

# 1. Introduction

[See also ICRC, Assistance Policy]

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## ICRC Protection policy

### Institutional Policy

#### 1. Introduction

The International Committee of the Red Cross (ICRC) has always undertaken activities that aim to protect lives and human well-being and secure respect for the individual. Its mission is to:

*“... protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles ... ”*

The ICRC’s multidisciplinary operational response capacity, in which protection and assistance are combined, and its special relationship with international humanitarian law (IHL) make the institution unlike any other. Protection has always occupied a unique place within the ICRC. It is at the core of the organization’s identity and is the motive force of its activities.

[...]

## 2. Definitions and framework for action

### 2.1. Definitions

The four Geneva Conventions of 1949 refer to “protection” several times without actually defining the term. The Statutes of the International Red Cross and Red Crescent Movement (Movement) introduced the notions of “protection” and “assistance” in 1952. This two-pronged terminology aimed to give specific meaning to what was once termed “humanitarian activities.” “Protection” and “assistance” are intrinsically linked and are inseparable elements of the ICRC’s mandate.

The term “protection” has several literal meanings. Broadly speaking, four spheres of action are involved in protection: political, military or security, legal (including judicial), and humanitarian. Every actor with a role in protecting persons, or an obligation to do so, belongs to one of them.

### **2.1.1. The ICRC’s definition of protection**

Protection aims to ensure that authorities and other actors respect their obligations and the rights of individuals in order to preserve the safety, physical integrity and dignity of those affected by armed conflict and other situations of violence.

Protection includes efforts to prevent or put a stop to actual or potential violations of IHL and other relevant bodies of law or norms.

Protection relates firstly to the causes of, or the circumstances that lead to, violations – mainly by addressing those responsible for the violations and those who may have influence over the latter – and secondly to their consequences.

This definition of protection also includes activities that seek to make individuals more secure and to limit the threats they face, by reducing their vulnerability and/or their exposure to risks, particularly those arising from armed hostilities or acts of violence.

Protection remains a constant concern for the ICRC. Promoting and strengthening IHL and other relevant norms and responding to humanitarian needs are, for the ICRC, always linked endeavours. The ICRC combines activities related to the causes of human suffering – especially those that seek to address the causes of violations – with activities to alleviate human suffering, particularly those in response to the consequences of, and the needs created by, such violations.

“Protection” as defined above thus refers to those types of activity that are unambiguously definable as “protection”<sup>3</sup> and to be distinguished from:

- other activities carried out within a protection framework or those that aim to have an indirect protection impact, particularly assistance activities that seek to alleviate or to overcome the consequences of violations;
- the permanent concern of the ICRC to ensure that its action does not have an adverse impact on, or create new risks for, individuals or populations (the precept to “do no harm”).

### **2.1.2. Violations**

Generally, legal rules exist to protect individuals and to limit the use of violence. Figuratively speaking, these rules may be said to be a type of barrier between individuals and the dangers that threaten them: authorities and other actors are responsible for the maintenance of this barrier.

Based on the definition of protection given above, violations play a central role in protection work.

A violation may be defined as disregard for a formal obligation. The ICRC extends the definition to include disregard for widely accepted standards. The concept of “violation” must therefore be interpreted broadly. Besides the failure to comply with binding norms (hard law), it must also include failures to observe non-binding norms (soft law), relevant traditions and customs, the spirit of the law, and humanitarian principles.

This concept of “violation” is quite similar to that of the more widely used “abuse.”

A violation may be intentional, linked to a deliberately repressive practice or strategy. Or it may be unintentional, the result of a technical, material, financial or structural incapacity to provide certain basic services. This definition of “violation” therefore includes not only acts of violence and arbitrary abuse of power or discriminatory practices, but also the failure to fulfil the obligation to assist people in need. Violations can also come in less immediately obvious guises, such as the economic or social ostracism of part of the population.

Violations almost always result in human suffering and humanitarian consequences for the individual or group concerned. It is these consequences that trigger the ICRC’s response.

Authorities bear the primary responsibility for ensuring the application of legal rules and of other widely accepted norms regulating behaviour. They and other actors must acknowledge and respect the rights of individuals and take measures to fulfil their obligations in this regard. Authorities and other actors are in fact, the primary guarantors of respect for the lives and the dignity of individuals, and also directly responsible for ensuring their security.

### **2.1.3. Risks, vulnerability, and the need for protection**

The concept of risk, with regard to violations, concerns the probability of their commission. More generally, “risk” is created by the cumulative impact of:

- the probability of dangers or threats resulting from a deliberate practice of authorities and other actors or from unintended consequences (structural breakdown or incapacity, adverse consequences of even lawful actions during the conduct of hostilities or during law enforcement operations);
- the vulnerability of persons.

In any given context, dangers or threats are assessed on the basis of precedents and probabilities. The interpretation of events – especially the analysis of the means employed by authorities and other actors, or of the goals they pursue – makes possible the identification of population groups potentially “at risk.”

Vulnerability is an inherent element of risk. It reflects the fragility of an individual or group confronted by hazards or aggression. It denotes a deficiency or shortage, although the latter might not be tangible. Put

more precisely, vulnerability reflects the incapacity of persons or population groups to offer resistance to arbitrary acts or violence, as well as their lack of access to services. Vulnerability is determined by specific factors such as legal or social situation, or socio-political, economical and personal characteristics (gender and age, for instance).

Protection needs arise when victims, or potential victims, of violations are unable to defend their basic interests and no longer benefit from the basic respect they are entitled to from authorities and other actors who have control over them or on whom they depend.

Protection needs are determined by analysing:

- actual or probable violations – their nature, gravity, scope, frequency and duration;
- actual or potential victims of violations, and the specific vulnerabilities that result from their being the object of violations;
- the urgency to respond, based on the response of authorities and other actors and on the ability of existing institutions and regulatory mechanisms to address key protection issues.

This process for defining protection needs enables the ICRC to:

- determine the severity of a particular crisis: emerging crisis/pre-crisis phase, acute crisis, chronic crisis or post-crisis period;
- make a decision on the extent of its involvement;
- establish priorities.

## **2.2. Framework for protection**

### **2.2.1. Normative framework for intervention**

**ICRC responsibilities vary according to the context.**

The ICRC directly responds to protection needs in four types of situation as defined by IHL, the Statutes of the Movement, and its own institutional policies:

- international armed conflicts;
- non-international armed conflicts;
- internal disturbances;
- other situations of internal violence.

In addition, some contexts are of a mixed nature and combine some of the characteristics of the situations mentioned above. ICRC protection work might also be required after the end of one of these situations (to handle direct consequences or during a transition period).

The ICRC's mandate (defined below) unambiguously imposes a responsibility on the organization to act in international armed conflicts; this corresponds with the obligation of States to allow the ICRC to undertake

certain activities in these contexts. This responsibility is less explicit, and consequently decreases, as one moves down the list of situations given above. In internal disturbances and other situations of internal violence, the ICRC's main responsibility is to examine each case and to offer its services where appropriate. The less stringent the ICRC's mandate, the more its decision to act is shaped exclusively by humanitarian considerations. In these situations the decision to act is based on the nature and the extent of identified needs; the ICRC also carefully considers the extent to which its action, experience and expertise would provide an added value.

### **Action based on a precise framework of reference**

The framework of reference consists of four elements:

- The legal rules and other norms applicable, which are determined by the legal classification of the situation (the main question is whether IHL applies) and other specific aspects of the context, such as whether the country in question has ratified IHL treaties and other instruments of international law.
- The ICRC's mandate. The ICRC has a clearly defined and internationally recognized role to promote implementation of and respect for IHL as well as the development and dissemination of this body of law. The role of the ICRC in relation to other bodies of law and norms depends on the circumstances and the context, and is governed by its institutional policies.

In international armed conflicts, the ICRC also has tasks and operational prerogatives in the field of protection that are set out in the four Geneva Conventions and their Additional Protocols and confirmed by the Statutes of the Movement and by the International Conference of the Red Cross and Red Crescent (International Conference).

With regard to non-international armed conflicts, internal disturbances or other situations of internal violence, the Statutes of the Movement and various resolutions of the International Conference – which constitute a basis for ICRC action – also mention protection activities in a variety of ways.

The Central Tracing Agency (CTA) is a special case. It is an institution that was originally established for situations of international armed conflict in accordance with the provisions of the four Geneva Conventions and Additional Protocol I of 1977, and with the Statutes of the Movement. Its effectiveness and later resolutions of the International Conference have widened the range of its activities to non-international armed conflicts and other situations of violence; more recently, the CTA has begun to assist in restoring family links (RFL) during natural disasters and in other situations in which National Red Cross and Red Crescent Societies (National Societies) are involved. [See ICRC, Tracing Service]

The CTA carries out four types of activity:

- activities to benefit persons affected and services that are provided directly to them: RFL, efforts to clarify the fate of the missing, the transfer of people, and the provision of travel and other documents;

- activities and services for the benefit of National Societies, particularly coordination and technical assistance for their tracing services;
- activities for States (e.g. assisting in the establishment of a national information bureaus as provided for by IHL);
- management of data on persons who require individual follow-up.

On the basis of the 1997 Seville Agreement and its 2005 Supplementary Measures adopted by the Council of Delegates of the Movement [**See The Seville Agreement**], the ICRC has been given the lead role for activities related to the work of the CTA. Broadly speaking, this covers all activities associated with RFL.

Within the Movement, the ICRC's leading role in protection activities is generally recognized: it develops guidelines, provides technical advice and, where it is operational, coordinates activities.

- The Fundamental Principles of the Movement: humanity, neutrality, independence, impartiality, universality, voluntary service and unity.
- The ICRC's institutional policies and other internal reference documents.

[...]

### **2.2.3. ICRC action is an integral element in creating an environment conducive to the provision of protection**

Ensuring respect for human dignity and for the rights of individuals depends on a number of factors. The ICRC's protection work cannot be conceived and carried out in isolation. It contributes to the creation of a favourable environment, along with other actors. The parties that bear different responsibilities and carry out a variety of activities include the following:

- authorities and other actors concerned: they have the primary responsibility and their omissions/violations trigger the need for separate but complementary action by other bodies;
- States other than that to which the authorities concerned belong: they are responsible for ensuring respect for IHL and for various other duties based on the United Nations Charter;
- external regulatory mechanisms, in particular other members of the international community, the international media, international NGOs, UN agencies and bodies of international justice; and internal regulatory mechanisms, (e.g. associations for the defence of certain groups or communities);
- persons who are, or who may in the future be, affected: circumstances permitting, they can take measures of their own to avoid risks and to protect themselves, their families and their communities.

The ICRC implements protection strategies that are complementary to those of other actors; it also tries to avoid confusion.

[...]

## **3. Operational response and beneficiaries**

The beneficiaries of the ICRC's protection activities – persons deprived of their liberty; the civilian population and other affected persons not in detention; separated family members or persons listed as missing – cannot be rigidly categorized. Affected persons may benefit from both generic (in behalf of all three categories) and specific (in behalf of some but not all categories) protection activities.

## **5.1. Generic activities**

The ICRC directly implements its protection action through a wide range of activities in which it has expertise. It carries them out in combinations that are adapted to the problems it encounters, the context, and the available possibilities. [...]

The aim of all ICRC activities is to improve the situation of victims of violations and of persons at risk. However, the organization distinguishes between two major categories of activity:

- activities targeting those responsible for violations: these aim to reduce the threat posed by authorities and other actors and to strengthen the protection they are meant to offer;
- activities developed directly to benefit affected individuals and communities: these aim to reduce vulnerability and exposure to violence.

[...]

Representations – written or oral – are central to the ICRC's protection activities. Bilateral and confidential representations – general or in behalf of particular individuals – form the ICRC's preferred approach. The purpose of these representations is to forcefully remind authorities of their responsibilities: they are basic negotiating tools in protection issues.

The bilateral and confidential approach [...] may not always be successful. When it does not yield tangible results it may be complemented – in exceptional cases, replaced – by discreet representations to third parties (States, international and regional organizations, or various individual personalities or entities who may be able to exercise a positive influence on the situation) or by public denunciation.

Discreet representations to third parties are usually conceived to precede public denunciation [...].

These steps may be accompanied or preceded by other measures such as:

- developing the law and standards
- reminding the parties concerned of applicable law and relevant standards
- promoting knowledge of the law and relevant standards with a view to changing attitudes towards them
- providing structural support for the implementation of the law and relevant standards in order to strengthen the capacity of authorities and other actors to integrate IHL provisions and other fundamental rules protecting persons into domestic legislation and national systems. The objectives of these activities vary according to the authorities in question, who might be:

- weapon bearers, including security forces (police and other State forces);
- legislative authorities;
- educational authorities;
- detaining or prison authorities;
- judicial authorities;
- health and other authorities with normative responsibilities.

The decision to act and the actual choice of activities depend on the political will of the authorities and other actors to effect lasting change, as well as their degree of structural capacity and cohesion. The potential for problems related to perceptions of the ICRC's activities (particularly in relation to its structural support for law enforcement and systems of judicial administration) is another important consideration.

- acting as a neutral intermediary
- aiming to directly reduce the vulnerability of persons and their exposure to risk through:
  - registration/follow-up of individuals at risk;
  - strengthening the capacity of communities, families and individuals for empowerment and self-protection;
  - risk education;
  - provision of aid and services aimed at reducing exposure to risk.

The ICRC's presence, particularly within affected communities, can have a potentially dissuasive effect.

## **5.2. Activities to benefit persons deprived of their liberty**

Being deprived of one's liberty is psychologically undermining: it makes people more vulnerable and markedly dependent on detaining authorities. The ICRC recognizes that the intrinsic vulnerability of all detainees can be exacerbated by a number of factors: the personal characteristics of detainees, the prevailing political and military situation, and the practices of authorities and other actors.

### *5.2.1. The ICRC's general approach to issues related to persons deprived of their liberty*

The ICRC:

- identifies the problems encountered by detainees;
- analyses the circumstances in which persons are deprived of their liberty;
- is guided by the normative international framework for the treatment of persons deprived of their liberty;
- operates within a precise methodological framework;
- strives to ensure that the rights of persons deprived of their liberty are respected throughout the period of their detention: this can have significant consequences for the protection strategy, the length of the ICRC's involvement, and the expertise and resources required.

Visits to persons deprived of their liberty form the basis of the ICRC's approach. They are, in principle, a prerequisite of all protection activities to benefit such persons. These visits are carried out in accordance with



established ICRC practice that is uniformly applied and has to be accepted beforehand by authorities and other actors concerned. The ICRC's methods guarantee professionalism and credibility and enable the ICRC to assess the situation as accurately as possible, whilst safeguarding the interests of detainees. They make it possible to analyse specific systemic issues, identify problems, assess conditions of detention, and carry on a dialogue with detainees and detaining authorities. They can also have a dissuasive effect on the commission of violations and be of value, in psychosocial terms, to detainees.

#### *5.2.2. Persons deprived of their liberty who are of direct concern to the ICRC*

Besides its responsibilities under IHL, the ICRC acts primarily to benefit persons deprived of their liberty in relation to situations that trigger its intervention. Broadly speaking – and as dictated by circumstances – the ICRC concerns itself with detainees who have no effective means of protecting themselves from abuse or arbitrary acts, who are neglected, who do not or who no longer have access to the most basic services they are entitled to receive from the authorities, or who are subject to the arbitrary behaviour of those exercising power over them.

The following categories of detainee are of direct concern to the ICRC:

- protected persons deprived of their liberty in a situation of international armed conflict;
- persons deprived of their liberty in relation to a situation of non-international armed conflict;
- persons deprived of their liberty not in relation to a situation of international or non-international armed conflict, but the conditions of whose detention are affected by the conflict;
- persons deprived of their liberty in relation to a situation of internal disturbances;
- persons deprived of their liberty in relation to some other situations of internal violence who are regarded by the authorities and other actors as actual or potential opponents or as threats (owing to their nationality, ethnic origins, religion or other consideration), or others who have been arrested as a means of intimidation;
- persons deprived of their liberty in a situation of internal disturbances or some other situation of internal violence who do not or who no longer receive the minimum protection they are entitled to from the authorities or who are subject to the arbitrary behaviour of those exercising power over them.

In situations other than those in which the ICRC is expressly mandated to act in behalf of persons deprived of their liberty, the organization's decision to offer its services is determined by the gravity of humanitarian needs and by the urgency of responding to them, whatever the causes of the protection problems or the reasons for detaining the persons concerned.

The ICRC deals specifically with the vulnerability of certain detainees, for reasons of age, gender, because they are under sentence of death, owing to their status as detained migrants, etc.

The ICRC insists – in all contexts – on preserving its independence in determining which categories of person deprived of their liberty it is interested in. Negotiations for access to detainees must ensure that no

category of detainee is excluded and that the ICRC will be permitted the greatest latitude possible in its work.

### *5.2.3. Scope of ICRC intervention*

The ICRC concerns itself with the following matters:

- the behaviour and actions of those responsible for making arrests, conducting interrogations and taking decisions related to detention;
- the material conditions of detention;
- access to medical care;
- the management and care of persons deprived of their liberty.

Its interventions focus on certain protection problems and violations:

- enforced disappearances and undisclosed detention;
- summary executions;
- torture and other forms of ill-treatment;
- problems created by violations of the physical or moral integrity of detainees and of their dignity and of the obligation to provide the essential necessities for their survival:
  - problems related to water and food;
  - problems related to personal hygiene and sanitation facilities in places of detention;
  - problems related to health and access to medical care;
  - problems related to material conditions of accommodation;
  - problems related to the management of detainees;
- violations of minimum judicial guarantees and procedural safeguards;
- violations of respect for family unity:
  - problems related to maintaining contact between detainees and their families.

[...]

## **5.3. Activities to benefit the civilian population and other affected persons not in detention**

The ICRC is conscious that the forms of repression and abuse to which the civilian population and other affected persons might be subjected and the risks to which they might be exposed, as well as the adverse consequences of conflict, are potentially very varied.

The ICRC requires the fulfilment of certain pre-conditions and the taking of certain steps before implementing its protection framework. These pre-conditions are as follows:

- a minimum amount of access to victims and witnesses of violations;
- safety of ICRC staff (e.g. the extent to which the ICRC's mandate is recognized and accepted by authorities and other actors, or the degree to which security guarantees are provided for the ICRC's

activities);

- safety of victims and other persons contacted by the ICRC (e.g. the extent to which guarantees are provided that persons in contact with the ICRC will not be subjected to reprisals);
- identification of and contact with pertinent authorities and other actors.

#### *5.3.1. The ICRC's general approach to problems faced by the civilian population and other affected persons*

The ICRC:

- analyses the problems faced by affected persons; it does so by exploiting its access to reliable and pertinent information, which is collected either by its own delegates or through a network of contacts;
- is mindful of the specific difficulties of analysing the conduct of hostilities, for instance, their impact – direct and indirect – on civilians, as well as the difficulties of analysing the use of force during law enforcement operations;
- is guided by the international normative framework applicable to various situations;
- operates within a precise methodological framework that enables it to undertake activities even when the conditions for its humanitarian work are only partially met.

#### *5.3.2. Persons and objects of concern to the ICRC*

- Civilians and combatants, or other weapon bearers, who are hors de combat or are no longer participating in hostilities.
- Objects specifically protected under IHL.
- All persons affected by internal disturbances or other situations of violence. This refers to persons who are not or who are no longer participating in acts of violence or against whom violence was used unlawfully when they took part in acts of violence.

The ICRC seeks to contribute to the protection of all those persons affected by violence, and those who are at risk, without discrimination. Nevertheless, it makes every effort to respond to the specific needs of certain categories of person (e.g. children, women, refugees, internally displaced persons, or international migrants).

#### *5.3.3. Scope of ICRC intervention*

The ICRC concerns itself with the following matters:

- the actions of weapon bearers and of the various authorities with responsibilities pertaining to the civilian population;
- the access to medical care and other basic services for individuals or population groups;
- the vulnerability of individuals or population groups and their exposure to risk.

The ICRC's interventions focus on violations, and the humanitarian problems that have been identified, by examining the following:

## **The use of force – means and methods:**

- in the conduct of hostilities, including the impact – direct and indirect – of hostilities and of the weapons that are used;
- in law enforcement operations.

## **The treatment of persons:**

- assaults on and threats to the lives, security and physical and moral integrity of persons;
- denial of basic health services and violation of the obligation to ensure access to basic necessities for survival;
- violations of respect for family unity;
- violations of rules related to missing persons and their families;
- violations of rules regarding the free movement of persons;
- the consequences of the unlawful or arbitrary destruction or expropriation of private property;
- disruption of access to education or to places of worship in situations of occupation.

### *5.3.4. ICRC protection activities*

In addition to the generic protection activities mentioned above [...], the ICRC undertakes specific activities to benefit the civilian population and other affected persons not in detention, depending on the nature and intensity of the situation, such as:

- ICRC accompaniment (ICRC delegates accompanying individuals or groups of civilians, thereby placing them under the protection of the red cross emblem);
- evacuation of persons at risk;
- establishment of protected areas;
- provision of RFL services.

## **5.4. Activities to benefit separated family members and the missing**

The ICRC is conscious that the well-being of individuals is largely dependent on the preservation of their ties to loved ones.

Efforts to ascertain the fate of the missing entail the undertaking of a wide range of complementary and closely coordinated activities. The ICRC is committed to addressing issues related to persons who are unaccounted for (missing persons) and to assisting their families. Its activities in this regard are adapted to the context and to the period of time that has elapsed since the persons concerned were reported missing. Some of these activities necessitate close collaboration with the authorities concerned and with all parties to the conflict, and take place mainly during post-crisis or transition periods.

### *5.4.1. The ICRC's general approach to problems faced by separated family members and missing persons*

The ICRC:

- determines its course of action after analysing needs and estimating the length of its engagement; it also examines the causes of ruptures in contact and communication (e.g. displacement, restricted access to means of communication and family contact, absence of records of people who have been executed or who have died in detention);
- acts within a precise methodological framework and employs rigorous working procedures that demand the following: speed in processing cases (which requires the assistance of the Movement's Family News Network, reliability in data management and transmission, protection of personal data, which varies according to the situation and the amount of time that has passed;
- carries out, in addition to RFL, activities that aim to prevent the severance of – ties and to respond to the specific material and psychological needs of persons who are directly affected, as well as to the needs of their families. The ICRC's efforts to ascertain the fate of the missing take a number of different forms: managing human remains, conducting forensic studies, providing support for families, integrating relevant norms into domestic legislation, ensuring that members of the armed forces are equipped with the necessary means of identification, etc.;
- sets up effective information, communication and tracing systems that enable the development of various tools that are adaptable to extremely varied needs and operational environments.

#### *5.4.2. Persons of concern to the ICRC*

- Separated family members: persons who have lost contact with their families as a consequence of an armed conflict or other situation of violence, or after a natural disaster.
- The missing: persons whose families have no news of them or who, based on reliable information, are listed as missing in relation to a situation of armed conflict or other situation of violence, or after a natural disaster.
- Persons deprived of their liberty who are individually monitored by the ICRC or who are held in places of detention visited by the organization.
- Relatives of the persons mentioned above.

Attention is paid to the specific needs of certain groups (children, women, internally displaced persons, refugees, or migrants). This is particularly the case with regard to children who are separated from their families or who are on their own (unaccompanied).

[...]

#### *5.4.4. ICRC protection activities*

Besides the generic protection activities mentioned above (see 5.1.), the ICRC carries out the following protection activities:

- registration/monitoring of persons at risk
- tracing individuals;

- operating a system that enables separated family members to correspond and to exchange documents;
- producing various certificates and issuing travel documents;
- reuniting family members;
- promoting and/or setting up mechanisms tasked with clarifying the fate of missing persons: the collection and management of information about the dead, the location, identification and recovery of human remains, etc.;
- providing support for the families of missing persons.

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