



# NIGERIAN MARITIME INDUSTRY: 2021 IN REVIEW

As opposed to the global downtime that commercial activities faced in the preceding year, the year 2021 was a very busy year, as many businesses leveraged the opening up of international trade and lifting of travel restrictions in response to the global coronavirus pandemic (“COVID-19”). The global shipping industry also had a great year despite widespread disruptions attributable to events such as the Suez Canal blockage, port congestions and seafarers’ sign on/off restrictions. 2021 also laid the foundation for a big transformation in global supply chains as well as the emergence of new maritime trade patterns. One of the landmarks in 2021 was A.P. Moller-Maersk A/S full-year profit, that matched its combined results from the past nine years, and is the largest ever declared by a Danish company.

The Nigerian shipping industry also had a better year 2021 when compared to 2020. The gradual recovery of intranational, regional and international economic activities, despite the rising foreign exchange rate, dearth of United States Dollars, increased freight prices and insurance premium on goods bound for Nigeria, also made 2021 a bright year for the Shipping and Oil Services Team at Bloomfield LP (“Bloomfield”).

We advised on several multi-jurisdictional ship finance and leases as well as sale and purchase of vessels (such as a derrick lay barge, LR1s, LR2s, MRs and FPSOs). The team also advised shipowners, regulators and financiers on matters touching on seafarers’ employment and welfare, debt restructuring, receivables recovery, corporate restructuring (including mergers), regulatory compliance and securitization. Bloomfield also advised on several interesting and novel disputes for shipowners, charterers, traders, protection and indemnity clubs (P&I Clubs), insurers and trade associations – these included the arrest and release of several vessels both within and outside Nigeria.

## Highlights of 2021

In 2021, we monitored developments in the shipping industry to be able to keep our clients updated and provide relevant and timely advice to our clients when required. Some of these developments include:

### Automation of Certificates Issued by the Nigerian Ship Registry (“NSR”)

Issuance of new certificates embedded with quick response codes (QR Codes) for automated verification by the primary regulator of the Nigerian shipping industry, the Nigerian Maritime Administration and Safety Agency (“NIMASA” or the “Agency”). The Agency also requested shipowners to complete a mandate form providing details of their authorized representatives who will be interfacing with the NSR.

### Marine Notice on COVID-19: Seafarers’ Sign On/Off

NIMASA by its Marine Notice: **MN 05/20/SN02** of 2020 (the “Notice”), in line with the Federal Government of Nigeria’s attempt to curb the spread of coronavirus, issued directives on the entry and exit of seafarers from vessels. Following the Notice, shipowners, shipping companies/agents, charterers, etc., among other things, were required to develop and implement a contingency plan and a COVID-19 risk assessment on their operations. On the other hand, the Notice also required that, seafarers were to, before joining or leaving a ship or offshore platform at anchorage/seaports/terminal/jetty, meet the national requirements on COVID-19 and in all travel locations, observe the standard guidelines provided by the Presidential Task Force on COVID-19, the National Centre for Disease Control (NCDC) and the Port Health Service on containing or preventing the spread of COVID-19 in Nigeria. There were increased efforts to implement these directives in 2021



## Fighting Illegalities in Nigerian Waters: Launch of Deep Blue Project

1. Under the Project, a Command, Control, Communication, Computer, and Intelligence Centre (C4I) was established for intelligence gathering and data collection. Additionally, sixteen (16) armoured vehicles were acquired for coastal patrol, while a Maritime Security Unit made up of six hundred (600) specially trained troops was set up for interdiction. Also, two Special Mission Aircraft were acquired for surveillance of the country's Exclusive Economic Zone (EEZ), while three (3) Special Mission Helicopters were acquired for search and rescue operations. The Federal Government also acquired four (4) Unmanned Aerial Vehicles for air operations as well as two (2) Special Mission Vessels and seventeen (17) Fast Interceptor Boats for sea operations.

2. See <https://www.icc-ccs.org/index.php/1312-piracy-and-armed-robbery-incidents-at-lowest-level-in-decades-but-imb-cautions-against-compacency>, last accessed January 13, 2022.

3. See the statement by the Nigerian Maritime Law Association (NMLA), available at <https://safety4sea.com/legal-concerns-raised-after-danish-frigates-kills-pirates-off-nigeria/>, last accessed January 11, 2022.

4. See <https://nairametrics.com/2022/01/07/gulf-of-guinea-piracy-danish-military-releases-suspected-nigerian-pirates/>, last accessed January 11, 2022.

5. Established further to the Nigerian Oil and Gas Content Development Act, 2010 (as amended), <https://ncifportal.boi.ng/ncif/public/faq>

6. See <https://businessday.ng/opinion/article/nigerian-local-content-act-at-10-impact-of-the-act/>, last accessed January 14, 2022.

On June 10, 2021, the President of the Federal Republic of Nigeria, Muhammadu Buhari, launched the Integrated National Security and Waterways Protection Infrastructure – nicknamed “The Deep Blue Project”. The Deep Blue Project which is Nigeria’s operational strategy to combat piracy and maritime offences in Nigeria’s territorial waters up to the Gulf of Guinea (“GoG”) was to be implemented by NIMASA, in partnership with the Federal Ministry of Transportation and other security agencies including the Nigerian Navy, Nigerian Air Force, Nigerian Army, Department of State Services, Nigerian Police Force, Marine Police etc.<sup>1</sup>

It is expected that the effective implementation of the Deep Blue Project will lead to a reduction/removal of war risk insurance requirements for ships trading on Nigerian waters for the benefit of all stakeholders in the Nigerian maritime industry.

It is noteworthy that Nigerian waters, after the launch of the Deep Blue Project, saw the lowest level of piracy and armed robbery incidents since 2004. In the third-quarter (“Q3”) of 2021, the International Maritime Bureau (“IMB”) reported that piracy and armed robbery at sea incidents declined by seventy-seven per cent (77%), as against the same period in the previous year and ninety-five per cent (95%) as against the same period in 2018. Four (4) incidents of piracy were reported in the first nine (9) months of 2021, in comparison to seventeen (17) in 2020 and forty-one (41) in 2018. The IMB also reported a thirty-nine per cent (39%) reduction in piracy and armed robbery incidents in the GoG. Twenty-Eight (28) incidents of piracy and armed robbery at sea were recorded to have occurred within the GoG region in the first nine (9) months of 2021, in comparison to forty-six (46) for the same period in 2020. IMB also reported that crew kidnappings in the region have dropped with only one crew member kidnapped in Q3 2021, compared to 31 crew members taken in five separate incidents during Q3 2020. All Q3 incidents in 2021 were also against vessels at port anchorages whilst the average successful kidnapping location in Q3 2020 was approximately one hundred nautical miles from land.<sup>2</sup>

## Fighting Illegalities in Nigerian Waters: The Danish Chapter - ESBERNE SNARE

Notwithstanding the above stated security initiatives and the IMB reports, piracy and armed robbery at sea incidents increased in the last quarter of 2021. On November 24, 2021, after firing warning shots to scare off eight (8) suspected pirates in a small vessel, the officers onboard the Danish military’s frigate, ESBERNE SNARE, killed four (4) of the suspected pirates and arrested four (4) others including one (1) injured person. The ESBERNE SNARE incident attracted the attention of Nigeria’s leading maritime practitioners, who commended all efforts to rid the GoG (including efforts by the Deep Blue Project and the Danish military) of piracy, maritime offences and criminality, but also emphasised the need for foreign security personnel to respect Nigeria’s territorial sovereignty as well as the application of rule of law.<sup>3</sup>

Interestingly, three (3) of the suspected pirates arrested by the Danish military, during the above stated ESBERNE SNARE incident, were released by the Danish government due to the alleged unwillingness of any of the GoG states to take them for prosecution. According to the Danish Justice Minister, Nick Haekkerup, the pirates “*have no relation to Denmark, and the crime they have been charged with was committed far from Denmark. They simply do not belong here, and that’s why I think it’s the right thing to do.*”

The Minister further revealed that the fourth suspect, who was injured at the incident and was earlier treating injuries in a Ghanaian hospital, has been taken to Denmark for prosecution.<sup>4</sup>

## Fiscal Incentives for Acquisition of Ships by Nigerians

The Director-General of NIMASA, Dr. Bashir Jamoh, at the Nigerian International Maritime Summit (NIMS) in October 2021, announced that the Federal Government of Nigeria had approved the waiver of import duty on the acquisition of ships as a fiscal incentive aimed at boosting and enabling the Nigerian maritime sector. He further stated that the Agency is pushing for further incentives for the sector.

The above is highly commendable as it will have a significant effect on the cost of acquiring vessels by Nigerians. It will further complement the efforts of the Nigerian Content Development and Monitoring Board (“NCDMB”) who continues to provide vessel acquisition facilities for indigenous oil and gas services companies at a single-digit interest rate with a maximum tenor of five (5) years through the Nigerian Content Intervention Fund (“NCI Fund”), a Three Hundred and Fifty Million (US\$350,000,000.00) fund established by the Nigerian Content Development Fund (“NCDF”) and managed by the Bank of Industry Limited (BOI).<sup>6</sup>

Although, the news on the import duty waiver is a welcome development, we are of the opinion that unless same is in a gazetted or enacted in a statute, the Nigerian Customs Service (“NCS”) may not comply with same, to the detriment of the Nigerian maritime stakeholders. Our position is informed by a similar situation in the aviation sector where the Federal Government had in 2016 announced a waiver of import duty on the acquisition of commercial aircraft. However, the NCS continued to collect Import Duty (and the 7% Import Surcharge that the Import Duty was practically replaced with) from persons importing aircraft into Nigeria until the waiver was enacted as section 39 of the Finance Act 2020.

## Smuggling of Narcotics via Nigerian Ports

A few vessels were detained for, inter alia, unlawful transportation and importation of narcotics and their crew members were also arrested. The port of origin for most of the detained vessels was in Brazil and the narcotics were found in the cargo holds whilst discharging cargoes in Lagos, Nigeria.

These incidences threw up series of investigation and prosecution challenges for the local authorities, all of which led to significant delays with severe financial consequences for owners and charterers. Also, owners are saddled with defending the charges proffered against the vessels by the National Drug Law Enforcement Agency (“NDLEA”) with the potential of the vessels being forfeited to the Federal Government.

## Notable Judicial Decisions

There were also several arbitration and litigation matters commenced in 2021. These matters arose out of shipping agreements which were affected one way or the other by COVID-19 and which did not include force majeure clauses that covered the COVID-19 pandemic. In relation to the litigation matters, some of these involved the arrest of vessels and the owners of the arrested vessels failed to provide the ordered security (usually, bank guarantee from a first class Nigerian bank) due to their inability to provide the funds required for the procurement of the bank guarantee and the unavailability of contracts for the relevant vessels.



7. 2021) LCN/15013 (CA)
8. (2010) 2 NWlr (pt.1179) 530
9. (2004) 5 NWLR (Pt 865)1
10. (1996) 4 NSC 182
11. See <https://shipsand-ports.com.ng/agbakoba-to-arrest-for-foreign-ships-flouting-nigerias-cabotage-law/> last accessed January 14, 2022.

Several judicial decisions that shape the Nigerian shipping industry were also delivered in the year 2021. First, the Lagos Division of the Court of Appeal (Coram Lokulo-Sodipe, Otisi and Hassan, JJCA) on February 19, 2021, delivered its judgment in **FUGRO SUB-SEA LLC v. PETROLOG LIMITED**.<sup>7</sup> Of interest to the maritime industry is the portion of the decision which upholds the jurisdiction of Nigerian courts in maritime matters and renders null and void arbitration clauses in maritime contract. The aforesaid decision relied on Section 20 of the Admiralty Jurisdiction Act ("**AJA**") which provides that any agreement by any person or party to any cause, matter or action which seeks to oust the jurisdiction of the Court shall be null and void, if it relates to any admiralty matter falling under the AJA. For maritime law practitioners, this appears to raise the ghost of the **MV MATRIX**<sup>8</sup> and the **MV PARNOMOS BAY**<sup>9</sup> conflicting decisions of the Court of Appeal regarding the jurisdiction of Nigerian courts as it relates to arbitration clauses in maritime contracts. As it stands now, the tally on Court of Appeal decisions on this matter is two (2) for Section 20 of the AJA and one (1) against. That said, we would lose no sleep as the Supreme Court's decision in the **MV LUPEX**<sup>10</sup> case said, inter alia, that Section 20 of the AJA is inelegantly drafted and "...is walking on its head." Interestingly, the **MV LUPEX** case was not considered in the Fugro case.

Also the Nigerian courts have in recent times embraced arbitration and not seen same as an ouster of their jurisdiction. We trust this would continue to be the trend notwithstanding the decision in the Fugro Case and maritime arbitration (including those with foreign seats), which has been universally adopted as a quick and reliable means of settling shipping disputes, would continue to be recognized in Nigeria.

Another important 2021 decision is the judgment of the Lagos Division of the Court of Appeal delivered on March 5, 2021, in **THE VESSEL M.T. SAM PURPOSE (EX MT. TAPTI) & ANOR. v. AMARJEET SINGH BAINS & 6 ORS.**, Appeal No.: CA/LAG/CV/419. In the judgment, the Court of Appeal held that the National Industrial Court ("**NIC**") has exclusive jurisdiction in any dispute concerning unpaid crew wages as it was a labour-related matter. This is notwithstanding the provisions of Section 2(3) (f) of the Admiralty Jurisdiction Act which lists a claim for crew wages as an admiralty matter, thus, within the admiralty jurisdiction of the Federal High Court; and notwithstanding that the NIC has no jurisdiction to order the arrest of a vessel as security for a maritime claim. We are of the view that had the Court properly considered the scope of the jurisdiction vested on the Federal High Court over admiralty matters as provided in Section 251(1)(g) of the Constitution of Nigeria 1999 (the "**Constitution**") which admits of no limitation from prior or subsequent provisions of the Constitution including Section 254C(1) which provides for the jurisdiction of the NIC, the Court would have arrived at a different decision.

With the far-reaching implications of the **MT SAM PURPOSE** judgment for the maritime sector, there is consensus among stakeholders on the need for an urgent response to the issues arising from the judgment. Such response may be by legislative intervention by way of alteration of the Constitution and legislation such as Admiralty Jurisdiction Act, Labour Act, Merchant Shipping Act, etc. to lay to rest the issue of jurisdiction in claims arising from crew wages. It is further suggested that in future cases with grave constitutional effect, particularly, such that would cede jurisdictions from a court to another, with an attendant consequence to international trade, the judicial process of 'case-stated' should be employed by Courts in deserving circumstances. It is equally suggested that where an appellate Court is faced with such substantial issue of law, whether arising from such case on reference or following a regular appeal, the Court should, as a matter of policy, constitute a special panel and extend invitations to amici curiae in such constitutional issues,

to ensure a robust deliberation and determination of the substantial and significant issue(s) of law.

### Maiden Maritime Law and Practice Workshop for Judges

In a bid to enshrine sound maritime decisions from our courts, the National Judicial Institute (NJI) in collaboration with the Nigerian Maritime Law Association ("**NMLA**") organised the Maiden Maritime Law and Practice Workshop for Judges. The NMLA provided the faculty and curriculum for the Workshop and same was well attended. The Workshop has now been slated as a yearly event on the NJI training calendar for Nigerian judges.

### Renewed Drive for the enforcement of the Cabotage Act

In a renewed drive for the enforcement of the the Coastal and Inland Shipping (Cabotage) Act (the "**Cabotage Act**"), NIMASA restated its plan to ban foreign-owned vessels from trading in Nigerian waters and to stop issuing ownership waivers to foreign vessels. This led to the detention of foreign vessels not compliant with the provisions of the Cabotage Act.

The year ended on an interesting note with the inauguration of a non-governmental body known as the Cabotage Implementation Forum ("**CIF**") on December 16, 2021. The CIF is made up of lawyers and members of the Nigerian Shipowners Association ("**NISA**"), Ship Owners Association of Nigeria (SOAN), Nigerian Chamber of Shipping and other partners. At the launch of the CIF, the Chairman, Board of Trustees of NISA, Chief Isaac Jolapamo promised to support the initiative of arresting erring foreign vessels in Nigeria.<sup>11</sup>

It must be noted that some vessels classified as foreign vessels include vessels with foreign registered companies (owned by Nigerians) but registered under foreign flags due to the requirements for the financing of the said vessels.

### Outlook for 2022

We foresee a very busy 2022, due to the continued COVID-19 pandemic and the imminent change of guard at the National Assembly and the Presidency. That said, we look forward to a steady build up business for our clients and foresee a very busy and profitable year for players in the shipping industries as international trade activities are likely to increase.

Below are highlights of events we anticipate for 2022:

Increased implementation of The Deep Blue Project with a view to stamping out criminality in the GoG and keeping low piracy and armed robbery at sea incidents in Nigeria waters. We also expect to see more international collaboration between Nigerian security operatives and their colleagues in other GoG states as well as non-GoG states like the United Kingdom, United States, and Nordic countries.

Effective implementation of the waiver of import duty on the acquisition of ships along the lines of our recommendations above. This would ensure that there are more funds available from Nigerian banks (and other developmental funds like NCI Funds) for vessel acquisitions. All in, more vessel sale and purchase transactions are expected in 2022.

We also expect other fiscal incentives in 2022, for the Nigerian maritime industry. One of the expected incentives, is the reverse or waiver of the additional taxes for the acquisition of ships (which in our opinion was inadvertently added) under the Finance Act 2021.





By implication, the Finance Act 2021 provides that any transaction for the sale and purchase of a vessel by a foreign seller to a Nigerian buyer, and with delivery in Nigeria, would attract Value Added Tax ("VAT") at the rate of seven point five per cent (7.5%) and the Federal Inland Revenue Service ("FIRS") may recover the VAT directly from the Nigerian buyer. This significantly increases the cost of importing vessels into the country. As a result of the foregoing, we envisage that rather than incur said extra costs, Nigerian buyers would elect to have their newly acquired vessels delivered at neighbouring ports like Lome, Togo thus leading to a chain of revenue (hotel and travel for the crew of the Sellers, supplies need by the Nigerian buyer, etc.) that would have accrued with the delivery of the vessel in Nigeria.

We, therefore, suggest a holistic approach in the proposed fiscal incentives given the potential for enhancing the blue economy and its potential for incentivising participation and investments in the Nigerian maritime sector.

We expect NIMASA to continue the detention of foreign vessel as part of its Cabotage enforcement drive.

We also anticipate the arrest of foreign vessels (engaged in Cabotage, particularly, tankers and offshore support vessels) by CIF. This would not be the first time that a non-governmental body arrested/detained foreign vessels for allegedly infringing the provisions of the Cabotage Act albeit with huge incidental costs to the owners of the affected vessels. The previous arrests threw up recondite and interesting issues of law and so expect same for any Cabotage related actions brought by CIF or similar bodies.

In a bid to avoid the foregoing, we advise that the foreign vessels ensure compliance with the Cabotage Act. This may require the foreign vessels to change to the Nigerian flag (either via bareboat or Nigerian ownership). This would also lead to a restructure of the security structure for the foreign vessels that are subject of credit facilities.

More arbitration and litigation matters flowing from the shipping agreements which were affected by COVID-19. We also anticipate more maritime training for our judges, via the usual NIMASA platforms and the above stated NMLA collaboration with NJI.

As a result of Nigeria's continued importation of bulk cargo (like sugar) from Brazil and other countries that are also known as narcotics source countries, we expect drug smugglers to continue to use commercial ship to transport their narcotics to Europe via Nigeria ports.

This realization has put NDLEA (and other Nigerian authorities) on high alert and so we expect stringent processing of cargo vessels arriving from these red flagged countries so owners and charterers need to take this into consideration and ensure proper planning.

In order not to have their vessels used and detained, we recommend that that owners reassess their procedures for loading at the red flag countries. From our experience in matters of this nature, owners need to ensure, inter alia, that their crew actively monitor the cargo loading process by the charterer's representatives and security cameras on the vessels are operational with their record available for inspection at the discharge port.

## Our Team

Bloomfield's Shipping and Oil Services Team continues to be recognized by clients and peers. We also continue to be ranked in several local and international directories for "an active shipping practice, advising on matters such as finance, leasing and corporate transactions, as well as representing clients in high-stakes litigation." (The Legal 500, 2021). We also authored the Nigerian chapter of several leading shipping publications and comparative guides such as The Shipping Law Review, ICLG Shipping Law, The Legal 500 Shipping Guide and Chambers – Shipping Law and Practice.

The Partner and Chair of our Shipping and Oil Services Team, **Adedoyin Afun**, was ranked by **Who's Who Legal** as a "**National Leader**" (2021) and "**Global Leader**" (2022) in the shipping sector. In 2021, **Chambers** acknowledges Adedoyin's "excellent mix of legal and commercial ability," as well as his "notable maritime disputes experience." Adedoyin also continues to be recognised, for four (4) consecutive years (2018, 2019, 2020 and 2021), as a Leading Individual (and the youngest of the identified practitioners) in the **Commercial, Corporate and M&A Practice in "The Legal 500: Europe, Middle East & Africa" rankings for Nigeria**.

Our Senior Associate, **Micheal Abiiba**, is also ranked as a **Recommended Lawyer** for Maritime disputes. (The Legal 500, 2021). He also co-authored the Nigerian chapter of Chambers – Shipping Law and Practice, 2021.

Other members of our team include **Ademide Peters, Ugochukwu Eze, Taiye Adegoke, Chidiebere Ironuru and Jadesola Alase**.

For more information please contact the Shipping and Oil Services Team or your usual contact at Bloomfield LP.



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