

## SYMPOSIUM ON COVID-19, GLOBAL MOBILITY AND INTERNATIONAL LAW

## COVID-19 AND THE HUMAN RIGHTS OF NATIONALS ABROAD

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The COVID-19 pandemic is having serious and disproportionate effects on nationals abroad and their families globally.<sup>1</sup> Many states have adopted positive measures including temporarily suspending forced returns as well providing visa and work permit extensions, temporary residence, or other forms of regular status to ensure that migrants are accounted for in national responses to the pandemic. Nevertheless, the human rights of nationals abroad and nationals with foreign family members have faced significant challenges. Some states have fully or partially closed entry to all of their own nationals and their foreign family members, in violation of nationals' right to return and their right of family unification. Other states' nationals abroad have been unable to enjoy the right to an adequate standard of living and the right to health. Many have also encountered the burdens of hate speech in both their home states and the states in which they live, the effect of which has been to undermine freedom of opinion and expression and the right to equality and non-discrimination. This essay identifies and explains these threats to human rights in the era of COVID-19. The essay encourages states to recommit to rights protection.

*Challenges to the Right to Return for Nationals Abroad*

The right to return to one's own state is a fundamental human right. Article 12(4) of the International Covenant on Civil and Political Rights (ICCPR) provides that "no one shall be arbitrarily deprived of the right to enter his own state."<sup>2</sup> Article 4(1) of the ICCPR permits states to derogate from the obligation to protect this right, but only in a time of "public emergency which threatens the life of the nation and the existence of which is officially proclaimed," and only insofar as the measures adopted are "strictly required by the exigencies of the situation" and "not inconsistent with their other obligations under international law."<sup>3</sup> Any public emergency response to the COVID-19 pandemic must be carried out in strict accordance with these requirements.

States have arranged the evacuation of nationals abroad on a global scale and achieved much. For example, from January 29 to April 14, 2020, the U.S. Department of State coordinated the repatriation of almost 62,000 Americans from 107 states on more than 560 flights.<sup>4</sup>

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<sup>1</sup> UN Comm. on the Prot. of the Rights of All Migrant Workers and Members of their Families & UN Special Rapporteur on the Human Rights of Migrants, [Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants](#) 1 (May 26, 2020).

<sup>2</sup> [International Covenant on Civil and Political Rights](#) art. 12(4), Dec. 16, 1966, 999 UNTS 171 [hereinafter ICCPR].

<sup>3</sup> *Id.* art. 4(1).

<sup>4</sup> William Walters & Ian G. Brownlee (U.S. Dep't of State), [Briefing on COVID-19: Updates on Health Impact and Assistance for American Nationals Abroad](#) (April 14, 2020).

Nevertheless, the right to return to one's own state has not been fully protected. Some states have closed their borders to nationals and adopted burdensome entry requirements and procedures since the advent of the pandemic. According to the International Organization for Migration (IOM), 219 states, territories, and areas had adopted a total of 74,680 COVID-19-related entry restrictions by July 27, 2020. Among those restrictions, 272 applied to the restricting state's own nationals.<sup>5</sup> As a result, tens of thousands of migrants are currently stranded at borders globally.<sup>6</sup> Among 3553 examined points of entry in 169 states, territories, and areas, 38 percent of the examined land-border crossing-points globally were fully closed, while this percentage was respectively 23 percent for airports and 22 percent for sea, river, and lake ports.<sup>7</sup> India recently halted the repatriation of its nationals from the Persian Gulf.<sup>8</sup>

Changes in air travel, including both government restrictions on international air travel and market-driven actions by private air carriers, have also affected the right to return. One aspect of the problem is the suspension of international flights. According to IOM's COVID-19 Travel Restrictions Database, on August 4, 2020, sixty-six states had suspended international flights or closed airports. Approximately 1500 migrants from Algeria, Jordan, and Tunisia were stranded at the Istanbul airport after their flights were canceled.<sup>9</sup> Closely related problems include sharp reductions in the number of available flights and overpriced air tickets. Arrangements for temporary or charter flights have become complex and difficult. For example, since March 12, 2020, each Chinese airline has been able to maintain just one weekly scheduled passenger flight on one route to any specific state.<sup>10</sup> New Zealand Foreign Minister Winston Peters confirmed on April 16, 2020, that a seat on chartered flights from India to New Zealand would likely cost more than US\$5,000 per person. In these circumstances, some New Zealanders remain stuck overseas.<sup>11</sup>

Quarantine requirements can also inhibit the right to return. In some cases, nationals abroad who do not or cannot provide a negative COVID-19 test may be excluded from their home country. Qatari nationals, for example, will not be allowed into the state unless they quarantine for two weeks.

States should impose proportionate entry restrictions in accordance with human rights law and provide assistance where necessary to protect the right to return.<sup>12</sup> Since the right to return is a fundamental human right, states, particularly during the COVID-19 pandemic, should unconditionally guarantee that they will receive their nationals abroad, thus avoiding forced stays in foreign states.<sup>13</sup>

### *Challenges to the Right of Family Unification for Nationals with Foreign Family Members*

The right of family unification stems from the fundamental human right to family. Article 23(2) of the ICCPR provides that "the right of men and women of marriageable age to marry and to found a family shall be recognized."<sup>14</sup> The right entails having a spouse or partner and giving birth to a baby, as well living together with them.

<sup>5</sup> Int'l Org. for Migration, [Global Mobility Restriction Overview Bi-Weekly Update](#) (July 27, 2020).

<sup>6</sup> UN Human Rights, Office of the High Comm'r, [COVID-19: Governments Must Protect the Rights of Migrants During the Pandemic and Beyond, United Nations Experts Urge](#) (May 26, 2020).

<sup>7</sup> Int'l Org. for Migration, [COVID-19 Impact on Points of Entry Bi-Weekly Analysis](#) (July 29, 2020).

<sup>8</sup> Int'l Org. for Migration, [COVID-19 Analytical Snapshot #40: Returning Migrants](#) (May 20, 2020).

<sup>9</sup> *Supra* note 5.

<sup>10</sup> Civil Aviation Administration of China, [Notice on Adjustments to International Passenger Flights](#) (June 4, 2020).

<sup>11</sup> Jordan Bond, [Covid-19: Mercy Flight Out of India Too Expensive for Some](#), STUFF (Apr. 16, 2020).

<sup>12</sup> Frédéric Mégret, [Transnational Mobility, the International Law of Aliens, and the Origins of Global Migration Law](#), 111 AJIL UNBOUND 13 (2017).

<sup>13</sup> GUOFU LIU, [THE RIGHT TO LEAVE AND RETURN AND CHINESE MIGRATION LAW](#) 84 (2006).

<sup>14</sup> [ICCPR](#), *supra* note 2, art. 23(2).

Article 23(1) of the ICCPR provides that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the state.”<sup>15</sup> Therefore, each state is obligated to cooperate with relevant states to ensure the unification of families that include citizens of different countries.

The right of family unification plays a key role for nationals and their foreign family members who seek to live together during the COVID-19 pandemic. It is inspiring that more than twenty states’ entry restrictions do not apply to nationals’ foreign immediate family members.<sup>16</sup> These states include Canada, France, Malaysia, and Japan, among others. Canada, for example, offers exemptions from the usual entry restrictions in order to unify immediate family members who have been or would be separated as a result of entry restrictions.

At the same time, fifty states, territories, and areas that have restricted entry entirely provide no exemptions at all for foreign family members of their nationals.<sup>17</sup> These include Argentina, Indonesia, Russia, and Nigeria, among others. Some states, such as South Korea, have invalidated already issued visas, without offering exemptions for nationals’ foreign family members. Other states, such as Kazakhstan, limit exemptions from entry restrictions only to spouses of nationals. Still other states have suspended already issued visas or refused to issue new visas, without providing exemptions to cover the foreign family members of nationals. India, for example, has announced that visas and e-visas issued before June 30, 2020 are invalidated. As a result, many families with different citizenships are unable to unify promptly. These kinds of restrictions pose significant obstacles to the enjoyment of the right of family unification.

As a fundamental human right, and particularly given the urgent human needs that arise during a pandemic, each state should guarantee the right of family unification and receive all foreign family members of their nationals. This guarantee should be harmonized with international health standards and guidelines. The entry of nationals’ foreign family members, including spouses, partners, dependent children, and legal guardians, should be facilitated and exemptions granted from entry restrictions. Exemptions from entry restrictions should also be encouraged for grandparents, grandchildren, and siblings.

### *Challenges to the Right to an Adequate Standard of Living and the Right to Health*

The right to an adequate standard of living and the right to health are fundamental human rights that are extremely important for nationals abroad during the pandemic. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that states should recognize “the right of everyone to an adequate standard of living for himself and his family.”<sup>18</sup> Article 12(1) of the ICESCR further provides that states should recognize “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>19</sup> Thus, the obligations of states towards those in their care continue regardless of nationality.

Most states offer timely help and support for nationals abroad to enjoy these rights. U.S. consular officers never stopped their efforts to help American nationals abroad.<sup>20</sup> Similarly, China has not only helped Chinese nationals who have been confirmed with or suspected of infections to obtain timely medical assistance, but also followed up on their conditions while urging host states to spare no effort in their treatment.<sup>21</sup>

<sup>15</sup> *Id.* art. 23(1).

<sup>16</sup> Int’l Org. for Migration, [COVID-19 Travel Restrictions Database](#).

<sup>17</sup> *Id.*

<sup>18</sup> [International Covenant on Economic, Social and Cultural Rights art. 11\(1\)](#), Dec. 16, 1966, 993 UNTS 3.

<sup>19</sup> *Id.* art. 12(1).

<sup>20</sup> *Supra* note 3.

<sup>21</sup> Ministry of Foreign Affairs, China, [State Councilor and Foreign Minister Wang Yi Meets the Press](#) (May 24, 2020).

Problems, however, have also arisen. A particularly troubling hallmark of the response to the COVID-19 pandemic is that it is used to minimize and disregard the rights of migrants. Some nationals who are trapped abroad face serious obstacles to the right to an adequate standard of living and the right to health, with jobs, study, and other commitments piling up in their home state. These obstacles include inadequate access to health care, water, food, sanitation, hygiene, communication in their mother language, financial support, and sound information. Some nationals have exhausted their financial resources and experience substandard living conditions. Approximately 900 foreign laborers housed in appalling dormitories were found to be infected with COVID-19 in April 2020 in Singapore.<sup>22</sup> Within national health care systems, the impacts of an outbreak are exponentially greater on migrants because of limited resources and immigration status. Insufficient access to diagnostic testing and treatment is an especially significant problem.<sup>23</sup>

States should take appropriate steps to ensure the right to an adequate standard of living and the right to health, recognizing as well the essential importance of international cooperation. Nationals abroad have the right to seek consular assistance for their right to an adequate standard of living and the right to health, but they are not entitled to receive such assistance, which, under international law, is a right of the state, rather than the individual.<sup>24</sup> Nevertheless, states of origin should assist nationals abroad, as should states of transit and destination. Insofar as poverty and lack of access to health care contribute to the spread of COVID-19, efforts to protect the rights to an adequate standard of living and to health may help to contain the pandemic.

#### *Challenges to the Freedom of Opinion and Expression and the Right to Equality and Non-Discrimination*

Hate speech may constitute an incitement to discrimination, hostility, or violence and pose a threat to the right to freedom of opinion and expression and the right to equality and non-discrimination. These two fundamental human rights are crucial in protecting nationals abroad from obstacles to expression and participation in public debate; from exposure to political and social exclusion, isolation, and stigmatization; from vulnerability to violence; and from being denied access to medical treatment and other vital services.<sup>25</sup> Article 19 of the ICCPR provides that “everyone shall have the right to hold opinions without interference” and that “everyone shall have the right to freedom of expression.”<sup>26</sup> Article 2(1) of the ICCPR provides that each state “undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind.”<sup>27</sup> Furthermore, Article 20(2) of the ICCPR provides that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”<sup>28</sup>

The COVID-19 pandemic has given rise to or exacerbated a wave of hate speech, including scapegoating, stereotyping, stigmatization, and the use of derogatory, misogynistic, racist, xenophobic, Islamophobic, or antisemitic language. Various political leaders have described COVID-19 as the “Chinese virus.” Individuals perceived as ethnically Chinese, Asian, or belonging to certain ethnic and religious minority groups; migrants; and foreigners

<sup>22</sup> Akmal Hakim, *Singapore Sees Spike in COVID-19 Infections*, MSN NEWS (April 27, 2020).

<sup>23</sup> Alicia Ely Yamin & Roojin Habibi, *Human Rights and Coronavirus: What's at Stake for Truth, Trust, and Democracy?*, HEALTH & HUM. RTS. J. BLOG (Mar. 1, 2020).

<sup>24</sup> *PUBLIC INTERNATIONAL LAW* 191 (Sam Blay et al. eds., 2005).

<sup>25</sup> United Nations, *Guidance Note on Addressing and Countering COVID-19 Related Hate Speech* (May 11, 2020).

<sup>26</sup> *ICCPR*, *supra* note 2, art. 19.

<sup>27</sup> *Id.* art. 2(1).

<sup>28</sup> *Id.* art. 20(2).

have been blamed and vilified for spreading the virus.<sup>29</sup> Minority communities have faced attacks on individuals linked to fears about COVID-19.

Hate speech has extended to returned nationals from states with high infection rates. When the pandemic began to unfold in Europe, for example, many Senegalese opted to return to Senegal by boat. However, residents prevented some boats from docking, while newspapers portrayed the returnees as sneaking into the state. Returns towards countries that are less prepared and well-resourced pose significant health risks for home states,<sup>30</sup> especially when the returns are irregular and occur in the absence of testing capacity and adequate guidelines and facilities for quarantine. These circumstances provide an opening for hate speech toward returnees.

The international community should promote inclusion, solidarity, and common humanity to address such hate speech, as set out in official UN documents.<sup>31</sup> For example, public communications by state officials should not attribute to any particular ethnic group blame or responsibility for the emergence or spread of the virus. Returned nationals must be included in national response, social protection, and recovery strategies. They must also be protected against hate speech in the public and private spheres. Further, the rights of those targeted by COVID-19-related hate speech must be upheld by appropriate means, including independent investigations according to law. The leaders of international organizations, including UN Secretary-General António Guterres, have spoken about the essential need for such action.<sup>32</sup> The importance of avoiding offensive or stigmatizing names for a pandemic is one of the lessons of the so-called Spanish flu that engulfed the world in 1918.<sup>33</sup>

### *Conclusion*

State responses to the COVID-19 pandemic pose serious threats to human rights. The ability or willingness of nationals abroad and their foreign family members to return and unify may be reduced by entry restrictions. Previous epidemics—including Ebola, the H1N1 influenza, the Severe Acute Respiratory Syndrome (SARS), and the Middle East respiratory syndrome (MERS)—suggest that the protection of human rights must not be overlooked as other efforts are undertaken to prevent and control the COVID-19 pandemic. Rights protection can address concerns for adequate living standards and health, as well as fears of hate speech. For nationals abroad and their foreign family members, states should develop and apply measures to prevent and control the pandemic consistent with the right to return, the right of family unification, the right to an adequate standard of living, the right to health, and the goal of prohibiting any hate speech that constitutes incitement to discrimination, hostility, or violence.

<sup>29</sup> [United Nations](#), *supra* note 25.

<sup>30</sup> Mukesh Pokhrel & Sonia Awale, [Returnees May be Taking Coronavirus to Rural Nepal](#), NEPALI TIMES (Mar. 31, 2020).

<sup>31</sup> *See, e.g.*, [ICCPR](#), *supra* note 2, art. 20(2).

<sup>32</sup> António Guterres, [We Must Act Now to Strengthen the Immunity of Our Societies Against the Virus of Hate](#) (May 10, 2020).

<sup>33</sup> Int'l Org. for Migration, [COVID-19 Analytical Snapshot #6: Stigmatization and Discrimination](#) (April 2, 2020).