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Identifying Migrant Bodies in the Mediterranean

> *Ottavia Ampuero Villagran*

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> POLICY REPORT <

Migration, Social Inclusion
and Peaceful Societies



Identifying Migrant Bodies in the Mediterranean

Ottavia Ampuero Villagran

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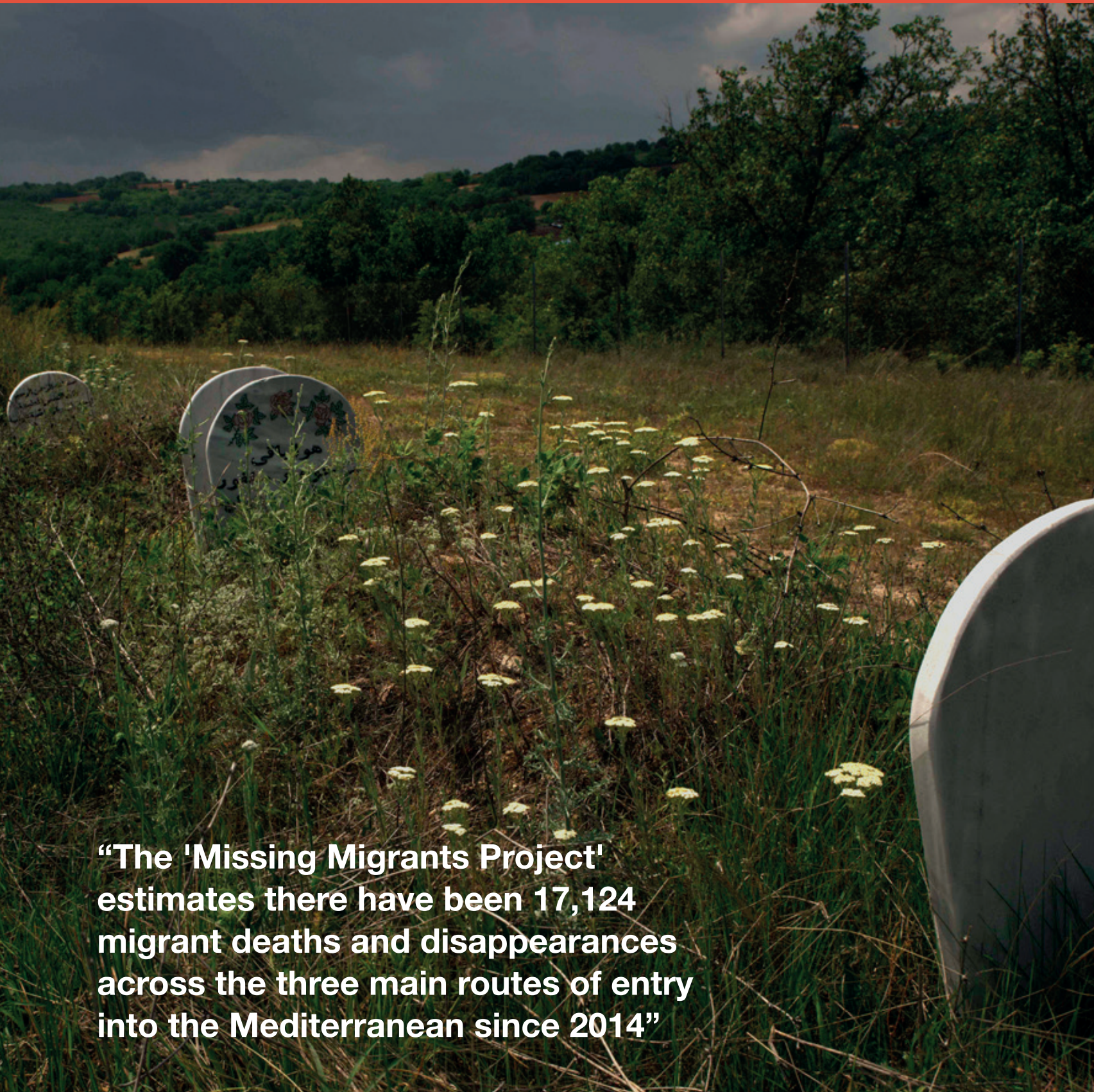
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Institute on Globalization, Culture and Mobility
Sant Pau Art Nouveau Site
Sant Manuel Pavilion
C/ Sant Antoni Maria Claret, 167
08025 Barcelona, Spain

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“The 'Missing Migrants Project' estimates there have been 17,124 migrant deaths and disappearances across the three main routes of entry into the Mediterranean since 2014”

Summary

The reality of undocumented migrant deaths and migrant bodies has been conspicuously absent from border migration narratives and from the rhetoric of many influential actors involved in policy, academia, and the media. Given that the Mediterranean route is the deadliest one in the world (IOM, 2018a), this policy brief seeks to examine undocumented migrant body identification from a human rights perspective that acknowledges the implications on the individuals, the families, and the states involved. The aim is to address the shortcomings of current management and identification efforts in European countries, and to provide practical solutions that can be implemented at the local, national, and international levels.

✦ Some of the migrants who died trying to reach Greece are brought to a cemetery in the village of Sidiro. There, they are laid to rest, mostly in unmarked graves. © Gregory Beals. Sidiro, Greece. May 2018.



Introduction

The International Organization for Migration's 'Missing Migrants project' is widely regarded as the first comprehensive attempt at collating data on "migrants who have died or gone missing at the external borders of states, or in the process of migration towards an international destination" (IOM, 2018b). The data includes, when available, information of the migrants' age, gender, origin, location, and cause of death. It is primarily sourced from IOM, UNHCR and government reporting as well as NGO and media accounts, and it is systematically compiled in a global database from which experts can analyze migration flows and changing trends. In regards to the main three routes of the Mediterranean region, the 'Missing Migrants Project' estimates that there have been 17,124 migrant deaths and disappearances since 2014. This figure represents 59,7% of the global estimate on migrant deaths and disappearances in the same four-year period, which at the time of writing stands at a staggering 28,675.

Other projects have attempted to quantify migrant deaths in this region with varying definitions, scopes, and methodologies, but all the figures produced can only be considered to be "minimum estimates" and "gross undercounts of the true number of lives lost" (IOM, 2017, p. 2). Spijkerboer credits this "dark numbers problem" to the nature of irregular migration in the Mediterranean, which features untraceable and undocumented



individuals taking clandestine routes to circumvent intensified and militarized border controls in low-quality rubber dinghies, even during adverse weather conditions in winter months (Spijkerboer, 2013, p. 10). In these conditions many are dying at sea, likely to never be found or accounted for in official data.



Difficulty of identification

Those that are found will just as likely never be identified. This is partly because of the inherent difficulties of identification in this context. Firstly, there is no readily available information on the migrant's nationality, route, or family relations. Many migrants do not carry identity documents or passports, and even if they do these may get lost or destroyed during irregular travel. Secondly, the involvement of criminal actors such as smugglers or traffickers means that some migrant deaths may be actively covered up as a result of abuse or torture, and certainly never reported (IOM, 2014). Finally, the cause of death for most of these migrants is drowning (as opposed to dehydration, starvation, hypothermia, sickness or lack of access to medical care), which means

✦ Refugees and migrants reach the Greek Island of Lesbos after crossing the Aegean Sea from Turkey. The journey is treacherous, with people crossing in overcrowded and poor quality dinghies, sometimes tackling rough seas and adverse weather.
© Ververidis Vasilis. Lesbos, Greece. October 2015

that most of the bodies will be found as they resurface from the sea floor during decomposition. Even though decomposition in salt water progresses at a relatively slow rate compared to fresh water or land, at this particular stage the body will have begun to lose physical attributes and appendages from the friction and/or from contact with various sea animals, making it harder to identify (Ellingham, 2017).



Current Practices

Identification is also hindered by the practices currently in place in European countries such as Italy and Greece. The lack of national legal provisions for dealing specifically with migrant deaths has resulted in ad hoc practices marked by funding issues, overlapping mandates, and an unsystematic collection and storage of information that would be useful for future identification efforts (Kovras & Robins, 2016). The management of dead migrant bodies is often categorized into five stages that include retrieval, transportation, autopsy, storage and burial/repatriation. Identification is a process that transverses them all, since information should be gathered, exchanged and evaluated at each stage (Mediterranean Missing, 2016).

Off the coast of Italy, the retrieval of migrant bodies is performed by multiple actors including the Italian Coastguard, the Italian Navy, ships from Frontex's new Joint Operation Themis,

merchant ships responding to distress signals, and ships belonging to non-governmental organizations conducting search and rescue missions in the area (Arsenijevic, 2017). Due to limited resources and personnel, rescuing the living is often prioritized over the retrieval of the dead and their belongings. Upon arrival - most frequently in the island of Sicily due to proximity - police officers or forensic experts photograph the bodies of migrants with a code that includes their gender and the date of their retrieval. Coroners reporting to the District Attorney's office will then examine the bodies and collect information on the corpses' primary characteristics (i.e. height, weight, distinguishing marks, tissue samples). Autopsies will only be carried out upon the direct request of the District Attorney, and the requests are usually related to concerns about the actual cause of death. Finally, the bodies are transported from the hospital to be buried in anonymous local graves, which are often covered with earth and marked by stones.

In Greece, the migrant body management process is similar. The national coastguard is responsible for collecting the bodies floating in the Aegean Sea, but also for conducting the investigation for identification and for coding the bodies with the date of retrieval and number of the victim. Coroners prepare the relevant documentation for burial of unidentified bodies and examine the bodies. The examinations involve the collection of tissue samples from which DNA data is extracted. Unlike in Italy where the DNA is dispersed in various institutions involved in the investigation, Greek law stipulates that DNA from all victims be sent to the Forensic Science Division (FSD) headquarters in Athens. Unfortunately, even this rare example of centralized management of identification data is "implemented poorly enough to make the possibility of future

✦ 1. A table filled with items found on the bodies of those who have perished attempting to cross from Turkey into Greece. © Gregory Beals. Alexandroupolis, Greece. May 2018.

✦ 2. Refugees are given help after being brought ashore by a volunteer lifeguard. Another refugee boat approaches having travelled some 1,100km from Turkey, which is visible in the background. © Malcolm Chapman. Lesbos, Greece. September 2015





identifications remote" (Kovras & Robins, 2016, p. 47), since there is no established link between the forensic data and the location of the migrants' graves and no outreach to the migrants' families to inform them of the possibility of sending in their own tissue samples for DNA analysis and comparison.

Considering that identification is essentially being able to match (or "reconcile") post-mortem (PM) data from the unknown body with corresponding ante-mortem (AM) data from registries or families of the missing, the practices currently in place for the management and identification of migrant bodies in the Mediterranean are largely inadequate (GMDAC, 2016). Analyzing the case study of the Italian authorities' identification efforts following three large-scale shipwrecks in Lampedusa will highlight both the flaws of current national efforts and the feasibility of migrant identification as a process in and of itself.



The Italian Case Study

Established in 2007, the Italian National Commission for Missing Persons has been coordinating and monitoring government initiatives in the search for people that have disappeared for more than a decade. Given the unprecedented scale of the shipwreck of 3 October 2011 and the media pressure surrounding it, the Commission was called upon to try to identify the 387 migrants that had lost their lives at sea. Its team of forensics and anthropologists rigorously followed established best practices for the treatment of the dead, systematically collecting post-mortem data from the victims' bodies using a standardized form ("SCHEDA Cadavere Non Identificato - modello p.m.") that includes sections on physical description, distinguishing marks, teeth, belongings, forensic

and photographic evidence. Crucially, the data was then uploaded to the national online database of unidentified missing persons, which is also accessible to families so as to facilitate AM and PM data reconciliation (Piscitelli, 2016).

The collection of ante-mortem data from the victim's relatives was a more complex operation that required utilizing the skills and access of diplomatic and civil society to their full potential. Thus, both AM and PM data collection were multi-stakeholder processes involving government ministries and agencies, consulates and embassies, police units, universities, forensics laboratories (most crucially the Labanof Institute of Forensic Anthropology and Dentistry), and humanitarian organizations such as the Italian and International Red Cross, the International Organization for Migration, the Italian Episcopal Conference, Amnesty International, and Borderline-Europe. In the cases where both sets of data were obtained, the identification rate reached an impressive 58,5% (Olivieri, 2018). For the shipwreck of 18 April 2015, the team sought to identify the approximately 750 bodies that had been submerged for a year within the vessel. These efforts proved that identification is still possible with DNA technology even in the advanced decay or skeletonization stages of decomposition, especially when different scientific approaches are combined in the process.

The case study of the Italian Commission proves that the issue with migrant identification is willingness rather than ability. More importantly, it

❖ A family of refugees arrive on the beaches of Lesbos in inflatable dinghy boats. They are cold, frightened and exhausted, but relieved to have arrived safely. At the height of the crisis, up to 2,000 people arrived to the Greek island each day, and the bodies of migrants who had died during the sea crossing frequently washed ashore.
© Anjo Kan. Lesbos, Greece. October 2015.

proves that European states similar to Italy have the specialized bureaucracy and the technological capacities required to improve their attempts at identifying migrant bodies, especially considering that the EU's budget for the management of external borders, migration and asylum will be increasing from 13 billion to 34.9 billion euros in the coming years. As Prefect Vittorio Piscitelli, head of the Italian Commission, claims, "with a little bit of money, a lot of goodwill and some hard work, it can definitely be done" (Scammell, 2015). The next logical step is to provide this service to as many dead migrants as possible, not just those on large-scale shipwrecks that receive political and media attention. The feasibility of identification only strengthens the human rights argument of properly attempting to identify the migrant bodies for the sake of the individuals, the families, and the states involved.



Rights after Death

At the individual level, it is crucial to consider the existing principles and frameworks that confer rights upon the dead, in particular the right to be identified after death. These principles and frameworks derive from international humanitarian law, international human rights law, international criminal law, and international maritime law, but none of them refer specifically to the treatment of the dead in the context of irregular migration² (Grant, 2016).

The Last Rights Project extrapolated from and collated the aforementioned legal frameworks in its "Proposal for a Statement of the International legal obligations of States" in order to establish the following twelve core international legal obligations on the treatment of dead migrants: to search for all missing persons; to collect the bodies of the dead; to respect the bodies of the dead; to preserve any personal effects of the dead, and to restore them to the next of kin; to take all reasonable steps to identify the deceased and to determine the cause of death; to issue a death certificate; to make every effort to locate and notify the dead and missing; to facilitate the return of the remains of the dead to their relatives if possible; where the remains are not returned to the next-of-kin, they should be disposed of in a dignified and respectful manner, appropriate to the religious and cultural traditions of the persons and bearing in mind the wishes of the next of kin; to record the location of burial and to respect and maintain gravesites; to treat citizens and non-citizens equally in all these actions; to provide special protection to children.

According to the Project, the right to be identified after death is supported by the international human rights case law of the European Court of Human Rights, which has repeatedly affirmed the states' procedural

❖ A mountain of lifejackets and lifesaving devices left by refugees and migrants in Eftalou, Lesbos. Lifejackets, usually sold to refugees by smugglers, were repeatedly found to be fake. Some were filled with cotton wool rather than buoyancy aids.

© Anjo Kan. Lesbos, Greece. February 2016.



obligation to officially investigate deaths or disappearances pursuant to Article 2 of the “Convention for the Protection of Human Rights and Fundamental Freedoms” (ECHR) - the “Right to Life”. The obligation is not geographically bound and, in the irregular migration context, it is also pursuant to Article 3 “Prohibition of torture”, Article 4 “Prohibition of slavery and forced labour”, and Article 14 “Prohibition of discrimination” of the same Convention.

The right to be identified after death can also draw on international humanitarian law (IHL). Although IHL is only applicable to situations of armed conflict, it could be argued that the legal obligation for identification extends to those whose deaths are peripherally connected to the conflicts in question, such as the thousands of refugees that are fleeing from civil wars through the Mediterranean route. Beginning with the 1929 Geneva Convention, a number of comprehensive protocols have been developed for the treatment of the dead and the missing, including the 1949 Geneva Conventions and the 1977 Additional Protocols, the 1988 Rome Statute, and the ICRC Guiding Principles on the Missing. In particular, ICRC Customary IHL Rule 116 establishes that “with a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves”. The common, underlying imperative of these frameworks is that identity and identification is a human right that extends past death. Identity has also been explicitly framed as a “right” in multiple instances, most recently during Interpol’s 1996 UN General Assembly statement on Disaster Victim Identification (DVI) and in ICRC’s 2004 meeting of Interpol’s Standing Committee on DVI - “human beings have the right not to lose their identities after death” (Interpol, 2018).

However, states’ recognition of this human right seems to be dependent on the circumstances surrounding the migrant deaths; the deaths of “regular” migrants (tourists, students, businessmen) in accidents and disasters are met with large-scale international responses that include advanced technological equipment and specialized teams, while the deaths of “irregular” migrants are met with bureaucratic ambiguity and administrative inaction. Dr Simon Robins of the Centre for Applied Human Rights summarized this hypocrisy in the following statement: “If we compare the amount of

resources and attention that have been focused on finding out what happened to the victims of the Malaysia airlines flight MH370 disaster, some 13 jumbo jets worth of migrants have died in the last 18 months, but there has been little media attention and insufficient efforts made to determine their identities” (University of York, 2016).

The contrast is striking, and it emphasizes the different value that societies place on human lives. An undocumented migrant is implicitly considered, as Judith Butler put it, “an ungrievable life, one that cannot be mourned because [...] it has never counted as a life at all” (Butler, 2015). Therefore, more systematic and concerted efforts for undocumented migrant identification would serve as posthumous reparation in three essential ways: they would remedy the state of invisibility that many have been subjected to during their journey by restoring the name, story, and humanity that they had previously been stripped of; they would compensate for rights that were not safeguarded during their life, such as the right to life, liberty and security, or the right to equal protection before the law; and finally, the naming that goes into identification efforts would also push back against undocumented migrant death normalization and the general securitization narrative that surrounds them.

✦ Thousands of people, predominantly Syrians, lived in Akcakale and Harran refugee camps in Turkey. The journey ahead of them into Europe was dangerous and expensive. Behind them, they left death and destruction as the war in their home country raged on relentlessly. © cemT. Sanliurfa, Turkey. September 2015.





Right to Mourn

Identification efforts would also restore the dead migrant's link to his or her family and community after death, stretching far beyond the fence, raft, or desert where he or she was found, to the homes of distant relatives. Even though the person has died, they still exert emotional power over the living. The families have to live every day without knowing the fate of their missing loved ones, and this ambiguity often leads to psychological problems such as anxiety, stress, and depression, as well as psychosocial problems that may be related to the loss of the breadwinner such as increased poverty and social exclusion. It also prevents the families from organizing funerals and resolving legal and administrative issues related to funeral arrangements, remarriages, inheritances, guardianships, and land ownerships (UN GA, 2017).

The hardship that they endure in their home countries as a result of ambiguous loss may force some of these families to migrate themselves (Lageman, 2016), but long distances, dangerous journeys, language barriers, and their illegal status in the EU complicate this plight. Even if they are able to locate the body of their loved one through local authorities that have properly collected and stored data for identification, the high costs of the repatriation of remains means that they cannot afford to return the body to their state of origin and may have to rely on criminal networks that profit on their suffering.

The aforementioned international legal frameworks acknowledge these burdens, starting from the assumption that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State" (UN GA, 1948). In international human rights law, such as the ECHR, inadequate identification efforts have been interpreted as violations of the substantive obligations pursuant to ECHR Article 8 and Article 3, which safeguard the right to private and family life and the right to not be subjected to inhuman or degrading treatment. In international humanitarian law the family's burdens are even prioritized over those weighing on the missing or the dead, as exemplified by Article 32 of Additional Protocol I to the Geneva Conventions ("General Principles for the Missing and dead persons") which states that: "The implementation of this Section shall be prompted mainly by the right of families to know the fate of their relatives".

Given the legal, administrative, and social implications of migrant deaths for the relatives, it seems crucial to incorporate them into the narrative and the process of undocumented migrant identification. This would facilitate access to practical "ante-mortem" information and acknowledge the strong emotional component

✦ Medical Examiner, Pavlidis Pavlos, holds a necklace found on the body of a man who had drowned in the Evros River attempting to pass between Greece and Turkey. The inscription on the pendant reads: "Heart for you". He keeps the items stored in a box in order to help relatives identify the bodies.

© Gregory Beals. Alexandroupolis, Greece. May 2018.

inherent in the passing of a loved one. It would also improve the visibility of the families since - unlike the families of "los desaparecidos" ("the missing") in Argentina and Spain - their dispersion across entire continents does not allow them to exert political pressure to demand accountability, justice, and commemoration. However, the role of the state is not just limited to promoting these activities, as will be made evident in the following section.

State Commitment to Human Rights

States involved in the management of undocumented migrants are likely to benefit from promoting identification efforts. As mentioned throughout this report, European states are legally bound, by a complex system of international treaties, conventions and protocols, to respect the human rights and dignity of migrants that have lost their lives while crossing the Mediterranean. They are legally bound to take all reasonable measures to adhere to the twelve core international legal obligations outlined by the Last Rights project.

The fact that they are not fulfilling their obligation of means has created a dissonance between the values that states proclaim and the actions they take to uphold them. This dissonance has human rights implications because of the

way in which it consistently undermines the rights to human dignity, freedom, and equality of dead migrants. With states choosing to frame undocumented migrant deaths as accidents rather than direct consequences of their intensified border control policies, it is no wonder that critics have gone so far as to call the Mediterranean, for example, a "graveyard of European

values" (Piet, 2015). Developing and implementing specialized policies for the identification of undocumented migrants would provide some much needed coherence to states' approach to migration, as well as facilitate social inclusion by proving to the living migrants they are hosting that their lives are worth the same as those of their own citizens.



Conclusions

Until now, the issue of undocumented migrant death identification has been lost in the wide and complex narrative of migration. But it is important that we begin to consider the human rights implications of ignoring this topic, as well as the inherent value of implementing policies that facilitate identification. There are human rights in life and in death for all human beings, and the consistent denial of these migrants' identity - of their name, their family, and of the life they fought so hard for - through inadequate identification systems should be considered a human rights violation. For the sake of the individuals and their families, and for the credibility of the European project, more can and must be done to address this.

To this end, this report will offer two sets of recommendations. The first set of recommendations addresses the political and institutional steps that could be taken by states to facilitate migrant body identification efforts and ensure the social wellbeing of the families and societies involved, while the second set of recommendations addresses the practical and technical aspects of identification efforts.

✦ Aerial shot of migrants and refugees arriving to a beach near Molyvos on an overloaded dinghy. In these conditions, the Western Mediterranean crossing from Turkey to Greece is incredibly dangerous and can lead to injuries, dehydration, and death. © Nicolas Economou. Lesbos, Greece. November 2015.

Policy Recommendations

Political and Institutional Recommendations

States should establish a permanent, regional, multi-stakeholder Commission for the coordination of both search and rescue activities of missing migrants and management and identification activities of dead migrants. The Commission should begin by assessing national systems and identifying areas improvement. Some of these may be easy to solve, such as the current disconnect in Greece

between the forensic data, the migrants' code, and their gravesite.

States should establish a centralized, regional database that includes all the relevant ante-mortem and post-mortem data. The database should be overseen by the aforementioned Commission so as to ensure legitimate interest for the human rights of affected parties. It should be made accessible to the families of the victims, while also safeguarding their privacy and security through the establishment of firewalls between border control data collection

and identification data collection (Grant, 2015). Data centralization requires the standardization of procedures for body management and identification, so states should implement the international protocols that have been established for the treatment of the dead (ICRC Guiding Principles on the Missing and Interpol's Disaster Victim Identification) and enforce them by training and supporting local authorities.

Civil society should be more extensively incorporated into the migrant body identification process. Non-governmental organizations are currently involved in different capacities (financing multi-religious burial ceremonies, providing psychological support and cultural mediation for victims' families) but their access to migrant communities could also be used to facilitate the retrieval of ante-mortem data from victims' families.

Practical and Technical Recommendations

In some countries, secondary identification methods such as visual identifiers (i.e. scars, tattoos, personal descriptors) are not recognized as legally valid identifiers because they are unreliable when compared to primary identifiers (i.e. DNA data, odontology, fingerprints). Policy-makers should consider the difficulties of obtaining ante-mortem data in the context of irregular

migration and proceed to legalize secondary and/or combination methods of identification in these scenarios (Olivieri, 2017).

Investigators involved in identification efforts should aim to utilize the global influence and reach of social media to its fullest potential. Although it is an unconventional approach, it has been proven to work. The Mediterranean Missing project recounts a situation in Sicily where a prosecutor was able to identify 22 out of 24 bodies by setting up a Facebook page and collaborating with the local Syrian migrant community, which is more connected than ever before.

Research in the field of marine taphonomy should be promoted at the national and regional levels, since the interacting factors affecting decomposition of human remains in water are still largely misunderstood. Promoting research in the field of forensic odontology would also be useful, since it is a field that can construct a biological profile (i.e. estimated age, ancestry, country of provenance and residence, etc) even in the absence of ante-mortem dental data (Pinchi, 2017).

States should invest in technologies that can facilitate the management and identification of migrant bodies in forensic humanitarian action, such as FTA paper that allows for long-term storage of DNA samples, remotely operated vehicles (ROVs) for the collection of bodies under water, and digital autopsy technologies in case of commingled remains, disarticulated appendages, and/or disfigurement (Jackowski & Thali, 2009, p. 184).



✦ A soft animal toy animal washed ashore on a beach in Turkey. Although less migrants are attempting to cross across the Mediterranean, the journey is getting more deadly. Currently, there is one death in every 18 arrivals. © Orlok. Canakkale, Turkey. March 2017.

“There are human rights
for all human beings in
life and death”



✦ After fleeing war in Syria, distressed refugee children
cross a cold, rough sea in an overloaded dinghy.
© Nicolas Economou. Lesbos, Greece. October 2015.

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Endnotes

¹ For example, the UN High Commissioner for Refugee's "The Mediterranean Refugees/Migrants Data Portal", the "Deaths at the Borders of Southern Europe Database", and the "Migration Data Portal".

² The "Mytilini Declaration" that was agreed and signed by a various human rights organizations on 11 May 2018 has sought to remedy this legal vacuum by calling upon states to act for the "Dignified Treatment of all Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys".

This report aims to contribute towards the attainment of the Sustainable Development Goals (SDGs), with particular focus towards:

- **SDG 10** - Reducing Inequalities: Reduce inequality within and among countries.
- **SDG 16** - Peace, Justice and Strong Institutions: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.
- **SDG 17** - Partnerships for the Goals: Strengthen the means of implementation and revitalize the global partnership for sustainable development.

A pre-eminent research centre, the United Nations University Institute on Globalization, Culture and Mobility (UNU-GCM) has been at the forefront of knowledge on migrants' socio-cultural integration policy since it was founded in 2013.

Focusing on the phenomena of migration and media as hallmarks of the era of globalization, the UNU-GCM conducts research to inform sound policy-making and good governance. It aims to pioneer transformative ideas, serving to ensure human rights and dignity are upheld for all and facilitating the sustainable economic growth of societies.

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