

Countering Terrorism and Violent Extremism:

The Erosion of Children's Rights in Armed Conflict

Summary of Findings

The evolving nature of warfare and increase in conflict intensity, duration, and complexity present new challenges for the protection of children in armed conflict. In particular, the rise of non-State armed groups resorting to acts of terrorism has created unprecedented threats to children's rights, as well as to international peace and security.

At the same time, States' counterterrorism strategies have proliferated, with the introduction of new measures that lack adequate safeguards for children and, in many cases, have led to serious violations of their rights.

Watchlist on Children and Armed Conflict ('Watchlist') conducted research with experts, diplomats, the United Nations, and nongovernmental organizations (NGOs) exploring States' measures to counter terrorism and violent extremism and the impact of these on children's rights in armed conflict. The objective of the research was to promote a child rights-based approach and encourage more proactive efforts on the part of States, international coalitions, and multilateral organizations to recognize and ensure their international obligations to protect children's rights and uphold juvenile justice standards.

The research shows that the rights of children living in countries affected by armed conflict are impacted in a number of negative ways in the context of efforts to counter terrorism.



About Watchlist

Watchlist on Children and Armed Conflict strives to end violations against children in armed conflicts and to guarantee their rights. As a global network, Watchlist builds partnerships among local, national, and international nongovernmental organizations, enhancing mutual capacities and strengths. Working together, we strategically collect and disseminate information on violations against children in conflicts in order to influence key decision-makers to create and implement programs and policies that effectively protect children.

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These include, but are not limited to, the following:

- **The treatment of children allegedly associated with designated terrorist groups**

International law recognizes that children associated with armed forces or armed groups should be considered primarily as victims of offenses against international law, not as perpetrators, and they should receive reintegration and rehabilitation support. In contrast, the research found that too often the point of departure under the counterterrorism framework is the criminalization of children associated with armed groups designated as “terrorist” or involved in “terrorist activities.” Through this lens, children are often primarily considered as threats and viewed as perpetrators.

- **Failure to apply international juvenile justice standards**

States are obligated to have adequate legal, institutional, and operational frameworks to respect, protect, and fulfill children's rights in the administration of justice. International humanitarian law (IHL) and international human rights law provide special protections for children both during peacetime and in situations of armed conflict. Children who may have committed illegal acts need to be treated in accordance with international juvenile justice standards, which emphasize alternatives to detention and prioritize the rehabilitation and social reintegration of the child.

Yet the past two decades have seen the progressive broadening of counterterrorism legislation in many countries, including expanding the list of criminalized offenses related to terrorism, such as preparatory acts and forms of complicity, conspiracy, the so-called “glorification” of terrorism, and other acts. In several conflicts involving terrorist groups, children have been tortured, subjected to ill-treatment, and unlawfully and/or arbitrarily detained on national security-related charges for their actual or alleged association with these groups.

As counterterrorism legislation aims to recognize the gravity of terrorism-related activity and to provide means for investigation and prosecution, specialized bodies, procedures, and sentences associated with counterterrorism often focus on a punitive approach,

which can be especially detrimental when applied to children. Furthermore, many national counterterrorism laws fail to distinguish between children and adults. Their provisions may be contrary to juvenile justice standards and in violation of these children's rights.

- **Children perceived as threats and the erosion of the principle of distinction**

The principle of distinction – whereby persons fighting in armed conflict must, at all times, distinguish between civilians and combatants – is the basic cornerstone of IHL. However, as the report shows, in many countries in situations of armed conflict, human rights are regularly sidestepped by counterterrorism measures, to the detriment of children.

One of the consequences is the emergence, in recent years, of a new category of people in situations of armed conflict, which goes beyond the standard IHL and international human rights law dichotomy: the labelling of certain individuals or groups neither as combatants nor as civilians, but as “security threats.” In some countries, governments have detained people, including children, from territories controlled by violent extremist groups, considering them security threats regardless of any actual association with the armed group. This blanket approach, contrary to IHL, has been used to justify mass detention, including of children, in many parts of the world, such as Iraq, Libya, Nigeria, and Syria, among others.

The internment of children regarded as security threats for their real or perceived ties to terrorist groups is another consequence of such an approach. For example, across Syria and Iraq, children with perceived links to the Islamic State (IS) are stranded in camps, detention centers, and orphanages, held in limbo amid dire humanitarian needs.

- **The treatment of “foreign terrorist fighters” and their families**

In recent times, the phenomenon of “foreign terrorist fighters” is a growing threat to many countries, including, but not only, in connection with the ongoing conflicts in Syria and Iraq. The phenomenon presents complex and unprecedented challenges, including how to address the situation of the thousands of family members, including children, of these individuals.

Despite increasing awareness of this issue and the repatriation of minors by some governments, efforts by States to protect their child nationals remain limited and ad hoc. Many home countries have refused to repatriate their nationals on the premise that they harbor extremist ideologies or could carry out attacks at home.

While governments have legitimate security concerns on how to deal with individuals linked to so-called terrorist groups, they also have an obligation to protect the rights of thousands of affected children. In Syria alone, there are an estimated 28,000 children from more than 60 different countries – including almost 20,000 from Iraq – mostly in displacement camps. An additional 1,000 children of foreign fighters are believed to be in Iraq. Many of these children are held in appalling and sometimes deadly conditions, denied access to legal or consular services, and at risk of statelessness, discrimination, and challenges accessing education, housing, health care, and other services.

- **Screening, Prosecution, Rehabilitation, and Reintegration (SPRR)**

The report highlights some concerns regarding SPRR. Security Council Resolution 2396 (2017) urges UN Member States to strengthen their efforts to stem the threat posed by foreign terrorist fighters returning from conflict zones, including through measures “to assess and investigate” suspected terrorists “and their accompanying family members, including spouses and children,” and to develop comprehensive risk assessments and consider appropriate action, including prosecution.

Child protection experts consulted in the course of this research stressed that SPRR is still an evolving concept that lacks sufficient parameters and operational guidance and should be approached with caution. The terms “screening” and “risk assessment” are particularly problematic as they are not clearly defined. It remains to be seen how SPRR will apply to children who compose large numbers of those allegedly associated with foreign terrorist fighters.

- **The impact of counterterrorism measures on humanitarian access**

Counterterrorism measures, including sanctions, have had serious implications for humanitarian access

and the neutrality of humanitarian actors, with dire consequences for children in need of lifesaving assistance.

Countering violent extremism and counterterrorism have increasingly become a driving force within the foreign aid agenda of many donors. Some donors have introduced clauses into their grant contracts with strict conditions aimed at preventing terrorist or violent extremist groups from benefiting from their assistance. In practice, these clauses compromise core humanitarian principles and risk denying access to the very children who need it the most, specifically the ones from the most vulnerable and excluded populations. Implementing programs on the basis of such conditions set by donors can also impact humanitarian organizations’ ability to adhere to the principles of non-discrimination and the best interests of the child. Further research and analysis of the impacts of counterterrorism measures on humanitarian action are needed to safeguard the humanitarian space and principles.

In general, the report shows that there has yet to be a significant effort to include and mainstream internationally recognized children’s rights standards into the discourse on terrorism, counterterrorism, and violent extremism. In many instances, counterterrorism discourse, policies, and laws have largely overlooked the specific needs of children, as a distinct and important category of persons in need of special protection and rehabilitation. States must ensure that human rights – and especially children’s rights – are protected and promoted while developing and implementing strategies, laws, and policies to counter terrorism and violent extremism.

Counterterrorism challenges States (including civilian authorities and security actors), the United Nations and other international or regional organizations, civil society, and other stakeholders to coordinate and interface in new ways. There is a need for further research on the short- and long-term impacts of counterterrorism on children’s rights and practical responses to ensure their rights are respected. This research should be shared with both civil and military counterterrorism experts, and a principled dialogue should begin in earnest for the sake of conflict-affected children globally.

I. Introduction

Background

In 2019, the international community marked 30 years since the General Assembly adopted the Convention on the Rights of the Child (CRC) and 20 years since the adoption of the UN Security Council's first resolution on children and armed conflict (CAAC). These key documents, together with other thematic resolutions, tools, and mechanisms, have built a strong normative framework for the protection of children's rights in conflict.

The evolving nature of warfare and increase in conflict intensity, duration, and complexity present new challenges for the protection of conflict-affected children. In particular, the rise of non-State armed groups resorting to acts of terrorism has created unprecedented threats to children's rights, as well as to international peace and security. Violent extremist groups have injured and killed thousands of children; targeted children for recruitment and use as soldiers, sexual violence, and abduction; and attacked schools and hospitals.

In such contexts, States have an obligation to take measures to protect their nationals and others against the threat of terrorist acts and bring the perpetrators of such acts to justice. In recent years, however, States have themselves been complicit in abuses. States' counterterrorism strategies have proliferated, introducing new measures that too often lack adequate safeguards for children and, in many cases, have led to serious violations of their rights.

International law recognizes children recruited by armed groups primarily as victims who should be rehabilitated and reintegrated into society. Yet in conflicts involving designated terrorist groups, thousands of children have

instead been detained on national security-related charges for their actual or alleged association with these armed groups. Children – including many under the age of five – have been forcibly confined in camps for internally displaced persons in appalling and sometimes deadly conditions, stripped of their citizenship, and denied access to legal or consular services. Further, counterterrorism measures and sanctions regimes have had serious implications for humanitarian access and neutrality of humanitarian actors, with dire consequences for reaching children in need of lifesaving assistance.

Purpose and Scope of the Research

Based on consultations with its Advisory Board, comprised of leading international humanitarian and human rights organizations, as well as on its own work on the UN's CAAC agenda, Watchlist on Children and Armed Conflict ('Watchlist') identified a number of worrying trends emerging in armed conflict situations involving designated 'terrorist' or 'violent extremist' groups. Watchlist further noted the sparse information linking the CAAC agenda to counterterrorism discourse and the need for further research on this issue. In response, Watchlist recruited an independent consultant to undertake research on children's rights and countering violent extremism and terrorism in armed conflicts.

Engaging with UN representatives, government representatives, NGOs, and individual stakeholders, the consultant reviewed efforts to counter violent extremism and terrorism and their impacts on children's rights in contexts of armed conflict. The research sought to understand the challenges to existing normative

protective frameworks for children in armed conflict, and what programmatic and advocacy interventions could strengthen their implementation and improve the protection of children's rights in these contexts.

It is important to note that the impact of terrorism and counterterrorism measures is not limited to situations of armed conflict. Children are also affected by counterterrorism legislation in countries not directly involved in armed conflict. However, the scope of this research focuses on situations of armed conflict.

Terminology

The development of this research posed a challenge from its onset regarding the terminology to be used: "terrorism/counterterrorism," or "violent extremism/countering violent extremism"? This challenge, also faced by practitioners, stems from the fact that there are no internationally accepted definitions for either "terrorism" or "violent extremism." The two terms are sometimes used synonymously and employed interchangeably, with "violent extremism" presented as a less polarizing alternative to the highly politicized term "terrorism." According to leading international experts, the terms are defined as follows:

1. **Terrorism:** According to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,¹ terrorism can be defined as an action or attempted action where:

1. The action:

- (a) Constituted the intentional taking of hostages; or

- (b) Is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or

- (c) Involved lethal or serious physical violence against one or more members of the general populations or segment of it; and

2. The action is done or attempted with the intention of:

- (a) Provoking a state of terror in the general public or segment of it; or

- (b) Compelling a Government or international organization to do or abstain from doing something; and

3. The action corresponds to:

- (a) The definition of a serious offence in national law enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or

- (b) All elements of a serious crime defined by national law.

2. **Violent extremism:** The Council of Europe has defined violent extremism as "promoting, supporting or committing acts which may lead to terrorism and which are aimed at defending an ideology advocating racial, national, ethnic or religious supremacy or opposing core democratic principles and values."²

The concept of **Countering or Preventing Violent Extremism (CVE/PVE)** has been increasingly gaining traction as an approach to combatting terrorism and its root causes. CVE goes beyond the use of military

¹ UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Martin Scheinin: *Ten areas of best practices in countering terrorism* (A/HRC/16/51), December 22, 2010, <https://www.undocs.org/a/hrc/16/51> (accessed December 15, 2019).

² Council of Europe, "Guidelines for prison and probation services regarding radicalisation and violent extremism," CM/Del/Dec(2016)1249/10.2, March 2, 2016.

force against designated terrorist groups. It attempts to employ tools commonly used in development – such as education, training, economic empowerment, or civil society promotion – but with the express aim of preventing or countering individuals’ desire to affiliate with extremist groups. Thus, CVE responds to domestic policy concerns in both developed countries and countries in crisis.³ While no internationally agreed definition exists for neither, CVE has been less used and is less well codified, for example, in UN Security Council and General Assembly resolutions, than counterterrorism.

While CVE/PVE can have some potentially positive impacts – such as addressing root causes of child recruitment by violent extremist groups – it also raises some concerns, especially with regard to further stigmatization of affected children, their families, and their communities. Activities narrowly targeted and branded as “PVE” and “CVE” “may prove counterproductive if they cause resentment among, stigmatize, and further alienate the very communities they are meant to engage.”⁴

Although all existing terms are problematic, for the purpose of this report, Watchlist has primarily used the terms “terrorism” and “counterterrorism.”

Methodology

This report was developed over the course of eight stages:

1. A desk-based review of the relevant literature, including policies, standards, and practices related to children’s rights, CVE, and counterterrorism in situations of armed conflicts;
2. Bilateral discussions and meetings with Watchlist’s Program Director and each member of its Advisory Board to identify key issues and concerns on which to focus the research;
3. The development of a list of key informants including representatives from the United Nations, governments, and NGOs, as well as independent experts;
4. The development of a set of questionnaires to guide the discussions with the abovementioned stakeholders;
5. Key informant interviews focusing on identifying key themes and recommendations for action;
6. The development of a report presenting key findings, emerging issues and/or gaps, and recommendations, which was shared with Watchlist and its Advisory Board for review;
7. Finalization of the report based on expert Advisory Board inputs;
8. Presentation of the key findings of the research and recommendations to UN Member States, UN representatives, NGOs, and other stakeholders at a side event in December 2019 at the Permanent Mission of the Federal Republic of Germany to the United Nations.

It is important to note that this research is meant to be a reflection based on expert interviews rather than primarily focused on a desk-based literature review. The report captures the perspective of a non-exhaustive list of stakeholders. The hope is that this exercise can be a starting point for further discussion and more in-depth research in the near future.

³ Norwegian Refugee Council (NRC), “Countering Violent Extremism and Humanitarian Action” (position paper), June 2017, https://www.nrc.no/globalassets/pdf/position-papers/170622-nrc-position-paper_cve-and-humanitarian-action---fv.pdf (accessed December 12, 2019).

⁴ United Nations University, *Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflicts*, 2017, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf (accessed December 15, 2019).

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II. The Connection between the CAAC and CT Agendas

The Children and Armed Conflict Agenda

According to the Peace Research Institute of Oslo (PRIO), more than 420 million children were living in areas affected by conflict in 2017.⁵ These children are affected by armed conflict in many ways. They are not solely caught in the crossfire or treated by combatants as expendable collateral damage, but often deliberately and systematically targeted for direct attack. They are used as human shields, killed, maimed, and raped. They are bombed in their schools and in their homes. They are abducted, tortured, and recruited by armed groups to fight and to work as porters, cooks, and sex slaves. Sexual violence and abductions have become standard tactics in conflicts from Syria to Yemen, and from the Democratic Republic of the Congo to Nigeria, South Sudan, and Myanmar.

The principles and provisions to protect children in armed conflict are laid out in the Geneva Conventions (1949) and their additional Protocols (1977), the CRC (1989) and its Optional Protocol on the involvement of children in armed conflict (2000), and the Rome Statute (1998) of the International Criminal Court.

Since 1999, with the adoption of the UN Security Council's first resolution (SCR 1261) on CAAC, the systematic engagement of the Council has firmly placed the situation of children affected by armed conflict on its agenda as an issue affecting international peace and security. Resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009), 1998 (2011), 2068 (2012), 2143 (2014), 2225 (2015), and 2427 (2018) all contribute to a comprehensive framework for addressing the protection of children affected by armed conflict.

In 1996, the UN General Assembly established the mandate of the Special Representative of the Secretary-General for Children and Armed Conflict (SRSR-CAAC), following the publication of Graça Machel's study on the *Impact of Armed Conflict on Children*.⁶ This report highlighted the disproportionate impact of war on children and identified them as the primary victims of armed conflicts.

The SRSR-CAAC serves as the leading UN advocate for the protection and rights of children affected by armed conflict. The role is to strengthen the protection of children affected by armed conflict, raise awareness, promote the collection of information about the plight of children affected by war, and foster international cooperation to improve their protection. The SRSR-CAAC reports yearly to the General Assembly and the Human

⁵ Østby, Gudrun; Siri Aas Rustad, and Andreas Forø Tollefsen, "Children Affected by Armed Conflict, 1990–2017," *Conflict Trends*, 10, Oslo: PRIO, <https://www.prio.org/Publications/Publication/?x=11264> (accessed December 12, 2019).

⁶ UN General Assembly, *Impact of armed conflict on children* (A/51/306), August 26, 1996, <https://undocs.org/en/A/51/306> (accessed December 15, 2019).

Rights Council, prepares the Secretary-General's annual report to the Security Council on children and armed conflict, and raises concerns about the situation of children in war to political bodies such as the UN Security Council, as well as to relevant Governments, in order to garner a sense of urgency amongst key decision makers and to secure political and diplomatic engagement.

Since SCR 1379 (2001), the Secretary-General has included parties who recruit and use children in the annexes of his annual reports on children and armed conflict ('annual report'). With SCR 1612 (2005), the Security Council empowered the Secretary-General to establish an enhanced and systemized method of gathering data on violations against children. The Monitoring and Reporting Mechanism (MRM) documents the following six "grave violations against children" in times of armed conflict: recruitment and use of children; killing and maiming of children; sexual violence against children; attacks on schools and hospitals; abduction of children; and denial of humanitarian access. All these violations except denial of humanitarian access are criteria, or "triggers," for the Secretary-General to list parties to armed conflict in the annexes of his annual report.

The MRM is a compliance mechanism whose objective is to change the behavior of warring parties to end and prevent violations against children. It does so by monitoring the conduct of parties to conflict who commit grave violations against children and providing the Security Council with timely, reliable, and UN-verified information that will allow it to apply pressure to parties to conflict to end and prevent such violations. The MRM is currently active in 14 countries and operates through Country Task Forces for Monitoring and Reporting (CTFMR), which are co-led by the highest UN representative in each respective country where the MRM is implemented (the head of the peacekeeping or political mission, if there is one, or the Resident Coordinator) and the UNICEF Country Representative.

Information gathered through the MRM has been used by the UN Secretary-General to urge Member States to take concrete actions to end and prevent violations of children's rights. Such recommendations may include calling for States to:

1. Treat children allegedly associated with armed groups primarily as victims and not as security threats, regardless of whether the armed groups in question have been designated as "terrorist" or "violent extremist";
2. Consider alternatives to the detention or prosecution of children on the basis of national security or counterterrorism charges, including for their alleged or actual association with armed groups;
3. Ensure that procedures or trials are consistent with international juvenile justice standards, international human rights law, and IHL;
4. Adopt protocols for the handover of children allegedly associated with armed forces or armed groups to civilian child protection actors in order to prioritize their reintegration; and
5. Fund long-term, multi-year reintegration programs, which include tailored and gender-sensitive psychosocial support, education programs, and vocational training.

The Security Council has created a strong normative framework to end and prevent grave violations against children in situations of armed conflict and provided the OSRSG-CAAC with specific tools to respond to violations against children. In addition, voluntary standards, including the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, the Safe Schools Declaration, and the Vancouver Principles on Peacekeeping and Preventing the Recruitment and Use of Child Soldiers, have provided further guidance for protecting children in armed conflict.

At this writing, each has been endorsed by at least 90 countries – demonstrating a widespread acceptance at the international level of these norms and principles.

The Counterterrorism Agenda

While countering terrorism has been on the agenda of the UN for decades, the attacks against the United States on September 11, 2001, prompted the Security Council to adopt Resolution 1373, which established the Counter-Terrorism Committee (CTC). Other relevant counterterrorism (CT) resolutions for the purpose of this report include SCR 2178 (2014), SCR 2354 (2017), and SCR 2396 (2017).

Five years later, all Member States of the General Assembly for the first time agreed on a common strategic framework to fight the threat of terrorism: the UN Global Counter-Terrorism Strategy.⁷ The strategy aims to enhance the efforts of the international community to counter terrorism along four pillars:

1. Addressing conditions conducive to the spread of terrorism;
2. Preventing and combatting terrorism;
3. Building Member States' capacity to prevent and combat terrorism and to strengthen the role of the UN system in this regard;
4. Ensuring the respect for human rights for all and the rule of law as the fundamental basis for countering terrorism.

At the time of the adoption of the strategy, the General Assembly also endorsed the Counter-Terrorism Implementation Task Force (CTITF), which was established by the Secretary-General in 2005. Consisting of 38 entities of the UN and affiliated organizations, CTITF worked to promote coordination and coherence within the UN System on counterterrorism and to provide assistance to Member States in this regard.

Established in 2011, the UN Counter Terrorism Centre (UNCCT)⁸ provides capacity-building assistance to Member States through counterterrorism projects around the world in line with the four pillars of the Global CT Strategy outlined above.

Following the Secretary-General's report on the capability of the UN to assist Member States in implementing the UN Global CT Strategy,⁹ the CTITF and the UNCCT were moved into a new Office of Counter-Terrorism (UNOCT) established on June 15, 2017, through the adoption of General Assembly Resolution 71/291 and headed by an Under-Secretary-General.

Watchlist's research highlights some concerns from the key informants vis à vis the different lists of designated "terrorist groups." While the UN and the European Union (EU) have established their own respective lists, some UN Member States also publish their own lists of designated terrorist organizations; some follow a clear procedure for listing and delisting, while others have little to no real transparency, exposing the process to the risk of politicization.

⁷ UN General Assembly, Resolution 60/288 (2006), A/RES/60/288 (2006), <https://undocs.org/en/A/RES/60/288> (accessed December 10, 2019).

⁸ UN Office of Counter-Terrorism, "About Us," <https://www.un.org/counterterrorism/about> (accessed December 7, 2019).

⁹ UN General Assembly, *Report of the Secretary-General on the Capability of the United Nations system to assist Member States in implementing the United Nations Global Counter Terrorism Strategy* (A/71/858), April 3, 2017, <https://undocs.org/en/A/71/858> (accessed December 15, 2019).

The Connection between the CAAC and CT Agendas and the Impact on Children

Most key informants of this research expressed concern about the erosion of children's rights in the context of counterterrorism measures, noting that the CAAC and CT agendas are increasingly inter-connected.

General comments from the informants suggest that the global CT agenda has become highly politicized and places considerable emphasis on a punitive framework. Indeed, the past decade has seen the gradual broadening of counterterrorism legislation in many countries, including the expansion of the list of criminalized offenses related to terrorism, such as preparatory acts and forms of complicity, conspiracy, the so-called "glorification" of terrorism, and other acts. This is also the result of a growing body of international law concerning criminal justice measures to counter terrorism.

Several key informants of this research expressed concern about what they perceived as a lack of emphasis on children and their specific rights and vulnerabilities in existing CT frameworks. Various practical tools have been developed on the protection of children's rights in the CT framework, including the UN Office on Drugs and Crime's (UNODC) *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups* and the *Neuchatel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context*. While these reaffirm

children's rights, including the principles of detention as a last resort and the priority on rehabilitation and reintegration, implementation remains challenging.

Furthermore, for some respondents, situations of armed conflict under which IHL should apply are being increasingly absorbed under the CT agenda. There is an indisputable expansion of the CT agenda that seems to be happening in two ways: 1) global counterterrorism measures and policies, including Security Council resolutions and UN specialized agencies' strategies, are growing in number; and 2) States are increasingly seeking to frame the situations they face domestically as "terrorism," avoiding the "armed conflict" denomination, which limits and changes their obligations under international law.

The main fronts with a CT label – such as in Afghanistan, Iraq, Libya, Mali, Nigeria, Somalia, Syria, and Yemen – are legally classified as non-international armed conflicts (with an extraterritorial element) by most observers,¹⁰ including the International Committee of the Red Cross (ICRC).¹¹ As such, IHL, which includes Common Article 3 of the universally ratified Geneva Conventions, is applicable in these contexts. Moreover, IHL already provides a strong legal framework with explicit prohibitions applicable to non-State armed groups designated as terrorist whose serious violations entail individual criminal responsibility both at domestic and international level (e.g. universal jurisdiction for acts amounting to war crimes).¹²

¹⁰ Ojeda, Stéphane, "Out of balance: Global counter-terrorism & the laws of war" (blog post), International Committee of the Red Cross (ICRC), September 15, 2017, https://blogs.icrc.org/law-and-policy/2017/09/15/out-of-balance-global-counter-terrorism-the-laws-of-war/?_ga=2.16923578.289577896.1576455396-1941511535.1572529733 (accessed December 15, 2019).

¹¹ ICRC, "Counterterrorism, IHL and Humanitarian Action," June 19, 2018, <https://www.icrc.org/en/document/counterterrorism-ihl-and-humanitarian-action> (accessed December 15, 2019). See also ICRC, "Counter-terrorism activities must respect protections afforded by international humanitarian law," Statement to UN General Assembly Sixth Committee Meeting on 'Measures to Eliminate International Terrorism,' December 10, 2019, <https://www.icrc.org/en/document/counter-terrorism-activities-must-respect-protections-afforded-international-humanitarian> (accessed December 15, 2019).

¹² Ojeda, Stéphane, "Global counter-terrorism must not overlook the rules of war" (blog post), ICRC, December 13, 2016, https://blogs.icrc.org/law-and-policy/2016/12/13/global-counter-terrorism-rules-war/?_ga=2.16923578.289577896.1576455396-1941511535.1572529733 (accessed December 15, 2019).

Respondents expressed concerns that the way that counterterrorism is currently framed – with insufficient acknowledgement of the protection risks for children in armed conflict – not only does a disservice to children, but also potentially undermines longer-term security outcomes. Emphasizing punitive frameworks, rather than rights and protections, risks furthering discrimination, stigmatization, and even secondary victimization of affected children. Such approaches can be ineffective – even counterproductive – and could increase the risk of children’s recruitment or even re-recruitment by armed groups.

Rather than simply strengthening the connections between the CAAC and CT agendas, stakeholders should take great care to avoid undermining the safeguards and guarantees that CAAC frameworks already ensure to children in situations of armed conflict. The existing frameworks for children’s rights and protection should be consistently and carefully applied within the context of the CT agenda, in order to avoid the risk of degrading existing protections.

The UN Security Council and Its Working Group on CAAC

A key finding of the research was related to the role of the UN Security Council in addressing children’s rights concerns in the context of counterterrorism. Among the respondents, there was a consensus that the Security Council could have a positive role in reaffirming the protection of children and respect for their rights in situations of armed conflict, including in CT contexts. At the same time, several respondents urged caution and called for continued advocacy for the protection of children’s rights in such contexts, in order to avoid undermining or omitting existing protections as the CT debate deepens at the Security Council level.

Of note, several respondents noted that the Security Council Working Group on Children and Armed Conflict (SCWG-CAAC) could play a positive role in acknowledging the areas of intersection between the CT and CAAC agendas and highlighting the need to apply existing CAAC standards in these contexts. However, respondents also recognized the challenges, given the politicized nature of CT discussions and efforts, and the at-times problematic positions of otherwise strong supporters of CAAC when faced with CT concerns.

III. Counterterrorism Measures in Armed Conflict and the Erosion of Children's Rights

Most of the interviewees agreed that the single-minded focus on national security and counterterrorism above all other concerns has often undermined the norms around child rights in conflict situations. As one respondent put it: "Security is eating human rights around the world."

Back to the Foundation of the Paris Principles: Children as Victims

International law recognizes children associated with armed forces or armed groups primarily as victims of serious violations who require reintegration and rehabilitation support.¹³ This principle has been reiterated throughout legal and operational frameworks and tools and applies also to children who may have committed crimes.

The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, for example, state that "[children] who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law; not only as perpetrators."¹⁴ At an

event on protecting children affected by terrorism, Under-Secretary-General Vladimir Voronkov of the UNOCT emphasized that "the recruitment of children, regardless of the circumstances and methods employed, constitutes a violation of international law and leads to violence and exploitation."¹⁵ Echoing an earlier statement by the Secretary-General, Voronkov noted that recognizing child recruits as victims of crimes was "essential to giving them access to their rights as such, including the right to repatriation and rehabilitation measures."¹⁶

In contrast, too often the point of departure under the CT framework is the criminalization of children associated with armed groups designated as "terrorist" or involved in "terrorist activities." Through this lens, children are often primarily considered as threats and viewed as perpetrators. In consequence, some children who themselves are merely alleged to be associated with these groups, are systematically arrested, detained, prosecuted, and even convicted and sentenced to harsh penalties, including the death penalty, in violation of international law and international juvenile justice standards.

In a signal development, the Security Council in its Resolution 2427 (2018) reaffirmed that children associated with armed groups, including those having committed crimes during armed conflicts, should be treated

¹³ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted May 25, 2000, UN General Assembly Resolution 54/263, annex I, 54 UNGA OR Supp. (No. 49) at 7, UN Doc. A/54/49, Vol. III (2000), entered into force February 12, 2002, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCR.aspx> (accessed December 4, 2019), art. 7(1).

¹⁴ Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, February 2007, <https://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf> (accessed December 4, 2019), principle 3.6.

¹⁵ "Protecting Children Affected by Terrorism: A Global Priority," statement by Mr. Vladimir Voronkov, Under-Secretary-General of the UNOCT, at joint UNOCT/UNCCT UNODC high-level event, September 30, 2019, https://www.un.org/counterterrorism/ctitf/sites/www.un.org/counterterrorism.ctitf/files/201930_USGVoronkovStatementChildrenAffectedbyTerrorism_Final.pdf (accessed December 5, 2019).

¹⁶ Ibid.

primarily as victims. It further emphasized that “no child should be deprived of his or her liberty unlawfully or arbitrarily,” with the deprivation of liberty of children used only as “a measure of last resort and for the shortest appropriate period of time,” and children associated or allegedly associated with armed groups, including those who commit terrorist acts, should be swiftly handed over to relevant civilian child protection actors.¹⁷

Finally, while counterterrorism law, both international and domestic, may draw a distinction between terrorist groups and armed groups not designated as such, from the point of view of IHL and human rights law, the situation of children allegedly associated with these groups does not differ. Accordingly, it is crucial that government authorities recognize the “primarily victim” status of children associated with terrorist and violent extremist groups.

Detention and Disregard for Child Rights in the Justice System

Detention of Conflict-Affected Children

Persons detained in connection with a non-international armed conflict waged as part of the fight against terrorism are protected by common Article 3, Additional Protocol II, when applicable, and the relevant rules of customary IHL. The rules of human rights law and domestic law also apply to them. They are entitled to the fair trial guarantees of IHL and human rights law if they are tried for crimes they might have committed.¹⁸

However, key informants of this research expressed concern that aggressive counterterrorism efforts, including overbroad and vague legislation adopted in response to terrorist armed groups, have increased the detention of children perceived to be security threats.

According to the 2019 annual report of the UN Secretary-General on children and armed conflict,¹⁹ at least 15 countries detain children in the context of armed conflict. These are: Afghanistan, Cameroon, the Democratic Republic of Congo, Iraq, Israel, Lebanon, Libya, Mali, Myanmar, Niger, Nigeria, the Philippines, Somalia, Sudan, and Syria.

Many children are rounded up in massive sweeps or arrested on the basis of sometimes weak evidence, groundless suspicion, or alleged terrorist activity by family members. Some children, including babies, are detained when their mothers are arrested on suspicion of security-related offenses. Security forces have tortured children and treated them in other cruel, inhuman, and degrading ways to elicit confessions, extract intelligence information, or as punishment. Former child detainees report having been beaten, raped, given electric shocks, forced to remain in prolonged stress positions, and threatened with execution.²⁰

In countries such as Afghanistan, Iraq, Israel, Nigeria, Somalia, and Syria, the authorities may have hundreds of children in detention at any given time for alleged national security-related offenses.²¹ Many are denied access to lawyers or relatives, or the chance to challenge their detention before a judge. They are often detained under appalling conditions, confined in overcrowded cells with adults and with grossly inadequate food and medical care.

¹⁷ UN Security Council, Resolution 2427 (2018), S/RES/2427 (2018), [https://undocs.org/S/RES/2427\(2018\)](https://undocs.org/S/RES/2427(2018)) (accessed December 8, 2019).

¹⁸ ICRC, “What does IHL say about terrorism?”, January 22, 2015, <https://www.icrc.org/en/document/what-does-ihl-say-about-terrorism> (accessed December 15, 2019).

¹⁹ UN Security Council, *Report of the Secretary-General on Children and Armed Conflict (A/73/907-S/2019/509)*, June 20, 2019, <https://undocs.org/s/2019/509> (accessed December 4, 2019).

²⁰ Human Rights Watch, *Extreme Measures: Abuses against Children Detained as National Security Threats*, July 28, 2016, <https://www.hrw.org/report/2016/07/28/extreme-measures/abuses-against-children-detained-national-security-threats> (accessed December 8, 2019).

²¹ In 2018, all of the countries named above, except Syria, had detained more than 100 children on national security-related charges; Iraq had detained more than 900. See: UN Security Council, *Report of the Secretary-General on Children and Armed Conflict (A/73/907-S/2019/509)*.

A growing number of countries have introduced or amended laws allowing authorities greater scope to detain people, including children, who are perceived to be security threats.²² Such laws increase periods of detention, allow punitive and indefinite detention, and expand the scope of military courts.²³ Although the Paris Principles affirm that States should not detain, prosecute, or punish children solely for association with armed forces and armed groups, some States have convicted children of terrorism solely for such membership, without evidence of other criminal offenses.

Many respondents also mentioned the double victimization of children in armed conflict: first, by the armed groups that recruit them and then again by their own governments when they are arrested and detained.

The Secretary-General has warned that the detention of children can exacerbate community grievances and has repeatedly urged States to prioritize alternatives to detention.²⁴ The 2019 *UN Global Study on Children Deprived of Liberty* urges Member States not to detain, prosecute, or punish children for mere association with armed groups, and instead, to provide them with rehabilitation and reintegration assistance. The study also recommends that States explicitly exclude children from counterterrorism and national security legislation, and ensure that children accused of national security offenses be dealt with exclusively in the juvenile justice system.²⁵ In November 2019, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) issued a statement on children and armed conflict,

expressing concern about the detention of children “for their real or perceived association with armed groups and violent extremist groups,” noting that “detention and prosecution of children for alleged involvement with armed groups is never in the best interests of children and violates their right to rehabilitation and reintegration.”²⁶

A practical tool to prevent the unlawful and arbitrary detention of children is for governments to sign explicit agreements to swiftly transfer children from military custody to civilian child protection authorities for rehabilitation or reintegration. In 2017, a UN Security Council Presidential Statement stressed the need to pay “particular attention” to the treatment of children allegedly associated with non-State armed groups, including those who commit acts of terrorism, “including through establishing standard operating procedures for the rapid handover of these children to relevant civilian child protection actors.”²⁷ In its November 2019 statement, the ACERWC called upon Member States of the African Union to end the military detention of children and adopt formal protocols for the handover of children from military custody to civilian child protection actors.²⁸

Since 2013, Chad, Mali, Niger, and Sudan have each signed formal handover protocols for this purpose. Such protocols typically require the transfer of children within a very short period, usually 24 to 72 hours. Although implementation can be uneven, such protocols can minimize any military detention of children. In Mali, for example, military authorities

²² UN General Assembly, *Global study on children deprived of liberty* (A/74/136), July 11, 2019, <https://undocs.org/A/74/136> (accessed December 15, 2019), paras. 72-78.

²³ Human Rights Watch, *Extreme Measures. Abuse against Children Detained as National Security Threats*, July 28, 2016.

²⁴ UN Security Council, *Report of the Secretary-General on Children and Armed Conflict* (S/2016/360), April 20, 2016, <https://undocs.org/S/2016/360> (accessed December 15, 2019), para. 16.

²⁵ Nowak, Manfred, *UN Global Study on Children Deprived of Liberty*, 2019, <https://omnibook.com/Global-Study-2019> (accessed December 10, 2019), pp. 615, 652.

²⁶ African Committee of Experts on the Rights and Welfare of the Child (ACERWC), Outcome Statement for the Day of General Discussion on Children Affected by Armed Conflict, November 26, 2019, https://www.acerwc.africa/wp-content/uploads/2019/12/Outcome-Statement_-_ACERWC-Day-of-General-Discussion_-_final.pdf (accessed December 19, 2019).

²⁷ UN Security Council, Presidential Statement (S/PRST/2017/21), October 31, 2017, <https://undocs.org/en/S/PRST/2017/21> (accessed December 14, 2019).

²⁸ ACERWC, Outcome Statement, November 26, 2019.

transferred more than 70 children detained for suspected involvement with armed groups to a rehabilitation program after signing such a protocol.²⁹

The Impact on Juvenile Justice Standards

IHL and international human rights law provide special protections for children both during peacetime and in situations of armed conflict. Children who have committed illegal acts need to be treated in accordance with international juvenile justice standards, which emphasize alternatives to detention and prioritize the rehabilitation and social reintegration of the child. The CRC states that, regardless of the circumstances, the arrest, detention, or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time.

However, in a number of situations children are being charged with terrorist offenses, treated like adults, and dealt harsh sentences, including the death penalty. Pakistan³⁰ and Iraq,³¹ for example, have applied the death penalty for terrorist offenses, including for children. In a number of countries, governments have criminalized mere association with designated terrorist groups, held children in prolonged police custody and/or pre-trial detention, subjected children to special trials (including in military courts) with limited access to lawyers, and lengthened sentences. The detention of children perceived as national security threats without due process of law is a clear violation of juvenile justice standards.

As counterterrorism legislation aims to recognize the particular gravity of terrorism-related activity and to provide means for investigation and prosecution, specialized bodies, procedures, and sentences associated with counterterrorism often focus on a punitive approach, which can be especially detrimental when applied to children. This approach not only undermines international juvenile justice standards but also negatively impacts the long-term social reintegration of the children in question.

States are obligated to have adequate legal, institutional, and operational frameworks to respect, protect, and fulfill children's rights in the administration of justice.³² However, many national counterterrorism laws fail to distinguish between children and adults.³³ Their provisions may be contrary to juvenile justice standards, creating ambiguity about which law should be applied. In practice, counterterrorism laws may be given preference and applied to children, even when they violate children's rights.

Age of Criminal Responsibility

Article 40(3)(a) of the CRC provides that States Parties shall establish a minimum age below which children shall be presumed not to have the capacity to deliberately and willfully infringe on the criminal law.³⁴ The age set by States, however, varies from the age of 7 up to 18. Neither the CRC nor the UN Minimum Standards and Norms of Juvenile Justice set a minimum age of criminal responsibility. Over 50 States Parties have raised the

²⁹ Watchlist on Children and Armed Conflict and Human Rights Watch, *Military Detention of Children in Armed Conflict: The Role of Handover Protocols in Protecting Children's Rights*, December 2019, https://watchlist.org/wp-content/uploads/2362-watchlist-military-detention-policy_note-lr.pdf (accessed December 19, 2019).

³⁰ See, for example: OHCHR, "Death penalty: Pakistan continues to execute child offenders in spite of UN experts' appeals," October 2, 2015, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16560&LangID=E> (accessed December 19, 2019); and Child Rights International Network (CRIN), "Inhuman sentencing of children in Pakistan: Briefing for the 28th Session of the Universal Periodic Review," October 2017, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=4239&file=EnglishTranslation> (accessed December 19, 2019).

³¹ See, for example: UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, https://www.ohchr.org/Documents/Countries/IQ/UNAMI_HRO_DP_1Oct2014.pdf (accessed December 19, 2019).

³² Convention on the Rights of the Child (CRC), adopted November 20, 1989, UN General Assembly Resolution 44/25, entered into force September 2, 1990, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (accessed December 10, 2019), art. 40(3)(b); also: Committee on the Rights of the Child, General Comment No. 10, Children's Rights in Juvenile Justice, CRC/C/GC/10 (2007), <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> (accessed December 5, 2019).

³³ UN General Assembly, *Global study on children deprived of liberty* (A/74/136), July 11, 2019, para. 75.

³⁴ CRC, art. 40(3)(a).

minimum age following ratification of the CRC, and the most common minimum age of criminal responsibility internationally is 14. Nevertheless, reports submitted by States Parties indicate that some retain an unacceptably low minimum age of criminal responsibility; for example, in Iraq at 9 years old and Syria at 10 years old.

In September 2019, the Committee on the Rights of the Child in its General Comment 24³⁵ called on all States to raise the minimum age of criminal responsibility to 14 years old; this replaced the Committee's previous position from General Comment 10 (2007), which had recommended that the minimum age of criminal responsibility should not be below 12. This change by the Committee on the Rights of the Child reflects concerns about the persistent use of deprivation of liberty and application of judicial processes against young children. Importantly, the General Comment highlights several specific issues affecting children in CT contexts, including their recruitment and use by non-State armed groups, including those designated as terrorist groups, and children in customary, indigenous, or other non-State justice systems.

The Committee on the Rights of the Child has also said that States should not create exceptions to lower the minimum age of criminal responsibility in cases where, for example, a child is accused of committing a serious offense, including national security and terrorist offenses.³⁶

Children Perceived as "National Security Threats"

In addition to the erosion of children's rights through the increasing recourse to detention and the disregard for juvenile justice standards,

respondents to this research expressed serious concern about the increasing designation of children as "threats" and its subsequent consequences.

The Erosion of the Principle of Distinction

The principle of distinction – whereby persons fighting in armed conflict must, at all times, distinguish between civilians and combatants – is the basic cornerstone of IHL. It serves as the basis for many rules and standards within IHL for the protection of civilians in armed conflict. There is no legal significance in describing deliberate acts of violence against civilians or civilian objects in situations of armed conflict as "terrorist" because such acts already constitute serious violations of IHL.³⁷

In many countries in situations of armed conflict, human rights are regularly sidestepped by counterterrorism measures and – as one respondent explained – we are seeing a global shift where the laws governing armed conflict are becoming "the most endangered species of international law."

One of the consequences is the emergence, in recent years, of a new category of people in situations of armed conflict, which goes beyond the standard IHL and international human rights law dichotomy: the labelling of certain individuals or groups neither as "combatants" nor as "civilians," but as "security threats." In some countries, governments have detained people, including children, from territories controlled by violent extremist groups, considering them security threats regardless of any actual association with armed groups. This blanket approach, contrary to IHL, has been used to justify mass detention, including of children, in parts of the world such as Iraq, Libya, Nigeria, and Syria, among others.

The internment of children regarded as security threats for their real or perceived ties to terrorist groups is another consequence of such an approach. For example, across Syria and especially in the northeast,

³⁵ Committee on the Rights of the Child, General Comment No. 24, Children's Rights in the Child Justice System, CRC/C/GC/24 (2019), <https://undocs.org/CRC/C/GC/24> (accessed December 5, 2019), para. 22.

³⁶ Ibid., para. 25.

³⁷ ICRC, "What does IHL say about terrorism?", January 22, 2015.

children are stranded in camps, detention centers, and orphanages. Some of these children are born of foreign nationals (*see below*), but tens of thousands of them are Syrian nationals held in limbo amid dire humanitarian needs.³⁸ The impacts of such internment and restrictions on freedom of movement are extremely harmful. Children are denied their basic rights, such as education, health care, access to food, clean water, shelter, and essential services, and such treatment violates their rights to due process and fair trial. Similar challenges are present in Libya and the Lake Chad Basin, for example.

The Treatment of “Foreign Fighters” and Their Families

In March 2019, the Islamic State (IS) lost the remainder of its territory in Syria. Its collapse left the international community with complex and unprecedented challenges, particularly with how to respond to the thousands of foreigners allegedly associated with the terrorist group, including their wives and children. The magnitude of this phenomenon extends beyond Iraq and Syria, as “foreign fighters” participate or have participated in conflicts in other areas, including *inter alia* Nigeria and Afghanistan.

Despite increasing awareness and the repatriation of minors by some governments, efforts by States to protect their child nationals remain limited and ad hoc. Many countries of origin have refused to repatriate their nationals on the premise that they harbor extremist ideologies or could carry out attacks at home. For

example, in July 2019, the Australian Parliament passed a new law creating Temporary Exclusion Orders, which would give the minister of home affairs the power to block a person over 14 years of age – including an Australian citizen – from returning to Australia for up to two years if the minister “suspects on reasonable grounds” that an order would prevent support or assistance to a terrorist organization.³⁹ Human rights and legal experts have expressed concerns about the law, including its potential impacts on children.⁴⁰

While governments, both in conflict-affected countries and those of origin, have legitimate security concerns on how to deal with individuals linked to IS, they also have an obligation to protect the rights of thousands of affected children. UNICEF estimates that 28,000 children from more than 60 different countries, including almost 20,000 from Iraq, remain trapped in northeast Syria, mostly in displacement camps; more than 80 percent of these children are under the age of 12, and 50 percent are under the age of five.⁴¹ An additional 1,000 children of foreign fighters are believed to be in Iraq.⁴² Many of these children are held in appalling and sometimes deadly conditions, stripped of their citizenship, and denied access to legal or consular services.

Many of these children do not have legal documentation of their identities for a variety of reasons.⁴³ Thousands were born under IS rule, including to foreign parents, without access to government-issued birth certificates

³⁸ “Unwanted, exploited and abused: Tens of thousands of children in Al-Hol camp and several parts of Syria in limbo amid dire humanitarian needs,” UNICEF news note, July 17, 2019, <https://www.unicef.org/press-releases/unwanted-exploited-and-abused-tens-thousands-children-al-hol-camp-and-several-parts> (accessed December 14, 2019).

³⁹ Counter-Terrorism (Temporary Exclusion Orders) Bill 2019 (Cth), July 30, 2019, <https://www.legislation.gov.au/Details/C2019B00062> (accessed December 15, 2019).

⁴⁰ *See, for example:* Law Society of New South Wales, Letter to Law Council of Australia re Counter-Terrorism (Temporary Exclusion Orders) Bill 2019, March 6, 2019, <https://www.lawsociety.com.au/sites/default/files/2019-04/Letter%20to%20LCA%20-%20Counter-Terrorism%20%28Temporary%20Exclusion%20Orders%29%20Bill%202019%20-%206%20March%202019.pdf> (accessed December 15, 2019); and Ní Aoláin, Fionnuala, “Legislative Responses to ISIS Returnees Take a New Twist in Australia,” *Just Security*, July 26, 2019, <https://www.justsecurity.org/65110/legislative-responses-to-isis-returnees-take-a-new-twist-in-australia/> (accessed December 15, 2019).

⁴¹ “Governments should repatriate foreign children stranded in Syria before it’s too late,” Statement by UNICEF Executive Director Henrietta Fore, November 4, 2019, <https://www.unicef.org/press-releases/governments-should-repatriate-foreign-children-stranded-syria-its-too-late> (accessed December 18, 2019).

⁴² “Protect the rights of children of foreign fighters stranded in Syria and Iraq,” Statement by UNICEF Executive Director Henrietta Fore, May 21, 2019, <https://www.unicef.org/press-releases/protect-rights-children-foreign-fighters-stranded-syria-and-iraq> (accessed December 18, 2019).

⁴³ NRC, *Barriers from birth: Undocumented children in Iraq sentenced to a life on the margins*, April 30, 2019, <https://www.nrc.no/globalassets/pdf/reports/iraq/barriers-from-birth/barriers-from-birth-med-pages.pdf> (accessed December 19, 2019).

or other civil documents proving their legal identity. For others, their documents may have been taken by IS, or lost as they fled. In some cases, local security forces or militias may have confiscated these children's documents due to their perceived association with IS. These children are not only at risk of statelessness, but also of discrimination and challenges accessing education, housing, health care, and future employment.⁴⁴

Public anxiety about terrorism is understandable, and States have an obligation to ensure national security. At the same time, States have an obligation to ensure the best interests of the child are prioritized, not least through the safe repatriation of child nationals, including those accused of having committed crimes. Furthermore, States – especially those who are Parties to the 1954 and 1961 Conventions on Statelessness – have obligations to prevent statelessness.

In a recent statement,⁴⁵ four high-level UN advocates expressed their concern about the precarious human rights, humanitarian, and security situation facing the thousands of people, mainly women and children, being held in northern Syria and Iraq on national security charges. They emphasized that States must act in the best interests of the child, including by ensuring their repatriation and reintegration.

Internationally agreed-upon standards have established that access to support for rehabilitation is key to the recovery of these children and their families, access which is not currently available in locations such as displacement camps in Syria. These children must return home and be reintegrated in their communities, and benefit from a full range of reintegration assistance, including family reunification, medical attention,

and mental health and psychosocial support. States should do everything possible to maintain family unity, and to provide the specialized protection, health, and other rehabilitative support that these children and their families will need upon return.

Screening, Prosecution, Rehabilitation, and Reintegration (SPRR)

Key informants of this research highlighted concerns about the developing process of Screening, Prosecution, Rehabilitation, and Reintegration (SPRR). This process, grounded in SCR 2396⁴⁶ (2017), urges Member States to strengthen their efforts to stem the threat posed by foreign terrorist fighters returning from conflict zones by adopting measures on border control, criminal justice, information sharing, and counter-extremism. It also calls on Member States to take appropriate action regarding suspected terrorists and accompanying family members who entered their territories, including by considering appropriate prosecution, rehabilitation, and reintegration measures, in compliance with domestic and international law.⁴⁷

SCR 2396 further urges States “to assess and investigate [...] suspected foreign terrorist fighters and their accompanying family members, including spouses and children,” in order to develop comprehensive risk assessments and consider appropriate action, including prosecution.⁴⁸

Child protection experts consulted in the course of this research stressed that SPRR is still an evolving concept that lacks sufficient parameters and operational guidance and should be approached with caution. The terms “screening” and “risk assessment” are particularly problematic as they are not clearly

⁴⁴ Houry, Nadim, “Children of the Caliphate: What to Do About Kids Born Under ISIS,” *Foreign Policy*, November 23, 2016, <https://www.hrw.org/news/2016/11/23/children-caliphate> (accessed December 19, 2019).

⁴⁵ OSRSG-CAAC, et al., “Joint Statement on Human Rights and Humanitarian Concerns Related to Conflict Affected Women and Children in Syria and Iraq,” November 11, 2019, <https://childrenandarmedconflict.un.org/joint-statement-on-human-rights-and-humanitarian-concerns-related-to-conflict-affected-women-and-children-in-syria-and-iraq/> (accessed December 5, 2019).

⁴⁶ UN Security Council, Resolution 2396 (2017), S/RES/2396 (2017), [https://undocs.org/S/RES/2396\(2017\)](https://undocs.org/S/RES/2396(2017)) (accessed December 13, 2019).

⁴⁷ Ibid., para. 29.

⁴⁸ Ibid.

defined. It remains to be seen how SPRR will apply to children who compose large numbers of those allegedly associated with foreign terrorist fighters.

It is useful to recall that the Integrated Disarmament, Demobilization, and Reintegration Standards (IDDRS) and the Paris Principles have already set forth how to deal with children allegedly associated with armed groups. There is a real risk that the new SPRR guidance may undermine the imperative to treat children primarily as victims and to favor their swift reintegration into society. Child rights advocates should be involved and closely consulted in the development of guidelines to operationalize SPRR, a process which is being spearheaded by UNODC, UNOCT, and the UN Counter-Terrorism Committee Executive Directorate (CTED).

A Shrinking Humanitarian Space

Restriction of Access to Certain Areas and Groups

In addition to the direct impacts of counterterrorism measures on children in armed conflict, these measures may also limit humanitarian response to children in need. Insecurity and ongoing counterterrorism operations in certain areas significantly limit humanitarian access. Additionally, some respondents suggested that discrimination and the perception that certain groups of people may present a security threat has made it extremely difficult for humanitarian actors to access certain areas and certain populations.

In Iraq, for example, women and children with perceived ties to IS who live in displacement camps have been denied access to basic humanitarian services. A 2018 report from Amnesty International found that tribal and local authorities, Iraqi forces including the Popular Mobilization Units (PMU), other government-aligned militias, and community leaders had denied these women and children access to food, water, and health care and/or discriminated against them in the provision of assistance.⁴⁹

This shrinking of humanitarian space has an immense impact on child victims of armed conflicts, and further practical guidance and good practices should be developed as a priority to ensure that vulnerable populations are accessed.

Donor Conditionality and Its Impact on Humanitarian Action

With an expansion of terrorist groups' activity globally, CVE has increasingly become a driving force within the foreign aid agenda of many donor governments. There are currently many different and often divergent governmental and intergovernmental definitional approaches to the concept of violent extremism.⁵⁰ When the provision of aid is driven by CVE or PVE, it runs contrary to principled humanitarian action and risks undermining the humanitarian principles of independence and impartiality.⁵¹

Experts on IHL, child protection, and human rights agree that, regardless of the real or perceived association of women and children with designated terrorist groups, humanitarian principles must maintain primacy. All individuals have a right to receive humanitarian assistance without discrimination and according to the principles

⁴⁹ Amnesty International, *The Condemned: Women and Children Isolated, Trapped and Exploited in Iraq*, April 2018, <https://www.amnesty.at/media/2671/the-condemned-woman-and-children-isolated-trapped-and-exploited-in-iraq.pdf> (accessed December 19, 2019).

⁵⁰ For example, in its 2011 Prevent Strategy, the UK Government defined extremism as "vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas." See Home Office, *Prevent Strategy*, June 2011, <https://www.gov.uk/government/publications/prevent-strategy-2011> (accessed December 5, 2019), p.107.

⁵¹ NRC, "Countering Violent Extremism and humanitarian action" (position paper), June 2017.

of humanity, neutrality, impartiality, and independence. However, these long-established principles are now endangered by so-called “donor conditionality clauses” that many States are imposing. These clauses can be divided into the following main categories: a) vetting of partners and contractors; b) vetting of geographical areas; and c) vetting of beneficiaries.

For example, USAID introduced a new clause into all its grant contracts with strict new conditions aimed at preventing Boko Haram and the Islamic State of West Africa Province from benefiting from US assistance. The clause states that all recipient agencies “must obtain the prior written approval of the USAID Agreement Officer before providing any assistance [...] to individuals whom the Recipients affirmatively knows to have been formerly affiliated with Boko Haram [...] as combatants or non-combatants.”⁵² In practice, this means that aid agencies receiving USAID funding risk falling afoul of US counterterrorism legislation if they do not vet their beneficiaries and refuse help to any civilians suspected of links with the armed group.⁵³

These clauses compromise the core humanitarian principles and risk denying access to the very children who need it most, specifically those from the most vulnerable and excluded populations. Implementing programs on the basis of such conditions set by donors can also impact humanitarian organizations’ ability to adhere to the principles of non-discrimination and the best interests of the child, as enshrined in the CRC. However, in an increasingly challenging funding

environment, conditionality clauses put undue pressure on humanitarian organizations, which already take great care to prevent aid from being misappropriated by warring parties. Furthermore, such clauses limit humanitarianism’s ability to access all civilians, including children, in need of life-saving assistance. Further research and analysis of the impacts of counterterrorism measures on humanitarian action are needed to safeguard the humanitarian space and principles.

The UN Security Council, General Assembly, and Secretary-General have repeatedly emphasized that Member States’ counterterrorism measures must respect their obligations under international law, including IHL. UN General Assembly Resolution 70/291 (2016) urges Member States to ensure “that counter-terrorism legislation and measures do not impede humanitarian and medical activities or engagement with all relevant actors as foreseen by international humanitarian law.”⁵⁴ Despite these repeated acknowledgements and commitments, in his 2017 *Report on Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations*, the Secretary-General noted that “counter-terrorism measures continue to impact on principled humanitarian action, including counter-terrorism clauses that run contrary to humanitarian principles.”⁵⁵

Donors should closely consult with humanitarian organizations, including child protection actors, in order to create a reasonable and responsible space of operation, while respecting humanitarian principles and ensuring access to the most vulnerable, including children.

⁵² Anyadike, Obi, “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 December 7, 2019).

⁵³ Ibid.

⁵⁴ UN General Assembly, Resolution 70/291 (2016), A/70/291 (2016), <https://undocs.org/en/A/RES/70/291> (accessed December 19, 2019), para. 22.

⁵⁵ UN General Assembly, *Report of the Secretary General on Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations* (A/72/76-E – E/2017/58), April 13, 2017, <https://undocs.org/A/72/76> (accessed December 15, 2019), para. 57.

IV. Challenges to Responding to the Erosion of Children's Rights in Armed Conflict

In an era where asymmetric threats and the fight against terrorism are high on the international agenda, the plight of children recruited, exploited, and abused by terrorist groups is widely recognized. However, the protection of these children has not been adequately addressed nor appropriately prioritized within approaches to address security concerns. Lenses used to treat these new threats often take the protection of children as a secondary consideration, or not at all. For this reason, continued and specific advocacy on this issue remains necessary and urgent.

Challenges and Gaps in the Current Advocacy Response

The respondents to this research identified a number of challenges to strengthening the CAAC perspective in counterterrorism policy and programs. Several highlighted the need to bridge core advocacy on child protection and child rights with broader advocacy on human rights, good governance, and access to justice. Respondents noted the importance of highlighting how these are all critical for a successful, holistic counterterrorism strategy that can and should look to more effective reintegration strategies for children. With UN Secretary-General Antonio Guterres' emphasis on prevention, this approach is ever more salient.

In part as a consequence of the above, child protection and child rights actors have not been adequately represented during CT discussions. Stronger efforts are needed to ensure the inclusion of child protection and children's rights perspectives in discussions on counterterrorism and national security. Furthermore,

greater dialogue and exchange between different sectors is needed; this includes bringing together experts on counterterrorism, sanctions, national security and defence, with those working in areas such as foreign affairs, treasury, humanitarian assistance, child protection, and human rights, among others. While some of these actors have not traditionally interfaced, counterterrorism challenges all actors to coordinate in new ways.

Given their obligations to uphold IHL and other legal frameworks for the protection of civilians and human rights, security actors – including Member States and concerned agencies – should strengthen their consultation with child protection actors and create space for engagement and the contribution of technical expertise. For example, many child protection actors have a wealth of expertise on engagement with non-State armed groups, skills that may serve the wider security community.

Issues Needing Greater Attention and Engagement

Protecting the Rights of All Children, Regardless of Origin

As previously mentioned, the situation of children affected by the foreign terrorist fighter phenomenon has been an issue of increased attention in connection with the demise of IS and the large number of foreign members of the group and their families. While the increased attention and associated advocacy for these children's protection is a welcome and needed development, it has in part led to inadequate

focus on the plight of children born of Syrian or Iraqi nationals and who are also forcibly confined in displacement camps in Iraq and Syria in violation of their rights. For example, as of late November 2019, the notoriously overcrowded Al-Hol displacement camp in northeastern Syria held 68,744 people, of whom 45 percent were Iraqis, 40 percent were Syrians, and 15 percent were third-country nationals.⁵⁶

Similarly, it is important to recall that children in other parts of the world affected by violent extremism are suffering violations of their rights; for example, children affected by Boko Haram in Nigeria, al-Shabaab in Somalia, the Taliban in Afghanistan, etc. As one respondent put it, this reflects a “very Western-centric approach” to the issue of children of alleged terrorist fighters.

The Need for Technical Assistance on Child Protection

This research suggests the need for greater specialized technical support on child protection and child rights to concerned governments. Some government representatives with whom Watchlist spoke acknowledged that they face a knowledge gap on how to deal with the practical issues of children's rights in their CT efforts. Civilian protection and human security must be at the forefront of counterterrorism, including for third party States supporting such efforts. However, this requires increased engagement with foreign and defense ministries, as well as the exchange of good practices and lessons learned among different foreign governments.

Over the past year, there have been several positive examples of public efforts to exchange good practices and strengthen adherence to

international laws and norms for the protection of human rights, humanitarian principles, and IHL in CT contexts. These include, but are not limited, to:

- The “Solutions for Safeguarding Humanitarian Action in UN Security Council Sanctions Regimes,” a project conducted by the International Peace Institute (IPI) in partnership with the German Federal Foreign Office and which included a series of discussion papers and events aimed at broadening and enhancing awareness of how sanctions regimes and their implementation may adversely impact principled humanitarian action and to propose ways in which the UN and its Member States can minimize this impact;⁵⁷
- The September 2019 UN General Assembly high-level side event on “UN Counter-Terrorism Frameworks and Sanctions Regimes: Safeguarding Humanitarian Space,” organized by the Permanent Missions of Belgium and Germany to the United Nations and the Delegation of the EU to the United Nations;
- The November 2019 VOICE workshop on the impacts of EU sanctions and counterterrorism legislation on humanitarian action, which brought together humanitarian NGOs, key stakeholders from the European Commission, and external experts for an exchange on the evolving approach of the EU to restrictive measures and the operational and policy implications for humanitarian actors; and
- The December 2019 UN side event organized by the Permanent Mission of Kazakhstan to the United Nations on “Kazakhstan’s Experience in Repatriation of Its Citizens from Conflict Zones and Their Reintegration into Society.”

⁵⁶ UN Office for the Coordination of Humanitarian Affairs (OCHA), “Syrian Arab Republic: North East Syria: Al Hol camp (as of 21 November 2019),” <https://www.humanitarianresponse.info/en/operations/syria/document/northeast-syria-%E2%80%93-al-hol-camp-21-november-2019> (accessed December 19, 2019).

⁵⁷ See: Debarre, Alice, International Peace Institute (IPI), “Safeguarding Humanitarian Action in Sanctions Regimes” (issue brief), June 2019, https://www.ipinst.org/wp-content/uploads/2019/06/1906_Sanctions-and-Humanitarian-Action.pdf (accessed December 19, 2019); and Debarre, Alice, IPI, *Making Sanctions Smarter: Safeguarding Humanitarian Action*, December 19, 2019, https://www.ipinst.org/wp-content/uploads/2019/12/1912_Making-Sanctions-Smarter.pdf (accessed December 20, 2019).

The Production of Tailored Guidance

All respondents acknowledged and welcomed the UN's efforts to develop practical handbooks and guidelines on the protection of children's rights in CT contexts.⁵⁸ These instruments have, in part, contributed to bridging the gap between the CT and CAAC agendas and, as such, have helped bring children's rights into the counterterrorism arena through increased dialogue between the security and child protection communities.

Some respondents cautioned against the treatment of children designated as "terrorist" or "associated with terrorist groups," noting that such labels risk further stigmatizing affected children or undermining their effective reintegration into their communities.

As with any practical guidance, one of the key challenges to effective implementation is the dissemination, roll-out, and ensuring that they reach the necessary audiences.

The main challenge with these tools is to go beyond the policy level and to strengthen dialogue between the CAAC and CT communities at the operational level.

All the respondents agreed that rather than the development of additional guidelines or handbooks restating international principles on these issues, experts should focus their efforts on the effective dissemination and implementation of those already in existence. They also expressed the need for: 1) more practical and technical advocacy tools; 2) practical implementation of existing laws, norms, and guidance and the provision of technical support to States to do so; and 3) strengthening efforts to identify and disseminate best practices and lessons learned on what actually works in such contexts.

⁵⁸ *These include, but are not limited to:* Children affected by the foreign-fighter phenomenon: Ensuring a child rights-based approach (UNOCT-UNCCT); Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System (UNODC); *and* Roadmap on the Treatment of Children Associated with Terrorist and Violent Extremist Groups (UNODC).

Recommendations to Strengthen and Improve the Protection of Children's Rights

For Member States

- Ensure that domestic laws, policies, and practices recognize the primary status of affected children – including those allegedly associated with designated terrorist or violent extremist groups – as victims, and ensure that the best interests of the child are a primary consideration in national counterterrorism strategies, in line with international laws and standards.
- Immediately end all unlawful and arbitrary detention of children; establish and implement protocols for the timely transfer of children allegedly associated with armed groups, including designated terrorist or violent extremist groups, to civilian child protection authorities for rehabilitation. In cases in which children are charged with national security offenses of a grave nature, they should be treated in accordance with international juvenile justice standards, which emphasize alternatives to detention and prioritize the rehabilitation and social reintegration of the child.
- Facilitate the return of child nationals, including those accused of affiliation with designated terrorist groups, and provide rehabilitation and reintegration support, in line with international standards and ensuring the best interests of the child.
- Engage with relevant child protection and child rights actors, including UNICEF and the ICRC, to seek guidance and support for the repatriation of child nationals to countries of origin.
- Refrain from implementing policies that, through act or omission, render individuals, including children, stateless, and strengthen efforts to ensure the provision of consular and legal assistance to affected children.
- Strengthen engagement with the child protection and children's rights community, including by requesting technical support when it comes to the treatment of children in counterterrorism operations.
- Ensure counterterrorism operations and strategies to counter violent extremism fully uphold governments' obligations under international human rights and IHL, in particular the principles of distinction and proportionality, and as these apply to children.
- Ensure strategies to counter violent extremism and terrorism do not place undue burden on humanitarian actors that prevent them from safely providing assistance to children in areas not under government control, nor that violate fundamental humanitarian principles.

For the UN Security Council and Its Working Group on CAAC

- Ensure that CT resolutions reflect or make reference to existing CAAC resolutions and specialized protections for children, addressing child rights concerns and providing specific recommendations.
- Consider holding a discussion or an Arria Formula meeting on strengthening the protection of children accused of association with designated terrorist groups.

- Mainstream CAAC concerns into counterterrorism discussions, including by inviting the SRSG-CAAC, UNICEF, and civil society experts on child protection and/or children's rights to brief the Council during its discussions on counterterrorism.
- Call upon all countries affected by or involved in situations of armed conflict to develop, sign, and implement protocols with the UN for the timely handover of children allegedly associated with armed forces or armed groups to child protection actors; in particular, the SCWG-CAAC should make recommendations in this regard, as relevant, in its conclusions on the Secretary-General's country-specific reports on children and armed conflict.

For the OSRSG-CAAC, UNICEF, and Other High-Level UN Advocates

- In public statements, specifically highlight children's rights concerns in the context of counterterrorism activities, drawing linkages between the CAAC and CT agendas and the negative impacts on children.
- Call upon all countries affected by or involved in situations of armed conflict to develop and sign protocols with the UN for the timely handover of children allegedly associated with armed forces or armed groups to child protection actors.

For Child Protection and Child Rights Actors

- Consider ways to strengthen coordination and synergies between the CAAC and CT agendas; this could include organizing joint workshops and conferences – including, for example, a workshop to follow-up on implementation of the Paris Principles in the context of recent counterterrorism operations.

- Strengthen advocacy strategies for the protection of children's rights in CT contexts, particularly by seeking ways to address legitimate security concerns and offer practical guidance and acceptable practices for partners in a principled way.
- Fortify the exchange of best practices and lessons learned on the protection of children's rights in the context of counterterrorism operations and efforts to counter violent extremism.

For UN Counterterrorism Actors

- Strengthen proactive engagement with child protection actors on the Screening, Prosecution, Rehabilitation, and Reintegration (SPRR) development process to ensure that it takes on an approach that is human rights-based and child-sensitive.
- Ensure that counterterrorism measures are developed and implemented in line with established international laws and standards regarding children's rights.

For Donors

- Refrain from introducing conditionality clauses in humanitarian funding agreements that could potentially cut off humanitarian access to children in need or violate the fundamental humanitarian principles of humanity, neutrality, impartiality, and independence.
- Engage and closely consult with humanitarian organizations, including child protection actors, to create a reasonable and responsible space of operation, with an emphasis on respecting humanitarian principles and ensuring humanitarian access to the most vulnerable, including children.

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