DETENTION BY NON-STATE ARMED GROUPS
OBLIGATIONS UNDER INTERNATIONAL HUMANITARIAN LAW AND EXAMPLES OF HOW TO IMPLEMENT THEM
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Report written by Tilman Rodenhäuser (Legal Adviser, ICRC).

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The present study is the result of several years of research in and analysis of reports from International Committee of the Red Cross (ICRC) operations, interviews with non-state armed groups, analysis of documents produced by such groups, and public reports. This work would not have been possible without the commitment and contributions of many people.

We would like to express our gratitude to Tilman Rodenhäuser (legal adviser, ICRC) for leading this project and drafting the study as well as to Jelena Pejic (formerly senior legal adviser, ICRC), who was instrumental in developing initial drafts. This project could not have been completed without the help of colleagues from several departments of the ICRC, most notably the ICRC Archives who identified reports of ICRC visits to detainees in the hands of non-state armed groups; colleagues in the ICRC’s Legal, Protection and Assistance divisions who shared their experiences, provided insights to and diligently reviewed several iterations of this study; legal associates who conducted parts of the research; and colleagues in several delegations who organized or conducted interviews with non-state armed groups.

The ICRC is grateful to members of non-state armed groups who shared challenges they face in the protection of detainees and examples on how they overcame these challenges. Engaging in dialogue on international humanitarian law with all parties to contemporary armed conflicts is indispensable to ensure that international humanitarian law is known, remains practical, and is implemented to protect detainees.

The ICRC would also like to thank Darwin Absari, Mansoor Almansoor, Ben Farley, Camille Faure, Ezequiel Heffes, Zhu Lijiang, Jennifer Maddocks, Eric Mongelard, Jelena Plamenac, René Provost, Marco Sassòli, Sandesh Sivakumaran, Jonathan Somer, Zelalem Tefera, and others who would like to remain anonymous, for peer reviewing a draft of this study in their personal capacity. We are grateful for your expertise, knowledge, and contributions, which were essential to the drafting process.
The mandate of the International Committee of the Red Cross (ICRC) to work for the protection of detainees in the hands of any party to an armed conflict – including non-state armed groups – has rarely been more relevant and needed than today. The reality we face is challenging. Our delegations estimate that over 100 armed groups have detainees. At times, this means a handful of soldiers kept in an abandoned house in a remote village; in other cases, it means thousands of captured soldiers and civilians held in central prisons or makeshift detention facilities in cities under an armed group’s control.

Since I started working in the humanitarian and human rights field, I have visited places of detention covering the whole spectrum, from state intelligence agencies to non-state armed groups. The one similarity I encountered in all these places are the needs of detainees: they are vulnerable to ill-treatment by their capturers and guards, their well-being depends entirely on the capacities and interest of their captors, and many are anxious because they do not know how long they will remain in detention. Visiting captured soldiers to verify that they are being treated humanely, cared and accounted for, and to facilitate contact with their families is one of the ICRC’s oldest humanitarian activities. Many national, regional, and international organizations work in government prisons – very few have access to places of detention by non-state armed groups.

When we engage with any party to an armed conflict, we have to be clear that it is the detaining power’s responsibility to treat detainees humanely and in accordance with international humanitarian law. The power to detain an adversary comes with a legal responsibility for that person’s life and well-being. As an impartial humanitarian organization, we can offer our legal and operational expertise to help detaining authorities to treat detainees in accordance with international law and standards. This is the sole purpose of this study on non-state armed groups’ obligations under international humanitarian law and examples of how to implement them.

In devising this study, our teams spared no effort. We opened ICRC archives, we collected the latest reports from our delegations, we sat down and listened to members of non-state armed groups about the challenges they face and the practices they developed, we went through dozens of “laws”, “codes of conduct”, “policies” or other documents developed by armed groups, and we analysed the rich work done by other experts in this field. We hope this study will reach at least three audiences.

First and foremost, we want it to reach non-state armed groups who have detainees. In this study, they will find a clear list of their international legal obligations on the protection of detainees and examples of how other non-state armed groups have implemented them.

Second, we estimate that about half of all armed groups receive some form of support by a state. Any supporting state has a unique ability – and responsibility – to ensure that their partners operate lawfully, including in the treatment of detainees.

And third, we hope that this study will provide humanitarian organizations, including the ICRC, with clarity on which minimum legal obligations we must ask armed groups to comply with and with a set of concrete examples of how they can do this in practice.

Nils Melzer
Director, International Law, Policy and Humanitarian Diplomacy
INTRODUCTION

Detention – by states and non-state armed groups (NSAGs) – is a reality in armed conflict. In 2021, the ICRC estimated that over 100 armed groups were holding detainees. Detention puts people in a vulnerable situation: their lives and dignity depend on the detaining authority. This vulnerability can be aggravated by various factors, such as the resources available to the detaining authority, the context in which a person is held and the reasons for the detention. Experience shows that detention by NSAGs often presents legal and practical challenges, ranging from a lack of knowledge of international rules and standards on detainee protection, in particular those found in international humanitarian law (IHL), to practical challenges such as how to ensure humane conditions of detention in the dire realities of armed conflict, or how to provide essential judicial guarantees for persons facing criminal charges.

This study presents research conducted by the ICRC on the law and practice relating to detention by NSAGs. It restates the legal framework for the protection of detainees in non-international armed conflict and presents examples of how NSAGs have implemented their obligations. It also presents a limited number of ICRC recommendations on the protection of detainees. It is hoped that this study may provide evidence-based examples of how NSAGs can respect and protect detainees. It may also be of interest for states that consider supporting non-state parties to armed conflicts to protect detainees, humanitarian organizations working for the protection of detainees, and researchers working on related issues.

STRUCTURE OF THE STUDY

The study presents 13 rules that restate IHL obligations binding on all parties to non-international armed conflicts, and makes three additional recommendations.

For each rule, the study gives a short introduction explaining its humanitarian underpinning. These introductions are based on the ICRC’s commentaries to the four Geneva Conventions and their Additional Protocols, which provide additional details on each issue.

The main text under each rule presents examples of measures that NSAGs have taken – or aim to take – to implement the rule or recommendation, based on NSAG practices, reported practices, and doctrine.
SOURCES CONSIDERED IN THIS STUDY

LEGAL SOURCES
Regarding the legal obligations of NSAGs, each rule presented in this study restates IHL obligations applicable in non-international armed conflicts, found in IHL treaty law and in customary IHL, as identified in the ICRC Customary IHL Study. For each rule, the legal sources are cited immediately below. Where relevant, the study also specifies which violations of IHL constitute war crimes or a crime against humanity under the Rome Statute of the International Criminal Court.

The three recommendations presented in this study are not found in the rules that the ICRC identified as part of customary IHL. Instead, they build on the ICRC’s operational experience and common practices observed among NSAGs.

As it remains unsettled whether and to what extent NSAGs have human rights obligations under international law, this study does not include references to international human rights law or standards.

Examples from the practice of NSAGs
Regarding examples of measures that NSAGs have taken – or aim to take – to implement these rules, the study reflects the practice, reported practice, and doctrine of 84 NSAGs that were parties to non-international armed conflicts in 42 states since the 1960s. The sources consulted for this study include:

- “practices” witnessed by the ICRC when visiting detainees held by NSAGs
- “reported practice”, as provided in interviews conducted by the ICRC with representatives of 16 NSAGs
- “doctrine”, meaning the “laws”, “codes of conduct”, “policies” or other documents developed by NSAGs
- NSAG practices cited in public reports and academic research.

In this study, the emphasis is put on the actual practices, reported practice, and doctrine of NSAGs that display an effort to comply with the IHL obligations in question. Importantly, examples of NSAG doctrine have been included as efforts to comply with IHL without verifying that a group fully complied with its own rules. Our research has not focused on practices or doctrine that are contrary to IHL, except where the presentation of IHL violations were deemed helpful to explain misunderstandings of the law.

Over two-thirds of the examples cited in the study come from confidential ICRC sources. To protect its bilateral dialogue with parties to armed conflicts, the ICRC cannot attribute specific examples to either groups or contexts. Instead, the footnotes present basic information in a decontextualized manner, namely: whether an example stems from the practice of a group as observed by the ICRC, from practice reported by the group, or from a group’s doctrine; whether an example could be found with one, some (between two and five), or many (more than five) NSAGs; whether the cited NSAG(s) exercised control over territory; in which region of the world the cited NSAG operated; and at what time. Where available, we included reference to academic research. Moreover, a list of publicly available “laws”, “codes of conduct”, “policies” or other documents developed by NSAGs are listed in the bibliography.

On some issues, NSAG practices have been complemented with recommendations that the ICRC commonly addresses to NSAGs. ICRC recommendations are clearly identified as such.
CONSIDERING THE EXAMPLES PRESENTED IN THIS STUDY IN DIFFERENT OPERATIONAL CONTEXTS

Contemporary armed conflicts involve NSAGs with a range of objectives and capabilities, operating in very different contexts. They range from groups that are primarily involved in hostilities to groups that exercise stable control over territory and are able to act like state authorities. NSAGs that hold detainees exist across the entire spectrum.

Under IHL, all parties to a non-international armed conflict (i.e. states and NSAGs) have the same obligations. Whether a warring party treats detainees in accordance with its IHL obligations varies. It appears to depend on several factors, including the detaining party’s will to implement such obligations, its capacity to do so, and the operational context. For example, even if a group is willing to provide adequate food to detainees, doing so could be significantly hampered in a context affected by famine. Still, the IHL obligations presented in this study set out fundamental guarantees that are not qualified by whether the detaining party has the capacity to implement them. It is well understood, however, that the way these obligations are implemented can vary according to the capabilities of the detaining party. For instance, the obligation to allow detainees to correspond with families can take the forms of letters, phone calls, text messages, video calls, or a message transmitted by the ICRC, depending on what is feasible in the circumstances. Holding the detainee without any family contact, however, is prohibited. In fact, Article 5(2)(a) of Additional Protocol II recognizes that certain conditions of detention must be respected by the detaining party “within the limits of their capabilities”.

By presenting NSAG practices, the ICRC does not necessarily condone them or suggest that they are “best practice”. Often, practices seen by the ICRC during detention visits are not the result of a decision or policy by the detaining NSAG on how to treat detainees but rather a reflection of how the group is able to treat the detainee in light of its capacity and operational context. Thus, these practices are presented as factual information to show different ways in which NSAGs have protected or attempted to protect detainees.

Importantly, not all examples can – or should – be considered as instructive in all contexts: some NSAGs may not be able to adopt certain practices presented in this study; and certain examples will not be suitable or relevant in a specific context. Moreover, this study is not exhaustive. While it is based on a large number of first-hand experiences and observations collected by the ICRC from a representative and diverse set of NSAGs, it nonetheless reflects only a fraction of NSAG practices. This study was designed in the hope that it may help NSAGs think about ways to build the protection of detainees into the planning and conduct of detention activities, and be a tool that states, humanitarians, and others can use to positively influence NSAGs to treat detainees in accordance with IHL.
LEGAL AND PRACTICAL ISSUES RELATING TO DETENTION BY NSAGS

DEFINITION OF “DETENTION”
In this study, the term “detention” is used to describe the confinement of an individual to a bounded area (often, but not necessarily demarcated by physical barriers) from which an individual is unable to leave at will. A situation may amount to detention irrespective of who holds a detainee (a state or non-state party to a conflict), regardless of the reasons used to justify detention or the applicable legal framework.

DIFFERENT TYPES OF DETAINES COMMONLY HELD BY NSAGS
In various contexts, and without prejudice to the lawfulness of such detention, individuals who commonly find themselves in the hands of NSAGs include:

- soldiers or fighters (belonging to a state or an adversary NSAG)
- other persons detained for taking part in fighting or other security reasons, including “spying”
- persons detained and charged for a crime committed in relation to the armed conflict
- persons detained and charged for a common crime committed in an area under the control of the detaining NSAG
- members of the NSAG, who are detained for disciplinary reasons.

Various NSAGs have also taken hostages, which is prohibited under IHL and constitutes a war crime.

IHL seeks to ensure that all persons who take no active part in hostilities – including all detainees – are treated humanely. IHL does not permit any adverse distinction based on nationality; in other words, detained foreigners must be granted similar protection to other detainees.

DIFFERENT FORMS OF DETENTION UNDER IHL
No rule in IHL prohibits detention by NSAGs – rather, IHL is built on the assumption that all parties to non-international armed conflicts will detain; therefore, it sets a number of limits on detention. Prohibited forms of detention include hostage-taking and forms of detention that are outside any regulatory framework (i.e. arbitrary detention). In contrast, other forms of detention are not prohibited as such but regulated. IHL applicable in non-international armed conflicts focuses primarily on two types of detention:

- **Criminal detention** (see Rules 12–13) means the detention of a person who is suspected of having committed a crime, is awaiting trial or sentencing, or who has been convicted of a crime. Some NSAGs arrest, prosecute and sentence members of their own or their adversaries’ forces for alleged crimes, including war crimes. Others, particularly those exercising state-like functions in a particular territory, use criminal detention to maintain “law and order” in the territory under their control. Under IHL, criminal suspects are entitled to essential “judicial guarantees”, meaning a fair trial.

- **Internment** (see Rule 11), which refers to detention for security reasons in situations of armed conflict, i.e. the non-criminal detention of a person based on the serious threat that their activity poses to the security of the detaining authority in relation to an armed conflict. A widely known example of internment is the detention of “prisoners of war” in armed conflicts between states. These persons are not detained for a crime they have allegedly committed but because the detaining authority considers them to pose an imperative security threat, or because detaining them is a way of reducing the military capacity of the enemy.
HOSTAGE-TAKING

While hostage-taking is a frequent occurrence in armed conflict, it is strictly prohibited under IHL and constitutes a war crime (see Rule 2). In practice, this often raises the question of whether detention by NSAGs amounts to hostage-taking (at times colloquially referred to as “abduction” or “kidnapping”). This question can only be answered through a case-by-case assessment. Hostage-taking is, in simple terms, the detention of a person in order to compel – by the threat to kill, injure, or continue to unlawfully detain the hostage – a third party (adversary, family, or other) to act or not act in a certain way. It is the specific intention of compelling a third party to behave in a certain way by threatening to kill, injure or continue to detain a person in violation of IHL that characterizes hostage-taking and distinguishes it from the deprivation of someone’s liberty as a security or judicial measure.

In practice, detainees are frequently exchanged between parties to a conflict following negotiations. Negotiating the release or exchange of a detainee – absent a threat to kill or injure them – does not necessarily turn that detainee into a hostage under IHL. If the person is lawfully detained (see Rules 11–12) or the person’s release is not legally required, negotiations about a detainee exchange or setting other conditions for the detainee’s release is not prohibited and does not turn lawful detention into hostage-taking under IHL. The situation is different, however, if the person’s release is legally required and continued detention clearly unlawful. This would be the case, for instance, if a civilian is detained without a suspicion of having committed a crime or reasonable grounds to believe that the person poses an imperative security threat. In that case, making the release of that person subject to conditions will likely turn detention into hostage-taking. The mere fact of detention of a soldier by an NSAG cannot be seen as hostage-taking.

Even though hostage-taking is unlawful, the IHL obligations on humane treatment (see Rules 1–2) and conditions of detention that preserve their lives and integrity (Rules 3–10) continue to apply and must be respected.

FORMS OF DETENTION FALLING WITHIN THE SCOPE OF THIS STUDY

The study focuses on the protection of detainees in the context of non-international armed conflict. This includes, first and foremost, persons captured during military operations and any other persons in the hands of an NSAG, such as persons arrested for alleged crimes committed during hostilities or in the context of maintenance of “law and order” by NSAGs. IHL rules on the treatment of detainees and their conditions of detention protect all persons detained by NSAGs, which may also include members of the NSAG detained for disciplinary reasons. For example, if they are prosecuted for alleged crimes, they must be afforded a fair trial.
OVERVIEW OF IHL RULES ON DETENTION BY NSAGS

These rules reflect obligations found in Article 3 common to the Geneva Conventions; Articles 4–6 of Additional Protocol II; and Rules 87–103, 118–128, 134–135, 138 of the ICRC Customary IHL Study.

RULE 1. All detainees must in all circumstances be treated humanely and without adverse distinction.

RULE 2. Violence to life and person of detainees – or a threat thereof – is prohibited at any time and in any place whatsoever, in particular:
- murder, including by execution of the death penalty without a fair trial before a regularly constituted court
- torture, cruel or inhuman treatment or punishment and outrages upon personal dignity, in particular humiliating and degrading treatment
- enforced disappearance
- rape and other forms of sexual violence
- corporal punishment
- mutilation, medical or scientific experiments.

IHL further prohibits:
- collective punishments
- uncompensated or abusive forced labour
- slavery and the slave trade in all their forms
- the taking of hostages
- pillage, i.e. stealing of detainees’ personal belongings by the capturing forces
- the use of detainees as “human shields”.

In the ICRC’s view, the fundamental IHL guarantees to protect life and dignity as enshrined in this rule should be understood as also prohibiting parties to the conflict from transferring persons in their power to another authority when those persons would be in danger of suffering a violation of certain fundamental rights upon transfer, such as arbitrary deprivation of life, torture, and other forms of ill-treatment.

RULE 3. Detainees must be provided with adequate food, water, clothing, shelter and medical attention. They must be held in premises removed from the combat zone which safeguard their health and hygiene.

RULE 4. Older detainees and detainees with disabilities are entitled to special respect and protection.

RULE 5. The specific protection, health, and assistance needs of women detainees must be respected. Women detainees must be held in quarters separate from those of men, except where families are accommodated as family units, and must be under the immediate supervision of women.

RULE 6. Children are entitled to special respect and protection. If detained, children must be held in quarters separate from those of adults, except where families are accommodated as family units.
RULE 7. The personal details of detainees must be recorded. Detainees must be allowed to correspond with their families, subject to reasonable conditions relating to frequency and the need for censorship by the authorities. Detainees must be allowed to receive visitors, especially near relatives, to the degree practicable.

RULE 8. The personal convictions and religious practices of detainees must be respected.

RULE 9. Mutilation of dead bodies is prohibited. All possible measures must be taken to prevent the dead from being despoiled. The detaining authority should endeavour to facilitate the return of the dead to their families upon their request. The dead must be disposed of in a respectful manner and the graves respected and properly maintained. With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves.

RULE 10. Impartial humanitarian organizations, such as the ICRC, may offer their services with a view to undertaking humanitarian work in places of detention, in particular to verify the conditions of detention and to restore contact between detainees and their families.

The ICRC recommends that detainees should be released in a safe manner if the detaining authority cannot ensure humane conditions of detention.

RULE 11. Arbitrary detention is prohibited.

RULE 12. No one may be accused or convicted of any act or omission which did not constitute a criminal offence under the law applicable at the time it was committed; nor may a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed.

RULE 13. No one may be convicted of an offence for which they are not personally responsible. No one may be convicted or sentenced except pursuant to a fair trial affording all essential judicial guarantees.

Where appropriate and only with regard to acts that may not be punished with detention, the ICRC recommends that alternative dispute settlement mechanisms should be considered.
THE HUMANE TREATMENT OF DETAINEES
RULE 1

All detainees must in all circumstances be treated humanely and without adverse distinction.
All detainees – be they soldiers or civilians, persons interned for security reasons or alleged criminals – must be treated humanely. The principle of humane treatment underlies all IHL rules protecting detainees. There are no possible justifications for failing to treat detainees humanely.

While there is no legal definition of what is “humane treatment”, it is generally understood as treatment with respect for a detainee’s dignity as a human being. Thus, not injuring or insulting detainees, and keeping them in good physical and mental health, is required for all detainees. What is considered “humane” can, however, vary over time and differ from person to person. For instance, conditions of detention that are humane for a healthy soldier may not be humane for a civilian or a sick person. The meaning of humane treatment may also vary according to age, gender, culture, and state of health or disability of the detainee.

Detainees must be treated without “adverse distinction”. This term means that, first, no detainee may be treated worse based on race, colour, gender, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Likewise, the standards of treatment may not be negatively affected by what group or armed forces the detainee allegedly belongs to or supports, the identification of the detainee as a “spy”, or the designation of their group as “terrorist”, “mercenary”, “foreign fighters” or other.

Second, IHL allows – and requires – differential treatment for individuals or specific groups of detainees where this may be necessary, based exclusively on their needs. For instance, the treatment of a wounded or sick detainee may be prioritized based on medical needs. A person’s age or gender may also justify, and in fact require, differential treatment. Accordingly, as expressed in Rules 4–6, under IHL certain individuals or groups of detainees, in particular women, children, older people, or persons with disabilities, are entitled to differential treatment in detention to ensure their humane treatment.

Detainees from third countries may also have particular needs. They may not speak the language or know the culture, religion, or customs of the NSAG holding them. It is especially important to ensure that these detainees are treated humanely and without discrimination, given their particularly vulnerable position. If feasible, detainees from third countries should be allowed to contact diplomatic representatives.

In practice, the ICRC has seen many examples of parties to an armed conflict – whether state or non-state – treating detainees inhumanely or discriminating against them on the basis of their nationality, ethnicity, religious or political beliefs, or gender. Some NSAGs have explicitly authorized discriminatory treatment in their internal rules, for instance by not granting certain protections to foreign detainees or persons accused of spying. In this study, however, the focus is on examples of the ways in which NSAGs have implemented or endeavoured to implement their obligations under IHL.

Examples of how NSAGs have understood the obligation of humane treatment and the prohibition of adverse distinction

• One NSAG explained that it understands humane treatment as treating detainees in accordance with the rules defined in IHL.

• Many NSAGs treated – or reported treating – all detainees as human beings, without distinction, be they civilians, members of an adversary group, members of the NSAG, or alleged “terrorists”.

• NSAGs have reported that they have not permitted any adverse distinction between detainees of different religious beliefs or ethnic/tribal origins.

Examples of how NSAGs have enforced such policies are listed under Rule 2 below.
RULE 2
Violence to life and person of detainees is prohibited at any time and in any place whatsoever.
Violence to life and person of detainees is prohibited at any time and in any place whatsoever, in particular:

- murder, including by execution of the death penalty without a fair trial before a regularly constituted court
- torture, cruel or inhuman treatment or punishment and outrages upon personal dignity, in particular humiliating and degrading treatment
- enforced disappearance
- rape and other forms of sexual violence
- corporal punishment
- mutilation, and medical or scientific experiments.

IHL further prohibits:

- collective punishments
- uncompensated or abusive forced labour
- slavery and the slave trade in all their forms
- the taking of hostages
- pillage, i.e. stealing of detainees’ personal belongings by the capturing forces
- the use of detainees as “human shields”.

In the ICRC’s view, the fundamental IHL guarantees to protect life and dignity as enshrined in this rule should be understood as also prohibiting parties to the conflict from transferring persons in their power to another authority when those persons would be in danger of suffering a violation of certain fundamental rights upon transfer, such as arbitrary deprivation of life, torture, and other forms of ill-treatment.

This rule reflects IHL obligations found in common Article 3, Articles 4(2) and 5(2) of Additional Protocol II, and Rules 89–97, 103, 122 of the ICRC Customary IHL Study. Violations of many of these rules constitute war crimes and may amount to crimes against humanity (see Article 8(c); 8(e)(vi, xi); Article 7(1)(a, c, f, g, I, k) of the Rome Statute of the International Criminal Court).

During armed conflict, detainees in the hands of “the enemy” are particularly vulnerable. To protect a detainee’s life and physical and mental integrity, all forms of violence to life and person – or threats thereof – are absolutely prohibited at all times and in all circumstances.

Committing violence against the life or physical and mental integrity of detainees is unlawful, inhumane, and unnecessary. Once a person is captured and is therefore no longer taking part in hostilities or otherwise posing a security threat, there is no need from a military point of view to harm the person. Science has concluded that torture and other forms of ill-treatment are not effective in gathering intelligence or influencing enemy behaviour. NSAGs have also put forward the following explanations for why they oppose torture and other forms of ill-treatment:

- Treating detainees humanely may enhance mutual respect for IHL by all parties to an armed conflict and be a stepping-stone towards peace. It can prevent the slippery slope of violence and reprisals between adversaries. For example, in the view of one NSAG, treating detainees humanely may help protect the NSAG’s own members against ill-treatment in the hands of the adversary.
- One NSAG explained that in their experience torture is not effective in gathering intelligence.
- If gaining the support of the communities that live in their areas of operations is integral to their military strategy, committing violence against detained community members runs counter to this goal.
- If appealing for support from states or the international community at large, showing compliance with IHL is important, including with respect to their treatment of detainees.

Reportedly, one NSAG leader has suggested that treating detainees humanely can undermine the adversary’s will to fight: if adversaries fear torture and murder if captured, they will fight
with greater fury. In contrast, the expectation of humane treatment after capture can reduce an adversary’s will to fight because they know they may save their lives by surrendering.  

In practice, it is well known that the risk of ill-treatment is particularly high immediately after capture in the heat of battle, during interrogation, and following the transfer of detainees to another authority. Abuses tend to be more likely if detainees are left in the control of a capturing unit, or lower-ranking members of a group, especially if they lack clear instructions from commanders on the treatment of detainees.

Examples of measures that NSAGs have taken to protect detainees from violence to life and person

Measures to prevent violations:

- NSAGs have developed clear internal rules (such as codes of conduct, or general orders, known by all members) demanding the humane treatment of all detainees and prohibiting all forms of violence to the life and person of detainees.  
- NSAGs have listed elementary rules on the treatment of detainees on a “pocket card” or other documents that are given to all commanders for dissemination among and implementation by their fighters.  
- NSAGs have trained fighters and units responsible for detainees in the handling of detainees and the prohibition of all forms of ill-treatment.  
- NSAGs have required all fighters to make a pledge to adhere to elementary rules on the treatment of detainees.  
- One NSAG has reminded fighters of the rules on detainee treatment before each engagement.  
- NSAGs have ensured that they have clear rules on the treatment of detainees and supervision especially in the hours and days after capturing a person.  
- NSAGs have required that detainees are handed over as soon as feasible to members specialized in interrogation, another unit trained in detainee handling and not directly involved in the fighting, or to a responsible commander.  
- NSAGs have designated a senior commander or a “detainee committee” as responsible for the lawful treatment of detainees, responding to evidence that the absence of a strong chain of command undermines respect for internal rules and orders.  
- NSAGs have allowed detainees to speak, in confidence, to the ICRC and to voice any complaints they might have.  
- NSAGs have taken measures to ensure that detainees are not attacked by the community, for instance by coordinating with the civilian authorities about the presence and security of detainees.  

In the ICRC’s experience, access of detainees to an independent doctor, regular family contact, and the possibility for detainees to raise issues with commanders can help prevent or stop ill-treatment.

Measures to oversee compliance and to stop violations:

- NSAGs have required that commanders are informed of all captures.  
- NSAGs have ensured that commanders exercise strong oversight, for instance by requiring a senior commander to check on the well-being of detainees every few days.  
- One NSAG has changed the commander in charge of a place of detention where there were repeated reports of ill-treatment.  
- One NSAG has updated or revised its internal rules as necessary to address misconduct by its members against detainees.  
- One NSAG has taken measures to prevent detainees attacking each other.
Measures to punish violations:

- NSAGs have imposed disciplinary punishment for those who ill-treat detainees, for instance through a commander, the group’s leadership, or a disciplinary board.\textsuperscript{45}
- NSAGs have established courts to prosecute and punish members responsible for ill-treating or killing detainees.\textsuperscript{46} If trials are conducted to impose disciplinary sanctions, such trials must respect the IHL obligations summed up in Rules 12–13 (fair trial).
- Depending on the gravity of the act, disciplinary sanctions imposed by NSAGs have included: reprimand in private or public; physical exercise or labour; suspension from duty, temporary disarming, demotion, expulsion, expulsion accompanied by a financial punishment, and prohibiting the person from handling detainees; detention of members responsible for the ill-treatment of detainees from the group.\textsuperscript{47}
- One NSAG has explicitly required that disciplinary punishments against members must be humane, not unduly harsh or cruel.\textsuperscript{48}

In the ICRC’s view, the fundamental IHL guarantees to protect life and dignity as enshrined in this rule should be understood as also prohibiting parties to the conflict from transferring persons in their power to another authority when those persons would be in danger of suffering a violation of certain fundamental rights upon transfer, such as arbitrary deprivation of life, torture, and other forms of ill-treatment.\textsuperscript{49}

Transferring a detainee to another authority (a state, or a non-state armed group) is not as such prohibited under IHL. However, it risks putting the life and physical and mental integrity of the detainee in danger if there are indications that the other authority might execute, torture, or otherwise ill-treat the detainee. Protecting the life and dignity of detainees requires that detainees must not be transferred to another authority that would violate their fundamental rights.

In some cases, NSAGs have transferred detainees in disregard of any legal limits, at times as a result of political pressure from their partners in military operations. Yet, others have taken a variety of measures to protect detainees.

Examples of measures that NSAGs have taken to protect detainees against unlawful transfers:

- Where NSAGs were concerned that there would be ill-treatment upon transfer, they have adopted a policy of not transferring detainees to any other group or state to avoid responsibility if the detainee is subsequently ill-treated.\textsuperscript{50}

If the transfer of a detainee is intended:

- NSAGs have assessed carefully prior to any transfer whether there is information that the receiving state or NSAG might execute (including by imposing the death penalty without a fair trial), torture, or ill-treat the detainee, and stopped the transfer when that was the case.\textsuperscript{51}
- NSAGs have informed the detainee of the intended transfer and asked – prior to the transfer – whether they had any fear of being transferred. If the detainee expressed such a fear, the NSAGs halted the transfer.\textsuperscript{52}
- When the receiving authority provided guarantees that the detainee would be treated humanely, one NSAG undertook an assessment whether the guarantee was reliable.\textsuperscript{53}

Note that under IHL, neither political or strategic considerations (for instance that the receiving authority is a partner or a supporter) can be invoked to justify transfers in violation of this rule.\textsuperscript{54}

If the detaining NSAG was unable to transfer the detainee, the following steps have been taken:

- One NSAG has kept the person in detention.\textsuperscript{55}
- One NSAG has released the detainee in a safe area.\textsuperscript{56}
- NSAGs have handed detainees over to their families.\textsuperscript{57}
CONDITIONS OF DETENTION
Detainees must be provided with adequate food, water, clothing, shelter, and medical attention. They must be held in premises removed from the combat zone which safeguard their health and hygiene.
A detaining NSAG is responsible for ensuring humane conditions of detention. It must maintain detainees in good health, protect their lives while in detention, and respect their physical and mental integrity. In this respect, the provision of food, water, clothing, shelter, and medical attention is simply indispensable.

Ensuring that the basic needs of detainees are met will help the detaining NSAG prevent instances of disorder in the place of detention, alleviate anxiety among detainees and lessen the emergence of additional needs. For example, a lack of adequate food or hygiene will likely facilitate the spread of disease among detainees, causing further suffering and also requiring the provision of medical treatment. Similarly, overcrowding in places of detention can lead to poor hygienic conditions, the spread of disease, as well as agitation, despair, and unrest among detainees.

The needs of detainees can vary according to their age, gender, health, or disability, as well as to their culture, religion, and similar factors.

To ensure humane living conditions, the detaining NSAG needs to plan for and dedicate the necessary resources to this task. The detaining authority should – and must if Additional Protocol II applies – provide detainees with a standard of food, water, clothing, shelter, and medical care similar to that enjoyed by the local civilian population, or at least with a standard of living similar to that available to members of the NSAG. Adequate food, water, clothing, shelter, and medical attention are essential elements of humane treatment and must not be made contingent on cooperation by the detainee, e.g. whether the detainee is willing to change allegiance, converts to the religion or beliefs of the NSAG, provides intelligence during interrogation, or complies with the rules set out for the place of detention.

In the context of an armed conflict, detainees are at risk of being harmed by hostilities, such as shelling or bombardment. If captured close to hostilities, it is thus important to transfer detainees as soon as possible away from the combat zone. If this is not possible, detainees must be able to seek shelter like their guards and should not be left in places that exposes them to much greater risk. While the obligation to hold detainees in places away from the combat zone is, to some extent, dependent on the capabilities of the detaining party, it is essential to protect their lives.

In a place of detention, the imperative of humane treatment should mean that detainees held indoors have daily access to the outdoors. In the ICRC’s experience, allowing detainees to do sports, and enabling intellectual, recreational, or educational pursuits, protects their physical and mental well-being and alleviates anxiety and tensions.

Where minimum living conditions cannot be guaranteed, acute humanitarian concerns are likely to arise. Such situations can amount to ill-treatment, and, in extreme cases, result in the death of detainees. While there can be circumstances in which it is particularly challenging to provide detainees with adequate conditions of detention (for instance when detainees are temporarily kept with fighters or if the detaining NSAG has very limited means), conditions must never be less than humane. For example, holding detainees without food and water, or without access to live-saving medical treatment, amounts to inhumane treatment, which is absolutely prohibited and constitutes a war crime.
Examples of essential measures that NSAGs have taken to ensure humane conditions of detention

Based on the practices, doctrine, and views of NSAGs examined for this study, a number of essential measures that NSAGs can and should take to ensure humane living conditions for detainees can be identified.

To have the necessary rules in place, NSAGs should establish clear internal frameworks (a code of conduct, general orders) requiring all members to respect IHL rules related to conditions of detention as reflected in this study. Many NSAGs have indeed defined rules to ensure humane living conditions for detainees and have taken concrete steps to enforce them, as illustrated by the practices listed under Rule 2.

To be able to implement the rules in operations, providing humane conditions of detention requires planning. Many NSAGs have anticipated and planned for the material needs (such as food, shelter, medical supplies) and staffing needs (such as female guards for female detainees) that will arise when taking detainees, or allocated funds for the needs of detainees.

In all parts of the world and in various conflicts, many NSAGs have provided detainees with food and water, hygiene items, and sanitation facilities, clothing, medical care, and accommodation of a similar standard to that available to the capturing forces/guards.

As already emphasized, providing humane conditions of detention is the responsibility of the detaining NSAG. When the detaining NSAG is unable to provide a minimum level of material conditions of detention, the following measures should be considered to protect the life and physical and mental integrity of detainees:

- Allow families to provide assistance to detainees, in particular during family visits.
- Allow assistance by external actors, including humanitarian organizations (see Rule 10), religious charities, international organizations, and supporting states.
- Transfer the detainee to an authority that is able to provide for their needs.
- Release the detainee in a safe manner.

Any assistance provided by families or external actors should not replace or diminish the quantity of food provided by the detaining NSAG and should be used only to improve the situation of detainees.

The following sections present more detailed examples of measures that NSAGs have taken to provide detainees with humane conditions of detention.

Food and drinking water:
- NSAGs have provided detainees with sufficient food and drinking water (in quantity and in quality), for instance in cooperation with local authorities.
- One NSAG has allowed detainees to prepare their own food.
- One NSAG has provided food to which the detainee is accustomed (based on their religious/cultural background).
- If detainees are required to work, one NSAG has increased their food rations.

Hygiene:
- NSAGs have provided detainees with facilities to wash themselves and their clothes regularly, in accordance with local standards.
- NSAGs have provided detainees with soap, toothpaste, toothbrushes, and other items necessary for hygiene.
- NSAGs have provided detainees with access to toilets – or other adequate places – as often as needed and according to local standards.
- If permanent access to toilets was not possible, NSAGs have provided facilities in the cell (as a last resort, these have been buckets).
- One NSAG has provided separate hygiene facilities for women (see also Rule 5).
• One NSAG has asked detainees to maintain hygienic conditions and regularly clean their place of detention, and provided them with the necessary means to do so.\textsuperscript{36}

**Clothing:**
• NSAGs have allowed detainees to keep their uniforms or clothing.\textsuperscript{79}
• NSAGs have provided detainees with adequate clothing (taking into account the local climatic conditions).\textsuperscript{80}
• NSAGs have provided detainees with one additional set of clothing to wear when the other one is being cleaned.\textsuperscript{81} Some have provided detainees with water, soap, and the opportunity to wash their clothing.\textsuperscript{82}

The ICRC recommends that NSAGs also provide detainees with the necessary means to repair their clothing to ensure that clothing lasts as long as possible.

**Medical care:**
• NSAGs have conducted a medical assessment for any new detainee to identify medical needs.\textsuperscript{83}
• NSAGs have asked detainees about their needs and provided medical care according to medical need.\textsuperscript{84}
• One NSAG conducted, with the support of humanitarian organizations, a campaign against scabies.\textsuperscript{85}
• If health care has not been available in the place of detention, NSAGs have referred detainees to health-care facilities in the surrounding area, or allowed/requested humanitarian organizations to transfer the person.\textsuperscript{86}
• In order to provide for urgent medical needs, NSAGs have:
  – ensured medical care through the same personnel that provides medical care for the capturing forces/guards\textsuperscript{87}
  – allowed personnel with medical skills who were among the captured to provide medical care to other detainees.\textsuperscript{88}
• NSAGs have asked non–military medical personnel from the area of the place of detention to care for the medical needs of detainees.\textsuperscript{89} Medical personnel must not, however, be forced to perform medical functions, even for the benefit of detainees.
• To ensure the independence of medical care, one NSAG has instructed its forces not to force medical personnel to carry out acts contrary to their professional ethics.\textsuperscript{90}

To ensure that detainees' health is maintained, the ICRC recommends NSAGs do the following:
• Identify in initial health assessments any acute health conditions and injuries that must be treated immediately and chronic conditions that require continuous treatment (such as diabetes, hypertension, and others).
• Provide detainees with at least a level of medical care comparable to that available to the general population in the surrounding area.
• Inform detainees of the medical procedures and medication prescribed to them, and respect a detainee's decision to refuse procedures or treatment, except where the detainee is unable to respond (for instance because they are unconscious). Ideally, the detainee's explicit consent should be provided in writing.
• Respect decisions by medical staff regarding a detained patient, such as the need for a person to be hospitalized or to be transferred to a facility offering the required health care (including where this can be accomplished only in combination with a release).
• Facilitate the vaccination of detainees to the same extent as the general population.

**Accommodation:**

*Protecting detainees against the dangers arising from hostilities:*
• NSAGs have removed – where possible – detainees from the combat zone to places of detention that are at a sufficient distance from hostilities.\textsuperscript{91}
• NSAGs have kept detainees in places outside military camps because military camps risk being attacked.\textsuperscript{92}
• One NSAG has taken security measures for detainees to protect them from attack, such as digging trenches or constructing shelters.93
• NSAGs have removed detainees from a place of detention if that place comes under attack or if attacks are expected.94
• NSAGs have released detainees when they could not ensure their safety.95

Holding detainees in an adequate place of detention
• NSAGs have kept detainees in a place of detention (such as cells in a military camp;96 detention camps;97 prisons;98 houses;99 other adequate shelter100) that are protected from heat, cold, and rain.101
• NSAGs have provided detainees with living conditions (sufficient space, mattresses/mats, blankets, natural light and ventilation, mosquito nets where required) similar to those of the capturing forces/guards.102
• When detention facilities became overcrowded, one NSAG has released detainees or housed them in adequate facilities nearby where feasible.103

Adequate access to the outdoors:
• NSAGs have allowed detainees to move within the boundaries of the detention facility instead of confining them to cells.104
• In some contexts, NSAGs have allowed detainees to move freely in areas surrounding the place of detention.105
• If detainees were confined in cells, NSAGs have allowed them access to the outdoors (for instance in the courtyard with daylight and sunshine) and enabled them to exercise.106

The ICRC recommends that access to the outdoors should be allowed for a minimum of two hours per day.

Recreational and educational activities:
• NSAGs have allowed detainees to read, write, play games, do sports or watch films, and provided them with necessary materials, such as books, newspapers, games, radios, paper, and pens.107
• NSAGs have organized educational activities (lessons, workshops) for detainees.108
RULE 4
Older detainees and detainees with disabilities are entitled to special respect and protection.
When detained, older persons and persons with disabilities require differentiated treatment.

All detainees must be treated humanely and without adverse distinction, and the ways to ensure such treatment must be adapted to a person’s specific needs and the distinct risks they face. For instance, older detainees may have certain dietary, medical, or other health requirements.

Considering and providing for the needs of and risks faced by older persons or persons with disabilities is a cross-cutting issue that needs to be considered with regard to all IHL obligations on the protection of detainees.

Examples of measures that NSAGs have taken in the treatment of older persons and persons with disabilities

Note that very limited practice could be found on this rule. This is partly because a number of NSAGs avoid detaining older persons or persons with disabilities for humanitarian, operational, or cultural reasons.\textsuperscript{109}

- One NSAG reported that they do not detain older people.\textsuperscript{110}
- NSAGs have ordered their members to pay special attention to the safety and needs of particularly vulnerable detainees.\textsuperscript{111}
- NSAGs have ordered their members to release older people, sick people, and persons with disabilities as soon as possible after capture.\textsuperscript{112}
The specific protection, health, and assistance needs of women detainees must be respected. Women detainees must be held in quarters separate from those of men, except where families are accommodated as family units, and must be under the immediate supervision of women.
Most places of detention are populated by a majority of men and detention regimes are tailored to their needs. However, women are also detained in armed conflicts. When detained, they require differentiated treatment, consistent with the prohibition of adverse distinction. For example, menstruating women need specific hygiene items and more access to sanitary facilities, and pregnant or nursing women require tailored nourishment and medical care. Moreover, Additional Protocol II prohibits carrying out the death penalty on pregnant women or mothers of young children.113

In particular, women must be held in quarters separate from those of men and under the direct supervision of women, except where families are held together. While providing separate quarters and supervision by female guards is, to some extent, dependent on the capabilities of the detaining party,114 the protection needs underlying this obligation are fundamentally important. Women and girls face gender-distinct threats of assault or violence, including rape and other forms of sexual violence. Such threats may arise from other detainees, as well as from guards and other people working in the place of detention.

Considering and providing for the needs of and risks faced by women is a cross-cutting issue that needs to be considered with regard to all IHL obligations on the protection of detainees.

Examples of measures that NSAGs have taken in the treatment of women

- NSAGs have reported that they do not detain women, or that they have adopted a policy of not detaining pregnant women.115
- NSAGs have ordered their members to pay special attention to the safety and needs of women and particularly vulnerable detainees.116
- In light of a lack of separate facilities, one NSAG has used house arrest as an alternative to the detention of women.117
- NSAGs have ordered their members to release pregnant women or women with young children as soon as possible after capture.118

Separate quarters:

- NSAGs have detained women in places of detention separate from men, or in different sections or cells within the same place of detention.119
- NSAGs have provided separate hygiene facilities for women where women and men are held in separate cells but the same place of detention.120
- NSAGs have kept female detainees under the supervision of female guards.121 If the detaining forces consist only of men, one NSAG has taken on female guards to supervise women.122
Rule 6

Children are entitled to special respect and protection. If detained, children must be held in quarters separate from those of adults, except where families are accommodated as family units.
This rule reflects IHL obligations found in Articles 43(a–d) and 52(a) of Additional Protocol II and Rules 120 and 135 of the ICRC Customary IHL Study.

Children – meaning persons below the age of 18 – may only be detained as a measure of last resort and for the shortest appropriate period of time. Where a child is facing criminal charges, judicial proceedings must be adapted to juveniles and alternatives to judicial proceedings should be sought. Children should not be prosecuted for mere association with an armed force or armed group. Moreover, Additional Protocol II prohibits pronouncing the death penalty on persons who were under the age of 18 at the time of the offence.\(^{123}\)

If children are detained, they have age and gender-specific needs and face distinct risks, including with regard to food, medical care, physical exercise, and access to education. The detaining NSAG is responsible for taking into account the risks child detainees face and providing for their needs. This is a cross-cutting issue and needs to be considered with regard to all IHL obligations on the protection of detainees.

When capturing children who are members of opposing armed forces or armed groups, the detaining NSAG should consider that their recruitment or use in hostilities in the vast majority of cases has violated these children’s rights: children must not be recruited into armed forces or armed groups and must not be allowed to take part in hostilities (generally under the age of 18, with some limited exceptions).\(^{124}\) In other words, such children have themselves been the victims of a violation of international law.

The ICRC recommends that, whenever feasible, detained children should be released safely or transferred to civilian child protection actors. This can be civilian agencies in the territory in which the armed group operates, including non-governmental and international child protection actors.

As of 2022, 31 armed groups and de facto authorities had signed a “Deed of Commitment” with the organization Geneva Call under which they commit, among other things, “to treat humanely children who are detained or imprisoned for reasons related to the armed conflict, in accordance with their age and gender-specific needs, recognizing that deprivation of liberty may be used only as a measure of last resort and for the shortest appropriate period of time. The death penalty will not be pronounced or executed on a person for any offence committed while a child.”\(^{125}\)

Examples of measures that NSAGs have taken regarding the treatment of children

- NSAGs have committed to treat detained children humanely and in accordance with their specific needs.\(^{126}\) NSAGs have ordered their members to pay special attention to children’s safety and needs.\(^{127}\)
- NSAGs have ordered their members not to detain children, or to release children as soon as possible after capture.\(^{128}\) NSAGs have recognized that deprivation of liberty may only be used as a measure of last resort and for the shortest appropriate period of time.\(^{129}\)
- NSAGs have kept detained members of the same family together in the same place of detention.\(^{130}\) If children are detained without family members, NSAGs have kept them separate from adults or in different sections or cells within the same place of detention.\(^{131}\)
- NSAGs have taken steps to ensure that children continue to receive an education while detained, either in the place of detention or outside.\(^{132}\)
- NSAGs have committed not to pronounce or carry out the death penalty on a person for any offence committed while a child.\(^{133}\)
- NSAGs have committed to taking gender-specific needs into account in the treatment of detained boys and girls.\(^{134}\)
Release or hand over children to civilian child protection actors:

- NSAGs have released detained children in handovers assisted by humanitarian organizations, such as the ICRC and UNICEF, including by agreeing standard handover protocols.\(^{135}\)
- One NSAG has committed to applying non-custodial and civilian alternatives to detention for children, and ordered that detained children be transferred from military to civilian detention where feasible.\(^{136}\)
RULE 7

The personal details of detainees must be recorded. Detainees must be allowed to correspond with their families, subject to reasonable conditions relating to frequency and the need for censorship by the authorities. Detainees must be allowed to receive visitors, especially near relatives, to the degree practicable.
Registering sufficient personal details to clearly identify a detainee is essential for several reasons. It permits the detaining NSAG to keep track of detainees, helps prevent ill-treatment or disappearances, allows for the tracing of those reported missing, and enables family notifications and visits. It also informs the detaining authorities of how many detainees are in its power and allows for adequate planning, both regarding logistics and guarding staff. To the extent feasible, personal data should be stored with adequate data protection measures in place, especially if stored electronically (i.e. lists on computers or phones) or if containing biometrical information.

While facilitating family contact is, to some extent, dependent on the capabilities of the detaining party,137 regular and meaningful contact with the outside world is essential to ensuring the mental well-being of detainees and their families. Such contact can take the form of family visits, letters, telephone calls, video calls, electronic messages, or messages sent through the ICRC. The detaining NSAG may censor such correspondence, for instance to prevent sensitive information that is harmful to the NSAG’s security being disclosed, or to prevent the spread of false information.

Allowing and facilitating detainees’ contact with their families helps avoid anguish and unnecessary suffering, both of families and detainees. The ICRC has observed that it also helps reduce tensions and violence by and among detainees and thus contributes to maintaining good order in places of detention.

Contact between detained children and parents is particularly important.

Following capture, and subject to the detainee’s consent, the detaining forces should proactively inform a detainee’s family of the capture, if feasible. This can be done directly, through diplomatic representatives, through the ICRC, or another impartial humanitarian organization. Every day, the ICRC and National Red Cross and Red Crescent Societies help families to find missing relatives, including detainees. Too often, this work is very difficult because detainees have disappeared, are not properly accounted for, or family contact is denied.

Examples of measures that NSAGs have taken to operate a registration system

- NSAGs have developed clear procedures to register all detainees.138
- NSAGs have maintained an up-to-date system of essential information on detainees, either manually (registration book, a card register) or in a digital database.139
- NSAGs have required that the registration of detainees be under the authority of a qualified administrator, their “military police”, or the person in charge of the detainee or the place of detention.140
- NSAGs have recorded information enabling the identification of a detainee with sufficient precision, which, depending on the context, has included:141
  - the detainee’s names; age; place of origin; where applicable military rank, division in the armed group, military task, duration of military service; health condition
  - the detainee’s names, address, phone number, their tribe’s leader, the regional leader, and the local leader of the place of origin.
- NSAGs have allowed the ICRC, and other impartial humanitarian organizations, to visit detainees and to record their details.142

Examples of measures that NSAGs have taken to facilitate contact between detainees and their families

- NSAGs have enabled detainees to contact their families shortly after capture.143
- NSAGs have allowed detainees to contact their families through cards or letters.144 Such cards or letters have, if deemed necessary, been read – and possibly censored – by the NSAG.145
- NSAGs have allowed detainees to call their families.146
• NSAGs have allowed families to visit detained family members.147
• To protect the hidden nature of a place of detention, one NSAG transferred detainees to an outside place to meet family members.148

The ICRC would remind NSAGs that if visits are permitted, they must not ask families for money, goods, or services in exchange for the possibility of visiting a detainee.

If direct contact between the detainee and the family is not possible, or in addition to direct contact:
• NSAGs have allowed impartial humanitarian organizations, such as the ICRC, to establish contact between detainees and their families.149
• NSAGs have informed impartial humanitarian organizations, such as the ICRC, of the names and personal details of detainees, and permitted the ICRC to transmit that information to the family.150
• NSAGs have informed families or the adversary of the name and personal details of the detainee and their physical and mental well-being, either directly or through a middle person.151
• One NSAG allowed foreign detainees to contact the diplomatic representatives of their countries of origin.152
• NSAGs have published the names and personal information of detainees (on radio, a website, social media).153

The ICRC recommends that information is only provided to families, diplomatic representatives, or published with the consent of the detainee to protect the detainee and their family. Detainees must not be humiliated by the publication of their pictures or videos. To this effect, one NSAG prohibited the taking of any pictures or videos of detainees.154
RULE 8

The personal convictions and religious practices of detainees must be respected.
Respect for personal or religious beliefs (irrespective of the religion) and allowing detainees to perform or not to perform religious duties is important for detainees’ mental well-being. Especially if detention continues for protracted periods, detainees risk developing higher levels of stress and anxiety. Respect for detainees’ personal convictions and religious practices can help the detaining NSAG reduce tensions or violence among or by detainees and thus facilitate the management of the place of detention.

**Examples of measures that NSAGs have taken to ensure respect for personal convictions and religious practices**

- NSAGs have ordered members to respect the personal convictions and religious beliefs of all detainees and allowed detainees to practise their religion.\(^\text{155}\)
- NSAGs have provided detainees with religious books\(^\text{156}\) and with a suitable place to practise their religion.
- NSAGs have allowed detainees to perform religious functions for other detainees, performed services through their own military chaplains, or allowed a person from surrounding communities to perform a religious service for detainees.\(^\text{157}\)
- One NSAG has allowed detainees to access religious facilities that were located close to the place of detention.\(^\text{158}\)
DETENTION BY NON-STATE ARMED GROUPS

RULE 9

Mutilation of dead bodies is prohibited. All possible measures must be taken to prevent the dead from being despoiled. The detaining authority should endeavour to facilitate the return of the dead to their families upon their request. The dead must be disposed of in a respectful manner and the graves respected and properly maintained. With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves.
Irrespective of the reason why a detainee dies, it is essential to preserve the dignity of the deceased by treating their remains respectfully. Their remains should be honourably buried, if possible according to the rites of the religion to which they belonged, and the location of the grave recorded. To protect their dignity and their families, their pictures should not be published.

Learning about the death of a detainee is extremely important for their family for obvious emotional reasons. But it can also be important for a range of legal and administrative issues that may arise. All available information about a deceased detainee must be recorded. The family needs to be informed of the detainee’s death and, if feasible, the body should be returned to the family. If direct contact with the family is not possible, the ICRC may be able to assist in that.

**Examples of measures that NSAGs have taken to ensure appropriate handling of deceased detainees**

- NSAGs have treated deceased detainees with respect, including when returning the body to the family or during burial.\(^{159}\)
- NSAGs have reported that medical authorities would certify death.\(^{160}\)
- NSAGs have informed families of deceased detainees,\(^{161}\) or an impartial humanitarian organization such as the ICRC.\(^{162}\)
- NSAGs have returned the body of deceased detainees to their family.\(^{153}\) If that was not possible, they buried the detainee, and marked and recorded the grave.\(^{164}\)

If detaining NSAGs have been unable to return the bodies of deceased detainees to the family:

- NSAGs have asked and allowed an impartial humanitarian organization to facilitate the return of detainees’ remains.\(^{165}\)
- NSAGs have informed the family of the location of the grave.\(^{166}\)

The ICRC recommends that NSAGs should, if feasible, provide a death certificate to the family, ideally issued by a medical professional. When a deceased detainee is buried, the body should be identified before burial and buried in a respectful manner (if possible in accordance with the rites of the religion of the deceased detainee). Bodies should be buried individually, except in unavoidable circumstances requiring a collective grave. All information pertaining to detainees who have died should be centralized under a same system (e.g. a list or Excel table) and records should be kept in a safe manner and made available to families when necessary. The location of the grave must be recorded. The detaining NSAG should investigate the cause of the detainee’s death and take necessary steps to prevent further deaths.\(^{167}\)
RULE 10

Impartial humanitarian organizations, such as the ICRC, may offer their services with a view to undertaking humanitarian work in places of detention, in particular to verify the conditions of detention and to restore contact between detainees and their families.
This rule reflects IHL obligations found in common Article 3 and Rule 124 of the ICRC Customary IHL Study.

Allowing impartial humanitarian organizations, such as the ICRC, to access places of detention is important for the physical and mental integrity of detainees and may also benefit the detaining authorities.

During visits to places of detention, the ICRC speaks to detainees in private and without witnesses, listens to their concerns and needs, and speaks to the detaining authorities on their behalf.

The ICRC can help the detaining authorities by providing practical recommendations on how to ensure respect for the detainees’ fundamental rights and improve their living conditions. In many armed conflicts, the warring parties allow the ICRC to facilitate communication between detainees and their families. Furthermore, the ICRC is experienced in operating as a neutral intermediary to facilitate the release of detainees. The ICRC may also provide essential humanitarian relief, such as food or medicine for detainees, when doing so is the only way to ensure detainee health and adequate living conditions, subject to an assessment by its staff of the related needs on site.

The ICRC operates under a long-standing policy and practice of confidentiality, meaning it will keep confidential its observations, its discussions with the detaining authority, and the information it receives from detainees. It will also only inform the detaining authority of complaints voiced by a detainee if the detainee consents. The ICRC does not share such information with other parties to the conflict or the general public.168

Examples of measures that NSAGs have taken to allow humanitarian work in places of detention

- NSAGs have contacted the ICRC and asked it to visit places of detention under their control.169
- NSAGs have responded positively to requests by impartial humanitarian organizations, such as the ICRC, to visit places of detention, including those situated close to hostilities.170
- NSAGs have developed internal rules to grant impartial humanitarian organizations, such as the ICRC, access to places of detention.171
- NSAGs have developed a written agreement with impartial humanitarian organizations, such as the ICRC, to allow the organization to conduct visits to places of detention.172
- When allowing the ICRC to visit places of detention, NSAGs have accepted the ICRC’s standard working procedures:173
  - allowing ICRC staff to visit all parts of a place of detention and all detainees of interest to it
  - allowing the ICRC to speak to any detainee without witnesses, i.e. allowing its delegates to speak privately to any detainee without guards being present or any threats against the detainee
  - allowing the ICRC to repeat its visits
  - providing the ICRC with a list of detainees or allowing the ICRC to register detainees and compile such a list.
- If for security reasons it was not possible to permit the ICRC to visit a place of detention, NSAGs have allowed and helped the ICRC meet detainees in another, safe place.174

ICRC visits should not be made conditional on whether the adversary allows the ICRC to visit detainees.175
**In the ICRC’s view, detainees must be released in a safe manner if the detaining authority cannot ensure humane conditions of detention itself, with the help of partners, or by inviting humanitarian assistance.**

Ensuring humane conditions of detention can be demanding for the detaining NSAG, for instance when the security situation is volatile or when the group does not have the means to provide for the basic needs of detainees. In practice, many NSAGs choose to release detainees shortly after capture for operational, humanitarian or cultural reasons.

From a legal point of view, shortcomings in the ability to provide for detainees’ basic needs can jeopardize the imperative of keeping detainees safe and ensuring their humane treatment. The inability to provide for humane conditions of detention risks violating the detaining NSAG’s legal obligations and may, in certain circumstances, amount to ill-treatment, which is absolutely prohibited. If the detaining NSAG cannot effectively address and remedy such a situation, it must take other appropriate measures, such as requesting humanitarian assistance or, ultimately, releasing detainees in a safe manner.\(^{176}\)

It is at all times prohibited to kill detainees – or soldiers who surrender or are wounded – including if they cannot be cared for.\(^ {177}\)

**Examples of why and how NSAGs have released detainees**

- NSAGs have released detainees in a safe manner for several reasons, including to avoid spending resources to care for the detainee,\(^ {178}\) if their basic needs could not be provided for,\(^ {179}\) if their security could not be guaranteed,\(^ {180}\) or as a sign of political good will.\(^ {181}\)
- One NSAG transferred detainees into the hands of a neutral state that accepted detaining soldiers on its territory.\(^ {182}\)
- When a detainee was released, NSAGs have ensured their safety by:
  - releasing the detainee in an area from which they can reach a place of safety\(^ {183}\)
  - asking the detainee whether they have concerns with being released in the designated area\(^ {184}\)
  - transporting the detainee to an inhabited area from which the detainee can return home safely\(^ {185}\)
  - releasing the detainee through the services of the ICRC or another impartial humanitarian organization.\(^ {186}\)

The ICRC will only facilitate or otherwise be involved in a release operation if the detainee gives informed consent to being released and transported to a specific place and handed over to a specific authority.

\(^{176}\)The ICRC will only facilitate or otherwise be involved in a release operation if the detainee gives informed consent to being released and transported to a specific place and handed over to a specific authority.
THE PROHIBITION OF ARBITRARY DETENTION AND IHL RULES ON CRIMINAL LAW DETENTION
IHL applicable in non-international armed conflicts primarily addresses two types of detention:

- **Criminal detention**, meaning the detention of a person who is suspected of having committed a crime, is awaiting trial or sentencing, or who has been convicted of a crime.

- **Internment**, which refers to detention for security reasons in situations of armed conflict, i.e. the non-criminal detention of a person based on the serious threat that their activity poses to the security of the detaining authority in relation to an armed conflict.

These two types of detention have different objectives and require different safeguards to protect detainees:

- For criminal law detention, see IHL obligations summed up in Rules 12–13.
- For internment, see IHL obligations and recommendations presented in Rule 11.

This legal difference is reflected in the practice of many NSAGs: while the ICRC has regularly seen – in the same place of detention – soldiers or fighters captured by an NSAG in the context of hostilities and persons detained for alleged crimes, in several cases NSAGs have applied different procedures to the two categories of detainees.187

Ensuring the lawfulness of detention – for criminal law reasons or for internment – can be challenging. In practice, answering the following questions can assist the detaining NSAG in ensuring protection against arbitrary detention and guide it towards the required legal procedures:

- Why is the person being detained? Does the person individually pose an imperative security threat or is the person suspected of having committed a crime? Is the detention in line with your group’s code of conduct and orders?
- Has the responsible commander or judicial authority reviewed the decision to detain?
- Has the person been told why they are being detained and have they been permitted to present arguments against the detention?
- Should the person be released, for instance, because:
  - the person is not – or no longer – personally posing an imperative security threat?
  - the person is not personally suspected of a crime, or while suspected of having committed a crime, there is no risk that the person will evade trial?
  - humanitarian reasons require the person’s release, i.e. because the person is seriously wounded or sick?
  - operational reasons require release, i.e. there is not enough capacity to provide for the needs of the detainee and to keep the person in custody safely?
- If the person is kept in detention, what legal procedure is required?
  - For internment for a person who poses an imperative security threat, see Rule 11.
  - For fair trial guarantees for a person charged with a crime, see Rules 12–13.

At times, NSAGs’ practical inability to conduct trials or to care for detainees has led to orders being given not to take detainees but to kill adversaries.188 If this means that detainees – or, for example, soldiers who are wounded or who surrender – are executed, this is a war crime. In such circumstances, the NSAG should release the detainees as soon as possible. It may not kill detainees. At all times, preserving the lives of the wounded and sick, persons who surrender, and of detainees must be the paramount concern.
RULE 11

Arbitrary detention is prohibited.
While any detention is likely to cause anxiety for detainees and their families, the harm is especially severe when the reasons for or duration of detention are uncertain, or when the fate of the detainee rests exclusively in the hands of the immediate captors or local commander. In the words of one NSAG, it is “prohibited to irrationally arrest persons”. IHL prohibits arbitrary detention in order to protect people from the severe distress of indefinite or groundless loss of liberty without recourse to an authority capable of ensuring fairness and due process. Under IHL, the prevention of arbitrary detention therefore requires clearly defined, transparent, and lawful grounds for detention, along with a process adequate to determine whether those grounds are met in a particular case.

For criminal law detention, IHL provides detailed rules that safeguard against arbitrary detention and punishment (see Rules 12–13). These include a fair trial by a regularly constituted court that affords all essential judicial guarantees.

For internment, IHL applicable in non-international armed conflict does not define permissible grounds. Nor does it set out the required procedural safeguards. The following paragraphs therefore present some of the procedural safeguards for internment that the ICRC considers necessary – as a matter of law and policy – if arbitrary detention is to be avoided, and examples of how armed groups have implemented them.

**Procedural safeguards for people subjected to internment**

In many contexts, NSAGs detain members of their adversary – be they members of government armed forces or fighters of other NSAGs. NSAGs frequently refer to these types of detainees as “prisoners of war” despite the fact that as a matter of law the status of “prisoner of war” only exists in conflicts between states. These detainees are not charged with a crime but detained for security reasons, i.e. to prevent them from continuing to fight. In most cases, this has meant that the NSAG detains these persons because they are a member of the adversary and without an elaborate review procedure, if any.

In exceptional circumstances, civilians might also pose an imperative security threat justifying internment, for instance if they take a direct part in hostilities or provide concrete military support to a party to the conflict. Often, however, the sources alleging that a civilian poses a security threat are opaque, are based on intelligence reports, and may present a risk of error. Thus, if civilians are interned, the review procedure is particularly important.

In light of this reality, the ICRC recommends a set of basic procedural safeguards for any internment related to armed conflict.

**Defining grounds and procedures to avoid arbitrary detention**

To avoid people being interned for vague reasons and without effective control, grounds and procedures for internment must be established by the NSAG leadership in a set of rules that are respected by NSAG members and enforced by the NSAG’s internal disciplinary system. Thus, NSAGs must provide grounds and procedures for internment in rules that are considered binding by all members, which could be their laws, rules, code of conduct, general orders, or similar instructions. Having grounds and procedures established in an NSAG document should also provide transparency and predictability to people subjected to internment, which is particularly important for civilians living in areas in which NSAGs operate.
The ICRC understands that in practice such rules might not exist when the first detainees are taken, and that it may take time and resources to define and implement effective review procedures. At the very least, NSAGs should – if they do not have such grounds and procedures in place – take the necessary steps towards defining and implementing them without delay.

**Implementing grounds and procedures to avoid arbitrary detention**

In all cases, and as a first and preliminary step, the ICRC recommends that from the moment a person is detained, without delay, a clearly established process should determine whether the captured person indeed poses an imperative security threat. Anyone for whom this is not the case, except where they are suspected of having committed a crime, should be released immediately. This practice has been observed with some NSAGs. In case of doubt, NSAGs have used their intelligence or justice department to make the determination.

If a person is kept in detention for security reasons, the ICRC recommends the three broad grounds and procedures below to ensure that internment is not arbitrary.

1. **Internment is an exceptional measure of control. A person may be interned for imperative reasons of security only.**

   In the ICRC’s view, a person may be interned for “imperative reasons of security” only, meaning in exceptional circumstances in which the detention is necessary to protect the detaining authority or civilians against an imperative security threat. This standard is based on long-standing practice in armed conflicts and strikes a balance between considerations of humanity and military necessity. It is upon the detaining authority to prove that each detainee poses such a threat.

   **Examples of persons that NSAGs frequently consider posing an imperative security threat**
   - “soldiers” or “fighters” captured during hostilities
   - anyone taking up arms or participating in hostilities against the group
   - spies or “collaborators”
   - persons planning or committing acts of sabotage or other serious harm against the group.

   Some NSAGs have also provided reasons for detaining people that are problematic. In the view of the ICRC, these reasons cannot – without additional justification – be considered as amounting to an imperative security threat or be accepted as a sufficient ground for internment. Such problematic cases include the internment of:
   - relatives of soldiers or fighters
   - persons merely suspected of being a soldier or a fighter
   - persons working for the adversary in a civilian function
   - persons supporting the adversary politically, persons who share the adversary’s ideology or religion, or persons living in a territory controlled by the adversary
   - persons who provide adversaries with food or medical care
   - persons alleged not to have paid “taxes” imposed by the NSAG.

   Holding a person solely to extract money, for demanding political concessions, or for the sole purpose of exchanging that person against a detainee held by the adversary likely amounts to hostage-taking and is prohibited under IHL (see Rule 2).

2. **The person must be informed promptly, in a language they understand, of the reasons for internment.**

   For the mental well-being of a person, and to enable them to challenge the internment, the detaining NSAG must inform an interned person promptly, and in a language that the person understands, of the reason for internment. Some NSAGs have done so in practice.
(3) A review process to determine the lawfulness of internment must be provided.

In the ICRC’s view, this process should provide the following safeguards:

• The internee has the right to challenge, with the least possible delay, the reasons and lawfulness of their internment.
• The authority reviewing such challenges must possess the independence and impartiality necessary to function as an effective check against arbitrary or unlawful detention and have the power to order the release of detainees.\(^{207}\)
• The detaining authority should periodically – for example every six months – review whether the detainee continues to pose an imperative threat to security and to order release if that is not the case.

It is the responsibility of the detaining NSAG to verify that each individual is detained for a valid reason and to permit the internee to challenge the internment. The ICRC is aware that NSAGs rarely conduct reviews for captured members of government armed forces. The assessment of the reasons for their detention might initially be straight-forward: they pose an imperative security threat. This conclusion might, however, change if circumstances evolve. For instance, a soldier may no longer pose an imperative security threat if the conflict ended, if the armed force or group that the person belonged to no longer exists, if the person is seriously wounded or sick, if the individual can credibly dissociate from the group they belonged to, or if a promise and sufficient assurances are given that the person will not return to a fighting role.

Examples – which is limited with regard to review procedures – of steps that NSAGs have taken to ensure that these safeguards are provided

• NSAGs have allowed detainees to challenge the reasons for detention and present arguments and evidence in their favour.\(^{208}\)
• NSAGs have used a commission, a board, a “court”, a religious authority, or something similar to conduct the review.\(^{209}\) Reviews have been conducted by (military) judges, civilian members of the group, lawyers, or religious leaders in such review bodies.\(^{210}\)
• One NSAG has established a review body that visits places of detention and has the authority to review grounds for detention and order the release of detainees.\(^{211}\)
• NSAGs have conducted reviews regularly, for instance every few months.\(^{212}\)

(4) Under IHL, detainees must be released – in a safe manner – as soon as the reasons justifying detention no longer exist.

The prohibition of arbitrary detention requires that as soon as the reasons justifying detention no longer exist, the person must be released. There will no longer be a justification – legally or practically – for detaining the person. Releasing detainees as soon as possible can be in the interest of the detaining authority as it saves military, human, and financial resources.

Examples of circumstances in which NSAGs have released detainees

• NSAGs determined that the detainee does not pose, or no longer poses, a security risk.\(^{213}\)
• NSAGs have released seriously wounded detainees.\(^{214}\)
• NSAGs released detainees on humanitarian grounds, for instance because the person has been in detention for a long period or is particularly vulnerable (such as a wounded or sick person).\(^{215}\)
• NSAGs released detainees to their families or tribes after obtaining a guarantee that the individual would not rejoin the adversary’s armed forces.\(^{216}\)
• NSAGs have released detainees of lower military rank.\(^{217}\)
• NSAGs have seen releases as a gesture of good will and as easing their burden of catering for detainees.\(^{218}\)
• NSAGs have included the release of detainees in ceasefire or peace agreements.\(^{219}\)
• NSAGs have released all internees at the latest at the end of hostilities.\(^{220}\)
RULE 12

No one may be accused or convicted of any act or omission which did not constitute a criminal offence under the law applicable at the time it was committed; nor may a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed.
This rule reflects IHL obligations found in common Article 3, Article 6(2–4) of Additional Protocol II, and Rule 101 of the ICRC Customary IHL Study. The sentencing or execution of a detainee without due process constitutes a war crime (see Article 8(2)(c)(iv) of the Rome Statute of the International Criminal Court).

No one may be punished for a criminal act unless the act was prohibited in the law that was in force and was accessible to that person at the time the act was committed. Logically, a person can only know that they committed a crime if they knew, or were able to know, that the act committed was prohibited by law and punishable.

IHL does not specify which “law” an NSAG may apply when conducting criminal trials. Based on the wording of relevant IHL treaties and their drafting history, the ICRC supports the view that NSAGs can conduct trials based on the law of the state in whose territory they operate or a law adopted by an NSAG, provided this law is in compliance with international law.

Importantly, if an NSAG adopts new criminal laws or changes existing ones, such laws can only be applied to crimes committed after the law was adopted or changed and to persons who were at that time under their control.

Examples of types of law based on which NSAGs have conducted trials

• NSAGs have continued to apply the criminal law already in place prior to the conflict, in particular with regard to offences committed by civilians.

• NSAGs have continued to apply the criminal law already in place prior to the conflict but made changes specific to the operational context or in line with the group’s values.

• NSAGs have developed new criminal law defining prohibited conduct and sentences, in particular in relation to military or security matters.

• Where available and pertinent, NSAGs have:
  – modelled new criminal law following the example of criminal laws of states
  – relied on criminal law that was developed in the region prior to the conflict.

• One NSAG has relied on international criminal law as a legal basis for prosecuting international crimes, such as war crimes.

The ICRC recommends that if a new criminal law is adopted, or changes are made to the existing law, they must comply with international law and be published and communicated to the population as soon as they are made.
RULE 13

No one may be convicted of an offence for which they are not personally responsible. No one may be convicted or sentenced except pursuant to a fair trial affording all essential judicial guarantees.
The purpose of a trial is to establish whether a person has committed the crime they are suspected of – or is innocent. As the passing of sentences can have very serious consequences for the convicted individual, any trial must be fair. This means that a number of judicial guarantees must be observed to ensure the fairness of the trial and to allow the accused to defend themselves. These guarantees must be provided by any court that may pronounce prison sentences, be they secular, religious, or anchored in tradition.

Under IHL applicable in non-international armed conflict, minimum guarantees include the following:

- **The court** adjudicating the case must offer the essential guarantees of independence and impartiality.\(^{230}\)

- **The rights of the accused** – the accused must:
  1. be informed without delay of the particulars of the offence alleged against them
  2. be afforded before and during trial all necessary rights and means of defence
  3. be convicted only on the basis of individual penal responsibility
  4. be presumed innocent until proved guilty according to the law
  5. have the right to be tried in their presence
  6. not be compelled to testify against themselves or to confess guilt
  7. be advised on conviction of judicial and other remedies and of the time-limits within which they may be exercised.\(^{231}\)

In practice, it has proven challenging for NSAGs to provide all necessary judicial guarantees for detainees who are accused of having committed a crime. If an NSAG is unable to ensure a fair trial, it must neither pass nor enforce a sentence. In no circumstances can the inability to conduct a fair trial justify arbitrary detention or the execution of a detainee.

Note that these judicial guarantees apply to criminal law trials; they are not legally required for solving disputes between civilians (for instance about land or heritage). For such disputes, see the recommendation on alternative dispute settlement mechanisms at the end of this study.

While IHL does not prohibit the death penalty, imposing it without respecting fair trial guarantees is a serious violation of IHL and constitutes a war crime (see Rule 2).

(1) **The court**

Under international law, a court must offer the essential guarantees of independence and impartiality. Independence means, among other things, that a sentence may only be pronounced by a court that is able to perform its functions without undue external interference. The court, and its judges, must, for example, not be under the direct influence or control of the commander who is responsible for the detainees. Impartiality means that neither the court as such, nor the judges, must be biased against the accused or improperly promote the interests of one side.

**Examples of measures that NSAGs have taken to ensure the independence and impartiality of a court**

- NSAGs have relied on the judicial structure already in place prior to the conflict.\(^{232}\)
- To establish a new court, NSAGs have developed a legal text (a “constitution”, a “basic law”, a “social contract” or another law) that defines that court’s responsibility (jurisdiction), in some cases specifying how it shall be composed (number, qualifications, terms of tenure and tasks of judges) and requiring, by law, its independence from other organs and impartiality.\(^{233}\)
To facilitate the independence, impartiality, and competence of a court, NSAGs have:

- Defined by law how judges are appointed\(^{235}\), and that no one shall have the power or authority to tell judges how they administer justice, except in accordance with the law.\(^{235}\)
- Required that judges shall be independent, for instance by not being members of the group establishing the court.\(^{236}\)
- Set up courts jointly with other groups to ensure that no group alone controls the court.\(^{237}\)
- Required that judges shall be impartial, for instance by assigning them to regions other than their own\(^{238}\) or by instructing them to remain neutral in local and ethnic conflicts.\(^{239}\)
- Required that judges are trained, for instance by having practised law before the conflict broke out.\(^{240}\) If this is not the case, NSAGs have required that judges know the law they apply\(^{241}\) or provided training/university education for judges if necessary.\(^{242}\)

- NSAGs have established mobile courts, meaning that the judges and administration constituting the court have travelled to different locations to administer justice.\(^{243}\)
- NSAGs have convened military courts. In those cases, some NSAGs have required that:
  - judges include members with legal knowledge, for instance legal advisers\(^{244}\)
  - the commander responsible for the members of the detaining NSAG who conduct the trial should not be present during the proceedings.\(^{245}\)

The ICRC recommends that if an NSAG aims to use existing judicial structures, this is only done to the extent that these structures are compliant with international law.

(2) The rights of the accused

To ensure a fair trial, a number of judicial guarantees are today generally recognized as indispensable (see “The rights of the accused” listed above). These judicial guarantees protect the accused against being wrongfully convicted of a crime that they have not committed.

The following judicial guarantees have been affirmed in documents produced by NSAGs and/or applied by reference to criminal procedures already in place prior to the conflict:\(^{246}\)

- Individual criminal responsibility, meaning that a person may only be charged with crimes they are personally accused of having committed.\(^{247}\)
- No one may be accused or convicted of an act or omission that did not constitute a criminal offence at the time it was committed (see also Rule 12).\(^{248}\)
- Once a person has been tried and either convicted or acquitted, the person may not be tried again by the same authority on the basis of the same facts.\(^{249}\)
- The accused must be treated as innocent until proven guilty by a judicial decision.\(^{250}\)
- The punishment regulated by law is commensurate with the crime.\(^{251}\)
- A confession obtained through coercion, such as torture or other forms of ill-treatment, is not valid and cannot be used to prove the crime in court.\(^{252}\)

The ICRC recommends that courts should not rely primarily or exclusively on confessions. Confession-based systems risk incentivizing ill-treatment of detainees to obtain confessions. Instead, other evidence and witness testimonies should be taken and considered.

Examples of rights and means of defence that NSAGs have either affirmed in documents and/or applied in practice

- NSAGs have informed the accused of the charges against them.\(^{253}\)
- NSAGs have allowed the accused to defend themselves during trial, to present evidence,\(^{254}\) and to call and examine witnesses in court.\(^{255}\)
- NSAGs have allowed the accused to have a defence lawyer\(^{256}\) and to communicate with the lawyer prior to trial:\(^{257}\)
  - In some cases, NSAGs provided free legal assistance to those who could not afford a lawyer, for instance through qualified lawyers or law students.\(^{258}\)
In some instances, and where no defence lawyers were available, NSAGs have allowed a community member – such as a family member, an elder, a religious authority, a member of the group – to represent and defend the accused.

NSAGs have required the accused to be present during court proceedings.

NSAGs have ensured that the accused understand the language spoken in the court, either by holding proceedings in such a language or by providing interpretation.

NSAGs have permitted convicted persons to appeal a judgment before a higher court.

The ICRC considers that a right of appeal to a higher tribunal must exist in all criminal trials in armed conflict. The right to appeal has been recognized in most judicial systems, is required under international human rights law, and arguably required by customary IHL. This is particularly important in cases in which the death sentence is applied.

Options for submitting individuals to criminal justice without establishing or operating courts:

- NSAGs have permitted the administration of justice by state authorities and respected their work.
- NSAGs have transferred, or attempted to transfer, detainees into the hands of the state authorities to administer justice.
- If truth and reconciliation processes exist at the national level and involve criminal investigations, NSAGs have handed detainees over to such mechanisms to deal with alleged crimes.

Where appropriate and only with regard to acts that may not be punished with detention, the ICRC recommends that alternative dispute settlement mechanisms should be considered.

It has been observed in practice that many NSAGs rely on traditional, customary, or religious mechanisms to resolve disputes among persons or communities living under their control. Such mechanisms can prove efficient and effective and do not pose legal and capacity challenges comparable to establishing a judicial system and conducting fair trials.

Alternative dispute settlements will be appropriate for settling minor civil or criminal law disputes that affect everyday life. Alternative dispute settlement mechanisms must, however, conform with the NSAG’s legal obligations (see, in particular, the prohibition of inhumane or discriminatory treatment under IHL, reflected in Rules 1 and 2). They should not be used instead of a criminal trial that may result in detention, which must be conducted in accordance with IHL (see Rules 12–13).

Examples of measures that NSAGs have taken to provide for alternative dispute settlement mechanisms:

- NSAGs have relied on traditional, customary or religious dispute settlement mechanisms, or established local dispute resolution mechanisms, to resolve disputes between community members or to address minor crimes.
- NSAGs have offered mediation to resolve disputes between community members. When settling such disputes, NSAGs have relied on religious or customary norms that are well known and accepted by the population in which the dispute arose.
- One NSAG has established reconciliation procedures to avoid detention and re-integrate detainees into society.
- Some NSAGs have recognized that serious criminal cases, in particular war crimes, or cases that can entail detention as a punishment, should not be resolved by a local dispute resolution mechanism.
PUBLICLY AVAILABLE DOCUMENTS DEVELOPED BY NSAGS

The documents listed below are mostly found in Geneva Call’s *Their Words* database (http://theirwords.org/). They present most of the publicly available documents developed by non-state armed groups that the ICRC analysed for this study. Reference to these documents does not affect the legal status of the parties to the conflict who issued them, or mean that they fully correspond to IHL or are fully complied with in practice.


Colombia, Revolutionary Armed Forces of Colombia—People’s Army, *Estatuto*.


Iran, Kurdistan Organization of the Communist Party (Komala), *Penal Procedures and Revolutionary Courts of Komala: Issued by Komala Central Committee March 1985*.


Philippines, Moro Islamic Liberation Front, Bangsamoro Islamic Armed Forces, *General Order No. 2*, 2006.


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END NOTES

1. This includes non-state armed actors that are parties to armed conflicts, as well as groups involved in other situations of violence.


4. For this study, reference is made to the Rome Statute of the International Criminal Court to identify which violations of IHL can be prosecuted as war crimes or amount to crimes against humanity.

5. As explained under Rule 2, the recommendation relating to the principle of non-refoulement results, in the ICRC’s view, from how the fundamental rights protected by common Article 3 should be understood.

6. In a number of instances, states – notably through resolutions adopted in UN organs such as the Security Council, the General Assembly, or the Human Rights Council – as well as human rights experts have called on NSAGs that exercise de facto control over territory to comply with human rights law in addition to respecting their IHL obligations. As a matter of policy, the ICRC takes a pragmatic approach and operates on the premise that “human rights responsibilities may be recognized de facto” if a non-state armed group exercises stable control over territory and is able to act like a state authority. See ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflict*, 2019, p. 54. For further discussion, see Rodenhäuser, “The legal protection of persons living under the control of non-state armed groups”, *International Review of the Red Cross* (IRRC), Vol. 102, No. 951, 2021, pp. 991–1020.

7. Examples are provided in no strict order. Where possible, we have aimed to start either with examples that provide basic steps that should be taken on early, or with examples of measures that are of concern to all detainees before describing specific measures that are of concern in specific circumstances.

8. A significant number of these cases can be found in Geneva Call’s Their Words database, see http://theirwords.org/.


10. See International Convention Against the Taking of Hostages, Article 1, which defines hostage-taking as the seizure or detention of a person (the hostage), combined with threatening to kill, to injure or to continue to detain the hostage, in order to compel a third party to do or to abstain from doing any act as the seizure or detention of a person (the hostage), combined with threatening to kill, to injure or to continue to detain the hostage, in order to compel a third party to do or to abstain from doing any act as an explicit or implicit condition for the release of the hostage. See also International Criminal Court, *Elements of Crimes*, in *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3–10 September 2002*, p. 23.

11. The question of precisely which safeguards are required in non–international armed conflict to prevent arbitrary detention is subject to debate. This lack of legal certainty affects the determination of whether a person is unlawfully detained, must therefore be released, and whether this person might be a hostage. Moreover, it should be recalled that the failure to provide appropriate procedural safeguards for a person who is believed to pose an imperative security threat within a reasonable time does not legally require the person’s release. A failure to provide procedural safeguards may also be remedied by establishing adequate procedures (see Rule 12).


15. Ibid., paras 725–727.

16. Under Rule 88 of the ICRC Customary IHL Study, non–adverse distinction is prohibited on the basis of race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria.

17. Examples of discriminatory rules on the treatment of detainees were found in the doctrine of some NSAGs that either engaged in fighting only or also exercised territorial control in Asia and South America in the 2000s and 2010s.

18. Found in the views of one NSAG that exercised territorial control in Africa in the 2000s.

19. Found in the practice, reported practice, and doctrine of many NSAGs that either engaged in fighting only or also exercised territorial control in Africa, Asia, and South America in the 2000s, 2010s and 2020s. See also C. Rush et al., *From Words to Deeds: A Research Study of Armed Non–State Actors’ Practice and Interpretation of International Humanitarian and Human Rights Norms: Moro Islamic Liberation Front/ Bangsamoro Islamic Armed Forces*, From Words to Deeds Research Project, Geneva, 2022, p. 51.
20. Found in the reported practice of some NSAGs that either engaged in fighting only or also exercised territorial control in Africa and Asia in the 2000s and 2010s.
21. The full rule reads: Mutilation, medical or scientific experiments or any other medical procedure not indicated by the state of health of the person concerned and not consistent with generally accepted medical standards are prohibited. See Rule 92 ICRC Customary IHL Study.
22. Threats of violence to life and person are explicitly prohibited under Article 4(2)(h) of Additional Protocol II and recognized as IHL violations in international jurisprudence. See ICRC, Commentary on the Third Geneva Convention, 2020, common Article 3, paras 658 and 674.
24. Found in the reported practice of one NSAG in Europe that only engaged in fighting in the 1970s.
25. Found in the reported practice of one NSAG in Europe that only engaged in fighting in the 1970s.
26. Found in the doctrine and views of some NSAGs that either engaged in fighting only or also exercised territorial control in Africa, Asia, and Europe in the 1970s, 2000s, 2010s, and 2020s.
28. Found in the practice, reported practice, and doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and South America since the 1980s.
29. Found in the practice and reported practice of some NSAGs that either engaged in fighting only or also exercised territorial control in Africa in the 2000s and 2020s. See also Special Court for Sierra Leone, Prosecutor v. Brima, Kamara, Kanu, Judgment, SCSL–04–16–T, 20 June 2007.
30. Found in the reported practice, and doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa and Asia since the 2000s.
31. Found in the doctrine of some NSAGs that exercised territorial control in Asia in the 2010s.
32. Found in the reported practice of one NSAG that exercised territorial control in Africa in the 2010s.
33. Found in the practice of many NSAGs that have exercised territorial control in Africa, Asia, and Europe since the 1980s.
34. Found in the practice, reported practice, and doctrine of some NSAGs that have exercised territorial control in Asia and South America since the 2010s. See also J. Plamenac, Unravelling Unlawful Confinement in Contemporary Armed Conflicts, Brill Nijhoff, 2021, p. 178.
36. Found in the practice of some NSAGs that exercised territorial control in Africa in the 1980s and 2000s.
37. This practice is common in ICRC visits to NSAG places of detention in all parts of the world.
38. Found in the practice and reported practice of some NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa or Asia since the 2010s.
39. Found in the doctrine of some NSAGs that either engaged in fighting only or also exercised territorial control in Asia and South America in the 1960s and 1990s.
40. Found in the practice and doctrine of some NSAGs that exercised territorial control in Africa and Asia in the 2010s and 2020s.
41. Found in the practice of one NSAG that exercised territorial control in Asia in the 2010s.
42. Found in the practice of one NSAG that exercised territorial control in Asia in the 2010s.
43. Found in the doctrine of one NSAG that exercised territorial control in Asia in the 2010s.
44. Found in the practice of one NSAG that exercised territorial control in Africa in the 1990s and 2000s. In the case of another NSAG, however, such measures were not taken, and detainees were abused by other detainees.
45. Found in the practice, reported practice, and doctrine of many NSAGs that either engaged in fighting only or also exercised territorial control in Africa and Asia in the 2010s and 2020s. See also ICRC, Safeguarding the Provision of Health Care: Operational Practices and Relevant International Humanitarian Law Concerning Armed Groups, ICRC, Geneva, 2015, p. 29; C. Rush, “Moro Islamic Liberation Front/Bangsamoro Islamic Armed Forces”, in Geneva Academy et al, From Words to Deeds, Geneva, 2021, p. 53.
47. Found in the practice, reported practice, and doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and South America since the 1960s. See also ICRC, Safeguarding the Provision of Health Care, p. 29.
48. Found in the doctrine of one NSAG that only engaged in fighting in Africa in the 1980s.
50. Found in the practice and reported practice of some NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa and Asia since the 2010s.
51. Found in the practice of some NSAGs that exercised territorial control in Asia in the 2010s.
52. Found in the practice of some NSAGs that exercised territorial control in Asia and Europe in the 1990s and 2000s.
53. Found in the reported practice of one NSAG that exercised territorial control in Africa in the 2010s.
54. Transfers based on such considerations were seen in the practice of some NSAGs that exercised territorial control in Africa and Asia in the 1990s and 2000s. See also J. Plamenac, *Unravelling Unlawful Confinement*, p. 188.
55. Found in the practice of one NSAG that exercised territorial control in Africa in the 1990s.
56. Found in the practice of one NSAG that exercised territorial control in Asia in the 2010s.
57. Found in the practice and reported practice of some NSAGs that either engaged in fighting only or also exercised territorial control in Africa and Europe in the 1990s and 2000s.
58. The standard of providing detainees with conditions of detention “to the same extent as the local civilian population” is an obligation under Article 5(1)(b) of Additional Protocol II. The idea that detainees should enjoy treatment and conditions at least similar to the capturing forces is found in the Third Geneva Convention as applicable to prisoners of war. See ICRC, *Commentary on the Third Geneva Convention*, 2020, paras 30–38 (introduction).
59. See Article 5(2)(a) AP II.
62. Found in the practice of many NSAGs that have exercised territorial control in Africa since the 1990s. See also Diakonia International Humanitarian Law Centre, *The Legal Status of ISIS–Affiliated Foreign Nationals*, Diakonia International Humanitarian Law Centre, Bromma, 2019, p. 20.
64. Found in the doctrine and practice of many NSAGs that have exercised territorial control in Africa and Asia since the 1970s.
66. Found in the practice of one NSAG that exercised territorial control Asia in the 1980s. See also R. Provost, “FARC justice: Rebel rule of law”, p. 418.
68. Found in the practice of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, Europe, and South America.
69. Found in the reported practice of one NSAG that exercised territorial control in Africa in the 2010s.
70. Found in the practice of one NSAG that exercised territorial control in Asia in the 2010s.
72. Found in the practice of one NSAG that exercised territorial control in Asia in the 1980s, 1990s, and 2000s.
73. Found in the practice of many NSAGs that have exercised territorial control in Africa, Asia, and Europe since the 1970s. See also ACIRC, B AG 219 003–007–01, *Rapports de visites aux prisonniers portugais au Zaire, 9 Juillet 1970*, ICRC, Angola, 1970.
74. Found in the practice and reported practice of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa and Asia since the 1970s.
1967, 24 September 1967

A. J. Siytanco, in the 2020s.

"A collection of codes of conduct issued by armed groups", p. 499.

in the 2010s and 2020s.

Found in the doctrine of one NSAG that exercised territorial control in Asia in the 2010s. See also

Found in the practice and reported practice of some NSAGs that exercised territorial control in Africa and Asia in the 2010s and 2020s.

in the practice of some NSAGs that have exercised territorial control in Africa and Asia since the 1980s.

Found in the practice of some NSAGs that have exercised territorial control in Africa and Asia since the 2000s. See also ONUCI, Rapport sur la situation des Etablissements pénitentiaires en Côte d’Ivoire, p. 103.

Found in the practice of some NSAGs that have exercised territorial control in Africa and Asia since the 2010s.

Found in the practice and doctrine of some NSAGs that have exercised territorial control in Africa, Asia, and South America since the 1990s. See also Geneva Call, Administration of Justice by Armed Non-State Actors, p. 11; ICRC, Safeguarding the Provision of Health Care, pp. 58–59.

Found in the practice of one NSAG that exercised territorial control in Asia in the 2010s and 2020s.

Found in the practice and reported practice of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and Europe since the 1960s. See also ACIRC, B AG 219 003–007–01, Rapports de visites aux prisonniers portugais au Zaïre; ONUCI, Rapport sur la situation des Etablissements pénitentiaires en Côte d’Ivoire, p. 105; see ACIRC, B AG 219 147–001.01, Rapports de visites 1967, 24 September 1967, ICRC, Nigeria, 1967.

Found in the practice, reported practice, and doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and South America since the 1980s. See also Geneva Call, Administration of Justice by Armed Non-State Actors, p. 11; ONUCI, Rapport sur la situation des Etablissements pénitentiaires en Côte d’Ivoire, p. 100.

Found in the practice of some NSAGs that have exercised territorial control in Africa and Asia since the 1990s.

Found in the practice and doctrine of some NSAGs that have exercised territorial control in Africa and Asia since the 1980s. See also A. J. Siytanco, A Closer Look Inside an MILF Detention Facility, Manila Bulletin, 2018.

Found in the doctrine of some NSAGs that have exercised territorial control in Africa since the 2000s. See also O. Bangerter, “A collection of codes of conduct issued by armed groups”, p. 499.

Found in the reported practice of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa and Asia since the 1990s.

Found in the practice of one NSAG that exercised territorial control in Africa in the 2000s. See also N. van Amstel and O. Bangerter, Administration of Justice by Armed Non-State Actors, p. 11; ICRC, Nigeria, 1967; and ONUCI, Rapport sur la situation des Etablissements pénitentiaires en Côte d’Ivoire, p. 90.

Found in the reported practice of some NSAGs that exercised territorial control in Africa and Asia in the 1970s, 1990s, and 2000s.

Found in the practice, reported practice, and doctrine of many NSAGs that have exercised territorial control in Africa and Asia since the 1980s. See also O. Bangerter, Internal Control, p. 105.

Found in the practice and reported practice of some NSAGs that have exercised territorial control in Africa since the 2010s.

Found in the reported practice of some NSAGs that exercised territorial control in Africa and Asia in the 2010s.

Found in the practice and reported practice of some NSAGs that exercised territorial control in Asia in the 1970s and since the 1990s.

Found in the practice of some NSAGs that exercised territorial control in Africa and Asia in the 1960s and since the 2000s. See also ACIRC, B AG 219 147–001.01, Rapports de visites 1967, 24 September 1967, ICRC, Nigeria, 1967; and ONUCI, Rapport sur la situation des Etablissements pénitentiaires en Côte d’Ivoire, p. 90.

Found in the reported practice of some NSAGs that exercised territorial control in Africa and Asia in the 1970s, 1990s, and 2000s.

Found in the practice of one NSAG that exercised territorial control in Asia in the 2000s and 2010s.

Found in the practice and reported practice of some NSAGs that have exercised territorial control in Africa and Asia since the 1990s.

Found in the doctrine of one NSAG that exercised territorial control in Asia in the 2010s. See also A. J. Siytanco, A Closer Look Inside an MILF Detention Facility.
Found in the practice of many NSAGs that have exercised territorial control in Africa and Asia since the 1970s. See also ACICR, B AG 219 003–007–01, Rapports de visites aux prisonniers portugais au Zaire; ONUCI, Rapport sur la situation des Etablissements pénitentiaires en Côte d’Ivoire, p. 100.

Found in the practice and doctrine of some NSAGs that exercised territorial control in Africa and Asia in the 1980s and 2010s. See also O. Bangerter, Internal Control, p. 105.

Found in the practice, reported practice, and doctrine of many NSAGs that exercised territorial control in Africa and Asia since the 1980s. See also N. van Amstel and O. Bangerter, “A collection of codes of conduct issued by armed groups”, p. 501.

Found in the practice and doctrine of many NSAGs that have exercised territorial control in Africa, Asia, and Europe since the 1970s. See also ACICR, B AG 219 003–007–01, Rapports de visites aux prisonniers portugais au Zaire; ONUCI, Rapport sur la situation des Etablissements pénitentiaires en Côte d’Ivoire, p. 101; O. Bangerter, Internal Control, p. 105.

Found in the practice of some NSAGs that exercised territorial control in Africa and Asia in the 2010s.

Found in the practice of some NSAGs that exercised territorial control in Africa and South America in the 1960s, 2000s, and 2020s.

Found in the reported practice of one NSAG that exercised territorial control in Africa in the 2000s and 2010s.

Found in the reported practice of some NSAGs that exercised territorial control in Africa and Asia in the 2000s, 2010s, and 2020s.

Found in the practice and doctrine of some NSAGs that exercised territorial control in Africa and Asia in the 1980s–2000s.

See Article 6(4) AP II.

See Article 5(2)(a) AP II.

Found in the practice and reported practice of NSAGs that either engaged in fighting only or also exercised territorial control in Africa, Asia, and South America in the 1960s and since the 2010s.

Found in the practice, reported practice, and doctrine of many NSAGs that exercised territorial control in Africa, Asia, and South America in the 1960s and since the 1990s. See also N. van Amstel and O. Bangerter, “A collection of codes of conduct issued by armed groups”, pp. 491, 499, and 501.

Found in the practice, reported practice, and doctrine of some NSAGs that have exercised territorial control in Africa and Asia since the 1980s.

Found in the practice and reported practice of many NSAGs that have exercised territorial control in Africa and Asia since the 1990s. See also ONUCI, Rapport sur la situation des Etablissements pénitentiaires en Côte d’Ivoire, p. 100; C. Rush, “Moro Islamic Liberation Front/Bangsamoro Islamic Armed Forces”, p. 52.

Found in the practice of some NSAGs that have exercised territorial control in Africa and Asia since the 1990s.

Found in the practice, reported practice, and doctrine of many NSAGs that have exercised territorial control in Africa and Asia since the 2000s. See N. van Amstel and O. Bangerter, “A collection of codes of conduct issued by armed groups”, pp. 499 and 501; C. Rush, “Moro Islamic Liberation Front/Bangsamoro Islamic Armed Forces”, p. 52.

Found in the reported practice of one NSAG that exercised territorial control in Africa in the 2000s and 2010s.

Found in the practice, reported practice, and doctrine of many NSAGs that have exercised territorial control in Africa, Asia, and South America since the 1980s and 2010s. See also O. Bangerter, “A collection of codes of conduct issued by armed groups”, pp. 499, 501, and 503.

Found in the practice, reported practice, and doctrine of some NSAGs that exercised territorial control in Africa and Asia in the 2010s.

Found in the practice of some NSAGs that exercised territorial control in Africa and Asia in the 2010s.

Found in the reported practice of one NSAG that exercised territorial control in Africa in the 2020s.

Detention by non-state armed groups

Under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, to which 172 states are party, the minimum age of recruitment by NSAGs is set at age 18 (Art. 4.1), the minimum age of compulsory recruitment by states is 18 (Art. 2), and the minimum age of voluntary recruitment by states is 16 or above (Art. 3). Under the African Charter on the Rights and Welfare of the Child, to which 49 African states are party, the minimum age of recruitment both compulsory and voluntary for states is 18 (Art. 22.2). In cases where these instruments do not apply, the applicable minimum age of recruitment for states is 15 under the Convention on the Rights of the Child (Art. 38.3) and 15 for states and NSAGs under Additional Protocol II to the Geneva Convention (Art. 4.3.c) and customary international humanitarian law.

Geneva Call, Deed of Commitment Under Geneva Call for the Protection of Children from the Effects of Armed Conflict.

Found in the practice of many NSAGs that either engaged in fighting only or also exercised territorial control in Africa and Asia in the 2010s. See also Geneva Call, Deed of Commitment, para. 5.

Found in the reported practice and doctrine of some NSAGs that have exercised territorial control in Africa and Asia since the 1990s. See also N. van Amstel and O. Bangerter, “A collection of codes of conduct issued by armed groups”, p. 501.

Found in the practice, reported practice, and doctrine of many NSAGs that have exercised territorial control in Africa, Asia, and South America since the 2000s. See also ONUCI, Rapport sur la situation des Etablissements pénitentiaires en Côte d’Ivoire, p. 92; C. Rush, “Moro Islamic Liberation Front/Bangsamoro Islamic Armed Forces”, p. 52.

Found in the practice of many NSAGs that either engaged in fighting only or also exercised territorial control in Africa and Asia in the 2010s. See also Geneva Call, Deed of Commitment, para. 5.
130. Found in the practice of some NSAGs that exercised territorial control in Africa and Asia between the 1980s and 2010s.

131. Found in the practice and doctrine of some NSAGs that have exercised territorial control in Africa and Asia since the 2000s. See also N. van Amstel and O. Bangerter, “A collection of codes of conduct issued by armed groups”, p. 501.

132. Found in the practice and reported practice of some NSAGs that have exercised territorial control in Africa and Asia since the 1980s. See also N. van Amstel and O. Bangerter, “A collection of codes of conduct issued by armed groups”, p. 501.

133. Found in the doctrine of many NSAGs that either engaged in fighting only or also exercised territorial control in Africa, Asia, and South America in the 1960s and since the 2010s. See also N. van Amstel and O. Bangerter, “A collection of codes of conduct issued by armed groups”, p. 491; Geneva Call, Deed of Commitment, para. 5.

134. Found in the doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and South America since the 2010s.

135. Found in the practice and doctrine of many NSAGs that have exercised territorial control in Africa, Asia, and South America since the 2010s. See also UNSG, Children and Armed Conflict: Report of the Secretary-General, A/74/845–S/2020/525, UN 2020, para. 196.

136. Found in the doctrine of one NSAG that exercised territorial control in Asia in the 2020s.

137. See Article 5(2)(a) AP II.

138. Found in the practice, reported practice, and doctrine of some NSAGs that exercised territorial control in Africa, Asia, and Europe in the 1990s and 2010s. See also J. Plamenac, Unravelling Unlawful Confinement, p. 178.

139. Found in the practice and reported practice of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa and Asia since the 1960s. See also ACICR, B AG 219 147-001.02, Rapports de visites 1968, 01/11/1968, ICRC, Nigeria, 1968; and ACICR, B AG 219 003-007-01, Rapports de visites aux prisonniers portugais au Zaire, ICRC, Angola, 1971.

140. Found in the views of some NSAGs that exercised territorial control in Africa and Asia in the 2020s.

141. Found in the practice and reported practice of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa and Asia since the 2010s.

142. This practice is common in ICRC visits to NSAG places of detention in all parts of the world. See P. Bongard, “The National Movement for the Liberation of Azawad (Mouvement National de Libération de l’Azawad, MNLA)”, p. 18, para. 48.

143. Found in the practice and doctrine of some NSAGs that have exercised territorial control in Africa and Asia since the 2010s.

144. Found in the practice and doctrine of some NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and Europe since the 1990s.

145. Found in the practice of one NSAG that exercised territorial control in Africa in the 2020s.

146. Found in the practice and reported practice of many NSAGs that have exercised territorial control in Africa and Asia since the 2000s.

147. Found in the practice, reported practice, and doctrine of many NSAGs that have exercised territorial control in Africa, Asia, and Europe since the 1970s. See also O. Bangerter, Internal Control, p. 105; P. Bongard, “The National Movement for the Liberation of Azawad (Mouvement National de Libération de l’Azawad, MNLA)”, p. 37; ONUCI, Rapport sur la situation des Etablissements pénitentiaires en Côte d’Ivoire, p. 100.

148. Found in the reported practice of one NSAG that exercised territorial control in Africa in the 2020s.

149. Found in the practice and reported practice of many NSAGs that have exercised territorial control in Africa, Asia, and Europe since the 1960s. See also ACICR, B AG 219 147-001.02, Rapports de visites 1968, 01/11/1968; ACICR, B AG 219 003-007-01, Rapports de visites aux prisonniers portugais au Zaire.

150. Found in the practice and reported practice of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and South America since the 1980s.

151. Found in the practice, reported practice, and doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and South America since the 1970s. See also O. Bangerter, Internal Control, p. 95; J. Plamenac, Unravelling Unlawful Confinement, p. 178 and 183.

152. Found in the doctrine of one NSAG that has exercised territorial control in Africa since the 2010s.

153. Found in the practice, reported practice, and doctrine of some NSAGs that have exercised territorial control in Africa, Asia, and South America since the 1960s. See also N. van Amstel and O. Bangerter, “A collection of codes of conduct issued by armed groups”, p. 491.

154. Found in the doctrine of one NSAG that exercised territorial control in Asia in the 2020s.

155. Found in the practice, reported practice, and doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and South America since the 1970s. See also N. van Amstel and O. Bangerter, “A collection of codes of conduct issued by armed groups”, p. 501.

156. Found in the practice and reported practice of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa and Asia since the 2010s.

158. Found in the reported practice of one NSAG that exercised territorial control in Asia in the 2010s. For a public reference, see A. J. Siatranto, A Closer Look Inside an MILF Detention Facility.

159. Found in the doctrine and reported practice of some NSAGs that either engaged in fighting only or also exercised territorial control in Asia in the 1970s and 2020s.

160. Found in the reported practice of some NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa and Asia in the 2000s.

161. Found in the doctrine of some NSAGs that exercised territorial control in Africa and Asia in the 2020s.

162. Found in the practice of many NSAGs operating in all parts of the world.

163. Found in the practice, reported practice, and doctrine of some NSAGs that either engaged in fighting only or also exercised territorial control in Africa and Asia in the 1970s and 2020s.

164. Found in the reported practice of some NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa since the 2010s.

165. Found in the practice and reported practice of some NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa and South America since the 2000s. See also ICRC, “Colombia: ICRC returns Assembly members’ bodies to families”, news release 07/98, ICRC, Geneva, 10 September 2007; Reuters, “11 bodies handed over in Colombia probe”, Reuters, 2007.

166. Found in the practice, reported practice, and doctrine of some NSAGs that exercised territorial control in Africa and Asia in the 1960s and 2020s.


168. The ICRC's commitment to confidentiality is not unconditional. The purpose and justification for this commitment derive from the quality of the dialogue that we maintain with the authorities and on the humanitarian impact achievable through bilateral, confidential communication. In exceptional and serious circumstances, if we have exhausted all other options and have got nowhere, we may decide to make our concerns public. We do this if we are convinced that it is the only way to improve the humanitarian situation. See ICRC, Action by the International Committee of the Red Cross in the Event of Violations of International Humanitarian Law or of Other Fundamental Rules Protecting Persons in Situations of Violence, cited in JRRC, Vol. 87, No. 858, 2005.

169. Found in the practice and reported practice of some NSAGs that have exercised territorial control in Africa since the 2000s.


171. Found in the practice and doctrine of some NSAGs that have exercised territorial control in Africa, Asia, and South America since the 2010s. See also P. Bongard, “The National Movement for the Liberation of Azawad (Mouvement National de Libération de l’Azawad, MNLA)”, p. 15; ICRC, Safeguarding the Provision of Health Care, p. 58.

172. Found in the practice of some NSAGs that exercised territorial control in Africa in the 1980s, 1990s and 2000s.

173. This practice is common in ICRC visits to NSAG places of detention in all parts of the world.

174. Found in the practice of some NSAGs that exercised territorial control in Africa and Asia in the 1980s, 1990s, and 2000s.

175. While many NSAGs do not make ICRC visits subject to their adversary also permitting ICRC visits, some NSAGs did. That was seen among NSAGs that either engaged in fighting only or also exercised territorial control in Africa, Asia, and Europe in the 1980s, 1990s, and 2000s.

176. The ICRC has a similar view with regard to the release of prisoners of war held by states. See ICRC, Commentary on the Third Geneva Convention, 2020, introduction, para. 114.

177. The killing of detainees in such circumstances were found in the reported practice of some NSAGs that either engaged in fighting only or also exercised territorial control in Asia and Europe in the 1970s, 1980s, 1990s, and 2000s.


180. Found in the practice and reported practice of some NSAGs that have exercised territorial control in Africa since the 2010s.

181. Found in the practice of one NSAG that exercised territorial control in Asia in the 2020s.

183. Found in the practice and reported practice of some NSAGs that have exercised territorial control in Asia since the 2010s.

184. See Rule 2.

185. Found in the practice of some NSAGs that exercised territorial control in South America in the 2020s.

186. Found in the practice and reported practice of many NSAGs that have exercised territorial control in Africa, Asia, and South America since the 2010s. See also P. Bongard, “The National Movement for the Liberation of Azawad (Mouvement National de Libération de l’Azawad, MNLA)”, p. 39.

187. Found in the practice, reported practice, and doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa and Asia since the 2020s. See also Diakonia International Humanitarian Law Centre, The Legal Status of ISIS-Affiliated Foreign Nationals, p. 27; E. Heffes, Detention by Non–State Armed Groups Under International Law, p. 203–204, 220.

188. Found in the practice of some NSAGs that either engaged in fighting only or also exercised territorial control in Asia and Europe in the 1970s, 1980s, 1990s, and 2000s.

189. For instance, the International Criminal Tribunal for the Former Yugoslavia (ICTY) found that the fact that detainees ‘did not know why they held there and what would happen to them’ amounted to cruel treatment. ICTY, Prosecutor v. Mrksic et al., Trial Chamber, judgment, IT–95–13/1–T, 27 September 2007, para. 537.

190. Found in the reported practice of one NSAG that exercised territorial control in Africa in the 2020s.


192. Found in the doctrine, reported practice, and practice and views of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, Europe, and South America since the 1980s. See also E. Heffes, Detention by Non–State Armed Groups Under International Law, pp. 204, 215, and 220. J. Plamenac, Unravelling Unlawful Confinement, pp. 148, 174, and 178.

193. Found in the reported practice of some NSAGs that exercised territorial control in Africa in the 2000s and 2010s.

194. This standard is also reflected in Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 1949, Articles 42 and 78.

195. Found in the practice, reported practice, and doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, South America, Asia, and Europe since the 1970s. See also E. Heffes, Detention by Non–State Armed Groups Under International Law, p. 202; J. Plamenac, Unravelling Unlawful Confinement in, pp. 148, 164–165 and 174; and NPA, Proper Treatment of POWs; and C. Rush, “Moro Islamic Liberation Front/Bangsamoro Islamic Armed Forces”, p. 52.

196. Found in the doctrine of some NSAGs that either engaged in fighting only or also exercised territorial control in Asia and Europe in the 2000s and 2010s. See also J. Plamenac, Unravelling Unlawful Confinement, p. 149.

197. Found in the practice, reported practice, and doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and Europe since the 1970s. See also A. Jackson, From Words to Deeds: A Research Study of Armed Non–State Actors’ Practice and Interpretation of International Humanitarian and Human Rights Norms: The Taliban–Afghanistan, From Words to Deeds Research Project, Geneva, 2022, p. 46; J. Plamenac, Unravelling Unlawful Confinement, pp. 177–178.

198. Found in the practice and reported practice of some NSAGs that either engaged in fighting only or also exercised territorial control in Africa and Asia in the 1990s and 2000s.

199. Found in the practice of some NSAGs that have exercised territorial control in Africa and Asia since the 2010s.

200. Found in the practice and reported practice of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa and Asia since the 1990s. See also J. Plamenac, Unravelling Unlawful Confinement, p. 180.

201. Found in the practice of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and South America since the 2000s. See also E. Heffes, Detention by Non–State Armed Groups Under International Law, pp. 211–212.

202. Found in the practices of many NSAGs that have exercised territorial control in Africa, Asia, and South America since the 1990s. See also E. Heffes, Detention by Non–State Armed Groups Under International Law, pp. 211–212; S. Sivakumaran, “Lessons for the law of armed conflict from the commitments of armed groups: Identification of legitimate targets of prisoners of war”, IRRC, Vol. 93, No. 882, June 2011, p. 474.
205. Found in the practice of some NSAGs that have exercised territorial control in Asia and South America since the 2010s. See also E. Heffes, Detention by Non-State Armed Groups Under International Law, pp. 211–212; J. Plamenac, Unravelling Unlawful Confinement.

206. Found in the practice of some NSAGs that exercised territorial control in Africa in the 2000s. See also J. Plamenac, Unravelling Unlawful Confinement, p. 178 and 183.

207. It should be noted that, in practice, mounting an effective challenge of the reasons for detention will presuppose the fulfilment of several procedural and practical steps, including: i) providing internees with sufficient evidence supporting the reasons for their internment; ii) ensuring that procedures are in place to enable internees to seek and obtain, to the extent feasible, additional evidence; and iii) making sure that internees understand the various stages of the internment review process and the process as a whole. See ICRC, Commentary on the Third Geneva Convention, 2020, common Article 3, para. 761.

208. Found in the practice of some NSAGs that exercised territorial control in Asia and in the 2010s. See also J. Plamenac, Unravelling Unlawful Confinement, p. 173.

209. Found in the practice and reported practice of many NSAGs that have exercised territorial control in Africa and Asia since the 2000s. See also J. Plamenac, Unravelling Unlawful Confinement.

210. Found in the practice and reported practice of some NSAGs that exercised territorial control in Asia and in the 2000s. See also J. Plamenac, Unravelling Unlawful Confinement.

211. Found in the practice of one NSAG that exercised territorial control in Asia in the 2010s.

212. Found in the practice of some NSAGs that exercised territorial control in Asia in the 2000s. See also J. Plamenac, Unravelling Unlawful Confinement, p. 168 ff.

213. Found in the practice and reported practice of some NSAGs that exercised territorial control in Asia and Africa in the 2010s.

214. Found in the practice and reported practice of many NSAGs that exercised territorial control in Africa and South America in the 1950s and since the 2000s. See also D. Murray, Human Rights Obligations of Non-State Armed Groups, p. 252; ONUCI, Rapport sur la situation des Etablissements pénitentiaires en Côte d’Ivoire, p. 103; S. Sivakumaran, The Law of Non-International Armed Conflict, p. 275.

215. Found in the practice and reported practice of some NSAGs that have exercised territorial control in Africa and Asia since the 2000s. See also J. Plamenac, Unravelling Unlawful Confinement, p. 170.

216. Found in the practice, reported practice, and doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and Europe since the 2010s. See also J. Plamenac, Unravelling Unlawful Confinement, p. 165 and 174.

217. Found in the reported practice of some NSAGs that have exercised territorial control in Africa since the 2000s.

218. Found in the doctrine and reported practice of some NSAGs that exercised territorial control in Africa and Asia in the 2000s.


220. Found in the practice of one NSAG that exercised territorial control in Africa in the 1990s and 2000s.

221. Convicting or executing a detainee without respecting essential judicial guarantees is a war crime. See Article 8(c)(iv) of the Rome Statute of the International Criminal Court.

222. See also ICRC, Commentary on the Third Geneva Convention, 2020, para. 728. Note that the English version of article 6(3)(c) AP II, as opposed to the French one, which speaks of “law”, not of “domestic and international” law. As the ICRC Commentary of 1987 explains: “The possible co–existence of two sorts of national legislation, namely, that of the state and that of the insurgents, makes the concept of national law rather complicated in this context.” See ICRC Commentary on AP II, para. 4605. This view was supported by states during the negotiations and subsequently. See M. Bothe et al., New Rules for Victims of Armed Conflicts, Martinus Nijhoff Publishers, 2013, pp. 716–717, para. 1.7; S. Sivakumaran, The Law of Non–International Armed Conflict, p. 561. See also ICRC, Commentary on the Third Geneva Convention, 2020, para. 728.


224. Found in the practice, reported practice, and doctrine of some NSAGs that have exercised territorial control in Africa, Asia, and Europe since the 2010s. See also Geneva Call, Administration of Justice by Armed Non–State Actors; D. Murray, Human Rights Obligations of Non–State Armed Groups, p. 232; R. Provost (ed.), Rebel Courts, p. 260–261.

226. Found in the doctrine of one NSAG that exercised territorial control in Asia in the 1990s and 2000s. See also S. Sivakumaran, *The Law of Non-International Armed Conflict*, p. 553.


228. Found in the reported practice and doctrine of some NSAGs that exercised territorial control or engaged in fighting in Europe and South America in the 1980s and 1990s. See also R. Provost, “FARC justice: Rebel rule of law”, p. 192; S. Sivakumaran, *The Law of Non-International Armed Conflict*, p. 554.

229. Convicting or executing a detainee without respecting essential judicial guarantees is a war crime. See Article 8(c)(iv) of the Rome Statute of the International Criminal Court.

230. Under IHL, it is understood that if courts are established by non-state parties to armed conflicts, they must be independent and impartial. See ICRC, *Commentary on the Third Geneva Convention*, 2020, common Article 3, paras 725–731.

231. Article 6 AP II. See also Rule 100 CIHL; ICRC, *Commentary on the Third Geneva Convention*, 2020, common Article 3, para. 721.

232. Found in the practice and reported practice of some NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and Europe since the 2010s.

233. Aspects of these examples have been found in the practice and doctrine of many NSAGs that have either engaged in the fighting only or have also exercised territorial control in Africa, Asia, Europe, and South America since the 1960s. See also A. Jackson and F. Weigard, *Taliban Courts in the West and North–West Afghanistan*, Humanitarian Policy Group (HPG), 2020, p. 4.

234. Found in the practice and doctrine of some NSAGs that either only engaged in the fighting or also exercised territorial control in Africa and Asia since the 1980s. See also ILAC, *ILAC Rule of Law Assessment Report*, p. 86.

235. Found in the doctrine of some NSAGs that exercised territorial control in Africa and Asia in the 2010s and 2020s.

236. Found in the practice of some NSAGs that exercised territorial control in Asia in the 2010s. In other cases, however, these judges were members of the NSAG, as seen in the practice of one NSAG that exercised territorial control in Asia in the 2010s. See also Geneva Call, *Administration of Justice by Armed Non-State Actors*, p. 10; in contrast, ILAC, *ILAC Rule of Law Assessment Report*, pp. 91–94.


239. Found in the practice of one NSAG that exercised territorial control in Asia in the 2010s. See also R. Provost, “Legality of rebel courts”, p. 139.


241. Found in the practice, reported practice, and doctrine of many NSAGs that have either engaged in the fighting only or have also exercised territorial control in Africa and Asia since the 2000s. See also Geneva Call, *Administration of Justice by Armed Non-State Actors*, p. 11; ILAC, *ILAC Rule of Law Assessment Report*, p. 86.


243. Found in the practice of some NSAGs that exercised territorial control in Africa and Asia in the 2010s. See also A. Jackson and F. Weigard, *Taliban Courts in the West and North–West Afghanistan*, p. 4.

244. Found in the doctrine of one NSAG that exercised territorial control in Africa in the 2010s.

245. Found in the practice and doctrine of some NSAGs that exercised territorial control in Asia in the 1990s and 2010s. See also R. Provost, “FARC justice: Rebel rule of law”.

247. Found in the doctrine of some NSAGs that either engaged in fighting only or also exercised territorial control in Africa and Asia in the 2000s.

248. Found in the doctrine of some NSAGs that exercised territorial control in Africa, Asia, and South America in the 1980s, 1990s, 2000s, and 2010s.

249. Found in the doctrine of some NSAGs that have exercised territorial control in Africa, Asia, and Europe since the 2000s. See also R. Provost, *Rebel Courts*, p. 238.


251. Found in the doctrine of one NSAG that exercised territorial control in Asia in the 2020s.

252. Found in the doctrine of some NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and South America since the 1980s. See also R. Provost, *Rebel Courts*, p. 238.

253. Found in the practice or doctrine of many NSAGs that have exercised territorial control in Africa, Asia, Europe, and South America since the 1960s. See also J. Plamenac, *Unravelling Unlawful Confinement*, pp. 158–160; and ILAC, *ILAC Rule of Law Assessment Report*, p. 88.

254. Found in the practice, reported practice, and doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and South America since the 1960s. See also ILAC, *ILAC Rule of Law Assessment Report*, pp. 94–97; J. Plamenac, *Unravelling Unlawful Confinement*, p. 167.

255. Found in the practice and doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Asia, Europe, and South America since the 1970s. See also Geneva Call, *Administration of Justice by Armed Non–State Actors*, ILAC, *ILAC Rule of Law Assessment Report*, pp. 94–97.

256. Found in the practice and doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Asia, Europe, and South America since the 1970s. See also Geneva Call, *Positive Obligations of Armed Non–State Actors*, p. 10; ILAC, *ILAC Rule of Law Assessment Report*, p. 88; J. Plamenac, *Unravelling Unlawful Confinement*, p. 159.

257. Found in the practice of some NSAGs that exercised territorial control in Africa and Asia in the 2010s. See also ILAC, *ILAC Rule of Law Assessment Report*, pp. 94–97; and O. Bangerter, *Internal Control*, p. 95.

258. Found in the practice of some NSAGs that exercised territorial control in Africa, Asia, and Europe in the 2010s. See also Geneva Call, *Positive Obligations of Armed Non–State Actors*, p. 10.

259. Found in the practice and views of some NSAGs that exercised territorial control in Africa and Asia in the 2010s.


261. Found in the practice and doctrine of some NSAGs that exercised territorial control in Africa and Asia. As seen in the practice of one NSAG that exercised territorial control in Asia in the 2010s; in some cases detainees were sentenced in absentia. See also A. Jackson and F. Weigard, *Taliban Courts in the West and North–West Afghanistan*, p. 4.


264. Rule 100 of the ICRC Customary IHL Study, commentary.

265. Found in the practice and reported practice of some NSAGs that either engaged in fighting only or also exercised territorial control in Africa and Asia in the 1990s and 2000s.

266. Found in the practice and reported practice of some NSAGs that have exercised territorial control in Africa since the 2010s. See also E. Heffes, *Detention by Non–State Armed Groups Under International Law*, p. 220.


268. Found in the practice, reported practice, and doctrine of many NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and South America since the 1980s. See also Geneva Call, *Administration of Justice by Armed Non–State Actors*, p. 10; Human Rights Now,

269. Found in the practice and reported practice of some NSAGs that have either engaged in fighting only or have also exercised territorial control in Africa, Asia, and South America since the 2010s. See also ILAC, *ILAC Rule of Law Assessment Report*, pp. 94–97; R. Provost, “FARC justice: Rebel rule of law”, p. 250.


271. Found in the practice of one NSAG that exercised territorial control in Asia in the 2010s.

272. Found in the practice and doctrine of some NSAGs that exercised territorial control in Africa and Asia in the 2010s. See also ILAC, *ILAC Rule of Law Assessment Report*, p. 118.
The ICRC helps people around the world affected by armed conflict and other violence, doing everything it can to protect their lives and dignity and to relieve their suffering, often with its Red Cross and Red Crescent partners. The organization also seeks to prevent hardship by promoting and strengthening humanitarian law and championing universal humanitarian principles. As the reference on international humanitarian law, it helps develop this body of law and works for its implementation.

People know they can rely on the ICRC to carry out a range of life-saving activities in conflict zones, including: supplying food, safe drinking water, sanitation and shelter; providing health care; and helping to reduce the danger of landmines and unexploded ordnance. It also reunites family members separated by conflict, and visits people who are detained to ensure they are treated properly. The organization works closely with communities to understand and meet their needs, using its experience and expertise to respond quickly and effectively, without taking sides.