

REVIEWS

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

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In 2016, over 65 million individuals were displaced from their homes due to human rights abuses, and 262,000 people applied for asylum in the USA. Individuals who have experienced persecution are present in many primary and specialty clinics. A medical forensic evaluation can increase the likelihood of a successful asylum case. This paper reviews the legal framework for asylum and the contribution forensic evaluations can make to this vulnerable population. Physicians without asylum expertise can help these patients by recognizing their legal right to residential protection and referring them to lawyers and physicians with expert skills. Performing forensic examinations of asylum seekers offers physicians the opportunity to collaborate with attorneys, immigration officials, and human rights experts. Clinicians who do this work find it personally and professionally rewarding, especially when they impart their expert knowledge and skills to future clinicians by involving trainees in these evaluations. Physicians who encounter refugees or asylum seekers in their roles as providers or as preceptors should have familiarity with the field of asylum medicine to enhance the comprehensive care they deliver.

KEY WORDS: immigrant health; vulnerable populations; global health; legal issues; human rights.

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BACKGROUND

In 2016, over 65 million individuals were forcibly displaced from their homes as a result of conflict or human rights violations.¹ Countless people live in danger of injury or death because of their fundamental identities or beliefs. Men and women are detained, tortured, and killed when they oppose repressive governments. Ethnic or religious groups face attack. Sexual orientation can lead to criminal prosecution and extrajudicial persecution.² Women have no protection from intimate partner violence in societies that consider it a “private issue,”³ and face other gender-specific harms such as forced marriage, honor killings, and female genital cutting.⁴ In some

countries, individuals face threats from gangs that act as de facto governments, and are targeted for death if they resist the gang’s authority.⁵

Many of these individuals leave their homes under duress to seek safety elsewhere. Those who manage to make it to the USA can apply for asylum in this country. The USA received 262,000 asylum applications in 2016, an increase of 52% from the year before and over twice as many as in 2014.¹

Physicians are uniquely positioned to help this vulnerable group of individuals. A medical examination can contribute to a successful asylum claim by documenting the effects of persecution or torture.⁶ One study found that asylum seekers with a medical evaluation performed by a health professional were granted asylum 89% of the time, compared with a national average rate of 37.5%.⁷

This paper reviews the contributions a physician can make in performing medical forensic examinations of asylum seekers. A psychological evaluation may be included, but is often conducted separately by a mental health specialist.⁸

Asylum medicine offers an opportunity for interdisciplinary cooperation between physicians, human rights experts, and immigration law professionals.⁹ It also allows physicians to participate in global human rights at a local level (see Table 1 for a listing of some of the leading groups involved in asylum-related advocacy and human rights work). Familiarity with the effects of torture and persecution and an understanding of the asylum process are also important for physicians generally. One study demonstrated that one in nine foreign-born patients seen in an urban clinic had been a victim of torture.¹⁰ Health professionals encountering such patients in their practice can refer them for legal help, provide medical documentation that may assist their asylum claims, and make referrals for specialized care.

HISTORICAL AND LEGAL PRECEDENTS

For thousands of years, a tradition has existed whereby societies have offered refuge to those facing persecution.¹¹ The modern history of asylum dates to the aftermath of World War II. Responding to the large number of refugees, the United Nations (UN) established policies providing a framework for protecting refugees fleeing persecution.

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Table 1 Human Rights Infrastructure Relating to Asylum

Organization	Role	Website(s)
Physicians for Human Rights and HealthRight International	Provide asylum seekers and their attorneys referrals to physicians and hold trainings for health professionals interested in performing forensic evaluations	http://physiciansforhumanrights.org/ https://healthright.org/
Torture survivor clinics	Provide medical care for torture survivors, perform evaluations	http://www.survivorsoftorture.org/ http://www.cvt.org/
Private immigration attorneys, non-profit immigration law firms, and law school legal clinics	Provide legal representation to asylum seekers	http://www.aila.org http://www.immigrationadvocates.org/nonprofit/legaldirectory
UN High Commissioner for Refugees	Works on behalf of refugees worldwide, compiles reports and statistics relating to refugees and asylum seekers	http://www.refworld.org/ http://www.unhcr.org/en-us
US Department of State	Prepares annual country reports on human rights practices that are frequently used as evidence in asylum cases	https://www.state.gov/j/drl/rls/hrrpt/
US Department of Homeland Security, and US Department of Justice Executive Office for Immigration Review	Administer the US asylum system, compile information and statistics on asylum cases	https://www.uscis.gov/humanitarian/refugees-asylum/asylum
Immigration Equality Center for Gender and Refugee Studies	Advocacy and information on LGBT asylum Information and advocacy relating to gender-based persecution	http://www.immigrationequality.org/ https://cgis.uchastings.edu/
Amnesty International, Human Rights Watch, and Human Rights First	Engage in human rights advocacy and prepare reports on human rights abuses faced by asylum seekers	http://www.amnestyusa.org/ https://www.hrw.org/ http://www.humanrightsfirst.org/

The 1948 Universal Declaration of Human Rights declared that “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution.”¹² The 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol define a refugee as “any person who . . . owing to a 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 . . . unwilling to avail himself of the protection of that country.”¹³ This treaty obliges states not to expel or return a refugee to a country where his or her life or freedom would be threatened.¹⁴ The US ratified the UN Protocol in 1968, and in 1980, the US enacted the Refugee Act, which made this international obligation part of US law and created a procedure for granting asylum to noncitizens facing persecution in their home countries.¹⁵

THE PROCESS FOR ADMITTING REFUGEES AND ASYLUM SEEKERS

The Refugee Act set up two distinct processes for allowing people who meet the refugee definition to come to the USA: resettlement and asylum. Those admitted through the refugee resettlement program typically go through 18–24 months of vetting while living in refugee camps or urban settings abroad. Refugee admissions are limited to a maximum number set each year by the President in consultation with Congress and were recently cut by nearly 50% to 45,000, the lowest level in decades.¹⁶

In contrast, any person who is in the USA or arrives at the US border has the right to apply for asylum. An asylum seeker may initially enter with legal documents such as a tourist or student visa or may arrive with no legal status. Some asylum

seekers are detained while trying to enter without authorization or after being caught inside the USA by immigration authorities, and may have to pursue their asylum claims while in detention.¹⁷ An application for asylum generally must be filed within a year after arrival, although there are exceptions to this rule (including for minors and delays due to mental or physical disability).¹⁸ To be granted asylum, an individual must show that he or she meets the refugee definition and that none of the various bars to asylum apply (e.g., serious criminal conduct, persecution of others, or terrorist ties). The burden of proof is on the asylum applicant, and applicants are expected to present corroboration of their claims where available. Persons seeking asylum, unlike criminal defendants, have no right to counsel at government expense.¹⁹

In recent years, approximately 25,000 persons have been granted asylum annually.²⁰ Those granted asylum (known as “asylees”), like refugees admitted through the resettlement program, gain work authorization, the right to remain in this country lawfully, the ability to bring in a spouse and/or minor children from abroad, and ultimately, the right to apply for permanent resident status and citizenship.²¹

THE STANDARD FOR BEING GRANTED ASYLUM

To meet the “refugee” definition and qualify for asylum, applicants must show that they suffered past persecution and/or have reasonable grounds to fear future persecution, and that the persecution was or will be inflicted based on one of five protected grounds: political opinion, race, religion, nationality, or membership in a particular social group. Claims covered under the “particular social group” category may include persecution based on sexual orientation or gender identity,²² gender-based harms such as domestic violence or

female genital mutilation,²³ and, in some circumstances, targeted gang violence.²⁴

Persecution requires more than mere discrimination or harassment. Harms that have been found to constitute persecution include torture, rape, repeated physical abuse, prolonged imprisonment, severe mental or emotional abuse, imminent and menacing death threats, and extreme economic punishments.²⁵

PERSECUTION AND TORTURE

Physicians, especially those serving immigrant populations, may encounter patients who have been tortured.²⁶ The UN Convention Against Torture (CAT) defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person” for purposes of punishment, coercion, obtaining information, or discrimination.²⁷ Some types of torture along with the resultant injuries are outlined in Table 2.²⁸⁻³¹ Torture may not leave a permanent physical scar, but instead can manifest as post-traumatic stress disorder (PTSD), severe anxiety or depression, or other mental illnesses.³²

Torture motivated by any of the five protected grounds is persecution that makes an individual eligible for asylum. But torture, regardless of why it is inflicted, can qualify a person for immigration relief. Under US regulations implementing the CAT, a person cannot be deported to any country where they would face torture from the authorities or inflicted by private parties with official acquiescence.³³

THE ROLE OF THE MEDICAL FORENSIC EVALUATION FOR ASYLUM SEEKERS

A forensic medical evaluation usually is initiated by a referral from an immigration attorney or advocacy organization. An evaluation can play a crucial role in persuading the adjudicator that the applicant’s account of persecution is credible by establishing that the person has scars, injuries, or physical or mental symptoms that are consistent with the applicant’s description of the mistreatment they suffered.⁷

Many physicians have or can readily obtain skills that enable them to assess scars and other abnormalities in asylum seekers. Trainings are conducted by human rights organizations such as Physicians for Human Rights or HealthRight International, or at academic asylum programs. Most trainings are a half or full day. There is no certification granted for training, but judges and immigration officials are likely to give more weight to a physician’s conclusions if he or she has been trained to conduct evaluations and prepare reports for asylum cases. Most physicians perform the evaluations on a pro bono basis, although some charge a small fee to cover their administrative expenses.

Evaluations can occur in a medical asylum clinic, physician’s private office, or an attorney’s office. As the evaluation is not considered medical care, malpractice insurance and creating an electronic health record are not necessary, although standards may vary by institution.

For asylum seekers with ongoing medical or mental health issues, the physician should speak with the attorney about community resources, including medical and psychiatric care, for which the client may be eligible. Many asylum programs

Table 2 Common Torture Methods

Form of torture	Common weapon or injury	Acute injury	Chronic scar	Functional sequelae
Blunt trauma	Baton, fists, whips, kicking	Contusion, fracture	Hyper- or hypo-pigmented, irregular borders, hypertrophic	Uncommon
Sharp trauma	Knife, bayonet	Laceration	Well demarcated, often linear, hypertrophic	Uncommon
Thermal trauma	Cigarette, hot iron, caustic substance	Burn	Shape is instrument dependent; nonspecific if liquid	Uncommon
Electrical shocks	Electrodes	Burns; shape is instrument dependent	Typically well demarcated	Uncommon
Forced position	Suspension, confined space	Uncommon	Uncommon	Chronic pain, motor and sensory deficits
Asphyxiation	Water, cloth, chemicals	Uncommon	Uncommon	Cognitive and memory impairment
Falanga/falanka (blunt trauma to the bottom of the feet)	Sticks, rods	None or foot swelling/bruising	None or fallen arch	Ambulatory impairment, chronic pain
“Telefono” (blunt trauma to ears)	Hands, fists	Swelling of pinna, none	Pinna scars, none	Chronic pain, hearing loss
Rape, sexual torture	Penis, other foreign objects	Lacerations, swelling, bleeding	Usually none	Sexual dysfunction, psychological scars
Inhumane conditions of confinement	Crowding, sensory deprivation, isolation, inadequate food and water, temperature extremes, unhygienic conditions, restricted use of bathrooms	Infections, malnutrition, acute medical illnesses		Post-traumatic stress disorder

have relationships with clinics for the underserved, and some programs provide comprehensive follow-up care for torture victims.

THE ISTANBUL PROTOCOL

The Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is the guiding document for forensic evaluations of survivors of torture, persecution, and ill treatment.³⁴ Developed for the UN by a group of physicians, attorneys, and human rights experts, the Istanbul Protocol is the international standard for assessing, documenting, and reporting allegations of torture. The guidelines recommend the following: (1) describing the events of persecution which led to the asylum seeker's physical findings; (2) documenting symptoms that could be related to ill treatment; (3) commenting on the degree of consistency between the applicant's history of alleged trauma and physical findings; (4) explaining possible medical causes of discrepant history; and (5) providing testimony in writing, and sometimes also in court.

PERFORMING EVALUATIONS

When an asylum seeker claims to be a victim of persecution or torture and reports physical scars and/or mental health sequelae, the physician must assess the consistency between the history reported by the individual and the medical findings. Physicians performing these medical forensic examinations generally do not provide medical care because the purpose of the evaluation is to gather evidence for use in legal proceedings. Physicians must maintain objectivity and avoid any suggestion of advocacy. Because this is a forensic evaluation, and not ongoing care, some physicians do not use the term "patients" to refer to these individuals.

The client's attorney documents the applicant's personal history and the events that gave rise to any injuries and provides this information to the physician in advance of the evaluation, often in the form of a detailed client affidavit or declaration. The referring attorney may also provide pertinent background information on the client's home country, or the physician may research this by consulting human rights reports prepared by the US State Department or NGOs such as Human Rights Watch or Amnesty International. The physician confers with the legal team to arrange an appointment as well as an interpreter, as needed. It is desirable to find someone fluent in the client's language who is not a friend or family member.

If trainees may be present to observe or participate in the evaluation, the attorney should obtain permission from the client for persons other than the physician conducting the evaluation to be involved.³⁵ Sometimes clients express a preference regarding the gender of the evaluator; for example, when the client has been a victim of gender violence.³⁶

Minimal equipment is necessary for the medical evaluation. A private room equipped with an exam table, and seating for client, translator, evaluator, and trainees should be assured. Necessary equipment may include a tape measure, stethoscope, otoscope, light source, and speculum depending on injuries.

Physicians should document all findings of scars on blank body diagrams and take photographs if the applicant allows.³⁷ If the person endured mistreatment that could have mental health sequelae, it is critical to obtain a history of any symptoms that may be consistent with post-traumatic stress disorder, anxiety, depression, phobias, and neurologic manifestations of trauma such as severe headaches or memory and cognitive deficits.

Re-traumatization can occur as the client recalls their persecution.³⁰ To minimize this, the exam should be conducted in an empathetic and respectful manner, while maintaining strict objectivity. Asylum seekers should be encouraged to speak with their current care providers or referred for mental health care if they experience distress during the evaluation or suffer worsening symptoms thereafter.

Since the medical forensic examination may be used as supporting documentation to an application for asylum, the physician must obtain an account of the ill treatment that is as precise and explicit as possible. For example, if an asylum seeker is recounting an incident of violence, it will be important to learn details such as the number of perpetrators involved in the assault, the type of weapon(s) or torture methods used, where on the body blows or other torture methods were inflicted, and the time elapsed during key events. These details will be important in assessing the consistency of any physical scars or symptoms with the individual's story. A medical history should also be taken to identify any medical conditions or injuries besides the persecution, such as abrasions from an accident that may account for any scars or symptoms.

Despite the importance of specificity in recounting torture and ill treatment, clients are not always able to provide detailed or completely consistent accounts of events.³⁸ Head trauma can interfere with recall. Detention may result in sensory deprivation, which can impair temporal and spatial memory. Post-traumatic stress disorder, depression, and anxiety can affect memory.³⁹ In such cases, the physician should outline the potential medical causes of impaired or inconsistent memory.

WRITING AFFIDAVITS AND TESTIFYING IN COURT

After performing a forensic evaluation, the physician will draft a report; this process may take several hours. The physician begins the report by describing his or her expertise, continues with the history elicited from the client, and then documents the physical findings and mental health sequelae. The report must include a discussion of the consistency of the findings with the alleged history of torture or persecution, as described in the Istanbul Protocol (Table 3). Because this report will be

Table 3 Degrees of Consistency (from the Istanbul Protocol)

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 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.

used as evidence in a legal proceeding, it usually takes the form of an affidavit or declaration under penalty of perjury signed by the physician.

If the physician, in preparing the report, discovers that the information obtained from the client during the medical interview differs from information the client gave to the attorney, the physician should discuss this with the attorney, but the physician must always function as an independent expert and rely foremost on the information acquired directly from the client. The weight placed on a physician's opinion depends on their perceived independence, as well as on their credentials and the quality and thoroughness of the evaluation and report.⁴⁰

Most asylum medical evaluations require only a written report from a physician. Occasionally, a physician will be asked to testify in person or by telephone at a hearing. The asylum seeker's attorney can help the physician prepare through a pre-hearing conversation or practice session. The physician may be asked questions by the client's attorney, the government attorney, and/or the immigration judge. In testifying, the physician should bear in mind that she is only responsible for providing a medical opinion and is not there to offer opinions on the asylum seeker's credibility, human rights conditions in the client's home country, or whether an asylum grant is appropriate. The government attorney may question whether the scars or symptoms are a result of the torture or other mistreatment alleged by the asylum applicant or could have been produced by other causes. The physician should reiterate the information in the medical-legal affidavit regarding the degree of consistency between the scars and the individual's account of persecution but must concede that the physician cannot say with certainty that the asylum seeker's account is true.

EDUCATING AND TRAINING MEDICAL STUDENTS, RESIDENTS, AND FELLOWS

As the number of asylum seekers increases, it becomes imperative to educate medical students, residents, and fellows about health and human rights, and the unique contribution a physician can make to asylum medicine. Trainees can learn skills in asylum evaluation and care of torture survivors through formal

curriculum instruction as well as direct involvement in performing evaluations.^{41,42}

CARING FOR VICTIMS OF TORTURE

This paper's focus is on how physicians can support individuals seeking asylum by performing much-needed forensic evaluations. Asylum seekers as a group are vulnerable and underserved, by virtue of the trauma they have experienced and their precarious legal circumstances as they await resolution of their case. Although serving as an expert evaluator may preclude providing ongoing care for the same patient, physicians performing asylum evaluations should, at a minimum, make appropriate referrals to health providers who can provide ongoing care, such as community health centers and programs dedicated to serving torture survivors. Keller et al., among others, have written about the medical needs of patients who have been victims of torture.²⁶ In addition, physicians can engage in political and human rights advocacy to improve the plight of refugees and asylum seekers in the USA and worldwide.

CONCLUSION

As long as there is conflict, human rights abuses, and forced displacement, there will be vulnerable individuals who seek asylum in countries other than their own. Physicians are respected witnesses in immigration proceedings and their expert opinion can increase the likelihood that a person will be able to prove their claim for asylum.⁷ Physicians—at all levels of clinical experience—can enhance their evaluative skills by obtaining training and participating in forensic medical evaluations, and in doing so, contribute to global health and human rights. Clinicians who work with asylum seekers in this capacity report finding the work satisfying and rewarding.^{43,44}

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Compliance with Ethical Standards:

Conflict of Interest: The authors declare that they do not have a conflict of interest.

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APPENDIX

Mr. Garcia is a 42-year-old man. He is Spanish speaking only. Since his initial visit to your clinic, Mr. Garcia has been treated for leg pain with a reported history of trauma secondary to a motor vehicle accident he sustained when he crossed into the USA. A colleague in the legal clinic at your university asks if you will conduct a medical forensic evaluation since you have expertise in this field, and your colleague believes his client sustained torture because of his political affiliation with a democratic party in his home country.

You receive the individual's affidavit and review it. When the interpreter and individual arrive, you escort them into a room equipped to conduct a history and physical examination. You explain the evaluation you have been asked to conduct is not part of his routine medical care, but is focused on evaluating his claims of torture.

Over the next several hours, you gather and clarify through the interpreter, in as much detail as possible, the violence and near-death experience he sustained, his prolonged recovery and efforts to hide from the perpetrators, and the subsequent death threats which forced him to flee to the USA. You carefully ask questions in several different ways at various points in the history to verify the story he is reporting to you, and to determine if it is consistent with the testimony provided to your colleague in his legal affidavit. You also explore any injuries, traumas, or illnesses he has suffered that are unrelated to the persecution.

After completing the history, you examine him, first focusing on each scar—its length, width—and then assess the likelihood of it being the result of blunt trauma, knife-wound trauma, or a surgical incision. You complete a thorough musculoskeletal examination focusing on deformities, limitations in range of motion, and resulting disabilities. After completing the physical examination, you ask questions about his mental health, whether he experienced or continues to experience symptoms consistent with post-traumatic stress disorder,

anxiety, depression, or other mental health disorders. You document your physical and mental health findings and illustrate the scars in drawings. He allows you to take photographs which you plan to include in your final report. While this examination has taken several hours, you realize there may be questions that arise as you write up your report, and ask if he would be willing to see you again if necessary.

You provide Mr. Garcia's attorney with a medical report that lists your qualifications, describes the evaluation you conducted, and details your findings. In the report, you describe and include photographs of several scars you found during your examination. You explain that two of Mr. Garcia's scars are highly consistent with his account of how his assailants cut him with a knife, while another is consistent with a blow to his face with truncheon that he described. You also note that he has a scar on his leg that

appears to be the result of his car accident and unrelated to his torture. You also note that Mr. Garcia describes nightmares, insomnia, intrusive thoughts, and hypervigilance that are consistent with post-traumatic stress symptoms.

After writing up your report, you realize that his primary care physician, a resident in your faculty-resident teaching clinic, did not know this person's history. You ask Mr. Garcia if he would grant you permission to discuss your findings with his medical doctor. He agrees that this information may enable his doctor to provide more insightful and empathic care. Fortunately, the PTSD symptoms are abating with psychiatric care and with support he receives from his fiancé, a woman he knew growing up in his home country who is a legal resident of the USA, and the hope provided by his lawyer and you in his efforts to be granted asylum.