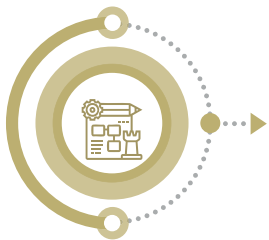


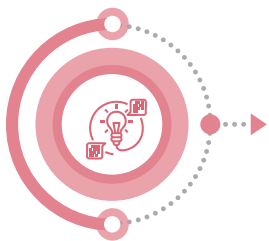
Organisations Checklist

DOCUMENTATION FOR FUTURE LEGAL ACTION



Assessing the appropriate documentation strategy

- Are there mandatory reporting requirements in the jurisdiction where you operate?
- What is the capacity of local authority? Do you have safety concerns when reporting to them / sharing information?
- What is the availability of other national, regional, international investigation mechanisms who could support?



Key considerations

- Assessing risks and establishing interim protection for the victims
- DO NO HARM
- Planning
- Confidentiality for victims, witnesses and other actors
- Informed consent
- Objectivity
- Gender-sensitive and survivor centred approaches



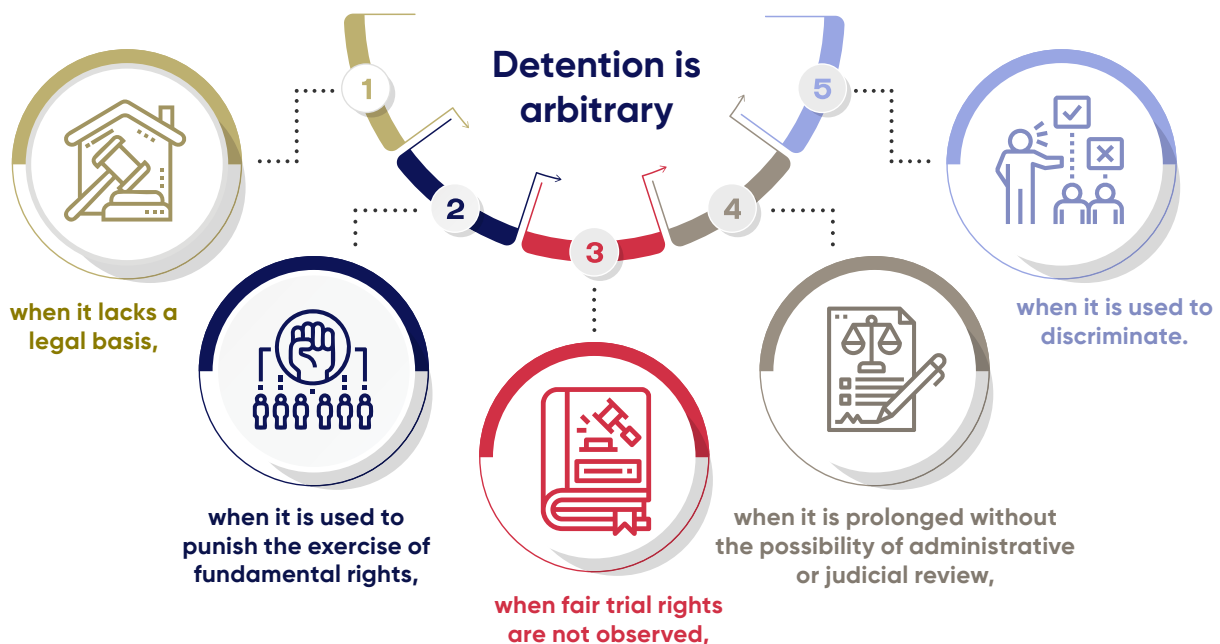
Preservation

- Collect only if safe, necessary, respecting the key considerations above.
- Define and implement clear confidentiality procedures.
- Use tools available in your context – Ex: eyewitness app.
- Obtain and document consent.
- Conduct interviews ONLY if trained to do so.
- Preserve the metadata of all digital files: save the original photo or video.
- Prevent the physical destruction of evidence.
- Every step related to the gathering, handling, storing, securing, transferring and managing of evidence must be documented.
 - Physical evidence must be stored safely with date and location of collection and storage, name of person responsible for collection, description of item and circumstance of collection, name of custodian. Document each time it is accessed or transferred, date, time, and name of person responsible.
 - Digital files must be saved safely, according to digital security and data protection protocols. Save date, time, author and location for all documents. If updated, record date, location and name of the person responsible for the modification.

DETENTION



Aid is increasingly criminalised to obstruct humanitarian operations and aid workers can become the victim of arbitrary detention. Deprivation of liberty means a person is held without their consent – when this happens, the safeguards against arbitrary detention and fair trial rights **must be observed**.



When an individual is arrested, detained, with or without stated legal basis, or disappears, a lawyer must be immediately consulted. The lawyer must monitor and ensure the respect of fair trial rights throughout the detention and explain the proceedings and options. **They may include:**



Pre-trial proceedings – Investigations, statement taking, preliminary hearings, collection and presentation of evidence, confirmation of charges, renewal of pre-trial detention orders.



Trial – pleadings, filing of additional evidence and legal argumentation, examination and cross-examination, deliberations, sentencing, appeals.



Post-trial proceedings – revisions of conviction, judicial review, mistreatment in places of deprivation of liberty.

Throughout the proceedings, individuals detained are entitled to fair trial rights, which includes the assistance of a lawyer of their own choosing (see Know your rights – Fair trial rights).



Aid Workers | Know Your Rights

FAIR TRIAL RIGHTS



The right to a fair trial is a human right that applies to all persons, including in times of armed conflict. The rights are contained in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights and in the Additional Protocol I to the Geneva Conventions, which reflects customary international law.

All accused are entitled to, at minimum:



be informed promptly and in detail in a language which they understand of the nature and cause of the charge.



be presumed innocent until proved guilty according to law.



adequate time and facilities for the preparation of their defense and to communicate with counsel of their own choosing.



a fair and public hearing by a competent, independent and impartial tribunal established by law.



be tried without undue delay and to be able to present a defense with the assistance of legal counsel.



examine the witnesses against and to obtain the attendance their own witnesses.

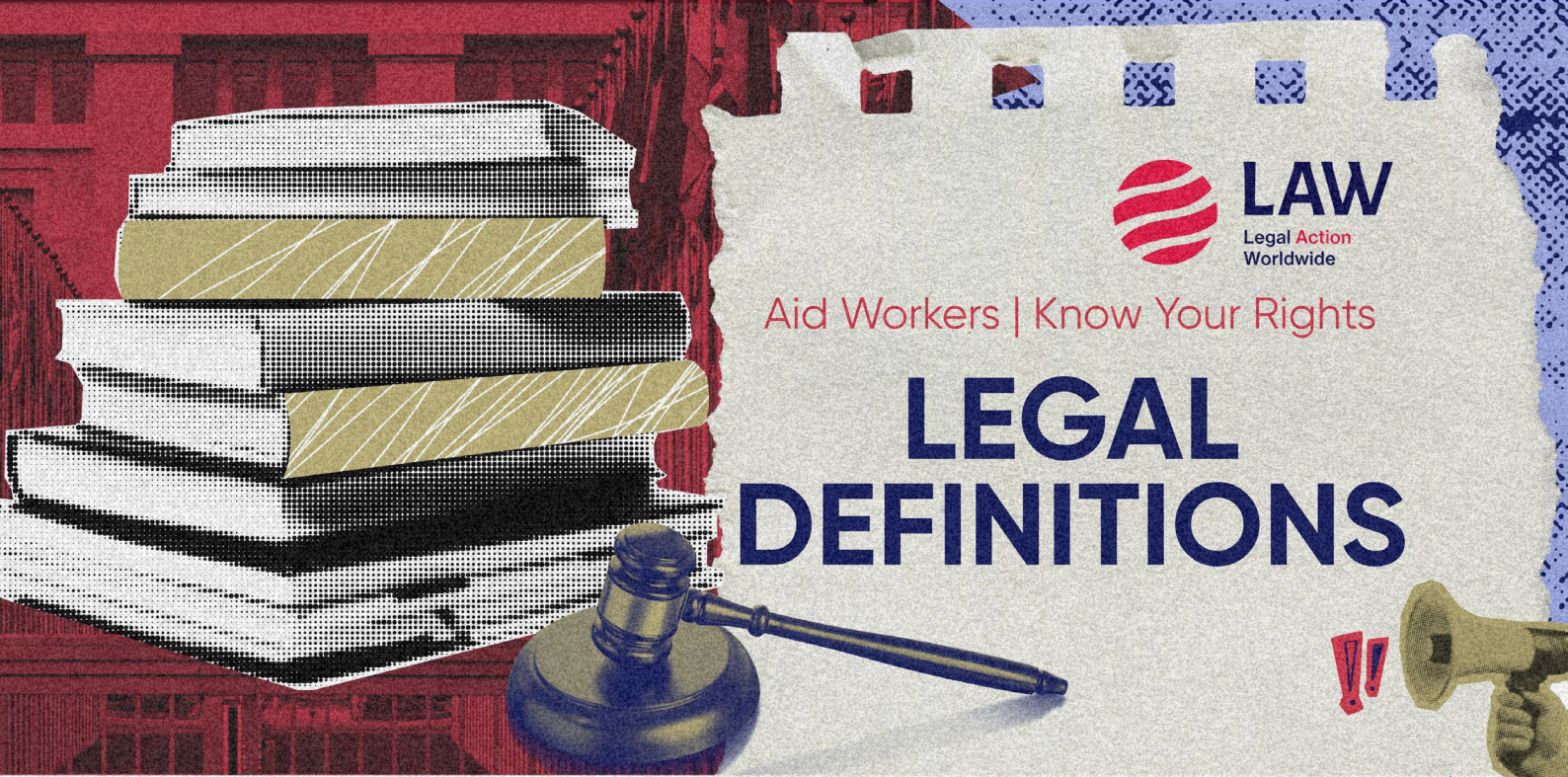


not be compelled to confess guilt, not be accused or convicted of a criminal offence which did not constitute a criminal offence under the national or international law they were subject to at the time that the act was committed.



If convicted, request a review of their conviction and sentence by a higher tribunal according to law.

In all cases and at every stage of the proceedings, a lawyer must be systematically consulted for specific rights applicable and to monitor and enforce their application. For example, right to speak to family, doctor, maximal duration of pre-trial detention, etc.



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LEGAL DEFINITIONS



Aid workers often work in fragile and conflict-affected regions, or in places where the rule of law has devolved. However, in the majority of situations, both domestic and international laws continue to apply.

Aid workers are first and foremost civilians who are protected under the Geneva Conventions in times of armed conflict. They are also rights holders under international human rights law, which continues to apply in armed conflict. Additional specific protections for humanitarian workers exist under treaty law and customary international law. Depending on the circumstances, an attack may have various legal consequences:

Incident	Potential Domestic Crimes/Civil Claims	International human rights and International humanitarian law	Basis for accountability
Death	Murder Manslaughter Wrongful death	Willful killing Violence to life and person Intentionally directing attacks against humanitarian personnel, the civilian population, or individual civilians	War Crimes Violations of IHL
		Extra judicial killing	Violation of the Right to Life
		Willfully causing great suffering or serious injury to body or health Violence to life and person Torture and cruel treatment	War Crimes Violations of IHL
Torture/ Serious bodily injury	Battery Assault Torture Grievous bodily harm	Torture and other cruel degrading and inhumane treatment	Violation of the prohibition on torture and other cruel degrading and inhumane treatment
		Violence & unlawful bodily harm	Violation of the right to liberty and security of person

Sexual Violence	Rape Sexual assault Battery Sexual violence	Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence	War Crimes Violations of IHL
		Violence & unlawful bodily harm	Violation of the right to liberty and security of person
Kidnapping, arrest and detention	Kidnapping False imprisonment Deprivation of liberty	Arbitrary detention Enforced disappearance	Violation of the prohibition on arbitrary arrest or detention. Violation of the International Convention for the Protection of All Persons from Enforced Disappearance. Violation of the right to recognition as a person before the law
Threats and intimidation	Assault Intentional infliction of emotional distress Intimidation Harassment	Outrages upon personal dignity, in particular humiliating and degrading treatment.	War crimes Violation of IHL
Obstruction/attacks on Humanitarian Operations	Unlawful destruction of property.	Intentionally directing attacks against civilian objects Intentionally directing attacks against hospitals and places where the sick and wounded are collected	War crimes Violations of IHL

If these crimes take place on a widespread or systematic basis, they may constitute Crimes Against Humanity, and in some cases where the attacks on aid workers and humanitarian operations are part of a specific intent to destroy whole or part of the population, it may constitute Genocide.

LEGAL RESPONSE TO CRITICAL INCIDENTS



Report to the authorities

Depending on the area and country where you operate, the police and other emergency services can be the first point of contact. Reporting the incident not only informs the local authorities but sets up a record that can be later used in legal proceedings. Maintain a record of all communications with the police or local authorities.



Document

Save and store securely as much information as possible on the incident (see Checklist – Documentation for future legal action). Take notes of everything you store, where, when and who is involved.

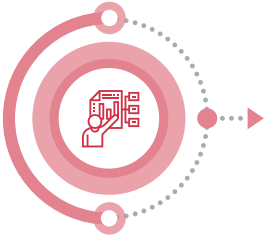
- Store all information in its original format and restrict the access.
- Record all information, documents, statements, photos, videos with their metadata.
- Do not conduct in-depth interviews if not trained to do so.
- If safe to do so and with their consent, preserve contact information of witnesses.



Seek legal advice

An appropriate lawyer, generally specialised in criminal law, will provide advice and, if required, representation before judicial bodies. They support the establishment of a legal strategy, help assess the risks against the potential benefits, explain the applicable law and legal process.

Legal advice is essential if there is any threat of detention and/or litigation.



Conduct a risk assessment for legal action

Aid workers, their families, a lawyer, security advisor, and other relevant stakeholders depending on the incident must be consulted to support decision-making regarding whether to take legal action or not. *(See Checklist – Risk assessment for legal action).*



Take Action

Consult victims, witnesses and staff members on their expectations.

Seek assistance from Protect Aid Workers, and request support including legal advice on accountability strategies and advice on psychosocial support and best practices.