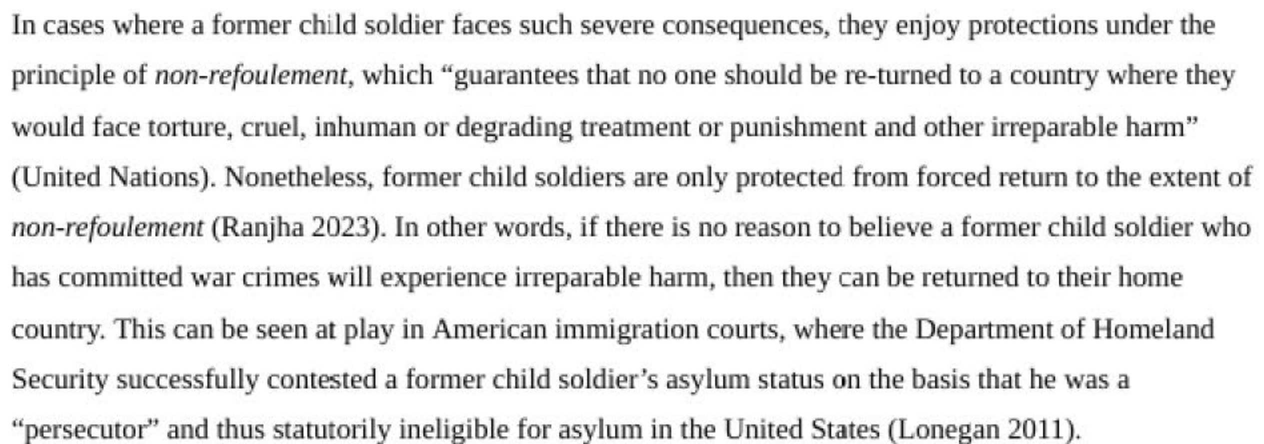
Revisiting Section 1(F): An Imperative for Humanitarianism

When Agnes was thirteen years old, armed men came to her village, tied her hands and feet together, and abducted her. With little context and time to prepare, Agnes found herself swept up in South Sudan's raging civil war, where she helped a militia raid traveling vehicles. Families would be forced from their cars, and militiamen would order civilian men to murder their own families. One day, when a man refused, Agnes was ordered to kill him. She knew the consequences of refusing. "They would beat me and urinate on my body," she recalled to the Canadian aid agency World Vision years after she escaped the militia (Wolfe 2019). Fearing abuse and degradation at the hands of her captors, she followed her orders and murdered the man. In a world where the United Nations promoted justice for all, Agnes would be entitled to flee Sudan and seek asylum as a former child soldier. Unfortunately, she is not, which highlights the failures of the international community to protect children who have been forced to fight wars against their will. In order to rectify this, the United Nations must update its international legal frameworks to resolve conflicting statutes and prioritize the rights of children who were involved as combatants.

Article 14 of the Universal Declaration of Human Rights (UDHR) guarantees everyone the right to seek and enjoy asylum from persecution. The 1951 Convention and Protocol Relating to the Status of Refugees builds on Article 14 by expanding the category of persons eligible for refuge abroad. However, Section 1(F) of the Convention on Refugees excludes those who are reasonably suspected of committing war crimes from refugee status. This exclusion applies without regard to age, meaning child soldiers like Agnes are often denied refugee status for participating in war crimes. Not only is this inhumane, but it is in tension with other international treaties. Article 3 of the 1989 Convention of the Rights of the Child (CRC) requires that the interests of the child be a primary consideration in courts of law and national legislatures.

Children are not ideal soldiers. In order to condition child soldiers for violence, they are often sexually and physically abused, fed narcotics, and brain-washed. Often many are abducted during raids. They are compelled to take part in horrific crimes, including mass murder and rape. For example, during the prosecution of Congan war criminal Thomas Lubanga Dyila, the International Criminal Court heard testimony about how a 12 year old boy was forced to rape a 60 year old woman (International Criminal Court 2009). Child soldiers are often vulnerable to mistreatment even when captured or after the war ends, including by national governments. For instance, the government of Congo has executed child soldiers as young as 14 years old (Human Rights Watch 2001).



In cases where a former child soldier faces such severe consequences, they enjoy protections under the principle of *non-refoulement*, which “guarantees that no one should be re-turned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm” (United Nations). Nonetheless, former child soldiers are only protected from forced return to the extent of *non-refoulement* (Ranjha 2023). In other words, if there is no reason to believe a former child soldier who has committed war crimes will experience irreparable harm, then they can be returned to their home country. This can be seen at play in American immigration courts, where the Department of Homeland Security successfully contested a former child soldier’s asylum status on the basis that he was a “persecutor” and thus statutorily ineligible for asylum in the United States (Lonegan 2011).

In order to protect the rights of child soldiers and eliminate statutory conflicts in international law, the United Nations should establish an age of criminal culpability and weave this into Section 1(F) of the Convention on Refugees. Currently, the Article 40 of the CRC requires signatory states to establish a minimum age below which children are presumed to lack capacity to infringe on the law. Nonetheless, there is no such age recommended or required by the CRC. Article 38 of the CRC prohibits signatory states from recruiting children under the age of fifteen into the armed forces. Therefore, it stands to reason that the international age of culpability for war crimes may be set at fifteen. This modest step forward would ensure that former child soldiers who committed war crimes before the age of fifteen are not denied asylum.

Setting the age of culpability above fifteen years of age may be a difficult task. Many countries, including the United States of America, permit children below as young as ten years old to be tried in adult courts. The higher the age of culpability is set, the more likely countries are to oppose reforms meant to protect former child soldiers. Recognizing that international law must conform to a variety of cultural understandings of justice is the most pragmatic path forward.

Between 2005 and 2022, more than 100,000 children were verified to have been conscripted by combatant groups to fight wars all across the world (UNICEF 2022). Given their protected status, it makes no sense to deny asylum to former child soldiers who were forced to commit war crimes. By failing to adequately protect former child soldiers under international law, the United Nations has created an international framework that works against the reintegration of some of the world’s most vulnerable children. Establishing an age of culpability and integrating it into statutes affecting the refugee status of

war criminals will ensure that children are not put into the same category as the tyrants responsible for orchestrating war crimes in global hotspots.

Works Cited

"Children Recruited by Armed Forces or Armed Groups." *UNICEF*, 5 Dec. 2022, www.unicef.org/protection/children-recruited-by-armed-forces.

"Congo: Don't Execute Child Soldiers." *Human Rights Watch*, 2 May 2001, www.hrw.org/news/2001/05/02/congo-dont-execute-child-soldiers.

"Convention and Protocol Relating to the Status of Refugees." *UNHCR*, 1951.

Griffin, Foley. "When Can a Child Be Charged as an Adult?" *Foley Griffin, LLP*, 16 Feb. 2022, www.foleygriffin.com/blog/2022/february/when-can-a-child-be-charged-as-an-adult-/#:~:text=In%20most%20states%2C%20adult%20courts,or%2010%20in%20adult%20courts.

"Case Against Thomas Lubanga Dyilo." International Criminal Court, 30 June 2009.

"The Principle of Non-Refoulement under International Human Rights Law Network on Migration." *United Nations*, United Nations, 1 Jan. 2018, migrationnetwork.un.org/resources/principle-non-refoulement-under-international-human-rights-law.

Lonegan, Bryan. "Sinners or Saints: Child Soldiers and the Persecutor Bar to Asylum after Negusie v. Holder." Boston College Third World Law Journal, Vol. 31, 2011.

Ranjha, Umer A. "Excluding Child Soldiers under the Refugee Convention." *DLP Forum*, 6 Mar. 2023, www.dlpforum.org/2023/03/07/excluding-child-soldiers-an-overview-of-article-1fa-of-the-1951-convention-relating-to-the-status-of-refugees/.

"Universal Declaration of Human Rights." *United Nations*, United Nations, 1948.

Wolfe, Deborah. "Child Soldier: Agnes' Story." *World Vision Canada*, 1 May 2019, www.worldvision.ca/stories/child-protection/child-soldier-agnes-story.