

# The Minnesota Protocol: [sub heading to be determined]

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## DRAFT TABLE OF CONTENTS

### PART A: INTRODUCTION

NEW PART

#### Section 1: Introduction

1. The legal status of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions ('the Principles'), and their relationship with the Minnesota Protocol ('MP').
2. The legal status of the MP in international jurisprudence and the purpose of revision.

#### Section 2: Legal Framework

Summary of the legal framework in which the MP sits, including:

- a. Respecting the right to life;
- b. Protecting the right to life;
- c. The duties of prevention and precaution under the right to life;
- d. The duty to investigate under the right to life;
- e. The right to know; and
- f. The right to the truth.

#### Section 3: Scope of application of the Minnesota Protocol

#### Section 4: Definitions

## **PART B: PREVENTION**

### **NEW PART**

#### **Section 1: Introduction**

Reference to the Principles and the obligation to prevent EJE.s.

#### **Section 2: Legal and Policy Requirements**

1. The need for the prohibition by law of all extra-judicial, arbitrary and summary executions and the prohibition of any order requiring such action, or the return or extradition of an individual to a country where there is a substantial risk of such action.
2. The need for adequate legal and policy frameworks on:
  - a. The use of force by state agents, including military, paramilitary, and law enforcement officials, private contractors acting on behalf of the state, and others.
  - b. The treatment of detainees and conditions of detention, including in state or privatised prisons, psychiatric hospitals or institutions, administrative or immigration detention facilities, and the availability of a review of the lawfulness of detention by a court within a reasonable period of time.
  - c. The extra-territorial use of force by state agents, including lethal autonomous weapons systems.
3. The principle of prevention/precaution and:
  - a. The need for adequate training of law enforcement officials and custodial staff.
  - b. The availability to law enforcement officials and custodial staff of appropriate “less-lethal” weapons.
  - c. The requirement for effective planning of law enforcement and state security operations to minimise the risk of death.
4. Progressive recognition and implementation of MP standards in legal, administrative, forensic and judicial institutions.

### **Section 3: Accountability Mechanisms**

The need for, *inter alia*:

- a. A domestic legal duty to investigate in the event of all deaths in custody, all deaths caused by state agents, and all deaths where there is a reasonable suspicion of state involvement or complicity.
- b. The existence and empowerment of independent oversight or review bodies in relation to state security, law-enforcement and custodial institutions.
- c. Transparent whistleblowing mechanisms within state security, law-enforcement and custodial institutions.

## **PART C: MODEL PROTOCOL FOR A LEGAL INVESTIGATION**

### **Section 1: Introduction**

*(Existing section to be revised)*

Nature of the Protocol and introduction to the text.

### **Section 2: The triggers for an investigation**

*(New section)*

Triggers for a preliminary vs full investigation (and definitions of the components of such investigations).

### **Section 3: Standards for an adequate investigation**

1. The overarching principles of an effective investigation *(New section)*.
  - a. promptness, effectiveness, independence and thoroughness (including definitions and practical application of each) and link to principles to combat impunity; i.e. the investigation should, where possible, seek to secure accountability through criminal justice system.
2. Effective investigatory bodies *(New section)*
  - a. Types of investigatory structures that may satisfy the requirements of an effective investigation provided they meet the standards for a full investigation, e.g. police investigation; independent police investigative body; inquest; special investigation or commission of inquiry.
  - b. Necessary powers for an effective investigatory body.
  - c. Necessary capacity, qualifications and training for an effective investigatory body.
3. Effective investigation processes *(Existing section to be revised and supplemented)*.
  - a. Recording of decision-making within the investigation ('decision making logs').

- b. Investigation phases including:
    - i. Identifying the legal elements of the possible crime(s) under investigation;
    - ii. Research and analysis of existing materials;
    - iii. Preparation of an investigation plan;
    - iv. Investigation;
    - v. Analysis of results, including the use of experts where necessary, and the objective assessment of all evidence in the round; and
    - vi. Reporting of results.
  - c. The right to know and the involvement of the family of the victim throughout the investigation.
- 4. Particular considerations in situations of armed conflict *(New section)*.
  - 5. Particular considerations in mass fatality incidents *(New section)*.
  - 6. Documenting deaths and disappearances in the absence of full investigatory capacity *(New section)*.
  - 7. Commissions of Inquiry *(Existing section to be revised)*.
    - a. Where possible and appropriate, subsection should be harmonised with Istanbul Protocol section on Commissions of Inquiry and Siracusa Guidelines for International, Regional and National Fact-Finding Bodies.

## **PART D: MODEL PROTOCOL FOR THE MANAGEMENT OF THE CRIME/DEATH SCENE(S)**

### **Section 1: General management of the crime/death scene(s)**

*(Existing section to be revised and supplemented).*

1. Securing the crime/death scene(s), including possibility of more than one scene.
2. Supervision of the crime/death scene(s) by impartial investigators.
3. Processing the crime/death scene(s).
  - a. Access to the crime/death scene(s).
  - b. Capture of the crime/death scene(s) – video, photography, sketches, plans, computer modelling.
  - c. Collection and preservation of physical and forensic evidence at the crime/death scene(s).
  - d. Chain of custody.

### **Section 2: Recovery and management of the body or bodily remains**

1. Management, examination and preservation of an intact body at the crime/death scene  
*(Combination of existing sections to be consolidated, revised and supplemented).*
2. Disinterment, examination and preservation of skeletal and decomposed remains at the crime/death scene(s) *(Part of existing section to be revised).*

## **PART E: MODEL PROTOCOL FOR THE COLLECTION, MANAGEMENT AND EVALUATION OF OTHER EVIDENCE**

*(Combination of existing sections to be revised and supplemented)*

### **Section 1: The collection and management of physical and digital evidence beyond the crime/death scene(s)**

1. Urgent preservation of evidence beyond the crime/death scene(s) including telephone contact and mobile/cell site data, and satellite imagery materials.
2. The collection and preservation of physical, documentary, photographic, digital and other evidence, including metadata, mobile/cell site evidence, social media and citizen journalism etc.
3. The chain of custody, management and storage of evidence.

### **Section 2: The collection and management of witness evidence**

1. The overriding principle of 'do no harm'.
2. Identification of potential witnesses, including threat assessments, mitigation of risks, and establishing secure contact.
3. Preparation for interview, including research and planning for witness interviews, understanding cultural and gender norms, and seeking informed consent.
4. The interview, including documenting the interview, avoiding re-traumatisation, and offering psycho-social support.
5. Consideration of witness protection measures.

### **Section 3: The evaluation of evidence as part of the investigatory process**

1. Source evaluation, including reliability, verification, chain of custody and credibility.

## PART F: MODEL PROTOCOL FOR THE FORENSIC EXAMINATION AND IDENTIFICATION OF DECEASED VICTIMS AND SKELETAL REMAINS

### Section 1: Conducting the autopsy

*(Existing section to be revised)*

### Section 2: The analysis of skeletal remains

*(Existing section to be revised)*

### Section 3: The identification of deceased victims and skeletal remains

*(New section)*

1. The right to know.
2. Primary and secondary identification techniques and the appropriateness of each in different circumstances.

### Section 4: The return of remains to family members

*(New section)*



## ANNEXES

1. UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions
2. The post-mortem detection of torture *(Existing section to be considered)*
3. Further reading *(New section)*