



ICRC

deprived of freedom

deprived of **FREEDOM**





**ICRC**

International Committee of the Red Cross  
Central Tracing Agency and Protection Division  
19 Avenue de la Paix  
1202 Geneva, Switzerland  
**T** +41 22 734 60 01 **F** +41 22 733 20 57  
**E-mail:** [icrc.gva@icrc.org](mailto:icrc.gva@icrc.org) **www.**[icrc.org](http://www.icrc.org)

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## Protection of prisoners: a necessity



**Even in societies where the rule of law prevails, the authorities may, if they feel threatened, be tempted to use undue force in order to attain their political or military objectives.**

The same is true of opposition factions. People deprived of their freedom in such circumstances are particularly vulnerable, for they are in danger of disappearing or being subjected to torture or ill-treatment.

Under international humanitarian law and the mandate entrusted to it by the international community, the International Committee of the Red Cross (ICRC) is responsible for helping the victims of both internal and international armed

conflicts and of other situations of violence. Since 1915 the ICRC has progressively developed procedures for visiting and subsequently monitoring the conditions in which people deprived of their freedom are detained. On the basis of the Geneva Conventions or with the prior consent of the detaining authorities, it regularly visits prisoners of war, civilian internees and security prisoners, and keeps a check on their situation until they are released. By making repeated visits, it is able to assess the psychological and material conditions of detention.

The ICRC reports its findings to the authorities and, if necessary, asks them to take steps to halt any abuses noted or remedy shortcomings in the prison system.

Although the risk of purely arbitrary arrest is high, particularly during internal unrest, the ICRC remains strictly neutral: it does not comment on the grounds for imprisonment, but confines its observations and requests to the treatment of detainees, particularly during interrogation, and to the conditions of detention. However, it does make sure that people facing prosecution benefit by the minimum legal safeguards laid down in international law.

Through its work the ICRC supports the efforts made by the international community to promote respect for international humanitarian law and the general principles of human rights.

## Visits to prisoners: a practice established in the early twentieth century

**Ever since 1915, the ICRC has been visiting people deprived of their freedom in times of conflict. It became concerned about the situation of prisoners of war and civilian internees in the early months of the First World War, once it was clear that the conflict would be of long duration: on its own initiative, and with the belligerents' consent, it started visiting them.**

**Its objective** was to encourage the parties to improve the prisoners' conditions of detention wherever necessary, and to be able to inform their governments and families how they were faring. This practice was subsequently codified in international humanitarian law, in the 1929 Geneva

Convention on prisoners of war. In 1918 and 1919, ICRC delegates also visited security prisoners for the first time in Petrograd (Russia) and in Hungary. During the Second World War they made over 11,170 visits to camps housing prisoners of war and civilian internees in the hands of States party to the 1929 Geneva Convention.

**After 1945** the ICRC adapted its activities to the needs created by new forms of conflict, offering its humanitarian services to the belligerents and visiting people in captivity during the wars in Viet Nam and Afghanistan and the internal conflicts in Mozambique, El Salvador and Nicaragua, and in situations of internal tension such as the one that prevailed in South

Africa. At the same time, the ICRC has continued to protect and assist prisoners of war during and after international armed conflicts (Falklands/Malvinas Islands, Iran/Iraq, Panama/United States, the Gulf war, Ecuador/Peru and Eritrea/Ethiopia).



## International humanitarian law: protection for people deprived of their freedom

### International humanitarian law contains many provisions relating to the situation of people deprived of their freedom.

In international armed conflicts, the following persons are protected by the Geneva Conventions of 1949 and Additional Protocol I:

- prisoners of war, by the Third Geneva Convention which is devoted entirely to them (for instance, during the Gulf war, Iraqi prisoners detained by the Coalition forces and prisoners from Coalition countries in the hands of the Iraqi authorities);
- civilian internees (i.e. civilians deprived of their freedom for security reasons), by the Fourth Geneva

Convention on the protection of civilians in wartime (for instance, Iraqi nationals living in the United Kingdom, Italy and France and interned there from the start of the Gulf war);

- in the event of territorial occupation, persons suspected or accused of committing acts hostile to the occupying power, persons tried for such acts and criminal law prisoners, by the provisions of the Fourth Geneva Convention (for instance, Palestinians detained or interned by Israel).

■ **The States** ■ party to the Geneva Conventions have formally undertaken to allow ICRC delegates to visit the above-mentioned persons in the event of international armed conflict.

In non-international armed conflicts, on the other hand, people who are not or are no longer taking part in the hostilities, particularly those deprived of their freedom, are protected by Article 3 common to the Geneva Conventions and by Additional Protocol II.

■ **The ICRC** ■ steps in on their behalf by virtue of the right of initiative assigned to it by the Conventions. In practice, it draws on the concepts applicable to international armed conflicts to define the categories of prisoners to whom it wants access: members of government armed forces, armed rebels captured by enemy forces, and civilians arrested by the government or the armed opposition because of their real or

presumed support for the other side. The ICRC likewise visits people who are likely to be persecuted because of their ethnic origin, religions, belief, etc.

■ **The ICRC** ■ may also offer its services to the authorities in the event of internal tension or disturbances. In such cases it acts, according to the gravity and urgency of the humanitarian needs observed, on the basis of the humanitarian right of initiative laid down in the Statutes of the International Red Cross and Red Crescent Movement and accepted by the States. For its detention-related activities those two criteria are determined by factors such as the number of arrests, the effectiveness of supervisory mechanisms within the country, the conduct of police and security forces and allegations of ill-treatment and disappearances.

Then again, the ICRC may offer its services to the authorities in other situations such as serious disruptions of law and order or the lack of minimum guarantees of individual safety, for instance, if many people are affected or if it believes that its intervention may reduce tension.

Over the years the ICRC has steadily extended the scope of its activities: criminal law offenders are included in its representations and visits if they share the same premises as persons arrested in connection with internal tension or disturbances, or if they are suffering as a direct result of that situation. For example, if prison food supplies are inadequate (thus affecting all prisoners, regardless of their status or the reasons for their arrest), the ICRC asks the authorities to take the necessary steps to remedy the shortage. Any additional assistance provided by the ICRC is distributed to all prisoners alike.

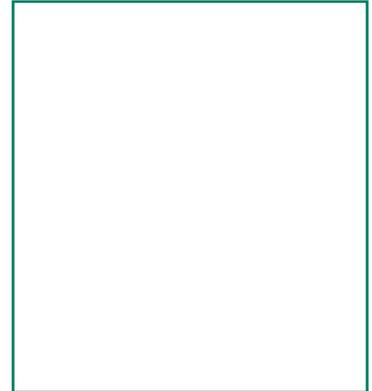


## Visits to prisoners captured during internal armed conflict

**The Russian civil war (1917-1921) was the first internal armed conflict during which the ICRC visited prisoners; its delegates modelled their activities on the practice established for prisoners of war in international armed conflicts.**

With the spate of internal conflicts after the Second World War,

this work assumed particular importance. The ICRC's objective was to gain access to all people captured and held by all parties to the conflict, but it did not always manage to do so. In other situations, ICRC visits have helped to protect people held not only by the government authorities but also by liberation or opposition movements.



## ICRC visits: facts are established, then the authorities are approached

**ICRC teams visiting people deprived of their freedom consist of at least one delegate and one doctor or sometimes a nurse.**

The size of the team and the length of the visits depend on the scale of the problems anticipated and the size of the premises to be visited: two people are enough to visit a police station in Sri Lanka, but one or more teams working together over several weeks will be required for the same task in large prisons divided into many sections holding thousands of prisoners, such as that of Shibergan in Afghanistan.

**■ All ICRC visits ■** follow a standard procedure and take place only if certain conditions are fulfilled.

ICRC visits to places of detention start with a preliminary exchange of views with the people in charge there to explain how the visits themselves are organized and carried out. Together with the prison authorities, the delegates then inspect the entire premises (cells, dormitories, latrines, showers, exercise yards, visiting rooms, kitchens, workshops, sports areas, places of worship, infirmary, punishment and solitary confinement cells, etc.).

The most important part of the visit is the private conversations the delegates have with each prisoner who so requests, as well as with those to whom the delegates themselves wish to speak in private, at which neither the authorities nor the guards are present.

In this way the ICRC team tries to find out what the prisoners regard as their main problems.

After analysing the information gathered and their own observations, the delegates submit their findings, conclusions and recommendations to the people in charge of the place of detention and make a note of their comments. In many cases, problems can be solved by establishing an ongoing working relationship with the local prison authorities.

■ **The next step** ■ is to approach the higher authorities. Problems such as overcrowding, medical care and water or food supplies very often depend not only on the prison director but also on other authorities such as the Prisons Department or the Ministry of Health. Such approaches may take the form of interviews at various levels or of correspondence or written reports, depending on how great and how urgent the problem is.

The ICRC regularly provides the national authorities with a summary report on its findings over a given period or in a specific category of places of detention, which covers not only the problems identified but also any improvements observed or measures taken.

■ **Prior conditions** ■

Drawing on the experience acquired over the years, the ICRC has thus established guidelines enabling it to evaluate a prison system with maximum objectivity and submit concrete and realistic proposals which take local customs and standards into account.

Whatever the circumstances, the ICRC visits people deprived of their freedom only if the authorities allow it:

- to see all prisoners who come within its mandate and to have access to all places at which they are held;
- to speak with prisoners in private, without any third parties being present;
- to draw up a list of prisoners during its visit whom it considers to come within its mandate, or to receive such a list from the authorities and to check and supplement it if necessary;
- to repeat its visits to all prisoners of its choice if it considers that the situation so warrants, and to do so as often as it wishes.





### ■ Confidential reports ■

Until the late 1940s, the ICRC used to publish its reports on visits to prisoners. However, because its reports were sometimes used polemically for political purposes, thereby jeopardizing further dialogue with the authorities, the ICRC had to stop publishing them.

Since then, ICRC reports have been submitted solely to the authorities concerned. The ICRC nevertheless reserves the right to publish its entire report if a detaining authority issues an abridged and consequently incomplete version of it.

### ■ Place of detention: one reality, three perceptions ■

Steps taken by ICRC delegates on behalf of people deprived of their freedom are based on an analysis and consolidation of information obtained chiefly from three sources:

- the authorities, who explain their view of the prison system and conditions of detention and tell of any problems encountered;
- prisoners, who describe their own experiences and difficulties;
- the delegates, who gather full information from these two sources and their own observations to form their own conclusions.

## Private interviews with prisoners: the cornerstone of ICRC action

**Conversations in strict privacy between delegates and individual prisoners, without any authorities present, are the cornerstone of ICRC action on behalf of people deprived of their freedom.**

Such interviews without witnesses, as they are sometimes called, serve a dual purpose: they give the prisoners a break from prison routine, during which they can speak freely about what matters most to them and be sure of being heard; and they enable the ICRC to find out all about the conditions of detention and the treatment of prisoners. The interviewing delegate also enquires how the arrest and the subsequent questioning took place, and about the conditions of

detention at the various places where the prisoner was temporarily held before arriving at the place visited.

In addition, the delegate may be given information about fellow prisoners whose arrest has not yet been notified to the ICRC or whom it has not been able to contact. He or she will ensure that the interview takes place without interference from other prisoners, who might seek to exert pressure.

**The task** of conducting such interviews is all the more delicate because they often revive painful memories of traumatic experiences, and there can be no question of subjecting the prisoners to a fresh interrogation. There are no precise rules for interviewing

detainees: it is up to the delegate to assess the situation on a case-by-case basis and adjust to it to create an atmosphere of trust. Sometimes the chance to speak to somebody from outside is enough for the individual prisoners to confide in the delegate, while for others it may take several visits before they will tell their story. Then again, they may open up only to the ICRC doctor. On the strength of the information thus gathered and after cross-checking, the ICRC decides what action should be taken.

Whenever necessary, interpreters are used to communicate with the prisoners. They are recruited by the ICRC itself and, to avoid any pressure, they are never nationals of the country in which the visits

take place. If it has no suitable interpreters available, the ICRC may ask the prisoners to appoint one or more from among themselves; this practice is seldom adopted, however, since the prisoner interpreting a fellow inmate's remarks may be endangered by doing so or may distort what he or she says.



## A professional code of conduct drawn up with the prisoner's interests in mind

**To the ICRC, the interests of the individual prisoners visited prevail over all other considerations. Their situation may lead to diplomatic approaches or some other intervention, but must always be handled with the utmost caution.**

A risk of reprisals against prisoners if allegations of ill-treatment are reported to the prison authorities may cause the ICRC to postpone its call for an investigation. Delegates will nevertheless contact other officials often at a higher level to prevent such situations from recurring. On no account will the ICRC quote a prisoner's statements without his or her express permission. It takes care to see that its interventions do not have

any negative impact on the day-to-day life of inmates, and adapts them accordingly. This is monitored by regular visits to the same place of detention.

**■ The ICRC ■** is also careful not to disrupt the prisoners' own internal organization. To withstand the pressures of prison life to the best of its ability, every group of prisoners sets up its own structures which sometimes reflect the social hierarchy and political movements of the outside world. To request the transfer of prisoners from one block to another may upset that internal structure and have serious repercussions such as fights, rivalries between groups or the deprivation of certain advantages linked to residence in a given block. On the other hand, the ICRC may ask



for prisoners to be transferred because they are being taunted or ill-treated by cellmates for political or other reasons.

## Individual monitoring to prevent extrajudicial executions and forced disappearances of people under arrest

**Any situation of conflict or violence within a country brings with it the risk of disappearances and extrajudicial executions.**

In order to prevent disappearances, the identity of people arrested must be established as soon as possible and their cases kept under observation. The ICRC therefore asks to be informed promptly of all people arrested and detained and to see them without delay. When visiting such prisoners, the ICRC registers their names and all other personal data and transmits them to their families. It can thus keep track of these people throughout their imprisonment, for each time it visits their place of detention it asks to see them again. If this is not possible,

it will want to know why, and ask to be informed of the missing prisoner's whereabouts. If a prisoner is transferred, the ICRC will try to visit him or her at the new place of detention.

Such visits will continue until the danger is significantly reduced or until the person is released, and individual monitoring may not stop even then, for families sometimes have to be contacted to check that a prisoner really has been released. If the situation so requires, particularly when the ICRC cannot gain access to a person whom it has previously visited, it repeatedly contacts the highest authorities both orally and in writing until it receives satisfactory information as to that person's situation and whereabouts.

The ICRC also contacts the authorities when its delegates are given eyewitness accounts of arrests, or at the request of families who report that a relative is missing.



## A step-by-step approach

**The ICRC analyses each item of information gathered by its delegates in the field in order to ensure that it really does see all detainees.**

If it feels that it is not being given access to all the prisoners it wishes to see, the ICRC contacts the authorities to enquire about them. Its work is therefore not confined to the prisoners it visits, but is also based on statements made to its delegates by people who themselves witnessed an arrest, by the families of missing persons or by prisoners who report that a fellow inmate has disappeared.

Prisoners sometimes tell delegates that they have been held at places which the authorities have not reported to the ICRC. In such

cases, the ICRC will negotiate access to the places in question and ask to be systematically informed of their existence. However, if it believes that unofficial detention and hence the danger of disappearances may increase if it steps in, it may decide to postpone its intervention. It will nonetheless try, on the basis of any information it can obtain and especially the testimony of credible fellow prisoners, to keep a check on the situation of people detained in such places.

### Registration and notification: a safeguard

The risk of extrajudicial execution or disappearance is frequently greater when the authorities have no reliable system for monitoring the prisoners' presence at,

transfer to or release from places of detention.

To lessen that risk the ICRC stresses the need for such a system; in particular, it recommends that registers be kept or that the authorities in the capital be systematically notified of each arrest, transfer or release. It also points out the advantages to the detaining authorities of doing so, i.e. being able to improve the organization, whether food supplies or security arrangements, of everyday life in places of detention.

ICRC delegates have sometimes helped to establish a monitoring system at the national level, for instance, by training local officials or providing material assistance.

The ICRC systematically checks information provided by the authorities against the lists it draws up during its visits or eye-witness accounts provided by the population.

## Long-term dialogue and presence: a strategic choice

**The ICRC has chosen to work on the basis of dialogue with parties to conflict and with the authorities, seeking to influence their behaviour and persuade them to comply with humanitarian law and principles.**

But to do so a climate of confidence, which can only be created in the long term and through sustained work in the field, has to be established with all concerned. That is one reason for the ICRC's discretion. In exchange, it expects its contacts to show that they are willing to take the political steps required to improve the situation.

### ▮ The limits of confidentiality ▮

Dialogue with the authorities, and not the systematic denunciation of violations of international law and humanitarian principles, is the course of action adopted by the ICRC. It does not allow itself to be swayed by the media or any other form of public pressure. But if serious and repeated violations occur and its own confidential approaches are in vain, or if it finds that the authorities clearly have no intention of respecting international humanitarian law, it may decide to speak out.



Parties to the conflict shall record as seen as possible, in respect of each wounded, sick or dead person of the adverse Party falling into their hands, any particulars which may assist in his identification. (...) Parties to the conflict shall prepare and forward to each other through the same bureau,\* certificates of death or duly authenticated lists of the dead.

*First Geneva Convention of 1949, Article 16*

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\* i.e. ICRC Central Tracing Agency

## Dialogue, not compromise

**All ICRC action on behalf of people deprived of their freedom is based on dialogue with prisoners, but also with the authorities.**

Getting the most objective picture possible of a place of detention or a prison system means listening to what everyone concerned has to say about it.

Dialogue with the prison officials helps the ICRC to find out whether the problems observed are due to shortcomings in the system or occasional malfunction, or are obviously intentional. Such dialogue also serves to determine the level in the chain of command at which the problem originates, and the authorities to be contacted about it.

Depending on circumstances, it may be necessary to call for a budget allocation, promote food self-sufficiency, make the local civilian or medical authorities aware of their responsibilities, restore a dialogue between guards and authorities or, in some cases, appeal to outside States for specific forms of assistance.

Malnutrition among prisoners may, for example, reflect widely differing problems ranging from deliberate policy on the part of the detaining authorities to difficulties of a purely logistical nature. In one African country, the ICRC urgently requested the Ministries of the Interior and Transport to provide a prison with food and have the lorry used to deliver the prison's supplies repaired; they responded,

and the prisoners soon showed no further sign of malnutrition.

Problems among prisoners may also reflect the attitude of a guard or official. Initially the ICRC will try to persuade those responsible to modify their behaviour but, if that fails, it will contact the authorities at a higher level.

Engaging in dialogue does not mean accepting a compromise: the ICRC will adamantly continue to press for a solution to the humanitarian problems observed. Using all possible channels open to it, it will try to reach all members of the administrative, judicial, military and political systems who are capable of influencing the situation, from the prison director right up to the head of State. If the

ICRC finds that it is making no headway and concludes that a new approach would be in the interest of the persons it visits, it may decide to suspend or discontinue its activities, or even publicly appeal to the States party to the Geneva Conventions to ensure that international humanitarian law is respected.

## Restoring family contact: a vital task

**To maintain decent conditions of detention, it is essential to preserve contact between prisoners and their families. Such contact is essential to their psychological well-being. Moreover, the family can provide the prisoner with often vital material support.**

In many contexts, family links are severed by conflict or unrest. The ICRC will then step in to restore them, asking that prisoners be authorized to communicate with their kin by means of Red Cross messages (the content of which is restricted to personal and family news) and to receive family visits throughout their detention.

If necessary the ICRC may, in cooperation with the National Red

Cross or Red Crescent Society, provide financial assistance or organize transport to help families travel to the prison, since prisoners are often held thousands of kilometres away from their homes and would otherwise be totally cut off from their loved ones.



## Everyday prison life

**One of the ICRC's objectives when visiting places of detention is to ensure that prisoners are detained in conditions which show due respect for human dignity.**

Such conditions depend first and foremost on the detaining authorities. However well-intentioned they may be, they do not always have the necessary resources to meet all the relevant international standards. To obtain appropriate living conditions and treatment, humane principles must be firmly upheld and imaginative solutions found. Above all, this means listening to the needs expressed by prisoners, and taking the local social and cultural context into account. For example, some prisoners do not want to be housed

in individual cells as required by international agreements. The concept of living space may therefore vary widely from one culture to another and the ICRC must adapt its approaches accordingly.

**One of the ICRC's priorities** is to get to know the prisoners' everyday environment. After an interview with the director of the place of detention, the visit starts with an inspection of all premises and facilities used by the prisoners. In the presence of the authorities, delegates have the daily routine explained to them, from how the kitchens are run and the sanitary installations cleaned to the ventilation of dormitories and the storage of food; they also check on facilities for family visits and access to the exercise yard,

etc. The same subjects are taken up again during the conversations held in private with the prisoners and the results are rounded off by the delegates' own observations.



### Ad hoc emergency aid

The ICRC's aim is to persuade the detaining authorities to take the necessary steps to ensure decent conditions of detention, not to shoulder their responsibilities for them. However, the ICRC will itself provide material assistance if the situation so requires and particularly if the survival of prisoners is at stake. This may take the form of additional food, medicines for the prison dispensary, sanitation work or various other repairs. At the same time the ICRC will ask the detaining authorities to assume their obligations as such, reminding them that they themselves are responsible for providing decent material and psychological conditions of detention.

### An extreme case: Rwanda

The situation in Rwanda's prisons after the genocide of 1994 was so acute – the government in place lacked the means to perform its duties as the detaining authority, the prisons were overcrowded to an unprecedented degree and the local population was clamouring for mass arrests – that the ICRC took exceptional action. In order to save the lives of tens of thousands of prisoners, the ICRC decided to equip new places of detention. It also took over the task of feeding the prisoners, at the same time calling on the authorities to progressively assume their responsibilities in that respect.



## Looking beneath the surface

**ICRC delegates are aware that their visits may have been prepared, if not adroitly orchestrated, by the authorities.**

There may be freshly painted walls, mended sanitary facilities, larger helpings of food on that particular day, and medical care for the sick. The ICRC naturally welcomes all

improvements which are lasting and of true benefit to the prisoners. But only regular visits can show whether they are permanent or not.

The delegates' own experiences enable them to see through such stratagems and to identify any problems regarding treatment or

living conditions that are not immediately obvious. To do so, they must compare the differing versions given by prisoners and the authorities with their own personal observations. It is only by looking beneath the surface and analysing the situation in greater depth, thanks to their knowledge of the prison environment, that they

will be able to form an accurate picture of the real conditions of detention and take appropriate steps in agreement with the authorities.



**To assess the conditions of detention, specific parameters must be taken into account.**

These parameters are as follows:

- the prison facilities (buildings, dormitories, bedding, sanitary facilities, drainage, ventilation and exercise yard);
- the prisoners' access to these facilities (the official or customary routine in the place of detention, e.g. frequency of access to

showers and length of the exercise period, as the fact that a facility exists does not mean that prisoners can use it);

- internal regulations (timetables, family visits, correspondence, leisure activities, etc.);
- treatment and discipline (relations between prisoners and authorities, possibility for prisoners to speak with the prison officials, duration and conditions of solitary confinement, etc.);

- the training and the working conditions of the prison staff;

- contacts with the outside;

- the internal organization of prisoners (political disputes, gangs, internal reprisals, collaboration with the authorities, etc., and delegates must be familiar with this aspect of prison life, otherwise any proposal they make may endanger the very people they are trying to help).

**Role of medical personnel** | ICRC visiting teams include doctors and nurses whose primary role is not to treat prisoners but to ensure that the detaining authorities guarantee them a state of health consistent with local standards. They assess the detainees' nutritional status, hygiene and living conditions (drinking water, ventilation of premises, latrines, overcrowding and its consequences on the prisoners' mental and physical health, etc.), as well as the personnel and facilities available for medical care; they will also check whether the prison population really does have access to them. Here, too, the private interviews play a crucial part.



## Combating torture and ill-treatment

**In situations of conflict or violence, anyone deprived of freedom may be subjected to torture and other ill-treatment at each stage of his or her detention.**

To prevent and try to put a stop to such practices is one of the ICRC's main concerns. Even when ICRC delegates are allowed to visit prisoners during the interrogation period, which is often considered the most dangerous, they are very rarely able to do so in the places where such acts are committed.

The ICRC's work to combat torture and ill-treatment is largely based on convergent accounts by prisoners of everything that has happened to them since their arrest. Any physical and psychological

after-effects observed by the ICRC doctor, which may or may not corroborate their statements, are also taken into account. All this information is gathered during conversations in private with the prisoners. It is then analysed, compared and evaluated in the light of statements from other sources to check intrinsic consistency and authenticity, for the ICRC is well aware that the strength of its representations lies in their credibility. Subject to the individual prisoners' permission, the ICRC passes on allegations of torture or ill-treatment to the authorities. In some cases it calls for an enquiry to establish the facts and prevent the recurrence of such acts. In others, it goes straight to the top and asks the highest authorities to put a stop to them. If, when a case is cited, the prisoner concerned

does not want to be named in connection with it or the delegates fear that their intervention might be followed by reprisals, the ICRC will proceed differently. If, however, the lives of prisoners are directly threatened, it will contact the authorities at the next level of responsibility, calling for warnings that acts of torture will be punished and for improvements in the training of prison guards.

Torture and ill-treatment may indicate a deliberate intention to punish, deter, interrogate or even terrorize. In such situations only the delegate's ability to convince and influence people, which requires tenacity and patience, will yield results. But unless the highest authorities show the necessary political will, the ICRC's effective-

ness will be limited. In practice, its work and that of the human rights agencies which is based on public opinion campaigns complement one another.

**A disorganized prison system** may also give rise to torture and ill-treatment. In such cases the ICRC will try to identify the causes of any malfunction and act upon them. In a prison where ill-treatment was regularly inflicted, for instance, delegates noticed that the untrained guards were too few in number to maintain security and believed that violence was the only means they had to do their job. The ICRC alerted the relevant ministry and persuaded it to increase the number of guards and train them properly. As a result, there were far fewer complaints of ill-treatment.



## Torture: no definition broad enough

**To give itself sufficient scope for action, the ICRC has never defined the term “torture”. There are always two aspects to torture, one physical and the other psychological; they are interlinked and inseparable.**

The psychological effects often go far deeper than the physical effects. For instance, seeing torture inflicted on one’s children or other loved ones, or even on somebody else, may prove much more traumatic than actually undergoing physical torture oneself.

Torture also has a strong cultural connotation. Its significance within a given social order and the intention behind it vary widely. Some behaviour may be regarded as “benign” in one culture, whereas in

another it may violate, for example, a religious taboo.

The ICRC has therefore decided not to adopt any of the definitions of torture formulated by the international community in recent years, although it may refer to them if it feels that doing so might help to combat the phenomenon of torture.

### ▮ The doctor’s role in visits to torture victims ▮

In principle, every ICRC team visiting prisoners who may have been tortured includes a doctor to examine them and assess their physical and psychological condition. For people who have been brutalized and humiliated by torture, this meeting with a doctor from the outside is often invaluable, for they can be reassured as to their state of

health. It is particularly important for victims of sexual torture: they will often confide more readily in a doctor than in another delegate. The doctor examines the prisoners and the results go on file, possibly to serve as supporting evidence. With the respective prisoners’ consent, detailed allegations may be used in representations to put a stop to torture. The ICRC doctor

acts as a “neutral medical intermediary”. As such, he or she may remind the prison doctors of medical ethics by drawing their attention to the World Medical Association’s Declaration of Tokyo, which prohibits any active or passive participation by doctors in torture and any other forms of cruel, inhuman or degrading treatment.



## Special protection for women and children in prison

**Women and children in prison are particularly vulnerable and therefore need specific protection.**

Admittedly, women are generally less likely than men to be deprived of their freedom on account of a conflict but, when they are, their conditions of detention are sometimes worse than those of other prisoners. Women may be deprived of their freedom during armed conflicts for various reasons. There are detailed rules in the four Geneva Conventions of 1949 and their two Additional Protocols of 1977 concerning the treatment of persons deprived of their freedom in connection with situations of armed conflict. These rules include specific provisions on the treatment of women in detention.

The aim of these specific provisions is to provide additional protection for women with regard to their particular medical and physiological needs, which are often, but not always, related to their child-bearing role, and to give consideration for their privacy.

■ **The accommodation** ■ provided for women may be too cramped if only one detention centre is set aside for them. The fact that prisons often have no female staff may have serious consequences, including certain forms of harassment by guards. During its visits, the ICRC pays special attention to the situation of women prisoners, who are moreover usually visited by female delegates. Specific rules regarding women and expectant or nursing mothers are laid down in the Geneva

Conventions. Also, standards set out in other international instruments require particular care to ensure that women deprived of their freedom are held in a safe and decent custodial environment: mixed gender staffing, separate accommodation, equality of access to activities, ante-natal and post-natal care, hygiene and health care, protection from ill-treatment, family visits, etc.

## Children and detention of a mother

**Also of relevance is the prohibition on the execution of the death penalty on pregnant women or mothers with dependent infants.**

Women often play the central role in the family unit, and detained women often suffer acutely from separation from their children (especially babies and young children) and from lack of information as to their well-being. Women therefore need to have contact with their children, including physical contact. Women may have to be given assistance to have such contact because of the distance of the place of detention from their homes, because contacts outside the prison are restricted, or because they do not know the whereabouts of their children.

In some cases, women may enter the prison pregnant or become pregnant while in detention. Babies may also be taken away from their mothers immediately after birth or when the mother is discharged from hospital. Many women (especially nursing mothers) find enforced separation from their children particularly traumatic and one of the most difficult aspects of their detention. The effects on the children could also be psychologically damaging. Nursing mothers should therefore be able to keep their newborn babies with them in detention if this is in the best interests of the children. If separated from them, nursing mothers must be informed of their whereabouts and be allowed to maintain frequent physical contact with them.



## Special protection for children

**During its visits, the ICRC pays special attention to the situation of detained minors. Children are imprisoned too, either for criminal law offences or because they have been caught up in the turmoil of events, or even because they have been enrolled as combatants.**

For them, the loss of freedom may be very hard to bear and have lasting effects on their development. They should also be protected against indecent assault. The ICRC insists on the psychological and emotional equilibrium, development and education of young prisoners being ensured as far as possible, and urges the detaining authorities to see that the following requirements are met:

- ▣ juveniles in detention should, as a rule, be accommodated separately from adults except when children and parents are held in the same place;
- ▣ juveniles should be offered as many purposeful activities as possible, such as sport, vocational training, recreation, physical education;
- ▣ if they are not released and their detention is extended, children must be transferred as soon as possible to a specialized establishment for minors;
- ▣ children must receive food, hygiene and medical care suited to their age and general condition;
- ▣ children must be able to continue their schooling;
- ▣ children must be able to keep in regular contact with their families and the outside world;
- ▣ disciplinary procedures and sanctions must be adjusted;
- ▣ regarding the death penalty, the States party to the Fourth Geneva Convention (Art. 68, para. 4) and the Additional Protocols (Art. 77, para. 5, API and Art. 6, para. 4, APII) should take legislative measures under penal and military law to prohibit the pronouncement or execution of a death sentence against anyone aged less than 18 years at the time of the offence.

## An important aspect of protection: upholding legal safeguards

**The ICRC intervenes to ensure that certain universally recognized principles enshrined in the Geneva Conventions and their Additional Protocols are respected by all parties to an armed conflict.**

No person may be deprived of his or her freedom except on legal grounds and in accordance with procedures provided for by law. The ICRC has therefore acted in conflict situations to see that judicial guarantees are applied. Judicial guarantees, also known as fair trial rights, are an integral part of international humanitarian law. They are provided for in the Geneva Conventions, and in their two Additional Protocols. These provisions are a key component of the notion of humane treatment

and their very aim is to protect the life, health and dignity of persons subjected to penal sanctions. Judicial guarantees were considered to be so important by the drafters of the Geneva Conventions and their Additional Protocols that their violation constitutes a grave breach or a war crime under the Conventions and under customary international law.

**■ The ICRC ■** has thus, for example, requested that prisoners of war accused of criminal offences be informed of the charges and evidence against them and that the right of such prisoners not to testify against themselves be respected. One State holding prisoners of war under investigation for the murder of another prisoner was reminded by the ICRC of



the ban on extorting confessions, the right of the accused prisoners to be defended by a lawyer qualified to prepare their defence, their right to the services of an interpreter, etc.

**The basic provision on judicial guarantees is contained in Article 3 common to the four Geneva Conventions which prohibits “the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples”.**

The Third Geneva Convention contains detailed safeguards that must be applied in criminal proceedings against prisoners of war, whereas the Fourth Geneva Convention contains judicial guarantees for civilians in international armed conflict. Judicial guarantees for any person affected by an



international armed conflict who is not entitled to more favorable treatment under the Conventions are elaborated in Additional Protocol I, while the safeguards that must be applied in penal proceedings carried out in relation to

an internal armed conflict are provided for in Additional Protocol II (see below).

In the past few years the ICRC has extended its interventions in this domain to other situations of

violence, drawing on the rules and principles of international humanitarian law or other relevant provisions of international law.

## Penal prosecutions

### Article 6 of Protocol II additional to the Geneva Conventions

**1. This Article** applies to the prosecution and punishment of criminal offences related to the armed conflict.

**2. No sentence** shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality. In particular:

- a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;
- b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

**3. A convicted person** shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

**4. The death penalty** shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

- c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if after the commission of the offence, provision

**5. At the end of hostilities,** the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.

- is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;
- d) anyone charged with an offence is presumed innocent until proved guilty according to law;
- e) anyone charged with an offence shall have the right to be tried in his presence;

- f) no one shall be compelled to testify against himself or to confess guilt.

## ICRC action: a means at the international community's disposal

**For several decades the international community has been intensifying its efforts, both in terms of legislation and in the field, to protect people deprived of their freedom.**

The ICRC's presence in the prison environment is one way of promoting respect for human dignity. Its intervention, which takes place in situations of acute crisis, must then gradually be supplemented by the human rights activities of other agencies.

While pursuing its own approach, which is based on dialogue with the authorities and on confidentiality, the ICRC has strengthened its operational cooperation in this field with national, international and non-governmental organiza-

tions, such as the Office of the United Nations High Commissioner for Human Rights, UNICEF and *Médecins sans frontières*, so as to avoid duplication of efforts and inconsistency in any action undertaken. Other components of the International Red Cross and Red Crescent Movement some-

times do welfare work in prisons in peacetime; some National Red Cross and Red Crescent Societies, for instance, provide material, psychological and social support for their countries' prisoners.



## “What matters (...)”

**“What matters is not only the good the ICRC brings, but even more the bad it prevents.”**

**Nelson Mandela**

**(Registration No. 220/82, Robben Island Prison, 1962–1990)**

It is hard for the ICRC to assess the true impact of its visits to people deprived of their freedom; it would also be difficult to say how things might have been if the ICRC had been unable to operate in a given situation. Nelson Mandela qualified the ICRC’s work in these terms: “What matters is not only the good the ICRC brings, but even more the bad it prevents”. All conversations with prisoners show that a visit by the ICRC has at least one result: it offers them a lifeline, an opportunity to talk and be listened to, to voice their tensions and frustrations (sometimes quite aggressively), and to express their anxieties and fears to someone who is well-disposed towards them. The psychological effect of contact with the outside world is

very important and should not be underestimated.

Moreover, the regular presence of the ICRC and its constant contacts at all levels of power have a dissuasive effect: they help to forestall and contain such phenomena as forced disappearances, torture and ill-treatment. Working as it does in times of armed conflict, disturbances, tensions and other situations of violence within a country, the ICRC is well aware that its activities are part of a longer-term process, for although rapid improvements can certainly be made, its mere presence in places of detention does not mean that abuses will stop.

If such phenomena are to be eradicated completely, the situation

must return to normal and non-governmental organizations and other components of civil society must be able to resume their regulatory functions, particularly those which enable the judicial system to work properly and arbitrary practices to be effectively curbed.



## Mission

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. It directs and coordinates the international relief activities conducted by the Movement in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the International Red Cross and Red Crescent Movement.



ICRC