



Analysis

The widespread impunity over migrant deaths

Ana González-Páramo
(Research associate at *Fundación porCausa*)

November 2017

Forthcoming international initiatives on refugees and safe and orderly migration offer an opportunity to ensure that there is an end to the widespread impunity over migrant deaths worldwide, and to ensure that refugees' and migrants' right to life is recognised and upheld.

Ten million stateless people wander or barely survive around the world without nationality, rights or basic freedoms. Another 65 million have been forced to leave their homes, including more than 22 million refugees, the equivalent of half the population of a country like Spain. About 244 million migrants risk their lives in search of a better future in other countries on a life-threatening journey, often facing inhumane conditions, illegal detentions, sexual assaults, violence, slavery or kidnappings. Sometimes, the journey turns out to be the final one.

These are 2016 figures from the United Nations Refugee Agency (UNHCR). [1] Taken together these people would constitute the third most populated country on the planet, the country of the excluded. A recent report, 'Unlawful death of refugees and migrants' [2] by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard, is a wake-up call to reason and conscience. It describes with eerie meticulousness a near-generalised regime of impunity over dead and missing migrants and refugees on a global scale, as well as the tolerance and social acceptance of this crisis.

This report, which received limited press coverage, sheds some light on the massive number of deaths of refugees and migrants. It looks into the collapse of the international human rights system and the global humanitarian crisis, amounting to an international crime, which because of its trivialisation and the lack of unified and reliable data, leads to the total impunity of its perpetrators. Worse yet, it is a crime perpetrated with an almost general tolerance and connivance of societies, wealthy or not, as well as the lack of action from regional, national or international institutions.

As Ms Callamard says: "it would seem that the universal right to life is limited by nationality, bounded by borders and visas and, ultimately, determined by the randomness of one's birthplace."

In the New York Declaration for Refugees and Migrants of 2016 (UN General Assembly Resolution 71/1), [3] world leaders pledged to save the lives and protect the human rights of all refugees and migrants, regardless of their status. A process of intergovernmental negotiations is currently under way on two agreements, the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration, which should culminate in an intergovernmental conference on international migration in 2018 at which they will be adopted.

According to the Callamard report which feeds into this process, thousands of migrants and refugees die or are killed every year. A key challenge is to work out how many, given the number of people that disappear, engulfed in sea waters or in the desert sands - not only in the Mediterranean but in Africa, Central America, the Gulf of Aden, the Bay of Bengal, etc. The data are scarce and incomplete, the identities of the dead are barely verified, not even their gender.

The demonisation of migrants and refugees as a security threat, aggressive migration policies based on the militarisation and externalisation of borders and, at best, on deterrence, do not provide solutions to what constitutes a humanitarian crisis. In fact, they further weaken the already fragile condition of these people in motion and implicitly (or explicitly) introduce an element of complacency towards those innocent deaths as "collateral damage" that can be assumed for the sake of security, sovereignty and the protection of borders.

As *Fundación porCausa* analyses in its report 'Anti-immigration: the growth in xenophobic populism in Europe' (only available in Spanish), [4] this impunity has various consequences, from the seemingly unstoppable rise of xenophobic discourse in Europe in the guise of neo-populism and its adoption by traditional political parties, to the re-evaluation of the international system for the protection of rights. The militarisation and extreme securitisation of borders increase the risk of abuse and violence and lead to migrants' increasing dependency on criminal trafficking networks. It is a vicious circle in which the only victim, the migrant, must choose between increasingly dangerous journeys and legal routes that are practically inaccessible.

According to the report of the UN Rapporteur, every human being has an inherent right to life and cannot be arbitrarily deprived of it. This protection guaranteed by the International Covenant on Civil and Political Rights must be exercised "without any discrimination". This means that states must take "all reasonable precautionary steps to protect life and prevent excessive violence" on the part of state authorities or non-state agents. They are also obliged to investigate these deaths independently and effectively, bring criminals to justice and must not leave any crime unpunished. In fact, the very absence of this procedure itself constitutes a violation of the right to life. The 1951 Convention Relating to the Status of Refugees guarantees the fundamental "principle of *non-refoulement*" to countries where migrants may be at risk of torture or other ill-treatment in the hands of state or non-state agents.

UN agencies, independent researchers and NGOs have gathered enough information to ensure that countries such as Libya are automatically discarded as destinations for so-called return operations. The UN Support Mission in Libya (UNSMIL) has denounced disappearances, murders and widespread violations of human rights committed against migrants by armed groups, smugglers and traffickers, private employers, police, the Libyan Coast Guard and the Department for Combatting Illegal Migration. The same could be said for other global migratory routes such as those passing through Central America, Egypt and Sudan, as denounced in Ms Callamard's report.

These deaths also occur in Europe due to the abuse of force by agents and officers responsible for border control using weapons (whether categorised as lethal or ‘non-lethal’) in a manner totally disproportionate to the alleged threat. The report explicitly refers to Spain in this respect, in relation to the deaths of 15 migrants who drowned trying to reach the Spanish coast in 2014, while the *Guardia Civil* fired rubber bullets and used tear gas in what is now known as the *El Tarajal* incident (see also the ECHR judgment handed down on 3 October 2017 in a separate case, *N.D. and N.T.*). [5]

So-called “hot returns” (*devoluciones en caliente* or pushbacks) are undertaken with full knowledge that the environmental circumstances (including those of the sea, the desert, etc.) can be life-threatening and condemn a person to death by drowning, starvation or thirst; or by falling into the hands of criminal networks, rogue states or authorities that do not respect minimum standards of human rights. In the context of border externalisation, if financing or training goes to states or their agents that commit abuses, we are assuming a moral and legal co-responsibility. The obligation to protect life, like any other human right, must be applied without discrimination, including in the field of migration control. It covers all measures of a legal, political or administrative nature, so that any violation of rights is considered an illegal act and, as such, is sanctioned and compensated.

As Ms Callamard states:

“Governments around the world know that people will die attempting to cross dangerous border regions, including deserts, rivers and seas. Here, the conflict between human rights and migration control could not be clearer: migrants are supposed to be deterred from crossing a border because they might die. It is impossible to protect the right to life while simultaneously attempting to deter entry by endangering life.”

One way of restoring dignity to so many dead and disappeared migrants would be to give them an individual identity, as has been done in cases of genocide. It is necessary to investigate each of these human rights violations and give dignified treatment to the dead, burying them according to their beliefs, informing the families, repatriating the bodies, returning their belongings and even attempting to make amends for the loss by offering compensation. It would be a way to individualize what today is no more than a shapeless mass of bodies, and to give public and institutional recognition to each and every individual tragedy so that society as a whole is made aware of their existence.

International initiatives on the global governance of refugee and migrant flows are an opportunity to address these problems and ensure that the right to life of refugees and migrants is respected and protected. People cannot simply be restrained, nor is it morally acceptable to discourage them from moving, travelling and seeking a better life. Humanity has always moved and it is in our genes to continue doing so.

This article first appeared as: ‘[La impunidad generalizada de la muerte de los migrantes](#)’, Público, 27 October 2017. Translation by Ana González-Páramo.

[Fundación porCausa](#) is a Spanish foundation working to ensure people are well informed about migrations through independent and truthful research and journalism.

Statewatch does not have a corporate view, nor does it seek to create one, the views expressed are those of the author. Statewatch is not responsible for the content of external websites and inclusion of a link does not constitute an endorsement.



Statewatch is a non-profit-making voluntary group founded in 1991. It is comprised of lawyers, academics, journalists, researchers and community activists. Its European network of contributors is drawn from 18 countries. Statewatch encourages the publication of investigative journalism and critical research in Europe the fields of the state, justice and home affairs, civil liberties, accountability and openness.

One of Statewatch's primary purposes is to provide a service for civil society to encourage informed discussion and debate - through the provision of news, features and analyses backed up by full-text documentation so that people can access for themselves primary sources and come to their own conclusions.

Statewatch is the research and education arm of a UK registered charity and is funded by grant-making trusts and donations from individuals.

Web: www.statewatch.org | Email: office@statewatch.org | Phone: +44 (0) 207 697 4266

Post: c/o Resource for London, London, N7 6PA

Charity number: 1154784 | Company number: 08480724
Registered office: 2-6 Cannon Street, London, EC4M 6YH

[1] UNHCR, 'Figures at a Glance', <http://www.unhcr.org/figures-at-a-glance.html>

[2] Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, 'Unlawful death of refugees and migrants', 15 August 2017, <http://www.statewatch.org/news/2017/sep/un-report-unlawful-refugees-and-migrants.pdf>

[3] Resolution adopted by the General Assembly on 19 September 2016, 'New York Declaration for Refugees and Migrants', http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1&=E

[4] 'Antiinmigración: el auge de la xenofobia populista en Europa', *porCausa*, September 2017, https://porcausa.org/wp-content/uploads/2017/10/ANTINMIGRACIÓN-El-auge-de-la-xenofobia-populista-en-Europa-Fundación-porCausa20_10_2017.pdf

[5] European Court of Human Rights, 'The immediate return to Morocco of sub-Saharan migrants who were attempting to enter Spanish territory in Melilla amounted to a collective expulsion of foreign nationals, in breach of the Convention', 3 October 2017, <http://www.statewatch.org/news/2017/oct/echr-judgment-N.D-and-N.T-v-Spain-%20immediate-return-to-Morocco-from-Melilla.pdf>