

The Potential Impact of Piracy on the ACFTA: A Nigerian Perspective

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Structured Abstract

Article Type: Research Paper

Purpose—While the literature on free trade agreement and piracy abound, there are no insights on the implications of the crime on such agreements. This paper aims at filling this lacuna by addressing the impact of piracy on the implementation of the African Continental Free Trade Area (ACFTA) by Nigeria.

Design, Methodology, Approach—In this paper, primary and secondary materials were deployed. Thus, the history and economic importance of the ACFTA, the nature and legal regime of piracy in Nigeria, and the potential impacts of piracy on the country's implementation of the ACFTA were dialectically analyzed using both primary and secondary materials.

Findings—The results provided significant support to the author's thesis that piracy would adversely implicate on Nigeria's implementation of the ACFTA.

Practical Implications—The study revealed that the effective implementation of the ACFTA by Nigeria requires the suppression of piracy off its waters. Consequently, the study advocated for the adoption of a regional cooperation mechanism to curb the crime.

Originality, Value—The originality of this paper is strengthened by the dearth of scholarly papers linking piracy to the ACFTA and the fact that the result of the thesis reveals that though piracy off the Nigerian waters threatens the implementation of the ACFTA by Nigeria, the use of regional cooperation platform provides a veritable anti-piracy model to curb the crime.

Keywords: ACFTA, LOSC, Nigeria, piracy, SPOMO Act

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I. Introduction

The attainment of economic integration declared by African countries under the aegis of the African Union (AU) post-colonial control of the continent has continued to dominate the continent's political space for more than half a century. Ultimately, the germane goal of AU "is full political and economic integration leading to the United Africa."¹ A slew of studies has suggested that the realization of this ultimate goal is feasible,² which implies that there is a need to engage in the establishment of structures toward that end. Ultimately, the African Continental Free Trade Area (ACFTA) is the vehicle through which AU intends to achieve sustainable economic development.³ The ACFTA will be comprehensive in its attempt to eliminate tariff and non-tariff barriers to trade in goods and services in Africa; thereby establishing "a stepping stone to an African customs union and, later, a fully-fledged African economic community."⁴

Aside from being a member of the Economic Community of West African States (ECOWAS) and having established domestic economic programs, such as the Economic Recovery and Growth Plan (ERGP), Nigeria could utilize the ACFTA as a conduit for fast-tracking its economic development. Consequently, a combined implementation of ERGP and the ACFTA would increase the import and export potential of Nigeria.⁵ Besides, the ACFTA—which emphasizes intra-African trade—requires an increased investment in transport infrastructure, especially ports, in Africa.⁶ Shipping, as part of logistics, is critical in the realization of the objectives of the ACFTA. Nonetheless, insecurity in the waters surrounding Africa may limit the attainment of the goals of the ACFTA. For example, the Gulf of Aden (GOA) and the Gulf of Guinea (GOG)—which are critical navigational routes for regional and international trade and shipping—are prone to piracy attacks (see Table 1). These attacks have both economic and humanitarian consequences on these African countries.⁷

Research has shown that GOG is currently the most dangerous navigational route in the world.⁸ More pointedly, the perpetrators of these attacks against vessels are Nigerian pirates and most of the piratical acts occur off the coast of Nigeria.⁹ Further, Kiourktsoglou and Coutroubis argue that pirates attack all kinds of vessels, *to wit*, general cargo, bulk carriers, tankers, ro-ro, and yachts¹⁰; which implies that vessels engaging in economic activities in Nigeria under the ACFTA (export and import of goods and services) may be hijacked by pirates. Also, the occurrence of piracy in the waters of Nigeria would lead to high costs of shipping in the country because of the increase in insurance premiums and rerouting of vessels. More pointedly, some shipping lines may avoid calling at Nigerian ports or traversing through the country's waters.

Against this backdrop, this study attempts to fill the lacuna in the effect of piracy on the implementation of the ACFTA by Nigeria. The study uses primary materials—legal instruments and case laws—and secondary materials, like scholarly publications, to dialectically analyze the effect of piracy in Nigeria's implementation of the ACFTA. The adoption of this methodology is significant because the research essentially requires the interpretation of extant legal instruments, case laws and a critical assessment of scholarly publications and data to analyze the likely impacts

of piracy on the implementation of the ACFTA by Nigeria. Thus, the study dialectically analyzes the development of the ACFTA and its potential economic benefits to Nigeria, the history, nature and legal framework of piracy in Nigeria, the potential threats posed by piracy to Nigeria's implementation of the ACFTA, and measures to curb the crime. The study observes that piracy off the Nigerian waters has economic, political, and sociocultural effects on the implementation of the ACFTA by Nigeria. And in line with the ACFTA protocols that suggest that the Member States should take action for their security interests¹¹; this study recommends regional cooperation mechanisms to combat the crime.

II. Overview of the Development of the ACFTA

2.1 *The Historical Development of the ACFTA*

According to Nanga, the ideation toward a single African Economic Community (African market) has been linked to the pan-Africanism that was formally deliberated by post-independent African countries in the early 1960s; which indicates that such an economic masterplan for Africa is not new.¹² During the process of establishing the Organization of African Unity (OAU), the importance of African economic unity was muted. Nkrumah reiterated the significance of establishing such a market that would significantly promote "the true requirements of the African states. Such an African Market presupposes a common policy for overseas trade as well as for inter-African trade and must preserve our right to trade freely everywhere."¹³ Though it was envisaged that such an economic union would require, *inter alia*, a single African currency, an African central bank, and an African confederal political structure¹⁴; the reality is that only African coordination and consultation have been achieved.

In the absence of any visible changes in the economic trajectory of most African countries, there were many attempts to establish a regional economic pact that will trigger the much-anticipated economic development in Africa, like the 1970s Lagos Plan.¹⁵ The Lagos Plan was subsequently replaced by the African Economic Community (AEC) signed in Abuja by 51 OAU states. As AU replaced OAU, the AEC was substituted by the New Partnership for Africa's Development (NEPAD). Nanga submitted that the combination of the AEC and the NEPAD became the foundation that culminated in the formation of AU's new Pan-Africanist project, "Agenda 2063: The African We Want," which has the ACFTA at its critical stage.¹⁶

According to Berahab and Dadush, the ACFTA exists to curb the rising winds of protectionism, promote "the welfare of the world's poorest and least integrated continent ... aims to liberalize goods and service trade, facilitate investment, and in a second phase, address issues such as intellectual property rights and dispute settlement."¹⁷ The ACFTA will oversee "a market of 1.2 billion people and a Gross Domestic Product (GDP) of 2.2 trillion dollars."¹⁸ Lastly, the need to improve the transport infrastructure in Africa to facilitate the ACFTA suggests that the security

of such infrastructure (like ports) and the promotion of the security interest of Member States,¹⁹ is a very significant aspect of the agreement.²⁰

2.2 A Dialectical Analysis of the ACFTA

Regional cooperation and regional integration are suggested to be key to tackle development challenges that cannot be solved at the national level. It has long been on the agenda of African countries, regions, and regional organizations to address the issue of “human security and mobility to rural livelihoods, trade, infrastructure, food security, environment, and climate change.”²¹ Regional integration in terms of economic development is deemed to—*inter alia*—“improve efficiency as a result of competitive pressures among rival firms.”²² In contemporary Africa, regional economic and political integration remains a priority in the landscape of the continent. Consequently, it is argued that the ACFTA exists not only to significantly facilitate the growth of the economies of Member States but also to create “a single market for goods and services, facilitated by the movement of persons”²³ within the continent.

The ACFTA coverage spans over a market of 1.2 billion people and a GDP of about US\$2.5 trillion that extends to all 55 Member States of the AU.²⁴ Comparatively, the population—including GDP—of Africa is approximately that of India, but it is divided into 55 AU Member States.²⁵ Many of the African countries are too small to contribute to “the economies of scale and investments necessary for industrial growth: 21 have a GDP less than \$10 billion.”²⁶ The ACFTA attempts to integrate and consolidate Africa into a US\$2.5 trillion market and expurgate the average tariffs of 6.9 percent that businesses encounter when they trade across Africa’s 107 unique land borders.²⁷ Also, the ACFTA seeks to eliminate “substantial non-tariff barriers, regulatory differences, and divergent sanitary, phytosanitary and technical standards that raise costs by an estimated 14.3 percent”²⁸ in Africa.

In addition to the above review, it is imperative to understudy the regional economic communities (RECs)—SADC, EAC, COMESA, ECOWAS, ECCAS, IGAD, AMU, and CENSAD²⁹—that are the drivers of the ACFTA. The establishment of these RECs was to advance the process of regional integration. The existence of the RECs has culminated in support programs, like the infrastructure development of the regions and the facilitation of compensation. For example, the ECOWAS Regional Development Fund (ERDF) has been instrumental in lending support to regional infrastructure projects, including fiscal compensation.³⁰ The “ACFTA not only ensures the continuation of the benefits accrued from the deeper integration in the RECs but also provides for alignment of RECs’ laws and regulations.”³¹ Furthermore, the ACFTA facilitates the RECs to realize the goals of integration in “market size and large-scale investment from Africa and outside the continent.”³² In all, where there is an inconsistency between the ACFTA and any regional agreement—like the RECs—the former “shall prevail to the extent of the specific inconsistency, except as otherwise provided in the Agreement.”³³ It is submitted that the existence of these RECs is pivotal in the implementation and actualization of the goals of the ACFTA.

Further, the success of the ACFTA depends on the availability of infrastructure, peaceful coexistence among African countries, the existence of democratic governance, the observance of the rule of law, and the introduction of productive fiscal, monetary, and exchange rate policies.³⁴ Nonetheless, Africa's ability to effectively implement the ACFTA is stifled by the continent's contribution of only 3 percent of the world's GDP, the fact that one-third of the documented global conflicts are in Africa, the "median Doing Business Ranking of African countries is 150 out of 190 countries covered and that on the WEF Competitiveness Ranking is 117 out of 137 countries covered."³⁵ Despite the above limitations, Massimiliano Cali et al. submit that the increasing quest for regional integration, like the ACFTA, is triggered by the "limited progress of the multilateral trade agenda in the last two decades."³⁶

After the epochal signing of the ACFTA on May 21, 2018, it entered into force on May 30, 2019, having obtained the 22 ratifications by Parliament as contained in the Agreement.³⁷ More importantly, after signing the Agreement, Nigeria has ratified the ACFTA,³⁸ which is a step in the right direction. The ratification of the ACFTA by Nigeria implies that the country should secure its waters to properly and effectively implement the ACFTA. In a nutshell, Akuo opines that the purpose of the Agreement is to establish a progressive liberalization of trade among the Member States through sequential negotiations that would culminate in the establishment of a customs union.³⁹ Hence, the Protocol on Trade in Goods (PTGs), the Protocol on Trade Services, and the Protocol on the Rules, and Procedure for Dispute Settlement aspects of the AFCTA have been successfully negotiated. Given the nature of this study, the PTGs are the focal point of this research.

2.3 *The Protocol on Trade in Goods*

The objectives of the PTGs include the progressive elimination of tariffs and non-tariff barriers to trade, the enhancement of the efficiency of customs procedures and trade facilitation, the improvement of cooperation on technical barriers to trade and sanitary and phytosanitary measures, the promotion and encouragement of regional and continental value chains, and fostering socio-economic development, diversification, and industrialization.⁴⁰ A cursory look at this provision reveals that goods can move from one Member State to another or to the other Member States. For example, Nigeria can import or export goods to South Africa, on the one hand, or to South Africa, Ghana, Egypt, and Cameroon, on the other hand. To that end, effective maritime domain awareness, secured and safe ports, and secured navigational routes are pivotal in achieving these transactions.

The PTGs, in Articles 4 and 5, contain the non-discrimination provisions of Most-Favored-Nations (MFN) and the national treatment, respectively. Given the MFN doctrine, State Parties are expected to accord each other—on a reciprocal basis—preferences that are similar to those given to Third Parties in the implementation of the Protocol. As Akuo observed, it is without affecting the "arrangements which do not impede the Protocol and are extended *erga omnes* to State Parties; or arrangements between Parties to the Agreement that further the objectives of the

Agreement and are extended reciprocally to other Parties,”⁴¹ including other arrangements made before the coming into force of the ACFTA.⁴² It is instructive to note that the PTGs provisions on MFN and the national treatment only expanded the opportunities to engage in regional trade, as Nigeria can, in addition to the trade windows opened by the ACFTA, continue with other existing trade agreements it entered with other countries, as long as they do not impede the application of the ACFTA. Consequently, it potentially increases the volume of trade by Nigeria, which implies heavy vessel traffic in Nigerian waters.

Article 7, under Part III titled “Liberalization of Trade,” the PTGs provides for the elimination of tariffs, which is significant in the attainment of the objectives of the ACFTA. Paragraph 1 of Article 7 of the PTGs stipulates that State Parties shall steadily expurgate import duties or charges that have similar “effect on goods originating from the territory of any other State Party following their Schedules of Tariff Concessions contained in Annex 1 to this Protocol.” Additionally, Parties to the Agreement shall not impose any new import duties or charges having a similar effect on goods originating from the territory of any other State Party, except following the Protocol.⁴³ The import of these provisions, simpliciter, is to encourage the transportation of goods from one African country to another since barriers have been expurgated. Accordingly, the removal of tariffs, import duties, and other charges would culminate in an unprecedented increase in the number of vessels in the waters of Nigeria.

2.4 The Potential Impact of the ACFTA on Nigeria’s Economic Development

There are significant objectives contained in the ACFTA. They include the progressive elimination of tariffs and non-tariff barriers, the enhancement of efficiency of customs, trade facilitation and transit, the facilitation of socio-economic devel-

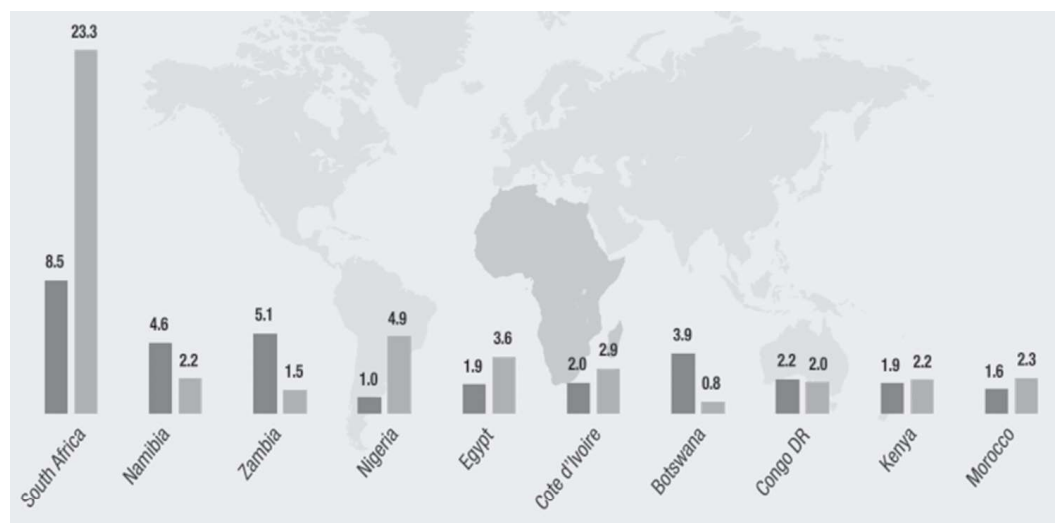


Figure 1. Top 10 intra-African trade contributors (US\$ billion). Source: “AFCFTA: Thriving in New Africa,” PricewaterhouseCoopers (PWC), <https://www.pwc.com/ng/en/assets/pdf/afcfta-2019.pdf>, p. 2.

Major export trading partners and percentage share in Q1, 2020 export trade	
India	15.61%
Spain	9.87%
Netherlands	9.72%
South Africa	7.82%
Cameroon	7.39%

Major import trading partners and percentage share in Q1, 2020 import trade	
China	26.28%
Netherlands	11.14%
United States	10.45%
India	7.92%
Belgium	6.11%

Figure 2. Major import and export partners in 2020. Source: “Foreign Trade in Goods Statistics (Q1 2020),” NBS, June 2020, <https://www.nigerianstat.gov.ng/>, p. 2.

opment, the development, diversification, and industrialization across Africa, and the development and promotion of regional and continental value chains.⁴⁴ It is significant to note that the signing and subsequent ratification of the ACFTA by Nigeria is an acceptance of the obligations of the Agreement.⁴⁵ Piracy adversely implicates on the objectives of the Agreement in terms of Nigeria’s exportation of petroleum products and raw materials, which account for about 88 to 95 percent of all the exports and 94 percent of export earnings of the country.⁴⁶

Moreover, as the seventh most populous country in the world and the largest economy in Sub-Saharan Africa,⁴⁷ Nigeria is a significant market for “many economies and companies looking to make inroads with their products and services.”⁴⁸ In terms of intra-African trade, Figure 1 suggests that as of 2017, Nigeria was the 4th contributor to trade among African countries. Aside from its robust market for African goods and services, Nigeria stands to gain from the ACFTA as there is an opportunity to increase its volume of exportation to other African countries. Therefore, Nigeria plays a significant role in regional trade in Africa and will contribute immensely to trade relationships with other African countries under the ACFTA.

Jibrilla suggests that the ACFTA can be beneficial to Nigeria if the country develops its industrial and agricultural sectors.⁴⁹ Consequently, the ACFTA would boost employment opportunities, increase food security through reduction to barriers on trade in agricultural products, enhance the competitiveness of Nigerian industrial

products through harnessing the economies of scale of a continental-wide market, and increase the rate of diversification of the Nigerian economy and the country's ability to supply its import needs from its resources.⁵⁰ Besides, the Agreement would facilitate the allocation of resources, enhance competition and reduced-price differentials, instill the growth of intra-industry trade through the regional value chain, and the development of geographically based specialization.⁵¹ Thus, the ACFTA would encourage the diversification of the economy of Nigeria from extractive commodities, like oil and gas, "towards a more balanced and sustainable export base."⁵²

Similarly, Nigerian small and medium-sized enterprises (SMEs) would benefit from the ACFTA. As an illustration, the Agreement creates an enabling environment where the SMEs in Nigeria would easily supply inputs to larger regional companies, who would subsequently export the goods to the final consumers.⁵³ From the standpoint of agriculture, since the SMEs play a significant role in the agricultural development in Nigeria, the existence of the ACFTA would be a veritable mechanism to strengthen the export potential of the agricultural SMEs in Nigeria. This is significant for cash crops that Nigeria has a comparative advantage in their cultivation and exportation.⁵⁴ Again, in terms of non-agricultural goods, the ACFTA will benefit Nigeria since the country is the largest petroleum exporter with a share of 45 percent of intra-African exports.⁵⁵

In terms of expected impact on businesses in Nigeria, 65 percent of businesses anticipate that the ACFTA could assist them in overcoming their major challenges "while 22 percent accentuate them."⁵⁶ In the same vein, 34 percent of large companies presume that the ACFTA could highlight their difficulties, in contrast to 25 percent of medium companies and 18 percent of small companies.⁵⁷ It has been suggested that the majority of the companies who expect the ACFTA to ease their business obstacles reached this conclusion because of the improved ease of doing business (32%), due to infrastructure improvement (24%), and the enlargement of markets for Nigerian producers (17%) as a result of the Agreement.⁵⁸

Overall, it is imperative to expand trade between Nigeria and other African countries given the availability of natural resources in Nigeria. Presently, only South Africa and Cameroon were listed as major export trading partners with Nigeria in the first quarter (Q1) of 2020 (see Figure 2). On the other hand, according to Figure 2, there was no African country among the major trading partners with Nigeria in the Q1 of 2020. The import of the data and the previous analysis is that trading between Nigeria and other African countries needs to be broadened due to the ACFTA. The realization of this objective may be derailed due to piratical acts in Nigerian waters.

III. The History and Nature of Piracy in Nigeria

3.1 Historical Development of Piracy in Nigeria

Globally, the history of piracy depicts that the crime is an antiquated phenomenon that dates back hundreds of years,⁵⁹ which has political, humanitarian, and economic ramifications. Winkel observes that the politics of piracy, including its

countermeasures, is a theme that resonates with historians, scholars of international politics⁶⁰ and trade, and shipping and ocean governance experts. While piracy has become widespread and a major threat to the “booming global seafaring,”⁶¹ attacks occurring off the GOG and “the Horn of Africa are severely disrupting international trading”⁶²; with a propensity to derail the ACFTA and other regional economic activities. Due to the global nature of the effects of piracy, regional antipiracy measures—among others—are essential in curbing the crime.⁶³

Historically, piracy in Nigeria has its origin in colonial legislation.⁶⁴ The Slave Trade Act of 1825—which was introduced by the British colonial government—provided that any British subject who conveyed a person with the intent of bringing him or her as a slave to any place would be guilty of piracy.⁶⁵ Nevertheless, modern piracy in Nigeria is an amalgam of many socioeconomic activities along the coast of Nigeria, which are summarized thus: from palm oil trade to fishing, attractive cargo imported through the waters of Nigeria, and the exploitation and exportation of crude oil, including chemicals.⁶⁶ Despite the contributions of smuggling and trafficking of persons, arms, and drugs in the heightened piratical acts in Nigerian waters, the activities of crude and refined oil thieves, resource control agitators, and political tugs in the oil-producing communities in the Niger Delta region of the country sustained piracy.⁶⁷

Generally, poverty, unemployment, the neglect and exploitation of people, and the absence of rule of law and democratic governance are some of the factors that contribute to the emergence and sustenance of piracy in the global community.⁶⁸ Panjabi succinctly captures some of these factors as “virtual islands of prosperity surrounded by a sea of poverty, hunger, and misery.”⁶⁹ Moreover, contemporary piracy involves using the global positioning system to track potential vessels targeted for attack, deploying small arms and rocket-propelled grenades to intimidate ships to reduce speed or stop to allow the pirates to board the vessels, obtaining information about the vessels’ manifests and schedule, and supporting the use of mother ships (like large merchant vessels and fishing boats).⁷⁰ From the foregoing, piracy in Nigerian waters poses a threat to the implementation of the ACFTA by the country.

3.2 Assessment of Nigeria’s Piracy Legal Regime

In light of the foregoing, it is apposite to briefly review the legal regime and institutional framework for piracy suppression in Nigeria. This is significant because the implementation of measures to combat piracy in Nigerian waters requires extant anti-piracy legislation and maritime regulatory and security agencies. In 2019, Nigerian government enacted the Suppression of Piracy and Other Maritime Offences Act (the SPOMO Act) to combat piracy off the country’s waters. The importance of the SPOMO Act is that it incorporated the definition of piracy under international law,⁷¹ which states that piracy involves an act of violence against a ship for private ends on the high seas involving two vessels.⁷² Given the inherent limitations in the definition, like the high seas principle, the SPOMO Act, in section 4, includes other maritime offenses, like armed robbery against a ship, which could occur in territorial waters.⁷³ So, Nigeria has a robust legal regime to combat piracy.

Notwithstanding, Bueger observed that the existence of piracy legislation may not lead to proper enforcement.⁷⁴ Consequently, the sentencing of three pirates delivered by Justice I.M. Sani of the Federal High Court sitting in Port Harcourt, River State, in the first piracy case in Nigeria buttresses the argument that the existence of anti-piracy legislation does not lead to its proper enforcement.⁷⁵ These pirates were fined the sum of 20 million naira (US\$52,000) each for the crime, contrary to section 12 (1) of the SPOMO Act that provides life imprisonment and a fine of not more than 50 million naira for convicted pirates. This author observes that though the conviction of the pirates is a laudable development in the suppression of piracy in Nigeria, the lenient sentencing will not deter other pirates from engaging in piratical acts in the future.

Additionally, the Nigerian Maritime Administration and Safety Agency (NIMASA)⁷⁶ was established to enforce all maritime security conventions, regulations, and guidelines.⁷⁷ In cooperation with the Nigerian Navy, NIMASA is saddled with the responsibility of monitoring the coastline of Nigeria. To prevent vulnerable vessels, like ships that are not seaworthy, have untrained seafarers or are non-compliant to International Maritime Organization's (IMO) guidelines for the safety and security of vessels from navigating through Nigerian waters; officials of NIMASA board vessels that call at Nigerian ports for inspection.⁷⁸ Given the broad functions of NIMASA, it becomes imperative to adequately train and equip the agency's officials. Notwithstanding its counter-piracy role, the agency lacks modern surveillance facilities, regular training, and adequate funding.⁷⁹ Moreover, corruption and embezzlement of funds also limit the capacity of NIMASA, including the navy, to curb piracy in Nigeria.⁸⁰

3.3 *The Nature of Piracy in Nigeria*

Table 1: The number of actual and attempted piracy attacks off the coasts of selected African countries

COUNTRY	2015	2016	2017	2018	2019	2020 (Q1)
Nigeria	14	36	33	48	35	11
Somalia	—	1	5	2	—	—
Benin	—	1	—	5	3	3
Cameroon	1	—	—	7	6	—
Kenya	2	2	1	—	1	—
Angola	—	2	1	—	—	3
South Africa	—	1	—	—	—	—
Morocco	—	1	—	—	2	—
Egypt	1	—	—	—	—	—

Source: created by the author from the ICC/IMB Piracy Report for 2019, 2020, p. 5, and the ICC/IMB Piracy Report for Q1 of 2020, p. 6.

Before delving into the nature of piracy in Nigeria, it is imperative to comparatively analyze the number of actual and attempted piracy attacks that occur off the coast of Nigeria. It is important to note that the above data may not be comprehen-

sive as many incidents may not have been reported, which distorts the level of risk in Nigerian waters.⁸¹ A glance at Table 1 clearly shows that acts of piracy abound in the waters surrounding Africa. However, according to Table 1, since 2015, the number of pirate attacks in Nigerian waters is more than the number of attacks in the waters of the rest of the African countries combined. Using the IMB data for the first quarter (Q1) of 2020 (January to March) captured in Table 1 as a case study, while 11 attacks have taken place in the waters of Nigeria, the rest of the countries in the table have 6 attacks off their coasts. The implication is that piracy is rife in the waters of Nigeria. Hence, piracy would implicate on the country's implementation of the ACFTA.

One of the striking features of piracy in Nigeria is the profiles of the pirates in terms of what led them to the crime. It is common knowledge that most Nigerian pirates are former militants that participated in resource control agitation. Ajibola observes that after the introduction of the amnesty program by the government of Nigeria, most of the militants decided to extend their violence to the sea.⁸² Additionally, some of the Nigerian pirates are remnants of armed thugs used during elections in the Niger Delta region. The Niger Delta politicians—in a bid to win elections—mobilize and arm gangs against their opponents.⁸³ In the absence of any form of disarmament after the elections, these armed gangs keep their weapons and use the arms to perpetrate other crimes, including piracy.⁸⁴

Aside from being very violent,⁸⁵ Nigerian pirates specifically target tankers carrying crude oil, refined petroleum products, and chemicals.⁸⁶ Illustratively, pirates attacked a tanker sailing under the Liberian flag off the Nigerian coast.⁸⁷ Again, Nigerian pirates attack fishing trawlers and extend their attacks to other GOG countries' waters.⁸⁸ More importantly, the absence of maritime domain awareness in Nigeria contributes to the nature of piracy off its coast as there is inadequate monitoring of the country's coastline by NIMASA and the Nigerian Navy.⁸⁹ It is submitted that due to the nature of piracy in the waters of Nigeria, particularly the absence of maritime domain awareness, the import and export of goods from Nigeria to other African countries under the ACFTA would be threatened.

3.4 The Economic Cost of Piracy in Nigeria

Beyond the humanitarian effect of Nigerian piracy as seafarers and security personnel are killed,⁹⁰ there are many economic consequences linked to piracy off the Nigerian coast. Using the two globally known piracy infested waters in Africa as case studies, the economic cost of piracy of the GOA from 2015 to 2017 was US\$1.3 billion (2015), US\$1.7 billion (2016), US\$1.4 billion (2017), while that of the GOG was US\$719.6 million (2015), US\$793.7 million (2016), and US\$818.1 million (2017).⁹¹ In 2018, it was estimated that Nigeria lost about US\$2.74 billion in the past four years, which was for the payment of "insurance charges and other sundry surcharges imposed on Nigerian shipments because the country's territorial waters are not safe for navigation."⁹² This implies that insurance charges and other surcharges will be levied on shipments involved in the ACFTA transactions, which will invariably implicate the effective implementation of the agreement by Nigeria.

Specifically, according to Nigerian National Petroleum Corporation (NNPC), piratical acts and theft of crude oil off Nigerian waters have culminated in the loss of US\$750 million by the country.⁹³ Similarly, in the fishing industry in Nigeria, many fishing trawlers are idle because the owners of the boats are afraid to sail, thereby threatening about 50,000 jobs.⁹⁴ Further, “Nigeria stands to lose up to US\$600 million in export earnings due to piracy threats to its fisheries.”⁹⁵ A glean at the data shows that piracy off the Nigerian coast potentially threatens economic activities that could emerge as a result of the introduction of the ACFTA. Put differently, the attempt by companies in other African countries to exploit the Nigerian market to sell their goods or purchase raw materials from Nigeria and the exportation of Nigerian goods to other African countries will be adversely affected by piracy.

IV. The Potential Effects of Piracy on the Implementation of the ACFTA by Nigeria

In light of the foregoing, the maritime industry is pivotal in both regional and global trade engagements and other economic activities. Therefore, 80 percent of global trade by volume as well as more than 70 percent of its value is carried through the sea.⁹⁶ Furthermore, Jarrod categorically states that aside from being the most cost-effective means of moving goods and services around the world, maritime industry is an important economic sector that directly and indirectly implicates “on the prosperity of a region providing a source of income and employment for many developing countries.”⁹⁷ Consequently, a secured navigational route is crucial in the implementation of the ACFTA by Nigeria as the absence of a secured sea would impede the transportation of raw materials, regional and global trade, and energy supply.⁹⁸

Statistically, the intra-African trade was about US\$135 billion, with a growth of 9 percent year-on-year from US\$124 billion in 2016.⁹⁹ While South Africa, Namibia, Zambia, and Nigeria contributed over 37 percent of the intra-African trade in 2017, Nigeria remains one of the key drivers of intra-African trade, “with its total intra-African trade growing by 8% in 2017, from a contraction of 27% in 2016.”¹⁰⁰ The import of these data depicts that Nigeria plays a significant role in the attainment of the objectives of the Agreement, which inform the need to address piracy off the country’s waters. There will be an increase in the cost of vessel and cargo insurance, and other surcharges will be imposed on Nigerian cargo.¹⁰¹ Also, the cost of rerouting vessels due to the insecurity in the waters of Nigeria implies a high cost of exported or imported goods in Nigeria.¹⁰²

As mentioned earlier, the Nigerian ERGP and the ACFTA have some commonalities, which will be implicated by piracy. As an illustration, both the ERGP and the ACFTA provide opportunities for the exploitation of new frontiers and expansion to larger markets for “Nigerian exports of manufactured goods and services”¹⁰³ and importation of raw materials. Hence, piracy off the Nigerian coast threatens the

implementation of the ACFTA and other similar agreements and programs by the country. Using the Dangote group as a case study:

The Dangote group employs a combination of exports and FDI across Africa. It presently operates in 10 African countries including 8 where production takes place and 2 where presence is maintained by bulk exports. Plans are underway to extend production to those two countries and expand to many more countries. With AFCTA, Dangote group will expand its market share significantly across Africa, contribute significantly to job creation, and grow its net worth. Over the next 10 years, the group is projected to hold 59.4% share of the Sub-Saharan African cement market, with sales reaching 140 Mt and assets reaching N20 trillion.¹⁰⁴

Another possible implication of piracy on the implementation of the ACFTA by Nigeria is that most single ship operators in Nigeria may be forced to close their business, as witnessed in the fishing subsector,¹⁰⁵ due to the cost implication of operating in piracy infested waters like the GOG. As many bulk carriers, container vessels, oil, and chemical tankers, among others, suspend their operations in the GOG, the effective implementation of the ACFTA by Nigeria in terms of exportation and importation of goods between Nigeria and other African countries would be jeopardized. Moreover, Jin et al. aver that most pirates target the cargo, for example, crude oil, which they sell on the black market.¹⁰⁶ It is observed that vessels transporting raw materials and natural resources, like crude oil, from Nigeria to other African countries are potential targets for piracy attacks in Nigerian waters.

The impact of piracy on Nigeria's implementation of the ACFTA can be addressed from its effects on trade. In linking piracy to trade, the economic impact of piracy on trade emerges as ship operators decide to change their main navigational and trading routes to avoid the threat of piratical attack.¹⁰⁷ Additionally, the impact of piracy on trade has been interrogated and Morabito and Sergi argue that "maritime piracy affects international trade through an increased insecurity concerning the delivery of goods."¹⁰⁸ The effect of ship operators changing their trade and navigational routes, increasing insecurity regarding the delivery of goods, and shipping companies going out of business or suspending operation in the GOG is that Nigeria may not be able to fulfill its obligations as specified in the ACFTA agreement.

This study argues that piracy implicates the creative economy, the art-craft industry, and the tourism sector—which are critical aspects of the socio-cultural and economic development of Africa—in terms of the implementation of the socio-economic aspect of the ACFTA by Nigeria.¹⁰⁹ Though there is limited scholarship on the impact of piracy on the art-craft industry, the tourism sector, and the creative economy, Anele has argued elsewhere that piracy threatens coastal tourism and import and export of art-craft items, which adversely implicate on the art-craft industry, the tourism sector, and the creative industry.¹¹⁰ Hence, the sale of the art-craft items or raw materials for producing art-craft items may be hampered as vessels transporting these items are hijacked, whereas African tourists visiting Nigerian tourist locations through the sea are exposed to kidnapping and torture due to piracy in Nigerian waters.¹¹¹

Summarily, it is irrefutable that piracy adversely implicates on the implemen-

tation of the ACFTA by Nigeria in terms of actualizing the socio-economic benefits of the Agreement. Illustratively, the combined reading of the piracy acts that occur in the waters of Nigeria contained in Table 1 and Figures 1 and 2 that highlighted Nigeria's trade contributions to Africa and Nigeria's major trading partners in the Q1 of 2020 clearly shows that piracy will reduce such trading activities between Nigeria and other African countries. Examples of the effects of piracy on the implementation of the ACFTA by Nigeria include, but are not limited to, the cost of hiring private security personnel (PSP) onboard the vessels, high cost in rerouting vessels, increased insurance cost, reduction in fishing, and a limited number of foreign tourists visiting Nigeria.¹¹² To obviate the consequences of piracy on the implementation of the ACFTA by Nigeria, this paper recommends measures that will facilitate the suppression of piracy off the country's coast.

V. Measures to Suppress Piracy Off the Coast of Nigeria

Piracy implicates the economic development of Nigeria and the implementation of the ACFTA. Nevertheless, the success recorded in reducing the impact of Somali and Asian piracy¹¹³ means that with appropriate anti-piracy measures, the impact of piracy on the implementation of the ACFTA by Nigeria will be minimized. Though the ACFTA does not mention piracy as a security threat to the realization of its objectives, its protocols enjoin the Member States to take action for their security interests.¹¹⁴ Thus, given the impact of international and regional cooperation in combating piracy and the fact that the implementation of the ACFTA by Nigeria will benefit African countries, this paper suggests the use of regional cooperation as a mechanism to implement counter-piracy measures in Nigerian waters. The study argues that beyond the domestic anti-piracy efforts by Nigeria,¹¹⁵ suppressing piracy under a regional cooperation platform is a matter of strategic importance to Nigeria and other African countries, particularly in the era of the ACFTA. This contributes significantly to the domestic counter-piracy efforts put in place by the Nigerian government, which include, *inter alia*, the existence of sub-regional efforts: Yaounde Code of Conduct,¹¹⁶ the enactment of the SPOMO Act 2019, the establishment of NIMASA, and the prosecution of pirates in a Nigerian court.

5.1 Enactment of a Regional Anti-Piracy Instrument

Similar to ReCAAP,¹¹⁷ the enactment of an anti-piracy agreement specifying the code of conduct¹¹⁸ for the entire African continent—which would define piracy and armed robbery at sea and could subsequently be made legally binding at the behest of the African countries—would go a long way toward introducing a uniform anti-piracy legal framework in Africa. Further, the agreement could provide for the establishment of a joint naval patrol team (with many patrol vessels) that would monitor piracy infested waters in Africa. It is important to point out that ReCAAP has contributed

to the reduction of piratical acts in Asia due to the creation of an information-sharing center (ISC), financial contributions by the Member States, joint naval exercises, and coordinated efforts by the contracting States to curb piracy in the region.

5.2 Regional Cooperation as a Gangway for the Implementation of Maritime Security Instruments

It is argued that maritime security instruments¹¹⁹ can be effectively implemented under the purview of regional cooperation. For example, the instrumentality of port state control (PSC) can be utilized effectively to ensure the implementation of existing maritime security instruments. This aligns with the regional cooperation platform envisaged by this study. This is important since pirates target vulnerable vessels for an attack.¹²⁰ The effective application of the PSC, especially regional cooperation in implementing the PSC, could lead to the reduction of vulnerable vessels navigating piracy infested waters, like the GOG. More importantly, effective regional cooperation aligns with the provisions of some maritime security instruments in light of the extradition of arrested pirates by the arresting country for prosecution by another country.¹²¹ This will encourage the arrest and prosecution of pirates where the arresting country may not be able to prosecute for lack of an anti-piracy legal regime, among other reasons.

5.3 Establishment of a Regional Maritime Security Agency

The creation of a regional maritime security agency will not only facilitate the enforcement of maritime security instruments but also the monitoring of waters surrounding Africa. It is argued that the existence of maritime domain awareness in Africa because of regular surveillance of the continent's waters will go a long way toward preventing the occurrence of piracy. Moreover, the existence of such a regional maritime security agency would engender joint naval exercises among the navies of African countries, including regional cooperation to assist with capacity building and development of the navies of the countries whose waters are prone to piracy attacks, like Nigeria. Besides, the issue of hot pursuit¹²² will be better executed if the vessel of the joint naval team is in pursuit of a pirate ship that entered any African country's territorial waters.

5.4 Creation of a Regional Court

In the wake of a regional maritime security agency, the prevention of piracy through capturing and prosecution of pirates is possible. In cases where pirates are arrested, it is imperative to formally charge them with the crime of piracy in court immediately to avoid violating their rights. Therefore, in line with the suggestion of Piquet, this study recommends the creation of a regional court saddled with the singular responsibility of hearing piracy cases,¹²³ which could be located in Nigeria¹²⁴ or any other African country.¹²⁵ The creation of this regional piracy court will reduce the burden of national

courts in adjudicating piracy cases and lead to a uniform application of the extant anti-piracy legal instruments. Alternatively, the existing African Court of Human Rights should be given the responsibility of hearing piracy cases. It is instructive to note that the expansion of the jurisdiction of the court can be done by introducing an amended protocol to that effect. Because of the significance of prosecuting pirates in domestic courts, it is imperative to rigorously implement the provisions of the law to deter pirates from engaging in piratical acts. Thus, the sentencing in the case of *Binaebi Johnson* should not be used as a precedent in the prosecution of pirates in Nigeria.

VI. Conclusion

The emergence of the ACFTA brings good tidings to African countries, particularly those whose economy depends on the importation of finished goods and the exportation of raw materials: Nigeria. The removal of tariffs and non-tariff barriers under the ACFTA is to bolster trade among African countries. Nonetheless, the objectives of the agreement seem to be threatened by piracy off the waters of Nigeria. Because of the significant role Nigeria plays in intra-African trade and as the biggest economy in the continent, piracy off the Nigerian coast will adversely implicate on the country's implementation of the agreement. Specifically, this paper argues that the implementation of the ACFTA in Nigeria would be adversely affected because of the unique methods of piracy in Nigeria. This would, in turn, have severe economic and humanitarian implications for the country. For instance, ship owners would avoid sailing through Nigerian waters, stop calling at Nigerian ports, reroute their vessels or employ PSPs. This would increase the cost of shipping with its attendant effect on the prices of goods imported into Nigeria from other African countries, including goods exported from Nigeria to other African countries, under the ACFTA. Since Nigeria has signed and ratified the agreement, it becomes imperative to address the threat posed by piracy in the country's waters. This is because piracy threatens the fulfilment of the ACFTA obligations by Nigeria and there is a legitimate expectation from the Member States that Nigeria should secure vessels engaged in ACFTA activities off the Nigerian waters. Given the fact that Nigerian piracy affects other African countries, particularly West African countries, it becomes imperative to utilize the regional cooperation mechanism to curb piracy in Nigeria. Among other measures, the study suggested the enactment of a regional code of conduct similar to ReCAAP, which would criminalize and outline punishment for pirates as a counter-piracy effort. In closing, by effectively implementing the above counter-piracy measures, piracy will be reduced and the implementation of the provisions of the ACFTA by Nigeria may not be affected.

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Notes

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110. This author has addressed the issue of piracy and its potential effects on the art-craft industry in Indonesia. See generally Kalu K. Anele (c), "Piracy Off the Coast of Indonesia: Potential Implications on the Craft Industry," *Brawijaya Law Journal*, 7(1) (2020), pp. 1–26, <https://lawjournal.ub.ac.id/index.php/law/article/view/253/pdf>, accessed November 10, 2020, <https://doi.org/10.21776/ub.blj.2020.007.01.01>; See also Toakodi Adongoi et al., "Sea Robbery and Its Implication on Tourism Development in Niger Delta Region of Nigeria," *International Journal of Social & Management Science, Maiden Edition*, 2(1) (2019), pp. 1–13, https://www.zeetarz.com/ijsms/wp-content/uploads/2018/12/Sea-Robbery-and-its-implication-Tourism-Development-in-Niger-Delta-Region-of-Nigeria_2_-_1_.pdf, accessed November 10, 2020.
111. In line with the provision of article 26 (f) of the PTGs, member States have the authority to protect its national treasures of artistic, historic or archaeological value, which are crucial in the tourism sector and the art-craft industry in Nigeria. Since piracy may threaten the tourism sector and the art-craft industry in Nigeria, it becomes imperative for the government of Nigeria to curb the crime.
112. For further analysis detailing the possible effects of piracy on the implementation of the ACFTA by Nigeria, see Anele (b) 2020; Sami Bensassi and Inmaculada Martinez-Zarzoso, "How Costly Is Modern Maritime Piracy to the International Community?," *Review of International Economics*, 20(5) (2012), <https://doi.org/10.1111/roie.12000>, 869–883; Kennedy K. Mbekeani & Mthuli Ncube, "Economic Impact of Maritime Piracy," *African Economic Brief*, Vol. 2, Iss. 10, 14 July 2011, 1. For the use of private security personnel onboard a vessel, see Ladan Affi et al., "Countering Piracy Through Private Security in the Horn of Africa: Prospects and Pitfalls," *Third World Quarterly* (2016), pp. 1–17, <https://doi.org/10.1080/01436597.2015.1114882>.
113. J.V. Hastings, "The Return of Sophisticated Maritime Piracy to Southeast Asia," *Pacific Affairs*, 93 (1) 2020, DOI: 10.5509/20209315, p. 6; Ilan Fuchs, "Piracy in the 21st Century: A Proposed Model of International Governance," *Journal of Maritime Law & Commerce*, 51(1) (2020), p. 17; A.K. Karawita, "Piracy in Somalia: An Analysis of the Challenges Faced by the International Community," *Jurnal Hubungan Internasional*, 23 (1), 2019, p. 115; and J.V. Hastings & S.G. Philips

“Order Beyond the State: Explaining Somaliland’s Avoidance of Maritime Piracy,” *J. of Modern African Studies*, 56 (1) (2018), doi:10.1017/S0022278X17000519, pp. 5–30.

114. See the PTGs, art. 27.

115. For detailed analysis of some of the suggested counterpiracy measures in Nigeria, see generally Anele (b) 2020, 18–21.

116. The Code of Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa, Yaounde, 25 June 2013.

117. Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), entered into force on 4 September 2006.

118. The agreement (Code) envisaged here has been in existence at the sub-regional level. See the Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden, Resolution 1, Adopted on 29 January 2009 (the Djibouti Code of Conduct).

119. See the SUA Convention; *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers*, adopted 7 July 1978; and *International Ship and Port Facility Security Code*, adopted 12 December 2002.

120. See Jin et al. 2019, p. 2, where it was suggested that pirates target vulnerable ships.

121. See SUA Convention, art. 10.

122. See the LOSC, art. 111.

123. Jessica Piquet, “Changing Tides: An Adaptable Prosecution Approach to Piracy’s Shifting Problem,” *Columbia Journal of Transnational Law* 52 (2013), p. 257.

124. Like Kenya (The Merchant Shipping Act No. 4 of 2009, ss. 369–371), Mauritius (The Piracy and Maritime Violence Act No. 39 of 2011, Government Gazette of Mauritius No. 112 of December 2011) and Seychelles (Penal Code, Chapter 158, Laws of Seychelles, 2016, s. 65), Nigeria has enacted an antipiracy legislation and has prosecuted pirates in Nigeria’s local court. See the SPOMO Act and case of *Binaebi Johnson*, respectively. See also Anele (b) 2020, p. 11.

125. The establishment of the regional court in Nigeria seems to be advantageous considering the country’s proximity to where the piracy incidents occur and the existing piracy legal framework.

Biographical Statement

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