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## Nahodha

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Michelle Wanga- Editor Abygael Mwashighadi Victoria Tuva Margaret Zighe

Lauretta Nafula Ellah Kiyangu Juma Ahmed Khalfan Baya Gilbert Kulali

### **Contributors**

Nafula Wakoli Josephine Nthia Mwanakombo M. Maulid

### **Guest Contributors**

Abdul Haki Bashiru-Dine - Ghana Shippers Authority

### Contact us

pr@kma.go.ke info@kma.go.ke Website: www.kma.go.ke

### Follow us on:

👩 : kmakenya@kmakenya

👔 : Kenya Maritime Authority

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# Kenya Maritime Authority gets Director General

The Board of Directors of the Kenya Maritime Authority (KMA) appointed Major (Rtd) George Nyamoko Okong'o as the Director General of the Authority with effect from 12<sup>th</sup> October, 2018 for a period of 3 years.



Major (Rtd) George Nyamoko Okong'o, KMA's Director General.

Major (Rtd) George
Nyamoko Okong'o is
a graduate of Kenyatta
University (KU) having
graduated with a
Bachelor of Science (Bsc)
in 1994. He has also
undergone extensive
training in maritime and
shipping affairs and is



Major (Rtd) George Nyamoko Okong'o , KMA'S Director General is formally welcomed by the Authority's Board of Directors

very conversant with the International Ship and Port Security Services (ISPS) Code.

Major (Rtd) George Nyamoko Okong'o brings to KMA a wealth of experience of 24 years from the maritime domain, 20 of which he served at the Kenya Navy.

# Kenya Marks World Maritime Day 2018



Mrs Nancy Karigithu, the Principal Secretary, State Department of Shipping and Maritime from the Ministry of Transport, Infrastructure, and Housing and Urban Development addresses participants during this year's World Maritime Day 2018 celebrations.

Kenya joined the rest of the international maritime community in commemorating this year's World Maritime Day on 27th September, 2018. This year's theme "IMO 70: Our Heritage Better Shipping for a Better Future" enabled the country to recall its maritime history, laud the progress made in the industry and address current and future challenges for maritime transport in order to maintain a continued and strengthened contribution sustainable towards growth for all. The celebrations were officially flagged by Mrs. Nancy Karigithu, the Principal Secretary, State Department of Shipping and Maritime from the Ministry of Transport, Infrastructure, and Housing and Urban Development. Organized by the Kenya Maritime Authority, the event was held at the Mama Ngina grounds in Mombasa. The World Maritime Day celebrations brought together stakeholders in the maritime industry, students and the general public to learn about trends in the sector, recognize challenges and find solutions, increase awareness and participation in the maritime

sector and the Blue economy. During the event, the public was also treated to a variety of educative exhibitions from various agencies and institutions such as the Kenya Maritime Authority (KMA), the Kenya Ports Authority (KPA), the Kenya National Shipping Line, the Kenya Ferry, Kenya Marine and Fisheries Research Institute, Southern Engineering Ltd, Captain Andys, Bandari College, Women in the Maritime sector from Eastern and Southern Africa (WOMESA), Abson Motors, among many others.

This year's World Maritime day came at an opportune time; when

the country keen to implement the Government's Big 4 agenda and host the global Sustainable Blue Economy Conference November 2018 as well as position itself to develop and reap big from the nation's Blue economy. The Kenyan maritime sector and Blue economy has great economic potential and can be a key driver for both sustainable growth in the economy and employment to millions of Kenyans if well harnessed.

Every year, the International Maritime Organization(IMO) sets aside a week of September for the international community to celebrate achievements made in the maritime industry towards shipping safety, maritime security, maritime education and training, the marine environment and to emphasize a particular aspect of IMO's work. The Republic of Kenya became a member of the International Maritime Organization (IMO) in 1973 and is currently a Council member under Category 'C', which consists of countries which have special interests in maritime transport or navigation, having first been elected in 2001 and re-elected in 2017.



.Mrs. Nancy Karigithu, the Principal Secretary, State Department of Shipping and Maritime from the Ministry of Transport, Infrastructure, and Housing and Urban Development interacts with staff from the Kenya National Shipping Line during the World Maritime Day celebrations 2018

# All about Ships... Unveiling the Mystery CONTAINER SHIPS By M. M. Maulid

A vessel structured specifically to hold huge quantities of cargo compacted in different types of containers is referred to as a container vessel (ship). The process of sending cargo in special containers is known as containerization.

The initiation of the container shipping forms one of the most remarkable developments in the maritime cargo industry. Container ships, a type of cargo ships, have revolutionized in the manner in which the cargo supplies are ferried and transported across the world, by providing assurance of safety and security of the transported cargo supplies. Some of the biggest shipping companies today deal mainly with containerized form of cargo.



Credits: Heb/wikipedia.org

The very first models of container ships were launched in the early 1950s and were mainly designed to ferry goods trains' and freight cars. Using crane systems and ramp systems, these freight cars could be loaded and unloaded from the vessels. Over the years technological advancement has made it possible for comparatively far more feasible methodologies, though crane systems still play a major role in the loading and unloading operations of the containers to and from the vessels' holds. Specialized lashing and cargo handling systems are used to secure the containers in their places.

Container vessels are distinctive in that they are constructed to accommodate immense possible cargo loads. The load holding capacity of container vessels is measured in terms of Twenty-foot Equivalent Units or TEUs, with the biggest container ships as much as over 15,000 -16,000 TEUs. Because of such high capacities, some of the largest ships in the world are container ships. Within a container ship, there are well demarcated holds that separate each container from each other which simplifies the entirety of the piling of the containers.



Credits: cma-cgm.com

In essence, container ships are regarded to be a generic reference. Within their ambit, there are several different types of container ships. Each container vessel is unique and different, with an undiminished operational singularity. Some of the various types of container vessels can be highlighted as thus:

- Container ships that are built specifically to fit into the channels of the Panama Canal are referred to as the Panamax container vessels. These ships can be loaded with a maximum TEU of about 5,000 and measure slightly over 290 meters lengthwise.
- The smallest variance of container vessels is the Small Feeder type. These container vessels can carry loads up to 1000 TEUs. Several developments made to the Feeder categorization has resulted in the development of the categories of 'Feedermax' and 'Feeder.' The former can carry a maximum of about 3,000 TEUs while the latter can carry around 2,000 TEUs

Here are some of the main types of container ships based on their sizes:

### **Panamax**

Panamax and New Panamax are terms used for ships that are designed to travel through the Panama Canal. The ship classification indicates the minimum dimensions required by the ship to able to pass smoothly through the Panama Canal. The sizes of Panamax ships are determined by considering the dimensions of the smallest lock of the canal. Those ships which do not fall under the dimension criteria of the panama vessel are known as Post-Panamax Vessels.

### Suezmax

The term Suezmax is used for the largest ship that can pass through the Suez Canal. A typical Suezmax vessel has a capacity of 120,000 to 200,000 Dead Weight Tonnage (DWT) with maximum 20.1 draft with beam no wider than 50.0 m (164.0 ft.) or 12.2 m (40 ft.) of draught for ships with maximum allowed beam of 77.5 m. Suezmax ships have lengths of about 275 meters stipulated as per the Suez Canal passage requirements.

### **Post panamax**

There are ships larger than Panamax, sometimes called "single-ocean" vessels. The Suez Canal is sea level, without locks, and ships larger than Panamax can travel from Asia to Europe or the eastern US via that canal. The largest ships in

service today are the Emma Maersk and her sister ships, container ships with a capacity of 14,770 TEU. The Emma Maersk has an overall length of 1302 feet, a beam of 186 feet, and draws 51 feet. This ship is the "design vessel" for the mega port at Southport planned by the State Ports Authority.

### **Post suezmax**

It is possible that in about 10 years the Ultra Large Container Ships (ULCS) will perhaps be as big as 18,000 TEU, with a ship breadth of 60 m and a max. Draught of 21 m. Today, this ship size would be classified as a post-Suezmax ship, as the cross-section of the ship is too big for the present Suez Canal. It is claimed that the transportation cost per container for such a big ship may be about 30% lower than that of a typical 5,000-6,000 TEU container vessel of today.

### **Post-Malaccamax**

Malaccamax is the term used for largest size of ship which is capable of passing through the Strait of Malacca. These vessels are often associated with Very Large Crude Carriers (VLCCs), though a specific assignation to their ship size has been annotated. These ship sizes measure about 400 meters lengthwise with up to 165,000 DWT. Used for both bulk carriers and super tankers, Malaccamax is also used for the new Maersk's Triple E Class Container vessels. Lastly, Container shipping vessels represent a majority in terms of the packaged cargo ferried across the world. On account of the relevance and the ever-increasing demand for better maritime cargo transportation channels, there has been seen huge strides in the container ships' domain. Such advancements are expected to grow even more in the days to come.



Courtesy of maritime-connector.com. (Post Malaccamax)



### I. Introduction

The importance of a unified approach protection of towards marine environment cannot be gainsaid, thanks to the universality and holistic nature of the sea. Individual state efforts to conserve and protect the marine environment is bound to be an exercise in futility because as much as there are legal boundaries, water and the living organisms are bound to traverse any 'maritime boundary'. It therefore follows that pollution on one part of the marine environment can still affect another part that was not the original recipient of the offending substance.

Before the codification of pollution prevention instruments, the international community mainly relied on customary international law rules which stipulated that a ship outside the internal waters and territorial waters (then 3 nautical miles) of a foreign State was under the exclusive jurisdiction of the flag State in case of a breach of international laws.

In the years preceding United Nation's Convention on Laws of the Sea (UNCLOS) III, various Conventions on the prevention of pollution from ships were adopted as pollution prevention was considered to be of paramount

importance hence UNCLOS 1982 having a whole chapter on the same: Part XII.

UNCLOS is drafted in such a way as to incorporate by reference the instruments that existed prior to its coming into force, as well as future instruments to be adopted under the International Maritime Organization (IMO) auspices. Part XII of UNCLOS forms a holistic overriding principle that guides State Parties on how to develop laws within the marine pollution prevention regime.

# II. Scope of UNCLOS with regard to pollution prevention

UNCLOS is the biggest environmental treaty in existence (168 State Parties) as it addresses six main sources of ocean pollution: land-based and coastal activities; continental-shelf drilling; potential seabed mining; ocean dumping; vessel-source pollution; and pollution from or through the atmosphere.

As regards prescription of specific pollution control measures, the Convention avoided enumerating new standards for particular forms of pollution. Instead, it proclaims a

general regime of powers and duties, which builds upon codification and development of existing and future pollution control conventions.

It lays down the fundamental obligation of all State Parties to protect and preserve the marine environment and urges all States to cooperate on a global and regional basis in formulating rules and standards and otherwise take measures for the same purpose.

**Article 194** of UNCLOS targets all forms of marine pollution, and **Article 192** makes it "the business of governments"; Flag States, Coastal States or Port States.

Coastal States have jurisdiction in the protection of marine environment and the enforcement of the same. This includes; the internal waters, territorial sea, Exclusive Economic Zone (EEZ) and Continental shelf. Flag States on the other hand have to implement and enforce pollution prevention measures and protection of marine environment on the vessels with their flag irrespective of where the pollution occurs. Port States too have a duty to enforce the various instruments, including marine environment protection as regards vessels in the course of Port State obligations.

### **III.** General provisions

Part XII has three Articles that are declaratory in nature and reaffirm what existed in customary international law.

Articles 192 and 194 impose a basic duty on States to protect and preserve the marine environment.

**Article 193** is a reaffirmation of State's sovereign rights with regard to exploitation of their natural resources, albeit with due regard to the protection of the marine environment.

**Article 194** creates an obligation to reduce pollution from any source. This is an omnibus provision and at the same time futuristic as it envisions and caters for pollution from any conceivable source.

## Section 2 – Global and Regional Co-operation

In a bid to protect the marine environment, States are to cooperate in the following:

- by formulating rules and standards-Article 197;
- by giving notification of imminent or actual damage- Article 198;
- by formulating contingency plans against pollution- Article 199;
- by undertaking research and the exchange of information- Article 200.

The above provisions did not follow any specific pattern as they were driven by public outcry and national interest with regard to pollution. In existence therefore were reactionary laws or laws based on necessity. In spite of the existence of such laws, there remained a void which Section 2 attempts to fill. Section 2 recognizes the universality of maritime affairs and the importance

of State cooperation in formulating common rules and standards in the protection and preservation of the marine environment. This section envisages cooperation on both global and regional basis.

It is essential to note that States are urged to be proactive and cooperate in marine environment protection. Setting rules and standards is not sufficient as it is futile to have standards without the corresponding obligation to minimize pollution from a practical point of view.

State Parties therefore have a duty to notify other State Parties deemed likely to be affected by any imminent or actual damage to the environment and also notify the competent international organization by virtue of the marine environment being a shared resource with a corresponding need for collective obligation.

Research and exchange of information and data is also considered key towards marine environment protection as it is from such research that State Parties are expected to establish appropriate scientific criteria for formulation and elaboration of rules, standards and recommended practices and procedures.

## Section 4 – Monitoring and environmental assessment

This section requires State Parties to monitor and evaluate the risks or effects of pollution within any given area, especially if it is as a result of an activity it has permitted. Further, State Parties are expected to take precautionary measures and to perform an environment impact assessment whose result is to be shared with other State Parties and the competent international organization before undertaking an activity that may cause substantial pollution or significant harmful change to the marine environment.

## IV. Sources of pollution under UNCLOS

### **Article 207** – Land-based pollution

Major pollution emanates from land-based sources. There are Polluter Rivers, industrial discharges, garbage and many other pollutants. It can be rightly said that every substance used on land will most probably end up in a water body and finally the ocean. State Parties are obliged to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources taking into account internationally agreed rules, standards and recommended practices.

"Taking into account" is a political compromise. Use of such wording should be of no surprise, as State Parties are obliged to adopt laws in their lands where they enjoy territorial sovereignty. Further, from the Article, it is evident that this form of pollution is neither comprehensively covered in UNCLOS nor in other international instruments. This is because the solution for preventing land —based pollution is on land i.e. subject of sovereignty of a State, a sensitive subject globally.

# **Article 208** – Pollution from Seabed activities subject to National Jurisdiction

These activities include pollution that may emanate from artificial islands, installations and structures in connection with seabed activities including mining and even marine scientific research. UNCLOS places a minimum obligation for laws, regulations and measures to be adopted by Coastal States and that such laws ought to be no less effective than international rules, standards and recommended practices and procedures.

It is generally agreed that this is not limited merely to a Convention but includes customary international law and soft law instruments not binding in international law but all the same persuasive.

This may be interpreted to mean that domestic law must not only be seen as effective but should if possible supersede the minimum standards that international laws provide.

### Article 209 – Activities in the Area

State Parties have an obligation to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area (seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction that is the purview of the International Seabed Authority (ISA)) undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority, as the case may be. State Parties in this case have to conduct their activities in tandem with the management and control role of the Area that is vested in ISA.

All activities in the Area are however regulated by Part XI of UNCLOS and all rules and regulations which fall under part XII must also adhere to Part XI.

### Article 210 - Dumping

Dumping ought not to be carried out without permission of Competent Authority of States.

Part XII of UNCLOS draws a distinction between two States; Coastal and Flag State. For coastal States, the jurisdiction is limited to geographical limitations; internal waters, territorial sea, EEZ and continental shelf (express prior approval of Coastal State required).

However, such Coastal States also have to consult with other Parties that are likely to be affected by such dumping prior to granting approval. For Flag States, the jurisdiction follows a vessel that it flags.

Due to the interconnectivity of the world, national laws, regulations and measures have to be no less effective in preventing, reducing and controlling such pollution than the global rules and standards.

However, the term "global rules and standards" is unclear. It is practically impossible with the exceptions of jus cogens and customary international law to speak of globally accepted rules.

### **Article 211** – Pollution from vessels

State Parties are obliged to establish rules and standards to prevent, reduce and control pollution of the marine environment from vessels and to adopt harmonised routing systems designed to minimise the threat of accidents which might cause marine pollution.

These rules are to have "at least the same effect as that of generally accepted international rules and standards." This creates a valid obligation with the effect being that State Parties have to ensure that their legislation is updated at least to be in line with international standards

Developed maritime interests States fought hard to resist unilateral Coastal State regulation over vesselsource pollution. Their eventual success in doing so had the result of internationalizing pollution control issues, thereby limiting Coastal State jurisdiction and preserving a large portion of the freedom of navigation. This is not to say that developed maritime States were ignoring the problem of marine pollution. On the contrary, they were busy initiating pollution control efforts at

IMCO (now International Maritime Organization) at about the same time that UNCLOS was being negotiated. The strategy of developed maritime interest States required effective control over marine pollution, but only through international agreement and decidedly not through Coastal State autonomy.

### Article 212 - Pollution from or through the atmosphere

States Parties are to adopt laws and regulations for prevention and control of pollution from or through the atmosphere.

All such laws are to take "into account internationally agreed rules, standards and recommended practices and procedures and the safety of air navigation."

State Parties have a wide discretion in adopting their own criteria when laying down any rules or regulations because we are talking pollution of the airspace over the State's landmass where it enjoys sovereignty. In doing so, all they have to do is take into account the internationally agreed standards.

### V. Other Provisions of Part XII

### Section 8 - Ice-covered area

Article 234: Coastal States have the right to adopt and enforce nondiscriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone.

Laws and regulations are to be "based on the best available scientific evidence."-This may be because this is not a much- known area and it may also imply that scientific studies which a country uses to come up with its laws ought to be suitable for use in a dispute settlement procedure.

This Article may not necessarily apply to Kenya as a Coastal State but a Kenyan flagged ship may be affected by laws derived from this section by a Coastal State.

## Section 9 - Responsibility and liability

Article 235: Provides that all State Parties are liable in accordance with international law for the non or partial fulfilment of their international obligations concerning the protection and preservation of the marine environment. State Parties shall also ensure that recourse and adequate compensation is available in their domestic systems in respect to all pollution- related damage to the marine environment.

Although State Parties may not be sanctioned if they do not fulfill their obligations and adhere to UNCLOS, States are more inclined to implement and enforce such standards in line with the doctrine of good faith (UNCLOS Article 300) and the principle of pacta sunt servanda as per the preamble of the Vienna Convention on the Law of Treaties, 1969. Furthermore, States tend to avoid being in a state of illegality that may arise as a result of breaching or non-adherence to international obligations as this may not augur well for the State Party's international relations.

## Section 10 – Sovereign immunity

Article 236: Provisions regarding the protection of the marine environment and the preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State Party and used for governmental non-commercial services.

## Section II – Obligations under other Conventions

Article 237: The specific obligations assumed by State Parties under special Conventions, with respect to the protection of the marine environment should be carried out in a manner consistent with the general principles and objectives of the Convention. This Article is futuristic in that it envisioned a wide and continually expanding range of global regional agreements dealing with protection of marine environment.

### VI. Conclusion

UNCLOS is a comprehensive and near universal Convention in terms of ratification and has stood the test of time. It plays a unifying and integrative function as concerns ocean governance. If any convention ought to be considered as having

springboard characteristics, would be UNCLOS. It is the skeleton upon which further norms of substance can be created as it seeks to encompass prior and subsequent treaties in relation to different aspects of the Law of the Sea. Another quality that distinguishes it from other international instruments is that some of its provisions: Article 237 and 311(2) establish the pre-eminence of the general principles of UNCLOS over other Conventions with regards to ocean governance issues hence earning the title, A Constitution of the Oceans'.

Looking at UNCLOS from this perspective, it can be said that it is a great success in that it has inbuilt mechanisms that allow for co-existence of other regimes including IMO, International Seabed Authority (ISA) and Regional Fishery Management Organizations (RFMO).

Part XII is an embodiment of the 'due regard rule' and has been implemented by different Conventions including the 1972 London Dumping Convention. Further it has been generally agreed that various provisions of UNCLOS are considered as having attained the customary international law status.



# **Pictorial**



Trainees attending the Expert Training of the Indian Ocean Memorandum of Understanding (IOMOU) for Port State Control Officers (PSCO) hosted by the Kenya Maritime Authority at the Sarova White Sands Beach Hotel in Mombasa, Kenya.



.Mrs. Nancy Karigithu, the Principal Secretary, State Department of Shipping and Maritime from the Ministry of Transport, Infrastructure, and Housing and Urban Development appreciates a memoir presented by George Macgoye, former Ag. Director General, Kenya Maritime Authority.



Major (Rtd) George Nyamoko Okong'o, KMA's Director General, speaks during the Expert Training of the Indian Ocean Memorandum of Understanding (IOMOU) for Port State Control Officers (PSCO) hosted by the Kenya Maritime Authority at the Sarova White Sands Beach Hotel in Mombasa, Kenya.



Eng. Shaban Omar Tayari from KMA representing Kenya during the 21st IOMOU Committee meeting in Australia in August 2018. Engineer Tayari, the Port State Control Officer from KMA received the Best Deficiency Photo Award from the Indian Ocean Memorundum of Understanding (IOMOU) Secretary, Mr. Dilip Mehrotra during the meeting.



Porthole cover holding down bolts and nuts missing affecting watertight intergrity.



Engine room floor plates missing and Engineer not wearing safety boots.



Main deck plating is paper thin and full of corrosion holes.



# Frequently Asked Questions on Seafarers Employment and Welfare By J. Nthia

## Recruitment and Placement Services

## 1. Is a license needed in order to run Recruitment and Placement Services (RPS)?

### **Answer:**

Yes. One has to have a license before starting the business of recruitment and placement, it is issued from KMA upon application and meeting all the requirements as recruitment and placement agent in accordance to the Merchant Shipping Act, 389

## 2. Should Recruitment Placement Services be certified as a ship owner?

### **Answer:**

No. A licensed Recruitment and Placement Agency is not allowed to own ships.

### 3. We use a recruitment and placement service in another country that has ratified the MLC. What must we be aware of in that connection?

### **Answer:**

Ship owners using private recruitment and placement services for seafarers in countries that have ratified the Maritime Labour Convention (MLC) or International Labour Organization (ILO) Convention no. 179 on the recruitment and placement of seafarers (1996) — must ensure that the relevant services have a certificate, a license or a document showing that they are operated in accordance with the Convention requirements.

### 4. We use a recruitment and placement service in another country that has not ratified the MLC. What must we be aware of in that connection?

### **Answer:**

Ship Owners using private recruitment and placement services for seafarers in countries that have not ratified the MLC — or ILO Convention no. 179 on the recruitment and placement of seafarers (1996) — must be

able to document that the relevant services meet the requirements for recruitment and placement services following from the Convention.

### **Hours of rest**

### 1. Should hours of rest be agreed upon in the employment agreement?

#### **Answer:**

Yes, it may be. However, hours of work and rest should be stipulated in the national laws of the flag state where the ship is registered. In accordance with MLC 2006 the minimum hours of rest for all seafarers are: 10 hours in any 24 hour period; and. 77 hours in any 7 day period. Hours of rest may be divided into no more than 2 periods one of which shall be at least 6 hours in length.

### 2. Can information on hours of rest be kept on board in electronic form?

### **Answer:**

Yes. If the system for recording hours of rest is electronic.

## 3. Must the seafarer always receive the overview of hours of rest in paper format?

### **Answer:**

It is required that records of seafarers' daily hours of work or of their daily hours of rest be maintained to allow monitoring of compliance in accordance to ILO standards. The seafarers shall receive a copy of the records pertaining to them which shall be endorsed by the master, or a person authorized by the master, and by the seafarers.

## 4. Are seafarers permitted to work on "public holidays"?

### **Answer:**

Collective agreements will state that compensation be done of work performed on public holidays by at least equivalent time off duty and off the ship or additional leave in lieu

of remuneration or any other compensation so provided. Seafarers should rest on public holidays as provided for in the MLC, 2006.

### **Food**

### 1. Must the food be free?

### **Answer:**

Yes. Seafarers on board a ship shall be provided with food free of charge during the period of engagement. The food should be of good quality and quantity.

### **Complaint procedure**

## 1. Who do I present a complaint to onboard ship?

### **Answer:**

Report to the immediate supervisor. If non responsive, escalate the complaint to a a higher level (Master).

### **Complaint Procedure at Port**

1. How do I report persistent violation in (wage payment, conditions of work, violation of seafarers' rights, hours of rest) to shore authorities?

### **Answer:**

Report to Port State Control Officers, the International Transport Workers Federation (ITF), Seafarer's Union, and the Maritime Authority

### For further enquiry please contact:

The Registrar of Seafarers
Kenya Maritime Authority
Moi Avenue, Whitehouse
P. O. Box 95076-80104
MOMBASA - KENYA
+254 41 2318398 / 9 / 0724319344
info@kma.go.ke







### FOR MORE INFORMATION

Contact us through:

### THE DIRECTOR GENERAL, KENYA MARITIME AUTHORITY

**P.O. Box** 95076 - 80104, MOMBASA

**Telephone:** +254 41 2318398/9, +254 20 2381203/4, 0724319344, 0733221322 **Fax:** +254 41 2318397 **E-mail:** info@kma.go.ke; complaints@kma.go.ke **Website:** www.kma.go.ke







