**Information on the practice of establishment,**

**preservation and provision of access to archives**

**Contribution from the International Committee of the Red Cross (ICRC)**

Pursuant to operative paragraph 11 of resolution 21/7 on ‘Right to truth’, the International Committee of the Red Cross (ICRC) is pleased to provide the Office of the High Commissioner with relevant information on its practices in the establishment, preservation and provision of access to its archives.

This information is organised according to three heading:

1. General rule governing access to as well as preservation and protection of ICRC archives;
2. Use by ICRC of others’ archives in the search of relevant information on humanitarian purposes (‘right to know’);
3. Building of an environment that is conducive to the use of archives for humanitarian purposes: example of the missing persons

Some additional information is provided in annexes.

\*\*\*

1. **General rules governing preservation, protection and access**

The ICRC has been holding archives since the beginning of the institution in 1863. A short presentation of ICRC archives is attached (text in French and English: Archives).

Since 1986, ICRC archives are open to the public. Access to ICRC archives is governed by a regulation adopted by the highest governing body of the institution, the Assembly (see text in French and English annexed). Generally, the public has access to ICRC archives classified as public after a set period of time (40 or 60 years), to ensure that such access will not in any way be detrimental to the ICRC, to the victims that it is its duty to protect, or to any other private or public interests requiring protection.

ICRC archives are classified according to time period and domain of activities and decisions of the governing boards. They are managed by staff professionally trained in academic institutions. ICRC staff responsible to manage its archives regularly follows additional specialization courses. Records are organized according to paper and electronic classification. ICRC uses the software ADS (archival description system) to describe and classify records.

Paper archives, photographs and films are stored in archives rooms duly equipped for their protection and conservation according to usual international standards in that matter. Security rules are available to face any risk of damage; an archival security officer is in charge of overviewing its implementation.

ICRC is a member of national and international networks of archives, ICRC archivists regularly take part to scientific conferences and exchanges. It is, among others, member of the section of international organizations of the International Council on Archives.

ICRC archives can support claims and needs of victims of armed violence or conflicts, and their families by:

* providing detention certificates or similar documents attesting their fate, provided that they have been registered by the ICRC;
* providing to governments having cooperated with the ICRC copy of correspondence or documents that might have been lost or destroyed;
* supporting research in ICRC archives (for the period open to the public) by historians or any other investigators of truth & reconciliation commissions.
1. **Use by ICRC of others’ archives in the search on the right to know**

The practice of international criminal tribunals has revealed that in addition to its use for prosecution, the information collected during criminal investigation is also valuable for humanitarian objectives such as the right to know and, in particular, for contributing to the provision of individual answers concerning the fate and whereabouts of missing persons.

In 2005, the ICRC, as chair of the Working Group on Missing Persons in Kosovo, negotiated access to the archives of international organizations, including the International Criminal Tribunal for Former Yugoslavia, that had worked or are still working in Kosovo, particularly those that might possess documentation related to gravesite locations and exhumations carried out in Kosovo directly after the conflict. Formal requests have also been forwarded to the Governments of countries whose military contingents operated in Kosovo within the International Security Force in Kosovo (KFOR). All retrieved information is being carefully processed and analysed in accordance with ICRC working modalities, which are based on confidentiality, and in close cooperation with the relevant national entities, in hopes that it leads to the identification of more human remains and to the location of potential gravesites.

In the same vein, in early 2012, the ICRC and the Office of the Prosecutor of the International Criminal Court concluded a general Memorandum of Understanding according to which the Prosecutor undertakes to assist the ICRC in the identification of material in its archives that could be relevant in the determination of the fate and whereabouts of missing persons where the ICRC is involved in the issue of missing persons.

1. **Building of an environment that is conducive to the use of archives for humanitarian purposes: example of the missing persons**

In its mandated work on missing persons, the ICRC has always worked to ensure that States and relevant authorities are sensitised to the importance to provide access to the information they detain and that is relevant to provide information on those that are unaccounted for in relation to an armed conflict or other situations of violence. For example, in ICRC model law on the missing persons - which aims at proposing national measures to prevent persons from going missing and to protect the rights and interests of the missing and their families (including their right to know) -, the ICRC proposes a specific provision on accessing information on the missing persons, which reads as follows:

*1) State authorities in charge of foreign affairs, defence, justice, the interior and local governments within their respective competence shall cooperate with, provide available information to and afford necessary assistance to the [authority] in the performance of its tasks, in particular in tracing and identifying missing persons.*

*2) Access to the information should be granted to the individual to whom the information relates, relatives and legal representatives of the missing persons, State authorities and other organizations authorized to perform tracing and recovery of missing persons. The data shall be made available in accordance with the relevant legislation on data protection.*

*3) The information shall not be subject to any restrictions except those which are provided by law and necessary to protect national security or public order. Where the requested authorities refuse to provide information on such grounds, all available cooperative means shall be undertaken so as to provide to the [authority] the information strictly required to trace the missing person or identify human remains.*

*4) The [authority] and other concerned State authorities shall cooperate with the International Committee of the Red Cross and the National Red Cross/Red Crescent society, in accordance with their mandates, with a view to tracing the missing persons and protecting the rights of their families.*

*5) A request for providing the data on the missing person may be submitted to the [authority] by the relative of such a person or by State authorities. The [authority] shall study and decide on such a request within 30 days from the date of its submission.*

*6) A person unsatisfied with the decision of the [authority] on his/her request may refer this decision to the court within 30 days from the date of its adoption.[[1]](#footnote-1)*

It is accompanied by the following comment:

*In order for the [authority] to fulfil its tasks, it is essential that cooperation with other public agencies and bodies be effective. Much of the information that is relative to the tracing and identification of missing persons to be provided to the inquirer will come from various governmental agencies/ministries at the national or local level. There must be a clear commitment and active support of all relevant ministries in the fulfilment of their clearly defined roles in collecting and processing information related to missing persons.*

*Access to personal data should be granted to the individual to whom the information relates. All persons have to be informed of the existence, use and disclosure of personal information relating to them, and this includes the missing persons and their relatives. The right to obtain a copy and to challenge the accuracy and completeness of the data and to have details amended as appropriate should also be provided for.*

*The controller of the files should be allowed to deny access, in part or totally, where the information sought contains references to other individuals or sources of information received in confidence, including information protected by confidentiality agreements concluded for a humanitarian purpose. Access could also be regulated when it could be expected to seriously threaten an important public interest (national security, public order, etc.), be seriously detrimental to the interests of other persons or impede or jeopardize the purpose for which the information was collected, including humanitarian purposes.*

In addition, the ICRC welcomed in 2012 the adoption by the UNGA of its resolution 67/177 on the missing persons where States, national institutions and, as appropriate, intergovernmental, international and non-governmental organizations are specifically invited to ensure the development and proper management of archives pertaining to missing persons and unidentified remains in connection with armed conflict, as well as access to those archives in accordance with relevant applicable laws and regulations (operational paragraph 13).

June 2013

1. The full text of the ICRC model law on missing persons is available at : http://www.icrc.org/eng/resources/documents/misc/model-law-missing-300908.htm [↑](#footnote-ref-1)