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Intentional burn injury: Assessment of allegations of self-infliction

Juliet Cohen [a, *], Jo Pettitt [b], Emily Wilbourn [b]

[a] Medico-Legal Reports Service for the Medical Foundation for the Care of Victims of Torture, Freedom from Torture, 111 Isledon Road, London N7 7JW, United Kingdom
[b] Policy and Advocacy Directorate, Freedom from Torture, 111 Isledon Road, London N7 7JW, United Kingdom

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ABSTRACT

This study investigates the question of whether there is evidence that suggests the possibility of self-infliction, or self-infliction by proxy, of burn injury among a group of asylum claimants in the UK who have attributed such injuries to torture, and how such evidence might be assessed. The question arose from the observations of doctors at the UK-based charity Freedom from Torture that increasing numbers of individuals from Sri Lanka who described a history of torture had suffered severe and disfiguring burn injuries from heated metal objects, and the suggestion from asylum decision-makers that in some cases such injuries could have been acquired deliberately by self-infliction or self-infliction by proxy rather than by torture as claimed. This suggestion has not been confined to Sri Lankan cases, but due to the large numbers of Sri Lankan asylum claimants referred to Freedom from Torture in recent years, including many with this type of injury, the case set for this study was drawn from this population. As many of these injuries are found to be on the back, where self-infliction would be extremely difficult, the possibility of self-infliction by proxy was specifically investigated.

An observational data set was examined in detail, comprising medico-legal reports for Sri Lankans with heated metal object burn injuries documented in 2011–14 by the Medico-Legal Reports Service at Freedom from Torture. All had described detention in Sri Lanka since the end of the civil war in 2009. The study reviewed the documented evidence of these injuries alongside other physical and psychological evidence attributed to torture and relevant contextual factors documented in each case. Findings were compared with previous research on torture in Sri Lanka and patterns of injury identified in forensic medicine for both self-infliction and self-infliction by proxy. Thorough examination of the evidence found no indication in this data set to suggest the possibility of self-infliction or self-infliction by proxy and supported the view that, as indicated in the Istanbul Protocol, the overall conclusion on likelihood of torture should be made on evaluation of all the physical and psychological evidence over and above the scrutiny of an individual lesion.

1. Introduction

1.1. Evidence of torture in Sri Lanka

Evidence of torture has been documented for many years both within Sri Lanka and in survivors reaching other countries and seeking asylum. According to Perera, a forensic doctor researching in Sri Lanka, 'the post independent Sri Lanka is widely known in international human rights forums for the prevalence of torture and its endemicity since 1970s'.[1]

In 2004 Sri Lanka was one of five pilot countries included by the International Rehabilitation Council for Torture Victims in training on implementation of the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also known as the Istanbul Protocol.[2,3] Subsequent research on 90 torture victims in Sri Lanka in 2007 found that 8% reported having been burnt with heated metal objects (not including cigarettes).[4] In the same year Perera reported an incidence of 11% for such burns in a study based on records of 100 torture victims from 1998-2001.[5]

Multiple reliable sources reporting widespread evidence of torture in Sri Lanka subsequent to the end of hostilities in 2009 are cited in regularly updated UK Home Office country of origin information and guidance documents that are routinely relied upon

* Corresponding author.
E-mail address: jcohen@freedomfromtorture.org (J. Cohen).

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by asylum decision-makers in the UK and in other jurisdictions.[6] For example, the current Home Office *Country Information and Guidance Report, Sri Lanka: Tamil Separatism,* revised in May 2016, cites multiple sources reporting ongoing torture in Sri Lanka, including Freedom from Torture,[7] the US Department of State, Amnesty International, Human Rights Watch, The International Truth and Justice Project and the UN High Commissioner for Human Rights. An excerpt cited from the 2015 US Department of State human rights report describes 'credible reports during the year that police and military forces abducted, tortured, raped, and sexually abused citizens' and an excerpt from a 2015/6 Amnesty International report states 'Torture and other ill-treatment of detainees – including sexual violence – continued to be reported and impunity persisted for earlier cases … ' At Section 2.2 of the report, the following guidance is given to decision-makers on assessing risk for asylum claimants from Sri Lanka: 'Persons perceived to sympathise with the LTTE continue to be intimidated, harassed, arrested, detained and tortured.'

Sri Lanka is both in the top five of countries of origin for asylum seekers in the UK, and for many years the top nationality of people referred to Freedom from Torture for both medico-legal reports and for therapy. During the 2011–2014 study period Freedom from Torture's Medico-Legal Report Service issued 160 medico-legal reports for Sri Lankans who described detention and torture since the end of the civil war in 2009. Evidence from these reports has been submitted to various UN human rights bodies including the Committee Against Torture (2011),[8] the Human Rights Committee (2014)[9] and the Office of the High Commissioner for Human Rights (2015).[10] In 2015 Freedom from Torture's report *Tainted Peace: Torture in Sri Lanka since May 2009*, based on 148 of the 160 medico-legal reports (where the individual had consented to the use of the report for research) found that 46% of cases had been burned with heated metal objects.[11] The burns are characteristically linear, of lengths varying from a few centimetres up to 30 cm, and mostly of a uniform width of 1–2 cm. The finding of burns in so many individuals was a change from patterns of torture observed in previous years, prior to the 2009 ceasefire in Sri Lanka, and thus appeared worthy of closer examination.[12,13]

1.2. Freedom from torture medico-legal reports

Freedom from Torture medico-legal reports are detailed forensic reports documenting and evaluating physical and psychological injuries attributed to torture. The purpose of the medico-legal report is to assist decision-makers in individual asylum applications, and Freedom from Torture doctors act strictly as independent experts. Legal representatives refer individuals to Freedom from Torture if they consider there may be evidence for the torture described by their client that can be documented in a medico-legal report as part of the asylum application. Referrals are accepted if they meet defined selection criteria: the individual describes experiences of torture (as opposed to some other form of abuse); they are likely to have physical or psychological evidence attributed to torture to examine and the documentation of torture is likely to make a material difference to the asylum claim. Reports are prepared in five Freedom from Torture centres around the UK by trained, specialist doctors according to standards set out in the Istanbul Protocol. The Medico-Legal Report Service at Freedom from Torture has been accepted by the UK Home Office as 'having recognised expertise in the assessment of the physical, psychological, psychiatric and social effects of torture.'[14]

The torture documentation process includes reviewing an individual's history as presented in documents relating to his or her application for asylum, taking a history as narrated by the individual, and assessing the history in relation to clinical findings in accordance with the Istanbul Protocol and Freedom from Torture's own methodology.[15] Clinical findings are obtained through a full physical examination, including an assessment of physical symptoms and the observation and documentation of all lesions (injuries and wounds including scars), a full mental state examination and the documentation of psychological symptoms and signs of torture. Previous clinical diagnoses and treatment of physical or psychological ill-health arising from torture, where known, are also considered as part of the overall clinical assessment. Lesions attributed to torture are differentiated - by the individual themselves and independently by the doctor - from those with a non-torture attribution such as accidental injury, self-harm or a medical intervention such as surgery. The consideration of the likelihood of other possible causes for physical lesions and the psychological findings is integral to the process of providing the expert opinion. Doctors are also required, as per the standards set out in the Istanbul Protocol and recognised in the Home Office Asylum Policy Instruction on medico-legal reports, to consider the possibility of fabrication in assessing the narrative and in reaching their conclusions will seek to establish the degree of congruence between the given narrative, other available evidence (such as physical evidence of torture or any external diagnoses or treatment) and the psychological presentation.

Freedom from Torture's specialised training on examination of victims of torture and documentation of torture for medico-legal reports is comprehensive. It includes specific consideration of how to assess the individual's description of how the injuries were sustained (both psychological and physical); the immediate and later effects of the injuries and the doctor's objective examination findings. Inter-examiner variability is minimised as far as possible by having regular update training for the doctors and each report is reviewed by a senior medical examiner and a lawyer before it is finalised.

It is stressed both in the Istanbul Protocol (paragraph 188 and others) and in Freedom from Torture's training for doctors that it is the overall evaluation of all the evidence – history, observations and examination findings both physical and psychological – over and above the consistency of each scar or lesion with a particular form of torture that is important in assessing the strength of evidence of torture.

The Istanbul Protocol requires doctors to consider the possibility of fabrication of the clinical condition, as well as a holistic assessment of all the clinical evidence at paragraph 105:

'In formulating a clinical impression for the purposes of reporting physical and psychological evidence of torture, there are six important questions to ask:

(a) Are the physical and psychological findings consistent with the alleged report of torture?
(b) What physical conditions contribute to the clinical picture?
(c) Are the psychological findings expected or typical reactions to extreme stress within the cultural and social context of the individual?
(d) Given the fluctuating course of trauma-related mental disorders over time, what is the time-frame in relation to the torture events? Where in the course of recovery is the individual?
(e) What other stressful factors are affecting the individual (e.g. ongoing persecution, forced migration, exile, loss of family and social role, etc.)? What impact do these issues have on the victim?
(f) Does the clinical picture suggest a false allegation of torture?

This requirement encapsulating key forensic principles about assessment of medical evidence in context is specifically adhered to