

Proving torture: demanding the impossible

Lucy Gregg and Jo Pettitt

New research demonstrates that errors by Home Office asylum caseworkers in their handling of expert medical evidence of torture can make it almost impossible for survivors of torture seeking asylum in the UK to prove that they were tortured. The consequences can be devastating for the individuals concerned, and can also place additional burdens on public services and funds.

A recent study suggests that 27% of adult forced migrants living in high-income countries like the UK are survivors of torture.¹ Many have complex physical, psychological, social and legal needs arising from their torture and from their often prolonged and dangerous journey to safety, and yet survivors consistently tell us that securing legal status quickly through the asylum system is the most significant problem they face.

Medico-legal reports are a well-recognised and accepted form of evidence commissioned by legal representatives on behalf of asylum claimants to assist decision-makers in establishing key factual elements of an asylum claim. They are a vital form of evidence for survivors of torture who may have little else available to prove the fact of their torture and, for reasons stemming from psychological trauma, may find it particularly difficult to give a coherent and comprehensive account of what has happened to them.

Freedom from Torture undertook a detailed analysis of how 50 expert medico-legal reports have been treated by asylum caseworkers in the UK Home Office.² The results indicate that in such cases many Home Office decisions are poor and have to be corrected by judges. In 76% of cases in our research for which the final outcome is known, the person was granted asylum following a successful legal appeal. The average success rate for asylum appeals is 30%. In many of the cases we reviewed, the Immigration Judge specifically refers to the strength and high quality of the medical evidence at the appeal stage. Such a high rate of overturn on appeal, albeit for a relatively small cohort of cases, suggests serious and systemic failings in asylum decision-making on torture claims in the UK.

Standard of proof

In all of the cases in our research we found that asylum caseworkers failed to apply the correct legal standard of proof for asylum claims in the UK. In order to grant asylum, caseworkers are required to satisfy themselves that a claimant's account is 'reasonably likely' to be true. Our research shows that, in practice, asylum caseworkers demand a different standard of proof from the medical evidence of torture, one which comes closer to the criminal standard of 'beyond reasonable doubt'. For example, asylum caseworkers reject medical evidence because the expert clinician cannot categorically attribute the injuries to torture. This is grossly inconsistent with the 'reasonably likely' standard of proof demanded. In other cases, caseworkers wrongly assume that physical injuries assessed as anything less than 'diagnostic' of torture (that is, having no other possible causes) have little or no significance as evidence of torture.

Questioning or replacing expert medical opinion

We found that in 74% of the cases asylum caseworkers gave preference to their own opinion on clinical matters or made clinical judgments beyond their qualifications. In 30% of cases, they wrongly questioned the clinical expert's qualifications and expertise in the documentation of torture. This is contrary to the Home Office policy guidance which directs them not to "dispute the clinical findings in the report or purport to make clinical judgements of their own about medical evidence or medical matters generally".³ The Home Office explicitly recognises in its policy that medical doctors and other clinicians at Freedom from

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Torture are “objective and unbiased” as well as trained, experienced and qualified to prepare medico-legal reports relating to torture, including in relation to the assessment of mental health conditions.

Credibility assessments

In 84% of cases in our research, asylum caseworkers dismissed the medical evidence because they had already reached a negative finding on the credibility of the case. Home Office policy makes it clear that expert medical evidence should be considered carefully as part of the process of looking at the evidence, and that a decision on credibility must not be reached before the medical evidence is fully considered. Our research demonstrates poor practice by asylum caseworkers in this respect, including failure altogether to consider the clinical findings, failure to consider parts of the evidence of torture (especially psychological evidence), and findings on credibility reached before the clinical evidence is even considered.

Poor understanding of international standards

In 54% of cases in the research the asylum caseworker demonstrated poor understanding of how to interpret medical evidence of torture that has been prepared in accordance with the internationally recognised standards contained in the Istanbul Protocol⁴ and submitted as evidence in asylum claims. For example, caseworkers wrongly criticised the doctor’s use of specific terms found in the Istanbul Protocol or incorrectly challenged the doctor’s compliance with the methodology for assessing the degree of consistency between physical injuries (lesions) and the attributed cause of torture given by the individual.

Next steps

For survivors of torture who need protection, the impact of being disbelieved and having their medical evidence mishandled can often be psychologically devastating, obstructing their chances of rehabilitation and social integration. This puts a significant and unnecessary additional burden on already overstretched public services and funds.

Mistreatment by asylum caseworkers of medical evidence of torture leads to long and costly legal appeals and a need for claimants to be financially supported in the asylum system for months or even years.

In its recommendations, Freedom from Torture has called on the Home Secretary to take immediate measures to improve decision making in asylum cases involving medical evidence of torture. The Home Office already has a strong policy in place but effective implementation is lacking. We are now working with the Home Office to begin to address the issues we have raised, with a focus on introducing more extensive and effective training as well as ongoing monitoring of practice.

We have also recommended that there be an independent public audit of the application in practice of the standard of proof more broadly in asylum claims in the UK. This audit should take evidence from survivors of torture, those with experience of providing expert evidence in asylum claims, and legal and other civil society organisations in the refugee field.

Lucy Gregg luggregg@hotmail.com

Former Senior Policy Advisor

Jo Pettitt jpettitt@freedomfromtorture.org

Lead Researcher

Freedom from Torture

www.freedomfromtorture.org

For further information please contact either Jo Pettitt or Sile Reynolds

sreynolds@freedomfromtorture.org.

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2. Freedom from Torture (2016) *Proving Torture: Demanding the impossible: Home Office mistreatment of expert medical evidence* www.freedomfromtorture.org/provingtorture
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4. OHCHR (2004) *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (‘Istanbul Protocol’)* www.refworld.org/docid/4638aca62.html