

Quick Guide - Using the UN human rights mechanisms to ensure protection in the context of COVID-19 measures and beyond

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Introduction

The purpose of this document is to provide guidance to UNHCR operations, Bureaux and Divisions on how to seek immediate interventions of United Nations human rights bodies as needed in the context of COVID-19 responses.

Such interventions could be useful to support UNHCR's efforts to prevent any irreparable harm to asylum-seekers, refugees, stateless and internally displaced persons in the context of measures taken in response to COVID-19, including but not limited to access to asylum and instances of refoulement. The document also highlights ways in which operations may already be incorporating the strategic use of human rights mechanisms in their protection strategies in the medium and longer term, which could mitigate risk of long-term loss of protection space resulting from measures taken in response to COVID-19.

Human rights of forcibly displaced and stateless persons in the context of COVID-19 related measures may be particularly affected in, *inter alia*, the following areas: Access to asylum; non-refoulement, restrictions on freedom of movement; quarantine/detention measures and housing; conditions in detention centers and camps; access to health services/systems; access to adequate water and sanitation facilities; racism, racial discrimination, xenophobia and related intolerance.

The mechanisms highlighted below, as well as the resources listed in annex, recall some of the tools available to UNHCR to address these protection challenges through the human rights system, where relevant and strategic.

1. Urgent action to ensure protection

A. UN special procedures mandate holders (Special Procedures)

i. Urgent appeals

UN Special Procedures are independent experts appointed by the UN Human Rights Council to address thematic or country-specific human rights issues. Most Special Procedures can receive allegations concerning either individual cases, or a wider pattern of human rights abuses that come within their mandates. They can intervene directly with Governments, and occasionally with non-State actors, by means of letters which include urgent appeals (in situations that require urgent or preventive action) and other communications. The intervention can relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring.

Key advantages of this mechanism:

- Cases may be brought to their attention **regardless of the State in which they occur and of whether the State has ratified any of the human rights treaties.**

- It is **not necessary to have exhausted all domestic remedies** before using the procedure.
- The communication **does not need to be made by the victim**, although the source must be reliable and have the consent of the individual whenever possible.

The ultimate decision to intervene is at the discretion of the mandate-holder(s) and will also depend on the criteria established under their respective mandate(s).

How? Additional practical information on how the Special Procedures can be seized for Urgent Appeals is available in UNHCR's internal General guidance on engaging the United Nations human rights complaints procedures ([English](#) / [French](#)).

ii. Press releases/media statements

Where Special Procedures are alerted to individual cases or general protection concerns/trends they may issue press releases individually or jointly along with other mandate holders. Should operations or Regional Bureaux identify protection concerns which could benefit from being brought to public attention by the special procedures, UNHCR may suggest or propose the concerned UN human rights entity issue a press release on the subject.

A collection of recent press releases which have been issued by Special Procedures on COVID-19 human rights concerns are included in Part 3 of this guidance, some of which may already be of use for UNHCR operations.

How? Operations and Bureaux who interested in pursuing a press release on protection concerns affecting persons under UNHCR's mandate are encouraged to contact the Human Rights Liaison Unit in the Division of International Protection.

iii. Key mandates of relevance to UNHCR in the context of COVID-19 measures

Among the 44 thematic mandates, a number of these mandates may be of particular relevance given the protection concerns arising in the context of measures in response to COVID-19.

With respect to, *inter alia*, restrictions on access to asylum, refoulement, detention conditions, quarantine measures or restrictions on freedom of movement which may amount to detention, racism, xenophobia, discrimination or discriminatory access to health services or facilities, water and sanitation, and specific age, gender and diversity concerns, the following mandates may be of particular relevance for UNHCR:

- Special rapporteur on [torture](#) and other cruel, inhuman or degrading treatment or punishment
- Special rapporteur on the human rights of [migrants](#)
- Working group on [arbitrary detention](#)
- Special rapporteur on the human rights of [internally displaced persons](#)
- Special rapporteur on contemporary forms of [racism, racial discrimination, xenophobia](#) and related intolerance
- Special rapporteur on [minority issues](#)
- Special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental [health](#)
- Special rapporteur on the human rights to safe drinking [water and sanitation](#)

- Special rapporteur on the right to [food](#)
- Special rapporteur on [adequate housing](#) as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context
- Special rapporteur on the rights of [persons with disabilities](#)
- Special rapporteur on the enjoyment of all human rights by [older persons](#)
- Special rapporteur on [violence against women](#), its causes and consequences
- Working group on discrimination against [women and girls](#)

B. UN treaty monitoring bodies (Treaty Bodies)

i. Complaints procedures and requests for interim measures

Eight of the international human rights treaties have mechanisms which have entered into force and which allow for individual complaints to be submitted to their respective Treaty Body.

- (i) The International Covenant on Civil and Political Rights) under its Optional Protocol
- (ii) The Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment
- (iii) The International Convention on the Elimination of All Forms of Racial Discrimination
- (iv) The Convention on the Elimination of All Forms of Discrimination against Women under its Optional Protocol
- (v) The Convention on the Rights of Persons with Disabilities, under its Optional Protocol,
- (vi) The International Convention for the Protection of All Persons from Enforced Disappearance
- (vii) The International Covenant on Economic, Social and Cultural Rights, under its Optional Protocol, and
- (viii) The Convention on the Rights of the Child, under its Third Optional Protocol.

With the exception of the Committee on the Elimination of Racial Discrimination, the remaining seven Treaty Bodies also have the authority to request the State party concerned to adopt **interim measures with immediate effect**. These may be adopted where the violation of the rights is extremely grave and urgent and immediate action is required to prevent any irreparable harm to the alleged victim before the Treaty Body has the opportunity to decide on the complaint. Interim measures may therefore be particularly relevant for urgent protection concerns affecting persons under UNHCR's mandate with respect to COVID-19 measures, as they can be invoked, for example, to stay a deportation or detention order.

Complaints can be submitted by an individual who has suffered an alleged human rights violation **or** by third parties on that person's behalf, for example, by an NGO or UN entity. The alleged violating State must be a party to the treaty invoked by the individual and, where relevant, have ratified the optional protocol that established the mechanism. The complaint must not be currently under examination by another international or regional adjudicative complaint procedure and proceedings may only be initiated after all domestic remedies have been exhausted.

How? Additional practical information on how complaints can be filed with the Treaty Bodies, and how to seek Interim Measures, is available in UNHCR's internal General guidance on engaging the United Nations human rights complaints procedures ([English](#) / [French](#)).

ii. Press releases/media statements

The Treaty Bodies may, with respect to serious human rights concerns or trends, issue press releases or media statements. Such statements typically involve one or more of the Chairpersons of the Treaty Bodies. With respect to COVID-19, one such statement was issued on 24 March 2020 in which the Chairpersons called for a [human rights approach in fighting COVID-19](#).

Should operations and Bureaux identify serious or systematic rights abuses affecting persons under UNHCR's mandate in the context of COVID-19 measures, it may be possible to seek the public support of the Treaty Bodies through a press release or media statement.

How? We encourage operations and Bureaux considering this option to contact the Human Rights Liaison Unit in the Division of International Protection.

2. Strategic advocacy to ensure protection space and inclusion

In addition to immediate measures which can be taken through the Urgent Appeals of Special Procedures or Interim Measures issued by Treaty Bodies on individual complaints, operations and Bureaux may wish to consider how engaging with and advocating through the human rights mechanisms may help to ensure that measures taken in the context of COVID-19 do not result in a longer-term reduction of protection space or barriers to inclusion for persons under UNHCR's mandate.

A. Special Procedures – Country visits

Specific challenges of UNHCR persons of concern can be brought strategically to the attention of the Special Procedures as relevant and useful under current conditions and working methods. Where operations and Bureaux identify that there may be sustained restrictions on protection space or barriers to inclusion for persons of concern, it may be advisable to seek a visit from a relevant Special Procedure to the country concerned. UNHCR's engagement and involvement in such visits can lead to valuable recommendations being issued by the Special Procedure to the Government, which can lead to improvements in the protection of persons of concern. In light of COVID-19 transmission risks and border closures, such visits are currently suspended. However, they may be considered and proposed to relevant mandate holders for a future time when conditions have improved and the risk of transmission of the virus has subsided.

While Special Procedures are typically interested to receive suggestions on countries to visit from UNHCR, as independent experts they have discretion whether or not to take up such suggestions. In addition, Special Procedures must seek the agreement of the Government before carrying out a country visit.

In the context of measures taken in response to COVID-19, the abovementioned mandates (see 1(A)(iii)) may be of most relevance to UNHCR for proposing and supporting country visits.

B. Treaty Bodies – Consideration of State parties' reports

State parties to the international human rights treaties, in addition to their substantive obligations under each treaty, have an obligation to submit periodic reports on their implementation of the relevant treaty to the respective Treaty Body. The Treaty Bodies hold a dialogue with the State on their report and publish Concluding Observations which set out recommendations on how the State can better fulfil its obligations under the relevant treaty. These recommendations can be

useful protection advocacy tools for UNHCR and partners to, *inter alia*, combat restrictions on access to asylum and asylum space or advocate for the inclusion of persons of concern in national systems, in light of measures taken in response to COVID-19.

In this regard, in addition to considering the State party's report, the Treaty Body may also consider information from other stakeholders, including UNHCR.

How? UNHCR may submit information confidentially to the Treaty Bodies on States under review and provide confidential briefings on key protection issues. Operations and Bureaux may, as a part of their overall protection strategy in response measures taken in the context of COVID-19, consider whether any upcoming reviews of the concerned state by the Treaty Bodies may be a useful mechanism through which they can engage on these issues.

C. Universal Periodic Review (UPR) – State reviews

The UPR is a State-driven process of the Human Rights Council. Under the UPR process, all 193 UN member states are reviewed every 4.5 years (approximately 42 countries per year). Each State declares the steps they have taken to improve the human rights situations in their country and receive recommendations from other States on how to better fulfil their human rights obligations. UNHCR has the opportunity to contribute public reports to this process, and to advocate confidentially with Permanent Missions, to encourage States to raise recommendations concerning persons under UNHCR's mandate.

Like the consideration of State reports by the Treaty Bodies, the recommendations issued to and support by States in the UPR process can be effective advocacy tools for UNHCR and our partners to advocate for the protection and inclusion of persons of concern and work with relevant States in this regard.

How? Operations and Bureaux may also wish to consider upcoming reviews by States in the UPR process as an additional tool in their response to measures taken in the context of COVID-19.

ANNEX: Additional resources and tools on human rights and COVID-19

UNHCR resources

- [UNHCR Policy and Guidance in the Context of the COVID-19 Response](#) (refworld.org)
- UNHCR internal General guidance on engaging with United Nations human rights complaint procedures (2019) ([English](#) / [French](#)).
- UNHCR press releases:
 - [Beware long-term damage to human rights and refugee rights from the coronavirus pandemic: UNHCR](#) (22 April 2020)
 - High Commissioner for Refugees – [Statement on the COVID-19 Crisis](#) (19 March 2020)
 - High Commissioner for Refugees and High Commissioner for Human Rights – [Joint editorial](#) - The coronavirus outbreak is a test of our systems, values and humanity (12 March 2020)
- UNHCR Regional Bureau for Europe - [Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic](#)

UN human rights mechanisms resources

- UN human rights treaty bodies
 - Human rights approach in fighting COVID-19 - [Joint press release](#) (24 March 2020)
 - Human Rights Committee – [Statement on derogations from the Covenant in connection with the COVID-19 pandemic](#) (30 April 2020)
 - Committee on Economic, Social and Cultural Rights – [Statement on COVID-19 and economic, social and cultural rights](#) (17 April 2020)
 - Committee on the Elimination of Discrimination against Women – [Guidance on CEDAW and COVID-19](#)
 - Subcommittee on the Prevention of Torture – [Advice to States parties and national preventative mechanisms relating to the COVID-19 pandemic](#) (7 April 2020)
 - Subcommittee on the Prevention of Torture - [Advice to the UK National Preventative Mechanism regarding compulsory quarantine](#) (February 2020)
- UN Special Procedures - [press releases](#).

UN general resources

- [UN Policy Brief – COVID-19 and Human Rights](#) (April 2020)
- OHCHR page: [COVID-19 and its human rights dimensions](#)
- WHO – Europe - [Preparedness, prevention and control of COVID-19 in prisons and other places of detention](#) (15 March 2020)
- UN Network on Migration – [joint press release on non-discrimination in response](#) (30 March 2020)
- UN Network on Migration, [COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?](#), April 2020
- UN Network on Racial Discrimination and Minorities – [joint press release on racial discrimination and the protection of minorities in the COVID-19 pandemic](#) (29 April 2020)
- Inter-Agency Standing Committee - [COVID-19 Outbreak Readiness and Response Page](#)
- Global Protection Cluster – [Protection and COVID-19](#)

Government, intergovernmental and NGO resources

- Colombia University, Cornell Law School, Zolberg Institute – [Human mobility and human rights in the COVID-19 pandemic: Principles of protection for migrants, refugees, and other displaced persons.](#)

- Colombia Law School – [Webinar: COVID-19 and its Response: Risks to Refugees, Migrants, and Asylum-Seekers](#) (22 April 2020)
- Human Rights Watch – [Report on Human Rights Dimensions of COVID-19](#) (19 March 2020)
- Council of Europe – [Impact of the COVID-19 Pandemic on human rights and rule of Law](#)
- Council of Europe Fundamental Rights Agency – [Fundamental rights of refugees, asylum applicants and migrants at the European borders.](#)