

**SUBJECT: EXPERT REPORT ON  
THE MANAGEMENT OF DEAD  
BODIES IN CUSTODY AND THE  
COVID-19 PANDEMIC.**

**PLAINTIFF: CENTRO DE DERECHOS  
HUMANOS MIGUEL AGUSTÍN PRO  
JUÁREZ A.C. (Human Rights Center  
Miguel Agustín Pro Juárez, Civil  
Association)**

**ACTING DISTRICT JUDGE IN THE STATE OF  
MORELOS,**

**WITH RESIDENCE IN CUERNAVACA**

1. I, Albertina Ortega Palma, hereby submit to your consideration this technical opinion on the management of dead bodies in custody and the COVID-19 pandemic, to be considered alongside the lawsuit to which this report is attached.

**I. RELEVANT BACKGROUND AND QUALIFICATIONS**

2. I hold a Bachelor's Degree in Physical Anthropology from Escuela Nacional de Antropología Física (National School of Physical Anthropology - ENAH), a Master's Degree in Criminal Sciences with Specialization in Criminalistics from Instituto Nacional de Ciencias Penales (National Institute of Criminal Sciences - INACIPE),

and I am a PhD student of Forensic Anthropology at the University of Coimbra, Portugal and a Full-time Professor-Researcher from 2006 to date at Instituto Nacional de Antropología e Historia (National Institute of Anthropology and History - INAH). Founder and coordinator of the Specialization in Forensic Anthropology at ENAH, Academic Manager of the Laboratory of Graduate Osteology at ENAH, Member of Academia de Licenciatura en Antropología Física (Academy of Physical Anthropology) from 2009 to the date, professor at Academia de Licenciatura en Antropología Física. I am the coordinator of the undergraduate course in Forensic Anthropology, a collaboration between ENAH and the International Committee of the Red Cross (ICRC). In addition, I have worked as an independent expert in forensic anthropology with families in search of missing persons and with the ICRC in the state of Guerrero. I am the author of various scientific articles and chapters of research books on the topics of Osteology, Forensic Anthropology and Human Identification. I have been a member of groups for support, interlocution and forensic advice in civil non-governmental organizations, including Grupo de Investigaciones en Antropología Social y Forense (Social and Forensic Anthropology Research Group - GIASF), the Grupo Autónomo de Trabajo (Autonomous Working Group - GAT) in the state of Coahuila, the Coahuila State Coordinating Group for the Exhumation Plan Evaluation, the Forensic Space, among others. And I have supported state prosecutors, for instance, in the states of Coahuila and Guerrero, with forensic technical advisory services.

3. Finally, I highlight that I have not received any compensation to write this report.

## **II. THE RIGHTS OF A PERSON WHO DIES IN CUSTODY, DETENTION, OR PRISON**

4. Persons in deprivation of liberty, in custody, detained or imprisoned retain all their rights except those rights which have been lost as a specific consequence of the deprivation of liberty. All persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person.<sup>i</sup> This

implies the dignified management of their bodies once the person has died in detention or deprivation of liberty.

5. It is also essential that, when a person who is detained or imprisoned dies, an investigation of the cause of his or her death is carried out. Principle 34 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>ii</sup> adopted by the UN General Assembly in 1988, provides: “Whenever the death or disappearance of a detained or imprisoned person occurs during their detention or imprisonment, an **inquiry into the cause of death** (emphasis added by the undersigned) or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case”...
6. This is due to the obligation to respect and protect the right to life; therefore, when this right is lost, it must be investigated. This is an essential part of the defense of the right to life<sup>iii</sup> and it promotes accountability.
7. In the case of a person who is detained, in deprivation of liberty under the jurisdiction of the State, his or her life must be protected by the State.<sup>iv</sup> Therefore, when a person dies while in custody of an authority or deprived of his or her liberty, one must perform the investigation of the cause of death and the appropriate necropsy, and inform the family.
8. The Minnesota Protocol on the Investigation of Potentially Unlawful Death in paragraph 11 states that family members have the right to seek and obtain information on the causes of a killing and to learn the truth about the circumstances, events and causes that led to it.
9. While paragraph 17 states the following: Likewise, this (the death of the detainee) must be reported, without delay, to a judicial or other competent authority that is

independent of the detaining authority and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such a death.

10. This responsibility extends to persons detained in prisons, in other places of detention (official or otherwise) and to persons in other facilities where the State exercises heightened control over their life. Owing to the control exercised by the State over those it holds in custody, there is a general presumption assumption of state responsibility in such cases.

11. Therefore, in any case, **the State has an obligation to provide all relevant documentation to the family of the deceased person, including the death certificate, a medical report, and reports on the investigation into the circumstances of the death, obtained from the necropsy report.** This ensures a transparent process of investigation.

### **III. MANAGEMENT OF DEAD BODIES DUE TO CONFIRMATION OR SUSPECTED INFECTION OF COVID-19 SARS COV-2 IN CUSTODY BY AUTHORITY**

12. However, what happens in the case of confirmed or suspected COVID infection deaths in custody or in prisons? The management of the corpses should be based on the orientations in the Guide to the Management of Covid-19 Sars COV-2 dead bodies in Mexico, proclaimed by the Mexican Ministry of Health, and the COVID-19: General Guidance for the Management of the Dead, document issued by the International Committee of the Red Cross (ICRC).

13. In the case of people who have died from COVID infection, it must be considered a natural death and it does not require necropsy.<sup>v</sup> However, there are exceptions and one of them is for people who have died in custody, including prisoners.<sup>vi</sup> The necropsy must be performed in these cases.

14. Despite the fact that there is no evidence of risk of infection from corpses of persons killed by COVID-19, to date, it should be considered that these corpses could pose a risk of infection for people who come into direct contact with them. Therefore, they must be managed in accordance with the Regulation of the General Health Law on Health Control of the Disposal of Organs, Tissues and Bodies of Human Beings and the related Mexican Official Standards. Also, the respect for human dignity should be observed, in the management of the dead and in the relationship with the family of the deceased.
15. Concerning the post-mortem examination, it should be carried out in a safe environment, comply with biosafety recommendations and the proper use of personal protective equipment<sup>vii</sup> by professional and technical personnel who work on such cases and handle the corpses<sup>viii</sup>. And observing the following principles:<sup>ix</sup>
- a. The safety and well-being of the team involved in the management of deceased persons (DPs) must be one of the main priorities.
  - b. Personnel performing recovery and identification must be specifically trained in the handling of corpses and the use of personal protective equipment (PPE).
  - c. The risk should always be evaluated during the mortuary care process, and it should be minimal.
  - d. Deceased persons must **be treated with respect and dignity** at all times. This is a right protected by the International Humanitarian Law and the Human Rights Law.
  - e. If the person is not identified or is identified but not claimed at the time of death, every effort must be made to identify the person at a later date, by correctly documenting, keeping a thorough record of the traceability of the body, and ensuring that the person is properly protected.
16. In accordance with these international and national guidelines and recommendations, the necropsy should be carried out only if available: a properly ventilated room for the procedure; appropriate personal protective equipment; scrub suits, surgical mask or respirator (N95 or similar). If there are aerosol-generating procedures (AGP): long sleeve fluid-resistant gown, gloves (double gloves or a pair of autopsy gloves) and

face shield (preferably) or goggles, and boots. In addition to attending to the proposed recommendations on equipment for the room and approach methodology.

#### IV. HEALTH EMERGENCY BY COVID-19

17. During the COVID-19 emergency, persons who die in detention may be classified into three types: 1) claimed corpse with known identity, 2) unclaimed corpse with known identity and 3) corpse with unknown identity (Art. 347, General Health Law)<sup>xi</sup>.

- a. Claimed corpse with known identity. A dead body that has been fully identified and whose family is responsible for giving it a final destiny.
- b. Unclaimed corpse with known identity. An identified dead body of which families cannot or do not wish to take care. A deceased person with no relatives. Or,
- c. A Corpse with unknown identity (or with false or erroneous identity information)<sup>xii</sup>. Unclaimed bodies within seventy-two hours after death. Corpse with false, erroneous or unknown identity since its identity is ignored or not known and that for some reason the family members are unaware of their status of detention, which leads to the body not being claimed. In this case there is the possibility that the person is **missing or has not been located**<sup>xiii</sup>.

18. If there is no family member to claim, an investigation must be carried out to track the relatives. If a relative is not located, the responsible authority must be notified, and the State will dispose of the corpse by proceeding to its inhumation in a common grave.

19. The ICRC guidelines in Mexico<sup>xiv</sup> state that: *Persons killed by (confirmed or suspected) COVID-19 who are not identified or are identified and not claimed should NOT be subjected to the necropsy process, however, an external postmortem*

*examination is required to collect the necessary and sufficient information for identification purposes according to the legal framework and the basic Identification File (ABI)<sup>xv</sup> adapted to the COVID-19 response.* In other words, the opening of cavities should be avoided as far as possible, but sufficient and necessary information must be collected for further identification

20. The external post-mortem examination should be carried out in accordance with the World Health Organization (Regional Office for the Americas), the Pan American Health Organization and the Guidelines for the Dead Body Management in Confirmed or Suspected Cases of Covid-19 issued by the ICRC for Mexico. The examination consists of obtaining the Basic Identification File containing the registration and description of the corpse's garments and belongings, physical description, particular marks and photographs for the purposes of identification (front and profile, and particular marks), post-mortem fingerprinting and collection of DNA sample<sup>xvi</sup>.
21. In the light of the above, the procedure in persons who have died while in custody of an authority or in detention is the following:
  - a. Claimed corpse with known identity, with death by COVID infection confirmed.
22. The authority may exempt necropsy. The recommendations of the World Health Organization (Regional Office for the Americas) and the Pan American Health Organization must be followed: Notify family members, give an appropriate explanation to the family, arrange a room for the family farewell, deliver the medical certificate and COVID confirmation medical tests, and deliver the body to the family member who claimed it through the appropriate funeral service.
  - b. Claimed or unclaimed corpse with known or unknown identity, with suspected death for COVID infection or for unknown cause. The competent authority must

apply for necropsy by the Forensic Medical Service of the entity.

23. In the event that they do not have the provisions regarding the equipment and safety of the personnel and the principles established by the World Health Organization (Regional Office for the Americas) and the Pan American Health Organization, and the Guidelines for Dead Body Management in Confirmed or Suspected Cases of COVID-19, the external Postmortem examination must then be carried out as default, in which the description of injuries (if present and observable) and the cause of death must be included.

## **V. REQUIREMENTS FOR INHUMATION**

24. The storage of an identified unclaimed corpse or a corpse of unknown identity must last a few days and then one must proceed to its inhumation in a common grave or ministerial pantheon.
25. Persons killed by COVID-19, especially those identified as unclaimed, as well as those who died unidentified, must be inhumed individually, as stated in the Disappearance of Persons Act. The necessary measures must be taken to speed up the process of identification and delivery of corpses in the future, thereby ensuring that when the emergency is over, the relatives can know where their deaths are and be able to close their mourning in a dignified manner<sup>xvii</sup>.
26. Use non-degradable materials for the labeling of the body bags, place at least two labels, a visible external label and an internal label attached to the body. Metal labels with required alphanumeric data are advised. This will allow to relate, in the future, the cadaver record (basic identification-necropsy file), the body and the relative who claims the body.
27. The transfer of the body and the inhumation shall be carried out as soon as possible



in coordination with the appropriate authorities.

28. It is therefore stressed that **cremation/incineration of the body should not be carried out**. The latter, as already indicated, because it is the case of an unclaimed body or an unknown identity, that may be claimed later by a relative as stated in the General Law on Forced Disappearance of Persons Committed by Individuals, and on the basis of the Agreement published in the Official Journal of the Federation on April 17<sup>th</sup>, 2020, issued by the Ministry of Interior that states: “Incineration of unclaimed unidentified and identified bodies that have died as a result of SARS-CoV2 virus disease (COVID-19) is prohibited and measures are suggested for recording deaths in the context of the emergency”. This is based on the fact that the World Health Organization itself does not force the incineration of the body within the framework of the pandemic.

**Albertina Ortega Palma**

October 02, 2020

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<sup>i</sup> United Nations High Commissioner for Human Rights. Human rights and prisons. A Pocketbook of International Human Rights Standards for Prison Officials. New York and Geneva, 2005.

<sup>ii</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Adoption: UN General Assembly Resolution 43/173, 09 December 1988.

<sup>iii</sup> The right to life is a norm of *jus cogens* and is protected by international and regional treaties, customary international law, and national legal systems. This right is recognized, among other instruments, in the 1948 Universal Declaration of Human Rights.

<sup>iv</sup> *Minnesota Protocol on the Investigation of Potentially Illicit Deaths (2016)*, Office of the United Nations High Commissioner for Human Rights, New York and Geneva, 2017. Paragraph 8, subparagraph (b) States should protect the life of all persons under their jurisdiction by law.

<sup>v</sup> In the case of Spain, it was recommended not to carry it out because of the biological risk of contagion to its executors and because of the risk of spreading the virus. Technical Document. Procedure for the management of corpses in COVID-19 cases. Government of Spain. Ministry of Health. Version from March 20, 2020.

<sup>vi</sup> Guidelines for the Management of Dead Bodies in Confirmed or Suspected Cases of Covid-19, Mexico 2020, International Committee of the Red Cross, Mexico, 2020.

<sup>vii</sup> Guide to Cadaver Management by Covid-19 Sars COV-2 in Mexico, Government of Mexico, Ministry of Health, 2020.

<sup>viii</sup> “Personnel who manipulate corpses” means any person involved in the physical manipulation of the bodies

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of the deceased. It includes, but is not limited to, medical doctors, health care personnel, workers in charge of taking care of the dead bodies, including doctors, pathologists and other forensic experts, autopsy technicians, personnel in charge of the recovery and transfer of the bodies, funeral service workers, and staff preparing the body for its final destination and other commemorative acts. These workers must take precautions when handling the bodies of persons killed by COVID-19. ICRC. “Management of dead bodies in confirmed or suspected cases of COVID-19. Technical recommendations for health workers and for of all those in charge of any manipulation of bodies”. Version from March 20, 2020.

<sup>ix</sup> Guidelines for the Management of Dead Bodies in Confirmed or Suspected Cases of Covid-19, Mexico 2020, International Committee of the Red Cross, Mexico, 2020.

<sup>x</sup> Cadaver management in the context of the new coronavirus (COVID-19). Pan American Health Organization, World Health Organization. Regional Office for the Americas (Provisional Recommendations, March 18, 2020).

<sup>xi</sup> General Health Law. Government of Mexico, 1984.

<sup>xii</sup> This is a common problem in prison or prison systems. The following press note “There are 28.000 unidentified prisoners in Colombian prisons” can be consulted at (available only in Spanish): <https://www.elmundo.es/america/2010/04/19/colombia/1271709967.html>

<sup>xiii</sup> Art. 4 of the General Law on Forced Disappearance of Persons, Disappearance by Individuals and of the National Search System, Mexico, 2017.

<sup>xiv</sup> Guidelines for the Management of Dead Bodies in Confirmed or Suspected Cases of Covid-19, Mexico 2020, International Committee of the Red Cross, Mexico, 2020.

<sup>xv</sup> Protocol for Forensic Treatment and Identification. Attorney General's Office, Mexico

<sup>xvi</sup> This sample should not be processed immediately, as little information is available about the behavior of the virus in biological samples. Guidelines for the Management of Dead Bodies in Confirmed or Suspected Cases of Covid-19, Mexico 2020, International Committee of the Red Cross, Mexico, 2020.

<sup>xvii</sup> Guidelines for the Management of Dead Bodies in Confirmed or Suspected Cases of Covid-19, Mexico 2020, International Committee of the Red Cross, Mexico, 2020.