

**CONSULTATION DOCUMENT**

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**Introduction**

1. This document, which is issued by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions ('the UNSR'), sets out the guiding principles for the revision of the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions ('the UN Manual'), introduces a draft Table of Contents for comment, and seeks comments on a number of key issues for consideration.

**Guiding Principles**

2. The UNSR has proposed the following five guiding principles for the revision process:
  - a. **The UN Manual is not a standalone document.** *The revised Manual must have a basis in and be compatible with the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions ('the Principles') as well as other applicable rules of international law.*
  - b. **This is a revision of an existing document and not a complete rewrite.** *This approach allows new sections to be written and old sections to be excised, but it requires the UN Manual to retain – in broad terms - its fundamental characteristics and existing structure.*
  - c. **A large part of the UN Manual's value is its brevity.** *The revision process is not an opportunity to expand the UN Manual substantially into points of detail. The UN Manual is intended to set out skeletal guidance onto which other documents can add flesh. It is not intended to be, and nor should it become, a document that purports to set out a detailed explanation of all aspects of the prevention and investigation of suspicious deaths.*

- d. Unless unavoidable, the content of the UN Manual should not conflict with the content of other leading documentation addressing similar issues.**
- e. The key objective of revision is to ensure that the revised Manual reflects the evolution in human rights jurisprudence and investigative and forensic techniques since 1991.**

*QUESTION 1: Do you support these guiding principles for revision. If not, please give reasons and set out your preferred alternatives.*

**Draft contents page**

- 3. A draft contents page has been provided for comment. This draft contents page incorporates the following preliminary decisions:
  - a. The deletion of existing Sections 1 and 2 of the UN Manual.
  - b. A new Introduction.
  - c. A new section on the prevention of unlawful deaths to better explain the practical application of the 'Prevention' elements of the Principles.
  - d. A substantial expansion of The Model Protocol for a Legal Investigation to better explain the practical application the requirements for a thorough, prompt and impartial investigation.
  - e. A new Model Protocol on the Management of the Crime/Death Scene(s) to consolidate existing content into a single protocol and to supplement with new material to reflect developments in crime scene standards.
  - f. A new Model Protocol on the Collection, Management and Evaluation of Other Evidence to consolidate existing content into a single protocol and to supplement with new material to reflect technological developments and new approaches to the collection of witness evidence.
  - g. A new Model Protocol on the Forensic Examination and Identification of Deceased Victims and Skeletal Remains to consolidate existing content and to supplement with new material to reflect technological developments and new approaches to forensic examination and identification of deceased victims.

*QUESTION 2: Do you support these preliminary decisions? If not, please give reasons and set out your preferred alternative.*

*QUESTION 3: In relation to the draft Table of Contents, please identify any other areas for inclusion or deletion, or highlight any areas requiring greater or lesser attention.*

**Key issue for consideration: scope of the UN Manual**

4. A key issue that must be addressed is the scope of the revised Manual. Although the title of the original Manual suggests that it is limited to cases of suspected “extra-legal, arbitrary and summary executions”, the text itself suggests otherwise. In respect of sections B and C of the Model Protocol for a Legal Investigation, it is clear that it is intended to apply to “all cases of violent, sudden, unexpected or suspicious deaths, including suspected extra-legal, arbitrary and summary executions”. The Model Autopsy Protocol refers to “suspicious” and “controversial” deaths.

*QUESTION 4: Which of the two options below do you support:*

*a. The UN Manual should apply only in cases of death where the involvement, complicity or responsibility of the state is reasonably suspected, or where the circumstances of the death raise a presumption of responsibility (ie deaths in custody, deaths caused by law enforcement officials etc)*

*b. The UN Manual should apply to all cases of violent, sudden, unexpected or suspicious deaths.*

**Key issue for consideration: nature of the UN Manual**

5. The UN Manual purports to provide “guidance”. In respect of the UN Manual’s Model Protocol for a Legal Investigation, it is explicitly “not binding”. It is less clear whether the other sections of the UN Manual provide guidance, minimum standards, necessary standards, or best practice etc.

6. In international jurisprudence, regional and national courts have treated the UN Manual as providing more than mere guidance, and in some cases, regional courts have found a failure to comply with the standards set out in the UN Manual to be unlawful.

*QUESTION 5: Which of the four options below do you support in respect of the revised Manual:*

- a. The revised Manual should provide guidance only;*
- b. The revised Manual should provide minimum standards;*
- c. The revised Manual should provide standards of good practice;*
- d. The revised Manual should provide a combination of minimum standards and good practice, depending on the context.*

*Please give reasons for your answer.*

**Key issue for consideration: title of the UN Manual**

7. A scoping exercise carried out by the UNSR between October and December 2014 suggested that the UN Manual is most commonly known as ‘The Minnesota Protocol’. The UNSR is inclined to use that name as the main title to the revised Manual, with a longer subtitle which mirrors the existing title.

*QUESTION 6: Do you support the proposed change to the main title of the UN Manual? Please give reasons.*

**Key issue for consideration: other relevant documents to bear in mind during revision process**

8. In accordance with the principle set out above in paragraph 2(d), and in order to provide reference within the revised Manual to other relevant documentation, the UNSR suggests that the working groups take into account other relevant documents, including:
- a. The UN Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity;
  - b. The UN Basic Principles and Guidelines on the Right to a Remedy;
  - c. The International Convention for the Protection of All Persons from Enforced Disappearance;
  - d. The Istanbul Protocol;

- e. UN Training Manual on Human Rights Monitoring, Ch. V: Basic Principles of Monitoring
- f. ICJ Practitioner Guide on enforced disappearances and extrajudicial executions
- g. The ICRC's:
  - i. Guidelines for Investigating Deaths in Custody;
  - ii. Ante-Mortem, Post-Mortem Database;
  - iii. Forensic Identification of Human Remains;
  - iv. Management of dead bodies – role of first responders
- h. The Siracusa Guidelines for International, Regional and National Fact-Finding Bodies;
- i. Interpol's DNA Handbook and Disaster Victim Identification Guide;
- j. Guidelines for Mass Fatality DNA Identification Operations (AABB)
- k. Scientific Working Group for Medicolegal Death Investigation Principles for Communicating with Next of Kin during Medicolegal Death Investigation
- l. International Protocol on the Documentation and Investigation of Sexual Violence in Conflict
- m. Good Practice Guide for the use of forensic genetics in investigations into human rights and international humanitarian law violations (Government of Argentina and the ICRC);

*QUESTION 7: Do you have any documents to add to the list above?*

*QUESTION 8: Do you have any other comments you wish to share in relation to the revision process?*

**Response**

- 9. The UNSR would be grateful for responses to this document, including comments on the draft Table of Contents, by 15 June 2015. Please send all comments to Petronell Kruger at [krugerpetronell@gmail.com](mailto:krugerpetronell@gmail.com).

The Office of the UNSR  
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