THE INTRODUCTION OF THE BLUE ECONOMY AND ITS IMPLICATIONS ON THE NIGERIAN TAX REGIME*

Abstract

The Blue Economy concept is a relatively new paradigm that transcends traditional notions of ocean-related economic activities. It encompasses a wide range of sectors, including fisheries, aquaculture, maritime transport, offshore renewable energy, marine biotechnology, and coastal tourism, among others that are of economic advantage to the country. Unlike conventional ocean-based economies, the Blue Economy seeks to balance economic growth with the long-term health of ocean ecosystems. With the dwindling terrestrial resources in Nigeria, attention is given to the emerging Blue Economy with a view to harnessing the opportunities and potentials in it. Nigeria's maritime architecture is weak, leading to the sector performing far below its revenue generating potential aside oil export and import. The laws should be configured in a manner that maritime assets can be maximized to improve fiscal liquidity on the part of government. The aim of this research is to explore the implications of the introduction of the Blue Economy on the Nigerian tax regime. This study will explore the current state of Nigeria's tax regime in relation to the Blue Economy, identify potential gaps and challenges and propose recommendations for reform. By doing so, it aims to contribute to the broader discourse on how Nigeria can effectively integrate the Blue Economy into its economic and fiscal strategies, ensuring that the country reaps the full benefits of its maritime resources in a sustainable and inclusive manner. The methodology adopted by this work is doctrinal method of legal research and adopting analytical approach in examining the extant laws and literature. The source of data collection for this work are primary sources of law such as statutes and conventions, case laws; and secondary sources of laws such as internet materials, journals articles and textbooks of renowned authors. Following a comprehensive analysis of relevant statutes, international legal instruments, case laws, journal articles etc., the researchers found that the introduction of the Blue Economy necessitates a comprehensive review of Nigeria's tax laws and policies. This is in order to expand their scope and application. It is a significant step forward in the efforts to harness its maritime potential for revenue generation and holistic development as same creates opportunities for revenue generation beyond the traditional sectors such as oil and gas. It is recommended inter alia for the development of a tax regime that would not only supports the growth of maritime industries but also aligns with the principles of sustainability and equity.

Keywords: Blue Economy, Nigeria, Taxation, Laws

1. Introduction

The recent creation of the ministry of Maritime and Blue Economy in Nigeria is a step in the right direction towards the possibility of exploiting the over 853km of coastline in the country creating abundant opportunities for Nigeria to exploit its abundant marine resources within the larger area.[1] The blue economy initiative in Nigeria is to awaking the consciousness to explore the vast resources it offers which could be used to knock off Nigeria's huge debt profile and to join other countries that are exploiting the sea business which is in vogue globally. Nigeria's feature lies in blue economy as Nigeria has over 200 nautical miles available for fishing yet lacks in the sustainability which the blue economy offers. Nigeria must develop appropriate policy interventions that focus on exploring and exploiting the opportunities in the blue economy. About 95% of Nigeria's international trade volume is transported through the waters. The concept of the Blue Economy, which emphasizes the sustainable use of ocean resources for economic growth, improved livelihoods, and ocean ecosystem health, has gained traction globally.[2]The Blue Economy represents a burgeoning sector with significant potential for economic growth, particularly in maritime nations like Nigeria. It encompasses various ocean-based industries such as fisheries, maritime transport, offshore energy, marine tourism, and biotechnology.[3] The Blue Economy Ministry now shall be responsible for driving revenue generation for the Nigerian government through various avenues. These avenues include:

a. Developing and implementing policies that promote sustainable use of marine resources.
b. Attracting investment in marine industries.
c. Regulating the marine sector.
d. Monitoring research and development in marine science and technology.

As Nigeria seeks to diversify its economy beyond oil dependency, the Blue Economy offers new avenues for revenue generation. However, tapping into these opportunities requires a well-defined legal and tax framework that can both

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[1] R Anammah & L Ezenyimulu, The Regulatory Framework of the Nigeria Blue Economy, https://www.mondaq.com assessed 10/8/2024

[2] SA Odey, 'The Nigerian Blue Economy: Opportunities and Difficulties for Economic Development' [2023] 11(2) *Jurnal IlmuSosiologi Dialektika Kontemporer.* 93-111

[3] *Ibid*

encourage growth and ensure the equitable distribution of revenues.[4] The legal framework for the taxation of the Blue Economy must be comprehensive, ensuring that all aspects of maritime and ocean-based activities are effectively captured within Nigeria's tax regime.

This analysis delves into the implications of the Blue Economy on the Nigerian tax system, examining how existing tax laws align with the demands of a blue economy and what changes might be necessary to optimize the economic benefits while ensuring environmental sustainability.

2. Conceptual Clarifications

Blue Economy

The Blue Economy is a relatively recent paradigm that integrates the economic exploitation of oceanic resources with principles of sustainability, environmental protection, and social inclusiveness. It spans a wide array of activities, including fisheries, maritime transport, tourism, offshore energy, and marine biotechnology. For Nigeria, with its vast maritime resources along the Gulf of Guinea, the Blue Economy offers significant opportunities for economic diversification, especially in the face of dwindling oil revenues. [5] The birth of blue economy concept could be traced to the Rio+20 United Nations conferences on Sustainable Development, held in Rio de Janeiro in June 2012.[6] The United Nations adopted the blue economy as the 14th Sustainable Development Goal (SDG). The blue economy is part of African Union's agenda 2063. The African union has identified the blue economy as a key tool to attaining a prosperous Africa based on inclusive growth and sustainable development within the context of the union's agenda.[7] The Africa Blue Economy strategy will foster strategic direction, prudent and effective utilization of our aquatic resources endowments for sustainable Blue Economy growth. The central theme of all the definition of the concept is that the blue economy involves the use of ocean resources as a means of economic development and improvement of human lives through the healthy utilization of ocean resources.

Tax

Tax is defined as a monetary charge imposed by the government on persons, entities or property to yield public revenue. Most broadly the term embraces all governmental impositions on the persons, property, privileged, occupations and enjoyment of the people and it includes all duties, imports and exercises.[8] Tax is a pecuniary burden laid upon individuals or property to support government, a payment exacted by legislative authority or compulsory contribution to the support of government levied on persons, property, income, commodities, transactions and others.[9] In *Mathews v Chicory Marketing Board (v)*,[10] a tax was defined as a compulsory exaction of money by a public authority for public purposes or raising money for the purposes of government by means of contributions from individual persons. A tax therefore by general understanding of the term and as used in the constitution[11] signifies an exaction for the support of the government.[12] Therefore is not a voluntary donation or payment but enforced contribution exacted pursuant to legislative authority.[13]

Objectives of Taxation

The major objectives are: - (i) To raise revenue to finance government expenditure**,** (ii) To influence activity in the economy as a whole. Tax policy provides a mechanism for influencing consumer demand and for providing incentive for production, investment and savings. It is therefore a key factor in promoting the government overall economic and social objective. Tax is the most powerful macro-economic lever available to the governments, which can be used to promote growth to stimulate investment through tax concessions and to maintain a stable economy. Being the most important and sustainable source of finance for a nation's development, Abdulrazaq[14] summarized the functions and objectives of taxation to be (a) Rising of the revenue to meet government expenditure (b) Redistribution of wealth and (c) Management

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[4]JN Osuji and J Agbakwuru, 'Ocean and Coastal Resources Components and their Contributions to Sustainable Development of Nigeria' [2024] 28(1) *Journal of Applied Science and Environmental Management 135-146*

[5] AO Jacob and OJ Umoh, 'The Nigerian Blue Economy: Economic Expansion Issues and Challenges' [2022] 2(1) *Socio Economy and Policy Studies (SEPS):* 29-33

[6] R Anammah and L Ezenyimulu, The Regulatory Framework of the Nigeria Blue Economy, https://www.mondaq.com assessed 10/8/2024

[7] AU-IBAR https://www.au-ibar.org African Union, Africa Blue Economy Strategy

[8] B A Garner (ed), *Black's Law Dictionary* (10th edition, USA, Thomson Reuters, St Paul M N, 2014)1688. M N Umenweke, *Tax Law and Its Implications for Foreign Investments in Nigeria* (1st ed., Enugu Educational Publications (Nig) 2008) P.5

[9] A B Ahmed; 'Residence and Permanent Establishment Issues in Nigeria Taxation' in AECA *Tax Law Journal of Nigeria*, 2012 Vol. 1 97

[10] (1938) 60 CLR 263 at 276

[11] CFRN, 1999 as amended, S 24(F), *United States v Buttler* 2279 US (1963) 61, IA Ayua, *Nigerian Tax law* (Ibadan, spectrum's Law publishing, 1995) 25

[12] *United States v Buttler* 227 9 US (1936) 61

[13] IA Ayua, *Nigerian Tax Law* (Ibadan, Spectrum's Law Publishing, 1996) p 25

[14] MT Abdulrazaq, *Niegrian Revenue Law* (Lagos, Malthouse press Ltd, 2005) 2

of the economy. Adam Smith in his treatise, 'Wealth of Nations',[15] set out the canons that are used as criteria for judging a good tax system as;

Equity: This is subdivided into horizontal and vertical equity. Horizontal equity requires that those with the same income should pay equal amounts of tax while vertical equity requires that those with different incomes should pay different amount of tax. It is believed that the strongest tax systems create fairness, assure adequacy, simplicity, transparency and promote administrative ease.

Certainty: Tax which an individual has to pay should be certain not arbitrary. The tax payer should know in advance how much tax he has to pay, at what time he has to pay and in what form the tax is to be paid to the government.

Neutrality: A tax is neutral if it avoids distortions of the market. It does not discriminate between different activities in the economy.

Administrative Efficiency: Tax personnel must administer the tax system efficiently. The administrative cost should not exceed the revenues realized from tax. The appropriate arm of the sovereignty reposed with the power to impose tax is the legislative.

3. The Implications of the Blue Economy in Nigeria's Tax Regime

Nigeria's coastline, abundant with marine resources, offers significant potential for economic activities such as fishing, shipping, tourism, offshore energy production and marine biotechnology. The introduction of the Blue Economy aims to harness these resources sustainably, thereby contributing to economic diversification and reducing the country's dependency on oil revenues. However, as these new economic activities grow, they necessitate a re-evaluation of the existing tax framework to ensure that it effectively captures the revenues generated while promoting sustainable practices.[16] The implications of the Blue Economy on the Nigerian tax regime are diverse. On one hand, there is the need to create or adapt tax policies that adequately address the unique characteristics of maritime or ocean activities. This includes considering the appropriate tax rates, incentives for sustainable practices and mechanisms for ensuring compliance in a sector that often operates across international boundaries. On the other hand, the Nigerian government must balance the goal of maximizing revenue with the imperative of promoting environmental sustainability and social equity. Furthermore, the introduction of the Blue Economy in Nigeria raises important questions about the allocation of tax revenues. How should the benefits derived from maritime activities be distributed among federal, state and local governments? What role should taxation play in mitigating the environmental impact of increased economic activities in Nigeria's coastal regions? These questions highlight the complex interplay between economic growth, environmental stewardship and fiscal policy in the context of the Blue Economy. The introduction of the Blue Economy necessitates a comprehensive review of Nigeria's tax laws and policies. It calls for the development of a tax regime that not only supports the growth of maritime industries but also aligns with the principles of sustainability and equity. This study explored the current state of Nigeria's tax regime in relation to the Blue Economy, identifies potential gaps and challenges and proposed recommendations for reform. By doing so, it aims to contribute to the broader discourse on how Nigeria can effectively integrate the Blue Economy into its economic and fiscal strategies, ensuring that the country reaps the full benefits of its maritime resources in a sustainable and inclusive manner.

4. Legal Framework for Taxation of Blue Economy

Nigeria's approach to taxing the Blue Economy must be informed by its obligations under international law, including treaties and conventions that govern the use and exploitation of marine resources. Such international legal and domestic instruments that will influence Nigeria's taxation of the Blue Economy include:

International Legal Framework:

United Nations Convention on the Law of the Sea[17] (UNCLOS) 1982: UNCLOS establishes the legal framework for maritime activities, including the rights and responsibilities of states in their Exclusive Economic Zones (EEZs). Nigeria's taxation policies must align with its rights under UNCLOS, particularly in relation to resource extraction within its EEZ.[18]

Convention on Biological Diversity (CBD) 1992*:* The CBD's provisions on the sustainable use of biological resources would influence how Nigeria should structure tax incentives for sectors like marine biotechnology.[19]

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[15] Cited in IA Ayua, *Nigerian Tax Law* (Ibadan, Specturm's law Publishing Ltd, 996) P 9
[16] A U-Ibar, *Africa Blue Economy Strategy* (Nairobi, Kenya, 2019), https://www.au-ibar.org, (accessed on 17th July, 2024)
[17] UNCLOS 1982
[18] United Nations Convention on the Law of the Sea, 1982, https://www.un.org unclos.
[19] Convention on Biological Diversity (CBD), 1992, https//www.cbd.int.s

International Maritime Organization (IMO) Conventions**:** Various IMO conventions, including those related to marine pollution (MARPOL) and shipping safety (SOLAS), have implications for environmental taxes and levies on maritime activities.[20]

Organisation for Economic Co-operation and Development (OECD) Guidelines: Nigeria's participation in global trade necessitates adherence to OECD guidelines on international taxation, including the Base Erosion and Profit Shifting (BEPS) framework, which seeks to prevent tax avoidance by multinational enterprises operating in multiple jurisdictions.[21]

Domestic Legal Framework

The domestic legal framework governing the taxation of the Blue Economy in Nigeria is derived from various constitutional provisions, statutes and regulations. These legal instruments provide the foundation for imposing, collecting and administering taxes on maritime and ocean-based activities.

Constitution of the Federal Republic of Nigeria 1999 (as amended): The Nigerian Constitution is the supreme law that delineates the powers of the federal and state governments, including taxation powers. Section 44(3) grants the federal government control over the management and taxation of natural resources, including those found in Nigeria's territorial waters and EEZ.[22]

Finance Acts[23] The various Finance Acts introduced significant changes to the existing tax laws and regulatory framework, aiming to foster economic growth, enhance fiscal stability and promote sustainable development.

Federal Inland Revenue Service (FIRS) Establishment Act 2007**:** This Act establishes the FIRS as the primary tax authority in Nigeria, responsible for assessing, collecting, and accounting for taxes. The FIRS has the mandate to oversee tax matters related to the Blue Economy, including corporate taxes, VAT, and customs duties on maritime activities.

Exclusive Economic Zone (EEZ) Act 1978 The EEZ Act defines Nigeria's jurisdiction over its EEZ, where it has exclusive rights to exploit marine resources. The Act provides the legal basis for taxing activities such as fishing, offshore drilling, and marine tourism within the EEZ.[24]

Petroleum Industry Act (PIA) 2021: The PIA introduces a new fiscal framework for the oil and gas sector, including offshore operations. It establishes different tax rates and regimes for deep-water and shallow-water operations, and includes provisions for royalties, profit-sharing, and environmental levies, all of which are pertinent to the Blue Economy.[25]

Companies Income Tax Act (CITA) 2007: CITA imposes taxes on the profits of Nigerian companies, including those engaged in maritime and ocean-based activities. The Act allows for various deductions and incentives, which could be tailored to promote investment in sustainable Blue Economy sectors.

Companies Income Tax (Significant Economic Presence) Order 2020**:** The Companies Income Tax (Significant Economic Presence) Order 2020[26] was enacted to streamline the incidence and situations where a foreign company would be deemed to have Significant Economic Presence in Nigeria and thus liable to Nigeria Company Income Taxes. The order would affect companies operational and carrying out businesses within the Blue Economy. Section 13(1) of the Companies Income Tax Act, provides that the income of a Nigerian Company is deemed to accrue in Nigeria irrespective of wherever they have arisen and whether or not they have been brought into or received in Nigeria. Section 13(2) defines the circumstances under which a company other than a Nigerian other than a Nigerian Company may be liable to Nigerian Tax.

The Fulcrum of section 13(2) of the Act vis-vis the Order: From the above, the underlisted deductions can be summised as follows: For a foreign company to liable to Nigeria taxes, it must have derived a turnover of Twenty-Five Million

[20]IMO, 'International Convention for the Prevention of Pollution from Ships (MARPOL)' <https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx> accessed 11th August, 2024

[21]OECD, 'Base erosion and profit shifting (BEPS)' <https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html> accessed 11th August, 2024

[22] A Awobiyide, 'Resource Control under the Constitution of the Federal Republic of Nigeria 1999: Current Limitations and Proposals for Reform' <https://ir.unilag.edu.ng/bitstreams/d1ca262e-7e5f-46fa-8827-e4a2c0de319d/download>accessed 11th August, 2024

[23] Finance Acts, 2019, 2020, 2021, 2022, 2023 & 2024 in Nigeria.

[24]Exclusive Economic Zone (EEZ) Act, 1978

[25]Petroleum Industry Act (PIA), 2021

[26] MN Umenweke 'Companies Income Tax (Significant Economic Presence) Order, 2020 Revisited' *AFJCLJ* Vol. 9, 2024, 157-160

Naira (N25, 000,000) or the equivalent in other currencies in that year of assessment from any or a combination of two or more of these activities:

a. It has to have a fixed base in Nigeria[27]
b. Its profits are attributable to its activities in Nigeria
c. Even if it has no fixed base, it has an agent in Nigeria
d. It has a person operating for it in Nigeria
e. It has controlling interests in a company in Nigeria
f. It maintains a stock of goods or merchandise in Nigeria from which deliveries are made.
g. It carries out any form electronic commerce in Nigeria via electronic or other means
h. It carries out online business activities like, payments, adverts etc. to the extent that the company has Significant Economic Presence in Nigeria.
i. The profits of the company can be attributable to her activities in Nigeria
j. Even if the transaction is a single activity like contract, for survey, deliveries, installation, construction, the profits from there are still deemed to be made in Nigeria and liable to Nigeria taxes.
k. Even where the company has engaged in artificial transactions to cover her tracks the court would discountenance the transaction and hold the company liable to Nigeria taxes.[28]

In all the above, the court would deem the profits of the said foreign company to be derived from Nigeria and such company profits would be liable to Nigeria taxes under section 9 of the CITA.[29] This would naturally apply to foreign companies operating in the Blue Economy.

Value Added Tax (VAT) Act 2007 (as amended): The VAT Act applies to goods and services consumed in Nigeria, including those related to maritime activities. VAT could be imposed on services such as shipping, marine tourism, and marine biotechnology products[30].

Nigerian Customs Service (NCS) Act 2020: The NCS is responsible for enforcing customs laws, including the collection of duties on goods imported through Nigeria's ports. The NCS Act provides the legal framework for customs duties and tariffs on goods and equipment used in the Blue Economy.[31]

Nigerian Maritime Administration and Safety Agency (NIMASA) Act 2007[32]: NIMASA is the regulatory authority overseeing maritime safety, security, and environmental protection. The Act empowers NIMASA to impose levies and fees on maritime operators, which are crucial for funding regulatory activities and ensuring compliance with environmental standards.

5. Key Taxation Issues in the Blue Economy

The taxation of the Blue Economy in Nigeria raises several key issues that must be addressed within the legal framework which includes:

Sector-Specific Taxation: Different sectors within the Blue Economy have unique characteristics that require tailored tax approaches. For example, offshore oil and gas extraction involves different risks and revenue potentials[33] compared to fishing or marine tourism. The legal framework must accommodate these differences by imposing sector-specific taxes, such as royalties on oil extraction, license fees for fishing, and VAT on tourism services.

Incentives for Sustainable Practices: To promote sustainability, the tax regime should include incentives for companies that adopt environmentally friendly practices. This could include tax credits for investments in green technologies, reduced tax rates for sustainable fishing practices, or exemptions from certain taxes for companies that engage in marine conservation efforts.

Transfer Pricing and Profit Shifting: Given the international nature of many Blue Economy activities, Nigeria must address the risk of profit shifting by multinational enterprises.[34] The legal framework should incorporate OECD-

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[27] *Offshore Int SA v. FBIR INTC* 384
[28] M N Umenweke, *Ibid*
[29] Section 9 and S.13(2) of CITA
[30] Value Added Tax (VAT) Act, 2007
[31] Nigerian Customs Service (NCS) Act, no 35 2023:
[32] NIMASA, Act, 2007
[33] V Owusu, 'Impacts of the petroleum industry on the livelihoods of fisherfolk in Ghana: A Case study of the Western Region' [2019] 6(4) *The Extractive Industries and Society,* 1256-1264
[34] B Gabanatlhong *etal*, 'Profit shifting by multinational corporations: Evidence from transaction-level data in Nigeria' <https://taxjustice.net/wp-content/uploads/2024/06/TJN-WP-2024-01-Profit-shifting-by-multinational-corporations-Evidence-from-transaction-level-data-in-Nigeria.pdf>accessed 19th August, 2024

compliant transfer pricing rules, ensuring that profits generated from Nigerian maritime resources are taxed in Nigeria rather than being shifted to lower-tax jurisdictions.

Environmental Taxes and Levies: To mitigate the environmental impact of maritime activities, Nigeria could impose environmental taxes, such as carbon taxes on shipping companies or levies on companies that contribute to marine pollution.[35] These taxes would not only generate revenue but also incentivize companies to reduce their environmental footprint.

Revenue Allocation and Fiscal Federalism: The legal framework must address the allocation of revenues from Blue Economy activities among the federal, state, and local governments. Coastal states and communities, in particular, should receive a fair share of the revenues to support local development and conservation efforts.[36]

Customs Duties and Tariffs: Nigeria's customs regime must be adapted to the specific needs of the Blue Economy.[37] This includes imposing duties on the importation of equipment used in offshore activities, as well as offering exemptions or reduced tariffs for goods that promote sustainability, such as renewable energy equipment.

6. Conclusion and Recommendations

The Blue Economy presents Nigeria with significant opportunities for economic diversification and sustainable development. However, to fully realize these opportunities, Nigeria must establish a robust legal framework for the taxation of Blue Economy activities. This framework should be comprehensive, addressing the unique characteristics of each sector within the Blue Economy while promoting sustainability and ensuring fair revenue distribution. By effectively implementing this legal framework, Nigeria can harness the full potential of its maritime resources, contributing to national development and global environmental stewardship.

The effective taxation of the Blue Economy in Nigeria faces several challenges, including enforcement, coordination among agencies and the need for continuous adaptation to emerging trends in the global Blue Economy. Some of the challenges facing the blue economy include sea piracy, illegal arms, trafficking, terrorism, the destruction of marine ecosystems, pollution, global climate challenge and the overreliance on oil and gas particularly the Niger Delta states.[38] To address these challenges, the following strategies are recommended:

Strengthening Institutional Capacity: Agencies responsible for tax administration and maritime regulation, such as the FIRS, NIMASA and NCS, should be equipped with the necessary resources and training to effectively implement the legal framework. This includes developing expertise in assessing and collecting taxes from Blue Economy activities.

Harmonization of Tax Laws and Policies: The legal framework should ensure that there is no conflict or overlap between different tax laws and regulations governing the Blue Economy. This may require the harmonization of tax laws with environmental regulations, as well as the coordination of policies across federal, state, and local governments.

Public-Private Partnerships (PPPs): The government should foster partnerships with private sector players in the Blue Economy to promote compliance with tax laws and the adoption of sustainable practices. PPPs can also help in the development of infrastructure and services that support the growth of the Blue Economy.

Adoption of Technology: Leveraging technology, such as digital platforms for tax collection and monitoring, can enhance the efficiency of tax administration and reduce the risk of tax evasion in the Blue Economy. Blockchain technology, for example, could be used to track and verify transactions in the maritime sector.

Regular Review and Reform of Tax Policies: The legal framework for the taxation of the Blue Economy should be subject to regular review and reform to ensure it remains relevant and effective. This includes adapting to changes in international tax rules, technological advancements, and emerging environmental challenges.

[35] JJ Odinkonigbo, 'Carbon Taxation as a Policy Instrument for Environmental Management and Control in Nigeria' [2011] 10(1) *Nigerian Juridical Review,* 96-111.

[36] JN Osuji and J Agbakwuru, 'Ocean and Coastal Resources Components and their Contributions to Sustainable Development of Nigeria' [2024] 28(1), *J. Appl. Sci. Environ. Manage*, 135-146

[37] Ibid.

[38] The Business & Financial Times https://thebftonline.com Blue Economy prospects-opportunities and challenges for Nigeria.