

CMI International Working Group on the Fair Treatment of Seafarers

QUESTIONNAIRE

PART I (Answers to these Questions are essential)

Question 1:

Who has responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the waters under the jurisdiction of your State?

THE DOMINICAN REPUBLIC NAVY (MARINA DE GUERRA DE LA REPUBLICA DOMINICANA) MDG = DR NAVY, AS PER THE PROVISIONS OF LOCAL LAW 3003 OF 1951. THE HEAD OF THE DOMINICAN NAVY IS THE CHIEF OF STAFF (JEFE DE ESTADO MAYOR MDG) AND THE ONES DEALING IMMEDIATELY WITH SUCH OCCURRENCES ARE THE HARBOURMASTERS = PORT COMMANDERS (COMANDANTES DE PUERTO), UNDER THE DIRECTION OF THE DIRECTOR OF PORT COMMANDERS / HARBOURMASTERS (DIRECTOR GENERAL DE COMANDANCIAS DE PUERTO).

Question 2:

When maritime accidents and/or marine pollution incidents occur within the waters under the jurisdiction of your State, what process of accident investigation is legally required?

THE PORT COMMANDERS / HARBOURMASTERS AS WELL AS OTHER STAFF MEMBERS OF THE DRNAVY ACT AS JUDICIAL POLICE, WHEN SUCH INCIDENTS OCCUR. THEY WOULD START WITH THE ACCIDENT INVESTIGATION, REPORT TO THE DIRECTOR OF PORT COMMANDERS WHO, IN TURN, WILL REPORT TO THE CHIEF OF STAFF. SOMETIMES, WHEN THE POLLUTION INCIDENT IS SIGNIFICANT, A COMMISSION OF SEVERAL DR NAVY OFFICERS AND THE DIRECTOR OF ENVIRONMENT IS APPOINTED BY THE DRNAVY CHIEF OF STAFF TO INVESTIGATE THE INCIDENT AND RENDER A REPORT.

THE INVESTIGATIONS INCLUDE A FULL INTERROGATORY TO THE VESSEL'S MASTER AND ALL THE CREWMEMBERS, AS WELL AS OF ALL WITNESSES, VERIFICATION OF THE SITUATION/POLLUTION IN SITU AND A PRELIMINARY EVALUATION OF THE DAMAGES, WHICH WILL BE PASSED UNTO THE LEGAL COUNSELLOR OF THE DRNAVY FOR ON FORWARDING TO THE CORRESPONDING DISTRICT ATTORNEY'S (D. A.) OFFICE.

Question 3:

Do your State's maritime accident and/or marine pollution investigative processes contemplate criminal charges against any ships' personnel involved and, if so what action may be involved?

INDEED THE ABOVE MENTIONED LAW 3003 AND OTHER LAWS PROVIDE FOR CRIMINAL CHARGES AGAINST ANYONE (MASTER AND/OR CREWMEMBERS) WHO DUMP OIL, WASTE OR DEBRIS INTO THE WATERWAYS, PORTS AND/OR TERRITORIAL WATERS.

THE DRNAVY, ACTING AS JUDICIAL POLICE, WILL SEND THE PERTINENT FILE TO THE CORRESPONDING DISTRICT ATTORNEY'S OFFICE, INDICATING THE VIOLATED STATUTES AND CHARGES FOR THE D. A. TO PROCEED WITH THE PROSECUTION.

Question 4:

If there is no criminal process, what other investigative process is utilized? PLEASE KINDLY REFER TO REPLY TO QUESTIONS 2 AND 3.

Question 5:

Does your State's investigative process permit detention of seafarers and, if so, under what circumstances and with what safeguards?

YES, THEY DO, UNDER CRIMINAL CHARGES FOR POLUTING TERRITORIAL WATERS.

Question 6:

If seafarers are required to be present for an investigation, trial or other hearing will they be permitted to leave your State until such investigation, trial or other hearing takes place?

THEY WILL NOT BE PERMITTED TO LEAVE DURING THE PRELIMINARY INTERROGATORIES/INVESTIGATION, BUT ONCE THE SAME IS COMPLETED, IF THEY CONSIDER THAT THEY ARE NO INDICATION OF THEIR INVOLVEMENT IN THE INCIDENT, THEY ARE ALLOWED TO LEAVE THE COUNTRY. IF OTHERS ARE FOUND TO BE INVOLVED, CRIMINAL CHARGES WILL BE PLACED AGAINST THEM, AND THOSE COULD ONLY BE PERMITTED TO LEAVE THE COUNTRY AGAINST PRESENTATION OF A BAIL BOND.

Question 7:

Does your State require a financial surety to ensure that seafarers return for any subsequent hearing and, if so, how is the amount of such a surety determined and what form is required?

YES, BUT ONLY FOR THOSE WHO ARE CONSIDERED AS PARTICIPANTS IN OR LIABLE FOR THE INCIDENT/POLLUTION.

Question 8:

Is your State's maritime administration or other authority given legal responsibility for the protection, rights and welfare of all seafarers and, if so, how is this responsibility administered?

THE DOMINICAN REPUBLIC IS SIGNATORY TO S.O.L.A.S., AND PRIMARILY THE DRNAVY, BUT ALSO ANY OTHER LOCAL AUTHORITY (I.E. DISTRICT ATTORNEY, POLICE DEPARTMENT, DOMINICAN PORT AUTHORITY) IS RESPONSIBLE TO COMPLY WITH THE SAME. INCIDENTALLY, A NEW PENAL CODE HASW BEEN RECENTLY PLACED IN FORCE AND THE SAME PROVIDES

ALL DETAINED PERSONS (WHETHER OR NOT SEAFARERS WITH A LOT OF RIGHTS (IN RESPECT TO THE PREVIOUS OLD NAPOLEON PENAL CODE).

PART II (Answers to these Questions would be most helpful)

Question 9:

If a maritime accident resulting in serious pollution occurs in waters under the jurisdiction of your State that involves a foreign-flag vessel with a crew of different nationalities, what is the expected role of vessel crew members held responsible in the subsequent investigative process? TO FULLY COOPERATE WITH THE INVESTIGATION, AS PER THE GENERAL PROVISSIONS OF INTERNATIONAL MARITIME LAW, IN CASE OF PENAL/CRIMINAL VIOLATIONS, THE LAW OF THE COASTAL COUNTRY APPLIES TO THE SAME, IRRESPECTIVE OF THE VESSEL'S FLAG AND/OR THE NATIONALITIES OF HER CREW MEMBERS.

Question 10:

If the accident, as outlined in Question 9, is due to negligence but not wilful misconduct by responsible crew members, will your State proceed only with pollution damage claims under the accepted international civil liability and compensation system?

NO. IF THERE IS A POLLUTION, THERE IS AN ASSUMPTION OF NEGLIGENCE AND/OR MISCONDUCT IN THE PART OF THE VESSEL'S MASTER AND/OR OTHER CREW MEMBERS. THE BURDEN OF PROOF TO ESTABLISH THE CONTRARY LIES UPON THEIR SHOULDERS. IF THE ACCIDENTAL NATURE OF THE EVENTS CAN BE PROVEN, (NO NEGLIGENCE, NO WILFUL MISCONDUCT) THEN IT WILL PURSUE ONLY POLLUTION COMPENSATIONS.

Question 11:

If the answer to Question 10 is 'No', what other processes or procedures will be undertaken by your State?

CRIMINAL CHARGES / IMPRISONMENT AGAINST THE LIABLE PARTIES (MASTER AND OR PERTINENT CREW MEMBERS) AND FINES.

Question 12:

If the maritime accident outlined in Question 9 occurred outside your State's Territorial Seas, although damage occurs in areas under your State's jurisdiction, would the procedures involved be different?

IF THE VESSEL ENTERS INTO DOMINICAN WATERS AND/OR CALLS A LOCAL PORT, THE PROCEDURES INVOLVED WOULD BE THE SAME; BUT IF THE VESSEL DOES NOT ENTER INTO TERRITORIAL WATERS NEITHER CALLS OUR PORTS, THE STATE MOST LIKELY WOULD ONLY SEEK POLLUTION COMPENSATION.

Question 13:

Regardless whether your State's investigative process utilizes the criminal justice system or any other system, will the relevant vessel crew members be detained? If so:

- a. What is the legal reason for such detention? PREVENTIVE INPRISONMENT DUE TO INVESTIGATION. – 48 HOURS MAXIMUM, AFTER WHICH AN "HABEAS CORPUS" IS IN ORDER.
- b. What rights will the accused/detained crew member have during the process, and do such rights differ from those available to citizens of your State? THE SAME WILL HAVE THE SAME RIGHTS AVAILABLE TO DOMINICAN CITIZENS: RIGHT TO MAKE AT LEAST ONE TELEPHONE CALL, RIGHT TO BE ASSISTED BY A LAWYER WHILE BEING INTERROGATED, ETC.
- c. Will full reasons and/or charges be provided to those detained? REASONS ARE NORMALLY PROVIDED BY THE INVESTIGATORS AND CHARGES WITHIN 48 HOURS AS FROM THE TIME OF THEIR DETENTION.
- d. What is the expected length of such detention? A MAXIMUM OF 48 HOURS WITHOUT HAVING PLACED ANY CHARGES AGAINST THEM. UNLIMITED IF CHARGES HAVE BEEN PLACED (A BAIL BOND WOULD BECOME HANDY TO OBTAIN THEIR LIBERTY UNDER BOND ONCE CHARGES ARE PLACED).
- e. Where and how will the seafarers involved be detained? MOST LIKELY AT THE HARBOURMASTER'S/PORT COMMANDER'S OFFICE.
- f. What access to legal advice and/or defence will such personnel have available to them? TECHNICALLY, A D. A. ASSISTANT SHOULD BE AVAILABLE. IN PRACTICE, THIS DOES NOT OCCUR ALL THE TIME. THE PERSONNEL IS ADVISED TO CONTACT THEIR LOCAL AGENTS AND/OR P. AND I LOCAL CORRESPONDENTS IN CASE OF A DETENTION
- g. Will the vessel's representatives, agents, family members, labour organisation representatives, or lawyers be given immediate and full access to those detained? THEY SHOULD.
- h. Will the relevant seafarers have the legal right not to answer questions that may be considered self-incriminating, if so advised? YES.

Question 14:

Does your Association have any other comments, suggestions or recommendations on this subject? NO.