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Safety & Security Review

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A FOCUS FOR SHARING AND LEARNING IN THE AID SECTOR

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Duty of care

There is a new look to what was the *Security Quarterly Review*, now renamed the *Safety & Security Review*. The scope of the publication has been broadened to encompass safety issues in humanitarian aid and the changes in appearance are consistent with the rebranding of RedR UK.

To mark the rebrand a new website has been launched (www.redr.org.uk) where past issues of the *Security Quarterly Review* and future issues of the *Safety & Security Review* can be found in the "Safety & security resources" section of the website.

The theme for this issue is "Duty of care". Employers owe a duty of care to their volunteers, employees and consultants to ensure they are aware of the conditions under which they are being asked to work and that the employer takes all reasonable measures to safeguard the lives and well-being of their staff.

A clear understanding of such a duty of care is particularly important when asking staff to operate in insecure environments where high-crime and conflict can exacerbate the already high levels of risk and stress experienced in humanitarian aid work.

At a RedR seminar held earlier this year at the Management Sciences for Health facility in Arlington Virginia, a number of issues were addressed that reflected a concern over an aid agency's duty of care to their national and international staff. Recent developments regarding security management in the aid sector has seen the establishment of minimum operating security standards (MOSS). The German NGO community (VENRO) was one of the first collaborative organisations to publish a paper on minimum security standards. The earlier InterAction Security Planning Guidelines have now been incorporated into the InterAction MOSS. Guidance for implementing InterAction's MOSS was published in June 2006 and can be found on their website. As well as security standards, legal liability and psycho-social trauma management were addressed at the seminar.

Carolyn Klamp's article on legal liability is based on her paper delivered at the seminar. The article provides practical guidance for managers on steps to take in exercising a duty of care whilst also minimising the potential damaging impact of legal actions that may be taken against an agency.

Peter Teahen reminds us of the need for greater attention to the management of aid worker stress. The careful management of human resources is the single most important management task in any organization. Given the conditions under which many aid workers operate today, are we really doing enough?



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Employers have a duty of care towards their staff and there are basic steps that NGOs can take to exercise that duty of care whilst also protecting themselves from potential legal claims from staff and their families.

Legal liability in the humanitarian sector

This article is based on a paper presented by **Carolyn Klamp**, Attorney at Law, to the RedR Senior Level Security Seminar held in Arlington, Virginia, in April 2007. As the seminar was held in the USA the law discussed is largely that of the United States relating to US NGOs. However, the suggestions and recommendations should be of interest to aid agencies worldwide.

This article provides a brief introduction to the issues regarding possible legal claims against international organizations for death or injury to their overseas staff. The relevant laws of each country are different; the most protective course of action is to consult local legal counsel in every country in which you operate.

Despite the complexity of the underlying law due to the large number of possible legal claims, defences and jurisdictions, there are several basic steps that NGOs can take to better protect themselves.

There is still very little reported case law in this area even though there is a definite sense in the NGO community that legal liability is rapidly increasing for injuries to humanitarian staff in hostile environments.¹

The absence of reported cases could be due to a number of factors including the prevalence of confidential legal settlements to resolve these disputes. Nevertheless, the law does offer a general framework which can be used to analyze, defend and prevent potential claims.

Legal liability

There are a wide variety of legal theories and claims that staff members, and their families, can use as the basis for potential lawsuits against NGOs.

The first is a claim based on an assertion that the organization was negligent (also called “tort” claims). Negligence claims are founded on the proposition that an employer has failed to meet a legal duty of care to its staff. “Staff” in this case meaning both employees and consultants.

The elements of any successful negligence or tort claim must include the following:

- **the organization has a legal duty of care to conform to a certain standard,**
- **the organization fails to meet that standard, and**
- **the staff member is injured as a result of this failure.**

Employers are generally required to provide staff members with a reasonably safe working environment, and/or a full warning of any dangers in the work environment.

The definition and application of these concepts varies. Generally, negligence involves a “recognizable danger, based upon knowledge of existing facts, and some reasonable belief that harm may possibly follow.” It is essential that the NGO could have foreseen the potential danger. The employer’s conduct is judged against the known options at the time that the decisions and actions were taken or not taken.

One of the few cases analyzing the definition of a “safe working environment” with respect to work in potentially hostile environments overseas held that a simple U.S. State Department travel advisory could be used as evidence that an entire country was an “unsafe workplace.”



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For more information

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There are certain circumstances where the duty of an NGO will be enhanced or heightened. These factors include the following:

- **the person harmed is an employee,**
- **the organization was in a better position to protect the victim than was the individual concerned, or**
- **the risk of harm is foreseeable or predictable.**

Although the law does not generally hold organizations responsible for the criminal acts of third parties, the presence of any of the above factors may change this general rule so that an NGO can be held legally liable for the criminal acts of others that harm its staff.

The law requires U.S. organizations to protect its staff against any imminent known danger. Generally, any organization that should be aware of a dangerous condition will be potentially liable if it fails to exercise reasonable care to avert the threatened harm.

Employers owe many duties of protection to their employees because employers are usually in a good, and oftentimes better, position to protect against harm and extend help if necessary. Note that consultants are in a different position to employees and are thus owed a different standard of care from the employer. In the *Workman v. United Methodist Committee on Relief of the General Board of Global Ministries of the United Methodist Church ("UMCOR")* case in 2003, the U.S. Court of Appeals for the District of Columbia found that UMCOR was not liable for the death of its consultant in Somalia because she was tasked by the organization to assess the relevant security considerations and to make her own decisions about how and when to best carry out her mission. As such, the court found that UMCOR did not owe a duty to the consultant to provide her with a safe workplace.

If a duty is owed, the standard of care is generally determined by what a reasonable and prudent organization under similar circumstances would do. When looking at the reasonableness of an NGO's action, a court will consider whether a general standard of care common to the business activity exists. Thus, for most NGOs, the relevant standard of care relates to general security standards used by the international aid community.

Because NGOs will be judged by a community standard, it is important to both know what other organizations are doing and to conform to the standards that are adopted both formally and informally. Formal standards are evolving and must be continually monitored. The UN has minimum operating security standards ("MOSS"). InterAction is requiring that all its members adopt and conform to its own MOSS in 2008. As these are leading organizations striving to set minimum standards for international humanitarian organizations, any organization that falls substantially behind these standards risks being considered unreasonable, imprudent or unsafe by a court of law.

NGOs also have several other legal responsibilities to their staff to provide a safe working environment. In addition to being subject to general tort liability for inadequate security, U.S. organizations can also face legal action for:

- **Failure to follow applicable health and safety laws,**
- **Failure to care adequately for a staff member who has been injured,**
- **Discrimination on the basis of race, sex, nationality, religion, age or disability,**
- **Failure to purchase workman's compensation or Defense Base Act insurance, or**
- **Commission of fraud or misrepresentation.**



The best way to demonstrate that staff members are entering a dangerous place voluntarily and knowingly is to have them sign an “Acknowledgement of Risk” document. The document should thoroughly describe the risk as it is known to the agency.

Available defences

There are several ways that US NGOs can lessen the chances that it will be held legally responsible if a US NGO staff member is injured overseas.

Full warning of possible danger

US organizations are often able to prevail in litigation solely by providing a detailed warning to staff of the possible danger of working in and travelling to a specific country or region. In some cases, such a warning may be sufficient to meeting the required standard of care. Even if this is not a complete defence to future legal action, it should serve as good evidence that an agency took necessary action to fulfil its duty of care.

Staff assumption of the risk

If an organization can demonstrate its staff voluntarily assumed a known risk inherent in travelling to and working in a hostile environment then this can be either a full or partial defence to many legal actions. Employers who can demonstrate that employees openly consented to a risk, voluntarily participated in it, and had full knowledge of the risk may have a valid defence. However, some jurisdictions may refuse to use the “assumption of risk” rationale for barring negligence lawsuits.

In addition to providing verbal assurances, it is a protective measure for an organization to maintain written documentation that an organization has assured staff members that their jobs or benefits will not be affected by their decision not to travel into a hostile environment.

The best way to demonstrate that staff members are entering a dangerous place voluntarily and knowingly is to have them sign an “Acknowledgement of Risk” document. The document should thoroughly describe the risk as it is known to the agency.

Legal promise not to sue for negligence

A U.S. NGO can only rely upon the “Acknowledgement of Risk” document as a contractual promise not to bring legal action against the U.S. NGO if the individual in question is an independent contractor, rather than an employee. Although the law does permit persons to sign waivers (or exculpatory agreements) that effectively exempt persons and organizations from negligence liability, such waivers are not effective if:

- **the accused organization was grossly negligent, reckless or intentionally created harm, or**
- **the agreement is between an employer and an employee.**

Defense Base Act Statute pre-emption of negligence claims

Workman’s compensation statutes generally pre-empt negligence claims by employees and are intended to be the sole remedy for employees injured in the course of their work. This legal scheme allows workers to be compensated for their injuries, regardless of who is at fault, but it also limits the amount of compensation that will be paid.

Defense Base Act (or DBA) insurance is a type of worker’s compensation insurance and functions as an exclusive remedy for employees of U.S. government contractors injured on the job overseas. Obtaining and maintaining this insurance should significantly limit a U.S. NGO’s liability.

This insurance does not, however, offer a U.S. NGO complete protection from liability. DBA insurance is generally only available for work done pursuant to a government contract, rather than a government grant. In addition, there are certain limited circumstances that courts will determine that workman’s compensation or DBA rules do not bar a negligence suit.

Charitable immunity

Generally, charitable immunity provides that charities shall be immune from suits for negligence. While abolished in the majority of US states, the common law doctrine of charitable immunity still exists, in varying degree, in some states. Complicated choice of law issues are likely to arise in the context of NGOs incorporated in the United States but involved in operations overseas. For this reason, an NGO should not rely too heavily on this doctrine.



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Legal liability in the humanitarian sector



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In addition to providing verbal assurances, it is a protective measure for an organization to maintain written documentation that an organization has assured staff members that their jobs or benefits will not be affected by their decision not to travel into a hostile environment.

Suggestions and recommendations

Structure your organization's security program so that it conforms with the evolving community standard of NGOs working internationally. The best way to avoid a possible claim is to prevent staff members from being injured or killed. Careful security planning, holistic and comprehensive security policies, training, adequate protective resources and information sharing can all accomplish this. If injuries or death cannot be avoided, be sure that the organization can demonstrate that it does at least adhere to the minimum standards of the NGO community in order to keep its people safe. InterAction's Minimum Operating Security Standards ("MOSS") are likely to be considered an important standard by which U.S. NGOs working overseas will be judged in the U.S. courts.

Ensure that your organization's risk assessments are up to date and specific to where the organization operates. Legal liability is generally predicated on the theory that the organization should have known that its people would be injured, but instead did nothing to protect them. The more the organization knows about the potential risks and communicates them to its employees, the more effective the organization will be at preventing harm and warning of specific danger. As long as no staff members are compelled to stay in unsafe environments, adequate and specific warning usually constitutes a full legal defence.

Carefully document all actions taken to protect your overseas staff. NGOs benefit tremendously from having written proof of the ways in which they protect their staff. The organization does not want to find itself in a position where staff turnover or missing records result in the loss of a good defence.

Do not promise more than your organization will or can deliver. The organization will not benefit from promising staff policies or resources which it cannot always deliver. While it is great to aspire to do more than is required by the basic legal doctrines, failure to deliver on a written promise can result in a new source of legal liability. Employee handbooks are frequently interpreted to be legally binding contracts.

Maintain adequate insurance. In addition to purchasing any insurance required by law comprehensive insurance cover can help agencies protect their employees. Insurance can be used to provide care to injured staff, evacuate at-risk staff, and compensate the families of staff members who have been killed.

Make a plan to deal with harm to your employees. Legal liability is increased by inadequate preparation to handle crises. Working crisis management teams, adequate crisis management policies, good insurance coverage and expert professional advice all help to protect NGOs from allegations of insufficient care of at-risk or harmed staff members.

Continually compare the benefit of working in a hostile environment to the risk of harm to staff in helping the organization pursue its mission in such a place. If the hostile environment's risks outweigh its benefits, be prepared to pull out of the environment if necessary.

Notes and references for further reading:

This paper provides only a discussion on general legal issues and does not constitute legal advice. The law is different for each potential case and every possible defendant. If you have a question regarding a specific situation, please obtain the legal advice of an attorney.

¹ C. Bruderlien and P. Gassmann, *Managing Risks in Hazardous Missions: The Challenges of Securing United Nations Access to Vulnerable Groups*, 19 HARV. HUM. RTS. J., 63, 66 (Spring 2006)

¹ K. Van Brabant, *HPG Briefing: Mainstreaming Safety and Security Management in Aid Agencies*, HUMANITARIAN POL. GROUP BRIEFING 1 (2001)

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The complete paper with legal references can be found on the "Safety and Security Resources" section of the RedR website: www.redr.org.uk/en/resources

Humanitarian aid workers are exposed to high levels of stress, which can lead to a variety of conditions. It is important for us to pay more attention to and actively do more to manage this stress.

Managing stress in humanitarian aid workers

Peter R. Teahen, a Certified Traumatologist, has been involved in more than 40 major disasters throughout the world. He has lectured extensively on the psychological impact on relief workers and has developed and taught psychological trauma management training programs in Sri Lanka and Sudan. In this article Peter highlights the need for greater attention to the management of aid worker stress. Written from the perspective of expatriate aid workers, many of the issues raised are also of concern to national staff and their families.

Humanitarian aid workers are exposed to a variety of intense stressors. The sources of stress described by many humanitarian aid workers include physically demanding and unpleasant working conditions, long hours, separation from families, and constant exposure to danger and uncertainty. A number of accounts have described the negative emotional consequences of exposure to these stressors including job burnout, compassion fatigue, post-traumatic stress disorder (PTSD), and self-destructive behaviors. Studies indicate the use of pre-deployment and post-deployment interventions will significantly assist the humanitarian aid worker cope with the emotional impact of their work.

Humanitarian aid in disasters is commonly provided by many local and international non-governmental organizations (NGOs), national governments, and United Nations agencies. In addition to individuals with necessary technical skills catastrophic and humanitarian disasters also provide an environment that draws individuals and agencies with little or no disaster experience or training and exposes them to situations that often overwhelm all of their coping skills.

It is hard to imagine what could prepare one for the altogether overwhelming experience of, for instance, being a teacher, in a school one day, with a routine schedule, comforts and security of an environmentally controlled work area with telephones, computers and a private office and then two days later being responsible for the provision of services in an Internally Displaced Person (IDP) or refugee camp to hundreds or thousands of traumatized displaced individuals who may have been inhumanly brutalized, suffering from starvation and threatened by machete or gun toting soldiers.

Humanitarian relief efforts are increasingly associated with a rising number of civil conflicts and with countries suffering from prolonged poverty and disasters. During these complex emergencies, humanitarian aid workers are at risk of experiencing acute potentially traumatic stressors and ongoing cumulative daily stresses.

Health consequences facing aid workers include death, physical illness, and psychological distress. There has been a documented rise in mortality rates of humanitarian aid workers over the past decade, which has indicated the serious risks humanitarian staff face. Intentional violence related to the use of weaponry, infectious disease, and accidents have accounted for the majority of reported deaths in humanitarian aid staff.

Physical illness among humanitarian aid workers can have serious consequences in countries where the availability of health services may be limited. Preventable infectious diseases and accidents have been reported as the main medical problems and account for the majority of medical evacuations.

Increasing evidence indicates that humanitarian relief workers are at risk of developing significant mental health problems. A recent study found that 30% of their sample of returned relief workers had developed post-traumatic stress disorder (PTSD) and after three years at home, a rate comparable to levels of distress amongst humanitarian peacekeepers. Other studies report high levels of depression (15%), anxiety (10%) and alcohol abuse (15%) in humanitarian aid workers. Reports from multiple sources have repeatedly documented the related distress, culture shock and burnout that humanitarian staff experience.



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For more information

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Resource poor environments, such as desolate refugee camps, seem to cry out for technical assistance such as food, medicine, shelter, machinery, sanitation and the expertise to provide them. However, those who provide such assistance are often seen simply as the conduits of international aid. Most research has not addressed the impact the delivery of relief services has had on humanitarian aid workers though there is significant evidence suggesting that individuals, rather than simply the materials they are associated with, determine the success of an aid project.

It is well known that working cross-culturally can be a stressful experience. For expatriates, seven factors have been identified as key stressors for aid workers. They are related to the degree of stress experienced distance from home, how similar the new country of residence is to home, how similar the new job is to the previous one, the quantity and quality of social support in the new environment, how secure the person's job is at home, and to what extent individuals have moved on a voluntary basis. These stressors can be a strong indicator that an individual's placement in personal, social and geographical terms is very important for coping with cross-cultural transitions. Recognition of the key stressors can help agencies understand the need to provide greater assistance to humanitarian aid workers as they interact with their new environment, and recognize that their social and personal relationships are key factors in adjusting to their current situation.

Studies strongly indicate that the provision of care to the aid worker can be divided into three specific stages; pre-deployment; deployment; and post deployment.

Working cross-culturally may present humanitarian aid workers with significant challenges, such as unrealistic expectations, confusion of roles, social isolation, and confrontation with one's own prejudices, exhaustion, and general anxiety. For many aid workers the absence of sufficient resources and support can undermine the workers sense of adequacy and competency. An aid worker unaccustomed to lack of supplies, inadequate resources, inability to communicate effectively due to language or technology failure, or watching as men, women and children die due to an inappropriate or inadequate relief response may find themselves without proper coping skills to respond effectively to the situation.

The nature of disaster response often requires the humanitarian relief worker to respond in a short period of time which often leaves workers inadequately prepared psychologically, socially, and domestically. The responding aid worker can be quickly overwhelmed as they struggle with their transition from their non-disaster employment and caring for family obligations to organizing the details of their deployment. A relief worker often struggles with the conflict of responsibilities. The aid worker feels a personal need to respond to a disaster yet family and societal pressures can create a sense of guilt and isolation as the worker deploys against the wishes of those left behind.

There are critical points in each phase of work for aid workers that carry increased risk of death, ill health, and distress. These critical points occur prior to departure, during the first overseas assignment, upon arrival at any new country of assignment, termination of the assignment and upon return home.

The beginning of a new assignment and completion of multiple stressful assignments may be particularly critical times because of the increased psychological distress and security problems that have been reported. Some studies have shown that a third of all deaths occur within the first three months of arrival and were unrelated to previous experience.

Homecoming for relief workers has also been identified as a high-risk period for psychological adjustment difficulties. In the past decade, organizational support that recognizes the difficulties of the deployment and adjustment to life upon return home has been limited. Over the past five years however, there are positive signs that the importance of psychological and social care programs is gaining recognition and they are being designed to the specific needs of returned staff.

There is no doubt that humanitarian aid workers face incredible physical and emotional distress during the pre-deployment, deployment and post-deployment phases of their work that has significant impact on the aid worker and subsequently on their families. As research continues to examine the impact of stress on relief workers, and the inevitable impact on service delivery, one can anticipate that both the worker and the humanitarian agency will recognize the need to develop a comprehensive psychosocial support program that adequately prepares and supports aid workers and their families.

What humanitarian relief agencies and workers need to recognize is that carefully managing the human resources in any organization is the single most important management task in any business or organization. Mismanagement of those resources reduces the efficiency and effectiveness of any human system regardless of its mission.

Safety and Security Training Event Calendar

"I met a man working in Nepal who told me 'thanks to your course I am still alive'. This is the impact of the training we have been able to devise and deliver with RedR, using their methodology, skills and enormous practical experience."

Peter Lehmann,
Senior Security Adviser, Swiss Agency
for Development and Co-operation

Location/date	Course title	Contact
UK		training@redr.org
21 to 25 Nov 2007	Personal Security in Emergencies	
13 to 14 Dec 2007	Security Specialists Forum	
Sudan		sudanadmin@redr.org
08 Nov 2007	Communications Training	
12 to 14 Nov 2007	Foundation of Staff Safety (Nyala)	
12 to 14 Nov 2007	Foundation of Staff Safety (El Fasher)	
15 Nov 2007	Communications Training	
18 to 19 Nov 2007	First Aid Training	
19 to 21 Nov 2007	Foundation of Staff Safety	
21 to 22 Nov 2007	First Aid Training	
22 Nov 2007	Security Guard Training	
25 to 26 Nov 2007	First Aid Training	
27 to 28 Nov 2007	First Aid Training	
27 to 29 Nov 2007	Management of Staff Safety	
11 to 13 Dec 2007	Training of Trainers	
Sri Lanka		applySL@redr.org
09 to 10 Nov 2007	Security Training for Drivers	
13 to 14 Nov 2007	Security Training for Drivers	
19 to 22 Nov 2007	Safety and Human Security Management	
Australia		training@redr.org.au
15 to 18 Nov 2007	Personal Security & Communications	

Consultancies

RedR provides tailored training and advice covering all aspects of humanitarian work. Our principal focus has been in the field of security management and personal security though we are able to cover the full range of subjects common to the humanitarian sector, such as Sphere Minimum Standards, logistics, health and water, sanitation and hygiene (WASH).

What we offer

Tailored training and advice in:

- **safety and security management**
- **personal security**
- **security consultancy – risk assessments, security audits, security management reviews**
- **crisis management training and simulations**
- **leadership and management**
- **humanitarian sector subjects (WASH, needs assessment, Sphere etc.)**

Contributions

All contributions and comments for the *Safety & Security Review* are welcome. If you wish to write an article, request a copy of Guidelines for Contributors from ssr@redr.org, contributions to be sent to the editor at the same address.

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