

NGO Liability in the Wake of Foreign Kidnappings: What U.S. Humanitarian Organizations and Mission Boards Need to Know

On June 29, 2012, Steve Dennis, an aid worker for the Norwegian Refugee Council (NRC), was shot and taken hostage in Dadaab, Kenya. Four days later, Kenyan authorities and a local militia launched a rescue operation. Since his rescue, Dennis has suffered from PTSD and depression and has been unable to work.

Not satisfied with the limited compensation offered by the insurers, Dennis sued his employer, NRC, for damages in the Oslo District Court. NRC offered Dennis \$514,000 to settle, but he refused and went to trial.

NRC lost. Despite decades of providing shelter, food, and education to refugees and displaced peoples in the poorest and most conflict-ridden areas of the world, the court refused to give NRC any special privileges. Instead, it found that "aid organizations are major employers with the same responsibility for their employees as other employers." The Court explained that *regardless of its "other good deeds,"* NRC's employees "must know that their employer covers their back with a satisfactory handling of their security and that they will be taken care of if anything happens." The court ultimately held NRC liable for gross negligence and awarded damages of \$695,000.

What happened?

Of course, NRC was not without fault. Since 2011, a drought in the Horn of Africa and the Kenyan war on Al Shabaab had almost doubled refugee populations and increased security risks. Attacks and kidnappings of aid workers and tourists were on the rise. Experts had issued warnings of the "increased threat of kidnapping and carjacking" and recommended armed police escorts for the Dadaab refugee area. NRC's own security review found internal weaknesses in its capabilities.

Nevertheless, NRC wanted to draw its donors' attention to the situation on the ground, so it sent its Secretary General for a visit to Dadaab. Ultimately, NRC's ignoring of expert warnings and its own security protocols landed it before the Norwegian court.

What can you do to avoid liability and protect your employees?

While this situation may sound extreme, NGOs are taking notice. With the refugee crisis creating dangerous situations in both North Africa and Western Europe, aid agencies may find themselves before European courts where the Dennis decision will be persuasive if not binding law. In the U.S., this case could easily have generated a verdict in the tens of millions of dollars. Despite their histories of "good deeds," the courts won't give NGOs any special treatment.

But aid organizations are not without recourse. Protecting one's employees and avoiding liability can start with some of the following efforts:

-) Take a fresh look at your intelligence capabilities. The Internet and cloud computing make information collection and sharing easier, faster, and more accurate than even two years ago and it is this capability

that will set the standard - not what was used a decade ago.

- J) Use the information already out there. Government agencies, private businesses, and local aid workers hold the knowledge about the risks they face. Get ahold of it, analyze it, and give it to your leadership and staff.
- J) Craft straightforward policies and follow them. No set of policies can be perfect, but all organizations can follow their own rules. When an action falls outside of those policies, table it until staff can lower the risks.
- J) Provide safety and security training. It is impossible to avoid all danger, but well-trained aid workers will improve their safety profile if they know how to identify risks, access resources, and take responsible action on their own.
- J) Make that training top-notch. Avoid using trainers without law enforcement and high-level personal protection expertise. Legal counsel can help identify experts and carry out the necessary due diligence to ensure the expert has the experience and capability to train a lay audience. Former hostage-rescue, special forces, federal prosecutors, and private security professionals understand the risks and security protocols. Even the fact that an organization has trained its employees reduces liability.
- J) Finally, open current operations to the scrutiny of outside eyes. People learn to downplay risks over time. An outsider will identify unacceptable risks that have become normative.



Scott J. Ward, *Owner and Director* at Gammon & Grange, P.C., has over 25 years of experience representing nonprofits, churches, and aid organizations with international reach, counseling them on investigations, best practices, and risk avoidance.



Bob Flores, *Of Counsel* at Gammon & Grange, P.C., has more than 30 years of experience prosecuting and investigating cases for the Manhattan District Attorney's Office and the United States Department of Justice. Mr. Flores also has an extensive network of security and technology experts that can be brought to bear on the most challenging problems and risks.

If you have questions about whether your organization is prepared to face the growing risks of international aid, Gammon & Grange P.C. will provide a no-cost initial consultation.

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