

Maritime Piracy and Unlawful Acts against Safety of Lives at Sea: Inimical and Antithetical to Fundamental Human Rights and the Rule of Law

A.K. Mgbolu

Senior Lecturer, Faculty of Law, Ebonyi State University, Abakaliki, Nigeria.

ABSTRACT:

The protection of human rights through the justice delivery system is an indispensable feature of any system governed by the rule of law. The protection of human rights have been acknowledged to a very large extent in most civilized or developed countries of the world because of its necessity and global acceptance not just for the safety and sanctity of life. The universality of human rights has been recognized by the United Nations as inherent in the very nature of human beings just for its reflection. Today, the wave of economic globalization has given rise to increasing spread and sophistication of various inimical activities and acts that negate the lofty ideals of the rule of law and protection of human lives at sea. The cross-border movement of ships with people and cargo, merchandise, investment and finance that encourage urbanization and globalization has been in most recent times threatened by piracy and armed robbery at sea, torture and various clandestine, unholy attitudes that are antithetical to fundamental human rights and has opened door for global criminal economy to flourish. Among the questions this paper seeks to address are, what is the link between trans-border or sea crime and globalization? What is piracy (Hosti-Humanis)? Why is piracy targeted at the sea..? Why does it occur most in Nigeria and some countries in the West African sub-region? What are the economic benefits from the sea that are being threatened by piracy and other crimes? And what efforts are being made by Nigeria and the West African sub-region including international cooperation's to address the issue? Above all, to construct the way forward to arrest the ugly situation.

Keywords: Maritime, Piracy, Unlawful, Inimical, fundamental Human Rights, Antithetical.

1. INTRODUCTION

The significant dependence of African countries on international trade makes maritime transport a crucial factor in Africa's economic development. Sea borne trade, through maritime transport provides a gateway to international markets for Africa, as port facilities play an important trade facilitation role to landlocked countries, where fishing and tourism are important sources of income-and employment to littoral and island economies. The sea has also become an important source of oil and gas and minerals and as such, has been used for connecting cables and pipes for data services and mobile telephone connectivity. Because of its economic importance as important gateway, the sea has become geographically constrained but strategically vital. This development made it vulnerable to piracy and unlawful acts which are inimical, not only to the safety of lives at sea but also to fundamental Human Rights principles under Nigerian law. Maritime economic opportunities in Africa are in recent years being threatened by the growing trend of maritime piracy particularly in Nigeria and Somalia. These unwanton act need to be combated squarely by governments and other relevant stakeholders in order to encourage the rule of law and safeguard lives and property in consonance with the fundamental human rights provisions under our laws. In the recent past, Nigerian Newspapers and the internet has been concerned with reports of attacks by pirates and other violent

armed unlawful attackers or armed robbers off and within the Congolese, Nigerian, Bini (Benin), Togolese and Ghanaian coasts and the Gulf of Guinea in alarming proportion. Maritime piracy is a traditional threat to maritime security and has posed substantial risk and challenges to sea borne trade and the mariners with considerable commodity ranging from raw materials and energy to high valued manufactured products being shipped between global economic power houses, like Western Europe and the far East through several of the world's most dangerous waterways notably, the strait of Malacca and the Gulf of Aden. These waterways are often geographically constrained, narrow but strategically vital.

Maritime sea borne trade through maritime transportation due to its economic opportunities in Africa and the diaspora are increasingly being threatened by the growing trend of maritime insecurity by pirates whose attacks have been more prevalent in Nigeria and Somalia; but the International Maritime Organization, (IMO) in 2012 reported that about seventeen other littoral states have experienced pirate attacks in the recent past.

The significant dependence of African countries on international trade makes maritime transportation a crucial factor in Africa's economic development, a gateway to international market for Africa's exports, while port facilities play an important trade facilitation role to landlocked countries. It is to be noted that fishing and tourism are important sources of income, and source of employment to littoral states and island economies. The sea is also an important source of oil, gas and minerals. Today, the sea is also used for connecting cables and pipelines for data, electronic services and mobile telephone connectivity. Because of all these and other valuable benefits from the sea across the globe, it has become vulnerable to acts which are detrimental to the safety of lives and property at sea. More worrisome, it is to be observed that these acts which threaten maritime security are also inimical to the global support and development of the fundamental human rights of nations which form the basis for the common law principle of the rule of law as observed by civilized nations of the world. Above all, because of its recorded danger and onslaught to the economy of maritime nations, piracy and other criminal activities on the sea need to be combated, to preserve the sanctity of human life and the rule of law in order to safeguard and uplift the human right posture of the nations where piracy has been on the increase.

2. CONCEPT OF INSECURITY

According to Callister K. Obi, the concept of insecurity is a cross-cutting and multi-dimensional concept which has been subject of debates. Insecurity is viewed differently by different researchers, some associating it with how it affects individual lives and existence. For example, the UNDP sees human security to include chronic threats like hunger, disease and repression. The state of fear or anxiety stemming from a concrete or alleged lack of protection or inadequate freedom from danger. In another view, Achumba et al, opined that insecurity is a state of being subject to danger, exposed to risk or anxiety. A person or thing is said to be secured when not being exposed to any form of danger or risk of physical or moral aggression, accident, theft or deterioration. For the purpose of this paper, insecurity is seen as a chronic threat to human life, territories, states, religious beliefs, properties, institutions among others. It also include the outcome of other illegal activities against the safety of lives at sea and which are inimical to the Fundamental Human Rights principles as enshrined in the laws of Nations and the Nigerian constitution 1999 as amended. It should be noted that there are no clear-cut definition of insecurity since it is often approached from different perspectives.

Analysts like Achumba, Ighomereho and Akpo-Robaro, has identified two major sources of insecurity, as the remote factors, and the immediate and proximate factors. The remote factors include: lack of institutional capacity resulting in government failure, pervasive material inequalities and unfairness, ethno-religious conflicts, conflict of perceptions between the public and government, weak security, loss of socio-cultural and communal value system. The immediate/proximate factors according to the aforementioned analysts include: porous borders, rural-urban migration, social irresponsibility of companies, unemployment, poverty and terrorism. Terrorism on its own part is a new dimension of insecurity with its more dangerous and more sinister arm-cyber-terrorism-now prevalent in most developing and developed countries. Terrorism is a premeditated use of threat or violence by sub-national groups to obtain a political or self-interest objectives through

intimidation of people, attacking of states, territories either by bombing, hijacking and suicide attacks, among others. It implies a premediated political motivated violence perpetrated against noncombatant targets just like piracy by sub-national groups of clandestine agents. Two types of terrorism has been identified as unlawful acts inimical to the consumption of the basic human right principles. The first of them is the domestic terrorism which involves the activities of terrorists in a host country, and their targets are fellow citizens, properties, countries institutions and policies either for political reasons or otherwise. This is likened to the activities of the Boko Haram terrorists in Nigeria in recent years and the insurgence of Tamils in Sri-Lanka most recently too. Transnational terrorism involve more than one country-which can emanate from the victims targets, institutions and supporters as was the case in the 2011 attacks in the United State of America known as 9/11 attacks. This is similar to the act of piracy.

3. WHAT IS PIRACY?

The increase in maritime insecurity at sea and ports worldwide has become alarming. This incident was first addressed in 1983 by the IMO, when it adopted a resolution on measures to prevent acts of piracy and armed robbery against ships, while at the same time, urging government to take as a matter of highest priority, all measures necessary to prevent and suppress piracy, armed robbery and other crimes against ships in or adjacent to their waters, she has also called on governments through the International Ship and Ports Security (ISPS) Code to improve measures and procedures against acts that threaten the safety of lives at sea, including terrorism to ensure the security of passengers, safety of ships and port facilities.

According to Hyde Onuaguluchi , the above efforts highlight the importance of the sea and port, not only as a natural heritage of mankind but an international environment which can make or mar the progress and image of a nation. This is because food, raw materials and goods meant for the growth and development projects of nations are channeled through the sea and ports, and government of various nations through the same means make a lot of money therefrom as earnings. Therefore, the urgent need to address this problem to save lives and property and protect the marine environmental resources cannot be under estimated.

According to the International Law Commission (ILC), piracy is any act of violence or degradation committed with intent to rob, rape, wound, enslave, imprison or kill a person or with intent to steal or destroy property for private ends without a bonafide purpose of asserting a claim of right under the laws; and provided the act is connected with an attack on, or from the sea, or in, or from the air. If the act is connected to an attack which starts on board of a ship, either that ship or another ship which is involved is categorically a pirate or a ship without a national character, which means the ship is a *res nullius* and does not fly any country's flag. Also, any act or voluntary participation in the operation of a ship with knowledge of facts which portray the ship a pirate ship. Similarly, any act of instigation or intentional facilitation of an act as described in par. 1 and 2 of the article.

A cursory look at the above definition show that there are essential ingredients in the definition. Before an act can be termed a pirate attack, for example, there must be a wrongful attack against the person or property for public end. Secondly, there must be at least more than one ship involved in the operation to fulfill the definition of piracy and one of the ships must be a pirate ship. The word attack, in this circumstance is relevant and must be understood to mean some kind of armed attack with force which is used by one ship against another ship. Also, in the Harvard Research Draft, the drafters say, if there appears some kind of mutiny on the ship of any state, while under the jurisdiction of the flag state, it may not be defined as piracy, but if the mutiny spreads and affect other ships of that area of the sea then, it comes within the definition of piracy.

Flowing from the above, one agrees with Onuaguluchi , that piracy is an illegal act of violence, detention or any act of depredation committed for private ends by the crew or passengers of a private ship or aircraft, directed on the high sea against another ship, aircraft, person or property on board such ship or aircraft. The ILO also accepts the rules and regulations made by the Harvard Research Draft, that any act against any ship within the high sea for depredation or violence is called piracy but, on the other hand, the article of the ILC , said that if the violence is committed against the ship by it's crew and passenger itself, then, it would not be within the definition of piracy. One of the striking issue raised by the ILO in its article is that if the passengers or the crew of a ship seizes the ship within the high sea without any legal reason, it still would not amount to piracy. The writer frowns at this aspect of the ILO, because a pirate within the definition of a passenger or a pirate may clothe himself deceitfully as a passenger on board a ship and on the high sea carry out nefarious acts that is

inimical to the safety of lives on maritime navigation or voyage and I call on the ILO to look into this aspect of its provision for an amendment.

4. PIRACY, INIMICAL TO FUNDAMENTAL HUMAN RIGHTS PRINCIPLES

Flowing from the concomitant effect of maritime piracy and armed attacks including mobile robbery along the coasts of Nigerian waters, one frowns at its motives both in Nigeria, West African countries and elsewhere, in the diaspora. If one align himself with the definition of piracy starting with the United Nations Convention on the Law of the Sea, one finds out that the “whole thing” piracy in all its ramifications defeats the purpose of the rule of law and it is contrary to the basic tenets and provisions of Fundamental Human Rights entrenched in the law of Nations including Nigeria.

According to the United Nations Convention on the Law of the Sea, piracy is defined as consisting of;

- (a) Any illegal act of violence or detention or any act of depredation committed for private ends by the crew or the passengers of a private aircraft and directed:
 - (i) On the high sea, against another ship or aircraft, or against persons or property on board such ships or aircraft.
 - (ii) Against a ship, aircraft, person 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 inciting, or of intentionally facilitating an act described in sub-paragraph (a) or (b).

As highlighted earlier in this paper, the International Law Commission (ILC) stated categorically that piracy consists of the following Acts.

- (i) Any illegal act of violence, detention or any act of depredation committed for private end by the crew or the passenger of a pirate ship, or a private aircraft and directed:
 - (a) On the high sea against another ship or against persons or against property on board such ship.
 - (b) Against a ship or property in a place outside the jurisdiction of any state.
 - (c) Any act of voluntary participation in the operation of a ship or an aircraft with knowledge of facts making it a pirate ship or aircraft.
 - (d) Any act of incitement or international facilitation of an act described in sub-paragraph 2 of this article.

Looking at the definition of the Harvard draft which goes to say that, any act of violence or depredation committed with intent to rob, rape, wound, enslave, imprison or kill a person or with intent to steal or destroy property for private end without bonafide purpose of asserting a claim of right, provided that the act is connected with an attack which starts from on board ship, either that ship or another ship which is involved must be a pirate ship or a ship without a national character, we conclude that, the Harvard Research Draft, the (ILC), the UNCLOS 1982 has a lot of similarity in their definition of piracy as a concept. It is therefore germane that to enable us do justice to this work for the interest of our target audience and with respect to the importance attached to fundamental rights principles, to review the undermentioned terminologies.

- 1. Pirate Ship or Pirate Aircraft:** This include a ship intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in the meaning of piracy or if the ship or aircraft has been used to commit that act and the act of piracy committed by a warship, government ship, or government aircraft, whose crew has mentioned and

have taken control of the ship or aircraft and are assimilated to acts committed by a pirate ship or aircraft.

2. Unlawful Act: This means an act other than an act of piracy under the Act committed by any person or group of persons or that person or groups unlawfully and intentionally who:

- (a) Seizes or exercises control over any ship or a platform by force or threat thereof, or any other form of intimidation.
- (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 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 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 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 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 sub-paragraph (h) (i) herein, in such quantity or concentration that causes or is likely to cause death or serious injury, 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;
 - (i) Any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition (whether as to ransom or otherwise) death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or abstain from doing any act; or
 - (ii) Any weapon, knowing it to be a weapon as defined in this Act; or

- (iii) Any source material, special fissionable material, or equipment or materials especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to 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 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 control of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapon where the resulting transfer or receipt or the holding of such items is not contrary to the State Party's obligations under the 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 person 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.

From the above explanation of the terms of acts which constitute unlawful acts, one can understand that the increase in maritime insecurity at sea and ports worldwide has become alarming. The incident was first addressed by the IMO in 1983 when it adopted a resolution on measures to prevent acts of piracy and aimed robbery against ships. It has also urged governments of maritime nations to take as a matter of urgency serious measures necessary to prevent and suppress piracy, armed robbery at sea and other sea crimes which are inimical to safety of maritime navigation and which constitute an abuse of the rule of law and fundamental human rights principles, on our water ways.

5. EFFECT AND IMPLICATION ON THE WEST AFRICAN SUB-REGION

From an economic point of view, maritime piracy is a threat for regional and global economy. This is because Africa's key maritime routes (sea lanes of communications) are affected adversely. Over 90% of Africa's imports and exports are moved by sea, and the exact cost of piracy on the Gulf of Guinea and Gulf of Aden cannot be estimated. It is staggering. West Africa as a whole has in recent years become the world's new piracy hotspot particularly between 2015-2018. The result is that political and economic instability has increasingly encouraged criminal groups who conduct violent attacks at sea. It is on record that pirate attacks do not only result in killings and injuries, it also damages the economy of states. In some cases, affected countries in West Africa have become less concerned with direct losses from piracy than with the ways in which these losses affect international insurance rates and other trade related costs.

In the Republic of Benin for example, taxes on trade, account for half of government revenue, and about 80 percent of these are derived from the port of Cotonou. It is true that ships now speed up with armed guards on board through the dangerous waters of Somalia and the Horn of Africa on East Coast of the continent, many vessels have to anchor to do business with West African countries, with little protection, making them soft targets for criminally minded pirates, and this jacks up insurance cost. The damage caused by pirates has forced oil companies to shut down pipelines. Royal Dutch Shell in 2013 sold off four of its onshore Nigerian oil blocs because of the constant theft of large volumes of oil from pipelines. Quite paradoxically, the Niger Delta in recent times has been at the epicenter of West African maritime crimes due to several factors not unconnected to the gains from the oil boom with the result that those excluded from the benefits turned to

organized crime in the form of petro-piracy which is aimed at stealing crude oil from tankers and pipelines so as to process the gains in illegally set up refineries.

Sanctity of Fundamental Human Rights

Looking at the activities and atrocities exercised or committed by the pirates and other armed robbers as witnessed in Nigeria and some West African regions as has been pointed out in this work, it may be germane to point out that the human rights law is designed to protect individuals from unlawful and arbitrary curtailment or deprivation of other basic rights and freedom as witnessed in Somalia. The most prominent of which is the right to life, right to liberty of a person and right against self incrimination.

Also, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Torture Convention "or " CAT) was adopted by the General Assembly of the United Nations on 10, December 1984 , and was entered into force on 26th June 1987 after it had been ratified by 20 states. However, Nigeria ratified the convention on 28th of June 2001, because of its insistence against self incrimination. For the purpose of this work, this Convention falls within the type of crime or illegal acts carried out by pirates along Nigeria waterways and coasts as well as in other West African countries already mentioned in this work. Torture means any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession punishing him for an act he or a third person has committed or is suspected of having committed or intimidating or coercing him or a third person or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from or inherent in, or incidental to lawful sanctions

The Nigeria Criminal Justice System

In Nigeria, enforcement of criminal law remains primarily a function of federal and state governments. The criminal justice system of Nigeria is adversarial or accusatorial system in which an accused is presumed innocent till proven guilty. The burden of proof being on the prosecution, the accused person is entitled to a true investigation, fair and unbiased trial. The prosecution is also expected to exhibit a balanced role in the trial of the offence. An accused person standing trial for a criminal offence before any court in Nigeria, enjoys the presumption of innocence until his guilt is proved, the proof of which must be beyond reasonable doubt. In Nigeria and in other West African countries, the nature of our sea-borne trade makes these provisions different. To be frank, most of the incursion of pirates on our waterways are never reported and in some cases reported but are not followed up by the prosecution on several excuses. According to D.S Garuba in his paper , he submitted that emerging concerns in international studies points to the existence of a correlation between globalization and trans-border economic crimes. This to my mind is understood because of the growing tendency to act fast to make money within the existing clusters of political, economic and social activities in which people, capital, images, ideas and values enjoy free and speedy flow across national boundaries. For example, in the first two months of 2012, it was reported that the IMO had recorded twenty incidents of piracy off coasts of Benin, Congo, Cote, d'Ivoire, Ghana and Nigeria, and these are the only reported cases as there were numerous unreported cases. Again, in a paper titled, Maritime Security Issues in Nigeria , by M.I. Igbokwe, he submitted that some of the cases of piracy as obtained from IMO website as at 30th January 2010, were not reported to the Nigerian Navy, Port Control, Harbour Master, Port Security, Nigerian High Commissioner etc.

The question here is how on earth can the case not reported to the appropriate authorities be investigated and persecuted...? This is a bottleneck. One could imagine the situation as it was in 2010, when between 2010-2012, the then, Secretary General Of the United Nations, Ban-ki-moon, sent a team to assess the scope of piracy threat in the Gulf of Guinea and received the following report; I quote extensively:

The mission found that piracy in the region had become systematic with pirates resorting to sophisticated modes of operation and utilizing heavy weapons. The attacks and the damage they caused had reached worrisome proportions.

In same 2012, it was reported that a violent attack occurred on a ship, MV Forces, where pirates killed a ship captain, an engineer, off shore Nigerian waters. The International Maritime Bureau (IMB) Piracy Reporting Centre stated that, armed bandits chased and fired upon a drifting bulk carrier at about 110, nautical miles off the coast of Nigeria.

Another report by same paper in 2012 reported that Nigeria and others lose US \$2b to maritime crime with smuggling, piracy and illegal bunkering on top of the list. In same 2012, M.I. Igboke stated that the nature of maritime security issues involved include maritime violence, theft, ship-hijacking, crew kidnapping in port areas, territorial waters and international waters and that the pirates were armed with guns, knives as they threaten, shot, kill injure crew members, steal cash, provisions and damage navigational equipment and stressed that the activities are high enough to be a cause of concern requiring preventions and suppressions. Other aspects of maritime security issues in Nigeria as at 2008, 2009, 2012-2013 include attack of oil installations, pipeline vandalization, explosion of pipelines by pirates, militant groups and criminal thugs and community bounty hunters who crippled crude oil exports. When in 2019, it was reported by the World Economic Forum Geostategy platform that, Africa is becoming the world's piracy capital , it took the affected nations by surprise, because the human right posture of some countries under the West African sub-region became an object of mockery. The report has it that two maritime regions are chiefly troubled by maritime piracy. They are the Gulf of Aden to the East of Africa and the Gulf of Guinea to the west.

One may ask, what has happened to the fundamental human rights of people in those nations? Can it be attributed to lack of statutory provisions or poor enforcement of laws...? How can a major sub-region of West Africa be under siege of piracy between 2008, 2009-2019...? Reuters News Agency reported in October 2019 that off Nigeria's coast pirates attacked on oil supply vessel and kidnapped two aliens, the captain and the engineer, and that piracy off Nigeria's coast has jumped by a third between 2013-2019 as ships passing through west Africa's Gulf of Guinea, a major commodity route has increasingly come under threat from gangs wanting to snatch cargoes. There is a reason for our search light to first of all, beam on S.20 of the 1999 Constitution of Nigeria. This is because the section has a direct provision on environmental rights in Nigeria. The notion of International Law is that the sea, oceans or the so called international waters belong to no body, hence the, "acronym" freedom of the sea. Nevertheless, there are concepts like territorial waters of a nation, exclusive economic zones and nautical miles through which a nation's interest or boundaries and outward limits from the sea is measured. This portray the fact that the sea is part of the environment where we live. This section provides thus:

The state shall protect and improve the environment and safeguard the water, air, land, forest and wild life of Nigeria.

This wonderful provision of our law is in chapter 11, but by virtue of the provision of section 6(6) of the same constitution , it is non-justiceable, but it remains a pillar and a guide and the main focus of attention of all tiers of government both in Nigeria and in the diaspora.

Looking at this view point, it is clear that s.20 does not confer an express right on a Nigerian citizen to enforce a right to a clean environment, within the context of chapter 11 of the constitution. However, in the case of *Attorney General of Ondo State v. Attorney General of the Federation*, it was held by the Supreme Court that since by item 60 (a) of the Exclusive Legislative List, the National Assembly is empowered to promote and enforce the observance of the fundamental objectives and directive principles contained in this constitution once the National assembly has enacted a law to that effect, the provision of chapter 11 becomes justiciable. Still on water as part of our environment that requires safety passage and protection, M.T. Landan in his article on Human Rights and Environmental Protection, asserted that for full realization of the enjoyment of human rights, that environmental protection should be seen as a necessity and not a luxury, not just the protection of wealth and the environment alone, but also, about the protection of our natural heritage. What then is this ugly menace and threats on our waterways by the pirates and other criminal actors...? Are they above the law...? The challenge of environmental protection and preservation is a challenge of sustainable development.

We therefore refer to the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, which is an existing law deemed to be enacted to enforce s.20 of the 1999 Constitution of Nigeria as amended. It provides that all people shall have the rights to general satisfactory environment favourable to them and that human rights are in-voidable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

In the case of *Abacha v Fawehinmi*, the Supreme Court held that the Charter has been re-enacted as part of the laws in Nigeria. The purport of this decision is that the Charter should be read along with the provisions of the 1999 Constitution (as amended) on fundamental rights in Chapter (iv) of the Constitution which is, *impair-matera* with the Act and Constitution. Principal among the provisions are, the right to life, fair hearing, right to free, safe and clean, satisfactory environment and all these are unwantonly abused by the pirates in the West African sub-region; including Nigeria. These rights are justiciable under s.46(1) and (2) of the 1999 Constitution of Nigeria, provided they are specifically brought under the constitution of the Act as was done in the case of *Abacha v. Fawehinmi*.

Right to Life

The right to life is the most fundamental of all rights because every other right can only be expressed by the person who is alive. S.33(1) of the Nigerian constitution (as amended), provides:

Every person has a right to life and no one shall be deprived intentionally of his life, save in execution of sentence of court in respect of a criminal offence of which he has been found guilty.

It was P. Enyeting in his book, who stated that the right to life is a phrase that described the belief that a human being has an essential right to live and particularly that a human being has the right not to be killed by the activities of another human being. The right to life possesses a special place in the hierarchy of rights. It is a human right which situate in the realm of fundamental rights. It is known to be inalienable, natural, universal, indivisible, inter-related and inter-dependent in nature. It transcends a mere existence, and covers other facets of life. In the Indian Supreme Court case of *Olga Tellis and others v. Bombay Municipal Corporation and others*. It was held that the right to livelihood is a necessary component of the right to life and if it is not treated as such,

the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood. The aforementioned destruction of lives and properties by pirates in the West African sub-region with the unwanton abuse of right to life and means of livelihood on the sea raises these pertinent questions:

- (1) How does piracy negate these laws...?
- (2) Is the right to life a right in strict legal sense?

The answers to these questions are not far-fetched. The activities of pirates in the Gulf of Aden and the Gulf of Guinea between (2008-2019) are worrisome and noteworthy. Apart from the Nigerian Constitution already mentioned there are galaxy of other Conventions which Nigeria has domesticated to be in tandem to our laws, including the International Covenant on Civil and Political Rights which stipulate that:

Every human being has the inherent right to life and that this right shall be protected by law. No one shall be arbitrarily deprived of his life.

The above and other statutes mentioned in the afore-going paragraphs show that the right to life is a right in a legal sense and that piracy negates this law. The Constitution of Nigeria as mentioned is in accord with other countries Constitutions and International and regional instruments that protect and guarantee human life.

For example, the Constitution of Democratic Republic of Congo and Mali provide good illustrations. In the case of Congo, it provides that:

Every citizen shall have the right to a satisfactory and sustainable healthy environment and shall supervise the protection and conservation of the environment.

In the case of Mali, S.15 of the Constitution provided that:

Every person has a right to healthy environment. The protection and defence of the environment and the promotion of quality of life are the duty for all and for the state.

There is also an international recognition of the link between human rights and environmental protection. For example, principle 1 of the Stockholm Declaration on Human Environment 1972 , is to be the first authoritative instrument recognized the environment as an aspect of human rights that need to be protected.

Also, by the year 1990, the UN General Assembly had adopted a resolution on the need to ensure a healthy environment for the well being of individuals. We can also add that one of the most significant and relevant move towards the protection of the environment and people's rights is the African Charter on Human and People's Rights , which came into force in October 1986. It was described as the pivotal human right instrument of the AU. Article 24 of the Charter provides:

All people shall have the right to a general satisfactory environment favourable to their environment.

Fortunately, Nigeria did not only adopt the Charter but also enacted it into law by the National Assembly in compliance with s.2(1) of the 1979 Constitution of Nigeria, as the African Charter on Human and Peoples Right Ratification and Enforcement Act, 1983. It is unfortunate to note that though, Nigeria and other West Africa nations domesticated this charter, not much effort has been recorded to checkmate piracy in the sub-region. The toll of deaths and rampage including loss of property and economic opportunities has continued to increase.

Though in 2013, there seems to be significant drop in international piracy due to the fall off in Somalia-related attacks on Africa's east coast. This is a result of a successful multi-national effort to patrol the oceans. This concerted effort by regional and international naval forces has been responsible for the reduction of piracy in the

Gulf of Guinea and Aden. Surprisingly, in 2015, there were 15 incidents, and in 2016, 95 incidents, and a rising figure of 112 in 2018. It thus appear that the regional and the international combined efforts against piracy in the region has relaxed, showing a continuous increase in piracy in these areas yet in 2019, especially in the Gulf of Guinea where political and economic instability is increasingly encouraging criminal groups to conduct violent attacks at sea.

6. CONCLUSION

For these atrocities and consequences, has given rise to our opinion that piracy needs to be combated. A good number of initiatives are being implemented by the United Nations and regional economies and this needs to be increasingly encouraged by all stakeholders politically, socially and financially. The banking industry has a stake there. They can contribute to combating piracy by raising awareness of the impact of piracy on the economy and on fundamental human rights, through knowledge products and financial contributions to improve port infrastructure and supporting the capacity building efforts being spearheaded by the IMO.

From an economic point of view, maritime piracy is a threat for regional and global economy. This is because Africa's key maritime routes (Sea Lanes of communications) are affected adversely. Over 90% of Africa's imports and exports are moved by sea, and the exact cost of piracy cannot be estimated.

West Africa as a whole has in recent years become the world's new piracy hotspot particularly between 2015-2018. The result is that political and economic instability has increasingly encouraged criminal groups who conduct violent attacks at sea. It is on record that pirate attacks do not only result in killings and injuries, it also damages the economy of states. In some cases, affected countries in West Africa have become less concerned with direct losses from piracy than with the ways in which these losses affect international insurance rates and other trade related costs.

It is true that ships now speed up with armed guards on board through the dangerous waters of Somalia and the horn of Africa on East Coast of the continent, many vessels have to anchor to do business with West African countries with little protection, making them soft targets for criminally minded pirates, and this jacks up insurance costs. The damage caused by pirates has forced oil companies to shut down pipelines. Royal Dutch in 2013 sold off four of its onshore Nigerian oil blocks because of the constant theft of large volumes of oil from pipelines.

Maritime piracy is having a negative impact on the cost of shipping for merchandise trade and oil and shipping related activities such as port and trans-shipment activities, tourism and fishing. By hijacking large tankers, seizing their cargoes, and delaying or preventing their delivery, military presence and operations in affected areas, the re-routing of ships, higher insurance premiums and increased costs associated with hiring security personnel and the installation of deterrent equipments are urgently required to assist in curtailing the ugly trend of piracy. Along with corruption, unemployment is also driving piracy in the sub-region. Most often, ships are hijacked for making money through huge ransom, due to lack of jobs, when youths see there is nothing on the ground for them to benefit from, they go to any length and use any means to disturb the economic activities that bring money into the nation. The fact is that piracy needs to be seriously checked. But all hand must be on deck by all stakeholders to achieve that. Even though, several legal instruments and institutional infrastructure like Yaounde Code of Conduct, Gulf of Guinea Commission etc are in place to combat piracy, increased cooperation; among respective

navies, patrol ships and international organizations are urged to report incidents properly and timeously too. Efforts should also be made for the employment of the high population of unemployed youths with respect to Nigeria. The regional cooperation's like the Djibouti Code of Conduct, and the multifaceted approach of the United Nations to ensure speedy political process in African nations and the peace keeping efforts of the African Union including the efforts of the United Nations Security Council and the IMO should be encouraged and strengthened by civilized nations of the world to discourage and punish piracy with enforceable laws globally.

7. REFERENCES

1. The countries include: Congo, Benin-Republic, Togo, Ghana, Cote d'Ivoire, Guinea, Malawi, Lesotho, Kenya, Pakistan, London, Spain etc, etc, to mention but a few.
2. See. Par. 3 (ibid).
3. C.K.Obi; Challenges of Insecurity and Terrorism in Nigeria: Implication for National Development. See; <http://www.ssrn.com/lnk/OIDA-intl-journal-sustainableDev.html>. Accessed 20/12/2019
4. I.C. Achumba, I.Ighomereho, et al; security challenges in Nigeria and the implication for Business activities and sustainable development; Journal of Economics and sustainable development 2013, vol. 4. No.2.
5. Eme and Anyadike: security challenges and security votes in Nigeria; a chapter in the Arabian journal of business and management Review (2013) vol. 2. No.8.
6. See par. 4. Ibid.
7. See, Central Bank of Nigeria Statistical Bulletin (2012) Abuja.
8. It should be recalled that the world's trade centre in the US was bombed in 2011 which took US, by surprise-popularly called the 9/11 by unknown persons.
9. H. Onuahuluchi: Port, Shipping, Safety and Environmental Management.
10. H. Onuaguluchi: ibid.
11. Article 39 of the ILC.
12. Article 39 of the ILO.
13. Article 39 of the ILO (ibid).
14. Onuaguluchi (ibid) on page 254.
15. See article 39 of the ILC.
16. Article 101.
17. Article 39.
18. See, Hyde Onuaguluchi: Ports, Shipping, Safety and Environmental Management.
19. See, Observer Research Foundation published @ <https://www.oreforum.org/agenda/2019/06 .statista2019>. Accessed 22nd February, 2019.
20. See, the UNODC figures published in March 2019.
21. The United States Press International in October 2013, reported that as a result of shutting down of pipelines, Nigeria produced about 400,00 barrels a day below its capacity of 2.5 million barrels a day.
22. See S. 33(a-) of the 1999 Constitution of Nigeria as amended.
23. See Resolution 39/46.
24. Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999, (as amended).
25. D.S. Garuba: Global Consortium on Security Transformation, Policy Brief series, on Trans-Border Economic Crimes, Illegal Oil Bunkering and Economic Reforms in Nigeria 15th October 2010.p.5.
26. See, the United Nations News Centre of 27/2/12, the Secretary General of the United Nations:, Ban-ki-Moon sent a team to assess the scope of the piracy threat in the Gulf of Guinea.
27. M.I. Igbokwe: Maritime Security Issues in Nigeria: A paper presented at the International Maritime Conference, Connecticut USA, organized by the International Bar Association under its Maritimes Committee between 25-26, March, 2010.
28. See, United Nations News Centre, 27/2/12.
29. See, This Day Newspaper of 1/3/12, captioned Pirates Kidnap Cargo, Ship and Crew.

30. This Day Newspaper of 23/2/12.
31. M. Igbokwe par. 31, op cit.
32. Africa is becoming the world's piracy capital. See, <https://www.weforum.org/agenda/2019/06>. Accessed December 12, 2019.
33. See piracy in West Africa: A bumpy road to maritime security. <https://www.un.org/africarenewal/magazine/december2013/cy>. Accessed 22nd february 2020. See also, [africarenewal/author/nint-ben-ari](https://www.un.org/africarenewal/author/nint-ben-ari)December 2013.
34. (as amended).
35. C.A. Omaka, The Nigerian Conservative Law...this definition is in tandem with that of the International Webster's Comprehensive Dictionary. Encyclopedic Edition p.425.
36. S. 20 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
37. Constitution of the Federal Republic of Nigeria, 1999, as amended.
38. (Ibid).
39. (2002) F.W.L.R (part iv) 1972 at pp.21-42, ration: per Uwaifo JSC. See also, the Indian Supreme Court case of Madras v. Champakan (1951) SCK 525 at p. 531.
40. M.T. Landan: Human Rights and Environmental Protection, in Okpara, Okpara, Human Rights and Practice in Nigeria, vol. 2 (Catholic Communication Links, 2007) pp.452-468.
41. (2000) N.W.L.R. pt 4,33.
42. As amended.
43. Par 35 op.cit.
44. 1999.
45. See, the Vienna Declaration and Programme of Action adopted in 1999.
46. P.Enyeting: Human Rights and the Niger Delta Question: Gabej prints, Lagos, 2009. P.9, and 10.
47. (2007) CHR.
48. Article 6.
49. J.B. Ruhl: The Co-evolution of Sustainable Developmental Justice. Available at, www.law.duke.edu/journal/9DLP-Ruhl. Sourced on, 18/2/2020.
50. 1992 Constitution of the Democratic Republic of Congo.
51. 1991: Constitution of Mali.
52. Declaration of the UN Conference on the Human Environment. UN. Dec/A/con/48/14/Rev.PI.1972. see also, the Rio Declaration, Rio De Janeiro, 6th June 1992.
53. See, UN General Assembly Resolution 15/94, adopted Dec, 14, 1990.
54. 1981.
55. Article 24 of African Charter on Human and Peoples Rights.
56. Cap.. 10 Laws of the Federation of Nigeria (LFN) 2010.