


National Capacity Building Project: Technical Assistance of the Survivor of Torture Programs

The Asylum Process: Interdisciplinary Responses to Multifaceted Challenges

April 16, 2023




Asylum Assessment and Evaluations



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Asylum Seekers in a Time of Record Forced Global Displacement: The Role of the Clinician

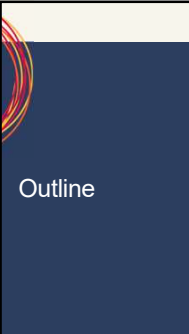
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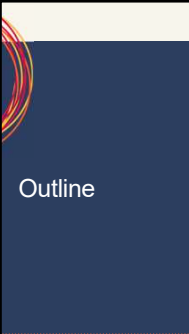
Conflicts of Interest

- No disclosures



Outline


- Historical and legal background of asylum
- Criteria for gaining asylum
- Performing medical evaluations of asylum seekers
- Forms of torture and persecution and common related scars
- Teaching asylum medicine



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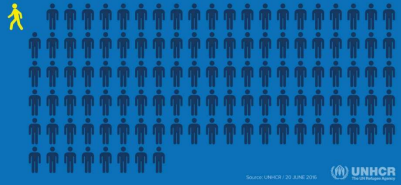
Ancient History of Asylum




Sanctuary ring on the door of Notre-Dame in Paris
During the Middle Ages, grasping this ring gave the right of asylum

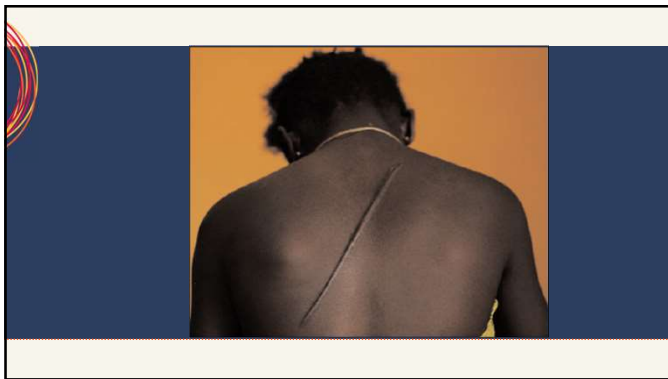
Gi-Bazo M.T. Asylum as a General Principle of International Law. International Journal of Refugee Law. 2016

1 in every 113 people on earth is an asylum-seeker, internally displaced or a refugee



Source: UNHCR, 2018





Yale Center for Asylum Medicine

Modern History of Refugees and Asylum

Article 5
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 14
(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

UNited Nations
Universal Declaration of Human Rights, United Nations, 1948

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Legal Criteria for Refugee and Asylum Status

- Persecution [is perpetrated] by the government, or the government [must be] unable or unwilling to provide protection from [that] persecution




Legal Criteria for Refugee and Asylum Status

- Race
- Religion
- Nationality
- Political opinion
- Membership in a particular social group
 - Domestic violence
 - Gang related violence
 - LGBTQ violence
 - Gender related violence
 - Female genital mutilation/cutting
 - Forced marriage



Refugee vs. Asylum Seeker

| | Refugee | Asylum |
|-------------------------|----------------------------|--|
| Meets legal criteria? | ✓ | ✓ |
| Timing of legal status? | Granted before entering US | Apply within 12 months after entering US |



Convention and protocol relating to the status of refugees. Geneva: Office of the High Commissioner on Refugees.

Outline

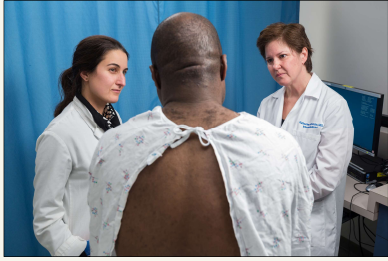
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Istanbul Protocol

YCAM: Medical Evaluations of Asylum Seekers

- Academic legal clinics (Yale and UConn)
- Immigration attorneys
- Human rights groups (Physicians for Human Rights, HealthRight International, American Friends Service Committee, IICONN)

Interview and Review Injuries Due to Persecution



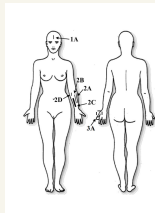
2016. Counting, explain victims. A clinician's guide to physical and psychological evaluation of torture and its treatment. Cambridge, MA: Physicians for Human Rights. 2012

Examine Scars Related to Persecution




Schmitt, KC, Thomas, A. Assessing scarred wounds in a time of global forced displacement: Five clinical cases. Journal of Forensic and Legal Medicine. 2017

Documenting Signs of Torture



Documenting and Describing Signs of Torture



Scar # 1). A 6.5 cm long, 4 cm wide flat and oval shaped scar with irregular pigmentation and sharp borders. It is on the medial side of the right leg and is consistent with a scar from blunt trauma

Scar # 2) A 4 cm long, 1 cm wide flat linear scar on the medial side of the right leg consistent with blunt trauma.

Scar # 3) A 3/4 cm circular hyperpigmented scar on the medial side of right leg consistent with blunt trauma.

Scar # 4) A 3 cm faint pigmented linear scar on the anterior side of right leg consistent with blunt trauma.

Istanbul Protocol: Degrees of Consistency

| | |
|-------------------------------|---|
| Not consistent with | The lesion could not have been caused by the trauma described |
| Consistent with | The lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes |
| Highly consistent with | The lesion could have been caused by the trauma described, and there are few other possible causes |
| Typical of | This is an appearance that is usually found with this type of trauma, but there are other possible causes |
| Diagnostic of | This appearance could not have been caused in any way other than that described |

United Nations, Office of the High Commissioner for Human Rights, Istanbul Protocol manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment, United Nations, New York, 2002, 114.

Provide Objective, Expert Evidence in Immigration Court

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**DECLARATION OF
KATHERINE C. MCKENNA, MD
CONSENSUS XXX**
November 2022

STATEMENT OF INTEREST

I, Katherine C. McKenna, MD, a board certified physician in the State of Connecticut, currently working as a general internist on the faculty of Yale School of Medicine and as an attending physician at Yale New Haven Hospital. I am board certified and board eligible in Internal Medicine.


I am a graduate of Brown University School of Medicine, and I received my clinical training as an intern and resident at Brown University Hospital in Providence, Rhode Island.

Since 2009, I have provided medical forensic examinations for asylum seekers referred to me by Yale New Haven, the University of Connecticut School of Law, Physicians for Human Rights, Human Rights International, the International Justice Center, Physicians for Human Rights, Human Rights International, the International Justice Center, the American Friends Service Committee, and various nongovernmental, nonprofit, for-profit, and academic entities, including Human Rights Watch, Amnesty International, and the American Friends Service Committee.

This medical expert witness testimony and consultation conducted on XXX at Yale School of Medicine, New Haven, Connecticut. In the face of the emergency, I consented to detail the substance provided in support of an application for asylum submitted to USCIS.

The findings of XXX's physical examination, as detailed herein, represent an assessment with the caveat provided in the Declaration and have not been subjected to a peer-reviewed literature or the scientific process.

Dated: December 16, 2022
1. XXX is working part-time in the United States; she is from YYY.

 Boraggin et al. A qualitative study of legal perspectives on medical affidavits in the asylum process. JGIM 2018;33(12):1722-8.

Benefits of a Medical Forensic Evaluation



A PHR study showed that 89% of asylum seekers who received forensic evaluations through PHR were granted asylum compared to the national average of 37.5% among US asylum seekers who did not receive PHR evaluations

Looney SA, Korman S, Chelacki M, Spector V, Marra SC. Asylum grant rates following medical evaluations of persecution among selected asylum applicants in the United States. *J Immigr Minor Health*. 2008

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Forms Of Torture: Blunt Trauma



Forensic D. Documentation for the late physical after effects of torture. *Journal of Clinical Forensic Medicine*. 1999

Forms of Torture: Burns



Forms of Torture: Sharp Trauma




DeGroot, L. Reimann, DV. Dermatological findings after alleged torture. *Torture Quarterly Journal on Rehabilitation of Torture Victims and Prevention of Torture*. 2006;18(2):109-27

Forms of Torture: Forced Positioning




Phil. 2004. *The Medical Documentation of Torture*. New York: Cambridge University Press, 2002

Forms of Torture:
Suffocation



Forms Of Persecution:
Gender Based Violence: Female Genital Mutilation/Cutting





Female genital mutilation/cutting: All procedures that involve partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons

Fact Sheet No. 361 Female Genital Mutilation, World Health Organization, 2008

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Teaching Asylum Medicine at Yale



Supporting Human Rights



"To tame the savageness of man and make gentle the life of this world"

-Aeschylus

National Capacity Building Project: Technical Assistance of the Survivor of Torture Programs

Asylum Evaluations by a Treating Clinician

Hawthorne E. Smith, Ph.D.
 Director, Bellevue Program for Survivors of Torture
 President, National Consortium of Torture Treatment Programs

Primary Asylum Questions

- Are you the person you say you are?
- Do you come from the country you say you come from?
- Have you gone through the experiences you claim to have survived?

Approach to the task

Goal – To produce the most detailed, comprehensive, and insightful report possible.
 Not to “win the case”

Approach - Focus on effective collaboration and communication
 Not just “touchy-feely,” “PC” stuff.

Multiple Goals




Legal and therapeutic benefits

"It doesn't have to be therapy to be therapeutic."

Types of Psychological Documentation

- One-time psychological evaluation
- Ongoing treatment

Different forms - (Legal Affidavit or Psychological Summary)



Presenting problem; Means of referral; Brief history; Course in treatment; Describe how symptoms fit with diagnosis; Clinical summation; DSM-5;


Structural Limitations

- Consistency not Causation
 - Cannot report past facts as such (reported events)
 - No pre-morbid contact with client
 - Possible v. Probable – No 100% certainty
- Bounds of competency
 - Not country experts
 - Not political experts
 - Not cultural moralists

Clinical Assessment


- Review of Systems -
 - Review of Experiences
 - Review of Context
 - Review of Feelings
- Interdisciplinary Focus
 - Psychiatric functioning as part of overall health
 - "How are you sleeping?"
- Normalizing the conversation
 - Patient is the best determinant of pain/distress
 - Avoid stigmatizing or minimizing

Evaluation Priorities and Techniques; Safety



- Of crucial importance for people who have lost their sense of safety and/or their sense of trust;
- Potential for re-traumatization
Many people have been tortured in the context of interrogation

Safety (cont'd)



Create a **climate** where the client can open up, share, and trust;


Work against **negative institutional transference**

Safety (cont'd)

- **“Anticipatory guidance”**
Explain process and potential benefits
Normalize fears and anxieties
- Reduce ambiguity
- Relate ambiguity to psychological torture techniques
- **“Accompanier” model** - stretching of traditional roles
- Emphasize therapeutic value of positive personal relationship


Evaluation Priorities and Techniques: Empowerment

- Of crucial importance for people who have been purposely and violently disempowered;
- Helps them to find their voice in an intimidating situation (it can mean life or death)
- May need reinforcement and elevation in the perceived power hierarchy



Empowerment (cont'd)

- Context of mutual respect – it’s a cycle. Pt. is helping you to do the most thorough job possible on their behalf
- Collaborative v. expert stance
Relationship between two human beings not “expert” and “victim”
Give sense of control and ownership
Do not add another cultural boundary (legal processes) in which they do not know the norms/behaviors



Empowerment (cont'd)

Allow client to teach/share

Model that their thoughts/ideas have value

Some country knowledge is valuable, but you don't have to be an "expert"

Language issues

Acknowledge multiple language skills; particularly for those who are struggling with English (most Americans struggle to speak just one language)

Process Issues

Humanistic Approach

Free floating v Specific Sequence

Collaborative context – not punitive like they are doing something wrong; do not want to discourage sharing



Process Issues (cont'd)

Understanding the Trauma history:

Consider process as well as content (Where does client begin narrative? What is the focus? How is the story told?)

Use for evidence regarding thought processes:
Gaps in history? Inconsistencies? Affect? Fixations?
Avoidance of certain areas?


Look for consistencies/examples (i.e. finding the office; navigating the transit system; time management)

Trauma and Memory Function

Trauma impacts how memories are encoded and how they are accessed;


Complex neurological interconnections;

“Library metaphor”




Helping a “withdrawn” client

- Normalize and give a sense of control
- Restate the potential benefits of sharing
- Reiterate the reason for the question and how it can be helpful




Helping a “flooding” client

- “Flooding”
 - Information or affect overload
 - Tangential, circumstantial, ruminative, or fixated
- Containing
 - Short breaks
 - Developing mutual goals
 - Restating the purpose/need for focus



Helping a "hopeless" client

- Safety Assessment
- Reflect back and inquire about resources strategies they already possess, or interventions you may provide
- Normalize and share experiences of witnessing change and improvement (victories?)



Credibility is Paramount


- Respect bounds of competence
- Context is key
- Consider process as well as content
- Feedback from fellow expatriates (group encounters, etc.)
- Historical/Cultural knowledge

Comments about testifying

Focus on consistency, not causation
 Acknowledge limits of knowledge (no pre-morbid contact)
 Cannot expect to always eradicate ambiguity
 Limits of competence (possible v probable)

Be careful of being drawn into adversarial relationship
 More effective when seen as professional/expert, not advocate
 Be prepared to defend credentials

Insights from former applicants



Wide range of presenting styles/reaction

"Getting to express myself"


"My heart holds more than I can say"

Insights from former applicants

Setting a humane context is the key

"Humanity is the only thing we have in common"

"Treat me like I'm a human being who has no country, no home, and I'm asking if I can stay with you."



Questions?

Have a question or something you want to discuss more in-depth? Here are some options for you:

- Type your questions in the Q&A, or
- Type your questions in the chat, or
- Raise your hand using the reaction button.


Have a questions after the presentation? Here is the contact information for our presenters:

- Name: Hawthorne Smith | Katherine McKenzie
- Email: Hawthorne.Smith@nychhc.org | katherine.mckenzie@yale.edu

Thank you for attending this NCB virtual training!

The Asylum Process: Interdisciplinary Responses to Multifaceted Challenges

The National Capacity Building Project is a project of the Center for Victims of Torture in partnership with Harvard Program in Refugee Trauma and the National Consortium of Torture Treatment Programs.



More resources are available at www.healtorture.org.

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