Implementing Principle 2: The Legal Framework vs. the Reality

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The international legal framework mandates that everybody, including all people on the move, should enjoy their right to health without discrimination. However, the reality for refugees, asylum seekers and other migrants during the last 12 months of the pandemic has been very different. This is explored below through discussion of the lived experience of millions of people on the move with respect to their right to health, highlighting the neglected issue of mental health and access to vaccination. This essay closes with some of the most important concrete responses states should be undertaking to meet their human rights obligations—better integration of migrants, including refugees, to ensure access to services and significantly ramping up international cooperation and assistance.

I. The Legal Framework—What States Should be Doing

Principle 2 of the *14 Principles* not only reflects a range of international and regional treaties safeguarding the right to health for all, as clearly articulated by Csete, but also the 2016 UN New York Declaration for Refugees and Migrants, in which governments reaffirmed the human rights of all refugees and migrants, regardless of status, and pledged to fully protect such rights recalling that, "[t]hough their treatment is governed by separate legal frameworks, refugees and migrants have the same universal human rights and fundamental freedoms."

This universalism is echoed by the UN Committee on Economic, Social and Cultural Rights (CESCR) in its 2017 statement on the rights of refugees and migrants where it emphasised that, "[a]ll people under the jurisdiction of the State concerned should enjoy Covenant rights. That includes asylum seekers and refugees, as well as other migrants, even when their situation in the country concerned is irregular."

In the same statement, CESCR made clear that although States should accommodate refugees and migrant inflows in line with the extent of their

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available maximum resources, this does not justify restricting the enjoyment of the essential content of Covenant rights on the basis of a lack of resources, even when confronted with a sudden and significant flow of refugees noting that, "because core obligations are non-derogable, they continue to exist in situations of conflict, emergency and natural disaster."

Yet this inclusive and progressive approach has not been reflected in the reality for millions of people on the move both during and prior to the COVID-19 pandemic, as widespread and systemic human rights violations are endemic, including with respect to the right to health.

II. The Reality During Covid-19—Repression and Neglect

A. A Harsh Welcome: Exacerbating the Socio-Economic Determinants of Poor Health

As Csete points out, most countries have imposed severe restrictions on international travel and cross border movements during the pandemic. Whilst restrictions may be justified on public health grounds, provided they are proportionate and not discriminatory, they mostly fail to take into account the reality that the driving factors that make people move—conflict, persecution, poverty, etc.—do not stop during a pandemic and indeed can be exacerbated by it.

When and if they manage to enter a country, those seeking asylum often find themselves living in extremely overcrowded environments whether in camps or urban settings, making social distancing impossible, and often without access to running water or appropriate sanitation impacting the risk to their health. People need about 20 litres of water per day as a minimum standard—one that most camp authorities are unable to meet due to problems with delivery and infrastructure. Population densities in many camps are often at extremely high levels—on the Greek islands for example, it is around twenty times the population density of New York City.

Detaining new arrivals has proved to be particularly dangerous with cramped detention centres not being able to guarantee people's right to health during this pandemic. In Australia detainees were desperate to be released due to fear that staff without adequate Personal Protective Equipment (PPE) could be transmitting the virus whilst in the US there were reports of punishment for those who sought to communicate their concerns about overcrowding and sickness. Consequently, Amnesty International and others have opposed all immigration-related detention during the pandemic where people's health cannot be safely protected.

B. Inequitable Access to Vaccines

States are obliged to ensure equitable access to vaccines to foreign nationals they host, regardless of their nationality and migration status. This is further reinforced by UN Security Council Resolution 2565 passed in February 2021 calling for vaccination plans to include the "most vulnerable", including "refugees, internally displaced people, stateless people" and migrants.

On the face of it, refugees appear not to have been neglected, even if more broadly people on the move have been. As of April 2021, 153 countries had developed national COVID-19 vaccination strategies which include refugees in their plans, according to UNHCR. However, few plans specify practical arrangements as to how refugees will be vaccinated and as a result the reality is very mixed: these range from vaccinating from the outset (Jordan and Rwanda}; including refugees in plans but with no details on roll out (Bangladesh and Uganda); deliberate exclusion (Colombia although it subsequently backtracked but it remains unclear when refugees will be vaccinated); months of delay before being eligible (Greece) and administrative barriers (Lebanon where Syrian refugees account for only 1.9% of vaccine registration and 0.5% of vaccination, even though they make up more than 20% of the population).

Lack of access to accurate information remains a major barrier exacerbating vaccine hesitancy which may also be due to other historic reasons (see Sandvik). It is essential that host countries, donors, humanitarian agencies and NGOs work together to design gender-sensitive outreach campaigns and activities in order to provide information about availability of vaccines for refugees, eligibility and registration modalities as well as credible information about effects of vaccines in order to combat misinformation.

C. The Neglected Issue of Mental Health

The COVID-19 pandemic has simultaneously shed light on and exacerbated many widespread but neglected human rights issues. One of these is the right of everybody, including refugees and migrants, to the highest attainable standard of not only physical health but also mental health.

In May 2020, the UN Refugee Agency, UNHCR, stated that the pandemic was already "triggering a mental health crisis" among refugees and other displaced people. Contributing factors included people's fear of infection, quarantine and isolation measures, stigma, discrimination, loss of livelihoods as well as overall uncertainty about the future.

Confronted by such huge need, the lack of effective responses by governments and the international community must be seen in the wider context of the overall neglect of mental health. In June 2020, the UN Special Rapporteur on the right to health stated that the pandemic has aggravated the, "historical neglect of dignified mental health care," at a time when it is even more urgently needed due to factors such as social distancing, economic decline, unemployment, and domestic and other violence driving a rise in anxiety and mental distress.

This historic neglect is reflected in the extremely low levels of expenditure on mental health particularly in low and lower-middle income countries, where 85% of the world's refugees live. The per capita median government mental health expenditure in those countries is USD 0.02 and USD 1.05 respectively. This dire situation is compounded by the fact that high-income countries are failing to prioritize the issue in their international cooperation and assistance—between 2007 and 2013, only 1% of the world's budget for international health aid was devoted to mental health.

At the same time as this abject failure to address mental health as Csete points out, many states are actively pursuing migration policies that exacerbate the mental suffering of people on the move—a non-virtuous circle.

What then could be a human rights-consistent alternative? The UN Special Rapporteur has recommended that states should develop: a national mental health strategy that includes migrants and refugees; a concrete plan to form a coordination mechanism that will address the health and wellbeing of people on the move, which includes the people themselves; and a road map that moves away from coercive treatment and towards equal access to mental health services.

III. What States Should be Doing Now

A. Effective Integration of People on the Move to Access Services

As Csete emphasises, effective societal integration of people on the move is vital to their ability to overcome bureaucratic hurdles and access services including operationalizing the key human rights principles of participation and accountability. In this respect CESCR has recommended that pending a decision on their claim to be recognized as refugees, asylum seekers should be granted a temporary status, allowing them to enjoy economic, social and cultural rights without discrimination. In addition to relaxing documentation requirements, states need to ensure that language is not a barrier and that firewalls are put in place between public service providers such as in the health-care system and law enforcement authorities. Another key aspect is the collection and monitoring of disaggregated data to ensure services are appropriate and well targeted.

B. Ramping up International Cooperation and Assistance

For many middle and low-income countries, receiving international assistance and cooperation from wealthier states is crucial in order to comply with their human rights obligations when dealing with sudden and large flows of refugees and migrants. The alternative option is likely to be more closed borders and/or people living in inhumane and unhealthy conditions. Effective global cooperation in ensuring the right to health for everybody regardless of their status and circumstances is not only morally and legally right, it is also clearly in the interests of public health. Only by safeguarding the health of everyone, including those who are most marginalized can all of our collective health be secured.