

Analysis of Best Practices on the Identification of Missing Migrants

*Implications for the Central
Mediterranean*

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for IOM's Global Migration Data Analysis Centre

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Central Mediterranean Route Thematic Report Series

The Central Mediterranean Route (CMR) Thematic Report Series, launched by IOM's Global Migration Data Analysis Centre (GMDAC), aims to provide accurate, comprehensive and policy-oriented information on key issues related to migration on the Central Mediterranean Route. The series is published as part of the "Safety, Support and Solutions" programme implemented by IOM, funded by the UK's Department for International Development (DFID). The programme's main objective is to contribute to safer and more orderly migration along the CMR, resulting in fewer deaths and less suffering. The programme includes activities in ten countries – Algeria, Burkina Faso, Côte d'Ivoire, the Gambia, Guinea, Libya, Mali, Morocco, the Niger and Senegal. IOM's GMDAC aims to disseminate information products to policymakers and other stakeholders on mobility dynamics and relevant topics along the CMR, with a view to improving knowledge and understanding of these and enabling actors to effectively manage emerging migration trends for the benefit of countries and migrants. Thematic reports such as this one will be regularly published throughout the programme period.

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Over the last decade crossing the Mediterranean has become one of the deadliest journeys in the world for migrants, with nearly 18,500 migrants having died crossing the Mediterranean since 2014. In 2017 and 2018, more than 4,100 people have died on the Central Mediterranean route (CMR), constituting 77 per cent of migrant deaths in the Mediterranean, without considering the many bodies that are never found. As such, the CMR is at the heart of the epidemic of death and disappearance in the Mediterranean. The vast majority of bodies found are not identified, with net identification rates of migrant bodies around 22 per cent between 1990 and 2013 (Deaths at the Borders Database (DatBD), 2015).

For every migrant body retrieved from the sea or found on the shore and not identified, there is a family living with ambiguity, not knowing if their missing loved one is dead or alive. Narratives around missing migrants focus not on individuals who are missing, but on bodies that are found, characterizing the challenge they present as a technical one of labelling these anonymous bodies, rather than of addressing the range of needs of the families who are missing the people those bodies represent. The primary need of families is to know if their loved one is dead or alive and, in any case, to know their whereabouts. Identifying the dead, whilst constituting the worst answer for a family searching for a missing person, offers closure: an end to ambiguity and a chance to honour their relative.

This analysis focuses on the challenges faced in identifying dead migrants on the CMR and informing the families of the deceased. Migrant deaths at international borders and on migratory routes have become distressingly commonplace in a world where so many are on the move; as a result, there is now a body of practice in identifying migrant bodies. This analysis reviews existing practice to identify those who die crossing borders globally with a view to contributing to a more effective identification process in States on the CMR. This is done in light of Objective 8 of the Global Compact for Migration, which calls on States to “Save lives and establish coordinated international efforts on missing migrants” (United Nations (UN), 2018) (see Annex I). Here we seek to use the results of the analysis to make a set of recommendations to increase the effectiveness of work on identification, the goal of which is understood as addressing the needs of families of missing migrants to know the fate of loved ones. The analysis focuses on bodies found on Italian territory, as the principal destination of the CMR and the State managing the largest number of bodies.

Current practice in identifying missing migrants on the CMR

The vast majority of the few identifications of migrant bodies currently made in Italy are not made scientifically, but rather visually, by families seeing the body itself or photographs of the body. Not only is this likely to produce false identifications, but it limits identification to the cases where families are able to be present near sites of shipwrecks in Italy. For three high-profile shipwrecks, the Italian Special Commissioner for Missing Persons – who is, in principle, responsible for all identifications of migrant bodies – has mobilized a high-quality forensic operation. Even in these limited cases, where comprehensive forensic data have been collected from migrant bodies, few scientific identifications have been made due to an inability to collect ante-mortem data from families of the missing. This is due both to the lack of outreach by the Italian authorities and to the absence of a visible and centralized entity that provides support, feedback and transparency for families reporting missing persons.

In the majority of cases in Italy, the quality of post-mortem data collection that can advance scientific identification is poor. In particular, non-forensic data from shipwrecks that could be relevant, such as testimony from survivors and personal effects of the dead, are not collected systematically. Such data, alongside the engagement of anthropologists, can inform the construction of a cultural profile that can aid in identifying where migrants come from, and so increase the probability of accessing ante-mortem data that can allow identification.

Successful identification demands effective management of data and in Italy data is currently insufficiently centralized. Among European States, effective transnational sharing of data demands the development of both a standard for managing data and a protocol for sharing cases where matches are sought, and this process can be supported by relevant international agencies. Ideally, Tunisia and Libya should be integrated into any transnational architecture developed in Europe for managing ante- and post-mortem data, as a precursor to a broader engagement with other States, including those of migrant origin.

The idea that there is a “model” for identification that can be replicated in the Mediterranean context must be rejected in favour of customized approaches. Nevertheless, the challenges in identifying bodies on the CMR, particularly in Italy, are considerable, and there are lessons to learn from what is done elsewhere.

Global practice in identifying missing migrants

Practice in the identification of migrant bodies has been most developed in the Americas, due to the long migration route from Central America, through Mexico to the United States. Those who die heading north include large numbers who fall victim to the extreme violence of criminal gangs and those who die in the deserts of the US border region, with Mexican authorities alone acknowledging more than 40,180 reports of missing persons received from 2007–2018, of whom an unknown number are migrants. Official data also shows that 36,708 unidentified bodies have been retrieved.¹ Identifying the bodies of those who die while migrating is complicated by the

¹ These figures were shared by the Mexican National Search Commissioner in January 2019 (Secretaría de Gobernación).

jurisdictional complexity of the federal States of the United States and Mexico, demonstrating that where a migrant has crossed not one but many national borders, local, State and national mechanisms are insufficient.

Approaches to identification have included State and local institutions, such as the Pima County Medical Examiner (PCOME) in the United States, which has pioneered the development of standards in post-mortem data collection in Arizona. More than this they have understood that to access relevant ante-mortem data demands the development of a cultural profile of the dead that can guide efforts to find their family. PCOME has also demonstrated the value of collaboration with civil society, working closely with the Colibrí Center for Human Rights. More than any State institution, a non-governmental organization (NGO) like Colibrí can effectively access the families of the missing and can work in a range of geographical jurisdictions – in both the United States and abroad – to find families and collect ante-mortem data from them. As a result, PCOME has unprecedented success rates in identifying migrant remains, with more than two thirds of bodies scientifically identified (Reineke, 2016).

The Mexican State has demonstrated how special institutions can advance identification through its creation of a Forensic Commission and a Foreign Support Mechanism that allows the Mexican judicial system to work abroad. The Commission seeks to address three massacres that took place in the north of Mexico between 2010 and 2012 where victims were largely migrants and is mandated to exhume, identify and return the mortal remains to their families. The innovation of this approach lies in both the direct engagement of civil society groups – including those made up of families – by a formal State body, and in the collaboration of State-appointed and independent forensic experts.

Perhaps the most comprehensive initiative to advance data collection and sharing around identification in the Americas is the Border Project, led by the Equipo Argentino de Antropología Forense (Argentine Forensic Anthropology Team, EAAF). The Project has collected 3,436 family reference DNA samples since 2010 from El Salvador, Guatemala, Honduras and some Mexican states with the involvement of family associations across the region. These have been stored in databases which also centralize post-mortem data from unidentified bodies, collected by both governmental and non-governmental organizations, facilitating more than 198 identifications. The Border Project catalyses a transnational approach using both State and non-State collected data, representing an unprecedented collaboration between civil society and States.

Key recommendations to improve the identification of migrant bodies on the CMR

European States and regional institutions should:

- Collaboratively develop guidelines outlining both their obligations around the identification of the migrant dead and technical standards to do so, as well as a standard for managing and sharing data transnationally;
- Offer technical and financial support to southern European States and develop coherent programmes of support for forensic capacity in Tunisia and Libya.

The Italian authorities, under the auspices of the Special Commissioner for Missing Persons, should:

- Reshape operations of the Office of the Special Commissioner in a family-centred way, to ensure his office is visible, accessible and welcoming to families searching for missing loved ones;
- Develop standards that ensure the comprehensiveness and quality of all data collected from bodies and shipwrecks in which migrants die, including personal effects and witness testimonies;
- Ensure the appropriate resourcing of forensic staff and facilities such that all bodies found are subject to examination consistent with existing international standards as well as any relevant regional standards;
- Seek to work in close collaboration with civil society and relevant diaspora communities, in Italy and elsewhere, to leverage their relationships to access families;
- Construct a “cultural profile” of the dead on the basis of the ensemble of post-mortem data that can guide efforts to identify potential families of the dead;
- Be proactive in sending personnel to States from which migrants come to actively identify families of missing migrants and collect ante-mortem data;
- Collect, manage and centralize all relevant data under the aegis of the Special Commissioner, with data ownership and control well-defined and -managed according to EU data protection law;
- Routinely seek to confirm visual identifications scientifically, as an integral part of the creation of a national system of systematic data management.

Civil society and international agencies should:

- Support States to develop data collection and sharing protocols and to share ante-mortem data with the Italian authorities;
- Support existing family associations and the creation of new organizations;
- Develop approaches that use social media to access families of the missing and finding ways to share these data with the concerned authorities.

INTRODUCTION

1

CHALLENGES IN THE CENTRAL MEDITERRANEAN

Over the last decade, the Mediterranean has become the deadliest border in the world for migrants to cross in terms of recorded deaths. Whilst neither States in the region nor the EU systematically record data on migrant fatalities, according to those collected by the IOM's Missing Migrants Project, more than 18,000 migrants have died seeking to crossing the Mediterranean since 2014 (IOM, 2019). These data are however incomplete, with no way to record those whose remains are never found, and thus represent a lower limit on such deaths. In the last two years (since the start of 2017), more than 5,600 deaths have been recorded, of which more than 4,300 died on the Central Mediterranean route (CMR), most typically departing from Libya and aiming to reach Italian territory. This means that more than three of every four deaths recorded in the Mediterranean since the start of 2017 have occurred in the Central Mediterranean. As such, the Central Mediterranean route is at the heart of the epidemic of migrant death and disappearance in the Mediterranean.

The vast majority of bodies found are not identified. The only rigorous measure of identification rates in Italy has been made through a thorough study of death registrations and for the period 1990–2013 indicates identification rates of migrant bodies of 22.1 per cent (DatBD, 2015). As with the failure to count the number of migrants who die, there is also little effort to collect and manage data that could reveal how many of those are identified.² For every migrant body retrieved from the sea or found on the shore and not identified, there is a family living with ambiguity, not knowing if their missing loved one is dead or alive. For these families, their loved ones are missing, having left home and not having been heard from since. In the absence of information about the fate of relatives, families live with the trauma of ambiguous loss and a range of emotional, psychological, social and economic challenges as a result.

This analysis will focus on the challenges faced in identifying dead migrants on the Central Mediterranean Route and informing the families of the deceased. It is driven by an understanding that the needs of families of the dead, living with no knowledge of their relatives' fate, can only be addressed through identification. It will review existing practice globally that could contribute to a more effective identification process in States bordering the CMR, reflecting on what is being done to identify those who die crossing borders elsewhere. This will be done in light of Objective 8 of the Global Compact for Migration, which calls on States to “Save lives and establish coordinated international efforts on missing migrants” (UN, 2018) (see Annex I).

This report seeks to use the results of the analysis of both challenges faced on the CMR and best practices identified to make a set of recommendations to increase the effectiveness of work on identification, the goal of which is understood as addressing the needs of families of missing migrants to know the fate of loved ones. The analysis will focus on bodies found on Italian territory, as the principal destination of the CMR and the State managing the vast majority of bodies. It will also however look at bodies found elsewhere on the route, including on the territory of Malta, and those that are retrieved on the North African coast (Libya, Tunisia), and the status and challenges of identification in those contexts.

² The lack of recording of border deaths is also mentioned in Tapella, Mirto and Last (2016).

METHODOLOGY OF THE STUDY

Two principal approaches to data collection are taken in this analysis. First, a review of relevant literature was made, including relevant legal frameworks and standard-setting exercises, statements made by concerned governments and intergovernmental institutions, media reports, empirical research with both families of missing migrants and around policies and procedures for the collection and management of data relevant to identification of migrant bodies. Second, interviews were made with concerned actors to inform both the analysis and the recommendations to be made. These included: academics, researchers and activists working on the issue of migration on the CMR in general, and missing migrants in particular; persons working on the identification of migrant bodies on the CMR alongside State authorities; academics, researchers and activists working on the issue of missing migrants in other contexts who can share their experience.

Data collection was motivated by the following research questions:

- What is done to identify migrant bodies found on the CMR, and what are the challenges in ensuring that all bodies are identified?
- What approaches are being taken to identify migrant bodies in other contexts and what lessons for the CMR can be learned from these?
- How can global experience be incorporated into current practice on the CMR to increase the fraction of bodies that are identified?

Best practices should here be understood as approaches that have been positive in some contexts. These practices can be used as a starting point and should be reinterpreted in ways that are relevant to the Central Mediterranean. Best practice can be seen in two distinct ways. First, there is structural best practice, that is approaches that have emerged from widespread policy and practice. Second, there is case-based best practice, where a particular approach has been taken in a certain case, often at variance with usual practice in the context.³ In such cases innovation can often be demonstrated or tested. Most of the practice discussed here is in the first category, largely a result of the difficulty in accessing deviations from normal practice that are often not well documented.

It is important to understand that not only are there many differences between the contexts discussed here and the situation in the Mediterranean, but that the idea that there is a “model” that can be replicated in the Mediterranean must be rejected in favour of customized and contextual approaches. Even within the global approach to identifying missing migrants in the Central Mediterranean, it is likely that different strategies will have to be used, using different methods and tactics in different States – and even in different regions of the same State – that pose different challenges, and adapting, for example, ante-mortem data collection to the wide range of contexts and conditions in which it will have to be collected. It is also clear that the only approach likely to be successful is one that seeks to work with concerned States and must be developed in an evolutionary and collaborative way with them. As such, the proposals and recommendations made here are signposts as to the direction such work can take and not a fixed prescription for what must be done. It should also be noted that identification rates (poorly measured everywhere) are nowhere very high – demonstrating that even best practice on this issue remains far from ideal practice.

³ An example is the use of social media in identification, discussed in an Italian context in Section 7.1.

The focus of this analysis in terms of best practice is the Americas, and in particular efforts to identify those who die on migratory routes that begin in Central America and pass through Mexico heading for the United States. Practice around identification in much of the world – notably on land routes in Africa and both sea and land routes in Asia – barely exists, as many States have both political and technical barriers to effective and comprehensive identification. The reason that practice is more sophisticated in the Americas may arise from the additional complexity in the European case, where migrants arrive from both Asia and Africa from dozens of different countries. It may also be the result of very different political environments, where in contrast to the language of “crisis” around migration in Europe, the Americas have always been lands of migration – notably as destinations – and with the exception of the United States, migrants have not necessarily been stigmatized.

1.2. IDENTIFYING MIGRANT BODIES

Textbox 1: Outline of requirements for data collection and management to enable identification of migrant remains

The identification of unidentified bodies is reliant on a three-step process. Each step involves different actors and requires a different set of skills:

- (a) **Collecting post-mortem data:** Law enforcement authorities generally undertake the examination of the remains of an unidentified body as part of their investigation, collecting and storing post-mortem data. Post-mortem data refers to data collected from and around the body, including DNA, identifying features of the body, possessions and witness statements from a shipwreck.
- (b) **Collecting ante-mortem data:** Ante-mortem data consist of DNA from a family member, medical reports, such as dental records, and family testimony about the missing person: these can then be compared with post-mortem data from unidentified remains. There are significant challenges in accessing and collecting ante-mortem data, likely demanding a comprehensive outreach programme targeting families in countries of migrant origin.
- (c) **Comparison:** The comparison of ante- and post-mortem data enables the identification of those who have perished at sea or gone missing. It is however dependent upon the appropriate management and sharing of relevant data. Mechanisms and agreements for data sharing must typically be in place between a range of institutions both in States managing bodies and others.

Successful identification requires a systematic collection of different types of data and their respective management (See Textbox 1). Identification typically occurs by bringing together post-mortem data from a body (for example distinguishing features, material effects such as SIM cards, wallets and identification documents, DNA data, witness testimony) with ante-mortem data from families of the missing (a description of the missing, DNA samples, etc.). An effective

system is one that collects data in a standardized way,⁴ and stores them in a centralized database that facilitates the sharing of these data with actors in other institutions or countries, allowing for ante- and post-mortem data matching. Scientific methods should be used with primary identifiers, such as DNA sampling, odontology or fingerprints, supported by analysis of other post- and ante-mortem data that can support the identification hypothesis to which they lead.⁵

Effective identification demands that thorough post-mortem reports are prepared, personal items found with the body are collected and recorded, survivors of shipwrecks are interviewed, DNA profiles are made, and all information is archived in a traceable and accessible way. Beyond the purely technical specification of requirements on data collection and storage, there is a need for administrative clarity, in terms of which actors and agencies are responsible for which data and how these data are centralized.

For both DNA-led approaches and visual identification (currently the primary form of identification in Italy), in order to complete the identification of a body, the engagement of family members and their collaboration in the identification process is the fundamental requirement. It is also necessary that families be engaged beyond ante-mortem data collection, in order to share information when an identification is made and to repatriate remains where families seek this. This demands not just contact with the family, but ideally the building of a relationship with the institution managing the search for their loved one, that can facilitate regular updating of the status of the search and build confidence in the final result obtained.

1.3. | FAMILIES OF THE MISSING AS DRIVERS OF IDENTIFICATION

The crisis of migrant deaths in the Mediterranean has prompted media attention on the shocking reality of shipwrecks and the bodies they produce, but relatively little focus on the human impacts on the families of the dead who are awaiting news of their loved ones. The families of dead migrants are also the victims of this humanitarian disaster and yet the impacts on them are largely unknown. They remain unrepresented in discussions about the management of bodies and the broader crisis, and largely unable to engage with the authorities who can identify their loved ones. People are missing because they are missed: this is the fundamental relational definition of what it means for a migrant to be “missing” and so demands an engagement with the families of the missing.

Narratives around missing migrants focus not on those who are missing, but on bodies that are found, turning a problem that is predominantly one for families and communities in low-income States and the global South into one that emphasizes rich States of the global North that are destinations for migration. This lens, which incarnates the problem of missing migrants exclusively in the bodies found on the beaches of the Mediterranean, risks characterizing the challenge as solely a technical issue of labelling these anonymous bodies, rather than one of addressing the range of needs of the families who are missing the individuals these bodies represent. It is also crucial to understand that many of the missing are not dead but are among those detained, trafficked and enslaved at some point on the migration route. Families often seek to deny the possibility of death

⁴ See for example Interpol's Disaster Victim Identification (DVI) forms, available from www.interpol.int/INTERPOL-expertise/Forensics/DVI-Pages/Forms (accessed 4 March 2019).

⁵ Secondary identifiers are for instance detailed personal descriptions, medical characteristics or personal belongings that are found on the body.

of their loved one and that possibility must be respected by those who work with families. Here, we are addressing a subset of missing migrants: those whose bodies have been found, and so a presumption of death is a starting point for this analysis.

Those families who suffer the impact of a migrant death in the Mediterranean that is never acknowledged or confirmed reflect the situations and pressures that drive migration. They find themselves in zones of conflict, such as the Syrian Arab Republic, Afghanistan and Iraq, where those who can have fled to safer regions. They also find themselves in States that are failing, where the economic and security situation is precarious, such as Eritrea and the Democratic Republic of the Congo. However, the single factor that most links these families is that they are living in situations of poverty and lack of opportunity, where the logical decision for a young person is to try to leave. Such families are characterized then by the fact that they are spread across several continents, that they are poor, and that they are often marginalized, both globally and within the often highly unequal States in which they live. As such, they lack political voice or power, and this is reinforced in debates and action over the issue of their dead and missing loved ones: families are excluded from any agency over approaches taken to the bodies of dead migrants and the collection and sharing of information that is of crucial importance to them.

Some empirical work has been done with families of missing migrants to understand their needs, most notably a study that focused on families missing loved ones in the Mediterranean (Ben Attia et al., 2016a; International Committee of the Red Cross (ICRC), 2013; ICRC, 2014). This confirms research with families who have missing family members due to other circumstances⁶ that the primary need of families is to know: they seek closure through information concerning the fate and whereabouts of loved ones. They want to know if the missing are dead or alive, and in any case where they are:

“ We don't know anything at all about him since that day. My heart is broken [crying]. He is my eldest son and I swear my heart is broken. I wish to see him or hear his voice and then I will die happy. I don't want anything from life but to hear his voice. [...] The problem is I don't know where he is. I would feel better knowing his location. The problem is he is missing. I lost him. It's absolutely hard. I would feel better knowing where he is. My heart is broken and there are thousands who are missing. We don't know where they are. If they are alive or dead. Completely vanished”.

(Mother of missing Syrian man, quoted in Ben Attia et al., 2016a)

If those missing are dead, families need their bodies to be repatriated so they can be honoured and buried where families can visit them, and they can take their place as a part of their community.

“ We would like his body, I'd like my brother. Even a part of him, it would relieve us to bury him here in his country among people who know him and love him. But I'm convinced that he's alive, and I need an unalienable proof so that I admit his death. I don't want to say that he's dead, my brother is alive”.

(Mother of missing Tunisian man, quoted in Ben Attia et al., 2016a)

⁶ A range of needs assessments have focused on the families of those missing in conflict and political violence, including Robins (2013); ICRC (2016); ICRC (2013).

Addressing these needs requires identification of the body but must begin with identification and recognition of the families of the missing, not least since scientific identification of remains is likely to require ante-mortem data from a relative of the dead.

The impacts on families of having a missing relative are many. While a death can be mourned, disappearance is something that cannot be understood in the light of everyday experience, trapping family members in a situation they struggle to make sense of. The families interviewed in the Mediterranean Missing study demonstrated a range of symptoms associated both with the impact of trauma and of ambiguous loss, including sadness, sleep disturbance and dreams of the missing, anxiety and hypervigilance.⁷ They reported a sense of stasis, a feeling that life had stopped since the person went missing. A minority reported that they had psychiatric problems that they linked to the disappearance and were receiving treatment for them. Having a missing relative gave rise to family conflict, with individuals isolating themselves and neglecting relationships with family, to pursue an obsessive interest in the missing person. In many families, there were divergent opinions as to what had happened to their missing relative, fuelling family conflict and preventing the missing person being discussed.

Missing someone from the family was also seen to impact on family roles, with women in particular having to take on greater responsibilities in homes where men, particularly husbands, are missing. Women also reported becoming a target for harassment where a husband is missing, as well as seeing their identity challenged since their status as wives or widows is ambiguous. Wives of the missing reject any possibility that they could remarry without definitive news of their husbands. Families also reported challenges to livelihood, as families were often left without the economic support of young men who were potentially their most productive members.

The price paid for those buried unnamed in Italy and elsewhere is the trauma of the families they have left behind. The invisibility of families, however, also plays a role in frustrating identification, which requires that post-mortem data from the body be matched to ante-mortem data from families: as long as European States have no contact with affected families nor routes to accessing them in States of migrant origin and elsewhere, this is impossible. This demands that families be put at the centre of the process, and efforts made to make them visible, not only for technical reasons, but politically – such that their voices can be heard and used to advocate for every effort to be made to identify the missing.

A fundamental challenge to the collection of ante-mortem data, or indeed the building of any relationship with families of the missing, is that in some cases the fact that a relative has left the country could be potentially dangerous for them. In Eritrea, where young people often flee compulsory military service, and in the Syrian Arab Republic, where leaving the country may imply support for rebel groups in the ongoing civil war, that a relative is a migrant is something that may have to be concealed from the authorities. As such, families must be approached discreetly, and ways found in which confidentiality and potentially a degree of anonymity must be maintained.

Putting families at the centre of addressing the issue of missing migrants implies a process beyond the purely technical one of giving bodies identities. Rather, it demands that States who have the responsibility to make identifications build relationships with families and their organizations and to

⁷ Hypervigilance is an enhanced state of sensory sensitivity accompanied by an exaggerated intensity of behaviors whose purpose is to detect threats.

make them partners in the process. Thus, a key element of the investigation of a migrant death is the identification of potential family members of the victim, meaning any family who is missing a loved one who may have died on the Central Mediterranean Route. Identifying such families permits keeping them informed of progress with the investigation, or lack thereof, and ultimately enabling notifications of death to families in a way that is sensitive to their needs.

**IDENTIFYING MIGRANT
BODIES ON THE CENTRAL
MEDITERRANEAN ROUTE**

2 **—**

CURRENT PRACTICE IN ITALY⁸

Approaches in Italy today are framed by the experience of the shipwrecks of 3 and 11 October 2013, in which it is estimated that more than 600 lives were lost. Despite many previous deaths en route to Sicily, these shipwrecks received great public, political and media attention due to the scale of deaths involved. Their significance is reflected in the understanding of these events as mass disasters, which activate a different set of responses to the deaths that occurred earlier – and continue to occur. Following these events, Italian actors adopted new approaches, routinely taking biological reference samples that allow for DNA testing. There are currently two routes to identify a deceased person in Italy: visual identification through relatives examining photographs or bodies, and methods that rely on primary identifiers, principally DNA sampling.

In 2007, the Italian government established a dedicated office in the Ministry of Interior dealing with issues related to missing persons, not only those who went missing during migration. The Special Commissioner for Missing Persons⁹ was created as the central institution coordinating the efforts of the different actors involved in identification and outreach to families. Whilst nominally responsible for all missing, including all missing migrants, in the context of migration-related deaths the Office of the Commissioner has specifically dealt with three shipwrecks: the incidents of 3 and 11 October 2013 and the case of 18 April 2015. It should be noted that because of this focus, the Commissioner is not deeply involved with the majority of historic cases of migrant bodies found in Italy, or with the caseload of ongoing cases as the dead continue to be found.¹⁰

There remains ambiguity over both the understanding among Italian officials of the State's responsibilities around the migrant dead and the political will of the authorities to identify them, complicated by the practical challenges of establishing procedures and coordination among national and international actors. For example, a contradictory approach has been adopted by prosecutors during the investigations opened after the October 2013 and April 2015 shipwrecks, demonstrating the common challenge with missing migrants of encountering different approaches from different jurisdictions within the same State. In the former case, the public prosecutor from Agrigento recognized that it is “necessary to identify the bodies, to withdraw their DNA and to compare it with that of relatives, because it is a duty to guarantee the victims’ relatives’ right to bring a civil action” (Siccardi, 2018). In the latter case a public prosecutor from Catania stated that the recovery of those bodies would not be useful for the purpose of the investigations (di Francesco, 2015). That the Italian State has undertaken such activities at an institutional level demonstrates an openness, relative to the European context, to the identification of the migrant dead. Yet, as demonstrated below, this openness remains restricted to partial initiatives, rather than allowing for the creation of a well-resourced, structured institutional response that can address the entirety of the caseload. This mismatch is one factor contributing to the continuing low rate of identifications of migrant bodies in Italy.

⁸ The author would like to thank Giorgia Mirto for discussions and input that contributed to the preparation of this section.

⁹ *Commissario Straordinario per le Persone Scomparse*. See www.interno.gov.it/it/ministero/commissario-straordinario-governo-persone-scomparse (accessed 4 March 2019).

¹⁰ Though the Commissioner's Office does compile a list of missing persons reports, including migrants and unaccompanied children when reported, every six months. See for example www.interno.gov.it/sites/default/files/modulistica/xix_relazione_semestrale.pdf (accessed 4 March 2019).

Post-mortem data collection

Challenges with examination procedures of bodies in Italy begin with the fact that an internal examination or autopsy is not mandated.¹¹ Due to logistical challenges and a lack of standardization, the quality of post-mortem data collection is poor in many cases, and there is a need to standardize forensic examination and autopsy to ensure that basic quality criteria are met (Ben Attia et al., 2016b). This will likely require additional resources to ensure relevant equipment (such as adequate refrigeration) and facilities are available. For example, Lampedusa has no facilities for storing bodies and so temporary burial is the only option available for migrant bodies brought to shore. Cause of death is determined through external examination and reports from coast guards and/or police involved with the incident: only if the body is very decomposed, if there are signs of violence, or if the usual signs of drowning, dehydration, starvation or hypothermia are not present, is it then recommended in the cadaver inspection report that the public prosecutor should order an autopsy (Last, 2018). An autopsy may be the only chance to determine the sex, race and estimated age of a corpse, important details for identification, particularly where a body is highly degraded, for example following an extended period in the sea.

An additional challenge in Italy is that provincial authorities (*prefettura*) have considerable discretion to design their own systems and procedures in accordance with the needs and capabilities of their province. “In practice, this means that national regulations about investigating and recording unnatural deaths are implemented differently by different actors, in different provinces, often depending on the working relationships that exist between local authorities from province to province” (Last, 2018:51). For instance, in the province of Lecce, the *Procura* (the Public Prosecutor’s office) established a special unit comprising representatives from the different police sections and the coast guard who meet every time there was any arrival of a boat carrying irregular migrants, dead or alive, in their jurisdiction, in order to exchange information about the living and the dead and coordinate their response. In Agrigento, for example, which includes Lampedusa, the *Procura* often cedes investigative authority to the coast guard or police.

For a body to be identified it must first be retrieved and, in the Central Mediterranean crossing, an unknown number are never found. Many bodies are not retrieved due to the legitimate prioritization by the coastguard of saving the living. However, if a body is not retrieved, then it is highly unlikely families can ever receive definitive information about the fate of their loved one. Despite significant efforts in the cases of the three aforementioned shipwrecks, it would be valuable for the Italian State, inter alia, to make a commitment to make every reasonable effort to retrieve all bodies found at sea.

In addition, contextual, non-forensic data from shipwrecks are not systematically collected. Of particular relevance would be the systematic collection of testimony from survivors, either through anonymous interviews conducted by the authorities or by non-governmental actors who ensure collection and storage of data for humanitarian identification, separate from that for law enforcement. Greater efforts must also be made to retrieve the personal effects of the dead. Such data, alongside the engagement of anthropologists, can inform the construction of a cultural profile that can aid identification of the origins of the migrant and increase the probability of identification. Current practice is driven by the desire to prosecute smugglers and “manage” irregular migrants, which ensures that collection is made by law enforcement whose primary interest is not always identification.

¹¹ The Italian criminal code mandates autopsies only when there is suspicion that the death is the consequence of a criminal offence.

Textbox 2: A story of the challenges family members face in finding a loved one's body.

An example of the challenges families face in making an identification is the story of Francis Ipbishe and his long attempt to identify the body of his wife Mary, as reported in the Guardian this year. During their boat journey to Italy, as they tried to reach a rescue boat together, Mary fell into the water, Francis feeling his pregnant wife's hands slip away from where they were holding him. Her body was later recovered by the rescue boat and Francis had to spend three days on the same boat with his wife's body as survivors waited to enter Italy. When they arrived in Sicily, Francis was sent to the very north of Italy and not invited to identify his wife's body. He spent a year searching for his wife's burial place making inquiries as widely as he could, including approaching the Special Commissioner and the LABANOF Institute, none of whom were able to help him. Francis finally found answers and support from a local civil society actor who had a fortuitous contact with the doctor who had examined Mary's body. Francis travelled to Sicily, where in Palermo he was shown seven photographs of bodies in various stages of decomposition. Number three was Mary: "I recognised her from her braids," he recalls. "I used to do them for her, as I did the day before we left Libya." He was shown to her grave site, which he tidied up as best he could and spent the morning praying over it.

(Tondo, 2018)

Ante-mortem data collection

The collection of ante-mortem data to support the three shipwrecks with which the Italian Special Commissioner for Missing Persons is dealing is supported by the Red Cross/Red Crescent Movement. The International Committee of the Red Cross (ICRC) has signed a Memorandum of Understanding with the Commissioner to collect ante-mortem data, using the global presence of the Red Cross / Red Crescent Movement and their tracing capacity in countries of migrant origin (ICRC, 2017b). The Italian Red Cross in Catania has signed a MoU with the Municipality and the *Procura* (the Office of the Public Prosecutor) to gather forensic information. This includes mapping cemeteries in Catania, and cross-referencing gravesites with missing persons reports from relatives (*Catania Today*, 2018). In practice, whilst international organizations and diaspora groups were engaged for the 3 October victims, all families who shared ante-mortem data were based in Europe (Olivieri et al., 2018), demonstrating the challenges in accessing families in their own countries. Whilst visual identification has been made for almost half the recovered bodies from 3 October these family members were not asked when in Italy for tissue samples that could have scientifically confirmed these identifications (ibid.).

Forensic work with the 3 October victims was managed using the ICRC Ante-mortem/Post-mortem database¹² and post-mortem data collected from bodies by Laboratorio di Antropologia e Odontologia Forense (LABANOF) and its university collaborators, with DNA-driven identifications made by the Forensic Genetics Lab of the University of Pavia (ibid.).¹³ Whilst the quality of the forensic work was high, it was funded by the laboratories and others involved – entirely independently from the Italian

¹² The ICRC's Ante-mortem/Post-mortem (AM/PM) Database has become a de facto standard around data management in such forensic investigations to manage large quantities of data on missing persons and unidentified human remains. The database is now used by more than 50 institutions in 14 countries around the world, including in Mexico and Central America. (ICRC, 2013).

¹³ The 53 cases where ante-mortem data has been received are presumed in Olivieri et al. (2018) to refer only to persons missing in the 3rd October shipwreck, but it is unclear how definitive the assignment of any missing person to a particular incident can be.

authorities. That this is an unsustainable model in terms of addressing the scale of identification needs in Italy is apparent: firstly, these efforts addressed only a tiny fraction of all migrant bodies found in Italy in recent years; and, secondly, the existing forensic work has made far fewer identifications than have been achieved through visual identification. Whilst nominally the Special Commissioner is leading this process, it appears as if it has in fact largely been subcontracted to the range of technical experts doing the work (Barrantes, 2018).

For the victims of the three shipwrecks in which the Commissioner is involved, where there have been greater outreach efforts,¹⁴ ante-mortem data has been received from only 53 families to aid identification using primary identifiers for a total of 366 bodies, of which 192 have been visually identified (ibid., footnote 26; LABANOF, 2017).¹⁵ While family members were able to travel to Italy to make such identifications, they came exclusively from Europe (Olivieri et al., 2018), reflecting that fact that outreach has largely failed to access those in States of migrant origin. However, no effort was made to take DNA reference samples from these families. As a result, despite a dedicated state-of-the-art forensic operation for the 3 October shipwreck, net scientific identification rates remain at only 8.5 per cent of all victims.¹⁶ The DNA identifications have also confirmed that two of the visual identifications were incorrect (ibid., footnote 21). None of the family members of those victims has however received an official death certificate (Mirto, 2018) – an important document for families seeking closure.

For the vast majority of bodies not from these three incidents, identification rates – primarily through visual identification – remain low, and likely lower than that for the case discussed above. Data from the Deaths at the Border Database (2015) suggest an overall identification rate in Italy of 22 per cent between 1990 and 2013. These rates are not however recorded by the Italian authorities: whilst they have access to the same data that the Deaths at the Border Database used, they have chosen not to compile this.

It must be emphasized however that only for the three high profile shipwrecks has a significant forensic operation been mobilized: for the vast majority of unidentified migrant bodies examination is often cursory, with tissue samples collected but an autopsy rarely made. Whilst there has been some effort to reach out to families for the three targeted shipwrecks, for most deaths no attempt to collect ante-mortem data is made, with the onus being on families to approach Italian authorities.

Identification Practice and Data management

Visual identification is the most common method currently used to identify dead migrants in Italy, with families viewing either bodies or photographs. Typically, police officers or members of the Forensic Science Department photograph the body from different perspectives, including the number assigned to the deceased. In practice, however, such visual identification can only be made for bodies where a relative was either travelling with the victim, survived and allowed to remain in the country in order to make an identification, or where a relative can quickly travel to Italy. However, the Italian authorities offer little or no support to families to enable such identification: there is no routine outreach to inform families of the possibility of making such identifications, and

¹⁴ Including the circulation of requests by the Commissioner through the Italian Ministry of Foreign Affairs for ante-mortem data collection in countries of origin.

¹⁵ It seems that no official number of identifications has been reported.

¹⁶ This figure has been calculated by simply measuring the fraction of all bodies from the shipwreck that have been identified scientifically. In Olivieri et al. (2018) a much higher rate of identification is produced by calculating the number of ante-mortem data samples successfully matched to a body, which gives a figure of 58.5 per cent (see footnote 26).

no support for their travel to Italy, neither through a humanitarian visa or funding. As a result, this route to identification is denied to most families.

There are significant limitations to visual identification, especially the fact that it is prone to error, particularly when bodies are in a poor condition and families are traumatized (Tidball-Binz, 2007). This is why, compared to scientific methods, it is not a preferred method of identification given the significant possibility of mistaken identifications being made.¹⁷ Primary identifiers such as tissue samples are routinely taken from all bodies collected in Italy but are stored in different locations depending on the institution carrying out the examination, namely the RaCIS (*Raggruppamento Carabinieri Investigazioni Scientifiche*, the Investigative Science Department of the Carabinieri), the Regional Cabinet of the Forensic Science Department, the Forensic Medicine Divisions at the universities, the Forensic Science Department, or the LABANOF Institute in Milano involved in the three high-profile shipwrecks. While data is not centrally stored, this is not necessarily perceived as problematic by the Special Commissioner and the involved institutions, partly because they so rarely access or process those data: in consequence, it remains to be seen how effective data sharing across such institutions is. Identification based on such data is rare because it is considered a last resort. Authorities consider it sufficient for a body to be identified visually, through a particularity of the body or a personal object. It is only in the absence of these factors that authorities proceed to the analysis of tissue samples.¹⁸ As a result, the greatest constraint on any identification in the current context of migrant bodies is the need for a family member to be present: in most cases, no such relative is available.

In conclusion, despite the apparent openness of the Italian institutions, the greatest obstacle to identification remains the challenge in family members contacting Italian authorities to permit ante-mortem data collection. Despite the improvement in the quality of post-mortem data collection, the fact that authorities need to be able to respond to families' requests is not recognized at an institutional level. Similarly, there is little engagement with relevant figures such as cultural mediators, diaspora communities and various civil society organizations that might function as bridges between the families (whether in their homeland or otherwise) and the Italian State. The events surrounding the 3 October shipwreck demonstrate precisely how third-sector associations and cultural mediators can facilitate and take on the responsibility of family requests. A further resource available to the Italian authorities is the witnesses, i.e. the survivors of shipwrecks, who may be very aware of the identities of the dead or at least their nationality or region of origin. Even though these witnesses are typically rapidly relocated following landings, they often have information fundamental to identifying the deceased.

¹⁷ This has been demonstrated in the Balkans, where DNA confirmation of visual identifications made during the conflict have determined that some visual identifications were incorrect, resulting in huge trauma for families who must then exhume bodies from family plots (Porter, 2017).

¹⁸ For the above information the author would like to thank Dr. Antonietta Lanzarone, forensic pathologist at the Department for the Promotion of Maternal and Child Health, in the forensic section of University of Palermo.

2.2.

CURRENT PRACTICE IN MALTA

In Malta, post-mortem data from bodies are managed by the forensic department of the hospital where DNA data is stored for all bodies found. The Maltese Red Cross collects reports from families concerning missing relatives and where dates of disappearance coincide can collect ante-mortem data to seek to match to stored post-mortem data. However, in Malta it is the practice of the Public Registries to only register persons who have died in their territory. As a result, bodies found in the sea – including in Malta’s extensive search and rescue zone – can be investigated and buried without their death ever being formally recorded. As a result of this, the Border Deaths Database records only 83 border deaths in Malta between 1990 and 2013, of which 51 have never been identified, implying an identification rate of 38.6 per cent (DatBD, 2015). This practice, in which a significant number of migrant deaths are made invisible, ensures that data will be incomplete, but appears to not have implications for identification in those cases (Last, 2018).

The Maltese case does however offer evidence for the value of an integrated approach. In many contexts, the management of the various elements required for successful identification (for example body management and examination, investigation, testimony collection, family outreach) are highly distributed across a range of institutions and at various hierarchical levels, obstructing effective data sharing – as seen in Italy (see above). In Malta, by virtue of the small size of the country, when an incident occurs one will typically find all relevant actors gathered together to address it: as a result, there is a natural sharing of information across the boundaries of formal responsibility and official office in a way that is highly useful. It thus becomes easy, for example, for those managing living migrants, who may have access to important testimony from shipwreck survivors about the dead, to share relevant information with those collecting data from bodies.

Malta also demonstrates how formal regulation can aid identification: in Malta, as in Spain and Gibraltar, both internal and external examinations are done in each and every case of an unnatural death, whereas in Italy only external examinations are compulsory and internal examinations are done at the request of the public prosecutor (Last, 2018).

2.3.

REGIONAL INITIATIVES IN EUROPE

There are several ongoing initiatives in the region to advance identification of migrant bodies and these should be considered in the development of any new approaches to the issue.

The International Commission for Missing Persons (ICMP) has initiated a “Joint Process” to account for missing migrants in the Mediterranean region, with the governments of Cyprus, Greece, Italy and Malta. This process is beginning with an assessment of existing identification capacities in the region but aims to foster broader cooperation and collaboration between States – including States of migrant origin, international organizations and others, to account for missing migrants.

The Council of Europe (CoE) is a forum that has engaged with the issue of migrant deaths in the Mediterranean (Parliamentary Assembly of the Council of Europe (PACE), 2012) and discussed the issue of missing migrants, recommending that Member States “respect the families’ right to know the fate of those who lose their lives at sea by improving identity data collection and sharing. This could include the setting up of a DNA file of the remains of those retrieved from the Mediterranean Sea.” (ibid.:3) The CoE is influential with Member States and has acknowledged the importance of

the issue of the identification of migrant bodies, notably through its Parliamentary Assembly (PACE, 2016), and seeks to advance pan-European solidarity to address the topic. As a result, the CoE could serve as a platform for advocacy in Europe to address it.

The ICRC has acknowledged that in Europe an inability to identify families of the missing is the weakest part of the data collection and management chain that can enable identification of migrant remains. Traditional Red Cross tracing activities, in which National Red Cross / Red Crescent societies identify families of the missing by seeking them in their communities appear to have not yielded positive results on the scale required. As a result, the ICRC has recently begun an innovative approach to trace families of missing migrants using contextual ante-mortem data and an algorithmic method. Here, “contextual ante-mortem data” means the many pieces of evidence that can indicate from which region a missing person came or otherwise localize their origin. This can include using data on migrant flows at the time of a shipwreck that can demonstrate which nationalities were most likely to have been on any particular boat, as well as phone records of calls made just prior to the boat being boarded and statements from witnesses who either survived the shipwreck or saw a boat being boarded. None of these pieces of data can in themselves identify a family, but what they can do collectively is drive a probabilistic analysis that can indicate the most likely origins of the dead from a particular incident. This can be combined with classical tracing to identify families missing someone lost during migration. Whilst this work is in its infancy, as it is currently being trialled in Senegal and Mauritania targeting one particular shipwreck, it demonstrates a radical reframing of the problem and seeks to directly tackle the key issue – access to families – limiting current identification efforts on the CMR.

2.4. IDENTIFICATION IN TUNISIA AND LIBYA

A significant number of bodies of migrants who die trying to cross the Mediterranean are retrieved on the North African coast, in or close to States of departure, notably Tunisia and Libya. The challenge of migrant bodies in such contexts has been discussed in the media (see for example NBC News, 2017), but there is little formal documentation of efforts to identify bodies and it is apparent that resources in both contexts are limited. M'charek has documented the situation on the Tunisian coast in Zarzis, pointing out that the morgue there has insufficient capacity, the sole ambulance is used hesitantly and “[i]n general terms, a proper management system that runs from finding the bodies on the beach to registration, examination and burial is still to be established, resulting in bodies simply being buried without any additional information except for the date on which it was found.” (M'Charek, 2018). Whilst efforts are made to bury the dead with respect, there is little attempt to identify them (Sherlock, 2018).

Tunisia has, however, taken concrete action to investigate the issue of missing migrants, through the establishment of a Commission of Inquiry to investigate those missing in 2015, which includes representative of the families tasked with working alongside the Italian interior ministry to understand the disappearances. A number of associations of Tunisian families of missing migrants have emerged and their pressure helped ensure the Commission was created.¹⁹ However, despite contact having been made with the Italian authorities, no concrete news of the missing has yet emerged.

¹⁹ These include *Association pour la recherche des disparus et encadrement des prisonniers tunisiens à l'étranger* (ARDEPTE), *La Terre pour Tous* (Land for All), and *Mères des disparus* (Mothers of the Disappeared).

In Libya, where conflict and a lack of stable governance complicates efforts, the Libyan Red Crescent Society (LRCS) is working to recover bodies, but it is unclear if any concerted efforts at identification are made (International Federation of Red Cross and Red Crescent Societies (IFRC), 2017). In the past, there were systematic efforts, at least in the capital Tripoli, to ensure that all bodies were examined by a coroner and DNA samples taken. These samples were sent to Jordan for analysis and results returned to Libya where they were stored in a database, while the body was buried under a headstone that featured a reference to the database (Wescott, 2015). Whilst there was never a systematic effort to collect ante-mortem data from families, if they visit Tripoli a sample can be taken to see if their loved one's data is in the database. It is unclear as to the extent to which such practices have continued given the current instability in Libya.

**GLOBAL PRACTICE IN THE
IDENTIFICATION OF
MIGRANT BODIES**

3



Migrants are dying on migration routes around the world, on both land and sea. In this report, an effort is made to survey global practice in the identification of migrant bodies to identify that from which the CMR can learn. It is however clear that in most cases practice is poor. For example, deaths on land routes in Africa are barely acknowledged and management of bodies and data collected from them is rudimentary (Mohamed, 2013). In the Sinai border for example, whilst the existence of a graveyard dedicated to migrants allows bodies to be buried with some dignity, there is no effort at identification, State-led or otherwise (EveryOne Group, 2013). In the Andaman Sea and Bay of Bengal, where large numbers of people have died leaving Myanmar, estimates have been made of the total number who died, but there has been no effort to identify the deceased (UN News, 2016). Hundreds of bodies have also been found close to land borders in Southeast Asia, such as the Thai–Malaysia frontier (Naz Karim and Shah, 2017), but whilst this phenomenon has been the focus of some media attention, no effort at identification has been made.

Elsewhere in Europe, there have been a number of identifications made of migrant bodies in particular incidents, where traditional police methods and the application of substantial resources have been successful.²⁰ These efforts have however involved States dealing with only very small numbers of such deaths and in circumstances where techniques used are not necessarily applicable to deaths at sea.

The practice of greatest relevance to the CMR is that of the Americas, and in particular relating to the death and disappearance of migrants traveling towards the United States–Mexico border. Deaths occur at all points on the route from Central American States where many journeys begin to the United States. There has been a focus, in the media and in terms of identification efforts, on deaths close to the United States–Mexico border, as migrants cross inhospitable desert regions, not least since United States’ government policy has been to block safe routes in the interest of deterring immigration, which as a result forces migrants to travel in more dangerous areas (Androff and Tavassoli, 2012). While many hundreds die in inhospitable areas in both the southern United States and northern Mexico, many others die before they reach the borderlands. In Mexico, persons are abducted and killed by both criminal gangs and State actors linked to them on a scale that has generated a substantial missing persons problem that is largely independent of migration (UN Working Group on Enforced or Involuntary Disappearances, 2017). Chronic violence involving criminal organizations in both Mexico and the State of origin of many migrants from Central America also claims many migrant lives however as does violence to which migrants are subject as they travel. This is also true on the CMR, where many die in Africa on land routes and in the ongoing chaos of Libya, including in efforts to extort money from their relatives and in conditions of slave labour (Heisterkamp, 2016).

²⁰ These notably include the deaths of 23 Chinese migrants who drowned while collecting shellfish in north-west England, resolved by international collaboration between UK and Chinese police (The Visitor, 2005) and the deaths of 71 migrants in who asphyxiated in a freezer truck in Austria (Europol, 2016).

Normative approaches

The legal obligations of States to address the issue of missing persons have been comprehensively addressed in International Humanitarian Law (IHL), for those missing in armed conflict, and in International Human Rights Law (IHRL), which has a significant body of jurisprudence around disappearance, that is where persons are made missing by or with the acquiescence of agents of the State. For those missing in migration neither body of law is typically relevant and as such there is an urgent need to understand what legal frameworks, particularly those linked to human rights law, can be referenced in such cases. The goal of such an exercise is to elaborate the obligations of States to missing migrants and their families and has implications for their action around identification.

The Global Compact for Migration includes the need to address the issue of missing migrants. GCM Objective 8 is to “[s]ave lives and establish coordinated international efforts on missing migrants” (see Annex I), and includes commitments to:

- Establish transnational coordination channels, including through consular cooperation, and designate contact points for families looking for missing migrants, through which families can be kept informed on the status of the search and obtain other relevant information, while respecting the right to privacy and protecting personal data;
- Collect, centralize and systematize data regarding corpses and ensure traceability after burial, in accordance with internationally accepted forensic standards, and establish coordination channels at transnational level to facilitate identification and the provision of information to families;
- Make all efforts, including through international cooperation, to recover, identify and repatriate the remains of deceased migrants to their countries of origin, respecting the wishes of grieving families, and, in the case of unidentified individuals, facilitate the identification and subsequent recovery of the mortal remains, ensuring that the remains of deceased migrants are treated in a dignified, respectful and proper manner (UN, 2018).

In the absence of specific legal frameworks that address the issue of missing migrants, a number of efforts have been made to use existing human rights instruments to extract obligations of States concerning realizing the right to truth of families of those missing in migration, as well as practical measures to manage data in ways that maximize the possibility of identifications being made. The Mediterranean Missing project produced a legal briefing linking IHRL to responsibilities of States to dead and missing migrants and their families (Grant, 2018). This identified twelve core State obligations, including to:

- Take all reasonable steps to identify the deceased and determine the cause of death;
- Locate and notify relatives of the dead and missing;
- Facilitate the return of the remains of the dead to next-of-kin, on request.

In May 2018, the Last Rights Project²¹ developed the Mytilini Declaration for the Dignified Treatment of all Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys, which seeks to define a framework for policies of States towards migrant bodies that ensures the right to truth for the families of the dead (Last Rights Project, 2018). This was signed by a range of activists and civil society groups, while States – who must operationalize these obligations – have largely not reacted to the declaration. Concerning identification, the Mytilini Declaration includes calls on States to:

“ Take all reasonable steps to identify the deceased and to determine the cause and manner of death (A.7);

Collect and preserve for all missing migrants ante-mortem and background information and genetic information of the biological relatives; and collect and preserve for all unidentified remains all recovery and post mortem information, including post mortem DNA samples (A.9);

Make every effort to locate and notify the family of the dead and missing (A.13).”
(Last Rights Project, 2018)

In 2017 the Special Rapporteur of the UN Human Rights Council on extrajudicial, summary or arbitrary executions, Agnes Callamard, produced a report on the “unlawful” deaths of migrants (UN Special Rapporteur on Extra-Judicial Summary or Arbitrary Executions (UNSR), 2017). Whilst the report focuses on the prevention of deaths it also engages with the “limited number of investigations into these unlawful deaths” (Last Rights Project, 2018:2). Explicitly concerning identification, the report makes the following recommendation:

115. States should implement, inter alia, the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) and best practices regarding the treatment of the dead, such as those set out in the publication of the International Committee of the Red Cross, Management of Dead Bodies after Disasters: A Field Manual for First Responders (2017a), and the “Last Rights” project five-point action plan and support and train local officials to implement these standards.

The UN Working Group on Enforced or Involuntary Disappearances (WGEID) produced a report in 2017 on what it referred to as “enforced disappearances” in the context of migration, referencing missing migrants, where States are implicated in their death and/or disappearance (UN WGEID, 2017). The report’s recommendations linked to the right to truth include:

Search for disappeared migrants

67. The State in which any person has disappeared, including migrants, regardless of their status, has the obligation to make the necessary efforts to search for and locate her/him immediately, in fulfilment of the recognized right to truth that is due to the relatives of the disappeared and to the society as a whole. In case of presumption of death, the State must search for the remains, identify them and return them to the relatives, with due respect for cultural customs.

²¹ See www.lastrights.net (accessed 4 March 2019).

68. For the search for disappeared migrants to be effective, the State must reveal all its forensic investigative resources and compile all relevant ante-mortem information, including the genetic information of the relatives, and incorporate it into a centralized database.

(Last Rights Project, 2017:16)

There has also been an effort by activists to use the terms “enforced disappearance” and “desaparecido” with reference to those who die while migrating, which represents a conscious effort to link such deaths to those killed by States, and to make clear the link between policy and such deaths.²²

Technical approaches

Whilst the above standards seek to be normative, namely to leverage law and legal obligations to drive State behaviour, there is another set of standards that are technical in nature, compiled by institutions respected in the field or by teams of experts. These provide technical guidance as to how to identify missing migrants. Where the body of a migrant has been found, the greatest obstacle to identification and the revealing of truth to families are the challenges in collecting and managing ante- and post-mortem data to ensure that matches can be made between them. The needs around data-sharing are summarized in an ICRC recommendation to States to:

Standardize the collection of information about missing migrants and dead bodies at national and transnational levels, and establish clear pathways for data to be collected, accessed and shared for the sole humanitarian purposes of clarifying the fate and whereabouts of missing migrants and informing their families, in accordance with internationally accepted data-protection and forensic standards.

(ICRC, 2017b)

The Last Rights Project explicitly suggests that the way forward in guaranteeing the right to truth of families of missing migrants – driven by experience in the Mediterranean context – is to ensure that every concerned State has a relevant national mechanism to manage data, and that these are linked internationally.

This is echoed by the report of the Special Rapporteur who suggests “setting up a national or regional truth commission tasked with discovering and revealing the truth about the unlawful death of refugees and migrants” (UNSR, 2017). This references the success of the truth commission as a tool to address disappearances in political violence. It echoes the Last Rights project in calling for “centralized regional databases and mechanisms to link existing national databases,” and emphasizes the importance when managing such data of “firewalls between criminal/enforcement data collection and data collected for identification.” (ibid.:25)

The WGEID report also addresses the issue of data sharing, urging greater cooperation between States in an effort to address the issue of the disappearance of migrants. (ibid.:18)

²² This terminology has been adopted by activists, particularly in Europe, who seek to portray European States as perpetrators, through migration policy decisions, of the killings of migrants who die at sea in the Mediterranean. In Spanish the word missing translates as *desaparecido* and historically has been used in the context of State-enforced disappearances in Latin America, so this is the terminology traditionally used by civil society and families of the missing in Central America to refer to migrants “disappeared” due to migration.

86. States should:

- (a) Gather, compile and systematize all the information in relation to all individuals who go missing in, or transiting through, their countries. This information should also be systematically shared with bordering countries as well as with relevant international and/or regional organizations;
- (b) Intensify cooperation — bilateral and multilateral — with other States in the areas of identification, search, data collection, prevention, investigation and prosecution (ibid.: 19)

There thus appears to be a consensus among all those considering the issue on the importance of data-sharing. The data protection implications of this, whilst the importance of the issue has been raised, have however not been addressed in any detail. There are concerns that strict European data protection frameworks may, for example, stymie effective sharing of personal data of persons whose fate remains unknown, and who thus may – in principle – be able to give or deny their consent to such exchange.

The international Red Cross movement has called two international meetings of the ICRC and relevant national Red Cross societies on management and identification of unidentified dead migrants in States of the Mediterranean. The outputs of these meetings made explicit recommendations about data collection and sharing:

- 2. Implementation of common forensic protocols and standards, at national and European levels.
- 3. Ensure coordination and cooperation between Medico Legal institutes (MLIs) and forensic laboratories at national and European level, for the identification of unidentified decedents, including migrants. (Croce Rossa Milano, 2013)

They also emphasized the need to build forensic capacities in Europe. In terms of data sharing, they recommend:

- 6. Promote the centralization and proper management of information available, including on unidentified decedents and missing persons, including migrants, through the development of searchable open databases at national and European levels, purely for humanitarian purposes.
 - 6.1.1. Encourage the development of national open databases of unidentified decedents and missing persons, including migrants, purely for humanitarian purposes (i.e. identifying dead migrants) and with different access levels and in line with data protection legislation and ensuring the protection of personal integrity.
 - 6.1.2. Develop an open European database platform of unidentified decedents and missing persons, including migrants, purely for humanitarian purposes (i.e. identifying dead migrants) and with different access levels and in line with data protection legislation and ensuring the protection of personal integrity. (Croce Rossa Milano, 2015)

In contrast to other recommendations, this latter suggests a single (open and searchable) European database.

It is worth observing that the empirical work of the Mediterranean Missing project in the EU showed that, even in the limited cases where high quality data, including DNA, had been collected from migrant bodies, few identifications were made due to the failure to collect ante-mortem data from families of the missing. None of the technical frameworks discussed here engages with approaches to the collection of such data from families.

3.2. FAMILY-CENTRED APPROACHES

One challenge with many approaches taken to addressing the issue of missing migrants is that they begin from existing State structures and build systems that resonate with what those structures can do. This builds in constraints to many State efforts since those institutions often struggle to flexibly address the multi-jurisdictional and transnational challenges presented. Here, alternative approaches that start from families are discussed, with the aim of understanding how families can best share the data they have concerning their missing relatives with State agencies and others.

A social media approach to accessing families

There is a lack of routes for States managing migrant bodies to communicate with families of the missing and innovative approaches must be sought to bridge this gap. A study with families of those missing in the Mediterranean reports that “Syrian and Iraqi families were very active on social media, sharing photographs and other information on Facebook and other sites, even though many were aware that this was a desperate measure.” (Ben Attia et al., 2016:31) Families were sharing photographs and information in the hope that they could make contact with someone who could share information about the missing. This reflects the large role that social media has in migration across the Mediterranean from planning trips, to contacting smugglers and planning routes across Europe (Frouws, 2016). A number of agencies have engaged with social media and sought to use online social networks to identify families seeking missing loved ones, but none has formalized a process to the point where they solicit requests from families. However, the capacity of social media as a tool to identify the missing, either dead or alive, is constrained by the non-participation of States in sharing the data they have collected, at least in Europe. However, in the United States – since the NamUS database is open to all, data from there, including images of the dead and their personal effects, are being posted to social media sites in an effort to help families find missing loved ones.²³ The challenge then is to understand if States can use social media as a way to reach families without compromising data protection, or the privacy of families, while maintaining the dignity of the dead.

In Sicily, an inspector of the city police in Siracusa, in collaboration with the local Syrian migrant community, set up a Facebook page in response to an incident in which he was confronted with 24 migrant bodies to identify. Families then had the opportunity to get in contact with a person working on the investigation. They could exchange information – in Arabic – in order to determine whether their loved one could be one of the victims. The result of this personal improvisation was that he was able to contact families and obtain data that enabled identification of all the dead (Reidy, 2017). This represents a potentially effective way to collapse the distance – both geographically and otherwise – between European authorities and families, demonstrating the potential of using such technology. Data protection is something crucial to all aspects of missing person work, but that comes into

²³ See for example the Facebook group *Inmigrantes Fallecidos No Identificados En Estados Unidos* (Unidentified deceased immigrants in the United States), available from www.facebook.com/groups/678033789230025 (accessed 4 March 2019).

particular focus when potentially sharing data in public social media forums. The first point to note is that data protection risks are case dependent: different families and individuals have different vulnerabilities, as noted above in discussing families that have fled authoritarian regimes. Data sharing for identification demands a broad network of organizations that collect, share and centralize information, emphasizing the importance of respecting the confidentiality of personal information in line with internationally accepted data-protection and privacy standards. An example of a practical articulation of such standards in the missing person context is provided by The Family Links Network Code of Conduct on Data Protection (2015) drafted by the International Red Cross Movement to steer their Restoring Family Links programme. This sets out the minimum principles, commitments and procedures that the International Red Cross and Red Crescent Movement integrate into their procedures relating to the processing of personal data around tracing and missing persons work. The Code of Conduct seeks to comply with the world's most stringent data-protection standards, most notably that of the EU. This Code of Conduct can inform the work of States with personal data around the search for missing persons.

Mobilizing families for support and identification

In the collection of ante-mortem data to advance identification, the issue of trust is best addressed by ensuring a role for peers of families of the missing who share culture and experience with those from whom data must be collected. More than this the creation of organizations of families of missing migrants can provide a valuable source of solidarity and practical support as well as aid in navigating the search and identification process and advocacy to demand action on the missing.

In recent years, especially in Central America, various organizations of the families of missing migrants have been created, including the *Comité de Familiares de Migrantes Desaparecidos del Progreso* (COFAMIPRO) of Honduras, the *Comité de Familiares de Migrantes Fallecidos y Desaparecidos de El Salvador* (COFAMIDE), and the *Comité de Familiares de Migrantes Desaparecidos del Centro de Honduras* (COFAMICENH). In the Mediterranean, *Terre pour Tous* has sought to mobilize families in Tunisia and the Collective of Disappeared *Harragas* (irregular migrants) in Algeria. The ICRC has supported families in Senegal to come together, including projects of both material and psychosocial support driven through support groups of affected families (ICRC, 2013). Several associations to support relatives of missing migrants have been established in countries of destination, such as *Carovane Migranti* in Italy,²⁴ the *Movimiento Migrante Mesoamericano* in Mexico and Central America,²⁵ and *Caravana Abriendo Fronteras*, which is organized in Spain but also active in France, Italy and Greece.²⁶ These organizations recently organized a global event in Mexico, bringing together families missing loved ones in migration from several continents. Families from El Salvador, Guatemala, Honduras, Nicaragua, Senegal, Mauritania, Tunisia and Algeria joined the *Caravana de Madres de Migrantes Desaparecidos* (Caravan of Mothers of Missing Migrants) in their annual journey through the country in search of their missing relatives. This first Global Summit of Mothers of Missing Migrants mapped out a plan to globalize the struggle of families searching for missing migrants (IOM, 2018b). A manifesto was drafted collaboratively on the final day of the summit, setting out the mothers' demands for truth and justice for their missing sons and daughters.

Family associations in Central America played a role in catalysing the Mexican Forensic Commission and have begun to play a role in the collection of ante-mortem data. Family members of COFAMIDE in El Salvador have been trained and in the last two years have assisted in the collection of that

²⁴ See <http://carovanemigranti.org> (accessed 23 January 2019).

²⁵ See <https://movimientomigrantemesoamericano.org> (accessed 23 January 2019).

²⁶ See <http://caravanaagrecia.info> (accessed 23 January 2019).

information, with the supervision of EAAF. The potential is that families can both play a technical role, explaining to other families what is required to make an identification, and act as a mediator between families and institutions involved in data collection. This can bridge the gap in terms both of identifying families to relevant institutions and in building confidence in the process such that families are happy to share data.

3.3

REGULAR NATIONAL INSTITUTIONS

It is typically States that, under domestic legal regimes, have both access to migrant bodies and the legal obligation to investigate cause of death and their identity. As such, it is the regular, existing State structures of coast and border guards, police, prosecutors and forensic officers who will be tasked with managing bodies and the data that can be collected from them. However, the extent to which States and State institutions will effectively collect, manage and store data from those bodies depends upon both their technical capacities and on the existence of political will. Both – particularly in the presence of very high migrant flows – can be challenged, as they are in the Mediterranean. In many cases, even where clear legal obligations to investigate exist, the environment of discrimination and marginalization of migrants and of local authorities overwhelmed by both dead and living migrants facilitates State neglect of migrant bodies and the needs of the families of missing migrants. It is also clear that the complex jurisdictional issues are an intrinsic challenge to sharing data even within a single country. In Mexico, for example, there are 32 federal states and – counting public institutions and non-governmental agencies engaged in the issue of missing migrants – one agency identified more than 130 stakeholders in the country (Baraybar, 2018). Here, some salient examples from the Americas are reviewed.

Identifying bodies found in the United States' southern borderlands: The Pima County experience

One approach to the complexity of jurisdiction issues is to work locally, and to exploit the natural advantages of civil society in collecting data from families and building working relations with such organizations. The Pima County Office of the Medical Examiner in Arizona, and its relations with NGOs, is an excellent example of this.

According to United States Border Patrol estimates, between 1998 and 2013, a total of 6,029 deceased migrants were found on the United States' side of the border with Mexico, with the remains of at least 300 migrants being recovered each year along the border since 2000 (Reineke and Martínez, 2014). While conditions on this border are very different from the Mediterranean context, there are similar challenges in identifying migrant bodies. Migrants die in remote places and bodies are often not found or only found a significant time after death: desert conditions mean remains are typically skeletonized and as such visual identification is unlikely and DNA may be difficult to extract. As a result of how long many remains have been in the desert, and due to the presence of animals, often only partial remains are found. Many migrants carry false documents or none at all, removing one valuable route to identification.²⁷ Civil society plays a role in maximizing the number of bodies that are found, both through patrols explicitly looking for human remains and in efforts that are driven by a desire to assist living migrants crossing the border.²⁸

²⁷ Notably, Central American migrants often use false Mexican identification documents, so that if they are apprehended by Border Patrol, they may be deported back to Mexico, rather than all the way back to Guatemala or El Salvador.

²⁸ The *Águilas del Desierto* (Eagles of the Desert) are one such volunteer group, searching on foot through inhospitable terrain looking for human remains (Romero, 2018).

As in Italy, the number of bodies found on the United States–Mexico border often overwhelms resources that are organized and provided by local rather than national authorities, and the techniques used to identify dead citizens – such as DNA, fingerprint, or dental records in local or federal United States databases – are typically not useful. Local government agencies tasked with investigating migrant deaths are under-resourced and struggle without access to centralized information about missing persons. Data collection and standardization is complicated by the highly-decentralized approach in the US, where each of the four border states and in some cases each county (of which there are 23 with a border with Mexico) has its own discretionary approach (Ochoa O’Leary and Soto, 2018). The patchwork of various international, state and local jurisdictions means that data for both the missing and the dead are decentralized and inconsistently managed.

The Pima County Office of the Medical Examiner (PCOME) has since 2013 provided medicolegal death investigation over the entire southern border of the US Border Patrol’s Tucson, Arizona Sector, and is responsible for examination of around one third of all migrant bodies found in the US borderlands – constituting around 150 cases of migrant remains per year (Reineke, 2016). PCOME provides a model of best practice for the region and has had some success in disseminating practices that facilitate high identification rates of migrant deaths (Anderson, 2008) that challenge previous approaches in the United States where human remains found were not properly examined, sampled for DNA or respectfully buried (Frey, 2015). The approaches of PCOME have been shared in a manual that seeks to institutionalize best practice (Binational Migration Institute, 2014). In terms of facilitating identifications, PCOME forensic anthropologists developed innovative methods (Anderson and Spradley, 2016). These include:

- 1) the use of the cultural profile by anthropologists that constructs a culturally situated picture of the victim;
- 2) collaboration with NGOs that collect missing persons reports (see below);
- 3) collection of systematic skeletal data;
- 4) working with NGOs to provide families a comprehensive identification report;
- 5) working with collaborative forensic partners; and
- 6) the use of the National Missing and Unidentified Person System (NamUs) as a tool to facilitate identifications.

Because local law enforcement agencies did not make a practice of taking missing persons reports on foreign nationals known or presumed to be missing in southern Arizona, PCOME developed a systematic approach in taking such reports from family members, friends and others who were reluctant to report the missing to US authorities or to governmental consulates. Such reluctance is widespread, given that undocumented migrants in the United States face the risk of deportation whenever they have contact with government in any form (Alexander and Fernandez, 2014). PCOME also developed specific protocols for migrant deaths, working with nongovernmental humanitarian organizations, and sharing information to maximize identification efforts. These partners have included the Argentine Forensic Anthropology Team, the South Texas Human Rights Center and the Colibrí Center for Human Rights. These organizations have various routes to accessing ante-mortem data from families seeking missing loved ones and as a result, more than two thirds of the sets of remains PCOME has examined are ultimately identified (Reineke, 2016).

The Colibrí Center acts as a missing migrant “family assistance centre,” both supporting families looking for missing loved ones and collecting missing person reports from them: all calls in Spanish to PCOME are directed to Colibrí. Colibrí also provides a cultural anthropology service to PCOME, examining selected personal effects to create a cultural profile of the victim.

The PCOME approach also includes collaboration with consulates of Mexico and other States in allowing photographs of bodies to be taken and in sharing any information (such as phone numbers or identification cards) found on the body that may aid identification by the Mexican authorities.

Management of ante- and post-mortem data in the United States

In many States the management of data that can aid identification is a major bottle-neck for various reasons. Whilst not an example of good practice, data management in the United States demonstrates these challenges.

The US federal government, through the FBI, stores DNA in a national database, the Combined DNA Index System (CODIS),²⁹ which supports the criminal justice system. CODIS contains data from convicted offenders, arrestees, detainees, unidentified human remains, missing persons, and relatives of missing persons, although there are challenges for both the inclusion of DNA from migrant bodies and from families seeking loved ones, largely because of its links to the criminal justice system. The challenges of using law enforcement databases have been demonstrated in efforts of civil society groups to integrate their data with that of the federal system. The Forensic Border Coalition (FBC), a group of forensic scientists, academics and human rights organizations,³⁰ has for six years tried to compare the ante-mortem data its members have collected from the families of missing migrants with the post-mortem data in CODIS, which includes data from human remains found in the United States. The FBI however demands that all DNA samples submitted to CODIS be taken in the presence of law enforcement and only law enforcement may access its information (Hay, 2018). This means that whilst NGOs like the Colibrí Center have their own databases with significant ante-mortem data from families, this cannot be cross-checked against US federal government data. A recent hearing of the Inter-American Commission on Human Rights highlighted this failure and talks continue with US officials (ibid.).

NamUs, managed by the US National Institute of Justice, is a national centralized repository and resource centre for missing persons and unidentified decedent records which automatically compares unidentified decedent data with missing persons data. Supported by comprehensive data sharing agreements with medicolegal offices and missing person clearinghouses throughout the country, it offers greater possibilities than any previous approach. As an open database, it can be searched online by anyone,³¹ representing a tool that can be accessed and customized by civil society and others who may have innovative ways to use these data. It remains however largely inaccessible to migrant families because of the demand that they report their case to a law enforcement or criminal justice agency. It also remains significantly under-resourced.

The lesson from the US context is that a database is needed that contains information from the State but is independent of law enforcement and the justice system. This would ensure that the database exists to further identification, rather than any other agenda, and can win the trust of

²⁹ It is worth noting that the ‘CO’ in CODIS originally stood for ‘convicted offender,’ with the database initially built to store the identities of sex offenders.

³⁰ FBC is a coalition is comprised of forensic scientists, scholars, and human rights partners working to comprehensively address the significant barriers to identifying the remains of missing migrants found on the United States–Mexico Border.

³¹ See NamUs website, available from www.namus.gov/Dashboard (accessed 23 January 2019).

3.4.

DEDICATED INSTITUTIONS

Given the very large numbers of persons going missing, both in migration and in other circumstances, a number of States have created dedicated institutions to address the issue, as the Italian authorities have with the Special Commissioner for Missing Persons. Here some examples of these in the Americas – including a transnational approach – are discussed.

Mexico's Forensic Commission and Foreign Support Mechanism

Mexico is a country of origin, transit and destination for migrants, but is dominated by those heading for the United States, with migration flows made up of hundreds of thousands of people per year. These include unaccompanied minors, asylum seekers, refugees and victims of human trafficking. Those who die in Mexico include large numbers who fall victim to the extreme violence of criminal gangs, including through large-scale abductions and killings (Inter-American Commission on Human Rights (IACHR), 2013). The language of enforced disappearance has been found relevant to such cases through the involvement of government officials, notably through corrupt engagement with criminal gangs (ibid.; UN WGEID, 2017). The total number of missing people are presumed to be many thousands, with the authorities acknowledging more than 40,180 reports of missing persons received.³² Even where the Mexican State has a commitment to address these cases, there are significant challenges to collecting reports of missing persons, including the fact that families are often not in Mexico, that they are marginalized and typically extremely poor.³³ Coordination mechanisms between the States of migrant origin and the Mexican authorities are haphazard. In some cases, the authorities have claimed to have identified bodies and informed families, but then cremated the bodies rather than returning them to families (Citroni, 2018). In response to these failures, between 2013 and 2016 the Mexican authorities established three mechanisms aimed to address the phenomenon of missing migrants and acknowledging their transnational nature and the need for regional coordination.

The Forensic Commission, founded in August 2013, sought to address three massacres that took place in the north of Mexico between 2010 and 2012 where victims were largely migrants. The Commission was mandated to exhume, identify and return the mortal remains from these massacres to their families. The Commission was established after pressure from regional civil society; the agreement that created it was signed by the EAAF, committees of families of missing migrants, and NGOs from El Salvador, Honduras, Guatemala and Mexico (*Fundación para la Justicia y el Estado Democrático de Derecho*, 2013). The innovation of this approach lies in both the direct engagement of civil society groups – including those of families – in a formal State body and the collaboration of State-appointed and independent forensic experts. The Commission structure seeks to give roles to these organizations that maximize their contributions. As such, the EAAF and the Attorney

³² These figures were shared by the Mexican National Search Commissioner in January 2019 (Secretaría de Gobernación).

³³ For example, less than 400 of the 37,400 reports concern non-Mexicans, demonstrating the limitations of such data collection.

General's Office share responsibility for scientific aspects, while committees of families facilitate the establishment of contacts with relatives of the missing and access to ante-mortem data. As a result, civil society organizations are involved in the collection of both ante- and post-mortem data. The EAAF participated in collaboration with the State Forensic Services in the exhumation and examination of almost 200 sets of remains recovered from the three massacres and the forensic information gathered from these remains has been stored in the Mexican attorney general's database, demonstrating a modality of non-government actors feeding data into state-managed databases and vice versa. The Forensic Commission has also collected 195 missing persons reports and 521 family reference samples. This has involved both EAAF and the Fiscalía General de la República (FGR, the institution responsible for investigating and prosecuting crimes at the federal level) at the same time taking the AM data and collecting the blood samples from the families.

The Forensic Commission seeks to establish good practices in the process of exhumation, identification, return of mortal remains, and notification to families. Whilst the Commissions' remit is only the three particular incidents it is hoped that the practice of both liaison with relevant actors and the establishment of good practice can have a wider impact. These protocols include those around the collection of ante-mortem data, DNA matching, the chain of custody of these data, and notification of the identification of the body of a missing migrant to his or her relatives (ibid.). Notably, in ante-mortem data collection the Commission acknowledged the transnational character of the issue and the challenges faced by families in that they travel to meet families rather than expecting families to travel to the Commission. According to the EAAF, the Forensic Commission had identified eighty-one persons as of June 2019. The greatest constraint on the value of what the Commission can achieve is the narrow focus of its work on the three particular massacres, analogous to the Italian process that has targeted a few specific and high-profile incidents. An expansion would demand that a concerted effort be made to map and systematically record all gravesites known in Mexico,³⁴ as a part of a national strategy to address missing migrants, as well as a complete register of all missing persons. It could also include data collected in the United States from bodies found there. It has been noted that a narrow focus on identification that the Commission articulates fails to provide social support and reparation to families (IACHR, 2017).

The other two bodies created (in 2015) were the Investigative Unit on Crimes against Migrants and a Foreign Support Mechanism for Search and Investigation to advance the prosecution of those perpetrating crimes targeting migrants. The Foreign Support Mechanism is intended to be a representative of the Mexican judicial system abroad, tasked with both keeping the families of migrants informed of relevant investigations and liaising with foreign institutions. It has begun collecting missing persons reports from families of missing migrants through Mexican consulates and embassies in Honduras, El Salvador and Guatemala (Citroni, 2018). As of March 2017, the Mechanism had received 65 complaints about crimes perpetrated against migrants in Mexico. Of these, at least 57 were cases of migrants from El Salvador, Guatemala and Honduras (Suárez et al., 2017). However, civil society organizations have expressed several concerns about how these institutions work in practice. The Investigative Unit is understaffed and there is almost no coordination with other Mexican authorities who also deal with families of missing migrants. The Foreign Support Mechanism has been registering complaints from families very slowly as there is only one attaché outside Mexico who must travel to meet families, while most Mexican consulates and embassies appear to be unaware of its existence

³⁴ A journalistic project, *A dónde van los desaparecidos* (Where do the disappeared go), has mapped clandestine burial sites discovered in Mexico between 2006 and 2016 and reported by the authorities (mostly prosecutor's offices), identifying 1,978. See <http://adondevanlosdesaparecidos.org> (accessed 29 January 2019).

(ibid.). Both institutions however represent a State actor acknowledging the transnational nature of the missing migrant problem and creating structures to address it.

A formal transnational approach: The Regional Conference on Migration

The Regional Conference on Migration (RCM), also known as the Puebla Process, was established in February 1996 as a multilateral mechanism for coordinating policies and actions relating to migration in the eleven Member States, from Central to North America.³⁵ It is a forum for discussion on regional migration issues, with the goal of greater regional coordination and cooperation and an explicit aim of protecting the human rights of migrants. As such, it represents one of the few transnational forums where all States of relevance to the issue of missing migrant sit at the same table. At the initiative of ICRC and IOM, and in the absence of any relevant normative frameworks agreed in the region, they sought to build a consensus on guidelines on the exchange of information relevant to missing migrants. The goal was a framework that could permit States to construct their own policies on the basis of agreed approaches, and progress was made at a workshop in Costa Rica in September 2018.³⁶ The workshop “addressed challenges and existing good practices for finding missing migrants, with the aim of increasing collaboration between RCM Member States and other regional and national organizations through agreed guidelines.” (IOM, 2018a) No public agreement has yet emerged, but it seems likely that ongoing drafting work will yield a document in 2019. This potentially represents an important starting point for broader transnational information sharing to address missing migrant cases.

3.5. THE ROLE OF CIVIL SOCIETY

Civil society organizations can address several challenges in the collection and management of data relevant to missing persons. In particular, they can:

- Overcome jurisdiction issues, where – both within and between States – officials are unable or unwilling to engage beyond their geographical or professional remit;
- Build effective relations with families in ways that State institutions cannot and, as a result, both have more effective access to ante-mortem data and the capacity to support families through the search process and potential identification;
- Represent families to State institutions where families themselves lack the access or capacity to do so.

Collection of ante-mortem data from the families of migrants is hugely complicated, in all contexts, by the irregular status of both those who die and many of the family members looking for them. The most consistent challenge faced by the families of missing migrants is the lack of a safe and centralized entity to report to that provides support, feedback and transparency. In the United States, for example, this is linked to the fact that missing persons investigations are traditionally handled by law enforcement. Undocumented migrants in the United States face the risk of deportation whenever

³⁵ Belize, Canada, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the United States.

³⁶ RCM Workshop on the Development of a Regional Mechanism for Information exchange during the search of Missing Migrants, San José, Costa Rica, 26 September 2018.

they have contact with government, whether social services or law enforcement (Alexander and Fernandez, 2014).

The nature of migration in the Americas, typically involving the crossing of not one but many national borders, renders local, state and national mechanisms inadequate for addressing missing persons cases and engaging with and supporting families of the missing. Migrants come from Mexico, all the States of Central America and beyond. Because of the length of many of these journeys, and the fact that bodies are discovered at all points along the routes migrants traverse, families often have little idea where to begin their search and which authorities to address. Families who live in Mexico or Central America typically report to local authorities, who can then send case information to their State attorney general or its equivalent. This data can then be sent to the consulate nearest to the area of disappearance, or potential disappearance, in the United States, but often seems to be lost in the transfer between offices and countries (Reineke, 2016). There are additional challenges for many families, of language, for example where Spanish is not their mother tongue, and of access to a phone or computer, as well as a longstanding mistrust of the State. There are also challenges in the nature and quality of the ante-mortem data that families can share, in contexts where medical records or histories of dental care may simply be absent due to a lack of access to such care. All of these echo the situation of the families of those who die on the CMR.

Given the challenges faced by States in collecting ante-mortem data, in the US–Mexico context, which necessarily encompasses migrants from Central America who die in the US and on routes towards it, civil society has played a crucial role in bridging this gap. There are a range of non-profit organizations with various roles but in particular in collecting ante-mortem data and in ensuring that this can be matched with post-mortem data held by States.

The Colibrí Center

The Colibrí Center for Human Rights is a non-profit, non-governmental family advocacy organization with the mission to end migrant death and related suffering on the United States–Mexico border. Colibrí was founded in 2013 to support the families of the missing, working directly with families to create forensically detailed missing person reports, which are stored in a database and compared against records of unidentified remains found in the borderlands. Colibrí represents a concrete example of how State and civil society organizations can work together to collect and manage data that identify dead migrants and address the needs of the families of the missing. Families contact Colibrí either through calling the Pima County Medical Examiner, submitting an enquiry through Colibrí's website, or contacting Colibrí through Facebook. Colibrí then takes detailed missing person reports by phone. In contrast to many State actors, Colibrí aims to approach families with an attitude of understanding, respect and partnership.

The Colibrí Center's database contains reports for 2,523 people last seen attempting to cross the border into the United States between the years 2000 and 2018, most at the Arizona border. It includes reports for migrants from any country who are believed to have disappeared in any of the four US border states. One significant innovation of Colibrí is its close cooperation with PCOME, which shares office space and equipment with Colibrí and ensures routine collaboration in investigations (see Section 3.3). This close relationship between a government office and an NGO is an innovative practice that prioritizes both addressing the needs of families and forensic best practice. Colibrí supports the investigation of migrant cases in Pima County by managing all inquiries from families of missing migrants who are believed to have disappeared on the US side of the border. Ante-

mortem data is collected and managed so that it can be shared with forensic practitioners. The Colibrí database also contains post-mortem data, including cases for remains found throughout the border region of the United States.

The Argentine Forensic Anthropology Team's Border Project

The Argentine Forensic Anthropology Team (EAAF) has sought to take a regional perspective through its Border Project, begun in 2009, which aims to support creation of a coherent regional system to address identification of dead migrants. Its ambition is to be able to make mass cross-referencing between post-mortem data from bodies and ante-mortem DNA from families seeking loved ones. This means prioritizing the use of DNA data, often with little supporting data to guide the identification process. The Border Project aims to create a regional exchange mechanism on missing persons and unidentified remains, including Mexico, Central America and the United States, in order to provide an effective, regional, and scientifically based response to the issue of missing migrants and improve the response of governments to families searching for missing relatives. The Project is an explicit response to the insufficient governmental response across the region to properly investigate or work to identify remains that could be those of migrants, and the lack of a regional, coordinated forensic system to exchange information on a large scale concerning these cases. It also seeks to address the lack of an integrated missing persons system and the absence of clear protocols for processing unidentified remains that may correspond to missing migrants in Mexico and the United States. The Border Project is a collaboration between the EAAF, Ministries of Foreign Affairs and Human Rights Commissions or Ombudsman offices in a number of States and associations of families of missing migrants.

The Project currently has ante-mortem data from El Salvador, Guatemala, Honduras and some Mexican states in DNA databases (Doretti, Osorno and Daniell, 2017). These databases centralize information collected by governmental and non-governmental organizations including committees of families of missing and disappeared migrants, national human rights institutions, attorney generals' offices in the different countries concerned, consular and diplomatic services, ministries of foreign affairs, and the EAAF (ibid.). The existence of a wider basis for comparison and matching increases the chances for identification. Since 2010, the EAAF has collected about 3,000 family reference DNA samples from across Central America and Mexico and facilitated more than 300 identifications. Those not collected as a part of the work of the Mexican Forensic Commission, with whom EAAF also works, are also stored in the EAAF laboratory in Argentina and processed in a private laboratory in the US. It faces challenges, however, from the reluctance of federal agencies in both the US and Mexico to share data and the lack of engagement of government officials in Guatemala.

The Border Project represents an NGO both exploiting its own position as a non-governmental actor to access families, but also leveraging its reputation to engage with State authorities. In doing so, the Project catalyses a transnational approach using both State and non-State collected data. It demonstrates a middle way between strategies of substitution (i.e. NGOs replacing State functions) where States are failing and support to those States to do a better job.

**STATUS AND PROSPECTS
FOR THE CENTRAL
MEDITERRANEAN**

4



Here, the lessons from the above review of global practice will be discussed in light of the challenges on the CMR. The potential application of the approaches seen to be effective elsewhere will be discussed, and conclusions drawn about what changes in policy and practice by both State authorities and others are required to maximize identifications. This drives a set of concrete recommendations for action by States in the region, the EU and other regional bodies, and others.

It is suggested that an approach must be taken in which the CMR is understood as a system in which information must be collected from where a body is found, where a migrant's journey began and – ideally – at additional points along the route he or she took. Work must acknowledge that for most migrants, crossing the Central Mediterranean is only the final part of a longer journey that typically begins far from the Mediterranean and a renewed focus be made on their place of origin. A result of this approach is to not think of ante- and post-mortem data as being independently collected and then brought together for identification purposes, but rather demanding an iterative approach in which elements of post-mortem data – such as documents found on the body or tattoos that have a particular origin – can steer the search for families that can provide ante-mortem data. This is demonstrated by the cultural anthropological analysis – the “cultural profile” – developed by PCOME in Arizona, and contrasts with the approach in Italy where for most cases the search for families (which in practice barely occurs) is entirely independent of the work with data from the body.

The significant experience globally, and particularly in the Americas, of seeking to identify the migrant dead allows several challenges – and their potential solutions – to be identified. These are summarized in Table 1. The focus in recommendations emphasizes Italy as the State in which most bodies are found, but also seeks to engage with Malta, and North African States.

Table 1: The range of challenges to dead migrant identification and some approaches to overcoming them

CHALLENGE	POTENTIAL SOLUTIONS	EXAMPLES
Relevant data is distributed across a range of diverse State institutions (for example coast guard, police, civil society, national and provincial institutions)	Dedicated national institutions to oversee data collection from range of stakeholders	<ul style="list-style-type: none"> • Mexico Forensic Commission • Italian Special Commissioner for Missing Persons
	Civil society organizations supporting data sharing between various stakeholders	<ul style="list-style-type: none"> • Colibrí Center for Human Rights
Relevant data is held by different States	Transnational data-sharing facilitated by: <ul style="list-style-type: none"> • Civil society actors • Intergovernmental bodies • State outreach institutions 	<ul style="list-style-type: none"> • EAAF Border Project • Regional Conference on Migration • ICMP Joint Process • Mexican Foreign Support Mechanism
Families are not in contact with State authorities / ante-mortem data cannot be collected	<ul style="list-style-type: none"> • Civil Society organizations as route to families 	<ul style="list-style-type: none"> • EAAF Border Project • Colibrí Center
	<ul style="list-style-type: none"> • Cultural mediators / diaspora groups 	<ul style="list-style-type: none"> • Eritreans in Italy who provide language and cultural mediation between the State and families
	<ul style="list-style-type: none"> • Family Associations 	<ul style="list-style-type: none"> • Family Associations in Central America that have collaborated with the EAAF Border Project
	<ul style="list-style-type: none"> • Contextual AM data and algorithmic approaches 	<ul style="list-style-type: none"> • ICRC
	<ul style="list-style-type: none"> • Cultural profile to steer search for families 	<ul style="list-style-type: none"> • PCOME
	<ul style="list-style-type: none"> • Social media to access families 	<ul style="list-style-type: none"> • Siracusa case, where social media aided identification of families for AM data collection.
Data held by States and others cannot be matched	<ul style="list-style-type: none"> • Shared State / non-State databases 	<ul style="list-style-type: none"> • EAAF Border Project
	<ul style="list-style-type: none"> • Open databases 	<ul style="list-style-type: none"> • NamUs database, but currently flawed and under-resourced

It is worth noting that many of the approaches that have been most successful in the Americas use not an overarching comprehensive scheme but seek to work in a particular geographical area, or within a particular jurisdiction, where responsible authorities are well understood and with whom partnerships can be built. This suggests that rather than seeking to address every case on the CMR with a global solution, different approaches should be used depending on circumstance and available resources.

4.1 | NORMATIVE AND TECHNICAL STANDARDS TO GUIDE THE PROCESS

The first step in advancing identification is to confirm both the political commitment and technical capacity of European States to identify migrant bodies for which they are responsible. A standard-setting exercise should frame both the obligations of European States around identification and the technical means by which they are satisfied. The form this takes must be led by States themselves but is likely to demand the engagement of both technical and regional political bodies. An example is the Regional Conference on Migration in the Americas, through which guidelines are being developed on the exchange of data relevant to missing migrants. Whilst standard-setting can begin with those EU States that are most affected by the issue of dead migrants on their territory, it will ideally go beyond these to include as many European States as possible and ultimately potentially include States of migrant origin. The Council of Europe may be a forum for this, but it will demand that international agencies drive the agenda. The ICMP's Joint Process may also provide a foundation for such standards.

In terms of normative frameworks concerning State obligations, there are existing initiatives that can be built upon to advance this goal, most notably the Last Rights project and other discussions in terms of understandings derived from international human rights law. The ICRC is engaged in an ongoing standards-setting exercise to create a technical framework of standards that can be advanced for missing persons in general, beyond but including those missing in migration.

There are a number of technical standards that can inform approaches taken in Europe, including:

- The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) is a set of international guidelines for the investigation of suspicious deaths, which represents an effort to internationally standardize death investigations procedure. As such, it can be relevant in seeking to ensure the breadth and quality of an investigation in to the deaths of those who may be missing to their families and represents a technical summary of the obligation to investigate;
- The Manual that emerged from the work of the Pima County Medical Examiner, which summarizes their empirically-developed approach to working with the bodies of migrants: Protocol Development for the Standardization of Identification and post-mortem Examinations of UBC Bodies along the United States–Mexico: A Best Practices Manual (2014);
- The ICRC (2009) has prepared a field manual for management of the dead that serves as a guide to recovery, storage and identification of dead bodies, and to the management of information from them. This can serve as a basic guide to management of bodies and data from them.

POST-MORTEM DATA COLLECTION

Whilst bodies are found in a range of States on the CMR, including Malta, Tunisia and Libya, there remains a substantial gap in Italy, where most bodies are found, between what could be done to identify bodies and what is currently being done. As a result, the focus here will be on Italy.

The quality of post-mortem data collection in Italy is constrained by the lack of resources. Whilst tissue samples for genetic data collection are now taken from all bodies found, there remains a lack of comprehensive post-mortem data collection beyond this:

- Many bodies are not retrieved due to the legitimate prioritization of the coastguard of saving the living: if a body is not retrieved then it is highly unlikely families can ever receive definitive information about the fate of their loved one. It would however be valuable for the Italian State, and others – such as NGO-led search and rescue operations and commercial vessels – to commit to make every effort to retrieve bodies found at sea;
- Data from shipwrecks that could be relevant are not systematically collected, including the testimony of survivors. This could be done through non-State actors who ensure collection and storage of data for humanitarian identification, separate from that for law enforcement. Current practice is driven by the desire to prosecute smugglers which fails to satisfy the need for data collection to aid identification and ensures that collection is made by those enforcing the law on such prosecutions.
- Greater efforts must also be made to retrieve the personal effects of the dead and ensure the most comprehensive examination of bodies, including autopsy. Such data alongside the engagement of anthropologists can inform the construction of a cultural profile that can aid identification of the origins of the migrant and increase the probability of identification;
- The quality of post-mortem data collection is poor in many cases and there is a need to standardize forensic examination and autopsy, to ensure basic quality criteria are met. This will likely require additional resources to ensure relevant equipment and facilities, such as adequate refrigeration units, are available.

The capacity exists in Italy to collect very high-quality forensic data from migrant bodies, as demonstrated for those recovered from the three high-profile shipwrecks. The challenge is to ensure these standards for all bodies found, across the entire country and is likely to require additional resourcing from the Italian State. A baseline for ensuring appropriate standards is for a relevant authority, such as the Special Commissioner, drawing up a set of guidelines for forensic data collection from migrant bodies, driven by identification needs. The PCOME manual (Binational Migration Institute, 2014) can be an input to this process.

There is significant potential for capacity building and support interventions around post-mortem data collection, both within and beyond Europe. A starting point for this is the understanding that unidentified bodies from the CMR are a European problem that can best be addressed through demonstration of solidarity within Europe. The significant identification capacities of northern European States are largely untested, due to the relatively small number of migrant deaths; as such they could support Italy and the southern EU States. There is also clearly a need for support, technically and financially, to Tunisia and Libya around post-mortem data collection to increase their ability to both treat the migrant dead with dignity and identify them.

ANTE-MORTEM DATA COLLECTION AND FAMILY ENGAGEMENT

The lack of ante-mortem data remains the single factor that most limits identification capacity in Italy and should therefore be the focus for efforts to improve it. The point has been made here that identifying families should be a priority for States seeking to name anonymous bodies and emerges naturally from the understanding that one works with the dead to serve the living.

The greatest deficit in the Italian context is the absence of any central point of contact with the State that is visible, accessible and welcoming to families. The office of the Special Commissioner has essentially no outreach capacity, can operate only in Italy and – perhaps most importantly – does not appear to acknowledge that engaging with families is crucial to its identification mandate. The Office of the Commissioner should reshape its operations in a family-centred way and, following some of the examples from the Americas, seek to work in close collaboration with civil society to leverage the relationships of the latter to access families. Diaspora communities in Italy and elsewhere in Europe have been cooperative and engaged in efforts to link the Italian State with families to aid identification. This can be the basis for the creation of a forum where the Office of the Commissioner hosts diaspora groups and civil society on a regular basis to foster collaboration and the development of a long-term working relationship.

If identification is understood as an obligation of the State that has retrieved a body, the Commissioner must reach out to families rather than expecting them to reach out to him. There are specific ways in which the Italian authorities can do this:

- The Italian authorities should be proactive in sending personnel to States from which migrants come to actively identify families and collect ante-mortem data. Otherwise, the onus is on some of the poorest and most marginalized families in the world to access Italian government agencies, a strategy that has demonstrably failed;
- Through Italian diplomatic representatives in relevant contexts, who should be briefed to be proactive in seeking to make contact with families of missing migrants, and supporting them to submit data to the Commissioner;
- Through engaging existing family associations and encouraging the creation of others in contexts where there are families missing loved ones on the CMR. They should be supported in this by relevant international agencies and Italian civil society, and in particular those that represent relevant diaspora groups in Italy and who can act as intermediaries between the Commissioner (and other institutions of the Italian State) and families;
- The cultivation of contacts with governments of States of migrant origin and the encouragement of them playing the largest possible role in the exchange of ante-mortem data through access to families and through their diplomatic representatives in Italy and elsewhere.

In the long term, challenges to access families of those missing on the CMR can best be addressed by support to networks of families of missing migrants. An active global network of family associations would constitute a motivated and accessible capacity to reach out to families missing loved ones who could enable the sharing of ante-mortem data with relevant bodies in Europe. In some contexts civil society has collaborated across the Mediterranean, with Tunisian family associations such as La Terre

pour Tous and Ardepte for example working with Italian NGO Carovane Migranti. In the absence of significant organized associations of families in most of the contexts from where migrants on the CMR come, there is a need to catalyse and support their creation. There are precedents for this both with families of missing migrants in Senegal (ICRC, 2013), and with families of conflict missing in a range of contexts. The creation and support of such a network of family associations would, however, require the technical and financial support of European States or international actors.

Governments of States of migrant origin have largely not been proactive in supporting the identification of their citizens who die trying to reach Europe, and greater efforts can be made by European States to engage them, both at the central government level and at embassies and consulates in Europe. The Central American experience shows that consulates can facilitate the exchange of relevant data in ways that aid identification.

It remains unclear as to the extent to which there is a role for civil society to work in data collection in ways that parallel the role of the State. The existence in the Americas of civil society groups able to work transnationally to support both families and States, and to advocate for action to identify the dead (such as the EAAF and the Forensic Border Coalition) is a model that currently has no counterpart in the Mediterranean context. If a civil society actor can find a way to work with Italian authorities to share ante-mortem data, then there may be a role for such an actor to develop a programme of data collection from families. This also however demands an addressing of the many data sharing questions (see below).

The use of social media should be explored as a potential route to accessing families of the missing and to access ante-mortem data. This must consider data protection as a priority and seek to adhere either to data protection standards as defined both in EU law and in the International Red Cross and Red Crescent Movement Family Links Network Conduct of Conduct on Data Protection (2015). Such efforts could be led by non-State actors currently trying to support the Italian authorities, such as the Red Cross Movement and by broader civil society. They could begin by seeking to systematically harvesting existing information shared by families on social networks to determine its value and confirm that data protection issues can be addressed. There is also likely to be a role for researchers to contribute towards this effort (see below).

4.4. | DATA MANAGEMENT, STORAGE AND SHARING

Management of both post- and ante-mortem data should be done in a way that optimizes ease of data-sharing and a well-defined, centralized cross-referencing procedure. Data management in Italy must address the opacity of data sharing between the multitude of national and provincial institutions that collect and hold post-mortem data. Whilst the Special Commissioner is a natural location to centralize data, in practice – around the three high-profile incidents that the Commissioner has prioritized – it has essentially subcontracted this to technical experts. For these three shipwrecks, both ante- and post-mortem data have been centralized through the LABANOF Institute. For most incidents, there remains however dispersal of data, and this drives the need for all data to be centralized in a single database. Given LABANOF's current role, their technical expertise and their independence of the justice system, they may well be the best holders of such a database, so long as their relationship to the State and in particular the Commissioner, is well defined, with data ownership and control well defined and data managed according to EU data protection law. This demands however that data management, as well as data collection more generally, be properly funded by the Italian State.

It is also highly desirable, as seen in the Americas, that non-State actors – such as NGOs – can contribute data to such a centralized database. As such, the Commissioner should encourage submission of such data and ensure that protocols defining the form of such data that satisfy international standards are drawn up and shared.

The need for transnational sharing of data demands not only that a single central authority in Italy manages all of the available national data, but that this is coordinated with institutions abroad. Given the reluctance of many actors to share their databases the most likely modality for such data sharing is to ensure that European States agree on both a single standard for managing such data and a protocol for sharing cases where matches are sought. The exact approach cannot be prescribed but must emerge from a bringing together of all the concerned actors. There is a role for international actors in supporting States to develop such protocols, and both the Council of Europe and the ICMP's Joint Process are potential forums for advancing such work.

Ideally, Tunisia and Libya should be integrated into any transnational architecture developed in Europe for managing ante- and post-mortem data, as a precursor to a broader engagement with other States, including those of migrant origin.

4.5. IDENTIFICATION APPROACHES

Ideally, all identifications should be made scientifically, with any visual identifications confirmed using DNA, since it is probable that some of these identifications are false. This demands that all family members making visual identifications are asked for tissue samples that can potentially confirm such identifications, as well as comprehensive ante-mortem data. In the long term, visual identification should be considered only a precursor to support scientific identification. As such there is a need for the authorities, potentially led by the Special Commissioner, to develop a strategy to enable routine fast and effective DNA confirmation of visual identifications.

4.6. A RESEARCH AGENDA

There remain large areas where the development of strategies to effectively identify migrant remains found on the CMR are constrained by a lack of knowledge. Here, a research agenda is presented to address this deficit.

Data collection and management

Whilst the deficiencies in data collection and the dispersal of relevant data in Italy are well documented, there remains a lack of information about how the Italian State can transition to a more centralized and coherent approach. Research, ideally with the cooperation of the concerned authorities, can establish scenarios for a more effective process, on the basis of existing resources and capacities as well as identifying the priority areas for increased resourcing.

The nature and quality of post-mortem data collection from migrant bodies in Tunisia and Libya, and their management, remain unclear. There is a need to map what is done now and existing capacities as a prelude to offering appropriate support.

Understanding family perspectives and organizing families

Limited research has been done on the needs of families, but there remain many contexts where family needs, around identification and otherwise, have not been researched.

To put families at the centre of the identification process demands that family associations be created and supported. Research can play a role in identifying where families of the missing are present in sufficient numbers that they can come together in this way, in understanding how they can engage with such an organization and how associations should engage with relevant States. Given the need to support such groups, an action research modality could deliver on both knowledge production and practical backing, as has been done in other contexts (Robins and Bhandari, 2012).

Any use of social media as a tool to reach families is also likely to demand a better understanding of how social media is used now by families, and how it could be in a way that connects families with State authorities without compromising data protection principles.

CONCLUSIONS

5



SUMMARY OF RECOMMENDATIONS

Normative and technical guidelines

- European States should prepare a set of guidelines to which they will adhere outlining their obligations to identify migrant bodies found on their territory and inform their families, and including technical standards on how identification is made;

Post-mortem data

- All actors engaged in search and rescue should commit to retrieving bodies wherever possible;
- Systematic debriefing of shipwreck survivors should be made with the aim of collecting data to aid identification of the dead. The State should permit such interviews to be made by non-State actors wherever possible to ensure free exchange of information;
- Greater efforts must be made to retrieve the personal effects of the dead and ensure that these are considered as a part of post-mortem data;
- Under the supervision of an appropriate authority, such as the LABANOF Institute, the Italian State should prepare guidelines on the nature of forensic examination to be made of migrant bodies found on Italian territory;
- Cultural anthropologists should construct a “cultural profile” of the dead on the basis of the ensemble of post-mortem data, including survivor testimony and personal effects, that can guide efforts to identify potential families of the dead;
- The Italian State should ensure the appropriate resourcing of forensic staff and facilities such that all bodies found are subject to the same quality of procedures used for the three high-profile shipwrecks; Other European States with significant capacity should support post-mortem data collection in Italy and Malta, and should develop coherent programmes of support for forensic capacity in Tunisia and Libya.

Ante-mortem data collection and family engagement

The challenge of ante-mortem data collection can only be addressed by institutions of concerned States building better relationships with families of the missing. Accordingly, the Italian Special Commissioner should:

- Reshape his operations in a family-centred way and ensure that his office is visible, accessible and welcoming to families searching for missing loved ones;
- Be proactive in sending personnel to States from which migrants come to actively identify families and collect ante-mortem data;
- Seek to work in close collaboration with civil society and relevant diaspora communities, in Italy and elsewhere, to leverage their relationships to access families;
- Understand that, as part of the obligations of the Italian State, to identify families in migrant States of origin demands he reach out to families rather than expecting them to reach out to him.

Family associations and organizations of families are a way to not only inform families of routes to access States managing bodies and of progress with their cases, but also a source of solidarity and support, and a way for them to have a voice in the management of the missing migrant issue. As such, all actors seeking to advance identification – including concerned States, international organizations and civil society – should foster and support such groups.

Civil society and international agencies – as seen in the Americas – should support engagement with families and the collection of ante-mortem data, including:

- Support to existing family associations and the catalysing of new organizations in States of migrant origin;
- Developing approaches that use social media to access families of the missing and finding ways to share these data with the concerned authorities. Pilot projects could begin immediately, potentially with the support of researchers (see below).

Data management and analysis

Management of both post- and ante-mortem data should be done in a way that optimizes ease of data-sharing:

- All relevant data, ante- and post-mortem must be centralized under the aegis of the Special Commissioner. It may be appropriate for a relevant technical actor to take on this responsibility, with data ownership and control well defined and managed according to EU data protection law;
- Data management and data collection must be appropriately funded by the Italian State.

Effective transnational sharing of data demands that:

- European States develop both a single standard for managing data and a protocol for sharing cases where matches are sought, with the exact approach to emerge from a bringing together of all concerned actors;
- International actors support States to develop such protocols and consider both the Council of Europe and the ICMP's Joint Process as potential forums for advancing such work;
- Tunisia and Libya to be integrated into any transnational architecture developed in Europe for managing ante and post-mortem data, as a precursor to a broader engagement with other States, including those of migrant origin.

Identification approaches

- The visual identifications that are most common now to be routinely confirmed by DNA identification, and a strategy to be developed by the Italian authorities to ensure this, as a part of the creation of a national system of systematic data management.

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ANNEX

GLOBAL COMPACT FOR MIGRATION: OBJECTIVE 8 - SAVE LIVES AND ESTABLISH COORDINATED INTERNATIONAL EFFORTS ON MISSING MIGRANTS

24. We commit to cooperate internationally to save lives and prevent migrant deaths and injuries through individual or joint search and rescue operations, standardized collection and exchange of relevant information, assuming collective responsibility to preserve the lives of all migrants, in accordance with international law. We further commit to identify those who have died or gone missing, and to facilitate communication with affected families.

To realize this commitment, we will draw from the following actions:

- (a)** Develop procedures and agreements on search and rescue of migrants, with the primary objective to protect migrants' right to life that uphold the prohibition of collective expulsion, guarantee due process and individual assessments, enhance reception and assistance capacities, and ensure that the provision of assistance of an exclusively humanitarian nature for migrants is not considered unlawful
- (b)** Review the impacts of migration-related policies and laws to ensure that these do not raise or create the risk of migrants going missing, including by identifying dangerous transit routes used by migrants, by working with other States as well as relevant stakeholders and international organizations to identify contextual risks and establishing mechanisms for preventing and responding to such situations, with particular attention to migrant children, especially those unaccompanied or separated
- (c)** Enable migrants to communicate with their families without delay to inform them that they are alive by facilitating access to means of communication along routes and at their destination, including in places of detention, as well as access to consular missions, local authorities and organizations that can provide assistance with family contacts, especially in cases of unaccompanied or separated migrant children, as well as adolescents
- (d)** Establish transnational coordination channels, including through consular cooperation, and designate contact points for families looking for missing migrants, through which families can be kept informed on the status of the search and obtain other relevant information, while respecting the right to privacy and protecting personal data

- (e) Collect, centralize and systematize data regarding corpses and ensure traceability after burial, in accordance with internationally accepted forensic standards, and establish coordination channels at transnational level to facilitate identification and the provision of information to families

- (f) Make all efforts, including through international cooperation, to recover, identify and repatriate the remains of deceased migrants to their countries of origin, respecting the wishes of grieving families, and, in the case of unidentified individuals, facilitate the identification and subsequent recovery of the mortal remains, ensuring that the remains of deceased migrants are treated in a dignified, respectful and proper manner.





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