

# Access to territory and non-refoulement

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## Key points

- Know that a failure to intervene consistently to refoulement-related incidents, or ensure effective internal information sharing, can have serious consequences for refugee protection, as well as important reputational risks for UNHCR. If an individual (or group) is at risk of refoulement or has been refouled, UNHCR must undertake either a direct or an indirect (e.g. through a partner) intervention, as appropriate in the context.
- Remember that working with States and other actors to ensure access to territory and prevent and respond to refoulement is a core responsibility of UNHCR in accordance with the international protection function prescribed under its Statute.
- Build a network with refugees, civil society and other partners (including UN agencies); they can alert you to refugee movements, as well as instances of refoulement.
- Engage with relevant State authorities, including those working at the border, airports or place of detention, and continually raise and train them on the principle of non-refoulement and protection sensitive entry systems, including to allow access to territory and asylum procedures for any individual who indicates a fear of return.
- Review and familiarize yourself with the 2022 UNHCR internal Administrative Instructions and Operational Guidelines on Preventing and Responding to Refoulement. In particular, be aware of the mandatory requirements for all operations to report refoulement incidents internally and to notify their Bureau and DIP of incidents for which escalation or support is likely to be needed, as well as significant refoulement-related incidents or situations (whether or not escalation is foreseen or needed).

## 1. Overview

This entry refers to activities by UNHCR and partners aimed at ensuring that:

- the legal principle of non-refoulement is understood;

- access to territory and fair asylum procedures for persons in need of international protection is upheld;
- refoulement is prevented; and
- appropriate interventions are undertaken in the event that refoulement does occur.

The principle of non-refoulement obliges States not to expel or return (refouler), in any manner whatsoever, a person to territories where their life or freedom would be threatened, on account of their race, religion, nationality, membership of a particular social group or political opinion, or where there are substantial grounds for believing that they would be in danger of being subjected to serious human rights violations, notably torture or other forms of cruel, inhuman or degrading treatment or punishment, or arbitrary deprivation of life. The non-refoulement obligation is set out under the 1951 Convention relating to the Status of Refugees, regional refugee law instruments, global and regional human rights law instruments and is also binding under customary international law.

The principle of non-refoulement applies to both refugees and asylum-seekers. As refugee status is declaratory in nature, asylum-seekers must not be refouled prior to a final determination being made on their status by either the relevant Government authorities or UNHCR.

Under international refugee law, a State is responsible for ensuring protection against refoulement to all individuals seeking or in need of international protection who are on its territory, at its borders, or, when outside its territory, under the State's jurisdiction (i.e. under the State's effective control).

The principle of non-refoulement is applicable to any form of removal or return, including in the context of interception at land or sea; rescue at sea; rejection, non-admission, or 'pushbacks' at the border; deportation or expulsion (either individually or collectively); externalization or third-country transfer measures; extradition; enforced disappearance; and extraordinary rendition. The principle of non-refoulement not only prohibits host States from taking direct or explicit removal measures, but also from taking disguised or indirect measures that deliberately create circumstances leaving an individual with no real alternative other than returning or departing to a place of danger.

## **2. Relevance for emergency operations**

Non-refoulement requires the priority attention of all UNHCR operations, including in emergency contexts. UNHCR's interventions in emergency contexts are aimed at ensuring that all reasonable and feasible measures are taken by States and other actors to ensure access to territory and fair asylum procedures; the prevention of refoulement; risks are monitored; and, in the event refoulement does occur, UNHCR responds appropriately.

Noting that everyone has a right to be protected from refoulement without discrimination, the principle of non-refoulement applies in all situations, including in the context of large-scale emergencies and mixed movements. It also applies to people who have entered or are present in a country regularly or irregularly, whether or not they have passed through immigration control,

and regardless of whether (or when) they have presented themselves to the authorities.

### 3. Main guidance

#### Protection objectives

To ensure people are given access to territory where they can seek and enjoy access to asylum procedures if in need of international protection, by:

- a) allowing them to enter the territory in order to seek and enjoy protection (people should not be turned away or pushed back at the border); and
- b) preventing their forcible return or removal in any manner whatsoever to their country of origin or any other country where they are at risk of persecution or other forms of serious harm.

#### Underlying principles and standards

- The principle of non-refoulement is set out, inter alia, in Article 33(1) of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as well as other relevant international or regional refugee or human rights law instruments.
- Article 33 is complemented by prohibitions on return contained in and developed under international human rights law, such as the absolute prohibition on return to torture or inhumane treatment or punishment and the prohibition of collective expulsion.
- As a norm of customary international law, the principle of non-refoulement is binding on all States, irrespective of whether or not they are party to the 1951 Convention or other international refugee or human rights law instruments.
- No reservations are permitted to Article 33 of the 1951 Convention or any other non-refoulement provision under international law. Further, States are also not allowed to suspend the application of the principle of non-refoulement in times of war or public emergency.
- Under Article 33(2) of the 1951 Convention two limited exceptions to the principle of non-refoulement are allowed. However, non-refoulement obligations under international human rights law continue to apply without any exception.

#### Protection Risks

- Asylum-seekers and refugees are returned or sent to where they face persecution or serious threats to their life if prevented from accessing safe territory or if returned to an armed conflict or to persecution. This risk may be particularly prominent when asylum-seekers and refugees move in mixed movements flows. (See Entry on [Migrant definition](#)).
- People may be forced to access safe territory through unofficial crossing points and/or by resorting to people smugglers or traffickers, making the travel hazardous and dangerous, including being at a greater risk of exploitation by smugglers and falling prey to trafficking and other crimes.
- Persons with specific needs who are turned away at the border may also be placed at further risk in the absence of much needed care, treatment and/or services.

#### Other risks

Not taking action to prevent refoulement or respond in a timely and adequate manner to incidents of refoulement is a violation of a core principle of refugee protection. Responding to and interceding in relation to risks of refoulement are fundamental obligations of UNHCR Offices. Failing to do so can have serious reputational risks with long-term consequences for refugee protection and lead to questions of accountability.

### **Key decision points**

- Human resources required for ensuring adequate monitoring for this priority activity to be mobilized and timely reporting undertaken.
- Depending on the context, advocate with Government authorities for UNHCR and partners, as appropriate, to have access to monitor border areas and entry points such as airports and seaports, as well as places of detention. Also, potentially establish a permanent presence at those locations particularly if instances of refoulement occur or are suspected to occur on a regular basis.
- Interventions with the Government, whether direct or indirect, are undertaken in a timely manner and through appropriate channels.

Involve, as appropriate, other protection partners, including the HCT/UNCT, OHCHR, UN Special Rapporteurs, UN Treaty Bodies and other UN mechanisms, (I)NGO partners, embassies, legal representatives, especially those with 'urgent action' capacities.

### **Checklist: Preventing and Responding to Refoulement**

- Map actors/potential sources of information: detention, border and entry-point monitoring is a primary source of information, but where this is not possible or irregular, information may be obtained through other sources such as asylum-seekers/refugees, community and religious leaders, local authorities and border officials, other UN agencies, NGOs, ICRC, media.
- Conduct regular field visits to, for example, border areas and seaports and airports and develop contact with the relevant interlocutors in order to raise awareness and create information sharing channels.
- Collect, triangulate, validate information and evidence, and report in your operation internally as well as to the Bureau and DIP, as well as externally to partners, as appropriate.
- Engage local authorities and border officials and offer training/capacity-building and/or material support/equipment. Please note that any support, other than training and

capacity-building, to non-UN security forces needs to be compliant with the [Human Rights Due Diligence Policy on United Nations support to non-United Nations Security Forces](#) (see annex).

- If the Government carries out screening of new arrivals at the border, be present and observe the process in order to ensure asylum-seekers and refugees are not denied entry into the territory.
- Ensure that procedures and mechanisms are in place to identify and differentiate refugees and asylum-seekers from migrants (See Entry on [Migrant definition](#)).
- Analyze the reasons behind the State's concern(s) or actions (why does the State refoule) and, together with the relevant authorities, seek ways to address those concerns while avoiding refoulement. This could be through the identification of measures to mitigate (perceived or real) security concerns of a large-scale movement of asylum-seekers and refugees, to address the needs of the local population arising from perceived or real competition over resources/livelihoods, etc.
- Inform Bureau/DIP in accordance with the Administrative Instructions on Preventing and Responding to Refoulement (see below).
- Intervene with the authorities and express concern with the authorities [e.g. through direct meetings, note verbale, public statement, etc. in line with the Administrative Instructions and the Operational Guidance on Preventing and Responding to Refoulement].
- Contact colleagues in the country to which the person has been forcibly returned. Inform them of the incident and explore potential follow up possibilities, including verification of the return, their treatment upon arrival/return and ongoing safety and other conditions, as appropriate.

## 4. Policies and guidelines

[Accessible to UNHCR staff only: UNHCR/AI/2022/04 Preventing and Responding to R...](#)

[Accessible to UNHCR staff only: UNHCR/OG/2022/01 Preventing and Responding to R...](#)

[UNHCR, Refugee Protection and Mixed Migration- The 10 Point Plan in action – 20...](#)

[Protection of Asylum-Seekers in Situations of Large-Scale Influx, No. 22 \(XXXII...](#)

[UNHCR, Persons in need of international protection, June 2017](#)

## **5. Main contacts**

As first port of call, the UNHCR Dep. Representative (Protection), UNHCR Asst. Rep. (Protection), and/or Snr Protection Officer in the country; or The UNHCR Regional Asst./Dep Rep (Protection) and/or Snr. Regional Protection Officer at the regional office (if applicable); or The Snr. Regional Legal Advisor in the respective UNHCR regional bureau, covering the respective country region, who in turn will liaise as required with the parent unit at UNHCR DIP.