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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Protection of the dead

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz*

Summary

In the present report, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz, examines, from a human rights perspective, the obligations to protect and respect the dead. He recommends the development of human rights-based guiding principles for the protection of the dead to bridge the gap between different levels of protections for dead persons under international law.

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I. Activities relating to the mandate

1. The present report is prepared pursuant to Human Rights Council resolution 53/4. The main activities undertaken by the Special Rapporteur on extrajudicial, summary or arbitrary executions from 1 August 2023 to 31 March 2024 are described in the annex. Activities undertaken from April to July 2023 were included in the report to the General Assembly.¹ The contribution of the Special Rapporteur to the Secretary General's consultation on lethal autonomous weapons systems pursuant to General Assembly resolution 78/241 is available from <https://www.ohchr.org/sites/default/files/documents/issues/executions/sr-sumex/A-HRC-56-CRP-Lethal-automated-weapons-systems.pdf>.

II. Protection of the dead

A. Introduction

2. The notion that the deceased and their human remains deserve respect and dignified treatment is common to and deeply embedded within different societal, religious and cultural traditions. Families, communities and societies around the world honour and mourn their dead through careful and elaborate final rites and funeral procedures. In cases of extrajudicial, summary or arbitrary executions (i.e. unlawful killings), bodies of victims are testaments to the violation of their right to life and, as such, the international community has a responsibility to protect and safeguard dead persons. In the present report, the Special Rapporteur examines the obligations to protect the dead from a human rights perspective, building on reports by previous mandate holders, including on the protection of mass graves.²

3. All States have the duty to protect and respect the dead. Relevant requirements are enshrined in international and regional human rights instruments, and all countries have detailed national laws regulating treatment of the dead. While the existing legal framework has many robust elements, a key challenge in protection of the dead is the chasm between the detailed protections in the laws of war and the more general obligations contained within international human rights law. The Special Rapporteur recommends development of human rights-based guiding principles for protection of the dead through a human rights lens, and calls on States, in every case and circumstance of a potentially unlawful death, to treat the body of the deceased with dignity and respect.

4. The Special Rapporteur reviews the applicable legal frameworks, including relevant international human rights, humanitarian and criminal law, as well as regional and national laws. The rights to life, to be free from torture, cruel, inhuman or degrading treatment (hereafter torture and ill-treatment), to be protected from enforced disappearance, to a remedy, to privacy, to religion and to culture all contain obligations to protect the dead. International humanitarian law contains detailed requirements with respect to managing, preserving, identifying and returning the dead. In such situations, deliberate ill-treatment of bodies can constitute a war crime.

5. The Special Rapporteur examines key practices relating to protection of the dead. He analyses the ways in which States protect the dead bodies and human remains of minorities and the indigent and manage unclaimed or unidentified bodies, and finds that the discrimination that exists in life is often maintained in death. Additionally, he identifies the scarcity of guidance for the preservation and protection of dead bodies in cases of potentially unlawful death. Finally, the Special Rapporteur looks at practices in the context of armed conflict and situations of emergency, including health emergencies, natural disasters, migration and mass fatality incidents, where the ability of States to adequately respond is limited because medico-legal systems have been overwhelmed and key infrastructure damaged, and highlights some pertinent good practices.

¹ A/78/254.

² A/75/384.

6. In preparation for the report, the Special Rapporteur issued a call for input, and received 30 submissions.³ Additionally, he conducted extensive research into laws, policies, and examples of practices relating to protection of the dead and carried out interviews with experts. The Special Rapporteur would like to thank the Global Human Rights Clinic, the University of Chicago Law School and the Global Research Initiative on Forensic Medicine and Human Rights (Monash University), as well as all those who were interviewed and responded to the call for input.

B. Applicable legal framework

1. General considerations

7. Across societies and cultures, paying respect to the dead through specific customs and rituals is almost universal. There is a myriad of approaches through which this occurs, and a rich debate regarding, and extensive documentation of the diversity of, what is considered dignified treatment of the dead. In the present report, the Special Rapporteur does not examine the philosophical, anthropological, religious and cultural foundations, or the debates, that underpin the obligations to protect the dead. However, he examines from a normative and legal perspective whether human rights apply only to the living and whether it is even appropriate to discuss rights as applied to the deceased. While jurisdictions and courts are divided about whether or not a deceased person retains residual rights, they still all find that obligations to protect and respect the dead arise from the human rights of the relatives of the deceased.⁴ Additionally, most countries have detailed laws, upheld by courts, designed to respect the wishes of the deceased person in relation to their posthumous affairs, notably as part of their wills and the honouring of their burial wishes and wishes relating to organ donorship.

8. Underlying those norms and rights is the concept of dignity of the dead, which has been used by a growing number of scholars to understand rights owed to the deceased and their families.⁵ That all humans have inherent dignity is a foundational concept in international law, derived from article 1 of the Universal Declaration of Human Rights. While the right to dignity is inherent, it is also complex to define and there are questions about whether it applies posthumously. Today, many countries, including Chile, France, India and Kenya (see para. 18 below), have explicitly recognized in their national laws or jurisprudence that “human dignity does not end with death”.⁶ Additionally, it has been articulated in multiple key international protocols governing the respectful treatment of the dead in emergencies.⁷

9. Within international human rights law, the rights to life, to be free from torture and ill-treatment, to be protected from enforced disappearance, and to a remedy contain obligations to protect the dead. Additionally, the rights to privacy, culture and religion also contain obligations to protect dead persons and their human remains. Related bodies of law, namely, international humanitarian law (applicable in times of armed conflict) and international criminal law (applicable to the commission of serious human rights violations), set out obligations regarding protection of the dead within certain specific situations.

³ The submissions are available at <https://www.ohchr.org/en/calls-for-input/2024/call-input-protection-dead-persons-and-their-human-remains-including-victims>.

⁴ See, for example, European Court of Human Rights, *Akpınar and Altun v. Turkey*, Application No. 56760/00, Judgment, 27 February 2007, paras. 82 and 84–86.

⁵ Claire Moon, “What remains? Human rights after death”, in *Ethical Approaches to Human Remains*, Kirsty Squires, David Errickson and Nicholas Márquez-Grant, eds. (Springer, 2019), pp. 47–50.

⁶ High Court of Kenya at Siaya, *Akoth Ajuang and another v. Owuor Osodo and three others*, Constitutional Petition No. 1 of 2020, Judgment, 15 June 2020, para. 210.

⁷ For example: International Committee of the Red Cross (ICRC), “Guiding principles for dignified management of the dead in humanitarian emergencies and to prevent them becoming missing persons” (2022); Pan American Health Organization and others, *Management of Dead Bodies after Disasters: A Field Manual for First Responders*, 2nd ed., Stephen Corder and others, eds. (Geneva, Pan American Health Organization, 2016); and International Criminal Police Organization (INTERPOL), *Disaster Victim Identification Guide* (November 2023).

2. International and regional human rights provisions

10. States are required to investigate all potentially unlawful killings as part of the duty to uphold the right to life. Death investigations must be prompt, effective, thorough, independent, impartial and transparent.⁸ All evidence must be collected and analysed, following internationally accepted protocols and procedures. This includes a full forensic investigation of relevant crime scenes and an autopsy of the human remains. The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the Minnesota Protocol on the Investigation of Potentially Unlawful Death set common investigative standards, procedures and guidelines. In situations of violations of the right to life, the search for the deceased, the identification of human remains and their return to relatives for dignified burials according to the family's customs and beliefs can be a means to advance the right to remedy. Additionally, the prohibition against torture and ill-treatment requires ensuring that the remains of a deceased person are treated with dignity and protected, to prevent the infliction of severe harm and suffering on the relatives of the deceased.

11. The most detailed protections of the dead under human rights law can be found in the International Convention for the Protection of All Persons from Enforced Disappearance. The Convention contains specific requirements for States to take all appropriate measures to locate, respect and return the remains of victims of enforced disappearance.⁹ It also requires States to maintain official records regarding the circumstances of the death and the location of remains in the event of a disappeared person's death.¹⁰ Lastly, the Convention requires States to help each other exhume, identify and return the remains of disappeared persons.¹¹ The duty to protect the dead has emerged in Human Rights Committee jurisprudence related to complaints about violations to the right to life. The Committee has indicated that the disrespectful treatment of remains may amount to cruel, inhuman or degrading treatment of the family of the deceased.¹² The protection of the right to life, the rights of family members of the deceased and the treatment of the dead are therefore closely intertwined. These protections have also been reaffirmed by regional courts, notably the Inter-American Court of Human Rights. For example, in the case of *Blake v. Guatemala*, the Court ruled that the concealment of Mr. Blake's whereabouts and human remains violated the prohibition against torture and ill-treatment.¹³ Further, in the case of *Guzmán Medina y otros v. Colombia*, a case of a State-perpetrated enforced disappearance,¹⁴ the Court held that part of the right to the truth is the right of family members to know the fate of their loved one and the location of the remains if the victim is deceased, and that State officials must exhaust all efforts to establish the whereabouts of the victim.¹⁵

12. Other international human rights that relate to the protection of the dead include the rights to privacy, to culture and to religion, and Indigenous rights. The right to privacy has been applied broadly by different jurisdictions, including the right of families to carry out dignified burials, to protect the medical information of the decedent and to ensure that organs are managed in accordance with the decedent's wishes. For example, regionally, in *Sabanchiyeva and others v. Russia*, the European Court of Human Rights found that withholding the body of someone determined to have participated in a terrorist act conflicted with article 8 of the Convention, protecting private and family life.¹⁶ Article 71 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families also requires States parties to facilitate the repatriation, to the State of origin, of the remains of deceased migrant workers or members of their families, where necessary. The rights to culture and to religion also relate to protection of the dead, by

⁸ Minnesota Protocol on the Investigation of Potentially Unlawful Death, para. 20.

⁹ Art. 24 (3).

¹⁰ Art. 17 (3) (g).

¹¹ Art. 15.

¹² See, for example, *Kandel et al. v. Nepal* (CCPR/C/126/D/2560/2015) and *Nakarmi and Nakarmi v. Nepal* (CCPR/C/119/D/2184/2012).

¹³ Judgment, 24 January 1998 (Merits), paras. 112–116.

¹⁴ Judgment, 23 August 2023, paras. 83–85.

¹⁵ *Ibid.*, paras. 92 and 93.

¹⁶ Application No. 38450/05, Judgment, 6 June 2013, paras. 141–147.

ensuring that different communities have the opportunity to carry out final rites and burial practices in accordance with their cultural and religious beliefs.

13. International human rights law also has specific provisions on protection of the dead for Indigenous Peoples, as part of their broader right to culture and self-determination. The United Nations Declaration on the Rights of Indigenous Peoples, which provides for the promotion of Indigenous Peoples' full and effective participation in all matters that concern them, contains, in article 12 thereof, specific requirements about the repatriation of ancestral remains.

3. International humanitarian and international criminal law

14. International humanitarian law ensures that parties to an armed conflict follow detailed and specific procedures to manage, identify and preserve the dead during periods of conflict and following the cessation of hostilities.¹⁷ This includes, in all armed conflicts, taking all possible measures to search for the dead in a timely manner, especially following the cessation of hostilities, and to prevent the despoilment of remains;¹⁸ and preventing the mutilation or mistreatment of dead bodies.¹⁹ Additionally, parties to the conflict must take all feasible means to identify deceased persons prior to disposing of the dead, including recording as much information as possible;²⁰ and endeavour to facilitate the return of human remains where requested to the next of kin or the party to the conflict to which they belong.²¹ The dead must be disposed of in a respectful manner, and graves must be respected, maintained, marked and, where possible, grouped according to nationality.²²

15. There are heightened requirements in international armed conflicts, including obligations to: endeavour to share death certificates and authenticated lists of the dead;²³ return the deceased's remains to the requesting party;²⁴ return personal items to the deceased's next of kin;²⁵ forward important documents, such as wills, and items with intrinsic or sentimental value to the next of kin;²⁶ facilitate the execution and authentication of the

¹⁷ For a detailed overview of the international humanitarian legal framework relating to protection of the dead, see ICRC, "Humanity after life: respecting and protecting the dead", 3 April 2020.

¹⁸ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), art. 15; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), art. 18; Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 16; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), arts. 32 and 33; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 8; and Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Volume I – Rules* (Geneva, ICRC; Cambridge, United Kingdom of Great Britain and Northern Ireland, Cambridge University Press, 2005), rules 112 and 113.

¹⁹ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rule 113.

²⁰ First Geneva Convention, art. 16; Second Geneva Convention, art. 19; and Fourth Geneva Convention, arts. 129 and 138.

²¹ Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), art. 120; Fourth Geneva Convention, art. 130; Protocol I Additional to the Geneva Conventions, art. 34 (2) and (3); and Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rule 114.

²² First Geneva Convention, art. 17; Second Geneva Convention, art. 20; Third Geneva Convention, art. 120; and Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rules 115 and 116.

²³ First Geneva Convention, art. 16; Second Geneva Convention, art. 19; Third Geneva Convention, art. 120; and Fourth Geneva Convention, arts. 129 and 138.

²⁴ Third Geneva Convention, art. 120; Fourth Geneva Convention, art. 130; Protocol I Additional to the Geneva Conventions, art. 34 (2) and (3); and Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rule 114.

²⁵ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rule 114.

²⁶ First Geneva Convention, art. 16; Second Geneva Convention, art. 19; Third Geneva Convention, art. 122; and Fourth Geneva Convention, art. 139.

wills of prisoners of war and of civilian internees;²⁷ investigate the deaths of detainees and prosecute those responsible;²⁸ and preserve the wills of detainees.²⁹

16. International criminal law, which concerns individual accountability for the most serious human rights violations and grave breaches of international humanitarian law, also criminalizes some treatment of the dead. The mutilation of dead bodies in armed conflicts is classified as a war crime under the Rome Statute of the International Criminal Court and is considered the commission of outrages upon personal dignity.³⁰ International courts have also considered that ill-treatment and lack of respect for the dead satisfy elements of other crimes. The trial chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, in the case of *Prosecutor v. Krstić*, pointed to the ill-treatment of bodies as part of the evidence of the intent to destroy the group of Bosnian Muslims, and therefore commit the crime of genocide.³¹ While the Appeals Chamber later reduced the charges to aiding and abetting genocide, finding that the defendant personally lacked the specific intent to destroy the targeted group (but rather was an accomplice),³² the trial court judgment demonstrates the ways in which courts consider treatment of the dead in making findings of international crimes.

4. National laws

17. All countries have detailed regulations governing lawful methods and places of disposal of human remains, including with regard to burial, cremation and other funerary rites; management of funeral service providers; cemeteries; and wills, estates and inheritance matters. Additionally, in situations of suspected unlawful killings, States have national procedures for protecting the remains and ensuring effective investigations. In many instances, the protections for the dead within national jurisdictions are often broader than international human rights law.

18. Some countries explicitly acknowledge the dignity of the dead and protect funeral rites and customs. For example, article 21 of the Constitution of India encompasses the right to dignity, which has been interpreted by its Supreme Court to extend to the dead.³³ The Constitutional Court of Kenya has also found that article 28 of the country's Constitution, which recognizes the inherent dignity of every person, does not end with death.³⁴ The Civil Code of France notes that the respect due to the human body does not cease with death, and that the remains of deceased persons, including the ashes of those whose bodies have been cremated, must be treated with respect, dignity and decency.³⁵ In Chile, Decree No. 357 of 1970 contains extensive regulations regarding death procedures, and the Supreme Court has held that while a deceased person does not retain personhood, the dead person's body nonetheless retains protection and regulation, in part due to the dignity of having been a person.³⁶

19. Other countries have laws regulating protection of the dead. The legal framework in Kenya includes laws that prohibit the hindrance of the burial of a body,³⁷ exhumations

²⁷ Third Geneva Convention, arts. 77 and 120; and Fourth Geneva Convention, art. 113.

²⁸ Third Geneva Convention, art. 121; and Fourth Geneva Convention, art. 131.

²⁹ Third Geneva Convention, art. 120; and Fourth Geneva Convention, art. 129.

³⁰ Elements of Crimes, footnote 49, relating to article 8 (2) (b) (xxi). See also Caroline Fournet and Nicole Siller, "We demand dignity for the victims" – reflections on the legal qualification of the indecent disposal of corpses", *International Criminal Law Review*, vol. 15, No. 5 (2015).

³¹ Case No. IT-98-33-T, Judgment, 2 August 2001, para. 596.

³² Case No. IT-98-33-A, Judgment, 19 April 2004, paras. 237–239.

³³ *Parmanand Katara v. Union of India*, MANU/SC/2328/1995.

³⁴ High Court of Kenya at Siaya, *Akoth Ajuang and another v. Owuor Osodo and three others*.

³⁵ Art. 16-1-1.

³⁶ *Díaz c. Servicio de Salud de Antofagasta*, Case No. 2845-2020, Judgment, 14 July 2020, pp. 11 and 12. Available at

https://www.pucv.cl/uuaa/site/docs/20200901/20200901215302/scs_rol_n____2846_2020_exhumaci_n.pdf.

³⁷ Penal Code of Kenya.

without authorization,³⁸ and the disposal of a body without a permit.³⁹ Other laws require consent to be obtained before a body is used for medical or educational purposes,⁴⁰ and there are rules on the holding of bodies in public mortuaries and their subsequent transfer to relatives or a public cemetery.⁴¹ In Qatar, the Penal Code prohibits any interference with human remains at their burial sites and any interference with funerals, and prohibits hiding bodies or burying them without a permit. Sharia law has been incorporated into the autopsy process in Qatar, as part of Law No. 2 of 2012, by prohibiting the dissection of a body unless it is for educational or criminal investigation purposes. In Mexico, the general law against enforced disappearance makes it a crime to hide, dispose of, bury or destroy human remains with the intention of hiding a crime, and requires that prior to the disposal of the body or remains of an unidentified person, the competent authorities must first collect and register information to facilitate future identification and ensure the dignified management and protection of the remains and traceability.

5. Challenges to the existing legal frameworks

20. Despite a plethora of laws relating to protecting the dead, challenges remain within the existing legal framework. First, while international humanitarian law contains detailed obligations for all States parties to conflict, this is not the case for existing international human rights law. As a result, there is a discrepancy in legal protections for persons who die in conflict versus those for persons who are killed in peacetime, with much of the protections outlined in human rights law needing to be inferred from broader rights for their applicability to dead persons and human remains. With an increase in large-scale fatality incidents that may not occur in times of conflict, but rather as a result of migration, climate change and other causes, the gap between the different bodies of law presents enormous challenges for ensuring adequate protection of the dead.

21. Second, many countries still do not have adequate laws protecting the dead, or the laws may be outdated and non-context specific. In certain countries, especially in countries that were formerly colonized, laws pertaining to protection of the dead derive from other jurisdictions. As such, they are ill-suited to the needs of the specific country.

22. Third, there can be tensions between rights with regard to protection of the dead. The rights to culture, religion and privacy enable families to mourn and dispose of the bodies and human remains of their loved ones in accordance with their customs, although many religions provide for exceptions or modifications in the event of natural disasters or armed conflict⁴² or potentially unlawful deaths. Yet, there are times where tensions arise between rights. For example, many religions prescribe the final disposition of their dead within 24 hours of death. This may be in the form of cremation in the case of Hinduism, Buddhism and Jainism, or burial in the case of Islam and Judaism. Under international humanitarian law, however, cremations of the dead should be allowed only in exceptional circumstances.⁴³

23. Fourth, most of the rights are accorded to those recognized as belonging to the family of the deceased, which can limit who has the right to make decisions. Biological families and legal spouses often have a right to the deceased's body and choice of funeral practice, including choices regarding cremation, selection of a burial plot, organ donation and autopsy, unless laws specify otherwise. This can present unique challenges to those, for example members of sexual minorities, who have diverse families.

24. Finally, although many countries do recognize residual rights of the deceased, or at least the rights of families of the deceased, the rise of social media and individuals' online and digital lives presents a new area meriting further exploration.⁴⁴ For example, German

³⁸ Public Health Act.

³⁹ Births and Deaths Registration Act.

⁴⁰ Human Tissue Act and Anatomy Act.

⁴¹ Public Health (Public Mortuaries) Rules, 1991.

⁴² See, for example, Ahmed al-Dawoody and others, *Islamic Law and International Humanitarian Law: Proceedings* (ICRC and Faculty of Islamic Studies, University of Sarajevo, 2020), pp. 24 and 25.

⁴³ ICRC, "Humanity after life".

⁴⁴ Kristin Bergtora Sandvik, "Digital dead body management (DDBM): time to think it through", *Journal of Human Rights Practice*, vol. 12, No. 2 (July 2020).

courts have stated that the dead do have posthumous rights and that the concept of dignity could be used to protect the personality rights – in this case, the right to not be libelled – of a deceased person.⁴⁵ However, this is an area that many States have yet to consider.

C. Discrimination in practices relating to treatment of the dead

25. Many of the inequities, discrimination and injustices that occur in life continue to persist in death. While the mandate of the Special Rapporteur relates to potentially unlawful killings, and therefore the present report is focused on protection of the dead in those situations, there is nonetheless significant overlap of laws, regulations and practices relating to non-violent and everyday deaths. In those instances, there remain significant challenges to protection of the dead, which compound the grief and loss of those seeking to mourn their loved ones. In particular, there are challenges pertaining to the upholding of the rights of members of minorities and Indigenous persons; the situations of indigent persons; and unidentified or unclaimed bodies.

1. Rights of minority groups

26. Minority groups within States frequently face significant challenges in ensuring that they can carry out funeral rites to honour and respect the dead according to their beliefs.⁴⁶ State practices can perpetuate exclusionary measures, constrain the right to enjoy culture and to practise religion,⁴⁷ and limit family rights relating to burials. Some States deny minority groups the right to establish or access their own cemeteries. Financial burdens associated with meeting cultural and religious requirements further compound this issue.⁴⁸ Beyond religious minorities, racial and sexual minorities also endure discrimination in death.⁴⁹ Embracing best practices that prioritize the dignity and rights of all individuals, including through proactive engagement with minority communities, equal access and treatment and the creation of a more robust national legal framework, is paramount for addressing systemic inequalities and providing equality in death.

27. Concerns relating to protection of the dead are heightened for Indigenous Peoples, who have faced prior harm and lack of respect for their cultural beliefs and rights, including their right to self-determination, and who continue to experience critical challenges. Argentina, Colombia and the United States offer examples of the recognition of rights of Indigenous Peoples to the repatriation of remains within legal mechanisms. Yet, in practice, general acknowledgment of the right to repatriation does not always result in actual repatriation. For one, those who have the right to the remains may go undetermined, or Indigenous concepts of ancestors may not align with the laws in a particular country. Other challenges include the lack of mechanisms for international repatriation and the placing of the burden of proof on Indigenous Peoples.⁵⁰

28. States have taken steps to protect the rights of deceased members of minority groups. For example, Indian courts have established a State duty to ensure decent cremation or burial,⁵¹ in accordance with the will of the deceased and the wishes of families. Other good practices include regularly reviewing cemetery and crematorium regulations; ensuring that

⁴⁵ See the 1971 decision of the Federal Constitutional Court upholding an injunction banning the publication of the novel *Mephisto*.

⁴⁶ On the protection of minority rights generally, see OHCHR, *Minority Rights: International Standards and Guidance for Implementation* (New York and Geneva, 2010).

⁴⁷ See A/HRC/49/44; and Yasminah Beebeejaun and others, “A roadmap for inclusive cemeteries and crematoria in diverse societies” (University of Luxembourg, 2022), pp. 18 and 19.

⁴⁸ Beebeejaun and others, “A roadmap for inclusive cemeteries”, p. 18.

⁴⁹ See, for example, Rebecca Smithers, “Gay people face discrimination when arranging funerals, survey reveals”, *The Guardian*, 16 July 2014; and Gerard Albert III, “Black cemeteries left in disrepair reflect years of segregation”, National Public Radio (NPR), 4 February 2024.

⁵⁰ International Indian Treaty Council, “The human rights framework and protocols for exhibiting, cataloguing and repatriating Indigenous Peoples’ sacred items and human remains by museums and recommendations for the development of a new mechanism for international repatriation”, 2020, p. 6.

⁵¹ Abhay Chhetri, “Dead man cannot wait for justice, it is the responsibility of living soul to do so for them”, *International Journal of Law Management & Humanities*, vol. 4, No. 3 (2021).

community perspectives inform national guidelines; translating funeral service information into local minority languages; providing various portable and optional religious icons, adaptable ritual space, washing facilities and neutral ritual options; and ensuring weekend staffing at crematoria and cemeteries, seven-day access to doctors and registrars for death certification and registration, and increased engagement with local religious minorities to foster inclusion.⁵²

2. Indigent deceased

29. The rising costs of funerals have become a significant concern globally, with disparities in expenses and accessibility.⁵³ This has led to funeral poverty, when the costs of death and final disposition of a person's dead body or human remains "perpetuate inequality and contribute to intergenerational cycles of poverty".⁵⁴ Although costs vary greatly between and within countries, for some low-income families, funeral costs can consume up to three times their annual income. Preceding and following the death of a loved one, families often face a period of decreased income and increased expenditure. This leaves many families to navigate complex financial burdens while mourning.

30. Few countries help defray funeral costs. India has recognized the right of deceased individuals who had been in situations of homelessness to receive a dignified burial or cremation in accordance with their religious customs.⁵⁵ Some nations offer basic funerals and cemetery plots to indigent persons, grants to defray the costs or universal funding for funerals.⁵⁶ While implementation challenges remain, if conducted well, such programmes can alleviate much of the stress that families face in organizing funerals.

3. Unidentified or unclaimed bodies

31. Globally, millions of deceased persons remain unidentified and are never returned to their families or communities. Unidentified or unclaimed bodies – deceased individuals who have no known or authorized next of kin – pose an enormous challenge for States' medico-legal systems. Identification of unclaimed bodies is often challenging due to a shortage of forensic experts, the scarcity of scientific resources, underfunded forensic systems, inadequate infrastructure and a lack of clear guidelines.⁵⁷ This problem is further compounded by the perceived futility in investigating unclaimed bodies and the growing number of unclaimed remains.⁵⁸ Due to a lack of resources, bodies can be poorly preserved or hastily disposed of.⁵⁹ Lack of identification results in a body becoming a missing person. This not only harms families and deprives them of their right to mourning and closure, but also has legal implications and can hinder criminal investigations in cases of potentially unlawful death.

⁵² Beebejaun and others, "A roadmap for inclusive cemeteries", pp. 32 and 33.

⁵³ Turkhan Sadigov, "Death beyond the means: funeral overspending and its government regulation around the world", *Rationality and Society*, vol. 33, No. 3 (2021).

⁵⁴ Victoria J. Haneman, "Funeral poverty", *University of Richmond Law Review*, vol. 55, No. 2 (2021), p. 389.

⁵⁵ *Ashray Adhikar Abhiyan v. Union of India and others*, Writ Petition (Civil) 143 of 2001, Judgment, 9 January 2002.

⁵⁶ Christine Valentine and Kate Woodthorpe, "From the cradle to the grave: funeral welfare from an international perspective", *Social Policy & Administration*, vol. 48, No. 5 (2014).

⁵⁷ Halina Suwalowska and others, "'The Nobodies': unidentified dead bodies – a global health crisis requiring urgent attention", *The Lancet Global Health*, vol. 11, No. 11 (2023).

⁵⁸ *Ibid.* See also Kate Megan Reid, Lorna J. Martin and Laura Jane Heathfield, "Understanding the burden of unidentified bodies: a systematic review", *International Journal of Legal Medicine*, vol. 137, No. 4 (2023).

⁵⁹ Suwalowska and others, "'The Nobodies': unidentified dead bodies".

D. Practices relating to protection of the dead during the investigation of unlawful killings

1. Foundations of effective investigations

32. In practice, protection of the dead is crucial to ensuring successful investigations of potentially unlawful killings. Effective investigations help support families in their quest to learn the fate and whereabouts of their loved ones, ensure they receive a body to carry out funerals in accordance with their rights and customs, and increase the possibility of justice. The Minnesota Protocol requires that investigators demonstrate care and respect for the dignity of the dead, stresses the importance of the rights of families within the investigative processes, contains detailed guidance on States' legal obligations and specifies best practice in the performance of an autopsy.⁶⁰ The Minnesota Protocol reflects an assumption that an investigation is to commence and that the whereabouts of human remains are known. Thus, there is a section on the recovery of human remains. But there is no information on the steps needed to protect a dead body pending the possibility of a future investigation. Without such steps, the preservation and traceability of bodies and human remains, as required for their future analysis and identification, may be compromised, and the facts of potentially unlawful deaths may later be difficult to establish. Protecting the human remains may also make it more difficult for perpetrators to aggravate their offence by hiding, destroying or managing human remains in a way that prevents or complicates the human remains being available for examination.

33. The principle underlying these steps is analogous to that detailed in the publication *Management of Dead Bodies after Disasters: A Field Manual for First Responders* (2016), an initiative of the Pan American Health Organization, the International Committee of the Red Cross (ICRC) and others. To increase the possibility for identification, relevant stakeholders must act immediately and properly to enable a later-stage, organized approach to the investigation of the death or deaths and identification of the deceased.⁶¹ The steps outlined in the manual are designed to be implemented by first responders but are equally applicable to the authorities or relevant agencies, including forensic experts.

34. The key steps that give effect to the principle above are also detailed in the manual. They require allocating a unique code to the human remains; taking photographs and recording data about the human remains; placing the human remains in a body bag (or similar) if available; storing the human remains, and if possible, securing them; and ensuring traceability of the remains. Taking these steps helps to prevent the loss of the human remains, ensure their traceability and preserve them to the greatest possible extent in the circumstances. If the steps are taken, the foundations have been laid for subsequent expert forensic examination of the human remains in accordance with the requirements of the Minnesota Protocol. The importance of these steps is such that significantly preventing or interfering with their implementation should be regarded as a crime in itself, or an aggravation of any underlying criminal offence.

2. Violations of the right to life

35. Violations of the right to life implicate the dignity and protection of the dead and the right of families to the remains of their loved ones. In particular, enforced disappearances and other serious violations of human rights (amounting to international crimes) infringe upon the right to know the truth about the fate and whereabouts of loved ones,⁶² and also impede the dignified treatment of the deceased.⁶³

⁶⁰ Minnesota Protocol, paras. 7–40, 35 and 148–163.

⁶¹ Pan American Health Organization and others, *Management of Dead Bodies after Disasters*, pp. 1 and 2.

⁶² International Covenant on Civil and Political Rights, art. 17; African Charter on Human and Peoples' Rights, art. 18; American Convention on Human Rights, art. 11; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), art. 8; and ICRC, "Humanity after life: respecting and protecting the dead".

⁶³ Because enforced disappearance prevents the possibility of a proper burial, this infringes upon the dignified treatment of the dead and the rights of the deceased's family.

36. In cases of enforced disappearance,⁶⁴ the right to know the truth about the fate and the whereabouts of a disappeared person includes, when the disappeared person is found to be dead, the right of the family to have the remains of their loved one returned to them and to dispose of those remains according to their own tradition, religion or culture.⁶⁵ Enforced disappearances remain a significant issue among States. The training guide for the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance provides detailed information about the obligations of States and describes best practices. Guiding principles and protocols for investigation also include applying the Minnesota Protocol and codifying enforced disappearance as a criminal offence under domestic law.⁶⁶ Protections for the dead are woven throughout the training guide, which stresses that States must ensure that the remains are returned to the families in a dignified manner, and must provide assistance so that remains are reburied according to the cultural or personal wishes of the deceased.⁶⁷

37. Examples of positive initiatives for the investigation of enforced disappearances are found in Argentina, Chile and South Africa. In 2023, the Government of Chile assumed the responsibility for the search of about 1,470 persons detained and executed under the dictatorship of Augusto Pinochet between 1973 and 1990. The national plan for the search for truth and justice includes establishing the conditions of the victims' forced disappearances, advancing the attribution of criminal responsibility for the crimes⁶⁸ and facilitating the process to locate, recover and identify the remains of victims and return them to their families. In South Africa, as many as 2,000 persons may have been forcibly disappeared during the apartheid years. Of those, 477 have been officially recognized by the country's Truth and Reconciliation Commission.⁶⁹ In 2005, the Commission created the Missing Persons Task Team, mandated to locate, exhume and identify the remains of the deceased under apartheid. As of April 2018, 138 bodies had been recovered.⁷⁰ In Argentina, working within the national judicial system, non-governmental organizations have identified approximately 1,000 victims who had been subjected to enforced disappearance and extrajudicial executions carried out under the military dictatorship that ruled the country between 1976 and 1983, when many thousands of people, including hundreds of children, were forcibly disappeared and executed as part of the regime's campaign to quell opposition.

38. Unlawful killings, which amount to serious human rights violations that can be considered international crimes, also present unique challenges for protection of the dead. In some instances, such violations result in the creation of mass graves. Not all mass graves should be considered to be illegal or clandestine; they are sometimes created as the only feasible option following large-scale and catastrophic events.⁷¹ However, they can reflect a range of violations by States, including of the prohibitions against arbitrary killing, enforced disappearance and desecration of the dead.⁷² To ensure dignity of the dead, prevent degrading treatment of bodies and ensure familial rights, mass atrocities, especially ones that have led to mass graves, should be properly investigated in accordance with international best practices, wherever possible.⁷³

⁶⁴ International Convention for the Protection of All Persons from Enforced Disappearance, art. 2.

⁶⁵ *Reporting under the International Convention for the Protection of All Persons from Enforced Disappearance: Training Guide, Part 1 – Manual* (United Nations publication, 2022), p. 142.

⁶⁶ *Ibid.*, pp. 207, 208 and 214–216.

⁶⁷ *Ibid.*, pp. 142, 148 and 152.

⁶⁸ John Bartlett, "Chile announces much-anticipated plan to search for Pinochet's victims", *The Guardian*, 30 August 2023.

⁶⁹ Jay D. Aronson, "The strengths and limitations of South Africa's search for apartheid-era missing persons", *International Journal of Transitional Justice*, vol. 5, No. 2 (2011), p. 263.

⁷⁰ South African History Online, "The Missing Persons Task Team (MPTT) to investigate apartheid missing persons cases", 20 April 2018.

⁷¹ Pan American Health Organization and others, *Management of Dead Bodies after Disasters*, p. 36.

⁷² *A/75/384*, para. 52.

⁷³ The Bournemouth Protocol on Mass Grave Protection and Investigation provides valuable guidance on how to protect and investigate mass graves.

E. Treatment of bodies post-execution

39. Under the mandate, it has been noted that, while much has been written on the imposition of the death penalty, little attention has been paid to the treatment of the bodies of the executed and the impact that it has on their families.⁷⁴ In many countries, historically the body of a person who had been executed was often publicly displayed, as a form of additional post-mortem punishment. Today, generally, families may apply for the return of the body or ashes of the person executed. However, in some instances, families are not afforded the opportunity to bury their loved ones, or have been subjected to conditions as to the manner in which their loved ones are buried. This deepens the suffering of families and has sometimes led to them fearing that their loved ones may have been subjected to forced organ harvesting.

F. Practices relating to protection of the dead in armed conflict

40. Concern about proper and respectful treatment of the dead has informed a significant portion of the development of the laws of armed conflict, which today are codified in the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto.⁷⁵ In practice, situations where armed conflict is ongoing often present the greatest challenges with respect to ensuring respect and protection of the dead. Parties to the conflict face difficulties in ensuring proper retrieval, collection and accounting of the dead, in preventing despoliation or mutilation and in returning the dead to relatives. Throughout these processes, the rights of families of the deceased are paramount. Good practices can ensure that the human remains of the deceased are protected for future identification processes, return to their families and accountability efforts.

1. Search for, collection of and accounting for the dead

41. International humanitarian law requires States to take all possible measures to advance the search for, and the recovery, documentation and protection of, the dead, including the dead of the adverse party (see para. 14 above).⁷⁶ Challenges inherent to the nature of armed conflict sometimes make it difficult for parties to locate and collect the dead without delay. Search-and-rescue forces may become victims while searching for bodies, it may be difficult to use heavy machinery or equipment to excavate or retrieve bodies, and there may be a priority to find survivors rather than retrieve bodies.

42. Parties to an armed conflict are also obligated to dispose of the dead in a respectful manner and ensure that their graves are respected and properly maintained.⁷⁷ The Geneva Conventions specify that the dead must be buried, if possible, according to the rites of the religion to which they belonged.⁷⁸ This facilitates not only individual respect for the family of the deceased, but also often community-wide respect and dignity. Parties to a conflict are also prohibited from demolishing cemeteries or confiscating bodies except in limited circumstances, such as where a cemetery becomes a legitimate military target.

43. In addition to retrieval and collection, international humanitarian law requires States to account for the dead during armed conflict, including by sharing lists of the deceased through their national information bureau. The 1982-armed conflict between Argentina and the United Kingdom of Great Britain and Northern Ireland over the Falkland Islands (Malvinas) exemplifies a good practice of a military conducting detailed accounting during armed conflict. A British Army captain was dispatched to the islands in 1982, where he spent six weeks building a cemetery for soldiers killed in the conflict whose remains had been

⁷⁴ [A/77/270](#), para. 84.

⁷⁵ See Moon, "What remains? Human rights after death".

⁷⁶ See also Welmoet Wels, *Dead Body Management in Armed Conflict: Paradoxes in Trying to Do Justice to the Dead*, masters' thesis, Leiden University, 2016.

⁷⁷ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rule 115. See also ICRC, "Humanity after life: respecting and protecting the dead".

⁷⁸ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rule 115; and ICRC, "Humanity after life: respecting and protecting the dead".

found. Relevant information, including identifying information relating to each soldier, was well documented, and the bodies were protected and buried in a dignified manner. Decades later, this enabled ICRC and its forensic team, upon request from the families and the parties to the conflict, to reliably identify the majority of the 122 bodies that had been found, using multidisciplinary identification methods, including forensic anthropology and genetic testing.⁷⁹

2. Prohibition and prevention of mutilation, desecration and despoliation

44. Under international humanitarian law, respect for the dead requires the prevention of mutilation,⁸⁰ desecration⁸¹ and despoliation.⁸² Posthumous violations may also constitute a war crime, and cause great suffering to loved ones. In practice, there continue to remain violations of the prohibition of mutilation and despoliation in armed conflict. Of more recent concern is the online dissemination and spread of images of harm to the human remains of deceased persons, including on social media.⁸³ This exacerbates the pain, humiliation and degrading treatment for families of the deceased, and can further cause fear and terror.

3. Return of the dead to the appropriate parties

45. Finally, parties are required to return remains of deceased persons and items of sentimental or personal value. Challenges to effective identification and return include improper initial burial or record-keeping; lack of infrastructure, expertise and resources to facilitate the return of remains; ongoing conflict and insecurity; lack of adequate legal frameworks; and lack of technology. Each of these areas results in unique difficulties in ensuring the right to identification and return of the dead.

46. The conflict between Iraq and the Islamic Republic of Iran presents an example where parties prioritized repatriation out of respect for the dead. Both countries signed an agreement with ICRC in 2008 to jointly investigate and resolve cases of missing persons and repatriate recovered human remains, including to provide families with closure.⁸⁴ The agreement included information-sharing, agreements regarding the handling of remains, and training by ICRC to help with forensic identifications. In November 2008, the two countries exchanged the remains of 241 soldiers at a ceremony, the first of many subsequent exchanges.

4. Rights of the families of the deceased in armed conflict

47. Accounting for, identifying and returning the dead and their belongings, including, where relevant, last wills, also pertain to upholding the rights of the deceased's family. Yet often States, in their policies and practices, do not respect the rights of families when dealing with the deceased. Ineffective identification efforts during mass fatality events or times of war leave families burdened with uncertainty about the fate and whereabouts of their loved ones.⁸⁵ Furthermore, a lack of attention and regulation of the return of the personal items of the deceased exacerbates their emotional suffering, potentially adding additional administrative and legal burdens and uncertainty.

⁷⁹ IHL in Action, "Identifying human remains in the Falkland Islands/Islands Malvinas: 1982–2018".

⁸⁰ In accordance with the Elements of Crimes published by the International Criminal Court (art. 8 (2) (b) (x)-1), the element of mutilation is present if the perpetrator permanently disfigures the person or persons, or permanently disables or removes an organ or appendage.

⁸¹ Desecration of the dead encompasses degrading or humiliating treatment, or treatment that otherwise violates the dignity of the person (Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rule 156, footnote 37; and Elements of Crimes for the International Criminal Court, art. 8 (2) (b) (xxi)).

⁸² Despoliation is defined as pillage, or robbing of the dead (Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rule 113).

⁸³ Supreme Court of Sweden, "Posing with dead bodies during an armed conflict has been deemed to constitute a war crime", available at <https://www.domstol.se/en/supreme-court/news-archive/posing-with-dead-bodies-during-an-armed-conflict-has-been-deemed-to-constitute-a-war-crime/>.

⁸⁴ IHL in Action, "Accounting for missing persons and exchanging human remains, Iran and Iraq: 2008–2015".

⁸⁵ ICRC, *Accompanying the Families of Missing Persons: A Practical Handbook* (2020), p. 16.

48. Some States have set up mechanisms legally mandated to regularly inform and work with family members to investigate, identify and hand over remains of missing persons after periods of conflict. In Spain, the 2022 Law on Democratic Memory paved the way for ongoing nationwide efforts to properly recover and identify victims from the Spanish Civil War, and for ensuring the rights of families to truth and closure and a dignified disposition of their dead. In 2016, Peru passed a law to help clarify the fate and whereabouts of the disappeared from the period 1980–2000.⁸⁶ The 2016 peace accord in Colombia provided for the creation of the special unit for the search for persons deemed as missing, which informs and works with family members to investigate, identify and return remains of missing persons.⁸⁷

G. Protection of the dead in emergencies

49. Emergency situations pose particular problems in ensuring the protection of the dead because of the limited ability to plan ahead, destruction of key infrastructure, high numbers of fatalities and demand for a quick response. Health crises overwhelm States' health-care and medico-legal systems, and concerns about the contagiousness of a disease can lead to the premature curtailment of burial rights in the interest of disposing of bodies as quickly as possible. Non-natural emergencies that lead to mass fatalities, such as terrorist attacks, also lead to destruction that can make victim identification difficult. In each of these cases, a lack of preparedness worsens the impact of an already confusing, chaotic and deadly emergency. Poorly planned responses can lead to a loss of trust in the medical system, and significant additional harm even after the end of the emergency.

1. Health crises

50. The coronavirus disease (COVID-19) pandemic starkly illustrated States' lack of preparedness and capability to respond effectively in terms of honouring and managing the bodies of those who died. To meet the demand for storage of bodies, States had to convert ice rinks,⁸⁸ refrigerated trucks and warehouses into temporary morgues.⁸⁹ States that were hit particularly hard by the pandemic struggled to create temporary morgues, resulting in bodies being left in hospital corridors or wrapped in body bags in the same isolation ward as COVID-19 patients. In other overwhelmed cities, bodies piled up in the streets. Similarly, bodies were also found buried on river banks or in cardboard boxes, or placed in poorly organized mass graves. In other situations, governments unilaterally decided to cremate the bodies of persons who died from COVID-19, even when in conflict with the person's or the family's religious beliefs. During subsequent waves of the virus after 2020, problems with the management of the bodies of those who passed away persisted, including challenges relating to significantly overwhelmed morgue, crematorium and funeral services.

51. No State was initially prepared to handle the massive strain the pandemic placed on national health and body disposal infrastructures. Because of this, the rights of the deceased and their families were severely curtailed during the pandemic. The improper preservation and disposal of bodies violated the absolute right to be free from cruel, inhuman or degrading treatment.⁹⁰ Furthermore, circumstances led to morgues returning incorrect bodies to families, and that prevented families from burying their loved ones according to their religion or traditions. Soon after, ICRC issued a series of guidance resources to assist States in ensuring better protection and respect for, and the dignity of, the dead during the health

⁸⁶ Agata Serrano, "Enforced disappearance in Peru: a step towards a national policy to search for disappeared persons", *The Age of Human Rights Journal*, No. 18 (2022).

⁸⁷ CED/C/COL/AI/1, paras. 138–145; Washington Office on Latin America, "Colombia's Unit for the Search of Disappeared Persons," 31 August 2020, available at <https://colombiapeace.org/colombias-unit-for-the-search-of-disappeared-persons/>.

⁸⁸ Submission from Escuela Superior de Administración y Dirección de Empresas (ESADE), University Ramon Llull, p. 9.

⁸⁹ Claudia Lauer and Jessica Gresko, "Where will the bodies go? Morgues plan as virus grows", Public Broadcasting Service (PBS), 4 April 2020.

⁹⁰ International Covenant on Civil and Political Rights, art. 7; and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 16.

emergency.⁹¹ This included advice for first responders in handling the dead, safe body handling and mourning ceremonies for communities affected by COVID-19, and religion-specific guidance. The guidance will be useful for future health crises.

52. Other health crises have led to similar issues. The Ebola virus disease crisis overwhelmed many countries, and the concerns surrounding its contagiousness led to body disposal practices that infringed on families' rights and traditional burial practices. Some countries unilaterally decided to cremate all bodies. Because the virus especially affected countries with strong religious and traditional burial practices, this fostered animosity between governments and the people. However, Sierra Leone reached a compromise by working with the World Health Organization (WHO), religious leaders and non-governmental organizations to create modified spiritual practices that would allow communities to mourn their members and perform rituals while still preventing the spread of the virus.

53. Furthermore, health crises that affect marginalized groups can lead to practices that violate their dignity in death. The HIV/AIDS epidemic is a prominent example: the stigmatization of the disease led to burials that violated the rights of the deceased and their loved ones, especially considering that their intimate relationships went unrecognized. In one city, dozens of unidentified AIDS patients were buried in graves that were deeper than standard and separated from other bodies. Funeral homes charged more money to embalm persons who had died from AIDS because of the extra protective gear required, an added barrier for indigent families. Additionally, because same-sex relationships were not legally recognized, partners faced an information barrier in receiving health records after a partner's death.⁹² The AIDS epidemic highlights how the violation of human rights in life can be perpetuated in death.⁹³

2. Migration

54. As increasing numbers of migrants die while attempting to navigate dangerous migration routes worldwide,⁹⁴ protection of the dead is challenging yet crucial to ensuring respect and dignity for the deceased and their families. Thousands of remains of deceased migrants each year go unrecovered across land, desert and sea migration routes. Even if recovered, many of the remains are unidentified. The implications of unlawful death of refugees and migrants, including the responsibility to ensure dignity and accountability in death, were considered in a previous report under the mandate.⁹⁵ Recently, the Committee on Enforced Disappearances issued a general comment stressing the obligations of States to search for disappeared migrants and conduct effective investigations into cases of alleged disappearances of migrants.⁹⁶ The Office for the Coordination of Humanitarian Affairs developed the Guiding Principles on Internal Displacement, which call for authorities to endeavour to collect the remains of the deceased, prevent their despoliation or mutilation, return or dispose of them respectfully, and protect and respect the grave sites of displaced persons. Authorities must also endeavour to inform families of the fate of deceased displaced persons and maintain families' access to grave sites.⁹⁷ Practically, there is a need to ensure that countries dealing with missing migrants on a large scale develop transnational mechanisms to search for, recover, preserve and protect, identify and return to families the remains of deceased migrants. Over the past decade, some best practices for the identification of missing and deceased migrants have been developed. At the policy level, in May 2018, on

⁹¹ ICRC, "Protection, dignity, and respect for deceased individuals and their families in COVID-19", 21 April 2020.

⁹² Andrew Anthony, "'We were so scared': four people who faced the horror of Aids in the 80s", *The Guardian*, 31 January 2021.

⁹³ See, for example, Supreme Court of Sri Lanka, *Manuwel Dura Chandani de Soysa et al. v. Kariyawasam, Min. of Education*, Case No. 77/2016, Judgment, 14 March 2016 (finding that discrimination on the basis of HIV status is impermissible).

⁹⁴ International Organization for Migration, "Deadliest year on record for migrants with nearly 8,600 deaths in 2023", 6 March 2024.

⁹⁵ [A/72/335](#).

⁹⁶ General comment No. 1 (2023), paras. 37–43.

⁹⁷ Principle 16.

the basis of an initiative launched by the Last Rights project, the Declaration for the Dignified Treatment of all Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys (the Mytilini Declaration) was agreed, setting out key principles for States and other agencies. Another example is the Border Project, led by the Argentine Forensic Anthropology Team, which has so far identified hundreds of migrants who have died along the border between the United States and Mexico.⁹⁸

3. Natural disasters and other mass fatality incidents of catastrophic proportions

55. Natural disasters and other mass disasters of catastrophic proportions causing hundreds or thousands of deaths typically overwhelm normal disaster response mechanisms, posing extraordinary challenges for States to properly manage and identify the dead in full respect of the deceased and their families. For example, tsunamis can cause mass death and the collapse of infrastructure required for the management of those deaths, including medico-legal institutions, hospitals, funeral homes and crematoriums, making it difficult or even impossible to apply standard procedures, such as the Disaster Victim Identification Guide published by the International Criminal Police Organization (INTERPOL), considered to be the world's gold standard for normal disaster response. The 2004 Indian Ocean tsunami marked a turning point in efforts to plan for and systematize management of the dead in the context of mass fatalities of catastrophic proportions and led to the development by WHO and ICRC, in consultation with INTERPOL, of specialized international guidelines, conceived for catastrophic events. Proper management of the dead using these guidelines was exemplified following the tsunami in Japan in 2011: bodies were properly recovered, documented for identification and protected, and their traceability was secured for dignified handing to families, whose care was ensured throughout.

56. In the light of the effectiveness that had resulted from planning and having standard guidelines for management of the dead in the context of mass disasters, in 2016, the *Management of Dead Bodies after Disasters: A Field Manual for First Responders* was revised to account for public health crises, including infectious diseases. In many ways, this responded to the rise in epidemics, including the Ebola virus crisis mentioned above. The revised manual stresses that “dead bodies from natural disasters generally do not cause epidemics”, except in cases where the deaths are due to highly infectious diseases (such as the Ebola virus disease, cholera and Lassa fever) or where they occur in an area where such diseases are endemic. In such situations, the infrastructure of States is often ill-equipped to handle the mass death and destruction that results. The rushed disposal of bodies, and lack of identification of bodies in some cases, could be considered a violation of international human rights law, because of the degrading treatment bodies receive, and because it prevents families from being able to identify, recover and mourn their relatives.

57. There are some notable examples following complex mass fatality incidents where significant efforts and resources were devoted to the search, identification and care of the deceased and their families. In the aftermath of the September 11 terrorist attacks in the United States, the Government allocated \$40 billion to emergency response efforts.⁹⁹ A temporary morgue was built to preserve thousands of recovered remains in climate-controlled containers, and a family room, which included a chapel, was created.¹⁰⁰ The forensic response to the February 2009 bushfires in Victoria, Australia, set an unprecedented example of successful multiagency coordination and national and international cooperation, which helped ensure the swift recovery and identification of victims to highest standards of forensic best practice. In France, in response to the 2015 Paris terrorist attacks, which had resulted in nearly 140 fatalities, the Medico-legal Institute of Paris acted swiftly in close coordination

⁹⁸ See <https://eaaf.org/proyecto-frontera/>.

⁹⁹ The White House – President George W. Bush, “Federal response: examples of government action since September 11”, available at <https://georgewbush-whitehouse.archives.gov/news/releases/2001/10/20011003.html>.

¹⁰⁰ David W. Dunlap, “Renovating a sacred place, where the 9/11 remains wait”, *The New York Times*, 29 August 2006.

with the police and other agencies to reliably identify the deceased¹⁰¹ while ensuring psychological support for the families throughout. More recently, in the aftermath of the 7 October 2023 attacks in Israel, resulting in more than 1,200 fatalities, the remains of the victims were recovered, analysed and documented for their swift return to families as soon as they were identified, as part of a multiagency effort, whereby the National Center of Forensic Medicine, under the Health Ministry, endeavoured to use forensic best practices. During the armed conflict that followed in Gaza, where tens of thousands of civilians have been killed, local authorities have sought to recover, document, and ensure dignified management and the traceability of, the dead in accordance with standard protocols, such as the *Management of Dead Bodies after Disasters: A Field Manual for First Responders*, despite the challenges of working amid ongoing conflict. In February 2024, wildfires in central Chile linked to climate change caused the country's deadliest mass fatality incident since the 2010 earthquake and tsunami. A total of 130 people died in the region of Valparaíso. Notwithstanding the challenges and complexity of the forensic recovery and identification process, the Chilean *Servicio Médico Legal* reliably identified 125 victims and ensured that bereaved families were informed and supported throughout. To do so, it applied the lessons learned from the search, identification and return of victims of disappearances and extrajudicial executions of the Pinochet regime. These are examples of good practice for the management, documentation and identification of the dead and for the respect of family rights in cases of overwhelmingly large mass fatality incidents, even in extremely challenging situations.

58. Overall, the destruction and chaos caused by emergencies resulting in mass fatality incidents makes properly managing, identifying and disposing of the dead particularly difficult. As a result, many States prioritize rapid disposal of the bodies over identification and respectful burials. This violates the dignity of the deceased, and families' rights. Disposing of the bodies too quickly undermines or prevents their documentation and identification and, consequently, the families' right to adequately mourn their loved ones. Failing to take the time to reliably identify remains can deprive families of the truth of their loved ones' whereabouts or fate. States must ensure that mechanisms to manage the dead in the case of an emergency are determined in advance, in order to prevent the rights of families and the deceased from being violated.

III. Conclusion

59. **In the present report, the Special Rapporteur considers whether the respect and protection owed to every individual with regard to their life and inherent dignity cease after death and concludes, on the basis of abundant and universal laws and practices, that they do not. Whereas this is not apparent in most human rights instruments, the Special Rapporteur identifies a growing corpus of human rights-based national and international jurisprudence and practice to protect the dead and the rights of their bereaved families.**

60. **The dignity of a person and the respect owed to his or her body and human remains do not cease with death. The processes by which individuals and societies across cultures and religions honour and mourn their deceased provides for the closure needed by families and their communities. Disruption of those processes, through improper protection of or disrespectful treatment of the dead, harms individuals and societies and, in the case of unlawful deaths, undermines or impedes the victims' rights to truth, justice and reparation. Therefore, State obligations to protect the dead are paramount to fulfilling the rights of families and to ensuring that all potentially unlawful deaths are thoroughly investigated. With the increasing complexity of mass fatality incidents, especially as a result of conflict, migration and natural disasters, including as a consequence of global warming, the need to effectively protect the dead is of growing importance.**

¹⁰¹ Antoine Tracqui and others, "An overview of forensic operations performed following the terrorist attacks on November 13, 2015, in Paris", *Forensic Sciences Research*, vol. 5, No. 3 (September 2020).

61. The duty to investigate every potentially unlawful death is not an option, but instead an obligation under international human rights law and an essential part of upholding the right to life.¹⁰² The concealment, destruction or despoliation of the bodies of the victims of unlawful killings, which impede investigations and foster impunity for perpetrators, are incompatible with this obligation. These practices also violate the right of the families of victims to full and effective remedy and may amount to a violation of their right to be free from torture and ill-treatment as a result of the suffering caused. Therefore, States have a duty to protect the bodies and human remains of victims of potentially unlawful death and to ensure investigations as required under international standards, including the Minnesota Protocol¹⁰³ and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

62. The specific means by which protection of the dead occurs in practice must be contextually adapted to the beliefs and customs of each community and State. However, universally, they must always be guided by principles of respect, dignity and decency towards the dead and their families. This will ensure the fulfilment of international human rights, humanitarian and criminal law obligations, and help to ease the pain that families, communities and societies face with the loss of their loved ones.

IV. Recommendations

63. The Special Rapporteur encourages State authorities and other relevant entities to implement the following recommendations for the effective protection and respect for the dead, and reiterates the availability, under the mandate, of technical assistance in this regard.

64. In every case and circumstance of a potentially unlawful death, the body of the deceased should be treated with dignity and respect, and properly collected, recorded, documented and preserved, and chain of custody procedures should be followed. This should be guaranteed across cultures and customs without discrimination, to ensure that the duty to investigate all instances of potential violations of the right to life is fulfilled, and the rights of families respected.

65. States, international organizations and other relevant actors should take steps to harmonize protections for the dead across international law by developing universally applicable guiding principles, based on human rights, for the comprehensive protection of the dead, for which the present report provides abundant examples of best practices across regions and cultures.

66. States should put in place relevant domestic measures, including laws, regulations, protocols, guidelines and enforcement mechanisms, to protect the dead in practice and ensure that the human remains of a deceased person are properly cared for and managed, in order to preserve the dignity of the dead and ensure respect for the rights of families of the deceased at all times. States should consider aligning their measures with applicable best practices, including those published by United Nations bodies, ICRC, WHO and INTERPOL.

67. The rights of families should be respected at all times during engagement with the search for, and the collection, preservation and analysis of, the remains of deceased persons, and priority should be given to the reliable identification of the remains of deceased persons. The cultural and religious practices of the families of the deceased must be respected during processes to protect, to handle and to carry out the final disposal of the remains of the deceased.

¹⁰² Human Rights Committee, general comments No. 31 (2004), paras. 15 and 18; and No. 36 (2018), paras. 27–29; and African Commission on Human and Peoples' Rights, general comment No. 3 (2015), paras. 2 and 15.

¹⁰³ Human Rights Committee, general comments No. 31 (2004), para. 18; and No. 36 (2018), paras. 27 and 28.

68. In times of armed conflict and other emergencies, where medico-legal systems may become overwhelmed, States, parties to the conflict and other key actors should take steps to develop protocols and necessary arrangements for ensuring timely, effective and respectful management of the dead, which should include the active involvement of trained forensic experts. Adequate resources should be provided for emergency preparedness, planning and readiness.

69. States should ensure that institutions and practitioners responsible for the recovery, documentation and protection of human remains, including medico-legal death investigation systems, have adequate capacity and resources and are provided with the training and support necessary to ensure that they can fulfil their obligations to protect the dead and to investigate violations of the right to life, including in mass fatality incidents.

Annex

Activities conducted by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz, from 1 August 2023 to 31 March 2024

This report marks the third year of the current SR' tenure. During this period, he endeavoured to fulfil the plan outlined in his 2021 report to the GA (A/76/264). The issues outlined on that occasion i.e. medico-legal death investigation systems (A/HRC/50/34); deaths in prisons (A/HRC/53/29), femicide(A/78/254) and the protection of the dead (A/HRC/56/*), were analysed in thematic reports which followed, with an emphasis on practical measures, including best practices, for investigating and preventing violations to the right to life. Advice and assistance were offered and provided for their implementation to Governments, International Organizations, NGOs and Academia, on the effective the implementation of standards developed by the mandate, in particular the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016). The history and contemporary use of these standards, which are today recognized by the forensic community globally as the reference for investigating suspicious deaths, were described in the 2022 report on the mandate's 40° anniversary (A/77/270). An important lesson learned during this period concerns the primary importance of reliable investigations for the protection of the right to life and the irreplaceable value of these standards for making this effective. However, much still needs to be done to make them better known, understood and used effectively, particularly in many contexts where the right to life and justice so require. The mandate's activities for the next three years will be guided by a commitment to help address these needs worldwide.

I. Communications

1. During the period under review, the Special Rapporteur issued, individually or jointly with other mandate holders, 89 communications, to States and non-State actors, and 40 press statements.

II. Thematic reports

2. On 23 October 2023, the Special Rapporteur presented to the 78th session of the General Assembly, a thematic report (A/78/254) examining the issue of "femicide" and its investigation as a means of identifying, seeking accountability for and helping to prevent this global scourge. The report finds that the use of a gendered lens and specialized protocols in investigating gender-based killings of women and girls enables these deaths to be identified, documented and counted as femicides to help to ensure truth, justice and reparations for victims and their families, and evidence-based preventive policies and practice.

III. Technical advisory and capacity building activities (in-person), including:

3. From 28 to 31 August 2023, the Special Rapporteur conducted a technical visit to Marseille, France, at the invitation of the Faculty of Medicine of the University of Aix-Marseille and the Forensic Anthropology Society of Europe (FASE). The aim of the visit was to deliver training and offer advice on the Minnesota Protocol and its implementation to around 200 European forensic experts, including for investigating migrants' deaths.

4. From 4 to 8 September 2023, the Special Rapporteur travelled to Bogota, Colombia, at the invitation of the Office of the High Commissioner of Human Rights (OHCHR) in Colombia, to provide technical assistance for a regional Workshop for Developing a Protocol for the Investigation of Unlawful Deaths of LGTBIQ+ People. The Protocol is a joint initiative by the OHCHR in Colombia, in cooperation with the OHCHR offices in Honduras,

Guatemala, and Panamá, together with the regional LGTBIQ+ NGO Red Sin Violencia. During his visit, the Special Rapporteur offered specialized advice to investigators on investigatory standards applicable to these cases.

5. From 11 to 16 September 2023, the Special Rapporteur visited Bogota, Colombia, at the invitation of the International Commission of Jurists and the University of El Rosario, to provide specialized training to national judges, public attorneys and NGOs on the investigation and prevention of potentially unlawful death and torture.

6. From 4 to 11 October 2023, the Special Rapporteur travelled to Buenos Aires and Cordoba, Argentina, at the invitation of the OHCHR Regional Office, the National Committee for the Prevention of Torture, the Ministry of Public Defence and the National University of Cordoba, to provide guidance on the implementation of recommendations from his 2022 country visit report (A/HRC/53/29/Add.1). He also provided specialized training for judges, public defence attorneys, prosecutors and forensic experts on the use of the Minnesota Protocol and its adoption as a standing operational procedure investigating for all potentially unlawful deaths.

7. From 24 to 28 October 2023, the SR visited Tel Aviv, Israel, on invitation of the Government, to observe and offer technical advice in relation to the elements and principles of the Minnesota Protocol, on forensic efforts underway to document and identify victims of the attacks of 7 October.

8. From 21 to 24 March 2024 the Special Rapporteur visited São Paulo, Brazil, at the invitation of the Brazilian non-governmental organization “Conectas”, for the launch of the project “Empowering the Brazilian human rights movement”, a joint initiative with UNDEF and the Federal University of São Paulo. He participated in the launch by the regional OHCHR for Latin America of the Portuguese version of the Minnesota Protocol and provided training on its use, including for members of Public Defense Office of the State of São Paulo, as well as for representatives of NGOs, including family organizations.

9. On 17 and 18 April 2024 the SR visited Bogotá, Colombia, to speak at a regional meeting on methodologies for investigations into attacks against human rights defenders in Latin America (Encuentro Regional sobre Metodologías de Investigación de Ataques y Homicidios Cometidos Contra Personas Defensoras de Derechos Humanos en Latinoamérica), organized jointly by the OHCHR with the Comisión Interamericana de Derechos Humanos (CIDH). The aim was to train and offer advice to attorneys, judges and NGOs on novel investigatory tools and methods.

IV. Other technical advisory/capacity building activities (Virtual participation), including:

10. In November 2023 the Special Rapporteur participated virtually at the 7th Annual Workshop of the Lieber Institute for Law and Warfare of the US Military Academy Department of Law, on “Civilian Protection in Armed Conflict”, to speak about practical aspects related to the protection of the dead and missing persons under international law.

11. Also in November 2023, the Special Rapporteur was invited by the Victorian Institute of Forensic Medicine and by the International Association of Forensic Science (IAFS) on the occasion of the XXIII IAFS Triennial Meeting in Australia, to speak about his mandate and the contribution of forensic science and the Minnesota Protocol to the investigation and prevention of unlawful deaths.

12. On 11 March 2024 the SR lectured at the week-long Training of Trainers Course on the Minnesota Protocol on Investigation of Potentially Unlawful deaths (2016), held in Manila, Philippines, organized jointly by the UN Joint Program on Human Rights in the Philippines and the Philippines’ Department of Justice, with participation of the University of the Philippines College of Medicine. This was a follow up to the week-long course organized in 2023 with the SR’s guidance, with the aim of scaling up the country’s forensic capability and competence based on the Minnesota Protocol. Participants included Government officials, the NHRI, academics and NGO representatives.