

**GUIDELINES ON
INVESTIGATING DEATH IN CUSTODY**

February 2011

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Chapter 1 - Introduction

Overview

- Deaths in custody are a common yet often not thoroughly investigated incident. They can occur due to many reasons, including death by natural causes, ill-treatment, and murder or possibly linked to inadequate detention conditions.
- Any death in custody poses challenges for the detaining authority, for the relatives of the deceased and for those tasked with enquiring into or investigating the death.
- Deaths in custody often raise public interest and emotions that call for careful handling and investigation. There is often suspicion and even allegations and complaints about foul-play; and much distress for the bereaved (family or acquaintances of the deceased). Therefore a correct, thorough and transparent approach to enquiring into each death helps dispel unfounded concerns about alleged foul-play in cases of natural deaths; it is indispensable where a criminal investigation is required; assists the bereaved in providing timely information and a death certificate and it provides essential information for the future prevention of deaths in .
- Yet, in many countries today custodial deaths are poorly investigated for reasons ranging from lack of clear legislation (i.e. obligation to investigate or even to enquire); lack of investigative resources (e.g. forensic pathologists) and, more often than not, a lack of understanding on the part of detaining authorities about the importance and convenience of proper investigations. In cases of foul play involving detaining authorities there may also be a criminal interest in avoiding investigations (i.e. cover-up).
- The United Nations have developed important *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (recommended by the Economic and Social Council resolution 1989/65 of 24 May 1989), which have been complemented by a *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*. This UN Manual includes 1) a Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions ("Minnesota Protocol"), 2) a Model Autopsy Protocol and 3) a Model Protocol for Disinterment and Analysis of Skeletal Remains (U.N. Doc. E/ST/CSDHA/12 (1991)). The *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* contained in the annex to its resolution 43/173 of 9 December 1988 deserves also to be mentioned. These documents as well as the case-law of human rights bodies do stress that investigations must be independent, impartial and effective.
- It is often difficult however for State authorities and humanitarian workers to know what they should actually do to act in conformity with these international requirements. For example, what kind of organ should be conducting an investigation in order for it to be considered as independent and impartial? In which cases is an administrative investigation considered sufficient? How should the crime scene be managed to be considered efficient? How should the autopsy be conducted? How should the evidence be processed? etc.
- In order to fill this gap and to offer an updated comprehensive document, 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 Committee of the Red Cross, in collaboration with the International Centre for Prison Studies, have undertaken research on deaths in custody.
- This document aims to provide guidance to detaining authorities and humanitarian workers on the overall standards and procedures that should be followed in the event of a death in custody, and also indicates the minimum standards that should be met in all circumstances. The document can also guide any responders to a death in custody to allow them to ascertain that the minimum steps are being taken by authorities. It can also be used as a guide by detaining authorities to draft or update any standing orders/standard operating procedures that relate to deaths in custody.

- As a caveat, it must be stressed that these guidelines cannot be exhaustive regarding investigative bodies/arrangements as they may vary from state to state. If it is the case that investigations can be conducted in a different manner to that outlined here, they should nonetheless always be effective and capable of establishing facts, including accountability where appropriate, to help prevent recurrence.

I. Objectives

- These guidelines aim to provide guidance to detaining authorities [and humanitarian workers] on the overall standards and procedures that should be followed in the event of a death in custody.
- They outline the minimum standards that shall be met in all circumstances and indicate some best practices.
- [The guidelines can also guide any responders to a death in custody to allow them to ascertain that the minimum steps are being taken by detaining authorities.]
- They can be used to draft or update any standing orders/standard operating procedures that relate to deaths in custody, as well as for training purposes.

II. Legal Basis of the Obligation to Investigate Death in Custody

- Application in Peace and War Time
 - The obligation to investigate deaths in custody derives from international humanitarian law and human rights law. It is therefore applicable in both wartime and peacetime.
 - No exceptional circumstances whatsoever, whether a state of international armed conflict, internal insurgency or any other public emergency, can displace the obligation to ensure that an official effective investigation is conducted on cases of deaths in custody, as outlined in the present guidelines.
- International Human Rights Law

Right to Life and State's Obligation to Ensure the Enjoyment of the Right to Life of All Persons Within Its Jurisdiction; Contracting States are under the obligation to account for the lives of persons held in their custody and deprived of their liberty. This entails the following obligations:

- Once a person is injured during his or her time in custody, having been originally admitted to custody uninjured, the burden of proof is reversed. It is the State who must first satisfy the obligation of burden of proof by providing a plausible explanation for the injuries or the death. This explanation should normally disengage the State's responsibility for the injuries or for the suspected unlawful loss of life.
- The obligation to *ensure* the enjoyment of a right is common to all human rights instruments. It means that the State is not only under an obligation not to interfere in the rights enumerated in human rights conventions, but also must take up positive steps in order to protect the concerned right, and deter and prevent its violation. In order to ensure the effective enjoyment and protection of the right to life, the State must form an official effective investigation into all cases of death in custody, one that is likely to reveal the facts surrounding the death and is capable of leading to the identification of the persons implicated in the events.
- The obligation to investigate under the right to life rises as soon as the concerned authorities become aware of the death. They must act on their own initiative by establishing an independent body in charge of determining the facts and identifying those responsible for the death. This cannot be dependent upon the lodging of a complaint by the next of kin.

Right to Effective Remedy

- The right to effective remedy guarantees, at the national level, the availability of a remedy to ensure that the substance of the rights and freedoms in the Convention are

enforced, in whatever form they might happen to be secured in the domestic legal order. The scope of the obligation depends on the nature of the applicant's complaint under the Convention but the required remedy must nevertheless be effective.

- Given the fundamental importance of the right to protection of life, the right to remedy imposes, without prejudice to any other remedy available under the domestic system, an obligation on States to carry out an effective investigation into the circumstances of a death in custody, including effective access to the investigation procedure for the complainant.
- The State's obligation to investigate death in custody under the right to effective remedy will rise only upon the lodging of a complaint to the authorities by the next of kin of the deceased person.

- **International Humanitarian Law**

- **International Armed Conflict**

- Every death or serious injury of a prisoner of war or of a civil internee shall be immediately followed by an official enquiry by the detaining power, regardless of the perpetrator's identity or the cause of death.

- **Non-International Armed Conflict**

- In non-international armed conflict, Common Article 3 of the Geneva Conventions establishes fundamental rules from which no derogation is permitted.
- It requires that all persons in enemy hands be treated humanely.
- It specifically prohibits murder, mutilation, torture, cruel, humiliating and degrading treatment.
- The right to life guaranteed in Common Article 3 should (also) be interpreted in light of human rights law as described in the previous section

III. Definitions

For the purposes of these Guidelines:

- "Death" is the irreversible cessation of all vital functions, including brain activity.
- "Custody" is considered to start from the moment of apprehension or arrest by agents of the State, or by any persons belonging to an organized (armed) group under responsible command. It includes any form of deprivation of liberty, notably detention or imprisonment as well as the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will. It ends when a person is not anymore under the effective control of State agents or of any persons belonging to an organized (armed) group under responsible command.
- "Detaining authorities" include a state correctional agency or officer or employee of that agency, or any other public or private agency or person (including medical personnel) responsible for the supervision, surveillance and care of detainees.

Chapter 2 - International Legal Aspects of the Obligation to Investigate Death in Custody

I. International Standards Related to the Investigation

Introduction

In cases of death in custody, State authorities must take all necessary means to ensure that investigations are properly carried out in order to determine the circumstances in which the death took place and to identify those responsible for such an occurrence. Although States do not have an obligation of results (obligation to find the cause of the death and/or those responsible for the death), they have an obligation of means (an obligation to take all the necessary steps to ensure that the cause and the responsible party can be identified) (ECHR and IACtHR).

To ensure that States fulfill this obligation of means, specific criteria have been progressively developed in soft law and jurisprudence. These criteria aim to evaluate how the investigation shall be conducted and relate to:

- the investigation itself,
- the body in charge of the investigation and
- the role of the next of kin in the investigation process.

A. The Investigation

- The scope of the investigation shall be **comprehensive** and shall touch upon the relevant facts linked to the death (ECHR and IACtHR).
- Investigation shall be initiated **promptly** by the **competent authorities** and carried out **without undue delay** (Principles of effective prevention and investigation of extra-judicial killings, arbitrary and summary executions, ECHR and IACtHR).
- Investigations shall be **effective** and **thorough** (HR Committee, ECHR and IACtHR) and shall allow the following facts to be determined (Principles of effective prevention and investigation of extra-judicial killings, arbitrary and summary executions, ECHR and IACtHR):
 - Identification of the victim
 - Cause, manner, place and time of death of the victim
 - Distinction between natural death, accidental death, suicide and homicide shall be made
 - Any pattern or practice that may have brought about the death
 - Autopsy should [*shall*] take place immediately after the death (ECHR).¹

¹ See chapter on autopsy, p. XXX

The following actions shall be taken, depending on the gravity of the case [non-natural death]

- The death scene shall be preserved in order to protect evidence and the body in charge of the investigation shall promptly visit the place of death and carry out ballistic tests in cases where firearms were used (ECHR).
- All key witnesses, including eyewitnesses of the events and suspected state agents, must be identified and called to testify. Failure to take steps to interview and seek evidence from the eyewitnesses may be sufficient in itself to consider the investigation seriously deficient (Principles of effective prevention and investigation of extra-judicial killings, arbitrary and summary executions, ECHR and IACtHR). Testimonies have to be carefully recorded and analyzed by the body in charge of the investigation (ECHR).
- An autopsy is a key element of the investigation process and is therefore considered as a component of the obligation to investigate cases of death in custody. The autopsy must be conducted by a physician. The autopsy report must describe any and all injuries to the deceased, including evidence of torture (Principles of effective prevention and investigation of extra-judicial killings, arbitrary and summary executions, ECHR and IACtHR). For additional information see the chapter on autopsy.

B. The Body in Charge of the Investigation

- Death in custody shall be **investigated ex-officio** (The Prosecutor shall trigger the investigation, even in the absence of a complaint by relatives) (HR Committee, ECHR).
 - The body in charge of the investigation shall be **independent** from the detaining authority and from any person or agency under investigation for the event. (HR Committee, Principles of effective prevention and investigation of extra-judicial killings, arbitrary and summary executions, ECHR, IACtHR).
- The body in charge of the investigation shall be **impartial**. Decisions shall be based on objective criteria, rather than on the basis of and form of bias or prejudice. (HR Committee and Principles of effective prevention and investigation of extra-judicial killings, arbitrary and summary executions, ECHR and IACtHR).
- The **investigative authority shall actively co-ordinate the investigation** process and shall transmit to the competent Court. An appeal shall be possible in case of absence of prosecution. Any decision not to initiate criminal proceedings in cases of death in custody shall be justified (ECHR).
- The investigation process shall **take into account all the relevant information and evidence** available. Biased information and false evidence shall be rejected (ECHR).
- Likewise, the **autopsy** shall be conducted by an independent and impartial body (Principles of effective prevention and investigation of extra-judicial killings, arbitrary and summary executions, ECHR and IACtHR).

C. Public Scrutiny and Family Involvement

- The investigation proceedings shall be **transparent** (HR Committee, Principles of effective prevention and investigation of extra-judicial killings, arbitrary and summary executions, ECHR).
- The investigative body shall **provide all information** relevant to the investigation (including hearings) to the victim's family and their legal representatives (Principles of effective prevention and investigation of extra-judicial killings, arbitrary and summary executions, ECHR).

- The victim's family shall have **the right to a medical or other qualified representative** being present at the **autopsy** (United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, ECHR).
- The victim's family and relatives shall have **access to the case file** and take part in the proceedings (HR Committee, Principles of effective prevention and investigation of extra-judicial killings, arbitrary and summary executions, ECHR).
- The victim's family **shall be involved in the investigation process** (ECHR).
- **Legal aid shall be available** to the victim's family (ECHR).

II. Purposes of the Investigation

The investigation serves to protect the interests of all parties involved: the victim, the next of kin, the prison authorities and society as a whole. The investigation shall allow the victims to have their rights accounted for; it shall also allow the next of kin to know the truth behind the death and it shall prevent and deter similar events from reoccurring.

Therefore the investigation's main purposes are:

- A. Establishing the truth. Investigation shall reveal the facts surrounding the death, including the cause, manner, location and time of death and it shall identify the causative factors and any persons implicated in the events, if any.
- B. Reducing the trauma and providing an effective remedy for the next of kin. Remedies shall be proportionate to the gravity of the circumstances. The next of kin, after being granted the facts surrounding the death, shall be entitled to adequate redress that could include, among other things, monetary compensation, public apology or any other similar remedy at the State's disposal.
- C. Allowing for criminal justice proceedings to be instituted where applicable after the facts have been established. Where there are grounds to believe that a crime has been committed, or that death has been intentionally inflicted, investigation shall lead to a criminal prosecution of the suspected perpetrators. They shall be brought before a competent court and subsequently punished adequately.
- D. Preventing the reoccurrence of deaths in custody by adopting necessary preventive measures. Where crimes were involved investigations shall help bring perpetrators to justice.

III. Forms of Investigation

All and every death in custody shall be investigated in order to establish the facts leading to the death and those responsible, if any.

A. Preliminary Investigation

A preliminary investigation shall be initiated by the head of the custodial facility in all cases of death in custody. This preliminary investigation shall take place immediately after the occurrence of the death and should include the following steps:

- Preserve the scene and all evidence
- Record details of the circumstances surrounding the death
- Notify the competent authorities {police and/or prosecutor} as soon as practicable following the death
- Supervise and remain in control at the scene until relieved by an authorised officer;

- Submit a detailed report immediately, including all times, events and actions undertaken, as well as testimonies from other inmates, family members and prison agents;

The process of the investigation may differ according to the cause(s) of death. In case of suspicious death, a judicial investigation shall be required, while a natural cause of death will only lead to non-judicial investigations.

Where applicable under national legislation, a coronial investigation should take place immediately in order to establish the facts.

In all cases, States are under the obligation to conduct an **effective** investigation, in the sense that they must act with due diligence and be determined to establish the facts, identify those implicated in the events, prosecute and punish where necessary.

B. Criminal Investigation

The effective judicial investigation may, and under certain circumstances must, include recourse to criminal law, especially if the right to life is intentionally infringed upon. States' obligation to set up an effective judicial system necessarily requires the provision of a criminal-law remedy in such cases.

- The Prosecutor or the other competent body shall determine to what extent a full judicial investigation should be carried out.
- Based on the preliminary investigations, police officials shall conduct a full investigation to determine the cause of death and the alleged responsibility;
- The Prosecutor shall actively co-ordinate the investigation process and shall transmit to the competent Court.

C. Non-Criminal Investigation

In cases of a natural cause of death, an effective, thorough and official administrative investigation may be sufficient in order to determine the causes and circumstances surrounding the death.

In all cases of death an administrative investigation should be carried out by the prison administration to determine the extent to which policy, procedures, practices and other arrangements, or the absence thereof, contributed to any extent to the death.

This investigation could be carried out by the prison administration or an ad hoc review mechanism such as the National Preventive Mechanisms established under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), the National Human Rights Institutions (NHRI) or the Ombudsman.

Administrative investigation shall not prevent judicial authorities from carrying out their own investigation. Similarly administrative or disciplinary measures shall not preclude judicial sanctions, whether stemming from a civil procedure or a criminal one.

Chapter 3 - Medical-Legal and Forensic Aspects of the Obligation to Investigate Death in Custody

I. The Death Scene Investigation

A. Introduction

- Each death has first to be certified by a physician. Once the death has been diagnosed, tampering with the scene – no matter how apparently well intentioned this might have been – should in itself be a subject of a prompt and thorough investigation. Every person accessing the body or its surroundings almost inevitably contaminates the scene. If resuscitation efforts are undertaken prior the death, a detailed statement should be obtained from all present.
- The body and associated evidence must not be moved, and has to be examined in situ by a qualified medical officer (ideally a forensic pathologist), and a qualified investigator – both of whom should be independent from the detaining authority. Any delay will compromise the investigation and will need to be investigated itself. Especially if there was a struggle shortly before death, or if the deceased had psychotropic medication, a very rapid onset of the scene operations is of crucial importance. If the body temperature is not measured rapidly in these cases, some causes of death cannot be established.
- The employees and administration staff of the detention facility have to collaborate fully with the investigation and give the investigators free access throughout the facility.
- All deaths in custody should be treated as suspicious until a clear natural cause of death without any possible involvement of a third party has been identified. The latter also concerns medical complications, detainees with prescribed medication, or detainees with insufficient access to medical care. However, in cases of deaths in custody that are expected, such as those that are the consequence of a diagnosed terminal illness, the investigation may in some cases be simplified.
- *The following recommendations are concerning unexpected deaths and/or deaths that may be unnatural.*
- Where doubt exists about the identity of the deceased (in case of a body that has been burned in an open space for example), it is necessary to carry out investigations to determine the identity.
- A pre-established emergency action plan can help to ensure the rapid reporting of the death to the competent authority, facilitating the preservation of the scene and preparing the ground for a professional scene investigation. Such a plan should be short, understandable and contain up-to-date contacts. It needs to be widely available throughout the detention facility and needs to be regularly updated and exercised. The plan can address a number of issues:
 - a. **Who to inform**
 - The detaining authority
 - The investigating authority
 - The next of kin of the deceased person

The authority that will be investigating the death is to be informed without delay according to a prepared listing. Immediate steps are to be taken to inform the next of kin once the deceased is identified.

- b. **Timing**

- The detaining and the investigating authorities need to be informed immediately.
- The scene investigators need to take important steps very rapidly after the death (such as preserving the scene, securing evidence and estimating the time since death).
- The next of kin should be informed as soon as the body is identified.

- c. **What/How**
 - The investigating authority has to be informed about the death: the identity of the deceased, the circumstances of the death, the medical history, history of drug abuse and all other information that may help to provide an adapted response of the investigators.
 - The gathering of the above information is however no excuse for any delay in the reporting of the death.
- Death investigators investigating deaths in custody should follow training in their specific domain. In addition to their professional experience, continuous education updates are necessary.

B. Scene Management

a. Definition

- The location in which the death occurred as well as the location of the body is to be treated as a crime scene until the scene investigation is concluded and the investigating authority has released the area to normal usage again. The release of the scene can be fast if no evidence of a third party intervention is found.
- Personal property and all documents about the deceased are of crucial importance to the investigating authority and need to be handed over to them.

b. Aim

- The body and the areas associated with the death need to be preserved in their original state, until the investigators properly document everything of interest.
- A qualified medical officer should first confirm the death, check for the presence of any evidence of violence and estimate the time of the death. The latter can be important for the verification of statements and give supportive evidence for some causes of death.
- The whole scene is to be thoroughly documented by both imaging and description.
- All evidence should be protected by establishing a "chain of custody", that is, a signed record of the date, time and person to whom the evidence is passed at each stage. This prevents tampering with the evidence.
- All evidence, documents and personal objects concerning the deceased are to be gathered and secured.
- A written report detailing all observations of the preliminary examination has to be given to the investigating authority.
- The staff of the detention facility is responsible for the security of the other detainees and the investigators.

c. When

- As soon as the death is discovered, access to the body and its surroundings has to be restricted. Only a physician/medical officer should be allowed access to the body at this stage in order to certify the death. Afterwards, nobody should access the scene and neither the body nor the surroundings are to be altered or touched until properly documented by the crime scene investigators and medical officer.

d. Who:

- The scene should be placed under the jurisdiction of the investigating authority, which will only grant access to the investigators and medico legal specialists.
- Those entering the scene of a suspicious death should minimize its disruption and avoid its contamination.
- Everybody having accessed the scene should be listed.

e. What/How

- The body, its position and the surroundings are to be documented (by both written description and imaging). If available, photo documentation is the preferred method. Making a sketch is an acceptable alternative.
- Photographs should include general views as well as detail photographs with a scale. Blood trace evidence has to be photographed and analyzed. Evidence (objects and

samples) has to be documented, collected, labelled and secured. All evidence is accompanied by a chain of custody listing.

- If the body and associated evidence (e.g. clothing and personal effects) have been moved, this needs to be documented. All medical intervention has to be noted, including any drug administration, cardiopulmonary resuscitation and defibrillation. This also includes resuscitation measures by wardens or detainees.
- The forensic medical examination of the body is only summary at this stage and should not interfere with the detailed post-mortem examination autopsy.
- Clothing should not be removed from the body at this stage. Wounds of any kind should not be explored on the scene.
- The medical officer also has to estimate the time of death. The later he is given access, the less precise his estimation of the time of death will be. The estimation is based on livor mortis, post mortem rigidity, and measurement of the deep rectal (body core) and ambient temperatures. This must be performed with care, not to interfere with sampling for sexual assault (perform a rectal swab before the measurement), and without inflicting post-mortem injuries. It must be stressed that the estimation of the time of death always has an inherent tolerance (i.e. error factor) of several hours.
- Any heat source or any influencing factors concerning the cooling of the body have to be identified and documented.
- Evidence on the body has to be protected and/or collected, recorded and secured. Maintaining chain of custody is crucial. The hands should be protected with paper bags.
- If possible the body has to be pre-identified, however without jeopardizing the collection of evidence. This can be achieved by staff of the facility, and confirmed later on.
- The staff in charge of the deceased has to be interviewed at an early stage (before any internal debriefing procedure). Their statements have to be written down, dated and signed. Medical personnel of the detaining facility should be interviewed as well, and asked about medication and medical conditions of the deceased. It has to be established when the deceased was last seen by a nurse or physician.

C. Management of the Body

- After the preliminary examination of the body, it has to be protected from postmortem change. This is best achieved by storing the body in refrigeration, ideally between 2°C and 4°C.
- The removal of the body and the transfer to the morgue where the full postmortem examination will be carried out has to be closely supervised by the investigating team. The body must at all times be treated with respect for the dignity of the person.
- Care must be taken in the proper identification and documentation of the body, in particular, careful procedures must be followed for the marking and recording of the body and of the grave sites in the case of temporary burial.

D. Informing the Next of Kin

- The next of kin have the right to be immediately informed of the death of their relative, and that an enquiry has been opened (as soon as the body is identified).
- They should be treated in a proper, respectful and dignified manner and reminded of their right to send a representative to the autopsy. They must be informed of the results of the enquiry. If available, counselling services (i.e. support therapy) should be offered.
- As soon as possible after the death a complete death certificate should be issued to the next of kin. Upon completion of the examination, the body must be returned to the next of kin in a manner affording all respect for the human dignity of the deceased, such that the funeral rites / customary procedures can be conducted with the shortest possible delay.
- The personal effects of the deceased should be returned to the next of kin as soon as possible.

II. Postmortem Examination

A. Introduction

The external and internal examination of a cadaver (dead body) is known as a **postmortem examination**. The postmortem examination of a body goes from an external examination of the body to a full forensic autopsy (external and internal examination) together with ancillary analyses. In most countries an examination of the body has to be performed before issuing a death certificate.

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

- the **identity** of the deceased
- the estimated **time of death** (see chapter 'scene investigation')
- the **cause of death** (physiological process and reason that a person died, such as injuries, diseases, intoxication, etc.)
- the **manner of death** (i.e. natural, accidental, suicidal, homicidal, undetermined)
- the possible **sequence of events** that led to the death

The extent of the postmortem examination of the body depends mainly on the local resources and customs. A dead body undergoes natural postmortem changes, which can mask injuries. For this reason, the postmortem examination has to be performed as soon as possible after death. If the body is stored in ideal conditions (i.e. cold storage, between 2°C and 4°C), a delay of some days is acceptable. The autopsy in itself is destructive and cannot be repeated in the same manner. Thus, every postmortem examination should be well documented to ensure the possibility of a later review by external experts.

Some funeral rites completely destroy the body, preventing any further forensic examination. For this reason the body should be released to the next of kin only after the postmortem examination. Due diligence in the investigation should help ensure the swift release of the body and avoid further stress for the bereaved.

B. Basic Principles

In a suspicious death, such as a death in custody, a **medico-legal** postmortem examination or autopsy is often mandatory and always necessary to **collect evidence** that may assist with the investigation to **ascertain facts and attribute responsibility**. In some cases of accidental deaths such as **unsafe electrical installations or sources of carbon monoxide**, the determination of the **cause of death can prevent recurrence**.

The threshold for conducting a full forensic autopsy in deaths in custody should be particularly **low** – in other words, there should be very strong, convincing and properly recorded arguments for *not* conducting an autopsy. Possible reasons for not conducting an internal examination can be the lack of trained pathologists. Opposition to autopsy of the next of kin may also be taken into account in some circumstances.

Accepted **international standards** should be followed when conducting a medico-legal autopsy in cases of deaths in custody, and the reasons for deviating from such standards should be fully noted (e.g. "*Model Autopsy Protocol of the United Nations*", endorsed by the General Assembly in 1991 ["United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions", U.N. Doc. E/ST/CSDHA/12 (1991)] and the Council of Europe's *Harmonisation of Medico-Legal Autopsy Rules*, Recommendation No. R 3 (99))

A detailed **written, photographic and video record**, as well as **sketches**, of the procedure and findings should be made. (if video is not available then photographs and sketches should suffice)

All evidence must be fully documented and relevant items and samples collected (ensuring **chain of custody**)

The same principles apply to any second autopsy that may be conducted in cases of deaths in custody (see below).

All deaths in custody should be examined by a medico-legal expert (ideally, a forensic pathologist) or, if unavailable, by a medical officer with forensic training. He or she must be given full independency concerning the investigation and the presentation of results, which must be impartial and objective.

Whenever possible it is imperative that the medico-legal expert carrying out the autopsy attend the scene of death (see corresponding chapter)..

C. Special Considerations

Expected natural deaths

All deaths in custody should be treated as suspicious. However, for expected deaths in custody, such as those that are the consequence of a previously diagnosed and medically well documented terminal illness, the investigation may in some cases be simplified. The minimum requirement is in those cases, a death certificate established by a medical doctor and based on a short external examination, the information of the next of kin and the release of the body to them. The next of kin have the right to ask for further investigation into the death.

D. Technical Comments

With rare exceptions (see below) post mortem examinations (including autopsies) in cases of death in custody should be performed as per se a homicide case, with appropriate investigating personnel in attendance and, wherever possible, with a forensic-trained photographer.

A record of resuscitative measures undertaken by first-aid and ambulance personnel, warders or prisoners must be available to the medical examiner prior to the autopsy.

(1) External Examination

- Complete photographs and sketches of the body including close up photographs of the hands and face (including teeth).
- Document all injuries on the body
- Document absence/presence of injuries to the external genital organs/anus (see specimens).
- Document absence/presence of petechial haemorrhages to the conjunctivae, buccal mucosa and peri-orbital and retro-auricular skin.
- Fingerprinting, in order to establish the identity (generally, the fingerprints of prisoners are listed).

(2) Internal Examination

Full autopsy with subcutaneous dissection of the back side of the body and layered *in situ* neck dissection;

Central Nervous System

In cases with suspected pathology of the central nervous system, the brain should be examined after fixation. The unfixated brain is difficult to examine and can only detect gross pathologies /such as important hemorrhage. After fixation in formalin for about three weeks the examination of the brain can detect much more pathologies.

Genitourinary System

A perineal dissection (formal procedure) is recommended with photographs of the dissected specimen.

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 illegal drugs.

(3) Specimens and ancillary investigations

- Fingernail scrapings
- Swabs and smears for semen and DNA from the oral cavity, anus, rectum, low and high vagina. Swabs must be performed prior to temperature recordings
- Samples of urine, peripheral blood, heart blood, liver, bile, vitreous humor and cerebrospinal fluid should be taken;
- Whenever possible, full routine toxicology
- Whenever possible, full body radiology before the internal examination
- Alcohol swabs for presence of Oleoresin capsicum –after examination with ultraviolet light (if indicated)
- Samples of all organs should be fixed in a formalin solution for histology;
- Consider histological examination whenever possible;
- Consider taking and submitting samples for microbiology analyses.

E. The Second Autopsy

One has to be aware that a first autopsy is always a destructive process and that the initial situation cannot be restored. Another factor to take into account is the postmortem change the body undergoes after death. This is why the result of such an autopsy depends mainly on the condition of the body. A second medico-legal autopsy or "counter autopsy" can be however be performed even years after the death. The questions, a second autopsy can answer are:

- Was the original autopsy performed according to the standards?
- Can the initial findings be confirmed?
- Are there additional relevant findings that were not detected at the first autopsy?
- Are the findings consistent with the initial interpretation of the results?

Sometimes, instead of a second autopsy, it can suffice to submit the documentation of the first autopsy to the appointed expert. If a second autopsy is performed, the same principles as above apply.

Chapter 4: Minimizing the Risk of Deaths in Custody

Introduction

This chapter identifies

- Strategies to minimize the risk of death by each of these causes
- Processes to ensure the implementation of the strategies

The best way to minimize the risk of death is by observing the human rights standards which have been agreed by the international community. If this message is properly explained, it is likely to be understood and generally accepted in all jurisdictions and cultures. It can be demonstrated to prison staff that this is an effective way to manage prisons. Respecting the rights of prisoners can frequently mean that the conditions in which prisoners live and in which staff work will improve, that tension will be reduced and that a prison will be managed more efficiently.

I. Minimizing the Risk of Ill Health

A. Conditions of Detention

In order to minimize the risk of ill health, close attention needs to be paid to:

- The capacity of the prison and the actual number of prisoners which it holds
- The state of the accommodation
- Its size relative to the number of prisoners
- The proportion of time prisoners spend in the cells/dormitories
- The use which is made of space near the living accommodation

The maintenance of human dignity also means that there should be proper provision for hygiene, sanitation and fresh clothing.

- Adequate washing arrangements
- Access to toilets
- Provision of personal clothing and bedding

Prisoners are entitled to adequate food and liquid.

- Quality of food
- Quantity of food
- Timing of meals

In all prisons, but especially in those which are overcrowded, it is important that prisoners should have

- Continuous access fresh air
- Daily exercise in the open air

B. Health Rights of Prisoners

Those who are imprisoned retain their fundamental right to enjoy good health, both physical and mental, and their entitlement to a standard of medical care which is at least the equivalent of that provided in the wider community.

A poor health profile

- Many men and women are likely to arrive in prison with pre-existing health problems
- These may have been caused by neglect, by physical or mental abuse

- They may have been caused by the person's previous lifestyle, including misuse of drugs or alcohol
- These problems may be significantly and adversely affected by the fact of imprisonment

a. Access to health care

- Prisoners should have access to adequate health care from the point of first reception to custody
- Prisoners should be examined by a qualified medical person as soon as possible after admission
- Throughout their sentences, they should have continuing access to qualified health advice and care

b. A healthy environment

Medical or health care staff from the prison have a duty to inspect, to collect information and to advise the prison authorities about matters relating to:

- The quantity, quality, preparation and serving of food and water
- The hygiene and cleanliness of the institution and prisoners
- The sanitation, heating, lighting and ventilation of the prison
- The suitability and cleanliness of the prisoners' clothing and bedding

c. Individual treatment

Prisoners should have the right of access of qualified medical or health care staff. When treating prisoners, the professional obligations of these staff include:

- observing the normal rules of medical confidentiality
- diagnosing physical or mental illness and taking all measures necessary for its treatment
- recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently
- dealing with withdrawal symptoms resulting from use of drugs, medication or alcohol
- isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment
- ensuring that prisoners carrying the HIV virus are not isolated for that reason alone
- determining the fitness of each prisoner to work and to exercise

d. Health care personnel

- Medical services in prison should be organised in close relation with the general health administration of the community or nation
- Every prison should have the services of at least one qualified general medical practitioner
- Arrangements should be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency
- Every prison should have personnel suitably trained in health care

C. Prisoners' Contact with the Outside World

An important feature in minimizing the risk of self-inflicted death in custody is to ensure that those who are detained can maintain and develop contact with family, friends and the external world. The following factors are among those which can assist in that objective.

- Prisoners should be allowed to communicate as soon and as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organizations and to receive visits from these persons
- The arrangements for visits should be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible

- Prisoners should be able to inform their families immediately of their imprisonment or transfer to another institution and of any serious illness or injury they may suffer

II. Preventive Measures to Ensure an Absolute Prohibition of Torture There must be clarity about the absolute and total prohibition against any form of torture.

a) There are certain key danger moments in terms of potential abuse of prisoners.

They include the following.

- On first reception into prison: The treatment he or she receives at that point is an important indicator to the prisoner and to others of what is to follow. On first admission to prison some people will be subdued and afraid. Others may be truculent or under the influence of drugs or alcohol. It is important that staff should treat every prisoner on admission with dignity and respect.
- In managing prisoners who need to be subdued: There has to be a clear set of regulations relating to the treatment of prisoners who are violent, who breach prison rules or who are in any way difficult to manage. This treatment can be firm and decisive, while at the same time avoiding any suggestion of cruelty or inhumanity.

b) Use of force

- Necessary use of force must be in accordance with international standards and respect the principle of proportionality..
- There should be specific regulations covering the use of all methods of physical force, including means of restraint such as handcuffs, body belts and chains, as well as batons and truncheons.
- Staff should not have unrestricted access to handcuffs, body belts and straitjackets. Instead, they should be held in a central location in the prison and any use should be authorised in advance by a senior member of staff.
- A full record should be maintained of any instance when this equipment is issued and the circumstances in which it is used.
- Prisoners who complain about physical abuse or torture should be examined by a forensically trained physician, in order to investigate and document any injuries.

The closed and isolated nature of prisons can offer the opportunity for abusive actions to be committed with impunity, sometimes in an organized manner and at other times because of the actions of individual members of staff. There is a danger that in jurisdictions or institutions where the punitive function of prisons is given priority, actions which amount to torture, such as routine unlawful use of force and beatings, can come to be regarded by staff as 'normal' behavior.

c) Clear definitions and instructions

Staff should be provided with a clear set of instructions which define what constitutes torture and cruel, inhuman or degrading treatment of detainees and prisoners and the fact that any behaviour which includes any aspect of this will never be condoned and will lead to disciplinary action

d) Complaints procedures

- It is important that there should be a set of procedures which allow prisoners to make special requests and to register any complaints which they have.
- These procedures should be clearly laid out in a way that can be understood both by prisoners and by the staff who deal directly with the prisoners.
- It should always be clear that a prisoner will not be punished or victimised for raising complaints.
- General regulations should be understood and followed by everyone, not solely by prisoners.

Annex I

Treaty Based Origins of the Obligation to Investigate

International Human Rights Law Treaties

Right to life

Article 3 of UDHR

Everyone has the right to life, liberty and security of person

Articles 2(1) and 6(1) of the ICCPR

§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, (...).

§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

Articles 1 and 2 of the ECHR

§1. The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention

§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.

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.*

Articles 1(1) and 4(1) of the ACHR

§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(...)

§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.

Articles 1 and 4 of ACHPR

§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.

§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.

The Right to Effective Remedy

Art. 2.3 (a) ICCPR

Each State Party to the present Covenant undertakes:

(a) 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"

Art. 13 ECHR

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."

Art. 25 ACHR

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.

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."*

International Humanitarian Law Treaties
International Armed Conflict

Obligation to investigate death in custody

Article 121 of GCIII and Article 131 of GCVI 1949

§121. 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....

§131. 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...

Obligation to prosecute war crimes

Articles GCI 49, GCII 50, GCIII 129 and GCIV 146

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. 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...

Articles GCI 50, GCII 51, GCIII 130 and GCIV 147

Grave breaches...shall be those involving any of the following acts, if committed against persons or property protected by the present 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.

Articles 11, 85 and 86 of AP I

§11(1). 1. The physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1 shall not be endangered by any unjustified act or omission...

§85(1). The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol.

2. Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons in the power of an adverse Party protected by Articles 44, 45 and 73 of this Protocol, or against the wounded, sick and shipwrecked of the adverse Party who are protected by this Protocol, or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse Party and are protected by this Protocol.

3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

(e) making a person the object of attack in the knowledge that he is hors de combat.

§86(1). The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do

Non International Armed Conflict

Common Article 3 to GC

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...

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

UN Soft Law Documents

- **General Comment No. 06: The right to life (art. 6), 30/04/82. CCPR General Comment 6.**
Online at: <http://www.unhchr.ch/tbs/doc.nsf/0/84ab9690ccd81fc7c12563ed0046fae3>
- **UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; A/RES/43/173 OF 9 December 1988.**
Online 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 ESCouncil RES1989/65 of 24.5.1989.**
Online at: <http://www2.ohchr.org/english/law/executions.htm>
- **UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/12 (1991).**
Online at: <http://www1.umn.edu/humanrts/instree/executioninvestigation-91.html>
- **Declaration on the Protection of all Persons from Enforced Disappearance GA RES 47/133 of 18 December 1992.**
Online 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)
- **General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant: 21/04/2004. CCPR/C/74/CRP.4/Rev.**
Online at: <http://graduateinstitute.ch/faculty/clapham/hrdoc/docs/hrcGC31.htm>
- **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 of 16 December 2005**
Online at: <http://www2.ohchr.org/english/law/remedy.htm>