



**Access to safety and criteria for provision of humanitarian support
for persons at checkpoints or transit facilities**

I. Basis and conditions for temporary restrictions on freedom of movement

Based on international standards and the applicable law in Iraq,¹ all people have the right to freedom of movement, especially while fleeing conflict. They also have the right to choose their place of displacement, and to voluntarily return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.² However, in situations of armed conflict, the authorities may impose short-term restrictions on freedom of movement for security reasons. International legal standards provide that these restrictions must be temporary, clearly specified in law, and applied in a non-discriminatory manner.

This exception permits the authorities to set up checkpoints to control access to certain areas, and to conduct individual security screenings. Authorities, including Government-associated militias with *de facto* control of checkpoints, have the obligation to inform people trying to cross such checkpoints about the procedures. People in need cannot be turned away at checkpoints on the basis that they are suspected of terrorism; if there are legitimate grounds for suspecting an individual of terrorism, they should be detained in accordance with the law and provided with a fair legal procedure respecting due process. Under no circumstance can any authority carry out unlawful detention, arbitrary detention, or abduction.

Moreover, at such checkpoints, authorities have to balance restrictions related to security considerations with their absolute obligation to protect the lives and safety of persons fleeing the conflict.³ The authorities must respect basic human rights and take into account the specific needs of various groups in the population (e.g. pregnant women, elderly persons, children, persons with serious medical conditions, persons with disabilities, traumatized persons, etc.), including in order to prioritize cases and expedite processes based on vulnerability.

RECOMMENDATIONS:

- Humanitarian actors to maintain a clear, unified message with the authorities that they must provide access to safety in compliance with existing national and international legal obligations. Restrictions on freedom of movement or access to safety on security grounds must have clear justification, a defined end date, and agreement within a higher command structure.
- Humanitarian actors to seek opportunities, in cooperation with national authorities and their international coalition partners, to reinforce training of military personnel and militias, both at decision-making and operational levels, regarding their obligations under international humanitarian and human rights law for the protection of civilians. This includes respect for freedom of movement and the non-discriminatory and safe implementation of any temporary restrictions, within clear and consistent parameters.

¹ Principles 28 and 30 of the Guiding Principles on Internal Displacement, Article 44 of the 2005 Iraq Constitution.

² e.g. customary international law (Rule 132)

³ Human Rights Committee, General Comment 27, Freedom of movement (Art.12), U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999).

II. Role of humanitarian actors in provision of assistance at checkpoints or transit facilities where security screenings are conducted

At checkpoints or transit facilities, the authorities must provide for the physical safety and basic needs of all persons who are waiting there. In practice, this means that the checkpoint / transit facility must be at a safe distance from front lines and military installations, as well as free of mines/IEDs. To protect life and avoid suffering, basic needs should be met such as food, water, shelter, and services provided such as medical aid.

If the authorities establish procedures for security screening at checkpoints, these procedures are to be applied consistently and without discrimination. Governmental authorities and the military chain of command must develop and implement clear guidelines on screening procedures. Special provisions are to be made to identify, prioritize, and expedite the security screening of any vulnerable individuals. IDPs, both those undergoing screening themselves and their family members, are to be informed about the nature and application of the procedures, including in relation to the location of those undergoing screening and the timeline for the process. Family unity must also be protected.

In principle, these measures are the responsibility of the national authorities, since it is the prerogative of the government to establish procedures and facilities for the purpose of security screening. Humanitarian actors may provide basic relief support in such facilities, but should not be part of setting up such facilities unless this is in line with the humanitarian imperative, for example in case of massive displacement and difficult weather conditions.

A decision on whether to provide humanitarian support at checkpoints / transit facilities, and how to do so, will depend on several factors:

- Criticality of the needs, i.e. both the urgency and extent of humanitarian needs;
- Risk that provision of support may cause the authorities to keep more people at checkpoints for longer periods of time, thereby exposing them to greater risks;
- Risk that the checkpoint / transit facility can become *de facto* an illegal detention center without clear and predictable procedures; and
- Risks related to the security of humanitarian staff, perception of humanitarian actors' neutrality and impartiality, reputational risks, and the risk to the established relations of trust with displaced communities and people in need.

CRITERIA FOR HUMANITARIAN ENGAGEMENT:

- Humanitarian actors, in particular protection actors, should be provided access to persons in need awaiting screening at checkpoints / transit facilities.
- If humanitarian actors are denied access to a population at a checkpoint / transit facility on grounds of security, then the location is also not safe for the persons who are waiting there. People must be moved, in a safe and dignified manner, to a safe location where humanitarian assistance can be delivered.
- Humanitarian actors should provide only temporary life-saving support to persons at checkpoints / transit facilities, since security screening should take place quickly in order for IDPs to reach their intended destination with minimum delay.
- Any humanitarian engagement at checkpoints / transit facilities should be coupled with advocacy efforts to protect and promote the rights of the people in need.
- Humanitarian actors will not use military assets to deliver direct assistance to persons at checkpoints / transit facilities that are inaccessible to humanitarian actors, as this would

contribute to the prolonged stay of such persons in inherently unsafe locations, and who are being prevented (sometimes intentionally, and sometimes by the same military authorities) from accessing safety. When humanitarian access is not possible on security grounds, advocacy should be undertaken for persons to be granted access to safety.

- The humanitarian community should evaluate to the extent possible whether their intervention in such facilities is in line with the principle of “do no harm”. The authorities should enable such an evaluation, including through providing reasonable access to the facilities and transparency in the procedures. If it is not possible to undertake this evaluation, or if intervention is in violation of the principle of “do no harm”, humanitarian actors should not provide support.
- Humanitarian support should not be provided in centers that become *de facto* illegal detention centers, even if only for some individuals.⁴ Where there are legitimate grounds to suspect an individual of terrorism, they should be transferred to legally established detention facilities and be granted due process under Iraqi law.

RECOMMENDATIONS

- HCT to advocate with governmental authorities and the military chain of command to issue a clear order to allow unrestricted access to humanitarian actors that provide support to people waiting for access to safety.
- OCHA/HAU to identify chains of command, establish clear lines of communication, negotiate access to deliver humanitarian support at all checkpoints, and intervene immediately when access is denied.
- Humanitarian actors to ensure that their presence at checkpoints and transit facilities, in order to conduct assessments and provide humanitarian support, is known to commanding officers in advance. Refusal of humanitarian access should be reported immediately to the Humanitarian Access Unit.
- Humanitarian actors to identify persons with specific needs or vulnerabilities to the commanding officer at the checkpoint, as long as it does not place the individual at greater risk and is in the best interest of the individual.
- Any hindrance of access for a specific person or group of persons to be negotiated by humanitarian actors with the commanding officer at appropriate decision-making level, and reported to the Protection Cluster.
- In all instances, the decision on whether humanitarian support is to be provided at a particular facility must adhere with the principle of “do no harm”. Provision of all humanitarian support will be withdrawn in any facility that becomes a *de facto* illegal detention center, or demonstrates trends of unlawful detention.
- The HC and HCT are to be kept well-briefed on specific circumstances at checkpoints and frontline locations where humanitarian assistance and interventions are sought/needed, especially where humanitarian actors are under pressure to intervene, and are to provide guidance and support to outcomes that favor the best interest of IDPs.
- The HC and HCT are to ensure consistent adherence to the criteria for engagement at checkpoints and transit facilities.

Endorsed by the Humanitarian Country Team on 8 February 2016

⁴ Under international human rights and humanitarian law, arbitrary deprivation of liberty is prohibited, e.g. ICCPR Article 9(1), CRC Article 37(b), and customary international law (Rule 99).