

**Executive Committee of the  
High Commissioner's Programme**

Distr.: Restricted  
2 March 2021  
English  
Original: English and French

**Standing Committee**  
80<sup>th</sup> meeting

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**International protection and durable solutions in  
the context of a public health emergency**

*Summary*

This paper provides an overview of key challenges in connection with ensuring international protection and finding durable solutions in public health emergencies and proposes measures to address them, drawing in particular on promising practices observed during the new coronavirus disease (COVID-19) pandemic. It concludes that the COVID-19 pandemic has demonstrated that States can protect public health while guaranteeing respect for rights, including maintaining access to international protection and durable solutions. It also recognizes the need for further international cooperation and support to ensure these are accessible in practice.

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## I. Introduction

1. The COVID-19 pandemic has demonstrated clearly that a public health emergency, and measures to respond to it, can have a significant impact on an individual's access to international protection and durable solutions, as well as the enjoyment of rights more broadly by all persons of concern to UNHCR.

## II. Risks to health and access to health care

2. As the United Nations Secretary-General has observed, COVID-19 “leaves few lives or places untouched. But its impact has been harshest for groups already in vulnerable situations before the crisis.”<sup>1</sup> Persons of concern to UNHCR, including asylum-seekers, refugees, returnees, internally displaced and stateless persons, are among those who have been particularly affected by the pandemic. Many displaced individuals and families who have fled violence and persecution, as well as stateless persons, have faced increased risk of infection, living in conditions which prevent them from observing the required social distancing or hygiene measures. In some situations, it has proven difficult for them to access treatment for other health conditions or risks, including mental health problems. In early 2020, 85 per cent of the world's 25.9 million refugees lived in low- or middle-income countries, many with fragile and overstretched health systems. Ensuring access to health is an essential precondition in practice to the enjoyment of rights associated with international protection and accessing durable solutions in the longer term.

3. Many States have extended COVID-19 health services to refugees and other persons of concern. However, while many States are willing to work towards their further inclusion, some need support to address the health needs of their nationals, as well as those of refugees and others of concern. Financial and technical assistance is crucial in such cases to strengthen national systems, in line with the goals of the 2030 Agenda for Sustainable Development to promote the health and well-being of all populations, as part of efforts to “leave no-one behind”, and the objectives of the Global Compact on Refugees.

4. In addition, to support the right to access national health facilities and services, specific measures may also be needed for persons of concern to make sure they can have effective access to health care services in practice. To this end, they need information regarding their eligibility for health care and may have to overcome obstacles such as lack of documentation, or fees or transport costs. Forcibly displaced and stateless persons may also fear coming forward for testing or treatment lest they be arrested or detained.

5. As noted during the High Commissioner's Dialogue session in November 2020, UNHCR has worked in areas affected by epidemics before, acquiring valuable experience which enables it to work with States that are seeking to address COVID-19. This experience has highlighted the importance of preparedness measures and plans for persons of concern that are integrated in national preparedness frameworks; of multisectoral responses, including water, sanitation and hygiene, as well as education, shelter planning, community-based protection; and of early community engagement to assess and address their concerns; and inclusion of persons of concern in national preparedness and responses. Furthermore, ensuring continuity of priority health services to address other conditions than those related to COVID-19 is essential.

6. Together with States, UNHCR has undertaken strategic interventions to strengthen preparedness and responses in the health sector, including training, provision of equipment and support to hygiene services and other mitigation measures. As vaccination programmes start,

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<sup>1</sup> United Nations, Policy Brief: COVID-19 and People on the Move, June 2020, [sg\\_policy\\_brief\\_on\\_people\\_on\\_the\\_move.pdf](https://www.un.org/sg_policy_brief_on_people_on_the_move.pdf) (un.org)

UNHCR is advocating the inclusion of persons of concern in national plans and working with States to this end, while recognizing the associated resource and logistical challenges.

### III. Measures to safeguard public health and access to international protection and durable solutions

7. States have a responsibility to protect public health. In a public health emergency, States may take lawful measures to pursue public health objectives that limit the enjoyment of certain rights, and in extreme circumstances, States may go further and temporarily suspend—or derogate from the exercise of certain rights, in a manner that respects, among others, principles of necessity, proportionality and non-discrimination. Some rights, including protection from refoulement, however, can never be subject to derogation.

#### *Access to territory and non-refoulement*

8. In guidance issued in March 2020,<sup>2</sup> UNHCR recalled that under international law, States have the sovereign power to regulate the entry of non-nationals. At the same time, measures to this effect may not prevent people from seeking asylum or expose them to the risk of refoulement.

9. Countries imposed restrictions on entry at borders as a measure to contain the spread of the virus. However, many have also established exceptions to allow entry by people seeking international protection, alongside measures to safeguard public health, including testing and/or quarantine upon entry. In this way, health risks were managed in a manner consistent with international law. At the same time, some countries have denied entry to people seeking international protection, leaving them stranded in border areas in inadequate conditions, or adrift at sea without permission to disembark in a place of safety. Some instances of removal or denial of entry at borders have amounted to direct or indirect refoulement.

#### *Access to asylum and documentation*

10. Furthermore, to gain access to the rights associated with international protection, people will, in most cases, require access to a fair and efficient asylum procedure to examine their claims for international protection. Among other COVID-19 mitigation measures, many States suspended the regular operation of their asylum systems during 2020. Most subsequently resumed full or partial operations, and most continued to provide information about ongoing suspensions or resumption of procedures. Registration for new asylum applicants, or updating of information in existing applications, has continued or resumed fully or partially in many countries, using postal, telephone, email or other online arrangements. In other countries, however, asylum-seekers have been unable to register or update claims, effectively precluding them from seeking and enjoying international protection.

11. Many States have adopted new and innovative approaches to registration and status determination during the pandemic, utilizing available technology for submission of claims and remote interviewing. However, further international cooperation and support are needed to enable countries without the resources or infrastructure to develop and implement similar arrangements.

12. For asylum-seekers, refugees, stateless people and others of concern to UNHCR, documentation remains crucial to prove identity and ensure protection from expulsion. Documentation is often also essential to gain access to national services and facilities, including health care. During the pandemic, many States have issued new documentation, or extended the validity of existing documents, or provided temporary documents to regularize the status of asylum-seekers.

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<sup>2</sup> 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>

*Detention and limitations on free movement*

13. Measures to ascertain and manage risks to public health associated with arrivals from other countries can include temporary limitations on movement. Any such restrictions must be regulated by law, necessary for and proportionate to the legitimate purpose of managing the identified health risk, and subject to review. Where restrictions amount to detention, it must not be arbitrary or discriminatory. Any detention must be in accordance with and authorized by law, for a limited time period and otherwise consistent with international standards.

14. Health concerns do not justify the systematic use of immigration detention. The increased risks of infection in crowded and inadequate detention conditions have been widely documented. Recognizing this, several States took steps in 2020 to release people from immigration detention, or to establish or expand alternatives to detention for asylum-seekers and migrants. In some contexts, however, the ongoing detention of asylum-seekers continues to raise concern about health risks and respect for rights.

*Livelihoods*

15. The socioeconomic consequences of the pandemic have had a disproportionate impact on refugees, other forcibly displaced as well as stateless people, many of whom have been the first to lose their livelihoods. Often lacking the right to work and employed informally, under insecure contracts or in sectors badly affected by lockdowns, many have exhausted their savings and are unable to cover their basic needs. UNHCR has reinforced cash assistance and advocated for the inclusion of persons of concern in national social protection schemes and services, while expanding cooperation with development actors and the private sector in livelihood programmes. Nonetheless, more and longer-term international assistance and self-reliance activities will be needed to keep many persons of concern from slipping into abject poverty.

*Gender-based violence, child protection and specific groups*

16. As the pandemic has exacerbated the risks and vulnerabilities of many, UNHCR has emphasised the importance of inclusive approaches to combating the virus and ensuring respect for rights. Confinement, loss of income and anxiety have contributed to a spike in gender-based violence (GBV) worldwide, including intimate partner violence. This has particularly affected displaced and stateless women and girls, who may face additional obstacles to seeking advice, protection and redress. Displaced women and girls, people with disabilities or of minority or indigenous backgrounds and people at risk of violence because of their sexual orientation or gender identity often face increased threats. UNHCR has therefore adapted its operations to step up remote services, including emergency hotlines, and strengthened GBV case management and emergency cash assistance for survivors and those at risk of violence.

17. Child protection risks have also increased during the pandemic, with suspension or limits on access to education and growing economic pressures on families resulting in more child labour and child marriage. Many children are at greater risk of exploitation, including trafficking, which has increased notably over the course of the past 12 months in many displacement settings. Among other responses, UNHCR has strengthened remote case management, arrangements for safe home visits, and access to children at heightened risk.

18. People with disabilities may be at higher risk of contracting COVID-19 if they cannot access preventive information, facilities and hygiene. If they have pre-existing conditions, the consequences of becoming infected can be severe and fatal. In displacement, older people are at particular risk of COVID-19 and may face age discrimination or neglect if isolated from carers. People may also be exposed to discrimination, stigmatization and isolation because of their sexual orientation or gender identity, and this may compound health risks. Minority and indigenous groups may also face heightened risk, including through discrimination and difficulty accessing services.

19. The consequences of the pandemic have led to an increase in mental health conditions among forcibly displaced and stateless persons. UNHCR has, therefore, scaled up its response and adjusted methods of delivering services, including through remote means; and encouraged States to ensure mental health needs are not ignored.

#### *Durable solutions*

20. Restrictions to curb the COVID-19 pandemic have posed significant challenges to the realization of durable solutions for many refugees. UNHCR and many States have worked hard to overcome these, but further efforts and innovative adaptation are needed to achieve them while the COVID-19 mitigation measures continue.

21. Voluntary repatriation has been hampered by border closures or delayed by quarantine or other requirements. Some refugees have sought to return as conditions in countries of asylum have become more difficult or unsustainable, raising questions about its voluntary nature.

22. Resettlement departures were suspended following travel and entry restrictions. After some resettlement countries reopened their borders departures resumed, and 22,770 refugees were resettled in 2020. UNHCR has strongly encouraged countries to increase resettlement places, in addition to their 2020 and 2021 quotas. UNHCR has worked with States to reunite separated refugee families, facilitated by increased remote processing and dossier management.

23. UNHCR's "Three-year strategy on resettlement and complementary pathways" seeks to achieve a greater number of third country solutions by opening up labour and educational opportunities. With economic activity dramatically reduced in many parts of the world, labour migration opportunities have declined, even while shortages have become apparent in the health sector which skilled refugees could help to cover. Education has been widely impacted by the pandemic, and many scholarship and education programmes for refugees have halted temporarily.

24. Self-reliance and the potential for integration of refugees have encountered challenges in many countries of asylum, as limits on economic activity and mandatory isolation have reduced scope for refugees to interact with their host communities. At the same time, however, some communities have made important efforts to maintain communication with their refugee neighbours, along with services such as language learning and health information, through technology and other remote means.

25. Further efforts will clearly be needed in 2021 to ensure the availability of durable solutions for more refugees, including for the many in protracted situations. Investment in assistance and development in countries of origin will be essential to create conditions conducive to return – including, critically, strengthening health care systems so returning refugees can benefit from testing and treatment without placing undue strain on a fragile infrastructure. UNHCR will continue to call for additional resettlement places and promote departures under the quotas that remained unfilled in 2020. States have expressed their commitment to working with UNHCR to help more refugees achieve solutions. This needs to be a key priority as post-COVID-19 recovery efforts are planned and implemented.

## **IV. Roles of different actors**

26. The 2020 High Commissioner's Dialogue on Protection Challenges focussed on "Protection and resilience during pandemics". The Dialogue was enriched by the viewpoints and experience of a wide range of stakeholders, as promoted by the Global Compact on Refugees. In addition to representatives from different government ministries, speakers included refugees, asylum-seekers, returnees and stateless people, civil society, city officials, faith leaders and private actors. Their interventions testified to the array of skills, expertise

and perspectives needed to ensure access to rights, international protection and durable solutions during public health emergencies.

27. The Dialogue also highlighted the invaluable contribution that persons of concern can make to COVID-19 responses when afforded an opportunity to do so. Many refugee, displaced or stateless health professionals were able to reinforce stretched national workforces, providing care and saving lives in their host communities. The positive image around their contributions stood in contrast with the misinformation, stigmatization and discriminatory attitudes voiced in some situations, where refugees or foreigners were blamed for the arrival or spread of the virus.

## V. Conclusion

28. The COVID-19 pandemic has demonstrated that States can protect public health while ensuring respect for the rights of refugees, other displaced and stateless people and those seeking international protection. In order to sustain the availability of international protection and durable solutions in the coming months and years, international cooperation and support for countries hosting refugees, including those with fragile health systems and facing economic challenges, will remain essential, as the pandemic's effects continue to wreak havoc. As plans for post-COVID recovery are developed and implemented, the inclusion of displaced and stateless people and others of concern to UNHCR in such efforts will be more important than ever.

29. Drawing on the above analysis, the following broad areas could be considered for an Executive Committee conclusion on the theme of international protection and durable solutions in the context of a public health emergency:

- The importance of ensuring that measures to protect public health are consistent with international refugee and human rights law;
- Challenges and opportunities affecting refugees, other displaced and stateless persons, as well as host communities, in the context of the COVID-19 pandemic;
- Inclusion of refugees and other displaced persons in pandemic response;
- The impact of the pandemic on displaced women and girls, including the increase in gender-based violence;
- The importance of international cooperation in addressing public health emergencies affecting persons of concern and their host communities;
- Access to health care, vaccination programmes and other basic services, including education;
- Inclusion in post-pandemic recovery plans, including with a view to realizing solutions; and
- Communication with persons of concern.