

Human mobility and human rights in the COVID-19 pandemic: Principles of protection for migrants, refugees, and other displaced persons

Developed under the auspices of:



Cornell Law School
Migration and Human Rights Program



Zolberg Institute on
Migration and Mobility

1. Equal treatment and non-discrimination

State policies responding to COVID-19 must guarantee equal and non-discriminatory treatment of all persons, irrespective of their immigration and citizenship status or the fact of their displacement.

2. Right to health

States must respect the right to health of migrants, refugees, and other displaced persons, including by ensuring that the provision of essential medicines, prevention, and treatment are provided in a non-discriminatory manner.

3. State obligations to combat stigma and xenophobia

States should ensure that neither their actions nor the actions of others stigmatize or incite violence against persons on account of their actual or perceived health status, in particular when such stigmatization is linked to nationality or immigration status.

4. Restrictions on movement between States

States are required to ensure that restrictions on mobility adopted in response to COVID-19 respect the rights of all persons to leave any State and to re-enter their home States.

5. Restrictions on movements within States

In responding to the COVID-19 pandemic, States must respect the liberty of movement of all persons within their territory.

6. Non-return and access to territory

A State's pursuit of legitimate health goals must respect the fundamental principle of non-refoulement, including non-return to a real risk of persecution, arbitrary deprivation of life, torture, or other cruel, inhuman, or degrading treatment.

7. Enforcement of immigration law, including detention

States may not enforce immigration laws in a manner that increases the risk of transmission of COVID-19, and such enforcement must comport with fundamental norms of due process. Detention of migrants, refugees, and other displaced persons is impermissible where such detention would expose them to serious risks to their health and life due to the COVID-19 pandemic.

8. Right to protection of life and health for persons in camps, collective shelters, and settlements

States must take effective measures to mitigate COVID-19 transmission among migrants, refugees, and other displaced persons living in camps, collective shelters, and settlements.

9. Right to information

Migrants, refugees, and other displaced persons have a right to information about COVID-19, including information related to symptoms, prevention, control of spread, treatment, and social relief. The internet is an indispensable source of information, and blocking or interfering with access during a pandemic is not justifiable.

10. Protection of privacy

In responding to COVID-19, States must protect the right to privacy of migrants, refugees, and other displaced persons, including their right to control the release of personal medical information.

11. Gender considerations

States must ensure the protection of the rights of displaced women, girls and gender-non-conforming people, and should identify and mitigate particular threats to their health, safety, and well-being in the context of the COVID-19 pandemic.

12. Marginalized groups

Certain groups among migrant, refugee, and other displaced populations require special attention in the context of COVID-19, particularly when it comes to protecting the right to health, access to information, and the prohibition on discrimination. These include older people, persons with disabilities, and children.

13. Labor rights of workers

States must observe the labor rights of migrants, refugees, and other displaced persons working in essential occupations and industries, and in particular take measures to protect their health. States must provide assistance to migrants, refugees, and other displaced persons who lose their jobs and incomes due to the COVID-19 pandemic to the same extent that such protection is afforded to nationals.

14. Rights and their limitations

Any restrictions on rights must be provided by law and be reasonable, necessary, and proportionate. Rights may not be suspended except in a publicly declared emergency threatening the life of the nation, and only if strictly required by the situation. Any such suspension must be consistent with the State's other international legal obligations.

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Introduction

In responding to the COVID-19 pandemic, many States have taken harsh and unprecedented measures against migrants, refugees, and other displaced persons. These have included border closures, quarantines, expulsions, and lock-downs of migrant worker communities and refugee camps. Migrants, refugees, and other displaced persons have also been excluded from programs adopted by States to secure the health and economic well-being of those within their borders. Actions taken to control and prevent the spread of the virus and to ameliorate the massive harms inflicted by the pandemic must be consistent with established international human rights norms. These norms – including those of non-discrimination, rights to health and to information, due process, and non-return to risks of serious harm – apply to all persons, irrespective of their immigration status.

The following principles derive from international treaties and instruments, customary international law, decisions of UN treaty bodies, and guidelines widely accepted by the international community. They are further informed by decisions of human rights bodies at the regional level and regional inter-State agreements. The principles are offered to inform and guide State action, to assist international organizations, and to provide a basis for advocacy and education.

The current crisis demands robust and effective action. But turbulent times do not justify claims that rights can be dispensed with or set aside because they are considered inconvenient to the pursuit of controlling the virus. It is precisely in such times that international human rights do their most important work, reminding us of the core principles of the humanity we are struggling to preserve.

Equal treatment and non-discrimination

State policies responding to COVID-19 must guarantee equal and non-discriminatory treatment of all persons, irrespective of their immigration and citizenship status or the fact of their displacement.

The threat of COVID-19 is indiscriminate. It knows no boundaries – no borders of geography, class, race, age, gender, sexual orientation, status, or situation. This means ensuring access to medical assistance, testing, and health care for all who are or may be at risk, as well as access to State programs adopted to ameliorate the economic hardships imposed by the pandemic. Not to

address the health needs of migrants, refugees, or other displaced persons on grounds of their origin or status would, in addition to increasing the risk of further spread of COVID-19, constitute discrimination because it would be unreasonable, disproportionate, pursue no legitimate goal, and threaten the well-being of the entire community.

The principle of non-discrimination also mandates proactive measures to bring the necessary health services and other vital life-saving services, such as food and housing, to marginalized communities, including those whose displacement, voluntary or involuntary, has separated them from traditional means of support. A proactive approach will necessarily benefit the community as a whole by reducing the risks of transmission by and among those who otherwise might be unable – due to lack of resources, illness, disability, or other circumstances – to stop work, self-isolate, or independently access health services.

(Sources: International Covenant on Civil and Political Rights (ICCPR) arts. 2(1), 26; International Covenant on Economic, Social, and Cultural Rights (ICESCR) art. 2(2); Charter of the United Nations, preamble, arts. 1(3), 55; Universal Declaration of Human Rights (UDHR), art. 2(1); Convention Relating to the Status of Refugees (Refugee Convention), art. 3; Guiding Principles on Internal Displacement, principle 1(1).)

Right to health

States must respect the right to health of migrants, refugees, and other displaced persons, including by ensuring that the provision of essential medicines, prevention, and treatment are provided in a non-discriminatory manner.

The right to health is widely recognized in international law. States have an obligation to provide access to existing health care services that are reasonably available when lack of access to that health care could expose an individual or community to a risk that can result in loss of life. Access to food, water and sanitation, safe shelter and education are recognized as part of realizing the right to health. These obligations, crucial in the current COVID-19 pandemic, are owed to all persons, including migrants, refugees, and other displaced persons, as well as stateless persons whose lack of effective nationality must not preclude them from enjoying the right to health. The right to effective and respectful health services are best achieved by measures that take into account the views of affected populations.

(Sources: UDHR art. 25; ICESCR art. 12; ICERD 5(e)(iv); UN Committee on Economic, Social and Cultural Rights, General Comment No. 14 on the right to the highest attainable standard of health; UN Human Rights Committee, CCPR Nell Toussaint v Canada (2018), para 11.)

State obligations to combat stigma and xenophobia

States should ensure that neither their actions nor the actions of others stigmatize or incite violence against persons on account of their actual or perceived health status, in particular when such stigmatization is linked to nationality or immigration status.

International human rights norms prohibit States from targeting or discriminating against particular groups based on their status, including actual or perceived health status. Numerous instances of stigmatization and xenophobic violence have been directed against people based, in particular, on their Asian descent or the perception that they were a source of COVID-19 infection. Stigma can operate as a significant barrier to seeking health care – a result that endangers both the groups that are targeted and the public at large. Thus, States must refrain from measures that foster or perpetuate stigma, and they should ensure that public health responses to COVID-19 are inclusive of and respect the rights of marginalized groups, including migrants, refugees, and other displaced persons. In addition, States should take proactive steps to combat stigma and discrimination on the part of third parties, such as service providers, private sector employers, the media, and community members. These could include a range of efforts aimed at public education and communications to underpin the fact that viruses are not synonymous with nationality. The availability of accurate and timely information about the disease and how it can be transmitted is also critical in both realizing the right to health and combating stigma.

(Sources: UDHR art. 2(1); ICCPR art. 2(1); ICESCR art. 2(2); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) arts. 2,4; Refugee Convention art. 3.)

Restrictions on movement between States

States are required to ensure that restrictions on mobility adopted in response to COVID-19 respect the rights of all persons to leave any State and to re-enter their home State.

The right of all persons to leave any State and the right to re-enter one's home State may be restricted only in exceptional circumstances. Restrictions of these rights adopted to prevent or contain the spread of COVID-19 must be authorized by statutory law and must be necessary and proportionate to the legitimate aims of protecting public health and the rights of others.

In many cases, there are more effective disease-control measures than border closures. Furthermore, border closures can endanger mobile populations and impede the movement of medical supplies. Where necessary to protect public health, border closures should be subject to exceptions for compelling humanitarian and compassionate needs and that ensure that a State's international obligations can be respected (including the right to seek and enjoy asylum).

(Sources: UDHR arts., 13(2), 29(2); ICCPR art.12(2)-(4); UN Human Rights Committee, CCPR General Comment No. 27; WHO, International Health Regulations (2nd ed.) arts. 23, 32.)

Restrictions on movements within States

In responding to the COVID-19 pandemic, States must respect the liberty of movement of all persons within their territory.

All persons, including migrants, refugees, and other displaced persons, are guaranteed free movement within States. In adopting measures to prevent and control the spread of COVID-19, States have adopted a wide range of limits on free movement. International law does not forbid policies requiring social distancing in public, self-isolation at home or curfews, where demonstrably necessary to the health of individuals and the community. Quarantines restricting freedom of movement and requiring residence at designated places may also be permissible, provided they do not constitute arbitrary detention. The cordoning off of areas – preventing either exit or entrance – must also meet requirements of reasonableness and proportionality. In each of these cases, restrictions on movement must be designed and enforced in a non-discriminatory way.

Restrictions on freedom of movement must also be consistent with other human rights. In particular, they must respect the right to life (including rights to food, clean water, health, and access to humanitarian aid) as well as freedoms of speech, assembly, and association and protection against arbitrary detention. They must also respect the protection of the family as a fundamental group unit of society; the separation of families is not justified other than for purposes of self-isolation, confinement, or treatment of infected family members.

(Sources: UDHR arts. 13(1), 16, 29(2); ICCPR arts. 12(1),(3), 23; UN Human Rights Committee, CCPR General Comment No. 27.)

Non-return and access to territory

A State's pursuit of legitimate health goals must respect the fundamental principle of non-refoulement, including non-return to a real risk of persecution, arbitrary deprivation of life, torture, or other cruel, inhuman, or degrading treatment.

The norm of *non-refoulement*, a fundamental principle of international law, is implicated in two important respects by State measures to respond to COVID-19. First, it may, under certain circumstances, prohibit removal of a migrant, refugee, or displaced person to a country where the absence or inadequacy of health care creates threats to life or a risk of serious, rapid, and irreversible decline in health.

Second, State measures may infringe upon the right to seek and enjoy asylum. Blanket measures to exclude refugees or asylum seekers from access to territory without ensuring protection from *refoulement* are inconsistent with international law.

Exceptions for refugees and asylum seekers to border closures and limitations on entry, combined with measures such as testing and quarantine, can enable States to manage arrivals safely while respecting the principle of *non-refoulement*.

(Sources: Refugee Convention, art. 33; Convention against Torture Other Cruel, Inhuman or Degrading Treatment (CAT) art. 3; ICCPR arts. 7, 13; OAU Convention governing specific aspects of refugee problems in Africa art. 2(3); American Convention on Human Rights art. 22(8); ECtHR, Paposhvili v Belgium (2016); UNHCR, Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response, 16 March 2020.)

Enforcement of immigration law, including detention

States may not enforce immigration laws in a manner that increases the risk of transmission of COVID-19, and such enforcement must comport with fundamental norms of due process. Detention of migrants, refugees, and other displaced persons is impermissible where such detention would expose them to serious risks to their health and life due to the COVID-19 pandemic.

State enforcement of immigration laws must not put in jeopardy the right to health of migrants, refugees, and other displaced persons, government officials, or the public. In particular, enforcement activities, and the threat of such activities, should not prevent or hinder migrants, refugees, and other displaced persons from seeking health care services.

Where State policies adopted in response to COVID-19 restrict access to information regarding legal rights or to counsel and interpreters, immigration proceedings may deny persons due process and protection against arbitrary expulsion. Under such circumstances, State pursuit of vital public health goals may require suspension of enforcement of immigration laws.

Once COVID-19 is introduced into a place of immigration detention, those housed there will face great difficulties in engaging in appropriate health practices, such as social distancing and effective hygiene. States have long been encouraged to develop robust and effective alternatives to detention. Where detention would expose migrants, refugees, and other displaced persons to serious COVID-19-related risks, and in particular where such alternatives exist, or could be reasonably be adopted, continued detention cannot be reasonable, necessary, or proportionate. In some circumstances, migration detention could constitute a threat to the right not to be subjected to inhuman and degrading treatment and the right to life. Persons released from detention should be supported to ensure they can engage in appropriate health practices and will have access to health services. Even in the midst of a pandemic, detained migrants and refugees have the right to challenge the legality, length, and conditions of their detention and to be compensated for any unlawful detention.

(Sources: UDHR arts. 3, 5, 6, 7, 14; ICCPR arts. 6, 7, 9(1), 10, 13, 14(1), 16, 26; ICESCR arts. 12(1); Refugee Convention arts. 16, 31-32; UN Human Rights Committee, CCPR General Comment No. 35.)

Right to protection of life and health for persons in camps, collective shelters, and settlements

States must take effective measures to mitigate COVID-19 transmission among migrants, refugees, and other displaced persons living in camps, collective shelters, and settlements.

The duty of States to take steps necessary for the prevention, treatment, and control of pandemic diseases applies with equal force toward persons who are compelled to live in camps, collective shelters, or settlements in which they are excluded from health systems provided to the general population. Migrants, refugees, and other displaced persons living in such locations must be provided with access to health services; information in a language they understand; clean water and soap, disinfectants and other means of enhancing personal hygiene; practical measures for physical distancing (which, however, must not result in lack of support to the most vulnerable); testing and tracking capacities to isolate infected persons and persons who might be infected; and, where possible, measures to decongest camps, collective shelters, and settlements.

Restrictions on movement into, out of and within camps, collective shelters, or settlements for migrants, refugees, and other displaced persons present particular challenges. Such restrictions may be justifiable if strictly necessary for the protection of the health of those residing there or the community at large (provided that adequate health measures and services are provided to persons within such camps, collective shelters, and settlements). Further, protection of health requires that humanitarian personnel working in camps, collective shelters, or settlements be screened for COVID-19 and provided with personal protective equipment to prevent COVID-19 from spreading.

(Sources: UDHR art. 3; ICCPR arts. 2(1), 6(1); IESCR art. 12(2); Guiding Principles on Internal Displacement arts. 12(20), 18(2)(d); ECtHR, Budayeva and Others v Russia (2008).)

Right to information

Migrants, refugees, and other displaced persons have a right to information about COVID-19, including information related to symptoms, prevention, control of spread, treatment, and social relief. The internet is an indispensable source of information, and blocking or interfering with access during a pandemic is not justifiable.

Access to scientifically sound health-related information is a crucial part of the right to health, and States have an obligation to provide access to accurate and reliable information to migrants, refugees, and other displaced persons. Such information should include the nature and level of the health threat, measures to mitigate risks, how to access health care, and ongoing response efforts (including restrictions on movement and other rights). Information must be made available in a language that migrants, refugees, and other displaced persons can understand. In order to foster the trust necessary to contain the spread of the virus, provide health care for those who need it, and best deploy resources, affected persons should be provided with information that permits them to effectively participate in the crafting of response efforts.

States have an obligation proactively to gather and disclose up-to-date information on pandemic management and response measures through digital, broadcast, social and other media. Blocking access to the internet through broad restrictions is never justified, and it is particularly harmful during a public health emergency. Any restriction imposed must be set forth in writing, must be narrowly tailored to promote a legitimate national security or related interest, and must not be targeted directly or indirectly against an identifiable social group, such as migrants, refugees, and other displaced persons. At the same time, States have a responsibility to ensure that the media is not used during a public health emergency for purposes of persecution or incitement to violence against such groups. In balancing these dual aims, the ordering of content take-downs or blocking of websites or social media accounts should be undertaken only when the information is clearly false and harmful or where the content constitutes incitement to violence, hatred, or discrimination.

(Sources: UDHR art. 19; ICCPR art. 19; UN Convention on the Rights of the Child (CRC) arts. 17, 24(e); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights art. 10; UN Human Rights Committee, CCPR General Comment 34.)

Protection of privacy

In responding to COVID-19, States must protect the right to privacy of migrants, refugees, and other displaced persons, including their right to control the release of personal medical information.

Measures to effectively prevent and control infection and provide clinical care involve collection and management of personal data, including of migrants, refugees, and other displaced persons. In pursuit of public health goals, neither names, other information by which a person could be identified nor personal medical information should be publicly disclosed without that person's express and voluntary consent. For purposes of contact tracing, revealing the name and health status of a person without the person's consent should be a measure of last resort to be undertaken only when all reasonable efforts to obtain consent have been pursued. Tracking the movement of persons infected with COVID-19 should be used only in limited circumstances, such as where the information is not obtainable directly from the person and where it will be used to enable contact tracing.

(Sources: UDHR art. 12; ICCPR art. 17; ECHR art. 8; ECtHR, Z. v. Finland (1997); European Union, Directive 95/46/EC on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (1995).)

Gender considerations

States must ensure the protection of the rights of displaced women, girls and gender-non-conforming people, and should identify and mitigate particular threats to their health, safety, and well-being in the context of the COVID-19 pandemic.

Women, girls and gender non-conforming people experience distinct challenges and risks related to the COVID-19 pandemic, including exacerbation of existing inequalities. These gender-specific risks pertain to migrants, refugees, and other displaced persons, particularly those who experience barriers in accessing essential goods and services and who live in camps, collective shelters, or settlements. Increased caregiving responsibilities – including care of children and sick relatives – can limit women’s and girls’ access to information, services, education, and livelihood activities. Indoor confinement increases the incidence of intimate partner violence and reduces the access of survivors of gender-based violence to life-saving care and support. In responses to COVID-19, women, girls and gender non-conforming people must be ensured access to sexual and reproductive health information, goods, and services. States should also take measures to ensure that women and girls can safely access abortion care, even while in quarantine.

(Sources: Convention on the Elimination of All Forms of Discrimination Against Women arts. 3, 12; UNHCR, Age, Gender and Diversity Considerations – COVID-19, 21 March 2020; UNHCR, Gender-based violence prevention, risk mitigation and response during COVID-19, 26 March 2020; WHO, Gender equity in the health workforce: Analysis of 104 countries, March 2019; Amnesty International, Responses to Covid-19 and States’ Human Rights Obligations: Preliminary Observations, 12 March 2020.)

Marginalized groups

Certain groups among migrant, refugee, and other displaced populations require special attention in the context of COVID-19, particularly when it comes to protecting the right to health, access to information, and the prohibition on discrimination. These include older people, persons with disabilities, and children.

Older people (defined by the U.N. as people over 60) are most vulnerable to COVID-19 and have a higher fatality rate. Older migrants, refugees, and other displaced persons living in camps, collective shelters, and settlements will face particular health risks from limited access to health and hygiene supplies and less ability to socially distance or self-isolate. Realizing their right to health will require governments to ensure access to health care, regardless of legal status, and access to the shelter, water, and sanitation facilities they need to maintain their health. Older migrants in detention, particularly those with chronic health conditions, face particular risks and their continued detention would be disproportionate.

Persons with disabilities (including physical, mental, intellectual and sensory) within migrant, refugee, and other displaced communities may not be able to socially distance since they rely on others for many daily tasks. These vulnerabilities are compounded by challenges in access to information on COVID-19 and the availability of services especially when they have specific communication needs. States are required to guarantee the rights to information, health, education, and a basic standard of living and to ensure accessibility and reasonable accommodation for people with disabilities to enable them to live independently in the community, with support as necessary.

Children constitute an estimated 31 million of the world’s forcibly displaced, and, in the context of the current pandemic, face particular challenges, including access to testing and treatment,

adequate water, sanitation, shelter, and education. These challenges are compounded for children who are unaccompanied or separated through border closures, intensified immigration enforcement, containment measures such as quarantine, and the death of caregivers. International human rights law requires States to ensure that the best interest of the child is a primary consideration in all actions concerning children. In responding to the COVID-19 crisis, States must respect the right to family life and the principle of family unity. States should thus refrain from actions that could result in separation and should take proactive measures to facilitate the speedy reunification of families. States must also take steps to combat the sexual exploitation and trafficking of children.

(Sources: CRC art. 3(1); ICCPR arts. 17(1), (2), UN Convention Against Transnational Organized Crime: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children art. 9; ICESCR arts. 10, 12; International Covenant on the Rights of Persons Living with Disabilities arts. 11, 25.)

Labor rights of workers

States must observe the labor rights of migrants, refugees, and other displaced persons working in essential occupations and industries, and in particular take measures to protect their health. States must provide assistance to migrants, refugees, and other displaced persons who lose their jobs and incomes due to the COVID-19 pandemic to the same extent that such protection is afforded to nationals.

Migrants, who make up large portions of the “essential” workforce in many States, will continue to work during the COVID-19 pandemic. Standards related to workplace safety, minimum wages, hazard pay, overtime, and collective bargaining apply to them on the same basis as nationals. To protect the health of all workers, States must ensure that migrant, refugee, and other displaced workers are provided with appropriate protective equipment, as well as with soap, water, and sanitary facilities. They may not be compelled to work in hazardous conditions or confined in overcrowded accommodation.

States must also protect, on the same basis as nationals, migrants, refugees, and other displaced persons who are unable to work (whether because of sickness or workplace closures) due to the pandemic. They are entitled to the same social benefits as nationals, including with respect to health care, sick leave, social security, and unemployment insurance. States should also take steps to ensure that work closures and other measures do not expose migrants and their families to any special risks. For instance, visas should be granted or extended regardless of employment status, and no one should be rendered “irregular” because they have lost their job or failed to acquire one during the pandemic.

(Sources: UDHR art. 23; ICESCR art. 6; Refugee Convention arts. 17-19, 23, 24; ICERD art. 5, Convention on the Protection of the Rights of All Migrant Workers and Members of their Families arts. 11, 25, 55, 56.)

Rights and their limitations

Any restrictions on rights must be provided by law and be reasonable, necessary, and proportionate. Rights may not be suspended except in a publicly declared emergency threatening the life of the nation, and only if strictly required by the situation. Any such suspension must be consistent with the State's other international legal obligations.

As a general rule, everyone's rights must be exercised in context with the rights of others and the community at large. Thus, States may restrict the exercise of certain rights where such restrictions are in the interest of public health or necessary for the protection of the rights and freedoms of others. Any restriction imposed must be for legitimate purposes of public health and well-being, must always be provided by law and must be shown to be reasonable, necessary, and proportionate, both formally and in practice.

In extreme circumstances, such as an emergency threatening the life of the nation, States may go further and suspend the exercise of certain rights altogether. Because such "derogation" measures carry risks to the rule of law and to democratic and accountable government, an emergency must be publicly declared and reflect an actual, clear, present or imminent risk, not merely the apprehension of one in the future. In addition, only those measures may be taken that are strictly required by the situation, in light of the duration, geographical scope, and impact of the emergency. They are temporary measures, and must not be inconsistent with the State's other obligations under international law, including the principle of non-discrimination.

Although certain rights may be limited or suspended, the law never is; and some rights are protected absolutely. These include the right not to be arbitrarily deprived of life, the right not to be subject to torture or other cruel, inhuman or degrading treatment, and the right of everyone to equality before the law and to recognition as a person before the law.

(Sources: ICCPR arts. 4, 6(1), 16; ECHR art.15(1); AHCR art. 27(1); UN Human Rights Committee, CCPR General Comment No. 29.)