

# Medical examinations within EU asylum procedures

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**The Care Full initiative – a joint project of Pharos, Amnesty International (Dutch section) and the Dutch Council for Refugees – seeks to create more awareness of the importance of medical considerations in the asylum procedure.**

Many asylum seekers suffer from health problems arising from their flight and the violence that preceded it: most often problems of physical movement and mental and psychiatric problems such as depression, fear and post-traumatic stress disorder (PTSD). Research on Iraqi asylum seekers showed a high incidence of psychiatric illness (42%) among asylum seekers that recently arrived in the Netherlands. Of this group, one quarter suffer from depression and approximately another third from PTSD. It is clear that these psychiatric problems were present during the asylum hearings and that they interfere with the outcomes of those hearings, resulting too often in a rejection of the application for asylum.

In the Netherlands, as elsewhere in Europe, medical and psychological knowledge and tools are little

used in the appraisal of an asylum application. Physical scars, medical and psychological complaints as well as accompanying behavioural and socio-cultural problems are often not examined. The asylum authorities appear not to consider the possible relation of these health problems with experiences of violence and torture.

Medical and psychological research in the field of traumatisation indicates interference with memory and incapacity to recall events. As a consequence some asylum seekers are unable to give a complete and coherent account of their flight. The story the asylum seeker tells to the authorities during the hearing is pivotal, frequently meaning the difference between a residence permit and expulsion. In other cases asylum seekers will remain silent about what happened in order to protect themselves against painful memories,

or they may find it indecent to talk about the events because it is culturally inappropriate to do so.

## **Impediments to giving a proper account**

A Togolese woman applies for asylum in The Netherlands. During her interview she cries and tells the interviewing officer that she does not feel in good health, that she has difficulty sleeping and is fearful of men and of loud noises. She says she is confused about what exactly happened to her. Although the asylum authorities push her to describe her experiences, she says she cannot talk about them.

The Immigration and Naturalization Service (IND) rejects the application. Because the woman did not submit any documents to support her claim, the IND does not deem her asylum story credible. She is placed in detention awaiting deportation. In the detention centre she is visited by a doctor who diagnoses depression and severe anxiety. It is difficult to diagnose her properly because of her emotional instability, her lack of concentration and her inability

### Istanbul Protocol

The Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) published by the UN has been developed by medical and legal professionals and human rights organisations. It provides guidelines for examinations and for documenting torture and ill-treatment.

It is considered international accepted good practice to make explicit provision – alongside the legal investigation – for a (forensic) medical and psychological examination. Protocol online at [www.pharos.nl/uploads/\\_site\\_1/Pdf/Documenten/istanbul%20protocol.pdf](http://www.pharos.nl/uploads/_site_1/Pdf/Documenten/istanbul%20protocol.pdf)

or unwillingness to respond to questions. The doctor treats her with psychiatric drugs. Deportation, however, cannot be arranged so she is released from detention and lives illegally in the Netherlands. Two years later she is hospitalised in a psychiatric clinic for aggressive behaviour and hallucinations. The clinician diagnoses chronic PTSD with psychosis. During the treatment in the clinic she is able to tell her story of ill-treatment and rape by the military forces in her home country.

The psychiatrist contacts the lawyer and sends him the appropriate medical information. The lawyer starts a new asylum application explaining the link between the traumatic events she was not able to recount during the first asylum interview and her psychiatric condition. Because of treatment received, she is able to recount her whole story during the interview for her second asylum claim. Within a few months the IND grants her asylum.

This case reflects the culture of disbelief among asylum authorities in Europe, within which the asylum seeker has to prove that they were tortured, raped, or beaten. It is not always possible, for example, for women who have been raped to talk about this at the first interview. In fact, can a woman be expected to talk about these things at all, when she sometimes dare not even tell her own husband, in case he rejects her?

Memories of traumatic events such as torture can be incomplete. There is evidence that asylum seekers experience a phenomenon known as ‘boundary restriction’ – a narrowing of focus that causes a failure to remember information that is on the visual or acoustic periphery of the traumatic experience. Asylum authorities, however, often question

asylum seekers about peripheral details of traumatic events such as the number of persons or windows in the room where the torture took place, the colour of the uniforms or the wall, the date or duration of events, and then draw conclusions about credibility on the basis of these details.

### Care Full initiative

The Care Full initiative was launched in 2006. It aims to improve refugee status determination (RSD) procedures for victims of torture and ill-treatment by encouraging authorities to take better account of the psychological, socio-cultural and physical factors that inhibit asylum seekers from presenting a coherent and complete history of their experiences. The initiative stresses the need for a full examination, conducted in accordance with guidelines set out in the 1999 Istanbul Protocol on the investigation and documentation of torture. It argues that any medical or psychological conditions must be given proper weight within the process of refugee status determination.

In 2006 the Care Full Initiative published *Care Full: Medico-legal reports and the Istanbul protocol in asylum procedures*<sup>1</sup> which included chapters on the physical after-effects of torture and ill-treatment; psychological and psychiatric factors affecting the ability of asylum seekers to speak about their experiences during the asylum procedure; an assessment of the use in ten European countries of medical reports in the asylum procedures; the use of medical reports at the European Court on Human Rights and by the Committee Against Torture (CAT); and the use and impact of the Istanbul Protocol in asylum procedures.

In early 2007 the Initiative published a set of Principles and Recommendations<sup>2</sup> – distributed

to NGOs in Europe and endorsed by 35 organisations – to bring to the attention of politicians and policy makers, both nationally and internationally, the need for medical and psychological examination in the asylum procedure.

### A common European asylum system

Given current attempts to harmonise asylum procedures across Europe, Care Full’s goal has been to search for and promote ways for the Istanbul Protocol to become an integral part of asylum procedures in Europe. European Community law recognises the particular needs of survivors of torture and addressing their particular needs is a major element of the European Commission’s plans for the next stage of the creation of a common European asylum system. Member States, however, are far from meeting the standards they have set.

In the EU Qualification Directive (which Member States should all have incorporated into national law by 10 October 2006) there are implicit and explicit references to the use of medical examination and medico-legal reports. UNHCR, in its reaction to the EU Green Paper on the future of the Common European Asylum System, declares itself to be “concerned that vulnerable asylum seekers and refugees are not always properly identified... The use and weight of medico-legal reports in asylum procedures vary widely.” After referring to the Istanbul Protocol, UNHCR also states that “initiatives aimed at identifying and developing good practices to address these challenges would be highly desirable.”<sup>3</sup>

In short, UNHCR and many NGOs in Europe believe that including proper medical examinations and requiring a medico-legal report in refugee status determination would improve the process. It would most certainly reduce the number of appeals as well as the number of revised asylum determinations based on medical facts that are presented at a later date. Furthermore, asylum seekers would feel that their experiences and situations were being recognised – which might in turn help them regain a sense of justice, acceptance, well-being and health.

### Signing up to the Care Full initiative

Organisations outside Europe are also welcome to sign up to the Care Full *Principles and Recommendations*. Supporting organisations are listed in this document – which is regularly updated and can be used throughout Europe to lobby on the national level. Please contact Erick Vloeberghs at [e.vloeberghs@pharos.nl](mailto:e.vloeberghs@pharos.nl).

The Care Full Initiative is currently focusing on:

- raising awareness among EU politicians, governments and medical professionals in order to work towards incorporation of medical examination and the writing of medico-legal reports within the asylum procedure
- developing at the national level (in the Netherlands) a procedure based on the Istanbul Protocol guidelines to incorporate a medical and psychological examination into asylum procedures
- supporting and developing initiatives to train staff of asylum authorities in the medical and

psychological aspects of RSD and in early identification of vulnerable asylum seekers.

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1. René Bruin, Marcelle Reneman & Evert Bloemen (2006) *Care Full: Medico-legal reports and the Istanbul protocol in asylum procedures*, Utrecht/Amsterdam: Pharos/Amnesty International/ Dutch Council for Refugees.
2. *Principles and Recommendations* (2007) [www.pharos.nl/uploads/\\_site\\_1/Pdf/Documenten/Care%20Full%20Principles%20%20Recommendations.pdf](http://www.pharos.nl/uploads/_site_1/Pdf/Documenten/Care%20Full%20Principles%20%20Recommendations.pdf)
3. The UNHCR reaction to the Green Paper can be found at: [http://ec.europa.eu/justice\\_home/news/consulting\\_public/gp\\_asylum\\_system/news\\_contributions\\_asylum\\_system\\_en.htm](http://ec.europa.eu/justice_home/news/consulting_public/gp_asylum_system/news_contributions_asylum_system_en.htm)