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GLOBAL TRENDS IN NGO LAW

A quarterly review of NGO legal trends around the world

THE LEGAL FRAMEWORK FOR VOLUNTEERISM:

TEN YEARS AFTER INTERNATIONAL YEAR OF VOLUNTEERS 2001

Letter from the Editor

Since 2001, the year designated by the United Nations General Assembly as the “International Year of Volunteers (IYV),”¹ governments around the world have come to recognize volunteerism as one of the primary drivers of political, economic, and social development. As UN Secretary General Ban Ki-Moon stated in 2008, “achieving the Millennium Development Goals will require the engagement of countless millions of people through volunteer action.”² With support from nongovernmental organizations (NGOs), bilateral aid programs and multilateral agencies many governments have gone further and moved from acknowledgment of the importance of volunteerism to adoption of laws and policies designed to support and promote volunteerism in their countries.

In anticipation of the ten year anniversary of IYV, United Nations Volunteers (UNV) commissioned a global report by the International Center for Not-for-Profit Law (ICNL) and the European Center for Not-for-Profit Law (ECNL), *Laws and Policies Affecting Volunteerism Since 2001*. The report finds that since IYV 2001, over 70 laws and policies on volunteers and volunteering have been adopted in countries around the world.³ The increase in laws and policies on volunteerism, which occurred across countries with diverse governmental and legal systems, demonstrates the success of efforts made by international and domestic NGOs to carry forward the message of IYV 2001 by showing that volunteerism is an integral part of national development.

Building on this report, this issue of *Global Trends* examines the major international trends and lessons learned in the development of supportive volunteerism policies and legislation over the past decade.

I. Introduction

Prior to IYV 2001, few governments had laws or policies that specifically addressed volunteerism in a unified or comprehensive manner. The lack of enabling laws and policies on volunteerism served to

¹ UN General Assembly Resolution A/RES/52/17 (15 January 1998).

² Report of the Secretary General (A/63/184 of 28 July 2008).

³ International Center for Not-for-Profit Law and European Center for Not-for-Profit Law, *Laws and Policies Affecting Volunteerism Since 2001* (2010), <http://www.unv.org/en/news-resources/resources/on-volunteerism/doc/resrach-report-volunteerism-laws.html>.

impede the full realization of the social and economic benefits associated with volunteerism in many countries. For example, some countries' employment and minimum wage laws failed to distinguish between volunteers and employees, making unpaid volunteer activity technically illegal. In others, an absence of government programs to promote, support, and recognize the achievements of volunteers represented missed opportunities to unleash volunteerism as a driver of economic and societal development.

IYV 2001 and the subsequent actions of national and international NGOs precipitated a major change in the way governments think about volunteerism issues. By the end of 2001, more than 125 national committees on volunteerism had been formed in countries around the world – creating organized constituencies that immediately began advocating for volunteerism laws and policies in their home countries.⁴ Today, the processes set in motion by IYV 2001 have led to an enhanced profile and understanding of volunteerism and the ways in which laws and policies can enable volunteerism.

Despite – or perhaps because of – the proliferation of interest in volunteerism, there is no single universally-accepted definition of the term “volunteerism.” The International Labor Organization (ILO)'s November 2008 *Manual on the Measurement of Volunteer Work* provides a useful guide to the various definitions of volunteerism that have been enshrined in local law. It allows comparison, for example, of Canada's definition -- “service without pay, on behalf of charitable or other non-profit organizations” -- to Mexico's -- “work a person does out of free will... for the benefit of others or for a cause that is not profit-seeking.”⁵ After reviewing various national and international definitions, the ILO proposed as a working consensus definition “activities or work that some people willingly do without pay to promote a cause or help someone outside their household or immediate family.”⁶

The ILO's “working consensus definition” highlights the most common elements of the definitions of volunteerism used across countries and regions, namely that:

1. **Volunteerism is an *activity or work*.** Volunteering is a contribution in-kind (i.e. time, skills, or services) and should be distinguished from donations in goods, cash, or other valuable assets.
2. **Volunteerism is done *by people*.** Volunteers may act individually, as groups, or through associations and other formal organizations; but in all cases, a “volunteer” is a human being.
3. **Volunteerism is done *willingly*.** Individuals must make a free choice to volunteer. If an individual is compelled or coerced, then he or she is generally not considered a volunteer.
4. **Volunteerism is done *without pay*.** In some contexts volunteers would not be expected to receive any kind of monetary compensation whatsoever, while in other places volunteers might be entitled to stipends intended to help cover their living expenses or reimbursements of expenses incurred (such as the cost of traveling back and forth to the volunteer location).
5. **Volunteerism is done *to promote a cause or help someone outside of the volunteer's household or immediate family*.** Volunteer activity is usually done to benefit the larger

⁴ Report of the Secretary General A/57/352 p. 4.

⁵ International Labor Organization, *Manual on the Measurement of Volunteer Work* (November 17, 2008), p. 10 - 11.

⁶ International Labor Organization, *op. cit.* at note 3, p. 11.

community, an organization representing community interests, a public body, or the common interest. While the individual volunteer's household or family might benefit from the volunteer work, some other person outside the family should benefit as well.

As a final note, the ILO definition embraces both formal volunteerism (that is, volunteering done through an organization or institution such as a school or CSO) as well as informal volunteerism (that is, volunteer work done on an individual basis). Many countries will regulate as "volunteerism" only work done through formal institutions, seeing no need to intervene with a law or regulation for informal volunteerism; whereas other countries (especially those with relatively fewer established NGOs) will adopt a more expansive view, including both formal and informal volunteerism within the scope of a law or policy.

II. Cross-Regional Developments

Adoption of Laws and Policies

The more than 70 new laws and policies on volunteerism adopted since 2001⁷ resulted for the most part from successful campaigns launched by domestic NGOs, often but not always with international support. In some circumstances, governments have been the primary instigators, but most often civil society has led the way.

Because volunteerism laws and policies are driven by domestic needs and concerns, there is no single solution or set of issues that is relevant in every country. In countries where volunteerism traditions are not well established, for example, policies may focus on promoting public awareness of the need for volunteerism and the value and purpose of volunteerism. In countries with strong social safety nets, volunteerism laws may focus on clarifying the distinction between paid employees and unpaid volunteers, thereby removing obstacles that may arise when volunteerism is treated as a form of standard employment. Industrializing or low- and middle-income countries might focus on promoting volunteerism to achieve specific development goals.

The following are examples of the notable new volunteer laws and policies adopted since 2001:

- In **New Zealand**, a series of laws and policies beginning with the passage of a 2001 *Statement of Government Intentions for an Improved Community-Government Relationship* have been responsible for a major expansion of formal volunteerism and the benefits provided to volunteers in the country. New Zealand volunteers are now provided with accident coverage and liability insurance, training on their legal rights and responsibilities, and financial support including student loan repayment assistance, among other improvements.
- **Bolivia's** 2005 *Law No. 3314* creates fourteen new volunteer rights, including the provision of significant and substantial financial and material support for fire and rescue volunteer activities

⁷ "Follow-up to the Implementation of the International Year of Volunteers, Report of the Secretary-General", developed in response to General Assembly Resolution 60/134, A/63/184, July 28, 2008.

and employer and university credit for volunteer workers and students who respond to emergencies. Though recently beset by implementation problems, the law is responsible for a country-wide expansion in the number and types of volunteer initiatives.

- **South Korea's** *Basic Law on Promoting Volunteer Services* (2006) established a National Committee on Volunteer Promotion including government and civil society representatives that has worked to encourage public participation in volunteering. Among other changes, the *Basic Law* mandates that national and local governments ensure that voluntary service is performed in a safe environment, and that the government provide insurance to guarantee against physical and economic injury to volunteers.
- **Burkina Faso's** *Law Number 031-2007/AN* (2007) provides a comprehensive definition of national volunteerism, mandates health and safety standards for volunteer working conditions, and establishes a permanent "National Program of Volunteerism in Burkina Faso" to promote coordination and communication between government and civil society. The law also provides for an exemption from the mandatory national military service requirement for individuals who have completed at least one year of volunteer service.
- The **Republic of Macedonia's** 2007 *Law on Volunteering* amended several Communist-era laws that were obstacles to enhanced volunteerism. Among other changes, the *Law on Volunteering* ended the practice of taxing volunteer reimbursements for expenses and provides health and travel benefits for foreign nationals working as volunteers in Macedonia.
- The government of **Saint Petersburg City** in Russia passed a 2008 *Regional Concept on Social Volunteering Promotion* that provides for the systematic training of coordinators and managers of volunteering activities and ensures the promotion and development of youth volunteering.
- In February 2009, the **United Kingdom** announced that it would direct more than £42 million toward NGOs meeting the needs of individuals harmed by the ongoing worldwide economic crisis in order to promote volunteerism among the unemployed. Among other components, this program will support the establishment of a volunteer brokerage that will create over 40,000 volunteer opportunities for unemployed persons to learn new skills while serving their communities.
- The **United States of America** passed legislation in April 2009 to utilize more than \$201 million of economic stimulus funding to (1) triple the number of volunteers in a government-affiliated national-service program known as AmeriCorps; (2) create new national volunteer programs; and (3) provide funding to help expand existing volunteer initiatives.⁸

Creation of National Volunteer Centers

One of the most common steps that countries take in promoting volunteerism has been to set up National Volunteer Centers which provide information, training, education, and CSO-volunteer matching services in many countries. Centers were set up in **Australia, Argentina, Barbados, Brazil, Croatia, Cyprus, Egypt, El Salvador, Lebanon, Luxembourg, Madagascar, Peru, South Korea, Ukraine, the**

⁸ Suzanne Perry, "President Signs National-Service Bill and Issues Call to Volunteer," *The Chronicle of Philanthropy* (April 21, 2009).

United Arab Emirates, and Zambia. In **Thailand** alone, more than 75 centers were established – one for each province in the country. Generally, these centers are responsible for implementation of a policy or law and coordination of activities regarding the promotion of volunteering.

- **Croatia's** Law on Volunteering (2007) created a National Board of Development for Volunteering to recommend means for improving the position of volunteers in society as well as new regulations to govern volunteer activities. The Board is composed of nineteen individuals: six from government, seven from civil society, and an additional six experts on the field of volunteerism from academia.
- **England's** Volunteering Development Council engages with government and opposition parties in order to steer government policy and community action in the field of volunteering.
- **The Philippines'** National Volunteer Service Coordinating Agency is responsible for implementing the Act on Institutionalizing a Strategy for Rural Development, Strengthening Volunteerism, and Other Purposes (2006) by reviewing and formulating policies and guidelines concerning national volunteer service, and providing technical services and capacity building assistance to volunteers and volunteer organizations.
- **Lebanon's** National Council on Volunteering facilitates contact and coordination between every government ministry, the Prime Minister's office, and NGOs to promote volunteerism throughout the country. The committee is composed of 26 individuals drawn from government ministries, international and domestic NGOs, major universities, and the United Nations.

Establishment and Strengthening of CSO / Government / Private Sector Partnerships

Informal partnerships between the government, NGOs, and the private sector can be a way for government officials to “test the waters” before putting forth a new policy or law on volunteerism. The activities of the partnerships tend to be educational or promotional in nature, and are designed to raise public awareness of and support for volunteerism. Some of the most successful efforts have used a national event that involves significant citizen participation, such as the Olympic Games, as a springboard for promotion of volunteerism.

- In **Egypt**, a program called “Sailing the Nile for the Millennium Development Goals” has been held annually since 2006. In a partnership between Egyptian government offices, UN agencies, NGOs, and private companies, traditional Egyptian feluccas (sailboats) sail from Cairo to Aswan and back. At each major city, the feluccas dock and concerts, plays and other events promoting volunteerism are staged. In 2007, one of the free concerts drew 17,000 individuals.
- In **China**, the government used the Olympic Games to launch a massive volunteer training and recruitment effort. Chinese authorities put forth an advertising campaign and competitive volunteer application process to facilitate post-Olympic game opportunities.
- In **South Africa**, the 2010 FIFA World Cup led to the development of a detailed World Cup Volunteer Policy, which appears likely to encourage the eventual adoption of a broader national volunteer policy.

III. Regional Trends and Challenges

Distinct trends in volunteerism law and policy have emerged at the regional level. Below we review some of the key issues that have emerged in seven regions of the world.

Africa

Since 2001, laws and policies on volunteerism have been passed in **Burkina Faso, Liberia, Namibia, Niger, Nigeria, South Africa**, and **Tanzania**, among others; draft laws have been introduced and are currently being debated in **Benin, Mauritius, Mozambique, Senegal**, and **Togo**. A trend that is especially pronounced in the African region is the use of volunteerism laws and policies as a part of broader programs that address specific issues identified as national priorities – most often, poverty reduction, HIV/AIDS prevention, post-conflict reconstruction, health, and education.

- In **South Africa**, for example, the government has not defined the term “volunteer” in any legislation or policy. Instead, several laws and policies make reference to the rights or obligations of volunteers as well as the volunteer and charitable purposes that the government seeks to encourage. A case in point is South Africa’s *Disaster Management Act* (2002), which creates a national framework for responding to and preventing “disasters,” a major component of which is the enrollment, training, and deployment of volunteers in various municipalities and districts. The *Disaster Management Act* also requires South African municipalities to establish volunteer units and creates a “National Centre” to coordinate and keep records of these units.
- In **Burkina Faso**, a report of the Ministry of Youth and Employment to the Council of Ministers indicated the government’s main justifications for building a national volunteerism system: that it would reduce unemployment by creating a mechanism for professional training.

Another notable African trend has been respect for and reinforcement of indigenous, informal volunteer traditions. Several South African laws make reference to the philosophy of *ubuntu*, roughly translated as caring for the community around you – or what Archbishop Desmond Tutu has described as “a person with... proper self-assurance that comes from knowing that he or she belongs in a greater whole and is diminished when others are humiliated or diminished.”

The Arab States

As a region, the Arab states have been an exception to the broader international trend of adopting new laws and policies on volunteerism; not a single Arab country has adopted a national law on volunteerism or addressed volunteerism issues in other legislation. This circumstance appears to be closely related to the fact that, with the exceptions of **Iraq, Lebanon, Morocco**, and to a certain extent **Yemen** and **Palestine**, the Arab region is characterized by laws on NGOs that do not meet standards with respect to the right of association set forth in international conventions. The **Egyptian Law on Non-Governmental Societies and Organizations** (Law 84 of 2002) is representative of Arab laws governing civil society:

unregistered organizations are prohibited, the process of obtaining a formal license to operate is difficult, arbitrary, time-consuming, and expensive,⁹ and both foreign and domestic NGO employees and volunteers are subject to severe and disproportionate criminal punishments for violations. Needless to say, such restrictions have a negative effect on civil society generally, and by extension on volunteerism for development.

For example, due to the **United Arab Emirates'** restrictive *Federal Law No. 6 of 1974*, very few legally-registered NGOs exist, and those that do are very small and do not have the capacity to absorb many volunteers. In 2006 the Emirates Foundation launched a major program called *Takatof*, Arabic for "shoulder-to-shoulder" to connect Emirati citizens to volunteerism opportunities and raise the profile of volunteerism in the UAE. Although the program was extremely successful, resulting in the recruitment of hundreds of volunteers, because of the restrictive legal environment for civil society the program ultimately recruited many more volunteers than it was able to place in NGOs. The potential contributions of volunteers who could not be placed were therefore lost to the UAE.

Arab states have on occasion promoted volunteerism through cooperative initiatives between government, the private sector, and civil society. For example, in **Lebanon**, a civil-society led movement to establish a national volunteer center was embraced by the Ministry of Social Affairs, which went on to create a permanent National Committee for Volunteerism that includes representatives from Lebanese government ministries, major universities, the United Nations, and domestic and international NGOs.

Asia

Throughout Asia, volunteerism has a long and well-established history – a reflection of local practices, community self-management, religious encouragement and practice, and government support. **The countries of Asia exhibit a relatively high degree of government centralization and control over civil society and volunteerism initiatives.** Asian volunteerism laws tend to channel and direct volunteerism toward government priorities, with different degrees of control over volunteer activities.

- In **China**, *voluntary* (as opposed to state-mandated) volunteerism did not emerge until well after the end of the Cultural Revolution in 1976. Currently, *The National Methods for Registration of Volunteers* (2006) allow a wide variety of public and private organizations to register volunteers for permitted volunteer work, defined as "poverty alleviation, urban construction, environmental protection, large scale competitions, emergency relief, overseas service, and other [forms of volunteer service]." Notably, **advocacy is excluded from the definition of permitted volunteer work.**
- **The Philippines** has also taken steps to manage and channel volunteer activity through *Act No. 9418 on Strengthening Volunteerism*, adopted in 2007. The *Act* mandates a national system to register all volunteers, and requires the Philippine National Volunteer Service Coordinating

⁹ For example, applicants are required to present an occupancy deed demonstrating that the organization is in possession of physical headquarters, a requirement that effectively makes it impossible for new organizations without the funds to rent an office to become officially registered.

Agency to organize the work of foreign volunteers and to decide whether or not foreign volunteers should be granted a special visa exempting them from immigration fees and charges.

The Commonwealth of Independent States

Because volunteerism was a significant aspect of communist ideology, and because volunteering in the Soviet Union often consisted of forced or mandated work, many individuals in the CIS attached negative connotations to the concept of volunteerism. A second and related obstacle is that almost without exception, CIS labor codes prohibit any person from working without pay or without a written contract.

As of this writing the only CIS national government to have passed a new law or policy promoting volunteerism is Azerbaijan, where the *Law on Voluntary Activity* (2009) defines the rights and responsibilities of volunteers and volunteer-utilizing organizations. Among other things, the Azerbaijani law:

- Requires all volunteer-utilizing organizations to conclude a written contract with volunteers explaining their rights and duties and informing them of any potential dangers to their health and safety;
- Gives volunteers the right to obtain information about the conditions and nature of the voluntary activity, and to demand compensation for daily expenses associated with voluntary activity outside the territory in which the volunteer resides; and
- Requires all volunteer-utilizing organizations to supply adequate life and health insurance for volunteers.

In addition, the national governments of **Belarus**, **Kazakhstan**, **Moldova**, and **Ukraine** have all begun the process of writing draft laws on volunteerism.

- In **Moldova**, a draft *Law on Volunteering* is now being finalized by the Ministry of Education and Youth. This law will guarantee certain benefits and facilities to volunteers, creating more opportunities for volunteers, and providing funding and recognition for volunteer activities. The Moldovan draft is notable for providing thorough consideration of almost all the issues that can affect volunteerism, including employment, tax, immigration, workplace safety, and liability law issues.
- In **Russia**, the local government of St. Petersburg passed a *Concept on Social Volunteering Promotion* that provides funding to volunteer-involving organizations, creates a local infrastructure which volunteers can utilize for training, coordination, and management, and provides for the development and promotion of volunteering among youth.

Europe

In a number of European countries, adoption of volunteerism laws and policies was driven in large part by the recognition that strict European welfare and labor codes had the unintended effect of creating major obstacles to volunteerism. For example,

- In **Latvia**, NGOs were not allowed to reimburse volunteers' expenses because any reimbursement would subject volunteers to employment laws and minimum wage rules – converting them from volunteers to paid employees.¹⁰
- In **Croatia** and **Macedonia**, state inspectorates could prohibit any kind of work (including volunteer work) if there was no written, signed employment agreement between the parties – greatly limiting the possibility of spontaneous volunteer engagements.
- In the **Czech Republic**, unemployed citizens who volunteered could lose their unemployment benefits, because volunteerism was deemed to be illegal work.¹¹
- In **Switzerland** and **Belgium** volunteer reimbursements were taxed, creating disincentives to expanded volunteerism.

All of these issues were remedied through legislation on volunteerism. For example, the **Czech Republic's Volunteer Services Act** (2002) officially designated volunteerism as a legal form of work for the first time.

European volunteerism laws are among the most detailed of any region, generally including provisions:

- Defining what types of organizations may utilize volunteer services – for example, prohibiting unpaid volunteer work unless such work serves a public benefit, thereby preventing private companies from using 'volunteers' to avoid enforcement of labor laws;
- Requiring written volunteer agreements that clearly allocate rights and responsibilities between the volunteer and host, thereby providing some protections to volunteers from potentially abusive practices;
- Specifying health and insurance coverage, thereby protecting volunteers from legal and financial liability in the event of accidents or injuries suffered during the volunteering period; and
- Facilitating international volunteerism, including by providing visas for volunteers from other states.

A final trend that is especially pronounced in Europe is the launch of programs and initiatives to encourage, establish, and facilitate **cross-border volunteering**, support networking among volunteer organizations from different countries, and influence policy concerning volunteerism on a regional (European) level.

- The **European Volunteer Centre (CEV)** is a European network of sixty-seven national and regional volunteer centers and volunteer development agencies across Europe that works to act as a bridge for communication between volunteer organizations and the work of the European institutions; to develop policies; and to promote and support the role of volunteering infrastructure in advancing volunteering as an expression of active citizenship in Europe.¹²

¹⁰ Raymond Stephens, "Latvian Volunteerism: In Search of a Favorable Environment," SEAL, Autumn 2001.

¹¹ Vojtech Tutr, "A draft Law for Czech Volunteers," SEAL, Autumn 2001.

¹² For more information about CEV work and projects, see www.cev.be

Latin America and the Caribbean

The rapid adoption of volunteerism laws and policies in Latin America and the Caribbean may be partially explained by the long history of formal volunteerism in Latin America, and the even longer history of indigenous volunteerism that predates the modern states of the region. This cultural context has helped Latin America and the Caribbean to avoid the problems of political will that have prevented the emergence of volunteerism laws and policies in other regions. New legislation on volunteerism has been passed since IYV 2001 in, among other countries, **Argentina, Bolivia, Brazil, Chile, Columbia, Ecuador, Guatemala, Mexico, Nicaragua, and Uruguay**. For example, **Argentina's** *Law on Social Volunteerism* (No. 25.855 of January 8, 2004), as well as the analogous *Law on Social Volunteerism* (No. 2579 of 2007) passed in the autonomous city of **Buenos Aires**, calls for the promotion of volunteerism by providing technical assistance, training, recognition of volunteer activities, and facilitation of complementary planning and activities by NGOs. The city of Buenos Aires' law has been influential across Argentina and in neighboring **Chile, Uruguay**, and beyond thanks to the city's sponsorship of an International Forum on Volunteerism and Public Policies in late 2006.

However, a significant issue that is especially evident in the Latin American context concerns problems in implementation that have plagued many volunteerism initiatives.

- In **Bolivia**, for example, soon after the *Law on Volunteerism* was passed, a new president was elected, and his administration eliminated the Ministry that had previously taken the lead on volunteerism. Without effective leadership from the Congress or the Government, regulations were never issued pursuant to the law.
- A similar electoral transition in **Nicaragua** was a factor in the absence of implementing regulations for that country's 2005 *Law on Volunteerism*. The government has not created the Commission on Volunteerism required by the law, and it has not budgeted funds to support social volunteerism despite a clear legal requirement.

The Pacific

The Pacific region is unique because, with the exceptions of **Australia** and **New Zealand**, most countries rely on custom and tradition as much as, if not more so than, written law. Only Australia and New Zealand, with their emphasis on formal written law, have passed laws or policies concerning volunteerism.

- Since 2001, **New Zealand** has set about creating a robust legal and regulatory environment to support volunteerism. The volunteering infrastructure includes, among other things, the 2002 *Government Policy on Volunteering*, which set specific targets for legal changes to support volunteerism for a host of government agencies, *Keeping it Legal*, a resource kit to help volunteers manage their legal risks and responsibilities, and a satellite account for non-profit organizations which measures the contribution of volunteering to the national economy, building support for volunteering at all levels of society by demonstrating its benefits.

The majority of Pacific Island nations have sought to promote volunteerism through mechanisms that are not related to law or policy.

- In the **Solomon Islands** the central government has established a *Memorandum of Understanding* (May 2008) between the government and Solomon Island NGOs designed to create a taskforce which will review laws and practices affecting NGOs and suggest ways to revise existing law and custom in order to better support volunteerism.

Conclusion

Volunteerism is a significant driver of political, economic, and social development. Because it builds inclusion, ownership, solidarity, and social cohesion, volunteerism has the potential to lead to stronger communities, capacity development and increased social capital. Governments around the world have not only acknowledged the importance of volunteerism, but also adopted laws and policies designed to support and promote volunteerism in their countries. Others have created programs that address specific issues identified as national priorities, or established volunteer centers or councils which provide information, training, education, and CSO-volunteer matching services. As the world prepares for the tenth anniversary of the International Year of the Volunteer in 2011, it will be important for NGOs, governments, and the international community to assess the lessons learned from the adoption of these new laws and policies over the last decade.