

COVID-19 AND THE HUMAN RIGHTS OF MIGRANTS: GUIDANCE

OVERVIEW

The current public health crisis caused by COVID-19 disproportionately affects people and communities who are already in vulnerable and marginalised situations. Around the world, migrants can be particularly vulnerable to stigma and discrimination and can be excluded in law, policy and practice from access to rights, including in the context of the public health and recovery response to COVID-19.

- Everyone, including all migrants regardless of their migration status, must be taken into account as an integral part of any effective public health and recovery response to COVID-19. Including migrants in the response to this crisis is the only effective way to protect not only migrants' rights, but also to avoid fuelling xenophobia and endangering the health of society as a whole.
- States should take specific measures that are responsive to age, gender, disability and other factors, in order to support migrants in vulnerable situations, who are at risk of being disproportionately affected by the crisis.

ACCESS TO HEALTH FACILITIES, GOODS AND SERVICES

Migrants often face obstacles in accessing health care, including language and cultural barriers, costs, lack of information and the wide reaching consequences of xenophobic attitudes and behaviours. Many migrants also face barriers to accessing health care as a result of laws, policies, administrative regulations and practices, including due to irregular immigration status. Migrants in an irregular situation may be unable or unwilling to access health care or provide information on their health status when they fear or risk detention, deportation and penalties as a result of their immigration status.

- All people in the territory or under the jurisdiction of a State, regardless of their nationality or migration status, have an equal right to health. States have an obligation to guarantee the right to health to everyone without discrimination, including on grounds of nationality and migration status. The scarcity of resources is not a sufficient basis for treating migrants' healthcare needs differently.
- Legislative, policy, administrative, and practical measures, including communication measures, should be put in place to ensure migrants' timely and effective access to health facilities, goods and services, at all stages of migration, regardless of immigration status. Such measures should include "firewalls" to separate immigration enforcement activities from health service provision. Communication messages and public information campaigns should make clear that migrants in irregular situations will not be penalized or targeted for immigration enforcement when seeking access to healthcare services.
- Information on the prevention, early diagnosis and treatment of COVID-19, as well as measures taken to address its spread, should be available to migrants in a language they understand and in formats they can access.

- Outreach efforts should aim at disseminating information with the meaningful and gender-balanced participation of migrant communities and actors that have access to migrants, including along migratory routes.

MIGRANTS LIVING IN CAMPS OR UNSAFE CONDITIONS

Migrants who travel or live in inadequate and unsafe conditions, without access to water, sanitation and hygiene, including those living in homelessness, overcrowded shelters, informal settlements, camp situations, slums or those with precarious or inadequate housing, are at greater risk in this pandemic. The risk of sexual and gender-based violence to which migrants living under such conditions are exposed, might further increase owing to additional tension generated by the pandemic and possible shortage of staff within settlements and shelters.

- Specific actions that should be taken to protect the health of migrants living in homelessness, shelters, informal settlements, camp situations, slums or inadequate housing include:
 - adequate prevention, testing, and treatment in shelters and camps;
 - preventive relocation from overcrowded camps to safe housing;
 - provision of water, sanitation and hygiene in shelters, camps and public areas;
 - continued and increased access to emergency shelters for migrants in transit and homeless people with no barriers as to their migratory status;
 - suspension of evictions from homes and shelters and extension of stay in shelters and reception centers; and
 - adequate measures to respond to the heightened risk of violence, including gender-based violence, due to the pandemic.
- The provision of all essential services, including food, water, sanitation and other rights, should be separate from immigration enforcement.

RIGHT TO DECENT WORK AND SOCIAL PROTECTION

Many migrants and their families are low-wage, temporary and informal sector workers. Many continue ensuring essential services for people during the pandemic and as a consequence may be at heightened risk of infection. Others are at risk of losing their jobs or work visas, and economic hardship as a result of containment measures, such as business closure. Migrant domestic workers may be disproportionately affected by social distancing measures and isolation in employers' homes, potentially subject to discrimination and even sexual and gender based violence and abuse without recourse to help.

- Social protection measures should be available and accessible to migrant workers and their families, regardless of their migration status, since they are likely to be in precarious working conditions and disproportionately affected by unemployment or reduced employment as a result of the pandemic.

RIGHT TO EDUCATION

Migrant children may face additional barriers in accessing education as schools or the organisations providing special educational programmes have been forced to close. This may include situations where migrant children have no access to the technological means or other support structures to continue their education from home.

- States should take measures to ensure that migrant children are not left behind, exploring partnerships and innovative ways to provide education remotely and reintegration of all migrant children once in-person schooling resumes.

IMMIGRATION DETENTION

Immigration detention centers, camps and other places where migrants are deprived of their liberty are high-risk locations for the spread of communicable infections, as they are often overcrowded and lack adequate healthcare, food and water, sanitation and hygiene.

- States should urgently prioritize release from immigration detention and institute a range of human rights-based, non-custodial alternatives to detention in order to protect the rights and health of migrants and staff in immigration detention facilities.
- Since immigration detention is never in the best interests of the child, children and their families should be immediately released.
- States should ensure that those released from immigration detention have access to adequate housing, food and basic services.

BORDER MANAGEMENT

Many countries around the world are closing borders or tightening border controls in an effort to contain the spread of COVID-19.

- Tightened border controls and measures implemented at international borders, including screening and quarantine at points of entry, must ensure non-discrimination, confidentiality and dignity and should not imply mandatory or indefinite detention. Search and rescue operations should be maintained ensuring compatibility with public health priorities.
- Measures should be in place to ensure continued access to individual assessment, best interests assessment and determination, and international protection under international human rights and refugee law. Migration and asylum procedures should comply with due process guarantees and avoid placing migrants in vulnerable situations, such as rendering them without migration status. States should consider regularization and timely extension of residence and work permits during the pandemic, as a way to facilitate migrants' access to rights and protect public health.
- States should consider the temporary suspension of enforced returns during the pandemic. Enforced returns can only be carried out if they comply with the principle of *non-refoulement* and the prohibition of collective expulsions, as well as procedural guarantees, including due process, access to lawyers and translators, and the right to appeal a return decision. In all cases, all stages of return procedures should be adjusted to ensure they are compatible with public health strategies.
- Migrants who are returning to countries of origin, especially those who are returning from countries with high infection rates, must be included in national response, social protection and recovery strategies without discrimination, and should be protected against stigma and exclusion in the private and public sphere.

XENOPHOBIA

In situations of fear and uncertainty, such as the current pandemic, migrants and minorities associated with migration can be particularly vulnerable to attitudes and behaviors that stigmatize and scapegoat them.

- State authorities should ensure that the public discourse and response to COVID-19 does not contribute to xenophobia and racial discrimination, including by introducing measures to prevent, monitor and address stigma and incidents of racism, xenophobia, incitement to discrimination, hatred and violence, and holding those responsible to account.
- States should remain aware that if the effort to contain the virus is to succeed, it is important that the international community acts in solidarity, between neighbours and families, within countries and across borders, and along migration routes and corridors. COVID-19 does not discriminate, neither should we.