

Mediterranean Missing

Understanding the Needs of Families and the Obligations of States

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Missing Migrants: Management of Dead Bodies in Sicily

Italy Country Report

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The cover image shows the cemetery of Castellamare del Golfo, Sicily, where victims of the shipwrecks of 3th and 12th Oct 2013 are buried.

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EXECUTIVE SUMMARY

As part of the Mediterranean Missing Project, this report seeks to describe and analyse how the bodies of migrants who die en route to Europe are managed, what laws are in place and what practices actors have developed to ensure that the dead are identified and families are informed. Our research focuses on the Italian island of Sicily, which has been one of the main entry points for undocumented migrants to the EU in recent years. More importantly, this specific route – primarily connecting Libya or Egypt to Sicily (Central Mediterranean Route) – is the deadliest of the 3 Mediterranean routes¹, accounting for the majority of deaths recorded in the Mediterranean since 2014. Since the shipwrecks of the 3rd and 11th of October 2013 off the coast of the Italian island of Lampedusa, the issues of migrant fatalities and of management of the bodies have gained increasing attention among the public as well as in media and politics. This report aims to identify both deficiencies and good practices in the system currently responding to these tragedies.

The report is based on 27 semi-structured interviews with representatives from local and national authorities, civil society organisations and individuals. Some key challenges faced by the actors involved in the investigation of migrant deaths have been identified. One of these challenges is the complex nature of the problem. Migrant fatalities represent a complex humanitarian issue that requires an ongoing and coherent response, coordinated among the actors involved. They are a transnational phenomenon and as such there is a need to liaise with a range of actors in different countries. Families of the missing and dead in countries of origin and other European states or elsewhere have to be contacted in order to facilitate identification, as well as to ensure that affected families are at the centre of efforts to address the issue. Similarly, cooperation with consular or diplomatic authorities, international organisations and diaspora communities in third countries are needed to make contact with families.



Photo 1 Grave of an unidentified victim of the 18th of April 2015 shipwreck. Castellammare del Golfo, Sicily.

Apart from information that should be gathered from families, data has to be collected from the bodies of the dead. A lack of resources and infrastructure has been identified in Italy, complicating the working conditions of those tasked with identification. For example, facilities for conducting autopsies were sometimes not equipped for dealing with high numbers of bodies. Data needed about deaths, including statements from shipwreck survivors, are not systematically collected. Moreover, a broad range of actors is involved in the investigation, with sometimes divergent objectives in their approach to migrant deaths being apparent. This is reflected in the fact that the prosecution of smugglers drives investigations rather than the humanitarian objective of the identification of the dead. Despite the work of the Special Commissioner for Missing Persons, a dedicated office for issues related to missing persons, aiming to coordinate the various actors, these different objectives can be impediments to an effective investigation. Finally, the common application of existing protocols, regulations and agreements is increasingly taking place but needs further facilitation.

Based on these key challenges, the report suggests an expansion of the role of the Special Commissioner for Missing Persons² and the good practice it has put into place, as well as exploiting further funding opportunities, in order to provide the needed resources for effective investigation. A central need is to systematically use opportunities for gathering data that are currently under-utilised, such as the collection of personal effects and survivors' testimony. Most importantly, families should be included at the centre of the investigation. Another crucial element identified in this project is the need for families to

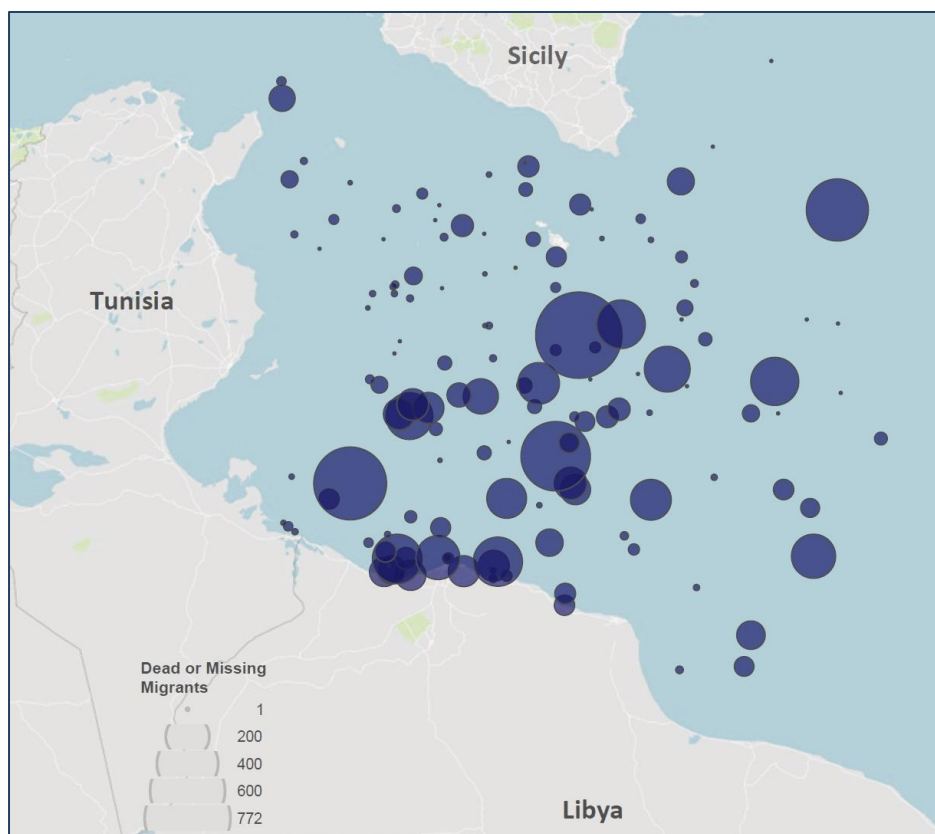
¹ The two other Mediterranean routes are the Western Mediterranean connecting Morocco and Spain and the Eastern Mediterranean route connecting Turkey and Greece.

² The Special Commissioner for Missing Persons was established in 2007 by the Italian Government and coordinates identification efforts around the issue of missing persons in general, including unidentified migrants. For more information see Chapter: Good Practice: The role of the Office of the Special Commissioner and collaboration with Labanof, page 22.

know their loved ones' fates. Their inclusion is important from both a practical viewpoint – since families are the main source for ante-mortem data which enable authorities to identify bodies – and a humanitarian one, that is to ensure that families' needs drive the entire process. As a long-term perspective to respond to migrant fatalities, the report recommends the establishment of a global architecture that allows families to contact investigating authorities, and permits the matching of ante-mortem data they provide with post-mortem data obtained from the bodies.

INTRODUCTION TO THE PROBLEM OF MISSING MIGRANTS³

Deadly shipwrecks and the bodies of migrants have tragically become the most iconic images of the contemporary refugee crisis at the EU's periphery. In 2015 and the first half of 2016, more than 6,600 are known to have died attempting to cross the Mediterranean, with an additional number of unrecorded deaths (IOM, 2016). Although the media and solidarity groups have shed light on the plight of living refugees, and highlighted the shocking reality of shipwrecks, very little is known about migrants whose fate is not known to their families. The majority of dead bodies found are buried and remain unidentified. As such, thousands of families in migrants' countries of origin remain unaware of the fate of



Map 1 Dead or Missing Migrants 2014 - 24th of July 2016

Source: IOM Missing Migrants Project. Data obtained from local authorities, IOM field offices and media reports.

their loved ones.

³ In this paper, it is acknowledged that 'migrants' and 'refugees' are two distinct legal categories. The nature of unidentified bodies however that their status prior to death is unclear, and that the legal obligations of states concerning those human remains are the same regardless of that legal status. As such, for the purposes of this briefing note we will use the terms interchangeably.

Authorities in the countries of reception (most notably Italy and Greece) have been unprepared to deal with the nature and volume of this humanitarian crisis. Migrants have been dying en route to Italy for many years, and arrivals to Italy have significantly increased in 2014, before the spike in arrivals on the Eastern Mediterranean route. Currently, there is a policy vacuum around the problem, marked by minimal cooperation among different state agencies, an absence of any effective investigation, and little effort to contact the families of the missing. This results in bodies being buried with little knowledge of religious and cultural expectations or the rights of the families of the dead.

Impacts on families of missing migrants

As part of the Mediterranean Missing project, 84 families from Tunisia, Syria, Iraq, Palestine and Egypt, whose relatives have gone missing during migration, have been interviewed to understand how they have been affected by such disappearances. The main conclusion is that most have no information as to the fate of loved ones and are therefore trapped in a state of ambiguity, between hope and despair. Ambiguous loss is the most stressful type of loss precisely because it is unresolved. Emotionally and psychologically, families are affected in ways which undermine their well-being through a generalised anxiety disorder, a sense of stasis in their lives, hypervigilance and sleep disturbance, while those worst affected have had to seek professional psychiatric help. Family conflict and self-isolation was prevalent among affected relatives, and women in particular were impacted by the dramatic change in role required to head a household where the husband has gone missing. Those who survived shipwrecks in which relatives went missing are likely to be traumatised, potentially suffering from post-traumatic stress disorder.

The needs of families are clear: they seek an answer, a resolution of the lack of clarity over the fate of the missing – are they dead or alive? In either case, they also want to know where their missing relatives are: if they are dead families want to retrieve the body and bring it home so that it can be honoured and buried in a space that returns a loved one to the family. Some family members have taken part in efforts to identify loved ones, including the often traumatic exercise of examining bodies in morgues or photos of the dead. Many have shared DNA samples with authorities in Europe but very few have received any response.

INTERNATIONAL HUMAN RIGHTS LAW – THE OBLIGATIONS OF STATES

International human rights law (IHRL) applies in situations of migrant death and loss; it places duties on states to identify the dead and respect the rights of the families of missing migrants.⁴

IHRL gives rights to individuals; states have a duty to ensure and protect these rights. All states in the European region have obligations under IHRL in respect of dead and missing migrants and refugees. These legal obligations derive from international treaties which states have agreed to implement in their domestic law and practice, notably the European Convention on Human Rights (ECHR), the International Convention on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC).

Human rights responsibilities arise where, for example:⁵

- a person dies in a State's territorial seas and/or their body is washed ashore;
- a person is 'missing' within a State's territorial seas;
- a State retrieves bodies from the sea, including in international waters;
- a family member/relative of the missing and dead is within the jurisdiction of the State.

⁴ For a more detailed review of states' obligations under international human rights law, and relevant case law, see Grant, S. (2016) *Dead and Missing Migrants: 4The Obligations of States in the European Region under International Human Rights Law*, York: Mediterranean Missing Project.

⁵ These responsibilities arise equally at land borders.

At a *minimum*, states have a duty to protect the right to life of ‘everyone’, without discrimination,⁶ to respect the right to family life of relatives of the missing,⁷ and to take special measures to protect children of missing migrants.⁸ The duty applies to all branches, and at all levels, of government.

- The duty to treat ‘everyone’ equally requires, inter alia, that there should be no discrimination between citizens and non-citizens in the steps which are taken to protect the right; and that religious or cultural beliefs should be respected without discrimination, including with regard to burial.
- The duty to protect the right to life of everyone requires preventing and investigating deaths. States should:
 - Take positive steps to prevent deaths where the authorities know or ought to have known of a real and immediate risk to lives; take exceptional measures to prevent the deaths of vulnerable persons, including asylum seekers, refugees, children and those whose lives are at particular risk.
 - Investigate all suspicious deaths, effectively, independently and promptly; investigation includes taking steps to establish the cause of death, identify the body, and secure evidence, including eyewitness testimony, and forensic evidence. Investigation should not be restricted to cases where criminal action is suspected. Effective investigation should include – inter alia – efforts to collect or retrieve the body, and to trace and inform families; issue of a death certificate confirming the death; collection and preservation of personal possessions, and their return to families.
- **The right to family life** includes – inter alia - participation by relatives in the investigation, and in the burial of a relative’s body.
- **The Protection of children** whose parents are missing includes respecting their best interests at all times, and taking specific measures to preserve their identity, including nationality, name, and family relations.

THE POLICY AND OPERATIONAL GAPS AT THE EUROPEAN UNION LEVEL

The policy, legislative and operational gaps identified in this report, at local and national levels, are reflected at the level of the European Union (EU). This is a complex field of EU and Member States’ policies and operations, with a strong security dimension and high level concerns about border controls and the aim of preventing irregular migration but lacking a specific response to deaths during migration. It is further complicated at the time of writing, by uncertainty over the future of the EU-Turkey agreement⁹ which was designed to address refugee flows, resettlement across the EU and returns of irregular migrants and persons found not to be in need of international protection.

EU policy in the field of migration and asylum is determined within the framework of Justice and Home Affairs, a policy area which, since the coming into force of the

⁶ ECHR Art. 2(1): ‘Everyone’s right to life shall be protected by law’; and ECHR Art 14: ‘The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground...’. ICCPR Art. 6(1): ‘Every human being has the inherent right to life. This right shall be protected by law’. ICCPR Art. 2(1) ‘Each State ... undertakes to respect and ensure to all individuals within its territory and jurisdiction the rights recognised.... in the Covenant, without distinction of any kind.

⁷ ECHR, Art 8(1): ‘Everyone has the right to respect for his private and family life...’.

⁸ CRC, Art. 8(1): States should ‘respect the right of the child to preserve his or her identity, including nationality, name and family relations...’.

⁹ Ayad, C., Jégo, M. (2016) Recep Tayyip Erdogan : « Western leaders preferred to leave Turkish people to themselves ». Le Monde Europe, 08.08.2016. Available at: http://www.lemonde.fr/europe/article/2016/08/08/recep-tayyip-erdogan-western-leaders-preferred-to-leave-turkish-people-to-themselves_4979866_3214.html. [Last accessed 09.08.2016].

Maastricht Treaty¹⁰, has increasingly moved from inter-governmental decision-making to EU competence. In addition, since the adoption of the Schengen agreement¹¹ establishing an area of free movement within the European Union, a range of policies have been developed that affect the way in which migration-related issues are regulated. This development of common policies on asylum and migration has been successful to varying degrees in relation to legal and irregular migration and border controls. These policies both respond to and are often deemed to contribute in different ways to producing the current situation in the Mediterranean, given their main focus on the control of immigration, control of the external borders of the EU, security concerns, returning irregular migrants and persons found not to be in need of international protection from the Member States, humanitarian aid, and, to a lesser extent, legal migration and mobility channels. Over the course of the last twenty years, the Common European Asylum System has been developed. This sets out ways in which asylum should be managed within the EU, and establishes the responsibilities of Member States through Treaties, programmes and regulations, such as the Dublin Regulations.

EU policies have not been designed to address explicitly the question of deaths of migrants on arrival at, or en route to, the EU, nor the needs of their families. However, the EU does have a remit to ensure that the human rights of migrants are protected, as do the Member States, whose international obligations are outlined elsewhere in this report. Underpinning the Treaty obligations is the European Convention on Human Rights (ECHR), which protects the right of every person to his or her life, imposing various positive obligations for the States, including a positive duty to prevent the loss of life, and a positive obligation to investigate suspicious deaths, as explained in the Article 2¹². In addition to the ECHR obligations, although there is no policy which explicitly addresses the issue of deaths at the EU's southern border (or identification work), several instruments and activities are relevant to the problem.

The following summary provides a brief overview of the relevant policies, instruments and actors engaged with the issue of deaths during migration and related investigations.

European Agenda on Migration

The overall policy framework for the EU's actions with regards to the response to migration in the Mediterranean is the European Agenda on Migration, which was communicated by the European Commission in May 2015.¹³ With this Agenda, the EU explicitly aims to prevent further deaths at sea by providing additional funds to Frontex, resettlement and Regional Protection and Development programmes as well as to the most affected Member States. Central to achieving this aim, for the EU, is its focus on the identification of criminal networks active in the Mediterranean in the context of migration. Within this framework, the instruments of this policy are political: (negotiations with third countries through regional and bilateral fora with a strong focus on return, as evidenced by the Partnership Frameworks proposed by the EU in June 2016; financial, through various EU funding instruments such as, for instance, the EU Trust Fund for Africa); and operational, in the form of engagement through the Mare Nostrum, Triton and Sophia operations.

¹⁰ European Union, Treaty on European Union (Consolidated Version), Treaty of Maastricht, 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1992:191:FULL&from=EN>. [Last accessed 09.08.2016].

¹¹ European Union, Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Schengen Agreement, 14 June 1985, Official Journal L 239, 22/09/2000 P. 0013 - 0018, 42000A0922(01), available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1470668430959&uri=CELEX:42000A0922\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1470668430959&uri=CELEX:42000A0922(01)). [Last accessed 09.08.2016].

¹² Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf. [Last accessed 09.08.2016].

¹³ European Commission (2015) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration. 13/05/2015 COM(2015) 240. Accessed 07/09/2015, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/index_en.htm.

Humanitarian Aid and Civil Protection

The European Commission's (EC) Humanitarian Aid and Civil Protection Directorate General (ECHO) provides funding for 'needs-based emergency assistance'¹⁴. It is explicitly aimed at providing assistance to 'people in distress, irrespective of their nationality, religion, gender, ethnic origin or political affiliation'¹⁵. As such, it could be of direct relevance for the provision of resources for the investigations around migrant deaths that leave families without any knowledge about the fate of their loved ones.

Border security

In 2004, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) was established.¹⁶ The agency's mandate includes the management and coordination of Joint Operations at the EU's borders, in which national security forces work together. Other main tasks of the agency include: the return of asylum seekers (from EU countries) whose applications have not been successful; training of staff in countries at the external borders; and risk analysis with regards to border security and technical and operational assistance at the external borders. Frontex cooperates in its activities with EUROPOL, the European Asylum Support Office (EASO), the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM). With its mandate and main tasks, the agency is a central actor involved in coordinating EU operations and national officials in the Mediterranean. This means it is confronted directly with the issue of deaths during migration to Italy and Greece. However, its mandate concerning search and rescue operations and its geographical remit are limited.

Operations in the Mediterranean

As a response to the shipwrecks of the 3rd and 11th of October 2013, in which at least 387 migrants lost their lives, the Italian government launched Mare Nostrum, an explicit search-and-rescue operation. The operation ran for one year and saved thousands of migrants' lives. In debates at the EU level, some Member States emphasised the operation as a pull factor and following this, it received no substantial support from the EU. The programme cost Italy 108 million euros and was ended to be replaced by the EU-led Triton operation.

Operation Triton, coordinated by Frontex, began in November 2014. It involves 'coordinated activities at the external sea borders of EU Member States in the Central Mediterranean region'¹⁷, and is therefore of particular relevance to deaths en route to Italy. The operation includes humanitarian search-and-rescue elements, but is clearly focussed on border security. Its main objectives are to control irregular migration and to tackle cross-border crime, including human smuggling. The activities pursued under Triton include increased border surveillance (air and sea), gathering information, and debriefing and screening activities. With these objectives and methods, Triton aims to ensure better control and a more nuanced picture of migration across the Mediterranean. Its aims are understood to contribute to the prevention of shipwrecks and to support search-and-rescue efforts.

Another operation linked to migration across the Mediterranean is the European Naval Force – Mediterranean (EUNAVFOR Med) Operation Sophia. This operation is run by the Navies of some EU Member States. It aims to:

‘undertake systematic efforts to identify, capture and dispose of vessels and enabling assets used or suspected of being used by migrant smugglers or traffickers, in order to contribute to wider EU efforts to disrupt the business model of human smuggling and

¹⁴ European Commission, Humanitarian Aid and Civil Protection (2015) Humanitarian Aid. ECHO Factsheet. Available from: http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/humanitarian_aid_en.pdf. [Last accessed 09.08.2016].

¹⁵ Ibid.

¹⁶ See Council Regulation (EC) No 2007/2004 of 26 October 2004

¹⁷ Frontex Archive of Operations. EPN Triton. Available at: <http://frontex.europa.eu/operations/archive-of-operations/NkKUdU>. [Last accessed 09.08.2016].

trafficking networks in the Southern Central Mediterranean and prevent further loss of life at sea¹⁸.

As such, the operation is mainly concerned with the elements of smuggling and trafficking linked to migration movements in the region. These policies and operations mainly focus on border security and cross-border crime. They represent different elements of the EU response to migration in the Mediterranean region, but also show that there is no policy that explicitly addresses the issue of deaths during migration, identification and liaison with families of the dead. Issues linked to deaths during migration, such as the role of victims' families, are often invisible elements of these tragedies, and this invisibility is also reflected in the lack of a concerted policy response at the EU level, to the problem. The deaths occurring in the Central Mediterranean take place within a geographical space which reflects both a gap between the operational mandates of national agencies and Frontex, and a policy gap at the national, EU, and international levels.

KEY CHALLENGES

The Central Mediterranean route has remained the deadliest route for undocumented migrants to Europe. The Central Mediterranean route accounts for only about a quarter of the almost 1.5 million people who have arrived to Europe since 2014 on the Central and Eastern Mediterranean routes. However, around 85% of almost 10,000 deaths that have been recorded in the Mediterranean since 2014 have occurred on the Central route.¹⁹ 2016 has been the deadliest year for migrants since the International Organization for Migration (IOM) started to record migrant fatalities in 2014. More than 3000 deaths have already been recorded across the Mediterranean between January and July this year.²⁰ Sadly, these numbers represent a lower limit on total deaths since only those bodies retrieved can be counted: an unknown number of deaths remain invisible. Within this context, authorities in countries at the external border of the EU face a complex humanitarian challenge. For every body that is retrieved or washed ashore there is a family whose lives are substantially affected by the ambiguous loss of their loved ones.

Deaths during migration – a complex picture

Migrant fatalities and the tracing of relatives are intricate issues that differ from other types of humanitarian mass disasters, such as environmental disasters or airplane crashes, for various reasons. Fatalities in the context of migration are open disasters,²¹ in which the number of deaths and the timeframe in which they occur are not well confined. Moreover, the problem is characterised by its relevance for a range of actors, nationally and transnationally, who are confronted with the dead – directly or indirectly. It is, therefore, firstly a transnational humanitarian issue that touches on the responsibilities of actors from different states, and secondly an issue requiring an ongoing and comprehensive response. The two strands of investigation, the management of bodies and an engagement with and support for families in their efforts to search for information about their relatives, imply specific demands. For authorities managing retrieved bodies, an infrastructure and appropriate resources and capacity are needed to conduct a thorough investigation, including by involving families as central actors in the process. For families of the missing it is in turn important to have the opportunity to access information about how to search for their relatives, whether alive or dead, and to perceive that authorities are actively engaging with them. Concerted efforts to reach out to families in countries of origin and third

¹⁸ European Union External Action (2016) European Union Naval Force – Mediterranean. Operation Sophia. Factsheet. Available at: https://ec.europa.eu/csdp/missions-and-operations/eunavfor-med/pdf/factsheet_eunavfor_med_en.pdf. [Last accessed 09.08.2016].

¹⁹ Black, J., Singleton, A., Malakooti, A. (2016) The Central Mediterranean route: Deadlier than ever. Global Migration Data Analysis Centre Data Briefing Series, Issue 3. Berlin: International Organization for Migration.

²⁰ International Organization for Migration: Missing Migrants Project. Available from: <http://missingmigrants.iom.int/>. [Last accessed 27.07.2016].

²¹ Interpol defines an open disaster as “a major catastrophic event resulting in the deaths of a number of unknown individuals for whom no prior records or descriptive data are available”. INTERPOL (2014) INTERPOL Disaster Victim Identification Guide. Available from: <http://www.interpol.int/INTERPOL-expertise/Forensics/DVI-Pages/DVI-guide>. [Last accessed 27.07.2016].

countries of residence are challenging tasks that authorities face together with international organisations, NGOs and diplomatic representatives.

Apart from their right to know the fate of loved ones, there is also a pragmatic need for the inclusion of families in the investigation of migrant fatalities: they are the only ones who can provide ante-mortem data²² to be matched with the post-mortem data²³ collected from bodies, thereby increasing the chances for effective identification of dead bodies. Accessing families can however be difficult for several reasons. Families are geographically dispersed, coming from different regions of the world, with no obvious routes for European authorities to access them. Additionally, families might be sceptical of state institutions, given uncertainties about their potential status if in Europe. In many cases, there may simply be no institutions – either state or non-state – that have the capacity to trace relatives, notably in terms of access and knowledge of their location. When it is possible to obtain data through an active engagement with counterparts in other countries, the quality of these data will vary. In many low-income states, for instance, there is little chance of receiving dental or medical records that could be compared with post-mortem data for identification purposes. Limited access to data and the constraints in the types of data available may make it necessary to adjust methods of matching ante- and post-mortem data.²⁴ Whatever the limitations, a systematic outreach to families for collecting ante-mortem data is a necessary step in order to make a successful identification and thereby fulfil a family's right to know about the fate of their relative. Deaths in the context of migration and the tracing of relatives therefore represent intricate transnational issues, involving a broad range of actors on different (local/national/regional) levels, from the civil service, civil society, as well as diplomatic representations.

Insufficient infrastructure for the inclusion of families in the investigation

Within this complex setting, it is important to provide channels of communication for families of the missing, and to organise outreach to them, wherever they may reside. As indicated above, it can be difficult to establish such channels of communication, and this certainly demands concerted efforts by both authorities and civil society organisations, including the Red Cross movement and its global network. In some of the migrants' countries of origin, state institutions lack the capacity to reach out to relatives and provide information about their opportunities to provide ante-mortem data. Furthermore, there is little outreach from European governments managing migrant bodies to governments of migrants' countries of origin. Such minimal cooperation among the actors involved in identification and outreach work limits opportunities for families to exercise their right to know, impeding the effective matching of ante- and post-mortem -data. An example of how difficult it can be to establish effective mechanisms to involve families and obtain ante-mortem-data is that of cooperation between Italy and Eritrea in the context of the shipwrecks of the 3rd and 11th of October 2013. A representative from the investigating authorities reported:

In the case of the 3rd of October we had many problems because most dead were Eritrean and there were problems of contacts with the embassy, with the country of Eritrea and with the victims. In Eritrea they don't accept the fact that their fellow citizens emigrate. There was this basic problem. Indeed many relatives came because

²² The ICRC defines ante-mortem data as “any information obtained from relatives - or other sources - on the dead or the missing that can be compared with data obtained from mortal remains”. ICRC Glossary of Restoring Family Links terms. Available from: <http://familylinks.icrc.org/en/Pages/NewsAndResources/Glossary.aspx>. [Last accessed: 27.07.2016].

²³ “Any information that can be obtained from a body, or from property, clothing or jewellery attached to the body, that can be compared with ante-mortem data and used to identify the person and establish the cause of his or her death”. ICRC Glossary of Restoring Family Links terms. <http://familylinks.icrc.org/en/Pages/NewsAndResources/Glossary.aspx>. [Last accessed: 27.07.2016].

²⁴ For example Labanof (Laboratorio di Antropologia e Odontologia Forense at the University of Milan) staff working with the Italian Commissioner have used innovative techniques where traditional medical and dental data are not available.

they heard the news from the media, but they came from Sweden or Germany, not Eritrea. (IT#24).

Due to the mostly negative view of emigrants held by the Eritrean Government, it is necessary to find other mechanisms for exchange of information with families who might fear stigmatisation or other consequences following their relatives' emigration. Syrian refugees may face similar challenges. Politically difficult contexts complicate the establishment of contact with institutions and organisations in both migrants' countries of origin and in countries where bodies are found.

A large number of actors and limited coordination

Coordinating actors involved in identification and outreach efforts at local, national and regional levels is one of the major challenges to be addressed, due to a various factors. A broad range of actors play important roles in the procedures concerning both the inclusion of families, and the more technical part of the process of identification of bodies. Apart from non-state actors, for instance grassroots initiatives such as those led by diaspora communities, and more structured civil society organisations such as the Red Cross and Red Crescent National Societies, there are three different branches of the Italian security forces involved. These are the Carabinieri (Military Police), the Judicial Police and the Police, although theoretically two additional branches of the security forces could be involved. Other relevant actors, such as the Public Prosecutor's office, complement this setting. Although not always explicitly formalised, there is some form of division of competences and labour among the authorities involved in Italy:

The thing is that there is no real division of roles. We [the Police] and the Carabinieri are Judiciary Police officers and work on investigating and reporting crimes, coordinated by the Public Prosecutor's office. Then, luckily, in Italy there's a (silent) kind of division of duties. So Carabinieri are a police force with a general competence, just like us, but, for example, in the branch of immigration in practical terms we are alone as regards the management of residence permits, photographic documentation for identification purposes and the management of immigration flows. (IT#24).



Photo 2 Piano Gatta cemetery, Agrigento, Sicily.

Formalising practices and/or structures that facilitate an effective organisation of the identification and outreach work and informing affected families about these would be an important step to support both families and authorities. Unclear responsibilities and competences, scattered across many different institutions, impede families' access to the relevant authorities and therefore limit access to ante-mortem data, which is essential for identification.

Moreover, different actors follow different objectives according to the reasons for which they are involved in the investigation. For example, the investigation in Italy is usually mainly driven by the purpose of prosecuting smugglers, hence humanitarian considerations such as the need to inform families of the dead may not have priority. However, an interesting development in the Italian context has been the establishment of more formal structures, particularly following the incidents of the 3rd and 11th of October 2013 and the 18th April 2015 by the Special Commissioner for Missing Persons²⁵. In these cases, voluntary guidelines and memoranda of understanding were issued and additional resources assigned to the investigations. This also facilitated cooperation among relevant actors. The work carried out by the Commissioner's office represents an example of good practice that will be discussed in more detail below.

Investigation driven by prosecution of smugglers

In Italy, the prosecution of smugglers usually represents the primary purpose of investigations around migrant fatalities. Identification of dead bodies and consequently the inclusion of families in such procedures, are then not necessarily a matter of priority, which

²⁵ See footnote 2 and chapter Good Practice: The Role of the Office of the Special Commissioner for Missing Persons and Collaboration with Labanof, page 22.

again emphasizes the importance of expanding the good practice of the Office of the Special Commissioner for Missing Persons as much as possible to other cases. The legal framework in which the investigation is embedded seeks to identify those responsible for the tragedies of shipwrecks. As one of the interviewees explained: “In Italy, aiding and abetting illegal immigration is a crime – because that’s what a smuggling ring is, being accessory to a crime – when you become responsible for helping immigrants get to Italy illegally” (IT#11). As such, humanitarian considerations such as a dignified management of the bodies that are found or families’ rights and needs, are not the priority from a legal viewpoint. Instead, a perspective from a penal point of view is taken. For example, there is an obligation to collect data in order to establish the identity of the person on whom the investigation is carried out²⁶, which will not be the body that is retrieved but rather a suspected smuggler. An interviewee explains:

The identity [of the body] is not relevant for investigative purposes. The multiple manslaughter remains the same whether I ascertain the identity or not. [...] I am interested in determining if the accused, who were driving the boat, had a culpable behaviour, as in a car accident – imagine – but on a larger scale. (IT#19).

Such an investigative focus can be problematic when it implies that families’ needs to know their relatives’ fate are neglected. This is not always the case however, and the penal code includes families indirectly. They can sue “for damage in a criminal court and get compensation, while the relatives of the unidentified won’t even be able to get a penny” (ibid.).²⁷ Identification is thus indirectly of importance to the respective authorities in order to provide the limited legal channels for recourse for families that exist in Italian law. This is an important element of the relevant body of law, but it is questionable whether families will be able to make use of such an opportunity.

The above shows that there is a way in which identification in cases of migrant deaths is indirectly included in the legal framework. There remains a lack of any framework, however, demanding the identification of those who lose their lives en route to the EU.

Implementation of existing protocols

Final concerns for identification and outreach are the patchy implementation of protocols that already exist (i.e. regulations that are in place) and the expansion of protocols that have been established in relation to cases in which the Office of the Special Commissioner has been involved. These aspects relate to the way in which data are collected and stored, including for example how pictures of the deceased are taken and how survivors are interviewed. A representative of the police who has been involved with migration issues since 2007 describes the problems with photographs of bodies taken incorrectly.

After a while I found that pictures had been taken during the first recovery of the boat. But those were not very clear pictures. Because they had thought of doing them but they had simply opened the bag and taken a photo. More often than not in unrecognisable poses [positions that do not allow to clearly see the person]. If the pictures had been taken correctly, I would have been able to identify them completely through relatives. But they simply opened the bags, took a picture of the body on its side. Identification wasn’t easy, even for family members (IT#7).

Establishing standardised ways of collecting data from the dead is clearly an important task but requires resources. Those who have to conduct the early management of bodies need to be trained in order to be able to follow guidelines and standards, as happened in the work related to the shipwreck of the 18th of April 2015. An example of a failure to implement standards, in this case concerning the storage of data, is the way in which biological samples are taken.

²⁶ Penal Code Art. 347, Art. 349

²⁷ Penal Code Art. 185, 76 and 74

On the island of Lampedusa, for example, various blood samples had been taken, but of these only one was suitable for an analysis aimed at tracing the identity. For the others, the analyses were not possible and even worse couldn't be repeated (IT#9).

If not taken appropriately, samples will not be usable for analysis (IT#8, IT#9). A standardised way of collecting and storing data also facilitates the necessary sharing with institutions from other countries, and thus increases the possibilities for identification.

To further illustrate the challenges and shortcomings of the system currently in place, the next section describes the procedures following an incident such as a shipwreck.

MAPPING POLICY RESPONSES

Special role for the shipwrecks of the 3rd and 11th of October 2013

Before describing and analysing the identification practices established in Sicily, it is important to acknowledge the enormous relevance of the shipwrecks of the 3rd and 11th of October 2013 for the development of those practices. The Special Commissioner for Missing Persons highlights these shipwrecks as a turning point in how bodies are managed: “we weren't ready for these shipwrecks [...]. It was the first time we were forced to face together with the police a new problem” (IT#9). Despite incidents of deaths en route to Sicily that occurred earlier, these shipwrecks received significant public, political and media attention due to the scale of deaths involved. Most authorities treated them as a single incident due to their temporal proximity. Identification efforts and burials were carried out jointly for both cases. The Public Prosecutor's office treated them as two separate cases, and there are, accordingly, two separate files. The significance of these events is also reflected in the understanding of these as mass disasters, which activated a different set of protocols and standards, while previous incidents were not treated as such. Yet, migration-related deaths occur on a regular basis and thus confront authorities with different needs for resources than exceptional disasters do. As the Commissioner for Missing Persons puts it:

Sadly that's the truth! Shipwrecks are new phenomena. It was a different reality: one thing is a guy whose disappearance is reported in Palermo. Usually the Prefectures send them to me. Another thing is that 10-15 migrants are retrieved from a boat. (IT#9).

One of the key differences to other forms of mass disaster is the need for a consistent and ongoing response to the issue. In the cases of the 3rd and 11th of October shipwrecks, the framing of the events as a mass disaster implied the involvement of special units such as the Disaster Victim Identification (DVI) unit from Palermo, supported by local police from Agrigento, namely the Flying Squad as well as the Forensic Science Department. These units carried out a thorough investigation including the collection of fingerprints, photographs and biological samples for identification. Such efforts resulted in successful identification of 181 bodies at the time of our research.

Following the events in late 2013, actors who were involved in identification and outreach work adopted new approaches and practices such as the regular collection of biological samples. Moreover, authorities have now better possibilities to justify expenses for costs related to identification of deaths in the context of migration. This is partly reflected in the memoranda issued by the Commissioner for Missing Persons which deal specifically with this issue. “There can be some difference given to personal initiative, to the discretionary power of the Investigative Police and to the Judiciary that coordinates investigations” (IT#5), but these varieties in practice were minimised by the actions that followed the 2013 shipwrecks. In the broader context and as a direct outcome of these events, the Italian Government initiated operation Mare Nostrum, a humanitarian search-and-rescue operation that included the retrieval of bodies of the deceased for a period of one year. The shipwrecks of the 3rd and 11th of October 2013 were exceptional in the influence they had on approaches and practices linked to identification and outreach efforts by authorities, but remain highly unrepresentative of approaches to the majority of such incidents.

MISSING PERSONS PROCEDURES IN ITALY

The main steps of managing bodies in the context of migrant deaths – as for example described by the ICRC²⁸ – would include the following: retrieval, transfer of dead bodies, autopsy, storage, and burial/repatriation. In reality, these separate steps are usually linked and overlap, as is the case in Sicily. The following section will therefore describe practices around the management of bodies at the time of data collection for this project.

Retrieval and transfer of dead bodies

Retrieving bodies is a crucial element in the process and can significantly influence subsequent chances of identifying the deceased. Weather conditions and the time taken until the investigation can start affect the extent of decomposition of bodies, and this can become an impediment to identification. Organising a timely recovery of bodies in a way that effectively locates and retrieves them is thus key to maintaining high chances for identification.

In Sicily, the first responders to an emergency such as a shipwreck are the Italian Navy and the Coast Guard alongside several other actors that operate in the Mediterranean. There are ships from other EU countries that operate within the framework of the Frontex joint operations, and ships that are operated by actors from civil society such as Médecins Sans Frontières (MSF) or SOS Méditerranée. Some of these operations are focused on a search-and-rescue response and thus represent purely humanitarian operations. Frontex operations include rescue elements but have a principle mandate to police the frontier. Nevertheless, all these actors will respond when they identify ships in distress or when emergency calls reach them. A representative of the police in Palermo described the steps that are taken once an emergency call has been received:

[W]hen the navy ship is called for help... even better, when migrants on board the boat call the Port Captainty and ask for help, the operations headquarters of the Italian Captainty will send the closest navy-ship. This, when it comes, will find the shipwreck. So it first retrieves the survivors. And then starts retrieving the bodies, sadly. Once, the boat was even sinking, and so the soldiers, they were Irish I think, were able to retrieve only some of the bodies (IT#5).

Clearly, in cases of shipwrecks, the priority is to rescue people. Once there is an opportunity to safely retrieve the bodies of those who have lost their lives, this will follow. It should be noted that the short timeframe of first response is also a key moment regarding the state in which a body can be retrieved and the collection of personal belongings: both affect the chances of identifying bodies.

When a body has been successfully retrieved and is brought onto a boat, it is essential to store and transport it appropriately to port. As mentioned above, depending on weather conditions the decomposition of bodies can significantly reduce the possibility of identification. Most ships that operate in the Mediterranean lack the infrastructures to store bodies in refrigerated rooms. As such, the deceased are put into black body bags and are then often left on the deck until they reach port, where heat and sun will accelerate decomposition. In the case of the shipwreck of the 27th of August 2015, a Swedish boat was equipped to store some of the bodies retrieved in a refrigerated box. However, due to the limited size of this refrigerated space, there were too many bodies inside which led to bodies being compressed and disfigured (IT#4).

The Italian Ministry of Interior, together with Frontex, decides on where a ship lands, depending on its proximity to the location of the incident and also on the availability of resources to deal with the incoming survivors and bodies:

²⁸ Morgan, O., Tidball-Binz, M., van Alphen, D. (2009) Management of Dead Bodies after Disasters. A Field Manual for First Responders. Washington D. C.: Pan American Health Organization, World Health Organization, International Committee of the Red Cross, International Federation of Red Cross and Red Crescent Societies.

If it [the incident] occurs in international waters, the survivors are carried depending on which country can receive them. There have been cases of shipwrecks occurring in the open Mediterranean Sea and dead migrants being brought to Reggio Calabria. So Reggio managed the whole event from the investigative point of view: the burial of the corpses, contacts with families, the opening of criminal proceedings, the investigation for identification of the people responsible for it, the smugglers (IT#24).

Before landing at the port that is allocated to the ship, preparations for the arrival will be taken – meaning the organisation of support for survivors and the associated bureaucratic procedures. An investigation team will be arranged by the Public Prosecutor, consisting of coroners, agents of the Flying Squad and the Forensic Science Department. Moreover, the municipality or the health authorities usually provide cultural mediators as support for the survivors.

There is also the whole system that deals with bodies, that is: the Flying Squad, more specifically the one of the staff of the Organized Crime Section so as to investigate the crime organization that gets rich, organizes the human trade, the staff of the Homicide Division, that deals more directly with bodies; a team of coroners, if the bodies are many, sent by the Public Prosecutor's Office, by the Judiciary. (IT#5).

The first representatives of authorities involved in the identification procedures are the coroners who inspect the retrieved bodies, sometimes even before the ship docks in the port. Only then will the ship properly land. At the port, the bodies are placed out of sight of survivors and others to conduct the first steps of data collection and to prepare the bodies for storage and further steps in the identification process.

This shows that there is a system in place to deal with incidents of deaths in the context of migration. However, this system does not necessarily acknowledge the ongoing nature of these incidents, which is mainly visible in the lack of available resources. A central issue in this regard is the collection and management of the data in relation to such incidents. The following section will further describe these practices of data management and highlight the problematic aspects.

Investigation, data collection and management

Under international law and at the EU level, there is an obligation for states to investigate unnatural deaths.²⁹ This implicitly includes deaths occurring in the context of migration. At the national level, there are three main legislative documents concerning migrant fatalities in general: the Penal Code, the New Regulation of the Civil State³⁰ and the Regulation of the Mortuary Authorities.³¹ Of these legal sources, the Penal Code is central to identification efforts as it sets out duties to collect specific information. Firstly, there is a duty to report on the personal details and generally on anything useful for the identification of the person on whom the investigation is conducted. Usually this person will be the individual accused of smuggling, but the deceased and witnesses should similarly be the subject of collection of such information.³² Fingerprints, photographs, anthropometric examination and other examinations are the means at disposal for those who carry out the investigation.

Successful identification requires the systematic collection of different types of data and their respective management. This is essential to provide families with information about their relatives. There are two main forms of data in the context of migrant fatalities – ante-mortem data, which is collected largely from families of the missing, and post-mortem data, which is collected from the dead body, from the shipwreck and from survivors. Within

²⁹ The European Court of Human Rights and the UN Human Rights Committee have set out the steps which the state must take when a non-natural death occurs: protection of the right to life entails both a substantive duty to prevent deaths and a procedural duty to investigate deaths. See also chapter: International Human Rights Law – States Obligations.

³⁰ Decreto del Presidente della Repubblica 396/2000.

³¹ Decreto del Presidente della Repubblica 285/1990.

³² Penal Code, Art. 347.

these there are various types of data, all of which come with specific requirements regarding methods for collection and storage. An effective system to collect data in a standardised way (as far as possible) and to store it in a centralised database (nationally or regionally) facilitates the sharing of these data with actors in other institutions or countries. Data sharing is likely to be essential to match ante- and post-mortem data and eventually provide families with information about their relatives' fate. In the case of the first response to a shipwreck, certain actors hold responsibility for different parts of the procedure. A representative of the police described the division of labour and who is responsible for data collection:

During the disembarkation, all police forces are present....To identify the smugglers and identify those who disembark. But the following part of the process is that of the Procura's³³ offices, the police reports, the phone analysis, the collecting of photos, of personal particulars, of documents that could help with identifying where they sailed from, where they came from, whether there were international organizations behind it or not (IT#7).

Another opportunity to obtain information about the dead in cases of shipwrecks is offered by systematic interviews with survivors. In Italy, those who first welcome survivors and support them do not systematically carry out such interviews for the purpose of identification. This is a source of data that authorities could explore further: survivors may know the identities of the dead, or their country, or town, of origin, and may themselves be relatives of the dead. Survivors might however be sceptical and hesitant to give information if they perceive that their own status in Italy may be potentially affected by the registration of their details. Irrespectively of the type of data, a systematic and standardised way of collecting, storing and managing the data is an important step in order to improve the overall response to the tragedy of loss of migrant lives in the Mediterranean. Despite the improvements made following the shipwrecks of October 2013, there is for example no systematic way of collecting personal effects in the Italian case. Passports, credit cards, photos, telephones and SIM cards, and similar personal belongings are valuable when it comes to identification of bodies. Such collection in turn requires staff who can carry out these tasks and who can also appropriately store and manage the objects collected. The ability to collect these data is therefore also a question of resources. Unfortunately, these data are currently, for the most part, left behind at sea or on the shore due to other priorities, safety issues and a simple lack of resources (IT#25). Biological reference samples (for DNA testing) are however now routinely taken. Since the shipwrecks of 2013 a more systematic approach has been taken and the collection and storage of DNA samples highlights this change in approach.

Finally, data collection is a key concern in the context of obtaining ante-mortem data from families of the missing. This is also one of the most challenging tasks, as it requires improvements on a range of different levels: cooperation of the relevant state authorities in migrants' countries of origin and/or other organisations, as well as in third countries where families might live, and in countries where bodies are managed. Moreover, an effective strategy to include families as central actors in the process demands improved cooperation and coordination among all actors involved. Some civil society actors and international organisations already operate outreach programmes and as such, authorities could make greater use of the Red Cross movement tracing network, engage with migrant and diaspora communities, and better liaise with consular and diplomatic authorities as well as themselves systematically collecting information from survivors.

IDENTIFICATION

Once bodies of the deceased have been retrieved, identification efforts begin. In Italy, the investigation is led by the Public Prosecutor's office. In preparation for the landing of

³³ The Procura is the institution in which the Public Prosecutor's office is located. Its main task is the prosecution of criminal offences.

survivors and bodies, the Public Prosecutor's office appoints a team to conduct the investigation and respective procedures. This team consists of a) coroners, b) agents of the Flying Squad, c) Forensic Science Department and d) cultural mediators (they are appointed by the municipality or the local health authorities). The latter are responsible for supporting survivors whereas the other actors are involved in the procedures directly linked to the management and identification of the deceased.

After landing, a first post-mortem examination is carried out, usually at specifically equipped hospitals or in temporary facilities at the port. Where these procedures are not carried out at the port, authorities will transport the bodies to locations where assessment can take place and where the bodies can potentially be stored. Practices, however, differ depending on the district and municipality responsible. Usually, the municipality should provide refrigerated facilities in hospitals or cemeteries, but this can be problematic when authorities have to manage high numbers of bodies. For example, the municipality of Palermo had to obtain refrigerated containers to store bodies during the summer of 2015 as it was lacking sufficient facilities.

In Italian law, there is an obligation for municipalities to provide facilities needed for the autopsy.³⁴ However, there have been cases where bodies were buried shortly after their retrieval, sometimes without an autopsy taking place (IT#11). Non-compliance with the respective regulations impedes identification efforts but also denies families the opportunity to see their relatives for a last time.

Whether at the port or in other facilities, the external examination of the bodies involves collecting information on height, weight, presumed age, and specific marks like tattoos or scars. Coroners or general practitioners conduct the examination, depending on which municipality is responsible and whether there are specialists available. The level of professionalism varies from city to city. Generally, the Forensic Science Departments in more urbanised areas tend to be more specialised regarding deaths in the context of migration. In other areas, police officers might be the first responders, carrying out some of the tasks of the post-mortem examination and will then go on to further support the work of specialists.

There are two streams of methods authorities can apply to identify the deceased: visual examination through photographs or by relatives in person, and methods that rely on primary identifiers, such as DNA sampling, odontology or fingerprints.³⁵

Visual identification

Visual identification is the most common method used as it is more feasible in terms of financial and staff resources. Moreover, it allows identification through both close and more distant relatives. Usually, police officers or members of the Forensic Science Department photograph the body from different perspectives including the number assigned to the deceased. This is done repeatedly – on the boat and during the post-mortem examination – and, in fact, most authorities involved in the process document the body themselves:

For every operation, for every body, there needs to be photographic evidence and both the regional forensic unit of the police and the hospital's forensic department do so. The pictures are almost identical, but this way we each have a separate archive. (IT#27).

Methods of visual identification are applied in most cases of migrant deaths in Sicily, but this form of identification is prone to error, particularly when bodies are in a state of advanced decomposition and relatives making identifications are traumatised.³⁶

³⁴ Art. 13 D.P.R. 285/1990.

³⁵ Secondary identifiers are for instance detailed personal descriptions, medical characteristics or personal belongings that are found on the body.

³⁶ ICRC (2009) 'Missing People, DNA Analysis And Identification Of Human Remains', p.10, also available at: https://www.icrc.org/eng/assets/files/other/icrc_002_4010.pdf [last accessed 27.07.2016].

Taking photographs of the body does not mean that an effort will be made at identification, since there has to be contact with the family of a missing person to make such visual identification.

Autopsy

While the post-mortem examination is done for every body that can be retrieved, medical examiners will not always conduct an autopsy. To carry out the latter, the Public Prosecutor needs to request it, which in turn is only done in case the coroner has any doubts about the cause of death. So if for instance there are indicators to assume a person has not died by drowning, the Public Prosecutor can order an autopsy. Both judiciary (for victims suspected of having committed a crime) and non-judiciary autopsies (solely for purposes of identification) can be ordered for unidentified bodies. Among our interviewees, there were different opinions on the utility of the information produced in autopsies in the context of migrant fatalities. A Public Prosecutor explained:

With the external examination the coroner can only say [...] that the death was, for example, by drowning or by swallowing water into the lungs. Instead, if we need a closer examination we make the autopsy [...]. The autopsy on drowned bodies is not meaningful from an investigative point of view because you know why they died. It can be useful only if the coroner has other kinds of doubts (IT#17).

In contrast to this example, a coroner in training highlighted the general advantages of carrying out autopsies as there are causes of death other than drowning in the context of migration across the Mediterranean. “We are talking about migrants who, poor fellows, die in the boats’ holds and die because of overcrowding or because they inhaled hydrocarbons” (IT#27). In such cases, the autopsy is of particular relevance to the criminal case as it might affect what charges the suspected smugglers face. However, there must be robust factors to justify the expense and time resources that the medical examiner has to dedicate to this work (ibid.). Interviews with families of missing migrants have shown a concern at autopsies being done, since they are considered by some to be a desecration of the body.³⁷

The autopsy itself involves the opening of different parts of the body in order to assess the inner organs, the brain and stomach, and blood toxicity screening. During these procedures, the coroner looks for characteristics that might indicate a cause of death other than drowning. It was suggested that autopsies on Sicily most probably follow a similar procedure, some form of protocol, which however, is not yet part of any law, though there are efforts to establish such a protocol more broadly in Italy (IT#9, IT#27). Having a protocol for basic procedures while conducting autopsies on the bodies is however dependent on the provision of appropriate facilities and financial resources. The availability of those resources in the municipalities significantly affects the conditions under which coroners work.

We work under impossible conditions...in Palermo and other cities like Porto Empedocle. Do you know where autopsies are done? [...] in makeshift rooms without electricity or even running water. When I get to court, I say ‘You want us to split a hair in two but have you no idea of the conditions we operate under?’ Without lighting? Without being able to see what is there (IT#1)?

Once again, the above description of the practices for autopsies highlights the lack of funding for the important work carried out by local and regional authorities in Sicily – an issue that needs to be addressed in order to allow for a dignified management of the bodies.

Forensic data

Primary identifiers such as tissue samples that can yield DNA are routinely taken from all bodies and stored in different locations, depending on the institution carrying out the examination. Identification based on such data is rare, however, due to the difficulties for families to know which institutions to contact. In the interviews it was suggested that

³⁷ See also: The Mediterranean Missing Project (2016) “Like a part of a puzzle which is missing”: The impact on families of a relative missing in migration across the Mediterranean. York: Mediterranean missing Project.

centralisation of the system concerning data management and liaison with families would be an important improvement for both the families and the authorities involved in identification and outreach work (IT#1). Despite higher costs and the difficulties described, authorities prefer identification based on forensic data as it is more accurate than visual identification.

There are still some challenges concerning DNA analysis for identification, such as that of comparing the sample with horizontal relatives rather than with parents. Moreover, the success of DNA analysis depends on how many families can be reached to send samples to the investigating institutions. That might not be possible in all countries where families are located (IT#14). From a financial viewpoint, DNA analysis might still be preferable as families can send a sample rather than having to finance a flight to Italy to visually identify their relatives. This way they can be sure it is their family member before they travel to Sicily to give them a burial, or before they initiate repatriation of the body. A representative of the Municipal Migrant Council describes the problem:

Do you think they have money for a DNA test? The Italian government could reach an agreement with local governments for these tests, I don't know... because that is the only true way to identify a dead migrant. Ask the relative to take a test, send the results through via email, compare them. (IT#2).

Burial and Repatriation

When the coroners have finished their examination or autopsy of a body, the next step is to prepare it for burial or, potentially, repatriation. Under EU law, families have the right to bury their relatives, provided for in article 8 of the European Convention of Human Rights. Based on this article, there are also duties to return the body to relatives, to organise and attend a funeral, and to take tissue samples from the body.³⁸

According to Italian law, there are several actors involved in the bureaucratic process accompanying the burial of the dead. If a body is unidentified, a retrieval report including detailed descriptions of the body has to be sent to the Prosecutor by the coroner or the Forensic Science Department. The Public Prosecutor will then draft the burial permit (“Nulla Osta alla Sepoltura”) and the municipality will issue the death certificate³⁹ for the body. A copy of the death certificate should be sent to the respective consular and diplomatic authorities that are involved in the process.⁴⁰ However, often this does not happen because the body remains unidentified, and thus without an identified nation of origin, or because no death act is issued. The responsibility for burying unidentified persons lies with the municipality and demands the provision of appropriate space in cemeteries. There is also the option to establish separate sections in cemeteries for different religions although only some municipalities have done this.

Where a person is buried depends mainly on the availability of space as facilities have filled up due to the high numbers of recent migrant deaths.

Those from July I buried in a small available area, which was originally meant exclusively for those natives of Palermo, who however had yet to be “let out” [released for burial] as cadavers. The Mayor decided this. I told him we had those slots and he told me we couldn't not use them. So we buried them there and for all the others we will find a solution then. I still don't have one (IT#4)!

Those managing the cemeteries, together with municipality officials, have to assess the situation concerning space in cemeteries and if the closest cemetery has no available space, the body will be brought to the next one that does. This highlights the practical difficulties that municipalities face concerning the obligations to manage the high numbers of bodies of dead migrants. There are three main challenges concerning the burial of the dead: a) the

³⁸ ECHR case Girard v. France (application no 22590/04).

³⁹ The term death certificate here refers to the Atto di Morte.

⁴⁰ Art. 83 DPR 396/2000.

costs for a dignified burial, b) the consideration of religious beliefs, and c) support for families.

The municipality is responsible for providing space in cemeteries. Transportation and funeral costs are either covered by the municipality or by civil society organisations that cover the costs for people who are not able to cover the expenses themselves, including the unidentified dead. Other issues included for instance how graves were marked (IT#13).

Where bodies can be identified, it may be possible to find out the religious affiliation of the dead. If authorities can establish this, ceremonies and some of the procedures can be adjusted to correspond to the religious requirements. In Sicily, municipalities, in close cooperation with civil society groups and individuals, have set up multi-religious ceremonies for the unidentified. These ceremonies are not carried out for every individual burial but for example for all the victims of a shipwreck. In such events, priests, imams, and sometimes rabbis, and representatives from other religions take part, as a way to show respect for the persons who have lost their lives. This is however, a rather exceptional example of respecting the religious peculiarities of the context. Since the confession a migrant belonged to is usually unclear, generalised burials according to a certain religion are problematic. Other examples where current practices are in conflict with religious beliefs or more general requirements for a dignified burial include cases where graves are marked only with a number and a cross. Those graves are not necessarily being maintained appropriately and civil society groups have highlighted the need for improvement of this situation (ibid.).

A central concern for the way in which burials are managed is how families can take part in this process or are supported in the aftermath. Burial is an essential element affecting how families cope with the loss of a relative.

It's important, I wouldn't contradict the fate, but in case my son is dead, I'd like to bury him here and, at least I'll be fixed and I'd have a place where I pray. Even bones, I'll bury them. The cemetery is in front of my house. Every morning, I wake up in front of it. I recite the « Fatiha », I do this daily. I don't have any hostility towards death. At least, if he's brought back to me, I'd look through the window to see his grave and I'd say that he's there (TU#16).

One of the key needs for families is to know about the fate of their loved ones and having the physical proof that a relative is dead means both the definitive loss of that person and an end to a state of ambiguity, between hope and despair, when families do not know whether their relative is dead or alive. The extent to which a grave also provides a physical place to mourn should also not be underestimated. This is a specific area where authorities could provide support to families, namely, when they travel to Sicily in order to identify their relatives, to give them a burial or to prepare for the return of the body. However, there is currently no such service provided. One of the cultural mediators reported:

They come from Sweden or from Germany. They are somehow able to make a reliable identification for the police... the relative identifies [them] and asks where they're buried. They give them a place of burial and a number of identification. They don't know how to get to the town, of course: no one speaks English and the means of transport are poor. Sometimes it happened that they wandered one or two days around Sicily looking for these cemeteries, whenever we were not taking them there (IT#18).

A modest improvement would be to support families who want to visit their relative's grave, and to mark graves with names where possible. These are two concrete steps that municipalities and the authorities managing cemeteries could take in order to better respond to families' needs.

If the identification and contact with the family of a dead person have been successful, families might want to return the body in order to bury it closer to where they live. Following the procedures required by Italian law, there are five different institutions

involved before the body can be released – namely, the Public Prosecutor’s office, which is responsible for authorizing the release of the body; the ASL⁴¹ (Local Health Authorities), which assesses health and sanitary conditions; the consulate; the Prefecture; and the municipality. Italian law provides a detailed protocol⁴² of the procedures that have to be carried out before the body can be returned, and all actors thoroughly follow it in the cases of repatriation of a body. Once all the authorizations are issued and the body is released, the company charged with the return can proceed.

Considering the importance of repatriation for families, there is one key challenge they face. If families have to travel to Italy they need to get a visa to stay during the process. A simple tourist visa for 10–15 days might not be sufficient, as these processes can take several weeks (IT#2), and are particularly challenging for individuals from migrants’ countries of origin. There might also be religious considerations affecting the return of bodies. For instance, it might be problematic to exhume a body, and consequently families will not be able bring the bodies of relatives home if these are already buried in Italy. This in turn emphasises the importance of an appropriate and dignified burial and grave, whether it is in Italy or elsewhere. A representative from the Islamic community in Sicily explains:

If we speak from a religious point of view, the body doesn't have to be brought back home. It's not mandatory. Our own prophet died in Medina, but he came from Mecca. This is also accepted by some theologians and wise scientists. They say the dead should not be transported to other shores. This is a current of Islamic thought. It should not be moved. However, it should be buried in a Muslim cemetery (IT#20).

A case in which identification and return of the body were successful occurred in 2013, when a young woman died following an explosion on the boat before it even set off, and the body was brought with the boat to Italy. A civil society group then went on to ask the other travellers about her identity and her family and was able to contact the latter. Following correspondence with the responsible public prosecutor, the group was able to stop the process of burial and her body was stored in a refrigerated room. After her father had contacted the Italian embassy in Sudan, he received a tourist visa to identify his daughter and give her a burial (IT#14).

This example is exceptional and shows how the civil society may often step in to fill a gap left by national authorities, in relation to their duty to actively search for families of the dead. Systematic and anonymous interviewing of survivors could potentially facilitate this search for families, as migrants can hold valuable information concerning identification of their dead peers.

GOOD PRACTICE: THE ROLE OF THE OFFICE OF THE SPECIAL COMMISSIONER AND COLLABORATION WITH LABANOF

In 2007, the Italian Government established a dedicated office dealing with issues related to missing persons, within the Ministry of Interior.⁴³ Focusing on all cases of missing persons, not only migrants, the Special Commissioner for Missing Persons became the central institution coordinating the efforts of the different actors involved in identification and outreach to families. The Commissioner’s main tasks are:

- Coordination between the different state actors involved in the procedures related to missing persons;
- Supervision of the activities of institutions and other actors dealing with various aspects of the phenomenon;
- Management and updating of the national register of unidentified bodies;

⁴¹ Azienda Sanitaria Locale.

⁴² See art. 17-36 DPR285/1990.

⁴³ DPR 31.7.2007

- Facilitation of cross-checking of information on missing persons and unidentified bodies;
- Liaison with international institutions for analysing the phenomenon comparatively;
- Liaison with the families of the disappeared and with representatives from NGOs dealing with them.

In the context of migration-related deaths, the Office of the Special Commissioner has specifically dealt with three major shipwrecks – the already mentioned incidents of October 2013 and April 2015. All three cases gained significant media coverage and attention in the political debate due to the number of deaths involved. This may indicate why in these cases greater resources and infrastructure were made available for the investigations. In the two incidents in 2013, 387 bodies were recovered; in the incident in April 2015, 675 bodies were recovered.⁴⁴ The Commissioner's office issued several Memoranda of Understanding that put forward guidelines on how to manage situations of shipwrecks in the context of migration. These documents established and informed cooperation among some of the central actors in the field of identification, namely, the Department for Civil Liberties in the Ministry of Interior, the University of Milan with its Labanof institute for forensic anthropology,⁴⁵ the Chief of Police and the Navy. A key objective of these memoranda is to facilitate the identification of persons who lose their lives during migration to Italy. Although these are not legal instruments in the sense of establishing duties for authorities, they still represent examples of good practice that can help to inform practice more generally.

The cases in which the Commissioner and his office are involved are exceptional with regards to the public attention they have received, as well as to the infrastructure available to those who work on them, but there are more far-reaching implications both for families and authorities.

Even if a thorough examination of the bodies is done, and DNA samples taken and managed systematically, there remains the issue of how families can contact the institutions in Italy managing identification. A representative of the homicide department describes the problem:

The problems are technical-operational. But the answer of the Judiciary Police and Forensic Science Department is very up-to-date and fast, the post-mortem examinations are done, autopsies are done. It's the channel of information that should be facilitated mostly. But this depends on the existing relations with these countries. The more channels are opened with these countries, the bigger the channel of information gets and it's easy also for inspectors identifying the victim. (IT#24).

In the case of the 2013 shipwrecks, the Commissioner's office addressed this issue by engaging with different organisations at a national and international levels, including the Italian Red Cross, the ICRC, the International Organization for Migration, Borderline-Europe, the Comitato 3 Ottobre and diaspora communities of Eritreans across Europe. The international organisations and NGOs were asked to put together lists of families who might have lost someone in these incidents. Meetings were set up with those who were able to travel to Italy, mainly Eritreans living in European countries. In those meetings, also attended by psychologists and forensic experts from Labanof, efforts were made to establish the identities of the bodies. This allowed for identification of 19 bodies. Some of the actors involved perceived this as a procedure that was satisfying some of the families' needs as they were able to talk about the shipwreck, the loss and the identification before proceeding with the actual identification (IT#18). Including families in the process of identification means acknowledging families' position in this tragedy, as well as facilitating



Photo 3 Graves of two migrants who lost their lives on 19th of August 2006. Piano Gatta cemetery, Agrigento, Sicily.

⁴⁴ As of the 14th of July 2016. <http://www.thelocal.it/20160714/italy-finishes-removing-corpses-from-raised-migrant-wreck>. [Last accessed 15.08.2016].

⁴⁵ Labanof: Laboratorio di Antropologia e Odontologia Forense.

the work of forensic experts who try to match ante- and post-mortem data. In the cases of the above-mentioned meetings, some bodies were identified through photographs because relatives knew what their loved ones were wearing when boarding the boat; for others where recognition was not possible, DNA testing could be done (IT#3). Moreover, diplomatic channels were utilised, through embassies of migrants' countries of origin and in states with large diaspora communities of the main nationalities involved in the disasters. This emphasised the acknowledgement of families' right to know and at the same time established the Office of the Special Commissioner as an institution that families can turn to irrespectively of where their relatives might have arrived in Italy (IT#9).

Another positive aspect of the work conducted in these cases is the centralisation of data and identification efforts at the Labanof institute, which carried out the identification work and DNA testing. As mentioned above, DNA testing is not always possible due to the lack of ante-mortem samples to be compared with those taken from the body, so the forensic experts adjusted their available methods in order identify as many bodies as possible.

A biological sample is taken, but they don't necessarily make the DNA test. That's the originality of it. Because doing it is useless unless someone does the comparison. We are able to do it if necessary. If they send us a lock of hair, then it's fine. But if they send us pictures that we can't compare with those ones (he points the screen), that we have post mortem [data]. We take the biological sample so as to put ourselves in the right condition to make the test (ibid.).

Setting out the guidelines and coordinating cooperation, the Commissioner's office started to fill the gaps that state policies and legislation leave – however only for certain cases. It would therefore be a logical step to expand the good practices developed in the context of these three incidents to the more regular identification and outreach work that is carried out by authorities in Italy; in order to do so, it would be necessary to ensure that the Commissioner has the mandate and the resources to bring similar techniques to bear in all cases.

POLICY RECOMMENDATIONS TO ITALIAN AUTHORITIES

The above analysis shows the complexity around the issue of migrant bodies that authorities in Sicily face. There are both immediate and longer-term steps that authorities can take in order to better respond to the situation generally, and to address families' rights and needs in particular.

Expanding the role of the Commissioner's office

Despite the guidelines and standards that the Commissioner's office has issued, the two key problems remain its restriction to work only on three particular cases and the limited nature of its agreements with relevant actors. The identification and outreach work around the shipwrecks of 2013 and 2015 in which the Commissioner's office is involved are well equipped, while bodies from other incidents receive less attention and resources. Moreover, the work carried out by forensic experts from Labanof or other Universities is currently not based on robust funding. A logical next step is therefore to expand the role of the Commissioner's office as a coordinating institution beyond the scope of these three cases and to apply the guidelines as standard procedures as widely as possible. The specifically humanitarian position of the Commissioner and his office should also be acknowledged, as this perspective facilitates the inclusion of families, who are in turn central to identification efforts and to the broader issue of migrant deaths.

The Memoranda of Understanding issued in the context of the shipwrecks are strategically important documents in order to establish cooperation among the actors involved in the identification and outreach work more broadly, both on a local and national levels. The existing activities of the Commissioner's office concerning outreach to families should be extended to all cases of shipwrecks in the context of migration. This includes extending cooperation with diplomatic and consular authorities in Italy, in migrants' countries of origin as well as in countries of their current residence, but also outreach to migrant

communities in Italy. Where this is not possible, established channels through international organisations and NGOs should be utilised. Central actors in this area are the Red Cross/Red Crescent movement, including national societies and the ICRC, with their Restoring Family Links activity. Cooperation with key actors, such as the Red Cross/Red Crescent movement is pivotal in order to facilitate the collection of ante-mortem data and to address families' rights and needs.

Another key area for improvement which has emerged from the interviews is the way in which data is managed. Centralising data storage nationally as a more immediate response, and building regional structures as a long-term perspective are steps the Commissioner's

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 bodies to identify. Families then had the opportunity to get in contact with a person working on the investigation. They could exchange information in order to determine whether their loved one could be one of the victims. The result of this personal act was that the inspector was able to contact families and obtain data that enabled identification of 22 of the 24. Authorities should borrow from such unorthodox approaches, and seek to institutionalise such good practices.

office can probably support and help to coordinate given its existing involvement with all key actors.

Securing additional EU resources

Italian authorities in Sicily and elsewhere face a complex humanitarian challenge demanding a continuous and comprehensive response. Addressing the central issues such as systematic data collection and management as well as effective liaison with families requires appropriate resources. It is therefore key to utilise existing funding opportunities for such issues as the transportation and burial of bodies, interpreting services and psychological support, as well as for the infrastructure needed. Civil society organisations provide some of these services but this does not mean they will be able to continuously do so in the future.

Moreover, psychological support is clearly needed for families who travel to Italy to identify and potentially bury loved ones. Those who work on these cases should similarly be able to receive support. This might imply training first responders and providing support in the aftermath of the work on incidents. Interviews showed how many examples of good practices were due to the initiative and engagement of individuals. The impact on representatives of authorities dealing with the dead should therefore not be underestimated.

Improving existing practices and upholding legal duties

Central to improving the possibility of successful identification is the utilisation of all opportunities for data gathering. In the case of Sicily, this concerns for example the immediate and systematic collection of testimony from witnesses after shipwrecks, with the explicit aim of identifying the dead. As explained above, consideration must be made as to how willing survivors are to speak to authorities if their status is perceived as being at stake. It is therefore important to either allow for anonymous interviews, or to collect reports through non-governmental actors who ensure that data for humanitarian identification and that for law enforcement are collected and stored separately. Current practice is driven by the desire to prosecute smugglers and fails to satisfy the need for data collection to aid identification, and ensures that collection is made by those enforcing the law.

The importance of ante-mortem data for identification purposes steers the second element of key practices that need improvement. In addition to the role of the Commissioner and his office, the role of social media in creating channels for liaison with families should be acknowledged and developed.

Responding to families' needs

As explained above, there is both a humanitarian and practical imperative to include families as key stakeholders in the procedures of identification. They are the most important source for ante-mortem data, which is a prerequisite for identification. It is therefore essential to reach out to families generally. This includes making use of existing channels such as the Red Cross/Red Crescent tracing network, engaging with migrant and diaspora communities, liaising with consular and diplomatic authorities but also to systematically collect information from survivors.

If families reach out to authorities or the latter are able to contact them, humanitarian visas should be issued. These visas need to allow for longer stays than tourist visas of only a few days, as bureaucratic processes can take several weeks in which case families must be able to stay until they can bury the body or organise the return. Moreover, it would be an improvement to simplify the bureaucratic procedures, particularly in the case of the return of a body. Finally, an important element of facilitating the interaction with families who come for identification, burial and repatriation of their loved ones would be to provide interpreters. This would support both authorities and families.

Building a transnational architecture to manage data around missing migrants

In other contexts, such as that of Mexico and the Central American region, efforts to ensure the sharing of data around missing migrants have been led by civil society and largely between states.⁴⁶ However, in the Mediterranean case the fact that ante-mortem data concerning missing migrants must come from many states in several continents complicates the problem. As such, there is a need both for European states holding post-mortem data to have national structures that can centralize such data, and for them to have access to ante-mortem data from a large range of other sources, including potentially migrants' countries of origin, other European states, and directly from families. More specifically, it is recommended that:

- Post-mortem data in European states be centralized nationally, stored securely, and be managed by an agency independent of concerned states that can win the trust of families, and that ensures a role for civil society organizations, including those representing families of missing migrants, and independent organisations with forensic expertise⁴⁷;
- Families of missing migrants be given the required support and information to follow the process of data collection, management and identification, and any subsequent exhumation and repatriation of bodies, in ways that put them at the centre of that process;
- All data collection, management and storage be subject to both relevant data protection standards and to an explicit separation of data used for humanitarian identification purposes and that for border control and law enforcement.

Moreover, a transnational architecture is required that would enable the collection and storage of both ante- and post-mortem data concerning missing migrants from a range of sources, including state authorities and families. Matching of ante- and post-mortem data can then be made either at the national level or through some transnational structure. We recommend that efforts begin to find ways in which states can cooperate and collaborate on data sharing. This could begin with the agreement of a set of principles, based on international human rights law, which could provide the foundation for such cooperation. These principles could take as their point of departure, the guiding principles developed by the ICRC, around the treatment of persons missing in conflict and political violence.⁴⁸ On the basis of such agreed principles and with a commitment to a human rights-based approach, a set of protocols can be developed, in collaboration with technical experts such as the ICRC and the International Commission for Missing Persons, that describe how data

⁴⁶ Reineke, Robin (2016) Missing persons and unidentified remains at the United States–Mexico border, in Brian, T. and Laczko, F. (Eds), *Fatal Journeys Volume 2, Identification and Tracing of Dead and Missing Migrants*. Geneva: IOM.

⁴⁷ Such as ICRC and ICMP.

⁴⁸ ICRC Guiding Principles

is collected, managed and shared, between states, families and other actors, in a way that maximises both the identification of missing migrants and the involvement of families in that process.

| DATE | ID | DETAILS |
|------------|-------|---|
| 20.11.15 | IT#1 | Coroner and chief of Department of Legal Medicine in Hospital |
| 24.11.15 | IT#2 | Spokesperson Municipal Migrant Council |
| 25.11.15 | IT#3 | Activist of Borderline Europe |
| 26.11.15 | IT#4 | Cemetery director |
| 27.11.15 | IT#5 | Vice Commander of Murder Department |
| 25.11.15 | IT#6 | Lawyer |
| 28.11.15 | IT#7 | Policeman, expert on border death identification |
| 09.12.15 | IT#8 | Professor of Forensic Science |
| 18.12.15 | IT#9 | Commissioner for Missing Persons |
| 23.12.15 | IT#10 | Public Prosecutor |
| 28.12.2015 | IT#11 | Public Prosecutor |
| 18.12.2016 | IT#12 | Activist, spokesperson missing migrants families group |
| 25.01.2016 | IT#13 | Lacal Combonian Community |
| 26.01.2016 | IT#14 | Cultural Mediator |
| 03.02.2016 | IT#15 | Cemetery Officer |
| 03.02.2016 | IT#16 | Caritas Director |
| 03.02.2016 | IT#17 | Public Prosecutor |
| 05.02.2016 | IT#18 | Cultural Mediator |
| 16.02.2016 | IT#19 | Public Prosecutor |
| 16.02.2016 | IT#20 | President of an Islamic Community, Sicily |
| 16.02.2016 | IT#21 | Representative of Sant'Egidio Community Sicily |
| 16.02.2016 | IT#22 | Trade Unionist |
| 17.02.2016 | IT#23 | DVI unit, Chief of Scientific Police |
| 26.02.2016 | IT#24 | Vice Commander of Murder Department |
| 26.02.2016 | IT#25 | Head of Scientific Department, Police |
| 26.02.2016 | IT#26 | Head of Operational Team |
| 12.05.2016 | IT#27 | Postgraduate student in Forensic Medicine at a Hospital |
| 05.12.2015 | TU#16 | Mother of a missing son (disappeared in May 2011), Tunisia |

Appendix I LIST OF INTERVIEWS

Appendix II LEGAL MEMO

The Italian legal framework for the management of missing persons and unidentified dead bodies, and the rights of their relatives⁴⁹

In Italy there are two different procedures concerning the issue of missing people that are closely linked and mainly focused on citizens:

- An administrative one, led by the Extraordinary **Commissioner for Missing Persons**⁵⁰ (CSPS in its Italian acronym) with the cooperation of the local prefects and the police, whose main focus is the search for missing people, not restricted to migrants;
- A judicial one, led by a Public Prosecutor, whose focus is the detection and prosecution of possible criminal offences underlying the discovery of an unidentified body.

The **administrative procedure** is governed by Law n. 203 of 2012 and begins with a report that a person is missing.

The CSPS is a central figure in the search procedure. It:

- Coordinates relevant public and private actors involved in the search process;
- Constantly updates the **Register of Unidentified Bodies** (Registro Nazionale dei Cadaveri non Identificati) and national statistics on missing persons;
- Facilitates the correlation of information on missing persons and unidentified bodies that could enable identifications;
- Maintains contact with the families of the disappeared.

The CSPS is supported by:

- A special department (called **Ufficio del Commissario straordinario per le persone scomparse**);
- A committee called "**Tavolo Tecnico**" which in 2010 developed a new information system, called **Ri.Sc.** (Missing People Research, in Italian "Ricerca Scomparsi") with the aim of comparing anthropological data from missing persons with that from unidentified bodies.

To this end two different forms must be completed:

- The 'ante-mortem form', which concerns ante-mortem data from the missing person and is filled in by the Police when the person is reported missing;
- The 'post-mortem form', which concerns post-mortem data from the unidentified body and must be completed by the coroner when the body is examined, at the request of the Public prosecutor.

The Ri. Sc. will soon also be interfaced with the national **central DNA database**, which was set up in 2009 by Law n. 85 to implement the 2005 **Prüm Treaty**⁵¹. This database contains the DNA profiles of people who were arrested or convicted of criminal offences and data from biological samples taken in the course of criminal proceedings, from unidentified bodies or remains, and from the close relatives of missing people.

⁴⁹ This summary was prepared by Serena Romano, who also authored the legal briefing on which it was based: Romano, S. (2016) The Italian legal framework for the management of missing persons and unidentified dead bodies, and the rights of their relatives, York: Mediterranean Missing Project.

⁵⁰ Established by Presidential decree on 31 July 2007.

⁵¹ Prüm Convention on the Stepping Up of Cross-Border Cooperation, particularly in combating terrorism, cross-border crime and illegal migration; signed by the contracting parties in Prüm (Germany) on 27 May 2005, and ratified by Italy with Law n. 85 of 30 June 2009.

The **judicial procedure** is governed by the Code of Criminal Procedure, D.P.R. n. 334/1989 and D.P.R. 285/1990 and is initiated when an unidentified body or human remains are found.

This procedure is led by a **Public Prosecutor** and aims to proceed with the identification of the body and the detection or prosecution of possible criminal offences underlying the finding of an unidentified body.

Because of the increasing phenomenon of missing migrants in Italy the Extraordinary Commissioner signed three **memoranda of understanding** with Italian Universities, the Labanof laboratory of the University of Milan and the Department for Civil Liberties of the Ministry of the Interior, in order to facilitate identification of the victims of the shipwrecks of 3 April 2013, 11 October 2013 and 18 April 2015 and to create national guidelines that are consistent with DVI (Disaster Victim Identification) protocols of Interpol and with those used by the International Committee of the Red Cross.

The Memoranda provide for a specific notice addressed to the families of the victims, in order to collect information and ante mortem data. The Universities involved have been analyzing the ante-mortem data and creating an archive which contains the results of autopsies, and anthropological information resulting from the analysis of the bodies. A report with the results is then sent to the Public Prosecutor's Office which relatives can consult, on their request. The Labanof laboratory has the task of matching ante-mortem data with post-Mortem data (taken from the archive).

The body is retained under judicial control, and family members of a dead migrant have the status of offended parties and are directly involved in the criminal procedure. They can ask for further investigations and appoint a technical advisor. Before the body is identified they nevertheless have an interest in the identification which is, at least, instrumental in family members acquiring their legal status and rights.

Concerning **burial**, as the body is under judicial control, a request must be addressed to the Prosecutor in order to release it. Once the body is released, the Clerk's office completes the **death certificate** and authorizes the burial in a local cemetery. A copy of the death certificate is immediately sent to the competent consular and diplomatic authorities.

The **exhumation** of the body can be ordered by the Prosecutor for the purpose of investigation and in the interests of justice according to art. 83 of the D.P.R. 285/1990 and art. 116 of the Regulation for the implementation of the code of criminal procedure.

In 2012 the **Italian Court of Cassation**⁵² held that relatives may not challenge a decision concerning exhumation and that they *do not have any legal right over the body of a relative and cannot dispose of it*. On the basis of that judgment one may assume that the relatives also have no legal right to request exhumation of the body.⁵³

The body can be moved to the country of origin, if requested by the family. In these cases:

⁵² Case n. 12549/2012.

⁵³ But see art. 83 of the Mortuary Police Regulation, pursuant to which for "reasons of justice" the exhumation can be ordered by the judge (even at the request of the relatives).

- When the body is to be moved to a State that is Party to the Berlin Convention⁵⁴, the local Prefect releases the death passport (**passaporto mortuario**), and nothing else is required;
- When the body is to be moved to a State that is not a Party, a request must be addressed to the Prefect of the place where the body lies, with some additional documents.

Some Legal Obligations derive from **International Law**:

- The London Convention for the Safety of Life at Sea and the Hamburg Convention on Search and Rescue at Sea lay out obligations for coastal states to promote and enable search and rescue services at sea; to provide aid and assistance to all those risking their life at sea; to provide first aid and medical assistance to survivors and to escort them to a safe place;
- Art. 6 of the Covenant on Civil and Political Rights and art. 2 of the European Convention on Human Rights, both state the right to life and the correlative obligation to protect it for the Contracting States as well as the duty to investigate where life is lost;
- Art. 3, which includes prohibition of inhumane and degrading treatment and art. 8, which protects the right to have a family and private life embracing family unity and respect for the dignity of both dead and living family members.

⁵⁴ Berlin Agreement on the Transport of Human Remains signed in Berlin on 10.2.1937.

Mediterranean Missing

Understanding the Needs of Families
and the Obligations of States

www.mediterraneanmissing.eu

THE MEDITERRANEAN MISSING PROJECT



The Mediterranean Missing Project is a one year research project running that began in September 2015, funded by the Economic and Social Research Council of the United Kingdom. Resulting from collaboration between the University of York, City University London, and the International Organization for Migration, the project is one of the first efforts to systematically collect data and comparatively explore current responses to migrant bodies in the Mediterranean, and the impacts of a missing person on families left behind. In 2015, over 3,770 refugees and migrants are known to have died at sea while trying to reach Europe. The majority of these people are not identified, and in many cases bodies are never found. In each case, a family is left in a state of ambiguous loss, unable to fully grieve for their loved one. Despite the magnitude of unidentified deaths and the suffering of families, states have done little to address this humanitarian imperative. This project aims to shed light on the policy vacuum at EU and national levels, through investigating the policies and practices in Italy and Greece regarding the investigation, identification, burial and repatriation of migrant bodies. Research with families of missing migrants from a range of contexts aims to better understand the impacts of missing persons on families, both psychologically as well as economically and socially.

Research findings include the following publications:

- Italy and Greece country reports, including summary versions.
- A report of a study on the impact on families of having a relative missing in migration.
- A legal briefing summarising the obligations under International Human Rights Law of states concerning the migrant bodies and the missing.
- Studies of the legal frameworks relevant to missing migrants and the management of the bodies of migrants in Italy and Greece.

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