

Screening for Asylum Eligibility in Children's Claims

**CGRS Practice Advisory
December 2023**



Center for Gender & Refugee Studies



ACACIA
CENTER FOR JUSTICE

Screening for Asylum Eligibility in Children's Claims

This **Center for Gender & Refugee Studies (CGRS)** publication was produced for the **Acacia Unaccompanied Children Program** and is provided as part of CGRS's Technical Assistance Program. Please do not circulate without permission from CGRS.

This advisory was principally written by Arwa Zakir Kakavand and editorial contributions by Christine Lin, Dulce Rodas, and Noora Barakat. Many thanks to Kristen Henderson for formatting and production assistance.

The **Center for Gender & Refugee Studies** is a national organization that provides legal expertise, training, and resources to advocates representing asylum seekers, litigates to expand protections for refugees, advances refugee law and policy, and uses domestic, regional and international human rights mechanisms to address the root causes of persecution.

TABLE OF CONTENTS

TABLE OF ACRONYMS	1
OVERVIEW TO ASYLUM AND RELEVANT GUIDANCE IN SCREENING CHILDREN	3
A. Persecutory Harm.....	6
B. Well-Founded Fear of Future Persecution	9
C. “On Account of” a Protected Ground.....	12
1. Nexus.....	12
2. Protected Grounds.....	13
a. Race	13
b. Nationality	15
c. Religion.....	15
d. Political Opinion.....	17
e. Membership in a PSG	19
D. Failure of State Protection.....	22
E. Fundamental Change in Circumstances & Internal Relocation.....	23
a. Changed Circumstances.....	24
b. Internal Relocation	25
F. Humanitarian Asylum	26
G. Bars to Asylum.....	28
H. Discretion	29
I. Alternate Forms of Relief	30
CONCLUSION	30
APPENDIX I: SCREENING ASSESSMENT TOOL.....	31
APPENDIX II: QUICK COMPARISON: ASYLUM, WITHHOLDING OF REMOVAL, & CAT	36
APPENDIX III: TECHNICAL ASSISTANCE RESOURCES & CONSULTATIONS.....	37

TABLE OF ACRONYMS

BIA	BOARD OF IMMIGRATION APPEALS	PSG	PARTICULAR SOCIAL GROUP
CAT	UNITED NATIONS CONVENTION AGAINST TORTURE	TVPRA	THE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT (2008)
FGC	FEMALE GENITAL CUTTING	UNHCR	UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

INTRODUCTION

Each year, thousands of children¹ flee harm from their country of origin, seeking protection from persecution in the United States. A crucial threshold step for these children is determining their baseline eligibility for asylum based on the individual facts of their case.

This practice advisory is geared towards advocates conducting intakes of young people. It provides an overview to the legal standards for the purposes of screening for asylum eligibility.

Please note that this advisory is provided for general purposes only. Information presented does not constitute legal advice. Although CGRS strives to provide up-to-date information to the greatest extent possible, attorneys should conduct their own independent research and analysis to ensure current, situation- and jurisdiction-specific legal assessments. Individuals without an attorney should consult with one.

¹ This advisory is primarily intended to provide guidance to advocates screening “unaccompanied minors” (hereinafter “child” or “children”) defined in the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) as an individual who is (i) who is under the age of 18; (ii) has no lawful immigration status in the United States; and (iii) does not have a parent or legal guardian in the United States or one who is available to provide care and physical custody. 6 U.S.C. §279(g).

OVERVIEW TO ASYLUM AND RELEVANT GUIDANCE IN SCREENING CHILDREN

Asylum is a form of lawful status available to protect individuals already in the United States or arriving at a U.S. border who have been or fear they will be persecuted in their countries of origin. An asylum seeker must meet the definition of a refugee. Under the Immigration and Naturalization Act (INA), a refugee is a person who is unable or unwilling to return their home country and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted on account of their race, nationality, religion, political opinion, or membership in particular social group.²

The same definition for asylum applies to all individuals; however, asylum claims of young people must be evaluated in a child-sensitive manner, which are described in the box below.³

Child-Sensitive Analysis in Asylum Claims

When evaluating a child's asylum claim, an adjudicator must:

- Take into account a child's **age, maturity, and development**;
- Recognize that children are **particularly vulnerable** to certain types of harm;
- Apply **relaxed requirements** with regard to the elements of asylum; and
- Grant children **a liberal benefit of the doubt** when assessing whether the evidence establishes asylum eligibility.⁴

Asylum Officers are trained in child-sensitive interviewing and are generally prepared to⁵:

- Allow a trusted adult to accompany the child at an asylum interview;

² INA § 101(a); 8 U.S.C. 1101(a).

³ See generally USCIS, *RAIO Children's Claims*, (Dec. 20, 2019) ("RAIO Children's Claims"); see also UNHCR, *Guidelines on Intl Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, U.N. Doc. HCR/GIP/09/08 (Dec. 22, 2009) ("UNHCR 2009 Guidelines"); see also *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006). This is the case even if the applicant is no longer a child at the time of applying for asylum; the age of the applicant at the time the persecution occurred is what matters.

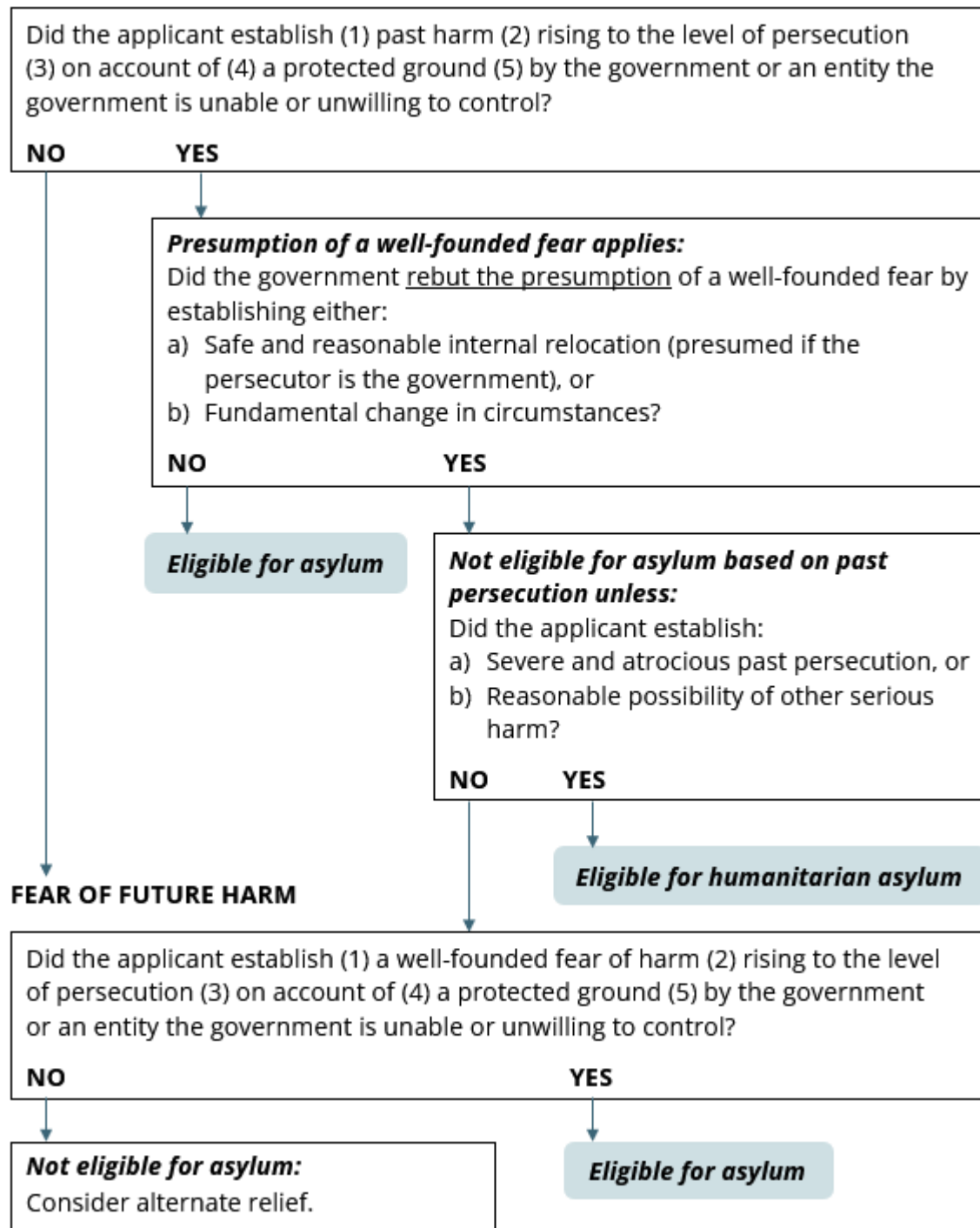
⁴ INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A).

⁵ See RAIO Children's Claims, pp. 27-33.

- Interview a child that is less forthcoming than an adult and may hesitate to talk about past experiences in order to not relive their trauma;
- Tailor questions to the child's age, stage of language development, background, and level of sophistication;
- Make the interview as non-adversarial as possible, setting a tone to allow the child to speak comfortably and promote a full discussion of their past experiences;
- Make every effort to use an interpreter that the child can fully understand and feels comfortable discussing sensitive information with the interpreter present;
- Build rapport with the child and make them feel safe and supported by building in time at the beginning and end of the interview to discuss neutral topics;
- Check for understanding—being certain that the child understands the process and the questions—through non-verbal cues, attuning to their body language and emphasizing that a child can seek clarification or say that they don't know the answer to a question;
- Reassure the child at any point during the interview if the child feels uncomfortable or embarrassed; and
- Offer breaks or a brief recess when necessary.

The chart below illustrates the requirements for asylum eligibility.

PAST HARM



This practice advisory will discuss each element necessary to establish eligibility for asylum:

Persecutory Harm
Likelihood of Harm
Nexus
Protected Ground
Failure of State Protection
No Bars to Eligibility
Discretion

A. Persecutory Harm

An important goal of the asylum intake is to assess whether the harm the child experienced or feared is severe enough to constitute “persecution”—the infliction of “harm or suffering . . . in a way regarded as offensive,”⁶ more than “mere harassment.”⁷ Persecution is not limited to physical violence and may include psychological harm, emotional harm, threats (even without physical harm), and severe economic deprivation. Even if isolated incidents of minor harm would not constitute persecution on their own, they may rise to that level when considered cumulatively. The threshold for persecution is lower for children—this is because children, dependent on others for their care, are prone to be more severely impacted by trauma than adults.⁸

Persecution is determined on a case-by-case basis, but the chart below includes a non-exhaustive list of types of abuse that may rise to the level of persecution in children’s asylum claims.

⁶ See, e.g., *Pitcherskaia v. INS*, 118 F.3d 641, 647 (9th Cir. 1997).

⁷ See, e.g., *Stanojkova v. Holder*, 645 F.3d 943, 947–48 (7th Cir. 2011); *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir. 1995).

⁸ See RAIO Children’s Claims, pp. 44-45; UNHCR 2009 Guidelines, ¶10.

Common Forms of Persecution in Children's Asylum Claims

- Physical abuse (e.g., beatings, female genital cutting (FGC), etc.)
- Rape and other sexual assault
- Serious psychological harm
- Sex and labor trafficking
- Serious human rights violations (e.g., forced recruitment for direct participation in hostilities or punishment for avoiding or deserting the armed forces)
- Threats of death or violence (even without actual physical harm)
- Severe economic deprivation
- Deprivation of education or other fundamental rights (e.g., slavery)
- Kidnapping
- Abandonment or neglect

Persecution against Family Members

In addition to documenting all forms of direct harm, advocates are encouraged to consider any abuse or violence that the child witnessed against family members, which may have psychologically impacted the child and rise to the level of persecution.⁹ This principle may also apply even when the young person was not actually present for the violence, but subsequently learned about it. The following examples illustrate harm to family members that may constitute persecution to the child.

Harm against Family Members: Selma's Case

In Guatemala, Selma's stepfather regularly beat her mother in front of her. He never beat Selma, but she was terrified of him and had frequent nightmares about him harming or killing her mother.

⁹ See *Mendoza-Pablo v. Holder*, 667 F.3d 1308, 1313 (9th Cir. 2012) (holding an infant can be the victim of persecution even if he has no present recollection of the events that constituted the persecution); *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1046 (9th Cir. 2007) (holding injuries to parents must be considered in asylum cases where the persecutory events occurred when petitioner was a child); UNHCR 2009 Guidelines, ¶ 17.

The lasting psychological harm Selma suffered from witnessing these acts of violence may rise to the level of persecution.

Harm to Caretakers: Roberto's Case¹⁰

In Honduras, when Roberto's mother was pregnant with him, gang members assaulted her and killed Roberto's father. Roberto's mother fled the town and moved elsewhere in the country, where Roberto was born with a physical disability due to the injuries his mother sustained. As a single Indigenous woman in Honduras, Roberto's mother had limited resources to care for an infant with special needs. Without treatment for his disability, his health significantly deteriorated.

As in Roberto's case, harm to a child's caretaker (which may begin before a child is born) may compromise their ability to care and provide for them, such that the child suffers serious health consequences that are directly attributable to the persecution of their family member. When considering all the harms cumulatively, this may amount to persecution against the child.

To assess if the young person suffered past harm in their home country, consider exploring the questions below.

Practice Pointer: Screening Tips for Past Harm

As a starting point to determine if a child suffered past persecution, an advocate may want to ask a child the following questions:

- Why did you leave your country?
- Has anyone ever hurt you? Your family members? If yes, who?
- Has anyone ever touched you in a way you did not like? If yes, who?
- Has anyone ever threatened you? Your family members? If yes, who?
- Has anyone ever forced you to do something you did not want to do? If yes, who?
- Have you seen someone hurting or threatening your family members? If yes, who?
- Do you have any scars? How did you get them? How old were you when you got them? Where are they on your body?

¹⁰ See *Mendoza-Pablo*, 667 F.3d at 1311.

- What was your relationship like with the people you lived with? Your mother? Your father? Other relatives? Others living in the household?
- Did you go to school?
- Did you have to work?

Note: the meaning of a word or phrase may have different interpretations and it is important to clarify how the young person is understanding the term. For example, “sexual abuse” may be understood differently across different ages, languages, and cultures. Ask the child to explain what a word means to them.

B. Well-Founded Fear of Future Persecution

Along with asking questions relating to harm a child has already experienced (*see* Section I.A., above), it is also important to separately ask about any future abuse or mistreatment they fear will occur if returned to their country of origin. Even if a child has not experienced past harm, they may still be eligible for asylum.

There are two components—subjective and objective—involved in establishing that a fear of future persecution is well-founded.¹¹ A subjective fear requires only that a young person genuinely feels afraid and can express that that fear. An objective fear is a reasonable possibility¹² of future persecution if a child is returned to their home country. Courts have interpreted this standard as a 10% chance of suffering harm.¹³ Due to a child’s age and maturity level, it may be more difficult to assess the balance between subjective and objective circumstances—very young children may lack the maturity to form a well-founded fear. On the other hand, a young person may be able to express a fear that is not objectively reasonable. The guidance below helps advocates navigate these challenges during an intake.

The table below contains a non-exhaustive list of questions advocates may consider asking a child to explore a child’s subjective fear of future harm.

¹¹ *Acosta*, 19 I&N Dec. at 224; *Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987); *see also* RAIO Children’s Claims, at p.50.

¹² *See INS. v. Cardoza-Fonesca*, 480 U.S. 421 (1987).

¹³ *See Al-Harbi v. INS*, 242 F.3d 882, 888 (9th Cir. 2001).

Practice Pointer: Screening Questions for Subjective Fear of Persecution

- Are you scared to go back to your home country? If yes, what are you scared of?
- Who are you scared of in your home country?
- Do you think anything bad will happen to you if you go back to your country? If yes, what do you think will happen? What makes you think that will happen?

The case example below illustrates how asking questions related to fear of future harm may lead an advocate to conclude that the child is sincerely afraid to return to their home country and there is at least a 10% chance that the child would be harmed upon return.

Future Fear of Harm: Francois's Case

During an asylum intake, ten-year-old Francois tells the advocate he does not want to go back to the Democratic Republic of Congo (DRC) because he is very scared that a paramilitary group will forcibly recruit him as a child soldier. He says no one has ever hurt him in the DRC, but he knows many boys in his village who have been kidnapped and recruited by such groups.

In this example, although Francois has not suffered past harm, if he is sent back to the DRC, he fears future recruitment as a child soldier based on the experiences of similarly situated boys in his village.

As mentioned above, some children may be too young to grasp the danger of their situation or articulate their fears. In such cases, an advocate may need to rely on objective methods to establish the reasonable possibility of future harm, such as seeking information from family members or adult caregivers or doing research on the conditions of similarly situated children in the child's country of origin.¹⁴ The considerations in the chart below may assist in objectively evaluating the reasonable likelihood that a young person may face harm if returned to their country.

¹⁴ See *Abay v. Ashcroft*, 368 F.3d 634 (6th Cir. 2004).

Practice Pointer: Exploring Likelihood of Future Harm

Through speaking with the child and conducting additional outreach or research, if necessary, an advocate may evaluate the following:

- Have others, with similar characteristics, been threatened or harmed? (e.g., family members, community members, friends, classmates, victims reported in the media, etc.)
- Have there been any changes in the child's personal circumstances? (e.g., coming out as LGBTQI, religious conversion, interfaith relationship, etc.)
- Have there been any changes in country conditions? (e.g., change in regime, passage of a persecutory law, a significant escalation of violence against a particular group, etc.)

The example below illustrates a situation where an advocate may need to rely on objective evidence alone to determine the possibility of future harm.

Objective Evidence of Future Harm: Anabel's Case

Anabel, a five-year-old girl from Mexico fled to the United States with her older sister, Evelyn, who is fifteen years old. When the advocate screening Anabel asks if she is scared to return to Mexico, she looks down and says she is not scared to go back. When asked if she fears anyone in Mexico, Anabel shrugs and says no one.

The advocate then screens Evelyn who expresses fear of being severely physically abused by her father. Evelyn notes that her father once pierced Anabel with a sharp object and she had to go to the hospital and get stitches on her forehead. Evelyn presents the advocate with Anabel's hospital report corroborating the injuries.

Since Anabel is not able to articulate why she is scared to go back to Mexico, the advocate screening Anabel may rely on Evelyn's account as well as the hospital report to ascertain the reasonable possibility that Anabel's father will harm her in the future.

C. “On Account of” a Protected Ground

1. Nexus

A critical aspect of an asylum screening is assessing whether the child was harmed “on account of” (“**nexus**”) one of the five protected grounds—race, nationality, religion, political opinion, or membership in a particular social group (PSG). In other words, is the reason a child suffered or fears persecution based on, at least, one of the five enumerated traits? A persecutor can have multiple motivations for their conduct as long as a protected characteristic is at least “**one central reason**” for the harm.¹⁵

Based on the unique facts of the case, there may be nexus to more than one protected ground. The protected traits may be “imputed” to the child; meaning that asylum law protects individuals who are targeted for their actual characteristics as well as those the persecutor believes they possess—regardless of whether they actually do.¹⁶

It is important to note that the inherent vulnerability of a young person often places them at the mercy of adults who may inflict harm, sometimes to a degree of severity that it may constitute persecution, without a punitive intent to hurt the child. A persecutor may target a child on account of a protected trait with the belief the abuser is actually helping them (e.g., “conversion therapy” if a child has expressed that they are gay).

Practice Pointer: Establishing the “Why”

It may be helpful to consider direct and circumstantial evidentiary clues to understand “why” the child was harmed or fears harm.¹⁷ An advocate may glean nexus through:

- Direct evidence:
 - Statements the persecutor made to the individual (e.g., the persecutor’s use of derogatory comments or slurs referring to a

¹⁵ See *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007).

¹⁶ See, e.g., *Matter of N-M-*, 25 I&N Dec. 526, 526 (BIA 2011).

¹⁷ See *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (2002); see also USCIS, [Refugee, Asylum and International Operations \(RAIO\) Directorate: Nexus-Particular Social Group Training Module](#) (July 20, 2021).

person's race, ethnicity, or skin color; patriarchal statements demeaning women or girls; references to a person's religious beliefs or lack thereof, etc.)

- Laws prohibiting, for example, the practice of certain religions or punishing "homosexual activity"
- Circumstantial evidence:
 - Timing of the persecution (e.g., after refusing to wear a hijab, after refusing to join a gang, when speaking an Indigenous language, etc.)
 - Social context where the harm is inflicted (e.g., at a protest, at home in a patriarchal society in which a father asserts dominance, when refusing to comply with gender- or race-specific laws, at school where there are policies against Indigenous enrollment, when child abuse is clearly disproportionate or unrelated to child-rearing discipline, etc.)
- Depending on the age and maturity level of the child, by asking them:
 - Why do you think these things happened to you?
 - What would the person who harmed you say when harming you?
 - Why do you think that person hurt you, rather than someone else?
 - Do you know anyone else in your community who was harmed in a similar way? Why do you think they were harmed?

2. Protected Grounds

The following subsections view each protected ground from the perspective of *why* the child was or will be harmed and offer case examples to assist an advocate in making these connections.

a. Race

In the asylum context, harm based on race may include all types of ethnicities or linguistic groups—including Indigenous communities and tribal or clan memberships.¹⁸ Some examples of race-based children's claims include policies separating Indigenous children from their parents or denying children of a

¹⁸ See UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, ¶ 68, U.N. Doc. HCR/1P/4/Eng/Rev. 4 (Feb. 2019) ("UNHCR Handbook")

particular race, ethnicity, or Indigenous background the right to a nationality, registration at birth, education, or health care.¹⁹ Children who identify as a particular race or ethnicity may also be targeted for a specific type of harm, including, but not limited to, rape, human trafficking, or gang recruitment.

Practice Pointer: Screening Tips for the Race Ground

When asking about race, ethnicity, or Indigenous identity, advocates may consider asking:

- What language(s) do(es) your family speak? Your community?
- Do you or your family observe specific customs or traditions?

In addition, consider asking questions relevant to the perpetrator's harm:

- Has anyone ever negatively referenced your physical features? (e.g., skin color, facial features, etc.) The clothes you wear? The types of food you eat?
- Has anyone called you derogatory words or slurs? (the advocate may have to explain the meaning of a derogatory word or slur with examples)
- Has anyone hurt you because:
 - You speak a certain language?
 - You look a certain way?
 - Of your cultural traditions?

Persecution on Account of Race: Rigoberto's Case

Rigoberto is a sixteen year old K'iche' boy from Guatemala who speaks K'iche' as his primary language. Rigoberto was threatened and harmed by persons in his neighborhood on three separate occasions because he did not speak Spanish. Each time they harassed, threatened, or beat him, the gang members used ethnic slurs and mocked him for speaking K'iche' instead of Spanish.

An advocate screening Rigoberto may conclude that he was persecuted on account of his race— K'iche'. The advocate may note both direct (use of ethnic slurs) and circumstantial evidence (timing of harm—when he spoke K'iche' instead of Spanish).

¹⁹ UNHCR 2009 Guidelines, ¶ 41.

b. Nationality

The protected ground of nationality goes beyond one's citizenship and takes into account those who were harmed because they are stateless, living in a third country, or are perceived to have a particular nationality (imputed nationality). The example below illustrates how nationality may be the reason a child is harmed.

Persecution on Account of Nationality: Sandra's Case

Sandra, a 13-year-old girl from Mexico, lived in the United States with her family for several years when she was younger. When Sandra returned to Mexico, she was targeted for extortion by gang members who called her a "rich American" and an "American princess" and threatened to kill her if she refused to pay them.

Based on the statements her persecutors made ("rich American"; "American princess") and their timing (when demanding an extortion), one central reason for why gangs threatened Sandra may be due to their perception that she is a U.S. citizen. The advocate screening Sandra may want to ask additional questions to link the harm to her imputed nationality.

c. Religion

For asylum claims, religion is viewed as a broader concept than traditional or organized religions. It can include:

- having no religion (e.g., atheism, agnosticism);
- practicing the "wrong" religion;
- being too religious or not religious enough;
- converting to a different religion;
- challenging gender roles or practices viewed as religious;²⁰ or
- having a child's parents' religious beliefs imputed to them.

²⁰ See UNHCR, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1(A)(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, ¶¶ 4–5, 41 (HCR/GIP/04/06) (Apr. 28, 2004) ("UNHCR Guidelines on Religion-Based Claims"); UNHCR Handbook, pp. 123–32; see also *Rizal v. Gonzales*, 442 F.3d 84, 90–94 (2d Cir. 2006); *Jiang v. Gonzales*, 485 F.3d 992, 995 (7th Cir. 2007); *Mezvrishvili v. Att'y Gen*, 467 F.3d 1292, 1295–97 (11th Cir. 2006).

Practice Pointer: Screening Tips for the Religion Ground

The following questions may assist an advocate screen for religion-based harm.

An advocate screening a child may ask:

- Do you have any religious beliefs or practices?
- Are your religious beliefs different than:
 - The beliefs of your family members?
 - Those of your community?
 - The official religion of the government?

Because of your religious beliefs, has anyone:

- Called you names?
- Threatened you?
- Hurt you?
- Punished you?

Has anyone harmed you because:

- You do not believe in a religion?
- You believe in a religion that is different than theirs?
- You practice your religion in a way that is different than the way they practice it?
- You refused to do something because of your religious beliefs?
- The person(s) who harmed you thought you practiced a religion even though you did not?
- The person(s) who harmed you thought you held certain beliefs even though you did not?

The example below demonstrates that by asking specific questions during a screening, an advocate may determine harm based on a child's particular religious beliefs.

Persecution on Account of Religion: Layla's Case

Layla, a 17-year-old girl from Morocco, was physically and emotionally harmed by her father, an orthodox Muslim. Layla has more liberal beliefs than her father, and one day, she left the house without wearing a hijab to cover her hair. Upon returning home, her father called her a "bad Muslim", told her she was "going to hell", and cut off her long hair so that she was never again tempted to leave the house without wearing a hijab.

The advocate screening Layla may note that her father harmed her (emotional abuse, cut off her hair) based on her religion, specifically, her liberal beliefs ("bad Muslim") and for challenging a religion-based gender practice (refusing to wear a hijab).

Note: Layla's refusal to wear a hijab may also be an expression of her political opinion (discussed below).

d. Political Opinion

When screening a child, an advocate is encouraged to think creatively about whether the harm is based on a political opinion. These claims involve more than just electoral politics, a formal political ideology, or party membership.²¹ A child's expression of their political beliefs may vary by their age, education and maturity level, and their ability to articulate their views. A young person may be persecuted for communicating their opinion not only through their words, but also through their actions. The chart below provides some examples of how a child may demonstrate a political opinion.

Practice Pointer: Potential Political Opinions Expressed by Children

- Participating in movements that advocate for national liberation, anti-violence, climate action, Indigenous rights, women's rights, LGBTQI rights, land ownership rights, immigrants' rights, etc.
- Attending school, as a girl, in a country or society that discourages girls' education
- Holding a feminist view, or a belief in the rights of women and girls

²¹ UNHCR Handbook, ¶ 32; see also *Rodríguez-Tornes v. Garland*, 993 F.3d 743 (9th Cir. 2021).

- Refusing to conform to a religious practice (FGC, forced marriage, etc.)
- Standing up to parents or adult caregivers against all forms of child abuse
- Standing up to family members who hold patriarchal views (e.g., women are less valued than men)
- Standing up to family members who believe that children are inferior to adults
- Refusing to join a gang or reporting gang violence (the persecutor may interpret this as a pro-government opinion)
- Refusing to undergo a coercive population control measure²² (e.g., abortion)

The example below illustrates how a young person may assert a political opinion and how an advocate may conclude that Gerardo's persecution was based on him expressing his belief.

Persecution on Account of Political Opinion: Gerardo's Case

Gerardo is a 17-year-old native of El Salvador. Several men from the National Liberation Front for Farabundo Marti (FMLN) showed up to his house and demanded that he join a violent demonstration and burn down cars and homes. Gerardo refused to participate, stating that he was opposed to violence as a means to resolve political problems; FMLN members told him to "watch out". A few days later they brutally attacked him on the street and threatened him that "next time it will be much worse." Soon after, Gerardo fled to the United States.

Gerardo expressed an anti-violence political opinion to the FMLN. The timing of the violent attack and threats—after his refusal to participate in a demonstration that involved destruction of property—indicate that the FMLN harmed him based on his political beliefs.

²² INA § 101(a)(42)(B). Undergoing forced coercive reproductive practices is a *per se* political opinion.

e. Membership in a PSG

Children's asylum claims often involve harm based upon social group membership. Most jurisdictions adopt the Board of Immigration Appeals' (BIA) definition of a PSG,²³ which requires the following three elements:²⁴

Immutability

The group is defined by characteristics that cannot be changed or that a person should not be required to change because they are fundamental to one's identity or conscience.

Particularity

The group must be defined by clear boundaries to determine who falls within the group.

Social Distinction

The individual's society must perceive the group as distinct.

Practice Pointer: Understanding Each Social Group Requirement

Immutable or Fundamental: A non-exhaustive list of immutable or fundamental characteristics is included below.

Traits that cannot be changed may include:

- race,
- ethnicity,
- family ties,
- nationality,
- past experience, or
- disability.

Fundamental characteristics that a person should not be required to change include:

- gender identity,
- religion, or
- deeply held beliefs.

Some traits, such as gender and sexual orientation, may be both immutable and fundamental.

²³ *W.G.A. v. Sessions*, 900 F.3d 957 (7th Cir. 2018).

²⁴ *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237–43; *Matter of W-G-R-*, 26 I&N Dec. 208, 210–18 (BIA 2014).

Particularity: The following non-exhaustive list illustrates evidence to support that a group has clear boundaries for who falls within the group.

- Commonly accepted definitions of terms, including laws or policies
- Social, cultural, and legal constructs of the group (e.g., patriarchal norms viewing females as subordinate to males, societal standards viewing children as inferior to adults)
- Verifiable or identifiable characteristics (e.g., gender, marital status, disability)

Social distinction: The important question for social distinction is whether the individual's *society* views the group as one.²⁵ The BIA has clarified that this does not mean they must be visibly distinguishable from others in society.²⁶ Indicators that the society in question perceives the group to be distinct may include:

- Governmental policies that are age-driven or specific to childhood or minor status
- A country's laws protecting disabled persons
- A history of discrimination against a specific category of persons, such those in the LGBTQI community
- The use of words or phrases in the local vernacular describing the group, including derogatory terms or slurs

Common PSG Categories in Children's Asylum Claims

Children's claims involving harm based on social group membership often are defined by the following characteristics:

- Family relationship: e.g., blood feuds, domestic violence towards a parent
- Gender: e.g., forced marriage, sexual abuse, FGC, trafficking
- Ethnicity: PSG membership may overlap with the race ground
- Disability

²⁵ *Matter of W-G-R-*, 26 I&N Dec. at 214.

²⁶ *Matter of M-E-V-G-*, 26 I&N Dec. at 228.

- Childhood status: e.g., familial abuse based on being a child, street children, child soldiers, etc.
- Sexual orientation or gender identity: actual or imputed status (even if a child has not articulated a sexual orientation or gender identity to others, they may be abused for not conforming to traditional gender norms)

At the screening stage, it is appropriate to broadly consider whether a child was harmed or may be harmed because of their inclusion in an actual or imputed PSG. The examples below may assist in recognizing cases where the persecution is tied to membership in a social group.

Persecution on Account of Family-based PSG: Tomas's Case

Tomas, a 9-year-old boy, fears returning to Honduras. His mother told him that his parents were attacked by gang members a few weeks after his paternal grandparents refused to comply with a gang's extortion demands. Around the same time, Tomas' paternal uncle was also attacked.

Tomas may have a potential asylum claim based on his fear of persecution connected to a family-based PSG. The timing of when the gang attacked his parents and uncle—after his grandparents refused to give into the gang member's demands—indicates that they were targeting his family.

Persecution on Account of Sexual Orientation-based PSG: Ife's Case

Ife, a 15-year-old girl from Nigeria, identifies as a lesbian. In Nigeria, she was threatened by her girlfriend's family, bullied at school, held at her church for several days for "conversion therapy", and raped and detained by police following a gay rights protest.

When screening Ife, an advocate may conclude that she was targeted for harm by her girlfriend's family (for being in an intimate relationship with their daughter), her church ("conversion therapy"), and the police because of her sexual orientation (timing, after a gay rights protest). Based on these facts, Ife appears eligible for asylum. At the representation stage, a practitioner may want to gather additional facts to determine why she was bullied at school.

Note: The harm Ife experienced after her participation in a gay rights protest may also be based on a political opinion (expressed as: members of the LGBTQI community are deserving of equal rights).

D. Failure of State Protection

To assess if the government can adequately protect a person from harm depends on whether the persecutor is a state actor (e.g., police, government officials) or a private individual (e.g., family or community members, intimate partners, gangs, etc.). In some cases, there may be more than one persecutor. The individual must establish that the government is either unable *or* unwilling to protect them from each persecutor's harm.²⁷ Where the abuse is perpetrated by a state actor, it is presumed that the government cannot protect them.

Practice Pointer: Screening Tips for Failure of State Protection

Depending on the age and maturity level of the child, an advocate may ask:

- Did you ever ask the police or courts in your country to help you?
- If so, what happened?
- If not, do you think they would have protected you?

A child may not have personal knowledge of whether the government can adequately protect them, therefore, CGRS recommends that advocates conduct independent research on objective evidence of government laws and enforcement. At the initial screening stage, it is sufficient to note relevant evidence of the government's inability or unwillingness to protect the child from harm without it affecting the overall assessment of the child's eligibility for asylum. Inability and unwillingness must be evaluated separately. The table below provides some questions an advocate may consider to gauge these two considerations.

²⁷ *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 952-53 (4th Cir. 2015); see *Doe v. Holder*, 736 F.3d 871, 879 (9th Cir. 2013).

Practice Pointer: Screening Tips for Failure of State Protection

Through additional fact-finding, an advocate may contemplate the underlying questions that go to a government's inability and unwillingness to protect an individual from harm, including:

- Do laws exist that specifically address the persecution a child has suffered or fears (e.g., laws that protect children from abuse, laws that guarantee a right to education, etc.)? If so, do they exist in name only, but are not adequately enforced?
- Are there any gaps in infrastructure to make these laws effective? For example: Are there sufficient shelters for children? Are they accessible to those in remote areas? Are agencies dedicated to protecting persons from harm under-resourced or understaffed?
- Is there documented evidence that the state systematically discriminates against certain groups of persons that request government protection (e.g., children, women and girls, disabled persons, Indigenous groups, members of the LGBTQI community, etc.)?

The fact that a child did not seek protection from harm in their country does not necessarily undermine their case, since reporting to the police is **not required**.²⁸ A young person may be unable to report harm based on their age, developmental, or other limitations (e.g., accessibility of a police station, dependency on abuser to report, etc.). Additionally, it may be dangerous or futile to do so.²⁹ For example, the child fears retaliation or retribution from their abuser for seeking protection, or the police are corrupt or willing to collude with the persecutor.³⁰

E. Fundamental Change in Circumstances & Internal Relocation

If an individual has suffered past persecution based on a protected characteristic, then they are presumed to have a “well-founded fear” of future persecution (a

²⁸ *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1073-75 (9th Cir. 2017) (holding that the petitioner was not required to report his abuse because the evidence—including a sworn affidavit, credible testimony, and country conditions—showed that reporting would have been “futile and dangerous” due to widespread discrimination and violence against LGBTQI individuals by the police); *Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000) (holding that the applicant satisfied the unable or unwilling requirement even though she had not requested protection from the government).

²⁹ See RAIO Children's Claims, pp. 31-32.

³⁰ See RAIO Children's Claims, p. 49; 2009 UNHCR Guidelines, ¶39.

“rebuttable presumption”), unless (1) there has been a change in circumstances within the individual’s country of origin such that they no longer have a fear of harm or (2) they can safely and reasonably move to another part of the country to avoid harm.³¹ Even if a person does not have a presumption of future harm, but fears persecution for independent reasons, the applicability of changed conditions and internal relocation may diminish their likelihood of persecution below a 1 in 10 chance. Each of these considerations is discussed below.

a. Changed Circumstances

In certain situations, an individual may no longer fear future harm because of a change in personal circumstances or country conditions. The change must affect the person’s risk of harm on an *individualized* basis.³² This can include a regime change in the country, no contact with or the death of the abuser, the child’s age,³³ as well as other reasons.

At this preliminary stage, an advocate will want to flag whether there are specific reasons (either personal or in the country of origin) for why a child no longer fears being harmed if they were to return to their country, but it should not affect an overall recommendation for asylum eligibility. The child’s legal representative may make arguments explaining why the government has not met their burden to show changed circumstances or that the young person may be eligible for humanitarian asylum, discussed in Section I.F., below. The case example below illustrates that although there has been a change in a child’s personal situation, when coupled with other factors, the child may be humanitarian asylum eligible.

Changed Circumstances: Ernesto’s Case

As a small child in Guatemala, Ernesto’s grandmother abused him severely. As a result, he suffers from traumatic brain injury, has limited memory and recall, and significant post-traumatic stress disorder (PTSD). Ernesto’s grandmother died shortly after he fled to the United States. If Ernesto is sent back to Guatemala, there is a significant likelihood that his brain injury and PTSD will be exacerbated, and he will not have access to

³¹ See 8 C.F.R. §§ 208.13(b)(1).

³² *Matter of N-M-A-*, 22 I&N Dec. 312, 318 (BIA 1998).

³³ See *Hui v. Holder*, 769 F.3d 984, 986 (8th Cir. 2014).

necessary medical and mental health treatment. He also fears that gang members who target adolescent boys will attempt to recruit him since he is now a teenager.

An advocate screening Ernesto may note that although his personal circumstances have changed due to the death of his grandmother. However, as discussed below, in Section I.F., the significant injuries he sustained from the abuse, as well as the new, serious harm he fears from local gangs may make him eligible for humanitarian asylum.

b. Internal Relocation

The internal relocation inquiry asks: is it safe *and* reasonable for the individual to move to another part of their country of origin to escape harm?³⁴ It is generally unreasonable to expect a child, given their unique need for adult care and protection, to move elsewhere in the country.³⁵

The table below provides prompts to consider during a screening that may assist in evaluating the safety and reasonableness of internal relocation, especially for young persons. However, during a preliminary intake, a child's actual relocation or potential ability to do so is not dispositive of asylum eligibility, therefore, if the child otherwise satisfies the necessary thresholds (past or well-founded fear of future harm and nexus to a protected ground (discussed above), the child may still have a colorable claim for asylum.

³⁴ Internal relocation can come up in two ways: to overcome a presumption of a well-founded fear of future persecution (discussed above, in Section I.A.2.) or when the individual has an independent well-founded fear of future harm. In other words, they must show that a safe and reasonable option to relocate within the country of origin does not diminish their risk of persecution below a 1 in 10 chance.

³⁵ See UNHCR 2009 Guidelines, ¶¶ 55-56.

Practice Pointer: Screening Tips for Safe and Reasonable Internal Relocation	
Safety Factors	Reasonableness Factors
<ul style="list-style-type: none"> • Has the child or family member attempted to relocate but the persecutor found them? • If the abuser is a gang or other organized crime group, do they have networks throughout the country? • Are public records easily accessible (e.g., school registration records), allowing a persecutor to locate the child? • Does the geographic size of the country limit where a child can live safely? • Does getting to a safer location require the child to travel through an area of unrest or danger? 	<ul style="list-style-type: none"> • Is the government or a state actor the persecutor? If so, relocation is presumed to be unreasonable.³⁶ • Are there age, family ties, economic, mental health, medical conditions, language, race or ethnicity, or gender considerations that would make relocation unreasonable?

While screening a child, if there is a potential change in circumstances or that they can safely and reasonably relocate within their country of origin; the young person may still be eligible for humanitarian asylum, discussed below.

F. Humanitarian Asylum

There may be situations where an individual suffered harm on account of at least one of the five protected grounds, but the presumption of future persecution has been rebutted (by showing of changed country conditions and/or actual or possible internal relocation). Section E.1. provides some examples of situations when a person no longer fears harm (e.g., when a persecutor dies, the young person is no longer a minor, a change in the country's regime, etc.). In such circumstances, the

³⁶ *Melkonian v. Ashcroft*, 320 F.3d 1061, 1070 (9th Cir. 2003); *see also Singh v. Whitaker*, 914 F.3d 654, 661 (9th Cir. 2019) (holding that the BIA failed to apply the "nationwide presumption" to the petitioner's well-founded fear by not considering persecution he might face from authorities outside of Punjab based on future political activity).

individual can still be eligible for “humanitarian asylum” if they demonstrate either that the past persecution was “severe and atrocious”³⁷; or they would face “other serious harm”³⁸ if sent back to their country of origin.³⁹ The chart below provides some examples of serious harm to aid the advocate in assessing what may be applicable to the child’s claim. The case study illustrates how an advocate can recognize potential eligibility for humanitarian asylum.

Examples of Other Serious Harm	
<ul style="list-style-type: none"> • Psychological impact on a child if returned to country of origin • Deprivation of education or other fundamental rights • Neglect • Civil strife, unrest, or war in country of origin 	<ul style="list-style-type: none"> • Lack of access to medical or mental health treatment • Harm by gangs or other organized crime • Homelessness • Violence based on gender, sexual orientation, or Indigenous heritage

Humanitarian Asylum: Ernesto’s Case
<p><i>As a small child in Guatemala, Ernesto’s grandmother abused him severely. As a result, he suffers from traumatic brain injury, has limited memory and recall, and significant post-traumatic stress disorder. Ernesto’s grandmother died shortly after he fled to the United States. If Ernesto is sent back to Guatemala, there is a significant likelihood that his brain injury and PTSD will be exacerbated, and he will not have access to necessary medical and mental health treatment. He also fears that gang members who target adolescent boys will attempt to recruit him since he is now a teenager.</i></p>

³⁷ In a leading case, the BIA was significantly influenced by the long-lasting impact of past persecution as well as the young age at which the asylum seeker was persecuted.

³⁸ While the “other serious harm” does not need to be on account of one of the five protected grounds, the gravity of harm must rise to the level of persecution. See *Matter of L-S-*, 25 I&N Dec. 705, 714 (BIA 2012).

³⁹ 8 C.F.R. § 208.13(b)(1)(iii).

An advocate screening Ernesto may note that although his personal circumstances have changed due to the death of his grandmother, the significant injuries he sustained from the abuse, as well as the new, serious harm he fears from local gangs may make him eligible for humanitarian asylum.

For screening purposes, assuming the child meets all the other elements required for a viable asylum claim, the advocate may wish to flag potential eligibility for humanitarian asylum.

G. Bars to Asylum

There are certain circumstances that “bar” an individual from being eligible for asylum.⁴⁰ When conducting a screening, advocates should generally flag any criminal activity, lawful permanent residence in a country other than the country of origin, and any indication of the child harming others, engaging in terrorist activity (e.g., recruitment as a child soldier), or posing a threat to national security. For screening purposes, it is sufficient to note the applicability of these factors—the young person’s representative may make arguments that a bar does not apply or that they meet an exception. Furthermore, the young person may still be eligible for withholding of removal or CAT protection even if they are barred from asylum. For additional guidance on these forms of relief, advocates are encouraged to see Section I.I, below, referencing CGRS’s practice advisories on both types of protection. Additionally, Appendix II contains a chart comparing asylum, withholding of removal, and CAT protection.

For reference, bars that apply to children’s asylum cases are outlined below.

Bars to Asylum in Children’s Claims⁴¹

- 1. Persecution of Others:** If the individual has ever ordered, incited, assisted, or otherwise participated in the persecution of someone else on account one of the five protected grounds.

⁴⁰ The TVPRA exempts “unaccompanied children” from the one-year and safe-third country bars. See 6 U.S.C. § 279(g) (2015). For a deeper discussion on bars applicable to children’s claims, See CGRS’s [Children’s Asylum Manual](#) (2021).

⁴¹ 8 U.S.C. §§ 1158(a)(2), (b)(2)(A).

- 2. Conviction of a Particularly Serious Crime:** If an individual has been convicted of an aggravated felony as defined by the INA.⁴²
- 3. Commission of a Serious Nonpolitical Crime:** If there is a reason to believe that an individual has committed a serious non-political crime outside the United States.
- 4. Previous Denial of Asylum:** If an individual has been previously denied asylum by an Immigration Judge or the Board of Immigration Appeals.⁴³
- 5. Firm Resettlement in Another Country:** If an individual has lived in another country prior to living in the United States and received an offer of permanent residence.
- 6. Support of Terrorism:**⁴⁴ If an individual has supported or been involved in a group that has participated in violent activity against the laws of the country or the United States.
- 7. Danger to National Security:** If an individual is a danger to the national security of the United States.
- 8. Participation in Nazi Persecution or Genocide:** If an individual participated in persecution affiliated with the former German Nazi government or in genocide, torture, or extrajudicial killings outside the United States.

H. Discretion

Asylum is a “discretionary” status, meaning an individual can be denied asylum, even if they are otherwise eligible, if significant negative factors (e.g., criminal history, lack of candor or credibility, and significant violation of immigration laws) in their case outweigh positive ones (e.g., family ties in the United States, evidence of good moral character, and general humanitarian reasons).⁴⁵

At this initial stage, if a child can demonstrate eligibility based on the elements of asylum detailed above, the child may still have a viable asylum claim even where the advocate has flagged the applicability of potential adverse considerations.

⁴² INA §101(a)(43).

⁴³ In this situation, the individual may be barred from asylum unless there has been a change in conditions affecting eligibility.

⁴⁴ This often comes up in the context of forced recruitment as a child soldier.

⁴⁵ See *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987).

During representation, a practitioner may demonstrate how the young person's situation overcomes the applicability of potential negative factors.

I. Alternate Forms of Relief

If a child is not eligible for asylum, there may be mandatory, but lesser forms, of relief available to protect them from returning to their country of origin. These are withholding of removal under the INA Section 241(b)(3), and protection under the United Nations Convention against Torture (CAT).⁴⁶ The legal standards for both differ from asylum and may be more difficult to meet; Appendix II provides a chart comparing the different requirements for asylum, withholding of removal, and CAT.

Along with screening for asylum eligibility, advocates are strongly encouraged to assess eligibility for other forms of immigration relief, such as Special Immigrant Juvenile Status, Central American Minors Program, U-visa, T-visa, VAWA self-petition, family-based petitions, etc.

CONCLUSION

Asylum is an important form of immigration relief for young people fleeing harm. This practice advisory is intended to help advocates confidently and efficiently screen children to determine whether they are eligible for asylum. Advocates are also highly encouraged to reach out to CGRS for tailored [technical assistance resources](#) and consultations in individual cases.

⁴⁶ For a more detailed discussion of withholding of removal and CAT relief, advocates may wish to consult CGRS's practice advisories on each topic: [Seeking Withholding of Removal](#) (2023) and [Seeking Protection Under the Convention against Torture in Non-State Actor Claims](#) (2022).

APPENDIX I: SCREENING ASSESSMENT TOOL

The following assessment tool is meant to be completed with information gathered during the intake screening of a child and any research or corroborating information from family members or others. Advocates may use this assessment tool to apply the facts of a child's case to the legal requirements for asylum eligibility." The framework below can be repeated for each persecutor and unique past or future harm based on a protected ground.

SCREENING ASSESSMENT FOR UNACCOMPANIED CHILDREN
Past Persecution
<div style="margin-bottom: 5px;"> <input type="checkbox"/> No (<i>Complete "Well-Founded Fear of Persecution" section</i>) </div> <div style="margin-bottom: 5px;"> <input type="checkbox"/> Yes (<i>Describe incidents of past harm</i>) </div> <div style="border: 1px solid black; height: 250px; margin-top: 10px;"></div>
Persecutor(s)
<div style="margin-bottom: 10px;"><i>Select all that apply and list the persecutors</i></div> <div style="margin-bottom: 20px;"> <input type="checkbox"/> Private Actor(s): </div> <div> <input type="checkbox"/> State Actor(s): </div>
On Account of a Protected Ground
<div style="margin-bottom: 10px;"><i>Select all that apply and for each applicable ground, list evidence demonstrating why the harm may be on account of that ground</i></div> <div style="border: 1px solid black; height: 60px; margin-bottom: 5px; position: relative;"> <div style="position: absolute; top: 5px; left: 5px;"> <input type="checkbox"/> Race: </div> </div> <div style="border: 1px solid black; height: 30px; position: relative;"> <div style="position: absolute; top: 5px; left: 5px;"> <input type="checkbox"/> Nationality: </div> </div>

<input type="checkbox"/> Religion:
<input type="checkbox"/> Political Opinion:
<input type="checkbox"/> Membership in a Particular Social Group (PSG):
<p><i>If the child has suffered past persecution on account of a protected ground, they have a presumption of a well-founded fear of future persecution, unless there has been a fundamental change in circumstances or internal relocation is both safe and reasonable, see sections below.</i></p> <input type="checkbox"/> Presumption of Well-Founded Fear of Persecution (<i>Additionally, the child must show a failure of government protection. See "Failure of State Protection" section, below</i>)
Well-Founded Fear of Persecution
<p><i>If the child has not suffered past harm based on a protected ground, but fears future persecution and/or there are additional independent reasons that child fears future persecution, complete this section.</i></p> <p>Harm feared (<i>describe the future harm that the child fears, this may include objective evidence of a reasonable possibility of persecution obtained through outreach or research</i>)</p> <div style="border: 1px solid black; height: 150px; margin-top: 10px;"></div>
Persecutor(s)
<p><i>Select all that apply and list the persecutors</i></p> <input type="checkbox"/> Private Actor(s):
<input type="checkbox"/> State Actor(s):

On Account of a Protected Ground	
<i>Select all that apply and for each applicable ground, list evidence demonstrating why the harm may be on account of that ground</i>	
<input type="checkbox"/> Race:	
<input type="checkbox"/> Nationality:	
<input type="checkbox"/> Religion:	
<input type="checkbox"/> Political Opinion:	
<input type="checkbox"/> Membership in a Particular Social Group (PSG):	
Failure of State Protection	
<input type="checkbox"/> Persecutor(s) is a state actor; presumption of a failure of state protection applies	Private Actor (<i>if the persecutor is a non-state actor, list the reasons why the government may be unwilling or unable to protect the child</i>)
	<input type="checkbox"/> Unwillingness to protect: <input type="checkbox"/> Inability to protect:
Reporting and/or Danger & Futility of Reporting Persecution (<i>although there is no reporting requirement, if applicable, select whether the child reported the harm to the authorities and what happened as a result of reporting</i>)	
Reported harm (<i>if past harm only</i>): <input type="checkbox"/> Yes <input type="checkbox"/> No	
What result (<i>if reported</i>)?	
List all relevant factors that would make reporting dangerous or futile	
<input type="checkbox"/> Reporting would be dangerous:	<input type="checkbox"/> Reporting would be futile:

Fundamental Change in Circumstances

☐ Yes ☐ No (If yes, list all the applicable potential change in personal or country conditions, e.g., death of the persecutor, change in regime, etc.)

Potential Safe and Reasonable Relocation Within Country of Origin

☐ Yes ☐ No (If no, list applicable reasons why relocation would be unsafe and unreasonable)

☐ Relocation is unsafe

☐ Relocation is unreasonable (e.g., consideration of the child's age, family ties, socio-economic factors, medical or mental health conditions)

Humanitarian Asylum

If the child suffered past persecution based on a protected ground and there is either a "Fundamental Change in Circumstances" or "Potential Safe and Reasonable Relocation Within Country of Origin" was selected, the child might still be eligible for humanitarian asylum. Select all that apply and list the applicable factors.

☐ Severe and atrocious past persecution:

☐ Other serious harm (e.g., psychological impact on the child, deprivation of fundamental rights, ongoing civil strife, harm by gangs or organized crime, violence based on gender, sexual orientation, or Indigenous heritage, etc.):

Bars to Asylum

Select all applicable bars and list reasons why they may apply

☐ Persecution of others (harmed others based on a protected ground):

☐ Conviction of particularly serious crime (convicted of an aggravated felony as defined by the INA):

<input type="checkbox"/> Commission of a serious nonpolitical crime (reason to believe that the child committed a serious, nonpolitical crime outside of the United States):	
<input type="checkbox"/> Previous asylum denial (previously denied asylum by an Immigration Judge or the Board of Immigration Appeals):	
<input type="checkbox"/> Firm resettlement (lived in another country and received an offer of permanent residence from that country prior to living in the United States):	
<input type="checkbox"/> Support of terrorism (involved with any group \at has participated in violent activity against the laws of the country or the United States):	
<input type="checkbox"/> Danger to national security (is a danger to safety and security of the United States):	
<input type="checkbox"/> Participation in Nazi persecution or genocide (affiliated with the former German Nazi government or in genocide, torture, or extrajudicial I killings outside of the United States):	
Discretion	
<i>List any applicable positive or adverse factors. Positive equities may include family ties in the United States, evidence of good moral character, and general humanitarian considerations. Negative equities may constitute criminal history, lack of candor or credibility, or significant violation of immigration laws. Note: these examples are not exhaustive and advocates are encouraged to note others that may be relevant.</i>	
<input type="checkbox"/> Positive discretionary factors:	<input type="checkbox"/> Negative discretionary factors:
Overall Asylum Eligibility	
Based on the information entered above, does the child appear to have baseline asylum eligibility? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Is a follow-up screening necessary to make an eligibility determination? <input type="checkbox"/> Yes <input type="checkbox"/> No	

APPENDIX II: QUICK COMPARISON: ASYLUM, WITHHOLDING OF REMOVAL, & CAT

	Asylum	Withholding of Removal	CAT Protection
Harm	Persecution	Threat to life or freedom	Severe pain or suffering
Nexus?	Yes	Yes	No
Likelihood of Harm	<ul style="list-style-type: none"> • “Well-founded fear” • Rebuttable presumption for past persecution • Severe and atrocious past persecution sufficient (“humanitarian asylum”) 	<ul style="list-style-type: none"> • “More likely than not” • Rebuttable presumption for past persecution • Past persecution not sufficient 	<ul style="list-style-type: none"> • “More likely than not” • No rebuttable presumption for past torture • Past torture relevant but not sufficient
State Action <i>(if threat or harm by a non-state actor)</i>	Government unable or unwilling to protect	Government unable or unwilling to protect	Consent or acquiescence of a public official or other person acting in official capacity
Discretionary?	Discretionary	Mandatory	Mandatory
Bars that Apply⁴⁷	<ul style="list-style-type: none"> • One-year bar • Safe third country agreement • Firm resettlement • Previous asylum denial • Particularly serious crime • Serious nonpolitical crime • Persecution of others • Terrorism-related bars • Danger to U.S. security 	<ul style="list-style-type: none"> • Particularly serious crime • Serious nonpolitical crime • Persecution of others • Terrorism-related bars • Danger to U.S. security • Participation in genocide • Participation in Nazi persecution 	CAT withholding: <ul style="list-style-type: none"> • Particularly serious crime • Serious nonpolitical crime • Persecution of others • Terrorism-related bars • Danger to U.S. security • Participation in genocide • Participation in Nazi persecution CAT deferral: None

⁴⁷ This chart contains a list of all bars to asylum, however, as indicated *supra*, n.40, some of these bars are not applicable to children’s asylum claims.

APPENDIX III: TECHNICAL ASSISTANCE RESOURCES & CONSULTATIONS

The [Center for Gender & Refugee Studies](#) (CGRS) offers support on cases involving asylum and related protections. Through CGRS's Technical Assistance (TA) Program, advocates may access materials tailored to the facts of individual asylum cases. CGRS provides one-on-one and group consultations on legal theory and strategy, procedural and evidentiary issues, and other topics.

CGRS's TA Program and Resources

How to access CGRS's TA Library and consultations:

1. If a first-time CGRS TA user, **create** an account.
2. **Fill out** a [case intake form](#).
3. After submitting a case intake form, **explore** the tailored TA Library with on-demand access to CGRS resources.
4. **E-mail** CGRS-TA@uclawsf.edu with a case number to make changes to a case record, request a consultation, or receive further assistance.

For further information, see the [TA Library Instructions](#) and [Technical Assistance FAQ](#). Keep up-to-date on CGRS's upcoming trainings and new materials by checking our [TA Program News](#).

After creating a CGRS profile, advocates may search for expert witness referrals directly on our [Expert Witness Database](#).

Tracking of Case Outcomes

Report a case outcome to CGRS on our website. CGRS maintains a database of over 60,000 asylum cases and collects case information including the facts, arguments made, identity of the adjudicator, outcome, and the rationale for the decision. This enables CGRS to assist other attorneys with similar claims by providing information on how particular adjudicators have ruled and what evidence was persuasive. The information is also critical to informing CGRS's research, impact litigation, and policy advocacy efforts.

Subscribe to the CGRS Newsletter and Gender Asylum Listserv by emailing cgrs@uclawsf.edu to stay informed on upcoming trainings, updates, and action alerts related to asylum and refugee law and policy.

The logo for CGRS features the letters 'C', 'G', 'R', and 'S' in a stylized, rounded font. The 'C' is light blue with a dark blue outline and an orange and green inner border. The 'G' is light blue with a dark blue outline and an orange and green inner border, with a green and white striped pattern on its left side. The 'R' is light blue with a dark blue outline and a red and white striped pattern on its bottom left. The 'S' is light blue with a dark blue outline and an orange and green inner border.

CGRS