

# GUIDELINES FOR INVESTIGATING DEATHS IN CUSTODY



ICRC



**ICRC**

International Committee of the Red Cross  
19, avenue de la Paix  
1202 Geneva, Switzerland  
T +41 22 734 60 01 F +41 22 733 20 57  
E-mail: [shop@icrc.org](mailto:shop@icrc.org) [www.icrc.org](http://www.icrc.org)  
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# **GUIDELINES FOR INVESTIGATING DEATHS IN CUSTODY**

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# FOREWORD

When people are deprived of their liberty, responsibility for their fate rests mainly with the detaining authorities, who must guarantee the life and physical integrity of each detainee. Therefore, when someone dies in custody, it is only fitting that an independent investigation be conducted – regardless of the presumed cause of death, which may be natural or accidental, but which may also have been an instance of unlawful killing or the result of ill-treatment or inadequate conditions of detention. A prompt, impartial and effective investigation is essential for ascertaining the cause of death, for preventing similar incidents in the future and ensuring the security of other prisoners, for informing the next of kin and for reassuring the public of the authorities' commitment to fulfilling their national and international obligations. An investigation of this sort is also a prerequisite for conducting any civil and/or criminal proceedings that may be appropriate.

International humanitarian law and international human rights law provide for the obligation to investigate deaths occurring in custody, but there is no one internationally accepted document that offers practical guidance to detaining authorities and humanitarian workers on the standards and procedures to be followed when a death occurs in custody. Guidance of this sort can help to answer such questions as: What should be done when a death occurs in custody? What are the obligations of the detaining authorities? How should evidence be collected and secured? What are the essential elements of a post-mortem examination? What are the rights of the next of kin? How can similar incidents be prevented from happening?

In 2008, the International Committee of the Red Cross (ICRC) launched a process with the intention of developing a set of concise guidelines for investigating and preventing deaths in custody. The guidelines were expected to be of assistance to humanitarian workers, detaining authorities and other stakeholders. The ICRC convened its own experts, including medical, forensic, legal and detention management professionals, as well as a number of external experts prominent in the field of investigating and preventing deaths in custody. The ICRC is extremely grateful for the contributions of the latter group; particular thanks go to a former colleague, Dr Jonathan Beynon, who played a leading role early on in the development of the guidelines.

Shortly after the process got under way, the ICRC accepted an offer from the University Centre for Legal Medicine of Geneva and Lausanne to develop a project for refining the guidelines, jointly with the Geneva Academy of International Humanitarian Law and Human Rights, the Faculty of Medicine of the University of Bern and the International Centre for Prison Studies. The Swiss Network for International Studies funded the project, which involved extensive research into cases – of deaths in custody – throughout the world and the manner in which they are resolved and prevented by States, in accordance with domestic legislation and applicable international standards. A number of institutions, academic and non-academic, were involved in the elaboration of the guidelines; as were several medical and forensic experts – including members of the ICRC's Forensic Advisory Board – international lawyers,

prison experts and humanitarian workers.<sup>1</sup> The drafting team included: project coordinators Prof. Bernice Elger and Prof. Paola Gaeta, from the University Centre for Legal Medicine of Geneva and the Geneva Academy of International Humanitarian Law and Human Rights respectively and their researchers (Ms Gloria Gaggioli, Ms Samar Khamis and Mr Patrick Mutzenberg); Dr Marc Bollman, currently at the University Centre for Legal Medicine Lausanne-Geneva, University of Geneva, but at the University of Bern at the time; and, from the ICRC, Ms Isabel Hight, prisons systems adviser and Dr Morris Tidball-Binz, forensic coordinator.

It gives us great satisfaction to present these guidelines, which constitute a framework – based on international law and best practice from around the world – for investigating and preventing deaths in custody. Concise and practical, they aim to help the pertinent authorities to conduct independent, impartial and effective investigations whenever someone in custody dies, and to prevent it from happening again. The guidelines aim also to provide humanitarian workers, including ICRC delegates, with a tool for guiding and advising those authorities, and for assessing their efforts, with the shared goal of protecting the lives and dignity of persons deprived of their liberty throughout the world.

**Pascal Hundt**

*Head, Assistance Division*

**Andreas Wigger**

*Head, Central Tracing Agency  
and Protection Division*

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<sup>1</sup> Prof. P. Mangin, University of Geneva; Prof. M. Thali, University of Bern; Prof. V. Chetail, Geneva Academy of International Humanitarian Law and Human Rights; Prof. A. Stapleton, Bluhm Legal Clinic, Northwestern University School of Law; Prof. Peter Vanezis, Cameron Centre for Forensic Medical Sciences, Queen Mary, University of London; Prof. J. L. Thomsen, University of Southern Denmark; Prof. H. P. Hougen, University of Copenhagen; Mr Ron Turnbull, former Head of Evidence Unit, International Criminal Tribunal for the former Yugoslavia; and Dr P. Bouvier, Ms C. Deman, Dr M. Duque, Ms A. Menegon, Ms M. Murphy, Ms J. Pejic, Dr H. Reyes, Ms E. Twinch, Mr S. Vité and Mr A. Wigger, ICRC.

# INTRODUCTION

## Overview

Deaths in custody are not uncommon. They may be due to natural causes; but they may also be instances of unlawful killing, or the result of ill-treatment or inadequate conditions of detention.<sup>1</sup>

In many countries, and for a variety of reasons, deaths in custody are poorly investigated. In some cases, legislation providing for mandatory investigation does not exist. Elsewhere, clear procedures are not in place or the skills and investigative resources required (such as forensic pathologists) are not available. More often than not, detaining authorities are unaware of the importance, and the benefits, of proper investigation. Where detaining authorities are implicated in foul play or incompetent, officials may also be particularly interested in preventing an investigation.

Proper investigation into deaths that occur in custody serves several purposes: it assists the bereaved by providing objective and timely information and helps them to obtain death certificates; it contributes to dispelling concerns about inadequate care or foul play when the death was due to natural causes; it is indispensable when a criminal investigation is required; and it provides information that is essential for preventing such deaths in the future.

There are a number of pertinent international standards for investigating deaths in custody. These are embodied mainly in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by the United Nations Economic and Social Council in 1989.<sup>2</sup> Practical complementary guidance may also be found in the 1991 *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*.<sup>3</sup> The *Manual* includes: a Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (the “Minnesota Protocol”); a Model Autopsy Protocol; and a Model Protocol for Disinterment and Analysis of Skeletal Remains.

However, it is often difficult for detaining authorities, investigating authorities, practitioners, and other relevant actors to ascertain precisely what they must do in order to conform to international norms and standards on investigating deaths in custody. Clear answers to practical questions are not always easily available. For instance: What procedures should be in place in order to ensure efficient management of the death scene? How should autopsies be conducted? How should evidence be processed?

To fill this gap and provide up-to-date and comprehensive guidance, the University Centre for Legal Medicine of Geneva and Lausanne, the Geneva Academy of International Humanitarian Law and Human Rights, the University of Bern, and the International

<sup>1</sup> These guidelines do not deal with judicial executions carried out in custody.

<sup>2</sup> UN Economic and Social Council, Res. 1989/65, 24 May 1989. See also the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly, Res. 43/173, 9 December 1988.

<sup>3</sup> UN Doc. E/ST/CSDHA/12 (1991).

Committee of the Red Cross (ICRC) – in collaboration with the International Centre for Prison Studies – have carried out research into the legal, medical and forensic aspects of investigating deaths in custody and prepared this set of guidelines.

The *Guidelines for Investigating Deaths in Custody* do not attempt to provide an exhaustive description of the full range of investigative bodies and techniques in existence. These vary widely from State to State, as do the relationships between such bodies. By way of reminder, the *Guidelines* list a number of relevant international rules; they also propose standards and good practices that should help to ensure efficient investigation of deaths in custody, regardless of the form that that may take. In some situations, non-State actors detain persons; however, the *Guidelines* deal exclusively with States' obligation to investigate deaths in custody.

### Objectives

The *Guidelines* are intended to serve detaining authorities, investigating authorities, practitioners, and others as a source of reference for the standards and procedures to be followed when a death occurs in custody. They reflect international law, as well as policy and best practices in the areas addressed.

They may be used for various purposes, such as:

- drafting or updating relevant domestic legislation
- providing training and building capacity
- ascertaining whether the authorities have met minimum standards and procedures following a death in custody.

### Definitions

For the purposes of the *Guidelines*:

- 'Death' is the irreversible cessation of all vital functions, including brain activity. Death is 'natural' when it is caused solely by disease and/or the aging process. It is 'unnatural' when its causes are external, such as intentional injury (homicide, suicide), negligence or unintentional injury (death by accident).
- 'Custody' is considered to begin from the moment a person is apprehended, arrested or otherwise deprived of his or her liberty by agents of the State, or by agents of any other public or private entity or organization, including in particular correctional or medical institutions or security companies, operating within the jurisdiction of that State. It includes, notably, detention or imprisonment, or any other placement of a person in a public or private custodial setting that he or she is not permitted to leave at will. It ends when a person is free to leave and is no longer under the effective control of State agents, or of agents of a public or private entity or organization, including in particular correctional or medical institutions, or security companies, operating within the jurisdiction of that State.
- 'Detainee' is a general term used to designate any person held in custody.
- 'Detaining authorities' includes any State agency, or officer or employee of that agency, or any other public or private entity or organization (including correctional or medical institutions or security companies), or officer, employee or member of that entity or organization (including medical personnel), operating within the jurisdiction of that State and responsible for the supervision, surveillance or care of people held in custody.
- 'Investigating authorities' includes any State agency, or officer or employee of that agency, operating within the jurisdiction of that State and responsible for conducting or supervising investigations into deaths in custody.



# 1. GENERAL FRAMEWORK

## 1.1. Purpose of the investigation

The investigation helps to protect the interests of all parties involved: the deceased, the next of kin, the detaining authorities, and society as a whole.

The investigation's immediate purpose is to:

- *clarify the circumstances of the death.* It should establish the facts surrounding the death: its cause, manner, location and time, as well as the extent of involvement of all those implicated in the death. It should distinguish between natural death, accidental death, suicide and homicide. It should also determine any pattern or practice that may have brought about the death.<sup>4</sup>

The investigation may also contribute to realizing other objectives, such as:

- *Reducing trauma and providing an effective remedy for the next of kin.* Having a clearer understanding of the circumstances surrounding a death may help the next of kin to cope with their suffering. If the State's responsibility is established, the next of kin are entitled to suitable reparation, such as monetary compensation or a public apology.
- *Prosecuting and punishing those responsible.* Where there are grounds for believing that the cause of death was unlawful, the investigation must lead to criminal prosecution of the suspected perpetrators, who must be brought before a competent court and, if found guilty, appropriately punished.
- *Preventing the recurrence of deaths in custody.* The investigation may reveal a pattern or practice likely to result in further deaths in custody, which should enable the detention authorities to adopt the preventive measures necessary (see Section 4 below).

## 1.2 Form of the investigation

States may decide, up to a point, on the most appropriate bodies and procedures for conducting a specific inquiry. The form of the investigation may be influenced by the cause or causes of the death:

- (a) In cases of death in custody, the head of the custodial facility should initiate a *preliminary investigation*. This investigation should take place immediately after the discovery of the death. The death scene and evidence must be preserved and preliminary details of the circumstances of the death recorded. The detaining authorities should notify the investigating authorities as soon as practicable and remain in control of the scene until relieved by an authorized officer. They should also submit to the investigating authorities a detailed report describing the conclusions of the preliminary investigation. Where applicable under domestic legislation, a medical officer should participate in the preliminary investigation.
- (b) When there are reasons to believe that the cause of death was homicide or negligence, a *judicial investigation* is required. Such an investigation must be part of a criminal procedure involving the prosecution and punishment of those responsible. In this instance, police officials must conduct a full investigation, based on the preliminary investigation,

<sup>4</sup> See Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, para. 9.

to determine the causes of death and the extent of involvement of all those implicated in the death. The prosecutor's office or some other appropriate body must coordinate the investigation process and transfer the case to a competent court.

- (c) When it seems fairly likely that the death was due to natural or accidental causes, a *non-judicial* investigation may be sufficient. This may be carried out by the authorities responsible for the place of detention or an ad hoc review mechanism, such as national preventive mechanisms established under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, national human rights institutions, or ombudspersons' offices.<sup>5</sup> A non-judicial investigation should not prevent judicial authorities from carrying out their own investigation.

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<sup>5</sup> In some States, these independent bodies have a statutory duty to investigate deaths in custody or to oversee investigations conducted by other institutions.

## 2. INVESTIGATING DEATHS IN CUSTODY: LEGAL ASPECTS

There are a significant number of rules and standards of international law pertaining to the investigation of deaths in custody. They are found mainly in international human rights law and international humanitarian law. Some rules are based on treaty and customary international law. These mainly impose the obligations to respect and protect life in all circumstances (see Section 2.1) and to investigate suspected violations of the right to life (see Section 2.2). Further guidance on fulfilling the obligation to investigate deaths in custody can be deduced from soft law instruments and international jurisprudence (see Section 2.3).<sup>6</sup>

### 2.1. Respecting and protecting life

#### International human rights law

- The right to life is a fundamental human right. It is deemed to be a norm of customary international law and is an indispensable element of human rights treaties, at the international and the regional level.
- States have a duty to respect and ensure the right to life of persons within their jurisdiction, including when such persons are held in custody, whether in public or in private settings.
- The duty to respect and ensure the right to life implies that no one may be arbitrarily deprived of his or her life.
- No exceptional circumstance whatsoever, such as an armed conflict or any other public emergency, may be invoked to justify derogation from the duty to respect and ensure the right to life.
- The duty to respect and ensure the right to life applies to all branches and organs of the State, including law enforcement agencies, security forces and the military.
- The right to life – which imposes an obligation to abstain from arbitrarily depriving individuals of life (“negative obligation”) – has also been interpreted as entailing “positive” obligations.” States are required to:
  - adopt legislative, judicial, administrative and other appropriate measures to ensure that no one is arbitrarily deprived of his or her life
  - ensure adequate conditions of detention for all those in custody, which includes providing access to food and water in sufficient quantities and of adequate quality, as well as to medical care, and guaranteeing their safety and security (protection against violence by co-detainees, prevention of accidents such as fires, etc.)
  - conduct a prompt and independent official investigation whenever a person dies in custody (see below)
  - take appropriate measures or exercise due diligence to protect the lives of persons detained by non-State actors whose acts or omissions are not attributable to the State and who operate within its jurisdiction. In particular, States should ensure that a competent body investigates the deaths of persons detained by such actors.

<sup>6</sup> For a list of relevant provisions in international treaties, instruments of soft law and other legal texts, see Annex II.

### International humanitarian law

- It is a fundamental requirement of humanitarian law that persons who are not, or who are no longer, taking a direct part in hostilities – including persons deprived of their liberty – be protected from violence against their person, in particular murder, at all times and in all places.
- This rule, which applies in international and in non-international armed conflict, is based on treaty law and on customary humanitarian law.
- Many rules of humanitarian law aim to ensure humane treatment of people in detention. They require, among other things, that those deprived of their liberty in connection with an armed conflict be provided with food and water, in sufficient quantities and of adequate quality, and medical attention.

## 2.2. Obligation to investigate deaths in custody

### International human rights law

Under human rights law, the prohibition against the arbitrary deprivation of life, read in conjunction with the general obligation to respect and ensure human rights within the State's jurisdiction, has been interpreted as imposing by implication an obligation to investigate alleged violations of the right to life. This obligation is put into effect whenever a detainee – without injuries when taken into custody – is injured or has died.

Under human rights law, the obligation to investigate deaths in custody has also been interpreted as deriving from a combination of the prohibition against the arbitrary deprivation of life and the obligation to provide an effective remedy. In cases of alleged arbitrary deprivation of life, the right to an effective remedy entails an effective investigation, one that should result in the identification, prosecution and punishment of those responsible.

The Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions confirm that “[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death” (Para. 9).

### International humanitarian law

In situations of international armed conflict, humanitarian law explicitly provides that every death of or serious injury to a prisoner of war or civil internee that is caused or suspected to have been caused by a sentry, another prisoner of war or internee, or any other person, as well as any death the cause of which is unknown, “shall be immediately followed by an official enquiry by the Detaining Power.”<sup>7</sup>

In addition, as previously mentioned, violence against persons who are *hors de combat*, which expressly includes detainees, is prohibited by treaty and customary humanitarian law in international and non-international armed conflicts alike and can amount to a war crime. The obligation under humanitarian law to prosecute war crimes logically presupposes an obligation to investigate.

<sup>7</sup> Art. 121 of the Third Geneva Convention of 1949; Art. 131 of the Fourth Geneva Convention of 1949.

### 2.3. Basic standards for investigating deaths in custody

These standards have been identified and have developed over time as a result of the adoption of soft law instruments and the evolution of international jurisprudence. They provide States with further guidance for fulfilling their obligation to investigate deaths in custody.

In order to be effective, an investigation should meet the following criteria:

- It should be *thorough*. It should establish all the facts related to the death, such as the identity of the deceased, the cause, manner, place and time of the death, the extent of involvement of all those implicated in the death, as well as any pattern or practice that may have caused the death. It should also determine whether the death was natural or accidental, or a case of suicide or homicide.
- It should be *undertaken ex officio*, i.e. of the authorities' own volition once the case has come to their attention, regardless of whether a formal complaint has been lodged, and carried out *as promptly as possible*.
- The authorities in charge of the investigation must be *independent and impartial*. They must have no relationship, institutional or hierarchical, with persons or agencies whose conduct has to be investigated. In addition, their conclusions must be based on objective criteria, and must not be tainted by bias or prejudice of any kind. Similarly, if an autopsy is undertaken, it must be carried out by an independent and impartial body.
- The investigation should include some degree of *public scrutiny*. Its conclusions should be made public. In addition, the *next of kin* of the victim should be involved in the process. They should receive legal assistance, have access to the case file, and take part in the proceedings. They should also be permitted to have a medical or other qualified representative in attendance at the autopsy.

Soft law and international jurisprudence provide further practical guidance for collecting and analysing evidence. In suspected cases of arbitrary deprivation of life, the investigation should include the following:

- *All relevant physical and documentary evidence*. The death scene should be preserved in order to protect evidence; and the authorities in charge of the investigation should make their way to it promptly. Ballistic tests should be carried out whenever firearms have been used.
- *Statements from witnesses*. All key witnesses, including eyewitnesses and suspects, should be identified and interviewed. Testimonies must be carefully recorded and analysed by the investigating authorities. Failure to interview and seek evidence from key witnesses may be sufficient reason to consider the investigation seriously inadequate.
- *A proper autopsy*. The autopsy should be conducted by a medical officer. It should identify any injury suffered by the deceased, including evidence of torture (see Section 3.2. below).

Further details on the collection and analysis of evidence may be found in the Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (the "Minnesota Protocol") included in the 1991 *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*.

It is not always possible in practice to fully abide by international standards for investigating deaths in custody. While States are required to conduct inquiries into such deaths whatever the circumstances, the means at their disposal may vary from one context to another. However, regardless of the circumstances, investigations must always be conducted as effectively as possible.

## 3. INVESTIGATING DEATHS IN CUSTODY: MEDICAL AND FORENSIC ASPECTS

This section provides medical and forensic guidance for investigating deaths in custody. It sets out a number of practical recommendations based on international standards and good practice. It explains how to prepare and conduct an investigation of the death scene (see Section 3.1.), how investigators should interact with the next of kin of the deceased (see Section 3.2.), and how post-mortem examinations should be carried out (see Section 3.3.).

### 3.1. Death scene

#### Plan of action

The detaining authorities should prepare a contingency plan for dealing with deaths in custody. The plan can help to ensure that deaths are reported rapidly to the investigating authority. This will make it easier to preserve the death scene and prepare the ground for a professional investigation. The plan should be short, understandable and contain an up-to-date list of contacts. It must be widely available in the detention facility and regularly updated and rehearsed.

The plan should contain, as a minimum, the following measures:

- Anyone who discovers that a death in custody has occurred (staff of the detention facility, detainees, etc.) should immediately inform the detaining authorities.
- The detaining authorities should immediately inform the investigating authorities.
- The detaining authority should immediately take the measures necessary to preserve the death scene and evidence and to record preliminary details on the circumstances of the death.
- Once the deceased has been identified, steps should be taken immediately to inform the next of kin.
- The detaining authorities must inform the investigating authorities about the identity of the deceased (where known); his or her medical history, including any history of drug use; and all other circumstances that may be of relevance to the investigation and that may help them to respond effectively.
- Gathering the information listed above must not be used as an excuse for not reporting the death to the investigating authorities forthwith.

### **Management of the death scene**

The investigating authorities should ensure proper management of the death scene in order to optimize the conduct and results of the investigation. To this end, certain procedures for preserving and investigating the death scene must be followed.<sup>8</sup>

#### ***(a) Preservation of the death scene***

- As soon as the death is discovered, access to the body and the surrounding area should be restricted. Only a qualified medical officer, certifying the death, should have access to the body at this stage. Afterwards, no one should be given access to the death scene. Neither the body nor the surrounding area should be touched until investigators and a medical officer properly document the scene.
- The scene should be placed under the jurisdiction of the investigating authority, which should grant access only to the investigators and the medical officer.
- Everyone who enters the death scene should be listed. Pertinent personal information should be recorded, as well as these persons' reasons for being there. They should not contaminate the scene and should disrupt it as little as possible.
- The death scene and the body should be preserved in their original state until the investigators and the medical officer have properly documented everything of interest. Clothing should not be removed from the body at this stage. Wounds of any kind should not be explored on the scene.
- Any interference with the scene – even if it is well-intentioned – should be promptly and thoroughly investigated. Anyone who has contact with the body or the surrounding area will almost inevitably contaminate the site. If resuscitation efforts were undertaken on the discovery of the body, a detailed statement should be obtained from all those present.

#### ***(b) Investigation of the death scene***

- The death scene, the body included, should be treated as if it were a crime site regardless of the cause and manner of death until the investigation of the scene is concluded and the investigating authorities have released the area for normal use, which can be done speedily if no evidence of third-party intervention is found.
- A qualified medical officer should first confirm the death, check for evidence of violence, and estimate the time of death.
- If possible, the body should be identified before – but without jeopardizing – the collection of evidence. Preliminary identification, by the staff of the facility, can be confirmed later on. An investigation is required to determine the identity of the deceased when that is in doubt (for instance, when the body has been burnt in an open space).
- The whole scene should be thoroughly documented, through photographs/video clips/drawings and written descriptions.
- All evidence should be protected by establishing a "chain of custody": a record, signed by the investigator, of the date and time of the handling of each item of evidence. This procedure prevents tampering with evidence.
- Evidence from the body must be protected or collected, recorded and secured (see below).
- Time of death can help to verify statements and provide supportive evidence for the cause of death in some instances. Estimates of the time of death are based on post-mortem lividity, post-mortem rigidity, and measurement of the deep rectal (body core) and ambient temperatures. Measurement must be performed with care, without inflicting post-mortem injuries or interfering with potential evidence of sexual assault (perform a rectal swab before measurement). It must be stressed that estimates of the time of death always have an inherent margin of error of several hours.
- The personal belongings of the deceased and all documents related to him or her are of crucial importance for the investigation. They should be gathered, secured and handed over to the investigating authorities. This includes all medical documents pertaining to the deceased as well as biological samples (blood, urine, etc.).

<sup>8</sup> See also Annex III: Simplified checklist for the management of the death scene.

- Medical factors must be taken into account. Medical complications, the use of prescribed medication, or insufficient access to medical care are important pieces of information. Where a death in custody was expected – for instance, owing to a terminal illness – and in the absence of other suspicious circumstances, the investigation may be simpler.
- The medical officer participating in the preliminary examination should give the investigating authorities a written report detailing his or her findings.
- Both the staff of the detention facility and the detainees should be asked to fully cooperate with the investigation.
- All members of the staff who were in charge of the deceased, and detainees who may have witnessed the circumstances of the death, should be interviewed at an early stage (before any internal debriefing procedure). Their statements must be written down and dated, and signed by them.
- Where evidence points specifically to the involvement of certain persons in the death, they should be separated without delay from everyone else.
- The medical staff of the detaining facility should also be interviewed. They should be asked about the medication used by the deceased and the state of his or her health before death. It should be established when a nurse or physician last had contact with the deceased.
- All those cooperating with the investigation, and their next of kin, must be protected from reprisals or pressure of any kind.
- The staff should give investigators full access to the facility, including to written and other records. The staff should also ensure the security of the investigators.

### Management of the body

Proper management of the body is an essential part of the investigation and of help in collecting evidence at the death scene and in ensuring suitable conditions for carrying out post-mortem examinations if needed. It also implies ensuring respect for the body of the deceased throughout the investigation.

- Care must be taken to identify the body and document all pertinent forensic information accurately.
- The body should be treated with respect at all times.
- The body and associated evidence must not be moved and must be examined *in situ* by a qualified medical officer (ideally, a forensic pathologist) and by a qualified investigator, both of whom should be independent of the detaining authorities.
- Only a summary initial forensic medical examination of the body should be made on the death scene; it should not interfere with the detailed examination that will be carried out during the autopsy.
- Any delay in examining the body will compromise the investigation and should be investigated. Reaching the death scene as quickly as possible is particularly important if the deceased had been involved in a physical confrontation shortly before death or if he or she had been taking psychotropic medication. In such cases, if the temperature of the body is not measured without delay, and the scene of death not quickly secured, it may not be possible to establish some of the causes of death, as well as other key elements of the investigation.
- The body and its position, as well as the surrounding area, must be recorded (in the form of images and written descriptions). Documentation with colour photographs, if possible, is the preferred method. Making a sketch is an acceptable alternative. Photographs should include general views as well as detailed images with a measuring scale. Blood trace evidence must be photographed and analysed.
- Evidence (objects and samples), including evidence of violence, should be documented, collected, labelled and secured. All evidence should be included in a chain of custody. If the body and associated evidence (such as clothing and personal effects) have been moved, this also needs to be documented.
- All medical interventions must be noted: this includes any administration of drugs as well as cardiopulmonary resuscitation and defibrillation. Reports should include resuscitation measures taken.



- Any heat source or similar influence on body cooling should be identified and documented.
- The dead person's hands should be protected for fingerprinting and recovery of trace evidence. Paper bags are ideal for this purpose.
- After the preliminary examination, the body must be protected from post-mortem change. This is best achieved by refrigeration, ideally at a temperature between 2°C and 4°C.
- Removal of the body and its transfer to the morgue (where the post-mortem examination will be conducted) must be closely supervised by the investigating authorities.
- In case of temporary burial, a body tag with indelible marking and a unique code should be attached to the body; and the grave must be marked and recorded carefully. This will help ensure the traceability of the body.

### **3.2. Post-mortem examination**

#### **Nature and scope**

'Post-mortem examination' is another name for the formal process of examining a dead body for investigative purposes, typically carried out in cases of violent, unexplained or suspicious deaths, including deaths in custody. Its definition is elastic – ranging from simple external examination to a full forensic autopsy (external and internal examination) with ancillary analyses. In most countries, a post-mortem examination by a medical officer has to be carried out before formal certification of identity, cause and manner of death can be issued: the specific objectives, issuing process and authority should be detailed in the contingency plan.

The aim of post-mortem examination is to determine and record:

- the identity of the deceased
- the estimated time of death (see "Investigation of the death scene" above)
- the cause of death (physiological processes, injuries, diseases, intoxication, etc.)
- the manner of death (natural, accidental, suicide, homicide, undetermined)
- the sequence of events that may have led to the death.

The extent of a post-mortem examination may depend on the resources available, local customs or the circumstances of the death. As a matter of principle, the threshold for undertaking a full forensic autopsy should be particularly low when a death has occurred in custody. A full forensic autopsy should always take place unless the arguments against it are exceptionally convincing, explained thoroughly, and documented. One reason for not conducting an internal examination may be the absence of a trained pathologist. Another reason may be the opposition, for cultural reasons, of the next of kin.

In cases where the death was expected (for example, owing to a previously diagnosed and medically well-documented terminal illness), the investigation may be simpler. Even in such cases, there are certain steps that must be followed: the provision of a death certificate by a medical officer on the basis of a short external examination; provision of relevant information to the next of kin; and handover of the body to the next of kin. However, should the next of kin request it, further investigation into the death may be undertaken.

#### **Basic principles**

- A post-mortem examination is always necessary when evidence has to be collected for an investigation set up to ascertain facts and attribute responsibility. In cases of accidental death – the result of unsafe electrical installations or carbon monoxide poisoning, for instance – determining the cause of death may contribute to preventing further loss of life.
- Established international standards should be followed when conducting post-mortem examinations. Except in very rare instances, such examinations (including autopsies) should meet the standards set for cases of homicide.

- Post-mortem examinations should be performed by appropriate investigating personnel. Where possible, a photographer with training in forensics should be included among them. All deaths in custody should be examined by a medico-legal expert and, ideally, by a forensic pathologist. If neither is available, a medical officer with forensic training may substitute.
- The post-mortem examination has to be performed as soon as possible after death. The body undergoes natural changes after death, which can mask injuries. If it is stored in ideal conditions (i.e. cold storage between 2°C and 4°C), a delay of some days is acceptable.
- The body should not be handed over to the next of kin until the post-mortem examination has been completed: some funeral rites destroy the body, preventing further forensic examination. Due diligence in the investigation should help expedite the handing over of the body, preventing further stress for the bereaved.
- The personnel carrying out post-mortem examinations must be granted complete independence throughout the investigation and when presenting its results. Where their independence is compromised, they may decline to draw conclusions. The investigation and findings must be impartial and objective.
- Post-mortem examination should include external examination, internal examination, and sample collection.
- A detailed written record of the entire process and the findings, illustrated with sketches and good-quality photographs, should be prepared.
- The chain of custody should be maintained. This requires all evidence to be fully documented and relevant items and samples collected and secured.
- DNA samples and other evidence should be taken before the body is washed.
- The medical examiner should visit the scene of death before the autopsy; and he or she must be provided with a record of the resuscitative measures undertaken by first-aid and ambulance personnel, warders or prisoners.
- The autopsy should be well documented so that it can be reviewed afterwards by external experts, should that be necessary. Autopsies are always destructive: in other words, the body cannot be restored to its original state, and therefore it is impossible to replicate an autopsy.
- The principles mentioned in this section also apply to a second autopsy (or “counter autopsy”) in case that becomes necessary. A second autopsy may be performed later, sometimes years after the first autopsy. It may help to answer the following questions:
  - Did the original autopsy comply with applicable domestic rules and meet international standards?
  - Can the initial findings be confirmed?
  - Are there additional relevant findings that were not detected at the first autopsy?
  - Are the findings of the second autopsy consistent with those of the first?
- The examining officer(s) must prepare a written report of the post-mortem examination; this is mandatory. The medical personnel carrying out the post-mortem examination must provide the investigating authorities with a report that describes the results of their work. It should summarize all significant findings. It should indicate the cause and manner of the death; make attributions, i.e. link injuries to external trauma, therapeutic efforts, post-mortem change, or other causes; and comment on the results of ancillary investigations and other important forensic questions. The report should include: the date, time and place of the autopsy; the names of the pathologist and the participating assistant(s), and of all others present at the autopsy; their medical and/or scientific degrees and professional, political or administrative affiliations(s).

A checklist for conducting autopsies can be found in Annex IV.<sup>9</sup>

<sup>9</sup> For more detailed guidance, see, for example, the Model Autopsy Protocol included in the *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, endorsed by the General Assembly in 1991, and the Council of Europe’s *Harmonisation of Medico-Legal Autopsy Rules*, Recommendation No. R (99) 3.

### 3.3. Next of kin

- The next of kin should be accorded due dignity and treated with respect.
- After the body has been identified, the next of kin should be informed immediately. The investigating authorities should tell them about the investigation that is about to be, or is already being undertaken; they should also report regularly to the next of kin on its progress.
- If an autopsy is to be performed on their relative, the next of kin should be informed in advance of the date and offered the possibility of being represented at it.
- The consent of the family should be sought for the retention of organs, such as the brain, for forensic examination after the autopsy. A procedure for returning these organs to the next of kin after examination should be considered.
- Counselling services and therapeutic support, if available, should be offered to the next of kin.
- The investigating authorities should hand over to the next of kin a complete death certificate as soon as possible after the death.
- On completion of all post-mortem examinations essential to the investigation, the body should be returned to the next of kin, in a manner that is fully respectful of the dignity of the deceased, so that funeral rites or other customary procedures can be conducted with the least possible delay.
- The personal belongings of the deceased should be returned to the next of kin as soon as possible.

## 4. PREVENTING DEATHS IN CUSTODY

Investigating a single death in detention may reveal a pattern or practice directly or indirectly linked to it. In such situations, it is not enough to ensure that measures have been taken to respond to the case under investigation. States should adopt additional measures aimed at addressing possible root causes and preventing such incidents.

Many different factors have a direct or indirect impact on detainees' safety and on their physical and mental well-being. Initiatives that aim to prevent deaths in custody (including death by suicide) should therefore be based on a thorough analysis of the place of detention and the way it operates, including how this affects detainees and staff.

This last section provides an overview of factors that increase the likelihood of deaths occurring in custody and sets out preventive measures that States should adopt.

### 4.1. Factors contributing to deaths in custody

#### Inadequate conditions of detention

The physical infrastructure of a place of detention, the detainees' sleeping arrangements and bedding, what they wear, eat and drink, their access to fresh air, daylight, toilets, washing and laundry facilities, their working conditions, whether they can exercise, meet their families, receive information on their case, be intellectually stimulated: all of these have an influence on their physical and mental health. When conditions of detention are seriously inadequate they can, either immediately or over time, constitute a danger to life.

A number of international and regional rules and standards offer guidance on the minimum conditions of detention necessary to protect the lives and dignity of people deprived of their liberty. Under both human rights law and humanitarian law, international treaties and customary law provide as a general rule that those in custody must be treated humanely. International rules and standards provide further guidance on how to create and operate a proper detention regime, addressing, among others, such issues as accommodation, access to food, water, hygiene, clothing, open air and bedding, and access to family.<sup>10</sup> This legal framework also takes into account the specific needs of children, women and other categories of detainee.<sup>11</sup>

<sup>10</sup> See, for instance, Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1955, and approved by the Economic and Social Council (Res. 663 C (XXIV), 31 July 1957; and Res. 2076 (LXII), 13 May 1977); Basic Principles for the Treatment of Prisoners, UN General Assembly Res. 45/111 of 14 December 1990; Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, adopted by UN General Assembly Res. 43/173 of 9 December 1988; Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules, adopted by the Committee of Ministers of the Council of Europe on 11 January 2006; Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, adopted by the Inter-American Commission on Human Rights in March 2008, OAS Doc. OEA/Ser/L/V/II.131 doc. 26.

<sup>11</sup> See, for instance, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, UN General Assembly Res. 45/113, 14 December 1990; United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (2010).

On the basis of its humanitarian work in numerous detention facilities throughout the world, the ICRC has itself developed a number of specific and practical recommendations aimed at ensuring humane treatment for all persons in custody.<sup>12</sup>

### **Insufficient access to health care**

Ensuring timely access to medical professionals and suitable care for physical and mental health are crucial in safeguarding the health and lives of those deprived of their liberty. The responsibility for this lies with the State. Detainees have the same basic health-care needs as others in the community. The care available to them should therefore be at least equivalent to that available in the community, and should take into account additional health risks associated with incarceration in general and with the incarceration of people with specific needs in specific contexts.

The Geneva Conventions of 1949 and their Additional Protocols of 1977 include a number of provisions aimed at ensuring, in international and in non-international armed conflicts, that the wounded and sick receive the medical care and attention required by their condition. International rules and standards provide further guidance on how medical services in detention should be organized.<sup>13</sup> This legal framework requires the presence of at least one qualified medical officer at every place of detention; also, it should be possible for detainees requiring specialist treatment to be transferred to specialized institutions. Medical officers should be entitled to conduct regular visits to places of detention and address recommendations to the detaining authorities with a view to improving material conditions of detention that, if left unchanged, may have an adverse effect on the health of detainees. Special medical attention should also be offered to detainees with specific needs, such as pregnant women and nursing infants.

Experience shows that all of the following play an important role in reducing the risk of death in custody: respect for professional medical ethics; comprehensive medical screening upon arrival in custody; regular medical check-ups; well organized, adequately resourced and accessible medical services; appropriate infrastructure for inpatients and outpatients; alertness of all staff to signs of physical and mental ill health; and the real possibility of referral to external professional care when necessary.

### **Insufficient contact with the family**

In some contexts detainees are dependent on their families for their most basic needs, such as food, bedding and clothing. Contact with the family (in person as well as by telephone or other means of remote communication) also helps to reduce a prisoner's isolation and enhances his or her sense of psychological and emotional well-being. Where there is a risk of suicide, contact with the family, and/or with professionals within or outside the institution, may be crucial. The Standard Minimum Rules for the Treatment of Prisoners provide that "[p]risoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits."<sup>14</sup>

### **Inadequate safeguards against suicide**

There is a higher than average risk of suicide in many places of detention. The provision of adequate detention conditions and treatment, access to health-care personnel (in particular to psychologists and psychiatrists), staff trained to identify and offer support to vulnerable prisoners, and contact with the world outside: all these are essential components of any policy for preventing suicides in custody.<sup>15</sup>

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<sup>12</sup> See ICRC, *Water, Sanitation, Hygiene and Habitat in Prisons* (2005) and *Water, Sanitation, Hygiene and Habitat in Prisons: Supplementary Guidance* (2012).

<sup>13</sup> See, for instance, United Nations Standard Minimum Rules for the Treatment of Prisoners, Rules 22-26; Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment; United Nations Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>14</sup> Standard Minimum Rules for the Treatment of Prisoners, Rule 37.

<sup>15</sup> *Preventing Suicide in Jails and Prisons*, World Health Organization, 2007.

The detaining authorities should put in place specific procedures that will enable them to identify detainees who are at risk of suicide. An assessment of the risk of suicide should be part of the admission procedure and should also take place during the initial medical examination. An assessment team composed of prison management, social workers, and medical personnel, including mental-health specialists (psychiatrists or psychologists where available), should decide where detainees at high risk of suicide should be held and the frequency of the observation and monitoring regime. All members of the staff who are in daily contact with the detainees should also be trained in identifying the potential for suicide.

Detainees at high risk of suicide may need to be transferred to a medical facility where they can receive expert attention; or their detention conditions may have to be altered to facilitate observation, monitoring, and emotional support.

Detaining authorities should record cases of suicide and identify the reasons that may have led the deceased to commit suicide. In places of detention where rates of suicide are high, detaining authorities should determine how the detention environment – and not only the physical infrastructure – could be improved to prevent others from taking their lives, and adapt detention conditions and staff training accordingly.

#### **Arbitrary deprivation of life, torture and other forms of ill-treatment**

Because places of detention are often self-contained and isolated, and out of range for external supervision, the risk of arbitrary deprivation of life, and of abusive treatment or neglect of detainees, is great. Violence between detainees is a fact of life in many detention centres; it has a direct impact on detainees' physical and mental health and may be a risk to life.

In institutions where punishment plays a prominent role, the staff may be more liable to regard actions that amount to torture or other forms of ill-treatment as 'normal' behaviour. Torture or other forms of ill-treatment in custody are particularly likely to occur in the following situations:

- at the beginning of the detention process, i.e. at the moment of arrest, when the detainee is transferred to a place of detention, or when he or she is received at such a place
- during interrogation, to obtain confessions or information
- when the detaining authorities adopt measures to maintain discipline and use instruments of force and restraint.

As previously explained, both human rights law and humanitarian law prohibit arbitrary deprivation of life. They also prohibit without exception any form of torture or other cruel, inhuman or degrading treatment or punishment.<sup>16</sup> States should reflect these prohibitions in their domestic legislation and adopt adequate measures, to ensure full respect for these rules in all places of detention. Arbitrary deprivation of life and torture should also be defined as crimes of a specific kind, enabling the prosecution and punishment, under domestic criminal law, of those responsible.

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<sup>16</sup> See, for instance, Art. 3 common to the Geneva Conventions of 1949; Art. 75 (2) of Protocol I of 8 June 1977 additional to the Geneva Conventions; Art. 4 (2) of Protocol II of 8 June 1977 additional to the Geneva Conventions; Art. 7 of the International Covenant on Civil and Political Rights; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## 4.2. Measures for preventing deaths in custody

International standards for the prevention of arbitrary deprivation of life, as well as for the prevention of torture and other cruel, inhuman or degrading treatment or punishment in custody, have evolved over time as a result of the adoption of soft law instruments and developments in international jurisprudence. These standards require States to adopt and implement the following measures:<sup>17</sup>

- Detainees must be held in official places of detention. Secret places of detention are prohibited.
- Essential information concerning persons in custody – such as the time and place of their arrest, the state of their health upon arrival at the place of detention, the names of the persons responsible for holding them in custody, or the time and place of their interrogation – must be recorded and made available for judicial or administrative proceedings.
- Detainees must have prompt and regular access to doctors and lawyers and, as often as possible, to family members.
- Competent authorities should make unannounced visits to places of detention where there is suspicion of torture or other forms of ill-treatment.
- Inspections – internal and external – of places of detention should be carried out regularly. This includes inspections by national health and safety bodies responsible for assessing fire and other risks. Ombudspersons, pertinent national bodies and human rights agencies should be granted access to all places of detention with a view to monitoring conditions of detention. Independent non-governmental organizations should also have access to all places of detention.
- In accordance with the Geneva Conventions of 1949, the ICRC must have access to all those places where prisoners of war, civilian internees or other protected persons are detained during international armed conflicts. The ICRC should also be entitled to visit persons deprived of their liberty in relation to non-international armed conflicts or other situations of violence.
- The use in judicial proceedings of statements or confessions obtained through torture or other forms of ill-treatment must be prohibited.
- Corporal punishment, including its use as a penalty for criminal offences or as an educational or disciplinary measure, must be prohibited.
- Effective measures should be taken to prevent violence among detainees. In this regard, the various categories of detainee, determined on the basis of criteria such as sex, age or criminal record, should be held in separate places of detention.
- The right to lodge complaints when threatened with arbitrary deprivation of life, or torture or other forms of ill-treatment, should be recognized in domestic law. Such complaints should be investigated promptly and impartially by competent authorities.
- Everyone associated with the treatment of detainees, or with holding them in custody, should receive the necessary instruction and training in preventing arbitrary deprivation of life and torture and other forms of ill-treatment. The prohibition against such treatment should be part of the operational rules and ethical standards to be followed by these persons.

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<sup>17</sup> This list is not meant to be exhaustive. For further details, see the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; the Standard Minimum Rules for the Treatment of Prisoners; International Covenant on Civil and Political Rights, General Comment no. 20 concerning prohibition of torture and cruel treatment or punishment (Art. 7), 03/10/1992; Report of the UN Special Rapporteur on Torture, General Recommendations, E/CN.4/2003/68, para. 26; Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002; African Commission on Human and People's Rights, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines), 2002.

# ANNEX I. INVESTIGATING DEATHS IN CUSTODY: EIGHT POINTS OF NOTE

1. All deaths in custody must be investigated promptly by an independent and impartial body regardless of whether the relatives of the deceased request it.
2. The main purpose of the investigation is to:
  - clarify the circumstances surrounding the death.

The investigation may also contribute to:

- reducing trauma and providing an effective remedy for the next of kin
  - prosecuting and punishing those responsible
  - preventing the recurrence of deaths in custody.
3. The investigation should be thorough. This implies that it must seek, at the least, to:
    - obtain and preserve physical and documentary evidence in connection with the death
    - identify possible witnesses and record their statements
    - identify the deceased
    - determine the extent of involvement of all those implicated in the death
    - establish the cause, manner, place and time of death, as well as any pattern or practice that may have caused it
    - differentiate between natural death, accidental death, suicide, and homicide.
  4. The scene of death should be regarded as potentially a crime scene, especially if the death was unexpected.
  5. A thorough autopsy, by a trained medical officer, is a must – especially where death was unexpected.
  6. The next of kin should be immediately informed of their relative's death and kept abreast of the progress and findings of the investigation.
  7. A complete death certificate should be issued to the next of kin as soon as possible after the death.
  8. On completion of all post-mortem examinations essential to the investigation, the body should be returned to the next of kin in a manner that is fully respectful of the dignity of the deceased.



# ANNEX II. INVESTIGATING DEATHS IN CUSTODY: INTERNATIONAL LEGAL SOURCES

## INTERNATIONAL HUMAN RIGHTS LAW: UNIVERSAL DECLARATION AND TREATIES

### The right to life

#### Universal Declaration of Human Rights

- Art. 3: Everyone has the right to life, liberty and security of person.

#### International Covenant on Civil and Political Rights

- Art. 2(1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant ...
- Art. 6(1): Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

#### European Convention on Human Rights

- Art. 1: The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.
- Art. 2(1): Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- Art. 2(2): Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

#### American Convention on Human Rights

- Art. 1(1): The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms ...
- Art. 4(1): Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

### **African Charter on Human and Peoples' Rights**

- Art. 1: The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.
- Art. 4: Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

### **Arab Charter on Human Rights**

- Art. 3(1): Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein ...
- Art. 5(1): Every human being has the inherent right to life.
- Art. 5(2): This right shall be protected by law. No one shall be arbitrarily deprived of his life.

### **The right to an effective remedy**

#### **International Covenant on Civil and Political Rights**

- Art. 2(3): Each State Party to the present Covenant undertakes:  
(1) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity ...

#### **European Convention on Human Rights**

- Art. 13: Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

#### **American Convention on Human Rights**

- Art. 25(1): Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
- Art. 25(2) The States Parties undertake:  
(a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;  
(b) to develop the possibilities of judicial remedy; and  
(c) to ensure that the competent authorities shall enforce such remedies when granted.

#### **Arab Charter on Human Rights**

- Art. 23: Each State party to the present Charter undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

## **INTERNATIONAL HUMANITARIAN LAW AND THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT: INTERNATIONAL ARMED CONFLICT**

### **Obligation to investigate death in custody**

#### **Third Geneva Convention of 1949**

- Art. 121(1): Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

#### **Fourth Geneva Convention of 1949**

- Art. 131(1): Every death or serious injury of an internee, caused or suspected to have been caused by a sentry, another internee or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

### **Prohibition of violence against those who are *hors de combat***

#### **First Geneva Convention of 1949**

- Art. 12(1): Members of the armed forces and other persons mentioned in the following Article, who are wounded or sick, shall be respected and protected in all circumstances.
- Art. 12(2): They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

#### **Second Geneva Convention of 1949**

- Art 12(1): Members of the armed forces and other persons mentioned in the following Article, who are at sea and who are wounded, sick or shipwrecked, shall be respected and protected in all circumstances ...
- Art. 12(2): Such persons shall be treated humanely and cared for by the Parties to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

#### **Third Geneva Convention of 1949**

- Art. 13: Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention ...

#### **Fourth Geneva Convention of 1949**

- Art. 32: The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

### **Additional Protocol I of 1977**

- Art. 75(2): The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:
  - a) violence to the life, health, or physical or mental well-being of persons, in particular
    - i) murder ...

## **War crimes**

### **Geneva Conventions of 1949**

- Common Art. 49(1)/50(1)/129(1)/146(1): The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.
- Common Art. 49(2)/50(2)/129(2)/146(2): Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

### **First Geneva Convention of 1949**

- Art. 50: Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment (...), wilfully causing great suffering or serious injury to body or health (...) not justified by military necessity and carried out unlawfully and wantonly.

### **Second Geneva Convention of 1949**

- Art. 51: Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment (...), wilfully causing great suffering or serious injury to body or health (...) not justified by military necessity and carried out unlawfully and wantonly.

### **Third Geneva Convention of 1949**

- Art. 130: Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment (...), wilfully causing great suffering or serious injury to body or health ...

### **Fourth Geneva Convention of 1949**

- Art. 147: Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment (...), wilfully causing great suffering or serious injury to body or health (...) not justified by military necessity and carried out unlawfully and wantonly.

### **Statute of the International Criminal Court**

- Art. 8(2). For the purpose of this Statute, 'war crimes' means:
  - (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
    - (i) Wilful killing;
    - (ii) Torture or inhuman treatment, including biological experiments;
    - (iii) Wilfully causing great suffering, or serious injury to body or health ...

## **INTERNATIONAL HUMANITARIAN LAW AND THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT: NON-INTERNATIONAL ARMED CONFLICT**

### **Geneva Conventions of 1949**

- Common Art. 3: In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture ...

### **Additional Protocol II of 1977**

- Art. 4(1): All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.
- Art. 4(2): Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:
  - (a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment ...

### **Statute of the International Criminal Court**

- Art. 8(2). For the purpose of this Statute, "war crimes" means:
  - (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:
    - (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture ...

## UN instruments of soft law and other relevant legal texts

- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988. At: <http://www.un.org/documents/ga/res/43/a43r173.htm>
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Recommended by Economic and Social Council Resolution 1989/65, 24 May 1989. At: <http://www2.ohchr.org/english/law/executions.htm>
- UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, UN Doc. E/ST/CSDHA/12 (1991). At: <http://www1.umn.edu/humanrts/instreetree/executioninvestigation-91.html>
- Declaration on the Protection of all Persons from Enforced Disappearance, A/RES/47/133, 18 December 1992. At: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/A.RES.47.133.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/A.RES.47.133.En?Opendocument)
- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 16 December 2005. At: <http://www2.ohchr.org/english/law/remedy.htm>
- General Comment No. 06: The right to life (art. 6), 30 April 1982, CCPR General Comment No. 6. At: <http://www.unhchr.ch/tbs/doc.nsf/0/84ab9690ccd81fc7c12563ed0046fae3>
- General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 21 April 2004, CCPR/C/74/CRP.4/Rev.6. At: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>

## **ANNEX III. SIMPLIFIED CHECKLIST FOR THE MANAGEMENT OF THE DEATH SCENE**

(Based on UN Doc. E/ST/CSDHA/12)

- Secure the scene and record the identities of everyone at the scene.
- Obtain information from witnesses, including those who last saw the deceased alive (when, where and under what circumstances).
- Determine whether the body has been touched and/or moved.
- Identify the body.
- Obtain the medical history of the deceased from his or her physician(s), and X-rays and hospital charts, including any previous surgery, history of substance abuse, suicide attempts, etc. Obtain stored blood and urine specimens.
- Interview emergency medical personnel who may have come in contact with the body. Note all medical interventions: this includes any administration of drugs as well as cardio-pulmonary resuscitation and defibrillation.
- Describe and photograph the body, its position and the surrounding area (colour photographs with general and detailed views). Look for blood trace evidence and document any that you find.
- Document, collect, label and secure all potentially relevant evidence and look for sources of electricity and carbon monoxide, weapons, drugs or any other agent of harm.
- Record the location, colour and degree of fixation of lividity, the presence or absence of rigidity, any signs of decomposition, and ambient and deep rectal temperatures (consider performing a rectal swab before the measurement).
- Any heat source or factors influencing the cooling of the body have to be identified and documented for estimating the time of death.
- Perform a summary examination of the body and secure any trace evidence that may be destroyed while manipulating and transporting the body.
- Consider protecting the hands of the deceased, with paper bags, for instance.
- Place the body in a body bag or its equivalent and store it in a secure refrigerated location to prevent tampering.

# ANNEX IV. CHECKLIST FOR CONDUCTING AUTOPSIES

## External examination

- Photograph and make sketches of the entire body; take close-up photographs of the hands and face (including the teeth). Shave as necessary and photograph before and after.
- Document in detail all injuries on the body (type, location (including distance from the middle-line and from the heel), shape, size and pattern).
- Suspected bite marks should be swabbed for DNA analysis (see “Specimens and ancillary investigations” below).
- Document the absence or presence of injuries to the external genital organs and anus (see “Specimens and ancillary investigations” below).
- Document the absence or presence of petechial haemorrhages to the conjunctivae, buccal mucosa and periorbital and retro-auricular skin.
- Provide fingerprints, to establish the identity of the deceased. Generally, the fingerprints of individuals detained under criminal law are recorded.
- Record dental condition and dental work.
- Document and photograph all identifying features (distinctive birthmarks, prominent moles, scars, tattoos, etc.).
- Where there are extensive injuries (e.g. burns) it is important to note the areas that are intact and, in case of burns, an estimation of the burnt body surface should be given. Body hair should be documented where there are burns or scalds.
- For firearms injuries, the presence or absence of abrasion, stippling, soot and residues, etc., should be thoroughly documented along with measurement of the skin defect.

## Internal examination

- Whenever possible, a full body radiograph should be taken before the internal examination of the cadaver.
- Perform a full autopsy with subcutaneous dissection of the back side of the body and layered *in situ* neck dissection (partial autopsies are insufficient).
- Record the weight, shape, colour and consistency of each organ, and note any neoplasia, inflammation, anomalies, haemorrhage, ischemia, infarcts, surgical procedures or injuries.
- Take samples of organs and of any abnormal areas and injuries for analytical purposes (e.g. toxicology, pathology, age-estimation of injuries).
- In certain cases, consideration should be given for embalming the body (e.g. a request to this effect from the next of kin, air transportation of the mortal remains).
- After the internal examination the organs should be put back into the body. All incisions should be closed and the body should be handed over to the next of kin in a state of maximum possible integrity and respectful of the deceased person’s dignity.
- The consent of the family should be sought for the retention of organs, such as the brain, for examination.

## Central nervous system

- When pathology of the nervous system is suspected, the brain should be examined after fixation. Examination of an unfixated brain is difficult and can detect only gross pathologies,



such as important haemorrhage. After fixation in formalin for about three weeks, many more pathologies can be detected. Since this implies not putting the brain back in the body immediately after the autopsy, formal retention of the organ should be considered only after consulting the family and securing their permission.

#### **Genito-urinary system**

- A perineal dissection is recommended; it should be properly documented and photographed.

#### **Respiratory system**

- After the brain and visceral block have been removed (through excision at the thoracic inlet), a formal neck dissection must be performed.

#### **Gastrointestinal system**

- Gastric contents should be collected. Where appropriate, the entire small and large bowel should be opened in order to exclude the presence of illicit drugs.

#### **Thorax**

- Note abnormalities of the breasts, check for pneumothoraces, record rib fractures, noting whether cardiopulmonary resuscitation was attempted, and record thickness of subcutaneous fat. After opening the chest, describe and quantify presence of blood or other fluid in pleural cavities and the pericardial sac, save samples of any fluid abnormally present for analytical studies; and collect, describe in detail and save for analytical studies any foreign objects present (e.g. bullets). Trace injuries before removing the organs. Collect blood sample directly from the heart and label accordingly. Check the pulmonary arteries for thrombotic material and save in formalin, for analytical studies, when there is any possibility of an ante-mortem thrombus. Note degree and location of coronary artery disease and other cardiac abnormalities. Record abnormalities of lungs and major blood vessels.

#### **Abdomen**

- Examine the abdomen and record the amount of subcutaneous fat. Consider retaining adipose tissue in a hermetic glass container if intoxication with volatile substances is suspected. Note the interrelationships of the organs. Trace any injuries before removing the organs. Make note of any fluid or blood in the peritoneal cavity, and save it until foreign objects are accounted for. Remove, examine and record quantitative information on the liver, spleen, pancreas, kidneys and adrenal glands. Remove the gastrointestinal tract and examine the contents. Note any food present and its degree of digestion. Gastric contents should be collected. The entire small, as well as the large, bowel should be opened. Examine the rectum and anus for burns, lacerations or other injuries. Locate and retain any foreign bodies present. Examine the aorta, the inferior vena cava and the iliac vessels.

#### **Pelvis**

- Consider a formal perineal dissection if appropriate. Examine the organs in the pelvis, including the ovaries, the fallopian tubes, the uterus, the vagina, the testes, the prostate gland, the urethra and the urinary bladder. Trace any injuries before removing the organs. Note any evidence of previous delivery. Save any foreign objects within the cervix, uterus, vagina, urethra or rectum.

## Head

- Examine the outer and inner surfaces of the scalp, noting any trauma or haemorrhage. Note any skull fractures. Remove the calvarium carefully and note epidural and subdural haematomas. Quantify, date and save any haematomas present. Remove the dura to examine the inner surface of the skull for fractures. Remove the brain and note any abnormalities. When pathology of the nervous system is suspected, the brain should be examined after fixation. Examination of an unfixated brain is difficult and can detect only gross pathologies, such as important haemorrhage. Evaluate the cerebral vessels. Dissect the brain and describe any injuries or cortical atrophy (whether focal or generalized).

## Neck

- After the brain and visceral block have been removed (through excision at the thoracic inlet), a formal neck dissection should be performed. Examine the subcutaneous layer. Dissect the anterior neck muscles *in situ* and describe any injuries or haemorrhage. Open and examine the jugular veins and carotid arteries. Remove the neck organs, taking care not to fracture the hyoid bone. Check the mucosa of the larynx, pyriform sinuses and oesophagus, and note any petechiae, oedema or burns. Note any particles or substances within the lumina of these organs. Examine the thyroid gland. Consider separating and examining the parathyroid glands. Examine the tongue. Dissect the hyoid bone and laryngeal cartilages and note any fractures.

## Spine

- Examine the cervical, thoracic and lumbar spine and note any haemorrhage in the paravertebral muscles. Examine the vertebrae from their anterior aspects and note any fractures, dislocations, compressions or haemorrhages. Where spinal injury is suspected, dissect and describe the spinal cord.

## Specimens and ancillary investigation

- Specimens must be collected in separate containers.
- Disposable hard plastic or glass tubes are recommended.
- Specimens must be labelled with the code for the deceased, specimen type, collection site, date/time of collection, and initials of the individual collecting the sample.
- Samples should be stored at a maximum of 4°C when analysed promptly after autopsy, otherwise at -20°C. When liquid specimens are to be frozen, it is recommended that some headspace (10-20%) be left in the specimen tubes.
- Swabs for DNA may usually be taken directly from the mouth, anus and vagina. If the sampling area is dry, the cotton swabs should be moistened with sterile water before swabbing the area, and a second dry swab also used to collect any remaining trace evidence. Swabs should be dried in air and protected from any contamination (e.g. in a paper envelope).

Ancillary investigations require collecting certain kinds of specimen and taking certain steps:

- blood: 10 ml of peripheral blood (usually from the femoral veins) and 30 ml of central (heart) blood; use sodium fluoride/potassium oxalate as the preservative;
- samples of urine, bile, vitreous humour and cerebrospinal fluid should be taken where possible;
- gastric contents (all);
- fragments (25g) of liver, muscle, kidney, lung and brain;
- hair: one strand of hair should be cut at the vertex as closely as possible. The proximal part (scalp side) should be indicated (e.g. by tying this end with a rubber band). Body hair can be taken if no head hair is available. Hair samples are stored at room temperature;
- fingernail scrapings;
- swabs and smears, for semen and DNA analysis, from the oral cavity, anus, rectum, and vagina (low and high). Swabs must precede the taking of temperature;

- samples of urine, peripheral blood, heart blood, liver, bile, vitreous humour and cerebro-spinal fluid – for analysis;
- whenever possible, a full routine toxicology;
- alcohol swabs for presence of oleoresin capsicum, after examination with ultraviolet light (if its presence is suspected);
- samples of all organs should be fixed in a formalin solution for histology;
- whenever possible, a histological examination should be undertaken;
- taking and submitting samples for microbiological analysis should be considered;
- taking samples of injuries for histology should also be considered;
- foreign objects found in the body must be saved as evidence.

**MISSION**

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.



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