

COVID-19: Access Challenges and the Implications of Border Restrictions

The COVID-19 pandemic has required States to implement exceptional measures to curb the spread of the virus and to protect public health. While border restrictions or closure may be justified, exceptions are needed to safeguard basic rights, including for refugees, asylum seekers and migrants. In many cases, such exceptions are not being made in law or in practice, creating serious risks of violations of rights.

Analysis and implications: border closures, access to territory and returns

Border restrictions which have been imposed or increased as part of measures to respond to Covid-19 are impacting heavily on asylum-seekers and refugees, preventing many across the world from seeking asylum and safety, in violation of the international legal principle of non-refoulement. As of 21 April, UNHCR estimates that 167 countries have so far fully or partially closed their borders to contain the spread of the virus. At least 57 states are making no exception for people seeking asylum, seriously limiting the rights of persons in need of international protection.

In addition, information gathered through [monitoring by IOM](#) shows that students, migrant workers, pilgrims, travellers, domestic workers, textile merchants and migrants who have travelled abroad to get medical assistance have found themselves stranded and destitute at airports, at or between land border entry points, and at sea without means to return to their home country. Some lack the financial means to pay for their return home or the required fit-to-travel medical certificate, while others find themselves faced with border closures with no means to sustain themselves where they are.

Forced returns, denials of entry and push-backs at borders, whether at land or sea, of asylum-seekers have been recorded in different regions worldwide. There are growing instances of refusals to disembark rescued individuals at sea, leaving them desperately stranded in unsafe boats for extended periods, or seeking to disembark them in unsafe places. Of equal concern is the lack of coordinated engagement even to carry out search and rescues, a norm of customary international law equally being violated during this crisis.

In some cases, States have returned asylum-seekers to transit countries to await lifting of the measures and access to an asylum procedure at an undefined point in the future, effectively suspending the right to seek asylum. In the absence of protection-sensitive border management which would enable regular means to enter at the borders of States - subject to health checks and quarantine where needed – migrants, asylum seekers and refugees might be forced to resort to irregular and often dangerous movements to access assistance and international protection, often facilitated by smugglers, which increases the risk of human trafficking, exploitation and abuse. In some cases, border closures have left people in need of international protection stranded at borders in dangerous and inadequate conditions. Furthermore, border closures may be detrimental to public health, as irregular movements and entry will increase the number of people who are not detected or known to authorities, further complicating efforts to curb and respond to the pandemic.

Collective expulsions of migrants and refugees have been recorded in some locations following reports of Covid-19, triggering refoulement and serious public health risks. Individuals are also being compelled to return to their countries of origin where fragile national health systems are ill-equipped to handle the necessary sanitary and confinement measures, especially where there are mass population movements.

While many governments have proactively organized the return of their nationals, governments such as Bangladesh and Ethiopia, have felt pressured to repatriate their nationals, without the means to do so. Meanwhile, a few governments have set positive examples by extending residence to third country nationals and allowing access to health care and social protection services to migrants. At the same time, some governments have revoked visas and residence permits issued prior to the Covid-19 outbreak.

Border closures and movement restrictions in many cases negatively impact the capacity of UNHCR, IOM and others working to assist migrants, asylum-seekers and refugees to access the services they offer, including counselling, legal advice, referrals and lifesaving assistance. Denial of access will also undermine the efforts of national authorities to ensure that people at risk of infection or spreading the virus are informed and able to access testing and treatment.

Advocacy messages

Key messages on borders and access limitation measures include:

- States have a sovereign responsibility to manage their borders; but need to do so in accordance with international human rights and refugee law, ensuring continued access to protection at borders. These obligations equally apply at sea borders.
- Denial of access to territory without safeguards to protect against refoulement cannot be justified on the grounds of any health risk. In addition, it could send people into “orbit” in search of a State willing to receive them and, in this way, may spread the disease.
- The principles of non-refoulement, prohibition of arbitrary detention and of collective expulsion must always be respected by States in any response at borders to the COVID19 pandemic.
- While States may take steps to protect public health and to limit COVID-19 transmission at borders, such measures must be non-discriminatory, necessary, proportionate, subject to regular review, and reasonable in line with international law; health concerns do not justify the systematic use of immigration detention.
- While nationals have the right to return to their country of origin, there should be flexibility for those abroad to maintain their stay during the crisis, in particular to avoid forced returns to States with fragile health systems. Support to strengthen national health systems could also be provided to enable safe returns to countries of origin, where appropriate.

More details can be found in a range of documents and recommendations produced in recent weeks. On 16 March, UNHCR issued [Legal Considerations](#) on access to territory for persons in need of international protection in the context of the COVID-19 response. Further public documents were issued on [Age, Gender and Diversity Considerations](#), [Risk Communication and Community Engagement](#) (both of 21 March) and [Gender-based violence](#) (26 March) in the context of Covid-19. UNHCR also issued [Covid-19 Crisis: Key Protection Messages](#), affirming among other things that “*States can and should ensure access to asylum while also protecting public health*”.

IOM has equally produced [recommendations regarding immigration, consular and visa procedures](#), which include facilitation of immigration and visa procedures for healthcare workers, expansion of remote consular support, adaptation of regulations to uphold legal frameworks and incorporate the necessary adjustments for migrants to remain in compliance with immigration rules, and rethinking existing immigration processes and programmes for these to fully integrate public health imperatives while incorporating technological innovations.

In more localized settings, such as the Horn of Africa, IOM has also urged concerned governments to devise group specific solutions, in considering limiting unnecessary movements, whilst ensuring access to the country of origin remains available for those nationals wishing to return home, and allowing those who are abroad to maintain their presence without resorting to coercive means and measures.

UNHCR and IOM

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