

Genocide and Severe Past Persecution: Child Survivors of Genocide as Per Se Refugees

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ABSTRACT

The last century witnessed a number of horrific mass tragedies in which a large number of people were targeted for annihilation due to their nationality, ethnicity, race, or religion. For these tragedies' survivors, the trauma can last a lifetime, and through the eyes of a child, that trauma is all the worse. Both international and domestic legal systems recognize that children should be treated differently than adults—for example, in sentencing, criminal procedure, and civil protections. But U.S. law and academia have been slower to apply international legal standards about child protection to the domestic asylum context. This Note fills that gap by arguing that child survivors of genocide should be treated as per se refugees.

Drawing on a review of legal approaches to genocide, the U.S. and international bases for humanitarian grants of asylum arising out of the severity of past persecution, and the emerging body of U.S. case law applying child-centered approaches to asylum claims, this Note is the first to comprehensively apply a child-centered legal framework to the U.S. context of asylum claims for genocide victims. The Note identifies four reasons why child genocide survivors should be treated as per se refugees: (1) the omnipresent nexus of the persecution suffered during a genocide to a statutorily protected ground; (2) the ubiquitous “severity” and “atrociousness” of persecution suffered during a genocide; (3) though not statutorily required, the lifelong harm of the experience of genocide as a child; and (4) the exception to cessation for genocide victims, notwithstanding changed country conditions. With U.S. courts adopting this approach to asylum claims for children, U.S. child rights and international human rights considerations can play a critical role in U.S. asylum claim adjudication.

I. INTRODUCTION

Seven-year-old Emma survived by lying against her sister's already-lifeless body and silencing her breath.¹ A group of Hutus had broken into her family's house and massacred her parents, her sister, and her with machetes,

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1. *Uwase v. Canada*, [2007] F.C. 1332, ¶2 (Can.).

clubs, rifles, and other weapons.² President Habayarimana had died just days before, in an event that catalyzed one of the darkest periods in human history: the Rwandan genocide.³

Emma is not the only child whose life has been altered by genocide. From 1933 to 1945, millions of children were targeted during the Holocaust; from 1975 to 1979, hundreds of thousands of children were targeted during the Cambodian genocide; from 1981 to 1983, tens of thousands of children were targeted in the Guatemalan genocide;⁴ from April to July 1994, hundreds of thousands of children were targeted during the Rwandan genocide; from 2003 to the present, tens to hundreds of thousands of children were targeted in the Darfur genocide.⁵ Yet in every genocide, children have survived. In 2009, a Rwandan genocide survivor said this of his or her time in Rwanda after the genocide:

Psychologically it is very difficult to deal with this idea that we have to live with our killers. I passed a big part of my life after genocide in Kigali, far from my native city and was always afraid. I know that in the village, survivors are neighbors with the killers. It's too much for survivors and for me this is a new way to abandon survivors a second time in their solitude of genocide, in their nightmare.⁶

What does the international community do when these children—or adults whose childhoods were torn apart by unspeakable violence—leave their country in search of a place where there is not widespread discriminatory violence against the physical and moral integrity of a national, ethnic, racial, or religious group?⁷ What do states do when these children—or adults whose childhoods were marred by genocide—knock at their doors searching for refuge in a place with national mechanisms to deal with identity-based conflict?⁸ In the U.S., unlike in sentencing,⁹ civil protections,¹⁰ and crimi-

2. *Id.*

3. *Id.*

4. Comm'n for Historical Clarification, GUATEMALA MEMORY OF SILENCE: REPORT OF THE COMMISSION FOR HISTORICAL CLARIFICATION, CONCLUSIONS AND RECOMMENDATIONS, ¶110 (1999), <https://hrdag.org/wp-content/uploads/2013/01/CEHreport-english.pdf> [<https://perma.cc/C64E-J8C5>].

5. Past Genocides and Mass Atrocities, UNITED TO END GENOCIDE, <http://endgenocide.org/learn/past-genocides> [<https://perma.cc/GD5X-2SGR>].

6. Noam Schimmel, *A Safe Place to Call Home: Securing the Right of Rwandan Genocide Survivors to Resettlement Outside Rwanda*, J. OF HUMANITARIAN ASSISTANCE (2010), <https://sites.tufts.edu/jha/archives/688> [<https://perma.cc/HZ66-NJZ6>].

7. See Office on Genocide Prevention & The Responsibility to Protect, FRAMEWORK OF ANALYSIS FOR ATROCITY CRIMES: A TOOL FOR PREVENTION, at 19 (Oct. 2014), http://www.un.org/en/genocide-prevention/documents/about-us/Doc.3_Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf [<https://perma.cc/S59G-4PBJ>].

8. See *id.* at 18.

9. See, e.g., *Miller v. Alabama*, 567 U.S. 460 (2012); *Roper v. Simmons*, 543 U.S. 551 (2005).

10. See, e.g., *Prince v. Massachusetts*, 321 U.S. 158 (1944).

nal procedure¹¹—wherein courts apply a particular adjudicatory approach to children—it depends.

Even though the U.S. can grant asylum as a matter of discretion for particularly severe past persecution alone,¹² the way adjudicators utilize this discretion can lead to vastly different results.¹³ It is for this reason that an Afghan national whose family was believed to be assisting the *mujabidin* and who was subsequently detained, interrogated, and tortured was granted asylum,¹⁴ while a different Afghan national who was detained and beaten due to his family's likely support of a local *mujabidin* faction was not.¹⁵ This discretion does not only lead to disparate results for adults, but also for children. Removal to a place where an individual suffered a genocide as a child is inhumane, and applying judicial discretion to do so shocks the conscience. Child survivors of genocide should therefore be treated as per se refugees.

This Note demonstrates that U.S. courts should treat child survivors of genocide as per se refugees because of genocide's severity, as exacerbated by children's immaturity, undeveloped coping mechanisms, and relative dependency.¹⁶ This Note will first discuss the historical context of the concept of genocide, as originally coined by Raphael Lemkin and as later solidified in international law through instruments like United Nations Resolution 96(I) and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention"). Second, the Note will explore the legal underpinnings for a humanitarian grant of asylum arising out of the severity of past persecution. Third, the Note will analyze the emerging body of case law utilizing a child-centric approach to grants of asylum. Fourth, the Note will explain that child survivors of genocide should be treated as a per se refugees based on (1) the omnipresent nexus of the persecution suffered during a genocide to a statutorily protected ground; (2) the ubiquitous "severity" and "atrociousness" of persecution suffered during a genocide; (3) though not statutorily required, the lifelong harm of the experience of genocide as a child; and (4) the exception to cessation for genocide victims, notwithstanding changed country conditions. The U.S. court system should consider taking this Note's approach to asylum adjudication as

11. See, e.g., Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. § 5601 (1974).

12. See *Matter of Chen*, 20 I.&N. Dec. 16, 18-19, 21 (BIA 1989). Here, "alone" means without a "well-founded fear" of future persecution.

13. Kate Aschenbrenner, *Discretionary (In)Justice: The Exercise of Discretion in Claims for Asylum*, 45 U. MICH. J. L. REFORM 595, 623 (2012).

14. In re B-, Interim Dec. 3251 (BIA 1995) (cited in Aschenbrenner, *supra* note 13). Note, however, that the Board did not describe its decision as a discretionary one in this case.

15. *Matter of N-M-A-*, 22 I.&N. Dec. 312, 325-26 (BIA 1998) (cited in Aschenbrenner, *supra* note 13).

16. UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION: 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, ¶15, HCR/GIP/09/08 (Dec. 22, 2009) ("Immaturity, vulnerability, undeveloped coping mechanisms and dependency as well as the differing stages of development and hindered capacities may be directly related to how a child experiences or fears harm.")

a way to better protect and rehabilitate children whose rights were once violated so acutely.

II. GENOCIDE

Speaking of the beginning of the mass murder of the Jewish people and what he perceived would “follow in the bloody ruts of Hitler’s tanks,” Winston Churchill called genocide “a crime without a name.”¹⁷ Polish-Jewish lawyer Raphael Lemkin later coined this crime “genocide” in his 1944 work, *Axis Rule in Occupied Europe*.¹⁸ By 1946, the United Nations (“UN”) had adopted General Assembly resolution 96 (I), affirming that “genocide is a crime under international law which the civilized world condemns.”¹⁹ According to Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”),

genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing Members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.²⁰

As defined in the Genocide Convention,²¹ the 1949 Geneva Conventions²² and their 1977 Additional Protocols,²³ and the 1998 Rome Statute of the International Criminal Court,²⁴ genocide is one of three “atrocities crimes.” The atrocities crimes—genocide, crimes against humanity, and war crimes—are considered the most serious crimes against humankind, as crimes that

17. Winston Churchill, Prime Minister, United Kingdom, Broadcast to the World About the Meeting with President Roosevelt (Aug. 24, 1941).

18. RAPHAEL LEMKIN, *AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF INTERNMENT, PROPOSALS FOR REDRESS* 79 (1944).

19. G.A. Res. 96 (I), at 188–89, U.N. Doc. A/64/Add. 1 (Jan. 31, 1947).

20. Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277.

21. *Id.*

22. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

23. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Jun. 8, 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Jun. 8, 1977, 1125 U.N.T.S. 609.

24. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, art. 6.

are an affront to humanity.²⁵ Under international law, genocide is committed against members of a national, ethnical, racial, or religious group.²⁶ Although victims of genocide are individuals, “they are targeted because of their membership, real or perceived, in one of these groups.”²⁷

When the UN Special Advisers on the Prevention of Genocide and on the Responsibility to Protect created the UN’s *Framework of Analysis for Atrocity Crimes: A Tool for Prevention* in 2014, they set forth eight general risk factors common to all atrocity crimes, as well as two risk factors specific to genocide.²⁸ The general risk factors for atrocity crimes—including genocide—are: situations of armed conflict or other forms of instability; record of serious violations of international human rights and humanitarian law; weakness of state structures; motives or incentives; capacity to commit atrocity crimes; absence of mitigating factors; enabling circumstances or preparatory action; and triggering factors.²⁹ Similarly, the specific risk factors for genocide are intergroup tensions or patterns of discrimination against protected groups and signs of intent to destroy in whole or in part a protected group.³⁰

The UN framework also includes a number of indicators to assist in determining the degree to which an individual risk factor is present.³¹ For genocide, these indicators comprise signs such as lack of national mechanisms or initiatives to deal with identity-based tensions or conflict; history of atrocity crimes committed with impunity against protected groups; and attacks against or destruction of homes, farms, businesses or other livelihoods of a protected group and/or of their cultural and religious symbols and property.³² As will be shown later, these indicators can assist in determining whether a country has meaningfully changed such that a refugee should no longer be considered deserving of international asylum.

III. HUMANITARIAN GRANT OF ASYLUM ARISING OUT OF SEVERITY OF PAST PERSECUTION

In international law, as well as in many domestic jurisdictions, there is a norm which allows for asylum to be granted not on the basis of a “well-founded fear of being persecuted,”³³ but on the basis of the severity of past

25. Office on Genocide Prevention & the Responsibility to Protect, *supra* note 7, at 1.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 10–17.

30. *Id.* at 18–19.

31. *Id.* at 6.

32. *Id.* at 18–19.

33. Convention and Protocol Relating to the Status of Refugees, art. I(A)(2), July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 [hereinafter Refugee Convention].

persecution alone.³⁴ The United Nations High Commissioner for Refugees (“UNHCR”) labels this concept “compelling reasons arising out of past persecution.” Articles 1C(5) and 1C(6) of the 1951 Convention Relating to the Status of Refugees (“Refugee Convention”), also known as the “general cessation” clauses, provide for clearly defined conditions under which refugee status ends, with certain exceptions to this cessation of status.³⁵ Articles 1C(5) and 1C(6) provide that the Refugee Convention ceases to apply to a refugee if:

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke *compelling reasons arising out of previous persecution* for refusing to avail himself of the protection of the country of his nationality;

(6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke *compelling reasons arising out of previous persecution* for refusing to return to the country of his former habitual residence.³⁶

In other words, even if a refugee would ordinarily be covered by a cessation clause and cease to be awarded protection under the Refugee Convention, if the refugee can demonstrate compelling reasons arising out of past persecution that he or she should continue to refuse to avail him or herself of the protection of the country of his or her nationality, he or she will not be required to repatriate. The UNHCR further clarifies this principle in its *Handbook on Procedures and Criteria for Determining Refugee Status*,³⁷ *Guidelines*

34. See, e.g., *Matter of Chen*, 20 I.&N. Dec. at 21 (holding that the applicant’s severe religious persecution during the Chinese Cultural Revolution created a genuine subjective fear of returning to China); *Matter of S-A-K & H-A-H*, 24 I.&N. Dec. 464 (BIA 2008) (finding severe past persecution where the applicant continually suffered pain from female genital mutilation); *Ghotra v. Gonzales*, 179 F.App’x 989 (9th Cir. 2006) (finding intermittent torture via a heavy wood roller and electrical shocks to the mouth constituted severe past persecution).

35. Refugee Convention, *supra* note 33, art. 1c(5)–(6).

36. *Id.* (emphasis added).

37. UNHCR, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES [hereinafter UNHCR, HANDBOOK], ¶136, HCR/IP/4/ENG/REV.1 (1979) (reedited Jan. 1992) (“The second paragraph of this clause contains an exception to the cessation provision contained in the first paragraph. It deals with the special situation where a person may have been subjected to very serious

on *International Protection*,³⁸ *Guidelines on Exemption Procedures in respect of Cessation Declarations*³⁹ and *Note on Cessation Clauses*.⁴⁰ The *Guidelines on International Protection* explain it most clearly:

[t]his exception is intended to cover cases where refugees, or their family members, have suffered atrocious forms of persecution and therefore cannot be expected to return to the country of origin or former habitual residence. This might, for example, include “ex-camp or prison detainees, survivors or witnesses of violence against family members, including sexual violence, as well as severely traumatised persons.”⁴¹

persecution in the past and will not therefore cease to be a refugee, even if fundamental changes have occurred in his country of origin. The reference to Article 1 A (1) indicates that the exception applies to ‘statutory refugees’. At the time when the 1951 Convention was elaborated, these ‘formed the majority of refugees. The exception, however, reflects a more general humanitarian principle, which could also be applied to refugees other than statutory refugees. It is frequently recognized that a person who—or whose family—has suffered under atrocious forms of persecution should not be expected to repatriate. Even though there may have been a change of regime in his country, this may not always produce a complete change in the attitude of the population, nor, in view of his past experiences, in the mind of the refugee.”).

38. UNHCR, *GUIDELINES ON INTERNATIONAL PROTECTION: CESSATION OF REFUGEE STATUS UNDER ARTICLE 1C(5) AND (6) OF THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES (THE “CEASED CIRCUMSTANCES” CLAUSES [hereinafter UNHCR GUIDELINES])*, ¶¶20–21, HCR/GIP/03/03 (Feb. 10, 2003) (“Both Article 1C(5) and (6) contain an exception to the cessation provision, allowing a refugee to invoke ‘compelling reasons arising out of previous persecution’ for refusing to re-avail himself or herself of the protection of the country of origin. This exception is intended to cover cases where refugees, or their family members, have suffered atrocious forms of persecution and therefore cannot be expected to return to the country of origin or former habitual residence. This might, for example, include ‘ex-camp or prison detainees, survivors or witnesses of violence against family members, including sexual violence, as well as severely traumatised persons. It is presumed that such persons have suffered grave persecution, including at the hands of elements of the local population, and cannot reasonably be expected to return.’ Children should also be given special consideration in this regard, as they may often be able to invoke ‘compelling reasons’ for refusing to return to their country of origin. Application of the ‘compelling reasons’ exception is interpreted to extend beyond the actual words of the provision to apply to Article 1A(2) refugees. This reflects a general humanitarian principle that is now well-grounded in State practice.”).

39. UNHCR, *GUIDELINES ON EXEMPTION PROCEDURES IN RESPECT OF CESSATION DECLARATIONS* (Dec. 2011), ¶25, <http://www.refworld.org/pdfid/4eef5c3a2.pdf> [<https://perma.cc/97KC-DRYL>] (“The ‘compelling reasons’ assessment concerns an exception to the decision that cessation is applicable and reflects a general humanitarian principle. This exception is intended to cover refugees, or their family members, who have suffered ‘very serious persecution in the past and will therefore not cease to be a refugee, even if fundamental changes have occurred in his [or her] country of origin’. The fact that past persecution was of a generalized character does not preclude the application of the ‘compelling reasons’ exception.”).

40. UNHCR, *Note on Cessation Clauses*, ¶24, UN doc. EC/47/SC/CRP.30 (May 30, 1997) (“The ‘ceased circumstances’ cessation clause contains a proviso which allows a refugee to invoke ‘compelling reasons arising out of previous persecution’ for refusing to re-avail himself or herself of the protection of the country of origin. This proviso is intended to cover cases where refugees or family members have suffered atrocious forms of persecution and, due to the trauma, cannot be expected to associate again with their country of origin. The proviso has also been interpreted to cover those refugees who had suffered persecution at the hands of elements of the local population, who may not necessarily have changed their attitude despite a change in the regime.”).

41. UNHCR, *GUIDELINES*, *supra* note 38, ¶20.

Because the U.S. grounded its asylum law in international law—tracking the language of the Refugee Convention almost verbatim—it is unsurprising that the U.S. also has a similar exception for victims of severe past persecution.⁴² In fact, when the U.S. brought its asylum law into conformance with international law, it even added past persecution as a separate basis for eligibility, instead of merely viewing it as evidence of a well-founded fear of persecution.⁴³ Under 8 C.F.R. § 208.13(b)(1)(iii) and 8 C.F.R. § 1208.13(b)(1)(iii), the Executive Office for Immigration Review (“EOIR”) or the U.S. Citizenship and Immigration Services (“USCIS”) can discretionarily grant asylum in the absence of a well-founded fear of persecution if “[t]he applicant has demonstrated compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution” or “[t]he applicant has established that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country.”⁴⁴ For the purposes of the humanitarian grants of asylum discussed in this Note, the former discretionary grant is most relevant.

The seminal U.S. case allowing for a grant of asylum based solely on the severity of the applicant’s past persecution—even “where there is little threat of future persecution”—is *Matter of Chen*.⁴⁵ In *Matter of Chen*, respondent Chen was the son of a Christian minister in China during the Cultural Revolution.⁴⁶ As a result of his father’s status, while in China the respondent’s home was ransacked, he was not allowed to attend school, and he was continually abused and humiliated, such that his hearing was irreparably damaged.⁴⁷ Chen “testified that he would kill himself if forced to return to China.”⁴⁸ Ultimately, the Board of Immigration Appeals (“BIA”)—the highest U.S. administrative body for interpreting and applying immigration laws⁴⁹—determined that asylum should be granted to Chen as a matter of discretion, due to his having clearly established that he and his family had suffered persecution, and notwithstanding the regime change since the Cultural Revolution.⁵⁰ In so holding, the BIA quoted the *Handbook on Procedures and Criteria for Determining Refugee Status*: “It is frequently recognized

42. See I.N.A. § 101(a)(42)(A), 8 U.S.C.A. § 1101(a)(42)(A) (2006).

43. Anker et al., *Mejilla-Romero: A New Era For Child Asylum*, 12-09 IMMIGRATION BRIEFINGS 1, 2 (2012). Compare I.N.A. § 101(a)(42)(A), 8 U.S.C.A. § 1101(a)(42)(A) (2006) (“persecution or a well-founded fear of persecution”) with Convention and Protocol Relating to the Status of Refugees, *supra* note 33, art. 1(A)(2) (“well-founded fear of being persecuted”).

44. 8 C.F.R. § 208.13(b)(1)(iii)(A)–(B).

45. *Matter of Chen*, 20 I.&N. Dec. 16, 19 (BIA 1989).

46. *Id.* at 19.

47. *Id.* at 20.

48. *Id.* at 20.

49. See Executive Office for Immigration Review: About the Office, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/eoir/board-of-immigration-appeals> [<https://perma.cc/F96Y-JQN9>].

50. *Id.* at 21.

that a person who—or whose family—has suffered under atrocious forms of persecution should not be expected to repatriate.”⁵¹

After *Matter of Chen*, a number of other cases developed the contours of the “past-persecution-only” exception in more detail. In *Bucur v. I.N.S.*, the Seventh Circuit read 8 C.F.R. § 2018.13(b)(1)(ii) “to be designed for the case of the German Jews, the victims of the Chinese ‘Cultural Revolution’ . . . , survivors of the Cambodian genocide, and a few other such extreme cases.”⁵² In *Matter of N-M-A-*, the BIA noted that “asylum is warranted for ‘humanitarian reasons’ *only* if [the applicant] demonstrates that in the past [he] or his family has suffered under atrocious forms of persecution.”⁵³ In *Lal v. I.N.S.*, the Ninth Circuit held that severe past persecution does not require an ongoing disability,⁵⁴ and in *Ordonez-Quino v. Holder*, the First Circuit indicated that extraordinary suffering is required, and “[a] showing of severe harm and the long-lasting effects of such harm are factors to consider when evaluating the severity of past persecution.”⁵⁵

In sum, the U.S. law surrounding a grant of asylum based on severe past persecution alone requires a showing of extraordinary past persecution related to one of the five protected grounds for asylum—race, religion, nationality, membership in a particular social group, or political opinion.⁵⁶ Even if the Department of Homeland Security (“DHS”) has successfully rebutted that the applicant has a well-founded fear of persecution, the applicant may still be granted asylum on a discretionary basis, for compelling reasons.⁵⁷ In determining whether the applicant has established “compelling reasons for being unwilling or unable to return to the country [of origin] arising out of the severity of the past persecution, decision-makers should consider not only extreme physical persecution, but also mental, emotional, and psychological suffering resulting in lasting effects.”⁵⁸

IV. CHILD-CENTERED APPROACH TO ASYLUM CLAIMS

In recent years, courts have begun to apply a more child-centered approach to adjudication in general, and to asylum claims in particular. Doing so accords with the general child protective principles advocated by the

51. *Id.* at 19 (quoting UNHCR, HANDBOOK, *supra* note 37, ¶136 (1979) (reedited Jan. 1992)).

52. *Bucur v. I.N.S.*, 109 F.3d 399, 405 (7th Cir. 1997).

53. *Matter of N-M-A-*, 22 I.&N. Dec. at 325 (quoting *Kazlauskas v. INS*, 46 F.3d 902 (9th Cir. 1995)) (internal citations omitted).

54. *Lal v. I.N.S.*, 255 F.3d 998, 1003 (9th Cir. 2001), *amended by* 268 F.3d 1148 (9th Cir. 2001).

55. *Ordonez-Quino v. Holder*, 760 F.3d 80, 94 (1st Cir. 2014) (“To qualify for humanitarian asylum based on the severity of past persecution, an applicant must prove that he or she experienced ‘extraordinary suffering’ in the past . . . A showing of severe harm and the long-lasting effects of such harm, such as an ongoing or permanent disability, may support a discretionary grant of humanitarian asylum.”).

56. I.N.A. § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A) (2006).

57. DEBORAH E. ANKER, *LAW OF ASYLUM IN THE UNITED STATES* 1068 (2017).

58. *Id.*

UN, with Article 3(1) of the UN Convention on the Rights of the Child (“CRC”) stating: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”⁵⁹ Similarly, in regard to the application of the “compelling reasons” exception to cessation of refugee status, the UNHCR states: “Children should also be given special consideration in this regard, as they may often be able to invoke ‘compelling reasons’ for refusing to return to their country of origin.”⁶⁰

In the U.S., this child-centered approach has manifested itself not only in statutory language and policy guidance,⁶¹ but also in case law. *Mejilla-Romero v. Holder*,⁶² the case of a Honduran child’s years-long fight for asylum after brutal attacks in Honduras arising from his family’s land reform struggles, represents “a major breakthrough for children asylum seekers.”⁶³ At the age of eleven, Mejilla-Romero illegally entered the U.S. after suffering extreme violence at the hands of both a neighbor and a street gang.⁶⁴ After multiple reviews and re-hearings of the applicant’s case, as well as a scathing dissent applying a child-sensitive approach to Mejilla-Romero’s claim, the First Circuit finally instructed the BIA to remand the case to an immigration judge (“IJ”) “in order that the IJ can evaluate the testimony and supporting evidence in light of the Guidelines’ standards regarding child asylum seekers.”⁶⁵ In a similar manner, in *Santos-Guaman v. Sessions*,⁶⁶ the First Circuit remanded an indigenous Ecuadoran child’s claim, finding that the BIA and IJ had failed to apply “the childhood standard” in analyzing the mistreatment that Santos Guaman suffered as a child.⁶⁷

In *Hernandez-Ortiz v. Gonzales*,⁶⁸ applicants Guillermo and Florentino were Guatemalan nationals of Mayan descent.⁶⁹ At seven and nine years old,

59. Convention on the Rights of the Child art. 3(1), Sept. 2, 2009, 1577 U.N.T.S. 3.

60. UNHCR, GUIDELINES, *supra* note 38, ¶20.

61. See, e.g., Memorandum from MaryBeth Keller, Chief Immigration Judge, EOIR Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children, 3 (Dec. 20, 2017), <https://www.justice.gov/eoir/file/oppm17-03/download> [<https://perma.cc/92RV-Z3EY>] (hereinafter EOIR Children’s Guidelines or DOJ Children’s Guidelines); see also U.S. Citizenship and Immigration Services, Asylum Officer Basic Training Course, Guidelines for Children’s Asylum Claims 16–17 (2009), https://cliniclegal.org/sites/default/files/AOBTC_Lesson_29_Guidelines_for_Childrens_Asymylum_Claims_0.pdf [<https://perma.cc/CUZ2-KHAK>].

62. *Mejilla-Romero v. Holder*, 600 F.3d 63 (1st Cir. 2010), *vacated*, 614 F.3d 572 (1st Cir. 2010).

63. Anker et al., *supra* note 43, at 1.

64. *Mejilla-Romero v. Holder*, 600 F.3d 63, 65–66 (1st Cir. 2010), *vacated*, 614 F.3d 572 (1st Cir. 2010).

65. See *Mejilla-Romero v. Holder*, 614 F.3d 572, 573 (1st Cir. 2010) (remanding for consideration “in light of the Guidelines’ [for Children’s Asylum Claims (1998) and Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children (2004)] standards regarding children asylum seekers”).

66. See *Santos-Guaman v. Sessions*, 891 F.3d 12 (1st Cir. 2018).

67. *Id.* at 18.

68. *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042 (9th Cir. 2007).

69. *Id.* at 1043.

the brothers suffered severe trauma at the hands of the Guatemalan army, which killed their other brother and drove them out of their home.⁷⁰ The Ninth Circuit eventually vacated the IJ's denial of asylum and its removal order, in part because the IJ failed to "look at the events from [the children's] perspective" and "measure the degree of their [Guillermo and Florentino's] injuries by their impact on children of their ages."⁷¹ Similarly, in *Jorge-Tzoc v. Gonzales*,⁷² applicant Jorge-Tzoc and his family, all Guatemalans of Mayan Indian descent, were "singled out by the government of Guatemala for persecution."⁷³ When Jorge-Tzoc was only seven years old, his sister, her husband, and her husband's mother were slain by soldiers.⁷⁴ Ultimately, the court remanded the IJ's denial of asylum and withholding of removal because the IJ "failed to . . . address the harms Jorge-Tzoc and his family incurred cumulatively and from the perspective of a small child."⁷⁵

Finally, although the First Circuit denied the recent case, *Olmos-Colaj v. Sessions*,⁷⁶ for review, Circuit Judge Barron's dissent captures the principle illustrated above. Yolanda and Consuelo Olmos-Colaj, sisters from Guatemala, are members of the indigenous Maya Quiché group.⁷⁷ During their childhood, two of the Olmos-Colaj sisters' relatives were raped and murdered in the Guatemalan Civil War.⁷⁸ While they were not personally injured, the level of violence and threats against the applicants' father led the girls to move with their mother to Santa Cruz.⁷⁹ In Santa Cruz, Consuelo was attacked and harassed, which caused her to emigrate to the U.S.; Yolanda soon followed, lacking a support system in Guatemala.⁸⁰ Though their petition for review was ultimately denied, Judge Barron's dissent convincingly applies the child-centered approach that previous case law has supported. Quoting the *Ordonez-Quino* Court's citation of *Hernandez-Ortiz*, Judge Barron states, "[W]here the events that form the basis of a persecution claim were perceived when the petitioner was a child, the fact-finder must 'look at the events from [the child's] perspective, [and] measure the degree of [his] injuries by their impact on [a child] of [his] age."⁸¹ Further drawing from the *Ordonez-Quino* Court, Judge Barron notes, "[T]he BIA must take the 'harms [a child's] family suffered into account' and consider

70. *Id.* at 1044.

71. *Id.* at 1046.

72. *Jorge-Tzoc v. Gonzales*, 435 F.3d 146 (2d Cir. 2006) (per curiam).

73. *Id.* at 147.

74. *Id.* at 147–48.

75. *Id.* at 150.

76. *Olmos-Colaj v. Sessions*, 886 F.3d 168 (1st Cir. 2018).

77. *Id.* at 171.

78. *Id.*

79. *Id.*

80. *Id.* at 171–72.

81. *Olmos-Colaj v. Sessions*, 886 F.3d at 178 (Barron, J., dissenting) (quoting *Ordonez-Quino*, 760 F.3d at 91).

them ‘from the perspective of a child’ in determining whether those childhood experiences amounted to persecution.”⁸² This Note will next apply this context-sensitive approach to explain why child survivors of genocide should be treated as per se refugees.

V. CHILD SURVIVORS OF GENOCIDE AS PER SE REFUGEES

A. *A survivor of genocide seeking asylum will always have a nexus to a statutory ground based on the persecution suffered during that genocide.*

Based on genocide’s definition, the asylum claim of a child who has been victimized by genocide will have a nexus to a protected ground. An individual who has survived a genocide is one who has been targeted, with the targeter intending to destroy that individual on account of his or her membership in a particular national, ethnical, racial, or religious group.⁸³ As nationality, ethnicity, race, and religion are all protected grounds for asylum,⁸⁴ that individual would, by default, have established one of the showings necessary for a grant of past-persecution-only asylum.

B. *The persecution suffered during a genocide is always “severe” and “atrocious.”*

As outlined in Section III, *supra*, in order for an applicant to qualify for the discretionary grant of asylum based on past persecution alone, the persecution that the applicant has suffered must be sufficiently severe. Different cases utilize various words like “atrocious,”⁸⁵ “extreme,”⁸⁶ and “extraordinary suffering”⁸⁷ to describe the type of persecution required for such a grant. In its *Basic Training Course*, the USCIS Asylum Office lists several factors to be considered in exercising discretion in past-persecution-only asylum cases. These factors include:

- i) duration of persecution; ii) intensity of persecution; iii) age at the time of persecution; iv) persecution of family members; v) conditions under which persecution was inflicted; vi) whether it would be unduly frightening or painful for the applicant to return to the country of persecution; [and] vii) whether there are continuing health or psychological problems or other negative repercussions stemming from the harm inflicted.⁸⁸

82. *Id.*

83. Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 20, art. 2.

84. I.N.A. § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A) (2006).

85. Matter of N-M-A-, 22 I.&N. Dec. 312, 325 (BIA 1998).

86. Bucur v. I.N.S., 109 F.3d 399, 405 (7th Cir. 1997).

87. Zarouite v. Gonzales, 424 F.3d 60, 64 (1st Cir. 2005).

88. *Asylum Officer Basic Training Course, Asylum Eligibility Part I: Definition of Refugee; Definition of Persecution; Eligibility Based on Past Persecution*, HANOVER LAW P.C., at 49 (Mar. 6, 2009), <https://www>

On balance, these factors weigh toward granting child survivors of genocide asylum in all instances.

First, the duration of persecution during a genocide is protracted. Not only are genocides themselves often long—with the shortest, the Rwandan genocide, still lasting three months⁸⁹—but also the genocide-related persecution begins before, and continues after, the actual “genocidal acts.”⁹⁰ Second, the intensity of persecution during a genocide is unfathomable. For example, relief workers found a ten-year-old boy who had been orphaned in the Rwandan genocide sitting next to other children’s lifeless bodies; he barely spoke and his extremities’ contractures prevented their use.⁹¹ Similarly, a survivor of Pol Pot and the Khmer Rouge’s genocidal regime recounted fellow inmates being whipped raw, hogtied to wooden bars, and having their fingernails yanked out.⁹² He recalls: “I thought that was the end of my life . . . In my room people kept dying, one or two every day.”⁹³ Third, the fact that an individual was a child at the time of a genocide strengthens the claim that the persecution suffered was severe.⁹⁴ Not only do children actually suffer persecution differently than adults do based on a number of innate physiological and relative differences,⁹⁵ but the law also reflects this fact. The Immigration and Naturalization Service’s Guidelines for Children’s Asylum Claims explicitly state, “[t]he harm a child fears or has suffered . . . may be relatively less than that of an adult and still qualify as persecution.”⁹⁶

Fourth, genocide survivors typically have seen their family members persecuted—and even killed. In a survey of sixty-eight Rwandan genocide survivors, 41 percent had witnessed the death of their own parents, and 77

.hanoverlawpc.com/wp-content/uploads/2018/01/Asylum-officers-Guide-to-Approving-Asylum-applications.pdf [https://perma.cc/RU8T-78B5].

89. The Rwandan Genocide, UNITED TO END GENOCIDE, <http://endgenocide.org/learn/past-genocides/the-rwandan-genocide/> [https://perma.cc/RLT5-9NR8].

90. Cf. Office on Genocide Prevention & The Responsibility to Protect, *supra* note 7, at 1.

91. Paul Geltman & Eric Stover, *Letter From Kigali: Genocide and the Plight of Children in Rwanda*, 277 JAMA 289, 290 (1997).

92. Christiane Amanpour, *Survivor recalls horrors of Cambodia genocide*, CNN (Dec. 10, 2008), <http://www.cnn.com/2008/WORLD/asiapcf/04/07/amanpour.pol.pot/index.html> [https://perma.cc/WU2F-F2WM].

93. *Id.*

94. See Schimmel, *supra* note 6. See also UNHCR, GUIDELINES, *supra* note 38, ¶¶20–21 (“Children should also be given special consideration in this regard, as they may often be able to invoke ‘compelling reasons’ for refusing to return to their country of origin. Application of the ‘compelling reasons’ exception is interpreted to extend beyond the actual words of the provision to apply to Article 1A(2) refugees. This reflects a general humanitarian principle that is now well-grounded in State practice.”).

95. UNHCR, *supra* note 16, ¶15; Save the Children & UNICEF, *The evolving capacities of the child* (2005) at 31–41 <https://www.unicef-irc.org/publications/pdf/evolving-eng.pdf> [https://perma.cc/C4WA-Y8R9].

96. Jeff Weiss, GUIDELINES FOR CHILDREN’S ASYLUM CLAIMS 19 (Dec. 10, 1998), <https://www.uscis.gov/sites/default/files/USCIS/Laws%20and%20Regulations/Memoranda/Ancient%20History/ChildrensGuidelines121098.pdf> [https://perma.cc/6K LX-ZZ7C].

percent had witnessed at least one person being brutally killed.⁹⁷ In another survey, 90 percent of child survivors of the Rwandan genocide had experienced a death in the immediate family.⁹⁸ Fifth, the conditions under which persecution is inflicted during a genocide are unforgiving. One study notes:

The amount of violence exposure, loss, and threat that these children experienced is difficult to comprehend. Their daily lives include intrusions, avoidance reactions, and other posttraumatic problems, while they face the formidable task of trying to make sense of incomprehensible events. Seeing their loved ones macheted to death, hearing others screaming for help, hiding under dead bodies to survive, and seeing trusted adults, and sometimes children, participating in the killings have left strong impressions on these children's minds.⁹⁹

Sixth, child survivors of genocide often find it unduly frightening or painful to return to their country of persecution. Finally, as will be shown in Subsection C, *infra*, children who survive often have continuing psychological problems stemming from the harm inflicted on them during a genocide.¹⁰⁰ Thus, the persecution suffered during a genocide is always "severe" and "atrocious."

Moreover, the UNHCR *Guidelines on International Protection* make clear what sort of persecution is considered "grave" or "atrocious,"¹⁰¹ and genocide plainly fits within the confines of its description:

This exception [to the cessation provision] is intended to cover cases where refugees, or their family members, have suffered atrocious forms of persecution and therefore cannot be expected to return to the country of origin or former habitual residence. This might, for example, include "ex-camp or prison detainees, survivors or witnesses of violence against family members, including sexual violence, as well as severely traumatised persons. It is presumed that such persons have suffered grave persecution, including at the hands of elements of the local population, and cannot reasonably be expected to return."¹⁰²

97. Susanne Schaal & Thomas Elbert, *Ten Years After the Genocide: Trauma Confrontation and Posttraumatic Stress in Rwandan Adolescents*, 19 J. OF TRAUMATIC STRESS 95, 99 (2006).

98. Geltman & Stover, *supra* note 89, at 290, citing L. Gupta, *Exposure to War Related Violence Among Rwandan Children and Adolescents: A Brief Report on the National Baseline Trauma Survey*, UNICEF TRAUMA RECOVERY PROGRAM (1996).

99. Atle Dyregrov et al., *Trauma Exposure and Psychological Reactions to Genocide Among Rwandan Children*, 13 J. OF TRAUMATIC STRESS 3, 13–14 (2000).

100. See, e.g., *id.* at 14–15.

101. UNHCR, *GUIDELINES*, *supra* note 38, ¶¶20–21.

102. *Id.*

C. *Even though past-persecution-only asylum does not require a continuing harm from that persecution, evidence shows that child survivors of genocide experience harm for many years after.*

As described in Section III, *supra*, a “showing of severe harm and the long-lasting effects of such harm, such as an ongoing or permanent disability, may support a discretionary grant of humanitarian asylum,”¹⁰³ though the requirement that an ongoing disability be demonstrated in order to warrant asylum under the *Matter of Chen* exception “is an untenable interpretation of the exception.”¹⁰⁴ Thus, while a showing of severe harm and its long-lasting effects can weigh in favor of a grant of past-persecution-only asylum, it is not necessary for such a grant. Notwithstanding its superfluity to the grant of asylum for severe past persecution, studies demonstrate that child survivors of genocide suffer lasting psychological and emotional effects.

Soon after a genocide, the post-traumatic effects have already set in for children. Only three months after the Rwandan genocide, in late 1994, a small-scale psychiatric morbidity survey of adolescents and adults in central Rwanda found that 90 percent of those surveyed showed symptoms of psychological trauma.¹⁰⁵ Similarly, Dyregrov et al. interviewed 3,030 children and adolescents thirteen months after the Rwandan genocide and concluded that 79 percent of the survivors showed moderate to severe posttraumatic stress reactions.¹⁰⁶

It appears that the effects of genocidal trauma persist later on in adolescence and into early adulthood. In a study examining the rate of traumatic event exposure and PTSD in a sample of orphaned Rwandan adolescents aged thirteen to twenty-three years, ten years after the genocide, findings indicated that most orphans displayed high rates of PTSD and posttraumatic stress symptoms.¹⁰⁷ While only 44 percent of the orphans met full DSM-IV criteria for PTSD, all of the child genocide survivors reported notable levels of post-traumatic stress responses, with an approximate average of nine symptoms present during the twelve months prior to the interview.¹⁰⁸ Sezibera and Philippot found similar results eleven years after the Rwandan genocide, finding 71.6 percent of a large population of orphaned Rwandan genocide survivors met the DSM-IV criteria for a PTSD diagnosis.¹⁰⁹

103. Ordonez-Quino, 760 F.3d at 94.

104. *Lal v. I.N.S.*, 255 F.3d at 1003, *amended by* 268 F.3d 1148 (9th Cir. 2001).

105. Andrew Carney, *Lack of care in Rwanda*, 165 BRITISH J. OF PSYCHIATRY 556 (1994).

106. Dyregrov et al., *supra* note 99, at 3, 14.

107. Schaal and Elbert, *supra* note 97, at 101.

108. *Id.*

109. Vincent Sezibera et al., *Intervening on Persistent Posttraumatic Stress Disorder: Rumination-Focused Cognitive and Behavioral Therapy in a Population of Young Survivors of the 1994 Genocide in Rwanda*, 23 J. OF COGNITIVE PSYCHOTHERAPY 107, 108 (2009) (citing Vincent Sezibera & Pierre Philippot, *PTSD preva-*

Symptoms of trauma experienced by child survivors of genocide endure later in life, with Amir and Lev-Wiesel finding that “the Holocaust experience for a child might be a lifelong narrative.”¹¹⁰ In assessing PTSD symptoms, psychological distress, and subjective quality of life of a group of 43 child Holocaust survivors and a control sample of individuals who had not experienced the Holocaust personally, Amir and Lev-Wiesel found that child survivors had higher PTSD symptom scores, higher depression, anxiety, somatization, and anger-hostility scores; as well as lower physical, psychological, and social quality of life than did the control group.¹¹¹

D. It is unlikely that child survivors of genocide will cease to be eligible for asylum based on country conditions that have changed in that survivor's lifetime.

According to Amnesty International,

[t]he main international standards addressing cessation of refugee status, including in particular decision-making and implementation processes, are set out in Executive Committee Conclusion No. 69, UNHCR's Guidelines on international protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses), Section B, and UN High Commissioner for Refugees, Note on Cessation Clauses, 30 May 1997, EC/47/SC/CRP.30.¹¹²

These sources, combined with U.S. case law, provide two basic rules regarding cessation of refugee status and removal of said refugee. First, cosmetic changes are insufficient to qualify for cessation of refugee status, as changed country conditions must be fundamental, stable, and durable in nature.¹¹³ Second, even if a country has changed substantially, the individual's perception of that country may not have changed.

The Executive Committee notes, in its Conclusion No. 69, that “an essential element in [cessation] assessment by States is the fundamental, stable and durable character of the changes.”¹¹⁴ In its *Note on Cessation Clauses*, the UNHCR further explains that “[a] situation which has changed, but

lence and prediction among Rwandan youth survivors of the 1994 genocide in Rwanda (2009) (Manuscript in preparation).

110. Marianne Amir & Rachel Lev-Wiesel, *Time Does Not Heal All Wounds: Quality of Life and Psychological Distress of People Who Survived the Holocaust as Children 55 Years Later*, 16 J. OF TRAUMATIC STRESS 295, 298 (2003).

111. *Id.* at 297–98.

112. AMNESTY INTERNATIONAL, MEMORANDUM TO THE GOVERNMENT OF UGANDA ABOUT THE CESSATION OF REFUGEE PROTECTION FOR RWANDANS (Dec. 2011), at 6, fn.6, <https://www.amnesty.org/download/Documents/28000/afr590212011en.pdf> [<https://perma.cc/4WES-HVZP>].

113. UNHCR, *Cessation of Status No. 69 (XLIII)*, ¶B, (Oct. 9, 1992), <http://www.unhcr.org/en-us/excom/exconc/3ae68c431c/cessation-status.html> [<https://perma.cc/Z8G5-XH4U>].

114. *Id.*

which also continues to change or show signs of volatility is not by definition stable, and cannot be described as durable . . . [u]ntil national reconciliation takes root and political changes are stable and firmly in place, such changes cannot be considered as durable.”¹¹⁵ As we saw earlier, indicators of genocide range from past or present serious discriminatory, segregational, restrictive or exclusionary practices,¹¹⁶ policies, or legislation against protected groups, to development of measures that seriously affect womens’ reproductive rights, or that contemplate the separation of children belonging to protected groups.¹¹⁷ These conditions are systemic issues that take years and years to change.

Changed country conditions are also discussed in *Matter of Chen*, where the court notes that “the immigration judge or this Board may take administrative notice of changed conditions in appropriate cases, such as where the government from which the threat of persecution arises has been removed from power.”¹¹⁸ However, *Matter of Chen* goes on to quote the UNHCR *Handbook on Procedures for Determining Refugee Status* in saying: “Even though there may have been a change of regime in his country, this may not always produce a complete change in the attitude of the population, nor, in view of his past experiences, in the mind of the refugee.”¹¹⁹

With many of the indicators being systemic issues that go to a society’s core, and a caveat that exists based on severe persecution, it is unlikely that a country will change such that an individual survivor of genocide should be removed to that country during his or her lifetime.

VI. CONCLUSION

As has been shown, genocide will always serve as a basis for asylum granted on a humanitarian basis arising out of the severity of past persecution. This Note raises serious concerns about the discretion allowed to remove an individual to a place where that individual has suffered a genocide as a child, due to a clear showing that such removal would be inhumane. The persecution suffered during a genocide is abhorrent: survivors watch as similarly-situated individuals around them are killed—often by neighbors, people they know, or people in authority positions, like government figures and soldiers—and subsequently feel guilty that they were the ones who managed to survive. Individuals are targeted on the basis of immutable characteristics, commonly stemming from local identity-based tensions that have been building for years and with which national mechanisms are unable to deal. After the conclusion of genocidal acts, the trauma suffered cre-

115. UNHCR, *supra* note 40, ¶¶21–22.

116. Office on Genocide Prevention & The Responsibility to Protect, *supra* note 7, at 11.

117. *Id.* at 19.

118. *Matter of Chen*, 20 I.&N. Dec. at 18.

119. *Id.* at 19. UNHCR, *HANDBOOK*, *supra* note 37, ¶136 (1979) (reedited Jan. 1992).

ates long-lasting psychological issues for survivors,¹²⁰ and countries take years and years to become stable enough that survivors might be able to return.

In combining the courts' recent child-centric approach to asylum claims with international and domestic law on a humanitarian grant of asylum based on the severity of past persecution alone, there is overwhelming evidence that child survivors of genocide should be considered *per se* refugees. The very reason that asylum systems exist is to prevent individuals from additional suffering in their countries of nationality, either in the form of current harm or through exacerbating prior harm. The U.S. should consider distinguishing itself as a protector of the rights of asylum seekers by initiating a procedure for *per se* refugee recognition of child sufferers of genocide, or individuals who suffered genocide while they were children.

120. *See, e.g.*, Transcultural Psychosocial Organization Cambodia, JUSTICE & RELIEF FOR SURVIVORS OF THE KHMER ROUGE (2015), <http://tpocambodia.org/justice-and-relief-for-survivors-of-the-khmer-rouge/> [<https://perma.cc/59AC-UJ4S>].