



# IFE JURIS REVIEW

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## STATES' RESPONSIBILITY FOR SAFETY OF NAVIGATION IN INTERNAL AND COASTAL WATERS UNDER NIGERIAN AND TANZANIAN MARITIME LAW

\*

R. Haule\* & G. A. Olagunju\*

### Abstract

*This paper examines on the responsibility of States to ensure safety of lives especially as regards navigation in their internal and coastal waters using Nigeria and Tanzania as case studies. The overall research findings reveal that in spite of technical assistance provided to States by the International Maritime Organisation in this area by formulating Model Safety Regulations which could serve as guide to African coastal States, both countries under consideration in this work have not taken full advantage of these regulations.*

### Introduction

In international law, States have the responsibility to ensure that ships registered under their flags comply with international legal instruments regarding safety of navigation.<sup>1</sup> Such instruments include the International Convention for Safety of life at Sea 1974 (hereinafter SOLAS 74 as amended); International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 relating thereto (hereinafter MARPOL 73/78 as amended); Convention on the International Regulation for Prevention of Collisions at Sea (hereinafter COLREGs 72 as amended); The International Convention on Standards of Training, Certification and Watch-keeping for Seafarers (hereinafter STCW 1978 as amended); The International Labour Organisation Merchant Shipping (Minimum Standards) Convention (No. 147) (hereinafter

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<sup>1</sup> See Article 94 United Nations Convention on the Law of the Sea, 1982

ILO Convention 147); Protocol Relating to the International Convention for the Safety of Life at Sea, 1988 and Annexes I to V thereto; International Convention on Maritime Search and Rescue, 1979 (SAR); International Labour Organisation Convention (No. 32 of 1932) on Protection against Accident of Workers Employed in Loading or Unloading Ships (Dockers Convention Revised 1932); International Convention on Maritime Satellite Organisation, 1976 (INMARSAT) and the Protocol thereto; The Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 and its Protocol of 1990; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 and the Protocol thereto; International Convention on Salvage, 1989; Placing of Seamen Convention, 1920; International Ship and Ports Facility Security (ISPS) Code; and International Convention for Safe Containers, 1972.<sup>2</sup> To ensure that safety regulations under these various conventions are complied with, the International Maritime Organization (hereinafter IMO) which is the United Nations specialised agency for maritime and other related matters coordinates the activities of States in this regard. For this purpose, all ocean going ships are compelled to register with the organization and are thus issued registration numbers. The duties on States in this regard is enunciated under Article 94 of United Nations Convention on the Law of the Sea, 1982 (hereinafter UNCLOS 1982) which is the mother of all conventions on maritime and related matters.<sup>3</sup> That article laid down the duties of the flag State with respect to ships flying its flag as follows:

*Article 94  
Duties of the flag State*

<sup>2</sup> See Section 215 Merchant Shipping Act of Nigeria, 2007, and Sections 56, 162, 193, 219, 251 and 351 Merchant Shipping Act of Tanzania, 2003 respectively.

<sup>3</sup> It may be apposite to state here the roles played by African States and some individuals in the entire formulation of UNCLOS III. Particular mention must be made of Joseph Warioba, a Tanzanian and other African jurists of repute. Attesting to their contributions, Akintoba an erudite scholar wrote: "The African Group, as well as particular African States and individuals, played crucial roles in the deliberation and formulation of the Committee II package of a 12-mile territorial sea and 200-mile EEZ. The OAU and Group of 77; Cameroon, Ghana, Kenya and Nigeria; Messrs. Frank Njenga of Kenya, Joseph Warioba of Tanzania, Paul Engo of Cameroon, Cisse of Senegal and Kedadi of Tunisia were all prominently active in UNCLOS III Proceedings." See Tayo O. Akintoba, *African States and Contemporary International Law: A Case Study of the 1982 Law of the Sea Convention and the Exclusive Economic Zone* (Vol. 26 of Publications on Oceans Development Series; Vol. 26 of Series of Legislation in Translation), Martinus Nijhoff Publishers, 1996, 90. In fact Akintoba asserted that 'the EEZ concept was first introduced by African States, specifically by Francis Njenge of Kenya and Joseph Warioba of Tanzania in 1971 at the Asian-African Legal Consultative Committee (AALCC) meeting held in Colombo, Sri Lanka, and that the notion became more fully developed at the Lagos and New Delhi Sessions of the AALCC in 1972 and 1973, *ibidem*, p. 92

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.
2. In particular every State shall:
  - (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
  - (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.
3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, *inter alia*, to:
  - (a) the construction, equipment and seaworthiness of ships;
  - (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
  - (c) the use of signals, the maintenance of communications and the prevention of collisions.
4. Such measures shall include those necessary to ensure:
  - (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
  - (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;
  - (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of

collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.
6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.
7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

Undoubtedly therefore, the flag State as defined under the above Convention has overall responsibility for the implementation and enforcement of international maritime regulations for all ships granted the right to fly its flag. The flag State may however conduct the larger part of this responsibility through entities located in other countries. The duty placed on flag States under Article 94 is enormous and where that duty is not performed or adequately performed there is bound to be problems resulting in maritime casualties, sometimes of enormous proportions and unimaginable dimensions. Thus as noted by Konig:

*By spelling out flag States' duties in much more detail than in the High Seas Convention, it was intended to put more pressure on them to effectively fulfil these duties and thus prevent the operation of substandard ships. Flag States are obliged to prescribe and enforce such measures on their*

vessels as are necessary to ensure order and safety at sea. These measures include, inter alia, the duty to maintain a shipping register and assume jurisdiction over each ship and its crew in respect of administrative, technical, and social matters, to subject each ship to regular surveys, to ensure that the master, officers, and crew are appropriately qualified, and to hold inquiries into marine casualties...<sup>4</sup>

To ensure flag States do not fail in this duty, international maritime law, over the last few years in recent times developed a system of Port State Control which involves the inspection of foreign ships in the ports of another State by Port State Control Officers (otherwise PSCO) or inspectors with the sole aim of ascertaining that the ship, those manning it, and its equipment comply with the requirements of international conventions such as SOLAS, STCW, MARPOL etc. as mentioned above. Where the ship does not, then it may be detained until such time that there is evidence of compliance, or even banned from entering the ports of the inspecting State (s). The sole purpose of this, is to force flag States to be alive to their responsibilities by not allowing substandard ships to fly their flags so as to minimise the risk of loss of life and damage to the environment.

All the above said, this duty is limited to ocean going vessels of 500 gross tons and above. What then happens to ships in other categories? E.g. Ocean going ships of less than 500 gross tons; ships, vessels, ferries and boats plying the internal/coastal waters of States etc? It is therefore the aim of this paper to find out whether there are regulations governing safety of life in Nigerian and Tanzanian internal (and coastal) waters. If there are, are the government agencies responsible for enforcement and compliance doing anything at all to enforce these regulations in order to avert accidents and prevent losses of lives in both countries? Or whether the agencies are facing any handicaps preventing them from effectively carrying out their duties regarding safety on the internal waters.

### **Coffin Boats**

This was a term used to refer to ships that carried Irish immigrants who were trying to escape the Great Irish Famine in 1847. The poorly built ships were usually crowded and overloaded, and hence disease-ridden which resulted in the deaths of so many immigrants in their attempt to cross the Atlantic. They were indeed the cheapest means of crossing the Atlantic at that time. The term became popularised by Samuel Plimsoll a Briton and a no less recognisable and prominent person in maritime law and transportation as far back as

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<sup>4</sup> See Doris Konig, 'Flag of Ships', in R. Wolfrum (Ed.), *The Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2010, Online edition, [www.mpepil.com], visited on 03.10.11

1873 when he denounced a system that allowed ship owners to send crew (and passengers) to sea on unseaworthy vessels which ultimately resulted in accidents and eventual losses of lives of those innocent souls.<sup>5</sup> This was over 300 years ago. But today, we have a replay of such system in Nigeria and Tanzania (both African maritime countries, Nigeria in the West and Tanzania in the East) and a few other unregulated maritime regimes in the world.<sup>6</sup> Available reports in the last 20 years or so reveal a staggering record of internal maritime accidents within the Nigerian and Tanzanian internal waters such that one begins to wonder whether there is any value placed on the lives of those human beings who use this mode of transportation at all in those countries. For the purpose of this work, it is worth our while to look at some of these accidents which are examined below.

#### Maritime Casualty Records in Nigeria in the last Twenty-Five years

For the purpose of understanding the topic under discussion it is important to look at the maritime casualty records of Nigeria in recent times in order to appreciate the enormity of the problem at hand. Some of this we shall examine below.

#### The Loss of MV Gurara

It must be understood from the beginning that Nigeria is not a ship-owning nation *per se* but rather a cargo-owning nation and so the only notorious case of the loss of a Nigerian ship involved the *MV Gurara* belonging to the now defunct Nigerian National Shipping Line Limited (NNSL). This was an ocean going ship, but for what is worth, it is important to look at the circumstances of its loss. The incident occurred in May 1990 off the coast of Portugal with serious loss of lives.<sup>7</sup> The immediate cause of the loss was not

<sup>5</sup> See generally S. Plimsoll, *Our Seamen: An Appeal* (Reprint), BiblioBazaar, Charleston, South Carolina 2010.

<sup>6</sup> See Philippines etc for example. Here it is worthy of note to also mention the recent accident that occurred in South Korea during the course of this research. In that country, the *Sewol* a ship while sailing from the port city of Incheon, west of Seoul to the resort island of Jeju with about 477 passengers on board who were mostly high school students on field trips, suffered a severe listing on April 16, 2014 before it finally sank off South Korea in the South West coast. While the listing was on, the students made several cellphone calls and tweeted calling for help even after the ship had sent distress signals. The South Korean Coast Guard and Naval Vessels even though responded almost immediately to engage in rescue operations while helicopters swung into action plucking passengers who clung to the side of the listing ship, several lives were still lost with some dead and others missing. See "2 dead, many unaccounted as rescuers scramble to sinking South Korean ship," available at: <http://edition.cnn.com/2014/04/15/world/asia/south-korea-sinking-ship-students/> (accessed 16 April 2014).

<sup>7</sup> Twenty-one persons reportedly died in the incident including the captain of the ship.

known until a board of enquiry was set up by the Minister of transport under section 268 of the then Merchant Shipping Act.<sup>8</sup> That Section provides:

*The Minister may from time to time by Order constitute a Board having a magistrate as President (in this Act referred to as "the Maritime Board") to make formal investigations into any casualty in respect of which reports have been submitted to the Minister or to inquire into charges of incompetence or misconduct on the part of any officer of a ship.<sup>9</sup>*

The board took evidence, made its findings and submitted its report on 17<sup>th</sup> May, 1990 as follows:

1. That the *MV. Gurara* though properly manned and bunkered, was not properly equipped as the main engine was found wanting;
2. That the holds and other parts of the ship for reception of cargo were either not fit or were defective and these affected the stability of the vessel, and endangered lives at sea;
3. That the ship was not adequately supplied with lube-oil;
4. That the ship's papers and certificates of survey did not reflect the true and correct position of the vessel;
5. That when the *MV. Gurara* was in distress, it made a distress call to the Portuguese authorities who delayed for a couple of hours;
6. That when help finally came, it was too late and thus the vessel could not be saved;<sup>10</sup>
7. Finally, the board found the Nigerian National Shipping Line Limited (NNSL), culpable in many respects and thereon imposed a fine of approximately ₦2,000,000 on the company

<sup>8</sup> The board was composed of Magistrate R. A. Bashiru-Deen as President; Captain O. O. Adeyemi as Assessor; Engineer I. O. Akinsoje as Assessor; Dr. Fola A. Awoyeba as Secretary.

<sup>9</sup> This provision is now contained in Section 427 of the new Merchant Shipping Act, 2007.

<sup>10</sup> See also Olayinka Faji, *The Regulation of Navigation and Shipping- Local and International*, in *The New Law of the Sea and The Nigerian Maritime Sector: Issues and Prospects for the Next Millennium*, (I. A. Ayua eds.), (Nigerian Institute of Advanced Legal Studies, Lagos, 1998), 115 at 121.

### **Other Incidents Involving Boats in Inland and Internal Waters**

Apart from loss of the MV Gurara reported above other incidents are mostly reported in the media which involve boats and canoes plying the country's internal waters. This work will endeavour to look at some of the most recent ones.

#### **The Loss of August 1999**

On August 31<sup>st</sup> 1999, it was reported that at least twenty persons died as a result of boat mishap. The boat was said to have capsized off Victoria Island, in Lagos. It was reported that the boat, laden with food and about 22 passengers began drifting after its engine got stalled. It then smashed against a pillar under a bridge before it capsized killing all on board except two survivors.<sup>11</sup>

The same report stated thus:

*Nigeria has been plagued by boat mishaps in recent times. On 21<sup>st</sup> August, about 30 persons died after their boat capsized in the Matan Marfa River in north-western Nigeria, according to news reports. About five month ago, scores of people died in a ferry disaster near the south-eastern town of Port Harcourt.<sup>12</sup>*

#### **The Losses of June, July, September and October, 2007**

Another report stated that seven people were feared dead in a boat mishap at Samanaji village, Yauri Local Government Area in Birnin Kebbi, Kebbi State, northwestern Nigeria on June 21<sup>st</sup> 2007. The boat also reportedly capsized.<sup>13</sup> On July 2007, it was reported that a boat was upturned by heavy waves on the river Benue, central Nigeria, while travelling from Guma council area to Makurdi. On board the boat were 20 persons who all lost their lives.<sup>14</sup> Also in September 2007, five persons were said to have been killed following a mishap at the Tin-Can Island Port area in Lagos when a Merchant Ship rammed into a small boat crushing it to pieces. The vessel was said to have been

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<sup>11</sup> See IRIN-WA Update 540 of events in West Africa (Tuesday 31 August), [19990901], United Nations Office for the Coordination of Humanitarian Affairs, Integrated Regional Information Network for West Africa, available at <http://www.africa.upenn.edu/Newsletter/irinw540.html> (University of Pennsylvania-African Studies Center), last visited 05.04.12

<sup>12</sup> *Idem.*

<sup>13</sup> See Boat accident kills 7 in Nigeria's Kebbi State, available at [http://english.peopledaily.com.cn/200706/21/eng20070621\\_386306.html](http://english.peopledaily.com.cn/200706/21/eng20070621_386306.html) (last visited 11.06.12)

<sup>14</sup> See Africa News, Police recover nine bodies from Nigerian boat accident, available at [http://news.monstersandcritics.com/africa/news/article\\_1325573.php](http://news.monstersandcritics.com/africa/news/article_1325573.php) and <http://www.sauress.com/en/spaen/464562> (last assessed 04.05.11).

owned by an indigenous company while the owners of the boat and the identity of the victims could not be ascertained. According to the Chief Harbour Master of the Nigerian Ports Authority (NPA), Western Ports, Captain Ubong Uwak, the incident occurred in the early hours of Sunday and therefore the victims could not get any help.<sup>15</sup> The same report also stated that a few weeks earlier, "about 50 vessels were trapped on the high seas unable to berth because all NPA pilot cutters broke down and there was none to bring the ships to berth."<sup>16</sup> Again on 6<sup>th</sup> October 2007, it was reported that about 30 people were feared dead in another boat accident, also in Kebbi. The accident occurred after the two boats the persons were travelling in collided head-on. According to the report, an official of the Red Cross stated that one of the boats was laden with petroleum products when it collided with the other boat carrying traders who were returning from a village market in Dandi district. Both boats then went up in flames, leaving only eight survivors with serious injuries.<sup>17</sup>

#### The loss of December 2011

In a report by the BBC on 14<sup>th</sup> December, 2011 at least 20 people were said to have drowned after the boat in which they were travelling capsized in Rivers State, Niger Delta region of Nigeria. Three people including a pregnant woman and a child survived the accident. The ferry was travelling between Eagle Island and Mgbuodohia in the State. According to a spokesman of the country's National Emergency Management Agency (NEMA), Yushau Shuaib "the boat was overloaded with passengers, some standing." The report added that "despite the region's oil wealth, most people there are poor and complain of bad transport networks."<sup>18</sup>

#### The loss of October 2012

In another incident on 28<sup>th</sup> October, 2012 ten persons were reported drowned when the boat they were travelling capsized at Imude Community lagoon, Otto-Awori Local

<sup>15</sup> See Godfrey Bivbere & Ifeyinwa Obi, "Five Feared Dead as Merchant Ship Rams into Boat", Vanguard, 14 September, 2007. Also available at <http://allafrica.com/stories/200709140293.html>; or <http://www.vanguardngr.com/articles/2002/cover/september07/14092007/f514092007.htm> (last accessed 11.06.12)

<sup>16</sup> *Idem*.

<sup>17</sup> See At least 30 drown as two boats collide northwest Nigeria, available at [http://www.esinislam.com/Nigerian\\_News/Nigerian\\_News\\_73.htm](http://www.esinislam.com/Nigerian_News/Nigerian_News_73.htm) (last accessed 23.06.12)

<sup>18</sup> See "Nigeria's Niger Delta: drowning in boat accident," BBC News Africa, 14 December, 2011, available at: <http://www.bbc.co.uk/news/world-africa-16189742> (Accessed 04 May 2012). See also "Boat accident kills at least 20 in southern Nigeria" available at: [http://www.africanoutlookonline.com/index.php?option=com\\_content&view=article&id=3467:boat-accident-kills-at-least-20-in-southern-nigeria&Itemid=50](http://www.africanoutlookonline.com/index.php?option=com_content&view=article&id=3467:boat-accident-kills-at-least-20-in-southern-nigeria&Itemid=50) (Accessed 13 March 2013)

Council Development Area (LCDA), Lagos. The boat was said to be conveying passengers from Idoluwo-Ile Village to Ikotun when the waves from a Julius Berger speed boat heading towards Otto-Agbara destabilised the boat halfway to its destination. Most of the victims were said to be teenagers returning from the celebration of the year's Eid-el-Kabir. There was no survivor. According to the General Manager of the Lagos State Emergency Management Agency (LASEMA) which undertook rescue operations together with the Merchant Navy, Dr. Femi Oke-Osayintolu, the agency (LASEMA) had been warning people using such local boats to make use of life jackets for safety. He lamented that the passengers were not putting on life jacket, which contributed to their death.<sup>19</sup>

### **The Losses of 2013**

In May 2013, Jascon 4 a tug owned by West African Ventures (a Nigerian Subsidiary of a Dutch Contractor) was caught up in heavy swell while towing a Chevron tanker in the Escravos area in the Gulf of Guinea, 20 miles off the Nigerian coast. Due to the heavy ocean swells, the boat eventually capsized. Out of the 11 crewmember onboard, only 1 could be rescued after three days while the other 10 perished.<sup>20</sup>

In September 2013, a goods and passenger boat travelling from Malilli village in Niger State, Central Nigeria with an estimated 150 people on board "split" in two on the River Niger and capsized killing 42 people with another 100 others missing.<sup>21</sup> According to the head of Niger State Emergency Management Agency, Mohammed Shaba, the accident was 'the worst to hit the State in recent years.'<sup>22</sup> The State head of the Agency also stated that 'the vessel was packed with far too many traders as well as goods.'<sup>23</sup> The report asserted that the vessel which apparently had an estimated capacity of 60 persons was overloaded, carrying heavy animals including several cows apart from passengers and other goods.<sup>24</sup> The report further added that:

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<sup>19</sup> See Information Nigeria, "10 Drown as Boat Capsizes in Lagos," available at <http://www.informationng.com/2012/10/10-drown-as-boat-capsizes-in-lagos.html> (Accessed 15 January 2013)

<sup>20</sup> See "Nigerian Cook tells how he survived for three days trapped under sunken ship," available at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/10115919/Nigerian-cook-tells-how-he-survived-for-three-days-trapped-under-sunken-ship.html> (Accessed 16 March 2014).

<sup>21</sup> See "42 dead, 100 Missing in Nigeria river boat accident." Available at <http://en.starafrica.com/news/42-dead-100-missing-in-nigeria-river-boat-accident.html> (Accessed 16 March 2014) and also "42 dead, 100 Missing in Nigeria river boat accident," available at <http://www.abc.net.au/news/2013-09-29/deadly-nigeria-ferry-accident-africa-travel/4987356> (Accessed 16 March 2014).

<sup>22</sup> *idem*

<sup>23</sup> *idem*

<sup>24</sup> *idem*

*Passenger boats in Nigeria, especially in more remote areas, are often poorly maintained and sometimes incapable of navigating rough waters. But operators with narrow profit margins typically try to cram on board an excessive number of passengers to boost income. Boat travel is especially attractive to traders seeking to move goods because of the poor state of Nigeria's roads, which are among the most dangerous in the world. But boat travel can be equally hazardous, with dozens already killed in Nigeria this year. In March, nearly 100 people died when a passenger boat that set off from neighbouring Benin capsized off Nigeria's Southern Cross Rivers State. It took days for details of the disaster to emerge and some people survived at sea by clinging to a cooking gas cylinder for several hours.<sup>25</sup>*

According to initial report by the police, the boat was said to have 'hit a large object, possibly a tree trunk which the pilot failed to see.'<sup>26</sup>

On 26<sup>th</sup> December, 2013 a passenger boat carrying about 50 persons capsized while crossing a terminal in Buruku River in Buruku Local Government of Benue State killing all passengers onboard. 15 bodies were recovered while about 45 were declared missing after rescue operations were carried out.<sup>27</sup> According to the report:

*A similar tragedy occurred in the state on September 29, 2012 when 65 people, mostly women and children, died in a boat accident on the Agatu River while fleeing their homeland which was submerged by flood. The passengers were travelling in an old engine boat to Lokoja to stay with their relatives when the vessel capsized.<sup>28</sup>*

<sup>25</sup> *idem*

<sup>26</sup> *idem*

<sup>27</sup> See "Benue boat accident: Rescuers recover 15 bodies, many missing," available at: <http://www.punchng.com/news/benue-boat-accident-rescuers-recover-25-bodies-many-missing/> (Accessed 16 March 2014). See also "Boxing Day Tragedy: Rescuers Recover 15 Bodies From Benue Boat Accident, Many Missing," available at: <http://www.informationng.com/2013/12/boxing-day-tragedy-rescuers-recover-15-bodies-from-benue-boat-accident-many-still-missing.html> (Accessed 16 March 2014).

<sup>28</sup> *idem*

### The Losses of 2014

On March 11 2014, a passenger boat carrying about 20 persons capsized at 4<sup>th</sup> Avenue, opposite 41 Road Junction in FESTAC Town, Lagos while trying to carry the passengers across from one side of the road to the other in a distance of about 10 metres. 13 bodies were recovered while 6 of the passengers were rescued after rescue operations were carried out by the National Emergency Management Agency (NEMA). Among the dead recovered were 2 children.<sup>29</sup>

On the 2<sup>nd</sup> of April, 2014 a boat operated by the Bell Marine Services set sail from Ebute Ero on Lagos Island en route Majidun in Ikorodu area of Lagos State carrying about twenty-five passengers on board. The boat was alleged to have hit a large object while sailing and thereafter capsized at the Oworonsoki area.<sup>30</sup> There were also allegations that it was overloaded and was overspeeding at the time of the accident.<sup>31</sup> The report also had it that some of the passengers had life jackets on yet they sank into the water and drowned after the accident. This fact was confirmed by the Managing Director of the Lagos State Emergency Management Authority (LASEMA)<sup>32</sup>, when he stated:

*From investigations, we learnt that those who had their life jackets on were afraid. Instead of jumping into the water, they didn't and that was how they sank.<sup>33</sup>*

The above is inevitable because apparently no safety drill was conducted on the passengers before the starting of the journey, which of course should be a *sine qua non* for setting out in any sea voyage. The operators of the vessel could also not provide the list of passengers on board because there was no manifest.<sup>34</sup> In all, about seven bodies including pregnant women were recovered, six persons were declared missing while about twelve or thirteen were rescued. According to the Managing Director of LASWA<sup>35</sup>:

<sup>29</sup> See "13 bodies recovered from Lagos boat accident," available at <http://www.nigerianeye.com/2014/03/13-bodies-recovered-from-lagos-boat.html> (Accessed 16 March 2014).

<sup>30</sup> See "Ikorodu Boat Accident: Pregnant Women, engaged couple among victims," available at <http://www.nigerianmonitor.com/2014/04/04/ikorodu-boat-accident-pregnant-women-engaged-couple-among-victims/> (Accessed 11 April 2014).

<sup>31</sup> *idem*

<sup>32</sup> Femi Oke-Osanyintolu

<sup>33</sup> *idem*

<sup>34</sup> *idem*

<sup>35</sup> Mr. Olayinka Marinho

*Investigations revealed that the boat, which departed from the Ebute-Ero jetty of the Lagos Island at about 5:30pm for the Majidun Jetty in Ikorodu hit a large object under the water in the course of the voyage. The impact damaged the hull of the boat and resulted into a high inflow of water, causing the boat to sink.*

*The swift response of the LASWA rescue team to the scene of the mishap made it possible to rescue 13 passengers alive. The team also recovered six bodies trapped in the sunken vessel from the depth of the lagoon and immediately rushed them to the Ikorodu General Hospital where they were confirmed dead. A pregnant woman who was one of the 13 passengers rescued on board the boat eventually died at the General Hospital on arrival increasing the total number of deaths recorded to seven. The Search and Rescue mission also recovered some items belonging to the victims.<sup>36</sup>*

#### **Maritime Casualty Records in Tanzania in Recent Times**

Tanzania's topography unlike Nigeria is a made up largely of mountains, lakes and sometimes planes. The utilisation of water transportation is very rife in places like lake Victoria, lake Tanganyika and lake Nyasa. In fact Tanzania shares lake Victoria with some other countries such as Uganda for example. This makes for cross border water transportation in some instances. It is as a result of this heavy reliance on water transportation that it is important for us to look at some of the maritime casualty records in Tanzania in recent years, which we shall do below.

#### **The loss of *MV. Bukoba***

The first maritime incident of importance in Tanzania to this paper is the *MV. Bukoba*, the loss of which was reported in TANZANIAN AFFAIRS in September 1996 as follows:

*In what many considered to be a disaster on a par with that of the 'Titanic' in 1912 (over 1,500 people perished) some 700 people died when the Lake Victoria passenger ship 'MV Bukoba' capsized on May 21 (1996) just 30 minutes before reaching Mwanza port. Only 53 people survived. President Mkapa declared three days of national mourning.*

<sup>36</sup> *idem*

Governments and individuals all over the world sent their condolences.

Eye witness survivors told how the ship was loaded with many more than its 433-passenger capacity should have allowed. At eight am, with Mwanza in sight the ship began to sway. Huge jikos, dishes and kitchen equipment in the restaurant crashed to one side; the loud bang created a panic and as people rushed to the deck the vessel turned over. Ironically, the vast quantity of Bukoba bananas the passengers had earlier asked the crew to throw overboard, later helped survivors by giving them something to cling on to in the water. There were not enough lifebelts. The vessel remained on the surface, partially buoyant. But then rescuers, who could hear trapped passengers screaming and banging, ignored the pleas of fishermen, and decided to drill a hole into the hull to rescue those trapped inside. The effect however was to release the air which had kept the hull afloat and shortly after 3 pm the boat sank.

Several hundred bodies were extracted with great difficulty by divers – people in the packed third class compartment of the ship had linked arms in solidarity before they died and it proved extremely difficult to break them free. Most of the bodies of the dead were buried in mass graves in Mwanza. An old lady in Kagera Region collapsed and died after learning that her daughter and three grandchildren had perished. One victim, a Ugandan businessman, was found to be carrying \$27,000 in notes.

On May 29 the captain of the ship and eight senior officials of the Tanzania Railways Corporation Marine Department were charged in court with the murder of 615 people and were remanded in custody. They were later released. On the same day Prime Minister Frederick Sumaye announced the appointment of a Commission of Enquiry under Judge Robert Kisanga which included five other Tanzanians and six foreign experts.

On June 2 President Mkapa halted any further recovery of decomposed bodies from the wreck as this posed a health hazard to divers who had come from South Africa, Kenya and

*Zanzibar. 392 bodies had been recovered. At a joint service of remembrance on June 3 Chief Justice Nyalali spread a handful of soil on the lake as a burial symbol. The wreckage, which lies 27 metres below lake level, became a permanent tomb for those whose bodies could not be recovered.<sup>37</sup>*

As it is usual with a disaster of this nature, there were conflicting reports as to the number of people who died in the incident. While some claimed it was 700, some claimed it was 894<sup>38</sup>, while others claimed it was even more. It was ascertained that the vessel was sailing from Bukoba to Mwanza and sank in Kariemo Island in Lake Victoria just about thirty kilometres away from its destination.<sup>39</sup> It was also ascertained that the vessel which was due for decommissioning had capacity for just about 430 passengers but on the day of the incident it was loaded with three times the amount of this capacity and there were no life jackets or lifeboats.<sup>40</sup> As was mentioned in the report the captain and eight others were brought before the court for murder but later released apparently because the State could not sustain the charge. To prove murder the two key elements *actus reus* (the physical act) and *mens rea* (the intention to kill) must be proved. In this case, even if the physical act of the captain and the other officials in overloading the vessel was proved, it cannot be sustained that they actually had the intention of killing those passengers by that act. Much later in 1998, four persons were brought before the High Court of Tanzania at Mwanza division for manslaughter which was a more realistic charge. They included the captain of the ship (1<sup>st</sup> accused), Harbour-Master who was also the ship-surveyor (2<sup>nd</sup> accused), the port officer at Bukoba (3<sup>rd</sup> accused) and the port officer at Kemondo (4<sup>th</sup> accused).<sup>41</sup>

Certain facts that emerge from this case which made mockery of safety rules and regulations in modern times are worth looking at below:

<sup>37</sup> Tanzanian Affairs: Tanzania's 'Titanic' Disaster- MV. Bukoba, available at <http://www.tzaffairs.org/1996/09/tanzanias-titanic-disaster-%E2%80%93-mv-bukoba/> (last accessed 08.01.12)

<sup>38</sup> See Development Cooperation Ireland, Department of Foreign Affairs, Annual Report 2002, p. 4. See also Making Waves (The Monthly e-News Brief of the National Maritime Foundation, India), *The World's 10 Worst Maritime Disasters – in The Last 20 Years*, Vol. 3, No.6/7, June/July 2008, p. 13, available at <http://www.maritimeindia.org/pdfs/MakingWavesJunJul08.pdf> Last accessed 01.02.11

<sup>39</sup> See the Report of Kisanga Commission of Enquiry on the loss of MV. Bukoba. The Commission was set up by the Government on the same day of the accident and it comprised of Judge Robert Kisanga, five other Tanzanians and six foreign experts.

<sup>40</sup> *Ibid.*

<sup>41</sup> *The Republic Versus 1. Capt. Jumanne Rume Mweiru; 2. Gilbert Mokiwa; 3. Alphonse Sambo; 4. Prosper Rugumila*, The High Court of Tanzania, at Mwanza, Criminal Case No.22 of 1998, (Unreported)

1. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons stated that they were employees of the Tanzania Railways Corporation, Marine Division, while the 2<sup>nd</sup> accused was stated to be Government Ship Surveyor for the same parastatal.<sup>42</sup> The truth is, as of this time (20<sup>th</sup> Century) and with modern trends of safety awareness in maritime law, how can the marine division of any country still be under railways authority and be expected to perform optimally, especially in a country with very thriving maritime activities having several ports and lakes? Even though both are means of transportation, the regulations for railways and shipping are clearly different, so also are their demands for safety and personnel to oversee these regulations. Undoubtedly the personnel will have different orientation towards safety.
2. In the case, it was stated that the Branch Manager at Mwanza was responsible for the port of Mwanza, Bukoba, Kemono Bay, Musoma, Nansio and other small ports in Lake Victoria.<sup>43</sup> The question that naturally comes to mind is, how can one branch manager be responsible for the whole of these ports? Clearly there was a shortage of manpower.
3. It also came out in evidence that between the period of 1987-1997 there were a total of 11 ships at the Mwanza port and all of them began operation before registration even though the regulation (law) says "that before a ship is allowed to operate, it has to be inspected by a Government ship surveyor and granted a certificate of seaworthiness."<sup>44</sup>
4. The certificate of seaworthiness of MV. Bukoba (issued by the 2<sup>nd</sup> accused as the Government surveyor of ships on 1<sup>st</sup> March 1996) authorised the vessel to carry 85 tons of cargo, 400 passengers and 22 members of crew only.<sup>45</sup>
5. As at 4<sup>th</sup> May 1994, ship experts invited to test the stability of the ship had noticed that the vessel was "listing" (i.e. swaying to one side) upon test-sailing it from Mwanza to Port Bell in Uganda and Back. As a result of this, it was discovered that once the vessel carried up to 100 tons listing would occur and so at a meeting attended by the Marine Divisional Manager and ship captain for the Tanzanian Railways Corporation (1<sup>st</sup> Prosecution Witness in this case), the Branch Manager at Mwanza (who was under the supervision of the 1<sup>st</sup> Prosecution Witness) and the Danish Expert, they agreed "that for the safety of the ship MV. Bukoba, it should

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<sup>42</sup> P.2 of the Judgement

<sup>43</sup> *Idem.*

<sup>44</sup> See p. 3 of the Judgement

<sup>45</sup> *Idem.*

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not carry more than 85 tons of cargo."<sup>46</sup> This decision was communicated to the captain of the ship and Passenger Agent vide a letter dated 11/5/94.<sup>47</sup>

6. The record also showed that another 'inclination test' (also called "stability test") was conducted by Belgian experts on MV. Bukoba at the request of the TRC on 1<sup>st</sup> May, 1996 without any report. The experts only promised to submit their report/recommendation later. While waiting for the report, the Branch Manager authorised the vessel to resume operations. It should be noted here that the accident occurred on the 21<sup>st</sup> of May, 1996, 20 days after the stability test by the Belgian experts. There is no record that this report ever came. There appears to be some negligence in presenting the report on the part of the so called experts as a result of their tardiness. Although there is no guarantee that their recommendations will be followed, however their timeous presentation of the report could have saved those many lives lost in the incident.
7. In any case there was evidence to show that the TRC had earlier called in Danish experts to test the vessel and these had recommended that the vessel was unfit for navigation but the management decided to call in Belgian experts (probably because the ship was built in Belgium) who nullified that report and went on to conduct their own test and never sent in their own report before the accident.<sup>48</sup>
8. Facts also emerged that while MV. Bukoba was undergoing test, another bigger vessel, MV. Victoria with capacity to carry 1, 200 passengers and 200 tons of cargo was assigned to replace it. The question arose as to whether this change was ever communicated to the appropriate persons and authorities. The Marine Divisional Manager's answer was that he did not know. He stated that, it was the duty of the Branch Manager to inform the appropriate persons and authorities by radio communication while the control at Mwanza was required to inform the headquarters at Dar es Salaam of the change. The implication of this is very grave in the sense that if the appropriate persons here (the port officers at Bukoba and Kemono Bay) were not informed of changes of this nature, by the time the MV. Bukoba was brought back again to replace the MV. Victoria, these officers might be under the impression that they were selling tickets for a bigger vessel, an action which could result in overloading. In fact one Eustace Rwegalugwa (PW24) an Assistant Port Officer at Kemono Bay and Seller of Passenger Tickets specifically

<sup>46</sup> P. 5 of the Judgement.

<sup>47</sup> *Idem.*

<sup>48</sup> See P. 39 of the Judgement.

stated before the court that he expected MV. Victoria to come but instead MV. Bukoba came.<sup>49</sup> Same evidence was given by another Joseph Ngboya (PW28), a parcels clerk.<sup>50</sup> This much was observed by the erudite judge in that case when he stated as follows:

*I find it necessary to pause here and point out at this juncture, that this piece of evidence regarding the change of ship; the difference in their capacity particularly for carrying passengers and the question whether the change was communicated to the Port officers at Bukoba and Kemondo, is very significant in this case, as it raises an assumption that, in anticipation of the bigger ship MV Victoria, the Port Managers may have sold tickets for more passengers and accepted more cargo; than MV. Bukoba had the capacity or authority to carry. By extension of this assumption, more passengers and probably more cargo was actually carried on MV. Bukoba on its return journey, than that ship had the capacity or authority to carry.<sup>51</sup>*

9. The Port Officer cum Ticket Seller (PW24) also stated that after he had sold 100 tickets according to instructions, four police officers in uniforms came to him and told him that they had their motor vehicle on the ship but they were late to board the ship at Bukoba (hence they had come to Kemondo to board). On the strength of this, he gave them four tickets making the total number of tickets sold by him 104.<sup>52</sup> This aspect apart from showing evidence of overloading goes to the root of security in modern times. Assuming that those persons in police uniforms merely disguised to get on board the ship in order to cause havoc e.g. hijack or blow it up? In fact there was an irrefutable evidence to show that at least one passenger even sneaked in without ticket at Kemondo Bay.<sup>53</sup> Without a proper identification and screening how can persons be allowed to get on board a ship? Today's security measures in international law and also national law will hardly permit this to happen.

<sup>49</sup> See P. 81 of the Judgement

<sup>50</sup> See P. 84 of the Judgement.

<sup>51</sup> Per Mlay, J (as he then was) on page 6 of the judgement.

<sup>52</sup> P. 82 of the Judgement.

<sup>53</sup> P. 68 of the Judgement.

10. It also came out in evidence that there was 'no equipment to pull the ship ashore as the only tug stationed at Mwanza "MV. Ukerewe" was at Kisumu,'<sup>54</sup> and also that 'the only two divers employed by TRC at Mwanza were on other duties in Kigoma port.'<sup>55</sup> At best, this showed inadequate manpower and also inadequate rescue equipment. The result could only be poor response to distress and emergencies as was witnessed in this case.
11. The Marine Divisional Manager also stated that he got information about the sinking of the ship from a Passenger Agent at Northern Mwanza at 8. 15 a.m. on the morning of 21/5/96. From facts before the court as revealed in the charge, it appears the accident occurred around 7. 15 a.m. in the morning, this leaves a period of exactly one hour before it got to the notice of the Divisional Manager. In any case he proceeded to the scene of the accident immediately with another vessel MV. Victoria which according to him its engine was also undergoing overhauling (i.e. it is also unseaworthy and therefore constitute a potential danger itself). This, the Manager did only after he had instructed his secretary to transmit the report of the capsizing vessel to the TRC headquarters and to other authorities.<sup>56</sup> He got to the scene of the accident about 1 hour 45 minutes later (around 10 am) and met 'the whole superstructure of the ship submerged with only part of the bottom (keel) above water but continuing to sink slowly.'<sup>57</sup> Confusion was everywhere as people tried to rescue survivors and also pick up dead bodies to send them ashore. While this was on, the Manager said he heard bangings from inside the capsized vessel based upon which he gave instructions that holes be bored on the ship in order to rescue the people trapped inside. This could not be immediately done "because equipment and gas had to be found".<sup>58</sup> Eventually, the boring of the hole started at about 2.30 pm (a period of about 4 ½ hours from 10 am since the arrival of the Divisional Manager at the scene of the accident). Three more people were rescued from this exercise, thereafter the ship appeared to be de-pressurised as a result of this action and so it began to submerge and eventually sank completely.<sup>59</sup>
12. The Divisional Manager also stated that 'on the day of the accident, there was no assistance until the second day when divers from the Tanzanian Harbour Authority

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<sup>54</sup> See P. 7 of the Judgment

<sup>55</sup> *Idem.*

<sup>56</sup> *Idem.*

<sup>57</sup> *Idem.*

<sup>58</sup> See P. 8 of the Judgement.

<sup>59</sup> *Idem.*

arrived and efforts to retrieve bodies from the ship continued. On the third day more divers from the Kenya Navy arrived and the exercise of seeking dead bodies continued.<sup>60</sup> This is ironical in the sense that the same help/assistance that was not available on the day of the accident for several hours even while the ship was partially afloat and people were trapped inside, banging for help, now came 2<sup>nd</sup> and 3<sup>rd</sup> days later to "rescue" their dead bodies. This shows the premium we place on the value of human life in Africa. Why weren't these divers contacted on the day of the accident? And if they were, why did they not respond immediately? In Africa generally, we place more premium on the dead, not the living; on cure, not prevention; on therapeutics, not prophylaxis. This is what has brought about the inspiration for this research. Even when we have done everything that needs to be done and accidents still occur, what is our level of response preparedness to disasters whether natural or man-made?

13. The Divisional Manager also averred that in surveying a ship, the surveyor inspects the life saving appliances which include life boats, life rafts and life jackets, fire appliances such as fire extinguishers and navigational aids such as compass and the steering, radio communication equipments, pilot chairs such as rocket parachutes, hand flares and smoke bombs. He also inspects whether there are any holes or badly loaded parts of the ship and such places as the engine room etc. He stated that in the course of the inspection the surveyor makes notes before the Certificate of Seaworthiness is prepared. In the case of the Bukoba, were all these inspections carried out by the surveyor before he issued certificate of seaworthiness on the 1<sup>st</sup> of March, 1996 (two months before the accident). Nothing can be further from the truth.
14. The Divisional Manager also stated that "he would not know if radio communication at port was not working if he was not given a report to that effect."<sup>61</sup> This could at best be described as "manpower negligence" in the sense that as the overall boss for these ports, it should be his duty to ensure the workings and workability of all safety equipments and gadgets especially radio communication equipments which are the first transmitters in the case of any emergency. No wonder, he had to wait for a Passenger Agent from Northern Mwanza at 8. 15 a.m. on the morning of the incident in order to know that an accident had happened about 1 hour ago. This is the information that would have been sent by radio signals from the ship to all ports and all surrounding vessels in

<sup>60</sup> *Idem.*

<sup>61</sup> See P. 10 of the Judgement.

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the form of "MAYDAY! MAYDAY!! MAYDAY!!!",<sup>62</sup> and everyone would have swung into action to save not only the passengers but also probably salvage the ship. As would be gleaned later in the proceedings it was one Captain Kombo (PW2 in the case) who much later sent out this distress signal from offshore at Northern Mwanza.<sup>63</sup> What naturally should have been sent onshore from the sinking ship. As was later averred in the case, 'radio communication is important for the safety of the ship to communicate with ports and to issue distress signals in case there are problems.'<sup>64</sup>

15. On passengers, it was asserted on the one hand that 'their number can be ascertained at the port of disembarking by making a head count',<sup>65</sup> while on the other hand it was also stated that 'the Steamer Clerk would normally have a passengers' manifest to show the number of passengers who were on the ship and the class in which they travelled' and that the Captain of the ship has access to the passengers' manifest which is prepared at the port of embarkation and handed over to the Steamer Clerk who was to allocate rooms to passengers. A copy of the passengers' manifest is left at the port of embarkation. The manifest has only the names of 1<sup>st</sup> Class and 2<sup>nd</sup> Class passengers recorded, while the total number of 3<sup>rd</sup> Class passengers is added.<sup>66</sup> The averments as to making head counts at port of disembarkation are not only unacceptable internationally, it is also outdated and

<sup>62</sup>Mayday is a standard distress call that is used internationally across voice procedure radio transmissions. It is used primarily by aviation and marine to signal a life-threatening emergency situation which requires immediate assistance. In some countries it is also used by emergency workers such as the police department, fire fighters and ambulance officers. Mayday is said three times in a row to avoid any confusion over the radio. This repetition also helps distinguish between an actual mayday call or any other one. The word originated in 1923, when a senior radio officer, Frederick Stanley Mockford, was asked to come up with a word that would be easily understood by all pilots and ground staff in the case of a life threatening emergency situation. As much of the aviation traffic was between Croydon and Le Bourget Airport in Paris he came up with the word "mayday" which originated from the French word *m'aider* meaning "come help me." Transmitting a false "mayday" call is a criminal act and the perpetrator may be required to pay a hefty fine, do time in jail or serve community service. This is because of the large amounts of resources that are committed to answering a mayday call. It is also a criminal offense because it may put the lives of others in danger, whether they are attempting the rescue or in need of assistance. See *Want to Know it? Answers to life's questions: Why is Mayday Used as a Distress Call*, available at [wanttoknowit.com/why-is-mayday-used-as-a-distress-call/](http://wanttoknowit.com/why-is-mayday-used-as-a-distress-call/) (last accessed 10.01.13). See also *Mimi: Aviation, Mayday*, available at [en.mimi.hu/aviation/mayday.html](http://en.mimi.hu/aviation/mayday.html) and *Mimi: Aviation, Distress Signal*, available at [en.mimi.hu/aviation/distress\\_signal.html](http://en.mimi.hu/aviation/distress_signal.html) (last accessed 10.01.13).

<sup>63</sup> See P. 28 of the Judgement

<sup>64</sup> See P. 19 of the Judgement

<sup>65</sup> See P. 11 of the Judgement.

<sup>66</sup> See P. 30 of the Judgement.

crude. Anything short of a prepared manifest at the port of embarkation is unacceptable internationally and runs contrary to best practices.

16. One of the employees of the TRC also averred that he was employed by the Marine Division as a sailor without any formal training although he learned on the job. Looking at the nature of duties delegated to him, these were far more than an unskilled and untrained person should do under any safety rule. According to him: 'he assists the Quarter Master and the Officer on Watch to spot any unusual objects in the water from the bridge. Sometimes he helps to handle the wheel getting instructions from the officer as watch on the degrees to turn the wheel.'<sup>67</sup>
17. The ship's cargo includes bags of beans, bananas, one Land Rover motor vehicle and one Motorcycle-Trail 110 all bound for Mwanza.<sup>68</sup>
18. The Divisional Manager also averred that there are ship standing orders giving guidelines to employees on how to perform their duties and there are also International Maritime Regulations which they need and they are like the ships' standing orders.<sup>69</sup> This is apparently a confusing statement and it shows the level of ignorance that a high standing official of the TRC dealing with shipping is placed. Because shipping is an international business, all regulations must comply with International Maritime Regulations as laid down by the International Maritime Organisation, therefore what standing orders is the Divisional Manager referring to? Also he says there are International Maritime Regulations which they need. This implies that they have never seen these regulations. The importance of these regulations cannot be overemphasised and non-compliance with (or ignoring) them will always ultimately lead to disasters such as we have seen in the case of the Bukoba.
19. Finally, evidence abound that neither safety drills nor instructions were given to the passengers.<sup>70</sup> Evidence also shows that the vessel was under-manned and the crew was improperly equipped and trained. In fact at a stage during the crisis before the ship finally capsized, it was a passenger who was assisted in the distribution of the few life jackets available.<sup>71</sup> Sixteen years later (May 2012), a survivor of the ill-fated ship recounted his ordeal thus:

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<sup>67</sup> See P. 55 of the Judgement.

<sup>68</sup> See P. 70 of the Judgement

<sup>69</sup> See P. 16 of the Judgement

<sup>70</sup> See P. 66 of the Judgement.

<sup>71</sup> *Idem.*

*I was awakened by the noise made by a terrified passenger at around 6:00 am on May 21, 1996. The passenger told me (shouting) that something had gone seriously wrong as the vessel had lost stability. We were located on the deck in the open. I quickly grabbed a life-jacket and put it on. Instantly, I heard a loud bang followed by a massive jolt. I was thrown into the lake. I guess I lost consciousness for three to five minutes. When I regained consciousness I found myself floating. The ship had already capsized and was sinking. There was total confusion.<sup>72</sup>*

#### **The Lake Tangayika Boat Accident**

On the 3<sup>rd</sup> of January, 2013 a passenger boat left Kipiri Kirando Village in Rukwa Region around 4pm via Rumonge Village and arrived at Herembe Village in Uvinza District, Kigoma Region on Thursday around 10 p.m. The boat was heading towards Uvira Township in DR Congo. On board the ferry were about 45 tonnes of cargo and 85 passengers. Shortly after leaving Herembe Village, the boat was struck by heavy tides and not long after it capsized. According to the Surface and Marine Transport Regulatory Authority (hereinafter SUMATRA) of Tanzania, the boat was christened *Yarabi Tunusuru*, owned by one Msiwa Khamisi, a resident of Ujiji Kigoma and registered in October 2012 with the registration NO. KST 0029, with the capacity to carry 50 tons.<sup>73</sup> Nine people were confirmed dead in the accident. This includes seven women and two boys, while ten persons were declared missing.<sup>74</sup> About 64 persons were rescued by the Tanzania Peoples Defense Forces (TPDF) personnel, the Police Force and officials from SUMATRA. According to the Regional Police Commander for Kigoma, Fraisser Kashai communication was difficult due to the location of the area. They also faced infrastructural challenges.<sup>75</sup>

<sup>72</sup> David Mutensa as reported by Meddy Mulisa, "Survivor recounts MV Bukoba tragedy," Tanzania Daily News, Tuesday 22 May, 2012. Available on line at: <http://www.dailynews.co.tz/index.php/local-news/5412-survivor-recounts-mv-bukoba-tragedy> [Accessed 15.01.13].

<sup>73</sup> See Gaudensia Mngumi, "Nine People Perish In Lake Tanganyika Boat Accident" THIS DAY, 6<sup>th</sup> January, 13. See also IPPMedia.com "Nine People Perish in Lake Tanganyika Boat Accident" available at: <http://www.ipppedia.com/frontend/index.php?l=49814> (last accessed 13.10.13)

<sup>74</sup> *Idem.*

<sup>75</sup> *Idem.*

### Other Recent Losses with Impact on Tanzania Mainland

These involve some recent incidences of maritime losses of certain ships apparently registered in the Island of Zanzibar, but operate within the Mainland (i.e. the port of Dar) and the two Islands of Unguja and Pemba in Zanzibar. These occurrences have had their tolls and negative impacts on the Union as a whole.<sup>76</sup> It must be stated here for the sake of clarity that even though Zanzibar forms part of the Union since 1964 when the Isles united with Tanganyika to form the United Republic of Tanzania<sup>77</sup>, it has remain semi-autonomous within the context of the Union and so it was not surprising when the new Merchant Shipping Act of 2003 was passed by the Union Government to replace the old 1967 Act, Zanzibar opted out to have its own law separately regulating shipping activities within its domain.<sup>78</sup>

#### The *MV. Spice Islander*

On 10<sup>th</sup> September, 2011 the *MV. Spice Islander* was travelling between Unguja and Pemba (in the territory of Zanzibar) with passengers estimated to be well over 2000 most of who hailed from the two islands. On the night of the same day, the vessel sank in Nungwi Bay, near Pemba. Officially, 203 people were said to have perished outrightly while about 619 others were rescued and over 1000 missing (among them a bride and her groom who left from their Vingunguti home in Dar es Salaam, Tanzanian Mainland and thirty-two other members of their family on the fateful day).<sup>79</sup> Unofficial statistics put the number of those who lost their lives on the ill fated vessel at over 1, 500.<sup>80</sup> The vessel was said to have an estimated capacity of not more than 600 passengers but on the day in

<sup>76</sup> For example a report stated after the *MV Spice* and the *MV Skagit* accident that According to International Maritime Organization (IMO), Tanzania is now heading towards countries with the worst maritime safety in the world rivalling Philippines and Senegal. See Finnigan Wa Simbeye, "Tanzania: Maritime Sector Calls for Independent Body", Tanzania Daily News, 28 August, 2012. Available online at <http://m.dailynews.co.tz/index.php/local-news/8977-maritime-sector-calls-for-independent-body> And <http://allafrica.com/stories/201208280376.html> [Accessed 12.12.12].

<sup>77</sup> Tanzania Mainland gained independence in 1961 and became a republic in 1962, while Zanzibar was granted "full independence in 1963". For a further and fuller discussion on this, see R. R. Haule, *Torturing the Union? An Examination of the Union of Tanzania and Its Constitutionality*, 66 *Heidelberg Journal of International Law*, (2006), 215.

<sup>78</sup> This is the Zanzibar Maritime Authority Act (No. 3) of 2009.

<sup>79</sup> See "Tanzania: 32 Family Members Die in Ship Accident", THE CITIZEN (Dar es Salaam), Monday, 12 September, 2011. Also available at: <http://www.thecitizen.co.tz/news/4-national-news/14676-32-family-members-die-in-ship-accident.html> and <http://allafrica.com/stories/201109130036.html> (last accessed 15.01.12)

<sup>80</sup> See Dr. Azaveli Fea Lwaitama, "Unregulated Private Monopoly and the Spice Islander Disaster", THE CITIZEN, Tuesday, 27 September 2011. Also available online at <http://thecitizen.co.tz/editorial-analysis-/15141-unregulated-private-monopoly-and-the-spice-islander-disaster> (last accessed 11.06.12)

question it was carrying well over three times that number.<sup>81</sup> Just like the Bukoba fifteen years earlier on the Mainland, this is evidence of outright disregard for safety rules and regulations. A sacrifice of human lives at the altar of commerce.<sup>82</sup>

#### The MV. Skagit

The MV. Skagit a Zanzibarian registered passenger ferry was sailing from the Tanzanian Mainland to the island of Zanzibar on the 18<sup>th</sup> of July, 2012 carrying over a hundred persons when it foundered at sea killing all on board. The ferry like others before it was said to have been overloaded.<sup>83</sup> The passenger ferry-only and another sister vessel, MV. Kalama were constructed in 1989 at Halter Marine in New Orleans, Louisiana in the United States and was originally designed as service boats for offshore oil rigs in the Gulf of Mexico. Later, an extra deck of superstructure was added to accommodate additional passengers.<sup>84</sup> This factor, it has been argued may have been responsible for the ship's instability and hence the accident.<sup>85</sup>

<sup>81</sup> A report by a ten-member inquiry commission into the accident led by Zanzibar High Court judge Abdulhakim Ameir Issa revealed that the ferry, was overloaded. It carried 2,470 passengers while it was licenced to carry 600 passengers only. See Bernard James, "Marine Disasters Earn Tanzania Dubious Distinction", THE CITIZEN, Sunday, 29 July 2012. Also available online at: <http://www.thecitizen.co.tz/news/4-national-news/24427-marine-disasters-earn-tanzania-dubious-distinction.html> (last accessed 09.11.12). Dr Lwaitama of the Department of Philosophy, University of Dar es Salaam further noted that "Owners and passengers avoid acting in accordance with their civic ethical responsibilities and condone the carrying of as many passengers as possible on each given sea transport service. Government regulations and their enforcement is the only bar standing between super profits out of these miserable poor passengers and the potentially filthy rich ship owners, who also often have political cloud, in the context of the abandonment of the Arusha Declaration code of political ethical conduct." Ibid.

<sup>82</sup> This much was also argued by Dr. Lwaitama when he said: "If the government regulatory organs are lax or the owners happen to wield a lot of influence on the operations of the government of the day, then, the result will be unregulated private monopoly and sea transport services of ships like MV Spice Islander will be accidents waiting to happen." *Idem*.

<sup>83</sup> See Issa Yussuf, "Tanzania: Zanzibar Boat Accident Death Toll Reaches 73", Tanzania Daily News (Dar es Salaam), 23 July, 2012. Also available online at: <http://dailynews.co.tz/index.php/local-news/7765-zanzibar-boat-accident-death-toll-reaches-73> and <http://allafrica.com/stories/201207230777.html?viewall=1> (last accessed 09.11.12)

<sup>84</sup> See Martin Cox's Maritime Matters "MV Skagit, Former U.S. Ferry Capsizes off Tanzanian Coast", available at: <http://maritimematters.com/2012/07/mv-skagit-former-u-s-ferry-capsizes-off-tanzanian-coast/> (last accessed 09.11.12).

<sup>85</sup> This was pointed out by Professor Ibrahim Lipumba (Chairman, Civic United Front) when he argued that "It is important that registration of ships is done after their safety have been thoroughly scrutinized. Since the boat was said to have undergone some modification then it is possible its stability was affected." See Issa Yussuf, "Tanzania: Zanzibar Boat Accident Death Toll Reaches 73", Tanzania Daily News (Dares Salaam),

The Zanzibar Maritime Authority (ZMA) has also been blamed for these spates of accidents within one year for lax of registration procedures and non adherence to safety and security regulations. The Deputy Shadow Minister for Infrastructure and Transport, Ms Pauline Gekul (Special Seats- CHADEMA), blamed the accident on what she described as mismanagement in registration of ships by ZMA.<sup>86</sup> According to her, "It is high time authorities looked into registration of ships. It is also apparent that no routine inspections have been carried out on ships registered in Zanzibar." Also according to James Mbata, Chairman National Convention for Construction and Reform- Maguezi (NCCR- Maguezi) and MP, "The safety of ships registered in Zanzibar is highly questionable. There is a chain of negligence among responsible leadership."<sup>87</sup> The Deputy Minister for Transport, Dr Charles Tizeba also informed the National Assembly that Zanzibar was using "open law" which allows ships to operate regardless of its age while Tanzania Mainland uses "close law" which restricts ships whose age is beyond 20 years.<sup>88</sup>

#### **The MV. Salwat**

The MV. Salwat sailed out from Pangani heading toward Zanzibar with twelve passengers on board. The vessel capsized near the Maziwe Islet in the Indian Ocean. The vessel which was alleged to have the capacity to carry 35 passengers started to take in water after it was hit by strong ocean currents near the Islet around 5 pm on the 19<sup>th</sup> of August, 2012. It was alleged that prior to take off, the captain of the vessel had a row with the owner, one Ahmada Haji Kombo who warned the proprietor that the weather was not conducive to set out into the ocean as a result of the northerly winds and strong winds, and suggested that the journey be better suspended until the weather is clear but the owner refused. Not long after the vessel set sail, it started experiencing stormy weather which prompted some passengers in the ferry to start making calls to their relations offshore for help. Based on this, the Pangani West Village Chairman mobilised people and set sail in another vessel for rescue operations. Much could not however be done by this rescue team as it was dark. Besides they were ill-equipped. It was not until dawn when two helicopters belonging to the Police Force and Tanzania People's Defence Force (TPDF) came that the

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23 July, 2012. Also available online at: <http://dailynews.co.tz/index.php/local-news/7765-zanzibar-boat-accident-death-toll-reaches-73> (last accessed 09.11.12).

<sup>86</sup> See Issa Yussuf, "Tanzania: Zanzibar Boat Accident Death Toll Reaches 73", Tanzania Daily News (Dar es Salaam), 23 July, 2012. Also available online at: <http://dailynews.co.tz/index.php/local-news/7765-zanzibar-boat-accident-death-toll-reaches-73> (last accessed 09.11.12).

<sup>87</sup> *Idem.*

<sup>88</sup> *Idem.*

people in the vessel were able to be rescued. The helicopters airlifted 11 of the passengers from the area to safety, while one person was declared missing.<sup>89</sup>

### **International Maritime Organisation and the Provision of Technical Assistance to States in the Area of Safety in Internal/Coastal Waters in Africa**

The mandate of the International Maritime Organisation (hereinafter IMO) is international in the sense that the organisation regulates ocean going ships engaged in international shipping, therefore the only way it can be concerned with safety in internal/coastal waters of States is only through technical assistance. Thus Williams and Hoppe noted as follows:

*While being acutely aware of the nature of the problem, if not its detail, and prevented from taking direct action because of its international mandate, IMO resolved that the most appropriate way to approach the issues was from the technical assistance standpoint. Technical assistance is an area in which IMO does have a strong mandate, and such action would enable it to assist and encourage countries to adopt safety standards for smaller ships on a regional basis.<sup>90</sup>*

It was in recognition of this fact that IMO under a technical co-operation project PR267 TC02RAF/98/109, developed what is known as Model Safety Regulations for Inland Waterways Vessels and Non-Convention Craft, including Fishing Vessels, Operating in Africa (hereinafter IMO Model Safety Regulations). The model regulations were agreed by representatives of the following countries: Burundi, Ghana, Kenya, Malawi, Mozambique, Nigeria, Rwanda, Sierra Leone, Tanzania, Uganda, Zambia and Zimbabwe during a Workshop held in Mwanza, Tanzania between 15 and 19 October 2001. The importance of such regulations among others was to promote safety of navigation and consequently safety of life and property; provide guidance and harmonized standards in important areas such as construction and maintenance of craft, surveys, training and the certification of crews; promote the development of a safe fishing industry; prevent pollution and preserve the marine environment; promote waterborne regional trade

<sup>89</sup> See George Sembony, "11 Cheat Death, 1 Missing in Boat Accident", THE CITIZEN, Monday, 20 August 2012. Also available online at: <http://www.thecitizen.co.tz/news/4-national-news/25075-11-cheat-death-1-missing-in-boat-accident.html> (Accessed 09 November 2012)

<sup>90</sup> Ian Williams and Heike Hoppe, Safety Regulations for Non-Convention Vessels: The Imo Approach, available at: [http://www.imo.org/blast/blastDataHelper.asp?data\\_id=18002&filename=Safety.pdf](http://www.imo.org/blast/blastDataHelper.asp?data_id=18002&filename=Safety.pdf) (Accessed 03 March 2013).

for countries sharing common water; and promote the development of a safe waterborne tourism industry.<sup>91</sup> Part of the preamble to that Model Regulation reads:

*In many African countries both coastal and landlocked, there has not been established a body of standards, rules and regulations procedures and practices to cater for the shipping industry taking place in the inland water masses comprising the lakes and navigable rivers. The foregoing scenario has contributed to the continuing tragic loss of life, damage to property and the marine environment in many of Africa's inland waterways. The need for harmonized standards, regulatory laws, rules, procedures and practices for vessels operating on inland waterways in Africa cannot be over emphasized.*

*The importance of having a body of regulations for inland waterways vessels would be, amongst others, to:*

*Promote safety of navigation and hence safety of lives, vessels, and cargo; Provide guidance and harmonized standards in important areas such as construction and maintenance of craft, surveys, training and the certification of crews; Promote the development of a safe fishing industry; prevent pollution and preserve the marine environment; Promote waterborne regional/international trade for countries sharing common water masses; Promote the development of a safe waterborne tourism industry.<sup>92</sup>*

The provisions of the model regulations are intended to facilitate the operations of vessels to which the relevant international conventions are not applicable but for which the application of the basic safety principles embodied in those instruments and international conventions, if applied, would ensure a higher level of safety for the vessels and personnel on board and protection of the marine environment. Therefore, the principles that are contained in those international instruments and conventions have been incorporated, as far as practicable, in the present model regulations. The model regulations also contain

<sup>91</sup> See Paragraph 2 of the preamble to the Model Regulations.

<sup>92</sup> See Model Safety Regulations for Inland Waterways Vessels and Non-Convention Craft, Including Fishing Vessels, Operating in Africa, January 2002

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<sup>93</sup> *Ibidem*,

provisions to enable African inland waterways administrations, as far as practicable and reasonable, to apply the same standards to existing vessels if they need to do so.<sup>93</sup>

The question now to be asked is how far have the participating States in these model regulations incorporated them into their laws? With particular reference to the two countries under study, it is submitted that only Tanzania has incorporated the model regulations into its laws. This takes us to the next part of the work which examines the regulatory authorities dealing with inland waterways in both countries.

#### **The National Inland Waterways Authority (NIWA) in Nigeria and the Surface and Marine Transport Regulatory Authority (SUMATRA) in Tanzania**

The National Inland Waterways Authority (hereinafter NIWA) was established pursuant to the National Inland Waterways Act (No. 13 of 1997) Laws of the Federation of Nigeria vested with power and responsibility, among other things, to improve and develop inland waterways for navigation in Nigeria. In accordance with the objectives of the authority, it shall have the power to:

- (a) *improve and develop inland waterways for navigation;*
- (b) *provide an alternative mode of transportation for the evacuation of economic goods and persons;*  
*and*
- (c) *execute the objectives of the national transport policy as they concern inland waterways.*

These inland waterways comprise: The River Niger from the Nigerian Niger/Benin border, through the Nun and Forcados distributaries to the Atlantic Ocean; the River Benue from the Nigerian/Cameroun border to its confluence with River Niger at Lokoja; The Cross River from the Nigerian/Cameroun border to the Atlantic Ocean, and all its distributaries; Rivers Sokoto, Kaduna, Geriny, Gongola, Taraba, Donga, Katsina-Ala, Anambra, Ogun, Oluwa, Osse, Benin, Imo, Kwa Tho; The Intra-coastal route from Badagry, along the Badagry Creek to Lagos, through Lagoon to Epe, Lekki Lagoon to Iwopin, along Omu Creek, Talifa River to Atijere, Akata, Aboto, Oluwa River to Okitipupa and onto Gbekebo, Arogbo, Of un am a, Benin Creek to Warri. Also the canal running from Araromi through Aiyetoro, Imelumo to Benin River and from Aiyetoro through Mahin Lagoon to Igbokoda; the waterway from Warri along the Forcados River, through Frukana, Siama, Bomadi, Angalabiri, Patani, Torofani, down River Nun to

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<sup>93</sup> *Ibidem*, Paragraph 5.

Agberi, Kiama, Sabagreia, Gbaran Creek, Agudama, Ekpetional into Ekole Creek to Yanaka, Yenegoa, Sangata to Mbiakpaba, onto Okokokiri, Of ok pot a, Olagaga, Nembe, Adema, Agoribiri Creek to Egbema, Degema, Som-breiro River to Hanya Town, Ogbakiri to Port Harcourt; the waterway from Port Harcourt, through Amadi Creek down Bonny River, into Opobo Channel Adoni River, through Andoni Flats, Teller Creek, Imo River, Shooter Creek, Kwa Tho Creek, Kwa Ibo River, Stubbs Creeks, Widenham Creek, Effiat-Mbo Creek, Cross River estuary to Oron and Calabar; Rivers Benin, Ethiopie, Ossiomo, Onne, Aba, Azumini, Olomum, Siluko, Talifa, Forcados, Penington, Escravos, Warri, Ramos, Dodo, Bonny, Middleton, Fishtown, Sengana, Brass of Nicholas, Santa Barbara, San Batholomew, Sambriero, New Calabar, Mbo, Rio del Rey, Uruan, Akwayafe; Creeks Odiama, Agamama Tora, Nembe, Krakama, Buguma, Bille, Finima, New Ekole, Cawthpme Channel, Ikane-Bakassi, Omu, Kwato (Gwato), Adagbrassa, Chananomi, Okpoko, Jones Kulama, Ikebiri, Nikorogba, Sagbama, Egbedi, Kolo, Laylor, Hughes Channel; Lakes Mahin, Oguta, Osiam Ehoma; the Orashi River from Oguta Lake to Ebocha, Omoku, Kreigani, Moiama, Okariki, Egberna, Sombreiro River; and the part of Lake Chad that falls within Nigeria.<sup>94</sup>

The powers and functions of the Authority are specified in Sections 8 and 9 of the Act as follows: to provide regulations for inland navigation; to ensure the development of infrastructural facilities for a national inland waterways network connecting the creeks and the rivers with the economic centers using the river-ports as nodal points for intermodal exchange; to ensure the development of indigenous technical and managerial skill to meet the challenges of modern inland waterways transportation; to undertake capital and maintenance dredging; to undertake hydrological and hydrographic surveys; to design ferry routes; to survey, remove, and receive derelicts, wrecks and other obstructions from inland waterways; to operate ferry services within the inland waterways system; to undertake installation and maintenance of lights, buoys and all navigational aids along water channels and banks; to issue and control licences for inland navigation, piers, jetties, dockyards; to examine and survey inland water crafts and shipyard operators; to grant permit and licences for sand dredging, pipeline construction, dredging of slots and crossing of waterways by utility lines, water intake, rock blasting and removal; to grant licences to private inland waterway operators; to approve designs and construction of inland river crafts; to approve and control all jetties, dockyards, piers within the inland waterways, and advertise within the right-of-way of the waterways: to reclaim land within the right-of-way; to undertake the construction, administration and maintenance of inland river-ports and jetties; to provide hydraulic structures for river and dams, bed and bank stabilisation, barrages, groynes; to collect river tolls; to undertake the production,

<sup>94</sup> See Part III, Section 10, Second Schedule of the National Inland Waterways Authority Act.

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publication and broadcasting of navigational publications, bulletins and notices, hydrological year books, river charts and river maps; to carry out consultancy and contractual services; to represent the Government of Nigeria at national and international commissions that deal with navigation and inland water transportation; to subject to the provisions of the Environmental Impact Assessment Act, carry out environmental impact assessment of navigation and other dredging activities within the inland water and its right-of-ways; to undertake erection and maintenance of gauges, kilometre boards, horizontal and vertical control marks; to advise government on all border mailers that relate to the inland waters; to undertake acquisition, leasing and hiring of properties; to run cruise boats; to carry out boat repairs, boat construction and dockyard services; and to clear water hyacinth and other aquatic weeds.

From the foregoing, the power to issue and control licences to inland waterways operators of transportation such as canoes, boats, ferries etc lies with the Authority. In fact the Authority is saddled with all these powers to the exclusion of any other body or persons including State Governments as provided for in Section 13 which states as follows

- (1) Notwithstanding the provisions of the Land Use Act or any other enactment, but subject to the provisions of the Lands (Title Vesting, etc.) Act, the Authority shall have right to all land within the right-of-way of declared waterways and shall use such land in the interest of navigation.
- (2) No person including a State shall
  - (a) obstruct a declared waterway, take sand, gravel or stone from any declared waterway; or
  - (b) erect permanent structures within the right-of-way or divert water from a declared waterway;
  - (c) carry out any of the activities as specified in section 9 of this Act without the written consent, approval or permission of the Authority.

It should be noted at this juncture that some States (Lagos especially) have challenged this wide-ranging power of the Authority and the Federal Government in this regard. What is of paramount importance to this work however, is the efficiency of the Authority with regards to regulation of these local operators of canoes, boats and ferries in the inland waterways especially in the area of safety. Throughout the Act, there is no part essentially devoted to safety of navigation in the internal waters such as recommended in the IMO Model Regulations aforementioned. For example, what type of vessels should be licensed to ply the waters? How should they be built or manned? What safety gadgets

should be installed? What communication gadgets should be installed? What safety drills should be performed before a voyage and so on and so forth? All these are essentials of safety which are detailed in the IMO Model Safety Regulations and which the NIWA Act has taken for granted. No doubt the country continues to record a plethora of accidents on our inland navigable waters. With regards to Lagos State which has challenged the NIWA Act in court and has in fact gone ahead to pass its own Act- the Lagos State Waterways Authority (LASWA) Act, the story is not different. In fact, while this research was ongoing maritime accidents happened in quick succession within the inland navigable waters of the State which reveals laxity on emphasis in safety of life for those who chose to use this mode of transportation.<sup>95</sup>

With regards to Tanzania the regulatory Authority saddled with safety of navigation, both in inland waters and internationally is Surface and Marine Transport Regulatory Authority (hereinafter SUMATRA) established in 2001 pursuant to the SUMATRA Act with a mandate to carry out its functions to strive and enhance the welfare of the Tanzania society by among other things to promote effective competition and economic efficiency;<sup>96</sup> protect the interests of consumers;<sup>97</sup> protect the financial viability of efficient suppliers;<sup>98</sup> promote the availability of regulated services to all consumers including low income, rural and disadvantaged consumers;<sup>99</sup> and enhance public knowledge, awareness and understanding of the regulated sectors.<sup>100</sup>

The functions of the Authority shall be; to perform, the functions conferred on the it by sector legislation;<sup>101</sup> and subject to that legislation, to issue, renew and cancel licences;<sup>102</sup> to establish standards for regulated goods and regulated services;<sup>103</sup> to establish standards for the terms and conditions of supply of the regulated goods and sources;<sup>104</sup> to regulate rates and charges;<sup>105</sup> to make rules,<sup>106</sup> among others.

Looking at the enabling Act of this body, there are basic and fundamental things missing in relation to safety at sea. Apart from the title of the Act, there is nothing directly

<sup>95</sup> See the Festac Boat Accident and the Ikorodu Boat Accident 2014, *Supra* notes 29 and 30.

<sup>96</sup> S. 5 (a)

<sup>97</sup> S. 5 (b)

<sup>98</sup> S. 5 (c)

<sup>99</sup> S. 5 (d)

<sup>100</sup> S. 5 (e)

<sup>101</sup> S. 6 (1) (a)

<sup>102</sup> S. 6 (1) (b) (i)

<sup>103</sup> S. 6 (1) (b) (ii)

<sup>104</sup> S. 6 (1) (b) (iii)

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<sup>109</sup> *Idem*

dealing with marine let alone safety in the whole body of the Act. In fact only sections 49 and 50 respectively mentioned amendment of the ferries ordinance; and amendment of the Tanzanian Harbours Authority Act. The Authority therefore looks like more of a consumer protection body than that regulating maritime activities and all its intricacies. The complex business of maritime transportation either locally or internationally does not admit of lumping other sectors (such as road or rail) with it in the process of overseeing it. By way of recollection, apart from the existence of the Merchant Shipping Act of 1967, the only body which seems to oversee shipping regulations before the *Bukoba* accident in 1996 was the Tanzania Railways Corporation (TRC). How can a body in charge of railways also oversee marine matters in a country regarded as a coastal state?

There is no clear-cut role pertaining to safety assigned to the Authority in the SUMATRA Act. If the Authority is vested with powers to enforce the provisions of the Merchant Shipping Act as assigned by the Minister (of transport), this should have been clearly and unequivocally stated in the Act to avoid any ambiguity. Granted that the Authority may be enforcing those provisions now, but there is no law that empowers it to do so except perhaps may be by Ministerial directives. Among the services claimed by the Authority that it renders include that involving ports and shipping; and maritime safety and security<sup>107</sup>, but how these services are rendered (or to be rendered) is vague since it is not stated in the Act itself. For example, which officer (s) shall be in charge of what, is not specified. A situation like this can only give room for weak enforcement of maritime safety regulations both nationally and internationally. Perhaps this is what has prompted for calls lately for the establishment of a new maritime administration body by the Tanzanian Shipping Agents Association (TASAA) and the Inland Container Depot Association of Tanzania (CDAT). According to the chairmen of these two bodies, there have so far been lapses in marine safety as undertaken by the Surface and Marine Transport Regulatory Authority (SUMATRA).<sup>108</sup> According to the chairman of the first body, who argued that Tanzania as a maritime nation needs a powerful maritime authority which is at present lacking, he also stated that SUMATRA'S capacity to regulate the industry and guarantee safety is overstretched by lack of qualified personnel and necessary resources to ensure that boats and ships plying the Indian Ocean and lakes Nyasa, Tanganyika and Victoria meet minimum international standards.<sup>109</sup> As for the CDAT

<sup>107</sup> See SUMATRA: Services, available at: <http://www.sumatra.or.tz/index.php/services/ports-and-shipping> and <http://www.sumatra.or.tz/index.php/services/marine-safety> (accessed 18 January 2013).

<sup>108</sup> See F. W. Simbeye, "Tanzania: Maritime Sector Calls for Independent Body", *Tanzania Daily News*, 28 August 2012 [Online] at <http://m.dailynews.co.tz/index.php/local-news/8977-maritime-sector-calls-for-independent-body> (accessed 12 December 2012).

<sup>109</sup> *Idem*

chairman,<sup>110</sup> he argued that 'Poor maritime safety is affecting private companies more than anybody else because they are losing business as people have no confidence in their services.'<sup>111</sup> He argued further that there is urgent need to establish an independent authority which should take charge of marine safety and regulation on both sides of the union with qualified personnel especially in the field of safety as numerous accidents indicate that there are serious problems relating to the area at SUMATRA. "We cannot continue like this, something urgent ought to be done to reverse the trend." Khan concluded.<sup>112</sup>

At the first ever locally organised Maritime Safety Workshop held in Dares Salaam in November, 2012<sup>113</sup> stakeholders appealed for stringent measures for compliance with marine safety regulations in order to prevent marine accidents. The participants noted lack of advanced navigational charts as one of the problems facing the industry in Tanzania. Lack of this equipment greatly exposes ships and ferries to accidents. According one of the key speakers at the workshop, Engineer Thomas Mayagila,<sup>114</sup> "use of navigational chart is a requirement that cannot be overstated. Operation of marine vessels must be precise and professionally carried out far from guesswork no matter how experienced a ship captain might be."<sup>115</sup> Another maritime expert at the workshop was of the opinion that the issue of registration of ships and ferries needs to be seriously addressed. A

<sup>110</sup> who is also the General Manager of Bakhressa Group, owners of Azam Marine Company Limited.

<sup>111</sup> Simbeye, *Supra*, note 101.

<sup>112</sup> *Idem*

<sup>113</sup> Organised by Dares Salaam Maritime Institute in conjunction with Symmetry Logistics Ltd and S. S. Bakhressa Group. It must be noted here that in April, 2010, a foreign organisation, the African Centre for Strategic Studies (ACSS), Washington D.C, U.S organised an "All-Africa Maritime Safety and Security Seminar," in Tanzania which brought together participants from other African countries to discuss issues and also opportunities to develop concrete national maritime strategies in accord with African Union goals. The seminar addressed several important goals of the AU such as: identifying common practices for successful maritime security; developing the necessary planning tools for building maritime security; crafting a strategic framework for creating national maritime security plans; and reinforcing ongoing African efforts to develop strategies for maritime safety and security. The Seminar was a catalyst for Tanzanian President Kikwete's approval of new legislation to apprehend violators and try crimes of piracy in a court of law. See African Centre for Strategic Studies, Maritime Safety and Security with Brenthurst, available at: <http://africacenter.org/2009/12/maritime-safety-and-security-with-brenthurst/> [accessed 04 May 2011]. Also in March 1997, the first workshop on the Safety of navigation on Lake Victoria was held at Mwanza, jointly organised by IMO and the East African Community. See E. E. Mitropoulos, *supra*, note 560.

<sup>114</sup> Also the Chairman of the Marine Classification Society of Tanzania as at the time of this research.

<sup>115</sup> See B. Kimati, "Marine Accidents Preventable, experts say," *Tanzanian Daily News* (Dar es Salaam), 10 November 2012 [Online] at <http://touch.dailynews.co.tz/index.php/local-news/11451-marine-accidents-preventable-experts-say> (accessed 22 January 2013).

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<sup>116</sup> *Idem*. Th

situation where there are two maritime administrations within the same country (one in Zanzibar and another in Mainland) does not augur well for safety.<sup>116</sup>

According to one of the officials interviewed at the SUMATRA office, he stated that presently the Authority is short staffed with the enormous work it is faced with combining regulation of road transport as well as maritime transport. He was of the opinion that regulation of marine transport should be separated from other activities for proper enforcement and monitoring. This officer also exonerated SUMATRA from the recent losses in Zanzibar region which he argues fall under Zanzibar Maritime Authority.

But unlike Nigeria, the IMO Model Safety Regulations have found their ways into the statute books of Tanzania and this may in the long run help to prevent maritime accidents and losses at sea to the mass of the citizens who daily rely on this mode of transportation in that country. Under the Tanzanian Merchant Shipping Act (No. 21 of 2003) Regulations made pursuant to Sections 55, 223, 224, 250, 301 (1) and 305 (1), there is now provision for "Small Ships, Local Cargo Ship Safety, Small Ship Safety, Surveys and Inspections for vessels engaged on Local and Coastal Voyages and Inland Waters." These provisions incorporated the IMO Model Safety Regulations in its entirety in 2004. One would have expected similar provisions in the Nigerian Coastal and Inland Shipping (Cabotage) Act, 2003 but it was totally absent.

#### Some Aspects of the Imo Model Safety Regulations

The Model Regulations is divided into Fifteen Chapters with provisions touching on various safety measures such as: vessel design, construction and maintenance; surveys and inspections; conditions and procedures for issuing certificates of seaworthiness; minimum freeboard; loading marks; loading of vessels; conduct of stability proof test; maximum number of passengers to be carried on a vessel; the machinery and electrical systems to be installed on a vessel; provision of fire extinguishers and fire extinguishing systems; life saving appliances; communication equipment; navigational and other light and sound signals; distress signals and equipment; health and safety of the crews; carriage of cargoes and dangerous goods; certificates of competency and manning; safety training and safe manning; pollution prevention; and safety in relation to fishing vessels.

#### Conclusion

This work focussed on the responsibility of States to ensure safety of lives especially as regards navigation in their internal and coastal waters using Nigeria and Tanzania as case studies. The overall research findings reveal that in spite of technical assistance provided to States by the International Maritime Organisation in this area by formulating

<sup>116</sup> *Idem*. This was the opinion of Captain Bandera who is also a maritime advocate

Model Safety Regulations which could serve as guide to African coastal States, both countries under consideration in this work have not taken full advantage of these regulations. While Tanzania has adopted the Regulations since 2004, Nigeria has failed or refused to do same to date. For Tanzania, it is hoped that the adoption of the regulations will help reduce maritime accidents as more and more pragmatic approaches are adopted in enforcing the provisions through the strengthening of its maritime safety administration which is presently weak. For Nigeria, it is hoped that the regulatory authority in charge of internal maritime safety (in this case NIWA) will one day wake up to its responsibilities in this area and find ways not only to seek the incorporation of those Model Safety Regulations into Nigerian laws, but also make sure they are strictly enforced and complied with. These efforts will go a long way to reduce accidents and maritime casualties in both countries' internal waters and the attendant carnage that usually follow such accidents.