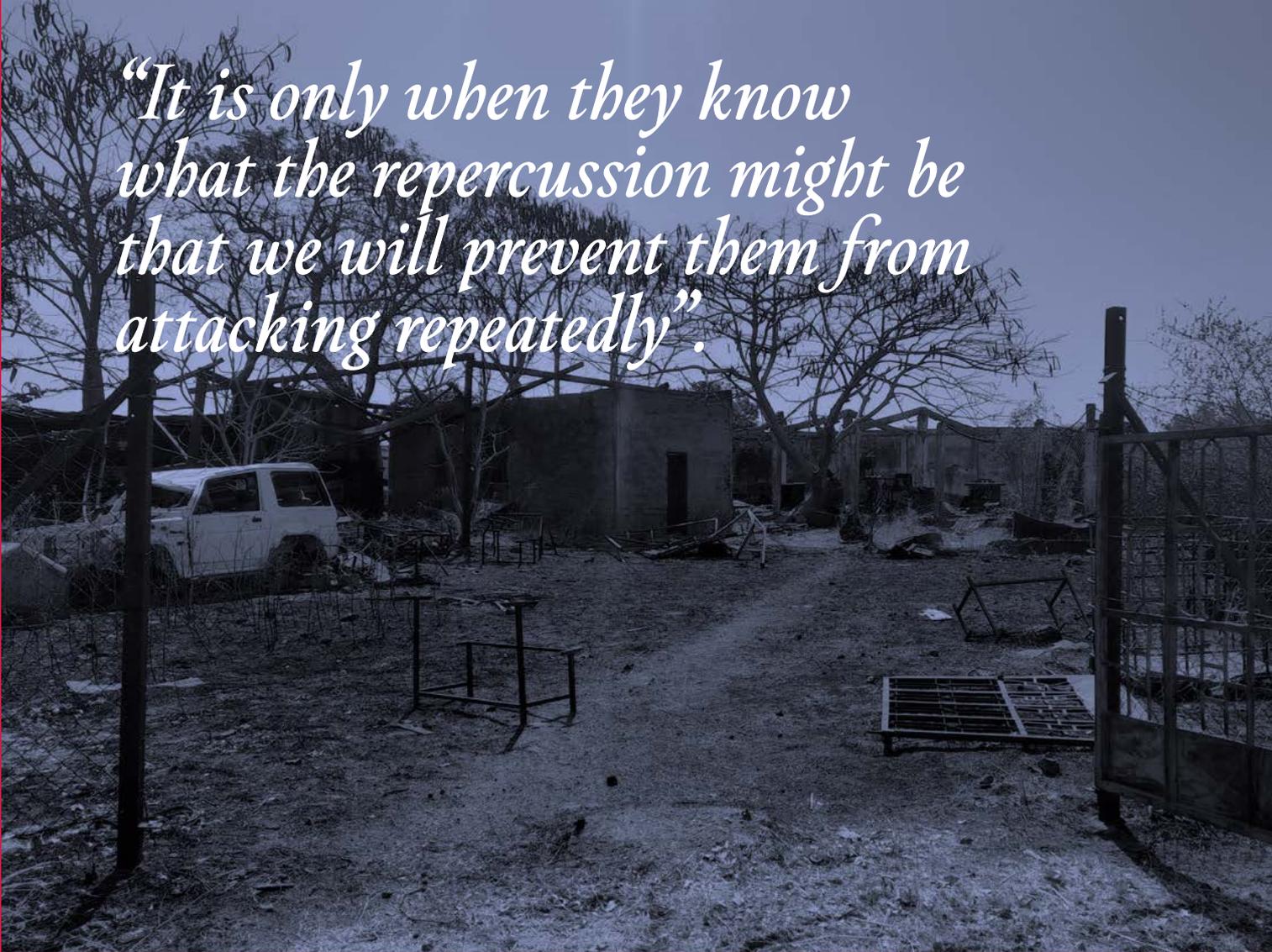


“It is only when they know what the repercussion might be that we will prevent them from attacking repeatedly”.



Justice and accountability for attacks on aid workers: What are the barriers and how to overcome them?

May 2024

About LAW

Legal Action Worldwide is an independent non-profit association comprised of human rights lawyers and jurists, unified in our belief that those who have experienced human rights violations and international crimes, should receive targeted, survivor-centred, gender-competent and trauma-informed support to access the justice they want. LAW's team works on the ground in conflict contexts combining national and international expertise with a deep understanding of victim and survivor needs and wishes. This approach provides a unique opportunity to address violence experienced; to bring national, regional, and international attention to the situation and to break the

cycle of impunity and recurrence. We work directly with survivors and their communities, building their capacity to meaningfully engage with justice and accountability processes. In collaboration with survivors, their communities and national justice actors, LAW develops and implements creative justice and accountability strategies, including strategic litigation at national, regional and international levels. These initiatives are driven by victim and survivor justice priorities, whether this be criminal justice, state accountability, reparations or truth and transformative justice, tailored to the needs of those who need it most.

Acknowledgements

LAW dedicates this report to all aid workers, particularly national staff, courageously working on the front lines to provide assistance to civilians in need. Aid workers face killings, kidnapping, and attacks that result in serious injury, both physical and psychological, on an almost daily basis across the world.

LAW is extremely grateful to those who participated in this research, took the time to confide in us, and shared their experience delivering aid to those who need it the most under sometimes harrowing circumstances and serious threats. In particular, this research would not have been possible without the support of aid workers in South Sudan, the Central African Republic, Somalia and Ethiopia, who identified respondents with varied backgrounds and humanitarian experience and who candidly shared their views on the barriers and recommendations. They helped us to better understand the difficulties and risks they face, and proposed concrete ideas on how to ensure perpetrators are held accountable and improve access to justice for the victims and survivors of attacks.

LAW is also thankful to the experts in international human rights, international humanitarian law and international criminal law who contributed to this report through insightful advice on legal responses to attacks on aid workers.

In this report, aid workers are defined as the employees and associated personnel of not-for-profit aid agencies (both national and international) that provide material and technical assistance in humanitarian relief contexts. In line with other projects supporting aid workers, this can mean employees, volunteers, daily labourers, service providers, and also health workers.

With the
participation
of



**MINISTÈRE
DE L'EUROPE
ET DES AFFAIRES
ÉTRANGÈRES**

*Liberté
Égalité
Fraternité*

Contents

About LAW	2	Barrier 3: The responsibility for attacks is placed upon organisations and/or aid workers themselves rather than perpetrators.	16
Acknowledgements	2		
Executive Summary	4		
Recommendations	6	Shift of the responsibility to the organisation	16
Part 1: Introduction and context	8	Normalisation of insecurity	17
Part 2: Methodology	10	Legal action is not humanitarian.	17
Limitations	11	Barrier 4: Perception that access will be lost.	18
Part 3: Barriers preventing aid workers from seeking justice	12	Fear of losing access	18
Barrier 1: Lack of access to legal information and assistance	13	Fear of losing funding	19
Legal assistance is not integrated into the response to security incidents	13	Part 4: Summary of legal frameworks protecting aid workers	20
Preference for informal mediation	13	International humanitarian law	20
Lack of available information on the applicable legal frameworks	14	International criminal law	20
Legal support is not valued.	14	International Criminal Court	20
Barrier 2: Strong perception that pursuing accountability is too difficult, too expensive, and too risky	15	Universal and extraterritorial jurisdiction	21
Mistrust in the justice system	15	International human rights law	22
The costs of legal advice and litigation	15	Domestic criminal law	22
Risks for the organisation	15	Part 5: Conclusion and Recommendations	24
Risks for staff	15	Recommendations	24
		Annex A	26
		Annex B	27

Executive Summary

In 2023, the number of aid workers killed was double that of 2022 and the numbers of aid workers killed in 2024 will create an unprecedented and horrific record high. The UN Security Council has passed ten resolutions urging states to ensure that unlawful killings of aid workers do not remain unpunished. However, to date, they have continued with almost total impunity. Access to justice and accountability for aid workers plays an essential role in combatting impunity for unlawful attacks against civilians, thus contributing to enhancing the protection of civilians more generally. But various barriers prevent aid workers from accessing justice and accountability, impacting staff members differently depending on their country of origin.

With the support of the French Ministry of Foreign Affairs, in 2022, LAW launched a new project to support humanitarian organisations and aid workers in obtaining justice and accountability for violence committed against them. This report looks at two main questions:

- **What prevents so many aid workers, particularly national staff, and non-governmental organizations (NGOs) from seeking justice and holding perpetrators of violence accountable?**
- **What can be done to support aid workers to address these barriers and access justice and accountability?**

LAW used a mixed-method approach, relying mainly on qualitative approaches to gather primary and secondary data from a variety of sources. 24 reports, articles and guidelines available in open source were reviewed (see Annex A). An anonymous online survey of national and international aid workers was completed by 28 individuals (Annex B). 73 individuals from 43 different organisations were interviewed from national, international NGOs, donors, and UN agencies. Six NGO coordination mechanisms were briefed and consulted, and 2 roundtables were held with 26 experts. The key findings and preliminary

recommendations below come from these roundtables and consultations.

The survey revealed interesting results. 81% of those surveyed said they or a colleague had been victims of violence and 83% stated that would like to receive legal advice, but only 18% had actually received advice from their organisation or their organisation had provided a lawyer.

Four main barriers were identified which prevent aid workers/organisations from seeking justice and accountability:

1. **Aid workers rarely have access to legal information or assistance.** Individuals in management positions in NGOs said that they have very little, if any guidance on what legal support to provide to their staff following an incident, and in many contexts, they did not have access to lawyers with the relevant expertise. In contrast to other responses linked to duty of care (medical, financial, and psychosocial support), access to legal information and assistance is either completely absent from the ‘duty of care package’ or treated informally, on a case-by-case basis. Aid workers were often confused about which legal frameworks provide protection to aid workers and which legal avenues were available. On the whole, legal assistance was generally misunderstood and undervalued.
2. **There is a very strong perception that pursuing justice and accountability is too difficult, too expensive, and too risky.** Due to the difficult contexts in which they operate, aid workers are reluctant to even consider engaging with formal justice systems due to perceptions about lack of capacity and corruption. They are also discouraged by how long processes take, and how much they cost. They raised concerns about the lack of protections available to victims and witnesses and the risk of reprisals to staff and their families from perpetrators and/or local authorities.



- 3. The responsibility for attacks is placed upon organisations and/or aid workers themselves rather than perpetrators.** There is an overwhelming perception that organisations are exclusively responsible for incidents affecting their staff, almost to the exclusion of the perpetrator. As a result, organisations are expected to systematically compensate their staff members for the harm suffered without addressing the accountability of the perpetrators. In addition, national staff members especially tend to normalise violence and its consequences on their work environment and mental health, which leads to a sense that they have no legitimacy to initiate legal proceedings.
- 4. Perception that access to the populations in need of humanitarian support and funding will be lost.** Staff fear that initiating proceedings could result in a loss of access to vulnerable communities and consequently result in a loss of funding. Donors, whilst agreeing with the principle of addressing impunity, also want organisations to continue operating reliably and to have on the ground access.

international humanitarian law, international criminal law, international human rights law, and relevant domestic law. The research identifies how aid workers can obtain justice and accountability through the current legal frameworks.

Despite a widely held view that we need to do something to address these horrific crimes, humanitarian organisations and individual aid workers generally do not see themselves as having an active role in the fight against impunity for crimes committed against them. The reasons for this are set out in this report and are complex, but doing nothing is simply no longer an option as the number of targeted attacks on aid workers escalates year by year. For this reason, the participants in this research have proposed a series of concrete actions that can be undertaken to significantly advance accountability for the crimes committed against aid workers. As we mark, the 75th year of the Geneva Conventions it is time that new and approved approaches are adopted and implemented if we are to reverse this trend.

The report also sets out the main legal frameworks applicable for the protection of aid workers, including

Recommendations

- 1. Establish a pool of qualified and independent lawyers to provide free legal information, assistance and representation:** Receiving legal information, being heard, understanding the violations you have suffered, and hearing the options available for legal redress is already a crucial step in the recovery process of a victim of crime. Independent, qualified, and specialised lawyers can provide legal information and assistance to aid workers, represent them throughout legal processes when appropriate, undertake risk assessments and take measures to protect their clients and mitigate risks. As highlighted by NGOs this support is not currently covered by insurance, is not available to all staff and organisations (particularly national staff and national organisations) and is not free, effectively putting it completely out of reach of all but the wealthiest aid workers and international NGOs.
- 2. Create a roster of deployable and experienced experts/investigators and online helpline:** In the aftermath of an incident NGOs and aid workers do not necessarily know which lawyers to approach and what to do about collecting, retaining and sharing information and/or evidence about the crimes committed. Direct contact with experts/investigators who can advise organisations on immediate steps and have the capacity to deploy and investigate incidents can significantly improve the likelihood of perpetrators being held accountable. In many circumstances victims and survivors feel safer formally pursuing justice much later, particularly when the conflict dynamics have changed and/or transitional justice processes are more developed. Investigators can ensure that information, evidence and contact details are safely archived.
- 3. Ensure systematic dialogue and a response to the targeting of aid workers:** The humanitarian community is regularly outraged by the number of attacks on aid workers, but if we want to

meaningfully address impunity, then there must be a significant investment in dialogue and coordination between Donors, the UN and NGOs on the necessity to act. Instead of ad hoc reactions to incidents by a few courageous organisations, an annual conference of all relevant stakeholders should review the numbers of attacks and all efforts to address justice and accountability. In addition, justice and accountability should systematically be on the agenda of the IASC principles, to ensure that a space is specifically created to discuss and strategize on how to address this complex but critical issue.

- 4. Report on action taken on justice and accountability, including investigations, to the UN Security Council and UN General Assembly:** In the absence of a UN mandate holder (Special Rapporteur or Working Group) on the security and safety of aid workers, the Emergency Relief Coordinator could annually or bi-annually report to the UN Security Council and the General Assembly on the numbers of incidents affecting aid workers and the action taken to address justice and accountability for these attacks. In the event of a serious incident or series of incidents, that could constitute a serious violation under IHL, there must be an immediate requirement to deploy qualified and independent investigators to support, where appropriate, state investigations. For example, this could be the responsibility of the UN Emergency Relief Coordinator, or an independent mechanism created by a Resolution of the UN General Assembly.
- 5. Improve internal procedures to ensure that aid workers can safely access legal assistance:** Legal aid is an individual right of victims of crimes, whether an aid worker or not, and should be included in all duty of care packages alongside medical and psychosocial support. It is a service that is not questioned in humanitarian responses, and is made available to beneficiaries of protection



programming, such as refugees, IDPs and other vulnerable populations in conflict. Unless this is also provided to aid workers, not only will impunity continue to spread, but it will be impossible to address the perception that only NGOs are legally and financially responsible for all the consequences of security incidents. Managing the risks around accessing legal assistance and pursuing justice and accountability can be integrated into organisational risk management strategies, which should also include a detailed analysis of the *impact of failing* to address impunity on access to vulnerable communities.

- 6. Support organisations who pursue justice and accountability.** UN Country Teams and donors have a close relationship with national authorities at the highest levels and can support NGOs or individual aid workers who risk losing access or fear reprisals through diplomatic measures. This support has been made available to other vulnerable civilians who have successfully engaged with justice mechanisms, for example to victims and survivors of conflict-related sexual violence in international and domestic legal proceedings and can be extended to specific aid workers and NGOs in contexts where there are risks of a negative reaction from local authorities, police and/or community leaders.

Part 1: Introduction and context

The number of aid workers killed more than doubled last year from 118 in 2022 to 264 in 2023.¹ A further 78 aid workers were kidnapped and 196 wounded worldwide in 2023.² The most dramatic change has taken place in Gaza, where a staggering 164 aid workers were killed and 53 wounded in 23 major incidents³ between 7 October and the end of 2023, compared to no reported fatalities or injuries in the preceding six years (2017-2022).⁴ South Sudan still accounts for the highest number of major incidents in 2023 (63 incidents) as well as Sudan (27 incidents) and Ukraine (17 incidents).

The international response to attacks against aid workers has largely focused on UN Security Council (UNSC) Resolutions. There have been at least ten UNSC Resolutions to date.⁵ These include statements, such as those in UNSC Resolution 2175, which “Urge[s] States to ensure that crimes against humanitarian personnel do not remain unpunished, affirming the need for States to ensure that perpetrators of attacks committed on their territory against such personnel do not operate with impunity, and that perpetrators of such acts are brought to justice, as provided for by national laws and obligations under international law”⁶.

Countries with the most major incidents recorded in 2023 against aid workers



(source <https://www.aidworkersecurity.org/>)

Despite the high number of attacks, very few perpetrators of these crimes have been prosecuted, and very few States have been held accountable for their failure to protect aid workers. In August 2017, Jan Egeland, Secretary General of the Norwegian Refugee Council, and Stephen O'Brien, then UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, published an article titled 'In the Line of Fire'⁷ which stated that *"so few people have been held to account that no official recorded number exists"*. This is still holds true in 2024 with a very limited number of courts known to have prosecuted crimes committed against aid workers.

One of the rare, publicly known, examples is the Terrain Hotel case, prosecuted in South Sudan in 2018.

In 2022, with the support of the French Ministry of Foreign Affairs, LAW launched a groundbreaking project to support humanitarian organisations and aid workers in obtaining justice and accountability for violence committed against them. By employing creative legal strategies, the project aims to break cycles of impunity, sending a strong message to perpetrators that the attacks will not continue unchallenged. The project was initially piloted in some of the most violent contexts for aid workers, namely South Sudan, Somalia, Ethiopia and the Central African Republic. In late 2023 it was expanded to include East Africa, the Middle East, Southeast Asia and Ukraine. In 2023, LAW undertook in depth research to identify the barriers preventing aid workers from seeking justice and limiting accountability of the perpetrators. As 98% of the aid workers who lost their lives in the ten most violent contexts in 2021 were national staff members¹¹, this research focuses on them.

The Terrain Hotel Case

On 11 July 2016, during intense fighting in Juba, South Sudan, between government and rebel forces, soldiers broke into the Terrain Hotel, killing a local journalist, and raping at least six women, beating other individuals present on the compound and looting private property.⁸ On 6 September 2018, a specially constituted Court Martial sentenced two soldiers to life imprisonment for murder, and eight soldiers to between seven and fourteen years in jail for rape, sexual harassment, theft and armed robbery. Rape survivors were each granted approximately USD 4,000 in compensation.⁹ This case remains one of the very rare examples of a prosecution of perpetrators of crimes committed against aid workers, by a domestic justice system, and demonstrates what can be done when the international community and the State in question work together. However, the process was criticised, particularly by survivors. Compensation provided to survivors was deemed inadequate, the survivors heard during proceedings were mostly international staff members of NGOs, the appeal by the victims is still pending as the casefile is missing, and the case should have been tried by civilian court in accordance with the South Sudanese law.¹⁰

Part 2: Methodology

LAW used a mixed-methodology approach, relying on qualitative approaches to gather primary and secondary data, a desk review, substantive key informant interviews, group discussions and roundtables.



Interviews

Total

73 individuals interviewed in **68** consultations, over **5** months

Donor/UN/NGO

37 INGO staff members
13 National NGO staff members
14 UN staff members
6 Donor staff members and
3 NGO Forum staff members

Gender

♂ **42** men and
♀ **31** women interviewed

National/International

55 International staff members and
18 National staff members (75%/25%) from
43 different organisations

Country

30 different nationalities based in
11 locations



Survey

Anonymous online survey completed by **28 individuals**

Group consultations

Six NGO coordination mechanisms briefed on the project and consulted

26 individuals consulted during **2 roundtables**

The research focused on the obstacles faced by staff working at international and national NGOs, and primarily focused on perceptions gathered from organisations operating in East Africa. LAW reviewed 24 reports, articles and sets of guidelines available in open source (Annex A). An anonymous online survey of national and international aid workers was completed by 28 individuals in September 2023 (Annex B). 73 individuals from 43 different organisations were interviewed. These organisations included national and international NGOs operating in South Sudan, Somalia, Ethiopia and the Central African Republic, as well as NGO fora, donors, and UN agencies. Six NGO coordination mechanisms were briefed and consulted. On 9 November 2023, 21 key humanitarian actors, representatives from NGOs, the UN, donors and organisations working in the region attended a roundtable hosted by LAW in Nairobi. The participants discussed the preliminary recommendations emerging from the findings of this research to ensure they would lead to concrete and realistic commitments to hold perpetrators accountable and bring justice to humanitarian workers who are the victims

of violence. On 29 January 2024, LAW invited five international humanitarian law experts and practitioners to discuss the applicable legal frameworks and to provide additional recommendations. The key findings and preliminary recommendations below come from the research as well as these roundtables and consultations.

LAW's research team included lawyers with extensive experience in the humanitarian field. Two LAW staff and one external consultant were responsible for undertaking the interviews, group discussions and open-source research. The coordination, analysis, drafting, internal review and proofreading the report was led by the team with the support of four additional LAW staff, including two with considerable experience of managing humanitarian operations in conflict and two experienced international law specialists. Several experts in international law were consulted in the drafting of the recommendations.

Limitations to the research

- **Generalisation.** While LAW interviewed a relatively large number of aid workers and donors, the analysis is not representative of every organisation's opinion and practice. The findings are a summary of the literature review and the most common responses given by interviewees. The conclusions identified in relation to some of the main barriers are therefore not a judgement on the practice of all organisations and are neither exhaustive nor inclusive of all points of view. Similarly, the issues raised cannot be generalised across all countries, including the countries specifically included for the research focus. Each country has a national context which will provide nuance in relation to the findings.
- **National staff members.** While 18 national staff members of NGOs were interviewed, they are slightly underrepresented in this report, as are national organisations, compared to international staff members and international humanitarian organisations.

Part 3: Barriers preventing aid workers from seeking justice and accountability.

Through an online survey undertaken in September 2023, 28 aid workers were surveyed on their access to justice and accountability following incidents of violence. Striking results showed the relevance of this research. To the question “Have you or a colleague been the victim of an incident of violence in the course of

your work?” 81% of the surveyed individuals answered yes. 83% answered that they would like to know their options to the question “Do you think you would like to get legal advice if you were the victim of violence?”. However, only 18% received advice from their organisation *or* their organisation provided a lawyer”.

Have you or a colleague been the victim of an incident of violence in the course of your work?



Did you/your colleague get legal advice?



55% answered “no, they did not know they had the option”.

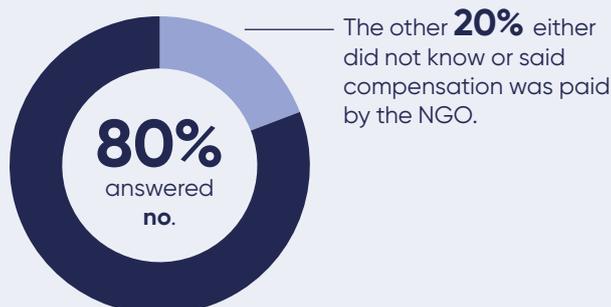
18% did get advice from their organisation or their organisation provided a lawyer.

9% were told not to get legal advice.

13% did not want it legal advice .

No respondents or their colleagues said that they obtained independent legal advice.

Did you/your colleague/your organisation take legal action following the incident?



Do you think you would like to get legal advice if you were the victim of violence?



No respondent answered that there was a criminal process against the perpetrator of the crime.

Four key barriers were identified through the research.

Barrier 1: Lack of access to legal information and assistance

One of the most important barriers identified is the lack of legal information and assistance after an incident. The aid workers interviewed had rarely thought of requesting to speak to a lawyer and very few NGOs thought to propose it to a staff member affected by an incident. From the key informant interviews, it was clear this was related to a lack of information about and/or appreciation of the value of legal assistance, rather than a conscious choice to refuse access to it. The exception was when a staff member is arrested or detained, when legal support was frequently sought to secure their release.

Legal assistance is not integrated into the response to security incidents

Organisational protocols for responding to a security incident are internal documents that could not be accessed for this research. However, according to individual interviews, they would typically include medical, psychosocial, and financial support for staff members affected and/or their families. These are widely known as Duty of Care policies and do not seem to include legal assistance, except in the case of arrest or detention of staff members, volunteers and/or partners, when the support of a lawyer is frequently sought, with the specific objective of securing their release. However, several respondents who had managed these situations confirmed that legal advice was not sought in relation to any abuses or human rights violations committed during detention.

In the aftermath of an incident, in the absence of organisational guidance on legal follow up, respondents reported that they were left to decide by themselves how to proceed and to rely on their own experience. Respondents described the compensation process following an incident as informal, generally favouring resolution through customary or traditional mediation over reporting to the authorities. Respondents reported that they relied on these mechanisms to decide on the amounts of compensation that would be awarded to the victim or their family following an incident. Respondents also reported that they would benefit from more internal guidelines on what support could be available if staff wished to seek justice.

The inclusion of psychosocial support in the duty of care

Over the past 30 years, the provision of psychosocial support has advanced significantly and is now widely recognised as a central part of the duty of care provided by organisations to their staff. Notwithstanding gaps in accessibility and quality of psychosocial support provided to staff and partner organisations, it is a reflex of humanitarian organisations and their staff members, including the UN, to prioritise psychosocial support following an incident. This was not always an automatic response to traumatic incidents. In December 1988, after an earthquake in Armenia, MSF decided, for the first time, to send psychologists and psychiatrists to the field, as part of its response. As Marc Gastellu, then head of programmes for Armenia and medical director of MSF recalled in a 2022 interview, *“Looking back at the context, at the time it was nothing to do with dogma but about something that was said at MSF: ‘We don’t do mental health.’”*¹²

Since then, a lot has changed.

Preference for informal mediation

The fact that aid workers resort to local compensations mechanisms is not surprising in communities and countries where traditional and customary justice processes are quite powerful and well respected. For example, a respondent in Somalia described decisions that are widely respected as follows: *“it is a brutal form of justice, but it works effectively”*¹³ This summarises the opinion of several aid workers from Somalia, South Sudan and the Central African Republic. When it comes to rapid reparations for the victim and keeping the peace in the community, traditional mechanisms are perceived to be more efficient. However, they also have major limitations, such as being inequitable and, in many situations, biased against women or one of the parties depending on their wealth.¹⁴ Traditional justice mechanisms are not necessarily survivor centred and in line with international human rights standards, particularly in relation to sexual violence. This must be taken into consideration by aid workers when deciding to use them to seek justice and accountability.

Lack of available information on the applicable legal frameworks

While aid workers are, in general, more likely than the wider population to have a basic knowledge of international humanitarian law, they do not have access to information on how it applies to them in the event of an incident, nor on other legal avenues available to them. Although the vast majority of international organisations have a lawyer on retainer, they are experts in registration, taxes, contract and employment issues, and not criminal matters. Respondents often noted that they would not know who to contact for legal assistance, where to report or how to initiate legal proceedings domestically or internationally. One respondent said,

“People lack information on who to report to, is it the police? Is it the police at the end of the road, or can they go to someone else?”¹⁵

Legal support is not valued.

In general, respondents did not have experience of talking to an independent lawyer in the aftermath of an incident and how this could contribute to recovery alongside psychosocial and medical support. Speaking to a lawyer is associated with initiating judicial proceedings, without considering the benefits of legal information and assistance alone. Victims and survivors often do not recognise themselves as victims, sometimes blame themselves and do not necessarily understand the range of crimes and violations committed against them. They can benefit from the opportunity to articulate the harms they suffered to an independent person, and from knowing their options for redress, even if they choose not to pursue them.

The Central African Republic and the Special Criminal Court

In the Central African Republic, during the most intense periods of the civil war, aid workers were directly targeted by violent attacks to prevent them from delivering humanitarian support to certain populations. The perpetrators were usually relatively well organised armed groups, with known command structures. There are no reports today of perpetrators being prosecuted specifically for these attacks. However, in 2024, the Central African Republic’s justice system can investigate, prosecute and adjudicate all categories of crimes committed against aid workers. The domestic criminal system, while lacking capacity in practice, has jurisdiction over crimes committed under the criminal code and under international criminal law. The Special Criminal Court has jurisdiction over crimes under the Rome Statute, and a hybrid formation of international and national magistrates. Finally, the Central African Republic has ratified the Rome Statute, giving jurisdiction to the International Criminal Court. All three present opportunities for victim participation. All these now available processes did not exist 10 years ago. They could include aid workers who were the victims of crimes at the height of the conflict, who would, years later, feel safer and readier to seek justice and accountability. Unfortunately, while NGOs and the UN keep historical records of incidents, they are not able to contact their former staff members to inform them of the opportunities for justice and accountability created, and the staff members never spoke to a lawyer to fully understand the potential legal implications of what happened to them. While numerous survivors now join ongoing legal proceedings in these three jurisdictions, aid workers do not seem to be aware that they could also apply for a victim’s status.

Barrier 2: Strong perception that pursuing accountability is too difficult, too expensive, and too risky.

Individuals interviewed expressed that for various reasons, including capacity, cost and potential retaliations, the risks of engaging with the justice system in the contexts where they worked outweighed the benefits.

Mistrust in the justice system

“The system to hold people accountable is broken”¹⁶

The lack of investigations and prosecutions for violence against aid workers is not due to a lack of international or domestic legal frameworks. Across the board respondents highlighted a lack of trust in formal justice systems and cited the collapse of the rule of law in many fragile and conflict affected states as a major barrier to accountability. Respondents highlighted that police and courts did not have the resources, technical capacity, or willingness to investigate attacks, particularly when the perpetrators had not been personally identified. Ten respondents shared their experiences of local authorities who blamed the organisation for incidents, arguing that the organisation was not authorised to be there or knew that the location was not safe, who were demonstrably biased against the organisation or its staff, and/or who leaked information about the case.

Corruption was mentioned as a reason for mistrust in the authorities, sometimes extending also to the lawyer representing the organisation. Concerns were raised about the capacity to implement judgments. If government officials are not aware of decisions, or are not willing to enforce them, then the process is perceived as pointless.

The costs of legal advice and litigation

It was highlighted that legal proceedings that can take a long time and require significant time commitments and resources. Related expenses are also potentially cost-prohibitive such as the cost of investigations, engagement of experts and transportation for staff in remote areas to follow up on cases. Respondents often highlighted that the funding was scarce and

was meant to go to beneficiaries rather than to staff, highlighting that legal aid is yet another “indirect cost” which they believed donors would not support. Similarly, the potential length of the proceedings was a deterrent, with no option in most organisations to have staff members dedicated to following up on lengthy legal proceedings.

Risks for the organisation

Organisations are often very cautious about accountability because of the risk of retaliation.¹⁷ One respondent noted that, “it is very easy for an organisation to be thrown out”¹⁸. Humanitarian actors fear that projects or activities would be targeted for further attacks such as looting by state or armed groups as retribution for speaking out.¹⁹ Most organisations’ risk management strategies are reliant upon acceptance from national, local, traditional authorities and there is a clear perception that formal complaints would go against this strategy. One respondent suggested that, as organisations are dependent on the permission and cooperation of local authorities to operate, “it may become problematic if the organisation started making problems for the authorities, started digging at them”²⁰.

Another Respondent commented that an organisation decides to go to court, there is a risk that “it will backfire for the individual, or for the NGO itself”²¹.

It was also reported that organisations have decided to stay silent about violations to avoid being accused of taking sides or being seen as criticising the system.

Some actors expressed concerns that legal proceedings would lead to widespread publication of the incident in the formal media and/or on social media which in turn would harm the reputation of the organisation and would mean losing control of the narrative.

Risks for staff

National staff respondents often feared retaliation from the perpetrator’s community if they sought formal justice and accountability. One respondent said,

“Another obstacle is that the legal services are not available in the country. The staff or their family turn against their organisation because they get a monetary compensation, without the risks of revenge and retaliation in the communities.”²²

Respondents felt that where the perpetrators are state actors or affiliated, the risks of threats and retaliation are especially high, particularly if there is a level

of impunity for the state security apparatus in the country.

“We have to think about our colleagues”²³

Generally national staff fear that the justice and accountability process will not be free from interference and that they could be personally threatened by the perpetrator or their community. International staff are more likely to fear retaliation based on immigration status, for example deportation or refusal of a visa. These are not just perceived risks: respondents referred to the arrest and expulsion of international NGO country directors following up on issues, and NGOs being expressly told by authorities to not report cases and to “stop looking” into cases.

South Sudan and access to justice and accountability

In South Sudan, staff affected by violence said that they were very unlikely to start formal legal proceedings, due to the fear of reprisal and the perceived inability of the justice system to process the case. However, the research also confirmed that these choices are not necessarily made following specific advice from expert lawyers and are therefore not informed decisions.

It is not the case that all individuals in remote locations in South Sudan are not interested in accessing the justice system. Humanitarian organisations providing services to victims and survivors of gender-based violence always include legal support in the referral pathways, in addition to psychosocial support, livelihood, and medical support. The importance of legal aid is perfectly well understood as an important element of the services for beneficiaries. If this is a reflex for beneficiaries, the question remains why the response would be different for aid workers.

In addition, LAW’s experience with access to justice and accountability in South Sudan and other similar contexts has shown that, when able to access legal aid, victims and survivors benefit from understanding their rights and options for redress. Many do initiate legal proceedings and utilise the formal judicial processes and well trained and experienced lawyers can support them to navigate domestic courts and mitigate risks.

Barrier 3: The responsibility for attacks is placed upon organisations and/or aid workers themselves rather than perpetrators.

Respondents often assumed that the organisation, rather than the individual aid worker, was responsible to decide whether to pursue justice and accountability and file any complaints. There is an overwhelming perception that organisations are responsible for incidents affecting their staff, almost to the exclusion of the perpetrator.

Shift of the responsibility to the organisation

In interviews, respondents often did not differentiate between their organisations and the perpetrators when it came to redress for the consequences of attacks. There was a prevailing perception amongst aid workers that if they were attacked, it was because the organisation had failed to protect them, assigning relatively little responsibility to the perpetrators. Even when the organisation is not negligent, they are often considered to be the party most equipped to compensate and to take legal responsibility. In the countries specifically targeted by this research, most respondents said that following a security incident there would be immediate recourse to financial compensation. Determining how much would be paid is negotiated between the organisation and the victim

or their family sometimes with the involvement of local leaders.

Several respondents, in the Central African Republic, Somalia and South Sudan, described community dynamics where the responsibility for an individual's actions lies with their community. Customary justice often intervenes to respond to cases of attacks against aid workers, as in any other case of members of the community, and can assign compensation to the party harmed. As a result, an NGO could be potentially considered as an equivalent to the community for the purpose of compensation.

Normalisation of insecurity

“Personally, I have never been the victim, I faced some threats but not direct violence. Threats on the road, at checkpoints, some harassment but no direct violence”²⁴.

National aid workers, particularly of national organisations, overwhelmingly saw insecurity and attacks as part of the job. National staff members especially tend to normalise violence and its consequences on their work environment and mental health. For many national humanitarian workers working in conflict-affected and fragile states, some form of violence is a daily occurrence in their community, so they do not consider themselves victims when they experience it. One respondent said that statistics on attacks against health staff probably reflect a very small proportion of the actual number of incidents. Harassment at checkpoints on the road to work, or threats and petty theft are considered so normal or are associated with being “in the wrong place at the wrong time” and are, as a result, not reported. One national staff who had been briefly kidnapped by members of the community he was working in, summarised the event by saying,

“it was a work accident, it happens”²⁵.

Legal action is not humanitarian

Linked to the sentiments that aid workers were responsible for their own safety, respondents expressed the view that addressing accountability is somehow incompatible with humanitarian action.

“Humanitarians are not judgemental; they don't judge people that is why they don't go to court”²⁶.

Some respondents believed that aid workers should not complain about working in dangerous contexts as that was part a job that they had chosen, and that initiating legal proceedings would not be compatible with their position as a humanitarian. Respondents highlighted that the power imbalance between staff members of organisations and communities would be made even worse by taking community members to court when they were already in a difficult humanitarian situation. The inference is that individuals who go into aid work necessarily must be ready to accept risk and violence without recourse.

“Beneficiaries are first, then comes the protection of staff”²⁷

Dennis v Norwegian Refugee Council and the responsibility of NGOs²⁸

On 29 June 2012, Steven Dennis and three of his colleagues working for the Norwegian Refugee Council (NRC) were injured and kidnapped in Kenya, when the convoy they were traveling in was attacked by six men, who also killed one of the drivers. They were rescued four days later. In 2015, Steven Dennis filed a claim for compensation against NRC at the Oslo District Court. The Court found that NRC acted with gross negligence and was liable for compensation towards Steven Dennis.

This case is important for the international aid sector, to ensure organisations institute strong security risk management procedures in line with the context they are operating in. NGOs, like any other employer, owe a duty of care to their employees, which includes informing them of the risks that they are taking if their physical security cannot be ensured. However, it must not be understood as putting the responsibility of the crime that was committed exclusively on the organisations. The perpetrator of the crime is not the organisation, and a negligence claim is not incompatible with initiating criminal proceedings to investigate the crime and prosecute the alleged perpetrators. For reasons discussed in this report, following up on criminal processes are very rarely supported following an incident, and compensation for the negligence of the organisations, whether decided by a court or not, are almost systematically the only form of justice and accountability aid workers can access.

Barrier 4: Perception that access will be lost.

“Humanitarian organisations want to provide the support despite the violence and not necessarily address the violence.”²⁹

Humanitarian organisations rely on access to affected populations to be able to deliver humanitarian services. Access to the affected population is closely associated with funding and organisational reputation.

“Staff members are part of the community, how does accusing the community of crimes improve access to beneficiaries, there are many other interests at stake despite holding the perpetrator accountable”.³⁰

Fear of losing access

Acceptance is the preferred risk mitigation strategy in humanitarian operations. Respondents expressed fear that pursuing accountability would not help to de-escalate a situation and would undermine their acceptance strategy, reduce humanitarian access and not necessarily prevent further attacks. For example, one respondent described that out of ten trucks going into a specific area, the organisation knew that a proportion were systematically looted and therefore specifically planned to accommodate this, notwithstanding these thefts could potentially turn violent. This was

considered an unavoidable cost of the acceptance strategy, and therefore this conduct continued with total impunity.

This is also one of the reasons why NGOs prioritise traditional community mediation mechanisms, to mitigate/reverse any damage to the relationship between the organisation and that community and secure ongoing access, with limited accountability.

Fear of losing funding

The fear of losing funding is very closely related to access, and donors interviewed did express reservations on legal action. Donors who were interviewed confirmed that they did not systematically ask NGOs about whether legal support was offered in the aftermath of an incident, in the way they might do for medical or psychosocial support. Although donors did see themselves as having a role in supporting NGOs or individual aid workers who sought accountability, for example through diplomatic avenues, and agreed that staff welfare must be prioritised, they also confirmed that it would be difficult if organisations lost access due to their response to a security situation. Donors agreed that in principle impunity had to be addressed, but expressed similar concerns about risks, access, and the lack of capacity to respond.

It is perhaps therefore not surprising that the most prominent advocacy relating to impunity has come from organisations that have chosen, in response to an attack on their staff, to close their operations and in extreme cases leave the country altogether, as Action Against Hunger (AAH) did following the killing of 17 staff members in Sri Lanka on 4 August 2006. AAH strongly advocated and worked for accountability for the crime and obtained some important breakthroughs, such as the opening of an UN international investigation, which resulted in a report on the crimes conducted during the Sri Lankan civil war.³¹



Part 4: Summary of legal frameworks protecting aid workers

The main legal frameworks applicable to humanitarian aid workers, including international humanitarian law, international criminal law, international human rights law, and relevant domestic law, are summarised below.

International humanitarian law

International humanitarian law –also known as the law of war³²– is a set of rules which regulates and seeks to limit the effects of armed conflict. It protects persons who are not, or are no longer, participating in the hostilities and restricts the means and methods of warfare. The four Geneva Conventions of 1949 and their Additional Protocols comprise the core of international humanitarian law. The initial four Conventions were subsequently supplemented by three additional agreements: the Additional Protocols I and II of 1977 relating to the protection of victims of armed conflicts and the Additional Protocol III of 2005 creating an additional emblem with the same status as the Red Cross and Red Crescent.³³ All UN Member states have agreed to be bound by the Geneva Conventions and more than 170 states are bound by the Additional Protocols.³⁴ Furthermore, in a 2005 study, the ICRC detailed the comprehensive protections that civilians enjoy under customary international humanitarian law.³⁵ Notably, states have an obligation under the Geneva Conventions and customary international law to investigate and prosecute violations of IHL within their domestic jurisdictions.³⁶

When addressing accountability, it is important to differentiate between attacks against aid workers and attacks against other ‘protected persons.’ International humanitarian law protects certain categories of persons who do not take part in hostilities, such as civilians and medical and religious military personnel. It also protects those who have ceased to take part in

hostilities, such as wounded, shipwrecked and sick combatants, and prisoners of war.³⁷ Aid workers receive the same protections under international humanitarian law as any civilians if they do not take part in the hostilities. However, aid workers are also afforded additional protection, as humanitarian relief personnel are specifically protected individuals under international humanitarian law.

In particular, the obligation to respect and protect humanitarian relief personnel is set forth in Article 71(2) of Additional Protocol I for international armed conflicts, and Article 18(2) of Additional Protocol II for non-international armed conflicts. Because the safety and security of humanitarian relief personnel is an indispensable condition for the delivery of humanitarian relief to civilian populations in need, respect for and protection of humanitarian relief personnel is a corollary of the prohibition of starvation, as well as the rule that the wounded and sick must be collected and cared for.³⁸

International criminal law

International Criminal Court

Article 8 of the Statute of the International Criminal Court (the Rome Statute) codifies violations of international humanitarian law that can be prosecuted and adjudicated as war crimes.³⁹ The Rome Statute provides that intentionally directing attacks against personnel, installations, buildings, units, or vehicles involved in a humanitarian assistance missions is a war crime in both international armed conflicts⁴⁰ and non-international armed conflicts.⁴¹ It is also a war crime in international armed conflicts to use starvation of civilians a method of warfare by depriving them objects indispensable to their survival, including wilfully impeding relief supplies (as required by the Geneva Conventions) such as food, water, and

medicine.⁴² In December 2019, the Assembly of State Parties to the Rome Statute adopted an amendment to Article 8, inserting a new article⁴³ prohibiting the same conduct in non-international armed conflicts. This amendment allows for further criminalisation of attacks against aid workers but has not yet been ratified widely by State Parties.⁴⁴

Aid workers can also be victims and witnesses of other international crimes prosecutable at the International Criminal Court (ICC), including other war crimes, crimes against humanity and acts of genocide, independently of their status as humanitarian relief personnel. Where the relevant contextual elements are met, aid workers can therefore participate in proceedings, as victims. For example, if an aid worker is killed in the context of a state's widespread and systematic attack against a civilian population, their killing could constitute the crime against humanity of murder under Article 7(1)(a) of the Rome Statute. Similarly, if an aid worker is killed with the intent to destroy their ethnic group in whole or in part, that could be the crime of genocide by killing under Article 6(a) of the Rome Statute, as long as other contextual elements are met – in particular that the murder took place as part of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.⁴⁵ Similarly, assuming the aid workers maintain their status as civilians, acts of violence towards them such as unlawful detention, torture, sexual violence, and enforced disappearances, can be prosecuted at the ICC as war crimes, crimes against humanity, and/or genocide where the relevant contextual elements are met.

Communication to the ICC under Article 15 of the Rome Statute

Aid workers, and/or those representing them, can file an Article 15 communication with the Office of the Prosecutor (OTP) of the ICC to provide information about violations against them, either to contribute additional information to any ongoing investigation or to request that the OTP open a new examination into the relevant situation. Under Article 15 of the Rome Statute, any individual, group, State, or intergovernmental or non-governmental organization may send information to the OTP in the form of what is referred to as an 'Article 15 communication.'⁴⁶ Articles 13(c) and 15 of the Rome Statute allow the Prosecutor to open a preliminary examination when he receives information on crimes within the Court's jurisdiction – known as a *proprio motu* investigation, because it is on the Prosecutor's own initiative. Following completion of the examination, if the Prosecutor concludes there is reasonable basis to proceed with an investigation, they *shall* submit the relevant request to the Pre-Trial Chamber of the ICC to open a formal investigation.⁴⁷

Universal and extraterritorial jurisdiction

International crimes such as war crimes, crimes against humanity and genocide, can also be prosecuted by certain States under the principles of extraterritorial or universal jurisdiction. Under customary international humanitarian law, states have the right to vest universal jurisdiction in their national courts over war crimes.⁴⁸ Typically, States are only competent to judge crimes if they have been committed on its territory, by or against its citizens. However, some States have recognized that the nature of international crimes is so serious that they constitute offenses against all humankind, thereby warranting special measures. Accordingly, certain States have enacted legislation, under the principle of extraterritorial and universal jurisdiction, that extends the jurisdiction of States beyond their borders and permits—and in some cases requires— prosecution of international crimes, regardless of where the crimes may have been committed or the nationality of the perpetrators and the victims.⁴⁹

This principle could be applied to include aid workers as victims in judicial proceedings in a country where they are not a national. For example, France opened an investigation in 2012 into the murder of

two French journalists in Syria, which was later reclassified as war crimes. The families of the French victims were parties in the case, a form of victim's status in French Criminal Procedure. Syrian and British journalists injured in the attack were also civil parties.⁵⁰ This shows that in certain jurisdictions, when investigations and prosecutions are undertaken into an attack against an aid worker, other nationals who were also victims of the attacks or their families could be included.

International human rights law

Aid workers are also afforded protections under international human rights law, which can be enforced by individuals against States through regional human rights courts and UN treaty body mechanisms and special procedures, just as any individual who had their rights violated by a State. Relevant international human rights norms that might be implicated in attacks on aid workers that could be prosecuted at the relevant regional mechanism include for example, the right to life, the right to be free from torture or cruel, inhuman or degrading treatment, including sexual violence, and the right to liberty and security (e.g. where an aid worker is unlawfully detained), among others. The remedies in such proceedings could include recognition of the crime, compensation from the state, and other forms of non-criminal accountability for the harm suffered.

In regional contexts, attacks against aid workers could be addressed in regional courts or mechanisms where the relevant State has signed a regional instrument and accepted the relevant jurisdiction of a mechanism and/or a court. Specific examples of regional avenues include the African Commission and Court on Human and People's Rights, the Inter-American Commission and Court of Human Rights, and the European Court of Human Rights. A series of rights and freedoms is included in the respective human rights instruments that govern the jurisdiction of each one of these courts and mechanisms⁵¹ and, in case of violating those rights and freedoms, the State concerned must be held responsible and provide justice and redress for the harm suffered. Depending on the establishing mechanism and the rules of procedure, state responsibility for violation of international obligations can be invoked either by another state or by an individual, organizations, or group of individuals that claim to have been the victims of a human rights violation.

Aid workers could also seek accountability for international human rights law violations at UN treaty bodies or under UN special procedures mechanisms. UN treaty bodies are quasi-judicial committees of independent experts that monitor implementation of the core international human rights treaties.⁵² There are ten different committees that analyse the responsibility of a State for breaching the treaties that they protect towards individuals and publish a decision, but which requires State ratification of human rights treaties and protocols to be applicable. Depending on the case, any of the Committees might be relevant as an avenue for human rights violations against aid workers, including but not limited to the Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights, the Committee against Torture, which monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which visits places of detention to prevent torture and other cruel, inhuman or degrading treatment or punishment.⁵³

UN Special Procedures allow independent UN experts on various human rights issues to address the States concerned for various human rights violations and breaches, which could include cases of attacks against aid workers. As of November 2023, there are 46 thematic and 14 country mandates.⁵⁴ Aid workers can also submit individual submissions to Special Procedures experts, to encourage Special Procedures to in turn send a communication to governments, intergovernmental organizations, businesses, military, or security companies, to allege particular human rights violations, and where necessary, request that the concerned authorities take action to prevent or stop a violation, investigate, it, bring justice to the victims and hold accountable those responsible, and make sure that remedies are available to the victim(s) or their families.⁵⁵

Domestic criminal law

At a domestic level, aid workers enjoy the legal protections applicable to all people within the territory of that State. A crime committed against them can be prosecuted under the applicable criminal code or other penal laws and may qualify as murder, serious bodily harm, kidnapping, rape, or other crimes.

With respect to United Nations humanitarian personnel, the Convention on the Safety of United Nations and Associated Personnel requires State Parties to the convention to take all necessary measures to ensure the safety and security of United Nations and associated personnel, establish criminal offences punishable by appropriate penalties, cooperate in the prevention of such crimes and ensure prosecution or extradition of these crimes.⁵⁶ To the extent States have ratified this convention and complied with its obligations to criminalize relevant offences and prosecute or extradite, this promotes accountability for United Nations humanitarian aid workers and further underscores state obligations to investigate and prosecute attacks against aid workers in their domestic legal systems.



Part 5: Conclusion and Recommendations

It is important to acknowledge that NGOs, particularly national organisations, courageously work on the front lines in highly insecure contexts and face threats and attacks on an almost daily basis across the world. Aid workers and their organisations are rightly outraged by these attacks, and the entire humanitarian community recognises that failures to address impunity only serves perpetrators and reinforces cycles of violence and impunity. This impacts not only humanitarian aid workers, but also the civilian populations they serve.

Despite a widely held view that we need to do something to address these atrocities, humanitarian organisations and individual aid workers generally do not see themselves as having an active role in the fight against impunity for crimes committed against them. The reasons for this are complex but many are related to a lack of knowledge about what can be done, which frameworks are applicable, and a lack of tools to address the complex risks that are perceived to be associated with pursuing accountability. Despite UN agencies and NGOs promoting legal support to beneficiaries as an integral part of the humanitarian response, very few afford the same support to their own staff, instead preferring to absorb the responsibility and financial cost of these attacks, to the exclusion of the perpetrator.

There are firmly held views amongst organisations that speaking to lawyers will automatically lead to problems for the aid worker, their family, the rest of the staff and the organisation and/or engaging with legal systems at all is a completely futile exercise. Addressing impunity is not at all easy, it certainly requires considerable support and resources, and it does carry risks, but many civilians, arguably much more vulnerable than aid workers, are engaging with domestic, regional and international accountability mechanisms on a regular basis - yet the voices and evidence of humanitarian aid workers, who experience similar violations and abuses alongside them, are by and large absent.

There is also a limited appreciation that legal information and advice can in itself be helpful following an incident, even if no further action is taken. Understanding what has happened to you, being able to articulate the crimes that you have suffered, being able to explain how it has impacted you and knowing what options are open to you, are crucial to the recovery of all survivors. The same support must be available for aid workers.

Legal information, assistance and support to pursue justice and accountability is an individual right of any victims of crime, violations or abuses, whether or not they are an aid worker. If we are serious about addressing impunity and prepared to show that we will fight back against the deliberate targeting of aid workers, it is time to take responsibility and make concrete commitments to support justice for aid workers and accountability of the perpetrators.

Recommendations

The recommendations came from the participants interviewed and consulted and are aimed at the humanitarian community. They describe concrete action that could be undertaken to improve aid workers access to justice and accountability. Notwithstanding the primary responsibility of States for the protection of aid workers, these recommendations do not include more generic and long-term investments on improving domestic legal systems.

- 1. Establish a pool of qualified and independent lawyers to provide free legal information, assistance and representation:** Receiving legal information, being heard, understanding the violations you have suffered, and hearing the options available for legal redress is already a crucial step in the recovery process of a victim of crime. Independent, qualified, and specialised lawyers can provide legal information and assistance to aid workers, represent them throughout legal

processes when appropriate, undertake risk assessments and take measures to protect their clients and mitigate risks. As highlighted by NGOs this support is not currently covered by insurance, is not available to all staff and organisations (particularly national staff and national organisations) and is not free, effectively putting it completely out of reach of all but the wealthiest aid workers and international NGOs.

- 2. Create a roster of deployable and experienced experts/investigators and online helpline:** In the aftermath of an incident NGOs and aid workers do not necessarily know which lawyers to approach and what to do about collecting, retaining and sharing information and/or evidence about the crimes committed. Direct contact with experts/investigators who can advise organisations on immediate steps and have the capacity to deploy and investigate incidents can significantly improve the likelihood of perpetrators being held accountable. In many circumstances victims and survivors feel safer formally pursuing justice much later, particularly when the conflict dynamics have changed and/or transitional justice processes are more developed. Investigators can ensure that information, evidence and contact details are safely archived.
- 3. Ensure systematic dialogue and a response to the targeting of aid workers:** The humanitarian community is regularly outraged by the number of attacks on aid workers, but if we want to meaningfully address impunity, then there must be a significant investment in dialogue and coordination between Donors, the UN and NGOs on the necessity to act. Instead of ad hoc reactions to incidents by a few courageous organisations, an annual conference of all relevant stakeholders should review the numbers of attacks and all efforts to address justice and accountability. In addition, justice and accountability should systematically be on the agenda of the IASC principles, to ensure that a space is specifically created to discuss and strategize on how to address this complex but critical issue.
- 4. Report on action taken on justice and accountability, including investigations, to the UN Security Council and UN General Assembly:** In the absence of a UN mandate holder (Special Rapporteur or Working Group) on the security and safety of aid workers, the Emergency Relief Coordinator could annually or bi-annually report to the UN Security

Council and the General Assembly on the numbers of incidents affecting aid workers and the action taken to address justice and accountability for these attacks. In the event of a serious incident or series of incidents, that could constitute a serious violation under IHL, there must be an immediate requirement to deploy qualified and independent investigators to support, where appropriate, state investigations. For example, this could be the responsibility of the UN Emergency Relief Coordinator, or an independent mechanism created by a Resolution of the UN General Assembly.

- 5. Improve internal procedures to ensure that aid workers can safely access legal assistance:** Legal aid is an individual right of victims of crimes, whether an aid worker or not, and should be included in all duty of care packages alongside medical and psychosocial support. It is a service that is not questioned in humanitarian responses, and is made available to beneficiaries of protection programming, such as refugees, IDPs and other vulnerable populations in conflict. Unless this is also provided to aid workers, not only will impunity continue to spread, but it will be impossible to address the perception that only NGOs are legally and financially responsible for all the consequences of security incidents. Managing the risks around accessing legal assistance and pursuing justice and accountability can be integrated into organisational risk management strategies, which should also include a detailed analysis of the *impact of failing* to address impunity on access to vulnerable communities.
- 6. Support organisations who pursue justice and accountability.** UN Country Teams and donors have a close relationship with national authorities at the highest levels and can support NGOs or individual aid workers who risk losing access or fear reprisals through diplomatic measures. This support has been made available to other vulnerable civilians who have successfully engaged with justice mechanisms, for example to victims and survivors of conflict-related sexual violence in international and domestic legal proceedings and can be extended to specific aid workers and NGOs in contexts where there are risks of a negative reaction from local authorities, police and/or community leaders.



Annex A

List of existing documentation on protection, safety and security of aid workers consulted

1. Evaluating mechanisms to investigate attacks on healthcare, International Humanitarian Fact Finding Mission, International Peace Institute, 2017
2. Partnerships and security risk Management: from the local partner's perspective, GISF Research Paper, Global Interagency Security Forum, September 2020
3. Evaluating Mechanisms for Investigating Attacks on Healthcare, New York: Els Debuf, International Peace Institute, December 2017
4. Convention on the safety of United Nations and Associated Personnel, Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, United Nations, Mahnoush H. Arsanjani, 2009
5. Horn of Africa: Conflict, Hunger and Aid Security, Insecurity Insight, December 2022
6. How to protect aid workers in conflict situations, A critical analysis of international humanitarian law, Reingold Erdt, FAU University Press, 2019
7. Joint Health Staff Survey, Protection of Health Care South Sudan, IRC, Medair, Children Aid, Impact Health Organization, the Rescue Initiative South Sudan and United Network for Health workers in South Sudan, September 2022
8. Toolkit: Responding to Violence Against Humanitarian Action on the Policy Level, Rationale and methods to share information, speak out, and challenge impunity in cases of violence against humanitarian action, Working Group on Protection of Humanitarian Action, 2017-2018
9. Safety and security for national humanitarian workers, Policy and Studies Series, OCHA, 2011
10. A/77/362, Safety and security of humanitarian personnel and protection of United Nations personnel, Report of the Secretary-General, 21 September 2022
11. A/76/334, Safety and security of humanitarian personnel and protection of United Nations personnel, Report of the Secretary-General, 21 September 2021
12. To stay and deliver – Good practice for humanitarians in complex security environments, Policy and Studies Series, Jan Egeland, Adele Harmer and Abby Stoddard, 2011, OCHA
13. Abduction Management, EISF Briefing Paper, European Interagency Security Forum, May 2010
14. Crisis Management of Critical Incidents, EISF Briefing Paper, European Interagency Security Forum, April 2010
15. Safety guide for journalists, A handbook for reporters in high-risk environments, Reporters Without Borders, 2017
16. Safety and security incident information management, Insecurity Insight and Cornerstone OnDemand Foundation, 2020
17. Safety and security incident information management (SIIM) for Staff, Insecurity Insight and Cornerstone OnDemand Foundation, 2020
18. Security Challenge: Mob attacks, Recommendations for protection of medical facilities against a mob attack, Insecurity Insight, September 2020
19. Security incident information management handbook, RedR UK, Insecurity Insight, European Interagency Security Forum, September 2017
20. Voluntary Guidelines on the Duty of Care to Seconded Civilian Personnel, Maarten Merkelbach, FDFA, Stabilisation Unit and Center for International Peace Operations.
21. Can you get sued? Legal liability of international humanitarian aid organisations towards their staff, Edward Kemp and Maarten Merkelbach, Policy Paper, Security Management Initiative, November 2011
22. Duty of Care: A review of the Dennis v Norwegian Refugee Council ruling and its implications, Edward Kemp and Maarten Merkelbach, EISF Article Series, European Interagency Security Forum, 2016
23. Humanitarian Accountability Partnership (HAP), "Accountability for Humanitarians", "Principles of Accountability", "HAP 2007 Standard in Humanitarian Accountability and Quality Management", "Humanitarian Accountability Partnership-International (January 2007)"
24. Aid Worker Security Report 2017, Behind the attacks: A look at the perpetrators of violence against aid workers, Humanitarian Outcomes, 2017

Annex B

<p>"This questionnaire is for humanitarian aid workers, independently of the duty station, country, seniority and nationality. If you are not an aid worker, kindly do not proceed with this questionnaire. Please note that all responses will be treated anonymously."</p>	
1	<p>Age: 20-30, 30-40, 40-50, 50+ Gender: M F Other Country of work Duty station in country/regional office/HQ International NGO / National NGO International staff / national staff Years of experience in the humanitarian sector: 0-5, 5-10, 10-20, 20+</p>
2	<p>Have you or someone you know who is working for a humanitarian organisation been the victim of an incident of violence?</p> <p>Yes No</p>
3	<p>Did you/the person you know get legal advice?</p> <p>A. I/they had no legal advice B. I/they received legal advice from an independent lawyer but paid by the employer C. I/they received financial support from the employer to pay for legal fees for a lawyer of my/their choice D. I/they received legal advice from the employer's legal department E. The organisation asked me/them not to get legal advice F. I do not know</p>
4	<p>IF YES Did you/the person you know or the organisation report the incident to the police?</p> <p>Yes No I do not know</p>
5	<p>IF YES What happened?</p> <p>Free Text</p>
6	<p>IF NO Why not?</p> <p>Free Text</p>
7	<p>Did you or the person you know pursue a legal or mediation process?</p> <p>A. No B. Yes a formal civil case to obtain compensation from the alleged perpetrator C. Yes a formal criminal process against the alleged perpetrator D. Yes an informal mediation to obtain compensation from the alleged perpetrator E. Yes an informal mediation to obtain compensation from the employer F. Yes a formal civil case to obtain compensation from the employer G. I do not know</p>
8	<p>IF YES (B to F) Was it successful?</p> <p>Yes No</p>
8	<p>WHETHER YES OR NO (line 8) Please explain what happened</p> <p>Free Text</p>
9	<p>IF NO (reponse to line 7) Why not?</p> <p>Free text</p>
10	<p>IF NO (response to line 3) If you were targeted in the course of your deployment with a humanitarian organisation, do you think your organisation would support you to access justice?</p> <p>Yes No</p>
10	<p>Please explain why you think your organisation would or would not support you to access justice?</p> <p>Free Text</p>
11	<p>If there was an incident and legal advice was available, would you like to speak to an independent lawyer?</p> <p>A. Yes, I would like to know my options B. No, I do not trust lawyers and/or the justice system C. No, I am afraid of associated risks/reprisals D. No, I think the organisation should engage with the lawyers on my behalf E. No, I would prefer to use other avenues F. Other (explain)</p>
12	<p>What do you think are the main reasons why aid workers rarely pursue formal legal remedies for crimes committed against them? (rank the answers)</p> <p>a. Lack of trust in local justice system b. No resources to pursue a case c. No support from the organisation to pursue a case d. Would jeopardise the organisation's access to area of operations e. The risk of reprisals f. Other (explain)</p>
14	<p>What do you think aid workers who have been victims of violence would want most out of a justice process? (rank the answers)</p> <p>a. Financial compensation from the perpetrator b. Perpetrator prosecuted/punished c. To make sure that this does not happen to anyone else d. Financial compensation from the organisation d. Other (explain)</p>

Endnotes

- 1 Statistics are from <https://www.aidworkersecurity.org/>, checked on 20 February 2024
- 2 Statistics are from <https://www.aidworkersecurity.org/>, checked on 20 February 2024
- 3 "Major incidents" are defined as killings, kidnappings, and attacks that result in serious injury, <https://www.aidworkersecurity.org/about>, checked on 15 May 2024
- 4 Statistics are from <https://www.aidworkersecurity.org/>, checked on 20 February 2024
- 5 S/RES/1502(2003), on the protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones, 26 August 2003; S/RES/2175(2014), on the protection of humanitarian personnel and UN and associated personnel in armed conflict, 29 August 2014; S/RES/2286(2016), on healthcare in armed conflict, 3 May 2016. Also S/RES/1265(1999), S/RES/1296(2000), S/RES/1674(2006), S/RES/1738(2006) and S/RES/1894(2009) on the protection of civilians in armed conflict, S/RES/2417(2018) on the protection of civilians including mention of unlawfully denying humanitarian access as warfare tactics, 24 May 2018, S/RES/2573(2021) on the protection of objects indispensable to the survival of the civilian population, 27 April 2021.
- 6 S/RES/2175(2014), on the protection of humanitarian personnel and UN and associated personnel in armed conflict, 29 August 2014, para. 4.
- 7 In the line of fire, Jan Egeland and Stephen O'Brien, Thomson Reuters Foundation News, 18 August 2017.
- 8 Commission on Human Rights in South Sudan calls for more justice after Terrain verdict, Human Rights Council Press Release, 7 September 2018.
- 9 Commission on Human Rights in South Sudan calls for more justice after Terrain verdict, Human Rights Council Press Release, 7 September 2018.
- 10 South Sudan: Missing file blocks justice for Terrain hotel rapes and murder, Amnesty International, Press Release, 6 September 2019.
- 11 Humanitarian Outcomes, Aid Worker Security Database – Aid Worker Security Report 2022, Figures at a glance, available at [awsd_figures_2022.pdf](https://www.aidworkersecurity.org/figures_2022.pdf) ([humanitarianoutcomes.org](https://www.humanitarianoutcomes.org))
- 12 "We don't do mental health": a review of Médecins Sans Frontières' first "psy" mission, Laure Wolmark, Issue 22 – Mental Health: from awareness to action, Humanitarian alternatives, March 2023
- 13 International Staff member, UN Agency, interviewed July 2023
- 14 Facing the challenges of customary dispute resolution: conclusion and recommendations, Grass-roots justice in Ethiopia, The Contribution of Customary Dispute Resolution, Getachew Assefa and Alula Pankhurst, Contemporary Horn of Africa
- 15 National/international staff member, international NGO, interviewed June 2023.
- 16 National staff member, National NGO, interviewed June 2023
- 17 Toolkit: Responding to Violence against Humanitarian Action on the policy Level, Rationale and methods to share information. Speak out, and challenge impunity in cases of violence against humanitarian action, Advanced Training Program on Humanitarian Action (ATHA), Action Against Hunger (Action contre la Faim), CARE International, the Johns Hopkins Center for Humanitarian Health, and the European Interagency Security Forum (EISF), 2017-2018.
- 18 International staff member, international NGO, interviewed May 2023
- 19 «The risks we face are beyond human comprehension»: Advancing the protection of humanitarian and health workers, Médecins du Monde, Humanity and Inclusion and Action Against Hunger, 2023, p.48
- 20 International staff member, international NGO, interviewed May 2023
- 21 International staff member, donor, interviewed May 2023.
- 22 International staff member, international NGO, interviewed May 2023. Similar statements from international staff member and national staff member of international NGO interviewed May 2023.
- 23 National staff member, international NGO, interviewed July 2023.
- 24 National staff member, international NGO, interviewed June 2023
- 25 National staff member, international NGO, interviewed July 2023
- 26 National staff member, international NGO, interviewed June 2023.
- 27 International staff member, international NGO, interviewed June 2023.
- 28 Kemp, E. and Merkelbach, M. (2016) Duty of Care: A review of the Dennis v Norwegian Refugee Council ruling and its implications. European Interagency Security Forum (EISF).
- 29 International staff member, international NGO, interviewed June 2023
- 30 International staff member, international NGO, interviewed June 2023
- 31 Muttur: 15 Years Of Indifference!, Action Against Hunger Press Release, 4 August 2021
- 32 What is International Humanitarian Law, Advisory Service on International Humanitarian Law, ICRC, July 2004.
- 33 What is International Humanitarian Law, Advisory Service on International Humanitarian Law, ICRC, July 2004.
- 34 <https://treaties.un.org/pages/showdetails.aspx?objid=080000280158b1a>; <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/state-parties>
- 35 <https://ihl-databases.icrc.org/en/customary-ihl>
- 36 ICRC, Customary International Humanitarian Law Study, Rule 158. Prosecution of War Crimes; see Geneva Convention (I) of 1949, article 49; Geneva Convention (II) of 1949, article 50; Geneva Convention (III) of 1949, article 129; Geneva Convention (IV) of 1949, article 146; see also Genocide Convention, article 6; Convention Against Torture, article 7; and Rome Statute preamble.
- 37 What is International Humanitarian Law, Advisory Service on International Humanitarian Law, ICRC, July 2004.
- 38 ICRC, Customary International Humanitarian Law Study, Rule 31. Humanitarian relief personnel must be respected and protected, Volume II, Chapter 8, Section A.
- 39 Rome Statute of the International Criminal Court, Rome, 17 July 1998, Article 8(2)(e)(iii) and (iv).
- 40 Rome Statute of the International Criminal Court, Rome, 17 July 1998, Article 8(2)(b)(iii), (ix), and (xxiv).
- 41 Rome Statute of the International Criminal Court, Rome, 17 July 1998, Article 8(2)(e)(iii) and (iv).
- 42 Rome Statute of the International Criminal Court, Rome, 17 July 1998, Article 8(2)(b)(xxv).
- 43 Rome Statute of The International Criminal Court, Rome, 17 July 1998, Amendment To Article 8 Of The Rome Statute Of The International Criminal Court, (Intentionally Using Starvation Of Civilians), The Hague, 6 December 2019, Article 8(2)(e)(xix).
- 44 https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsq_no=XVIII-10-g&chapter=18&clang=_en
- 45 ICC Elements of Crimes, Article 6(a)(4).
- 46 Rome Statute of the International Criminal Court, Rome, 17 July 1998, Article 15; <https://otplink.icc-cpi.int/faqs>.
- 47 Rome Statute, Art. 15 (3).
- 48 ICRC, Customary International Humanitarian Law Study, Rule 157. Jurisdiction over War Crimes
- 49 Universal Jurisdiction, Trial International, <https://trialinternational.org/topics-post/universal-jurisdiction/>, checked on 13 May 2024
- 50 Members of the Syrian Regime – Killing of journalists, Trial International, <https://ujim.trialinternational.org/latest-post/unknown-members-of-the-syrian-regime/>, checked on 16 May 2024
- 51 African Charter on Human and Peoples' Rights (27 June 1981), Protocol to the Charter on the Establishment of an African Court on Human and Peoples' Rights (10 June 1998); Charter of the Organization of American States (30 April 1948) and American Convention on Human Rights (22 November 1969); European Convention on Human Rights (4 November 1950), as amended by its Protocols.
- 52 <https://www.ohchr.org/en/treaty-bodies#:~:text=What%20are%20the%20treaty%20bodies,set%20out%20in%20the%20treaty.>
- 53 <https://www.ohchr.org/en/treaty-bodies#:~:text=What%20are%20the%20treaty%20bodies,set%20out%20in%20the%20treaty.>
- 54 <https://www.ohchr.org/en/special-procedures-human-rights-council>
- 55 <https://www.ohchr.org/en/special-procedures-human-rights-council/what-are-communications>
- 56 Convention on the Safety of United Nations and Associated Personnel, New York, 9 December 1994



**Head office:
Legal Action Worldwide (LAW)
Rue de Varembe 3
1202 Geneva
Switzerland**

✉ info@legalactionworldwide.org

✂ [@LegalActionWW](https://twitter.com/LegalActionWW)

www.legalactionworldwide.org