

Power of humanity

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**33rd INTERNATIONAL CONFERENCE
OF THE RED CROSS AND RED CRESCENT**

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**Restoring Family Links while respecting privacy, including as it
relates to personal data protection**

Draft 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)**

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DRAFT RESOLUTION

Restoring Family Links while respecting privacy, including as it relates to personal data protection

The 33rd International Conference of the Red Cross and Red Crescent,

concerned by the 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 factors being addressed by components of the International Red Cross and Red Crescent Movement (Movement) in their services in the field of restoring family links and clarifying the fate and whereabouts of missing persons,

recalling that the protection of the family, including the prohibition of arbitrary or unlawful interference with one's family, is provided for under human rights law,

stressing the importance of restoring and maintaining contact between separated family members and recalling relevant international obligations, including under international humanitarian law for parties to armed conflict, as applicable, on facilitating the reunion of families dispersed as a result of armed conflict, on enabling the exchange of personal news with family members and on the dignified treatment of the dead,

further stressing the importance of clarifying the fate and whereabouts of missing persons and *recalling* relevant international obligations, in particular those related to the right of families to know the fate and whereabouts of their relatives, as applicable,

recalling relevant resolutions of the United Nations (UN) General Assembly on missing persons in armed conflict and UN Security Council Resolution 2474 (2019) which, *inter alia*, calls upon parties to armed conflict to take appropriate measures to prevent persons from going missing as a result of armed conflict, through the facilitation of the reunion of families dispersed as a result of armed conflict, and to allow for the exchange of family news, consistent with their international obligations,

further recalling and reaffirming Resolution 16 of the 25th International Conference of the Red Cross (now the International Conference of the Red Cross and Red Crescent and hereinafter referred to as the International Conference), Resolution 2 and Resolution 5 of the 26th International Conference, Resolution 1 of the 28th International Conference, Resolution 1 of the 30th International Conference and Resolution 3 of the 31st 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 and *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 mandate of National Societies as auxiliaries to the public authorities in the humanitarian field, as reflected in 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 mandate of the International Federation of Red Cross and Red Crescent Societies (International Federation), as reflected in its Constitution and as contained in the Statutes of the Movement and relevant International Conference resolutions, and *recalling*, in this regard, its work to organize, coordinate and direct the international relief assistance of the Movement in accordance with the Statutes of the Movement, strengthen and accompany National Societies in their role as auxiliaries to the public authorities in the humanitarian field and represent National Societies in the international field, including in the area of migration and related activities,

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

recognizing that the Restoring Family Links (RFL) services of the Movement, by their very nature, are aimed at furthering the protection of the family and family unity,

recalling obligations related to privacy enshrined in national, regional and international legal frameworks, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and reflected in resolutions of the UN Human Rights Council and General Assembly, including Resolution 73/179 (2019),

recalling further that personal data protection is closely related to privacy and specifically listed and recognized among the human rights and fundamental freedoms safeguarded in the applicable regional and national legal frameworks of many countries where the components of the Movement perform their respective mandates,

taking into account that data processing is an integral part of RFL services and necessary for the performance of the Movement's mandate and thus for important grounds of public interest and that the increasing use of technological solutions to respond to demands for greater efficiency and effectiveness leads to a diversification in the nature of the data collected and to an increase in data volume and data flows,

recognizing that it is important for beneficiaries to trust all components of the Movement with their personal data to ensure that they have access to these services and that uncertainties around the protection of personal data, including the potential for data security breaches and unauthorized access and use, can lead to a lack of trust and fear of misuse,

recalling that the public interest value of personal data processing by the Movement in the area of RFL has been acknowledged by certain members of the international community and that some recent regulatory frameworks that seek to safeguard individuals from the

risks associated with personal data processing 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,

recalling that the ICRC and the International Federation and their employees and representatives enjoy privileges and immunities, to the extent applicable, in order to enable them to perform their respective mandates and to do so in full conformity with the Movement's Fundamental Principles of neutrality, impartiality and independence,

noting 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, and its explanatory note which expressed the need for privileges and immunities in order to protect data collected for humanitarian purposes,

1. *calls upon* States to take effective measures to prevent persons from going missing, to clarify the fate and whereabouts of persons who have gone missing, to restore family links or facilitate family reunifications and to avoid, as far as possible, family separation, consistent with applicable legal frameworks, and *encourages* States to consider how these measures will protect men, women, boys and girls in particularly vulnerable situations;
2. *requests* States to take all possible measures, in accordance with applicable international obligations, 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, to bury them in a secure place and to centralize and analyse data, in accordance with applicable legal frameworks, in order to try 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;
3. *calls upon* the components of the Movement to work closely with States and with relevant institutions, in line with their mandates and the Movement's Fundamental Principles, and *further calls upon* States to make use of the services of their National Society, in its role as an auxiliary to the public authorities in the humanitarian field, to clarify the fate and whereabouts of missing persons and to enable individuals and their families to establish, restore or maintain contact, including along migratory routes;
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 *further calls upon* States, in conformity with the Statutes of the Movement and consistent with their international obligations, to continue their support for the services of the components of the Movement in the field of RFL, in particular by:
 - a. reaffirming and recognizing the specific role of the National Society of their country in providing RFL 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 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 RFL services
 - f. cooperating with the components of the Movement, in accordance with domestic, regional and international legal frameworks, by giving them access to relevant data and responding to any individual inquiries they may make in order to help establish the fate and whereabouts of missing persons;
5. *welcomes* the fact that the Movement processes personal data under the framework set out in the Restoring Family Links Code of Conduct on Data Protection;
 6. *recognizes* that important grounds of public interest and, in many cases, the vital interest of the individual concerned are valid bases for the processing of personal data for exclusively humanitarian purposes by components of the Movement, as part of their respective mandates, including National Societies in their auxiliary role in the humanitarian field, and by States for the purpose of enabling and facilitating the delivery of RFL services by the components of the Movement;
 7. *welcomes* the Movement's efforts to proactively address and provide adequate safeguards against the risks associated with personal data processing, including the risk to beneficiaries of being re-identified when components of the Movement use aggregate data, and *encourages* the Movement to continue to enhance the effectiveness of data processing practices, including but not limited to ensuring data quality, carrying out data protection impact assessments and executing data sharing agreements, particularly for cross-border transfers of personal data;
 8. *recognizes* that the misuse of data may result in violations of privacy obligations that are set out in national, regional and international legal frameworks, including as such obligations relate to personal data protection, and may have a serious impact on the beneficiaries of RFL services and be detrimental to their safety and to humanitarian action more generally;
 9. *encourages* States that have not already done so to adopt all necessary legislative, administrative and practical measures at the domestic level to implement stringent standards and regulatory frameworks on privacy, including as it relates to personal data protection, which recognize the public and vital interest as the bases for data processing for humanitarian purposes, including RFL services;
 10. *recognizes* that it is of utmost importance to ensure that the processing and cross-border transfer of personal data within the Movement for the purpose of providing RFL services remain as unrestricted as possible, subject to national and regional regulations, in order to enable the Movement to successfully carry out such services, while emphasizing that the recognition of the public and vital interest bases for personal data processing is necessary to enable the flow of data;

11. *recognizes* that, whenever any component of the Movement collects, retains or otherwise processes personal data in the performance of RFL services, it should do so for purposes that are exclusively humanitarian;
12. *recognizes* the need for support from States in the performance of the Movement's RFL services and *calls upon* States to commit to respecting the exclusively humanitarian purpose of the Movement's personal data processing, 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;
13. *therefore calls upon* States to refrain from requesting such 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 and the independence, impartiality and neutrality of RFL services;
14. *welcomes* the Movement's Restoring Family Links Code of Conduct on Data Protection
as an appropriate foundation for personal data protection covering the data flows required in this area of the Movement's services and as a tool setting out the minimum data protection principles necessary for such services, including requirements that processing be fair, based on legitimate grounds, adequate, relevant, not excessive for its purpose, accountable to data subjects and compliant with national legislation;
15. *requests* the Movement to periodically amend and update the Restoring Family Links Code of Conduct on Data Protection to ensure it is in line with the most relevant data protection regulations and *requests* States to support the components of the Movement in their efforts to implement it.