

**Children Recruitment in Colombia in the Context of Peace Process.
An International Standards analysis**



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Acronyms

Acronym	Description
CAAFAG	Child Associated with an armed force or armed group
CC	Constitutional Court
CIPRUNNA	Technical Secretariat of the Intersectoral Commission for the Prevention of Recruitment, Use, Exploitation, and Sexual Violence against Children and Adolescents
CNMH	National Center for Historical Memory
CNR	National Reintegration Council
CRC	Convention on the Rights of the Child
HRDAG	Human Rights Data Analysis Group
ICBF	Colombian Institute of Family Welfare
ICC	International Criminal Court
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILO	International Labour Organization
NIACS	Non-International Armed Conflicts
OPAC	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
RUV	Unique Victims Registry
SIIPO	Integrated Information System for Post-Conflict
SIVJRM	Comprehensive System of Truth, Justice, Reparation, and Non-Repitition
SRVR	Truth and Responsibility Recognition Chamber
UARIV	Administrative Unit for Comprehensive Victim Care and Reparation
UIA	Investigation and Prosecution Unit
UN	United Nations
UNSC	United Nations Security Council
ZVTN	Transitory Local Zones for Normalization

Executive Summary

This comprehensive study examines the provisions of the Colombian legal system concerning the protection of children recruited by armed groups within the context of peace negotiations. The objective is to assess the alignment of these provisions with international standards and evaluate their practical implementation. The study addresses several sub-questions related to international standards, the Colombian legal system's provisions, their conformity with international norms, practical implementation challenges, potential gaps, and opportunities for improvement.

After giving an introduction, the study focuses on the specific international standards and legal frameworks that prioritize children's rights in the context of armed conflict in Section 2. It explores the international instruments ratified by Colombia, encompassing International Humanitarian Law (IHL) and International Human Rights Law (IHRL). These instruments provide the basis for understanding the current standards governing the recruitment of minors in armed conflicts. The analysis highlights the relationship between IHL and IHRL and emphasizes major treaties that have contributed to advancing the protection of children in armed conflicts. The chapter further delves into three main tensions: the specific age for recruitment prohibition, the definition of child soldiers and their roles, and the range of protection measures from prevention to rehabilitation.

Regarding recruitment age, there is a general consensus that the minimum age for recruitment and participation in hostilities should not be below 15 years. While various international instruments provide protection for minors, dilemmas arise due to differences between armed forces and armed groups, mandatory and voluntary recruitment, and the nature of conflicts. However, there has been significant progress in prohibiting recruitment, and international criminal jurisprudence does not differentiate between forced and voluntary recruitment of minors under 15. The analysis also explores the role children play in armed groups. While there are discrepancies between protocols, efforts have been made to prohibit children's participation in hostilities, both directly and indirectly. The term "child soldier" has been updated to "child associated with an armed force or armed group" (CAAFAG) to encompass various roles. However, criticism remains regarding the oversimplification of child soldiers and the need to accurately portray their complex realities. The study examines the protection given to children from prevention to rehabilitation. IHL provides measures for protection during armed conflicts, while the CRC and the OPAC focus on reintegration after the conflict. The ILO Convention emphasizes prevention, and the Paris Agreements encompass prevention, release, and reintegration.

Subsequently, Section 3 delves into the provisions within the Colombian legal system that protect children recruited by armed groups and evaluates their alignment with the principles and standards outlined in the international legal framework, particularly concerning the peace process with armed groups. First, the study analyzes the legal framework established by the Colombian Constitution, in which the fundamental rights of children are guaranteed and the state obligations to protect these rights are set. It also touches on various other laws that complement the protection, including the Penal Code, the Code of Childhood and Adolescence, the Justice and Peace Law, and the Victims' Law. All of them complete the picture of protection by providing specific provisions and penalties for the recruitment and utilization of minors by illegal armed groups.

Additionally, the study highlights the constitutional jurisprudence in Colombia that has addressed the issue of forced recruitment of children and adolescents, recognizing their vulnerability and the violation of multiple rights. The jurisprudence has emphasized the special protection that must be provided to minors and has connected the recruitment of minors to factors such as violence, economic conditions, and displacement, among others. Colombia's legal framework and judicial decisions demonstrate a solid foundation for protecting the rights of children recruited by armed groups. However, the study shows the necessity of evaluating the norms in line with the pressing reality of recruited children in the country.

With this in mind, Section 4 focuses on the FARC-EP Case and the 2016 Final Agreement to evaluate to what extent the provisions are in line with international legal frameworks and identify potential gaps or limitations compared to international standards. The chapter provides an overview of the components

of the Special Jurisdiction for Peace (SIVJNR), emphasizing the need to analyze the implementation of these measures to identify gaps and challenges. It examines the Commission for the Clarification of Truth, Coexistence, and Non-Repetition (CEV), the Special Jurisdiction for Peace (JEP), and the measures of reparation contained in the agreement. While the agreement and its mechanisms demonstrate a commitment to addressing the recruitment and use of children in the conflict, challenges remain in ensuring impartiality, accurate information, and the effective implementation of the agreed provisions. The study finds the Colombian case could serve as an example for other countries in terms of providing truth and reparations for children affected by armed conflicts.

Finally, Section 5 delves into the challenges associated with negotiating with the National Liberation Army (ELN) in Colombia, with a particular focus on the issue of forced recruitment of minors. The aim of the section is to explore in which way the Colombian legal framework can be strengthened and improved in order to afford better protection and support for children recruited by armed groups, considering the lessons learned from previous peace agreements.

The chapter begins by analyzing the current situation, highlighting the alarming prevalence of minors being coerced into joining the ELN, especially in regions like Antioquia, Arauca, Chocó, and Nariño. It also examines statements from ELN leaders denying recruitment and emphasizes the need for stronger institutions and preventive measures. It then provides an overview of the negotiations process, discussing the various stages and locations where the peace process has taken place. The chapter further explores the challenges faced in dialogues with the ELN, particularly contrasting them with the FARC-EP peace process. It discusses the ELN's unique vision of negotiation, organizational differences with the FARC-EP, and the importance of integrating civil society into the peace process. It also highlights the role of weapons for the ELN and the need to address disarmament in the context of protecting and reintegrating recruited minors. Lastly, the chapter discusses limitations identified from the implementation of the FARC Peace Agreement and emphasizes the importance of learning from past experiences to achieve a successful negotiation with the ELN.

Based on the findings throughout the study, recommendations are proposed to strengthen the existing legal framework and provide wider protection for children that complies with international standards. The recommendations focus on: 1) Enhancing children's participation to ensure meaningful involvement of former child soldiers in the peacebuilding process in Colombia. 2) Addressing root causes of recruitment, including improving living conditions and providing opportunities for vulnerable children. It is crucial to overcome inequality, discrimination, marginalization, and exclusion to achieve a successful transition to peace. 3) Promoting territorial considerations, taking into account the specific conditions, historical trajectories, and expectations of each territory within the framework of the peace agreement implementation. And finally, 4) emphasizing civil society involvement, since their support and participation contribute to fostering trust, promoting transparency, and holding all parties accountable for their commitments, which enhance the legitimacy and effectiveness of the peace process.

In conclusion, this study provides an in-depth analysis of the provisions within the Colombian legal system concerning the protection of children recruited by armed groups. It evaluates their alignment with international standards, explores practical implementation challenges, identifies potential gaps, and offers opportunities for improvement. By examining international standards, the Colombian legal framework, the FARC-EP Case and the 2016 Final Agreement, and the challenges associated with negotiating with the ELN, this study offers valuable insights for strengthening the legal system's ability to protect and support children affected by armed conflicts within the context of peace negotiations.

Key words: Children recruitment, peace negotiations, international standards, child soldiers, recruitment age, protection of children, armed groups.

Overview of the main findings

1. Progress has been made globally in prohibiting child recruitment, aligning with international standards that set the minimum age for recruitment above 15 and moving towards 18 years.
2. The international standard on children's participation in armed conflict has evolved to cover both direct and indirect involvement. While measures exist to protect children from all forms of conflict, their practical implementation remains limited. Efforts are underway to protect minors through prevention, addressing their situation during conflict, and facilitating their rehabilitation after leaving armed groups.
3. Colombia's legal framework and jurisprudence demonstrate advancements in safeguarding the rights of recruited minors. Although discrepancies exist regarding the age at which recruitment is prohibited, efforts are being made to address the rights of children recruited before certain legal provisions. The law recognizes compliance with international standards and establishes comprehensive protection measures and responsibilities for reintegration and rehabilitation.
4. Transitional justice mechanisms, including the JEP and the CEV, play a crucial role in ensuring accountability, reintegration, and the protection of children's rights as conflict victims. The CEV's work aligns with international legal frameworks, prioritizing children's rights to be heard and receive reparations. The JEP's institutional structure incorporates international standards and its unique approach to addressing gender-based crimes serves as a global example.
5. The Colombian approach to reparation outlined in the peace agreement provides valuable insights into the role of non-state armed actors in post-conflict transitions for child victims of recruitment. Despite implementation challenges, the agreement's comprehensive measures and guarantees aim to restore victims' rights and address the collective impact of the conflict.
5. Ongoing challenges persist in implementing the peace agreement and addressing child recruitment. Territorial control by armed groups hampers effective reintegration efforts, necessitating continued work to ensure the respect and protection of recruited minors and the development of public policies aligned with international standards.
6. A comprehensive approach is needed to address child recruitment in peace dialogues with the ELN. Factors such as organizational structure, negotiation interests, past experiences, and implementation failures should be considered. Ethnic communities with high recruitment rates require special attention, and the ELN's acknowledgment of responsibility is crucial for the success of the peace process.
7. Meaningful involvement of former child soldiers in peacebuilding processes is recommended, including incorporating child protection and rights language in peace agreements and ensuring their active participation through consultative and child-led approaches.
8. Addressing the root causes of child recruitment entails improving living conditions, providing opportunities, and combating inequality, discrimination, and marginalization. Transformative reparations should be pursued to address underlying issues, and professionals involved in psychosocial support and mental health services should receive training to assist affected children.
9. A localized approach is vital, including monitoring and collecting data at the local level, understanding territorial dynamics, and establishing observation mechanisms. Building alliances between local economic interests and armed groups should be addressed, and comprehensive reconstruction mechanisms should be integrated into national planning, prioritizing infrastructure, socio-economic improvements, and collective rights to prevent child recruitment.
10. Civil society's alignment with the state and other stakeholders involved in implementing the peace agreement and engaging with the ELN is crucial to ensure coherence between prevention efforts and reparations for those affected by recruitment.

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1. Introduction

1.1. Context of the problematic

For over five decades, Colombia has been submerged in an internal armed conflict that has left millions of victims of violence and displacement suffering throughout the nation. The conflict has been driven by a complex set of factors, which include social inequalities all over the country, poverty, corruption, drug trafficking, and territorial disputes. For a long time, different armed groups, including the Revolutionary Armed Forces of Colombia - People's Army (FARC-EP), have recruited and exploited children and adolescents, depriving them of their childhood and exposing them to extremely dangerous conditions (CNMH, 2013). These children have been involved in combat, intelligence tasks, logistical support, and other war-related activities, facing irreparable physical and emotional traumas (Rivera, 2022).

However, after years of negotiations and diplomatic efforts, a historic goal was achieved in November 2016 with the signing of the Final Agreement for the Termination of the Conflict in Colombia between the Colombian government and the FARC-EP. A peace negotiation is currently on the table with the National Liberation Army (ELN), the second biggest armed group, which has also recruited minors among their army. With this in mind, children recruited by armed forces in Colombia remain a pressing concern, particularly in regions with limited state presence. The recruitment of children by armed groups has become a distressing reality, necessitating a comprehensive analysis of how the Colombian legal system addresses this issue within the context of peace negotiations.

1.2. Research question and sub-questions

This research aims to respond to the following question: *To what extent the provisions of the Colombian legal system regarding the protection of children recruited by armed groups, in the context of peace negotiations, are in accordance with international standards?*

In order to respond it properly, some other questions will be addressed as well along the text. These sub-questions focus specifically on examining the provisions of the Colombian legal system and their alignment with international standards, as well as their practical implementation and potential for improvement within the context of peace negotiations and the protection of children recruited by armed groups. What are the specific international standards and legal frameworks that focus children's rights in the context of armed conflict? What are the provisions within the Colombian legal system that protect children recruited by armed groups? How do these provisions align with the principles and standards outlined in the international legal framework when it comes to the peace process with armed groups? What are the potential gaps or limitations that can be found there and how do these diverge from international standards? And finally, How can the Colombian legal system be strengthened and improved to provide better protection and support for children recruited by armed groups, considering lessons learned from previous peace agreements? Along each chapter the reader will find the response to each of these questions, aiming to clarify the topic and build up the knowledge to substantiate a proper response to the main question.

1.3. Overview of the legal framework that will be analyzed

The legal framework for safeguarding the rights of children in Colombia encompasses both national and international dimensions. At the national level, key legal instruments include the Colombian Constitution of 1991, Law 1098 of 2006 (Code of Childhood and Adolescence), Law 1448 of 2011 (Victims and Land Restitution Law), and the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace from 2016.

Internationally, Colombia also adheres to various legal frameworks that encourage children's rights. These include the Geneva Conventions (1949), the Additional Protocol II Relating to the Protection of Victims of Non-International Armed Conflicts (1977), the Convention on the Rights of the Child (1989), the Statute of the International Criminal Court (1998), and the Optional Protocol on the Involvement of Children in Armed Conflict (2000), among others. These international instruments provide essential guidelines and standards for the protection and welfare of children affected by armed conflict.

In addition to the legal framework, the chosen topic triggers significant academic and societal debates in Colombia. Currently, it is possible to find discussions related to the implementation of reparation guarantees for minors recruited by the FARC-EP prior to the peace agreement. Furthermore, there are also concerns that arise regarding the involvement of various actors, including FARC dissidents, the National Liberation Army (ELN), and the Popular Liberation Army (EPL), who have established links with drug trafficking and transnational crime. These connections add complexity to addressing child recruitment within the broader context of armed conflict.

This research aims to explore the dynamics between the Colombian legal system, peace negotiations, and the protection of children recruited by armed groups. By doing so, it pursues to contribute to a complete understanding of the measures in place and to identify potential areas for improvement in safeguarding the rights and well-being of children affected by armed conflict in Colombia.

1.4. Research methodology

A legal research methodology is going to be followed, understanding it “as techniques by which one acquires legally relevant information, analyses, interprets and applies them to resolving issues at hand and presenting the findings.” (Abugu, 2021). On the other hand, a doctrinal legal research technique will be applied, taking into account that most of the information that will be assessed are statutory material and statistics from official institutions like the Corc Institute, the Truth Commission, and other international entities that have been appointed to verify the implementation of the agreement.

Additionally, the reader will find an overview of legal cases that have come to national courts that relate to the protection of children recruited by armed groups and finally literature that discussed all of the above. This technique is especially favorable for the present investigation since it allows assembling relevant law and facts related to the matter and identifying the legal issue in the specific area, which in this case is the state response to children recruited by armed groups. By having an analysis of the above materials, it will be possible to narrow the view of the problem and provide a substantiated opinion.

The reader will also find in the first chapters an analysis of the standards related to 1) the age of prohibition for recruitment; 2) the act of recruitment itself, including the definition of a child soldier and the role children play inside the armed group; and finally, 3) the responsibility over the recruitment (being it on the state, or on the armed group for repairing children. Finally, through an analysis of the compliance with international standards of the peace agreement with the FARC-EP and the current peace process with the ELN, some recommendations will be given.

2. International legal framework on the rights of children and the obligations of the state and non-state actors towards children in armed conflict

This section focuses on the specific international standards and legal frameworks regarding children's rights in armed conflict. It discusses international instruments ratified by Colombia, covering International Humanitarian Law (IHL) and International Human Rights Law (IHRL). The text explores the current standards for the recruitment of minors in armed conflict. It first explains the relationship between IHL and IHRL, highlighting the major treaties. Then, it narrows the scope to three main tensions for analysis: the age limit for recruitment, the definition of child soldiers and their roles, and the protection measures for children, including prevention and rehabilitation.

2.1. The need for interaction between International Humanitarian Law and International Human Rights Law in the context of Child Recruitment in Armed Conflicts

According to Aptel, IHL and IHRL are two separate yet interrelated legal frameworks that aim to protect the rights and dignity of individuals (2019). While IHL is seen to apply only during armed conflict, IHRL applies at all times, whether during war or peace. IHL provide a set of rules that seek to limit the effects of armed conflict for humanitarian reasons, while IHRL establishes a framework of legal standards that individuals and groups can claim from their governments. (ICRC, 2010).

IHL applies to armed conflicts and regulates the conduct of parties involved in hostilities, such as combatants, prisoners of war, and civilians. Its objective is to protect persons who are not or are no longer participating in hostilities and to restrict the means and methods of warfare. IHL is part of international law and has its sources in written agreements between states, customary rules, and general principles (ICRC, 2011). Its main sources are the four Geneva Conventions of 1949, their Additional Protocols of 1977 and 2005, and other treaties regulating weapons and protection for specific persons and objects (ICRC, 2011). On the other hand, IHRL sets forth a framework of legal standards that governments are obliged to respect and protect, regardless of the existence of armed conflict.

It is important to distinguish between these two different laws in the execution of military operations that can have a legal significance for the potential harms (2011, p.13). To illustrate the above, Jiménez (2020) discusses an incident of August 29, 2019, when the Colombian Air Force bombed a camp in the Caquetá jungle. The "Atai" operation, resulted in the deaths of at least eight minors who were present in the camp. The government initially denied knowledge of the presence of minors but later evidence revealed the intelligence reports had indeed mentioned the recruitment of children by the armed group (Noticias Caracol, 2019). The legality of the bombing under IHL is questioned by Jiménez, as he considers it violated the principles of military necessity and humanity. The author emphasizes the need for investigation, prosecution, and punishment of those responsible for ordering the attack since they had prior knowledge of the presence of children in the camp (Jiménez, 2020). This shows the sensitivity and controversy surrounding the application of IHL in cases involving the protection of children in armed conflicts.

Therefore, it is clear the relevancy of studying the tensions existing between IHL and IHRL to the present research. The distinction becomes useful considering that the peace process and responses to minors during the armed conflict and after the agreement will be analyzed. With this in mind, the text will detail the most important instruments and norms related to the recruitment of minors, focusing on the tensions highlighted before. Accordingly, this document will provide a description of the relevant IHL and IHRL pertaining to child soldiers, followed by an analysis of each focal point to establish the current international standards in place.

2.2. Protection given by International Humanitarian Law Instruments

As discussed previously the cornerstone of IHL is the four Geneva Conventions and their Additional Protocols, which constitute a set of legal rules governing the conduct of armed conflicts and attempting to mitigate their effects. These regulations aim to protect individuals who do not take part in hostilities or who have ceased to do so (ICRC, 2014).

In specific is important studying Article 3 common to the four Geneva Conventions, since it expands the general protection to non-international armed conflicts. The article prohibits acts such as attacks on life, taking hostages, degrading treatment, and unfair trials without recognized judicial guarantees for those not taking part in hostilities. These provisions reflect the humanitarian principles of humanity, impartiality, and neutrality that are at the core of international humanitarian law. (ICRC, 2006). According to Hill-Cawthorne many discussions regarding the development of common Article 3 focused not primarily on broadening the scope of humanitarian law to include internal conflicts, but rather on expanding the reach of international law to cover issues within a state (2015).

In particular, regarding the regulation of children's participation in armed conflicts, it was first established in the Additional Protocols on the protection of victims of war in 1977. The first Protocol, which applies to international armed conflicts, prohibits the direct participation and recruitment of children under the age of 15 into armed forces. In cases where individuals aged between 15 and 18 are recruited, the Protocol establishes that the older ones should be given priority (Protocol I, Article 77.2, 1977). This Protocol introduces several significant innovations, including the recognition of armed conflicts in which people are fighting against colonial domination, alien occupation or racist regimes as international conflicts under Article 1(4). The Protocol also contains new definitions of armed forces and combatants and emphasizes the protection of the civilian population against hostilities.

More importantly for the discussion in this document, Protocol II, which applies to non-international armed conflicts, also prohibits the recruitment of children under 15 years of age into armed forces or groups, but goes further by prohibiting their participation in hostilities, both directly and indirectly (Article 4.3 (c)(d), 1977). Prior to the adoption of the current Protocol, the only provision applicable to non-international armed conflicts was Article 3, which was common to all four Geneva Conventions of 1949. However, this provision was deemed inadequate in light of the fact that non-international conflicts accounted for about 80% of the victims of armed conflicts since 1945 and were often fought with greater cruelty than international conflicts (ICRC, 2014). Therefore, the Protocol is to extend the essential rules of the law of armed conflicts to internal wars. Because of some concerns that the Protocol might compromise state sovereignty, hinder governments' ability to maintain law and order within their borders effectively, and provide a pretext for external intervention the Diplomatic Conference end up simplifying the Protocol.

According to the commentary made in 1987 on article 4.3, sub-paragraph (c) children should not be recruited into armed forces and should not take part in hostilities (Protocol II, Commentary of 1987, article 4). The International Committee of the Red Cross (ICRC) proposed an age limit of fifteen for children's participation in military operations, which was adopted, despite some delegations preferring the age of eighteen (Commentary of 1987, article 4). This provision is included in both Protocol I and Protocol II. However, the wording in Protocol I leaves room for exceptions by stating that parties to the conflict should take "all feasible measures" to prevent children under fifteen from participating in hostilities. In contrast, Protocol II states that children "shall neither be recruited in the armed forces or groups, nor allowed to take part in hostilities."

Sub-paragraph (d) highlights the continued protection of children in situations where sub-paragraph (c) is not respected. This provision aims to ensure that children continue to receive special protection during armed conflicts, even if the age limit of fifteen years is not respected. Protocol II explicitly prohibits children's recruitment and participation in hostilities, while Protocol I's provision is less constraining, allowing for feasible exceptions to the age limit requirement (Commentary of 1987, article 4, para.4558). There is no doubt the Geneva Conventions and their Additional Protocols serve as the foundation for the recruitment of children and its legal regulations, aiming to mitigate the impact of armed conflicts and protect individuals involved. Nonetheless, the following could be said taking into account the tensions identified in the beginning of the chapter: First, regarding the age of prohibition for recruitment, Additional Protocol I and II (in a very similar way) establishes that children under the age of 15 should not be directly recruited into armed forces during international armed conflicts. However, the wording allows for exceptions, requiring parties to the conflict to take "all feasible measures" to prevent children's

participation in hostilities. This provision introduces a tension between the desire to safeguard children from the dangers of armed conflict and the potential for flexibility in enforcing the age limit.

Additionally, the role of children within armed groups is addressed deeper in Protocol II, which applies to non-international armed conflicts. This protocol goes further by prohibiting their participation in hostilities, both directly and indirectly. The latter is an advancement, but some authors consider the discrepancy between the two protocols immaterial (Loizou, 2019), since according to the Commentary to API the mention of "direct" involvement in hostilities also encompasses "indirect forms of participation." (Commentary of 1987, article 77, para.3187). According to the author, this interpretation aligns with the intention of the drafters to ensure that children under the age of fifteen are kept away from any engagement in armed conflicts (Loizou, 2019).

Thirdly, regarding the responsibility over the recruitment of children, while international humanitarian law sets clear guidelines and prohibitions, the enforcement of these regulations remains a challenge. As it was discussed, some concerns revolve around compromising state sovereignty, hindering governments' ability to maintain law and order within their borders effectively, and providing a pretext for external intervention. International Humanitarian Law itself cannot be seen therefore as a complete standard regarding the recruitment of children. Hence, it is essential to establish the standard within a comprehensive overview of all the pertinent instruments.

2.3. Broadening the protection of Child Soldiers through International Human Rights Instruments.

In 1989, global leaders committed to protect children's rights through the Convention on the Rights of the Child (CRC). This IHR treaty recognizes children as independent individuals with rights, defining childhood as a protected period until age 18. The CRC has extensive ratification and is the most widely embraced human rights treaty.

According to Graça Machel's study on the impact of armed conflict on children, the CRC plays a very important role in protecting children's rights (1996). It recognizes a comprehensive list of rights that apply to children in both peacetime and war. In particular, articles 38 and 39 of the CRC contain provisions that relate to armed conflict. Article 38(4) of the CRC requires States Parties to respect and ensure respect for IHL and take all possible measures to protect and care for children affected by armed conflict. It also prohibits the recruitment and participation of children under 15 years of age in hostilities. According to Aptel, the explicit reference to IHL in Article 38 of the CRC, highlights the complementary and mutually reinforcing relationship between IHRL and IHL in protecting children during armed conflicts (2019, p. 519). It is worth noting that, when Colombia ratified the CRC, it included a reservation specifying that the minimum age for direct participation in hostilities should be 18 years old, thereby increasing the level of protection provided by the Convention. The country considered the reservation preferable as it was "in accordance with the principles and norms prevailing in various regions and countries" (CRC Committee, 1994).

Moreover, Article 39 of the CRC focuses on the recovery and social reintegration of child victims of armed conflicts. It must be noted that according to the Committee on the Rights of the Child, as discussed by Graça Machel, because the CRC has no general derogation clause, a positive interpretation of it should be adopted during armed conflicts to ensure the broadest protection of children's rights. It is highlighted that articles 2, 3, and 4 of the Convention are so fundamental that they cannot be derogated under any circumstances (Machel, 1996, p.229).

On the other hand, the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC) complements these articles by condemning the targeting of children in armed conflict and direct attacks on places such as schools and hospitals that have a significant presence of children, as they are protected under international law as stated in the preamble of this instrument (2000). In specific, Article 3(1) outlines the obligations of States with regards to raising the minimum age for voluntary recruitment into their national armed forces. Furthermore, Article 4 indicates the prohibition of the recruitment or use of children under 18 years of age in hostilities. The article states that armed groups distinct from the armed forces of a State are prohibited from recruiting or using children under 18 for

any purpose related to hostilities and article 6 obliges state parties to take all necessary measures, including legal measures, to prevent such recruitment and use.

Besides, another instrument is the International Labour Organization's (ILO) Convention No. 182 on the Worst Forms of Child Labour, adopted in June 1999 and entering into force in November 2000. The Convention identifies the compulsory or forced recruitment of children for use in armed conflicts as among the "worst forms of child labour" in Article 3 and on article 6(1) urges for the implementation of action programs to prevent children from participating as soldiers in conflicts by taking all possible steps to guarantee the efficient application and enforcement of the provisions that implement the Convention, including the use of criminal penalties or other appropriate measures to ensure compliance as highlighted in article 7.

Additionally, some soft law instruments that served as normative precedent in the country are the Cape Town Principles and Best Practices of 1997. In 2007, the UN updated them with the purpose of establishing them as universal parameters in any armed conflict in which minors are recruited by armed groups. Thus, the Paris Principles of January 30, 2007, establish the "Principles and guidelines on children associated with armed forces and armed groups" and establish the criteria for the reintegration and care of minors, highlighting gender considerations.

They define recruitment in section 2.4 as: "compulsory, forced and voluntary conscription or enlistment of children into any kind of armed force or armed group." (Paris Principles, 2000, article 2.4) Similarly, section 2.5 with respect to the term "Unlawful recruitment or use" defines it as the recruitment or use of children who have not attained the minimum age required by the relevant international treaties or national law that applies to the armed group or armed forces in question (Paris Principles, 2000, article 2.5). Finally, it is significant to mention Article 2.1, which specifies that a child associated with an armed force or group concerns to individuals under the age of 18 who have been enlisted or utilized by an armed group or armed forces in any role, such as child soldiers, male or female, who have been used for various purposes, including fighting, cooking, carrying supplies, delivering messages, espionage, or sexual exploitation. It is not limited to minors who are actively engaging in combat.

Moreover, they cover several key areas regarding measures to prevent the illegal recruitment or use of children in armed forces. These include conducting information campaigns for armed groups, identifying factors that may lead children to join armed forces, prioritizing education for children, being aware of gender-specific risks for girls, avoiding family separation, offering alternative programs such as education and vocational training, and providing security to local communities. Additionally, the Principles advocate for prompt release of child soldiers by planning efficient release processes and including provisions in ceasefire and peace agreements. Finally, the Principles prioritize the reintegration of child soldiers by promoting inclusive approaches that prioritize family reunification and offering comprehensive support, including financial assistance, to ensure a successful transition to civilian life (see section 7). Unfortunately, Akello (2019, p.437) notes from his experience in the application of this principles for rehabilitation and reintegration of former child soldiers in Uganda, that when implementing the guidelines, they seemed to ignore the real status of children. He suggests that the simplistic and ineffective approach put forth by the Paris Principles, portrayed the children as passive and lacking purpose, which did not reflect on their actual experiences and self-perceptions (2019, p.450). This demonstrates that despite laws are designed to provide comprehensive protection for children, the actual implementation can vary greatly depending on the society.

Pursuing the analysis, it's worth mentioning the Rome Statute (1998) which is a significant advancement in the efforts to end the exploitation of children in war (UNICEF, 2003). The Statute defines the following acts as war crimes under article 8(2)(e)(VII) "conscripting or enlisting children under the age of 15 years into the armed forces or using them to participate actively in hostilities" of a non-international armed conflict.

In relation to article 8(2)(b)(XXVI), the equivalent provision for international armed conflicts, the Lubanga Judgement by the International Criminal Court (ICC) established that active participation in hostilities should not be narrowly interpreted to mean only direct participation in hostilities, as understood under

Common Article 3 of the Geneva Conventions (2014, paragraph 324). The Court's analysis established that for such a crime to exist, a link must be established between the activity in which a child is involved and the armed conflict in which the perpetrator's armed force or group is participating (ICC, Prosecutor v. Thomas Lubanga, 2014, paragraph 334).

Aptel argues the lack of clarity in defining "direct participation in hostilities" in armed conflicts can have adverse effects (2019). Under IHL, individuals who directly participate in hostilities lose their protection from direct attack and can become legitimate targets. Children, therefore, should not be involved in direct hostilities since they can become legitimate targets under IHL (2019, p. 527). The author suggests that a narrow and restrictive definition of who is considered to be "directly participating in hostilities" or "actively participating in hostilities" should be adopted to prevent misidentification of children as legitimate targets and protect them from harm (Aptel, 2019). This is a great example of the tension related to the role of children when recruited. As in the case of Colombia with the operation Atai, it can define whether a child can have a higher threshold of protection or no.

Finally, it is worth highlighting Resolution 1612 of 2005¹ since it requests the Secretary-General to establish a monitoring and reporting mechanism to gather information on the recruitment and use of child soldiers and other violations and abuses against children in armed conflict, with the participation of governments and civil society actors. Colombia is included among the governments, since is part of the Secretary-General's report (S/2005/72) that is mentioned in paragraph 3 for the consultation in order to implement the above mentioned mechanism. In the resolution, the Security Council expresses concern over the lack of progress of national governments in providing effective protection and relief to all children affected by armed conflicts and requests a report including "information on on compliance by parties in ending the recruitment or use of children in armed conflict in violation of applicable international law and other violations being committed against children affected by armed conflict" (Resolution 1612 of 2005, paragraph 20a). This resolution also established the Council's Working Group on Children and Armed Conflict, and emphasized the correlation between the unlawful trade of small arms and light weapons and the exploitation of children as soldiers.

2.4. Analyzing the obligations and prohibitions regarding recruitment age.

Taking into account the previous regulations, regarding the stipulations concerning age, it can be generally stated that despite the consensus on the gravity of recruitment, the regulations face certain dilemmas regarding establishing a minimum age. These dilemmas arise from different aspects, including recruitment by armed forces versus recruitment by armed groups, mandatory and voluntary recruitment, the international or non-international nature of conflicts, and mandatory versus recommended measures. On one hand, the Additional Protocols to the Geneva Conventions clearly demonstrate these differentiations. Additional Protocol I (relating to international conflicts) provides protection for minors under 15 years old, there is an ambiguous language of protection, often referred to in literature as "minimum protection" (Aptel, p. 524). On the contrary, the language of the second protocol seems to be completely prohibitive (Article 4(3)(c)), not allowing recruitment of minors under 15, and if there are minors under 15, special protection is established for them (Article 4(3)(d)). In line with this reasoning, the Rome Statute also considers enlisting minors under 15 as a war crime in both international and non-international conflicts (Article 8(2)(e)(VII) and 8(2)(b)(XXVI)).

On the other hand, the CRC reiterates in Article 38 the protection of minors under 15 years old, stating that they should not take part in hostilities (38.2) and should not be recruited by armed forces in any way (38.3). Up until that point, it seemed that the consensus was around 15 years of age in general. However, with the OPAC, an attempt is made to raise the protection for children under 18 in cases of mandatory recruitment, while still maintaining 15 years of age in the case of voluntary recruitment,

¹ See other resolution: 1265 of 1999, 1314 of 2000, 1379 of 2001, 1460 of 2003, 1539 of 2004, 1612 of 2005, 1882 of 2009, 2068 of 2012, 2143 of 2011 and 2427 of 2018

particularly to accommodate nations where minors are trained in school (Aptel, 2019, p. 525). Nevertheless, the protocol in Article 1 specifies that even if they are part of the armed forces and are under 18, the state must take all necessary measures to ensure that they are not involved in hostilities. However, in the case of armed groups, there is a prohibition on participation in hostilities for minors under 18 (Article 4(1)). In this case, "all feasible measures" are not taken into account. According to Aptel (2019, p. 526), discussing the forced or voluntary nature of the recruitment of minors under 15 is irrelevant in terms of international criminal jurisprudence since there would be international jurisdiction regardless. Finally, in the ILO Convention 182, Article 3 clearly establishes a limit on recruitment for minors under 18. As for the Paris Principles, they simply refer to international standards in section 2.5. After the analysis, it can be said that although there is no uniform practice regarding the minimum age for recruitment and participation in hostilities, there is a general consensus that it should not be below 15 years of age. Since 1977, the Geneva Conventions have paved the way for prohibiting recruitment, so it can be said that in the 50 years since the beginning of the regulations, significant progress has been made. This is considering the complexity of reconciling such diverse cultures around the world with a practice that was considered acceptable until relatively recently. However, considering the resolutions of the Security Council, the Committee on the Rights of the Child, civil society, and other actors (including countries that raise their standards like Colombia), this standard has been reinforced, advocating for the recruitment of individuals only above 18 years of age.

2.5. Standard regarding the role they play inside the armed group.

Continuing with the analysis, is essential to discuss the implication on the recognition of specific roles in the armed groups. While Additional Protocol I specify the direct participation of children, Protocol II, which applies to non-international armed conflicts, goes further by prohibiting their participation in hostilities, both directly and indirectly. The latter is an advancement, but some authors consider the discrepancy between the two protocols immaterial, since according to the Commentary to API the mention of "direct" involvement in hostilities also encompasses "indirect forms of participation." (Commentary 1987, article 77, para.3187). According to Loizou (2019), this interpretation aligns with the intention of the drafters to ensure that children under the age of fifteen are kept away from any engagement in armed conflicts. Nevertheless, other authors like Viktor Nylund (2016a), consider one possible reason for excluding the concept of direct participation in AP II could be the need for a stricter approach to prohibit armed groups in non-international conflicts from involving children in any form of conflict. Therefore, according to him, it was deemed crucial to address children's participation in a broader sense and not restrict it solely to "direct participation." (Nylund, 2016a, p 67)

On the other hand, another of the most debated definitions in the literature that can account for the role played by children in the conflict is that of "child soldier" itself. This term has been criticized for not being adequate in representing the reality of minors and for overlooking the more than 40% of girl soldiers (Drumble 2020, p. 658). Based on the analyzed legal framework, it can be seen this term was updated with the Paris Principles, and now it is referred to as "child associated with an armed force or armed group" (CAAFAG). This definition considers any capacity in which a person under 18 acts within the group, including various roles such as cooks, messengers, fighters, and those involved in sexual purposes, among others (Paris Principles, 2007, Article 2). However, Denov and Cadieux expresses that the terms "child soldiers" and CAAFAG do not effectively convey the true experiences of young individuals involved in armed groups (2022, p. 353). According to them, these terms are inherently problematic and fail to fully capture the complex realities faced by these individuals. Similarly, Rosen considers the issue with the simplified portrayal of child soldiers as completely innocent and passive victims is that it allows for the emergence of an opposing narrative, which can be politically convenient, due to the absence of accurate data supporting the initial image (2019, p.171). This alternative narrative portrays child soldiers as deliberate and dangerous terrorists which allows for a gap opening for a harmful treatment for these children.

Ultimately, the international standard regarding children's participation in armed conflict has evolved to address both direct and indirect involvement in armed groups. Although measures have been

established to protect children from any form of conflict, their practical implementation is limited. Furthermore, criticisms persist regarding the terminology used, such as the term "child soldiers," which does not fully reflect the complexity of the experiences of children involved in armed groups.

2.6. Analysis of the protection given to children: from prevention to rehabilitation

After analyzing the instruments, it can be said they have a broad interest in protecting children at different times: before, during, and after the conflict. The Geneva Conventions and Additional Protocol II provide measures of protection for children in armed conflicts. Common Article 3 ensures that children who are not participating in hostilities are treated humanely and prohibits acts such as violence, torture, and degrading treatment. Regarding non-international armed conflicts, Article 4.3 of Additional Protocol II states that children should receive necessary care and assistance, including education, facilitate family reunification, be protected from recruitment and participation in hostilities, and be temporarily relocated to safer areas if needed. These measures prioritize the well-being, education, and family ties of children affected by armed conflicts. It seems that the focus of IHL is more on protection during the conflict, although it also suggests certain preventive measures. Some authors argue the need to evaluate the provisions by granting special protection to children since it appears that they apply only once the child is captured and not during combat (Nylund, 2016a p.44). In the author's words, "Once the child has joined an armed group or force, he or she does not maintain the status of a civilian, and under international humanitarian law there appears to be little 'special protection' accorded to such a child" (2016a, p.44).

On the other hand, the CRC and the OPAC focus more on the reintegration of minors. Article 38.4 addresses all possible measures to protect children affected by armed conflict, and Article 39 delves into the details of recovery and social reintegration after the conflict. In the case of the OPAC, Article 6.3 discusses the responsibility of the state to take necessary measures for the demobilization of minors and provide psychological and physical assistance when needed. Additionally, Article 7.1 addresses the topics of prevention and rehabilitation together, including technical cooperation and financial assistance among the measures.

In the case of the ILO Convention, the focus is more on prevention. Article 6.1 discusses the implementation of action programs to prevent the involvement of minors as soldiers, and Article 7 calls for criminalizing such acts and taking measures to ensure compliance with the commitments. Finally, the Paris Agreements, despite criticism from some authors, contain provisions that encompass the conflict more comprehensively, addressing prevention of recruitment in Section 6 and release and reintegration in Section 7. It is worth highlighting provision 7.12, which establishes the importance of including the theme of release and reintegration in every stage of the peace process, which will be taken in consideration when analysing the peace agreement in Colombia. It also states that specific provisions must be included to determine resources for support programs for minors. In summary, according to these principles, states have obligations to prevent the recruitment and use of children in armed conflicts. They must establish safeguards, prosecute offenders, cooperate internationally, provide support to affected children, and advocate for their rights in peace agreements.

By analyzing these provisions together, it can be concluded that there is a search for the protection of minors from different angles. This protection could be situated to prevent recruitment, deal with children in the middle of the armed conflict, or accomplish the rehabilitation of those who cease to be part of armed groups. It is worth noting that, as suggested by the Committee on the Rights of the Child, an effective exercise of children's rights requires the availability of remedies in case of rights violations (CRC/GC/2003/5, p.24). Therefore, concerning this point, despite the eagerness to protect minors, international legislation lacks specific mechanisms through which minors can claim the violation of their rights in an expedited manner, considering the immense infringement upon their rights that they face.

This chapter aimed to answer what are the international standards and legal frameworks that apply to children recruited in the context of armed conflict. The analysis reveals that there is a general consensus that the minimum age for recruitment and participation in hostilities should not be below 15 years of age. Moreover, significant progress has been made in prohibiting recruitment, although practical

implementation of protective measures for children in armed conflict remains limited. Also, efforts are being made to protect minors from various angles, including prevention, addressing their situations during the conflict, and facilitating their rehabilitation upon disengagement from armed groups. It was also seen the State has very specific obligations in order to protect minors and respond to them once an infringement of their rights has occurred. In general, there is an ongoing commitment to enhance the protection of children's rights in armed conflict, but further improvements are needed in practical implementation and addressing the complex realities they face.

3. National Legal Framework and Constitutional Jurisprudence in Colombia

3.1. Protecting Children Recruited by Armed Groups in Colombia: Specific Provisions in the Legal System

The legal framework concerning the recruitment of minors in Colombia comprises various laws, decrees, and legal provisions that guarantee the fundamental rights of children, their protection, and their overall well-being. These regulations establish measures to prevent the recruitment and utilization of minors by organized armed groups operating outside the law while promoting their harmonious development and full exercise of their rights. Analyzing the national regulations will allow us to determine whether Colombia is closer or further away from meeting the internationally established standards for the protection of recruited minors.

3.1.1. Constitutional protection

To begin with, the Colombian Constitution of 1991 serves as the primary legal framework that establishes the fundamental rights of children in the country. Article 1 recognizes the State Social Rule of Law (*Estado Social de Derecho*), which guarantees the protection of individual and collective rights within the country. In this provision, they stress the importance of human dignity as the guiding principle for state entities, highlighting the duty to protect and respect the rights of individuals affected by armed conflict.

Additionally, Article 2, establishes the purpose of protecting the rights and duties to serve the community and to promote prosperity while maintaining peaceful coexistence. The forced recruitment of minors violates these principles, potentially holding the State accountable for ensuring their protection and reintegration. Moreover, Article 5 defines family as the basic institution of society. Based on this, all government programs aimed at reintegrating children and adolescents affected by armed conflict prioritize the restoration of their family structure. Failure to achieve this crucial element throughout the reintegration process would weaken the comprehensive nature of the child's rehabilitation, which is part of the standards set internationally.

Furthermore, Article 44 establishes the rights of children, including the right to life, physical integrity, health, identity, family, education, and recreation, among others. Besides, the Constitution prohibits the separation of children from their families and stipulates that the rights of children take precedence over the rights of others and that the family, society, and the State have an obligation to assist and protect them. Families play a pivotal role, and it is not uncommon for minors to be recruited, especially when their relatives are associated with armed groups (UNICEF, ICBF, 2022).

3.1.2. Criminalization of the conduct

The Colombian Penal Code, as outlined in Law 599 of 2000, represents a primary regulation concerning this matter. Article 162 of the Code criminalizes the unlawful recruitment of individuals under the age of eighteen within the context of armed conflict, as it imposes imprisonment and fines for those who recruit, utilize, or coerce minors to engage in hostilities or armed actions. This would be in accordance with the international standard, that even when is set on 15 years, is being pushed to be raised in different countries.

Furthermore, Article 188C of this law sanctions the trafficking of girls, boys, and adolescents, imposing stricter penalties on those involved in acts of selling, delivering, or trafficking minors. The subsequent Article 188D establishes a prison sentence of 10 to 20 years for anyone who "induces, facilitates, uses, coerces, promotes, or instrumentalizes" a minor to commit crimes or promotes such "use, coercion, inducement, or participation in any of the described behaviors." It is important to clarify that this article stipulates that the minor's consent does not exempt from criminal responsibility. Nevertheless, before the aforementioned regulation, Law 418 of 1997 already included the crime of illicit recruitment in Article 14, prescribing a penalty of three to five years of imprisonment for such behavior.

3.1.3. Code of Childhood and Adolescence enhancing the protection of children and the state obligations towards them.

Additionally, the Code of Childhood and Adolescence states that children have the right to not be recruited or used in armed conflicts and that any form of recruitment or utilization of minors for war purposes constitutes a violation of their rights (Law 1098 of 2006, Article 20). Furthermore, it establishes that the State must implement public policies and comprehensive prevention, protection, and rehabilitation programs to prevent recruitment and ensure the restoration of the rights of affected children. In specific, Article 20.7 enshrines the right of children to be protected against wars and internal armed conflicts, as well as against recruitment and utilization by armed groups. On the other hand, Article 41.29 of the same regulation states that, in relation to children, the State must "ensure that they are not exposed to any form of economic exploitation or begging and refrain from using them in military activities, psychological operations, civic-military campaigns, and similar activities." and according to section 41.30 the State should also protect them against engagement and recruitment in armed groups operating outside the law.

Concerning the responsibility of children in armed groups, the Code stipulates in Article 175 the principle of opportunity in legal proceedings involving adolescents who have participated in crimes committed by armed groups operating outside the legal framework. The Office of the Attorney General is granted the discretion to waive criminal prosecution in cases where adolescents, regardless of their circumstances, have been associated with such armed groups or have directly or indirectly engaged in hostilities, armed actions, or offenses committed by these groups. It establishes also that adolescents who voluntarily disengage from armed groups that operate outside the legal framework are required to be referred to a specialized care program (Law 1098 of 2006, Article 175 p.3). It should be noted that in the paragraph of this provision is said that the principle of opportunity shall not apply when the offenses committed by adolescents may constitute serious violations of international humanitarian law, crimes against humanity, or genocide, as defined by the Rome Statute.

3.1.4. Laws enacted in the context of conflict

Among other laws, Law 975 of 2005, commonly known as the Justice and Peace Law, serves the purpose of facilitating peace processes and the reintegration of individuals or groups involved in armed activities outside the legal framework. The law ensures the protection of victims' rights to truth, justice, and reparation (Article 1). Furthermore, Article 5A has as a mandate that the State has to provide specific guarantees and protective measures for groups facing a higher risk of violations, such as women, youth, children, the elderly, persons with disabilities, among other groups, particularly when they participate in the special judicial process established by the law.

Very similarly, Law 1448 of 2011, known as the Victims' Law, pursuant to Article 1 aims to provide comprehensive attention, assistance, and integral reparation to victims of internal armed conflict. It encompasses judicial, administrative, social, and economic measures, both individually and collectively, within a transitional justice framework. These measures seek to guarantee the rights of victims to truth, justice, reparation, and non-repetition.

According to Article 3, individuals or groups who have suffered harm as a result of events occurring from January 1, 1985, due to violations of International Humanitarian Law or serious and manifest violations of international human rights norms during the internal armed conflict are considered victims. Notably, paragraph 2 specifies that members of armed groups operating outside the legal framework are generally excluded from the victim category unless they were disassociated from such groups while still being minors. By positively differentiating this group, it offers minor victims the opportunity for special attention in their reintegration into civilian life. This is the first law that recognizes children and adolescents as special victims of the conflict, expanding the scope of guarantees that must be provided in their reparation processes.

This section aimed to respond the sub questions of the research regarding the specific provisions within the Colombian legal system that address the protection of children recruited by armed groups. By analyzing these laws and constitutional provisions, it becomes evident that Colombia has taken steps

to protect the rights of children and adolescents affected by armed conflict. Regarding the age is clear that the international threshold is respected and even outlined very clearly in children under 18 years of age. These legal instruments also aim to ensure their well-being, reintegration, and comprehensive reparations, taking into account direct and indirect participation in the conflict. However, it is crucial to analyze all this legal body in context through jurisprudence advancements and see how it protects children from being recruited by armed groups.

3.2. Forced recruitment of children and adolescents and their status as victims, according constitutional jurisprudence.

Constitutional jurisprudence in Colombia has also addressed the issue of the recruitment of children and adolescents by illegal armed groups on several occasions, recognizing the vulnerability of this group. The Constitutional Court (C.C) has established through different rulings the special protection that must be provided to minors and has highlighted the legal and social implications of this phenomenon. This section aims to describe some of these precedents and illustrate how national and international regulations are combined when understanding the forced recruitment of minors.

In the case of Sentence C-172 of 2004, the Court approved the OPAC. The judgment emphasizes that the recruitment of children in armed confrontations violates multiple rights, such as personal integrity, life, freedom, personality development, expression, education, health, family, and recreation. It also recognized that many minors join illegal armed groups for economic or sentimental reasons, or to protect their families, and that within these groups, they become victims of violence and sexual slavery. Similarly, in ruling C-203 of 2005, the Court analyzed the causes and effects of the recruitment of minors by illegal armed groups. It pointed out that recruitment is carried out through the direct use of violence or through manipulation and psychological pressure. It highlighted that many minors join under the appearance of voluntary recruitment, but in reality, they are victims of economic, social, psychological, and cultural factors that lead them to make this decision. This judgement states minors are subject to special protection under IHL and should benefit from specific protective provisions, as discussed when assessing the international legal framework.

In this context, the C.C recognized in Auto A251-08 the imperative and prioritized protection of the fundamental rights of children and adolescents displaced by the armed conflict. The ruling acknowledges the risk of forced recruitment of minors by illegal armed groups participating in the Colombian armed conflict. Also, it links it to forced displacement, both of families and entire communities to protect their children from recruitment, and the displacement solely of children and adolescents at risk to preserve their lives. In general, the Court acknowledges that the State of Affairs generated by forced displacement, as in T-025 of 2004, violates the State's obligations derived from international instruments, including the Universal Declaration of Human Rights and the CRC. These instruments establish that States must respect and guarantee the rights of children without discrimination and take all necessary measures to protect them. The decision highlights that over 50% of forcibly displaced individuals are minors and that the forced recruitment of boys and girls by illegal armed groups is a widespread and systematic practice throughout the national territory

In Sentence C-069 of 2016 the C.C emphasize that the recruitment of minors in armed conflicts constitutes a real threat to their rights to life, integrity, freedom, and education, among others. Regardless of the type of conflict or armed group involved, it is recognized that recruited boys and girls face extreme situations that include separation from their families, handling of weapons and explosives, committing violent acts such as homicides and kidnappings, sexual abuse, torture, mistreatment, and other harmful aspects of hostilities.

Moreover, the Sentence C-007 of 2018 analyzes the constitutionality of Article 23 of Law 1820 of 2016, which refers to the exclusion rule of amnesties, pardons, and waiver of criminal prosecution. In this ruling, the Court argues that advocating for the best interests of children does not resolve the legal problem posed in this case. The Court stresses that the recruitment of individuals under 18 years old is prohibited in Colombia but raises the question of whether it is valid to use a reference to the Rome

Statute to define the scope of the exclusion rule of amnesties. It considers that the Rome Statute has a lower standard of protection than the OPAC. Despite this, the Court highlights that the State cannot disregard the special protection of children and adolescent victims of the conflict, regardless of whether the reference to the Rome Statute is affirmative or negative.

Additionally, the Court examines whether this reference is proportional, considering the existence of other norms in international criminal law that define the recruitment of minors under 18 years old as a war crime. To do so, it reviews the domestic criminal laws and concludes that in Colombia, the definitive prohibition of the recruitment and enlistment of children in the conflict was established through a 1997 law, reinforced in 1999 and reflected in a criminal offense. The Court also refers to the CRC and highlights that, until the adoption of the OPAC, the prohibition of recruiting minors under 18 years old was observed only from that age onwards. However, it does not consider the reservation that Colombia made to the CRC, whereby the minimum age for participation in hostilities in the armed conflict is set at 18 years old, as emphasized in Sentence C-069-16. This ruling is a very clear example of how International Standards are taken into consideration in the country, but also molded with respect to the specific context is faced in the country.

To add on the above, it verifies whether the recruitment of minors has been defined as a war crime in ICL and whether this makes the formula of the Rome Statute inadmissible or requires strengthening the standard of what is not subject to amnesty. It points out that while there is a war crime associated with conduct leading to the participation of children under 15 years old in the armed conflict, it is not clear that this category extends unequivocally to individuals between 15 and 18 years old. However, it highlights that there is a progressive strengthening of the prohibition and an intention to raise the crime standard to 18 years old in the international sphere.

The conclusion at the end is that, Article 23 of Law 1820 of 2016, by excluding individuals over 18 years old from amnesty and pardon, does not violate the rights of children and adolescents involved in the armed conflict. However, it warns that this exclusion cannot lead to disregarding the rights of minors, who must be considered victims and receive appropriate protection and care measures. In this measure, the standard is set finally at 15 years for actions committed prior to June 25, 2005, and at 18 years for actions committed after that date. (C-007, 2008, para. 449). According to Ambos the decision will "lead to greater consistency and clarity in the application of the provision" (2021, p.127)

Some authors have expressed disagreement with the position adopted by the Court. According to Alarcon (2019), the Court relies on an interpretation that validates the exclusion of amnesty and pardon for individuals over 18 years old involved in the armed conflict, using the Rome Statute as a reference. While recognizing the importance of protecting children and adolescents in the conflict, Alarcón believes that the Court does not adequately address the legal problem by not taking into account the higher standard of protection established in the OPAC (2019). Furthermore, she criticizes the Court for not considering the prohibition established in Colombian domestic law regarding the recruitment of individuals under 18 years old. Alarcón argues that the Court's decision does not respect the international obligations derived from the CRC and Colombian domestic law, and believes that a more protective stance should have been taken in safeguarding the rights of children and adolescents who are victims of the armed conflict (2019). Coming back to the main research question, this would be considered as not appropriate relating to the International Standards, since the country should aim to give the highest protection of children, and not observing a reservation done to the most important children treaty is inadequate.

Taking into account subsequent jurisprudential precedents, in one of the most recent judgments, Judgment T-506 of 2020, the CC establishes that minors are considered victims of the crime of illicit recruitment, regardless of the form of their participation (voluntary or forced) or their role (direct or indirect) in the armed conflict, as indicated in Judgment C-541 of 2017. Additionally, it is also established that IHR treaties that are part of the constitutional block attribute special obligations to the Colombian state in the promotion and protection of the rights of victims of illicit recruitment, including the reparation and restoration of rights affected by victimization. Finally, in that ruling, the Court reiterates its

jurisprudence and highlights the importance of the Unique Victims Registry (RUV) as a highly relevant administrative tool that materializes the fundamental right of victims of the internal armed conflict to be recognized as such. In the exercise of its functions related to this registry, the Administrative Unit for Comprehensive Victim Care and Reparation (UARIV) must observe fundamental principles such as favorability, good faith, legitimate trust, and the primacy of substantive law, among others.

3.3. Compliance with international standards

From the analysis of the previous decisions and Colombian legislation, the following conclusions can be drawn. Firstly, concerning the age at which recruitment is prohibited, although the current standard is set at 18 years in the legislation, there is some friction regarding the timing of its application in accordance with the discussions in judgment C-007/18. This is because the date from which the OPAC entered into force for Colombia is taken into account, disregarding Colombia's reservation regarding the age issue. This may to some extent violate the rights of those children who were recruited at the age of 15 or older before this date. However, it is evident that the Court is making an effort to understand and conduct a comprehensive analysis of the different instruments that protect minors.

On the other hand, regarding the role played by minors within armed groups and whether their involvement is voluntary or forced, it can be said that international standards are being complied with. Regardless of the appearance of voluntariness, recruitment is always considered forced due to the conditions analyzed in various judgments that may lead them to make that decision. Additionally, in terms of their role, both the law and jurisprudence establish their status as victims, whether the role involves direct or indirect participation. This is evidenced by the way the conduct is penalized in the penal code, specifically in Articles 162 and 188, which establish direct or indirect participation and encompass different behaviors, including the use of coercion to commit crimes. In summary, the Constitutional Court in judgment C-007/18 specifically calls for consideration of the special harm suffered by girls and therefore orders that the measures taken be differentiated and take into account the stigma they may be exposed to. This reflects the progress and advancement of legislation and jurisprudence in favor of a specific group with greater vulnerability, such as girls, who are particularly susceptible to sexual exploitation.

Ultimately, with regard to the protection provided, both the Constitution and the Code of Childhood and Adolescence determine the prevalence of rights for minors, as well as the state's duty to create public policies in favor of comprehensive prevention, protection, and rehabilitation, as has been established internationally. In addition, within the framework of transitional justice, the Law of Justice and Peace pursues to provide comprehensive assistance to those minors affected by the armed conflict, including judicial, economic, and social measures, among others. Moreover, through jurisprudence, decisions such as Auto 251-2008 hold the state accountable due to the systematic nature of the violation of the rights of recruited minors.

In conclusion, the analysis of previous decisions and Colombian legislation reveals that there are discrepancies regarding the age at which recruitment is prohibited, and efforts should be made to address the rights of children recruited prior to certain legal provisions. However, the CC demonstrates a commitment to understanding and analyzing the various instruments protecting minors. Compliance with international standards regarding the role of minors in armed groups is recognized, and the legal framework establishes rights and responsibilities for their comprehensive protection. On the other hand, Jurisprudence holds the state accountable for violations against recruited minors, and aims to protect the rights of children. Colombia's legislation and jurisprudence reflect progress in safeguarding the rights of minors, particularly vulnerable groups like girls. Nevertheless, efforts are necessary to address inconsistencies, since the behaviors that have occurred in society over the years are evidence of a system that is not safeguarding properly the rights of children.

4. The FARC-EP Case and the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace from 2016.

This chapter aims to respond how the provisions in the peace agreement with the FARC-EP in conjunction with the general legal infrastructure in Colombia align with the principles outlined in the international legal framework?. For this reason, the chapter will start by explaining the main mechanisms created by the agreement to repair children recruited by armed groups. Then to discover what are the potential gaps or limitations that can be found and how do these diverge from international standards, the section will discuss the implementation of the provisions according to different official entities statistics.

4.1. Peace agreement mechanisms that comprise the Comprehensive System of Truth, Justice, Reparation, and Non-Repetition (SIVJRNR).

The Final Agreement (F.A) with the former FARC-EP addresses multiple aspects related to the conflict based on six fundamental points, ranging from comprehensive rural reform to political participation. Nevertheless, the critical point regarding the recruitment of children and adolescents in the armed conflict, is "Point 5: Victims of the Conflict", which establishes the Comprehensive System for Truth, Justice, Reparation, and Non-Repetition (SIVJRNR).

Hence, this section provides an overview of the key components comprising the SIVJRNR (F.A, 2016, p.124). It is essential to emphasize that, as stated in the agreement, the various mechanisms and measures of truth, justice, reparation, and non-repetition should not be viewed in isolation (2016, p. 127). They are interconnected through conditional relationships and incentives, ensuring access to and the maintenance of any special judicial treatment, all grounded in the acknowledgment of truth and responsibilities. Analyzing them will allow the reader to understand the gaps that arise once the agreement is implemented in the community, and consequently comprehend if there is compliance with the international standards.

4.1.1. Commission for the Clarification of Truth, Coexistence and Non-Repetition. (CEV)

This CEV, according to the definition given on the Final Agreement is a temporary and extrajudicial body that aims to uncover the truth of what happened and contribute to the clarification of violations and infractions, offering a comprehensive explanation to society of the complexity of the conflict. Its objectives are to promote recognition of the victims and the responsibilities of those who directly or indirectly participated in the armed conflict (F.A, 2016, Section 5.1.1., p.129-130)

The Commission has several positive aspects. Firstly, it seeks to fulfill the right of the victims to know the truth about the conflict. Also, it promotes the recognition of victims as individuals whose rights were violated, as well as the recognition of individual and collective responsibilities of the actors involved in the conflict. This enriches justice, reparation, and non-repetition, and seeks to build an environment of respect, tolerance, and coexistence in Colombian society.

In particular, according to Article 11 of the Decree Law 588 of 2017 the CEV's mandate involves clarifying and promoting recognition of various aspects related to the Colombian conflict. This encompasses human rights violations, party responsibilities, societal impact, political consequences, combatant involvement, conflict's historical context, persistence factors, paramilitarism, forced displacement, land dispossession, drug-related ties, and social transformation (Decree Law 588, 2017, Article 11).

According to articles 5 and 6 (Decree Law 588, 2017), the participation of victims is central to the work of the CEV. Efforts are made specifically to guarantee their active participation, dignify their experiences, and contribute to the transformation of their living conditions.

Despite receiving praise from various sectors in Colombia, the commission's work has faced criticism regarding its impartiality and the accuracy of the information presented. Members of the Centro Democrático party, founded by Álvaro Uribe and opposed to the peace process, have questioned the report for holding the armed forces and police members accountable among the actors (Voz de

América, 2022). This opposition is a significant challenge for the commission, as noted by Duplat and Molina (2021). They highlight President Iván Duque, for obstructing the agreement's implementation since taking office (2021, p.185). The appointment of Darío Acevedo as director of the National Center for Historical Memory further exemplifies the lack of impartiality. His denial of an armed conflict in Colombia led to the suspension of the center from the International Coalition of Sites of Conscience (ICSC, 2020). The coalition requested clarification from the center but received no response. To be reinstated, the Coalition asked the Center to publicly commit to recognizing the armed conflict in Colombia, guaranteeing truth for victims, ensuring victim participation, supporting civil society memory exercises, and promoting coexistence.

Furthermore, the temporary nature of the CEV limited its operating time and raised concerns about its ability to achieve its objectives. Article 1 of Decree Law 588 of 2017 established a three-year operating period for the CEV, with an additional preparatory period of up to six months. However, due to the conditions caused by the pandemic, a public action of unconstitutionality was filed, requesting an extension of time. The Presidency and the Ministry of Justice and Law argued against modifying the duration term, stating that it had already become *res judicata* (C.C, C-377/2021, para. 18). They also argued that extending the term would set a precedent for all state officials (C.C, C-377/2021, para. 100). Nevertheless, the Court's decision was to count the operating time until June 27, 2022, along with two months for report dissemination. This decision took into consideration that the CEV's functions required on-site presence to adequately address the rights of the victims, and the pandemic hindered its activities. The Court also held the Government and Congress responsible for failing to allocate the necessary resources for the commission's continued operation (C-377, 2021, para.100). The above demonstrates that the court's analysis ultimately safeguards the rights of the victims and contributes to the establishment of a comprehensive truth that includes minors who were victims of recruitment by this group.

Related to children for example, as part of the activities of the Truth Commission, a documentary titled 'Recruited Childhood' was screened at its headquarters, followed by a dialogue that yielded valuable findings related to the recruitment and abuse of children during the armed conflict in Colombia, specifically by the former FARC-EP (CEV, 2021a). This event is in line with the Truth Commission's commitment to systematically clarify the acts that led to the forced incorporation of over 18,000 minors, according to data provided by the JEP (Communication 086, 2021). It was also revealed that approximately 40% of the recruited minors were under 15 years old, which shows the seriousness of this violation of children's rights in the context of the armed conflict.

During the documentary, they heard the testimonies of nine victims, recounting experiences of sexual violence, torture, and mistreatment, as well as the physical and psychological consequences that marked their lives due to their forced involvement in the armed conflict. These testimonies provided a shocking panorama of the atrocities committed against the recruited children, demonstrating the gravity of the abuses suffered. (CEV, 2021b) This shows how the Commission seeks to guarantee their active participation, dignify their experiences, and contribute to the transformation of their living conditions.

The documentary also addressed how minors were taken from their homes, mostly located in rural and remote areas, where their families were pressured and left with no options but to hand them over (CEV, 2021b). These children were forced to carry weapons, handle explosives, and participate in violent actions, including the execution of their own friends (CEV, 2021b).

These findings display the urgent need to comprehensively address the recruitment and use of children and adolescents in the armed conflict in Colombia. The Truth Commission plays a fundamental role in seeking the truth and reconstructing the social fabric by allowing victims to share their testimonies and traumatic experiences. Furthermore, they highlight the importance of implementing measures of reparation and guarantees of non-repetition in order to provide a sense of justice and prevent the perpetuation of these abuses in the future. The International legal framework, which establishes the right to be heard of children, and the right to reparation of children, would be in this case respected by the commission's mandate and activities. Even more, the work of the CEV could be seen as having a

stronger emphasis on the right of truth of children as a way of reparation than the international standard, therefore an example for other countries in the world.

4.1.2. Special Jurisdiction for Peace (JEP)

The SIVJRNR includes various judicial bodies, such as an Amnesty and Pardon Chamber and a Peace Tribunal, responsible for administering justice, investigating, clarifying, prosecuting, and punishing serious human rights violations and grave breaches of International Humanitarian Law. The Special Jurisdiction for Peace (JEP) is part of this comprehensive system and exclusively deals with behaviors directly and indirectly related to the armed conflict, without replacing ordinary jurisdiction (F.A, 2016, Section 5.1.2, p. 143).

The justice component is based on fundamental principles. Firstly, states have the legal obligation to address the rights of victims while also being responsible for preventing new acts of violence and achieving peace in an armed conflict through the means at their disposal (F.A, 2016, Section 5.1.2.1). It considers peace achieved through negotiation as morally and politically superior to peace resulting from the annihilation of the opposing side. (F.A, 2016, Section 5.1.2.1,1)

Another guiding principle is the notion that the political community is not only a union of contemporaries but also a link between generations. Justice has a prospective perspective, recognizing that one era inevitably influences future ones and seeking to end conflicts that should not be perpetuated in defense of the rights of future generations.(F.A, 2016, Section 5.1.2.1.3) This principle is relevant for children since they are being taken into account as a crucial part of the society and the political community.

Also, it is recognized that the state has the autonomy to establish special jurisdictions or legal systems based on the sovereignty and free self-determination of nations and the principles of International Law, including IHL, IHRL, and ICL (F.A, 2016, Section 5.1.2.1.2). The latter shows an interest of the country to comply with the standards set internationally.

The central focus of the justice component is to repair the victims by considering their rights and the severity of the suffering inflicted during the conflict (F.A, 2016, Section 5.1.2.1.6) It seeks to repair the damage caused and restore when possible, applying a restorative justice approach that aims to end the social exclusion resulting from victimization. The latter is different from a retributive approach to transition that is primarily centered on the penalization of the offender (Rojas, 2021, p.101). According to Nylund (2016b) restorative justice involves incorporating children's participation in the transitional justice process, recognizing their potential involvement in crimes. But specially It aims to divert children from the regular judicial process, promoting their reconciliation with families and communities. According to him this approach aligns with the CRC, emphasizing children's dignity, respect for human rights, and their constructive role in society (Nylund, 2016b, p.211). Furthermore, children are said to have special protection and reparation for being part of the most vulnerable victims of the conflict, such as women, indigenous peoples, and Afro-Colombian communities, among others (F.A, 2016, Section 5.1.2.1.7).

In this sense, regarding forced recruitment, specifically in section 5.1.2 (40), special protection can be applied as it is established that crimes against humanity committed systematically, including the recruitment of minors, are not subject to amnesty, pardon, or benefits. This means the acts performed in order to recruit minors have a higher level of punishment, which is usually supported by numerous references along the agreement to IHL, ICL and IHRL.

Regarding the systematic nature of these crimes, a study conducted by the CEV, the JEP and the Human Rights Data Analysis Group (HRDAG) helped understand the magnitude of the violence suffered by children and adolescents during the armed conflict in Colombia (2022). For this project, 112 databases from various entities and social organizations were integrated. The analysis of these databases provided both documented figures and estimates related to five human rights violations: homicide, forced disappearance, recruitment, forced displacement, and kidnapping.

Among the facilitating factors for the involvement of children and adolescents in armed groups, the final chapter on children made by the CEV establishes 1) The challenging living conditions they face, lacking adequate opportunities for personal growth and development. 2) The dominance of armed groups

dictating the dynamics and control over the territories they inhabit.³) The failure or inability of families and society to effectively safeguard their well-being.⁴) The State's indifference towards preventing violence directly impacting them. (CEV, 2022a, p. 189) They consider recruitment was normalized and intentional despite the prohibition established in guerrilla statutes. Out of the registered 16,238 victims, 44% were under the age of fifteen, with the FARC-EP and the ELN being the main responsible for recruitment. It is also observed that approximately 45% of girls, boys, and adolescents recruited by the FARC-EP were under fifteen, while this figure was 46% for the ELN and 33% for paramilitary groups. (Rivera, 2022, p. 24-25)

Concerning the state's failure to protect children and adolescents and the existence of violence both within armed groups and toward families, other statistics are presented. In this regard, of the total children and adolescents recruited between 1990 and 2017, 11% of them were identified as indigenous and 9% as Afro-Colombian or belonging to ethnic communities, which denotes disproportionate harm suffered by these communities compared to their representation in the general population of the country.

4.1.2.1. Case 7: Recruitment and use of children in the armed conflict.

Given the above statistics, Case 07 focuses on the recruitment and use of girls, boys, and adolescents in the armed conflict in Colombia by the now-defunct FARC-EP. Since its opening in March 2019 it has made significant progress. The Chamber of Truth and Responsibility and Determination of Facts and Conducts has exhaustively analyse and cross-checked information to identify the victims and determine the magnitude of the incidents. Until now, a universe of 18,677 unique victims has been found through the integration of 31 databases from various organizations, state entities, and universities (JEP, Auto SRVR-LRG-T-032-2022, para. 13).

However, in Order 159 of 2022 it was said that the underreporting of cases of child recruitment can be attributed to various interconnected factors, including the prolonged duration of the armed conflict, the absence of a specific criminal offense for unlawful recruitment until its establishment in 1997, reluctance to report cases due to fear of reprisals from armed groups, limited institutional presence in the recruitment-affected territories, and the deficiencies in information recording systems that lacked the comprehensive data collection tools available today. (JEP, Auto 159-2021, para. 12)

The investigation has identified that the Eastern Bloc of the former FARC-EP is responsible for 42% of the recruitment and use of girls and boys, followed by other blocs within the organization (Auto 159-2021, para.26). This information has led the Chamber to prioritize the territorial investigation, considering the presence of indigenous reserves in the departments where this bloc operated, with the aim of investigating the differential impact on ethnic communities and ensuring their participation in the testimonies being conducted. Another focus find in the case is the occurrence of sexual and gender-based violence, which has been evidenced in 68 cases among accredited victims in the case (JEP, Auto SRVR-LRG-T-032-2022, para. 33). This information has led to the opening of a new line of investigation within Case 07 to specifically address these forms of violence and respond to the justice needs of victims with diverse sexual orientations, gender identities, and gender expressions.

The decision in Case 07 regarding the prioritization strategy has received significant acclaim from civil society, including organizations like COALICO (2021), it plays a crucial role in disclosing forced recruitment that occurred within the context of the conflict. It marks an important benchmark in the investigation of heinous crimes, particularly sexual violence, which unfortunately often go unpunished due to a prevailing culture of impunity. Some authors have argue the importance considering reproductive violence in the investigation, emphasizing its systematic and widespread nature (Trujillo, 2021). Regarding the gender-based crimes, Valiñas (2020) considers the JEP offers an opportunity to address conflict-related sexual and gender-based violence innovatively. The author believes the evolving practices of this jurisdiction can inspire justice processes globally, and that by reaching out to all victims and contextualizing their experiences, the JEP can deliver the promised accountability and reparations to victims and society as a whole.

Acknowledging this perspective is vital to ensure a comprehensive understanding of the atrocities committed during the conflict. Nonetheless, Case 07 not only helps in raising awareness about the work of the SRVR (Specialized Unit for the Investigation and Prosecution of Crimes against Humanity and War Crimes), but it also pushes progress in subsequent stages of the process. This decision contributes to recognizing the victims and increases pressure on society to continue striving toward the full implementation of the peace agreement focusing in groups that are specially affected.

So far, regarding the actions taken in Case 07, 43 protective measures directed at victims and participants have been adopted out of 72 requests (JEP, n.d). Likewise, coordination has been established with the Unit for the Search for Missing Persons to support the search for recruited girls and boys who are still missing. To sum up, Case 07 has achieved notable advancement in identifying the victims and determining the facts regarding the recruitment and use of girls, boys, and adolescents in the armed conflict in Colombia. Through protective measures, coordination with other entities, and the opening of new lines of investigation, the aim is to provide justice and visibility to the experiences of the victims, including those who have suffered sexual and gender-based violence. Although the process is still ongoing, this progress demonstrate the Chamber of Truth's commitment to the pursuit of truth and responsibility regarding this grave crime with a focus in specially vulnerable affected groups, such as girls and ethnic communities.

According to Gallón and Ospina (2021) this intricate framework of transitional justice mechanisms like the JEP, tailored to both national and international contexts, aims to acknowledge the accountability of actors involved in armed conflicts, facilitate the reintegration of former combatants and ensure the fulfillment of victims' rights. These objectives are crucial for the overall functioning of the Comprehensive System and, specifically, the JEP. Nonetheless, failing to achieve these goals may lead to further violations of victims' rights and the potential emergence of new conflicts, fueled by perceptions of impunity if past atrocities are disregarded (Gallón & Ospina, 2021, p.60). Similarly, Tarapués (2022) highlights the Tribunal for Peace and the Chambers of Justice as innovative judicial bodies designed to address serious human rights violations and breaches of international humanitarian law during armed conflict. He also considers the JEP incorporates international standards and has a unique institutional structure. According to the text, the conditionality aspect of the JEP ensures the enforcement of victims' rights and allows for supranational prosecution of international core crimes (Tarapués, 2021)

Ultimately, by the analysis of the JEP's work with children recruited by the former FARC-EP, up to this point, it seems to be working towards achieving accountability, reintegration, and the protection of victims' rights. Regardless, it is important not to neglect these goals until the end, since it could lead to further violations and potential conflicts. The JEP, therefore, presents an opportunity to address gender-based crimes in an innovative manner, inspiring global justice processes, and its unique institutional structure incorporates international standards and allows for the enforcement of victims' rights and supranational prosecution of international core crimes.

4.1.3. Measures for comprehensive reparation for peacebuilding

Continuing with the analysis of mechanisms, the comprehensive reparation measures for peacebuilding and guarantees of non-repetition, as defined in the peace agreement, aim to ensure the holistic repair of victims' rights and address the collective impact of the conflict (F.A, 2016, p.130). These measures strengthen existing mechanisms, introduce new actions, and promote the commitment of all stakeholders to repair the damage caused. It is relevant to analyze some of the reparations measures included in the agreement, as it partly seeks to address the sub-question regarding how the provisions align with international standards in peace processes.

4.1.3.1. Acts of collective responsibility

Section 5.1.3 emphasizes the significance of early acts of collective responsibility recognition as a means to satisfy the rights of victims and create a conducive environment for peace (F.A, 2016, p.178). Both the Government and the FARC-EP agree to engage in formal, public, and solemn acts of

recognition and contrition. These acts involve acknowledging collective responsibility for the harm caused during the conflict and seeking forgiveness. To avoid re-victimization and empower the victims, the coordination of these acts is conducted by the National Episcopal Conference and other organizations in dialogue with victims and human rights organizations, with the aim of establishing the foundation for promoting coexistence and non-repetition. A recent example of this measure is the FARC's public apology in Bojayá, where Pastor Alape expressed remorse to the victims for the massacre that occurred 13 years ago (Indepaz, 2015).

4.1.3.2. Collective reparation through PDET

The agreement also emphasizes the need to strengthen collective reparation processes and ensure that Rural Development Plans with Territorial Focus (PDET) have a reparative approach. These plans should include measures to address harm, promote coexistence and reconciliation, align with other plans and programs, and actively involve victims and territorial authorities. An illustrative example of tangible actions in this regard is the project undertaken by the PLAN Foundation. The foundation commits to implementing the PDET Works strategy by executing activities aimed at community empowerment and social control. This involves carrying out small-scale, swiftly implemented projects that contribute to the social and economic reconstruction of communities within the targeted territories (PLAN, n.d). Notably, this project engaged 78,811 participants over a span of 21 months, starting from February 2021. Its focus was primarily on the departments of Nariño, Cauca, and Valle del Cauca. Through the execution of such plans, support is extended to Sustainable Development Goals (SDGs) like SDG 16, which pertains to peace, justice, and strong institutions, as well as SDG 10, aimed at reducing inequality.

Within the framework of collective reparation plans and local initiatives for reconciliation, the National Government commits to expanding coverage and enhancing the quality of community rehabilitation strategies for social reconstruction (F.A, 2016, Section 5.1.3.3.3). These strategies are developed through medium- and long-term community processes, with the fundamental objectives of fostering shared future life projects, enhancing trust among citizens and institutions, and achieving peaceful coexistence by restoring trust between public authorities and communities. The strategies aim to promote coexistence within communities, including victims, former paramilitary members, FARC-EP members reintegrating into civilian life, and other parties involved in the conflict. Gender and differential perspectives are taken into account during the implementation of these strategies.

Manos a la Paz, is an example of a Colombian government initiative supported by the United Nations Development Programme (UNDP, n.d). This plan pursues to strengthening of the entities capacities, local authorities, and social actors in conflict-affected regions of Colombia, by offering university students the opportunity to engage in real-life experiences, focusing on achieving territorial peace, sustainable development, and promoting a culture of peace. Additionally, public servants and academics participate in volunteer activities through the Paza-la Experiencia initiative. The program operates in 257 prioritized municipalities for post-conflict efforts and aligns with the Sustainable Development Goals, particularly SDG 16 (Peace, Justice, and Strong Institutions), SDG 10 (Reduced Inequalities), SDG 11 (Sustainable Cities and Communities), and SDG 17 (Partnerships for the Goals). Through Manos a la Paz, over 1,220 young interns have contributed to peacebuilding and development, benefiting more than 23,000 people and fostering social cohesion and trust in the regions.

4.1.3.3. Rehabilitation of psychosocial well-being

Among other measures, rehabilitation of psychosocial well-being is another critical aspect addressed in Section 5.1.3.4. The agreement recognizes the importance of individual emotional recovery and commits the National Government to expand public coverage and improve the quality of psycho-social care. This includes tailoring the care to specific harms suffered by victims, including victims of sexual violence. The agreement proposes increasing local victim support centers and implementing mobile strategies to reach remote areas. Furthermore, the National Government agreed on strengthening access to and provision of mental health services for victims requiring them.

According to the Integrated Information System for Post-Conflict (SIIPO), the issuance of Decree 1652 of 2022 was successfully achieved. This decree includes the Psychosocial Care and Comprehensive Assistance Program for Victims (PAPSIVI) within the framework of the General System of Social Security in Health (SGSSS) and mandates the operationalization of its two components under the SGSSS. In light of the issuance of Decree 1650 of 2022 (Article 2.9.1.1.5.), the Ministry of Health and Social Protection initiated the transitional process for implementing the psychosocial care component through SGSSS institutions. To facilitate this process, direct transfers have been allocated to 27 territorial entities at the departmental level, as well as to their corresponding State Social Enterprises (SIIPO, 2022). Pursuant to Resolution 1739 of 2022, an estimated amount of two billion five hundred million pesos (\$2,500,000,000 COP) will be allocated for this purpose.

4.1.3.4. Adaptation and Participatory Strengthening of the Comprehensive Care and Reparation Policy for Victims

Lastly, among the measures agreed upon in the peace agreement is the Adaptation and Participatory Strengthening of the Comprehensive Care and Reparation Policy for Victims within the framework of the end of the conflict and contribution to the material reparation of victims (5.1.3.7). This entails an effective process with the broadest possible participation of victims and their organizations, promoting spaces for the discussion of their proposals with the relevant authorities. In relation to minors who are victims of forced recruitment, this represents a recognition of their right to be heard, while also allowing for the participation of children as victims.

An intriguing aspect of this section is the provision for material reparation to the victims by the FARC-EP, through the inventory of assets and resources provided under section 3.1.1.3 of the same agreement (p.186). According to information from the Unit for Victims (n.d), in collaboration with the former FARC-EP, a historic step has been achieved as over 2,000 victims have been indemnified with a total sum exceeding \$20 billion. According to this institution is the first time in the armed conflict, individual compensation has been accomplished utilizing resources provided by the now-defunct guerrilla group (Unit for victims, n.d).

Additionally, in regards to children affected by the conflict fiduciary arrangements have been established to protect and manage the resources allocated to girls, boys, and adolescents until they reach legal age. This achievement has been made possible through the joint collaboration between the Unit for Victims and the Special Assets Society, however, some assets are said to be missing and an investigation has begun after President Gustavo Petro denounced corruption in the organization (Colombia Reports, 2022).

4.1.3.5. Alignment with international standards of the reparation measures

In section 4.1.3, various measures were analyzed to ensure their alignment with the international standards set forth in section 2. Specifically, a review was conducted on collective responsibility acts, collective reparation, rehabilitation of psychological well-being, and the adaptation and Participatory Strengthening of the Comprehensive Care and Reparation Policy for Victims. These measures particularly consider the focus on reparation established in Articles 38 and 39 of the CRC, as they pertain to protection measures, recovery, and social reintegration. Additionally, concerning the OPAC, they also adhere to these criteria, with Article 7 specifically emphasizing rehabilitation through cooperation measures such as institutional strengthening and economic measures that aim to provide reparation to victims using funds from armed groups. Similarly, through the analysis of the psychosocial reparation measure in the agreement, it can be concluded that there is adherence to the standards outlined in Article 6.3, which relates to the obligation of the state to provide psychological assistance. Moreover, the analyzed measures comply with the provisions of Article 7.2 of the ILO Convention, as this instrument focuses on the obligations of each member to provide necessary and appropriate assistance for the elimination of the worst forms of child labor, as well as for the rehabilitation and social integration of affected children in special risk situations. Lastly, the measure also complies with the Paris Principles, since they establish the need to allocate resources for support programs for minors and aim to include the reintegration in every stage.

As Rojas (2021) notes, the Colombian approach to reparation in the peace agreement provides valuable perspectives on the role of non-state armed actors in relation to reparations during transitions from non-international armed conflicts. While he establishes international law lacks specific guidance on this issue, the legal framework presented in Colombia according to him demonstrates a basis for addressing it. Consequently, he believes the Colombian practice can enhance the understanding and implementation of reparations obligations for non-state actors, both within judicial mechanisms and in broader contexts (Rojas, 2021, p.110).

In conclusion, the Colombian approach to reparation, as outlined in the peace agreement, provide a wide range of reparations for victims. They aim to holistically repair victims' rights and address the collective impact of the conflict. However, despite notable initiatives such as collective responsibility recognition and community rehabilitation strategies, there is a necessity for the law to achieve concrete results and ensure effective implementation. Their successful implementation requires collaboration and commitment from government institutions, civil society, and the international community as they are crucial for sustainable peace and contribute to advancing knowledge in peacebuilding, human rights, and transitional justice when it comes to repairing all the damage suffered by children that have been recruited by armed groups. Hence, section 4.2 aims to delve into this aspect, in order to respond which are the exact gaps and limitations that have been noticed so far.

4.2. Implementation and main challenges faced by the government with the peace agreement related to victims of forced recruitment.

Ambos (2021) sustain, Colombia has made efforts to align with international standards, including those set by the ICC Statute, which distinguishes it from other similar processes in countries like South Africa and Eastern Europe, as has been noted previously. Nonetheless, while the Colombian legislation is progressive according to the author, challenges lie in effectively implementing this framework. (Ambos, 2021, p.128). For this reason, the purpose of the present section is to analyze the extent to which the previous mechanisms and, in general, the stipulations of the peace agreement have been implemented and therefore comply with international rules.

The analysis will rely on the reports generated by the Kroc Institute as a methodological basis. Through its Peace Accords Matrix Program (PAM) in collaboration with the University of Notre Dame, the institute has developed an innovative real-time methodology to thoroughly assess the agreement's implementation (Kroc Institute, n.d.c). Furthermore, this methodology known as the Barometer Initiative, was formally accepted as part of the verification mechanism and included in the text of the Final Agreement (2016, Section 6.3.2.).

The Barometer Initiative proposes to measure all aspects of compliance with the Final Agreement over a period of ten years, by collecting and evaluating implementation events from published sources and observations by a specialized team involved in the peace process in Colombia (Kroc Institute, n.d.a). Additionally, it produces monthly data and periodic reports on the state of implementation, with a focus on identifying gaps and slowdowns in the process, making it a weighty and helpful instrument for this document. Thus, the results regarding point 3.2.2.5, concerning the reintegration of minors who have left FARC-EP camps, as well as the results achieved concerning point 5 of the agreement related to victims, will be reviewed. Finally, the public policy for prevention of recruitment will be evaluated, as is an initiative born from the agreement, which emphasizes the way forward for protecting those children that are in risk of being recruited by other armed groups.

4.2.1. Reintegration of minors who have left FARC-EP

Firstly, regarding point 3.2.2.5, the agreement seeks to establish a specific program to guarantee comprehensive reintegration and psychosocial support, as well as temporary accommodation in municipalities near the Transitory Local Zones for Normalization (ZVTN). In this regard, the ICBF in compliance with Decree 891 of 2017, was designated as the entity responsible for adjusting the technical guidelines and corresponding standards to support the implementation of the Differential Path

of Life Program. This program is led by the Presidential Council for Human Rights, under the guidelines of the National Reintegration Council (CNR) and aims to attend the disengagement of minors who have left the FARC-EP camps.

In the Peace Building Accountability Report from November 2016 to May 2018, the ICBF reports that actions have been undertaken in the administrative process of restoring rights with the 124 cases that entered the program (ICBF, 2018). Furthermore, as detailed in the Management Report of the Agency for Reintegration and Normalization, as of the reporting date, 118 young individuals are in the reintegration process, with 67 being women and 51 being men (ARN, 2022). The document also records achievements in key areas, such as economic sustainability, where 85 individuals have received disbursed productive projects, and 10 are involved in productive environments.

According to the Barometer Initiative, which assigns a score of 0 to 3 to each stipulation (0: not initiated, 1: minimum implementation in progress, 2: intermediate implementation in progress, 3: full implementation), this specific point is rated 66% complete and 33% in progress (Korc Institute, n.d.a). However, despite these advances, the program still faces significant challenges, as reported by the SIIPO, such as difficulty in enrolling young individuals in mass academic and vocational training courses and a lack of interest in accessing the benefits. Additionally, the reintegration strategy encounters difficulties due to heavy rainfall in late 2022 and early 2023, as well as complexities in supplier contracting, land adaptation, and road improvement (DNP & SIIPO, 2023).

Furthermore, the Korc Institute report from November 2020 to November 2021 highlights challenges in the ethnic focus, particularly the insecurity faced by minors regarding recruitment (Álvarez et al., 2022, p.19). This situation puts the implementation, lives, and integrity of minors at risk due to ongoing competition for control over illegal activities associated with drug trafficking and illegal mining.

4.2.2. Implementation related to victims as outlined in Point 5 of the Peace Agreement

Pertaining to point 5 of the agreement, as can be observed in Figure 1, the implementation is considerably more complex and diverse in each of its aspects. According to the monitoring report, progress has been noted in the implementation of the truth, justice, reparation, and non-repetition component, with a decrease in pending provisions and minimal actions, and an increase in provisions in intermediate and complete states (Álvarez et al., 2022, p.28).

Theme Name	Subtheme	Total Stipulations	Implementation Score			
			Not Initiated	Minimum	Intermediate	Complete
TRUTH: Comprehensive System of Truth, Justice, Reparations ..	Unit for the Search of Disappeared People in ..	13		4 (30.77%)	4 (30.77%)	5 (38.46%)
	Commission for clarifying truth, coexistence ..	15	1 (6.67%)	2 (13.33%)	1 (6.67%)	11 (73.33%)
JUSTICE: Comprehensive Syste..	Special Jurisdiction for Peace (JEP)	38	8 (21.05%)	11 (28.95%)	9 (23.68%)	10 (26.32%)
REPARATIONS: Comprehensive System of Truth, Justice, Reparations and Non-Repetition	Land Restitution Measures	2			2 (100.00%)	
	Psycho-social recovery	2		2 (100.00%)		
	Collective return process for displaced perso..	2		1 (50.00%)	1 (50.00%)	
	Collective Reparations: Comprehensive Repa..	3	1 (33.33%)	2 (66.67%)		
	Collective responsibility events and concrete..	3		2 (66.67%)	1 (33.33%)	
Guarantees of Non-repetition	Strengthening Victim Assistance and compre..	6		4 (66.67%)		2 (33.33%)
	Strengthening, Prevention, and Protection of H..	6	1 (16.67%)	3 (50.00%)	2 (33.33%)	

Figure 1. Number of stipulations implemented in Point 5 regarding the agreement on the Victims of the Conflict. Korc Institute. Colombia Barometer Initiative - Status of Implementation (January 2023) (n.d.b)

4.2.2.1. Truth component

Specifically, concerning the truth component, the CEV strengthened its strategy of engaging with victims and organizations, as well as its communication strategy. The documentary "Transición," which depicts the commission's work from within the institution and its impact on Colombia, highlights some of the challenges faced, including adapting work during the pandemic, reaching remote and affected territories across the country, navigating another armed conflict, and presenting a narrative that represents all sectors involved in the conflict (victims, demobilized individuals, members of armed groups, and agents of the security forces), among others (CEV, 2023).

The Commission's work was extensive and involved collecting testimonies (over 30,000), holding collective meetings in Truth Houses in different communities throughout Colombia (including indigenous reservations and Afro-Colombian communities), and receiving over 1,000 reports from civil society and other organizations (CEV, 2022b). The final report, which has been cited along the document, "There is a Future if There is Truth", was finally submitted in August 2022. The report consists of 11 distinct volumes addressing different dimensions of the conflict, including a special volume on children and adolescents affected by the conflict, with the aim of widespread dissemination to promote greater truth and clarity about the conflict and its more than 9 million victims (CEV, 2022b, p.16). According to Article 32 of Decree 588 of 2017, the Monitoring and Follow-up Committee on the recommendations was established, for which no reports have been received to date. However, meticulous monitoring of the 74 recommendations contained in the Commission's Final Report is expected.

4.2.2.2. *Justice component*

In terms of justice, progress has been recorded in referring cases involving lack of recognition of responsibility from the Truth and Responsibility Recognition Chamber (SRVR) to the Investigation and Prosecution Unit (UIA) of the JEP, specifically in relation to case 7. Regarding reparation, the report indicates that the Land Restitution Unit (URT) provided technical and financial support to beneficiaries of the restitution processes to rebuild their life projects and income-generating strategies, including minors who were victims of recruitment (Álvarez et al., 2022). Despite these advances, the monitoring conducted by the Kroc Institute indicates that there were few concrete results during this period, which negatively affects the levels of implementation and jeopardizes the trust built with victims and civil society (Álvarez et al., 2022, p.28). However, case 7 is ongoing, so the final results should be carefully observed once the process is completed.

Sections 4.2.1 and 4.2.2 highlight significant progress in terms of the reintegration of minors and the justice and truth components of point 5 of the agreement. However, the greatest challenges in achieving implementation are related to strategies for engaging young individuals in programs that provide them with benefits, as well as insecurity in different areas due to drug trafficking, which puts minors at risk. Nonetheless, implementation is still ongoing, and despite reaching an agreement approximately seven years ago, the recruitment issues have been part of the country for over fifty years, requiring hard work and coordination among various institutions to fully comply with the provisions of the agreement. International standards aim to protect minors, but they are not entirely clear about how such protection should be carried out. This is partly due to the complexities and specificities that each state may present in its own territories. However, Colombia can serve as a model for other countries with internal armed conflicts, as it has made significant efforts to align itself with international norms and provide maximum protection to minors within its laws. Accordingly, it is necessary to ensure that every protection is given by law becomes a reality.

4.2.3. *Prevention public policy*

To conclude this section, it is important to underline the current public policy regarding the prevention of child recruitment, since this is one of the fields that international law delves into when addressing the protection of children from recruitment. The Public Policy Guideline for the Prevention of Recruitment, Utilization, Use, and Sexual Violence against Children and Adolescents by Organized Armed Groups (GAOs) and Organized Criminal Groups (GDOs) of 2019 emerged from concerns about forced recruitment dynamics and the involvement of minors identified in various reports from the Secretary-General to the Permanent Council on the Monitoring and Support Mission for the Peace Process (MAPP) and the Office of the Attorney General of the Nation.

In their XXVII Semi-Annual Report, Recommendation 11.1 addresses different recruitment phenomena in the country, such as those carried out by the ELN in areas like Catatumbo in Norte de Santander and municipalities like Segovia, Santa Rosa, Bojayá, among others (OAS, 2019). It particularly urges the CIPRUNNA to: strengthen prevention policies and community initiatives to prevent recruitment in high-risk rural areas, to collaborate with local governments in order to enhance youth policies, providing

opportunities for education, culture, sports, and employment and finally to empower children, adolescents, and young people to pursue paths of legality and contribute to peacebuilding (OAS, 2019, p.35).

Furthermore, the aforementioned aligns with the Report of the Office of the Attorney General of the Nation, which, based on the monitoring and supervision of the situation of the rights of children, adolescents, and youth in the management of local administrations, establishes that despite a reduction in cases of illicit recruitment of minors, there was an increase after the signing of the Peace Agreement (PGN, 2019, p.28). On average, strategic actions related to the care of disengaged youth, such as access to education, comprehensive care, specific reintegration projects, among others, were implemented in 36.5% of departments and 7.5% of municipalities (PGN, 2019, p.26). In this regard, the recommendations addressed to CIPRUNNA include defining the plan for technical assistance to territorial entities and the mechanism for articulating public policies, promoting differential actions to highlight the situation of indigenous and Afro-Colombian children, ensuring their recognition as vulnerable, guiding the territories on the development of a diagnostic line on the recruitment situation (PGN, 2019, p.28). Additionally, the Delegated Prosecutor's Office with functions for monitoring the peace agreement recommends strengthening instances, mechanisms, programs, and policies created for the protection of children, adolescents, and youth, as it implies greater prevention, timely attention to alerts generated by the Office of the People's Advocate, and strengthening institutional offerings in coordination with municipalities (PGN, 2019, p.44).

In response to these recommendations, the Public Policy Guideline for the prevention of recruitment was established. It proposes concrete actions to mitigate different forms of violence related to these issues that violate the rights of children and adolescents, considering that the validity of CONPES 3673 of 2010 was initially planned for only four years and there was a need to update planning instruments and harmonize institutions in accordance with regulatory developments (CPDHI, 2019, p.7). It is worth noting the work of Colombia, to learn from the experience of implementing CONPES 3673 of 2010, which encountered obstacles in involving the voices of territorial entities and articulating the institutional structure at the national and territorial levels, hindering its implementation at the time (CPDHI, 2019, p.29).

This policy accurately identifies the inadequate recognition of children and adolescents as rights holders, the weaknesses in comprehensive protection tools, various forms of violence and exploitation, limited social inclusion, restricted participation, and lack of coordination between systems. (CPDHI, 2019, p.32-40). Hence, It aims to recognize children as rights holders, strengthen protection tools, combat violence and exploitation, promote participation, stabilize families, and coordinate prevention actions against recruitment, utilization, and sexual violence by armed and criminal group (CPDHI, 2019).

The aforementioned objectives are advancing according to the Thirty-Fourth Report of the Secretary-General to the Permanent Council on the MAPP, which highlights the development of 58 technical assistance activities at the municipal and departmental levels, as well as the strengthening of family units and educational institutions through the psychosocial support strategy. (OAS, 2022, p.8) However, is stated that challenges persist with violence against children by illegal armed groups, notably in drug-related areas like Putumayo, Bajo Cauca, southern Córdoba, Samaniego, and Yondó. Additionally, there is emphasis placed on reinforcing attention to the accompaniment and monitoring of cases of disengagement and return to the family environment, as Illegal Armed Groups still control territories and restrict their presence due to considering them a threat (OAS, 2022, p.26).

The above prevention policy in terms of international standards is aligned. The latter since as stated in Article 4.2 of the OPAC, states have the obligation to take all feasible measures in order to prevent such recruitment. By delving into the different challenges that have come up from the review of other laws in place such as de 2010 CONPES, is clear there is a consistent effort to come up with a strategy that tries to articulate better the institutional structure in territorial levels, and that takes into account specific challenges to provide a better protection for children. Additionally, it is in conformity with the

ILO Convention article 7, and with the Paris Principles, section 6, concerning the prevention of unlawful recruitment or use, which points for a comprehensive plan inside the state as a lasting solution.

In conclusion, regarding the implementation of the peace agreement, it can be said that progress seems to be at a medium to high level in terms of victims and the issue of recruitment, with indicators mostly falling within the intermediate to complete range. However, the reality of the country and the calls from different entities such as the Office of the Attorney General and the OAS indicate the persistence of the phenomenon and therefore the different challenges that must continue to be overcome to ensure the respect and guarantee of all minors who have been recruited, as well as those at risk of recruitment, through public policies such as the one established by CIPRUNNA. Ultimately, one of the greatest challenges lies in the difficulties of territorial control, as different armed groups continue to be the authority in various areas, preventing the genuine reintegration of minors. There is, therefore, work to be done to fully address the issue and comply with international standards, in order to ensure the well-being of all children and adolescents affected by recruitment, as well as to prevent future occurrences.

5. Chapter IV: Analyzing the ELN Negotiations and Crucial Challenges in the Ongoing Process.

This chapter explores the multifaceted challenges inherent in negotiating with the ELN in Colombia, focusing particularly on the issue of forced recruitment of minors. The aim is to understand the ongoing negotiation to be able to respond to how can the Colombian legal system be strengthened and improved to provide better protection and support for children recruited by armed groups, considering lessons learned from previous peace agreements. Consequently, it initiates an analysis of the present landscape, highlighting the alarming prevalence of minors being coerced into joining the ELN. Later, the chapter underscores the significance of comprehending the affected territories and the disproportionate impact on ethnic communities. It also explores various challenges encountered during dialogues with the ELN, including organizational disparities with the former FARC-EP, divergent perspectives on negotiation, the imperative of integrating civil society into the peace process, and the complex role of weapons. Finally, the chapter concludes with a comprehensive summary of the key findings taking into account the lessons learned from the 2016 peace agreement.

5.1. Current Situation

According to UNICEF and the ICBF (2022), there is a huge impact of guerrilla warfare and other criminal organizations on children and adolescents in the country. This report, based on testimonies from minor victims between 2013 and 2022, analyzed 2,181 records. The ELN accounted for 26.9% of forced recruitment cases, totaling 587 cases. Among minors recruited by the ELN, 45% belonged to ethnic groups, while the FARC and the Gulf Clan had a prevalence of 35%. (UNICEF & ICBF, 2022, p.28). The most affected territories by forced recruitment are Antioquia, Arauca, Chocó, and Nariño (Rivera, 2022, p.27). These regions accounted for over 50% of cases according to the Truth Commission's report. The ELN registered 1,391 victims, with approximately 46% of them being under the age of fifteen, despite the prohibition of recruiting minors within this age range (Rivera, 2022, p.24). This is despite the prohibition of guerrilla statutes regarding the recruitment of minors within this age range. In relation to this point, statements by the ELN's top leader, "Antonio García," denying the recruitment of minors are concerning (El Espectador, 2023b). However, the government delegate, Otty Patiño, also claims unawareness of the group's recruitment practices (Morales, 2023). These statements disregard available data and legal precedent emphasizing the coercive nature of minor recruitment. Constitutional Court's Judgment C-203 of 2005 highlights socioeconomic factors influencing minors' decisions to join armed groups.

Finally, to understand the current situation, it is worth referring to a recent official communication from the Colombian Ombudsman's. It addressed the recruitment of underage minors by illegal armed groups. It identified 23 cases of recruitment involving 13 boys and 10 girls aged 13-17 (DP, 2023). Also, it stated Illegal armed groups are increasingly present in ethnic communities and rural areas. The letter emphasized the need for stronger institutions, preventive measures, and a comprehensive response. The Ombudsman requested government action and greater coordination, urging the UN Security Council to include information on the participation of children in armed conflicts in its report under Resolution 1612 (DP, 2023, p.2).

The negotiation process with the ELN must take into account the serious impacts of forced recruitment of minors and the responsibility of this organization in such cases. Testimonies and documented evidence accentuate the need to fully tackle this problem.

5.1.1. Overview of the negotiations process

As the severity of the current events has been outlined, it is important now to proceed describing the negotiations. The peace process between the Colombian government and the ELN, has gone through different stages and locations over time. Under President Santos, a ceasefire was agreed with the ELN from October 2017 to January 2018, but it was disrupted by ELN's actions, including kidnappings and murder (Aponte & González, 2021, p.18). In general, after different rounds of negotiations in Ecuador

and Cuba, a six-point agenda was outlined that was never fully implemented (Ramírez, 2023). It can be said that a constant factor in negotiations with the ELN was the lack of agreement between the urgency to end armed action and the effective construction of peace, democracy, and social inclusion. The latter will be covered as a challenge in the following section.

Unfortunately, under Iván Duque's presidency, the government's stance on negotiations with the ELN changed. Following a car bomb attack in Bogotá that claimed 23 lives in January 2019, Duque declared an end to the peace process and disregarded signed protocols and guarantor countries (BBC, 2019). This generated diplomatic tensions and left the ELN delegation in Cuba in limbo (Aponte & González, 2021, p.23).

However, with President Gustavo Petro, negotiations were resumed in August 2022 with High Commissioner for Peace Danilo Rueda to build upon previous agreements (Torrado, 2023). Specifically, in the second cycle of negotiations, which took place in Mexico City between February 13 and March 10, 2023, significant progress was made with the New Peace Dialogue Agenda (Mexico Agreement, 2023). The agenda covers society's role, democracy, transformations, victims, conflict resolution, and implementation. Challenges exist, but the peace process with the ELN aims for lasting peace. However, to understand the path forward in order to follow the international framework, we'll explore challenges in dialogue with the ELN and its differences from the FARC-EP peace process.

5.2. Challenges in dialogues with the ELN: Contrasts with the FARC-EP peace process

According to the Ideas for Peace Foundation (FIP) (2022), there are certain key points that explain the current situation and the changes that have occurred since the end of the dialogue process in 2019. Since the 1990s, several Colombian governments have attempted to establish dialogues with the ELN, but all have ended without success. However, the current left-leaning government of Colombia, led by President Petro, represents the first opportunity for the ELN to engage in dialogue with an ideologically aligned government (FIP, 2022, p.4). This opens up new opportunities but also generates tensions on how to address structural issues and end the armed conflict.

5.2.1. The ELN's vision of negotiation and organizational differences with the FARC-EP

One of the challenges to consider, is the ELN's particular vision of negotiation (FIP, 2022, p.6). Unlike the FARC-EP, the ELN has a different perspective on a "negotiated solution." The ELN sees itself as a confederation of different regional groups that represent specific problems in their respective regions (Aponte & González, 2021) Therefore, it can be considered that the content of the negotiations should be based on local proposals from civil society, through participatory forums in different regions and a National Social Dialogue Table.

Adding to this is the differentiated structure of the armed group. Aponte and González explain the importance of the organizational and territorial conditions of the ELN in understanding its influence in dialogue spaces (2021). The authors emphasize the failure of replicating FARC-EP strategies in dealing with the ELN due to their distinct organizational structures (FIP, 2022, p.6). While ELN's federated nature requires consultation with the central command (COCE) before negotiating decisions, the FARC demonstrated a hierarchical command and control structure. Additionally, the founding motivations of each armed group, the organizational structure they have developed, the type and quality of their fighters, as well as their capacity and firepower, differ significantly (Aponte & González, 2021, p.18). Nonetheless, there are similarities in the peace processes carried out with both groups. If we compare the Peace Agreement and the Mexico Agreement, the first point regarding access to and use of land, which addresses key issues regarding warfare in rural areas, is quite similar to the third point on the agenda called "Transformations for Peace." In this point, similar development and political topics to those in Havana are addressed, but an urban and ethnic development component is added. Regarding the second point negotiated in Havana, namely political participation, it resembles the second point on the agenda with the ELN, which also proposes a review of participation mechanisms (El Espectador, 2023a). Nevertheless, a completely innovative point is included, which is the examination of the

economic model and the political regime. Previously, President Gustavo Petro criticized the FARC agreement precisely for not including topics on industrialization, for considering it prevents the achievement of an "equitable real world." (Fuquén, 2023).

On another note, regarding victims, there are also some similarities, as the Comprehensive System for Peace is based on truth, a concept that is repeatedly referred to in the Mexico Agreement regarding reparation. However, concerning the specific victims of recruitment, it is worth mentioning that one of the points to prioritize is point 1.5. It establishes citizen participation during the dialogues for "historically excluded" populations, including children, adolescents, and youth (Mexico Agreement, 2023). This was missing from the process with the FARC, even though points involving minors were discussed in the General Agreement (initial road map) reached by the Government of the Republic of Colombia and the FARC-EP (OHCP & Presidency, 2018, pp.277-281). Only in relation to point 2 on political participation, effective measures to promote the participation of the most vulnerable population (2.3) are mentioned (2018, pp.277) but not specifically tackling children. This would be the opportunity to involve civil society on the subject, as will be discussed in the next sub-section.

Therefore, to reach an appropriate peace agreement, it is important to consider the differences between the groups and handle them accordingly. In spite of that, since there are also similarities, it is important to take them into account in order to build upon what has already been achieved. As seen from the comparison of the agendas of both processes, there are several converging points that can favor the process if taken into consideration.

5.2.2. Integration of Civil Society in the Process

Another challenge is integrating civil society into the current peace process with the ELN, which is crucial for achieving effective transformation in Colombia. Since the 1990s, the ELN has recognized that society is the main agent of change and has advocated for its active participation in the formulation and direction of state policies (Mouly & Hernández, 2020, p. 22). The importance of broad societal involvement lies in its ability to present transformation proposals and demand the implementation of those transformations from the state, backed by a citizen mandate (Mouly & Hernández, 2020, p. 22). However, the challenge is agreeing on concrete measures that ensure such participation in practice. Ongoing armed conflicts and the presence of non-state armed groups, especially those related to paramilitarism and drug trafficking, have hindered the implementation of participation mechanisms (Mouly & Hernández, 2020, p. 25). These circumstances have affected the capacity of civil society to play an active role in peacebuilding and have limited its influence in decision-making related to social transformation

Therefore, to achieve a definitive negotiation with the ELN, it is necessary to expand on the accumulated experiences of previous attempts and recognize the fundamental role that organized civil society will play in this process (Aponte & González, 2021, p.259). Overcoming the armed conflict will allow for the return of political action to civil society, providing a space for the reconstruction of social, cultural, and economic relationships in the territories (Curra, 2014, p.93).

In relation to the recruitment of minors, the involvement of civil society implies a profound reflection on children's rights and the collective responsibility to protect them. Only through a committed engagement, collaboration among all parties involved, and the strengthening of policies and programs for child protection, can progress be made towards a lasting peace that includes the prevention of child recruitment and their voices. This would be in line with the CRC, article 12, which highlights the importance of given due weight to the voice of the child in issues that concern them. Likewise, Paris Principles in 3.14 establish the need to seek for the children views and their families in every stage of the process.

5.2.3. The role of weapons for the ELN

Another challenge is the role of arms. For the ELN, the surrender of weapons will occur as progress is made in fulfilling the agreed-upon commitments since they consider arms as a guarantee to ensure the implementation of the reached agreements (FIP, 2022, p.6). However, this viewpoint has been criticized by Humberto de la Calle, the former chief negotiator of the previous peace process (Calle de la, 2023).

In a letter addressed to Jose Laffaurie, a member of the current government delegation, he expresses his concern that the ELN may seek to retain weapons even after reaching a final peace agreement (Calle de la, 2023, para.3).

According to the Mexico Agreement, the only thing that is clear so far is that the issue of arms will be addressed in point 5, which deals with the end of the conflict. Specifically, point 5.6 proposes, in light of the new circumstances, efforts to reach an agreement with the ELN regarding their weapons, aligning with the strategy to end violence and disarm (Mexico Agreement, 2023, p.6). In any case, it is important for this disarmament process to be closely linked to efforts to protect and reintegrate recruited minors as soon as possible. Only through a combination of demobilization, disarmament, and comprehensive reintegration programs is possible to ensure a hopeful future for these minors, while preventing the reutilization of weapons to their detriment.

5.2.4. Limitations Identified from the Implementation of the Agreement with the FARC-EP

On the other hand, implementing the FARC Peace Agreement has highlighted the state's limitations in fulfilling agreed commitments (FIP, 2022, p.11). This situation has generated mistrust in the ELN towards the negotiation model followed with the FARC. According to the Report of the Secretary-General of the United Nations Verification Mission in Colombia, one of the greatest challenges for consolidating peace is the security of ex-combatants (S/2023/222, p.47). Ultimately, the ELN as an armed group is the biggest critic of the peace agreement with the FARC-EP, as its success or failure is seen as a starting point.

In the present peace agreement, one of the innovations that can be useful in overcoming this obstacle is the partial agreements. According to point 5.2.3 of the Mexico Agreement, these are immediately implemented agreements aimed at addressing urgent realities in the conflict-affected territories (2023, p.9) According to the text of the agreement, they should be harmoniously articulated with a general agreement and should ensure permanence, deepening, and continuity, avoiding being episodic or merely demonstrative.

In the context of the recruitment of minors, partial agreements can play a fundamental role. By urgently addressing this problem, concrete and effective measures can be established for the protection and reintegration of recruited minors. These agreements can include the implementation of psychosocial care programs, education, and vocational training for minors, as well as the creation of reporting and protection mechanisms involving civil society and relevant institutions.

5.3. Conclusions

Throughout this chapter, the forced recruitment of minors by the ELN and its impact on the peace process in Colombia has been examined. Various challenges and key considerations requiring particular attention have been identified. Firstly, the relevance of learning from the implementation of the peace agreement with the FARC-EP, which has provided important lessons for addressing the recruitment of minors, has been discussed. The comprehensive approach involving preventive measures, demobilization, reintegration, and protection of the rights of affected children and adolescents will be crucial in reducing this practice.

Furthermore, the need to pay special attention to high recruitment rates in ethnic communities has been emphasized. The forced recruitment of minors in these vulnerable groups represents an additional issue that requires a specific and culturally sensitive response. The inclusion of the perspectives of these communities and the implementation of measures tailored to their needs is crucial for effectively approaching this problem. Finally, the need to address the ELN's negotiation stance with a focus on the recruitment of minors is emphasized. Recognition and assumption of responsibility by this armed group are essential for advancing the peace process and ensuring genuine transformation.

To effectively address child recruitment in peace dialogues with the ELN, a broader perspective is needed. This includes examining the organization's structure, negotiation interests, past experiences, and implementation failures. These factors shape the dialogue process and impact the trust of the

armed group. Considering these aspects, the following chapter will provide conclusions and recommendations.

6. Chapter V: Conclusion and Recommendations

The present document sought to specifically answer the following question: *To what extent are the provisions of the Colombian legal system regarding the protection of children recruited by armed groups, in the context of peace negotiations, in accordance with international standards?*

To do this, a review of the international regulations imposing standards was conducted, and they were evaluated in light of the major identified tensions, namely: the age of recruitment, children's participation in the conflict, and due protection. Bearing in mind these frictions, Colombian regulations and jurisprudence in the matter were analyzed. Once the links with international regulations were established, a closer examination was made of the provisions of the peace agreement with the FARC-EP, to determine the extent to which they aligned with these parameters and how they were developed even beyond what international standards require.

However, the regulations themselves are not enough to assess their compliance, so the focus shifted to the implementation of these provisions. In this regard, efforts were made to identify gaps or limitations that have arisen during the implementation of the agreement. Afterward, the applicability of the identified gaps was sought by drawing parallels with the peace process with the ELN, highlighting some potential challenges, in order to formulate the recommendations presented below, aiming to align the new peace process even more with international expectations for the country. The main conclusions reached throughout the text can be found in the Overview of Main Findings at the beginning of the document, therefore this chapter will focus on the following suggestions:

6.1. Enhancing Children's Participation in Peacebuilding Processes

As argued by Nabuco Martuscelli and Duarte, children are agents in peacebuilding (2018). Nonetheless, there are several challenges for ensuring their participation, including limited recognition, lack of clear mechanisms, selective participation, unclear inclusion of children, and the absence of specific provisions (2018, p.399). These challenges emphasize the need for greater clarity and concrete measures to ensure meaningful involvement of former child soldiers in the peacebuilding process in Colombia. Therefore, it is important that their voices are heard and given due weight in the current negotiations, as they possess expertise to provide perspectives on the issues at hand.

Aoskan (2021) says there is a lack of efforts to include children's voices in the peace process and decision-making processes that affect them. One example of this are the National surveys that have been done both for the final peace agreement (Weintraub et al., 2021) and after the Peace and Justice Law (Centro de Memoria Histórica, 2012), which only included individual over 18 years. The children are not sought as part of a group that has saying in the matter. In this sense, Aoskan (2021) proposes three forms of participation in different degrees that would be very valuable to include in the ongoing dialogues: consultative (Seeking children's views and perspectives to inform adult decision-making.), collaborative (Shared decision-making between adults and children, allowing children to influence outcomes), and child-led participation (Children taking the lead in initiating activities and advocating for themselves). Therefore, following this model It is crucial to incorporate child protection and rights language into peace agreements and implement agreed-upon provisions to ensure the inclusion of children in the process.

Although Colombia is making progress in respecting the right to be heard, such as through the inclusion of children's voices in various documents of the Truth Commission (CEV), there is still a need to further build on this, particularly in the context of reaching a new agreement with the ELN. It is crucial to consider and respect their needs, recognizing them as both victims and agents of change with the necessary authorship to participate in the process as suggested in the Paris Principles and as highlighted in the CRC.

6.2. Addressing Root Causes of Child Recruitment in Armed Groups: A Focus on Structural Factors and Psychosocial Support for Caregivers and Children

The Colombian armed conflict is a complex phenomenon that requires addressing the root causes of child recruitment, as noted in the preamble of the OPAC, such as living conditions, lack of opportunities,

and the presence of armed groups in remote areas. The State, in collaboration with civil organizations, should strive to improve the living conditions of children, which would substantially reduce recruitment rates. It is important to target factors that push minors to perceive armed conflict as a viable alternative. The CNMH emphasizes the need to overcome inequality, discrimination, marginalization, and exclusion and ensure the realization of economic, social, and cultural rights to achieve a successful transition to peace (2013, p. 401).

Capone (2017) challenges the traditional understanding of reparations and argues that all forms of redress, including guarantees of non-repetition, have the potential to address the root causes of violations. The effectiveness of these measures depends on victim vulnerability and implementation feasibility. While guarantees of non-repetition are often associated with transformative outcomes, other forms of reparations can also achieve similar results (Capone, 2017, pp. 135-136). It is crucial for government and organizations working with children to consider this in their efforts to combat the underlying reasons of recruitment.

Reparations for extensive human rights violations in unequal societies aim to transform the circumstances in which victims lived, rather than simply restoring them to their previous state of poverty and discrimination (Uprimy, 2009). These reparations serve as a means to address the root causes of conflict and promote a more just society. This approach is known as "transformative reparations" (Uprimn, 2009, p. 637-638).

Inside these transformative reparations to address root causes, it should be also important to focus on the provision of training to those who provided psychosocial support and mental health services to children affected by armed conflict. In this sense, Johnson et al. (2022) study emphasizes the positive impact of training mental health professionals to work with traumatized children and ensuring their access to counseling and support services. The study identifies the role of caregiver resilience in mitigating the negative effects of psychopathology on children's well-being, particularly among girls. (Johnson et al., 2022)

Hence, to effectively protect children from recruitment in the Colombian armed conflict, it is essential to address the underlying causes of recruitment, improve living conditions, and provide opportunities for vulnerable children. Additionally, training mental health professionals and ensuring access to counseling and support services can positively impact the social-emotional well-being of traumatized children. It is important therefore to consider caregiver psychopathology, resilience, and the specific needs of different genders in implementing support systems.

6.3. Promoting Territorial Particularities

The importance of considering the particularities of territories and establishing differentiated strategies in each territory to have a greater impact has been mentioned along the text. Ethnic communities have experienced high levels of insecurity, including increased rates of homicide, displacements, and confinement (Álvarez et al., 2022, p. 66). It is crucial to take a local and socio-historical perspective when analyzing the recruitment and use of children and adolescents, as the conditions vary across regions and communities (CNMH, 2017, p. 30).

To effectively address the issue of recruitment, it is also necessary to monitor and collect data at the local level, conducting qualitative exercises tailored to different territories (CNMH, 2017, pp. 605-606). Understanding the territorial dynamics and the sociability associated with the war is the first step in developing effective tools for children recruitment prevention and intervention. This understanding can be enhanced through the establishment of territorial observation instruments, such as regional or local observatories, which would provide concrete inputs for the Secretariat's Observatory of the Intersectoral Commission for the Prevention of Recruitment, Use, and Sexual Violence against Children and Adolescents (CNMH, 2017, pp. 605-606). It must be considered also the complexity of non-denouncing for fear of retaliation that children and families have. Not having a complete picture of the problem is a problem itself, so the State has to build a mechanism that protect and incentivize the denouncement. Additionally, the formation of alliances between local and regional economic interests and illegal armed groups, as well as the appropriation of land and natural resources, undermines the principles of the

Social Rule of Law (CNMH, 2013, p. 404). Therefore, it is essential for the national government to integrate a comprehensive reconstruction mechanism into national planning. This mechanism should ensure the effective presence of the state and prioritize the provision of basic infrastructure, such as roads, electricity, and connectivity, as well as socio-economic improvements, including education, healthcare, housing, and collective rights.

In summary, it is recommended to adopt a territorially differentiated approach that takes into account the specific conditions, historical trajectories, and expectations of each territory within the framework of the peace agreement implementation. This approach should involve active participation from organized civil society and local authorities to enhance the legitimacy and effectiveness of the implementation process (Álvarez et al., 2022, p. 83). By adapting strategies and interventions to the realities of each territory and prioritizing localized actions, it is possible to address the source elements that lead to recruitment more effectively and achieve positive outcomes in the prevention and protection of children and adolescents affected by the armed conflict in Colombia.

6.4. Civil society participation is Key! Cooperation

Finally, it is clear that each of the previously proposed recommendations requires coordination among different civil society organizations as a cross-cutting element in the implemented measures. The support and participation of civil society are key focuses for the ELN and should therefore be central in the implementation of partial agreements and any future possible final agreement.

Amaya (2021, p.7) considers that aligning the agendas of governments, the European Union (also including other guaranteeing countries), and civil society serves as a counterbalance to those societal groups opposing peace, thereby strengthening the legitimacy of the agreements. Given the breadth of the problem surrounding recruitment, multiple state and civil society organizations must work together to prevent disconnection. Consequently, there should be regulations that appropriately govern how such participation should take place throughout the ongoing dialogues and in the event of reaching an agreement.

By implementing these recommendations, Colombia can come closer to ensuring the full protection of children from recruitment. While the country has made progress in aligning with international standards, persistent statistics indicate the need for further action. Enriching the national legal infrastructure with the suggested measures is crucial for building a stronger future for children and upholding their rights. As stated in the CRC, states “shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.” (CRC, 1989, article 38.4). Consequently, Colombia must continue its efforts to achieve full compliance with global criteria.

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