

The search for truth, justice and closure during the pandemic

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The pandemic has posed additional challenges for bereaved migrant families who mourn the death or disappearance of their loved ones. There are practical ways, however, to assist them.

Bereaved families have the right to truth, to justice and to closure. These fundamental rights are recognised under international human rights law, including under the right to dignity, the right to life and the right to family and private life.¹ At a minimum, States must ensure that bereaved migrant families have the opportunity to be informed about the fate and whereabouts of their

missing or deceased relative, to claim and repatriate their remains, and to lay them to rest (Mytilini Declaration of 2018²).

National responses to the COVID-19 pandemic have had severe implications for the ability of bereaved migrant families to exercise the above rights. Containment measures to halt the spread of the virus have often failed to take into consideration the

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specific needs of bereaved migrant families and have raised additional legal and practical barriers. Drawing on the experiences of migrants in eight countries (Greece, Germany, France, Italy, Mexico, South Africa, the US and Zimbabwe) during the pandemic, we seek to demonstrate that there are practical and realistic ways in which States – in line with their international obligations – can assist bereaved migrant families without undermining public health responses.³

Understanding the cause of death

Lingering questions and doubts over the circumstances of the confirmed or presumed death of a loved one can weigh heavily on the surviving family. International human rights law recognises that the emotional pain and anguish endured may even amount to inhuman and degrading treatment. States are therefore under an obligation to investigate suspicious deaths, hold those responsible accountable and keep the family informed.

The seemingly mysterious nature of the new virus and the spread of conspiracy theories have amplified uncertainties among migrant communities. To begin with, official data on the transmission- and death-rate of COVID-19 among migrants are largely unavailable. Many States, including most European States and the US, do not publish COVID-19 statistics disaggregated by nationality, nor do they report separately on the situation of migrants.

Uncertainty is further exacerbated not only by the different ways in which COVID-19 deaths are verified but also by the amount of information shared with the next of kin. In certain countries (such as Germany), the cause of death is a confidential part of the death certificate which is passed to the relevant statistics office but not readily made available to the next of kin due to personal data protection laws. In New York, death certificates stating COVID-19 as the cause of death have been met with distrust by many families, especially where the person was previously in good health and if access to medical records or any further information about the cause of death is not available. For families located abroad, it

may be even harder to obtain information about the circumstances of death because of restrictions on travel and on who has the right to access relevant paperwork.

Migrants – especially undocumented migrants – have faced increased difficulties in accessing health care since the outbreak of the pandemic for a number of reasons. As a result, an unknown number of COVID-19 cases and other medical conditions have been untreated, and an unknown number of non-hospital deaths have gone undiagnosed. Releasing official and transparent data on the transmission- and death-rate among migrants may help put to rest suspicions and speculations, and assist families seeking truth, justice and accountability.

In Mexico, for instance, the authorities release on a daily basis full open data on COVID-19 cases, hospitalisations and deaths. In addition to tracking variables such as age, sex, location and co-morbidities, Mexico also includes information on nationality, migration status and country of departure. In addition, Mexico has been releasing weekly epidemiological reports on COVID-19 among migrants, including the total number of suspected and confirmed cases, countries of origin, hospitalisations and deaths. Although the official statistics do not account for the full extent of the death toll (given that Mexico has one of the lowest testing rates), the government has nonetheless taken an important step towards making official data fully available to the public in an open and downloadable format.

Procedures for requesting death certificates and obtaining further information about the circumstances of death should be accessible and should take into consideration the additional difficulties faced by bereaved families located abroad. Civil society organisations, migrant associations and support groups can help bereaved families navigate administrative procedures; it is essential that such actors remain operational and accessible throughout the pandemic.

Awareness raising is needed not only on how to contain the spread of the virus but also to provide comprehensive and accessible information about access to health care, the

prospects in case of a positive diagnosis and the reasons for containment measures directly affecting migrant communities. Engaging refugee and migrant communities, grassroots organisations and other support groups to share this information can offer an effective way to overcome deep-rooted distrust towards the authorities.

Laying to rest

International law recognises the human right to bury and honour one's deceased relatives. Ensuring respect for funeral preferences and rituals has become particularly problematic during the pandemic, with limitations on attendance and on handling bodies. The pandemic has also exacerbated time-related and financial constraints. The increasing lack of space in morgues has led to expedited funeral procedures, limiting options for destitute families who need more time to raise funds and constraining their ability to transport remains elsewhere. International travel restrictions have placed additional barriers. The situation is even more complicated where the remains are unidentified or where the family has doubts about the identity.

Forensic protocols should expressly address how post-mortem and ante-mortem data relevant for future identification should be collected and preserved. An important example has been set by Mexico's COVID-19 forensic protocols on the treatment of unidentified remains. These protocols describe how bodies should be handled and how data should be collected and stored in light of the pandemic. The protocols also prohibit the cremation of unidentified remains. In the event of the need for mass management, all unclaimed bodies – whether identified or unidentified – must be buried in individual graves for COVID-19 remains, and the attorney's office and forensic services must record where the remains have been buried.

Funeral expense assistance could be included in the financial assistance provided by States to ease the effects of the pandemic. An important step in this direction has been made by New York City's burial assistance programme to

which migrant families – including those with undocumented status – can apply.

Establishing a national visa for funeral and/or identification purposes is an effective and practical way to support bereaved migrant families living abroad. In Germany, for instance, the family visa – which has been maintained throughout the pandemic – allows family members, including extended family members, to visit Germany on a temporary basis to attend a funeral.

Hospital and funeral services protocols should show flexibility to accommodate funeral rites where possible. In Germany, although relatives are not allowed to take the body home, they are allowed in certain circumstances or locations to perform funeral rituals in the hospital room. In Zimbabwe, live streaming of funeral services is available for families (and other members of the community) who are unable to attend in person.

Repatriating remains

For bereaved families, bringing the deceased relative home is essential for closure. Even before the pandemic, the repatriation of human remains was a complex and costly procedure. Since the pandemic, these procedures have become more costly and more bureaucratic, as many States have placed additional restrictions to avoid contagion. At the same time, the suspension of consulate services in many countries combined with travel restrictions have made it more difficult for families living abroad. It is not uncommon, therefore, for bereaved migrant families not to pursue the repatriation option or to find unorthodox ways to achieve it. In Greece, for instance, many migrant families opt to repatriate the bones only, which are made available to the next of kin three to five years after burial. In New York, Mexican families may choose to cremate the relative, against their beliefs, as repatriation of such remains is easier. All this can weigh heavily on the surviving families. There is an urgent need for better national regulations and international coordination in order to more effectively facilitate repatriation procedures.

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Bereaved migrant families cannot be left to grieve alone. Providing proper assistance is not only a moral duty; it is also a legal obligation grounded in well-established human rights norms.

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1. Last Rights (2019) Extended Legal Statement and Commentary bit.ly/Last-Rights-2019-legal-statement
2. The Mytilini Declaration for the Dignified Treatment of all Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys, adopted 11 May 2018, http://lastrights.net/LR_resources/html/LR_mytilini.html
3. Last Rights (2021) *Every Body Counts: Death, Covid-19 and Migration. Understanding the Consequences of Pandemic Measures on Migrant Families* bit.ly/Last-Rights-2021-EveryBodyCounts

