

The ICRC's Initiative on Strengthening Legal Protection for Persons Deprived of their Liberty in Non-International Armed Conflict

What is the initiative?

The ICRC is currently undertaking a major consultation process aimed at strengthening legal protection for persons deprived of their liberty in non-international armed conflict (NIAC). This initiative is grounded in Resolution 1 adopted at the 31st International Conference of the Red Cross and Red Crescent in 2011. In Resolution 1 the International Conference invited the ICRC, in cooperation with States and other relevant actors, to pursue research, consultation and discussion on how to ensure that international humanitarian law remains practical and relevant in providing legal protection to all persons deprived of their liberty in relation to armed conflict. The focus of the project is on NIAC, the most prevalent form of armed conflict today. The resolution also asked the ICRC to submit a report with a range of options, including its recommendations, for strengthening the law to the next International Conference in 2015.

Why does this area need strengthening?

There is a significant disparity between the robust and detailed provisions applicable to the deprivation of liberty in the context of international armed conflicts, and the very basic rules that have been codified for NIACs. This relative absence of specificity within IHL has caused uncertainty over the source and content of the rules governing detention in NIAC, and discussion and disagreement continue regarding the applicability and adequacy of human rights law, as well as the precise contours of customary IHL. There is general recognition that IHL in relation to detention in NIAC is inadequate, and that further reflection on how to strengthen the law is necessary.

What has the consultation process involved?

The process is being carried out through consultations with States and other relevant actors. This has included four regional consultations of government experts throughout 2012 and 2013, and two thematic consultations of government experts in 2014. To ensure a thorough and productive discussion, the ICRC limited participation in these consultations to a geographically representative selection of States, also taking into account previous experience with armed conflict. In these consultations, the ICRC sought the participants' views on whether and how the rules of IHL protecting detainees in NIAC should be strengthened, in four priority areas: (1) conditions of detention; (2) vulnerable categories of detainees; (3) grounds and procedures for deprivation of liberty; and (4) transfers of detainees from one authority to another. Overall, participants have agreed with all the topics that the ICRC identified as key humanitarian problems and with the need to address them. Detailed reports of all consultations are made available on the ICRC website, together with the background documents for the consultations.

What are the next steps?

A consultation meeting for all States will be held on 27-29 April 2015, in Geneva. The purpose of the meeting is twofold. First, all States will be informed of the substantive discussions held so far in the consultation process, and be given an opportunity to contribute their views. Second, there will be a discussion about possible options for the future, for strengthening legal protection in relation to detention in NIAC. The meeting will therefore be a crucial one, as the discussions will inform the ICRC's preparation of a draft resolution and a report presenting options and recommendations for the way forward, for consideration by all States at the next International Conference of the Red Cross and Red Crescent in December 2015.

What is the intended outcome?

The desired goal is to produce an outcome instrument that would strengthen IHL applicable to detention in NIAC. Although the exact nature of such an instrument is still to be determined, States participating in the consultations so far have generally expressed a preference for an outcome of a non-binding nature. Any work on an outcome instrument would begin in 2016 based on a resolution adopted by the December 2015 International Conference.

Where can I get more information?

Information about the initiative, together with copies of all relevant documentation is available on the ICRC website:

- ∅ 'Detention in non-international armed conflict: The ICRC's Legal Work on Strengthening Legal Protection': <https://www.icrc.org/eng/what-we-do/other-activities/development-ihl/strengthening-legal-protection-ihl-detention.htm>

The ICRC is available for bilateral discussions on this initiative at any time, and welcomes any questions or feedback. ICRC contact persons for the initiative are:

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