



ICRC

NOTE ON THE PROTECTION OF MIGRANTS IN THE FACE OF THE COVID-19 PANDEMIC

As the COVID-19 pandemic expands, States are facing an exceptional public health challenge, compelling them to adopt increasingly stringent measures. Against such a backdrop, the management of migratory movements adds another layer of complexity to ensuring that migrants¹ are not disproportionately affected both by the pandemic itself, and by the various measures legitimately adopted by States to respond to it. Numerous governments are already developing innovative and solidarity-based solutions to ensure the inclusion of migrants, irrespective of legal status, in their responses and to abide by their international obligations even in such exceptional times.

This paper is intended to assist States in developing effective COVID-19 responses mindful of the specific vulnerabilities and protection needs of migrants, including refugees and others in need of international protection, and to help them reconcile the imperative of protecting public health while ensuring respect for individual rights.

Develop migrant-inclusive responses for the benefit of the entire community

The inclusion of migrants, irrespective of legal status, in COVID-19 responses is not only essential to reduce the impact of the pandemic on migrants themselves but is also core to public health management. **The specific vulnerability of migrants should therefore be factored into any national plan to respond to COVID-19.** Specific strategies of outreach are required to ensure their access to information, their inclusion in prevention measures and their equal access to testing and health care services. **Existing barriers impeding migrants' inclusion in COVID-19 responses need to be addressed as a matter of urgency.** In particular, requirements that health service providers, other essential services and humanitarian actors report migrants in an irregular situation to law enforcement or migration authorities should be lifted, as they may deter migrants from seeking help, be it in order to find an environment more conducive to the implementation of preventive measures and/or to self-quarantine, or to access health services.

Adapt the response to the specific circumstances of the most vulnerable migrants

Specific attention is required to adapt COVID-19 response plans to the particular circumstances of immigration detention facilities, camps, formal and informal settlements and collective sites, as well

¹ The ICRC, like the rest of the International Red Cross and Crescent Movement, uses a deliberately broad description of “migrants” to include all people who leave or flee their home to seek safety or better prospects, and who may be in distress and need protection or humanitarian assistance. Migrants may be workers, students and/or foreigners deemed irregular by public authorities. They can also be refugees, asylum seekers and/or stateless persons. We seek to ensure that all migrants, including refugees and asylum seekers, receive the protection they are entitled to under international and domestic law, but we adopted an inclusive description to reflect our operational practice and emphasize that all migrants are protected under several bodies of law.

as for migrants in transit or who are homeless. The impact of COVID-19 on destitute migrants, those occupying temporary or precarious jobs or relying on daily wages to subsist also needs to be addressed.

- ✓ As a matter of urgency, **access to emergency shelter/housing** suitable for the implementation of COVID-19 infection prevention and control measures should be offered, without barriers related to immigration status, to those who are homeless, in transit, released from detention or evacuated from camps and do not have alternative accommodation options in the community. Priority should be given to those whose condition renders them more vulnerable to complications derived from COVID-19 (i.e. the elderly, persons with underlying health conditions, unaccompanied children and families).
- ✓ For migrants dependent on social services and humanitarian aid to survive, **continuity of services and humanitarian assistance should be ensured**, in a way that protects the safety of both migrants and staff². Policies developed by States to mitigate the social and humanitarian impact of the economic downturn caused by COVID-19 on workers, as well as on vulnerable or marginalized groups, should be migrant-inclusive.
- ✓ **Comprehensive contingency plans that follow public health guidance are urgently required for collective sites, camps, formal and informal settlements, as well as immigration detention facilities.** Any lockdown, quarantine, or isolation measures that may be justified in such settings should be accompanied by adequate prevention measures and appropriate medical preparedness and response. These measures are extremely important to avoid exposing noninfected individuals to people infected by COVID-19 and ultimately increasing preventable morbidity and mortality among migrants, staff and the community.
 - In order to reduce or eliminate the circumstances of **detention**³ that may increase the risk of transmission, and as done in a number of jurisdictions already, authorities should: take all possible measures to reduce the number of people subjected to new immigration detention orders; consider releasing people from immigration detention; and/or consider closing immigration detention facilities inadequate for the prevention and control of the infection and the management of individuals who fall sick⁴. Anyone diverted or released from detention should have access as needed to shelter, health and other essential services.

² The protection of staff, particularly health care workers, is indeed critical to the response. See WHO, *Rational use of personal protective equipment (PPE) for coronavirus disease (COVID-19)*, 19 March 2020, available at: https://apps.who.int/iris/bitstream/handle/10665/331498/WHO-2019-nCoV-IPCPPE_use-2020.2-eng.pdf, [accessed 27 March 2020].

³ Specific recommendations on the management of COVID-19 in detention facilities can be found in WHO, *Preparedness, prevention and control of Covid-19 in prisons and other places of detention*, Interim guidance, 15 March 2020, available at: <http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention-2020> [accessed 06 April 2020].

⁴ For further details re the ICRC's policy on immigration detention, including the detention of children on migration-related grounds, see ICRC, *Policy paper on immigration detention*, April 2016, available at: https://international-review.icrc.org/sites/default/files/irrc_99_19.pdf [accessed 4 April 2020], as well as ICRC, *Second Comment on the Global Compact for Safe, Orderly and Regular Migration – Focus on Immigration Detention*, 25 October 2017, available at: https://www.icrc.org/sites/default/files/document/file_list/second-icrc-comment.pdf [accessed 25 March 2020].

- In all these cases, as well as when applying any alternatives to immigration detention, **it is important not to confuse restrictions on public health grounds with restrictive measures linked to migration.**
- Authorities should avoid establishing new **camp**s where it can be expected that adequate prevention measures⁵ will be impossible to implement. Serious consideration should be given, notably in situations of overcrowding or otherwise precarious living conditions, to either decongest the sites, with the priority evacuation of suspected cases of COVID-19 infection and vulnerable individuals, or to evacuate camps and settlements (be they formal or informal) as a whole. Camp closure as a contingency measure enabling people to leave overcrowded areas should be planned thoroughly with respect to public health guidance.

Important: None of the above-mentioned recommendations should be interpreted as promoting deportations or *a fortiori* expedited procedures of deportation.

Maintain access to asylum⁶ and humanitarian exceptions to travel restrictions

States are entitled to take measures to ascertain and manage public health risks, including those that could arise in connection with non-nationals arriving at their border. **Restrictions of movement and emergency border measures must comply with international law.** They must be non-discriminatory, as well as necessary, proportionate and reasonable to the aim of protecting public health.

When protection is not available in-country, cross-border displacement is often the only available option for people to avoid violations of fundamental rights, notably in situations of armed conflict and other situations of violence. Therefore, **avenues for asylum seekers to access international protection should be maintained.** The systematic rejection of all foreigners at the border in a manner that precludes the admission of individuals in need of international protection, without measures to protect them against *refoulement*, are incompatible with States' obligations under international refugee law (IRL) and international human rights law (IHRL). **Because the principle of non-refoulement protects absolute and non-derogable rights, denial of access to territory without safeguards cannot be justified on the grounds of any health risk.** If such a risk is identified for an individual or a group of individuals, other measures can be implemented, such as testing and/or quarantine, which enables authorities to limit health risks to host populations, while respecting their international obligations.

Humanitarian exceptions to travel restrictions should be maintained, for instance to allow access to life-saving or otherwise critical medical care or family reunifications when a person is highly dependent and requires help to conduct daily activities. Resettlement procedures of a life-saving or otherwise critical character should resume without further delay.

⁵ Specific recommendations on the management of camps to face COVID-19 pandemic can be found in *IASC Interim Guidance scaling COVID-19 Outbreak Readiness and Response Operations in Camps and Camp-like Settings*, available at: <https://interagencystandingcommittee.org/other/interim-guidance-scaling-covid-19-outbreak-readiness-and-response-operations-camps-and-camp> [accessed 25 March 2020].

⁶ 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, available at: <https://www.refworld.org/docid/5e7132834.html> [accessed 4 April 2020].

Ensure that migrants are treated humanely and protected against stigmatization and violence

In all circumstances, **the primary concern should be to treat migrants humanely**, respect their rights under international law and to not expose them to unnecessary immediate or predictable health risks, while mitigating public health hazards. In the context of the implementation of exceptional measures and emergency border management measures to prevent the spread of the COVID-19 pandemic, and as in any other law enforcement situation, **force may only be used as a last resort and must respect human rights law and standards**. In line with IHRL, any use of force must be consistent with the principles and requirements of legality, necessity, proportionality, precaution and accountability⁷.

Furthermore, against a backdrop of already prevalent discrimination, migrants are at risk of being blamed for the propagation of the pandemic, exacerbating the risk of violence by communities or xenophobic groups. In situations where such a risk is identified, the authorities, including law enforcement agencies, have the **obligation to protect migrants** from abuse. Furthermore, authorities have a particular responsibility to refrain from feeding negative narratives against migrants and to counter such narratives.

Preserve family unity and prevent migrants from going missing

States should take all feasible measures to prevent family separation and the risk of migrants going missing or dying, including during management of border crossings, medical evacuations, and application of quarantine and other measures implemented in response to the outbreak of COVID-19⁸. In case family separation is required on health grounds, authorities should ensure that this is done in an orderly manner, and for the strictly necessary amount of time, while maintaining the possibility to communicate and maintain family contact. Measures should be taken, such as the systematic registration of persons admitted into medical/health or quarantine facilities, with a view to facilitate family reunification wherever possible or inform family members in-country or abroad in case of death.

Favor international cooperation, solidarity and responsibility-sharing

At a time of globalization and strong inter-dependence between countries confronted with the complex issue of managing migratory movements in the face of COVID-19, cooperation amongst States should prevail, as it is a prerequisite for the effectiveness of national, regional and international responses. When relevant, **decongestion or evacuation of camps** should be part of a broader mechanism of regional or international responsibility-sharing, when the capacity of a given country is likely to be overwhelmed. In situations where **migrants in transit** are stranded in border areas, coordination between authorities on both sides of the border should also prevail, taking into account: respective accommodation options, capacities for screening and testing, quarantine options when appropriate, available health care services, and possibilities of safe transportation. Considering furthermore that countries of return are mostly countries with weak health systems, **forced returns**

⁷ ICRC, *Comment on the Global Compact for Safe, Orderly and Regular Migration*, 27 March 2017, available at: <https://www.icrc.org/en/document/icrc-comment-global-compact-safe-orderly-and-regular-migration> [accessed 4 April 2020]

⁸ For further details on ICRC policy re missing migrants and their families, see ICRC, *Missing Migrants and their Families - Recommendations to Policy-makers*, August 2017, available at: <https://www.icrc.org/en/document/missing-migrants-icrc-recommendations-policy-makers> [accessed 25 March 2020].

and returns which are not of a strictly voluntary nature should be suspended, with a view to preventing the spread of the virus.⁹

Regularly monitor the impact on migrants of the response to the COVID-19 pandemic

The impact on migrants, irrespective of their legal status, of the COVID-19 pandemic and the related authorities' responses should be closely and regularly monitored with a view to adapting decisions taken, increasing their effectiveness, ensuring their legality under IHRL and IRL and minimizing their humanitarian impact.

CONCLUSION

Drawing on its operational presence along migration routes, the ICRC, together with the volunteers and staff of the Red Cross and Red Crescent Movement, are already actively engaged in the humanitarian response to the COVID-19 pandemic: providing medical and forensic assistance; supporting detaining authorities; scaling up water supply and hygiene in settings particularly vulnerable and/or critical such as hospitals and detention facilities; raising awareness on prevention measures among migrant communities and contributing to their inclusion in the authorities' response; facilitating contact between separated family members etc. The ICRC recognizes the enormous challenges authorities are facing and the pressure under which public services are operating as they seek to respond to the COVID-19 pandemic. The ICRC, along with its Movement partners, stands ready to assist the authorities in the implementation of the present recommendations and their adaptation to the specificities of the challenges governments are facing in developing their responses to the pandemic.

Geneva, 8 April 2020

⁹ This includes 'induced returns', 'constructive/ disguised expulsions' and assisted returns which are not of a strictly voluntary nature and/or that follow a decision of expulsion. Reference is made here to measures whereby States 'induce' or 'incentivize' returns by creating circumstances that have the effect of leaving a migrant with no real alternative other than returning, or that are intended to do so (e.g. dire living conditions; indefinite detention; lack of safety in host State). When a State cannot return a migrant in accordance with the principle of *non-refoulement* through direct measures (order to leave - effective remedy against the order – if lawful, enforcement of the order by State authorities), it should not take indirect or disguised measures that have the same effect.

The mandate and humanitarian mission of the International Committee of the Red Cross (ICRC) is grounded in international treaties (in particular the Geneva Conventions of 1949), the Statutes of the International Red Cross and Red Crescent Movement (the Movement) and the resolutions of the International Conference of the Red Cross and Red Crescent (the International Conference)¹⁰.

In particular, the ICRC's work with migrants is guided by Resolution 3 of the 31st International Conference (2011)¹¹. This resolution encourages States and the Movement to work together to respond to the suffering and needs of migrants and requests States "to enable National Societies, in conformity with the Statutes of the Movement and, in particular, the Fundamental Principles, to enjoy effective and safe access to all migrants without discrimination and irrespective of their legal status".

The ICRC works together with National Societies and with the Federation of the Red Cross and Red Crescent (IFRC) to guarantee that migrants receive the protection and assistance they require. The ICRC plays a prominent role in the Movement's protection work, notably by visiting detained migrants; engaging with States in a dialogue on the humanitarian consequences and the impact of their migration policies on migrants' rights; restoring family links, clarifying the fate and whereabouts of missing people and supporting their families; and ensuring proper and dignified handling of human remains and other forensic services.

The Movement does not try to prevent or encourage migration. It focuses on responding to the needs of the most vulnerable migrants all along their journey, from when they leave their country of origin to when they arrive in their country of destination. What distinguishes the Movement from other humanitarians is its proximity to vulnerable migrants through its network of responders along migratory routes and its distinct vulnerability-based approach that focuses on addressing the needs of migrants regardless of why they fled and where they are. Moreover, the Movement seeks to ensure that all individuals receive the protection they are entitled to under international and domestic law, including the special protection afforded to certain categories such as refugees, asylum seekers and stateless persons.

¹⁰ The International Conference is the supreme deliberative body of the International Red Cross and Red Crescent Movement. It brings together all the components of the Movement and the States Parties to the Geneva Conventions. It meets once every four years.

¹¹ 31st International Conference, Resolution 3 "Migration: Ensuring access, dignity, respect for diversity and social inclusion", 28 November 2011, available at: <https://www.icrc.org/en/doc/resources/documents/resolution/31-international-conference-resolution-3-2011.htm> [accessed 6 April 2020].