

# First Aider Liability

## Surveying the Legislations Regarding Liability of **First Aid Providers** around the World



Global First Aid Reference Centre

First Aider Liability

## About The Global First Aid Reference Centre (GFARC)

The GFARC is an IFRC Centre of excellence created in 2012. Its objectives are to reduce the number of deaths and the severity of injuries as well as to make people and communities more resilient using first aid. To achieve this, the team works closely with National Societies to facilitate knowledge sharing between them and to promote first aid education at the global level. In order to ensure that first aid techniques are relevant to any country and any situation, the centre participates in numerous studies undertaken by medical doctors, scientists and researchers.

For more **information** on GFARC:

[globalfirstaidcentre.org](http://globalfirstaidcentre.org)

 [@GlobalFirstAidReferenceCentre](https://www.facebook.com/GlobalFirstAidReferenceCentre)

[first.aid@ifrc.org](mailto:first.aid@ifrc.org)

***This document is published in December 2020. It has been elaborated with the support of White & Case, an international law firm.***

## Table of contents

About The Global First Aid Reference Centre (GFARC).....	1
Introduction.....	3
Context of the survey.....	4
Conclusions and recommendations .....	5
Methodology .....	7
I - The widespread lack of definition of first aid notions .....	8
The notion of first aid.....	8
The notion of first aid provider .....	9
The concept of first aid training standard .....	11
II - The existence of a duty to rescue .....	14
III – The general liability regimes applied to first aiders.....	18
Criminal liability.....	18
Civil liability .....	21
IV – The challenges in obtaining reparation for the first aider .....	24

## Introduction

Laws and Regulations concerning the liability of the first aider have a large impact on how people react during an emergency. Although the legal risk incurred will likely not by itself determine whether an individual will decide to provide assistance if need be, it may induce some hesitation and therefore reduce the chance of providing assistance. Indeed, during an emergency situation (for example a car crash, fire, medical emergency), should a bystander know that he/she may be liable when providing assistance, he/she may decide to not assist and wait for emergency services or even worst not call for help. Such delay in assistance will be detrimental to the condition of the potential victim and others. For instance, after breathing stops, a heart stops beating within four minutes and brain damage can occur within four to six minutes. Likewise, over 50% of deaths from traffic accidents occur in the first few minutes of the crash<sup>1</sup>, which will often be well before emergency services have reached the scene.

It is therefore important to ensure that there is an adequate framework so that first aid providers will not suffer any legal or financial consequences when choosing to provide assistance. In addition to the legal protection for first aid providers, some national legislations have gone further by imposing a duty to rescue (or duty to act) and punish the failure to provide first aid to a person in need.

The objective of this report is to present the results of the global survey that has been carried out, and to highlight the best practices concerning the liability of first aiders, as well as point out legislations that require improvements, in order to help the Red Cross and Red Crescent Societies to focus their efforts and advocacy work.



---

<sup>1</sup> First aid for a safer future, Focus on Europe (ICRC, 2009)



## Context of the survey

The Association *La Croix-Rouge française* – the French Red Cross – is a recognized association of public utility that aims to reduce all human suffering by participating in their best efforts of protection, prevention, education and social and humanitarian actions.

In December 2012, the French Red Cross signed a memorandum of understanding with the International Federation of Red Cross and Red Crescent Societies entrusting it with the management of the Global First Aid Reference Centre (GFARC). One of the GFARC’s missions is to support the 192 National Red Cross and Red Crescent Societies in their advocacy work, which implies a good knowledge of the different legislations. The French Red Cross required assistance in realizing section 14 of the first aid resolution of the International Conference of 2015, reproduced hereinafter:

*“Also encourages States to consider all necessary measures to encourage trained non-professionals to provide first aid, including, where appropriate, providing them with protection so that efforts made in good faith do not engage their responsibility and ensuring that they are aware of this protection”*

Accordingly, White & Case has carried out an inventory of applicable legislations regarding the liability of the first aider, particularly from the general public, and produced this report.



## Conclusions and recommendations

This report demonstrates that the legislation regarding first aid is still lacking in most of the surveyed jurisdictions. First, in relation to first aid notions, such as “first-aid”, “first aid provider” and “first aid training standards”, there are no definitions or standards in a substantial part of the surveyed jurisdictions. We note that such standards and definitions are important in order to develop a clear legal framework dedicated to first aid, which encourages the participation of the general public alongside quality training. Accordingly, our recommendation would be that relevant stakeholders be engaged in the applicable jurisdictions with the aim of introducing such definitions and standards.

On the liability of the first-aid provider, he/she may in some jurisdictions be liable whether he/she acts or does not act. This is because, as this report demonstrates, in most jurisdictions the first aid provider will be held liable in the case of negligence but may also be held liable for not acting, if that jurisdiction provides for a duty to rescue. In this regard, we would recommend that in jurisdictions where there is a duty to rescue, the conditions for liability must be clear and established. Further, our strong recommendation is that the general public be informed of the scope and criteria relevant to the duty to rescue, so as to encourage intervention by bystanders in the case of an emergency. This is also necessary to ensure that people are aware of their rights and potential liability where they choose to act or not act, as the case may be.

As for the liability of the first aid provider, once he/she has decided to intervene, our recommendation is that the relevant legal structures should make defence available to the first aid provider. Whether for criminal or civil liability, most of the surveyed jurisdictions did not provide for any specific provision. This means that the first aid provider will need to rely on general criminal or civil law defences which may not always be suitable or applicable in the context of a first aid provider. For this reason, we strongly recommend that the specific provision of defences for the first aid provider should be enshrined in legislation, as it will allow for a consistent application of such defences by the courts and, if made known to the general public, encourage bystanders to take action in emergency situations. Therefore, we would recommend that so called “Good Samaritan Laws” should be encouraged and promulgated in the laws of the jurisdictions still lacking specific defences for good faith first aid providers.

Concerning the possibility for the first aid provider to be reimbursed for any damages: our survey shows that in the majority of the jurisdictions, it will be difficult – if not impossible – to obtain such reimbursement. This is caused by the fact that in most jurisdictions, the first aid



provider will need to rely on the general civil regime in order to claim damages from the victim. Some jurisdictions provide for specific dispositions, and the use of such statutes should, in our view, be encouraged in order to make sure that it is possible – and easy – for the first aid provider to be reimbursed.

The objective of all these conclusion and recommendations is to make the legal status of the first aid provider safer, in order to ensure that he/she will not suffer in any way from his/her good faith decision to intervene. Accordingly, we recommend that such relevant dispositions be not only enshrined in the law, but that they be made known to the general public, so that the legal risk of an intervention by a bystander in case of an emergency, is no longer a factor in their decision to intervene. This, would, in our view go a long way to encouraging all members of the general public to provide their assistance to a person requiring help which can only have wide spread benefits for the jurisdictions adopting such an approach.





## Methodology

In order to provide an overview of the applicable legislations of as many jurisdictions as possible, White & Case has developed a survey that aims to obtain a targeted and standardized report on each country, covering the areas of law that could impact a first aider.

Notably, the survey which has been developed is divided into three parts. The first part covers the definitions given to notions related to first aid such as “first aid”, “first aid provider” and “first aid training standard”. The second part covers the liability of the first aid provider, notably under civil and criminal law, including concerning applicable defences. The third part covers the damages suffered, and whether the first-aid provider can obtain reparation for any damage suffered. Finally, the survey also allowed participants to add comments on any other relevant information, such as draft laws and public initiatives concerning first aid in the jurisdiction.

This survey has then been circulated within the firm and lawyers have volunteered to complete it. A total of 55 associates and 14 partners in 20 White & Case offices on 5 continents have participated in the project by completing the survey for jurisdictions they have selected. A total of 59 jurisdictions, representing 51 countries have been surveyed. Although not all lawyers are necessarily qualified in the jurisdiction they have selected, they have selected jurisdictions which allowed them to match their interests, language skills and qualifications to the requirements. The surveys have been completed on a four-month period until April 2019, and have all been reviewed and approved by a partner. Finally, they have been consolidated and reviewed in order to prepare this report.

### Surveyed countries

**Europe:** Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, France, Ireland, Italy, Luxembourg, Malta, Norway, Poland, Portugal, Russia, Slovakia, Spain, Sweden, Switzerland, Serbia, United Kingdom

**Americas:** Argentina, Brazil, Canada, Chile, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, United States (DC, IL, FL, TX, NY, CA, MA)

**Africa:** Kenya, Mauritius, South Africa, Tanzania, Zimbabwe

**Middle East:** Israel, Lebanon, Oman, UAE

**Asia:** Kazakhstan, Taiwan, Pakistan, India, , Indonesia, Thailand, Japan, Vietnam, China (mainland and Hong Kong)

**Oceania:** Australia, New Zealand



## I - The widespread lack of definition of first aid notions

### The notion of first aid

First-aid is defined in the International first aid and resuscitation guidelines of the International Federation of Red Cross and Red Crescent Societies (IFRC) as “the immediate assistance provided to a sick or injured person until professional help arrives. It is concerned not only with physical injury or illness but also with other initial care, including psychosocial support for people suffering from emotional distress caused by experiencing or witnessing a traumatic event. First aid interventions seek to preserve life, alleviate suffering, prevent further illness or injury and promote recovery”.

However, most surveyed legislations do not define the notion of first-aid under their laws, which is the first step to developing a legal framework that promotes first-aid. Indeed, our data shows that over half (52%) of the surveyed jurisdictions does not provide for a definition of first-aid. However, such lack of definition ranges from a complete absence, such as in Slovakia, Costa Rica or Pakistan, of some sort of recognition of a definition, although not directly prescribed by law. For instance, recognized organizations do provide for some definition, like fire brigades (such as in Jamaica), public institutions (such as in Brazil) or the local Red Cross, which are, in all instances recognized as an official auxiliary to the government for humanitarian aid, meaning that the IFRC definition has relevance.

#### **Country Focus: the Croatian “Law on the Red Cross”**

Croatia has formally acknowledged the Croatian Red Cross by a law adopted in 2001. The act notably provides that the Croatian Red Cross “contributes to the training of citizens to give first aid in everyday circumstances”, “contributes to the training for giving first aid at work” and “coordinates the national programme of first aid to drivers”. Therefore, while Croatian law does not define the notion of first-aid, given the role played by the Croatian Red Cross in the field of first aid, the IFRC definition is defacto used in Croatia.

More generally, in jurisdictions where the notion is not defined under the law, the IFRC definition may have relevance and is referred to in our survey. This however does not replace the need for, and usefulness of, a recognized definition of the notion. Our data shows that only 17% of the surveyed jurisdictions have an interpretation of the notion, adopted either through case law, such as in the Czech Republic, or by adopting an Act, such as in Poland.

The definitions retained are quite similar to the IFRC definition in that the objective is to provide assistance and prevent further harm to a victim. The definitions are more or less elaborate or developed. For instance, first aid is defined as “a primary medical assistance provided to save lives, prevent danger to someone or to relieve their pain” in Israel, “the action to provide assistance to victims of vital distress, accidents, calamitous events, catastrophes, disasters and fire” in Luxembourg, and “a set of emergency actions taken to rescue a person whose health is in danger, performed by a person in the place of an accident, including the use of medical devices and equipment [...], and medicinal products issued without the prescription of a doctor [...]” in Poland.

### Country Focus: defining first aid by the scope of the law in Ireland

While the law in Ireland does not actually define the term first-aid, it does define the scope of the activities covered under its Good Samaritan law, which is the equivalent of first-aid, although limited to the field of first aider liability. The law covers “the provision, in an emergency, of assistance, advice or care to a person who is (i) in serious and imminent danger, or apparently in serious and imminent danger, of being injured, (ii) injured or apparently injured, or (iii) suffering, or apparently suffering, from an illness (...)”.

The remaining 31% of the jurisdictions surveyed are somehow in between. While not defining the general concept of first aid, their legislation provides for an interpretation of the concept in the context of the workplace. As noted in the 2015 IFRC “Law and first aid” advocacy report, workplace first aid mandates are the most common legal mandates related to first aid. Therefore, it is not surprising that the notion of first aid is considered in the occupational health legislations.

Some of the definitions are clearly limited to the workplace, such as in Indonesia, which defines first aid as “efforts to provide first aid actions promptly and accurately to workers and/or other persons who are in the workplace who experience illness or injury at work”. Most definitions however are quite broad, such as in Australia where first aid is defined as “the immediate treatment or care given to a person suffering from an injury or illness until more advance care is provided or the person recovers”, or in Malta where first aid is defined as “treatment for the purpose of preserving life and minimizing the consequences of injury and illness until help is obtained from a medical practitioner or nurse”. These definitions would benefit from being used beyond workplace regulations and could be used more generally to provide a clear legal framework for first aid.



### The notion of first aid provider

The first aid provider is generally the person who will rescue another, by providing first aid, in an emergency situation. In broad terms, a first aid provider can be categorized according to

his/her training: it can be an unprofessional volunteer with no training of any kind, a trained (certified or not) provider, or a health professional. The need for a definition of such a provider is important to bring certainty as to which legal regime will be applied. However, our survey shows that 57% of the reviewed jurisdictions do not provide for any kind of definition of this notion. In some of these countries, we have not identified any distinction or categorization of the first aid provider, such as in Portugal, Tanzania, Zimbabwe or Oman. In other jurisdictions, while there is still no consistent definition of the notion, we have identified that practically a distinction is made between the different categories of first aid providers. This distinction is made either from case law or other binding documents. For example in Brazil, according to case law and available guidelines, first aid providers are distinguished into three categories: unprofessional volunteer, certified first aid provider and healthcare professional. Similarly, in Italy, a patchwork of different laws and regulations distinguish between amateur volunteers, qualified volunteers, a qualified first-aid team member, and a health professional. Such practical categorization is also made in Sweden, the Czech Republic or Estonia.

In the other surveyed jurisdictions, most of them (26%) do provide a general definition for a first aid provider, 13% do so but only in the context of workplace regulation and 4% provide a definition which is only limited to professional first aid providers. Some of these definitions are broad, mainly address a first aid provider from the lay public, and do not provide for any categorization.

#### **Country Focus: a broad concept of the first aid provider in Canada**

The laws relating to the liability of the first aid provider are adopted in each Canadian province and may vary. However, most provinces provide a wide definition which includes any individual providing first aid, as long as such aid is provided at the emergency scene and without expectation of reward. This definition also covers healthcare professionals providing aid, should such aid be provided outside of a hospital or other medical facility.

For instance, in the United Arab Emirates, and notably in its local Dubai law, a volunteer is defined as “any person who, willingly and under no duress or coercion, dedicates himself to performing volunteer work without pay”. Similarly, in the District of Columbia (United States), a first aid provider is defined as “any person who in good faith renders emergency medical aid or assistance to an injured person (...) without the expectation of receiving or intending to seek compensation from such injured person for such service”.

However, the definition adopted may also allow for a categorization, which will be relevant when applying a liability regime to the first aid provider. For example, in Texas (United States), first aid providers are defined as “persons not licensed or certified in the healing arts who in good faith administer emergency care as emergency medical service personnel”. Similarly, Polish law distinguishes between unprofessional healthcare providers and professional first-aid

#### **Country Focus: comprehensive categorization under Costa Rican laws**

The Costa Rican Decree for Out-of-Hospital attention distinguished between the different kinds of first aid providers, resulting in precise definition and categorization, which may be useful to provide for different duty of care and liability. Five categories are therefore distinguished in Costa Rica: health professionals, medical emergency assistants (not necessarily authorized), medical emergency technicians (authorized), first aid assistants (with basic first aid training) and volunteers (with no training).

providers (such as paramedics and rescuers). A similar distinction is also made in Ireland and Luxembourg. In China, a first-aid provider is only defined for professional healthcare providers such as physicians, nurses, and medical aid personnel, although some local government also recognize first aid providers from the general public, by encouraging them to provide first aid if required.

As previously stated, some definitions of first aid providers are given but predominantly in the context of the workplace, where law and regulation concerning first aid are frequent. This is the case, for instance, in Croatia, Malta, the United Kingdom, Australia and Vietnam. These definitions mainly concern the qualification that a person must hold to be considered a first aid provider. For example in Mauritius, a first aid provider is “a person who has been trained by and holds a current first-aid certificate issued by an organisation approved by the Permanent Secretary for the purposes of these regulations”. Similarly, the law in Hong Kong is concerned with “a person trained in first aid” which is defined as “a person who holds a current certificate of competency in first aid (...), is a registered nurse (...), or has otherwise completed a course of training in first aid by certificate under the Commissioner”.

The first aid training requirements and certification used in the workplace could be used as a basis for improving training and access to first aid more generally, beyond the workplace. As for the remaining surveyed jurisdictions, we have only identified a definition of a professional first aid provider, which still allows for some categorization but would provide clarity if the layperson first aid provider is also considered. For example, in Taiwan, we have only identified a definition of “emergency medical personnel” which is “care personnel referring to physicians, nursing personnel and rescue technicians”.

## **The concept of first aid training standard**

Our data shows that a majority (55%) of the jurisdictions surveyed have some sort of training standards. However, this figure hides a great diversity of standards, and a large variety of contexts in which it applies. Indeed, some of these standards apply in the workplace, such as in Estonia, Malta, Sweden, Switzerland or the UK. For example, in Tanzania, workplace law and regulations mandate training programs which must be approved by the government. In Australia, first aid training is mandated depending on the level of risk of the workplace. For high-risk workplaces, such training should be certified by a registered training organization under Australian law. The concept of approving or certifying a first aid training, whether in the workplace or not, can be beneficial to ensure the quality and consistency of training programs.

### **Country Focus: a strong oversight of workplace first aid training in South Africa**

The Occupational Health and Safety Act of 1993 regulates workplaces training. It provides for strict rules that must be adhered to for first aid providers to obtain their accreditation. Such providers must be in possession of a valid certificate of competency in first aid issued by an organization approved by the Department of Labour, and be approved by the Quality Assurance Body. In addition, the National First Aid and Emergency Care Training Standards Committee has been formed in order to establish and maintain standardization in first aid and emergency training.





In addition to workplace training standards, some standards have been implemented but only to be applied to certain professions. For example in Kazakhstan, in addition to employees at hazardous production facilities, first aid training must be followed by healthcare workers who do not have medical training and vehicle drivers. Similarly in Switzerland, anyone applying for a driver's licence must attend training ten hour first aid course, which must be approved by the Federal Road Office. In California (United States), lifeguards and firefighters must be trained in cardiopulmonary resuscitation (CPR), and such training should be approved by the authority. Finally, in Ecuador, specific first aid courses are mandated for tourist guides. These standards would benefit from wider use in society, or at least being extended to a wider category of persons.

One way to address first aid training is to provide training at a young age, in school. We

have identified several jurisdictions which provide for training, with specific first aid training standards in schools. For example, in Norway, first aid training is part of the national school curriculum, and the First Aid Council provides first aid guidelines. In addition, employees at schools and kindergarten must have followed a first aid training. There are similar first aid trainings in Denmark for secondary school students. In the District of Columbia (United States), CPR is mandatory for high-school graduation and public schools and public charter

**Country Focus: first aid training from a young age in Spanish schools**

A training standard specific to primary education has been developed in Spain, as primary schools are required to provide first aid education. The objective is to teach children to identify an emergency and address it by providing first aid. The government hopes that even if the child is unable to provide first aid him/herself (for example for CPR), he/she will be able to instruct the adult bystanders. The curriculum is divided into three subjects: science of nature, social and civil values, and physical education.

schools shall provide instruction in CPR to students.

In other jurisdictions, standards have been developed for professional first-aid providers, but we have not identified such training standards for the general public. For example in Italy, a qualified first aider is defined as someone who has attended a course and obtained a first aid training certification in accordance with the regional regulations. In Poland, "rescuers" are mandated to hold a valid certificate of completion of a qualified first aid course, similarly to qualified first aiders in Israel. In Florida (United States), first aid training standards are provided to some law enforcement officers. Finally, in Japan, a national license for first aid is available and requires passing various tests after a specific training, which is set in the law.

Other countries have tried to set a more general training standard. For example, in France, the authorities have published manuals and reference guides in order to provide a common standard. Similarly, in Russia, a learning aid and textbook have been produced by the Ministry of Health to provide instructions regarding first aid. In Indonesia, the law has recognized the training standard set in the First Aid Guidelines published by the Indonesian Red Cross.

Unfortunately, in about 45% of the countries surveyed we have not identified any kind of first aid standard, whether generally or in specific contexts. As previously noted, such standards allow for the quality and consistency of first aid training programs and the lack of standard can be detrimental in an emergency situation, whether while assisting the victim (if the provision of first aid is improper), assisting another first aid provider (as having consistency in the training will allow for better cooperation), or when handing over the victim to emergency services (in order to give as much information as possible about the status of the victim).

## II - The existence of a duty to rescue

A duty of rescue can be defined as the obligation for one person to assist another who is in danger. Under this concept, a first aider who has failed to assist a victim may be criminally liable. However, the existence of such a duty and its applicability criteria vary widely across jurisdictions. Our data show that, of the countries surveyed, the world is evenly split between jurisdictions providing for some sort of duty to rescue (52%) and those under which there is no such duty (48%).

Schematically, it can be said that in jurisdictions of civil law tradition (such as in Europe) the duty to rescue exists while there is no such duty in common law countries, although in these countries, such duty can also arise. Indeed, even if there is generally no duty to rescue upon the general public in common law countries, there may be an existing duty of care, where there is a special relationship, which will include the duty to rescue, for example parents towards their children, or doctors towards their patients.

In **Europe**, the vast majority of the surveyed countries provide for a duty to rescue. The notable exceptions are the UK, Malta and Ireland. Other jurisdictions provide for a duty which is more or less loose. For example in Sweden, there is no duty to rescue as such but rather a duty to call for help for “a person who discovers, or in any other way becomes aware of a fire or an accident, which means risk of death or serious injury”, which is sanctioned by a fine. In Italy, the duty is more stringent and makes “failure to report or to assist any person who seems dead or injured” an offence, while still imposing at minimum a duty to call for help. Other jurisdictions, such as Croatia and France, apply the duty to rescue strictly and do not provide for a simple duty to call for help. This is common to several other jurisdictions, for instance Slovakia, which provides that “anyone who does not provide necessary aid to a person that is in danger of death or shows signs of serious harm to health, despite being able to do so without danger to himself/herself or to another person, will be punished by imprisonment for up to two years”.



**Country Focus: a limited duty to rescue in Russia**

Members of the general public do not have a legal obligation to provide first aid under Russian law. Such duty to rescue only applies to “those who, by virtue of their professional duties, respond to accidents and emergencies and possess first aid training” such as the police force, fire department or emergency rescue teams. In addition, “leaving to danger” is also criminally punished but is binding only on those who either are legally obligated to care for said person or if themselves have put said people into a life or health threatening situation. However, traffic laws provide that “drivers involved in auto accidents have a legal obligation to provide first aid to injured victims of the accident”.

Nonetheless, in jurisdictions where there is a duty to rescue, it does not apply blindly. The courts will take into account the circumstances of the situation in assessing whether the person failed in their duty to rescue or not. In addition, the law generally provides for some exceptions, or defences, to such duty to rescue. For example, in Portugal, the obligation to provide assistance is mitigated by the fact that “the failure to provide assistance shall not be punished where it may cause serious risk to the rescuer's life or physical integrity or when, for other relevant cause, said assistance must not be expectable”.

Some provisions identified are more specific, for example in Belgium, where the failure to provide assistance is subject to the knowledge of the danger and a lack of serious danger to the respondent or other. This means that should a first aid provider fail to assess the seriousness of the situation and fail to act, it may not be held liable as the offence should be wilfully committed. The fact that the bystander will be liable only if he/she is aware of the situation and wilfully refuse to provide assistance is also specifically found for example in Luxembourg, Italy or Spain. Such deliberate intention to not provide assistance will usually be assessed by the courts. For example in France, a person’s awareness of the degree of gravity of the situation will be appreciated depending on its qualification. French courts have considered that a doctor is presumed to be conscious of the degree of gravity of the danger, when properly informed.

While limited data have been gathered for Africa, the surveyed jurisdictions show that the situation regarding the duty to rescue is diverse. Most reviewed jurisdictions do not provide for a duty to rescue. For instance Kenya does not provide for a duty to rescue, it merely criminalizes the unlawful interference with the efforts of a third-party to escape a wreck. The situation is similar in Tanzania, Zimbabwe and South Africa, which also do not provide for a general duty to rescue. However, in South Africa, such duty to rescue exists if a legal duty is imposed upon someone, such as a person which holds a particular office/occupation. In addition, employers are also mandated to ensure that first aid is provided to their employees in case of injury or emergency. The only surveyed jurisdiction where a duty to rescue has been identified is Mauritius, where criminal liability is incurred for “wilful omission or failure to provide assistance” and “refusal or neglecting to lend assistance”. As for the jurisdictions in Europe, several defences are provided for under Mauritian law, should there be a risk for the provider or a third-party and the need for proportionate assistance rather than effective assistance.



In the **Americas**, half of the surveyed legislations provide for some sort of duty to rescue. For example in Argentina, “the omission or failure to provide assistance to a child under 10 years old or to a wounded person or a person threatened by any danger” is punished by a fine. Similar provisions can be found in Chile and Costa Rica, which also contain the discussed defences, notably the risk of harm to the first aider and the wilfulness of the omission to provide assistance. These duties to rescue may sometimes not apply to the general public but rather be more limited. For instance in Cuba, we have only identified a duty to rescue for “physicians” should he/she fail to provide assistance, which limits the scope of the duty only to healthcare professionals.

#### **Country Focus: different duties depending on the first aid provider in Brazil**

The Brazilian Penal Code criminalizes the omission of help, which means “(i) failing to provide assistance, where possible without personal risk, to an abandoned or lost child, or to a handicapped or injured person, or to those facing imminent danger or (ii) failing to alert the authorities of the need for rescue. A review of case law shows that courts interpret this provision as only requiring a layperson, without training, to alert the emergency services. However, should the person have training in first aid (for instance a firefighter, healthcare professionals, military personnel, police...), such person will be required to provide first aid in order to fulfil the provision related to the duty to rescue.

The remaining half of the jurisdictions do not provide for any duty to rescue. Unsurprisingly, common law countries such as Canada and the United States do not require laypersons to provide assistance during an emergency. In the United States, laws related to the liability of a first aid provider are at State level, which means that some provisions may vary. For instance, in several States, such as the District of Columbia, the law requires individuals to at least notify law enforcement and/or seek aid for strangers in peril. In addition, California is considering adding a duty to rescue to the statutes regarding the liability of the first aid provider. The lack of such duty to rescue is also found in the Dominican Republic, Ecuador or Guatemala.

Most of the reviewed jurisdictions in the **Middle East** provide for some sort of duty to rescue, often combined with a duty to call for help. For instance, in Israel, the law provides that “a person is obligated to provide assistance to a person (...) in grave and immediate danger threatening his or her life, bodily integrity or health, unless doing so will [place] the assistance provider in danger” and that “a person shall be deemed to have provided assistance if he or she notifies the authorities”. Similarly, in Lebanon, the law requires a person to either help personally or at least ask for help. The law in the United Arab Emirates regarding the duty to rescue or call for help is also similar. However, some jurisdictions do not provide for such a duty. For instance, we have not identified any duty to rescue under the laws of Oman.

In the **Asia-Pacific** region, we have only identified a small number of jurisdictions which provide for a duty to rescue. Notably, Vietnamese law holds criminally liable “any person who [is] capable of but fails to assist a person in peril resulting in the death of such person”. Increased sentences are mandated if the offender has a duty of rescue by law or by his/her professional ethics (such as emergency responders, healthcare professionals...). Similarly, in Indonesia, a person will be held criminally liable if he/she fails to provide assistance without endangering oneself, if the death of the person follows. Assistance is understood as either providing help directly or calling for assistance.

### **Country Focus: a duty to rescue limited to Japanese roads**

As a general rule, non-professional bystanders are not required to provide rescue in Japan. However, there is one exception to this rule for traffic accidents. The Road Traffic Act provides that “in the event of a traffic accident, the driver and members of the vehicle and street-cars involved in the traffic accident must immediately stop driving and take the necessary measures, such as aiding injured persons and preventing road hazards”. A person violating this provision may be subject to five years of imprisonment and a fine.

In all the remaining jurisdictions – which represents a large majority of them – we have not identified any duty to rescue. This is the case for instance in New Zealand, Pakistan, India or Hong Kong. This is not surprising as most of these jurisdictions are common law jurisdictions. It is also the case in Taiwan where there is no duty to rescue, but a mere obligation not to hinder the emergency services from carrying out their activity. However, it should be noted that in Australia, while there is also no general duty to rescue, in the context of workplace regulation, the employer has a health and safety duty towards its employees, which will result in a positive duty to act in situations where there is a risk of death or serious injury or illness.



### III – The general liability regimes applied to first aiders

In the vast majority of the surveyed jurisdictions, there is no specific provisions regarding the liability, either criminal or civil, of the first aider. As a result, the general provisions, and defences, of the criminal and civil liability regimes will apply in the context of a first aider providing assistance. While the lack of specific provisions is not in itself an issue, it should be made sure that the defences under the general regimes effectively applies to a first aider. The objective is that if a bystander decides to provide assistance to a victim during an emergency situation, he/she does not face any liability as a result of its intervention. Such exoneration may be limited – for example only to those acting in good faith and without negligence – but should be available, and known, to the general public.

#### Criminal liability

In addition to the duty to rescue, which has been previously discussed, first aiders may be held liable for the assistance they have provided, under general criminal law provisions. For example in Guatemala, one may be held liable under several provisions: slight injury; injury; serious injury; negligent injury; simple homicide or negligent homicide. Similarly, a first aid provider may be held liable in Malta, as “whoever, through imprudence, carelessness, unskilfulness or non-observance of regulations, causes bodily harm to any person, or death, may be held criminally liable.” In Japan, a rescuer may be held liable for causing an injury or death through negligence. Similar provisions which may apply in the context of first aid have also been explicitly identified in Luxembourg, Brazil, Ecuador, Indonesia, the Dominican Republic, Kenya or the United Arab Emirates. However, it can be said that all jurisdictions have similar provisions, as these are not specific to first aid providers but general criminal provisions.

#### **Country Focus: the lack of intent preventing liability in the UK**

In the UK, a person administering first aid may, prima facie, undertake acts amounting to assault or, more likely, battery, being the application of unlawful force to a person, especially in circumstances where such first aid is performed without the express consent of the person in distress, including where a person is unable to give consent due to unconsciousness, for example. However, as the offense of battery requires either criminal intent to cause harm (or recklessness as to such harm being caused), in most circumstances the offense will not have been made out in the context of first aid.

Therefore, first aiders may find themselves liable if during their provision of assistance, cause harm to the victim. Such a liability regime may discourage bystanders to act, in order to avoid criminal liability. However, it is understandable that legal systems do not completely exonerate a first aider of all liability, in order to encourage useful assistance. This is why, once an offence is made, it is important that effective defences are in place in order to protect the first aider, under some conditions.

**Country Focus: different liabilities for medical personnel and bystanders in India**

In India, bystanders and medical professionals are not held liable similarly in case of provision of first aid. Under the Penal Code, medical professionals will be held liable for medical negligence for claims arising from injury, although case law has held that there is no criminal liability in case of error of judgement or an accident. Untrained first aid providers from the general public will be held liable under criminal negligence provisions if they “endanger the human life or personal safety of others through a rash or negligent act”. Courts will therefore apply a different standard depending on the quality of the first aid provider.

As stated, defences should be provided in the law for the first aider to avoid liability for its action. In only a minority of the surveyed jurisdictions (15%) we have identified defences specifically concerning the liability of the provider in the context of first aid. In the remaining 85% of the jurisdictions, general criminal law defences may be used. However, it may be advisable to have specific provisions, as these will be easier to interpret for courts and will provide better legal certainty to potential bystanders.

Notably, specific provisions have been identified in a limited number of jurisdictions. For instance, in India, the government has issued guidelines in order to protect first aid providers from liability. It provides that bystanders and volunteer first aid providers shall “not be liable for any civil or criminal liability”. However, the first aid provider should not be found to be negligent or reckless for this defence to apply. Similarly, in the United Arab Emirates, it is provided that “no crime is committed when medical treatment is performed in accordance with generally accepted scientific principles and with the express or implied consent of the patient, or if medial interference is required in emergency cases.” Comparable specific provisions have also been identified in Vietnam, Japan, Pakistan, the United States, Cuba and Switzerland. In Zimbabwe, a specific provision exists but only for a “qualified person”, which limits the defence to a healthcare professional.

Most of these provisions, in order to be applicable, require that the first aider act in good faith and not be negligent. For example in Japan, “an act unavoidably performed to avert a present danger to life, body, liberty or property of oneself or any other person is not punishable only when the harm produced by such act does not exceed the harm to be averted”. These limitations are useful to ensure that should a first aid provider decide to act, he/she will not cause further harm to the victim. However, it should be interpreted by the courts in favour of the first aid provider, in order to not discourage any potential rescuer from intervening.



### Country Focus: a specific limit to the exoneration of liability under Cuban law

The Criminal Code in Cuba provides that “whosoever acts in order to avoid an imminent danger threatening his own person or that of a third party, or a social or individual right, whatever this shall be, should the danger not have been able to be avoided in any other way whatsoever, nor should it have been intentionally originated by the agent, and provided the sacrificed right was inferior in value than the one saved, shall be exempted from criminal liability”. The carve out concerning the danger “intentionally originated by the agent” should be interpreted as meaning that an aider deemed to have acted negligently or caused further injury by exceeding the “limits of necessity” so as to endanger the health of the victim may, depending on the appreciation of the court, not be completely exempted from criminal liability.



In most jurisdictions, no specific provision related to first aid has been identified but general criminal liability provides defences that may be used by first aid providers. The vast majority of these jurisdictions provide for the defences of necessity. For example in Kazakhstan, it is provided that “it is not a criminal offence to cause harm in a state of extreme necessity, i.e. actions taken in order to eliminate the danger directly threatening the life, health, rights and legitimate interests of the people, the interests of society or state if this danger could not be eliminated by other means and such actions do not exceed the limits of extreme necessity”. Similarly in Ecuador, “a state of necessity exists when the person in protecting himself or another, causes injury or harm to another, provided that the protected right was in real and actual danger, the result of the protective act was not greater than the injury or harm that was intended to be avoided and there is no practicable and less harmful means to defend the right”. The defence of necessity can also be found for example in Belgium, Italy or Lebanon, as in the majority of the surveyed jurisdictions.

Less common but still enshrined in the criminal provisions of a substantial number of the jurisdictions surveyed, self-defence (which also applies to the defence of third parties) also provides a defence which may be relied on by first aid providers. For example, in France it is provided that “a person is not criminally liable if confronted with a present or imminent danger to himself, another person or property, he performs an act necessary to ensure the safety of the person or property, except where the means used are disproportionate to the seriousness of the threat”. A similar defence can also be found in Luxembourg. Likewise, in Argentina, criminal law considers legitimate defence, which may be used by a first aid provider alongside the other available defences.

While the exact conditions for the use of the defences – whether necessity or self defence - may vary from one jurisdiction to another, they all have relevance and could be relied on by a first aid provider in order to avoid liability. Some jurisdictions provide for other defences besides the ones considered above. For example, in the United Arab Emirates and Costa Rica a first aid provider will be able to avoid liability by relying on the consent of the victim, which may be implicit. Notably in the UK, it is also possible to rely on the person’s implied consent where such treatment is necessary to save their life. This will however be assessed by the courts depending on the case. In other jurisdictions, it is also possible to rely on a lawful order to avoid liability. For instance in Oman, the criminal law provides a defence for “an act committed by virtue of a lawful duty or imposed by a legal order from the competent authorities”. The law in Croatia provides for the insignificant offence defense where if the offence is obviously insignificant with regard to the person’s conduct, culpability, and the incurred consequences to the protected good and the legal system, he/she will not be held liable. Finally, Vietnamese law provides, in addition to the necessity defense (which is named “urgent circumstances”) for an unexpected events defense, where there will be no liability if the harmful consequences of the act could not have been foreseen.

#### **Country Focus: a specific defense for certified first-aid providers in Italy**

Under Italian law, the illegal practice of a profession, such as a doctor or health professional, without the necessary degrees and certification may result in criminal liability. However, article 593 of the Italian Criminal Code provides that the possession of a first-aid training certification protects the first aid provider against prosecution for illegal practice of a profession. He/she may still be held liable on other grounds, such as negligence. The use for this defense will nevertheless be limited as it is unlikely that a first aid provider – certified or not – will be held liable for illegal practice of a profession in the context of an emergency situation.

## **Civil liability**

In all of the surveyed jurisdictions, we have identified that the first aid provider is subject to the general civil liability regimes, which means that he/she may be liable for any damage caused during its assistance. The exact content of such provisions varies from one jurisdiction to another and can be more or less specific. For instance in Vietnam, it is provided that a person is liable if he/she “intentionally or unintentionally harms the life, health, honour, dignity, reputation, property, or other legal rights or interests of an individual, or harming the honour, reputation, or property of a legal entity or other subject, thereby causing damage”. In Spain, it is merely provided that any person who causes harm to others, by act or omission, concurring fault or negligence, must repair the damage caused. In Costa Rica, “any person who either intentionally, by their omission, negligence, or imprudence causes harm to another person is bound to repair the other by means of damage”.

In most jurisdictions, an unlawful act will be required in order to establish the civil liability. It may be difficult to consider that any attempt to provide assistance in an emergency situation is unlawful, or is a fault. However, negligence can amount to a fault in a majority of jurisdictions, such as in Kenya, Italy or Pakistan, where it is explicitly provided for. Similarly, the law in Ireland provides that one may be liable under the law of negligence, if a duty of care is

established and the applicable standard is breached. Such standard will vary according to the facts and circumstances, including with respect to the level of knowledge and skill of the first aid provider, and the level of risk posed by the situation.

While it may not always be possible to alleviate the risk of liability in case of negligence, which

**Country Focus: a case law threshold for negligence under Canadian law**

In Canada, once first aid has been initiated, the provider may be subject to civil liability under the general law of negligence. The provider may be liable for any resulting injuries if a duty of care to the victim is established, if the applicable standard of care is breached and if such breach caused such injuries. The Canadian Supreme Court has indicated that a first aid provider acting without expectation of compensation, even if negligent, would be subject to liability only where the failure to exercise reasonable care leaves the victim in a worse position than they otherwise would have been in. Accordingly, the Canadian Supreme Court has stated: “even if a person embarks upon a rescue and does not carry it through, he is not under any liability to the person to whose aid he had come so long as discontinuance of his efforts did not leave the other in a worse condition than when he took charge.”

may be justified by the need to make sure first aid providers lacking training do not worsen the situation, there are still defences available in most jurisdictions, at different levels, in order to avoid civil liability. We have identified three categories of jurisdiction when it comes to defences applicable in the case of first aid. The first one includes a majority of jurisdictions surveyed (40%) where it may be possible to rely on general civil liability defences. The second one is jurisdictions where there are specific provisions related to first aid providers (29%) and the remaining category is jurisdictions where no applicable defences have been identified (31%).

The first category, jurisdictions where first aid providers can rely on general civil liability defences, includes for instance Russia, Oman, Estonia or South Africa. Such defences will often be necessity or force majeure, but can include other applicable defences. For example in Argentina, there is no liability “when the damage was actually originated by the person being assisted, in case of force majeure, when the damage was generated by a third-party to whom no responsibility is due and due to the impossibility to fulfil the obligation.” Similarly, the law in Mauritius provides that there is no liability in case of force majeure, if the plaintiff’s fault has contributed to the prejudice and if a third party has contributed to the prejudice. While the law in these jurisdictions provides for defences which may be used by first aiders, it is unfortunate that there is no specific provision, which would provide a clear and certain legal framework in order to protect first aiders from liability.

The second category concerns jurisdictions where there are specific provisions related to the limitation of liability of first aid providers. Some of these provisions are called “Good Samaritan Laws”, mostly in common law countries, such as in New Zealand, Australia, Canada, Ireland, Israel or the United Kingdom. In India for instance, while there is no central or general Good Samaritan law, the government has issued guidelines to prevent Good Samaritans from liability and for example in the state of Karnataka, the Good Samaritan law provides that “a person will not incur any civil liability for an act done or omission made while providing

emergency care to an injured person, when such act or omission is made in good faith, with or without consent.” The limit to such protection is in case of gross negligence or recklessness.

While not specifically named Good Samaritan laws, other jurisdictions provide for similar provisions specific to first aid providers, for example in Vietnam, Japan or Pakistan. For instance in Spain, it is provided that a person can “negate liability by proving that he acted diligently to prevent the harm”.

#### **Country Focus: good Samaritan provisions governed by State law in the United States**

In the US, all states provide for Good Samaritans laws, alleviating the first aid provider from civil liability. While there may be some variation from one state to another, these provisions are substantially similar. For example, the California Health and Safety Code provides that “no person in good faith, and not for compensation, renders emergency medical or nonmedical care at the scene of an emergency shall be liable for any civil damage resulting from any act or omission”. Similarly, Massachusetts General Laws provide that “any person, whose usual and regular duties do not include the provision of emergency medical care, and who, in good faith, attempts to render emergency care including, but not limited to, cardiopulmonary resuscitation or defibrillation, and does so without compensation, shall not be liable for acts or omissions (...) resulting from the attempt to render such emergency care. However, State laws also provide that such first aid providers may still be liable in case of gross negligence.

Finally, the last category concerns jurisdictions where we have not identified any applicable defence, such as in France, Kenya, Brazil or Hong Kong. However, in most jurisdictions, it will be up to the court to assess the liability of the first aid provider. For example in Switzerland, when determining the form and extent of the compensation provided for loss or damage incurred, the court will take into account the “circumstances and the degree of culpability”. Similarly, in Belgium, in order to appreciate whether a fault has been committed, the judge will analyse the behaviour of the person for whom liability is sought in light of the behaviour that should normally have been expected from a person exercising the same function and having the same qualification. In that context, the judge will generally take into account the fact that the first aid provider was acting as a volunteer and will generally be less severe. In such jurisdictions where first aid providers cannot rely on any legal defence in case they are held liable, it might result in discouraging a potential intervention by a first aid provider.

#### **Country Focus: a full exoneration of liability in China, but framed by the courts**

China’s General Provisions of the Civil Law explicitly provide that a “person who voluntarily provides emergency assistance and causes harm to the recipient of assistance shall not assume civil liability”. The text of this provision, adopted in 2017, seems to exempt first-aid providers from the general public from all civil liabilities. However, the legislation history and opinions of the scholars suggest that there should be limitation to the exemption in some circumstances, such as when the aided suffers unnecessary harm because of the gross negligence of a first-aid provider from the general public. The effect and interpretation of this provision remains to be seen.





#### **IV - The challenges in obtaining reparation for the first aider**

Should the first aider suffer any damage, during his/her provision of first aid, it is reasonable for that person to be expected to be reimbursed for its damages. For example, this may include an injury or illness that results from his/her intervention, or damage to his/her property. However, our data shows that the possibility for the first aider to be reimbursed is quite limited. Indeed, our survey shows that only in a minority of jurisdictions there are specific provisions for first aiders to be reimbursed. In all the remaining jurisdictions surveyed, a first aider will only be able to rely on the general civil liability.

However, such liability regime may not be suited to address the expenses of the first aid provider. Indeed, it implied that the first aider must show a fault, or negligence, caused by the victim, which may not always be the case or difficult to prove. In addition, it is also necessary that the damage is caused by the victim. However, the damage can sometimes be caused by third-parties, who may be unidentified. The result is that it can be a long and difficult process for a first aid provider to obtain reimbursement.

##### **Country Focus: a specific reimbursement scheme for voluntary firefighters in Taiwan**

Taiwanese law contains some financial protection, but limited to the context of firefighting. Notably, it is provided that “any voluntary fire fighter which becomes ill, disable[d] or dead in the course of training, drill or on duty shall be paid depending on the applicable regulations to his/her status at where he or she holds the regular job”. In addition, should the fire services “requisition and utilize fire control, rescue, medical personnel, vehicle, sea vessel, aircraft and equipment from public agencies, public sector and private sector”, then any person requisitioned for fire control, rescue and providing first aid “shall be paid according to the standard remuneration payable by his or her employer or entity where he or she holds the regular job; and any person which becomes ill, injured, handicapped or dead” shall also be reimbursed accordingly.

Some jurisdictions – a minority of the ones reviewed – provide specific dispositions or mechanisms for the first aider to be reimbursed. For instance in France, courts have created the notion of volunteer assistance agreement, qualified as a quasi-contract, in order to compensate the rescuer for the damages he/she suffered when providing assistance to others. This obligation covers personal injury and material damage, implying a genuine safety obligation. A similar concept can also be found for instance in Luxembourg and Belgium. In Israel, it is provided that “a person who has committed, in good faith and in a reasonable manner, an act to protect the life, bodily integrity, health, dignity or property of another (without being obligated to do so) and has incurred reasonable expenses in connection with the act or financial loss as a result of the act, shall be indemnified for those expenses by the person enriched”.

In Vietnam, there is a more general provision, which is applicable if the victim caused the damage: “a person creating an emergency situation which leads to damage being caused must compensate any aggrieved person”. Similarly, in China, first aid providers can claim reimbursement on the ground of “managing other’s business under no obligation”, which concerns services given in order to protect another person’s interests when the provider is not legally or contractually obligated to do so. In such cases, the provider shall be entitled to claim from the beneficiary the expenses necessary for such assistance. Finally, in Lebanon, under criminal law, “the crime committed in the case of necessity obligates the person who benefited from the act (or help) to compensate for the person injured”. In all the above-mentioned jurisdictions, general civil liability can also be used by the first aid provider to obtain reimbursement for damage, but the use of this specific provision may be more effective. In any case, the presence of specific provisions in the law allowing the reimbursement should be encouraged, as it will provide for better legal certainty and possibility for reimbursement to the first aid provider.

It should be noted that all of the discussed legislations, whether is it under general civil liability or specific provisions, the reimbursement is made by the victim. However, three of the surveyed jurisdictions provide for reimbursement not from the victim but from third parties, the State or insurance. In Poland, it is provided that “a person who has suffered damage to property arising as a result of providing first aid by himself shall be entitled to claim compensation for the damage from the State (...)”. However, no reimbursement is due if the damage was caused solely due to the fault of the person who has suffered the damage, or a third party for which the state is not responsible. In that case, Polish law provides for a specific disposition in order to be reimbursed for justified expenses by the victim. Similarly, in Austria, in certain circumstances a first-aid provider may be able to direct their claim at the relevant municipal health insurance institution. In Japan, various municipalities’ fire departments have established so-called “Bystander Insurance” to cover medical costs for rescuers’ injuries caused and/or testing for infectious diseases contracted from rescuing. Different programs have different scopes of coverage (e.g. some require administration of cardiopulmonary resuscitation or automated external defibrillator) and amount of compensation.

