WATCH LIST ON CHILDREN AND ARMED CONFLICT
20 years
working together to
protect children in war

FORDHAM
THE JESUIT UNIVERSITY OF NEW YORK

Institute of International
Humanitarian Affairs

Denial of Humanitarian Access for Children: Legal, Policy, and Operational Challenges

About Watchlist

Watchlist on Children and Armed Conflict ("Watchlist") 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 (NGOs), enhancing mutual capacities and strengths. Working together, we collect and disseminate information on violations against children in conflicts in order to influence key decision-makers and implement programs and policies that effectively protect children. Watchlist is a fiscally sponsored project of United Charitable, a US-based 501(c)3 not-for-profit organization.

For further information about Watchlist, please visit: www.watchlist.org.

About IIHA

Founded in 2001, the Institute of International Humanitarian Affairs (IIHA) at Fordham University serves as a unique bridge between academia and humanitarian efforts worldwide. Its mission is to educate and train current and future aid workers through rigorous academic programs which offer undergraduate and graduate degrees in Humanitarian Studies, and through humanitarian training courses hosted online and in various rotating locations around the world, which equip individuals with the knowledge and skills needed to respond effectively to humanitarian crises. IIHA also publishes on a wide range of humanitarian topics and hosts events to further the understanding of conflicts and natural disasters through critical analysis and shared experiential knowledge.

For further information about IIHA, please visit:
https://www.fordham.edu/iiha/

Contents

SUMMARY

In recent years, the denial of humanitarian access has become one of the most prevalent grave violations against children in situations of armed conflict documented by the United Nations as part of its children and armed conflict (CAAC) mandate.

In 2020 alone, the UN reported over 4,100 incidents of denial of humanitarian access for children perpetrated by parties to armed conflict, states and non-state armed groups alike. Incidents include attacks on aid workers, bureaucratic and administrative impediments, suspension or diversion of aid, and interferences with programming decisions. Not all forms of denial of humanitarian access constitute violations of international law, but all disrupt humanitarian operations and, in many cases, have a devastating impact on the survival of children caught in armed conflict.

Building on previous work, Watchlist on Children and Armed Conflict and Fordham University's Institute of International Humanitarian Affairs (IIHA) conducted research on the denial of humanitarian access for children in armed conflict. This policy paper is the result of that research, and it examines the international legal framework on denial of humanitarian access as it applies to children; the impact of counterterrorism measures, sanctions regimes, and donor conditionality clauses affecting humanitarian access for children; the various forms of denial of humanitarian access and their consequences on children, including emerging obstacles such as the COVID-19 pandemic; the challenges of monitoring and reporting on the denial of humanitarian access in the context of the UN's CAAC mandate; and the potential risks and opportunities of making the denial of humanitarian access a trigger for listing perpetrators in the Secretary-General's annual report on children and armed conflict. This paper concludes with a series of recommendations directed to the UN and its Member States, donors, and the humanitarian community, to influence normative and policy change.

1. INTRODUCTION

1.1. Background

In situations of armed conflict, humanitarian access[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.[2] These were perpetrated by both state actors and non-state armed groups (NSAGs) alike. The denial of humanitarian access can take many forms, including attacks against relief workers and convoys; bureaucratic and administrative impediments, such as cumbersome registration procedures and denial of entry visas for humanitarian personnel; suspension or diversion of aid; and interferences with programming decisions, such as the selection of beneficiaries or areas of intervention. Parties to conflict have also used siege and blockade tactics to deny the delivery of relief supplies to civilians.

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. Recent research[3] 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. Moreover, the denial of humanitarian access increases the vulnerability of children to other rights violations and abuses, such as abduction, recruitment and use by armed forces or NSAGs, and rape and other forms of sexual violence, including early marriage.[4]

Counterterrorism (CT) measures and sanctions regimes compound these issues and further complicate children's access to humanitarian assistance. 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.

In a 2020 policy note on the impact of CT measures on children's rights,[5] Watchlist on Children and Armed Conflict (Watchlist) identified the need for further research and analysis of the unintended consequences of CT measures in denying humanitarian access for children. Indeed, there has been a growing recognition among governments, humanitarian actors, human rights advocates, and other stakeholders of the unintended consequences of CT and sanctions regimes on access negotiations, as well as operational constraints related to de-risking of banks.[6] This has, in turn, led to greater efforts to monitor the denial of access, as well as to identify and implement solutions to preserve humanitarian space and principles. Despite increased attention in recent years on the need to collect evidence of the impact of the denial of humanitarian access on civilians, there is a lack of analysis of this issue as it relates specifically to children.

In order to better protect children in situations of armed conflict, the UN Security Council identified and condemned the denial of humanitarian access for children as one of six grave violations committed against children in armed conflict, to be monitored

through the UN's children and armed conflict (CAAC) mandate, including the Monitoring and Reporting Mechanism (MRM). The MRM was established in 2005 through Security Council Resolution 1612, with the ultimate goal of influencing the conduct of parties to conflict in order to end and prevent grave violations against children. One of the ways the CAAC mandate seeks behavior change is through the Secretary-General's annual report on children and armed conflict, which includes annexes that list perpetrators of these violations by country, effectively "naming and shaming" them. Denial of humanitarian access for children is the only one of the six grave violations that does not trigger the listing of perpetrators in these annexes. The question of whether it should become a trigger requires further analysis to better understand the challenges of monitoring and reporting on this grave violation, the risks and opportunities of making it a listing violation, and whether this would create the conditions for engagement with listed parties to conflict with positive outcomes for humanitarian access.

1.2. Objectives and methodology

In 2021, Watchlist and Fordham University's Institute of International Humanitarian Affairs (IIHA) established a partnership to support the implementation of the UN's CAAC mandate by developing policy papers on issues that require clarification and agreement through research and advocacy. Watchlist and IIHA identified the denial of humanitarian access for children as one such issue while scoping new areas of study for the partnership, and the two established a joint fellowship to develop this policy paper. The project leverages Watchlist's expertise on the Security Council's CAAC agenda[7] and over 20 years of international advocacy for the protection of

children's rights, and Fordham University's academic rigor and the expertise of its staff of seasoned humanitarian and child protection professionals.

The main objectives of this policy paper are to:

- Advance stakeholders' understanding of the international legal framework governing humanitarian access, including its shortcomings;

- Advance policy makers' understanding of the impact of CT measures, sanctions regimes, and donor conditionality clauses on humanitarian access for children in situations of armed conflict;

- Contribute to strengthening implementation of the MRM by examining the challenges of monitoring and reporting on the denial of humanitarian access for children and analyzing the reasons why it is not a trigger for listing in the annexes of the Secretary-General's annual report on CAAC;

- Provide information and analysis to complement a future UN guidance note on monitoring and reporting on the denial of humanitarian access for children;

- Inform advocacy work on humanitarian access for children by Watchlist and peer organizations, and by policy makers, including the UN and its Member States.

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. The authors consulted primary sources such as key legal texts and reviewed secondary sources such as studies, journal articles, reports, policy notes, and expert comments.

- An online survey. The authors launched a 12-question online survey targeting key stakeholders working on CAAC issues, including headquarters-level and field-based UN and nongovernmental organization (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.

- Key informant interviews. A total of 22 semi-structured, individual interviews were conducted with humanitarian practitioners, CAAC experts, legal scholars, and government representatives. The interviews sought the perspectives of experts on legal problems related to humanitarian access and on challenges in monitoring and reporting on the denial of humanitarian access for children in the MRM context.

It is important to acknowledge that, except for a few recent studies, there is a lack of child-specific disaggregated data on denial of humanitarian access beyond anecdotal evidence. Also, policy and guidance on this topic remain unpublished or are internal—such as "non-papers"—and are often context-specific rather than globally applicable. While this paper captures the perspectives of key stakeholders and experts, it does not claim to reflect an exhaustive picture of the extent and impact of the denial of humanitarian access on children in armed conflict. The authors hope, however, that this paper can inspire further discussion and lead to empirical research in the future.

1.3. Structure

This paper is divided into five parts, as follows:

- Part 1 reviews the international legal framework related to humanitarian access—international humanitarian law (IHL), international human rights law (IHRL), and international criminal law (ICL)—as it applies to children.

- Part 2 identifies some key challenges in the existing legal framework. In particular, it looks at whether and to what extent states have an obligation to ensure that the CT measures and sanctions they adopt do not result in denial of humanitarian access.

- Part 3 identifies patterns and forms of denial of humanitarian access, including emerging obstacles, such as the COVID-19 pandemic, as well as their effects on children in armed conflict. This section relies on survey responses and interviews with stakeholders and selected experts. It also considers the ways humanitarian organizations have adapted their operational methods to cope with access constraints.

- Part 4 examines the challenges of monitoring and reporting on the denial of humanitarian access in the context of the MRM. In particular, it explores the potential risks and opportunities of elevating this grave violation to a "trigger" for listing perpetrators in the annexes of the Secretary-General's annual report on CAAC.

- Part 5 concludes the paper with a series of recommendations directed to the UN and its Member States, donors, the humanitarian and CAAC communities, and academic, research, or policy institutions to influence normative and policy change.

2. INTERNATIONAL LEGAL FRAMEWORK ON HUMANITARIAN ACCESS

2.1. Background

The international legal framework related to humanitarian access—IHL, IHRL, and ICL—is governed by general rules rather than ones that are specific to children. These general rules specify the obligations of parties to armed conflict (both states and NSAGs), third states not parties to conflict, humanitarian actors, and others, to ensure civilians in need receive humanitarian aid. There is no treaty definition of "humanitarian access" in international law. This term is not used in the Geneva Conventions nor their Additional Protocols. The Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) refer to "humanitarian assistance" (see below, under IHRL framework) but do not define it. Humanitarian access is often used interchangeably with the terms "humanitarian aid" or "relief assistance" and is understood as referring to "both access by humanitarian actors to people in need of assistance and protection and access by those in need to the goods and services essential for their survival and health."[8]

2.2. IHL framework

IHL provides specific rules regulating humanitarian relief operations, both in international and in non-international armed conflicts. These rules are found in the 1949 Geneva Conventions and their 1977 Additional Protocols, as well as in customary international humanitarian law (CIHL).[9] Each party to armed conflict—state or NSAG—bears the primary responsibility to meet the basic needs of the civilian population, including children, living under its control. Humanitarian organizations have a right to offer their services, especially when the basic needs of the population are not fulfilled. The consent of concerned states[10] is required. However, offers of humanitarian services cannot be refused on arbitrary grounds when civilians' essential needs are unmet and when the services being offered are exclusively humanitarian and impartial in character and carried out on the basis of need alone without adverse distinction on any ground (for example, on the grounds of ethnicity, religion, sex, or age). Once consent has been granted, parties to conflict must allow and facilitate the rapid and unimpeded passage of relief supplies, equipment, and personnel into and throughout the territory under their control.[11] They are, however, entitled to exert some measures of control over humanitarian relief operations.[12] Humanitarian relief personnel, equipment, and supplies must be respected and protected. This is an indispensable condition for the delivery of aid to civilian populations in need.

In situations of armed conflict, children are entitled to special protection and must be provided with the "care and aid" they require, including access to education, food, and health care.[13] In international armed conflicts, priority must be given to the distribution of relief consignments for those particularly vulnerable categories of persons with specific needs, such as children and expectant and nursing mothers, who, under the Fourth Geneva Convention or under Additional Protocol I, are to be accorded privileged treatment

or special protection.[14] Additional Protocol II—which is applicable in non-international armed conflicts—also requires that children be provided with the care and aid they require.[15] However, it does not specifically address the provision of humanitarian assistance to children, notably the passage of relief consignments and priority to be afforded to children in their distribution.[16]

Box 1: **Inclusion of child protection provisions on humanitarian access in agreements with parties to conflict**

While not common, child protection provisions related to humanitarian access have been included in a select number of UN-brokered agreements with parties to conflict. A well-known example is the Ground Rules agreement between the UN's Operation Lifeline Sudan (OLS) and various NSAGs in 1995 and 1996 to improve delivery of humanitarian aid in Sudan.[17] This agreement, which set out the principles upon which the OLS worked, contains a statement of support for the CRC and provides that priority must be given to women, children, and other vulnerable groups, such as the elderly, disabled, and displaced, when distributing humanitarian assistance. Other examples include the 2010 Memorandum of Understanding (MoU) between the UN and the Justice and Equality Movement (JEM) regarding the protection of children in Darfur,[18] which includes specific commitments on the provision of humanitarian assistance to children; as well as the 2020 action plan between the UN and the Government of South Sudan, which is the first action plan to include commitments to end and prevent all six grave violations against children, including denial of humanitarian access. The action plan has specific provisions on allowing safe access to humanitarian actors for the delivery of humanitarian assistance to children.[19]

Peace agreements frequently contain commitments by parties to conflict to allow humanitarian access, including through humanitarian pauses and corridors, but refer to assistance to civilians in general and usually do not include specific provisions on children.[20] However, there are examples of peace agreements that have addressed child protection issues, in particular the release and reintegration of children formerly associated with armed forces or armed groups.[21]

2.3. IHRL framework

Some IHRL treaties expressly refer to humanitarian assistance for children. The CRC has several provisions on the facilitation of humanitarian relief to children in need, thereby ensuring that refugee children "receive appropriate protection and humanitarian assistance."[22] The CRC specifically addresses the rights of children in armed conflict, requiring states parties to take "all feasible measures" to protect and care for children affected by armed conflict.[23] Additionally, regional human rights instruments, such as the ACRWC, demand states parties to take "all appropriate measures" to ensure refugee children receive appropriate protection and humanitarian assistance.[24] Both the CRC and ACRWC require states parties to cooperate with humanitarian actors.[25]

Moreover, a number of basic human rights are of relevance, notably the right to life, the prohibition on torture and other cruel, inhuman, or degrading treatment, the right to health, and the right to an adequate standard of living, including food, clothing, and housing.[26] Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), states parties have an obligation to take steps, individually and through international assistance and cooperation, indispensable for the survival and fulfillment of a population's essential needs, including in terms of access to food and health care.[27]

2.4. ICL framework

Under the Rome Statute of the International Criminal Court (ICC), intentionally using starvation of civilians as a method of warfare "by depriving them of objects indispensable to their survival, including wilfully [sic] impeding relief supplies as provided for under the Geneva Conventions" is a war crime.[28] This prohibition was applicable only in situations of international armed conflict until the Rome Statute was amended in December 2019 to include the same crime of starvation in the context of non-international armed conflicts.[29] The prohibition applies to blockades and sieges, among other situations.[30]

Furthermore, the denial of humanitarian access to civilians in situations of armed conflict can lead to other international crimes. For example, the intentional deprivation of access to food or medicine, calculated to bring about the destruction of part of a population, when committed as part of a widespread or systematic attack directed against any civilian population, may amount to the crime against humanity of extermination.[31] In extreme cases, the denial of humanitarian assistance and access might even provide evidence of genocide.[32] Intentionally attacking personnel, installations, material, units, or vehicles involved in the provision of humanitarian assistance, as long as they are entitled to the protection given to civilians and civilian objects under IHL, may also constitute a war crime in international and non-international armed conflicts.[33]

3. LEGAL ISSUES

3.1. Arbitrary/unlawful denial of access

As mentioned above, each party to armed conflict bears the primary responsibility to meet the basic needs of the civilian population under its control. When the party is unable or unwilling to fulfill this obligation, and civilians are still in need, it cannot arbitrarily withhold consent to an offer of services made by impartial humanitarian organizations. Yet, the expression "arbitrary denial/withholding of consent" is not found in any IHL treaty, and while there is no clear or authoritative definition,[34] international law provides guidance on how to interpret the criterion of "arbitrariness." Essentially, a refusal to grant consent would be arbitrary, and thus unlawful, if it entails a violation by a state of its other obligations under international law.[35] Under IHL, a non-exhaustive list of such circumstances[36] includes the following:

- It would be unlawful for a state to withhold consent to humanitarian relief operations in situations where the civilian population is inadequately supplied, and the refusal would result in the starvation of civilians.

- It would also be deemed unlawful when a state is unable to meet the basic needs of the civilian population under its control, including to provide children with the "care and aid" they require, and turn down offers of services by impartial humanitarian organizations.[37]

- A refusal to grant consent for the purpose, implied or expressed, to punish the civilian population for acts for which it is not responsible,

such as acts committed by a party to the armed conflict with effective control over the civilian population, would also qualify as unlawful.

- Similarly, a refusal may be considered unlawful when it is based on adverse distinction, i.e., when it is designed to deprive a particular group or section of the civilian population (persons of a certain nationality, ethnicity, religion, political opinion, etc.) of needed aid. The mere fact that civilians may live in territory under the control of a DTG is not a permissible ground for withholding consent to relief operations.

Under IHRL, there are a number of relevant fundamental rights applicable to situations of armed conflict that may be engaged if a state withholds consent to humanitarian relief operations. For example, there is likely to be a violation of the right to life where a state refuses access to humanitarian actors in a situation where civilians are at real risk of starvation or, in relation to children specifically, severe malnutrition with risks of developmental impairment.[38]

Another key legal issue is to determine in each specific context whether a failure by a party to armed conflict to allow and facilitate rapid and unimpeded passage of humanitarian relief may be considered unlawful. As a matter of law, it can be challenging to determine when access impediments imposed on humanitarian operations constitute a violation of IHL. Impediments will amount to a violation of the obligation to allow and facilitate rapid and unimpeded passage of relief operations when they leave the civilian population as a whole, or segments thereof, without essential relief items or specific services for prolonged periods.

3.2. Responsibility of third-party states on CT measures, sanctions, and funding agreements

CT measures and sanctions, which prohibit the transfer of funds or economic resources to designated individuals or entities, 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.

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 IHL under Common Article 1 of the 1949 Geneva Conventions. The imposition of CT and sanctions regimes obstructing humanitarian activities may, therefore, be incompatible with their obligation to respect and ensure respect for IHL provisions

governing humanitarian activities.[39] 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 must be designed and implemented such that they do not conflict with states' obligation to facilitate humanitarian activities, and such measures constitute unlawful denial of consent to relief operations conducted by impartial humanitarian organizations in accordance with IHL.[40] 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.[41]

Similarly, restrictions in funding agreements can be problematic. In order to ensure that funding recipients comply with CT measures and sanctions, 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.[42] In a number of contexts, these requirements have led humanitarian organizations to avoid conducting operations in areas where designated NSAGs are active, despite significant needs.[43]

4. FORMS OF DENIAL OF HUMANITARIAN ACCESS AND IMPACT ON CHILDREN

4.1. Trends

The denial of humanitarian access for children has long been recognized as a critical issue affecting children living in conflict zones. Since 2005, at least 14,900 such incidents have been verified through the MRM, which included, among others, violence and threats against humanitarian relief personnel and facilities, the looting of lifesaving supplies, and onerous physical and administrative barriers.[44] In recent years, the denial of humanitarian access has become one of the most prevalent grave violations against children documented by the UN. Analysis of the Secretary-General's annual reports on CAAC shows that verified incidents have increased massively over the years, peaking in 2019.[45] According to the UN,[46] the number of cases of denial of humanitarian access for children was almost six times higher in 2019 than 2018—up from 795 to 4,402. This was the highest number ever recorded, and almost three times higher than the previous peak of 1,213 in 2017.[47] The Secretary-General's latest annual report on CAAC recorded 4,156 incidents of denial of humanitarian access in 2020,[48] with the highest number of incidents verified in Yemen (3,033), the Occupied Palestinian Territory (661), Mali (199), the Central African Republic (CAR) (103), and Syria (48). It should be noted that the upward trend in the number of verified incidents of denial of humanitarian access for children may not only be the result of an increase in violations, but may also be related to improved reporting of access incidents.

The findings of the online survey conducted for this paper echo this general worsening of the access situation. A majority of respondents (76.5 percent) said they believe that fewer children have had access to humanitarian aid in recent years. In particular, they noted an increased pattern of insecurity, attacks against humanitarian workers and assets, as well as movement restrictions. One respondent said, "As access for humanitarian agencies has reduced, by consequence children have not been reached by aid. Equally, with an increase in humanitarian emergencies and needs there are not enough resources to reach all children impacted. So again, a lower percentage of children affected are being reached." This respondent's observations suggest that some access challenges may be due to lack of funding and resources.

Incidents of denial of humanitarian access for children have also been reported in several situations of armed conflict that have not yet been included in the Secretary-General's annual report on CAAC. These include Ethiopia, Mozambique, and Ukraine, and widespread reports of denial of humanitarian access in these countries serve to confirm the upward trend of this violation identified by the UN in recent years. Since November 2020, the armed conflict in northern Ethiopia has raised alarms about the situation of children. The UN estimates that 500,000 children are in urgent need of food, and there have been allegations of starvation being used as a weapon of war.[49] In December 2021, the UN stated that "only limited UN-organized humanitarian supplies [had] been able to enter Tigray since July,"
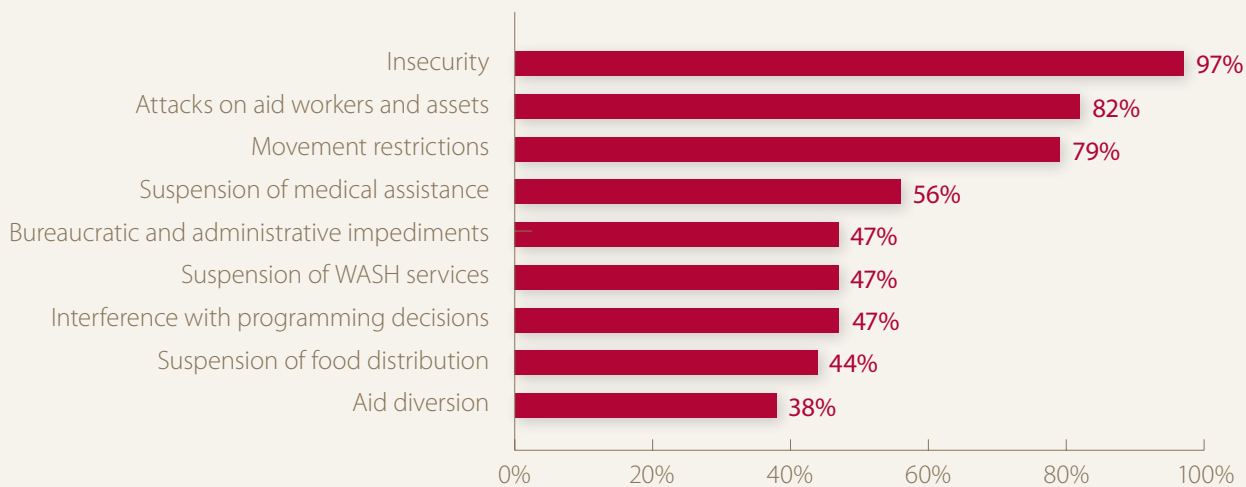
and noted that access challenges were compounded by harassment of humanitarian workers and widespread anti-humanitarian rhetoric.[50] In less than a year since the onset of the conflict in Tigray, at least 23 humanitarian workers had been killed.[51] In northern Mozambique, attacks by the armed group Al-Sunna wa Jama'a (ASWJ) in March 2021 led to the displacement of 856,000 civilians, including 414,272 children.[52] Following this attack, government forces imposed restrictions blocking humanitarian access,[53] and humanitarian organizations reported significant challenges in the import of supplies and in securing visas for their staff,[54] further complicating efforts to scale up the humanitarian response. The armed conflict in eastern Ukraine entered its eighth year in 2022. UNICEF has described eastern Ukraine as one of the world's most mine-contaminated stretches of land,[55] where explosive remnants of war (ERW) are among the leading causes of child casualties. The situation dramatically deteriorated in 2022, with armed conflict spreading to the rest of the country following Russia's invasion of Ukraine on February 24. The use of explosive weapons with wide area effect and indiscriminate weapons, such as cluster munitions, has caused mass destruction. An alarming scale of displacement raises further concerns for Ukraine's 7.5 million children.[56] Access and security constraints continue to hinder the ability of humanitarian organizations to reach civilians in need.[57] Damage to water and sanitation infrastructure has left millions without safe drinking water, and shortages and insecurity are limiting civilians' access to food, medicine, heating, and other essentials.[58] Negotiations for urgently needed humanitarian corridors have failed.[59]

4.2. Forms of denial of humanitarian access

Forms of denial of humanitarian access most frequently observed by the respondents of the survey and their organizations include the following:

Challenges and forms of denial of humanitarian access*

Challenge	Percentage
Insecurity	97%
Attacks on aid workers and assets	82%
Movement restrictions	79%
Suspension of medical assistance	56%
Bureaucratic and administrative impediments	47%
Suspension of WASH services	47%
Interference with programming decisions	47%
Suspension of food distribution	44%
Aid diversion	38%

*As observed by survey respondents

As illustrated in the graph above, the most prevalent forms of denial of humanitarian access observed by respondents include attacks on aid workers and assets (82 percent) and movement restrictions (79 percent). Insecurity, including active hostilities and military operations, have further compounded access challenges, making certain areas inaccessible and preventing the delivery of aid and care. For example, in Colombia, Ethiopia, and Somalia, hostilities have continued to hinder humanitarian activities.[60] Several respondents also mentioned criminal activities and the presence of landmines and unexploded ordnances. Attacks against humanitarian workers, assets, and facilities, as well as threats of attacks, have seriously disrupted relief operations and children's access to humanitarian assistance. Several respondents reported cases of killing and kidnapping by both state armed forces and NSAGs. A recent example includes the killing of two staff of Save the Children in Myanmar's Kayah State in December 2021[61] and three staff of Médecins Sans Frontières (MSF) in Ethiopia's Tigray region in June 2021.[62]

According to the Aid Worker Security Database (AWSD) 2021 report,[63] violence against aid workers resulted in 484 casualties (117 killed, 242 wounded, and 125 kidnapped), making 2020 the worst year on record for aid workers for the second year in a row, despite constraints on humanitarian programming caused by the COVID-19 pandemic. The highest number of attacks affecting aid workers recorded by AWSD in 2020 were accounted for in South Sudan, Syria, the Democratic Republic of Congo (DRC), CAR, Mali, Ethiopia, Somalia, Afghanistan, Nigeria, and Cameroon.[64] Parties to conflict have been responsible for most of the major attacks against aid workers over the years, but incidents of violent 'common crime' are on the rise in operational settings. In 2020, criminality surpassed conflict-related violence in attacks against aid workers for the first time.[65] Parties to conflict have also attacked humanitarian assets and facilities. Nearly 40 percent of the survey respondents reported diversion of humanitarian aid away from children in need. Several respondents mentioned cases of extortions at roadblocks, looting of convoys and premises, as well as attacks on health facilities.[66]

Nearly 80 percent of survey respondents said their organizations have faced restrictions of movement of personnel and supplies, both into and within countries of operation, as well as blocking of access, notably roadblocks and checkpoints, causing delays in the delivery of aid. About 50 percent of the respondents said they faced actual suspensions of activities (medical assistance, food distribution, and water, sanitation, and hygiene–WASH services) into areas with humanitarian emergencies. Siege and blockade tactics have also been used to deny civilians access to lifesaving aid. In Syria, for example, Save the Children has documented the appalling fate of children trapped in besieged areas, who were cut off from aid and deprived of access to food, water, medicine, including vaccines, and other vital supplies.[67] In Yemen, the Saudi Arabia-led Coalition[68] imposed in 2017 a full blockade of all humanitarian and commercial goods entering the country by land, sea, or air, following months of severe import restrictions that had pushed the country to the brink of starvation. The Coalition formally lifted the blockade but continued to impose a range of bureaucratic impediments that substantially limited the import of food, fuel, and medicine.[69] In Ethiopia, since opposition forces retook control of the Tigray region in June 2021, the Government has imposed a de facto blockade of aid and critical supplies, including food and medicine, on the country's northern region.[70] These access restrictions have remained in place despite an escalating crisis of food insecurity affecting the population.[71] Malnutrition among young children in northern Ethiopia continues to be at an alarming level. Some 13 percent of Tigrayan children under the age of five and half of all pregnant and breastfeeding women are malnourished, leading to poor pregnancy outcomes, low-birth weight, stunting, and maternal death.[72]

Nearly 50 percent of survey respondents said their organizations' humanitarian operations to provide aid to children have been constrained at some time or other by various bureaucratic and administrative impediments, such as cumbersome registration procedures, delays or denials of entry visas and travel permits for humanitarian personnel, imposition of taxes on humanitarian organizations, demands for payment to release aid, and lengthy clearance procedures to procure or import supplies.[73] According to the UN, visa and work permit restrictions and other bureaucratic impediments in Myanmar, Syria, and Yemen, among other places, have prevented thousands of humanitarian workers from deploying.[74] In South Sudan, the Government reportedly increased work permit fees for foreign staff of international NGOs from USD $100 to $10,000 per person in 2017.[75]

Another point raised by many of the survey respondents relates to regulations set up by host governments to discourage dialogue with NSAGs. As one respondent put it, "There is little or no interest of governments to see aid delivered in areas that are not under their control, as often these areas are perceived to be affiliated or sympathetic with the opposing party. Any assistance there might be seen by governments as strengthening the control and legitimacy of NSAGs in those areas." Moreover, nearly 50 percent of respondents said that their organizations have faced interference with programming decisions from parties to conflict, which has led to disruptions, delays, and, in some cases, the suspension of humanitarian operations. Typically, such practices have included the interference of parties to conflict with independent humanitarian assistance, sometimes accompanied by harassment and intimidation related to staff recruitment and/or the selection of partners, suppliers, or service providers. Respondents said that parties to conflict have also interfered with the selection of beneficiaries and areas of intervention, as well as with the distribution of goods, thus infringing upon the humanitarian principle of impartiality.

CT measures, sanctions regimes, and donor conditionality clauses

Humanitarian operations have also been hampered by an increasingly complex and growing web of CT measures, sanctions regimes, and donor requirements that humanitarian actors must navigate when conducting operations, especially in contexts where NSAGs are active, or where country-specific sanctions are in force.[76] CT measures have been adopted by states with the aim of criminalizing terrorist acts and any form of support to groups or associated individuals designated as "terrorist." The scope of the prohibition is extremely broad and can potentially include relief supplies that are diverted to such groups or otherwise benefit them. As a cascading effect, 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. CT-related clauses are also frequently included in donor governments' funding agreements with humanitarian actors to ensure that no funds, financial assets, or other economic resources are made available, directly or indirectly, to entities or individuals designated as "terrorist."

More than 50 percent of the survey respondents said that their organizations' access to children in need of assistance and protection have been impacted by these various measures: CT measures (42 percent), sanctions regimes (29 percent), and donor requirements (26 percent).[77] 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.[78] 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.[79] In a widely reported case,[80] the Government of Israel designated the child protection NGO Defence 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. 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, for example, 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.[81]

Clauses in funding agreements that may require implementers not to operate in areas under DTGs' control, or to vet beneficiaries, are also problematic. These have been introduced by various donors across several contexts. 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."[82] 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 refuse help to any civilians suspected of links with the NSAGs.[83] 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.

According to respondents, these various measures (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.

"Our ability to design program responses in line with children's needs and rights is severely affected by the multifaceted ramifications of CT measures. The ability of the organization to operate in areas where threats to child protection are especially high is jeopardized, along with the security and protection of our staff and partners. The fulfillment of our humanitarian mandate […] is therefore at stake."

- Internal policy position of a child protection agency

"We definitely see humanitarian space shrinking. With all these access restrictions and risks that we are facing, it is becoming increasingly difficult to operate at a time when humanitarian needs have dramatically increased. This situation is not sustainable."

- Interview respondent

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.

Box 2:   Impact of COVID-19 on children's access to services and legal obligations of parties to conflict

The COVID-19 pandemic has exacerbated access challenges. While children have generally been less severely affected by the virus than adults, the measures put in place to contain the spread of the pandemic have disrupted the delivery of humanitarian aid and children's access to education, health care, and other services, including immunizations and neonatal care, increasing their risk of infection or death from otherwise preventable diseases.[84] More than 25 percent of survey respondents said that parties to conflict, including NSAGs,[85] have limited their organizations' access to children, parents, and caregivers for the provision of assistance. Simultaneously, COVID-19-related restrictions, such as flight suspensions, border closures, quarantine measures, lockdowns, and curfews, have hampered the deployment of aid workers and transport of goods, including medicines, into and within countries. This has resulted in delays and partial suspensions of aid distribution and other activities.[86] In Yemen, for example, Human Rights Watch documented how efforts to prevent the spread of COVID-19 and respond to other urgent health needs have been hampered by onerous restrictions and obstacles that the Houthis (who call themselves Ansar Allah) and other authorities have imposed on humanitarian aid agencies. In 2020, the Houthis blocked 262 containers in Hodeida port belonging to the World Health Organization (WHO), as well as a large shipment of Personal Protective Equipment (PPE) for the COVID-19 response.[87]

More than 70 percent of survey respondents said that COVID-19-related movement restrictions prevented their organizations from reaching children in need of assistance in target areas. The closure of schools, community spaces, and other spaces for children also significantly limited children's access, which led to the suspension of school feeding programs that are often a key form of lifesaving assistance. Forty-five percent of respondents said that medical personnel and facilities were less available because of the pandemic. In response to these challenges, most respondents (68 percent) said that their organizations resorted to new methods, notably remote management, and relied on online technologies to coordinate with stakeholders and monitor operations.

Under IHL, parties to conflict may adopt measures based on health considerations to contain the spread of COVID-19. However, these measures are not valid grounds to deny consent to humanitarian activities undertaken by impartial humanitarian organizations. Such a refusal may amount to an unlawful denial of consent if, for example, it would deprive the population of supplies essential for its survival, including health care.[88] Likewise, CT measures adopted by third-party states should not prohibit the provision of medical assistance, including vaccines, in areas controlled by parties to armed conflict designated as terrorist groups, as this would be contrary to IHL.[89]

4.3. Consequences of denial of humanitarian access on children
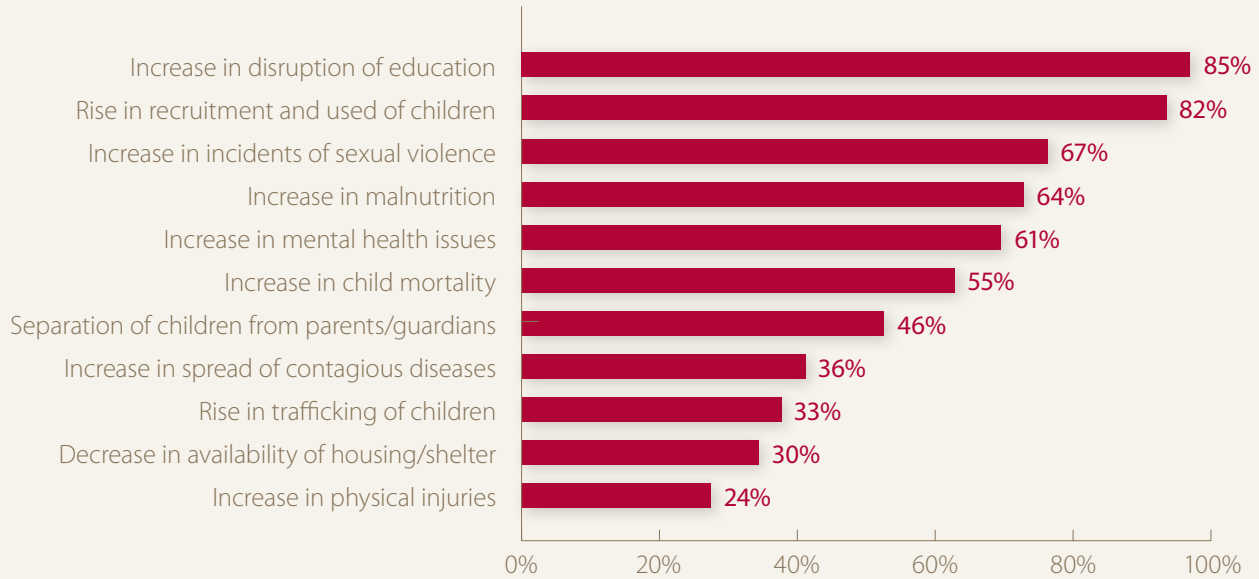
In a series of reports issued between 2019 and 2021, Save the Children published new statistics that showed an increase in violations against children in armed conflict and the impact of war on children.[90] The data is stark: 452 million children—or one in six children worldwide—are living in conflict zones, and the number of grave violations committed against children in situations of armed conflict, as reported and verified by the UN, has almost tripled since 2010.[91] The reasons for the increase in violations against children include violence against civilians, such as the use of explosive weapons with wide area effects in populated areas, attacks on schools, the abduction and enslavement of girls, and starvation tactics. In addition, armed conflicts are increasingly more protracted, as evidenced by the war in Syria. The longer a conflict lasts, the greater the harm on children who are left without essential services.[92] From 2016 to 2020, based on the UN Secretary-General's annual reports on CAAC, denial of humanitarian access increased by more than 300 percent.[93]

Save the Children has called this a "crisis of compliance"[94] because the rise in violations against children is not the result of a lack of legal instruments to protect children in situations of armed conflict, but rather of the increasing disregard for the laws of war by parties to conflict. This includes what some researchers have called "starvation crimes" because people are being deliberately starved through denial of humanitarian access.[95] Millions of children in situations of armed conflict around the world "are at risk of dying due to disease and hunger than from any other cause, and the denial of humanitarian access is a major driver of their suffering."[96]

In 2020, almost two-thirds of all verified incidents of denial of humanitarian access occurred in Yemen. The UN verified and reported 3,033 incidents of denial of humanitarian access perpetrated by the Houthis (who call themselves Ansar Allah), the Yemen Armed Forces, and unidentified perpetrators,[97] which represents a massive rise of 1,379 percent over five years, up from a total of 220 documented incidents of the denial of humanitarian access in 2016.[98] Incidents of denial of humanitarian access have included attacks against civilian infrastructure and restrictions of movements in and out of Yemen. After Yemen, the largest number of incidents of denial of humanitarian access in 2020 were documented in the Occupied Palestinian Territory and Mali. The UN verified and reported 661 incidents of denial of humanitarian access by Israeli forces in the Occupied Palestinian Territory, denying children access in the West Bank, including East Jerusalem, and in Gaza.[99] In order to access specialized medical care outside of Gaza, Palestinian children must exit through the Erez crossing and can only do so if issued a permit by the Israeli authorities. In 2020, 28 percent of children's permit applications were delayed, and three percent were denied, affecting 659 children. Three Palestinian children died before receiving permission to exit through the Erez crossing to access medical care.[100] In Mali, the UN verified and reported 199 incidents of denial of humanitarian access affecting children in Mopti, Gao, and Ménaka, by unidentified perpetrators.[101] Today, 3.5 million children in Mali are in need of humanitarian aid.[102]

In the survey conducted for this policy paper, respondents were asked which consequences of denial of humanitarian access on children they had observed. As illustrated in the following graph, the most frequently observed consequences include disruption of education (85 percent), recruitment and use of children (82 percent), incidents of sexual violence (67 percent), malnutrition (64 percent), and mental health issues (61 percent):

Consequences of the denial of humanitarian access*

Consequence	Percentage
Increase in disruption of education	85%
Rise in recruitment and used of children	82%
Increase in incidents of sexual violence	67%
Increase in malnutrition	64%
Increase in mental health issues	61%
Increase in child mortality	55%
Separation of children from parents/guardians	46%
Increase in spread of contagious diseases	36%
Rise in trafficking of children	33%
Decrease in availability of housing/shelter	30%
Increase in physical injuries	24%

*As most frequently observed by survey respondents

These consequences can have severe, long-lasting effects on children's development, physical and mental health, and wellbeing. When children are deprived of their opportunity to grow and flourish, the impact is felt by their families, communities, and nations. At stake is the potential for a peaceful, prosperous future.

5. MONITORING AND REPORTING ON DENIAL OF HUMANITARIAN ACCESS FOR CHILDREN

5.1. Background

In 1999, the UN Security Council adopted Resolution 1261, its first thematic resolution on CAAC, thereby formally acknowledging that the protection of children in situations of armed conflict is an international peace and security concern which falls squarely within its remit. Resolution 1261 strongly condemns the targeting of children during armed conflict and calls on states to act on issues affecting children, including humanitarian access:

> *"[The Security Council …] Calls upon all parties to armed conflicts to ensure the full, safe and unhindered access of humanitarian personnel and the delivery of humanitarian assistance to all children affected by armed conflict …"[103]*

Since then, the UN Security Council has adopted 13 groundbreaking resolutions on CAAC[104] which provide the UN with a framework and a set of tools for protecting children in situations of armed conflict. As noted earlier in this paper, Resolution 1612, adopted by the Security Council in 2005, established the MRM, an unprecedented compliance mechanism which monitors six grave violations against children: (1) recruitment and use of children by armed forces and groups, (2) killing and maiming of children, (3) rape and other forms of sexual violence against children, (4) attacks against schools or hospitals, (5) abduction of children, and (6) denial of humanitarian access for children. The purpose of the MRM is to gather "accurate, timely, objective and reliable information on grave violations committed against children,"[105] which allows the UN to engage directly with parties to conflict—both state actors and NSAGs alike—to end and prevent such violations.

MRM information is shared with the Security Council and forms the basis for the Secretary-General's annual report on CAAC, which urges parties to conflict to comply with international law and child protection norms and standards. The report includes annexes that list perpetrators of five of the grave violations— the so-called "trigger" violations—by country, effectively "naming and shaming" them. Once listed in the annexes of the report, parties to conflict must sign and implement concrete, time-bound action plans for ending and preventing the grave violations for which they are listed. Removal from the annexes, also known as "delisting," can only be achieved after full implementation of such action plans, accompanied by the UN's verification that the party to conflict has ceased all violations for a period of at least one year.[106]

When the MRM was established in 2005, recruitment and use of children by armed forces and NSAGs was the only violation among the six grave violations that triggered listing. Over the next 10 years, the Security Council gradually adopted additional CAAC resolutions, elevating four other grave violations into trigger violations in order to strengthen compliance by parties to conflict with international law and child protection standards. The rationale for expanding

the listing criteria was based on the increasing prevalence of certain violations and the availability of MRM documentation of incidents. For example, the increasing and documented prevalence of abductions in 2014 prompted the Security Council to elevate abduction to a trigger violation in 2015:

> *"Since 2014, several high-profile cases of mass abductions of children have occurred in situations of armed conflict around the world. In April 2014, 276 schoolgirls were abducted in Chibok, Nigeria. In May 2014, the Islamic State of Iraq and Syria (ISIS) abducted 153 Kurdish boys returning from exams in Aleppo, Syria. In July 2014, ISIS also abducted 412 Yezidi children in western Iraq. In February 2015, at least 89 boys were kidnapped in the Government-controlled area of Upper Nile State, South Sudan. […] While abductions are not a new feature of armed conflict, they have appeared to increase in recent years. […] The expansion of the listing criteria to include abductions would be an important step toward enhancing the international community's ability to protect children and hold perpetrators to account."[107]*

Killing and maiming and rape and other grave forms of sexual violence became trigger violations through Security Council Resolution 1882 in 2009, attacks against schools or hospitals through Resolution 1998 in 2011, and abduction of children through Resolution 2225 in 2015. Denial of humanitarian access for children is the only one of the six grave violations that does not trigger the listing of perpetrators in the annexes of the Secretary-General's annual report on CAAC. The question of whether it should become a trigger violation requires further analysis to better understand the challenges of monitoring and reporting on denial of humanitarian access for children, and the risks and opportunities of elevating it to a trigger violation.

5.2. Challenges of monitoring and reporting

Monitoring and reporting on human rights violations is part of the UN's core mandate and responsibility, stemming from the UN Charter's guiding principle of promoting and respecting human rights.[108] In 2013, then-Secretary-General Ban Ki-moon reaffirmed the UN's commitment to protecting human rights when he launched the Human Rights Up Front initiative, which sought to strengthen atrocity prevention and early action through improved coordination and collaboration of the UN's collection and analysis of data on human rights violations.[109] The CAAC mandate fulfills this core responsibility through the monitoring and reporting of grave violations committed against children in situations of armed conflict.

Security Council Resolution 1612 (2005), which established the MRM, requires the implementation of the Secretary-General's "Action Plan for the Establishment of a Monitoring, Reporting and Compliance Mechanism," as outlined in his 2005 annual report on CAAC.[110] This action plan addresses, among other things, which violations and parties to conflict should be monitored, the legal framework that constitutes the basis for monitoring, and the gathering of information and preparation of reports. More importantly, it establishes the MRM as an incident-based monitoring and reporting mechanism:

> *"To ensure the reliability of information and devise a system for quality control and confidentiality, each task force on monitoring and reporting should establish a rigorous and systematic procedure for vetting information gathered, protecting sources and ensuring the security of the raw data. Although general monitoring and reporting practices may be the same across country situations, country-level particularities will necessitate specific approaches by the task force. Ultimately, it is critical that information transmitted be objective, accurate and precise.*

Typically, such information should include concise descriptions, specifying incidents of violations, where and when the incidents occurred and the identity of parties responsible for committing the violations."[111]

The decision to establish the MRM as an incident-based system is critically important, as it makes it possible to engage with the responsible parties on the specific violations they committed and negotiate action plans for ending and preventing such violations. As an incident-based system, once the MRM is established in a particular country, it monitors and reports all incidents of the six grave violations against children, regardless of their frequency and pattern, perpetrated by all parties to a conflict—states and NSAGs alike—whether or not they have been listed in the annexes of the Secretary-General's annual reports on CAAC.

Monitoring and reporting is done through in-country teams known as Country Task Forces on Monitoring and Reporting (CTFMRs), which are co-chaired by the highest-ranking UN official in-country (Special Representative of the Secretary-General or Resident Coordinator) and the UNICEF country representative. CTFMRs are generally composed of relevant UN entities and international operational NGOs, and in some exceptional cases, also national NGOs.[112] The child protection sections of UNICEF, the Department of Peace Operations (DPO), and the Department of Political and Peacebuilding Affairs (DPPA) usually convene the CTFMRs at technical level, taking the lead in monitoring and reporting activities, and in overseeing the MRM information management system. In countries where CTFMRs have not been established because no formal MRM system has been rolled out, such as countries that appear as "other situations of concern" in the Secretary-General's annual report on CAAC, monitoring and reporting may be similarly undertaken by members of the UN Country Team and international operational NGOs.

Field-based monitors who have been specifically trained on the MRM are responsible for collecting information on the six grave violations. They include UN staff usually working on protection, child protection, or human rights, and staff from international NGOs (and in some cases, national NGOs) working in similar areas. CTFMRs analyze the information collected, and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict (SRSG-CAAC) prepares reports based on this information for the Security Council. These include the Secretary-General's annual report on CAAC, the Secretary-General's country-specific reports on CAAC, and confidential quarterly reports to the Security Council Working Group on CAAC, known as the Global Horizontal Notes (GHN), as well as the SRSG-CAAC's annual reports to the Human Rights Council and General Assembly. MRM information is also used to strengthen the humanitarian response to children who are victims of grave violations, and for advocacy and engagement with parties to conflict to end and prevent grave violations against children.

Respondents of the survey used for this policy paper and key informant interviewees identified a series of challenges to the monitoring and reporting of denial of humanitarian access for children that would have to be examined and addressed before embarking on the question of whether it should become a trigger for listing. These challenges are presented in order of importance, as follows:

a. The broad scope of the MRM definition

Respondents described the MRM definition of denial of humanitarian access for children as an "umbrella term" that captures a wide range of access constraints. It may have been drafted with broad strokes to allow it to "catch" all the acts that could possibly constitute access constraints. The definition is as follows:

> *The intentional deprivation of or impediment to the passage of humanitarian assistance indispensable to children's survival, by the parties to the conflict, including wilfully [sic] impeding relief supplies as provided for under the Geneva Conventions; and significant impediments to the ability of humanitarian or other relevant actors to access and assist affected children, in situations of armed conflict.*
>
> *The denial should be considered in terms of children's access to assistance as well as humanitarian agencies' ability to access vulnerable populations, including children.[113]*

The problem respondents identified is that the definition, as it is written, does not specify nor differentiate all the forms of access constraints that can cause "significant impediments to the ability of humanitarian or other relevant actors to access and assist affected children." The unintended result is that it allows for varying and inconsistent interpretations on which incidents of denial of humanitarian access should be reported through the MRM. In addition, the inclusion of the phrase "as provided for under the Geneva Conventions" has led to disagreement on whether only access impediments that constitute unlawful acts under international law should be reported through the MRM, even though this is not stated in nor required by the definition.

b. The difficulty of determining whether an access constraint constitutes an unlawful act under international law

Respondents identified two issues that make monitoring and reporting on the denial of humanitarian access particularly challenging: (a) the complexity of determining whether an access constraint is an unlawful act under international law (see section 3.1 above), and (b) the concern that MRM monitors and CTFMRs generally do

not have the expertise required to make such complex legal determinations in order to be able to monitor and report on this violation.

In reality, neither MRM monitors nor CTFMRs are expected to make such legal determinations. They are only expected to monitor and report on whether an incident of denial has occurred. This is true for all of the six grave violations that are monitored under the MRM. For example, when reporting on killing or maiming of children in situations of armed conflict, MRM monitors and CTFMRs are not expected to determine whether the attack that killed or maimed children was unlawful under IHL in terms of distinction and proportionality. Instead, they are expected to monitor and report that such an attack occurred in the context of an armed conflict and was perpetrated by parties to an armed conflict, and that children were killed or maimed.

It is important to highlight that the six grave violations, including the denial of humanitarian access, were identified by Security Council Resolution 1612 and by the Secretary-General's 2005 annual report on CAAC "based on their suitability for monitoring and verification, their egregious nature and the severity of their consequences on the lives of children."[114] Furthermore, Security Council Resolution 1612 and the Secretary-General's 2005 annual report determined that all six grave violations have a legal basis in IHL, IHRL, and ICL, which provide "well-defined yardsticks for monitoring and reporting violations against children in situations of armed conflict."[115]

c. The difficulty of identifying perpetrators

The MRM seeks to influence the conduct of all parties to conflict to end and prevent grave violations against children, and therefore monitors the behavior of all parties to conflict—both states and NSAGs.[116] When the MRM is established in a country situation, it does not only monitor the conduct of the parties

listed in the Secretary-General's annual report on CAAC, nor does it only monitor the violations for which the parties were originally listed. It monitors the conduct of all parties to conflict in the country in question, as well as all six grave violations.[117] This is of critical importance for compliance and accountability purposes in light of the changing dynamics of conflicts,[118] and it means that the denial of humanitarian access must always be monitored, even if it is not a trigger violation.

In addition to monitoring the conduct of all parties to an armed conflict, the MRM information that CTFMRs share with the Office of the SRSG-CAAC must include "the identity of parties responsible for committing the violation"[119] for attribution of responsibility. The difficulty of identifying perpetrators of the denial of humanitarian access or attributing responsibility is related to the wide range of access constraints that are monitored under the MRM—from hostilities, to the denial of entry visas for humanitarian personnel, to a situation of besiegement—as compared to the more limited forms of other grave violations. In other words, it may be easier to identify a government as the perpetrator of denial of access when the incidents are cumbersome registration procedures for humanitarian organizations that want to operate in the country, as compared to attacks against aid workers and humanitarian assets which may occur in complex and high-threat environments, where verification is difficult and it may be unclear if the perpetrators are state actors or militias, NSAGs or criminal groups. The same is true for cases of extortion at roadblocks or looting of humanitarian convoys, where it is often difficult to identify the perpetrators. It should be noted that the difficulty of identifying perpetrators is not unique to the denial of humanitarian access and can also be a challenge when monitoring and reporting on other grave violations, including killing and maiming of children, rape and

other forms of sexual violence against children, and attacks against schools or hospitals, as well as human rights violations monitored under other frameworks.

d. The different obligations of states and NSAGs

Another challenge identified by respondents is that international law obligations on humanitarian access differ between states and NSAGs. As explained in section 2.2 above (see footnote 10), consent to relief operations may not be refused for arbitrary reasons. However, only states have a legal capacity to consent; this capacity does not exist for NSAGs, even though under IHL, they must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.

The concern for respondents is that this asymmetry could be perceived as a double standard if the denial of humanitarian access were to become a trigger violation. However, as with the concern identified above on the difficulty of determining whether an access constraint constitutes an unlawful act under international law, MRM monitors and CTFMRs are only expected to monitor and report on whether an incident of denial has occurred—in this case, that consent to relief operations was refused. They are not expected to make legal determinations on whether the refusal was arbitrary or unlawful.

e. Inconsistent reporting across countries

Respondents reported concerns regarding inconsistent reporting on the denial of humanitarian access across MRM country situations, and from year to year in certain contexts. This is a different concern than the one identified above, regarding the inconsistent interpretations on which incidents

of denial of humanitarian access should be reported through the MRM as a result of the broad definition of this violation. The concern with inconsistent reporting relates to the different methodologies used to monitor the denial of humanitarian access across different UN agencies' mandates.

Security Council Resolution 1612 and the Secretary-General's 2005 annual report on CAAC call for a "collaborative division of labor"[120] among UN agencies that are members of CTFMRs, not only to ensure inter-agency coordination but also to encourage ownership of MRM objectives as a way of strengthening the work of CTFMRs.[121] Best practices on the MRM have shown that a collaborative division of labor works well when the mandate of each UN agency is leveraged for assigning monitoring responsibilities for each grave violation. For example, the International Labour Organization (ILO) gathers information on recruitment and use of children as part of its own reporting requirements related to ILO Convention 182 on the "Worst Forms of Child Labour" (1999), and for its programs on economic reintegration of children associated with armed forces and armed groups; the WHO gathers information through its Surveillance System of Attacks on Healthcare (SSA), as mandated by World Health Assembly Resolution 65.20 (2012)[122] to monitor and disseminate data on attacks against health care in complex humanitarian emergencies;[123] and the Office for the Coordination of Humanitarian Affairs (OCHA) tracks access constraints and their impact on affected populations and humanitarian response as part of its global Access Monitoring and Reporting Framework (AMRF).[124] In certain contexts, these UN agencies share information gathered under their respective mandates with CTFMRs as part of inter-agency coordination on the monitoring and reporting of grave violations against children.

The concern for respondents is with the differences in methodologies used by the various parts of the UN system that contribute to the MRM. For example, WHO's SSA system does not collect information on perpetrators, whereas information on perpetrators is critical for the MRM for purposes of compliance and accountability. OCHA's AMRF system is based on access severity mapping, which is not necessarily compatible with the MRM's incident-based methodology. These differences in methodologies have resulted in inconsistencies in reporting. This is compounded in contexts where CTFMRs have interpreted the MRM definition of denial of humanitarian access to mean that only access constraints that constitute unlawful acts under international law should be reported.

f. The lack of priority and lack of visibility

The number of UN and NGO staff dedicated exclusively to implementing the MRM is consistently low across countries on the CAAC agenda.[125] This is a vexing problem because monitoring and reporting is a human-resource-intensive responsibility that can be especially difficult in situations where access is limited. Respondents noted that in complex and high-threat environments, where only a few staff are tasked with monitoring and reporting, they have sometimes had to prioritize documentation of the trigger violations over the monitoring and reporting of incidents of the denial of humanitarian access. Like with the above concern regarding inconsistent reporting, this is compounded in contexts where CTFMRs have interpreted the MRM definition of denial of humanitarian access to mean that only access constraints that constitute unlawful acts under international law should be reported.

Respondents also reported that the word count restriction[126] for the length of the Secretary-General's annual report on CAAC has negatively impacted the visibility given to the denial of humanitarian access in the report. In other words, during the editing process to finalize the annual report, the situational analysis on this grave violation is reportedly the part most often cut to meet the strict word count limit, including because denial of access is not a trigger violation. Also, CTFMRs are asked to provide detailed information on the incidents of denial that have been included in their reports, such as information on the humanitarian actors that were affected, the relief items that were barred from entering, the consequences for operations, and the impact on children. However, the limited word count of the annual report does not allow for this situational analysis to be kept in the final report.

It is worth noting that there is significantly more room to include such situational analysis in the Secretary-General's country-specific reports on CAAC, which are also issued pursuant to Security Council resolutions on CAAC and are based on data collected through the MRM. As they are each dedicated to a single country on the CAAC agenda, they are less constrained by word count limitations and have robust sections on each of the six grave violations, including denial of humanitarian access. In addition, country-specific reports are important advocacy tools: after they are submitted to the Security Council, the Council's Working Group on CAAC issues recommendations (also known as "conclusions") to parties to conflict, Member States, donors, the UN system, and other relevant actors, which can include recommendations on denial of humanitarian access. However, while the country-specific reports on CAAC are less constrained by word count limitations when it comes to the inclusion of situational analysis on the denial of humanitarian access, the Working Group only receives country-specific reports concerning those situations where parties to conflict are listed in the annexes to the Secretary-General's report.

At this writing, country-specific reports are only produced on 14 of the 22 situations covered in the Secretary-General's annual reports on CAAC.[127]

g. The lack of guidance and training on monitoring and reporting on this violation

Respondents identified the lack of specific guidance and training on monitoring and reporting on the denial of humanitarian access as an important gap that should be addressed in the short term, regardless of whether it were to become a trigger violation. The Secretary-General's 2005 annual report on CAAC outlines the responsibilities of UN entities with monitoring and reporting mandates to ensure the effectiveness of the MRM system, which include "providing guidance and training in methodology, as well as in ethical and security matters, to information gatherers,"[128] and strengthening "the capacities of their field presence in terms of personnel, training and funding. Similarly, NGOs involved in monitoring and reporting should also strengthen their capacities for this purpose."[129] Guidance and training are critical for ensuring common approaches to monitoring and reporting across the MRM system, which is why the Secretary-General's 2005 annual report on CAAC calls on the Office of the SRSG-CAAC and UNICEF to "compile monitoring and reporting guidelines, drawing on experience to date and working with the Task Force, United Nations peacekeeping operations, United Nations country teams and NGOs."[130]

Guidance notes have been developed for other grave violations,[131] which could serve as a basis for developing specific guidance and training on monitoring and reporting on the denial of humanitarian access. New guidance would help to clarify the existing MRM definition of this violation and provide clear examples of acts that constitute denial of access, reiterate the legal foundations that were used to include it as one of the six grave violations, and explain the UN verification standards that are required to report such incidents through the MRM.

To support future decision-making on whether the denial of humanitarian access should become a trigger violation, the guidance should include either an action plan template for ending and preventing denial, or sample provisions on humanitarian access to be included in consolidated action plans, criteria for measuring the implementation of and compliance with such action plans or provisions, and measurable listing and delisting criteria for perpetrators of this violation. The guidance should also clarify responsibilities for negotiating humanitarian access.

At the heart of the above-listed concerns regarding monitoring and reporting on the denial of humanitarian access is a more general problem that affects the MRM system as a whole: the need for long-term and sustainable financial resources to support the UN's capacity to deliver on the MRM.

5.3. Risks and opportunities of making denial of humanitarian access a "trigger" violation

The UN Security Council's gradual adoption of CAAC resolutions that elevated five of the six grave violations into trigger violations speaks to the real possibility that denial of humanitarian access for children could also be elevated to a trigger, as long as it is done at an opportune political moment. The more significant question is whether it would be beneficial for the MRM system as a whole, for the protection of children in armed conflict, and for advancing humanitarian access.

This question has elicited conflicting points of view among experts and stakeholders. During key informant interviews, an interviewee wondered whether the voices supporting the elevation of the denial of humanitarian access to a trigger violation come from advocacy and human rights organizations focused on strengthening the MRM system in order to achieve compliance by parties to conflict with international law, child protection standards, and CAAC action plans, whereas humanitarian organizations tend to be more reluctant out of concern for their operations and their security, which directly impact whether children can access services and protection. Either way, concerns about the negative impact of elevating denial of access to a trigger violation are not widely understood and could benefit from expert and stakeholder consultations.

The following table is a compilation of these varying points of view regarding the question of whether denial of humanitarian access for children should be elevated to a trigger violation. These were gathered from key informant interviews, the online survey conducted for this paper, and various internal UN and NGO documents that have sought to clarify the way forward on this issue. They are organized around risks and opportunities, as follows:

		RISKS	OPPORTUNITIES
1.	On engagement with parties to conflict	• It could undermine negotiations on humanitarian access (organizations negotiating for access would be the same ones gathering information that could be used for listing). • It could compromise the safety and security of humanitarian personnel. • It could further politicize humanitarian access for children (i.e., humanitarian actors might no longer be perceived as neutral, impartial, or independent).	• It could promote dialogue on humanitarian access between parties to conflict and child protection organizations.
2.	On accountability	• In certain contexts, it is extremely difficult to identify perpetrators of the denial of humanitarian access or attribute responsibility, making it impossible to hold them accountable for their actions.	• As some parties to conflict are deliberately using the denial of humanitarian access as a tactic of war, it could provide political leverage to press for their compliance with obligations on humanitarian access and on the protection of children in armed conflict, thereby enhancing accountability.
3.	On advocacy	• There could be duplication of efforts or confusion if advocacy around denial of humanitarian access for children is not linked to broader UN access strategies and efforts.	• It could help raise awareness and bring international attention to this issue, as do other UN instruments such as the Secretary-General's annual report on protection of civilians, which could help raise funds and lead to successful negotiations on humanitarian access.
4.	On listing and delisting of perpetrators	• The implementation of the MRM is perceived by some experts and stakeholders as having been weakened by the politicization of the process of listing and delisting perpetrators from the annexes of the Secretary-General's annual report on CAAC.[132] Such politicization must be addressed and remedied before elevating denial of humanitarian access to a trigger violation, or there is risk of further politicization and erosion of the MRM.	• It could strengthen the implementation of the MRM by making it more consistent, as all six grave violations would trigger the listing of perpetrators—both state and NSAGs—in the annexes of the Secretary-General's annual report on CAAC.

▶

		RISKS	OPPORTUNITIES
5.	On action plans	• Making denial of humanitarian access a trigger violation would not necessarily lead to the signing of action plans to end and prevent this violation, which would be needed in order for perpetrators to be delisted. For example, while attacks against schools or hospitals became a trigger violation in 2011, with Security Council Resolution 1998, no action plans to end and prevent such attacks have been signed to date. • Currently there are no criteria for measuring a listed party's compliance with an action plan to end and prevent the denial of humanitarian access.	• It would allow the UN to advocate for the signing of action plans to end and prevent the denial of humanitarian access for children, or for the inclusion of provisions on ending and preventing this violation within comprehensive action plans that address several grave violations. If achieved, this could have an important positive impact for the protection of children given the high number of verified incidents of denial of humanitarian access.
6.	On guidance for monitoring and reporting	• The lack of existing guidance on monitoring and reporting on the denial of humanitarian access could exacerbate inconsistencies in the monitoring and reporting of this violation across countries, and potentially undermine the credibility of the MRM system.	• The development of guidance would help to clarify the existing definition of denial of humanitarian access for children, provide clear examples of acts that constitute denial of access, and reiterate the legal foundations that were used to include it as a grave violation.
7.	On a new CAAC resolution	• The adoption of a new CAAC resolution on the denial of humanitarian access would require the type of political momentum and climate of support that is absent in the Security Council at this moment in time. • Advocating for a new CAAC resolution to make denial of humanitarian access a trigger violation could result in language that is more limiting or restrictive than the current MRM working definition of this violation. • It could also result in less flexibility to engage with parties to conflict and to monitor violations.	

▶

◀ *continued*

		RISKS	OPPORTUNITIES
8.	On staff capacity and funding for the MRM		• It could help raise funds for training of current MRM staff on monitoring and reporting of this violation, and for increasing the number of dedicated staff working on MRM at field level.
9.	On impact on children	• Negotiations on humanitarian access could be undermined due to perceptions of lack of impartiality, as those organizations negotiating for access would be the same ones gathering information that could be used for listing. As a consequence, children would be negatively impacted by the further constraints on humanitarian access.	• If denial of humanitarian access were elevated to a trigger violation and parties to conflict were listed for this violation, the potential for behavior change of parties to conflict could lead to an expansion of humanitarian access for children. This would, in turn, decrease at least one of their vulnerabilities to other rights violations and abuses.
10.	On links to other UN mandates		• It could enable the implementation of other Security Council resolutions that address humanitarian access, such as Resolution 2286 (2016) on attacks against medical facilities as a form of access denial, or Resolution 2417 (2018) on starvation through access denial.

In addition to reflecting on the risks and opportunities of elevating the denial of humanitarian access for children to a trigger violation, some respondents indicated that there are few, if any, situations in which parties to conflict would only be responsible for perpetrating denial of humanitarian access and would not already be listed for at least one of the other five grave violations. This is an important point to consider when deliberating on whether denial of humanitarian access should be elevated to a trigger violation, as it highlights the importance of considering alternative avenues for strengthening efforts to monitor and report on this violation before making it a trigger for listing. In this respect, it is important to note other ongoing efforts to address access constraints that also seek behavior change and that are not linked to the CAAC mandate. These include the responsibilities of Humanitarian Coordinators (HCs) and Humanitarian Country Teams (HCTs) to engage in coordinated negotiations with parties to conflict to obtain free, timely, safe, and unimpeded access by humanitarian organizations to populations in need; and to promote respect for international humanitarian and human rights laws by all parties to conflict.[133]

6. RECOMMENDATIONS

To all parties to armed conflict

- Respect and protect humanitarian personnel, items, and equipment that form part of humanitarian activities undertaken by impartial humanitarian organizations.

- Allow and facilitate unimpeded, rapid, and safe access for impartial humanitarian organizations to deliver aid and care to civilians in need, with priority given to the most vulnerable, including children affected by armed conflict.

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.

To UN agencies and humanitarian organizations

- Strengthen collective advocacy strategies at national and global levels to preserve principled humanitarian action and to secure safe, rapid, and unimpeded access to children and other civilians in need of assistance and protection.

- Strengthen humanitarian actors' capacity to engage with NSAGs, including DTGs where operationally and programmatically necessary, in accordance with humanitarian principles.

To the Office of the SRSG-CAAC

- In collaboration with the MRM Technical Reference Group (TRG), develop a guidance note on monitoring, reporting, advocacy, and dialogue on denial of humanitarian access for children, in line with existing guidance notes for other grave violations against children, including the guidance note on Security Council Resolution 1998 on attacks against schools or hospitals.

- Highlight in public statements the impact of denial of humanitarian access on children and use the 25th anniversary of the CAAC mandate and the 20th anniversary of the CRC's Optional Protocol on the involvement of children in armed conflict (OPAC) to create momentum for change in 2022 and beyond.

- Highlight the impact of denial of humanitarian access on children during private, bilateral advocacy meetings with Member States or parties to conflict.

- Increase the visibility given to the denial of humanitarian access in the Secretary-General's annual report on CAAC by including more situational analysis on this grave violation.

To OCHA, UNICEF, DPO, and DPPA

- Convene a series of stakeholder consultations to achieve the following objectives:

  - Analyze the extent to which monitoring and reporting on denial of humanitarian access for the CAAC mandate has positively contributed to or negatively compromised access negotiations.

  - Analyze the risks and opportunities associated with elevating denial of humanitarian access to a trigger violation from a humanitarian, child rights, human rights, and broader political perspective.

  - Analyze the intersection with other Security Council resolutions that address humanitarian access, such as Resolution 2286 (2016) on attacks against medical facilities as a form of access denial and Resolution 2417 (2018) on starvation, and the extent to which elevating denial of humanitarian access to a trigger violation would enable the implementation of those resolutions and lead to better compliance all around.

  - Explore alternative avenues for strengthening the monitoring and reporting of denial of humanitarian access without making it a trigger violation.

- In consultation with relevant UN agencies and entities, develop a specialized training for monitoring, reporting, advocacy, and dialogue on denial of humanitarian access, to be imparted on an ongoing basis, including through onboarding, refresher, and online training modalities, to UN and NGO staff participating in the MRM, and as a complementary tool for a new guidance note on monitoring and reporting on this violation.

To OCHA and UNICEF

- Support CTFMRs and relevant UN Country Teams through coordination meetings specifically focused on denial of humanitarian access with the Office of the SRSG-CAAC, DPO, and DPPA.

- In consultation with relevant UN agencies and entities, organize a dedicated discussion on the different monitoring and reporting methodologies used by the various parts of the UN system that contribute to the MRM, including WHO's SSA and OCHA's AMRF, in order to reflect collectively on how these systems could better support and inform each other, and lead to more consistent reporting on denial of humanitarian access.

To the MRM TRG, or academic, research, or policy institutions

- Undertake field-based research to generate empirical evidence on the adverse effects of the denial of humanitarian access on children, including from CT measures and sanctions regimes.

- Undertake a thorough review of the impact and effectiveness of agreements with parties to conflict–in particular, their child protection provisions–in advancing humanitarian access for children.

7. ACKNOWLEDGEMENTS

Endnotes

[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.

[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.

[3] 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).

[4] Save the Children, "Stop the War on Children: Protecting Children in 21st Century Conflict," 2019, https://resourcecentre.savethechildren.net/pdf/report_stop_the_war_on_children.pdf/ (accessed May 2, 2022).

[5] 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).

[6] 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).

[7] Since the publication of its first report on Afghanistan in 2001 (the same year as its founding), Watchlist has produced over 25 reports detailing the situation of children in conflict-affected countries. For further information, please visit: https://watchlist.org/resources/reports/.

[8] This working definition is utilized by many humanitarian actors, the Global Protection Cluster, and the UN Office for the Coordination of Humanitarian Affairs (OCHA) in its inter-agency guidance. See: Swiss Federal Department of Foreign Affairs (FDFA), "Humanitarian Access in Situations of Armed Conflict: Handbook on the International Normative Framework, Version 2," December 2014, https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/voelkerrecht/Human-access-in-sit-of-armed-conflict-handbook_EN.pdf (accessed April 26, 2022), p. 13.

9   These rules are found principally in Common Article (Art.) 3(2) of the four Geneva Conventions (GC); GC relative to the Protection of Civilian Persons in Time of War (GC IV), adopted August 12, 1949, 75 U.N.T.S. 287, entered into force October 21, 1950, https://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5 (accessed May 2, 2022), Arts. 17, 23, 59 and 61; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (AP I), adopted June 8, 1977, 1125 U.N.T.S. 3, entered into force December 7, 1978, https://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079 (accessed May 2, 2022), Arts. 68-71 and 81; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts (AP II), adopted June 8, 1977, 1125 U.N.T.S. 609, entered into force December 7, 1978, https://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079 (accessed May 2, 2022), Art. 18; and rules 55 and 56 of customary international humanitarian law (CIHL). See: International Committee of the Red Cross (ICRC), "Q&A and Lexicon on Humanitarian Access," June 2014, https://www.icrc.org/en/doc/assets/files/2014/icrc-q-and-a-lexison-on-humanitarian-access-06-2014.pdf (accessed April 26, 2022) and Swiss FDFA, "Humanitarian Access in Situations of Armed Conflict: Handbook on the International Normative Framework, Version 2," December 2014, pp. 22-35.

10   Common Art. 3(2) to the GC is silent as to who should consent to humanitarian relief operations in non-international armed conflicts. Some interpret Common Art. 3(2) as implicitly allowing humanitarian relief operations to be conducted if the party to the conflict to which an offer is made, be it a state or a NSAG, accepts it, regardless of the position adopted by the other party. However, Art. 18(2) of AP II is more explicit on this issue, requiring the consent of "the High Contracting Party concerned," thus inferring that solely a state party to a non-international armed conflict has a right to consent. It is the ICRC's view that as a matter of law, consent should be sought from the state in whose territory the conflict is taking place, including for relief activities to be undertaken in areas over which it has lost control. See: Tristan Ferraro, "Relief Schemes and the Delivery of Humanitarian Activities in Situations of Armed Conflict: The ICRC's Perspective," in Proceedings of the 40th San Remo Round Table: The Additional Protocols 40 Years Later: New Conflicts, New Actors, New Perspectives, ed. Fausto Pocar (International Institute of Humanitarian Law: FrancoAngeli, 2018), https://iihl.org/wp-content/uploads/2018/03/RT-2017-FERRARO.pdf (accessed April 28, 2022), p. 198. See also: Dapo Akande and Emanuela-Chiara Gillard, "Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict," OCHA, October 2016, https://reliefweb.int/sites/reliefweb.int/files/resources/Oxford%20Guidance%20pdf.pdf (accessed April 26, 2022), pp. 16-17. According to Matthias Vanhullebush, this legal asymmetry defeats the very purpose of criminalizing starvation and willful impediment of humanitarian relief during non-international armed conflicts as in order for members of NSAGs to be held criminally liable, the groups to which they belong must have such right to accept or deny offers of impartial humanitarian organizations in the first place. See: Matthias Vanhullebush, "Do Non-State Armed Groups Have a Legal Right to Consent to Offers of International Humanitarian Relief," *Journal of Conflict & Security Law*, Volume 25, Issue 2 (2020), pp. 317-341. As Françoise Bouchet-Saulnier of Médecins Sans Frontières (MSF) puts it, "It is hard to contemplate how non-State parties to the conflict can have obligations to facilitate relief operations […] without also having their legal capacity to consent to such operations." See: Françoise Bouchet-Saulnier, "Consent to Humanitarian Access: An Obligation Triggered by Territorial Control, Not States' Rights," *International Review of the Red Cross*, Volume 96, Issue 893 (2014), https://international-review.icrc.org/articles/consent-humanitarian-access-obligation-triggered-territorial-control-not-states-rights (accessed April 26, 2022), pp. 211-212. Whatever the legal position, as a matter of operational practice, many humanitarian organizations seek the agreement of all parties concerned, including NSAGs, before carrying out their activities.

11   This may include simplifying and expediting entry-visa procedures for personnel participating in humanitarian relief operations, waiving or reducing customs inspection requirements, granting permits for the passage of humanitarian relief supplies, equipment, and personnel, etc. See: Dapo Akande and Emanuela-Chiara Gillard, "Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict," OCHA, October 2016, pp. 27-28.

12   This includes measures such as verifying the humanitarian and impartial nature of the assistance, prescribing technical arrangements for the practical delivery of the assistance, as well as temporarily restricting the movement of relief personnel in case of imperative military necessity. The military necessity argument can only be invoked in exceptional circumstances to regulate–but not prohibit– humanitarian access. See: ICRC, "Q&A and Lexicon on Humanitarian Access," June 2014.

13   Rule 135 of CIHL; GC IV, Art. 24(1); AP I, Art. 77(1); AP II, Art. 4(3).

14   GC IV, Art. 23, and AP I, Art. 70(1).

15   AP II, Art. 4(3).

16   Shaheed Fatima QC, *Protecting Children in Armed Conflict* (London: Bloomsbury Publishing, 2018), pp. 486-487.

17   SPLM/OLS (Operation Lifeline Sudan) Agreement on Ground Rules, May 1996, http://theirwords. org/media/transfer/doc/sd_splm_a_1995_06-231ae906230a30c0a15a29fa99e67511.pdf (accessed May 2, 2022).

18   Memorandum of Understanding Between the UN and the Justice and Equality Movement (JEM) Regarding the Protection of Children in Darfur, July 21, 2010, http://theirwords.org/media/transfer/ doc/sc_sd_jem_2010_14-f6948befe283477f4580d2ad67692d97.pdf (accessed May 2, 2022), Art. 2 (Principles of Humanitarian Assistance).

19   Office of the Special Representative of the Secretary-General for Children and Armed Conflict (OSRSG-CAAC), "South Sudan: Comprehensive Action Plan to End & Prevent All Grave Violations Against Children Signed by Government," February 7, 2020, https://childrenandarmedconflict.un.org/2020/02/ south-sudan-comprehensive-action-plan-to-end-prevent-all-grave-violations-against-children-signed-by-government/ (accessed April 28, 2022).

20   Ashley Jackson, "In Their Words: Perceptions of Armed Non-State Actors on Humanitarian Action," Geneva Call, May 2016, https://www.genevacall.org/wp-content/uploads/2019/05/WHS_ Report_2016_web.pdf (accessed April 28, 2022). See also: Christine Bell et al., *PA-X Codebook, Version 5* (Edinburgh: Political Settlements Research Programme), University of Edinburgh, 2021, https://www. peaceagreements.org/ (accessed April 28, 2022).

21   OSRSG-CAAC, "Practical Guidance for Mediators to Protect Children in Situations of Armed Conflict," February 2020, https://childrenandarmedconflict.un.org/wp-content/uploads/2020/10/ Practical-guidance-for-mediators-to-protect-children-in-situations-of-armed-conflict.pdf (accessed May 5, 2022).

22   UN General Assembly, Convention on the Rights of the Child (CRC), G.A. res 44/25, adopted November 20, 1989, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, http://www.ohchr.org/en/professionalinterest/pages/crc.aspx (accessed May 2, 2022), Art. 22(1); see also: CRC, Arts. 24 and 27 on children's right to health care, nutrition, clothing, and housing.

23   CRC, Art. 38.

24   Organisation of African Unity (OAU), African Charter on the Rights and Welfare of the Child (ACRWC), OAU Doc. CAB/LEG/24-9/49 (1990), adopted July 1990, entered into force November 29, 1999, https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf (accessed May 19, 2022), Art. 23(1).

25   CRC, Art. 22(2); ACRWC, Art. 23(2).

26   For details on these rights and how they relate to humanitarian access, see: Swiss FDFA, "Humanitarian Access in Situations of Armed Conflict: Handbook on the International Normative Framework," pp. 42-48.

27   UN General Assembly, International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res 2200A(XXI), adopted December 16, 1966, 21 U.N. GAOR Supp. (No.16) at 49, U.N. Doc A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx (accessed May 2, 2022), Arts. 2(1), 11, and 12.

28   Rome Statute of the International Criminal Court (ICC) (Rome Statute), U.N. Doc. A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf (accessed May 2, 2022), Art. 8(2)b(xxv). The inclusion of willfully denying humanitarian assistance as an international crime was unsuccessfully proposed by the Inter-Agency Standing Committee (IASC) during the negotiations of the Rome Statute of the ICC. UN, Communication Received from IASC to the UN Diplomatic Conference on Plenipotentiaries on the Establishment of an International Criminal Court, Note by the Secretary-General, (A/CONF.183/INF/4), June 11, 1998, https://undocs.org/A/CONF.183/INF/4 (accessed April 28, 2022), Annex, para. 2.

29   ICC Assembly of States Parties, "Report of the Working Group on Amendments, 18th session," (ICC-ASP/18/32), December 3, 2019, https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP18/ICC-ASP-18-32-ENG.pdf (accessed May 2, 2022).

30   Dapo Akande and Emanuela-Chiara Gillard, "Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict," OCHA, October 2016, p. 37.

31   Rome Statute, Arts. 7(1)(b) and 7(2)(b).

32   Ibid., Art. 6(c).

33   Ibid., Art. 8(2)(b)(iii) and (e)(iii).

34   Tristan Ferraro, "Relief Schemes and the Delivery of Humanitarian Activities in Situations of Armed Conflict: the ICRC's Perspective," 2018, pp. 200-201.

35   Ibid.

36   Dapo Akande and Emanuela-Chiara Gillard, "Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict," OCHA, October 2016, pp. 23-24, and Shaheed Fatima QC, *Protecting Children in Armed Conflict*, 2018, pp. 463-468.

37   Shaheed Fatima QC, *Protecting Children in Armed Conflict*, 2018.

38   Ibid.

39   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.

40   Ibid.

41   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.

42   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.

43   Ibid., p. 60.

44   OSRSG-CAAC, "Study on the Evolution of the Children and Armed Conflict Mandate, 1996-2021," January 2022, https://childrenandarmedconflict.un.org/wp-content/uploads/2022/01/Study-on-the-evolution-of-the-Children-and-Armed-Conflict-mandate-1996-2021.pdf (accessed April 28, 2022), p. 50.

45   An analysis by Save the Children of the Secretary-General's annual reports on CAAC shows that the denial of humanitarian access in conflict has increased by 1,500 percent since 2010 and barely featured in the early years of reporting. See: Save the Children, "The War on Children: Time to End Grave Violations Against Children in Conflict," 2018, https://resourcecentre.savethechildren.net/pdf/war_on_children-web.pdf/ (accessed April 28, 2022), p. 30.

46   UN Security Council, Report of the Secretary-General on Children and Armed Conflict (A/74/845–S/2020/525), June 9, 2020, https://undocs.org/S/2020/525 (accessed April 28, 2022), para. 9. Information related to the denial of humanitarian access to children is presented pursuant to Security Council Resolution 1612 (2005) and follows guidelines of the 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.

47   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/en/S/2019/509 (accessed April 28, 2022), para. 11.

48   UN Security Council, Report of the Secretary-General on Children and Armed Conflict (A/75/873–S/2021/437), May 26, 2021, para. 4.

49   Katharine Houreld and Giulia Paravicini, "UN Official Says Starvation Is Being Used as Weapon of War in Tigray," *Reuters*, June 14, 2021, https://www.ctvnews.ca/world/un-official-says-starvation-is-being-used-as-weapon-of-war-in-tigray-1.5469072 (accessed May 9, 2022).

50   Office of the High Commissioner for Human Rights (OHCHR), "Statement by Nada Al-Nashif, the UN Deputy High Commissioner for Human Rights, Special Session of the Human Rights Council on Ethiopia," December 17, 2021, https://www.ohchr.org/en/2021/12/special-session-human-rights-council-grave-human-rights-situation-ethiopia (accessed May 9, 2022).

51   OCHA, "HC a.i. Statement on the Killing of 23 Aid Workers in the Tigray Region Since the Start of the Crisis," September 1, 2021, https://reliefweb.int/report/ethiopia/hc-ai-statement-killing-23-aid-workers-tigray-region-start-crisis (accessed May 9, 2022).

52   UNICEF, "Humanitarian Action for Children 2022 – Mozambique," December 2021, https://reliefweb.int/sites/reliefweb.int/files/resources/2022-HAC-Mozambique.pdf (accessed May 9, 2022).

53 UNICEF, "Geneva Palais Briefing Note on Reports of Abduction of Minors in Mozambique's Cabo Delgado Province," October 5, 2021, https://www.unicef.org/press-releases/geneva-palais-briefing-note-reports-abduction-minors-mozambiques-cabo-delgado (accessed May 9, 2022).

54 Jonathan Wittall, "Focus on Fighting 'Terrorists' Ignores Real Humanitarian Needs in Cabo Delgado," *News 24*, May 1, 2021, https://www.news24.com/news24/columnists/guestcolumn/opinion-focus-on-fighting-terrorists-ignores-real-humanitarian-needs-in-cabo-delgado-20210501 (accessed May 9, 2022).

55 UN News, "Conflict in Ukraine Disrupting an Entire Generation of Children, Says UNICEF," February 18, 2022, https://news.un.org/en/story/2022/02/1112272 (accessed May 9, 2022).

56 UN News, "'Unprecedented' Number of Traumatized People Flee Ukraine," March 4, 2022, https://news.un.org/en/story/2022/03/1113342 (accessed May 9, 2022).

57 OCHA, "Ukraine: Humanitarian Impact, Situation Report as of 10 March 2022," March 10, 2022, https://reliefweb.int/sites/reliefweb.int/files/resources/2022-03-10_Ukraine%20Humanitarian%20Impact%20SitRep_.pdf (accessed May 9, 2022).

58 UNICEF, "UNICEF Executive Director Catherine Russell's Remarks at the UN Security Council Meeting on the Humanitarian Situation in Ukraine," March 7, 2022, https://www.unicef.org/press-releases/unicef-executive-director-catherine-russells-remarks-un-security-council-meeting (accessed May 9, 2022).

59 Amnesty International, "Ukraine: Humanitarian Corridors for Civilians Fleeing Russian Attacks Must Provide Safety – New Testimonies," March 10, 2022, https://www.amnesty.org/en/latest/news/2022/03/ukraine-humanitarian-corridors-for-civilians-fleeing-russian-attacks-must-provide-safety-new-testimonies/ (accessed May 9, 2022).

60 UN Security Council, Report of the Secretary-General on the Protection of Civilians in Armed Conflict (S/2021/423), May 3, 2021, https://undocs.org/en/S/2021/423 (accessed April 28, 2022), para. 39.

61 Save the Children, "Save the Children Staff Identified Among the Dead After Burnt Bodies Found in Myanmar," December 28, 2021, https://www.savethechildren.net/news/save-children-staff-identified-among-dead-after-burnt-bodies-found-myanmar (accessed April 28, 2022).

62 MSF, "Ethiopia: MSF Demands Investigation into Killing of Three Staff Members in Tigray," July 7, 2021, https://www.doctorswithoutborders.org/latest/ethiopia-msf-demands-investigation-killing-three-staff-members-tigray (accessed April 28, 2022).

63 Humanitarian Outcomes, "Aid Worker Security Report 2021. Crime Risks and Responses in Humanitarian Operations," October 2021, https://www.humanitarianoutcomes.org/sites/default/files/publications/awsr2021.pdf (accessed April 28, 2022).

64 Ibid.

65 Ibid.

66 For example, in the course of 2017 research on South Sudan, Watchlist found that parties to conflict had shot and stolen ambulances, looted humanitarian convoys filled with lifesaving medicines and nutrition supplements, and damaged or destroyed medical facilities, thus preventing children's access to health care. Watchlist on Children and Armed Conflict, "'Everyone and Everything Is a Target': The Impact on Children of Attacks on Health Care and Denial of Humanitarian Access in South Sudan," 2018, https://watchlist.org/wp-content/uploads/watchlist-field_report-southsudan-web.pdf (accessed April 28, 2022).

67   Save the Children, "Childhood Under Siege: Living and Dying in Besieged Areas of Syria," March 2016, https://resource-centre-uploads.s3.amazonaws.com/uploads/stcj4175_besieged_children_03_16_web.pdf (accessed April 28, 2022).

68   Also known as the "Coalition to Support Legitimacy in Yemen" in the Secretary-General's annual reports on CAAC.

69   Watchlist on Children and Armed Conflict and Save the Children, "'Every Day Things Are Getting Worse': The Impact on Children of Attacks on Health Care in Yemen," April 2017, https://watchlist.org/wp-content/uploads/2212-watchlist-field-report-yemen-lr.pdf (accessed April 28, 2022).

70   Human Rights Watch, "'I Always Remember That Day': Access to Services for Survivors of Gender-Based Violence in Ethiopia's Tigray Region," 2021, https://www.hrw.org/report/2021/11/09/i-always-remember-day/access-services-survivors-gender-based-violence-ethiopias (accessed April 28, 2022). See also: OCHA, "Press Statement on the ERC's Visit to Ethiopia," August 4, 2021, https://www.unocha.org/story/press-statement-erc%E2%80%99s-visit-ethiopia (accessed May 9, 2022).

71   In March 2022, Ethiopia's Government declared an immediate "humanitarian truce" with opposition Tigrayan forces to allow aid into the besieged northern region where millions of people were facing starvation. See: Emmanuel Akinwotu, "Ethiopian Government Declares Tigray Truce to Let Aid In," *The Guardian*, March 24, 2022, https://www.theguardian.com/world/2022/mar/24/ethiopian-government-declares-tigray-truce-to-let-aid-in (accessed April 28, 2022).

72   World Food Programme, "Severe Hunger Tightens Grip on Northern Ethiopia," January 28, 2022, https://www.wfp.org/news/severe-hunger-tightens-grip-northern-ethiopia (accessed April 28, 2022). OCHA, "Northern Ethiopia Humanitarian Update, Situation Report," January 27, 2022, https://reliefweb.int/attachments/ffdca3b0-6d62-37b7-a120-f0ac1f1fbfea/Situation%20Report%20-%20Northern%20Ethiopia%20-%20Humanitarian%20Update%20-%2027%20Jan%202022.pdf (accessed April 28, 2022).

73   The IASC has recently completed an indicative global mapping to understand and address bureaucratic and administrative impediments impacting humanitarian action. See: https://interagencystandingcommittee.org/system/files/2022-01/IASC%20Guidance%20Understanding%20and%20Addressing%20Bureaucratic%20and%20Administrative%20Impediments%20to%20Humanitarian%20Action_Framework%20for%20a%20System-wide%20Approach.pdf.

74   UN Security Council, Report of the Secretary-General on the Protection of Civilians in Armed Conflict (S/2021/423), May 3, 2021, para. 39.

75   Watchlist on Children and Armed Conflict, "'Everyone and Everything Is a Target': The Impact on Children of Attacks on Health Care and Denial of Humanitarian Access in South Sudan," 2018.

76   Emanuela-Chiara Gillard, "IHL and the Humanitarian Impact of Counterterrorism Measures and Sanctions: Unintended Ill Effects of Well-Intended Measures," Chatham House, September 2021.

77   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.

78   InterAction, "Detrimental Impacts: How Counter-Terror Measures Impede Humanitarian Action, A Review of Available Evidence," April 2021.

79   For example, in Syria, according to 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).

80   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: Defence 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).

81   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).

82   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).

83   Watchlist on Children and Armed Conflict, "Countering Terrorism and Violent Extremism: The Erosion of Children's Rights in Armed Conflict," January 2020, p. 21.

84   Save the Children, "Protect a Generation: The Impact of COVID-19 on Children's Lives," 2020, https://resourcecentre.savethechildren.net/pdf/vr59-01_protect_a_generation_report_en_0.pdf/ (accessed April 28, 2022); Save the Children, "The Hidden Impact of COVID-19 on Child Poverty," 2020, https://resourcecentre.savethechildren.net/pdf/the_hidden_impact_of_covid-19_on_child_poverty.pdf/ (accessed April 28, 2022); Child Rights Now!, "Ending Violence against Children and COVID-19," June 2020, https://reliefweb.int/sites/reliefweb.int/files/resources/Ending%20violence%20against%20children%20and%20COVID-19%20publication.pdf (accessed April 28, 2022); War Child and World Vision, "The Silent Pandemic. The Impact of the COVID-19 Pandemic on the Mental Health and Psychosocial Wellbeing of Children in Conflict-Affected Countries," 2020, https://www.wvi.org/sites/default/files/2021-04/The%20Silent%20Pandemic_final.pdf (accessed April 28, 2022); Plan International, "Halting Lives: The Impact of COVID-19 on Girls and Young Women," September 2020, https://plan-international.org/publications/halting-lives-the-impact-of-covid-19-on-girls/ (accessed April 28, 2022); Watchlist on Children and Armed Conflict, "Factsheet on COVID-19 and Children and Armed Conflict," April 2020, https://watchlist.org/wp-content/uploads/2379-watchlist-factsheet-covid-19-final.pdf (accessed April 28, 2022).

85   Since the start of the COVID-19 pandemic, various NSAGs have taken measures to contain the spread of the virus in areas under their control. These measures include closing business, establishing lockdowns, increasing health checks, and imposing travel controls and other restrictions to the freedom of movement. See: Geneva Call, "COVID-19 Armed Non-State Actors' Response Monitor," December 2021, https://www.genevacall.org/covid-19-armed-non-state-actors-response-monitor-2/ (accessed May 2, 2022); and Sandra Krähenmann et al., "Emergency Governance: Armed-Non-State Actors Facing COVID-19," Armed Groups and International Law, March 2, 2022, https://www.armedgroups-internationallaw.org/2022/03/02/emergency-governance-armed-non-state-actors-facing-covid-19/ (accessed May 2, 2022). According to estimates by the ICRC, between 60 and 80 million people live in areas controlled by NSAGs. See: ICRC, "International Humanitarian Law and COVID-19 Vaccinations in Territories under the Control of Non-State Armed Groups," March 31, 2021, https://www.icrc.org/en/document/ihl-covid-19-vaccinations-territory (accessed May 2, 2022).

86   UN Security Council, Report of the Secretary-General on the Protection of Civilians in Armed Conflict (S/2021/423), May 3, 2021, para. 40.

87   Human Rights Watch, "Deadly Consequences. Obstruction of Aid in Yemen During Covid-19," September 2020, https://www.hrw.org/report/2020/09/14/deadly-consequences/obstruction-aid-yemen-during-covid-19 (accessed May 2, 2022).

88   ICRC, "IHL Rules on Humanitarian Access and Covid-19," April 8, 2020, https://reliefweb.int/sites/reliefweb.int/files/resources/icrc_ihl_rules_on_humanitarian_access_and_covid-19_april_2020.pdf (accessed May 2, 2022).

89   Emanuela-Chiara Gillard, "COVID-19 Vaccine: Reaching People in Areas Controlled by Armed Groups," December 16, 2020, https://www.chathamhouse.org/2020/12/covid-19-vaccine-reaching-people-areas-controlled-armed-groups (accessed May 2, 2022).

90   The data was produced by the Peace Research Institute Oslo (PRIO) that maps children and armed conflict trends from 1990 to 2020, using the Uppsala Conflict Data Program's Georeferenced Event Dataset (UCDP GED) and the UN 2019 World Population Prospects. See: Save the Children, "Stop the War on Children: A Crisis of Recruitment," 2021, https://resourcecentre.savethechildren.net/pdf/SWOC-5-5th-pp.pdf/ (accessed May 2, 2022).

91   Save the Children, "Stop the War on Children: Protecting Children in 21st Century Conflict," 2019.

92   Ibid.

93   Save the Children, "Stop the War on Children: A Crisis of Recruitment," 2021.

94   Save the Children, "Stop the War on Children: Protecting Children in 21st Century Conflict," 2019.

95   Alex de Waal, *Mass Starvation: The History and Future of Famine* (Cambridge: Polity Press, 2018).

96   Save the Children, "Hunger – a Lethal Weapon of War: The Impact of Conflict-Related Hunger on Children," 2018.

97   UN Security Council, Report of the Secretary-General on Children and Armed Conflict (A/75/873–S/2021/437), May 26, 2021, para. 202.

98   Save the Children, "Stop the War on Children: A Crisis of Recruitment," 2021.

99   UN Security Council, Report of the Secretary-General on Children and Armed Conflict (A/75/873–S/2021/437), May 26, 2021, para. 81.

100   Ibid.

101   Ibid.

102   Save the Children, "Protecting Children in Mali," May 27, 2021, https://www.savethechildren.org.uk/blogs/2021/protecting-children-in-mali (accessed May 2, 2022).

103   UN Security Council Resolution 1261 (1999), S/RES/1261 (1999), https://undocs.org/S/RES/1261(1999) (accessed May 2, 2022), para. 11.

104   Security Council Resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009), 1998 (2011), 2068 (2012), 2143 (2014), 2225 (2015), 2427 (2018), and 2601 (2021).

105   OSRSG-CAAC, UNICEF, and the Department of Peacekeeping Operations (DPKO), "Guidelines: Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict," June 2014, https://www.mrmtools.org/files/MRM_Guidelines_-_5_June_2014(1).pdf (accessed May 2, 2022), p. 7.

106   UN Security Council, Report of the Secretary-General on Children and Armed Conflict (A/64/742–S/2010/181), April 13, 2010, https://undocs.org/A/64/742 (accessed May 2, 2022), paras. 176-180.

107   Watchlist on Children and Armed Conflict, "Briefing Note: Expanding the UN's Children and Armed Conflict Agenda," May 2015, https://watchlist.org/wp-content/uploads/Watchlist_Abductions_Policy_Brief-LR.pdf (accessed May 2, 2022).

108   UN, "Charter of the United Nations," October 24, 1945, https://www.un.org/en/about-us/un-charter (accessed May 2, 2022), Art. 1(3).

109   UN Secretary-General, "Renewing Our Commitment to the Peoples and Purposes of the United Nations," November 22, 2013, https://www.un.org/sg/en/content/sg/speeches/2013-11-22/renewing-our-commitment-peoples-and-purposes-united-nations-scroll (accessed May 9, 2022); also: UN, "'Rights Up Front' Detailed Action Plan," updated March 2014, https://interagencystandingcommittee.org/system/files/detailed_hruf_plan_of_action.pdf (accessed May 9, 2022).

110   UN Security Council, Report of the Secretary-General on Children and Armed Conflict (A/59/695–S/2005/72), February 9, 2005, https://undocs.org/s/2005/72 (accessed May 2, 2022), paras. 58-137.

111   Ibid., para. 86.

112   "The CTFMR is composed of all relevant UN entities and may include national and/or international NGOs or national bodies (e.g., National Human Rights Commission, Ombudsman Office) provided they are neutral, impartial and independent." Watchlist on Children and Armed Conflict, "The 1612 Monitoring and Reporting Mechanism: Resource Pack for NGOs," 2015, https://watchlist.org/wp-content/uploads/2127-Watchlist-MRM_finalcomplete.pdf (accessed May 2, 2022), p. 17.

113   OSRSG-CAAC, UNICEF, and DPKO, "Guidelines: Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict," June 2014.

114   OSRSG-CAAC, "Guidance Note on Security Council Resolution 1998," May 2014, https://childrenandarmedconflict.un.org/publications/AttacksonSchoolsHospitals.pdf (accessed May 2, 2022).

115   UN Security Council, Report of the Secretary-General on Children and Armed Conflict (A/59/695–S/2005/72), February 9, 2005, para. 69.

116   UN Security Council, Report of the Secretary-General on Children and Armed Conflict (A/59/695–S/2005/72), February 9, 2005, para. 74.

117   OSRSG-CAAC, UNICEF, and DPKO, "Guidelines: Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict," June 2014.

118   The gradual listing of parties in Nigeria illustrates this point. When the MRM was established in Nigeria following the listing of Boko Haram in 2014 for killing and maiming of children and for attacks against schools or hospitals, the MRM monitored not only the conduct of Boko Haram, but also of the Nigerian security forces and the Civilian Joint Task Force (CJTF). As more credible and verified information was documented by the MRM, Boko Haram was listed for additional violations and other parties were listed as well. Boko Haram was listed for recruitment and use of children in 2015, for abduction of children in 2016, and for rape or other forms of sexual violence against children in 2017. The CJTF was listed for recruitment and use of children in 2016, signed an action plan with the UN in 2017 to end and prevent this violation, and was delisted in 2021. To date, Boko Haram-affiliated and splinter groups remain listed for all five trigger violations.

119   UN Security Council, Report of the Secretary-General on Children and Armed Conflict (A/59/695–S/2005/72), para. 86.

120 UN Security Council, Report of the Secretary-General on Children and Armed Conflict (A/59/695–S/2005/72), February 9, 2005, para. 85.

121 OSRSG-CAAC, UNICEF, and DPKO, "Global Good Practices Study: Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict," November 2013, https://www.mrmtools.org/files/MRM_Good_Practice_Study_-_27_Nov_2013.pdf (accessed May 2, 2022).

122 The WHO is mandated "to provide leadership at the global level in developing methods for systematic collection and dissemination of data on attacks on health facilities, health workers, health transports, and patients in complex humanitarian emergencies, in coordination with other relevant United Nations bodies, other relevant actors, and intergovernmental and nongovernmental organizations, avoiding duplication of efforts." See: World Health Assembly Resolution 65.20, May 26, 2012, https://apps.who.int/iris/bitstream/handle/10665/80494/A65_R20-en.pdf?sequence=1&isAllowed=y (accessed May 2, 2022), para. 2(8).

123 Benjamin Mason Meier, Hannah Rice, and Shashika Bandara, "Monitoring Attacks on Health Care as a Basis to Facilitate Accountability for Human Rights Violations," *Health and Human Rights Journal*, Volume 23, Issue 1, June 2021, https://www.hhrjournal.org/2021/06/monitoring-attacks-on-health-care-as-a-basis-to-facilitate-accountability-for-human-rights-violations/ (accessed May 2, 2022), pp. 55-70.

124 OCHA, "OCHA Access Monitoring & Reporting Framework," https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/OCHA_Access_Monitoring_and_Reporting_Framework_OCHA_revised_May2012.pdf (accessed May 2, 2022).

125 OSRSG-CAAC, "Study on the Evolution of the Children and Armed Conflict Mandate, 1996-2021," January 2022, p. 55.

126 The UN Department for General Assembly and Conference Management (DGACM) manages the rules governing submission of UN documents. Mandated documents originating in the UN Secretariat, such as the Secretary-General's reports to the Security Council, have a strict word limit of 8,500 words, which includes footnotes, endnotes, headings, and annexes. See: https://www.un.org/dgacm/sites/www.un.org.dgacm/files/pdf/document_submission_guide_5.2.pdf.

127 At this writing, the 14 countries on which country-specific reports are produced are Afghanistan, CAR, Colombia, DRC, Iraq, Mali, Myanmar, Nigeria, the Philippines, Somalia, South Sudan, Sudan, the Syrian Arab Republic, and Yemen. The eight countries or situations included in the Secretary-General's annual report on CAAC as "other situations of concern" at this writing are Burkina Faso, Cameroon, India, Israel and the State of Palestine, the Lake Chad Basin, Lebanon, Libya, and Pakistan. See: UN Security Council, Report of the Secretary-General on Children and Armed Conflict (A/75/873–S/2021/437), May 26, 2021. See also: UN Security Council, Working Group on Children and Armed Conflict, website, https://www.un.org/securitycouncil/subsidiary/wgcaac (accessed May 18, 2022).

128 UN Security Council, Report of the Secretary-General on Children and Armed Conflict (A/59/695–S/2005/72), para. 83.

129 Ibid., para. 84.

130 Ibid., para. 104.

131   OSRSG-CAAC, "The Six Grave Violations against Children during Armed Conflict: The Legal Foundation," October 2009, updated November 2013, https://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf (accessed May 2, 2022); OSRSG-CAAC, "Children and Justice During and in the Aftermath of Armed Conflict," September 2011, https://childrenandarmedconflict.un.org/publications/WorkingPaper-3_Children-and-Justice.pdf (accessed May 2, 2022); OSRSG-CAAC, "Guidance Note on Security Council Resolution 1998," May 2014.

132   An example of such politicization is the premature delisting of the Saudi-led Coalition even though it did not satisfy the Secretary-General's delisting criteria, as outlined in the 2010 annual report on children and armed conflict. The Saudi-led Coalition had been listed for committing grave violations against children in Yemen and was delisted—first, in 2018, for attacks on schools or hospitals, and then, in 2020, for the killing and maiming of children—despite not having signed or implemented action plans with the UN to end these grave violations and despite MRM documentation of a continuing pattern of violations. See: Eminent Persons Group, "Keeping the Promise: An Independent Review of the UN's Annual List of Perpetrators of Grave Violations against Children, 2010 to 2020," March 2021, https://watchlist.org/wp-content/uploads/eminent-persons-group-report-final.pdf (accessed May 2, 2022).

133   IASC, "Standard Terms of Reference for Humanitarian Country Teams," February 2017, https://interagencystandingcommittee.org/system/files/hct_tors.pdf (accessed May 9, 2022).

20 WATCH LIST ON CHILDREN AND ARMED CONFLICT
years
working together to
protect children in war

FORDHAM | Institute of International
THE JESUIT UNIVERSITY OF NEW YORK | Humanitarian Affairs