UNIVERSIDADE CATÓLICA PORTUGUESA

Forever Vulnerable:

Pledge for a Former Child Soldier Status

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Master in Law

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"E eu tenho de partir para saber
Quem sou, para saber qual é o nome
Do profundo existir que me consome
Neste país de névoa e de não ser."

— Sophia de Mello Breyner Andresen,
Há cidade acesas na distância, 1944

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Decerto que uma página nunca será bastante naquilo que se traduz no agradecimento àqueles que se asseveram o pilar da minha existência e da expressão da mesma, sendo esta dissertação, uma conquista que considero meritória de um marco no meu percurso.

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Ao Pedro, a minha casa, cujo desafio de expressar a minha gratidão se assemelha a uma tentativa de quantificação de toda a imensidão de apoio, carinho e devoção que me foi presenteada ao longo destes anos e que espero algum dia conseguir igualar.

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Para a minha avó,
que até ao dia de hoje,
me segura nas mãos frias.

RESUMO

As crianças-soldado, enquanto fenómeno prevalecente e veementemente repudiado pela comunidade internacional, têm vindo a aferir-se como uma prioridade na ação política internacional em matéria de direito humanitário. Lamentavelmente, assim que esta condição passa a fazer parte do seu passado, verifica-se uma súbita indolência e até negligência perante a vulnerabilidade inerente a estes indivíduos.

Motivados pelo desapreço evidenciado pelo Tribunal Penal Internacional quanto à condição de ex-criança-soldado inerente a Dominic Ongwen, bem como pela insuficiência - e por vezes, inexistência - do regime jurídico referente esta mesma condição, propomos-mos, com esta dissertação, a apresentar um estatuto protetor para os indivíduos que se aferem como ex-crianças-soldado.

A elegibilidade para a obtenção deste estatuto é baseada na própria definição do conceito de ex-criança-soldado que, por sua vez, deverá evidenciar a heterogeneidade e vulnerabilidade patentes a este grupo.

Destarte, a proposta do referido estatuto, implica que nos debrucemos sobre as diversas experiências destes indivíduos, estando estas diretamente ligadas a necessidades distintas de proteção. Contudo, pela multiplicidade e complexidade das questões que este estatuto pode suscitar, selecionámos a forma de participação nas hostilidades enquanto o elemento condutor do nosso estudo.

Não obstante, a proteção efetiva de um grupo de pessoas vulneráveis é apenas possível de ser alcançada através de garantia jurídica. É precisamente neste sentido que nos propomos a desenvolver uma disposição jurídica vinculativa do estatuto de ex-criança-soldado.

Enfim, questionamo-nos: porque é que as crianças-soldado são dignas da proteção do direito internacional, mas o mesmo não se verifica quanto aos indivíduos cujos passados estão manchados pelas mesmas violações de direitos humanos e cujo futuro é condicionado pelo trauma de experiências passadas?

Palavras-Chave: Ex-crianças-soldado; Crianças-Soldado; Direitos Humanos, Direito Internacional Humanitário, Dominic Ongwen.

ABSTRACT

Child soldiers, as a prevalent phenomenon widely condemned by the international community, have been slowly becoming a policy priority in the humanitarian field. Regrettably, once this condition becomes part of their past, there is almost a loss of interest or even forgetfulness of their vulnerable condition.

Driven by disbelief due to ICC's disregard for the "former child soldier condition" of the defendant Dominic Ongwen, and the insufficient—and sometimes non-existent—international legal framework for former child soldiers, we propose a protective status for individuals who fall within the definition of former child soldiers.

Eligibility for this status is based on the very own definition of former child soldiers, which, in turn, should highlight the heterogeneity of this group, whose vulnerability stems from the past gross violation of their human rights.

Accordingly, the proposal of a protective status implies addressing different experiences that are directly linked to different protection needs. Yet, due to the number of issues that this status can raise, we selected the type of participation in hostilities as our guiding element.

Nevertheless, the ultimate protection of a vulnerable group can only be obtained through a legal instrument, which is why we aim to set this status in a binding article.

Thus, we ask ourselves: why are child soldiers deserving of international law's protection, but not individuals whose past is tainted by the same violations of their human rights and whose future is conditioned by their past experiences?

Keywords: former child soldiers; child soldiers, Human Rights, International Humanitarian Law, Dominic Ongwen.

TABLE OF CONTENTS

ACRONYMS AND ABBREVIATIONS

ACRWC - African Charter on the Rights and Welfare of the Child

Art(s). – Article(s)

Beijing Rules - United Nations Standard Minimum Rules for the Administration of Juvenile Justice

CRC – Convention of the Rights of the Child

DDR – Disarmament, Demobilization and Reintegration

DRC – Democratic Republic of the Congo

FCS – Former Child Soldier

ICC – International Criminal Court

ICL – International Criminal Law

ICRC – International Committee of the Red Cross

IDDRS - Integrated Disarmament, Demobilization and Reintegration Standards

IHL – International Humanitarian Law

LRA – Lord's Resistance Army

NGO – Non-governmental organization

Optional Protocol to the CRC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

PP – The Paris Principles

Rome Statute - Rome Statute of the International Criminal Court

Statute of the SCSL - Statute of the Special Court for Sierra Leone

TRC – Truth and Reconciliation Commission

UN – United Nations

UNICEF – United Nations International Children's Emergency Fund

INTRODUCTION

It is our belief that the concept of vulnerability is necessarily tied to the human condition of the vulnerable, but the catalyst for this vulnerable condition will undoubtedly reside in an external factor. With that being said, one can easily regard children as vulnerable actors due to their great dependency on others to satisfy their basic needs. Yet, only certain children are exposed to risks that prey on their vulnerability—child-soldiers are a concerning and prevailing[1] example of these vulnerable groups, as the violation of their human rights is driven and facilitated by their condition of fragility. Hence, as individuals whose human rights have been grossly violated in the time period typically defined as "childhood", former child soldiers (FCS), must also be acknowledged as a vulnerable group whose condition should be recognized and cautioned against.

The motivation behind for our study of FCS lies essentially in the case of Dominic Ongwen—a former Ugandan child soldier who was convicted with the same crimes of which he was a victim, and whose FCS status was startlingly neglected by the Chamber of the International Criminal Court (ICC). It was precisely the lack of recognition—coupled with the lack of protective mechanisms for a group of individuals whose traumatic experiences constantly shadows their very being—that inspired this to attempt to outline a legally foreseen status that properly addresses the needs of this vulnerable group.

To comprehend the main components and assumptions of the international discourse on FCS, the first part of this investigation will focus on defining "FCS", which, in turn, will imply the drawing of an analogy between this concept and the non-legal construction of "child soldier". We intend to propose a definition whose compulsory elements allow us to shield the variety of cases that this concept must include—from the subject's gender or age, to their type of participation or form of recruitment.

Once the circumstances that allow these individuals to enjoy a differentiated status have been established and fully recognized, the subsequent phase is to understand what

[1] In 2021, the UN reported the recruitment and use of 6,310 children, as well as the release of 12,214 children from armed groups and armed forces (UN GENERAL ASSEMBLY, SECURITY COUNCIL, Report - Children and armed conflict, 2022, §§4,5). In 2022, "[t]he recruitment and use of children continues to rank among the highest reported violations against children in situations of armed conflict (…)" (UN GENERAL ASSEMBLY, Report - Children and armed conflict, 2023, §27).

it means to benefit from this status. As we are dealing with a large and heterogeneous group of vulnerable individuals, it must also be subjectively determined how this status should protect and assist every FCS.

In order to outline the way this status operates in each specific case, we selected the "type of participation" as the variable that allows us to relate and identify the multiple issues that this status must comprise. Yet, regardless of the type or degree of participation, we maintain that the psychological impact of being a FCS—as a common factor in all cases—should always, and in any case, be acknowledged and taken into account according to the uniqueness of each case.

Given the illegality of the acts committed when directly participating in the hostilities, the purpose of the status of those who directly participated in hostilities should not only be linked to rehabilitation and reintegration programs, but also to the acknowledgement of their condition when dealing with issues of criminal liability. On the other hand, when we talk about FCS that indirectly participated in hostilities, their status will only be linked to the aforesaid programs, since we will no longer be dealing with issues of criminal liability. Seeing as most studies and protection mechanisms for FCS focus on the reintegration and rehabilitation, we believe that the uniqueness of the proposed status lies on how we believe FCS should be held accountable under the law. It is precisely for that reason that more emphasis will be given to this branch of the status, clearly influenced and determined by Dominic Ongwen's case, to which due reflection will be given.

Lastly, due to the legal insufficiency that intrinsically motivated us to develop this dissertation, we will propose an outline for the legally foreseen status of FCS , and what its application and enforcement may entail. This legal provision will be the embodiment of our main intent with this dissertation: to show the reader that FCS should be regarded as a group of vulnerable people that have been victims of violations, and thus require special protection for the equal and effective enjoyment of their human rights.

I. DEFINING THE CONCEPT OF FORMER CHILD SOLDIER

As a relative position or current state held by an entity—to which certain rights, obligations, exonerations, restrictions and even benefits are typically attached—a status must be defined according to the very own individualities and surrounding socio-political context of those who are eligible to benefit from that position.

On that premise, a definition of the very concept of "former child soldier" must be set forth to initiate this discussion. Despite acknowledging the criticism and dissention among authors[2] regarding this definition, our proposal is inevitably based on the most widely accepted definition of "child soldier", which was first drafted in 1997, in the Cape Town conference[3] organized by UNICEF and the NGO Working Group, and later reviewed in 2007 by the Paris Principles (PP). According to this instrument, the concept of "child soldier" 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, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities."[4]

This standard universal definition by the PP provides an essential, non-binding framework for global actors, which play a vital role in the protection of children's rights and wellbeing. Through the recognition of certain elements, such as age or type of participation, this construction eliminates "the ambiguity surrounding who is considered a child soldier and represent[s] a "child rights-based approach" to the law".[5] Notwithstanding the merits of this definition, which highly contributes to the internationally accepted thesis of child soldiering being "(…) an unambiguous violation of universal children's rights."[6], each of the requirements imposed by the PP pose different concerns from an empirical perspective. Issues such as the controversial adoption of a single universal definition of childhood for the present purpose, the "voluntary" recruitment of children, or the various forms of children's military

[2] On the ambiguities and hurdles of the definition of child-soldiers, see DENOV, 2010, pp. 2-5.
[3] The "Cape Town Principles and Best Practices on the Prevention of Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa" were adopted in 1997 and became a key instrument in developing strategies for preventing recruitment of children, demobilizing child soldiers, and helping them reintegrate into society.
[4] Art. 2(2.1) of the PP
[5] GALLGHER, 2010, p.121
[6] LEE, 2009, p.3

involvement as “child soldiers”. These must be debated and clarified whilst building the definition of “former child soldier”, in order to determine who can be considered eligible to receive this status, while still partly mirroring the commonly accepted concept of child soldier.

With that being said, in our perspective, a former child soldier is an individual who, in the time period before reaching 18 years of age, was associated with an armed force or armed group, by being recruited, used as a fighter, or in any other capacity, without requiring a direct participation in the hostilities (cooks, porters, spies, sexual purposes…). As previously stated, the ambiguity of each of these conditions requires the clarification of the issues they comprise.

Hence, we will theorize an interpretive guidance of the aforementioned definition of “FCS”, aiming to provide a legal reading in order to strengthen the implementation of the status itself.

1) Gender issues

The usage of the specific wording—“an individual”—when characterizing a former child soldier has the intent to formally accentuate the distinctive experience of female child soldiers, usually marked by gender and sexual-based violence. To overcome the unfounded preconceived notion of an “(…) harrowing spectacle of boys (…) brandishing rifles and machine-guns and ready to shoot indiscriminately at anything that moves”[7] - commonly associated with broader gender stereotypes and international patterns of gender discrimination, we must consider the existing data, which, according to the Executive Director of the UN children's agency UNICEF, shows:

> “(…) an alarming picture of the widespread recruitment and use of girls in armed conflicts across the globe, including those in Afghanistan, Colombia, the Central African Republic, Nigeria, South Sudan, Syria and Yemen. Nearly 75 per cent of conflicts today involve recruitment of children, and well over half of these have included girls.”[8].

Notwithstanding the key feature of gender and sexual-based violence experienced by these girls, we must also acknowledge the variety of roles that they take part in, from active fighters, cooks, gatherers, and nurses, to forced “wives” and sexual slaves. For instance, in North-eastern Sri Lanka, within the guerrilla organization of the Liberation

[7] PILLOUD et al., 1987, p. 900
[8] FORE, 2021

Tigers of Tamil Eelam, "(…) gender roles that forced female child soldiers to adopt duties usually reserved for wives (cooking, sex, childcare) were not typically part of the Tiger picture (…)"[9]. Conversely, in the case of Northern Uganda, Lord's Resistance Army (LRA) commanders are commonly rewarded with abducted girls forced to serve as "wives", who are susceptible to sexually transmitted diseases and unwanted pregnancies, on account of systematic sexual assaults[10]. Accordingly, one must conclude that the perceived disparities in the testimonies of each female child soldier strongly rely on different factors, such as the nature of the exact conflict and the traditional social role of women in each community.

It is particularly significant to recognize these variations between male and female child soldiers when discussing the "FCS status", largely due to the intensive stigma faced by these women as they attempt to reintegrate into civilian life. This dishonor intensifies if they return with children who were born while these girls were associated with the rebel groups, often labelled as "rebel children"[11]. These gender-related labels are commonly reinforced by strict cultural values, typically shared in these countries. In particular, virginity is ascribed the position of every woman's pride, never to be trivialized. Consequently, these FCS are viewed in many cultures as damaged, unable to marry, and as a disgrace to the community and the family institution itself[12].

According to the UN[13], the disarmament, demobilization and reintegration (DDR) programs have repeatedly overlooked the needs and experiences of FCS, by designing programs that not only inadvertently impede the girls' access, but also do not strengthen their chances of a successful rehabilitation[14]. Hence, in the face of the total disregard of former female child soldiers' struggles and needs, we believe that reproductive health needs, reduction of stigma related to sexual abuse, and adequate psychological assistance must be top priorities when assembling successful reintegration programs. As mentioned by Timothy Webster, the problem of child soldiers "(…) plagues boys and girls, but it disproportionally harms girls, who often stomach the additional indignity of

[9] FISHER, 2013, p. 32
[10] On this matter, see LEIBIG, 2005.
[11] In Northern Uganda, "rebel children" are seen as "possessed", "wrong-doers" and are labelled as carriers of the spirit of Joseph Kony - the leader of the LRA (a Central Africa rebel group). On this matter, see BAINES, 2003, pp. 35-36.
[12] FISHER, 2013, p. 175
[13] UNITED NATIONS, 2006, pp. 9-10
[14] By not addressing the extensive sexual violence that these girls suffered and the associated stigma, these programs are only perpetuating potential long-term psychological trauma and segregation.

sexual slavery and forced marriage to the leaders of the armed forces"[15]. By following an "inclusive structure", where the struggles and needs of female and male child soldiers are acknowledged and differentiated (when required), these reintegration programs stand a better chance of helping to meet the gendered needs of formerly recruited girls and boys, respectively.

In regard to the crimes committed against female and male child soldiers—and despite the recognized prosecution of those responsible for recruiting children into the hostilities[16]—these too pose dissimilarities worth mentioning. To illustrate the crimes that have been recognized against children of both sexes, the statements of the Special Court for Sierra Leone indicate that several of the crimes committed against child soldiers during the conflict in Sierra Leone fulfil the threshold of crimes against humanity[17]. Despite the fact that these crimes are perpetrated against both genders, female child soldiers are particularly targeted when it comes to sexual crimes. For that reason, when dealing with former female child soldiers, the prosecution of those responsible for the widespread rape, forced marriage, and sexual slavery of girls abducted during the conflict[18] is imperative for the adequate rehabilitation of these women (proving once again the importance of highlighting the gender disparities in our status).

In this regard, through the establishment of a status directly connected to the right of reintegration into society, and special protection linked to the vulnerable condition of those who benefit from it, both female and male FCS (but especially girls whose access to DDR programs is extremely challenging) can be entitled to all kinds of support, once they meet all the other criteria under the definition of FCS. In sum, by referring to FCS as "individuals", we are establishing a non-discriminatory description, which allows us to guarantee that both girls and boys have unbiased access to all the benefits pertaining to their own condition.

[15] WEBSTER, 2007, p. 228
[16] Art. 8 (2) (b) (xxvi) of The Rome Statute.
[17] According to Art. 2 of the Statute of the Special Court for Sierra Leone (SCSL), these crimes include murder, extermination, enslavement, deportation, imprisonment, torture, rape, sexual slavery, forced prostitution, forced pregnancy and any other form of sexual violence.
[18] These atrocities clearly fall within the scope of acts listed under Arts. (2)(c) and (g) of the Statute of the SCSL.

2) The selected age gap

Age is a key factor in determining whether the aforementioned individuals can be considered "former child soldiers", since their involvement with the armed forces or armed groups must take place in the period of the human lifespan commonly referred to as "childhood".

In our perspective, childhood is a complex notion that goes beyond biological factors, encompassing not only the child's individual capabilities, but also the community to which the child belongs. Thus, similarly to a variety of authors[19], we perceive "childhood" as a social construct that mainly depends on the social, economic, and political context. In many African societies[20], the lines between childhood and adulthood are defined in social terms, blurred gradually through rites and practices that mark and confirm one's social status[21]. In Afghanistan, for instance, a girl "(…) becomes an adult with her marriage and particularly after the birth of her first child.", while a "(…)young man may not attain his social adulthood until he becomes the head of a family after the death of his father and assumes responsibility for relatives and households"[22]. However, by agreeing with the fact that "(…) adopting a single universal definition of childhood in both international humanitarian and human rights law ignores the fact that there is no universal experience or understanding of childhood"[23], we are not automatically excluding individuals who are not seen by their communities as children, but perceived like one in other cultures.

In fact, adhering to a more culturally sensitive definition of childhood, allows us to embrace a protectionist approach, favoring a "case-by-case assessment" in order to create suitable reintegration and rehabilitation programs (and accountability solutions in some cases) for distinctive circumstances, and discarding a single category where all child soldiers are merged by the imposition of foreign notions. Still, the bearing of unavoidable social, economic, political, and military responsibilities, which lead certain communities to perceive children as adults, cannot justify the lack of protection of these children. Addressing cultural subjectivities around childhood, while necessary in most

[19] See WESSELLS, 2000, p. 408 and FOX, 2005, p. 43
[20] According to UNICEF's Press Release, from 23 November 2021, West and Central Africa have the have highest number of child soldiers.
[21] TEFFERI, 2007, p. 298
[22] DE Berry, 2008, p. 370
[23] ROSEN, 2007, p. 297

FCS cases, should not be taken as an opportunity to leave a group of vulnerable people unprotected, but rather as an opening to create a more adaptable status.

On that note, the selected age threshold of 18 years of age, when related to the difficulty of finding a suitable age standard to apply to all cases, "(…) when it is clear that the mental development of children occurs at different rates depending on the individual"[24], is justified by the aforementioned "protectionist approach" that we intend to advocate. The issue of establishing a maximum chronological age limit for the status of FCS triggers two debates often contemplated within the international community: the age limit from which an individual is no longer considered a child (discussed above), and the age limit for lawful enlistment.

According to the most widely accepted legal definition of childhood—set out in the Convention on the Rights of the Child[25]—18 is the general, internationally recognized age of majority. Similarly, the African Charter on the Rights and Welfare of the Child establishes an unequivocal maximum age limit of 18 years[26].

Nevertheless, and senselessly, most international legal provisions[27] set a minimum age for conscripting or enlisting children at the age of 15 years, opposing the Optional Protocol to the CRC, which increased the age limit to 18 as the minimum age for compulsory recruitment and participation in hostilities. This change can be seen as a way to assure a superior degree of protection to children against the violence that they would be exposed to, serving the "best interests of the child"[28]. Contrarily to all expectations, the Protocol did not impose the same age limit of 18 years for voluntary recruitment, which definitely poses a setback to the utmost protection of these children, considering the reservations which we will later refer. However, the Protocol subjects the voluntary recruitment to restrictive conditions, such as the supply "(…) of reliable proof of age prior to acceptance into national military service.", once again reassuring the need to increase the protection granted.

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[24] WRIGHT, 2010, pp. 318-319

[25] Art. 1 of the Convention on the Rights of the Child affirms that "[f]or the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

[26] Art. 1 of the ACRWC states that "[f]or the purposes of this Charter, a child means every human being below the age of 18 years".

[27] Art. 38 of the CRC, Art. 77 (2) of the Additional Protocol I, and Art. 4 (3)(c) of the Additional Protocol II all advocate against the enlistment and/or participation in hostilities of children as old as 15 years. Moreover, under Art. 8, the Rome Statute of the ICC sets the age of 15 as the threshold for criminalization to conscript or enlist children under the IL.

[28] For more about the concept of "best interests of the child", see UNICEF, 2007, pp. 35-46.

All things considered, and despite the commendable efforts made to date in the "international legal framework", these are visibly insufficient for an adequate protection of child soldiers, hence the present trend towards the labeling of any enlistment or recruitment of individuals below the age of 18 into an armed group or force[29], as unlawful. With that in mind, and in regard to FCS, we can only support an age gap that includes the greatest number of children ("individuals below the age number of eighteen") who were involved in hostilities, and offers them a "protective status".

Within this status, this age aspect also enables us to differentiate between the needs of these individuals according to said age and "processes of transience". Since children become more capable as they age, as development is "(…) the product of the maturing child's activity in constructing an internal representation of their environment."[30], the age when these children were recruited, managed to escape, or were saved is extremely relevant to find suitable reintegration and rehabilitation solutions. Also, when contemplating the criminal responsibility of illicit acts committed by these individuals, age and level of maturity are crucial details for the competent entities to appraise each case distinctively and adequately. This is mainly because "(…) children interpret, organize, and use information from the environment to construct their own conceptions ("mental structures") of their social and physical worlds"[31]. Therefore, their own perception of the norms, values and principles commonly shared by a civilized society can be easily distorted by the violent experiences involuntarily of these children.

3) The difference between armed force and armed group

Armed forces and armed groups represent different entities. While the former "refers to the armed forces of a State"[32], emphasizing its state-like nature, the latter concerns the "armed entities that are distinct from the government and the armed forces

[29] As early as 1990, upon ratification of the CRC, various countries, such as Colombia, Uruguay and the Netherlands, stated their preference to fix the minimum age for taking part in armed conflicts and for being recruited at eighteen years of age. (UN,1998). Congruently, the ICRC continues its efforts in pursuance of the Plan of Action for Children Affected by Armed Conflict, which promotes the principle of non-recruitment and non-participation of children below the age of 18 years in armed conflicts. (INTERNATIONAL COMMITTEE OF THE RED CROSS, 1995, pp. 63-64). Recently, in the 2022 Annual Report on children and armed conflict, the Secretary-General of the UN, urged "(…) Member States and parties to conflict to define a child as every human being below the age of 18 years." (UN GENERAL ASSEMBLY, Report-Children and armed conflict, 2022, §295).
[30] TABAK, 2020, p.28
[31] Ibid.
[32] Art. 2 (2.2) of the PP

of a State"[33]. In essence, the factor that distinguishes these terms lies on their State and non-State nature respectively, since the term "armed group" refers solely to the armed wing of a non-State party in a non-international armed conflict[34].

The dissimilarities are not limited to their nature, as the engagement in humanitarian issues—namely child recruitment—also varies between armed forces and armed groups. In conformity with the 2022 Secretary-General's annual report on children and armed conflict, the UN verified the recruitment and use of 6,310 children in 2021, as one of the six grave violations against children, in various countries by both armed groups and armed forces. Through the meticulous assessment of the "[i]nformation on grave violations"[35] advanced by the report, we concluded that the armed forces of at least 9 countries[36], recruited and/or used children for conflict-related purposes. This falls behind the action of more than 100 armed groups in all 22 countries mentioned in the UN report. Nonetheless, the number of State armed forces in these lists of persistent perpetrators is still a worrying issue, which impacts, among others, the credibility and effectiveness of the UN's Action Plans[37], since almost all of the government security forces cited in the report, signed these commitments with the UN.

In our opinion, and for the purpose of our subject (FCS status), the analyzed data indicates that holding perpetrators (armed groups and armed forces) accountable could be essential to eradicate the practice of recruiting and using children in conflicts[38]. The responsibility of State forces is particularly critical when advocating this position, since

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[33] Ibid.

[34] AZEREDO LOPES ET AL., 2020, pp. 231-247

[35] UN GENERAL ASSEMBLY, Report-Children and armed conflict, 2022, §295

[36] Afghanistan (Afghan National Police and the Afghan National Police jointly with the Afghan National Army), Central African Republic (Armed Forces of the Central African Republic), DRC (Armed Forces of the DRC), Mali (Malian Armed Forces), Somalia (several government security forces, such as the Somali Police Force and the Somali National Army), South Sudan (South Sudan National Police Service), Syrian Arab Republic (Syrian government forces and pro-government forces), Yemen (Yemen Armed Forces), and the Philippines (Armed Forces of the Philippines).

[37] "An action plan is a written, signed commitment between the UN and those parties who are listed as having committed grave violations against children in the Secretary-General's Annual Report on Children and Armed Conflict. Each action plan is designed to address a specific party's situation, and outlines concrete, time-bound steps that lead to compliance with international law, de-listing, and a more protected future for children."(OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SG FOR CHILDREN AND ARMED CONFLICT, N.D.).

[38] In July 2022, Patrick Kumi, a former child soldier, gave his testimony in the UN Security Council Open Debate on Children and Armed Conflict. Based on his experience with an armed group that had acted in the war of Eastern Equatoria, and his involvement in former child soldier rehabilitation programs, Patrick also presented four recommendations, being one of them being precisely the need for "greater accountability" . He emphasized the need for militaries, armed groups and local government departments to honor their promises and commitments – which are legally binding – and to hold accountable those who disrespect these obligations (OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SG FOR CHILDREN AND ARMED CONFLICT, 2022).

State authorities unarguably bear the prime responsibility and duty to protect, endorse and implement all human rights of their own citizens, including—and especially—vulnerable groups, like children. Therefore, when composing our proposal for a protective status, this primary responsibility of the States should be undoubtedly reflected. Yet, as our proposal focuses essentially on the protection of FCS, we will not delve deeper into the responsibility issues of these entities.

4) Recruitment of child soldiers

The vicissitudes inherent to each recruitment and usage of children under the age of 18 years by armed groups or armed forces of a State, as a violation of international norms, represents one of the core elements of the FCS status. Subjectivity is particularly important when comparing cases where children were recruited at 10 years old and were only rescued at 17 years old, cases where children were captured at 16 and released a few months later, or, in more extreme cases, captured at 11 and remained under the influence of these groups or forces until adulthood. These are some examples of circumstances that should be observed when determining the type and degree of protection offered by the status, as the needs of each individual vary according to their specific circumstances.

As is internationally recognized, including in the provisions of the PP[39], the nature of recruitment may vary between, compulsory, forced and voluntary conscription[40]. One can logically argue that the individual will of being enlisted may impact the way in which we perceive the phenomenon of child soldiers and their right to reintegration. Yet, this hypothesis can be easily rebuked when we take into account all the inherent features of the vulnerable persons who would presumably have the option to decide.

Regarding the "voluntary" recruitment of children, whereas it may seem that there is an element of "choice" present in these children's actions, by accepting that "(…) purely voluntary participation occurs in the absence of both an inter-personal threat and

[39] Art. 2 (2.4) of the PP

[40] While compulsory recruitment refers to the State-mandated enlistment of people in a national military service, forced recruitment implies any form of involuntary recruitment, comprising situations of abduction, coercion, and severe threat exposure. While we admit that the clear distinction between forced and voluntary recruitment is extremely challenging to unravel in the "theater of operations", we can state that voluntary and forced recruitment are contrary concepts. For more on forced recruitment, see (ECK, 2014, pp. 364-398).

a coercive environment."[41], we believe that this decision is almost always a product of socio-economic and circumstantial factors[42]. A child's ability to decide to contribute to an armed conflict is a significant debate in this discourse. Where some of authors[43] endorse a "grey area" that contains both elements of forced circumstances and elements of voluntary acts, others maintain that the decision of contributing to an armed conflict is an act that has wide societal consequences, being one of the most serious decisions that a person can make, which is inconsistent with the lack of maturity of young individuals[44].

Considering the limited ability of a child to assess risks[45], and the fact that they're often seen by military groups and forces as more compliant, obedient, and easily indoctrinated[46], we believe that the absence of threat or coercion should not be sufficient to identify the will of these children. Consent must be given without externally imposed factors. On that note, "(…) we should not lose sight of the fact that child soldiers are mainly an issue in poor, marginalized, or disputed countries, where state sovereignty is challenged."[47], which means that these children are often predisposed to become "volunteers" due to starvation, extreme poverty, or even desire to avenge the deaths of loved ones, or to fight for their own countries. Children who see no other option for survival cannot be seen as unequivocally "free and informed", contrarily to several scholars who claim that some children are "volunteers" because they are willing to perform certain acts in order survive. It is our belief that these authors incur in a clear paradox. Is it reasonable to affirm that a child has free will when the alternative is to kill or being killed?

We should take into account the defined criteria for establishing voluntariness in the Optional Protocol to the CRC on the involvement of children in armed conflict,

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[41] RICHARDS, 2014, p.310

[42] Research shows that enlistment increases as economic and social conditions worsen. (See UN GENERAL ASSEMBLY, 1996, §40).

[43] BJØRKHAUG, 2010

[44] SINGER, 2005, pp. 117-119

[45] Statement of a FCS from DRC (Germain): "You see, at the beginning I didn't think of that, because I watched the television, and I didn't know the consequences and how it could happen, and so on. I didn't think of that, I was still a kid. I was so impressed by the actions, the way of handling the weapons, their way of getting dressed. I said to myself that one day, I would also wear the same outfit…I didn't know that in the army, I would suffer." (BRETT & SPECHT, 2004, p.109).

[46] The LRA is often said to prefer abducting children due to the ease of indoctrinating young soldiers when compared to adults. This preference is related to the tendency of these children to be easily manipulated and extremely loyal.(KELLY AT AL., 2016, p.5).

[47] VAUTRAVERS, 2008, p.107

namely the requirements[48] that the recruitment is "genuinely voluntary"[49], and that the children are "fully informed of the duties involved in such military service". However, it can be argued that these are hardly verifiable when studies prove that several of these young individuals are encouraged to join through misleading information[50] and propaganda machines with "(…) displays of war paraphernalia, funerals and posters of fallen heroes; speeches and videos, particularly in schools; and heroic, melodious songs and stories [that] all serve to draw out feelings of patriotism and create a compelling milieu (…)"[51]. The condition of being "fully informed" is even more incongruous with child recruitment when considering that young girls are used as "wives" and sex slaves, as we formerly examined.

Thus, we consider the usage of the expression "voluntary recruitment", inadequate and even imprudent. In accordance with our position, the Human Rights Watch organization expresses its opinion by the use of quotation marks when referring to child enlistment as "voluntary"[52]. Consequently, in our belief, the alternative usage of the term of "unforced recruitment"[53] safeguards the situations where a child responds to immediate conditions, life situations and available routes, since *"*(…) young people are often left to choose the [lesser evil] of a series of bleak possibilities."[54] .

Whilst not exhaustive, this comprehensive analysis of the acknowledged sorts of recruitment of child soldiers, including—and most importantly—the widely sustained refutation of the voluntary nature of child enlistment in an armed group or armed forces, is crucial to the construction of the proposed status. By reinforcing the lack of "free will" in these children's choices, we also rule out the possibility of certain FCS being denied this protective status due to the violation of their human rights being of their own volition.

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[48] Art. 3 (3) (a) and (c) of the Optional Protocol to the CRC

[49] "Arthur (Sierra Leone) identified himself as having volunteered, but he had also witnessed the murder of his friend who refused to join." (BRETT & SPECHT, 2004, p.109).

[50] "Rebels without a cause" is a term that could perhaps represent many child soldiers, but especially certain child soldiers fighting in Africa. For example, both the RUF and the LRA endeavored to terrorize the same civilian population for which they had claimed to fight and from which their child soldiers were recruited. (FISHER, 2013, p.25).

[51] SOMASUNDARAM, 2002, p.1269

[52] HUMAN RIGHTS WATCH, 2004

[53] Ingunn Bjørkhaug chooses to address these situations as "voluntarily forced recruitment", since "(…) in the twilight zone between voluntary and coerced recruitment they are closer to coerced recruitment." (BJØRKHAUG, 2010, p.8).

[54] SEYMOUR, 2011, p.60

5) Direct or indirect participation

The last element worth mentioning and dissecting, are the various forms of child military involvement as "child soldiers", since the contrast between those who took direct part[55] in the hostilities and those who did not will guide our discussion of the main issues that the "FCS status" should include[56]. The intended comprehensiveness of our proposed definition aims to reflect the multiple roles that children can play in fighting forces , and to clarify that (for the purposes of being eligible for this status) this component must be grasped as a distinguishing and not an excluding factor[57].

By combining both situations, we do not intend to disregard the severity of each of these conducts, neither to openly challenge the logical correlation between the concept of combatant (soldier) and their right to directly participate in hostilities. In fact, we desire the exact opposite effect—to widen the scope of protection of children who participated in armed conflict scenarios, whilst differentiating the categories and nature of the activities undertaken. This differentiation should be made by means of correlation between each case and adequate measures of reintegration, rehabilitation, and even when discussing proper accountability. The characteristics and experiences of children implicated in collective violent actions, are strikingly different[58] from those who engage in supportive roles such as cooks, and those who were forcibly used for sexual purposes. Hence the need to unmistakably reject the idea of a homogeneous group, and instead uphold a unique subset of parameters for a broader group of FCS affected by conflict.

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[55] Despite the lack of an internationally accepted definition of this concept, due to the absence of any reference to the type(s) of conduct that could possibly fall under this IHL concept, and for the purpose of this subject, we understand the concept of "direct participation" in accordance with the ICRC, as acts "which aim to support one party to the conflict by directly causing harm to another party, either directly inflicting death, injury or destruction, or by directly harming the enemy's military operations or capacity" ICRC, 2009.

[56] See Appendix I.

[57] It would be absolutely discriminatory and inconsiderate to exclude children who have not been assigned an active role in the hostilities, but who experienced diverse traumatic events and possibly witnessed the same acts of violence, from a protective status that entitles them to certain rights. In Sierra Leone, in order to have access to reintegration support, children needed to pass a "weapons test" to receive the appropriate aid, which required the child to disassemble, reassemble and fire an AK-47. This poses a great discriminatory method against the children who had served roles such as cooks, spies, porters or sex slaves. (WESSELLS, 2019, p. 4).

[58] Research has shown that "(…) child soldiers who had killed or injured others during the war showed long-lasting psychological effects (e.g. hostility) that were not present in other children who had witnessed similar atrocities but did not participate in them." Thus, "(…) perpetrating violence is a significant variable in the future psychological recovery of former child soldiers and so psychosocial and mental health interventions for former child soldiers must address this issue in their treatment modules." (O'CALLAGHAN ET AL., 2012, pp. 88-89).

II. FORMER CHILD SOLDIER VS CHILD SOLDIER

Comprehending and assimilating each of these elements allows us to acknowledge the heterogeneity among individuals and corresponding circumstances that are deemed eligible to receive the proposed status. Ranging from age, gender, or method of recruitment, the subjectivities of each case allow us to find a robust and inclusive paradigm based on a "protectionist approach" with a view to shield as many children who were involved with armed forces or armed groups as possible. Yet, it should be noted that these elements, as variables, characterize both child soldiers and FCS, since the latter concept consists of a chronological shift—a mere interruption of the conditions to which the same children are being subjected[59].

At this point, it should be noted that what separates the concepts of child soldier and FCS is a period of time where one of two conditions must be met: either the child's involvement with the armed group or force under consideration is discontinued, or this engagement continues, but the individual reaches the age of majority. Therefore, and unrelated to the type of connection between the child and the group or force, the eligibility to receive the protective status is only dependent on either the destruction of this bond—which, in turn, begins from the moment of any of the forms of recruitment aforesaid—or reaching the age of majority (18).

Hence, the proper presentation and analysis of the potential benefits, hurdles, and ramifications that this status may entail can only be achieved if the two conditions of the concept of former child soldier are accurately acknowledged. Firstly, the status can only be applied if the individual no longer meets one of the aforesaid conditions. On the other hand, the elements described above enable the very construction of the status by shaping the forms of protection that this status must comprise—foreseeing cases that are often forgotten and neglected by the "traditional" view of child soldiers.

[59] Note that the preferred definition of FCS (shown above) demonstrates that the concept is dependent on past actions that have already ceased.

III. UNDERSTANDING THE NUANCES OF THE STATUS

In order to delineate the main issues that the FCS status might entail, we start from the premise that all individuals who present the characteristics listed above should be granted a protective status based on their past involvement in armed conflict as children. However, and as suggested earlier, the degree and forms of protection offered by this status must vary according to the individuality of each case. Thus, we selected the individual type of participation as our guide in the subsequent subchapters, given that it is the only element that allows us to connect and differentiate all the issues that this status must comprise.

Yet, it should be emphasized that the level of urgency to protect these individuals is in no way linked to the type of involvement of the child in armed conflict. In fact, in both cases we can identify a shared repercussion—the undeniable psychological impact. Notwithstanding the severity of the acts committed, by experiencing a large number of potentially traumatizing acts of extreme violence as witnesses, victims and even as perpetrators[60], FCS are more prone to develop mental disorders. And since "(…) children are particularly vulnerable during their impressionable formative period (…)[61], these can cause permanent damage to their budding personality. Still, in spite of the common damaging psychological outcomes in both child soldiers who participate directly in the hostilities and those who did not, the severity and violence of their involvement will generate dissimilar responses, as "(…) different types of violence, the duration of the conflict, and the nature of experienced and witnessed traumatic events are all associated with the onset and severity of mental disorders among conflict-affected children"[62]. Accordingly, the research on Sierra Leone's FCS[63] indicates that children who had killed or wounded others had higher levels of depression, anxiety and hostility. It is due to this caveat—respecting the psychological impact of having been a child soldier—that we once again stress the need for the implementation of this status.

[60] Studies on FCS with ages between 11 and 18 years old conducted in rehabilitation centers in Uganda and the Democratic Republic of the Congo have reported that approximately 93% of the FCS had witnessed shootings, 54% had killed someone, and 28% had been forced to engage in sexual activities against their will. (BAYER ET AL., 2007, p. 555).
[61] SOMASUNDARAM, 2002, p.1270
[62] FROUNFELKER ET AL., 2019, p. 483
[63] BETANCOURT ET AL., 2010

1) Indirect participation

For the purposes of our study, the indirect participation of child soldiers refers to any type of child involvement with the armed forces/groups that does not entail taking direct part in combat. This includes, but it is not limited to, porters, messengers, cooks, sexual slaves, or carriers.

In the previous chapter, we stated that the experiences and ensuing repercussions of the two types of participation are vastly different, and accordingly, the resulting protective status must cover several vulnerabilities. However, both direct and indirect participation of child soldiers should be perceived as "modern slavery"[64], since human trafficking (as the recruitment by means of coercion or due to a position of vulnerability[65]) is indeed a form of modern slavery[66]. With that being said, we maintain that disregarding the condition of certain FCS solely based on the form of exploitation[67] to which they were subjected is a preposterous model that would ultimately neglect all FCS used for tasks that do not fall within the scope of direct participation. Former female child soldiers are a great example of a group that would be largely unprotected and discriminated against, if that was the case.

We first must establish that our analysis of the relation between this type of participation and the purposed status relies on the assumption that children that were solely used for supportive roles did not engage in unlawful acts of violence—as opposed to the FCS which experienced direct involvement in the conflict. With that being said, the main concern of the status applied to these FCS is the obligation to ensure rehabilitation and reintegration programs.

1.1) International responsibility of states and organizations

The exploitation of FCS is a persistent violation of these children's human rights, and it typically translates into a "loss of humanity", which forces them to be subsequently subjected to extensive and demanding (re)education[68] processes in order

[64] An umbrella term for criminal acts of severe human exploitation, which comprises three main denominators: the control of a person over another, an involuntary aspect in their relation, and the element of exploitation (MENDE, 2018).
[65] According to Art. 3 subparagraph (c) of the Protocol , Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, the method of recruitment is not relevant to be qualified as trafficking in relation to persons.
[66] Modern Slavery Act, UK Public General Acts, c. 30 (2015)
[67] Criminal, labour and sexual exploitation are all variations of modern slavery of children (Wood, 2020).
[68] Depending on the recruitment age and the involvement period with the forces, some FCS have never recognized (or recall) any other reality and other values than those presented by the groups/armed forces in violation of the law.

to fully integrate back into a civil setting. Assuring the consolidation of this complex transition should be the States' prime responsibility, since these entities have the duty to protect, promote and implement all human and fundamental rights. Accordingly, Art. 39 of the CRC establishes that all State Parties must pledge psychological and physical recovery, as well as social reintegration, of any child victim of armed conflict, similarly to Art. 22 (3) of the African Charter on the Rights and Welfare of the Child[69]. The Optional Protocol to the CRC[70], recognizes in greater detail the need for signatory States to implement—through technical and financial cooperation—all viable measures to the recovery and social reintegration of "(…) persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol (…)"[71]. In addition, the PP devoted principle 7 to the effective reintegration of children who have been associated with armed forces or armed groups, implementing a rehabilitation framework—spanning community, society and family integration—that can and should be taken as the standard of comparison for the States' actions. The suggested status of FCS, as outlined thus far, could reinforce the obligation for States to cooperate and create detailed and individualized reintegration strategies according to each FCS's needs.

In this context, collaboration between governments, local NGO's and international organizations is imperative to achieve effective reintegration of FCS. However, this cooperation between entities is often encumbered in scenarios where the government forces are involved in the use and recruitment of child soldiers[72]. Nonetheless, international organizations play a significant role in implementing reintegration programs. The UN are a prime example, as the leading international partner implementing DDR initiatives, which cover the phase of reintegration as a social and economic process that helps "(…) former fighters acquire full civilian status (…)"[73]. But, regardless of the rather extensive mention of children protection, in practice, DDR

[69] "3. State Parties to the present Charter shall" (...) "take all feasible measures to ensure the protection and care of children who are affected by armed conflicts." (Art. 22 (3) of the ACRWC).
[70] Arts. 6(3) and 7(1) of the Optional Protocol to the CRC.
[71] The age restriction (Art. 3 of the OPAC) discussed above could pose a barrier to the reintegration of children who were "voluntarily" recruited into their national armed forces before they reached 18 years. Still, by rejecting the verification of the imposed minimum conditions to be granted the classification of voluntary recruitment, these children will always be eligible for the purpose of Arts. 6(3) and 7(1) of the OPAC.
[72] In Uganda, "(…) in certain cases doctors refused to help in rehabilitation of some children because of death threats from the militants" (KHAN, M. & RAJA, A., 2019, p. 11).
[73] RABASA, A., ET AL., 2011, p.53

programs not only often neglect the specific needs of FCS[74], but also face significant hardships in developing eligibility criteria for such programs[75] and inadvertently overlook children who have escaped on their own[76].

Considering these shortcomings in the DDR programs, the proposed status can be seen as part of a solution. On the one hand, by including this status in a legally binding instrument, the individuals who qualify as FCS under the aforesaid requirements would have the legal right of benefiting from the DDR programs[77]—strengthening the criteria for those eligible, but also covering those who demobilize spontaneously, since the status only requires that the tie between the individual and the armed forces/groups is severed. On the other hand, DDR programs present a concerning breach regarding FCS who surpass the 18-year-old age mark[78], by only considering and meticulously outlining DDR programs for adults[79] or children, disregarding the grey area where we include these individuals. Once again, implementing a legal provision of this status could force the responsible entities to act towards the individual needs of the different types of FCS[80].

1.2) Rehabilitation and reintegration programs for FCS

Regardless of the responsible entities' approach to rehabilitation and reintegration programs for FCS, we believe that these programs should contain stages comprising different approaches and focuses adapted to each case[81]. All plans should include physical and psychological rehabilitation, followed by social (family and community) reintegration, as past DDR experiences involving African and Asian FCS suggest that their needs are best met when they enroll in "(…) long-term rehabilitation programs that

[74] "For example, in its first Sierra Leone operation in the mid-1990s, the UN earmarked $34 million to disarm, demobilize, and reintegrate ex-combatants. However, only $965,000 of this already small amount was directed toward the tens of thousands of child soldiers in Sierra Leone, despite the fact that they made up the bulk of the fighters in the war." (SINGER, P., 2005, p.443).

[75] Module 3.21 on "Participants, Beneficiaries, and Partners" of the IDDRS framework is, to this day, under development. (UN INTER-AGENCY WORKING GROUP ON DISARMAMENT, DEMOBILIZATION AND REINTEGRATION, nd.).

[76] By necessarily linking the reintegration process with the demobilization one (UNITED NATIONS, 2014).

[77] Mainly the reintegration process, since the disengagement from military life and control is the key variant between child soldiers and FCS.

[78] As mentioned before, the requirements to receive the status of FCS do not exclude the individuals who only disengaged from armed forces/groups after reaching 18, if their recruitment took place before reaching the age of majority.

[79] I.e. that only engaged in armed forces/groups as adults.

[80] The module 5.30 – Youth and DDR of the IDDRS Framework is also insufficient in that it restricts its applicability to 15–24 year-olds, disregarding the needs of FCS that were only able to disengage after the limited age restriction, and should have the right to benefit from the care and protection services they need. (UN INTER-AGENCY WORKING GROUP ON DISARMAMENT, DEMOBILIZATION AND REINTEGRATION, nd.)

[81] See Appendix II.

prioritize both their physical and psychological needs and emphasize family reunification."[82]

The primary rehabilitation phase must embrace, on the one hand, psychosocial and mental health support—since most FCS present warning signs of psychological trauma as a result of their military experiences, which are exacerbated by their youth—and on the other hand, health care—as most of them are frequently in poor physical condition due to injuries, diseases and forced drug use. Different planning strategies and approaches may arise within humanitarian organizations, since the way practitioners observe the concept of "psychosocial" may vary widely[83] , leaning more towards social, cultural and moral values, or emotions, behaviors and thoughts. Besides, health screening processes are one of the most urgent interventions, since FCS are much more susceptible to infections, physical disabilities, and dependencies due to deprivation of hygiene, untreated injuries, and even forced drug and alcohol use to help strengthen child soldiers before engaging in violent activities[84].

The second stage focuses on the reintegration of FCS. This ultimately implies offering educational (including human rights awareness) and vocational opportunities though skill training and job placement[85], since most of them were removed from school at an early age, which often leads to marginalization by lack of education[86]. It also includes family/community acceptance as "(…) experience shows that family reunification and community-based strategies are the most effective in reintegration."[87], a step crucial to the healing process and prevention of re-recruitment, breaking the cycle of violence.

As long-term programs[88], the planning and execution of these rehabilitation/reintegration interventions depend on multi-year funding mechanisms[89] that should be provided through the collaborative efforts of the entities described

[82] RABASA, A., ET AL., 2011, p.63
[83] "In Uganda, for example, there was no agreement among NGOs interviewed as to what psychosocial programming actually encompassed" (LOREA & ELZBIETA, 2006, p.61).
[84] For more on this topic, see (LOREA & ELZBIETA, 2006).
[85] BROWNELL & BASHAM, 2017, p. 1082
[86] For more on the deficient education of FCS, see, BETANCOURT ET AL., 2008.
[87] VERHEY, B., 2001, p.22
[88] "Reintegration is a long-term process taking much longer than a few months. Although no blueprint exists for the time frame over which this extends, most practitioners think in terms of years, and it requires extensive preparation and follow-up support." (WESSELLS, 2004, pp. 519-520).
[89] Yet the reality is quite different, as most of these programs are operated with short-term funding. "[M]ost agencies such as the United States Agency for International Development ("U.S.A.I.D.") provide funding for periods typically of one year to eighteen months. Then, when the next crisis erupts or donor fatigue sets in, the funding dries up." (Ibid, p. 523).

above—international organizations (governmental and non-governmental) and States—since successful integration of FCS is highly dependent on economic opportunities from humanitarian enterprises. Moreover, communities, organizations, and government and civil authorities must be prepared to deal with situations in which families are dispersed or non-existent, schools are closed, and economies are disrupted due to typical armed conflict scenarios.

1.3) Former girl child soldiers: reclaiming their dignity

Last but not least, within the category of children who didn't engage directly in hostilities, one must emphasize the absolute horrific scenarios to which female child soldiers are subjected and allow them to reclaim their dignity. Although male child soldiers can also suffer from acts of sexual violence in certain groups/forces[90], on a global scale, girls are targeted in higher rates. Additionally, despite playing diverse roles within the armed groups/forces, more than half of the abducted girls experience sexual exploitation[91]—including rape, forced marriage, unwanted pregnancy, pregnancy-related complications, among other cruel physical and psychological traumas. To adequately address the needs of these women and girls, rehabilitation and reintegration programs must focus on the unique vulnerabilities linked to their gender and status in society, rejecting the idea of a one-size-fits-all plan.

Following the proposed two-step program, rehabilitation of former female child soldiers should require appropriate health care. On the one hand, to offset the high incidence of sexually transmitted diseases; on the other, because these girls frequently transition into womanhood and motherhood during armed conflict. The program should also include various psychological rehabilitation practices, as most of them are sexual assault survivors.

Moreover, the rehabilitation phase has to contend with deep-rooted stigma (inflicted upon these women, but also their children), which lead some authors to question the benefits of cultural and societal norms regarding the reunion of female former child soldier with their families and communities[92]. In our opinion, social stigma must be fiercely opposed, as it hinders the reintegration of these victims and is one of

[90] KINYANDA ET AL., 2010, p.4
[91] PRAKASH, 2022, p.17
[92] Ibid. p.21

their greatest sources of distress[93]. An immediate solution could rely on healing rituals that allow formal acceptance within the family and community[94], which should be complemented with a long-term solution that consists of the fostering of acceptance of children victims of unspeakable violence, since "(…) changing people's mindset around sexual violence is crucial."[95].

In light of the clear shortcomings of the current plans[96], implementing the legal status of FCS, which openly encompasses these girls, can highlight their vulnerable situation[97], not only through the need of physical and mental health care, but also through the linkage between the status and the criminal responsibility of the attackers[98]. This way, young women can have a better perception of their own rights and reclaim their dignity.

2) Direct participation

For the purpose of the suggested status, the concept of "direct participation" of child soldiers implies the perpetration of unlawful acts of violence by the child, during the time that they were still associated with the armed groups/forces. Within this context, the already widely debated issue arises in the search for an answer to the following question: "Are FCS victims or perpetrators?". From our standpoint, this debate must be divided into two different subchapters, which reflect the disjunctive conditions that we mentioned in Chapter II—either the child soldier ceases to be a soldier, but remains a child (FCS under 18), or they cease to be a child and remain a soldier (FCS over 18).

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[93] "Girls themselves are sometimes reluctant to join reintegration programs, because they fear the rejection by their families and communities, especially when bringing a child home with them." (OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SG FOR CHILDREN AND ARMED CONFLICT, 2018, p. 10).

[94] "In all these rituals, returning soldiers are purified before they are reintegrated into the family and community. A key element is symbolically breaking with the past: proclaiming the beginning a new life; (…)" (HONWANA, 2006, p.194).

[95] DANZI, 2019

[96] For more about gaps and needs on current plans see, GLOBAL COALITION FOR REINTEGRATION OF CHILD SOLDIER SECRETARIAT, 2020.

[97] Female child soldiers are regularly submitted to sexual exploitation, which represents one of the many ways how violence against women can emerge, as stated in the Declaration on the Elimination of Violence Against Women adopted in 1993 by the UN General Assembly.

[98] "8.5 States should ensure that perpetrators of violence against children associated with armed forces or armed groups, *including sexual violence against girls are prosecuted*, either through national legislation or through the International Criminal Court." (Art. 8 (8.5) of the PP).

2.1) Former child soldiers under 18

The first case presents the dilemma of the prosecution of FCS for offenses committed before 18. This is a distinct debate due to the lack of clear guidance on behalf of international law and courts of justice, since it is not clearly established whether these children should be held accountable for their wrongdoings. Taking into consideration various references in international law regarding the prosecution of child soldiers, these instruments do not contemplate the exclusion of criminal prosecution and imprisonment of juvenile offenders, merely forbidding the capital punishment of individuals who were under 18 years at the time of the offence[99]. There is a clear lack of regulation on how to prosecute children who have undergone these extreme circumstances, despite brief mentions[100] that are intended to follow the "best interests of the child"[101]. In addition to the oversimplification of these provisions, they all fail to set a minimum age of criminal responsibility[102], granting this power to national regulation, and consequently the decision to prosecute (or not) these FCS.

Similarly to the international legal provisions, the existing international courts have also failed to address the culpability of these children, forcing the burden back into national authorities. In fact, none of the *ad hoc* tribunals or the pioneer Nuremberg Tribunal, have offered guidance so far on the age at which criminal responsibility begins, leaving the decision of whether young people should be prosecuted for their offenses to the domestic courts. Due to the pervasive use of child soldiers throughout this conflict, the hybrid tribunal of Special Court for Sierra Leone deserves special emphasis. Notwithstanding the fact that in its Statute the court's jurisdiction was extended to children between the ages of 15 and 18 years of age with some additional

[99] Art. 68 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, and reiterated by Art. 77 (5) of the Additional Protocol I, and Art. 6 (4) of the Additional Protocol II; Art. 37 (a) of the CRC (also adding the prohibition of "(…) life imprisonment without possibility of release (…)"); Art. 17.2 of the Beijing Rules.

[100] For instance, Art. 37 (b) of the CRC and principle 19.1 of the Beijing Rules regard the imprisonment of a child only as a measure of last resort. Also, Principle 5.1 of the Beijing Rules states that "(…) any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence".

[101] Art. 3 of the CRC, "(...) is the "umbrella provision" and overriding substantive mandate of the CRC to protect the best interests of the child." (MALONE, 2015, p. 617).

[102] Irrespective of the few limitations set out by principle 4.1 of the Beijing Rules ("(…) age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity." 9 and General Comment No. 10 to the CRC U.N. Doc. CRC/C/GC/10 p.11 ("(…) it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable.").

safeguards[103], "[t]he SCSL's first Chief Prosecutor unequivocally stated that he never would prosecute children under the age of eighteen, including child soldiers, *inter alia* because they do not bear the greatest responsibility"[104]. Lastly, the ICC's jurisdiction is expressively excluded over child soldiers as settled by the Rome Statute[105], preventing the court from prosecuting anyone under the age of 18. Once again, the decision to prosecute children for crimes committed as child soldiers is left to State discretion[106], which we believe is a lacking response that can lead to fairly arbitrary and dangerous decisions from national authorities. As an example of this risky arbitrariness, back in 2000, in the DRC, a 14 year-old child soldier was executed shortly after being sentenced[107], and in 2001 the same sentencing of four boys recruited aged between 14 and 16 was only prevented thanks to international pressure[108]. We believe that, due to the international nature of this issue, States' discretion should be limited, and thus the answer must not comprise of a simple conferral of decisive power solely because of its inherent complexity.

In the face of a persistent gap, the FCS status could provide a coherent uniform standard governing the culpability of these children, not only by establishing a minimum age of prosecution, but also by introducing alternative solutions to the sentencing of criminal responsibility. This would act as an appropriate response to individuals who fundamentally differ from other youths who commit violent crimes. In conformity with one of the key advocacy messages of the UN Special Representative for Children and Armed Conflict[109], and regarding the FCS status, we propose to exclude "(…) children under 18 from criminal responsibility for crimes committed when associated with armed forces or armed groups;". On the basis of the initially given definition of FCS, it would be fairly unreasonable to consider a more restricted protection only in terms of legal responsibility, when our aim in establishing this status

[103] "Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child." (Art. 7(1) Statute of the Special Court for Sierra Leone).
[104] DRUMBL, 2012, p. 123
[105] Art. 26 of the Rome Statute
[106] The drafter's decision was not based on the children's inability to commit war crimes or the need to not prosecute them based on their youth, but on the lack of consensus between States regarding the minimum age for international crimes—indicative of a political compromise rather than a statement of principle. See (AMNESTY INTERNATIONAL, 2000, pp. 7-9) and (CLARK & TRIFFTERER, 1999).
[107] HUMANS RIGHT WATCH, 2001a
[108] HUMANS RIGHT WATCH, 2001b
[109] OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN AND ARMED CONFLICT, 2011

is to provide adequate and differentiated protection to all individuals who fall into this category. Still, one should not disregard the divergent cases of a 7 and a 17 year-old FCS, as their views on morality, common sense and ethics are necessarily distinct due to the aforementioned natural development of a child. For that reason, we understand some States' decisions on making 15 to 17 year-olds targets of prosecution. But even in those cases, and in accordance with Rule 11.4 of The Beijing Rules, viable alternatives to juvenile justice should be prioritized and processed in the form of community-based diversion activities.

Setting the minimum age of criminal responsibility at 18 for FCS would be the ideal answer, consistent with the arguments presented above on chapter "The selected age gap", as well as with the shift in the international community to prohibit the recruitment and use of children under the age of 18 in armed conflicts. On that note, prohibiting the recruitment of child soldiers under the age of 18 and ascribing criminal responsibility to these children would be contradictory. Besides, while subjective capacities must always be pondered when assessing each individual case, setting a minimum age is essential to create an equally shielded position under the law, which clearly goes hand-in-hand with "the best interests of the child".

Still, one might argue that the prohibition of this prosecution could lead to an increase in recruitment of child soldiers due to impunity. However, by not prosecuting FCS for crimes committed before the age of 18, we can also avoid the fear and reluctance to disengage. With that being said, preventing the prosecution of FCS can also contribute to a more successful reintegration by rejecting the formal assignment of a war criminal label, which would ultimately result in an "official" confirmation of the communities' stigma directed towards these children[110]. Finally, although we cannot dismiss the argument of the victims' potential impunity, or of failed justice, we reiterate that the protection of a vulnerable group and its best interests cannot be jeopardized when alternative measures are available.

Hence, and in accordance with the PP[111] and the UNCRC[112], our status also furthers the need to seek alternatives to judicial proceedings at national level, which should encompass victim/offender mediation, reconciliation processes, acknowledgment of

[110] "Whether they are victims, witnesses or alleged offenders, public court appearances may put them at risk of stigmatisation or violent repercussions." (UNICEF & SAVE THE CHILDREN, 2022, p. 361).
[111] "8.9.0 Alternatives to judicial proceedings should be sought for children at the national level;" (Art. 8 (8.9.0) of the PP)
[112] Art. 40 proclaims that criminal justice alternatives to formal judicial proceedings must be found when talking about Administration of Juvenile Justice.

their own accountability for committing war crimes, among other resources of restorative justice[113] programs, embracing a Transitional Justice approach[114], and allowing children to come to terms with their poignant past.

A great example of these alternative methods are the Truth and Reconciliation Commissions (TRC), as they are "(…) established to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, [and] get a clear picture of the past in order to facilitate genuine healing and reconciliation."[115]. These commissions generally issue a public report that can involve the assignment of institutional responsibility, recommendation of reforms and reconciliation mandates through the publication of the report itself or by engaging the commission in regard to liability and reparations[116]. The two most noteworthy TRC's regarding child soldiers, are the Sierra Leone and Liberia TRC's, since both commissions reflected upon the "dual identities" of both victim and perpetrator that they were forced to assume[117]. They did this by incorporating these children's experiences in their findings via hearings and statements, but perceiving them as victims of a war that exploited their intrinsic vulnerability, as they "(…) were socialized into committing abuse, the routine use of violence, and the power of the gun as the central norms that rules their lives."[118] Regardless of some challenging

[113] "Restorative justice is a flexible, participatory and problem-solving response to criminal behavior, which can provide a complementary or an alternative path to justice. It can improve access to justice, particularly for victims of crime and vulnerable and marginalized populations, including in transitional justice contexts." (UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2020, p.1).

[114] "The notion of transitional justice discussed in the present report comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation." (UN SECURITY COUNCIL, 2004, p. 4).

[115] Art. XXVI(1), of the Peace Agreement Between the Government of Sierra Leone and the Revolutionary.

[116] For more about Truth and Reconciliation Commissions see, DRUMBL, 2012, pp. 180-188.

[117] "The conflict in Sierra Leone forced children into assuming "dual identities" of both victim and perpetrator. While the Commission chose to treat children who had been involved in the conflict as neutral witnesses, the Commission was also determined to explore the fullness of their experiences in order to understand the motivations for what they did and whether they had the capacity to understand all of it. Examining their role as perpetrators is an important step in this direction. The Commission is not seeking to explore guilt; on the contrary, it strives to understand how children came to carry out violations as part of an important learning curve in preventing future conflicts." (TRC OF SIERRA LEONE, 2004, p. 287).

[118]. TRC OF LIBERIA, 2009, P. 255

obstacles[119], we view these TRC's as suitable transitional justice solutions, not based on a "forgive and forget" logic, but rather "remember and heal"[120].

2.2) Former child soldiers over 18

This second group focuses on determining whether being a FCS should be a relevant exclusion criterion and/or mitigating factor of criminal responsibility, regarding crimes committed after the age of 18. In other words, can a FCS be held responsible for the acts that they continue to commit as an adult, while still in the same environment in which they were raised?

Regardless of the initial struggle to envision such a complex scenario, this situation is perfectly portraited in the case *Prosecutor v. Ongwen*. With it being a case of various firsts[121], the ICC was presented with the unique opportunity to establish a precedent on the very application of the relevant legal provisions to the victim/perpetrator complexity inherent to a trial of a FCS over 18 years. Nonetheless, the Chamber failed to acknowledge the dilemmas arising from Dominic Ongwen's dual status, openly disregarding the devastating and enduring effects of child soldiering, which it had previously recognized in the case *The Prosecutor v Thomas Lubanga*[122].

On May 6, 2021, Dominic Ongwen was found guilty of 61 counts for crimes against humanity and war crimes committed in Northern Uganda, between 2002 and 2005, and including murder and persecution in the context of the attacks on four camps for IDP; sexual and gender-based crimes; and, ironically, conscription of children under the age of 15 and their use to participate actively in the hostilities. Seventeen years after the referral[123] of the situation, concerning LRA[124], by the President of Uganda to the

[119] Although its voluntary character can be seen as a weakness (as a restorative justice process), the offenders usually experience varying degrees of moral or even political pressure to cooperate with the TRC (PARMENTIER, 2001).

[120] For more about Children Formerly Associated with Armed Forces or Armed Groups in Justice Systems, see UNICEF & SAVE THE CHILDREN, 2022, pp. 360–377.

[121] Dominic Ongwen was the first former child soldier and the first LRA member to be prosecuted in an international tribunal.

[122] "They cannot forget what they suffered, what they saw, what they did. They were 9, 11, 13 years old. They cannot forget the beating they suffered. They cannot forget the terror they felt and the terror they inflicted. They cannot forget the sounds of their machine-guns, that they killed. They cannot forget that they raped and that they were raped." (*Prosecutor v. Thomas Lubanga Dyilo* (Opening Statement), 2009, p.2).

[123] Press Release, ICC, President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC, 2004.

[124] The Lord's Resistance Army is a rebel militant group led and founded in 1987 by Joseph Kony, subject of an arrest warrant by the ICC since 2005, and widely known for its extensive conscription of children and widespread killing, maiming, abduction, and sexual violence against the people of Uganda.

ICC, Dominic was sentenced to 25 years of imprisonment by the Trial Chamber IX of the ICC.

LRA is widely known for the recruitment of children, due to their characteristic loyalty, tendency to be effortlessly manipulated, and mostly due to the fact that they can be easily indoctrinated. The brutality of LRA's indoctrination method includes preventing children from bonding with each other (and possibility form escape plans) by prohibiting abductees "(…) to speak in their native languages or communicate with others."[125], as well as discouraging escaping through public killings and beatings, and by forcing abductees to kill or beat their peers[126]. Dominic Ongwen was abducted in 1987 around the age of 9 by the LRA, and subjected to barbaric indoctrination processes that lasted throughout his entire childhood[127]. These facts were corroborated by the Chamber, showing that "(…) Dominic Ongwen's abduction at the age of around nine years and subsequent early years in the LRA brought to him great suffering, and led to him missing out on many opportunities which he deserved as a child.". Still, the Court swiftly dismissed these traumatic experiences by asserting that this "(…) in no way justifies or rationalizes the heinous crimes he willfully chose to commit as a fully responsible adult."[128]

We argue that the Chamber focused on strict legalistic narratives, which inhibited the creation of a pioneering legal outline for an individual's defense based on mental incapacity and unique conditions of a FCS—which could constitute a renewed discussion on the responsibility of FCS.

From our standpoint, and under Art. 31 of the Rome Statute and Art. 145 of the Rules of Procedure and Evidence, the possibility of Dominic's criminal responsibility being excluded or his sentence mitigated was bound to fail, considering the highly unsuitable legal framework of international criminal law regarding cases of FCS. Diminished mental capacity (Art. 31(1)(a)) and duress (Art. 31(1)(d)) as grounds for the

[125] KELLY AT AL., 2016, p.5
[126] Ibid, p. 6.
[127] "He explained how the disciplinary rules of the LRA were taught to him following his abduction, in particular that he should not escape and that he would be killed if he did. He stated that he was forced to slaughter some people, hang their intestines on a tree and to eat beans mixed with their blood. He added that he collapsed and became unconscious as a result, and that to this day, he cannot forget this image." (*Prosecutor v. Dominic Ongwen* (Sentence), 2021, §73).
[128] *Prosecutor v. Dominic Ongwen*: Summary of the delivery of the sentence on 6 May 2021, §55.

exclusion of criminal liability, or for mitigating circumstances (Rule 145(2)(a)(i)) both present major probatory obstacles[129].

Duress essentially implicates that the accused succumbs to improper external pressure so that his actions can be understood, but not condoned[130]. Although we could claim the existence of a real and ongoing threat of death or serious bodily harm throughout Dominic's years in the LRA[131], the imposed conditions of duress, as a ground to avoid liability, are extremely strict[132] and manifestly incompatible with FCS' circumstances. For example, the "(…) characteristic cruelty of LRA acts places serious difficulties on establishing that the acts were proportionate to the threat against Ongwen (...)"[133].

Likewise, mental capacity, as a substantial defense to the allegations against the accused, requires proof that he suffered from a mental disorder or mental deficiency at the time of the commission of the crimes. Just like in Dominic's case, years will often pass and several events will occur between the relevant conduct and the psychological assessment. Therefore, it can be really challenging to evaluate and prove "(…) how functionality and incapacity may alternate and co-exist, and how particular instances of incapacity might be established with a sufficient degree of specificity"[134].

Nevertheless, we must point out two major flaws in the Court's reasoning. First, the absence of cultural context in the recognized forensic psychiatry[135] as a crucial element to consider regarding the circumstances of FCS, as stressed before. Additionally, the expert reports on Dominic's mental capacity were prepared to evaluate his condition only under the strict criteria of Art. 31(1)(a) of the Statute, not observing the impact of the traumatic experiences on his personality, brain development, and moral values.[136]

In the face of this inadequacy, it must be recalled that "(…) the Chamber has a considerable degree of discretion in determining what constitutes a mitigating

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[129] For more about mental incapacity and duress as a defense for FCS, see (CHIFFLET & FRECKELTON, 2022) and (GRANT, 2016).
[130] KREBS, 2013, p.398
[131] From the age at which he was abducted, Ongwen was forced to perform unlawful and violent acts under threat of being beaten and killed. It can also be argued that this continued even after he had reached the rank of commander, as it was mentioned that Dominic was imprisoned and subjected to torture in Sudan by Joseph Kony as a reaction to Ongwen's desire to escape. (DRUMBL, 2016).
[132] The requirements of duress, as established by Art. 31(1)(d), may seem to incorporate elements more typically associated with necessity. (KREBS, 2013, p.398)
[133] GRANT, 2016, p. 20
[134] CHIFFLET, FRECKELTON, 2022, p. 775
[135] Ibid., p. 776
[136] *Prosecutor v. Dominic Ongwen* (Annex: Partly Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza), 2022, §136.

circumstance in addition to those explicitly set out in Rule 145(2)(a) of the Rules of Procedure and Evidence, as well as in deciding how much weight, if any, to be accorded to the mitigating circumstances identified."[137]. Even so, the Court decided that neither of the grounds applied to the present case. This decision, when considered alongside the severity of the ICC's sentence, can be associated with the ICC's unsuccessful and frustrated efforts to exercise its jurisdiction over the alleged war crimes and crimes against humanity committed during the conflict between the LRA and the national authorities of Uganda.

The inadequacy of the legal framework in regard to the vicissitudes of FCS once more allow us to emphasize the need for implementing the proposed status. Firstly, Dominic Ongwen is indubitably eligible to benefit from the FCS status, as all the defined criteria are met. Therefore, this status should be a sufficient condition for the Court to reject the idea that time alone creates an entity's ability to be morally and legally responsible, and to discuss how the disruption of moral maturity's development—including the distinction between right and wrong—can result in a merging of what is the victim/perpetrator binary.

We do not seek to uphold a status that portrays all FCS as helpless victims, presumed unaccountable once the conditions for the status are met. If so, we would be corroborating the overtly simplistic reasoning of the Court, where there's a clear line between the responsibility of those who are portraited as victims and as perpetrators.

Conversely, we intend to emphasize the need to implement legal standards that bound Courts to challenge the very limitations of ICL in regard to the victim/perpetrator binary. For example, the meeting the conditions for a FCS before an international court should be linked to the idea of exceptionality (justified by the unique nature of the case), and consequently to the consideration and open debate of certain factors, such as the psychological impact of being a child soldier (within the cultural context), or the criminal inapplicability due to a distorted moral perception of the world. These factors must be weighed and contemplated by the judges themselves, resulting in a legal and socio-cultural discussion on the responsibility of FCS. This, in turn, should be reflected in the resulting sentence[138]—not only when recognizing mitigation circumstances, but

[137] *Prosecutor v. Dominic Ongwen* (Sentence), 2021, §54

[138] The insufficient discussion about Dominic's compelling circumstances was also echoed in a deficient assessment on Dominic's sentence, by only considering the excessiveness of a life sentence.(Ibid., §388).

also when pondering the promotion of rehabilitation and reintegration before the execution of the sentence[139].

In our opinion, major advances for the protection of FCS within the ICL can result from these debates, such as listing especially designed mitigating factors that vary according to the severity of each case—which, in turn, would be measured according to the elements of the FCS concept itself (age of recruitment, gender, time spent as a child soldier, …)—or provision of defenses which might partially exonerate someone (partial defenses).

All in all, similarly to other FCS, and in accordance with the Partly Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza, "(…) Mr. Ongwen's abduction and his early traumatic experiences in the coercive environment of the LRA had a long-lasting impact on his personality, brain formation, future opportunities and the development of his moral values."[140], which ultimately should be considered as relevant personal circumstances at the sentencing stage. The current provisions of ICL are clearly insufficient when faced with the complexities of the "victims who victimize", due to the unfitting grounds for defense and established mitigation circumstances. Hence why, in light of an insufficient international criminal legal framework, we grasp the formal recognition of this victim status, as a resource for courts to use their expressive value of international criminal judgments to acknowledge the human rights violations of these FCS along with their vulnerable status.

[139] See more about the interests of the sentenced person on the execution of sentences in VERMEULEN & DE WREE, 2014.
[140] *Prosecutor v. Dominic Ongwen* (Annex 1: Partly Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza), 2022, §91.

IV. A LEGALLY PROTECTED STATUS

The need to create a legally binding status derives from the blatant void of what it legally entails to be a former child soldier. The two key points of the provision of this status imply the need for rehabilitation and reintegration of FCS, and an adequate balance between criminal justice issues and children's human rights considerations.

As a status based on the need to protect individuals whose early experiences deprived them of the enjoyment of basic and fundamental human rights as children, we consider that its legal provision could be included in the Optional Protocol to the Convention on the Rights of the Child (OPCRC) on the involvement of children in armed conflict. This is mainly due to the condition of eligibility to benefit from the status occurring during "childhood", and to the Protocol's scope to protect children from recruitment and use in hostilities.

The legal provision we will suggest below, is nothing more than the culmination of our research regarding the protection of FCS, and it should thus reflect all the concerns articulated throughout our dissertation.

On that account, we will first present a general clause in which we comprise *all* former child soldiers—emphasizing the various elements studied in Chapter I—and to which we attribute the right to be duly reintegrated and rehabilitated[141]. For the implementation of this clause, the role of Member States and international organizations is significant, in the terms that we have previously defined, both in Subchapter III a) and Appendix II.

The second part of the article concerns a framework that is only applied to those who took part directly in hostilities and perpetrated unlawful acts of violence. We ponder the needs and propose adequate solutions for children accused of acts committed within their military engagement, and for individuals like Dominic Ongwen, whose traumatic experience should always be contemplated when determining his criminal liability. In sum, we present a protective framework for those whose human and fundamental rights have been grossly violated in the most vulnerable period of the human lifespan.

Thus, we propose adding the following article to the Protocol:

[141] Note that, while rehabilitation and reintegration programs are not as widely emphasized in the chapter addressing FCS who directly participated in hostilities, we consider their reintegration and rehabilitation equally important. This position has been corroborated by the framework in Appendix 1, and the caveat presented at the beginning of Chapter III.

Art. XX – Former Child Soldier Status

1. State Parties shall ensure that all former child soldiers, irrespective of their gender, age, form of recruitment or type of participation, have access to personalized rehabilitation and reintegration programs—through sufficient cooperation and provision of technical and financial support[142].

2. When applicable, each State Party shall ensure access to every individual who qualifies as a former child soldier to a justice system which properly frames the individual's accountability for any criminal act, committed in association with armed groups/forces, within the status of a survivor of a human rights violation. If the offences at issue were committed:

a) Before eighteen years of age, and when associated with armed groups/forces, criminal responsibility should be excluded in principle. However, State authorities may have some discretion in prosecuting those who committed crimes between the ages of 15 and 17, if their treatment within the justice system is respectful of their age of recruitment, level of development, and other conditions related to the coercive circumstances under which the child was living or forced to act. In any case, States shall favor reintegration and restorative justice over any punitive measures or formal judicial mechanisms.

b) After eighteen years old of age, the former child soldier status shall be perceived as an inherent condition of the accused, which entitles the defendant—and the defendant's actions—to be assessed in light of their past experiences, whether in regard to the pre-trial, sentencing, or any other legal proceeding.

[142] Child protection practitioners should push for States' funding "(…) sufficient to allow for an inclusive community-based approach that supports (…) children known to be formerly associated with armed forces and armed groups (…)". (UNICEF & SAVE THE CHILDREN, 2022, p.107)

V. CONCLUSION

We initiated this thesis with the aim of arguing that FCS should be considered a vulnerable group, which, in turn, should imply eligibility to a particular protective status.

We thus opened by proposing a definition for FCS grounded on the definition of child soldiers, which was subsequently divided into its own integral elements. This fragmentation allowed us to draw a pivotal conclusion that guided us through the rest of our research—that FCS are an extremely heterogeneous group, and, therefore, that their individualities must be acknowledged and reflected in the proposed protective measures.

Still, to fully grasp the concept of FCS, one must recognize the line between a FCS and a child soldier. Hence, what allows us to move from one concept to the other is meeting one of the two objective conditions previously stated—military engagement or being under 18 years of age. This enabled us to ascertain the moment from which the subject qualifies for the proposed status.

After establishing these conceptual bases, and to outline the issues which our status should comprise, we selected the type of participation as our guiding element. We also determined that direct participation in hostilities is necessarily linked to committing illegal acts of violence, contrarily to indirect participation. From this premise, we were able to uncover and analyze the different needs of each group.

For the FCS that did not engage directly, we deduced that the main concern of this status should be access to rehabilitation and reintegration programs. While it is a widely debated topic, the implementation of the status should emphasize the need to adapt these programs to each specific case (namely the distinct context of female former child soldiers) and the important role of States and international organizations in that process.

As for FCS that did engage directly in hostilities, we reflected on the complex dichotomy of accountability and protection, both in occasions where FCS are accused of crimes committed before the age of 18, and situations where they are charged for crimes perpetrated after that age. In both scenarios, we pinpointed the blatant international legal gap regarding their condition under the law. And despite advocating feasible solutions for both, we believe that the pioneering aspect of this status is in fact the provision that safeguards FCS in cases similar to Dominic Ongwen's. In reality, by

assuming the need for this status' protection, we are contesting the international trend of reducing their qualification as victims or perpetrators.

Finally, the new legal provision we suggest is the result of our ultimate goal to offer a legally status that guarantees to FCS the effective enjoyment of their human rights.

So, are former child soldiers victims or perpetrators?

Well, to us, they are forever vulnerable human beings.

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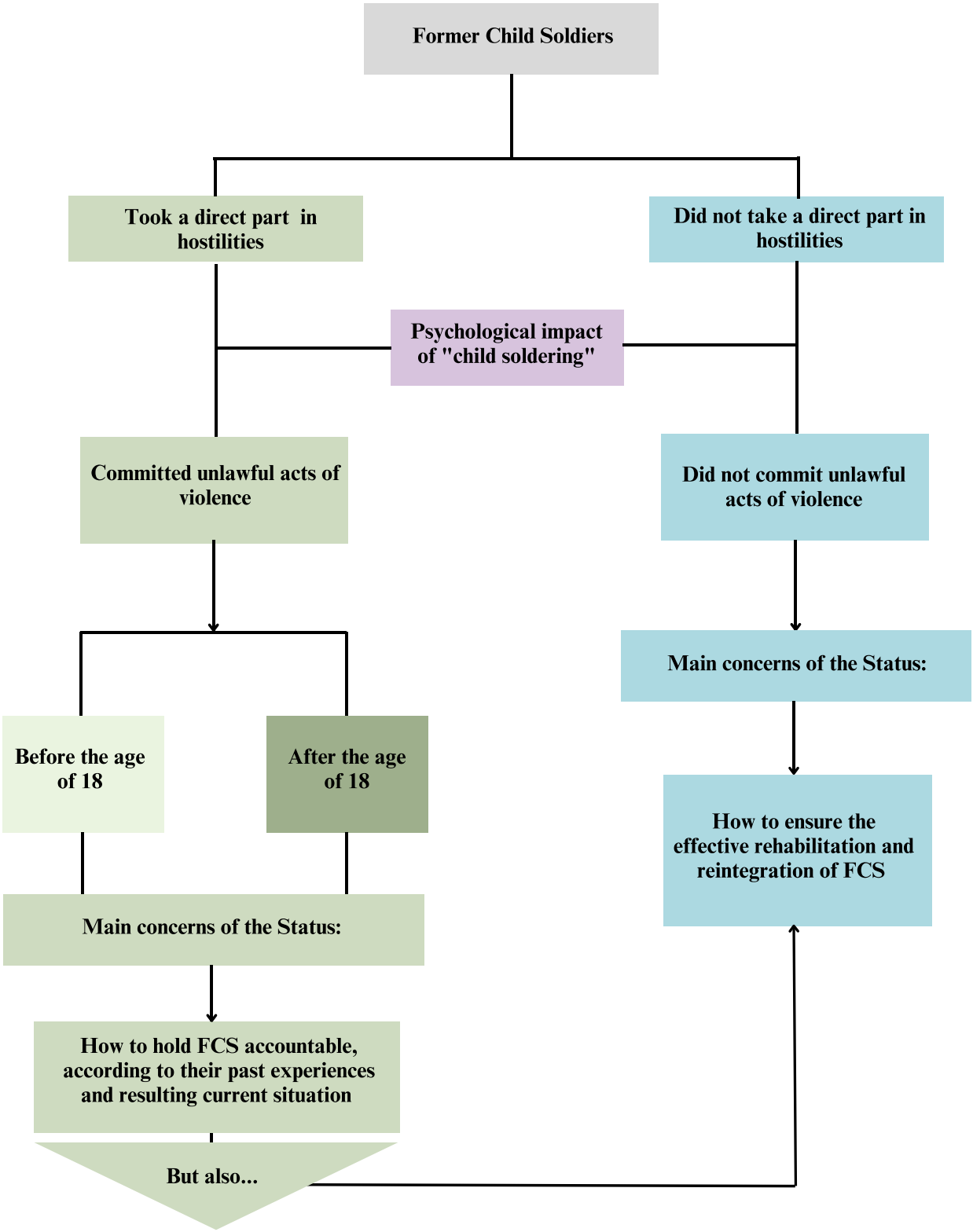
VII. APPENDIXES

i) **APPENDIX 1:** Main issues that should be covered by the "Former Child Soldier Status".



ii) **APPENDIX 2:** Rehabilitation and reintegration programs for Former Child Soldiers.