

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

Geneva, Switzerland
9–12 December 2019

**Restoring family links while respecting the right to privacy,
including as it relates to personal data protection**

Draft zero resolution

Document prepared by

**The International Committee of the Red Cross in cooperation with the other members
of the RFL Leadership Platform and the RFL Strategy Implementation Group (28
National Societies and the International Federation of Red Cross and Red Crescent
Societies)**

Geneva, June 2019

DRAFT ZERO RESOLUTION

Restoring family links while respecting the right to privacy, including as it relates to personal data protection

The International Conference of the Red Cross and Red Crescent,

deeply disturbed by the dramatic numbers of families separated and people going missing as a result of armed conflicts, disasters and other emergencies as well as in the context of migration, by the lack of sufficient measures to prevent people from going missing and to clarify the fate and whereabouts of those who do, by the fact that many human remains are never identified and by the suffering of families who do not know the fate and whereabouts of their loved ones,

recognizing that the distinct needs of and risks faced by separated families and the families of missing persons will depend on factors including gender, age and disability and *affirming* the importance of these being addressed by components of the International Red Cross and Red Crescent Movement (Movement) in their activities in the field of restoring family links and clarifying the fate and whereabouts of missing persons,

stressing the importance of clarifying the fate and whereabouts of missing persons and *highlighting* in this regard the right of families to know the fate and whereabouts of their missing relatives, as provided, in particular, in the Geneva Conventions of 1949 and their Additional Protocols of 1977 and as recognized in human rights law,

further stressing the importance of restoring contact between separated family members and *recalling* other relevant obligations, including international humanitarian law obligations, as applicable, to facilitate, in every possible way, the reunion of families dispersed as a result of armed conflict and to allow for the exchange of family news, and obligations related to the treatment of the dead,

recalling and reaffirming Resolution 16 of the 25th International Conference of the Red Cross and Red Crescent (International Conference), Resolution 2 and Resolution 5 of the 26th International Conference, Resolution 1 of the 28th International Conference and Resolution 1 of the 30th International Conference,

recalling the mandate of the International Committee of the Red Cross (ICRC) based on the Geneva Conventions of 1949, their Additional Protocols of 1977, the Statutes of the Movement and resolutions of the International Conference; *recalling* in this regard the Central Tracing Agency (CTA) of the ICRC, including its role as coordinator and technical adviser to National Red Cross and Red Crescent Societies (National Societies) and governments, as defined in the report adopted by the 24th International Conference,

recalling the role of National Societies as auxiliaries to the public authorities in the humanitarian field based on their mandate under the Geneva Conventions of 1949, their Additional Protocols of 1977, the Statutes of the Movement and resolutions of the International Conference, including Resolution 2 of the 30th International Conference and Resolution 4 of the 31st International Conference,

recalling the adoption by the Movement of its Restoring Family Links Strategy (2008–2018) in Resolution 4 of the 2007 Council of Delegates,

recalling that privacy is a human right set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other human rights instruments and national laws, that personal data protection is closely related to privacy and is specifically listed and recognized among the human rights and fundamental freedoms safeguarded in the legislative instruments of many countries where the components of the Movement perform their respective mandates, and that personal data protection is also safeguarded in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data,¹

taking into account that data processing is an integral part of restoring family links services and that the increasing use of technological solutions to respond to demands for more efficiency and effectiveness leads to a diversification in the nature of the data collected and to an increase in data volume and data flows,

recalling that the public interest value of personal data processing by the Movement in the area of restoring family links has been acknowledged by data protection authorities² and that certain recent regulatory frameworks have started to explicitly recognize the important grounds of public interest and vital interests involved in the processing of personal data by the components of the Movement,³

recalling that the restoring family links activities of the Movement, by their very nature, are aimed at furthering the right to a private and family life,

recalling that the ICRC and the International Federation of Red Cross and Red Crescent Societies as well as their employees and other representatives enjoy, to the extent applicable, privileges and immunities in order to enable them to perform their respective mandates in full conformity with the Fundamental Principles of neutrality, impartiality and independence,

recalling 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

1. *urges* States to avoid, as far as possible, family separation and to take effective measures to prevent persons from going missing, to clarify the fate and whereabouts of persons who have gone missing and to restore family unity or facilitate family reunifications, consistent with their international obligations, and *encourages* States to consider how these measures will support men, women, boys and girls in particularly vulnerable situations;
2. *calls 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

¹ <https://www.coe.int/en/web/data-protection>.

² CNIL Deliberation No. 2012-161 of 24 May 2012, <https://www.legifrance.gouv.fr/affichCnil.do?id=CNILTEXT000026241772>.

³ See EU General Data Protection Regulation (GDPR), recitals (46) and (112); and modernized Council of Europe Convention 108, Explanatory Report, para. 47.

⁴ <https://icdppc.org/wp-content/uploads/2015/02/Resolution-on-Privacy-and-International-Humanitarian-Action.pdf>. In particular, in this resolution the International Conference of Data Protection and Privacy Commissioners recognized that, in the context of humanitarian activities, humanitarian organizations routinely collect data that would often be classified as sensitive under data protection law. It also recognized that humanitarian organizations not benefitting from privileges and immunities may come under pressure to provide data collected for humanitarian purposes to authorities wishing to use such data for other purposes. This risk of misuse of data may have a serious impact on the data protection rights of affected persons and their safety as well as on humanitarian action more generally.

whereabouts of missing persons and to enable them and their families to establish, restore or maintain contact, including along migratory routes, while respecting the right to privacy, including as it relates to personal data protection;

3. *requests* States to take all possible measures to ensure the dignified treatment of people who have died as a result of armed conflicts, disasters and other emergencies as well as in the context of migration and to centralise and analyse data in order to identify deceased persons and provide answers to their families, and *welcomes* the support provided in this process by the ICRC in the form of forensic expertise;
4. *welcomes* the adoption by the Movement of its Restoring Family Links Strategy 2020–2025 in Resolution X of the 2019 Council of Delegates and *calls upon* States to continue their support for the activities of the components of the Movement in the field of restoring family links, in conformity with their role and mandate and consistent with their international obligations, in particular by:
 - a. reaffirming and recognizing the specific role of the National Society of their country in providing restoring family links services;
 - b. strengthening the National Society's capacities, including through the provision of resources;
 - c. ensuring that the National Society has a clearly defined role in the context of the country's overall disaster risk management laws, policies and/or plans;
 - d. exploring and establishing partnerships with the components of the Movement to provide connectivity to help separated families restore and maintain family links;
 - e. granting the components of the Movement access to places where there are people in need of restoring family links services;
 - f. cooperating with the components of the Movement by giving them access to relevant data and/or responding to their individual inquiries in order to help establish the fate and whereabouts of missing persons;
5. *recognizes* that important grounds of public interest and, in many cases, the vital interests of the individuals concerned are a valid basis for the processing of personal data by components of the Movement, as part of their respective mandates, and by States for the purpose of enabling and facilitating the delivery of restoring family links services by the components of the Movement;
6. *welcomes* the fact that the Movement processes personal data under the framework set out in the Restoring Family Links Code of Conduct on Data Protection⁵ and the Movement's efforts to proactively address the risks of re-identification in data aggregation;
7. *recognizes* that it is therefore of utmost importance to ensure that the processing and flow of personal data within the Movement for the purpose of providing restoring family links services remain as unrestricted as possible in order to enable its components to successfully carry out such services;
8. *recognizes* that the misuse of data may have a serious impact on the right to privacy, including as it relates to personal data protection, of the beneficiaries of restoring family links services and can be a detriment to their safety and to humanitarian action more generally;
9. *recognizes* that, whenever any component of the Movement collects and otherwise processes personal data in the performance of restoring family links services, it must

⁵ RFL Code of Conduct on Data Protection, 2015, <https://www.icrc.org/en/document/rfl-code-conduct>.

do so for purposes that are exclusively humanitarian and *calls upon* States to commit to respecting the exclusively humanitarian purpose of personal data processing and, in particular, to apply their sovereign right to engage in information collection, including for the purposes of national security and public safety, in line with their commitment under Article 2 of the Statutes of the Movement to support the work of the components of the Movement and to respect the adherence by all the components of the Movement to the Fundamental Principles, which entails refraining from requesting personal data from the components of the Movement with a view to using it for purposes incompatible with the solely humanitarian nature of the work of the Movement or in a manner that would undermine the trust of the people it serves;

10. *requests* States to recognize the Movement's Restoring Family Links Code of Conduct on Data Protection as a solid basis for the protection of personal data covering the data flows required in this area of the Movement's activities and to fully support the components of the Movement in their efforts to implement it.