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**THE MERCHANT SHIPPING (SAFE AND ENVIRONMENTALLY SOUND
RECYCLING OF SHIPS) REGULATIONS 2019**

**A SUBSIDIARY LEGISLATION TO INCORPORATE THE HONG KONG
INTERNATIONAL CONVENTION FOR THE SAFE AND ENVIRONMENTALLY
SOUND RECYCLING OF SHIPS, 2009 INTO THE MERCHANT SHIPPING ACT AND
TO PROVIDE FOR THE EFFECTIVE IMPLEMENTATION THEREOF**

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1.0 BACKGROUND OF THE HONGKONG CONVENTION FOR THE SAFE AND ENVIRONMENTALLY SOUND RECYCLING OF SHIPS, 2009 (SHIP RECYCLING CONVENTION)

1.1 Introduction

This explanatory note seeks to bring to the attention of the Kenyan government through the Cabinet Secretary for Transport and Infrastructure the importance of the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (the HKC). The explanatory note, therefore, examines the origins of the HKC and its crucial role in the shipping sector. Through ratification of the HKC Kenya will be able to protect itself from being a dumping ground for ships at the end of their life and therefore ensure that every Kenyan enjoys the right to a clean and healthy environment as enshrined in the Constitution of Kenya 2010. Also, the HKC under its regime of safe and environmentally sound recycling will create a source of safe employment for many Kenyans, which is one of the main targets of the Kenyan government development agenda. Unemployment being one of the key problems in Kenya and the greater African region, this will help in the alleviation of poverty.

The explanatory note will briefly discuss the provisions of the HKC and the way the HKC can be incorporated into the laws of Kenya for effective implementation.

1.2 Business of shipbreaking: What is shipbreaking?

Just like shipbuilding, shipbreaking is an integral part of the shipping industry. Once ships have outlived their purpose, they are subjected to ship breaking upon which valuable materials are recovered, and these materials serve various important purposes. However, while some ships are broken down and reused, a large number find their way to the beaches of Asia where they are broken down for steel and other parts. The shipbreaking industry is further complicated by the constant development of modern and structurally complex ships, which makes it even more dangerous¹.

Until the 1970s, shipbreaking was a common industrial activity in the USA and Europe. However, due to increased labour costs and introduction of strict governing regimes the shipbreaking industry was moved to Asian countries like Taiwan and South Korea². With time, Taiwan and

¹ Tony George Puthucherril, “*From Shipbreaking to Sustainable Recycling: Evolution of a Legal Regime*” (Martinus Nijhoff Publishers and VSP, 2010) p. 11

² Ibid

South Korea shifted focus to shipbuilding, and the shipbreaking industry was left with countries like China, India and Pakistan³.

End-of-life vessels sent to these developing countries for breaking down are loaded with hazardous wastes which have far-reaching negative consequences for the environment and human health. However, it is nearly impossible to do away with the ship breaking industry in these countries as some of the local economies are fuelled by this industry. Besides, it requires a low level of investment and creates much-needed jobs for the local population. Almost all the parts of the ship including hull, machinery and equipment, fittings, generators, batteries, hydrocarbons and even furniture can be reused.

Without disregard to the advantages that local communities derive from ship breaking activities, shipbreaking is one of the most dangerous activities. First, due to the complex structure of modern day ships, there is potential exposure to asbestos, polychlorinated biphenyls (PCBs), lead among a long list of other hazardous chemicals and materials which make it catastrophic for the marine environment. Second, during shipbreaking, there is excess noise, fire and explosions which are similarly detrimental to the marine environment. The situation is further complicated because shipbreaking is carried out by poorly skilled workers who lack technical knowledge on ship breaking and work under poorly regulated conditions without regard to their health and environmental safety⁴.

1.3 Brief overview of the shipbreaking industry

Shipbreaking can be divided into four stages from the beginning of the life of the vessel to its end life:

1. New building market which trades in new ships,
2. Freight market which provides sea transport services,
3. The sales and purchase market which trades in second-hand ships, and
4. Finally, the demolition market where old vessels are sold and purchased⁵.

Shipbreaking is pivotal to the shipping industry as it plays an important role as a buffer to create a balance in the shipping industry. This can be explained by the fact that at any one particular time,

³ Sangeeta Sonak, Mahesh Sonak and Asha Giriyan, “*Shipping Hazardous Waste: Implications for Economically Developing Countries*”

<https://www.researchgate.net/publication/225415465_Shipping_hazardous_waste_Implications_for_economically_developing_countries> Accessed on 13th February 2019.

⁴ Sonak (N3)

⁵ Puthucherril (N1)

only a limited number of new ships can be built⁶. Shipbreaking is the primary means of disposal, and there are few other practical methods for disposing of ships.

If ships are not scrapped, they have to be scuttled, that is the decontamination of a ship and sinking it into a carefully chosen location to form an artificial reef⁷. Scuttling, however, can be expensive due to the clean-up costs and undetected dangers. Also, the raw materials on the ship such as valuable steel and other materials are not utilised. This leaves shipbreaking as the acceptable primary mode of ship disposal⁸.

1.4 Regime of International Shipbreaking: Tracing the HongKong Convention From Previous International Instruments to the Current Position.

Initially, shipping was regulated by a regulatory framework laid down by the key maritime players. However, this changed due to the movement of people, goods cargo and freight via ships. Also, the shipping industry developed at a rapid pace and thereby necessitating cooperation due to the multiple challenges that emerged⁹.

The most important piece of international legislation that deals with the issue of ship recycling as well as the transboundary movement of ships for recycling is the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1989 (the Basel Convention), as well as the Basel Ban and the Technical Guidelines for the Environmentally Sound Management of Full and Partial Dismantling of Ships¹⁰.

The International Labour Organization (the ILO) also covers aspects of shipbreaking by setting standards that cover workers for occupational safety and health. The ILO aspect can be seen from the Maritime Labour Convention 2006 (MLC 2006) in Regulation 4.3¹¹.

Further, the ILO also adopted technical guidelines¹² on ship dismantling for the major recycling countries in Asia and Turkey¹³. The guidelines state that the main aim is to transform the informal

⁶ Sonak (N4)

⁷ Damien A. Devault, Briac Beilvert, Peter Winterton, “*Ship Breaking or Scuttling? A Review of Environmental, Economic and Forensic Issues for Decision Support*” <<https://link.springer.com/article/10.1007/s11356-016-6925-5>> Accessed on 14th February 2019.

⁸ Puthucherril (N1) 14

⁹ Puthucherril (N1) 104

¹⁰ Ibid

¹¹ Maritime Labour Convention 2006 Regulation 4.3

¹² Safety and Health in Shipbreaking- Guidelines for Asian Countries and Turkey <http://www.ilo.org/public/libdoc/ilo/2004/104B09_279_engl.pdf> Accessed on 11th March 2019.

¹³ Ship Recycling: Global Policy <http://ec.europa.eu/environment/waste/ships/global_policy.htm> Accessed on 8th March 2019.

economy of shipbuilding to a formal one by assisting to ensure safe work in shipbreaking that conforms to the ILO's decent work agenda¹⁴.

The 1982 Convention on the Law of the Sea (UNCLOS) also covers shipbreaking in that it provides for a regulatory regime for pollution from land-based sources. UNCLOS requires that all parties either jointly or individually take all the necessary precautions to prevent, reduce and control pollution of the marine environment¹⁵. Further, Article 194 (2) of UNCLOS requires states to ensure that all activities in their jurisdiction or control are so conducted that they do not cause damage or pollution to other states and their environment. This obligation further requires that pollution arising from the incidents under the jurisdiction or control does not spread beyond the areas where they exercise the sovereign rights provided by UNCLOS¹⁶.

1.5 International Hazardous Waste and shipbreaking

The most important international legal instrument that recognises the threat to human health and the environment due to the transboundary movement of hazardous waste is the Basel Convention. Hazardous wastes are transferred from the developed states to the developing states. The main aim of the Basel Convention is to provide a regime for the protection of human health and environment against adverse effects resulting from the generation and management of hazardous wastes. The Basel Convention has a two-dimensional approach to achieve its ends. The first is by enhanced control over the transboundary movement of hazardous waste, and the second is an obligation to the parties to adopt appropriate measures to minimise the generation of hazardous and other wastes and ensure that they establish adequate disposal facilities within the state that generates the waste¹⁷.

The Basel Convention in Article 2 (8) defines environmentally sound management as taking all practical steps to ensure that hazardous wastes or other wastes are managed in a manner that will protect human health and the environment against adverse effects that may arise from such wastes. This provision requires steps to be taken to conform with the implementation requirements of the Basel Convention.

¹⁴ Safety and Health in Shipbreaking: Guidelines for Asian Countries and Turkey (N 12)

¹⁵ 1982 United Nations Convention on the Law of the Sea, 10th December 1982, 21 I.L.M. 1261 (entered into force 1994) Art 194 (1)

¹⁶ UNCLOS, Art 194 (2)

¹⁷ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal 22nd March 1989, 1673 U.N.T.S 126 I.L.M. 657 (entered into force 5th May 1992) , Preamble

There have been technical guidelines that have been put in place to deal with the management of streams of hazardous waste that implement this requirement¹⁸. However, in relation to shipbreaking, it is the Technical Guidelines on the Environmentally Sound Management of the Full and Partial Dismantling of Ships, 2002 (TGSD).

The Basel Convention states in its provisions that five people are involved in the transport of hazardous wastes¹⁹. The first person is defined in Article 2 paragraph 18 of the Convention as any person whose activities produce hazardous wastes or where the person is not known, any person who is in possession and or control of the hazardous waste²⁰. The *exporter* is defined in the Convention as any person under the jurisdiction of the exporting state, arranges for hazardous wastes to be exported. The *carrier* is the person who undertakes the transport of hazardous wastes²¹. The *importer* is defined by the convention as any person under the jurisdiction of the importing state who imports hazardous wastes²². The *disposer* is defined as the individual who receives the hazardous cargo for disposal²³.

The five legal persons who are stated in the Basel Convention operate in a broad framework where the main drivers are the state of export from where the movement of hazardous waste or other waste is planned for initiation or has already been initiated; state of import to where movement of hazardous waste or other waste is planned or takes place for the purpose of disposal in an area not under the national jurisdiction of any state and finally, the state of transit which means any other state other than the state of export or import through which movement of hazardous or other wastes is planned or takes place.

The Basel Convention recognised that end-of-life ships are laden with Hazardous Materials such as asbestos PCBs and waste oils. These Hazardous Materials if not properly managed, can have catastrophic to the marine environment and also to human health²⁴. Movement of these ships that are destined for ship breaking from national jurisdiction of one state to the national jurisdiction of another state constitutes a transboundary movement and hence the Basel Convention applies²⁵.

1.6 Shortcomings of the Basel Convention

¹⁸ Puthucherril (N 1) 107

¹⁹ Art 2 paragraph 14 of the Basel Convention defines a person as any natural or legal person.

²⁰ Basel Convention Art 2(18)

²¹ Ibid Art 2(17)

²² Ibid Art 2(16)

²³ Ibid Art 2 (19)

²⁴ Ship Dismantling <<http://www.basel.int/Implementation/ShipDismantling/Overview/tabid/2762/Default.aspx>> Accessed on 7th March 2019.

²⁵ ShipBreaking and the Basel Convention an Analysis <http://archive.ban.org/subsidiary/shipbreaking_and.html > Accessed on 8th March 2019.

The two main areas that created difficulties in the application of the Basel Convention to ship recycling are the identification of waste and the identification of the state of export.

First the difficulty in definition of a ship as waste under article 2 of the Basel Convention and second is the ship still being defined as a ship under international law rules and thus not the subject of transboundary waste legislation. There is also the problem of the difficulty to ascertain when the intention to send the ship for recycling is developed.

Also, another problem with the Basel Convention is whether, when the decision to send the vessel for recycling is taken at sea or when the ship calls at a port before going for recycling will affect the identification of the state of export²⁶.

The Basel Convention prohibits the exportation of hazardous wastes from a country if there is a reason to believe that the wastes will not be managed in an environmentally safe manner²⁷. Each party is also required to prohibit the importation of wastes if it has reason to believe that the wastes will not be managed in an environmentally safe manner²⁸. Environmentally safe is defined in the Basel Convention in Article 2 as, taking all the practical steps to ensure that hazardous or other wastes are managed in a manner that will protect the human health and environment from the adverse effects that may arise from such wastes²⁹.

Despite these provisions, ships are still exported to developing countries, and it is a known fact that the ship breaking activities in such countries do not constitute environmentally safe standards as required by the Basel Convention. Such ships are laden with Hazardous Materials such as PCBs, asbestos, hydraulic fluids, paints containing lead or other metals, tributyltin, or TBT antifouling coatings, contaminated holding tanks among other substances that are extremely dangerous to the human health and environment³⁰.

2.0 MAIN ELEMENTS OF THE HONGKONG CONVENTION FOR THE SAFE AND ENVIRONMENTALLY SOUND RECYCLING OF SHIPS, 2009 (SHIP RECYCLING CONVENTION)

As discussed above, there has been a lot of difficulty in the application of the Basel Convention to the ship recycling industry. This is because controls established under the Basel Convention are not strictly applied by parties and can easily be circumvented for end-of-life ships headed for

²⁶ Ship Dismantling (N24)

²⁷ Basel Convention Art 4, Paragraph 2 (e)

²⁸ Ibid Art 4, Paragraph 2 (g)

²⁹ Ship Breaking and the Basel Convention (N 25)

³⁰ Ibid

recycling³¹. Parties to the Basel Convention were in agreement that ships can be classified as waste under Article 2 of the Basel Convention. However, they invited the IMO to continue work that was aimed at establishing mandatory requirements for the environmentally safe and sound management of ship dismantling³².

The HKC was adopted by a diplomatic conference in Hong Kong China in May 2009. The HKC contains Articles and Regulations that establish a controlled system for ship recycling and this system includes obligations for flag states, shipowners, recycling states and ship recycling facilities³³.

In May 2010, the adoption of the HKC was welcomed by the seventh session of the Open-ended working group³⁴. The tenth meeting of the Conference of Parties in October 2011 encouraged parties to ratify the HKC so that it would speedily enter into force. Also, the tenth Conference of Parties acknowledged that the Basel Convention should continue to assist parties to apply the Basel Convention as it relates to ships³⁵.

2.1 Structure of the Hong Kong Convention

The HKC is divided into;

1. 21 Articles which establish the main legal requirements for the member states,
2. 25 Regulations, which contain the technical requirements and these are divided into four chapters;
 - a. General regulations,
 - b. Requirements for ships,
 - c. Requirements for ship recycling facilities, and
 - d. Reporting requirements
3. 7 appendices on the list of Hazardous Materials, forms for certificates among other things³⁶.

2.2 Application of the HKC

The HKC when it enters into force shall apply to ships flying the flag of a state party to the convention and recycling facilities operating under the jurisdiction of a party state.

³¹ Ship Dismantling (N 24)

³² Decision BC-10/17 on Environmentally Sound Management of Ship Dismantling.

³³ Ship Dismantling (N 24)

³⁴ Decision OEWG-VII/12 on Environmentally Sound Dismantling of Ships.

³⁵ Decision BC-10/17 (N 33)

³⁶ Nikos Mikelis, "Introduction to the HongKong Convention and its Requirements"

<<http://www.imo.org/en/KnowledgeCentre/PapersAndArticlesByIMOSTaff/Documents/Introduction%20to%20the%20Hong%20Kong%20Convention%20and%20its%20requirements%20-%20N.%20Mikelis.pdf>> Accessed on 16th February 2019.

The HKC does not apply to warships; government owned non-commercial ships, ships that operate exclusively in inland waters or sheltered waters and ships less than five hundred gross tonnes. The HKC requires parties to adopt the measures that are appropriate to ensure that ships act in accordance with the requirements of the HKC.

Article 3 paragraph 4 of the HKC provides for the no more favourable treatment³⁷. It states that ships entitled to fly the flag of non-parties to the convention, parties shall apply the requirements of the convention as may be necessary to ensure that no more favourable treatment is given to such ships³⁸.

2.3 Requirements for ships

For newly built ships, the HKC prohibits and or restricts in the shipbuilding use of hazardous materials listed in Appendix 1³⁹. Newly built ships also are required to develop an inventory of hazardous materials (IHM) for materials listed in Appendix 2⁴⁰.

For already existing ships, the HKC requires that, within five years from the entry into force of the HKC, or at the time of recycling whichever comes earlier, that the ships develop an IHM for the materials listed in Appendix 1 of the HKC⁴¹.

The HKC requires an initial survey for verification of Part 1 of the inventory of hazardous materials and issuance of an international certificate on the inventory of hazardous materials (ICIHM), for new built and existing ships⁴².

For ships that are in service, the HKC prohibits or restricts the use of hazardous materials listed in Appendix 1 of the convention in repairs and maintenance. Also, for ships that fall under this category, the HKC requires updating of Part 1 of the IHM after any installation of materials listed in Appendix 2 of the HKC. Finally, the HKC requires renewal of the ICIHM after every five years.

For ships that are preparing for recycling, the HKC requires that they should select an authorised facility in a state that is a party to the HKC for recycling of the ship. Also, the HKC requires that the facility chosen should be authorised and capable of dealing with the hazardous quantities of

³⁷ The IMO is the oversight authority that ensures cooperation among its member states and the availability of shipping services on a non-discriminatory basis. When IMO conventions enter into force, they cover all ships regardless of the flag that they fly as ships of non-party states entering the waters or ports of convention states are subject to the no more favourable principle.

³⁸ Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009, Article 3 paragraph 4

³⁹ Appendix 1 contains the list of controlled hazardous materials.

⁴⁰ Appendix 2 contains the minimum list of items for the inventory of hazardous materials.

⁴¹ Hong Kong Convention Regulation 5 Paragraph 2

⁴² Ibid Regulation 5 Paragraph 1

materials contained in the ship. The ship is required to provide the recycling facility with copies of the IHM, THE ICIHM and any other relevant information and also, complete Part II for operationally generated wastes and Part III (for stores) of the IHM⁴³. The HKC requires that the flag state of the ship is required to be notified of the intention to recycle the ship.

Once the approved Ship Recycling Plan (Ship Recycling Plan) is received from the facility, arrangements should be made for a final survey to verify the IHM and that the SRP reflects correctly the IHM and that it contains other required information. After the final survey, obtain an International Ready for Recycling Certificate (IRRC) from the flag state or its recognised organisation (RO).

2.4 Requirements for Ship Recycling Facilities.

The HKC requires states to establish the necessary legislation to ensure that Ship Recycling Facilities (SRF) are designed, constructed and operated in a safe and environmentally sound manner in accordance with the regulations set out in the convention. Also, states are required to ensure a mechanism for SRF to comply with the HKC and further mechanisms for authorising SRF. The HKC requires that member states designate one or more Competent Authorities (CA) and that a single contact person be used by interested parties.

SRF that are located within the jurisdiction of a member state are required to be authorised by that state, and such authorisation shall be valid for a period of five years. Also, SRF is required only to accept ships that comply with the HKC in that they meet the requirements required under the HKC and that they are authorised to recycle.

SRF is required to develop and implement a Ship Recycling Facility Plan SRFP that covers worker safety and training, protection of human health and environment, roles and responsibilities of personnel, emergency preparedness and response and systems for monitoring, reporting and record-keeping. A ship-specific ship recycling plan (SRP) shall be developed taking into account information provided by the shipowner.

An SRF preparing to receive a ship is required by the HKC to notify the CA of its intent and notification shall include details of the flag state, details of the ship and its particulars, details of the owner and company and also details of the classification society. Further to these details, the IHM and draft SRP will be included.

⁴³ Hong Kong Convention Regulation 8

The SRP shall be approved by the CA either tacitly or expressly and shall be made available to the ship for its final survey. When the ship has acquired the IRRC, the SRF shall report to its CA the planned start of recycling. The report shall include a copy of the IRRC. Recycling of the ship shall not start prior to the submission of this report. When recycling is completed, a statement of completion shall be issued by the SRF to its CA. The CA shall copy the statement to the administration which issued the IRRC for the ship.

3.0 REGIME FOR SHIP RECYCLING IN KENYA

There is no specific legal framework for ship recycling in Kenya however the National Environment Management and Co-ordination Act (the EMCA) regulates Hazardous Wastes. EMCA provides for the regime of licencing for the transportation or generation of Hazardous Wastes⁴⁴.

Unlike the Basel Convention that defines Hazardous Wastes in Article 2, in EMCA provide that, The Standards and Enforcement Review Committee in consultation with lead agencies, recommend to the National Environment Management Authority (NEMA), the criteria for the classification of Hazardous Wastes⁴⁵.

In determining the classification regard will be heard to determining Hazardous Waste, Corrosive Waste, Carcinogenic Waste, Flammable Waste, Persistent Waste, Toxic Waste, Explosive Waste, Radioactive Waste⁴⁶. Regard will also be heard to wastes that are reactive but not specified in the NEMA Act and any other category of waste that may be considered by NEMA⁴⁷.

Section 91(2) of EMCA states that no person shall import into Kenya, any Hazardous Wastes provided in EMCA⁴⁸. Also, EMCA provides that no Hazardous Wastes shall be exported to any country from Kenya, without a valid permit from NEMA or the competent authority of the receiving country⁴⁹. These provisions can be compared to those of the Basel Convention that provides for the regulation of end-of-life ships headed for ship breaking⁵⁰.

One of the problems of the Basel Convention is that in order to circumvent the provisions of the Basel Convention, exporting states conceal the fact that the ships are headed for ship breaking⁵¹.

⁴⁴ EMCA Sec 88.

⁴⁵ Ibid Sec 91 (1).

⁴⁶ Ibid

⁴⁷ EMCA Sec 91(1).

⁴⁸ Ibid Sec 91(3)

⁴⁹ Ibid Sec 91 (4)

⁵⁰ Ship Breaking and the Basel Convention (N24)

⁵¹ Ibid

EMCA attempts to regulate this in Section 141 by providing that, any person who withholds information or provides false information about the management of Hazardous Wastes, Chemicals or Radioactive substances commits an offence and if convicted is liable to a fine of one million shillings or imprisonments for a term of not less than two years or both⁵².

In the case of *African Centre for Rights and Governance (ACRAG) & 3 Others v. Municipal Council of Naivasha (2017) e KLR*⁵³, the Court stated that if the County Government of Nakuru intends to continue to dump, it must apply for the requisite licence under section 87 and 88 of EMCA. It also stated that where such an application is made to NEMA, the latter must assess such application having in mind all the requisite criteria and may either decline or permit such an application with the necessary conditions.

The Kenyan Merchant Shipping Act does not provide explicitly for the regulation of hazardous wastes that may be produced by ships during ship-breaking activities. Though EMCA regulates Hazardous Wastes, ship breaking activities are highly unregulated. Kenyan authorities are unaware of the impact that beaching activities have on human health and the environment. Also, Kenyan authorities are unaware of the value of the materials extracted from ship breaking activities and their contribution to local artisanal industries (*jua kali sector*) and the huge potential of jobs that the shipbreaking industry can create⁵⁴. Therefore there is a lack of proper legal regime for ship breaking activities and there is need to create a legal regime to regulate these activities in order to harness these potentials.

4.0 THE PROBLEM IN KENYA

The Likoni Channel, is a high-risk collision area for transit traffic and local traffic, especially in the regions where ferry crosses are high also, due to the shallow reefs on the Kenyan coastline, vessels are at high risk of running aground⁵⁵. Also, further inland the Lake Victoria Region, there are frequent accidents that occur due to overloading of vessels and lack of proper regulation⁵⁶. Many of these vessels end up on the shores of Kenyan Waters, and no action is taken to clear the wreckages.

⁵² EMCA Section 141

⁵³ African Centre for Rights and Governance (ACRAG) & 3 Others v. Municipal Council of Naivasha <<http://kenyalaw.org/caselaw/cases/view/136817/>> Accessed on 8th March 2019.

⁵⁴ Ship Breaking and the Basel Convention (N 25)

⁵⁵ Onyango Shem Otoi, "A Study of Vessel Traffic Risk Management in Mombasa Approach Channel" (Department of Coast Guard Studies, Graduate School of Korea Maritime and Ocean University) <<http://ir.jkuat.ac.ke/bitstream/handle/123456789/2792/Onyango%20Shem%20Otoi%20Msc%20Engineering%202017.pdf?sequence=1&isAllowed=y>> Accessed on 26th February 2019

⁵⁶ Lake Victoria Disaster: Many Dead as Pleasure Boat Sinks <https://www.theguardian.com/world/2018/nov/25/lake-victoria-disaster-22-die-after-ugandan-party-boat-sinks> > Accessed on 26th February 2019

Many of these vessels release toxic substances into the ecosystem which are extremely harmful to the marine environment. **Case Study 1: The Globe Star:** The vessel ran aground on a reef while approaching Mombasa in April 1973. Seven months later, during a second removal attempt, two divers and three rescuers on the surface dies from asphyxiation by hydrogen sulphide from the decomposition of the cargo which was ten thousand tons of barley flour.⁵⁷ **Case Study 2: The Rafaela:** This was a general cargo ship coming from Antwerp loaded with cars, textiles, chemical products and containers. It suffered a fire in Mombasa Port in November 1981 and was towed to a neighbouring cove to avoid spreading of the fire to other ships on the berth. The Rafaela continued to burn for two days despite efforts from three harbour tugs equipped with fire hoses. The vessel was declared a total loss and sold to a local scrap merchant, and finally sunk after three years of awaiting demolition⁵⁸.

Both of these cases are an example of the impact that ships that are disposed of incorrectly can cause to the marine environment. Many of these pollutants when released to the environment either directly cause harm such as in the Globe Star incident that led to fatalities or indirectly when marine species consume these toxins which are in turn consumed by people⁵⁹.

Also, one of the “big four agendas⁶⁰” for the Kenyan government is the manufacturing sector which creates a high demand for raw materials. Though there are deposits of iron ore that have been identified in Tharaka Nithi, Kwale and Kitui, these deposits are not commercially viable, and hence there is still a high demand for iron in the manufacturing industry. Most of these ships that sink due to lack of technical knowledge on how to handle demolition of ships such as the Rafaela presents a ready source of much-needed iron to fuel the manufacturing industry in Kenya⁶¹. The manufacturing sector in the country is mainly artisanal (*jua kali sector*), but this is a major source of employment for hundreds of thousands of Kenyans.

While some of the ships end up being sold in junkyards for scrap, majority of the ships sink due to lack of expertise on how to salvage the remnants of the ships. Even those that end up in junkyards

⁵⁷ MV Globe Star < <https://www.revolvvy.com/page/MV-Globe-Star>> Accessed on 26th February 2019

⁵⁸ Bulletin of Information and Analysis of End-of-Life Ships <<http://www.robindesbois.org/en/a-la-casse-n52-le-mondial-de-la-dem-olition-des-navires/>> Accessed on 26th February 2019

⁵⁹ Evaluation of Environmental Impacts of Ship Recycling in Bangladesh Final Report for International Maritime Organization Programme No. TC/1514 “SENSREC” Safe and Environmentally Sound Ship Recycling in Bangladesh-Phase 1 December 2016 < <http://www.imo.org/en/OurWork/Environment/MajorProjects/Documents/Ship%20recycling/WP1b%20Environmental%20Impact%20Study.pdf>> Accessed on 8th March 2019.

⁶⁰ Jael Keya , “4 pillars Uhuru Announced in His Jamhuri Day Speech” <<https://www.kenyans.co.ke/news/25512-4-pillars-uhuru-announced-his-jamhuri-day-speech>> Accessed on 8th March 2019.

⁶¹ Kenya Association of Manufacturers; Manufacturing in Kenya Under the ‘Big 4 Agenda’, A Sector Deep- Dive Report <<http://kam.co.ke/kam/wp-content/uploads/2018/10/KAM-Manufacturing-Deep-Dive-Report-2018.pdf>> Accessed on 8th March 2019

are a cause of concern because the personnel in the junkyards are ill-equipped to deal with the wrecks which pose a major risk to their health and safety⁶². Also, breaking down of ships in junkyards is unregulated, and the government cannot, therefore, monitor such activities and safeguard the health and safety of persons working in such junkyards⁶³.

4.1 Why Should Kenya Ratify and Implement the HKC?

Article 42 of the Constitution of Kenya under the Bill of Rights states that every person has the right to a clean and healthy environment⁶⁴. Further, with regard to obligations in respect of the environment, the state shall eliminate processes and activities that are likely to endanger the environment⁶⁵. By ratifying and subsequently incorporating the HKC into the Laws of Kenya the government will be fulfilling constitutional mandate to provide a clean and healthy environment for every Kenyan.

Another important facet is the fact that one of the main agendas of the Kenyan government is job creation. Unemployment is a major problem in Kenya and the greater African regional block. In its job creation campaigns, the government hopes to encourage job creation in the informal sector⁶⁶. Ship-breaking activities provide a good opportunity for job creation and innovation. The through ratification of the HKC will see the development of a safer regime for recycling of ships. This holds a huge potential for the employment of thousands of Kenyan Youth. Further the material salvaged from ships will provide a cheap source of raw materials for the local “*jua-kali*” sector⁶⁸.

5.0 HOW WILL THE HKC BE INCORPORATED INTO THE LAWS OF KENYA?

The HKC has not yet entered into force, currently as of 8th March 2019, only ten parties have ratified the convention. However Panama has ratified the HKC which presents a large percentage of the world’s tonnage. Also, Turkey a major ship recycling nation has ratified the convention.

⁶² Bulletin of Information and Analysis of End-of -Life Ships (N 59)

⁶³ Ibid

⁶⁴ Constitution of Kenya Art 42

⁶⁵ Ibid Art 69 (1) (g)

⁶⁶ Support for MSMEs, Especially in Identifying Opportunity and Scaling Start-ups Would Create Jobs

<https://www.nation.co.ke/election2017/agenda/3797778-3808570-xpxpjj/index.html> Accessed on 27th February 2019

⁶⁷ Informal Sector in Kenya made up of small scale traders, craftspeople and entrepreneurs

⁶⁸ Jua Kali Sector in Kenya- Informal Sector in Kenya <https://informationcradle.com/kenya/directory/jua-kali-sector-in-kenya/> > Accessed on 27th February 2019

Kenya has not yet ratified that convention⁶⁹. Kenya needs to ratify the convention and domesticate it for proper regulation of ship breaking activities.

After the promulgation of the Constitution of Kenya on 27th August 2010, there has been an argument as to whether Article 2(5) and 2 (6) of the Constitution of Kenya transform Kenya into a monist state as far as the applicability of international law in the domestic sphere is concerned⁷⁰. Implementation of international law is often presented as a clash between the dualist and monist schools of thought. Article 2 (5) of the Constitution of Kenya states that general rules of international law shall form part of the laws of Kenya⁷¹. Article 2(6) states that any treaty ratified by Kenya shall form part of the laws of Kenya⁷².

The 1963 Constitution, which was severally amended until the promulgation of the 2010 Constitution did not also set out in its provisions the position of the applicability of international law in Kenya. Evidence from practice proved that international law was applied in an *ad hoc* manner. Some treaties were considered to be binding upon ratification and were applicable despite not being domesticated, while on the other hand, some treaties were applicable only upon meeting the dualist requirements which meant that they had to be transformed into municipal law⁷³. There have been several debates on whether the current provisions of the Constitution of Kenya 2010, transforms Kenya into a dualist state however, this paper will not delve into the subject.

In order to deal with this issue, parliament enacted the Treaty Making and Ratification Act (No. 4 of 2012) which inter alia ensures that parliament is involved in the process of making or adopting anything that will have the force of law in Kenya. The Act in Section 8 provides that once the Cabinet Secretary has approved the ratification of a treaty, the Cabinet Secretary of the relevant state department shall submit the treaty together with a memorandum on the treaty to the speaker of the National Assembly⁷⁴.

Parliament consisting of both or relevant house shall consider the treaty and may approve it with or without reservation⁷⁵. Where approved with reservation, the treaty shall be ratified with those

⁶⁹ Hong Kong Convention for the Safe and /environmentally Sound Recycling of Ships
<<http://www.imo.org/en/about/conventions/listofconventions/pages/the-hong-kong-international-convention-for-the-safe-and-environmentally-sound-recycling-of-ships.aspx> > Accessed on 8th March 2019.

⁷⁰ Joseph Ndirangu Maina, “Do Articles 2(5) and 2(6) of the Constitution of Kenya Transform Kenya into a Monist State?”
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2516706 > Accessed on 23rd February 2010 p 9

⁷¹ Constitution of Kenya 2010 , Art 2 (5)

⁷² Ibid, Art2 (6)

⁷³ Ndirangu (N 71) 9

⁷⁴ Treaty Making and Ratification Act (No. 4 of 2012) Sec 8.

⁷⁵ Ibid Act, Sec 8 (2)

reservations to the corresponding article in the treaty⁷⁶. Parliament may also refuse to approve ratification of the treaty in which case government shall not ratify the treaty⁷⁷.

Even once the treaty is ratified the obligations raised by it are binding, parliament will through consideration ensure that consistency of the arising international obligations with domestic circumstances as well as the prevailing law⁷⁸. Therefore despite the non-requirement to domesticate the law, the process of consideration by the Treaty Making and Ratification Act still places international law under check by the domestic legal systems.

Further, despite the Constitutional removal of the requirement to domesticate laws, and that international treaties automatically become part of the laws of Kenya, such instruments may not be self-executing or immediately operative within the Kenyan Context⁷⁹. The HKC, though not yet having been ratified by Kenya and being an IMO instrument, needs to be enforced by state parties to ensure effective implementation.

The Merchant Shipping Act (MSA) in Section 8 (1) provides that the Cabinet Secretary for Transport⁸⁰ may make regulations for the better carrying out into effect the provisions of this Act⁸¹. Also, the MSA, in Section 410 (1), states that, the Cabinet Secretary may make regulations for the protection and preservation of the marine environment from pollution by matter from ships⁸². Regulations are an easy method of incorporating the HKC into Kenya's domestic law as it does not have to go through the rigorous parliamentary process. The parliamentary process often takes too long and is sometimes marred by political affiliations which will deprive Kenyans of an instrument that is essential to safeguard them from harmful shipbreaking practices and also beneficial to them by providing jobs.

⁷⁶ Ibid, Act, Sec 9(2)

⁷⁷ Ibid, Sec 9(3)

⁷⁸ Ndirangu (N71)15.

⁷⁹ J Osogo Ambani and Tom Kabau, "*The 2010 Constitution and the Application of International Law in Kenya: A Case of Migration to Monism or Regression to Dualism?*", (Africa Nazarene Law Journal ,2010)

⁸⁰ Formerly referred to as Ministers under the old regime before the 2013 general election. With the new regime are referred to as Cabinet Secretaries.

⁸¹ Merchant Shipping Act (NO.4 of 2009) Sec 8 (1)

⁸² Ibid, Sec 410 (1)

6.0 OVERVIEW OF THE REGULATIONS

Salient features of the Regulations.

6.1 Regulation 2- Commencement

The provision for commencement provides for the entry into force of the Regulations. Under the Laws of Kenya, Regulations become operational only after they have been published in the Kenya Gazette.

6.2 Regulation 4-Duties of the Competent Authority

This Section of the Regulations applies to ships and also ship recycling facilities that are authorised by the Kenya Maritime Authority (the Authority), to fly the flag of Kenya and to operate in Kenya respectively. Such ships and ship recycling facilities are required to comply with the provisions of the Regulations.

Also, the Authority is required to, while implementing the Regulations, take into account the relevant applicable standards that are guidelines and recommendations that are developed by the ILO and the Basel Convention.

The Regulations also require the Authority to give full effect to the provisions of the Regulations in order to prevent, reduce, minimize and, to the extent practicable, eliminate accidents, injuries and other adverse effects on human health and the environment caused by Ship Recycling, and enhance ship safety, protection of human health and the environment throughout the operating life of a ship.

The Regulations also require the Authority to ensure cooperation to ensure effective implementation of the HKC and also ensure continued encouragement of development of technologies that ensure the safe and environmentally sound recycling of ships.

6.3 Regulation 5-Application

This Regulation lays down the ships that the Regulations shall apply to and these are ships that are registered in Kenya and the crew of such ships, offshore units within Kenyan waters. Most importantly the Regulations apply to ship recycling facilities that are operating in Kenya. The Regulations do not apply to ships owned by Kenya or any other state and for the time being only being used for non-commercial purposes and also, the Regulations do not apply to warships and naval auxiliaries.

Another important aspect that is included in the Regulations is ships that are less than 500 gross tonnes and which the HKC does not apply. In such cases the inspectors authorised by the Authority shall take any such action that is necessary to ensure that such ships are not hazardous to safety, human health and the environment.

Also, the Regulation reflects the IMO ‘no more favourable treatment clause’ when ships that are not registered in Kenya call at a Kenyan port. An inspector authorised by the Authority while carrying out an inspection pursuant to the Regulations no more favourable treatment shall be accorded to such ships that are not party to the HKC and the crew of such ship than that accorded to ships and crew that are party to the HKC.

6.4 Part II-Requirements for Ships.

Part A-Design, Construction, Operation and Maintenance of Ships

Regulation 7 requires the Authority to prohibit the installation or use of hazardous materials specified in Annex I of the Regulations for ships entitled to fly the flag of Kenya and also ship recycling facilities that are operating in Kenya.

Further, this Regulation prohibits the use of such materials on ships whilst in ports, shipyards, ship repair yards or offshore terminals and in order to ensure compliance the authority is required to carry out inspections.

Regulation 8 requires each ship to have a ship specific IHM on board that is subject to verification by the Authority taking into account the guidelines developed by the IMO. Further, this Regulation provides a timeline of 5 years for existing ships to comply with the Regulations while taking into account the guidelines developed by the IMO.

The IHM is to be maintained for the entire operational life of the ship and it should reflect the new installations of hazardous materials contained in Appendix II of the Regulations and also the changes in ship structure and equipment taking into account the guidelines developed by the IMO.

Part B- Preparation for Ship Recycling

Regulation 9 requires that ships that are destined for recycling shall only be recycled at ship recycling facilities that are authorised by the Authority and also fully authorised to undertake the ship recycling which is specified by the Ship Recycling Plan.

One important aspect that is reflected by Regulation 9 is that ships prior to recycling are required to conduct operations in a manner such that it minimizes the amount of cargo residues, remaining fuel oil and wastes remaining on board. Also, where the recycling is that of a tanker, the ship owner should ensure that the tanker arrives at the facility in a condition certified safe-for-hot work.

The ship owner is required to provide all information that relevant to the ship for the development of the Ship Recycling Plan. Also, the ship owner shall complete the IHM as required by Regulation 8. Finally, the Authority shall certify the ship as ready for recycling prior to any recycling activity taking place. Regulation 10 provides that such decision as to approval or denial of the ship recycling plan shall be communicated by the Authority in writing to the ship recycling facility, ship owner and Administration.

Regulation 10 provides that a ship specific ship recycling plan should be developed taking into account the information provided by the owner in Regulation 9. Where the ship recycling plan is approved by the Authority, it shall be made available for inspection by the Administration or any nominated surveyors or organization recognised by it.

6.5 Requirements For Ship Recycling Facilities

Under Regulation 11, the Authority is mandated to grant a licence to ship recycling facilities so long as the facility operates in a safe and environmentally sound manner and that establishes management and monitoring systems, procedures and techniques which have the purpose of preventing, reducing and to the extent practicable eliminating health risks to the workers concerned and to the population in the vicinity of the Ship Recycling Facility.

Also, Regulation 11 further states that the ship recycling facility should prevent effects to the environment and human health including the demonstration of the control of any leakage in particular in the intertidal zones. Also, the ship recycling facility should ensure the containment of all Hazardous Materials present on board during the entire ship recycling process so as to prevent release of those materials into the environment.

In addition to the containment of wastes, all waste generated from the ship recycling activity and their quantities should be documented and only transferred to waste management facilities, including waste recycling facilities, authorized to deal with their treatment without endangering human health and in an environmentally sound manner.

6.6 Ship Recycling Plan

Regulation 15 states that ship recycling facilities licensed by the Authority shall be prepare a ship specific ship recycling plan which shall be adopted by the board of the ship recycling company. Also, the ship recycling plan according to Regulation 15 shall include a policy ensuring workers' safety and the protection of human health and the environment, including the establishment of objectives that lead to the minimization and elimination to the extent practicable of the adverse effects on human health and the environment caused by Ship Recycling. Also included in the ship recycling plan is a programme for providing appropriate information and training of workers for the safe and environmentally sound operation of the Ship Recycling Facility.

6.7 Prevention of Adverse Effects to Human Health and the Environment.

Regulation 17 states that Ship Recycling Facilities shall ensure safe and environmentally sound removal of any hazardous materials contained in the ship by ensuring that all hazardous materials as detailed in the inventory of hazardous materials are identified, labeled, packaged and removed to the maximum extent possible prior to cutting by workers who are properly qualified.

Further, Regulation 17 sub-regulation 3 provides that all ship recycling facilities are shall ensure safe and environmentally sound management of all Hazardous Materials and wastes removed from the ship recycled at that Ship Recycling Facility. Waste management and disposal sites shall be identified to provide for the further safe and environmentally sound management of materials.

Regulation 17, sub-regulation 4 further provides that all wastes generated from the recycling activity shall be kept separate from recyclable materials in order not to pose a risk to the workers, human health or the environment and only transferred to a waste management facility authorized to deal with their treatment and disposal in a safe and environmentally sound manner.

CONCLUSIONS

The main aim of the Regulations is to ensure that there is strict regulation of ship recycling activities in Kenya. This is achieved in the Regulations by providing for strict authorization of ship recycling facilities as well as ship recycling activities. Ship recycling activities are to be carried out in a manner that is not detrimental to human health or the environment.

To be deposited with the Secretary-General of IMO, London

INSTRUMENT OF RATIFICATION

**Hong Kong International Convention for the Safe and Environmentally Sound
Recycling of Ships, 2009.**

WHEREAS the **Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009** was adopted at **Hong Kong** on **15th May 2009**, by the **Diplomatic Conference held in Hong Kong, China from 11th to 15th May 2009**.

AND WHEREAS **KENYA**, being a State entitled to become a party to the said **Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009** by virtue of Article **16** thereof,

NOW THEREFORE the Government of **KENYA** having considered and approved the said **Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009**, hereby formally declares its accession to the **Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009**.

IN WITNESS WHEREOF I **CABINET SECRETARY FOR FOREIGN AFFAIRS** of **KENYA** have signed this Instrument of Ratification and affixed **THE OFFICIAL SEAL OF KENYA**.

DONE at **NAIROBI**, this **14th** day of **MAY** two thousand and **NINTEEN**

(Seal)

(Signature)

[**CABINET SECRETARY
FOR FOREIGN AFFAIRS**]



SPECIAL ISSUE

Kenya Gazette Supplement No. _____

21st February, 2018

LEGAL NOTICE NO. _____

**The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations,
2019**

IN EXERCISE of the powers conferred by section read with section 8, 452 read with section 450 of the Merchant Shipping Act, the Cabinet Secretary for Transport makes the following Regulations-

MERCHANT SHIPPING (SAFE AND ENVIRONMENTALLY SOUND RECYCLING OF SHIPS) REGULATIONS, 2019

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MERCHANT SHIPPING (SAFE AND ENVIRONMENTALLY SOUND RECYCLING OF SHIPS) REGULATIONS, 2019

PART I-GENERAL

1.Citation

These Regulations may be cited as the Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019

2. Commencement

These Regulations shall come into operation on such date as the Cabinet Secretary may, by notice in the Gazette, appoint.

3. Interpretation

For purposes of these Regulations, unless expressly provided otherwise:

“**Competent Authority(ies)**” means the Kenya Maritime Authority, established under Section 3 of the Kenya Maritime Authority Act, 2006.

“**Convention**” means the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009.

“**Gross tonnage**” means the gross tonnage (GT) calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any successor convention.

“**Hazardous Material**” means any material or substance that if introduced into the environment is likely to create hazards to human health and/or the environment.

“**Organization**” means the International Maritime Organization.

“**Recycling Company**” means the owner of the Ship Recycling Facility or any other organization or person who has assumed the responsibility for operation of the Ship Recycling activity from the owner of the Ship Recycling Facility and who on assuming such responsibility has agreed to take over all duties and responsibilities imposed by this Convention.

“**Secretary-General**” means the Secretary-General of the Organization.

“**Ship Recycling Facility**” means a defined area that is a site, yard or facility used for the recycling of ships.

“**Ship Recycling**” means the activity of complete or partial dismantling of a ship at a Ship Recycling Facility in order to recover components and materials for reprocessing and re-use, whilst taking care of hazardous and other materials, and includes associated operations such as storage and treatment of components and materials on site, but not their further processing or

disposal in separate facilities.

“**Ship**” means a vessel of any type whatsoever operating or having operated in the marine environment and includes submersibles, floating craft, floating platforms, self-elevating platforms, Floating Storage Units (FSUs), and Floating Production Storage and Offloading Units (FPSOs), including a vessel stripped of equipment or being towed.

“**Existing ship**” means a ship which is not a new ship.

“**New ship**” means a ship:

- a. for which the building contract is placed on or after these Regulations come into force
- b. in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after six months after these Regulations come into force; or
- c. the delivery of which is on or after 30 months after these Regulations Come into force.

“**Operationally generated waste**” means waste water and residues generated by the normal operation of ships subject to the MARPOL Convention.

“**Tanker**” means an oil tanker as defined in Annex I to the MARPOL Convention.

“**New Installation**” means the installation of systems, equipment, insulation or other material on a date after these Regulations come into operation.

“**Ship Recycling Plan**” means a plan prepared by the operator of a Ship Recycling Facility and adopted by the board or appropriate governing body of the Ship Recycling Company that describes the operational processes and procedures involved in ship recycling at the Ship Recycling Facility and that covers in particular workers’ safety and training and protection of human health and the environment, roles and responsibilities of personnel, emergency preparedness and response, and systems for monitoring, reporting and record-keeping, taking into account the relevant guidelines and resolutions developed by the International Maritime Organization.

“**Safe-for-entry**” means a space that meets the following criteria;

- a. the oxygen content of the atmosphere and the concentration of flammable vapours are within safe limits;
- b. any toxic materials in the atmosphere are within permissible concentrations; and
- c. any residues or materials associated with the work authorized by the Authority will not produce uncontrolled release of toxic materials or an unsafe concentration of flammable vapours under

existing atmospheric conditions while maintained as directed.

“**Safe-for-hot work**” means a space that meets the following criteria;

- a. safe, non-explosive conditions, including gas free-status, exist for use of electric arc or gas welding equipment, cutting or burning equipment or other forms of naked flame, as well as heating, grinding, or spark generating operations;
- b. the safe-for-entry criteria are met;
- c. existing atmospheric conditions do not change as a result of the hot work; and
- d. all adjacent spaces have been cleaned, rendered inert or treated sufficiently to prevent the start or spread of fire.

“**Administration**” means the Government of the State whose flag the ship is entitled to fly, or under whose authority it is operating.

“**New installation**” means the installation of systems, equipment, insulation, or other material on a ship after the date on which this Convention enters into force.

“**Shipowner**” means the person or persons or company registered as the owner of the ship or, in the absence of registration, the person or persons or company owning the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship’s operator, “owner” shall mean such company. This term also includes those who have ownership of the ship for a limited period pending its sale or handing over to a Ship Recycling Facility.

“**Worker**” means any person who performs work, either regularly or temporarily, in the context of an employment relationship including contractor personnel.

“**Statement of Completion**” means a confirmatory statement issued by the Ship Recycling Facility that the Ship Recycling has been completed in accordance with this Convention.

“**Inspector**” means a person appointed as such under Section 409 of the Merchant Shipping Act No. 4 of 2009.

4. Duties of the Competent Authority

1. Ships authorised to fly the flag of Kenya and operate under its authority shall comply with all the requirements set forth in these Regulations.

2. Ship Recycling Facilities operating in Kenya shall be authorised by the authority and the authority shall ensure that such ship recycling facilities comply with all the requirements under these Regulations.

3. The authority shall, in implementing the requirements of these Regulations, take into account relevant applicable standards, recommendations and guidance developed by the International Labour Organisation and the relevant and applicable technical standards, recommendations and guidance developed under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

4. The Authority shall undertake to give full and complete effect to the provisions of these Regulations in order to prevent, reduce, minimize and, to the extent practicable, eliminate accidents, injuries and other adverse effects on human health and the environment caused by Ship Recycling, and enhance ship safety, protection of human health and the environment throughout a ship's operating life.

5. The Authority shall endeavor to co-operate for the purpose of effective implementation of, compliance with and enforcement of the Convention.

6. The Authority shall undertake to encourage the continued development of technologies and practices which contribute to safe and environmentally sound Ship Recycling.

5. Application

1. These Regulations unless otherwise prohibited, shall apply to;

- (a) ships that are registered or licensed in Kenya wherever, they may be;
- (b) other foreign ships while they are in Kenya or its inland waters;
- (c) the crew of a ship referred to in paragraph (a) or (b);
- (d) ship recycling facilities operating in Kenya;
- (e) all offshore units within Kenyan waters or ports of Kenya; and
- (f) all national public or private entities that have a defined role in these Regulations.

2. these Regulations shall not apply to –

- (a) a ship owned or operated by Kenya or any other state and used for the time being only for non-commercial purposes; and

(b) a naval auxiliary or warship.

3. In the case of a ship that is less than 500 gross tonnes, to the extent to which the Convention does not apply, an inspector shall without prejudice to any powers under any Convention enactment, take such action as may be necessary to ensure that the ship is not clearly hazardous to safety, health and the environment, so far as such action is reasonable and practicable.

4. When inspecting a ship pursuant to these Regulations, no more favourable treatment shall be given to a ship flying the flag of a State which is not party to the Convention or to the crew of such ship than that given to a ship which is flying the flag of a State that is party to the Convention or to the crew of such ship.

6. Ambulatory Reference

1. The Annex to these Regulations form an integral part of it. Unless expressly provided for otherwise, a reference to these Regulations constitutes at the same time a reference to its Annex.

2. Reference to Part 1 of the Inventory of Hazardous Materials refers to Annexes 1 and 2 of these Regulations.

PART II-REQUIREMENTS FOR SHIPS

PART A-DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF SHIPS

7. Controls of ships' Hazardous Materials

1. The Authority in accordance with the requirements specified in Annex 1 to these Regulations shall;

(a) prohibit the installation or use of Hazardous Materials listed in Appendix 1 on ships entitled to fly the flag of Kenya or ship recycling facilities operating under its authority;

(b) prohibit the installation or use of such materials on ships, whilst in its ports, shipyards, ship repair yards, or offshore terminals; and

(c) carry out inspections to ensure that such ships comply with those requirements.

8. Inventory of Hazardous Materials

1. Each new ship shall have on board an Inventory of Hazardous Materials. The Inventory shall be

verified by the Authority taking into account guidelines, including any threshold values and exemptions contained in those guidelines, developed by the Organization.

3. The Inventory of Hazardous Materials shall be specific to each ship and shall at least:

(a) identify as Part I, Hazardous Materials listed in Annexes 1 and 2 to these Regulations and contained in ship's structure or equipment, their location and approximate quantities; and

(b) clarify that the ship complies with Regulation 7.

4. Existing ships shall comply as far as practicable with sub-regulation 1 herein above not later than 5 years after these Regulations come into force, or before going for recycling if this is earlier, taking into account the guidelines developed by the Organization.

5. The Hazardous Materials listed in Annex 1, at least, shall be identified when the Inventory is developed.

6. For existing ships a plan shall be prepared describing the visual or sampling check by which the Inventory of Hazardous Materials is developed, taking into account the guidelines developed by the Organization.

7. Part I of the Inventory of Hazardous Materials shall be properly maintained and updated throughout the operational life of the ship, reflecting new installations containing Hazardous Materials listed in Appendix 2 and relevant changes in ship structure and equipment, taking into account the guidelines developed by the Organization.

8. Prior to recycling the Inventory shall, in addition to the properly maintained and updated Part I, incorporate Part II for operationally generated wastes and Part III for stores, and be verified by the Authority, taking into account the guidelines developed by the Organization.

PART B – PREPARATION FOR SHIP RECYCLING

9. General Requirements

1. Ships destined to be recycled shall;

(a) only be recycled at Ship Recycling Facilities that are;

i. authorized by the Authority in accordance with these Regulations; and

ii. fully authorized to undertake all the ship recycling which the Ship Recycling Plan specifies to be conducted by the identified Ship Recycling Facility or where more than one, Ship Recycling Facilities.

(b) conduct operations in the period prior to entering the Ship Recycling Facility in order to minimize the amount of cargo residues, remaining fuel oil, and wastes remaining on board;

2. in the case of a tanker, the shipowner shall ensure that it arrives at the Ship Recycling Facility with cargo tanks and pump room(s) in a condition that is ready for certification as Safe-for-hot work;

3. the shipowner shall provide to the Ship Recycling Facility all available information relating to the ship for the development of the Ship Recycling Plan as provided by Regulation 10;

4. the shipowner shall complete the Inventory of Hazardous Materials as required by Regulation 8; and

5. the ship shall be certified as ready for recycling by Authority, prior to any recycling activity taking place.

10. Ship Recycling Plan

1. A ship-specific Ship Recycling Plan shall be developed by the Ship Recycling Facility(ies) prior to any recycling of a ship, taking into account the guidelines developed by the International Maritime Organization.

2. The Ship Recycling Plan shall;

(a) be developed taking into account all the relevant information about the ship

provided by the shipowner according to Regulation 9 sub-regulation 3;

(b) include information concerning, the establishment, maintenance, and monitoring of Safe-for-entry and Safe-for-hot work conditions and how the type and amount of materials including those identified in the Inventory of Hazardous Materials will be managed;

(c) be explicitly approved by the Authority and shall send written acknowledgement of receipt of the Ship Recycling Plan to the Ship Recycling Facility, Ship Owner and Administration within three (3) working days of its receipt; and

(d) the Authority shall send written notification of its decision to approve or deny the Ship Recycling Plan to the Ship Recycling Facility, Ship Owner and Administration;

3. the Ship Recycling Plan as explicitly approved in accordance with sub-regulation 2 shall;

(a) be made available for inspection by the Administration, or any nominated surveyors or organization recognized by it; and

(b) where more than one Ship Recycling Facility is used, identify the Ship Recycling Facilities to be used and specify the recycling activities and the order in which they occur at each authorized Ship Recycling Facility.

PART III -REQUIREMENTS FOR SHIP RECYCLING FACILITIES

11.Licencing of Ship Recycling Facilities

1. The Authority shall grant a license to a Ship Recycling Facilities subject to the following conditions;

(a) it is designed, constructed and operated in a safe and environmentally sound manner;

(b) it operates from built structure;

(c) it establishes management and monitoring systems, procedures and techniques which have the purpose of preventing, reducing and the extent practicable eliminating;

i. health risks to the workers concerned and to the population in the vicinity of the Ship Recycling Facility; and

- ii. adverse effects on the environment caused by ship recycling;
- (d) it prepares a ship recycling plan;
- (e) it prevents adverse effects to human health and the environment, including the demonstration of the control of any leakage in particular in intertidal zones;
- (f) it ensure environmentally sound management and storage of hazardous materials and waste, including;
 - i. the containment of all Hazardous Materials present on board during the entire ship recycling process so as to prevent release of those materials into the environment; and in addition, the handling of Hazardous Materials, and of waste generated during the ship recycling process, only on impermeable floors with effective drainage systems; and
 - ii. that all waste generated from the ship recycling activity and their quantities are documented and are only transferred to waste management facilities, including waste recycling facilities, authorized to deal with their treatment without endangering human health and in an environmentally sound manner;
- (g) it establishes and maintains an emergency preparedness response plan; ensures rapid access for emergency response equipment and vehicles, ambulances, cranes, to the ship and all areas of the Ship Recycling Facility;
- (h) it provides for worker safety and training, including ensuring the use of personal protective equipment for operations requiring such use;
- (i) it establishes records on incidents, accidents, occupational diseases and chronic effects and; if requested by the Authority, reports any incidents, accidents, occupational diseases and chronic effects causing, or with the potential for causing risks to workers' safety, human health and environment.

12. Regulation of Ship Recycling Facilities

1. The Authority shall license Ship Recycling Facilities in Kenya that comply with the conditions set out in Regulation 11 herein above, to conduct ship recycling. Such license may be granted to the Ship Recycling Facility for a maximum period of 5(five) years subject to renewal by the Authority;
2. where a Ship Recycling Facility ceases to comply with the conditions set out in Regulation 11, the Authority shall withdraw any such license issued by it.

13. Inspection of Ship Recycling Facilities

1. The Authority shall carry out an annual inspection to ensure that the Ship Recycling Facility complies with the conditions set out in Regulation 11;
2. In carrying out an inspection, the inspector shall;
 - (a) check the license issued under Regulation 11; and
 - (b) satisfy himself as to the overall condition of the Ship Recycling Facility;

14. Acceptance of ships for recycling

1. Ship Recycling Facilities licensed by the Authority pursuant to fulfilling the conditions set out in Regulation 11 shall, for ships to which these Regulations apply, or ships treated similarly pursuant to Regulation 5 sub-regulation 4, which provides for the no more favourable treatment; only accept ships that:
 - (a) comply with these Regulations;
 - (b) meet the requirements of these Regulations;
 - (c) they are authorized to recycle; and
 - (d) have the documentation of its authorization available if such documentation is requested by a shipowner that is considering recycling a ship at that Ship Recycling Facility.

15. Ship Recycling Facility Plan

1. Ship Recycling Facilities authorized by the Authority shall prepare a Ship Recycling Facility Plan;
2. The Plan shall be adopted by the Board of the Ship Recycling Facility, and shall include:
 - (a) a policy ensuring workers' safety and the protection of human health and the environment, including the establishment of objectives that lead to the minimization and elimination to the extent practicable of the adverse effects on human health and the environment caused by Ship Recycling;

(b) a system for ensuring implementation of the requirements set out in these Regulations, the achievement of the goals set out in the policy of the Ship Recycling Facility, and the continuous improvement of the procedures and standards used in the Ship Recycling operations;

(c) identification of roles and responsibilities for employers and workers when conducting Ship Recycling operations;

(d) a programme for providing appropriate information and training of workers for the safe and environmentally sound operation of the Ship Recycling Facility;

(e) an emergency preparedness and response plan;

(f) a system for monitoring the performance of Ship Recycling;

(h) a record-keeping system showing how Ship Recycling is carried out;

(i) a system for reporting discharges, emissions, incidents and accidents causing damage, or with the potential of causing damage, to workers' safety, human health and the environment; and

(j) a system for reporting occupational diseases, accidents, injuries and other adverse effects on workers' safety and human health,

2. the Ship Recycling Facility plan shall take into account guidelines developed by the Organization.

16. Prevention of adverse effects to human health and the environment

1. Ship Recycling Facilities licensed by the Authority under Regulation 11 herein above, shall take all measure practicable to:

(a) prevent explosions, fires, and other unsafe conditions by ensuring that Safe-for-hot

work conditions and procedures are established, maintained and monitored throughout Ship Recycling;

(b) prevent harm from dangerous atmospheres and other unsafe conditions by ensuring that Safe-for-entry conditions and procedures are established, maintained, and monitored in ship spaces, including confined spaces and enclosed spaces, throughout Ship Recycling;

(c) prevent other accidents, occupational diseases and injuries or other adverse effects on human health and the environment; and

(d) prevent spills or emissions throughout Ship Recycling which may cause harm to human health and the environment,

2. in taking measures in sub-regulation 1 herein above, the Authority shall take into account guidelines developed by the Organization.

17. Safe and environmentally sound management of Hazardous Materials

1. Ship Recycling Facilities licensed by the Authority under Regulation 11 herein above shall ensure safe and environmentally sound removal of any Hazardous Material contained in a ship certified in accordance with Regulation 22;

2. The person(s) in charge of the recycling operations and the workers shall be familiar with the requirements of these Regulations relevant to their tasks and, in particular, actively use the Inventory of Hazardous Materials and the Ship Recycling Plan, prior to and during the removal of Hazardous Materials;

3. Ship Recycling Facilities authorized by the Authority shall ensure that all Hazardous Materials detailed in the Inventory of Hazardous Materials are identified, labeled, packaged and removed to the maximum extent possible prior to cutting by properly trained and equipped workers, taking into account the guidelines developed by the Organization, in particular;

(a) hazardous liquids, residues and sediments;

- (b) substances or objects containing heavy metals such as lead, mercury, cadmium and hexavalent chromium;
- (c) paints and coatings that are highly flammable and/or lead to toxic releases;
- (d) asbestos and materials containing asbestos;
- (e) PCB and materials containing PCBs, ensuring that heat inducing equipment is avoided during such operations;
- (f) CFCs and halons; and
- (g) other Hazardous Materials not listed above and that are not a part of the ship structure.

3. Ship Recycling Facilities licensed by the Authority under Regulation 11 herein above shall provide for and ensure safe and environmentally sound management of all Hazardous Materials and wastes removed from the ship recycled at that Ship Recycling Facility. Waste management and disposal sites shall be identified to provide for the further safe and environmentally sound management of materials.

4. All wastes generated from the recycling activity shall be kept separate from recyclable materials and equipment, labeled, stored in appropriate conditions that do not pose a risk to the workers, human health or the environment and only transferred to a waste management facility authorized to deal with their treatment and disposal in a safe and environmentally sound manner.

18. Emergency preparedness and response

1. Ship Recycling Facilities licensed by the Authority under Regulation 11 herein above shall establish and maintain an emergency preparedness and response plan;

2. The plan shall be made having regard to the location and environment of the Ship Recycling Facility, and shall take into account the size and nature of activities associated with each Ship

Recycling operation;

3. The plan shall;

(a) ensure that the necessary equipment and procedures to be followed in the case of an emergency are in place, and that drills are conducted on a regular basis;

(b) ensure that the necessary information, internal communication and coordination are provided to protect all people and the environment in the event of an emergency at the Ship Recycling Facility;

(c) provide for communication with, and information to, the Authority, the neighborhood and emergency response services;

(d) provide for first-aid and medical assistance, fire-fighting and evacuation of all people at the Ship Recycling Facility, pollution prevention; and

(e) provide for relevant information and training to all workers of the Ship Recycling Facility, at all levels and according to their competence, including regular exercises in emergency prevention, preparedness and response procedures.

19. Worker safety and training

1. Ship Recycling Facilities licensed by the Authority under Regulation 11 herein above shall provide for worker safety by measures including:

(a) ensuring the availability, maintenance and use of personal protective equipment and clothing needed for all Ship Recycling operations;

(b) ensuring that training programmes are provided to enable workers to safely undertake all Ship Recycling operations they are tasked to do; and

(e) ensuring that all workers at the Ship Recycling Facility have been provided with appropriate training and familiarization prior to performing any Ship Recycling

operation.

2. Ship Recycling Facilities licensed by the Authority herein above shall provide and ensure the use of personal protective equipment for operations requiring such use, including:

- (a) head protection;
- (b) face and eye protection;
- (c) hand and foot protection;
- (d) respiratory protective equipment;
- (e) hearing protection;
- (f) protectors against radioactive contamination;
- (g) protection from falls; and
- (h) appropriate clothing.

3. Ship Recycling Facilities licensed by the Authority under Regulation 11 herein above may co-operate in providing for training of workers. Taking into account the guidelines developed by the Organization;

4. the training programmes set forth in these Regulations shall:

- (a) cover all workers including contractor personnel and employees in the Ship Recycling Facility;
- (b) be conducted by Competent persons;
- (d) provide for initial and refresher training at appropriate intervals;

(e) include participants' evaluation of their comprehension and retention of the training;

(f) be reviewed periodically and modified as necessary; and

(g) be documented.

20. Reporting on incidents, accidents, occupational diseases and chronic effects

1. Ship Recycling Facilities licensed by the Authority under Regulation 11 herein above shall report to Authority any incident, accident, occupational diseases, or chronic effects causing, or with the potential of causing, risks to workers safety, human health and the environment.

2. Reports shall contain a description of the incident, accident, occupational disease, or chronic effect, its cause, the response action taken and the consequences and corrective actions to be taken.

PART IV-SURVEYS AND CERTIFICATION

21. Surveys

1. Ships to which Regulation 5 of these Regulations apply shall be subject to the surveys specified below:

(a) an initial survey before the ship is put in service, or before the International Certificate on Inventory of Hazardous Materials is issued. This survey shall verify that Part I of the Inventory of Hazardous Materials as required by Regulation 8 of these Regulations is in accordance with the requirements of these Regulations;

(b) a renewal survey after a period of one year to verify that Part I of the Inventory of Hazardous Materials as required by Regulation 8 of these Regulations complies with the requirements of these Regulations;

(c) an additional survey, either general or partial, according to the circumstances, may be made at the request of the shipowner after a change, replacement, or significant repair of the structure, equipment, systems, fittings, arrangements and material. The survey shall be such as to ensure that any such change, replacement, or significant

repair has been made in the way that the ship continues to comply with the requirements of these Regulations, and that Part I of the Inventory of Hazardous Materials is amended as necessary; and

(d) a final survey prior to the ship being taken out of service and before the recycling of the ship has started. This survey shall verify:

i. that the Inventory of Hazardous Materials as required by Regulation 8 is in accordance with the requirements of these Regulations taking into account the guidelines developed by the Organization;

ii. that the Ship Recycling Plan, as required by Regulation 10 , properly reflects the information contained in the Inventory of Hazardous Materials as required by Regulation 8 and contains information concerning the establishment, maintenance and monitoring of Safe-for-entry and Safe-for-hot work conditions; and

iii. that the Ship Recycling Facility(ies) where the ship is to be recycled holds a valid license in accordance with Regulation 11 of these Regulations.

2. Surveys of ships for the purpose of enforcement of the provisions of these Regulations shall be carried out by inspectors authorized by the Authority, taking into account the guidelines developed by the Organization.

3. In every case, the Authority shall be responsible to ensure the completeness and efficiency of the survey and shall undertake to ensure the necessary arrangements to satisfy this obligation.

4. The initial and renewal surveys shall be harmonized with the surveys required by other applicable statutory instruments of the Organization.

22. Issuance and endorsement of certificates

1. An International Certificate on Inventory of Hazardous Materials shall be issued either by the Authority after successful completion of an initial or renewal survey conducted in accordance with Regulation 21, to any ships to which Regulation 5 applies, except for existing ships for which both an initial survey and a final survey are conducted at the same time, taking into account the

guidelines developed by the Organization.

2. The International Certificate on Inventory of Hazardous Materials issued under sub-regulation 1, at the request of the shipowner, shall be endorsed either by the Authority after successful completion of an additional survey conducted in accordance with Regulation 21.

3. notwithstanding Regulation 25. Sub-regulation 2 and the requirements of Regulation 21 sub-regulation 1 paragraph (b), when the renewal survey is completed within three months before the expiry date of the existing certificate, the new certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing certificate.

4. When the renewal survey is completed after the expiry date of the existing certificate, the new certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing certificate.

5. When the renewal survey is completed more than three months before the expiry date of the existing certificate, the new certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of completion of the renewal survey.

6. If a certificate is issued for a period of less than five years, the Authority may extend the validity of the certificate beyond the expiry date to the maximum period specified in Regulation 21 sub-regulation 1 paragraph (b).

7. If a renewal survey has been completed and a new certificate cannot be issued or placed on board the ship before the expiry date of the existing certificate, an inspector authorised by the Authority may endorse the existing certificate and such a certificate shall be accepted as valid for a further period which shall not exceed five months from the expiry date.

8. If a ship at the time when a certificate expires is not in a port in which it is to be surveyed, the Authority may extend the period of validity of the certificate but this extension shall be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed and then only in cases where it appears proper and reasonable to do so. No certificate shall be extended for a period longer than three months, and a ship to which an

extension is granted shall not, on its arrival in the port in which it is to be surveyed, be entitled by virtue of such extension to leave that port without having a new certificate. When the renewal survey is completed, the new certificate shall be valid to a date not exceeding five years from the date of expiry of the existing certificate before the extension was granted.

9. A certificate issued to a ship engaged on short voyages which has not been extended under sub-regulation 8 herein above may be extended by the Authority for a period of grace of up to one month from the date of expiry stated on it. When the renewal survey is completed, the new certificate shall be valid to a date not exceeding five years from the date of expiry of the existing certificate before the extension was granted.

10. In special circumstances, as determined by the Authority, a new certificate need not be dated from the date of expiry of the existing certificate as required by paragraph 4, 8 or 9 of this Regulation. In these special circumstances, the new certificate shall be valid to a date not exceeding five years from the date of completion of the renewal survey.

11. An International Ready for Recycling Certificate shall be issued by the Authority or by any person or organization authorized by it, after successful completion of a final survey in accordance with the provisions of Regulation 21, to any ships to which Regulation 21 applies, taking into account the licensing of the Ship Recycling Facility under Regulation 11 and the guidelines developed by the Organization.

12. A certificate issued by another State other than the Authority shall be accepted by the other Parties and regarded for all purposes covered by these Regulations as having the same validity as a certificate issued by the Authority. Certificates shall endorsed either by the Authority and the Authority assumes full responsibility for the certificate.

23. Issuance or endorsement of a certificate by another State Party

1. At the request of the Authority, another State may cause a ship to be surveyed and, if satisfied that the provisions of these Regulations are complied with, shall issue or authorize the issuance of a certificate to the ship, and where appropriate, endorse or authorize the endorsement of that certificate on the ship, in accordance with these Regulations.

2. A copy of the certificate and a copy of the survey report shall be transmitted as soon as possible to the Authority.

3. A certificate so issued shall contain a statement to the effect that it has been issued at the request of the Authority and it shall have the same force and receive the same recognition as a certificate issued by the Authority.

4. No certificate shall be issued to a ship entitled to fly the flag of a State which is not a Party to the Convention.

24. Form of the certificates

The certificates shall be drawn up in English, in the form set forth in Annexes III and IV.

25. Duration and validity of the certificates

1. An International Certificate on Inventory of Hazardous Materials issued under Regulation 22 or Regulation 23 shall cease to be valid in any of the following cases:

(a) if the condition of the ship does not correspond substantially with the particulars of the certificate, including where Part I of the Inventory of Hazardous Materials is not properly maintained and updated, reflecting changes in ship structure and equipment, in accordance with the guidelines developed by the Organization;

(b) upon transfer of the ship to the Kenyan flag by another State. A new certificate shall only be issued when the Authority is fully satisfied that the ship is in compliance with the requirements of Regulation 21. In the case of a transfer between the Authority and another State Party, if requested within three months after the transfer has taken place, the Authority shall, as soon as possible, transmit to the State to whose flag the ship is entitled to fly, copies of the certificates carried by the ship before the transfer and, if available, copies of the relevant survey reports;

i. if the renewal survey is not completed within the periods specified under Regulations 21 sub-regulation 1 and Regulation 22; or

ii. if the certificate is not endorsed in accordance with Regulation 22 or Regulation 23.

2. An International Certificate on Inventory of Hazardous Materials shall be issued for a period which shall not exceed five years.

3. An International Ready for Recycling Certificate shall be issued for a period that shall not exceed three months.

4. An International Ready for Recycling Certificate issued under Regulation 22 or Regulation 23 shall cease to be valid if the condition of the ship does not correspond substantially with the particulars of the certificate.

5. The International Ready for Recycling Certificate may be extended by the Authority for a single point to point voyage to the Ship Recycling Facility.

PART V- REPORTING REQUIREMENTS

26. Initial notification and reporting requirements

1. A shipowner shall notify the Authority in due time and in writing of the intention to recycle a ship in order to enable the Authority to prepare for the survey and certification required by these Regulations.

2. A Ship Recycling Facility when preparing to receive a ship for recycling shall notify in due time and in writing to the Authority of the intent. The notification shall include at least the following ship details:

(a) name of the State whose flag the ship is entitled to fly;

(b) date on which the ship was registered with that State;

(c) ship's identification number (IMO number);

(d) hull number on new-building delivery;

- (e) name and type of the ship;
- (f) port at which the ship is registered;
- (g) name and address of the Shipowner as well as the IMO registered owner identification number;
- (h) name and address of the company as well as the IMO company identification number;
- (i) name of all classification society(ies) with which the ship is classed;
- (j) ship's main particulars (Length overall (LOA), Breadth (Moulded), Depth (Moulded), Lightweight, Gross and Net tonnage, and engine type and rating);
- (k) Inventory of Hazardous Materials; and
- (l) draft ship recycling plan for approval pursuant to Regulation 10.

3 When the ship destined to be recycled has acquired the International Ready for Recycling Certificate, the Ship Recycling Facility shall report to the Authority of the planned start of the Ship Recycling. The report shall be in accordance with the reporting format in Annex VI of these Regulations , and shall at least include a copy of the International Ready for Recycling Certificate. Recycling of the ship shall not start prior to the submission of the report.

27. Reporting upon completion

1. When the partial or complete recycling of a ship is completed in accordance with the requirements of these Regulations, a Statement of Completion shall be issued by the Ship Recycling Facility and reported to the Authority.
2. This report must be compiled as shown in Annex VII. The Authority where the ship is not entitled to fly the flag of Kenya, the Authority shall send a copy of the Statement to the Administration which issued the International Ready for Recycling Certificate for the ship.
3. The Statement shall be issued within 14 days of the date of partial or completed Ship Recycling in accordance with the Ship Recycling Plan and shall include a report on incidents and accidents damaging human health and/or the environment, if any.

PART VI-VIOLATIONS

1. Where a shipowner, agent or master fails to maintain on board an Inventory of Hazardous Materials in accordance with Regulation 8 of these Regulations he commits an offence and shall be liable upon conviction, to a fine not exceeding one million shillings or imprisonment for a term not exceeding one year or both such fine and imprisonment and the ship shall be liable to be detained until such a time as the shipowner, agent or master shall have paid the fine.

2. Where a shipowner, agent or master in the case of a tanker fails to ensure that it arrives at the Ship Recycling Facility with cargo tanks and pump room(s) in a condition that is ready for certification as Safe-for-hot work in accordance with Regulation 9 sub-regulation 2, he commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding six months or both such fine and imprisonment.

3. Where the shipowner fails to provide the Ship Recycling Facility all available information relating to the ship for the development of the Ship Recycling Plan as provided by Regulation 10, he commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding six months or both such fine and imprisonment.

4. Where a ship recycling facility acts contrary to these Regulations and any the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the ship recycling facility, or any person who was purporting to act in such a capacity, he as well as the ship recycling facility commits an offence and shall be liable to be prosecuted and punished accordingly.

PART VII-UNDUE DELAY OR DETENTION OF SHIPS

1. When carrying out inspections under these Regulations, the inspector shall make all possible efforts to avoid undue detention or delay of a ship.

2. Where an inspection reveals that a copy of the certificates required under these Regulations are not on board a vessel to which these Regulations is applicable at the date of inspection, the inspector shall detain the ship

3. The Authority may lift the detention order for the purpose of avoiding port congestion, and shall

immediately inform the competent authorities of the flag State accordingly.

4. When a ship is unduly detained or delayed under these Regulations, it shall be entitled to compensation for any loss or damage suffered.

PART VIII-DISPUTE SETTLEMENT

1. Where there is a dispute between the Authority and any other State Party regarding the interpretation or application of these Regulations such disputes shall be settled by negotiation or any other peaceful means agreed upon by them, which may include enquiry, mediation, conciliation, arbitration, judicial settlement, or resort to regional agencies or arrangements.

PART IX- COMMUNICATION OF INFORMATION

1. The Authority shall report to the Organization and the Organization shall disseminate to the other State Parties, as appropriate, the following information:

(a) a list of Ship Recycling Facilities authorized in accordance with these Regulations and operating in Kenya;

(b) contact details for the Authority, including the contact of the Director General of the Authority;

(c) a list of the recognized organizations and nominated surveyors which are authorized to act on behalf of Kenya in the administration of matters relating to the control of Ship Recycling in accordance with these Regulations, and the specific responsibilities and conditions of the authority delegated to the recognized organizations or nominated surveyors;

(d) an annual list of ships flying the flag of Kenya to which an International Ready for Recycling Certificate has been issued, including the name of the Recycling Company and location of the Ship Recycling Facility as shown on the certificate;

(e) an annual list of ships recycled within Kenya;

(f) information concerning violations of these Regulations; and

(g) actions taken towards ships and Ship Recycling Facilities in Kenya.

PART X-ANNEXES

ANNEX 1

CONTROLS OF HAZARDOUS MATERIALS

Hazardous Material	Definitions	Control measures
Asbestos	Materials containing asbestos	For all ships, new installation of materials which contain asbestos shall be prohibited.
Ozone-depleting substances	<p>Ozone-depleting substances means controlled substances defined in paragraph 4 of article 1 of the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, listed in Annexes A,B,C or E to the said Protocol in force at the time of application or interpretation of this Annex.</p> <p>Ozone-depleting substances that may be found on board ship include, but are not limited to:</p> <p>Halon 1211 Bromochlorodifluoromethane Halon 1301 Bromotrifluoromethane Halon 2402 1,2-Dibromo-1,1,2,2-tetrafluoroethane (also known as Halon 114B2) CFC-11 Trichlorofluoromethane CFC-12 Dichlorodifluoromethane CFC-113 1,1,2-Trichloro-1,2,2-trifluoroethane CFC-114 1,2-Dichloro-1,1,2,2-tetrafluoroethane CFC-115 Chloropentafluoroethane</p>	New installations which contain ozone-depleting substances shall be prohibited on all ships, except that new installations containing hydrochlorofluorocarbons (HCFCs) are permitted until 1 January 2020.

<p>Polychlorinated biphenyls (PCB)</p>	<p>“Polychlorinated biphenyls” means aromatic compounds formed in such a manner that the hydrogen atoms on the biphenyl molecule (two benzene rings bonded together by a single carbon-carbon bond) may be replaced by up to ten chlorine atoms</p>	<p>For all ships, new installation of materials which contain Polychlorinated biphenyls shall be prohibited.</p>
<p>Anti-fouling compounds and systems</p>	<p>Anti-fouling compounds and systems regulated under Annex I to the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (AFS Convention) in force at the time of application or interpretation of this Annex.</p>	<p>No ship may apply anti-fouling systems containing organotin compounds as a biocide or any other anti-fouling system whose application or use is prohibited by the AFS Convention.</p> <p>No new ships or new installations on ships shall apply or employ anti-fouling compounds or systems in a manner inconsistent with the AFS Convention.</p>

ANNEX II

MINIMUM LIST OF ITEMS FOR THE INVENTORY OF HAZARDOUS MATERIALS

Any Hazardous Materials listed in Appendix 1
Cadmium and Cadmium Compounds
Hexavalent Chromium and Hexavalent Chromium Compounds
Lead and Lead Compounds
Mercury and Mercury Compounds
Polybrominated Biphenyl (PBBs)
Polybrominated Diphenyl Ethers (PBDEs)
Polychlorinated Naphthalenes (more than 3 chlorine atoms)
Radioactive Substances
Certain Shortchain Chlorinated Paraffins (Alkanes, C10-C13, chloro)

ANNEX III

This certificate shall be supplemented by Part I of the Inventory of Hazardous Materials

FORM OF THE INTERNATIONAL CERTIFICATE ON INVENTORY OF HAZARDOUS MATERIALS

INTERNATIONAL CERTIFICATE ON INVENTORY OF HAZARDOUS MATERIALS

(Official seal) (State)

Issued under the provisions of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019 under the authority of the Government of Kenya

.....
KENYA

by
THE KENYA MARITIME AUTHORITY

Particulars of the Ship

Name of Ship	
Distinctive number or letters	
Port of Registry	
Gross tonnage	
IMO number	
Name and address of shipowner	
IMO registered owner identification number	
IMO company identification number	

Date of Construction	
----------------------	--

Particulars of Part I of the Inventory of Hazardous Materials

Part I of the Inventory of Hazardous Materials identification/verification number:

Note: Part I of the Inventory of Hazardous Materials, as required by Regulation 8 of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019, is an essential part of the International Certificate on Inventory of Hazardous Materials and must always accompany the International Certificate on Inventory of Hazardous Materials. Part I of the Inventory of Hazardous Materials should be compiled on the basis of the standard format shown in the guidelines developed by the Organization.

THIS IS TO CERTIFY:

1. that the ship has been surveyed in accordance with Regulation 21 of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019; and
2. that the survey shows that Part I of the Inventory of Hazardous Materials fully complies with the applicable requirements of the Convention.

Completion date of survey on which this certificate is based: (dd/mm/yyyy)

This certificate is valid until (dd/mm/yyyy)

Issued at

(Place of issue of certificate)

(dd/mm/yyyy)

(Date of issue)(Signature of duly authorized official issuing the certificate)

(stamp of the Authority)

ENDORSEMENT TO EXTEND THE CERTIFICATE IF VALID FOR LESS THAN FIVE YEARS WHERE REGULATION 22.6 APPLIES

The ship complies with the relevant provisions of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019, and this certificate shall, in accordance with Regulation 22.6 of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019

(dd/mm/yyyy):

Signed:

(Signature of duly authorized official)

Place:

Date: (dd/mm/yyyy)

(stamp of the Authority,)

ENDORSEMENT WHERE THE RENEWAL SURVEY HAS BEEN COMPLETED AND REGULATION 22.7 APPLIES

The ship complies with the relevant provisions of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019 , and this certificate shall, in accordance with Regulation 22.7 of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019, be accepted as valid until (dd/mm/yyyy):

.....

Signed:

(Signature of duly authorized official)

Place:

Date: (dd/mm/yyyy)

(stamp of the Authority,)

ENDORSEMENT TO EXTEND THE VALIDITY OF THE CERTIFICATE UNTIL REACHING THE PORT OF SURVEY OR FOR A PERIOD OF GRACE WHERE REGULATION 22.8 OR 22.9 APPLIES

This certificate shall, in accordance with Regulation 22.8 or 22.9 of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019 , be accepted as valid until (dd/mm/yyyy):

Signed:

(Signature of duly authorized official)

Place:

Date: (dd/mm/yyyy)

(stamp of the Authority)

ENDORSEMENT FOR ADDITIONAL SURVEY

At an additional survey in accordance with Regulation 21 of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019, the ship was found to comply with the relevant provisions of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019

Signed:

(Signature of duly authorized official)

Place:

Date: (dd/mm/yyyy)

(stamp of the Authority,)

ANNEX IV

FORM OF THE INTERNATIONAL READY FOR RECYCLING CERTIFICATE

INTERNATIONAL READY FOR RECYCLING CERTIFICATE

(Note: This certificate shall be supplemented by the Inventory of Hazardous Materials and the Ship Recycling Plan)

(Official seal) (State)

Issued under the provisions of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019 under the authority of the Government of

.....
KENYA

by
THE KENYA MARITIME AUTHORITY

Particulars of the Ship

Name of Ship	
Distinctive number or letters	
Port of Registry	
Gross tonnage	
IMO number	
Name and address of shipowner	
IMO registered owner identification number	

IMO company identification number	
Date of Construction	

Particulars of the Ship Recycling Facility(ies)

Name of Ship Recycling Facility	
Distinctive Recycling Company identity number*	
Full address	
Date of expiry of DASR	

* This number is based on the Document of Authorization to conduct Ship Recycling (DASR).

Particulars of the Inventory of Hazardous Materials

Inventory of Hazardous Materials identification/verification number:

Note: The Inventory of Hazardous Materials, as required by Regulation 8 of The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019, is an essential part of the International Ready for Recycling Certificate and must always accompany the International Ready for Recycling Certificate. The Inventory of Hazardous Materials should be compiled on the basis of the standard format shown in the guidelines developed by the Organization.

Particulars of the Ship Recycling Plan

Ship Recycling Plan identification/verification number:

Note: The Ship Recycling Plan, as required by Regulation 15 of The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019, is an essential part of the International Ready for Recycling Certificate and must always accompany the International Ready for Recycling Certificate.

THIS IS TO CERTIFY:

1 that the ship has been surveyed in accordance with Regulation 21 of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019;

2 that the ship has a valid Inventory of Hazardous Materials in accordance with Regulation 8 of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019;

3 that the Ship Recycling Plan, as required by Regulation 15, properly reflects the information contained in the Inventory of Hazardous Materials as required by Regulation 8 and contains information concerning the establishment, maintenance and monitoring of Safe-for-entry and Safe-for-hot work conditions; and

4 that the Ship Recycling Facility(ies) where this ship is to be recycled holds a valid authorization in accordance with the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019

This certificate is valid until (dd/mm/yyyy)
(Date)

Issued at
(Place of issue of certificate)

(dd/mm/yyyy)
(Date of issue)(Signature of duly authorized official issuing the certificate)

(Seal or stamp of the authority, as appropriate)

ENDORSEMENT TO EXTEND THE VALIDITY OF THE CERTIFICATE UNTIL REACHING THE PORT OF THE SHIP RECYCLING FACILITY FOR A PERIOD OF GRACE WHERE REGULATION 25.5 APPLIES

This certificate shall, in accordance with Regulation 25.5 of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019, be accepted as valid for a single point to point voyage

from the port of:

to the port of:

Signed:
(Signature of duly authorized official)

Place:

Date: (dd/mm/yyyy)

ANNEX V

FORM OF THE AUTHORIZATION OF SHIP RECYCLING FACILITIES

Document of Authorization to conduct Ship Recycling (DASR) in accordance with the requirements of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019

Issued under the provisions of the Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019

under the authority of the Government of:

.....

KENYA

by.....

KENYA MARITIME AUTHORITY

Name of Ship Recycling Facility	
Distinctive Recycling Company identity No.	
Full address of Ship Recycling Facility	
Primary contact person	
Phone number	
E-mail address	
Name, address, and contact information of ownership company	
Working language(s)	

This is to verify that the Ship Recycling Facility has implemented management systems, procedures and techniques in accordance with Parts III and V of the Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019.

This authorization is valid until and is subject to the limitations identified in the attached supplement.

This authorization is subject to amendment, suspension, withdrawal, or periodic renewal in accordance with Regulation 11 of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019.

Issued at

(Place of issue of the authorization)

(dd/mm/yyyy)

(Date of issue)(Signature of duly authorized official issuing the authorization)

.....

(Typed name and title of duly authorized official issuing the authorization)

(stamp of the Authority,)

SUPPLEMENT TO:

Document of Authorization to undertake Ship Recycling (DASR) in accordance with the Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019

- | | | |
|--------|--|--|
| Notes: | This record shall be permanently attached to the DASR. | The DASR shall be available at the Ship Recycling Facility at all times. |
| 2 | All procedures, plans and other documents produced by the Ship Recycling Facility and required under the terms to which the DASR has been issued shall be available in the working language of the Ship Recycling Facility and in either English, French or Spanish. | |
| 3 | The authorization is subject to the limitations defined by this supplement | |

1 GENERAL TERMS

1.1 Requirements of the Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019

The Ship Recycling Facility meets the requirements that it be designed, constructed, and operated in a safe and environmentally sound manner in accordance with the Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019, including meeting the relevant requirements of:

Regulation 11 – Licensing of Ship Recycling Facilities

Regulation 10 – Ship Recycling Plan

Regulation 16 – Prevention of adverse effects to human health and the environment Regulation 20

- Safe and environmentally sound management of Hazardous Materials Regulation 21 –
Emergency preparedness and response
- Regulation 19 – Worker safety and training
- Regulation 20 – Reporting on incidents, accidents, occupational diseases and chronic effects
- Regulation 26 – Initial notification and reporting requirements Regulation 27 – Reporting upon
completion

These requirements are imposed on the Ship Recycling Facility by way of

.....
(Identify the permit, licence, authorization, legal standards, or other mechanism that applies)

Ship Recycling Facility Plan identification/verification number:

1.2 Acceptance of ships

For ships to which the Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019 apply and ships treated similarly pursuant to Regulation 5 of the Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019,

1.3 Safe-for-hot work and Safe-for-entry conditions

The Ship Recycling Facility is capable of establishing, maintaining and monitoring Safe-for-hot work and Safe-for-entry conditions throughout the Ship Recycling process.

1.4 Management of Hazardous Materials

The Ship Recycling Facility is designed, constructed, operated, and required to ensure that all Hazardous Materials’ management shall be safe and environmentally sound in compliance with the Convention and with all relevant local or national regulations/requirements.

1.5 Map and location of Ship Recycling operations

A map of the boundary of the Ship Recycling Facility and the location of Ship Recycling operations within it, is attached.

2 CAPABILITY OF SHIP RECYCLING FACILITY

2.1 Size of ships

The Ship Recycling Facility is authorized to accept a ship for recycling subject to the following size limitations:

Maximum Size		Other Limitations
Length		
Breadth		
Lightweight		

2.2 Safe and Environmentally Sound Management of Hazardous Materials

The Ship Recycling Facility is authorized to accept a ship for recycling that contains Hazardous Materials as specified in the following table subject to the conditions noted below:

Hazardous Material(*4)	Management of Hazardous Materials			Authorization/Limitations
	Removal	Storage	Process (*1)	
	Y/N (*2)	Y/N	Y/N (*3)	
Asbestos				
Ozone-depleting substances				
Polychlorinated biphenyls (PCB)				
Anti-fouling compounds and systems				
Cadmium and Cadmium Compounds				

Hexavalent Chromium and Hexavalent Chromium Compounds				
Lead and Lead Compounds				
Mercury and Mercury Compounds				
Polybrominated Biphenyl (PBBs)				
Polybrominated Diphenyl Ethers (PBDEs)				
Polychlorinated Naphthalenes (more than 3 chlorine atoms)				
Radioactive substances				
Certain Shortchain Chlorinated Paraffins (Alkanes, C10-C13, chloro)				
Hazardous liquids, residues and sediments				
Paints and coatings that are highly flammable and/or lead to toxic release				
Other Hazardous Materials not listed above and that are not a part of the ship structure (specify)				

Notes: *1 Process means the processing of Hazardous Materials in the Ship Recycling Facility, such as:

- a. incineration of Hazardous Materials;
- b. reclamation of Hazardous Materials; and
- c. treatment of oily residues.

*2 If Yes (Y), indicate in the Ship Recycling Facility Plan the responsible personnel authorized to carry out the removal, with the certificate number or other relevant information.

*3 If No (N), describe in the Ship Recycling Plan where the Hazardous Materials are to be processed/disposed.

*4 These Hazardous Materials are specified in Annexes I and II of the Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019

1. .

ANNEX VI

FORM OF REPORT OF PLANNED START OF SHIP RECYCLING

The
(Name of Ship Recycling Facility)

located at
(Full Ship Recycling Facility address)

Authorized in accordance with the requirements of the Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019 to conduct Ship Recycling under the authority of the Government of:

.....
KENYA

as indicated in the Document of Authorization to conduct Ship Recycling issued at
.....
(Place of authorization)

by
THE KENYA MARITIME AUTHORITY

on (dd/mm/yyyy)
(Date of issue)

Hereby reports that the Ship Recycling Facility is ready in every respect to start the recycling of the vessel
(IMO number)

The International Ready for Recycling Certificate issued under the provisions of the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019 under the

authority of the Government of

.....

KENYA

by

THE KENYA MARITIME AUTHORITY

on (dd/mm/yyyy)

(Date of issue)

is enclosed.

Signed

ANNEX VII

FORM OF THE STATEMENT OF COMPLETION OF SHIP RECYCLING

STATEMENT OF COMPLETION OF SHIP RECYCLING

This document is a statement of completion of Ship Recycling for

.....
(Name of the ship when it was received for recycling/at the point of deregistration)

Particulars of the Ship as received for recycling

Distinctive number or letters	
Port of Registry	
Gross tonnage	
IMO number	
Name and address of shipowner	
IMO registered owner identification number	
IMO company identification number	
Date of Construction	

THIS CONFIRMS THAT:

The ship has been recycled in accordance with the The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Regulations, 2019 ,at

.....
(Name and location of the authorized Ship Recycling Facility)

and the recycling of the ship as required by the Convention was completed on: (dd/mm/yyyy)

.....
(Date of completion)

Issued at

(Place of issue of the Statement of Completion)

(dd/mm/yyyy)

*(Date of issue)(Signature of the owner of the Ship Recycling Facility or
a representative acting on behalf of the owner)*
