

MIGRANTS' CIVIC FREEDOMS AND COVID-19

Although COVID-19 has been called the “great equalizer,” its trajectory through our communities and countries has hit certain populations with disproportionate force.¹ Migrant² groups, in particular, are being physically and economically devastated by the coronavirus. While experts have warned of a dire humanitarian crisis if governments do not take swift action to protect vulnerable populations, little consideration has been given to the long-term effects that COVID-19 could have on migrants' civic freedoms, particularly freedoms of expression, association, and assembly.

This article examines the likely impact of the COVID-19 pandemic on the civic freedoms of migrants and groups that provide services to migrants, especially migrant-allied civil society organizations (CSOs). The article stresses the importance of putting into place policies that safeguard migrants' basic rights. Section I reviews the pre-COVID-19 environment in which migrants exercised civic freedoms. Section II focuses on COVID-19's impacts on the health, safety, and prosperity of migrant populations. Section III analyzes the pandemic's negative impact on the civic freedoms of migrants and migrant-allied CSOs, and Section IV considers several ways in which the pandemic could enhance migrants' rights. Finally, Section V offers concrete recommendations to governments seeking to meet migrants' humanitarian needs and safeguard their civic freedoms.

1. Migrants Already Face Limits on the Exercise of Civic Freedoms

Over the last decade, migrant and refugee flows have increased dramatically worldwide. In 2010, 51 million people migrated from their home countries, but by 2019, this number had risen to 272 million, according to the United Nations Department of Economic and Social Affairs.³ Migrants now comprise about 3.5 percent of the global population.⁴ Displaced from their homes by conflict, natural disaster, persecution, poverty, or unemployment and pulled towards destination countries by the hope of safety and economic opportunity, migrants have always been a vulnerable population. As their numbers have grown, so has hostility to them in destination countries, often with significant damage to their exercise of civic freedoms.

THE IMPORTANCE OF MIGRANTS' CIVIC FREEDOMS

The legal and practical barriers impeding the exercise of migrant rights are concerning because most migrants are not citizens of their destination countries and thus cannot vote or directly take part in the conduct of public affairs.⁵ Because migrants have no ability to choose political representatives to espouse their interests, the exercise of civic freedoms and collective action are often the only ways in which migrants can influence the policies that shape their lives.

THE RISE OF TOXIC NARRATIVES

The recent rise of migrant flows has been accompanied by narratives that depict migrants and migrant-allied CSOs as a threat to host communities and a burden on local economies. Although asylum-seeking is a protected act under international law and most national laws, and the crossing of borders without authorization is more appropriately considered an administrative infraction than a crime, nationalist politicians, media, and other groups have painted migrants as “illegals” or criminals. These toxic narratives set the stage for increased xenophobia and efforts to control “suspicious” migrant populations by limiting their civic freedoms and pushing them into more isolated and vulnerable positions.

LEGAL RESTRICTIONS ON CIVIC FREEDOMS

The last decade has seen a general increase in governments' efforts to constrain civic freedoms by erecting restrictive legal frameworks.⁶ States have used a variety of legal tools to undermine civic freedoms, including adopting and manipulating of laws to restrict CSOs' abilities to register, protest, and access resources, and, in more extreme cases, closing, de-registering, and expelling CSOs.⁷ Between 2015 and 2018 alone, seventy-two countries introduced laws that restrict the operations of CSOs.⁸ While this trend is not aimed at migrant groups in particular, migrants' rights have been significantly affected.

Migrants face a host of unique legal obstacles when they seek to exercise their rights to free expression, association, and assembly. First, laws that restrict fundamental freedoms may have a disproportionate impact on migrants. For example, if laws require mandatory registration for CSOs and give government officials discretion in deciding whether to accept their registrations, migrants, who are often disfavored by biased officials, will find it especially difficult to register their organizations. Complicated registration procedures will be an added burden for migrants struggling with language barriers. Second, some governments have enacted rights-restricting laws that specifically target migrants. These laws may prevent non-citizens from fully participating in associations, require defined quotas of citizens as CSOs' members, or make it difficult for non-citizens to open bank accounts.⁹

PRACTICAL CONSTRAINTS ON CIVIC FREEDOMS

The harsh reality of many migrants' lives can further burden their exercise of fundamental freedoms. Refugees and other migrants in irregular situations often find that their struggle to survive leaves little time and energy for self-organization or advocacy.¹⁰ Migrant workers may be prevented from self-organizing and advocating by long work hours, isolated locations in labor camps or domestic households, linguistic and cultural barriers, information gaps, and prejudice in local communities.¹¹ Certain subgroups of migrants, such as women, racial and ethnic minorities, and sexual minorities, can face especially daunting barriers of isolation, stigma, and prejudice, which further hinder their exercise of civic freedoms.¹²

MIGRANTS' INSECURE LEGAL STATUS

Perhaps the most important barrier to migrants' exercise of their rights is their often tenuous legal status. If they attract the negative attention of national or local governments or employment authorities, migrants may lose their legal status and even be detained or deported. These threats can dissuade migrants from exercising their rights to organize, assemble, and express themselves.

RESTRICTIONS ON MIGRANT-ALLIED CSOS

Toxic narratives that paint migrants as criminals smear migrant-allied CSOs with the same brush, undermining their ability to fundraise and recruit staff and affecting their members' psychological well-being. In the last decade, laws related to smuggling and trafficking--and even laws unrelated to migration--have been increasingly misused to harass and criminalize migrant-allied CSOs and their staff.¹³ CSOs' activities that have been criminalized in various countries include providing assistance to persons seeking asylum or information about asylum, participating in search and rescue (SAR) missions, and providing humanitarian aid.¹⁴ In the European Union alone, at least 158 individuals were investigated or formally prosecuted on grounds related to their migration work between 2015 and 2019.¹⁵ Criminal charges open the door to secondary harassment of CSOs, such as authorized surveillance, the freezing of bank accounts, and the seizure of assets. Indictments or the risk of indictment also force CSOs to divert significant time, money, and resources into responding to these threats instead of carrying out their core work.

In addition to criminalizing certain activities, some countries have proposed or erected administrative barriers that obstruct the work of migrant-allied CSOs. These barriers include overly restrictive codes of conduct,¹⁶ requirements that CSOs report undocumented migrants to the authorities,¹⁷ refusals by governments to grant permission for SAR vessels to leave or enter ports,¹⁸ mandatory registration of migrant-allied CSOs,¹⁹ restrictions on access to migrants in detention centers,²⁰ special taxes,²¹ and restrictions on access to public funding.²²

2. COVID-19 Disproportionately Affects Migrant Populations

Because migrants do not usually enjoy the same rights as citizens in destination countries, they are often excluded from the economic and social safety nets that support citizens in times of need. The lack of support for migrants increases their vulnerability to COVID-19 and can amplify the often severe health and economic damage that the disease can inflict, especially if combined with any of a host of other challenges.

OBSTACLES TO SOCIAL DISTANCING

Migrants are particularly vulnerable to the coronavirus because of their difficulty practicing social distancing. Refugees and others in irregular situations often find themselves held in crowded camps or detention centers that lack adequate access to clean water and sanitation.²³ Migrant workers also often live and work in cramped conditions. For instance, many migrants in the Gulf states have been locked down in over-crowded dorms.²⁴ Migrants often find work in industries that are considered “essential” but involve increased exposure to the virus, such as construction, oil and gas, agriculture, and health care.²⁵ Like many low-wage earners, most migrant workers do not have the option of working from home.²⁶

BARRIERS TO QUALITY HEALTHCARE

Migrants face significant obstacles in obtaining health care, which exacerbates the impact of COVID-19. A pre-pandemic analysis of fifty-one countries found that only one-third of them provided citizens and migrants with access to the same health care.²⁷ In some countries, migrants are disproportionately uninsured because their work in the informal sector prevents them from obtaining private coverage and their immigration status prevents them from obtaining public coverage.²⁸ The lack of access to quality healthcare is even more pronounced for the 84 percent of refugees who live in low- and middle-income countries, where health, water, and sanitation systems are weak.²⁹ In the midst of the pandemic, refugee populations face a paucity of testing and care facilities,³⁰ and linguistic and cultural barriers can prevent them from obtaining the information that they need to obtain health care and make informed decisions. The fear of deportation prompts some refugees to avoid seeking treatment for COVID-19, at times with deadly consequences.³¹

FOOD INSECURITY

Experts warn that COVID-19 might precipitate a worldwide food crisis. If this happens, it is important to note the migrants are particularly vulnerable to food insecurity.³² Many migrants do not have sufficient financial resources to stockpile food in case of lockdowns.³³ Migrants’ food insecurity is likely to be intensified by the loss of employment and increases in food prices.³⁴ Migrant-allied CSOs have already

reported an increase in hunger among migrants who have lost their incomes on account of the pandemic.³⁵

HEIGHTENED RISKS TO WOMEN MIGRANTS

Women migrants face greater threats to their health and safety as a result of COVID-19. Women migrants work predominantly in health care, domestic services, the hospitality industry, and factories—all contexts in which they are likely to “suffer more[,] due to greater exposure, lack of information, limited or absence of social protection, or lack or denial of access to services or remedies.”³⁶ Lockdown orders enacted in response to COVID-19 mean that women migrants face a greater incidence of domestic violence.³⁷

GREATER VULNERABILITY TO ECONOMIC TURMOIL

The economic damage inflicted by the coronavirus is hitting migrant communities severely. Many migrant workers were already in precarious employment and financial situations and vulnerable to labor abuses before the pandemic. As industries shut down, migrant workers are often the first to be laid off. Some migrants have been forcibly deported while deprived of pay and benefits. Others have been put on leave without pay, while still others have suffered wage cuts.³⁸ Migrants have also been excluded from aid packages intended to stem the economic damage inflicted by the pandemic. In Saudi Arabia, for instance, the government introduced a \$2.4 billion aid package that partially covers workers’ salaries in the private sector but excludes non-citizens.³⁹ In the United States, the \$2 trillion CARES Act, intended to ease financial hardship resulting from coronavirus-related job loss, excludes undocumented migrants.⁴⁰

TRAVEL RESTRICTIONS WITH DISPROPORTIONATE IMPACT

Governments around the world have enacted coronavirus-related travel restrictions in an effort to stop the spread of the disease. At the end of April 2020, 93 percent of the world’s population lived in countries with some form of restrictions on travel.⁴¹ Border closures and other travel restrictions have had a disproportionate impact on transitory populations such as migrants, who have often found themselves stranded while in transit.⁴² In India, for instance, the media reported that when more than a half-million migrants attempted to flee cities after the government abruptly announced a lockdown, many newly homeless and hungry migrants were subjected to violence and police mistreatment.⁴³

Although country-wide lockdowns often affect migrant and citizen populations indiscriminately, some governments have enacted protocols for curfews, quarantines, and lockdowns that specifically restrict the movement of migrants such as refugees in camps.⁴⁴ Migrant-allied CSOs report difficulty in accessing refugee populations

during lockdowns to provide them with goods and services, even as beneficiaries' needs increase.⁴⁵ Because of these difficulties, migrant populations have found themselves with fewer services to meet their needs.⁴⁶ In Italy, for instance, newly arrived asylum seekers have vastly fewer integration services than before the pandemic.⁴⁷ Colombia has halved its response services for Venezuelan refugees.⁴⁸

INCREASED DISCRIMINATION

The pandemic has increased xenophobia and the stigmatization of migrants, or persons thought to be migrants, who are often accused of spreading the disease.⁴⁹ As of April 3, 2020, a U.S.-based reporting center had received 1,135 reports of coronavirus-related discrimination against Asian Americans, who were presumably perceived to be foreign.⁵⁰ Between February and April, Asians were the subject of 105 out of 248 reports of discrimination involving the coronavirus submitted to the New York City Human Rights Commission.⁵¹ (During the same period one year earlier, the commission received only five reports of discrimination against Asians.⁵²) In countries whose administrations are already hostile to migrants, discrimination and xenophobia is particularly prevalent and sometimes carries over into reduced health care for migrants. For example, Iranian hospitals are allegedly refusing to treat Afghan migrants.⁵³

MORE IRREGULAR MIGRATION PATHWAYS

Refugees are particularly affected by border closures, which have forced many of them to take high-risk routes to their destinations.⁵⁴ Despite increasing travel restrictions and rising xenophobia, the economic hardships inflicted by the pandemic will increase poverty in many parts of the world⁵⁵ and may propel more individuals to migrate domestically or internationally.⁵⁶ With fewer migration pathways available, many people who are compelled to move will most likely be forced to rely on smugglers and other criminal groups.⁵⁷

3. The Pandemic Will Further Impede Migrants' Exercise of Civic Rights

Migrants face significant barriers in exercising their civic freedoms, and they are disproportionately vulnerable to the negative health, economic, and social impacts of the pandemic. Early evidence suggests that some governments are using the coronavirus crisis as an opportunity to impose excessive new legal restrictions on their peoples' rights.⁵⁸ This opportunistic response, coupled with the extreme pressures that the pandemic imposes on migrants, means that COVID-19 is likely to have dire consequences for migrants' ability to exercise freedoms of assembly, association, and expression.

A FOCUS ON SURVIVAL

The single-minded focus on survival and immediate humanitarian needs—pushing other human rights concerns to the background—was a pre-existing concern for migrant populations that the COVID-19 crisis will intensify.⁵⁹ To the extent that migrant populations become even sicker and poorer because of the pandemic, their lack of the time, energy, and financial resources needed to organize and self-advocate will be exacerbated. This will almost certainly be the case as migrants focus their energy on obtaining food and medicine in hostile environments, especially if they are in transit or stranded in minimally equipped camps because of closed borders.

LEGAL AND FINANCIAL INSECURITY

The pandemic will push migrant populations into even more insecure legal and financial situations, which will have a chilling effect on their exercise of civic freedoms. New travel restrictions will push migrants into irregular situations, in which they are reluctant to advocate openly for their own interests out of a fear of deportation or detention. Greater economic hardship will also discourage migrants from organizing against governments or other powerful interests.

DIFFICULTIES ACCESSING INFORMATION

The pandemic will complicate migrants' ability to access information. In response to COVID-19, some governments have introduced policies and practices that limit the information that can be published about the virus. Governments have also extended or eliminated deadlines for officials to respond to the public's requests for information.⁶⁰ Such laws and policies restricting access to information will have an disproportionate impact on migrants, who already find it difficult to obtain information, given linguistic barriers, isolation, and a common lack of internet access.⁶¹ Migrants' inability to obtain information about the virus can have direct consequences for their health. As one commentator explained, "issues such as language, technology, and mistrust of authorities may pose barriers for displaced populations in accessing accurate and appropriate information. For instance, in Rohingya refugee camps, ongoing government restrictions on communication networks, such as phone and internet access, have impeded access to credible information and encouraged the spread of false information regarding the virus."⁶²

RESTRICTED OPPORTUNITIES TO PARTICIPATE

Migrants are likely to find participation in policy making more difficult. The coronavirus poses major challenges to civil society in that governments often believe that COVID-19 responses must be decided quickly, quarantines impede the work of participatory bodies, and authoritarian leaders find expedited, non-participatory procedures appealing. These obstacles are even more imposing for migrants, who already face more significant barriers to participation than citizens of destination

counties. Migrants are commonly excluded from participatory processes, both because they are seen as temporary residents without a stake in local affairs and because they tend to occupy socially isolated positions in their host communities. Particularly in an atmosphere of heightened xenophobia, migrants are likely to be excluded from policy-making consultations.

Quarantines and social distancing during the pandemic make digital connectivity more important than ever. But here, too, many migrant groups are excluded. Refugees are 50 percent less likely than the general population to have internet-enabled telephones, and 29 percent of refugee households have no phones at all.⁶³ Women refugees are even less likely to have internet access.⁶⁴ Without active efforts to ensure that migrants are connected, they will find it difficult to participate in decisions about policies that affect their lives.

POLICE VIOLENCE AND DUE PROCESS OBSTACLES

Migrants' access to justice and due process are being hindered during the coronavirus. Lockdown orders and other restrictions on public activity have given police more leeway, often with public approval, to control the movements of individuals. On numerous occasions, the police are reported to have exercised their authority with unnecessary force.⁶⁵ Especially if they are in irregular situations, migrants face aggressive clampdowns. For instance, in Kuala Lumpur in early May, the police arrested hundreds of undocumented migrants and held them in crowded detention centers on the pretext of ensuring that they did not spread the disease.⁶⁶

In response to the pandemic, many governments have enacted more restrictive migration and asylum laws and closed immigration courts. These measures leave migrants without judicial mechanisms to secure release if they are detained and to challenge decisions regarding asylum and other migration-related issues.⁶⁷ For instance, in early April, the U.S. government effectively closed down the country's asylum system, denying entry to returning asylum seekers or detaining them in temporary camps in Mexico without due process.⁶⁸

WEAKER DONOR FOCUS ON MIGRANT ISSUES

The devastation caused by the coronavirus is expected to shift governments' attention to the recovery of their citizens and their economies. Migrant advocates are concerned that governments will be less likely to honor their financial and other commitments under the Global Compact for Migration, the world's first comprehensive global agreement on migration.⁶⁹ Just as migrants face redoubled economic hardships, migrant-allied CSOs could find their funding streams drying up, which will reduce their capacity to provide migrants with needed humanitarian and advocacy services.

CONTINUED CRACKDOWNS ON MIGRANT-ALLIED CSOS

Despite the increased needs of migrant communities, several countries continue to repress migrant-allied CSOs and migrant human rights defenders. In Calais, France, and Barcelona, Spain, migrant-allied CSOs providing support to migrants were reportedly fined.⁷⁰ Greece published a joint ministerial decision in April 2020, which establishes onerous requirements for registering migrant-allied CSOs and brings their activities and personnel under stricter state control. This development is likely to have a chilling effect on the sector.⁷¹ States are closing the space for civil society to provide support at a time when migrants stand in most desperate need of assistance.

4. The Crisis May Offer Ways to Enhance Migrants' Civic Rights

Although the pandemic poses a crisis for migrants' rights, it also offers reasons for optimism. Governments and the public increasingly recognize the expertise of migrants, particularly their medical expertise, and their contribution as essential workers.⁷² For instance, agricultural laborers in the United States, who are largely undocumented, have been deemed critical by the Department of Homeland Security, and migrant workers reportedly now carry "essential workers" letters as security against arrest for violations of lockdown orders.⁷³ This trend may lead to reduced prejudice against migrants in the longer term. Likewise, a growing understanding of ways in which communities are interconnected during health crises could lead to more consideration for societies' most vulnerable members. There have already been reports of upgrades in water, sanitation, and hygiene infrastructures in refugee camps where repairs had been stalled long before the pandemic.⁷⁴ A growing recognition that the health and safety of a community are threatened by disease and instability among its migrant populations provides an incentive to support this vulnerable group.

The pandemic also offers the opportunity for CSOs to demonstrate how their grassroots efforts serve communities in need, which could bolster trust in civil society. Heightened awareness of the contribution of CSOs could counter some of the negative narratives that have been used to justify governments' restrictions on civil society in recent years. In particular, migrant-allied CSOs stand to benefit from a more welcoming environment.

The crisis may even offer opportunities to strengthen migrant-allied CSOs. In several places, the authorities' failure to adequately anticipate the pandemic has prompted civil society groups to step in to help in communities and migrant camps. For instance, in Palestine, after the authorities failed to act, refugees in the Balata camp formed internal committees to carry out cleaning operations, raise awareness about the virus, and work on sanitation projects.⁷⁵ Demonstrations of migrant groups' ability to

respond quickly and serve their own communities could encourage donors and others to support them.

Some governments have taken steps to protect the health of migrants, which will have the secondary benefit of bolstering migrants' ability to exercise their civic freedoms. A few countries and municipalities have put safety nets in place to ensure the stability of migrants' health and finances during the crisis. Portugal granted migrants equal access to health care during the pandemic.⁷⁶ Ireland introduced coronavirus-related unemployment payments to all migrants, regardless of their legal status.⁷⁷ The regional government of Campania, Italy, has allocated funding to support migrants with temporary housing, safe transportation for workers, psychosocial support, informational campaigns, and medical services.⁷⁸ The municipalities of Geneva, Switzerland, and Cartagena, Spain, have broadened some social emergency and sanitation services to include undocumented migrants.⁷⁹ Such measures do not directly enhance migrants' access to civic freedoms, but by satisfying migrants' fundamental needs, they leave migrants with more time and resources for self-advocacy.

A few national and regional authorities have taken innovative steps to address the obstacles that migrants face in accessing information. The city of Leeds, United Kingdom, has set up an online information hub available in more than forty languages, as well as a weekly online information session where migrant community organizers exchange up-to-date information about the virus.⁸⁰ In Ioannina, Greece, the authorities have collaborated with migrant-allied CSOs to provide migrants with information on COVID-19 prevention in their neighborhoods, refugee camps, and places of employment.⁸¹ Local and national authorities in Austria, Greece, Italy, and Switzerland have published official information on COVID-19 and the government's response to it in multiple languages.⁸² These responses enable migrants to access information about the virus and improve their ability to help their communities combat COVID-19.

Finally, a few governments have considered measures to regularize the status of undocumented migrants and others in irregular situations. For instance, the Italian government has proposed granting up to 600,000 undocumented migrants visas that would allow them to stay and work in the country legally.⁸³ Barcelona, Spain, has launched a fast-track procedure to regularize resident and work permits for migrants.⁸⁴ Such actions may lessen the chilling effect that legal insecurity can have on migrants' right to organize.

5. Recommendations

The positive steps that some governments have taken to expand safety nets for migrants, ensure their access to information, and regularize their legal status could, if

retained after the coronavirus crisis recedes, lead to long-term gains in migrants' ability to exercise civic freedoms. However, restrictive measures rolled out in the name of public health could also stay in place, entrenching resistance to the exercise of rights and freedoms by migrants and their allies.

There are a number of ways in which governments can address the pressing humanitarian needs of migrants during the pandemic. Desired measures include extending to migrants, even those with irregular status, the same social security and health benefits and financial aid packages that nationals receive. Governments can also regularize the status of migrants in ways that allows them to access benefits and aid packages and alleviates their fear of detention or deportation. They can erect firewalls between immigration authorities and health and social services, to ensure that migrants are not dissuaded from obtaining help. Finally, governments can ensure that essential migrant workers are provided with necessary protective equipment and sanitation facilities, and that employers comply with labor laws. These and other measures to address migrants' humanitarian needs and tenuous legal positions will strengthen migrants' ability and willingness to exercise their civic freedoms.

In addition to meeting migrants' humanitarian needs, we recommend that governments take the following steps to safeguard migrants' civic freedoms:

1. Ensure that any restrictions on movement, access to information, or exercise of the rights of free assembly, association, and expression are strictly necessary, proportionate, and time-limited to the duration of the pandemic and apply in a non-discriminatory fashion to citizens and non-citizen migrants alike.
2. Ensure that measures affecting transit across borders or asylum rights are narrowly focused to guarantee that migrants and asylum seekers are not pushed into unsafe or unhealthy situations.
3. Refrain from measures that could perpetuate stigmas and xenophobia affecting migrants, such as issuing statements that tie COVID-19 to a particular nationality.
4. Translate public health announcements and other information into languages commonly spoken by migrants and distribute the information to migrant communities. In particular, migrants should receive information that helps them understand and mitigate risks to their health and access all health care, social security benefits, and financial aid available to them.
5. Ensure that migrant groups have the information and opportunities needed to participate in relevant policymaking processes on virus response, reaching out

in particular to migrants who may have limited internet access. Ensure that migrant-specific concerns are mainstreamed into response policies.

6. Ensure that migrants have swift access to judicial review of detention, asylum, deportation, and other migration-related decisions. In no circumstances should a migrant be held in detention, refused asylum, or deported without being able to meaningfully challenge such decisions.
7. Emphasize the importance of policing without violence and take immediate corrective action against any police or immigration authorities acting with unnecessary force.
8. Desist immediately from harassment of migrant-allied CSOs and criminalization of their provision of humanitarian services to migrants.
9. Craft laws and policies that create an enabling environment for migrant-allied CSOs as they support migrant communities.
10. Continue to honor financial and other commitments under the Global Compact for Migration.

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