

Memorandum of Understanding
between
the Government of the Republic of India
and
the International Committee of the Red Cross (ICRC)

1. Preamble:

Whereas the Government of the Republic of India (hereinafter referred to as "the Government"), based on its abiding commitment to democracy, secularism, humanitarian values and transparency,

recognises the valuable contribution that the International Committee of the Red Cross (hereinafter referred to as "the ICRC") can make as a humanitarian, neutral, independent and impartial institution,

whereas visits to persons detained form part of the ICRC's traditional activities,

has agreed to ICRC's request to be allowed to have access to detained persons in connection with the prevailing situation in Jammu and Kashmir,

the Government and the ICRC (hereinafter referred to as "the Parties") hereby agree as follows:

2. Principles and purposes:

2.1 Subject to the provisions of this Memorandum of Understanding, ICRC delegates shall be allowed to visit all individuals arrested, detained, imprisoned in connection with the situation prevailing in J&K (hereinafter referred to as "detainees") under any law to that effect by any authority operating under the responsibility of the State Government or the Government of India.

2.2 ICRC visits to detainees may in no case be interpreted as affecting the status of the detainees, as such visits are allowed by the Government of India on purely humanitarian grounds.

2.3 The delegates will examine only the conditions of detention and the treatment of the detainees they visit. The ICRC does not question the reasons for detention ordered by the authorities.

2.4 The visits will be carried out in accordance with the procedures set out in Article 3 below. In full cooperation with the relevant authorities, they will be conducted in an independent, impartial and constructive spirit, without yielding to pressure from public opinion, the media or any political organization whatsoever.

2.5 ICRC will take adequate care to ensure distinction between the humanitarian considerations relating to detainees, and any kind of activities of public nature and refrain from engaging in, or encouraging the latter activities.

2.6 In conducting these activities, the ICRC undertakes to maintain absolute and complete confidentiality as to its delegates' findings.

2.7 The ICRC delegates will be free to contact the immediate members of families of detainees interviewed by the ICRC, and families will be free to contact the ICRC to help establish links between them and the detainees.

3. Procedures:

3.1 ICRC delegates shall be authorised to visit all persons referred to in Article 2.1 in all detention centres where such persons may be held. They shall be allowed access to all the premises of the detention centre if they so wish, and to see all such detainees held there at the time of their visit.

3.2 They shall be given all necessary facilities to carry out interviews in private with any detainees falling within their purview. Each interview will be held in a place selected by the delegates within the place of detention and shall not be limited in time. The delegates will be assisted by an ICRC expatriate interpreter.

3.3 ICRC delegates may repeat their visits according to the needs they observe.

3.4 The delegates may record the identities of detainees whom they regard as falling within Article 2.1 mentioned above. The competent authorities shall provide the delegates with lists of detainees. If they so request, the delegates shall receive all relevant information on movements (whereabouts, transfers, releases, admissions to hospital, deaths, etc.) of detainees, including those they have already visited.

3.5 If, during their visits, ICRC delegates come across detainees who have had no contact with their relatives, they will assist them in establishing links with their families within India.

3.6 Where appropriate, ICRC delegates may offer assistance to the authorities in improving the material or psychological conditions of the detainees.

4. Conduct of visits:

4.1 The authorities shall assist the ICRC in establishing speedy communication channels between the delegation and the competent authorities of the State and Central Government. Liaison officers will be appointed by the authorities concerned to facilitate implementation of this agreement.

4.2 The delegates will inform the authorities of each visit they plan to make. Details of the notification procedure will be agreed upon at working level with the concerned authority, taking into consideration the shared interest of developing a smooth and speedy process.

4.3 Each visit will be conducted in accordance with ICRC customary procedures, as spelled out in the enclosure. The main stages of the visit will include:

- an initial interview with the authorities in charge of the place of detention,
- a visit of all premises in the place of detention,
- interviews in private with the detainees,

- a final interview with the authorities in charge of the place of detention.

4.4 Several ICRC visiting teams may operate simultaneously in different places of detention. The composition of the teams will depend on specific conditions in each place to be visited. They will be made up solely of expatriate personnel.

4.5 ICRC medical delegates shall be entitled to converse with and examine, in private, all the detainees of their choice. ICRC medical delegates will receive from the authorities such assistance as necessary and feasible.

5. Reporting:

5.1 ICRC delegates will report orally to the person in charge of the place of detention at the end of their visit as a matter of routine. In so far as possible, the person in charge will take the delegates' remarks into consideration.

5.2 In addition, a written confidential report will be submitted to the competent authorities as notified by the Government. These reports, and all other communications, will be drafted in an objective and constructive way. They will take account of local conditions and customs, as well as any material difficulties encountered by the administration in charge. In line with recognised ICRC practice, the reports are intended solely for the information of the Government.

5.3 The Parties undertake to maintain a confidential dialogue on all questions of humanitarian concern raised in the reports.

5.4 The ICRC and its personnel undertake to maintain total confidentiality concerning its findings during and after its visits. This confidentiality shall be respected even after the end of this agreement.

5.5 In any publication issued by the ICRC or the Government, only the number of places and detainees visited and the dates of visits shall be mentioned. No public comments on conditions of detention or suggestions put forward by the ICRC shall be made. Any other information regarding the visits may be published only on agreement between the Parties.

6. Final Provisions:

6.1 The present Memorandum of Understanding shall enter into force as soon as it has been approved by both Parties.

6.2 It will be brought to the knowledge of all competent authorities in the Government.

6.3 This Memorandum of Understanding may be amended by mutual consent of the Parties. Any such amendment(s) shall be set out in writing and signed by both Parties.

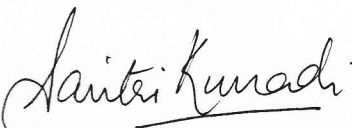
6.4 Disputes shall be settled by mutual consultation between the Parties.

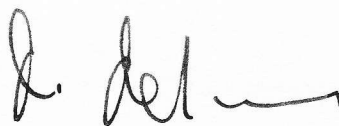
6.5 This Memorandum of Understanding may be terminated by either Party giving written notice to the other.

In witness whereof, the undersigned, being duly authorised for this purpose by the Parties hereto, have signed the present Memorandum of Understanding in New Delhi on this Twenty Second Day of June, Nineteen Hundred and Ninety Five.

For the Government of
India

For the International
Committee of the Red Cross


(SAVITRI KUNADI)
Joint Secretary(UN)


(DAVID DELAPRAZ)
Regional Delegate

Enclosure

Procedures for the Conduct of ICRC Visits

1. Clearance for ICRC visiting teams

The ICRC will present to the Government of India for its clearance the names of all expatriate personnel whom it proposes for its field operations in India, a reply to which would be forthcoming within three weeks.

2. Size and Composition of ICRC visiting teams

The size of the team of ICRC delegates visiting a place of detention depends on the number of detainees and on the prevailing material conditions of detention. Therefore, ICRC teams may include delegates, physicians or nurses, and interpreters.

3. Duration of ICRC visit

These factors also influence the duration of a visit, which may last from one to several days. The ICRC will take care to ensure that the arrangements for the stay of the team would be such as to preclude any activities of public nature.

4. Number of ICRC teams

The number of teams that may operate in the State of J&K would be decided upon by mutual agreement between the Parties.

5. Notification of ICRC visit

The ICRC will give the relevant authorities of the Government sufficient notice for the conduct of their visits. This notice should normally be not less than a fortnight.

6. Pattern of ICRC visit

An ICRC visit to a place of detention usually follows the same pattern, no matter what the place i.e.:

(a) Initial interview with the authorities in charge of the place of detention

The main purpose of the initial interview are:

- to present the ICRC (its principles, activities, methods) to the authorities,
- to explain the purpose of the visit and work out visiting procedures with the authorities,
- to obtain the administrative information (identity of the authorities, capacity of the place of detention, number of detainees, categories and lists of detainees if available, etc.) required to conduct the visit,
- to learn how the place is run, the main problems facing the authorities, the improvements made by them since the previous visit, etc.

(b) Visit of all premises in the place of detention

During this second stage of the visit, the delegates visit all the facilities in the place detention: cells, dormitories, toilets, showers, yards, visiting rooms, kitchens, workshops, rooms set aside for sports, leisure or religious purposes, punishment cells, etc. The delegates ask to have access to all these premises from the first visit.

This general tour is usually made in the company of a member of the prison staff, who can act as a guide and answer the delegates' questions.

The main purposes of this visit of the premises are:

- to gain a complete and detailed view of the organisation of the places of detention,
- to see by themselves premises which authorities and detainees will refer to in their discussions.

(c) Interviews in private with the detainees

This third stage is of utmost importance. The delegates must be allowed the time needed to speak in private with the detainees of their choice in a place of their choice. Particulars of the detainees are sometimes taken at this point in the visit.

The main purposes of the interviews in private are:

- to gain an understanding of the conditions of detention and treatment as described by the detainees,
- to take note of the detainees' individual problems (family, medical, etc.) if the ICRC is in a position to help,
- if necessary, to give the detainees the opportunity to correspond with their families within India through family messages duly censored, through post or as otherwise agreed upon.

The interview in private has the advantage of allowing the detainee to speak freely about his problems or any other matter.

The information obtained during each interview gives the delegates a better idea of what life is like for the detainees and supplements the delegates' own observations.

(d) Final interview with the authorities in charge of the place of detention

The final interview is the last stage of the visit. The delegates inform the authorities of their findings, make suggestions and take note of the authorities' replies. In making proposals for improvements in the conditions of detention, the delegates take into account the general standard of living in the country, the country's level of development and the resources available to the authorities.

The ICRC's purpose is neither to condemn nor to protest, it seeks to solve problems together with the authorities.

Sometimes the detaining authorities are not able to follow the ICRC's suggestions for improving the material conditions of detention, even though they feel those suggestions are justified. The ICRC could also propose and offer assistance for such improvements.