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WORLD MARITIME UNIVERSITY
Malmö, Sweden

**MARITIME LABOUR CONVENTION, 2006:
CHALLENGES FOR IMPLEMENTATION IN
REGARDS TO TITLE 5 COMPLIANCE AND
ENFORCEMENT IN FIJI**

By
SHERYNE ROSALIA KANAWALE
FIJI

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

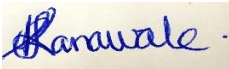
MASTER OF SCIENCE
in
MARITIME AFFAIRS
(MARITIME LAW AND POLICY)

2021

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): 21/09/21

Supervised by: Professor Laura Carballo Piñeiro

Supervisor's affiliation: World Maritime University

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Abstract

Title of Dissertation: Maritime Labour Convention, 2006: Challenges for implementation in regards to Title 5 Compliance and Enforcement in Fiji,

Degree: **Master of Science**

Shipping is an important component of human existence, which serves over 90 per cent of global trade. Interestingly, the drivers of the shipping industry are the seafarers, whose activities do not get the recognition they deserve, compared to other sectors of the global economy. Reports on assaults, ill health, poor remuneration, poor working and living conditions among other issues have plagued the seafaring profession over the years.

In the light of this, the International Labour Organisation (ILO) in 2006 came up with the Maritime Labour Convention (MLC) 2006 as amended, geared towards ensuring a decent working agenda for the seafarers. However, there are indications that quite a number of countries are yet to implement the provisions of the MLC 2006, thereby jeopardising the lots of the seafarers’.

The focus of this dissertation is to examine and discuss how effectively the Government of the Fiji and the Maritime Safety Authority of Fiji (MSAF) have adopted the MLC 2006 into their national laws, in particular Title 5, focused on the compliance and enforcement as regards Flag State, Port State and Labour Supplying Responsibilities. Fiji’s draft Labour Convention), Regulations 2017 will be analysed against the MLC, 2006, seeking to find out its effectiveness and compliance to the Convention.

The research will also attempt to identify gaps and make recommendations on how to improve the draft (Labour Convention), Regulations 2017 before its implementation.

KEYWORDS: Maritime Labour Convention, 2006, Seafarer’s Rights, Ship-owners, International Labour Organization.

Table of Contents

Declaration	i
Acknowledgements.....	ii
Abstract	iv
Table of Contents.....	v
List of Tables	vii
List of Figures	vii
List of Abbreviations	vii
Chapter 1 Introduction	1
1.1 Background	1
1.2 Research Questions and Objectives	4
1.4 Methodology	4
Chapter 2 Fiji as a Flag State with Responsibilities in accordance with the MLC, 2006.	6
2.1 Introduction	6
2.2 National Inspection and Enforcement System	7
2.2.1 Training and Competency Requirements for Inspectors	7
2.2.2 Inspectors Status, Powers and Independence	9
2.2.3 MLC Ship Inspection Intervals	10
2.2.4 Inspection Records and Annual Reports	11
2.2.5 Legal Provisions for Compensation for Loss/Damage.....	12
2.3 Delegation to Recognized Organizations	12
2.3.1 Assessment of the Recognized Organization Agreement.....	15
2.3.2 Functions carried out by the Recognized Organizations.....	17
2.3.3 Communication and Oversight Procedures	18
2.4 Fiji's Inspection and Certification System.....	19
2.4.1 Maritime Labour Certificate and Declaration of Maritime Labour Compliance.....	20
2.4.2 Provisions to issue an Interim Maritime Labour Certificate.....	22
2.4.3 Cease of a certificate validity including withdrawal.....	23
2.4.4 Withdrawal	24
2.4.5 Dispensation	25
2.5 On-board Complaint Handling Procedures.....	26
2.6 Marine Casualties	29
2.6.1 Official Inquiry of Marine Casualties	30
2.6.2 Final Report of Marine Casualties.....	31
2.7 Conclusion	32
Chapter 3 Fiji as a Port State with Responsibilities in accordance with the MLC, 2006.....	33
3.1. Introduction	33
3.2 Inspections in Port Undertaken by PSC Authorized Officers.....	35

3.3 Qualifications and Training required to perform Port State Control	40
3.4 Unduly Detention or Delay of Ships	43
3.5 Fiji as a member of Port State Control Memorandum of Understanding (MoU).....	45
3.6 Onshore seafarer complaint-handling procedures.....	49
3.7 Conclusion	50
Chapter 4 Fiji as a Labour Supplying Country with Responsibilities in accordance with the Convention	51
4.1 Introduction	51
4.2 Inspection and Monitoring	53
4.3 National Implementation of Social Security Protection for Seafarers.....	55
4.4 Conclusion	58
Chapter 5 Conclusion	60
5.1 Recommendations	62
References.....	63
Appendices	69
Appendix 1	69
Appendix 2	70
Appendix 3	71
Appendix 5	75
Appendix 6	77

List of Tables

Table 1 Deficiencies by Category.....	47
Table 2 Deficiencies recorded by APCIS	49

List of Figures

Figure 1 PSC Inspection in Port (prepared by Author)	37
Figure 2 Political Map of Fiji.	42

List of Abbreviations

APCIS	Asia-Pacific Computerized Information System
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEO	Chief Executive Officer
DMLC	Declaration of Maritime Labour Compliance
ECOs	Enforcement Compliance Officers
FNPF	Fiji National Provident Fund
HRAS	Human Rights at Sea
ILO	International Maritime Labour Organization
IMO	International Maritime Organization
ITF	International Transports Workers' Federation
MLC	Maritime Labour Certificate
MLC, 2006	Maritime Labour Convention, 2006
MoU	Memorandum of Understanding
MSAF	Maritime Safety Authority of Fiji
MTA	Maritime Transport Act, 2013
PSC	Port State Control

PSCOs	Port State Control Officers
ROs	Recognized Organizations
UNCLOS	The United Nations Convention on the Law of the Sea, 1982

Chapter 1 Introduction

1.1 Background

The Maritime Labour Convention (MLC), 2006, also known as the Seafarers Bill of Rights, is the fourth pillar of international maritime law for quality shipping, which incorporates the most recent international maritime labour conventions, and recommendations and the basic principles found in other international labour conventions.

The MLC, 2006 was the initial comprehensive set of global standards to be adopted without the opposition of any of its stakeholders compared to the previous conventions and recommendations, which were not designed to ensure the widest acceptance among governments, ship-owners and seafarers. Working and living conditions of seafarers prior to the MLC 2006 varied among companies locally, internationally and among states. The MLC, 2006 harmonises most the previous conventions and recommendations of ILO into one, which led to countries, which ratified the MLC 2006, not needing to ratify and comply with previous conventions. Countries that do not ratify the new convention will continue to comply with the terms of the conventions they have ratified.

“The system of compliance and enforcement should ensure that the MLC, 2006 is effective in practice by virtue of the no more favourable treatment principle” (Carey, 2017, p. 19). Fiji adopted the MLC, 2006 in 2014, but has yet to incorporate it into national law. Currently it is at its draft stage and seeks implementation in the not so distant future. In addition, Fiji has adopted and enforced the amendments of 2016 and 2018 to the MLC, 2006. However, Fiji is yet to submit a declaration of acceptance of the amendments to the Code of the Convention 2014.

The growing body of literature on challenges that states face in implementing the MLC, 2006 has revealed several issues. As from the ratification date, research has shown that implementation has been delayed due to many factors. Among them, global economic destabilization, political challenges, environmental disasters, an arrangement of social security rights for seafarers, and which department should contribute to the implementation of the Convention (McConnell, 2011). Such findings indicate that the Convention's non-implementation will lead to significant issues for not only the seafarers involved but also all parties connected.

Implementation of the MLC, 2006 is considered the most effective and harmonized approach to ensure that all states, shipping companies, manning agencies, and other stakeholders are involved in guaranteeing decent working and living conditions for seafarers'. Governments are expected to have the broadest acceptance of the Convention, which allows for easy updating and effective implementation and enforcement.

A significant challenge the Fijian government faced regarding the implementation of the Convention was the lack of qualified and competent personnel, including physical resources to carry out inspections on ships visiting their ports and to verify compliance with the Convention (Francisco et al., 2013). States must have the resources to thoroughly carry out MLC, 2006 inspections and ensure it is adhered to.

“Despite this, the International Labour Organization (ILO) has acknowledged that many seafarers are vulnerable to exploitation and abuse, non-payment of wages, non-compliance with contracts, exposure to poor diet and living conditions, and sometimes being abandoned in foreign ports” (Kabai, 2015, p.189). In the maritime context, the creation of an impressive treaty infrastructure governing seafarers' rights supervised by the ILO has only taken place side-by-side with ongoing and widespread abuses committed against seafarers (Payoyo, 2018).

Fijian seafarers continue to face abuses as mentioned by seafarers' trade unions in their day-to-day affairs on-board. Significantly, violating the seafarers' rights where the ship-owner reduced their salaries as opposed to what was agreed upon in the initial contract; given new agreements prior to boarding the vessel; refusing to pay them at regular times while on contract; seafarers made to pay their medical bills, including payment of work permit. Meanwhile, the costs are borne by the ship-owner (Couper, 2020).

Seafarers are workers that face neglect and must be acknowledged for their sacrifices in ensuring world trade is in motion. The abuses faced by Fijian seafarers call for immediate actions from all concerned to pursue the MLC 2006 in particular to fully implement compliance and enforcement in the country. To end human rights' abuses at sea, will only be possible by the implementation of the MLC 2006 by guaranteeing the protection of our seafarers including their safety and welfare. It is alarming to see that seafarers around the globe are still facing such treatment that "Many seafarers are victims of discrimination, maltreatment and unfair labour practices and cannot properly use their rights to justice, strike, shore leave, fair wages, repatriation, freedom of association and collective bargaining among others" (Dimitrova, 2010, p.3).

The non-implementation of the Convention will continue to affect seafarers and impact the maritime industry way into the future. The challenges range from global economic destabilization, political challenges, environmental disasters, the arrangement of social security rights for seafarers, inspection and certification of ships, lack of qualified and competent personnel, including physical resources to the lack of control states possess over their flagships, is not alien to Fiji.

The appendixes consist of forms from the draft (Labour Convention) Regulations 2017 of Fiji, which are yet to be fully developed, which clearly depicts the challenges faced by the country. The forms are general areas subject to detailed inspection, social

security afforded to seafarers, part I and II declaration of maritime labour compliance, interim maritime labour certificate and the maritime labour certificate.

Further research is required to explore and find the challenges to fill the gap and contribute to current knowledge to make way for proper and effective implementation of Compliance and Enforcement of the MLC, 2006 in Fiji.

1.2 Research Questions and Objectives

The following research questions have been formulated to achieve the objectives of this study:

1. Is Fiji's Flag State Responsibility effective and does the national law implementing the MLC, 2006 in compliance with the provisions of the Convention?
2. Is Fiji's Port State Responsibility effective and does the national law implementing the MLC, 2006 in compliance with the provisions of the Convention?
3. Is Fiji's Labour Supplying Responsibility effective and does the national law implementing the MLC, 2006 in compliance with the provisions of the Convention?

The questions listed above will also attempt to identify the gaps.

1.4 Methodology

This study employs a legal-dogmatic and comparative analysis methodology as its methodological grounding.

The research is based on the legal provisions of the MLC, 2006 and Fiji's national laws on whether or not Fiji's laws are in line with the provisions of the Convention. In addition, Fiji's Draft Maritime (Labour Convention) Regulations, 2017 will be

examined against the MLC, 2006, to see whether the draft is satisfactory in compliance with what the Convention requires; by comparing the two legal data in relation to one another and then assessing their similarities and differences.

Furthermore, to discern any gaps in Fiji's national law that violate the MLC, 2006.

Secondary data will be obtained from literature, journals, books, online scientific articles, online news articles and statistical data related to this research topic.

Finally, it is imperative to note that limited access to secondary sources in Fiji presented a challenge to this research.

Chapter 2 Fiji as a Flag State with Responsibilities in accordance with the MLC, 2006.

2.1 Introduction

Flag states hold the prime responsibility for safe and efficient shipping. “The role of flag states in exercising effective jurisdiction and control over administrative, technical and social matters on ships flying their flag lies at the heart of the international system of maritime regulation and enforcement” (Bateman, 2015, p.43). As detailed in Article VI of the MLC, 2006, member states are expected to ensure that vessels flying their flag comply with all aspects of the Convention, the Articles, Regulations, and Code.

“It is clear that the majority of the obligations under the MLC, 2006 are directed to States in their capacity as flag States” (McConnell, 2011, p.134). Fiji as a flag state and a maritime island state has duties in this regard towards all ships flying its flag. The only regulatory authority in Fiji is the Maritime Safety Authority of Fiji (MSAF), which monitors and ensures that all vessels comply with the International Maritime Organization (IMO) instruments in Fiji, at least all instruments that the Government of Fiji has ratified (Maritime Safety Authority of Fiji, 2015).

A registry is a means of providing a ship with an identity to expedite its movement worldwide (Davis, 1986). MSAF is the only registry of ships and is regulated by the Maritime (Ship Registration) Regulations 2013. Part 1 paragraph 2 of the Ship Registration Act states its purpose, “These regulations prescribed the requirements that must be fulfilled in order to register ships in Fiji and which entitles the ship to fly the Fiji flag” (Ship Registration Act, 2013). Fiji has 2609 vessels registered under MSAF and is a traditional closed registry. It is the ship-owners primary duty to ensure the safe operation of their ships and the safety and welfare of their crews. However, the flag state plays a key role by ensuring owners of ships flying their flag comply with international regulations (Bateman, 2015).

This chapter will examine the effectiveness of Fiji's flag state responsibilities under national law as outlined in the ILO Guidelines for Flag State Inspections under the Maritime Labour Convention, 2006 as amended and the MLC 2006 in ensuring Fiji flagged vessels' compliance to the minimum standards of the Convention.

2.2 National Inspection and Enforcement System

Fiji will implement the MLC, 2006 through its draft Maritime (Labour Convention) Regulations, 2017, which entrusts MLC, 2006 inspections to flag state inspectors, but also authorized delegation to Recognized Organizations (ROs), to carry out inspections and certification on behalf of the flag state.

According to Regulation 5.1.4 paragraph 1 of the Convention, a coordinated system of regular inspections, monitoring, and other control measures needs to be put in place for ships that fly their flag. The following sub-headings will examine if Fiji has an effective inspection and enforcement system. The inspection system's essential aspects are to ensure that inspectors have adequate training and expertise and status, power, and independence to conduct thorough ship inspections at intervals required by the MLC of 2006. In addition to the publication of inspection records and inspectors' reports, compensation must be paid in cases of improper exercise of an inspector's authority.

2.2.1 Training and Competency Requirements for Inspectors

Training activities such as flag state inspection are not just important but necessary to enforce the Maritime Labour Convention of 2006 (Devlin, 2011). In addition to this, Devlin stresses that inspectors have great experience, but this is not sufficient. It is essential that inspectors understand that they will not be referencing the MLC, 2006, but rather the national laws that incorporate the Convention.

It is essential to know that flag state inspections may involve both maritime inspectors and labour inspectors, which some countries resort to in flag state inspections, particularly maritime labour inspections. Due to MLC, 2006 being a labour matter, unlike other inspections carried out by the administration inspectors. Many topics such as social security or occupational safety and health and the possibility of implementation through collective bargaining agreements are not within most maritime administrations usual practice or jurisdiction (McConnell, 2011).

Maritime labour inspectors should demonstrate the necessary expertise aspects relating to the MLC, 2006. Appropriate knowledge in ship operations, minimum requirements for seafarers to work on ships, conditions of employment, accommodation, recreational facilities, food and catering, accident prevention, health protection, medical care, welfare and social security protection. Additionally, having a solid understanding of the ILO Guidelines for Flag State Inspections under the Maritime Labour Convention, 2006, as amended, along with the relevant national laws and legislation as well as international and national instruments.

According to the ILO Guidelines for Flag State Inspections under the Maritime Labour Convention, 2006 as amended, a vital duty of a flag state inspection system is to provide a sufficient number of trained and competent inspectors that can effectively perform their duties. Fiji has to provide a sufficient number of inspectors, which must be qualified, trained and competent to thoroughly carry out the provisions stated in Convention.

Adequate provisions shall be made to ensure that the inspectors have the training, competence, and terms of reference, powers, status, and independence necessary or desirable to enable them to carry out the verification and ensure compliance as per Standard A5.1.4 of the Convention.

The Committee of Experts on the Application of Conventions and Recommendations (CEACR), highlighted in regards to flag state responsibilities, to indicate how it gives effect to Standard A5.1.4 paragraph 3. Fiji's draft maritime (labour convention)

Regulation of 2017 does not stipulate this provision of the MLC, 2006 and therefore fails to state the training and competence requirements needed by a flag state inspector to fulfil his/her duties.

The Fiji legislation should specify inspectors training: they must be trained in the provisions of the MLC, 2006 and in particular, how the national laws, which incorporate the Convention, are interpreted. In addition, the Fiji legislation should include competence of the inspectors; they have to be familiar with the MLC, 2006 requirements. Including terms of reference explicitly indicating their powers and how they will exercise them.

Fiji's draft Maritime (Labour Convention) Regulations 2017 is deficient in complying with the provisions of Standard A5.1.4 paragraph 3 of the Convention.

2.2.2 Inspectors Status, Powers and Independence

A flag state has primary responsibility for exercising jurisdiction over its ships and taking enforcement action against these ships (Watson, 2016). A flag state inspector ensures that vessels registered under its flag meet the satisfactory requirements to continue their registration is at the mercy of the flag state, which will cause these vessels not to enter ports and lose their affiliation. For inspectors to effectively carry this out they need regulations to enforce these powers.

Fiji's draft Maritime (Labour Convention) Regulations 2017, Regulation 121 affirms the powers given to flag state inspectors to board and inspect vessels without the consent of the ship-owner, master or person in charge of the vessel. In addition, Regulation 135 of Fiji's draft Maritime (Labour Convention) Regulation 2017, states the power given to flag state inspectors to detain a vessel that does not meet the requirements of the MLC, 2006.

Fiji's Regulations 121 and 135 complies with the provision of Standard A5.1.4 paragraph 3, referring only to inspector's powers. Which must have adequate provisions to ensure inspectors have the powers to check that all measures related to

living and working conditions have been implemented and the requirements of this convention are met, as stated in the declaration of maritime compliance.

However, Fiji's draft Maritime (Labour Convention) Regulations 2017 fails to specify the inspector's status and independence as also mentioned by CEACR. MSAF needs to include these into Fiji's Regulations, i.e. inspector's status, the type of inspector as being a professional flag state inspector, and their independence to carry out their functions. It is critical to be independent, not subject to order by a supervisor such as the maritime administration, and thus subject to their influence, not being able to comply with the MLC, 2006's requirements. Accordingly, Fiji does not comply with paragraph 7 of Standard A5.1.4 where it states that all members must ensure the inspectors have the proper status and conditions of service to be independent of changes of government and improper external influences by providing and enforcing adequate rules.

2.2.3 MLC Ship Inspection Intervals

"All ships covered by the MLC, 2006 are potentially subject to inspection" (Grbić et al., 2015), p. 53). The Guidelines for Flag State Inspections under the Maritime Labour Convention, 2006 as amended, emphasizes that flag states shall ensure, through a system of regular inspection, monitoring, and control measures, that ships comply with the Convention as implemented in national laws and regulations. In addition to collective bargaining agreements, or other measures or practices implementing the Convention (as cited by Piniella et al., 2013). Regular inspections will provide better protection to all seafarers and ensure they enjoy adequate working and living conditions stipulated by the MLC, 2006.

Not all vessels will be certified but it is vital that all vessels must be inspected. An inspection will be based on objectives stating how flag state inspectors intend to inspect their domestic and international fleet, which have to be documented and submitted to CEACR upon request. According to the ILO Guidelines, for Flag State Inspections under the Maritime Labour Convention, 2006 as amended. vessels that are

not required to be certified (vessels less than 500 gross tons, or vessels that do not operate from a port or between ports in another country, and do not engage in any international voyage); must still meet all the requirements as a certified vessel.

A vessel that is not certified is subject to a three-year inspection, according to the same compliance requirements as certified vessels (as implemented nationally). They differ only in that neither Maritime Labour Certificate (MLC) nor Declaration of Maritime Compliance (DMLC) are issued to them (ILO, 2021). In addition, the sixteen areas identified in Part I of a DMLC will also be inspected.

Vessels that are certified (vessels with a gross tonnage of 500 or more engaged in international voyages or operating from or between ports in another country) are required to undergo a series of inspections to ensure compliance to the Convention; where it will be issued an MLC or DMLC; these certificates have a duration of not more than five years. The vessels are inspected in accordance with the MLC, 2006 clearly, when it has to be certified in a framework of five years and be inspected three times during this time. Standard A5.1.3 states that an initial inspection is to be carried out before the issuance of the MLC, an intermediate inspection between the second and third years, and a renewal inspection upon the expiry of five years.

Fiji's draft Maritime (Labour Convention) Regulations 2017; Regulation 124 replicates this pattern. However, Fiji does not comply with the ship inspection intervals as it fails to mention that intermediate inspections can also be conducted in the second year as stated in Standard A5.1.3 paragraph 2 even though Fiji has accepted the 2016 amendments of the Code, which entered into force in 2019. In addition, Fiji does not provide a provision for ship inspection intervals for vessels not required to be certified.

2.2.4 Inspection Records and Annual Reports

The competent authority is obliged to keep a record of inspections of seafarers' conditions on its flagged vessels, according to A5.1.4 paragraph 13. Within six months of the end of each year, the competent authority is obliged to publish an annual report on inspection activities. Flag States should consider the contents of Guideline B5.1.4,

paragraph 10, when drafting annual reports.

The contents should include a list of laws and regulations currently affecting seafarers' working and living conditions and any amendments made during the year, including an overview of the inspection system. The details of all seafarers who are subject to the nation's laws and regulations and statistics and information on violations, penalties, and detentions of ships, and information disclosed on occupational injuries and diseases affecting seafarers.

Fiji's draft Maritime (Labour Convention) Regulations 2017 does not comply with Standard A5.1.4 paragraph 13, as it does not mention the inspection records and annual reports MSAF must publish at the specified time.

2.2.5 Legal Provisions for Compensation for Loss/Damage

When conducting inspections, inspectors must be aware of the provisions of the Maritime Labour Convention, 2006, including the Guidelines for flag state inspections under the Maritime Labour Convention, 2006 as amended to avoid the consequences of inaccurately exercising their powers or causing loss or damage to the vessel. It is necessary for competent authorities to develop guidelines for inspectors, to be trained appropriately on their tasks (ILO, 2021).

Regulation 135 (3) of the draft Maritime (Labour Convention) Regulations 2017 affirms that if it is proven that a vessel was unduly detained or delayed, the Authority shall be liable to pay the ship-owner the costs of and incidental detention of the vessel. Including compensation for any loss or damage sustained due to the detention.

Fiji's draft Maritime (Labour Convention) Regulations 2017 Regulation 135 paragraph 3 complies with Standard A5.1.4 paragraph 16 of the Convention.

2.3 Delegation to Recognized Organizations

An important element of control is the carrying out of inspections, for which provisions are included in the text of the Convention. If inspections show that a vessel

complies with the relevant provisions certificates are issued. A certificate issued by a flag state or recognized organizations (ROs) declares that the vessel named on the certificate has been examined and found to comply with the provisions indicated on the certificate. “In the operation of flag state inspections, an innovative element is the recognition of the role of the Recognized Organizations – mainly the classification societies” (Adăscăliței, 2014, p. 12).

The International Commission on Shipping stated that in 2001, regulatory inefficient flag states issued statutory safety and pollution prevention certificates since every state has the same rights and obligations, other states should accept these certificates as proof of compliance (Mansell, 2009). Many states lack the ability to provide infrastructure and legal capability to administer and enforce their national laws.

Consequently, flag states’ carefully select ROs that are up to standard. Flag states may delegate the work associated with surveys and the issue of certificates to inspectors nominated for the purpose or to classification societies recognised by them, but remain responsible for the facts stated on the certificate. The MLC, 2006 provides that member states shall designate recognized organizations to perform the function of inspecting and certifying maritime workers' conditions (Jiménez, 2014).

As flag states do not maintain an international network of offices, flagged vessels that operate internationally end up rarely or never visiting their port of registry. International maritime law has established a regulatory framework that accepts the traditional role that recognized organizations perform and allows delegation of flag state responsibilities such as inspection, survey, and certification of ships, which has become convenient for many flag states.

In addition, many states lack the resources and personnel necessary to accomplish these inspections, as seen in many countries with an open registry system, which must rely on these private entities for inspections and certifications (Silos et al., 2013). While Fiji is a closed registry as mentioned earlier, it still suffers from an insufficient

number of resources and personnel for the effective oversight of those vessels flying the Fijian flag; therefore, delegation of duties to ROs is necessary.

A significant amount of flag states' responsibilities regarding vessel safety certifications will no doubt be privatised through recognized organizations, just as it is their responsibility regarding labour inspections and certifications (Piniella et al., 2013). Under MLC, 2006 Regulation 5.1.1 paragraph 3, a member can authorize public institutions or other recognized organizations, which it recognizes as competent and independent, in establishing an effective system for inspections and certifications of maritime labour conditions. Flag states must specify what they want the ROs to do, whether to inspect both domestic and ocean-going vessels or only ocean-going vessels. It remains the member's full responsibility to inspect and certify the working and living conditions of seafarers on-board its flagged vessels.

Fiji's draft Maritime (Labour Convention) Regulations, 2017 Regulation 2, including the Fiji Maritime Code 2013 Regulation 2, delegate to ROs the functions of undertaking surveys and issuing certificates by the organizations' employees as well as maritime and marine protection regulations. These ROs include classification societies, which are periodically audited and given instructions by the authority for survey, audit, and certification authorized by MSAF.

Fiji delegates survey, audit and certification to ROs, as stated in Fiji's Maritime Code, 2013 appendix 2 below:

- a. American Bureau of Shipping
- b. Bureau Veritas
- c. DNV/GL – Det Norske Veritas/ Germanischer Lloyd
- d. LR – Lloyds Register of Shipping
- e. NKK – Nippon Kaiji Kyokai

f. KR – Korean Register

Fiji is required to provide the ILO with a current list of any ROs authorized to act on its behalf and should keep this list current as per Standard A5.1.2 paragraph 4. Fiji meets the requirements of this provision.

The delegation of ROs will significantly compensate for the shortage of flag state inspectors experienced in the country. It is essential to mention that ROs are to be competent in carrying out their roles when conducting MLC, 2006 inspections and certification, having the knowledge and expertise in the relevant aspects of the Convention. In addition, ROs need to be independent (not influenced by superiors, ship-owners or Governments). Fiji does not comply with Regulation 5.1.1 Paragraph 3 since it fails to define the standards of independence and competence as required by ROs. These standards have also been detailed in the IMO Code for ROs, but Fiji appears not to adhere to them.

2.3.1 Assessment of the Recognized Organization Agreement

The development of a formal agreement between two or more parties, which may be legally enforced, is an essential component to be discussed. When an agreement is entered into, it is always assumed that the parties to it were aware of and made allowances for the legal consequences of any breach of conduct. A written agreement establishes the approval of organizations by the competent authority by clearly stating how it works; this essentially acknowledges granting specific powers to the recognized organizations (Ntovas, 2013). Flag states that delegate statutory duties concerning the MLC, 2006 to ROs must ensure that these duties are carried out effectively and per the RO Code.

As a rule, formal written agreements perform several important functions, such as binding the parties together, specify negotiation content and document the nature of the agreement (Blomqvist et al., 2005). According to Guideline B5.1.2 paragraph 3, the agreement will comprise of the following elements: application scope, purpose, general conditions, and execution of functions under authorization, legal basis of

functions under authorization, reporting to the competent authority, and specification of the authorization from the competent authority to the recognized organization and supervision of the recognized organization by the competent authority.

ROs should be delegated statutory power to act on behalf of flag states' in accordance with the RO Code. Importantly, it is vital that the flag state assesses and determines the capability of the ROs to carry out their statutory obligations before engaging in an agreement. As mentioned in Standard 5.1.2 paragraph 1 (a, b, c, d), the flag state must ensure that ROs have demonstrated the capability to carry out the activities covered by the authorization they granted. The ROs are not trained to cover issues like employment contracts, employment issues, or anything on the labour side; if the class needs to do that on top of their regular duties, they will need a different set of skills (Landon, 2012).

The ROs shall be knowledgeable about the pertinent aspects of the Convention and have adequate knowledge of ship operations, minimum requirements for seafarers working on-board, accommodations, leisure facilities, food and catering, accident prevention, health protection, medical care, welfare, and social security protection. In addition, they should maintain and update the expertise of its personnel, be aware of related national laws and regulations and relevant international instruments, and understand the appropriate size, structure, experience, and capability that corresponds to the type and degree of its authorization.

Fiji's draft Maritime (Labour Convention) Regulations, 2017 Interpretation 2 (1) and the Fiji Maritime Code 2013 Interpretation 2 confirms that Fiji has entered into a Memorandum of Agreement as per the Code for Recognized Organizations with the ROs mentioned in 2.3 while complying with IMO Assembly Resolution A.739 (18) and its annexes amended by Resolution MSC 208 (81). Fiji's Regulations do not extend further to elaborate on what specifically is required by the ROs when carrying out statutory functions relating to the MLC, 2006 including the elements required to be stated in the agreement.

Fiji is deficient in complying with Standard 5.1.2 paragraphs 1 and Guideline B5.1.2 paragraph 3, MSAF needs to include the ROs agreement and what it specifically states into the Fiji's Maritime Labour Regulations and ensure that it aligns to the provisions of the MLC, 2006. As MSAF may already have agreements with ROs for other international conventions, these agreements must be reviewed to include the provisions of the MLC, 2006.

2.3.2 Functions carried out by the Recognized Organizations

The MLC, 2006 Regulation 5.1.1 paragraph 3, specifies instances in which public institutions or independent organizations recognized as competent and independent may be authorized to conduct inspections or issue certificates, or to do both, on behalf of a flag state. In the Convention, ROs are referred to as such. In relation to the MLC, 2006, the ROs shall be allowed to inspect and certify ships as complying with the Convention only when they have met the requirements specified therein. In addition, 4.2 of the RO Code states that the flag state should not authorize functions beyond the capabilities of the RO.

Fiji's draft Maritime (Labour Convention) Regulations 2017, interpretation (2) asserts that for the purpose of the MLC, 2006, ROs are authorized by the Chief Executive Officer (CEO) to survey, inspect and to issue a MLC and DMLC for Fiji's flagged vessels.

Fiji does not comply with the MLC, 2006 in regards to the issuance of the DMLC, which should only be issued by the flag state. DMLC provides information about the national requirements that implement the Convention on the working and living conditions and the steps taken by the ship-owner to comply with those requirements on the vessel. To rectify this matter, Fiji needs to amend the draft Maritime (Labour Conventions) Regulations 2017 and additionally the agreement with the ROs, if they are also mentioned there to issue DMLC, as this is a violation of the MLC, 2006.

2.3.3 Communication and Oversight Procedures

To ensure that ROs carry out their obligation towards the flag states, it is essential that there are regular communication and oversight procedures to confirm that ROs are performing to the standards agreed upon in the agreement. States should consider the 1993 Guidelines for the Authorization of Organizations Acting on Behalf of the Administration issued by the International Maritime Organization when establishing such procedures (Ntovas, 2013).

To resolve issues associated with substandard classification societies, the Guidelines aim to ensure that flag states have the necessary control when delegating their functions and set minimum standards for recognized organizations (Takei, 2013). Moreover, flag states should also establish a mechanism that ensures the adequacy of the work performed by recognized organizations, for example, through monitoring, verification, and additional inspections.

Communication and oversight requirements are not explicitly stated in the MLC, 2006; however, Part 3 of the RO Code requires that the flag state develop, implement, and manage an effective communication and oversight programme to monitor its delegated ROs. It is vital to monitor activities of the ROs as they may operate both privately and publicly. Some authors have suggested a potentially unhealthy relationship between those parties since a classification society can still function both as a public and private organization at the same time (Mansell, 2009). In addition, as mentioned by Mansell, public functions are performed by ROs when they are authorized to carry out flag state obligations and private functions when they perform class obligations for ship-owners.

“A number of ROs also have other business interests with ships entitled to fly the flag of the State that has delegated authority to such ROs” (Barchue, 2009, p. 63). As a result, ROs are subjected to more commercial pressures, which sometimes result in conflicts between their role as an inspector and certifier on behalf of the flag state and their commercial relationship as the classification society for the vessel. As many ROs

are profit driven and even so called rogue organizations, they are there for the benefits and do not comply with their duties as agreed upon.

For these reasons, it is imperative that flag states monitor and maintain regular communication with the ROs they have delegated, especially for MLC, 2006 since it pertains to seafarers' working and living conditions on-board their flagged vessels and delegations to the ROs remain the responsibility of flag states. Inspection and certification shall remain the responsibility of MSAF.

In this regard, Fiji does not comply with Standard A5.1.2 paragraph 3 (b) in that it fails to specify the communication and oversight procedures of ROs, which it has delegated statutory duties. A significant deficiency as Fiji needs to monitor the delegated ROs to ensure they are adhering to the provisions of the MLC, 2006. MSAF must consider amending the draft labour regulations 2017 to include communication and oversight procedures while considering the Guidelines for the Authorization of Organizations Acting on Behalf of the Administration adopted by IMO.

MSAF must fulfil its obligations under Regulation 5.1.2 of the MLC, 2006 through developing national regulations, guidelines, and RO agreements; in addition, they assist the Administration with the certification functions described in Regulation 5.1.3 as explained in 2.4.

2.4 Fiji's Inspection and Certification System

Every member state is obliged to establish an effective system for inspecting and certifying the maritime labour conditions, ensuring living conditions for seafarers' on-board their flagged vessels comply and continue to yield to the standards in this Convention (Christodoulou-Varotsi & Pentsov, 2007). Member states' like Fiji have an obligation to adhere to the provisions of the MLC, 2006 and ensure that their inspections and certifications are compliant with the requirements of the Convention. Despite not all vessels being certified, all vessels subject to the Convention must be inspected to ensure compliance with the provisions of the MLC, 2006, as noted in section 2.2.3.

Sampson et al. describes that a ship audit or inspection can also act as an assessment of seafarers, who are particularly susceptible to being disciplined by their companies and even criminalized and imprisoned by port officials (as cited by Baumler et al., 2021). Out of fear, many seafarers' refrain from reporting non-conformities related to working and living conditions on-board, which the MLC, 2006 seeks to eliminate and promote fair conditions for seafarers'. Having a proper inspection system and at regular intervals will help both the seafarers' and ship-owners' to work more diligently towards these inspections while adhering to the Convention.

Fiji has established an inspection and certification system, which is, regulated in Part VIII of the draft (Maritime Labour) Regulations 2017. As discussed in 2.3.1 Fiji also delegates these tasks to authorized ROs. Part VIII provides detailed provisions on application of the inspection and certification, issuance of a MLC and DMLC, power to inspect ships, interim MLC and its validity.

Furthermore, any Fiji vessel that is engaged in commercial activities, which is of 500 gross tons or more, employed in international voyages, or that is operating from a port or between ports outside Fiji, shall be subject to the provisions of this Part VIII after one year after its publication in the Gazette.

2.4.1 Maritime Labour Certificate and Declaration of Maritime Labour Compliance

A valid MLC and a DMLC, which are adequately maintained, can be taken as prima facie evidence that the labour conditions aboard meet the requirements of the Convention (Bollé, 2006). As part of its obligations under the MLC, 2006, Fiji must ensure that all Fijian flagged vessels carry and maintain an MLC and DMLC, which verifies that the working and living conditions for seafarers have been inspected and meet the requirements of national laws regulating the Convention; as stated in Regulation A5.1.3 and Standard A5.1.3.

As mentioned in 2.2.3, certification only applies to vessels with a gross tonnage of 500 or more engaged in international voyages or operating from or between ports in

another country; these vessels shall upon satisfactory completion of an inspection (as stated in 2.2.3) will be issued a MLC. The MLC requires the certification of 16 areas, which correspond to the different titles (4) of the MLC, 2006.

However, at the request of a ship-owner, for flagged vessels that are not mentioned above, this regulation also applies. These are vessels' that engage in commercial activities and sail on international voyages will be subject to inspection by port state control. Therefore, certification is required to avoid being delayed in a foreign port. In addition, vessels below 500 gross tons engaged in international voyages or any tonnage not engaged in international voyages, ship-owners' have the right to request certification (McConnell et al., 2011). Upon completion of the inspection process and submission of a DMLC Part II, the MLC will be issued (ILO, 2021).

Furthermore, the DMLC comes in two parts, which must be attached to the MLC. DMLC Part I is to be completed by the flag state administration. It contains the 16 areas (Appendix A5-11) that need to be inspected, this is vital for flag state inspectors' and ROs as they need to know detailed information on how the MLC, 2006 is being implemented in accordance with national legislation. It is important to note that this is tailor made for different vessel types.

In addition, DMLC Part II is to be completed by the ship-owner, ensuring compliance with national requirements on the vessel concerned. The DMLC Part II requires the approval of the flag state administration or ROs on its behalf. As part of Part II of the DMLC, the ship-owner should specify the measures adopted to ensure that they continue to comply with the national requirements between inspections and measures proposed to ensure that improvements are ongoing.

Fiji's draft Maritime (Labour Convention) Regulations 2017, states in Regulation 124 that the CEO or the RO may issue the MLC once they are fully satisfied, after an initial or renewal inspection that vessels working and living conditions complies with the requirements of its regulations or other written laws.

In Regulation 124 of Fiji's draft Maritime (Labour Convention) Regulations 2017, the CEO or the RO may issue an MLC after the initial or renewal inspection. Upon verification that the working and living conditions on board comply with Fiji's regulations or other written laws following the initial or renewal inspection. Fiji's Regulation 122 on DMLC duplicates what is written in Standard A5.1.3 paragraph 10 (a) and (b). Fiji has listed 16 areas of inspection in Schedule 10 of its draft regulation (see appendixes 3&4); however, MSAF has not filled out the DMLC correctly; it is copied and pasted directly from the MLC, 2006, which many countries are exercising which is of course incorrect. MSAF needs to revise Fiji's DMLC as per their regulations.

Fiji's draft Maritime (Labour Convention) Regulations 2017, Regulations 124 and 122 complies with Regulation 5.1.3 and Standard A5.1.3 paragraph 10 (a) and (b).

2.4.2 Provisions to issue an Interim Maritime Labour Certificate

“Apart from reasons that relate to the endorsement of the continuous compliance of the ship through the period of five years, a maritime labour certificate may also be issued on an interim basis” (Ntovas, 2013, p. 162). The validity of such a certificate may not exceed six months. After the initial six months, the same flag state cannot issue consecutive interim certificates to the same ship-owner. No DMLC needs to be issued for the period the interim certificate is valid. Before the interim certificate expires, an inspection is required to enable the issuance of the MLC. An interim MLC may be granted to a new ship upon delivery, when a ship changes flag, or when a ship-owner takes over operation of a new vessel.

An interim MLC may only be issued following verification that the vessel has been inspected so far and practicable in the 16 areas listed in A5-I. In addition, the ship-owner has demonstrated to the competent authority or RO that the vessel ensures compliance with this Convention through adequate procedures. The master is familiar with this Convention's requirements, including relevant responsibilities for

implementation. Furthermore, that relevant information has been submitted to the competent authority or RO to produce a DMLC.

Fiji's draft Maritime (Labour Convention) Regulations 2017; Regulation 123 duplicates what is stated in Standard A5.1.3 paragraphs 5, 6, 7, and 8 of the MLC, 2006. However, it is deficient in complying with paragraph 7 (c), as it fails to address that the master is required to be familiar with the Convention's requirements, including any responsibilities related to implementation. It is vital that Fiji incorporate this provision into its draft Regulation to be in compliance with this provision. Upon accepting the operating responsibility of the vessel, the master accepts all duties and obligations of a ship-owner under the Convention (Mandin, 2016). Considering the master is the ship-owner's representative on board, it is imperative they are conversant with and ensure the Convention is observed at all times.

2.4.3 Cease of a certificate validity including withdrawal

The MLC is valid for five years and undergoes various inspections in between as mentioned in 2.2.3. It has been observed that seafarers' have received far less attention than the structural characteristics of vessels (the so-called iron and steel factors), equipment and supplies (Zhang & Phillips, 2016). There are many factors that determine the seaworthiness of a vessel however, the requirements of the Convention should not be overlooked, as this inspects working and living conditions for seafarers' and ensures that the vessel is complying with the requirements specified.

In addition, the MLC may cease to be valid for the reasons specified in Standard A5.1.3 paragraph 14. The reasons are when the renewal or intermediate inspection is not undertaken or not completed, when the vessel does not pass the inspection, the vessel changes flag, change of ship-owner, and when there have been substantial changes in crew accommodation.

Fiji's draft Maritime (Labour Convention) Regulations 2017; Regulation 125 paragraph 9 stipulates circumstances when a MLC ceases to be valid. They are when an intermediate inspection is incomplete. The certificate is not endorsed on the MLC;

the vessel changes flag, the ship-owner ceases to be responsible for vessel operations, significant changes are made to the vessel that are related to accommodation, recreation, food, and catering if the certificate is suspended during a period of suspension and the certificate is withdrawn.

Fiji's Regulation 125 paragraph 9 does not comply with the Convention on Standard A5.1.3 paragraph 14, as it refers to significant changes made to the vessel on recreation, food or catering. This should only apply to accommodation, structures or equipment dealt with in Title 3 (seafarers' accommodation) that have undergone significant changes (ILO, 2021). In addition, Fiji further violates the Convention where it fails to specify what the suspension of the certificate conforms to when it suspends it during the period of suspension.

2.4.4 Withdrawal

Withdrawal of an MLC is considered a severe matter and should not be taken lightly. A competent authority or RO can withdraw an MLC if the RO has authorization (McConnell et al., 2011). Standard A5.1.3 paragraph 16, asserts that an MLC can be withdrawn when evidence exists that the vessel does not comply with the Convention's requirements and there have not been any corrective actions taken. In cases when the deficiencies are frequent, yet ship-owners turn a blind eye and do not attend to these deficiencies, inspectors will have no other choice but to withdraw the certificate.

It is important to note when this occurs in a foreign port, the port state of that country should inform the flag state inspectors' to make a decision. Flag state inspectors' will need to use their professional judgment when deciding on the withdrawal of an MLC (ILO, 2021). Furthermore, Standard A5.1.3 paragraph 17 states when considering the withdrawal of a MLC, it must involve the seriousness or frequency of the deficiencies. MLC may not be granted until the vessel adheres to the Convention.

When MSAF believes a vessel is not meeting the requirements of the Convention, as well as having substantial proof that the ship has not taken corrective measures, MSAF has the right to withdraw the MLC. Fiji's draft Maritime (Labour Convention)

Regulations 2017, Regulation 125 paragraph 3 asserts that if a vessel is found not to comply with the regulations or other relevant written law requirements, the CEO or RO shall suspend the MLC. However, if the CEO or RO is not satisfied with the corrective actions, the CEO may withdraw the MLC.

Fiji does not comply with Standard A5.1.3 paragraph 16, as it states that the CEO and RO can suspend the MLC; however, withdrawal of the certificate is only made by the CEO. It is vital to correct Fiji's Regulation 125 paragraph 3, as Fiji has delegated these tasks also to authorize ROs. In addition, Fiji also does not comply with Standard A5.1.3 paragraph 17, as it is deficient in mentioning that the competent authority or RO shall consider the seriousness or the frequency of the deficiencies when considering the withdrawal of an MLC.

2.4.5 Dispensation

The draft Fijian Maritime (Labour Convention) Regulations, 2017 paragraph 12 calls attention to dispensation procedures under which a ship-owner or master is entitled to apply to the Authority for a dispensation for an MLC. Once satisfied, the CEO is not reasonably practicable for the ship-owner or master to comply with the regulations or other relevant written law due to unforeseen circumstances. The working and living conditions of the seafarers on board will not be adversely affected. Dispensation will be granted until the next port of call or for a specified period, if such period of dispensation should not exceed one month.

Furthermore, paragraph 13 elaborates that the CEO, when granting permission, imposes any condition he/she thinks fit. If the ship-owner fails to comply with the requirements of the Convention and does not provide decent work and living conditions, the ship-owner may be deemed to have failed to make the ship seaworthy (Zhang & Phillips, 2016).

Dispensations are not permitted by the Convention, this is a violation of the MLC, 2006. Regulating the above will burden the Fijian seafarers more as they already work and live in unfavourable conditions. Fiji needs laws that will improve on-board living and working conditions. Allowing for dispensation allows room for the already rogue ship-owners and substandard ships to take advantage of in Fiji.

2.5 On-board Complaint Handling Procedures

The Convention introduces distinctive on-board complaint procedures that give the seafarers a rather important role in its enforcement. By identifying existing deficiencies directly on-board, these procedures allow timely rectification and serve as an essential source of information for ensuring ongoing compliance by vessels with the Convention. "The purpose of these procedures is to resolve complaints at the lowest level possible and to exhaust such on-board remedies" (Ntovas, 2013, p. 173). (Doumbia-Henry, 2017) stated that an essential purpose of the new provisions on-board seafarers' complaint handling procedures are the "strengthening of the enforcement system" (p. 139).

According to Regulation 5.1.5 of the MLC, 2006, states should require ships flying their flags to have on-board fair, expeditious, and effective procedures for handling seafarers' complaints on violations of the requirements of the convention. Consequently, states should prohibit and penalize any form of victimization of seafarers who register complaints. Victimization means any adverse action towards a seafarer because of complaints that are not manifestly vexatious or malicious in nature (Stribis, 2019).

Seafarers intending to lodge a complaint about a non-conformity with the Convention should follow the on-board complaint procedures. States must ensure that they have in place, in their laws and regulations, adequate on-board complaint procedures to meet the requirements of this regulation. Complaints should be resolved at the lowest level

possible through such procedures (Ntovas, 2013). Nevertheless, seafarers should have the right to directly complain to their masters whenever necessary, in addition to if they feel it necessary, to appropriate external authorities.

These procedures are a powerful tool; if a ship-owner refuses to address complaints, the seafarers can contact the flag state. Accordingly, it must be ensured that contact information is available to the seafarers and they know exactly whom to contact in reporting deficiencies related to the Convention on-board and receive impartial assistance; a copy of on-board complaint procedures should be provided to the seafarers. It is imperative that the flag state provides a model for on-board handling procedures indicating how to submit a complaint. Furthermore, the on-board complaint procedures should include the right of seafarers to be accompanied or represented throughout the complaint process and ensure that they are protected from victimization for filing a complaint.

CEACR highlighted that Fiji is to provide information procedures dealing with receiving and investigating complaints, referring to Standard A5.1.4 paragraphs 5, 10 and 11(b). The Fijian Government is yet to indicate on how it intends to ensure that the above provisions are in conformity with the Convention. MSAF must ensure that these are included as it pertains to seafarers' lodgement of complaints and inspectors' obligation of confidentiality when receiving and dealing with on-board complaints. Inspectors must use their professional judgement and demonstrate impartially and confidentiality in performing their duties (Politakis, 2013). Flag state inspectors will benefit from these procedures as they help them perform their duties in a manner that complies with the Convention to the best of their ability.

The draft Fijian Maritime (Labour Convention) Regulations, 2017 Regulation 131 paragraph 1, elaborates that in order to comply with this regulation or any other relevant written law. It is the ship-owners' and maritime administrations responsibility to provide appropriate procedures for seafarers' to make a complaint against any

person on-board. Paragraph 2 outlines that the seafarers have the right to complain directly to the master, including the right to be represented; there should be adequate safeguards to ensure that the seafarers are not prejudiced upon lodging complaints. Additionally, an investigation is to be conducted by the master when he or she receives a complaint.

Moreover, Regulation 132 paragraph 1 and 2 specifies that ship-owners shall make available on-board a copy of the on-board handling procedures that states how to contact the authority and the competent authority in the seafarers' home country and names of persons on-board who may assist seafarers and advise them on their complaints.

Fiji's Regulation 131, paragraphs 1 and 2, comply with the provisions of Regulation 5.1.5 and Standard A5.1.5, paragraphs 1 and 2, of the Convention including Regulation 132, paragraphs 1 and 2, comply with Standard A5.1.5 paragraph 4 of the MLC, 2006. However, Fiji is deficient in complying with Standard A5.1.4 paragraphs 5, 10 and 11(b). The management of complaints on-board improves the company's performance when done positively rather than by avoiding seafarers' complaints entirely. Additionally, it allows ship-owners to rectify the grey areas without having to be faced with a complaint against them by the flag state.

Legal provisions dealing with victimization of seafarers' filing a complaint; must be given the same opportunity to those workers ashore, which is fair and just, allowing them to practice their rights in a free and fair manner. "The Convention requires member States to specifically prohibit and penalize any kind of victimization of a seafarer for filing a complaint" (Carballo Pineiro & Kitada, 2020). The flag states must ensure they have regulations in place to accommodate such actions against seafarers' as stated in the MLC, 2006.

Seafarers have generally been subjected to abuse, dangerous and challenging work,

and prolonged separation from their families and homes throughout history. Despite raising their concerns often, their complaints have not always been heard (Couper et al., 1999). The MLC, 2006 finally provided a platform where seafarers can voice their concerns regarding working and living conditions, including their agreements, via the on-board complaint procedures. Regulation 5.1.5 paragraph 2 stipulates that it is prohibited and unlawful for any member to victimize a seafarer for filing a complaint.

Fiji's draft Maritime (Labour Convention) Regulations, 2017 Regulation 131 paragraph 7 states that a master of a vessel who fails to comply with this Regulation without reasonable cause is guilty of an offense and upon conviction is fined not more than \$2,000. Fiji's draft Maritime (Labour Convention) Regulations, 2017 Regulation 131 paragraph 7 complies with Regulation 5.1.5 paragraph 2 of the Convention.

2.6 Marine Casualties

“Total-loss marine casualties are the nightmares and the most serious shipping accidents to the world, which may cause huge economic losses, the loss of lives, and severe marine environmental pollution” (Chen et al., 2017), p. 1). The Convention aims to have a positive impact on the shipping industry. Luo and Shin (2019) conducted a research study and found out that “human error has been identified as the main cause of marine accidents” (p. 449).

Fatigue, poor training, and other factors have contributed to many accidents and deaths in the maritime industry. Having poor conditions of work and life at sea has detrimental effects on the safety of ships and seafarers'. By reducing the instances of sub-standard conditions of work and life aboard ships, shipping will become safer especially for seafarers, which the MLC, 2006 seeks to achieve.

Regulation 5.1.6 of the Convention requires each member to investigate injuries or fatalities resulting from a marine casualty that involves vessels flying their flag. The

final report of an inquiry shall typically be made public. Cooperation between states is necessary to facilitate the investigation of serious maritime casualties. Additionally, it is relevant to emphasize that the Convention does not include any provisions on the standard and guidelines to the regulation.

2.6.1 Official Inquiry of Marine Casualties

Fiji is a signatory to SOLAS (Regulation I/21), MARPOL (Articles 8 and 12), and the Load Lines Convention (Article 23) requires the flag states to carry out casualty investigations on any of their flagged vessels. Furthermore, as being a signatory to The United Nations Convention for the Law of the Sea (UNCLOS) under article 94 paragraph 7 on the Duties of a Flag State. Requiring Fiji to conduct an inquiry into every marine casualty or incident of navigation on the high seas on-board their flagged vessels where there has been a loss of life, serious injury, damage to a ship or the marine environment.

Fiji has been a signatory to SOLAS that requires under Chapter 1, Regulation 28 that Administrations carry out investigations of marine casualties and incidents following the present Convention, and per the provisions stated in the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code).

In practice, the Maritime Safety Authority of Fiji, in carrying out marine casualty or incident investigations, is required to investigate as per the Casualty Investigation Code; this complies with Regulation 5.1.6 of the Convention. However, Fiji does not comply with Regulation 5.1.6 paragraph 2, as it fails to address that members shall cooperate when investigating serious marine casualties.

Investigation and inquiry of a marine accident, incident, or mishap under the Maritime Transport Act (MTA), 2013, regulation 45, paragraph 1, states that the CEO, upon

notification of a marine casualty, incident, or mishap, shall appoint authorized officers to proceed with an investigation of the accident, incident, or calamity. An inquiry in which the CEO determines that there has been a death or severe injury on-board a vessel or a seafarer dies or endures an injury while away from the vessel.

Regulation 20 of the MTA, 2013 elaborates that this regulation applies to Fiji flagged vessels, including foreign ships at the time of the accident, incident, or mishap are in the Fiji waters.

The Maritime Transport Act, 2013, Regulation 20 and 45, complies with the Convention's provisions as set out in Regulation 5.1.6 paragraph 1 (first sentence).

2.6.2 Final Report of Marine Casualties

Understanding past mistakes, is essential in controlling current events and designing for the future (Harrold, 1987). A casualty investigation report makes a fundamental contribution to such understanding. This helps in avoiding future accidents and improving current regulations concerning marine casualties. The submission of a marine casualty report is mandatory for all serious casualties under the SOLAS Convention Regulation XI-1/6 (IMO, 2019).

Furthermore, flag states are required to submit their final report via the Global Integrated Shipping Information System (GISIS) immediately after the investigation is completed (IMO, 2014). The public has access to the GISIS that may be used for future developments to improve maritime safety.

Paragraph 9 of regulation 75 of the Maritime Transport Act 2013 states that the person conducting the accident investigation will submit their report to the Minister within 21 days, containing any information or extracts from the evidence and any observations they think are pertinent to the report. Regulation 75 paragraph 9 of the Maritime

Transport Act 2013 complies with standard A5.1.4 paragraph 14 of the Convention.

However, Fiji's regulations do not comply with the second sentence of Regulation 5.1.6, paragraph 1, requiring the inquiry's final report to be made public. The Maritime (Investigation and Inquiry Procedures) Regulations, 2014, Confidentiality of Information, Regulation 11 paragraph 1 states that information obtained during an investigation is confidential and should not be disclosed.

2.7 Conclusion

Throughout the chapter, significantly, non-compliance with the MLC, 2006 was identified. Evidently, Fiji faces implementation challenges, which require immediate action from the flag state since Fiji's draft Maritime (Labour Convention) Regulations, 2017 is still at its draft stage. The above anomalies must be corrected before implementing the Regulation to ensure full compliance with the Convention.

Chapter 3 Fiji as a Port State with Responsibilities in accordance with the MLC, 2006

3.1. Introduction

In 1978, several European countries signed The Hague Memorandum, which agreed to audit vessels on working and living conditions to ensure compliance with the rules set out by the ILO. In the same year, following the demise of the oil tanker Amoco Cadiz and ILO Convention No. 147 signings, a Memorandum of Understanding (MoU) was signed to coordinate and harmonize international maritime inspections by coastal and port states (Arof¹ & Zulkifly, 2012).

Upon this premise, the Port State Control (PSC), a solution to help stop substandard ships from trading was established in 1982, as agreed upon by the Paris MoU. These controls are insufficient to correct or prevent all hazards leading to an accident, but they have significantly reduced the number of maritime accidents observed during the last decade (Mejia Jr et al., 2010).

The Paris MoU took the place of The Hague Memorandum with more or less the same objectives. Fiji is one of the 21 member Authorities of the Tokyo MOU in the Asia-Pacific Region, which will further be discussed in 3.6 of this chapter.

The purpose of Regulation 5.2 of the MLC, 2006 is to “cooperate with each other for the purpose of ensuring the effective implementation and enforcement of this Convention was understood as envisaging cooperation between the Port State and the Flag State in ensuring continuous implementation on-board ships” (Doumbia-Henry, 2017, p. 134).

Additionally, Fiji’s responsibility as a port state is to inspect and control foreign vessels in Fiji’s waters with the purpose that they do not pose a threat to ships, crew safety, or the marine environment as stipulated in Article 94 of UNCLOS and relevant

international conventions. Additional accountability lies with Port State Control Officers (PSCOs) as the Convention extended its monitoring and inspection capacity concerning international cooperation in implementing and enforcing the standards of the MLC, 2006, on foreign ships as stated in Standard A5.2.1 of the MLC, 2006.

The implementation of the Convention relies immensely on PSC enforcement for the practical function of the Convention, despite the preceding amendments to the MLC, 2006 and the attempts of the International Labour Organization to pressure the flag states to implement the Convention competently and eradicate ill-treatment of seafarers (Exarchopoulos et al., 2018). Fiji already has a PSC system, which requires that a master or ship-owner of a foreign ship within Fiji's jurisdiction shall ensure that the vessel complies with the provisions of the MLC, 2006.

Although the flag state is required to conduct a series of inspections and prove that the ship complies with the MLC, 2006 standards, the port state has the right to inspect any ship arriving at its port to ensure compliance with these standards, regardless of whether the foreign ship is flying a member's flag or not (Carballo Piñeiro, 2016). According to international law, the concept of PSC includes requiring foreign vessels to comply with the laws of their flag state and the laws of the port state. Thus, even if the flag state is not a party to the MLC, 2006, entering a port of a ratifying member, the port state makes compliance mandatory.

The aforementioned ensures that non-ratifying states do not receive a more favourable treatment according to Article V, paragraph 7, of the MLC, 2006. The port state's right to enforce compliance on foreign vessels within its sovereign territory. Conversely, a state cannot plead that its national law exonerates it from performing its international obligations. Having ratified the MLC 2006, a state has an obligation under international law to enforce relevant provisions as part of its PSC procedures, irrespective of whether those provisions have been replicated in or are contrary to domestic legislation.

This chapter will examine the effectiveness of Fiji's PSC responsibilities under national law as outlined in the ILO Guidelines for Port State Inspections under the Maritime Labour Convention, 2006 as amended and the MLC 2006 in ensuring foreign vessel's compliance to the minimum standards of the Convention. Firstly inspections in port undertaken by Authorized Officers; secondly, qualifications and training required to perform PSC inspections; thirdly, procedures for deficiencies and non-conformities; fourthly, unduly detention or delay of ships, and the fifth; Fiji as a member of PSC Memorandum of Understanding.

3.2 Inspections in Port Undertaken by PSC Authorized Officers

“Port State Control confers the power to board, inspect, and where appropriate, detain a merchant ship flying a flag foreign to that state” (Hare, 1996, p. 571). The MLC, 2006, gives PSCOs the same powers to board, inspect and detain a vessel when it is not adhering to the provisions of the Convention. "The elementary obligation for ensuring the vessel's yardsticks of seaworthiness resides with the flag state, but the PSC renders a "safety net" to haul substandard ships" (Mantoju, 2021). Furthermore, PSC is intended to cease substandard ships from trading, which the MLC, 2006 complements to guarantee the safety of seafarers while also protecting their rights to fair and equal treatment.

Prior to the MLC, 2006, there were less regulations in place to enforce inspections on seafarers' working and living conditions, including seafarers' rights. PSC inspections were limited to inspections of hull and machinery, whereas seafarer certifications were taken into account and only a few of their rights were considered. The adoption of the MLC, 2006 steered PSC inspections to include work and living conditions, ensuring fair and equal opportunities for all seafarers.

According to Ntovsa, (2013) it was concluded:

Port State inspections thus offer the means of enforcing compliance where the ship-owner and the flag State have failed in their responsibility to implement or ensure compliance, and contribute in this way to the establishment of a continuous and integrated system that will ensure the full enforcement of the Convention's standards (p. 153).

As with flag state inspections, PSCO's conducting PSC inspections must check for compliance with areas listed in Appendix A5-1 of the Convention and Standard A5.1.3 paragraph 1. In addition, vessels will be required to comply with all the requirements of the Convention. If an investigation of any complaint by PSCOs indicates that there is likely a non-compliance, a more detailed inspection may be carried out, thus worth noting that under Regulation 5.2.1 paragraph 2 of the Convention, a valid MLC with a DMLC attached should be accepted by Authorized Officers as prima facie evidence of compliance.

On the assumption that there are no apparent deficiencies or any outstanding complaints of non-compliance, PSCOs should accept these certificates without the need for further inspections. If this is not the case, a more detailed inspection may be carried out, when there are inconsistencies of the documents, or clear grounds for believing that the working and living conditions do not comply with the Convention. Also, if the flag has changed to circumvent the requirements and if a complaint has been lodged, as stipulated in Standard A5.2.1 paragraph 1 of the MLC, 2006.

Figure 1 below shows the inspection procedure for PSC inspection on the MLC, 2006.

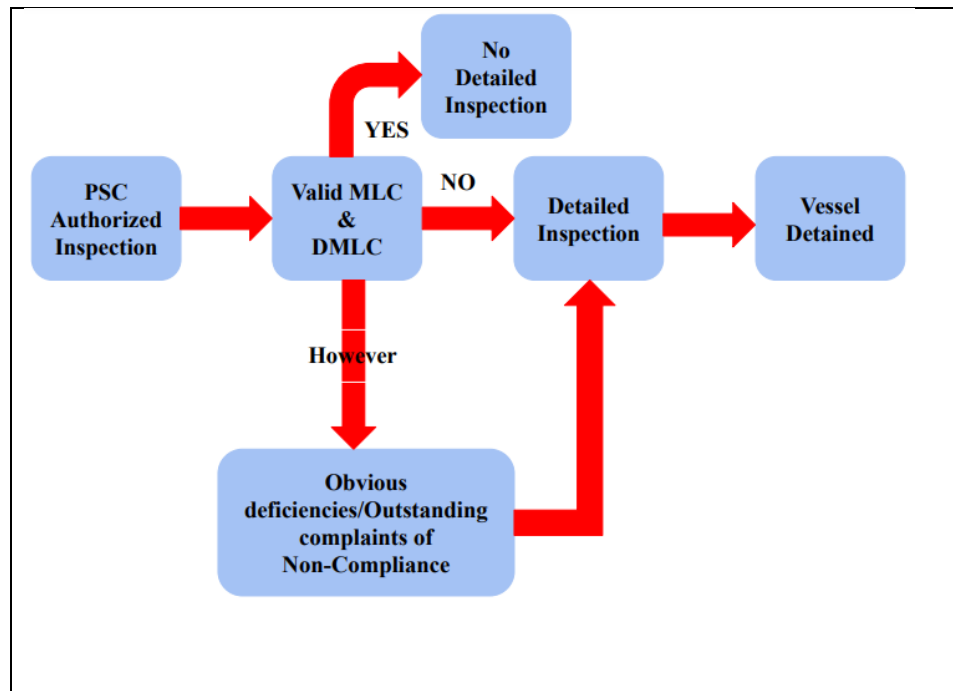


Figure 1 PSC Inspection in Port (prepared by Author)

Fairness and consistency in the way inspections are carried out are essential if the aims and objectives of the Convention are to be met. To achieve this, the ILO passed a resolution at the Tripartite Meeting of Experts in 2008, which adopted the Guidelines for Port State Control Officers carrying out inspections under the MLC, 2006, as amended. The guidelines are to be used extensively for planning and carrying out inspections under the Convention to achieve fairness and consistency; additionally, it contains a complete guide for inspectors regarding inspection areas and procedures, including actions to be taken in the event of non-compliance.

Ships are likely to be subject to more frequent inspections by PSC, rather than the flag state. The Guidelines for Port State Control Officers carrying out inspections under the Maritime Labour Convention, 2006 as amended, states the purpose of PSC and for PSCOs to determine whether the vessel is in compliance with the requirement of the Convention including seafarer's rights as stated in Article IV paragraph 5 (International Labour Organization [ILO], 2021). These requirements are laid down in the Articles, Regulations, and Part A (Standards) of the Code of the Convention.

They relate to seafarers' working and living conditions on the ship (Regulation 5.2.1, paragraphs 1 and 3). Part B (guidelines) of the MLC, 2006, Code is not subject to inspection by port state control. Port state inspections are concerned with the 16 areas (as attached Appendix 1) listed in Appendix A5-III of the Convention as identified for inspection (Standard A5.2.1 paragraph 2) are also the same mandatory areas of compliance required for certification; in addition, vessels must also comply with other requirements of the Convention. The sixteen areas are to be certified by flag States as complying with the related requirements of the Convention: which is relating to working and living conditions as stated in Regulation 5.2.1 paragraph 1; in case of non-compliance, PSCOs may take action.

CEACR highlighted Regulation 5.2.1 and Standard A5.2.1 paragraph 4, as a deficiency, stating that Fiji's port state procedure did not include provisions of inspection for working and living conditions on-board except for accommodation. The Fiji Government informed CEACR that MSAF is revising port state procedures, and will include the provisions of inspection on working and living conditions. CEACR elaborated on the need for Fiji to revise this procedure in order to comply with the Convention.

In addition, the Committee further requested in the context of the adoption of legislation to implement the MLC, 2006, to provide information on provisions implementing Standard A5.2.1 paragraph 4. This requires the attention of relevant seafarers and ship-owners organizations to deficiencies in working and living conditions on the vessel, in the event of a complaint or where such deficiencies are considered significant. The Government is to provide information on the revision of the PSC checklist per the Convention (ILO, 2021).

Fiji's draft Maritime (Labour Convention) Regulations, 2017 Regulation 134 (2) complies with the provisions of the MLC, 2006, Regulation 5.2.1 paragraph 2. In

regards to foreign vessels, any such inspection shall be limited to verifying that they carry a valid MLC, valid interim MLC and a valid DMLC as prima facie evidence of compliance to the Convention. It also complies with Standard A5.2.1 paragraph 1, Regulation 134 (3) of Fiji's draft Maritime (Labour Convention) Regulations, 2017, authorizing Fiji PSCOs to carry out a more detailed inspection when he or she finds the interim MLC or DMLC are not produced or do not contain particulars or information required by the Convention.

In addition, a detailed inspection may be carried out when there are clear grounds for believing that the working and living conditions on board do not conform to the requirements of the Regulation or if there are reasonable grounds for believing that the ship has changed flag to avoid compliance with the Convention.

Upon receiving a complaint alleging that specific working and living conditions on-board do not comply with the requirements of the Convention and when the working and living conditions present could constitute a clear hazard to the safety, health or security of seafarers. Lastly, when the PSCOs have grounds to believe that any deficiencies present an account for serious breach of the requirements to the Convention. This will ensure foreign vessels berthing at Fiji's ports will be thoroughly inspected in accordance with the MLC, 2006 and its provisions, which will ensure effective implementation and enforcement of the Convention.

Fiji's draft Maritime (Labour Convention) Regulations, 2017 Regulation 134, does not comply with Standard A5.1.2 paragraph 4 of the Convention. It fails to specify reporting procedures to follow when a detailed inspection has been carried out. When deficiencies are detected the PSCO shall inform the master with the required deadlines for rectification, if such deficiencies are considered significant or relate to a complaint been lodged, the PSCO shall bring these to the attention to appropriate seafarers' and ship-owners' associations in the Member to which the inspection is carried out. Having done this the PSCO may also notify the flag state and provide relevant information to

the Authorities of the next port of call. Fiji must include this in its draft Maritime (Labour Convention) Regulations 2017, in order to be in compliance with Regulation 5.2, to cooperate with each other for the purpose of ensuring the effective implementation and enforcement of this Convention.

It is vital to have Fiji's PSC thoroughly regulated by effective policies as they are the actual executors and supplement flag state inspections of the MLC, 2006 and its provisions.

3.3 Qualifications and Training required to perform Port State Control

Qualifications and training of PSCOs are essential components needed to inspect a vessel, as the nature of work demands a high degree of skills, knowledge, competency, and experience. In addition, it is vital to have proper qualifications and continuous training to carry out inspections on the provisions of the MLC, 2006.

"Indeed, one of the weaknesses of the MLC, 2006 is that it does not spell out the specific competency requirements that PSC officers must meet in order to be capable of implementing its provisions" (Piniella et al., 2013, p.78). Inferring from Regulation 5.2.1 paragraph 4, of the MLC, 2006, inspections that may be carried out under this Regulation shall be determined on an effective port state inspection and monitoring system. The crucial aspect of this obligation is the need to ensure that the PSC has an adequate number of qualified officers trained to carry out PSC under the MLC, 2006.

PSCOs employed by the flag states have the qualification and training needed to carry out the requirements of a PSC system effectively, as stated in IMO Resolution A.1119 (30) Procedures for Port State Control, 2017 under chapter 1.9: Qualifications and Training Requirements of PSCOs. PSCOs (also labour inspectors) qualification alone is sufficient to meet the standards to carry out PSC inspections. "It would seem logical that the PSC decision says to detain a vessel should be based on highly specialized

knowledge and confidence on the inspector's part” (Piniella et al., 2013, p.78). In addition to this, PSCOs must be trained according to the provisions set out in the MLC, 2006. It is necessary to ensure that the port state has a sufficient number of qualified inspectors trained to carry out PSC under the MLC, 2006. Therefore, an authorized officer may carry maritime labour inspections, which may not necessarily be a PSCO as practiced in some countries (ILO, 2021).

Fiji's draft Maritime (Labour Convention) Regulations, 2017 fails to mention the qualification and training required to be performed by PSCOs. Fiji's PSCOs have the qualifications to perform PSC inspections, yet do not have training on the provisions of the MLC, 2006. Inclusion of this into Fiji's national law is crucial as PSCO's need to be trained according to the Convention's provisions, especially on maritime labour, to improve the quality and consistency of Fiji's PSC inspection system. The Guidelines for Port State Control Officers carrying out inspections under the Maritime Labour Convention, 2006 as amended will monumentally support Fiji towards correct implementation including training of its PSCOs. Continuous training and development of PSCOs will enhance Fiji's PSC inspection in relation to the MLC, 2006.

In addition, Fiji does not have an effective Port State inspection and monitoring system, which requires a sufficient number of qualified inspectors to carry out inspections according to the provisions of the MLC, 2006. Fiji has five international ports (marked with red triangles below): Suva, Lautoka, Levuka, Savusavu, and Malau.



Figure 2 Political Map of Fiji Ezilon Maps. (2009). Fiji Map - Political Map of Fiji [Online]. Ezilon Maps. Edited by Author.

MSAF currently has only two PSCOs in charge of all international ports, mainly in the capital city called Suva: This leads to the remaining four international ports being a target for non-complying ships; this should not be overlooked. Fiji needs to employ and train more PSCO's to carry out its obligation towards the Convention effectively. Complying with the provisions of the Convention will be challenging, where MSAF urgently needs to strategically plan for effective implementation of Fiji's PSCOs regarding their duties and obligations in regards to the MLC, 2006.

Fiji is deficient in complying with the Convention in relation to training and qualifications of PSCOs.

3.4 Unduly Detention or Delay of Ships

PSCOs role is very subtle in deciding to detain a vessel, which is based on their professional judgment (Kiehne, 1996). A severe deficiency or non-compliance to the provisions of the MLC, 2006 regarding seafarers working and living conditions, including seafarers' rights, will may lead to a vessel been delayed or detained. The vessel will only be allowed to depart once the deficiency has been rectified or if a plan of action to rectify the non-conformities is presented to the PSCO, who then is satisfied that the vessel will implement it.

Detention is the most-extreme action a PSCO can take and involves a considerable amount of cost to the ship-owner and delays to an already compact shipping schedule. Standard A5.2.1 paragraph 8 states that each member, when implementing their responsibilities under this standard, shall make all possible efforts to avoid a ship being unduly detained or delayed. This provision which mirrors other international conventions gives a ship-owner the right to take legal action if he/she believes that a vessel has been unreasonably detained or delayed (Doumbia-Henry, 2017).

Erroneously detaining or delaying a foreign vessel reflects poorly on the port state the vessel is being inspected in. In addition, this may be the case when the PSCO has failed to follow legal procedures and the requirements laid down in the MLC, 2006 to enforce detention and for no reason at all – without legal consent. In many cases, the lack of legal understanding of the Convention. Hence, as mentioned earlier, detention of a vessel incurs loss of money by relevant parties and in cases of unduly detention or delays, the onus is on the PSC in the form of compensation which shall be paid for any loss or damage suffered.

The MLC, 2006 states the 16 areas (A-5111) that are to be covered by PSCOs when carrying out inspections, and in cases when a complaint is submitted, only a more detailed inspection is carried out. Standard A5.2.1 paragraph 6 states the conditions justifying the detention of a vessel. In addition, the Convention stresses the need for

authorized officers to be given guidance on the justification of detention and whom to contact when there is detention as per Standard A5.2.1, paragraph 7.

Fiji's draft Maritime (Labour Convention) Regulations, 2017 Regulation 135 paragraph 3 duplicates what is written in Standard A5.2.1 paragraph 6, in dealing with vessels' unduly detention or delay. However, there is no provision to address the procedure, of whom to inform when a vessel is detained, which is not in line with Standard A5.2.1 paragraph 6 of the MLC, 2006 where the authorized officer is to inform the flag state, invite or request the flag state to reply within a reasonable time. Appropriate ship-owners and seafarer's organizations shall be informed in the port state in which the inspection was carried out.

One of the leading implementation challenges is that MLC, 2006 is both a labour and a maritime convention (McConnell, 2011). Moreover, this has largely contributed to Fiji not aligning the draft Maritime (Labour Convention) Regulations, 2017 to the provisions of the MLC, 2006.

In addition, it is important to note that the above provision is also stated under section 3.13 of the Tokyo MoU (which Fiji is a member), stating that the Authorities are to make all possible efforts to avoid unduly detaining or delaying of a vessel. In regards to this provision, Fiji has obligations to both the MLC, 2006 and the Tokyo MoU to avoid unduly detaining or delaying a foreign vessel in its ports.

Furthermore, the provisions of the MLC, 2006 do not define the term unduly detention or delay of ships. As mentioned earlier, PSCOs need to exercise their professional judgment on whether the vessel is to proceed to sea or be detained or delayed until deficiencies are rectified. In Fiji's case, where PSCOs are limited and have not undergone proper training on the MLC, 2006, this could result in inappropriate detention, resulting in unfortunate consequences. The inclusion of this definition will significantly enhance the knowledge of all parties concerned and give a more defining

insight into the term especially understanding the legal repercussions of wrongly detaining a vessel.

3.5 Fiji as a member of Port State Control Memorandum of Understanding (MoU)

A Memorandum of Understanding is an international instrument of a less formal kind of agreement than a treaty (Bang & Jang, 2012). These instruments are signed by the Governments concerned, which will act as the port state entitled to control foreign ships visiting their ports concerning any deficiencies. They will ensure that any severe deficiencies found are rectified before the vessels are allowed to sail. In recent years, the importance of PSC has been widely recognized, and there has been significant movement in various regions to establish a harmonized approach to the effective implementation of control provisions.

Fiji has been a member of the Tokyo MoU since the 1st of June 1996. Having an aim to stop substandard vessels from trading within the region, the MoU set up a real time data exchange system in order for all PSCOs to have access to and thoroughly select vessels operating in violation of the international conventions labelling them as vessels of interest.

The initial MoU of PSC was the Paris MoU which adopted a coding system for deficiencies found and actions taken, a facility for data collection (Yan et al., 2021). This very effective system has also been adopted by other MoUs which helps create a standard data set for statistical purposes. These include the naming and shaming detention lists and reviews. The Tokyo MoU utilizes the system called the Asia-Pacific Computerized Information System (APCIS).

The establishment of APCIS was to:

- Provide the PSCOs with information on the inspection of vessels in other regional ports to assist in selecting foreign-flagged vessels for inspection.

- Provide adequate facilities for the information exchange on PSC in the region.
- APCIS is located in Moscow at the Maritime Administration of the Russian Federation (Tokyo MoU, 2021).

To date, this system has proven to be highly successful in selecting and reporting foreign-flagged vessels not complying with international standards in the Asia-Pacific region. The Tokyo MoU is much more ambitious, setting an overall target for all signatories to the Convention that 80% of ships should reach ports. (Albertos & Palacio, 2013).

Fiji has traditionally been regarded as the hub of the Pacific (Tarte, 2010). A discharge point for foreign-flagged vessels before the cargo is then transported to outer islands on smaller vessels. Fiji has been inspecting foreign-flagged vessels in regards to the MLC, 2006 provisions using the APCIS database under the Tokyo MoU. In addition, it has been noted that a number of deficiencies had been identified from the year 2018 to 2020 on working and living conditions of seafarers including labour conditions, as seen in the table below.

Table 1 Deficiencies by Category

Nature of deficiencies	Year		
	2018	2019	2020
Living conditions	410	334	303
Working conditions	2126	1913	1311
Minimum requirements for seafarers	48	31	37
Conditions of employment	545	444	523
Accommodation, recreational facilities, food and catering	1094	1426	1032
Health protection, medical care, social security	2571	3023	2090

Source: Tokyo MoU PSC Annual Report, 2020, p.28, Edited by Author.

The PSC regime has proven to be efficient and accurate when inspecting foreign vessels in their ports and ensuring they comply with the provisions of the MLC, 2006. However, MSAF's PSCOs have been inspecting foreign vessels calling into Fiji, as mentioned in 3.3 on MLC, 2006's provisions concerning working and living conditions, which is a breach. The deficiencies recorded in the Asia-Pacific database confirmed that PSCOs conducted these inspections despite the fact that Fiji does not have the mandate as the CEACR stated and are inspecting the areas not listed in their procedure. Fiji's PSC is applying the MLC, 2006 as a self-executing text when inspecting foreign vessels, despite not having implemented the Convention, which is fallacious. Fiji must fulfil its international obligations, including the PSC.

Regulation 102 of the Maritime Transport Act (MTA), 2013 stipulates that PSCOs have the power to manage port state responsibilities, implement international agreements concerning port and ship security, and board any ship with the required assistance and equipment to verify compliance with IMO Conventions. Testing and

sampling any substance on board the vessel or any surface defined thereon, inspecting any machinery, tanks, holds, or equipment on board as needed, and examining all documents. Obtaining copies of or taking extracts from records or books require the master to certify that a true copy of the extract made by the PSCO is a true copy of the original. Including video or photographs of the ship, any equipment, or anything else, require anyone on-board to answer questions and, lastly, the power to detain vessels. Power to detain ships is also highlighted in Regulation 135 of Fiji's draft Maritime (Labour Convention) Regulations, 2017.

However, none of Fiji's maritime regulations mentions the independence that is necessary for PSCOs to conduct the verification and ensure compliance with Standard A5.1.4 paragraphs 1 and 3. Therefore, Fiji does not comply with the standard.

The Port Authority exercises its powers within reason, because extreme actions by the Authority may result in retaliation by its counterparts (Kasoulides, 1993). Certainly, Fiji's PSC procedure can be challenged by ship-owners as to what authorization PSCOs have to inspect the 16 areas as listed in A5-111 of the MLC, 2006 that Fiji unfortunately does not have as evidence of proof. PSCOs can say they have the mandate of the MLC as the country has ratified it but it is important to have these warranties in place. Even though Fiji has not amended the PSC inspection procedure it is accountable also to what is written in the Tokyo MoU. Paragraph 2 of the Tokyo MoU states that in inspecting ships with respect to the provisions of relevant instruments to which it is a party, the Authority, as a port state shall not impose on foreign vessels standards in excess of those applicable to ships flying the flag of that port state.

The table below summarizes the deficiencies recorded on APCIS on MLC, 2006 inspections carried out by Fiji's PSCOs in Suva and Lautoka between the years 2018 to 2020, however only two vessels had been found not complying to the working and living conditions in the year 2020.

Table 2 Deficiencies recorded by APCIS

DATE	PORT	SHIP NAME	IMO NO	FLAG
23/09/20	Lautoka	Media	9377432	Republic of Korea
01/08/20	Suva	Captaine Dampier	9230787	Singapore

Source: Tokyo MOU, PSC Database 2021, Edited by Author.

3.6 Onshore seafarer complaint-handling procedures

An appropriate use of seafarers' complaints can protect maritime labour to a significant extent. Consequently, the application of Convention No.147 has been as effective as possible, since it activates PSC of social and labour conditions (Christodoulou-Varotsi, 2012). According to the MLC, 2006 Regulation 5.2.2, each member shall ensure that seafarers calling at a port in its territory who complain of a breach of the convention or their rights have the right to report it in order to facilitate prompt and practical redress.

Fiji has yet to develop procedures, such as steps to safeguard confidentiality, for seafarers visiting its international ports to report alleged breaches of the MLC, 2006, which includes their rights as set forth in Regulation 5.2.2 paragraph 1 and Standard A5.2.2 paragraphs 1-7. In this globalized sector, the onshore complaints procedure recognizes the importance of both recognizing the role of the flag state while also permitting the port states' to play a role in ensuring seafarers' protection (Doumbia-Henry, 2017).

CEACR elaborated that Fiji is to provide a document describing onshore complaint-handling procedures, which relates to Standard A5.2.2. Fiji's draft Maritime (Labour

Convention) Regulations, 2017 do not include any provisions regarding procedures for onshore complaints handling by seafarers as per Regulation 5.2.2, thus preventing seafarers from reporting any alleged breaches of the Convention through this platform. As far as the MLC, 2006 is concerned; Fiji does not meet this requirement.

3.7 Conclusion

The essence of PSC is to check nefarious activities of shipping and to help maintain best practices in the international shipping community. While many foreign vessels may never call at their ports of origin, the role of the PSC cannot be overstated; hence, MSAF should engage the services of RO's in achieving a robust inspection regime. Aside from the fact that the welfare, safety and general living conditions of seafarers is guaranteed, it also protects the ship from damage, while also helping to save cost. Invariably, it resorts to a win-win situation.

Chapter 4 Fiji as a Labour Supplying Country with Responsibilities in accordance with the Convention

4.1 Introduction

Fiji as a labour supplying country has an obligation in accordance with the MLC, 2006. MSAF's role is to establish an effective system for inspection and monitoring to enforce its labour supplying responsibilities regarding the recruitment and placement services in the country. "It's pronounced purpose lies in ensuring that each Member implements its responsibilities under the Convention pertaining to the social protection of its seafarers and the seafarer recruitment and placement service" (Ntovsa, 2013, p. 176). However, (McConnell et al., 2011) expressed that when the residence country of seafarers does not provide social security assistance, flag states are encouraged to protect them.

Fiji also has the obligation to grant all Fijian seafarers who are nationals, resident or otherwise domiciled in its territory, access to its social security system in the same terms as shore-based workers. In meeting these obligations in compliance to the Convention, Fiji shall report on its system for enforcing these obligations under the ILO Constitution Article 22.

Many seafarers are recruited by foreign companies whilst the recruitment and placement service is based in their country of origin. Therefore, the law of the flag does not automatically apply to their employment contracts (Carballo Piñeiro, 2015). Furthermore, Carballo Piñeiro (2015) expounds that taking full advantage of this freedom of recruitment; ship-owners hire manning agencies located in labour-supplying states. It is imperative that these services are regulated to ensure that seafarers are protected and offered services which they are entitled to.

"The employment of seafarers, especially from the developing countries, involves in almost every case a manning agency" (Dimitrova & Blanpain, 2010). This is the case

of Fiji as seafaring jobs have vastly increased throughout the years, which has led ship-owners to utilize recruitment and placement services. Previously, there was no effective system to monitor these recruitment and placement services resulting in a dangerous working environment with significant stress and insecurity for seafarers; it was deplorable then that crimps, and other social parasites, victimized seafarers (ILO, 2018).

Aside from the high financial impact of using these services regularly, the provisions have been introduced as a direct response to abuses, including charging seafarers and fishers' illegal fees for finding jobs. By cutting seafarers' salaries, exploiting them by forcing them to sign two contracts, sending them to non-existent jobs or promising false working conditions, abandoning them, and prohibiting them from joining trade unions under the threat of being excluded from the labour market (Carballo Piñeiro, 2015).

“Despite this, the International Labour Organization (ILO) has acknowledged that many seafarers are vulnerable to exploitation and abuse, non-payment of wages, non-compliance with contracts, exposure to poor diet and living conditions, and sometimes being abandoned in foreign ports” (Kabai, 2015, p.189). A humanitarian issue faced in Fiji, where a ship-owner had abandoned his crew is such that contracts signed were changed once they arrived on the vessel to a new agreement, the salary was reduced (60-70 percent less). In addition, the seafarers' are left on-board beyond their original length of contracts (18 months) and failure of the company to repatriate these seafarers home (International Transport Workers Federation, 2020).

As stated above, Fijian seafarers experience one of the aforementioned or more during their lifetime sailing, and are exposed to abuse and exploitation by placement and recruitment services. It is critical that effective systems are put in place to prevent any further negligence and manipulation of seafarers from occurring. Furthermore, MLC, 2006 places an obligation on States' to have an effective system of recruitment and

placement of seafarers in its territory provided by a system of inspection and monitoring, including judicial prosecution of violations of licensing and other operational requirements mentioned in Standard A1.4.

There are several private recruitment and placement services established in Fiji that must be regulated according to the MLC requirements, 2006 as stated in Fiji's draft Maritime (Labour Convention) Regulations, 2017. However, Fiji does not have public seafarer recruitment and placement service. In this chapter, we examine Fiji's Inspection and Monitoring system for Recruitment, Placement Services, and the National Implementation of Social Security Protection for Seafarers, and whether or not Fiji's draft Maritime (Labour Convention) Regulations, 2017 align with the MLC, 2006.

4.2 Inspection and Monitoring

The treatment and conditions of seafarers' employment by recruitment and placement services, requiring them to pay to be given a placement on-board, is an abuse of their fundamental rights leading to unfair treatment and exploitation. There is a need to monitor this unfair treatment meted out to the seafarers. Article V, paragraph 5, of the MLC, 2006, stipulates that each member shall effectively exercise its jurisdiction and control over recruitment and placement services of seafarers when they are established in its territory. In addition, Regulation 5.3 paragraph 3 states that under the Convention, Members must establish an effective inspection and monitoring system to ensure that their labour-supplying obligations are met (McConnell et al., 2011).

The convention requires recruitment and placement services be licensed or certified or other form of regulation to be operated in conformity with a standardized system. The system's details may only be changed after consulting with the seafarers' and ship-owners' organizations, as stipulated in Standard A1.4 paragraph 5 (McConnell et al., 2011). Fiji addresses this in Regulation 18 paragraphs 4 and 5 of the draft Maritime (Labour Convention) Regulations, 2017, asserting that all seafarers' recruitment and

placement services in the country must be granted a certificate of authorization, which is valid for three years upon successful completion of an inspection, by the competent authority.

Under the Convention Standard A1.4 paragraph 5 (c), recruitment and placement services are required to comply with a number of commitments before it can be certified, namely:

- Register of all seafarers they place or recruit must be up to date, which the competent authority will inspect.
- Provide seafarers information on their rights and responsibilities as per employment agreements before or in the employment process. Inspect the agreements before and after signing and a copy provided to the seafarers.
- Ensure that those recruited or placed by them are qualified and hold the required documents for the job involved and that the seafarers' employment agreements comply with any laws and regulations that apply to the employment contract and any collective bargaining agreement.
- Ensure the ship-owners have adequate means to protect seafarers from being stranded in foreign ports, investigate and respond to any complaints concerning their activities, and inform the competent authority of any unsettled grievance.
- Create a system for compensating (insurance or other measures) seafarers if they suffer monetary loss due to the failure of a recruitment company or the ship-owner to live up to their obligations under the seafarers' employment agreement.

As noted in Standard A1.4, paragraph 5 (c), the Member is not obliged to establish a specific protection system. Instead, states should ensure that private placement and recruitment services (if any) establish insurance or equivalent protection (McConnell et al., 2011). The MLC, 2006 does not define monetary loss, but its scope includes any financial loss, including breach of contract damages, unpaid wages, or failure to repatriate (Carey, 2017). As such, this is an indirect method of creating a level playing field for quality shipping (McConnell et al., 2011).

Fiji's draft Maritime (Labour Convention) Regulations, 2017 Regulation 18 provides and complies with the provisions of Standard A1.4 paragraph 5 (c) as stated above. However, many small and less sophisticated crewing agencies charge seafarers for their services and overcharge for substandard training, in violation of accepted standards and legislation (Cristina & Simona, 2012). Fiji's Regulation 18 brings to fruition the MLC, 2006 and what it seeks to achieve; this will ensure that Fijian seafarers' will at no time pay for seeking employment on-board ships and avoid being victimized under the competent authorities inspection and monitoring system.

4.3 National Implementation of Social Security Protection for Seafarers

Social security protection is a fundamental element of decent employment (Jensen et al., 2013). Unfortunately, it is the most neglected aspect in the shipping industry where seafarers are not fairly treated as shore-based workers who have very well structured social security benefits in place as in the case of Fiji. Seafarers make an essential contribution to civil society, but their welfare does not seem to receive sufficient attention in the maritime world (Exarchopoulos et al., 2018). It is challenging to establish who will be responsible for protecting the social security benefits of seafarers due to the complexity of the trade and having ship-owners and seafarers based in different countries.

“Social security refers to benefits or a safety net provided under schemes generally operated by a state; this can result in significant public expenditures supported by taxation systems and other national contributory scheme requirements” (McConnell et al., 2011, p. 443). Non-resident seafarers are encouraged to be protected by the flag states when their country of residence has no social security protection, including its nationals and residents, which is why the Convention places the duty on the place of the seafarers' residence as labour supplying state as stated in Regulation 5.3.

Under Regulation 4.5 of the MLC, 2006, all member states share in the responsibilities for social security protection. As part of their ratification of the MLC, 2006, all ratifying countries are required to submit a Declaration listing the branches for which their social security protection extends to resident seafarers (Carballo Piñeiro, 2020). Standard A4.5 paragraph 2 states that at least three of the nine branches provided for social security are to be provided at the time of ratification; in particular employment injury benefit, sickness benefit and medical care. Others include unemployment benefit, old-age benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit.

Concerning Regulation 4.1 medical care and Regulation 4.2 ship-owners' liability in the event of death and long-term disability, which are observed as supplementary to social security protection as per Standard A4.5 paragraph 1, emphasizes that flag states are secondary in their responsibility under Regulation 4.5. (Carballo Piñeiro, 2020). Nonetheless, flag states are obliged to provide according to national law and practice ample coverage for social security branches. Due to the fact that seafarers are governed by a variety of national laws, countries' conformity to the Convention varies. Although it has revolutionized the human rights of seafarers, it does not provide a panacea to all their problems (Zhang et al., 2020). Carballo Piñeiro (2020) reiterated that the primary responsibilities lie with the labour supplying states who shall ensure adequate social security is provided to all seafarers'.

It is imperative to note the issues highlighted by CEACR concerning security protection provided by Fiji that need to be addressed. The Committee requests the Fijian Government to indicate how it will give effect to coverage of dependents, social security branches (to include medical care, sickness benefit and employment injury benefit). In addition, CEACR requests Fiji to provide information on how it intends to provide for seafarers ordinarily resident in its territory in relation to unemployment benefits. Furthermore, the Government is to clarify how non-resident seafarers

working on Fijian flagged vessels without adequate insurance coverage will receive comparable benefits.

According to Fiji's draft Maritime (Labour Convention) Regulations, 2017 Regulation 26 paragraph 1 (h) states that health and security protection benefits will be provided to seafarers. Out of the nine branches to be afforded to seafarers outlined in the Convention, Fiji addresses only six; sickness benefit, maternity benefit, old age benefit, employment injury benefit, survivors' benefit and unemployment benefit.

Fiji's draft Maritime (Labour Convention) Regulations, 2017 schedule 3 elaborates on sickness benefit (see appendix 2). Where all seafarers are entitled to 1.5 calendar days in a month to take as sick leave. Sick leave entitlement is not accumulated, and unused sick leave lapses after each year. In addition, maternity benefits, all-female seafarers are entitled to 84 consecutive days in a year to be on paid maternity leave subject to providing their employer with a certificate from a registered medical practitioner specifying the possible date of birth.

Furthermore, Fiji's draft Maritime (Labour Convention) Regulations, 2017 schedule 3, the old-age benefit is referred to as pension, which is provided for and implemented by the Fiji National Provident Fund (FNPf) and all ship-owners must provide to its seafarers. In addition, survivor's benefit, as per the Workmen's Compensation Act 1975, when a seafarer dies in the course of employment, his or her next of kin must be compensated by the ship-owner that employed them. Lastly, unemployment benefit, all seafarers are entitled to unemployment benefit provided by the Fiji National Provident Fund provided that the seafarer meets the necessary requirements.

In relation to Regulation 4.5 paragraph 2 and Standard A4.5 paragraph 11, Fiji is yet to discuss with its tripartite partners on how it intends to improve the benefits currently present or to extend social security protection to the branches not covered at present. Regulation 4.5 paragraph 2, Standard A4.5 paragraphs 3, 4, 8 Fiji is yet to establish

bilateral or multilateral arrangements in which it will participate regarding the provision of social security protection and the maintenance of rights acquired or in the course of acquisition.

Standard A4.5 paragraphs 5 and 6, and Guideline B4.5 paragraph 5, Fiji is yet to comply with these provisions of the MLC, 2006 and no measures have been adopted for providing benefits to non-resident seafarers who are working on Fiji-flagged vessels, and do not have adequate social security coverage. However, Fiji complies with Standard A4.5 paragraph 5 and Guideline B4.5 paragraphs 6 and 7, ship-owner contributions to the protection of seafarers' social security are monitored by FNPF.

From the above findings, it is clear that Fiji is insufficient in fully complying with the provisions of the Convention concerning seafarers' social security. It is essential that Fiji act urgently as it has an obligation to effectively implement its duty of social security protection. It has been almost seven years since Fiji ratified the Convention, yet the country has not adequately implemented all its provisions for its seafarer's social security. Fiji's workers ashore are provided favourable social security benefits; regrettably, seafarers do not have the same protection.

4.4 Conclusion

Fiji as a labour supplying country has an obligation in regards to its recruitment and placement services including social security protection for seafarers. As noted from the above findings Fiji is aligned with its obligations towards the MLC, 2006 in regards to seafarer recruitment and placement services with minor deficiencies. However, concerning social security protection, Fiji has quite a number of deficiencies to rectify to comply with the MLC, 2006. Having these gaps only gives room to the many miscreant recruitment and placement services including ship-owners to take advantage of the unsuspecting seafarers. To ensure Fijian seafarers are treated in the utmost humane way MSAF, and all its stakeholders must come together and strategically plan

on how they intend to rectify these deficiencies and ensure that Fiji aligns its national maritime laws to the MLC, 2006.

Chapter 5 Conclusion

Around 1.5 million seafarers work and live worldwide in dangerous conditions that adversely affect their physical and mental health. Seafarers face daily hazards, including heat, noise, movement, poor diet, shift work, separation from friends and family, exploitation, and financial pressures due to noncompliance with contracts and unpaid wages (Fotteler et al., 2018). MLC, 2006 entails provisions regarding equal treatment and decent working conditions for seafarers and ship-owners provisions that are not found in major IMO and ILO conventions.

A notable feature of the MLC, 2006 is that it specifies the responsibilities of the three primary interests in the maritime industry: flag states, port states, and labour supplying states. For the Convention to be ratified and enforced properly, ILO member states that have ratified it need to take on their responsibility and incorporate international regulations into their domestic laws and policies, and implement them at the national level (Zhang & Zhao, 2015).

Chapters 2, 3, and 4 thoroughly analyzed the MLC, 2006 Vis a Vis Fiji's draft (maritime labour) Regulations 2017 and other relevant laws. The research found significant areas in Fiji's draft (maritime labour) Regulations 2017 and laws that do not comply with the MLC, 2006. Including non-compliance to other instruments such as the RO Code, Marine Casualty Investigation Code, and the Port State Control Memorandum of Agreement (in the case of Fiji – Tokyo MoU).

Fiji's draft (maritime labour) Regulations 2017 failed to state the training and competence requirements needed for flag state inspectors' to effectively carry out their duties. In addition, inspectors' status and independence were not mentioned. Fiji's inspection intervals fail to comply with the Convention in order to ensure that vessels flying its flag are inspected regularly. As Fiji has delegated statutory obligations to authorized ROs, it is noted that the Fiji legislation was deficient in defining the

standards of independence and competence required including what is required of the ROs when carrying out statutory functions in accordance to MLC, 2006.

Furthermore, a violation of the MLC, 2006 when Fiji is seen to delegate the issuance of the DMLC to ROs, as this is the duty of the flag state that needs immediate corrective action. It is overwhelming to note that there is no communication and oversight procedures for ROs, which have been delegated statutory duties by MSAF, Fiji has no means of monitoring and keeping up to date with the activities undertaken by ROs. It is imperative to note that the CEO only allows the withdrawal of the MLC; however, the ROs are not permitted even though they have been delegated statutory obligations by the flag state.

Unfortunately, Fiji permits dispensation, which is a violation of the MLC, 2006; deficiencies are to be rectified before the vessel is allowed to sail or risk being detained in port, MSAF is to review this and amend accordingly. It was noted that on-board complaint handling procedures failed to state the confidentiality of inspectors' when receiving and investigating complaints.

It is vital to note in regards to marine casualties, that MTA, 2013 did not conform to the provisions of the MLC, 2006, it failed to address that members are required to cooperate when investigating series marine casualties including the information obtained to be published. Furthermore, Fiji's PSC procedure failed to include provisions of inspection for working and living conditions on-board, including reporting procedures to follow when a detailed inspection is to be carried out. This is a serious breach, which Fiji needs to address to avoid repercussions from ship-owners'. Qualifications and training required by PSCOs were not mentioned including the need to have sufficient PSCOs.

Furthermore, Fiji lacks procedures for dealing with onshore complaints, and currently there is no arrangement for handling complaints onshore. A disadvantage for seafarers', which must not be overlooked. Finally, Fiji does not address fully seafarers' social security protection, such as coverage for dependants, unemployment benefits

and coverage for non-resident seafarers' to name a few. Fiji is yet to discuss with relevant stakeholders on how it intends to extend its social security protection for its seafarers'.

As mentioned earlier, MLC, 2006 is both a maritime and labour Convention; to ensure its effective implementation requires collaboration from all relevant stakeholders. Fiji needs to address the issues highlighted in this research to ensure it develops a national regulation that is in full compliance with the MLC, 2006.

5.1 Recommendations

- Utilizing the policy cycle to develop a robust national regulation to implement the MLC, 2006 in Fiji. Commencing from the setting the agenda, formulating, legitimizing, implementing, evaluating, and maintaining them; will ensure Fiji implements the Convention effectively.
- Engaging all seafarers, ship-owners, seafarers' union and all other relevant stakeholders to amend the current draft in order to be in full compliance of the MLC, 2006. In particular the deficiencies identified in this research on Fiji's draft (maritime labour) Regulation 2017.
- Recruitment of adequate number of flag and port state inspectors who should be entitled to continuous training and development on the provisions of the MLC, 2006.

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Appendices

Appendix 1

SCHEDULE 1

(Regulations 25 (5))

GENERAL AREAS SUBJECT TO DETAILED INSPECTION

1. Minimum age.
2. Medical certification.
3. Qualifications of seafarers.
4. Seafarer's employment agreements.
5. Use of any licensed or certified or regulated private recruitment and placement service.
6. Hours of work or rest.
7. Manning levels for the ship.
8. Accommodation.
9. On-board recreational facilities.
10. Food and catering.
11. Health and safety and accident prevention.

112 | Page

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12. On-board medical care.
 13. On-board complaint procedures.
 14. Payment of wages.
 15. Financial security for repatriation.
 16. Financial security relating to shipowners' liability.

Appendix 2

SCHEDULE 3 (Regulations 26 (1) (b))

SOCIAL SECURITY PROTECTIONS AFFORDED TO SEAFARERS

1. **Sickness Benefit** –all seafarers are entitled to 1.5 calendar days in a month to take as sick leave. Sick leave entitlement is not accumulated and unused sick leave lapses after each year.
2. **Maternity Benefit** – all female seafarers are entitled to 84 consecutive days in a year to be on paid maternity leave subject to providing her employer with a certificate from a registered medical practitioner specifying the possible date of birth.
3. **Old Age Benefit** –this is referred to as pension which is provided for and implemented by the Fiji National Provident Fund and which all ship-owners must provide to its seafarers.

114 | Page

4. **Employment injury benefit** – workers injured at the workplace must be compensated by the shipowner whom the injured seafarer was employed by as per the *Workmen's Compensation Act 1975*.
5. **Survivor's benefit** –when a seafarer dies during the course of employment, the shipowner whom the deceased seafarer was employed under must compensate the deceased seafarer's next of kin as per the *Workmen's Compensation Act 1975*.
6. **Unemployment Benefit** – all seafarers are entitled to unemployment benefit provided by the Fiji National Provident Fund provided that the seafarer meets the necessary requirements.

Appendix 3

SCHEDULE 10

(Regulations 127 (1))

PART I – DECLARATION OF MARITIME LABOUR COMPLIANCE

(Note: This Declaration must be attached to the ship's Maritime Labour Certificate)

Issued under the authority of Maritime Safety Authority of Fiji

With respect to the provisions of the Maritime Labour Convention, 2006, the following referenced ship:

Name of ship	IMO number	Gross tonnage

is maintained in accordance with Standard A5.1.3 of the Convention.

The undersigned declares, on behalf of the abovementioned competent authority, that:

- (a) the provisions of the Maritime Labour Convention are fully embodied in the national requirements referred to below;
- (b) these national requirements are contained in the national provisions referenced below; explanations concerning the content of those provisions are provided where necessary;
- (c) the details of any substantial equivalencies under Article VI, paragraphs 3 and 4, are provided under the corresponding national requirement listed below;
- (d) any exemptions granted by the competent authority in accordance with Title 3 are clearly indicated in the section provided for this purpose below; and
- (e) any ship-type specific requirements under national legislation are also referenced under the requirements concerned.

- 1. Minimum age (Regulation 5)
- 2. Medical certification (Regulation 7)
- 3. Qualifications of seafarers (Regulation 17)
- 4. Seafarers' employment agreements (Regulation 25)
- 5. Use of any licensed or certified or regulated private recruitment and placement service (Regulation 18)
- 6. Hours of work or rest (Regulation 29A and 30)
- 7. Manning levels for the ship (Regulation 24)
- 8. Accommodation (Regulation 62)
- 9. On-board recreational facilities (Regulation 62)

10. Food and catering (Regulation 63)
11. Health and safety and accident prevention (Part VIII)
12. On-board medical care (Regulation 79)
13. On-board complaint procedures (Part IX)
14. Payment of wages (Regulation 36)
15. Financial security for repatriation (Regulation 39A)
16. Financial security relating to shipowners' liability (Regulation 62)

Name:
 Title:
 Signature:
 Place:
 Date:
 (Seal or stamp of the authority, as appropriate)

Substantial equivalencies

(Note: Strike out the statement which is not applicable)

The following substantial equivalencies, as provided under Article VI, paragraphs 3 and 4, of the Convention, except where stated above, are noted (insert description if applicable):

.....

No equivalency has been granted.

Name:
 Title:
 Signature:
 Place:
 Date:
 (Seal or stamp of the authority, as appropriate)

Exemptions

(Note: Strike out the statement which is not applicable)

The following exemptions granted by the competent authority as provided in Title 3 of the Convention are noted:

.....

No exemption has been granted.

Name:
 Title:
 Signature:
 Place:

Appendix 4

Date:
(Seal or stamp of the authority, as appropriate)

PART II – DECLARATION OF MARITIME LABOUR COMPLIANCE

Measures adopted to ensure ongoing compliance between inspections

The following measures have been drawn up by the shipowner, named in the Maritime Labour Certificate to which this Declaration is attached, to ensure ongoing compliance between inspections:

(State below the measures drawn up to ensure compliance with each of the items in Part I)

- | | |
|--|--------------------------|
| 1. Minimum age (Regulation 5) | <input type="checkbox"/> |
| | |
| 2. Medical certification (Regulation 7) | <input type="checkbox"/> |
| | |
| 3. Qualifications of seafarers (Regulation 17) | <input type="checkbox"/> |
| | |
| 4. Seafarers' employment agreements (Regulation 25) | <input type="checkbox"/> |
| | |
| 5. Use of any licensed or certified or regulated private recruitment and placement service (Regulation 18) | <input type="checkbox"/> |
| | |
| 6. Hours of work or rest (Regulation 29A and 30) | <input type="checkbox"/> |
| | |
| 7. Manning levels for the ship (Regulation 24) | <input type="checkbox"/> |
| | |
| 8. Accommodation (Regulation 62) | <input type="checkbox"/> |
| | |
| 9. On-board recreational facilities (Regulation 62) | <input type="checkbox"/> |
| | |
| 10. Food and catering (Regulation 63) | <input type="checkbox"/> |
| | |
| 11. Health and safety and accident prevention (Part VIII) | <input type="checkbox"/> |
| | |
| 12. On-board medical care (Regulation 79) | <input type="checkbox"/> |
| | |
| 13. On-board complaint procedures (Part IX) | <input type="checkbox"/> |

- | | |
|---|--------------------------|
| 14. Payment of wages (Regulation 36) | <input type="checkbox"/> |
| 15. Financial security for repatriation (Regulation 39A) | <input type="checkbox"/> |
| 16. Financial security relating to shipowners' liability (Regulation 8) | <input type="checkbox"/> |

I hereby certify that the above measures have been drawn up to ensure ongoing compliance, between inspections, with the requirements listed in Part I.

Name of shipowner:¹

Company address:

Name of the authorized signatory:

Title:

Signature of the authorized signatory:

Date:

(Stamp or seal of the shipowner¹)

The above measures have been reviewed by *(insert name of competent authority or duly recognized organization)* and, following inspection of the ship, have been determined as meeting the purposes set out under Standard A.5.1.3, paragraph 10(b), regarding measures to ensure initial and ongoing compliance with the requirements set out in Part I of this Declaration.

Name:

Title:

Address:

Signature:

Place:

Date:

¹Shipowner means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organizations or persons fulfill certain of the duties or responsibilities on behalf of the shipowner. See Article II (1) (i) of the Convention.

Appendix 5

(Seal or stamp of the authority, as appropriate)

SCHEDULE 11 (Regulations 128 (1))

INTERIM MARITIME LABOUR CERTIFICATE

Issued under the provisions of Article V and Title 5 of the Maritime Labour Convention, 2006 (referred to below as "the Convention") under the authority of the Government of the Republic of Fiji

by

(full designation and address of the Chief Executive Officer or Recognised Organisation duly authorised under the provisions of the Convention)

Particulars of the ship

Name of ship

Distinctive number or letters

Port of registry

Date of registry

Gross tonnage

IMO number

Type of ship

Name and address of the shipowner2

This is to certify for the purpose of Standard A5.1.3, paragraph 7, of the Convention, that:

- (a) this ship has been inspected, as far as reasonable and practicable, for the matters listed in Appendix A5-I to the Convention, taking into account verification of items under (b), (c) and (d) below;

- (b) the shipowner has demonstrated to the competent authority or recognised organisation that the ship has adequate procedures to comply with the Convention;
- (c) the master is familiar with the requirements of the Convention and the responsibilities for implementation; and
- (d) relevant information has been submitted to the competent authority or recognised organisation to produce a Declaration of Maritime Labour Compliance.

This Certificate is valid until subject to inspections in accordance with Standards A5.1.3 and A5.1.4.

Completion date of the inspection referred to under (a) above was

Issued at on

Signature of the duly authorised official issuing the interim certificate

.....

(Seal or stamp of issuing authority, as appropriate)

Appendix 6

SCHEDULE 12

(Regulations 128 (2))

MARITIME LABOUR CERTIFICATE

(Note: This Certificate shall have a Declaration of Maritime Labour Compliance attached.)



Issued under the provisions of Article V and Title 3 of the
INTERNATIONAL MARITIME LABOUR CONVENTION 2006,

Under the authority of the Government of

FJI

By

(Signature of CEO MSAF or Recognised Organisation)

Particulars of the ship

Name of ship
Distinctive number or letters
Port of registry
Date of registry
Gross tonnage
IMO number
Type of ship
Name and address of the shipowner

This is to certify:

1. That this ship has been inspected and verified to be in compliance with the requirements of the Convention, and the provisions of the attached Declaration of Maritime Labour Compliance.
2. That the seafarers' working and living conditions specified in Appendix A5-I of the Convention were found to correspond to the above mentioned country's national requirements implementing the Convention. These national requirements are summarized in the Declaration of Maritime Labour Compliance, Part I.

This Certificate is valid until subject to inspections in accordance with Standards A5.1.3 and A5.1.4 of the Convention.

This Certificate is valid only when the Declaration of Maritime Labour Compliance issued at on is attached.

Completion date of the inspection on which this Certificate is based was
Issued at on

¹For ships covered by the tonnage measurement Interim scheme adopted by the IMO, the gross tonnage is that which is included in the REMARKS column of the International Tonnage Certificate (1969). See Article 8(1)(c) of the Convention.

²Shipowner means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organizations or persons fulfill certain of the duties or responsibilities on behalf of the shipowner. See Article 8(1)(j) of the Convention.

.....
Signature of the duly authorized official issuing the Certificate
(Seal or stamp of issuing authority, as appropriate)

Endorsements for mandatory intermediate inspection and, if required, any additional inspection

This is to certify that the ship was inspected in accordance with Standards A5.1.3 and A5.1.4 of the Convention and that the seafarers' working and living conditions specified in Appendix A5-I of the Convention were found to correspond to the abovementioned country's national requirements implementing the Convention.

Intermediate inspection:
(to be completed between the second
and third anniversary dates)

Signed
(Signature of authorized official)

Place
Date

(Seal or stamp of the authority, as appropriate)

Additional endorsements (if required)

This is to certify that the ship was the subject of an additional inspection for the purpose of verifying that the ship continued to be in compliance with the national requirements implementing the Convention, as required by Standard A3.1, paragraph 3, of the Convention (re-registration or substantial alteration of accommodation) or for other reasons.

Additional inspection:
(if required)

Signed
(Signature of authorized official)

Place
Date

(Seal or stamp of the authority, as appropriate)

Additional inspection:
(if required)

Signed
(Signature of authorized official)

Place
Date

(Seal or stamp of the authority, as appropriate)

133 | Page

Additional inspection:
(if required)

Signed
(Signature of authorized official)

Place
Date

(Seal or stamp of the authority, as appropriate)