

REPORTS AND DOCUMENTS

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Statement by the President of the International Committee of the Red Cross, Jakob Kellenberger

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Utmost vigilance and care remain important in responding to the needs of those affected by armed conflict and other situations of violence. It is in remembering the many people affected by such situations that I wish to talk to you today about the protection of these persons. As you know, protection in such situations lies at the core of the mandate of the International Committee of the Red Cross.

International humanitarian law requires that parties to a conflict protect all persons who do not or no longer actively participate in hostilities or acts of violence — civilians, the wounded, and the detained. It is on the duty to protect this last group of individuals — persons deprived of liberty — that I will focus my address today. However, we must keep in the forefront of our mind the plight of the hundreds of thousands, not to say millions, of civilians affected by armed conflicts or internal violence who are all too often subjected to indiscriminate attacks, forced displacement, sexual violence, and looting, and who do not benefit from the basic protections to which they are entitled.

The ICRC has broad experience in visits to detainees, experience not limited to some specific places. Indeed, in 2004 ICRC delegates visited 571,503 detainees held in 2,435 places of detention in about 80 countries.

Last year, I spoke of the complementarity of international humanitarian law and international human rights law, and how both are guided by the principle that by virtue of their humanity, individuals are entitled to protection from abuse. Today, I wish to address how both bodies of law protect persons deprived of liberty in the context of any armed conflict or other situation of violence.

Of the many people affected by armed conflict and other situations of violence every year, it is often those who are deprived of liberty that are at a

particular risk of physical or mental abuse, disappearance, and whose immediate needs such as food, water and medical care are often not adequately met.

There is no question that States are entitled to detain people on a number of grounds, including for reasons related to security. With this right, however, comes the obligation to treat with humanity those who have been deprived of their liberty — an obligation found in both international humanitarian and human rights law. These laws recognize the need to strike a balance between a State's legitimate security interests and the need to respect the rights of persons deprived of liberty.

What do these laws say?

Three important elements serve to ensure that detainees are treated with humanity, namely the prohibition of torture and other forms of ill-treatment, the obligation to ensure acceptable conditions of detention, and the respect of procedural safeguards. I will address each of these three elements in turn.

The prohibition of torture and other forms of ill-treatment is absolute. Both international humanitarian and human rights law prohibit the use of torture and other forms of cruel, inhuman or degrading treatment or punishment, whether physical or mental, at all times. The Geneva Conventions and international human rights law also prohibit coercion, whether physical or moral, measures of intimidation, humiliation, brutality, indecent assault, and sexual violence such as enforced prostitution and rape.

Detaining authorities must abide by the prohibition of torture and other forms of ill-treatment not only because it is unlawful under international law (and most domestic law, for that matter), but because such treatment violates the most basic principles of humanity to such an extent that it can never be morally justified. Even the slightest acceptance of such practice risks to lead down the slippery slope of proliferation.

Based on ICRC experience and from a policy perspective, very often ill-treatment further alienates the population of which the detained person is a member, creating potential for an escalation in violence and opposition. When a party to a conflict resorts to ill-treatment, an opposing party may be tempted to use this as an excuse to do the same. Ill-treatment thus becomes more widespread. The threat of the spread of torture and other forms of ill-treatment and the erosion of its prohibition outweighs any justification for its use. A further protection against the use of ill-treatment is the obligation of States to respect the principle of non-refoulement — meaning that a person may not be transferred to a place where he or she risks being subjected to prohibited treatment.

States must also adopt national laws to ensure that ill-treatment is prohibited, that information obtained as a result of ill-treatment is not admissible as evidence in legal proceedings, that persons who resort to ill-treatment are punished, and that victims of ill-treatment receive assistance and compensation. It also is essential that civilian and military law enforcement personnel receive proper training and resources to ensure compliance with the requirement to treat detainees with humanity and respect.

States must also take measures to ensure that those who are deprived of liberty do not disappear - that they do not become missing persons. As such, all persons deprived of liberty must be registered and held in officially recognized places of detention under the supervision of higher or judicial authorities. They must also be given the opportunity to communicate and remain in regular contact with family members.

The very conditions in which a person is detained may determine whether she or he is being treated humanely. Persons deprived of liberty must benefit from adequate conditions of detention, including sufficient provision of food, adequate access to clean water, acceptable levels of hygiene, regular access to quality medical care and sufficient access to open air. Conditions of detention in many parts of the world are unacceptably poor, not to say life-threatening. The ICRC has noted the deterioration of this situation in recent years. The responsible authorities may lack the capacity or political will to ensure satisfactory conditions of detention. States must urgently commit themselves to addressing these serious problems, and the international community, development organizations and financial institutions should provide them with adequate support.

There are groups of detained persons who have special needs, who are particularly vulnerable to abuse, and who therefore require special care. States must take measures to ensure that detained women are protected from the dangers to which they are most prone - rape, enforced prostitution and other acts of sexual violence. Special care should be taken to meet the nutritional and health care needs of expectant mothers as well as children accompanying their mothers in detention. The particular needs of juveniles and other vulnerable groups such as members of ethnic minorities, the elderly, and the infirm, must also be addressed.

States must also ensure that all detained persons, whether charged with a crime or interned, are able to avail themselves of procedural guarantees. The procedural safeguards of persons deprived of liberty include the right to be informed of the reasons for detention and to have the lawfulness of detention reviewed by an independent and impartial body. A legal framework must also govern all forms of detention. Ensuring the application of a legal framework and respect of procedural safeguards is a necessary protection against disappearance, arbitrary detention, and ill-treatment.

The sum of the requirements I have highlighted — the prohibition of ill-treatment, the provision of satisfactory conditions of detention, and the respect of procedural guarantees — serve to ensure that all persons deprived of liberty are treated humanely.

We continue to hear some people claim that there are persons who do not deserve humane treatment because of the horrific nature of the acts of which they are suspected or the crimes for which they have been convicted. Such reasoning must be rejected. Humane treatment does not preclude the prosecution and punishment of persons accused of criminal acts. When international humanitarian law is applicable it requires the prosecution of those who violate it. However, by virtue of being human, all people have certain rights

— rights that the international community has codified in international law and that States uphold in national legislation. Denying persons deprived of liberty the right to be humanely treated risks placing such persons outside the protection of the law. This would be unacceptable. The very principle behind the rule of law is that no one can be beyond the protection of the law.

I will briefly highlight the ICRC's role in the protection of persons deprived of liberty in the context of armed conflict and other situations of violence. But before doing so it is important to mention that the ICRC's offer to visit such persons has not been accepted by a good number of countries on various grounds, including that the countries concerned were not legally bound to accept such visits. There are still many places where the ICRC cannot play its role in the protection of persons deprived of liberty.

The aim of the ICRC's visits is to help authorities live up to the obligations and to meet the challenges I have referred to. The ICRC visits detained persons in order to assess conditions and treatment and to make recommendations for improvements, where necessary. The ICRC may also provide authorities with support in meeting the objectives of its recommendations through, for example, direct assistance to detainees, training of prison and law enforcement personnel, or through providing commentary on draft regulations or legislation affecting the treatment of detainees.

The ICRC aims to establish a constructive dialogue with detaining authorities in order to discuss the problems observed and to make recommendations. To do so, the ICRC relies on confidentiality. Confidentiality is important to the ICRC's access to persons deprived of liberty and to its ability to create the environment in which open discussion with authorities can take place. In certain exceptional instances, when all other avenues have been exhausted, when the humanitarian situation remains grave, the ICRC may decide to render public some of its concerns. However, having said that, the ICRC remains committed to the use of confidentiality as a working method and has no intention to change its practice in this regard.

The ICRC's work in places of detention is complementary to the important work of other national and international bodies and organizations working to ensure respect for international law. I conclude by urging all States to continue to uphold the laws and principles that reflect the years of progress the community of States has made in upholding the respect of the humanity and dignity of individuals.