



# The legal framework for volunteering in emergencies

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## Executive summary

The legal environment is an important determinant in creating a conducive environment for volunteers in any country. The past decade has seen an increase in legislation related to volunteering, in the form of either a framework law, or in amendments to laws and policies that affect or constrain volunteering.

While there has been substantial research on the legal issues that affect volunteers in general, there has been less focus on specific questions that may arise relating to volunteers in emergencies. These volunteers constitute a critical component of any response to disasters and emergencies, and given the difficult circumstances in which many operate, it is important to assess the legal protections afforded to them.

In light of this gap, the present study has as its focus the legal environment in regard to volunteers in emergencies. For the purposes of this study, the use of the term “emergencies” or “disasters” includes man-made and natural disasters, and excludes situations of conflict.

While the study refers to the legal framework applicable in a number of regions of the world, there is more detailed assessment of the legal issues raised in Australia, Brazil, France, Indonesia and Qatar due to the *pro bono* support of local law firms in these five jurisdictions.

At the outset, the first observation is that in the last decade there has been a trend towards the adoption of legislation on volunteering across jurisdictions. This is usually not in regard to a particular sector or type of activity but encompasses different voluntary activities. In some countries however, there is legislation specifically in regard to disasters and emergencies, which may include reference to volunteers in these situations. Usually, countries that do not have such specific legislation would apply general law and legal principles to situations of volunteering in emergencies.

In regard to the **notion or definition of a volunteer**, this varies across jurisdictions. It is generally found that volunteers are regarded as distinct from employees, even if they may receive a symbolic pecuniary reward as recognition of their commitment.

In most countries, legislation on volunteering deals exclusively with **volunteering by nationals**. However, some countries have adopted legislation to facilitate volunteering by foreigners (by streamlining immigration procedures for instance).

As a general rule, in a situation of disaster/emergency (depending on the definition in the law), authorities are required to issue a **declaration of emergency/disaster**. National, regional or local authorities are normally entitled to make this declaration, depending on the scale of the disaster. In many

instances, such declarations of emergency/disaster have the effect of enhancing the powers given to public authorities in order for them to address the situation. In addition, there may also be higher standards or requirements to be complied with. In relation to volunteers, such declarations may have the effect of temporarily suspending some rules usually applied to volunteering activities, and/or providing incentives for volunteers to be rapidly mobilized. Such declarations may also have a specific impact on specialized volunteering activities, such as for health care providers who volunteer in these situations.

Different jurisdictions allow for not-for-profit entities to **assist the emergency response** by deploying volunteers, often subject to governmental approval. This may be to complement the response of State entities and their volunteers.

Many jurisdictions require the **registration of volunteers**, and sometimes additional accreditation procedures prior to their deployment in emergencies. Distinct from this is the **question of contract or written documentation** between the volunteer and the organization. In many jurisdictions, specifically in regard to volunteering in emergencies, this is a requirement. While this may be perceived as excessive formality, it seems in the interest of both volunteers and organizations to have the terms of their commitment clearly written down, especially since it may have an impact on areas such as liability and insurance.

Another area of focus relates to the **extent of liabilities** of volunteers and organizations towards third persons, as well as obligations of organizations towards volunteers themselves.

In regard to the liability of volunteers and organizations towards third persons, the study identifies many instances where specific disaster legislation as well as legislation related specifically to volunteering, details liabilities in regard to third parties adversely affected by organizations – and in some cases by volunteer action. The penalties range from monetary fines to detention or incarceration, depending on the seriousness or type of the wrongdoing. In addition, general civil and criminal liability provisions may also be applicable. This is often due to the harm caused to a third party (normally a tort-based liability requiring fault to be proven), and to the existence of a general legal obligation to assist a person in danger.

There are also specific circumstances in which only volunteers are liable (especially if they act in disregard of the tasks and duties assigned to them). However, quite often organizations may also be vicariously liable (due to their relationship with volunteers, in which they are normally considered as a “principal” and volunteers their “agents”). In the latter case, it might be possible for organizations to subsequently seek compensation from volunteers. General liability rules usually apply to specialized volunteers (such as medical personnel), together with additional rules pertinent to their professions.

In many jurisdictions however, there are also **exemptions from such liability**, such as in case of acts carried out in “good faith”. In some countries, claims from third parties may even be indemnified by the State. However, the issue of exemptions from liability is still an open debate, especially in cases of specialized volunteer activities, such as for healthcare providers who volunteer during

crises. Certain jurisdictions may also grant immunity to “good Samaritans”, which may be applicable to volunteers.

The question of obligations and concomitant liabilities of an **organization towards its volunteers** is premised on the concept of duty of care owed to volunteers generally. This also may be supplemented by specific legislation – either in the realm of disaster or specific to volunteers – which may specify certain responsibilities and obligations that an organization owes to its volunteers.

In some instances, disaster legislation requires the provision of **insurance and /or compensation** by the organization in case of injury or death of a volunteer. However, in many countries, the law does not place an obligation to insure and there is scant specialized insurance for volunteers in emergencies. It is therefore left to the option of the organization to specify risks and activities, in order to include volunteers in their standard insurance coverage.

Another obligation of an organization that is reflected in many jurisdictions relates to the **health and safety** of volunteers – which implies the responsibility of the organization to ensure adequate safety, appropriate equipment etc., for the safety and well being of volunteers. While in some instances these obligations may also arise specifically from disaster/emergency legislation, in others this may be a matter of application of general legislation and legal principles. This may also not be so much a matter of the designation of a person as a “volunteer” but may arise out of the relationship between the organization and the individual concerned.

Another issue that has been highlighted in some studies is the **employment status** of volunteers, who may be deployed in emergencies. Countries have different approaches in relation to the possibility for employees to take leave in order to volunteer in emergencies. Some countries provide for no leave, unless the State itself requests that the volunteer/worker be deployed in a particular situation. Other countries may provide for paid or special leave in some cases. The law may also protect volunteers from dismissal in the course of crises. Finally, in many jurisdictions the law provides tax benefits for employers who encourage their employees to volunteer in such situations.

In some countries, **training of volunteers** is mandatory and this obligation flows from disaster and civil defence legislation. Given the specialized circumstances in which volunteers in emergencies carry out their activities, this is an area that would benefit from further discussion, as training benefits organizations, volunteers and third parties alike. Also, well trained volunteers tend to perform better.

In **conclusion**, this study demonstrates that jurisdictions adopt a rather piecemeal approach to the legal protection of volunteers in emergencies. Although there are some significant examples of how legislation protects volunteers, protection remains fairly inconsistent among countries. Some countries have legislation in place specifically applicable to either volunteering or disaster, whereas in others, volunteering in emergencies is covered by general laws. Moreover, only few cases seem to have been brought before national courts, and thus in many jurisdictions the legal position remains uncertain - and untested.



The intention of this study has been to highlight the gaps and open questions in the various legal frameworks applicable across jurisdictions. It is also meant to initiate further analysis and discussion of the specific legal issues relating to volunteering in emergencies. In some cases, depending on the context and upon this analysis, it may be required to either amend or enact legislation; in others, it may be a matter of better implementation; and in yet others, the situation may work to the satisfaction of all, and most importantly, afford protection and an environment that is conducive to volunteering.





# Introduction

## 1. Background and context: an “enabling environment” for volunteers

2011 marks the tenth anniversary of the “International Year of Volunteers”<sup>1</sup>. This landmark recognizes the dedication of millions of volunteers around the world, which is crucial to saving lives, and to recovery from disasters and crises. Specifically in regard to the Red Cross and Red Crescent Movement, it is estimated that there are 13.1 million volunteers, of whom 26% are active in disaster preparedness and response; 37% are active in enabling healthy living, and another 12% work to promote social inclusion.<sup>2</sup>

These numbers are but an indication of the value and importance of volunteers to the Red Cross and Red Crescent Movement, and also to the communities and societies that depend on them. It is therefore essential to create an environment which allows volunteers and voluntary action to flourish. One way to create an enabling environment for volunteering is by ensuring that the national legislative and policy framework is robust, and encourages volunteering activities.

States have recognized the importance of promoting a positive legal environment to enable volunteering. This has been affirmed at fora such as the International Conference of the Red Cross and Red Crescent Movement as well as the General Assembly of the United Nations.

At the 27<sup>th</sup> International Conference in 1999, Final Goal 3.3 placed the responsibility on States to “review and where necessary, introduce or update legislation so as to facilitate the efficient work of relevant voluntary organizations.” The International Federation of Red Cross and Red Crescent Societies (IFRC) also made a pledge to the International Conference *inter alia*, “to cooperate with governments to broaden the existing legal, fiscal and political bases for volunteering and to mobilize increased public support”.

Echoing the same call and commitment made at the International Conference, the United Nations General Assembly in Resolution A/RES/56/38 of 10 January 2002, elaborated on ways for governments and civil society to support volunteerism and recommended that governments support volunteerism by creating a favourable environment, which included “enabling fiscal, legislative and other frameworks”, and specifically within this category, to “introduce enabling legislation”.

1 The UN General Assembly proclaimed 2001 the International Year of Volunteers, according to its resolution A/RES/52/17 of 15 January 1998.

2 IFRC, *The value of volunteers - Imagine how many needs would go unanswered without volunteers* (2011).

In follow-up to the 27<sup>th</sup> International Conference, and in keeping with its mandate, the IFRC worked with the Inter-Parliamentary Union (IPU) and United Nations Volunteers programme (UNV) to prepare a guidance document in 2004, *Volunteerism and Legislation: A Guidance Note*. This Guidance Note flags the main issues and considerations that need to be taken into account in examining the legal framework as it relates to volunteering. It provides guidance to parliamentarians and recognizes the vital role that parliaments play in creating an enabling environment for volunteering<sup>3</sup>.

The United Nations General Assembly, commemorating the tenth anniversary of the International Year of Volunteers in Resolution A/RES/63/153 of 11 February 2009 acknowledged the role of the IFRC to “promote volunteerism through its global network”.<sup>4</sup> Further, the resolution “recognizes the importance of supportive legislative and fiscal frameworks for the growth and development of volunteerism, and encourages Governments to enact such measures”.

In furtherance of this, UNV commissioned a study, *Law and Policies Affecting Volunteerism since 2001*, issued in 2009.<sup>5</sup> This study provides a detailed analysis of the law and policies that have been enacted or that have been amended since 2001. Based on this study, in 2010, UNV prepared *Drafting and Implementing Volunteerism Laws and Policies: A Guidance Note*. This guidance note provides best practice in relation to the legal challenges to volunteering and in identifying the goals and challenges in the law, the process of advocacy and drafting, as well as implementation of the law.

## 2. General considerations on the status of legislation

This section provides general observations on the existence and status of legislation on volunteering and/or on emergency/disaster in different countries.

In recent years, many countries have adopted legislation on volunteering, which will be referred to throughout the current research.<sup>6</sup> Some countries also have legislation covering emergencies and disasters, sometimes containing references to volunteers in these contexts.<sup>7</sup>

It is important to note that in some jurisdictions laws on volunteering regulate only national volunteering.<sup>8</sup> This is the case in **Togo** and **Burkina Faso** for example, where the *Law on Volunteerism* applies to national volunteers only, understood as any individual dedicated to a voluntary mission as provided by the law, excluding voluntary activity on the national territory under foreign

<sup>3</sup> IPU, IFRC and UNV, *Volunteerism and Legislation: A Guidance Note* (2004).

<sup>4</sup> UN General Assembly, resolution A/RES/63/153 of 11 February 2009.

<sup>5</sup> United Nations Volunteers, *Law and Policies Affecting Volunteerism since 2001* (2009).

<sup>6</sup> Examples of countries that have adopted legislation on volunteerism in recent years, are among many others: **Brazil** (Law 9.608/1998 of 18 February 1998), **Colombia** (Law 720 of 24 December 2001), **Hungary** (Act LXXXVIII/2005 on Public Interest Volunteer Activities of 2005), and **Macedonia** (Law on Volunteering, published in the Official Gazette of Republic of Macedonia N°85/2007 of 09 July 2007).

<sup>7</sup> Examples on this regard are: the **Philippines** (Philippine Disaster Risk Reduction and Management Act of 2010, of 27 May 2010), **South Africa** (South Africa Act N°57, Disaster Management Act, 2002, of 15 January 2003), and **Zambia** (Zambia Disaster Management Act 2010 of 13 April 2010).

<sup>8</sup> For example, see **Burkina Faso's** Law N°031/2007/AN of 17 January 2008 instituting a National Volunteer Corps; see also **Togo's** Law on Volunteerism of 11 February 2011 on the establishment and regulation of national volunteerism in Togo.

legislation or headquarters agreements.<sup>9</sup> Such laws tend to include nationality among the criteria for a person to become a volunteer protected by the law, and the issue will be addressed later in the study.

Furthermore, it is worth recalling that certain countries have not adopted legislation on volunteering as such.<sup>10</sup> The lack of regulation should however not necessarily imply that volunteering does not take place in a given country. For instance the State of **Qatar**, despite not having yet adopted specific legislation on volunteering, has a number of legal sources relevant to the topic of the current study,<sup>11</sup> parts of which shall be referred to.

Other countries have recently undertaken law reforms that simplified the national legal framework applicable to volunteers. **France** is one such example, for its 2010 law reform resulting in the *Code du Service National* (National Service Code) simplified the regime applicable to volunteering and created the “Civic Service”, which encompasses different types of volunteers, to be discussed below. In France however, while there is specific legislation with regard to volunteering in general, only a few laws apply to emergency situations.<sup>12</sup>

Finally, in some countries the law applicable to the subject has been largely developed at State level. In **Australia** for example, although there are some national (Commonwealth) laws relevant to emergencies,<sup>13</sup> the majority of laws affecting emergencies are State or territory laws. These laws vary between jurisdictions and, on many issues, there is no uniform national position. The main consequence of this is that volunteers and members of emergency services who assist across internal borders must be familiar with the law of neighbouring jurisdictions, since they may affect them.<sup>14</sup> Examples of such issues will be given later in the current study.

9 **Togo's Law** on Volunteerism, Article 4: “Le volontaire national est toute personne physique qui se consacre à une mission de volontariat telle que prévue par la présente loi, à l'exclusion du volontariat effectué sur le territoire national en vertu de législations étrangères ou d'accords de siège.” Similarly, see **Burkina Faso's Law** on Volunteerism (2008), Article 3.

10 **Indonesia** is one example of a country that has no specific legislation in regard to volunteering. Furthermore, information was obtained that currently in Indonesia there is no ongoing process with the view of adopting legislation on the matter.

11 Among them, the Civil Defence Department Law N°13 of year 1997 (CDD Law), the Decision of the Council of Ministers N°17 of year 1998 for the creation of a permanent committee for emergencies (Decision 17/1998), the Decision of the Minister of Endowments and Islamic Affairs N°50 of year 1998, relating to the provision of assistance in case of disasters (Decision 50/1998), and the Decision of the Council of Ministers N°16 of year 2008 for the creation of the permanent committee for rescue operations and humanitarian assistance in affected regions in sister or friendly States (Decision 16/2008). Decisions by Minister and/or Council of Ministers listed above are binding and enforceable regulations.

12 Some examples include Law N°2010-241 on Civic Service of 10 March 2010 regulated by Decree N°2010-485 of 12 March 2010, and Law N°96-370 of 3 May 1996 governing the development of volunteering in the National Fire Brigades.

13 These include laws relating to the provision of emergency services within the Territories or those that operate as part of the Defence Forces, as well as emergencies so significant that they could impact upon and threaten the stability of the nation. See Sections 51(vi) and 61 and 51(xxxix) Commonwealth of Australia Constitution Act 1900.

14 As background, it is worth noting that the Commonwealth of **Australia** is a federation comprising six States (New South Wales, Victoria, Queensland, South Australia, Tasmania and Western Australia) and two territories (Northern Territory and the Australian Capital Territory). Each State and territory has its own parliament, and there is also a national (Commonwealth) parliament. Australia has a federal legal system under which certain matters specified in its national Constitution fall within the exclusive jurisdiction of the Commonwealth Parliament. States and territories have the power to pass laws governing other areas, and on occasions there may be both Commonwealth and State legislation applicable to a certain extent. In case of inconsistency, Commonwealth legislation will prevail. In relation to the legal system, Australia adopts the common law, by which law derives not only from legislation but also from the written decisions of judges. Judgments are binding on lower courts within the same jurisdiction. Decisions by State Courts are not strictly binding on Courts of other States or territories, but may be given weight in some circumstances.

### 3. Gaps in legal research

Despite the recent studies (described in the previous section) that have comprehensively identified legal issues affecting volunteers across the world, the focus of attention has been on volunteering in general.<sup>15</sup> A gap in comparative legal research has been identified and relates to volunteering in emergencies (such as natural and man-made disasters, excluding situations of conflict). This particular context brings up specific legal issues that may need to be addressed, such as heightened health and safety concerns, the impact of a declaration of emergency, questions related to insurance, liability, employment law, volunteering by professionals, etc. There has not been much focus on these specific issues and how they correlate to disaster management or volunteering legislation, despite the widespread assistance and crucial role of volunteers in emergencies. This is therefore an area that warrants further inquiry and that is especially relevant to the Red Cross and Red Crescent Movement, given the heavy reliance upon volunteers at all times, including in times of emergencies.

By way of elaboration, an issue that may require clarity pertains to employment at the time of volunteering in an emergency. Many volunteers who may be deployed in emergencies have regular employment, and they may benefit from protection in regard to this employment. In some countries, law protects the volunteer from being dismissed at the time of deployment for volunteering duties; in other instances, the law enables such activity by expressly providing for a fixed number of days that the person will be able to volunteer for, either with pay or in some cases, without pay. In all these cases however, the employer would be unable to dismiss or commence any disciplinary procedures.

Another area of concern relates to exemption from liability in the course of voluntary activities. Given the heightened circumstances and risk, many countries have legal protection for volunteers who have been tasked to undertake certain activities and conduct the activities in good faith. Naturally, in specific circumstances (such as inebriation or criminal activity), usually no such exemptions from liability would apply. Clarity surrounding the extent of liability in emergencies is in many instances found in the disaster management laws of countries, if such laws exist.

Given the circumstances around volunteering, proper training as well as accreditation of volunteers is sometimes also provided for in disaster legislation and may be one way of ensuring better protection of volunteers as well as communities that benefit from their activities.

These are some of the issues that may arise specifically in regard to volunteers in emergency contexts. As a result, acknowledging the need to undertake a more detailed analysis of these issues, and in complement to the work already done regarding legal issues around volunteering in general, the IFRC has prepared this preliminary study, specific to law and volunteering in emergencies. The current study aims to make a contribution towards filling this gap, by addressing two main points: namely, what specific legal issues impact volunteering in emergencies; and, the manner in which some jurisdictions regulate the matter. This research has been undertaken in order to contribute

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<sup>15</sup> See for example, IPU, IFRC and UNV, *Volunteerism and Legislation: A Guidance Note* (2004); United Nations Volunteers, *Laws and Policies Affecting Volunteerism since 2001* (2009).

to a better understanding of the legal issues that may arise in emergencies, alongside those legal issues that relate to volunteering in all contexts.

## 4. Scope and methodology of the study

An important clarification at the outset is that for the purposes of this study, the term “volunteering in emergencies” includes situations of “declared emergency” or “disaster”, including natural or man-made disasters (e.g. floods, earthquakes, chemical/toxic spills, etc.). However, situations of conflict are not the subject of legal analysis in this study.

Also, when referring to volunteering, (or volunteerism and voluntary activities), the study adopts a broad definition, similar to that adopted by the UN General Assembly, namely “a wide range of activities, including traditional forms of mutual aid and self-help, formal service delivery and other forms of civic participation, undertaken of free will, for the general public good and where monetary rewards is not the principal motivating factor.”<sup>16</sup> Although the study will not primarily focus on the definition of volunteering and related terms, attention will be given to particular definitions used by different jurisdictions, as relevant.

This study combines detailed analysis in regard to five countries in different regions of the world,<sup>17</sup> together with additional supplementary research on laws applicable to volunteering in emergencies.<sup>18</sup> While most references are to national laws, the study also highlights state and/or territory legislation, if this is accessible and indicative of an innovative approach or best practice.

The in-depth analysis of the five countries were prepared by local law firms in those countries, in response to a comprehensive questionnaire.<sup>19</sup> The involvement of these local law firms was facilitated by **A4ID-Advocates for International Development**. The firms are as follows: in **Australia**, *HWL Ebsworth Lawyers*; in **Brazil**, *Bichara, Barata, Costa & Rocha Advogados*; in **France**, *Dechert (Paris) LLP*; in **Indonesia**, *ABNR Counsellors at Law*; and in **Qatar**, *Badri and Salim El Meouchi LLP*. Thanks to their expertise and knowledge of the legal framework in each of these countries, the law firms’ reports provided an in-depth overview of national legislation applicable to volunteers, particularly in situations of emergency. The reports also made clear that, even in the absence of specific legislation regarding volunteering in emergencies, general laws would regulate volunteers’ actions.

The complementary research on the legislation of additional countries focused primarily on the existence of particular laws applicable to volunteering, and/or emergencies. Although the study aims to gather relevant information concerning various jurisdictions, it covers some of them in greater detail than others.

The study considers, first and foremost, whether States have adopted legislation specifically applicable to **volunteering in emergencies**. In cases where

<sup>16</sup> UN General Assembly resolution A/RES/56/38 of 10 January 2002, Annex I. There are other relevant definitions of volunteering, especially the ILO’s working consensus definition of the term, understood as “activities or work that some people willingly do without pay to promote a cause or help someone outside their household or immediate family.” See United Nations Volunteers, *Laws and Policies Affecting Volunteerism since 2001* (2009), p. 9.

<sup>17</sup> Detailed case studies used in the current study cover **Australia, Brazil, France, Indonesia and Qatar**.

<sup>18</sup> The research on further countries was primarily based on the adoption of legislation on volunteerism, according to information obtained in previous studies on the subject.

<sup>19</sup> For the questionnaire, see Annex I to the current study.



there is such legislation in place, it is identified and analyzed as relevant. Given that only a small number of States have adopted specific legislation regarding volunteering in emergencies, the study goes further and identifies whether general legislation on volunteering may impact volunteering in emergencies. Finally, countries are assessed where no specific legislation on volunteering was identified but where the general legal framework would in any case apply.

Finally, it is important to note that it is beyond the scope of this study to evaluate the implementation and enforcement of existing laws, be they specifically in regard to volunteering in emergencies, or general laws that would apply to volunteers.



# Chapter 1: Declaration of emergency/ disaster and impact on volunteering

This chapter considers the issues linked to the declaration of emergency/disaster, such as whether it is mandatory for authorities to issue such a declaration, and the likely impact on volunteers.

## 1. The notion of emergency/disaster

Before addressing the issue as such, it is valuable to briefly note how the notion of emergency and disaster emerges in different jurisdictions. Some countries adopt a legal definition illustrating situations that amount to a disaster or an emergency.<sup>1</sup> Other countries list different types of situations considered as disasters and/or emergencies.<sup>2</sup> Finally, some countries have not adopted any legal definition of the two terms.<sup>3</sup>

## 2. Legal requirements to take action in case of emergency/disaster

A related feature of relevance is whether the law requires authorities to issue such a declaration of emergency/disaster, and if so, whether it defines which authority has the power to do so.

- 1 Such is the case of **Brazil**, for Presidential Decree 7257 of 4 August 2011 defines disaster in Article 2 (II) as: “result of adverse events, natural or man-made upon a vulnerable ecosystem, causing damage to human, property or the environment with ensuing economic and social losses”. The same decree defines situation of emergency in Article 2(III): “abnormal situation due to disasters which causes damage and losses that bring about the partial impairment of the affected government to respond”. **Indonesia** also adopts similar broad definition of disaster, according to Article 1 of Law N°24 of 2007 on Disaster Management, disaster is defined as “the event or the chronology of events which threatens and disturbs life in society, caused by natural and/or non-natural factors as well as human factors resulting in the emergence of human victims, destruction of environment, loss of assets, and psychological impact.” See also the definition of disaster adopted in **Colombia**, according to Article 2 of Law 46 of 1998: “For the purpose of this Act, the term disaster means the serious damage or disruption of normal conditions of life in a given geographical area, caused by natural phenomenon and by catastrophic effects of accidental man’s actions, requiring the special attention of state agencies and other humanitarian entities or social service.” In **Australia**, there is no common legal definition of the terms “emergency” and “disaster”, and thus their meaning varies from jurisdiction to jurisdiction. For example, in the State of New South Wales an “emergency” is defined in Section 4 of the State Emergency and Rescue Management Act 1989 (NSW) as “any event that endangers, or threatens to endanger, the safety or health of persons or animals or destroys or damages, or threatens to destroy or damage, property or the environment and which requires significant co-ordinated response.”
- 2 In **Qatar**, for example, the Civil Defence Department Law N°13 of 1997, indicates in Article 1 (2) that a “public disaster”, unless the context requires otherwise, for the application of the that law means: “any incident of fire, destruction, flood, tempest, or earthquake, or any other incident causing damages or threatening the lives of individuals or public or private properties, and that the usual services are not able to confront, or control or lessen its losses.”
- 3 This is the case of France, for example, in which the law neither defines “emergency” nor “disaster”. Nevertheless, France has legislation on emergency response, in the form of a plan called “*Organisation des SECours*” plan (ORSEC), to be discussed below.

## 2.1 Authorities' duty to issue a declaration of emergency/disaster

### Qatar

In Qatar for instance, in the event of the occurrence of a public disaster, or if the circumstances that may lead to its occurrence are met, or in the event of an attack or a threat thereof, the Minister of Interior shall, after obtaining the approval of the Prime Minister, declare the state of emergency, and shall also declare the end of this state upon the disappearance of its requirements.<sup>4</sup>

### Indonesia

In Indonesia the law requires authorities to issue a declaration.<sup>5</sup> Both central and local government may make this declaration depending on the scale of the disaster. The President shall make a declaration of emergency/disaster at national level, whilst for provincial level situations the Governor shall make such declaration. If the emergency/disaster occurs at regency/city level, the declaration is to be made by the Regent/Mayor.<sup>6</sup>

### Australia

In Australia, as a matter of Constitutional law, the legal responsibility for responding to emergencies rests with States and territories. There is no national authority for dealing with emergencies. However, under the National Disaster Relief & Recovery Arrangements, the Commonwealth government works cooperatively with the States and territories to assist them in responding to emergencies within their borders, including regarding financial assistance. Taking as an example the State of New South Wales, the Premier (head of government of that State) has power to declare a state of emergency if he/she is satisfied that an emergency exists that “constitutes significant and widespread danger to life or property in New South Wales”.<sup>7</sup> Once an emergency or natural disaster occurs in a State (as defined in relevant State legislation or pursuant to a declaration by a State of a state of emergency), the Commonwealth generally assists the response, but there is no formal legislative basis for this.

The key government agencies involved in emergency response in Australia typically include the Police, the Ambulance Service, the Fire Brigade and a specialized emergency service (for example in the **State of New South Wales** this is the State Emergency Service), although in extreme emergency the Defence Forces may also be involved. Almost all these agencies draw upon volunteers to some extent, although their role may vary between States and territories and between particular emergencies. Each State and territory has a disaster controller, usually the Commissioner of Police, whereas at regional and local levels Police officers are usually appointed as controllers. Emergency planning is also conducted at a district and local level, and District Emergency Management Committees may be created which are “responsible for preparing

4 Qatari Civil Defence Department Law N°13 of 1997, Article 7.

5 Indonesian Law N°24 of 2007 on Disaster Management, Article 48. Similarly, in **Colombia** authorities are also required by law to issue such a declaration, in case events amount to a serious public calamity. See Article 215 of the Colombian Political Constitution of 1991.

6 Indonesian Government Regulation N°21 of 2008 on the Implementation of Disaster Management, Article 21. As a general note, the Indonesian legal system does not recognize federal and/or State law. Laws will only be issued by the central government. The provincial government may however issue a regulation as an implementing regulation to the law.

7 State Emergency & Rescue Management Act 1989 (NSW), Section 33.

plans in relation to the prevention of, preparation for, response to and recovery from emergencies in the district for which it is constituted”.<sup>8</sup>

## 2.2 Authorities’ duty to activate a plan for the organization of relief

### France

France seems to reflect a somewhat particular case since although there is no formal declaration when an emergency occurs, authorities have the possibility of activating the “ORganisation des SECours” plan (ORSEC). The current ORSEC plan lays out a structured action plan for the prevention, response to, and aftermath of disasters.<sup>9</sup> It is organized by geographical zones and contains guidelines seeking to address and provide an adequate response to any situations which might have a serious impact on the populations, such as major accidents, natural or technological disasters, terrorist attacks or health catastrophes. To become operational, the ORSEC plan has to be activated by French authorities or local representatives whenever events have, or could have, serious effects on the population. Thus, when local organizations are not in a position to respond to certain emergency situations due to their lack of capacity, the mayor of a town, the *Préfet de Département* (the Governor of the District), the *Préfet de Zone* (the Governor of the Region) or the *Préfet Maritime* (the Governor of the Sea Front), depending on the geographical areas affected by the situation, may activate the ORSEC plan. The system is flexible and allows for an escalation of the available measures. The hierarchy of command is clearly defined and each actor can upgrade the response to any situation.

## 3. General effects of a declaration of emergency

### Qatar

Qatar’s current legal framework foresees obligations to all individuals in case of necessity, regardless of their status:

“Any person, even if he/she is not a volunteer, is considered responsible for offering the assistance that he/she can provide and that is required for civil defence in the fields where there is a necessity.”<sup>10</sup> In addition, a declaration of emergency triggers the application of specific disciplinary standards for individuals working at civil defence;<sup>11</sup> the mandatory permanence of staff working in sectors considered vital;<sup>12</sup> and the possibility of the temporary

<sup>8</sup> *Ibid.*, Section 22.

<sup>9</sup> The current ORSEC plan was introduced by Law N°2004-811 of 13 August 2004 on the Modernization of Civil Safety.

<sup>10</sup> Qatari Civil Defence Department Law N°13 of 1997, Article 17.

<sup>11</sup> *Ibid.*, under Article 8(1) upon the declaration of state of emergency: “The persons working at the civil defence and that do not work at the police forces shall be subject to the rules of discipline and sanctions that are decided upon the persons working at police forces in accordance with the provisions of Law N°23 of year 1993 [relating to police forces].”

<sup>12</sup> *Ibid.*, under Article 8(2) upon the declaration of state of emergency: “The individuals working for public services and vital establishments [as such terms are defined in the CDD Law], and in the sectors of medical services, and foodstuffs, are prohibited from leaving their workplace without the authorization of the civil defence responsible at the service or institution. This prohibition shall also apply to any other category of persons whom the CDD deems it is essential that they remain in their jobs to guarantee the continuity of normal life.”



seizing of private property, with fair indemnification.<sup>13</sup> In relation to volunteers, the Qatari law indicates that:

“The CDD [Civil Defence Department] shall establish teams of volunteers whom it will train on civil defence activities outside of the official hours of work, so that they may participate in the performance of certain civil defence activities in the event of declaration of state of emergency.”<sup>14</sup>

Although it is not expressly mentioned that this provision applies only in case of a declaration of emergency, the chapter’s title under which the article falls suggests that this is the case, namely: “Chapter 3 – Procedures and provisions of emergencies”. The provision seems to envision the regular training of volunteers who may remain on “stand-by”, ready to be called upon as needed. In relation to this issue, information gathered suggests that the regulations concerning volunteers are to be implemented in the future by the CDD, which is currently in the process of reforming its regulations and creating new volunteering regulations that will include among other issues the training and equipment required. The volunteers will be trained to help in emergency situations and other social activities that the CDD might put in place.<sup>15</sup>

## 4. Specific effects of a declaration of emergency

### 4.1 Direct effects on volunteering

#### Effects on the volunteer’s employment status

In some countries, a “declaration of emergency” can have an impact upon volunteers’ employment status (in case of volunteers who also work).

##### United States

In the US for example, State legislation indicates that it would be illegal to suspend or fire an employee who has not reported to work, if he/she was actively responding to an emergency, or serving as a volunteer emergency responder upon a declaration of a state of emergency. The pre-requisite would be that the volunteer informs the employer with notice as well as provides a certificate and incident report subsequently.<sup>16</sup>

##### Australia

Australia has similar legislation, namely the *Workplace Relations Amendment (Protection for Emergency Management Volunteers) Act 2003*.<sup>17</sup> It protects the rights of volunteers and provides an environment that facilitates volunteering – or at the very least removes barriers to volunteering in emergencies.

13 *Ibid.*, under Article 8(3) upon the declaration of state of emergency: “The Minister of Interior may issue decisions to temporarily seize plots, the seizure of which is required by the emergency circumstances, and such in consideration of a fair indemnification; the provisions of Law N°13 of year 1988 (regarding the expropriation of plots and their temporary seizure for the public interest) shall apply in this respect. The Minister of Interior may also issue decisions to seize movable assets in consideration of a fair indemnification for the period of their use and their deterioration as a result of such use.”

14 *Ibid.*, Article 12. Emphasis added.

15 According to clarifications orally obtained concerning the local law firm report on the State of Qatar.

16 New Jersey Emergency Responders Employment Act (2010).

17 *Workplace Relations Amendment (Protection for Emergency Management Volunteers) Act 2003* of 15 July 2003.



## Effects on specialized volunteer activities

### United States

Declaration of emergency may also have consequences for certain specialized activities, for example in relation to medical personnel. The US *Uniform Emergency Volunteer Healthcare Services Act* (2007) provides in Section 6:

“(a) While an emergency declaration is in effect, a volunteer health practitioner, registered with a registration system that complies with Section 5 and licensed and in good standing in the State upon which the practitioner’s registration is based, may practice in this State to the extent authorized by this [Act] as if the practitioner were licensed in this State.”<sup>18</sup>

As a main consequence the provision facilitates the volunteering by health-care practitioners in an emergency situation within the same country, lifting temporarily the mandatory observance of State regulations that restrict the practice of health practitioners to professionals licensed in their own States.

## 4.2 Indirect effects on volunteering

Other countries have legislation containing similar provisions that, although not clearly covering volunteers, may be interpreted so as to include certain categories of volunteers, especially individuals who also work in public institutions.

### Zambia

Zambia’s *Disaster Management Act 2010* is one such example, providing that:

“37. (1) Where a declaration of a state of disaster is declared under section thirty-six, the President, in consultation with the Council, may make regulations relating to:

[...]

(b) the release of personnel of a State organ or institution for the rendering of emergency services;”<sup>19</sup>

However, the language used in the highlighted provision does not clearly refer to volunteers. It may thus be interpreted narrowly, covering only regular public workers released to render emergency services (out of their voluntary commitment or following orders from State authorities).

<sup>18</sup> US Uniform Emergency Volunteer Healthcare Services Act, Section 6 (Recognition of Volunteer Health Practitioners Licensed in Other States). Emphasis added. The Act was drafted by the National Conference of Commissioners on Uniform State Laws and by it approved in 2007 and recommended for enactment in all US states. So far twelve States, the US Virgin Islands, and the District of Columbia have enacted the UEVHPA, and three more States introduced the Act in 2011. The States in which the UEVHPA has been enacted are: Arkansas, Colorado, Illinois, Indiana, Kentucky, Louisiana, Nevada, New Mexico, North Dakota, Oklahoma, Tennessee, and Utah. The Act was recently introduced in Connecticut, Mississippi, and Texas. [http://uniformlaws.org/LegislativeFactSheet.aspx?title=Emergency Volunteer Health Practitioners](http://uniformlaws.org/LegislativeFactSheet.aspx?title=Emergency%20Volunteer%20Health%20Practitioners).

<sup>19</sup> Zambia Disaster Management Act 2010, Section 37 (Regulatory powers in state of disaster). Emphasis added.



## Chapter 2: Recognition of volunteers and volunteer organizations in the emergency context

Using the emergency context as background, this chapter deals with the notion and regulation of different types of volunteers. Furthermore, this chapter addresses questions relating to the use of volunteers by organizations, as well as activities assigned to volunteers. Finally, it considers requirements to register and/or certify volunteers, and whether only such registered volunteers are allowed to respond to emergencies.

### 1. Definition of volunteers

In relation to the notion of volunteer, there are various understandings of what it means to be a volunteer, based on culture and context. There are many issues implicated in the characterization of a volunteer, and the consequences of this also may vary. The current study highlights the various ways in which ‘volunteers’ are referenced in legislation, and the approaches in the legal framework applicable to volunteers in emergencies in different jurisdictions.

#### Philippines

Some countries define volunteers in their disaster management law, and make no reference whatsoever to eventual payment of volunteers. The Philippines is one such example. The implementing *Rules and Regulations of Republic Act No. 10121*,<sup>1</sup> Rule 2, Section 1, (rr) define volunteers as the:

“[...] individuals/persons or group who for reasons arising from their socio-developmental, business and corporate orientation, commitment or conviction, contribute time, service, and resources whether full time or part time base to a just and essential social development cause, mission or endeavour in the belief that their activity is mutually meaningful and beneficial to public interest as well as to themselves.”

#### Zambia

Zambia’s *Disaster Management Act 2010* defines a volunteer as “a person providing, or assisting in the provision of, disaster management services.”<sup>2</sup> Compared to the previous one, this definition seems quite narrow, referring broadly to “persons” (which can be interpreted as potentially covering both individuals and legal entities)<sup>3</sup> acting in relation to a particular situation, namely disaster management services.

1 This Act is also known as Philippine’s Disaster Risk Reduction and Management Act of 2010.

2 Zambia Disaster Management Act 2010, Section 2.

3 Later in the same Act reference is made to different categories of persons. *Ibid.*, Section 29: “(1) Any person, private enterprise or non-governmental organization may, in the prescribed manner and form, volunteer to: (a) provide or assist in the provision of any disaster management service in any district; and (b) perform, within any district, any function connected with disaster management as determined by the District Committee.” Emphasis added.

## 2. Types of volunteers

### 2.1 Recognition of volunteers as one broad category

Some countries do not seem to recognize different categories of volunteers.<sup>4</sup>

### 2.2 Recognition of different categories of volunteers

#### Brazil

Other countries, like Brazil, adopted federal legislation covering volunteering in general, but left to States the possibility to adopt legislation on particular types of volunteers. One such example is the law adopted by the State of São Paulo on the creation of a volunteer corps of firefighters.<sup>5</sup>

#### France

France has a different model for it recognizes two broad categories of volunteers potentially able to respond to emergency situations. They are *bénévoles* and *volontaires*.

- The first category comprises persons who voluntarily exercise non-professional part-time activities outside their professional and personal time. They are not covered by specific legislation, but subject to ordinary French law.
- *Volontaires*, on the other hand, are full-time volunteers<sup>6</sup>, and therefore entitled to financial compensation in consideration for their time. Specific legal statutes regulate them, and *volontaires* most commonly used in emergency response are volunteer firefighters, Civic Service Commitment (CSC) and Civic Service Volunteering (CSV).

Due to the wealth of material on the subject regarding France, later reference in this section addresses particular types of volunteering in this jurisdiction. It is also of interest to stress that other francophone countries similarly seem to recognize the two main broad categories of voluntary engagement, indicating in their laws on volunteering that they apply to *volontaires* only. The laws on volunteering of both **Burkina Faso** and **Togo**, for instance, mention that national *volontaires* are not to be considered as *bénévoles*.<sup>7</sup>

### 2.3 Differentiation between national and international volunteers

#### Measures restricting volunteering by foreigners

##### Nationality set as a criterion to become a national volunteer - Togo

Regarding any eventual distinction made by law between national and international volunteers, some countries set nationality among the relevant criteria

<sup>4</sup> This is the case for example of **Indonesia** and **Qatar**.

<sup>5</sup> Law 10.220 of 12 February 1999 adopted by the State of São Paulo.

<sup>6</sup> One has to note that the possibility of volunteering full time may hardly be accepted across jurisdictions, since in some countries Courts may interpret such commitment as amounting to employment and not volunteering.

<sup>7</sup> Burkina Faso Law 031-2007/AN of 17 January 2008, Article 3: “[...] Le volontaire national n'est ni un bénévole, ni un salarié au sens du droit du travail.” See also Togo's Law on Volunteerism, Article 4: “[...] Le volontaire national n'est ni un bénévole, ni un agent public au sens du statut général de la fonction publique, ni un salarié au sens du droit du travail.”

to become a volunteer. Togo's law on the subject, for example, lists among the requisites to become a national volunteer to be a Togolese national.<sup>8</sup>

### Residence set as a criterion to become a national volunteer – Burkina Faso

While Burkina Faso's *Law on Volunteerism* focuses on national volunteerism, it allows both nationals and foreigners to volunteer. Foreigners, however, have to reside for at least two years in the national territory in order to become a national volunteer.<sup>9</sup> Such differences in the criteria set for becoming a volunteer under national law may pose difficulties in an emergency context, for example in the event that foreign individuals not fulfilling these criteria offer to volunteer in the country affected by an emergency.

## Measures facilitating volunteering by foreigners

### Procedure for foreigners volunteering - Macedonia

Other countries have adopted legislation with the view to facilitate volunteering by foreigners. One such example is Macedonia, whose *Law on Volunteering* envisages the possibility of foreigners volunteering, subject to a particular procedure seeking authorization from the Ministry of Labour and Social Politics.<sup>10</sup>

### Special visa for foreigners volunteering – South Africa

Similarly, South Africa amended its immigration legislation in order to accommodate the possibility of issuing a visa to foreigners coming to the country for volunteering purposes.<sup>11</sup> This amendment can be identified as an effort to foster the coming of international volunteers to the country.

### Temporary visa for foreigners volunteering - Brazil

Brazil also allows foreigners to stay and/or work in the country, upon the application for a temporary visa called VITEM 5 (which covers volunteers among others) as well as a work permit. Once both documents are obtained, one can freely stay and work in any part of the country, including as a volunteer.

### Entry of foreign volunteers on a case-by-case basis - Indonesia

In Indonesia the entry of international volunteers on a case-by-case basis, is stipulated in specific immigration policies. During the tsunami disaster in Aceh in 2004, for instance, the relevant authorities issued a policy allowing international volunteers to participate in the emergency response.

### Potential exemptions from the immigration law for the entry of volunteers - Qatar

In Qatar, foreigners' entry into the country is governed by the *Immigration Law* No. 4 of 2009 (the Immigration Law), which does not contain anything specific regarding the entry or the sending of volunteers to other States.

According to the provisions of the *Immigration Law*, no non-Qatari individual may enter Qatar unless *inter alia* with a visa and under the sponsorship of a party in Qatar. However, Article 43 paragraph 3 of the Immigration Law provides that by exception to the provisions of Article 18, the Minister of Interior

8 Togo's Law on Volunteerism, Article 9: "Nul ne peut être volontaire national: - s'il n'est de nationalité togolaise [...]".

9 Law 031-2007/AN of 17 January 2008, Article 7: "Peut être volontaire national toute personne physique, quel que soit son niveau d'étude, de formation ou de qualification répondant aux critères ci-après : – être de nationalité burkinabé ou résider depuis au moins deux ans sur le territoire national [...]".

10 Macedonian 2007 Law on Volunteering, Article 8.

11 South Africa Immigration Act 13 of 2002, as amended by Act 19 of 2004, Section 11, (1)(b)(ii) (bb).



may issue visas and grant residency permits without a sponsor to specific categories including *inter alia* any category that is determined by a decision of the Council of Ministers. It is not entirely clear whether this principle would also apply in relation to international volunteers. This is left at the concerned authorities' discretion.

It is however worth noting that Article 4 of the Arab Convention (to which Qatar is a party) provides that member States undertake to provide the required facilitations for the moving of rescue teams and representatives of member States that accompany them in missions related to rescue operations and especially:

1. Granting rescue representatives who carry certificates issued by the governmental authorities or rescue committees adopted in the member States the required entry or exit visas upon their arrival or leaving of borders' offices in member States without any delay when the object of their leaving or entering of such State is for rescue activities;
2. Providing the facilitations required for the transportation of rescue representatives and the rescue materials (as such term is defined in the Arab Convention) accompanying them to the affected regions through the means of aerial, terrestrial, and maritime national transportation in member States, and granting them priority over other passengers and providing them facilitations of free or reduced travel on such means.

Furthermore, Article 57 of the Qatari *Immigration Law* provides that without prejudice to the provisions of the international treaties ratified by Qatar, the parties enumerated in the said Article shall be exempted from the provisions of this law, including *inter alia*

- i. the heads and members of foreign diplomatic and consular missions and international organizations appointed by the State, and the administrative staff and their families and the persons following them, and the official convoys; and
- ii. the persons that the Minister of Interior decides to exempt for considerations based on the principle of reciprocal treatment or for international courtesy considerations or for the public interest.

### 3. Organizations allowed to resort to volunteers

#### Organizations having received the State's approval and/or fulfilling specific requirements - France

In relation to the types of organizations that may engage volunteers, in France any public or private legal entity may use *bénévoles*. In emergency situations, however, only associations that have State approval to conduct civil safety missions (the so-called "Associations of Civil Safety") are allowed to use *bénévoles*. In an emergency context, public legal entities may use *bénévoles* in the framework of the "Municipal Reserve", which can be set up by any mayor to oversee civil safety endeavours, especially when providing assistance to the population when it is unable to respond to major crisis or post-disaster situations due to insufficient means.<sup>12</sup>

<sup>12</sup> The Law on the Modernization of Civil Safety N°2004-811 of 13 August 2004 addresses, among other issues, the 'Municipal réserve'.

The regulations of France in relation to *volontaires* indicate that both public and private legal entities may engage them, but the latter have to meet a number of requirements (such as the obligation for associations to be established in France), or have to obtain State approval. In order to use CSC and CSV *volontaires*, the Associations of Civil Safety and further types of association have to meet the legal criteria, namely to demonstrate they have a philanthropic, educational, environmental, scientific, social, humanitarian, sports-related, familial or cultural purpose or that they work towards ensuring civil safety or the promotion of citizenship.

In relation to firefighters, they can only be deployed by firefighting and rescue services, most notably the *Service Départemental d'Incendie et de Secours* (SDIS), and cannot be used by any association in the civil safety sector.<sup>13</sup>

#### Both public and private organizations - Brazil

In Brazil, besides taking place in public entities of any kind, volunteering can also be agreed in relation to private non-profit entities with a diversity of goals, namely civic, cultural, educational, scientific, recreational or social assistance.<sup>14</sup>

#### Organizations under the coordination of specialized collective bodies - Indonesia

In Indonesia, two specialized collective bodies are in charge of coordinating the deployment of volunteers, though international organizations and foreign NGOs may also take part in disaster management under the coordination of such bodies,<sup>15</sup> as well as engage volunteers in their activities.

## 4. Restrictions due to activities and age

#### No restriction except with regard to regulated professions - France

In relation to the types of activities assigned to volunteers, together with further requirements set for volunteers, France does not impose restrictions on the activity of *bénévoles*. However, in France no person can exercise a regulated profession that he/she is not qualified to exercise (for instance only a doctor may exercise that profession, even within the *bénévolat* framework). In relation to *volontaires*, France sets the same objectives for both CSC and CSV, namely:

1. to commit *volontaires* to a collective project and;
2. to take part in a mission of general interest with a public or approved private legal entity, which will take place in France or abroad. Such missions may relate to a number of areas, including humanitarian aid and emergency intervention.

The main difference between CSC and CSV regards the age of the volunteer and the duration of the mission. CSC volunteers must be between 16 and 25 years old, and parental consent is needed if a minor. CSV volunteers must be older than 26 years old. In relation to mission duration, the CSCs' commitment

13 French Law N°96-370 of 3 May 1996 governing the development of volunteering in the National Fire Brigades Officers.

14 Brazilian Law 9.608 on Volunteerism of 18 February 1998, Article 1.

15 Indonesian Government Regulation N°23 of 2008 on the Participation of International Institutions and Foreign Non-Governmental Institutions in Disaster Management, Article 10. The two collective bodies referred to are the National Disaster Management Board (*Badan Nasional Penanggulangan Bencana* or "BNPB"), and the Regional Disaster Management Board (*Badan Penanggulangan Bencana Daerah* or "BPBD").

is for 6-12 months, 24-48h/week (maximum of 35h/week if a minor) whereas CSVs commit themselves to 6-24 months, 24-48h/week. Both CSC and CSV volunteers need to be either French nationals or have long-standing ties with France.<sup>16</sup> The two categories are allowed to work in addition to volunteering, but not for the legal entity with whom they volunteer.

## 5. Formalization of the relationship between an organization and its volunteers

In relation to the legal basis for the relationship between an organization and its volunteers and the eventual obligation to conclude a volunteering contract, it can be said that some jurisdictions allow a relative degree of flexibility regarding volunteers' status and time commitment. A formal written contract may demonstrate the commitment of both parties towards the volunteering, although in some emergency situations the obligation to formalize a written contract may pose a challenge.

### Written contracts for certain volunteers - Macedonia

Regarding such procedures, Macedonia in its 2007 *Law on Volunteerism* sets the obligation for organizations engaging volunteers to conclude a volunteering contract, in written form, with individuals volunteering more than 40 hours per month. Such a formality is optional in case of volunteers committing themselves for less than 40 hours per month. Finally, in relation to foreigners, it is mandatory to conclude a formal written volunteering contract, regardless of the number of hours agreed for the volunteering.<sup>17</sup>

### Written contracts with mandatory provisions for all volunteers - Brazil

In Brazil, volunteering shall take place after the signing of an agreement between the public or private entity in which volunteering will occur, and the individual volunteer, containing the object and the conditions of the volunteering.<sup>18</sup>

### Specific kind of contracts for volunteers - Indonesia

Similarly, in Indonesia the law requires parties to sign a special type of contract called the “provision of specific services”.<sup>19</sup> The parties to the contract shall be the organization, which may include an international institution or foreign non-governmental institution, and the volunteer individually.

### Written contracts for all volunteers - France

In France, the law requires the execution of a written contract between the *volontaire* (including CSC and CSV *volontaires*) and the association for which he/she carries out the activity. The contract must mention the conditions under which the *volontaire* shall undertake his/her mission, including, *inter alia*, the location, nature and duration of the mission, indemnification, health

<sup>16</sup> This can be understood as a citizen of a country in the European Economic Area, legally residing in France for at least a year, or a third-country national from a country where French civil service volunteers are deployed.

<sup>17</sup> Macedonian 2007 Law on Volunteering, Article 14.

<sup>18</sup> Brazilian Law 9,608 on Volunteerism of 18 February 1998, Article 2.

<sup>19</sup> This type of contract is provided for under Book III, Chapter VII A of the Indonesian Civil Code.

insurance, vacation time, and early termination terms. Among other rules, the *volontaire* is subject to the internal rules of the association (most notably regarding confidentiality and the duty of secrecy). Accordingly, the association may also decide to terminate the volunteering contract and hire the *volontaire* for a six-month employment contract, or for an indefinite period of time.<sup>20</sup> In relation to firefighters, French law stipulates that they must commit to exercise their duties with obedience, discretion and responsibility pursuant to legislative and regulatory provisions. Firefighters are typically engaged for a period of five years. However, in the case of an occasional and serious emergencies - such as natural disasters - additional volunteer firefighters may be called upon for a maximum period of three months (renewable only once for exceptional purposes).<sup>21</sup>

## 6. Accreditation and mobilization of volunteers

### No mandatory accreditation of volunteers - Indonesia

In Indonesia, on the contrary, there are neither registration nor certification requirements for volunteers to respond to emergencies. Nevertheless, firefighters, medical and search and rescue personnel may already have certification and registration with their formal institution.

### Mandatory registration or certification of certain volunteers - France

In France, registration varies according to the type of volunteers deployed. *Bénévoles* are not required to be registered or certified to work for an association. In relation to *volontaires*, namely CSC and CSV volunteers, it is important to recall that before engaging a CSC or a CSV volunteer, associations must be approved by the State, which evaluates their resources in order to ensure that they are able to conduct their mission. The riskier the mission (especially for emergencies), the more resources the associations need in order to be granted approval. The associations are not, however, required to prove that their *volontaires* are registered or certified in any way to be granted approval. The associations must simply list the *volontaires* that they wish to deploy in a given mission. This suggests that only the listed *volontaires* for an approved mission may become involved in emergency situations. Finally, volunteer firefighters are registered in the SDIS with which they have committed to volunteer, and thus act within the framework of a rescue service controlled and managed by a local authority.

### Mandatory accreditation of all disaster volunteers - Philippines

Regarding the accreditation and mobilization of volunteers, especially in disasters, in the Philippines the *Disaster Risk Reduction and Management Act of 2010* stipulates a procedure for the accreditation of disaster volunteers, which is to take place at the municipal or city level.<sup>22</sup> Only through such a procedure may government agencies, civil society organizations, private sector and local government units mobilize volunteers to augment their respective personnel in the delivery of disaster risk reduction programs. It further indicates that each respective entity concerned shall take full responsibility for the enhancement,

20 French Law N°2010-241 of 10 March 2010 on Civic Service, Article 8 creating Articles L. 120-15 and L.120-16 of the National Service Code.

21 French Decree N°2009-1208 of 9 October 2009 on firefighters volunteering recruitment.

22 Philippine Disaster Risk Reduction and Management Act of 2010, Section 13.



welfare and protection of volunteers. The list of volunteers accredited in this process is to be included by the body in charge of civil defence in the database of community disaster volunteers. Furthermore, the Act indicates that a national roster of “Accredited Community Disaster Volunteers” (ACDV) shall be maintained.

The Implementing Rules and Regulations of the same Act further indicate that the training of volunteers shall form part of the volunteer mobilization activities by the different Disaster Risk Reduction and Management Councils (DRRMC), at the various structural levels of the State (national, regional, local, etc.).<sup>23</sup> Nevertheless, more precise guidelines on the mobilization, accreditation, capacity-building and protection of ACDVs are to be issued. Although the provision seems to focus on disaster risk reduction (DRR) activities, the accreditation procedure and the maintenance of a roster of disaster volunteers may facilitate their swift mobilization, should the need arise.





## Chapter 3: Liability and immunity

# 3

This chapter addresses issues relating to the liability of volunteers and organizations towards third parties, the liability of organizations towards volunteers, and the duties or codes of conduct assigned by law to volunteers. Furthermore, the chapter deals with immunities, especially whether they apply to volunteers and/or organizations. Due to the wealth of examples, they are clustered into groups and subgroups, taking into account the adoption by States of legislation on volunteering, and specific subjects of interest, respectively. It is also to be noted that the way liability arises may vary across jurisdictions. In countries adopting the civil law system liability is likely to arise out of legislation, whereas in other countries liability may arise out of statutes and/or the common law concept of tort.

### 1. Countries with legislation on volunteering in emergency

#### 1.1 Criminal liability of volunteers and organizations in relation to emergency response

##### List of prohibited acts - Philippines

In the Philippines the *Disaster Risk Reduction and Management Act of 2010* lists a series of prohibited acts which relate to disasters and emergencies. It provides that any person, group or corporation committing the proscribed acts shall be held liable and subjected to penalties. Among such punishable acts figures a number relating to the misuse of relief goods (including the buying and selling of relief goods which are intended for humanitarian assistance); the dereliction of duties which leads to destruction, loss of lives, critical damage of facilities and misuse of funds; illegal solicitations by persons or organizations representing other humanitarian entities; and the deliberate use of false data in support of the request for funding, relief goods, equipment or other aid commodities for emergency assistance or livelihood projects.<sup>1</sup>

The application of the penal clause does not seem to be conditioned to any particular time (such as after a declaration of emergency) but rather to certain conducts proscribed by the Act. The likelihood of the occurrence of such conduct though would usually be in relation to humanitarian crises. Both volunteers and organizations could be held responsible. Penalties range from fine and/or imprisonment of between 6-12 years. In cases where the offender is a corporation, partnership or association, or other juridical entity, the penalty shall be imposed upon its respective officer(s) without prejudice to the

<sup>1</sup> Philippine Disaster Risk Reduction and Management Act of 2010, Section 20. Emphasis added.

cancellation or revocation of this entity' license or accreditation issued by the government.

Another important feature contained in the Act and potentially covering international volunteers is the indication that, if the offender is an alien, he/she shall, in addition to the penalties prescribed in the Act, be deported without further proceedings after serving the sentence.<sup>2</sup>

A consequence of adopting legislation with penal clauses relating to disaster/emergency, in addition to prohibiting such conduct, is to raise awareness among organizations, individuals and others about their obligations.

## 1.2 Immunity in emergency response

### Immunity granted to volunteers for acts committed in good faith – Pakistan and South Africa

In Pakistan, the *Punjab Emergency Services Act 2006* stipulates that an act or omission committed by a volunteer in good faith for the purpose of exercising functions related to the emergency, shall not subject such volunteer personally to “any legal action, liability, claim or demand”, and further, that any such proceedings or claims “shall be defended and indemnified” by the Punjab Emergency Service.”<sup>3</sup>

In South Africa, the *Disaster Management Act 2002* stipulates that:

“the Minister, the National Centre, a provincial or municipal disaster management centre, an employee seconded or designated for the purpose of the National Centre or a provincial or municipal disaster management centre, a representative of the National Centre or a provincial or municipal disaster management centre, or any other person exercising a power or performing a duty in terms of this Act, is not liable for anything done in good faith in terms of, or in furthering the objects of, this Act.”<sup>4</sup>

Although the language used here does not clearly refer to volunteers, the Act does refer to volunteers elsewhere,<sup>5</sup> and thus this provision may also be interpreted as covering volunteers acting in emergencies.

### Immunity provisions not covering volunteers - Zambia

In certain countries, despite the adoption of legislation covering volunteering in disaster, immunity provisions do not cover volunteers. Such is the case of Zambia, for its *Disaster Management Act 2010* refers to immunity applicable to members of different committees and sub-committees (technical, provincial, district and satellite committees), but which leaves volunteers unprotected since they are not members of such bodies. Accordingly:

“An action or other proceeding shall not lie or be instituted against a member of the Committee or a sub-committee for, or in respect of, any act or thing done or omitted to be done in good faith in the exercise

<sup>2</sup> *Ibid.*

<sup>3</sup> Punjab Emergency Service Act 2006, Section 19.

<sup>4</sup> South Africa Disaster Management Act N°57 of 2002, Chapter 8, Section 61 (Indemnity). Emphasis added.

<sup>5</sup> *Ibid.*, Chapter 7, Section 58 (Disaster management volunteers): “A metropolitan or a district municipality may establish a unit of volunteers to participate in disaster management in the municipality.” It seems however that the Act refers to a particular type of volunteers, who are volunteering under the general supervision of authorities.

or performance, or purported exercise or performance, of any of the powers, functions or duties conferred under this Act.”<sup>6</sup>

### Debate on the advantages of granting immunity to volunteers

Legal protection given to volunteers may encourage engagement of individuals, and create an enabling environment, particularly in countries where lawsuits are frequent.

Granting immunity to volunteers acting in emergencies is, however, not a measure unanimously welcomed. In the literature, Rothstein (2010), addressing particularly US health practitioners acting in emergencies in that country, strongly opposes the issue. He argues that

“laws granting volunteer physicians immunity in public health emergencies have the effect of discriminating against poor people, have the potential to be socially destabilizing, and could undermine public health interventions in an emergency.”<sup>7</sup>

For Rothstein, such immunity discriminates between regular physicians, who work for payment in the framework of an existing health system, likely to treat “customers” (patients with insurance coverage, or with the material means to pay for the service), and volunteer physicians, likely to be allocated to treat people outside the health care system and without means to pay for medical treatment. He argues that, while patients in the first group can potentially file a claim in relation to medical malpractice, the second group of patients, if such immunity applies, would not be entitled to do the same if they were victims of medical malpractice. Hence, immunity gives the message that, non-paying patients harmed by substandard medical care have no legal recourse. Rothstein suggests instead that the government should pay for the malpractice insurance of volunteer physicians or indemnify physicians for any claim arising from their services. In any case, he argues that even if very few claims regarding emergency situations are likely to be filed, especially by indigent patients, it is nevertheless important to keep the same standard of legal protection for all patients. Rothstein stresses that a balance should be sought between encouraging volunteering among health practitioners and making sure patients are receiving adequate treatment during emergencies. Although he raises important points for discussion, one has to consider whether his argument also applies to countries with a different health system than the US, for example countries having universal health system coverage reaching all individuals similarly.

## 1.3. Compensation of volunteers in case of injury/death in emergency response

While disaster legislation in various jurisdictions refers to the role of volunteers, in many instances it is unclear if compensation is to be provided to volunteers, in case of injury or death.

### Philippines

6 Zambia Disaster Management Act 2010, Schedule (Immunity of member of committee or sub-committee), at 6. Emphasis added.

7 Rothstein, M., “Malpractice Immunity for Volunteer Physicians in Public Health Emergencies: Adding Insult to Injury”, *Journal of Law, Medicine & Ethics* (2010), 149-152, at 149.

In the Philippines, the *Disaster Risk Reduction and Management Act of 2010* stipulates that any volunteer who incurs death or injury while engaged in activities such as those relating to disasters and emergencies shall be entitled to compensatory benefits and individual personnel accident insurance.<sup>8</sup>

The *Implementing Rules and Regulations* of this particular law indicate that the government agency, civil society organization, private sector or local government unit which mobilizes the ACDVs shall be responsible for providing the latter with insurance and necessary benefits.<sup>9</sup>

The provision notably strengthens the legal protection of volunteers in emergencies. However, it applies to the ACDVs, the category of volunteers accredited by governmental authorities. Volunteers who have not previously been granted such status therefore do not seem to be covered. Conditions for becoming an ACDV are to be set out in guidelines to be issued by the body in charge of dealing with disasters and emergencies (see *Implementing Rules and Regulations of Republic Act No. 10121*, Rule 9, Section 6).<sup>10</sup>

### Zambia

Zambia has an analogous provision in its *Disaster Management Act 2010*, containing language addressing volunteers in disaster, namely:

“(2) The President may, by statutory instrument, make regulations to: [...] (b) provide for the procedure, criteria, type and the determination of compensation to be given to a volunteer for any disability or injury during the provision of volunteer services under this Act;”<sup>11</sup>

### South Africa

South Africa has a similar rule, though phrased in less clear terms. According to the *Disaster Management Act 2002*:

“The Minister may make regulations not inconsistent with this Act providing for the payment, out of moneys appropriated by Parliament for this purpose, of compensation to any person, or the dependants of any person whose death, bodily injury or disablement results from any event occurring in the course of the performance of any function entrusted to such person in terms of this Act.”<sup>12</sup>

The language used allows a certain degree of discretion regarding the making of regulations and the provision contains no clear reference to volunteers. It may nevertheless be interpreted so as to cover volunteers acting in emergencies.

<sup>8</sup> Philippine Disaster Risk Reduction and Management Act of 2010, Section 13. Emphasis added.

<sup>9</sup> Implementing Rules and Regulations of Republic Act N°10121, Rule 9, Section 5.

<sup>10</sup> It says: The NDRRMC, through the OCD, shall formulate, promulgate and issue within three (3) months from the effectivity of these Rules the guidelines on the mobilization, accreditation, capacity-building and protection of ACDVs from the government agencies, CSOs, private sector and LGUs. See *Implementing Rules and Regulations of Republic Act N°10121*, Rule 9, Section 6. For the acronyms, see list at the end of the current study.

<sup>11</sup> Zambia Disaster Management Act 2010, Section 29 (Disaster management volunteers). Emphasis added.

<sup>12</sup> South Africa Disaster Management Act N°57 of 2002, Chapter 8, Section 59 (Regulations). Emphasis added.

## 2. Countries with legislation on volunteering in general only

### 2.1 Liability of volunteers towards third persons

#### Nicaragua

The Nicaraguan *Law on Volunteerism* contains a general provision that could lead to the liability of volunteers in relation to third persons, possibly also in the context of emergencies. It lists among volunteers' obligations the respect of the rights of beneficiaries of their voluntary activities.<sup>13</sup> Under this provision, volunteers notably have to respect and comply with the instructions received from the organization in which they participate, for the proper development of the mandated activities."<sup>14</sup>

#### Macedonia

In Macedonia, the 2007 *Law on Volunteerism* indicates that the volunteer who during or in relation to the volunteer services causes damage to third parties, is obligated to compensate that party, according to the provisions of the *Law on Obligatory Relations*.<sup>15</sup> Furthermore, a fine of € 50 to 200 shall be imposed on the volunteer who does not compensate third parties for such damage.<sup>16</sup> Here it is interesting to note that a clear obligation to compensate lies directly with the volunteer.

### 2.2 Liability of organizations towards third persons

#### Burkina Faso

In Burkina Faso, in case of damage inflicted by volunteers on third parties in the course of or in connection with the performance of their duties, the national law on volunteerism indicates that the voluntary organization shall be liable. Although the law is silent on this particular issue, the provision is likely applicable to situations of emergency.

Voluntary organizations may subsequently seek indemnity from volunteers who harmed third parties deliberately or out of gross negligence.<sup>17</sup> The highlighted provisions therefore strike a balance in relation to the protection of volunteers, voluntary organizations and third parties.

### 2.3 Liability of organizations towards volunteers

#### 2.3.1 Obligation to insure and compensate

##### Macedonia

13 Nicaraguan Law N°543 of 22 June 2005 on Social Volunteerism, Article 9(3): "[...] Respetar los derechos de los beneficiarios de su actividad voluntaria."

14 *Ibid.*, Article 9(6).

15 Macedonian 2007 Law on Volunteerism, Article 12.

16 *Ibid.*, Article 24.

17 Law 031-2007/AN of 17 January 2008, Article 15: "Le volontaire national a droit à une protection civile pour les dommages causés à des tiers dans l'exercice ou à l'occasion de l'exercice de sa mission. Cette protection civile est assurée par la mise en œuvre de la responsabilité civile de la structure d'accueil.  
La structure d'accueil peut, après réparation du préjudice, exercer une action récursoire contre le volontaire national lorsque le fait préjudiciable présente le caractère d'un dol, d'une faute lourde ou intentionnelle."



In Macedonia, the 2007 *Law on Volunteerism*, incorporating by reference the provisions of the *Law on Obligatory Relations*, indicates that organizations are obligated to compensate damages to volunteers, caused during or in relation to the volunteer services.<sup>18</sup> Furthermore, a fine of € 500 to 1000 shall be imposed on organizations that do not compensate such damage to their volunteers.<sup>19</sup>

Although the provision is to be fully fleshed out through another law, it already clearly sets the principle that organizations have to compensate volunteers in case of damage.

### Nicaragua

In Nicaragua, the *Law on Social Volunteerism*, although not focusing exclusively on volunteering in emergencies, contains some provisions that may be of considerable interest in that context. One such example relates to the obligation of voluntary organizations to ensure to their volunteers medical services in cases of accident, disability or death, as well as coverage regarding funeral expenses and diseases arising directly from the exercise of voluntary activities.<sup>20</sup> Volunteers also have the right to receive free comprehensive medical care from their organization in case of accident or sickness resulting from the exercise of voluntary activities.<sup>21</sup>

### Mozambique

Similarly, in Mozambique the *Law on Volunteerism* stipulates that volunteers are entitled to receive compensation, allowances, pensions, and other legally defined benefits in case of accidents or diseases contracted in the exercise of the volunteering.<sup>22</sup> Another related provision indicates that whenever actions undertaken on a voluntary basis may endanger the life, physical integrity or somewhat put the volunteer at risk, the organization must provide an insurance policy covering all risks to which the volunteer is exposed.<sup>23</sup>

These provisions seem to be of relevance for those volunteering in an emergency context.

## 2.3.2 Obligation to address increased health and safety risks

Nicaragua's *Law on Volunteerism* contains general provisions that relate to health and safety issues, without specifically referring to emergencies. The law lists among volunteers' rights the ability to carry out the tasks with all appropriate health and safety measures in place, according to the nature and characteristics of such tasks.<sup>24</sup> Similarly, organizations have to ensure that

18 Macedonian 2007 Law on Volunteering, Article 12.

19 *Ibid.*, Article 22.

20 Nicaraguan Law on Social Volunteerism, Article 14(6).

21 *Ibid.*, Article 8(4).

22 Law 7/2011 of 11 January 2011, Article 8 (1)(d): "São direitos do voluntário: ... (d) receber da entidade promotora indenizações, subsídios e pensões, bem como outras regalias definidas legalmente, em caso de acidentes ou doenças contraídas no exercício do serviço voluntário."

23 *Ibid.*, Article 7 (Seguro de risco): "Sempre que as acções praticadas em regime de voluntariado possam perigar a vida ou pôr em causa a integridade física, ou ainda, que possam acarretar eventuais riscos para a pessoa voluntária, as entidades públicas ou privadas promotoras devem providenciar um seguro que cubra a totalidade dos riscos a que o voluntário se encontra exposto."

24 Nicaraguan Law on Volunteerism, Article 8(6): "Realizar su actividad con las debidas condiciones de seguridad e higiene en función de su naturaleza y características."

volunteers carry out their activities under healthy and safe conditions, and provide the necessary resources for them to carry out their activities.<sup>25</sup>

However, studies have pointed out difficulties in various countries – among them Nicaragua - in relation to the implementation of existing legislation on volunteers.<sup>26</sup> One has to keep in mind that the adoption of legislation on the subject does not necessarily amount to a real improvement of the situation on the ground.

### 2.3.3 Obligation to establish contingency plans

In **Bolivia**, the *Law on Volunteerism* lists among the obligations set forth for organizations working in emergencies to draw up a contingency plan, and to inform volunteers about procedures to be undertaken throughout the different phases of a disaster.<sup>27</sup>

This provision ensures that volunteers are prepared to meet needs arising in that context.

## 2.4 Liability of volunteers towards organizations

### 2.4.1 General liability of volunteers

In **Macedonia**, the 2007 *Law on Volunteerism* states that volunteers who while carrying out volunteer services cause damage *on purpose or out of negligence* to their organization have to provide compensation.<sup>28</sup> Furthermore, a fine of € 50 to 200 shall be imposed on volunteers who do not compensate such damage.<sup>29</sup>

By focusing on conduct involving intention or negligence only, the provision protects volunteers causing damage due to other grounds. In an emergency context, volunteers unintentionally causing damage to the organization (car breakdown due to poor road conditions, etc.) are likely to be protected.

### 2.4.2 Duty to inform the organization of damaging facts and corresponding immunity

#### Macedonia

The Macedonian 2007 *Law on Volunteerism* lists among volunteers' obligations the requirement to inform the organization about harmful consequences that they are familiar with and which may damage the organization, volunteers personally or third parties. It further indicates that, if volunteers have previously informed the organization of such damaging consequences they will not be held liable for the damage caused.<sup>30</sup>

25 *Ibid.*, Article 14(5): "Garantizar a las personas voluntarias la realización de sus actividades en las debidas condiciones de seguridad e higiene, y proporcionar los recursos necesarios, para el cumplimiento de las actividades concertadas."

26 See, for example, United Nations Volunteers, *Laws and Policies Affecting Volunteerism since 2001* (2009), p. 34, indicating that although Nicaragua adopted in 2005 the Law on Volunteerism, regulations have not yet been implemented.

27 Law on Volunteerism (Ley N°3314 of 16 December 2005), Article 7(k). Available at <http://conavol.org/Documents/Ley%20N%203314%20del%2016%20de%20Diciembre%20de%202005%20DEL%20VOLUNTARIADO%20EN%20BOLIVIA.pdf>, visited on 20 July 2011. The original text reads: "Las organizaciones de Voluntario de Riesgo deberán contar, según su especialidad, con Planes de Contingencias para cada una de las actividades a encarar. Debiendo informar a sus voluntarios sobre procedimientos a emplearse dentro de las diferentes etapas del ciclo del desastre."

28 Macedonian 2007 Law on Volunteerism, Article 12.

29 *Ibid.*, Article 24.

30 *Ibid.*, Article 11.

The provision also seems of interest in an emergency context, in which local volunteers are likely to be more familiar with the particularities of the country (for example no-go areas, or areas hostile to emergency relief). They may have access to privileged information to be brought to the attention of the organization, so as to adjust aid relief operations accordingly.

## 3. Countries with general legislation

### 3.1 Liability of volunteers towards third parties

Many countries have no legislation on volunteering addressing the issue of the liability of volunteers towards third parties. Liability usually arises from general individual liability provisions, normally found under the Civil and/or Criminal Code.

#### Indonesia

One such example is Indonesia, where article 531 of the Indonesian Criminal Code provides:

“He who, witnessing the immediate danger that someone else experiences, neglects to render and supply him with the help that he can, without reasonable concern of danger to himself or others, render and supply, is punishable, if the death of the person in need ensues, by a prison term of at most three months or a fine of three hundred guilders.”

Criminal liability is also triggered where the action of volunteer causes death or injury to a third party.

Additionally civil liability may be triggered for the loss and damage suffered by a third party due to the action of the volunteer. This is a tort-based liability requiring fault to be proven. Acts of tort are regulated under Article 1365 of the Indonesian Civil Code, which stipulates as follows:

“A party, who commits an act of tort which causes damages to another party, shall be obliged to compensate the damages caused.”

#### Brazil

In Brazil the liability of volunteers in relation to third parties also arises from general legislation, especially the Brazilian Civil Code:

“A person who, by voluntary act or omission, negligence or recklessness, violates the rights and causes harm to others, even if only moral, commits an unlawful act.”<sup>31</sup>

Hence, different factors must be taken into account, namely:

- action or omission imputed to the volunteer;
- fault or particular intention by the volunteer;
- connection between the conduct and the damage caused; and
- the assessment whether damage was actually caused to third parties.

In regard to criminal liability, the Brazilian Penal Code applies as follows:

“Failure to provide assistance when possible to do so without personal risk, to an abandoned or lost child, or to a disabled or injured person, or

<sup>31</sup> Brazilian Law 10.406/2002 of 10 January 2002 (Brazilian Civil Code), Article 186.

to a helpless person in grave and imminent danger, or failure to request, in such cases, assistance of public authorities:

Penalty - detention of one to six months or a fine.

Sole Paragraph - The penalty is increased by half if the omission results in serious bodily injury, and tripled if death results.”<sup>32</sup>

Therefore, provided that it is possible to assist the person in danger without personal risk, the volunteer ought to do so or faces punishment.

Furthermore, specialized volunteers (medical doctors, for example) have to comply with particular rules applicable to their field, for instance the *Code of Ethics for the Medical Profession*.<sup>33</sup>

### **Qatar**

In Qatar, general liability rules also cover liability of volunteers towards third parties. According to the general civil liability provision:

“Each fault that causes damage to others obliges the person who committed it to indemnify.”<sup>34</sup>

Therefore, the civil liability of a volunteer towards a third party may be engaged if the following conditions are met, namely:

- a fault exists;
- damage occurred; and,
- there is a causal link between the fault and the damage.

Qatari *Civil Law* also governs the liability of a person for any unlawful acts he/she undertakes.

Although the standard of care of volunteers towards third parties is not expressly addressed, certain laws, including the *CDD Law*, contain a “duty to rescue”:

“any person, even if he/she is not a volunteer, is considered as responsible for offering the assistance that he/she can provide and that is required for civil defence in the fields where there is a necessity”.<sup>35</sup>

Criminal liability may also arise:

“Shall be punishable by imprisonment for a term not exceeding 3 years, and of a fine not exceeding QR /10 000/ [i.e. approximately United States dollar (USD) /2700/], or of any such two sanctions, any person who intentionally does not provide help to a person that is threatened by significant danger to himself or his assets, if this danger arises from a public disaster, and the person who refrained from providing assistance was capable of providing such assistance, and did not fear any personal danger from providing such help.”<sup>36</sup>

The Criminal Court in Qatar has indicated that the combination of three elements of crime is required, in order to give rise to criminal liability, namely:

<sup>32</sup> Brazilian Decree-Law 2.848 of 7 December 1940 (Brazilian Penal Code), Article 135.

<sup>33</sup> This Code conveys standards for the quality of medical care, including the principle that medical doctors ought to do what is feasible in a given circumstance in order to save patients' lives.

<sup>34</sup> Article 199 of the Qatari Civil Law.

<sup>35</sup> Article 17 CDD Law.

<sup>36</sup> Article 187 of the Qatari Criminal Code.

- the material element of the crime (represented in a positive act of committing something or in an abstention from doing something),
- the legal element (represented in the act or the abstention from acting being punishable by law), and
- the moral element (represented by an intentional act or a fault), then the person committing such act would be criminally liable<sup>37</sup>

### France

In France, the general provisions of civil liability law likewise govern the relationship between volunteers and third parties, especially the following:

“Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it.”<sup>38</sup>

Civil liability is triggered by three elements that a victim must establish:

- a damage,
- a fault (a damageable act), and
- a causal link between these two elements.

Under article 1382 of the Civil Code, people have to pay compensation for their acts that caused harm to others and for which they were at fault. Damageable acts can be positive acts (actual acts or behaviour), omissions, or recklessness causing a tort to someone. The wrongful nature of the act is evaluated by a judge contingent on the circumstances that led to the damage.

The liability of firefighters is governed by general French law while their behaviour is evaluated according to the rules applicable to their profession. They have a specific obligation to act with diligence.

Medical personnel and doctors are subject to specific legislation that provides for a best-endeavour obligation.<sup>39</sup> This means that doctors must have used all necessary and reasonable means in order to rescue or cure a patient. Doctors' liability may only be sought if they committed a fault.<sup>40</sup> Judges will evaluate the circumstances leading to damage, taking into account the material conditions and environment in which the doctors operated, in order to conclude whether they have been negligent.

In France, there is no specific or reinforced duty of care for volunteers, even in emergency situations. Furthermore, a volunteer has no particular duty to rescue, even under the ORSEC operation framework.

Nevertheless, they remain subject to the general duty to help a person in danger, namely:

“[a]nyone who, being able to prevent, by immediate action, a felony or a misdemeanour against another person, without risk to himself or to third parties, who wilfully abstains from doing so, will be punished by five years imprisonment and a fine of €75,000. The same penalties apply

<sup>37</sup> See for example, Qatari Criminal Court judgment rendered on March 2, 2009 (Judgment N°25).

<sup>38</sup> Article 1382 of the Civil Code. For the civil liability regime see Articles 1382 to 1384 of the French Civil Code.

<sup>39</sup> See French Law N°2002-303 of 4 March 2002 on the patient's rights and the quality of health system.

<sup>40</sup> This would be a situation in which the doctor does not use all means he/she has at his/her disposal or if he/she has been negligent. In some cases, the law provides for a performance liability which means that a doctor may be liable, even in the absence of a fault, if he/she did not achieve a specific result. However, these cases remain restricted to certain specific medical procedures such as blood transfusions or mandatory vaccinations.



to anyone who wilfully fails to offer assistance to a person in danger which he could himself provide without risk to himself or to third parties, or by initiating rescue operations.”<sup>41</sup>

Criminal liability of volunteers may also arise from the following general provision:

“Anyone who voluntarily abstains from taking or initiating measures, which involve no risk to himself or to third parties, to combat a natural disaster likely to endanger the safety of others is punished by two years’ imprisonment and a fine of €30,000”.<sup>42</sup>

Such provisions are of relevance especially to volunteers undertaking civil safety missions in emergency situations, for they are likely to be exposed to people in danger. However, one has to take into account the consideration of the matter by the judge, together with further criminal law provisions, as explained below.

The duty to provide help to a person in danger is called a “best-endeavours obligation”. It applies when a person is subject to certain and actual threats, and the existence of a real danger. The attempt to rescue must be necessary and immediate. However there is no obligation of result to save the person as long as everything possible was attempted in the given circumstances. The potential rescuer may be excused for not having acted/intervened if that would have implied excessive risks. Additionally, failure to rescue may not be punished if the attempt was sufficient in light of the circumstances.

It is left to the discretion of the judge to determine whether the rescuer who intervened and caused damage behaved proportionately to the seriousness of the threat. Volunteers who act according to their training are generally held to have acted proportionately. According to the exemption provision in the criminal code,

“A person is not criminally liable if, when confronted with a present or imminent danger to himself, another person or property, he/she 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.”<sup>43</sup>

Any omission to act is punished if the person objectively knew the situation was dangerous and did not attempt to prevent it. Errors of judgment as to the actuality of the danger do not give rise to convictions.

## Australia

Before addressing the main sources of civil liability of volunteers in relation to third parties, it is worth drawing attention to how the duty to rescue is regulated in the Australian jurisdiction. Generally, there is no duty to assist a stranger.<sup>44</sup> In *Hargrave v Goldman*<sup>45</sup> Windeyer J stated that:

“[...] The law casts no duty upon a man to go to the aid of another who is in peril or distress, not caused by him. The call of common humanity may lead to the rescue. This the law recognizes, for it gives the rescuer its

41 Article 223-6 of the French Criminal Code.

42 Ibid., Article 223-7.

43 Ibid., Article 122-7.

44 *Stuart v Kirkland-Veenstra* [2009] HCA 15; (2009) 237 CLR 215; *Council of Shire of Sutherland v Heyman* [1985] HCA 41; (1985) 157 CLR 424; *Hargrave v Goldman* [1963] HCA 56; (1963) 110 CLR 40.

45 [1963] HCA 56.

protection when he answers that call. But it does not require that he do so. There is no general duty to help a neighbour whose house is on fire.”<sup>46</sup>

Despite the absence of a general duty to rescue, in a number of exceptions people in “special relationships” may have a duty to come to the assistance of others. School teachers, doctors and prison officers are considered to be in such a “special relationship”, and have a duty to take care of their students, patients and prisoners respectively. Failure to provide first aid or arrange for first aid to be provided may constitute negligence.

Where a person’s duties include the provision of first aid at work, this person may be under a duty to assist fellow workers, and possibly also visitors to the workplace. Doctors, due to their professional standing and training, could also be expected to assist in an emergency. Section 36 of the 1992 *Medical Practice Act* (NSW) qualifies as “unsatisfactory professional conduct” the failure of a doctor to provide assistance when he/she could do so.

If a person decides to assist another, even where not legally required to do so, a standard of care corresponding to the person’s training is expected. However, Australian Courts appear to be sympathetic to the argument that emergencies require immediate action in circumstances often beyond a rescuer’s normal experience, and the difference between action and non-action by the rescuer could be a matter of life and death. Thus, they are reluctant to hold that well motivated attempts at rescue are negligent even if in hindsight another course of action would have been more appropriate.<sup>47</sup>

The Courts have consistently stated that the actions of a rescuer, even if negligent, are not considered sufficient to break the chain of causation if the damage suffered was a “natural and probable consequence” of the events that precipitated the need for the rescue: *Haynes v Harwood*.<sup>48</sup>

The law of tort is the main source of civil liability of volunteers in relation to third parties in Australia, most likely relating to allegations of negligence or trespass. A tort is a civil wrong requiring compensation to be paid to a plaintiff. Relevant torts in relation to emergency law include assault, trespass and negligence. An assault has been defined as “Any touching of another person, however slight”.<sup>49</sup> Given that rescues or first aid involve touching a person, there is a theoretical risk that liability for assault may be triggered. However, this seems unlikely in practice since there is no assault if the person rescued consents. Accordingly, as long as the volunteer acts appropriately without using excessive force there is no liability for assault.

Trespass to goods involves a direct and deliberate interference with another person’s property, whereas trespass to land is an action which is “committed [...] directly and intentionally [...] by] entering or remaining upon, or causing some object to come into contact with, land in the possession of another without the consent of the person in possession or other legal justification or excuse.”<sup>50</sup> Emergency volunteers are frequently interfering with an injured person’s property and/or land in order to effect a rescue. There is potential liability for trespass unless some other legal justification can be found for their actions (such as the valid exercise of a statutory power) or if they fall

<sup>46</sup> *Ibid.*, at 66.

<sup>47</sup> Eburn, M., *Emergency Law* (3<sup>rd</sup> ed, The Federation Press), at 28.

<sup>48</sup> [1935] 1 KB 146 at 156.

<sup>49</sup> *Collins v Wilcock* [1984] 3 All ER 374 at 378.

<sup>50</sup> Luntz, H & Hambly, D, *Torts (Cases & Commentary)*, Butterworths, Sydney 1996, at 680.

within the statutory protection granted to volunteers in emergencies (to be seen below).

Finally, negligence is the most likely cause of action against volunteers in emergencies. A plaintiff claiming compensation on the basis of negligence must show that the service and/or the individual (emergency volunteer) owed him/her a duty of care, that the rescuer failed to act reasonably in the circumstances, and that, as a result, he/she suffered harm. The determination of the existence of a duty of care giving rise to liability for negligence is a complex issue. Australian Courts have held that there must be a relationship of “proximity” between the plaintiff and the defendant, and it must be reasonably foreseeable that the defendant’s acts or omissions would expose the plaintiff to harm. In general, it is likely that Australian Courts would find that rescuers (including volunteers in emergencies) owe a duty of care to those they are assisting in an emergency.

When considering whether or not there has been a breach of a duty of care, the following factors are taken into account by the courts:

- a. the magnitude of the risk of harm;
- b. the probability of the harm occurring;
- c. the expense, difficulty and inconvenience of avoiding harm;
- d. other conflicting responsibilities the defendant may have had; and
- e. the social utility or value of the particular conduct.

It is worth noting that in some Australian jurisdictions, legislation has been passed to limit the circumstances in which a person can be found negligent for breach of duty of care. In the State of New South Wales for example, a person is not negligent for failing to take steps to protect another person from harm unless the risk of injury:

- a. was foreseeable;
- b. was not insignificant; and
- c. a reasonable person in the same circumstances would, and could, have taken some action to minimize or avoid that risk.<sup>51</sup>

When judging whether a person has been negligent in relation to his/her role in an emergency response, Australian Courts have acknowledged that people tend to be faced with situations which may be beyond their experience in emergencies and be placed in circumstances of danger, urgency and/or personal risk. In *Leishman v Thomas* it was held that:

“[a] man is not to be charged with negligence if he, not being the creator of the crisis or emergency which has arisen, finds himself faced with a situation which requires immediate action of some sort and if, in the so called “agony of the moment”, he makes an error of judgment.”<sup>52</sup>

In *Wallis v Albany*<sup>53</sup> it was held that a rescuer “acting under the pressure of emergency, is to be judged leniently as to the reasonableness of his conduct.” Nonetheless, in all the circumstances, the rescuer’s conduct falls below the

<sup>51</sup> Civil Liability Act 2002 (NSW) Section 5B (1).

<sup>52</sup> (1958) 75 WN (NSW) 173 at 175.

<sup>53</sup> (1989) Aust Torts Reports 283 at 69.

standard that could be reasonably expected from a reasonable rescuer, he/she can still be found negligent.<sup>54</sup>

In another relevant case, the Wests sued the State of New South Wales for alleged negligence of the Rural Fire Service in response to fires. Penfold J stated:

“It may be possible [...] to say, for instance:

that there is no common law duty to any individual member of the community to manage the Rural Fire Service in a particular way, to allocate resources such as funding for firefighting equipment in a particular way, or to issue or not issue particular delegations in connection with particular fires; but

in some cases [...] there might be a common law duty owed by the Rural Fire Service to a particular landholder on whose land Rural Fire Service officers had entered in the course of the firefighting activities.”<sup>55</sup>

He concluded that the plaintiffs might be able to mount an argument for negligence against the Rural Fire Service.

The statutory protection given to volunteers in Australia does not apply where the relevant act or omission constituted a criminal offence. Emergency workers (including volunteers) may be prosecuted under the criminal laws of the State in which they are deployed. The crimes notably may include homicide, causing serious injury, assault and theft. It must be shown that the rescuer had the intention to commit the crime, or for some crimes, acted recklessly.

However the common law defence of necessity may be relevant. It applies when a person has to choose between complying with the law and seeing harm done, or minimizing the harm by breaking the law. For this defence to apply, it must be shown that the accused did no more than was reasonably necessary in the circumstances and that the harm caused was not out of proportion to the harm to avoid.

## 3.2 Liability of organizations towards third parties

This section highlights the liabilities of organizations towards third parties, as well as some instances where there may be potential recourse actions in regard to the volunteers who have committed acts resulting in this liability.

### France

Even though there is no subordinate relationship between volunteers and associations, French case law has established the existence of a “preposition relationship” allowing third-parties to sue associations for vicarious liability, based on the following legal provision:

“A person is not only liable for the damage caused by his own acts, but also for that caused by the acts of persons whom he is responsible for, or by things which are in his custody.”<sup>56</sup>

Associations are vicariously liable for the actions volunteers perform on their behalf. It is enough for third parties to establish the fault of a volunteer. Associations are not liable, however, where the volunteer’s fault results from

54 Dunlop, C, “Volunteers in the 2000s – Volunteer liability in the Emergency Services” Maddocks, at 5.

55 Case of New South Wales v West [2008] ACTCA 14.

56 Article 1384 of the French Civil Code.

a misconduct that cannot be imputed to the association. In that case the volunteer has to indemnify the third party. On the other hand, in France criminal liability is personal, and thus nobody can be held criminally responsible for the acts of another person. If a third-party sues a volunteer in criminal Courts, the volunteer is not able to invoke vicarious liability. The criminal liability of the association is thus only engaged if it took part in causing the damage (such as giving the order to commit an offence). In such a case, both the volunteer and the association are held liable. In practice, however, this is unlikely to occur.

### Indonesia

In Indonesia there is no precise regulation on the liability of organizations towards third parties. In most cases liability follows general liability rules under the Civil and Criminal Codes.<sup>57</sup>

Furthermore, organizations may only take action against a volunteer once there is a conflict in which the volunteer is reputed to have violated the rights of the organization as governed in various provisions of the prevailing laws and regulations. Finally, organizations may be indemnified by a volunteer for the loss and damages they incurred as a result of his/her conduct.

### Qatar

In Qatar, the rules relevant to emergencies do not address the issue of liability of organizations towards third parties.<sup>58</sup> General rules of liability should therefore apply.

Under civil liability provisions, the principal is responsible for the damage caused by his/her agent in the fulfilment of his/her tasks.<sup>59</sup> A relationship of subordination is characterised if the principal controls and supervises the tasks of his/her agent, regardless of choice of agent. There is no information that civil liability has been exercised in relation to volunteers until this date.<sup>60</sup>

In relation to criminal liability, Article 37 of the Criminal Code provides that, except for ministries, other governmental bodies, and public organizations and institutions, a legal person is criminally liable for the crimes committed by its representatives, managers, and agents working for its account or in its name. They may be subject to fine and any other sub-penalties deemed adequate. If the main penalty decided by law is other than a fine, then the maximum fine possible is Qatari Riyals 500 000 (i.e. approximately USD 137 300).

This does not however prevent the person who committed the crime from being personally punished with the penalty prescribed by law. In this case, if the organization has earned the legal personality (as aforementioned), it may be liable for the acts of its representatives, managers, and agents that work for its account or in its name. Nonetheless, there is no express mention that a volunteer is deemed as a representative, manager or agent of the organization for which he/she works. Additionally, one has to note that there is no information that any judicial case has ever been filed against associations regarding criminally liable volunteering activities.

<sup>57</sup> Civil liability derives from an act of tort which is regulated under Article 1365 of the Indonesian Civil Code, whilst criminal liability is generally regulated under Article 431 of the Indonesian Criminal Code.

<sup>58</sup> This is the case especially in relation to Law 12/2004 and Decision 2/2005, referred to earlier in this study.

<sup>59</sup> Qatari Civil Law, Article 209, Paragraph 1.

<sup>60</sup> *Ibid.*, Article 209.



Qatari law also does not expressly address the possibility of the organization to take action against the volunteer. However, when an organization acquires legal personality, it has the right to sue and it can also be sued.<sup>61</sup>

Furthermore, Article 210 of the *Civil Law* provides *inter alia* that a person who is responsible for others' actions has the right to sue them seeking the entire amount that he/she paid as indemnity for the unlawful acts that they have committed.

Hence, there is in principle nothing that would prevent the organization, in the event that it has acquired the legal personality, to sue its volunteers if it had to pay an indemnity due to their unlawful acts. Depending on the acts of the volunteer, it could sue him/her for civil liability on the basis of Article 199 and following of the *Civil Law*, or for criminal liability if the aforementioned conditions in this respect are met.

### Brazil

In Brazil, an organization may be indemnified by a volunteer in breach of the terms of the agreement between the volunteer and the organization or due to the application of general principles on liability. Indeed, Article 2 of the law on volunteerism indicates the need for a formal agreement between the volunteer and the organization, containing all the rules that volunteers shall abide by, together with the tasks assigned to them.<sup>62</sup>

Hence, organizations may sue the individual volunteer, in cases where they can demonstrate that the volunteer's behaviour was in breach of the agreement, and that such conduct caused financial losses to the organization.

General rules of liability also apply. According to them, whereby a person improperly injures rights or causes damage to others, he/she is obliged to repair. Since volunteers may be considered as agents of their organization, any conduct that causes harm to others may result in the engagement of the liability of the organization. Such liability arises from Article 932, paragraph III of the 2002 Brazilian Civil Code:

Art 932. Among those responsible for civil damages figure:

[...]

III. The employer or principal, for its employees, servants and agents in the performance of the work assigned to them, or because of it.

Nonetheless, organizations sued by third parties for misconduct of their volunteers, may subsequently sue their volunteers.

Finally, organizations may be exempt from third-party liability in cases where the reproachable conduct of the volunteers has no connection with the tasks assigned to them. Here, volunteers may be personally liable towards third parties.

### Australia

In Australia, organizations can be liable for the negligence of their volunteers either under common law principles of vicarious liability or by reason of particular statutory provisions.

<sup>61</sup> *Ibid.*, Articles 53 and 54.

<sup>62</sup> Brazilian Law 9.608 of 18 February 1998 on Volunteerism, Article 2.

The principle of vicarious liability applies to the law of agency, so that a “principal” is vicariously liable for the negligence of an agent, as long as the agent was acting within the scope of his/her authority at the time.

While this principle is usually applied to the employer-employee relationship, volunteers are very likely to be regarded as agents of their organization. They usually act under the supervision and direction of the organization and present themselves as representing the organization, often to the extent of wearing the organization’s uniform, operating the organization’s equipment etc. Assuming agency can be established on this basis, the organization is vicariously liable for their negligence as long as they were acting within the scope of their authority. This was confirmed in the decision of *Duncan v Trustees of the Roman Catholic Church of the Archdiocese of Canberra and Goulburn*,<sup>63</sup> where Higgins J stated that “vicarious liability does not attach only to the actions of paid employees and agents. It also applies to volunteers.”

In some States, such as Victoria and South Australia, volunteers are granted statutory immunity. As a consequence, any liability that would normally attach to them attaches instead to their organization. This is known as the doctrine of *respondeat superior*. This makes it clear that the statutory immunity applies only to the volunteer personally, and gives statutory force to the right of an injured party to claim damages from a community organization resulting from negligence on the part of a volunteer.

In the State of New South Wales it is somewhat different because Section 3C of the *Civil Liability Act 2002* states: “Any provision of this Act that excludes or limits the civil liability of a person for a tort also operates to exclude or limit the vicarious liability of another person for the tort.” Accordingly, community organization may then benefit from the statutory protection granted to volunteers just as volunteers do personally. Neither the individual volunteer nor the organization are liable to pay damages to an injured person unless the community organization is held to have breached its own duty of care.

In the State of Victoria, under section 39(3) of the *Wrongs Act 1958*, any liability of a community organization arising out of the negligence of its volunteers while “acting on behalf of the State” is considered as liability of the State government itself. This potentially concerns emergency situations where the government delegates some aspect of the response to non-governmental organizations. A similar provision in section 10(2) of the *ACT Civil Law (Wrongs) Act 2002* gives the Australian Capital Territory (ACT) government the power to assume the liability of community organizations carrying out functions recognized as “government responsibility”.

Under the Commonwealth legislation, any liability that a volunteer would have, but for the statutory protection, is stated to be a liability of the Commonwealth. The volunteer in question is required to assist the Commonwealth in responding to any claim made against it under this provision.<sup>64</sup>

### 3.3 Liability of organizations towards volunteers

#### Indonesia

In Indonesia, the liability of the organization towards volunteers is not specifically regulated. However it generally follows the liability of employers

63 [1998] ACTSC 109 (unreported), Higgins J, 14 October 1998 at 146.

64 Commonwealth Volunteers Protection Act 2003, Sections 7 and 8.

towards their employee, as regulated under *Labour Law*. Under *Law No. 13 of 2003 concerning Manpower* (Law No. 13/2003), as long as volunteers are formally engaged with organizations under an agreement to perform specific duties, organizations serve as employers.

Workplace legislation, like provisions of *Law No. 1 of 1970 concerning Occupational Safety*, generally apply to volunteers. Organizations usually have a duty of care towards volunteers, which is determined on a case-by-case basis.

There is no general obligation to compensate volunteers and their families in case of injury/death. This is due to the fact that volunteers act on their free-will to assist in emergency/disaster. Nevertheless, organizations may adopt policies in order to provide compensation.

### **Qatar**

In Qatar laws regarding organizations and associations do not specifically refer to the liability of the organization towards volunteers.<sup>65</sup> Similarly, there is no precise legal standard applicable to the duty of care owed by an organization towards its volunteers. As a general principle, *Article 63 of the template Articles of Association for Organizations attached to Decision 2/2005* provides that *Labour Law* shall apply in relation to any matters which are not provided for in the internal regulations for employees of the organization. However, given that volunteers are not remunerated, they do not qualify as employees under *Labour Law*, and thus its provisions should in principle not apply to them. Case law is silent on this particular matter. In relation to the applicability of workplace legislation to volunteers, especially health and safety legislation, the matter seems to be similarly treated, namely the provisions of the *Labour Law* would in principle not apply to volunteers. Nevertheless, organizations list among the rights of volunteers the right to operate within a safe and supportive working environment.

In case of injury/death of volunteers occurring during the performance of civil defence activities, *Article 10 of the CDD Law* provides that they should be compensated according to the provisions applying to the persons working at the CDD, or according to the provisions applying to their initial professions. The more advantageous should be chosen.

For other voluntary activities, the compensation of volunteers in case of injury/death, and of their families in case of volunteers' death, is not expressly regulated. Arguably, compensation would be on the basis of the general rules for civil and/or criminal liability.

### **Brazil**

In Brazil, the liability of organizations towards volunteers follows general liability provisions stated in the Civil Code (especially article 186 already highlighted). In the case where the activity causes damage to the volunteer, for example due to the fact that voluntary service takes place in dangerous areas, or where the organization has not provided adequate equipment for volunteers to protect themselves (bullet proof jackets, helmets, torches, etc.). If the volunteer harms himself/herself, the organization may be reputed liable regardless of fault, and has the obligation to indemnify, as stipulated by Article 927 of the Civil Code.

<sup>65</sup> Both Law 12/2004 regulating organisations and private institutions, and Decision No. 2/2005 of the Minister of Social Affairs establishing the template of articles of association for the incorporation of such entities do not specifically address this issue.

“Article 927. The person who through the commission of a tort (articles 186 and 187) causes harm to others, is obliged to repair it.

Paragraph. There will be an obligation to repair the damage, regardless of fault, in the cases specified by law, or when the activity normally carried out by the perpetrator imply, by its nature, an attempt against the rights of others.”<sup>66</sup>

Furthermore, in the event of injury or death of the volunteer, once a causal link between the act or activity of the voluntary organization and the harmful event to the volunteer is established, there is a duty to indemnify the volunteer and possibly also his/her relatives in case of his/her decease, according to Article 5 (V) of the *Brazilian Constitution*. One such example would occur in the case where the voluntary organization has not strived to minimize health and safety risks that may impact the volunteer during the discharge of the voluntary activities.

Statutory limitations applicable to liability follow the general timeframe applicable to civil liability, stated in Article 206, § 3, V of the Civil Code, which limits the possibility of filing a civil compensation claim to three years.

Liability may be excluded in three situations, namely:

1. exclusive fault of others;
2. force majeure and;
3. fortuitous event.

Exclusive fault of others occurs when a damage claim is filed against a person who did nothing to contribute to its occurrence. When there is no nexus between the action and the harmful result, there is no finding of liability.

The “force majeure” exclusion relates to unpredictable events normally caused by exceptional natural phenomena (hurricanes, storms, etc.), independent of human will, and whose effects are impossible to stop.. Finally, the “fortuitous event” exclusion refers to events related to human will which, although predictable, cannot be avoided. One such example is a general strike.

## France

In France, volunteers may engage the liability of an association for any material, corporeal or moral harm they suffer while performing their mission due to the contractual relationship existing between an association and its *bénévoles* (through a tacit consent agreement), or *volontaires* (through a written contract).

## Bénévoles

*Bénévoles* may engage the liability of the association by proving the existence of a tacit consent agreement (*convention d'accord tacite*). Such an agreement binds *bénévoles* to the association for which the mission is undertaken. It has been created by case law to enable the indemnification of *bénévoles* for any material, corporeal or moral harm suffered in the accomplishment of a mission.<sup>67</sup> *Bénévoles* do not have to prove that the association was at fault but

<sup>66</sup> Brazilian Civil Code, Article 927: “Aquele que, por ato ilícito (arts. 186 e 187), causar dano a outrem, fica obrigado a repará-lo.

Parágrafo único. Haverá obrigação de reparar o dano, independentemente de culpa, nos casos especificados em lei, ou quando a atividade normalmente desenvolvida pelo autor do dano implicar, por sua natureza, risco para os direitos de outrem.”

<sup>67</sup> See, for example, Cass. 1ère Civ., 10 October 1995, N°pourvoi 93-19.142.

only establish a causal link between the mission and the damage incurred.<sup>68</sup> Indeed, the association owes a duty of safety to its volunteers that requires it to protect its *bénévoles* by all reasonable means.

*Bénévoles* can also claim the liability of the association on the grounds of Articles 1382 and 1384 of the French Civil Code. Under these provisions, the victim must establish that the association committed a fault and that there is a causal link between that fault and the damage suffered.

### Volontaires

In relation to *volontaires*, as written contracts are established, it is enough to prove that the damage occurred during the activity carried out on behalf of the association. There is therefore no need for *volontaires* to prove that the association committed a fault. The same solution as in the case of *bénévoles* applies.

The association is also liable for damage where the victim contributed to the occurrence of the damage through his/her own fault or where *force majeure* occurred.<sup>69</sup>

The duty of safety also extends to cases of negligence. The association may be held liable in cases where it has not used all available means to ensure the safety of its volunteers.

An association owes the duty of safety to its *bénévoles* and *volontaires*. As discussed above, the association is liable for any harm caused, or for the death of any of its members.

As a general rule, the officers of an association cannot be liable if they act on behalf of the association and within the limits of their duties. The liability of an association may only be engaged if they exceed their powers, act beyond their purpose, or if their actions were not related to the normal functioning of the association.

Officers must keep a close watch over the operation of the association and exert proper control over its administration. As a result, a manager's absenteeism or lack of interest in the activity of the association and/or its members may constitute a fault which could potentially engage the manager's liability.

In cases of death or injury, the liability of the association may be extended to families, on the grounds that they suffered material and/or moral damage. There is no requirement to compensate *volontaires* or *bénévoles* for injury and death in situations other than those mentioned above.

In regard to statutory limitations and exclusions, there are none in relation to a volunteer's liability.

### Australia

At common law, employers have a duty to take reasonable precautions to prevent injury to their employees. The standard of this duty of care is high because the relationship is one in which employers derive financial benefits from the performance of services by their employees. While the same cannot necessarily be said of work undertaken by volunteers, organizations still

<sup>68</sup> If the fault is proven, however, this obligation does not prevent the third-party who caused the harm to the volunteer from indemnifying the *bénévole* under general liability principles of French law.

<sup>69</sup> In certain circumstances, however, the judge may consider that the association also has a performance requirement even where the association's member is actively involved in the mission (this falls within the duty of safety and is principally concerned with the protection of any person who does not enjoy a freedom of action such as children or elderly people).



owe a duty of care to their volunteers and must take reasonable care for their safety and welfare. Where failure to do so results in volunteers being injured, organizations have a liability to pay damages.<sup>70</sup>

In addition this common law duty of care owed by organizations to volunteers, specific requirements under workers compensation and occupational health and safety laws apply.

For example, every Australian State and territory's workers compensation legislation imposes obligations on employers to pay benefits to employees suffering from a work-related injury or illness. It is also compulsory for employers to take out workers compensation insurance to cover this liability.

However, Australian volunteers are not usually entitled to receive workers compensation benefits for injuries or illnesses suffered in the course of their voluntary activity. Given the risks associated with much of the work undertaken by volunteers in emergencies, this is a significant concern and highlights the need for other insurance to be in place to cover injured volunteers. Nevertheless, there are some exceptions to the general principle that volunteers are not covered by workers compensation. In some jurisdictions certain categories of volunteers are treated like employees and deemed as such for the purposes of workers compensation. In the State of New South Wales, the *Workplace Injury Management and Workers Compensation Act 1998* provides that volunteer bush firefighters and ambulance workers are "deemed" employees.<sup>71</sup> In the State of Victoria, volunteer emergency workers are entitled to compensation if injured while engaged in emergency activities.<sup>72</sup> Other categories of volunteers assisting Victorian government agencies are deemed to be workers as though they are performing activities for the Crown, for example volunteer school/student workers<sup>73</sup> and volunteers assisting police officers.<sup>74</sup>

In addition, some jurisdictions provide for specific workers compensation benefits for certain categories of volunteer. In New South Wales for example, there is a special compensation scheme for volunteer bush firefighters, emergency service workers, rescue association workers and surf lifesavers. This also extends to compensation of firefighters and emergency worker for destructions of or damage to vehicles, equipment, clothing etc.<sup>75</sup>

In relation to health and safety, one has to note that until recently, the focus of most occupational health and safety legislation in Australia has been on the obligation of employers to provide a safe workplace for their employees. In New South Wales for instance, the stated objectives of the *Occupational Health & Safety Act 2000* (NSW) (OH&S Act) are to:

- a. secure and promote the health, safety and welfare of people at work;
- b. promote a safe and healthy work environment for people at work that protects them from injury and illness and that is adapted to their psychological and physiological needs; and

70 Vorbach, D., "Employer's Liability Relating to NGO Operations Outside of Australia – A Legal Perspective" HWL Ebsworth Seminar Paper 22 April 2009, at 4.

71 *Workplace Injury Management and Workers Compensation Act 1998* (NSW), Sch 1.

72 *Emergency Management Act 1986* (Vic), Section 27.

73 *Education Act 1958* (Vic).

74 *Police Assistance Compensation Act 1968* (Vic).

75 *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* (NSW).

- c. ensure that risks to health and safety at a place of work are identified, assessed and eliminated or controlled.<sup>76</sup>

Section 8 of the OH&S Act provides that an employer must ensure the health, safety and welfare of all employees at work. This duty includes:

- a. ensuring that systems of work and the working environment of the employees are safe and without risks to health;
- b. providing such information, instruction, training and supervision as may be necessary to ensure the employees health and safety at work; and
- c. providing adequate facilities for the welfare of the employees at work.

The OH&S Act allows for criminal penalties to be imposed upon an employer who fails to provide a safe workplace. In extreme cases, the criminal penalties imposed can be very high, and may include prison terms for senior managers who were personally responsible for serious safety breaches. Injured employees can recover damages for breach of this statutory duty.

While the application of occupational health and safety laws to volunteers as distinct from employees has, until now, been somewhat unclear, this will change on 1 January 2012 when uniform work health and safety laws come into effect in all States and territories in Australia.<sup>77</sup> Under the new legislation, volunteers in all Australian jurisdictions will have the benefit of the same occupational health and safety protection as employees. All organizations conducting a “business or undertaking” will have a duty to ensure the health and safety of workers, including volunteers, and to provide them with necessary information, training and supervision.

The New South Wales Work Cover Authority and corresponding authorities in other States can be quite aggressive in prosecuting employers. Successful prosecutions under occupational health and safety legislation result in penalties which cannot be insured against by the employer.<sup>78</sup> Although some insurance policies may cover the legal costs associated with the defence of these prosecutions, they do not cover the penalties imposed. The new provisions are expected to strongly reinforce the protection of volunteers.

## 4. Immunity for the actions of volunteers

Volunteers may be granted specific immunities in relation to the activities they undertake. This protection varies from one jurisdiction to another.

### Indonesia and Qatar

No immunity provisions apply to volunteers in Indonesia and Qatar.

### Brazil

In Brazil, the law on volunteering does not provide for any immunity. Nevertheless, certain general legal provisions, although not strictly qualifying

<sup>76</sup> See Vorbach, *Op. cit.*, at 5.

<sup>77</sup> See for example, the Work Health and Safety Act 2010 (NSW). It is anticipated that other States and territories (with the possible exception of Western Australia) will enact substantially equivalent legislation.

<sup>78</sup> Vorbach, *Op. cit.*, at 6.

as immunity, may apply to volunteers but rather as justification or exculpation from breaking the law. Article 188 of the Civil Code indicates that the following:

“Do not constitute unlawful acts:

I - [those] committed in self-defence or in the lawful exercise of a recognized right;

II - the deterioration or destruction of something unrelated, or injury to person, to remove danger.

Paragraph. In the case of section II, the act is legitimate only when circumstances make it absolutely necessary, not exceeding the limits of what is necessary to remove the danger.”<sup>79</sup>

On the other hand, according to Article 23 of the Criminal Code:

“23 - There is no crime when the perpetrator commits the action:

I – in state of necessity;

II - in self defence;

III - in strict compliance with statutory duty or in the exercise of their ordinary rights.

Excess punishable

Paragraph - The agent in any of the hypotheses of this article, will be liable for the excess placed maliciously or negligently.”<sup>80</sup>

## France

Under French law *bénévoles*, *volontaires*, firefighters, doctors and medical personnel do not benefit from any special exemption or immunity. Case law has granted specific protection to persons acting by themselves or required by the State to help in the accomplishment of public service missions that may cause damage to themselves or to a third party. This form of protection is grounded in the notion of occasional public service partner (*collaborateur occasionnel de service public*) according to which a person effectively participating in a public service activity may be considered the public agent of a public servant.<sup>81</sup> It is particularly relevant where approved associations are requested by the authorities to act under the ORSEC plan. It applies to civil liability even in the absence of a given order or any real link between the State and the volunteer, for example if someone tries to stop a thief and causes damage to someone else, or if a doctor saves someone from gas intoxication but gets hurt.<sup>82</sup> The State must indemnify any damage that the occasional partner causes to a third

<sup>79</sup> Brazilian Civil Code, Article 188: “Não constituem atos ilícitos:

I - os praticados em legítima defesa ou no exercício regular de um direito reconhecido;

II - a deterioração ou destruição da coisa alheia, ou a lesão a pessoa, a fim de remover perigo iminente.

Parágrafo único. No caso do inciso II, o ato será legítimo somente quando as circunstâncias o tornarem absolutamente necessário, não excedendo os limites do indispensável para a remoção do perigo.”

<sup>80</sup> Brazilian Criminal Code, Article 23: “Não há crime quando o agente pratica o fato:

I - em estado de necessidade;

II - em legítima defesa;

III - em estrito cumprimento de dever legal ou no exercício regular de direito.

Excesso punível

Parágrafo único - O agente, em qualquer das hipóteses deste artigo, responderá pelo excesso doloso ou culposos.”

<sup>81</sup> Ministerial Answer dated 31 March 2003.

<sup>82</sup> Conseil d’Etat, Sect., 11 October 1957 *Commune de Grigny*, D. 1958 p. 768.

party or to an occasional partner himself/herself during the performance of the activity. However, in order for the “occasional partner theory” to apply, certain circumstances must be met, namely, the participation of the “partner” in question must be appropriate, effective and necessary. Although intervention has to be short and/or occasional, it is covered as long as it is useful. As such, provided the person is able to prove that he/she is an occasional partner, the liability of the State applies regardless of whether a fault was committed, because it falls under a “no fault” liability regime.<sup>83</sup>

The third party who suffered the damage caused by the occasional partner has nevertheless to prove the fault of the latter to engage the liability of the State. In other words, the occasional partner’s fault engages the liability of the State.

Rather than seeking the liability of the firefighter, a third party can seek the liability of the State because they operate on behalf of the State to accomplish public service missions.<sup>84</sup> In practice, the above-mentioned authorities are appropriately insured for this kind of event despite insurance coverage not being mandatory.<sup>85</sup>

### Australia

In Australia, since 2001, the Commonwealth and all States and territories have passed legislation protecting volunteers from liability in certain circumstances.<sup>86</sup>

Broadly similar they protect volunteers from personal liability in respect of activities carried out on a voluntary basis for “community organizations”, subject to certain defined exceptions.

For example, section 4 of the South Australian *Volunteers Protection Act 2001* provides that:

“[...] a volunteer incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in the course of carrying out community work for a community organization.”

The definition of “community organization” varies between States and territories, but generally includes government agencies in addition to non-governmental organizations. Similarly, all the definitions of “community work” include references to “benevolent” or “philanthropic” work or “work for the purpose of promoting the common interests of the community”. Volunteers participating in emergency response would therefore be protected from personal liability.

83 Conseil d’Etat, Sect., dated 25 September 1970, *Commune de Batz-sur-Mer*, Rec. CE 1970, p. 540.

84 In practice, people will often engage the State’s liability rather than engage the civil liability of persons who came to save them. Considering that they are acting through a mission of public service, the authority governing them and operating the service will be held liable and, accordingly, be required to indemnify the third party. Such compensation may be reduced, however, if the victim contributed to the damage. It should be noted, nonetheless, that it is not possible to reduce the liability of firefighters and medical personnel towards a third party. Disciplinary sanctions may, however, be brought against them.

85 The State developed a standard assurance policy for municipalities and department to harmonize their insurance covering and provide for civil liability for damages caused by firefighters among others. They are free to use it or not and they may amend it as they want.

86 The main volunteer protection provisions in Australian legislation are the following: (a) *Civil Liability Act 2002* (NSW); (b) *Wrongs Act 1958* (Vic); (c) *Volunteer Protection Act 2001* (SA); (d) *Volunteers (Protection from Liability) Act 2002* (WA); (e) *Personal Injuries (Liabilities and Damages) Act 2003* (NT); (f) *Civil Law (Wrongs) Act 2002* (ACT); (g) *Civil Liability Act 2002* (Tas); (h) *Civil Liability Act 2003* (Qld) and; (i) *Commonwealth Volunteers Protection Act 2003* (Cth).

The Commonwealth volunteer protection legislation is limited to volunteers working for either the Commonwealth government or one of its agencies.<sup>87</sup> Under the *Commonwealth Volunteers Protection Act 2003*, a person does not incur personal liability where it arises from work done in good faith, on a voluntary basis, and organized by the Commonwealth or agency.

The exceptions to the statutory immunity of volunteers are broadly similar across jurisdictions. In most places, volunteers are not entitled to the protection if:

- a. the volunteer's ability to exercise reasonable care and skill was significantly impaired by alcohol or recreational drugs;
- b. the volunteer was acting outside the scope of the activities authorized by the community organization concerned or contrary to instructions given by the community organization; or
- c. the volunteer's conduct at the time constituted a criminal offence.

The New South Wales and Queensland legislations provide specific protection to volunteer office holders of a community organization.<sup>88</sup> However, it seems likely that the protection given to ordinary volunteers in the other States and territories would also cover office holders as long as they are not paid for the work they do.

Generally, volunteers are protected only if they can show that they acted in "good faith". The expression is used in all the volunteer protection legislation across Australia (apart from that of the ACT where the term "honestly" is used). According to the Macquarie Dictionary "good faith" means "honesty of purpose or sincerity of declaration: to act in good faith".<sup>89</sup> In *Board of Fire Commissioners v Ardouim*<sup>90</sup> the High Court found that the concept of "good faith" referred to an act that was done "without any indirect or improper motive".<sup>91</sup> Thus a person providing emergency assistance acts in good faith when his/her honest intention is to assist the injured person. It is possible for a volunteer to act in good faith even if the action is unreasonable.

In South Australia and the Northern Territory, volunteers must also act "without recklessness". This is a somewhat stricter test, in that volunteers lose the benefit of the statutory protection if they act foolishly, even if they are well-intentioned at the time.

In addition to the statutory protection granted to volunteers, all States and territories have introduced a statutory protection for "Good Samaritans" despite the fact that legal action against them is almost unheard of in Australia. A major review of negligence law in Australia in 2002 recommended against the introduction of Good Samaritan legislation:

"[B]ecause the emergency need treat the circumstances, and the skills of the "good Samaritan", are currently taken into account in determining the issue of negligence, it is unnecessary and, indeed, undesirable to go further and to exempt good Samaritans entirely from the possibility of being sued for negligence. A complete exemption from liability for rendering assistance in an emergency would tip the scales of personal responsibility too heavily in favour of interveners and against

87 Commonwealth Volunteers Protection Act 2003 (Cth), s 6.

88 NSW CLA Section 61; Queensland CLA Section 39(1).

89 Dunlop, C., "Volunteers in the 2000s – Volunteer liability in the Emergency Services", Maddocks, *Op. cit.*, at 12.

90 [1961] HCA 71; (1961) 109 CR 105.

91 Per McTiernan J, cited in Eburn, *Op. cit.*, at 73-74.



the interest of those requiring assistance. In our view, there are no compelling arguments for such an exemption.”<sup>92</sup>

Nonetheless, Good Samaritan legislation now exists across Australia, mostly as a result of law reforms in the past ten years. Legislation across all Australian jurisdictions, apart from Queensland, is broadly consistent. A Good Samaritan is generally defined as a person who, in good faith and without expectation of payment, comes to the assistance of an injured person. He/she may or may not be medically qualified, but must not be providing the assistance as part of his/her normal employment or professional duties.<sup>93</sup> A Good Samaritan is protected from personal liability in respect of any act or omission done in good faith to provide assistance to an injured person. In some jurisdictions, such as South Australia, Western Australia and Tasmania, the protection specifically extends to advice given in relation to the injury, including possibly telephone advice. As for the volunteer protection, there is an additional requirement in some jurisdictions that the Good Samaritan be able to show that he/she acted “without recklessness”.

There are various exemptions to this protection, for example if the Good Samaritan failed to exercise reasonable care as a result of being under the influence of alcohol or drugs,<sup>94</sup> or was the cause of the original accident that brought about the person’s injury.<sup>95</sup>

The protection from liability in Queensland is more limited in that it only applies to medical care or assistance rendered in an emergency by a medical practitioner or a nurse, at or near the scene of an accident, or while the injured person is being transported from the scene of the accident. The assistance must be provided without expectation of a fee or other reward, and the medical practitioner or nurse must act in good faith and without gross negligence.<sup>96</sup>

Specific protection in some of the legislation govern the operation of the fire services. In New South Wales for example, Section 78 of the *Fire Brigades Act 1989* provides:

“A matter or thing done by [...] any member of a fire brigade [...] does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject such a person personally, or the Crown, to any action, liability, claim or demand.”

This legislation differs from that in relation to the State Emergency Service and the Ambulance Service in New South Wales, in that it exempts the Fire Brigade itself from liability.<sup>97</sup>

In relation to the New South Wales Rural Fire Service (which is staffed largely by volunteer firefighters), section 128 of the *Rural Fires Act (1997) NSW* provides that:

“A material thing done or omitted to be done by a protected person or body [i.e. any member of the Rural Fire Service] does not, if the matter or thing was done in good faith for the purpose of executing any provision [...] of this or any other Act, subject such person personally, or the Crown, to any action, liability, claim or demand [...]”

<sup>92</sup> Ipp Report at 108.

<sup>93</sup> Eburn, *Op. cit.*, at 74.

<sup>94</sup> For example, *Civil Liability Act 1936 (SA)*, Section 74(4).

<sup>95</sup> For example, *Civil Liability Act 2002 (NSW)*, Section 58(1).

<sup>96</sup> *Law Reform Act 1995 (Qld)*, Sections 15 and 16.

<sup>97</sup> *Fire Brigades Act 1989 (NSW)* s 78; *Rural Fires Act 1997 (NSW)* s 128; *State Emergency and Rescue Management Act 1989 (NSW)* s 42.



# 4

## Chapter 4: Insurance

This chapter addresses aspects pertaining to insurance, especially the existence of standard or special insurance, available to all or only some volunteers in specialized areas, and mandatory insurance for liability cover.

### 1. General practice

#### Macedonia

In Macedonia, the provisions for pension and invalidity insurance and the provisions for health insurance of the 2007 *Law on Volunteerism* indicate that organizations are obligated to provide insurance against work-related diseases and injury during the volunteering, if it was so agreed.<sup>1</sup>

Although having a legal provision on the insurance of volunteers for issues that may affect their personal health is a significant achievement, the inclusion of this protection in the volunteer agreement remains optional.

#### Indonesia

In Indonesia there is neither standard insurance available for all volunteers, nor special insurance for volunteers in specialized areas. Nevertheless, organizations have the possibility to insure their volunteers. Although there is no specific regulation on this subject, a volunteer may be insured by the organization (through an individual or group insurance), including in terms of life and health insurance. However, there is no legislation that specifically addresses this issue.

#### Qatar

While Qatari law does not expressly address the issue of insurance of volunteers, there is no reason why the provision of insurance would be prohibited.

#### Brazil

In Brazil, there is neither standard insurance available for all volunteers nor special insurance for volunteers in specialized areas. Nevertheless, existing types of insurance could cover some of the potential risks taken by volunteers. For instance it would be possible to sign up for individual insurance to cover life, health and liability risks. There is no specific insurance policy covering volunteering, and thus the eventual risks that volunteers may face should be examined by insurers, including for the purposes of considering the possibility of drafting group insurances for volunteers of organizations.

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<sup>1</sup> Macedonian 2007 Law on Volunteering, Article 13. Emphasis added.

If a particular risk to be covered is not listed within the standard insurance portfolio, the insurance company may examine such risk in order to decide whether it may offer a special type of insurance.

In Brazil most of the risks subject to insurance coverage fall within distinct insurance contracts: vehicle (ambulance/fire), life and health (volunteers), third party liability, specific event (full coverage of the event), and place insurance (everything that is inside the place is covered).

Risks must be predicted or expected by the insurer. Insurance awards are evaluated according to the risk, the number of people covered, particularities regarding each covered event (for example: material damage, third party liability, life, etc.). As a general rule, insurance companies in Brazil cover neither terrorist events nor natural phenomena, which are either considered very unlikely events, or unsure and unknown events, for which it is not possible to quantify the risk. These are therefore considered excluded risks.

## France

### Standard civil liability insurance

In France, standard civil liability insurance is available to any volunteer (*bénévoles* and *volontaires*). However, in order to ensure adequate coverage, it is recommended to describe in great detail what risks the volunteer may face and to select an insurance policy tailored to the activities likely to be undertaken. Special insurance policies are available but for higher monthly premiums. Although insurance is not compulsory for associations under French Law, associations specialized in civil safety should seriously consider signing up for suitable insurance.

The *Fondation du Bénévolat* (a non-profit public service financed primarily by private sponsors and partners) has negotiated free civil liability insurance coverage specifically for *bénévoles* with certain insurers. Today more than 6,000 associations and 100,000 *bénévoles* benefit from this insurance coverage.<sup>2</sup>

There are also special insurance policies for *bénévoles* who carry out specific tasks. Nothing prevents a *volontaire* from benefitting from this type of insurance as well but because he/she is volunteering for a longer period than a *bénévole*, premiums are higher.

### Professional insurance

Professional policies also exist in France. For regulated professions, such as doctors, specific insurance policies are negotiated and set up in collaboration with the National Council of the Medical Profession which governs the profession.

Firefighters are not required to be personally insured (they are typically insured by the public authority they are volunteering for) but they may subscribe to a complementary insurance with the *Mutuelle Nationale des Sapeurs-Pompiers* (National Collective of Firefighters).

Although insurance is not mandatory, it is highly recommended for associations whose purpose it is to deal with civil safety.<sup>3</sup> It is thus advisable that an

<sup>2</sup> Document from Fondation de France.

<sup>3</sup> This is not the case for some activities. Mandatory insurance is provided for sporting federations or associations, leisure or holidays resorts, approved municipal hunting associations, associations which organize travel, tourism associations and any establishment dealing with disabled or maladjusted minors.

association subscribes to a civil liability insurance policy to avoid indemnifying its volunteers should they be injured or cause damage to third parties.

Civil liability insurance also covers damages caused by volunteers to third parties. Here, the insurance policy must not only cover damages caused by volunteers to one another, but also to the association itself. As a general rule, civil liability insurance contracts cover only the civil liability of the beneficiary to third parties. As volunteers are neither third to the association nor to one another, the insurance would not apply to this kind of damage. As a result, associations are required to specify in the insurance contract that each volunteer is to be considered a third party with regard to one another and to the association itself. If the association does not do so, the insurance contract is ineffective, and both the volunteers and/or the association remain uninsured for this kind of damage. Moreover, the association should make sure that it has taken out additional coverage to include volunteers' personal vehicles if they are using them for the association.

Finally, in France there is no specific provision for individual or collective insurance, and therefore associations are free to choose between individual or collective insurance. However, while collective insurance grants similar coverage to all volunteers, it may be useful to include additional individual insurance for certain members of the association who may be subject to certain specific risks.

### Australia

In Australia, it also seems that emergency organizations could insure their volunteers against injury. Taking out a relevant insurance policy protects both volunteers and the organization.

The Centre for Volunteering maintains that “not-for-profit organizations engaging volunteers must carry public liability insurance and volunteer personal accident insurance”.<sup>4</sup> Taking out such insurance protects both the volunteers and the organization against the costs of medical treatment, loss of wages, and other associated losses should the volunteer suffer injury.

According to Volunteering Australia, “access to affordable insurance cover has improved over the past decade and there is evidence that access to insurance is not a significant barrier to volunteerism in informal not-for-profit agencies”.<sup>5</sup> Nonetheless, Volunteering Australia recognizes that the changing need for volunteering, and an increase in less formal, episodic and more mobile volunteer work forces could expose volunteers to situations where they may find themselves unprotected by legislation or insurance coverage.

In 2005-2006, Volunteering Australia worked with the large international insurance broker to develop the “Volunteers Vital Pack”, which is a range of comprehensive and cost effective insurance products for volunteers.<sup>6</sup>

### Medicare, national government-funded insurance

Australia has a national government-funded health insurance scheme, known as Medicare, established under the Commonwealth *Health Insurance Act 1973*,

<sup>4</sup> [http://www.volunteering.com.au/working\\_with\\_volunteers/volunteer\\_management/insurance.asp](http://www.volunteering.com.au/working_with_volunteers/volunteer_management/insurance.asp)

<sup>5</sup> Volunteering Australia: Issues Paper April 2010 “Issues Related to Insurance Protection for Volunteers” Authorized by Cary Pedicini, Chief Executive Officer, Volunteering Australia [www.volunteerinaustralia.org](http://www.volunteerinaustralia.org) at 11.

<sup>6</sup> *Ibid.*, at 5.



which provides universal health care for all its citizens. There are also private health providers, and Australians can opt to receive medical treatment within either the public or the private health system. There are a number of registered private health insurers who provide insurance coverage for private medical treatment.

Australian volunteers injured within Australia receive, at the very least, free medical treatment under the Medicare scheme. However, it is important that they also have the benefit of insurance to cover other losses and expenses not covered by Medicare. In addition, where the injury was caused by the negligent act or omission of the organization or its employees or agents, Medicare (and the volunteer's private health insurer, if applicable) may have a right of recovery against the negligent party in respect of the volunteer's medical expenses.

Volunteers may also benefit from four main types of insurance.

#### **Volunteers Personal Accident Insurance**

The first of them is the Volunteers Personal Accident Insurance, which taken out on behalf of volunteers covers the volunteer for medical expenses and related costs if the volunteer sustains an illness or injury. Some policies also cover loss of income and pay a defined lump sum benefit for certain injuries or disabilities.

Importantly, this type of insurance does not require the volunteer to establish that anyone was at fault in relation to the illness or injury. It is therefore an important "first line" of insurance coverage for all volunteers.

#### **Public Liability Insurance**

Organizations are generally able to obtain group personal accident insurance that cover all members of a defined group of people working for them. However, they must be careful to ensure that cover is specifically extended to volunteers.

The second type of specific insurance is the Public Liability Insurance. Most organizations have to cover any legal liability they incur to pay damages to a third party injured as a result of negligence on the part of the organization or its employees or agents. If a volunteer is injured in circumstances where he/she can establish that the injury was due to negligence on the part of the organization, and brings a claim for damages against the organization, any liability the organization has to the volunteer is generally covered by its public liability policy. However, care must be taken to ensure that the policy wording covers claims by volunteers, since their relationship with the organization is different from that of members of the public.

While public liability insurance may assist in covering compensation claims by volunteers, it does not by itself offer sufficient protection for volunteers, because the policy only becomes effective if the volunteer is able to establish negligence on the part of the organization or its employees or agents.

Public liability insurance may also cover the organization's vicarious liability for claims made against it by a third party as a result of a negligent act or omission on the part of a volunteer. Again, the organization should verify that cover extends to the negligent acts of volunteers and is not limited to employees.

#### **Professional Indemnity Insurance**

The third type of insurance to be considered is the Professional Indemnity Insurance. In addition to public liability insurance, organizations should consider whether professional indemnity insurance is required to cover claims against them for breach of professional duty. This might be relevant where the organization provides medical assistance or is responsible for advising on aspects of an emergency response or making strategic decisions about how to deal with a particular emergency. A claim against an organization for negligence in relation to matters of this kind may fall outside the organization's public liability cover, and professional indemnity insurance would be required to fill this gap.

#### **Directors and Officers Insurance**

Finally, the fourth type of insurance to be considered is the Directors and Officers Insurance. Some volunteers are also directors or other office-holders of an organization, and are potentially exposed to liability for breach of duty in this capacity. Although it is debatable whether the statutory protection for volunteers extends to voluntary directors or other office-holders, even where it is thought that the volunteer office-holders have no personal liability, it would be prudent to ensure that they are nonetheless covered by the organization's Directors and Officers Liability Insurance.

#### **Colombia**

Following large casualties among rescue workers in a disaster in 1999, the Colombian government has launched a national insurance scheme for volunteers. Article 1 of Decree 2012 of 2003 states that:

“the nation will annually contract an accident insurance to protect volunteer members of the relief agencies that are part of the National System for Prevention and Attention of Disasters.”<sup>7</sup>

Under Article 2 of the same Decree, the Colombian Red Cross, the Colombian Civil Defence, Fire Corps in Colombia and other organizations registered as members of the System in the Directorate of Disaster Prevention and Response of the Ministry of Interior and Justice are relief agencies of the National System for Disaster Prevention and Response.

Individuals who, out of their civic spirit and without compensation, carry out relief efforts in any of the agencies referred to in the preceding paragraph, and offer their services in accordance with the regulations that each institution has established for the development of its volunteer activities, are volunteer members of the relief agencies<sup>8</sup>. The accident insurance covers the following contingencies arising in the performance of voluntary service: dismemberment, disability partial or total, permanent or temporary, medical services, physical and functional rehabilitation and provision of prostheses<sup>9</sup>.

## **2. Recurring issues**

Associations often have the choice between a subscription to a comprehensive insurance policy covering the needs of the entire association, or several contracts covering different types of risks. In order to prevent gaps in the insurance coverage, and make sure that the insurance policy covers all the

<sup>7</sup> Decree 2012 of 21 July 2003, Article 1.

<sup>8</sup> *Ibid.*, Article 2.

<sup>9</sup> *Ibid.*, Article 3.

risks associated with situations of emergency, it is advisable for organizations to declare and describe, to the broadest extent possible, fullest details of the activities that volunteers may carry out. If the risks are very specific, such as in emergency situations, it is imperative they are identified in advance.

Legislation can raise the awareness of organizations to protect their volunteers and even make it compulsory.



# 5

## Chapter 5: Employment law

The current chapter addresses issues related to employment law, in particular leave of absence from regular work, protection from dismissal and other positive benefits that may encourage individuals to volunteer in emergencies.

### 1. Leave of absence and protection from dismissal

#### Brazil

Brazil does not have legislation authorizing leave in case of disasters or emergencies. Nevertheless, labour laws contain a provision regarding the possibility of taking a leave of absence motivated by significant reason related to national security. In such a situation, governmental authorities contact employers in order for employees to leave their regular work. Labour prosecution services shall oversee the procedure. The employer shall continue paying regular wages to employees during the first 90 days of their absence from regular work.<sup>1</sup> The law does not provide protection from dismissal in such a situation, but the working contract is suspended during the employee's absence, and it is therefore impossible for the employer to dismiss him/her. Nevertheless, the law does not protect the employee from dismissal once he/she returns to work.

#### Indonesia

In Indonesia there is no regulation in regard to the ability of a volunteer to take a leave of absence from his/her "regular job" in order to volunteer in case of disasters/emergencies.

Nevertheless, if the volunteering is formally obligated by the State, then such leave is permissible. Article 92 (2)(d) of the *Law No. 13/2003 concerning Manpower* (Law No. 13/2003) specifically stipulates that an employer shall be obliged to pay the employee's wages if the employee does not perform his/her work because he/she is carrying out or fulfilling obligations to the State.

In such particular situation in which the volunteering is ordered by the State, the law provides legal protection from dismissal in case of participation in such activities. Accordingly, Article 153 (2) (b) of the *Labour Law* stipulates that an employer is prohibited from terminating the employment of an employee who is fulfilling his/her obligations to the State in accordance with the prevailing laws and regulations.

#### Australia

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<sup>1</sup> See the compilation of Brazilian Labour Laws (Consolidação das Leis do Trabalho), Article 472.



In Australia, regarding the possibility of taking a leave of absence for volunteering, it is to be noted that all private-sector employees have a legal entitlement under the *Commonwealth Fair Work Act 2009* to take unpaid “community service leave”, allowing them to be absent from work for:

- a. the period of engagement in the activity;
- b. reasonable travelling time associated with the activity; and
- c. reasonable rest time immediately following the activity, provided that the absence is “reasonable” in all the circumstances.<sup>2</sup>

Activities that are allowed within the definition of community service leave include emergency management activities done on a voluntary basis<sup>3</sup> for a “recognized emergency management body”<sup>4</sup> that either:

- a. requested the employee’s services or
- b. had the circumstances permitted, would have reasonably made such a request.

The right to take community service leave under the *Fair Work Act 2009* does not require a formal declaration of emergency or natural disaster.

In relation to the legal protection from dismissal, employees who take “community services leave” in accordance with their entitlement under the *Commonwealth Fair Work Act 2009*, cannot have their employment terminated on the basis that they have taken the leave.<sup>5</sup> This would include a temporary absence from work to undertake voluntary work as part of an emergency response.

Some Australian jurisdictions provide protection against the “victimisation” of employees who are absent on emergency relief work. For example, in New South Wales, emergency services volunteers are protected from “victimisation” with regard to their voluntary duties.<sup>6</sup> This goes beyond termination to other factors adversely affecting an employee’s employment. The protection is however limited to instances of emergency relief work that is specifically prescribed by the State government as being protected under this Act.

## Qatar

In relation to Qatar, there is no particular legal provision addressing leave of absence taken by volunteers. However, certain laws may be of relevance, such as Article 9 of the *CDD Law*, which provides that any person requested to participate in civil defence activities is considered as being mandated by his/her initial profession, which shall keep paying his/her salary together with all other payments and in kind considerations during the period of his/her mandate.

Furthermore, Article 8 of the *CDD Law* *inter alia* provides that, upon the declaration of state of emergency, the individuals working for public services and vital establishments (such terms are defined in the *CDD Law*), and in the medical services and foodstuffs sectors, are prohibited from leaving their workplace without the authorization of the civil defence responsible at the service or

<sup>2</sup> Fair Work Act 2009 (Cth), Section 108.

<sup>3</sup> Honorariums, gratuities and similar payments do not count as payment for the purposes of determining if an activity is voluntary: *Fair Work Act 2009* (Cth), Section 109 (2)(b).

<sup>4</sup> This term has a broad definition insofar as an organization is set up to respond to natural disasters and emergencies, however the Act excludes from this provision a body set up purely for the purposes of being eligible for community services leave: *Fair Work Act 2009* (Cth), Section 109(4).

<sup>5</sup> *Ibid.*, Section 77(1)(h).

<sup>6</sup> *State Emergency and Rescue Management Act 1989* (NSW).



institution. This prohibition shall also apply to any other category of persons whom the CDD deems essential that they remain in their jobs to guarantee the continuity of normal life. Although it is not clear whether this would also cover volunteers, at the current stage it can be confirmed that such provision applies to the personnel assisting the CDD in certain situations or missions, noting that such personnel are usually from the police. However, none of these provisions have so far been practically implemented.

Qatari *Labour Law* is silent regarding the issue of dismissal of an employee who has participated in volunteering activities. In fact, Article 49 of the *Labour Law* provides that an employment agreement for an indefinite period may be terminated by the employer or the employee at any time without the need to justify the reasons of such termination provided that prior notice is given according to the provisions of the said article.

Furthermore, Article 61 of the *Labour Law* provides for those cases in which the employer may dismiss an employee without prior notice and without the end of service indemnity, noting that such cases do not include the case of participation in volunteering activities, and are mostly related to immoral or violent acts or breaches committed by the employee.<sup>7</sup>

However, the wording of Article 9 of the *CDD Law* referred to above may be an indication of a legal protection from dismissal in cases of participation in civil defence activities given that it guarantees that the person so participating would still be paid his/her salary and any and all other payments and in kind considerations by their initial profession during the period of his/her mandate. Article 9 of the *CDD Law* does not expressly mention that this applies only in the event of an express declaration of state of emergency, although the title of the chapter under which Article 9 falls is: “Chapter 3 – Procedures and provisions of emergencies”.

Qatari law does not expressly address the issue of any positive benefits granted in regard to volunteering, and specifically in regard to volunteering in situations of emergency or disasters.

It is worth noting that according to Article 2 (3) subject to the provisions of Article 20 of the *Income Tax Law No. 21 of 2009* (the *Income Tax law*), regarding the income tax applicable on amounts paid to non-residents for activities that are not related to a permanent establishment in the State of Qatar, the provisions of the law shall not apply to salaries, remunerations and considerations and other resembling amounts, which means that employees in Qatar (Qatari nationals or not) are not subject to income tax.

## France

### Ability of volunteers to take a leave of absence

In France several legal provisions govern the ability to take a leave of absence from “regular jobs” in order to volunteer. These laws only apply to employees, except for firefighters who are a very particular type of volunteer. The French *Labour Code* specifically provides for a number of leaves of absence which may be applicable to emergency situations. Such leaves are encouraged under French law by providing for tax incentives to be granted to associations

<sup>7</sup> Among breaches committed by the employee figure: (a) In the event the employee failed, more than once, to comply with any of the essential obligations provided in the employment agreement or by law, despite having been sent a written notice in this regard and; (b) In the event the employee was absent from work without a legitimate reason for seven consecutive days or fifteen non-consecutive days *per annum*.

which agree to make their employees available to volunteer for any approved Association of Civil Safety. Nevertheless, any such absences remain unpaid by the employer.

As already suggested, in France employment laws only apply to *volontaires* under CSC or CSV contracts when they are employees in addition to their acting as volunteers. CSC or CSV may be able to take unpaid leaves of absence from their “regular jobs” in order to volunteer.

#### **Ability of bénévoles to take a leave of absence**

*Bénévoles* of an approved Association of Civil Safety can also benefit from an unpaid leave of absence.<sup>8</sup>

In relation to the legal provisions in regard to the ability of *bénévoles* to take leaves of absence from their “regular jobs” in order to volunteer, the Labour Code provides for a number of leaves of absence which may be applicable in emergency situations.

#### **■ Representatives in the social organs of associations**

One leave is specific to representatives in the social organs of associations. It grants time off for meetings, but not for training.

#### **■ International solidarity leave**

Another type of leave is the international solidarity leave.<sup>9</sup> Any employee may take it provided that the following conditions are met. For missions conducted outside of France, the purpose of the mission must be for:

1. humanitarian aid, or
2. humanitarian aid in emergency situations.

The list of associations conducting such missions is provided by a Ministerial Order<sup>10</sup> dated 16 July 1996.<sup>11</sup> In order to participate in a humanitarian aid mission, an employee must have at least 12 months (consecutive or not) of work in the same firm. No official declaration of emergency or disaster is required in order for the international solidarity leave to be granted.

This leave of absence can last up to six months. The employee must notify the employer at least 30 days before the beginning of the leave and state his/her willingness to participate in such a mission. This notification must be sent by a registered letter (with acknowledgment of receipt) and must contain the duration of the mission and the name of the association for whom the mission shall be undertaken. The employer may refuse the leave of absence if he/she considers that it would have detrimental consequences on the productivity and running of the company. The refusal must be justified and the employee

8 Circular letter of 13 February 2007. Accordingly, employees are available to volunteer as *bénévoles* in these associations during working hours. This is in turn considered as donation in kind which allows the employer to tax reductions amounting to 60% of the hourly amount (this reduction remains limited to a five per thousand turnover).

9 Articles L. 3142-32 to L. 3142-40 of the French Labour Code.

10 Ministerial Orders are official answers from the Government to address policy concerns or respond to either indirect questions – such as those raised by a citizen through his/her elected member of the parliament – or direct questions – such as those asked by members of the parliament. Like Circular Letters, these are regarded as legal doctrine and have no legal weight except Ministerial Orders which address tax issues.

11 Ministerial Order of 16 July 1996, implementing Law N°95-116 of 4 February 1995 and fixing the list of associations beneficiary of the dispositions relating to the international solidarity leave.

notified within 15 days of receipt of the request for absence. Silence is considered as approval by the employer.

In emergency cases, the employee may request a leave of absence of up to six weeks with 48 hours notice. The employer must answer within 24 hours. He/she is not bound to justify the refusal, and his/her silence is not considered an approval.

In an emergency situation, if a dispute arises between an employer and an employee, the latter is entitled to refer the matter to the labour relations board for a summary judgment.

The beneficiary of an international solidarity leave cannot be dismissed while he/she is participating in such activities. However, an employee who is taking a leave of absence without the approval of his/her employer is not protected and may be dismissed.

At the end of the leave of absence, or by reason of a force majeure event which interrupts the mission, the beneficiary is entitled to return to his/her regular job or a similar job with at least an equivalent income. In return, the beneficiary shall give the employer a certificate from the association or organization recording the mission accomplished during the leave of absence.

As already mentioned, the international solidarity leave is not remunerated by the employer. Article L. 3142-37 of the *Labour Code* provides that the duration of the leave of absence is to be included within the effective working period of the employee.<sup>12</sup> This period has to be taken into consideration when determining the legal and conventional advantages to be granted to employees and remain contingent on the employees' seniority. Unless otherwise agreed upon with employees, this leave cannot be imputed on the annual leave duration and counted as vacation time.

#### ■ Leave for the participation in emergencies and rescue operations

A second type of unpaid leave under French law is the Leave for the participation in emergencies and rescue operations.<sup>13</sup> Accordingly, an employee who is a member of an approved association dedicated to civil safety issues may take a leave of absence in order to participate in a mission conducted by such association.

This can be sought when the ORSEC plan is triggered (requiring the deployment of approved associations and their volunteers) or when the association's volunteers are required to intervene in case of accident, calamity or disaster.

There are no specific conditions in order for this leave to be granted in cases of natural disaster, other than the employer's approval. The employer cannot refuse the leave unless the employee plays a critical role in the smooth running of the company. The law does not provide a maximum duration for this intervention. Pursuant to the French *Labour Code*, employees cannot be dismissed or downgraded, nor have disciplinary sanctions brought against them, if they are mobilized to participate in emergencies and rescue operations.<sup>14</sup>

#### ■ Leave for natural disaster

<sup>12</sup> Labour Code, Article L. 3142-37.

<sup>13</sup> *Ibid.*, Articles L. 3142-112 to L. 3142-114.

<sup>14</sup> *Ibid.*, Article L. 3142-114.

A third possible leave under French law is the Leave for natural disaster.<sup>15</sup> A leave of absence may be taken by any employee residing in or employed in an area hit by a natural disaster to participate in activities of organizations helping the victims of a natural disaster. This applies equally to *bénévoles* and *volontaires*. The law does not require a declaration of emergency or a triggering of the ORSEC plan.

Beneficiaries must request the approval of their employer for a maximum duration of 20 days, regardless of whether they are consecutive or not. In emergency situations, this leave may be taken with 24 hours notice. However, the employer may refuse the leave if he/she considers that it would be detrimental to the production or the smooth running of the company. The employer must consult the workers' council or the employees' representatives as well as provide justifications for the refusal of the leave.

The employer may not lay off or initiate any disciplinary sanctions against the employee after granting approval.

No declaration of emergency is necessary and the legal protection would apply to any instance of volunteering.

#### ■ Leave for firefighters

A fourth leave relevant to volunteers in emergencies under French law is the Leave for firefighters.<sup>16</sup>

The law governing volunteering in the National Fire Brigade establishes the right to take a leave of absence for volunteer firefighters in two circumstances:

1. Operational missions for the rescue of accident or disaster victims, evacuation of populations, protection of persons, goods and the environment in emergency situations and
2. Training.<sup>17</sup>

A volunteer firefighter may take a leave of absence from his/her regular job at any time when the competent authority requires him/her to do so. This does not depend upon a declaration of emergency or disaster.

However, a volunteer firefighter needs to receive the approval of his/her employer to take a leave of absence in emergency situations or for training actions. An agreement between the employer and the local fire and rescue service ensures that the terms of the operational availability of the volunteer firefighter are compatible with the necessities of the smooth running of the company or public service. Such agreement provides for the terms that may apply to the benefit of the employer if the absences exceed a limit set out therein by the parties.

The employer may refuse approval for reason of necessity if the presence of the employee is critical for the smooth running of the company or the public service. However, this refusal must be justified and notified to the volunteer and the local fire and rescue service.

It should also be noted that with respect to training programs, volunteer firefighters' training includes initial and ongoing training. The initial training is

<sup>15</sup> *Ibid.*, Articles L. 3142-41 and L. 3142-42.

<sup>16</sup> Law N°96-370 of 3 May 1996 regarding the development of volunteering firefighters, Articles 2, 3 and 4.

<sup>17</sup> *Ibid.*, Articles 2, 3 and 4.

spread over at least 30 days of the first three years of their commitment, 10 of which must be done during the first year. The ongoing training requires at least 5 days of training a year.

In relation to the legal protection from dismissal, the law provides that neither dismissal, downgrading, nor disciplinary sanctions may be taken against a volunteer firefighter for reason of his/her leaves.<sup>18</sup> This legal protection is independent of a declaration of emergency being issued or not.

The law provides for compensation and retirement benefits for the volunteer firefighter.<sup>19</sup> These are not linked to an emergency situation but are calculated on an hourly basis. After 20 years of service, the volunteer firefighter is entitled to an *allocation de vétérance* (a tax free veteran allowance).

#### ■ Leave for employees committed to the civil safety reserve

The fifth type of leave under French law relevant to volunteers in emergencies is the Leave for employees committed to the civil safety reserve.<sup>20</sup>

Any employee committed to the civil safety reserve may be entitled to take a leave of absence to fulfil his/her commitment. Civil service reservists are, however, subject to more favourable provisions contained in their employment contract, collective labour agreement or convention between their employer and the Ministry in charge of civil safety. The employee must nevertheless request his/her leave from the employer who is required to respond within a week and provide justifications for any refusal. During the period of activity in the civil safety reserve, the labour contract is suspended. No dismissal, downgrading or disciplinary sanctions can be taken against the employee. The period of activity in the reserve is considered as an effective period of working and is thus taken into account for the legal and conventional advantages in terms of seniority, paid vacation and rights to social welfare.

## 2. Positive benefits identified in other jurisdictions

In relation to further positive benefits identified in other jurisdictions, they are gathered below and presented under specific subject headings.

### 2.1 Paid leave

#### Mozambique

Mozambique recently adopted a *Law on Volunteerism*, which allows volunteers to be absent from their regular work for up to three days, if their volunteering is required in urgent missions to respond to emergency situations, public calamity or equivalent.<sup>21</sup> The time spent is to be considered as worked days, and shall be paid by the volunteer's regular employer.<sup>22</sup>

<sup>18</sup> *Ibid.*, Article 6.

<sup>19</sup> *Ibid.*, Articles 11 and 12.

<sup>20</sup> French Labour Code, Articles L. 3142-108 to L. 3142-111.

<sup>21</sup> Law 7/2011 of 11 January 2011, Article 8 (1)(c): “São direitos do voluntário: [...] (c) faltar justificadamente, se for empregado, até 3 dias, por motivo do cumprimento de missões urgentes em situações de emergência, calamidade pública ou equiparadas.”

<sup>22</sup> *Ibid.*, Article 8 (2): “As faltas justificadas, até 3 dias, previstas na alínea c) contam, para todos os efeitos, como tempo de serviço prestado à entidade empregadora e não implicam a perda de remuneração.”



This may set a heavy financial burden on local employers, who therefore might be unwilling to hire volunteers likely to be deployed in emergencies.<sup>23</sup>

## 2.2 Unemployment benefits

### Macedonia

In Macedonia, the 2007 *Law on Volunteerism* indicates that the rights acquired based on the unemployment status shall not be lost following the conclusion of a volunteering contract.<sup>24</sup>

This provision is a positive step as it reassures individuals that volunteering shall not lead to losing unemployment or other benefits.

## 2.3 Tax benefits

### Macedonia

Also in Macedonia, the 2007 *Law on Volunteerism* indicates that personal income tax related to expenses for volunteering as specified in the contract shall not be paid.<sup>25</sup> This provision offers a general incentive aiming to foster individuals to sign up for volunteering.

## 2.4 Retention of benefits in case of accident or illness

### Burkina Faso

In Burkina Faso, the national law on volunteerism indicates that a volunteer who has his/her contract suspended due to illness or accident related to the volunteering retains the monthly allocation until he/she is ready to resume the volunteering, or until the expiration of the volunteering contract.<sup>26</sup> Moreover, the same law indicates that volunteers are entitled to social protection in case of accident at work and occupational diseases, as stated in the general social security scheme applicable to regular employees.<sup>27</sup>

The provision can well be applied in relation to volunteering in emergencies. It seems to offer a good level of protection to volunteers, although it may result in financial challenges for some voluntary organizations.

## 2.5 Volunteering deemed as work/study hours

### Bolivia

In Bolivia, the *Law on Volunteerism* indicates that emergency voluntary actions requiring volunteers to perform during their regular working hours are to be

<sup>23</sup> On this issue, see, for example, a commentary by a local law firm, under <http://www.salcaldeira.com/Temadasemana/RegimeJuridicodoVoluntariado.pdf>, visited on 28 July 2011.

<sup>24</sup> Macedonian 2007 Law on Volunteering, Article 18.

<sup>25</sup> *Ibid.*, Article 13.

<sup>26</sup> Law 031-2007/AN of 17 January 2008, Article 27: “Le volontaire national dont le contrat a été suspendu pour cause de maladie ou d’accident imputable à sa mission de volontariat, conserve l’intégralité de l’allocation forfaitaire mensuelle jusqu’à ce qu’il soit en état de reprendre sa mission de volontariat ou jusqu’à l’expiration de la durée de son contrat de volontariat.”

<sup>27</sup> *Ibid.*, Article 11: “Le volontaire national a droit à une protection sociale en matière d’accident du travail et de maladies professionnelles dans les conditions fixées par la loi relative au régime de sécurité sociale applicable aux travailleurs salariés et assimilés.”

considered working hours in the case of workers/employees, and course attendance hours in the case of students. The national volunteering body (National Volunteer Council) shall certify on the work performed by volunteers and the time spent on emergency voluntary action.<sup>28</sup>

The provision sets an incentive for volunteering in emergencies, since volunteers shall not be penalised for not turning up to their regular work or if they are prevented from attending classes due to volunteering in such situations. Furthermore, it recognizes the important role that volunteers play in emergency situations in working towards the general wellbeing of society as a whole. Although such an initiative is to be welcomed, it is worth highlighting that previous studies have reported difficulties in implementing this law in Bolivia, apparently due to the fact that it was adopted during the mandate of the previous President and that it was not considered as a priority for the new government to implement.<sup>29</sup> Hence, this suggests that having a legal framework in place does not necessarily enhance legal protection for volunteers in emergencies.



## Chapter 6: Other issues

# 6

This chapter addresses further issues of relevance in relation to volunteers in emergencies, particularly any training they ought to take part in, as well as eventual checks required by law, such as criminal background checks, among other issues.

### 1. Compulsory training

#### Brazil

In Brazil, the regular training of volunteers is not mandatory, except for professional activities. This is the case for instance in relation to medical doctors, engineers, and lawyers.

#### France

In France, all *bénévoles* of approved Associations of Civil Safety acting in teams that participate in civil safety missions have to undertake a continuous training.<sup>1</sup> The goal is to maintain the technical and/or pedagogical knowledge, to update and perfect such knowledge, and to acquire new skills and techniques. The mandatory training comprises of six hours per year.<sup>2</sup>

Having “operational” *bénévoles* is a pre-condition to being approved by the State as an Association of Civil Safety. In addition, an approved association has to ensure that its *bénévoles* are up-to-date with the ongoing training requirements so that they can be mobilized at any time. Failure to ensure regular training leads to the loss of approval as an association and hence the association may be barred from participating in future civil safety missions.

Only *bénévoles* who could be called upon to intervene in civil safety operations need to be trained. *Bénévoles* of an Association of Civil Safety involved in other types of missions do not have the same training requirements.

*Municipal Reserve bénévoles* do not physically intervene in emergency situations but often provide remote technical support to the emergency teams. No particular training is required for them as they are not in direct contact with those being rescued.

The law provides for the training of CSC and CSV *volontaires* adapted to the nature of their missions. The training is paid for by the association and performed while the *volontaire* is on mission. They must follow special trainings in order to intervene in emergency situations. The content and effectiveness of such trainings can be controlled by the State.

<sup>1</sup> Decree N°91-834 of 30 August 1991 relating to first aid training.

<sup>2</sup> Ministerial order of 24 May 2000 on the organization of ongoing training in the first aid sector.

The contract of CSC must provide for additional preparation and civic and citizenship training. Associations resorting to CSCs benefit from a grant of € 100 per month per CSC to cover supervision and training costs.

The training of firefighter volunteers includes initial and ongoing training sessions preparing them for all types of rescue missions.<sup>3</sup>

### **Qatar**

In Qatar, Article 2 of the *CDD Law* provides that the activities of the civil defence include all the means towards realizing its objectives, and especially *inter alia*:

- i. implementing the training programs required for civil defence activities and undertaking local tests to ensure the adequacy of the means and measures relating thereto and
- ii. establishing training plans and preparing the equipment required for their success and training the persons working at the CDD and elsewhere, as well as preparing volunteers for the undertaking of civil defence works.

Article 5 of the *CDD Law* also provides that the Minister of Interior shall decide on the undertaking of tests and trainings to increase the level/standard of training for civil defence activities and the good functioning of the machines and equipments in coordination with the concerned training parties.

Furthermore, the law provides that the principles of civil defence shall be taught at all stages of education and at religious and military institutes and training institutes and centres according to the information that the CDD determines in agreement with the concerned educational parties.<sup>4</sup>

In addition, the CDD shall establish teams of volunteers that train for civil defence activities outside official working hours, so that they may participate in the performance of certain civil defence activities in the event of a declaration of a state of emergency.<sup>5</sup>

The governing rules of organizations engaging volunteers may not expressly provide for additional or regular training requirements. Nevertheless, the Qatari Red Crescent indicated that volunteers are trained before proceeding with any volunteering work, in order to ensure that they are up to the level of performance of certain missions. It is the mission of certain volunteers to train and instruct other colleagues on the rules and processes of volunteering. Additionally, according to the draft internal bylaws of the Disaster Department, volunteers will be trained for a certain period of time before being approved permanently as Qatari Red Crescent volunteers.

### **Australia**

In Australia, training is an important incentive to emergency service volunteers because it ensures that volunteers are competent and confident. Appropriate training provision may also be part of the legal duty of care owed by organizations to their volunteers and the public, and is likely to be the most powerful recruitment and retention tool.<sup>6</sup> There apparently isn't any legal

3 Law N°96-370 of 3 May 1996 regarding the development of volunteering in firefighters organizational bodies, Article 4.

4 CDD Law, Article 6.

5 *Ibid.*, Article 12.

6 Emergency Service in Australia & New Zealand, "Problems & Prospects for Volunteer Ambulance Officers" *Report of the Stand Up & Be Counted Project May 2002*, University Department of Rural Health, Tasmania, at 46.



obligation to ensure mandatory training programme for volunteers operating in emergencies.

In any case, one has to concede that the training of volunteers is an important aspect of risk management. It is relevant to both the potential liability of organizations towards volunteers who may be injured in the course of their duties, and to the liability of organizations to members of the public.

In an article on the subject, Tan argues that, given that volunteers face more hazardous conditions in an emergency, it is essential that they are screened as well as prepared as much as possible so as to avoid adding to the problems that already exist in emergency situations.<sup>7</sup> He further identifies some measures for the preparation of volunteers deployed in emergencies. According to him, the preparation should include pre-deployment screening, the provision of proper equipment and adequate briefing of volunteers.<sup>8</sup>

Pre-deployment screening could include medical check-ups, psychological and personality testing, qualifications and certification check, verification of prior experience and training, testing and assessment, as well as written consent to the risks involved.<sup>9</sup>

It is also important to brief emergency volunteers so that they can prepare themselves before deployment. The briefing could include information about their legal rights and duties. Personal preparation could include vaccinations and immunizations, physical training, insurance, and contingency planning. Such preparation and mitigation activities are important as humanitarian relief workers may be at a higher risk of developing symptoms of post traumatic stress disorder.<sup>10</sup>

It is also recommended that standardized volunteer training by industry type be offered across all jurisdictions. To date, some organizations (some State SES groups and volunteer firefighters, Australian Volunteer Coast Guard, the Surf Life Saving Association, Red Cross, St. John's Ambulance and others) have developed their own training programs, while others still have no formal structure in place or lack the resources to do so.<sup>11</sup> Unfortunately, the volunteer sector is given no concessions by the federal or State education and training authorities in their delivery of training or reductions of costs.<sup>12</sup>

## Nicaragua

In Nicaragua, arising from the legislation on volunteering, an obligation is imposed upon voluntary organizations regarding the training of volunteers, namely: to 'conduct with its volunteers induction training and capacity activities necessary for the proper development of their functional and personal activities.'<sup>13</sup>

7 Tan, Richard, "The preparation of volunteers for deployment in emergencies", *The Australian Journal of Emergency Management*, Volume 21, N°4, November 2006, at 55.

8 Ibid.

9 Ibid.

10 Ibid., at 55.

11 Emergency Service in Australia & New Zealand, *Op. cit.*, at 67.

12 Ibid..

13 Nicaraguan *Law on Social Volunteerism*, Law N°543 of 22 June 2005, Article 14(4): "Implementar en las personas voluntarias procesos de inducción, capacitación y formación, necesarios para el correcto desarrollo de actividades funcionales y personales."



## 2. Prior background checks

### France

In France, no additional registration or checks are legally required for *bénévoles* or *volontaires* in general.

However, to volunteer as a medical doctor, the *bénévole* must register with the local office of the *Ordre National des Médecins* (the National Council of the Medical Profession) and must comply with insurance requirements.

Firefighter volunteers must fully enjoy their civil rights and must not have been convicted of a crime deemed incompatible with their functions (arson or pyromania, for example).

### Brazil

In relation to Brazil, *Labour Law* is against the carrying out of any previous checks – in order to prevent prejudice and/or unequal treatment. The Brazilian Constitution forbids discrimination and protects the right to privacy.<sup>14</sup> Furthermore, the Brazilian Labour Ministry has also issued some norms for the protection of the right to privacy. Order 41/2007, Article 1 and Article 8 illustrate this concern:

“Article 1. When hiring or in order to maintain the employee’s contract the employer is forbidden to make any demand for documents considered discriminatory or that could put the hiring at risk, specifically certificate about previous labour judicial actions, tests, exams, descriptive reports, health certificate or declaration regarding sterilization or pregnancy status.”

“Article 8. The employer is forbidden to make any note that could cause harm to the image of employees, especially regarding sex or sexuality, origin, race, colour, civil status, family status, age, labour judicial actions, health and professional performance or behaviour.”

## 3. Testimony

### Indonesia

According to the *Law No 8 of 1981 concerning Criminal Procedure* as well as the laws and regulations governing civil procedure, there is no provision exempting volunteers from the ordinary rules of civil and criminal evidence taking in Indonesia. Everyone is obliged to testify before a presiding Panel of Judges in a hearing, or before the investigator in a formal investigation.

### Brazil

In Brazil, witnesses are compelled to testify regardless of their eventual status as volunteer, for all individuals have an obligation to assist competent authorities in the investigation of crimes. The law nonetheless admits exceptions in special cases (for example due to family relationship, serious illness, etc.). If

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<sup>14</sup> Brazilian Constitution, Article 5 (I and VIII; and X-XII, respectively).

a witness fails to appear without a good reason, he/she may be summoned to testify by force, and shall be fined for delaying the investigative procedure.<sup>15</sup>

### **Qatar**

Similarly in Qatar, general rules applicable to testimony would also apply to volunteers.

Article 264 of the *Qatari Civil and Commercial Procedural Law* (CCPL) provides that employees and persons in charge of a public service do not testify on matters that have come to their knowledge during the undertaking of their work with respect to information that was not published in a legal manner nor authorized for divulcation by the concerned authority, even after leaving their employment. Nevertheless, the concerned authority may authorize them to testify upon the request of the Court or one of the parties in the lawsuit.

Article 265 of the CCPL provides that lawyers, agents, doctors and others may not disclose information that came to their knowledge through their profession or capacity. This concerns facts or information, even after the end of their service or termination of their capacity, unless the information indicated the commission of an offence or a crime. Nevertheless, the abovementioned persons should testify on such facts or information whenever requested to do so by the person who has disclosed it to them, without prejudice to the provisions of the laws related to their professions.

Article 278 of the CCPL also provides that if the witnesses refuse to attend the hearing following the request of a party or the Court, such party or the clerk office, depending on the situation, must assign them to attend to testify at least 24 hours before the fixed date, except in cases of testimony by distance. It is possible to shorten that timeline in cases of urgency, and to assign the witness to attend by a telegram sent by the clerk office by order of the Court or the mandated judge.

Under Article 279 of the CCPL, where witnesses have been duly assigned and failed to attend, the Court or the mandated judge shall sentence them to pay a fine amounting to QR 200 (i.e. approximately USD 55). The decision shall be mentioned in the records and shall not be subject to any appeal. In cases of severe urgency, the Court or the judge may issue an order to have the witnesses brought by the police. In other cases, it shall be ordered to re-assign the witnesses to attend if this is necessary, and they shall bear the expenses of such assignment. Failure to attend results in having to pay double the fine and the Court or the judge may issue an order to have the witnesses brought to the Court. The judge or the Court may exempt them from the penalty in case they finally attend and provide a reasonable excuse.

Article 280 of the CCPL further provides that where the witness attends but refuses without a lawful justification to take the oath or to answer, he/she shall be sentenced to pay a fine not exceeding the amount of QR 1000 (i.e. approximately USD 273).

Article 282 of the CCPL provides *inter alia* that the testimony shall be made before the Court and in the presence of the parties; unless the witness has

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15 Decree-Law n° 3.689 of 3 October 1941 states, “Artigo 218. Se, regularmente intimada, a testemunha deixar de comparecer sem motivo justificado, o juiz poderá requisitar à autoridade policial a sua apresentação ou determinar seja conduzida por oficial de justiça, que poderá solicitar o auxílio da força pública.”  
“Artigo 219. O juiz poderá impor à testemunha faltosa prisão de até 15 dias, sem prejuízo do processo penal por crime de desobediência, e condená-la ao pagamento das custas da diligência.”

an excuse that prevents him/her to attend and the Court is convinced there from. The Court may approach him/her in order to hear his/her sayings.

Finally, pursuant to Article 179 of the Criminal Code, any person who has been assigned to testify before any judicial authority, or investigation authority, and did not attend, or take the oath, or testify, without an acceptable excuse shall be punishable by imprisonment for a term not exceeding six months, and of a fine not exceeding QR 3000 (i.e. approximately USD 822), or of any such two sanctions. The witness shall be exempted from the penalty if he/she returned from his/her refusal prior to the issuance of the judgment in the lawsuit.



## Conclusion

Volunteers are active in many different countries and in varied contexts. Some of them perform vital activities in the context of disasters and other crises. For all volunteers, the creation of an enabling environment within which they can flourish is important, and the legal framework in any country has an impact on this environment. The legal framework may provide greater protection and facilitate volunteering efforts, and in some cases inhibit or create barriers to volunteering.

The current study aims at shedding some light on the legal protection of volunteers in emergency. While the last few years have seen the adoption in many countries of laws on volunteering, the issue of volunteering in emergency has so far been addressed in only a limited number of laws, cases and academic writing.

From the overview of the legal protection afforded by different countries, together with a detailed analysis of five particular jurisdictions, the findings of this study indicate that there are divergent approaches taken in addressing the legal issues that may arise. In some countries, there is no specific law applicable in regard to volunteers or emergencies contexts, and the general law would apply (which may not be sufficiently clear or in fact may restrict volunteering in emergencies). In other countries, there is specific legislation relating to volunteers (which may apply to all contexts including emergencies) and in others, there is specific disaster/emergency legislation that regulates volunteering. Even in these latter contexts, the protection of such laws may not be sufficient in all instances, and a case by case analysis is required. Overall the approach varies greatly, and it is to the benefit of communities and volunteers for States to undertake an initial assessment of their legal framework in regard to volunteers, and particularly those active in emergencies, to assess the adequacy of such a framework and to strengthen the legal protection of volunteers.

Based on this assessment, and the legal context, the applicable legal framework may need to be clarified by means of law or policy. Depending on the problem at hand, the solution will need to be tailored: for instance, in case of a barrier to volunteering such as the levying of taxes on reasonable reimbursements for volunteers, or dismissal in case of absence from work (even for a legitimate activity such as responding to an emergency), then a solution may lie in amending the particular tax or employment law provision. In other situations, where there are multiple barriers or ambiguities, then a preferred option may be to legislate a “framework law” on volunteering in general, that would clarify all the legal aspects surrounding volunteering. Clearly, the most appropriate way to create an enabling environment would depend on the particular context of each country and a “one size fits all” approach will not work. This study does not assert that the adoption of legislation on volunteering in emergencies is necessarily required. Nonetheless, it recalls the

conclusions and recommendations of the United Nations Secretary-General, that “a favourable legislative framework helps ensure that volunteers and volunteer-involving organizations feel secure in their volunteer experiences.”<sup>1</sup>

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<sup>1</sup> Report of the Secretary-General, Follow-up to the implementation of the International Year of Volunteers, General Assembly document A/63/184, of 28 July 2008, p. 18.



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### Togo

Law on Volunteerism of 11 February 2011

### United States

US Uniform Emergency Volunteer Healthcare Services Act

New Jersey: Emergency Responders Employment Protection Act, of 14 January 2010

### Zambia

Zambia Disaster Management Act 2010, of 13 April 2010

## List of Acronyms

<b>ACDV</b>	- Accredited Community Disaster Volunteer
<b>ACT</b>	- Australian Capital Territory
<b>BNPB</b>	- Badan Nasional Penanggulangan Bencana (National Disaster Management Board)
<b>BPBD</b>	- Badan Penanggulangan Bencana Daerah (Regional Disaster Management Board)
<b>CCPL</b>	- (Qatari) Civil and Commercial Procedural Law
<b>CDD</b>	- (Qatari) Civil Defence Department
<b>CLA</b>	- Civil Liability Act
<b>CSC</b>	- Civic Service Commitment
<b>CSO</b>	- Civil society organizations
<b>CSV</b>	- Civic Service Volunteering
<b>Cth</b>	- Commonwealth
<b>DRRMC</b>	- Disaster Risk Reduction and Management Councils
<b>GCC</b>	- Gulf Cooperation Council
<b>IFRC</b>	- International Federation of Red Cross and Red Crescent Societies
<b>LGU</b>	- Local government Units
<b>NDRRMC</b>	- National Disaster Risk Reduction and Management Council
<b>NSW</b>	- New South Wales
<b>NT</b>	- Northern Territory
<b>OCD</b>	- Office of Civil Defence
<b>ORSEC</b>	- ORganisation des SECours (organization of help/emergency plan)
<b>Qld</b>	- Queensland
<b>SA</b>	- South Australia
<b>SDIS</b>	- Service Départemental d'Incendie et de Secours (firefighting and rescue services)
<b>SES</b>	- State Emergency Service
<b>Tas</b>	- Tasmania
<b>US</b>	- United States

**USD** – United States dollar

**Vic** - Victoria

**ViE** - Volunteer in Emergencies

**WA** - Western Australia

## Annex I: Questionnaire distributed to law firms

The following is the list of questions and issues prepared by the IFRC, based on a preliminary review of the literature and country legislation. The questionnaire was distributed to law firms of five countries (Australia, Brazil, France, Indonesia and Qatar), and each of which drafted a comprehensive report on the national legal framework applicable to volunteers in emergency in their respective jurisdictions. These reports represent the main basis upon which the current report was drafted.

### Status of Legislation

- 1.1 Is there specific legislation in regard to volunteering in general in the country?
- 1.2 Is there specific legislation in regard to emergency/disaster in the country? Please highlight the federal level as well as a few instances of State/territory law, as relevant.
- 1.3 If there is a specific legislation regarding emergency or disaster, are there special provisions in regard to the deployment and use of volunteers in disaster?
- 1.4 Does national legislation make any distinction or treat national volunteers differently from international volunteers? If yes, then please factor this differentiation into all the responses to the questions in the following sections.

### Declaration of Emergency/Disaster

- 2.1 Is there a specific definition of “emergency” or “disaster”, and what is the definition?
- 2.2 Is there a “declaration of emergency/disaster” required as per the law?
- 2.3 Is this declaration made by the local government or central government (depending on whether the type of governance is federal)? Please elaborate.
- 2.4 What is the consequence of this “declaration of disaster or emergency” in general?
- 2.5 Does such a declaration have a specific consequence or impact in regard to certain activities (such as emergency medical personnel, firefighters, search and rescue personnel)?
- 2.6 Does this also impact volunteers for these specialised activities?
- 2.7 Does this impact other volunteers e.g. passers-by or “good samaritans”?

### Recognition of Volunteers and Volunteer Organizations

- 3.1 Are there special categories or types of volunteers as defined by special legislation and/or policies (e.g. medical personnel, including emergency medical technicians, ambulance personnel, doctors; search and rescue personnel; firefighters etc)?
- 3.2 For each of these categories, is there any special legislation/policy in case of emergencies and what does this law/policy contain?

- 3.3 Is there any change or are there any additional requirements to this law/policy due to a “declaration of emergency”?
- 3.4 Are there specific categories of type of organizations that may use volunteers for their activities?
- 3.5 What is the legal basis of the relationship between an organization and its volunteers?
- 3.6 Are there specific laws that would restrict certain types of activities as well as types of volunteers?
- 3.7 Are there specific requirements to register or certify volunteers? Can only such registered volunteers respond to emergencies for an organization?

## **Liability and Immunities**

### **4.1 Liability**

#### **4.1.1 What is the liability of volunteers towards third parties?**

4.1.1.1 What is the standard of care of volunteers towards third parties? For example, is there a “duty to rescue”?

4.1.1.1.1 Does this differ when the volunteer is affiliated to an organization and is there for the specific purpose as opposed to a passer-by or “good samaritan”?

4.1.1.2 Is this defined under the specific laws as related to the types of volunteers (e.g. defined standard of care regarding medical personnel, as opposed to search and rescue?) OR is this a general standard of care?

4.1.1.3 Is this defined by legislation or by the development of case law and please provide specific examples per category?

4.1.1.4 What is the type of liability that a volunteer may have towards a third party i.e. is this civil liability and/or criminal liability?

4.1.1.5 What are the sources of this liability (e.g. negligence, trespass etc)?

#### **4.1.2 What is the liability of organizations (that have volunteers) towards third parties?**

4.1.2.1 Can the organization take action against the volunteer?

4.1.2.2 Can the organization be indemnified by the volunteer?

4.1.2.3 In case of ostensible authority to act, can an organization be protected in regard to the acts of a volunteer?

#### **4.1.3 What is the liability of the organization towards volunteers?**

4.1.3.1 What is the duty of care owed by an organization towards its volunteers?

4.1.3.1.1 Does this extend to negligence?

4.1.3.1.2 What is the applicability of workplace legislation to volunteers, e.g., health and safety legislation?

4.1.3.1.3 Are there any statutory limitations of volunteer liability?

4.1.3.1.4 Exclusions



4.1.3.2 Who owes the duty of care towards volunteers? Can individual members/officers of the organization be held liable or can the organization as a whole be held liable e.g. in case of the death of a volunteer?

4.1.3.3 Is there a requirement to compensate volunteers in case of injury/death? Does this extend to families in case of death?

4.1.4 What are the duties of volunteers? Is there a code of conduct or set obligations stipulated by law?

## 4.2 Immunity

4.2.1 Are there any immunities that may apply to actions of volunteers and what are these immunities?

4.2.2 What are the requisite “triggers” for the immunity to apply?

4.2.2.1 Does a disaster have to be declared?

4.2.2.2 Who can declare a disaster?

4.2.2.3 Is the coverage retroactive once a declaration is made?

4.2.3 What types of emergency/disaster does the law contemplate?

4.2.4 Does the law focus on organizations for immunity? If organizations are the basis of immunity, are there certain categories or types of organizations that would qualify?

4.2.5 To whom does the immunity apply?

4.2.5.1 Anyone participating during a disaster?

4.2.5.2 Only those licensed to participate?

4.2.5.3 Only those authorised to participate?

4.2.5.4 Only those giving rights to property or goods?

4.2.5.5 Only those participating through a qualifying organization?

4.2.5.6 Are there restrictions in regard to qualifying organizations, e.g. would the immunity apply only to non-profit organizations and/or governmental entities? Would volunteers from private organizations be covered as well?

4.2.6 What acts does the law granting immunity cover?

4.2.6.1 Does it require that a volunteer stay within a certain “scope” to be covered?

4.2.6.2 Are volunteers only immunised for acts of simple negligence?

4.2.6.3 Are there any important exceptions from immunity? (for example in some cases there is no immunity in case of negligence in operating a motor vehicle)

4.2.7 Are volunteers compelled to testify (at hearings, inquests and other judicial/quasi-judicial proceedings)?

4.2.7.1 Does this fall within the scope of activities as determined by law?

4.2.7.2 Are there any exceptions/immunities to this requirement?

## Insurance

- 5.1 Is there standard insurance available for all volunteers?
- 5.2 Is there special insurance for volunteers in specialised areas?
  - 5.2.1 If yes, does this insurance coverage differ depending on the type of activity, e.g. different coverage for emergency medical technicians as opposed to firefighters?
- 5.3 Can an organization insure its volunteers?
- 5.4 Is there a provision for individual insurance, or group insurance?
- 5.5 Is insurance mandatory for adequate liability cover and is this provided for in a specific or general law?
- 5.6 In the absence of adequate insurance coverage, would potential immunity from liability be jeopardised?

## Employment law

- 6.1 In case of a disaster/emergency, are there legal provisions in regard to the ability of a volunteer to take a leave of absence from his/her “regular job” in order to volunteer?
  - 6.1.1 If yes, does this depend on a “declaration of emergency/disaster”?
  - 6.1.2 If no, are there specific circumstances under which this leave would be permissible e.g. are there specific conditions to be fulfilled?
- 6.2 Is there any legal protection from dismissal in case of participation in such activities?
  - 6.2.1 If yes, if this limited to an express “declaration of emergency/disaster” or does this apply to any instance of volunteering?
- 6.3 Are there any positive benefits accorded by the law in regard volunteering (such as tax benefits etc.), and specifically in regard to volunteering in situations of emergency or disasters?

## Other Issues

- 7.1 Are there requirements for additional or constant training (mandated by law)?
- 7.2 Are there any additional registration or checks required by law, such as criminal background checks?
  - 7.2.1 If yes, are these for all volunteers working in any situation, OR for volunteers working with certain categories of persons?
- 7.3 Are there legal provisions regulating the entry of international volunteers or the sending of volunteers to other States?
  - 7.3.1 Are these in the immigration laws/policies?
  - 7.3.2 Are there specific exemptions/permissions in a specific legislation relating to emergencies/disasters that would regulate such volunteers, as an exception to the immigration/entry requirements?

# The Fundamental Principles of the International Red Cross and Red Crescent Movement

**Humanity** / The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

**Impartiality** / It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

**Neutrality** / In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

**Independence** / The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

**Voluntary service** / It is a voluntary relief movement not prompted in any manner by desire for gain.

**Unity** / There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

**Universality** / The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.



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