

HARNESSING THE POTENTIALS OF INDIGENOUS SHIPPING INDUSTRY IN NIGERIAN BLUE ECONOMY UNDER THE CABOTAGE ACT 2003

NZERIBE EJIMNKEONYE ABANGWU

Faculty of Law and Security Studies, Department of Private and Commercial Law, Babcock University, Ilesan-Remo, Ogun State, Nigeria. Email: abangwu@babcock.edu.ng,

OYAGIRI BUDUKA ISAAC

Faculty of Law and Security Studies, Department of Jurisprudence & Public Law, Babcock University, Ilesan-Remo, Ogun State, Nigeria. Email: oyagirib@babcock.edu.ng,

Abstract

Shipping industry sub-sector of the Nigerian blue economy has over the years played a key role in the development of Nigerian economy. However, several factors such as lack of adequate funding, insecurity, opportunity for adequate training, etc. converged to making it difficult to enhance adequate development of the sub-sector. This necessitated the establishment of the Coastal and Inland Shipping Act 2003 (Cabotage Act). This paper discussed the effectiveness or otherwise of the provisions of the Cabotage Act in enhancing the potentials of the shipping industry under the Nigerian blue economy. This paper employed a doctrinal legal research method. The paper relied on content analytical methodology of study. This paper found that despite the laudable efforts made by the Cabotage Act, there were still challenges in terms of the implementation of the law, corruption and inadequate funding and training. This paper concluded that the Cabotage Act 2003 does not provide a formidable and sustainable legal framework for enhancing the Nigerian shipping industry. It recommended a robust amendment of the Cabotage Act to accommodate the dynamics of the shipping industry. It further recommended the proper funding of the security operations to tackle piracy and adequate punishment for corrupt practices.

Keywords: Blue Economy; Cabotage Act; Indigenous Shipping; Local Capacity; Relevant Agencies; Vessel Financing.

1. BACKGROUND

Historically, the sea has always been present in the economic activities of nations. This could be in the form of provision of food, transportation or in terms of commercial trade.¹ The seas or oceans constitute more than 95% of the biosphere, providing a substantial portion of the general population with food and livelihood and is a means of transportation for about 80% of global trade.²

The maritime transport sub-sector of Nigeria has over the years played a key role in the economic development of the nation through enhancing the import and export trade. It has also facilitated the exploration and the exploitation of the natural resources located offshore.³ the use of ship as a medium of sea transportation is one of the constituents of Nigerian blue economy.

The blue economy or the ocean or maritime economy refers to ‘the sustainable use of ocean resources for economic growth, improved livelihood and ocean health’. It encompasses a range

of sectors such as fisheries, aquaculture, shipping, energy, tourism and marine biotechnology.⁴ Currently, blue economy appears to have gained appreciable attention as an important strategy for sustainability development.⁵ The blue economy is typically conceptualized into six dimensions and is characterised by principles and practices that aim to ensure the sustainable use of ocean resources for the benefit of present and future generations.⁶ The dimensions are economic, social, cultural, environmental, technological and governance dimensions.

The economic dimension is concerned with creating economic growth and development while promoting sustainability. This involves a range of activities such as fishing, aquaculture, marine biotechnology, tourism and renewable energy. The principles of this dimensions focus on 'creating value from ocean resources promoting innovation and developing sustainable business models that support local communities.'⁷

The social dimension of blue economy is concerned with equitable distribution of ocean resources benefits to all the stakeholders, while the environmental dimension is concerned with protecting the health and integrity of ocean ecosystem.⁸ For the technological dimension of the blue economy, this is concerned with the development and application of new technologies in support of the activities of the ocean while the cultural aspect deals with the preservation of the traditional heritage and knowledge of ocean resources.⁹ The aspect that deals with creating effective governance mechanism for management of ocean resources is referred to as the governance dimension of blue economy.¹⁰ The area this study is concerned with is the economic dimension with focus on potentials of indigenous shipping in the Nigerian blue economy.

Nigeria has more than 10,000km of inland waterways and is strategically located which makes maritime transport very valuable by its ability to connect the rest of the world to the international markets.¹¹ Nigeria's water resource composes the rivers, creeks, lagoons and lakes. Nigeria has intra-coastal water which source are two main rivers – River Niger and River Benue.¹² The Most used waterway, especially by larger watercrafts, is its tributary – the Benue. The Benue River is especially used for commercial activities in the delta area of Cross River and all along the coast to the Lagos lagoon.¹³

It is an acknowledged fact that maritime coastal trade has enhanced the growth of commercial activities in Nigeria and Nigeria's blue economy. Coastal trade and inland water trade are important in the development of Nigeria as about 80% of the shipping business done in the coast of West Africa is done in Nigeria. It was in furtherance of this and the need for Nigerians to play an active role and realise the potentials of coastal shipping that prompted Nigeria to enact the Coastal and Inland Shipping (Cabotage) Act in 2003.¹⁴ Cabotage usually refers to the exclusive reservation by a state of the commercial operation between ports in that country for their own flag vessel.¹⁵ Thus, the primary essence of the Cabotage Act is to restrict the dominance of foreign participation in Nigeria's blue economy and increase the indigenous involvement of Nigerians in the ownership and operation of vessels in Nigeria.

The Cabotage Act, having come into existence for about twenty (20) years, this paper seeks to give an overview of indigenous shipping as it relates to the objectives of the Act. It is further

the intendment of this paper to consider whether the Cabotage Act has been able to harness Nigeria's blue economy through indigenous participation in the shipping sector. Nonetheless, this paper would also proffer suitable recommendations as may be necessary for harnessing indigenous shipping potentials in Nigeria's blue economy towards the realisation of the objectives of the Act.

2. BRIEF OVERVIEW OF THE CABOTAGE ACT 2003

The major objective of the Act is to restrict the use of foreign vessels in domestic coastal trade so as to promote the development of indigenous shipping. The object further extends to the establishment of cabotage vessel financing fund and other related matters.

The operative terms used in signifying the objective of the Act are 'Cabotage Trade' or 'Cabotage' as reflected in section 2 of the Act. It states:

The carriage of goods or passengers by vessel or any other mode of transport from one place in Nigeria waters, either directly or via a place outside Nigeria and includes the carriage of goods in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of Nigeria whether in or under Nigerian waters.¹⁶

Other functions of the Act include the promotion of the development of indigenous tonnage ensuring the protection of local shipping and the creation of opportunities for indigenous shipowners. Also included in the function of the Act are the provision of employment opportunities, the enhancement of indigenous participation in the maritime industry and the encouragement of the development of technical expertise in infrastructure and to establish a Cabotage Vessel Financial Fund.

From the foregoing definitions, it can be deduced that cabotage in Nigeria essentially pertains to the domestic operation of indigenous vessels for trade and carriage within Nigerian territorial waters while restricting the use of foreign owned vessels in domestic coastal trade.

2.1.1 Restriction of foreign vessels in domestic trade

Section 3 to 6 of the Act provide to the effect that the vessels, tugboats or barges that are allowed to engage in domestic coastal carriage of cargo and passengers within Nigerian territorial waters are the ones that are fully owned and manned by Nigerian citizens and also built and registered in Nigeria. However, tugboats or barges that are rebuilt in Nigeria or forfeited to any Nigerian government authority even if it was not built in Nigeria are exempted from the requirement of this provisions.¹⁷ This appears to mean that the above provision of the Act gives Nigerian citizens absolute control of commercial activities in the Nigerian maritime sector.¹⁸

Nonetheless, there are instances under which foreign vessels may be permitted to operate in Nigerian territorial waters. This may be in situations where the Nigerian owned and operated vessels lack the capacity to carry out such operations. This may be in terms of salvage operations.¹⁹

It is to be observed that the exceptions accorded to foreign vessels in section 8 of the Act are not in relation to commercial activities. This is because foreign vessels are not allowed to engage in coastal carriage of cargo and passengers within the Nigerian territorial waters. In any case, the Act makes an exception as which the foreign owned, built and manned feeder vessels can operate within Nigeria's coastal and inland waterways. This is by filing an application for a grant of waiver by the Minister of transportation.²⁰

The procedure for obtaining such a waiver is set out in the Guidelines on the Implementation of the Coastal and Inland Shipping (Cabotage) Act 2003 Revised 2007²¹ and it requires that an application for waivers must be sent to the Minister of Transportation through the Nigerian Administration and Safety Agency (NIMASA). NIMASA processes all waiver applications and if satisfied that the applicant has met all the requirements and paid the prescribed fees, make recommendations on the application to the minister.²²

Preference is given to a foreign vessel owning company to enjoy waiver in Nigeria under the Act if the minister is satisfied that the shipping company and vessels are owned by Nigerian citizen and non-Nigerians under a joint venture agreement. The percentage of equity shareholding of the Nigerians in both the shipping company and the vessels shall not be less than 60%.²³ Furthermore, the minister must be satisfied that the percentage to be held by Nigerian joint venture partner is held by Nigerian citizen(s) free from any trust or obligation in favour of non-Nigerians. Waivers are granted as a matter of priority. Priority is given to a vessel registered in Nigeria and owned by a shipping company registered in Nigeria.

It is observed that the Act does not give outright waiver to the foreign shipping companies and vessels. It still preserves the involvement of Nigerians in coastal trade although to a limited extent. The provision implies that any foreign shipping company interested in doing business across Nigerian inland waters must collaborate with Nigerians. By so doing, the purpose of the Act in terms of indigenous control would be considerably achieved. This may ultimately lead to technology transfer, manpower development and employment creation.

2.1.2 Cabotage Vessel Financing Fund (CVFF)

It is a well-known fact that shipping business is capital intensive. In the realization of this fact, the Act made a necessary and helpful provision for financial assistance to Nigerian operators in the domestic coastal shipping. This financial assistance is known as Cabotage Financial Fund ('CVFF' or 'the Fund').²⁴

The CVFF is generated by the deduction of 2% from the contract sum of all contracts performed by any vessel engaged in coastal trade. Other sources of fund for CVFF are funds approved by the Nigerian National Assembly,²⁵ tariffs, fines and fees for licenses and waivers and from interest on loans granted from the fund.

The Fund is collected by NIMASA deposited in commercial banks and administered under guidelines to be proposed by the Minister with the approval of the National Assembly.

3. POTENTIALS FOR INDIGENOUS SHIPPING IN NIGERIA'S BLUE ECONOMY

There are enormous prospects in indigenous shipping in Nigeria's blue economy which are dependent on the full implementation of the provisions of the Cabotage Act. The full implementation would enhance more Nigerians to be employed in jobs that are related to domestic shipping industry. These jobs include the employment of seafarers, ship operators, ship managers as a result of the fact that ships and vessels being used in domestic shipping are built in Nigeria and are owned, operated and crewed in Nigeria.

Other potentials include development of cottage and allied industries, export promotion, increased foreign exchange earnings, diversification and expansion of opportunities to trade and compete favourably in overseas markets.

Furthermore, building and maintenance of vessels for passengers and cargo would call for a need to employ more labour from the Nigerian workforce. This would lead to the increase in indigenous participation in Nigerian shipping industry and less reliant on foreigners and foreign vessels to ensure Nigeria would be able to compete in international sea-borne trade with other nations engaged in maritime businesses.²⁶

Therefore, the potentials for indigenous shipping in Nigeria, if properly explored or exploited could assist in the following:

- overall growth and expansion of Nigeria's blue economy;
- viability of the indigenous maritime sector with increase in ship management and ship building opportunities and the development of maritime fleet by Nigerians.
- increase in manpower, capacity building and attendant employment opportunities for Nigerian seafarers;
- increase in maritime economic activities and overall development of the Nigerian economy;
- increased interest in the maritime industry as well as the development of more indigenous Maritime Academics for training of personnel; and
- export of human capital by the supply of locally trained personnel to shipping companies all over the world.

The question may be asked as to whether the potentials of indigenous shipping under the Nigerian blue economy had been realized and if the answer is in the negative what could be the reasons militating against it. The answer to this pose would be addressed by looking at the implementation of the Cabotage Act 2003.

It is worthy of note that Nigeria is blessed with a natural maritime endowment base comprising a coastline of over 850km and an Exclusive Economic Zone (EEZ) of 12 nautical miles and vast inland waterways resource estimated at nearly 4000kms and capable of supporting a vibrant intra-regional and international trade.²⁷

With a total annual freight cost estimated at between \$5 billion and \$6 billion annually, Nigeria enjoys immense economic advantages that come with maritime transportation.²⁸ Therefore,

Nigeria has an enormous potential of generating revenue for its blue economy through shipping both globally and at the national level.²⁹

The Cabotage Act was enacted in Nigeria to guarantee national security and protect the country's domestic economy against likely threats from foreign competition in order to develop local capacity in the indigenous shipping industry. However, in spite of the salient provisions the Act proffers the Act has also been plagued with major lacunae which have made the realization of the objectives of the Act difficult.³⁰ these include:

A. Limited Scope of the Cabotage Act

The uncertainty or scope limitation in the interpretation of 'vessel' in section 2(d) of the Act has raised diverse argumentations and conflicting court decisions over the years. Some critics have expressed the view that the interpretation of 'vessel' under the Act appears not to be all inclusive. Section 2(d) of the Act defines a vessel as:

...a ship, boat, hovercraft including air cushion vehicles and dynamically supported craft, designed, used or capable of being used solely or partly for marine navigation and used for the carriage or through or under water of persons or property without regard to method or lack of propulsion.

Thus, a Federal High Court of Nigeria in *Nobel Drilling (Nigeria) Limited v Nigerian Maritime Administration and Safety Agency and the Minister of Transportation*,³¹ held that 'drilling rigs' did not fall within the definition of the word 'vessel' and the court should give the words contained in the Act their natural and ordinary meaning. However, in *Seadrill Mobile Units Nigeria Limited v Minister for Transportation & 2 others*,³² another Federal High Court reached a contrary conclusion. The court held that drilling rigs fell within the scope of the definition of vessel under the Cabotage Act, and that drilling operations constitute coastal trade as defined under the Cabotage Act.

The Court of appeal, on the other hand, in *Transocean Support Services Nigeria Limited and 3 ors. V NIMASA and Minister of Transport*³³ has overruled the decision of the Federal High Court has in the *Seadrill Mobile Units Nigeria Limited's* case. The appellate court held that it must be clearly shown that such drilling rig is 'designed, used or capable of being used solely or partly for *Marine navigation* for the carriage of persons or property on, through and under water' as required in the definition of a vessel under the Cabotage Act. In this regard, the Court of Appeal held that drilling rigs are not used for deployed for coastal trade as contemplated under the Cabotage Act. Furthermore, the Court of Appeal held that considering that a rig was not expressly listed as one of the vessels eligible for registration under the cabotage Act, the attempt by the Minister of Transportation to list Rigs in the Cabotage Guidelines was improper.³⁴

B. Inadequate Local Capacity

It is an incontrovertible fact that the Cabotage Act was promulgated to empower indigenous operators in the Nigerian maritime industry and reduce the influence of foreign shipping companies and seafarers in coastal trade which invariably would have helped in improving

Nigerian blue economy.

Regrettably, the provision of sections 3 to 6 of the Act appears to be impracticable presently. This is as it relates to ship building, ship manning and whole ownership of vessels involved in cabotage operations by Nigerians. Nigeria exports huge amounts of resources and imports hundreds of million tons of foreign goods and raw materials. There still exists no registered Nigerian ships that ply international routes. Nigeria presents itself as the only oil producing nation without a national fleet. Nigeria exports millions of barrels of crude oil yearly, without much freight benefit accruing to it³⁵.

Presently, Nigeria appears not to possess the capacity to build ships required for complex operations offshore. Furthermore, Nigeria does not have fully equipped dock yards with qualified and competent personnel to build the compartments of a ship for coastal trade. Whilst it is achievable for Nigeria to wholly own vessels for coastal trade, it must be noted that the acquisition of a vessel requires huge capital investment. Meeting this requirement largely requires enormous support from financial institutions.

However, due to the volatility of the Nigerian maritime market, financial institutions appear reluctant to grant credit facilities to Nigerian maritime operator to purchase vessels in addition, the unrelenting global movement against the production and use of non-renewable energy and against the acquisition and use of vessels powered by non-renewable energy have compounded the hesitance of financial institutions in providing capital to Nigerians for acquisition of vessels, since most vessels are currently largely powered by non-renewable energy.

In the same vein, the requirement for vessels to be fully manned by Nigerians appears plausible but it may be difficult to meet this requirement given that most Nigerians appear to lack the requisite expertise in vessel manning due to lack or limited provision of facilities for the acquisition of this expertise. Although there are maritime academies in Nigeria established to train and educate seafarers, they do not appear to be adequately funded, equipped certified to handle their obligations³⁶. Nigeria's implementation of cabotage has failed to provide sufficient business opportunities for local vessel operators to participate in coastal shipping as the hide of foreign dominations continues³⁷.

C. Cabotage Waiver Regime

The Cabotage Act provides for grant of waivers in respect of the building requirements, foreign vessels usage and manning requirements under the Act. However, it is argued that the waiver regime defeats the purpose of the Cabotage Act since most Nigerian Maritime operators are still building the capacity to meet the requirements set out in sections 3 to 6 of the Act. A wide room is therefore created for foreign ship owners and crew to leverage on this to flood the Nigerian maritime market, thereby leading to loss of opportunities for Nigerians in the shipping sector.³⁸

Furthermore, the granting of waivers for foreign owned vessels by section 9 of the Act has proven to be detrimental to local shipowners.³⁹ this has led to the exclusion of Nigerian ship owners in the participation in transporting oil in coastal and inland waters. This trade has

exclusively become foreign dominated resulting in the non-development of local capacity in the sector and a loss of trillions in the national revenue.⁴⁰ It is worthy of note that in 2019, the Nigerian Maritime Administration and Safety Agency (NIMASA)⁴¹ issued a notice of temporary suspension of the issuance of waivers on manning requirements under the Cabotage Act. The Agency announced a five-year strategic plan on the cessation of the waiver clause and the implementation of a New Cabotage Compliance Strategy (NCCS) under which certain categories of waivers have been suspended in order to encourage Nigerians to participate more in the indigenous shipping industry.⁴²

The waiver regime was meant to be reviewed after five years. However, Cabotage Act has been in operation for about 20 years and the minister still grants waivers in respects of the indigenous requirements under the Cabotage Act. Strict enforcement of the Act would have ensured that the required capacity and technology transfer from foreign ship builders and ship owners were realised within the first five years of the commencement of the Act.⁴³

D. The Cabotage Vessel Financing Fund (CVFF)

The Cabotage Act established the CVFF with the purpose of promoting and developing indigenous ship acquisition by aiding Nigerian operators in the domestic coastal shipping industry to facilitate an easier transition into indigenous capacity in coastal shipping.⁴⁴ The CVFF has done little to build indigenous capacity in shipping in Nigeria.⁴⁵ The CVFF which was created to help indigenous ship owners in the acquisition of vessels to take control of Nigeria's cabotage trade 'has since been hijacked by the government and its representatives',⁴⁶ and the 'total amount of money in the fund is unknown and distribution of funds has become a journey of endless promises'.⁴⁷ Alaka commenting on CVFF stating that 'it is sad that almost 17 years after, no single dollar has been disbursed from the fund and the endless promises keep coming as if some people somewhere are benefitting from the non-disbursement of the fund'.⁴⁸ It is to be added that till date, there appears to be no evidence as to change in the situation. This has prevented Nigerians from obtaining vessels for economic growth.⁴⁹

E. Piracy

So, piracy against vessels constitutes serious security threats to water transportation. Pirates attack all kinds of vessels: general cargo, bulk carriers, tankers, ro-ro, liners, fishing vessels, sailing yachts and tugboats and sometimes the pirates attack vessels to take the crew members hostage.⁵⁰ According to the International Maritime Bureau (IMB) piracy reports, the actual and attempted attacks off Nigerian waters from 2015 to 2019 are as follows: in 2015(14); 2016(36); 2017(33); 2018(48) and 2019(35).⁵¹ A cursory look at these figures shows that the number of piratical attacks is high and can negatively impact on the shipping industry in Nigeria in terms of security.⁵² In an attempt to curb the menace of piracy at sea, the Nigerian government enacted the Suppression of Piracy and other Maritime Offences (SPOMO) Act in 2019. The Act has as its main objective the prevention and suppression of piracy, armed robbery and any other unlawful act against a ship, aircraft and any other maritime case however propelled including fixed or floating platforms.⁵³ NIMASA is the maritime regulatory agency that enforces maritime security instrument in Nigeria. In as much as the existence of anti-piracy framework

is pivotal in curbing piracy attacks, however, without proper and regular enforcement, pirate attacks will continue unabated. It is instructive to note that before 2019, there was no anti-piracy legislation in Nigeria. This means that arrested pirates were not prosecuted for acts of piracy in Nigeria.⁵⁴

Nonetheless, with the enactment of the SPOMO Act, it is argued that the relevant agencies, like NIMASA and the judiciary should properly and effectively enforce and apply the anti-piracy law to curb piracy off the coast of Nigeria for the enhancement of the shipping industry.⁵⁵ Thus, in *Federal Republic of Nigeria v Binaebi Johnson & Co*,⁵⁶ the Federal High Court sitting in Port Harcourt, Rivers state, presided over by I.M. Sani J, for the first time in Nigeria, convicted three pirates for hijacking a vessel, *MV Elobey VI*, off the coast of Equatorial Guinea and securing a ransom of US \$200,00 for the release of its crew. The pirates were fined the sum of 20 million naira (which was then equivalent to US \$52,000) each for the crime. Anele argued that though this was a laudable development in the fight against piracy in Nigeria, the lenient sentencing, which was contrary to the provision of section 12(I) of the SPOMO Act that stipulates life imprisonment and a fine of not more than 50 million naira (US \$130,893 as at then) would encourage other pirates to continue attacking vessels in Nigeria.⁵⁷ This would in essence affect the shipping industry and invariably the Nigerian blue economy.

It is to be observed that despite the effort of the maritime regulatory agencies to enforce maritime security instruments in Nigeria, corruption, inter-agency conflicts, misappropriation of funds among other things, are rife in their operations.⁵⁸ Furthermore, the regulatory agencies are ill-equipped, ill-trained, largely lacks transparency and accountability in conducting their affairs.⁵⁹ There is also the issue of poor funding which impacts negatively in maritime security activities in Nigeria. These factors prevent the maritime security agencies in Nigeria from effectively discharging their duties in terms of coastlines monitoring and protection.⁶⁰ These challenges create an enabling environment for piracy to thrive and impairs the activities of the Nigerian shipping industry. One key gap evident in policing Nigeria's waterways apart from being riddled in corruption is in the area of assets.⁶¹ Combined with limited patrol personnel, inadequate assets explains the inability of the Nigerian Navy and other Military Joint Task Force stationed to guard Nigeria's territorial waters to ensure all – inclusive security in the coastal states. This has given room for sea pirates to prey on the ships. Furthermore, marine security personnel are most times accused of corruption and negligence. It was once reported that the security personnel stationed to secure the waterways in Nigeria busy themselves with extortion from sea users.⁶² It is further to be noted that despite the passage of SPOMO Act, Nigeria's coast line remains an explosive corridor for piracy. For instance, 'Four armed robberies occurred in the waterways in December, 2019; followed by the killing of four security personnel on 2nd January, 2020 on an oil dredge in Nigeria.'⁶³ Another drawback noticeable in the SPOMO Act is that it failed to clarify amongst other things, specific security agency (ies) responsible for patrolling and enforcing the principles of the SPOMO Act. By so doing, the law gave room for inter-agency rivalries that can undermine adequate security provisioning in Nigeria.⁶⁴ Combating maritime insecurity requires the collective commitment and co-operation of all the security agencies and stakeholders. Moreover, clear role differentiation enhances productivity and result delivery.

3. CONCLUSION

This paper looked into the basic provision of the Cabotage Act 2003 and other related legislation in Nigeria. It discussed the effort put in place under the Cabotage Act to enhance the shipping industry in Nigeria. However, despite the laudable provision of the Act, it wasthe finding of this paper that there were still challenges associated with the enforcement of the Law, corruption, insecurity and inadequate funding. These challenges affect the potentials of indigenous shipping industry in Nigeria and by extension, its blue economy. To curb the identified challenges militating against the enhancement of the full potentials of the shipping industry under the Nigerian blue economy, the following recommendations are proposed.

4. RECOMMENDATIONS:

i. Implementation of the Cabotage Act and the Amendment of Some Grey Areas

The Cabotage Act needs to be fully implemented to ensure the participation of the indigenous shipping industries. There is need to suspend the issuance of waivers to foreign ship companies as it has been abused by government officials and its purpose defeated. It is further recommended that the Cabotage Act 2003 should be amended to correct some grey areas that are noticeable on the extant Act. Interestingly, there is presently a draft Bill before the Nigerian National Assembly which is titles ‘The Coastal and Inland Shipping (Cabotage Act) (Amendment) Bill 2020.’ Some of the salient provisions of the draft Bill include:

- (a) Amendment of the scope of the phrase ‘place above Nigerian waters.’ The provision will now read ‘place above Nigerian waters’, in the context of coastal trade includes ‘any vessel, offshore drilling unit, production platforms, artificial island, subsea installation, pumping station, living accommodation, storage structure, loading or landing platform, dredge, floating crane, pipe laying or other barge or pipeline, rigs, Floating Production Storage and Offloading Platform (FPSO), Floating Storage Unit (FSU) and any anchor cable or rig pad used in connection therewith.’
- (b) The expansion of the aims of the Act under section 3(a) and the inclusion of the Nigerian Maritime and Safety Agency (NIMASA) under section 3(b) as the agency of government responsible for the administration of the Bill.
- (c) The Bill also amends section 12 of the Act by replacing it with a new section 12 (A) & (B), providing that applications for waiver must carry an undertaking to comply with the provisions of the Nigerian Content Development Act with respect to the employment, training and succession planning.
- (d) Section 22(5) of the Act is also proposed to be amended by the expansion of the scope of vessels eligible for registration under the Bill. Notably, Mobile Off-shore drilling rigs, seismic survey vessels, drilling rigs, Floating Production, Storage and Offloading Platforms, etc., are clearly eligible for registration under the Act for various contraventions of the provisions of the Bill.

It is important for the National Assembly to facilitate the passage of the Bill as this would expand the scope of the cabotage regime and place Nigerian shipping industry on a positive and upward trajectory.

ii. Funding of the Relevant Agencies

It is further recommended that the various government agencies in charge of the shipping industry in Nigeria should be well funded. This is because finance had been held to be a major hinderance in the activities of the agencies. It is recommended that a Maritime Bank is to be created to enhance provision of funds for indigenous ship owners and stakeholders in the maritime industry. Furthermore, the Cabotage Vessel Fund should be effectively disbursed and easily made accessible to those who are entitled to it.

iii. Enforcement of Anti-piracy Legislation

The availability of anti-piracy legal framework is a necessity for curbing piracy. However, without effective enforcement of these laws, piracy attacks would continue to thrive. Therefore, with SPOMO in place, the relevant security agencies including the judiciary, should properly and effectively enforce the anti-piracy and incidentally improve the activities of the shipping industry. Maritime regulatory and security agencies play a significant role in counter-piracy efforts by enforcing anti-piracy legislation which prevents the threat posed by piracy to the shipping industry.

Moreover, given their important role in suppressing piracy, it becomes imperative to fund, equip and adequately train officials of these maritime agencies for effective discharge of their assignments. It is the opinion of the author that well equipped and trained maritime security and regulatory agencies would immensely contribute to the suppression of piracy and its potential consequences on the Nigerian shipping industry. Therefore, the government also, adequate funding and enhanced remuneration would reduce the incidence of corruption and misappropriation of funds by officials of these agencies.

Nonetheless, the officials of these maritime institutions who engage in corrupt practices and embezzlement of public fund should be prosecuted to act as deterrent to others. It is also recommended that the government of Nigeria should procure modern surveillances and communication facilities and state of the art ships and speedboats for the maritime and security agencies. It is further recommended that the SPOMO Act is to be amended to clarify the security agency (ies) responsible for patrolling and enforcing the principles of the SPOMO Act to avoid inter-agency rivalry.

iv. Accessibility of information

Agencies should be able to freely access information and documents of one another to be able to determine foreign vessels from indigenous vessels. Adequate and up-to-date information should be shared to enable the identification of nationalities of seamen, their qualifications, ship yard capacity etc.

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- 5) Nigeria recently created a Ministry of Marine and Blue Economy. The mandate of the ministry includes to explore, protect and unlock the tremendous potential of Nigerian marine heritage and the vast opportunities it presents for its economic growth and sustainable development. Available at <https://frimbre.gov.ng>. Accessed 5th June, 2024. The African Union has also launched the Blue Economy Strategy which is aimed at promoting sustainable economic growth, food security, and job creation by developing marine resources. See P. Bond, ‘Blue Economy Threats, Contradictions and Resistances seen in South Africa’ (2019) *Journal of Political Ecology*, 26(1). Available at <https://doi.org/10.2458/v26i1.23504>. Accessed 5th June, 2024. See also Henderson J., ‘Oceans without history? Marine Cultural Heritage and the Sustainable Development Agenda, (2019) *Sustainability*, 11(18) 5080. <https://doi.org/10.3390/su11185080>. Accessed 6th June, 2024. See generally, M. Joroff, ‘The Blue Economy: Sustainable Industrialization of the Oceans (at) Proceedings in International Symposium on Blue Economy Initiative for Green Growth’, 2009 Massachusetts Institute of Technology and Korean Maritime Institute, Seoul, Korea, pp. 173-181; M. Geissdoerfer, et al, ‘The Circular Economy – A New Sustainability Paradigm?’ (2017) *J Clean Prod.* 143:757-768; D. Afolabi, ‘The Nigerian Mangrove Ecosystem, Third Regional Workshop of Gulf of Guinea Large Marine Ecosystem (GOGLME) Lagos, Nigeria; R. Amaechi, ‘Blue Economy Sustainability: Nigeria to Partner other African Countries. Available at <https://www.nimasa.gov.ng/press-centre/post/blue-economy-sustainability-nigeria-to-partner-other-african-countries-amaechi>. Accessed 6th June, 2024.
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- 7) Marwan Youssef, ‘Blue Economy Literature Reviews’, *International Journal of Business and Management*. Vol. 18 No. 3: 2023. <https://doi.org/10.559/ijbm.v18n3p12>. Accessed 5th June, 2024.
- 8) Ibid.
- 9) Ibid.

- 10) Ibid
- 11) O.A. Gbadegesin and S. Akintola, *Charting the Course for a Blue Economy in Nigeria: A Legal Agenda* (Nigeria, 2022).
- 12) Nigeria waterways Assessments. Available at <https://dicalogcluster.org/display/public/DLCA/2.5+Nigeria+Waterways+Assessment/>. Accessed 7th June, 2024.
- 13) Ibid.
- 14) The Act was to be implemented on the 1st of May, 2004. The intended effect of the Act could be gathered from the explanatory note which is to the effect that the Act sought to restrict the use of foreign vessels in domestic coastal trade to promote the development of indigenous tonnage and to establish a cabotage vessel financing funds and for other matters related to it. The Act also permitted foreign possessed vessels and organisations to take interest in cabotage trade in Nigerian waters but subject to the acquisition of a waiver as well as permit from the Federal Ministry of Transport. See Adepoju Ibrahim Babatunde, 'Cabotage Operations between Theory and Practice in Nigeria; Electronic Research Journal of Social Sciences and Humanities, 2019, 1(3). Available at <https://www.researchgate.net/publication/337563039/cabotage-operation-between-theory-and-practice-in-Nigeria-publications>. Accessed 7th June, 2024.
- 15) O.Ude 'Movement for Cabotage Regime in Nigeria', (2001) Maritime Quarterly, Maritime Publications Ltd. Lagos.
- 16) The same section 2 defines 'vessel built in Nigeria' as meaning 'where all the major components of its hull and superstructure are fabricated in Nigeria or assembled entirely in Nigeria'.

'Vessel wholly manned by Nigerians' means where all the shipboard officers and crew employed aboard the vessel are exclusively of Nigerian citizenship'.

'Wholly owned Nigerian vessel' means a vessel which is owned and registered in Nigeria whose 64 shares are beneficially owned by Nigerian citizens or a company registered in Nigeria with 100 per centum of its share capital beneficially owned by Nigerian citizens free from any trust or obligation in favour of non-Nigerians.

Furthermore, section 2 of the Act defines 'foreign vessel' as a vessel other than a Nigerian vessel while section 3 expressly made some restrictions on some vessels by stating:

A vessel other than a vessel owned and manned by a Nigerian citizen built and registered in Nigeria shall not engage in the domestic coastal carriage of cargo and passengers within the coastal, territorial, inland waters, island and any point within the waters of Exclusive Economic Zone of Nigeria.

Section 42(2) of the Act describes 'Cabotage Vessel Financing Fund' as a Fund whose purposes is to promote the development of indigenous ship acquisition capacity by providing financial assistance in domestic coastal shipping.
- 17) Cabotage Act, 2003, s.7.
- 18) Cabotage Act, 2003, s.8.
- 19) It is the relevant minister in Nigeria that determines whether there is need to engage such a foreign ship to embark on the salvage operation or not. Such foreign vessels with the approval of the relevant minister or any other government agency may engage in activities related to marine pollution emergency or to any threatened risk. This may also extend to any ocean research activity commissioned by the Department of Fisheries or any other department of the government responsible for such research or operated or sponsored by a foreign government that had sought and received the consent of the Minister of Foreign Affairs to conduct Marine Scientific Research.

- 20) Cabotage Act 2003, ss.9-11. These sections allow the minister to grant applications for waivers for foreign vessels to engage in cabotage operations where there is no wholly owned vessel that is suitable the service to perform the activity described in the application. Furthermore, if there is no qualified Nigerian officer or crew for the position specified in the application and there is no Nigerian ship building company that has the capacity to construct the particular type and size of vessel specified in the application.
- 21) Coastal and Inland Shipping (Cabotage) Act 2003 Revised 2007 ('The Coastal Guidelines'), paragraph 5.3.
- 22) The requirement for Cabotage license for foreign vessels include: application form, copy of Certificate of Registry, Declaration of ownership certificate, Completed crew declaration form, Certificate of tonnage measurement, Passenger ship safety certificate, Cargo ship safety certificate; minimum safe manning and international safety management certificate. Other requirements are Land line certificate; survey certificate; safety radio certificate; classification certificate; copy of current certificate of vessel insurance, certificate of incorporation; memorandum and articles of association; certified true copy (CTC) of forms CAC 7 AND CAC2. Others include: current tax clearance certificate, evidence of registration of shipping company with NIMASA, proof of payment of registration fees and the undertaking to train a prescribed number of Nigerian cadets.
- 23) See The Nigerian Content Act which defines a Nigerian company as a company where Nigerians hold 51% of the shares.
- 24) Cabotage Act 2003, s.2.
- 25) Nigeria has a bicameral legislature (National Assembly) – the Senate and the House of Representatives.
- 26) Adepoju Ibrahim Babtunde, 'Cabotage Operations between Theory and Practice in Nigeria', (2019) 1(3) Electronic Research Journal of Social Sciences and Humanities. Available at <https://www.eresearchjournal.com/wp-content-upload/2020/08/cabotage-operation.pdf>. Accessed 16th June, 2024. See also A.E. Faith, 'The Maritime Industry of Nigeria: Challenges and Sustainable Prospects (2019). Danubius Working Papers 1(1) pp. 20-31.
- 27) Brickstone, 'Private Sector Participation in Nigeria Maritime Industry' (2019). Available at <https://reports.brickstone.africa/whitepapers/WHP-MARITIME-SECTOR>. Accessed 18th June, 2024.
- 28) Nigerian Maritime and Safety Agency (2018). Available at https://nimasa.gov.ng/pdfs/nigerian_maritime_industry_forecast.pdf. Accessed 18th June, 2024.
- 29) M.I. Igbokwe, 'The Importance of Maritime Transport in Nigerian Economy', (2001). Available at <https://mikeigbokwe.com/wp-content/uploads/2018/06/importance-of-maritime-transport-in-economy-post-system-pdfs>. Accessed 17th June, 2024.
- 30) The detailed aims of the Nigerian Cabotage regime are:
 - Restrict the use of foreign vessels in domestic coastal trade;
 - Promote the development of indigenous tonnage;
 - Establish a cabotage vessel financing fund;
 - Reserve the bulk of coastal trade for vessels built, owned and manned by qualified Nigerian seafarers;
 - Stimulate and expose Nigeria's indigenous shipping firms to shipping business in the coast as a stepping stone to deep sea/international shipping;
 - Encourage acquisition of shipping technology by creating and diversifying employment opportunities in the industry;
 - Improve environmental safety;

- Protect the nation’s security interests;
 - Enhancing domestic waterborne transportation;
 - Increase national fleet/tonnage;
 - Develop shipbuilding and repair capability;
 - Create opportunities for employment;
 - Conserve foreign exchange;
 - Protect the national economy, security etc.
- 31) Suit No. FHC/L/CS/78/2008.
- 32) Suit No. FHC/L/CS/607/2016.
- 33) Suit No. CA/L/503/2016.
- 34) The vessels eligible for registration under section 22(5) of the Cabotage Act include: passenger vessels, crew boats, bunkering vessels, fishing trawlers, barges, offshore service vessels, tugs, anchor handling tugs and supply vessels, floating petroleum storage, dredgers, tankers, carriers and any other craft or vessel used for carriage on, through or underwater of persons, property or any substance whatsoever. There is a bill pending before the National Assembly - the Cabotage Act Amendment Bill 2020, which seeks to amend the Cabotage Act by revising the definition of vessels contained in the Act to include rigs, floating, production, storage and offloading platforms used for drilling and oil and gas operations offshore.
- 35) See www.ceicdata.com. Central Bank of Nigeria on current price of crude oil. Available at <https://www.cbn.gov>. See also Nigerian daily crude oil production as indicated by the Nigerian Upstream Petroleum Regulatory Commission. Available at <https://www.nupre.gov.ng/oilpro>. All these sites were visited on 17th June, 2024.
- Furthermore, earlier data had shown that between 2009-2012, ship calls to Nigeria and its tonnage saw a significant increase from 82 million to 150 million with an increase from \$4.1 billion to above \$7.5 billion. Nigeria is said not to have benefited from this. Also, there ported export of Nigeria’s crude oil was about 900 million barrels per annum. Foreign vessels earned a freight cost of about \$2.25 billion from the carriage of Nigeria’s crude oil without any national freight benefit. See the following:
- Victor Peretomodes, ‘The Role of Maritime Industry and Vocational and Technical Education and Training in the Economic Development of Nigeria’, (2014) 1910SR Journal of Humanities and Social Sciences, <https://www.semanticscholar.org/paper/The-Role-of-the-Maritime-Industry-and-Vocational-in-Peretomoses>. Accessed 17th June, 2024; Niaz Ali Solangi, ‘Contribution of Shipping in a Nation’s Economy and the Maritime Training in this Contribution’, (1995) World Maritime University Dissertations, <https://commons.comu.se/all-dissertations/906?utm-source-commons=comuseatfull>. Accessed 17th June, 2024.
- Chidi Lloyd et al, ‘Maritime Transportation and the Nigerian Economy: Matters Arising’, (2019) 45(3) Commonwealth Law Bulletin. <https://www.candfoline.com/> Accessed 17th June, 2024.
- Adepoju Ibrahim Babatunde, ‘Cabotage Operations: Between Theory and Practice in Nigeria’ (2019) 1(3) Electronic Research Journal of Social Sciences and Humanities. <https://www.researchjournal.com/wp-content/uploads/2020/08/cabotage-operations.pdf>. Accessed 16th June, 2024.
- 36) Some of the maritime academies in Nigeria include: The Maritime Academy, Oron, Akwa Ibom State, Federal College of Fisheries and Marine Technology, Victoria Island, Lagos, Nigerian Maritime University, Okerenkoko, Delta state etc.

- 37) Onwuegbuchunam Donatus, 'Assessment of Cabotage Act Implementation and its effect on Nigerian seafarer's' (2020) 5(1). *Journal of Sustainable Development of Transport and Logistics*, <https://jsdtl.sciview.net/index.php/jsdtl/article/view/94>. Accessed 16th June, 2024. See also BisiAkodu, 'Maritime Cabotage in Nigeria – The Need to Empower Domestic shipowners' (OAL, 2015) <https://oal.law/wp-content/uploads/2017/09/maritime-cabotage-article.pdf>. Accessed 16th June, 2024. See also B.C. Ndikom, *Maritime Transport Administration in Nigeria*, (Lagos Bumico Publishers, 2008).
- 38) A 2017 report by the National Bureau of Statistics on the Nigerian ports Authority (NPA) stated that the ship traffic statistics around a total number of 19.833 vessels berthed at the various ports between 2013 and 2016. Similarly, 543, 842, 425 tonnages were also registered between those years. The report showed that 98% of freights were being moved by foreign shipping companies. This showed the outlandish growth of foreign participation within Nigerian territorial waters. As stated earlier, the Cabotage Act was enacted to encourage indigenous participation by Nigerians in the shipping industry, but this has become threatened due to cabotage waiver which has left key players in the maritime sector unprotected to compete in the Nigerian maritime sector to foreigners. See Ganiyu Alayaki, 'Suspension of Waiver to Boost Cabotage', (Young Ship 2017). <https://www.youngship.com/departments/nigeria/news/suspension-of-waiver-to-boost-cabotage-implementation>. Accessed 15th June, 2024.
- 39) Cabotage Act 2003, s.9, provides to the effect that the Minister of Transportation has the discretion to grant a waiver to a foreign owned vessel, where he is satisfied that there is no wholly Nigerian owned vessel that is suitable and available to provide the services or perform the activities described in the application.
- 40) BisiAkodu, 'Maritime Cabotage in Nigeria'. The Need to Empower Domestic Shipowners (OAL 2015). <https://oal.law/wp-content/upload/2017/09/Maritime-Cabotage-Article.pdf>. Accessed 16th June, 2024. See also *The Incorporation Trustees of Indigenous Shipowners' Associan (ISAN) v M.T. Makhambet*, (2011) JELR 33444 (CA).
- 41) NIMASA was a creation of the Nigerian Maritime Administration and Safety Agency Act 2007. It empowered NIMASA to be the body to enforce and administer the Cabotage Act 2003. NIMASA Act was enacted to promote maritime safety and security, protect maritime environment, shipping registration, maritime labour and other related matters. See also section 2 of the Cabotage Act which gives NIMASA responsibility to enforce the provision of the Act.
- 42) NIMASA issued Marine Notice M11/01/19/S1102 to further the Cabotage Act's objectives and to ensure strict compliance. The notice was issued to all local and foreign operators in the Nigerian oil & gas industry and requires them to submit a five-year marine service or vessel engagement plan and a schedule detailing the particulars of existing contracts and other marine projects to the agency. It also states that the expiration date of any such contracts must be communicated in writing to the agency six months prior to the expiration date. In addition, the notice requires that every advert for an award of a marine contract in coastal trade must list cabotage compliance as a pre-condition for obtaining such an award. While an award is to be given to a foreign firm due to a lack of local availability to satisfactorily execute the job, a certificate of no objection must first be obtained from the agency.

It was expected that this notice would, among other things, ensure greater compliance with the cabotage regime and drive wider indigenous participation in offshore marine operations. However, as the NIMASA has not introduced a fine or other punishment for non-compliance, full compliance with the notice cannot be guaranteed. All the notice does is to mandate cabotage officers to enforce its demands and ensure strict guidance. It is doubtful whether this would be sufficient to compel widespread adherence by all relevant operators. Without the requisite tools to enforce the notice, the extent of compliance that can be achieved remain uncertain. Considering the importance of the notice, a clear enforcement mechanism ought to have been presented. See Akabogu & Association www.lexology.com. Accessed 17th June, 2024.
- 43) Daily Trend News Report of 19 February, 2020. Available at <https://dailytrend.com.ng/2020/02/19anxiety-grips-nigerian-seafarers-as-nimasa-allegedly-abandons-waiver-cessation-plans/>. Accessed 17th June, 2024.

- 44) Cabotage Act, 2003, ss.42-45.
- 45) National Vanguard Newspaper, May 22, 2019. Available at <https://www.vanguardofng.com/2019/05/cuff-90-initial-contributors-currently-out-of-business/>. Accessed 15th June, 2024.
- 46) ChidinmaNwagbara, 'Banks to Hold Shipowners Accountable for \$200m CVFF Disbursement', (Nairametrics2020). <https://nairametrics.com/2020/01/24/banks-to-hold-shipowners-accountable-for-200m-CVFF-disbursement/>. Accessed 15th June, 2024.
- 47) Ibid.
- 48) Oluwakemi Dauda, '17 years after Cabotage Vessel Financing Fund Remains in Limbo' (The Nation, 2021). <https://thenationonline.net/17-years-after-Cabotage-Vessel-Financing-Fund-remains-in-Limbo/> Accessed 15th June, 2024.
- 49) Sulaimon Salan, 'Why Nigeria's Maritime Sector Still Perform Poorly by Stakeholders' (The Guardian Newspaper, 2018). <https://guardian.ng/business-services/maritime/why-nigerias-maritime-sector-still-performs-poorly-by-stakeholders/> Accessed 15 June, 2024.
- 50) George Kiourktsoglou and Alex D. Coutroubis, 'Is Somali Piracy a Random Phenomenon,' WMUJ. Marit. Affairs Vol. 10 IssI (2011). Accessed 16th June, 2024, Dol: 10.1007/s13437-012-0023-4.
Sam Chambers '10 crew kidnapped from product Tanker off Nigeria, Splash.247.com 1 May, 2020. Available at <https://splash247.com/10-crew-kidnapped-from-product-tanker-off-nigeria/?fbclid=IWAR3NqkgKGP7mQJS-WW21WtZLsoV-tqnLlfo4vE4Wl-MF0xkaKWPsh-YEW>. Accessed 17th June 2024. See generally Kalu Kingsley Anele, 'The Potential Effects of Piracy on the Art-Craft Industry: A Comparative Analysis of Nigeria and Indonesia' (2020)10 Indon. L. Rev. 229.
- 51) /CC/ International Maritime Bureau, 'Piracy and Armed Robbery against Ships: Report for the Period 1 January, – 31 December, 2019', Pp.5. See also Kalu Kingsley Anele, 'Addressing the Issue of Piracy Off Indonesia and Nigeria: The need for a paradigm change,' (2020) Indo. J. of Int'l&Com.L.Vol.VII:253.
- 52) It is to be noted that data containing piracy incidents do not distinguish between piracy on the high seas and armed robbery against a ship in the territorial waters. See generally the various ICC/IMB Piracy Reports.
- 53) SPOMO Act, s.12, stipulates that a person that commits an act of piracy is liable to life imprisonment and a fine of not more than 50 million naira.
- 54) Kalu Kingsley Anele, 'the Potential Effects of Piracy on the Art-Craft Industry: A Comparative Analysis of Nigeria and Indonesia,' (2020) Vol. 10, Number 2. Indonesia Law Review, Dol: <http://dx.xol.org/10.15742/liev.v10n2.652>. Accessed 17 June, 2024.
- 55) Ibid.
- 56) Suit No. FHC/PH/62c/2020 (unreported).
- 57) Kalu Kingsley Anele, 'the Potential Effects of Piracy on the Art-Craft Industry: A Comparative Analysis of Nigeria and Indonesia,' op. cit.
- 58) Kalu Kingsley Anele, 'Addressing the issue of piracy off Indonesia and Nigeria: The Need for a Paradigm Change,' (2020) Indo. J. of Int'l & Com. L. Vol VIII. 253.
- 59) Ibid.
- 60) Ibid.

- 61) For instance, despite being one of the well-resourced littoral states within the Gulf of Guinea, Nigeria has only 10 large patrol boats, two frigates, 15 small patrol aircraft (inshore patrol craft and seaward defense boats) and 4 maritime patrol craft to patrol its 459 nmi of coastline and waters going out 200 nmi. See Micheal I. Ugwueze & Samuel A. Asua, 'Business at Risk: Understanding threats to Informal Maritime Transportation System in the South-South, Nigeria' (2021) 14 J. Transp. Sec. 119 and citing Africa. Center for Strategic Studies 2015.
- 62) E. Ekpima, 'Pirates Kill Man, seize cash, boat in Akwa Ibom state,' The Punch Newspaper, (2016) p.8
- 63) M. Ogbonnaya, 'Nigeria's Anti-Piracy Law Misses the Mark,' (2020) <https://issafrica.org/iss-today/nigeria's-anti-piracy-law-misses-the-mark/>. Accessed 17/6/2024.
- 64) C. Oluebube, 'Lack of Synergy among Security Intelligence Agencies Unhealthy' (2017) Metrowatch. available at <https://metrowatchonline.com/lack-of-synergy-among-security-intelligence-agencies-unealthy-says-oluebube>. Accessed 17/6/2024.