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**A RESOLUTION INCORPORATING THE
MARITIME LABOUR CONVENTION 2006
INTO MOZAMBICAN LEGISLATION**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) at
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Explanatory Note

“Normative action is an indispensable tool to make decent work a reality”¹

1. Introduction

The Maritime Labour Convention 2006 (MLC), was adopted by the International Labour Conference at a maritime session in Geneva in February 2006. It is a consolidation of a number of maritime labour conventions and recommendations, relating to seafarers conditions of work that had been adopted by the International Labour Organization (ILO)², between 1920 and 1996.

The Convention deals with matters such as conditions of employment, hours of work and rest, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security protection for seafarers, as well as the regulation of recruitment and placement services and flag State inspection system. The most significant feature of the Convention is that it is based on a tripartite agreement, where not only governments, but also representatives of seafarers and shipowners came together and produce an international instrument that benefits all the parties.

It is important to note that the above mentioned conditions were part of Geneva Accord between the shipowners and seafarer’s representatives who expressed serious concerns about the existing maritime standards and had put forward eight “preferred solutions” to deal with their concerns³.

The eight “preferred solutions” constitutes the recommendation on the content of a draft of framework instrument, namely:

¹ SOMAVIA, Juan – ILO Director General - 2001

² International Labour Organization (ILO) – Specialized agency of United Nations that deals with the labour issues. Its headquarters are in Geneva-Switzerland. It was created in 1919 by the Versailles Treaty and affiliated with the League of Nations until 1924; The organization receive the Nobel Peace Prize in 1969.

³ Adoption of an Instrument to consolidate Maritime Labour Standard page 1

1. The provisions of the corpus of International Maritime Labour Standards that are sufficiently up to date should be consolidated as a matter of priority and in so far as this proves possible to achieve;
2. The substance should be incorporated in a single, coherent instrument, seen as part of the body of standards maritime instruments;
3. The consolidated instrument should consist of a number of parts setting out the key principles of the International Maritime Labour Standards;
4. The Parts should be complemented by annexes setting out detailed requirements for each of the Parts;
5. A simplified amendment procedure should be provided for updating the annexes and ensuring prompt entry into effect;
6. The instrument should also contain the substance of recommendation and other non-mandatory texts;
7. The instrument should be drafted in such a way as to secure the widest possible acceptability among governments, shipowners and seafarer's committed to the principles of decent work;
8. The instrument should contain provisions giving responsibility to all States to ensure that decent conditions of work apply to all ships that are placed under their jurisdiction or that come within their jurisdiction.

Giving proper consideration in a maritime context to the essential aspects of Decent Work, which the components are:

- a) Human rights at work;
- b) Employment and incomes;
- c) Social protection and social security;
- d) Social dialogue.

The MLC is also intended to complement the three key International Maritime Organization (IMO) Conventions and to become the "fourth pillar" of the international maritime regulatory regime for quality shipping complementing the key Conventions of IMO. The three other pillars are the following: The International Convention for the Safety of Life at Sea (SOLAS, 1974) as amended; The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 1978) as

amended; and, The International Convention for the Protection of Pollution from Ships (MARPOL 73/78) and its annexes, which together constitutes a comprehensive set of global standards based on those provided for in existing maritime labour instruments⁴.

⁴ Ibid page 5

1.1. Purpose

The MLC aims to achieve worldwide decent conditions of work, protection to the fundamental principles and human rights at work as well as definition of global nature of the shipping industry which needs an international regulatory which will respond for the particular maritime issues.

Particular innovation on the Convention is the definition of seafarers because, it is estimated that there are 1.2 million people working at sea at present moment. The Convention defines a seafarers as “any person who is employed or engaged or works in any capacity on board a ship to which this convention applies”⁵. Clearly, the definition will eliminate the misunderstanding among those who work on board ships but are not directly involved in navigating or operating the ship, such as the many personnel or passengers on the ship.

National authorities should pay attention for the fact that the Convention does not apply to smaller ships (200 gross tonnage and below) that are not engaged on international voyage. Also, the Convention provides exception to ships which navigate exclusively in inland waters or waters within or closely adjacent to sheltered waters or areas where port regulations apply; ships engaged in fishing; ships of traditional built such as dhows and junks; and warships or naval auxiliaries.

The Convention provides that in case of any doubt related to the extension of application of the Convention (categories of persons or definition of ship or certain category of ship), the competent authority of the State party after consultation with shipowners and seafarer’s organization, should resolve the doubt ⁶. The resolution should be communicated to the Director General of International Labour Office as stated in paragraph 7.

⁵ Article II Section 1 (f) of the Convention.

⁶ Article II Section 1 paragraph 3, 5.

In relation to liability, the Convention provides that shipowners are liable⁷ if they fail to protect seafarer's by providing them with financial security in case of sickness, injury or death occurring while they are employed. The mentioned Article is complemented by another provision which encourages States parties to adopt domestic laws and regulations dealing

with financial protection to the seafarers. The shipowners will be exempted by this liability if it proved that the incident was a result of seafarer's misconduct or intention.

With regards to flag State responsibility, the Convention states that flag States have obligation to establish an effective system of inspection and certification of maritime labour conditions under Regulation 5.1.3. and 5.1.4, where the certification issued meets and continues to meet the standards of the Convention. The State responsibility, remains even when the inspections procedures and certification had been delegated to a different public institution or organization.

Another important provision of the Convention is related to port State responsibility, where it is states that ships are subject to the inspection of flag States and port authorities which are obliged to certify that those ships are operating in conformity with the provisions of the Convention. The inspection should be based on "no- more favorable treatment⁸" clause. Which means that once the convention is in force, the authorities of countries that have ratified the Convention may require all ships that visit their ports to comply with the standards of the Convention regardless of whether or not the country whose flag the ships fly is bound by the Convention. So, all ships trading internationally will be obliged to follow the requirements of the Convention. Furthermore, if the vessel is found not complying the provisions of the Convention, mainly those which affects health and safety on board the vessel, the port State control inspector has the power to detain that vessel.

⁷ Regulation 4.2

⁸ ILO – Maritime Labour Convention 2006 – A guide for the Shipping Industry – Page 8

1.2 Structure

The Convention comprises three different but related parts: The Articles, the Regulations and the Code (Parts A and B).

The Articles and Regulations set out the principles, rights and the basic obligations of members ratifying the Convention. It must be noted that *amendments to any of the provisions of this Convention may be adopted by the General Conference of the International Labour Organization in the framework of Article 19 of the Constitution of the International Labour Organization and the rules and procedures of the organization for the adoption of the Conventions. Amendments to the Code may also be adopted following the procedures in Article XV⁹.*

The Code contains the details related to the implementation of the Regulations. This comprises the following:

- Part A – Mandatory Provisions; and
- Part B – Non- Mandatory Guidelines.

The Regulation of the Code is organized into general areas of concern under five Titles, as following:

- Title 1 – Minimum requirements for seafarers to work on a ship;
 - Title 2 – Conditions of employment;
 - Title 3 – Accommodation, recreational facilities, food and catering;
 - Title 4 – Health protection, medical care, welfare and social security protection;
- and

⁹ Article XIV of the Convention

- Title 5 – Compliance and enforcement.

Furthermore, under this structure, the Convention aims to achieve three underlying purposes:

- a) To lay down (in its Articles and Regulations) a firm set of principles and rights;
- b) To allow (through the Code) a considerable degree of flexibility in the way Members implement those principles and rights; and
- c) To ensure (Through Title 5) that principles and rights are properly complied with and enforced¹⁰.

1.2.1 – THE TITLES

TITLE 1 – Minimum Requirements for Seafarer’s to Work on a Ship

In order to regulate the relationship between shipowners and seafarers, the Convention places the obligations on the shipowners to observe the minimum age of seafarers. This is a mandatory regulation which stipulate that shipowners are obliged to employ seafarers over 16 taking into the work to be carried and the period within which the work is to be performed.

With regards to medical certificate, seafarer’s are required to have this document which ensure that they are medically fit to perform their duties at sea. The certificate should be issued by a competent health authority under the guideline B1.2.1. of the Convention.

The medical certificate will be valid for the following periods:

- a) Maximum of 2 years as a general rule;
- b) 1 year if the seafarer under age 18; and
- c) Maximum of 6 years for a colour vision certificate.

Shipowners are obliged to observe that seafarer’s are trained and qualified to carry out their duties on board ships. The Certificates regarding the competence and the training for

¹⁰ Adoption of an Instrument to Consolidate maritime labour standards page 12

personal safety on board ship should also certificates in accordance with the STCW Convention.

In relation of Recruitment and Placement, the purpose of this regulation is to ensure that seafarers “have access to an efficient and appropriately regulated recruitment and placement system which is free to use and operates in a fair and no-discriminatory way”.

Another important provision is that shipowners have to ensure that “seafarer’s are informed of their rights and duties under employment agreement prior to or in the process of engagement and that proper arrangements are made for seafarer’s t examine their employment agreement before and after it is signed and for them to receive a copy of the agreement”¹¹.

TITLE 2 – Conditions of Employment

The Title aims to ensure that seafarers have a fair employment agreement where the terms and conditions of employment are set out in a clear, written, and legally enforceable agreement. The agreement should be signed by both parties and each part has to have a signed original document. Furthermore, seafarer’s should be given the opportunity to review and seek advice in relation to the terms of employment agreement.

In relation to seafarer’s wages, shipowners must ensure that all seafarer’s are paid regularly at least monthly an in full accordance with their terms of employment.

When it comes to hours of work and hours of rest, shipowners shall ensure that seafarer’s have regulated hours of work and rest, based in standards like that for other workers (8hours day with one day for rest) per week which includes rest on a public holidays.

TITLE 3 – Accommodation, Recreational Facilities, Food and Catering

¹¹ Standard A.1.5 (5), ©

Shipowners are obliged to ensure that seafarers have decent accommodation and recreational facilities for seafarer's working or living on board or both, consistent with promoting the seafarer's health and well being. The Convention states that particular attention should be given to the following issues:

- a) The size of rooms and other accommodation spaces;
- b) Heating and ventilation;
- c) Noise and vibration and other ambient factors;
- d) Sanitary facilities;
- e) Lighting; and
- f) Hospital accommodation.

TITLE 4 – Health Protection, Medical Care, Welfare and Social Security Protection

The present Title provides a minimum requirements in order to protect the health of seafarer's and ensure their prompt access to medical care on board ship and ashore. The health care provision is not limited to treating sick or injured but includes preventive measures such as health promotion and education and, that all ships should carry a chest, medical equipment and medical guide.

TITLE 5 – Compliance and Enforcement

The Title specifies that each Party to the Convention has the responsibility to fully implement and enforce the principles and rights set out in the Convention. Especial recommendation is provided in paragraph 4 which provides that “the provision of this Title shall be implemented bearing in mind that seafarers and shipowners, like all other persons, are equal before the law and are entitled to the equal protection of the law and shall not be subject to discrimination in their access to courts, tribunals or other dispute resolution mechanisms. The provisions of this Title do not determine legal jurisdiction or a legal venue”.

The Convention shall enter into force 12 months after the date on which its ratification has been registered¹². This is expected because all States during the conference unanimously adopted the Convention.

2. The Mozambican Reality

Mozambique was under Portuguese rule until 1975, hence its legal system is influenced by the Portuguese legal tradition of civil law system. Presently Mozambique's problem is related to the antiquity of important legislations (including maritime legislation), and the necessity of a structural sector regulation. Nevertheless, the public sector reform of legislation constitutes a policy of the Mozambican Government in order to simplify the procedures and introduce its regulatory framework.

Mozambique is a county in the East Coast of Africa with about 2,700 kilometres of coast. It is bounded in the west by four countries with no coastlines, the so called land locked countries, namely, from the south to north: Swaziland, Zimbabwe, Zambia and Malawi. South Africa in the south and Tanzania in the north have coastlines and ports. Mozambique is the only country that, can easily be used to import and export products to and from those countries namely from America, Asia, Europe, and to the rest of the world, using the Indian Ocean.

As an example, Zimbabwe exports sugar and coal using Maputo Port; and Malawi, Zambia and Zimbabwe, import fuel oil (petrol, diesel, lubricants, oil and others products) using the port of Beira, through pipelines. These products are dangerous and inflammable, in case of accident they can cause pollution in the territorial waters of Mozambique. Mozambique plays a very important role for the land locked countries because through the main ports of Mozambique: Maputo, Beira and Nacala, all the mentioned countries import and export their products through these ports. In average

¹² Article VIII paragraph 4 of the Convention

there are about 11 to 20 ships per day entering and leaving Mozambicans ports, carrying different kind of goods, ranging from dangerous like oil to delicate like food.

Although Mozambique has no substantial number of seafarers, but taking account the fact that its ports are opened for regional and international transportation on one hand and the globalization procedures on other hand, these situation claims for a necessity of a good, protective and clear regulation for the welfare of seafarers in order to protect the interests of the parties involved in a maritime relationship.

The proponent of this draft respectfully submit that Mozambique is going to have in the near future considerable number of seafarers, so, by incorporating the Convention, Mozambique will have the necessary legal infrastructure that would protect the welfare of the seafarers.

Under this purpose, the Ministry of Transports and Communication, together with the Ministry of Work, are involved in a process of reformulation of its legal legislation where incorporation of the MLC, constitutes one of their priority.

The Maritime Labour legislative regime in Mozambique is incorporated to the general Labour Code - Law number 23/2007 of August 1st. But this legal instrument does not reflect the real legal protection necessary for the welfare of seafarers. Furthermore, the Law¹³ itself provides that maritime work should be regulated by special regulations.

Mozambique had ratified a considerable number of international conventions dealing with labour matters namely: Worker men's Compensation (Accidents) Convention in 1925; Forced Labour Convention in 1930; Hours of Work (Commerce and offices) Convention, 1930; Labour Inspection Convention, 1947; and many others. This legislation, however, are obsolete therefore MLC will be a new tool and framework in the protection for the seafarers. That is what is stated under Article X of the Convention when states that "This Convention revises the following conventions: (...); what means that the MLC 2006, is revising the previous Conventions and Recommendations adopted by the International Labour Conference since 1920.

¹³ Article 3, number 1 (e) of Law 23/2007 of August 1st.

The ILO's Constitution, encourages different States to adhere to international conventions, as a way to create a uniform and harmonized international maritime instrument which will cater to a comprehensive rights and protection to the seafarers.

2.1. Incorporation Process

The National Maritime Institute (INAMAR) is the Mozambican Maritime Authority under the Ministry of Transport and Communication which is competent¹⁴ to prepare and submit a proposed document (explaining the reasons of the need and the benefits for the country) for ratification and incorporation of the Maritime Labour Convention 2006 to the Ministry of Transports and Communication. Should the Ministry find this proposal pertinent, it will submit the same to the parliament for discussion and approval. After parliament procedures and signature by the head of State, the convention should be published in the official gazette which has to mention the specific date of its affectivity.

Article 18 of the Mozambican Constitution, states that: “*validly approved and ratified international treaties and agreements shall enter into force in the Mozambican legal order once they have been officially published and while they are internationally binding on the Mozambican State*”, which means that, the international conventions are incorporated under Mozambican legal system by adoption or transformation after its approval¹⁵ by the Parliament. Number 2 of the same Article provide the position of the Convention under a constitutional hierarchy of the Mozambican laws.

¹⁴ Decree number 32/2004 of August, 18; article 3 number 1, a); b) – Organic Statute of INAMAR.

¹⁵ Approval process consists in a document called “Resolution” which provide the whole text of convention which can be translated in a national language

Furthermore, if the Government realizes the need for a specific or more details in relation of the application and management of the present Convention, they will recommend the competent ministry to provide a specific regulation, by issuing a Decree which is annexed in the present document. The competent organ to issue the Decree is a Council of Ministers, according to provision stated in Articles 203 number 1 together with 210 number 1 of the Constitution of Republic of Mozambique.

It is in these terms that it is proposed to adopt, by **Resolution, The Maritime Labour Convention 2006, into the Mozambican Legislation.**



Republic of Mozambique
Assembly of Mozambican Republic
Project of Resolution n.º ____/2010
Of ___ of _____

Mozambique is a State with an extensive coastline in whose territorial waters are developing in a large scale activities of shipping and fishing by vessels.

The privileged geographical location in relation to its neighbouring countries in the Region, which many of them are land-locked, makes it a natural access for both import and export trade for these bordering countries what claims for a more protective and clear legal framework to safeguard the interests of the involved parties.

In order to protect the relationship between Mozambique and its neighbouring countries and many others countries, there is an urgent necessity of implementation of an international legal instrument to regulate the mentioned relationship.

The MLC 2006 is designated to create a single, coherent instrument embodying as far as possible, all up-to-date standards of existing international maritime labour Convention and Recommendation in order to give more protection to seafarers rights.

Having a need to join the Convention, taking into account the purpose that it seeks, the Assembly of Republic, making use of the powers conferred in Article 179 number 2 (t) of the Constitution, determine:

Article 1

It is approved the Resolution for the Incorporation of the Maritime Labour Convention 2006. The whole text in Portuguese and English are annexed.

Article 2

The MLC 2006, derogates all the Conventions listed under Article X of this Convention, and all other national labour regulations inconsistent with the MLC.

Article 3

The Minister of Transports and Communication is responsible for carrying out all the necessary procedures for the enforcement of the adoption.

Approved by the Assembly of Mozambican Republic in ___ of ___ of 2010

Publish

The President of the Parliament

Veronica Macamo

Regulation of Maritime Labour Convention 2006

CHAPTER I General Principles Article 1 (Definitions)

1. For the purpose of the present regulation, unless provided otherwise in particular provisions, the following terms means:
 - a) **Convention** – Maritime Labour Convention, 2006;
 - b) **Disciplinary Offence** – Any act by seafarer in violation of his obligations stated in the employment agreement;
 - c) **Employer** – A public or private entity, including the owner of the vessel or any person, (excluding the master of the vessel), working in behalf of the shipowner or representing him in his relationship with the seafarers or third parties, engaged in recruiting seafarers;
 - d) **Forced Labour** – Any work compulsively performed by seafarer against his will and without remuneration;
 - e) **INAMAR** : National Maritime Institute a maritime authority with legal personality, administrative and financial autonomy, under supervision of the Ministry of Transport and Communications;
 - f) **Maritime Authority**: Official organism empowered to oversee, supervise and control any maritime activity, of public order and of territorial integrity in accordance with applicable law;
 - g) **Maritime Labour Certificate** – Certificate issued by INAMAR;
 - h) **Normal Working Hours** – Period during which the seafarer is at disposal of the employer, to perform tasks according to his employment agreement;

- i) **Overtime** – Any work performed outside of normal working hours without remuneration;
 - j) **Seafarer** – Any person who is employed or engaged to work in any capacity on board a ship to which the Convention is applicable;
 - k) **Ship** – means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;
 - l) **Shipowner**- the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility has agreed to take over the duties and responsibilities imposed on ship owners in accordance with the Convention, regardless of whether any other organization or persons fulfill certain duties or responsibilities on behalf of the ship owner;
 - m) **Training Agreement** – document signed between the employer and a young¹⁶ seafarer or his tutor;
 - n) **Wages** – remuneration due to the seafarer for the performance of his work;
 - o) **Employment Agreement**- document signed between the seafarer and the employer where are stated the working conditions and duties and obligations of both parties;
 - p) **Working Place**- the ship or any place where the seafarer regularly performs tasks related to his part of the employment agreement.
2. Except as expressly provided otherwise, this Regulation, applies to all seafarers.
3. In the event of doubt as to whether any categories of persons are to be regarded as “seafarers” or if the Regulation application extends to which kind of ships, the matter should be determined by the competent authority, after consultation with shipowners and seafarers organizations.

Article 2 (Scope of Application)

1. The present regulation is applicable to:
- a) Seafarers working on a permanent basis, under public or private entity;
 - b) Ships engaged in commercial activities, whether publicly or privately owned.
2. Occasional sea workers are excluded for the scope of the present regulation.
3. Fishing ships, traditional built ships and warships are excluded from the scope of the application of the present regulation.

Article 3 (Fundamental Rights)

¹⁶ In case he is underage, where are stated the conditions of vocational training for younger seafarer.

The Maritime Authority is obliged to ensure that the following seafarers rights are observed on the employment agreement:

- a) Freedom of association and effective recognition of the collective bargaining;
- b) Elimination of all forms of forced or compulsory labour;
- c) Effective abolition of child labour; and
- d) Elimination or discrimination in respect of employment and occupation.

CHAPTER II

Minimum Requirements For Recruitment of the Seafarers

Article 4 **(Minimum Age Requirement)**

1. No person under the 16 years age shall be employed in any capacity on board ships.
2. By specific diploma the Council of Ministers, shall define the nature and conditions within which the underage 12 to 15 years, should be employed.
3. Seafarer between ages of 16 and 18 should be accepted on board ships only for training purposes.
4. The seafarers underage shall not perform overtime.
5. The requirement of the paragraph above mentioned may be waived if the night work is necessary as part of their activities.

Article 5 **(Medical Examination)**

1. Seafarers should not be accepted to work on board ship, without providing a medical certificate.
2. Prior to signature of employment agreement seafarers shall undertake a detailed medical examination, to attest that they are medically fit to perform the duties stated in the employment agreement.
3. The result of medical examination shall certify the seafarer's mental and physical fitness to be employed in the capacity of the sea worker.
4. Medical practitioner shall pay special attention to the seafarer hearing and sightseeing fitness.
5. Underage seafarers shall undertake a specified medical examination on regular bases, in order to certify that the performance of the seafaring activities will not put in risk the normal physical and mental development of the younger seafarer.

6. Medical certificate examination should be issued in two copies, where one of them should be kept by the seafarer and another one, should be kept by the employer in the employment records.
7. Medical certificates are to be used for strictly administrative and recruitment purposes and should be kept confidentially.
8. Flag State and Port State authorities may demand to see medical certificates of the seafarers on board at anytime during an inspection of the ship.
9. The above mentioned standards should be observed without prejudice to the International Convention of Training and watchkeeping of Seafarers, 1979 as amended (STCW).

Article 6
(Training and Certification)

1. Seafarers shall not be employed on board the ship without certification of adequate training and competent experience to perform his duties.
2. The statement mentioned at number one of the present Article, includes certification of successfully completed training for personal safety on board ship.

CHAPTER III
Constitution of the Employment Agreement

Article 7
(Recruitment and Placement of Seafarers)

1. Seafarers recruitment shall be effected under legal recruitment and placement system free of any charge.
2. Seafarers shall be informed about their rights and duties under their employment agreement.

Article 8
(Seafarers Employment Agreement)

1. Seafarers employment agreement should be issued in a written employment contract which should be signed by both parties involved, as shipowner and seafarers respectively.
2. Each party of the employment agreement should have a original signed contract.
3. Seafarers have the right to review and seek advice on the terms and conditions stated on the employment agreement.

4. The employment agreement should contain basic information about the parties, involved such as:
 - a) The seafarers full name, date of birth or age and birthplace;
 - b) The shipowners name and address;
 - c) Name of the ship;
 - d) Capacity in which the seafarer is to be employed;
 - e) Normal working hours;
 - f) Amount of gross salary and eventual deductions;
 - g) Means of payment;
 - h) Duration of the contract and conditions for its renewal;
 - i) The seafarers' entitlement to repatriation;
 - j) Place and date of the signatures;
 - k) Date of entry into force;
 - l) Signatures of both parties.
5. The provisions of the above mentioned number should be applicable with no prejudice of the Law of Work.

Article 9
(Wages)

1. All seafarers shall be paid for their work monthly and in full a remuneration, corresponding to the performance of their work, according to what stated in Article 8, number 4 (f) of the present regulation..
2. Shipowners shall take measure to provide seafarers with a means to transmit all or part of their earnings to their family or dependents.

Article 10
(Duration of the Employment Agreement)

1. Seafarer's employment agreement is celebrated for a limited period of time, usually for one voyage or as to be agreed upon between the parties.
2. When the contract is for the definitive period, the contract should fix its expiry date and the port where the voyage ends.

Article 11
(Specificities of the Employment Agreement)

1. The special conditions of employment agreement must include:
 - a) Regulation of work on board, including the original issues;
 - b) Obligations of the shipowner in what concerning in payment of wages;
 - c) Rest schedule;
 - d) Accommodation, alimentation and recreational facilities;
 - e) Medical assistance and compensation in case of accident or illness occurred on board;

2. The special conditions of the contract must be explained to the seafarers on their first enrolment and must be kept at their disposal for further reference.
3. Terms of payment of compensation must be available case by case.
4. Repatriation in case of:
 - a) The voyage ends in a foreign port or in any other port different from the one where the voyage took place.
 - b) Illness or injury or other medical condition which require this measure;
 - c) Shipwreck.
5. On the above mentioned situations, shipowners should provide that the repatriation should be concluded respecting the fundamental seafarer's rights, including security and financial measures.

Article 12
(Termination of the Employment Agreement)

1. The employment contract may be terminate:
 - a) By caducity;
 - b) By mutual agreement; or
 - c) By unilateral decision.
2. The party which unilaterally terminating the contract, shall give to the other, reasonable time of separation notice.
3. The party unilaterally terminating the contract should give to another party reasonable time of separation notice.
4. The employment contract may be terminated at any time, as a result of a disciplinary measure, before fulfillment of the administrative procedures.
5. Upon termination of the contract the employer has to provide the seafarer with a “discharge document”, specifying:
 - a) The date of admission;
 - b) The duration of extinguished contract; and
 - c) The nature of tasks performed by the employee.

CHAPTER IV
Contents of the Working Agreements

Article 13
(Master of Ship)

For the purpose of the present regulation, the employer or shipowners is represented by the master of the vessel, for all activities related to its manning.

Article 14
(Rights of the Parties)

1. Employer has the right to:

- a) Direct all manning activities as well as decide the organization and use of available resources including human resources on board the vessel in order to guarantee its proper function;
- b) Define and assign tasks to seafarers, according to service needs as well as to their technical and professional skills;
- c) Draft internal rules and instructions for organization and discipline purposes; and
- d) Ensure working discipline and apply disciplinary measures.

2. In addition to the fundamental rights attached to all workers, seafarers has the right to:

- a) Be treated with respect and consideration for their integrity and dignity;
- b) Have effective occupation on board the ship and be provided with adequate conditions for the increasing of productivity;
- c) Fair recruitment process free of charge;
- d) Reasonable working hours;
- e) Receive fair, punctual and regular wages including additional payment for any overtime hours of work;
- f) Be provided with proper food and potable water on regular basis and without any charge;
- g) Benefit from professional and technical training in order to enhance their performance and give them access to promotion and professional evolution;
- h) Have a safe and clean working environment protection of physical integrity, while performing his duties;
- i) Benefit of regular medical care examination and social security;
- j) Be provided with mess room and recreational rooms on board;
- k) Freedom of expression and association;
- l) Access to court and fair trial; and
- m) Legal representation.

Article 15
(Organizational Power)

1. The definition and organization of the service includes the right to establish working and charge them if the need arises, in order to ensure the proper functioning of the ship.
2. The charging of tasks or working hours has to be exceptional and cannot be on a permanent basis, unless it implies a promotion for the seafarers.
3. These rights have to be exercised according to the law and without a prejudice of the right of the seafarer to remuneration in framework of overtime services.

Article 16
(Working discipline)

The employer can use the necessary lawful measures to supervise and control the proper accomplishment of tasks, without prejudice of dignity of the seafarers.

Article 17
(Duties of the Parties)

1. The Employers have the duties to:

- a) To treat the seafarers under their rightful employee and respect them as such manner to contribute to their professional and social improvement;
- b) To Contribute to better productivity levels, providing them by adequate working environment system;
- c) To pay Punctually and fairly the seafarers wages;
- d) To inform the seafarers about all relevant issues related to their working life;
- e) To Promote good working relations on board the ship;
- f) To Provide a clean and safe working environment and diligently ensure the fulfillment of all hygiene and safety requirements; and
- g) To Provide medical assistance to seafarer on board whenever need or on shore at the nearest port of call if the needs arises.

2. Employees duties:

- a) Diligently perform the tasks assigned to them in the framework of their duties on board;
- b) Make proper use of working time in order to contribute to better productivity;
- c) Comply with master's instructions relating to discipline and safety at work unless contrary to their rights;
- d) Show punctuality and assiduity on work; and
- e) Inform or justify to the master in case of any impossibility to perform their duties arises.

Article 18
(Independency of wages)

1. Seafarers should be paid regularly, according to what it stipulated at employment agreement.
2. The payment of wages shall not be dependent of the earning of freight by the ship.

3. Shipowners should provide seafarers by mechanisms to transmit all or part of their earnings to their families or dependants or legal beneficiaries.

Article 19
(Bankrupt of the Employers)

In case of the bankrupt of the employers, the seafarers wages or any other outstanding payments to the seafarers have priority over other professional obligations of the ship owner.

Article 20
(Void Waiver)

Any agreement between the parties where seafarers renounces to his basic rights is void.

Article 21
(Hours of Work)

Maximum hours of work shall be of 14 hours in any 24 hours period and 72 hours in each 7 periods.

Article 22
(Hours of Rest)

The minimum hours of rest shall be not less than 10 hours in any 24 hours period and 77 hours in any 7 days period.

Article 23
(Performance of Overtime)

1. Whenever possible, overtime shall be performed with prior consent of the seafarer.
2. Seafarer overtime shall not exceed 4 hours per day.
3. Overtime shall be remunerated with a fixed percentage of wages.
4. Underage seafarers shall not perform overtime.

CHAPTER V
Disciplinary Measures

Article 24
(Disciplinary Power)

1. The master has disciplinary power over the seafarers at his service and exercises it for disciplinary infractions committed by them while on duty on board the vessel.

2. The disciplinary procedures shall be undertaken according to appropriate regulations in case of public or private relationship.

Article 25
(Publicity and Records)

With exception to minor admonishments, disciplinary measures taken against the seafarer have to be recorded in his disciplinary file and can be taken into consideration when assessing future disciplinary cases.

Article 26
(Right of Defense)

The seafarer has the right to defend himself against the disciplinary measures, whenever he has not committed the offense he is being accused to be done or if he feels that the disciplinary measures is abusive and disproportional to the offense committed.

CHAPTER VI
Compliance and Enforcement

Article 27
(Marine Labour Certificate)

Each ship shall carry on board a duly filled Maritime Labour Certificate, attesting of its each certificate has validity of no more than 5 years upon which, a new inspection shall be out and a new certificate issued.

Article 28
(Maritime Labour Convention)

1. Together with the documents mentioned in previous article, each ship shall carry on board, a copy of the Maritime Labour Convention.
2. Each document shall have a printed version in the official language of the flag State of the ship and a version in English.

Article 29
(Inspection)

The competent Maritime Authority may, at any time deemed necessary performance inspection on board the ships, in order to verify the proper compliance and application of the rules stated in the present Regulation.

CHAPTER VII
Final Dispositions

Article 30
(Sources of Maritime Labour Law)

1. The 2006 International Maritime Labour Convention will be the main source of the present regulation.
2. The present regulation shall be applied without prejudice of any dispositions of the general Work Law of the Republic of Mozambique.

Article 31
(Implementing Agent)

The implementation of the present regulation shall be of the responsibility of the Minister which superintends the area of Transports and Communication.

Article 32
(Doubts and Omissions)

Any doubts and omissions issued from the interpretation and application of the present Regulation, shall be resolved by using the applicable standards for similar cases, especially the rules applicable for public or private works.

Article 33
(Entry into Force)

The present Regulation will enter into force sixty days after its publicity.



Republic of Mozambique
COUNCIL OF MINISTERS

Project of Decree n.º ____/2010 of ____/of ____

By Resolution number ____/____/2010, the Assembly of Republic of Mozambique approved the incorporation of Maritime Labour Convention 2006 in its legal system.

The Convention consolidates and updates certain number of ILO Conventions and Recommendations on maritime issues, into a single, comprehensive document covering such issues as conditions of employment, hours of work, food and catering, medical care, repatriation and accommodation at sea.

ILO aims that the Convention became a major maritime instrument which stand alongside SOLAS, MARPOL and STCW Conventions (which Mozambique is part), and fundamental component in the regulatory framework of shipping.

Ensuring the protection of seafarers welfare, the Council of Ministers, making use of the powers conferred in Article 204 number 1 (f) of the Constitution, determines:

Article 1

It is approved the Regulations of the Maritime Labour Convention, which is part of this Decree.

Article 2

The Regulation referred to in Article 1 enter into force sixty days after its publicly.

Approved by the Council of Ministers, in ____ of ____ of 2010

Publish

The Prime -Minister

Aires Bonifacio Ali