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Restoring Family Links and Data Protection

Background document

Document prepared by

**The International Committee of the Red Cross in cooperation with the other members
of the RFL Strategy Implementation Group (24 National Societies and the International
Federation of Red Cross and Red Crescent Societies)**

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EXECUTIVE SUMMARY

The impact of people being separated or going missing on individuals, families and the community at large is one of the most damaging and long-lasting humanitarian tragedies. People will not stop searching until they know the fate and whereabouts of their missing loved ones. The Red Cross and Red Crescent Family Links Network covers a broad spectrum of services, including the prevention of family separation, restoring and maintaining family links, tracing, providing answers to families on the fate and whereabouts of their loved ones and supporting family reunification.

While Restoring Family Links (RFL) needs caused by armed conflict, other situations of violence and natural and man-made disasters remain as important as ever, over the last decade, we have witnessed the mounting engagement of the International Red Cross and Red Crescent Movement (Movement) in addressing the needs of separated and missing migrants and their families, which have often remained unattended. As a result of the risks migrants face along migration routes, large numbers are dying or going missing. All too often, dead migrants remain unidentified. In the absence of effective mechanisms and inter-state cooperation to clarify the fate and whereabouts of missing migrants, families seeking information about their missing relatives are left alone in uncertainty.

To improve the response to these challenges and provide answers to families, cooperation, coordination and the harmonization of practices among a wide range of actors across multiple countries, regions and continents is crucial. With this aim, the Movement has developed a new RFL strategy 2020–2025 and calls upon States to welcome it and support its implementation.

The effective and efficient performance of RFL activities necessarily entails the continuous processing of personal data, including cross-border data transfers. Without the ability to transmit and match data, RFL would simply be impossible. The exponential growth in the development of digital technology and the use of data has made it possible to gather large quantities of personal data faster and more easily. The Movement recognizes the enormous potential of these developments for its humanitarian action but is also aware of the potential risks this might entail and the importance of observing and developing appropriate data protection standards. Under internationally recognized principles of data protection, any processing of personal data must have a legitimate basis. The mandate granted to the Movement to engage in the delivery of assistance to victims of humanitarian emergencies, which is based on international humanitarian law as well as on the Statutes of the Movement and relevant resolutions of the International Conference of the Red Cross and Red Crescent, underlines the grounds of public interest on which the processing of personal data for RFL purposes is carried out.

There is a strong need for States to collectively acknowledge this legitimate basis for processing personal data for RFL services and to recognize that such processing can often be in the vital interest of the individuals concerned and is carried out by the Movement for exclusively humanitarian purposes. This is also motivated by strict adherence to the Movement's Fundamental Principles and the principle of "do no harm". Additionally, the Movement asks States to acknowledge that frequent transborder flows of personal data are necessary for the effective provision of RFL activities and should remain as unrestricted as possible, while still complying with strict data protection requirements. To enable the Movement to carry out its exclusively humanitarian mandate in full compliance with its Fundamental Principles, States are called on to refrain from requesting access to the data collected for RFL with the intention of using it for other non-humanitarian purposes. With a view to instilling confidence in the Movement and in States, an effective framework that ensures solid standards is needed to prevent such personal data from being misused or used in violation of relevant data protection requirements. Therefore, we call on States to commend

the RFL Code of Conduct on Data Protection as a reference for the processing of personal data within the Movement for RFL activities.

1) INTRODUCTION

Restoring Family Links (RFL) is the generic term given by the International Red Cross and Red Crescent Movement (Movement) to the range of activities that aim to prevent separation and disappearance, clarify the fate and whereabouts of missing persons, restore and maintain contact between family members and facilitate family reunification¹ whenever possible. The Family Links Network (FLN)² has long played a central role in assisting authorities in meeting their obligations by delivering RFL services. International humanitarian law, which applies in situations of armed conflict, contains relevant rules concerning respect for family life, maintaining or re-establishing family links and clarifying the fate and whereabouts of persons reported missing as a result of armed conflict.³ Other international instruments also reiterate relevant rights related to respect for family life, unity and reunification.⁴

The demand for a strong global FLN is evidenced by the growing numbers of people approaching the Movement for RFL services. Population movements in a variety of contexts and a rise in humanitarian crises lead to large numbers of people being in need of humanitarian protection and assistance. With 257 million migrants worldwide,⁵ this demand is likely to persist, and it is therefore vital that the RFL service continues to meet the needs of separated families and the missing and their families as effectively and efficiently as possible. Based on more than a hundred years of experience and expertise in this domain and with a network stretching across all borders and continents and rooted in communities around the world, this unique core service is best placed for the task. The RFL strategy 2020–2025 proposed for adoption at the Council of Delegates (CoD) in 2019 notes the need for continued engagement with authorities to coordinate our work, according to the respective mandates of the components of the Movement, to meet the needs of people who are without news of or separated from members of their family.⁶

2) BACKGROUND

The International Conference (IC) has affirmed the importance of RFL on numerous occasions. 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 and facilitate NS tracing and family reunification work in situations of armed conflict. Furthermore, the 28th IC established a series of goals in relation to persons missing as a result of armed conflicts and

¹ Facilitating family reunification refers to the efforts of the Family Links Network to assist families in coming together, rather than the promotion of a governmental migration policy related to family reunification.

² The Family Links Network comprises National Red Cross and Red Crescent Societies and ICRC delegations, coordinated by the Central Tracing Agency. The essential humanitarian nature of helping people find answers about the fate and whereabouts of their loved ones and the unique position of the Movement to provide this service are uncontested and remain relevant today and for the future.

³ This includes the obligation stemming from the Geneva Conventions of 1949 – and developed in Additional Protocol I of 1977 – to facilitate enquiries made by relatives of persons dispersed in connection with an armed conflict, with the aim of restoring family links and facilitating the reunion of dispersed families in every possible way. It also includes the obligation of States parties to the Geneva Conventions to enable all persons in their territory to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them. Furthermore, according to Additional Protocol II, children shall be provided with the care and aid they require, in particular, all appropriate steps shall be taken to facilitate the reunion of families temporarily separated.

⁴ See, for instance, the Universal Declaration of Human Rights (1948) (Article 16); the International Covenant on Economic, Social and Cultural Rights (1966) (Article 10); the International Covenant on Civil and Political Rights (1966) (Article 23); the Convention on the Rights of the Child (1989) (Articles 9, 10, 20 and 22); and the International Convention for the Protection of All Persons from Enforced Disappearance (2006) (Articles 17, 24 and 25).

⁵ As at 2017, <http://www.un.org/en/development/desa/population/migration/data/estimates2/estimates17.shtml>.

⁶ Restoring Family Links Strategy of the International Red Cross and Red Crescent Movement 2020–2025; it will be attached to the “draft resolution”.

other situations of violence. Amongst them were the goals of preventing people from going missing, ascertaining the fate of missing persons, managing information and processing files on missing persons. The commitment of the Movement to managing information and processing data responsibly is evidenced in the development of our RFL Code of Conduct on Data Protection (CoC),⁷ the first of its kind for a Movement service. It sets out the minimum principles, commitments and procedures that members of the Movement must comply with when processing data within the FLN. A dedicated working group⁸ supports global implementation of the CoC. With the conclusion of our RFL strategy 2008–2018, the proposed new RFL strategy 2020–2025 and the implementation of the CoC, we continue our commitment to data protection as a critical enabler for the transmission of personal data.

3) ANALYSIS

While RFL needs caused by armed conflict, other situations of violence and natural and man-made disasters remain as important as ever, over the last decade, we have witnessed the mounting engagement of the Movement in addressing the needs of separated and missing migrants and their families, which have often remained unattended. As a result of the risks migrants face along migration routes, large numbers are dying or going missing. All too often, dead migrants remain unidentified. In the absence of effective mechanisms and inter-state cooperation to clarify the fate of missing migrants, families seeking information about their missing relatives are left alone in uncertainty.

Further, developments in digital technology are becoming critical tools for humanitarian work, changing the way people connect globally and enhancing their ability to do so. These developments mean that we must modernize our efforts to assist and protect people who access our services to reconnect with their family members or ascertain their fate and whereabouts, including working towards digitalization and digital proximity and ensuring careful protection of their personal data. We must therefore also reaffirm how we work with authorities to achieve our shared objectives.

According to the results of a global survey conducted in 2017 to measure the capacity of the RFL services provided by NSs, RFL is recognized by a vast majority of State authorities as a humanitarian service provided by NSs.⁹ However, the RFL service would benefit from stronger awareness and recognition in many countries, as only 42% of NSs reported having a specific role for the RFL service in their response to migration. Improving the response to these challenges in order to provide answers to the families of missing migrants requires the coordination and harmonization of practices among a wide range of actors across multiple countries, regions and continents.

Rapid advances in digital technology and the exponential increase in mobile phone use, social media use and internet access are having a transformative impact on all aspects of people's lives as well as on humanitarian work. An increasing number of people can trace and contact family members through such means, and connectivity has become a primary request. We are responding to this demand and expanding our capability to meet it within the FLN.

Digital tools offer tremendous new opportunities to enhance proximity to beneficiaries and cooperation with other stakeholders. The exponential growth in the use and development of technology has made it possible to gather large quantities of data faster and more easily. The use of new ways to provide RFL services inevitably leads to a diversification of the types of personal data collected and to an increase in data volume and flows. The growing awareness

⁷ RFL Code of Conduct on Data Protection, 2015, <https://www.icrc.org/en/document/rfl-code-conduct>.

⁸ RFL Code of Conduct on Data Protection Application Group. The Group convened for the first time in 2017. It comprises the ICRC data protection adviser, RFL specialists from the ICRC and representing NSs from each region, and the IFRC adviser. It leads the FLN in enhancing understanding of and compliance with the RFL CoC on Data Protection.

⁹ 82% of NS members that responded agreed with this statement.

of both the benefits and the risks that the processing of large amounts of (sensitive) personal data entails has brought renewed attention to data protection and to the need to ensure that the Movement is capable of maintaining its RFL services, while at the same time ensuring that affected people are not exposed to additional dangers and that the Movement's Fundamental Principles are not compromised.

Data protection law has developed rapidly in recent years, and it has also become much more important to the humanitarian sector as it seeks to deploy new technologies to support its operations. For the components of the Movement, data protection standards and principles offer a means to innovate responsibly, maintain confidentiality, uphold the rights of affected people and build trust among communities and stakeholders. The specificity of data protection in humanitarian action has already been acknowledged in a variety of international instruments, which do not, however, exempt humanitarian actors from complying with core data protection principles and requirements.¹⁰

Under such internationally recognized principles, any processing of personal data must have a *legitimate basis*. The processing of personal data by the components of the Movement for RFL purposes is commonly based on, and necessary for, important grounds of *public interest* and can often be in the *vital interest of the individuals* concerned. Important grounds of public interest are considered to exist when the activity is part of the humanitarian mandate and necessary to accomplish the task of the Movement.¹¹ The public interest role of the activities carried out by the ICRC is also recognized, *inter alia*, by the UN General Assembly in its resolution granting the ICRC observer status as an international organization based on its mandate and the "special role carried on accordingly by the ICRC in international humanitarian relations".¹² In other words, the international community has entrusted the Movement with the provision of humanitarian assistance, of which RFL constitutes a core component. This means that States have recognized that it is in the public interest for the Movement actors to carry out the activities they have been mandated to pursue. Since RFL cannot function without processing the personal data of the affected individuals, the Movement has a legitimate need to process (sensitive) data, particularly when necessary for important reasons of public interest.¹³ This legitimate basis for processing data for RFL has been increasingly acknowledged in certain jurisdictions and by certain regulatory frameworks.¹⁴

¹⁰ Guidelines for the Regulation of Computerized Personal Data Files adopted by UN GA Resolution 45/95 of 14 December 1990 (<http://www.refworld.org/pdfid/3ddcafaac.pdf>); 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 (<https://icdppc.org/wp-content/uploads/2015/02/Resolution-on-Data-Protection-and-Major-Natural-Disasters.pdf>); 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 (<https://icdppc.org/wp-content/uploads/2015/02/Resolution-on-Privacy-and-International-Humanitarian-Action.pdf>); EU General Data Protection Regulation; and Modernized Council of Europe Convention 108.

¹¹ See *Handbook on data protection in humanitarian action* by co-editors Christopher Kuner and Massimo Marelli (VUB/ICRC), p. 49. On the humanitarian mandate of the Movement, see also, for example, the provisions on the activities of the ICRC in the Geneva Conventions of 1949 and the Additional Protocols of 1977, the Statutes of the Movement adopted in 1986 and amended in 1995 and 2006 and relevant resolutions of the IC.

¹² UN GA (1990) 45/6.

¹³ For example, the EU recognizes the role of the ICRC and of the IFRC as international organizations (IOs) with a public service mandate in its regime of application of the EU Financial Regulation (Regulation (EU, EURATOM) No. 966/2012): its rules of application (Commission Delegated Regulation No. 1268/2012) explain, in Article 43, that the term "international organization" shall include: "(b) the International Committee of the Red Cross; (c) the International Federation of National Red Cross and Red Crescent Societies". This inclusion means that, although they are established as private associations under the Swiss Civil Code, the ICRC and the IFRC are assimilated to IOs since their mission is recognized by the international community of States. For more information, refer to the DG ECHO Partners' Helpdesk website at: http://fpa2008.dgecho-partners-helpdesk.eu/partnership/instruments/fpa_for_ios.

¹⁴ See EU General Data Protection Regulation, recitals (46) and (112); Modernized Council of Europe Convention 108, Explanatory Report, para. 47; and Commission nationale de l'informatique et des libertés (French Data Protection Authority), Deliberation 2012-161 of 24 May 2012.

The IC constitutes the ideal forum in which States can recognize this claim collectively, thereby cementing the unique status of the Movement as a humanitarian actor acting in the public interest, whose mandate is explicitly provided for in international humanitarian law, the Statutes of the Movement and relevant resolutions of the IC. Therefore, it is for the purpose of upholding this public interest and enabling and improving the effectiveness of RFL services that States acknowledge that the flow of personal data among the components of the Movement should remain as unrestricted as possible, while complying with strict data protection requirements.

In the context of RFL activities, the data collected by the Movement often includes information that would be considered sensitive. The processing of such information requires a considerable level of responsibility as well as a profound sense of *trust* in the Movement on the part of the affected individuals. Such trust, which is fundamental to the effectiveness of the Movement's action, is motivated by the expectation that the Movement actors collect and process personal data for *exclusively humanitarian purposes* and that RFL services are always provided in accordance with the Fundamental Principles. This sense of trust can only be maintained if RFL activities are properly framed through privacy and data protection guarantees. Another internationally recognized principle of data protection holds that personal data can be processed only for the specific purposes mentioned above; subsequent further purposes are permissible only if they are compatible with the initial purposes. However, Movement actors may come under pressure to provide data collected for purely humanitarian purposes to authorities wishing to use them for other unrelated purposes. The sharing of potentially sensitive information on affected people with other entities, such as States, that wish to use such data for non-humanitarian purposes might expose individuals to new risks, such as profiling, discrimination, arrest or even exclusion from humanitarian assistance. This would negatively impact the safety of the very people humanitarian action is trying to help, contradict the "do no harm" principle and be incompatible with the Fundamental Principles, especially neutrality, impartiality and independence.

While the ICRC and the International Federation enjoy, to the extent applicable, privileges and immunities – including immunity from jurisdiction, potentially exempting them from national data protection laws – to enable them to perform their respective mandates in conformity with the Fundamental Principles and thus to mitigate the above-mentioned risks, this possibility is generally precluded for NSs, which are instead fully subject to the national data protection legislation of the State under whose jurisdiction they fall. However, it is inevitable that the provision of RFL services depends upon close cooperation between the Central Tracing Agency (CTA) of the ICRC, as coordinator and technical adviser to NSs and governments,¹⁵ and the NSs in their role as auxiliaries to the public authorities in the humanitarian field.¹⁶

In practice, such action might expose affected individuals to dangers, owing to the increased potential for data breaches arising from access by third parties to the personal data processed by NSs for non-humanitarian purposes. In light of the exclusively humanitarian purposes of data processing in RFL activities and the Fundamental Principles that the Movement must always abide by, recognition of the above-mentioned unrestricted flow of data within the Movement should then be mirrored by a call upon States to *refrain from requesting the personal data collected by the components of the Movement for RFL services*.

The processing of personal data is more necessary for RFL than for any other of the Movement's services, as it requires the ability to transmit and match data. The Movement recognizes the immense potential of these developments for its humanitarian action and seeks to incorporate them into its activities. However, the Movement is also aware that the potential for intrusion into the private sphere of individuals becomes more significant and that it is of vital importance to observe and develop appropriate data protection standards. Safeguarding the

¹⁵ Report adopted by the 24th International Conference.

¹⁶ Resolution 2 of the 30th International Conference and Resolution 4 of the 31st International Conference.

personal data of individuals, particularly in the fragile and volatile conditions in which the Movement operates, is an essential aspect of protecting people's lives, physical and mental integrity and dignity and of respecting their rights, including the right to privacy.

To heed the call for a data flow that is as unrestricted as possible within the FLN for RFL services, while at the same time avoiding, to the extent possible, any potential risks that misuse of these humanitarian data might entail, a framework that ensures solid standards of data protection is needed. In recognition of data protection as a key pillar of RFL, the *RFL CoC on Data Protection* was developed. 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. By standardizing good practices, it reinforces proper data management within the FLN and secure data transfers within the Movement and to other actors. The CoC therefore instils confidence in both individuals and regulators with regard to the work of the Movement and provides reassurance to members of the Movement who need to transfer personal data between each other.

4) RESOURCE IMPLICATIONS

A well-functioning and effective FLN for the years ahead requires technical expertise and leadership at global, regional and national levels, dedicated, well-trained staff and volunteers, access to digital technology, an ability to respond and scale up in emergencies and flexibility to offer the best service through the most appropriate means. Financial resources are required to meet the objectives of the RFL strategy 2020–2025. We will seek support from governments, the corporate sector and individual donors in order to diversify funding, where today the majority of RFL services are still largely supported by the ICRC.

5) IMPLEMENTATION AND MONITORING

Implementation of the resolution will be led by the Implementation Group (IG) for the RFL strategy 2020–2025.¹⁷ This body will be supported by the RFL CoC on Data Protection Application Group, which will provide technical expertise on data protection. With the support of the IG, the Leadership Platform will steer implementation at the strategic level. The IG will support and monitor the implementation of the RFL strategy at the global service level and provide guidance and direction for the regional RFL platforms. It will further develop a monitoring and evaluation framework for the new RFL strategy. Communication of progress to the members of the IC at the national level will be encouraged through bilateral dialogue between the NSs and the relevant government authority to ensure cooperation. Progress reports are to be delivered to the CoD and the IC in 2023.

6) CONCLUSIONS AND RECOMMENDATIONS

It is critical for the functioning of the FLN to reaffirm with States our specific role in RFL and our cooperation with States in this field, including recognition of the Movement's need to manage and transfer personal data for exclusively humanitarian purposes. A joint commitment by States and the components of the Movement to this process and ongoing dialogue is necessary for the legitimacy and reputation of all components of the Movement as trusted institutions that seek exclusively humanitarian outcomes.

We call upon members of the IC to endorse the resolution in recognition of the value of the FLN and the support it provides to separated and missing persons and their families across the globe. In particular, we request States to welcome the new RFL strategy 2020–2025 and to support its implementation.

We ask States to recognize that the FLN needs to be able to collect, process and exchange personal data for the exclusively humanitarian purpose of providing RFL services. Therefore,

¹⁷ This forum is chaired by the ICRC and comprises NSs from each region, the ICRC and the IFRC.

we call on States to commend the Movement's RFL CoC on Data Protection and support efforts to implement it.