

Duty of Care:

Protection of Humanitarian Aid
Workers from Sexual Violence





Acknowledgements

Report the Abuse wishes to thank all of those who have supported this project, with particular thanks to the author, researchers, and reviewers whose tireless work helped to make this possible, and the Board of Directors who provided their expert advice and time. Special thanks to the International Women's Rights Project, without whom this report would not have been possible.

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August 2017

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Suggested citation: Megan Nobert and Christine Williamson, *Duty of Care: Protection of Humanitarian Aid Workers from Sexual Violence*, Report the Abuse, August 2017.



Duty of care is being increasingly discussed within the humanitarian community, and becoming an important area within risk management practice for organisations wishing to better address health, safety, and security issues for their staff. This is a welcomed move, with humanitarian action feeling progressively dangerous¹, and cases like *Steve Dennis v. NRC*² underscoring the need to do better as a community.

What needs to be considered more thoroughly however is duty of care as it applies to sexual violence in humanitarian workplaces and living environments. With this issue finally getting increasing attention³, there is an opportunity to highlight the intersection and identify where further research is needed to create safer and healthier workplaces for all humanitarian aid workers.

This paper functions as a broad foundation for contemplating duty of care, as it relates to sexual violence. We hope that others will build on the information set out briefly here, to develop explicit and full examinations of how humanitarian organisations can meet their duty of care to provide workplaces free from sexual violence.

Duty of Care

Before we can determine what duty of care means in relation to sexual violence, we must first consider how to define the concept. Many break down duty of care into two categories: legal and moral⁴.

Legal duty of care refers to the legal obligations an employer has towards their staff. In western contexts, this is often framed in the language of workplace health and safety rules or laws; the legal formulation varies wildly between countries and standards are not the same from location to location⁵. In many contexts where humanitarian operations take place, there may not be such

¹ Insecurity Insight collects regularly updated statistics on attacks against humanitarian aid workers, available at: <http://www.insecurityinsight.org/aidindanger/world-maps/>

² As the court case is in Norwegian, NRC's candid, albeit brief, description helps to set the stage for our analysis in this Guidance Note, which includes a number of reports that look at the implications of this court case: *Verdict in court case against NRC*, NRC, 25 November 2015, available at: <https://www.nrc.no/news/2015/november/verdict-in-court-case-against-nrc/> (*Steve Dennis vs. NRC*).

³ Megan Nobert, *Safety and Security Concerns: Sexual Violence against Humanitarian Aid Workers*, ATHA, 25 January 2017; Megan Nobert, *Why should we address sexual violence in humanitarian workplaces?*, EISF, 3 March 2017; ATHA, *Protection of Humanitarian Action Series: Duty of Care and Sexual Violence*, 19 April 2017.

⁴ There is nothing inherently wrong with this approach and RTA has already done so briefly in another publication (Megan Nobert, *Addressing Sexual Violence in Humanitarian Organisations: Good Practices for Improved Prevention Measures, Policies, and Procedures*, Report the Abuse, August 2017). At the end of the day though, it is important to keep in mind that a court of law will not make a delineation between whether an organisation has breached their legal or moral duty of care: they will examine whether a humanitarian organisation has been negligent in fulfilling and enacting the duties they owe to their staff.

⁵ Kelsey Hoppe and Christine Williamson, *Dennis vs Norwegian Refugee Council: implications for duty of care*, HPN, 18 April 2016 (Hoppe and Williamson, *Dennis vs Norwegian Refugee Council*); People in Aid,



workplace health and safety rules or laws, and organisations need to determine what standards they would be held to in the event of a potential breach.

In the context of humanitarian action, such a standard can perhaps be best framed as the organisation's obligation to manage and address foreseeable risks, which will be context-specific. Asking oneself the following questions can be a helpful exercise:

- Are appropriate measures in place to prevent foreseeable risks?
- Could an incident have been mitigated?
- Were staff members adequately prepared for the work environment?
- Are staff members in different roles right for the position?⁶

Granted, humanitarian contexts can be dangerous places, and it might not be possible to prevent all types of dangers. Humanitarian aid workers should take on their roles, particularly in more dangerous locations, with informed consent – they have the best available knowledge about the environment and their role, they understand the risks and how the organisation will mitigate these, and knowingly consent to move and work in the context in question knowing there are these risks. This does not alleviate the responsibility of the employer organisation to provide as safe as possible a working and living environment throughout the entirety of an employee's working cycle⁷.

It is also important to reflect on the moral duty of care humanitarian organisations owe to their staff. Moral duty of care knows no jurisdiction, and is not set out in the same explicit way as legal duty of care. Instead, it is derived from the obligations that humanitarian organisations should be naturally setting and meeting and adapted to the nature of humanitarian action and context.

Humanitarian organisations should expect to enhance their standards of care when employees are operating in higher risk environments. The standard of care will clearly be higher in an office in South Sudan versus an office in the UK – going above the minimum would be necessary to meet the duty owed to staff in such locations. For instance, in a Juba office, meeting one's duty of care will likely entail the employment of security guards, secure travel, satellite phones, etc. Having such things in the London office may not be necessary, but so would setting a minimum London standard for duty of care in a posting like South Sudan. Whilst going above and beyond a standard duty of care could be seen as the moral thing to do, it is likely to be seen as the legal thing to do where staff are working in higher-risk environments.

Humanitarian organisations have already set standards for moral duty of care related to how we undertake humanitarian operations. We employ do not harm and prohibit acts of sexual

Code of good practice in the management and support of aid personnel, 2003 (People in Aid, *Code of good practice*).

⁶ Christine Williamson, *Opinion: Duty of care starts with recruitment*, Devex, 25 July 2017.

⁷ Hoppe and Williamson, *Dennis vs Norwegian Refugee Council*, fn. 4; People in Aid, *Code of good practice*, fn. 4; Christine Williamson, *Personnel management and security*, HPN, June 2010.



exploitation and abuse. We have created codes, such as the Sphere Handbook and the Core Humanitarian Standard (CHS)⁸. The donor community has created the Good Humanitarian Donorship initiative⁹ to guide how it provides funding. So there are already expectations that humanitarian organisations will accept and adhere to a moral type of duty of care when it comes to implementing programming and interacting with the local population. This moral duty of care principle must also extend to the provision of a safe and secure workplace for humanitarian staff, including the prevention and appropriate response to incidents of sexual violence.

The reasons for adhering to duty of care is clear – not doing so can result in cases such as *Steve Dennis vs. NRC*. Ignoring or neglecting duty of care can place the organisation, staff, and its reputation at risk. Whilst implementing resilient duty of care measures requires resources – including multiple prevention measures, policies, procedures, training, competent staff to manage this, and the engagement of all key stakeholders and decision makers – there is strong argument that the cost of not doing so is higher than acting; this particular point can and should also be made clear to donors¹⁰.

Duty of Care and Sexual Violence

The number of existing duty of care guidelines and analysis is steadily increasing, likely due to the *Steve Dennis v. NRC* case, including practical and actionable information about what humanitarian organisations can do to fully meet their duty of care to their staff¹¹.

When it comes to the intersections of sexual violence and duty of care, there has been less focus¹², though this is quickly changing thanks to several publications in the last year. More attention must be paid however, and sexual violence must be integrated fully into any and all analysis of duty of care, people management, and risk management¹³.

⁸ Information on the Sphere Handbook revision process, which will integrate the CHS standards from 2018 is available on the Sphere Project website. Sphere Project, *Revising the Sphere standards*, available at: <http://www.sphereproject.org/handbook/revision-sphere-handbook/>

⁹ Good Humanitarian Donorship, available at: <https://www.ghdinitiative.org/ghd/gns/home-page.html>

¹⁰ Hoppe and Williamson, *Dennis vs Norwegian Refugee Council*, fn. 4; People in Aid, *Code of good practice*, fn. 4.

¹¹ Maarten Merkelbach and Edward Kemp, *Duty of Care: A review of the Dennis v Norwegian Refugee Council ruling and its implications*, EISF, 2016; Maarten Merkelbach and Edward Kemp, *Can you get sued?: Legal liability of international humanitarian aid organisations towards their staff*, Security Management Initiative, 2011; Maarten Merkelbach, *Voluntary Guidelines on the Duty of Care to Seconded Civilian Personnel*, ZIF, et al., 2017.

¹² Previous analysis has largely centred on kidnappings and physical (non-sexual) violence against humanitarian aid workers.

¹³ The following list of resources is an excellent place to start considering in further depth how to integrate sexual violence into duty of care considerations: Christine Persaud, *Gender and Security: Guidelines for Mainstreaming Gender in Security Risk Management*, EISF Briefing Paper, 2010; Shaun Bickley, *Security Risk Management: a basic guide for smaller NGOs*, EISD, 29 June 2017; Christine Williamson, *Security to Go: People Management*, EISF, 28 March 2017 (Christine Williamson, *People Management*).



Broadly speaking, humanitarian organisations need to consider what systems it has in place to protect its staff from risks; it is vital that these systems also account for sexually violent acts against staff members, including attacks that come from outside the humanitarian community as well as within. Organisations must examine questions such as, are there prevention measures, policies, and procedures in place to address different forms of sexual violence? Are staff members in various roles appropriately trained, are those expected to interact with survivors comfortable doing so? Does the organisational culture support staff reporting incidents of sexual violence? Is the organisation conducting transparent, professional, and impartial investigative or inquiry processes? Do staff members at all levels of the organisation understand their rights and obligations to the creation and maintenance of safe and healthy workplaces and living environments?

Considerations when it comes to this issue must centre on good people management for the prevention of all types of misconduct¹⁴, and starts with the recruitment of new staff members. While recruitment will always carry a duty of care component, this is particularly essential in cases of sexual violence. Current information on the issue strongly suggests there are serial perpetrators in the humanitarian system. If individuals, known or suspected, have committed acts of sexual violence and are being hired by a humanitarian organisation, the organisation has immediately been neglectful in their duties; it is entirely foreseeable that a previous perpetrator of sexual violence will commit future acts.

There is also considerable evidence that known or suspected perpetrators of sexual violence within the humanitarian system are being shifted between offices or promoted; any such act would also clearly violate an organisations duty of care towards its staff. These types of acts perpetuate impunity and create environments where sexually violent acts are not only foreseeable, but probable.

The overall arching theme for a humanitarian organisation to meet its duty of care for sexual violence is zero-tolerance: organisations must have well-designed, well-managed, and trusted feedback systems and policies for risk management, informed consent, bullying and harassment, grievance, discipline, health and wellbeing, as well as critical and post-incident procedures, to instil a culture of no tolerance and redress. Ensuring that messaging on the prohibition of sexual violence acts is clear, repeated, and backed up by action when incidents occur is obligatory – it should be the thread that runs through all the policies and practices that prevent and support this critical issue. Anything less than zero-tolerance for sexual violence acts will likely fail in an analysis of organisational duty of care.

Conclusion

There is still more analysis and clearly concrete actionable information needed about how an organisation can specifically meet its duty of care when it comes to the risk of sexual violence, much like the information that already exists for kidnappings and physical violence against

¹⁴ Christine Williamson, *People Management*, fn. 13.



humanitarian aid workers. What has been set out quite briefly in this document will hopefully serve as a spark for others, because while the discourse on duty of care is rapidly growing, there is still an opportunity for future researchers and professionals to set out more explicitly duty of care as it applies to sexual violence in humanitarian working and living environments. With the closure of Report the Abuse¹⁵, we urge others to hear this call and take up the issue in the future.

¹⁵ On 20 August 2017, due to a lack of sustainable funding streams.



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