



Legal issues related to volunteering

Toolkit for National Societies

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Foreword

Volunteers are the heart and soul of the Red Cross and Red Crescent Movement. The Fundamental Principle of Voluntary Service is at our core. It is through the millions of volunteers worldwide that the Red Cross and Red Crescent provides its support and assistance to vulnerable people.

2011 marks the tenth anniversary of the “International Year of Volunteers”. On this occasion the IFRC has undertaken numerous initiatives aimed at the protection, promotion and recognition of volunteers globally. One of these initiatives is this Toolkit.

Based on the needs of volunteers, volunteer managers, and legal advisors of National Societies, this Toolkit has as its objective to support National Societies to ensure better protection and management of their volunteers.

Sound volunteer management is critical. An inherent component of volunteer management is an understanding of the applicable legal framework and the potential legal pitfalls for both the institution and the volunteer. The ambition of this toolkit is to set out in general terms what these potential legal issues may be and provide ideas for how they can be best addressed. Of course every national context will be different, but in general as you the reader will see, there are common questions and concerns which range across all jurisdictions. The definition of a volunteer, a volunteer versus an employee, the potential liability of a volunteer, insurance and health and safety obligations, are examples of volunteer management issues which all National Societies must consider.

It is also hoped that this publication will facilitates the sharing of knowledge and best practice among National Societies. The substance for this publication for the most part comes directly from you, your lessons learned and your best practices, which when shared will help strengthen us all. We hope to keep this a living knowledge sharing tool by issuing regular updates. We therefore encourage your active feedback and participation in its updates. In this regards, our Legal Department and the Youth Action and Volunteering Development Department at the secretariat are at your disposal for any further assistance and guidance you may need on these issues.



Bekele Geleta
Secretary General

Introduction

Why produce this toolkit?

This toolkit has been drafted as a response to the growing number of National Societies seeking the International Federation of Red Cross and Red Crescent Societies (IFRC) secretariat's advice relating to legal issues and volunteering. This may relate to actual or potential legal action against the National Society, or may involve National Societies working with government to influence future legislation likely to have an impact on how a National Society mobilizes and manages volunteers.

The toolkit therefore has two main goals:

- It provides a framework to support National Societies in analyzing the national legal issues that may impact on volunteers and volunteering, and suggests practical steps that National Societies can take in order to reduce and mitigate risks.
- It serves as a basis for National Societies' advocacy to governments on legal issues likely to have an impact on volunteering.

In producing the toolkit during the International Year of Volunteers +10, the secretariat encourages National Societies to consider how they can better protect, promote and recognize volunteers. It follows the 2004 Guidance Note on Volunteerism and Legislation, produced jointly by IFRC, United Nations Volunteers and the Inter-Parliamentary Union (see bibliography), and is produced in parallel with a scoping study on the legal issues affecting volunteering in emergencies.

Legal environment and risk management

Every National Society operates in a specific legal and social context. This not only affects the legal framework surrounding its work, but also the nature of its activity and how it engages with volunteers.

The national legal environment consists of national laws (including applicable case law) and policies. In some instances, legislation is clear in regard to definitions of volunteers and activities of volunteers, and there may even be a framework law relating to all volunteering issues; in other jurisdictions, there is an absence of clear definitions or scope of activities that volunteers may be engaged in, leaving grey areas in the law; in yet other instances, there are barriers or legal provisions that may prohibit or restrict volunteering. This means that National Societies have various legal frameworks to consider when analysing their volunteering practice.

In addition, there are also Red Cross and Red Crescent Movement policies and principles, such as the Fundamental Principles of the International Red Cross and Red Crescent Movement, in particular the principle of Voluntary Service, that are obligatory for National Societies to follow.

Proper management of volunteers, in compliance with the law and adoption of best practices will ensure effective legal risk management. Numerous legal issues may affect both volunteers and National Societies - an understanding of what these issues are and how to deal with them will contribute to better protection of volunteers, beneficiaries as well as National Societies themselves.

The toolkit makes reference to the IFRC Volunteering Policy of 1999 (Volunteering Policy) to give a sense of what is agreed best practice within the Movement. An issue to raise is that it may at points conflict with national law. One specific example is that some countries allow payment to volunteers that go beyond the reimbursement of expenses set out in the Volunteering Policy. In this case, National Societies will have to develop practice based on the nature of the contradiction, and the best interests of their volunteers.

Different forms of volunteering in National Societies

There are two broad paradigms of volunteer involvement within the Movement. Of these, the member-based model is more common, although most National Societies will make use of both approaches at different times and for different roles within the organization.

The **member-based model** is one of local groups of National Society members self-organizing in order to meet local needs. Members elect local, regional and national committees to determine and oversee the National Society's work at these different levels. Not all members are active members (i.e. volunteers). Local groups of members are not managed directly by the National Society – the National Society rather provides a framework of values and strategy within which they carry out their work.

The **service delivery model** is similar to a standard Human Resources process for paid staff. Volunteers are recruited against role descriptions to carry out a task that contributes to fulfilling a mission. This model of volunteer engagement is often used in project-based activities, especially those funded by external partners, or for the recruitment of specific volunteer roles (e.g. financial advisor).

The power relationships inherent in these models have strong implications for how National Societies manage change – in this case developing a volunteering risk management framework. Experience shows that change management in the member-based model can be a slow and resource intensive process, as strong local ownership of the organization means that change must often come about through persuasion and local buy-in rather than top-down instruction from higher levels of the organisation.

National Societies volunteers are typically involved in ongoing service delivery, governance, advocacy, fundraising, responding to emergencies etc. **This toolkit is broadly relevant to all forms of volunteering.** However, it does **not** provide specific advice on governance issues that might affect National Society leaders (for example, in cases where Board members are volunteers). Nor does it address specific issues relating to volunteering in emergencies, or international volunteers.

How to use this toolkit

It is the role of the National Society legal advisors as well as volunteer program managers to understand these obligations, and to ensure fulfilment of legal requirements. Not only is this likely to mitigate legal risk to the National Society, it is also likely to promote better management and retention of volunteers through creating safer and better conditions for volunteers, as well as third-parties that benefit as a result of volunteer activities. Effective use of this toolkit will require joint effort between National Society legal and volunteering staff.

The structure of the toolkit reflects the various stages of volunteer involvement, and is designed to provide step-by-step guidance in regard to the legal issues that may come up at each stage. Each chapter highlights the issues, presenting examples from national legislation as well as practice of National Societies, and provides some practical steps for National Societies to take in approaching the issues raised.

While recognizing that National Societies have different levels of legal expertise, the following is a suggested process for National Societies with little or no experience in this area:

1. Go through the toolkit to identify the different areas of national law that might impact on National Society volunteering. Highlight any further legal issues that the National Society may be aware of.
2. Research existing national law to see what provisions exist under these headings. This might be done in conjunction with other volunteer organisations. The IFRC legal department may also be able to coordinate *pro bono* legal advice, upon request from a National Society.
3. Audit National Society systems and processes against criteria in national law as well as in the Volunteering Policy or National Society Volunteering Policy if one exists. Use the compliance checklist provided in Annex 1 to record and check compliance with national law. Be aware that there may be different practices among different types of volunteers, or in different geographic regions.
4. Decide which risks are serious enough to be addressed. Prioritise the most urgent risks.
5. Where National Society practice does not meet legal and policy requirements, consider the potential impact of non-compliance and take necessary measures, including reporting to management or the Board, if required.
6. Develop an action plan to mitigate those risks that are identified as most urgent within the National Society.
7. Include volunteer risk management in regular risk management audits.
8. Train programme and volunteer management staff at national and local levels in the key issues that they need to be aware of when dealing with volunteers and volunteer programmes.

Feedback and further support

It is hoped that this toolkit will provide greater awareness of the obligations and requirements that National Societies should take into account in structuring volunteer activities. This in turn should result in safeguarding the organisation, volunteers and their activities, thereby making volunteering more beneficial.

The IFRC secretariat will continue to provide support in regard to these legal issues. Please contact the IFRC legal department and the youth action and volunteering development department to provide feedback or to request further support in regard to any of the legal issues highlighted.

Please note that this toolkit is not intended to provide or replace qualified legal advice. Information in this toolkit is meant to highlight issues and some different practice within the Movement. Should you require legal advice, please obtain advice based on your national law from a qualified legal practitioner.



1 Chapter 1: Defining Red Cross Red Crescent volunteers

Defining who National Societies volunteers are is the first step to developing and managing an adequate National Society volunteering risk management framework. Experience suggests that National Societies that are not clear about who their volunteers are, and that do not consistently engage with them in accordance with national law, are at greater risk of legal action. This can be particularly true in countries in which there is no clear legal definition about what constitutes a volunteer.

This section uses the definition of volunteering from the Volunteering Policy to highlight some of the areas of national law that may impact on how a National Society engages with volunteers.

Volunteering in the Red Cross and Red Crescent Movement is an activity that is:

- *motivated by the free will of the person volunteering, and not by a desire for material or financial gain or by external social, economic or political pressure*
- *intended to benefit vulnerable people and their communities in accordance with the Fundamental Principles of the Red Cross and Red Crescent*
- *organized by recognized representatives of a National Red Cross or Red Crescent Society*

A Red Cross or Red Crescent volunteer is a person who carries out volunteering activities for a National Red Cross or Red Crescent Society, occasionally or regularly.

According to the Volunteering Policy, volunteering is a means to put into practice the Fundamental Principle of Voluntary Service which states that the Movement “is a voluntary relief movement not prompted in any manner by desire for gain.”

This is broadly in line with the International Labour Organisation (ILO) working consensus definition that highlights the most common elements of the definitions of volunteerism used across countries and regions: Volunteering consists of “activities or work that some people willingly do without pay to promote a cause or help someone outside their household or immediate family”.

1. Defining volunteers in National Societies’ statutes and practice

In defining volunteers, National Societies should ensure that their statutes and policies reflect any national definitions of volunteers. Two particular areas in which National Society statutes and practice are often confused is the distinction between volunteers and members within the National Society, and the distinction between “community” volunteers and Red Cross Red Crescent volunteers. Without clarity in these areas, a National Society risks the national legal definition of volunteers applying to more people in the National Society than the National Society’s own definition.



The Volunteering Policy makes the following distinction between volunteers and members:

- A Red Cross or Red Crescent Volunteer is a person who carries out volunteering activities for a National Red Cross or Red Crescent Society, occasionally or regularly.
- A Red Cross or Red Crescent Member is a person who has formally agreed to the conditions of membership as required under the National Society's constitution or rules, and is usually entitled to elect representatives on governing bodies, and to stand for election.

National Society statutes vary from society to society, and are often based on local traditions of voluntary organisation. It is therefore difficult to generalise. For example, however, someone who is a member under National Society statutes may also carry out activities that would make them a volunteer under national law.

The case of “community volunteers” is similar. A number of National Societies use the term “community volunteers” to describe people who work for less than a certain number of hours per month, or who may not have reached a certain level of training. It would be likely that these people would be considered as Red Cross Red Crescent volunteers by a legal authority if they are engaged in an activity organised by the National Society. In developing a risk management framework for volunteering, National Societies must look closely at national definitions of volunteering, and be aware that the language and practice of the National Society may not align with this.

2. Complying with legal limits on who can volunteer and for what activities

While the Volunteering Policy implies that anyone can volunteer for a National Society, provided that the criteria set out under the definition of volunteering are met, national laws often contain specific provisions as to who can be considered a volunteer.



Kabilash Secondary School runs a Red Cross programme with Junior Red Cross Volunteers who learn about disaster preparedness and what to do in an emergency. The children have built a retaining wall to help protect their school from earthquakes and landslides, studied basic first aid and practiced evacuation and other emergency procedures. They also collect funds to be used during the emergency season. JRCVs are between 12 and 16 years old and have been doing this for as long as five years.



RC Tuvalu's oldest volunteer, Cindarella Tuvlamati, has been volunteering since the 1980s. In her long career of voluntary service she has particularly enjoyed helping the handicapped with home visits and raising money for poor children to go to school. Although she can no longer walk upright, she plans to keep on volunteering until she dies. She says "Now I can't walk, but I can still do my duty by giving advice to the president of the Funafuti branch of the Red Cross."

Serbia

Under Serbian law, if the beneficiaries of volunteering activities are children, disabled persons, elderly persons, persons who need help and care of another person, sick persons or persons who are totally or partially deprived of their working capacities, volunteering cannot be carried out by:

- 1) a person undergoing mandatory outpatient psychiatric treatment or mandatory treatment for drug addiction or alcoholism, or who has been prohibited from carrying out his/her profession and duties which are related to the volunteering activity;
- 2) a person sentenced for certain categories of serious crimes;
- 3) a person who has totally or partially lost his/her working ability.

Bosnia

Under Bosnian law, it is forbidden to volunteer for more than 40 hours per week during more than six months without interruption.

South Africa

In South Africa the immigration legislation has been amended in order to accommodate the possibility of issuing a visa to foreigners coming to the country for volunteering purposes.

Montenegro

Non-Montenegrin citizens have the right to perform volunteer work in the territory of Montenegro provided that they have approval for the temporary or permanent residence permit.

Three particular issues may come up in the development of programmes involving volunteers:

1. Legislation may prohibit certain types of activities from being carried out, for example with certain groups of beneficiaries;
2. Legislation may limit who can carry out certain types of activities;
3. Legislation may require specific approval from the authorities before launching a new programme.

Some people may be legally prevented from volunteering, or be subject to procedures so strict that their involvement in voluntary activities is – in effect – obstructed. This might be the case with migrants, people claiming unemployment benefits or individuals with a criminal record.

Furthermore, the involvement of other groups of people may also be restricted or subject to special formalities. In particular, young people may be subject to minimum conditions for their involvement as volunteers. They may have to be of a certain age, for example, or have written permission from both parents.

National Societies sometimes adopt policies relating to young people, in particular relating to the age at which they can volunteer for the organisation.

Similarly, constraints may be placed in regard to the maximum age of volunteers. Any age restrictions (minimum or maximum) should be in accordance with national law relating to non-discrimination. This should also be appropriate to the types of activities a volunteer is to carry out, and the related health and safety obligations.

Some categories of people are “compelled to volunteer”: for instance to complete social/community service due to minor offenses, or as an alternative to compulsory military service. Such activities due to a legal obligation would usually not be considered ‘volunteering’ but this depends on national law.

A preliminary assessment should be conducted in regard to any such legal prerequisite for a programme and it is of vital importance that this legal scoping exercise is conducted in the design phase of the programme.

3. Legal issues relating to compensation of volunteers

Volunteers and employees are often confused even though different taxes, minimum wages, pensions and contractual frameworks apply. This is complicated further in cases where there is no clear definition of a volunteer. The consequences for blurring the boundary between employees and volunteers are potentially risky, so National Societies should ensure that they make clear, legally justifiable distinctions between volunteer engagement and paid employment in their practices.

The Volunteering Policy states that a Red Cross Red Crescent volunteer is not motivated by a *desire for material or financial gain*. It also states that volunteers are entitled to reimbursement of reasonable expenses incurred while volunteering.

The practical issue here is that volunteers may be asked to carry out tasks that require travel, or long periods of working time in emergency situations, and some types of project. If National Societies want to enable people from all parts of society to volunteer, then they need to make such activities cost-neutral by refunding volunteer expenses. This is acceptable in most (but not all) tax environments.

What can be problematic is when National Societies pay volunteers lump sums that have no relationship to volunteers’ actual expenses (assuming this is allowed under tax law). In this case National Societies may inadvertently create employment relationships and become liable for minimum wage, pension etc. This may also result in volunteers as well as National Societies falling foul of tax obligations.

In addition, there are ethical and practical dimensions to the problem of what constitutes legitimate financial support to volunteers. If a National Society does give volunteers a lump sum that has no relationship to the personal cost of their voluntary activity, then it risks being accused of exploiting vulnerable people as cheap labour. In practical terms, such practices can lead to a situation in which volunteering becomes synonymous with poor quality employment, making it impossible for a National Society to recruit genuine volunteers without paying some form of wage. This is unsustainable in many situations, hampering a National Society’s capacity to develop and deliver local services.

Bosnia

Under Bosnian law, persons under the age of 18 are not allowed to volunteer from 8 pm to 7 am the following day.

Hungary

Under Hungarian law, anyone performing activities pursuant to a legal rule, final court decision or prescribed by authorities, shall not be considered as a volunteer.

Hungary

Under Hungarian law, any transportation, food or accommodation provided to a volunteer or reimbursement of such expenses against receipts, shall not be considered as remuneration. In addition, expenses/reimbursement for provision of food, care and training to an animal used by a volunteer for volunteer activities may not be considered as remuneration either. This latter example may be important for search and rescue volunteers and other emergency responders.

Also, anyone performing work for remuneration at an organization may not perform the same tasks as a volunteer.



Tunisia

Under Tunisian law, volunteer contracts may not be concluded to substitute for any employment contracts.



In countries with a public welfare system, volunteering may affect the retention of welfare benefits. To avail of welfare benefits, typical conditions would include being unemployed and actively seeking employment. In some cases where the border between volunteering and employment is blurred, those volunteering may be in danger of losing welfare benefits. This is because performing voluntary work may create confusion as to their status. Additionally, their voluntary commitments may be perceived as preventing them from satisfying their duty to actively seek work. Where such a risk exists, National Societies should inform potential volunteers of the risks and may need to tailor their programs to allow more flexibility.

Practical steps!

- ✓ Assess the definition of volunteers under national law and ensure compliance with all requirements.
- ✓ Ensure that any limitations on the types of volunteering activities as well as persons who conduct these activities are mapped out.
- ✓ Ensure that payment to volunteers is within legal limits. Make sure that volunteers are not exploited as cheap labour, even if you are complying with your national law!
- ✓ Assess national law to ensure that those on welfare benefits do not lose such benefits in case of volunteer activities. Inform any such volunteers regarding this risk.
- ✓ Volunteers should not have the same burden on them as staff members. Else, they should be considered staff – NOT volunteers – and be employed on a fully legal basis!!
- ✓ Develop and apply internal policy, for example:
 - ✓ Volunteer per diems are only paid for a certain length of time, after which volunteers are employed properly.
 - ✓ Volunteers are provided with adequate food, accommodation when away from home, etc.

Chapter 2: Engaging volunteers

2

In getting volunteers on board, there are certain legal issues that you will need to keep in mind. For instance, are there any particular selection processes and criteria that need to be complied with, mandated by law? Are there particular legal provisions in regard to background checks for volunteers?

1. Description of the voluntary activity

Many National Societies use written descriptions to define volunteer roles. This helps National Societies to assess potential volunteer suitability for a role, and potential volunteers the opportunity to learn more about what volunteering may involve. Such descriptions may be subject to specific rules or conditions, as stipulated in law. It is particularly important to ensure that a description does not inadvertently result in the creation of a position of employment.

In addition, all screening requirements (as discussed in the section 2.2) should be highlighted, in order that potential volunteers are aware of the existence of a screening process.

2. Selection of volunteers

The National Society must be open to all without any discrimination when selecting volunteers.

The volunteers should be able to act in accordance with the Fundamental Principles of the International Red Cross and Red Crescent Movement and should have the opportunity to develop appropriate skills to undertake their tasks or roles as required by the National Society.

2.1 Ensuring diversity and non-discrimination

Increasing diversity among potential and active volunteers, as well as ensuring non-discrimination is an issue of particular relevance for many National Societies. Both these aspects are usually strictly regulated under law, with a plethora of rules and cases to abide by. This also needs to be reflected throughout the process of selection, and so this aspect is captured at the beginning of the section.

Emanating from international law, national human rights legislation and case law in many countries, discrimination is prohibited on specified grounds. Some of these are gender, race, age, personal health, sexuality, previous convictions or other personal characteristics. In engaging volunteers, a National Society must verify the applicability of such non-discrimination laws and ensure compliance with any such law.

Montenegro

Under the law of Montenegro, a volunteer is entitled to obtain a written description of the volunteer service.



Supple Charvatt/FRC

Serbia

The Serbian law specifies that an organisation is not allowed to act in an unjustified manner or provide unequal treatment towards a volunteer which can be considered as discrimination, unless it is part of the nature of the volunteering activity or the capabilities of the volunteer in question.

Ireland

In Ireland, prisoners volunteer within the prison community and encourage other prisoners to get tested for HIV/AIDS. This helps greatly reduce the stigma of HIV/AIDS within the community.

Discrimination can be active (such as refusing to allow a person to volunteer on the basis of specific characteristics), or passive (such as not providing suitable access to public buildings for disabled people). Further, discrimination may occur through formal processes, organisational culture, or through the behaviour of individuals. It is therefore essential for a National Society to clarify the legal requirements of non-discrimination and not fall foul of these prohibitions, in the selection and engagement of volunteers.

National Society diversity should be seen as more than a legal requirement. Discriminatory practices limit diversity among volunteers and weaken the capacity of the Red Cross Red Crescent to reach out to vulnerable people.

The Fundamental Principle of Unity addresses the question of non-discrimination within the organisation, stating that the Red Cross Society “*must be open to all*”.



The Volunteering Policy states: “National Societies shall actively seek to recruit volunteers irrespective of their race, age, ethnicity, sex, religion, beliefs, disability or age”. This principle is based on the Statutes of the Movement of 1986 which mentions among the conditions of recognition of a National Society the following one: “Recruit its voluntary members and its staff without consideration of race, sex, class, religion or political opinions” (art. 4, par. 8).

The updated Policy to be presented to the General Assembly in November 2011 requires that National Societies systematically remove physical, economic, social and cultural barriers to participation.

In regard to gender and discrimination, the Volunteering Policy requires appropriate participation of men and women and gender-sensitive delivery of service and activities. This is reiterated in the IFRC Gender Policy.

2.2 Screening potential volunteers

Under most legal systems, National Societies are obliged to protect beneficiaries, staff, other volunteers and the general community from harm. This is in keeping with the duty of care that is applicable under tort law, as well as other statutory requirements. Failure in this duty of care may result in legal action, as well as potential penalties from authorities in case of violation of statutory requirements. This is distinct from reputational risks, which may also have a considerable impact on the National Society.

In order to prevent any such liabilities arising, there are various steps that can be taken. A preliminary step in assuring compliance with this obligation is to screen volunteers as part of the selection process. This takes on a greater importance as in many cases, the engagement of volunteers results from an informal process, or from personal ties. Therefore, a thorough screening process serves as an important check on potential cases of wrongdoing or negligence. One tool to better assist the screening process is the use of an application form to be submitted by the potential volunteer.



In regard to the information requested in the application form, it is particularly important to ensure that this is in compliance with the legal standards set for content as well as *processing or handling of information*. For example, legal provisions on non-discrimination may prohibit asking for certain types of information, such as health problems. Additionally, access to information and the manner in which it is processed may be subject to data protection legislation.



Poland

In Poland, the law relating to volunteering stipulates that all volunteers shall be duly qualified and conform to such requirements appropriate for the scope of activities, as laid down in other legislation.

Ireland

The Irish Red Cross has developed a Policy and Procedures for Garda Vetting to assess convictions and make decisions on individuals' suitability to work with the Red Cross.

Germany

The German Red Cross requests a copy of the volunteer's criminal record for specific tasks of volunteers, e.g. care for children, handicapped or elderly people.

Denmark

In Denmark, all volunteers working with child beneficiaries are checked in the national register containing the names of all people sentenced for sexual abuse on children. Besides the screening, internal instructions within the National Society ensure that there always are at least two adults when working with children.

Austria

In Austria certain criminal record checks are mandatory for all paramedics – staff and volunteers – in order to protect the patients.



Australia

In Australia, volunteer information is securely stored in electronic form and hard copy. For unsuccessful applicants, all of their information is destroyed beyond three months, in keeping with the organisations' policy.

Another factor to keep in mind is that depending on the type of program that a volunteer would be engaged in, there may be more stringent legal requirements for screening. These requirements may apply across the board, regardless of the status of the person as a volunteer or staff member. An example of this may be where the activity involves working with children.

Certain activities, such as medical activities, may require certain additional screening processes (as well as minimum qualifications and/or certification).

There may be a requirement by law in some cases for a special category of screening such as in the form of a criminal record check. In addition, it is important for a National Society to understand the legal impact and consequences of such mandatory checks. Certain classes of convictions may automatically preclude a volunteer from filling a position, while other will merely require the person to be subject to a higher standard of supervision. Other consequences of mandatory checks may include the duty to inform or report to authorities in particular situations. Failure to comply with this requirement, as well as potentially engaging a volunteer who has a particular type of criminal record, would entail greater liability on the part of the organisation, in case of future wrongdoing.

2.3 Interviewing potential volunteers

Most National Societies will have some form of formal or informal interview process to determine if a potential volunteer is suitable.

In conducting this interaction/interview, it is again important to ensure that the information requested and the manner of conducting this interaction is appropriate and in accordance with legal standards. The type of information gathered may be subject to constraints and in some cases it may be illegal to ask for it.

In some jurisdictions, conducting an interview may also lead to confusion as to the nature of the assignment, and whether this would be considered employment. It is therefore important to clarify this from a legal perspective, prior to undertaking this exercise, in accordance with the applicable law.

3. Registration and record keeping

Once a person expresses interest in being a volunteer, and has gone through the steps described above it is advisable to have him/her fill out a registration form, which will enable the National Society to record and manage its volunteer data better. This will not only ensure better management, but may also mitigate potential legal risks.

This is also a way to ensure that any legal obligations on the organisation can be met easily, in relation to reporting or accounting for activities of volunteers.

It is also relevant to highlight that once an organisation receives information about a volunteer, it becomes responsible for this information in terms of confidentiality and access.

Germany

In order to effectively manage volunteers in a disaster situation, some branches of the German Red Cross have a process of mandatory registration, and based on this will call upon specific volunteers in disasters. This enables better management and coordination in the context of a disaster.

In most of the regional branches, the German Red Cross runs an online management database about every volunteer (i.e., his/her age, language skills and other specialized skills).

In many countries, data protection legislation places restrictions on organisations in regard to the type of information to be stored, the length of time the information is to be stored, who this information may be shared with and other such details, which need to be complied with. In Hungary for example, an organization must keep records for 5 years after the end of the relationship. It may not disclose any fact, data, or opinion concerning the volunteer to a third person unless otherwise stipulated by law or consented to by volunteer. Data concerning the volunteer may be used for statistical purposes and may be passed on for such purposes (in a way that identity of the individual cannot be established).

4. Formalisation of volunteer commitments

National Societies sometimes require volunteers to formalise their commitments by signing a contract, agreement or code of conduct. Is this necessary and legally required? **The answer would vary depending on the legal requirements of the country**, but there are a few issues to highlight and keep in mind in this regard. In formalising commitments, it is necessary to ensure that the manner in which this is done does not fall foul of legislation that defines volunteers, as well as employment law. In this section, the term “agreement” means formalising a commitment. It has the same meaning as a contract. Please note that in some jurisdictions, an agreement may also be oral, rather than only in writing.



At the outset, usually signing a formal document is not precondition to start volunteering. National Societies must therefore determine, based on the activity as well as the context, whether a formal engagement is useful or required. It can often also be unclear and confusing in choosing the right manner to make a volunteer's commitments explicit. Often, the question depends on domestic law. In some countries, the relationship between the organisation

Germany

The German Red Cross rarely formalises commitments contractually, due to sufficient regulations in statutes, regulations and policies.

Poland

In Poland the law specifies the need for a written volunteer agreement if the services provided by the volunteer are implemented over a period exceeding 30 days.

Hungary

In Hungary, a volunteer agreement must be concluded in writing if:

- a) it is made for an indefinite time or at least 10 days (in the case of volunteers under 18 years of age or adults with a restricted legal capacity, for at least two days),
- b) the volunteer is provided allowances,
- c) the volunteer is utilized in construction work requiring a building permit,
- d) the public interest volunteer activity is performed abroad,
- e) the volunteer is a citizen of a state which is not a state party of the Agreement on the European Economic Area.

Tunisia

In Tunisia, volunteer agreements have to be established according to a standard contract approved by order of the Minister for Social Affairs.

Tunisia

In Tunisia, at the end of the contract, the organization has to deliver a certificate to the volunteer indicating the nature of voluntary activity performed, its duration, the training received, the competence or the experience he/she has acquired.

and the volunteer is valid only if based on an agreement, while in other countries the mere fact of having an agreement qualifies the relationship as one of employment. Also, it is important to stress that courts rely on the content of the understanding and not on the name it has been given by the parties to determine whether it falls under volunteering or employment legislation. Thus, a “volunteering agreement” may be deemed to be in actual fact an employment agreement. This issue is of crucial importance and needs to be assessed prior to entering into any form of agreement.

Important points to note about “Volunteer Agreements”:

- Ensure that having such an agreement does not create an employment relationship – based also on its content;
- Make this clear in the agreement;
- Refer to the code of conduct if applicable or any other policies/procedures that may apply to volunteers.

Depending on the kind of activities to be undertaken and the length of the commitment, formalising the engagement (by means of an agreement) has several advantages. Most importantly, an agreement clarifies expectations from the very start in regard to the role and function of the volunteer. Another benefit is that it usually highlights key policies that need to be observed (such as a code of conduct), and identifies possible breaches and remedial action. Also, if an agreement exists in writing, it is easier to verify and prove the substance of the commitment or any violation of policy.

In some jurisdictions, it may not be clear who retains copyright in case of volunteers’ contribution to manuals/reports etc. There may be a need for explicit assignment of intellectual property rights by a volunteer to the National Society which may be clarified by a provision in the volunteer agreement.



5. Volunteering by employees

Many employees volunteer in their spare time, work *pro bono* or even volunteer during working hours if needed for situations of emergency or disasters.

In some cases, businesses support their employees' volunteer engagements by allowing them to leave their work during a certain period of time to volunteer. Employers may even have a requirement under law to permit such volunteer activities, and this is especially relevant in regard to specific situations such as disasters.

However, there may be constraints under labour law (such as maximum time for 'work' which may include hours for volunteer activities) likely to impact on volunteering initiatives – and which may make employers reluctant to encourage volunteering. Yet, in many cases, depending on the legal environment, the time spent on volunteer activities during working hours may be deducted from the leave entitlement of an employee, and no special allowances would be made for this.

France

Under French law, tax incentives are granted to organisations who agree to make their employees available to volunteer for any approved Association of Civil Safety in times of emergency. Nevertheless, any such absences remain unpaid by the employer.

Mozambique

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

United States

In the United States, some state legislation indicates that it would be illegal to suspend or fire an employee who has not reported to work, if he/she is actively responding to an emergency, or serving as a volunteer emergency responder upon a declaration of a state of emergency. In many states, paid leave time is provided to either state, or local and state, government employees who volunteer to provide specialized disaster relief services with the American Red Cross.



Practical steps!

- ✓ Ensure that a programme using volunteers is not subject to restrictions in terms of activities, persons involved, and beneficiaries.
- ✓ Develop a National Society diversity policy in consultation with volunteers and ensure that this policy is in FULL compliance with the applicable laws regarding diversity and non-discrimination.
- ✓ Train volunteers and staff in promoting and respecting the organisation's diversity, and monitor diversity regularly. Make diversity a regular Governing Board agenda item and check for incorporation in Statutes.
- ✓ Set pre-determined and clear screening standards for volunteers based on programme needs and legal requirements.
- ✓ Assess the best manner to formalise the volunteers' commitments – by agreement, or oral commitment.

3

Chapter 3: Performing voluntary services

Once engaged, volunteers will have to be prepared by the organisation in order to carry out their activities at the expected standard, and provided with adequate support in doing so. In particular National Societies are responsible for their volunteer's health and safety as well as the safety of those they come into contact with whilst volunteering.

While it is beyond the scope of this toolkit to address the specific set of issues arising out of volunteer activities conducted abroad or **international volunteering**, it is important to note that **all obligations that an organisation owes volunteers**, such as heightened duty of care for health and safety, insurance coverage (medical and repatriation), greater supervision and coordination, are affected. Any legal constraints in regard to sending volunteers abroad should be assessed thoroughly prior to any such actions being undertaken. **Both domestic law and the law of the country where the activity is performed should be checked.**

This chapter will present some of the elements to take into consideration in order to enable volunteers to perform their tasks effectively.



Sophie Chavand/IFRC

1. Standards of performance and conduct

In keeping with the Volunteering Policy, there are certain minimum standards that all volunteers should adhere to. These are that all volunteers act in accordance with the Fundamental Principles of the International Red Cross and Red Crescent Movement; that they respect regulations on the use of the emblem and prevent its misuse; work to the highest standards of service; sign and behave in accordance with the National Society's Code of Conduct for volunteers (if applicable), rules, and/or the IFRC's Code of Ethics and Fundamentals of Voluntary Service; respond to the needs of beneficiaries and strengthen their capacity for self-help and active volunteering.



Maria Kocic/IFRC

Many National Societies have codes of conduct for volunteers (that may apply to both employees as well as volunteers) laying down standards of conduct, as well as consequences in regard to breach of the code of conduct. For example, see Bolivia Red Cross Society, Pakistan Red Crescent Society, Georgian Red Cross Society, New Zealand Red Cross Society and Maldives Red Crescent Society.

Annex 2 provides some factors to keep in mind when formulating a code of conduct for volunteers. A code of conduct may be included or referred to in a volunteer agreement (as discussed in Chapter 2).

With increased social networking and internet usage, it is prudent to provide some detailed guidance in regard to appropriate use of such sites and mode of communication. For example, the confidentiality of information would extend to dissemination through such *fora* or prohibitions regarding uploading pictures of beneficiaries etc.

These are in addition to any standards required specifically in relation to a particular activity.

2. Safe environment



Fundamental rights and freedoms establish a right to a safe environment. Safety standards are often further detailed in statutory provisions. In some legal systems for instance, organisations may have to provide their volunteers with adequate equipment and organise their activities in premises that are safe. This is in accordance with a general legal concept such as the duty to take reasonable care (see in this regard Chapter 4).

Under the Volunteering Policy, National Societies shall provide appropriate equipment for the task or role volunteers are asked to carry out. Volunteers should be subject to the same safety standards as employees.

3. Training

The training of volunteers is a key step in diminishing potential risks and in disseminating basic information on Red Cross Red Crescent principles and procedures. Some national laws make orientation and training events mandatory.

Australia

The Australian Red Cross provides volunteers deployed overseas with guidelines on the responsible use of social media. Four key issues are addressed in the guidelines:

- **Representation:** volunteers are required to state on their blogs or profiles that all views are their own and not those of Red Cross.
- **Security:** volunteers are told to avoid listing specific details about their location (e.g. home addresses, phone numbers) on social media sites.
- **Reputation:** volunteers are required not to comment on any issues of cultural, political or religious sensitivity on social media sites.
- **Privacy:** volunteers are required to protect other people's privacy by not tagging them in posts or publishing their photographs or videos without informed consent.



Denmark

The Danish Red Cross has established a hotline providing psychological support for volunteers having experienced a traumatic situation.

Germany

In Germany, in the aftermath of an emergency, volunteers, staff, surviving dependants and other affected people can get psychological or social support by specialized teams. In many branches of the German Red Cross there is a delegate for psycho-social emergency aftercare.

Bolivia

The Bolivian Red Cross regulations on volunteers stress that the activity should not be burdensome and that volunteers should receive adequate information regarding the activities they are involved in. Volunteers should receive adequate tools and uniforms for the tasks and functions they were entrusted with and accepted.

Hungary

According to Hungarian law, the volunteer shall refuse the execution of an instruction if it constitutes a direct threat to another person's life, health or physical integrity. Additionally, the volunteer is not required to execute the instruction if it constitutes a direct threat to his/her life, health or physical integrity.

Belgium

In Belgium, a volunteer who stops working because of sickness has to declare his/her volunteering to the doctor for his /her own safety. This procedure decreases the liability of the National Society in case of accident provided that the risks of the activity have been correctly explained and that the volunteer has been reminded of his/her obligation to report.

According to the Volunteering Policy, National Societies are required “to provide appropriate training that will enable a volunteer to meet his or her responsibilities towards the Movement, the specific task or role they were recruited to carry out, and for any emergency response activity they may be asked to carry out”.



Training ensures that volunteers familiarise themselves with the organisation as a component of the Movement, including the respect of the Fundamental Principles of the International Red Cross and Red Crescent Movement and of the regulations on the use of the emblems, in order to adequately represent it and carry out the service at the required standard. Training should also ensure that volunteers are able to promote the dissemination of the Fundamental Principles of the International Red Cross and Red Crescent Movement, according to the Volunteering Policy. Ongoing training is also important for volunteers to clearly assess their capability and to indicate to the National Society their ability to undertake particular activities.

Legal requirements may include providing information about the organisation in general, rather than just about the activity to be undertaken by the volunteer.

Belgium

In Belgium organisations have the obligation to explain their status, goals, which insurance they have contracted for their volunteers, if they give lump sums and how, as well as confidentiality requirements for certain activities.

Bolivia

In the Bolivian Red Cross volunteers must be informed about the Red Cross Principles, the Geneva Conventions, the goals, structure, functioning, Statutes, General Proceedings of the organisation, as well as programmes and projects of the different Units of the National Society.

4. Supervision

National Societies should have mechanisms in place to supervise volunteers, linked to the types of activities as well as volunteers involved. These may range from informal mechanisms such as peer feedback or assessments, to more formal supervision by other volunteers or staff members. Increased supervision will for instance be needed for young volunteers or for high-risk activities.



5. Volunteer insurance

Volunteers may work in situations where they are vulnerable. Every year, volunteers are injured or killed while undertaking volunteer activities. Organisations are therefore frequently required to contract insurance policies covering cases of injury or death, and also in regard to the volunteer activity itself.

Under some legal systems National Societies have to subscribe to insurance policies covering their volunteers. Such insurance obligations often are to be found in laws on employer's liability and may also apply to any volunteers. It is important for National Societies to check if there are barriers or higher premiums in case of older volunteers or if there are restrictions in the type of insurance, based on the age of volunteers.

Additionally, organisations may be responsible for ensuring that individuals carrying out specific activities have their own insurance policy. For instance, professionals volunteering are frequently obliged to be adequately insured by virtue of regulations specific to their professions. Volunteer drivers using their own car for the activity may also have to inform their insurance company.

The Volunteering Policy also requires National Societies to provide appropriate insurance protection for volunteers.

The IFRC has a global accident insurance scheme for National Societies who do not already have insurance. 20,501 volunteers from 30 National Societies are insured through the IFRC scheme, and approximately 500,000 volunteers are insured through 38 National Society insurance schemes. Approximately 4% of National Society volunteers in total are insured.

For more details in regard to the IFRC global accident insurance scheme, contact volunteering@ifrc.org

Germany

In addition to training volunteers for their tasks, the German Red Cross has started an in-house training on “diversity and cross-cultural issues” aiming at sensitizing volunteers and staff and enabling them to get a deeper understanding of other cultures without prejudice.

Spain

In Spain, the law requires that volunteers be provided with training and supervision, as well as to establish systems for guidance of volunteers in performing their activities.

Mozambique

In Mozambique, whenever actions undertaken on a voluntary basis may endanger the life, physical integrity or put the volunteer at risk, the organisation must provide an insurance policy covering all risks to which the volunteer is exposed.

Nicaragua

In Nicaragua, organizations have to ensure 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 activity.

Poland

In Poland, volunteers shall be eligible for compensation in case of an accident when providing services. Also, the organisation shall be obliged to take out casualty insurance for any volunteer providing services for a period no longer than 30 days. Should the agreement concluded between the organisation and a volunteer provide for the volunteer to be delegated to provide services in the territory of another State, where an armed conflict, a natural disaster or a natural calamity occurs, the beneficiary shall be obliged to take out casualty and expatriate medical insurance for the volunteer.



Honduras

In April 2011, a Honduran Red Cross ambulance was ambushed and the volunteer ambulance driver suffered severe gunshot wounds to the head. He was later required to undergo surgery because of these injuries.

The Honduran National Society assumed the costs of his surgery, and supported him through his recovery process. This volunteer has now recovered and is in perfect health, and continues to assist with the important voluntary services provided by the Honduran Red Cross.



Practical steps!

- ✓ Assess health and safety standards required by national law.
- ✓ Provide appropriate induction to the Red Cross Red Crescent Movement and communicate clearly regarding what is expected from volunteers.
- ✓ Monitor that each volunteer receives training and provide ongoing training opportunities.
- ✓ Assess the level of supervision required based on the complexity and risk of the assignment and ensure that supervisors are accessible to volunteers.
- ✓ Make regular risk assessments and check performance standards regularly.
- ✓ Ensure that appropriate insurance is purchased covering the age range of volunteers and their activities.

Chapter 4: Managing volunteers' performance

The previous chapters highlight the steps and actions to be taken in order to involve volunteers in activities of the National Society. While these steps should significantly reduce the risks of a volunteer not performing activities up to required standards, or creating liabilities for the organisation due to wrongful acts, these are still concerns that should be accounted for and mitigated in the eventuality that they occur.

Clearly, there needs to be a distinction between poor performance of a volunteer in the conduct of activities and instances of wrongdoing or unlawful acts. However, often poor performance of duties together with the lack of an effective check and rectifying system, may result in more serious lapses, which in many jurisdictions would be defined in terms of the tort of negligence.

What is negligence?

The tort of negligence applies to acts and omissions under the following criteria:

- obligation to act in a certain way towards others;
- conduct is below the standard that a reasonable person would have adopted in a similar situation;
- failure to act properly caused damage or injury;
- causal connection between the negligent act and the injury or damage;
- injury or damage must have been reasonably foreseeable.

In any of these three broad categories – **poor performance, negligence, or wrongful/illegal acts by a volunteer** – the consequences can be severe for the National Society, creating liabilities to mitigate. Such consequences may arise out of claims by third parties who, adversely affected or injured by the actions of the volunteer, may hold the National Society responsible. In addition, the volunteer may also be held personally responsible.

This chapter will lay down a framework to mitigate risks and address liabilities, in the event that they materialise.

1. Benchmarks for performance and liability

One of the first aspects to ensure is that instructions and standards expected of volunteers are clearly communicated to them. This is also addressed in Chapter 3.

However, while there may be a general standard of care in carrying out an activity, some activities require a specific/higher threshold of care. Generally, this may be indicated in legislation as well as tort law principles applicable in a particular jurisdiction.

The standard of care differs **depending on the activity** and the circumstances. It is likely to be higher if a volunteer is supervising children for instance or carrying out dangerous activities.

It also incorporates the skills and abilities of individuals. Volunteers with **special skills or training**, like doctors or nurses, will be held to a higher standard of care than unskilled volunteers.



If these standards are not met, the organisation may be held responsible for the negligence or wrongdoing of the volunteer. While there may be differences depending on the jurisdiction, usually the responsibility of the organisation arises due to the fact that the volunteer was under its control and direction, and/or that the volunteer was acting within the scope of its responsibilities when the incident occurred.

In practice, volunteers are considered to be acting within the scope of their responsibilities when they are taking part in an activity approved or directed by the organisation. Volunteer's actions may be within the scope of the organisation's responsibility even if a volunteer did not carry out instructions correctly.

In addition, in many jurisdictions, a National Society may also be liable for unauthorised acts of a volunteer if he/she reasonably appeared to have the authority, and the other party did not know that the volunteer lacked the authority.

In regard to any of the three categories (non-performance, negligence or other wrongful acts), an assessment of the actions is linked to the *type of activity* as well as the *consequences of the volunteers actions or omissions*.

2. Policies and procedures to address non-performance/negligence/wrongful acts of volunteer

While there are diverse circumstances that may give rise to the liability of a National Society, such liability may also be invoked in case the National Society has not reacted appropriately to the actions of the volunteer.

In order to address such situations of non-performance, or negligence, or other forms of wrongdoing, there are some tools that a National Society may use, based on the circumstances as well as applicable law.

National societies should have policies and procedures in place in case of breach of standards of conduct or wrongdoing (which could be incorporated into a code of conduct, as discussed in the previous chapter, or made separately available to volunteers).

Such policies and procedures may also be mandated by national legislation. It is worth checking if all procedures applicable to employees would also be applicable to volunteers, or whether there are additional/different concerns that need to be taken into account in developing these procedures.

At the outset, there should be some form of mechanism for feedback regarding the performance of volunteers. However, it also needs to be clear that if such a feedback mechanism exists and there seems to be legitimate complaints, then the National Society will have to take action in this regard.

In case of a complaint against a volunteer, there may be particular steps to be taken in line with the national legal system. Broadly, there are usually specific steps that should be taken, in case of any allegations against a volunteer:

1. Investigation into allegations or fact-finding exercise, to verify the basis of the complaint;
2. Clarity of authority – who would make decisions in regard to this case;
3. Due process;
4. Sanctions; and
5. Duty to report.

In order to ensure clarity of process and information, the first step is to ascertain where this information would be available. In some cases, the code of conduct may contain the relevant details in regard to disciplinary procedures, the steps in the process, and possible consequences and safeguards.

It is important to clarify at the outset that if there are common policies and procedures for both volunteers and staff, care should be taken to not blur the boundaries between the categories of volunteers and employees. Please consider any potential implications of common or separate policies and procedures.

Germany

The German Red Cross has directives about commendations, complaints and disciplinary proceedings.

South Africa

Upon receipt of an allegation of wrongdoing by the South African Red Cross, in accordance with the Code of Conduct, an initial assessment of the claim is to be conducted. This may involve talking to relevant persons to assess whether the allegation is credible.



United States

The American Red Cross has an ombudsman who is designated as the impartial dispute resolution practitioner. Internal stakeholders (employees and volunteers) and external stakeholders (Red Cross clients, donors, suppliers, vendors and the public) may approach this ombudsman.

Distinct from the ombudsman, the Office of the General Counsel and the Office of Investigations, Compliance and Ethics conduct formal investigations into allegations of fraud, waste, abuse, Red Cross policy violations, illegal or unethical conduct or other improprieties regarding the Red Cross. Usually, the allegations arise from whistleblower complaints of Red Cross employees and volunteers seeking formal review or investigations of their allegations of wrongdoing.



Tien Quang Tuan/Vietnam Red Cross

Investigation/fact assessment

It is important that an initial allegation of wrongdoing in any form is investigated in a proper and transparent manner. It is also crucial to highlight that in most instances it is incumbent on the National Society to investigate if there is a credible basis for the allegation. Failure to do so may result in the liability of the organisation.

Clarity of authority

Another important factor is to ensure clarity in regard to the authority conducting any disciplinary process. This is in keeping with transparency and should also preclude conflict of interest.

Due process

The requirements of due process may be obligatory on the basis of national law as well as international human rights conventions (such as, for example, the European Convention on Human Rights, the Inter-American Convention on Human Rights). For instance, a volunteer should have the opportunity to comment or present his/her view in the course of investigation of allegations, avail of external assistance etc.

Colombia

In 1993 the Constitutional Court of Colombia has required the National Society to reinstate a volunteer for lack of due process.

Bolivia

In the Bolivian Red Cross, depending on the misconduct, sanctions such as oral warning, written warning or expulsion may apply. Two oral warnings lead to a written warning and the third written warning involves expulsion.

South Africa

The South African Red Cross Society may, in addition to other legal action, terminate a volunteer contract if gross misconduct is substantiated.

Canada

The Canadian Red Cross Code of Conduct makes it mandatory for volunteers to report immediately any knowledge or observations of a child/youth being bullied, harassed or abused to his/her immediate supervisor and/or according to provincial/territorial Child Protection Acts.

Sanctions

There may be a range of sanctions subsequent to an investigation and an affirmative finding of fault or wrongdoing. This may include warnings (written or oral), suspension from the National Society, cancellation of volunteer agreement or volunteering arrangements, blacklisting and other such measures.

“Blacklisting” is one way of ensuring that a volunteer who is clearly unsuitable (for reasons of wrongdoing or negligence) is unable to return to a National Society. This could be through a confidential list or records. However, please exercise this option with caution, as it may have possible implications related to slander/libel, privacy laws, data protection etc.

Duty to report

While there are generally obligations in regard to confidentiality of information, in some situations this is trumped by the duty to report certain actions or behaviour.

A National Society should clearly define the types of allegations and activities that may require a volunteer to report to his/her supervisor and/or the public authorities (including the police) based on national law. This may apply to particular instances, such as allegations of abuse, non-reporting of which may entail consequences such as fines or jail sentences. A good rule is that any activity that may be considered criminal (theft, fraud etc.) would have to be reported to the authorities for them to investigate and prosecute.

Clear internal procedures are important to prevent and mitigate any instances of wrongdoing, to prevent claims as well as to protect beneficiaries and communities. Due process requirements should be followed carefully at all steps and any sanctions should be commensurate to the wrongful actions.



3. Liability of National Societies

In certain situations, despite best efforts of the National Society in complying with its duty of care towards volunteers as well as third parties, there still may be instances where the National Society may be presented with a claim or be held liable. The types of liability as well as the remedy depend on statutory as well as tort law in most jurisdictions.

In addition, there may be instances where volunteers harm people and damage property - especially if they have not been properly trained, equipped or managed - resulting in liability or a claim to the National Society.

In such situations, a National Society may be faced with an obligation to compensate or to provide other forms of restitution, depending on the actions for which the National Society may be liable. In order to reduce the impact of such claims, National Societies may establish an internal fund for the purpose of liabilities, as well as consider liability insurance (including for Board members or Directors, in case liability extends to them according to the legal system).

A National Society usually should minimise its risks regarding liability due to actions of volunteers in the following manner:

- Obtaining third party or public liability insurance;
- Employers liability insurance (if possible to extend to volunteers);
- Professional liability insurance (for instances of incorrect or negligent advice);
- Insurance for board members (if applicable);
- Insurance for volunteer drivers (if applicable).

Usually for any of these policies to apply to volunteers, don't forget that this should be explicitly mentioned in the policy.

France

In France, volunteers may engage the liability of an organisation for any material, corporal or moral harm they suffer while performing their mission. The volunteer will not have to prove that the organisation has committed any fault, but merely establish that a causal link exists between the mission and the damage incurred.

Macedonia

Under Macedonian law, an organisation has to provide compensation for damages to volunteers caused during or in relation to the volunteer services - and risks being fined in case it does not fulfil this obligation. Volunteers are under the same obligation towards third parties.

Philippines

The Philippine legislation lists a series of prohibited acts which relate to disasters and emergencies. It states that any person, group or corporation who commit the proscribed acts shall be held liable and subjected to penalties. Among such punishable acts figure a number of acts 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. From the language of the Act, it seems that volunteers could be held responsible for such acts, as well as organizations. Penalties range from fine and/or imprisonment between 6-12 years.

Hong Kong

In Hong Kong, the Prevention and Control of Disease Ordinance provides immunity from personal liability of health officers and other responders acting in good faith during an emergency.

United States

In the U.S., the Uniform Emergency Volunteer Health Practitioners Act extends civil liability protections to registered health care volunteers similar to the immunity provided to state employees.

Macedonia

The Macedonian law lists among volunteers' obligations to inform the organization about potential harmful consequences that he/she is familiar with and which may damage the organization, the volunteer personally or any third parties. It further indicates that, if the volunteer has previously informed the organization on such damaging consequences he/she will not be held liable for the caused damage.

Gambia

Under Gambian law, a volunteer assisting in an emergency or a disaster situation who exercises his/her duties in good faith shall not be liable for injury to persons or loss of property caused as a result of those duties.

Pakistan

In Pakistan, a volunteer having committed an act or omission in good faith for the purpose of exercising functions related to an emergency, shall not be personally liable in regard to 'any legal action, liability, claim or demand', and any such proceedings or claims 'shall be defended and indemnified' by the Punjab Emergency Service.

4. Immunity

Both volunteers and National Societies may be granted specific immunities in relation to the activities they undertake. In most instances, these relate to emergency response and other specific situations of volunteering.

In addition, there are specific "good Samaritan laws" in many jurisdictions that protect health care professionals or individuals who provide aid at the scene of an accident or emergency against civil liability for causing injury while providing assistance.

Another specific type of immunity that may apply, depending on the jurisdiction, relates to volunteers called as witnesses in court proceedings or for the purpose of inquests.



Practical steps!

- ✓ Tell volunteers if they are performing below requirements, or if they are putting themselves or others at risk.
- ✓ Put in place appropriate disciplinary processes, in accordance with legal requirements.
- ✓ Ensure clarity in process and sanctions.
- ✓ Put in place mechanisms to mitigate financial risks of liability, such as insurance policies or a fund.
- ✓ Know the activities and situations in which the National Society or volunteers may have immunities.



Annex 1

Compliance checklist

The following checklist provides an outline to assess your systems and processes against some of the most important and recurrent criteria in national law.

If you **don't know** how to answer a question, there may be a risk of non-compliance with your legal obligations. We therefore encourage you to **check your national law** in that respect and take any appropriate measures.

If you **know** what the legal requirements with regard to an issue are, **evaluate your level of compliance**. This self-assessment will thus enable you to highlight potential gaps and react accordingly to ensure better compliance.

Issues	Knowledge		Compliance		
	Yes	No	Not at all	Medium	Fully
Definition of volunteering and volunteers under national law <ul style="list-style-type: none"> → Are some activities prohibited or subject to restrictions? (fundraising, emergency) → Do you have to seek approval prior to conducting your activity? → Are some people precluded from volunteering? (legal capacity, age limit, national, residential permit) → Is there a requirement to dedicate a certain amount of time? (maximal/minimal amount of hours) → Are there restrictions in terms of beneficiaries of the volunteer activity? (all/some vulnerable persons) → Are National Society definitions of a volunteer in line with national law? 					
Differences between volunteers and employees <ul style="list-style-type: none"> → How can volunteer commitments be formalised so as not to create a contract of employment? (none, form, content) → Is there a limit in terms of time committed? (maximum amount of time) → Do tasks and responsibilities have to differ from what is expected of an employee? (cheap labour/heavy burden) → Are there restrictions with regard to compensation? (monetary, in kind) → What are the procedures in case of breach of duty? (due process, sanctions) → Are there specific considerations for employees who volunteer? (such as limitations regarding time, standards, locations) 					
Financial support <ul style="list-style-type: none"> → Are there conditions for the refund of volunteer expenses? (all/some, proof) → Is there a limit to the amount of volunteer expense and/or reimbursement? (minimal/maximal) 					

Issues	Knowledge		Compliance		
	Yes	No	Not at all	Medium	Fully
Non-discrimination <ul style="list-style-type: none"> → Are your selection criteria in line with non-discrimination provisions? (age, gender, health, sexual orientations, political opinion) → Should some questions be avoided in the course of an interview? (discriminatory questions, questions creating confusion with employment) 					
Screening <ul style="list-style-type: none"> → Are there mandatory screening requirements? (activities with children, high risks activities, qualifications) 					
Registration <ul style="list-style-type: none"> → Do you have to compile information on volunteers? (to account for activities, to ensure adequate supervision) → Do confidentiality requirements apply? (data protection, duty to report) 					
Safe environment <ul style="list-style-type: none"> → Are there specific health and safety requirements? (physical ability, workload, equipment, vaccination) → Is training obligatory? (inexperience of the person, risk of the activity, acting off-site) → What is the level of supervision required? (threshold required by the type of activity/experience of the volunteer) 					
Insurance <ul style="list-style-type: none"> → Is there an obligation to insure all of your volunteers? (age limit, level of involvement) → Is there an obligation to have an insurance policy covering all of your activities? (off-site, emergency situations) → Do you have to subscribe to insurance for third parties? → Is additional insurance for professionals required? (doctors, drivers) → Are there additional insurance requirements for high risks activities? 					
Liabilities <ul style="list-style-type: none"> → What is your minimal duty of care for each activity? (activities with children, high risks, special skills) → How are you required to react in the case of a breach of duty? (authority of decision, due process) → Are disciplinary measures mandated by law? (warnings, suspension from the National Society, blacklisting) → Do you have an obligation to investigate wrongdoings? (threshold, transparency) → Do you have a duty to report? (criminal acts, testimony) → Is there an obligation to compensate? (fund, restitution, declaration) 					
Immunities <ul style="list-style-type: none"> → Are there exceptional criteria to fulfil in order to benefit from immunity? (state of emergency, good Samaritan law) 					

Annex 2

Elements to be considered for a code of conduct

A code of conduct is a preventive tool to set out the rights and responsibilities of volunteers and National Societies. Any code of conduct should be developed in conjunction with National Society volunteers and clearly communicated to all new National Society volunteers. It should be reviewed regularly with volunteer input.

Volunteers could be asked to sign a code of conduct, however this may have legal implications that a National Society should research before implementing.

You will find below some of the main elements that could be included in a code of conduct for volunteers.

Standards of behaviour

Volunteers are personally and collectively responsible for upholding and promoting the highest standards of ethical and professional conduct as stated below:

- Respect and promote the Fundamental Principles of the International Red Cross and Red Crescent Movement;
- Respect and promote respect for the Movement Emblems;
- Observe strictly national laws and regulations;
- Carry out assigned tasks to the required standards;
- Behave in a way that maintains and builds the reputation of the Red Cross Red Crescent Movement.

General conduct

- Respect and maintain the confidentiality of personal and privileged information as appropriate, both during and after your assignment;
- Do not disclose without authorisation, directly or indirectly, to any person, organisation or social media, the private affairs of the National Society or persons associated including, but not limited to, trade secrets, suppliers lists, or personal information of clients, beneficiaries, volunteers or staff;

Breach of the Code of Conduct

- Breaches may include the following:
 - Personal use of the Red Cross Red Crescent assets, taking financial advantage due to association with the Red Cross Red Crescent, improper use/benefit due to Red Cross Red Crescent affiliation, acting contrary to the best interest of the Red Cross Red Crescent in a given situation, conflict of interest, acting inappropriately and contrary to the Red Cross Red Crescent Principles;
 - Acts which could be considered harassment, abuse, discrimination or exploitation;

- Failure to comply with local traffic laws and regulations, including driving Red Cross Red Crescent vehicles under the influence of any alcohol or mind altering substance or possessing any drugs prohibited by law;
 - Exercising any professional activity without valid certification;
 - Surfing/reading inappropriate websites and/or electronic message boards using Red Cross Red Crescent computers/systems;
 - Off duty activities which adversely affect staff, volunteers or clients of the Red Cross Red Crescent, or discredit Red Cross Red Crescent, are also breaches of the Code of Conduct.
- Anyone witnessing a breach of the Code of Conduct, or developing concerns or suspicions regarding a breach, should report immediately to the appropriate person.
 - A reported concern will be handled fairly with respect to any individual named, taking into account the seriousness of the issue raised, the credibility of the information or allegations, and the prospects of effective investigation.
 - Volunteers are subject to disciplinary measures in the event of a violation of this Code. Disciplinary actions include dismissal, where circumstances warrant.

"I have read and understood this Code of Conduct"

Date and signature of the volunteer

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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 world-wide.



International Federation
of Red Cross and Red Crescent Societies
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