

HOW THE INTERNATIONAL COMMITTEE OF THE RED CROSS HELPS TO COMBAT TORTURE

ICRC visits to persons deprived of their freedom
in situations of internal disturbances and tension:
aims and methods *

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The International Committee of the Red Cross welcomes all attempts to strengthen the protection against torture of persons deprived of their freedom. It therefore welcomes the adoption of the *European Convention for the prevention of torture and inhuman or degrading treatment or punishment*, which should enable an effective system of control to be established for the prevention and elimination of such inhuman practices in the member countries of the Council of Europe that may have ratified the Convention.

In the experience of the ICRC, visits to places of detention are the best method of international control for preventing acts of torture. If they are to be effective, the visits must conform to a number of standard procedures, such as the interview without witnesses, registration of the persons detained, and repetition of the visits.

The ICRC will follow with the greatest interest the implementation of this new Convention. It will contact the European Committee as soon as this has been established in order to discover what its intentions are with regard to the procedures for its activities and will study with the Committee the best way to ensure that the activities of the two

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bodies complement each other harmoniously, particularly in ICRC activities outside the scope of the Geneva Conventions, for example, during internal disturbances or tension. The ICRC will also follow with interest the development of other draft conventions against torture that would devise a system of visits to places of detention, in the hope that these will in fact lead to the introduction of an effective monitoring system to prevent and eliminate such inhuman practices.

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Traditionally, the ICRC takes action to protect and assist the civilian and military victims of armed conflicts. By virtue of the Geneva Conventions of 1949 and their Additional Protocols of 1977, the ICRC is mandated, in time of international armed conflict, to visit, in their places of detention, all prisoners of war and civilian detainees. In the event of internal armed conflict the ICRC must negotiate, in each case, the agreement of the parties involved in the conflict in order to be able to visit prisoners, since the Geneva Conventions lay down no obligation in such circumstances.

Beyond the scope of application of the Geneva Conventions and the Additional Protocols, the ICRC also acts in what are known as *internal disturbances and tension*. Disturbances are situations in which, although there is no non-international armed conflict as such, there is within the country confrontation of a certain gravity or duration and including acts of violence. Internal tension covers severe internal tension, whether political, religious, racial, social or economic, etc., or the aftermath of an armed conflict or of internal disturbances.

Internal disturbances and tension are characterized in particular by the following circumstances:

- mass arrests;
- a large number of persons detained for security reasons;
- probable ill-treatment, torture, or poor material or psychological conditions of detention;
- detainees being held in secret for long periods;
- the suspension of fundamental legal guarantees.

The declaration of a state of emergency is one sign, but not the determining factor, that might prompt the ICRC to offer its services.

This means that the ICRC is interested only in a specific category of persons deprived of their freedom, namely, those usually known as “political detainees” or “security detainees”. There is no definition of this category of people in international law. Unless they come into a specific category in the law of their own country, the determining factor for identifying them is the relation with internal disturbances and tension.

Since it has no basis in international law for its activities in favour of this category of people, the ICRC bases its work on Article 5 of the Statutes of the International Red Cross and Red Crescent Movement, which empowers it to take any type of humanitarian initiative and to offer its services to States. It should be pointed out that the intrinsic principle underlying this practice has never been called into question by the international community. The basis for the ICRC’s activities in the event of internal disturbances and tension is well on the way to becoming customary law, and it is widely recognized that an offer of services by the International Committee does not constitute interference in the internal affairs of a State. However, the ICRC’s right to offer its services is not matched by any obligation for governments to accept such offers.

The chief duty of the ICRC in cases of internal disturbances and tension consists in visiting places of detention in order to improve the prisoners’ conditions. The Committee’s delegates concern themselves mainly with the material and psychological situation of the detainees. Since it is anxious to retain, by its neutrality, the confidence of all parties concerned, the ICRC does not involve itself in any way in the political problems that are the cause of the disturbances or tension, neither does it make any comment on the reasons for the detention.

Experience has shown that, even when the government of a country desires to have its prisoners treated humanely, the day-to-day reality of prison life could and, in many cases, should be improved. The persons imprisoned are often considered as “enemies” by the officials in direct contact with them and rarely have a real opportunity to bring their grievances to the attention of the national authorities which would be not only capable but desirous of guaranteeing them dignified and humane treatment. In such cases, the ICRC delegates are able to draw the attention of the responsible authorities to the conditions of detention and to request improvements. It is important to realize that ICRC visits also have a preventive effect with regard to torture, as the very presence of the delegates in the places of detention frequently acts as a deterrent on those who might otherwise have recourse to inhuman practices.

The work of the ICRC in favour of “political detainees” may be summed up as follows:

Periodic and thorough visits to places of detention and to detained persons are carried out by properly trained ICRC delegates. Such visits are followed by discussions at all levels with those responsible for detention, and are the subject of confidential reports sent to the authorities, usually at the highest level. The reports take into account the particular social, economic and cultural background of the country; they describe in detail and as objectively as possible the conditions of detention and the treatment of the prisoners, and make precise and practical proposals for improving these. The reports are not intended for publication. The ICRC makes public only the places and dates of its visits, the number of persons seen, and the fact that the delegates have been able to interview the prisoners without witnesses. It never comments publicly on the material or psychological conditions in the places of detention or on any cases of torture it may have noted.

As a rule, these visits have beneficial results, a view often shared by the governments that have chosen to accept the ICRC's services. In the experience of the Committee, no State has complained that its security has been compromised by ICRC visits or that the legal status of the persons visited has been affected. This is worthy of mention, when it is remembered that the ICRC has visited more than half a million such prisoners in about a hundred countries since 1918.

In order to be able to carry out the visits according to its own criteria, the ICRC first of all wishes its delegates to have access to all places of detention, whether permanent or temporary, official or unofficial, civilian or military, whether prisons, internment camps, barracks, transit centres, police stations, rehabilitation centres or any other type of place where political detainees are held. The ICRC delegates visit all detainees in all such establishments and their associated buildings, without any time limit. The purpose of the visits is to assess and, if necessary, to obtain improvement in the material and psychological conditions of detention and the treatment of detainees, and also to prevent the introduction of torture or other forms of inhuman treatment. The delegates do not concern themselves with the reasons for detention, since this matter is outside the competence of the ICRC.

The delegates must be allowed to talk freely with the detainees of their choice, i.e., without the presence of a third person. These interviews without witnesses, which take up much time, form the cornerstone of each visit, since they enable the delegates not only to judge the conditions in the place of detention but also to observe any ill-treatment

there may have been during interrogation in places other than those usually visited by the ICRC. This procedure, in the opinion of the ICRC, is the only way to acquire an overall view of the detainees' treatment and conditions of detention. Depending on circumstances, the interviews without witnesses may apply to all the detainees or to only a few. They take place in surroundings chosen by the delegates. The visits must be carried out with great care, which means that they must be well prepared. A visit to a single place of detention may take a number of days, or even weeks, and the ICRC has to assign one or more teams of several delegates and a doctor to carry it out. The delegates may require the services of interpreters, who are Swiss nationals like themselves or who are selected by the delegates from among the detainees.

At the beginning of the visit, the ICRC delegates talk with the authorities in charge of the place of detention, to inform them of the aims and the methods of the visit. They ask to be given, or to draw up themselves, a list of the names of the persons deprived of their freedom whom they are about to visit. It should be noted that recording the names of the prisoners constitutes in itself a factor of protection that is not negligible. The disappearance of prisoners, as is known, is a phenomenon of growing amplitude in certain countries. Identification of the prisoners visited and their interviews with a delegate are in fact a way of ensuring that they will not disappear later. The same procedure likewise acts as a significant deterrent to any detaining authorities which might practise torture or other forms of ill-treatment. This explains why the ICRC considers it so important to have access to the persons concerned as soon as possible after their arrest.

Repetition of the visits is another essential element. For it is important to be able to observe whether recommendations that the ICRC may have made have been followed up. Moreover, for the safety of the detainees who decided to talk to the delegates, it is essential to be able to see them again soon afterwards, and at regular intervals.

At the end of each visit the ICRC sends the government concerned a report of the delegates' findings and recommendations, a report that remains confidential. However, should the detaining power make public any part of such a report, the ICRC reserves the right to publish it in full.

This description, which is not exhaustive, of the conditions in which the ICRC works shows that effective and long-lasting protection of persons deprived of their freedom calls for a great deal of effort, especially in terms of personnel and time. This is why the ICRC maintains a permanent delegation in most countries where it makes

visits to places of detention. In addition it pays the closest attention to the training of its delegates. Only a wealth of experience enables them to obtain a reliable idea of the situation. It is obvious that the activities carried on by the ICRC in this area require considerable financial resources.

ICRC visits are not restricted to inspecting places of detention. Relief supplies are distributed as needed to the detainees or handed to the authorities for distribution. Such supplies include medicines, books and games. In very poor countries, in fact, it has proved virtually impossible for the delegates to arrive at the prisons empty-handed.

The ICRC delegations, moreover, try to trace persons who have disappeared, at the request of members of their family or of prisoners. The importance of this service is obvious in countries dominated by violence, where detainees are held in secret and where the disappearance of the regime's opponents is commonplace. This type of tracing activity is unthinkable without a permanent office in the country itself and without the help of the necessary staff recruited locally.

When visiting places of detention, delegates are inevitably approached by prisoners who tell them their personal problems, often related to their families or to their state of health. The delegates must pay attention to the plight of each one, since a prisoner being visited is above all an individual; but their attitude and their statements must be such as to avoid raising false hopes.

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For many decades now, ICRC delegates have been visiting persons deprived of their freedom for political or security reasons in countries undergoing crises. Experience has shown that prison visits, that is, the physical presence of delegates in the places of detention themselves, represent an appropriate method of preventing not only ill-treatment and torture but also the disappearance of prisoners, and of improving their conditions of detention.

The neutrality, independence and impartiality of the ICRC's work are now universally acknowledged. The fact that the ICRC is a Swiss institution helps to safeguard this reputation. It is extremely important, in politically disturbed situations above all, that the credibility of delegates should not be questioned, either by the authorities or by the prisoners.

The new *European Convention for the prevention of torture and inhuman or degrading treatment or punishment*, which originated with the appeal made by Jean-Jacques Gautier, brings a new dimension to the efforts to abolish torture, in particular by providing for visits to

places of detention at all times, even in the absence of conflict or tension. In time of peace, when there are no problems, it is desirable to lay the foundations for prevention, in order to preclude any recourse to torture in times of crisis. The visits by the European Committee will act as an early warning system, in the sense that they will bring to light as soon as possible any deterioration of the situation in penal establishments. The ICRC does not undertake this type of mission, and the activities of the European Committee will therefore complete the efforts undertaken to eliminate torture.

The European Convention states, in Article 17, para. 3:

“The Committee shall not visit places which representatives or delegates of Protecting Powers or the International Committee of the Red Cross effectively visit on a regular basis by virtue of the Geneva Conventions of 12 August 1949 and the Additional Protocols of 8 June 1977 thereto.”

This provision is a wise one. It takes into account the specific mandates attributed to the ICRC by the Geneva Conventions and their Additional Protocols. But it also takes into account the fact that the problems resulting from detention during an armed conflict, whether international or otherwise, are different in many ways from those encountered in peacetime. Consequently, the objectives of the work of protection, whose basic element is visits to places of detention, are different in the two situations.

In the course of long years of activity, the ICRC has found that the problems relating to detention in times of *internal disturbances and tension* are often identical or similar to those encountered during armed conflicts, especially internal conflicts. With its specific experience and possessing the necessary infrastructure, the ICRC will continue to offer its services to the authorities of countries affected by internal disturbances and tension. It hopes that the authorities concerned will continue to grant it permission to visit places of detention in these specific situations. Informal consultations between the ICRC and the future European Committee will doubtless make clear the complementarity of the approaches of the two institutions, and this will enhance the protection of detainees who are particularly vulnerable to “man’s inhumanity to man”.

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