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Council of Delegates of the International Red Cross  
and Red Crescent Movement

Geneva, 26 November 2011 – For humanity



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**COUNCIL OF DELEGATES  
OF THE INTERNATIONAL RED CROSS  
AND RED CRESCENT MOVEMENT**

Geneva, Switzerland  
26 November 2011

**Joint ICRC/International Federation Commission  
for National Society Statutes**

**Background Report**

prepared for resolution 4 “Revision on National Society Statutes and legal base”

adopted at the Council of Delegates 26 November 2011

**Document prepared by the Joint ICRC/International Federation  
Commission for National Societies Statutes**

Geneva, October 2011

## BACKGROUND REPORT

### Report of the Joint ICRC/International Federation Commission for National Society Statutes

#### INTRODUCTION

In the last decade, the world has continued to face severe disasters, including among the most recent the Earthquake in Haiti, the floods in Pakistan, the complex disaster of earthquake, tsunami and nuclear power plant accident in Japan and the severe drought in the Horn of Africa. Concurrently, situations of armed conflict and other situations of violence in many parts of the globe continue to place affected populations at grave risk for their lives, their security and well-being. This includes ongoing armed conflicts such as in Afghanistan, the Democratic Republic of Congo, Israel and the occupied territories, and Libya, as well as situations of civil unrest such as in the North of Africa and the Middle East at the outset of 2011. These events caused the displacement of hundreds of thousands of people, compelled to leave their dwellings and to move in search for safer places. During these challenging events, National Red Cross and Red Crescent Societies have played and will continue to play a crucial role, both in their capacity as auxiliaries to public authorities in the humanitarian field and under their own initiative to respond to the needs of vulnerable people within the community.

All components of the Movement recognize the importance for National Societies to develop a strong legal and statutory base allowing them to function effectively and to fulfil their humanitarian mission in accordance with the Fundamental Principles. A solid legal base enables National Societies to govern and manage their internal affairs and to strengthen their relationship with their respective governments. This includes better defining their auxiliary status, thus allowing them to act at all times as reliable partners to public authorities especially when operating in situations of acute humanitarian crises.

The Joint ICRC/International Federation Commission for National Society Statutes (Joint Statutes Commission) was established to assist National Societies in strengthening their statutory or constitutional instruments, as well as in developing a sound legal base in the domestic law of their national State. To achieve this objective, the Joint Statutes Commission:

- provides recommendations on the legal base of National Societies, i.e. their Statutes and National Societies laws/decrees. In particular, the Commission assesses the compliance of draft Statutes with a series of minimum requirements set out in the *Guidance for National Societies Statutes* document (Guidance document) and of draft laws/decrees with the minimum elements contained in the *Model law on the recognition of National Societies* (Model Law);
- assesses applications of new Societies for recognition by the ICRC and for admission to the International Federation on the basis of the 10 Conditions of recognition defined in Article 4 of the Statutes of the Movement and makes recommendations in this regard to the ICRC and the International Federation.

The mandate and objectives of the Joint Statutes Commission were reaffirmed in 2001 through the adoption of Action 3 objective 1 of the Strategy for the Movement which requested “all National Societies [to] examine their Statutes and related legal texts by 2010 and, where necessary adopt new constitutional texts, in accordance with the Guidance for National Society Statutes and relevant Resolutions of the International Conference (Resolution 6 of the 22<sup>nd</sup> International Conference, Tehran 1973, and Resolution 20 of the 24<sup>th</sup> International Conference, Manila, 1981).

Since then, National Societies, the ICRC and the International Federation have been working with the guidance of the Joint Statutes Commission to ensure that National Societies develop and enjoy a sound and coherent legal and statutory base permitting them to operate at all times in accordance with the Fundamental Principles of the Movement.

The present report is submitted in the framework of Action 3 objective 1 of the Strategy for the Movement, as revised in 2005 and as a follow-up to Resolution 3 ("Revision of National Society Statutes") adopted at the 2009 Council of Delegates. It highlights the developments, progress and significant achievements of National Societies in reviewing and revising their legal base since the 2009 Council of Delegates and summarises the activities of the Joint Statutes Commission during the period under review (November 2009-October 2011). It further aims to provide an overall assessment of the fulfilment of Objective 3 of the Strategy for the Movement (I). It additionally reflects on the main challenges encountered by National Societies in the fulfilment of Action 3 objective 1 of the Strategy for the Movement and on the joint efforts of the ICRC and the International Federation at the level of the Joint Statutes Commission and of their respective field Delegations in support of National Societies (II). The report also aims to outline the way forward beyond 2011 (III).

It shall be noted that the JSC also continued its work during the reporting period on reviewing applications for recognition and admission of new National Societies. The present Report remains however focussed on the achievements of National Societies and on the work of the JSC in relation to the review and revision of the statutory and legal base instruments of National Societies.

## **I. ON THE PROGRESS OF ACTION 3 OBJECTIVE 1 OF THE STRATEGY FOR THE MOVEMENT:**

### ***ACHIEVEMENTS OF NATIONAL SOCIETIES AND ACTIVITIES OF THE JOINT STATUTES COMMISSION***

#### **A. Context**

The crucial importance of high-quality Statutes to ensure the ability and capacity of National Societies to deliver their services to people in need is well and widely recognized within the Movement. The continued commitment of National Societies to achieve the objective set out in Action 3 objective 1 of the Strategy for the Movement to examine and review their Statutes and related legal texts by 2010 has also been reaffirmed in the following Resolutions adopted by all the components of the Movement at recent Council of Delegates:

Ø In November 2007, Resolution 7 related to the Strategy for the International Red Cross and Red Crescent Movement, “urged National Societies, as requested under Action 3 of the Strategy for the Movement, to examine and update their Statutes and

related legal texts by 2010, in accordance with the Guidance for National Society Statutes and relevant International Conference resolutions”.

Ø In November 2009, the Council of Delegates drew the attention of all components of the Movement, in particular their leadership, to the crucial importance of high-quality statutes and related legal texts to allow National Societies to deliver effective service to the people in need adopted a Resolution related to the revision of National Society Statutes.

This Resolution in particular:

- "[urged] National Societies to continue working closely with the ICRC and the International Federation delegations, to consult with the Joint Statutes Commission and to take the Commission recommendations into account [...];
- [called] upon National Societies which have not yet initiated or concluded a statute-revision process to take the necessary steps to fulfil the objective of Action 3 of the Strategy for the Movement on the basis of the Guidance document and the supplementary Advisory Notes;
- [recommended] to National Societies undertaking a revision process that they be particularly attentive to the following issues identified by the Joint Statutes Commission as the issues most often at variance with the Guidance document in the National Society draft Statutes:
  - a clear definition of the National Society's relationship with the public authorities and its auxiliary status in the humanitarian field is needed, in respect for the Fundamental Principle of Independence;
  - a clear definition is needed of the governing bodies (composition, duties, procedures and rotation);
  - separation between governance and management functions;
  - membership;
  - the branch structures (how branches are created, what bodies govern them and the relationship between branches and headquarters)."

## **B. National Society Statutes and related legal texts**

*Progress achieved between November 2009 and October 2011*

Many National Societies have undertaken significant new work to update their Statutes and constitutional base instruments in the last two years. This is highlighted by the sustained dialogue established between National Societies and the Joint Statutes Commission and the increasing number of (draft) Statutes received by the Joint Statutes Commission for its consideration and review. The Joint Statutes Commission wishes to congratulate National Societies which have engaged in this dialogue and encourages all National Societies to complete a revision process as soon as possible, as required under Action 3 of the Strategy for the Movement and the more recent commitments outlined above.

*Between November 2009 and October 2011, the Joint Statutes Commission*

- received 45 draft Statutes and over 50 adopted Statutes from some 80 National Societies worldwide for its review and comments;

- issued over 105 letters to National Societies including recommendations on the compliance of the said instruments with the minimum requirements set out in the "Guidance document for National Society Statutes".

To assess the degree to which the commitments of National Societies in this field have been fulfilled, the Joint Statutes Commission has maintained an updated list of National Societies and of their respective statutory and constitutional base instruments, summarizing the situation for each National Society, as of 31 August 2011<sup>1</sup> (see Annex I to this Report).

In 2010, the categories within the Joint Statutes Commission's summary list were revised and brought down to four (4) categories in order to more accurately reflect the actual fulfilment of the minimum requirements as defined in the Guidance document.

In the period under review, the summary list was sent twice to National Societies (in July 2010 and in July 2011) in order to share the Joint Statutes Commission's monitoring framework and assessment with all National Societies in a transparent manner. National Societies were invited in this context to review and to provide their comments on the summary list in order to ensure that the Joint Statutes Commission maintains an updated overview of the steps undertaken and of the progress achieved by National Societies.

#### *Overall assessment of the situation of National Society Statutes as of 31 August 2011*

According to the information available to the Joint Statutes Commission, the situation as at 31 August 2011 is as follows:

- 44 National Societies Statutes meet the minimum requirements;
- 116 National Societies are in the process of reviewing and revising their statutory base instruments;
- 22 National Societies have not yet initiated a revision process;
- 4 National Societies have Statutes which do not meet the minimum requirements.

These figures illustrate that, since the adoption of the Strategy for the Movement, over 90% of all National Societies have initiated a process of review of their statutory and constitutional base instruments and that of these, over 30 per cent of all National Societies are assessed to have successfully completed a revision process of their statutory and constitutional base instruments. It is important to stress that many National Societies are hence today engaged in an active process of reviewing their Statutes and related legal texts.

The Joint Statutes Commission also notes, as highlighted in its most recent communication to all National Societies in July 2011, that close to 20 National Societies have not yet initiated a revision process or have recently adopted Statutes which fall short of the minimum requirements. While a variety of reasons are

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<sup>1</sup> The summary list contains information as of 31 August 2011. The updates received from September to November 2011 will be reflected in a summary list that would be distributed during the Council of Delegates.

recognized to have generated this situation, including *inter alia* the obstacles sometimes faced by National Societies in maintaining their independence and autonomy vis-à-vis their public authorities, the Joint Statutes Commission strongly encourages the National Societies concerned to maintain their commitment.

The Joint Statutes Commission wishes to note that it has strived to respond as rapidly as possible to the requests for comments on draft statutes received from National Societies prior to their adoption. The Commission has as a rule prioritized these requests and in consequence has sometimes been delayed in commenting on Statutes sent to it after they had been adopted.

To conclude, while significant work has been undertaken in the past 11 years since the 2001 Strategy for the Movement was adopted, much remains to be done by many National Societies in order to achieve the objectives set out in the 2001 Strategy for the Movement. It is important to highlight that the Movement needs to consider that the process of review of a National Society's legal base instruments is a permanent task, which requires to be renewed on a periodical basis, for example every 10 years, in order to ensure that a national Society's statutory base instruments remain adapted to the National Society's evolving needs and to its operational environment.

The draft Resolution proposed for adoption by the 2011 Council of Delegates intends to reaffirm the commitment of all National Societies, with the support as required of the Joint Statutes Commission, the ICRC and the International Federation, to pursue their efforts in order to review and strengthen their statutory base instruments. It also invites the ICRC and the International Federation to further report on the progress made to the Council of Delegates in 2013 and 2015.

### **C. National Societies laws/decrees**

The Joint Statutes Commission wishes to reiterate the importance for National Societies to establish and maintain a sustained and balanced auxiliary relationship with their respective public authorities. National Society laws/decrees are crucial in this respect: they recognize the National Society as an independent legal entity and as a “voluntary aid society, auxiliary to the public authorities in the humanitarian field”. They also reaffirm the commitment of public authorities to respect the National Society's adherence to and ability to operate at all times in accordance with the Fundamental Principles of the Movement.

Furthermore, through the adoption in 2007 of Resolution 3 of the 30<sup>th</sup> International Conference relating to the *Specific nature of the International Red Cross and Red Crescent Movement in action and partnerships and the role of National Societies as auxiliaries to the public authorities in the humanitarian field*, National Societies and their public authorities recognised the central importance for National Societies to maintain a sustained dialogue on the legal base of National Societies in domestic law and on the implementation of their auxiliary role in practice. A strong legal base of National Societies in national legislation should notably serve to ensure a strong yet balanced relationship between National Societies and their public authorities, guaranteeing the ability of the National Society to work and operate at all times autonomously and in accordance with the Fundamental Principles.

Due to the importance for National Societies to define and to formalise their specific and privileged partnership with their public authorities, National Societies are

increasingly requesting the assistance of other components of the Movement in better defining and structuring this relationship in domestic law. This is reflected in the increasing number of requests received by the Joint Statutes Commission from National Societies calling for comments on their respective laws/decrees of recognition.

Between November 2009 and October 2011, the Joint Statutes Commission hence provided recommendations to a number of National Societies in support of their efforts and dialogue with public authorities to strengthen their legal base in domestic law. The need for National Society to engage with Governmental authorities in this respect also continued to constitute a central feature in the regular dialogue of the ICRC and the International Federation with National Societies on organisational development and capacity strengthening.

The ICRC and the International Federation remain in this regard fully committed to supporting National Societies in this view. The Joint Statutes Commission intends to strengthen its work on National Society laws and regulations in the future, including through the development of a more systematic monitoring of existing National Society laws and decrees.

The JSC is hence currently requesting National Societies to submit their national legislation to the Commission in order to support the Commission's objective to establish an electronic data base and to produce a summary list detailing existing National Society laws and decrees and the level of compliance of such acts with the minimum requirements defined in the Model law.

Given that Government interference in the work of National Societies continues to be observed in a number of national contexts and that in such instances inadequate or ambiguous laws and regulations often represent a contributing factor, this will be regarded by the Joint Statutes Commission as a priority in its work in the next two years.

## **II. CHALLENGES OF THE REVISION PROCESS**

As highlighted above, while significant progress has been achieved since the adoption of the Strategy for the Movement in 2001, further efforts are still required by many National Societies in order to ensure the full compliance of their statutory and legal base instruments with the minimum standards defined and agreed within the Movement.

Practice furthermore shows that National Societies often continue to face challenges in their efforts to work and operate in their respective operational context in full accordance with the Fundamental Principles and that this is often due in some measure to the weakness or inadequacy of their legal and statutory base instruments.

The Joint Statutes Commission recognises that these challenges exist. An internal reflection conducted by the Joint Statutes Commission has highlighted some of the

difficulties and dilemmas faced by National Societies in bringing the review and revision of their statutory and legal base instruments to a successful conclusion. The Commission also engaged today in a thorough review of its own working methods and modes of operation, which ultimately should assist in enhancing its effectiveness. The conclusions of these reviews will continue to shape the Commission's priorities and course of action and have assisted in the drafting of the present Report.

The Joint Statutes Commission's review notably highlighted that the difficulties encountered by National Societies in conducting a review and revision of their legal base instruments include the following:

- Conducting a review of its statutory and legal base instruments to a successful conclusion remains for many National Societies a demanding exercise, requiring extensive human and financial resources. Such a process implies thorough preparatory work and extensive consultations within the National Society at Headquarters and branch levels, which National Societies often find difficult to mobilise. Governmental bodies at different levels may also need to be associated at different stages of the process, and thus particularly in defining the National Society's status, prerogatives and privileges under national legislation. The process also requires significant expertise in both organisational development and legal fields, which may not be readily or easily available. These factors may lead to delays in the completion of a revision process.
- While the requirement for strong and sound legal base instruments is understood by the leadership of the vast majority of National Societies, a variety of considerations often prevent or limit the ability and willingness of National Societies to duly proceed with a review process. Such factors may include the political context, cultural and legal dimensions impeding the formalisation of a National Society's legal status in domestic law, as well as the internal situation of the National Society.
- While the Movement has affirmed the requirement for National Societies to strengthen their statutory and legal base instruments as a matter of priority and has in this view developed support mechanisms and tools, some National Societies feel that they would require greater or more tailored assistance. While the support and advice provided by the Joint Statutes Commission is generally appreciated and its recommendations valued, National Societies have at times called for a strengthened technical support based on greater knowledge of the local context in which the Society operates. This, it is felt, would imply the need for a more sustained dialogue between National Societies and the ICRC and International Federation Delegations and representations in the field. It may also require the Joint Statutes Commission to issue new and more user friendly tools (new advisory notes for example) and to develop new working methods which would allow it to respond to the requests for support received from National Society in a more effective and timely manner.

### **III. THE WAY FORWARD BEYOND 2011**



Taking the fast changing environment in which National Red Cross and Red Crescent Societies are given to operate and in light of the crucial importance of high-quality Statutes and of a strong legislative base for National Societies in domestic law, all components of the Movement must maintain their commitment to ensure that National Societies develop strong legal base instruments. This should allow National Societies to meet and to adapt to today's humanitarian challenges more effectively and to continue to play their important humanitarian role both nationally and internationally.

In this respect and in addition to the work already undertaken, components of the Movement need to consider new and innovative ways of assisting National Societies in strengthening their legal base instruments, and thus while making use of all available resources and the new communication and learning opportunities developed within the Movement, such as *inter alia* the joint ICRC/International Federation Induction Course (MIC), the International Federation's Learning Platform and relevant National Society networks, such as the global and regional groups of legal advisers and the newly formed Red Cross and Red Crescent Academic Network.

Considering the importance for the Movement to reaffirm the continued relevance of the objectives set out in Action 3 of the Strategy for the Movement and of the commitments undertaken in more recent Resolutions (e.g. Resolution 3 of the 2009 Council), the ICRC and the International Federation will bring to the 2011 Council a new Resolution.

The Resolution will aim in particular to restate and extend the commitments of National Societies to strengthen their legal base instruments, as well as to lay the ground for the Movement's future course of action and reflection in support of these aims. The tentative elements of the draft Resolution notably seek to:

- § reaffirm the objective of Action 3 of the Strategy for the Movement and past commitments adopted within the Movement for National Societies to review their legal base instruments and to work closely with the ICRC and the International Federation and to consult with the Joint Statutes Commission in this view;
- § take stock of the progress achieved and of the work remaining for many National Societies and, in particular, National Societies which have not yet undertaken any process of review of their legal base instruments;
- § recognize the different challenges faced by National Societies and underline the primary responsibility of the senior leadership and management of National Societies to ensure that adequate constitutional and statutory instruments are in place and duly implemented;
- § call upon National Societies to continue working closely with the ICRC and the International Federation delegations, in the revision of their statutes and related legal texts and in the strengthening of their legal base in domestic law and to take the recommendations of the Joint Statutes Commission into account;

- § call upon the ICRC and the International Federation and the Joint Statutes Commission, to pursue their support to National Societies and to seek ways of increasing their capacity and the effectiveness of their working methods. In their work to support National Societies, they should pay special attention to NS laws and regulations, to develop new advisory notes for National Societies as needed, and to ensure that the new institution building mechanisms and tools established within the Movement duly include and reflect the objective of strengthening the legal and statutory base instruments of National Societies.
- § invite the ICRC and the International Federation to initiate a consultation with National Societies on the most effective ways to continue the process of strengthening National Society legal base instruments in the future, and thus to explore and implement new and innovative ways and models to support National Societies, to draw further on existing resources, partnerships and legal expertise within the Movement, including the use of new learning platforms and relevant National Society capacities and networks;
- § invite the ICRC and the International Federation to draw on the work of the JSC in order to report on the achievement of the ongoing objective of strengthening the legal and statutory base instruments of National Societies to the 2013 and subsequent Council of Delegates.