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Short Report

An analytical approach to clinical forensic evaluations of asylum seekers: The Healthright International Human Rights Clinic

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ABSTRACT

Healthright International, formerly Doctors of the World-USA, has for the past 15 years trained clinicians to perform forensic medical evaluations of torture survivors. As the burden of proof in asylum cases in the United States has increased, so has the scrutinizing of the evidence presented. We present a series of cases in which the scars themselves bear testimony to the applicant's case, bolstering the importance of photography in these cases.

There are more than 22 million refugees, and 650,000 persons seeking asylum, in the world today.[1] Every day, thousands of men, women and children survive violence and flee their homelands.[2] They are often forced to travel in a dangerous manner and without valid travel documents, applying for asylum in the countries where they land.[3] These populations are at high risk for having experienced torture.[4]

There are over 500,000 immigrant torture survivors currently living in the United States.[5] This population is dispersed throughout the United States, though clusters are found in 10 states: Arizona, California, Florida, Massachusetts, Minnesota, Nebraska, New York, Pennsylvania, Texas and Washington.[6] New York is a city with a large population of foreign-born torture survivors, with at least 100,000 survivors living in the New York metropolitan area alone.[7]

Healthright International (HRI), formerly Doctors of the World-USA, established the Human Rights Clinic (HRC) in New York in 1993. Its goal is to train physicians and mental health providers to bear witness to the experiences of torture survivors, perform objective clinical evaluations of asylum seekers, to write affidavits for meritorious applicants, and to testify in legal proceedings (as necessary). Clinicians at HRI are trained to perform evaluations using a standardized protocol, one based on the United Nation Manual on Effective Investigation and Documentation of Torture and Other Cruel and Degrading Treatment or Punishment (also know as the Istanbul Protocol).[8] Evaluations typically require 2–3 h. Most volunteers meet with the applicant to perform their assessment in one session. Since its inception, the HRC has trained over 400 physicians and mental health professionals, and provided evaluations to over 2000 torture survivors from over 100 countries. Over the past 14 years, the HRC has shown remarkable success: 85% of torture survivors with an HRC affidavit are granted immigration relief, compared to the national average of 23%[9] which is comparable to the experience of others.[10]

Torture survivors seeking asylum in the United States are typically examined months or years after the purported torture has occurred. In a systematic chart review of the forensic evaluations of asylum seekers seen in the Human Rights Clinic in the Bronx, applicants were examined, on average, 2.9 years after entering the United States, commonly several years after the alleged maltreatment.[11] For these reasons, physical clinical forensic findings of asylum seekers are almost always limited to the late manifestations of torture.

The recent enactment and broader enforcement of stricter immigration laws place added burdens on asylum seekers. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 mandated that anyone entering the country without documentation would be subject to deportation[12] resulting in mandatory detention under conditions akin to prison. Furthermore, the Real

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ID Act of 2005 gave immigration judges and asylum officers broad discretion to reject asylum claims based on demeanor of the claimant or witnesses further codifying the need for corroborative evidence in asylum cases.[13] For torture survivors, such substantiating evidence may sometimes be found on physical examinations abetted by photographic documentation.

Physicians who conduct examinations of asylum applicants face a number of challenges. These include time constraints to perform evaluations, limited access to applicants, the need for rapid submission of affidavits, language and cultural barriers, and the emotionally difficult nature of working with torture survivors. Once the evaluation is performed and the affidavit submitted, healthcare providers face challenges from the legal system as well. Our HRC volunteer physicians are considered by the courts to be defense witnesses, and sometimes their objectivity is questioned. In addition, the qualification of some our HRC examiners has been challenged in US immigration courts on the basis that a specialty in "torture medicine" simply does not exist.

Confounding this, many torture survivors bear no physical findings of their traumas. The most common type of torture documented in asylum seekers is beating[14] which often results in either nonspecific scarring or none at all.[15] Indeed, these findings support the dictum that "the absence of physical findings must never be construed as evidence of absence of torture".[16]

The goals of this article are threefold—to share clinical forensic findings of asylum applicants, to support an analytic approach to evaluating and reporting physical findings, and to encourage using photography as a clinical tool to assess torture survivors. Since the forensic examiner in immigration cases must present findings to a non-medical and sometimes skeptical audience, we believe it is in the applicants' interest for us to present the evidence in a clear fashion, such that the wound patterns could be evident even to the unpracticed eye. Lastly, in the absence of convincing forensic evidence, the examiner should review the history aiming to detect a unique historical element as exemplified by our final case. (Notte benne – although there is no international consensus[17] for the descriptive terminology to be used in forensic findings of asylum applicants, and not yet a standard in US immigration courts, we have applied the terms from the Istanbul Protocol format for forensic examiners in the cases below.)

1. Case 1

An Egyptian Coptic Christian was attacked by Muslim fundamentalists wielding a knife. The applicant describes that to protect himself from the blow; he extended his left hand in a defensive posture. The knife penetrated his leather jacket and cut him, digging into his left wrist. He did not seek medical attention and the wound healed slowly over 25 days. At examination the applicant showed the scar (Fig. 1) and also demonstrated the means by which he defended himself (Fig. 2).

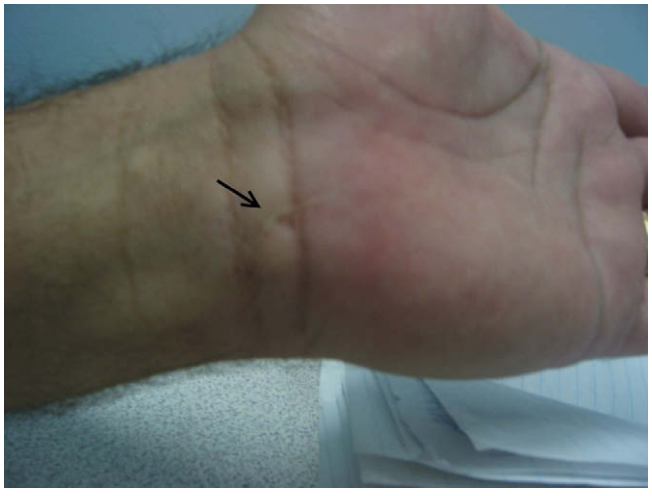

Fig. 1. Scar on inner wrist outlines shape of the tip of a knife.

Close examination of the ventral aspect of the wrist reveals a small triangular scar. There are several significant features of this scar. Its triangular shape reflects the tip of a knife. It is a small depressed scar, highly consistent with the tip of a knife digging into the skin, as opposed to a long linear laceration from, say, a slashing wound. The scar demonstrates evidence of closing by primary intention, without the aid of sutures. In addition, the unique location of the scar, on the ventral surface of the wrist, is compatible with the applicant description and demonstration of how he held out his hands to protect himself during the attack.

2. Case 2

A Guinean man reported that he was tortured by the military over 2 years. He describes that on numerous occasions he was restrained and then burned with the hot flat tip of a variety of metal rods that had been resting in a fire. At times he was forced to stare into the eyes of his torturer as the hot iron was pressed held to his skin. The burned areas formed blisters which he lanced and drained.

Physical examination revealed numerous scars on the lower legs. Many of the scars were circular reflecting the shape of the end of the metal rods. In addition, there was a unique scar on the left lower leg (Fig. 3). This scar was a depressed circular 2.5 cm^2 with central hypopigmentation and with discrete dark margins. In addition, there was a distinctive hyperpigmented mark, an inverted cross (Fig. 3, arrows), within the scar.

This scar has several significant features that could lead an examiner to conclude that this finding is diagnostic according to Istanbul Protocol criteria. The shape of the scar is an almost perfect circle and full thickness burn injury is suggested by hypopigmentation and depression. In the center are two wide, hyperpigmented intersecting lines at a 90° angle which may be attributed to the structural nature of the end of the heated rod.

Unique scars like these, with unusual or specific shapes, have been previously reported in torture survivors.[17]

3. Case 3

A Somali man reported that he was burned repeatedly with a long thin hot metal rod. The rod had been heated in a fire. The

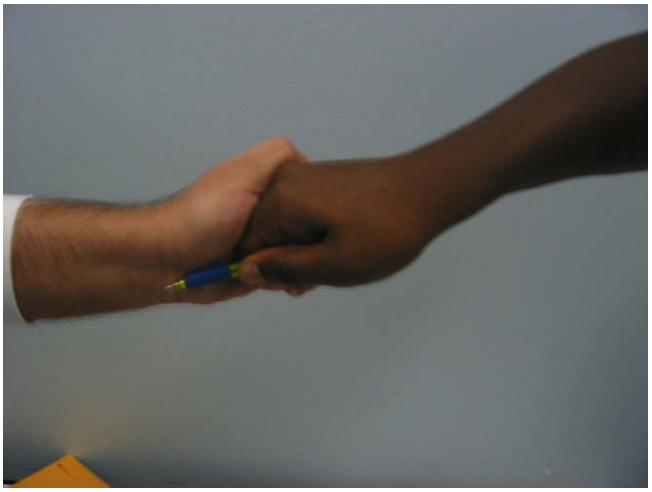

Fig. 2. Applicant demonstrating defensive posture. This photo was included in the medical affidavit.