******The Impact of Counter Terrorism on Peacemaking, Peacebuilding,**

**Sustaining Peace, Conflict Prevention and Resolution**

**Submission on Behalf of Watchlist on Children and Armed Conflict and Fordham University’s Institute of International Humanitarian Affairs to the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism**

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*Note: The following submission is adapted from* Denial of Humanitarian Access for Children:

Legal, Policy, and Operational Challenges*, a joint policy paper published by Watchlist on Children and Armed Conflict and Fordham University’s Institute of International Humanitarian Affairs (IIHA) in June 2022. The complete policy paper can be accessed at* <https://watchlist.org/wp-content/uploads/watchlistfordham-policynote_denial_of_humanitarian_access_final_for_web.pdf>.

In situations of armed conflict, humanitarian access[[1]](#footnote-1) is essential to protecting and assisting civilians, including children. Yet, in recent years, the denial of humanitarian access, though not a new phenomenon, has become increasingly prevalent and has been identified as one of the most significant challenges facing relief operations. In 2020 alone, the United Nations documented over 4,100 incidents of the denial of humanitarian access for children perpetrated by both state actors and non-state armed groups (NSAGs) alike.[[2]](#footnote-2) Incidents include attacks on aid workers, bureaucratic and administrative impediments, suspension or diversion of aid, and interferences with programming decisions. Not all forms of access denials constitute violations of international law, but all disrupt humanitarian operations and, in many cases, have a devastating impact on the survival of civilians, including children, caught in humanitarian crises.[[3]](#footnote-3)

Counterterrorism (CT) measures and sanctions regimes, which prohibit the transfer of funds or economic resources to designated individuals or entities, further complicate children’s access to humanitarian assistance. Such measures may have an adverse impact on the delivery of aid and care to civilians in need, including children, by impeding or even preventing impartial humanitarian organizations from conducting humanitarian activities in a principled manner. Some donors have introduced “conditionality clauses” into their funding agreements aimed at preventing “designated terrorist groups” (DTGs) from benefiting from their assistance. In some cases, such provisions have limited the engagement with proscribed groups and prevented children living in areas under their control from accessing lifesaving aid.

While parties to conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief, there are strong arguments to suggest that states that are not parties to an armed conflict (“third party non-belligerent states”) have an obligation to ensure that any collective or unilateral measures they adopt do not impede humanitarian activities and result in the denial of aid delivery and access to services of people in need of assistance and protection. It can also be argued that third party states should facilitate humanitarian activities that have already been accepted by parties to conflict to meet the needs of the civilian population. This could be inferred from the due diligence component enshrined in the obligation to ensure respect for International Humanitarian Law (IHL) under Common Article 1 of the 1949 Geneva Conventions. The imposition of CT measures and sanctions regimes obstructing humanitarian activities may, therefore, be incompatible with their obligation to respect and ensure respect for IHL provisions governing humanitarian activities.[[4]](#footnote-4) In addition, based on their obligation to perform treaty obligations in good faith, as reflected in the Vienna Convention on the Law of Treaties, third party states—as high contracting parties to the Geneva Conventions—are expected not to take any actions or measures that would prevent the operation of IHL rules, including those governing humanitarian access. On this basis, CT measures and sanctions regimes must be designed and implemented such that they do not conflict with states’ obligations to facilitate humanitarian activities, and do not constitute unlawful denial of consent to relief operations conducted by impartial humanitarian organizations in accordance with IHL.[[5]](#footnote-5) Measures that would criminalize offers of services by humanitarian actors to parties to conflict, including NSAGs designated under sanctions regimes or CT legislation, would be incompatible with Common Article 3(2) of the Geneva Conventions.[[6]](#footnote-6)

Similarly, restrictions in funding agreements can be problematic. In order to ensure that funding recipients comply with CT measures and sanctions regimes, some donor states require vetting of final beneficiaries of humanitarian programs. Such requirements, if they lead to the deprivation of people from the humanitarian assistance to which they are entitled, because they are designated under sanctions or CT measures, would also be inconsistent with IHL and humanitarian principles.[[7]](#footnote-7) One such example is in Nigeria, where, in 2018, USAID introduced a new funding contract clause requiring recipient agencies to seek prior authorization before providing any assistance to individuals whom the recipient agency “affirmatively knows to have been formerly affiliated with Boko Haram or ISWAP (Islamic State’s West Africa Province), as combatants or non-combatants.”[[8]](#footnote-8) This would mean that aid agencies receiving USAID funding under these terms would risk falling afoul of the United States’ CT legislation if they did not vet their beneficiaries and refused help to any civilians suspected of links with the NSAGs.[[9]](#footnote-9) This would include children who would be excluded from receiving aid if they were allegedly associated with Boko Haram or ISWAP, or had familial ties with the groups’ members. This example is particularly stark because it illustrates the dilemma faced by humanitarian organizations providing release and reintegration services to children formerly associated with armed forces or armed groups. Complying with such donor conditionality clauses creates an environment where humanitarian agencies’ neutrality, impartiality, and independence are challenged or restricted, with potential adverse consequences for their operations and security. In some circumstances, it may even create a chilling effect, where compliance with CT legislation becomes a determining factor restricting humanitarian action.

In response to an online survey conducted by Watchlist and Fordham University,[[10]](#footnote-10) more than 50 percent of the respondents said that their organizations’ access to children in need of assistance and protection has been impacted by these measures: CT measures (42 percent), sanctions regimes (29 percent), and donor requirements (26 percent).[[11]](#footnote-11) Several respondents said that key services to children could not be delivered, and in some instances, program activities have had to be canceled or put on hold temporarily. In contexts such as Nigeria, Syria, or Yemen, it has become increasingly challenging for humanitarian actors to deliver lifesaving assistance to areas subject to CT measures or sanctions regimes, notably in areas under the control of DTGs.[[12]](#footnote-12) As a result, certain humanitarian actors have avoided operating, or are no longer effectively able to operate, in such high-risk areas, despite acute needs of local populations, including children, who have been, therefore, de facto excluded from relief aid.[[13]](#footnote-13) In a widely reported case,[[14]](#footnote-14) the Government of Israel designated the child protection nongovernmental organization (NGO) Defense for Children International-Palestine (DCI-P) as a “terrorist organization.”Several respondents also mentioned the significant hindrances to the delivery of aid posed by sanctions regimes and “de-risking” policies. For example, commercial actors such as banks, insurers, and suppliers have at times curtailed the services they provide to humanitarian actors for fear of non-compliance with CT measures and sanctions regimes. As a result of such measures, humanitarian organizations have faced difficulties transferring money into certain areas and importing goods needed for their operations. In Afghanistan, Western economic measures imposed since the Taliban takeover in August 2021 have prevented aid agencies from transferring funds into and within the country, blocking millions from receiving emergency relief, including children.The situation in Afghanistan is worsening by the day, with 23 million people facing acute hunger and the near total collapse of many public services.[[15]](#footnote-15)

In light of these multiple challenges, nearly 50 percent of survey respondents said their organizations have adapted their strategies. Many have increased advocacy efforts with other agencies to “speak louder” with donors and Member States. Some organizations have increased collaboration with local partners to procure locally produced items and deliver aid in hard-to-reach areas, while others have engaged in strengthening community self-protection strategies. A recurrent theme among respondents was the increased investment in building capacity for engagement with NSAGs, through the development of institutional policies, guidelines, and training on access negotiations. Other respondents said that their organizations have had to employ legal counsel and implement due diligence systems to cope with CT measures and donor requirements.

CT legislation, sanctions regimes, and donor conditionality clauses fundamentally compromise the capacity of humanitarian organizations to operate in contexts where DTGs are active and deliver aid to all those in need, as foreseen by IHL and in accordance with humanitarian principles.

**Recommendations****to Member States, Including Donor Governments**

* Promote respect for IHL rules related to humanitarian access and the protection of children in armed conflict, including by leveraging influence and reminding all parties to conflict of their legal obligations.
* Ensure that CT measures and sanctions regimes are fully consistent with applicable international law and do not restrict, hinder, or criminalize the effective and timely delivery of aid, including for children, by impartial humanitarian organizations.
* Introduce express safeguards and standing exemptions for principled humanitarian action in CT measures and sanctions regimes.
* Refrain from introducing restrictions or conditionality clauses (such as the screening or vetting of beneficiaries) in funding agreements that risk affecting the humanitarian principles of humanity and impartiality and cutting off humanitarian access to children in need of assistance and protection.
1. There is no universally agreed-upon definition of the term “humanitarian access.” However, many humanitarian actors use a general definition which encompasses two dimensions: the ability of humanitarian actors to reach populations in need of assistance and protection, and the ability of affected populations to access services. [↑](#footnote-ref-1)
2. UN Security Council, Report of the Secretary-General on Children and Armed Conflict (A/75/873–S/2021/437), May 26, 2021, <https://undocs.org/s/2021/437> (accessed April 26, 2022), para. 4. Information related to the denial of humanitarian access for children is presented pursuant to Security Council Resolution 1612 (2005) and follows guidelines of the Monitoring and Reporting Mechanism (MRM) on children and armed conflict. The information presented herein does not necessarily give an exhaustive view of the full humanitarian access situation in the countries concerned. [↑](#footnote-ref-2)
3. Recent research has shown that millions of children in countries affected by armed conflict are unable to access food and medicine and are at risk of dying from hunger and disease. In 2017 and 2018, Watchlist published a series of field-based research reports (“Field Monitors”) focused on attacks on hospitals and health care and the impact of these attacks on children in situations of armed conflict. Watchlist’s 2018 report on South Sudan further examined the links between attacks on health care and the denial of humanitarian access. *See also:* Save the Children, “Hunger – A Lethal Weapon of War: The Impact of Conflict-Related Hunger on Children,” 2018, <https://resourcecentre.savethechildren.net/pdf/hunger_-_a_lethal_weapon_of_war_7th_pp.pdf/> (accessed May 2, 2022). [↑](#footnote-ref-3)
4. Tristan Ferraro, “International Humanitarian Law, Principled Humanitarian Action, Counterterrorism and Sanctions: Some Perspectives on Selected Issues,” *International Review of the Red Cross*, Volume 103, Issue 916-917, February 2022,

<https://international-review.icrc.org/articles/international-humanitarian-law-principled-humanitarian-action-916> (accessed April 28, 2022), pp. 136-137. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. Emanuela-Chiara Gillard, “Humanitarian Action and Non-State Armed Groups The International Legal Framework,” Chatham House, February 2017, <https://www.chathamhouse.org/sites/default/files/publications/research/2017-02-02-humanitarian-action-non-state-armed-groups-gillard.pdf> (accessed April 28, 2022), pp. 7 and 12. [↑](#footnote-ref-6)
7. Emanuela-Chiara Gillard, “IHL and the Humanitarian Impact of Counterterrorism Measures and Sanctions:
Unintended Ill Effects of Well-Intended Measures,” Chatham House, September 2021,

<https://www.chathamhouse.org/sites/default/files/2021-09/2021-09-03-ihl-impact-counterterrorism-measures-gillard_0.pdf> (accessed April 28, 2022), p. 46. *See also:* Emanuela-Chiara Gillard, Sangeeta Goswami, and Fulco van Deventer, “Screening of Final Beneficiaries–A Red Line in Humanitarian Operations. An Emerging Concern in Development Work,” *International Review of the Red Cross*, 2021,

<https://international-review.icrc.org/sites/default/files/reviews-pdf/2022-02/screening-of-final-beneficiaries-a-red-line-in-humanitarian-operations-916.pdf> (accessed May 6, 2022), p. 526. [↑](#footnote-ref-7)
8. Obi Anyadike, “Aid Workers Question USAID Counter-terror Clause in Nigeria,” *The New Humanitarian*, November 5, 2019, <https://www.thenewhumanitarian.org/news-feature/2019/11/05/USAID-counter-terror-Nigeria-Boko-Haram> (accessed April 28, 2022). [↑](#footnote-ref-8)
9. Watchlist on Children and Armed Conflict, “Countering Terrorism and Violent Extremism: The Erosion of Children’s Rights in Armed Conflict,” January 2020, <https://watchlist.org/wp-content/uploads/watchlist-policy-note_jan2020_lr.pdf> (accessed April 26, 2022), p. 21. [↑](#footnote-ref-9)
10. The research methods used for gathering information for this policy paper include a desk review of relevant literature on the denial of humanitarian access and its impact on children, key informant interviews, and an online survey. The authors launched a 12-question online survey targeting key stakeholders working on children and armed conflict (CAAC) issues, including headquarters-level and field-based UN and NGO staff, to identify the forms of denial of humanitarian access and their impact on children, and the challenges that humanitarian organizations are facing. A total of 34 individuals responded anonymously. [↑](#footnote-ref-10)
11. The survey question was: “Has your organization’s access to children in need of assistance/protection been impacted by any of the following? (Select all that apply) (1) Counterterrorism measures, (2) Donor conditionality clauses, (3) Economic sanctions.” This question was not related to monitoring the denial of humanitarian access for MRM reporting purposes. [↑](#footnote-ref-11)
12. InterAction, “Detrimental Impacts: How Counter-Terror Measures Impede Humanitarian Action, A Review of Available Evidence,” April 2021, <https://www.interaction.org/wp-content/uploads/2021/04/Detrimental-Impacts-CT-Measures-Humanitarian-Action-InterAction-April-2021.pdf> (accessed May 2, 2022). [↑](#footnote-ref-12)
13. For example, in Syria, according to the UN Office for the Coordination of Humanitarian Affairs (OCHA), 80 percent of the people categorized as being in “severe” or “catastrophic” humanitarian need are in non-government-controlled areas of northern Syria. *See:* OCHA, “Humanitarian Needs Overview. Syrian Arab Republic,” March 2021, <https://reliefweb.int/sites/reliefweb.int/files/resources/syria_2021_humanitarian_needs_overview.pdf> (accessed April 28, 2022). [↑](#footnote-ref-13)
14. The UN Office of the High Commissioner for Human Rights (OHCHR), “UN Experts Condemn Israel’s Designation of Palestinian Human Rights Defenders as Terrorist Organisations,” October 25, 2021,<https://www.ohchr.org/en/press-releases/2021/10/un-experts-condemn-israels-designation-palestinian-human-rights-defenders> (accessed May 18, 2022). *See also:* Defense for Children International (DCI), “Statement on Israeli Authorities’ Designation of DCI-Palestine as a ‘Terrorist Organization,’” October 25, 2021, <https://defenceforchildren.org/defence-for-children-international-statement-on-israeli-authorities-designation-of-dci-palestine-as-a-terrorist-organization/> (accessed April 28, 2022). [↑](#footnote-ref-14)
15. Norwegian Refugee Council (NRC), “Life and Death: NGO Access to Financial Services in Afghanistan,” January 2022, <https://www.nrc.no/globalassets/pdf/reports/life-and-death/financial-access-in-afghanistan_nrc_jan-2022.pdf> (accessed April 28, 2022). [↑](#footnote-ref-15)