

**Scottish Refugee Council Autumn Conference  
Friday, 9th November 2007**

**Workshop on  
Child-Specific Persecution**

**Introduction and overview:**

1. These notes accompany a workshop to be delivered by Baljeet Sandhu (of Wilsons & Co solicitors) and Steve Symonds (of Immigration Law Practitioners' Association) on child-specific persecution. This introductory part of the notes provides a very brief overview of the context of specific sensitivity towards children in our asylum procedures and decision-making. Following the introductory part, the notes consist of a paper giving specific examples of child-specific persecution which may arise in particular asylum claims.
  
2. There is no settled definition of child-specific persecution nor any settled caselaw on the subject. However, it is expressly recognised in the EU Qualifications Directive (Council Directive 2004/83/EC, 29 April 2004); paragraph 24 of the preamble to which provides:

*“It is necessary, when assessing applications from minors for international protection, that Member States should have regard to child-specific persecution.”*

Article 9.2 of the Directive provides that:

*“Acts of persecution... can... take the form of:  
...  
(f) acts of a gender-specific or child-specific nature.”*

3. There is good reason why there is no settled definition. Neither the concept of persecution within the terms of the 1951 Refugee Convention nor other forms of harm that may engage the 1950 European Convention on Human Rights are changed by a recognition that children may suffer

such harms in ways that either disproportionately or solely affect them rather than adults.

4. In addition to the formal recognition of this in the Directive, by which the UK is bound, it has long been recognised in domestic and international law that persecution needs to be considered by reference to the particular circumstances of the individual. Thus, the European Court of Human Rights regularly refers to the following formulation in judgments concerning Article 3 (the prohibition on torture, inhuman or degrading treatment or punishment):

*“As is established in the Court’s case-law, ill-treatment, including punishment, must attain a minimum level of severity if it is to fall within the scope of Article 3 (art. 3). The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim...”* (see e.g. paragraph 100 of *Soering v UK*, Application no. 14038/88)

5. Similar recognition has been given in UK caselaw. An example of this is given in the judgment in *Katrinak v SSHD* [2001] EWCA Civ 832 at paragraph 21:

*“Third, the attacks also potentially evidence the appellants’ vulnerability in the future. An activity which would not amount to persecution if done to some people may amount to persecution if done to others. It is easier to persecute a husband whose wife has been kicked in a racial attack whilst visibly pregnant than one whose family has not had this experience. What to others may be an unbelievable threat may induce terror in such a man.”*

6. Most recently, and perhaps significantly, is the judgment of Baroness Hale in *SSHD v K, Fornah v SSHD* [2006] UKHL 46 concerning gender-specific persecution. At paragraph 86 of a judgment that merits far more consideration than can be devoted to it in this workshop, Baroness Hale said:

*“In other words, the world has woken up to the fact that women as a sex may be persecuted in ways which are different from the ways in which men are persecuted and that they may be persecuted because of the inferior status accorded to their gender in their home society. States parties to the Refugee Convention, at least if they are also parties to the International Covenant on Civil and Political Rights and to the Convention on the Elimination of All Forms of Discrimination against Women, are obliged to interpret and apply the Refugee Convention compatibly with the commitment to gender equality in those two instruments.”*

7. Of course, recognising that individuals (such as women and children) may be persecuted in particular ways also necessitates a recognition that there may need to be particular care in considering the claims and in investigating the claims of such individuals. It has long been recognised that particular care needs to be taken in any approach to asylum claims made by children. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (paragraphs 213-219) specifically recognises this in respect of unaccompanied minors seeking asylum. The UK’s Immigration Rules include similar consideration at paragraphs 350-352:

***“Unaccompanied children***

*350. Unaccompanied children may also apply for asylum and, in view of their potential vulnerability, particular priority and care is to be given to the handling of their cases.*

*351. A person of any age may qualify for refugee status under the Convention and the criteria in paragraph 334 apply to all cases. However, account should be taken of the applicant's maturity and in assessing the claim of a child more weight should be given to objective indications of risk than to the child's state of mind and understanding of his situation. An asylum application made on behalf of a child should not be refused solely because the child is too young to understand his situation or to have formed a well founded fear of persecution. Close attention should be given to the welfare of the child at all times.*

*352. An accompanied or unaccompanied child who has claimed asylum in his own right may be interviewed about the substance of his claim or to determine his age and identity. When an interview is necessary it should be conducted in the presence of a parent, guardian, representative or another adult who for the time being takes responsibility for the child and is not an Immigration Officer, an officer of the Secretary of State or a police officer. The interviewer should have particular regard to the possibility that a child will feel inhibited or alarmed. The child should be allowed to express himself in*

*his own way and at his own speed. If he appears tired or distressed, the interview should be stopped.”*

8. The Border and Immigration Agency now ensures that case owners dealing with new asylum claims by children have received specific child-related training. Child-sensitive approaches may require a case owner to adopt a more sensitive form of questioning at interview, but also to consider more carefully the likelihood of the child being able to remember or have knowledge of particular events or reasons or motives behind such events or feeling sufficiently confident to disclose information.
9. The general approach then, is that all asylum claims ought to be considered first and foremost from the perspective of the individual claimant. The most straightforward approach is to ask the simple question – what may happen to this individual if he or she is returned to their home country? If the answer to that question reveals real risks of significant harm, it is likely that the individual’s asylum claim may be established under one or more relevant protection criteria – e.g. Refugee Convention definition of a refugee (Article 1(A)(2)) or various articles of the European Convention (perhaps particularly Article 3). Understanding where the particular harm fits will require coming back to the relevant legal tests, and considering whether and how the risk fits under those tests. Having gone through this step, it is ultimately possible to see what status (or statuses) the individual may be eligible for – see BIA Asylum Policy Instructions on Refugee Leave, Humanitarian Protection and Discretionary Leave.
10. Before progressing to the short paper on child-specific persecution which follows, it is perhaps worth pausing again to reconsider where the analytical approach in the preceding paragraph begins – start with simply working out what is going to, or may, happen to the individual if they are removed. Asylum claims are always fact-specific. And increasing awareness of concepts such as child-specific persecution reinforces this need to look carefully at the individual and their particular circumstances before becoming bogged down in technical rules and criteria (such as the

refugee definition or articles of the European Convention, which are reproduced below).

**Taken from Article 1(A)(2) of the 1951 Refugee Convention providing a definition of ‘refugee’:**

*owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country*

**Article 3 of the 1950 European Convention:**

*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

**Article 4 of the 1950 European Convention:**

*1 No one shall be held in slavery or servitude.*

*2 No one shall be required to perform forced or compulsory labour.*

*3 For the purpose of this Article the term “forced or compulsory labour” shall not include:*

*(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*

*(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*

*(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*

*(d) any work or service which forms part of normal civic obligations*

**Article 8 of the 1950 European Convention:**

*1 Everyone has the right to respect for his private and family life, his home and his correspondence.*

*2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

## **Child-Specific Persecution**

Horrendous violence is perpetuated against children all over the world. Children are at risk of life-threatening abuses on the streets, at home, in schools, where they are forced to work, and in institutions. In too many cases, children are betrayed by the very individuals responsible for their protection and well being: the state, members of rebel groups, their family, their teachers, their employers, the police, members of the armed forces and criminal gangs.

There is a lack of understanding that often children are fleeing all sorts of persecutions that are more specific to children. Children are members of society least able to protect themselves due to their vulnerability. For this reason alone they may be specifically targeted.

International organisations such as the UNCHR, UNICEF, Amnesty International and Human Rights Watch have advocated for years for child specific persecution to be recognised by the international community. This concept of child-specific persecution is not new and states have been urged to encompass the harms that children are fleeing within their jurisdictions.

It is vital to focus on child-specific persecution as an aspect of not only international but also domestic law. This area has been neglected for far too long.

There is firstly a widely held assumption that children are attachments to adults who do not attract persecution in their own right. An asylum seeking child who applies for asylum is thus presumed to have done so at the instigation of an adult, to gain preferment rather than because of a real need for protection.

Legal practitioners, decision makers and professionals working alongside asylum seeking children fail to recognise the types of

1. Street Children
2. Children in police custody
3. Child soldiers
4. Children in armed conflict
5. Child labour
6. Persecution and human rights violations at schools
7. Children in Orphanages and Institutions
8. Child Trafficking
9. Forced marriages
10. Female Genital Mutilation
11. Child abuse

## **1. Street children**

Street children frequently experience violence at the hands of police and other law enforcement officials. They are especially easy targets because they are poor, young, often ignorant of their rights, and frequently do not have responsible adults to look out for them.

They are considered as societal problem by the state and the population and in some countries there are often police operations to round them up off the streets in an attempt to eliminate them and rid the streets from their presence. This is known to take place in countries such as Brazil and Saudi Arabia. International organisations such as Human Rights Watch report that street children have been beaten tortured, mutilated, sexually assaulted, and sometimes killed.

Several factors contribute to this phenomenon: police perceptions of street children as vagrants and criminals, widespread corruption and a culture of police violence, the inadequacy and non-implementation of legal safeguards and the level of impunity that officials enjoy. Police also have financial incentives to resort to violence against children. They beat children for their money or demand payment for protection, to avoid false charges, or for release from (often illegal) custody. Street girls may be forced to provide sex to avoid arrest or to be released from police custody.

Children are often detained by police without sufficient cause, and then subjected to brutal interrogations and torture in order to elicit confessions or information. Once detained in prisons, children are frequently mistreated and abused, enduring severe corporal punishment, torture, forced labour, denial of food, isolation, sexual assaults, and harassment. In many instances, children are detained with adults, leaving them at increased risk of physical and sexual abuse.

## **2. Police brutality and interrogation:**

There have been reported incidents of children being beaten and tortured by the police in countries throughout the world. In many countries the police are known to torture children in order to obtain confessions.

Police officials in many countries detain and torture children in order to obtain evidence and confessions about crimes as well as an attempt to locate politically active family members.

Pakistani police frequently torture children in police custody in order to extract confessions or obtain information. Human Rights Watch reported that “medical team interviewed 200 Pakistani children in Karachi’s Youthful Offenders Industrial School in 1999 and found that while in police custody, nearly 60 percent of children had been subjected to forms of torture including severe beatings, electric shocks, hanging, *cheera* (stretching apart of the victim’s legs, sometimes in combination with kicks to the genitalia), cuts, and

burns.(Human Rights Watch, *Prison Bound: The Denial of Juvenile Justice in Pakistan* (New York: Human Rights Watch, 1999)

### **3. Child Soldiers:**

In 2004 Child soldiers continued to be involved in the conflict in the Chechen Republic of the Russian Federation. In Eritrea where children are reported to serve in the armed forces illegally and are subjected to torture, arbitrary detention and forced labour for fleeing forcible recruitment and military service.

Orphans and other homeless children are enrolled in military schools from as young as nine in countries such as Kazakhstan and Russia

More recently, children In the Democratic Republic of Congo, thousands of children have been recruited by government forces, pro-government militias, and rebel forces.

In late 2006 the Islamic Courts in Somalia kidnapped and forcibly recruited children to fight against descending militia groups and Ethiopian troops.

In the past the rebel Lord's Resistance Army (LRA) in Uganda has been known to abduct thousands of children to fight against the government of Uganda and the Sudan People's Liberation Army. Similarly, the Tamil Tigers in Sri Lanka also forcibly recruited and enlisted children to fight against the Sri Lankan Government.

In Colombia, thousands of children have been recruited into guerrilla forces and pro-government, military backed paramilitaries.

The rebels took children as young as eight or nine. Children who protect or resist are killed. Children who cannot keep up or become tired or ill are killed. Children who attempt to escape are killed.

Apart from the inherent risks of combat, child soldiers are also frequently subjected to sexual abuse and other forms of brutal treatment by fellow soldiers or their commanders. Children may be taken from their families and will never be reunited with them again.

In these countries teams of rebels/armed forces are sent on operations to find children to recruit. Typically returning from these missions with truckloads of children

Often armed forces and rebel groups would then provide three to six months of infantry and weapons training. In the case of Somalia children were forced to shout and chant in the name of Allah and the Jihad.

Children who escape may be considered deserters and can be subjected to on-the-spot execution. In some countries if children are believed to have given



information to the states security forces, be it under torture, the punishment is death.

If you are faced with a child from a particular country it is vital to understand the political make up of the country and to have a sound understanding of the armed conflict taking place, if any. Without this knowledge it is very difficult to establish whether it is necessary to consider the possibility of whether the child was forcibly recruited by the armed forces or rebel groups. Often children will not know.

In December 2003 the European Union (EU) adopted “Guidelines on children and armed conflict”. The guidelines set out the EU’s objectives of influencing countries and non-state bodies to implement international and regional human rights and humanitarian standards, and “to protect children from the effects of armed conflict, to end the use of children in armies and armed groups, and to end impunity”. It is useful to consider these guidelines when working on cases involving child soldiers.

Further information can also be obtained from organisations such as the: Child Soldiers Coalition; UNICEF; Amnesty International; Save the Children and Human Rights Watch who often report on current country trends in relation to the recruitment of child soldiers.

### **Armed conflict:**

Not only are children at risk of human rights violations and persecution as a result of forced conscription as child soldiers but children are the frequent targets of brutal, indiscriminate acts of violence. In an oft-repeated statistic, UNICEF estimates that during a recent ten-year period, two million children died as a direct result of armed conflict, and an additional six million were injured or disabled.

In countries such as Afghanistan, Somalia, DRC Children have been murdered, mutilated, tortured, beaten, raped, and enslaved for sexual purposes.

Refugee children have not only suffered from war and been forced to flee from their homes, but many continue to suffer human rights abuses in countries of asylum. Even after travelling across an international border to seek refuge, they remain vulnerable to physical abuse, sexual violence and exploitation, and cross-border attacks.

### **Child labour:**

The International Labour Organization estimates that 250 million children between the ages of five and fourteen work in developing countries— at least 120 million full time.

Children are often expected to work long hours that keep them out of school, and subjected to gruelling conditions and health and other hazards. In addition, many children are also subjected to beatings or other forms of violence by their employers or supervisors and/or parents.

Child labourers often endure long and demanding hours and under difficult and harmful circumstances. Child labourers are often beaten for working too slowly, making mistakes, arriving to work late, appearing tired, or simply as a means of intimidation. Those who attempt to escape such abuse and seek protection from the police may be returned directly to their employers.

In countries such like India and Egypt, an estimated 15 million children are bonded labourers, working in conditions of servitude in order to pay off debts incurred by their family. Most work in the agricultural sector, while others work in domestic servitude, prostitution, or the production of silk, handwoven carpets, jewelry, leather and other products.

Human Rights Watch reported that in Burma, the Government forced millions of people, including many children as young as twelve years old, to work without pay on the construction of roads, railways, and bridges. Many of these forced labourers have died from beatings, exhaustion and lack of medical care.

### **Persecution and human rights violations at schools:**

In schools, intended to nurture the development of children, violence may be a regular part of a child's experience. In many countries, excessive corporal punishment is still permitted as part of school "discipline." Children are subjected to caning, slapping, and whipping that result in bruises, cuts, and humiliation and in some cases serious injury or death.

Girls are also at particular risk. They are at particular risk of sexual violence from both teachers and male students, and may be verbally degraded, assaulted and raped.

In South African schools, we found that rape, assault, and sexual harassment of girls was widespread and committed by both teachers and male students. Girls were raped in school toilets, in empty classrooms and hallways, and in hostels and 17 dormitories. They were frequently fondled, subjected to aggressive sexual advances, and verbally degraded. In some countries, including South Africa, schoolgirls may also be subjected to virginity examinations. This involves intimidation and pain and violates the girls' right to bodily integrity.

Students may also be targeted because of their gender, race, ethnicity, religion, nationality, caste, sexual orientation, social group, or other status.

Many Kurdish children from Turkey have been victims of beatings and abuse by teachers because of their ethnicity.

### **Orphanages and institutions:**

Hundreds of thousands, if not millions, of children who have been orphaned or abandoned are placed in orphanages. Dependent on the state for care, many experience shocking and sometimes deadly levels of abuse and neglect. They may be beaten, sexually abused, restrained in cloth sacks tied to furniture and subjected to degrading treatment by staff.

Prejudice or policies against children with disabilities may lead parents to institutionalise their children who are disabled or perceived to have disabilities.

Once institutionalised, orphans and abandoned children may experience extreme neglect or abuse that their lives may be endangered. They may be denied interaction, stimulation, medical care, and education and frequently learn to live in fear of the people who are their only providers of care.

In Turkey children with learning difficulties and psychiatric needs were essentially abandoned, tied to their beds and starved in mental health institutes. Some children had water-bottles taped to their hands to stop them from biting their hands. There was also widespread practice in the use of raw electroshock as a form of punishment to patients without consent (Mental Disability Rights International, an advocacy group based in Washington September 2005)

### **Child-specific and gender-specific persecution:**

Many young girls are subjected to atrocious traditional and religious practices because of their gender. Other young girls are subjected to violence because they are desired objects to be sold on the 'open market'.

Two of the most common areas where child and gender specific persecution are interlocked when considering applications for asylum are cases involving Female Genital Mutilation (FGM) and Trafficking.

### **FGM**

Many countries, in particular East Africa are subjected to this barbaric practice. Practically 98% of all young Somali females have been mutilated. Young girls as young as 6 are held down by their arms, without anaesthetic, whilst the procedure is carried out.

Not only is the act in itself a violation of human rights. The repercussions for the child and the family if not done are horrendous. Young girls may be ostracised by the community. Often being beaten and accused of being unspoilt by the rest of the community.

The practice may be condemned by the laws in the country of origin. However, in most countries customary law prevails and the state and police officials ignore and condone the practice.

## **Trafficking**

A distinction needs to be emphasised between the positive and necessary act of helping asylum seekers with transportation across borders (smuggling) and the more exploitative process of 'trafficking'.

A universal definition of trafficking has been enshrined in international law under the UN's Palermo Protocol (United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000) This protocol came into force in December 2003 and states:

*“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abductions, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.*

Article 3 (c) states that:

*‘The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in person” even if this does not involve any of the means set forth in subparagraph (a) of this article’.*

The cases of suspected trafficking include exploitation of children for:

- domestic work
- restaurant/catering work
- prostitution
- benefit fraud
- manual labour
- under-age marriage
- ‘cannabis factories’

Children from particular countries have completely different experiences.

(a) Eastern European Countries:

Often young girls came into the UK accompanied by the trafficker, or met the trafficker soon after arriving. The relationship between the two often established by the trafficker before arriving in the UK. The girl believing that she was going to be looked after by the trafficker. In other cases, she may

have been 'rescued' from prostitution in other European countries and promised a better life, only to be forced back into prostitution.

These relationships were characterised by violence, rape and threats to the girl's family to ensure she did not leave. What is known as 'Debt bondage' was also used. This is where the trafficker pays for the victim's expenses for travel, accommodation etc, and then demands this money back from her.

(b) West African Countries:

African children, on the other hand, were found to enter the UK as unaccompanied minors.

The pattern was that they arrive unaccompanied and are told to claim asylum on arrival. In Nottingham young girls were left outside doors of social services departments and the Refugee Action. However, once in care, they were forced to contact their trafficker and would then go missing. In these cases girls were controlled by threats of voodoo magic and the fear that if they told anyone about what was happening then their family would suffer. Others had been sold by their parents to the traffickers and when they tried to contact their families they were told to simply do what they were told if they did want to have them all killed.

On some occasions the girls would pursue their asylum claim. They would collect their money from social services but were then not seen for days. When asked who they were visiting they informed that they were visiting their Pastor who had brought them to the UK. No one was ever able to contact the 'Pastor'.

ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes) publish ongoing reports from across the UK about child victims of trafficking and is a very helpful source for support and information for child victims of trafficking.

ECPAT UK  
Grosvenor Gardens House  
35 – 37 Grosvenor Gardens  
London SW1W 0BS  
Telephone: +44 (0) 20 7233 9887

### **Forced marriages:**

According to the 2005 Foreign and Commonwealth Office Forced Marriages Unit publication 'Forced Marriage: A Wrong Not a Right':

*"A forced marriage is conducted without the valid consent of one or both parties and is a marriage in which duress – either physical or emotional – is a factor. An arranged marriage is very different from a forced marriage. An arranged marriage is entered into freely by both people, although their*

*families take a leading role in the choice of partner. Forced marriage is an abuse of human rights, and a form of domestic violence and child abuse, when it involves young people.”*

Many young girls are forced to marry from as young as 12. In countries such as Pakistan, Afghanistan, Syria and other middle-eastern countries they may be given away by their fathers or other male family members. State officials and local leaders will not get involved with private family matters and therefore the girl has the inability to seek protection. Many girls are used by male members of the family to pay off debts. In Pakistan the state does not provide adequate protection to women (and children) against acts human rights violations committed by family members (Shah & Islam)

In other countries, if the girl attempts to escape from the forced marriage she is accused of ‘dishonouring the family’. This is particularly amongst young girls in Kurdish communities in both Turkey and Iran.

Alternatively, if a girl is accused of dating or sleeping with a boy/man before marriage she is also seen as committing the sin of dishonouring the family.

Girls may be beaten, imprisoned in their own home and at worst shot dead in order to retain the family honour.

### **Domestic violence and child abuse:**

Many women and young children are victims of dreadful acts of physical, mental and emotional abuse by their husband and fathers. It should be noted that in many Islamic countries the husband and father maintain the power within the family. Some Islamic countries have a strict interpretation of Sharia law and this law impacts and legislates for rights within the family, including: rights to a divorce; property rights; inheritance rights and parental rights.

In Iran the parental rights of custody of a child are given to the biological father until the child has attained the age of 7. This will be the case despite allegations of child abuse against the father. In cases young children who have been sexually or physically abused by their father will be returned to the fathers care and the biological mother has no rights over the children.