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Gaggioli Gasteyger, Gloria; Elger, Bernice Simone

How to cite

GAGGIOLI GASTEYGER, Gloria, ELGER, Bernice Simone. Death in Custody: Towards an International Framework for Investigation and Prevention. In: Emerging Issues in Prison Health. Elger, Bernice S., Ritter, Catherine, Stöver, Heino (Ed.). Dordrecht : Springer, 2017. p. 35–53. doi: 10.1007/978-94-017-7558-8_3

This publication URL: https://archive-ouverte.unige.ch/unige:135829
Publication DOI: 10.1007/978-94-017-7558-8_3

This is a preprint version of the article published in: G. Gaggioli and B. Elger, "Death in Custody: Towards an International Framework for Investigation and Prevention", *in* B. Elger et al. (eds.), *Emerging Issues in Prison Health*, Dordrecht, Springer, 2016, pp. 37-56.

Death in Custody:
Towards an International Framework for Investigation and Prevention

Gloria Gaggioli, Bernice S. Elger

Death in custody: various definitions

Existing soft law and guidelines define "death in custody" in various ways. Differences exist, first, with respect to the places that are considered as "custody". According to the definition used "custody" might narrowly refer to police custody (Aasebo, Erikssen, & Jonsbu, 2003; Atanasijevic, Nikolic, & Popovic, 2007; Best, Havis, Payne-James, & Stark, 2006; Bhana, 2003) or more widely include other forms of detention (Okoye, Kimmerle, & Reinhard, 1999). More rarely, death in custody studies include not only deaths in certain places, but also deaths that occur "during an interaction between a law enforcement officer (on or off duty) and a suspect" (Koehler et al., 2003). In international soft law instruments, only the United Nations Rules for the Protection of Juveniles Deprived of their Liberty provide a definition: "The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority" (United Nations, 1990).

Second, some jurisdictions and researchers include only deaths which occur before release (Fazel & Benning, 2006; Fruehwald et al., 2004; O'Driscoll, Samuels, & Zacka, 2007), others include also the timeframe after release during which deaths are still considered as "deaths in custody" (Schmidt, Dettmeyer, Musshoff, & Madea, 1999). In addition, mortality studies have been carried out among the population of those imprisoned during a defined period of several years. Mortality data were analysed for this group independently from the fact whether prisoner remained in prison or were released (Kariminia, Law, Butler, Corben et al., 2007). Others have investigated deaths occurring during the first weeks or months after release from prison (Binswanger et al., 2007; Bird & Hutchinson, 2003; Harding-Pink, 1990; Kariminia, Law, Butler, Levy et al., 2007; Pratt, Piper, Appleby, Webb, & Shaw, 2006). A third way of analysing the subject could be to include the presence or absence of a cause related to custody as part of the definition. This means that deaths that are not influenced by the fact that a person is in custody are excluded, such as natural or "expected" deaths that occur in custody. This definition is problematic because natural deaths, i.e. deaths caused by a natural disease during imprisonment, could still be caused by the incarceration if the disease could have been cured outside the prison and deaths have been caused by the lack of adequate treatment in the detention facility. In spite of the difficulties to define the influence of imprisonment and which deaths may be reasonably to be expected and which not, a similar definition based on what seems "natural" or "expected" is used by studies that examine in particular unexpected deaths in custody (Tiainen & Penttila, 1986).

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In the case of a death that occurs a long time after imprisonment, the cause might still be related to the prison stay, such as in a case where a detainee has contracted a resistant tuberculosis strain during incarceration. Of course, the longer the timeframe, the more difficult it becomes to establish and prove a causal relationship. Therefore it is not surprising that the longest period in international soft law for the timeframe to be included in the definition of deaths in custody is 6 months following release from prison. This is the case in Rule 57 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (United Nations, 1990).

It is obvious that the distinct definitions of death in custody in different studies make a comparison of data stemming from different prisons or countries very difficult.

In the present chapter, the definition adopted includes all deaths that occur during any form of detention where a person is not permitted to leave at will. More precisely, "'Custody' is considered to begin from the moment a person is apprehended, arrested or otherwise deprived of his or her liberty by agents of the State, or by agents of any other public or private entity or organization, including in particular correctional or medical institutions or security companies, operating within the jurisdiction of that State. It includes, notably, detention or imprisonment, or any other placement of a person in a public or private custodial setting that he or she is not permitted to leave at will. It ends when a person is free to leave and is no longer under the effective control of State agents, or of agents of a public or private entity or organization, including in particular correctional or medical institutions, or security companies, operating within the jurisdiction of that State." (ICRC Guidelines on Deaths in Custody, 2013, p.8) Deaths occurring after this period may still be in a causal relationship with detention. They will be called deaths related to custody.

Prevalence and causes of deaths in custody[1]

Causes of death in custody vary significantly according to the regions where prisons are situated. A very important factor is the availability of resources for water, food, hygiene and health care in a country globally and the relative amount of resources dedicated to prisons. In several regions of the sub-saharian Africa, prisoners still die today of starvation (Alexander, 2009) and of diseases caused by the lack of vitamins (Ahoua et al., 2007; de Montmollin, MacPhail, McMahon, & Coninx, 2002). Lack of health care, in particular for the numerous HIV infected prisoners, is also an important cause for deaths in African prisons and represents a "double sentence". The lack of

[1] In the ICRC Guidelines for Investigating Deaths in Custody, the definition adopted is relatively restrictive:
" 'Custody' is considered to begin from the moment a person is apprehended, arrested or otherwise deprived of his or her liberty by agents of the State, or by agents of any other public or private entity or organization, including in particular correctional or medical institutions or security companies, operating within the jurisdiction of that State. It includes, notably, detention or imprisonment, or any other placement of a person in a public or private custodial setting that he or she is not permitted to leave at will. It ends when a person is free to leave and is no longer under the effective control of State agents, or of agents of a public or private entity or organization, including in particular correc¬tional or medical institutions, or security companies, operating within the jurisdiction of that State."

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health care transforms the prison stay into a "death sentence" for many of the AIDS patients (Alderman, 1991; Simooya & Sanjobo, 2006).

Lack of ventilation and of efficient treatment strategies is a cause for deaths in custody in Eastern Europe, especially in countries of the former Soviet Union, where multi-resistant strains of tuberculosis are highly prevalent (Nechaeva, Skachkova, & Podymova, 2005; Shukshin, 2006). In Eastern Europe, a significant number of deaths could be avoided that are presently due to high levels of mental illness and infectious diseases for which treatment exists, but is, for various reasons, not sufficiently made available in prisons (Bobrik, Danishevski, Eroshina, & McKee, 2005; Yerokhin, Punga, & Rybka, 2001).

Lack of health care is also a cause of avoidable deaths in the United States. This concerns somatic as well as psychiatric diseases. Insufficient diagnosis and treatment of hypertension in young offenders (Wang et al., 2009), untreated heart attacks (Thomas, 2005), unavailable defibrillators (Roessler et al., 2007), as well as under-treatment of substance abuse disorders and their related health care problems (Fiscella, Pless, Meldrum, & Fiscella, 2004) have been reported to contribute to an (over)mortality in detention facilities in the US. Indeed, although the benefit, including prevention of deaths, of methadone treatment for heroin addicts has been shown (Brugal et al., 2005; Kimber et al., 2010) and that cost-benefit analysis speaks in favor of methadone treatments in prison (Warren et al., 2006), in many states in the US, but also in many prisons in Europe, methadone is not part of routine treatment, in part because knowledge about this treatment is not sufficient (Springer & Bruce, 2008).

Numerous studies in the US and many other countries have shown that insufficient prevention and treatment for drug addicts causes not only avoidable deaths from overdose in prison, but in particular a significant increase of deaths during the first two weeks after release from prison (Binswanger et al., 2007; Bird & Hutchinson, 2003; Farrell & Marsden, 2008; Harding-Pink, 1990; Krinsky, Lathrop, Brown, & Nolte, 2009; Seaman, Brettle, & Gore, 1998).

Insufficient risk reduction strategies as well as unavailable treatment for hepatitis C is also a concern in the US and causes a significant amount of avoidable deaths (Harzke, Baillargeon, Goodman, & Pruitt, 2009). Since about 40% of prisoners in US detention facilities are infected it is not surprising that hepatitis C infection contributed to the cause of death in 15% of chronic liver disease and/or cirrhosis deaths, 33% of liver cancer deaths, 81% of hepatitis B deaths, and 7% of HIV deaths, while (Baillargeon et al., 2004; Baillargeon, Snyder et al., 2009; Hunt & Saab, 2009).

Unavailability of HIV treatment in prisons is also causing deaths among US prisoners (Baillargeon, Borucki, Williamson, & Dunn, 1999; Baillargeon, Grady, & Borucki, 2000). Access to clinical trials with new HIV medication in prison is one of the factors that has motivated an IOM commission to propose a revision of research ethics federal law in the US (Elger & Spaulding; L. O. Gostin, 2007; L.O. Gostin, Vanchieri, Pope, & IOM Committee on

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Ethical Considerations for Revisions to DHHS Regulations for Protection of Prisoners Involved in Research, 2006).

Finally, studies in the US have shown that "contracting out", i.e. the transfer of the responsibility of prison health care to private companies increases mortality (Bedard & Frech, 2009).

Although in many European countries and in Australia concerns exist also about the quality of somatic health care (Freckelton, 2009), the majority of avoidable deaths in these countries are due to inadequately treated psychiatric disease (Sailas et al., 2006), especially resulting in suicide (Bell, 1999; Blaauw, Kerkhof et al., 1997; Bourgoin, 1993; Cox & Skegg, 1993; Fazel, Benning, & Danesh, 2005; Fruehwald et al., 2000; Fruehwald, Frottier, Matschnig, & Eher, 2003; O'Driscoll et al., 2007). Suicide is also a frequent cause for deaths among US prisoners (Baillargeon, Penn et al., 2009; Hayes, 1999, 2005).

Prevention of suicide in prison does not follow international standards (ECHR, 2008; Smith et al., 2008). Apart from relative lack of psychiatric care in prison, separation policies (the isolation of detainees) are clearly an important contributing factor to the suicide rate in prison (Camilleri & McArthur, 2008; Champion, 2009; Martire & Larney, 2010). Suicide rates are also increased in recently released prisoners (James, 2006; Stewart, Henderson, Hobbs, Ridout, & Knuiman, 2004; Verger, Rotily, Prudhomme, & Bird, 2003), in comparison to the general population.

Finally, causes of death due to torture or violence caused by third persons are less well documented in the medical literature. As far as (possibly proportional) violence during arrest is concerned, more and more recent studies show that a sizable percentage of deaths are linked to particular arrest measures, such as tasers (Ho et al., 2009; Jauchem, 2010; Lee et al., 2009; Vilke, Johnson, Castillo, Sloane, & Chan, 2009) and restraints (Dickson & Pollanen, 2009; Hollins, 2010). Restraints are an important contributing factor to a disease entity called "exited delirium". This syndrom results not rarely in death which is probably among others due to positional asphyxia (Das, Ceelen, Dorn, & de Jong, 2009; Grant, Southall, Mealey, Scott, & Fowler, 2009) and restraints (Otahbachi, Cevik, Bagdure, & Nugent, 2010).

Disproportional violence is more difficult to prove in scientific studies. Homicide has been identified as the cause for 5% of deaths in US detention recently (Kim et al., 2007). In the Iraq, in 44% of the deaths in prison, the cause was not clear; otherwise the majority of deaths in prisons in this study were due to untreated or insufficiently treated infectious diseases (Khaji, 2009). Deaths related to disproportional violence and to lack of health care have also been reported from Afghanistan: (Allen et al., 2006)

Deaths in custody as violations of human rights and/or humanitarian law

International human rights and humanitarian law stipulate that prisoners have the right to be treated humanely. This fundamental obligation, applicable both in peacetime and wartime situations, implies negative and positive obligations for detaining authorities.

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As regards negative obligations, it is self-evident that summary executions of detainees are absolutely prohibited (art. 6 of the International Covenant on Civil and Political Rights (ICCPR), art. 2 of the European Convention on Human Rights (ECHR), art. 4 of the American Convention on Human Rights (ACHR), art. 4 of the African Charter on Human and Peoples' Rights (AfCHPR), art. 3 common to the four Geneva Conventions (GC), art. 12 GCI, 12 GCII, 13GCIII, 32 GCIV, art. 75§2 Additional Protocol I to the Geneva Conventions (API), art. 4§2 a) Additional Protocol II to the Geneva Conventions (APII)). The same can be said of torture or any other form of cruel, inhuman, or degrading treatment (art. 7 ICCPR, art. 3 ECHR, art. 5§2 ACHR, art. 5 AfCHPR, art. 3 common to the four GC, art. 12 GCI, 12 GCII, 17GCIII, 32 GCIV, art. 75§2 API, art. 4§2 a) APII). In brief, any form of coercion against detainees is prohibited even for interrogation purposes (Gaeta, 2004). Not only States will be considered as responsible on the international level for this kind of violations but the perpetrators may be held criminally responsible at the national and international level (*See* arts. 6-8 of the International Criminal Court (ICC) Statute).

State responsibility can also be incurred if detaining authorities failed to take positive steps which may have prevented the death of a detainee. There are numerous decisions and recommendations from universal and regional human rights bodies like the European Court of Human Rights (ECtHR) as well as a growing body of soft law (Elger, 2008c) which indicate that inadequate health care, lack of hygiene and insufficient nutrition can lead to a violation of the prohibition of inhumane and degrading treatment (*See* among many others: *Mukong v. Cameroon,* Human Rights Committee, comm.. 458/1991, *Kalashnikov v. Russia*, ECtHR, 15.7.2002, *Juvenile Reeducation Institute v. Paraguay,* Inter-American Court of Human Rights (IACtHR), 2.9.2004)

Inadequate health care, lack of hygiene and insufficient nutrition can be the cause of increased mortality and so called "natural" deaths in custody, although they are clearly related to inadequate conditions of custody (Elger, 2008a, 2008b). If death is the consequence of inadequate detention conditions, the right to life can be considered as violated as well (*See* among many others: *Titiahongo v. Cameroon,* Human Rights Committee, 26.10.2007, *Ahmet Özkan v. Turkey*, ECtHR, 6.4.2004, *Ximenes-Lopes v. Brazil*, IACtHR, 04.07.2006). IHL also provides many detailed rules regarding the treatment of persons deprived of their liberty in connection with an armed conflict, including the obligation to provide adequate food and water, medical attention etc. (See Third Geneva Convention, arts 21-81; Fourth Geneva Convention, arts 79-135; Additional Protocol I, art. 75 API, Additional Protocol II, arts. 4 and 5).

Detaining authorities are indeed vested with a particular role of guarantor and must take all measures which can be reasonably expected from them to protect the life of the persons they guard. These measures must also include those to ensure the security of detainees from "external" threats, which comprise the obligation to protect detainees against other inmates' violence, against suicides, against external attacks/threats (fire, bombings etc.), and against violence by third actors in the context of extraditions or other removals for instance (*See e.g. Paul and Audrey Edwards v. United Kingdom,* ECtHR, 14.3.2002 (violence among detainees), *Barbato et*

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al. v. Uruguay, Human Rights Committee, 21.10.1982 (suicide), *Juvenile Reeducation Institute v. Paraguay*, IACtHR, 2.9.04 (fire), *Haitian interdiction v. United States of America*, Inter-American Commission on Human Rights, 13.3.1997 (repatriation)). In rare cases, the lack of positive measures to protect the life of detainees may even lead to the commission of an international crime and thus lead to the individual criminal responsibility of the persons in charge of the detainees. The act of intentionally and "deliberately inflicting on [a national, ethnical, racial or religious] group conditions of life calculated to bring about its physical destruction in whole or in part" is an act of genocide (*See* art. 6c) ICC Statute).

Moreover, States have also post-mortem obligations. Whenever a person dies in custody, an investigation must be conducted (*See e.g.* Concluding Observations*: United States of America, Human Rights Committee*, 15.9.2006, §14, *Salman v. Turkey*, ECtHR, 27.6.2000, *"Juvenile Reeducation Institute" v. Paraguay*, IACtHR, 2.9.2004). This is an immediate (*ex officio*) obligation of the State and it does not depend on an action from the relatives of the detainee who died. The investigation has not always to be a criminal one. In case of apparently natural death, an administrative investigation may be enough (*See e.g. Balci v. Turkey,* ECtHR, 17.2.2009, §34.). In any case, the investigation must be conducted by an impartial and independent body. It must be initiated and conducted thoroughly and diligently. It must also be conducted with the participation of the next of kin of the deceased person and include some element of public scrutiny. In cases of suspicious deaths possibly involving a violation of the right to life, an investigation should include notably a thorough collection and analysis of all relevant physical and documentary evidence, statements from witnesses and a proper autopsy (See "Minnesota Protocol").

The international legal basis of the obligation to investigate can be found in Human Rights treaties as part of judicial guarantees (right to an effective remedy essentially). Regarding deaths in custody, the obligation to investigate is also intrinsically linked with the right to life. Human Rights bodies have consistently underlined that in order to effectively guarantee the right to life it is necessary to comply with the obligation to investigate suspicious deaths (See General Comment n°6 *: Right to Life (article 6)*, Human Rights Committee, 1982, §3 (implicit in the obligation to prosecute), *McCann v. United Kingdom*, ECtHR, 27.09.1995, *Myrna Mack Chang v. Guatemala*, IACtHR, 25.11.2003). Therefore the absence, or inadequacy, of an investigation into the death of a detainee may amount to a violation of the right to life under its procedural aspect.

In times of armed conflict, International Humanitarian Law treaties, like the 1949 Geneva Conventions and its 1977 Additional Protocol I, do also provide for the obligation to investigate suspicious deaths, or deaths the cause of which is unknown, of prisoners of war and of civilian internees (art. 121 GCIII and art. 131 GCIV). The obligation to investigate is also implicit in the obligation to prosecute grave breaches (Arts. 49 and 50/ 50 and 51/ 129 and 130/ 146 and 147 of the four GC. See also arts. 11, 85 and 86 of API.). It would indeed be impossible to prosecute war criminals without conducting a proper investigation first. It should be recalled that the wilful

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killing of detainees, like prisoners of war or civilian internees, is a war crime. The obligation to investigate war crimes is also considered as part of customary law for international and non international armed conflicts (*See* Henckaerts & Doswald-Beck, *Customary International Humanitarian Law*, Rule 158).

As a final remark, it may be noted that at the universal level, in parallel to the ICCPR and the UN Convention against Torture, the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance (United Nations, 2006) which entered into force in December 2010, is a major landmark for the purpose of establishing a comprehensive framework for preventing and investigating death in custody.

How to investigate deaths in custody? The need for clear and realistic guidance

Deaths in custody warrant scrutiny (Allen et al., 2006), not only because they might be due to torture, abuse and inadequate medical care, but also because they pose challenges for detaining authorities (Gaeta, 2004, 2008). Any death in custody can lead to accusations stemming from family members and human rights organisations. In several countries, especially from the Northern hemisphere, guidelines on death in custody exist that range from advice to nurses about resuscitation (South Worchestershire Primary Care Trust NHS, 2005) to guidelines about the investigation and prevention of deaths in incarcerated aborigines populations (Biles, 1988; Spencer, 1989) to general guidelines from Amnesty International on the documentation of situations where deaths are suspected to have resulted from torture (Amnesty International & Council for the Development of Social Science Research in Africa, 2000). Whereas in some cases - where events take place in highly mediatised places and torture is suspected - deaths in custody are getting particular attention (Okie, 2005) (Okie, 2005), it is a widely overlooked problem that in many prisons deaths are frequent (Fazel & Benning, 2006) and most of them are considered "normal" or "natural" (Grant et al., 2007) because (1) there are no external signs of violence, (2) there are other health related reasons that seem obvious and (3) time, guidelines and material is lacking to advise health care workers or international personnel on the spot how to proceed in such cases.

In light of this real and persistent problem, the ICRC launched an initiative in 2008 to develop a set of concise guidelines for its field staff, other humanitarian workers, detaining authorities and other stakeholders to clarify the basic considerations in cases of deaths in custody, from the management of the scene to disposal of remains and prevention. These guidelines were adopted in 2013 and aim at filling an important gap since there is so far no other international document offering practical guidance on the standards and procedures to be followed when a death occurs in custody. Existing guidelines such as the Minnesota and the Istanbul Protocols cover the subjects of suspected extra-judicial executions, arbitrary or illegal killings, and the documentation of torture. This is insufficient for the vast majority of deaths in custody worldwide. These deaths are attributed to natural causes such as illnesses or suicide related to psychiatric disease

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(Kariminia et al., 2005; Kariminia, Butler et al., 2007; Kariminia, Law, Butler, Corben et al., 2007; Kariminia, Law, Butler, Levy et al., 2007). However, as explained above, death in this context could still be classified as inhuman and degrading treatment if it is due to inadequate medical treatment (Kariminia, Butler et al., 2007; O'Driscoll et al., 2007) and lack of hygiene or nutrition. Indeed, decisions of the European Court of Human Rights and reports from the European Committee for the Prevention of Torture (CPT) have considered adverse events from these conditions a violation of article 3 (inhuman and degrading treatment) of the European Convention of Human Rights or, depending on the outcome, a violation of article 2 (right to life). Appropriate investigation is the prerequisite for adequate preventive measures and is required by international law. Unfortunately, these deaths occur often in places where there is no forensic capacity to carry out a thorough investigation.

In addition, experience from forensic specialists who have been later solicited by families to investigate death that was declared as "due to natural causes" by authorities, shows not only that it is often trying if not impossible to conclude from second autopsies (Rainio, Lalu, & Penttila, 2001), but also that in the absence of scientifically valid standards for death investigation it will be difficult to convince family members that no evidence for unnatural causes has been detected (Brandt-Casadevall, Krompecher, Giroud, & Mangin, 2003). This underlines the immense importance of immediate, independent and scientifically sound investigation of so called natural deaths in custody and calls for further reflections about impartiality (Lorin de la Grandmaison, Durigon, Moutel, & Herve, 2006) and a reinforced role of organisations such as the ICRC or the CPT.

The efficiency of humanitarian workers in this field relies on a detailed knowledge of, firstly, existing local, national and international policies and legal provisions defining the framework of investigation and prevention. Secondly, it is clear that it is not always easy for humanitarian workers to tackle at present the investigation of deaths in custody, as shown by the subsequent qualitative interview study. The result show the difficulties expressed by experts and stakeholders involved in the investigation of deaths in custody (Ruizetal 2014; Wangmo et al. 2014). That empirical research has been an indispensable basis for consecutive reflection on appropriate procedures and guidelines. While it is important to develop minimum standards not only for developed countries (Aghayev et al., 2008; Hiss & Kahana, 1996; Thali, Braun, Wirth, Vock, & Dirnhofer, 2003; United Nations, 1991), but also in other settings, studies from developing countries on deaths in custody are scarce. Indeed, in humanitarian settings (Stover, Haglund, & Samuels, 2003) death inquiry and forensic evaluations will often need to be done by ordinary health care workers and other non- specialists (Brandt-Casadevall et al., 2003). The latter need to have access to appropriate guidelines where basic tasks of the interaction with authorities as well as of the investigation are described. They need to know in particular the simple but efficient technical means that have been determined by forensic specialists, together with practical strategies and their legal enforcement in order to obtain access to the death scene without delay and the best possible assistance by forensic expert. Details for such assistance need to be

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developed and could for example consist in a form of "tele-autopsies" or "tele-death-investigation" (a forensic expert could comment on the scene through telecommunication systems, analogue to "telemedicine" where medical information is transferred via telephone, the Internet or other networks for the purpose of consulting, and sometimes remote medical procedures or examinations).

An international research project about death in custody

The drafting of the guidelines was preceded by several steps that took place between 2008 and 2013 and were part of a larger research project carried out by the University Centre for Legal Medicine of Geneva and Lausanne, the Geneva Academy of International Humanitarian Law and Human Rights, the University of Bern, the International Centre for Prison Studies (King's College London) and the International Committee of the Red Cross (ICRC). .

First, a comprehensive review of the scientific literature and of other documents on the investigation of deaths in custody in the fields of forensic medicine, medical ethics and health law has been conducted. The aim of this analytical part was to gather and summarise the existing knowledge on how extensively deaths in custody have been examined in the past. It showed that reports exist predominantly from countries from North America, Australia and certain countries in Europe (Blaauw, Kerkhof, & Vermunt, 1997; Blaauw, Vermunt, & Kerkhof, 1997; Frost & Hanzlick, 1988; Fruehwald, Frottier, Eher, Gutierrez, & Ritter, 2000; Thomson & McDonald, 1993; Wobeser, Datema, Bechard, & Ford, 2002). The existing literature was examined with respect to the following questions: what were the causes for the deaths in different regions (Steffee, Lantz, Flannagan, Thompson, & Jason, 1995; Steinhauser, 1997), what were the problems encountered during death investigations, how adequate and extensive were the forensic death investigations carried out, and what was the role of medical and/or forensic intervention (Blaauw, Vermunt et al., 1997; Cordner, 1991; Franklin, 2000; Segest, 1987) as well as strategies of prevention and their outcome.

Second, questionnaires were developed and transmitted to prison administrators and other experts to be used in order to collect information from local authorities about their official or usual practice to investigate deaths in custody. Questionnaires were distributed at conferences organised for prison administrators and other personnel working in places of detention. They were instructed to contact their hierarchy of relevant local authorities in the field and ask them whether they could provide any written official local guidance or whether they could describe any instructions they have received how to approach deaths in custody. These questions did not interfere with confidentiality policies because the answers did not consider identifiable institutions or persons, but only existing official policy and past anonymized cases. Anonymity of results was granted on the individual level (expert or prison administrator involved) as well as on the country or regional level if required by the statutes of the institution. Before carrying out the empirical parts of the project, the protocol was submitted to the president competent Ethics

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Committee of the core team (Geneva) and obtained permission to realize the questionnaire[2] and interview study.

Third, based on the results from the first two steps, semi-directive interview guides and a semi-structured questionnaire have been developed. Interviews were held over the phone or in person with more than 2 dozens of experts, including CPT members, ICRC delegates, prison administrators, forensic experts and NGO members working in the field. The objective was to identify and to compare existing strategies for investigation of deaths in custody and to evaluate knowledge of interviewees about legal frameworks for deaths investigation, as well as about adequate forensic techniques, including basic forensic techniques feasible in countries where local forensic specialists are not available (Ruiz et al. 2014; Wangmo et al. 2014).

Fourth, information obtained from the previous steps were analysed and summarised in short presentations. A conference funded by the European Science Foundation took place in May 2010 in Linköping, Sweden, where the existing preliminary results as well as propositions for international guidelines about the investigation and prevention of deaths in custody have been presented to several types of specialists who work in the fields of deaths in custody worldwide.

The experts who gathered in Linköping were from the fields of criminology, law and human rights with experience in prisons. They have been identified through a selection method known as purposive sampling. Purposive sampling is often used in qualitative studies to identify groups of people with specific characteristics or circumstances (Dornan & Bundy, 2004; Patton, 2002). In purposive sampling, researchers choose study participants based on identified variables under consideration. In the present case, experts were selected based on previous ICRC and CPT experience, networks from the International Centre for Prison Studies (King's College London), publications and a snow-ball system, in order to reflect a wide range of professional backgrounds and regions. During the conference, experts discussed among others the appropriate and most efficient ways to obtain independent death investigations in custody.

Another group of experts came from the field of forensic science. Experts were chosen based on their experience in humanitarian work and death investigations in prison. They were selected according to purposive sampling as described above with particular support from the International Academy of Legal Medicine and included forensic scientists from several Eastern European countries, as well as Asia and North America. The experts were confronted with the collected information and draft guidelines and discussed minimal techniques permitting efficient death investigation, with a special focus on countries with limited forensic infrastructure.

[2] The results of the mixed questionnaires (quantitative and qualitative parts) were published as part of the Master thesis at the University of Geneva, faculty of medicine. Death in custody: how is it investigated? A semi-qualitative study on the challenges and best practices experienced by prison administrators following the death of an inmate (by Jehan Martin, 2011).

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Those various steps and expert consultations provided the background for the final guidelines work.

The ICRC Guidelines for Investigating Deaths in Custody

On the basis of the aforementioned background research into the legal, medical and forensic aspects of investigating deaths in custody and collaborative efforts of the various institutions listed above, *Guidelines for investigating deaths in custody* have been published by the ICRC in 2013 (available on: https://www.icrc.org/eng/resources/documents/publication/p4126.htm).

The objective of the Guidelines is to provide guidance to detaining authorities, investigating authorities, practitioners and others as to the standards to be followed when a death occurs in custody. The Guidelines are based not only on international binding rules but also on best practices and domestic policies. They can be used for drafting or updating domestic legislations, for providing training and building capacity as well as for ascertaining whether authorities have respected minimum standards and procedures following a death in custody. Although non-State actors – and in particular organized non-State armed groups in the context of a non-international armed conflict – also have an obligation to investigate suspicious deaths occurring in custody, the Guidelines deal exclusively with the obligations of States to investigate deaths in custody,.

The Guidelines are the result of a truly interdisciplinary endeavour as they develop both legal aspects pertaining to the investigation of deaths in custody and medical/forensic aspects.

As per the legal aspects, the Guidelines recall that there is, first, a strong obligation to respect and protect the life of persons deprived of their liberty that is derived from both the fundamental human right to life and from international humanitarian law; and, second, that these bodies of law provide for a specific obligation to investigate deaths in custody. The Guidelines then elaborate on the basic standards for investigating deaths in custody that can be derived from soft law instruments, such as the "Minnesota Protocol", and international jurisprudence. These standards are essential to determine the criteria that should be fulfilled to consider an investigation as effective.[3] In particular, and as highlighted above, any investigation should be thorough, undertaken *ox officio*, independent and impartial and should include some degree of public scrutiny as well as involve the next of kin. Moreover, in suspected cases of arbitrary deprivation of life, the investigation should include all relevant physical and documentary evidence, statements from witnesses and a proper autopsy. The legal section is complemented by two annexes. A first one provides eight key elements flowing from the duty to conduct effective

[3] It is to be noted that the Guidelines adopt a cautious approach and employ the verb "should" when looking at the criteria for considering an investigation effective. The case law of some human rights bodies, such as the European Court of Human Rights, goes however further and tends to consider the respect for these criteria as a "must" to consider an investigation effective. See, for example, ECtHR, Kaya v. Turkey, 19 February 1998, paras 87 and 89 (on the criteria of independence and publicity notably and on the necessity to collect evidence on sight). For more references See also: G. Gaggioli, *L'influence mutuelle entre les droits de l'homme et le droit international humanitaire à la lumière du droit à la vie*, Paris, Pedone, 2013, pp. 494-497.

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investigations into deaths in custody and a second one summarizes the main international legal sources of the obligation to investigate.

As regards the medical and forensic section, the Guidelines include precise and concrete guidance based on international standards and good practice as to how the death scene and dead body should be managed. This guidance makes clear that a precise contingency plan and proper training of the detaining authorities are essential to ensure that deaths in custody are investigated properly. The nature, scope and basic principles that should govern post-mortem examination are developed. A section also clarifies how investigators should involve and inform the next of kin of the deceased in accordance with the principle of humanity. The medical and forensic section is also complemented by two annexes. A first one provides a simplified checklist for the management of the death scene and a second one elaborates a detailed checklist for conducting autopsies.

Lastly, an entire section is dedicated to the prevention of deaths in custody. Investigations play not only a role in elucidating the death of a person but also in preventing further similar deaths by providing the necessary information to address possible direct or indirect root causes. The Guidelines provide an overview of factors that increase the likelihood of deaths in custody (i.e. inadequate conditions of detention; insufficient access to health care; insufficient contact with the family; inadequate safeguards against suicide and arbitrary deprivation of life, torture and other forms of ill-treatment) and recommend some measures for preventing deaths in custody.

Conclusions

Deaths in custody need to be studied more systematically, according to similar definitions and methods in different countries in the world in order to be able to compare efficiently mortality causes and rates between various countries and to describe adequately trends and changes within the same region over time. The ability to prove unlawful violence as cause of death as well as inadequate health care, nutrition and hygiene depends on the quality and timeliness of forensic. The impartiality, effectiveness and timeliness of a judicial investigation has not only a significant influence on truth finding, but also on the prevention of deaths in custody. The persistence of avoidable deaths in police custody in Germany (Heide, Henn, Kleiber, & Dressler, 2010; Heide, Kleiber, Hanke, & Stiller, 2009) has been attributed among other things to the lack of efficient prosecution due to the high standard of proof required in the German justice system. According to Heide et al. therefore no incentives exist for policemen in Germany to use available adequate preventive measures, such as conducting arrested persons more often to the hospital when in doubt about their health (Heide, Kleiber, & Stiller, 2009).

It is to be hoped that the ICRC Guidelines for Investigating deaths in custody will also be helpful to forensic practitioners, prison administrators and the justice system and will constitute an

incentive to adapt or even develop appropriate domestic standards and procedures. However, domestic standards and procedures are only a first step, and they need to be accompanied by clear messages enshrined in public policy. As Frater has recently put it (Frater, 2008): "Deaths in custody. The risk factors are known, but public policy is lagging behind".

References

Aasebo, W., Erikssen, J., & Jonsbu, J. (2003). [Deaths in police custody]. *Tidsskr Nor Laegeforen, 123*(8), 1066-1067.

Aghayev, E., Christe, A., Sonnenschein, M., Yen, K., Jackowski, C., Thali, M. J., et al. (2008). Postmortem imaging of blunt chest trauma using CT and MRI: comparison with autopsy. *J Thorac Imaging, 23*(1), 20-27.

Ahoua, L., Etienne, W., Fermon, F., Godain, G., Brown, V., Kadjo, K., et al. (2007). Outbreak of beriberi in a prison in Cote d'Ivoire. *Food Nutr Bull, 28*(3), 283-290.

Alderman, C. (1991). HIV in prison: a double life sentence? *Nurs Stand, 5*(39), 18-19.

Alexander, J. (2009). Death and disease in Zimbabwe's prisons. *Lancet, 373*(9668), 995-996.

Allen, S. A., Rich, J. D., Bux, R. C., Farbenblum, B., Berns, M., & Rubenstein, L. (2006). Deaths of detainees in the custody of US forces in Iraq and Afghanistan from 2002 to 2005. *MedGenMed, 8*(4), 46.

Amnesty International, & Council for the Development of Social Science Research in Africa. (2000). Monitoring and Investigating Death in Custody: http://www.codesria.org/Links/Publications/amnesty/custody.pdf (accessed April 2008).

Atanasijevic, T., Nikolic, S., & Popovic, V. (2007). [Death during police interrogation--case report]. *Srp Arh Celok Lek, 135*(5-6), 342-345.

Baillargeon, J., Black, S. A., Leach, C. T., Jenson, H., Pulvino, J., Bradshaw, P., et al. (2004). The infectious disease profile of Texas prison inmates. *Prev Med, 38*(5), 607-612.

Baillargeon, J., Borucki, M., Williamson, J., & Dunn, K. (1999). Determinants of HIV-related survival among Texas prison inmates. *AIDS Patient Care STDS, 13*(6), 355-361.

Baillargeon, J., Grady, J., & Borucki, M. J. (2000). Immunologic predictors of HIV-related survival among Texas prison inmates. *AIDS Patient Care STDS, 14*(4), 183-187.

Baillargeon, J., Penn, J. V., Thomas, C. R., Temple, J. R., Baillargeon, G., & Murray, O. J. (2009). Psychiatric disorders and suicide in the nation's largest state prison system. *J Am Acad Psychiatry Law, 37*(2), 188-193.

Baillargeon, J., Snyder, N., Soloway, R. D., Paar, D., Baillargeon, G., Spaulding, A. C., et al. (2009). Hepatocellular carcinoma prevalence and mortality in a male state prison population. *Public Health Rep, 124*(1), 120-126.

Bedard, K., & Frech, H. E., 3rd. (2009). Prison health care: is contracting out healthy? *Health Econ, 18*(11), 1248-1260.

Bell, D. (1999). Ethical issues in the prevention of suicide in prison. *Aust N Z J Psychiatry, 33*(5), 723-728.

This is a preprint version of the article published in: G. Gaggioli and B. Elger, "Death in Custody: Towards an International Framework for Investigation and Prevention", *in* B. Elger et al. (eds.), *Emerging Issues in Prison Health*, Dordrecht, Springer, 2016, pp. 37-56.

Best, D., Havis, S., Payne-James, J. J., & Stark, M. M. (2006). Near miss incidents in police custody suites in London in 2003: a feasibility study. *J Clin Forensic Med, 13*(2), 60-64.

Bhana, B. D. (2003). Custody-related deaths in Durban, South Africa 1998-2000. *Am J Forensic Med Pathol, 24*(2), 202-207.

Biles, D. (1988). Draft Guidelines for the Prevention of Aboriginal Deaths in Custody: http://www.aic.gov.au/publications/other/dic1992/2.html (accessed March 2008).

Binswanger, I. A., Stern, M. F., Deyo, R. A., Heagerty, P. J., Cheadle, A., Elmore, J. G., et al. (2007). Release from prison--a high risk of death for former inmates. *N Engl J Med, 356*(2), 157-165.

Bird, S. M., & Hutchinson, S. J. (2003). Male drugs-related deaths in the fortnight after release from prison: Scotland, 1996-99. *Addiction, 98*(2), 185-190.

Blaauw, E., Kerkhof, A. D., & Vermunt, R. (1997). Suicides and other deaths in police custody. *Suicide Life Threat Behav, 27*(2), 153-163.

Blaauw, E., Vermunt, R., & Kerkhof, A. (1997). Deaths and medical attention in police custody. *Med Law, 16*(3), 593-606.

Bobrik, A., Danishevski, K., Eroshina, K., & McKee, M. (2005). Prison health in Russia: the larger picture. *J Public Health Policy, 26*(1), 30-59.

Bourgoin, N. (1993). [Mortality due to suicide in prison]. *Rev Epidemiol Sante Publique, 41*(2), 146-154.

Brandt-Casadevall, C., Krompecher, T., Giroud, C., & Mangin, P. (2003). A case of suicide disguised as natural death. *Sci Justice, 43*(1), 41-43.

Brugal, M. T., Domingo-Salvany, A., Puig, R., Barrio, G., Garcia de Olalla, P., & de la Fuente, L. (2005). Evaluating the impact of methadone maintenance programmes on mortality due to overdose and aids in a cohort of heroin users in Spain. *Addiction, 100*(7), 981-989.

Camilleri, P., & McArthur, M. (2008). Suicidal behaviour in prisons: learning from Australian and international experiences. *Int J Law Psychiatry, 31*(4), 297-307.

Champion, M. K. (2009). Commentary: doing time in maximum security--the pains of separation. *J Am Acad Psychiatry Law, 37*(2), 194-200.

Chetail, V. (2006). Le Comité des Nations Unies contre la torture et l'expulsion des étrangers : dix ans de jurisprudence. *Revue suisse de droit international et européen, 26*(1), 63-104.

Chetail, V. (2007). Le Conseil des droits de l'homme des Nations Unies : l'An I de la réforme. *Refugee Survey Quarterly, 26*(4), 104-130.

Cordner, S. (1991). The Royal Commission into Aboriginal Deaths in Custody. Aspects of medical interest. *Med J Aust, 155*(11-12), 812-818.

Cox, B., & Skegg, K. (1993). Contagious suicide in prisons and police cells. *J Epidemiol Community Health, 47*(1), 69-72.

Das, C. K., Ceelen, M., Dorn, T., & de Jong, J. T. (2009). [Cocaine use and sudden death: excited delirium syndrome]. *Ned Tijdschr Geneeskd, 153*, B299.

de Montmollin, D., MacPhail, J., McMahon, J., & Coninx, R. (2002). Outbreak of beri-beri in a prison in West Africa. *Trop Doct, 32*(4), 234-236.

This is a preprint version of the article published in: G. Gaggioli and B. Elger, "Death in Custody: Towards an International Framework for Investigation and Prevention", *in* B. Elger et al. (eds.), *Emerging Issues in Prison Health*, Dordrecht, Springer, 2016, pp. 37-56.

Dickson, B. C., & Pollanen, M. S. (2009). Fatal thromboembolic disease: a risk in physically restrained psychiatric patients. *J Forensic Leg Med, 16*(5), 284-286.

Dornan, T., & Bundy, C. (2004). What can experience add to early medical education? Consensus survey *British Medical Journal 329*, 834.

ECHR. (2008). European Court of Human Rights. Renolde vs. France; Decision 16.10.2008: http://www.menschenrechte.ac.at/docs/08_5/08_5_14 (accessed April 2009).

Elger, B. S. (2008a). Medical ethics in correctional healthcare: an international comparison of guidelines. *J Clin Ethics, 19*(3), 234-248; discussion 254-239.

Elger, B. S. (2008b). Research involving prisoners: consensus and controversies in international and European regulations. *Bioethics 22*(4), 224–238.

Elger, B. S. (2008c). Towards equivalent health care of prisoners: European soft law and public health policy in Geneva. *J Public Health Policy, 29*(2), 192-206.

Elger, B. S., & Spaulding, A. Research on prisoners - a comparison between the IOM Committee recommendations (2006) and European regulations. *Bioethics, 24*(1), 1-13.

Farrell, M., & Marsden, J. (2008). Acute risk of drug-related death among newly released prisoners in England and Wales. *Addiction, 103*(2), 251-255.

Fazel, S., & Benning, R. (2006). Natural deaths in male prisoners: a 20-year mortality study. *Eur J Public Health, 16*(4), 441-444.

Fazel, S., Benning, R., & Danesh, J. (2005). Suicides in male prisoners in England and Wales, 1978-2003. *Lancet, 366*(9493), 1301-1302.

Fiscella, K., Pless, N., Meldrum, S., & Fiscella, P. (2004). Benign neglect or neglected abuse: drug and alcohol withdrawal in U.S. jails. *J Law Med Ethics, 32*(1), 129-136.

Franklin, P. (2000). The medical management in police custody of alcohol dependent detained persons. *J Clin Forensic Med, 7*(4), 201-203.

Frater, A. (2008). Deaths in custody. *BMJ, 336*(7649), 845-846.

Freckelton, I. (2009). Safeguarding the vulnerable in custody. *J Law Med, 17*(2), 157-164.

Frost, R., & Hanzlick, R. (1988). Deaths in custody. Atlanta City Jail and Fulton County Jail, 1974-1985. *Am J Forensic Med Pathol, 9*(3), 207-211.

Fruehwald, S., Frottier, P., Eher, R., Gutierrez, K., & Ritter, K. (2000). Prison suicides in Austria, 1975-1997. *Suicide Life Threat Behav, 30*(4), 360-369.

Fruehwald, S., Frottier, P., Matschnig, T., & Eher, R. (2003). The relevance of suicidal behaviour in jail and prison suicides. *Eur Psychiatry, 18*(4), 161-165.

Fruehwald, S., Frottier, P., Matschnig, T., Koenig, F., Lehr, S., & Eher, R. (2004). Do monthly or seasonal variations exist in suicides in a high-risk setting? *Psychiatry Res, 121*(3), 263-269.

Gaeta, P. (1995). Cancellazione dal ruolo e trattamenti disumani e degradanti: il caso Hurtado davanti alla Corte europea dei diritti dell'uomo"(Striking a Case Off the List and Inhumane and Degrading Treatment: the Hurtado Case before the European Court of Human Rights). *Rivista di diritto internazionale*, 149-167.

This is a preprint version of the article published in: G. Gaggioli and B. Elger, "Death in Custody: Towards an International Framework for Investigation and Prevention", *in* B. Elger et al. (eds.), *Emerging Issues in Prison Health*, Dordrecht, Springer, 2016, pp. 37-56.

Gaeta, P. (2004). May Necessity Be Available as a Defence for Torture in the Interrogation of Suspected Terrorists? *Journal of International Criminal Justice*(785-794).

Gaeta, P. (2007). "Tortura" (Torture). In M. Flores (Ed.), *Dizionario dei diritti umani*. Torino: Utet.

Gaeta, P. (2008). On What Conditions Can A State Be Held Responsible For Genocide? (forthcoming). *European Journal of International Law* Gaggioli, G., L'influence mutuelle entre les droits de l'homme et le droit international humanitaire à la lumière du droit à la vie, Paris, Pedone, 2013.

Gaggioli, G., & Elger, B. (April 2010). " Investigating Deaths in Custody: The Need for Guidelines ". *The Correctional Psychologist,* 42(2), 17-18.

Gaggioli, G., & Kolb, R. (2007). " A Right to Life in Armed Conflicts? The Contribution of the European Court of Human Rights ". *Israel Yearbook on Human Rights,* 37, 115-163.

Gaggioli, G., & Kolb, R. (2007). " L'apport de la Cour Européenne des Droits de l'Homme au droit international humanitaire en matière de droit à la vie ". *Revue Suisse de Droit International et Européen*, 1, 3-11.

Gostin, L. O. (2007). Biomedical research involving prisoners: ethical values and legal regulation. *Jama, 297*(7), 737-740.

Gostin, L. O., Vanchieri, C., Pope, A., & IOM Committee on Ethical Considerations for Revisions to DHHS Regulations for Protection of Prisoners Involved in Research. (2006). *Ethical Considerations for Research Involving Prisoners* Washington, D.C.: The National Academies Press.

Grant, J. R., Southall, P. E., Fowler, D. R., Mealey, J., Thomas, E. J., & Kinlock, T. W. (2007). Death in custody: a historical analysis. *J Forensic Sci, 52*(5), 1177-1181.

Grant, J. R., Southall, P. E., Mealey, J., Scott, S. R., & Fowler, D. R. (2009). Excited delirium deaths in custody: past and present. *Am J Forensic Med Pathol, 30*(1), 1-5.

Harding-Pink, D. (1990). Mortality following release from prison. *Med Sci Law, 30*(1), 12-16.

Harzke, A. J., Baillargeon, J. G., Goodman, K. J., & Pruitt, S. L. (2009). Liver cancer mortality among male prison inmates in Texas, 1992-2003. *Prev Med, 48*(6), 588-592.

Hayes, L. M. (1999). Suicide in adult correctional facilities: key ingredients to prevention and overcoming the obstacles. *J Law Med Ethics, 27*(3), 260-268, 210.

Hayes, L. M. (2005). Juvenile suicide in confinement in the United States results from a national survey. *Crisis, 26*(3), 146-148.

Heide, S., Henn, V., Kleiber, M., & Dressler, J. (2010). An Avoidable Death in Police Custody? *Am J Forensic Med Pathol*.

Heide, S., Kleiber, M., Hanke, S., & Stiller, D. (2009). Deaths in German police custody. *Eur J Public Health, 19*(6), 597-601.

Heide, S., Kleiber, M., & Stiller, D. (2009). [Legal consequences in cases of deaths in police custody]. *Gesundheitswesen, 71*(4), 226-231.

Henckaerts, J.-M., & Doswald-Beck, L. (2009), *Customary International Humanitarian Law,* Vol. I: Rules. Cambridge: Cambridge University Press.

This is a preprint version of the article published in: G. Gaggioli and B. Elger, "Death in Custody: Towards an International Framework for Investigation and Prevention", *in* B. Elger et al. (eds.), *Emerging Issues in Prison Health*, Dordrecht, Springer, 2016, pp. 37-56.

Hiss, J., & Kahana, T. (1996). Medicolegal investigation of death in custody: a postmortem procedure for detection of blunt force injuries. *Am J Forensic Med Pathol, 17*(4), 312-314.

Ho, J. D., Dawes, D. M., Heegaard, W. G., Calkins, H. G., Moscati, R. M., & Miner, J. R. (2009). Absence of electrocardiographic change after prolonged application of a conducted electrical weapon in physically exhausted adults. *J Emerg Med*.

Hollins, L. (2010). Managing the risks of physical intervention: developing a more inclusive approach. *J Psychiatr Ment Health Nurs, 17*(4), 369-376.

Hunt, D. R., & Saab, S. (2009). Viral hepatitis in incarcerated adults: a medical and public health concern. *Am J Gastroenterol, 104*(4), 1024-1031.

James, J. S. (2006). Prisoner death rate very high immediately after release. *AIDS Treat News*(421), 5-6.

Jauchem, J. R. (2010). Deaths in custody: are some due to electronic control devices (including TASER devices) or excited delirium? *J Forensic Leg Med, 17*(1), 1-7.

Kariminia, A., Butler, T., Corben, S., Kaldor, J., Levy, M., & Law, M. (2005). Mortality among prisoners: how accurate is the Australian National Death Index? *Aust N Z J Public Health, 29*(6), 572-575.

Kariminia, A., Butler, T. G., Corben, S. P., Levy, M. H., Grant, L., Kaldor, J. M., et al. (2007). Extreme cause-specific mortality in a cohort of adult prisoners--1988 to 2002: a data-linkage study. *Int J Epidemiol, 36*(2), 310-316.

Kariminia, A., Law, M. G., Butler, T. G., Corben, S. P., Levy, M. H., Kaldor, J. M., et al. (2007). Factors associated with mortality in a cohort of Australian prisoners. *Eur J Epidemiol, 22*(7), 417-428.

Kariminia, A., Law, M. G., Butler, T. G., Levy, M. H., Corben, S. P., Kaldor, J. M., et al. (2007). Suicide risk among recently released prisoners in New South Wales, Australia. *Med J Aust, 187*(7), 387-390.

Khaji, A. (2009). Mortality of the Iranian ex-prisoners of war in Iraqi detention camps (1980-1990). *Arch Iran Med, 12*(2), 140-144.

Kim, S., Ting, A., Puisis, M., Rodriguez, S., Benson, R., Mennella, C., et al. (2007). Deaths in the Cook County jail: 10-year report, 1995-2004. *J Urban Health, 84*(1), 70-84.

Kimber, J., Copeland, L., Hickman, M., Macleod, J., McKenzie, J., De Angelis, D., et al. (2010). Survival and cessation in injecting drug users: prospective observational study of outcomes and effect of opiate substitution treatment. *BMJ, 341*, c3172.

Koehler, S. A., Weiss, H., Songer, T. J., Rozin, L., Shakir, A., Ladham, S., et al. (2003). Deaths among criminal suspects, law enforcement officers, civilians, and prison inmates: a coroner-based study. *Am J Forensic Med Pathol, 24*(4), 334-338.

Krinsky, C. S., Lathrop, S. L., Brown, P., & Nolte, K. B. (2009). Drugs, detention, and death: a study of the mortality of recently released prisoners. *Am J Forensic Med Pathol, 30*(1), 6-9.

This is a preprint version of the article published in: G. Gaggioli and B. Elger, "Death in Custody: Towards an International Framework for Investigation and Prevention", *in* B. Elger et al. (eds.), *Emerging Issues in Prison Health*, Dordrecht, Springer, 2016, pp. 37-56.

Lee, B. K., Vittinghoff, E., Whiteman, D., Park, M., Lau, L. L., & Tseng, Z. H. (2009). Relation of Taser (electrical stun gun) deployment to increase in in-custody sudden deaths. *Am J Cardiol, 103*(6), 877-880.

Lorin de la Grandmaison, G., Durigon, M., Moutel, G., & Herve, C. (2006). The international criminal tribunal for the former Yugoslavia (ICTY) and the forensic pathologist: ethical considerations. *Med Sci Law, 46*(3), 208-212.

Martire, K. A., & Larney, S. (2010). An estimate of the number of inmate separations from Australian prisons 2000/01 and 2005/06. *Aust N Z J Public Health, 34*(3), 255-257.

Nechaeva, O. B., Skachkova, E. I., & Podymova, A. S. (2005). [Tuberculosis in the prisons of the Sverdlovsk Region]. *Probl Tuberk Bolezn Legk*(5), 16-18.

O'Driscoll, C., Samuels, A., & Zacka, M. (2007). Suicide in New South Wales Prisons, 1995-2005: towards a better understanding. *Aust N Z J Psychiatry, 41*(6), 519-524.

Okie, S. (2005). Glimpses of Guantanamo--medical ethics and the war on terror. *N Engl J Med, 353*(24), 2529-2534.

Okoye, M., Kimmerle, E. H., & Reinhard, K. (1999). An analysis and report of custodial deaths in Nebraska, USA. *J Clin Forensic Med, 6*(2), 77-84.

Otahbachi, M., Cevik, C., Bagdure, S., & Nugent, K. (2010). Excited delirium, restraints, and unexpected death: a review of pathogenesis. *Am J Forensic Med Pathol, 31*(2), 107-112.

Patton, M. Q. (2002). *Qualitative research and evaluation methods* (third ed.). Newbury Park, CA: : Sage Publications.

Pratt, D., Piper, M., Appleby, L., Webb, R., & Shaw, J. (2006). Suicide in recently released prisoners: a population-based cohort study. *Lancet, 368*(9530), 119-123.

Rainio, J., Lalu, K., & Penttila, A. (2001). Independent forensic autopsies in an armed conflict: investigation of the victims from Racak, Kosovo. *Forensic Sci Int, 116*(2-3), 171-185.

Roessler, B., Fleischhackl, R., Fleischhackl, S., Singer, F., Mittlboeck, M., Fachberger, J., et al. (2007). Death in correctional facilities: opportunities for automated external defibrillation. *Resuscitation, 73*(3), 389-393.

Sailas, E. S., Feodoroff, B., Lindberg, N. C., Virkkunen, M. E., Sund, R., & Wahlbeck, K. (2006). The mortality of young offenders sentenced to prison and its association with psychiatric disorders: a register study. *Eur J Public Health, 16*(2), 193-197.

Schmidt, P., Dettmeyer, R., Musshoff, F., & Madea, B. (1999). [Sudden death after release from police detention]. *Arch Kriminol, 203*(5-6), 138-146.

Seaman, S. R., Brettle, R. P., & Gore, S. M. (1998). Mortality from overdose among injecting drug users recently released from prison: database linkage study. *BMJ, 316*(7129), 426-428.

Segest, E. (1987). Police custody: deaths and medical attention. *J Forensic Sci, 32*(6), 1694-1703.

Shukshin, A. (2006). Tough measures in Russian prisons slow spread of TB. *Bull World Health Organ, 84*(4), 265-266.

Simooya, O. O., & Sanjobo, N. (2006). HIV/AIDS is still a double sentence in prisons. *BMJ, 332*(7533), 119-120.

This is a preprint version of the article published in: G. Gaggioli and B. Elger, "Death in Custody: Towards an International Framework for Investigation and Prevention", *in* B. Elger et al. (eds.), *Emerging Issues in Prison Health*, Dordrecht, Springer, 2016, pp. 37-56.

Smith, A. R., Witte, T. K., Teale, N. E., King, S. L., Bender, T. W., & Joiner, T. E. (2008). Revisiting impulsivity in suicide: implications for civil liability of third parties. *Behav Sci Law, 26*(6), 779-797.

South Worchestershire Primary Care Trust NHS. (2005). Death in custody guidelines: http://www.worcestershirehealth.nhs.uk/Internet_Library/Primary_Care_Trust/policies_and_procedures/Clinical/040607Deathincustody.pdf.

Spencer, J. (1989). Aboriginal deaths in custody. *Aust N Z J Psychiatry, 23*(2), 164-165.

Springer, S. A., & Bruce, R. D. (2008). A pilot survey of attitudes and knowledge about opioid substitution therapy for HIV-infected prisoners. *J Opioid Manag, 4*(2), 81-86.

Steffee, C. H., Lantz, P. E., Flannagan, L. M., Thompson, R. L., & Jason, D. R. (1995). Oleoresin capsicum (pepper) spray and "in-custody deaths". *Am J Forensic Med Pathol, 16*(3), 185-192.

Steinhauser, A. (1997). [Analysis of cause of death in Central Rhine prisons and in police detention centers 1949 to 1990]. *Arch Kriminol, 199*(3-4), 88-96.

Stewart, L. M., Henderson, C. J., Hobbs, M. S., Ridout, S. C., & Knuiman, M. W. (2004). Risk of death in prisoners after release from jail. *Aust N Z J Public Health, 28*(1), 32-36.

Stover, E., Haglund, W. D., & Samuels, M. (2003). Exhumation of mass graves in Iraq: considerations for forensic investigations, humanitarian needs, and the demands of justice. *JAMA, 290*(5), 663-666.

Thali, M. J., Braun, M., Wirth, J., Vock, P., & Dirnhofer, R. (2003). 3D surface and body documentation in forensic medicine: 3-D/CAD Photogrammetry merged with 3D radiological scanning. *J Forensic Sci, 48*(6), 1356-1365.

Thomas, S. P. (2005). From the editor--harrowing deaths in prison. *Issues Ment Health Nurs, 26*(6), 559-560.

Thomson, N. J., & McDonald, D. (1993). Australian deaths in custody, 1980-1989. 1. Relative risks of aborigines and non-aborigines. *Med J Aust, 159*(9), 577-581.

United Nations. (1990). United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Adopted by General Assembly resolution 45/113of 14 December 1990: http://www.un.org/documents/ga/res/45/a45r113.htm (accessed August 2010).

United Nations. (1991). United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions ("Minnesota Protocol"), U.N. Doc. E/ST/CSDHA/.12 (1991): http://www1.umn.edu/humanrts/instree/executioninvestigation-91.html (accessed August 2010).

United Nations. (2006). International Convention for the Protection of All Persons from Enforced Disappearance (adopted December 2006 and opened for signature February 2007): http://untreaty.un.org/English/notpubl/IV_16_english.pdf (accessed March 2008).

Verger, P., Rotily, M., Prudhomme, J., & Bird, S. (2003). High mortality rates among inmates during the year following their discharge from a French prison. *J Forensic Sci, 48*(3), 614-616.

This is a preprint version of the article published in: G. Gaggioli and B. Elger, "Death in Custody: Towards an International Framework for Investigation and Prevention", *in* B. Elger et al. (eds.), *Emerging Issues in Prison Health*, Dordrecht, Springer, 2016, pp. 37-56.

Vilke, G. M., Johnson, W. D., 3rd, Castillo, E. M., Sloane, C., & Chan, T. C. (2009). Tactical and subject considerations of in-custody deaths proximal to use of conductive energy devices. *Am J Forensic Med Pathol, 30*(1), 23-25.

Wang, E. A., Pletcher, M., Lin, F., Vittinghoff, E., Kertesz, S. G., Kiefe, C. I., et al. (2009). Incarceration, incident hypertension, and access to health care: findings from the coronary artery risk development in young adults (CARDIA) study. *Arch Intern Med, 169*(7), 687-693.

Warren, E., Viney, R., Shearer, J., Shanahan, M., Wodak, A., & Dolan, K. (2006). Value for money in drug treatment: economic evaluation of prison methadone. *Drug Alcohol Depend, 84*(2), 160-166.

Wobeser, W. L., Datema, J., Bechard, B., & Ford, P. (2002). Causes of death among people in custody in Ontario, 1990-1999. *Cmaj, 167*(10), 1109-1113.

Yerokhin, V. V., Punga, V. V., & Rybka, L. N. (2001). Tuberculosis in Russia and the problem of multiple drug resistance. *Ann N Y Acad Sci, 953*, 133-137.