

INTERNATIONAL ORGANIZATION FOR MIGRATION

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Summary: *This Guidance Note provides general and specific parameters integrating protection principles to guide IOM staff during international humanitarian evacuations for migrants caught in armed conflict settings. This Guidance Note is an internal IOM tool that is intended to help all IOM staff involved in planning and implementing international humanitarian evacuations for migrants caught in armed conflict settings to apply the appropriate standards of the Organization in performance of their functions. In case IOM staff need to deviate from this Guidance Note the Department of Emergencies and Operations must be consulted.*

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INTERNATIONAL ORGANIZATION FOR MIGRATION

Internal Guidance Note on the Inclusion of Protection Considerations when Planning and Implementing International Humanitarian Evacuations for Migrants Caught in Armed Conflict Settings

This Guidance Note provides general and specific parameters integrating protection principles to guide IOM staff during international humanitarian evacuations for migrants caught in armed conflict settings. Every international humanitarian evacuation operation will need to adapt/contextualize the below parameters to the ever changing reality on the ground and specific operational context. This Guidance Note is an internal IOM tool that is intended to help IOM staff involved in planning and implementing international humanitarian evacuations for migrants caught in armed conflict settings to apply the appropriate standards of the Organization in performance of their functions. In case aforementioned IOM staff needs to deviate from this Guidance Note the Department of Emergencies and Operations must be consulted.

I. CONTEXT

1. Since the end of the Balkans' wars, to the most recent Libya, Central African Republic and Yemen crises, IOM has provided support to its Member States through the implementation of international humanitarian evacuations as a life saving measure for migrants¹ caught in armed conflicts and crises and targeted or at risk of being targeted by harm and violence. Despite the diverse settings, IOM has effectively developed standard *modus operandi* in carrying out international humanitarian evacuations for the protection of migrants (for more details on the IOM operational steps and measures for humanitarian evacuations please refer to the Emergency Operations Manual). Nevertheless, these operations have also shown similar challenges and dilemmas throughout the different stages of the operations. This guidance note intends to address, in a systematic way, some of the recurring legal, strategic and protection related challenges which IOM staff might face when planning and conducting humanitarian evacuations.
2. IOM's international humanitarian evacuations fall under one of the Migration Crisis Operational Framework² Sectors of Assistance: Sector 3 - Transport Assistance for Affected Populations. However for the multidisciplinary nature of this action such evacuations call for an integrated approach involving other sectors of assistance (e.g.: Sector 2- Shelter and NFI; Sector 4- Health Support; 6- (Re) Integration Assistance;

¹ **Migrant** - IOM defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. IOM concerns itself with migrants and migration-related issues and, in agreement with relevant States, with migrants who are in need of international migration services.

² The Migration Crisis Operational Framework provides a reference frame for IOM's response to the mobility dimensions of crisis situations (see MC/2355). It was approved unanimously by IOM Member States in Council Resolution No. 1243 of 27 November 2012.

Sector 10- Counter-human trafficking and assistance to vulnerable migrants; Sector 11- Humanitarian Border Management and so on).

3. This guidance note focuses on international humanitarian evacuations – transfer and transport by air, land or sea to another country (transit and/or country of origin) - of migrants and their families caught in countries facing armed conflict and at risk of and/or being the target of violence and harm. For the purpose of this guidance note, the term “migrant” will include all foreign nationals stranded in a country facing armed conflict (international or non-international armed conflict). The term “migrant” here could therefore include persons or groups also called third-country nationals, regular and irregular migrants, migrants in transit, expatriates, diplomats, diaspora members or groups stranded in a country facing international or non-international armed conflict. For specific guidance on humanitarian evacuations of persons caught in or at risk of being affected by natural disasters, please refer to IOM MEND guide (Comprehensive Guide for Planning of Mass Evacuations in Natural Disasters- 2015).

IOM’s involvement in internal humanitarian evacuations (relocation) of an endangered group of the population to a safer location within the same country or in international evacuations of nationals of the affected State (State facing armed conflict) into another safe State will not be discussed here. Both activities evoke a different set of parameters and require concerted decisions with all State and non-State actors involved³.

II. LEGAL FRAMEWORK

4. International humanitarian evacuations are understood as the transfer of individuals or groups of persons at particular risk of imminent attack or serious human rights violations or violations of humanitarian law into another country. International humanitarian evacuations are the responsibility of the States whose nationals abroad are in danger as well as of the States hosting the endangered populations, having failed to protect them through other means. Humanitarian and intergovernmental organizations, like IOM, support States in this last resort and extreme protective measure. More specifically, IOM’s involvement in international humanitarian evacuations is aimed at protecting migrants caught in an armed conflict (see definition in point.3) and at moving them to another country in the absence of other effective means of protecting them in situ.
5. In an armed conflict (both international and non-international) international humanitarian law (IHL)⁴ applies. For situations which are not regulated by IHL human rights law also applies for the protection of civilians caught in the conflict. Migrants (not taking part in hostilities) are part of the civilian population.

³ IOM is contributing to the development of tools looking at these dimensions through its participation to the Global Protection Cluster. See also GPC Thematic Round Table on humanitarian evacuations in armed conflict, November 2014.

⁴ IHL is a branch of public international law specifically designed to limit the effects of armed conflicts. It applies in both international and non-international armed conflicts and represents a compromise between the principles of military necessity and humanity. IHL restricts the means and methods of warfare and aims to ensure respect for persons who are not, or no longer, taking part in the hostilities (such as wounded combatants and detainees). Communicated by ICRC in April 2016.

6. Since its foundation IOM's activities have aimed at promoting dignity and respect for migrants. IOM does so in accordance with international norms and standards and in order to promote individuals' dignity throughout the migration cycle, respecting and upholding the rights of migrants⁵. Article 1.1 (b) of the IOM's constitution makes reference to IOM's mandate "to concern itself with the organized transfer of refugees, displaced persons and other individuals in need of international migration services for whom arrangements may be made between the Organization and the States concerned, including those States undertaking to receive them." In addition, IOM's Principles for Humanitarian Action indicate that "IOM's mandate is consistent with the principle that States bear the primary responsibility to protect and assist crisis-affected persons residing on their territory, and where appropriate their nationals abroad, in accordance with international and national law, including international humanitarian, refugee and human rights law⁶". IOM's mandatory Data Protection Principles for beneficiaries also apply to humanitarian evacuations⁷.

III. GENERAL PARAMETERS

7. International humanitarian evacuations are to be considered a measure of last resort when all other options to ensure that migrants are safe from violence have proven not feasible. They carry legal, political and human consequences for those who have been evacuated and for the actors in charge of those who are evacuated. IOM's involvement in international humanitarian evacuations should be grounded on the following conditions: 1) coordination/request from the State whose nationals are endangered in a foreign country facing armed conflict; 2) the request from the individual who wish to be evacuated coupled with the consideration that a "non-intervention" might trigger higher loss of life among the migrant civilian population - the humanitarian imperative; 3) consent and/or consultation with the warring parties. Consent might be implicit when access and transportation permits are granted; 4) authorization from the State where the migrant will be evacuated if not his/her country of origin. In addition, the humanitarian principles of humanity, impartiality, neutrality and independence also guide IOM actions. IOM should consider how its actions might impact on political and military situations and possible goals and mitigate the potential negative effects on the affected population.
8. International humanitarian evacuations of migrants are conducted on an individual voluntary basis and with the full consent (explicit or implicit) of the migrants to be evacuated. Migrants should be informed on the conditions of the operation.
9. International humanitarian evacuations of migrants caught in an armed conflict need to be approved and coordinated by the Resettlement and Movement Management Division within the Department of Operations and Emergencies: DOE@iom.int and RMM@iom.int . DOE International movements should comply with the standards set forth in the IOM Movement Manual.

⁵ IOM's Protection Policy, C/106/INF/9

⁶ IOM's humanitarian policy- Principles of Humanitarian Action, C/106/CRP/20.

⁷ Data Protection Principles (IN/138) further elaborated in the Data Protection Manual (MA/88)

IV. SPECIFIC PARAMETERS

Choice of who is to be evacuated first and non-discrimination principle

10. The choice of who is to be evacuated first should be based on needs and vulnerabilities and should not be discriminatory (i.e. not based on the migrants' nationality, race, religion, sex, age, and gender identity, migratory status- regular or irregular). Common priority categories include medical cases, pregnant or lactating women, disabled individuals, elderly individuals, large families or single-headed families, unaccompanied and separated children. Other priority criteria might depend on the context and circumstances migrants are confronted with in addition to operational considerations such as the possession of valid travel documentation and readiness to travel. In principle, a State's requests for evacuations of their endangered nationals abroad should be balanced against a set of context-based criteria of who is most at risk and in need to be prioritized (i.e. lack of other means of protection, proximity to the conflict, specific at risk groups targeted by the conflict, survivors of violence and so on.). These criteria are to be set-up jointly by the IOM team in charge of the operation and the other humanitarian stakeholders operating on the ground. The migrants to be evacuated should not be seen as a homogeneous group. This is because some sections or individuals to be evacuated might be more at risk than others and should be identified accordingly, to the extent possible. In order to ensure priority for the most in need and/or at risk, the *first come first served* principle should be avoided as much as possible when organizing evacuations. IOM operational considerations might impose the grouping of individuals or groups of the same nationality for priority evacuations.

Asylum requests, refugees and non –return countries

11. In line with the principle of *non-refoulement* if, among the migrants to be evacuated, there are individuals or groups who are wishing to claim asylum in the transit country, they should be allowed to do so and referred to the relevant authorities and/or UNHCR;
12. Recognized refugees should also be referred to UNHCR and/or the relevant national authorities/commissions/committees for the adequate guidance and care. Special operations could be carried out for refugees wishing to return to their country of origin. These operations are to be carefully planned in consultation with IOM HQ (DOE@iom.int) and UNHCR.
13. For nationals of countries where return is considered a risk by their nationals and/or by partners (such as UNHCR through non-return advisories) and for which IOM has introduced a moratorium on voluntary returns, consultations are required with IOM HQ (DOE@iom.int) and partners prior to committing IOM's support towards their evacuation (these countries might vary over time).

DATA PROTECTION PRINCIPLES

14. Personal data regarding who is in need of evacuation should be collected and managed appropriately in respect of IOM Data Protection Principles (in particular the principles of confidentiality, consent, transfer to third parties). In order to avoid any unintended negative consequences for the migrants to be evacuated, IOM staff need to comply with IOM Data Protection principles.

Communication with the migrants

15. As much as circumstances allow regular communication with all migrants identified should be maintained. Information regarding the modalities for the establishment of the priority list; the risks of migrants' screening and search by the authorities during departure, transit and arrival; the risks of detention upon arrival as well as the possible stop-over during the trip is to be communicated in a timely, culturally sensitive way (choice of appropriate language) to the migrants.

Identity and travel documentation

16. Valid travel and/or ID documents should be secured for every evacuee/passenger. Once migrants to be evacuated have been identified their readiness to travel has to be ensured. This includes the possession of valid identity documentation, travel documentation, exit permit and entry permits (including valid visa, authorization from origin and/or receiving country of entry or re-entry, etc). According to the circumstances IOM will facilitate liaison with consular authorities in the affected country and/or abroad to ensure all evacuees have the necessary documents for their travel. As last resort, IOM may contact the ICRC for the issuance of ICRC Travel Document when all other means of issuing emergency travel documents have been exhausted⁸. In principle no one is allowed to travel without valid documents (even more so unaccompanied and separated children- see paragraphs 22- 26). Valid documents should be secured for every evacuee/passenger; grouped laissez-passer without pictures should be avoided as much as possible. This is to avoid individuals without personal travel documentation.

⁸ An ICRC Travel Documents should only be issued when the following conditions are met: 1) the applicant does not have a valid passport and is unable to obtain or renew any other document which might permit travel. Furthermore, it is impossible for the receiving country to provide a travel permit. The ICRC Travel Document is therefore to be issued only as a last resort when: 2) the country to which the applicant wishes to travel, and the transit country/countries have promised or already granted entry and transit visas; 3) the country to which the applicant wishes to travel, and the transit country/countries have accepted in writing to allow the applicant to travel or to enter their territory with an ICRC Travel Document; 4) an exit visa or safe-conduct to leave the country, if required, has been promised by the country whose territory the applicant wishes to leave. Communicated by ICRC, April 2016.

17. IOM should advocate with the border authorities of both departure and transit countries that migrants documents are not arbitrarily withdrawn, detained nor held during evacuations.
18. IOM should also advocate and/or ensure that, once migrants evacuated have reached their final destination, their country of origin, they have access to the establishment of identity documentation. This is to avoid risks of statelessness and ensure a smooth reintegration back to their country of origin. This is to be done through liaison with relevant authorities and/or support with appropriate projects.

Pre-embarkation health check and movement of individuals with significant medical conditions

19. Medical evaluation for fitness to travel is a mandatory requirement prior to any IOM facilitated travel through bus/plane/boat. In situations where time constraint does not allow individual thorough medical screening a quick visual assessment can be carried out by a medical personnel to detect individuals with significant medical conditions, including pregnancies and disabilities as well as suspected communicable diseases. IOM will delay the travel of anyone who is not fit to travel for their own safety and that of other travelers and the receiving community;
20. To the extent possible, contact between evacuees and the IOM appointed medical personnel need to be established as soon as possible. This will not only allow more thorough pre-departure medical screening but also the administration of treatment and stabilization measures which could eventually improve the medical conditions of ill evacuees to reach a fit to travel status.
21. In situations where an evacuee has a significant medical condition and is conditionally fit to travel IOM must take steps to ensure continuity of care for the evacuee throughout the whole travel process as well as during transit and on arrival at final destination where a proper medical handover to the receiving health personnel will need to be made. Special attention should be paid to evacuees requiring medical escorts, special accommodation or mobility arrangement, as well as urgent medical follow-up upon arrival. Communication of medical information to the relevant stakeholders must be made as soon as fitness to travel health checks are completed;

Family unity and considerations for unaccompanied and separated children

22. Family unity shall be ensured throughout the evacuation, in particular children should not be separated from parents and/or primary/ usual care givers.;
23. Full information shall be provided to families so that they are in a position to express their informed consent regarding the modalities of the evacuations.;
24. To avoid risks of family separation during evacuations meeting points should be designated at both departure and arrival ports where accidentally separated families could reunite with their members. Also parents should be encouraged to inform and prepare

their children to meet in that designated meeting place if accidentally separated. More generally, parents should be sensitized to keep their family together in the course of evacuation operations.

25. For identified unaccompanied (not accompanied by a parent, guardian, or other adult that by law or custom is responsible for them)⁹ and separated children (separated from both parents, or from their previous legal or customary primary caregivers but not necessarily from other adults)¹⁰ in need of evacuation assistance a specific procedure needs to be established, possibly with the support of other humanitarian actors, consular authorities, ICRC and UNICEF. Unaccompanied and separated children should not board any transportation assets like adults as they require special considerations, see above point 16.
26. When an unaccompanied and separated child is identified by IOM during the evacuation operations, first and foremost, immediate needs of that child should be checked: security, medical, food, shelter. Once those initial needs are met the following actions should/could be envisaged according to the circumstances. i) If separation has recently occurred, engage in quick reunification efforts, through phone contacts with parents, or go to the designated meeting place (ICRC has the mandate for re-establishing family links during armed conflicts and liaison with them might be necessary/useful during these early stages¹¹) ; ii) refer the child to other child protection entities in charge of looking into best interest determination and assessments and participate as much as possible to the follow-up of a suitable solution for that child; iii) if no child protection entities exist and immediate evacuation is needed¹² place the child under the guardianship of an adult care giver (adult care givers should be identified carefully in consultation with child and protection partners), under the auspices of the consular authorities and/or national authorities and refer to child protection actors at arrival point. Where actions described in point ii could happen (iv) documentation of that child needs to be provided by the consular authorities and handed over to national authorities upon arrival; v) communication with IOM office in country of arrival or transit is necessary to ensure necessary preparations and continuity of care. In all situations regarding children the child's views are essential and need to be considered according to his/her maturity and capacity.

Identification and assistance of victims of trafficking and other exploited migrants

27. During the identification of migrants to be evacuated IOM staff should pay special attention to instances or risks of human trafficking¹³ and exploitation. IOM has the

⁹ IOM, Migration Glossary, 2011.

¹⁰ IOM, Migration Glossary, 2011.

¹¹ ICRC, Restoring Family Links - <http://familylinks.icrc.org/en/Pages/home.aspx>

¹² The evacuation of unaccompanied children must be a solution of last resort, based on the consent of the parents, tutors, customary or usual care givers/guardians and must be in the best interest of the child, under the restrictive rules and principles established by IHL (Art.4 (3) of the AP II and 78 of AP I).

¹³ According to the Art. 3(a), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, Palermo 2000: Human trafficking is a crime constituted by three elements: 1) a act (recruitment, transportation, transfer, harboring or receipt of persons), 2) means of coercion (psychological and/or physical) to have control over another individual and 3) a purpose (exploitation or intention of exploitation). These three elements need to be present to define a crime as trafficking.

expertise and capacities to assist these cases. Men, women, boys and girls not in possession of their identity or travel documents, and when their documents are held by other adult migrants accompanying/escorting them in the absence of any proved family links, should be considered suspicious cases to be further screened for trafficking (trafficking screening form to be obtained from counter-trafficking –CT- focal point in country or at the regional office). The same applies for migrants with false identity or travel documents and/or visibly destitute individuals in the absence of medical conditions.

28. If there are identified cases or suspicions of human trafficking and/or exploitation, cases should be immediately referred to the IOM CT focal point in the country so that further identification and onward assistance (as needed) can be secured in coordination with the mandated authorities. If no assistance options exist in the country of identification referral and continuity of care should be ensured until final destination is reached. There the IOM CT personnel and/or national authorities could take over the case and proceed with the needed assistance and identification of appropriate solutions.

Evacuating migrants who are in detention

29. In some countries, migrants might be found in detention under an administrative measure for their irregular status. In countries where unauthorized entry is considered a crime, detention can also be imposed as a criminal sanction¹⁴. If the conditions set forth in point 8 of this guidance note are satisfied, IOM's involvement in evacuating migrants from detention should be limited to those migrants who are detained under administrative measures for violation of immigration rules. In cooperation with the relevant consular authorities, IOM should engage in efforts with the relevant authorities to ensure that the administrative charges on these migrants are lifted and their safe evacuations accomplished, with no consequences on their passport and/or nature of the operation (avoid deportation stamps on passports)¹⁵;

Cooperation with military forces and other safety considerations

30. In some circumstances, humanitarian actors including IOM have sought protective accompaniment by the military forces¹⁶ while conducting evacuations. However in a non-international armed conflict, if that military force is seen as aligned with one party to the conflict, the operation might attract attacks from the opposing party and be jeopardized

For children, the crime of trafficking is constituted by two of the above mentioned elements: 1) act and 2) purpose.

¹⁴ "Main international bodies consider that criminalization of irregular entry as disproportionate and recommend that it is at most an administrative infringement. In many cases, the detention of migrants is a police measure that is not regulated at all and falls in a legal vacuum, leaving migrants with no or little safeguards or remedies for any abuse committed in this regard....The overarching principle that the IOM should uphold and promote when assisting governments in the area of immigration detention is that deprivation of liberty should be a measure of last resort. States should always first explore the possibility to use less restrictive options and apply these options when possible. The IOM promotes and can directly assist with the provision of such options and the development of alternatives to detention, such as open service/reception centres, centres for special support to vulnerable migrants, and community based alternatives." IOM, Internal Guidance Note on Immigration Detention and Alternatives to Detention, August 2015.

¹⁵ Collaboration with ICRC can be explored in a contextualized manner in particular, when ICRC has better access to detention facilities –taking into account that ICRC procedures might not always allow to satisfy the request. Communicated by ICRC, April 2016.

¹⁶ Military forces could include: United National Military Defence and Asset, UN peace-keeping forces, Member States and other Regional Bodies deployed forces, national military forces, etc.

putting at further risk the migrants and IOM staff involved in the evacuation¹⁷. The use of military forces during evacuations should be considered a last resort option and analyzed on a case by case basis, following extensive in-country and HQ consultations (RMM@iom.int and PRD@iom.int);

31. Depending on the circumstances, evacuation convoys might be marked with signs of IOM (indicating the neutral scope of the operation). This measure has to be evaluated on a case by case basis depending on the prevailing perception of migrants and/or humanitarian actors.

Management of asset and properties of the evacuees

32. A fixed number of luggage and maximum weight allowed per migrant should be agreed by the IOM staff in charge of the operation in consultation with the air/boat and land carriers (carriers might have different weight allowance and/or vary amounts as per circumstances). It is recommended that the same measure is set for all migrants to be evacuated under the same operation, regardless of the carrier they are boarding on; this allows consistency and standard common messaging. This measure is taken to ensure people are given priority over luggage;
33. Considering the importance placed on personal assets by migrants, arrangements with national and consular authorities should be envisaged to keep record of left-behind evacuees' assets (this might not be possible in every operation). When possible, compensation programs could be envisaged in consultation with national and consular authorities. IOM should have no legal responsibility on assets left-behind by the migrants but advocate with national and consular authorities for appropriate measures to be found.

After the evacuations: responsibility and longer term considerations

34. For the life-saving nature of this operation, the responsibility of IOM vis-à-vis the protection of evacuated migrants stops when the migrants reach their final destination: their country of origin. IOM should ensure that the appropriate coordination has occurred with the origin country so that the most appropriate reception and follow-up is in place after the end of the evacuation (in some instances IOM is in charge of onward transportation). Some origin countries might be able to ensure additional reintegration assistance, including onward travel, and individual or community-based health, socio-economic and psychosocial support. IOM, in line with its supportive protection mandate, should advocate with the States and the donors for the impartial medium to long term reintegration assistance to all evacuated migrants and their receiving communities and contribute to its implementation, through appropriate/relevant projects, when this is feasible;
35. Evacuated migrants might wish to return to the country in which they have been stranded prior to the evacuation. IOM, in line with its supportive protection mandate, should advocate to States and/or directly inform on the prevailing security and safety conditions

¹⁷ OCHA- IASC, Civil-Military Guidelines and References for Complex Emergencies, 2008.

(this could take the form of an advisory note) but shall not be responsible for the implementation of this action. Adequate solutions should also be provided to the returnees and the communities in the countries of origin to reduce the likelihood of returning/ remigration to the conflict- prone countries.

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