

# Chapter 17

## Medical Evaluation of Asylum Seekers

Katherine C. McKenzie

### Introduction

An asylum seeker is a refugee who enters the US without legal status, fleeing persecution and torture. Asylum seekers have suffered physical and/or emotional trauma in the country and believe that they will be in danger if they return. Every year, thousands of victims seek refuge in the US, and apply for asylum; in 2011, nearly 25,000 people were granted asylum in the US [1]. A medical forensic report from an expert clinician can provide strong support in immigration court.

### Asylum Seekers

As defined by US law, a refugee is an alien in the US “who is unable or unwilling to return to ... [his or her] country ... because of persecution or... fear of persecution... on account of race, religion, nationality, membership in a particular social group or political opinion [2].

Sometimes torture survivors enter the US with a tourist or student visa. Once they stay beyond the time allowed on the visa, they choose to apply for asylum so that they are not sent back to the countries from which they have come. While asylum seekers are awaiting a court decision, they are not able to work legally and are not eligible for government assistance. Other asylees enter the US through an airport or at a land border, without a visa. Under these circumstances, they are placed in a detention center near this entry point and the evaluation occurs there.

---

K.C. McKenzie, M.D. (✉)  
Department of Medicine, Yale School of Medicine, 800 Howard Avenue,  
New Haven, CT 06519, USA  
e-mail: [Katherine.mckenzie@yale.edu](mailto:Katherine.mckenzie@yale.edu)

## Torture

Torture is officially condemned by most nations but continues to be carried out in almost 150 countries; it is widespread in more than 70 [3].

In 1984, the United Nations General Assembly Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT) defined torture as:

“Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain and suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions” [4].

The CAT also requires that no member UN state “shall expel, return ... or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture” [5].

While torture is the intentional infliction of severe mental or physical pain, persecution covers a wider spectrum of hardships [6]. Torture is a form of persecution, and both are considered valid reasons for granting a client asylum.

Physical and psychological sequelae from common forms of torture are listed in Table 17.1.

Types of psychological torture include deprivation and inhumane conditions during detention, humiliation (especially sexual), proximity to torture of others, threats, blackmail, harassment, and interrogation. Victims subjected to psychological torture can demonstrate anxiety, depression, posttraumatic stress disorder (PTSD), failure to thrive, insomnia, nightmares, and sexual dysfunction.

Female genital mutilation/cutting (FGM) as a form of torture is a manifestation of gender inequality. It most commonly occurs in African countries, but is practiced in India and the Middle East as well. FGM is a practice entrenched in the social, economic, political, and religious institutions of the communities where it occurs.

**Table 17.1** Sequelae of torture [7]

Common forms of physical torture	Common physical and psychological sequelae
Burns	Scars
Blunt trauma/beatings	Chronic pain
Genital cutting/skin mutilation	Infertility
Sexual assault and female genital mutilation/cutting	Sexual dysfunction
Forced positioning	Chronic pain; functional neurological symptoms
Suffocation and waterboarding	PTSD and anxiety
Electrical torture	Scars

It is inflicted most commonly on girls between the ages of 0–15 and in some cases is part of a “coming of age” ceremony for girls. Families perceive that the societal benefits outweigh the harm to the girls and their families; families and daughters can be ostracized if they refuse to allow FGM. For example, a girl whose family refuses to allow FGM may never be allowed to marry.

The severity of the cutting varies in each society, but in many cases the practice allows the girl’s virginity to be ascertained, decreases her ability to experience sexual pleasure, and enhances male sexual pleasure. FGM is classified into four types [8]. See Chap. 15 for more details.

## **Role of the Expert Clinician [7]**

Asylum seekers present to physicians and other clinicians seeking professional evaluation of emotional and/or physical trauma. Medical care is explicitly not provided during this evaluation; the clinician must gather objective evidence to be used in the legal case for asylum. Consequently asylum seekers are considered clients, not patients. This evaluation requires clinical judgment and medical expertise of the physician or mental health professional.

Clinicians interview the client, determine whether the client’s physical and/or psychological sequelae are consistent with the alleged ill treatment, and produce a written report of these findings. The clinician evaluator is not responsible for verifying a client’s identity, confirming the veracity of the client’s report, determining whether claims of torture meet CAT criteria, predicting what would happen if the client returns to their country, or deciding whether a client qualifies for asylum.

## **Client Referral**

Clinicians of any specialty can be trained by advocacy groups to perform asylum evaluations. These training meetings typically last for a half to a full day. Advocacy groups also provide ongoing mentorship for expert clinicians. Asylees are referred to trained clinicians from private lawyers (some of whom see clients pro bono and some of whom charge a fee), from advocacy groups such as Physicians for Human Rights or HealthRight International or from law schools. An attorney will interview the client and a report that outlines the persecution or torture will be shared with the clinician prior to the medical evaluation. A background report on the country of origin of the asylee may be provided as well, to outline details of the political climate of the country. When necessary, the law office or advocacy group will arrange for a translator to accompany the client.

## **Interviewing the Client**

Meetings with the client usually last 60–90 min and begin with acknowledgement of the alleged trauma the client has experienced. Clinicians must strive to provide the client with a sense of control during the encounter; to this end, a client can be told that the interview can be paused or halted if the discussion becomes too traumatic. Although the client has already been informed that the purpose of the meeting is to gather medical information to provide in court, expectations regarding the interview are reviewed with the client. The client is again informed that medical care will not be provided.

The information that was sent from the attorney is reviewed, with emphasis on the details of the torture and persecution. Note should be made of post-injury treatment as well, including medical care provided, medication given, procedures, hospitalization, or surgery. The client is asked to be as specific as possible when describing the incidents of torture. A detailed account is considered to be more credible in court.

Nevertheless, some survivors of torture have poor recall due to head trauma, sensory deprivation during detention, or post traumatic stress disorder. If the client is nonspecific in describing the trauma, a cause should be elicited and outlined. Although many clients are seen also by a mental health professional, it is appropriate to investigate persistent psychological symptoms during the medical interview.

## **Examining the Client**

The physical exam is focused on areas of the body where there are scars from the trauma. Other scars that are unrelated to trauma are noted, with description of the unrelated injury mentioned in the report.

In some cases, there is no physical evidence on exam. This can happen if torture occurs, but the area of trauma heals entirely. Rape, especially in a parous woman, often leaves no scars. Nevertheless, documentation of the history along with an exam from an internist still has value, and should include commentary from the internist regarding any psychological symptoms related to the torture or rape. Internists usually assess psychological distress based on a client's affect and explicit symptoms. More thorough and objective psychological evaluations occur with mental health professionals.

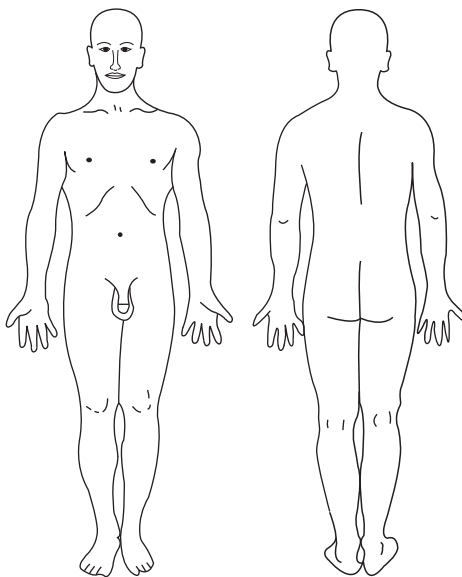
## The Report

After the interview and exam, the clinician writes a report outlining the findings. This report takes the form of a declaration, which does not require notarization, or an affidavit, which does. The attorney determines which form is required.

The clinician begins with a brief outline of the client's life preceding the torture, any medical history and background about country conditions. The clinician then outlines the details of the alleged torture, while providing a detailed history of exactly what the client remembers of the torture or persecution. For example, if a client was detained and tortured, details such as the number of abductors, the type of weapons or instruments of torture that were used, and the number of days in detention are all important.

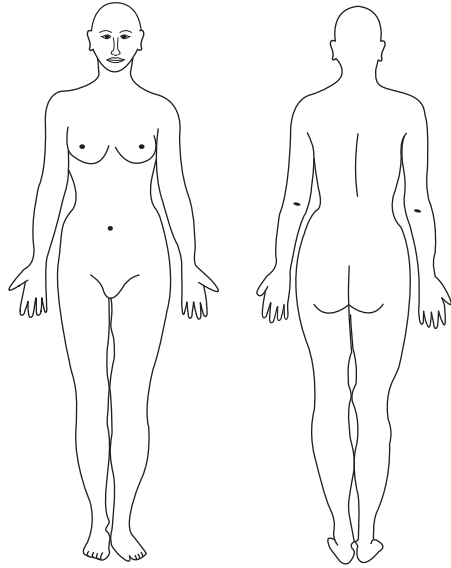
Physical findings are noted in the report. They can also be documented on body diagrams (see Figs. 17.1 and 17.2) [9], with photos or both. Scar documentation should be as precise as possible, with specific measurements and explicit descriptions. The report outlines any psychological findings as well.

The trained clinician must use medical expertise to determine specificity of physical findings and characterize them as outlined in Table 17.2.



**Fig. 17.1** Line drawing, male

**Fig. 17.2** Line drawing, female



**Table 17.2** Expressing degrees of consistency [10]

Not consistent	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 nonspecific and there are many other possible causes
Highly consistent	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

## Court Testimony

The client's attorney or the government attorney may request testimony in court from the clinician; this usually lasts less than 30 min and can be provided telephonically in most cases. During testimony, attorneys may review the clinician's credentials. Both the client's attorney as well as the US government attorney can ask questions based on the information in the affidavit or report. The clinician provides an expert opinion regarding whether the history, physical findings and psychological symptoms are consistent with the reported torture.

## Summary

An expert forensic medical exam by a trained clinician can be invaluable to an asylee applying for refuge in the US. Objectivity and credibility along with detailed physical descriptions can greatly enhance the chances that a torture victim will be allowed to obtain asylum.

Immigration courts explicitly indicate that clinicians are not responsible for determining whether a client's report of abuse is true, nor are they required to determine if a client meets the requirements for asylum. It is only necessary to use medical expertise to judge how consistent a client's history is with the injuries and emotional state. Most cases referred from law clinics and advocacy groups have been well vetted, and the findings strongly support claims of torture or persecution.

Performing evaluations of torture survivors allows clinician to use their training and medical skills in an unusual manner. It is not often that a clinician can impact a person's life in this unique way. The experience of interviewing and examining people who have suffered such profound trauma is emotionally and intellectually challenging, but deeply rewarding.

## References

1. Office of Immigration Statistics, Department of Homeland Security. 2011 Yearbook of immigration statistics. 2012: p. 43. <http://www.dhs.gov/immigration-statistics>. Accessed Aug 2013.
2. United States Immigration and Nationality Act 101 (a) 42. <http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101.html>. Accessed Aug 2013.
3. Amnesty International. Torture worldwide: an affront to human dignity. New York: Amnesty International; 2000. p. 2–3.
4. United Nations General Assembly. United Nations General Assembly convention against torture and other cruel, inhuman or degrading treatment or punishment, Article 1. 1984. <http://www.un.org/documents/ga/res/39/a39r046.htm>. Accessed Aug 2013.
5. United Nations General Assembly. United Nations General Assembly convention against torture and other cruel, inhuman or degrading treatment or punishment, Article 3. 1984. <http://www.un.org/documents/ga/res/39/a39r046.htm>. Accessed Aug 2013.
6. Ark T. Immigration and nationality law handbook: 2002–03 edition, v 1. Washington: American Immigration Lawyers Association; 2002. p. 278.
7. HealthRight International/Human Rights Clinic. Training manual for physicians and mental health professionals. 6th ed. 2012
8. World Health Organization. Eliminating female genital mutilation: an interagency statement. 2008. [http://whqlibdoc.who.int/publications/2008/9789241596442\\_eng.pdf](http://whqlibdoc.who.int/publications/2008/9789241596442_eng.pdf). Accessed Aug 2013.
9. Physicians for Human Rights. Examining asylum seekers: a clinician's guide to physical and psychological evaluations of torture and ill treatment. 2012. <http://physiciansforhumanrights.org/asylum>. Accessed Aug 2013.
10. 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. New York/Geneva: United Nations; 2001. p. 34–35.