



ICRC

ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW

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## Humanity after Life: Respecting and Protecting the Dead



The bodies of people who die during armed conflict or situations of violence falling below the threshold of armed conflict – or who have perished in disasters or in the course of migration – must be handled respectfully and their dignity protected; and the remains of unknown individuals must be identified. Failure to discharge the obligations set out in international and domestic law on managing the dead – or to meet pertinent international and national standards, and implement the necessary policies and practices – could add to the number of people who are unaccounted for; it might also show a lack of respect for the dead, and disregard the rights and needs of their relatives and prolong their suffering.

International humanitarian law (IHL) is a set of rules that applies during armed conflict. It seeks – for humanitarian reasons – to protect persons who are not or who are no longer directly participating in hostilities, and to restrict means and methods of warfare. The treatment of the dead during armed conflict has always been a subject of cultural and religious concern. IHL, too, has a long history in this regard. In particular, it requires that the remains of those who have died during armed conflict be properly managed and their dignity protected. It also requires searching for, collecting, and evacuating the dead, to help ensure that no one is unaccounted for.<sup>1</sup>

Other branches of international law, such as international human rights law and international disaster response law, contain provisions to ensure proper management of the dead, and protection for their dignity; they also contain provisions to clarify the fate and whereabouts of people missing not only in connection with armed conflict but also in circumstances such as those mentioned above.

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<sup>1</sup> For more information, see the ICRC's factsheet *Missing Persons and their Families*, which is available at <https://www.icrc.org/en/document/missing-persons-and-their-families-factsheet>

## Application of relevant IHL provisions

The dead must be respected and protected during international or non-international armed conflict, as required by specific provisions of the 1949 Geneva Conventions (GC I–IV) and their two Additional Protocols of 1977 (AP I and AP II), and by customary international humanitarian law (CIHL).

### **Obligation to search for, collect and evacuate the dead**

Whenever circumstances permit, and particularly after an engagement, every party to conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction (GC I, Article 15(1); GC II, Article 18(1); GC IV, Article 16(2); AP I, Articles 32 and 33; AP II, Article 8; and CIHL Study,<sup>2</sup> Rule 112).<sup>3</sup>

Parties to an international armed conflict may also appeal to the civilian population and aid societies to search for the dead and report their location (AP I, Article 17(2)), and shall endeavour to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas (AP I, Article 33(4)). At sea, parties may appeal to commanders of neutral vessels to collect the dead (GC II, Article 21). In both international and non-international armed conflict, obliging victims to collect the dead bodies of other members of their ethnic group is not acceptable and may amount to torture.<sup>4</sup>

<sup>2</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules*, ICRC/Cambridge University Press, 2005: <http://www.icrc.org/customary-ihl/eng/docs/home>. Subsequent references are to the “CIHL Study”.

<sup>3</sup> For more information on the prohibition against adverse distinction, see in particular: *ICRC Commentary on the First Geneva Convention*, 2016 – and, in particular, paras 565–580 of the commentary on Article 3 common to the Geneva Conventions – available at

### **Treatment of the dead**

Parties to an armed conflict must take all possible measures to prevent despoilment of the dead (GC I, Article 15(1); GC II, Article 18(1); GC IV, Article 16(2); AP I, Article 34(1); AP II, Article 8; and CIHL Study, Rule 113).

Il-treatment and mutilation of dead bodies is prohibited (GC I–IV, Article 3(1)(c); AP II, Article 4(2)(a); CIHL Study, Rule 113).<sup>5</sup>

### **Identification**

Parties to an armed conflict must record all available information before disposing of the dead, with a view to identifying these dead bodies or human remains at a later date (GC I, Article 16(1); GC II, Article 19(1); GC III, Article 120(2); CIHL Study, Rule 116). Identification is an “obligation of means” that requires parties to do all that they can with all means available to them.

Parties to an international armed conflict shall prepare and forward to each other certificates of death or duly authenticated lists of the dead giving all particulars necessary to identify the deceased (GC I, Article 16(3); GC II, Article 19(3); GC III, Article 120(2); and GC IV, Articles 129(2 and 3) and 138).

### **Return of human remains and personal effects of the dead**

Parties to an armed conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin (GC I,

<https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt3>; and GC I, Art. 12; GC II, Art. 12; GC III, Art. 16; GC IV, Arts 13 and 27(3); AP I, Arts 9(1), 69(1), 70(1), and 75(1); AP II, Arts. 2(1), 4(1), and 18(2); and CIHL Study, Rule 88.

<sup>4</sup> *ICRC Commentary on the First Geneva Convention*, 2016 – and, in particular, the commentary on common Article 3, para. 639 – available at: <https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt3>

<sup>5</sup> The prohibition against mutilating dead bodies is also set out in the section on

Article 17(3); GC III, Article 120(6); GC IV, Article 130(2); AP I, Article 34(2 and 3); CIHL Study, Rule 114). Return of the dead to their families can be considered a basic humanitarian goal, recognized in both conventional and CIHL.<sup>6</sup>

Parties to an international armed conflict must return the personal effects of the deceased to their next of kin (CIHL Study, Rule 114). Parties and/or national information bureaux must collect and forward – in sealed packets – last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value that are found on the dead, together with a complete list of the contents of the packets (GC I, Article 16(4); GC II, Article 19(3); GC III, Article 122(9); GC IV, Article 139; and AP I, Article 34(2)).

### **Wills**

Detaining Powers in international armed conflicts must facilitate the execution and authentication of the wills of prisoners of war and of civilian internees, in particular by allowing these prisoners and internees to consult a lawyer (GC III, Articles 77 and 120(1); and GC IV, Article 113);. Wills of prisoners of war and of civilian internees must be transferred for safe keeping (GC III, Article 120(1); and GC IV, Article 129(1)).

### **Burial and cremation**

The dead must be disposed of in a respectful manner (GC I, Article 17; GC II, Article 20; GC III, Article 120; GC IV,

“war crimes” in the Statute of the International Criminal Court: it falls under the category of ‘committing outrages upon personal dignity’ (Arts 8(2)(b)(xxi) and 8(2)(c)(iii)).

<sup>6</sup> *ICRC Commentary on the First Geneva Convention*, 2016 – and, in particular, the commentary on Art. 17, para 1645 – available at <https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt17>

Article 130; AP II, Article 8; and CIHL Study, Rule 115).

Parties to an international armed conflict have additional obligations concerning deceased members of the armed forces. They must carry out a careful (medical) examination of the body before burying or cremating it, in order to confirm death, establish identity and enable a report to be made (GC I, Article 17(1); GC II, Article 20(1); and GC III, Article 120(3)).

Cremation of dead bodies, which prevents any future documentation and identification of the deceased, is allowed only in exceptional circumstances: (i) for imperative reasons of hygiene (it is worth noting that, in most cases, dead bodies do not spread disease); (ii) on religious grounds, based on the religion of the deceased; or (iii) where the deceased prisoner of war or civilian internee has expressly stated this to be his/her wish, for instance, in a will to that effect (GC I, Article 17(2); GC II, Article 20(2); GC III, Article 120(5); GC IV, Article 130(2); and CIHL Study, interpretation of Rule 115). In the exceptional cases where cremation is permissible, the circumstances and reasons for cremation must be included in the death certificate or duly authenticated list of the dead (GC I, Article 17(2); GC III, Article 120(5); and GC IV, Article 130(2)).

Detaining authorities must ensure that the dead are honourably buried, if possible according to the rites of the religion to which they belonged (GC I, Article 17(3); GC III, Article 120(4); GC IV, Article 130(1); and CIHL Study, explanation of Rule 115). Detaining authorities must ensure that where deceased prisoners of war depend on the same Power, they are interred in the same place (GC III, Article 120(4)). States shall facilitate access to gravesites for relatives of the deceased and for representatives of official graves

registration services (AP I, Article 34(2)(a)).

### **Collective graves**

Parties to international armed conflict must ensure – to the extent permitted by circumstances – that bodies are buried or cremated individually (GC I, Articles 17(1) and 20(1); and CIHL Study, interpretation of Rule 115). Deceased prisoners of war and internees must be buried in individual graves unless unavoidable circumstances require the use of collective graves (GC III, Article 120(5); and GC IV, Article 130(2)).

### **Lists of graves**

Parties to international armed conflicts shall organize at the commencement of hostilities an official graves registration service to ensure the identification of bodies and possible transportation to home countries; these services must, no later than at the end of hostilities, exchange lists showing the exact location and marking of graves together with particulars of the dead interred therein (GC I, Article 17(3 and 4); and GC II, Article 20(2)). In order that graves of prisoners of war may always be found, all particulars of burials and graves must be recorded with the graves registration service established by the Detaining Power; and lists of graves and ashes, and particulars of those interred, shall be communicated to the Power on which these prisoners depended (GC III, Article 120(6)). As soon as circumstances permit, and no later than at the close of hostilities, the Detaining Power shall forward lists of graves of deceased internees to the Powers on whom the deceased internees depended, through the national information bureau; such lists shall include all particulars necessary for identifying deceased internees and the exact location of graves (GC IV, Article 130(3)). Where evacuated children have died before being returned to their families, the party that arranged the evacuation shall send a card to

the Central Tracing Agency of the ICRC bearing, wherever possible, information related to the child, including the date, place and circumstances of the child's death and the site of his or her interment (AP I, Article 78(3)).

### **Marking, respecting and maintaining graves**

Parties to the conflict shall ensure that graves are respected – and if possible, grouped according to nationality – properly maintained and marked; this includes the graves of deceased prisoners of war and internees, and of people whose deaths took place in circumstances related to occupation (GC I, Article 17(3); GC II, Article 20(2); GC III, Article 120(4); GC IV, Article 130(1 and 3); AP I, Article 34(1, 2 and 3); and CIHL Study, Rules 115 and 116).

### **Exhumations**

During international armed conflicts, the official graves registration service shall allow exhumations of remains in a State in whose territory gravesites are situated (GC I, Article 17(3); and GC II, Article 20(2)). Exhumation shall be permitted only when the States concerned have concluded an agreement to facilitate the return of the remains of the deceased and of personal effects to the home country, or when exhumation is a matter of overriding public necessity, including cases of medical and investigative necessity; in the latter instance, the State undertaking the exhumation shall give notice to the home country of its intention, together with details of the intended place of reburial (AP I, Article 34(2, 3 and 4)).

Exhumed bodies and ashes shall be kept until they can be disposed in accordance with the wishes of the home country (GC I, Article 17(3); GC II, Article 20(2); and GC III, Article 120(6)). Practice suggests that exhumations combined with the application of forensic methods may be an appropriate method of identifying the dead

after they have been buried (CIHL Study, interpretation of Rule 116).

### **Death in detention**

In international armed conflicts, every death of a prisoner of war or civilian internee must be followed by an official enquiry by the Detaining Power, which must take all necessary measures to prosecute those responsible, as appropriate (GC III, Article 121; and GC IV, Article 131).

### **Other relevant bodies of law**

#### **International human rights law**

States can, in connection with the dead, be held responsible for interfering with rights set out in human rights law, such as the right to life, the protection of human dignity, the right to private and family life, the right to an effective remedy and the prohibition against cruel, inhuman or degrading treatment or punishment. The pertinent rules are contained in various international instruments such as the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), and in various regional treaties such as the 1950 European Convention on Human Rights (ECHR), the 1969 American Convention on Human Rights (ACHR) and the 1986 African Charter on Human and Peoples' Rights (AfCHPR).

UN Treaty Bodies and regional courts have interpreted the provisions of these instruments to require States to comply with certain obligations regarding the dead and the related rights of their relatives.

The procedural obligations stemming from the right to life (ICCPR, Article 6; AfCHPR, Article 4; ACHR, Article 4; and ECHR, Article 2)<sup>7</sup> require that an effective investigation be carried out when a violation of that right is alleged. This could oblige a State to carry out *ex officio*<sup>8</sup> an effective investigation<sup>9</sup> into acts committed prior to the death in question, acts that have led the State to establish the truth with regard to the circumstances leading to the deprivation of life.<sup>10</sup>

In addition, courts have determined in some cases that the suffering caused to family members by the post-mortem treatment of a dead relative's corpse may be regarded as reaching the threshold of inhuman or degrading treatment<sup>11</sup> (ICCPR, Article 7; ACHR, Article 5; AfCHPR, Article 5; and ECHR, Article 3),<sup>12</sup> when such suffering is different in nature from the distress or sorrow caused by the death itself.<sup>13</sup>

Relatives may also invoke their right to private and family life (ICCPR, Article 17; AfCHPR, Article 18; ACHR, Article 11; and ECHR, Article 8)<sup>14</sup> when they are denied the possibility of visiting their relative's grave, participating in the burial ceremony, having the body returned to them without

excessive delay, or given no information on the location of the grave.<sup>15</sup>

The ICPPED imposes certain obligations on States Parties: to locate, respect and return the remains of the deceased (ICPPED, Article 24(3)); to assure the compilation and maintenance of official records, including the circumstances and cause of death and the destination of the remains, in the event of death during the deprivation of liberty (ICPPED, Article 17(3)(g)); and to afford one another the greatest measure of mutual assistance with a view to exhuming, identifying and returning the remains (ICPPED, Article 15).

### **International disaster response law**

International disaster response law includes a number of "soft-law" instruments related to forensic activities and the management of the dead. The 2011 *Humanitarian Charter and Minimum Standards in Humanitarian Response* – published by the Sphere Project – sets out a number of universal minimum standards for disposing of dead bodies in a manner that is dignified, culturally appropriate and based on good public-health practice. The Sphere Project also provides guidelines for handling the remains of the dead following a natural disaster. During armed conflict, however, IHL rules on the management of the dead will apply and take precedence.

### **Domestic implementation**

States have an obligation to adopt measures for implementing IHL domestically,

*de Río Negro v. Guatemala*, 2012, paras 151–165.

<sup>12</sup> See also UDHR, Art.5.

<sup>13</sup> ECtHR, *Akkum et al v. Turkey*, no. 21894/93, 2005, para. 258; *Khadzhaliyev et al v. Russia*, no. 3013/04, 2008, para. 121; IACtHR, *Nadege Dorzema v. Dominican Republic*, 2012, paras 117 and 252.

<sup>14</sup> See also UDHR, Art.12.

<sup>15</sup> ECtHR, *Sabanchiyeva et al v. Russia*, no. 38450/05, 2013, para. 138. See ECtHR, *Guide on Article 8 of the European Convention on Human Rights: Right to Respect for Private and Family Life*, 2018, paras 99–104.

<sup>7</sup> See also UDHR, Art. 3

<sup>8</sup> Inter-American Court of Human Rights (IACtHR), *Manuel Cepeda Vargas v. Colombia*, 2010, para. 117; European Court of Human Rights (ECtHR), *Tanrikulu v. Turkey*, no. 23763/94, 1999, para. 103; UN Human Rights Committee, CCPR, General Comment 36, CCPR/C/GC/36, para. 28; ECtHR, *Guide on Article 2 of the European Convention on Human Rights: Right to Life*, 2018, para. 129, available at: <https://www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis/guides&c>; African Commission on Human and Peoples' Rights, *General Comment No. 3 on the*

*African Charter on Human and Peoples' Rights: The Right to Life (Article 4)*, 2015, paras 2 and 7

<sup>9</sup> ECtHR, *Rantsev v. Cyprus and Russia*, no. 25965/04, 2010, paras 232–233.

<sup>10</sup> ECtHR, *Kaya v. Turkey*, no. 22535/93 2000, para. 126; ECtHR, *Ergi v. Turkey*, no. 23818/94, 1998, para. 85; ECtHR, *Yasa v. Turkey*, no. 22495/93, 1998, para. 104; IACtHR, *Neira Alegría et al v. Peru*, 1995, para. 71; UN Human Rights Committee, CCPR, *General Comment 36* CCPR/C/GC/36, paras 27–29.

<sup>11</sup> IACtHR, *Moiwana Village v. Suriname*, 2005, paras 98–100; IACtHR, *Masacres*

including measures related to respect for the dead. Such measures must be taken in both peacetime and wartime.<sup>16</sup>

### ICRC support

During armed conflict, and in situations of violence falling below the threshold of armed conflict and other circumstances requiring action by a specifically neutral and independent body, the ICRC strives to ensure that people are protected from any threat to their lives, physical integrity or dignity. This includes seeking to ensure that deaths are documented, the dead respected and when possible, identified, and preventing people from going missing.

The ICRC provides advice, support and training to local authorities and forensic professionals in searching for, recovering, managing, analysing, and identifying the dead for humanitarian purposes.

The ICRC focuses on building sustainable local forensic capacities. It promotes the use of scientific best practices and provides the necessary training. It has supplemented these efforts by producing the following publications:

- *Management of Dead Bodies after Disasters: A Field Manual for First Responders* (revised in 2016)<sup>17</sup>
- *Forensic Identification of Human Remains*<sup>18</sup>
- *Operational Best Practices regarding the Management of Human Remains and Information on the Dead by Non-Specialists*<sup>19</sup>
- *Guidelines for Investigating Deaths in Custody*<sup>20</sup>

<sup>16</sup> For more information on turning IHL rules into action, please refer to the ICRC's factsheet *Implementing International Humanitarian Law: From Law to Action*, which is available at <https://www.icrc.org/en/document/implementing-international-humanitarian-law-law-action>

<sup>17</sup> Available at <https://www.icrc.org/en/publication/0880-management-dead-bodies-after-disasters-field-manual-first-responders>

- *Missing People, DNA Analysis and Identification of Human Remains: A Guide to Best Practice in Armed Conflicts and Other Situations of Armed Violence*<sup>21</sup>

Finally, the ICRC Advisory Service on IHL advises and assists States in implementing IHL and other relevant norms domestically. In this regard, the ICRC has drafted *Guiding Principles / Model Law on the Missing*, which may be useful to States wishing to adopt domestic measures on missing persons, including the dead.<sup>22</sup>

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<sup>18</sup> Available at <https://shop.icrc.org/forensic-identification-of-human-remains-2665.html>

<sup>19</sup> Available at [www.icrc.org/en/publication/0858-operational-best-practices-regarding-management-human-remains-and-information-dead](https://www.icrc.org/en/publication/0858-operational-best-practices-regarding-management-human-remains-and-information-dead)

<sup>20</sup> Available at <https://www.icrc.org/en/publication/4126-guidelines-investigating-deaths-custody>

<sup>21</sup> Available at <https://www.icrc.org/en/publication/4010-missing-people-dna-analysis-and-identification-human-remains-guide-best-practice>

<sup>22</sup> Available at <https://www.icrc.org/en/document/guiding-principles-model-law-missing-model-law>. See also the ICRC's factsheet *Missing Persons and Their Families*.