maritime zones already defined in UNCLOS in establishing its scope of application. SPOMO is therefore restrictive in scope and negates the object of the international conventions it seeks to domesticate.

Secondly, the long title of the Act states that the Act would give effect to the provisions of UNCLOS and the 1988 SUA Convention and its Protocols. UNCLOS is a large treaty, with three hundred and twenty articles and nine annexes, some of which are themselves quite large (such as Annex III, on the Basic Conditions of Prospecting, Exploration and Exploitation, which contains twenty-two articles). UNCLOS deals with many topics. It establishes the regime of maritime zones that characterize the delimitation of the seas: internal waters, territorial sea, archipelagic waters, contiguous zone, exclusive economic zone, continental shelf and extended continental shelf, high seas and the deep seabed. The Convention establishes the general rules for drawing the baselines from which most of these zones are measured. It also describes the rights and obligations—including resource rights,

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<sup>27</sup> SPOMO Act, s12.

<sup>28</sup> SPOMO Act, s19.

<sup>29</sup> V. Onyegbado, 'Suppression of Piracy and Other Maritime Offences Act 2019: A Review,' <https://www.akabogulaw.com> accessed 1<sup>st</sup> January 2024.

<sup>30</sup> SUA Convention 1988, Art4(1).

passage rights and other freedoms—that exist in each of these zones. Finally, it contains detailed provisions on piracy, boarding and pursuing vessels, and managing the exploitation of resources outside the management reach of individual coastal states, and sets up dispute resolution mechanisms.<sup>31</sup>

Nigeria has since claimed its maritime zones with the promulgation of Nigerian Territorial Waters Act, 1967; Nigerian Territorial Waters (Amendment) Act, 1998; and the Exclusive Economic Zone Act, 1978. The criminal aspects of the 1988 SUA Convention was also domesticated through the Merchant Shipping Act, 2007 and the two Terrorism Acts, 2011 and 2013. What the Piracy and Suppression of Other Maritime Offences Act, 2019, therefore, seeks to do is to give effect to Articles 101, 105, 106 and 107 of UNCLOS which deal with piracy and the 2005 SUA Convention.

It is, however, necessary to point out that the definition of piracy in Article 101 of UNCLOS met with much criticism because of its reference to pirate ship and private ends which expressly excludes terrorism. These created lacunas when the *Achille Lauro* and other terrorist incidents (*USS COLE*, *USS LIMBURG*, *SuperFerry*) occurred. It is therefore surprising that this same fraught definition of piracy was imported wholesale into the Piracy and Suppression of Other Maritime Offences Act, 2019. It is noteworthy that the SUA Convention did not attempt to define either piracy or terrorism so as not to limit the scope or purview of the treaty. The 2019 Act should have followed that track by avoiding definition of piracy and just criminalise the acts constituting it.

With the full adaptation of the definition of piracy under Article 101 of UNCLOS, the challenges associated with that definition were also adopted. For instance, Section 4 of SUPMOA (SPOMO) provides that for piracy to be established, the act must be committed for private ends or for personal gains. However, any acts that are politically motivated do not fall within the definition of piracy. This principle is flawed because in Nigerian political climate, political rivals could go as far as committing criminal act of violence against a ship or crewmen; unfortunately, it will not amount to piracy.<sup>32</sup>

The third issue is the absence of a boarding provision in the Act. The 2005 SUA Convention added boarding and search rules and safeguards to the 1988 SUA Convention. It provides for law enforcement officials to board foreign flag ships on the high seas to search for alleged terrorists and or weapons or to render assistance to a vessel suspected of being under attack. According to the procedure provided for in Article 8 *bis*, a requesting State Party may board a foreign ship when it has reasonable grounds to suspect that that ship or any person on board has been or is about to be involved in the commission of an offence under the Convention.<sup>33</sup> The requesting State Party may only board the vessel in question after it has received authorisation from its flag State.<sup>34</sup> The flag state may also approve the requesting state to exercise powers of arrest, detention and prosecution.<sup>35</sup> A State Party may notify the IMO Secretary-General that it would allow authorisation to board and search a ship flying its flag, its cargo and persons on board if there is no response within four hours.<sup>36</sup>

When carrying out the authorized action, the use of force is to be avoided except when necessary to ensure the safety of officials and persons on board, or where the officials are obstructed in the execution of these actions. Any use of force shall not exceed the minimum degree necessary and reasonable under the circumstances. The provisions concerning the use of force must be consistent with current practice on the use of force in international law. States Parties shall also be liable for any damage, harm or loss attributable to them arising from measures taken pursuant to this article (that is, boarding a foreign ship) when the grounds for such measures prove to be unfounded, or unlawful, or exceed those reasonably required in light of available information.

The only reference to boarding in the Act is section 17(5)(b) which provides as follows:  
Subject to the provision of this Act, any of the law enforcement agencies shall have the power to:

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<sup>31</sup> Maritime Crime: A Manual for Criminal Justice Practitioners, United Nations Office on Drugs and Crime, 2019.

<sup>32</sup> C. Tokulah-Oshoma, 'Can SUPMO Act Tame Piracy on Nigerian Waters?' *The Punch* (Lagos, 9<sup>th</sup> January 2020) 35.

<sup>33</sup> SUA Convention 2005, Art8(5).

<sup>34</sup> SUA Convention 2005, Art8(5)(c).

<sup>35</sup> SUA Convention 2005, Art8(8).

<sup>36</sup> SUA Convention, 2005 Art8(8)(d).

(b) Execute a search warrant as granted by the courts authorizing any of its officials or any other law enforcement officials to enter into any vessel, aircraft, tanker, premises or conveyance for the purpose of conducting searches in furtherance of its functions under this Act or under any other law.

A ship has the nationality of the state under whose flag it is registered. Boarding such ship has to be with the consent and authority of the flag state, hence the elaborate provisions in the Convention on boarding. Freedom of navigation and right of innocent passage on the high seas are, however, protected. All these are not covered in the Act.

The fourth issue is the liability of legal entities. The 2005 SUA Convention imposes liability on legal entities in its Article 4 in view of the new offences created in Articles 3 *ter* and 3 *quater* which are likely to involve shipping companies, freight forwarders, manufacturers and other legal entities, and masters of vessels or other responsible persons. Article 5 of 2005 SUA Convention provides that each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in the Convention. Such liability may be criminal, civil or administrative. The above provision is not included in SPOMO. There is no corporate liability included in the Act.

Fifth, SPOMO included 'Radiological' to Biological, Chemical and Nuclear Weapons. BCN are new non-proliferation offenses introduced by the 2005 SUA Convention and are intended to strengthen the international legal basis to impede and prosecute the trafficking on the high seas in commercial ships of BCN Weapons, their delivery systems and related materials. The non-proliferation provisions require States Parties to criminalise transport on the high seas of BCN and certain related materials, as well as nuclear materials and equipment.<sup>37</sup>

The 2005 SUA provides for only BCN weapons. SPOMO adds 'Radiological' to BCN making it now BRCN (Biological, Radiological, Chemical and Nuclear) weapons. 'Radiological' is, however, not defined in the Act. Radiological warfare is any form of warfare involving deliberate radiation poisoning or contamination of an area with radiological sources. The fission products from a conventional nuclear explosive weapon are as much a radiological weapon as weapon solely designed for the purpose of mass radiological warfare. Radiological weapons are normally considered weapons of mass destruction.<sup>38</sup>

What is the difference between 'radiological' and 'nuclear'? the Act does not make the distinction. Since the Act does not define 'radiological,' it is difficult finding out the intention behind the inclusion/addition of 'radiological' to the BCN weapons in the Act. Adding radiological to BCN weapons, however, seems superfluous and unnecessary.

Sixth, the Act, under section 12(1), provides that any person who commits an act of piracy, armed robbery at sea or any other unlawful act under the Act, whether or not the person was armed with a firearm or other weapon during the commission of the offence, shall be liable on conviction to life imprisonment and a fine of fifty million naira and restitution.<sup>39</sup> However, section 12(2) also provides that if during the commission of armed robbery at sea, the offender was in possession of or had under his control any firearm, explosive or BRCN weapon, the offender will be liable on conviction to at least fifteen years imprisonment.<sup>40</sup> There is a need to revisit the punishment section because of the disparity and ambiguity.

Another pitfall observed is the failure of the Act to expressly define a ship or what constitutes a ship. A similar lacuna was created in the Cabotage Act, 2003. The failure of the Cabotage Act to expressly describe an oil rig as a ship has been used by foreign ship-owners to contest the statutory powers of NIMASA to levy its statutory fees on oil rigs employed by these ship-owners in their drilling operations until the court finally interpreted the Act to include oil rigs that are propelled. The issue of what constitutes a ship could have easily been averted if the definition given by the Act was all encompassing and sufficient to cover all ships like the Jones Act 1929 did. It is hoped that this lacuna will not affect the effective prosecution of offences under the Act.

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<sup>37</sup> SUA Convention 2005, Art 3(1)(b).

<sup>38</sup> Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/radiological> accessed 1<sup>st</sup> January, 2024.

<sup>39</sup> SPOMO Act, s12(1).

<sup>40</sup> SPOMO Act, s12(2).

Section 4(g) of SPOMO provides that it is an offence to receive proceeds from the crime of piracy, armed robbery against ships and other maritime offences at sea.<sup>41</sup> The Act expressly lumped individuals receiving proceeds from the crimes under the Act and corporate entities such as banks and other financial institution. There is a need to revisit this section because proceeds of crimes, including maritime crimes, usually find their way to banks and other financial institutions without the banks knowing the actual source of the funds. With the enactment of this Act, banks and other financial institutions are advised to upgrade their KYC tools and procedure.

The aim of SPOMO is to prevent and suppress piracy, armed robbery and other unlawful act against ships, aircraft and other maritime craft. But these maybe difficult to achieve if the necessary tools are not put in place for the effective implementation of the Act.

### **III. Recommendation:**

1. Establishment of a National Coast Guard: NIMASA has been empowered under SPOMO to enforce the Act. However, NIMASA being a civil entity is not fully equipped to effectively carry out the enforcement of SPOMO. For this Act to be effective and cure the menace of sea crimes, it therefore calls for the establishment of a National Coast Guard. The role of the National Coast Guard is to safeguard the territorial and internal waters of a coastal state while the navy patrols the high seas and protect the coastal state against external aggression. The time to establish a National Coast Guard is now.
2. Funding: The Nigerian Navy needs to be supported and funded and there should be collaboration between the Nigerian Navy and international navy in safeguarding the high seas around the coast of Nigeria and the Gulf of Guinea.
3. Creating Maritime Division Court: Maritime matters are of specialised knowledge, as such, there is an urgent need to create a specialised divisional court to handle maritime matters presided over by trained maritime judges for the speedy dispensation of justice under the Act. With NIMASA's powers to prosecute, albeit with the consent of the Attorney-General, offences under the Act will be prosecuted swiftly, hence the need to have a maritime court readily available to dispense justice.

### **IV. Conclusion**

The Gulf of Guinea is bordered by several states, creating several legal and regulatory complexities in addressing maritime crime. The stretching shoreline bordering the Gulf often gives pirates more room to operate and much more time to pillage and transfer stolen cargo or kidnapped persons. The prevalent high risk in the Gulf of Guinea indicates that more work has to be done in coordinating anti-piracy efforts. Increased regional and global cooperation consisting of intelligence and resource sharing is imperative. In addition, there is the need for Gulf of Guinea states to domesticate significant provisions of UNCLOS, the Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation (SUA) and other relevant international instruments to enhance effective prosecution of pirates.

In the long run, the root cause of the problem lie further ashore. Near-total collapse of the state in Nigeria has had a corresponding effect on her coastlines. A country that cannot police its hinterlands would not be expected to police its coastlines. State failure in Yemen and Somalia led to escalation and spike in piracy in the Gulf of Aden between 2007 and 2010 before coalition navies of the developed world checked the menace.<sup>42</sup> Nigeria needs to improve her domestic governance and security architecture as well.<sup>43</sup>

For the medium term, Nigeria should strengthen its legal framework by making necessary amendments to the Suppression of Piracy and Other Maritime Offences Act, 2019 in line with the observations made above.

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<sup>41</sup> SPOMO Act, s4(g).

<sup>42</sup> 'We Are Not the Solution to Piracy, Says Somalia Coalition Navy Chief,' *Lloyd's List* (Somalia, 25<sup>th</sup> September 2008).

<sup>43</sup> Ibid.