
Monitoring and Investigating Death in Custody

Amnesty International and CODESRIA



Amnesty International



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I. Definitions and examples of death in custody

1. When is death in custody a human rights violation?

Death in custody may constitute a human rights violation:¹

- **When it results from a summary execution:**

Example: On 13 March 1998, a political activist, a member of the opposition party, was arrested by the police and brought shortly afterwards to the main prison of the capital. According to the testimonies of fellow prisoners, he was shot dead the following day by prison guards.

- **When it results from torture:**

Example: Ms Moyo, a market trader, was arrested by police officers in the market where she was working on 16 April 1998. She was arrested following accusations by a customer that she had robbed him. Three days later, her family was informed that her dead body had been found in the town mortuary. According to the autopsy requested by the family, she had been severely tortured and died as a result of the torture.

- **When it results from ill-treatment, including medical neglect and bad prison conditions:**

Example: Mr Abdou, an activist working on behalf of street children, was arrested by police officers in November 1997, accused of spreading false rumours on the killings of children by the police. He was imprisoned, while awaiting trial, in the prison of the capital. The prison conditions are well known to be very bad, with prisoners being denied access to food and safe water, overcrowded jails, lack of medical treatment, etc. Shortly after being imprisoned, Mr Abdou developed a bad cough and malaria. Despite repeated appeals

1

For the purpose of this booklet, custody refers to any place where individuals are being held by law enforcement officers or people acting with the agreement of law enforcement officers.

These places of detention, restriction, or imprisonment by the state may include: prisons, police stations, gaols, military camps, illegal and/or secret places of detention, the back of a police car, an airport lounge, etc.

In many situations, death in custody may also constitute a political killing, for instance, when the victim died as a result of a summary execution or of torture. (See separate booklet on *Monitoring and Investigating Political Killings*).

from his family that he be given adequate treatment, he never saw a doctor. He died on 4 April 1998.

- **When it results from excessive use of force:**

Example: Ms Malaseya, a rejected asylum seeker, was deported back to her country of origin three months ago. At the airport, when attempting to force her into the plane, the two policemen responsible for her deportation used methods of restraint that resulted in her death by asphyxia. A Commission of Inquiry set up after the incident concluded that this was a case of death in custody resulting from excessive use of force.

2. When is death in custody not a human rights violation?

- **When prisoners or detainees die from natural causes or fatal illness**

Example: Mr Babaseke, a long-term prisoner serving a 20-year sentence for robbery and murder, died yesterday of lung cancer in the hospital of the prison.

- **When prisoners are killed by security officials acting in self-defence, for instance if the prisoner threatens a guard with a weapon**

Example: Three inmates were killed by prison guards yesterday. Prisoners had rioted earlier in the day, taken three guards hostage, and got access to firearms. A shoot-out occurred later, during which one prison guard and three prisoners were killed.

But remains suspicious:

- **Natural causes, illnesses or accidents may hide human rights violations**

Many so-called “natural” deaths in custody result from poor conditions of detention, lack of access to medical care, lack of appropriate diet or safe water,

overcrowding, etc. Such poor conditions of detention may be described as cruel, inhuman or degrading treatment. Under these circumstances, death in custody constitutes a human rights violation.

- **Killings resulting from attempted escape may hide human rights violations.**

It is common for the authorities to claim that prisoners have died while trying to escape or in armed encounters. Forensic evidence and the testimony of witnesses can be used to counter such claims. Similarly, claims of an accident might be made after a prisoner dies from injuries which a post-mortem investigation shows are consistent with torture.

II. Example of an investigation:

The Mozambican League for Human Rights

The following example is the investigation conducted by the Mozambican League for Human Rights into the death in custody of a 31-year-old man wrongly accused of stealing a mini-bus.

Since it was created, the Mozambican League of Human Rights has documented various cases of death in custody and, in many, the perpetrators have gone unpunished. The following case was investigated by X, a staff member of the Mozambican League for Human Rights.

The story of a prisoner tortured to death by police officers at a Police Station is a common one in Mozambique. As an example, let's look at the following case.

Description of the case

The victim, a 31-year-old man by the name of FT, died at Hospital Central de Maputo on 9 June 1996, where he was taken in a near death state after being put through 13 straight hours of intense torture by a group of police officers.

FT had been charged with stealing a mini-bus owned by his employer. Later, after thorough investigations, it was discovered that the culprit had been someone else. What happened is that, after seeing that the vehicle was missing, FT alerted the owner's wife who refused to accept his story and simply demanded the mini-bus back. Worried about the situation, FT went home and discussed it with his wife and they decided to go to the police station. There, to their surprise, they found that the lady (his employer) had already filed a complaint. Without bothering to inquire into the case, the police simply arrested FT.

FT's wife witnessed her husband's torture which started around 9 p.m. on 2 June. The torture lasted until 11 a.m., with FT's wife and three-month-old baby standing by.

The investigation

A member of the League describes for us what he did after hearing about the case.

*I headed to the **police station** on a fact-finding mission accompanied by two colleagues from our Legal Assistance Department, intent on filing a complaint against the perpetrators. Aware of their colleagues' actions, the other officers obstructed our inquiries.*

First, the Head of the PIC (Criminal Investigation Unit) denied any knowledge of a prisoner by the name of FT and of any torture. My attempts to see the gaol cells were thwarted and I was threatened with prison for abuse of authority. Not intimidated, I persisted and finally the Head of the Unit relented and ordered his men to check on FT. He was found to be in grievous state. I was assured that the victim would be taken to the hospital.

Still perturbed with the case, I went back to the police station at around 2 p.m. and was told that FT had been taken to the hospital and that an arrest warrant for the officers on duty on the night of the torture had been issued. No mention was made of the other four perpetrators.

*At 6 p.m. that day, I went to the **hospital**. FT's body had been completely wrecked. He could not speak so I was not able to get a word out of him. I knew that if he died, I wasn't going to be able to get all the proof I needed. At 3 p.m. the following day, I was informed of FT's death.*

An officer later informed me that the bus owner's wife had offered to give money to the police if they could force him to confess to having stolen the vehicle. Another source assured me that they had already received the money. According to other leads, which I was not able to follow through owing to police obstruction, the main crime suspect in the mini-bus theft was already in police custody.

Search for justice

The death of FT as a result of the torture he endured at the hands of police officers could not be questioned: there had been a witness (FT's wife), the Mozambican League itself saw

the state the man was in the police cell, and the Head of the Criminal Investigation Unit itself has acknowledged wrong-doing on the part of the officers in charge. Furthermore, the Mozambican League had been able to get information on bribery. But it would take a long time before justice was done, and even then, it was an incomplete justice.

I set off a chain of events I thought would eventually lead to the perpetrators being punished.

I wrote on behalf of the League to the President, the Prime Minister, the Justice and Home Affairs Ministers, and to the General Prosecutor, asking them to act. But none of them reacted.

Nonetheless, the League pressed ahead and lodged a complaint with the City Prosecutor's Office and one of the Prosecutors was charged with looking into the case. Unfortunately, the case got shelved when the Prosecutor started receiving threatening phone calls, with death threats even being made to the people from the League pressing for the case to go on.

The investigation was later reopened. Six months later, the perpetrators were tried and sentenced. They each got a seven-year prison sentence and will have to pay a 39 million meticaís compensation to the victim's wife and children.

But impunity persists . . .

However, mysteriously and inexplicably, the person in charge during the torture is still free. He was transferred and has recently been promoted to a senior post in the Ministry of Home Affairs. Furthermore, by making the four condemned officers liable for compensation, the court in fact freed the State from its obligations. In normal circumstances, it should be the State compensating the victims relatives, because the officers committed the crime while on duty. To this day, the widow has not received a penny and the League is still battling to see justice done.

III. How to monitor death in custody?

Monitoring is the long-term observation and analysis of the human rights situation in a country or region.

- It consists of collecting **systematically and consistently** information that may be related to human rights violations, from a variety of sources.
- This information, collected over a certain period of time, should allow you to **put the cases under investigation into a political and legal context**, as well as to **identify patterns** in terms of death in custody. They should also allow you to develop an in-depth knowledge of the security forces and opposition groups, their methods of operations, their chains of command, etc.
- Please refer to the main book *Monitoring and Documenting Human Rights Violations in Africa*, see part one, “General Principles and Activities”.

As highlighted in the case above, death in custody is unfortunately a common state of affairs in many prisons throughout the world, hence the importance of thorough monitoring to assess the extent of the violations and to identify the likely set of events that triggers and characterises such deaths.

Three main steps for monitoring death in custody

- Step 1: **Collect** information on the law, political climate, social climate, criminality, etc.
- Step 2: **Record and follow-up** individual allegations of death in custody
- Step 3: **Analyse** information and allegations and identify **patterns**

1. Collect general information

1. Legal and institutional data

- What is the legislation governing the protection of prisoners under any form of detention and rules for the treatment of prisoners?
- Are there any codes of conduct for police or military forces regarding the treatment of prisoners? What does the code say exactly?
- Do the police or military forces receive any training? What type of training?
- What are the chains of command?

2. Political information

- Keep track of statements made by government officials regarding torture and death in custody.
- Keep records of all official positions on individual cases, allegations or general comments about prisoners in general.

3. Social information

- Through the monitoring of the media, you should be able to find out about the general public's feelings regarding prisoners and criminality.
- Does the public or media call for harsher treatment of prisoners?

4. Criminality

- Keep track of information regarding criminality: is it on the increase or decrease? What are the main criminal activities? What are the main charges? Sentences?

2. Record and follow up individual cases

Let's return for one moment to the investigation by the Mozambican League for Human Rights. You may recall what was said at the beginning of the testimony:

The story of prisoners tortured to death by police officers is a common one in Mozambique. Since it was created, the Mozambican League for Human Rights has documented various such cases and, in many, the perpetrators have gone unpunished.

The League knew, from experience, that (i) death in custody is common, and (ii) impunity is prevalent.

Human rights organisations or monitors are able to reach such conclusions by identifying and following up all cases that come to their attention. To facilitate such a task, it is recommended that you **design a form** to record individual cases of alleged deaths in custody.

Opposite is an example of a form to record individual cases. You may need to adapt it to the specific circumstances of your country or region.

Sample form for recording information on death in custody

Date: Registration number: Information compiled by:
Visit to the scene: No Yes by on
Interviews of witnesses: No Yes by on

1. Victim identification information

Name (Last and first name, nickname):
Date of Birth or Age: Gender:
Profession/Occupation: Family Status:
Address:
Nationality: Religion: Ethnicity:
Physical description or picture:

2. Location of the death in custody

Date, time and year of the alleged death in custody:
Name of prison or other custody location:
Province: District City/village (or nearest):
Street address (if applicable):

3. Circumstances of the arrest

Date, place, time, witnesses, etc.:
.....
Reasons for the arrest:
Who conducted the arrest:
Were other people arrested:
Previous arrest?:
Legislation under which the prisoner was being held:
Did he/she appear before a court judge? No Yes If yes, give details
.....
Was he/she formally charged? No Yes
If not charged, did the authorities give reasons for the arrest?
.....
Did he/she have access to a defence lawyer? No Yes
If yes, name and address of the lawyer
Who chose the defence lawyer?

4. Cause of death

Cause of death (e.g. gunshot):

Brief description of the state of the victim:

.....

Circumstances of the death:

.....

5. Alleged perpetrators

Names:

Officers in charge:

Chain of command:

6. Evidence

Witnesses:

Forensic evidence:

Court record:

Other:

7. Complaints

Was a complaint lodged? No Yes

If yes, when? where?

by whom?

8. Government responses

Was an investigation launched? No Yes

If yes, by whom? when?

Did the case reach court? No Yes

If yes, which court? when?

Were any statements made by public officials; if so, what?

.....

.....

3. Identify patterns

Through monitoring and investigating individual cases, you should be able to identify patterns. These will allow you to draw an overall picture of the situation as far as death in custody is concerned and will assist you in future investigations.

Patterns most relevant to death in custody may include:

Patterns in the identity of the victims

Are most victims of death in custody to be found among members of:

- specific political parties
- certain social sectors
- ethnic groups
- religious groups
- alleged criminals

Patterns in the circumstances resulting in death in custody

Are the majority of cases of death in custody preceded by similar sets of events, such as:

- new legislation
- declaration of a state of emergency
- elections
- announcements of meetings or requests for authorisation
- meetings
- demonstrations, riots
- intimidation and/or death threats

Patterns in the location of the cases

Did the majority of the cases take place in specific locations, such as:

- specific gaols
- specific prisons
- specific military barracks
- secret detention centres

Patterns in the identity of the alleged perpetrators

In the majority of the cases, are the alleged perpetrators to be found among:

- a specific security force
- specific prisons, gaols, etc.
- specific individuals within a security branch
- individuals of similar ranks

Patterns in the cause and manner of death

Are the majority of the cases of death in custody resulting from the same cause, e.g.

- gunshot wounds
- garroting
- torture
- lack of medicine and medical treatment

Patterns in the month/season of death

- do many cases of death in custody appear to take place during the same season or month of the year (e.g. hot season or rainy season which may be characterised by hunger, an increase in malaria or tuberculosis throughout the country, etc.)

Patterns in government responses to alleged cases of death in custody?

In the majority of cases, did the government response follow a similar pattern, e.g.

- refusal to return the body to the family
- absence of independent and impartial investigations
- absence of autopsy
- procedures falling short of international standards regarding autopsy or investigation
- no arrest, trials, or judgement

IV. How to conduct fact-finding

Fact-finding consists of investigating a specific incident or allegation of human rights violations, collecting or finding a set of facts that proves or disproves that the incident occurred and how it occurred, and verifying allegations or rumours.

1. Gather material evidence which will confirm (or not) the allegations

Very rarely will the security officials admit that death in custody took place. Instead, the authorities may argue that the detainee died of natural causes or during an attempted escape.

It will be up to you to gather sufficient evidence to corroborate the government's version or, alternatively, to prove that the detainee did not die of natural causes but was executed, or that heart failure resulted from torture or cruel, inhuman or degrading treatment.

Material evidence may include: forensic evidence, medical records, photographs, physical signs or marks, official documents or acknowledgement.

Forensic evidence will often be crucial to counter the authorities' claims, along with knowledge about the deceased's medical history, and testimonies from witnesses.

2. Conduct interviews

Ask yourself who is more likely to give you access to this evidence.

Individuals to be interviewed may include: victims, family members, other inmates, prison guards, police officials, eye-witnesses or other witnesses, security officials, local officials, etc.

3. Assess the information and evidence

Having gathered material evidence and interviewed the victims or witnesses, you will need to **assess** the information and evidence provided in order to determine whether death in custody took place.

1. Preparing for the investigation: Get the facts

Be knowledgeable

- Be knowledgeable about the law related to death in custody: find out exactly what is prohibited under domestic laws and international human rights standards; seek information from experts.
- Be knowledgeable about the patterns related to deaths in custody and impunity
- List everything you already know about the case

For instance, in the case above, the researcher already knew that the prisoner had been tortured. He went to the prison in order to be fully certain about the allegation of torture and in order to seek remedies: e.g. to make sure that the prisoner got access to medical care as soon as possible.

- List everything you already know about this particular prison or police station, as well as about death in custody

Seek expert advice

- Get all the necessary information or expert advice, e.g. consult with forensic pathologists, lawyers, etc.

Prepare your interview format

- Write down a check-list of the data and facts necessary to assess the allegations.
- If this is your first investigation of a death in custody, show the check-list to local contacts who have worked on such cases to get their input: they will often be able to add questions.
- Please refer to the booklet, *Monitoring and Documenting Human Rights Violations in Africa, General Principles and Activities*.

2. Going to the scene and other locations

Identify the places you may need to go to in order to conduct your investigation

- For instance, let's return to the investigation conducted by X into the alleged death in custody of FT. X went to:
 - the police station
 - the actual cell of the prisoner
 - the hospital
 - the mortuary
 - the court
- In the majority of alleged cases of deaths in custody, these places may be crucial to your research. You may need to go to all places of detention, including a police station, prison(s), as well as to the hospital, and the mortuary. You will also need to go to court, in case the death in custody case has been officially recorded or some family members have filed a complaint.

Carry out a thorough risk-assessment

- List all possible security concerns (e.g. your own physical security and the security of your contacts) and develop contingency plans to deal with each one of them.
- If access to, and your presence at, the prison or police station carries many dangers, identify alternative means of carrying out the research, e.g. rely on a confidential contact who has access to the prison or the police station to get information and interview possible witnesses.
- Be ready: prepare responses regarding the reasons for your visit and what you are doing in case people ask you difficult questions or appear suspicious.
- If necessary, seek official written authorisation to go to these places.

Identify your delegation

- **Be strategic:** The investigative team should not be constituted of individuals who may be perceived as partial by the informants because of their ethnicity, religion, known political affiliation, etc. As far as it is possible, identify team members who are impartial but who will also be *perceived* as impartial by the informants.
- **Experts:** Identify which expertise will be most needed during the investigation: you may need forensic pathologists, a ballistic expert, a lawyer, etc. If possible, you should include such an expert in your delegation. If this is not possible, you should meet with experts before going on a fact-finding mission.

3. Identify the main sources of information

- List all possible contacts and sources of information you may need to interview and meet in order to investigate and corroborate the information
- You may need to interview police officers and the officers in charge, other prisoners who may have witnessed the killing, family members who may also have witnessed the killing or have seen the victim before or after his/her death; hospital workers, because they are likely to have seen the victim before his death and after; mortuary workers because they are likely to have seen the dead body.
- **Identify with whom it may be more appropriate to meet first**, provided, of course, that you have the luxury to set up and organise meetings. In any case, you should decide whether and at which point in the investigation you will meet with security officials.

A generic list of possible sources of information (individuals and/or groups)

- Eye witnesses
- Relatives
- Lawyers
- Medical personnel
- Local human rights activists
- Members of religious institutions
- Members of political parties, civil rights groups, trade unions; ethnic groups, etc.
- Members and officials of the police force
- Other police/judicial representatives
- Members and officials of the army
- Members and officials of armed opposition groups
- Other witnesses
- Community leaders
- Journalists
- Prosecutors

4. Identify and collect material evidence

- Ask yourself the following question: What do you already know about the case? What information is missing? What kind of evidence is lacking?
- **Remember:** You have to prove that the death was unlawful and deliberate and that state officials were involved.

Possible material evidence

- Hospital and/or autopsy records
- Court records
- Arms left behind, bullet shells
- Documents left behind by the deceased
- Videos, pictures, etc.
- Police reports
- Official statements

V. How to assess information

The following is a generic list of questions and issues for which you should seek answers or evidence in order to assess the facts and the cause of the suspicious death.

The questions guiding your investigation should be based on the your assessment of the official version explaining the suspicious death, e.g. natural causes, death during escape, killings at the hand of other detainees, etc.

1. Reliability of initial source

- **Are your initial sources or contacts reliable?**

In your experience, have these sources been reliable and accurate before?

2. Consistency with patterns

- **Is the incident reported to you consistent with what you know about the patterns of incidents of death in custody in the country?**

In many countries, the incidents of death in custody will present strong similarities from which patterns can be extracted.

- Compare the case under investigation with what you know about patterns of death in custody.

3. Consistency of medical evidence

- **Whenever possible, you should get the assistance of medical experts and forward them all medical evidence. You may have to demonstrate that the victim did not die of natural death or because of medical pre-conditions.**

Some of the questions guiding your assessment include:

The state of the victim's health before the arrest

- What was the state of the victim's health before his/her arrest?
- What was deceased's doctor's assessment of his/her health before the arrest.
- Had he/she undergone surgery?
- Was he/she an alcohol or drug user?
- Had he/she attempted to commit suicide in the past?

The state of the victim's health in detention

- Was he/she taking medicines?
- What was the state of his/her health during detention?
- Was he/she complaining about illnesses, ailments?
- Had he/she seen any medical doctors? Why?
- Did he/she have access to any medicine?

The post-mortem

- Was a post-mortem performed? If so, when? At what time? If not, why not?
- Did the post-mortem follow national and international protocols?
- What were the results of the post-mortem?
- What conclusions were drawn?
- How does this post-mortem report compare with others?
- Did the same doctor conduct other post-mortems on similar cases?
- Was the body of the victim eventually handed over to the family?
- Was the victim buried by the security forces?
- How does this fit with existing known patterns?

4. Reliability of the testimonies

- Do the witnesses' testimonies appear reliable and consistent with each other?
In assessing the testimonies, keep in mind the points developed in the guidelines in *Monitoring and Documenting Human Rights Violations in Africa*.

Pay special attention to:

- The witnesses' account of the circumstances, location, procedures, individuals involved, etc. Are they consistent with what others who witnessed similar events at the same time and place say; or with the patterns of death in custody?
- The witnesses' account of the sequence and timing of the events.
- Consistency of the testimony: Does the testimony concur with others as well as with previous patterns of death in custody in the country/region? Do the witnesses contradict each other when asked the same or similar questions?
- Inconsistencies in the testimonies: Are they the result of the witnesses' dishonesty or of faults in memory, exaggerations, unsubstantiated rumours, cultural differences or misunderstandings between the interviewer (or interpreter) and the interviewee?

5. Assessing the responsibility of the government

- Did the government's response meet international and national standards relating to death in custody?

Official responses include: official acknowledgements or unofficial statements by representatives of the government; court testimonies; conclusions of independent investigation bodies, or the absence of independent investigations; post-mortem report.

Below are some questions to assist you in further assessing the responsibility of the government.

The arrest

- Why was he/she arrested?
- What were the circumstances of arrests? Was violence used?
- Was the individual charged? What were the charges?

The detention centre

- In which detention centre(s) was he/she held?
- What are the conditions of detention there?
- Did death in custody occur in this place before? What were the causes or circumstances?

The cause of death

- Alleged day and time of death?
- What is the “official” version for the cause and circumstances of the death?
- Is there another version? What is it?
- Did the death happen during interrogation?
- How many police were allegedly involved?
- Were there witnesses?
- Were security officials present at the time?

The involvement of security forces

- Who was in charge of the police station, prison or detention centre?
- Who was responsible for the actions of the security officials?
- Did the security officials justify the death in custody in any way immediately after the event?

The response of the authorities

- Was a complaint made?
- Was an inquiry initiated?
- Who or which agency was responsible for the inquiry?
- Did the inquiry follow principles set down by domestic laws?
- Did the police harass the witnesses of the death in custody or the relatives of the victim?
- Was a post-mortem performed? How?
- Was a criminal procedure initiated?
- Was a civil suit initiated?
- Was the case settled out of court?
- Was an internal investigation initiated?
- Was disciplinary action taken against the alleged perpetrators?

Annexe One: Some international and regional standards

1948 Universal Declaration of Human Rights, Art. 3
“everyone has the right to life, liberty and security of persons”

1966 International Covenant on Civil and Political Rights, Art. 6 (1) “no one shall be arbitrarily deprived of his/her life”. Art.4 states that no derogation from art.6 is possible even in an emergency.

1978 UN Code of Conduct for Law Enforcement Officials, art. 3:

- Force should be used only when strictly necessary. The official Commentary included in the Code says that the use of force should be exceptional, that force should be used only as is reasonably necessary under the circumstances and that it should be used for only two purposes: The prevention of crime and effecting or assisting in the lawful arrest of offenders or suspected offenders.
- The force used should be proportional to the objectives (it should be used only to the extent required for the performance of law enforcement officials’ duty.) The Commentary acknowledges the principle of proportionality laid down in national laws and says that the Code should not be taken to authorise the use of force which is disproportionate to the legitimate objective to be achieved.

1955 UN Standard Minimum Rules for the Treatment of Prisoners, art. 31:

Corporal punishment, punishment by placing in a dark cell, and cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, principle 6:

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials:**General provisions**

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.
2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.
3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimise the risk of endangering uninvolved persons, and

the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimize damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the

rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

African Charter on Human and Peoples' Rights

Article 4: Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5: Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 6: Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Annexe Two: Body of principles for the protection of all persons under any form of detention or imprisonment

Adopted by General Assembly resolution 43/173 of 9 December 1988

Scope of the Body of Principles

These principles apply for the protection of all persons under any form of detention or imprisonment.

Use of Terms

For the purposes of the Body of Principles:

- (a) “Arrest” means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;
- (b) “Detained person” means any person deprived of personal liberty except as a result of conviction for an offence;
- (c) “Imprisoned person” means any person deprived of personal liberty as a result of conviction for an offence;
- (d) “Detention” means the condition of detained persons as defined above;
- (e) “Imprisonment” means the condition of imprisoned persons as defined above;
- (f) The words “a judicial or other authority” means a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 2

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorised for that purpose.

Principle 3

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognised or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognise such rights or that it recognises them to a lesser extent.

Principle 4

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

Principle 5

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the

application of, such measures shall always be subject to review by a judicial or other authority.

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.² No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.

3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

² The term "cruel, inhuman or degrading treatment or punishment" should be interpreted to cover the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

Principle 8

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

Principle 9

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the

powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

Principle 10

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 12

1. There shall be duly recorded:

- (a) The reasons for the arrest;
- (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
- (c) The identity of the law enforcement officials concerned;
- (d) Precise information concerning the place of custody.

2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

Principle 13

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

Principle 14

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

Principle 15

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

Principle 16

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.

4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

Principle 19

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Principle 20

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

Principle 21

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose

of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

Principle 22

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.

Principle 23

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.

Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Principle 25

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the

right to request or petition a judicial or other authority for a second medical examination or opinion.

Principle 26

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

Principle 27

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

Principle 28

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

Principle 29

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

Principle 30

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

Principle 31

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left with out supervision.

Principle 32

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

Principle 33

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman

or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.

3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death 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. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardise an ongoing criminal investigation.

Principle 35

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by domestic law.
2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

Principle 36

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

Principle 37

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

Principle 38

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

Principle 39

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

General clause

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.

Annexe Three: Possible recommendations and actions

- Lobby for systematic post-mortem examinations of all individuals who die in custody or shortly after release, from whatever cause.
- Request that all post-mortems be conducted by independent forensic pathologists in accordance with international standards (such as the ones put forward in the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions).
- Whenever cases of death in custody are brought to your attention:
 - request an independent and impartial investigation
 - request an autopsy performed by an independent pathologist
 - inform the family about their rights; convince them to ask for a post-mortem
 - avoid the fast burial of the body;
 - ensure that the body of the deceased is given back to the family
 - ensure that the family can pay last tributes
 - file complaints
- Issue press statements
- Seek authorisation for investigation in the places of detention
- Preventive strategies:
 - Get access to the prisoners; ask that they receive medicine and access to medical officers;
 - Campaign for the improvement of prison conditions (in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners)
 - Request that detainees and prisoners be held only in official detention centres;

- Request that a list of all known detention centres be publicised;
- Lobby for the creation of an independent body responsible for regular, unrestricted and unannounced prison visits responsible for putting forward recommendations for improving prison conditions;

Please refer to the booklet on *Monitoring and Investigating Political Killings*.

The Publishers

Amnesty International (AI) is a worldwide voluntary activist movement working towards the observance of all human rights as enshrined in the Universal Declaration of Human Rights and other international standards. It promotes respect for human rights, which it considers interdependent and indivisible, through campaigning and public awareness activities, as well as through human rights education and pushing for ratification and implementation of human rights treaties. Amnesty International takes action against violations by governments of people's civil and political rights. It is independent of any government, political persuasion or religious creed. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

Amnesty International Dutch Section Special Programme on Africa (SPA) was established in 1994. Initially, SPA developed a programme to assist Amnesty Sections worldwide to improve the effectiveness of their campaigning against human rights violations in Africa. Since 1996 SPA has moved towards providing support to the broader Human Rights Movement in Africa. Rather than funding projects, SPA is developing and co-ordinating long term projects for and in cooperation with other human rights organisations and AI sections. In addition to copublishing *Ukweli*, SPA is also coordinating advocacy and training workshops in southern and West Africa, a project on policing and Human Rights, and a pilot project to raise human rights awareness in rural areas in Liberia.

CODESRIA is the Council for the Development of Social Science Research in Africa head-quartered in Dakar, Senegal. It is an independent organisation whose principal objectives are facilitating research, promoting research-based publishing and creating multiple forums geared towards the exchange of views and information among African researchers. It challenges the fragmentation of research through the creation of thematic research networks that cut across linguistic and regional boundaries.

CODESRIA publishes a quarterly journal, *Africa Development*, the longest standing Africa-based social science journal; *Afrika Zamani*, a journal of history; the *African Sociological Review*, and the *African Journal of International Affairs (AJIA)*. Research results and other activities of the institution are disseminated through 'Working Papers', 'Monograph Series', 'New Path Series', 'State-of-the-Literature Series', 'CODESRIA Book Series', the *CODESRIA Bulletin*, *KIBARU* and *CIVIC AGENDA*.