

Power of humanity

33rd International Conference
of the Red Cross and Red Crescent

9-12 December 2019, Geneva



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OF THE RED CROSS AND RED CRESCENT**

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Restoring family links and data protection

Draft elements of resolution

March 2019

Background

The draft elements of the proposed resolution on restoring family links and data protection seek to provide an outline of the possible substance of individual paragraphs, without providing a definitive text for the proposed resolution.

Each paragraph is followed by a rationale explaining why it would be useful to include such a paragraph in the resolution.

This document is being shared for consultation with the members of the International Conference of the Red Cross and Red Crescent in order to gather a first round of comments and feedback, and to gain an initial understanding of whether the proposed approach on the substance would be acceptable and garner consensus.

When providing comments and feedback on this document, please consider the following questions:

- Do you agree with the proposed elements for the preambular and operative paragraphs of the resolution?
- Are there any elements that are missing or should be included in the resolution?

Detailed comments on the wording of the draft elements of this resolution are not expected at this stage. There will be an opportunity to comment on specific wording at a later stage, once the “draft zero” of the resolution is available.

Introduction

People endure tremendous anxiety and suffering when they are separated from family members and do not know where and how they are. For a parent, a child, a sibling, a wife or a husband, knowing what happens to their loved one is often more important than water, food and shelter. The family members of people who are missing will not stop searching until they know their fate and whereabouts. In trying to find an answer, they use up their resources and may put themselves and other family members at risk.

Despite the fact that we are living in a world that is more connected than ever, with exponentially growing internet access, mobile phone penetration and social media use, the number of missing persons registered by the Red Cross and Red Crescent Family Links Network has significantly increased in recent years.¹

The impact of disappearances on individuals, families, and communities at large is one of the most damaging and long-lasting humanitarian consequences of armed conflict, other situations of violence, migration and natural disasters. Disappearances not only represent immeasurable tragedies for the families and communities affected, but can also constitute an open wound for former parties to a conflict and an obstacle to reconciliation and stability.

The problem of the missing takes on a truly global dimension within the framework of migration. Thousands of people disappear every year along precarious migratory routes around the world, and numerous dead bodies found along these trails remain unidentified. Improving the response to these challenges in order to provide answers to the families of missing migrants requires coordination and the harmonization of practices among a wide range of actors across multiple countries, regions and even continents.

The Restoring Family Links (RFL) services of the Red Cross and Red Crescent Family Links Network cover a broad spectrum, including preventing family separation, maintaining family contact, restoring family links, tracing and providing answers to families on the fate and whereabouts of their loved ones and supporting family reunification. When delivering RFL services, the Family Links Network only acts with the full consent of the individuals

¹ The number of new cases registered by the ICRC in 2018 has more than doubled compared to 2016.

concerned and in compliance with the principle of “do no harm”, including in relation to the processing of personal data and respecting the wishes of people who do not want to restore contact with family members. The Network provides RFL services in the context of conflict and violence, natural disasters, migration and other situations requiring a humanitarian response. RFL is a unique core service of the International Red Cross and Red Crescent Movement (the Movement), which is best placed to assume this task, with its more than one hundred years of experience and expertise in this domain, a network that stretches across all borders and continents and its rootedness in communities around the world.

The International Conference (IC) has addressed RFL on several occasions in the past. Specifically, the 24th IC requested National Societies (NSs) to carry out tracing and family reunification and asked governments to facilitate the work of the Movement and give it all the necessary support, the 26th IC asked States to grant NSs access to relevant data, facilitate NS tracing work and family reunifications in times of armed conflict, and the 28th IC contained a series of goals relating to persons missing as a result of armed conflicts and other situations of violence, notably preventing people from going missing, ascertaining the fate of missing persons, managing information and processing files on missing persons.

At the 2007 Council of Delegates (CoD), the Movement adopted its first RFL Strategy for the years 2008 to 2018, which was welcomed in a resolution of the IC in the same year. It has now come to an end, and a new RFL Strategy has been developed, which will be proposed for adoption by the CoD in 2019.

The Movement must ensure the protection of the fundamental rights and freedoms of the people for whom it provides RFL services, in particular the right to privacy and personal data protection. Data protection law has developed rapidly in recent years. It has also become much more important to the humanitarian sector as it seeks to deploy new technologies to support its operations, assistance and service delivery. For the various components of the Movement, data protection standards and principles offer a means to innovate responsibly, maintain confidentiality, uphold the fundamental rights of beneficiaries and build trust among communities and stakeholders. Nevertheless, compliance with a new generation of data protection requirements poses considerable challenges, ultimately threatening the effectiveness of the Movement’s humanitarian action.

The specificity of data protection in humanitarian action has already been acknowledged in a variety of international instruments, including the Guidelines for the Regulation of Computerized Personal Data Files adopted by United Nations General Assembly Resolution 45/95 of 14 December 1990,² the Resolution on Data Protection and Major Natural Disasters adopted by the 33rd International Conference of Data Protection and Privacy Commissioners on 1 November 2011 in Mexico City,³ and the Resolution on Privacy and International Humanitarian Action adopted by the 37th International Conference of Data Protection and Privacy Commissioners on 27 October 2015 in Amsterdam.⁴ The recently adopted European Union General Data Protection Regulation and the modernized Council of Europe Data Protection Convention have set the highest standards, placing a host of obligations on data controllers and processors. These instruments legally recognize the challenges of processing and protecting personal data in humanitarian contexts, although they do not exempt humanitarian actors from complying with core data protection principles and requirements.

Data protection law is also spreading rapidly from Europe to the rest of the world. More than 100 countries now have some form of data protection law or sectoral privacy requirement, and new legislation is appearing all the time. This poses a significant challenge to the

² <http://www.refworld.org/pdfid/3ddcafaac.pdf>.

³ <https://icdppc.org/wp-content/uploads/2015/02/Resolution-on-Data-Protection-and-Major-Natural-Disasters.pdf>.

⁴ <https://icdppc.org/wp-content/uploads/2015/02/Resolution-on-Privacy-and-International-Humanitarian-Action.pdf>.

Movement's components, particularly where data are shared across borders and subject to overlapping legal regimes.

An important step in addressing this challenge is the development of the RFL Code of Conduct on Data Protection.⁵ It is the first code of this kind for any service provided by the Movement. It sets out the minimum principles, commitments and procedures that members of the Movement must comply with when processing data within the Family Links Network. In order to support the application of the Code by all components, a special working group has been established. Seeking to comply with the most stringent data protection regulations and to harmonize data protection practices within the Movement, the Code of Conduct and its application will instil confidence in both affected people and regulators with regard to the work of the Movement.

The transmission of personal data is more important for RFL than for any other service of the Movement. Without it, RFL services could no longer function. For these reasons, RFL is the ideal starting point for preparing the ground for broader arrangements between the Movement and States on data protection.

Preambular paragraphs

PP: On RFL in general, the preambular paragraph expresses deep concern over the suffering caused by family separation and disappearances, underlines the urgent need for States to take reinforced action and expresses recognition by the International Conference of the important work which the components of the Movement are carrying out in the field of RFL. It will further refer to international humanitarian law and previous resolutions of the IC on restoring family links.

On the subject of data protection, the preambular paragraph further recalls that the protection of privacy is a human right set out in several international, regional and national human rights instruments, that personal data protection is closely related to privacy and considered a fundamental right in many countries where the Movement operates and that it is being increasingly safeguarded in the legal instruments of several international organizations.

It also highlights that the processing of personal data is an integral part of the performance of the mission of humanitarian actors and that the increasing use of technological solutions inevitably leads to a diversification in the nature of the data collected and to an increase in data volume and data flows.

It also recalls that the purpose of RFL activities is to further the right to private and family life and that the important grounds of public interest and vital interests involved in the processing of personal data in this area by the Movement have been increasingly acknowledged by data protection authorities and certain regulatory frameworks.

Finally, it recalls and reaffirms the concerns, previously expressed by the International Conference of Data Protection and Privacy Commissioners, that, while the introduction of technology strengthens the effectiveness of humanitarian action, with its increased data volume and flows, it may also jeopardize the safety and data protection rights of vulnerable individuals, especially if such data are exploited and misused for non-humanitarian purposes by entities outside the Movement.

Rationale: It is important to underline the suffering caused by family separation and disappearances, to recall the obligations of States and the important role the components of the Movement can play in supporting States in addressing these issues and to remind the International Conference of previous instances when it has dealt with this subject and the scope of that work. These aspects will be further elaborated in the background document.

⁵ <https://www.icrc.org/en/document/rfl-code-conduct>.

While the introduction of new technologies has helped strengthen the effectiveness of humanitarian action, it has also led to an increase in the volume and flow of personal data within the Movement components.

The provision of RFL services necessarily entails the processing of personal data. This, coupled with a rapidly developing regulatory framework (both inside and outside of the Movement) and an increasing awareness of both the benefits and the risks that the processing of large amounts of (possibly sensitive) personal data entails, has led to a renewed attention to data protection and the need to ensure that the Movement is capable of maintaining its RFL services, while at the same time avoiding exposing affected people to dangers and possibly compromising the Movement's Fundamental Principles. Movement actors may indeed come under pressure to provide data collected for purely humanitarian purposes to authorities wishing to use them for other unrelated purposes, possibly to the detriment of humanitarian action.

Operative paragraphs

OP 1: A first operative paragraph could call upon States to take effective measures to prevent family separation and disappearances, to clarify the fate and whereabouts of persons who have gone missing and provide answers to their families and to restore family unity or facilitate family reunifications.

Rationale: The dimensions highlighted in this paragraph are part of existing international humanitarian law, but their scope must be broadened to apply also in other situations, such as situations of violence other than armed conflict, natural disasters and migration.

OP 2: A second operative paragraph could call upon States to make use of the services of the National Society, in its role as auxiliary to the public authorities in the humanitarian field, to clarify the fate and whereabouts of missing persons and to enable migrants and their families to establish, restore or maintain contact along migratory routes and at destination.

Rationale: The role of National Societies as auxiliaries to the public authorities in the humanitarian field is well established and part of the Fundamental Principle of independence and the Statutes of the Movement (Article 3). However, it deserves to be emphasized with regard to the RFL activities carried out by National Societies where their added value in helping the public authorities to fulfil their obligations and commitments is particularly strong, as they are part of the global Family Links Network.

OP 3: A third operative paragraph could call upon States to welcome the adoption by the Movement of its RFL Strategy 2020–2025 and continue their support for the activities of the components of the Movement, in particular by:

- a) reaffirming and recognizing the specific role of the National Society of their country in providing RFL services
- b) strengthening National Societies' capacities, including through the provision of resources
- c) ensuring that the National Society has a clearly defined role in the country's overall disaster preparedness and response plan
- d) exploring and establishing partnerships with the components of the Movement to provide connectivity to help separated families to restore and maintain family links
- e) granting the components of the Movement access to places where there are people in need of RFL services
- f) cooperating with the components of the Movement by granting them access to relevant data and/or responding to their individual inquiries in order to help establish the fate and whereabouts of persons sought by their family

g) supporting the development of digital mechanisms for data matching between personal identities in the databases of the Family Links Network and databases under the responsibility of the public authorities in compliance with internationally accepted data protection standards.

Rationale: The 30th IC in 2007 welcomed the adoption by the Movement of its RFL Strategy and called upon governments to continue their support for the activities of the components of the Movement in the field of restoring family links, particularly by strengthening National Societies' capacities in conformity with their role and mandate. The Conference further urged all members to address the suffering caused by family separation and the tragedy of persons missing in connection with armed conflict or other situations of armed violence.

As the current RFL Strategy comes to an end, it is appropriate to ask States to welcome the adoption of the new Strategy. It is to be noted that the dimension of cooperation and partnership among the components of the Movement and States has become even more important in today's context. The specific areas of the Strategy where successful implementation by the components of the Movement depends on support from States are therefore listed in the operative paragraph.

OP 4: A fourth operative paragraph would call upon States to recognize that the processing of personal data by the Movement's components for the purposes of providing RFL services is necessary on important grounds of public interest and can often be in the vital interest of the individuals concerned. Additionally, it would recognize that whenever any component of the Movement processes personal data for RFL, it does so for exclusively humanitarian purposes. It is therefore important to ensure that the processing and flow of personal data within the Movement remain as unrestricted as possible in order to provide RFL services effectively.

Rationale: The provision of RFL services necessarily entails the processing of personal data across borders on a very frequent basis. Therefore, it is in the interest of enabling and improving the effective provision of RFL services that the flows of personal data between the components of the Movement remain as unrestricted as possible.

Under internationally recognized principles of data protection, any processing of personal data has to be based on a legitimate interest and only for specified purposes. The Movement provides its humanitarian services in the public interest and in the vital interest of affected people, as it has been granted a mandate to do so in a number of international instruments.⁶ Since the processing of personal data is a necessary aspect of the Movement's humanitarian action generally, and RFL services specifically, and serves the ultimate aim of enhancing its effectiveness, it is essential for States to collectively recognize that the processing of personal data for RFL services is motivated by and based on important grounds of public interest and the vital interest of affected people, something that is increasingly being acknowledged in certain jurisdictions.⁷

In light of the above, it should be acknowledged that the processing of personal data for RFL services is carried out exclusively for humanitarian purposes in line with the Fundamental Principles.

OP 5: A fifth operative paragraph could call upon States to acknowledge that the misuse of data may have a serious impact on the rights of affected people and their safety as well as on humanitarian action more generally. Therefore, it could ask States to commit to respecting the exclusively humanitarian purpose of personal data processing and undertake to refrain

⁶ Geneva Conventions of 1949; Additional Protocols of 1977; Statutes of the International Red Cross and Red Crescent Movement adopted in 1986 and amended in 1995 and 2006.

⁷ See EU General Data Protection Regulation, recitals (46) and (112); Modernized Council of Europe Convention 108, Explanatory Report, para. 47; CNIL Deliberation 2012-161 of 24 May 2012.

from requesting data from the components of the Movement with a view to using it for other purposes incompatible with the solely humanitarian nature of the work of the Movement.

Rationale: The exclusively humanitarian purposes of data processing in RFL activities also give rise to another aspect of the operative paragraphs: to ensure the purely humanitarian nature of the Movement's work, the resolution would call upon States to refrain from requesting personal data collected by the components of the Movement for RFL with a view to using it for other purposes. To respond to such requests would be incompatible with the humanitarian nature and the Fundamental Principles of the Movement, including its neutrality, impartiality and independence.

In all of its operations, the Movement should always uphold the principle of "do no harm", which also applies to the negative impact that the (mis)use of digital data might have on the beneficiaries concerned. If personal data collected by the Movement's components for humanitarian purposes are then utilized for unrelated purposes, this would seriously undermine the trust that people place in the Red Cross and Red Crescent and could result in both material and reputational damage vis-à-vis the affected people.

OP 6: A sixth operative paragraph could request States to commend the Movement's RFL Code of Conduct on Data Protection as a solid basis for the protection of personal data and to fully support the components of the Movement in their efforts to implement it.

Rationale: In order to heed the call for unrestricted data flows within the Movement for RFL services, while at the same time avoiding, to the extent possible, any potential risks that misuse of these humanitarian data might entail, an effective framework that ensures solid standards of data protection is needed. For this reason, there is an appeal for States to welcome the Movement's RFL Code of Conduct on Data Protection and to support the components of the Movement in their efforts to implement it. Applicable to all components of the Movement, it is benchmarked on the highest standards of data protection, tailoring them to the specificity of humanitarian action generally, and RFL services specifically. Therefore, it standardizes good practices across the Movement, establishing clear requirements.