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Context, evidence and attitude: The case for photography in medical examinations of asylum seekers in the Netherlands

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ABSTRACT

Can photographs of scars serve as evidence of torture? Amnesty International's Medical Examination Group in the Netherlands (AI-MEG) has, for more than a decade, been photographing torture scars to supplement the testimonies of asylum seekers who have been denied refuge. AI-MEG only intervenes at this point, when asylum seekers face extradition. Proving allegations of torture is of vital importance, as asylum seekers face rising anti-immigrant sentiment in European countries. All victims examined by AI-MEG present a combination of mental, physical and emotional scars. We summarize five cases where AI-MEG used photography in their medical examinations, and consider the ethical role physicians play in helping asylum seekers obtain refuge. Though photographs cannot capture all forms of trauma, as visual documents, they are a compelling form of concrete evidence of torture. In this way, photographs complement verbal testimonies and help doctors and immigration authorities to see and understand physical scars left by various forms of torture. AI-MEG explains in medical terms the connections between the visible late sequelae of torture and victims' testimonies. They then assess whether or not the physical scars are consistent with the forms of torture recounted by victims, using the terminology of the Istanbul Protocol (1999), the United Nations–adopted manual of guidelines that explains how to document torture. This paper outlines the medical examination process and argues for the use of photography as medical evidence on behalf of asylum seekers.

Introduction

Finding refuge in the Netherlands has become increasingly difficult for asylum seekers as policymakers respond to anti-immigrant sentiment (Snel, De Boom, & Engbersen, 2003; United Nations High Commissioner on Refugees [UNHCR], 2007a). When the Dutch Immigration and Naturalisation Department (IND) deems allegations of fear of returning to one's country of origin to be justified, the Netherlands is, as a signatory to the 1951 Refugee Convention, obliged to provide asylum (Courtland-Robinson, 1998; Wilson & Drozdek, 2004). The rate of acceptance for asylum seekers who filed applications for refugee status in the Netherlands in 2007 was forty-five percent (Amnesty International [AI], 2008). The people who are rejected by the IND must immediately return to their country or face detention. The rate of removing rejected asylum seekers in the Netherlands is high compared to other countries in the E.U. (Amnesty International [AI], 2008, p. 11).

The physicians of Amnesty International in the Netherlands (AI) intervene when an asylum seeker is denied refugee status. Because IND primarily bases its decisions on asylum seekers' verbal testimony because it is difficult to substantiate their claims with documents, AI physicians intervene by producing medical evidence that will be legally admissible ("medico-legal evidence"). Technically, doctors are allowed to participate in the asylum process, but the IND opines that "[O]n the basis of medical examination, no firm pronouncements can be made as to the cause of complaints or scars" (Dutch Ministry of Justice, 1982). As such, in all of the cases examined by AI since 1977 (the recent average is approximately 40 cases each year) (Oomen, 2007), IND never sought out medical expertise when an asylum request was rejected. Thus, while this paper's primary focus is on the use of medical photography, we also advocate for medical examinations to become a standard practice in the asylum process.

Refusing to admit medical evidence is significant when asylum seekers cannot speak or present a coherent narrative to immigration authorities (Tankink, 2009). Photographs can illustrate traumatic events that are difficult to recount, especially in unfamiliar, foreign settings. In response to this situation of tortured victims, Oomen has participated in AI's Medical Examination Group

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(AI-MEG) on their project "Scarring from Torture" since 1996 (MEG, 2000; Oomen, 2009). The AI-MEG examines how, in prospective research, photographs of torture victims can document evidence of long-term consequences of torture for judicial purposes. This project also inventories photographs of scars as a teaching tool for other AI volunteer physicians.

AI-MEG's photography supports asylum seekers' narratives of torture, it does not replace it. Creating medico-legal evidence, however, is not without opposition. In France, the debate over whether or not to issue medical certificates—clinical reports that certify that claims of torture are authentic—for asylum seekers has been ongoing for twenty years (Fassin & Rechtman, 2009, p. 221). Some physicians view themselves solely as caregivers, and would prefer not to be involved in the larger governmental bureaucratic process (Fassin & Rechtman, 2009, p. 220). Despite the differing positions on medical certificates, medical organizations continue to administer them in hopes of helping some asylum seekers gain refugee status (Fassin & Rechtman, 2009). Though Fassin and D'Halluin (2005) have rightly raised concern about replacing the words of asylum seekers with medical certificates in France, medical evidence will be used in the Dutch context to complement testimony. AI-MEG responds to a political situation where tortured victims are denied refuge despite visual evidence of torture. Fassin and Rechtman astutely observe that in this problematic process of establishing the truth from the body, the contradictions and difficulties of the medical examination "say much more about moral and political stakes than they do about clinical and diagnostic issues" (2009, p. 223). Thus, despite the limited role of medical examinations, presenting visible evidence of torture has enabled AI-MEG to win refugee status for their clients.

The political context of seeking refuge in Europe

Asylum policy in Western Europe primarily aims to restrict entry, despite the fact that all EU-members are signatories to international asylum conventions. The 1951 Refugee Convention and its 1967 Protocol commit signatories to protect refugees. Yet states fail to comply when they force asylum seekers to return "to the frontiers of territories where their life or freedom would be threatened" (UNHCR, 2007b, p. 15). In 2008 alone, 383,000 asylum applications were submitted from people seeking refuge from war, torture, and political threats in fifty-one industrialized European and non-European countries (UNHCR, 2009). The high number of refugees is unsurprising considering that there are thirty wars or conflicts taking place around the world (Inhorn, 2008). Forced migration is primarily caused by violence and human rights violations (Castles, 2004), but is also the result of complex historical and political factors, an international history that connects countries to one another through continuing processes of (neo-) colonialism and globalization (Scheper-Hughes & Bourgois, 2004). Though refugees are perceived to be a burden on developed nations from (non-Western) violent and unstable countries, they are better described as the individual victims of global pressures and relationships in which these same host countries figure as part of the interconnected global community (Chimni, 1998). Improving asylum seekers' chances to obtain asylum is part of the international community's responsibility to provide protection to refugees (Goodwin-Gill, 2001).

However, many countries have responded to refugees with fears over a shortage of jobs and increased border restrictions (Castles, 2004). Only a small minority of torture survivors are even able to leave their countries of origin to seek asylum in safer countries. In the Netherlands, the total number of applications for asylum submitted between 2004 and 2008 was approximately 57,100 within an existing population of 16.5 million (UNHCR, 2009). In short, AI-MEG must work within an environment that is unwelcoming to asylum seekers.

The role of medical evidence in asylum seekers' applications for refugee status

After IND denies an asylum request based on what AI-MEG considers to be legitimate grounds for asylum, the victim and the solicitor act together to appeal the decision. This process, which can take up to two years, entails building new arguments, and solicitors often enlist help from AI-MEG in validating their request for an appeal. The involvement of AI-MEG is crucial since they are the only medical authorities recognized by IND. Measuring the impact of medical examinations upon asylum decisions is difficult because the asylum process can take several years. According to solicitors who work with asylum seekers, about thirty-two percent of those seeking an appeal still do not know their status two years after the examination (Oomen, 2007). In half of the cases that AI-MEG takes on, however, the presence of physical scars has led to the reopening of asylum procedures (Oomen, 2007). AI-MEG has had a high rate of success in getting decisions reversed, prolonging procedures, or at the very least procuring a general pardon and thereby obtaining for an asylum seeker a residence permit (Oomen, 2007). In a retrospective study of the impact medical examinations have made on asylum requests in the U.S., researchers found "that in medically evaluated cases 89% were granted asylum versus a general national average of 37.5%" (Lustig, Kureshi, Delucchi, Iacopino, & Morse, 2008, p. 7). In the Netherlands, since 1990, 70 percent of the clients examined by AI-MEG had their negative decisions on asylum requests overturned (Oomen, 2007).

Currently the MEG has followed other groups in archiving torture scars: the Rehabilitation and Research Centre for Torture Victims in Copenhagen (Danielsen et al. 2003), the Medical Foundation for the Care of Victims of Torture in London (Peel & Hughes, 2003), and the Open Society Institute in New York (Alexander et al., 2009). These organizations' archives serve as a source of reference and comparison for the recently created archive, 'Atlas of Torture,' in Turkey, which deals extensively with recently acquired injuries (Human Rights Foundation of Turkey, 2008). The Atlas of Torture enables physicians to access reports and train colleagues on how to perform, observe, and read medical examinations, and how to direct photographic documentation of scars. Prior to the Atlas of Torture, a group of Turkish doctors had initiated the first international guidelines for the documentation of torture and its consequences called the *Istanbul Protocol* (Physicians for Human Rights [PHR], 1999). Their pioneering work, with its extensive examinations and careful ethical considerations, sets an example in the medical profession.

On the late sequelae of torture, more isolated case studies are appearing in medical literature as well as a few dedicated dissertations, monographs and human rights manuals (Basoglu, 1998; Bloemen, 2004; Brogdon, Vogel, & McDowell, 2003; Jacobsen & Smidt-Nielsen, 1997; Peel & Iacopino, 2002). Of these publications however, few contain pictures of scars that comply with the *Istanbul Protocol*. For instance, through collecting inventory for the Scarring From Torture project, AI-MEG learned that achieving a forensic level of analysis was difficult when the photographs, borrowed from other human rights organizations, were unclear, unlabeled, or lacked the corresponding medical documents. Furthermore, information explaining and contextualizing photos was often absent due to lack of informed consent. To access visual images, physicians consult internal publications and handbooks, or other physicians, dermatologists, surgeons, and forensic pathologists who keep illustrations for reference and training. The limited availability of these kinds of photos is also due to ethical concerns.