

VOLUNTEERISM **AND LEGISLATION:** **A GUIDANCE NOTE**



Inter-Parliamentary Union



International Federation
of Red Cross and Red Crescent Societies



UN
Volunteers

VOLUNTEERISM AND LEGISLATION: A GUIDANCE NOTE

A joint project
of the International Federation
of Red Cross and Red Crescent Societies,
the Inter-Parliamentary Union and
United Nations Volunteers

Preface

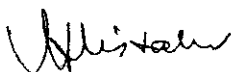
As part of its recognition of the importance of the International Year of Volunteers, 2001 (IYV 2001), the Inter-Parliamentary Council adopted a resolution at its 168th Session in Havana urging parliaments and their members around the world to identify and adopt policies to encourage volunteerism and to establish a legislative framework supportive of voluntary action from a good governance perspective.

In response, the Inter-Parliamentary Union (IPU), the world organisation of sovereign parliaments, agreed with the International Federation of Red Cross and Red Crescent Societies (IFRC), the largest global network of volunteers, and the United Nations Volunteers (UNV), the focal point for follow-up to IYV 2001, to prepare a Guidance Note on Volunteerism and Legislation for use by parliamentarians around the world. The Note was prepared following extensive consultations, primarily through a questionnaire, with parliamentarians from all regions, North and South, volunteer-involving organisations and Red Cross and Red Crescent National Societies. Supplementary information was obtained from research papers, Internet searches, and face-to-face and phone interviews.

The preparation of the Guidance Note is, first and foremost, a recognition of the vital role parliaments play in supporting and nurturing volunteerism. Second, the Note responds directly to instruments passed in recent years, *inter alia* at the 27th International Conference of the Red Cross and Red Crescent, held in 1999, and the 55th Session of the United Nations General Assembly, in 2000, as well as the IPU Resolution adopted in Havana, in 2001. Lastly, it is expected that this initiative will directly benefit all organisations engaged in supporting and promoting volunteerism, and by so doing, will help the many millions of people who give their time freely in support of the general well-being of their communities, and the vast numbers of people who directly or indirectly receive assistance thanks to the generosity and solidarity of others.

By playing an active role, parliaments can positively affect levels of voluntary participation in society. However, the reverse is also true. By not enacting enabling legislation for volunteering, there is the real risk of overlooking an extraordinary national asset and, unwittingly, undermining the very social traditions that are the basis for civic engagement and that bind people together in common pursuits. Volunteering, as an expression of the individual's involvement in her or his community, is not a nostalgic relic

of the past. It is our first line of defence against social atomisation in a globalising world, and is a fundamental component of good governance practices. Today more than ever before, action by parliaments is needed to help ensure the most favourable environment possible in which civic engagement and expressions of caring and sharing can flourish.



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*The fact that good deeds grow in
the wild does not free us from
the obligation to cultivate them.*

Sharon Capeling-Alakija,
Executive Coordinator (1998-2003),
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I. Introduction

At the core of this Guidance Note are issues concerning the contribution of citizens to development, safety and social growth, and the desirability of recognising, valuing and promoting voluntary action by citizens in every country. Volunteering is a nursery for good citizenship. It helps build strong and cohesive communities. It teaches people to be responsible citizens and schools them in the process of democratic involvement. It promotes trust and reciprocity, which are essential to stable societies. The *Human Development Report 2002: Deepening Democracy in a Fragmented World* refers to volunteerism as holding enormous scope for broadening participation in governance and promoting more equitable outcomes for people.

The International Year of Volunteers, 2001 (IYV 2001), highlighted the existence of an enabling framework for volunteering as being one of the more important determinants of a flourishing volunteer movement. A growing number of countries, both industrialised and developing, have adopted or are considering adopting national legislation on volunteering. This Guidance Note on volunteerism and legislation (henceforth referred to as the Note) does not purport to cover all areas of legislation on volunteering nor is it a technical document with detailed consideration of each issue covered. It does, however, highlight the principal considerations in any legal framework, including recognition of the legal status of volunteers; the treatment of certain aspects of volunteerism under labour, social welfare and tax laws; the relationship between volunteers and volunteer-involving organisations; and legal provisions for the further development of volunteerism. It also respects the fundamental role of parliaments to enact laws and to have a direct impact on policies that support and promote improved livelihoods for all citizens, especially the more disadvantaged members of society. Finally, it needs to be emphasised that the Note is an advisory, not a prescriptive, document. It should be discussed among interested parties at country level, and a consensus should be arrived at as regards those elements which are likely to enhance the environment within which volunteerism can flourish in any given set of country-specific circumstances.

II. Forms of volunteerism

Volunteerism is an ancient and global phenomenon. Since the beginning of civilization, a fundamental human value has been people helping people and, in the process, helping themselves. Most cultures have names to describe it: *Barangay* in the Philippines; *bénévolat* and *volontariat* in France; *gotong royong* in Indonesia; *harambee* in Kenya; *shramadana* in India; *mingu* in Andean countries; and *al taawun wal tawasul* in many Arab States. The act is familiar even where the word "volunteer" is not.

Volunteerism is strongly influenced by the history, politics, religion and culture of communities. What may be valued as volunteerism in one

country may be dismissed as low-paid or labour-intensive work in another. Despite the wide variety of understandings, it is possible to identify some core characteristics of what constitutes voluntary activity.

First, voluntary activity is not undertaken primarily for financial reward, although reimbursement of expenses and some token payment may be allowed and even recommendable to facilitate access of individuals from all economic backgrounds. Second, it is undertaken voluntarily, according to an individual's own free will. Third, voluntary activity brings benefits to people other than the volunteer, although it is recognised that volunteering brings significant benefit to volunteers as well.

Volunteerism is about people helping, learning and actively participating in communities. Volunteerism has no borders. It is a cross-cutting social phenomenon that involves all groups in society and all aspects of human activity. It can take many different forms, depending on cultural and economic realities of countries and communities. Four expressions of volunteerism evolved out of IYV 2001.

Mutual aid in many parts of the world constitutes the main system of social and economic support. It often plays a primary role in the welfare of communities in developing countries, from small informal kinship and clan groupings to more formal associations and welfare groups. It also plays an important role in industrialised countries, particularly in the health and social welfare field, providing support and assistance to those in need.

Philanthropy or service to others is distinguished from mutual aid in that the primary recipient of the volunteering is not the member of the group him or herself, but an external third party, although most people would acknowledge that philanthropy includes an element of self-interest. This type of volunteering takes place typically within voluntary or community organisations, although in certain countries there is a strong tradition of volunteering within the public sector and a growing interest in volunteering in the corporate sector. There is also a long-standing tradition of volunteers being sent from one country to another to offer development and humanitarian assistance, both North to South and South to South.

A third expression of volunteerism is *participation or civic engagement*. This refers to the role played by individuals in the governance process, from representation on government consultation bodies to user involvement in local development projects. As a form of volunteering, it is found in all countries, although it is most developed in countries with a strong tradition of civic engagement.

Finally, *advocacy or campaigning* is a form of volunteerism which may be instigated and maintained by volunteers. It may include working towards a change in legislation affecting the rights of people with disabilities, or the introduction of anti-discrimination measures. Through advocacy and campaigning, volunteers have paved the way for the introduction of new welfare services in the field of HIV/AIDS, have raised public consciousness

about human rights and the environment, and have been active in the women's movement.

This Note focuses on volunteering channelled through formally constituted volunteer-involving organisations from the voluntary or private sector, as well as through government agencies. However, volunteerism is also very dynamic, and different types of volunteer involvement are not mutually exclusive. Volunteers engaged in philanthropic or service delivery agencies may be involved in advocacy and campaigning as well as in mutual aid arrangements.

III. Legislation and volunteerism

Until IYV 2001, few States had seen a need to pay attention to the legal issues which have an impact on the willingness and ability of citizens to volunteer. During the extensive preparatory work undertaken for the Year it became increasingly clear that the existence of enabling legislation may be in fact an important contributor to the extent to which volunteerism flourishes in any given situation. The United Nations General Assembly took up this theme and included legislation which encourages or inspires citizens to volunteer among the recommendations for supporting volunteering in Resolution 56/38, adopted at its 56th session, in 2001.

The context for this document is the widely recognised need, especially since IYV 2001, to clarify the nature of volunteer environments in the modern world.

First, as has been seen, volunteerism takes many forms and makes contributions in many different ways. It is also affected by many influences. These include socio cultural characteristics, the political system, economic structures and wealth distribution, institutional divisions of labour, beliefs and values, traditions and other principles and norms. Some of these features are defined in laws, but many are not.

Second, laws and statutes alone cannot fully define the environment for volunteerism. For by its very nature, volunteerism succeeds because of the wish of citizens to make their own contribution. Not only would the spirit of volunteerism be harmed if legislation were drafted with a purpose of control, instead of facilitation, but its very purpose would be distorted.

Third, there is a clear trend away from public sector involvement in many of the activities traditionally supported by volunteers. Parliamentary action should also aim to ensure that laws with specific purposes do not restrict opportunities for the enhancement of an enabling volunteer environment. It should also ensure that principles supporting volunteerism are understood and appreciated in wide government circles, including at the local level.

In summary, legislation on volunteerism has to be approached with care and with openness as regards the social and cultural make-up of a given country

and the governance systems in place. Legal reform should not be over emphasised at the cost of attention to the actual norms by which citizens choose to undertake voluntary action. Great care is needed, moreover, to ensure that legislation on volunteering is considered in full consultation with the principal stakeholders, especially from civil society, so that it is fully aligned with real needs and possibilities and does not create additional obstacles.

The core of the Note is divided into two sections:

Section A discusses the impact that different existing laws have on volunteerism, including: fundamental rights and freedoms, international law, labour law, tax law, social welfare laws, immigration law, and the regulatory framework for non-profit or charitable organisations. Suggestions on ways to promote a favourable legal framework for volunteerism are offered following the presentation of each of the different issues affecting volunteerism.

Section B discusses the need for laws which apply specifically to volunteer work. The Note will highlight the importance of having a framework law on volunteerism as a means to ensure, on the one hand, proper legal recognition for all forms of voluntary action, and on the other hand, appropriate treatment of the different elements of volunteerism under areas of law that currently affect its development. Suggestions are offered on legal provisions which can promote engagement in voluntary activity, drawing on existing laws and regulations on volunteering that are in force in different countries around the world.

A. Areas of law that can have an impact on volunteerism

In the absence of a clear legal definition of what constitutes voluntary work and a volunteer, some laws and regulations can inadvertently have an impact on voluntary action. States should pay careful attention to the way in which international and domestic regulations can affect volunteerism in their country.

The following are examples of legal issues that affect volunteerism worldwide. Suggestions are offered on how laws could support an enabling environment for volunteerism.

1. Fundamental rights and freedoms

International and domestic laws on fundamental rights and freedoms protect volunteers and delimit the legal scope of voluntary activity, *inter alia*, when they provide for:

- the right to free assembly and peaceful association;
- the right not to be required to perform forced or compulsory labour;
- the right to participate actively in the political, economic, cultural, and social life of the country;

the right to freedom of thought, conscience and religion;
the right to a safe environment; and
the right to promote human rights and fundamental freedoms.¹

Volunteerism should be promoted within the context of these fundamental rights and freedoms. The law should prevent the term "volunteerism" from being misused, for example, to cover illegal forms of compulsory labour.

Volunteerism should be promoted within the context of fundamental rights and freedoms.

2. International law

Many laws and regulations on international development cooperation and aid provide for volunteer participation through public and private institutions, agencies, and national and international organisations.² Though these laws encourage and in some way support volunteer participation in international missions and programmes, the protection afforded may not always suffice.

In the absence of any nationally and internationally recognised legal status for volunteers, they are often denied the strengthened diplomatic protection that is afforded under public international law to staffs of organisations for which they work.³

To avoid discouraging volunteer participation in international development cooperation and aid programmes run by intergovernmental, government and acknowledged non-governmental organisations whose non-voluntary staff enjoy such protection, governments and parliaments should demand that similar privileges and immunities extend to volunteers.

3. Labour law

In the absence of a legally recognised status for volunteers and voluntary work, domestic labour law provisions affect volunteerism in many different ways.

The intention of some labour laws is to be inclusive. They expressly or tacitly extend the scope of their application to protect individuals other than paid employees.

The issue is whether such protection benefits volunteerism or whether it otherwise imposes unnecessary and undesirable burdens on volunteer users or the beneficiaries of volunteers' services. Unpaid voluntary work often shares very similar characteristics to paid work or employment: it is productive, valuable and contributes to the economy. Careful attention should

Labour law provisions should not discriminate against volunteers.

therefore be paid to ensuring that labour law provisions do not discriminate against volunteers.

To avoid confusion between the concepts of employment and volunteerism, it may be necessary for some labour law provisions expressly to exclude volunteers from the scope of their application. For example, the general presumption that "work" is "paid work" should not apply to voluntary workers serving non-profit purposes. Volunteerism is non-paid, but it is not always cost-free.

The legal concept of "consideration for work" should not apply to any reasonable amounts volunteers may receive, such as reimbursements of

National law should clarify what kind of compensation volunteers may reasonably receive without being considered as "employees" by the labour law system.

out-of-pocket expenses related to their voluntary activities or the board or lodging they may be provided in the course of their work.

The law should clarify what kind of compensation volunteers may

reasonably receive, according to their specific needs and service requirements, without being subjected to the general labour law system as "employees".⁴

Health and safety

Provisions establishing the right to a healthy and safe environment at work are very often inclusive.

The right to a healthy and safe environment should be extended to cover volunteers in the workplace.

They require diligent and responsible behaviour on the part of employers with respect to all those who may be affected by their undertaking. These provisions actually guarantee some basic

protection for volunteers without imposing any untenable burdens on volunteer-involving organisations.

Provisions on the right to a healthy and safe environment should be extended to cover volunteers at work.⁵

Liability of volunteers

Volunteers should be protected in the event of damages or injuries they may cause in the course of their work.⁶

Labour laws should provide for the transfer of liability of volunteers to the private or public entities for which they work, as is the case for paid employees. When transferring liability from volunteers to non-profit volunteer-involving organisations, the law should encourage or prescribe the subscription of liability insurance policies to cover the risks.

The law should address the liability of volunteers for damage or injury that might be related to their volunteering.

Minimum wage

When boundaries between the legal framework for employment and volunteerism are not clearly established by law, non-profit organisations often stop short of offering protection to volunteers for fear of having to offer volunteers the complete package of rights and duties corresponding to paid employees, including minimum wage provisions.

Volunteers should be expressly excluded from the application of minimum wage provisions.

Volunteers should be expressly excluded from the application of minimum wage provisions.

Again, volunteers are not paid workers. The amounts volunteers may be offered in the form of reimbursement of reasonable expenses and the necessary subsistence support for the accomplishment of their assignments should not qualify as "consideration for work".⁷

Employee volunteering

There is a growing interest in the private sector in promoting employee volunteering as an expression of corporate social responsibility. In some circumstances, for example, when an employer encourages staff to volunteer for a specific non-profit organisation with which the employer has a collaboration agreement, especially if this happens during working hours, the time spent can be considered as "hours worked", and thus fall under the frame-work of labour laws. In such cases, the employer is bound to pay the minimum wage, overtime premiums and other related provisions ensuring protection for employees.

Labour laws should encourage and facilitate employee volunteering.

Labour laws should encourage and facilitate employee volunteering. However, it is important that the law provide adequate protection for employees while avoiding the legal uncertainty that currently prevents many employers from encouraging participation of their staff in voluntary activity.⁸

The law can also encourage employee participation by allowing employees to take sabbatical time off from work to serve on a voluntary basis in non-profit organisations, without detriment to the contract with the employer.⁹

4. Tax law

In some countries, any economic compensation is taxable as "personal income" – even reimbursement of travel expenses and allowances for food and lodging. This hinders the recruitment of volunteers from less favourable economic backgrounds.

To facilitate the recruitment of volunteers from all economic backgrounds, tax provisions should expressly exempt volunteers from paying taxes on the amounts they may receive as reimbursement of expenses or for subsistence

Tax regulations should ensure the sustainability of voluntary action.

support, provided that these amounts are "reasonable" and "necessary" for the purposes of their volunteer assignments.¹⁰

Furthermore, tax regulations can be strategically established to ensure sustainability of voluntary action, for example by:

- encouraging private, individual or corporate funding, through tax exemptions and deductions, to organisations utilising volunteers. The concept of donation should include the secondment of employees to work on a temporary or part-time basis;¹¹ and
- granting tax exemptions and benefits, including on income tax and other duties, such as property transfer tax, under certain conditions.¹²

5. Social welfare law

Social welfare and health care are areas where volunteering has traditionally been very strong. Although the State has ultimate responsibility in these sectors, in many countries citizen participation is considered to be of fundamental importance to help meet these needs.

Laws regulating social welfare and health-related work have a considerable impact on volunteerism, especially, though not only, in those countries

Social welfare laws should establish conditions allowing participants to volunteer without losing their benefits.

where the bulk of social welfare work is carried out by volunteer-involving organisations.¹³

Social welfare laws which have an impact on the nature of volunteer engagement can directly

influence social inclusion and integration of certain social groups, such as the elderly, or members of migrant or ethnic minorities.

In most countries with public social welfare and health-care schemes, volunteers do not enjoy special status *per se*, and they are therefore subject, as individuals, to the general rules concerning entitlements to state social welfare benefits. A volunteer's entitlement to public benefits in such cases will depend on whether the voluntary activity affects any parallel recognised legal status he or she may enjoy as a student, an unemployed person, or a person recognised as unfit for employment, which may involve entitlements.¹⁴

For example, individuals receiving unemployment benefits and who are required to look for a job on a full-time basis risk losing entitlements because volunteer work does not allow them to meet such a basic requirement. The law should address this situation, and for example, limit the time and conditions under which individuals in receipt of subsistence benefits can dedicate to volunteering without losing their entitlements.

If there are no clear rules regarding the amounts volunteers may receive as reimbursement of expenses or subsistence support related to their activities, then they also risk losing low-income support or family benefits, on the grounds that they are being remunerated for their services. The law should not penalise involvement in voluntary action by depriving volunteers and their families of social benefits they would otherwise receive. Such risks generally increase in cases where volunteers engage in full-time and long-term voluntary service programmes, especially if this occurs outside their countries of residence.

Volunteers should not be required to make social or health insurance contributions.

Social welfare laws should establish clear conditions under which benefit claimants are permitted to volunteer without losing their entitlements.

Furthermore, volunteers and the organisations in which they are involved should not generally be subjected to social and health scheme contributions, as this prevents less-resourced organisations from organising voluntary activities. To the extent possible, the funding of such protection should be assumed by the State.

6. Immigration law

In the absence of a national and international legal definition of what constitutes voluntary activity, foreign citizens wishing to enter a given country for the purposes of volunteering, for example, through acknowledged international cooperation programmes, often encounter

The law should facilitate the entry of volunteers into the country so they can participate in international cooperation programmes.

additional obstacles when applying for entry and residence permits. In many cases volunteers are issued inadequate visas and residence permits, such as tourist, student or business visas. This can be a considerable burden for the volunteer-involving organisations, and often means expatriate volunteers are unable to join their projects or to stay for the full duration of the volunteer assignment.

Immigration law should facilitate the entry of volunteers into a country for the purposes of participating in acknowledged international cooperation programmes or projects. This might include establishing clear legal conditions for the issuance of volunteer visas, or allowing work permits to be issued to foreign nationals who intend to undertake activities “of a charitable nature”,¹⁵ or permitting inclusive provisions for the entry of specialised workers who can contribute to national economic and social development.¹⁶

7. Regulatory frameworks for non-profit or charitable organisations¹⁷

Non-profit or charitable organisations, including secular and religious associations and foundations, political parties and trade unions, represent some of the most appropriate arenas in which massive volunteerism can be developed and effectively managed. All of them involve citizens as volunteer-participants in their activities. Some are engaged in promoting volunteerism directly, managing volunteer efforts, building up worldwide networks of volunteers, raising awareness and lobbying for further recognition and support for voluntary action.

Creating an enabling legal environment for the establishment of non-governmental organisations is paramount to the further development of volunteerism.

National legislation should allow for the realisation of a strong civil society, in which networks of volunteers and volunteer-involving organisations across communities and nations will be able to improve upon their experiences and optimise their efforts.

This can be done by establishing an enabling legal framework for non-profit or charitable organisations that:

- encourages the establishment of both formal and informal (non-registered) volunteer organisations;
- recognises their independence from the State and from the business sector;
- improves their visibility and credibility, including through the establishment of reasonable conditions for their official registration, with a view to setting adequate standards of governance, accountability and transparency in the carrying out of their functions;
- ensures sustainability of the sector by mandating the State to support and facilitate their activities, including by assisting organisations in finding ways of securing benefits, for example through tax incentives and other funding opportunities;

- establishes mechanisms for dialogue between the State and the non-profit sector; and
- ensures the coordination of the implementation of applicable State policies and measures to promote, support and enhance the capacity of non-profit organisations.

B. Establishing a legal framework for volunteerism

In the absence of a clear definition of volunteerism or voluntary activity, some countries try to offer protection to volunteers by legally assimilating them with other categories, such as “employees”. This has both positive and negative implications for the development of volunteerism. Unscrupulous employers must be prevented from abusively profiting from the undefined situation of the voluntary sector by using it to exploit cheap labour.

The need for laws concerning volunteers has generally been construed in terms of offering basic protection to volunteers outside of an existing legal framework for paid work or employment. That framework has been identified as unsuitable for the development of volunteerism.

In order for all countries to benefit fully from volunteerism and from the exchange of volunteers among countries, States should recognise volunteers as a legal category *per se*. This recognition should be in full alignment with the objectives of the International Year of Volunteers, 2001, endorsed by the United Nations General Assembly. These objectives address the promotion, recognition, facilitation and networking of volunteerism.

In other words, States and their legislatures should take appropriate steps to facilitate voluntary action and promote its development, while respecting the philosophy and capacity of all people, irrespective of background, to participate in voluntary activity.

Any law relevant to volunteers should enhance recognition of voluntary activity and remove any legal and regulatory barriers, and should certainly not create additional obstacles for engagement.

In both industrialised and developing countries, recent legislation on volunteerism has taken various forms including:

- laws encompassing and giving full recognition to the whole range of existing and potential expressions of voluntary activity in a democratic country, also referred to as framework laws on volunteerism;¹⁸

An enabling legal environment for the establishment of non-governmental organisations is paramount for the further development of volunteerism.

- laws and regulations supporting organised voluntary action and providing legal protection to volunteers acting through public or private organisations;¹⁹ and
- laws and regulations promoting and supporting voluntary participation by specific groups, such as youth or unemployed persons, or promoting volunteerism in areas of special interest, such as social development work, international development cooperation, fire brigades, civil protection²⁰ or disaster management.²¹

These laws and accompanying policy measures include important issues affecting volunteerism, such as legal recognition and acknowledgement, the definition and principles of voluntary activity, the legal status of volunteers, and the basic rules governing the relationship between volunteers and the organisations in which they are involved.

A single encompassing framework law for all types of voluntary action may, in many instances, facilitate the factoring of volunteerism into policy-making processes, and thus promote volunteering. Such a framework law could include models for use in purpose-specific legislation.

The main benefit of a framework law on volunteerism is that it can serve as a general legislative reference for further deepening and fine tuning the legal system in favour of voluntary action. Framework laws enhance recognition of the contributions of all individuals and groups volunteering for the common good, independent of their social background and area of activity.

There are some common elements within existing framework laws on volunteerism in the countries which have adopted them. These include the legal definition of a volunteer and voluntary activity as a concept distinct from employment, general principles of volunteerism, codes of conduct that determine the relationship between volunteers and the organisations in which they are involved, and measures to further recognise, facilitate and promote the development of volunteerism and networking of volunteers. Different issues are analysed below and some considerations to be taken into account in the relevant legislative processes are highlighted.

1. Legal definitions

There is no universal model for a legal definition of the terms “volunteer” and “volunteerism”. Different national laws and regulations establish different definitions, depending on traditions and culture. Sometimes, the



Definitions of volunteerism should be adapted to local social and cultural values.

absolute need for volunteer support leads to different definitions being used within a single country, depending on the circumstances.

When considering the wording of these definitions, legislators should take care not to disregard the potential benefits of all existing kinds of voluntary activity. It is of paramount importance that a framework law on volunteerism provide the most comprehensive and flexible definitions possible for volunteers and voluntary activity. For example:

- "Volunteerism is the group of activities carried out by individuals, associations or legal entities, for the common good, by free choice and without the intention of financial gain, outside the framework of any employment, mercantile or civil service relationship"; or
- "A volunteer is an individual who, by free choice, offers his or her time, work and skills, occasionally or on a regular basis, without expectation of compensation, other than reimbursement of reasonable expenses and subsistence allowance necessary for the accomplishment of his or her assignments as a volunteer, for the public benefit, individually or within the framework of informal or officially registered non-governmental non-profit organisations or national or international public entities".

These definitions include the participation of all men and women, who freely offer their time, work and skills, rather than goods, money or facilities, without compulsion or coercion of any kind or by law. They may do so either occasionally or on a regular basis, according to an agreement for cooperation with an officially acknowledged or informal organisation, for the common good, not only for their private interests, in their home countries or abroad. The volunteer does not work for financial gain, although he or she may receive reasonable compensation and necessary support for the accomplishment of his or her assignment as a volunteer.

The legal definitions of volunteers and voluntary activity should allow for a clear distinction between what constitutes voluntary unpaid work and paid employment. Volunteers require legal treatment and protection distinguishable from that applicable to "paid workers". This is necessary to protect volunteers and the organisations in which they are involved from the potentially pernicious application of certain labour, social welfare and tax law provisions, as mentioned above. In this regard, the most important issue relates to the absence of financial reward for voluntary activity.

The law should begin with the assumption that volunteers are not paid for their services. Volunteers are not motivated by financial gain. Reimbursement of reasonable expenses or the provision of necessary subsistence support for volunteers (in money or in kind, in the form of food, accommodation and pocket money) must be assessed, taking into account that volunteering incurs costs and that ideally all citizens, independent of their financial resources, should be in a position to volunteer if they so desire.

Several considerations are relevant to the assessment of whether or not any reimbursement of expenses or subsistence support is reasonable or necessary for the effective accomplishment of the voluntary activity. These include whether the individual has any reasonable expectation of compensation either at present or in the future.

2. General principles of volunteerism

In order to further delimit and clarify the essential elements of voluntary activity, laws should foresee a set of general principles governing the development of volunteerism.²² Principles of volunteerism may vary significantly from country to country. Generally they include many of the following basic standards:

- volunteers participate on the basis of freely-expressed consent;
- volunteering is not compulsorily undertaken in order to receive pensions or government allowances;
- volunteering is not carried out in expectation of any financial gain;
- volunteering complements, but must not result in, the downsizing or replacement of paid employment;
- volunteerism should be encouraged with a certain degree of autonomy from the public authorities, to safeguard its independence;
- volunteering is a legitimate way in which citizens can participate actively in the development of community and social life and address human needs;
- volunteers act for the common good and on the basis of a social commitment;
- volunteering promotes human rights and equality;
- volunteerism respects the rights, dignity and culture of the communities involved;
- volunteer recruitment is based on equal opportunity and non-discrimination;
- volunteering is inspired by democratic, pluralistic, participative and caring social tenets.

3. The relationship between volunteers and volunteer-involving organisations

Some framework laws on volunteering include provisions governing relationships between volunteers and the organisations in which they work.

Practical rules should clarify duties and responsibilities of volunteers and their volunteer-involving organizations.

This can further help to clarify the borders between volunteerism and employment, encourage a responsible commitment on the part of the different protagonists, and protect volunteers.

The challenge is to establish practical rules which take into careful consideration the social and economic reality of the country and which permit volunteers and volunteer-involving organisations to develop their activities flexibly, according to capacities and needs.

A **code of conduct** for volunteers and volunteer-involving organisations could include the following provisions:²³

Protection of volunteers:

- The right to receive the necessary information, training, supervision, personal and technical support for the discharge of their duties;
- Insurance against the risk of accidents and illness related to the volunteer activity;
- The right to work in safe, secure and healthy conditions;
- The right to be reimbursed for reasonable expenses related to the volunteer activity, as well as to be provided with basic subsistence support for food and accommodation whenever the volunteer assignment so requires, and previously agreed with the host organisation; and
- Appropriate accreditation, describing the nature and length of time of the volunteer activity, as well as certification acknowledging the volunteer's contribution at the end of the service;

Duties of volunteers:

- To respect the objectives and observe the regulations of the organisation in which they are involved;
- To respect the rights, beliefs and opinions of beneficiaries; and
- To participate in any necessary training courses provided by the host organisation.

Responsibilities of volunteer-involving organisations:

- To ensure that an appropriate insurance policy is in place for volunteers, covering eventual risks of accident or illness directly related to the volunteer activity;
- To reimburse any expenses incurred by volunteers in fulfilling their volunteer tasks, up to the reasonable limits previously agreed with the volunteer;
- To provide volunteers with appropriate infrastructure for the discharge of their duties;
- To provide appropriate information to their volunteers on the nature and condition of their voluntary assignment;
- To provide volunteers with appropriate training;
- To ensure safe, secure and healthy conditions at work, in accordance with the nature of the volunteer activity;
- To provide their volunteers with accreditation and issue a certificate acknowledging their contribution at the end of their service; and
- To assume third-party liability for any damages or injuries their volunteers may cause by any action or omission in the course their voluntary work, provided that the volunteers act with due diligence and in good faith.

4. Recognition of volunteer contributions

Laws on volunteering should contribute to enhancing recognition of the contributions of volunteers. Examples include:

- encouraging volunteer-involving organisations to issue volunteer certificates attesting to their contributions;

Laws should recognise the value of volunteer contributions.

acknowledging the educational value of volunteerism though a system of academic credits;²⁴ and

- counting the time spent on voluntary activity for the purposes of future social welfare pensions, when applicable.²⁵

5. The role of governments

The extent to which laws contribute to promoting volunteerism is strongly determined by the set of policy measures in place to implement those laws. Such policy measures often include:²⁶

- awareness campaigns on the values and benefits of volunteerism;
- technical, logistical and financial assistance for organisations which involve volunteers, including training and information services;
- financial support measures for volunteers, such as reductions for public transport;
- inclusion of volunteers in public social welfare and health-care schemes when their voluntary activity prevents other forms of coverage; and
- development and support for research on volunteerism, including the establishment of national mechanisms to measure the contribution of volunteerism to human development.

Governments should also examine the possibility of supporting national and local volunteer committees with broad representational participation. Such

Governments have an important role in the promotion of volunteerism, including through supporting national and local committees with broad representational participation.

supports should also involve relevant public authorities and private actors, including decision makers, public and private volunteer organisations, business and other important donors, and academia.²⁷ Such institutions can also contribute to monitoring the imple-

mentation of laws and identifying additional issues to be taken up in future legislation. They are also useful forums in which to identify the roles of the different protagonists, better coordinate their activities, exchange best practices, and identify possible areas for cooperation, including mobilising human and financial resources.

6. *The role of members of parliament*

In most cases relating to the maintenance of an enabling environment for voluntary action, parliamentarians will be considering legislation on issues which do not concern volunteers directly, but where volunteer support is vital to the success of the action proposed. Parliamentarians may wish to establish consultative systems to draw attention to such issues, so that they can underscore the cross-cutting nature and contribution of voluntary action to a country's well-being. They can advocate for supportive, pro-volunteering policies, laws and budgetary allocations. Through this, they can mobilise action in favour of volunteerism by influencing governments and public officials, including by promoting the establishment of parliamentary and public forums for debate on the issues. In many cases this will link naturally to their representative function in the parliament and their own wish to represent community issues positively.

IV. Conclusions and recommendations

Legislation has a considerable impact on volunteerism, and indeed, can be a significant determinant of the extent to which it flourishes. The issues raised and discussed in this Note reflect some of the most evident expressions of the impact that laws can have on volunteerism. While some laws protect and facilitate the engagement of volunteers, others have the opposite effect, usually unintentionally.

For the benefits of volunteerism to be fully realised in each country's context, the following steps may be considered:

- ♦ establish a parliamentary committee or a similar group to address issues pertaining to volunteerism and to consider and develop specific policy strategies and measures to improve the framework conditions for national and international volunteer action;
- ♦ ensure that the contribution of volunteers to economic and social development is recognised and protected in all legislation and other government action relevant to the sector in question;
- ♦ intensify awareness-raising activities, for example, through supporting and promoting International Volunteer Day, 5 December, and other significant days and events in which volunteerism is a significant component;
- ♦ host activities aimed at supporting and giving recognition to the efforts of volunteers;
- ♦ maintain close consultation with volunteer-involving organisations as well as other stakeholders, such as the private sector, academia and the media, including through public hearings, accessible to the volunteers themselves;

- ◆ support the creation and functioning of national and regional volunteer centres or even volunteer development agencies as permanent structures allowing for continuous dialogue between policy-makers and legislators on the one hand and the principle stakeholders in volunteer action on the other;
- ◆ approve budget lines for the support of pro-volunteer actions;
- ◆ exchange information and practice;
- ◆ develop, support and facilitate research on the contribution of volunteerism to social development and the impact of national legislation on volunteerism from both a national and an international comparative perspective;²⁸
- ◆ include references to volunteerism in state of the nation addresses;
- ◆ integrate volunteerism in its various forms and as a mainstreamed issue in national policies, programmes and reports, for example factoring volunteer contributions into national and international strategic goals; such as reports on the Millennium Development Goals; and
- ◆ ensure that international, regional and national policy and legislation do not impose obstacles that reduce the capacity of citizens to engage in voluntary action, ensuring diversity and flexibility of all potential expressions of volunteerism.

As States strive to achieve the Millennium Development Goals, volunteerism offers enormous resources. States should harness that potential, in part by ensuring that national laws foster, rather than deter, volunteerism. Six billion people have something to contribute toward the Millennium Development Goals, and parliamentarians have a vital role to play, especially by:

- ◆ removing existing barriers in laws and regulations;
- ◆ mainstreaming volunteerism in legislative processes; and
- ◆ enhancing opportunities for volunteering, through the creation of appropriate volunteer legislation in partnership with all stakeholders.

Parliamentarians have a vital role to play in ensuring that all people can contribute their talents to the well-being of their communities and societies and of the world, through the Millennium Development Goals.

Endnotes

- ¹ United Nations General Assembly Resolution 53/144 of 8 March 1999, adopting the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote Universally Recognised Human Rights and Fundamental Freedoms (Article 1 of the Declaration).
- ² Lebanon-Italy: Development Cooperation Agreement between the Government of the Italian Republic and the Government of the Republic of Lebanon.
- ³ Convention on the Privileges and Immunities of the United Nations of 13 February 1946, Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947, Convention on the Safety of United Nations and Associated Personnel of 9 December 1994; see also the Geneva Conventions of 12 August 1949.
- ⁴ United States (Federal): Fair Labor Standards Act (FLSA).
- ⁵ South Africa: Occupational Health and Safety Act, No. 85, of 1993; United Kingdom: Health and Safety at Work Act of 1974 (Section 3); New Zealand: Health and Safety in Employment Amendment Act of 2002.
- ⁶ Canada (Nova Scotia): Volunteer Protection Act, S.N.S. 2002; c. 14 (available at: http://www.gov.ns.ca/legi/legc/bills/58th_2nd/3rd_read/b098.htm); Australia: Volunteers (Protection from Liability) Act of 2002; United States: Volunteer Protection Act of 1997.
- ⁷ United Kingdom: Case law: *Chaudri v. Migrant Advisory Service (MAS)*, 1997; source: *Legal Status of Volunteers in Europe*, 2003, Association of Voluntary Service Organisations (AVSO) and European Volunteer Centre-Centre Européen du Volontariat (CEV) joint research study, available at: <http://www.avso.org/en/activities/CEV&AVSO.htm> and http://www.cev.be/legal_status.htm.
- ⁸ United States (Federal): Fair Labor Standards Act (FLSA).
- ⁹ Belgium: Source: *European Union without Compulsory Military Service: Consequences for Alternative Service - A comparative study on the policies in EU member states*, 2002, Gerd Greune and Michaela Lai, European Bureau for Conscientious Objectors (EBCO), EU-Study Papers, Heinrich Böll Foundation, Brussels office.
- ¹⁰ Canada: Income Tax Act (ITA); Belgium: Internal Administrative Regulation, *Circulaire*, G. Rh. 241/509.803 of 5 March 1999.
- ¹¹ Mozambique: Decree No. 21/2002 of 30 June 2002
United Kingdom: Inland Revenue, <http://www.inlandrevenue.gov.uk/pdfs/ir64.pdf>; Case Law: *Chaudri v. Migrant Advisory Service (MAS)*, 1997; source: *Legal Status of Volunteers in Europe*, 2003, Association of Voluntary Service Organisations (AVSO) and European Volunteer Centre-Centre Européen du Volontariat (CEV) joint research study (available at: <http://www.avso.org/en/activities/CEV&AVSO.htm> and http://www.cev.be/legal_status.htm).
- ¹² Mozambique: Right to Free Association Act No. 8/91 of 18 July 1991; Associations of Public Benefit Decree No. 37/2000 of 17 October 2000; Non-Governmental Non-Profit Organisations Decree No. 21/2002.
- ¹³ South Africa: National Welfare Amendment Act, No. 77 of 1978 and White Paper for Social Welfare of 1997.
- ¹⁴ The Netherlands: Subsistence Benefits Act, source: *Legal Status of Volunteers in Europe*, 2003, Association of Voluntary Service Organisations (AVSO) and European Volunteer Centre-Centre Européen du Volontariat (CEV) joint research study (available at: <http://www.avso.org/en/activities/CEV&AVSO.htm> and http://www.cev.be/legal_status.htm).

- ¹⁵ Canada (Federal): Immigration and Refugee Protection Act (Section 205); South Africa: Immigration Act, No. 13 of 2002 (Section 11); Brazil: Temporary Visa Regulations.
- ¹⁶ Uruguay: Decree on the Entry and Stay of Foreign Citizens in the Territory of the Eastern Republic of Uruguay.
- ¹⁷ Examples of laws encouraging the establishment of non-governmental organisations across the world:
- Albania: Act No. 8781 of 3 May 2001 amending Act No. 7580 of 29 July 1994; Civil Code of the Republic of Albania; Non-Profit Organisations Act, No. 8788 of 7 May 2001; and Registration of Non-Profit Organisations Act, No. 8789 of 7 May 2001.
- Sri Lanka: Voluntary Social Services Organisations (Registration and Supervision) Act, No. 31 of 1980, as amended by Act No. 8 of 1998.
- South Africa: Non-Profit Organisations Act, No. 71 of 1997. The Act states that within the limits prescribed by law, every organ of State must determine and coordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of non-profit organisations to perform their functions.
- Russian Federation (Federal): Charitable Activities and Charitable Organisations Act.
- Japan: Law to Promote Specified Non-Profit Activities of 25 March 1998 (Chapter I, Article 2).
- ¹⁸ Examples of framework laws on volunteerism:
- Colombia: Act No. 720 of 29 December 2001, on volunteerism.
- Brazil: Act No. 9608 of 18 February 1998, on volunteerism.
- ¹⁹ Examples of laws and regulations supporting organised voluntary action and providing certain legal protection to volunteers acting through public or private organisations:
- Laws establishing a general framework for the development of volunteerism within non-governmental non-profit organisations or public entities:

Spain: Act No. 6/1996 of 15 January 1996, on volunteerism.

Italy: Act No. 266/1991 on volunteering.
 - Laws limiting the liability of volunteers working in organisations:

Canada (Nova Scotia): Volunteer Protection Act of 2002.

Australia (South Australia): Volunteers Protection Act, No. 65 of 2001.

United States (Federal): Volunteer Protection Act of 1997.
- ²⁰ Tunisia: Decree 99-2428 of 1 November 1999, establishing the methods and procedures for the use of civil volunteers by the national office of civil protection.
- ²¹ Examples of laws and regulations promoting voluntary participation of specific target groups or in areas of special interest:
- Senegal: National (Youth) Civic Service Act, No. 98-25 of 7 April 1998.
- Italy: National (Youth) Civic Service Act, No. 64/2001 of 6 March 2001; Cooperation to Development Voluntary Service Act, No. 49/1987; Promotion of Social Organisations Act, No. 383/2000.
- Czech Republic: (Youth) Volunteerism Act of 2002.
- Germany (Federal): Promotion of a Voluntary Year of Social Service (for Youth) Act of 1964, and Promotion of a Voluntary Year of Ecological Service (for Youth) Act of 1993, as amended.
- Japan: Promotion of Specified Non-profit Activities Act of 25 March 1998.
- Portugal: Regulation of the *Lusíadas* Programme, Ministerial Order No. 745 - H/96 of 18 December 1996.
- Tunisia: Act No. 93-121 of 27 December 1993, establishing the National Office of Civil Protection.
- South Africa: Maritime and Aeronautical Search and Rescue Act, No. 44 of 2002, Disasters Management Act, No. 57 of 2002.
- Albania: Act No. 8765 of 26 March 2001, on civil emergencies.
- ²² Colombia: Act No. 720 of 29 December 2001, on volunteerism.
- Portugal: Act No. 71/98 of 3 November 1998, on volunteerism.
- ²³ Brazil: Act No. 9608 of 18 February 1998, on volunteerism.
- Spain: Act No. 6/1996 of 15 January 1996, on volunteerism.
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- ²⁴ Italy: National (Youth) Civil Service Act, No. 64/2001 of 6 March 2001.
- ²⁵ Senegal: National (Youth) Civic Service Act, No. 98-25 of 7 April 1998; Italy: National (Youth) Civil Service Act, No. 64/2001 of 6 March 2001.
- ²⁶ Portugal: Act No. 71/98 of 3 November 1998, on volunteerism
Czech Republic: (Youth) Volunteerism Act of 2002.
Senegal: National (Youth) Civic Service Act, No. 98-25 of 7 April 1998.
- ²⁷ Portugal: Resolution No. 50/2000, establishing the Permanent National Volunteerism Council.
Colombia: Act No. 720 of 29 December 2001, on volunteerism.
- ²⁸ Examples of country-focus studies and comparative research on legislation affecting volunteers:
- *Legal Status of Volunteers in Europe*, 2003, Association of Voluntary Service Organisations (AVSO) and European Volunteer Centre-Centre Européen du Volontariat (CEV) joint research study (available at: <http://www.avso.org/en/activities/CEV&AVSO.htm> and http://www.cev.be/legal_status.htm).
 - *Situación Legal del Voluntariado en Iberoamérica – Estudio Comparado*, Organización Iberoamericana de Juventud (OIJ) (available at: <http://www.oij.org/voluntariadooij.pdf>).

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