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Missing migrants, refugees and asylum seekers – A call to clarify their fate

Report[1]
Committee on Migration, Refugees and Displaced Persons
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Summary

The phenomenon of migrants, refugees and asylum seekers going missing is a tragedy largely underestimated and neglected as a human rights issue requiring policy responses across Europe and the world. Many contexts can lead to the disappearance, including the enforced disappearance, and the death of a person on the move, with many consequences and challenges induced by for public authorities and for those searching for a missing person.

The need to clarify the fate of missing migrants, refugees and asylum seekers, whether the person is dead or alive, does not face a legal vacuum. Equally, the fact that migrants, refugees and asylum seekers go missing is not inevitable and can be prevented. At the crossroads between data protection, humanitarian and protection considerations, criminal law and forensic search, a wide range of issues have to be addressed in an international context.

Co-operation between State and non-State actors, through public policies in line with existing international standards in the various matters at stake, is the key to protect the rights and dignity of the living, as well as of the deceased. In this endeavour, this report demonstrates the potential for the Council of Europe to support the existing efforts towards greater alignment of legislation and procedures across member States in the field of prevention, protection, search, investigation, and identification of missing persons.

1. Reference to committee: Doc. 15488, Reference 4642 of 25 April 2022.

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A. Draft resolution[2]

1. The phenomenon of migrants, refugees and asylum seekers going missing is a tragedy largely underestimated and neglected as a human rights issue requiring policy responses across Europe and the world in line with the Objective No. 8 endorsed by the State parties to the Global Compact for Safe, Orderly and Regular Migration.

2. The Parliamentary Assembly is convinced that concerted initiatives at the public policy level are needed to underpin and multiply the significant efforts already in place through a structured and adequately-resourced vision and plan, rooted in the respect of international human rights and international humanitarian law.

3. The Assembly fully endorses the recommendations outlined in the General Comment No. 1 on Enforced Disappearances in the context of Migration (CED/C/CG/1) by the United Nations Committee on Enforced Disappearances, and in the report entitled "Unlawful death of refugees and migrants" (A/72/335) by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions. It also endorses the recommendations in the report by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions "Protection of the dead" (A/HRC/56/56) including the need to develop universally applicable guiding principles, based on human rights, for a comprehensive protection.

4. The Assembly considers that human dignity should be ensured to all persons in life and in death, and that the obligation in law to treat the deceased with dignity should extend to situations where international humanitarian law is not applicable.

5. The Assembly recalls that, pursuant to Article 2 of the European Convention on Human Rights (ETS No. 5), member States have a duty to prevent violations of the right to life and to investigate any cases of unnatural death or unlawful killings; it is on this basis that they must define how they tackle the issue of missing migrants, refugees and asylum seekers.

6. The Assembly expresses its sympathy and solidarity with the families of the missing and acknowledges their legitimate quest for information. It recognises the right for adults to choose to not divulge their whereabouts to their families, but also the importance for families to know whether their relatives are dead or alive.

7. The Assembly considers that any initiatives conducted by State authorities to report, search or identify a person should never involve the administrative checks or the criminalisation of that person or of any person providing support to them due to their irregular status.

8. On prevention, effective access to safe and legal migration routes, including for family reunion or reunification, must be a priority as well as the provision of humanitarian assistance along migration routes irrespective of the administrative status of the person on the move in need of support.

9. Member States must conduct search and rescue operations at sea and on land according to international law, in full compliance with the European Convention on Human Rights and the consistent case law of the European Court of Human Rights. Pushbacks are illegal practices which may also lead to disappearance and must stop immediately.

10. Reiterating the importance of fully abiding by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210) the Assembly underlines the need to protect vulnerable people on the move who are or may be at risk of being victims of trafficking, victims of torture, victims of enforced disappearance or victims of gender-based and domestic violence, and thus to reduce their risk of going missing. Any person deprived of their liberty should be registered and should be able to communicate with the outside world as per the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) standards. Immigration detention should only be a measure of last resort and for the shortest period possible, pending the enactment of a return procedure where deprivation of liberty is proven to be necessary as confirmed through the appropriate judicial oversight. Refugees should not be criminalised for crossing a border unauthorised, pursuant to Article 31 of the Convention related to the Status of Refugees. The Assembly invites the relevant Council of Europe bodies such as the CPT, the Group of Experts on Action against Trafficking in Human

2. Draft resolution adopted unanimously by the committee on 27 June 2024.

Beings (GRETA) and the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) to pay particular attention to the impact which border management policies may have on their fields of expertise as regards missing migrants.

11. In line with Recommendation CM/Rec(2019)4 of the Committee of Ministers to member States on supporting young refugees in transition to adulthood and its Recommendation CM/Rec(2019)11 on effective guardianship for unaccompanied and separated children in the context of migration, the Assembly highlights the need for the systematic registration of unaccompanied children, for diligent search efforts when they go missing, and for a safe and child-sensitive referral to appropriate accommodation, educational facilities and, when applicable, to family reunification.

12. As regards reporting and search mechanisms, the Assembly firmly stresses the importance of ensuring that reporting and search processes are free from any considerations related to the administrative status or the criminal record of the person searched for.

13. In the event of a disaster involving a large group of persons, disaster victim identification teams should be deployed to ease a standardised cross-border process to identify victims. The Assembly recommends that member States identify possible areas where resources can be mutualised and shared on the most critical aspects of such cross-border co-operation. The International Criminal Police Organization (INTERPOL) may be of support in this endeavour.

14. The Assembly warns against the risks possibly induced by the centralisation of personal data and recalls the importance of informed consent being obtained by data subjects in the management of their personal information, and of identifying an adequate legal basis for such information management. Any such converging of information should only be performed with the guarantee of external oversight by independent data protection entities in the member States participating in such pooling of data.

15. As regards the identification and treatment of the bodies of the deceased, the Assembly underlines a critical need for additional resources to be allocated to forensic and coroners' services, including the need for sufficient space in the morgues pending autopsy, identification, burial or repatriation.

16. The Assembly recommends that prosecutors systematically authorise the investigation and autopsy of unidentified bodies to collect as much information as possible within the short period of time available including non-primary identifiers in line with international standards for the documentation and preservation of data. Data should be kept in dedicated storage accessible to law enforcement authorities.

17. In the case of potentially unlawful deaths, the Assembly encourages member States to make use of the available international standards for their reliable investigation, in particular the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) – The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

18. Member States should align their legislation with the legal standards allowing for the proper documentation of the deceased, as provided for in Recommendation No. R(99)3 of the Committee of Ministers on the harmonisation of medico-legal autopsy rule, and enable the transfer of biometric data in the context of search and identification in full compliance with the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) as amended by Protocol CETS No. 223 ("Convention 108+"). It calls on member States to facilitate the exchange of forensic knowledge and resources to allow for identification within the short period of feasibility.

19. The Assembly acknowledges the role of the International Criminal Police Organization (INTERPOL) has a potential facilitator towards such harmonisation. It stresses the critical importance of ensuring an external oversight by data protection bodies in each country where such harmonisation and processing of personal data is envisaged.

20. As regards the possibility to centralise post-mortem and ante-mortem data, the highest standards of data protection should be ensured when making the effort to co-ordinate the fragmented datasets available, in line with Convention 108+ and the Minnesota Protocol. A clear distinction should be made between data intended for humanitarian searches and that used for other purposes.

21. The Assembly encourages those countries who have not yet done so to ratify Convention 108+ and to use this instrument in the context of missing and deceased migrants, in line with paragraph 30 of its explanatory report. It draws attention to instruments such as the standardised Model Contractual Clauses for the Transfer of Personal Data from Controller to Controller and the Model Contractual Clauses for the

Transfer of Personal Data from Controller to Processor to transfer personal data to countries non-party to Convention 108+ and whose data protection legislation is inexistent or does not provide an appropriate level of protection.

22. The Assembly calls for increased exchanges between the national and regional authorities with responsibilities in the field of data protection, human rights and migration issues, in order to best co-ordinate between themselves and with international and United Nations organisations sharing recognised expertise on compilation, exchange and/or comparison of relevant information. Such organisations should include the International Commission on Missing Persons (ICMP), the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (IFRC), INTERPOL, the International Organization for Migration (IOM), the United Nations Refugee Agency (UNHCR), the United Nations Special Rapporteur on the human rights of migrants, the United Nations Special Rapporteur on extrajudicial, arbitrary and summary executions, experts from the United Nations Committee on Enforced Disappearances and the United Nations Working Group on Enforced or Involuntary Disappearances. Wherever possible, discussions on these matters must provide for the inclusion of the voices of migrants, the families of those lost or deceased, and civil society.

23. The Assembly would welcome the Council of Europe being provided a meaningful role to ensure data protection conditions allowing for standardised processes and platforms to enable the matching of data coming from vetted data collectors and holders and to ensure interoperability. Such efforts may also lead to the establishment of a database.

24. The Assembly calls for regional co-operation between prosecutors across Europe on how best to identify and share data on missing migrants and unidentified bodies.

25. As a part of the above actions, the Assembly recommends that member States:

25.1. adopt a common definition, guided by the ICRC's standard definition whereby "a missing person is an individual about whom their family has no news and/or who, on the basis of reliable information, has been reported missing as a result of an international or non-international armed conflict, other situations of violence, disasters or any other situation that may require the intervention of a competent State authority including in the context of migration";

25.2. facilitate the issuance of relevant documents for families of the missing person (for example a certificate of absence), enabling them to gain access to various rights or to reunion or reunification procedures;

25.3. work together with the Red Cross and Red Crescent Movement and contribute to the co-ordination of the disaster victim identification procedures and to the sharing of information on INTERPOL databases designed to search for and identify missing persons;

25.4. appoint national focal points for missing migrants to serve as the designated point of contact for inquiries by other national authorities or their representatives in transnational co-ordination efforts; member States which have already appointed national focal points for missing migrants may share their experience in the framework of the Network of Focal Points on Migration coordinated by the Special Representative of the Secretary General of the Council of Europe on Migration and Refugees.

25.5. expediate short-term visa requests lodged by families of missing migrants, refugees and asylum seekers, in order to facilitate identification processes and provide support to families with regard to the procedures involved, including repatriations;

25.6. review their legislation with a view to improving and harmonising national processes to record and manage cases of missing migrants and unidentified human remains, including as regards gaps in the medico-legal framework and the issue of European and international data sharing in line with international norms and standards on data protection;

25.7. ensure that graves are individualised, clearly identifiable and permanently marked either nominally or numerically, with unique codes, and recorded, and that every effort is made to respect the religious and spiritual beliefs of the persons deceased when such are known, in line with the right to freedom of religion and belief as protected in Article 9 of the European Convention on Human Rights;

25.8. ratify and implement the International Convention for the Protection of All Persons from Enforced Disappearance.

B. Draft recommendation[3]

1. The Parliamentary Assembly refers to its Resolution... (2024) “Missing migrants, refugees and asylum seekers: a call to clarify their fate” and invites the Committee of Minister to express the Council of Europe’s readiness, in line with the Organisation’s values and standards, to join forces with its international partners and to support member States in further developing and adding to the efforts which have been initiated in recent years on the issue of missing migrants, refugees and asylum seekers.

2. In this respect, the Assembly encourages the Committee of Ministers to strengthen its paths of co-operation with the most relevant organisations on the international stage, in particular with the International Committee of the Red Cross, INTERPOL, the United Nations High Commissioner for Refugees, the United Nations International Children’s Emergency Fund, and the International Organization for Migration.

3. It considers that progress on joined-up and coherent policy making on this issue also requires specific discussions between the competent authorities of member States. It invites the Committee of Ministers to acknowledge the pressing need for common standards across member States in order to improve search processes at national and transnational levels, and to improve the management and the identification of deceased migrants, in particular by:

3.1. updating Recommendation No. R(99)3 on the harmonisation of medico-legal autopsy rules, in light of the emerging challenges and new practices, especially with respect to post-mortem documentation for identification, the standardisation of forensic investigation and autopsy rules and the particular context of cross-border mobility;

3.2. adopting guidelines on data collection, transmission and centralisation of the post-mortem data for forensic identification of missing persons in Europe; providing a standard definition of missing persons; and protecting the rights of members of the families as data subjects protected under the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) as amended by Protocol CETS No. 223 (“Convention 108+”). These guidelines should also cover the specific legal and practical issues at stake as regards the situation of missing migrants, refugees, asylum seekers, and of families in search of missing persons, including the cross-border context, and could be made open for endorsement by non-member States which are party to the Convention 108+;

3.3. facilitating discussions between prosecutors across member States, particularly as regards the possibility of reviewing the standard practices already in place in a series of member States on the identification and management of cases of deceased missing migrants, refugees and asylum seekers, and of establishing guidelines for a standard protocol to be used across all member States.

3. Draft recommendation adopted unanimously by the committee on 27 June 2024.

C. Explanatory memorandum by Mr Julian Pahlke, rapporteur

1. Introduction

1. Between 2014, when the International Organization of Migration (IOM) launched the Missing Migrants Project, and today, "the tragedy of missing migrants has reached a dreadful magnitude" of dozens of thousands of persons, as stressed by the former Commissioner for Human Rights of the Council of Europe in a statement published in September 2022.

2. In 2018 States signatory of the UN Global Compact on safe, orderly and regular migration have committed to "sav[ing] lives and establish[ing] coordinated international efforts on missing migrants" (Objective 8 of the Compact). After many years of civil society organisations and families of the disappeared raising the alarm on the need for co-ordinated action and policy making on this tragic reality, the many efforts launched by international organisations such as INTERPOL, the IOM and the International Committee of the Red Cross (ICRC) are illustrative of the growing acknowledgment of the issue and the scope for international co-operation to address it.

3. However, the level of engagement by State authorities as such has remained limited and this is hampering the impact both of international co-operation and of actions at the micro-level.[4]

4. On 28 March 2022, a motion for Resolution (Doc. 15488) was tabled, calling for the Assembly to explore ways to "encourage the creation of an effective search process for missing migrants, asylum seekers and refugees, proper management of dead bodies, identification processes, as well as support that could be given to their relatives."

5. The issue is without any doubt morally very compelling, and yet raises several technical and political challenges. Some aspects of the problems and issues have been already discussed by the Parliamentary Assembly in Resolution 2324 (2020) and Recommendation 2172 (2020) "Missing refugee and migrant children in Europe" and in Resolution 2425 (2022) "Ending enforced disappearances on the territory of the Council of Europe."

6. On 25 November 2022, the Standing Committee of the Assembly referred the motion for Resolution (Doc. 15630) "Protecting human rights and saving lives in the North Sea and the English Channel" to the Committee on Migration, Refugees and Displaced Persons, asking it to take this motion into account in the preparation of this report. I am grateful to our colleague Mr Fourat Ben Chika (Belgium, SOC) for drawing the Assembly's attention to this particular situation which has recently – tragically – gained even greater topicality.

7. For the purpose of this report, I will use the term "missing migrants" in a general sense of people going missing in the context of migration, irrespective of the administrative category under which they may be considered, except when their administrative status involves a particular type of challenges or procedures to address or prevent a situation of disappearance (people in need of international protection, refugees, asylum seekers, people at risk/victims of trafficking in human beings).

2. Overarching view of the issue: defining the scope

2.1. Who are missing migrants?

8. The ICRC considers that a "missing person" is a person "about whom their family has no news and/or who, on the basis of reliable information, has been reported missing as a result of an international or non-international armed conflict, other situations of violence, disasters or any other situation that may require the intervention of a competent State authority, including in the context of migration".[5]

9. According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), a migrant is "any person who is outside a State of which she or he is a citizen or a national, or, in the case of a stateless person, his or her State of birth or habitual residence".[6] Migrants thus may be persons on the move, or persons of foreign origin established regularly or irregularly in a country.

4. UN Secretary General, "Global Compact for Safe, Orderly and Regular Migration" (A/76/642), 21 December 2021.
5. ICRC, "Guiding Principles / Model Law on the Missing", 2009.
6. OHCHR, "Recommended principles and guidelines on human rights at international borders", 2014.

10. It is important to highlight that a significant number of migrants going missing are children, often unaccompanied minors. Missing Children Europe[7] covering 32 European countries, has raised its concern that the fate of migrant children often remains unreported. For its part, EUROPOL notes that their vulnerability to exploitation, to abuse – including by criminal networks or their own family unit – is extremely high, even more so as their registration is not always ensured.[8]

11. Among the men, women and children going missing, some would fall into the category of refugees in that they might have been eligible for a form of international protection in the sense of the United Nations Convention related to the Status of Refugees (hereunder the "Refugee Convention"). For the purpose of this report, as regards those missing, I will mostly use the term "migrants" in a general sense of people on the move, irrespective of the administrative category under which they might be considered.

12. Migrants may also be victims of enforced disappearance which mean that they are victim of a crime perpetrated by States or non-state actors as defined in Articles 2 and 3 of the International Convention for the Protection of All Persons from Enforced Disappearances. In 2017, the Working group on Enforced or Involuntary Disappearances outlined "the direct link between migration and enforced disappearance, either because individuals leave their country as a consequence of a threat or a risk of being subject to enforced disappearances there, or because they disappear during their journey or in the country of destination."[9]

2.2. Why do migrants go missing?

13. In September 2023, the Committee on Enforced Disappearances found that "migrants are in a situation of particular vulnerability", and "faced with restrictive immigration policies and dehumanizing border governance tactics" leading to thousands of them dying, disappearing or going missing each year.[10]

14. Migrants may go missing because their death, even if arising from natural causes, goes unreported, because their body is never searched for or found, or cannot be identified.[11] Some may be alive without access to means of communication, for example in a place of detention. If a body is found, the impossibility of tracing the person's journey and the family connections often leaves family members without any updated news on their loved ones. Even when the identity of the person is confirmed, families may be out of reach.

15. The increasingly strict financial, administrative and documentation requirements imposed by countries of destination, and by countries of transit to enter or cross their territory, including for people in need of international protection, should be considered as a contributing factor to disappearances.

16. The UN Special Rapporteur on the Human Rights of Migrants (2017-2023) spoke in July 2022 of "the global trends that contribute to the loss of life and injury including the militarization of border patrols increasing the risk of human rights violations, collective expulsions of migrants, heightened risks of refoulement and chain-refoulement, the use of force involved in some pushback operations, externalization of border governance measures, bilateral and multilateral agreements that fail to uphold human rights obligations, and denial of access to territory or access to asylum by States."[12]

17. In Europe, the realisation of such restricted access through physical but also legal/procedural means is combined with practices which may be in breach of international human rights law as well as with European norms and case law, such as pushbacks and pullbacks[13] including through the use of informal detention sites with no regard for registration procedures.[14] The failure to respect international obligations including the non-refoulement principle and the absence of a proper process to ascertain the protection needs of each individual contribute to migrants going missing.[15]

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7. Missing Children Europe, "Annual Review 2022", 2022.
8. Europol, "Criminal networks involved in the trafficking and exploitation of underage victims in the EU", 2021.
9. UN Working Group on Enforced or Involuntary Disappearances, "2017 Report" (A/HRC/36/39 and addendum A/HRC/36/39/Add.2), 1 August 2017.
10. UN Committee on Enforced Disappearances, "General Comment No.1 on enforced disappearance in the context of migration" (CED/C/CG/1), 18 September 2023.
11. UNITED, "List of refugee deaths", last accessed on 17 June 2024.
12. OHCHR, "Pushbacks of migrants on land and at sea must end, says UN expert", 9 July 2021.
13. European Court of Human Rights, Case of Hirsi Jamaa and Others v. Italy (application no. 27765/09), 23 February 2012 (ruling as rectified on 16 November 2016); UN Committee on Enforced Disappearances op.cit. p.7.
14. CPT, "32nd General Report", March 2023.
15. Exchange of views with Ms Kristy MacDonald, Protection Coordination, ICRC France, meeting of the Committee on Migration, Refugees and Displaced Persons, 7 December 2022.

18. The lack of coordination of search and rescue efforts across European States,[16] the restriction of search and rescue efforts means and of the ability for non-state actors to provide support to migrants in distress have proved to be aggravating factors conducive to cases of migrants going missing; in the case of tragedies at sea, the IOM talks about "the invisible shipwrecks."[17]

19. In this context, the growing presence of traffickers and of abusive smugglers along migration routes, and sometimes even from the very outset of the journey, is exposing people on the move to increased risks of exploitation which reinforces the likelihood of them going missing and becoming victims of enforced disappearances.[18] This reality, coupled with agreements between countries to curb migration, is contributing to "an increase in the exposure of migrants to [a] litany of abuse" by State and non-state actors.[19]

20. Migrants may be unwilling to register their presence on a given territory, but they are often known to non-official entities, for instance community centres or non-governmental organisations. However, the severe mistrust between official authorities and migrants or migrant-led non-governmental organisations is conducive to segmenting the relay of information, which makes it much harder to trace a person gone missing.

21. The difficulty in tracing the journey or the presence of migrants is mostly due to the absence of a channel of communication where the person can notify his/her presence to his/her family members. It may also be that migrants have had their means of communication confiscated on their journey, including by law enforcement authorities, and are left with no means to communicate with the outside world.

22. Such situations may also be exacerbated by malpractices from the part of official actors such as the lack of systematic registration or effective access to means of communication for foreigners deprived of their liberty in formal and informal detention sites, or the administrative blockage preventing people from ensuring legal residency when transiting from one administrative status to another.

2.3. Why clarify their fate?

23. Clarifying the fate of a missing person starts first and foremost by investigating whether this person reported missing is dead or alive and, in the latter case, whether s/he needs support.

24. International organisations and academic experts have testified to the psychological impact on families waiting to hear from/about their missing ones, sometimes for years, many suffering from "ambiguous loss", a condition of uncertainty having severe psychological and psychosocial repercussions which may lead to pathology, depression, alcoholism, or other diseases, and which should be considered as an issue of public health concern.[20]

25. Very concrete material and administrative repercussions also impact those left behind. Death certificates may be needed to obtain civil rights compensatory damage, for legal ownership rights or even to assume the guardianship of a child or register children in school when one or the two parents have died. The absence of a parental death certificate means that an orphan cannot continue with his/her life and possibly join the only relative they have in another country, within Europe or beyond. Someone may depend on a missing person as the main applicant for the issuance or the renewal of a residence permit, or for an application as a family unit for relocation to be processed.[21]

26. Clarifying the whereabouts of missing migrants may also involve solving a criminal case where death was provoked by an act of violence, abuse or negligence. In this respect, the UN Special Rapporteur on Extrajudicial, summary and arbitrary executions (2016-2021) stated, in her thematic report on unlawful deaths of refugees and migrants in 2017 that the "frequent absence of investigations into deaths [of migrants] is an

16. Anita Orav, "Briefing on search and rescue efforts for Mediterranean migrants", [(PE 733/712)], European Parliamentary Research Service, October 2022.
17. IOM, "1,200 Missing Migrants Recorded Thus Far in 2020 May Well Undercount Totals Since Covid-19 Outbreak", *IOM News*, 14 August 2022.
18. UN Committee on Enforced Disappearances, op.cit. p. 7.
19. OMCT & CACIT, "The Torture Roads: The Cycle of Abuse against People on the Move in Africa", 2021.
20. ICRC, "Missing persons and their families – Legal Factsheet", 2023; and D. Mazzarelli, B.Bertoglio, M.Boscacci, G.Caccia, C.Ruffetta, D.De Angelis, T.Fracasso, JP.Baraybar, S.Riccio, M.Maria Marzagalia, C.Cattaneo, "Ambiguous loss in the current migration crisis: A medico-legal, psychological, and psychiatric perspective", *Forensic Science International: Mind and Law*, *Volume 2, 2021*, 100064, ISSN 2666-3538.
21. Exchange of views with Pr Cristina Cattaneo, Full Professor of Forensic Medicine and Anthropology, Director of LABANOF, Laboratory of Anthropology and Forensic Odontology, University of Milan, Italy, meeting of the Committee on Migration, Refugees and Displaced Persons, 19 March 2024.

additional, worldwide violation of the right to life, contributing to an international regime of impunity, the invisibility of the violations, and of their victims, and ill-informed policy making related to migration that may contribute to further deprivation of life."[22]

27. Last but not least, clarifying the fate of a missing person is simply a matter of human dignity.[23] This moral imperative[24] may find some legal grounding in the notion of human dignity or even considerations around article 2 of the European Convention on Human Rights (ETS No. 5), as discussed in section 5.6.

2.4. Legal framework

28. The Guiding principles for the search for disappeared persons of the UN Committee on Enforced Disappearances are based on the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). Its Principle 1 states that "[t]he search for a disappeared person should be conducted under the presumption that he or she is alive."[25] Article 24 of the Convention recognises families as collateral victims of enforced disappearances, with ensuing responsibilities for State authorities to ensure effective support and reparations mechanisms.

29. According to the ICPPED, State parties should ensure that any individual suspecting that a person has been subjected to enforced disappearance has the right to report the facts (Article 12), that no one will be held in secret detention, and that any person deprived of liberty shall be authorised to communicate with his or her family (Article 17). As of 2021, only 21 member States had ratified the ICPPED and are bound by it.[26] The ICPPED also provides that States must take all appropriate measures to search for, locate and release disappeared persons and must investigate acts of enforced disappearance and bring those responsible to justice.

30. Article 71 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families requires States Parties to "facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families." As of 2024, seven member States of the Council of Europe had signed the Convention including four who have ratified it.

31. The international law of the sea also posits very clear obligations for States and non-state actors to assist and rescue persons in distress at sea (the International Convention for the Safety of Life at Sea – SOLAS – and the 1979 International Convention on Search and Rescue – SAR). Moreover, in 2022, the United Nations Office on Drugs and Crime (UNODC) issued an official statement encouraging States to "give special attention to the recovery of dead bodies as well as efforts directed at determining their identity, providing their families with information on their fate and whereabouts and preventing them from becoming missing persons."[27]

32. The European Convention on Human Rights protects the rights of all people living in Europe and contains particular obligations which, if duly respected, can help prevent migrants from going missing, and can help safeguard the rights for families to know the fate of their missing ones.

33. Article 2 of the Convention imposes positive and negative obligations whereby States should take all required steps to safeguard the lives of those within their jurisdiction. Such obligations derive from all instruments in international law applicable in all circumstances including in cases of restriction or deprivation of liberty, and find their grounding in Article 3 (prohibition of torture or of inhumane and degrading treatment), Article 5 (lawfulness of detention and especially importance of keeping a record of the time, date, place of detention as well as of identification of detainees[28]) and in Articles 8, 10 and 12 of the Convention (contact with the outside world in the case of detention[29]).The enjoyment of procedural rights enshrined in the

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22. Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, "Unlawful death of refugees and migrants – Note by the Secretary-General" (A/72/335), 15 August 2017.
23. ICRC, "Guiding Principles for Dignified Management of the Dead in Humanitarian Emergencies and to Prevent them Becoming Missing Persons", 2021.
24. ICRC, "Humanity after life: Respecting and protecting the dead, legal factsheet", 2021; and The Last Rights Project "Extended Legal Statement and Commentary: The Dead, the Missing and the Bereaved at the World's Borders, Statement of the International Legal Obligations of States Together with Commentary", 2019.
25. Committee on Enforced and Involuntary Disappearance, "Guiding principles for the search for disappeared persons" (CED/C/7), 28 August 2019.
26. Report of the Parliamentary Assembly: "Ending enforced disappearances on the territory of the Council of Europe" (Doc. 15431), 10 January 2022.
27. IOM, OHCHR, UNHCR, UNICEF, UNODC, and the UN Special Rapporteur on the Rights of Migrants, "The concept of place of safety under international law and the respect of the rights of migrants and refugees rescued at sea by all States", joint press release, 18 May 2022.

Convention (Article 13) may prevent situations leading to disappearance notably the risk of being held incommunicado, as well as the right of family members to be informed of the fate of their missing members, considered in the light of the right to private and family life (Article 8).[30] It may also be inferred from Article 8 that the right to family life may encompass the possibility to locate and pay their respects to a deceased member of family at a marked grave.

34. With respect to the right to dignity of the deceased, the Court has interpreted the Convention with consideration for the relatives and their right to respect, pursuant to Article 8 and Article 3 in relation to a case involving the intentional mutilation of bodies.[31] While "[t]he Court has held that the human quality is extinguished on death and, therefore, the prohibition on ill-treatment is no longer applicable to corpses" it has found that "the treatment of dead bodies has given rise to a violation of Article 3 with respect to the deceased's relatives".[32]

35. Cases of deaths caused by the use of force should be thoroughly investigated, irrespective of whether suspected perpetrators are State or non-state agents.[33] The Court also stated that the knowledge of cases where suspicious death may be involved should be sufficient for the competent authorities to act.[34]

36. According to the Last Rights Projects, such reasoning may be applicable in some missing migrant cases where deaths may be considered as having been caused by the use of force, and the State's failure to investigate on reported suspicious deaths may be considered as breaching the Convention.

37. With respect to personal data, all cases listed in the Court's case law on the matter have to do with the personal data of living persons.[35] The personal data of living individuals are protected in Europe under the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) as amended by Protocol CETS No. 223 ("Convention 108+") and pursuant to Article 8 of the European Convention on Human Rights. This convention entails a number of principles safeguarding the rights of data subjects when processing "special categories of data" (Article 6) including genetic and biometric data.

38. For those individuals whose body or remains of the body may have been found without any immediate prospect of establishing identity, most national legislations provide for legal frameworks with respect to the management of unnatural or suspect deaths, cases which may lead to the opening of a criminal investigation and to the identification of the deceased. Few States have adopted legislation that requires them to take all reasonable steps to identify human remains.

3. Multidimensional challenges

3.1. Reporting the missing and launching an investigation

39. Any missing person should be reported by their families, their kinship, or their co-travellers so that a search warrant can be launched by the police. However, for families or kinship of missing migrants, support networks and resources are usually scarcer than what may be available to families reporting a person missing in a domestic context, particularly if no criminal investigation is launched. The international context renders the reporting even more complex: if families know or presume where their missing family member may be, they do not necessarily know whom to address in this country, nor be able to communicate in a language which those authorities may understand. And even in the country of origin, families or kinship may not know where to turn to or are left with no interlocutor.

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28. European Court of Human Rights, Kurt v. Turkey (15/1997/799/1002), 25 May 1998; and Anguelova v. Bulgaria (application no. 38361/97), 13 September 2002.
29. European Court of Human Rights, "Guide on the case-law of the European Convention on Human Rights: Prisoners' rights", last accessed on 17 June 2024.
30. According to the Court, a State's continuing failure to provide an applicant with credible information as to the fate of her newborn son – who had gone missing from a State-run maternity ward shortly after birth – constituted a continuing violation of the right to mutual enjoyment and respect for her family life (for example Zorica Jovanović v. Serbia, application no. 21794/08, 2013).
31. On Article 8, see Genner v. Austria (application no. 55495/08), 12 January 2016; and Akkum and Others v. Turkey (application no. 21894/93), 24 March 2005. Cases cited in Last Rights Project, op. cit. p.9.
32. European Court of Human Rights, "Case law guides, Guide on the case law on Article 3", last accessed on 17 June 2024.
33. Cases cited in Last Rights Project, op. cit. p.9.
34. European Court of Human Rights, Finucane v. the United Kingdom (application no. 29178/95), 1st October 2003; and Trufin c. Roumanie (application no. 3990/04), 20 January 2010 (French only).
35. European Court of Human Rights, "Factsheet on personal data protection", February 2024.

40. Most countries have police departments competent to register cases of missing persons and investigate such cases across member States. They rely on international co-operation tools such as INTERPOL's Yellow Notices if necessary. However, administrative tools and databases are not necessarily successful in identifying people living without an up-to-date civil registration in the country where they were last located.

41. During my fact-finding visit to Greece in March 2024, community-based organisations shared their deeply rooted perception but also their very concrete experience of marginalisation by the official authorities. This is not specific to Greece.[36] Nonetheless, this reality is having direct consequences on migrant communities, who simply do not trust official authorities. Communities searching for a missing person are therefore using informal channels, social media, word of mouth and even printouts of photographs on posters on the street: my interlocutors acknowledged that this raised serious issues regarding confidentiality and the sharing and use of personal data, possibly jeopardising the safety of the person.

3.2. Data collection on a segmented itinerary

42. Often, information on missing migrants may exist but it is scattered across a diversity of public and non-public stakeholders and sites.

43. Ensuring data protection is therefore essential when aiming to trace missing migrants. The challenges range from: identifying trusted data collectors to reach out to the diversity of actors and entities; determining an adequate legal basis to lawfully use and share such personal (sometimes biometric) data; having legislations in place enabling the sharing of such data for humanitarian purposes safely and proportionately nationally or even internationally. Such considerations are of the utmost importance in the context of the growing appetite from the part of policy makers and law enforcement authorities for the interoperability of databases.

44. In the case of official entities (for example the police force, anti-trafficking units, detention sites, reception centres, shelters), national legislations are usually careful concerning the possibility to share personal information with third parties. In the case of non-official entities and individuals, it is worth noting that friends, families, co-travellers, even survivors of shipwrecks, can provide important information which can help locate and find a person who is missing. Such information can also prove extremely valuable in providing what is called missing person data, including ante-mortem data. However, these persons are not systematically approached, let alone using any harmonised standards, and may not wish to be.

45. Adults may wish not to provide information about their whereabouts or situation. One challenge is to provide trustworthy platforms for people to register their fate, so that the police authorities are able to inform family members that they are well and safe without disclosing their exact whereabouts, for example like what is provided for through the Missing People charity platform in the United Kingdom.

46. However, in the case of migrants under 18, one of the main issues at stake across Europe is the absence of systematic registration of unaccompanied or separated children, as underlined in Resolution 2324 (2020) "Missing refugee and migrant children in Europe." These children turn out to be particularly vulnerable if left with no systematic registration once turning adult, as noted by our colleague Ms Rósa Björk Brynjólfsdóttir (Iceland, UEL) in her report "Effective guardianship for unaccompanied and separated migrant children" (Doc. 15133).

3.3. Managing, registering and identifying dead bodies

47. Migrants may be reported missing and then found dead. It also often happens that dead bodies are found and are not identified because no one is looking for them[37] or because the procedures are not sufficiently standardised, and resources are unavailable to process all cases.

48. To identify a body, a thorough forensic examination is required to collect the post-mortem data and the specific features on the body (scars, tattoos, etc). Identification procedures, notably for sudden and suspicious deaths, are defined in national law. However, in the case of missing migrants' death, the same identification procedures are often not conducted.

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36. C. S. Czymara and J. Mitchell, "All cops are trusted? How context and time shape immigrants' trust in the police in Europe", *Ethnic and Racial Studies*, *46(1)*, 2022; and M. D Pass, N.S Madon, K. Murphy, E. Sargeant, "To trust or distrust?: Unpacking ethnic minority immigrants' trust in police", *The British Journal of Criminology, Volume 60, Issue 5,* September 2020.

37. Meeting with Pr Pavlos Pavlidis, University Hospital, Alexandroúpolis, Greece, fact-finding visit, 7 March 2024.

49. Unreported deaths of migrants fall into the category of the many invisible and marginalised persons who are buried unidentified, in a general context of scarce judicial and medico-legal resources to investigate even the suspicious deaths of nationals.[38] Moreover, such deaths may not be accidental but be provoked by indirect actions, through negligence or acceptance of risk, potentially involving crimes such as "criminal negligence" or "involuntary homicides": such cases should be investigated by the authorities in charge.

50. Once recovered, a body should be kept in a morgue pending the identification process by the competent authorities if so decided, or in a cemetery: this is costly. Throughout the preparation of this report, all forensics pointed to the lack of space in the morgues to keep corpses until the autopsy is conducted and until, perhaps, a family member makes themselves known to the police. As an example, the forensic department at the University Hospital in Alexandroúpolis was given two refrigerated containers by the ICRC which can keep 30 corpses altogether. Both refrigerated containers were full at the time of my visit in early March 2024. No public funding is available otherwise to pay for such equipment.

51. Besides, forensic laboratories are not all trained or sensitised on the cases of unidentified bodies which may be that of migrants. In Greece, a dozen of forensic medical services is to be found but only few (Alexandroúpolis, Lesvos, Rhodes, Samos) are regularly involved in cases of unidentified bodies who are likely to be migrants crossing through Evros or the Aegean Sea.

52. A major question also arises when looking for a space to inhumate migrants who lost their lives including those who are unidentified. Across European countries, some sections of cemeteries are sometimes dedicated for the final resting of these people. Sometimes, specific plots of lands are allocated by the local authorities to bury them, like in Sidiro, Greece.

53. The lack of harmonisation of national procedures, primarily designed to address the death of registered citizens, renders the cross-country search for a missing person extremely difficult, especially if death happened during an irregular border crossing; this is exacerbated by the material and financial challenges faced by the authorities as well as families.[39]

54. Identification through DNA is not a panacea in the case of missing migrants. First, DNA registration may not be sufficient or available if the person has not had her/his biometrics registered elsewhere, if no family member supplies his/her DNA to allow a comparison and a possible match, or if DNA comparison is not allowed through specific legislation protecting the rights of data holders. Second, a migrant whose body has been recovered may also be identified through other unique or personal information such as personal belongings, or specific characteristics on the body. These are called "secondary identifiers" and are commonly part of the ante-mortem data. However, this kind of information is either stored in the eventuality of a family member identifying the body and claiming these belongings,[40] or destroyed.

55. Secondary identifiers are not automatically registered in a repository, neither are survivors systematically interviewed following disasters, and even if they are, this not always done according to the same standards (protection-sensitive and oriented towards the collection of information helping to identify who were the co-travellers and who may be those missing). Yet, such information may be particularly valuable to identify a country of origin and from there on, through official channels, possibly get in touch with members of families to confirm the identify of a deceased person.[41]

3.4. Engaging communities and families

56. Not all countries have an external representation to the country where a deceased person was found (for example Afghanistan). It may also be difficult for the official authorities to ensure that the information and documents provided by the presumed members of the families are genuine. The role of community-based organisations may provide a useful informal channel to reach out to families.

57. Once possible family members are identified, they should be provided with explanations as to the identification procedure and be asked to give their informed consent regarding the sharing of their biometric data. Such procedures should be in line with the standards recognised by the countries between which a

38. Council of Europe, "'Totally insufficient' investigation of a suspicious death and the reform of criminal investigations: Impact of the European Convention on Human Rights", last accessed on 17 June 2024.
39. S.Grant, "Dead and Missing Migrants: The Obligations of European States under International Human Rights Law", *Mediterranean Missing project, IHRL briefing*, September 2016; and European Commission – Migration & Home Affairs, "EMN inform on separated and missing migrants", 2 June 2021.
40. Meeting with the Hellenic Police, Athens, Greece, fact-finding visit, 6 March 2024.
41. ICRC, "The Ante-Mortem / Post-Mortem Database: An Information Management Application for Forensic Data", 2020.

cross-check of DNA information will be conducted, which necessitates of course that such legal framework, based on the relevant standards, exists in each of those countries. The prosecutor must also contact the country where the body was found to launch an identification request through official legal proceedings.

58. Families cannot always afford the cost of sharing a DNA sample with the competent authorities; cost is also a barrier in accessing visas. It may be difficult to obtain visas in all events, in order to be able to travel to identify their missing family member, pay their respects and inhumate the body in that country should repatriation be impossible.

59. Overall, therefore, the cost of any procedure undertaken, particularly if any form of repatriation is envisaged, is very high. Expenses regarding legal advice may also have to be considered. In the case of Greece, for example, the Last Rights Project shared that "without a lawyer even though it is often not a legal issue at all, the Greek authorities will not engage in the absence of official representation of the families."[42]

3.5. Many actors, many practices, many data sets

60. In the international migration context, information is spread across many countries, with families often located outside the jurisdiction they need to engage with.

61. In some cases, the missing person may not in fact be dead. Tracing migrants is extremely difficult for many reasons. For example, adults may not wish to disclose their whereabouts, while unaccompanied children may disappear from reception centres on their own volition in order to reunite with family members or with other persons close to them who are not however their legal guardians.

62. It may also be uncertain that the names and details of migrants inscribed on all tombs are their actual names and confirmed civil details, and it is not always certain that the authorities of the presumed country of origin have been informed.

63. International organisations such as the UNHCR or the International Red Cross and Red Crescent Movement which register information on migrants, refugees and asylum seekers along their migratory route as part of their mandate (services provided, visits of detention centres, reporting of persons missing) are, understandingly, wary of sharing information about people who may still be alive and where the sharing of information may be detrimental to their safety.

64. The importance of not unduly sharing data on missing persons who are or may be alive is also taken very seriously by the national authorities, not least with regard to the best interest of children and particularly vulnerable groups such as victims of trafficking and victims of gender-based and domestic violence.

65. The challenge often resides in the absence of a legal framework enabling data owned by non-state actors and State actors to be submitted to the same platform in order to potentially identify matches in the case of unidentified bodies or remains. Forensic experts need a judicial authority to authorise the sharing of information with a third party. Organisations like INTERPOL are easier for the prosecutor's office to engage with because it is an international organisation for police co-operation with common standards.[43]

3.6. Connecting the dots: what options?

66. It is clear that one of the most significant obstacles encountered in the search for missing persons, whether dead or alive, is the lack of compatibility and exchange of information between different databases, some of them managed by official actors, others by non-governmental organisations, all acting by different standards even though some harmonisation efforts have been made.

67. Another major issue are the challenges in handling police and non-police data. INTERPOL is ruled by strict standards on data processing in line with its Constitution and with the Council of Europe Convention 108+ for the protection of individuals with regard to the processing of personal data. These safeguards are of particular importance to the issue of missing migrants for at least two reasons: first, INTERPOL is insistent on the fact that going missing is not a crime and ensures that comparisons to search for missing persons, or their

42. Exchange of views with Mr Syd Bolton, co-founder of the non-governmental initiative "The Last Rights Project", meeting of the Committee on Migration, Refugees and Displaced Persons, 11 May 2023.
43. Exchange of views with Ms Susan Hitchin, coordinator, DNA Unit, Forensics & Police Data Management Sub-Directorate, INTERPOL General Secretariat, meeting of the Committee on Migration, Refugees and Displaced Persons, 22 March 2024.

families, in the DNA databases are conducted strictly against non-offender data; second, Article 3 of its Constitution (adopted in 1956) prohibits INTERPOL from undertaking "any intervention or activities of a political, military, religious or racial character."

68. These constitute safeguards against the risk that data is manipulated or misused for the purpose of racial discrimination and against unjustified criminalisation. In 2017 already, the EU Fundamental Rights Agency, also making reference to concerns expressed by the European Data Protection Supervisor, warned against the risk of discrimination and of profiling deriving from the undefined concept of "migratory risk" by Schengen member States as part of the European Travel Information and Authorisation System.[44]

4. Existing efforts at international level and across Europe

4.1. Shaping a political consensus and setting standards: international and regional positionings

69. In 2018, the United Nations adopted the Global Compact for Safe, Orderly and Regular Migration (GCM) which was endorsed by the UN General Assembly and specifically calls on States to "save lives and establish coordinated international efforts on missing migrants" (Objective 8). Objective 8 of the GCM comprises a set of "associated actions" including the promotion of international co-operation to "recover, identify and repatriate the remains of deceased migrants to their countries of origin" in dignity.

70. The United Nations have gradually noted the vulnerability of migrants of becoming victims of enforced disappearances,[45] and their efforts culminated in September 2023 with the adoption of the first General Comment on Enforced Disappearances in the context of Migration by the UN Committee on Enforced Disappearances.[46] Over the years, the Special Rapporteur of the United Nations on extrajudicial, summary or arbitrary executions also stressed the importance of preventive measures so that unlawful killings of any individuals including migrants do not occur, and underlined the importance of reliable investigations to identify the deceased, bring perpetrators to justice and prevent re-occurrence.[47]

71. In 2016, the Special Rapporteur submitted to the UN High Commissioner for Human Rights the Minnesota Protocol on the Investigation of Potentially Unlawful Death. Although non-legally binding, the Minnesota Protocol is today considered as a gold standard for the forensic investigation of potentially unlawful deaths on the investigation, excavating and autopsy rules applicable in the context of unlawful killings, with due account to the role and obligations of State authorities as well as for the rights of families (except if they are implicated in the cause of the death).

72. The ICRC has been particularly pro-active in consolidating the knowledge available across the globe to facilitate the harmonisation and standardisation of procedures on the particular case of missing migrants.[48] In 2023, a legal factsheet compiling the most up to date information on missing migrants and their families was made available. In 2023, it rolled out the Missing Persons Digital Matching solution as an additional digital avenue to search for missing persons in the ICRC's, National Red Cross and Red Crescent Societies', and possibly in the future ICRC's partners' databases (international organisations and government databases, but also some vetted non-governmental databases).

73. INTERPOL developed a Guide to Disaster Victim Identification which is regularly updated (latest version published in 2023) and is the unique globally accepted standard in this field. INTERPOL has long shared an expertise in the biometric evaluation of cases, it has a unique capacity of dissemination and sharing of police information, based on robust safeguards enshrined in the INTERPOL Rules on the Processing of Data. The organisation also adopted rules on the processing of data which set the conditions for international

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44. EU Agency for Fundamental Rights, "The impact on fundamental rights of the proposed Regulation on the European Travel Information and Authorisation System (ETIAS)", 2017.
45. UN Working Group on Enforced or Involuntary Disappearances, op.cit. p. 7.
46. Exchange of view with Ms Milica Kolaković-Bojović, PhD, Expert for the United Nations Committee on Enforced Disappearances, and Senior Research Fellow at the Institute of Criminological and Sociological Research of Belgrade, Serbia, meeting of the Committee on Migration, Refugees and Displaced Persons, 8 December 2023.
47. OHCHR, "UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions", Economic and Social Council Resolution 1989/65, 24 May 1989.
48. See ICRC, "Guidelines on Coordination and Information-Exchange Mechanisms for the Search for Missing Migrants", "Guiding Principles on Interaction with Families of Missing Migrants" and "Core Dataset for the Search for Missing Migrants", 2021.

organisations to co-operate on the processing of personal data, and which lay down the conditions for recording data of deceased persons in the datasets only in specific cases, including for identification purposes.

74. Regional organisations have also adopted resolutions supporting policy action on this particular issue, notably the African Commission on Human and Peoples' Rights in 2021 and the European Parliament in 2023.[49]

75. In 2024, a workstream was established between the UNHCR, the IOM, the ICRC and the IFRC to enhance concerted political will and action on the provision of humanitarian assistance to migrants in distress to prevent loss of life in transit.[50]

4.2. The slow pace of enacting public policy responses

76. The calls for policy responses have barely materialised in domestic policy responses, despite the number of efforts dedicated by non-governmental actors[51] to accompany the adoption of legal reforms or even support nationally the impetus provided internationally, including by representatives of States and government when endorsing the GCM.

77. In September 2023, a "thematic meeting on separation of families and missing persons in the context of migration" was organised in the context of the Euro-African Dialogue on Migration & Development (Rabat Process) facilitated by the ICRC. The recommendation to appoint a national focal point on missing migrants in each member of the Rabat process to facilitate inter-governmental co-operation and multilateral discussions was officially endorsed in February 2024 at the last Senior Official Meeting of the Rabat Process. Currently six countries part of the Process have appointed focal points (Switzerland, the Gambia, Ivory Coast, Malta, Chad and Senegal).

78. In March 2024, the Belgian authorities amended the law on DNA identification in criminal proceedings: the use of DNA identification is now enlarged to identify missing persons and unidentified bodies, including via the sharing of information with European and international databases.[52] This legislation allowed for profiles to be searched in INTERPOL's DNA and I-Familia databases, which was welcomed by the organisation as a strong message sent to other countries about the use of international police co-operation to "help get answers for families."[53]

4.3. Fact-finding mission to Greece

79. In June 2023, the Greek authorities activated the Disaster Victims Identification (DVI) protocol to identify victims of the Adriana shipwreck, an estimated 750 persons, which sunk in one of the deepest points at sea in the region. The Forensic Science Division and the DVI Unit Department of the Hellenic Police described in detail the particularly technical and emotionally demanding work which their teams are conducting to recover and identify the deceased bodies. The latest update in May 2024 indicated that 74 people had been identified (31 Egyptians, 21 Pakistanis, and 28 Syrians).

80. The DVI Unit ensured that psychologists were available to support relatives and friends of people who had disappeared during the shipwreck. It also co-operated with the embassies, sometimes relying on the Red Cross and Red Crescent services and on the International Commission on Missing Persons (ICPM) to act as an intermediate with the authorities in cases where families felt more comfortable engaging less directly with official entities (for example in the case of Syria).[54] Various national stakeholders from the coroner's office to the General Secretary of Civil Protection, the Ministry of Foreign Affairs but also other DVI teams in other EU countries were involved.

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49. African Commission on Human and Peoples' Rights, "Resolution on missing migrants and refugees in Africa and the impact on their families" (ACHPR/Res. 486 (EXT.OS/XXXIII)), 28 July 2021; and European Parliament "Resolution on the need for EU action on search and rescue in the Mediterranean" (2023/2787(RSP)), 13 July 2023.
50. United Nations Network on Migration, "Actionable recommendations on missing migrants and providing humanitarian assistance to migrants in distress", last accessed on 17 June 2024.
51. ICRC, "Hellenic Parliament, ICRC address humanitarian needs of missing migrants, families", ICRC news release, 10 May 2019; and ICMP, "ICMP Greek Minister for Migration Hosts Third ICMP-Facilitated Discussion On Missing Migrants in the Mediterranean with Cyprus, Italy and Malta", ICMP news release, 19 November 2021.
52. "Loi modifiant le code d'instruction criminelle, loi du 22 mars 1999 relative à la procédure d'identification par analyse ADN en matière pénale et loi du 5 août 1992 sur la fonction de police", 7 March 2024, Le Moniteur Belge (French only).
53. INTERPOL, "INTERPOL welcomes new DNA legislation in Belgium", 11 April 2024.
54. Amnesty International and Human Rights Watch, "Greece: 6 Months On, No Justice for Pylos Shipwreck", 2023.

81. In terms of prevention mechanisms, I was able to exchange with the General Secretary for Vulnerable Persons and Institutional Protection at the Ministry of Migration and Asylum who provided detailed information on the national emergency response mechanism since 2020.[55] This initiative is aimed at securing a smooth transition to adulthood for young adults and should be regarded as a good practice to prevent those turning 18 from being deprived of any administrative status.

82. Additionally, in September 2021, the National Commission for Human Rights decided to establish the Recording Mechanism on Informal Forced Returns. This practice was acknowledged by the European Commission in its 2023 Rule of Law Report, as a good practice aiming to "boost accountability for reported human rights violations alleged to have occurred" and which may be used to clarify cases of missing migrants as well as bringing perpetrators of enforced disappearances to account.[56]

83. I was particularly grateful for the exchanges I had with members of the Hellenic Parliament as well as with the Hellenic Minister on Migration and Asylum, who all agreed that access to visas for families to identify deceased members of their families whose body was found in Greece should be facilitated; the Minister committed to requesting the Hellenic consular services to expediate short-term visa requests lodged by families to travel to Greece.

4.4. International organisations devising cross-border co-operation tools

84. The Family Links Network, coordinated by the Central Tracing Agency (CTA) of the ICRC provides free and confidential services to families and to people who are searching about their relatives and/or would like to inform about their fate and restore contact with their family. Restoring Family Links services, under the co-ordination of the CTA, is equipped with a set of digital tools/platforms to manage individual cases and search for people that have gone missing.[57]

85. In 2021, INTERPOL launched an innovative and unique database called "I-Familia": families can come forward and provide their DNA with appropriate safeguards. This platform is complementary to the Prüm system (for all Schengen member States part of it) which was recently expanded to non-criminal DNA information on missing persons and unidentified bodies: contrary to Prüm, I-Familia can help in cases where a direct profile is missing and where families are known.

4.5. Local initiatives

86. The commitment of some individual forensic doctors is a striking and humbling example of the urge felt by professionals to honour the deceased and address the needs of families. In Alexandroúpolis, Pr Pavlidis has systematically kept the belongings recovered from the corpses in the hope that a family member will, one day, recognise a necklace, handwriting on a piece of paper, a key ring. In Paris, the Medico-Legal Institute has devised its own co-operation protocol with the judiciary in Paris so that the prosecutors authorise the systematic autopsy of unidentified bodies.

87. Volunteers have also engaged with the Red Cross and Red Crescent Movement. In Catania, locals involved in the reception of migrants have, in co-ordination with the Family Links Network to which the Italian Red Cross is part of, initiated the collection of all information possible on people buried in the migrants' section of the local cemetery.[58] In Spain, with the support of the ICRC, the National Society developed a specific program to collect information from various sources including survivors of shipwrecks to reconstitute list of passengers and provide partial answers to the families.

88. Across the globe, collectives of families and NGOs have structured a series of responses. From psycho-social to fundraising efforts to help finance legal representation, the repatriation, the burial, or the travelling fees, from public gatherings to commemorate the memory of the missing to the publication of

55. European Commission, "Greece: National Emergency Response Mechanism for the protection of unaccompanied children: from needs assessment to response", 13 April 2023.
56. European Commission, "2023 Rule of Law Report – Country Chapter Greece" (SWD(2023) 808 final), p.24 footnote 219 referencing the National Commission for Human Rights, "Impact of 2022 ENNHRI rule of law reporting", 5 July 2023.
57. See the Trace the Face portal and the Resolve Platform (internal tool that can be provided to the authorities), last accessed on 17 June 2024.
58. C. Kobelinsky and F. Furri, "Hosting the dead by migration. The treatment of lifeless bodies in Catania (Sicily)", *COMPAS Special Working Paper series* on "Migrations in Latin America and the Mediterranean compared: Violence, state cruelty and (un-)institutional resistance", 2020.

booklets in various languages to help families identify what authority to contact to report a missing person in a foreign country and sort out administrative issues, non-governmental initiatives provide a unique space which acknowledges the voices and the sadness of these families and friends.[59]

5. Recommendations

5.1. Acknowledging the issue as one with public interest

89. Adequate public budget should be allocated to prevent the disappearance of migrants, refugees and asylum seekers, as well as to address the search, investigation, identification and burial or repatriation needs. Resources should be able for professionals across all sectors involved in the prevention and addressing of cases of missing migrants such as the judiciary (especially prosecutors), administrations on social affairs, police forces, forensics and coroners, consulates, coast guard and border guard authorities, the data protection authorities and the ombudsperson's office.

90. These stakeholders should be trained on standard procedures related to the prevention and search of missing migrants, and on the identification of recovered bodies or human remains.

91. Any policy approach should be inclusive of the voice of non-state actors and international organisations such as the Red Cross and the Red Crescent Movement, INTERPOL, the IOM, the UNHCR which share an expertise in this issue, and which can act as trustworthy intermediates with families of missing migrants or with migrants willing to inform of their whereabouts.

92. Co-ordination of such a policy-based approach may be facilitated by an entity officially appointed to liaise between all official and non-governmental actors at domestic level and act as an interface with external entity, such as the network of focal points on missing migrants which is being established with the support of the ICRC.

93. Coroners and forensics should be trained and provided adequate working conditions, materially as well as in terms of training resources and staff. Such resources are necessary to register and investigate the cause of the death of the significant number of unidentified bodies which are, tragically, to be found in significant numbers across Europe, particularly at its land and sea borders.

5.2. Not an inevitable phenomenon: preventive mechanisms

94. Preventive measures and policies should ensure that people on the move have access to humanitarian support, irrespective of their status, along migration routes, in line with ICRC's recommendations and with the "routes-based approach" promoted by the UNHCR and the IOM.

95. Search-and-rescue mechanisms should be systematically and swiftly deployed at land and at sea whenever a group of people in distress is reported to the competent authorities.

96. Migrants, refugees and asylum seekers should be provided decent and dignified reception conditions wherever they are registered officially by the State authorities, which will decrease the risk of vulnerability and of disappearing. Particular attention should be paid in all procedures to the vulnerability and needs of migrants, refugees and asylum seekers, including children especially when they are unaccompanied.

97. One of the main issues at stake across Europe is the absence of systematic registration of unaccompanied or separated children. It should be recalled that the GRETA has adopted guidelines available to member States on registration policies, with a particular warning against the risk of children going missing as victims of trafficking.[60]

98. Effective mechanisms for family reunion and reunification should be ensured for anyone officially registered in a country whether they are asylum seekers whose application is pending, or members of family of a migrant worker.

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59. Asociación SOS Desaparecidos, "Guía de información para familias de desaparecidos", 2018 (Spanish only); Boats4People "Information guide for the families of migrants – and their supporters – who died or went missing while crossing Central Mediterranean sea on their way to Italy", 2017.
60. GRETA,"12th General Report", 2023.

99. All persons deprived of liberty in detention sites or in *de facto* detention sites under the supervision of official authorities should be systematically registered and guaranteed effective access to their procedural rights and to effective communication with the outside world, in line with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) and with the European Convention on Human Rights.

5.3. Searching for the missing effectively: reporting and investigative mechanisms

100. Trustworthy platforms are needed for migrants, refugees and asylum seekers to register their fate so the police authorities are able to inform family members that they are well and safe without disclosing their exact whereabouts.

101. Any person reported missing should be searched for. People should be able to report that a member of their family or an acquaintance is missing, without any fear of a check on their criminal record or administrative status. Reporting mechanisms should be accessible to relatives or any reliable source so that unnatural deaths which are suspected to have occurred because of extra-legal, arbitrary and summary executions are investigated thoroughly, promptly and impartially.

102. The role of community-based organisations, migrants' rights organisations, and international organisations providing services to migrants, refugees and asylum seekers should be recognised as trusted intermediaries to report a case of a person missing to the national competent authorities.

103. It is important that non-governmental entities possess the ability to be mindful of the appropriate standards when approaching vulnerable groups, or when engaging with people whose identity as family members may not be certain. They must also hold the trust of the authorities.

104. Interviews with migrants who were provided with humanitarian support along their journey should be conducted to identify possibly cases of persons gone missing on the way; such interviews must be voluntary, protection-sensitive, and duly considerate of the high vulnerability of the persons interviewed, and only carried out by trained interlocutors. The information collected should only be shared if the interviewee consents to it to notify the competent authority towards the search and potential investigation of the case. Such information sharing should be for humanitarian purpose directly only with the competent authorities, or with a trusted intermediary which will inform the competent authorities.

5.4. Recovering and identifying the deceased: the need for internationally harmonised standards

105. The deployment of disaster victim identification units in the context of migrant shipwrecks, following the example of the work carried out by the Hellenic Police, must be acknowledged as a good practice.

106. Co-operation on data sharing should be made possible between State authorities with the involvement of national independent data protection authorities and with the highest consideration for data protection standards. It must be guaranteed that the search for possible match between different datasets across different countries is only meant for humanitarian purposes and in full alignment with the Council of Europe Convention 108+ and in co-operation with ICRC and INTERPOL.

107. Secondary identifiers should be systematically collected and registered in a repository available to facilitate the identification of deceased persons or of unidentified human remains. In the same spirit, interviews with people provided with humanitarian assistance along their migration journey may help report the cases of deceased persons, as well as facilitate the identification of these persons. The protection-sensitive safeguards must apply when interacting with interviewees.

108. All member States of the Council of Europe should adhere to the modernised version of Convention 108 (Convention 108+). Aligning by the globally recognised standard on data protection will ensure that cross-border co-operation to search for and identify missing persons, including migrants, refugees and asylum seekers, will fully respect the individual right to privacy while ensuring an optimal data sharing between State authorities, under the oversight of duly established independent data protection authorities.

109. Any suspicious or unnatural deaths should be systematically and thoroughly investigated, and families communicated the result of such investigation and repatriated the body of their member of family, in line with the International Convention for the Protection of All Person from Enforced Disappearances and with the Minnesota Protocol.

110. Any investigation on a suspicious or an unnatural death should also involve the identification of the cause of the death and of the people responsible for such death. In the case of the identification of such persons, perpetrators should be brought to justice and victims, including families, should obtain redress, unless they are involved as perpetrators. Effective human rights return monitoring and border monitoring mechanisms must be recognised as instruments which can help clarify cases of missing migrants as well as bringing perpetrators of enforced disappearances to account.

111. Standard procedures should be adopted across member States in relation to the excavation of graves and autopsy, as indicated in the detailed guidelines of the Minnesota Protocol (Guidelines C and D).

112. A network of prosecutors on the issue of missing migrants at the level of the Council of Europe would provide a very useful discussion forum to start reflecting on this issue in very practical terms. It may be worth reflecting on possible synergies with existing initiatives at regional level such as the network of focal points on missing migrants.

113. In all circumstances, whether death was natural or not, the rights to data protection of members of families during any identification process of a migrant gone missing whose body may have been found should be fully respected, in conformity with the standards set in the Convention 108+.

5.5. Managing bodies

114. The marking of the tombs with at least a form of registration is essential but this is not systematically the case, creating a significant challenge for families who may come years after the death to try and identify the grave of a member of their family. The maintenance of the tombs proves also costly and is usually ensured by non-governmental initiatives.

115. The standards applicable to the treatment of dead bodies and human remains set in international humanitarian law should be acknowledged by member States as extending beyond the situations where IHL applies.

116. People shall not go missing twice: anybody, whether in the form of a corpse or of human remains, shall never be buried unidentified. Such identification may take the form of a number in the absence of any other personal identification element. Graves should be individual and registered and mapped so that they can be located in the case of a late identification.

117. Importantly, the Committee of Ministers of the Council of Europe adopted Recommendation R(99)3 on the harmonisation of medico-legal autopsy rules: this document, although non-binding, provides very useful and European-wide recognised standards which may provide a pertinent policy document to engage in discussions on the particular issue of missing migrants.

5.6. Reflecting on the protection and the dignity of the deceased

118. “Every individual has the right to be identified after death, accurately and in a respectful and dignified manner. This is a clear sign of a civilised society.” This is how the head of the Forensic Unit at the Hellenic Police started her presentation when I visited them in March 2024. This sentence is very illustrative of a nexus worth exploring to question the possible legal grounding of the call for respect and protection for the rights of the deceased.

119. The topicality of this issue was confirmed with the decision by the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions to report on “the protection of dead persons and their human remains, including of victims of potentially unlawful killings”. The report observes “a growing corpus of human rights-based national and international jurisprudence and practice to protect the dead and the rights of their bereaved families” and concludes that “the dignity of a person and the respect owed to his or her body and human remains do not cease with death”. It further observes that “the protection of the right to life, the rights of family members of the deceased, and the treatment of the deceased are therefore closely intertwined”.[61]

120. Besides, the explanatory memorandum of Convention 108+ posits that “[t]he Convention (…) is not meant to apply to personal data relating to deceased persons. However, this does not prevent Parties from extending the protection to deceased persons” (paragraph 30).

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61. Special Rapporteur on extrajudicial, summary or arbitrary executions, “Protection of the dead” (A/HRC/56/56), 25 April 2024.

121. The question revolving around the legal obligations associated with the dignity of the deceased raises the issue of "the last rights".[62] The Minnesota Protocol already posits that "[t]he recovery and handling of human remains – the most important evidence at a crime scene – require special attention and care, including respect for the dignity of the deceased and compliance with forensic best practices." Pr Catherine Dupré argues that, while human rights law had been developed for the living, treaty law did not restrict dignity to them.[63]

122. By referring to "forensic humanitarianism"[64] and to the "last rights" in her report on summary executions and mass graves in 2020, the UN Special Rapporteur on Extrajudicial, summary and arbitrary executions (2016-2021) seems to agree that such rights may exist.[65]

5.7. Support and protect families

123. Ensuring safeguards for families and acknowledging their rights as victims, but also as stakeholders in the clarification of the fate of missing migrants, is essential. Protocols and protection-sensitive approaches are paramount.

124. Access to visas needs to be facilitated in order to allow for transnational searches and for people to be able to pay their respects to their lost ones.

125. The possibility for national authorities to issue absence certificates recognised across European countries may help family members proceed with their lives, instead of being blocked in various administrative processes which can last for years.

126. The Convention 108 has been ratified by all member States and by nine non-member States. Importantly, the Convention has been developed with an Additional protocol regarding supervisory authorities and transborder data flows (ETS No. 181), opened to signature in November 2001, and which has so far been ratified by 44 member States, and by 8 non-member States.[66] Such legal framework is useful in the international context to protect the rights of family members present in signatory countries, including in the Council of Europe's partner countries signatory of the Convention.

6. Conclusion

127. The reality of migrants going missing in migration is multi-faceted and cannot be addressed through one single policy. Migrants, refugees, and asylum seekers may decide not to reveal their situation or whereabouts; others may be unable to communicate with their families; some may have died.

128. The demand for public action is real. Families do not give up on seeking information on the whereabouts of their missing ones. This was shown all too clearly in the tragic Adriana shipwreck off Pylos, Greece, in June 2023, when family members flew from all over the world to Greece desperately seeking news of their relatives.

129. Tools do exist at different levels to help prevent migrants, refugees and asylum seekers from disappearing. The Council of Europe itself has many instruments which can help accompany and support States in mainstreaming the issue of missing migrants. This can help prevent disappearances, identify those who have lost their lives, and help hold perpetrators of enforced disappearances to account.

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62. See AS/Mig/Inf(2024)15.
63. European Court of Human Rights, Case Akpinar and Altun v. Turkey (application no. 56760/00), 27 May 2007: partly dissenting opinion of judge Fura-Sandström, paragraphs 2-5; Professor Catherine Dupré, online meeting, 12 April 2024; C. Dupré (2016), *The Age of Dignity: Human Rights and Constitutionalism in Europe*, Bloomsbury, www.bloomsbury.com/uk/age-of-dignity-9781509900398/.
64. C. Moon, "What Remains? Human Rights After Death", in: Squires, K., Errickson, D., Márquez-Grant, N. (eds) (2019) *Ethical Approaches to Human Remains*. Springer, Cham. 27 October 2020.
65. Special Rapporteur on extrajudicial, summary or arbitrary executions, "UN expert: International community must do more to protect mass graves", 27 October 2020.
66. Non-member States having ratified Convention CETS No.108+: Argentina, Cape Verde, Mauritius, Mexico, Morocco, the Russian Federation, Senegal, Tunisia and Uruguay. Non-member States having ratified ETS No.108: Argentina, Cape Verde, Mauritius, Mexico, Morocco, the Russian Federation, Tunisia and Uruguay.

130. The voice and support of the Council of Europe are essential to enhance international co-operation with the Organisation's external partners and to support member States in addressing some of the complex challenges and in harmonising standards with due respect for data protection requirements. Such co-operation and harmonisation are particularly needed in the case of tracing and identifying migrants who have lost their lives along migration routes.