

Approved for tabling in the House.



REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

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22/9/2021


TWELFTH PARLIAMENT – FIFTH SESSION

THE DEPARTMENTAL COMMITTEE ON  
TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT ON-

RATIFICATION OF:

1. THE 2014 AND 2018 AMENDMENTS TO THE MARITIME LABOUR CONVENTION, 2006;
2. THE INTERNATIONAL LABOUR ORGANIZATION CONVENTION C185 (AMENDED CONVENTION ON SEAFARERS IDENTITY DOCUMENTS, 2003);
3. THE INTERNATIONAL LABOUR ORGANIZATION CONVENTION C188 (WORK IN FISHING CONVENTION, 2007);
4. THE INTERNATIONAL CONVENTION ON THE STANDARDS OF TRAINING, CERTIFICATION AND WATCHKEEPING FOR FISHING VESSEL PERSONNEL, 1995; AND
5. THE CAPE TOWN AGREEMENT OF 2012 ON SAFETY OF FISHING VESSELS

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 23 SEP 2021	
DAY: THURSDAY	
TABLED BY:	CHAIR, DE - TRANSPORT, PUBLIC WORKS & HOUSING HON. DAVID PKOSING MP
CLERK-AT THE-TABLE:	Mainah Wanjiku


DIRECTORATE OF DEPARTMENTAL COMMITTEES  
CLERK'S CHAMBERS - NATIONAL ASSEMBLY  
PARLIAMENT BUILDINGS  
NAIROBI

SEPTEMBER 2021

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 <b>THE NATIONAL ASSEMBLY</b> <b>PAPERS LAID</b>	
<b>DATE:</b> 23 SEP 2021	<b>DAY.</b>
<b>TABLED BY:</b>	
<b>CLERK-AT THE-TABLE:</b>	

## ANNEXURES LIST

- (i) Minutes of sittings of the Committee
- (ii) List of Members present during adoption of the report
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- (vii) Submission from the Ministry for Interior



## **EXECUTIVE SUMMARY**

On 23<sup>rd</sup> February 2021 five Conventions from the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works were laid before the National Assembly for consideration by the House. These are:

1. The 2014 And 2018 Amendments to The Maritime Labour Convention, 2006;
2. The International Labour Organization Convention C185 (Amended Convention on Seafarers Identity Documents, 2003);
3. The International Labour Organization Convention C188 (Work in Fishing Convention, 2007);
4. The International Convention on The Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995; and
5. The Cape Town Agreement of 2012 on Safety of Fishing Vessels.

Pursuant to section 8 of the Treaty Making and Ratification Act, 2012, they were committed to the Departmental Committee on Transport Public Works and Housing for consideration and report to the House. Once ratified, the Conventions shall become part of our Kenyan laws as provided for in Article 2(6) of the Constitution which provides that *"any treaty or convention ratified by Kenya shall form part of the Law of Kenya under this Constitution"*.

In line with Article 118 (1) (b) of the Constitution on public participation in law making process and section 8(3) of the Treaty Making and Ratification Act of 2012, the Committee placed advertisements in two local daily newspapers of 1<sup>st</sup> of April 2021, requesting for submission of memoranda by the public on the subject matter. There was no response.

On 1<sup>st</sup> July 2021, the Committee met the Principal Secretary, State Department for Shipping and Maritime, Secretary, Internal Security, Director General, Kenya Coast Guard Services, Director General for Immigration among other government officials. They unanimously recommended the ratification of the Conventions while outlining various benefits especially on protection of seafarers and employment.

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the guidance and technical support accorded to it during consideration of these Conventions.

On behalf of the Committee, it is therefore my pleasant duty and privilege, to lay this report on The Ratification of the 2014 and 2018 amendments to the Maritime Labour Convention, 2006; the International Labour Organization Convention C185 (Amended Convention on Seafarers Identity Documents, 2003); the International Labour Organization Convention C188 (Work in Fishing Convention, 2007); the International Convention on The Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995; and the Cape Town Agreement of 2012 on Safety of Fishing Vessels; for consideration and approval by the House Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199.

**HON. DAVID L. PKOSING, C.B.S., M.P.**

**Chairperson -Departmental Committee on Transport Public Works and Housing**

## 1.0 PREFACE

### Mandate of the Committee

1. The Departmental Committee on Transport, Public Works and Housing is mandated, pursuant to the Standing Order 216 (5), to;

- a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- b) *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
- c) *study and review all legislation referred to it;*
- d) *study, access and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- e) *investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- f) *to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
- g) *examine treaties, agreements and conventions;*
- h) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- i) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- j) *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- k) *Examine any questions raised by Members on a matter within its mandate.*

2. Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects: -

- a) Transport;
- b) Roads;
- c) Public works;
- d) Construction and maintenance of roads, rails and buildings;
- e) Air and seaports; and
- f) Housing.

3. In executing this mandate, the Committee oversights various State Departments, namely:

- a) The State Department of Transport;
- b) The State Department of Infrastructure;
- c) The State Department of Housing and Urban Development;
- d) The State Department of Public Works; and
- e) The State Department of Shipping and Maritime Affairs.

## Membership of the Committee

4. The Departmental Committee on Transport, Public Works & Housing was constituted by the House on Thursday 14<sup>th</sup> December 2017. It was further re-constituted by the House on 15<sup>th</sup> July 2020 and currently comprises of the following Members: -

### Chairperson

Hon. David Pkosing, C.B.S., M.P.  
Pokot South Constituency  
Jubilee Party

### Vice-Chairperson

Hon. Gathoni Wamuchomba, H.S.C., M.P.  
Kiambu County  
Jubilee Party

Hon. Abdul Rahim Dawood, M.P.  
North Imenti Constituency  
**Jubilee Party**

Hon. David Njuguna Kiaraho, M.P.  
Ol Kalou Constituency  
**Jubilee Party**

Hon. Johnson Many Naicca, M.P.  
Mumias West Constituency  
**Orange Democratic Movement Party**

Hon. Omar Mwinyi Shimbwa, M.P.  
Changamwe Constituency  
**Orange Democratic Movement Party**

Hon. Peris Tobiko, C.B.S., M.P.  
Kajiado East Constituency  
**Jubilee Party**

Hon. Samuel Arama, M.P.  
Nakuru Town West  
**Jubilee Party**

Hon. Ahmed Abdisalan Ibrahim, M.P.  
Wajir North Constituency  
**Orange Democratic Movement Party**

Hon. Ahmed Bashane Gaal, M.P.  
Tarbaj Constituency  
**Peoples Democratic Party**

Hon. Ali Wario Guyo, M.P.  
Garsen Constituency  
**Orange Democratic Movement Party**

Hon. Dominic Kipkoech Koskei, M.P.  
Soitik Constituency  
**Jubilee Party**

Hon. George Aladwa Omwere, M.P.  
Makadara Constituency  
**Orange Democratic Movement Party**

Hon. Gideon Mutemi Mulyungi, M.P.  
Mwingi Central Constituency  
**Wiper Democratic Party**

Hon. Kulow Maalim Hassan, M.P.  
Banisa Constituency  
**Economic Freedom Party (EFP)**

Hon. Mercy Wanjiku Gakuya, M.P.  
Kasarani Constituency  
**Jubilee Party**

Hon. Janet Wanyama Nangabo, M.P.  
Trans-Nzoia County  
**Jubilee Party**

Hon. Shadrack John Mose, M.P.  
KitutuMasaba Constituency  
**Jubilee Party**

Hon. Tom Mboya Odege, M.P.  
Nyatike Constituency  
**Orange Democratic Movement Party**

## **Committee Secretariat**

5. The Committee is serviced by the following secretariat staff:-

Ms. ChelagatTungo Aaron  
**First Clerk Assistant**  
Head of Secretariat

Mr. Ahmed Salim Abdalla  
**Second Clerk Assistant**

Mr. Ronald Walala  
**Legal Counsel I**

Mr. AbdinasirMoge Yusuf  
**Fiscal Analyst I**

Mr. Eric Kariuki  
**Research Officer III**

Ms. ZainabuWario  
**Serjeant-at-Arms**

Mr. Yeziel Jilo  
**Serjeant-at-Arms**

Mr. Yaqub Ahmed  
**Media Relations Officer**

Mr. Collins Mahamba  
**Audio Recording Officer**

## 2.0 INTRODUCTION

6. The International Maritime Organization (IMO), the International Labour Organization (ILO) and the Food and Agriculture Organization (FAO) are specialized agencies of the United Nations. Kenya is a member State of all the three UN organizations.
7. Seafarers and fishers work on-board vessels which are socio-technical and complex systems existing inside a hostile environment. They are captive to the work environment as they live and work on-board, are exposed to ever practical risky situations, cultural diversity, as well as hostile internal and external work environments which are incomparable to land. All these factors affect their occupational safety and health (OHS). The State therefore has a duty to secure OHS as either a flag or state, port state or labour supplying state.
8. Pursuant to a Cabinet Memorandum of October 2020, the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works submitted five Conventions for consideration by the House. These are:
  - a) The 2014 And 2018 Amendments to The Maritime Labour Convention, 2006;
  - b) The International Labour Organization Convention C185 (Amended Convention on Seafarers Identity Documents, 2003);
  - c) The International Labour Organization Convention C188 (Work in Fishing Convention, 2007);
  - d) The International Convention on The Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995; and
  - e) The Cape Town Agreement of 2012 on Safety of Fishing Vessels
9. The Outline of the Conventions is provided for as hereunder.

### Outline of the Conventions

- a. **The 2014 and 2018 Amendments to The Maritime Labour Convention, 2006;**
10. The Maritime Labour Convention (MLC) sets out seafarers' rights to decent working and living conditions for the world's seafarers and to establish a system of fair competition among ship owners. The MLC has a total of 96 ratifications. Kenya ratified the MLC on 31st July, 2014.
11. The 2014 amendments to the MLC relate to the financial security of seafarers in case of abandonment, and contractual claims for compensation in the event of seafarer's death or long-term disability due to an operational injury, illness or hazard. These amendments enter into force on 18 January 2017. They have been adopted by 105 states, 18 being African.
12. The 2018 amendments to MLC 2006 aim to improve protection of seafarers. The amendments:
  - a) guarantee full payment of seafarers' wages and entitlement during the entitlements during the entire period of captivity and until the seafarers are released and duly repatriated. If the seafarers dies while in captivity, wages and entitlement should be paid until the date of death as determined in accordance with applicable national laws; and
  - b) give guidance on eliminating shipboard harassment and bullying.

**b. Convention on seafarers Identity Documents, 2003, as amended (C185)**

13. This convention facilitates the entry of seafarers and fishers into the territory of member states, for the purpose of shore leave, transit, transfer or repatriation.
14. After the 9/11 attacks in USA, there was a global change on the general attitude towards border security. This led to the revision of the Seafarers' Identity Convention of 1958 to the Seafarers' Identity Documents Convention No 185 in 2003, which led to the introduction of biometrics aimed at facilitating shore leave, transfers and transit at maritime borders while respecting the security requirements of port states.
15. The convention prescribes the Content, Form and Systems requirements of the Seafarers' Identity Document (SID). Thus, the SID serves as an alternative to the passport and a stand-alone document to facilitate access to shore and transit of seafarers (exempts seafarers from holding a visa).
16. This Convention:
  - a) provides seafarers and fishers an opportunity to go ashore provide a mental and physical break from routine and contributes to good health and better attitudes towards their job;
  - b) enable seafarers and fishers to travel without visa requirement; and
  - c) enables seafarers and fishers to access employment opportunities.

**c. Work in Fishing Convention, 2007(C188);**

17. The Convention 188 was designed to ensure the fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board, conditions of service, fishers' work agreement, repatriation, recruitment and placement, accommodation and food, occupational safety and health protection, medical care and social security, protection in case of work-related sickness injury or death. It entered into force on 16 November 2017. It has a total of 18 ratification, 6 being African.
18. The Convention establishes minimum labour standards to improve the safety, health and medical care for workers on board fishing vessels, ensuring a minimum age for fishers, payment of minimum wages, and enforcing limits on working hours as well as ensuring they have the protection of a written work agreement and the same social security protections as workers on land. These provisions are vital in preventing workers from being exploited by unscrupulous employers who pay less than the recommended minimum wages, refuse to ensure overtime is voluntary and compensated, and engage in debt bondage and forced labour. Further, ensuring fishers are included fully in the social security system in critical especially if they suffer and occupational accident or illness.

**d. International Convention on the Standards of Training, Certification and Watchkeeping for Fishing Vessels Personnel, 1995 (1995 STCW-F Convention)**

19. The STCW-F Convention applies to personnel serving on board seagoing fishing vessels entitled to fly the flag of the party. It sets the regulatory framework for the training and certification of personnel employed in fishing vessels with view to improving the safety of life and property at sea in the fishing industry. It entered into force on 29<sup>th</sup> September 2012.
20. The STCW-F Convention contributes to the reduction of casualties and brings considerable benefits and advantages to the fishing industry i.e., improving the quality

of education and training provided to personnel employed in fishing vessels; and enhancing the standards of training and safety in the fishing industry and fishing vessel fleets.

21. The Convention is currently under review. The amended version will be adopted in 2022, and will establish two levels of skippers' dependent on tonnage and length of the fishing vessel.

**e. Cape Town Agreement of 2012 on Safety of Fishing Vessels**

22. This is an international binding agreement which will control the rogue fishing industry, an area which has largely been unregulated over the years, through the control of fishing vessel safety by flag, port coast and states. It will also contribute to the fight against illegal, unprotected and unregulated (IUU) fishing.
23. It sets internationally agreed standards on the design, construction, and equipment of seagoing fishing vessel which are 24 meters or 300 gross tonnage (GT) and above. The requirements are aimed at ensuring that vessels safety by flag, port and coastal states. It will also contribute to the fight against illegal, unreported and unregulated (IUU) fishing.
24. The agreement currently has 14 contracting states. It requires 15 states to enter into force. 2 African states are party to the agreement. It is expected to enter into force on 20th October 2022.

### 3.0 SUMMARY OF THE PROCESS LEADING TO THE ADOPTION OF THE CONVENTIONS

#### a. The number of States that are party to the Treaty

25. Amendments of 2014 and 2018 to the Maritime Labour Convention, 2006 has a total of 96 ratifications. Kenya ratified the MLC on 31<sup>st</sup> July, 2014. These amendments entered into force on 18<sup>th</sup> January 2017. They have been adopted by 105 States, 18 being African. The amendments entered into force in Kenya tacitly on 26<sup>th</sup> December 2020. The Convention on Seafarers Identity Documents, 2003, as amended (C185) was entered into force on 8<sup>th</sup> June 2017. It has a total of 35 ratifications, 5 being African countries. Work in Fishing Convention, 2007 (C188) was entered into force on 16<sup>th</sup> November 2017. It has a total of 18 ratifications, 6 being African. The International Convention on the Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 was entered into force on 29<sup>th</sup> September 2012. It has a total ratification of 32 States, 9 being African. It is currently under review. The amended version will be adopted in 2022. The amendments will enter into force under the tacit amendment procedure. The Cape Town Agreement of 2012 on Safety of Fishing Vessels currently has 14 Contracting States. It requires 15 States to enter into force. 2 African States are party to the Agreement. It is expected to enter into force on 20<sup>th</sup> October 2022.

#### b. The views of the public on the ratification of the Conventions

26. In view of the restrictions in place due to the COVID-19 pandemic, the Ministry undertook public participation via various fora including newspaper notice, letters to stakeholders and virtual meetings. The Ministry submitted that the following entities presented their views:
- i. State Department for Shipping and Maritime
  - ii. Ministry of Foreign Affairs
  - iii. The National Treasury and Planning
  - iv. The Office of the Attorney General and Department Justice
  - v. State Department for Transport
  - vi. State Department for Transport
  - vii. State Department for Interior and Citizen Services
  - viii. State Department for Fisheries, Aquaculture and Blue Economy
  - ix. State Department for Vocational and Technical Training.
  - x. State Department for University Education and Research
  - xi. Kenya Maritime Authority
  - xii. Kenya National Qualification Authority
  - xiii. Kenya Ships Agents Association
  - xiv. International Transport Workers Federation
  - xv. Seafarers Union of Kenya
27. The Ministry explained that all the entities showed strong support for the ratification and the acceptance of the above-mentioned Conventions, noting their importance in advancing the protection of safety and labour interests of the country's seafarers and fishers.

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#### c. Whether the Agreements sought to be ratified permit reservations and any recommendations on reservations and declarations

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28. The Conventions do not permit reservations. However, they permit denunciation as provided for under each Convention.



**d. Implications on matters relating to Counties**

29. The obligation imposed on Kenya upon ratification relate to its status as a flag state, port state, labour-supplying state. A flag state is a state of a ship's nationality. A port state verifies whether foreign ships comply with international rule and standards. A labour-supplying state is a state that plays a major role in the global maritime labour market, as a significant source of seafarers/fishers. Those form part of the National Government Maritime Administration obligations as under part 1 (3.13, 15,16,18) of the Fourth Schedule of the Constitution, and do not occasion County obligations.

**e. Whether expenditure of public funds will be incurred in implementing the Treaties and an estimate, where possible, of the expenditure**

30. The implementation and enforcement of the Conventions is anticipated to have financial implications over and above Ministry's current budgetary allocations, partially in the areas of:
- i. Cost of ratification and amending the law
  - ii. establishment of adequate training facilities;
  - iii. training of trainers;
  - iv. training of the Maritime Administration personnel to facilitate proper implementation and enforcement;
  - v. adequate equipment for issuance of SID;
  - vi. linkage of the Immigration and Kenya Maritime Authority Databases;
  - vii. establishment of quality control and evaluation procedures
  - viii. modification of certification process in line with the Standards;
  - ix. technical assistance and cooperation on implementation and enforcement; and
  - x. expounding the scope of Recognized Organizations inspections and certifications.

#### 4.0 CONSIDERATION OF THE CONVENTIONS

31. On 1<sup>st</sup> July 2021, the Departmental Committee held a meeting with the Principal Secretary in the State Department for Maritime, the Secretary for Internal Security and other officials from the Ministry. The meeting was interactive with the Committee members having a better understanding of the Conventions and the benefits expected for the country.
32. In her submissions, the Principal Secretary for Shipping and Maritime explained that one of the key mandates of the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works is the development of skills and competencies necessary for the development of Kenya's maritime sector as a necessary prerequisite to the growth of the Blue Economy. Towards fulfilment of various aspects of this mandate, the Ministry therefore commenced the process towards the ratification of the five key Conventions that support capacity building as well as ensure the safety of the seafarers while employed on board the ship.
33. The PS explained that the Conventions protect the rights, occupational safety, health and welfare of persons while in their work environment on board foreign going ships. She submitted that the Conventions have all been universally adopted through the joint action of two specialised agencies of the United Nations, namely: -
- a) the International Maritime Organization (IMO), charged with setting global standards for safety, security of shipping and marine environmental protection; and
  - b) the International Labour Organization (ILO), charged with improving labour conditions and standards throughout the world.
34. The Principal Secretary observed that Kenya is a member of both the IMO and ILO, but while we have ratified the MLC 2006, we are yet to ratify its later amendments. This therefore exposes Kenyan seafarers and fisher-folk to risk arising from the fact that they live and work on-board sea-going ships that are mostly foreign-owned or registered. Being captive to the work environment also exposes them to risky situations, cultural diversity, as well as potentially hostile internal and external work environments, all of which are incomparable with what their compatriots working on land, face.
- a) Ratification of the Conventions will help therefore make it possible for Kenya to achieve the following specific benefits:
- a) Protection of Seafarers;
  - b) Facilitate the access to shore facilities as well as transit to Seafarers and Fishers;
  - c) Protection of Fishers;
  - d) Training and Certification of Fishing Vessel Personnel; and
  - e) Safety of Fishing Vessels.
35. The Committee however sought further clarifications, from the Ministry of Interior, regarding the Seafarers' Identification Document (SID) as provided for in the Convention on seafarers Identity Documents, 2003, as amended (C185). The Committee wanted to know whether the SID was replacing visa and if not, which other documents will be used together with the SID. The Committee also wanted to know which other documents protect seafarers, as well as the features of the SID. The Committee further wanted clarification on whether there was an interlinkage between

the SID database and immigration data base; especially for security purposes. The Committee therefore directed the Ministry of Interior to submit a written report responding to the issues raised by the Committee.

36. On 10<sup>th</sup> August 2021 the Committee confirmed the receipt of the Report from the Principal Secretary for Interior on the Seafarers' Identification Document (SID). The Committee considered the same and noted that the report by the Ministry of Interior was comprehensive and addressed all issues that the Committee had raised when considering the Maritime Conventions and in particular, the International Labour Organization Convention C185 (Amended Convention on Seafarers Identity Documents, 2003).
37. The Committee, being satisfied with the submissions by the Ministry of Interior and Co-ordination of National Government on the Seafarers' Identity Documents (SID), resolved to recommend to the House, the ratification of the following Conventions:
  - 1) Amendments to the Maritime Labour Convention, 2006 (2014 and 2018 Amendments);
  - 2) International Labour Organization Convention C185 (Amended Convention on Seafarers Identity Documents, 2003);
  - 3) International Labour Organization Convention C188 (Work in Fishing Convention, 2007);
  - 4) International Convention on the Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995; and
  - 5) Cape Town Agreement of 2012 on Safety of Fishing Vessels.
38. In its meeting held on 14<sup>th</sup> August 2021, the Committee therefore adopted this Report, recommending the ratification of all the five Conventions.

## 5.0 COMMITTEE'S OBSERVATIONS

39. The Constitution in Article 2 (6) provides for the entrenchment of these Conventions into the laws of Kenya.
40. The Conventions are in line with the spirit of the Constitution of Kenya, as they address protection and the well-being of Kenyans in recognition of the essential values of human dignity, human rights and equality. The Conventions also promote access to quality education, the well-being of maritime labour; and the employment of Kenyans.
41. The 2018 amendments to MLC 2006 aim to provide protection to seafarers. The amendments will guarantee full payment of seafarers' wages and entitlements during the entire period of captivity and until the seafarer is released and duly repatriated. If the seafarer dies while in captivity, wages and entitlements should be paid until the date of death as determined in accordance with applicable national laws. These amendments will also give guidance on eliminating shipboard harassment and bullying.
42. The Convention on Seafarers Identity Documents, 2003, as amended (C185) facilitates the entry of seafarers and fishers into the territory of Member States, for the purposes of shore leave, transit, transfer or repatriation. This Convention provides seafarers and fishers an opportunity to go ashore and provides a mental and physical break from routine and contributes to good health and better attitudes towards their job. The Convention also enables seafarers and fishers to travel without the visa requirement; and therefore, enables seafarers and fishers to access numerous employment opportunities.
43. Work in Fishing Convention, 2007 (C188) establishes minimum labour standards to improve the safety, health and medical care for workers on board fishing vessels and provides for the minimum age for fishers. The Convention also provides for the payment of minimum wages, limits on working hours and a written work agreement and social security protections for fishers.
44. The International Convention on the Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 contributes to the reduction of casualties and brings considerable benefits and advantages to the fishing industry, i.e., improving the quality of education and training provided to personnel employed in fishing vessels; and enhancing the standard of training and safety in the fishing industry and fishing vessel fleets.
45. The Cape Town Agreement of 2012 on Safety of Fishing Vessels aims to guarantee the safety of fishing vessels through flag and port State controls. The agreement will also contribute to the fight against illegal, unreported and unregulated fishing.
46. Ratification of the five Conventions will assist Kenya in realizing her Blue Economy aspirations, the Big Four Agenda, as well as the United Nations Sustainable Development Goals.
47. The Conventions as presented satisfy the requirements of the Treaty Making and Ratification Act, 2012 as provided for in section 7 and section 8 of the Act.

## 6.0 COMMITTEE'S RECOMMENDATION

48. The Committee recommends that the House approves the ratification of the following Conventions as the approvals are in Kenya's national interest:

- 1) Amendments to the Maritime Labour Convention, 2006 (2014 and 2018 Amendments);
- 2) International Labour Organization Convention C185 (Amended Convention on Seafarers Identity Documents, 2003);
- 3) International Labour Organization Convention C188 (Work in Fishing Convention, 2007);
- 4) International Convention on the Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995; and
- 5) Cape Town Agreement of 2012 on Safety of Fishing Vessels.


Signed .....

Hon. David L. Pkosing, C.B.S., M.P.

Chairperson

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS &  
HOUSING

Date ..... 22/9/2021 .....

 <b>THE NATIONAL ASSEMBLY</b> <b>PAPERS LAID</b>	
<b>DATE: 23 SEP 2021</b>	
<b>TABLED BY:</b>	<b>DAY.</b>
<b>CLERK-AT THE-TABLE</b>	



# Minutes

of sittings of the Committee






# **Explanatory Memorandum**

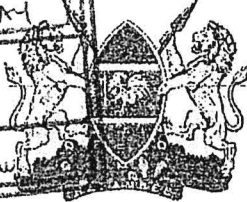
on the Conventions



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SECRET

		REPUBLIC OF KENYA	
THE NATIONAL ASSEMBLY		PAPERS LAID	
DATE: 23 FEB 2021		DAY: TUESDAY	
TABLED BY:	LOM		
CLERK-AT THE TABLE:	Mainah Nantulye		



**CABINET MEMORANDUM ON THE  
ACCEPTANCE OF AMENDMENTS TO MARITIME LABOUR  
CONVENTION, 2006;  
ACCEPTANCE OF ILO CONVENTION C185;  
ACCEPTANCE OF ILO CONVENTION C188;  
ACCEDING TO THE STCW- F CONVENTION; AND  
RATIFICATION OF THE CAPE TOWN AGREEMENT**

BY

**THE MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING,  
URBAN DEVELOPMENT AND PUBLIC WORKS**

OCTOBER 2020

SECRET

SECRET

# SECRET

## 1.0 OBJECTIVE

1.1 The purpose of this Cabinet Memorandum is to:

- (i) Apprise the Cabinet and seek its approval for the ratification and acceptance of the following International Labour Organization (ILO) and International Maritime Organization (IMO) Conventions:

- Amendments of 2014 and 2018 to the Maritime Labour Convention (MLC), 2006;
- Convention on Seafarers Identity Documents, 2003, as amended (C185);
- Work in Fishing Convention, 2007 (C188);
- International Convention on the Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (1995 STCW-F Convention); and
- Cape Town Agreement of 2012 on Safety of Fishing Vessels.

## 2.0 BACKGROUND

2.1 The IMO is a specialized agency of the United Nations (UN). It is the global standard-setting authority for safety, security and environmental performance of international shipping. Owing to the global nature of shipping, its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and implemented.

2.2 The ILO is a specialized agency of the UN dedicated to improving labour conditions and living standards throughout the world. One of the functions of the ILO is the development and promotion of standards for national legislation to protect and improve working conditions and standards of living. The ILO is devoted to promoting social justice and internationally recognized human and labour rights, through a decent work agenda.

2.3 The Food and Agriculture Organization (FAO) is a specialized agency of the UN that leads international efforts aimed at defeating hunger. With respect to the fishing sector, FAO plays a foremost role in development and improvement of international fisheries policies to benefit State's food security and nutrition, economic growth, alleviation of poverty and employment opportunities.

2.4 Kenya is a member State of the IMO since 1973; a member State of the ILO since 1965; and a member State of FAO since 1964.

2.5 The IMO and ILO, with inter-agency cooperation with FAO, jointly adopted the above listed Conventions aimed at improving the work and living conditions of maritime labour, which comprises of both seafarers and fishers. A Seafarer is any person who is employed,

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engaged or works in any capacity on-board a ship. Conversely, a Fisher is any person employed, engaged or carrying out an occupation on-board a fishing vessel, including persons working on-board who are paid on the basis of a share of the catch.

- 2.6 Seafarers and fishers work on-board vessels which are socio-technical and complex systems existing inside a hostile environment. They are captive to the work environment as they live and work on-board, are exposed to ever practical risky situations, cultural diversity, as well as hostile internal and external work environments which are incomparable to land. All these factors affect their occupational safety and health (OSH). A State has a duty to secure OSH as either a flag State, port State or labour supplying State.

### 3.0 THE OBJECTS AND SUBJECT MATTER OF THE CONVENTIONS

#### 3.1 Amendments of 2014 and 2018 to the Maritime Labour Convention, 2006

The Maritime Labour Convention (MLC) sets out seafarers' rights to decent working and living conditions. Its primary purpose is to ensure decent working and living conditions for the world's seafarers and to establish a system of fair competition among ship owners. The MLC has a total of 96 ratifications. Kenya ratified the MLC on 31<sup>st</sup> July, 2014.

The 2014 amendments to the MLC relate to financial security of seafarers in cases of abandonment, and contractual claims for compensation in the event of a seafarer's death or long term disability due to an operational injury, illness or hazard. These amendments entered into force on 18 January 2017. They have been adopted by 105 States, 18 being African.

The 2018 amendments to MLC 2006 aim to provide protection to seafarers. The amendments:

- i) guarantee full payment of seafarers wages and entitlements during the entire period of captivity and until the seafarer is released and duly repatriated. If the seafarer dies while in captivity, wages and entitlements should be paid until the date of death as determined in accordance with applicable national laws; and
- ii) give guidance on eliminating shipboard harassment and bullying.

The end of their formal disagreement period is 26 June 2020. The amendments will enter into force on 26 December 2020. Three (3) African States have accepted the amendments.

#### 3.2 Convention on Seafarers Identity Documents, 2003, as amended (C185)

This Convention facilitates the entry of seafarers and fishers into the territory of Member States, for the purposes of shore leave, transit, transfer or repatriation.

After the 9/11 attacks in USA, there was a global change on the general attitude towards border security. This led to the revision of the Seafarers' Identity Convention of 1958 to the Seafarers' Identity Document Convention No 185 in 2003, which led to the



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introduction of biometrics aimed at facilitating shore leave, transfers and transit at maritime borders while respecting the security requirements of port States.

The Convention prescribes the Content, Form and System requirements of the Seafarers' Identity Document (SID). Thus, the SID serves as an alternative to the passport and a stand-alone document to facilitate access to shore and transit of seafarers (exempts seafarers from holding visa).

The Convention entered into force on 8 June 2017. It has a total of 35 ratifications, 5 being African.

This Convention:

- i) provides seafarers and fishers an opportunity to go ashore provides a mental and physical break from routine and contributes to good health and better attitudes towards their job;
- ii) enables seafarers and fishers to travel without the visa requirement; and
- iii) enables seafarers and fishers to access employment opportunities.

### 3.3 Work in Fishing Convention, 2007 (C188);

Fishing is one of the most dangerous professions in the world, accounting for over 32,000 deaths yearly. This is because most fishers operate dangerous equipment and are exposed to long working hours without adequate rest times. Furthermore, most fishing vessels that have limited space, space being allocated to accommodation facilities and equipment and machinery used in fishing operations. The rates of injury are therefore high.

Convention 188 was designed to ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board, conditions of service, fishers' work agreement, repatriation, recruitment and placement, accommodation and food, occupational safety and health protection, medical care and social security, protection in case of work related sickness injury or death. It entered into force on 16 November 2017. It has a total of 18 ratifications, 6 being African.

The Convention establishes minimum labour standards to improve the safety, health and medical care for workers on board fishing vessels, ensuring a minimum age for fishers, payment of minimum wages, and enforcing limits on working hours as well as ensuring they have the protection of a written work agreement and the same social security protections as workers on land. These provisions are vital in preventing workers from being exploited by unscrupulous employers who pay less than the recommended minimum wages, refuse to ensure overtime is voluntary and compensated, and engage in debt bondage and forced labour. Further, ensuring fishers are included fully in the social security system is critical especially if they suffer an occupational accident or illness.



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### 3.4 International Convention on the Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (1995 STCW-F Convention)

Just like workers aboard other vessels whose training certification and watchkeeping provisions are hinged on the already ratified STCW Convention, workers in fishing equally need similar provisions and protections hinged on law.

The STCW-F Convention applies to personnel serving on board seagoing fishing vessels entitled to fly the flag of a Party. It sets the regulatory framework for the training and certification of personnel employed on board fishing vessels with a view to improving the safety of life and property at sea in the fishing industry. It entered into force on 29<sup>th</sup> September 2012. Has a total ratification of 32 States, 9 being African.

The STCW-F Convention contributes to the reduction of casualties and brings considerable benefits and advantages to the fishing industry i.e. improving the quality of education and training provided to personnel employed in fishing vessels; and enhancing the standard of training and safety in the fishing industry and fishing vessel fleets.

The Convention is currently under review. The amended version will be adopted in 2022, and will establish two levels of skippers' dependent on tonnage and length of the fishing vessel.

### 3.5 Cape Town Agreement of 2012 on Safety of Fishing Vessels

This is an internationally binding agreement which will control the rogue fishing industry, an area which has largely been unregulated over the years, through the control of fishing vessel safety by flag, port and coastal States. It will also contribute to the fight against illegal, unreported and unregulated (IUU) fishing.

It sets internationally agreed standards on the design, construction, and equipment of seagoing fishing vessels which are 24 meters or 300 gross tonnage (GT) and above. The requirements are aimed at ensuring that vessels remain watertight, weather-tight, strong, and stable, even under adverse conditions such as ice and extreme weather.

The Agreement currently has 14 Contracting States. It requires 15 States to enter into force. 2 African States are Party to the Agreement. It is expected to enter into force on 20 October 2022.

## 4.0 ANALYSIS OF THE PROBLEM

### 4.1 Amendments of 2014 and 2018 to the Maritime Labour Convention, 2006

In as much as Kenya has employment laws in place that serve to generally protect the rights of workers, work aboard vessels is of a peculiar kind and the existing employment laws do not sufficiently cater for the interests of workers aboard vessels

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Kenyan seafarers face untold difficulties in the event that there is need for their repatriation or need for compensation in case of injury on board for lack of funds to facilitate such, occupational accidents, harassment and bullying and capture by pirates.

### 4.2 Convention on Seafarers Identity Documents, 2003, as amended (C185)

The current document that Kenyan seafarers and fishers are issued for identification and recording sea service does not meet the requirements of Convention C185 and therefore Kenyan seafarers are often denied the right of shore leave or passage unless they have a valid visa for the countries the ship is passing through.

### 4.3 Work in Fishing Convention, 2007 (C188);

Kenya has ratified MLC 2006 that generally provides for the protection of seafarers' rights. The MLC 2006 however excludes fishing vessels from the application of the MLC Convention. A gap therefore does exist for Kenyan seafarers have the protection of law but fishers remain exposed in spite of working under hazardous conditions. The Work in Fishing Convention, 2007 (C188) fills this gap.

Fifty per cent of Kenyan citizens working at sea work in the fishing sector, but Kenya has not ratified the ILO Convention 188 which means that there is a gap in regulation to protect the fishers.

### 4.4 International Convention on the Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (1995 STCW-F Convention);

Kenya has ratified the International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers, 1978 as amended that generally provides the requisite training, safe manning and health fitness standards for seafarers but does not provide for workers on fishing vessels. The STCW-F sets the regulatory framework for the training and certification of personnel employed on board fishing vessels with a view to improving the safety of life and property at sea in the fishing industry.

To successfully drive the Blue Economy Agenda, Kenya requires qualified employees to work on-board fishing vessels. The country currently has not developed a standard education programme for fishers. In order to attract employment of Kenyan fishers onboard Kenyan as well as international fishing vessels, Kenyans should be trained in accordance to the international standards and therefore ratification of STCW-F will enable Kenya churn out fishers from fishing institutions with internationally recognized qualifications.

### 4.5 Cape Town Agreement of 2012 on Safety of Fishing Vessels

Although Kenya has ratified the Safety of Life at Sea Convention (SOLAS), the Convention does not adequately provide for safety of fishing vessels. CTA covers areas of fishing vessel safety compliance not covered by SOLAS.



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Furthermore, Kenya faces food insecurity and also loses billions as a result of IUU fishing.

### 5.0 CONSTITUTIONAL IMPLICATION

5.1 The Conventions are in line with the spirit of the Constitution of Kenya, 2010. They neither propose any amendment to the Constitution, nor are they contrary to the Constitutional values and objectives.

5.2 The Conventions are committed to protecting the well-being of Kenyans and recognises the essential values of human dignity, human rights and equality.

### 6.0 NATIONAL INTERESTS THAT MAY BE AFFECTED BY RATIFICATION

6.1 The Conventions intend to promote the well-being of maritime labour; the employment of Kenyans; and the access to quality education, thus promote sustainable development; and food security and economic growth of Kenya. In essence, the Conventions will aid Kenya realize her 8<sup>th</sup> economic pillar of the Third Medium Term Plan of the Kenya Vision 2030 that is the Blue Economy, the Big Four Agenda, as well as the United Nations Sustainable Development Goals.

### 7.0 OBLIGATIONS IMPOSED ON KENYA BY THE TREATIES

#### 7.1 Amendments of 2014 and 2018 to the Maritime Labour Convention, 2006

As a Labour-Supplying State, Kenya will have an obligation to review the legislation and regulations in place to require shipping companies to provide financial security in P&I Clubs; ensure dispute resolution procedures are present onboard and onshore and to require seafarers to undertake the Life Skills Training.

Kenya will also have to ensure effective implementation and enforcement of the Regulations.

#### 7.2 Convention on Seafarers Identity Documents, 2003, as amended (C185)

To implement this Convention, the Government will need to:

- i) provide adequate equipment for issuance of SID;
- ii) define the implementation and enforcement procedures;
- iii) link the Immigration and Kenya Maritime Authority Databases;
- iv) establish a focal point for issue of SIDs and for enquiries;
- v) increase capacity for issuing SIDs; and
- vi) establish quality control and evaluation procedures.

#### 7.3 Work in Fishing Convention, 2007 (C188)

There will be need for legislation to implement the provisions of this convention. There will also be need to establish mechanisms for coordination between relevant stakeholders as well as establishment a robust licensing regime for private recruitment agencies.

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The Government will also need to increase its capacity for implementation and enforcement as flag, port and labour supplying State.

### 7.4 International Convention on the Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (1995 STCW-F Convention)

To implement this Convention, the Government will need to:

- i) establishing adequate training facilities;
- ii) train the trainers;
- iii) modify certification processes in line with the Standards;
- ~~iv) monitor and inspect the training institutions;~~
- v) enact legislation to domesticate requirements 'left to the satisfaction of the Administration';
- vi) seek technical cooperation on implementation and enforcement;
- vii) negotiate Memoranda of Understanding for endorsement and recognition of certificates for fishers;
- viii) establish a Cabotage regime for fishers; and
- ix) monitor future amendments due to tacit amendment procedures.

### 7.5 Cape Town Agreement of 2012 on Safety of Fishing Vessels

Implementing the CTA requires:

- i) expounding the scope of Recognized Organizations inspections and certifications.
- ii) formulation of national legislation, regulations and guidelines for standards left to the 'satisfaction of the Administration'.
- iii) development of a progressive implementation plan.
- iv) training of the Maritime Administration personnel to facilitate proper implementation and enforcement; and
- v) training of crew on safety issues.

## 8.0 POLICY AND LEGISLATIVE CONSIDERATIONS

8.1 These Conventions are not self-executing in nature and they require transposition into national laws.

8.2 The Government will therefore have to review and/or enact legislation to implement and enforce the:

- i) Amendments of 2014 and 2018 to the Maritime Labour Convention, 2006;
- ii) Convention on Seafarers Identity Documents, 2003, as amended (C185);
- iii) Work in Fishing Convention, 2007 (C188);
- iv) International Convention on the Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (1995 STCW-F Convention); and
- v) Cape Town Agreement of 2012 on Safety of Fishing Vessels.

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8.3 This will be done taking into consideration the objectives of the Integrated National Transport Policy, 2009 which requires the Government to:

- a) develop the maritime transport sector in support of the economy in general and Kenya's international trade in particular;
- b) enhance the legal framework within which to ensure safety and security of life and property, the prevention and control of pollution of the sea and of the inland waters;
- c) ensure provision of globally competitive, quality maritime education and training for seafarers and other workers in the maritime industry.

### 9.0 WHETHER THE CONVENTIONS PERMIT RESERVATIONS

The Conventions do not permit reservations. However, they permit denunciation as discussed hereunder.

#### 9.1 Maritime Labour Convention, 2006

The MLC permits a Member to denounce the Convention after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

A Member who does exercise the right of denunciation shall be bound for another period of ten years and, thereafter, may denounce the Convention at the expiration of each new period of ten years.

#### 9.2 Convention on Seafarers Identity Documents, 2003, as amended (C185)

The C185 permits a Member to denounce the Convention after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

A Member who does exercise the right of denunciation shall be bound for another period of ten years and, thereafter, may denounce the Convention at the expiration of each new period of ten years.

#### 9.3 Work in Fishing Convention, 2007 (C188)

The C188 permits a Member to denounce the Convention after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

A Member who does exercise the right of denunciation shall be bound for another period of ten years and, thereafter, may denounce the Convention at the expiration of each new period of ten years.



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### 9.4 International Convention on the Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (1995 STCW-F Convention)

The STCW-F Convention may be denounced by a Party at any time after the expiry of five years from the date on which the Convention enters into force for that Party. The denunciation is effected by notification in writing to the Secretary-General of the International Maritime Organization.

The denunciation takes effect 12 months after receipt of the denunciation by the Secretary-General or after the expiry of any longer period which may be indicated in the notification.

### 9.5 Cape Town Agreement of 2012 on Safety of Fishing Vessels

The Cape Town Agreement may be denounced by a Party at any time after the expiry of five years from the date on which the Convention enters into force for that Party. The denunciation is effected by notification in writing to the Secretary-General of the International Maritime Organization.

The denunciation takes effect 12 months after receipt of the denunciation by the Secretary-General or after the expiry of any longer period which may be indicated in the notification.

## 10.0 VIEWS OF THE PUBLIC ON RATIFICATION OF THE TREATIES

10.1. In view of the restrictions in place due to the COVID-19 pandemic, the Ministry undertook public participation via various fora including newspaper notice, letters to stakeholders and virtual meetings.

10.2. The following entities presented their views:

- i. State Department for Shipping and Maritime
- ii. Ministry of Foreign Affairs
- iii. The National Treasury and Planning
- iv. The Office of the Attorney General and Department of Justice
- v. State Department for Transport
- vi. State Department for Labour
- vii. State Department for Interior and Citizen Services
- viii. State Department for Fisheries, Aquaculture and the Blue Economy
- ix. State Department for Vocational and Technical Training
- x. State Department for University Education and Research
- xi. Kenya Maritime Authority
- xii. Kenya National Qualification Authority
- xiii. Kenya Ships Agents Association
- xiv. International Transport Workers Federation
- xv. Seafarers Union of Kenya

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- 10.3. All the entities showed strong support for the ratification and acceptance of the above-mentioned conventions, noting their importance in advancing the protection of safety and labour interests of the country's seafarers and fishers.

### 11.0 MINISTERIAL RESPONSIBILITY

- 11.1 The Ministry of Foreign Affairs being the custodian of all International Treaties where Kenya is a Party will be responsible for the ratification and depositary of the Conventions to the relevant international organization.

- 11.2 The Ministry of Transport which oversees the country's shipping and maritime affairs will be responsible for overseeing effective implementation and enforcement of the Conventions.

- 11.3 The Ministry Agriculture which oversees the country's Fisheries, Aquaculture and the Blue Economy State Department will oversee the capacity building of fishers in close collaboration with the Ministry of Transport.

- 11.4 The National Treasury and Planning being charged with the responsibility of mobilizing domestic and external resources for financing national and county government budgetary requirements, will tailor adequate resources to enable the realization of the additional obligations that will be imposed on Kenya.

### 12.0 IMPLICATIONS ON MATTERS RELATING TO COUNTIES

The obligations imposed on Kenya upon ratification relate to its status as a flag State, port State, labour-supplying State. A flag State is the State of a ship's nationality. A port State verifies whether foreign ships comply with international rules and standards. A labour-supplying State is a State that plays a major role in the global maritime labour market, as a significant source of seafarers/fishers. These form part of the National Government maritime administration obligations as under Part 1(3,13,15,16,18) of the Fourth Schedule of the Constitution, and do not occasion County obligations.

### 13.0 FINANCIAL IMPLICATIONS AND EXPENDITURE OF PUBLIC FUNDS TO BE INCURRED IN THE IMPLEMENTATION OF THE PROJECT

- 13.1 The implementation and enforcement of the above-mentioned conventions is anticipated to have financial implications over and above Ministry's current budgetary allocations, particularly in the areas of:

- (i) Cost for ratification and amending the law
- (ii) establishment of adequate training facilities;
- (iii) training of trainers;
- (iv) training of the Maritime Administration personnel to facilitate proper implementation and enforcement;

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- (v) adequate equipment for issuance of SID;
- (vi) linkage of the Immigration and Kenya Maritime Authority Databases;
- (vii) establishment of quality control and evaluation procedures;
- (viii) modification of certification processes in line with the Standards;
- (ix) technical assistance and cooperation on implementation and enforcement; and
- (x) expounding the scope of Recognized Organizations inspections and certifications.

13.2 Initial estimates indicate that approximately Kshs 146 Million will be required in the first financial year to finance start-up activities. This is explained hereunder.

ACTIVITIES	ESTIMATE FOR FIRST FINANCIAL YEAR KSHS 000'
Cost for Ratification of the IMO & ILO Conventions	5,000
<b>2014 AND 2018 AMENDMENTS TO THE MARITIME LABOUR CONVENTION</b>	
➤ Review of the legislation and regulations in place in light of international standards	500
<b>ILO C185 CONVENTION ON SEAFARERS IDENTITY DOCUMENTS</b>	
➤ Acquiring state-of-the-art equipment for the issuance of SID;	20,000
➤ Linking the KMA and Immigration databases;	4,000
➤ Establishment of quality, control and evaluation procedures	500
<b>C188 WORK IN FISHING CONVENTION</b>	
➤ Develop legal framework to domesticate requirements of the Convention 'left to the satisfaction of the Administration'	500
<b>STCW - F CONVENTION</b>	
➤ Develop legal framework to domesticate requirements of the Convention 'left to the satisfaction of the Administration'	500
➤ Acquisition of state-of-the-art training equipment and facilities;	50,000
➤ Conduct audits of approved Fishers' Training Institutions	300



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➤ Training of Trainers (TOT) programmes for instructors	3,000
<b>CAPE TOWN AGREEMENT</b>	
➤ Develop legal framework for requirements of the Convention 'left to the satisfaction of the Administration'	500
➤ Development of a progressive implementation plan	300
<b>Grand Total</b>	<b>85,100</b>

### 14.0 REQUEST TO THE CABINET

#### 14.1 The Cabinet is invited to:

- (i) Take note of the contents of this Memorandum;
- (ii) Approve the ratification, accession or acceptance of:
  - Amendments of 2014 and 2018 to the Maritime Labour Convention, 2006;
  - Convention on Seafarers Identity Documents, 2003, as amended (C185);
  - Work in Fishing Convention, 2007 (C188);
  - International Convention on the Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (1995 STCW-F Convention); and
  - Cape Town Agreement of 2012 on Safety of Fishing Vessels.
- (iii) Direct the Ministry of Foreign Affairs to ratify and deposit the Conventions to the Secretary General of the International Maritime Organization and the Director General of the International Labour Organization.
- (iv) Direct the National Treasury and Planning to allocate resources for the realization of the obligations arising from the ratification, accession and acceptance of the five (5) Conventions.
- (v) Direct the Ministry of Transport to oversee the implementation and enforcement of the Conventions.
- (vi) Direct the Ministry of Agriculture, Livestock and Fisheries to oversee the capacity building of fishers in close collaboration with the Ministry of Transport.
- (vii) Direct the Office of the Attorney General and Department of Justice to Review and/or enact legislation to implement and enforce the Conventions.



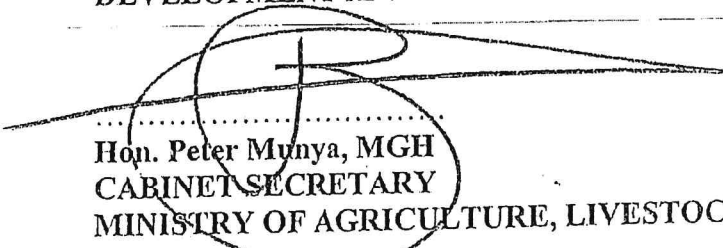
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SIGNED BY:

  
James W. Macharia, EGH  
CABINET SECRETARY


MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN  
DEVELOPMENT AND PUBLIC WORKS

14/10/2020  
DATE

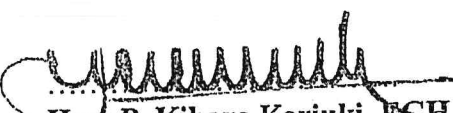
  
Hon. Peter Munya, MGH  
CABINET SECRETARY

MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES

21/10/2020  
DATE

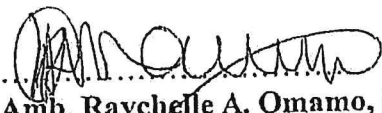
  
Hon. (Amb.) Ukur Yatani Kanacho, EGH  
CABINET SECRETARY  
NATIONAL TREASURY & PLANNING

12/11/2020  
DATE

  
Hon. P. Kihara Kariuki, EGH  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

2nd November  
DATE 2020


  
Amb. Raychelle A. Omamo, SC, EGH  
CABINET SECRETARY  
MINISTRY OF FOREIGN AFFAIRS

29/10/2020  
DATE

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**International Labour Organization Convention C188  
(Work in Fishing Convention, 2007)**

 <b>THE NATIONAL ASSEMBLY PAPERS LAID</b>	
<b>DATE: 23 SEP 2021</b>	
<b>DAY.</b>	
<b>TABLED BY:</b>	
<b>CLERK-AT THE-TABLE:</b>	



SECRET

## C188 - Work in Fishing Convention, 2007 (No. 188)

### Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its ninety-sixth Session on 30 May 2007, and

Recognizing that globalization has a profound impact on the fishing sector, and

Noting the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and

Taking into consideration the fundamental rights to be found in the following international labour Conventions: the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and

Noting the relevant instruments of the International Labour Organization, in particular the Occupational Safety and Health Convention (No. 155) and Recommendation (No. 164), 1981, and the Occupational Health Services Convention (No. 161) and Recommendation (No. 171), 1985, and

Noting, in addition, the Social Security (Minimum Standards) Convention, 1952 (No. 102), and considering that the provisions of Article 77 of that Convention should not be an obstacle to protection extended by Members to fishers under social security schemes, and

Recognizing that the International Labour Organization considers fishing as a hazardous occupation when compared to other occupations, and

Noting also Article 1, paragraph 3, of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and

Mindful of the core mandate of the Organization, which is to promote decent conditions of work, and

Mindful of the need to protect and promote the rights of fishers in this regard, and

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Recalling the United Nations Convention on the Law of the Sea, 1982, and

Taking into account the need to revise the following international Conventions adopted by the International Labour Conference specifically concerning the fishing sector, namely the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Medical Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen's Articles of Agreement Convention, 1959 (No. 114), and the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126), to bring them up to date and to reach a greater number of the world's fishers, particularly those working on board smaller vessels, and

Noting that the objective of this Convention is to ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security, and

Having decided upon the adoption of certain proposals with regard to work in the fishing sector, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this fourteenth day of June of the year two thousand and seven the following Convention, which may be cited as the Work in Fishing Convention, 2007.

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## **Part I. Definitions and scope**

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### **Definitions**

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#### **Article 1**

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For the purposes of the Convention:

- (a) **commercial fishing** means all fishing operations, including fishing operations on rivers, lakes or canals, with the exception of subsistence fishing and recreational fishing;
  - (b) **competent authority** means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned;
-

- (c) **consultation** means consultation by the competent authority with the representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist;
- (d) **fishing vessel owner** means the owner of the fishing vessel or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Convention, regardless of whether any other organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner;
- (e) **fisher** means every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers;
- (f) **fisher's work agreement** means a contract of employment, articles of agreement or other similar arrangements, or any other contract governing a fisher's living and working conditions on board a vessel;
- (g) **fishing vessel** or **vessel** means any ship or boat, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing;
- (h) **gross tonnage** means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any instrument amending or replacing it;
- (i) **length (L)** shall be taken as 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the keel line, or as the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In vessels designed with rake of keel, the waterline on which this length is measured shall be parallel to the designed waterline;
- (j) **length overall (LOA)** shall be taken as the distance in a straight line parallel to the designed waterline between the foremost point of the bow and the aftermost point of the stern;
- (k) **recruitment and placement service** means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting fishers on behalf of, or placing fishers with, fishing vessel owners;

- (l) *skipper* means the fisher having command of a fishing vessel.

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## Scope

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### Article 2

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- 1. Except as otherwise provided herein, this Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.
- 2. In the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the competent authority after consultation.
- 3. Any Member, after consultation, may extend, in whole or in part, to fishers working on smaller vessels the protection provided in this Convention for fishers working on vessels of 24 metres in length and over.

### Article 3

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- 1. Where the application of the Convention raises special problems of a substantial nature in the light of the particular conditions of service of the fishers or of the fishing vessels' operations concerned, a Member may, after consultation, exclude from the requirements of this Convention, or from certain of its provisions:
  - (a) fishing vessels engaged in fishing operations in rivers, lakes or canals;
  - (b) limited categories of fishers or fishing vessels.
- 2. In case of exclusions under the preceding paragraph, and where practicable, the competent authority shall take measures, as appropriate, to extend progressively the requirements under this Convention to the categories of fishers and fishing vessels concerned.
- 3. Each Member which ratifies this Convention shall:
  - (a) in its first report on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation:
    - (i) list any categories of fishers or fishing vessels excluded under paragraph 1;
    - (ii) give the reasons for any such exclusions, stating the respective positions of the representative organizations of employers and workers concerned, in particular the representative organizations of fishing vessel owners and fishers, where they exist; and
    - (iii) describe any measures taken to provide equivalent protection to the excluded categories; and

- (b) in subsequent reports on the application of the Convention, describe any measures taken in accordance with paragraph 2.

#### *Article 4*

- 1. Where it is not immediately possible for a Member to implement all of the measures provided for in this Convention owing to special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions, the Member may, in accordance with a plan drawn up in consultation, progressively implement all or some of the following provisions:
  - (a) Article 10, paragraph 1;
  - (b) Article 10, paragraph 3, in so far as it applies to vessels remaining at sea for more than three days;
  - (c) Article 15;
  - (d) Article 20;
  - (e) Article 33; and
  - (f) Article 38.
- 2. Paragraph 1 does not apply to fishing vessels which: (a) are 24 metres in length and over; or
  - (b) remain at sea for more than seven days; or
  - (c) normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater; or
  - (d) are subject to port State control as provided for in Article 43 of this Convention, except where port State control arises through a situation of force majeure,
 nor to fishers working on such vessels.
- 3. Each Member which avails itself of the possibility afforded in paragraph 1 shall:
  - (a) in its first report on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation:
    - (i) indicate the provisions of the Convention to be progressively implemented;

- (ii) explain the reasons and state the respective positions of representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist; and
- (iii) describe the plan for progressive implementation; and
- (b) in subsequent reports on the application of this Convention, describe measures taken with a view to giving effect to all of the provisions of the Convention.

#### *Article 5*

- 1. For the purpose of this Convention, the competent authority, after consultation, may decide to use length overall (LOA) in place of length (L) as the basis for measurement, in accordance with the equivalence set out in Annex I. In addition, for the purpose of the paragraphs specified in Annex III of this Convention, the competent authority, after consultation, may decide to use gross tonnage in place of length (L) or length overall (LOA) as the basis for measurement in accordance with the equivalence set out in Annex III.
- 2. In the reports submitted under article 22 of the Constitution, the Member shall communicate the reasons for the decision taken under this Article and any comments arising from the consultation.

### **Part II. General principles**

#### **Implementation**

#### *Article 6*

- 1. Each Member shall implement and enforce laws, regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to fishers and fishing vessels under its jurisdiction. Other measures may include collective agreements, court decisions, arbitration awards, or other means consistent with national law and practice.
- 2. Nothing in this Convention shall affect any law, award or custom, or any agreement between fishing vessel owners and fishers, which ensures more favourable conditions than those provided for in this Convention.

#### **Competent authority and coordination**

#### *Article 7*

Each Member shall:



- (a) designate the competent authority or authorities; and
- (b) establish mechanisms for coordination among relevant authorities for the fishing sector at the national and local levels, as appropriate, and define their functions and responsibilities, taking into account their complementarities and national conditions and practice.

### **Responsibilities of fishing vessel owners, skippers and fishers**

#### **Article 8**

- 1. The fishing vessel owner has the overall responsibility to ensure that the skipper is provided with the necessary resources and facilities to comply with the obligations of this Convention.
- 2. The skipper has the responsibility for the safety of the fishers on board and the safe operation of the vessel, including but not limited to the following areas:
  - (a) providing such supervision as will ensure that, as far as possible, fishers perform their work in the best conditions of safety and health;
  - (b) managing the fishers in a manner which respects safety and health, including prevention of fatigue;
  - (c) facilitating on-board occupational safety and health awareness training; and
  - (d) ensuring compliance with safety of navigation, watchkeeping and associated good seamanship standards.
- 3. The skipper shall not be constrained by the fishing vessel owner from taking any decision which, in the professional judgement of the skipper, is necessary for the safety of the vessel and its safe navigation and safe operation, or the safety of the fishers on board.
- 4. Fishers shall comply with the lawful orders of the skipper and applicable safety and health measures.

### **Part III. Minimum requirements for work on board fishing vessels**

#### **Minimum age**

#### **Article 9**

- 1. The minimum age for work on board a fishing vessel shall be 16 years. However, the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing.

- 2. The competent authority, in accordance with national laws and practice, may authorize persons of the age of 15 to perform light work during school holidays. In such cases, it shall determine, after consultation, the kinds of work permitted and shall prescribe the conditions in which such work shall be undertaken and the periods of rest required.
- 3. The minimum age for assignment to activities on board fishing vessels, which by their nature or the circumstances in which they are carried out are likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years.
- 4. The types of activities to which paragraph 3 of this Article applies shall be determined by national laws or regulations, or by the competent authority, after consultation, taking into account the risks concerned and the applicable international standards.
- 5. The performance of the activities referred to in paragraph 3 of this Article as from the age of 16 may be authorized by national laws or regulations, or by decision of the competent authority, after consultation, on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons concerned have received adequate specific instruction or vocational training and have completed basic pre-sea safety training.
- 6. The engagement of fishers under the age of 18 for work at night shall be prohibited. For the purpose of this Article, "night" shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m. An exception to strict compliance with the night work restriction may be made by the competent authority when:
  - (a) the effective training of the fishers concerned, in accordance with established programmes and schedules, would be impaired; or
  - (b) the specific nature of the duty or a recognized training programme requires that fishers covered by the exception perform duties at night and the authority determines, after consultation, that the work will not have a detrimental impact on their health or well-being.
- 7. Nothing in this Article shall affect any obligations assumed by the Member arising from the ratification of any other international labour Convention.

#### **Medical examination**

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#### ***Article 10***

- 1. No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.

- 2. The competent authority, after consultation, may grant exemptions from the application of paragraph 1 of this Article, taking into account the safety and health of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation, and type of fishing operation.
- 3. The exemptions in paragraph 2 of this Article shall not apply to a fisher working on a fishing vessel of 24 metres in length and over or which normally remains at sea for more than three days. In urgent cases, the competent authority may permit a fisher to work on such a vessel for a period of a limited and specified duration until a medical certificate can be obtained, provided that the fisher is in possession of an expired medical certificate of a recent date.

#### *Article 11*

Each Member shall adopt laws, regulations or other measures providing for:

- (a) the nature of medical examinations;
- (b) the form and content of medical certificates;
- (c) the issue of a medical certificate by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a certificate; these persons shall enjoy full independence in exercising their professional judgement;
- (d) the frequency of medical examinations and the period of validity of medical certificates;
- (e) the right to a further examination by a second independent medical practitioner in the event that a person has been refused a certificate or has had limitations imposed on the work he or she may perform; and
- (f) other relevant requirements.

#### *Article 12*

In addition to the requirements set out in Article 10 and Article 11, on a fishing vessel of 24 metres in length and over, or on a vessel which normally remains at sea for more than three days:

- 1. The medical certificate of a fisher shall state, at a minimum, that:
  - (a) the hearing and sight of the fisher concerned are satisfactory for the fisher's duties on the vessel; and
  - (b) the fisher is not suffering from any medical condition likely to be aggravated by service at sea or to render the fisher unfit for such service or to endanger the safety or health of other persons on board.

- 2. The medical certificate shall be valid for a maximum period of two years unless the fisher is under the age of 18, in which case the maximum period of validity shall be one year.
- 3. If the period of validity of a certificate expires in the course of a voyage, the certificate shall remain in force until the end of that voyage.

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## **Part IV. Conditions of service**

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### **Manning and hours of rest**

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#### *Article 13*

Each Member shall adopt laws, regulations or other measures requiring that owners of fishing vessels flying its flag ensure that:

- (a) their vessels are sufficiently and safely manned for the safe navigation and operation of the vessel and under the control of a competent skipper; and
- (b) fishers are given regular periods of rest of sufficient length to ensure safety and health.

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#### *Article 14*

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- 1. In addition to the requirements set out in Article 13, the competent authority shall:
    - (a) for vessels of 24 metres in length and over, establish a minimum level of manning for the safe navigation of the vessel, specifying the number and the qualifications of the fishers required;
    - (b) for fishing vessels regardless of size remaining at sea for more than three days, after consultation and for the purpose of limiting fatigue, establish the minimum hours of rest to be provided to fishers. Minimum hours of rest shall not be less than:
      - (i) ten hours in any 24-hour period; and
      - (ii) 77 hours in any seven-day period.
  - 2. The competent authority may permit, for limited and specified reasons, temporary exceptions to the limits established in paragraph 1(b) of this Article. However, in such circumstances, it shall require that fishers shall receive compensatory periods of rest as soon as practicable.
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3. The competent authority, after consultation, may establish alternative requirements to those in paragraphs 1 and 2 of this Article. However, such alternative requirements shall be substantially equivalent and shall not jeopardize the safety and health of the fishers.

4. Nothing in this Article shall be deemed to impair the right of the skipper of a vessel to require a fisher to perform any hours of work necessary for the immediate safety of the vessel, the persons on board or the catch, or for the purpose of giving assistance to other boats or ships or persons in distress at sea. Accordingly, the skipper may suspend the schedule of hours of rest and require a fisher to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the skipper shall ensure that any fishers who have performed work in a scheduled rest period are provided with an adequate period of rest.

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#### **Crew list**

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#### **Article 15**

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Every fishing vessel shall carry a crew list, a copy of which shall be provided to authorized persons ashore prior to departure of the vessel, or communicated ashore immediately after departure of the vessel. The competent authority shall determine to whom and when such information shall be provided and for what purpose or purposes.

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#### **Fisher's work agreement**

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#### **Article 16**

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Each Member shall adopt laws, regulations or other measures:

- (a) requiring that fishers working on vessels flying its flag have the protection of a fisher's work agreement that is comprehensible to them and is consistent with the provisions of this Convention; and
- (b) specifying the minimum particulars to be included in fishers' work agreements in accordance with the provisions contained in Annex II.

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#### **Article 17**

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Each Member shall adopt laws, regulations or other measures regarding:

- (a) procedures for ensuring that a fisher has an opportunity to review and seek advice on the terms of the fisher's work agreement before it is concluded;

- (b) where applicable, the maintenance of records concerning the fisher's work under such an agreement; and
- (c) the means of settling disputes in connection with a fisher's work agreement.

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#### *Article 18*

The fisher's work agreement, a copy of which shall be provided to the fisher, shall be carried on board and be available to the fisher and, in accordance with national law and practice, to other concerned parties on request.

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#### *Article 19*

Articles 16 to 18 and Annex II do not apply to a fishing vessel owner who is also single-handedly operating the vessel.

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#### *Article 20*

It shall be the responsibility of the fishing vessel owner to ensure that each fisher has a written fisher's work agreement signed by both the fisher and the fishing vessel owner or by an authorized representative of the fishing vessel owner (or, where fishers are not employed or engaged by the fishing vessel owner, the fishing vessel owner shall have evidence of contractual or similar arrangements) providing decent work and living conditions on board the vessel as required by this Convention.

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#### **Repatriation**

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#### *Article 21*

- 1. Members shall ensure that fishers on a fishing vessel that flies their flag and that enters a foreign port are entitled to repatriation in the event that the fisher's work agreement has expired or has been terminated for justified reasons by the fisher or by the fishing vessel owner, or the fisher is no longer able to carry out the duties required under the work agreement or cannot be expected to carry them out in the specific circumstances. This also applies to fishers from that vessel who are transferred for the same reasons from the vessel to the foreign port.
- 2. The cost of the repatriation referred to in paragraph 1 of this Article shall be borne by the fishing vessel owner, except where the fisher has been found, in accordance with national laws, regulations or other measures, to be in serious default of his or her work agreement obligations.
- 3. Members shall prescribe, by means of laws, regulations or other measures, the precise circumstances entitling a fisher covered by paragraph 1 of this Article to repatriation, the maximum duration of service periods on board following which a fisher is entitled to repatriation, and the destinations to which fishers may be repatriated.

- 4. If a fishing vessel owner fails to provide for the repatriation referred to in this Article, the Member whose flag the vessel flies shall arrange for the repatriation of the fisher concerned and shall be entitled to recover the cost from the fishing vessel owner.
- 5. National laws and regulations shall not prejudice any right of the fishing vessel owner to recover the cost of repatriation under third party contractual agreements.

## **Recruitment and placement**

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### *Article 22*

#### **RECRUITMENT AND PLACEMENT OF FISHERS**

- 1. Each Member that operates a public service providing recruitment and placement for fishers shall ensure that the service forms part of, or is coordinated with, a public employment service for all workers and employers.
- 2. Any private service providing recruitment and placement for fishers which operates in the territory of a Member shall do so in conformity with a standardized system of licensing or certification or other form of regulation, which shall be established, maintained or modified only after consultation.
- 3. Each Member shall, by means of laws, regulations or other measures:
  - (a) prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work;
  - (b) require that no fees or other charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher; and
  - (c) determine the conditions under which any licence, certificate or similar authorization of a private recruitment or placement service may be suspended or withdrawn in case of violation of relevant laws or regulations; and specify the conditions under which private recruitment and placement services can operate.

#### **PRIVATE EMPLOYMENT AGENCIES**

- 4. A Member which has ratified the Private Employment Agencies Convention, 1997 (No. 181), may allocate certain responsibilities under this Convention to private employment agencies that provide the services referred to in paragraph 1(b) of Article 1 of that Convention. The respective responsibilities of any such private employment agencies and of the fishing vessel owners, who shall be the "user enterprise" for the purpose of that Convention, shall be determined and allocated, as provided for in Article 12 of that Convention. Such a Member shall adopt laws,

regulations or other measures to ensure that no allocation of the respective responsibilities or obligations to the private employment agencies providing the service and to the "user enterprise" pursuant to this Convention shall preclude the fisher from asserting a right to a lien arising against the fishing vessel.

- 5. Notwithstanding the provisions of paragraph 4, the fishing vessel owner shall be liable in the event that the private employment agency defaults on its obligations to a fisher for whom, in the context of the Private Employment Agencies Convention, 1997 (No. 181), the fishing vessel owner is the "user enterprise".
- 6. Nothing in this Convention shall be deemed to impose on a Member the obligation to allow the operation in its fishing sector of private employment agencies as referred to in paragraph 4 of this Article.

#### **Payment of fishers**

##### ***Article 23***

Each Member, after consultation, shall adopt laws, regulations or other measures providing that fishers who are paid a wage are ensured a monthly or other regular payment.

##### ***Article 24***

Each Member shall require that all fishers working on board fishing vessels shall be given a means to transmit all or part of their payments received, including advances, to their families at no cost.

#### **Part V. Accommodation and food**

##### ***Article 25***

Each Member shall adopt laws, regulations or other measures for fishing vessels that fly its flag with respect to accommodation, food and potable water on board.

##### ***Article 26***

Each Member shall adopt laws, regulations or other measures requiring that accommodation on board fishing vessels that fly its flag shall be of sufficient size and quality and appropriately equipped for the service of the vessel and the length of time fishers live on board. In particular, such measures shall address, as appropriate, the following issues:

- (a) approval of plans for the construction or modification of fishing vessels in respect of accommodation;



- (b) maintenance of accommodation and galley spaces with due regard to hygiene and overall safe, healthy and comfortable conditions;
- (c) ventilation, heating, cooling and lighting;
- (d) mitigation of excessive noise and vibration;
- (e) location, size, construction materials, furnishing and equipping of sleeping rooms, mess rooms and other accommodation spaces;
- (f) sanitary facilities, including toilets and washing facilities, and supply of sufficient hot and cold water; and
- (g) procedures for responding to complaints concerning accommodation that does not meet the requirements of this Convention.

#### *Article 27*

Each Member shall adopt laws, regulations or other measures requiring that:

- (a) the food carried and served on board be of a sufficient nutritional value, quality and quantity;
- (b) potable water be of sufficient quality and quantity; and
- (c) the food and water shall be provided by the fishing vessel owner at no cost to the fisher. However, in accordance with national laws and regulations, the cost can be recovered as an operational cost if the collective agreement governing a share system or a fisher's work agreement so provides.

#### *Article 28*

- 1. The laws, regulations or other measures to be adopted by the Member in accordance with Articles 25 to 27 shall give full effect to Annex III concerning fishing vessel accommodation. Annex III may be amended in the manner provided for in Article 45.
- 2. A Member which is not in a position to implement the provisions of Annex III may, after consultation, adopt provisions in its laws and regulations or other measures which are substantially equivalent to the provisions set out in Annex III, with the exception of provisions related to Article 27.

### **Part VI. Medical care, health protection and social security**

#### **Medical care**

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### *Article 29*

Each Member shall adopt laws, regulations or other measures requiring that:

- (a) fishing vessels carry appropriate medical equipment and medical supplies for the service of the vessel, taking into account the number of fishers on board, the area of operation and the length of the voyage;
- (b) fishing vessels have at least one fisher on board who is qualified or trained in first aid and other forms of medical care and who has the necessary knowledge to use the medical equipment and supplies for the vessel concerned, taking into account the number of fishers on board, the area of operation and the length of the voyage;
- (c) medical equipment and supplies carried on board be accompanied by instructions or other information in a language and format understood by the fisher or fishers referred to in subparagraph (b);
- (d) fishing vessels be equipped for radio or satellite communication with persons or services ashore that can provide medical advice, taking into account the area of operation and the length of the voyage; and
- (e) fishers have the right to medical treatment ashore and the right to be taken ashore in a timely manner for treatment in the event of serious injury or illness.

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### *Article 30*

For fishing vessels of 24 metres in length and over, taking into account the number of fishers on board, the area of operation and the duration of the voyage, each Member shall adopt laws, regulations or other measures requiring that:

- (a) the competent authority prescribe the medical equipment and medical supplies to be carried on board;
- (b) the medical equipment and medical supplies carried on board be properly maintained and inspected at regular intervals established by the competent authority by responsible persons designated or approved by the competent authority;
- (c) the vessels carry a medical guide adopted or approved by the competent authority, or the latest edition of the International Medical Guide for Ships;
- (d) the vessels have access to a prearranged system of medical advice to vessels at sea by radio or satellite communication, including specialist advice, which shall be available at all times;

- (e) the vessels carry on board a list of radio or satellite stations through which medical advice can be obtained; and
- (f) to the extent consistent with the Member's national law and practice, medical care while the fisher is on board or landed in a foreign port be provided free of charge to the fisher.

### **Occupational safety and health and accident prevention**

#### *Article 31*

Each Member shall adopt laws, regulations or other measures concerning:

- (a) the prevention of occupational accidents, occupational diseases and work-related risks on board fishing vessels, including risk evaluation and management, training and on-board instruction of fishers;
- (b) training for fishers in the handling of types of fishing gear they will use and in the knowledge of the fishing operations in which they will be engaged;
- (c) the obligations of fishing vessel owners, fishers and others concerned, due account being taken of the safety and health of fishers under the age of 18;
- (d) the reporting and investigation of accidents on board fishing vessels flying its flag; and
- (e) the setting up of joint committees on occupational safety and health or, after consultation, of other appropriate bodies.

#### *Article 32*

- 1. The requirements of this Article shall apply to fishing vessels of 24 metres in length and over normally remaining at sea for more than three days and, after consultation, to other vessels, taking into account the number of fishers on board, the area of operation, and the duration of the voyage.
- 2. The competent authority shall:
  - (a) after consultation, require that the fishing vessel owner, in accordance with national laws, regulations, collective bargaining agreements and practice, establish on-board procedures for the prevention of occupational accidents, injuries and diseases, taking into account the specific hazards and risks on the fishing vessel concerned; and

- (b) require that fishing vessel owners, skippers, fishers and other relevant persons be provided with sufficient and suitable guidance, training material, or other appropriate information on how to evaluate and manage risks to safety and health on board fishing vessels.
- 3. Fishing vessel owners shall:
  - (a) ensure that every fisher on board is provided with appropriate personal protective clothing and equipment;
  - (b) ensure that every fisher on board has received basic safety training approved by the competent authority; the competent authority may grant written exemptions from this requirement for fishers who have demonstrated equivalent knowledge and experience; and
  - (c) ensure that fishers are sufficiently and reasonably familiarized with equipment and its methods of operation, including relevant safety measures, prior to using the equipment or participating in the operations concerned.

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### *Article 33*

Risk evaluation in relation to fishing shall be conducted, as appropriate, with the participation of fishers or their representatives.

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### **Social security**

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### *Article 34*

Each Member shall ensure that fishers ordinarily resident in its territory, and their dependants to the extent provided in national law, are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers, including employed and self-employed persons, ordinarily resident in its territory.

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### *Article 35*

Each Member shall undertake to take steps, according to national circumstances, to achieve progressively comprehensive social security protection for all fishers who are ordinarily resident in its territory.

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### *Article 36*

Members shall cooperate through bilateral or multilateral agreements or other arrangements, in accordance with national laws, regulations or practice:

- (a) to achieve progressively comprehensive social security protection for fishers, taking into account the principle of equality of treatment irrespective of nationality; and

- (b) to ensure the maintenance of social security rights which have been acquired or are in the course of acquisition by all fishers regardless of residence.

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#### **Article 37**

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Notwithstanding the attribution of responsibilities in Articles 34, 35 and 36, Members may determine, through bilateral and multilateral agreements and through provisions adopted in the framework of regional economic integration organizations, other rules concerning the social security legislation to which fishers are subject.

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#### **Protection in the case of work-related sickness, injury or death**

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#### **Article 38**

- 1. Each Member shall take measures to provide fishers with protection, in accordance with national laws, regulations or practice, for work-related sickness, injury or death.
- 2. In the event of injury due to occupational accident or disease, the fisher shall have access to:
  - (a) appropriate medical care; and
  - (b) the corresponding compensation in accordance with national laws and regulations.
- 3. Taking into account the characteristics within the fishing sector, the protection referred to in paragraph 1 of this Article may be ensured through:
  - (a) a system for fishing vessel owners' liability; or
  - (b) compulsory insurance, workers' compensation or other schemes.

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#### **Article 39**

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- 1. In the absence of national provisions for fishers, each Member shall adopt laws, regulations or other measures to ensure that fishing vessel owners are responsible for the provision to fishers on vessels flying its flag, of health protection and medical care while employed or engaged or working on a vessel at sea or in a foreign port. Such laws, regulations or other measures shall ensure that fishing vessel owners are responsible for defraying the expenses of medical care, including related material assistance and support, during medical treatment in a foreign country, until the fisher has been repatriated. 2. National laws or regulations may permit the exclusion of the liability of the fishing vessel owner if the injury occurred otherwise than in the service of the vessel or the sickness or infirmity was concealed during engagement, or the injury or sickness was due to wilful misconduct of the fisher.

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## Part VII. Compliance and enforcement

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### *Article 40*

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Each Member shall effectively exercise its jurisdiction and control over vessels that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention including, as appropriate, inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures, in accordance with national laws or regulations.

### *Article 41*

1. Members shall require that fishing vessels remaining at sea for more than three days, which:

- (a) are 24 metres in length and over; or
- (b) normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater,

carry a valid document issued by the competent authority stating that the vessel has been inspected by the competent authority or on its behalf, for compliance with the provisions of this Convention concerning living and working conditions.

2. The period of validity of such document may coincide with the period of validity of a national or an international fishing vessel safety certificate, but in no case shall such period of validity exceed five years.

### *Article 42*

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- 1. The competent authority shall appoint a sufficient number of qualified inspectors to fulfil its responsibilities under Article 41.
- 2. In establishing an effective system for the inspection of living and working conditions on board fishing vessels, a Member, where appropriate, may authorize public institutions or other organizations that it recognizes as competent and independent to carry out inspections and issue documents. In all cases, the Member shall remain fully responsible for the inspection and issuance of the related documents concerning the living and working conditions of the fishers on fishing vessels that fly its flag.

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### *Article 43*

- 1. A Member which receives a complaint or obtains evidence that a fishing vessel that flies its flag does not conform to the requirements of this Convention shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.
- 2. If a Member, in whose port a fishing vessel calls in the normal course of its business or for operational reasons, receives a complaint or obtains evidence that such vessel does not conform to the requirements of this Convention, it may prepare a report addressed to the government of the flag State of the vessel, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.
- 3. In taking the measures referred to in paragraph 2 of this Article, the Member shall notify forthwith the nearest representative of the flag State and, if possible, shall have such representative present. The Member shall not unreasonably detain or delay the vessel.
- 4. For the purpose of this Article, the complaint may be submitted by a fisher, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the vessel, including an interest in safety or health hazards to the fishers on board.
- 5. This Article does not apply to complaints which a Member considers to be manifestly unfounded.

#### *Article 44*

Each Member shall apply this Convention in such a way as to ensure that the fishing vessels flying the flag of any State that has not ratified this Convention do not receive more favourable treatment than fishing vessels that fly the flag of any Member that has ratified it.

### **Part VIII. Amendment of Annexes I, II and III**

#### *Article 45*

- 1. Subject to the relevant provisions of this Convention, the International Labour Conference may amend Annexes I, II and III. The Governing Body of the International Labour Office may place an item on the agenda of the Conference regarding proposals for such amendments established by a tripartite meeting of experts. The decision to adopt the proposals shall require a majority of two-thirds of the votes cast by the delegates present at the Conference, including at least half the Members that have ratified this Convention.

- 2. Any amendment adopted in accordance with paragraph 1 of this Article shall enter into force six months after the date of its adoption for any Member that has ratified this Convention, unless such Member has given written notice to the Director-General of the International Labour Office that it shall not enter into force for that Member, or shall only enter into force at a later date upon subsequent written notification.

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## **Part IX. Final provisions**

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### **Article 46**

This Convention revises the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Medical Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen's Articles of Agreement Convention, 1959 (No. 114), and the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126).

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### **Article 47**

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

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### **Article 48**

- 1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
- 2. It shall come into force 12 months after the date on which the ratifications of ten Members, eight of which are coastal States, have been registered with the Director-General.
- 3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification is registered.

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### **Article 49**

- 1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
- 2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this



Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

#### *Article 50*

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- 1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications, declarations and denunciations that have been communicated by the Members of the Organization.
- 2. When notifying the Members of the Organization of the registration of the last of the ratifications required to bring the Convention into force, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

#### *Article 51*

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The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and denunciations registered by the Director-General.

#### *Article 52*

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At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part, taking into account also the provisions of Article 45.

#### *Article 53*

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- 1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:
  - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 49 above, if and when the new revising Convention shall have come into force;
  - (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

- 2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

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#### **Article 54**

The English and French versions of the text of this Convention are equally authoritative.

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### **Annex I**

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#### **Equivalence in measurement**

For the purpose of this Convention, where the competent authority, after consultation, decides to use length overall (LOA) rather than length (L) as the basis of measurement:

- (a) a length overall (LOA) of 16.5 metres shall be considered equivalent to a length (L) of 15 metres;
- (b) a length overall (LOA) of 26.5 metres shall be considered equivalent to a length (L) of 24 metres;
- (c) a length overall (LOA) of 50 metres shall be considered equivalent to a length (L) of 45 metres.

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### **Annex II**

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#### **Fisher's work agreement**

The fisher's work agreement shall contain the following particulars, except in so far as the inclusion of one or more of them is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations, or a collective bargaining agreement where applicable:

- (a) the fisher's family name and other names, date of birth or age, and birthplace;
- (b) the place at which and date on which the agreement was concluded;
- (c) the name of the fishing vessel or vessels and the registration number of the vessel or vessels on board which the fisher undertakes to work;
- (d) the name of the employer, or fishing vessel owner, or other party to the agreement with the fisher;
- (e) the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement;
- (f) the capacity in which the fisher is to be employed or engaged;

- (g) if possible, the place at which and date on which the fisher is required to report on board for service;
- (h) the provisions to be supplied to the fisher, unless some alternative system is provided for by national law or regulation;
- (i) the amount of wages, or the amount of the share and the method of calculating such share if remuneration is to be on a share basis, or the amount of the wage and share and the method of calculating the latter if remuneration is to be on a combined basis, and any agreed minimum wage;
- (j) the termination of the agreement and the conditions thereof, namely:
  - (i) if the agreement has been made for a definite period, the date fixed for its expiry;
  - (ii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the fisher shall be discharged;
  - (iii) if the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission, provided that such period shall not be less for the employer, or fishing vessel owner or other party to the agreement with the fisher;
- (k) the protection that will cover the fisher in the event of sickness, injury or death in connection with service;
- (l) the amount of paid annual leave or the formula used for calculating leave, where applicable;
- (m) the health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner, or other party or parties to the fisher's work agreement, as applicable;
- (n) the fisher's entitlement to repatriation;
- (o) a reference to the collective bargaining agreement, where applicable;
- (p) the minimum periods of rest, in accordance with national laws, regulations or other measures; and
- (q) any other particulars which national law or regulation may require.

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### Annex III

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### Fishing vessel accommodation

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#### *General provisions*

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- 1. For the purposes of this Annex:

- (a) "new fishing vessel" means a vessel for which:
  - (i) the building or major conversion contract has been placed on or after the date of the entry into force of the Convention for the Member concerned; or
  - (ii) the building or major conversion contract has been placed before the date of the entry into force of the Convention for the Member concerned, and which is delivered three years or more after that date; or
  - (iii) in the absence of a building contract, on or after the date of the entry into force of the Convention for the Member concerned:
    - - the keel is laid, or
    - - construction identifiable with a specific vessel begins, or
    - - assembly has commenced comprising at least 50 tonnes or 1 per cent of the estimated mass of all structural material, whichever is less;
- (b) "existing vessel" means a vessel that is not a new fishing vessel.
- 2. The following shall apply to all new, decked fishing vessels, subject to any exclusions provided for in accordance with Article 3 of the Convention. The competent authority may, after consultation, also apply the requirements of this Annex to existing vessels, when and in so far as it determines that this is reasonable and practicable.
- 3. The competent authority, after consultation, may permit variations to the provisions of this Annex for fishing vessels normally remaining at sea for less than 24 hours where the fishers do not live on board the vessel in port. In the case of such vessels, the competent authority shall ensure that the fishers concerned have adequate facilities for resting, eating and sanitation purposes.
- 4. Any variations made by a Member under paragraph 3 of this Annex shall be reported to the International Labour Office under article 22 of the Constitution of the International Labour Organisation.
- 5. The requirements for vessels of 24 metres in length and over may be applied to vessels between 15 and 24 metres in length where the competent authority determines, after consultation, that this is reasonable and practicable.
- 6. Fishers working on board feeder vessels which do not have appropriate accommodation and sanitary facilities shall be provided with such accommodation and facilities on board the mother vessel.
- 7. Members may extend the requirements of this Annex regarding noise and vibration, ventilation, heating and air conditioning, and lighting to enclosed working spaces and spaces used for storage if, after consultation, such

application is considered appropriate and will not have a negative influence on the function of the process or working conditions or the quality of the catches.

- 8. The use of gross tonnage as referred to in Article 5 of the Convention is limited to the following specified paragraphs of this Annex: 14, 37, 38, 41, 43, 46, 49, 53, 55, 61, 64, 65 and 67. For these purposes, where the competent authority, after consultation, decides to use gross tonnage (gt) as the basis of measurement:
  - (a) a gross tonnage of 75 gt shall be considered equivalent to a length (L) of 15 metres or a length overall (LOA) of 16.5 metres;
  - (b) a gross tonnage of 300 gt shall be considered equivalent to a length (L) of 24 metres or a length overall (LOA) of 26.5 metres;
  - (c) a gross tonnage of 950 gt shall be considered equivalent to a length (L) of 45 metres or a length overall (LOA) of 50 metres.

### *Planning and control*

- 9. The competent authority shall satisfy itself that, on every occasion when a vessel is newly constructed or the crew accommodation of a vessel has been reconstructed, such vessel complies with the requirements of this Annex. The competent authority shall, to the extent practicable, require compliance with this Annex when the crew accommodation of a vessel is substantially altered and, for a vessel that changes the flag it flies to the flag of the Member, require compliance with those requirements of this Annex that are applicable in accordance with paragraph 2 of this Annex.
- 10. For the occasions noted in paragraph 9 of this Annex, for vessels of 24 metres in length and over, detailed plans and information concerning accommodation shall be required to be submitted for approval to the competent authority, or an entity authorized by it.
- 11. For vessels of 24 metres in length and over, on every occasion when the crew accommodation of the fishing vessel has been reconstructed or substantially altered, the competent authority shall inspect the accommodation for compliance with the requirements of the Convention, and when the vessel changes the flag it flies to the flag of the Member, for compliance with those requirements of this Annex that are applicable in accordance with paragraph 2 of this Annex. The competent authority may carry out additional inspections of crew accommodation at its discretion.

- 12. When a vessel changes flag, any alternative requirements which the competent authority of the Member whose flag the ship was formerly flying may have adopted in accordance with paragraphs 15, 39, 47 or 62 of this Annex cease to apply to the vessel.

### *Design and construction*

#### *Headroom*

- 13. There shall be adequate headroom in all accommodation spaces. For spaces where fishers are expected to stand for prolonged periods, the minimum headroom shall be prescribed by the competent authority.
- 14. For vessels of 24 metres in length and over, the minimum permitted headroom in all accommodation where full and free movement is necessary shall not be less than 200 centimetres.
- 15. Notwithstanding the provisions of paragraph 14, the competent authority may, after consultation, decide that the minimum permitted headroom shall not be less than 190 centimetres in any space - or part of any space - in such accommodation, where it is satisfied that this is reasonable and will not result in discomfort to the fishers.

#### *Openings into and between accommodation spaces*

- 16. There shall be no direct openings into sleeping rooms from fish rooms and machinery spaces, except for the purpose of emergency escape. Where reasonable and practicable, direct openings from galleys, storerooms, drying rooms or communal sanitary areas shall be avoided unless expressly provided otherwise.
- 17. For vessels of 24 metres in length and over, there shall be no direct openings, except for the purpose of emergency escape, into sleeping rooms from fish rooms and machinery spaces or from galleys, storerooms, drying rooms or communal sanitary areas; that part of the bulkhead separating such places from sleeping rooms and external bulkheads shall be efficiently constructed of steel or another approved material and shall be watertight and gas-tight. This provision does not exclude the possibility of sanitary areas being shared between two cabins.

#### *Insulation*

- 18. Accommodation spaces shall be adequately insulated; the materials used to construct internal bulkheads, panelling and sheeting, and floors and joinings shall be suitable for the purpose and shall be conducive to ensuring a healthy environment. Sufficient drainage shall be provided in all accommodation spaces.

#### *Other*

- 19. All practicable measures shall be taken to protect fishing vessels' crew accommodation against flies and other insects, particularly when vessels are operating in mosquito-infested areas.
- 20. Emergency escapes from all crew accommodation spaces shall be provided as necessary.

#### *Noise and vibration*

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- 21. The competent authority shall take measures to limit excessive noise and vibration in accommodation spaces and, as far as practicable, in accordance with relevant international standards.
- 22. For vessels of 24 metres in length and over, the competent authority shall adopt standards for noise and vibration in accommodation spaces which shall ensure adequate protection to fishers from the effects of such noise and vibration, including the effects of noise- and vibration-induced fatigue.

#### *Ventilation*

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- 23. Accommodation spaces shall be ventilated, taking into account climatic conditions. The system of ventilation shall supply air in a satisfactory condition whenever fishers are on board.
- 24. Ventilation arrangements or other measures shall be such as to protect non-smokers from tobacco smoke.
- 25. Vessels of 24 metres in length and over shall be equipped with a system of ventilation for accommodation, which shall be controlled so as to maintain the air in a satisfactory condition and to ensure sufficiency of air movement in all weather conditions and climates. Ventilation systems shall be in operation at all times when fishers are on board.

#### *Heating and air conditioning*

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- 26. Accommodation spaces shall be adequately heated, taking into account climatic conditions.
- 27. For vessels of 24 metres in length and over, adequate heat shall be provided, through an appropriate heating system, except in fishing vessels operating exclusively in tropical climates. The system of heating shall provide heat in all conditions, as necessary, and shall be in operation when fishers are living or working on board, and when conditions so require.
- 28. For vessels of 24 metres in length and over, with the exception of those regularly engaged in areas where temperate climatic conditions do not require it, air conditioning shall be provided in accommodation spaces, the bridge, the radio room and any centralized machinery control room.

#### *Lighting*

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- 29. All accommodation spaces shall be provided with adequate light.

- 30. Wherever practicable, accommodation spaces shall be lit with natural light in addition to artificial light. Where sleeping spaces have natural light, a means of blocking the light shall be provided.
- 31. Adequate reading light shall be provided for every berth in addition to the normal lighting of the sleeping room.
- 32. Emergency lighting shall be provided in sleeping rooms.
- 33. Where a vessel is not fitted with emergency lighting in mess rooms, passageways, and any other spaces that are or may be used for emergency escape, permanent night lighting shall be provided in such spaces.
- 34. For vessels of 24 metres in length and over, lighting in accommodation spaces shall meet a standard established by the competent authority. In any part of the accommodation space available for free movement, the minimum standard for such lighting shall be such as to permit a person with normal vision to read an ordinary printed newspaper on a clear day.

### *Sleeping rooms*

#### *General*

- 35. Where the design, dimensions or purpose of the vessel allow, the sleeping accommodation shall be located so as to minimize the effects of motion and acceleration but shall in no case be located forward of the collision bulkhead.

#### *Floor area*

- 36. The number of persons per sleeping room and the floor area per person, excluding space occupied by berths and lockers, shall be such as to provide adequate space and comfort for the fishers on board, taking into account the service of the vessel.
- 37. For vessels of 24 metres in length and over but which are less than 45 metres in length, the floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 1.5 square metres.
- 38. For vessels of 45 metres in length and over, the floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 2 square metres.
- 39. Notwithstanding the provisions of paragraphs 37 and 38, the competent authority may, after consultation, decide that the minimum permitted floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 1.0 and 1.5 square metres respectively, where the competent authority is satisfied that this is reasonable and will not result in discomfort to the fishers.



#### Persons per sleeping room

- 40. To the extent not expressly provided otherwise, the number of persons allowed to occupy each sleeping room shall not be more than six.
- 41. For vessels of 24 metres in length and over, the number of persons allowed to occupy each sleeping room shall not be more than four. The competent authority may permit exceptions to this requirement in particular cases if the size, type or intended service of the vessel makes the requirement unreasonable or impracticable.
- 42. To the extent not expressly provided otherwise, a separate sleeping room or sleeping rooms shall be provided for officers, wherever practicable.
- 43. For vessels of 24 metres in length and over, sleeping rooms for officers shall be for one person wherever possible and in no case shall the sleeping room contain more than two berths. The competent authority may permit exceptions to the requirements of this paragraph in particular cases if the size, type or intended service of the vessel makes the requirements unreasonable or impracticable.

#### Other

- 44. The maximum number of persons to be accommodated in any sleeping room shall be legibly and indelibly marked in a place in the room where it can be conveniently seen.
- 45. Individual berths of appropriate dimensions shall be provided. Mattresses shall be of a suitable material.
- 46. For vessels of 24 metres in length and over, the minimum inside dimensions of the berths shall not be less than 198 by 80 centimetres.
- 47. Notwithstanding the provisions of paragraph 46, the competent authority may, after consultation, decide that the minimum inside dimensions of the berths shall not be less than 190 by 70 centimetres, where it is satisfied that this is reasonable and will not result in discomfort to the fishers.
- 48. Sleeping rooms shall be so planned and equipped as to ensure reasonable comfort for the occupants and to facilitate tidiness. Equipment provided shall include berths, individual lockers sufficient for clothing and other personal effects, and a suitable writing surface.
- 49. For vessels of 24 metres in length and over, a desk suitable for writing, with a chair, shall be provided.
- 50. Sleeping accommodation shall be situated or equipped, as practicable, so as to provide appropriate levels of privacy for men and for women.

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### *Mess rooms*

- 51. Mess rooms shall be as close as possible to the galley, but in no case shall be located forward of the collision bulkhead.
- 52. Vessels shall be provided with mess-room accommodation suitable for their service. To the extent not expressly provided otherwise, mess-room accommodation shall be separate from sleeping quarters, where practicable.
- 53. For vessels of 24 metres in length and over, mess-room accommodation shall be separate from sleeping quarters.
- 54. The dimensions and equipment of each mess room shall be sufficient for the number of persons likely to use it at any one time.
- 55. For vessels of 24 metres in length and over, a refrigerator of sufficient capacity and facilities for making hot and cold drinks shall be available and accessible to fishers at all times.

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### *Tubs or showers, toilets and washbasins*

- 56. Sanitary facilities, which include toilets, washbasins, and tubs or showers, shall be provided for all persons on board, as appropriate for the service of the vessel. These facilities shall meet at least minimum standards of health and hygiene and reasonable standards of quality.
  - 57. The sanitary accommodation shall be such as to eliminate contamination of other spaces as far as practicable. The sanitary facilities shall allow for reasonable privacy.
  - 58. Cold fresh water and hot fresh water shall be available to all fishers and other persons on board, in sufficient quantities to allow for proper hygiene. The competent authority may establish, after consultation, the minimum amount of water to be provided.
  - 59. Where sanitary facilities are provided, they shall be fitted with ventilation to the open air, independent of any other part of the accommodation.
  - 60. All surfaces in sanitary accommodation shall be such as to facilitate easy and effective cleaning. Floors shall have a non-slip deck covering.
  - 61. On vessels of 24 metres in length and over, for all fishers who do not occupy rooms to which sanitary facilities are attached, there shall be provided at least one tub or shower or both, one toilet, and one washbasin for every four persons or fewer.
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- 62. Notwithstanding the provisions of paragraph 61, the competent authority may, after consultation, decide that there shall be provided at least one tub or shower or both and one washbasin for every six persons or fewer, and at least one toilet for every eight persons or fewer, where the competent authority is satisfied that this is reasonable and will not result in discomfort to the fishers.

#### ***Laundry facilities***

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- 63. Amenities for washing and drying clothes shall be provided as necessary, taking into account the service of the vessel, to the extent not expressly provided otherwise.
- 64. For vessels of 24 metres in length and over, adequate facilities for washing, drying and ironing clothes shall be provided.
- 65. For vessels of 45 metres in length and over, adequate facilities for washing, drying and ironing clothes shall be provided in a compartment separate from sleeping rooms, mess rooms and toilets, and shall be adequately ventilated, heated and equipped with lines or other means for drying clothes.

#### ***Facilities for sick and injured fishers***

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- 66. Whenever necessary, a cabin shall be made available for a fisher who suffers illness or injury.
- 67. For vessels of 45 metres in length and over, there shall be a separate sick bay. The space shall be properly equipped and shall be maintained in a hygienic state.

#### ***Other facilities***

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- 68. A place for hanging foul-weather gear and other personal protective equipment shall be provided outside of, but convenient to, sleeping rooms.

#### ***Bedding, mess utensils and miscellaneous provisions***

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- 69. Appropriate eating utensils, and bedding and other linen shall be provided to all fishers on board. However, the cost of the linen can be recovered as an operational cost if the collective agreement or the fisher's work agreement so provides.

#### ***Recreational facilities***

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- 70. For vessels of 24 metres in length and over, appropriate recreational facilities, amenities and services shall be provided for all fishers on board. Where appropriate, mess rooms may be used for recreational activities.

#### ***Communication facilities***

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- 71. All fishers on board shall be given reasonable access to communication facilities, to the extent practicable, at a reasonable cost and not exceeding the full cost to the fishing vessel owner.

### *Galley and food storage facilities*

- 72. Cooking equipment shall be provided on board. To the extent not expressly provided otherwise, this equipment shall be fitted, where practicable, in a separate galley.
- 73. The galley, or cooking area where a separate galley is not provided, shall be of adequate size for the purpose, well lit and ventilated, and properly equipped and maintained.
- 74. For vessels of 24 metres in length and over, there shall be a separate galley.
- 75. The containers of butane or propane gas used for cooking purposes in a galley shall be kept on the open deck and in a shelter which is designed to protect them from external heat sources and external impact.
- 76. A suitable place for provisions of adequate capacity shall be provided which can be kept dry, cool and well ventilated in order to avoid deterioration of the stores and, to the extent not expressly provided otherwise, refrigerators or other lowtemperature storage shall be used, where possible.
- 77. For vessels of 24 metres in length and over, a provisions storeroom and refrigerator and other low-temperature storage shall be used.

### *Food and potable water*

- 78. Food and potable water shall be sufficient, having regard to the number of fishers, and the duration and nature of the voyage. In addition, they shall be suitable in respect of nutritional value, quality, quantity and variety, having regard as well to the fishers' religious requirements and cultural practices in relation to food.
- 79. The competent authority may establish requirements for the minimum standards and quantity of food and water to be carried on board.

### *Clean and habitable conditions*

- 80. Accommodation shall be maintained in a clean and habitable condition and shall be kept free of goods and stores which are not the personal property of the occupants or for their safety or rescue.
- 81. Galley and food storage facilities shall be maintained in a hygienic condition.
- 82. Waste shall be kept in closed, well-sealed containers and removed from foodhandling areas whenever necessary.

### *Inspections by the skipper or under the authority of the skipper*

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- 83. For vessels of 24 metres in length and over, the competent authority shall require frequent inspections to be carried out, by or under the authority of the skipper, to ensure that:
  - (a) accommodation is clean, decently habitable and safe, and is maintained in a good state of repair;
  - (b) food and water supplies are sufficient; and
  - (c) galley and food storage spaces and equipment are hygienic and in a proper state of repair.

The results of such inspections, and the actions taken to address any deficiencies found, shall be recorded and available for review.

### *Variations*

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- 84. The competent authority, after consultation, may permit derogations from the provisions in this Annex to take into account, without discrimination, the interests of fishers having differing and distinctive religious and social practices, on condition that such derogations do not result in overall conditions less favourable than those which would result from the application of this Annex.

