

KMA hosts Heads of African Maritime Administrations Summit



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“ *A man without a goal is like a ship without a rudder.* ”
Thomas Carlyle



Cover photo: The Executive Committee of the Association of African Maritime Administrations during their meeting at the Pride Inn Convention Centre in Mombasa

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Kenya Maritime Authority receives new Ag. Director General



Mr. George N. Macgoye, EBS, OGW,
Ag. Director General, Kenya Maritime Authority

Mr. George N. Macgoye has been appointed by KMA's Board of Directors as the Director General of Kenya Maritime Authority (KMA) in an acting capacity for an initial period of two months. Before his appointment, Mr. Macgoye was the Director of Administration in the State Department of Public Works at the Ministry of Transport, Infrastructure, Housing and Urban development. Mr Macgoye, an experienced administrator, brings to KMA a wealth of experience in Public Administration having worked in the disciplined forces and the Public service for over 30 years.

The outgoing Ag. Director General of KMA, Mr. Cosmas Cherop congratulated Macgoye on his appointment and assured him of his support.

“We are the people who will enable him adjust to his new work environment. He needs our support, prayers and team work. We wish him well in his new appointment,” he said.



The Executive Committee of the Association of African Maritime Administrations engage in discussions at the Pride Inn Convention Centre in Mombasa

KMA hosts Heads of African Maritime Administrations Summit

Kenya Maritime Authority (KMA) hosted the second session of the Executive Committee of the Association of African Maritime Administrations (AAMA) on 6 - 8 February, 2018 at the Pride inn Hotel, Mombasa. The meeting was attended by Heads of African Maritime Administrations from about 11 different African countries including, Nigeria led by the Director General- Nigerian Maritime Administration and Safety Agency (NIMASA) and Chairman of AAMA, Dr. Dakuku A. Peterside and Ghana led by the Director General, Ghana Maritime Authority (GMA), Mr. Kwame Owusu. Heads of African Maritime Administrations from South Africa, Egypt, Ethiopia, Sudan, Seychelles and Mozambique were also present.

The Association brings together all African Maritime Administration Authorities to address issues of common interest in Africa's maritime sector.

"We are gathered here today to improve among others, the capacity, capability and performance of Africa's Maritime Administrations, with emphasis on human resources

development, technology and information sharing," said the AAMA Chairman, Dr. Dakuku A. Peterside, who is also the Director General of NIMASA.

Speaking during the meeting, the former Ag. Director General of KMA, Mr. Cosmas Cherop noted that the continent's existing aspirations as captured in the 2050 Africa's Integrated Maritime Strategy (2050 AIM Strategy) and Agenda 2063 on maritime safety, security, infrastructure, management and sustainable resource utilization provide a good platform for the continent to progress its ambitions to revive the blue economy.

"Our main task is to roll out programs that will hasten the realization of our dream in the sector," said Cherop.

At the conclusion of the two day meeting, a number of key issues were deliberated upon such as engagement with the African Maritime Advisory Group (AMAG) on provision of data on illegal migration, establishment of a maritime department in the African Union Commission, the role of AAMA in the implementation of the Africa Integrated Maritime

Strategy (AIMS) 2050, preparation for the 2018 Maritime Awards in Africa, establishment of a continental Cabotage regime under AIMS 2050, establishment of a database of Ship Registries in Africa, the AAMA work plan, the framework for monitoring and controlling fishing activities, Near-Coastal Trading, Certification and Competency Code to foster economic cooperation among AAMA members, prevention of marine pollution and implementation of the 2016 Lomé Charter to strengthen inter-agency and transitional coordination and cooperation in maritime domain awareness, fight against all forms of maritime crimes and the promotion of economic growth of Africa.

The Kenya Maritime Authority (KMA) is one of the founder members of the Association of African Maritime Administrations (AAMA). Kenya was endorsed to host the 2nd Session of the Executive Committee of AAMA by the association's Executive Committee of at its 1st Session held at the Arab Academy for Science, Technology and Maritime Transport (AASTMT) on 17-19 September 2017 in Egypt.



Beneficiaries of the Eu- crimario training from Kenya and Madagascar

EU rolls out programme to improve maritime security

The European Union through the EU CRIMARIO (Critical Maritime Routes Indian Ocean) project rolled out its first phase of training in Kenya on maritime data visualization in February 2018. The project is part of its advocacy for regional cooperation and interagency coordination in the control of crimes and incidents at sea. The training drew participation of 17 participants from Kenya and Madagascar and aims to build capacity of specialized staff of state and military agencies in maritime data visualization in order to enhance maritime security in the region.

The Kenyan delegates who benefited from the training were officers from the main agencies involved in the surveillance of maritime domain which included the Kenya Maritime Authority (KMA), Kenya Ports Authority (KPA), the Kenya Navy, the Kenya Police and the Kenya Wildlife Services. The Participants learned how to mine data provided by Automatic Identification System (AIS) sources and use specified applications for viewing and

editing data. An AIS is an automatic tracking system used on ships and by vessel traffic services for identifying and locating vessels by electronically exchanging data with other nearby ships, AIS base stations and satellites. The EU- CRIMARIO project aims to strengthen maritime safety and security in the wider Indian Ocean region by supporting coastal countries in enhancing Maritime Situational

Awareness (MSA). In Kenya, the EU- CRIMARIO collaborates closely with the Kenya Maritime Authority (KMA), which is the national focal point of the project. It has established a training program on maritime data analysis and the Training of Trainers. The CRIMARIO project is also working with KMA to strengthen the Automatic Identification System (AIS) national network as well as install an AIS regional server.



KMA staff in a working group during the training

Autonomous ships for the future?

By W. Sanga

Self-driving cars have spearheaded the autonomous revolution on roads and highways but it need not necessarily end there. The oceans will soon be filled with driverless ships, sleek new vessels that promise big safety and economic advantages over conventional piloted ships. The idea is to do things more efficiently and transport more with less people onboard. It is envisioned that in future everything will have some degree of intelligence.

It has been argued that human crews can be cost-intensive when it comes to shipping. They need places to sleep and to take care of bodily functions. Moreover, they require food and a place to prepare that food, and they can only work so many hours a day. Also, crewmembers and their accommodations have weight, which means increased fuel costs for ocean-going vessels. Without the need for crew quarters, a conventional bridge, lifeboats, and other familiar features, ships can be lighter and more compact and thus less expensive to operate, although they may be more expensive to build. If it were possible to move ships to and from ports without humans, shipping could get a lot cheaper. The future of shipping, much like that of flying vehicles and land based ones, may well be unmanned.

It is anticipated that such smart vessels will be able to, for example, autonomously sail in the high seas, coping with adverse weather and environmental conditions, while

avoiding collisions without human intervention. This may lead to emergence of fleets of smaller, more fuel-efficient boats to replace giant cargo vessels. Such developments will necessitate command centers to monitor these ships at select ports worldwide.

Additionally, it is projected that it will decrease the demand for labour. With the exception of cruise ships where staff are needed to serve passengers, crews will be largely unnecessary. Just like in the case of drones, captains will still have a job to do, but they will be monitoring multiple autonomous ships from shore rather than commanding a single ship at sea. However, it is not all gloom for seafarers as they will be provided with better working conditions and safer environments.

It is argued that the concern for safety is a primary driver for autonomous ships, with the main cause of concern

being human error. Humans, are not good at doing repetitive tasks for long hours, and fatigue can set in. Robot operators, on the other hand have no problems with tasks that are perceived dull. The shipping industry can borrow from commercial aviation where human error is less of a problem because of autopilot and other automated systems. It begs for ship re-engineering to develop technologies to retrofit conventional ships with autonomous capabilities.

It is reasoned that the real challenge for unmanned shipping, much like for commercial drones, will be twofold: the development of technology for safe remote operation, and the modernization of laws governing transportation. Complicating the latter challenge is that the body of law governing international waters, territorial waters, and how they interact is vast and complex.



BUNKERS CONVENTION IN A NUTSHELL

By B. A. Haki & N. Wakali

Introduction

Kenya acceded to the International Convention on Civil Liability for Bunker Oil Pollution Damage (2001) (Bunkers Convention) on 7th October, 2015 and is bound by the obligations in it. The Bunkers Convention entered into force on 21st November, 2008, to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by oil spill from ships' bunkers.

Birth of Bunkers Convention

The 1990s saw lots of maritime pollution incidents as a result of spills that were attributed to bunker oil. States felt there was need to regulate this kind of spills and also to ensure that costs incurred in resolving the situation could be recovered, for it had been difficult for States to recover the hefty cleanup costs or compensation for damage caused (Gaskell, N. and Forrest, C UQLJ 27(2), 2008) 127. This was majorly because most Ship owners did not have liability insurance cover for bunker oil pollution and for those that had, it involved a cumbersome legal process that was also not economical.

The delegation of Australia introduced a document: LEG 96/12/1 in 96th session of the International

Maritime Organization (IMO) Legal Committee which pointed out that the *Pacific Adventurer* incident of 2009 was the driving force behind the Australian proposal on bunker oil pollution. This vessel lost approximately 270 tons of heavy fuel oil affecting 56 kilometres of the South East coast of Queensland. LEG 96/13 explains further that the initial assessment of the clean-up cost was estimated at over USD 25,000,000 yet the limit of liability as per the Convention on the Limitation of Liability for Maritime Claims, 1976 (LLMC) as amended by the 1996 Protocol was 7,556, 400 SDRs- an amount much lower than the cleanup cost.

It is as a result of this predicament and the realization that sometimes general cargo ships carry more oil as bunkers than tankers carry as cargo that Australia submitted a proposal to the IMO Marine Environment Protection Committee in 1994 and later to the Legal Committee in 1995. The proposal justified the need for international requirement to be set for ship owners to have effective financial security to meet their liabilities for bunker oil pollution damage, hence the Bunkers Convention which is modelled on International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC) as amended by the 1992 Protocol.

The CLC only covers pollution as a result of oil spill, including bunker oil spill from vessels adapted to carry oil in bulk as cargo (tankers) and did not cover bunker oil spill from vessels other than tankers. The Bunkers Convention therefore fills the gap in the international regime for compensation for damage caused by bunker oil pollution.

Though similar to CLC, Bunkers Convention does not apply to pollution damage covered by the CLC, whether or not compensation is payable for the same under the CLC. It therefore follows that in spite of a State being a party to the Bunkers Convention, if there is a bunker oil spill from a tanker, one cannot seek recourse by relying on the provisions of the Bunker's Convention but only the CLC (Jacobsson, 2009).

Salient Features of the Convention
The Bunkers Convention defines Bunker oil as any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil. The Convention applies to pollution damage caused on the territory including territorial sea and exclusive economic zone of State Parties and also applies to preventive measures taken to prevent such damage. The Bunkers Convention is known for its three key features: Strict liability; compulsory insurance; and limitation of liability. This is a pattern

which in many respects is similar to that of the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC) as amended, though there are some differences.

a. Strict liability

The implication of the strict liability regime is that it is not necessary for the claimant to prove that the pollution resulted from the fault or negligence of any other party but the only proof required is that the damage was caused by an incident involving the ship itself.

A major difference between the CLC and Bunkers Convention is that as much as they are both strict liability regimes, Bunkers Convention has a single-tier compensation regime with no provision for supplemental compensation above the ship owner's liability limit from an additional source comparable to the International Oil Pollution Compensation (IOPC) Fund that caters for pollution under CLC.

It is important to note that unlike the CLC whose definition of ship owner is restricted to the registered owner or person owning the ship, the Bunkers Convention defines a ship owner as the owner including the registered owner, bareboat charterer, manager and operator of the ship. This was in a bid to preserve right of recovery from other parties apart from registered owner in view of the strict liability.

The implication of subjecting the above-mentioned parties to liability is that in the absence of an additional source like IOPC Fund, it increases the chances of affected State Parties getting compensation as compared to a situation where only the registered owner is responsible and is incapable of settling the claims for damages. This may be seen as reprieve for ship owners to counter the strict liability regime.

b. Limitation of Liability

In light of the strict liability regime, the Convention in Article 6 allows for limitation of liability by the Ship owners, insurance or persons providing financial security under any applicable national or international regime such as the Convention on the Limitation of Liability for Maritime Claims, 1976 (LLMC) as amended by the 1996 Protocol if ratified by a State. It is worth noting that Kenya has ratified the 1996 Protocol. The Merchant Shipping Act 2009 in Part XVII attempts to incorporate LLMC but unfortunately its limits are still based on the 1976 LLMC and therefore in need of revision.

c. Compulsory Insurance

The Bunkers Convention provisions on compulsory insurance are similar to the provisions in the CLC and the Nairobi Wreck Removal Convention. Article 7 of the Convention provides for compulsory insurance and stipulates State's obligations with regards to insurance or financial security which includes issuing of certificates for compliant vessels. The Convention provides that the registered owner of a vessel of over 1000 gross tonnage ought to maintain insurance cover or other financial security to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international regime. In the Kenyan case, the Merchant Shipping Act, 2009.

The Convention also makes it possible for any claim for compensation for pollution damage to be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution damage. In this case, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained under the Convention.

Conclusion

As much as Bunkers Convention establishes strict liability for all State Parties, neither the limits of liability nor the amount of compulsory insurance are uniform as it is solely dependent on either national compensation regimes or the Convention on the Limitation of Liability for Maritime Claims, 1976 (LLMC) /1996 regime. In addition, without a second tier (similar to the Fund) safeguarding the availability of funds, the claimant's ability to recover is limited.

Further, the Bunkers Convention does not clearly stipulate whether environmental claims other than those related to restoration or reinstatement of the environment are included or excluded from the definition of damage and whether it prohibits recovery in relation to such claims under national law. What is also unclear is whether Art.2 (1) of the Convention on the Limitation of Liability for Maritime Claims, 1976 (LLMC) covers damage from bunker oil when no physical damage has been sustained.

There is a risk, therefore, that, in jurisdictions where it will be taken not to cover such type of damage, the Bunkers Convention will establish strict liability with no limitation applicable for such claims which is obviously against the spirit of the Bunkers Convention. On the whole, it may well be that the level of many bunker pollution claims does not warrant the need for a second tier, but it is equally clear that the effect of Art.6 on limitation of liability is problematic; linkage to the LLMC may well mean that pollution claimants have to share in a rather limited fund with other commercial claimants.

Port Community holds 2nd think tank forum



Mr. James Macharia, Cabinet Secretary, Ministry of Transport, Infrastructure, Housing and Urban development, addressing Port Stakeholders

The Mombasa Port stakeholders held their second Think Tank Forum and annual review of the Port Community Charter on 1st March, 2018 at the Pride Inn Resort, Mombasa. The forum was notably presided by Mr. James Macharia, the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing and Urban Development (MOTIHUD) accompanied by Prof. Paul Maringa, Principal Secretary, State Department of Transport and Mrs. Nancy Karigithu, Principal Secretary, State Department of Shipping and Maritime affairs. Other key participants in the forum were Cosmas Cherop, former Ag. Director General, Kenya Maritime Authority, Catherine Wairi, Managing Director - Kenya Ports Authority, Gilbert Langat- Chairperson of the Port Community Charter and Chief Executive Officer of the Shippers Council of East Africa and James Nganga, a representative from Trademark East Africa.

The forum was aimed at enhancing coordination amongst cargo interveners, improving productivity and efficiency at the Port of Mombasa and along the Northern Corridor, reducing cost and increasing ease of doing business and reviewing the Port Charter.

Participants in the meeting articulated the achievements of the Port Community Charter, identified the challenges to the Charter's implementation and recommended measures needed to enhance the effectiveness of the Charter. Delegates also engaged in interactive discussions on important thematic issues required to unlock the potential of the Charter, issues for consideration in the Charter's review including incorporation of drivers to the Blue economy development. The forum's deliberations also highlighted issues in Maritime transport, port operations and the Corridor.

Speaking to participants, James Macharia, Cabinet Secretary, Ministry of Transport, Infrastructure, Housing and Urban Development, reiterated the importance of the Port Community Charter:

"Without the success of the Port Charter, we have no chance of achieving a successful regional integration," he said.

Mr. Macharia also noted that silo mentality hindered the success and development of the Port Community Charter and should be shunned as it results to inefficiencies, unnecessary overlays and wastage of resources. He also encouraged stakeholders to support and utilize the Standard Gauge Railway (SGR) considering its huge potential to address logistical challenges experienced at the Port of Mombasa and along the transport chain.

"Let us remember that we are making our country competitive for business within and beyond Africa," Prof. Maringa, the Principal Secretary, State Department of Transport added, "Ultimately what we want is dependability, efficiency and competitiveness in our processes."

"Business should be left to operate in an environment that is competitive, cost-effective and efficient," restated Gilbert Langat, the Chairperson of the Port Community Charter, "We are hopeful that the voice of the private sector will be entrenched in the regulatory framework of Kenya Maritime Authority."



Port stakeholders with Mr. James Macharia, the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing and Urban Development (MOTIHUD), Prof. Paul Maringa, Principal Secretary, State Department of Transport and Mrs. Nancy Karigithu, Principal Secretary, State Department of Shipping and Maritime affairs during the forum

Spotlight on Port State Control

With Eng. Shaaban Omar Tayari- Port State Control Officer-
Kenya Maritime Authority (KMA)

Interview conducted by M. Zighe



1. What is Port State Control?

Port State Control (PSC) is an internationally agreed regime for the inspection of foreign ships in other national ports by PSC inspectors. The remit of these PSC officers is to investigate compliance with the requirements of international conventions, such as Safety of Life At Sea (SOLAS), Convention for the Prevention of Pollution from Ships (MARPOL), Standards of Training, Certification and Watchkeeping for Seafarers (STCW), and the Maritime Labour Convention (MLC). Inspections can involve checking that the vessel is manned and operated in compliance with applicable international law, and verifying the competency of the ship's master and officers, and the ship's condition and equipment.

2. What is the difference between Port State inspection and Flag State inspection?

A State is called Flag State when ships are registered in that country and they carry its flag. A Port State is any State with an international Port. For example, a ship is registered in Kenya and is in the Port of Singapore. In this example, Kenya is the Flag state and Singapore is the Port State. Port state inspection is an internationally agreed regime of the inspection of foreign ships other those of the flag state. PSC officers are required to investigate compliance of ships with the requirements of international conventions, such as SOLAS, MARPOL, STCW, and the MLC. In Flag State inspection, countries ensure that ships that fly their flag or are under their flag administration comply with international and national rules and regulations, covering maritime safety and security, marine environmental protection, and social, living and working conditions of seafarers.

3. Tell us more about Port State inspections in Kenya?

Port State Control inspections in Kenya are conducted in line with the Indian Ocean Memorandum of Understanding (IOMOU). A state should inspect a minimum of 25% of all eligible ships calling at her ports to ensure compliance with international safety and operational standards.

What are the qualifications of a Port State Control officer?

- For Captains – must hold a Master's Certificate of Competency with 5 years' experience at sea.
- For Engineers – Must hold Chief Engineer Certificate of Competency with 5 years' experience at sea.

4. How many ships do you inspect every day?

One to two ships per day depending on condition of the ship.

5. Apart from safety what other aspects do you check for during the Port State Control (PSC) inspection?

Apart from safety, Port State Control inspection includes:

Protection of the people, meaning Captain, crew, stevedores (dockers) and anybody boarding the vessel including port state control inspectors, protection of the property which means the ship, the cargo and equipment and protection of the planet which means pollution of the environment including our waters, air and our ecosystem.

6. Do you do impromptu inspections or do you notify the ship first?

Impromptu inspection, provided the ship has not been inspected in any member state in the Indian Ocean Memorandum Of Understanding (IOMOU) in the last six months.

7. What happens to the ships that are deemed to have 'failed' the inspection?

We detain them until all the defects observed are rectified, or allow the vessel to sail to an agreed Port for repair provided the vessel does not pose any danger to the environment.

8. What measures are taken to ensure these ships do not sail in Kenyan waters?

They are banned from coming into this region.

9. From your experience can a Port State inspection be compromised? i.e have you ever been offered a bribe by the ship captain to ignore faults on the ship?

NO. Port State Control Inspectors are not allowed to accept any form of gift from the vessel.

10. Are there mechanisms to deal with corruption in your industry?

Corruption means a dishonest or fraudulent conduct by those in power, typically involving bribery. As a Port State Control inspector I do my work with integrity, objectivity and professionalism.

11. Are there any challenges you face in your job?

Yes. There are only two Port State Control Inspectors in Kenya Maritime Authority (KMA), this is too little compared to the number of ships to be inspected.

12. What do you think should be done to address these challenges?

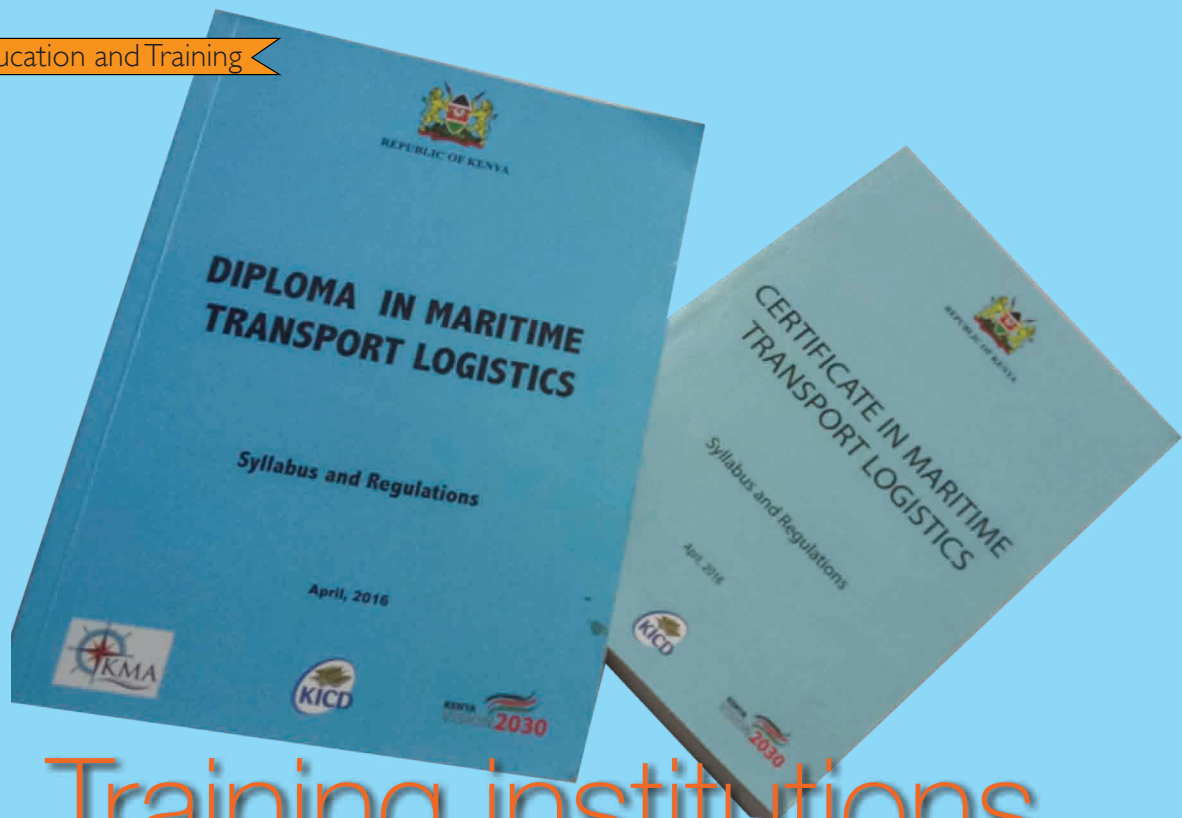
Recruit more Port State Control Inspectors.

13. Do you think you are suitably equipped to carry out your job?

Yes. I have the training, knowledge and experience required.

14. What do you like most about your job?

I love this job very much. I find it to be easy and interesting. After being at sea for Thirty nine (39) years, Thirty five (35) of which I served as Chief Engineer there is nothing I do not know about ships right from the bilges in the engine room through to the main deck and wheelhouse.



Training institutions get green light to offer landbased maritime curriculum

The Kenya Maritime Authority (KMA) has endorsed three Kenyan institutions to offer the landbased maritime curricula after they successfully completed the accreditation process. The Training institutions which will begin offering diploma and certificate courses for maritime transport logistics are the Mount Kenya University, the Kenya School of Revenue Administration and the Coast International College.

The maritime curricula is aimed at addressing the skills gap in shore based activities in the shipping industry. The courses are designed to equip trainees with relevant knowledge, skills and attitudes for performance of clerical and supervisory duties in processing of shipping documents, managing port operations, undertaking cargo and ships clearance, interpreting contract documents in shipping business, complying with environmental conventions, laws and regulations, supervising logistics and multimodal transport operations and performing ship broking activities.

KMA developed the landbased maritime curriculum in collaboration with the Kenya Institute of Curriculum Development (KICD), Technical and Vocational Education and Training (TVET) and the Ministry of Education, Science

and Technology as part of its key priority projects for human resource development in the maritime sector. The initiative is expected to enhance the sector's contribution to the national economy as envisaged in Kenya's Vision 2030 and encourage Kenyans to invest in the maritime sector.

Training institutions interested to offer the landbased maritime curricula can apply by sending a written application to the Kenya Maritime Authority expressing interest to implement the curriculum. The application will be acknowledged and the applicant requested to submit all the requirements for evaluation and consideration. Thereafter, an approval verification team will ascertain the applicant's compliance with the requirements, which may require site visitation. The result will be communicated within a period of 15 days from the date of submission of the documentation. On the basis of the recommendations of the accreditation team, the applicant will thereafter be notified to either pay the approval fees or the reasons for the negative outcome. The implementation will be monitored to ensure continuous compliance with the approval standards.

Four maritime professionals, three women and one man, are standing in front of a stone archway. They are all wearing dark blue or black uniforms with white collars and cuffs, and white caps with gold anchors. The man on the far right has a higher rank, indicated by more stripes on his shoulder. The women are also in uniform, with the one in the middle wearing glasses.

Interested to offer the Landbased Maritime Curriculum?

Follow the following process:

- i. Apply by sending a written application to the Kenya Maritime Authority (KMA) by expressing interest to implement the curriculum.
- ii. The application will be acknowledged and the applicant requested to submit all the requirements for evaluation and consideration.
- iii. Thereafter, an approval verification team will ascertain the applicant's compliance with the requirements, which may require site visitation. The result will be communicated within a period of 15 days from the date of submission of the documentation.
- iv. On the basis of the recommendations of the accreditation team, the applicant will be notified to either pay the approval fees or the reasons for the negative outcome.
- v. The implementation will be monitored to ensure continuous compliance with the approval standards.

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FOR MORE INFORMATION

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