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**WORLD MARITIME UNIVERSITY**

Malmö, Sweden

**THE IMPLEMENTATION OF REGULATIONS  
4.2 AND 4.5 OF THE MARITIME LABOUR  
CONVENTION, 2006 IN NIGERIA**

By

**FATIMAH TEMITOPE LAWAL**

**Nigeria**

A dissertation submitted to the World Maritime University in partial  
fulfilment of the requirements for the award of the degree of

**MASTER OF SCIENCE  
in  
MARITIME AFFAIRS**

**(MARITIME LAW AND POLICY)**

2022

## Declaration

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

(Signature):



(Date): 20<sup>th</sup> September, 2022

Supervised by:

**Associate Professor Khanssa Lagdami**

.....

Supervisor's affiliation

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## Abstract

Title of Dissertation: **The Implementation of Regulations 4.2 And 4.5 of the Maritime Labour Convention, 2006 in Nigeria**

Degree: **Master of Science**

The main drivers of the shipping industry are the human elements known as seafarers whose activities and welfare are regulated by the International Labour Organization (ILO). However, in the early years of shipping, seafarers were faced with work hazards, poor working and living conditions, poor wages, inequality and lack of social security.

In order to curb the unfair labour practices and codify existing labour laws, ILO introduced the Maritime Labour Convention (MLC,2006) with the aim of ensuring all-inclusive global protection of the rights of seafarers which is known as seafarers' Bill of Right. However, the mode of implementation vested in Member States shows the challenges in the Implementation of MLC,2006 in some countries.

The purpose of this dissertation is to examines the implementation of MLC,2006 Regulations 4.2 and 4.5 in Nigeria and challenges hindering effective implementation of the convention. The paper will discuss the background of the convention vis-à-vis its regulations, standards and guidelines. It further analyzes the Nigerian Legal Framework and the roles of National and International Maritime Stakeholders on MLC, 2006. Unfortunately, Nigeria is still faced with some challenges hindering complete implementation of the MLC, 2006 Convention such as legislative issues, and capacity building of MLC, 2006 inspectors.

Accordingly, the research will attempt to explain the concept of ship-owners' liability and social security gaps in the implementation of MLC,2006 and make recommendations for successful implementation of MLC,2006 in Nigeria.

**KEYWORDS:** Maritime Labour Convention, 2006, Seafarers' Right, Social Security

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## List of Abbreviations

- BIMCO – Baltic & International Maritime Council
- CBA – Collective Bargaining Agreement
- ECA – Employee Compensation Act, 2010
- EEZ – Exclusive Economic Zone
- GDP – Gross Domestic Product
- IBF – International Bargaining Forum
- ICJ – International Court of Justice
- ICS – International Chamber of Shipping
- IFSDRW – International Federation of Ship, Dock and River Workers
- ILO – International Labour Organization
- IMEC – International Maritime Employment council
- IMO –International Maritime Organization
- ISAN – Indigenous Ship-owners Association of Nigeria
- ITF – International Transport Workers Federation
- ITLOS – International Tribunal on Law of the Sea
- LCAS – London Committee of Asian Seamen
- MAAP – Maritime Academy of Asia and the Pacific
- MARPOL – International Convention for The Prevention of Pollution from Ships
- MASS - the Maritime Autonomous Surface Ships
- MLC, 2006 – Maritime Labour Convention
- MSA- Merchant Shipping Act, 2007
- MWUN – Maritime Workers Union of Nigeria
- NIMASA – Nigerian Maritime Administration and Safety Agency
- NIMASA ACT – Nigerian Maritime Administration and Safety Agency Act, 2007
- NJIC – National Joint Industrial Council
- NLAC – National Labour Advisory Council

NMNOA – Nigerian Merchant Navy Officers and Water Transport Staff Association  
NNSL – Nigeria National Shipping Line  
NPA – Nigerian Ports Authority  
NSC – Nigerian Shippers Council  
NSITF – Nigerian Social Insurance Trust Fund  
P&I CLUB – Protection and Indemnity Club  
PRA – Pension Reform Act, 2014  
ROs – Registered Organizations  
SEA – Seafarers Employment Agreement  
SOAN – Ship Owners Association of Nigeria  
SOLAS – Safety of Life at Sea  
STCW – Standard of Training, Certification and Watch-keeping  
TEU – Twenty-Foot Equivalent Unit  
UNCLOS – United Nations Conventions on the Law of the Sea  
UNCTAD – United Nations Conference on Trade and Development  
WMU – World Maritime University

# CHAPTER ONE: INTRODUCTION

## 1.1 BACKGROUND

Shipping is an international business regulated by Treaties and Conventions under the directives of the International Maritime Organization (IMO). The International Labour Organization (ILO) regulates the human element in shipping. These rules and regulations among others are the four pillars conventions that governs the operations of the ships in the global maritime space, namely; Safety of Lives at Sea (SOLAS), International Convention for the prevention of Pollution from Ships (MARPOL), Standards of Training, Certification and Watch-Keeping (STCW) and the Maritime Labour Convention (MLC) 2006, which is an ILO Convention known as seafarers' bill of right. It is regarded as the fourth pillar of IMO's regulatory framework. (IMO, 2022)

The MLC, 2006 addresses the gap in the United Nations Convention on the Law of the Sea (UNCLOS) in respect of "the lack of UNCLOS's recognition of the ocean as a location of labor or a "human rights site" (Carey, 2017). Thus, the aim of the aforementioned MLC, 2006 Convention is to ensure all-inclusive universal protection of the rights of seafarers and "to establish a level playing field for countries and ship-owners committed to providing decent working and living conditions for seafarers, protecting them from unfair competition on the part of substandard ships" (Carey, 2017, p 19).

The working conditions of seafarers has improved over the last two centuries. However, they are still facing challenges in a variety of ways. Maritime labor is still a particularly specific type of work that unveils all seafarers to hazardous physical, psychological, and social situations (Stribis, 2019). The severity and peculiarities of the profession, such as seafarers' long-term separation from shore and the high mobility of the workforce, have compelled most governments to implement marine labor legislation. The ILO has been the place for the establishment of particular provisions for employment at sea on a global scale.

Interestingly, the ILO like the IMO is a regulatory organization that operates with a model of tripartism Gött (2020) explains ILO's distinctive tripartite structure as containing three main organs ie government, trade union and employers. Piper et.al (2021) further noted that the distinctive tripartite structure of the ILO, which empowered a group of actors (governments), trade unions as well as employers was revolutionary since ILO's establishment came into force in 1919. This model creates an active avenue for bringing together representatives of governments and the economy's social partners (employers and workers) to publicly debate and cooperatively shape labor issues (Gött, 2020). ILO is an Agency under the umbrella of the United Nations (UN) saddled with duties of developing policies that promote social justice and ensure occupation, health and safety of all workers such as seafarers and dockworkers (ILO, 2022). However, this dissertation focuses more on the seafarers as well as their welfare benefits stipulated in the provisions of the MLC, 2006.

An historical event happened on 23<sup>rd</sup> February, 2006 at the 94<sup>th</sup> session of the ILO in Geneva, where the Maritime Labour Convention, 2006 was adopted. The promulgation of the MLC, 2006 is as a result of the need for codified labour standards that assures the protection of rights of seafarers who are the main drivers of the shipping industry (ILO, 2022).

The MLC, 2006 consolidated the previous 37 Conventions regulating different aspects of Maritime Labour issues with the exclusion of fishing which has a precise instrument "ILO Work in fishing Convention, 2007 (Stribis, 2019). Furthermore, the implementation MLC,2006 of has aided in raising awareness of the necessity for safeguarding seafarers' well-being while also ensuring they have a pleasant working environment. It also provides a level playing field for the ship-owner by ensuring a good competitive maritime industry (Zhang & Zhao, 2014).

The MLC, 2006 entered into force on 20<sup>th</sup> August, 2013 and comprises of three different parts; Articles, Regulations and Code. These parts although different, they are related. The Articles enjoy the mandatory force over member states as it stipulates the scope of application of the MLC for member states. The Regulations are a

mandatory aspect of the Convention. It is the foundational principle that lays out the basic rights of seafarers and the associated obligations of Member States and other aspects addressed by the Convention. The Code contains precise provisions for executing the provisions of the Regulations. It is subdivided into Standards (Part A) mandatory and Guidelines (Part B) non mandatory (Stribis, 2019). The Regulation and Codes are embedded in 5 Titles which covers the following:

1. The minimum requirements for seafarers to work on a ship,
2. The conditions of employment,
3. Accommodation, recreational facilities, food and catering,
4. Health protection, medical care, welfare and social security protection and
5. Compliance and enforcement

The ratification of the Convention and, most importantly, its effective implementation relies on member states taking their obligations seriously and implementing international regulations into their national laws and policies, as well as enforcing these laws and policies at the national level. In this sense, it is the Flag State Control's responsibility to guarantee that the MLC, 2006 is ratified, domesticated, and also adopted into the country's national legislations (Fotteler, Andrioti & Jensen, 2020). On the other hand, the Ports State Control mechanism, makes enforcement of the MLC, 2006 possible by ensuring that ship-owners fully comply, particularly with regard to manning and crewing, while also taking into account that seafarers are not exposed to hazards that may be harmful to their well-being, among other enforcement responsibilities as enshrined in the Convention.

Importantly, the MLC is constantly evolving and its periodic amendment have shown its determination of ensuring future validity and relevant capability to resolve new issues that were not earlier provided for in the existing chapters of the Convention. The swift response of the MLC to major problems of the Maritime Industry has enticed its ratification by 101 Nations as at 2022 (ILO, 2022) which encompasses over 94%

of the world's maritime fleets (Fotteler, Andrioti & Jensen, 2020). More recently, the ILO Special Tripartite Committee on MLC had its 4<sup>th</sup> session between 5<sup>th</sup> -13<sup>th</sup> May, 2022 where among other things some amendments were affected in the MLC, 2006. The following are the parts that were amended:

<b>S/N</b>	<b>REGULATIONS</b>	<b>TITLE</b>
1.	1.4	Recruitment and Placement
2.	2.5	Repatriation
3.	3.1	Accommodation and recreational facilities
4.	3.2	Food and catering
5.	4.1	Medical care on board ship and ash
6.	4.3	Health and safety protection and accident prevention

Table 1. 1 : ILO Special Tripartite Committee's MLC amendments

Notwithstanding the existence of the framework of MLC, 2006 commonly referred to as the seafarer's bill of right which stands as the fourth pillar of International Maritime Law for quality shipping to compliment the other three pillars STCW, MARPOL and SOLAS, that seeks to address protection of seafarers' rights and resolve anomalies. Regrettably, seafarers are still faced with challenges such as piracy attacks, abandonment, and non-payment of wages, accidents, low manning, sexual harassment, resting hours and lack of quality health insurance Whitlow, & Subasinghe, 2015).

Nigeria is a Member State of ILO that ratified MLC, 2006 in 2013. The Nigerian Maritime Administration and Safety Agency (NIMASA) is the regulatory Agency under the supervision of the Ministry of Transportation saddled with the responsibilities of ensuring compliance with the IMO and ILO Conventions while also ensuring maritime safety, security, prevention of marine pollution, protection of maritime labour, training and certification of seafarers and developing indigenous shipping (NIMASA Act, 2007). The Agency alongside other actors in the maritime industry namely; Nigerian Ports Authority (NPA) and Nigerian Shippers Council

(NSC) who carry out other responsibilities in the sector have jointly ensured the protection of the Nigeria maritime domain.

The increasing literature on the challenges that member states face in the implementation of the MLC, 2006 has shown several issues. Studies have shown that implementation of MLC, 2006 has been delayed due to a variety of issues such as global economic instability, political hurdles, environmental calamities, and social security scheme for seafarers (Carey, 2017). Thus, non-implementation will cause serious problems not only for the Seafarers engaged, but for all parties involved.

Some of the significant challenges faced by the Nigerian Government regarding the implementation of MLC, 2006 includes continuous delay in domestication of the Convention into national laws and lack of adequate specialized personnel (McConnell, 2011). Due to these challenges Nigerian seafarers continue to suffer violation of their rights such as non-payment of wages, getting wages far lower than their counterparts from other nations and delay in payment of compensation and hospital bills (Aguda 2017). These abuses faced by Nigerian seafarers has necessitated the need for speedy action on full implementation of MLC, 2006 in Nigeria as non-implementation of the Convention will continue to affect the seafarers and the maritime industry at large. Thus, Regulations 4.2, and 4.5 of MLC, 2006 provides for ship-owners liability and social security protection (Aguda, 2017),

Regulations 4.5 necessitates ratifying states to make efforts towards achieving advanced and all-inclusive social security for workers. States are given leeway to take into account their countries and make a social security model that will be enforceable in their states. In the Nigerian context, the rights to decent working and living and working conditions, medical and other social protection services provided in Regulations 4.5 are intended to proffer solution to the lack of social security for seafarers to further improve the working conditions and provide the needed encouragement for would-be seafarers to join the profession (Piñeiro, 2022).

Furthermore, as part of the responsibilities of the flag state, the Convention established the need for flag states to monitor and ensure that ship-owners are complying with



their social security duties, particularly if they make any contributions to national social security systems in the case of seafarers. Similarly, Article 4.2 deals with the ship owners' liabilities to ensure the protection of seafarers from the financial obligations of injury, sickness or death, while in the line of duty (EduMaritime, 2021). These Regulations are particularly beneficial to Nigeria's maritime industry as a whole because of the social protection and support it offers to maritime workers. Thus, this study aims to analyze the implementation of these Regulations 4.2 and 4.5 in Nigeria maritime industry vis-a-vis the use of the tripartite Collective Bargaining Agreement to ensure compliance in the sector.

## **1.2 PROBLEM STATEMENT**

Despite the existence of a legislative framework protecting seafarers' rights in Nigeria, namely NIMASA Act, Merchant Shipping Act and the Collective Bargaining Agreement on minimum standards for seafarers, there is concern as to whether the existing legal framework can effectively protect seafarers' wellbeing on board and ashore. MLC, 2006 compliance varies per jurisdiction and seafarers are subject to a variety of national laws, including those of flag states, port states, and seafarer providing nations. Furthermore, while the MLC, 2006 has resulted in a revolution in the human rights of shipping professionals, it is not a panacea for all issues that seafarers encounter (Zhang, P. et al., 2020).

Social security is one of the basic fundamental human rights (ILO, 2019). These are monies paid as compensation for medical care, permanent injury, sickness benefit, death and old age benefit sustained while in an employment (EduMaritime, 2021).

Ship-owners liability and social security are intertwined as both aspects deal with payment of compensations to seafarers in the event of accident or death. The main purposes of Regulations 4.2 and 4.5 as provided by MLC, 2006 includes

***“To ensure that seafarers are protected from the financial consequences of sickness, injury or death occurring in connection with their employment” and “To ensure that measures are taken with a view to providing seafarers with access to social security protection”*** (MLC, 2006, p 58 & 70). Furthermore, the MLC, 2006 gave every member state the liberty to develop categories of social security in line

with their economy. As a result, a range of models have emerged that rely on workers' sustainability regardless of their race, and that they perform their duties towards companies situated in their national territory (Carballo, 2020).

Historically, International seafarers have been exposed to hazardous situations that can have a significant influence on their physical and mental health. The Nigeria maritime sector has a peculiar case of unfair treatment of seafarers by ship-owner such as non-payment of wages, poor leaving conditions of seafarers onboard their vessel. Furthermore, in event of an accident, ship-owners have engaged in corrupt practices to avoid paying adequate compensation even with the existence of the Collective Bargaining Agreement. These acts exhibited by the ship-owners have instigated negative effects in the society thereby discouraging aspiring indigenous seafarers from developing a career path in shipping. Given the current situation, it is clear that there are gaps in the implementation and enforcement of MLC, 2006, Regulation 4.2 and 4.5, and the Collective Bargaining Agreement. Thus, it is of utmost importance to examine the implementation of the Regulations and propose modalities to strengthen and stiffen the implementation of the Collective Bargaining Agreement for the Nigerian maritime industry.

### **1.3 AIMS AND OBJECTIVES**

1. To examine the implementation of regulations 4.2 and 4.5 of the MLC, 2006 by the Nigerian Maritime Administration and Safety Agency, in addition to the compliance of ship-owners with MLC, 2006 and Collective Bargaining Agreement.
2. To discuss challenges that has obstructed successful implementation of MLC, 2006 in Nigeria.
3. To examine alternative measures and propose recommendations for the Maritime Administration to undertake in terms of enforcement in order to ensure proper implementation of MLC, 2006.

### **1.4 RESEARCH QUESTIONS**

1. What is the National Legal framework for implementation of Regulations 4.2 and 4.5 in Nigeria?

2. How can the challenges hindering implementation of the MLC, 2006 be improved?

### **1.5 METHODOLOGY**

This research will employ the legal-dogmatic, analysis of the national legal framework put in place for implementation of the Convention. In addition, a semi-structured survey interview is used, targeting Nigerian maritime stakeholders which includes the maritime administration, ship-owners, seafarers, labour unions and international maritime stakeholders based on the provisions of MLC, 2006.

Secondary information will be sourced from Internet sources, journals, news articles and books.

### **1.6. EXPECTED RESULT**

The goal of this research study is to come up with practical solutions to the challenges or gaps facing the implementation of MLC, 2006 in Nigeria more specifically regarding regulations 4.2 and 4.5. It is also anticipated that the recommendations presented in this study will be valuable to Nigeria's Maritime Administration, as they will serve as a modality for successful implementation of the Convention.

## **CHAPTER TWO: LITERATURE REVIEW**

The term maritime labour or seafarer is as old as the vessel. In order to ensure comprehensive understanding of seafarer and implementation of the seafarer's bill of right (MLC, 2006) provision of historical background surrounding them are necessary. Thus, this chapter will examine the establishment of ILO, promulgation of MLC, 2006, roles of actors in the maritime industry and provisions of Regulations 2 of the MLC, 2006

### **2.1. BRIEF ON THE ESTABLISHMENT OF INTERNATIONAL LABOUR ORGANIZATION (ILO)**

International trade and labour issues pre-exists the creation of the International Labour Organization (ILO). ILO was founded in 1919 under the League of Nations as part of the treaty of Versailles after World War I and the Bolshevik revolution as a reflection on the need to achieve peace in the world and improve labour conditions. It was adopted as a specialized agency under the UN in the Declarations of Philadelphia in 1946. Notably, the impetuses behind the creation of ILO came from security, political, humanitarian and economic considerations. Also, the significance of social justice, global peace, understanding of economic independence of every nation and cooperation to achieve good working conditions global labour force were obvious to the forefathers; these are stated in the preamble of the ILO Constitution (ILO, 1996-2022).

Importantly, ILO's labour standards cut across all spheres of professions. However, the maritime industry have unique challenges, harsh working conditions and maritime related issues which have been treated separately from other forms of labour. ILO is an organization created by States and it acknowledges the sovereignty of the States while they also form part of its decision making bodies. These sovereign right proffer States a flexible guide. The declaration of Philadelphia still constitutes the aims and objectives of the ILO which are founded on human right, freedom of association, ability to engage in collective bargaining process, elimination of forced labour, child labour, ensuring minimum age for labour and gender equality (Ali, 2015).

Furthermore, in order for ILO to regulate the maritime industry, the organization has adopted over 65 conventions aimed at mitigating the challenges in the maritime industry. It had in 1926, set up the Committee of Experts saddled with responsibilities of supervising application of all ILO standards and establishment of the International Institute for Labour Studies in Geneva and International Training Centre in Turin. ILO is the only tripartite agency of the UN that promotes social dialogue by bringing together representatives of government, employers and employees from over 187 countries to establish labour standards that promotes good working conditions for maritime labours (ILO, 2022).

Interestingly, since inception of the organization, ILO currently has 190 Conventions, 208 recommendations and 6 protocols. As predicted, some of these conventions have been repealed while others have been revised/codified into another law. ILO conventions like other regulatory bodies are reactive in nature and it was the emergence of new challenges and the need to codify existing laws that led to the enactment of MLC, 2006. A broader view of what MLC,2006 entails will be discussed next (ILO, 2022).

## **2.2. OVERVIEW OF MARITIME LABOUR CONVENTION (MLC) 2006**

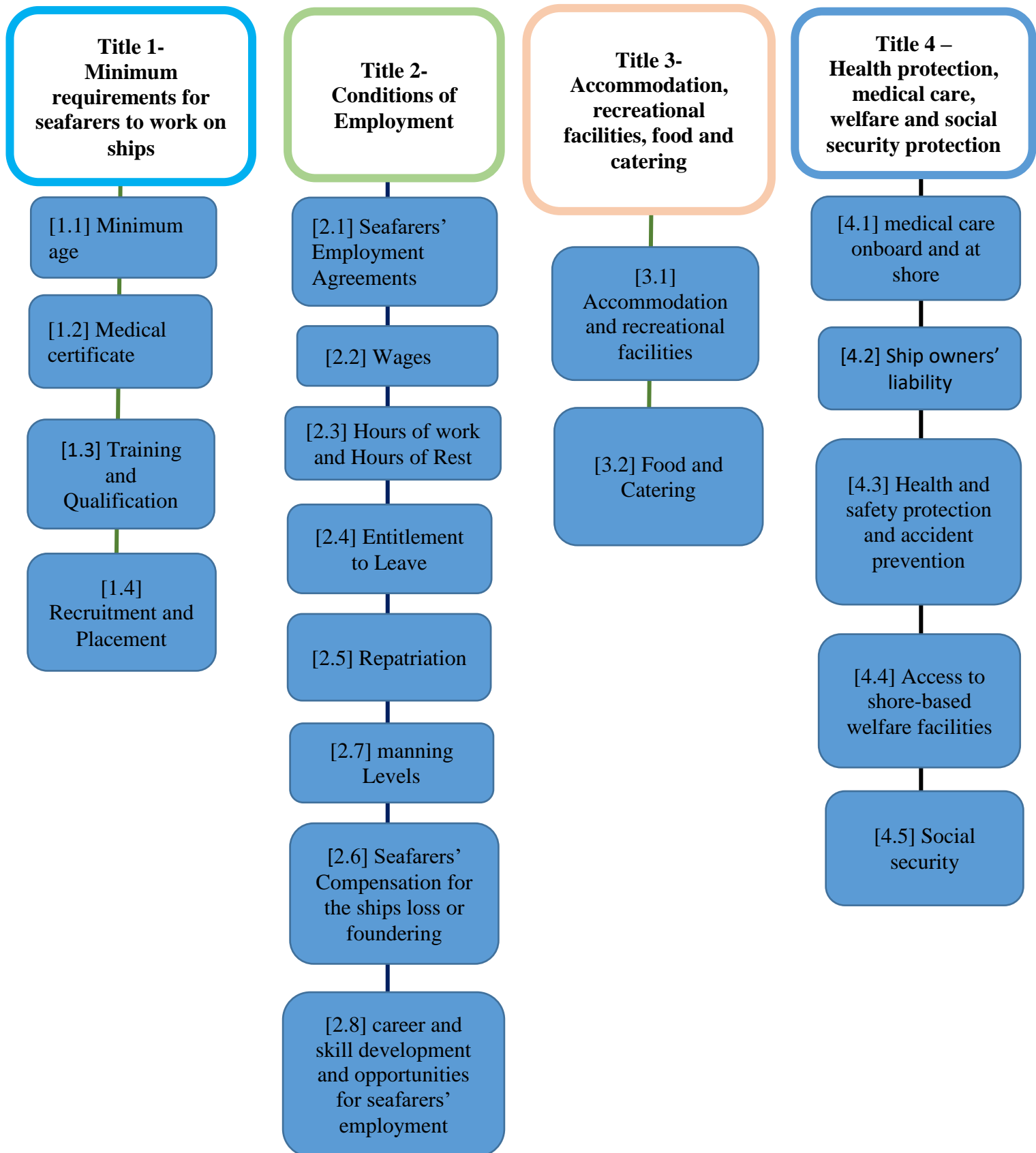
The medieval structure of the shipping industry was fluid and rules governing States were different. The lack of uniformity in the industry attracted some dishonest ship-owners who took advantage of the situation to cut corners and pay less wages, as well as providing poor working and living conditions for seafarers. Prior to the enactment of MLC, 2006, there were previous conventions of the ILO which tackled different issues. However, the flexibility of these conventions did not attract a lot of ratification and challenges in the maritime industry still lingered due to lack of internationally acceptable minimum standards for seafarers (Guide, n.d).

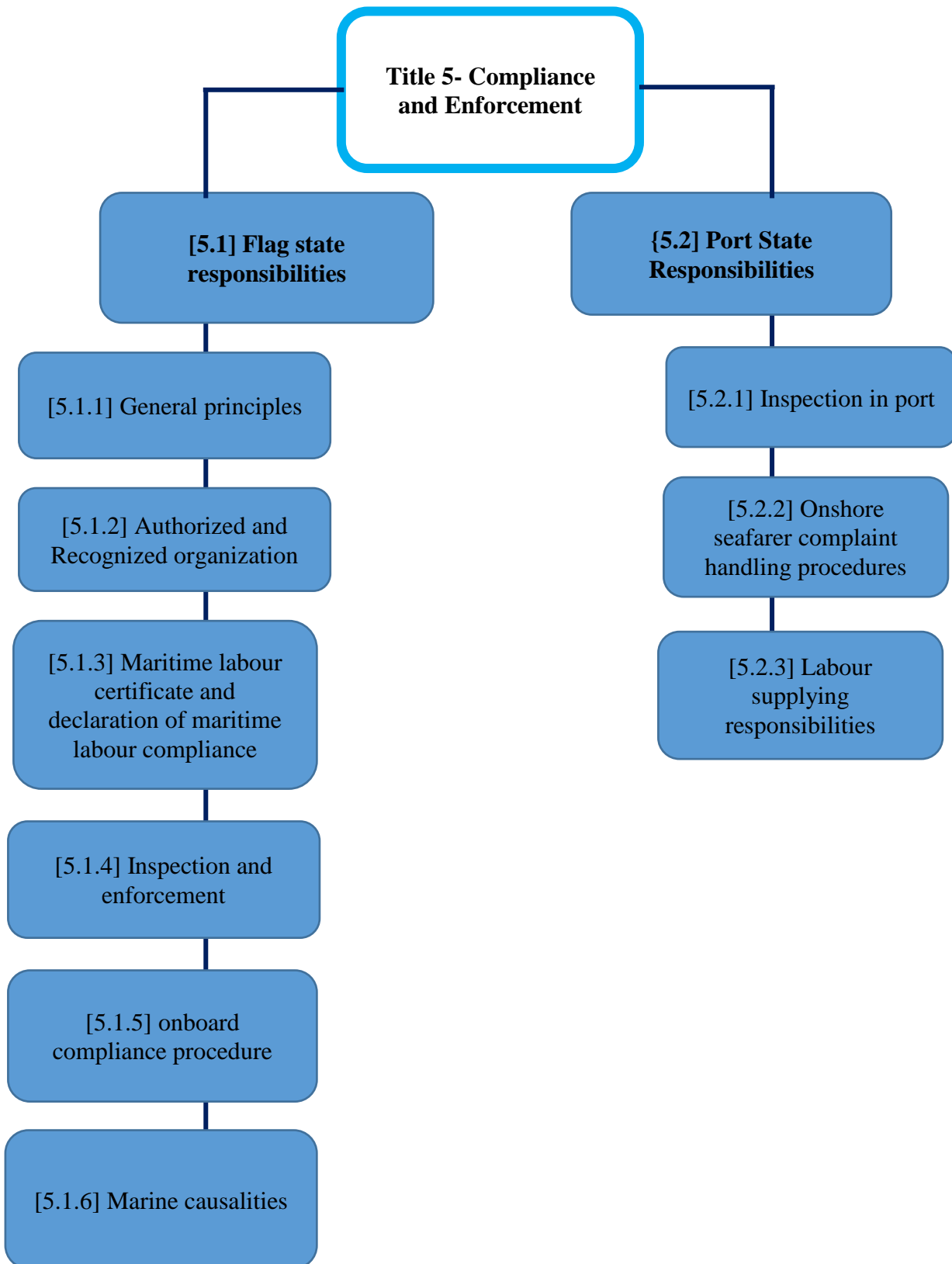
MLC,2006 was adopted at the 10<sup>th</sup> maritime session and 94<sup>th</sup> of International Labour Conference of the ILO on 23<sup>rd</sup> February, 2006 in Geneva and it entered into force 20<sup>th</sup> August, 2013. The agreement on codification of the 37 previous conventions was formed as an outcome of the joint resolution of maritime stakeholders in 2001. The

consolidation was adopted to set an elaborate minimum standard on working and living conditions of all fields of maritime labour. It also seeks to accomplish both human rights especially right to decent working and living condition and economic goals as both economic, social and labour rights are intertwined with a fair competitive level playing field. It is known as seafarers' Bill of Right due to the global standard set by the convention to ensure an equality in the maritime industry (Zhang & Zhao, 2014).

Furthermore, the MLC, 2006 is made up of 100 pages, 5 titles and comprises of three different but related parts that includes Articles, Regulations and Codes which put forth the responsibilities and minimum requirements of seafarers, ship-owners, flag state and port state control respectively. The Article establishes principles and liabilities that are mandatory and Regulations gives ample terms, while the codes are divided into Standard A –mandatory and Guideline-B non-mandatory part. The Codes are conjoined with each aspect of the Regulations. Additionally, the Titles encompasses the regulations and codes which are sub-divided (See Figure1). However, this dissertation will focus more on discussing the implementation of regulations 4.2 and 4.5 in the later part of this dissertation (Stribis, 2019).

Figure 1. 1: Breakdown of MLC, 2006







Interestingly, 101 States accounts for 94% of the global maritime industries that have ratified the MLC, 2006. Ratification of the MLC, 2006 automatically denounces the application of most of the previous Conventions by ratifying States. Furthermore, ratification of the Convention does not automatically give its enforcement rights in the states. However, the responsibility of ensuring domestication of the Convention into the national laws and adequate enforcement mechanism of member states are that of their flag state control, while the port states control ensures compliance of ship-owners, seafarers and other actors with the convention (Fotteler, Andrioti & Jensen, 2020).

It is a known fact that regardless of whether a state is a ratifying state or not, the widespread application of the Convention cut across everyone. This means that where a non-ratifying state vessel pulls up at the port of a ratifying state, it is compulsory for such vessel to comply with MLC, 2006 requirements. Thus, it is of great advantage for all states to comply owing to the fact that shipping is an international trade and the non-ratification limits the ports of calls for such state (Mantoju, 2021).

Notably, the flexibility status of most conventions, commonly hinders its effective implementation globally. The aims of the MLC, 2006 is to ensure decent working and living condition of seafarers is very apt and firmly laid-out in the Convention. However, the rights given to states to determine the implementation and domestication of the Convention into their national laws gives room for a different mode of application. It also gives states the discretion of picking parts of the Convention to comply with or disregard.

Arguably, the problems if seafarers are not limited to food and other amenities onboard vessels, the lack of uniformity in wages, hour of work and rest, social securities and liabilities are portraying the Convention has been weak and not delivering on its global standards quest as the inequality in payment of different amount in wages for different nationalities still persist in the maritime industry. This dissertation will discuss the implementation of Regulations 4.2 and 4.5 of MLC, 2006 and its challenges in Nigeria. However, before that a little insight will be given into Title 2 of the Convention for an adequate understanding of other aspect of the Convention.

### **2.3. MLC 2006 AS FOURTH PILLAR OF INTERNATIONAL MARITIME ORGANIZATION (IMO)**

The shipping activities were regulated by mainly IMO's 3 legal frameworks which includes International Maritime Organization (IMO), namely; Safety of Lives at Sea (SOLAS), International Convention for the prevention of Pollution from Ships (MARPOL) and the Standards of Training, Certification and Watch-Keeping (STCW) with the goal of ensuring seamless shipping, adherence to set out standards to mitigate loss of lives at sea, prevent pollution and sustainable use of ocean resources (IMO, 2022).

However, the aforementioned conventions do not have adequate provision guiding the rights of seafarers. Notably, seafarers are the main drivers of the maritime business whose rights are mostly tramped upon despite the hazard they are exposed to in their chosen career. Hence, the need to ensure protection of rights and wellbeing of the seafarers became essential and the ILO came up with the MLC, 2006 which is commonly referred to as the seafarers' bill of right. The MLC, 2006 demonstrates a deliberate choice of mainstream labor standards, compliance, and enforcement techniques within the current regulatory environment and equalizes labor and social standards (McConnell, 2011).

The aim of MLC, 2006 on ensuring decent working and living condition for seafarers cannot be over-emphasized as seafarers' rights and wellbeing are sacrosanct to the success of shipping activities (McConnell, 2011).

Although, the MLC, 2006 is not an initiative of the IMO which is the agency solemnly responsible for shipping activities. The connection of IMO to the conventions, however goes beyond this complementarity as IMO had also plugged into the principles of the Convention, thus giving it the required motivation in ensuring its global acceptance and well published for the good of the seafarers.

Conclusively, the MLC, 2006 as the fourth pillar IMO regulatory framework protects both ship-owners and the seafarers, thereby enabling a thriving maritime business (IMO, 2022).

## **2.4 THE ROLES OF ILO AND IMO IN IMPLEMENTATION OF MLC, 2006**

ILO and IMO play significant roles in the shipping sphere as the ILO is saddled with responsibility of setting labour standards that are globally acceptable while IMO establishes rules for safety, security of ships and environmental protection. The ILO and IMO have a close working relationship as both have been instrumental in establishing regulations to ensure decent working and living conditions of seafarers onboard all vessels meets minimum criteria through the MLC, 2006 (Fei & Routledge, 2018).

The agencies have a joint working committee dealing with issues of financial security and increase in abandonment cases of seafarers. This committee in turn reports to the Legal Committee of IMO as well as the ILO governing bodies. ILO and IMO both receive and share reports on issues affecting seafarers and maritime affairs. Thus, in order to ensure prompt response to issues, ILO and IMO operate a joint database which entails the list of abandonment cases and other issues. This collaboration has further reinforced the aim of the agencies geared towards ensuring a viable maritime industry and decent work agenda for seafarers (IMO, 2022)

## **2.5. OVERVIEW OF TITLE 2 OF THE MLC, 2006**

The welfare of seafarers on board a ship and ashore is crucial for sustaining their health and well-being, and it is also intimately related to how well they perform at work. The MLC, 2006 offers a comprehensive collection of international standards that are based on maritime labor instruments already adopted by ILO with the aim of ensuring social justice, equal employment opportunities devoid of racism and gender inequalities (Zhang et.al, 2020).

Notably, seafarers are key drivers of global economy and this essentiality makes it necessary for them to have a decent working and living condition onboard vessels. The MLC, 2006 have the employment conditions, wages and hours of work and rest covered in its Title 2.

### **2.5.1. SEAFARERS EMPLOYMENT AGREEMENT**

All humans have the right to safe, secure and conducive working environment with quality standards, fair terms of employment with decent work agenda and seafarers are not left out of this equation. Over the years, human resources management have become a serious part of the maritime industry's managerial practice which relates to their condition of employment (Zhang et.al, 2020)

Regulations 2.1 of the MLC, 2006 deals with the condition of employment of seafarers. These conditions are embedded in the Seafarers Employment Agreement (SEA) which categorized the necessary requirements of the seafarers during the period of employment as provided in Standard A2.1.4. This includes: the monthly wages and its calculation, required minimum and maximum hours of work and rest, annual leave and payment, repatriation, social security, medical treatment, termination of agreement conditions and reference to the Collective Bargaining Agreement (CBA) (if applicable); that is inclusion of the CBA in the SEA indicates the acceptance of the repatriation entitlement set out in Standard A2.5.2 (MLC, 2006).

The 2018 amendment of the MLC, 2006 was intended to protect the seafarers during pirate attacks by ensuring that their wages are paid even while in captivity and their SEA continue to exist. However, there is no mandatory provisions for financial guarantees.

Furthermore, to enforce adequate compliance with the provisions of Title 2, copies of SEA must be placed onboard the vessel and can be inspected by Flag and Port state control officials. SEA is one of the 14 prescribed areas of shipboard inspection and certification that ship-owners have to comply with (Aye, 2016).

### **2.5.2. WAGES**

It is part of seafarers' entitlement to receive their wages on schedule and regular basis. Wages are defined in ILO's Protection of wages convention 1949 as follow

*“The term wages mean remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual*

***agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered”***

(Co59, 1949 p-1).

Historically, in the 17<sup>th</sup> and 18<sup>th</sup> centuries, seafarers’ wages were determined using the freight/profit made by the vessel. Thus, where the vessel did not make profit, the seafarers did not get paid, and this necessitated the enactment of statutes that ensured protection of the seafarers right to wages.

The issue of regular payment of wages was first addressed by the MLC, 2006 in Regulations 2.2, Standard A2.2.1 where it stated that

***‘Each Member shall require that payments due to seafarers working on ships that fly its flag are made at no greater than monthly intervals and in accordance with any applicable collective agreement’*** (MLC, 2006, p 27).

This provision sets out the minimum requirements for payment of seafarers’ wages. The concept of minimum wage is the lowest amount that an employee can be paid which is legally accepted by national and international regulations. This is aimed at protecting the employees from getting paid extremely low wages by their employers and curb the inequality in the society (Mantoju, 2021).

Wages is one of the known factors that tangibly affect the life of an employee and this is one of the challenges the MLC strives to deal with. However, the provision of Regulations 2.2 is constantly being breached by ship-owners especially during the 2008 financial crisis and the COVID-19 pandemic, in which a lot of seafarers experienced the hardship of rendering services without payment. However, this further buttresses the fact that member states need to proffer strict measures that will ensure ship-owners complies with regulations 2.2 and national laws such as CBA (Zhang et. al, 2020).

### **2.5.3. HOURS OF WORK AND REST**

Seafarers are known to work severely for long hours and this can affect them both physically and psychologically. The knowledge of the danger posed by fatigue to seafarers when they are denied adequate rest ignited the adoption of the convention of seafarer's hours of work and manning of ships, 1996, No180 to regulate, specific minimum and maximum hours of work and rest of seafarers. This is because fatigue has been identified as a main component of marine casualties. Thus, the regulation is to serve as a medium of preventing fatigue and by extension loss of goods and ships (Baumler et.al, 2021).

ILO has adopted several conventions set to mitigate fatigue which includes, the Hours of Work and Manning (Sea) Convention 1936 (No.57), Wages, Hours of Work and Manning (Sea) Convention, 1949 (No.93), convention of seafarer's hours of work and manning of ships, 1996, No180 and the most recent one is the MLC, 2006 (ILO, 2022). It is worthy to note that the previous conventions were not widely ratified like the MLC, 2006

Standard A2.3.5 provided clear directives on the number of hours of work and rest as follows: *“The limits on hours of work or rest shall be as follows:*

*(a) maximum hours of work shall not exceed:*

*(i) 14 hours in any 24-hour period; and*

*(ii) 72 hours in any seven-day period;*

*or*

*(b) minimum hours of rest shall not be less than:*

*(i) ten hours in any 24-hour period; and*

*(ii) 77 hours in any seven-day period.*

The MLC, 2006 is a vital component of seafarer's everyday life and thorough implementation of the convention will not only advance fairness but also inspire confidence in member state's capacity to safeguard seafarers operating within their borders (Mansyur et.al, 2021)

## **2.5.4 LEAVE**

Another measure setup to mitigate the effect of fatigue is annual leave. Annual leave means granting a seafarer the permission to stay off work with entitlement to a pay called annual leave bonus. Regulation 2.4 elucidates the need for seafarer's entitlement to annual shore leave. However, the MLC, 2006 leaves the calculation of the leave to member states to determine in accordance with their national laws and possibly in line with their CBA (Bartulović et.al, 2018). In the case of Nigeria, the national laws take into account the needs of seafarers and other labours while recommending 30 working days for annual leave and 7 working days for casual leave. In addition, the annual leave with pay entitlement shall be calculated on the basis of a minimum of 2.5 calendar days each month of employment.

In as much as it is good practice to comply with granting seafarer's annual leave some challenges of their work may hinder them from enjoying their right. An example is those working on offshore platform that are usually 60-120 miles away and cannot get back to shore easily. Also the recent ship notification regarding berth availability affects shore leaves because when there is no berth the vessel will slow steam to avoid hanging around ports if it arrives early. This shows that more measures need to be put in place to allow seafarers get their annual leave as at when due (Mantoju, 2021).

## **2.6. ROLE OF INTERNATIONAL MARITIME STAKEHOLDERS**

### **2.6.1. INTERNATIONAL TRANSPORT WORKERS FEDERATION (ITF)**

The International Transport Workers Federation (ITF) is an egalitarian confederation that connects nearly 700 affiliated trade unions from 150 countries and representing close to 20 million workers who may have otherwise be secluded, as well as assisting the members in securing social justice, equality, and rights around the globe. ITF was founded through the drives of international camaraderie and belief in the latin maxim of "Ex Unitate Vires" meaning Unity in strength in 1896 and was known as the International Federation of Ship, Dock and River Workers (IFS DRW). It adopted its current name in 1898 as a result of its expansion and inclusion of transport workers that are in the non-maritime industries. ITF's root is centered on the outcome of its

several special Conferences such as the Federation of European Seamen and Railway in 1890s, the international co-operation of European Transport Unionists during the dock strikes of 1896-7 in Rotterdam and Hamburg (ITF, 2022).

Furthermore, ITF has through its affiliated unions set out to achieve the following goals; to protect and defend its members' rights, promote respect and ensure equality for trade union globally, guarantee access to justice, ensure fair working conditions for all its members and provide aid to all transport workers in distress. ITF has played significant roles in the maritime industry and its roles in defending seafarer's wages, social security, decarbonization and the repatriation of seafarers during COVID-19 cannot be overstated.

ITF has worked with other international stakeholders in the maritime industry like the International Chamber of Shipping (ICS), Baltic & International Maritime Council (BIMCO) and International Maritime Employment council (IMEC) in order to ensure welfare of seafarers and dockworkers standard in line with global best practice is achieved in the maritime industry. The organization has raised awareness on issues regarding seafarers' wellbeing, mental health, decarbonization and autonomous shipping (ITF, 2022).

ITF as a social partner has gained high level of appreciation from international regulatory bodies under UN like IMO and ILO, obtained a consultative status with IMO in 1961 which gives it a platform to narrate the challenges of seafarers and ensure adequate measures are proffered by the regulatory bodies. ITF's delegate to IMO attends all governing bodies meetings and it serves on 5 committees and 7 sub-committees (ITF, 2022). Additionally, ITF had recently reached an agreement with the ICS in Geneva on the need to elevate the minimum wages of seafarers globally in line with the MLC, 2006.

Interestingly, ITF's enforcement mechanisms are guided by the international Conventions most especially the MLC, 2006 and ITF's agreements i.e CBA, special agreement and total crew cost agreement. The ITF's CBA laid out a global industry-level negotiating framework with satisfactory analysis to influence the minimum wages, social security and other anticipations, without exclusion of those on ships



without ITF agreement. Many ITF agreements with labour employers have shown the level of influence the organization has in the international industrial relations sphere (Saksela-Bergholm & Arasanz, 2020).

### **2.6.2. INTERNATIONAL MARITIME EMPLOYERS COUNCIL (IMEC)**

The International Maritime Employers' Council (IMEC) was founded over 50 years ago by ship-owners employing seafarers from the Indian subcontinent. IMEC is dedicated to maritime labour relations issues with its representation covering over 250 shipping companies. The organization serve as a replacement to the London Committee of Asian Seamen (LCAS), a body established during World War II to oversee the wages and working conditions of seafarers (IMEC, 2022).

IMEC contributed greatly to the establishment of the Indian National Maritime Board and an equivalent of same in both Pakistan and Bangladesh respectively. The Boards regulates the wages and living and working conditions of their nations' seafarers and IMEC participated in the negotiations of the seafarers' welfare benefits. Additionally, the organization provides advice for its members on issues relating to human resources and welfare and this has contributed to the organization's wider range of participation in many labour supplying countries' negotiation and its activities has grown to a full-fledged international organization with its registration in 38 countries around the globe (IMEC, 2022).

The primary objectives of the organization include to provide a forum for employers to exchange views and information on seafarers' wages and working conditions, provide active and effective employers expression in negotiations of seafarers' wages, to motivate, support and organize the development of collective bargaining arrangements between employers' and seafarers and take part in training and providing facilities for the training of future seafarers globally. Furthermore, the organization has established cadet training programmes on behalf of its members at the Maritime Academy of Asia and the Pacific (MAAP), in the Philippines (IMEC, 2022)

The organization works alongside ITF and the International Bargaining Forum (IBF) and its members enjoy the IBF benefits which includes dispute resolution procedures, grants, advice & assistance and the IBF privileged green card.

### **2.6.3. INTERNATIONAL CHAMBER OF SHIPPING (ICS)**

ICS is a worldwide trade union representing over 80% of international merchant ship-owners and operators through their national association. It has members from over 40 countries which gave ICS its distinctive and genuine ability to speak for and represent a vast majority of shipping companies from all facets of the shipping community (ICS, 2022).

ICS was founded in 1921 at the international shipping conference with 14 national shipping associations and its establishment was symptomatic to the new international cooperation after World War I. The main aim of ICS is ensuring the creation, promotion and adoption of high operating standards, legal framework that prioritizes safety, good working environment, fair and competitive market in the shipping industry. The association has influence at IMO and ILO meetings and it was among the first non-governmental organization to be given consultative status. ICS articulates the position of its members on regulatory proposition of the shipping industry that will ensure quality, safety and environmental protection standards (ICS, 2022).

The ICS, played a significant role during the outbreak of the COVID-19 pandemic. The association was seen calling on government to ensure adequate medical care was provided for seafarers after the discovery of denied medical care inhibited towards the seafarers at the ports during the pandemic. Thus, to help mitigate the issues concerning seafarers' health the ICS created series of medical guidelines for ship-owners and operators which will help preserve the seafarers' health. These guidelines were also published by the IMO (Dolumbia-Henry, 2020). Additionally, in order to aid seafarers' well-being, the ICS has jointly with ITF published the inclusion of guideline B4.3.1, paragraph 1 as part of the 2016 amendment of MLC, 2006 referencing the issue of bullying and harassment of seafarers onboard ships. According to the ICS/ITF guidance, shipping companies should create a written statement that outlines their harassment and bullying policies which should be distributed to all seafarers (Carballo& Kitada, 2020).

#### **2.6.4 ROLES OF PROTECTION AND INDEMNITY CLUB (P&I CLUB)**

In mid eighteenth century, the ship-owners were faced with liability problems which their old-fashioned hull financiers could not cover. This crisis led the formation of the first ship-owner mutual association in 1855 known as the “Ship-owners Mutual Protection Society” (Purwendah et.al, 2019).

P&I Club is a non-profit making mutually beneficial association that provides insurance cover for their members against third party liability claims which might have been incurred during the operation of the vessel (Algantürk, 2006). A mutual insurance is where an insurer agrees based on common interest to indemnify in the event of a risk preventing a person’s benefit. The club doubles as an insurance company and legal firm because they help their members with all aspects of their liabilities such as providing investigation experts, legal advice and payment of claims (Seward, 2002).

In addition, the club has a premium paid by ship-owners who are members of that club and it is known as “Call” which comprises of advance and supplementary calls. These monies are determined by based on the number of ships, age, flag, tonnage, trades and nationality of crew. Thus, where a member has a claim, then the club will meet the first \$5million claim and where the claim is above \$5million and up to \$30million, it will be shared among all members (Purwendah et.al, 2019).

Furthermore, the P&I clubs offer insurance against the following liabilities:

- i. Death or injuries suffered by seafarers, passengers and third party
- ii. Environmental pollution
- iii. Collision
- iv. Towage operations
- v. Grounding and wrecking
- vi. Damages to fixed and floating objects
- vii. Liability to cargo

The P&I Clubs play significant roles in ensuring ship-owners discharge their liabilities and further protect seafarers by ensuring seamless payment of compensations those who have claims. Additionally, there exist Thirteen (13) International groups of P&I Clubs with their affiliated associations (IGP&I, 2022), namely:

1. American Steamship Owners Mutual Protection and Indemnity Association, Inc
2. The Britannia Steam Ship Insurance Association Limited (Britannia P&I)
3. Gard P&I (Bermuda) Ltd.
4. The Japan Ship Owners' Mutual Protection & Indemnity Association
5. The London Steam-Ship Owners' Mutual Insurance Association Limited
6. The North of England Protecting & Indemnity Association Limited
7. The Shipowners' Mutual Protection & Indemnity Association (Luxembourg)
8. Assuranceforeningen Skuld
9. The Standard Club Ltd
10. The Steamship Mutual Underwriting Association (Bermuda) Limited
11. Sveriges Ångfartygs Assurans Förening / The Swedish Club
12. United Kingdom Mutual Steam Ship Assurance Association Ltd
13. The West of England Ship Owners Mutual Insurance Association (Luxembourg).

Unfortunately, Nigeria like other African countries does not have an indigenous P&I Club which has made the ship-owners seek solace in other countries' P&I Clubs. In doing so, the ship-owners are paying huge sum as premium.

## **CHAPTER THREE**

### **IMPLEMENTATION OF REGULATIONS 4.2 AND 4.5 IN NIGERIA**

#### **3.1. BACKGROUND ON NIGERIA'S SHIPPING INDUSTRY**

As a country on the Western part of Africa, surrounded by Chad to the north-east, Niger Republic to the north, Cameroon to the east and Benin Republic to the west, Nigeria is the most populous country in Africa and ranks seventh populous country in the world with a population of over 218 million. Nigeria covers a landscape measuring about 923, 769 square kilometers (356,669 sq. miles) and is located in the Southern part of the Gulf of Guinea in the Atlantic Ocean (Falola, 2001).

Nigeria has a coastline of about 850km with a protracted Exclusive Economic Zone (EEZ) further than 200 nautical miles and an inland water above 4,000km. Nigeria is made up of a collection of different nations conquered by the British and amalgamated to become one nation (Falola, 2001). Nigeria is known for her rich mineral resources, oil production capacity which is estimated to an average of 1.5 to 1.7 million barrels per day (Sonnichsen, 2022) and the unique biodiversity in her waters. The oil and gas sector funds 70% while agriculture funds 29.94% of the nation's Gross Domestic Product (GDP) between 2019 – 2021 (Sasu, 2022).

The maritime industry is irrefutably important to the economic growth and historical development of the country. The ancient maritime activities in Nigeria was carried out via the use of wooden boats and floating contraptions which are used in conveying goods and services within the country most especially around the coastline of Bayelsa, Calabar and Bonny Island. Prior to Nigeria's participation in international trade, the British colonial masters controlled the shipping activities of the country and the notable foreign carriers were Woremann Line, Elder Dempster Line and Palm Line (Damachi & Zhaosheng, 2005).

The country prefigured momentous development in the maritime industry with the opening of Lagos Lagoon to trade and approval of dredging and erection of first east

mole in 1906 which further led to the development of Apapa and Port Harcourt Ports (Chilaka, 2015). Thus, in 1959 Nigeria established its first shipping company known as the Nigeria National Shipping Line (NNSL) in partnership with Dempster and Palm Lines and it became a fully owned Nigeria company in 1962 with 27 vessels. However, in 1996, NNSL was liquidated due to lack of maintenances of its resources, which led to the establishment of Nigerian Unit Line (Damachi & Zhaosheng, 2005).

The economic progress and introduction of indigenous private shipping in Nigeria encouraged the international trade of the country with Europe, Asia and America. As a result, Nigerian maritime activities and shipping gained prominence in the continent of Africa. However, over the years private shipping companies experienced downside and some of them do not own any vessel thereby living the indigenous shipping again in the hands of foreign ship-owners. Thus, it is safe to say Nigerian shipping still has a substantial amount of foreign control (Faith, 2019).

Furthermore, some of the notable aforementioned challenges led to the establishment of the Nigerian Maritime Administration and Safety Agency (NIMASA) whose mandates includes development of indigenous shipping vis a vis international trade and implementation of international regulations (NIMASA Act, 2007). Since the establishment of NIMASA, the Nigerian shipping industry has experienced a surge in container shipping, improvement of cargo handling equipment and labour practice with an average throughput of 1,528,520.000 TEU in 2020 (UNCTAD, 2022). The Nigerian shipping industry is contributing immensely to the eradication of unemployment and economic growth of the nation.

### **3.2. RATIFICATION OF MARITIME LABOUR CONVENTION 2006 IN NIGERIA**

Notably, the Maritime Labour Convention (MLC) 2006 is a convention of the International Labour Organization (ILO), a regulatory body with set of rules guiding its member states. Any member state that ratifies the MLC, 2006 is largely required to make accessible precise information on its obligation and actions taken for successful implementation of the Convention in accordance with Article VI of the Convention.

Nigeria became a member state of ILO in 1960 and it has ratified 40 conventions of the ILO most of which have now been codified into MLC, 2006.

Interestingly, Nigeria deposited its instrument of ratification of the MLC, 2006 to the ILO on 18<sup>th</sup> June, 2013, it came into force a year later as it is the ILO standard for its conventions to enter into force a year after member state ratifies it. Nigeria ranked the 37<sup>th</sup> member state to ratify the convention and the 5<sup>th</sup> in Africa after Benin, Liberia, Morocco and Togo (ILO, 2022).

Nigeria makes use of a dualist approach for incorporating the international regulations into its national laws. Firstly, the Convention is expressly included in the Merchant Shipping Act (MSA), while the authority of implementation domiciles in the Minister of Transportation or secondly, after ratification, the Convention goes through the legislative processes of Act enactment in accordance with Section 12 of the Constitution of Federal Republic of Nigeria, 1999 as amended (Okeke & Anushiem, 2018). Although, the MLC, 2006 is subjected to the second approach. However, some part of the convention is presently being implemented through the MSA, 2007 because of the availability of provisions that covers aspects of the MLC, 2006 in the MSA, 2007. Thus, the lack of enactment of an Act for the implementation of the Convention is one of the hindrances of all-encompassing implementation of the MLC, 2006 in Nigeria. Furthermore, the subsequent chapter of this dissertation will further highlight other challenges, which have necessitated the needless amendment of the MSA.

The implementation of the MLC, 2006 is under the mandate of NIMASA and it has through its national legal framework been able to implement the Convention in Nigeria even without the domestication of the Convention. NIMASA carries out both flag state and port state inspection of ships within its territorial waters. This is to ensure adequate compliance of both indigenous and international vessels in its waters with MLC, 2006 and other regulations. The deposition of the instrument of ratification was carried out by the then Minister of Labour, Employment and Productivity Mr. Emeka Wogu who in his address emphasized Nigeria's recognition of the need for international labour standard for seafarers and Nigeria's commitment to implement the convention (ILO, 2022).

The MLC, 2006 is being implemented through the Merchant Shipping Act, 2007, NIMASA Act, 2007 and Collective Bargaining Agreement (which is periodically reviewed). Furthermore, the ratification of the Convention has brought a high level of improvement into the Nigerian maritime industry such as setting minimum standards for seafarers' welfare, capacity building and improved international trades (Afun, 2022)

### **3.3. IMPLEMENTATION OF REGULATIONS 4.2 AND 4.5 IN NIGERIA**

Social security and ship-owners liability are vital aspects of the shipping industry, thus, this segment will give a little insight into social security and ship-owners liability for better understanding.

#### **SHIPOWNERS' LIABILITIES**

A ship-owner is a person or an organization who owns the vessel via outright purchase of bareboat charter and has accepted the duty of operating the vessel and other responsibilities required of a ship-owner.

Regulations 4.2 of the MLC, 2006 provides for ship-owners liability known as minimum requirements for contractual compensation. This aspect of MLC, 2006 mandates the ship-owners to put in place satisfactory procedures and financial security that will ensure protection of seafarers from financial corollaries of sickness, injury or death that may occur in course of their work. The provision of medical care and funeral expenses in the case of death of a seafarer falls within the responsibility of the ship-owner (McConnell, 2011). Furthermore, the Convention gives member States the leeway through their national laws to limit the liability of ship-owners or excludes ship-owners from outright liability.

Importantly, the Flag state has a duty to ensure that ships flying its flag complies with the provision of financial security that can be used for payment of compensation when the need arises. This financial security has gained more attention owing to the 2014 amendment of MLC, 2006 which requires the issuance of certificate of financial security which must be carried onboard vessels (MLC, 2006). The IMO Legal



Committee vividly discussed the issue of non-compliance with the financial security provision during its 109<sup>th</sup> session in March, 2022 where the committee urged member states to ensure adequate measures are put in place to promote compliance (IMO, 2022).

As earlier stated, the amendment of the Convention introduced new requirements amongst which is the provision of Standard 4.2.1 paragraph 8 which provides that claims for contractual compensation can be brought by the affected seafarer, his/her representative, designated beneficiary or the next of kin and the money will not be less than the minimum stipulated payment. This provision is to ensure protection of the seafarer and family (Petrinović et.al, 2017).

## **SOCIAL SECURITY**

The concept of social security dates back to 1889 when Chancellor Otto von Bismarck introduced social security programs in Germany. Social security is an aspect of human right that is recognized by the ILO's Declaration of Philadelphia 1944, UN declaration of Human Rights 1948 the International Covenant on Economic, Social and Cultural Rights in 1966. While social security is a known concept of human right, in the early years many people could not benefit from national social security scheme most especially those who work outside the shore of their country. Seafarers fall in the categories of the most affected as their profession takes them outside the shores of their countries, and even when they benefit, it will be in a fractional way as compared to those residing and working within (Carballo, 2020).

Social security is a retort to the global clamor for protection of workers against specific life threatening perils. The mandate of social security is to ensure good health, access to medical care in case of accident, financial stability such as wages, compensation in case of injury, death or old age retirement that can help avert inequality and promote social presence and self-worth which is provided to citizens and regulated by law (Aye, 2016).

As one of the obligations of ILO, social security is rooted in well-being that aims to provide social justice for humans. The Social Security Convention, 1952 of the ILO

set out criteria, which covers nine (9) principal branches of social security namely; medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefit that states have to consider to achieve extensive protection for their workers (ILO, 2022). However, due to the flexibility skill adopted by ILO, which allows States to define their social security via their economic status, it has brought about assortments of social security models. The diversities in the social security of States is one of the challenges faced by seafarers. Worthy of note is that seafarers are not confined to work within a particular territory and they are usually on the receiving end when social security issues come up.

Furthermore, the jurisdictional issue earlier mentioned seems to have been resolved, by the provision of Article 94 of UNCLOS, which allows Flag states to undertake jurisdiction on matters concerning ships flying its flag alongside the crew on administrative, technical and social matters. However, since social security laws are unilaterally crafted on national principles, seafarers from developing countries are still discriminated against in some developed countries. Examples are Spain and Italy, which excludes seafarers working onboard their vessels and residing in developing countries from their national social security scheme (Carballo, 2020).

In order to permanently resolve the inequities of social security, the MLC, 2006 swerved from the position of Article 94 of UNCLOS, put the responsibility of social security on all member states, and not Flag states. Social security is imbedded in Regulations 4.5 of the MLC, 2006 and it adopted the earlier stated 9 branches of the Social Security Convention of 1952 and further gives member state the right to include at least 3 of the 9 branches of social security protection in their laws. It obliged ratifying member states to take actions that will ensure progressive achievement of comprehensive social security in their states (ILO, 2022).

Regulations 4.5 of MLC, 2006 did not assign the duty of providing social security fortification to any particular State, but it explicitly stated it as responsibility of member states to provide complementary social security protection to all seafarers with its territory. This is evident in the provision of Standard A4.5.3, which states the following:

*“Each Member shall take steps according to its national circumstances to provide the complementary social security protection referred to in paragraph 1 of this Standard to all seafarers ordinarily resident in its territory. This responsibility could be satisfied, for example, through appropriate bilateral or multilateral agreements or contribution-based systems. The resulting protection shall be no less favourable than that enjoyed by shore workers’ resident in their territory” (MLC, 2006).*

However, the MLC, 2006 still places important role on the flag states in respect of social security as provided for in Regulations 4.1 (medical care) and 4.2 (Ship-owners liability). The flag states are required to ensure compliance with provision of medical care for the crew, both onboard and ashore and ship-owners liabilities compliance in line with international regulations (Piñeiro, 2022). The concept of Regulations 4.2 and 4.5 intertwines as both deal with payment of contractual compensation to seafarers in the event of sickness, injury or death. Furthermore, the complementary social security provision can be carried out via suitable bilateral or multilateral agreement or a contribution-based approach. This happens with vivid consideration of the nation’s economic status.

As earlier stated, Nigeria is a ratifying State of the MLC, 2006. However, the concept of social security is not limited to the maritime sector and by that, there are other regulations guiding social security in Nigeria. Section 14 (2) of the Nigerian constitution 1999 as amended makes provision for the right to security and social welfare of its citizens. There are laws and regulations promulgated on the bases of fundamental rights of Nigerian citizens.

Thus, social security right in Nigeria falls under the purview of the Pension Reform Act (PRA), 2014, which regulates provision of retirement benefits and infirmity benefits through contributory scheme. This means that the employer contributes 10% and the employee contributes 8% monthly, totalling 18 per cent monthly contributory pension. Furthermore, the Employee Compensation Act, 2010 (ECA) makes broad

provisions for payment of compensation to sick, injured or dead workers during the course of their employment (Anifalaje, 2017). In addition, the government also established the Nigerian Social Insurance Trust Fund (NSITF) to cover private sector employees. It is a contributory scheme that enables employees get their pension and compensation in the event of an accident or death. the agency works in compliance with PRA and ECA (NSITF, 2022).

The Nigerian maritime sector like other sectors in the Nation is subjected to the laws and regulations of the country alongside international regulations. NIMASA has ensured incorporation of PRA, ECA and other necessary regulations into its laws. The implementation of the Regulations 4.2 and 4.5 draws its implementation powers from the MSA, NIMASA Act, 2007 and the CBA. These national laws make provisions for condition of service of seafarers and they will be discussed in the subsequent section.

### **3.4. ANALYSIS OF INSTITUTIONAL FRAMEWORK FOR IMPLEMENTATION OF MLC, 2006 IN NIGERIA**

The desire for an improved labour standard and maritime labour practice necessitated Nigeria's constituent ratification of the germane ILO Conventions. Nigeria has over the years ratified over 40 ILO Conventions in an effort to enhance its maritime labour practices and safeguard seafarers' rights. The Country has further shown its commitment and dedication towards good working, living condition and seafarers right by ratifying the MLC, 2006 alongside its three amendments.

The regulatory framework of Nigeria is implemented through enactment of national laws and espousal of international laws into its national legislation. The right of seafarers to decent work is entrenched into various national laws such as Merchant Shipping Act, 2007, NIMASA Act, 2007 and Collective Bargaining Agreement. These legislative frameworks will be discussed next (Igwe et.al, 2019).

#### **3.4.1. NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY ACT, 2007 (NIMASA ACT)**

The NIMASA Act was promulgated in 2007 and it is the Act that established the Nigeria Maritime Administration with the mandate of overseeing and ensuring the growth of the maritime industry, its cabotage trade, welfare of the seafarers and

implementation of international Conventions. In addition, Section 22(1) of the act summarized the Agency's duty to carry out some of the under-listed statutory functions (NIMASA, 2022):

- Flag and Port State Control
- Ship Registration, Survey and Certification
- Wreck receipt, removal and Maritime search and rescue
- Maritime Labour administration
- Maritime safety, security, environment and marine pollution and prevention.

Importantly, the NIMASA Act, 2007 was enacted has the necessary requirements to unfetter and advance Nigerian seafarers and indigenous businesses from their status as bystanders to major actors in international maritime business, which will have a significant positive impact on the Nigerian economy (Ngwu & Nwokedi, 2019).

Furthermore, the Agency's power to oversee issues of concerning maritime labour's welfare, wages, registration and dispute resolution are derived from Section 27 of the NIMASA Act, 2007 which provides as follows:

***27(1) The Agency shall***

***(a) register and maintain a register of every dock worker, seafarer, stevedoring company and seafarer employer, jetty, terminal operators and offshore platforms or terminals;***

***(b) provide training, conduct examinations and regulate the certification of seafarers and the conditions of service of dock workers and seafarers;***

***(c) ensure that dock workers and seafarer employers comply with existing regulations and standards in relation to crewing, wages, safety, welfare and training of dock workers and seafarers at ports and on board vessels; and***

*(d) upon notification, investigate disputes relating to the employment of dockworkers and seafarers (NIMASA Act, 2007)*

These aforementioned responsibilities are diligently carried out by the Maritime Labour Services Department of the Agency. Thus, by virtue of the aforementioned provision, the department supervises the tripartite CBA for Seafarers and monitor ship-owners complies of the established minimum standard via the CBA. The bill for amendment of the NIMASA Act, 2007 is currently undergoing its review at the Legislative house of the country. The aim of the proposed amendment is to strengthen the regulatory instrument of the maritime sector to meet the need of the current reality (Punch, 2022).

### **3.4.2. NIGERIAN MERCHANT SHIPPING ACT, 2007 (MSA)**

The Merchant Shipping Act is a unique and vital international instrument that deals with maritime management and practice such as registration of ships, licensing, ship building, wrecks, prevention of marine pollution, carriage of dangerous goods by ship, and seafarer welfare (Abdulkadir, 2021).

The Nigerian Merchant Shipping Act, 2007 (MSA) was enacted in 2007. It stipulates the aforementioned requirements for ship operation in Nigeria. Part X of MSA makes provision for issues relating to seafarers' welfare which include accommodation, medical treatment and compensation for Nigerian seafarers working onboard ships flying its flag. Section 183 provides a comprehensive information of when and how a seafarer can be entitled to medical treatment and compensation (MSA, 2007).

*1) Where a master, seaman or cadet belonging to a Nigerian ship is*

*hurt or injured in the course of his service in the ship or suffers from any illness, not being an illness due to his own willful act or default or to his own misbehavior,*

*the expenses of:*

*(a) providing the necessary surgical and medical advice and attendance and*

*medicine; and*

*(b) the maintenance of the master, seaman or cadet until he is cured, or he dies or is returned to his proper return port and of his conveyance to the port; and*

*(c) in the case of death, his burial, shall be defrayed by the owner of the ship without any deduction on that account from the wages of the master, seaman or cadet.*

*(2) Nothing in this section shall prejudice the rights of any master, seaman or cadet under the Workmen's Compensation Act or the National Social Insurance Trust Fund Act, so however, that no person shall be entitled to periodical payments under any of these Acts in respect of the period during which the owner of the ship is liable to defray the expenses of the maintenance of the person under this part of this Act.*

*(4) The expenses of all medicines, surgical and medical advice and attendance given to a master, seaman or cadet whilst on board his ship shall be defrayed in the manner provided in subsections (1) and (2) of this section.*

It is glaring that the MSA contains all-encompassing provisions on the mode of maritime management and practice which is applicable to both indigenous and foreign vessels operating within the territorial waters of Nigeria. It also recommended application of significant international conventions (Abdulkadir, 2021).

### **3.4.3. COLLECTIVE BARGAINING AGREEMENT**

The Collective Bargaining Agreement (CBA) is an ILO's tripartite model which creates an avenue for the meeting, negotiation and deliberation amongst employers, employees and under the supervision of the Government with the aim of setting up modalities that will build solid working relationship that is based on mutual respect and understanding. The CBA is used to set up minimum standards that regulates seafarers' working and living conditions which has improved the labour management and reduced industrial relation disputes to its barest minimum (ILO, 2022).

Furthermore, in 2000, ITF and IMEC played an important role in the maritime industry for concluding an international CBA model which is aimed at regulating and protecting social benefits of seafarers. Their model is considered as the only true sector-based approach of CBA (Bourque, 2008).

CBA is one of regulatory models through which the MLC,2006 is implemented in Nigeria. CBA as earlier stated is derived through negotiation of all necessary stakeholders. These stakeholders include representatives of seafarer's employers, Trade Unions (Maritime Workers Union of Nigeria represents the Ratings and Nigerian Merchant Navy Officers represent officers), the representatives of NIMASA, Ministry of Transportation and Ministry of Labour, Employment and Productivity (NIMASA, 2022).

In addition, the CBA encompasses all aspect of seafarers' welfare and set the minimum sum to be paid by the ship-owners in events of employment, hours of work and rest, wages, holidays, leave, medicals, manning level, repatriation, compensations, pensions, misconducts, abandonments, termination of employment, onboard accommodation, food, personal protective equipment, disputes and monitoring & compliance. The CBA undergoes a periodic review and the slated year for review of Nigeria's CBA is 2years. A copy of the CBA will be annexed to this dissertation.

The Nigerian maritime industry's CBA model adopted the creation of separate CBA for the coastal seafarers and offshore seafarers. The reason behind this model is based on the fact that coastal and offshore seafarers have a distinct mode of work and in order to avoid an inadequate CBA that will not attend to the needs of all seafarers; therefore,



the National Joint Industrial Council (NJIC) decided to create separate CBAs. The subsequent part of this chapter will further discuss the role of the NJIC in the CBA.

The CBA like any other regulatory instruments have their challenges. One of the notable challenges of CBA is that it is based on country by country bases and the lack of uniformity of it may result in some countries having a well institutionalized CBA while others may still be less formalized. This kind of challenge often prevent the complete actualization of the aims of the CBA across board (ILO, 2022). Interestingly, one of the challenges of Nigeria's CBA is its flexibility which allows negotiation and signing of CBA on company by company bases. This model will infuse inequality in the system.

### **3.5. ROLES OF INDIGENOUS STAKEHOLDERS**

In order to have a thriving maritime industry, there is need for collaboration amongst necessary parties of the industry to ensure implementation and compliance with regulatory framework. Thus, this segment will discuss the roles of the maritime administration, ship-owners and NJIC in ensuring successful implementation of Regulations 4.2 and 4.5 respectively.

#### **3.5.1. ROLES OF NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY (NIMASA)**

Nigerian Maritime Administration and Safety Agency (**NIMASA**) is the competent authority saddled with the responsibility of regulating the Nigerian maritime industry. NIMASA was established on 1<sup>st</sup> August, 2006 and Section 22 of NIMASA Act, 2007, Cap 224 LFN 1990 provides for the functions of the agency which includes promotion of Maritime Safety and Security, Maritime Labour, Shipping development and regulations, Promotion of Commercial Shipping and Cabotage activities, prevention of maritime pollution and protection of marine environment (NIMASA, 2022).

**NIMASA** as the maritime administrator is also empowered to implement conventions of ILO and IMO in Nigeria. The power to implement these conventions most especially the MLC, 2006. The power to implement Regulations 4.2 and 4.5 is embedded in Section 27© of NIMASA Act, which states:

*(c) ensure that dock workers and seafarer employers comply with existing regulations and standards in relation to crewing, wages, safety, welfare and training of dock workers and seafarers at ports and on board vessels; and*

Thus, the Maritime Labour Services Department of the agency carries out the responsibilities of Section 27 and by extension facilitates and monitor compliance of seafarer employers with the CBA on minimum standards for the welfare of seafarers (NIMASA Act, 2007).

### **3.5.2. ROLES OF SHIP-OWNERS**

Article II (j) of MLC,2006 gives a detailed interpretation of the word ship-owner. Regulations 4.2 and 4.5 provides that ship-owners are liable for provision of welfare, medical care, compensation to injured or dead seafarers from when the seafarer is employed until termination of the employment/repatriation of the seafarer. In addition, owing to the flexibility of the MLC, 2006, these slated responsibilities amongst others must be carried out in accordance with national laws

The Ship Owners Association of Nigeria, (SOAN) and Indigenous Ship-owners Association of Nigeria (ISAN) are the known bodies that represents the interest of ship-owners in Nigeria with the objectives of providing avenues for dialogue on issues, policies, practices concerning ship-owners and other stakeholders whilst ensuring adherence to implementation of both international conventions and national laws (SOAN, 2015). These associations interface with NIMASA on issues concerning ship-owners and they are also responsible for expressing the views of ship-owners during the deliberation and negotiation of the CBA (Ebong, E. et al, 2020).

### **3.5.3. ROLES OF LABOUR UNIONS**

These are Associations under the umbrella of Trade Union with the sole aim of protecting the interest of their members to ensure achievement of a decent work agenda. The Maritime Workers Union (MWUN) and Nigerian Merchant Navy Officers and Water Transport Staff Association (NMNOA) are the bodies that represent the interest of seafarers. They interface with NIMASA and negotiate the

welfare of seafarers and with the ship-owners during CBA deliberations. The unions' contribution and collaboration has ensured the signing and implementation of the CBA (NIMASA, 2022).

The global maritime labour market has been significantly influenced by trade unions, as they ensure that seafarers' legal rights are effectively safeguarded and set forth in both international legal instruments and national legislation (Ebbinghaus & Visser, 2000). The Nigerian Labour Union has ensured promotion of industrial peace, ensured capacity building trainings for seafarers, acted on behalf of seafarers during dispute resolution and CBA deliberations. In addition, NIMASA has kick started the facilitation of reviewing the CBA signed in 2019 so as to improve the working and living conditions of seafarers.

#### **3.5.4. ROLES OF THE NATIONAL JOINT INDUSTRIAL COUNCIL (NJIC)**

The National Joint Industrial Council (NJIC) is a statutory consultative forum where representatives of employers, trade unions and government deliberate, negotiate and reach a consensus on issues relating to good working and living conditions of seafarers (ILO, 2022).

The Wages Board and Industrial Council Act, 1974 provides for the establishment of the National Industrial Council and National Wages Board. This power to create the council is vested in the Minister of Transportation whom by virtue of the position can establish the national industrial council to carry out duties that will proffer modalities for improvement of condition of service and wages of employees (WBIC, Act, 1974). Thus, the Minister of Transportation has transferred the right to coordinate and fund the NJIC to NIMASA. The Council negotiated the condition of service of seafarers and signed the CBA in August, 2019 which is the consensus reached at the deliberation. However, processes for reviewing the 2019 CBA has commenced as the Agency inaugurated the NJIC on 24<sup>th</sup> August, 2022 (Onigbinde & Yousouph, 2022).

Notably, all necessary stakeholders are represented on the NJIC, thus, implementation of the CBA is a collective effort of all stakeholders. However, NIMASA as the regulatory agency monitors the compliance of ship-owners, employees and trade unions with all international and national laws.

## **CHAPTER FOUR**

### **CHALLENGES IN THE IMPLEMENTATION OF MLC, 2006 IN NIGERIA.**

Nigeria has an active member of the United Nations (UN) and its agencies, has clearly declared the nation's commitment and acceptance of the international system's unilateral and multilateral conventions. Beyond the shown passion and commitment of Nigeria towards international conventions, the question of whether the country is capable of successfully interpreting and implementing all duties and standards embedded in the Conventions it acceded to, need to be discussed (Ahmed, 2016).

Historically, since the eighteenth and nineteenth centuries, the world has experienced an upsurge in its reliance on treaties and convention for the regulation of global affairs (Guide, n.d). The international conventions have played significant roles in its establishment of the League of Nations, UN, ITLOS, ICJ and other Agencies. Furthermore, it also attends to issues ranging from trade, diplomacy, science & technology, shipping & maritime activities, travels, communication and defense (ILO, 2022)

As earlier stated in the previous chapter, Nigeria operates a dualist approach in its adoption of international regulations into national laws and section 12 of the Nigerian Constitution 1999 as amended provides for modes of domesticating international regulations. The concept of implementing regulations goes beyond ratification of the convention because it is said that having a policy is one thing but implementation of it remains inviolable to the actualization of the policy (Brinkschröder, 2014). Thus in order to ensure successfully implementation of a policy, there is need for comprehensive understanding of the policy cycle (Mejia 2022).

This chapter intends to analyze amongst other issues the challenges in implementing the MLC, 2006 in the Nigerian maritime sector, while also discussing the data and findings on the implementation of Regulations 4.2 and 4.5.

Nigeria is an active member state of ILO who has ratified a good amount of ILO's conventions. However, the country faces a lot of challenges which has hindered the

effective implementation of the MLC, 2006 in Nigeria (Ndikom et.al, 2017). Thus, this segment will analyze the challenges of the implementation of MLC, 2006 in Nigeria.

### **1. LEGISLATIVE ISSUES÷**

Legislative problems of a country are linked to the relationship between international law and national regulations. This problem is faced only by dualist states and Nigeria falls in this category. As previously explained a dualist approach is a process of domesticating a ratified international law into national law via enactment of an act of parliament (Okeke & Anushiem, 2018). This means that a bill in respect of the ratified law will be raised, submitted at the National Assembly and where it passes the three stages of reading and deliberation, an Act for the implementation of such international law will be enacted in accordance with provisions of section 12 (1) of 1999 Constitution as amended:

***“No treaty between the federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly”***

It is pertinent to note that, the MLC, 2006 has not been domesticated into Nigerian laws, as the implementation of the Convention is partially been carried out via the MSA, 2007 and NIMASA Act, 2007. The lack of enactment of a single legislation has hindered the absolute implementation of the MLC, 2006 in Nigeria.

Furthermore, studies have shown that the Bill for Enactment of a national regulation has passed second reading at the legislative house and was sent to the National Labour Advisory Council (NLAC) for its recommendation. NLAC is a body responsible for ensuring that best labour practice in line with international labour standard is adhered to and in turn make recommendation on which international labour regulations to be domesticated. Unfortunately, NLAC failed to hold a meeting to deliberate issues before it for six (6) years

until 2021 and even after its meeting, the MLC, 2006 is yet to be domesticated (Olawuni, 2021). However, the Bill for the domestication of MLC, 2006 which is now at the final stage with the legislative house has to be concluded to give a complete effect to the implementation of the MLC, 2006 in Nigeria.

The Nigerian Maritime Administration has constantly argued that the delay in domestication of the MLC, 2006 has not in any way hindered its implementation as most of the provisions of MLC, 2006 are already in the country's national laws most especially MSA, 2007, NIMASA Act, 2007 and Labour Laws (Olawuni, 2021). However, Nigeria's implementation of MLC, 2006 via MSA, 2007 is not quite right in the sense that the MSA, 2007 in its section 216 provides for the international conventions that the Act is applicable to and MLC, 2006 is not one of them.

***Section 216: Application of some related maritime safety Conventions and Protocols***

***As from the commencement of this Act, the following Conventions,***

***Protocols and***

***their amendments relating to maritime safety shall apply, that is-***

***(a) International Convention for the Safety of Life at Sea, 1974 (SOLAS);***

***(b) Protocol relating to the International Convention for the Safety of Life at Sea, 1988 and Annexes I to V thereto;***

***(c) International Convention on Standards of Training Certification and Watch Keeping of Seafarers, 1978 (STCW) as amended;***

***(d) International Convention on Maritime Search and Rescue, 1979 (SAR);***

***(e) International Labour Organisation Convention (No. 32 of 1932) on Protection against Accident of Workers Employed in Loading or***

***Unloading Ships (Dockers Convention Revised 1932);***

*(f) International Convention on Maritime Satellite Organisation, 1976*

*(INMAR- SA T) and the Protocol thereto;*

*(g) the Athens Convention relating to the Carriage of Passengers and their*

*Luggage by Sea, 1974 and its Protocol of 1990;*

*(h) Convention for the Suppression of Unlawful Acts against the Safety of*

*Maritime Navigation, 1988 and the Protocol thereto;*

*(i) International Convention on Salvage, 1989;*

*U) Placing of Seamen Convention, 1920;*

*(k) International Ship and Ports Facility Security (ISPS) Code; and*

*(l) International Convention for Safe Containers, 1972. (MSA, 2007)*

Thus, in order for the justification of the aforementioned argument, there is need for amendment of section 216 to incorporate the application of MLC, 2006 (Olalekan, 2014). In addition, the MLC, 2006 has witnessed 3 amendments and the national legislations that is currently been used by Nigeria for implementation of the MLC, 2006 is yet to complete its amendment processes and cannot not be confidently said to have met the existing amendments done to the MLC, 2006. There is need for enactment of an Act specifically for the implementation of the MLC, 2006, by doing so, incorporating the amendment of the convention will be done seamlessly.

## **2. CAPACITY BUILDING:**

Capacity building plays significant role by strengthening the skills and knowledge of professionals for actualization of a project and resolution of conflicts (ADR, 2021). Maritime is an industry that keeps evolving with new ideas and regulations. Thus, there is need for training of maritime officers to meet the needs of the industry.

Furthermore, ILO has made provisions for the MLC, 2006 guidelines for ship inspection and certification to which every Member State must adhere to. The

guidelines are envisioned to offer additional practical information to States which can be modified to suit their national laws and proffer adequate measures for implementing the MLC, 2006 (ILO, 2021).

Importantly, Nigeria receives a reasonable number of vessels at its ports, the lowest number of vessels that called at Nigerian Ports was recorded in 2020 which is 3,972 vessels (Olaoluwa, 2021). For a State that has a gross registered tonnage of over 125 million, there is need for adequate qualified MLC inspectors to carry-out necessary inspection of vessels calling at its ports (McConnell, 2011).

Currently, Nigeria have 3,554 registered flagged vessels, 2,300 of these vessels falls with MLC, 2006 coverage. However, not all 2,300 vessels are ocean going. Furthermore, Nigeria has trained Forty- Eight (48) Flag State inspection officers, who had inspected **244** flagged Vessels from 2014 to 2022 (NIMASA, 2022). The inadequate of trained Flag State inspection officers to carry out inspections has slackened the compliance level of Nigerian Flagged vessels with the MLC, 2006. Where over a thousand vessels has not been inspected, we cannot justify the effective implementation of the MLC, 2006.

Furthermore, it may be argued that capacity problem regarding inspection and certification can be solved by the use of Registered Organizations (ROs). The ROs can carry out IMO required inspections but in the case of MLC, 2006, there is a requirement that the Declaration for Maritime Labour Compliance Part 1 must be filled by the Government (ILO, 2022).

It is pertinent to note that, the author was informed by a Nigerian Maritime Labour specialist that NIMASA in order to proffer a solution to the low rate of inspectors and inspections, had recently increased the number of officers the Agency sends to ILO for the Training of trainers and maritime inspectors on the application of the ILO Maritime Labour Convention, 2006 program.

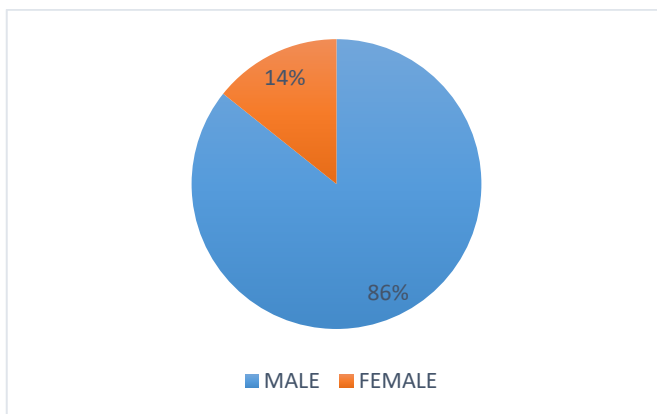


#### **4.1. DATA ANALYSIS AND FINDINGS ON IMPLEMENTATION OF REGULATIONS 4.2 AND 4.5 IN NIGERIA**

This segment will analyse data obtained from Nigeria maritime stakeholders which includes maritime administrator (NIMASA), ship-owners, seafarers, unions, insurance agency and international organization (ITF). These data were gathered through the conduct of a semi-structured interview with 10 questions. The interview questions were approved by WMU Ethic Committee prior to the conduct of the interviews. These interviews were carried out via zoom for all participants.

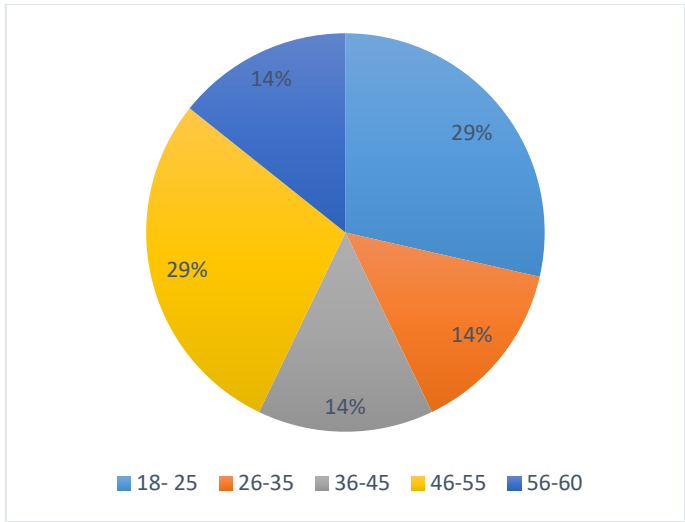
Furthermore, the semi-structured interviews were aimed at evaluating the national legal framework for the implementation of regulations 4.2 and 4.5 alongside challenges hindering successful implementation of MLC, 2006 in Nigeria which forms the research questions of this dissertation. The researcher sought the consent of 19 participants prior to the interview, however, 14 of them participated in the interview. The interviews were conducted in English language and the time of the interviews varied from 15 minutes to 45 minutes. The researcher has carefully analysed the responses gotten from the participants during which the following was deduced.

**Figure 2. Gender of the Participants**  
**Gender Responses: 14**



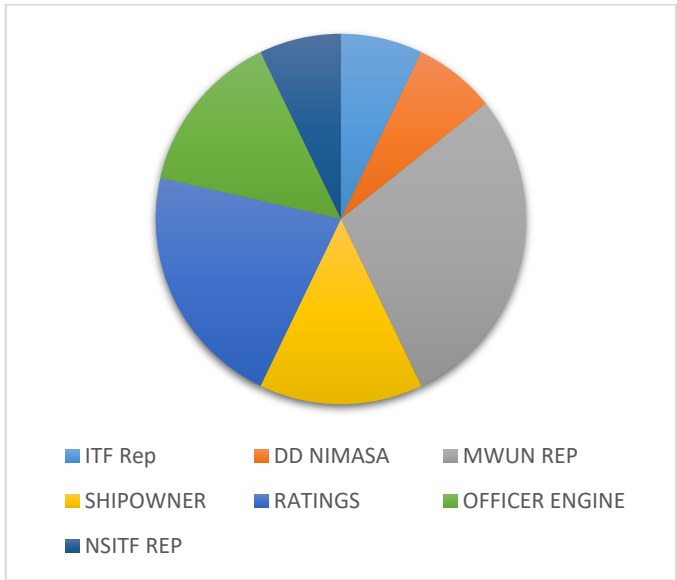
According to the data gathered out of the 14 participants, 12 are Male representing 86% and 2 Female representing 14%.

**Figure 3: Age of Participants**



Data gathered shows that 4 participants are between the age of 18-25 representing 23%, 2 participants between the age of 26-35 represents 16%, 2 participants between the age of 36-45 represents 15%, 4 participants between the age of 46-55 represents 31% and 2 participants between the age of 56-60 represents 15%

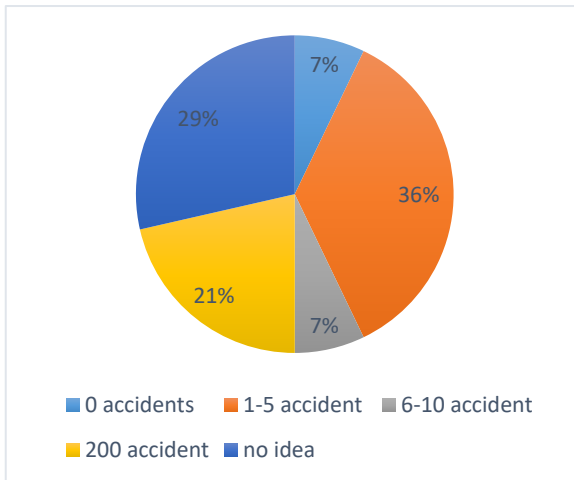
**Figure 4: Rank of Participants**



The data gathered shows 1 ITF representative, 1 Deputy Director (DD) from NIMASA, 4 MWUN officials, 2 ship-owners, 3 Ratings, 2 Officers (Engine) and 1 NSITF official

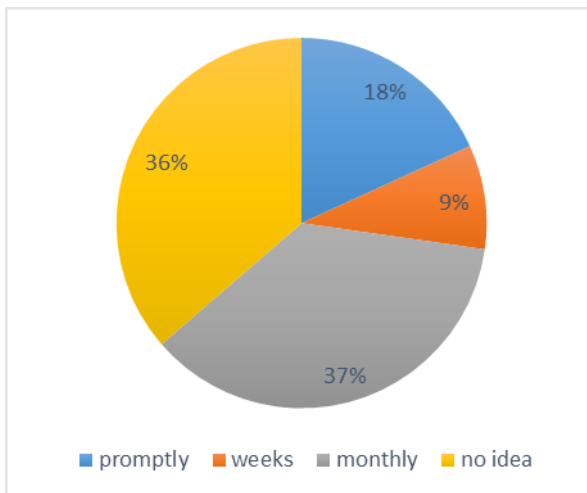
#### 4.1.1. INTERVIEW RESPONSES

**Figure 5: How many Nigerian seafarers are involved in maritime accidents?**



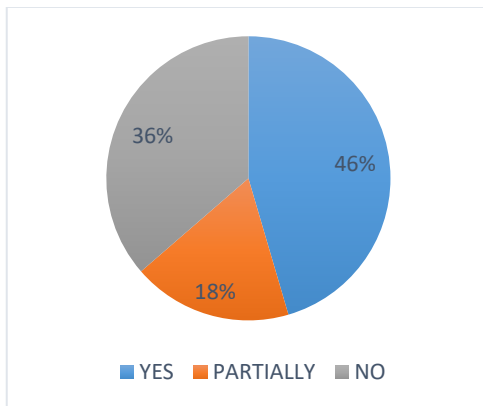
According to the data gathered, 1 participant represent 7% for a company with no case of maritime accidents, 5 participates represent 36% that has records of maritime accidents ranges from 1-5, I participant represent 7% that has record of 1 maritime accident, 3 participants represent 21% that gave record of 200 maritime accidents and 4 participants represent 29% that have no idea of number of maritime accidents in their establishments.

**Figure 6: How timely is the process for paying social security to injured or dead seafarers carried out?**



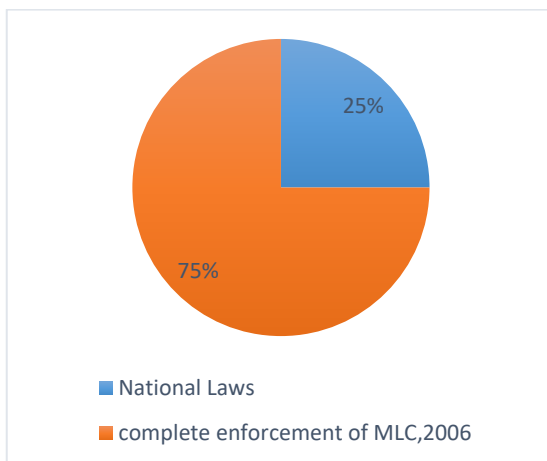
Data gathered shows that 2 participants represent 18% said they were paid promptly, 1 participant represent 9% stated it takes weeks, 5 participants represent 37% stated that it takes months for payment to be made, 4 participants represent 36% no idea of the compliance level.

**Figure 7: Is Collective Bargaining Agreement beneficial to Nigerian seafarers?**



According to data gathered, 5 participants represent 46% that said Yes, 2 participants represent 18% that said partially beneficial and 4 stated represent 36% that said No.

**Figure 8: How do you think the non-compliance of ship-owner with the MLC, 2006 and unfair labour practices in the Nigerian Maritime sector should be addressed?**



According to data gathered, 9 participants represent 75% for complete enforcement of the MLC, 2006 while 4 participants represent 25% for promulgation of national laws.

## **4.2 SUMMARY OF FINDINGS**

The aforementioned data analysis obtained via the semi-structured interviews conducted were targeted at answering the research questions of this dissertation.

The questions sought to obtain an insight into the national legislative framework for implementation of MLC, 2006 especially Regulations 4.2 and 4.5 which revolves

around payment of compensation and provision of safety measures by ship-owners. The data gathered expressed the challenges regarding payment of social security as most of the participants claimed that the process of paying social security to injured or dead seafarers takes months and enforcement of the Collective Bargaining Agreement is not adequate. The Researcher found out that ship-owner more often than not frustrate the process of paying social security which most time results seafarers to lodging their complaint to NIMASA. In addition, the ITF official stated that the organization hardly receive issues about Nigerian seafarers because most of the Nigerian seafarers operates within the Nigeria waters and only few are involved in international voyages.

NIMASA has a unit in Maritime Labour Services Department that deals with labour related issues. This unit mediates for the parties i.e employer and employee with the aim of providing amicable resolution of the disputes. The unit had created an accident/death reporting platform and does participate in the process of payment of social security in order to ensure that ship-owner complies with mode of calculation of monies due to the injured or death seafarers. However, the unit does encounter challenges in dispensation of its duties due to ship-owners habit of stalling which most time has elongated the process of mediation and the payment of social security.

Furthermore, the emphasis laid by the interview questions was to ensure that ship-owners liability regarding welfare, provision of safety measures onboard vessels and prompt payment of social security is carried out promptly to affected seafarers in accordance with employment agreement and stipulated provisions of the MLC, 2006. In addition, the outcome of the survey has shown that there are gaps in the implementation of the MLC, 2006 most especially the aforementioned Regulations as payment of the social security is not absolutely complied with and done in time. This was the position of most of the seafarers and Labour Unions who form the higher percentage of the affected ones.

Similarly, the survey gathered that there are challenges hindering the successful implementation of MLC, 2006 and unfair labour despite the several negotiated CBAs aimed at ensuring welfare of seafarers. The Nigerian Seafarers are still faced with

delay in payment of social security and unfair practices of ship-owners in cutting corners. In addition, the lack of indigenous P&I Club has further shown how some ship-owners cut-corners by interfering with the process of paying social security and in turn short-pays the seafarers without following laid down procedures of the maritime administration. The enforcement challenges of national legal framework are evident in the non-compliance of ship-owners with the CBA negotiated and agreed by them via delay in payment of social security to seafarers injured or dead while serving onboard vessels.

The researcher deduced a problem of compliance to CBA, according to a Labour Union interviewed, the Agency supervised CBA gives room for company by company based CBA, meaning that after negotiation of the minimum standards, the union alongside with companies can negotiate another CBA based on the category of work carried out by that company. This company based CBA is one of the hindrances of implementing the CBA. Thus, there is need for Nigeria to have an all-encompassing CBA that can be applied to all seafarers in the maritime industry both offshore, onboard and onshore. An all-encompassing CBA will curb discrepancies in wages and welfare benefits of seafarers.

The Nigerian Maritime Administration in its effort to solve the challenges hindering successful implementation of MLC, 2006 has issued a Marine Notice to institute measures towards improving the medical standards and certification of seafarers (NIMASA, 2022). Furthermore, the Director General of the Agency Dr. Bashir Jamoh at the reconvening of the NJIC for the review of CBA for Seafarers reaffirms the Agency's commitment towards ensuring provision of improved welfare for seafarers and implementation of MLC, 2006 in Nigeria (Onigbinde & Yousouph, 2022). Although the Agency is proffering measures to improve welfare of seafarers, there is need to levy penalty against any ship-owners that unjustifiably delay or fail to pay all forms of remuneration due to seafarers.

## **CHAPTER 5**

### **5.1 CONCLUSION**

Seafarers are faced with different kinds of perils while working on-board vessels. This notable work hazards includes long shifts, poor diets, unpaid wages, poor living conditions and isolation from their families and friends often affects the mental health of seafarers.

The role of seafarers in shipping industry cannot be overemphasized and in other for shipping activities to be successfully carried out, there is need to provide seafarers with decent working and living conditions.

The dissertation attempted to look into critical areas that concerns the welfare and condition of living of the Nigerian Seafarers in relations to the provisions in the MLC, 2006 as amended.

The MLC has already made provisions for the minimum standard for the engagement of the seafarers by their employers, of which negating it is tantamount to breach of contract, while also trampling on the rights of the seafarers.

Undoubtedly, seafarers are keyworkers as the IMO designated them during the pandemic, owing to their roles in keeping global commerce going despite the challenges they faced during the pandemic. Obviously, IMO being a reactive organization had no contingent plans or regulations in place on resolving crisis like the arrival of the pandemic, which took the entire globe by surprise.

Therefore, the advent of the pandemic was a wake-up call to the entire sectors of the global economy, but most especially for the seafarers to ensure they are catered for by their employers and in the country, they reside.

Nigeria, which is the focus of this dissertation, ratified MLC, 2006 in 2013 and domesticated it in the year, 2014, thereafter came up with the midwifing of the National Joint Industrial Council (NJIC) to see the wellbeing of the seafarer, while ensuring they continue to enjoy Decent Work Agenda as prescribed by the ILO.

The NJIC initiative comes in a tripartite fold, which includes the government, in this case, NIMASA, the Labour Union and the employers of the seafarers, with NIMASA being in charge of the process. This has ensured that the ports industry in the country enjoys uninterrupted service, with lasting peace and harmony.

Although, NIMASA has been commended from many quarters on the successes and gains achieved ensuring that the seafarers' condition of service is well drafted and followed to the latter, there is still the need to engage the enforcement mechanisms in order to allow erring employers comply with the regulations as prescribed by the ILO.

Meanwhile, the need to embrace technological advancement has become imperative in shipping, as it will help better a lot of the seafarers, particularly with the incessant attacks faced regarding their security and safety.

Although, many African countries are still developing, there is the need to pave way for the advent of the Maritime Autonomous Surface Ships (MASS), which is fast becoming a subject of discourse in the global maritime space, as this will help mitigate the sufferings of the seafarers.

However, there seems to be concerns about the operation of MASS, with the notion that it may phase out human seafarers, as robots may be in charge of the piloting of the ships. From the authors view, the operations of MASS are to improve shipping and bring about technology, not to make the seafaring profession redundant.

Countries like Nigeria may start making plans for deeper drafts in the ports that will accommodate modern ships, while also preparing for the MASS, as with time technology will take its place in the global maritime space.

Therefore, embracing MASS will increase safety, which should be part of the conditions of service of the seafarer, as enshrined in the MLC, 2006 as amended, to ensure the Decent Work Agenda initiative is achieved.

## **5.2 RECOMMENDATION**

- Suffice to state that Nigeria is a major player in the African maritime domain; hence, the author of this dissertation strongly recommends that aside the



Merchant Shipping Act (MSA), 2007 and the NIMASA Act, 2007. The Federal Government of Nigeria should have a separate law that encompasses the MLC, 2006, as this will make amendments easy, rather than depend on existing regulations, which may not be up to date with the ideals of the ILO laws on conditions of living for the seafarers.

- The government should ensure training of adequate number of MLC,2006 inspectors who shall be entitled to incessant training to boost their knowledge of the evolution of the maritime industry.
- Creation of an indigenous P&I Club that will foster good collaboration with the government so as to ensure unfair labour practices is curbed and further ensure conformity with payment of social security as prescribed by the ILO. Note that creation of P&I Club in Nigeria will serve as the first P&I Club in Africa, which will also ensure protection of African seafarers at large.

Conclusively, seafarers are integral part of global commerce, as they sacrifice a whole lot to ensure over 80, percent of global trade is made possible. The least reward they can get is the minimum standard set by the ILO in its MLC, 2006, which no country, employer of labour or individual should breach.

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## Appendix 1: Collective Bargaining Agreement

### **NATIONAL JOINT INDUSTRIAL COUNCIL (NJIC) COLLECTIVE BARGAINING AGREEMENT (CBA) ON CONDITIONS OF SERVICE FOR NIGERIAN SEAFARERS IN COASTAL SECTOR, AUGUST 20<sup>TH</sup>, 2019.**

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Coastal sector



## **COLLECTIVE BARGAINING AGREEMENT ON CONDITIONS OF SERVICE FOR NIGERIAN SEAFARERS IN COASTAL SECTOR**

This reviewed Collective Bargaining Agreement is made this day of August, 20<sup>th</sup>, 2019 between the representative of seafarers employers whose registered offices is situated and known as 25, Marine Road, Apapa, Lagos (hereinafter referred to as the representatives of “**the Seafarers Employers**”) which expression shall where the context so admit include its successors in title and assigns on the one part.

And

The Nigerian Merchant Navy Officers and Water Transport Senior Staff Association (NMNO & WTSSA) whose registered office is situated and known as 24, Palace Road, Off Industrial Road, By Trinity Bus Stop, Olodi Apapa, Lagos (hereinafter referred to as the representative of “**the seafarer (officers)**”) which expression shall be where the context so admit include its successors in title and assigns on the other part.

And

The Maritime Workers Union of Nigeria (MWUN), whose registered office is situated at 119, Osho-Drive, Olodi Apapa, Lagos (herein referred to as the representative of “**the seafarer (ratings)**”) which expression shall where the context so admit include its successors in title and assigns on the other part.

### **Whereas:**

- (i) The parties as representatives of the Employers and Seafarers have negotiated and agreed to the minimum conditions of service set hereunder for the Nigerian Seafarer in the Coastal Sectors for either voyage, definite or indefinite article;
- (ii) The parties had reviewed the minimum standards for the Coastal by an agreement dated August 20, 2019.
- (iii) The National Joint Industrial Council (NJIC) is the body charged with effecting Collective Bargaining Agreement (CBA) negotiation between the Employers and seafarers.
- (iv) After several deliberations/negotiations at the various meetings of the NJIC, agreements were reached by all the parties on various articles set out in this condition of service.

### **Article 1: General Obligations**

**1.1** This Agreement expressly incorporates the provisions of the Maritime Labour Convention, 2006 as amended and applies to all seafarers on all ships covered by the Convention.

**1.2** All parties to this Agreement shall ensure that the provisions of the Maritime Labour Convention, 2006 as amended are effectively implemented and enforced.

**1.3** All parties to this Agreement undertake to give complete effect to the Articles set out in this Agreement in order to secure the right of all seafarers to decent employment.

### **Article 2: Pre-Employment**

**2.1** Each Seafarer shall undertake to serve the Company competently and to exercise, the skill commensurate with the certificates that they declare to hold.

**2.2** The Company shall be entitled to require that any Seafarer to undertake a satisfactory pre-employment medical examination, at the Company's expense, by the Company-nominated doctor and that the Seafarer shall answer sincerely any question on their State of health, as may be required. Failure to do so may affect the Seafarer's entitlement to compensation as per Articles 20, 21, 22, 23 and 24 of this agreement.

### **Article 3: Probationary Service**

**3.1** A minimum period of not more than six (6) months of service during the first term of employment on board the ship shall be regarded as probationary and both the Seafarer and/or the Company shall upon notification by either party, be entitled to terminate the employment prior to the expiration of the contract during this period. In such an event, the cost of repatriation shall be the responsibility of the party who gives notice of termination but the compensation for premature termination of employment provided in Article 18.4 shall not apply.

### **Article 4: Non-Seafarer Work**

**4.1** Neither the ship's seafarer nor anyone else on board shall be required or introduced to carry out cargo handling and other work traditionally or historically done by Dockworkers.

**4.2** Where Union is in place, neither the ship's Seafarer nor anyone else on board shall be instructed or induced to undertake cargo handling or other work, traditionally and historically done by members of the Union which would affect the resolution of such a dispute.

**4.3** For Seafarer members compensation for such work performed during the normal working week, as specified in Article 5, shall be by the payment of the overtime rate specified in Appendix II for each hour or part hour that such work is performed in addition to the basic pay. Any such work performed outside the normal working week will be compensated at double the overtime rate.

### **Article 5: Duration of Employment**

**5.1** A Seafarer shall be engaged for the period specified in Appendix I to these Conditions of Service and such period may be extended or reduced by the amount shown in Appendix II for operational convenience. The employment shall be automatically terminated upon the terms of these Conditions of Service at the first arrival of the ship in port after expiration of that period, unless the company operates a permanent employment system.

### **Article 6: Hours of Work**

**6.1** The normal hours of duty shall be specified in Appendix I but in no case shall exceed eight hours per day, from Monday to Friday.

### **Article 7: Overtime**

**7.1** Entitlement to overtime for all Seafarer shall be as specified in Appendix II.

**7.2** Overtime shall be recorded individually and in duplicate either by the Master or the Head of the Department on board.

**7.3** Such record shall be handed to the Seafarer for vetting every month or at shorter intervals. Both copies shall be signed by the Master and/or Head of the Department as well as by the Seafarer, after which the record shall be final. One copy shall be handed over to the Seafarer.

**7.4** Any additional hours of work carried out during an emergency where it directly affects the safety of the Ship, its passengers, Seafarer or cargo, of which the Master shall be in command of the safety drills or work needed to assist other Ships or persons in peril, the assistance shall not count as overtime.

**7.5** Fixed overtime shall be in accordance with this Article and it shall not be more than eight (8) days for each complete month of service and pro rata for a shorter period.

### **Article 8: Holidays**

**8.1** For the purpose of this Condition of Service, the Nigerian National Holidays shall be considered as holidays at sea or in port or any other holiday declared by the Federal Government of Nigeria.

### **Article 9: Rest Periods**

**9.1** Each Seafarer shall have a minimum of 10 hours rest in any 24-hour period

**9.2** The hours of rest may be divided into not more than two periods, of which one of the periods shall be at least 6 hours in length.

**9.3** The minimum period of ten hours may be reduced to not less than 6 consecutive hours provided that any such reduction shall not extend beyond two days and not less than seventy (70) hours of rest are provided in any seven-day period.

**9.4** The Company shall post in an accessible place onboard a table detailing the schedule of service at sea and in port and the minimum hours of rest for each position on board.

**9.5** The requirements for rest periods need not be maintained in the case of emergency or other overriding operational conditions but in such cases the seafarer shall have an adequate compensatory rest period.

9.6 Emergency drills will be conducted in such a manner that minimizes the disturbance of rest periods and does not induce fatigue.

9.7 A short break of not less than 30 minutes will be considered a period of rest.

**Article 10: Wages/Allotment**

10.1 On wages, the National Joint Industrial Council (NJIC) resolved that the seafarers' employers and the seafarers' representative shall proceed with negotiation on Company by Company basis and shall be witnessed by NIMASA.

10.2 Any Seafarer, if he/she so desires, shall be granted an allotment payable at monthly intervals of up to 80% of his/her wages after allowing for any statutory deductions.

**Article 11: Leave**

11.1 Each Seafarer shall on the termination of employment for whatever reason shall be entitled to the payment of leave period as specified in APPENDIX II for each completed month of service and on a pro rata basis.

**Article 12: Subsistence Allowance**

12.1 When food or accommodations are not provided onboard, the Company shall provide adequate subsistence allowance for food and accommodation.

**Article 13: Watch keeping**

13.1 Watch-keeping at sea and, when deemed necessary, in port, shall be organized where possible on a three (3) watch systems.

13.2 It shall be at the discretion of the Master for a Seafarer to be schedule on watches and where, if on a day work it should not exceed 8 hours.

13.3 While keeping watch at sea, the officer in command of a navigational watch shall be assisted on a lookout during dark hour and as required by the relevant national and international rules and regulations, and where necessary, by the Master or officer of the navigational watch.

**Article 14: Manning**

14.1 The Ship shall be manned by competent seafarers so as to ensure its safe operation and the maintenance of a three-watch system whenever required and in no case manned at a lower level than in accordance with relevant and applicable international / national laws, rules and regulations.

14.2 The manning shall not include any temporary or riding squad workers.

**Article 15: Shorthand Manning**

15.1 Where the complement falls short of the manning, where necessary the basic wage shall be paid to the seafarer in the department of the shortage, his/her employer in consultation

with the Nigerian Maritime Administration and Safety Agency shall make every effort to effect the shortage within 7 days before the ship sails to the next port of call.

#### **Article 16: Service in Warlike Operation Areas**

**16.1** A warlike operation area shall be determined by the seafarer and his employer in consultation with the Nigerian Maritime Administration and Safety Agency.

**16.2** During the service, a Seafarer shall be given full information of the war zone's inclusion in the Ship's trading plan and shall have the right to proceed to or not to a warlike operations area. Where he opted not to proceed, the seafarer shall be repatriated at the company's cost with benefits accrued until date of return to the port of his engagement.

**16.3** Where a ship enters into an area or warlike operations, the Seafarer will be paid a bonus up to 100% of the basic wage for the duration of the ship's stay in such an area subject to a minimum of the five (5) day's pay. Similarly, the compensation for disability and any death shall be doubled.

**16.4** A Seafarer shall have the right to accept or decline the assignment or entry into warlike zone or losing in employment or suffering any other detrimental effects.

#### **Article 17: Seafarer Effects**

**17.1** When any Seafarer suffers total or partial loss or damage to their personal effects whilst serving on board the ship as a result of wreck, loss stranding or abandonment of the vessel as a result of fire, flooding or collision, they shall be entitled to compensation in line with Protection and Indemnity and employee compensation Act, 2010 where applicable.

**17.2** The Seafarer shall in addition to article 17.1 certify that any information provided with regards to lost property is true to the best of their knowledge.

#### **Article 18: Termination of Employment**

**18.1** The employment shall be terminated:

- a) Upon the expiration of the period of service identified in APPENDIX I.
- b) When signing off owing to sickness or injury after medical examination in accordance with Article 2.2 but subject to the provision of Article 25.

**18.2** The Company may terminate the employment of a Seafarer;

- a) By giving one month's written notice to the Seafarer;
- b) On the misconduct or incompetence of the Seafarer in accordance with Article 21.
- c) Upon the total loss of the ship or when the ship has been laid up for a continuous period of at least one month or upon the sale of ship.

**18.3** A seafarer to whom these Conditions of Service apply may terminate employment:

- a) By giving one month's written notice of termination to the Company or the Master of the ship;
- b) When during the course of a voyage, it is confirmed that the wife or in the case of a single person, a parent, has fallen critically ill;

- c) If the ship is about to sail into a warlike operational area in accordance with Article 16 of this Conditions of Service;
- d) If the Seafarer was employed for a specified voyage on a specified ship, and the voyage is subsequently altered substantially, with regard to the duration of the trading pattern;
- e) If the ship is certified substandard in relation to the applicable provisions of the Safety of Life at Sea Convention (SOLAS) 1974 as amended, the International Convention on Load lines (LL) 1966 as amended, the Standard Training, Certification and Watch keeping Convention (STCW) 1995, the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 (MARPOL) or substandard in relation to Maritime Labour Convention 2006 as amended and remains for a period of 30 days provided on board or ashore. In any event, a ship shall be regarded as substandard if it is not in possession of the certificates required under either the applicable National Laws and Regulations or International Instruments;
- f) If the ship was arrested and has remained under arrest for thirty (30) days provided one month notice in writing is given to employer by the seafarer.
- g) If after any grievance procedure has been invoked, the Company has not complied with the terms of these Conditions of Service.

**18.4** A Seafarer shall be entitled to receive compensation as negotiated by the parties in a CBA meeting

**18.5** There shall be no grounds for termination if during the of the Conditions of Service, the Company transfers the Seafarer to another vessel belonging or related to the owner/manager on the same work and wages and all terms applicable in vessel so transferred on the same or similar voyage patterns. There shall be no loss of earnings or entitlements during the transfer and the transferring Company shall be liable for all costs and subsistence for and during the transfer.

#### **Article 19: Repatriation**

**19.1** The Seafarer shall be repatriated to the Port of his/her engagement at the end of the employment.

**19.2** Repatriation shall take place at the end of contract term in such a manner that takes into account, the needs and reasonable requirement for comfort of the Seafarer

**19.3** During repatriation under normal conditions, the Company shall be liable for the following costs:

- a) Payment of wages between the time of discharge and the arrival of the Seafarer at their place of original engagement or home;
- b) The cost of maintaining the Seafarer ashore until repatriation takes place
- c) Reasonable personal travel and subsistence costs during the travel period;
- d) Transport of the Seafarer personal effects up to the amount allowed free of charge by the relevant carrier.

**19.4** A Seafarer shall be entitled to repatriation at the Company's expense on termination of employment as per Article 18 except where such termination arises under Clause 18.2 (b) and 18.3 (a)

## **Article 20: Seafarers Abandonment**

**20.1** The Company shall put in place an expeditious and effective financial security system to assist Seafarers in the event of their abandonment in any event that the company has unilaterally severed their ties with seafarer including failure to pay contractual wages for a period of at least two months and or has left the seafarer without the necessary maintenance and support.

**20.2** The financial security of the company shall be in accordance with the MLC 2006 as amended in line with applicable national standard and regulations in the form of insurance and bank guarantees.

**20.3** Ships flying the Nigerian Flag shall carry on board a certificate or other documentary evidence of financial security issued by the financial security provider.

## **Article 21: Misconduct**

**21.1** The Company may terminate the employment of a Seafarer following an act of misconduct or incompetence, which gives rise to a lawful entitlement to dismissal after a written notice given to the Seafarer specifying the misconduct or incompetence.

**21.2** In the event of the dismissal of a Seafarer in accordance with this clause, the Company shall be entitled to recover from the Seafarer any balance of wages, the costs involved with his/her repatriation in addition to any costs incurred by the company arising from the Seafarer's misconduct.

**21.3** For the purpose of this Conditions of Service, refusal by any Seafarer to obey an order to sail the ship shall not amount to misconduct of the seafarer where;

- a) The ship is unseaworthy or otherwise substandard as defined in Clause 18.3 (e);
- b) For any reason it would be unlawful for the ship to sail;
- c) The Seafarer has a genuine grievance against the Company in relation to the implementation of these Conditions of Service and has complied with the terms of the Company's grievance procedure, or
- d) The Seafarer refuses to sail into a warlike area.

## **Article 22: Medical**

**22.1** A Seafarer who is employed engaged or works on board a ship shall be entitled to medical attention.

**22.2** A seafarer who is hospitalized abroad owing to sickness or injury shall be entitled to medical attention (including hospitalization) at the Company's expense. Such attention (including hospitalization) shall be at the Company's expense until the Seafarer is repatriated to the port of his/her engagement whichever is the earlier.

**22.3** A Seafarer who is repatriated to his or her port of engagement and is unfit as a result of sickness or injury shall be entitled to medical attention including hospitalization at the Company's expenses:

- a) For up to sixty (60) days after repatriation subject to the submission of satisfactory medical reports on the sickness.
- b) For as long as the medical attention is required or a medical determination is in accordance with clause 25 concerning permanent disability.





22.4 Proof of continued entitlement to medical attention shall be based on submission of satisfactory medical reports endorsed by the Company's medical doctor.

**Article 23: Sick Pay**

23.1 When a Seafarer lands at port due to sickness or injury, payment of his/her wages shall continue until they have been repatriated at the Company's expense as specified in Article 19.

23.2 Thereafter, the Seafarer shall be entitled to sick pay at the rate equivalent to his/her wages within the sick period up to a maximum of sixty (60) days.

23.3 In the event of an incapacity due to an accident, basic wage shall be paid until the injured Seafarer has been cured or until a medical determination is made in accordance with Article 25 concerning permanent disability.

23.4 Proof of continued entitlement to sick pay shall be by a submission of satisfactory medical reports, endorsed, where necessary by a Company's appointed doctor. If a doctor appointed by or on behalf of the Seafarer disagrees with the assessment, another doctor may be nominated jointly between the Company and the seafarers Union and the decision of the doctor shall be final and binding on both parties.

**Article 24: Maternity**

24.1 In event that a Seafarer becomes pregnant during the period of employment the Seafarer shall inform the Master as soon as the pregnancy is confirmed;

24.2 The Company will repatriate the seafarer as soon as reasonably possible but in no case later than the 26<sup>th</sup> week of the pregnancy; and where the nature of the vessel's operations could in the circumstances be hazardous-at the first port of call.

24.3 The Seafarer shall be entitled to two (2) months basic pay and be afforded the priority of same or equivalent position within three (3) month following the birth of the child.

**Article 25: Disability**

25.1 A Seafarer who suffers permanent disability as a result of an accident whilst in the employment of the Company, including accidents occurring while traveling to or from the ship, and whose ability to work as a Seafarer is reduced as a result thereof shall in addition to sick pay, be entitled to compensation according to the provision of this Agreement.

25.2 The disability suffered by the Seafarer shall be determined by a doctor appointed by the Company. If the Seafarer disagrees with the company's Doctor assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of the third doctor shall be final and binding on both parties.

25.3 The Company shall provide compensation on disability to the Seafarer in accordance with the Employees Compensation Act, 2010 and P&I where applicable.

25.4 A Seafarer whose disability in accordance with Article 25 is assessed and is at 50% or more, shall for the purpose of this paragraph be entitled to 100% compensation. Furthermore, any Seafarer that is assessed and is less than 50 % disability but is certified as permanently disabled and unfit for sea services in any capacity by the Company nominated doctor, shall

also be entitled to 100% compensation. Any disagreement as to the assessment or entitlement shall be resolved in accordance with clause 25.2 above.

**Article 26: Shipboard Harassment and Bullying**

**26.1.** The Company shall put in place policies and measures to guard against harassment and bullying on board. A list of what constitute harassment and bullying shall be placed conspicuously in the company's notice board and on-board ships and shall be in line with the MLC 2006 as amended.

**Article 27: Loss of Life – Death in Service**

**27.1** If a Seafarer dies through any cause whilst in the employment of the Company including death from natural causes and death occurring while traveling to and from the vessel, or as a result of marine or other similar peril, but excluding death due to willful acts, the Company shall pay the sum in accordance with Protection and Indemnity(P&I) and the employee compensation Act, 2010 where applicable to the next of kin(s) or beneficiary(s) nominated by the Seafarer. The Company should also transport as its own expense the body to Seafarer's home where practical and at the family's request. If the Seafarer leaves no nominated next of kin or beneficiary(s), the aforementioned sum shall be paid to the person or body empowered by law or otherwise to administer the estate of the Seafarer.

**27.2** Payment effected under this clause shall be without prejudice to any claim for compensation made in law.

**27.3** For the purpose of this clause, a Seafarer shall be regarded as "in the employment of a Company" as long as the provisions of Articles 27 apply and provided the death is directly attributable to sickness or injury causing the termination of the Seafarer's employment.

**Article 28: Insurance Cover**

**28.1** The seafarer shall be entitled to Protection and Indemnity (P&I) and Employees Compensation Act 2010 where applicable.

**Article 29: Food, Accommodation, Bedding, Amenities etc.**

**29.1** The Company shall provide the following for the use of each Seafarer whilst they are serving on board;

- a) Sufficient food of good quality and of a type conforming with the Seafarer's dietary and/or religious requirements;
- b) Accommodation of adequate size and standard;
- c) One mattress and at least one pillow, two blankets and two bed sheets (or equivalent duvets and covers), pillowcase and two towels. The sheets (or duvet covers), pillowcase and towels shall be changed at least once a week;
- d) Necessary cutlery and crockery;
- e) Laundry facilities;
- f) Recreational facilities in accordance with MLC 2006 provisions

**29.2** In addition, the Company shall provide galley equipment and utensils normally required for cooking purposes. All items of equipment mentioned in Article 29.1 sub paragraphs (c), (d) and (e) shall be of good quality.

**29.3** The accommodation standard should generally meet those criteria contained in the MLC 2006 instruments as amended relating to seafarer accommodation.

29:4 The Seafarer shall have access to free telephone calls on a one-off basis and on compassionate and emergency circumstances.

**Article 30: Personal Protective Equipment**

**30.1** The Company shall provide the necessary personal protective equipment in accordance with ISM/IMO/ILO regulations, or any applicable national regulations that specify any additional equipment for the use of each seafarer while serving on board.

**30.2** The Company will supply the Seafarer with appropriate personal protective equipment for the nature of the job.

**30.3** The Seafarer should be advised of the dangerous nature and possible hazards of any work to be carried out and instructed of any necessary precautions to be taken as well as of the use of the protective equipment.

**30.4** The Seafarer should use and take care of personal protective equipment at their disposal and not misuse any means provided for their own protection or the protection of other. Personal protective equipment remains the property of the company.

**Article 31: Shipboard Safety Committee**

**31.1** The Company shall facilitate the establishment of an on board Safety and Health Committee, in accordance with the provisions contained in the ILO Code of Practice on Accident Prevention on Board Ship at Sea and in Port, and as part of their Safety management system as per the requirements of the ISM Code.

**31.2** The Company shall provide a link between the Company and those on board a designated of a person or persons ashore having direct access to the highest level of management as per the requirements of the ISM Code. The Company shall also designate an on-board competent safety officer who shall implement the Company's Safety and Health Policy and complaint.

- a) Improve the Seafarer's safety awareness;
- b) Investigate any safety complaints brought to his/her attention and report the same to the Safety and Health Committee and the individual, where necessary;
- c) Investigate accident and make the appropriate recommendations to prevent the recurrence of such accidents;
- d) Carry out safety and health inspections and
- e) Monitor and carry out the on-board safety training of the Seafarer.

**31.3** The Company acknowledges the right of the Seafarer to elect a safety representative to the on-board Safety and Health Committee. Such a representative shall be entitled to the same protections as the liaison representative.

#### **Article 32: Union Matters**

**32.1** The Company shall arrange to deduct and paycheck-off dues of each Seafarer to the Seafarer Association / Union under its employment.

**32.2** The Company acknowledges the right of the Seafarer to elect a liaison representative from among the Seafarer to liaise and mediate on a grievance procedure in event of disciplinary proceedings

#### **Article 33: Equality**

**33.1** Each Seafarer will be entitled to work, train and live in an environment free from harassment and bullying whether sexually, racially or otherwise motivated. The Company shall regard breaches of this undertaking as a serious act of misconduct on the part of the Seafarer.

#### **Article 34: Waivers and Assignments**

**34.1** The Company undertakes not to demand or request any seafarer to enter into any document by way of waiver or assignment or otherwise, the seafarer agrees or promises to accept variations to the terms of the these Conditions of Service or return to the Company /their servants or agents any wages (including back wages) or other emoluments due or to become due to the Seafarer under these Conditions of Service and the Company agrees that any such document already in existence shall be null and void,

#### **Article 35: Pension Scheme**

**35.1** The Seafarer shall be registered under the amended National Pension Reform Act 2014. The minimum contribution shall be in the ratio of 8% and 10% by the employee and employer respectively.

#### **Article 36: Duration and Amendment**

**36.1** This condition of service shall be for a period of two (2) years

**36.2** The Company and Seafarer may request for amendments where necessary. However, such request shall be made at least three (3) months before the expiration of this Condition of Service to enable both parties make adequate preparation for negotiation.

#### **Article 37: Monitoring and Compliance**

**37.1** This Condition of Service shall be monitored by a tripartite committee composed of the Nigerian Maritime Administration and Safety Agency (NIMASA), representatives of Seafarers employers, representatives of the Nigeria Merchant Navy Officers and Water Transport Senior Staff Association (NMNO&WTSSA) and the Maritime Workers Union of Nigeria (MWUN).

## APPENDIXES

### APPENDIX I      CONTRACT DURATION, WORKING HOURS, HOLIDAYS

#### **Duration of Employment**

The maximum period of engagement referred to in the article of agreement (either voyage definite or indefinite)

#### **Normal Working Hours**

Following accepted working practice in the country to which these conditions of service applies, normal working hours shall be eight (8) hours.

### APPENDIX II      WAGES, OVERTIME, LEAVE ENTITLEMENTS.

#### **Wages**

On wages, the National Joint Industrial Council (NJIC) resolved that the seafarers' employers and the seafarers' representative shall proceed with negotiation on Company by Company basis and shall be witnessed by NIMASA.

#### **Overtime Rate**

The overtime shall be determine based on negotiation on Company by Company basis and shall be witnessed by NIMASA.

#### **Overtime**

Overtime payments shall be in accordance with Article seven (7) and it shall not be less than eight (8) days for each completed month of service and pro rata for a shorter period.

#### **Leave**

Leave pay for officers and ratings in accordance with Article eleven (11) shall not be less than 8 and 4 days respectively for each completed month of service and pro rata for a shorter period.

## **APPENDIX III COMPENSATION PAYMENTS**

### **Seafarer Effect**

Maximum compensation for loss of effects as provided for in Article seventeen (17).

### **Medical, Dental or Social – Seafarers Family**

There may be additional contributions by the company to meet medical, dental or social needs of seafarers and their families including seafarer communications, subject to negotiations.

### **Loss of Life – Death in Service**

Death in – services benefits as provided in Article twenty-seven (27) of these conditions of service shall be to the next of kin(s) or beneficiary(ies)

Coastal sector

**FOR: COASTAL SEAFARERS EMPLOYERS:**

**NAME:.....**

**DESIGNATION:.....**

**SIGNATURE:.....**

**FOR: NIGERIAN MERCHANT NAVY OFFICERS AND WATER  
TRANSPORT SENIOR STAFF ASSOCIATION (NMNO & WTSSA):**

**NAME:.....**

**DESIGNATION:.....**

**SIGNATURE:.....**

**FOR: MARITIME WORKERS UNION OF NIGERIA (MWUN):**

**NAME:.....**

**DESIGNATION:.....**

**SIGNATURE:.....**

**IN THE PRESENCE OF:**

- 1) ORGANISATION: FEDERAL MINISTRY OF LABOUR AND EMPLOYMENT(FMLE):**

**NAME:.....**

**DESIGNATION:.....**

**SIGNATURE:.....**

- 2) ORGANISATION: FEDERAL MINISTRY OF TRANSPORTATION (FMOT):**

**NAME:.....**

**DESIGNATION:.....**

**SIGNATURE:.....**

- 3) ORGANISATION: NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY (NIMASA):**

**NAME:.....**

**DESIGNATION:.....**

**SIGNATURE:.....**



Appendix 2: List of Participants

S/N	ORGANIZATIONS	NUMBER OF PARTICIPANTS
1	NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY (NIMASA)	2
2	LABOUR UNIONS: I. NIGERIAN LABOUR UNIONS II. INTERNATIONAL TRANSPORT WORKERS FEDERATION: NIGERIA REPRESENTATIVE	4
3	INTERNATIONAL LABOUR REPRESENTATIVES I. INTERNATIONAL TRANSPORT WORKERS FEDERATION II. INTERNATIONAL CHABER OF SHIPPING	2
4	NIGERIAN SHIP-OWNERS	3
5	SOCIAL SECURITY ORGANIZATION I. NIGERIA SOCIAL INSURANCE TRUST FUND II. MARINE INSURANCE COMPANY	2
6	MALE SEAFARERS	4
7	FEMALE SEAFARERS	2

**TOTAL NUMBER OF PARTICIPANTS: 19**

## Appendix 3: Interview Questions

### **NIGERIAN SHIP-OWNERS**

1. How many Seafarers are currently under your employment?
2. How many Maritime Accidents have been recorded since the establishment of your Company?
3. How many Seafarers in your employment have been involved in Maritime Accidents?
4. What are the measures put in place by your Company to ensure safety and fair treatment of your Seafarers?
5. What are your Company's contributions in ensuring effective implementation of MLC, 2006 and other regulatory frameworks in Nigeria?
6. To what extent is your Company compliant with the provision of social security in the event of maritime accident, injury or death of Seafarers?
7. In your point of view, what is the impact of the Tripartite Collective Bargaining Agreement on minimum standards for the Seafarers on the Nigerian Maritime Industry?
8. How timely and effectively does your Company pay social security to injured or dead seafarers?
9. How do you think the problem of non-compliance with the regulatory framework and unfair labour practices in the Nigerian Maritime sector should be addressed?

### **NIGERIAN MARITIME ADMINISTRATION (NIMASA)**

1. How many Nigerian Seafarers are under the Agency's registration?

2. How many cases of non-payment of social security to injured or dead Seafarers have been recorded by the Agency?
3. How timely are these cases resolved?
4. What are the dispute resolution techniques used in resolving non-compliance of ship-owners with payment of social security to injured or dead seafarers?
5. How effective are the regulatory frameworks put in place by the Maritime Administration in Nigeria for implementation of MLC,2006?
6. In your view, what are the challenges faced by the Nigeria maritime sector in respect of non-compliance of Ship-owners to their liabilities and provision of social security for their crew?
7. In your point of view, why are Nigerian Ship-owners reluctant in providing social security for seafarers in case of accident or death?
8. How do you think the problem of non-compliance of ship-owners with MLC, 2006 and unfair labour practices in the Nigerian Maritime sector should be addressed?
9. What are the modalities put in place to ensure safety and fair treatment of seafarers?

**LABOUR UNIONS: NIGERIA LABOUR UNIONS AND NIGERIAN REPRESENTATIVE OF INTERNATIONAL TRANSPORT WORKERS FEDERATION**

1. What cadre of Seafarers are members of your Labour Union?
2. Do you have an idea about how many Seafarers have been involved in Maritime Accidents in the Nigerian Flagged Ships?
3. Do you have an idea on how timely are social security paid to these seafarers?

4. What are your Union's contributions in ensuring effective implementation of MLC, 2006 and other regulatory frameworks in the Nigerian Maritime Sector?
5. What are the challenges faced by Seafarers in respect of nonpayment of social security by the Ship-owners?
6. In your view, how fairly are the Nigerian seafarers treated by their employers?
7. What is the impact of the Tripartite Collective Bargaining Agreement on minimum standards for the Seafarers on the Nigerian Maritime Sector?
8. How do you think the problem of non-compliance of ship-owners with MLC, 2006 and unfair labour practices in the Nigerian Maritime sector should be addressed?
9. What are the challenges faced in enforcement of the Collective Bargaining Agreement?

#### **NIGERIAN SEAFARERS**

1. For how long have you been a Seafarer?
2. Have you ever been involved in a Maritime accident?
3. Do you have an idea of how many maritime accidents has been recorded by your Company?
4. Have you or any of your colleagues ever experienced nonpayment of social security?
5. In your view, how timely is the process of payment of social security to dead or injured Seafarers in your Company?
6. Do you have an idea on whether injured Seafarers in your work place experience discrimination or delay in payment of their social security?

7. How effective does your employer respond to cases of Maritime Accident involving Seafarers in their employment?
8. What are the modalities put in place by your employers to ensure fair treatment, safety and security of crew onboard the vessels?
9. What are the benefits of the Tripartite Collective Bargaining Agreements to the Seafarers?
10. How do you think the problem of non-compliance of ship-owners with MLC, 2006 and unfair labour practices in the Nigerian Maritime sector should be addressed?

**INTERNATIONAL LABOUR REPRESENTATIVES: INTERNATIONAL TRANSPORT WORKERS FEDERATION AND INTERNATIONAL CHAMBER OF SHIPPING**

1. How often do you receive complaints about Maritime accidents?
2. How many cases of nonpayment of social security are reported by Seafarers?
3. How many of these cases involve Nigerian Seafarers?
4. What are the timely resolution advice or action that has been rendered by your establishment to the parties involved?
5. What are the strategies your organization prescribed in ensuring effective implementation of MLC, 2006 by Member States?
6. Why are the Ship-owners reluctant in providing financial security for seafarers in case of abandonment, accident or death?
7. As the treatment of Seafarers improved since the amendment of the MLC, 2006
8. What are the challenges hindering effective implementation of MLC, 2006?

9. How do you think the problem of non-compliance of ship-owners with MLC, 2006 and unfair labour practices in the Nigerian Maritime sector should be addressed?

**SOCIAL SECURITY ORGANIZATIONS: NIGERIA SOCIAL INSURANCE TRUST FUND (NSITF) AND MARINE INSURANCE COMPANIES**

1. What is the average term of Insurance policies within your organization?
2. In your view, how many Shipping Companies are insured with your Organization?
3. Do you have an idea on how many types of social security benefits does your organization have in place?
4. What is the minimum age for registration under the insurance policy in your organization?
5. Do you have an idea on how often do you organization pay social security on behalf of Ship-owners in case of accident or death?
6. In your view, where an accident occurs outside the jurisdiction of the Insurance, how does your Company handle it?
7. What are the challenges faced by your Organization while carrying out its obligation in cases of accidents or death of Seafarers?
8. In your opinion, how do you think the problem of non-compliance of ship-owners with MLC, 2006 and unfair labour practices in the Nigerian Maritime sector should be addressed?