Programme Guidance Note on Engaging with Non-State Entities in Humanitarian Action
PROGRAMME GUIDANCE NOTE ON ENGAGING WITH NON-STATE ENTITIES IN HUMANITARIAN ACTION

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1. INTRODUCTION

1.1 What is in this Programme Guidance Note?

This programme guidance responds to a priority need identified by UNICEF senior managers and staff working in country contexts where armed non-state entities (“NSEs”) operate.

The guidance lays out the reasons for UNICEF to consider engagement with armed non-state entities and the purpose of such engagement within the context of humanitarian action. It also defines and analyses the broad legal and policy framework for engaging with NSEs, as well as considerations regarding the environment in which UNICEF undertakes this engagement. Finally, the guidance identifies methods for assessing if and when such engagement is appropriate, and how to proceed within the organisation once engagement has been initiated. This guidance note does not provide step-by-step instruction on how to engage/negotiate, but in Annex C it provides information on where to find more operational guidance.

1.2 What Situations does this Programme Guidance Note cover?

This guidance note covers situation in which UNICEF works to deliver results for children affected by crises through humanitarian action. “Humanitarian action” is programming that is guided by humanitarian principles. For UNICEF, the scope of “humanitarian action” is defined in UNICEF’s Core Commitments to Children in Humanitarian Action (CCCs) and includes the preparedness for response to humanitarian crises, the response itself including the early recovery approach. It therefore covers a more extensive time period than is contemplated in the “humanitarian action” dealt with in International Humanitarian Law (IHL) (which focuses on the middle phase of UNICEF “humanitarian action”: the response phase). The present guidance does not mean to exclude the possibility of UNICEF engagement with NSEs for purposes other than humanitarian assistance as defined in IHL. While some aspects of this guidance may indeed be relevant in non-humanitarian situations, the legal and policy frameworks, possible approaches and risks are significantly different in non-humanitarian settings and are therefore beyond the scope of this guidance.

1.3 Why do we need this Programme Guidance Note?

UNICEF has a noted history of engagement with non-state entities. In Biafra and Cambodia in the 1970s, the UNICEF Executive Director negotiated directly with all sides to allow the safe passage of relief flights. In Sudan in the 1990’s, UNICEF, as the lead agency in Operation Lifeline Sudan, negotiated a multiparty “ground rules agreement” with the Government of Sudan and Sudan People’s Liberation Movement (SPLM) that laid out the principles and parameters for humanitarian assistance in areas under SPLM control. UNICEF has a successful record of negotiating the release of children from armed groups, including in Uganda, Sri Lanka and Nepal. However, experience within the humanitarian community also shows that poorly planned and executed engagement will be fruitless, and in the worst case counterproductive, damaging and even prompt violence. This Programme Guidance Note is therefore essential reading for all personnel.

In all cases, the decision of whether and how to engage with NSEs is complex and challenging for managers and staff due to fast evolving and diverse country situations, the multiplicity of international actors involved in a given situation, the perception that national stakeholders have or may have of UNICEF as a multi-mandated organization, and the
motives of the parties to a given conflict. Though no guidance can substitute for good decision-making and sound judgment, this Programme Guidance Note aims to help UNICEF staff handle the ambiguity of these situations competently and confidently.

2. JUSTIFICATION

2.1 Why does UNICEF engage with non-state entities?

Children and women can be severely affected during armed conflict. They are often unable to access services, including humanitarian assistance. They also face extreme protection risks. Children may be illegally recruited into armed groups and children, both girls and boys, and women may be targeted for sexual violence and forced marriage. Where NSEs control populations and territory, engaging with them is in certain contexts critical to delivering on UNICEF’s mandate and ensuring achievement of the Core Commitments for Children in Humanitarian Action (CCCs). The negative consequences of non-engagement - children without access to basic social services or the victims of persistent grave violations of their rights –outweigh the risks of engaging with armed non-state entities.

UNICEF’s mandate correlates closely with the Millennium Declaration and the Millennium Development Goals, specifically promoting universal primary education (Goal 2), reducing child and maternal mortality (Goals 4, 5), and malaria control (Goal 6). The MD and MDGs apply equally in peacetime and in armed conflict.

UNICEF’s programmatic objectives for assisting and protecting children and women in humanitarian action provide a strong rationale for engagement with NSEs. Ensuring the achievement of the benchmarks outlined in the CCCs may necessitate engaging with NSEs, notably for four main reasons:

A. To advocate in favour of and to secure access to populations in need for the provision of assistance. This is core to our mission and mandate and in many cases we are not able to pursue our mission without making some sort of arrangements with NSEs to have access to populations they control or to pass through territory they control. The mandate for this is firmly rooted in UNICEF’s mission and in international legal and normative frameworks (which are discussed in the following section).

B. To secure commitments on goals fulfilling the rights of children in humanitarian emergencies. Engagement to secure commitments on goals fulfilling the rights of children in humanitarian emergencies is equally core to UNICEF’s mandate but often more challenging to articulate effectively. Child protection activities are, by nature, often politically sensitive. Several UNICEF managers and staff have noted concerns that strong advocacy in favour of children and women’s rights, in particular when conducted through public channels, may alter the manner in which UNICEF is perceived by the government and other groups and what the likely impacts of such perceptions could be on other programmes and on access. This challenged is noted by the humanitarian community as a whole, in particular by the

1 This guidance note also covers engagement with NSEs in the context of provision of humanitarian response to natural disasters, in cases where the country affected by the disaster was already in a pre-existing conflict situation.

other organizations which have both a protection mandate and a mandate to deliver services through humanitarian action.

C. To advance accountability for perpetrators of violence against children, and to assist the United Nations Security Council in its work to combat grave violations against children. As a part of the United Nations System, UNICEF has a mandate to work with other towards ending impunity for those who commit violence towards children, including through groups such as NSEs. The United Nations Security Council has made clear the importance of stopping grave violations against children, through UN Security Council Resolutions 1612 (2005), 1882 (2009), and 1998 (2011) on Children in Armed Conflict. In these resolutions the Security Council has identified six grave violations against children as requiring special focus and require the UN to establish country-level the Monitoring and Reporting Mechanism on Grave Child Rights Violations in Situations of Armed Conflict (MRM), in places where such violations persist.\(^3\) Resolutions 1612, 1882 and 1998 indicate that UNICEF, as a mandated agency to implement these resolutions, is called upon to carry out a number of activities, most notably the elaboration and implementation of Action Plans to end Grave Violations by parties listed under the 1612/1882/1998 mechanism that require engaging with NSEs in certain situations as part of the efforts of the UN as a whole.

D. To mitigate risks to staff security. UNICEF may need to engage with NSEs to explain UNICEF’s role and humanitarian mandate – including the humanitarian principles of universality and neutrality – so as, for example, to secure the safe movement of supplies and staff. In the past, this has included agreements with armed groups to secure zones of peace, humanitarian corridors or days of tranquility to temporary halt ongoing fighting for the delivery of relief supplies, or to conduct immunization campaigns.

E. To pursue UNICEF’s humanitarian mandate in post-conflict situations. In post-conflict situations, humanitarians often find themselves working in environments where peace processes are active and where UN peacekeepers and political actors are present. Humanitarian action can contribute to peace-building by protecting civilians, encouraging confidence in the peace-building process, reducing violence, initiating recovery and rebuilding and improving relationships between the actors involved. While other international actors might engage with NSEs exclusively for peace-building purposes, UNICEF staff engaged in humanitarian assistance should make every effort to maintain a neutral and impartial profile in their own dealings with NSEs.\(^4\)

2.2 Applicable International Legal and Normative Framework

\(^3\) These include (1) the killing and maiming of children, (2) the recruitment and use of children as soldiers, (3) attacks against schools and hospitals, (4) the denial of humanitarian access for children, (5) the abduction of children and (6) the rape and/or sexual abuse of children.

\(^4\) The neutrality of humanitarian assistance is confirmed in GA Res. 46/182, 19 December 1991, paragraph 1, Annex paragraph 1, 2. (“Humanitarian assistance must be provided in accordance with the principles of humanity, neutrality, and impartiality.”). This is understood as a commitment “not to take sides in hostilities and to refrain from engaging in controversies of a political, racial, religious or ideological nature.” (CCCs). In some situations, some parties may see a political impact from the provision of humanitarian assistance, and while this is regrettable, all UNICEF’s actions will continue to be guided by the best interests of children and the humanitarian imperative. UNICEF is committed to maintaining a distinct humanitarian (that is, neutral) profile even when working closely with key UN partners which have a political or security mandate.
It is essential to understand, and be able to articulate, the international legal and normative framework within which our engagement with NSEs takes place. Such an understanding is a key element in the structured decision-making approach laid out in this Programme Guidance Note. Moreover, the international legal obligations of states and NSEs in their treatment of civilians set forth in such instruments can provide a solid basis for negotiation. The aspects covered below constitute the minimum knowledge that staff operating in high threat and conflict environments should have about relevant legal and normative frameworks. Resources are available within UNICEF (through EMOPS, Humanitarian Policy Section, and the legal office in the Office of the Executive Director) to consider more in depth aspects of these matters.

**INTERNATIONAL LAW**

International law is the body of legal principles that govern relations between States. It is any and all of the following: (a) international conventions, whether general or particular, establishing rules expressly recognised by States; (b) international custom, as evidence of a general practice accepted as law; (c) general principles of law recognised by States; and (d) judicial decisions, and teachings of qualified persons (referred to as “publicists”), as subsidiary means for the determination of international law.

UNICEF’s purposes for engaging with NSEs in humanitarian situations, and the obligations of NSEs as to populations and as to humanitarian actors in such situations, are grounded in three particular branches of international law: international humanitarian law; human rights law; and international criminal law. These obligations are also informed by human rights law, a separate body of law that governs relations between governments and individuals (and which is increasingly being understood to govern relations between individuals and any organised group exercising governmental-type authority, such as a NSE.)

(a) **International Humanitarian Law**

IHL applies in situations of armed conflict, which can be “international” or “non-international”. An “international” armed conflict is normally self-evident. Determining a “non-international” armed conflict for the purposes of IHL is more complex, however, and politically very sensitive. Some indications of a “non-international armed conflict” are that the state is fighting an organised armed group (or two or more such groups are fighting each other); and that there is a certain level and intensity of fighting over a more than temporary or short-lived period. UNICEF, as a matter of policy, does not make a determination that a particular situation is a “non-international armed conflict”. If this question arises, particularly in connection with UNICEF programmes, Country Offices should refer to HQ for support.

IHL, as reflected in relevant international instruments, is binding on states that have ratified those instruments. The principal instruments are the four Geneva Conventions (1949) and their two supplementary instruments, the two Additional Protocols relating to the protection of victims of armed conflicts (1977). A seventh instrument is vitally important for UNICEF’s work: the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000). NSEs, by definition, are not in a position

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5 There are additional relevant instruments which are not addressed substantially in this Note, including the Biological Weapons Convention (1972); the Conventional Weapons Convention and its five optional protocols (1980); the Chemical Weapons Convention (1993); the Ottawa Convention on anti-personnel mines (1997); and the Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two protocols.
to become signatories to or ratify such instruments; however, as individuals the members of such groups are required, as a matter of international humanitarian law, to comply with these instruments. IHL as reflected in customary international law is binding on all parties to an armed conflict – regardless of whether they are parties to a particular agreement, and some of its rules are binding directly on individuals regardless of any implementing legislation.

While most rules of international humanitarian law apply only in “international” armed conflicts, some rules also apply in “non-international” armed conflicts. Both Common Article 3 of the Geneva Conventions of 1949 and Additional Protocol II of 1977 are specific to non-international conflict. Each one calls for the humane treatment of all combatants, the care of the wounded and sick, and confirm the right of impartial humanitarian bodies to assist affected populations.

Additional Protocol II also obliges parties to a conflict to distinguish between civilians and combatants, and calls for the protection of civilians against all acts of violence and reprisals. It includes specific provisions for the assistance and protection of children, including access to education, and bans the recruitment of children under 15 years old as combatants. Additional Protocol II also calls for impartial humanitarian relief for civilians in need. Customary international humanitarian law further stipulates that parties to the conflict must allow and facilitate rapid and unimpeded passage of impartial humanitarian relief for civilians in need, subject to the consent of the parties concerned. This consent may not or must not be arbitrarily withheld. Only in cases of imperative military necessity may the movements of humanitarian organizations be even temporarily restricted.

Both treaty-based and customary international humanitarian law are understood to establish a “right of initiative” whereby, as part of their humanitarian mission, humanitarian organizations may offer their humanitarian services to all parties to armed conflict, subject to the parties’ consent, which cannot be arbitrarily refused. UNICEF’s efforts to engage with NSEs for humanitarian purposes are consistent with this principle.

(b) International Criminal Law

The Rome Statute of the International Criminal Court (2002) articulates the elements of international criminal law. It confirms that – as was the case even before 2002 pursuant to customary law – it is a war crime – to murder, enslave, torture, forcibly transfer, sexually assault, or deprive of liberty, any civilian populations. Moreover, the Rome Statute specifically provides – again, confirming principles that had become law through custom already at that point – that knowingly enlisting, conscripting, or using persons under 15 years of age to actively participate in hostilities is a war crime. The principles of the Rome Statute apply in both international and non-international armed conflicts. The International Criminal Court has jurisdiction over individuals only, not groups as such. More information

\(1954\).

6 The “Common Articles” of the Geneva Conventions are those articles that are common to all four of the Conventions.

7 This is expressed to be subject to consent of the state involved. Consistent with principles of customary international humanitarian law (see footnoted 10-12), that condition is now recognised to mean that a state cannot withhold consent, and that any restrictions or conditions imposed in giving consent must relate solely to matters such as ports of entry, routes of passage, and the like, but cannot purport to restrict the proper discharge of the humanitarian mandate by, for example, seeking to compromise the principle of neutrality an universality.

8 International Committee of the Red Cross Customary Rule 55.

9 International Committee of the Red Cross Customary Rule 56.

INTERNATIONAL NORMS

UNICEF’s engagement with NSEs, and the obligations of NSEs, are also grounded in internationally-recognised norms (principles of conduct that, although acknowledged by the international community have not yet risen to the level of international law). These are reflected in inter-governmental statements – most particularly, statements by organs of the United Nations.

(a) Resolutions of United Nations Organs

United Nations Security Council and General Assembly resolutions also contain strong language and provisions on state and non-state obligations to protect and assist civilians and against the recruitment of children into armed groups. Security Council resolutions adopted under Chapter VII of the United Nations Charter are legally binding. General Assembly resolutions are recommendatory for Member States.

Security Council resolutions on the Protection of Civilians in Armed Conflict and on specific country situations are increasingly explicit on the need for humanitarian agencies to negotiate with parties to a conflict to obtain and maintain safe access to civilians, and to guarantee security for humanitarian relief personnel. Staff might look to such resolutions for strong language on state and parties’ obligations toward civilians, and for specific provisions pertaining to the particular context in which they are working.

In addition to the IHL framework which pertains to the provision of humanitarian assistance, UNICEF’s own mandate to engage with NSEs is firmly grounded in both Security Council and General Assembly resolutions. UN Security Council Resolutions and 1882 (2009), on Children in Armed Conflict articulate six grave violations against children and require the UN to establish country-level monitoring and reporting mechanisms (MRMs), in places where such violations persist. Resolutions 1612, 1882, 1998 indicate that UNICEF, as a mandated agency to implement these resolutions, is called upon to carry out a number of activities that require engaging with NSEs in certain situations.

General Assembly Resolution 46/182 (1991) and subsequent resolutions on Strengthening the Coordination of the Emergency Humanitarian Assistance of the United Nations set forth the humanitarian principles under which humanitarian organizations operate. The principle of impartiality is particularly important, as it stipulates that humanitarian assistance must be provided without discrimination and based on need. The principle of neutrality is also essential to UNICEF’s ability to engage with all parties to a conflict without conferring legitimacy on them or their actions.

Resolution 46/182 also includes specific language on facilitating humanitarian access “by obtaining the consent of all parties concerned, through modalities such as the

10 These include the killing and maiming of children, the recruitment and use of children as soldiers, attacks against schools and hospitals, the denial of humanitarian access for children, the abduction of children and the rape and/or sexual abuse of children.

11 These include humanity, neutrality, impartiality and independence.
establishment of temporary relief corridors days and zones of tranquillity and other forms.” Although this language specifically applies to the Emergency Relief Coordinator, UNICEF can be expected to engage in such negotiations when acting as a lead agency (for example it was given this role in Operation Lifeline Sudan), when acting on behalf of the HCT as part of a joint strategy, or when working to deliver on its own mandate. Subsequent General Assembly resolutions increasingly call upon humanitarian organizations to engage with NSEs to obtain humanitarian access.

(b) Other Standards

Normative standards that are non-binding further strengthen UNICEF’s mandate to engage with NSEs, notably The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (2007).

HUMAN RIGHTS LAW (HRL)

While IHL includes provisions that are binding on NSEs, HRL has traditionally been understood to apply only to states. It is designed to protect individuals from state abuse, and obligates states to ensure that NSEs operating within their borders do not violate human rights. However, there is a growing trend within in humanitarian law and policy that recognizes the human rights obligations of NSEs in their own right, particularly if they exercise government-like functions in a given territory.12

In addition, some NSEs have developed their own policies that reflect human rights language, by drafting codes of conduct for their members. (Examples include SPLA, LTTE and PLO). While NSEs might not generally have direct obligations under HRL, the Convention on the Rights of the Child (1989) recognizes responsibilities of actors beyond the state towards women and children. For example, its Optional Protocol on the Involvement of Children in Armed Conflict (2002) prohibits armed groups that are distinct from the armed forces of the state from recruiting or using in hostilities persons under the age of 18 years.

3. APPROACH

3.1 Decision to engage with NSEs

As explained above (section 2.1), there are certain contexts in which UNICEF will be placed in a position where it must engage with NSEs to achieve the sought outcomes for children.

The decision that is before managers and staff is therefore not whether to engage but rather when, how and for what purpose. In this regard, the decision-making process should be informed by:

- a solid analysis of the political context, conflict dynamics, stakeholder interests and operating environment;
- the identification of concrete objectives for such engagement;
- consideration of the range of options for engagement based on these objectives;
- a shared understanding of the risks within the organisation; and
- possible strategies for their mitigation.

Such decisions should also be made within the framework of the in-county UN system—be it a UNCT, HCT, or SRSG-led integrated mission. The UN leadership, particularly the Humanitarian Coordinator and UNDSS/the DO, should be included in the early stages of decision-making to ensure strategic UN coordination, anticipate the UN-wide impact and assess security risks. As regards the Children and Armed Conflict agenda, UNICEF acts in concert with other members of the Country Level Task Force and may seek the advice and support of the Office of the SRSG for CAAC via UNICEF HQ. Only exceptionally should UNICEF decide on unilateral action, even when related to limited activities specific to its core mandate.

In countries where UNICEF is likely to have to engage at a given point with NSEs, it is recommended that the CO Team undertakes this analysis well ahead of the actual engagement and revisit this analysis periodically. The steps below are obviously too substantive to be carried out by UNICEF staff members when they are faced with the immediate decision of whether or not to speak with a group when out in the field. These reflections should therefore be conducted in a preparatory step, and in certain countries could be integrated into the regular country programme cycle (in the SITAN, at annual reviews, etc...), under the leadership of the CO Management and with the support of the Regional Office and EMOPS.

A. Analysing the Situation

Decisions to engage with NSEs should include a broad analysis of the situation. Consideration should be given to the following issues:

(a) The overall political/security context, including an analysis of the nature of the emergency, its causes, dynamics and political context, peace negotiation or mediation processes underway, and the role of the UN and international community in that process. A security risk assessment should be updated/undertaken with this particular context in mind.

(b) Key stakeholders, including a mapping of all key local, national and international players and their influence on and responsibilities for children’s rights, and consideration of the role and authority of the government and the role an authority of all major NSEs. Particular attention should be paid to the NSE in question, its composition, structure, core values, interests, funding sources, hierarchy, ethnicity and its relationship to the civilian population under its control or affected by its actions. Such analysis may also

Integrated UN Presences
The presence of peacekeeping or political missions can affect the perceptions of humanitarian agencies by parties to the conflict and local populations. In such cases, engagement for humanitarian purposes should generally be conducted by civilian, humanitarian actors, and remain separate (in both process and content) from political or peace negotiations (noting that this is not always possible, for example when negotiating action plans in the context of Security Council Resolutions 1612 and 1882 where UNICEF’s mandate is shared with the mission, in partnership with peacekeeping missions). However, while the strategy and approach may be distinct, coherence is important. In keeping with UN policy on integrated UN presences, the purposes of such engagement should be aligned with the integrated strategic framework in place, and NSE discussions should be undertaken ‘in close cooperation’ with political and peacekeeping actors. Such cooperation is often not easy to come by as humanitarian actors may meet resistance from political or peacekeeping colleagues.

In such situations, it is important that the UNICEF Country Representatives 1) remind political and peacekeeping counterparts that integration arrangements should take full account of recognized humanitarian principles, allow for the protection of humanitarian space, and facilitate effective humanitarian coordination with all humanitarian actors; 2) focus UNICEF’s own engagement with NSEs on humanitarian objectives and actions; 3) ensure that the purpose of such engagement is well defined, communicated and understood by all parts of the UN, relevant areas of government and all parties to the discussions.

Efforts should be made to resolve any differences of opinion at country level. When such resolution is not possible, the Country Representative should contact Director of EMOPS to obtain support from HQ. In situations where there is no mission, but a UNCT and RC/HC, UNICEF should seek UN-wide support of the UNCT, RC/HC and HCT. The Regional Director should be kept appraised in all cases.

When engagement is related to SCR 1612/1882/1998, the guidance and support of the SRSG for Children and Armed Conflict can help ensure a coherent approach between the Co-Chairs of the Task Force (UNICEF and the SRSG or RC).
help identify partners who are better placed to undertake negotiations with NSEs that would nevertheless enable UNICEF-supported activities to proceed.

(c) **The impact of the political/security environment on girls, boys, women and men**, including an assessment of the humanitarian situation, current assistance operations and likely trends including gender differentiation, with specific attention to populations and sectors covered by UNICEF’s mandate and operations. This should also include a review of the relevant global norms, standards, rights and obligations based on international law the relevant intergovernmental legislation and other norms and programmatic standards discussed above.

(d) **The presence and nature of UN peacekeeping or political missions, where deployed**, including an analysis of the mandate and operations of the political/peacekeeping mission, how humanitarian actors engage with the mission, whether they are structurally integrated and where operations and activities overlap. This should also include a determination of attitudes the mission leadership might have about the prospect of UNICEF’s engagement with NSEs, and/or to identify any existing UN policy statements applicable to engagement with NSEs in that given context.

(e) **Perceptions of United Nations humanitarian actors**, particularly by NSEs, local populations and the government. Issues to consider are how perceptions have been affected by UN mission activities, the involvement of foreign armed forces, whether and how aid is diverted from its purpose (by parties to the conflict and/or by the international community) and the overall implications for UNICEF. Consideration should also be given to the reaction of the government should engagement with NSE take place. If such analysis does not favour engagement with NSEs, corrective action might be needed (e.g. confidence building measures, advance discussions with relevant stakeholders) as part of the engagement strategy.

(f) **Practical considerations**, specifically how to gain physical access to the group and the areas under its control, where, how and with whom contact should be made to maximize UNICEF’s ability to gain commitments from, and change the behaviour of, the group in question.

(g) **Relevant global political issues**, including regional politics and the role of neighbouring countries, foreign policy objectives of neighbours, allies and enemies as well as the presence of foreign armed forces. This includes the likely response of governments to UNICEF engagement with NSEs.

(h) **Recent experience and lessons learned**, such as whether and how humanitarian agencies have operated in the given territory in the past, whether and how they engaged with NSEs and including important
B. Clarify the objective of engagement

Based on UNICEF’s mandate and programmatic commitments, engagement with NSEs will likely focus on one of the four main aims discussed in section 2.1. Within this framework, however, specific objectives for engagement with an NSE can range from lifting a single roadblock to discussing the six grave violations examined by the UNSC, to defining the parameters for humanitarian access across an entire region. In all cases, objectives must be based on UNICEF’s core mandate and humanitarian principles and/or the humanitarian priorities defined in key outputs, such as Integrated Strategic Frameworks (ISFs), the Consolidated Appeals Process (CAPs), transitional and other frameworks. A deliberate decision should be made on the number of issues to be raised. NSE engagement is likely to be most effective if objectives are clear, narrowly defined, coordinated with partners. It may also be wiser to start engagement on less sensitive issues, and broaden dialogue as trust is established.

C. Responsibility for the decision

At country level, decisions about engaging with NSEs should be made by Country Representatives and not individual staff members. All Country Representatives as well as those staff members at country level who are likely to engage with NSEs must be familiar with this guidance. When such decisions require HQ support, the EMOPS Director acts as the focal point for all technical and legal questions and as the coordinator of all internal consultations, including with the OED, as necessary. The Regional Director must be kept appraised at all times.

The Executive Director must give the green light for any new engagement with an NSE, including any significant changes in the nature of an ongoing engagement.

When the risk associated with NSE engagement is limited to country level, decision-making should remain with the UNICEF Country Representative. Information on such decisions should be shared with the Regional Director, and the Director of the Office of Emergency Programmes (EMOPS). Technical support may also be sought from EMOPS, DPP, and PD. EMOPS also has established partnerships that may be relied on to clarify specific legal issues. Staff members at country level who are likely to engage with NSEs should receive the appropriate training, possess at minima knowledge of the legal and normative frameworks as explained in this Programme Guidance Note, and have been briefed on the Country Office’s analysis of the situation and strategy for engagement.

Decisions that have broader implications (e.g. repercussions in other country programmes, reputational risk beyond the country, relations in the UN family, risk transferred to partners) should be made in consultation with all relevant Country Representatives, Regional Directors, and HQ led by the Director of EMOPS. Note that by definition engagement with listed and/or proscribed groups or entities has possible implications beyond the specific country context. The Director or EMOPS is the focal point for a rapid, joint and transparent risk analysis with relevant organizational levels/divisions, especially PD, DPP and GMA. The Director of EMOPS will refer sensitive decisions to the Office of the Executive Director (OED). The Director of EMOPS will also be able to provide updated policy advice related to multilateral and bilateral sanctions, country-specific issues, proscribed groups, and security risks.

Where situations involve engaging with individuals linked to International Criminal Court crimes or under ICC warrant, UNICEF Country Representatives are required to contact the Director of EMOPS who will obtain specific guidance from the Principal Legal Adviser, Office of the Executive Director.

3.2 Modalities of engagement

How to engage with NSEs should be directly linked to the objectives and the context in which engagement takes place. However, any negotiations with NSEs must be based on ensuring compliance with obligations
and responsibilities under IHL and the other international instruments described above in the name of assisting and protecting civilian populations. A principled approach to negotiation is not easy and may repeatedly be dismissed by NSEs wanting tangible benefits for their cooperation. However, UNICEF staff should not offer any status or legitimacy, allow any privileged treatment or promise any kind of favours or rewards in exchange for meeting UNICEF’s needs.

The following are possible approaches for engaging with NSEs. They are not mutually exclusive and can be used in combination or in stages as situations and objectives change over time. Whatever form engagement takes, UNICEF staff should determine that the benefits of engagement outweigh the risks, and that the NSE interlocutor is authorized to represent the organization, and has – or has access to – decision-making power to make and keep commitments.

(a) **Direct vs. indirect engagement:** Direct engagement makes sense when the NSE is willing and accessible, and when such engagement does not create an undue risk for UNICEF relations or programmes. Indirect contact, such as communicating through diplomatic channels, an intermediary organization, community or religious leaders is warranted when direct engagement is rejected, when contact by the UN is severely restricted by the government, or when direct engagement is geographically difficult. Indirect contact may also be used when NSE members fear retribution from others. Issues to consider are time-sensitivity, misinterpretation of messages and possible compromises to confidentiality.

(b) **Open vs. confidential engagement:** Open engagement can promote respect for the agreed conditions by the parties, build confidence in the community, protect against potential retribution and allow for transparency with regards to UNICEF’s partners. On the other hand, open engagement can inadvertently confer status on the NSE or individual. Confidential engagement can be useful in the initial stages of engagement when the focus is on relationship and trust building. Confidential engagement may also be necessary when the sensitivities around the discussions would jeopardize UNICEF programmes, staff or relationships (including with the host government). In such cases, Country Representatives should articulate and verify the need for confidentiality and seek executive-level approval from HQ. Total confidentiality, however, is hard to maintain in practice. Consideration should always be given to the risks when the existence and content of ‘confidential’ discussions are disclosed.

(c) **High vs. low-level engagement:** High, or strategic-level, engagement can set the broad parameters for the discussion and raise visibility. Mid-level engagement is useful for working through technical and operational details. Low-level contact is often necessary to implement at ground level what has been agreed elsewhere. Low- or mid-level engagement might also be required when the NSE’s intricate chains of command or fragmented structures make access to its leadership difficult or irrelevant. Different levels of engagement may be more or less useful at different stages of the process.

(d) **Multi-party agreements:** These are warranted when the objectives are broad and the situation requires a more formal agreement with multiple stakeholders. These typically involve a lead agency that engages with the NSE on the humanitarian community’s behalf and requires coordination among humanitarian partners to determine a single set of objectives and requirements for process.

These options for engagement may be applied in the following contexts (not mutually exclusive):

(a) **Acute and sudden impact emergencies:** When rapid response is important, direct and low-level engagement on the front lines may be the only means for quick, informed decision making. In such cases, it is important that objectives are focused on immediate operational issues, communication is open and decisions are made quickly.

(b) **Protracted emergencies:** In situations of long-standing conflict, engagement with NSEs is as much about relationship building as it is about fulfilling immediate objectives. In such cases, the process can be as important as short-term outcomes, as it can build trust and create the potential for wider dialogue.

(c) **International engagement:** International forums are useful platforms to monitor political trends, advocate for principled humanitarian action and to guard against the use of humanitarian activities for military or political ends. As such engagement is more visible and high-stakes, care should be taken to avoid perceptions of lost neutrality or of endorsement of the NSE. Consideration should be given to the use of senior officials (e.g. special envoys, SRSGs – in particular the SRSG CAAC where SCR 1612-1882-1998 are concerned or USGs.), who may negotiate such politics more effectively.
3.3 Risk management

Balancing opportunity and risk is particularly difficult in complex emergencies. Engagement with NSEs may increase risk, and so requires a structured assessment of the potential threats. The following risk management principles, from UNICEF’s Enterprise Risk Management Policy, should be considered:\textsuperscript{13}

Accept risk when benefits outweigh costs. Such decisions should be based on a clear articulation of objectives and thorough analysis of the context and potential risks.

Recognize opportunities and make swift decisions. Analyse opportunities by weighing the benefits/expected results against the risks. Avoid delaying decisions that may exacerbate the problem, miss an opportunity, or lead to the loss of lives.

Consider risks individually and in the aggregate. Evaluate each risk on its own and in combination with other risks related to the same objective.

Make risk management decisions at the right level: Make decisions on risks at the level of delegated authority and escalate the decision to a higher level of management when necessary. The appropriate organizational focal point (in this case EMOPS) must be kept involved in all instances.

A. Categories of Risk

The following defines categories of risk that should be considered as part of any risk assessment:

(a) Security risks to staff: UNICEF national and international staff may assume a greater degree of personal risk when engaging with NSEs, as individuals and/or organizations may be targeted by a range of interests because of such engagement.

(b) Risks to ‘do no harm’ policy: Engaging with NSEs may create increase risks for affected populations. An example would be payments to warlords that exacerbate the humanitarian crisis.

(c) Risk to ongoing or future country programmes: This includes changes in access, programme continuity, relationships with populations, national authorities and donors, and risks to country programmes in other countries. UNICEF faces fewer risks when acting under humanitarian mandates with a basis in IHL and SC Res. 1612/1882/1998, compared to less specific mandates under the UN General Assembly, the CRC or other frameworks.

(d) Risk to other actors: UNICEF must consider the impact of its actions on others’ activities and reputation and its duty of care when it comes to partners.

(e) Reputational risk: At country level, this could mean the loss of UNICEF’s neutrality in the eyes of the government, the population, other NSEs and actors on the ground, particularly if engagement is misperceived as providing legitimacy to the NSE. This may, in turn, create security risks. At global level, this could include risk to UNICEF’s reputation within the humanitarian community, among neighbouring countries and donors, affecting wider operations, fundraising and advocacy.

(f) Global precedents: Operational concessions made to NSEs (e.g. payments, right to be searched, applications for permits) may set global precedents that impact on other humanitarian organizations.

(g) Legal/political risks: The responsibility for enforcing the measures imposed on “proscribed” individuals/entities is incumbent upon Member States and not upon international organizations. There is no formal mechanism through which the terrorist-designation of or sanctions against an individual, organization or state restricts UNICEF’s ability to engage for humanitarian objectives. However, the increased use of sanctions and the designation of individuals/organisations may create political difficulties when engaging with NSEs.\textsuperscript{14} In the cases of engagement with groups that are designated by Member States as terrorist entities, it should be assumed this carries a possible global risk to the organisation, and sign-off should be sought from the Office of the Executive Director through the Director of UNICEF’s Office of Emergency Programmes (EMOPS).

\textsuperscript{13} A more detailed description may be found in UNICEF’s Enterprise Risk Management Policy. Risk is defined as impact \times likelihood.

\textsuperscript{14} ‘Non-Paper on Policy Issues Affecting UNICEF Humanitarian Action In Complex Threat Environments.’ EMOPS, 2010
B. Assessing Risk

Once risks have been identified, they must then be assessed for their likelihood and potential impact. This can be either simple to measure, in the case of the value of a lost building, or impossible to know as in a force majeure event. It is therefore important to conduct a structured risk analysis to identify, analyze and plan for varying degrees of risk. The UNICEF Enterprise Risk Management Policy includes guidance on how to conduct a structured risk analysis. Country Representatives and staff likely to engage with NSEs should be familiar with and use these risk analysis tools.

C. Reducing Risk

Below are some key strategies for reducing risks that arise from engagement with NSE over time:

(a) **Build community relationships**: Dialogue, negotiation and advocacy are rarely one-off activities. Their success often depends on trust, mutual respect and understanding and on relationships cultivated over time. A first step should be to understand the community they represent from first-hand knowledge. This can minimize misperceptions and identify the appropriate interlocutors.

(b) **Manage security risk actively**: Security risks to staff should be identified and addressed through a formal or informal assessment of security risk with UNDSS, the relevant field security officers and the Designated Official. Doing this from the outset will help shape the relationship between UNICEF and security officials, clarify roles and responsibilities, minimize disagreement on acceptable risk. A strategy for managing these risks must be put in place and continually monitored.

(c) **Gain partner support**: Coordination with humanitarian partners, for example within the UNCT and/or IASC, and implementing partners is critical to minimizing risks.

(d) **Employ the right staff**: Engaging with NSEs requires exceptional interpersonal skills, the ability to think on one’s feet, an acute sense of responsibility and sound judgement. Employing managers and staff with those attributes will go a long way in minimizing the risk NSE engagement may bring on. Providing staff with training on IHL and negotiations can help ensure they have access to the right resources and tools.

(e) **Ensure records on engagement are maintained**: Rapid staff turnover can create of knowledge related to engagement with specific groups. Strategic knowledge should also be shared with the respective Regional Directors and headquarters. The confidentiality of this information must be assured, in part by limiting electronic circulation.

4. Conclusion and Resources

The origins and dynamics of the conflict, the existence and status of a peace process and the actors who are involved, whether or not there is a warrant from the International Criminal Court concerning a given non-state actor or country situation, a Security Council mandate, and the mandate and perceived intentions of any UN peacekeeping or political presence will have an impact on UNICEF’s ability and approach to NSE engagement. UNICEF itself might be involved in a range of activities, from humanitarian service delivery, to protection and children rights monitoring, to peace-building activities and development assistance, that create misperceptions with authorities and NSEs about the motivations for UNICEF’s engagement with NSEs. This requires extra efforts by the organisation to distinguish itself as a humanitarian actor, whose work is guided by the principles of humanity, neutrality and impartiality. Moreover, direct involvement of UNICEF with NSEs might inadvertently confer legitimacy on an NSE and/or be used by them for political purposes. Any decision about NSE engagement requires a sophisticated understanding of the context, benefits and risks, coordination with the right partners and support at the right level.

Engaging with non-state entities is a critical component of UNICEF’s ability to fulfil its mandate and deliver life-saving assistance to populations, and particularly children and women, in need; indeed it is often necessary in order to fulfil UNICEF’s mandate to protect the rights of children and women in humanitarian action.

Most UNICEF staff working in the field are likely to encounter the dilemmas described above during the
course of their careers. Decisions about when, whether and how to engage with non-state entities must be based on a solid knowledge of the political/security context and legal basis for such engagement, an ability to identify and assess a range of risks to UNICEF staff, relationships and programmes and the recognition of when such decisions require broader consultation or more expert/senior advice. Though no guidance can substitute for good decision-making and sound judgment, this programme guidance suggests ways in which COs, working with ROs and HQ and in close collaboration with the rest of the UN system and humanitarian partners, can make well informed and structured decisions. It is hoped that investing in such processes will help UNICEF staff handle the ambiguity of these situations competently and confidently.

**For more information contact EMOPS, Humanitarian Policy Section:**

Genevieve Boutin, Chief  
Gboutin@unicef.org

Mads Oyen, Policy Advisor  
moyen@unicef.org

Please also consider joining **UNICEF’s Community of Practice on Working in High Threat Environments**
ANNEX A – Terminology

The following key principles, norms and terms define the nature of humanitarian assistance and its parameters and are essential for engaging with NSEs.

**Non-state entity:** In armed conflict, an armed non-state entity is distinct from a governmental force. Its structure may range from that of a militia to rebel bandits.\(^{13}\) Other attributes may include independence from state control, the use of violence for political purposes and effective control over a territory/population.\(^{16}\)

**International Humanitarian Law (IHL):** A body of rules, that protects persons who are not or are no longer participating in the hostilities, and regulates how wars can be fought. The rules apply to governments and their armed forces, and to NSEs. IHL is made up of the four Geneva Conventions of 1949 and their two Additional Protocols of 1977 as well as subsequent treaties, case law, and customary international humanitarian law.\(^{17}\)

**Humanitarian Principles:** humanitarian assistance must be provided in accordance with the principles of humanity, neutrality, impartiality and independence\(^{18}\)

- **Humanity:** Human suffering must be addressed wherever it is found, with particular attention to the most vulnerable in the population, such as children, women and the elderly. The dignity and rights of all victims must be respected and protected.
- **Neutrality:** Humanitarian assistance must be provided without engaging in hostilities or taking sides in controversies of a political, religious or ideological nature.
- **Impartiality:** Humanitarian assistance must be provided without discriminating as to ethnic origin, gender, nationality, political opinions, race or religion. Relief of the suffering must be guided solely by needs and priority must be given to the most urgent cases of distress.
- **Independence:** Humanitarian objectives must be autonomous from the political, economic, military or other objectives that any actor may hold with regard to areas where humanitarian action is being implemented.

**Humanitarian Access:** The parties to conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.\(^{19}\)

**Children Associated with an Armed Force or Armed Group:** refers to any person below 18 years of age who is, or who has been, recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, spies or for sexual purposes. It does not only refer to a child who is taking, or has taken, a direct part in hostilities.\(^{20}\)

**Protection of Civilians in Armed Conflict:** Structures and policies developed by the UN, States and other humanitarian actors, and based in international humanitarian law, human rights and refugee law, to protect vulnerable populations from the effects of armed conflict, ranging from the most immediate priorities of minimizing civilian casualties, including killing, maiming and sexual violence, to more long-term priorities of promoting the rule of law and security, law and order within a State.\(^{21}\)

**War Crime:** Grave breaches of the 1949 Geneva Conventions, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention, committed as part of a plan or policy or as part of a large-scale commission of such crimes, including: (i) Willful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Willfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; (vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; (vii) Unlawful deportation or transfer or unlawful

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\(^{15}\) Office for the Coordination of Humanitarian Affairs, ‘Glossary of Humanitarian Terms in Relation to the Protection of Civilians in Armed Conflict,’ New York 2003, p. 7

\(^{16}\) Glaser, Max, “Humanitarian Engagement with Non-State Armed Groups, the Parameters of Negotiated Access” Overseas Development Institute Humanitarian Practice Network Paper, p. 7

\(^{17}\) OCHA Glossary, Op. cit. p. 16


\(^{19}\) OCHA Glossary Op. cit. p. 13

\(^{20}\) UNICEF, “Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups” (2007), para 2.1

\(^{21}\) OCHA Glossary Op. cit., p. 21
confined; and (viii) Taking of hostages. War crimes also consist of many other serious violations of the international
laws and customs applicable in international and non-international armed conflicts, including intentionally directing attacks
against a civilian population as such, against individual civilians not taking direct part in hostilities or against civilian
objects. [See ‘Geneva Conventions and Additional Protocols’ and ‘International Criminal Court’]22

ANNEX B – Resources

The following documents and articles may serve as supplementary reading and reference. These and other relevant documents will be made available as part of the Community of Practice on Engagement with Non-State Entities, maintained by EMOPS in 2011.

**International Law**
- The Geneva Conventions of 1949 and their Additional Protocols of 1977
- ICRC Customary Law Database
- The Universal Declaration of Human Rights (1948)

**UN Documents**
- Security Council Resolutions on the Protection of Civilians in Armed Conflict
- General Assembly Resolution 46/182 (1991)
- Millennium Development Goals
- Millennium Declaration, Keeping the Promise (GA 2010)

**UNICEF Documents**
- The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (2007)
- The Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa (1997)
- The Core Commitments for Children in Humanitarian Action (April 2010)
- The UNICEF Enterprise Risk Management Policy
- Monitoring and Reporting Mechanism on Grave Child Rights Violations in Situations of Armed Conflict (MRM)
- Human Rights-Based Approach to Programming (HRBAP)
- Non-Paper on Policy Issues Affecting UNICEF Humanitarian Action in Complex Threat Environments (October 2010)

**Other Resources**
- OCHA Manual on Humanitarian Access (forthcoming)
- Glossary of Humanitarian Terms in Relation to the Protection of Civilians in Armed Conflict (OCHA, 2003)
## ANNEX C – How to Decide: A Practitioners’ Checklist

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<tr>
<th>KEY STEPS</th>
<th>ACTIONS</th>
<th>RESOURCES</th>
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| 1) Understand legal obligations of NSEs in armed conflict. | - Review relevant provisions in international humanitarian law.  
- Review relevant provisions in international customary law.  
- Review relevant provisions in UN Security Council resolutions on the Protection of Civilians in Armed Conflict.  
ICRC Customary Law Database  
OCHA Handbook on Humanitarian Access (forthcoming)  
OCHA Glossary of Humanitarian Terms in Relation to the Protection of Civilians in Armed Conflict |
| 2) Be familiar with other international instruments that can help frame NSE engagement | - Review relevant human rights treaties, conventions and instruments.  
- Review the Rome Statute of the ICC. | The Universal Declaration of Human Rights (1948)  
| 3) Understand the origins and content of UNICEF’s mandate for NSE engagement | - Review relevant Security Council and General Assembly resolutions.  
- Understand the definition, meaning and application of humanitarian principles.  
Security Council Resolutions on the Protection of Civilians in Armed Conflict (from 1999)  
General Assembly Resolution 46/182 (1991)  
The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (2007) |
Monitoring and Reporting Mechanism on Grave Child Rights Violations in Situations of Armed Conflict  
Millennium Development Goals  
Millennium Declaration  
Human Rights-Based Approach to Programming (HRBAP) |
| 5) Understand the political context, conflict dynamics, stakeholder interests and operating environment; | - Conduct situation analysis, stakeholder mapping, and security assessment.  
- Identify others who can support UNICEF (RCs, SRSGs, SRSG CAAC, USGs, etc.)  
- Review lessons learned from previous engagement.  
- Consider practical arrangements (e.g. geography, logistics, interlocutors). | Community of Practice on Engagement with Non-State Entities |
| 6) The identification of concrete objectives for such engagement; | - Consult with UN leadership (e.g. SRSG/DSRSG/DO) and partner organizations (e.g. HCT, UNDSS).  
- Determine objectives based on UNICEF mandate. | Community of Practice on Engagement with Non-State Entities |
| 7) Select and approach or multiple approaches based on these objectives | - Consider the operating environment and range of options for approaching NSEs.  
- Check with Principal Legal Adviser, Office of the Executive Director at UNICEF Headquarters in New York Office of the ED in situations of ICC jurisdiction/activity | Interim Guidance on UNICEF’s Relationship with the ICC  
Non-Paper on Policy Issues Affecting UNICEF Humanitarian Action in Complex Threat Environments |
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<tr>
<th>Step</th>
<th>Description</th>
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| 8) | Come to a shared understanding of the risks within the organisation | - Assess all levels and types of risks.  
- Share the risk assessment with relevant Country, Regional and HQ Directors and staff. |
| 10) | Take steps to manage existing risks | - When engaging with ‘proscribed’ groups, seek approval from ED through the Director of EMOPS |
| 11) | Before finalizing the decision | - Share decision with the Regional Director, and the directors of EMOPS and Governance and Multilateral Affairs (GMA).  
- Seek technical support from EMOPS and the Programme Division.  
- When engagement has potential broader implications, consult with other relevant Country Representatives, Regional Directors, EMOPS, GMA and the Programme Division.  
- Keep OED informed (via EMOPS) and obtain Green Light from OED for any new engagement or significant changes in nature of ongoing engagement.  
| 12) | When in doubt, ask for help | - Decisions associated with major risks must be escalated. |