



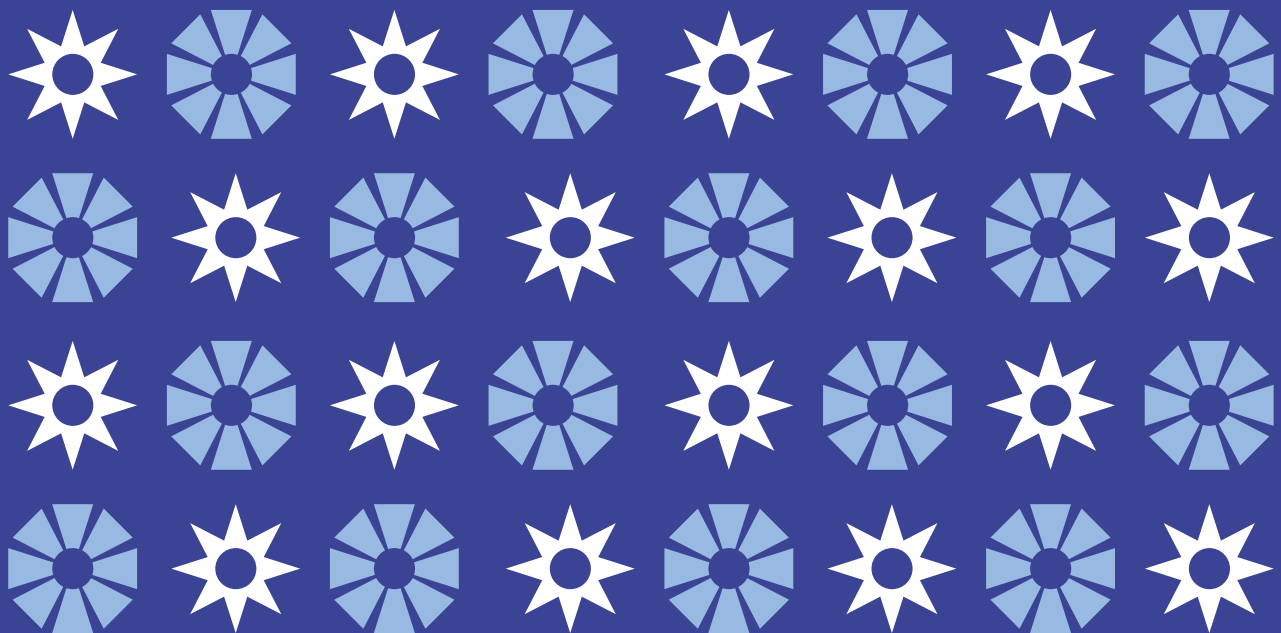
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IACHR Inter-American
Commission on
Human Rights

RIRCU PRACTICAL GUIDES TO COVID-19

01

What are the standards for ensuring respect for the grieving, funeral rites, and memorials of those who died during the COVID-19 pandemic?



The Inter-American Commission on Human Rights (IACHR), in collaboration with its special rapporteurships, introduces a series of practical guides addressing topics linked to human rights in the context of the COVID-19 pandemic. Drawing on Inter-American human rights standards, it has developed public policy recommendations to guide practices and decisions adopted by States in relation to the pandemic. This is a commitment of the Rapid Integrated Response Coordination Unit to dealing with the COVID-19 crisis (RIRCU COVID-19).



1

SUMMARY OF CONTEXT

1. The IACHR follows the concept of “family” in accordance with **Advisory Opinion 24/2017 of the Inter-American Court of Human Rights.**

At the end of September 23, 2020, COVID-19 has taken the lives of **530,000 people** in the region of the Americas. The unprecedented global health emergency caused by the pandemic seriously impacts the full realization of human rights at both the collective and individual level. The death of a family member or a close friend during the pandemic is particularly difficult. Due to the risk of infection and the containment measures adopted in the framework of the pandemic, families¹ and their loved ones may be prevented from accompanying their ill member in their last days of life.

Moreover, every person, community and culture has their own rituals as a way to alleviate the grief caused by the passing of a loved one. Specifically, in the context of the pandemic, restrictions have been placed on funerals and memorial services in order to prevent further infection. Apart from funeral rites, the grieving process involves social interaction, which has also been curtailed in these times. These restrictions on funerals and memorial services for persons who have lost their lives to COVID-19 and, in some countries, all deaths occurring during the pandemic, can have an impact on the grieving process of family members and loved ones and can infringe rights protected under the Inter-American legal framework

The IACHR offers this practical guide along with a list of recommendations and considerations to provide guidance to States in the formulation and adjustment of public policies, as well as in the practices and decisions on the disposal of bodies, respect for the grieving family members of the deceased during the pandemic. The measures presented contribute to honoring and respecting the memory of the deceased.

Records, burials and identification of human remains

As a consequence of the high number of deaths reported in the context of the pandemic, available information suggests that certain situations arising in the States may be tantamount to human rights infringements:

1. Regarding the location of death:

- » Persons dying in their residence: challenges have been identified relating to the institutions in charge of removal of the body;
- » Persons dying on public premises, at hotels or care facilities: delays in removal of bodies from these locations have been reported, as well as challenges in coping with bodies at hospitals. In some instances, this has led to bodies piling up on the streets, as emergency services are operating over capacity.

2. At the administrative level:

- » Difficulties in properly identifying the remains of the deceased;
- » Omissions or lack of clarity on death certificates in terms of cause of deaths from COVID-19. In some instances, family members reported confusing or conflicting information on death certificates and medical reports;
- » Delays in handing over and interring of remains;
- » Administrative difficulties in issuing death certificates;

- » Burying a large number of human remains in common graves without identifying them or adhering to technical requirements;
 - » Subjecting family members of the deceased to heavy body searches, long waits for the disposal of the bodies;
 - » No protocols in place for migrants to be able to contact and find their family members;
 - » Problems with identifying and repatriating remains;
 - » Funeral homes and morgues overwhelmed, leading to:
 - » Corpses piling up in morgues and on streets;
 - » Inability to accept bodies due to lack of space and overwhelmed cemetery workers.
3. Working conditions impacting the physical and mental health and labor rights of funeral home and morgue workers:
- » Limited resources available for coroners, funeral and morgue workers to perform their jobs safely;
 - » High demand for their services leading to overburdened work schedules.

Funerals and memorial services

In several countries, funerals and memorials for the deceased have been impacted by overburdened service providers and the different restrictions in effect as a result of the pandemic. This requires finding alternative ways to conduct funerals and memorial services. These restrictions include:

- » Limits on the number of people who may attend funerals. This limit has varied from 1 to 10 people in different countries. In some instances, only immediate family members (sons, daughters, mothers, fathers and spouses) are allowed to attend, while in others, funerals are conducted without any attendees at all;
- » Funeral time reduced, for example, to between 30 and 90 minutes;
- » No physical contact with the body.

Additionally, in some situations family members and loved ones do not have access to the bodies to conduct rituals in accordance with their culture, religion and/or worldview. These situations include:

- » The inability to repatriate the deceased, whose bodies are cremated in the country of residence, even when cremation goes against their beliefs;
- » In some indigenous communities, people are unable to access the bodies to conduct funeral rites in keeping with their worldview.

→ *Additionally, people living in poverty often cannot afford the expenses involved in the final disposal of the remains or the repatriation of the bodies of their loved ones. This situation is further exacerbated by the context of unemployment and reduced income.*

The above-listed restrictions further hamper the ability of the family members of the deceased to hold funerals in accordance with their beliefs, rituals and customs, which affects their mental and emotional health as they are unable to grieve. This harsh reality adversely impacts the communities' ways of culturally expressing themselves when bidding farewell to a person with dignity and respect; and prolongs bereavement and suffering.

2

RIGHTS POTENTIALLY INFRINGED

Right to humane treatment and to health

Legal basis:

- » Art. 11 of the American Declaration of the Rights and Duties of Man enshrines the right to the preservation of health and to well-being.
- » Art. 10 of the Protocol of San Salvador notes that the right to health is understood to mean the enjoyment of the highest level of physical, mental and social well-being.
- » Art. 5 of the American Convention on Human Rights establishes the right to humane treatment, which means respect for physical, mental and moral integrity.
- » Art. 26 of the American Convention sets forth that States must undertake to adopt measures, both internally and through international cooperation, with a view to achieving progressively the full realization of ESCERs.
- » **Resolution 1/2020** "Pandemic and Human Rights in the Americas" signals that States must adopt all appropriate measures to protect the rights to life, health, and personal integrity.
- » **Resolution 4/2020** "Human Rights of Persons with COVID-19" introduces guidelines on bereavement and the rights of family members. This includes the right of family members of victims of COVID-19 to have their personal integrity and mental health respected.

Right to freedom of religion and worship and right to take part in cultural life

The right to religious freedom means, among other things, the freedom to profess and disseminate one's culture, religion or beliefs, individually or collectively, both in public and private. The terms "beliefs" and "religion" must be understood in the broad sense of theist, non-theist, atheist beliefs and of not professing any type of worship or belief. It also means that no one can be subjected to restrictive measures that affect the freedom to conserve his or her religion or beliefs or to change religions or beliefs. Thus, the exercise of said right includes the freedom to hold funerals, to visit sacred sites and to grieve and mourn in accordance with one's own belief and culture.

Respect and protection of the right of every person to exercise his or her own cultural practices, within the limits of respect for human rights, include any practices of religion, worship and belief that one may have relating to death, which are closely tied to forms of cultural participation and worldviews in societies.

Legal basis:

- » Art. 3 of the American Declaration establishes the right of every person to religious freedom and worship, to freely profess a religious belief; to express it and practice it in public or in private. Art. 12 of the American Convention sets forth that everyone has the right to freedom of conscience and of religion.
- » Art. 13 of the Declaration establishes the right to take part in the cultural life of the community. Likewise, Article 26 of the American Convention and Article 14 of the Protocol of San Salvador protect that right.
- » In **cases involving indigenous communities and afro-descendants**, both the IACHR and the IA Court have found that the inability to conduct funerals or to visit sacred sites is a serious obstacle to their worldview and religious practice, which severely affects their cultural identity and integrity.

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- » **Resolution 4/2020** indicates that family members of the victims who died during the COVID-19 pandemic must be able to grieve and perform funeral rites in accordance with their own traditions and world view. That right may only be curtailed under specific circumstances and on the recommendation of health authorities based on the scientific evidence available, and using the most suitable, and least hurtful, measures to protect life, health, or personal integrity.
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Right to private and family life

Legal basis:

- » Art. 5 of the American Declaration and Art. 11 of the Convention enshrine the right to private and family life and ban arbitrary and abusive interference into it.
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Right to the truth

Legal basis:

- » The right to the truth is related to the right of access to information, as provided for in Art. IV of the American Declaration and Art. 13 of the American Convention. Under these provisions, the right to the truth encompasses the right of victims and their family members, as well as society as a whole, to learn the truth.
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3

CURRENT PRACTICES OF STATES GLOBALLY

In the context of the pandemic, the States have provided a response to the challenges raised in the previous section through a variety of initiatives and measures. Several examples of important practices on the subject in several countries of the world are explained below.

Records, burials and identification of human remains

- » Making individual records of the deceased during the pandemic;
 - » Banning burials of persons who died from COVID-19 in common graves and using specific graves for suspected or confirmed cases, to facilitate finding and identifying the individual at a later time.
 - » Incineration of unidentified or identified and unclaimed bodies was prohibited.
 - » Coordinating with hospitals to register ill persons in data bases and to facilitate locating and identifying the patient and, in the event of death, contacting family members.
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Funerals and memorial services in certain States

- » Requesting scientific evidence-based recommendations to periodically monitor and regulate funeral homes and morgues.
- » Using technology (videos, video calls, etc.) for people to bid farewell of their loved ones prior to their passing and to hold funeral and memorial services and engage in religious worship, so family members and loved ones are able to share images, memories, and other forms of expression with their loved ones.

- » Imposing price caps on funeral costs to hold prices down at the level that was in effect prior to the pandemic.
- » Allowing funeral wakes, when specific requirements are met, such as reduced hours and number of participants to ensure social distancing based on the rules issued by health authorities and available scientific evidence.
- » Creating teams of volunteers to pick up the bodies of people who died from Covid-19, in coordination with the families and the police, and take them to the closest cemetery.
- » In some municipalities, laws were approved to allow cremation of those who died from the virus free of charge, subject to submission of proof that the death was caused by this disease.
- » Establishing protocols to repatriate the bodies of persons who died in the pandemic.

Bereavement support

- » Using technology to offer mental health services, in the context of bereavement, via e-mail, telephone, phone apps, virtual meetings, among other ways.

4

RECOMMENDATIONS TO THE STATES

General

- 01** Respect and guarantee the rights of the next of kin of persons who die in the pandemic.
- 02** Guarantee investigation of potentially unlawful deaths, by ensuring the right of access to justice for family members, based on the United Nations' [Minnesota Protocol](#) on the Investigation of Potentially Unlawful Death (2016).
- 03** Implement the public policy best practices laid out in this guide, when applicable to the respective State, in order to ensure respect for bereavement, funeral and burial rituals and memorial services for people who lose their lives in the COVID-19 pandemic.
- 04** Preserve human dignity in the handling of the body under any circumstances, respecting the beliefs and cultures of the individual, especially when he or she belongs to ethnic communities and indigenous peoples.
- 05** Provide clear guidance to hospitals and health facilities, care facilities, prisons and detention facilities and other places where deaths occur in the pandemic, for the handling of bodies and interacting with family members based on the right to humane treatment and mental health of the families of the affected persons and victims of the COVID-19 pandemic.
- 06** Ensure information is given to relatives of people with COVID-19 about issues such as: the evolution of the disease; the limitations of visits to the hospital systems and the effects on cultural practices that may be limited by the restrictions imposed.

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- 07** Strengthen control mechanisms in States so that they function effectively and are not made more flexible, in accordance with established legislation, to guarantee that any distribution of resources occurs within a framework of transparency and democracy, free from corruption. All measures necessary for resources to reach the areas and populations most affected by the pandemic must be guaranteed.
 - 08** State custodial institutions must follow the [Nelson Mandela Rules](#), which establish specific flow obligations for deaths and notification of family members.
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Records, burials and identification of human remains

- 09** Create a national/state individual registry system of persons who lose their lives in the pandemic.
- 10** Urge medical facilities to provide reliable and accurate information to family members about the cause of death of persons who lose their lives in the pandemic, based on the family members' right to know what happened and the right of society as a whole to know the statistics on the impact and scope of the COVID-19 pandemic.
- 11** Prohibit the interment of people who die of COVID-19 in mass graves and use specific graves for suspicious or confirmed cases in order to facilitate locating and identifying them at a later time. Additionally, prohibit the incineration of unidentified or identified and unclaimed bodies.
- 12** Develop and implement databases to create a registry of persons affected by COVID-19 and their family members and in this way make sure they can be identified and facilitate contact with family to receive information on health status and, in emergency circumstance, to be able to provide prior, free and informed consent regarding medical treatment. Hospitals, health and care, detention and prison facilities and migrant holding facilities should have such databases.
- 13** Inform family members and relatives clearly and precisely about the potential risk of contagion while in contact with persons with COVID-19 and the mortal corpses, and provide them with biosecurity measures. This information should include details about the use of biosecurity measures during the process of identifying bodies, including restrictions on direct contact with the body for health protection purposes.
- 14** Take measures to provide for the identification of the deceased and traceability of bodies when they have been buried.
- 15** Establish standards and national mechanisms and procedures through consular offices for the identification and repatriation of bodies of persons who die in the COVID-19 pandemic, including for contact with family members.

Funerals and memorial services

- 16** Make sure that families' wishes regarding final disposal of the bodies are respected, always in congruence with the current sanitary provisions.
- 17** Allow for funeral and burial rituals in keeping with the circumstances and, thereby, help to preserve memory and pay respects.
- 18** Ensure that the right to freedom of conscience and to religion, as well as to the privacy of the next of kin, are not subjected to arbitrary interference and that any abridgment of these rights passes the test of legality and proportionality.
- 19** Respect the right of family members and loved ones of the victims who die in the COVID-19 pandemic to carry out burial rituals, in accordance with their traditions and worldview, and specific circumstances and recommendations of the health authorities, based on available scientific evidence and adhering to public policy best practices followed in some States.
- 20** Streamline processes of prior, free and informed consultation, appropriately taking into account positions and traditions connected to burial rituals of indigenous peoples and afro-descendant and tribal communities, with specific mechanisms of social participation to guarantee that different religious practices or beliefs are incorporated into the protocols designed for these purposes.
- 21** Establish channels of effective coordination and clear guidelines, using a human rights-based approach, between the different levels of public institutions involved and those whose purview is decision-making about cemetery and morgue management and administration, such as mayors' offices and municipal governments.

Bereavement support

- 22** Establish mechanisms of mental health care in the public and private health system to provide bereavement support to people who have lost a loved one, ensuring the use of technology for the support services and other public policy best practices on the subject matter.
- 23** Communicate the passing of individuals from COVID-19 to the family or support network, with respect, and taking into consideration the religion, spirituality and cultural values of the affected persons.

Funeral home and morgue workers

- 24** Make sure that morgue or similar establishment staff and the interment teams take biosafety precautions at all times and have suitable personal protection equipment.
- 25** Guarantee the protection and limit the exposure of infection of workers and the general community during the transportation, cremation or burial of the bodies of people who died from COVID-19.