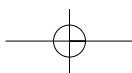


Rape as a Method of Torture

Edited by Dr Michael Peel

MEDICAL FOUNDATION

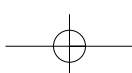
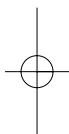
for the care of victims of torture



The editor wishes to thank Beatrice Clarke and Sherman Carroll for editorial comments throughout the chapters of the book.

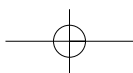
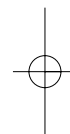
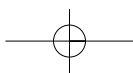
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CHAPTER 1

Introduction

by Dr Michael Peel

Background

Women continued to constitute about 40% of referrals to the Medical Foundation for the Care of Victims of Torture up to the third quarter of 2003, whereas in 1999 the figure was about 25%. A large majority of them had been raped. A recent publication based on Medical Foundation research showed that about 5% of male patients admitted to having been raped, and the true proportion is likely to be much higher. Thus the issue of rape as an aspect of the torture of women and men is one of increasing importance to the patients and staff of the Medical Foundation. There are many different patterns of rape, and all victims of rape need care and treatment, both for the immediate physical and psychological consequences, and to help them deal with the long-term impact on themselves, their families, and the societies in which they live. Rape raises worries about sexually transmitted diseases, and for women includes issues of a possible unwanted pregnancy, and sometimes concerns about termination of that pregnancy, or having to bring up the child. Many also need protection from being returned to a situation in which further torture and rape can occur. The way that rape is considered in international human rights law and in domestic asylum law affects the risk of these women and men being tortured again.

This book has been written by a team from the Medical Foundation in order to share clinical experiences of helping victims of rape from a range of perspectives, and to transmit that information to help victims of rape and those working with them, whether clinicians, lawyers, advocates or friends. We hope that this expertise, in due course, will guide opinion-formers and decision-makers to clarify concepts of rape as torture, to help victims, to punish perpetrators, and to prevent future occurrences.

Rape

“Historically [in England and Wales], the crime of rape was concerned particularly with the theft of virginity, reflecting a preoccupation with the protection of virgins from rape, abduction and forced marriage. It was not until 1275 that the first Statute of Westminster appears to have provided that the ravishment of any woman was an offence... Although the crime has developed significantly from its early origins, the question remains whether it has changed sufficiently to meet the demands of the 21st century.”¹

In Western societies, rape was first defined as a crime by the early Romans, albeit in the context of abduction (*raptus*). In the story of the Rape of the Sabine Women, the Romans invited the Sabine people to a celebration, then abducted their young women as wives. According to Livy,² the offence was the abduction of the women, who were then happy to marry the Roman men, so the subsequent sexual activity was consensual. This was, of course, history written long after the event by the victors, and the reality might not have been so clear-cut. Subsequently, when Roman women were abducted, the law stated that ensuing sexual activity was always considered to have been forced.³

In that period, women were regularly carried away by victors in war. The assumption then was that a woman who had always been faithful to her husband would continue to be so, and any sexual activity would therefore have been unwilling. However, a woman who had ever consented to have sex with a man (whom she had therefore chosen) against the wishes of her family was also assumed to be willing to have sex with any other man, however brutal, ugly, rude or malodorous.⁴ It was for the family to decide whom the woman married, with her opinion taken into consideration to a greater or lesser extent. Premarital and extramarital sex by women (but not by men) was illegal. Thus a woman was unlikely to have been able to have selected her husband, with whom she would be having sex, so being raped by a stranger was not thought to be very different. These attitudes persist in many societies:

“Why should a woman feel injured if she is raped?’
The rhetorical questioner believes that it is the same physical act a woman would experience with any man. Her husband or her father or her brother are the ones who should feel injured because rape is an act against their honour.”⁵

Men (particularly the opinion formers) were thought to lack discrimination sexually, so they would have sex with whoever was available. The model seemed to be that women were either totally faithful, or totally promiscuous like (some) men. The classical gods were certainly not thought to have any concept of consent, often relying on deception and entrapment as a strategy.

An early example of the issue of coercion is the story of the Rape of Lucretia. Sextus Tarquinius, a colleague of her husband’s, came to Lucretia’s home demanding sex. She refused, and he threatened to kill her. She said that she would rather die than suffer the dishonour of adultery. He then threatened to kill her and a male servant, and leave their bodies in a manner that suggested that they had been having sex. She felt that this latter dishonour to the family would be greater than that from having non-consensual sex with him, and finally agreed. Her family acknowledged that she was not guilty of adultery because she had been coerced: that although her body had committed the offence, her mind had not. It is interesting to note that medieval Christian commentators consider the crime to be the adultery committed by Sextus Tarquinius rather than his rape of Lucretia.⁶

What is the relevance of this to the idea of rape as torture today? The values of the ancient Romans are those that formed the basis of present European ones, and their literature is still part of our education. In medieval times, a woman’s sexuality was still the property of her family, and it was they, not she, who had been injured when she was raped. Courts often dealt with sexual attacks on lower class women as a trivial matter, but where the victim was a member of the upper classes, the full force of the law was brought into play.⁷ If a woman did not fight to preserve her “honour”, she did not deserve protection. Women are often blamed for being the survivors of social transgressions.⁸ We can see the dichotomous view of women in criminal rape trials in British courts, where “reputation” can still be a factor in deciding if a

woman has been raped. Decisions about asylum status may be based (consciously or unconsciously) on such attitudes.

In many cultures, similar values exist about women's place in society.⁹ Rape is more common where a woman is seen as property, or where she is considered to be responsible for ensuring that a man is not aroused, because he is not required to exercise self-control. Many rapists perceive their conduct as normal sexual behaviour. A man brought up in a society where sex is thought of as a component of a loving relationship is much less likely to rape.¹⁰

In many of the countries from which asylum seekers are coming, there is civil war, not unlike the situation around Rome two and a half thousand years ago. Gangs of rebels roam the countryside, killing, raping, kidnapping and stealing at will. Cities are controlled by warlords and fight against neighbouring militias, with the rest of the population having no protection from either side. We can see that a woman who has been abducted is extremely unlikely to consent willingly to sex with her abductor, but to preserve her life she might need to give the appearance of willingness. In the pervasive atmosphere of violence, women may make decisions that seem implausible in the safety of the UK.

If we believe in human rights, we believe in autonomy and dignity. Article 1 of the Universal Declaration of Human Rights (1948) states:

“All human beings are born free and equal in dignity and rights...”

A woman (or man) therefore has the right to refuse sex with any particular man, at any particular time, under any particular set of circumstances. Only if she consents has she not been raped. Nobody else has the right to make that decision for her. It does not matter whether force, coercion or fraud have been used, her autonomy has been ignored and she has been humiliated. It is immaterial whether the man would have been convicted of rape in the country in which it happened, or in the UK. From a therapeutic point of view, whether or not she believes that she consented is what matters. In the interests of international protection, it is the victim who must be the focus.

For the purposes of this book, rape will be defined as it is in current British domestic law, as the unwanted penetration with the

penis of the vagina and / or anus of another person.¹¹ Many other sexual assaults are also perpetrated as part of torture.

Male rape has a much less certain history. Male homosexuality was encouraged in classical times as a means of controlling the population size,¹² but as we have seen, consent to sexual activity in those societies was not considered important. The subsequent criminalisation of all male homosexual activity means that the consent of the man who was penetrated was unimportant. Once homosexual activity had become legal, the penile penetration of a man without his consent was a sexual assault, a relatively minor offence. Only in 1992 in the UK was the rape of a man considered as serious an offence as the rape of a woman. However, the rape of male prisoners by their captors to add to their humiliation has probably been a recurrent part of warfare throughout history, albeit not one that either side was willing to make publish.

Torture

Torture is the deliberate infliction of physical or psychological pain. In the context of human rights law (and the mandate of the Medical Foundation) to be torture, the infliction of pain must in the custody of, or under the control of, a state agent, or by a non-state agent acting in an organised group (such as a rebel group in control of territory), including organised violence which the state is either unwilling or unable to control.¹³

Most human rights instruments have required there to be a purpose for an act to be categorised as torture, such as gaining a confession (whether true or false), punishing, or intimidating.¹⁴ The only requirement is that the violence should not be completely purposeless. Perpetrators have often argued that torture is necessary to gain information. It has been accepted since the time of Plato that torture is ineffective for this. The strong and motivated will resist torture and die. The weak will confess to anything, whether true or not.¹⁵ The consequence for societies of condoning torture is severe. Torture is used by authoritarian regimes to discourage dissent and to demonstrate power. This is particularly true of sexual torture. Those who argue that torture is necessary to protect civilisation must say how it is strengthened by kicks, cigarette burns and electric shocks to the genitals, which happens to perhaps 50% of men who are tortured,¹⁶ and to a sizeable proportion of women.

It is important not to confuse purpose and motive. The purpose of the rape is to humiliate the victim, and to intimidate others. It may be to obtain information from a third party. It is the reason the authorities have to condone or encourage the rapes, which are never purposeless. Rape is committed for a combination of motives including the exercise of power, the infliction of humiliation, and lust, and even the perpetrator is not likely to know which is predominant.

Unwanted sexual activity, by its nature, is always humiliating and degrading, which is not necessarily the case for non-sexual assault. When it is carried out in an organised manner it aggravates the humiliating and degrading treatment such that it can be considered torture.

Rape and war

“Rape, nonetheless, has long been mischaracterized and dismissed by military and political leaders – those in a position to stop it – as a private crime, a sexual act, the ignoble act of a private soldier; worse still, it has been widely accepted precisely because it is so commonplace.”¹⁷

Rape has always been part of war, from the time of women (and men) being abducted by victorious soldiers to become domestic slaves with no rights. If rape is common in peacetime, it is not surprising that it is considered such a commonplace in war. It is:

- a right mainly conceded to the victors (rape as reward)
- a consequence of the macho culture of armies, where it is used for initiation and social bonding (rape to boost morale)
- a way of damaging both men and women in communities (rape to inflict terror)
- a means of humiliating male opponents who were not able to protect ‘their’ women (rape as the messenger of defeat)
- a method of destroying the opposing community and culture (rape as cultural warfare)
- a means of ethnic cleansing through impregnating women with mixed-race offspring (rape as genocide)¹⁸

Alleging rape is also a means of propaganda: something that the other side’s evil soldiers do which justifies war, without admitting

that the same happens on both sides. That large numbers of Korean women were abducted by the Japanese to use as prostitutes for their soldiers,¹⁹ or that there was widespread rape by the Russian soldiers when they entered Berlin,²⁰ have only been acknowledged 50 years after the events, when they no longer have any political impact. It is interesting to note that allegations of torture by UN troops in Somalia in 1992 have been investigated and punished only by the Belgian and Canadian Governments²¹ (countries with good human rights records), while other governments simply dismissed them.

It is rarely acknowledged that returning troops also sometimes rape the women of their own communities, their reasoning being that the soldiers needed to be “thanked” or “compensated” for their suffering in the war (as though the women had not suffered in the war). Not “consenting” was seen as collaborating with the enemy.²²

Only recently has rape been accepted as a war crime. It is usually accompanied by other human rights abuses. Rape has been used as part of ethnic cleansing. It happens at times when male family members are being arrested or killed. It happens in detention, along with other forms of torture. The only difference between rape and other human rights abuses and breaches of international humanitarian law is that the vast majority of the victims are women.

Trafficking and sex work

Trafficking is when people are moved from place to place against their will. In international law, this means internationally, but people can be trafficked within a country. It is distinguished from people-smuggling, in which the person has agreed to be helped to cross borders illegally. The issues of consent and coercion are not dissimilar to those discussed below. One key point is whether the person gets what they have agreed. If someone agrees with an agent to pay to be helped to enter the UK in the belief that he or she will get legitimate paid work in good conditions, only to find him or herself working illegally and often in virtual slavery, then both the illegal entry and subsequent work have been coerced, and the person has been trafficked rather than smuggled.

As it is clandestine, the extent of trafficking cannot be known. People are trafficked for a range of purposes including physical labour (for example in restaurants), for domestic work, and for sexual purposes. Only the last of these is relevant to this book. By definition, forced sexual activity is humiliating and degrading, and that must be true of coerced sex work. (This chapter will not engage with arguments about whether all sex work is effectively coerced. Most, if not all, of the sex workers who enter the UK illegally have been trafficked.)

Those coerced into sex work in the UK have been humiliated and degraded here. The British Government responds to requests for help from them, at least to prevent further violations here, but policy in many cases is to return them to their countries of origin as soon as possible.^{23,24} Only those who agree to act as witnesses in criminal cases against their controllers will be offered any protection, and then only for the duration of the case. Many will also have been raped and beaten in their countries of origin. They need adequate protection. The main issue is the ability of their home governments to offer protection as, in many of the countries of origin, the police are complicit in the trafficking.

Women must not be sent back if they are at risk of being abducted, killed, or forced back into further sex work (even if that sex work is not in the UK). The fact that a woman thought she was being smuggled voluntarily into the UK for legitimate hotel work does not mean that she is not at risk if she is returned home, even if she has not testified against her controllers. Some of those who thought they were coming for legitimate work may find themselves effectively in debt bondage (a contemporary form of slavery),²⁵ and be unable properly to protect themselves. There are reports of trafficked sex workers being returned, only to be intercepted by their traffickers, and sent directly back to the UK.

There are also women in the UK who have been trafficked to a third country for sex work, then escaped and been smuggled to the UK. Their risks of being returned to their country of origin are the same as for those women trafficked here directly.

Consent and coercion

The definition used in this book says that for it to be rape the penetration must be “unwanted”. That is to say, without the

consent of the victim. In some circumstances the absence of consent is clear, as when the victim is held down or has a knife at the throat. Many other criminal offences depend on the absence of consent, such as fraud, but they do not require physical force. Consent is also absent when direct force is not used. The recent sexual offences White Paper is clear about consent:

“In order to protect victims of all ages we will be including in the statute the following list of circumstances in which it should be presumed that consent was most unlikely to have been present, i.e., where the victim:

- was subjected to force or the fear of force
- was subjected to threats or fear of serious harm or serious detriment to themselves or another person
- was abducted or unlawfully detained
- was unconscious
- was unable to communicate his or her decision by reason of physical disability; or
- had agreement given for them by a third party.

It would be for the prosecution to prove, beyond a reasonable doubt, that sexual activity took place in one of the circumstances on the list. If so, it would then be for the defendant to show, on the balance of probabilities, that in the particular circumstances in question the victim did indeed give their consent.”²⁶

Identifying coercion is difficult. The victim has apparently consented, but the consent is obviated by threat or deception. Some examples of patients at the Medical Foundation who considered themselves to have been raped are:

A is a woman of 30 whose husband had been participating in a political demonstration. He was arrested but managed to escape. On three occasions, soldiers came to her home, searched for her husband (whom she had not seen since the demonstration), questioned her about his whereabouts, and beat her and her children. Two or three soldiers would hold her down and rape her in turn, and threaten to kill her and her children if she protested.

B is a woman who at the age of 16 was kidnapped by a guerrilla group and “married” to one of them. For a period of 18 months

she had to do the man's cooking and cleaning, and to have sex with him whenever he wanted. Shortly after she arrived, one of the women who had been captured with her tried to run away, and B had to watch as she was killed very painfully. She had to give the appearance of being willing to comply with her husband's sexual demands. Only when she was absolutely sure she could escape safely did she run away.

C is a woman of 21 whose husband was killed when rebels attacked and burnt their village. She ran with her two small children, with the help of other family members, towards a refugee camp. By the time she got there with her children, she had become separated from the other family members. Her children were malnourished, but when she went to get food, the administrator told her that he would only give her the food he was distributing to the refugees only if she had sex with him. Every night, she and a group of other women heads of families waited outside his tent to be called in until she met a relative who helped her flee the country with her children.

D is a man of 19 who was arrested in a student demonstration. He was transferred to a police station on the far side of his country where they spoke a different language and were extremely mistrustful of D's group. He was beaten, then released in the afternoon. He went to the marketplace, but none of the drivers would take him without payment, and the police had kept all his valuables. Then a man came up to him and offered to give him the money for the bus rides home, plus a hot meal and a roof for the night, provided he spent the night in bed with him. D had never had any homosexual ideation, but decided to go with the man in order to get home.

E is a married woman of 25 whose husband was arrested by the army during a routine roundup. She knew that the men were tortured in the army camp, and some died there. Most got out only when their families paid a bribe, but she did not have access to that amount of money. A friend told her that one of the sergeants had a reputation for helping men escape if he had sex with their wives. She went to the camp, and the next day her husband was helped to escape.

In each of these cases, the person considered that they had "no choice" but to submit to the sexual acts. It is impossible for us in the safety of another environment to know what their alternatives

might have been. However, in order to seek international protection, they must show that they have been tortured, and that the ill-treatment will be repeated if they are returned.

The case of A is quite straightforward. She has been raped three times by soldiers in the course of their duty. The authorities do not appear to be interested in restraining them. In the absence of her husband, the soldiers would continue to search her house and rape her while they were there.

B had to give the appearance of consenting to sex in order to save her life. She has been abducted against her will. The alternative to compliance was death. The guerrillas were the *de facto* authorities in the area, and there was nobody to protect her. She has been raped and tortured.

How about C? She could have chosen not to comply, but then her children would have died of starvation, and she might well also have died. It is not only the gun at the head that counts as a threat to loved ones, and their death would have been almost as immediate. The other issue is whether she had a reasonable expectation of the food. The man's job was to distribute food to the refugees and by denying the food to female headed households, he was abusing his power at the expense of the most disadvantaged. Ultimately she could complain to higher authorities, if she was able to access them, but that would be too late for her children. Coerced sexual intercourse with an abuse of power is rape as torture. If she were forced to go back to the camp, she could be coerced into the same dilemma.

D considered himself to have been raped, but was he? He was left by the police in a potentially hostile environment with no way of supporting himself or getting home. However, he did not have to go with the man. He could be said to have been made an offer that he accepted. However, it is unclear what the normal or expected course of events would be. Was he put into a position by the authorities, who left him no alternative but to accept whatever humiliating offer was made to him? Whether this was rape depends on his alternatives. Could he have gone to a nearby religious establishment and sought charity? Would he have been safe waiting in the market overnight in case he was made a better offer the next day? Should he be expected to have walked for several days without food along an unsafe road? Can we second guess his judgement that he had no alternative, given that he decided that

the sexual act, although painful and humiliating, was a lesser risk than the alternatives?

E made an offer to the sergeant, although she probably felt trapped into making it. She had no reasonable expectation of her husband being released. However, if her husband would have remained in detention indefinitely, with his health slowly deteriorating, she could reasonably argue that she would have to have acted sooner or later and that there was nothing to gain from delay. Only if she had other, better options, could it be said that she was not raped.

These analyses are not intended to be definitive, but to demonstrate the complexity of situations in which women and some men feel coerced into sex, and how difficult it is for a third party to judge whether what she did was acceptable in the circumstances. Courts should not be making moral judgements about appellants in these cases. The women and the man did what they considered was safest in the circumstances, and that fact should be accepted.

We do not make similar judgements about students who have been tortured following a non-violent demonstration, nor trapped by an *agent provocateur*. Psychological torture often involves exposure to ambiguous situations or contradictory messages, such as giving the victim two equally unattractive alternatives.²⁷ Only if one of those alternatives is to comply with a sexual act do we make a judgement about the option chosen.

What matters therapeutically is that the victim feels violated by what happened, and needs help to cope with the consequences. That help includes being protected from the fear of the same thing happening again.

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CHAPTER 2

Psychological Approaches to Working with Political Rape

by **Nimisha Patel and Aruna Mahtani**

Introduction

Historically, in psychological literature, the impact of rape has been categorised as being an acute traumatic reaction once described as ‘rape trauma syndrome’ with the main presenting features being anxiety and fear.¹ This early conceptualisation was then replaced with that of post traumatic stress disorder (PTSD), a psychiatric diagnosis that attempts to describe psychological reactions to a broad range of traumatic experiences, spanning road traffic accidents to childhood sexual abuse. However, PTSD and related theoretical paradigms have been heavily and rigorously critiqued with regard to their validity and their relevance and applicability to refugees.^{2,3,4} In the context of refugees who have been raped, the psychological presentation and difficulties are very complex, and to attempt to categorise them using conventional, Eurocentric psychiatric frameworks of PTSD and rape trauma syndrome seriously risks oversimplifying and de-politicising both the impact of rape and the therapeutic attempts used to help survivors of rape to manage their difficulties.

This chapter describes ways to understand and to address rape and its aftermath, specifically in the context of rape as torture. It is argued that a central task for therapists is to integrate a contextual approach to working with survivors of rape, whatever theoretical and therapeutic model is adopted.

The Contexts of Rape

At the heart of understanding the impact of rape when working with asylum seekers and refugees is the recognition of the

multifaceted and interconnected contexts of rape. These contexts are highly significant because they a) shape and define the way in which a person **presents** in a clinical context, or in an asylum interview context; b) they **shape the meanings** that the survivor of rape attaches to their experiences and the way they make sense of their choices and the future; c) furthermore the same contexts also **regulate the community and social responses to and treatment of** survivors of rape. Thus, the act of rape itself is an act of violence and deliberate aggression which *becomes* powerful precisely because of the contexts within which these acts are perpetrated, experienced and understood. This has enormous implications for prevention: if we are to prevent or minimise rape being used as a weapon in oppression and warfare, then we need to understand those very contexts which enable such acts to be perpetrated and to be so powerful and often to be effective in fulfilling their aims of oppression.

Traditionally, psychological theorising and research has approached rape in terms of trauma resultant from a sexual assault, the emphasis being on the impact of this assault on the victim. The focus on the victim and their 'rape trauma' has perhaps inadvertently served the function of locating blame and responsibility for change at the individual victim level. The focus on the act as a sexual offence has enabled the psychological interventions to be directed at the perpetrator, again implying that the focus of pathology and therefore of the sole responsibility for change should be on the individual man. As such, psychological approaches, whilst useful in enabling some understanding of individual distress and psychological anatomy, remain partial, limited and potentially oppressive themselves. Psychological approaches typically assume that all psychological concepts are universal and culture- and gender-neutral. The historical, cultural and political contexts of violence against women and men are largely ignored.

Feminist literature has made significant contributions to the politicising of psychological practice with survivors of rape – most notably in the development of an understanding of rape and sexual violence in terms of dominance and control aimed at maintaining patriarchy and women's subordinate position within the social order.⁵ In some feminist interpretations, rape is thus an expression of male misogyny; as Brownmiller⁶ argues, war provides the

licence to express the misogyny that is ever-present. Rape in war has been described by Niarchos⁷ as “torture, mutilation, femicide and genocide”. She suggests that historically, women were obvious targets given their status as the protagonists of the enemy’s soldiers. However plausible, such gender analyses on their own do not enable us to understand better how rape is used in peacetime, as a weapon of terror, repression and persecution, and against both women and men. For example, how is rape used politically and what impact does it have when perpetrated in the context of torture, say, by men from one ethnic group against men and women of another ethnic or political group? Psychology has generally obscured the complexities of such political contexts, focussing instead on the targets of oppression, the ‘victim’ and mostly on the female victims.

The following explores the significance of various contexts in the psychological presentation of survivors of rape. Case examples are used to illustrate both the complexity of the psychological presentations and to identify specific issues for consideration by clinicians as well as criminal or asylum law decision-makers.

Political beliefs and political identity as a context

Sangul, a Turkish Kurd, was a political activist. She was detained in isolation and following one of her interrogations she was forced to strip naked and was raped. Obscenities were shouted at her throughout her detention and during the assault. In therapy she described her thoughts and the words that she repeated to herself during the ordeal, illustrating a mixture of terror, rage and absolute defiance – “you [the aggressor] can touch my body but you cannot touch my beliefs” and “you can break my body but you will not break my will”; “you fear what I stand for, I have utter conviction”. Her political beliefs and her identity as a political activist were central in her way of coping with the rape, both during and after the assault and subsequently in exile in the UK. When talking about the cultural injunctions that made her experience difficult to talk to anyone about, she explicitly privileged her political identity over and above her gender and cultural identities. She stated in the very first session that she had been raped. For her it was imperative that she defied cultural taboos and talked to someone about why she sought asylum and

how she had been tortured – testimony was the main motive, therapy was seen as a secondary priority, viewed by her as a way to alleviate her continued distress. Interestingly, she sometimes described therapy as an indulgence, one which her comrades could not afford in their continued struggle for freedom.

Some months into therapy, she became pregnant by a man she had recently met. She commented that she had no interest or desire to have a relationship with any man. The pregnancy raised numerous ambivalent and complex emotions for her, most notably manifest in her contempt for men and for her body, whilst desperately desiring a child of her own. Psychologically, she felt that the only way that she could overcome her fear and her belief that her body was damaged was to force herself to have sex, but as a consenting adult, being able to choose the man and to control the circumstances of the sexual experience. The sexual act was both an act of defiance and an attempt to repair the damage she perceived had been done to her physically. In an act of defiance, she had taken an active position against passivity and lack of control, and in an act of reparation, she had used her body to do what she felt it was designed to do, not for sexual pleasure, but to produce a child, to give life. She saw the pregnancy as a very positive experience, a confirmation of her physical, emotional and political integrity: “this baby will be pure, new, uncontaminated...I want to bring up this child and show them that there is a way to grow up without hate, violence and fear, there is a way to be free.”

Similarly, Theresa, a Latin American woman, was a health professional and politically very active in challenging the regime in her country. She was multiply raped by a gang of secret police and left naked and with severe physical injuries, on the doorstep of her home where her children and her mother found her. She had been targeted specifically because of her political beliefs and activities. Bunster-Burotto⁸ argues that the “military regimes in Latin America have developed patterns of punishments specifically designed for women who are perceived as actively fighting against or in any way resisting oppression and exploitation visited upon their peoples by dictatorial governments” (p.297). Here rape is not used indiscriminately against all women as a tool in the subordination of women. This is an act of sexual violence directed at a woman because of her political beliefs – that is, political rape.

As such it is both the political identity and the gender identity of the person that make them a prime target in oppression.

Theresa's response to the rape included enormous shame and rage that she had been assaulted and humiliated. Her shame was amplified by the act of her torturers leaving her battered, naked body for her mother and children to find, something she experienced as a punishment for her and her family. Bunster-Burotto⁹ explains that it is essential to understand that the identity of the Latin American woman is derived from her position in the family and especially from her sacred mothering role: "Her role is sacrifice and selflessness personified" (p.164). In this context, sexual torture is intended to "teach her that she must retreat into the home and fulfil the traditional role of a wife and mother. It is this role only that provides her with respect in a society where she is ideologically defined as inferior to the man from whom she derives her second identity" (p.166).

Significantly, like Sengul, Theresa disclosed her experience of rape at the very beginning of therapy. She explained that such experiences were common for women who were politically active in challenging the regime in her country, but that she never thought it would happen to her. Her determination to overcome her emotional difficulties subsequent to the rapes stemmed directly, in her own mind, from her political and gender identities – she felt that she had to resume her roles as a political activist and as a mother. She made a conscious decision to tell her children what had happened to her and why, and to reinstate her role as the mother, the nurturer of values, explaining to her children that "they used my body to try to break me, but they did not break me, they brought me to my knees.... You must learn that you cannot fight injustices whilst on your knees – learn to stand up and fight for what you believe in." Her request in therapy was simply put: "Help me to stand up again and I will go on fighting."

Cultural beliefs and cultural identity as a context

Understanding the cultural context of those who have been raped is crucial. An example of the different ways distress related to rape can be expressed is described by Swiss and Giller.¹⁰ They report that the presentation of physical complaints was more likely than the presentation of psychological symptoms in Ugandan women

who had been raped. These women reported feeling dirty and infected, despite not having infections. In this situation it was important to treat the physical presentation first, develop trust, and then to deal with the impact of the trauma of rape.

Van der Veer¹¹ also highlights the importance of the cultural context in determining the reaction of the person's social environment to rape, a reaction which can include the ostracism and stigmatisation of a woman who has been raped, even though she is the victim. Similarly, Mollica and Caspi-Yavin¹² emphasise the importance of the cultural attitudes and beliefs of Indochinese women associated with sexual torture. These women face negative social sanctions and severe punishment, exemplified by a Vietnamese proverb that graphically illustrates community responses to rape: 'Someone ate out of my bowl and left it dirty.' Such severe sanctions inevitably affect the woman's subjective reaction to rape as well as the psychological presentation of any related difficulties.

Sara, a young Eritrean woman was raped whilst in prison with her mother at the age of eleven. Having been separated from her mother during this ordeal and subsequently, she never had the opportunity to talk to her mother or anyone else about her profound confusion, shame and terror. At the age of 17 she was sent alone by an aunt to Britain to seek asylum. In a short-term hostel she was raped again by a man living in the hostel who threatened to kill her if she told anyone. After a long period of help from her social worker she disclosed her experiences to her but vowed never to speak again of the matter – either to the Home Office, her solicitor or her current counsellor at the Medical Foundation. Her social worker had then left the service. Her asylum claim was refused at the same time as she was assessed at a local HIV and Sexual Health Clinic for HIV infection. The HIV counsellor, insensitive to Sara's cultural and developmental contexts, remarked that having casual sexual relationships carries the risk of HIV infection and that it was probably a foregone conclusion that she would have tested as HIV positive because "this is common for people from Africa".

For Sara there were several factors which accounted for her choice not to disclose the nature of both her experiences of rape to anyone except her social worker, and eventually her counsellor. Within her developmental context, her age at the time of the first

rape was central to understanding the impact on her emotional and sexual development later on in her life. She was a child imprisoned with her mother, raped in prison. A political act of violence profoundly shattered her relationship with her mother and her faith in her mother's ability to nurture and protect her.

Simultaneously, the rape served to stunt her emotional and sexual development. Her body became for her the symbol of shame, intense self-disgust, self-hatred and great confusion. Silence was the only culturally available response to her – to speak of her experience would not only evoke intense confusion and pain but for her it was equivalent to betraying her mother by exposing both her mother's inability to protect her, and her mother's inability to be present, to support and to nurture her subsequently. Her reluctance to speak of her experiences was also related to the fear that her shame and disgust would be mirrored and magnified by her mother's shame and guilt. Sara would repeat that death was a preferable option to shame for her and her mother. Silence, and therefore not disclosing her experiences even for her asylum claim, was chosen over public shame for her, her mother and her family.

Within Eurocentric psychology, silence can be understood in many ways, but the meaning of silence is also deeply embedded in cultural and historical contexts.¹³ As such, silence can be a culturally specific and a culturally accepted form of communication. It serves not only to convince the audience that the experiences are too extreme to speak of or simply incomprehensible in language, but it also communicates a powerful relationship to one's culture and one's cultural norms where honour, respect and utmost loyalty to one's elders, parents and family are privileged over and above one's own life. For Sara, her shame was magnified by being raped again, whilst seeking asylum and safety in the UK. Her experiences with the HIV counsellor further compounded this shame and self-loathing, whilst reinforcing her belief that death (either by AIDS or by self-harm) was preferable to disclosing her experiences to anyone. Her existence was balanced on a thin line between literal death and silence as emotional and spiritual death.

Culture is not only a context for understanding people's beliefs and identity, but it also provides a context for definitions and meaning of rape. The very concept of rape itself is shaped by culture^{14,15} and regardless of legal definitions, rape is constructed

differently within the context of one's culture. For example Holzman¹⁶ points out that for African-American women rape is to be understood within the cultural and historical context of slavery, where African-American women were systematically raped as a means of increasing the supply of slaves, as well as for other reasons. Therefore, she argues, it was maintained that it was impossible to rape an African-American woman because she was never unwilling. Rape thus carried the historical baggage of stereotypes and prevailing power relations. This is not to deny that rape is primarily an act of violence with a sexual nature, whatever the cultural context. Nevertheless, the way in which rape is defined, the language which exists and is used to refer to the violent act, and what the social constraints are on how and when it is talked about, are influenced directly by culture.

Kavitha, a Tamil Sri Lankan young woman, was gang raped by government soldiers in front of her parents when she was 25 years old. She was the only daughter in the family, unmarried and living with her parents. Her brothers were all either fighting for the LTTE or killed in the civil conflict. Following her attack, she became mute, choosing not to speak except to ask for food and water. Her parents sought professional help for her after arriving in the UK, fearing that their daughter's silence and child-like behaviour was an indication that she had become mad. Neither parents nor Kavitha disclosed their experiences or named them as rape to their solicitor, the Home Office, their GP or the psychologist. For her parents the definition was seemingly irrelevant or too shameful to name. For them the overt consequences of her experiences were of primary concern – no member of the family was actually seeking help for Kavitha to 'overcome' her experiences of rape. Her parents wanted confirmation as to whether she was indeed now mad, and whether she would ever recover from her experiences. Their shame was intolerable, and the guilt was profound for both parents, in particular the guilt of having failed to protect her and the guilt that her prospect of ever marrying someone within their own community and culture was now deemed impossible. The parents were confronted daily by relatives or people in their own community asking them if their daughter was ready and fit for marriage. Whilst Kavitha became the focus of the 'problem' within the family, both parents were consumed with guilt and shame and blamed themselves.

Kavitha's elective mutism was understood and explored in therapy in cultural terms – as a culturally available and culturally acceptable expression of her distress and as her expression of loyalty towards her family. For Kavitha, not speaking and behaving in a “child-like” way, served to absolve her parents of their guilt and the responsibility for not being able to find her a suitable marriage partner. Her behaviour was labelled as an undiagnosable, non-specific mental illness by a psychiatrist in the NHS, one that the psychiatrist assumed to be latent until being triggered by exile. Rape as a possible trigger was never discussed by her parents or other health professionals involved in her care. Rape as a part of the aetiology or possibly as a focus in the treatment approach was equally never considered.

In therapy, Kavitha's silence and her behaviour was explained and explored as her culturally-syntonic way of protecting the honour of her family and her parents. For her, silence and a label of serious mental illness were preferable options to shaming her family and her family's future standing in their community. Her parents' well-being was privileged over her self and her individual needs. Culture in this example accounted for non-disclosure, for not naming the experiences of rape, for familial and community responses to rape and for methods of survival. Cultural explanations enabled an understanding of the significance of family honour and shame. Protecting family honour was a value of the highest order, a responsibility most explicitly vested in the women in the family. In such cases, any transgression which threatened to damage the family honour can be seen and experienced as a failure to meet familial responsibilities, as humiliation and even as a betrayal, with alienation and ostracism within one's community being likely outcomes.

Religious beliefs and religious identity as context

Mustafa is an Iraqi man, aged 38, married and with two children, aged 5 and 2 years. He was a devout Shi'ite Muslim and came from a very religious family himself. He was imprisoned for five years and tortured in a variety of ways, including anal rape and other sexual torture. Mustafa had never disclosed details of his experiences to his wife or in therapy, to the psychologist. Only his solicitor knew. His reasons for not disclosing to anyone were based

on his experience of intense shame and on his religious beliefs about sexuality, guilt and punishment. He believed that he must have done something of such magnitude to be punished and to suffer such atrocities. He further believed that his relationship with God had been contaminated and damaged permanently, as had his body and his masculinity. His feelings of rage, hatred, self-disgust and despair were compounded by feeling alienated from his religious upbringing and his faith at a time when he felt he might have most sought comfort in God.

For Mustafa, the many rapes he experienced in detention were experienced as an assault not only on his body and psyche, but also on his spirit and his relationship with God. The impact was not only on him as an individual, but on his sexual and marital relationship with his wife, and his relationships as a father with his children. He felt that as a man with a damaged and contaminated body, and as a father with a damaged relationship with his faith, that he had nothing to live for, nothing to offer his wife or his children, least of all religious direction and a purpose in life. Furthermore, the injunction against speaking of the rapes was powerfully maintained by his belief that his life “would be totally finished” and he, his wife and children “would be destroyed for good” if ever they were to learn of his experiences in detention. His difficulties were manifest in the relationships within his whole family: he and his wife continuously argued, avoiding all emotional and sexual intimacy and she complained that he was intolerable to live with given his aggressive outbursts towards the children and his emotional withdrawal from her. Despite many attempts to encourage him to come to the sessions with his wife and children he remained adamant that whilst he would do so under exceptional circumstances, he could never involve his wife in any form of marital and sexual therapy – for him the responsibility for change lay solely within himself and with God’s will: “It is my shame, my problem and my destiny, I cannot let it destroy their lives too.”

Male rape

Male rape in the refugee population has been scarcely investigated. In the UK’s non-refugee male population it has only been studied since 1989,¹⁷ so it is not surprising that refugee males have been paid even less attention. Van der Veer¹¹ observed that many male

refugees have been sexually tortured on a regular basis, but they were unable to talk easily about these experiences because of the shame and the beliefs about rape held in most cultures. Sexual torture is also often accompanied by verbal threats about the masculinity of the victim, his reproductive capacities and his future sexual functioning.¹¹ In addition to the multiple effects of other forms of torture, men can thus experience serious doubts about their sexual identity, problems in their relationships and sexual functioning, intense feelings of guilt, shame and self-blame, and moral and religious conflicts.

John, a Latin American man, was referred to psychology for help with his withdrawn behaviour. Initially, he was able to say only that something had happened to him, and it was his fault. He felt sad and wanted to be quiet and not have to play with his children or talk to his wife. This was in marked contrast to how he described himself before his detention: he was sociable and enjoyed life. As he began to engage in a trusting therapeutic relationship, he started to talk about how he was treated in detention, and eventually talked about being raped. He blamed himself for being raped as he had shouted at the soldiers to stop, when he saw them raping women prisoners. The next day he was himself raped as a punishment. When he was released after a bribe, he was very disoriented and unable to function. He felt very exposed, ashamed, and less of a man because his wife and other family members knew what had happened to him. His brother and wife looked after him, and his role changed from being husband, father and breadwinner, to one of being completely dependent on those around him.

In psychological therapy, he was slowly able to see that he was not to blame for being raped, and that it was the soldiers and the political regime behind them who were to blame. Despite this positive shift in his perception, he continued to have difficulties in his sexual functioning with his wife. The changes in his role as a Latin American man were hard for him to deal with. It was only through working with them as a couple and helping them to communicate their fears and his shame at what had happened, as well as the change in their traditional roles, that their marital and sexual life improved. He was able to move on from the shame, guilt and disorientation he felt. With this specific man and within his culture which is more embedded with Western values, it was possible to talk more openly with him and his wife about sex. This

may not be appropriate to men from other cultures or religions, such as the Iraqi Mustafa, where there are many barriers against talking openly about sex.

In a Medical Foundation study of 184 Tamil men, asylum seekers from Sri Lanka, 21% reported having been sexually assaulted.¹⁸ Sexual abuse in detention usually started with forced nudity, along with verbal sexual threats and mocking, adding to the humiliation and degradation of being tortured. Five per cent of these men reported being raped, and these were usually the younger ones. Most of them did not have the language to explain what had happened, and were disclosing their experiences for the first time. Male rape had also never been reported in their national press, leaving the men totally unprepared for what had happened to them. The motivation for sexual assaults in these incidents appeared to be to secure complete control over the man, rather than lust. In assessment or therapy, the interviewing needs to be conducted with extreme care and sensitivity, and issues may need to be named indirectly, for example by saying that the clinician is aware that men have been raped when detained in their country of origin. The clinician also has to find a way in which to discuss the very real fears of homosexuality that the client is facing.

Ahmed, an Iranian man in his 20s, was detained and tortured for several months when he was a young man. He was kept blindfolded much of the time and was raped several times. The guards called him a homosexual and ridiculed him, and in this way fuelled the fears and insecurities of a young man with no previous sexual experience. He fled to the UK, and presented as being extremely distressed and not coping. He expressed suicidal thoughts and felt there was nothing to look forward to, and that his life had been destroyed by his experiences. This was arguably the political aim of the torturers: to humiliate and break a person to the point where it becomes damaging to their psychological state in the long term, thereby achieving complete control of the person. In Ahmed's case, they succeeded by getting him to confess to his political activities. The guilt about confessing and the multiple rapes continued to affect him in the long term. After Ahmed arrived in the UK, he described how uncomfortable he felt if a man even looked at him in the street. Uncertainty about his sexuality after the rapes was compounded by a fear that other men might make sexual advances to him, and that he might be raped again.

Despite being attracted to women, he felt unable to approach a woman and engage in a relationship, making him feel that he had failed in what was expected of him as a man in his culture. The aims of the perpetrators were being achieved.

HIV

Rape in countries with a high incidence of HIV is likely to increase the risk of infection. However, clients themselves tend not to present with or talk about HIV. In a discussion amongst clinicians at the Medical Foundation it appeared that on the whole, doctors found it easier to broach the subject of HIV than did other clinicians. Both clients and clinicians reported being preoccupied with the numerous other difficulties that refugees have to deal with, such as the uncertainty of their asylum status, racism, concerns about their family members both here and those left behind, poor accommodation, financial hardship, and the losses and torture they have suffered. The stigma and fear which surround HIV inevitably add to the difficulty of talking about this issue directly.

Furthermore, there are problems related to accessing appropriate health services. McMunn et al¹⁹ highlight the difficulties that African people with HIV have in accessing genitourinary medicine services. In a survey at their clinic in South London, they note that coupled with concerns about confidentiality, "African attenders cited a lack of understanding of the healthcare system, a lack of knowledge about eligibility for care, different beliefs about health and the use of modern medicine, language problems, and fear of authority often brought about by insecure immigration status as barriers to accessing health care" (p.157).

Psychological Interventions

In any psychological intervention with refugee clients who have been raped, trust and safety must first be established before therapeutic work can proceed. Client confidentiality must be made explicit, and an explanation given that the information will not be disclosed to spouses or other family and community members. If an interpreter is present, then confidentiality must be assured, and the

interpreter's role in the client's community explained. Many clients may never have used the word 'rape' to label their experiences before, and may refer to their experiences indirectly by saying something 'dirty' was done to them or not mentioning it at all. Helping them to name what has happened to them and shifting the client's internalisation of these negative feelings and stigmatisation is an essential part of intervention.

Clients have to feel safe and trust that the clinician is not judging them or blaming them for what has happened. The clinician can help the client to see that the responsibility lies with the perpetrator and with the political machine that is the State, and that they in fact are the victim. As stated at the beginning of this chapter, traditionally, psychological interventions have not dealt with the historical, cultural and political contexts of sexual violence. Incorporating these contexts in intervention and viewing rape as an act of persecution and oppression by the State is essential in the therapeutic process. The impact of the rape can be further explored in relation to their society's perception of the victim, and how they position themselves in this wider societal and cultural context. There may be occasions when the clients are unable to talk about what happened to them at all. In such a situation it is important not to become preoccupied with the incident of rape or insist that they revisit the experiences in detail. Instead, it can be helpful to think about the wider context and meaning of rape both in the client's country of origin and in the country of exile.

For men who have been raped it is often even more difficult than for women to disclose what has happened to them. Their own perception of their masculinity, sexuality, and their role as men in their societies compounds their difficulties. The clinician working therapeutically with male victims will have to be clear in naming their experience of rape and provide a safe containing space where intense emotions, including shame and fear, can be expressed and explored. A directive approach may be appropriate,²⁰ when coupled with an explanation for such directness, namely that men who have been raped often find it hard to talk about it.

Mohammed, a North African man, initially did not disclose he had been raped. He was only able to disclose what had happened later on to a legal caseworker. When he was referred for psychological help, he said he was troubled by his memories, and

wanted to forget what had happened to him. His biggest fear was that everyone would know what happened to him, particularly because the political regime in his country deliberately made it known that men who had been detained were also raped. This added to the stigma and shame felt by others in Mohammed's situation. He himself had been taunted by police officers with a colloquial Arabic expression for women losing their virginity. The intense feelings of shame that this generated in him led him to extremes of being very secretive about himself. He gave different combinations of his name to different people so that it would be harder to identify who he was. His social relationships were curtailed because he did not want to disclose personal information about himself. He drifted around London, and found it difficult to engage in everyday living.

In therapy, the rapes were named and the likely effects on him were explored. Mohammed actively avoided talking about his detention and rape. He was only able to say that his honour had been taken away. Instead of becoming preoccupied with reliving the details of what had been done to him, therapy focused on the effects of the rape on his life, and on his apathy and pessimism about the future. The political will and intention behind the acts of sexual torture perpetrated against him and the perceived success of the State in committing these acts were also examined.

For women who have become pregnant as a result of being raped, the clinician will have to deal with the consequences of this, whether the result was a termination of the pregnancy or giving birth to the child. In a study of 25 Bosnian and Croatian refugee women who had been raped, Kozaric-Kovacic et al ²¹ provided a gynaecological and psychiatric examination at an obstetrics and gynaecology clinic. These women had suffered multiple traumas and losses. Nine of the women requested an abortion and five women in advanced pregnancy gave birth. All five women abandoned their babies at the hospital, having perceived them as foreign entities in their bodies. The women expressed a sense of alienation, and the authors hypothesised that perhaps they were using denial or depersonalisation as a defense against their terrible memories. Interestingly, all 25 women refused psychotherapy, perhaps pointing to a need for finding alternative approaches and also for considering the timing of therapeutic interventions. It may

also be that there were cultural and community taboos preventing the women from talking about being raped.

A close examination of Western models of psychological therapy reveals that they are historically embedded with the values of European and North American cultures, such as the emphasis on individualism, self-disclosure and Western style talk therapy.²² In recognition of these shortcomings, there is now an established literature on transcultural and intercultural approaches.^{23,24,25} Such approaches are an essential part of therapeutic interventions with refugee survivors of rape, alongside the use of an anti-discriminatory and an empowering framework.

Therapist variables also influence the therapeutic intervention. The role of *gender* is discussed by Michael Peel. The clinician's *age* can also play a role, particularly if the clinician is much younger than the client. The client may feel that the clinician is not old enough or sufficiently experienced to be able to deal with the extent of sexual trauma that the client has suffered. If the clinician is a younger woman, and the client is a man older than she, then the combined effect of these variables can make it much more difficult for the male client to disclose that he has been raped. The clinician's *ethnicity* can also have an impact. For example, if the client is from an Afghani background and the clinician is from an Indian background, this can make the client feel they are culturally closer to the clinician, even though they may not be from the same country. The client can feel that in this situation the clinician is better able to understand them because the clinician is assumed to be culturally close and is perceived as having a more immediate understanding of some of the client's experiences, such as that of racism within the UK.

When psychological intervention entails working with interpreters, there is additionally the important issue of the interpreter's own experiences, their gender, age, political, cultural and religious affiliations and values. Many interpreters who work with refugee clients are themselves refugees, and may also have been through similar losses and traumatic experiences to those of the clients for whom they are interpreting. In this situation the clinician will have to assess the impact that the client's story and experiences is having on the interpreter as well. The interpreter may become distressed and it becomes incumbent upon the clinician, as an ethical responsibility, to debrief and support them,

and if necessary, to enable them to seek professional or other help for themselves. The interpreter can also be a cultural consultant who can provide additional and valuable insights into the client's cultural, religious and political contexts²⁶ although one needs to guard against expectations of the interpreter to represent all aspects, experiences and interpretations of a given culture.²⁷ In this context, it is important that culture is understood more broadly to encapsulate religious, historical, political or other meanings attached to people's experiences. Furthermore, it is imperative that such meanings are not simply explored as if culture is something possessed by only the client and the interpreter, but also as something possessed by the therapist. Thus culturally shaped values and assumptions held by the therapist and the models and methods employed by them need to be open to discussion, scrutiny and challenge by client and interpreter.²⁷

Recent psychological research also suggests that our traditional emphasis on encouraging rape victims to focus primarily on the past and on reasons why the rape occurred is not always helpful, and that enabling the victims to focus on what they can control now and how they might make themselves less vulnerable in the future would be more helpful than focusing on why the rape occurred.²⁸ Furthermore, Frazier argues that by clearly distinguishing between responsibility for being raped ("why me, what did I do?") and control over the future ("what can I do now and in the future"), it is possible to talk about ways to foster a sense of control and to decrease a sense of vulnerability without fostering self-blame. This does not preclude an exploration of meanings attached to the experiences in question, meanings held not only by the survivor of rape, but also by their partners and other family members.

In any such psychological work, self-blame can be experienced as a monumental hurdle to overcome if no one in the equation (e.g. in the family) is to feel paralysed by guilt, shame and humiliation. In this regard shame is typically reported by both men and women who have been raped. In therapy self-blame can be understood as a defence against shame, an attempt to manage the loss of feelings of control, omnipotence, competence and predictability in oneself and others.²⁹ The fear of losing control of one's emotions, thoughts, relationships and actions can be overwhelming, and therapy can explore ways in which the person can understand these fears and

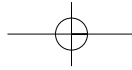
manage them by maximising and fostering opportunities for more control in their lives as well as within the therapeutic relationship itself.

Conclusions

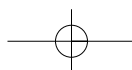
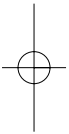
There are many implications to adopting a contextual approach in therapeutic interventions with survivors of rape. It is vital to acknowledge that rape in the context of war, torture and organised violence is not an indiscriminate act of violence on an individual, to be understood within the realms of that individual's psyche alone, but a deliberate assault on the individual in context – that is, the intended impact of such political violence is aimed at affecting all those around the individual and at the very value and belief systems (cultural, political, religious, ethnic, etc.) with which that person is affiliated. Thus, psychological interventions need, first, to account for the many contexts within which the experience and impact of violence is formulated and understood. Accounting in this way must aim to avoid placing responsibility for change, and consequently the locus of blame, solely on the individual. Psychological formulations must account for the social inequalities and the human rights injustices that relate to the individual person's experience of the political rape.

Second, psychological interventions need actively and discursively to address the contexts of distress thereby aiming interventions at multiple levels (e.g. marital relationship, familial relationships, or at the community or Statutory services levels) and not just at individual change. For example, in Sara's case, the psychological interventions would include efforts to challenge and to make a complaint against health professionals such as the HIV counsellor for their insensitivity and their racist remarks, which had compounded Sara's shame and distress.

Third, psychological interventions must address the inherent biases and disempowering practices embedded in mainstream psychological therapies which are heavily criticised for their Eurocentricism and patriarchal biases. It is the clinician's ethical duty continually and critically to evaluate and to challenge their own models and practice, and to pursue more empowering practice. For example, the therapeutic relationship must endeavour to be honest and transparent about models used and their inherent



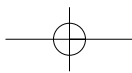
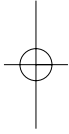
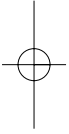
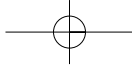
biases and gaps, and to be open about the therapist's own biases, stereotypes, lack of knowledge of, or lack of understanding about, the client's specific cultural, political or religious context where appropriate. Transparency in itself is rarely empowering, unless accompanied by a genuine and committed attempt to be respectfully curious and open to learning from the clients themselves. Clients, their families, interpreters and bi-lingual colleagues are often a fountain of knowledge that can be used to facilitate a better understanding of the client's and their family's needs. The combination of transparency, an openness to learn and reflect, a genuine respect and curiosity and the will to improve our models and ways of working therapeutically all amount to psychological therapy which is continually evolving and being remodelled in partnership with the client and family, to best suit their needs and their cultural, social, historical, political and religious contexts.



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CHAPTER 3

Women Who Are Raped

Dr Petra Clarke

100 women who were tortured by rape

The preparation of objective medico-legal reports is now an important part of the work of the Medical Foundation where there is considerable experience in interviewing and examining people who claim that they have been the victims of torture. The examining doctors, and other professionals, have expertise and training in assessing each person's account and in deciding whether a report, prepared at the request of the person's legal advisor, will be helpful. We believe that the medico-legal reports, taken as a whole, offer an accurate picture of torture as reported by the individuals we see. Recently, women have made up a higher proportion than men of those sent to the Medical Foundation for such a report. Rape is usually a significant part of the torture. This chapter reports data from 100 recent medico-legal reports that document rape.

The group of women in the study and how they were selected

The Medical Foundation retains some 37,000 written files on people referred for services. In 2002, 3027 new files were created for people from 83 different countries who attended for the first time. The computer record of appointments was searched for women who attended for a consultation with a female doctor (medico-legal reports for women are normally prepared only by female doctors). The files relating to these individuals were scrutinised for whether a medico-legal report had been prepared and if the woman reported being raped as part of the torture. The search for such cases proceeded backwards in time until 100 cases had accrued.

This procedure selected 11 cases where a medico-legal report had been prepared in January-March 2003, 49 in 2002, 39 in 2001 and one from 2000. No effort was made to pursue the small minority of files that were not immediately found. Because the cases reviewed are not strictly consecutive, this study should be

TABLE 1: Countries of origin of the women in the study	
Cameroon	15
Uganda	11
Democratic Republic of Congo	10
Zimbabwe	10
Ethiopia	8
Federal Republic of Yugoslavia: Kosovo	6
Sierra Leone	6
Cote d'Ivoire	4
Kenya	4
Rwanda	4
Turkey	3
Angola	2
Burma	2
Congo	2
Eritrea	2
Iran	2
Bolivia	1
Guinea	1
India	1
Liberia	1
Federal Republic of Yugoslavia: Montenegro	1
Pakistan	1
Poland	1
Sri Lanka	1
Ukraine	1
Total	100

regarded as anecdotal rather than representative. Nevertheless it provides a valid snapshot of the women who come for a report to the Medical Foundation. It is important to remember that they have already been highly selected by their lawyers and by the Medical Foundation intake team. For example, some lawyers send many of their clients for a report while others send none. A woman with obvious scars had a greater chance of being accepted for the preparation of a report than one with none. Finally it is worth noting that our client profile is fluid and what is observed in one year may not be repeated the next. Conflicts around the world escalate or are resolved, which affects the patterns of who seeks asylum in the UK.

The countries of origin of the 100 women of the study group are listed in table 1.

These data cannot be translated into assumptions about the prevalence of torture among asylum seekers in the UK nor about who is tortured in the world at large. They reflect only the Medical Foundation medico-legal report writing for women survivors of torture. It is noticeable that there were no women from several countries with poor records on human rights such as Iraq, Algeria, Chechnya or Afghanistan and only two women from Iran. A relatively small proportion of the referrals to the Medical Foundation from these countries are female, and a study of torture of men seen at the Medical Foundation would certainly have included individuals from these countries.

Religion, education and age at rape

Of the 88 women whose religion was recorded, 62 were Christian, 23 were Muslim, two were Hindu and one was Jewish. This finding, that the group was predominantly Christian, probably reflects the observation above of a deficit of women from Muslim countries. Seventeen of the women said they had been educated only to primary level, 36 to secondary level and 24 beyond secondary level. A further 23 had received no education or the level was not recorded. The age range of the women at first rape was 17 to 52 years with an average of 28 years and a median age of 26 years. These data show that the group was relatively highly educated when compared with the educational opportunities available to people in the countries of origin. The women were

largely in their early or mid twenties (the Medical Foundation also sees young girls who have been raped: see chapter 5).

Marital status, numbers of children and present status of these family members

Fifty-five women said they were 'married'. Of these 13 had husbands in the UK and seven believed their husbands to be alive in the country of origin. Fourteen women said that their husbands had died in the same violence they had experienced, although not always in the same incident. Twenty-one did not know if their husbands were alive or dead. Sixty-eight women had had living children. Of these, 26 women had 46 children with them in this country – four born after arrival. Thirty-two women had 70 children believed to be alive in the country of origin. A further 17 women had no information about 32 of their children. Some of the women had children in different categories because the family had been split. These data speak for themselves of the anguish many women feel as they live their lonely lives in the UK. Thirty-five women either knew they were bereaved of their husbands or believed they probably were but were not sure. No women admitted to the death of a child but 32 children were unaccounted for and the chances of reunion of mother and child must be small.

Why the women were targeted, by whom, and where

Of the women tortured, 31 said that they had been targeted because of their personal commitment to politics, and another eight said that they and their family as a whole were in opposition politics. Twenty-one women, who were not politically involved, believed they had been tortured because their family or their partner had been opposed to the regime. Twenty-one women cited ethnicity as the cause of the violence against them (Kosovo 7, Rwanda 4, Democratic Republic Congo 4, Ethiopia 4, Poland 1, Turkey 1). One woman from a predominantly Muslim country had been raped because she is Christian. Ten women had been kidnapped by bands of rebels as 'wives' and had experienced multiple rapes over long periods. Six of these women were from Sierra Leone, three from Uganda kidnapped by the Lord's Resistance Army, and one from Liberia. Other women gave

individual reasons. These observations confirm that only a minority of women, 39 of the 100, were tortured because they were politically active. Many are picked out from formerly quiet lives merely because of their ethnicity or their family associations.

The men who perpetrated the rapes were from the army in 25 cases, the police in 20 cases, and the security forces in 29 cases. These groupings are not precise because the term 'security force' is used for different agents of state repression. The men may wear army uniforms or be recognised by wearing dark glasses or other uniformity of appearance. In Zimbabwe, the men of violence (total 7) wear the words Zanu PF on their tee shirts and caps as a badge of terror. Other women described different perpetrators.

Fifty-five women were raped while detained by the authorities, 21 women in or near their home and 21 in remote country or bush. Three other women were first raped at their home and then again when taken into detention.

Detention – where and how long

Of the 55 women detained, 33 thought they were in a security prison, which would equate with a prison for political prisoners, 11 described the place of detention as a police station, seven as a prison for criminals and three were in army barracks. When asked during the interview, the women could not always be certain about the category of the detention centre. Ten women were held in camps as rebel 'wives'. When the camps holding two of these women were liberated by government soldiers, these women were taken into detention as suspected rebel supporters. They were again raped during this second detention. Other women described individual circumstances.

Of the 55 women who were detained, 21 were detained for two weeks or less and of these, 12 were for less than five days. Seventeen were detained for between two weeks and three months, 16 for three to 12 months, and four for longer than one year. The longest detention recorded was in Burma for four years. Other than this one woman, none of these women described formal legal procedures such as being charged or appearing in a court. Once detained the period is indeterminate. Some of the women escaped when a relative paid a bribe to the prison guard.

The abuse

Questions about the tortures and the circumstances of detention are very distressing for our clients. They may have begun to cope with their memories and their confidence may be returning, yet in the interview they are asked to describe the finest details of what was done to them, by whom and how many times. Even the doctors who have long experience of writing medico-legal reports are cautious about probing these painful areas. Many patients are unable to speak of the acts done to them which they find unbearable to recall and impossible to put into words to a stranger and through an interpreter. Thus any list of the abuses suffered by our clients is almost certainly incomplete. Equally, the descriptions of how they were held captive and how they coped with their day-to-day needs for water and food, light, air and personal hygiene, and how they were affected by temperature and by episodes of ill-health are never more than sketchy. For these reasons any list, such as that below, of the abuse suffered by those who have survived torture is representational rather than comprehensive.

The sexual abuse

Eleven women said they were virgins at the time of the rape and this status was unrecorded for another nine childless women. The rapes, as described, varied in numbers of episodes and in numbers of men. Some of the women were raped once by one man, others by several men over long periods of time (Table 2). Twenty-four of the women said that other women were being raped, sometimes in the same room. Table 3 lists other sexual humiliations and tortures described by the women. The case files do not record systematically whether the rape was vaginal, anal or/and oral.

Other non-sexual abuse

Nine women said there had been no violence other than the rape. Ninety-one women described abuse additional to the rape. Seventy-nine said they were beaten, which included slaps, punches, kicks, and hitting with sticks, truncheons, rods and belts. Nine were beaten on the soles of their feet (*falaka*), which is a very painful and disabling torture, but which usually leaves no signs. Seven

TABLE 2: How women were raped	
One rape, one man	8
One man, more than one episode	5
One episode, more than one man	35
More than one episode (but recalled the exact number of times), more than one man (number of episodes 2,2,2,2,3,4,4,4,4,4,5,5,10)	15
More than one episode, more than one man, many times	35
Other (see Table 3 marked *)	2

TABLE 3: Sexual humiliations described by individual women at interview
Truncheon pushed into vagina when pregnant
Knife handle pushed into vagina/ attempted insertion of tips of shoes
Vagina penetrated twice with piece of stick 3- 4 inches long *
Frequent anal rape over 6 months including inserting a penile shaped object into anus
Sticks and guns pushed into vagina/told to have sex with a dead body
Eldest son forced to rape her
Detained with male prisoners/made to defecate in front of them/guards made prisoners rape her
Other prisoners watched her being raped
Raped in front of cellmates and soldiers/ urinated on
Was menstruating – made to lick vagina of other raped women *
Made to suck penis of man after he had raped another woman
Mocked while naked
Breasts bitten (2)

women were stamped on deliberately, six were whipped. Nine women were burned with lighted cigarettes, often many times, and 21 were burned in other ways, with hot water, tar, metal, melted plastic or acid. Two women described receiving electric shocks and 16 were stabbed or cut. Four women were made to crawl on stones and this had cut their knees.

Other tortures described were being threatened with a gun (2), being shot, attempts to strangle her (2) and being thrown from a moving car. One woman had been suspended from the ceiling by

her legs and beaten. Another had a screwdriver pushed into her thigh, another had a beer bottle broken on her head. One woman had her ears pricked; another had her legs and arms twisted. Two women were tied to chairs for days while another had to sit in water for a long time, another had to stand in dirty water and a third was held naked in a cell with water to shoulder height. Individuals said they were 'tied up naked', 'tied up', 'tied up tightly'. One experienced tear gas and another was exposed to constant intense light. Others were made to touch rotting corpses, made to drink urine and made to swallow their own urine and faeces.

Tying the hands or applying handcuffs, often very tightly, was so common it is not recorded separately. Likewise being blindfolded was common and was often not recorded in detail. Several women were held in cells in total darkness with no sanitary provision or water. During their detention some of the women had to collect wood, hoe fields, fetch water, clean the prison, especially the toilets, and do other forced labour.

Violence to family members

Twenty-seven women saw a member of their family being killed or being treated violently (Table 4). The countries of origin of these women were Cameroon, Democratic Republic of Congo, Ethiopia, Guinea, Ivory Coast, Kenya, Federal Republic of Yugoslavia: Kosovo, Liberia, Rwanda, Sierra Leone, Uganda and Zimbabwe.

Pregnancies

Seventeen of the women conceived from being raped. Five miscarried spontaneously and one had a termination of pregnancy in the country of origin. Two pregnancies were terminated in the UK when the woman first arrived. Five pregnancies resulted in six children liveborn in the country of origin including one set of twins. Four women gave birth in the UK to four liveborn infants. One of these women, aged 17 years and a virgin when she was raped, conceived twins, of whom one lived and one was stillborn. Two women were already pregnant when they were raped. Both pregnancies continued.

TABLE 4: Violence to family members

<p>Father shot dead</p> <p>Father hacked to death – heart and liver roasted and made to eat it</p> <p>Father burned alive</p> <p>Father killed, sister shot dead, mother beaten, brother’s hands cut off</p> <p>Father, mother, sister shot dead</p> <p>Father-in-law beaten – died later, woman’s children beaten</p> <p>Father and brother beaten</p> <p>As a child age 8 years, saw mother and father killed</p> <p>Mother burned with hot tar and died 1 week later</p> <p>Husband hacked to death</p> <p>Common law husband beaten and died later</p> <p>Husband hacked to death, uncle beaten</p> <p>Husband beaten very violently</p> <p>Husband whipped</p> <p>Husband beaten</p> <p>Husband beaten</p> <p>Brother shot dead</p> <p>Sister endured same assaults as client – many rapes, vaginal + anal, over 2 days, drink captor’s urine, suck penis after rape of another woman, beaten, whipped, cut</p> <p>Sister beaten and raped</p> <p>Sister shot dead, brother-in-law beaten</p> <p>Twin brother beaten and arrested</p> <p>Brother beaten, whole family tied up</p> <p>Acid poured on daughter’s arm, aged 13 years</p> <p>Son, aged 4 years, punched in face – teeth broken</p> <p>Her child hit and scalded</p> <p>Sons beaten</p> <p>Son, age 2 years, detained alone for 4 months. On release he was described as in poor condition and later he became totally withdrawn.</p>

Time intervals since first being raped to arrival in the UK and to the date of the medico-legal report

The files record the dates when she was raped and when she arrived in this country. Eleven women reached the UK in less than one month after the first rape, and in all 45 had arrived in under 6 months. Ten took between 2 and 3 years and 14 more than 3 years. The doctors at the Medical Foundation are agreed that for many women rape was the most severe form of abuse. Women often described repeated non sexual torture, such as beating, which is resented but which is accepted as part of the price of staying in their own country. Once raped, her flight is triggered, and this was observed for women from Kosovo to Democratic Republic of Congo to Ethiopia. The longest time from the first rape to reaching the UK was 101 months. This woman was held in detention as were others who were long delayed in making their escapes.

Fifteen women had the first interview with a doctor to prepare a medico-legal report within a month and 50 in less than 6 months of arrival in the UK. This reflects the needs of clients from countries that the UK lists as having a low risk of torture. Unless the Home Office can be convinced that they have been tortured in the way they describe, these women are at risk of early deportation. On the other hand, six women saw a doctor for a report from 2 to 3 years after arrival and four waited longer than 3 years (generally because the legal representative made a late request for documentation). It is important to acknowledge the strain these long waits place on women before they know the outcome of their asylum claim.

The time from the first rape to the time of the medico-legal report can also be calculated. Twenty-three women saw the doctor within less than 6 months of the first rape, and, in all, 41 within less than one year. The interval from rape to report was more than 3 years for 29, more than 4 years for 18 and more than 5 years for 11. It is reasonable to assume that, however vivid the detail of the abuse appears to the woman, the memory can become distorted with the passage of time. It is also distressing for women to have to keep the memory fresh and to be required to recount the events repeatedly. Nevertheless, an inconsistency in date or place may contribute their claim for asylum being rejected by officials.

Scars from the torture

During the interview for the medico-legal report the women are examined clinically. All scars are reported. The woman is asked if she can account for the scars either as an injury she has received during the violence, or as part of an injury sustained by the incidental trauma of everyday life, maybe as a child. Seventy-seven women had scars compatible with the described assaults. Of these, seven women had scars in the genital area, recorded as follows:

- 'cigarette burn and 3 dark blotches'
- 'irregular scar in intergluteal cleft'
- 'healed tear of labium majora'
- 'swollen labium majora'
- '1.5 cm scar near vulva'
- 'clitoris and labia cut away as torture'
- '3 rounded scars ?from rape ?herpes'

It is an exception to find scars in the genital area following rape (see chapter 8). When a woman is examined within 24 hours of being raped, the most that would be expected is bruises or abrasions that heal quickly and do not leave a scar. Even severe scars have a tendency to fade over time. For most women seen at the Medical Foundation, months, if not years have elapsed between the assault and their medical examinations. Nevertheless, a minority of women bear scars which it would be difficult to account for in ways other than from a violent sexual assault. The genital area and the area between a woman's thighs are usually naturally protected during trauma from incidental injury. Therefore, provided surgery can be ruled out, scars such as those listed above give strong support to a woman's account of having been assaulted sexually.

Characteristic country-specific patterns of abuse of women

It is well recognised that there are consistent patterns of abuse in countries that allow their citizens to be tortured. Beating and threats are universal. The perpetrators add to this the abuse that will inflict the most humiliation on their victim, and the choice of how to torture is often culturally determined. For example, a single

rape will forever destroy the family and good name of a Muslim woman from Kosovo. In Uganda, after being raped, a woman may be forced to crawl on her knees while clapping her hands above her head and singing. In these circumstances rape is not perpetrated for reasons of lust; it is done to humiliate.

The women examined above came from 25 countries. This does not provide enough cases from each country to define the characteristic patterns of abuse. The pen portraits below draw on the experience of many doctors who have been seeing women clients over many years. We are all struck by the commonality in the patterns of abuse. During the period covered by the study a high proportion of women attending the Medical Foundation came from the countries described below. In earlier years other countries such as Sri Lanka, Nigeria and Bosnia would have had a higher profile.

Congo, Cote d'Ivoire, Cameroon

In Congo, Cote d'Ivoire and Cameroon state power is held through dreaded gangs of 'security' forces. The women who are caught up in state disputes are detained without trial in prison. Beating is violent and it becomes part of the daily routine of being in prison.¹ The guards use batons or wooden sticks cut from the bush, with the ends of the branches freshly hacked off. Rape is common, brutal and may involve many men. In spite of injuries from the violence, it is common for the women to be taken out to work in the fields or in the prison compound.

Democratic Republic of Congo

The Democratic Republic of Congo (formerly Zaïre) is in a brutal battle for power. Where there is no authority, anarchy prevails. This vast country is rich in minerals that are fought over by the government, rebels and neighbouring states. Women don't have a role in this violent world except to provide food. If they are trapped between rebel and government forces they are protected by neither in the rape and looting that occurs. For those condemned to live in a refugee camp life can become a terrifying struggle to survive. Camp bully boys hold sway through extortion, violence and rape.

In 1998, when President Laurent Kabila condemned all Tutsis as subversives many women of Tutsi ethnicity were targeted by mobs. Their husbands were murdered, their houses were burned, and they themselves were beaten and raped. Officially this condemnation from the President has been lifted, but women are still reporting violence against them because they are Tutsis.

In spite of all these risks some brave women demand food and schools for their children. As a result, some of them are beaten, raped and put in prison. Sometimes the prison cells are in total darkness with no toilet facilities but the floor. So many other women may also be there that they cannot lie down. Without indictment or trial the situation must seem hopeless, as undoubtedly it is for the many women who die in prison.

Ethiopia and Eritrea

A woman of mixed Eritrean and Ethiopian parentage is very vulnerable. Even if she has lived in Ethiopia all her life, she may suddenly be accused of spying for Eritrea, dragged from her family and deported to Eritrea, a country she may never previously have visited. There she has to eke out an existence in a refugee camp in this strange country with no opportunity to make family contact because the two countries have been at war. If she is accused of a more serious charge she may be detained in Ethiopia. The prisons are appalling. Some are containers, i.e., seagoing metal boxes, dumped in the desert – the heat, the vermin and the stench can barely be imagined. Women reported having spent time in such conditions lying next to a dead body before it was removed. Meanwhile they are taken for interrogation, beating and rape at unpredictable intervals.

Federal Republic of Yugoslavia: Kosovo

Kosovan women describe a rural society that is unyieldingly patriarchal, where a Kosovan woman without family support is almost unthinkable. A whole family's honour is impugned if one of its women has had sexual intercourse outside marriage even if through rape. The soldiers knew this. Rape costs nothing, not even a bullet. One rape disrupts the community utterly by setting family against family for not adequately protecting 'their' womenfolk. A

Kosovan woman pregnant as a result of rape is a symbol of the whole community's disgrace.

Kosovan women report that, after they were raped in the family home while the men were working in the fields, they washed themselves, cleaned up, told the children not to tell and cooked dinner as normal. They had never divulged their dreadful secret to their husbands even after being in the UK for years. Meanwhile the children who saw the rape also carry the burden of their knowledge. The Kosovan women in the UK who are in this situation are terrified of being deported. They fear for their personal safety because they believe that the knowledge that they were raped cannot be kept secret in their home village. They know that their children are likely to be taken away from them and that their husband, however understanding he may have been in this country, will find it difficult to resist the family pressure to divorce his wife and marry someone of his family's choosing if forced to return.

Roma from Czech Republic, Slovak Republic and Poland

The Roma women referred to the Medical Foundation were usually married young, say at 15 years, in a traditional Roma ceremony, often to a boy little older. A life of discrimination awaits them. The women suffer at the hands of skinheads who harass them in the streets. They are called names, their children are frightened, and they are threatened. There is no schooling for their children. Sometimes the homes of Roma are set on fire. In the worst cases, the women are gang raped, usually when out-of-doors. The police give no support and do little about reported assaults.

Rwanda and Burundi

The ethnic conflict between Hutus and Tutsis is largely unreconciled and affects both Rwanda and Burundi as well as surrounding areas close to the borders. Women and girls of mixed ethnicity are especially vulnerable to being raped, almost as a matter of course, as they hoe the fields or walk to market. As in other African countries, rape can transmit HIV infection and the women fear this possibility greatly.

The aftermath of the 1994 genocide in Rwanda is far from over and settling scores is widespread. Within villages the people know who the murderers are. The murderers themselves are seeking to avoid being publicly identified. People may be reported to the police for subversion on evidence that amounts to no more than malicious reporting by people with a grudge. The women in their families are then at great risk as local people take their revenge. The violence is instant and extremely brutal: members of a family that is raided at home at night will be lucky all to be alive next day.

Sierra Leone

The inhabitants of whole villages in Sierra Leone have been kidnapped into the rebel bands. The women were made to prepare food, collect firewood and provide sex for the soldiers. If they tried to run away and were caught they suffered violent beating or they were shot. Terrible atrocities, such as mutilations, were committed. Sometimes the soldiers were driven to excesses under the influence of hallucinogenic drugs. Some of the women tried glue-sniffing to help them forget. After years with the rebels many women found it difficult to persuade the outside community that they were not rebel supporters. Then these women were at risk from both rebels (because they had escaped) and from the general population.

Turkey

The Turkish state has a long history of persecuting opposition. Innumerable women have described the main Turkish prisons as degrading. The state also opposed Kurdish autonomy and culture and represses expressions of adherence to the Alevi branch of Islam. Turkish Kurdish women have been arrested because they were related to suspected Kurdish fighters or because someone had informed on them or because they had taken part in a protest demonstration. Even celebrating Nawros (the Kurdish New Year) could bring a penalty. In country areas the women were usually detained in a police station, often overnight, which was repeated several times, after every police raid. The violence was kicks and slaps, and blows from rifle butts and truncheons. Sometimes they were hosed with cold water or their cell was awash. Rape was not the norm for the first arrest or two, but it became increasingly

likely if the woman was arrested repeatedly. The level of violence may fortunately have reduced in 2003 and fewer Turkish women are being seen at the Medical Foundation.

Uganda

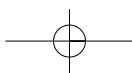
The conflict in Uganda is between the government and the 'rebels'. The rebels are different in the north from in the south. The Kony's Lord's Resistance Army kidnaps young people from their schools or from villages in the north. They are indoctrinated and often held by rebels for many years as they roam in the region of the Uganda/Sudan border. The girls do domestic jobs such as collecting firewood and cooking. They are raped repeatedly and eventually some of the girls are 'adopted' as an unofficial wife to an individual man. Children are born.

Government soldiers invade the camps when they can and arrest the rebels and all those in the camp, which includes many young adults who originally were kidnapped. Those accused as rebel supporters are then usually held in army camps. The soldiers beat them with rifle butts and give them kicks and slaps. The officers rape the women at night. The ordinary soldier appears to be constrained from raping the women but this does not apply to the officers who pick the women they want each night. The women are often required to work in the bush cutting grass or chopping firewood.

The government is also fighting rebels in the south-west of Uganda. A similar pattern of abduction, rape and detention seems to apply.

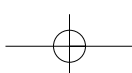
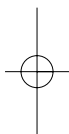
Zimbabwe

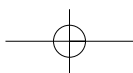
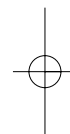
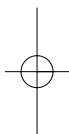
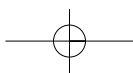
In Zimbabwe women are assaulted because they are from the Ndebele tribe or because they have displayed defiance of the government, often in a very minor way. A mob of young men wearing Zanu PF clothes abducts the woman from her home or from the street. She is taken for a punishment session with beating, burning and whipping. The violence invariably includes rape. The purpose of the assaults is to subdue the population and the women are released back into the community as a deterrent to further dissent.



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CHAPTER 4

Men as Perpetrators and Victims

by Dr Michael Peel

Introduction

Male rape is rarely disclosed. Neither victims nor perpetrators want to talk about it. In the South African Truth and Reconciliation Commission, male victims of rape never used the term. They sometimes said that they had been “sodomised”, but more commonly described the experience as having a metal rod pushed through their anus.¹ In the one press account of male rape in the Croatian press during the war there, the victims were Muslim, described in a way that diminished their masculinity and sexuality, and the perpetrators were Serb, portrayed as aggressive perverts.² No society wants to admit to being party to male rape, but this quiescence leaves victims isolated and rape seen as a sexual act rather than one of the exercise of power and the infliction of humiliation.

For male patients of the Medical Foundation, sexual abuse has usually taken place when one man is in control of another, usually in a place of detention. Like female rape, sometimes it happens at home, and sometimes victims are abducted and raped in an isolated place. It is an all-male occurrence. Female soldiers or police officers are very occasionally described as having been present when male detainees were being sexually assaulted, although the extent to which the women were victims or perpetrators is debatable. When men were raped, there were never said to have been women present. The victims were almost always raped individually, alone. Unlike women, men are not usually raped in groups, adding to the feelings of isolation. There may have been several perpetrators involved, but generally they do not all rape the victim. When there

is only one rapist, he still benefits from the powerlessness of the victim.

Most of the studies of male rape have taken place in American prisons. In that situation, the perpetrators might be seeking some sexual gratification, but the predominant dynamic is of the confirmation of the hierarchy of the detainees. In many countries, men jailed for homosexual activities are raped by the other prisoners with the approval of the guards. Most of the male rape discussed in this chapter is by the guards themselves.

Perpetrators

“Victims are too often seen as participants in a sexual act, and rapists as competent males in pursuit of sexual gratification... [R]ape can be more accurately perceived as a uniquely damaging form of criminal assault by dangerous... persons.”³

Forensic studies of male sexual offenders show them to be generally violent and antisocial, with the sexual aspect of the offence being secondary to the habit of using force to get what they want.⁴ Rape has been described as a “pseudo-sexual act”, in that sex is used to address feelings of status, aggression, control, and dominance.⁵ Rapists show different behaviour patterns depending on their principal motivation. Some attempt intimacy and coerce women into appearing to consent, to bolster their own inadequacies, and may well repeatedly target a few women. These rapists might appear to be more sexually motivated. Other rapists are completely impersonal, attack unpredictably, and without discrimination between targets, whether male or female, old or young.⁶ What they have in common is a complete lack of empathy for their victims.

Sociological studies demonstrate an increase in the incidence of rape in societies where there is social disorganisation, urbanisation, economic inequality, and a sizeable number of men without a regular sexual relationship.⁷ In the context of repressive states or those in civil war, from which most patients of the Medical Foundation come, these criteria are easily met. Men who can kill and torture with impunity will not think twice about rape. From what our patients tell us, it is only a minority of soldiers, policemen

TABLE 1 (Adapted from reference 10)

Country	No. of patients	No. sexually abused	% sexually abused	No raped	% raped
Algeria	11	5	45.5%	1	9.1%
Angola	27	7	25.9%	4	14.8%
Cameroon	17	2	11.8%	0	
DRC / Zaire	37	10	27.0%	5	13.5%
India	56	12	21.4%	0	
Iran	37	6	16.2%	0	
Iraq	21	9	42.9%	0	
Kenya	20	10	50.0%	2	10%
Nigeria	51	14	27.5%	3	5.9%
Pakistan	14	4	28.6%	0	
Sri Lanka	137	26	19.0%	9	6.6%
Sudan	19	9	47.4%	3	15.8%
Turkey	65	17	26.2%	0	
Europe	13	3	23.1%	1	7.7%
North Africa	18	5	27.8%	0	
Other Africa	45	8	17.8%	3	6.7%
Other Asia	7	1	14.3%	0	
Other Middle East	12	5	41.7%	1	20%
Total	607	153	25.2%	32	5.3%

NOTE

Europe: Bulgaria, North Cyprus, Romania, Russia, Ukraine, former Yugoslavia

North Africa: Eritrea, Ethiopia, Libya, Morocco, Somalia, Tunisia

Other Africa: Congo (Brazzaville), Gambia, Ghana, Ivory Coast, Rwanda, Sierra Leone, South Africa, Tanzania, Togo, Uganda, Zimbabwe

Other Asia: Afghanistan, China, Burma (Myanmar), Nepal

Other Middle East: Bahrain, Egypt, Lebanon, Syria, Yemen

and prison guards who rape, but the majority who do not rape also do not prevent it. Their seniors do nothing, and may condone the acts because it adds to the intimidation. In an American study, about 15% of a random sample of men said that they would rape a woman if they thought they could get away with it.⁸

There are different patterns of how men rape.⁹ Some give in to peer pressure. Others are opportunists, taking advantage of vulnerable women. A few men go looking for opportunities to

rape, or seek out jobs where they will have the opportunity to rape. In societies where there is impunity, such men may well seek out jobs as soldiers and prison guards, in the same way that, in Europe and North America, paedophiles have sought jobs in, for example, children's homes.

Men who rape other men in prison do not think of themselves as homosexual, and this tends to be supported by their peers. However, they project the homosexuality of the act onto their victims, by claiming that insertion is a heterosexual act and that it is only being penetrated that is homosexual. In reality, the act is not only a sexual one, but one of exercising dominance and inflicting humiliation.¹⁰

Thus rape is about power, domination, sexual gratification and misogyny, in different proportions in different men. Some of these are common to torturers, but we do not need to look at their motivation in order to say that a survivor has been tortured. Only when there has been this sexual component to their torture does the motivation of the perpetrator appear to become relevant to decision makers. For an asylum adjudicator to try to get inside the mind of the perpetrator is impossible, and it is absurd to decide that sexual gratification alone is the motivation of the perpetrator.

Studies of perpetrators are, of course, very limited, as they are based solely on those who have been convicted. Studies of rapists in the USA show that many of them develop complex patterns of operation to avoid being caught or to minimise the risk of successful prosecution.¹¹ The motivation of soldiers, policemen, prison guards and security agents who rape can only be described by analogy. However, it is clear that their motivation is complex.

Victims

A study of men referred to the Medical Foundation between 1 January 1997 and 30 June 1998 showed that over 25% had been sexually assaulted in detention, of whom more than 5% admitted to having been raped.¹² However, it is likely that the true number would have been significantly higher. Over 20% of men from Angola and Democratic Republic of Congo reported having been raped, whereas there were no reports of rape from countries such as Iran and Iraq, although other forms of male sexual assault were as common as in other countries. It is not clear whether this is

because it did not happen, or that cultural taboos meant that it was not reported, although anecdotal evidence suggests the latter.

Men find it very difficult to disclose rape, and they will avoid talking about it if they can. Whereas for many women rape is the principal form of torture, for men the rape is generally part of a series of assaults that can leave significant physical signs, so that they might not need to disclose the rape when being interviewed by a doctor in order for a medical report to be produced that will confirm other significant signs of torture. Even during the therapeutic process, the rape may only be disclosed relatively late, once the client has complete trust in the therapist, and almost certainly there are men who never disclose rape. One particular problem is in finding the most appropriate interpreter. Some men are very unwilling to talk about sexual matters in front of a woman. Others are more ashamed to describe being raped to another man. Often the victim appears to be concerned about the gender of the interpreter, but not that of the clinician or therapist,¹³ perhaps because their conversation is more directly with the interpreter.

With a female victim, the situation is clearer. The woman has been raped by a man, and usually prefers to talk about her experiences to other women; thus the clinicians and interpreters should, wherever possible, be female. The male victim has also been raped by a man, and a man speaking the same language, and perhaps looking physically similar to one of the rapists. This setting is likely to bring back unwanted memories of the incident. Some male victims are completely unwilling to disclose rape in front of another man of the same religion as themselves, but not from another religion. Some of them believe that any man who finds out that the victim has been involved in homosexual activity, even though it was forced, has a duty to denounce the fact to his mosque.

Three patterns of sexual assault and rape were identified in the Medical Foundation study. In one pattern, seen for example in Nigeria, the rape and sexual assault were part of the brutality of the detention and interrogation processes. No part of the body was respected, and the genitals were often the focus of assault. Objects were pushed into the urethra and through the anus during questioning, and rape was part of this.

In Algeria at the time of the study there was a policy of intimidation and humiliation, of which sexual assault was an integral part. Men were made to squat with the neck of a soft-drink bottle against their anus. They were then kicked or pushed so that they lost balance and they were penetrated by the bottle. Rape was not generally accompanied by questioning, but it was officially sanctioned. It was made known unofficially by the authorities that men had been raped in detention, and should no longer have the status of adult males in the community. This fitted into the overall pattern of intimidation through torture in which semi-conscious bodies were dumped by the authorities, covered with blood and bruises, to discourage others from questioning their authority.

The third pattern, for example in Sri Lanka, was where drunken soldiers entered cells at night and raped some of the men (any women detained were said to have been raped by army officers). The male victims tended to be the youngest and most vulnerable detainees.¹⁴ They described the ambivalence they felt in hearing another victim screaming. One of the most difficult aspects of torture is hearing someone else being abused and being powerless to help, yet at the same time they were relieved because they knew that they were not going to be raped that night. Rape was not official policy, but generally it was condoned. Sometimes it was said that rape was less likely when the camp commander was on site. Given how widespread this pattern of rape was, this suggests that the authorities could have minimised the problem if they wished, but that most senior officers took no interest. Condoning rape under these circumstances is a breach of international law.

Anal penetration by a penis rarely leaves any identifiable physical signs after only a few days.¹⁵ In the Medical Foundation study, only one of the 32 men who had been raped had any specific physical signs, and he had been raped many times over several years. When objects are pushed through the anus there is much more likelihood of damage and therefore scarring (although such acts are not, strictly, rape). Of the 25 men who had suffered objects being pushed through their anus, 5 (20%) had significant physical signs.

The psychological effects of male rape are much clearer. In the same study, of those men who had been tortured but not sexually assaulted, about 30% described all the symptoms of post-traumatic stress disorder (PTSD). Of those who had been sexually assaulted

but not raped, it was just over 55%, and of those who had been raped, the proportion with PTSD symptoms was over 70%.

Men who have been raped are often full of self-blame and self-criticism, and believe that others will see them in the same way, and this inhibits them from disclosing the experience. They relive the rape repeatedly and convince themselves that they could have fought off the assailants, and that they will be blamed by others for not having done so. They need to recognise that they probably were incapable of fighting off their rapists, and would only have been beaten more severely if they had tried.¹⁶

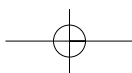
The aspect some of the men found most distressing was that they had developed an erection and sometimes ejaculated. This is a particular concern for men who have also been forced to rape other detainees. Since the assault, they feared that they had become homosexual and so are even less willing to disclose the assault. It is very helpful to be able to explain that this is a physiological response from the stress and physical stimulation, and does not relate to their psychological response.¹⁷ There is no evidence that sexual assault of heterosexual men has any lasting influence on their sexual orientation.¹⁸

When a man discloses that he has been raped, it could be that this is his first disclosure, and this needs to be clarified. It is important to be reassuring without being familiar. Many victims of torture have been raped, but few are willing to talk about it, making victims feel very isolated. Physical examination should be offered, even though it is unlikely that anything will be found, to reassure (if appropriate) that there has been no physical damage. The possibility of sexually transmitted diseases should normally be raised and, if necessary, a referral made. It is unlikely that the survivor will be able to address all the issues at once, and may think of further questions after the consultation. The opportunity for follow-up and, if possible, a referral for counselling needs to be offered.

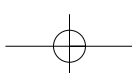
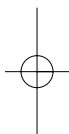
Male rape is the forgotten method of torture. Only by recognising that it exists can medical professionals – and ultimately the authorities – address the issues and survivors discuss their concerns. Acknowledgement by investigating bodies that male rape exists is necessary to prevent many further abuses.

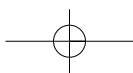
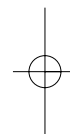
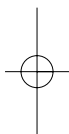
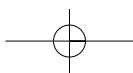
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CHAPTER 5

When the Future Has Been Spoilt: the Impact of Politically Motivated Rape on Children and Adolescents

by the Medical Foundation Child and Adolescent Psychotherapy Team*

Introduction†

This chapter discusses some of the specific effects of rape on developing children and adolescents. The discussion takes place in the context of their phase of development, their family context (which may be functional or dysfunctional), and the range of beliefs and myths that exist in their culture about gender, sexuality, and the social positions of men and women in different societies.

We will focus on the specific effects of rape, on children and adolescents during phases of their development, that differ from the effects of rape on adults.

We will explore the different impacts of rape on girls and on boys and the separate impacts of observing and of experiencing rape in the context of political violence.

We will finally explore themes of resilience and vulnerability connected with the experience of rape in childhood and in

* This chapter was coordinated by Sheila Melzak who has final responsibility for the content.

† Sheila Melzak with Sheila Kasabova and Debra Kalmanowitz

adolescence and the possibilities and limitations of psychotherapeutic treatment, that uses both individual and group approaches.

This chapter is about children's experiences of violent and unwanted sexual intercourse during situations of violence and war. This violence has been perpetrated by repressive forces inflicting humiliation, and undermining and destroying any political or personal resistance. Rape is a human rights abuse.

Rape in childhood, by definition the time in human development of immaturity and fragility of the personality, will lead to a variable extent to specific consequences of the experiences of violence, loss, humiliation and disorganisation that it involves. Such experiences of violence in childhood are likely to have a serious and profound impact on subsequent development.

The impact of these experiences will be related to the nature, the frequency and the extent of their rape and other abuses, as well as to the child's access to internal, external and developmental sources of resilience.¹ These sources of resilience will include the level of care and support, and involvement from adults and peers whom the child knows well.

The impact of these abusive experiences will also be related to periods of time for reflection available to the child. The sense of 'belonging' to an adult with whom a child has a caring and a trusting relationship, and the possibilities of reflection about both the difficult and the nourishing and protective aspects of their life, are sources of resilience as the child grows up. Children and adolescents need access to developmental, internal and external sources of resilience throughout their development. Resilience developed as they grow up will help children to understand and manage their vulnerabilities. Resilience might develop from involved parental and substitute parental care; it might develop from individual and group-based therapeutic and psychotherapeutic work. Resilience only develops when there are possibilities of exploring personal, family and social vulnerabilities in an open way, and usually with another trusted person.

Many of the children and adolescents seen at the Medical Foundation have arrived in Britain 'unaccompanied'. This means that they either arrived in Britain alone after being separated from their parents and their extended families and communities or they arrived with adults who for various reasons are unable to parent them. This second group of children and young people are

psychologically unaccompanied. These children have lost an important external source of resilience and protection and, ideally, substitutes need to be found, in the form of carers, bartenders, advocates and guardians. This search for substitute carers and advocates is an important principle of our work.

The specific experience of rape is likely to have some similar consequences in a developing child to the experience of physical violence. Children and adolescents who experience political violence will have been abused by perpetrators from outside their family and extended family. The impact of rape during childhood is not simply that of an act of violence with physical and psychological, social, cultural and existential consequences. The impact is coloured by the additional complications and shadings connected with the child's relationship with the private aspects of sexuality and the child's inherent naivety and misunderstandings about the physical, psychological and social meanings of adult sexuality.

Approach

The Medical Foundation Child and Adolescent Psychotherapy Team has a holistic developmental approach towards assessment and therapeutic work with children and adolescents who have experienced torture and political violence. In the Team, clinical work and the clinical models used by team members are essentially informed by an holistic, a human rights, and an advocacy perspective.

Our holistic approach has three interwoven ways of thinking: The first is concerned with protection (both asylum and child protection); this encompasses screening and assessment, treatment, rehabilitation, and reintegration into the community. These interventions might occur at the same time or sequentially.

The second way of thinking is concerned with the many levels of experience, the historical, the political, the social, the cultural, the developmental, the existential, the familial and the individual.

The third is concerned with physical and psychological needs, including for asylum, practical welfare and housing.

These three dimensions are inextricably connected in our holistic practice within the activities of our clinicians who not only offer assessment and treatment but who also write clinical reports

to support children's asylum claims and sometimes for child protection proceedings. Clinicians often need to advocate for adequate substitute care and welfare support in addition to working in the area of asylum protection and to offering psychotherapeutic help.

Our approach to assessment and treatment is informed by three different theoretical frameworks. These are child psychoanalytic theory, systemic theory and psychoeducational models. All three are applied in individual, group and family (substitute family) therapeutic work carried out in the team.

It is clear that the experience of rape will have both psychological and physical consequences and, in a political context of organised violence, (rather than in a family context or generally in a community context), may lead the survivor to seek asylum and be faced with the consequent stress of becoming an asylum seeker.

The chapter does not in any way attempt to provide a comprehensive analysis of the ways in which children cope with the experience of rape, but instead describes certain characteristic responses of children and adolescents that are different from those of adults.

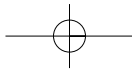
The experiences of young children

Children may experience rape themselves, and they may observe the rape of others who are close to them, or the rape of strangers.

Children will always be affected by their experiences of rape but not all will undergo a regression in their personality: their development may go backwards, and it may become problematic.

Some children cope with their experiences of human rights abuses with apparently minimal cost to their personality development. These are, we believe, those who are able to talk about or to express in other non-verbal ways their memories and the feelings connected with these memories and to share the memories and the feelings connected with these experiences with another person.

Others will cope with these potentially overwhelming events by making use of various unconscious psychological defence mechanisms, including denial, repression, identification with the aggressor and dissociation.



Dissociation is a commonly used defence. The child may remember events but not the feelings connected to these events which are likely to be feelings of bewilderment, pain, guilt, profound numbness, disgust, powerlessness, terror and shame. Alternatively, they may remember the feelings but not exactly what might have happened.

Valerie Sinason described the use of dissociative mechanisms as a response to sexual abuse.² Dissociation is an unconscious psychological defence against overwhelming experience.

Sinason wrote in the introduction to her book about a condition called Dissociative Identity Disorder, and about the traumatic roots of the symptoms of dissociation. She writes about dissociation and fragmentation as a childhood defence.

She also writes about how mental health professionals use dissociative mechanisms to prevent themselves from feeling the consequences of their patients' experiences of rape:

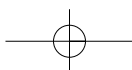
What happens when the toxic nature of what is poured into the undeveloped vulnerable brain of a small child is so poisonous that it is too much to manage? Little children, who have had poured into them all the pain and hate adults could not manage, somehow grow up. There is a shadow side to this.

In this context Valerie Sinason further described the ways in which aspects of the self become separated from each other after some situations of violent and prolonged sexual abuse.

Sinason wrote about dissociation as:

....one way of surviving, a brilliant piece of creative resilience which comes with a terrible price. It is a way of surviving so difficult to think about and speak about that, like the topic of learning disability, its name changes regularly. Dissociative Identity Disorder is the newest term. Where and in whom the disorder lies is a crucial issue in its own right. (page 4).

She also quotes Felicity De Zulueta in this context:



A refusal on the part of psychiatrists and therapists to validate the horrors of their patients' tortured past implies a refusal to take seriously the unconscious psychological mechanisms that individuals need to protect themselves from the unspeakable. Such a denial is however no longer ethical, for it is this human capacity to dissociate that is part of the secret of both childhood abuse and the horrors of Nazi genocide. Both are forms of human violence, so often carried out by 'respectable' men and women.³

It is a characteristic of development that different aspects of the self in relation to others become integrated during its course. In the aftermath of experiences that are overwhelming, survivors may continue their psychological and emotional development in certain aspects of themselves, while other aspects of their development may remain stuck or may go backwards (regress). This is an aspect of the general fragmentation of the internal psychological world after overwhelming and traumatic experiences. The usual boundaries that separate past and present experience and internal and external experience and thoughts and actions may sometimes break down when children and young people are overwhelmed. The consequences of this are that young people might be reminded of their traumatic experiences by a trigger in present time and be mentally transported back to their memories of their rape. They may have frequent flashbacks, bad dreams and nightmares about their rape. They may also believe that their thoughts or feelings caused the rape ('magical thinking'). They may feel permanently damaged and transformed both physically and psychologically by the rape.

A minority will not cope at all. These children are unable to hold in their minds a series of frightening and overwhelming events connected to rape. During this series of events whose impact is cumulative, they will have been overpowered and humiliated and felt that they were expendable and were likely soon to die. They may break down partially or completely and go 'out of their minds' because these events are too difficult and painful to hold 'in mind'. They may regress to a time where they felt more secure and comfortable. They may seem to 'forget' the past in order to function in the present, or be unable to function at all in the

present in terms of ,taking care of themselves, of thinking and studying, or of forming friendships and relationships with adults.

There is not enough space available to do justice to the direct experience of rape in childhood and to describe in detail the disorganisation and profound negative impact on the development of the sense of self, the sense of relationships to others, and the interference with mental and emotional development that ensue when young children are raped. Detailed discussion of the impact of rape by adults on children inside and outside their family can be found in the references.^{4,5,6}

Most of our referrals of young children are of those who have been profoundly disturbed by witnessing rape, so here we will describe the consequences of a young child's observations of rape and the impact of these observations on her development. We work with many young children who have been multiply traumatised by their experiences of murder and rape. it is not easy to separate out the particular impact of rape on the development of these children.

When young children observe the rape of their mother

Hana

Hana was four when conflicts again flared up between the government of the Middle Eastern country where she was born, and armed rebel forces fighting for a less militaristic and more democratic society. Between the ages of four and seven, when she and her family came to seek asylum in Britain, Hana was exposed to street violence, shootings, murders and the sight of dead bodies in the street on her route to school. She was also, during her early developmental years, exposed to her parents' terror and their difficulties in protecting her from exposure to frightening and shocking events. The consequences of these experiences for Hana were persistent and extreme emotions of anger and fear and serious developmental symptoms of enuresis and encopresis (inability to control her bladder and bowels).

Pressure was placed on Hana's father to support and join both the government and the rebel forces. He was a member of one of the helping professions. Under threat of murder and in a state of unmanageable fear Hana's father left his family and his country and sought asylum in Britain. After his departure, the family home was

visited on several occasions by male and female officials who asked about his whereabouts and threatened his family.

The events that repeatedly emerge into Hana's conscious mind are the two occasions that Hana's mother was beaten and raped in her presence and that of her younger sister Alia. Hana observed her mother's rape by more than one man on two separate occasions. On the first her mother was seriously injured as she resisted with all her strength. She had to be hospitalised.

Whatever the long term impact of these events on Hana might be, the short and medium-term impact has been fearfulness, anger, relationship difficulties, disrupted sleep and difficulties in daytime bladder and bowel control. Though Hana had gained bladder and bowel control she lost these developmental achievements at the time of the rape and now, at the age of ten, she has not regained these aspects of mature development. Ana continually tests her mother's love and does not trust that her mother loves her. Our psychotherapeutic work with Hana focuses on the relationships between Hana and her family, and in particular with her mother.

Hana stopped noticing or feeling when her bladder and bowels were full when she was repeatedly overwhelmed with terror. It is now, at the age of ten, difficult for Hana to relearn how to notice the subtle physical signs of the need to empty her bladder or bowels. Hana does however have clear memories of her mother's rape and understanding that her mother was raped, not simply beaten. She was able for the first time to speak with her mother about her rape, and raised the subject herself only several years after these violent events took place. While being aware that her mother was hurt and feeling some empathy with her mother's pain and humiliation, Hana also knows that her mother was unable, at that time, to hold her (Hana's) needs and experiences in her mind. This affects her relationship with her mother and with her peers. She is especially intolerant of children who use different defensive strategies to her own.

Other children respond to observing their parents being raped in different ways. Eric, aged two when soldiers broke into his parents' home to arrest his father and rape his mother, in his full view, seemed to us to have made an instant identification with the soldiers. This is a phenomenon described by Anna Freud and called 'identification with the aggressor'. Anna Freud described the

development of this defensive style in great depth⁷ and it is also addressed by Phyllis Greenacre in her book on trauma.⁶

In his adolescence, Eric raped a girl and committed several street crimes. We felt that these acts were rooted in the impact on his development of his early experiences, when he was under five, of violence, the arrest and imprisonment and absence of his father and the rape of his mother.

In contrast, a girl, Ellianne, aged six at the time when she was forced to witness, her mother's rape at gun point by several soldiers, still has night-time dreams and daytime memories of this event four years after it was perpetrated. Ellianne, in contrast to Hana and Eric, copes by being an adult, looking after her parents and siblings, being hypersensitive to their needs and having difficulties in reflecting on her own. As she approaches adolescence she seems prematurely aware of the sexual aspects of her friends' and her parents' relationships. She feels safer in her play with young children but mostly plays alone, putting most of her energies into monitoring her parents' state of mind.

When a child, especially one who has understanding of neither the psychological nor the physical aspects of sexual intercourse, observes parents making love they often think that their parents are fighting. A child who observes a parent being raped sees their parent being vulnerable, helpless and often injured. This is terrifying as the child realises that their parent cannot keep either themselves or their child safe. The consequences of these events might be those experienced by Hana, a child with a high level of unmanageable anxiety and anxiety related symptoms

These four ways of coping with childhood observations of rape i.e., dissociation, partial regression and fixation, identification with the aggressor, and becoming parentified, are some of the more common ways that a child might cope with the rape of their mother by soldiers.

The experience of rape in early adolescence

The direct and personal experience of being raped in psychological pre-adolescence or early adolescence is an experience that has several aspects to it, some physical and some psychological. Pre- and early adolescence are times of great physical and psychological change and are important developmental phases for young people

from any culture. In fact many cultures mark this time of transition and transformation from childhood into adulthood with a community ritual.

In addition to the physical transformations of puberty, young people go through many psychological changes as they initially regress and later slowly move forward in their development. They need to be able both to look backwards and to explore their relationships with important figures from their past, and to be able to look forward with both hope and the faculties to think critically.

Alongside the physical changes from a child's to an adult's body children go through many psychological conflicts and struggles as they work out what kind of adult they want to be.

The developmental significance of this phase of development, from preadolescence to early adolescence, makes unsurprising the targeting of this age group by repressive forces intent to destroy opposition in present and future generations unsurprising. Of the young people who have experienced rape, and who have been referred to the Medical Foundation Child and Adolescent Team, most were raped first during this phase of development.

At the time of the rape children and young adolescents certainly experience physical pain and often injury. They also feel sometimes overwhelmed and disorganised and often helpless, hopeless and disgusted with themselves as humans, and especially with their bodies, particularly their genitals, which are likely to be experienced as disgusting, smelling, damaged and deformed. Young people also often fear that they have caught a disease. Children and adolescents who are raped almost always believe that they are responsible for what are clearly the actions of the perpetrators.

Later as children move forward in their development, many survivors of childhood rape become preoccupied with the concept of virginity. This concept is overlaid in the mind of the young adolescent, searching for a new independent adult identity, with the cultural and mythological beliefs that are rooted in the child/young person's culture.

Virginity and culture

Most young adolescents we assess and work with who have direct experiences of rape also have subsequently the experience of separation from their parents and life as an unaccompanied

adolescent minor living in exile. They are also likely to have witnesses killing during war.

Most feel most profoundly a sense of loss of their childhood and adolescence, and in relation to rape a sense of the loss of the possibility of innocence. Young people feel a huge sense of anger and sadness at the injustice of being forced into a knowledge of adult sexuality without the longed for joy, and well before they were ready.

One girl raped at the age of nine (and before puberty) by government forces in an African country, because members of her ethnic group were seen to be a threat to the government, remembered the physical pain but now at fifteen looks back on that experience saying:

At that time I did not know what I had lost. Now I realise that my future has been spoiled. They took away something that was special for me, just not replaceable, my virginity, my innocence.

The personal sense of the meaning of virginity is mingled with the cultural, social and mythological fantasies and beliefs from the child's culture. In some traditional cultures the loss of virginity, whether through loving mutual consent or rape, means that the victim, especially the female victim, is defiled permanently, at several levels and often seen as a social outcast forever contaminated by the perpetrator's actions.

Cultures are filled with mythological characters that come to represent men's fears of women's sexuality and men's fears of the sexual potency of other men. One example of this comes from the Somali cultural traditions. In these the Somali queen Arawhelo castrates male rivals. In the same culture the female monster Dhegdheer eats her male rivals.⁸

For young people who have been raped, the consequences of overwhelming violence that they have experienced are mental disorganisation, anxieties and terrors, but these difficult feelings and representations of the overpowering relationship and unstable self esteem are sustained and restimulated by cultural memories and expectations. Girls must be virgins before marriage otherwise they are not eligible. Boys have to be potent, strong, even omnipotent. A

young woman with a child and no husband often has to live on the margins of the society.

The body, the mind and gender

Rape during adolescence always has an impact both on the young person's developing body and on their mind. We see over and over again young people who, after rape, locate all their emotional pain in their body. This is especially the case for this age group whose bodies are in the process of transformation and may feel quite unfamiliar. Young people who have been raped feel a strong sense that they have been wounded. They have numerous questions and much distress about the nature of the wound. The 'wound' clearly becomes the focus of a mixture of fantasies and real perceptions which may take some while to disentangle. In the meantime, the young person's troubled state of mind may be deduced from their difficult, aggressive or withdrawn behaviour. 'Suicidal' and 'acting out' behaviours are common. These young adolescents are experiencing a loss of faith in the world in that for them many social mores and moral standards about relationships in society have been challenged. They trust almost no-one and least of all themselves.

Rape of boys

A boy's experience: Hamid

Hamid was kidnapped and raped by a religiously fundamentalist rebel group when he was twelve. He was kidnapped because his parents criticised fundamentalist religion, not as a result of any of his own actions.

He was held for more than a month in a small room and he felt that he might be killed. He was beaten and anally penetrated by soldiers using both bottles and their penises. When he was released, and subsequently, he had some physical damage both to his anus and to his penis which needed treatment over a couple of years. He was also deeply ashamed that he, a Moslem boy, should have experienced what he felt was both a disgusting act and a violation of his religious code. His parents decided to send him to seek asylum, with an agent, to Britain. He often felt suicidal and acted out these wishes by cutting parts of his body. He felt that he could never tell anyone outside his family that he had been violated.

Sometimes he felt that he had physically been transformed into a girl, sometimes that he would never physically be accepted by a girl as a sexual partner. Hamid felt angry, ashamed, violated and pessimistic about his future.

In his therapeutic work, Hamid needed to explore in great detail and with considerable repetition his experiences of rape that he felt were both his fault and his destiny as a punishment for his imagined actions: misdemeanours at some point in his history. He felt angry with his parents because they sent him away, while at the same time he understood that they were trying to keep him safe. He had no criticisms of their beliefs and a clear and highly developed intellectual criticism of the rebel fighters who had arrested and raped him.

After many years of regular psychotherapy sessions, talking in great detail about his experiences and their consequences, he was eventually able to find a sense of hope in the future and a sense of possibilities for his personal life, and future relationships, unimpeded by power-imbalance in intimate relationships, self-disgust, helplessness and his sense of injustice.

For a boy, rape is likely to lead to many ambiguities in their sexual identity. Some boys come to completely deny their sexuality, some feel emasculated and some feel an endless drive to validate their own sexual identity against males and against females. Sometimes female company is humiliating and reminds the boy of his sexual inadequacy and leads to difficulties with any intimacy, such as kissing and cuddling let alone in having an erection. At other times girls might remind the boy, in a very real sense of his male perpetrator, even to the extent of transforming perceptually in front of his eyes. Ambiguities of sexual identity are part of normal adolescent development but rape which forces a boy into a passive and helpless position can make a boy's development stuck at this phase.

The most disturbed young people are hypervigilant and feel that the fact of their having been raped may be visible to all. These experiences are both terrifying and isolating. Isolation in adolescence, when young people need a peer group within which to bounce off their conflicts, muddles, worries, and trials and errors, and with whom to feel part of a social group has a strong impact on the ability to make relationships in adult life. There is also a real fear of sexually transmitted diseases and HIV.

These difficulties for a young person profoundly interfere with their access to justice, with their ability to tell their story to asylum lawyers or to immigration officers or Home Office officials. The difficulties also interfere with whom they might accept help from either in the form of care or of mental health support, as every potential helper must be very carefully scrutinised.

A fundamental area that it is necessary to explore is the virility of the male rapist who often seems to be omnipotent and to have magical powers to transcend borders and countries in the young person's mind. The fear and power connected with the perpetrator has to be explored in depth for the young person to move forward developmentally.

It is our experience that those young people who are traumatised by rape and have experienced the breaking not simply of physical, but also of psychological, boundaries, often feel when they are under any present stress that the perpetrator of their rape is with them. When young people are traumatised, the barriers between past and present, internal and external experience, and thoughts and actions break down. Also the faculties that we have in order to make sense of the world, e.g., for thinking, concentrating, making links, and integration may also break down.

Under any present stress, traumatised young people are likely to experience the same extreme feelings and emotions that they experienced when they were raped. They also commonly see people in the present, especially those towards whom they have ambivalent feelings, such as authority figures or those with whom they wish for a more close relationship than is realistically possible, as temporarily being their perpetrator in reality.

The process of psychotherapy and healing for children, pre-adolescents and adolescents who have been raped

Though children and young people, like adults, will never completely forget their experiences of rape, many are able to make use of the psychotherapeutic process which involves their communicating both memories and feelings to an experienced listener who is able to hold and contain their discomfort, pain and horror. This psychotherapeutic process with young survivors of human rights abuses involves three essential aspects which may take place in parallel or sequentially.

It is essential that the child's testimony is both communicated (and this communication may need some facilitation), heard and acknowledged, that the memories of abuses and loving experiences in the past are recalled over time with the connected feelings and emotions, and finally that these experiences are integrated, in order that the young person might move forward developmentally and be able to live in the present and think, with some hope, about the future.

This process involves predictability and safety and a measure of dependence of the young person on their psychotherapist. This dependence will last for a varying amount of time.

Most of the users of our service welcome the possibility of reflecting on their experiences with a listener who is available for them at a regular time in the same place.

Resistance and resilience

The experience of rape is inherently terrifying and as described above it touches many unconscious and archetypal cultural taboos. In the context of individual experiences of rape, and the widespread rape that is characteristic of war and political violence in many countries, there are frequent examples of resilience and resistance. This is the case even in the context of the profound power imbalance that colours every rape.

Adolescents have described extraordinary acts of resistance. These include some who have fought and made all sorts of body contortions rather than be raped. Others have seen friends who have refused to allow rape and have been shot. Many girls have described wanting to live so much and resisting in their mind and their heart while their bodies were raped. This is a form of coping and involves intentional dissociation, a form of self-hypnosis.

Rape of adolescent girls

The experiences of two girls: Hanan and Marie.

Exploring the experience of politically motivated rape in individual psychotherapeutic work.

These two girls' experiences of rape in two different African countries in the throes of an internal war, when they were both thirteen, were complicated and incorporated several different

events. These included their experiences of witnessing physical violence and murder; their bewilderment at experiencing rape and at observing the rape of others, both old and young women, by boys and men; their sense of personal physical and psychological injury; their own personal and cultural ambivalence about their bodies and about female sexuality; and the attitudes of their abusers to females and to the relationships between males and females in their culture.

For their psychotherapists the most poignant aspect of their experiences was their difficulties in talking about their own feelings. Quite sensitive to the feelings and the state of mind of others, these two young women described the process, in situations of fear, of having learned to suppress and even to repress their own feelings. At the time they began to attend the Medical Foundation both were ready to explore their strong feelings not simply about the impact on them of rape in adolescence, during a time of political conflict in their communities, but also of their communities' attitude towards the rape of girls and women.

These two girls had not only observed adults in their communities solving conflicts over resources and beliefs and values by the use of violence, discrimination, persecution and scapegoating: both had also received the unspoken instruction that they should not talk about their personal experiences as this would have negative personal, family and community consequences (in terms of what their two separate communities could tolerate thinking about and the consequent moral and religious mores).

It was clear that some aspects of their experiences were kept as conscious secrets. Others were repressed and apparently forgotten.

Hanan came from a culture where girls are circumcised. She remembers being circumcised at the age of six or seven. She also remembers being sexually abused by an important religious figure in her community who was a friend of her father. When the political violence began in her neighbourhood, Hanan was staying with a cousin, helping her during her pregnancy. Soldiers came to the home and Hanan was raped by young soldiers and knocked unconscious. She awoke to see dead bodies around her. She was covered in wounds caused by the soldiers' abuses.

Marie came from the ruling elite of her country. She was an innocent, physically pubertal, psychologically preadolescent girl, enjoying girls' games with her best friend and her school life when

rebel soldiers overthrew the government, and those seen to be connected with the government were driven out of their homes.

Forced to live in the forests with the forest dwellers and local villagers as their only source of help and support, Marie and her family saw and experienced violence, both rape and murder.

Marie remembers rape by boys of her age carrying knives and guns. She remembers rape by men older than her father. She has often repeated that everyone was raped, men and women, the old and the young. She remembers making the decision not to die and was raped having observed her best friend refusing to be raped, and being shot.

Marie told about this event without tears. Her psychotherapist listened to the account and could not stop her own tears. When she acknowledged the enormity of the circumstances of the friend's murder and the apparent absence of grief Marie responded:

I am crying inside all the time but the soldiers taught us with fear that if anyone showed emotion they would be killed. I learned to cry in my heart with no outside signs.

Marie has several physical consequences of her experiences: scars on her back and other parts of her body and back and leg pains. She also became pregnant. As a thirteen year old unfamiliar with her 'woman's body' she was unaware that she was pregnant until a relation noticed her enlarged abdomen.

Marie and Hanan represent the two aspects of the impact of rape on young adolescent girls. Hanan is preoccupied both with rape as a gender-based crime and her conflicts about adult love relationships, the conflicts between her wishes for intimacy and her fears of and anger with men in general. Marie is preoccupied with being a very young mother and her wish to find a place in school and acceptable child-care for her baby. Marie is able to be a tender and thoughtful parent.

Both girls have been profoundly affected by their experiences of rape. Both have repetitive dreams about the violent intrusions into their bodies, their physical and their psychological space. Some of these dreams are direct replays of their actual experiences of rape. Other dreams contain elaborations of these experiences based on subsequent thoughts and past and present events.

These two young women reflect, in different ways, on the ways that their rape has interfered with feelings in their bodies, with the capacities of their bodies to experience sensations.

Marie is not interested in boys at this time. Most of her energies are taken up with being a mother. Hanan, older and particularly gifted intellectually, is preoccupied with the impact on her mind and her body of her own multiple experiences of sexual and gender-based abuse and with the political aspects of such experiences, i.e., women in traditional patriarchal societies being circumcised and raped in the service of patriarchy.

Both girls wanted to use the quiet time and dedicated place of psychotherapy on their own to explore aspects of their history and present life and their hopes for the future, and the ways in which rape has impacted on their minds and on their bodies, on their capacities to make and maintain relationships and on their feelings about themselves. Both felt deeply that the rape was somehow their fault in spite of both being aware at one level that these feelings did not make sense. Both needed and wished to make use of a time for reflection in order to explore and unravel their own particular mixture of fantasy, reality, lost memories, pain, fear, rage, shame and guilt. By entering into this process of sharing and communicating with a stranger, (someone not from their own culture) both could begin to move forward in their development.

When children become separated from their family and community

It is important to note here that children and young people become more vulnerable to abuse and exploitation when their experiences of political violence and war result in separation from supportive family and community. This vulnerability begins in their country of origin and continues on their journey into exile, and further in exile. In all three contexts these children are vulnerable to physical, sexual and emotional abuse and neglect.

This vulnerability underlines our need to make use of the holistic approach to assessment and treatment outlined above.

Approaches to treatment

Most children and young people who have experienced political violence want to talk about their experiences. This is usually

initially within a slowly developing relationship to one individual, listening, therapeutic figure who can help them to tease out the many layers of their whole experience, extreme feelings, the contravention of family and social taboos, the search for justice and compensation, and the huge loss of the possibility of uncorrupted innocence. These children have experienced a corrupted world, the transition from one set of social expectations to another, and political violence, and need space and time in which to explore their experiences at a deep and detailed level in order that they might work through these experiences and integrate their difficult and their good memories, their strengths and their vulnerabilities. This takes a long time with regular therapeutic meetings sometimes over several years. Often young survivors describe a feeling that they take a step forward and subsequently two steps back.

It is clear that for most young survivors of rape the ordinary barriers between past and present and internal and external experience are broken.

The central therapeutic task is to rebuild this flexible boundary between past and present in order that the young person might be able to experience past events in the past and to live in the present with hope for the future. It is the task of the psychotherapist to provide and to maintain a safe and protected space in which these experiences that are very difficult to speak about can be explored, reflected on and mourned.⁹

The therapist using a holistic approach will include in their assessment and therapeutic work attention both to internal psychological themes and to the external practicalities that need to be addressed to ensure the safety of children and young people. This involves attention to care, education, housing and financial support in addition to psychological issues in the lives of young survivors of rape.

A psychotherapeutic group for older adolescent girls who have been raped

*Exploring experiences of politically motivated rape in a group context**

This group has been part of the work of the Child and Adolescent Psychotherapy team since 2001. It is a therapeutic group for young women, all of whom arrived in the UK as unaccompanied minors, aged from seventeen to twenty, who have been raped and who have suffered multiple losses and who come mostly from East and West Africa.

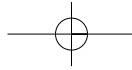
The original purpose in setting up the group was to create a time and space where the girls would feel safe, supported and trusting enough to share some of their traumatic experiences and to realise that they were not alone in them.

The two facilitators of the group are an art therapist and a clinical psychologist and family therapist. Over a period of three months the group also had the impact of a female doctor, with the same ethnic background as many of the group members. The aim of her presence was to facilitate the integration of the physical and the psychological consequences of rape. Many previously unspoken questions and doubts could be raised, including confusions about the girls' own anatomy, questions about infertility and other imagined physical consequences of rape.

The group set out to explore the different themes that have been associated directly and indirectly with the experience of rape in early and middle adolescence. Discussions have covered their past experiences, their present thinking and their future lives. The discussions have been explorations of the ways that each young woman feels about her physical self, i.e., her body as a result of her experiences. Some of the questions that have arisen are: Will she ever be able to have an intimate relationship? Will she be able to have children and to sustain a family?

In such a group the dynamics are created not so much by the therapists or facilitators, but more by the personalities of the members. The group has had the good fortune to have a few members who have been brave enough to voice their deepest concerns about their future lives. This has enabled others who are

* This part of the chapter has been written by Lourdes Berdasco and Diana Brandenberger.



less confident to express their hidden fears. The realisation, for the more quiet girls, when they hear others express their thoughts, that they are not alone in that dark place is both reassuring and bonding for them.

After a slow start, two years ago, the group has now taken on a more 'solid' form. There are ten members, the majority of whom attend the fortnightly sessions regularly, letting the therapists know if they are unable to come. Over these two years feelings connected with their abuse have been talked about but not at any depth.

It is only recently, that is after two years of regular group work, that the subjects of sexuality, sex and rape have been named directly. Their deepest concerns about their bodies, their sexuality and their wishes and fears about intimacy are now emerging.

The reasons for this slow start are now better understood by the therapists as a necessary time lapse that has enabled the group to come to 'a place and time' where they can feel truly safe and trusting enough to make frank disclosures, and endure the reality of their past experiences being shared by the group.

Some of the words of these young women describe well the meaning for them of starting to feel safe enough to disclose their experiences. It is important to honour their words directly:

I really trust this group. I could never say what I say here with my friends at college.

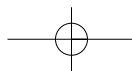
Other young women at college could not understand.

Sharing with others has been very important as you then feel that you are not on your own in experiencing these traumatic events

It is good that I have been able to say so much, it has made me stronger

Four main themes have emerged in the group to date. These correlate directly with the themes that emerged in the individual psychotherapeutic work described above. These are

- a) Complaints about physical symptoms;
- b) The impact of not being the same and loss of virginity;



- c) Views, feelings and beliefs connected with difficulties in making relationships with young men;
- d) Overwhelming feelings: dreams and nightmares rooted in the experiences of rape and loss of family support.

a) Complaints about physical symptoms

The young women in the group have regularly presented their ill health in the group. It has been clear that these pains certainly have a psychological component and they may be rooted totally in the sufferers state of mind.

Between them they have complained about pains over their whole body. This has included complaints about back pain, abdominal pain, headaches, and leg pain. Some talked about vaginal pain and vomiting as a result of psychological distress. Sometimes the pains in various parts of their bodies were linked with the girls' experiences of torture.

The most consistently described pain was the pain linked with menstruation. The young women described this as follows:

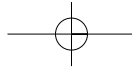
It is so painful that you have to stay in bed, or stay at home for several days.

When it happens I cannot face going out.

I have recently seen my GP as I am in so much pain.

If my mother was with me at least I could ask her questions and I could talk with her.

In the exploration of their separate experiences of rape and in listening to their different stories it became obvious to the therapists that these girls had very little knowledge of their female anatomy and about how their bodies function. They were all concerned that they had been damaged by their rape to the extent that they would neither be able to experience a loving, sexual relationship that was their choice, nor would they be able to conceive a child. The doctor, worked with anatomical drawings and her reassurance went a long way towards convincing them that their experiences had not left them physically damaged.



b) The impact of loss of virginity

For many of the young women in the group it was clear that their experiences of rape made them feel as if they are contaminated, transformed and dirty. It has been particularly distressing for those who have experienced multiple rapes. One way in which they have coped with their sense of contamination is for them to find extreme ways of cleaning themselves in the private parts of their bodies as a result of their fears of being 'dirty' or 'smelly'. Here their words express their feelings.

It was worse you see. I was not only raped once but many times.

You really need to scrub yourself.

Sometimes you really need to put Dettol in the water to really clean yourself. You need to insert your towel.

Although some of their cleaning rituals were informed by cultural and familial beliefs others were linked with the drama of their rape and some of the young women were preoccupied with the sense of having been infected.

c) Concerns connected with difficulties in being able to make relationships with young men

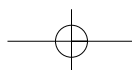
The majority of the group are preoccupied with the idea of being rejected by young men. They express their thoughts in words such as:

Young men will not understand what has happened to me and the fact that it has happened many times.

I feel that I will never be accepted.

Other group members have expressed their wish but also their fear of having violent feelings towards young men in the present who remind them of the men who were perpetrators of rape:

I am worried that at times I feel so much hatred that I could become violent towards my partner.



Another young woman felt attracted towards a young man but the thought of being physically close to a man made her feel anxious and sick to the extent that she would begin to vomit.

In the context of this violence and loss are the wishes for a family of their own and the fears that this is an unrealistic wish with this history.

d) Overwhelming feelings, dreams and nightmares rooted in the experiences of rape and loss of family support at an early age

The girls have repeated nightmares that are linked to their real experiences and to the elaborations of these experiences. The themes include being attacked by men, being strangled by snakes, running away from potential perpetrators and finally the tragic loss of family. In an art session one girl drew an image of her recurring dream of seeing her mother on the other side of the river. As she swam towards her mother she would always wake up, just before she could touch her mother.

The group has provided a safe enough space for young people to share feelings of abandonment, hopelessness and despair. The cumulative trauma of rape, being without family and the further traumas of their experiences of living in exile has meant that at times they have expressed feeling suicidal. These feelings are particularly strong at the age of eighteen when, in Britain, the support, care and housing arrangements change. The lack of protection of these vulnerable girls is unbearable for both the young people and the therapists.

Countertransference and transference issues

Psychotherapists working with traumatised children and adolescents have to be aware of their own countertransference feelings as well as of the transference feelings from the child. Here we are addressing both extreme and strong feelings and the phenomena connected with traumatisation of fragmentation and dissociation. These make thinking difficult.

The impact of this work on psychotherapists and group facilitators is profound. The therapeutic task is sometimes overwhelming because the therapists feel a high level of responsibility and concern for young people who have had such devastating experiences. Therapists and group workers who spend

time listening to accounts of rape and its consequences for children and young people need ongoing support and supervision from an experienced supervisor who is not directly involved with their work and who is fully conversant with the theoretical framework being used.

Conclusion

We do not underestimate the therapeutic difficulties of working to bring about hope in a group of adolescent girls who often express difficult feelings, their suicidal thoughts, and their nightmares about their personal experiences of abuse and humiliation and of violent bereavement. We acknowledge that the pertinent therapeutic response is listening to and acceptance of these painful feelings and are convinced that this response produces the therapeutic effect.

It is equally relevant in the group, and in individual psychotherapeutic work, that the facilitators help these young survivors to create new stories of themselves that are connected to marking a new phase of life, with an explicit separation of the past from the present, and a building of hope for the future. Integration and reflection are key aspects of the complex holistic approach in which attempts are made both to identify and to address the many needs resulting from the experience of rape in order to enable these young people to slowly move forward in their development.

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CHAPTER 6

Rape and Mental Health: the Psychiatric Sequelae of Violation as an Abuse of Human Rights

by Dr Abigail Seltzer

Introduction

Of all forms of torture, rape probably induces the strongest emotions in both listener and narrator. By its very nature, it entails violation of one of the intimate aspects of self: sexuality. In many cultures – including Western cultures, despite the open availability of a wealth of sexually explicit material – frank discussion of personal sexuality, especially with a comparative stranger, is taboo. The assessment and management of the psychiatric sequelae of rape are therefore both sensitive and complex matters.

Unfortunately, rape is neither an uncommon nor a recent human rights abuse. Although men are by no means exempt from risk, women are especially vulnerable in times of war or political repression, especially if detained. Brownmiller, in her now classic text, 'Against our Will', notes that right back to biblical times, rape has not only been widespread, but has largely been seen as an inevitable consequence of war.¹ Such rapes still occur in all corners of the world, from South America to SE Asia, in the Balkans and across the continent of Africa.^{2,3} An International Committee of the Red Cross project undertaken in 1999 in countries which had been or were still at war found that women's memories of war were dominated by specific cases of rape, and that one in nine respondents knew somebody who had been raped.⁴

Rape in peacetime is already well recognised as a psychological trauma with well documented consequences for mental health.^{5,6,7} However, 'politically motivated' rape has been less often studied. This is probably partly due to a comparative lack of recognition of the scale of the problem, partly due to a reluctance to acknowledge it at all (as has been noted in this book and elsewhere, it was not until recently that rape was recognised as a war crime),^{8,9} and partly due to the logistical and ethical difficulties of carrying out such work. Probably the most widely cited work is that of Lunde and Ortmann, who found that a disturbing 61% of their sample of survivors of torture had experienced some form of sexual torture.¹⁰

This chapter will look at what is known of the effects of rape of this nature on mental health, drawing both on systematic studies and the clinical work of the Medical Foundation, and will outline the principles of assessment and management. It will focus largely on women, as they constitute the population most at risk of rape, and also because the topic of male rape is covered elsewhere in this book.^{11,12}

Comparisons: 'random' rape vs 'persecutory' rape

In order to place the effects of 'persecutory' rape (to coin a phrase to describe rapes that occur in a framework of systematic abuses of human rights) in context, it may be helpful first to consider the outcome of 'random' rape (to coin another phrase to describe rapes occurring in a broadly well organised and well functioning society) as a benchmark.

Early adjustment and long term consequences: 'random' rape

Virtually all women who have been raped will show some degree of psychological disturbance in the subsequent days and weeks. This disturbance is likely to follow a predictable pattern for the majority. Intrusive daytime recollections are the rule, as are disturbed sleep, nightmares which recreate aspects of the rape, including the emotions associated with it, avoidance of reminders of the rape and symptoms and signs of hyper-arousal. There may be peaks of distress at the time of day at which the rape occurred. There may be phobias, such as fear of being alone, often in settings which act as reminders of the rape. There may be fear of being indoors if the rape occurred there, or conversely fear of being outside, if the rape

occurred in the open. Depressive symptoms are also likely to be prominent, such as low mood, self-blame, guilt and impaired concentration. Shame is likely to be particularly prominent, as is a sense of being contaminated, dirty or despoiled. There may be compulsive washing. Thoughts of suicide are common, and there may be actual attempts in the early days or weeks.^{13,14}

The acute symptoms described above are likely to resolve over a matter of months with little more than good social support for the majority of women. However, many make major lifestyle changes as a result of the rape, the commonest being changes in place of residence or work (depending on the circumstances of the rape), or relationship changes. Many will continue to curtail certain activities, such as going out after dark, or avoiding public transport, and may take much longer to regain their confidence. Understandably, many will experience sexual difficulties, ranging from a temporary disinclination for sexual activity to a persisting avoidance of any intimate relationships.^{15,16}

A proportion will go on to develop frank and persisting psychiatric morbidity. Those most at risk are likely to be socially isolated, or have abnormal personality traits or maladaptive coping styles. Past history of childhood sexual abuse or pre-existing psychiatric illness are other strong predictors of psychiatric morbidity. The diagnoses most commonly associated with rape are PTSD and depression, and the two conditions often co-exist. Of all violent crimes, rape has the strongest association with a diagnosis of PTSD.¹⁷ These women are likely to require specialist intervention of one form or another and their mental health may be chronically compromised, even with treatment. In other words, 'random' rape exacts a high toll in terms of impairment of both short- and long-term functioning, with consequences not only for the affected individual but also for those in her social network and the wider community, and has the potential to lead consistently to a higher level of psychiatric morbidity than almost any other single precipitant. Life may go on, but rape leaves its mark.

Early adjustment and long term consequences: 'persecutory' rape

a) Pre-existing mental state

Before examining the consequences of persecutory rape, it is first worthwhile to look at the pre-existing state of mind of those who

find themselves subject to such violation. It can differ substantially from those subject to random rape, as a result of the context in which the act occurs. This difference may affect the capacity to cope with and adjust to the act itself, and may predispose to longer term psychiatric morbidity.

In respect of those in detention, even before the rape occurs, the victim is likely already to be in a physically and psychologically compromised state. Interrogation and intimidation of one form or another are likely to have taken place. Detainees are likely to have had insufficient food or drink, or food and drink of poor quality. They may have been held in solitary confinement, or in conditions of sensory deprivation, or conversely in conditions of overcrowding. Sanitary facilities are likely to be poor or non-existent (something of particular significance to women during menstruation). They may already have been subject to random or systematic physical violence, including recognised methods of physical torture, such as beating on the soles of the feet, suspension, submersion, or electrical shocks. The pattern of ill-treatment is likely to vary from country to country and from time to time, but is likely to be typical for that country and that time. Detainees may have also already been subjected to psychological torture, ranging from threats to family or self, to mock executions. All of these, along with the probable terror of arrest, which may be unexpected and accompanied by physical violence, or indeed the experience of pre-arrest persecution of self or family, are likely to conspire to bring about an altered psychological state, even before the rape takes place. There may be a pre-existing state of high arousal, fear and hyper-vigilance in the detainee, coupled with an inability to control or escape the conditions that are causing this state. There may be apathy and depression; or equally, a fluctuation between the two states.

War and its aftermath are accompanied by massive civil disruption, terror and loss, as can be political instability. There may be more or less complete civil breakdown, which can continue for many years, allowing conditions of lawlessness to emerge, with a culture of sexual slavery and brutal rape (see, for example, Amowitz et al).¹⁸ Victims may have experienced the terror of bombing, traumatic bereavement, forced displacement, and loss or destruction of property and possessions, and may well have witnessed atrocities and horrors of many kinds. Victims of rape in these circumstances may equally be in an altered psychological state, characterised by affective states such as fear, high arousal or apathy.

It has been shown that an individual's capacity to deal with a traumatic event is adversely affected by a number of factors, many of which are inherent in the types of event described above. For instance, it is well recognised that there is a 'dose-response' relationship between trauma and post-traumatic psychological ill health; in other words the more extreme a traumatic event, or the more traumatic events an individual is exposed to, the more likely it is that a disorder such as PTSD will supervene, and this has been demonstrated for survivors of torture.^{19,20} Continued exposure to stress also seems to lead to long-term neuropsychobiological changes. There may be demonstrable alterations in hormones, which control response to stress and regulate metabolism, and alterations in neurochemical transmitters that regulate mood and arousal, and which impact on the laying down, organisation and retrieval of memory.²¹ The upshot is that the previously stressed or traumatised are likely to be less resilient and consequently more vulnerable to the effects of subsequent trauma.

b) Early adjustment – the first days or weeks

After an act of rape under the sorts of conditions outlined above, an act which may well be repeated a few or many times, and which may be perpetrated by one or several individuals on each occasion, post-rape psychological responses may not follow the 'normal' pattern, simply because there is no opportunity for a 'normal' adjustment to occur, and because the rape itself did not occur under 'normal' circumstances. For obvious reasons, the early adjustment of those subject to 'persecutory' rape has not been systematically studied. However, clinical accounts of rape in these circumstances give an indication of the psychological mechanisms which can come into play. The pattern of early adjustment seems very much to depend on the immediate aftermath of the rape. Where a detainee is released after a comparatively brief detention (days or weeks), into a society which is not at war (cf. Turkey, Iran) and where social structures are intact, retrospective accounts of early adjustment have much in common with those subject to 'random' rape, although depressive and avoidant symptoms seem to be more prominent than intrusive recollections, often with strong suicidal ideation. Cultural and religious differences are also particularly relevant to early coping, as is the socio-political context in which the event occurred, but these will be discussed below.

The more complex the context and the experience of rape, the more likely it seems that the pattern will vary from the 'norm'. Under these circumstances, clinical experience suggests that overt and persisting psychiatric morbidity appears at an early stage, with depression – again with profound lowering of mood and strong suicidal ideation – seeming to pre-dominate over other conditions, with PTSD symptoms seeming to emerge once the depression is treated or remits to some extent. Where rape occurs over a prolonged period, or in the context of extreme hardship, perhaps becoming part of a pattern of 'predictably unpredictable' assaults and where social structures are, to a greater or lesser extent, disrupted (cf. Sierra Leone, Uganda, DRC), then to a certain degree, different coping mechanisms seem to come into play. Under these circumstances, victims often describe dissociation as their main coping mechanism. In other words, they learn to manage the otherwise uncontrollable distress of being repeatedly violated by 'switching off', and consciously deadening all emotional responses to the act, both during and after. Dissociation is well-recognised as one of the key risk factors for developing later PTSD,²² and clinically, this population does seem to present as more severely and intractably affected when seen at a later stage (see below for further discussion).

c) Long-term consequences

The longer term consequences of persecutory rape are intimately bound up with the context in which it occurs. Undoubtedly, all rapes, however and whenever they occur, are affected by context, but from a clinical perspective, socio-political or cultural analysis may seem to have a limited place in the consulting room when working with a distressed individual. However, they are arguably central to the understanding of persecutory rape. Rape of this type is much more than an individual act of sexual violence. It is likely to be part of a systematic, conscious and deliberate attempt to humiliate, punish and control not only the individual victim, but the whole group or class to which the perpetrator perceives the victim to belong. It is not the act of a 'dysfunctional individual', but of a 'dysfunctional system'. This is not to say that a socio-political analysis of random rape is not relevant or important, or that justice is always easy to come by in such rapes. However, in the context in which persecutory rapes occur, the victim knows for a fact that she

has little or no chance of redress or justice, either formal or informal – and it is indeed one of the primary aims of torture to instil in the victim a sense of hopelessness, powerlessness and despair, with the wider aim of perpetuating persecution or subjugation of a targeted population. Furthermore, the victims themselves of persecutory rape often have a sense that they were ‘targeted’: had they not been members of a particular class or group, then they would not have been raped. It was not simply a matter of being victimised for being women, as might be argued for random rape; rather it was that their gender determined this as the way in which they were victimised, giving rise to the double trauma of a) being persecuted b) *through* rape. In other words, the purpose of and motivation for persecutory rape is somewhat different from that in random rape.⁹

This pertains all the more where rape takes place in conditions of war or political instability. There may be no effectively functioning medical, welfare or legal systems, and if and when these are restored, the needs of women who have been raped may not come to light for some time, and may not be dealt with in a coherent and systematic way.

A further complicating factor that has a strong bearing on an individual’s capacity to live with the fact of rape is the cultural context in which the act occurs. Many societies hold views of women that are very different from those held in Western societies, views often shared by women themselves. In part, these views shape the opportunity for redress (are women’s rights worthy of being addressed?), but they also shape the individual’s coping responses and the coping responses of those around them. Although this aspect appears not to have been much studied, it seems likely that some societies will facilitate recovery more than others, by virtue of the ease or otherwise with which the victim can access support and care, including medical attention where necessary. In some societies, rape leads to a woman being treated as an outcast, in others, as an object of sympathy. (For a fuller discussion, see Richters.²³)

A further major difference between random rape and persecutory rape relates to the particular difficulties faced by those who flee their country of origin and seek political asylum. In addition to whatever psychological traumas this population may have experienced, including sexual violence, they must also deal

with living in a foreign country, where they may encounter difficulties posed by language barriers, racism and unfriendly media coverage. They may also encounter difficulties in accessing health care and appropriate legal or welfare advice.^{24,25} Add to this the possible pain of separation from loved ones, or continued anxiety about the safety or even whereabouts of those left behind, or about the general political situation in the home country, not to mention the vicissitudes of the host country's immigration system, all factors which in themselves can have an adverse effect on mental health,^{26,27,28} and it can be seen that the task of analysing the long term consequences of sexual violence is a complex one.

With these provisos, what can be said about the longer term consequences of persecutory rape? As with both random rape and torture, PTSD and depression are the predominating psychiatric disorders, although it is difficult to know what proportion of those who have experienced persecutory rape will go on to develop psychiatric disorders, and what the determinants are.

In respect of PTSD, as with random rape, flashbacks, intrusive recollections or images usually relate to the rape or particularly salient aspects of the rape. The content of nightmares is commonly rape-related and usually recreates the affect associated with the rape, such as terror or helplessness. Almost all victims experience profound and sometimes uncontrollable distress if exposed to people or circumstances that remind them of their ordeal. Common triggers are official buildings or interviews, and officials of any sort, particularly if male and wearing uniform. Seemingly innocuous events or objects can trigger panic, such as the colour of someone's hair, or a particular smell. The smell of sweat is often a potent reminder.

There may be a wide range of symptoms of avoidance, from being unable to recount the rape in any detail so as to avoid experiencing distress, to a more complex symptom array, such as avoidance of looking at one's naked body either directly or in the mirror, or avoidance of clothes which emphasise shape or sexuality, symptoms which may not be volunteered spontaneously, but which are frequently present. There may be patchy memory for details of the event (particularly if any loss of consciousness is associated with the rape). There are likely to be strong feelings of shame or guilt. On-going sleep disturbance is virtually universal, although not pathognomonic in itself of PTSD. Symptoms of hyperarousal may

manifest themselves as hypervigilance, a subjectively unpleasant watchfulness, especially toward strange men, or in circumstances or situations which act as reminders of the rape. Equally, there may be pronounced irritability, with apparently unpredictable outbursts of anger. Mothers commonly report lack of patience with children, to the extent that child protection issues may have to be considered where there is risk of actual neglect or violence towards them.²⁹ This is likely to be exacerbated by the cramped and inadequate living conditions experienced by many asylum seekers. Some degree of impaired concentration is again virtually universal, although not pathognomonic. This impairment can significantly hinder integration into a country of exile, as it affects the ability to learn a new language. It can be so severe that normal daily functioning is almost impossible. Many women, for instance, report losing their way when out, forgetting to attend to cooking so that pans burn, or being unable to organise themselves to do the simplest tasks.

In respect of depression, which often co-exists with PTSD and can be severe, affective changes predominate. There is likely to be persistent, unvarying low mood, accompanied by characteristic cognitive changes, i.e., changes in the ways in which the individual thinks about her or himself and the world. Most commonly there will be strong feelings of worthlessness or low self-esteem, linked to changes in self-perception, with the self viewed as 'damaged goods' – despoiled, contaminated and unworthy of love, nurture or respect. Hopelessness and pessimism are common. There may also be noticeable somatic changes, such as poor appetite and loss of weight. There is likely to be disturbed sleep, the characteristic disturbance being waking in the early hours of the morning and being unable to fall back to sleep. Concentration is likely to be impaired, often so severely that there can be major difficulties in acquiring, retaining and recalling information efficiently, which can lead the sufferer to conclude that there must be some underlying organic problem such as a brain tumour. In the most severe cases, there may be persistent thoughts of suicide, or actual attempts.

Other psychiatric disorders may also be present and may co-exist. These are most likely to be anxiety disorders, including panic attacks and phobic disorders, dissociative disorders and somatoform disorders. Other possible consequences are eating disorders or substance misuse.

Particular mention must be made of those who have undergone systematically repeated experiences of rape, often in the context of ongoing imprisonment, other torture or other brutality, such as slavery. As stated above, this group often uses dissociation as a way of coping. While this may be a necessary and valuable survival mechanism in the short term, this form of coping can have adverse consequences for future psychological adjustment. It may be one of the factors leading to longer-term and more widespread impairment of normal emotional regulation and responses, similar to those described in Holocaust survivors, and survivors of childhood sexual abuse.³⁰ This state of mind is recognised in the World Health Organisation International Classification of Diseases, tenth edition (ICD 10) as 'Enduring Personality Change after Catastrophic Experience'³¹ but there is no comparable diagnosis in the American Psychiatric Association Diagnostic and Statistical Manual, fourth edition (DSM IV).

Nonetheless, although it may be possible to make a definitive diagnosis using internationally recognised criteria, in many ways these diagnoses do not do justice to the full range of psychological disturbance that may be encountered, nor to its complexity, even when multi-axial diagnoses are used. For instance, sexual dysfunction is highly prevalent, with at least one study citing around 30-40% of survivors experiencing one or more forms of dysfunction,¹⁰ and clinical experience suggests that, for many, sexual dysfunction is severe and long lasting, especially when the survivor is not in a well established and caring relationship. It could be argued that sexual dysfunction is merely a symptom of an underlying disorder (for instance, it could be construed as avoidance according to PTSD criteria, or arise out of the general anergia of depression). However, it is likely to be of profound significance to the sufferer, affecting the capacity to form or maintain intimate relationships, and interfering with an integrated sense of self. Existing diagnoses do not adequately capture this consequence of rape, unless by classifying it as a separate disorder. Earlier studies tried to tackle this by talking about a 'rape trauma syndrome' in much the same way as slightly later studies talked of a 'torture syndrome'. However, these ideas no longer hold much sway, having been subsumed by the diagnosis of PTSD, with all its limitations. It is probably misleading, therefore, to rely too extensively on diagnostic labelling as an exclusive way of

conceptualising long term suffering, although it can be helpful as a way of grouping together and making sense of otherwise apparently unconnected symptoms. Furthermore, none of these diagnostic systems gives sufficient weight to the defining characteristic of persecutory rape, namely that it occurs in a context of systematic human rights abuse.

A further problem is that these symptoms can impair the ability to recount a coherent story of the trauma and its aftermath. Avoidance, patchy memory and impaired concentration may lead to apparent inconsistencies, omissions or lack of detail. This can have serious implications for those seeking asylum, as without an understanding of how affective and cognitive function can be devastated by such a trauma, there is a risk that officials will simply dismiss victims as 'faking it'.

Clinical Assessment – General Principles

The principles of assessing a survivor of persecutory rape do not differ radically from those of assessing any survivor of rape. However, the following are essential.

1) Time

It may take many sessions to elicit a full history, and to understand the aspects of the rape that cause the most distress. If necessary, the interviewer should take a brief outline history and expand at a later date. The amount of detail required to complete the assessment will inevitably depend on the nature and purpose of the assessment. It is possible to make a working diagnosis without having to know every last detail, but much harder to formulate and carry out sensitive and appropriate interventions without this knowledge. The trauma history may be extensive and painful, and the most relevant information may not be the first to be disclosed, nor the 'presenting' trauma the most important.

2) Interpreters

A good interpreter who is acceptable to the client is essential. For women, this will usually be an interpreter of the same sex; for men, not necessarily so. The same interpreter should be used for all sessions, wherever possible. The best interpreters act as bi-cultural mediators, acting as an explanatory bridge between clinician and

client. A detailed discussion of the skills required to work successfully with interpreters is beyond the scope of this chapter, but must be acquired by any clinician working with survivors of persecutory rape where the clinician does not speak the same language as the client (e.g., see Tribe and Raval.³²)

3) *Empathy, courtesy and honesty*

The importance of these cannot be overstated. These qualities foster an atmosphere of trust, which facilitates not only the process of disclosure, but also the process of healing. Survivors of persecutory rape have experienced treatment intended to dehumanise and undermine trust. An initial encounter with a professional can do much to reinforce or diminish this psychological damage, depending on the conduct of the professional.

4) *Confidentiality*

For those who have been violated, confidentiality is usually a crucial issue. It is not unusual for a client to request that no record is made of a rape, for fear that other members of his or her community, or his or her partner, may find out. Whenever a history is being taken, it is good practice to explain what will be recorded, where, and for what purposes, as well as who will have access to this information. For instance, where the purpose of an interview is to provide a medico-legal report, a fairly detailed account of traumatic events and their consequences will be necessary, and will be made comparatively public. These issues need to be discussed fully and openly, and agreement reached about what should and should not be recorded and how.

5) *'High index of suspicion'*

Many women and some men will disclose freely that they have been raped. Others do not find it as easy. Survivors may present with 'unexplained' somatic symptoms as opposed to psychological distress, particularly in primary care, or where there is doubt about whether the interviewer is trustworthy, or has the time or interest to hear his or her story. It is of note that Eisenman et al, in a study of foreign-born attenders at a New York medical clinic, found that 6.6% reported a history of torture on systematic screening: in none had this history been elicited by the treating primary care physician.³³ Backache is a common symptom in women, and may

relate to pelvic injury sustained during the rape, or may be more psychologically determined. Another common somatic symptom is headache. Some non-specific aches and pains may be physical manifestations of underlying psychiatric disorder, such as the chest tightness of anxiety, or the alterations in appetite or bowel habit due to depression. There may be more overt non-specific psychological complaints, such as poor sleep, or impaired concentration or memory, for which extensive physical investigation may be requested.

In these circumstances, where the client or patient is known to come from a country with a record of human rights abuse, the interviewer should have a high index of suspicion of the possibility of rape, especially for women, and enquire about a history of personal human rights abuse.³⁴ It is almost certainly the case that a woman who has been detained will have been raped.³⁵ It is also almost a given that men are far less likely than women to disclose that they have been raped.

6) Levels of Disclosure

Workers are often uncertain as to how to go about taking a history, and in particular, how much detail to elicit. There is often a wish not to cause too much unnecessary distress to the client by asking questions that are too probing, as well as a wish not to appear prurient by going into detail. In practice, the level of disclosure will depend not only on the quality of relationship between client and clinician, but also on its nature. A therapist doing long term work will seek a higher level of disclosure than a practice nurse doing a routine health screen. As a rule of thumb, the level of disclosure should be sufficient for the worker, whatever their profession, to carry out their task effectively.

Where it does seem relevant and important to go into detail, it may be necessary to ask direct questions rather than using the more customary open-ended approach, particularly about aspects of the rape that cause the most shame, for example concerning the manner or route of penetration, or the use of implements. Provided this questioning is carried out in a respectful and gentle manner, disclosure can bring great relief, and greatly enable a worker to understand a puzzling presentation.

However, to do so requires some knowledge and understanding of patterns of sexual torture. If it becomes apparent that more

detail is required, then it is important to know what to look for. Rape may not be the only form of sexual torture perpetrated, and while there is no 'universal classification' of sexual torture, Lunde and Ortmann's is the one most commonly cited, derived from their investigation of 283 survivors of torture, namely:

- violence against the sexual organs (which includes beating or electric shocks to breasts or genitals);
- physical sexual assault (which includes forced sexual contact of any sort, from touching of breasts or genitals, to oral sex or rape, or penetration by an object);
- mental sexual assault (e.g., forced nakedness, sexual threats, witnessing others being sexually tortured);
- any combination of these.¹⁰

To these may be added sexual humiliation, such as comments about being unable to bear children, or in the case of men, about being homosexual, or enforced perpetration of sexual contact with another, either captor or prisoner.

This gruesome catalogue of abuse may make difficult reading, but it is important for those working with this population to be aware of the full horrors of sexual torture, so as to understand better the experiences that a client may have suffered.

Clinical Management – General Principles

Respect the client's identified needs and wishes.

People heal in different ways and at different paces. When someone presents with a wide range of symptoms – often severe – clinicians can feel impelled to 'do something', especially when confronted by a history of human rights abuse. The common responses are to offer medication, or some form of therapeutic intervention, or to offer to refer on for these. Yet, a 'traditional' or 'conventional' treatment approach, or one that relies on a model that is unfamiliar to the client, or one with which the client feels uncomfortable, may not be the most helpful. Many survivors of torture do heal to some extent over time, and clinical experience shows that the majority are adept at seeking the level of support or treatment that is right for them at any particular time. For some, therapeutic work is a luxury they cannot psychologically afford until other pressing real

life problems are resolved, such as immigration status, or housing or financial problems, and initial work may consist of offering practical help with, or psychological support for, these problems. Others can engage well despite their legal and practical difficulties.

Nonetheless, as in any clinical encounter, those who appear to be at risk – of self-harm, significant self-neglect, or who seem vulnerable to exploitation – must be protected, and for these people assessment and intervention by statutory mental health services may be appropriate.

A little goes a long way

Many clinicians feel overwhelmed by a history of human rights abuse, particularly when the client presents as profoundly distressed. This can lead to a variety of reactions within the clinician. Clinicians may feel that the case is ‘too difficult’, or beyond their clinical expertise, and so unconsciously limit their availability, either within sessions, or outside, perhaps by not responding or delaying responses to phone calls or other contacts. They may rationalise these feelings by telling the client – and themselves – that ‘specialist help’ is needed, or conversely that the client’s problems are not ‘truly clinical’, by virtue of being man-made in origin, and so not within the clinician’s remit. Another common reaction is to champion the client to the extent of becoming over-involved, possibly to the extent of overstepping professional boundaries.

However, all professionals are capable of doing something to ease suffering. They may be able to give assistance with practical problems, or, for those who are recently arrived or re-settled, by providing simple information about how ‘the system’ operates (e.g., the health system, the benefits system, the housing system), and its capacities and limitations. They may be in a position to offer symptomatic treatment, in the form of medication (for more details see below). Above all, they can offer a sympathetic listening ear. Many clients may have no one else to confide in, and many of their problems are indeed not amenable to a clinical solution. All the therapy in the world will not remove a regime that abuses human rights with impunity, nor change immigration legislation. However, a professional who recognises and above all respects the client as a victim and a survivor, even if they have no special therapeutic tools

in their armoury to tackle specific symptoms, goes some way to repairing the damage that has been wrought.

Specific Clinical Interventions

It is beyond the scope of this chapter to explore these in detail. However, the following interventions may be appropriate.

1) Medication

A short prescription for night sedation can be of untold benefit, offering even temporary respite for endless insomnia. Symptoms of depression or PTSD can be alleviated by judicious prescription of an appropriate anti-depressant, with the first-line treatment most commonly being an SSRI (an antidepressant of the class “specific serotonin reuptake inhibitor”) such as paroxetine, although higher doses than usual, e.g., up 50mg, may be required. This is most likely to be helpful with intrusive symptoms of PTSD, such as flashbacks or nightmares, or with symptoms of hyper-arousal. It is also likely to relieve, to some extent, the painful low mood of depression, and the associated biological symptoms. A careful clinical history should be taken before prescribing, and rational prescribing should be followed, i.e., continuing to monitor mental state, and also deciding when to discontinue or change medication. Medication should be withdrawn in a planned, staged way in order to avoid either rebound or withdrawal symptoms.^{36, 37, 38}

2) Psychological interventions

Of all psychological interventions, Cognitive Behavioural Therapy (CBT) is probably the best studied, and the most cited as the treatment of choice for ‘post-traumatic’ reactions.^{39, 40} Subject to the caveats below, it may be appropriate for some, but should be offered only where the client is in a position, both physically and psychologically, to take it up, and techniques (e.g., number and frequency of sessions, type and nature of homework) may have to be adapted to suit the client’s needs and situation. Person-centred counselling or psychodynamic therapy, individual or group, may also be appropriate. There are as yet no comprehensive studies of the comparative effectiveness of these approaches with this population, but given the complexity of presentation, a mixture of approaches at different times may be indicated.⁴¹

However, it is one of the basic premises of this chapter that it is not possible to be fully therapeutically effective without recognising the socio-political context of persecutory rape. For any longer term intervention to be meaningful, clinicians must have an understanding of the client's cultural norms, as well as some knowledge of the political history of the country of origin, whatever their theoretical framework or training. These issues and the way they impact on therapy are explored in detail in Patel and Mahtani's chapter in this book⁴² and elsewhere.⁴³

3) *Psychosocial interventions*

Broad-based psychosocial interventions tend to involve several agencies, including refugee support groups, and other voluntary sector agencies. Such interventions are likely to be the primary ones in recently war-torn countries or those where mental health services are less well developed than in Western economies. They have the benefit of being able to incorporate local customs and beliefs and can be more acceptable than entirely 'state delivered' services.⁴⁴

However, mental health services in the UK, at least, tend to focus on individual need, or on the needs of those with a particular diagnosis, and much of the service is still delivered by individuals (even where those individuals are team-based) to individuals. Not only is this an unfamiliar model to many from low-income countries, but it could also be argued that this model of care does not do justice to the complexity of the needs of those who have suffered sexual violence in the context of human rights abuse. If a more effective service is to be provided to those who suffer the consequences of this and other human rights abuse, then more attention must be paid to developing multi-agency work, with a greater emphasis on psychosocial interventions, rather than a proliferation of segregated 'specialist' services.

When I first came to this country, I felt like I was dead. Now, I feel like maybe I have a bit of life in me. I still lose my temper too much. Sometimes I even shout at people in the street if they come too close. I think the other people in the house where I live are frightened of me. I shout at them for little things, things that I know don't really matter. I do not want

to be this person. Still, I'm starting to have hope. Dr Y has been like a mother to me. She sees me every two weeks, and she was so kind, she made me feel that I was a human being. When I had no money, she found some emergency money for me so I could eat. I was so hungry, for days I had nothing but the cereal and milk they gave me in the hotel. When I am better, I want to be an air hostess, but first I must get better English. I studied travel and tourism in my own country before they came for me. I am going to get better. I'm not better yet, but I'm going to get better. The nice people here are so nice, that it makes all the difference in the world. *(Ms H, aged 28, Ethiopian asylum seeker, raped repeatedly while detained for questioning about brother's political activities.)*

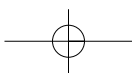
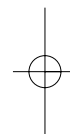
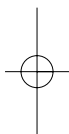
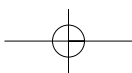
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CHAPTER 7

Impact of Rape on the Family

by Jocelyn Avigad and Zohreh Rahimi

Abstract

Systemic Family Therapy with refugees and victims of torture can make a great deal of sense to families who have been up-rooted from their own culture and society. Leaving their home country and culture by force and being placed in the host country with a different culture can create extreme anxiety to a family system. The lack of familiarity with the new system and trying at the same time to deal with many losses in the past will make the adaptation and acculturation process even harder. This can be compounded where family members have experienced or witnessed rape as a form of torture.

In this chapter we discuss a range of ways in which families deal with this experience from a systemic perspective. We explore the impact different family and cultural narratives have on whether the rape experience remains a secret or not. We also examine the possible consequences of the range of family responses using case examples to illustrate our discussion.

Introduction

“The person I was on the morning of 19 November 1998 was taken from me and my family. I will never be the same for the rest of my life.” (*A survivor of rape*).

Rape as an act of torture is an extreme event that has the most profound effect on all levels of an individual's functioning. In this sense it achieves the presumed and sometimes explicit intention of the perpetrator in that it severely impairs the abused person's

capacity to engage in the roles, functions and activities that are a part of his or her normal repertoire.

In this chapter we will be using a systemic frame to examine the impact of this form of rape on the internal and external worlds of the victim. We will also explore some gender, cultural and religious beliefs and practices in an attempt to describe how these might help or hinder healing and reconstruction. Throughout we will use case studies to illustrate the concepts we are discussing and to show how we apply systemic concepts to our clinical work.

For those readers who are not familiar with systems theory, it might be helpful to outline a few general principles. A system can broadly be described as a group of people who are held together by beliefs, narratives and experiences that are sufficiently shared to give those who subscribe to them a sense of belonging and identity. A disturbance in one part of the system can perturb the whole, sometimes to the point of disintegration or major change. When we think of threats to the internal world, we refer to the individual's relationship to self, a partner, children and to the family unit as a whole, however this is culturally defined. By contrast, the external world is made up of the extended family, the immediate community, the socio-political context (i.e., that of both the home country and that of the host country in the case of asylum seekers) and the international community.

Exploring the Inner World

The Impact on the Individual

“What I really need now is a new soul.”

This was said to us by a father who was raped in his home territory of Kosovo as part of a prolonged experience of torture. He went on to describe how, during the rape, in order to manage the overwhelming feelings of shame, humiliation and pain, it was as if his soul had left his body. This phenomenon, which therapists often refer to as ‘dissociation’ or an ‘out of body experience’, is frequently described by both our male and female clients as a protective strategy to survive this extreme experience of torture. It is a strategy that is known to be used by many rape victims in a wide range of circumstances. The additional humiliation of it being a weapon of

torture is that it brings about the destruction of the individual's sense of integration and wholeness, thus destroying his or her often previously intact capacity to function effectively as a human being. Many have wished that they had been killed instead, but that is precisely the aim of the torture, i.e., to render the victim fragmented, traumatised and in this way 'invaded by the enemy' to the very core of his or her being.

In such cases, we believe that the task of the therapist is to facilitate a process that enables the client to bring body and soul back together again. This includes 'refinding' and confronting the damaged soul and then gradually allowing it to become integrated into a new identity which includes the experience of rape as torture as part of the personal narrative of that individual and in many cases, part of the family narrative too.

To take another description of the experience, this time from the perspective of a woman client who, as a consequence of having been raped as an act of torture, said:

If a metal is damaged it will show the damage by bending. If china is damaged it will shatter and no longer be as it was before. Even a stone can break if enough force is used. But what happened to me – my body stayed whole on the outside but inside it is so broken and no-one can see the damage.

This description of the experience of fragmentation is one that men and women we work with describe again and again in many different but equally vivid ways. The skill of the therapist lies in helping those clients access the memories of these extreme events (including memories that are so deeply buried that they exist only in the client's unconscious) in order that they might be brought into consciousness, processed through words and feelings, and in this way integrated into the client's future description and lived experience of self.

The impact on the relationship to self of such extreme violation over which there is no control has the potential to be as destructive as the event itself. Together they can manifest in a loss of sense of self, identity, role and purpose. They can render the victim psychologically absent and unavailable to others, even if physically present in the family. This fragmentation is not just located in the individual but almost invariably resonates throughout all the systems of which this individual is a member. This requires that a therapist working with such a family attends to and addresses all the layers of

complexity and takes time to help each member find his or her voice and the words to describe the impact of what has happened.

In our experience, children in families tend to be in a different relationship to rape as torture whether they have themselves been raped or have been made to witness the rape of parents or other significant family members. Their responses are influenced by age, gender, position in the family, cultural norms and many other variables. Younger children, for instance, often do not have the words or the maturity to make sense of what has happened although they are acutely aware that life has changed in sad and frightening ways. Young children we work with have used words such as “My mummy was hurt and now I have to look after her” or “I see my daddy crying and I don’t know what’s wrong.” For older children guilt, shame, embarrassment, responsibility and blame can be additional violent feelings they have to deal with in the aftermath of being raped or witnessing rape or both. In extreme cases we have worked with older girls and boys who are so disgusted with their bodies that their response is to continue abusing themselves through acts of self harm such as promiscuity (sometimes even prostitution) or at the other extreme, withdrawal from any sexual or social contact with others. As with some adults, this could be seen among other things as an attempt to regain the control that was lost as a result of the violation.

The Impact on the Family

“When I try to touch my husband and get close to him, he pushes me away. This makes me feel like a whore.”

This description given by a wife whose husband was raped reflects the struggle that many couples are faced with as a consequence of their experiences of rape as a form of torture. Many dimensions of the marital relationship are severely and sometimes irreparably damaged by this extreme violation, most significantly that of intimacy. The experience of rape, whatever form it takes, tends to render victims uncertain of their capacity to re-engage in sexual intimacy. In the case of those who have experienced it as an act of torture, this capacity is further impaired by the invasiveness of the memories and flashbacks not just of the act itself but also of the usually violent and often public context in which it took place. It is

almost as if the torturers are in bed with the couple and the multiple aspects of their crime plays over and over, unremittingly implicating both the victim and the partner. If knowledge of the rape is shared, a couple might be helped to bear and process together their individual and shared pain, grief and confusion in order to facilitate healing and reconstruction of their relationship. This might not be possible, and in such cases separation might be a likely outcome. For one such partner, as he so succinctly put it, "If my wife had chosen to have another relationship, I could have accepted this. The fact that she had no choice is more than I can bear."

When a torture experience of rape is kept a secret between the partners, the layers of complexity increase, for even the word 'secret' has different meanings in different contexts and cultures and thus also for different couples. For instance, in those cultures (e.g. ethnic Albanian Kosovans) in which a woman, if raped, is considered to have committed a crime, were her husband to know of it he would be obliged by his family to abandon his wife and take their children with him. Thus for a woman in this situation, keeping the secret is often tantamount to holding on to life and her family. Yet holding on to such a toxic experience could also be the event that unbalances an already fragile system completely. In such a double bind (i.e., one in which you are damned if you do and damned if you don't), choices are greatly reduced. This often results in the wife retreating into psychological absence, physical illness or using children as 'distance regulators' between herself and her husband. This latter could take the form of focussing exclusively on the needs of the children or reorganising sleeping arrangements so that the parents do not share a bed.

So far we have discussed two ways in which couples organise themselves around the extreme event of rape as a form of torture. A third option that some couples choose in therapy is, as it were, to agree to know without putting this knowledge into words. In this way it is possible to talk hypothetically or metaphorically about the experience without the couple having to manage the devastating consequences that would be likely were the story to be told.

This phenomenon was graphically illustrated for us in our work with the N Family, which includes two parents, a son of nine and a daughter of five. They had escaped from Kosovo in 1999 and were referred to us the following year because of serious concern about Mrs. N's mental state and the impact of this on the family. Both Mr

and Mrs N were raped as part of their torture. During the course of therapy we became aware this was a secret between the couple in the sense that it had never been described in words. At the non-verbal level, however, both gave us many indications that they knew of each other's rape but that they were also aware of the dangerous and far reaching consequences for the family of articulating this knowledge. For this reason they saw silence as the strategy that would offer the greatest protection. They gave voice to this by being adamant that there were some topics that could not be explored in joint sessions, at least not through explicit communication. Mrs N provided a way out of this dilemma by using a metaphorical 'enactment' in the form of stealing from a store to bring to our sessions issues of blame, guilt, shame, trust and fear of consequences that were having a negative impact on the couple's relationship. Once we too saw this act as a metaphor for rape, we were able to help the couple explore their difficulties in a safe but challenging context. We came to this understanding through adopting a position of curiosity about cultural beliefs and practices and through this process learnt that stealing, particularly by a woman, is viewed in ethnic Albanian Kosovan culture as an act surpassed only by rape in the degree of shame attributed to it.

Through the therapeutic conversations that followed it was possible to create a safe container for this deadly toxic secret and thus a measure of healing for the couple in both their relationships to themselves and to each other – at least for as long as the family remain in the UK.

Secrets in a family in relation to a torture experience of rape tend not only to be confined to the act of rape itself. They can also be about such visible and tangible consequences as pregnancy, about the act being committed during pregnancy, and about retraumatisation through secondary rape as a response by the husband to a wife's inability to tolerate intimacy.

We will use case studies to illustrate the serious impact on family dynamics that each of these secrets can have beginning with the secret of pregnancy. The G Family consists of a husband, wife and three children aged nine years, seven years, and eighteen months. They were referred for family and individual therapy because the two older girls were suffering from disrupted sleep, nightmares and bedwetting. Both parents were also struggling with the memories of their own experiences of torture, which in the case of the wife

included rape. We were told by the referring professionals that Ducan, the youngest child, was conceived during rape and that Mr G had found this out soon after Ducan's birth when his wife had talked in her sleep. Previously it had been a secret and although through the unplanned disclosure it had become yet another extreme event which this family had to struggle with, it was mostly too painful to address.

Mrs G, however, was becoming increasingly disturbed by her recurring nightmares, headaches and somatic symptoms, and it was in response to these that individual sessions were initiated. Through narration of Mrs G's story, a new picture began to emerge. This included Mrs G's strong but ambivalent belief that she could have been pregnant at the time of the rape and that if this were so, her husband was indeed the father of Ducan and not the surrogate father as he had come to accept. Through sharing and reinforcing this version of the story with her husband it seemed that he too had come to believe it, at least overtly. And yet in the inner world of each, it is clear that both possibilities must continue to live side by side forever with the non-verbal agreement between them that to try to reach too much certainty would not be in the interest of the well-being of the family system.

While they stay in this country it is possible for the family to live in this state of 'safe uncertainty' (Mason) which gives them permission to remain intact as a family and not have to face the cultural injunction of separation were they to be deported. In the future, if a context of safety is created by their being granted indefinite leave to remain, the balance might shift. Should this happen, the parents might find the courage to revisit the secret in all its ambivalence and allow their children to do the same with their help and support. After all Ducan will not stay a baby forever and in families, secrets have a habit of being known covertly even if they are not talked about out loud. In this way, parents who have been psychologically unavailable to their children, as the G parents have, might be able to offer them instead a secure base in which to explore many more of their painful and overwhelming traumatic memories by demonstrating that they are strong enough to bear the unbearable. Thus can healing take place.

In those cases where rape as a form of torture occurs when the woman is already pregnant, the complexity of the impact on the family is immense. Most affected are the relationship between the

adults, as a couple and as parents, and the woman's capacity for attachment to her child from this point on. Attachment theory describes and explores how the bonding that takes place between a child and its carers in the first years of life plays a crucial role in all areas of that child's health and development both as a young person and as an adult. There are some writings which suggest that this also applies to *in utero* attachments, i.e., that disruptions in the process *in utero* are likely to lead to rejection on the part of the adults and an insecure attachment history for the child.

This process is illustrated by a Sri Lankan family comprising Mr and Mrs P and their two daughters, Fatima aged ten and Dina aged six. Mrs P was raped while her husband was in hiding to avoid capture by government forces. At the time, Mrs P was eight months pregnant with her second child Dina. Her elder daughter witnessed the rape.

The family were referred for family therapy by a psychiatrist who was treating Mrs P for her 'obsessive-compulsive' need to cleanse herself and her house. No sooner had she done both than she was driven to repeat the ritual again. In addition, Mrs P was showing no recognition of Dina's existence, refusing to participate in her care or interact with her in any way. At the same time, Mrs P's attachment to her older daughter Fatima could be described as enmeshed, and excluding of other family members. In the first session Mrs P described how she was unable to touch Dina from birth because she felt she was "contaminated by what happened to me".

Although the rape was not a secret in the family, it was referred to only as "something terrible that had happened to my wife" which prevented her from relating to Dina. This focus allowed the couple to avoid addressing the unbearable pain and extreme depths of anger that existed in each of them separately and between them as a couple. It was only after some months of therapy that Mrs P, in an individual session, was able to acknowledge her rape as the violation and act of torture that it was. This helped her also to acknowledge her inability to bear thinking about the fact that "Dina was inside me while it happened" and that she carried with her the constant image of Dina being covered with the rapist's semen and thus contaminated by it.

The issues that families who have experienced rape as a form of torture must struggle with are manifold. We have chosen to describe

only those that we see most frequently in our work. Our last example is that of a couple from Iraq where both husband and wife were raped while in prison. Mr and Mrs A had no children. They were practising Muslims but did not feel bound by culturally prescribed behaviours relating to rape. An indication of this was that they could openly discuss with each other their experience of rape as part of their torture, unlike many Iraqi Muslim couples who would have felt obliged to keep it a secret.

The couple were referred because of Mrs A's severe depression and the impact it was having on many aspects of their relationship, including their ability to be intimate. Despite their decision to share with each other the details of their violations, the As seemed to be experiencing relationship difficulties very similar to, and in some ways even greater than, those seen in couples described above where their rape had been kept a secret. This could be ascribed to the fact that this couple had been 'doubly violated' in that each was separately having to deal with the consequences of having been raped while at the same time having to manage together the traumatic responses of each partner as well as the severe impact of these on the relationship as a whole. In the case of Mr and Mrs A, as in most others, it was at those moments when they attempted emotional and physical intimacy that the image of the perpetrator became most real and therefore most threatening – as if the perpetrator was in the marital bed instead of the partner. In this way, the rape was re-experienced over and over again and for Mr and Mrs A. It also meant that each had to witness the reliving of the experience by their partner. The overwhelming anger that this process generated in Mr A was expressed as a murderous wish to kill his wife, which at times he could barely control. Although Mrs A's anger was more silent and passive, it was no less dangerous in that it was also directed at ending the suffering through death. In both cases the murderous feelings were displaced inwards because of the anonymity and unavailability of the perpetrator(s). When this occurs in therapy, it is the task of the therapist to help clients recognise this displacement process so that they can redirect the anger to where it belongs, give voice to it and thus begin to heal and reintegrate the fragmented parts of self and relationship.

Another level of complexity was Mr A's need to be satisfied sexually and his expectation that it was his wife's role and responsibility to ensure that this happened. However, when Mr A

attempted to impose this demand on his wife to the point of being willing to force entry, he was not only brought face to face with his perpetrator but also with his own impotence, which was for him one of the consequences of having been raped. In a session some way into therapy, Mr A was for the first time able to describe those moments in the following words:

As soon as I try to get into the act of intercourse, I lose all my desire, power, feelings and it seems that I have lost my manhood. This makes me so angry at my wife, myself, the man who did this to me and the whole world because it's like I don't know what I am anymore. Am I a man? Am I a woman? Am I a homosexual man? What am I?

Finally it is important to remember that, despite the therapist's greatest efforts to help restore family life after torture, there are some cases where nothing can be done. These are cases in which the damaging effects of rape as torture impair relationships to such an extent that separation and divorce are the only possible outcomes. This can be a healthy choice a couple make in their attempt to reach conflict resolution. Often however it is an outcome which is a sobering reminder to the therapist that however hard he or she works, the clients need to have a sense of responsibility for and commitment to the therapy if it is to have any chance of success.

Therefore, a therapist's responsibility initially includes informing clients that the process may be long and painful and comes with the expectation that everyone involved will try to take an active part so that the change and healing can take place. In this process the task for both therapist and family is to attempt to find a unique solution that fits that particular family. An example of this for the family that decides on 'no change', having explored the other options available, is to use therapy as a safe place for holding their secret in order to allow them the freedom of living without sharing that secret with each other or anyone else. After all, the violation of rape can be one of the most destructive and damaging secrets for many families and cultures. Having a safe place such as therapeutic space to leave this secret without any concerns about it escaping outside can give the greatest relief to clients and in this way can be restorative and healing.

The Cultural and Social Impact of Rape as a Form of Torture

The culture in which the rape occurs plays a significant part in how it is dealt with in the family and the wider community. Conversely, the widespread practice of rape as an act of torture in a culture disturbs the traditional norms, beliefs and behaviours of that culture, sometimes to the point that new responses begin to emerge which over time have the potential to replace these traditional beliefs and patterns of behaviour. For instance, the Kanun, the traditional code of law attributed to the 15th century ruler Leg Dukagin still governs the daily life of the majority of ethnic Albanian Kosovan people today. This code prescribes that a married woman who has been raped must leave her husband and children and live the life of a disgraced woman. The husband and his family are then free to find a new wife and mother for the children. At the same time, it is incumbent on the men of the woman's family to avenge her rape by seeking out and murdering the perpetrator. In many Kosovan communities (particularly those that are more rural) these rules are still adhered to today. However, because of the widespread rape of women during the war years, there is a significant group of women who are courageous and angry enough to want to fight for a redefinition of cultural norms as they relate to the current status of a woman who has been raped. Although barely visible yet, if one looks carefully, it is possible to see the beginnings of a shift taking place.

In Middle Eastern cultures, as illustrated in the case of Mr and Mrs A, there is a cultural injunction that a woman who has been raped must be killed in order to cleanse the family of the shame she has brought on it by association. It is sobering to remember that in their country, rape is a crime punishable by law that applies equally to men and women. The intention is to protect the victim and society and to acknowledge the violation of the right to a private life within safe and secure boundaries.

Some Concluding Thoughts

In those families where the experience of rape as a form of torture has become the organising discourse around which family life takes place, the task of the therapist is to keep the holistic perspective in mind in order to help the family attend to the many layers of

potential disruption and disturbance that are generated by this extreme discourse. For instance, the fragmentation of self and family identity that is often a consequence of the rape can go totally unrecognised by the family and the therapist because the memories of the violation are buried so deeply in the unconscious that it is as if there were no narrative to tell. Clues that help a therapist know that the narrative does exist, however, often come from observable individual and family behaviour patterns which might include psychological unavailability of one or more members of the family, hysteria, paranoia and extreme terror, violent outbursts of rage and a family structure which places a child in a 'parentified' position in relation to the parents and siblings.

While part of the therapeutic task is to facilitate individual and family healing, the holistic nature of the therapeutic process places a responsibility on the therapist also to ensure that all family members are safe and protected physically and psychologically and, in the case of any children, that their health and development are not being significantly impaired in any way. Where child protection needs are uppermost, it is often necessary to involve other professionals and agencies such as solicitors, the National Asylum Support Service (NASS), health, education and social services.

Facilitating healing through therapy is a complex, challenging and uneven process of progress and regression. At the heart of the work is a belief that it is only when individuals and families are able to incorporate into their life-scripts the narrative of their torture can they begin to reconstruct their identities in such a way that the new parts of self can co-exist with the old. When this happens, the new identity that emerges, even if tentatively at first, allows for the possibility that individual and family life can be rebuilt in a way that integrates the past with the present so that neither has to be submerged in the service of survival.

This chapter cannot be closed, however, without considering the unequal power structures on which these narratives are acted out. The first is that of the home country in which the violations took place. The power imbalance between perpetrator and victim was not negotiable. For the victim there was no way out, no way of taking control. For the perpetrator, control was absolute. The rape was, as it were, the overt enactment of this imbalance. It is often only in its aftermath that the full impact of the power differential is felt just as the perpetrator presumably intended it would be, i.e., to leave the

victim with an uncontrollable rage, an overwhelming sense of injustice and an all-consuming need for retribution and redress, and most poignantly, no perpetrator to direct this at. The displacement that then occurs, though not surprising, has the potential for becoming a source of 'secondary torture' in the way it is experienced by those who take the place of the perpetrator in the victim's search for justice, retribution and healing.

This was powerfully illustrated by the words of a social worker investigating child protection concerns around a Turkish Kurdish father's physical abuse of his children.

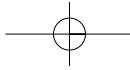
You brought your family to this country to protect them from further violent abuse by Turkish police. Now you are the perpetrator of this abuse. I realise it happens when you are most overwhelmed by your own memories and the anger and pain these bring with them, but it is not all right to take these out on your children. The person you really want to beat is your torturer, isn't it? It must be so hard to not know how to see that justice is done and not be able to find a way for this to happen. But you can't beat your children instead. You have to find another way.

The second power imbalance is that of this country and its asylum policies and practices. Again the power imbalance between those in charge of implementing these harsh, discriminatory and often unjust policies and those at the receiving end of them renders the latter vulnerable to further abuse and traumatising.

To return to the words of a survivor of rape that opened this chapter:

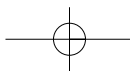
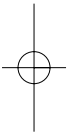
The person I was on the morning of 19 November 1998 was taken from me and my family. I will never be the same for the rest of my life.

In the light of the above exploration of the impact of rape as a form of torture on the individual in the context of his or her internal and external worlds, we can only add that all those who are connected with the survivor of the rape will never be the same again either.



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CHAPTER 8

Physical Consequences of Rape of Women

by Dr Petra Clarke

Introduction

Sexual activity is part of being an adult human. It carries risks of injury, the transmission of infection and the possibility of conception. At first intercourse, if the hymen is still present, most women experience slight bleeding and pain. If the sexual activity is vigorous or uses unconventional means to achieve satisfaction, the partners may both suffer minor injuries. This is not rape provided those involved willingly take part

Rape usually presents no physical evidence to distinguish it from sexual intercourse between willing partners, especially if it is a few days since the event. By contrast, whipping or cigarette burns, for example, leave physical marks that fade only slowly, if ever. In the spectrum of violence and abuse we know as torture, rape has sometimes not been regarded as seriously as these non sexual abuses. Yet a single rape can destroy for ever a woman's confidence and enjoyment of life. Most women who have been abused both physically and sexually recall the rape with the greater horror.

Confirming the crime of rape requires proof both that sexual penetration took place and that there was a lack of consent. Unless others were present who are prepared to testify, it is extraordinarily difficult to prove this crime beyond all reasonable doubt and the evidence is usually circumstantial. The laboratory tests used to investigate an allegation of rape reported to the police in the UK corroborate only the fact of intercourse, not the absence of consent. DNA testing might assist in the prosecution of a perpetrator, but otherwise such tests do not help when the rape took place months or years before and in another country. In considering whether a woman was raped in the context of torture,

evidence must be gathered about her personally, about those with whom she lived, where she was when she says she was raped, how she was raped, and how she responded to the assault. In the longer term there may have been physical and emotional consequences. The expert medical opinion based on this assembled evidence must be reached objectively. A positive opinion that rape occurred requires that the social, medical and consequential accounts show no significant inconsistencies.

Although an opinion that a woman was raped a long time ago and a long way away could be criticised as 'based on woolly evidence', this does not excuse the forensic examination from being as rigorous as possible. The evidence must be objective, informed and accurate.¹ Unfortunately, the consideration of sexual violence against women is often cloaked in a veil of ignorance and embarrassment. Not all medical practitioners are comfortable with examining women intimately. Lawyers too need to understand the basics of anatomy and functionality if they are to assess expert medical evidence. Those making decisions about crimes such as rape who are not familiar with the anatomy or physiology of a woman's genital tract run the risk of drawing conclusions that are not soundly based.

Genital structures and their function

External structures

The vulva is the term for the structures around the entrance to the vagina. The vaginal entrance is also known as the introitus. It lies in the midline and presents as a slit, normally closed by apposition of its walls. On each side lie the labia minora, two delicate flaps of hairless skin which vary between women in their size and in the extent to which they are pendulous. Peripheral to these are two longitudinal hummocks of hairy skin called the labia majora that offer more robust protection. Forward of the vagina lies the delicate reddened round opening of the urethra, the tube that carries urine from the bladder to the outside. In front of the urethral opening is the clitoris. The labia minora come together from each side and fuse in front of the clitoris to provide a protective hood. The mons pubis (mons Veneris) is the hair-bearing hummock that overlies the pubic bone at the lowest part of the wall of the abdomen. Behind the vagina a bridge of skin covers

dense muscular and fibrous tissue called the perineal body, which provides a bulwark between the vagina and the anus. The anus lies behind, and the gluteal cleft lies further back between the buttocks (the gluteal muscles form the buttocks).

External skin is tough and relatively impermeable. This type of skin is liable to repair imperfectly when damaged and a scar may result. There are always two layers, the epidermis, and the deeper dermis. The epidermis has many layers of cells; it is called **keratinising stratified squamous epidermis**. New cells, formed by the deepest basal layer, migrate to the surface, die, get rubbed off, and are in turn replaced by more cells being pushed up from underneath. **Keratin** is a horny protective substance which is especially thick in some areas such as the soles of the feet. The looser **dermis** underneath contains strong flexible collagen, some elastic tissue, hair roots, blood vessels, nerves and sweat glands. It is modified from site to site in the body. In the genital and armpit areas it is hairy and contains characteristic sweat glands. **Bartholin's gland** is a highly modified sweat gland, one of which lies on each side of the vulva; their secretion helps to lubricate during sexual intercourse.

Internal structures

The vagina is a tube that leads to the **uterus** (womb). The neck or **cervix** of the uterus, which lies at the top of the vagina, offers a very fine passageway into the body of the uterus. Sperm or infective agents in the semen, traverse the uterus and leave through either of the **Fallopian tubes**, which stream out from the top corners of the uterus. These hollow structures lead to the **ovary** on each side. At **conception** an egg, released from one of the ovaries, travels down the Fallopian tube, where it is fertilised by one of the torrent of oncoming sperms. The fertilised egg travels to the uterus, where the baby develops for around nine months.

Each of these internal tubes has a specialised and functional lining – only that of the vulva and vagina will be described. The tissue lining the vagina and also extending on to the labia minora is called **non-keratinising squamous stratified epidermis**. It is similar to the epidermis that lines the external skin except that the surface layer does not produce keratin and it is not pigmented with melanin. It is pink because the plentiful supply of small blood vessels shines through from beneath the layers of cells. This type of

skin, found predominantly at the margins between internal and external structures such as at the anus and the vulva, is called **mucosa**.

Underlying the mucosa of the anus and the urethra is strong encircling muscle which the woman can control at will (**voluntary muscle**). These muscles, called **sphincters**, ensure continence. There is also a thick muscular layer under the vaginal mucosa that ensures the vaginal tube is closed at rest. This is of a muscle type that the woman cannot control at will (**involuntary muscle**). The lower part of the vagina may gape in women who have given birth vaginally if the muscle has been torn.

If the vagina is cut or burned, there may be permanent scars. However, most vaginal injuries are limited to minor cuts and abrasions that heal quickly even after a rape that has been strongly resisted.² There are many reasons for the relative protection enjoyed by the vagina. The assault might be deflected because the mucosa is slippery with mucous secreted by the cervix. The underlying tissues in the vagina are muscular and probably spring away from a blunt assault such as violent sexual intercourse. The mucosa bleeds readily, but the vascularity that causes this also ensures that healing is rapid and complete (as noted after biting one's own cheek).

Female genital mutilation

Female genital mutilation is very widely practised, particularly in sub-Saharan Africa, with a prevalence reaching almost 100 per cent in Somalia.³ The scars are usually in front of the vagina and appear as characteristic to an experienced observer. Moreover, the woman will say that she was 'circumcised'. In the most extreme circumstances the anatomy has been so distorted that sexual intercourse would not be possible without severe tissue tearing.⁴ It can be of three types, 'Sunna', 'excision', and infibulation.

Sunna involves excising the prepuce (hood) of the clitoris, and is therefore the most nearly analogous to male circumcision. **'Excision'** involves removal of part or all of the clitoris with or without the labia minora. **Infibulation**, the most severe form of genital mutilation, involves excision of the clitoris, labia minora and labia majora. The raw edges of the cut thus made are usually approximated by binding the girl's legs together – only rarely is

there any formal suturing. A small orifice, sometimes only pinhole size, remains for urine, vaginal secretions and menstrual blood to escape. In such circumstances, if a woman manages to become pregnant, vaginal delivery is only possible after de-infibulation (cutting the fused tissues in the midline to re-create a vaginal opening). Infibulation is easy to recognise, but the scars of excision or Sunna might not be so obvious. The woman will usually say that she was 'circumcised' or 'cut'. If a woman delivers a baby without professional attention while infibulated, she is likely to sustain severe tears, often extending posteriorly into the rectal mucosa, and this is likely to leave scars as well as possibly interfering with faecal continence. Vaginal delivery in an infibulated woman can also cause injuries to the urinary tract.

Vaginal intercourse

The vagina and vulva have evolved for sexual intercourse and childbirth. During the reproductive period of life, sexual intercourse should evoke no or only minimal adverse effect. The **hymen** is torn at first penetration if it has not already been lost as an individual variant or as a result of strenuous activities. The clear presence of an intact hymen denotes virginity but its absence does not necessarily mean that a woman has been penetrated. For most women the loss of the hymen causes no more than a few streaks of blood loss although some lose much more.

Sexual intercourse can be physically traumatic for **prepubertal girls** because the girl is small and because there is less mucous as a lubricant. Young and small girls would probably sustain injuries with bleeding and tearing of the tissues, although because they are young the injuries would be expected to heal quickly and without necessarily leaving longterm scars, although penetrative sexual assault can leave characteristic damage to the hymen. All the skin surfaces of **older women** are thinner and the tissues shrivel. This means that violent sexual intercourse would be more likely to cause damage than when she was younger. The vagina may be relatively dry, which also increases the risk of injury.

Menstruation

Menstrual periods characteristically occur once a month. The blood loss varies but it should not be so much that a woman becomes anaemic. Girls start to menstruate (**puberty**) at about 13 years, but the age is variable. During the so called reproductive phase of a woman's life, her periods will establish a pattern she recognises as her own, even if this is an irregular one. The menstrual periods are regulated by **hormones** produced by several organs such as the thyroid gland and the ovaries. The output of hormones by these organs is, in turn, regulated by the pituitary gland that lies immediately beneath the brain and is intimately connected with it. This chain of events explains why menstrual periods are sensitive to mental state. If there is no detectable physical cause for a change in the pattern of a woman's periods, it is reasonable to ascribe the change, at least in part, to mental stress. The **menopause** usually occurs between the ages of 45 and 54 years, but it may be much earlier in some women. At the extremes of reproductive life menstrual periods may be atypical: too heavy, too prolonged, too frequent, or too infrequent.

Women who have been raped often complain that their periods have been changed. Usually they relate an increased blood loss and periods that last longer than before and that come on irregularly. Stress has a role in causing these symptoms, as described above. Pain with periods is also a common complaint. Women who had pain-free periods say they now have to spend two days in bed every month. One cause for these symptoms, including heavy periods, is infection in the internal genital organs, especially the Fallopian tubes, acquired through sexual intercourse. This condition is called pelvic inflammatory disease (see next chapter). However, not all women who complain of problems with their periods are suffering from ongoing disease, and their symptoms can abate over time without specific treatment.

Childbirth

During childbirth, the head, some 10 cm diameter, is the largest part of the baby to pass through the vagina and vulva. This degree of stretching is amazing and is only possible because, under the influence of hormones, the birth canal softens in the later months

of pregnancy while the mucosa becomes more vascular, and copious mucous lubricates the baby's passage. After the birth the tissues return close to their pre-pregnant state.

Sometimes, when the baby is born quickly or the birth is uncontrolled, the tissues of the lower part of the vagina tear towards the back, often in the midline. In the worst cases the tear includes the anal sphincter and the woman may become incontinent of faeces. If this is to be avoided it is sometimes necessary to enlarge the lower vagina by a surgical incision called an **episiotomy**. If the separated tissues are stitched together with good apposition and if the healing is good, the injuries may be almost undetectable. However, if there is limited medical care, women who tear during childbirth depend on natural healing, which may not give well opposed tissues, and the line of the tear is obvious. These scars lie at the back of the vulva.

Pregnancy

A woman is fertile for only a few days each month, so it is unlikely that she will conceive from a single episode of rape. If she was raped when not in custody it may be helpful to record if her husband was living at home then, or if he was away in prison or in hiding. This does not pinpoint the rapist as the father but, depending on the ethos and culture in which the woman was living, it makes it more likely. Conception is more likely if a woman is being raped daily over a period of months, but it is not inevitable. It is worth asking a woman about the births of her children before she was raped. If she has had one child, maybe with a difficult birth, followed by several years without a child, it is possible that she was damaged during the birth and that thereafter she was infertile. It is then reasonable to conclude that her failure to conceive after being raped repeatedly by many men is explained and does not invalidate a woman's account.

Women who become pregnant as a result of rape are likely to need support in making a decision as to whether to continue with the pregnancy. Some women feel that they cannot continue with the pregnancy and decide to have a termination. Others may wish to continue with the pregnancy, particularly if they feel that the baby represents their only remaining family. However, following

the birth, some mothers may reject a baby conceived as a result of rape.⁴

Dating the time of conception

A woman is fertile about 14 days before her next menstrual period is expected. If her periods come approximately every 28 days the time of conception can be set as two weeks after her last period began. This is the 'normal' interval between periods and, using this scenario, the date on which she can expect to be delivered (EDD) can be calculated by a rule of thumb: take the date of the first day of her last menstrual period (LMP), add seven days and subtract three months. If her periods are less frequent, for example every eight weeks, she probably conceived six weeks after her last period and this means her expected date of delivery is four weeks later than the above calculation would give. When trying to pinpoint the time of conception, if one knows the date on which the baby was born, the same calculation can be done in reverse, i.e. add three months and subtract one year and seven days. However, if the baby was born prematurely (**preterm**), this needs to be taken into account because the period from conception to birth has been shorter. It is not always easy to assess whether a child was premature from the history alone, but a mother will say that the child was small or feeble in sucking and crying. At the least, the birth weight should be recorded. A baby weighing less than 2.5 kg is, by convention, premature, but there are many confounding factors.

The expected date of delivery represents only the most likely day of delivery and many women deliver a few days before or after. There is a finite length for a human pregnancy. The World Health Organisation has defined the end of normal pregnancy as 42 weeks or 293 days past the first day of the last menstrual period assuming a 28 day cycle.⁶ Nevertheless some 2-5% of pregnancies continue beyond this length but only by a few days.

Miscarriage

It is common for a pregnancy to be lost between two and three months after conception. A **miscarriage** is characterised by symptoms of pain and bleeding after two or three missed menstrual

periods. Usually no cause for losing the pregnancy is found and one miscarriage does not make it more likely that the next pregnancy will also be lost. It is therefore not easy to ascribe the early loss of a pregnancy to violence such as beating, although trauma may have contributed. After three months of pregnancy miscarriage is much less likely, and it is reasonable to assume that violence, especially to the abdomen, may have been a contributing cause of losing the baby. (The term abortion is often used. It must be specified as **spontaneous abortion**, which describes a miscarriage as above, or **induced abortion**. **Termination of pregnancy** describes a medically induced abortion done under the terms of national legislation.)

Vaginal rape by penis

When a woman is not sexually aroused, the vaginal surfaces lie in apposition and the vagina is no more than a potential space. Forced entry is painful because the vagina is not being lubricated by an outpouring of mucous. Rather than adjusting her position to enable penetration, a woman being raped is actively avoiding the union, and these struggles result in bleeding, bruising and pain. If she is a virgin the hymen may be torn. After violent rape the bruises can be very painful especially when walking or sitting. Some women say they obtained relief by lying in a bath of warm water. Because of the good healing properties of mucosa nearly all such injuries resolve quickly. When women are examined within days of being raped, only a minority show evidence of genital injury.⁷ It is rare for vaginal rape to cause longterm pain in the vulva or vagina.

After sexual intercourse that has been violent, whether consensual or not, a woman commonly complains of pain when passing urine. She may say that her bladder feels 'heavy' or painful and there may be burning as the urine flows. These symptoms arise because the urethral opening and/or of the base of the bladder, which lie close to the front of the vagina, have been bruised. If bacteria invade these bruised tissues, the resulting infection causes persisting pain on passing urine, a need to pass urine very often and an unpleasant smell from the urine. There may also be lower abdominal pain. These symptoms should resolve in days or weeks unless the infection becomes established, when it will need antibiotics to be cured. Some women complain of longterm urinary symptoms following rape. In these cases it is probable that the early

stage of urinary infection was not treated adequately and she may have developed an ongoing infection which can be very difficult to treat.

Advice about reproductive and sexual health

It is unwise to be dogmatic about whether a woman is fertile or not. If she believes herself to be infertile, she may not take contraceptive precautions; rather the reverse, she may seek out sexual partners to test if she is still fertile or not. Women who have been sexually abused and who may, as a result, have suffered pelvic infection need to be sensitively and accurately counselled about family planning. Nothing is as difficult as broaching the issue of contraception with a woman who is distressed because she thinks she may be infertile and who, at the time, says she has no interest in sex. The choice must be hers, but she should have the information on which to base her future decisions about contraception and about reducing the risk of acquiring sexually transmitted infections.

Anal penile rape

Anal penetration usually requires more force because men and women who are raped can tighten the anal sphincter. If the rapist persists against resistance, anal rape can tear the anal mucosa and cause heavy bleeding. If she already suffers from haemorrhoids (piles), which are bulging veins around the anus, these are also likely to be torn, which causes more blood loss. These injuries usually heal spontaneously and quickly. Anal rape may lead to anal fissure – a crack in the mucosa that fails to heal and which gives intense pain on passing faeces. However, anal fissure can be the result of constipation, a common complaint. Some women who have been repeatedly raped anally complain of constipation but it is unclear why this would occur unless, as some of the women admit, it is that they are afraid to defecate and hold it back. Where objects have been used to penetrate the anus, there can be scarring, and this may well have a distribution that is different from the one caused by anal fissures (which typically occur in the posterior midline). Sometimes patients worry about a skin tag hanging from the anus. These findings are not specific of injuries from rape, but

they can contribute to the wider picture that supports her account of being anally assaulted.

Intentional violence to the genital organs

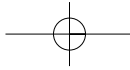
Bottles, sticks, guns and knives are just some of the objects that have been forced into the vagina and/or anus. Women are cut and shot in the genital area. In other cases the vagina has been packed with astringent herbs or caustic crystals that burn the mucosa. Bleeding is likely to be profuse and some of these women die. The scars from such injuries reflect the mode of torture. Cuts and tears leave scars that are distinct from the scars of childbirth or the scars of 'circumcision'. They are asymmetrical, often directed sideways, and encroach on to the labium major. The labium minor may have been transected and now hangs in two lobes. Burns result in tissue loss and when the vagina heals, it is narrowed or twisted. If the assailant has missed the vagina, he may have caused a stab or burn wound to one side of the vulva or in the buttock.

Rape and other sexual violation, including electric shocks applied to the genital area, may leave residual physical signs, although this is rare. Absence of such signs should not be taken to imply that sexual violation has not taken place.⁶

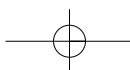
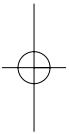
Women commonly experience sexual difficulties following sexual violence and may need reassurance about sexual function and fertility.⁶

Non-genital injuries particularly associated with rape

Most women, threatened with rape, respond instinctively by keeping their knees together drawn up in front of themselves. During the rapist's struggle to open her legs she may suffer injuries that are away from the genital area. The pattern of such injuries, when they leave permanent scars, supports her claim to have been raped. The rapist may have dug his fingers into her thighs, which can leave impressions of fingers at the tops of her thighs or tramline scratches down the insides of her thighs from his finger nails. There may be irregular scars on the labia majora or on the insides of her buttocks. A woman who continues to fight vigorously may be spread eagled with her limbs tied to furniture to keep them apart. Years later there may be circumferential scar marks around

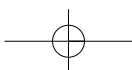
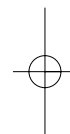
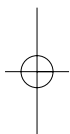
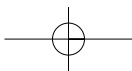


wrists, ankles or just above the knees as witness to being tied up. If she was raped on a ground strewn with stones she may have suffered wounds to her back and buttocks as she wriggled to get free. Scars on the back are common and not specific to rape. Marks may be found on the breasts where she has been bitten; sometimes the outline of teeth is clear. Women are cut, burned with cigarettes and given electric shocks around the breasts and these tortures leave variable marks, or there may be no residual marks.



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CHAPTER 9

Sexually Transmitted Infections as a Consequence of Rape

by Dr Rebecca Adlington and Dr Angela Burnett

Introduction

Sexually transmitted infections (STIs) are among the most common medical problems complicating sexual assault. STIs diagnosed at the time of a sexual assault can add to the emotional problems experienced by the survivors, whether or not the disease was acquired as a result of the assault. In addition, survivors often express severe anxiety about the possibility of contracting an STI from the assailant. The anxiety can accentuate the emotional trauma they experience, aggravate any post-traumatic stress, and delay their recovery.¹ The possibility of HIV transmission during the sexual assault has further added to the anxiety and stress related to sexual violence.² Their identification and medical management following assault is therefore important for the psychological as well as the physical recovery of the survivor.

Although the majority of work in this field has been done with female survivors of rape, many of the issues raised are pertinent to men.

Infectivity and risk of transmission

Little is known about the infectivity of most STIs after a single episode of intercourse, although the relative infectivity of some organisms has been determined; among regular partners of male patients with *Neisseria gonorrhoea* and *Chlamydia trachomatis* infection, studies employing culture diagnosis found rates of 80 and

45% respectively.³ Studies carried out among female sex workers estimated the risk of transmission from an infected female to be 22-25%. Although equivalent data from single male to female exposure are not available, the risk would be expected to be at least that high.⁴ The anatomic site of the assault may also affect the likelihood of contracting an STI. For example, because of their ability to infect cervical columnar epithelium, N gonorrhoea and C trachomatis may be more readily transmitted by vaginal intercourse than by anal or oral intercourse.

Amongst monogamous partners of people with Hepatitis B, 20-27% were found to be infected; the risk of infection after a single exposure is probably less, but is likely to vary with factors such as bleeding during the exposure and presence of Hepatitis B 'e' Antigen in the infected partner.⁵ Similarly, 30% of sexual partners of patients with syphilis are found to be infected, but again the risk of infection after a single exposure varies by stage of syphilis of the infected person and nature of the sexual contact.⁶

Risk of transmission for HIV per single anal or genital exposure have been estimated to range from 0.1% to 5.6%. Many factors can affect the HIV transmission risk, and may elevate it above this level of risk.

The risk of HIV transmission in intercourse that results from sexual violence is much higher than during consensual sex. Genital injuries, including tearing and abrasion of the vaginal wall or other organs, increase the likelihood of transmission if the assailant is HIV-positive. In addition, protective vaginal secretions that are normally present in uncoerced sex are absent in cases of rape. Girls who have not yet reached puberty are at particular risk of HIV transmission as they are more likely than older girls and women to suffer genital injuries during rape. The risk of HIV transmission increases if there are multiple perpetrators or if women are held in captivity for long periods.⁸ Finally, whether or not the male assailant ejaculates during a sexual assault may affect the likelihood of victims contracting a certain STI. A survey of sexual functioning during episodes of assault reported by male offenders showed that 34% were sexually dysfunctional.¹

HIV1 accounts for nearly all cases except a minority of cases that originate in West Africa. Compared to HIV1, HIV2 is less transmissible (5-8 fold less efficient than HIV1 in early-stage disease and rarely the cause of vertical transmission), is associated

Table 1: Risk of HIV transmission ⁹

Receptive anal intercourse	3.0%
Receptive vaginal intercourse	0.1%
Insertive vaginal or anal intercourse	0.1%
Needle stick injury	0.3%
Sharing injecting equipment	0.6%
Mucous membrane exposure	<0.1%

Other factors affecting the risk of transmission:

A high plasma viral load (low or undetectable viral loads are likely to reduce transmission but do not exclude the possibility of transmission).

A high genital tract viral load (this usually correlates with plasma viral load; this may be influenced by the presence of STIs or penetration of antiretrovirals [ARVs] into the genital compartment).

The presence of an STI facilitates HIV transmission: the risk of HIV transmission will be increased up to 5 times in the presence of a non-ulcerating STI and up to 300 times in the presence of a genital ulcer.¹⁰

Mucosal damage (mucosal disease of the mouth or trauma following a sexual assault may increase the risk of HIV acquisition).

Virulence of HIV strain: there are two types of HIV: HIV1 and HIV2.

with a lower viral load, and is associated with a slower rate of both CD4 decline and clinical progression ¹¹

Transmission of HIV in war settings

Sexual violence is motivated by a wish to dominate and degrade and is a very powerful weapon against individuals, families and communities.¹²

Claims that the virus itself has been used as a weapon of war, with soldiers known to be HIV-positive ordered to rape enemy women, have not been substantiated. Nevertheless, allegations of intentional transmission of HIV have been used as propaganda. In late 2001, Radio-Television National Congolaise said that “two thousand HIV-positive Rwandan and Ugandan soldiers [had] been dumped in the Democratic Republic of Congo...Kigali and Kampala’s action demonstrates their inhuman determination to carry out the plan of establishing a Hima-Tutsi empire by infecting the soil of the DRC.”¹²

In Resolution 1308 (2000), the United Nations Security Council explicitly recognized that the HIV/AIDS pandemic is exacerbated by armed conflict, as have others.¹³ The UN Secretary General reported to the General Assembly in 2000 on children in armed conflict and noted the "...haunting images, from place after place, of adolescent victims of rape, which has become as much a weapon of warfare as bullets and machetes...Armed conflicts also increasingly serve as vectors for the HIV/AIDS pandemic, which follows closely on the heels of armed troops and in the corridors of conflict."¹⁴ By 1987, HIV had spread from northern areas of Angola to central and southern regions, accompanying war-induced population displacement.¹⁵ High HIV infection rates in El Salvador soldiers were attributed to high levels of sexual risk behaviour associated with the 12-year civil war and numerous prostitution centres surrounding military posts.¹⁶ Ethnic patterns of recruitment into Uganda's National Liberation Army after the overthrow of Idi Amin in 1979 correlated positively with geospatial distributions of Ugandan AIDS cases in 1990, supporting the hypothesis of military involvement in HIV spread.¹⁷ By 1998, a decade of ethnic war, upheaval and mass movements of refugees from violence in Rwanda had fanned an escalating HIV epidemic that spread from cities such as Kigali to the countryside.¹⁸ In Sierra Leone, sexual contacts with foreign soldiers from countries with high HIV seroprevalence preceded rapid increases in rates of STI and HIV.¹⁹ The U.S. Institute for Peace in 2001 estimated that the HIV prevalence rate among combatants in the D.R. Congo war was 60 percent.²⁰ Dr. Tshioko Kweteminga of WHO-Congo has commented that the displacement and multiple troop movements between Congo and neighbouring countries have set Congo up for a major "explosion of HIV/AIDS", a view held by many.²¹ It is predicted that Rwandan troops returning with the virus from Congo will put the civilian population of Rwanda at increased risk of contracting HIV.

During the 1996-1997 war in the Congo, military authorities distributed condoms to some soldiers, but this practice ceased. According to one RCD military doctor, military authorities now treat the subject as taboo and are doing nothing to prevent or limit the spread of the virus in RCD ranks. He noted that the prevalence of HIV/AIDS among RCD troops is "very high", and that it is even higher among the wives of these soldiers. He warned that unless

the taboo is broken, many more people will die.²² Higher rates among military wives may be related to the need to engage in 'occasional sex work' in return for money or food while their partners are away from home for extended periods of time.

Even amongst the medical personnel within the military, the most basic universal precautions against HIV infection are frequently ignored. While visiting a military clinic in Goma region, a community nurse witnessed a series of injections being administered to a group of soldiers without changing or sterilising the needle between patients. When questioned about the risk of HIV transmission the medical officer replied by asking the visiting nurse to "leave us alone".²³

Stigmatisation of survivors of rape

In many cultures, sexual violence and rape are taboo subjects, and survivors may feel very uncomfortable discussing their experiences. This may be exacerbated by the presence of an STI, which may increase the person's feelings of being "unclean", and by concerns that they might have contracted HIV. Persistent unexplained distress and anxiety may be due to a history of sexual violation.²⁴

For both male and female survivors the dominant emotion following rape is usually that of deep shame. Women may be shunned by their community and family as having been defiled, and are no longer accepted.^{25,26}

In Eastern DRC husbands and families often weighed many issues in determining their response to the rape of a woman in the household. In deciding the long-term results of the crime, they considered whether the woman might have become pregnant, and if so, what responsibilities would be involved in rearing the child. Families also considered the possibility that the victim might have been infected, particularly with HIV that would impose a further burden of care on the family. One woman who had been raped said that her husband rejected her, saying that he was afraid that she had contracted HIV and would "contaminate him". So being HIV positive or even being suspected of being HIV positive adds to the stigma of rape to make it a double stigmatisation.

A greater willingness to speak out about the crimes has helped reduce the stigmatisation from which the survivors suffered. In some areas of East Congo, priests are using their sermons to

publicise the availability of medical treatment and counselling for survivors of sexual violence. Although few may be able to avail themselves of these services, simply raising the issue of sexual violence publicly in such a forum helps reduce the stigma attached to sexually abused women and girls and makes it easier for them to seek help.²⁷

The coordinator of one organisation working for the rights of women in Goma states that there are three factors that hinder a woman's willingness to report a rape and resultant symptoms. These are:

1. Lack of justice. Few of the perpetrators of these crimes are ever sought out and convicted.
2. The social stigma attached to rape and her fear of disclosure to the community leads to silence.
3. Lack of medical care available to her, because of either location or cost. In many areas there are few, if any, healthcare providers, the majority of whom are men. Generally the medical staff are poorly trained; they have little or no specialised experience in treating the consequences of sexual violence, are not paid and are demoralised. Medical services are poorly equipped; many facilities have been pillaged or destroyed.

One Congolese doctor said, "Those we see are just a sample. We probably see only the most extreme cases." A nurse agreed. "If women and girls have been raped and are really sick and they have to seek medical help, some go to hospitals. If they don't have to, they don't speak about it to anyone, and don't seek medical help."²⁸ Although the focus of this work was on women, these issues would also be very relevant for men. As will be discussed later in this chapter, men who are survivors of rape may also feel uncomfortable disclosing details of sexual torture to other men.

Treatment of individual trauma

In any culture people may not voice their distress in 'psychological terms'. For example, in the study of 107 Ugandan women raped during war, only two presented with symptoms that could be termed as psychological, i.e., nightmares and loss of libido. 53% presented with physical complaints, i.e., headaches, chest pain and rashes, and 57% with gynaecological symptoms, mainly vaginal

discharge or pelvic pain, dating from the time of the rape. The persistence of perceived infection in this group, often despite multiple treatments for symptoms, (approximately two thirds had no clinical findings of infection) reflects a common sequel to rape, that of feeling dirty and infected.²⁹ Similarly, Cambodian women who were raped during the Pol Pot period complained of vaginal discharge many years after the rape occurred.³⁰

Distress will be expressed in different ways in particular cultural settings, and this will shape an individual's response to the trauma sustained. For Ugandan women, for example, it was important that their physical complaints were all treated as such. Once trust had been established between the healthcare workers and the women, it was then possible to develop their own responses to rape trauma.³¹ It must be remembered that the very process of human rights documentation may conflict with the needs of individual survivors. Recounting the details of a traumatic experience may trigger an intense reliving of the event and, along with it, feelings of extreme vulnerability, humiliation and despair.³² Health professionals in the former Yugoslavia have reported a number of harmful outcomes after survivors of rape have been interviewed by journalists, human rights workers and even medical personnel. These include actual and attempted suicide, severe clinical depression, and acute psychotic episodes.³³ This highlights the importance of effective communication between all those involved in the care of survivors of sexual violence. Where an individual is referred for STI screening, details of the rape should be included in the referral. This will avoid the need for the person to recall and relate events which have already been documented.

Offering examination and treatment in the UK

The benefit to the patient of an examination and sexual health screen must be weighed against the risk of exacerbating or prolonging their distress. The identification of an STI cannot corroborate allegations of rape. However, the identification and medical management of an STI following assault may be important for the psychological recovery of the survivor, as well as for their physical recovery.¹ Anyone who has experienced rape and sexual assault should be offered a sexual health assessment. The screening can be done either at a sexual health clinic or, if the facilities are there, within general practice.

The reason for referral to a sexual health clinic should be discussed with the survivor so that they have some understanding of why they are there when they arrive. Full STI screening including HIV testing will be offered to all clients. The screen for bacterial STIs is routinely done by an internal speculum, or in the case of anal rape, proctoscope examination. If the patient is not comfortable with the idea of this, then alternative non-invasive screening will be offered, e.g., self-taken high vaginal swabs or urine testing. Alternatively they may simply be prescribed empirical treatment to cover any bacterial STIs acquired, thus avoiding the need for investigation.

All patients will see the health adviser prior to examination. The role of the health adviser at this stage is to discuss the option of HIV testing with the patient, helping to prepare them for the possibility of receiving a positive result if they choose to test. They will also ensure that the patient is in touch with appropriate support networks and counselling services.

An interpreter should be available if required, and if possible a choice of gender of both health care worker and interpreter should be given (although we appreciate the limited availability of interpreters). Some people may feel more comfortable with the use of a telephone interpreter in this situation, although the practicalities of the distance from the phone can be difficult when examining. Relatives, particularly children, should not be used to interpret. Note that some people may view interpreters with suspicion, and may refuse to have one. This is often due to fears about confidentiality when discussing such a sensitive subject. The principle of confidentiality needs to be clarified with the interpreter and explained to the patient. Professional interpreters should have received training in the importance of confidentiality and should be bound by a clause in their employment contract.

It may be possible to ask directly about experiences of sexual violation, but if direct questioning appears to be too uncomfortable, it may be preferable to introduce the subject indirectly by asking a question such as:

“ I know that some people in your situation have experienced sexual violation. Has this ever happened to you?”

The sexual assault services available to a woman or man who has been assaulted in richer countries are significantly more sophisticated than those available to a survivor of sexual torture in poorer countries. In those countries where access to even the most basic antibiotics cannot be relied upon, forensic examination (including DNA sampling) would be considered beyond the scope of care available to a victim. It is exceptional that the identification of a sexually transmitted infection assumes evidential importance, as prior acquisition would have to be excluded. An exception to this may be considered in the case of a pre-pubescent child.

Summary of care in the UK for survivors of sexual assault³⁴

The following summary of care refers to examination and investigation taking place soon (i.e., a matter of days) after a sexual assault. In some instances a survivor may be able to access care locally, or may flee their country and be seen in a clinic in the UK soon after the attack. but the majority of survivors that we see in the UK present between 3 and 18 months later. The principles of examination and history taking in such circumstances do however, remain the same as those seen acutely.

History

The interviewer should be experienced in the care of survivors of sexual assault. A highly sensitive approach is needed for a patient who may be desperately trying to regain control after the assault. It is important to clarify which orifices were penetrated during the assault, to ensure that these sites are examined both for injury and infection. The sexual history before and after the assault should be elicited, as well as the past medical, gynaecological, menstrual and contraceptive history.

Examination

Injuries requiring immediate attention should take precedence over any other examination.

It cannot be over-emphasised that the benefit to the patient of any investigation or aspect of examination must be weighed against the risk of exacerbating or prolonging the patient's distress, and should not be performed without their full, unhurried consent.

Women who have experienced sexual violence may experience difficulties with internal examination but may, however, be reassured by being examined.

Evidence of grievous bodily harm, for example bruising and lacerations should be accurately documented (ideally including diagrams and, if possible photographs), if it is anticipated that evidence of torture will be required for a medical report, in addition to any injuries found on genital inspection. Petechial haemorrhages on the palate should be sought with a history of forced oral penetration that has taken place in recent days. Anal examination, including proctoscopy should be performed if there is a history of forced anal penetration.

Investigations

A full STI screen at presentation is recommended in view of the significant incidence of pre-existing STIs among victims of sexual assault. The incubation period for sexually transmitted infections can be up to 14 days.

Where laboratory facilities allow it, testing for the following infections should be performed:

Neisseria gonorrhoea, *Chlamydia trachomatis*, *Trichomonas vaginalis*, Bacterial vaginosis and *Candida albicans*. In those countries where testing for specific infections is not routinely available, or where a patient is reluctant to have an internal examination performed, prophylactic antibiotics should be offered.

Blood for syphilis serology (noting that it takes an average of 30 days for a VDRL to become positive), hepatitis B serology and serum save is taken. In those countries with a high prevalence of HIV, HIV testing is recommended. Indeed, in those centres offering HIV anti-retroviral prophylaxis, this may be made conditional upon HIV testing. The rationale behind this is that if a one month prophylactic course of anti-retroviral therapy is given to an HIV positive individual, they are at high risk of developing viral resistance to the medication once it is stopped. This would reduce their future therapeutic options, as well as potentially increase the spread of resistant virus within the community.

Treatment

For up-to date information about treatment in the UK, please see: www.mssvd.org.uk

Follow up

A two week follow-up visit should be arranged. At this visit a repeat STI screen can be offered to detect any STIs acquired at the time of the assault if prophylactic antibiotics were not given, and if the person had initially presented less than 14 days after the assault (i.e., within the incubation period for STIs). The emotional support needs of the person should also be reviewed.

At 12 weeks, serological tests for syphilis, Hepatitis B and HIV should be offered with counselling, and if the assailant is considered to be high risk, then hepatitis C testing can also be offered.

For those individuals who are diagnosed with an STI and who are currently sexually active, it is essential that their partner be treated if re-infection is to be avoided. With the huge stigma attached to rape and STIs in many cultures, this may be less than straightforward, particularly when the woman (or man) has, until now, kept the history of rape a secret from their partner.

Although some people may benefit from talking about their experience of sexual violence, others may feel very uncomfortable. It may be more effective to help people to develop their own support networks by facilitating the development of meetings and activities and by addressing current practical difficulties that they are facing. It is important to address sexual violation in the context of the many traumas and losses experienced.²⁵

Very often, survivors of sexual assault do not return for follow-up appointments. Symptoms of post-traumatic stress, reactive depression and anxiety may interfere with compliance. They may find that the visits prompt recall of a highly traumatic event they are trying to forget. As previously mentioned, where an individual is referred for STI screening, details of the rape should be included in the referral. This will avoid the need for the person to recall and relate events which have already been documented.

Pelvic inflammatory Disease

Definition

Pelvic inflammatory disease (PID) is inflammation and infection of the upper genital tract in women, typically involving the fallopian tubes, ovaries and surrounding structures.

Most cases seem to result from ascending infection from the cervix. Initial epithelial damage caused by bacteria (especially *Chlamydia trachomatis* and *Neisseria gonorrhoea*) allows the entry of other organisms. Isolates from the upper genital tract are poly-microbial, including *Mycoplasma hominis* and anaerobes.

It is believed that the cervix offers a functional barrier for the ascent of micro-organisms. This barrier may be attributable to the properties of the cervical mucus plug. Anything that disrupts the integrity of this barrier, e.g. blood flow, during menstruation or miscarriage, or trauma due to instrumentation, will increase the risk of ascending infection. A woman with a pre-existing asymptomatic STI may, for example, develop PID after inducing an abortion.

As mentioned above, the isolates from the upper genital tract in cases of PID are poly-microbial. Where instrumentation has taken place (e.g., in the case of a professional or non-professional abortion, or as part of a sexual assault), bacteria other than STIs may well be the cause of the pelvic infection.

Clinical Findings

PID may be symptomatic or asymptomatic. The following features are suggestive of a diagnosis of PID:

- Lower abdominal pain
- Deep dyspareunia (lower abdominal pain during sexual intercourse)
- Abnormal vaginal bleeding
- Abnormal vaginal discharge

The pain associated with PID is typically bilateral low abdominal or pelvic, and dull in character. Irregular bleeding is common, occurring most frequently in cases of Chlamydia PID. Dysuria (pain on passing urine) is present in approximately 20% of cases.

Only about 50% of cases report an altered vaginal discharge. Deep dyspareunia is a common complaint.

Pain or discomfort in the right upper abdominal quadrant as symptoms of a possible concomitant peri-hepatitis occur in approximately 5% of patients (The Fitz-Hugh-Curtis syndrome). This is important because, in some cases of PID, this is the dominating symptom and might mislead the examining clinician to

direct examination towards cholecystitis and pleuritis instead of the correct diagnosis of genital tract infection.

Women with HIV may have more severe symptoms associated with PID but respond well to antibiotic therapy. Parenteral regimens are recommended.

Signs

As with the non-specific symptoms of PID, the clinical signs used to make a diagnosis of PID lack both sensitivity and specificity. These are:

- Lower abdominal tenderness
- Adnexal tenderness on bimanual vaginal examination
- Cervical motion tenderness on bimanual vaginal examination
- Fever (>38 °c)

Diagnosis

The positive predictive value of a clinical diagnosis is 65–90%, but is increased by the finding of a lower genital tract infection.

Elevated inflammatory markers (raised erythrocyte sedimentation rate or C reactive protein) also support the diagnosis. For further investigations refer to 2001 Guidelines for the management of pelvic infection and peri-hepatitis www.mssvd.org.uk/CEG/cegguidelines.htm and Management of Acute Pelvic Inflammatory Disease RCOG Guidelines, No 32 May 2003 www.rcog.org.uk

Differential diagnosis

Alternative diagnoses that need to be considered in the differential of PID are as follows:

- In cases of acute onset of pain, ectopic pregnancy, acute appendicitis or torsion of an ovarian cyst are possibilities.
- When the pain is of a more chronic nature, endometriosis or functional pain are possible causes.

Management

It is likely that delaying treatment increases the risk of longterm sequelae (see below). Because of this, and the lack of definitive diagnostic criteria, a low threshold for empirical treatment of PID is recommended. Broad spectrum antibiotics are prescribed to cover *N.gonorrhoea*, *C.trachomatis* and anaerobic infection. Refer to 2001 Guidelines (See under *Diagnosis* above).

Late sequelae

The majority of women with acute PID recover completely, but some are left with post-inflammatory damage. This damage is the basis for the late sequelae of PID, which include chronic pain, infertility and increased risk of tubal pregnancy. There may be acute exacerbations of infection: “acute on chronic” PID.

Abdominal pain lasting longer than 6 months has been reported in 18% of women treated for laparoscopically proven PID, the most common pathologic finding being of pelvic adhesions.

In the pre-antibiotic era, the rates of pregnancy after acute PID were 25-45%. After the advent of chemotherapy, the corresponding figures have been 24-80%.³⁶

In the series from Lund (1960 – 1984) after only one episode of salpingitis, 11.4% became infertile from post-salpingitis damage. With each repeated episode of PID in the same woman, the infertility rate roughly doubled.³⁶

Advice about reproductive and sexual health

People may not wish to use contraception for religious or cultural reasons, but this should not be assumed – check with the individual person as to their wishes. It should also be emphasised that it is not possible to predict fertility following a sexually transmitted infection and/or pelvic inflammatory disease. Women need accurate information and sensitive counselling to enable them to make decisions concerning their own fertility and sexual health.

HIV/AIDS

HIV/AIDS is a significant issue for many refugees and asylum seekers but is often hidden and difficult to address. People may be concerned about the possibility of HIV infection but may not raise it, due to fear, concerns about confidentiality and stigma, and mistrust of interpreters. It can be difficult to raise the issue of HIV/AIDS when it is not clear whether a person feels that they have been at risk. The following questions may be helpful in initiating discussion:

“What do you know about HIV/AIDS? Do you think that you have been at risk?”²⁵

People may be particularly anxious about the risk of HIV, as they may not be aware of the availability of treatment. In many of the countries from which asylum seekers and refugees originate, treatment for HIV is unavailable or too expensive to be affordable by the majority of people, and the diagnosis of HIV, therefore, for many people represents a death sentence. Asylum seekers and refugees in the UK are eligible for treatment and medication, including anti-retroviral therapy. Explanation of the availability of treatment may lead to more readiness to have a test. People who are HIV positive are at increased risk of TB.

People may also be at risk of transmission of HIV and other sexually transmitted infections in the UK and information on prevention should be given.

Access to specialist legal advice is important. Those who would lose access to treatment if deported may seek compassionate grounds to remain.

Psychological effects of HIV

The diagnosis of HIV can be devastating and may lead to depression or anxiety (ref 37). An asylum seeker or refugee may be separated from usual support networks. In addition it may be very hard to disclose positive status for fear of discrimination and stigmatisation. Voluntary organisations can play an important role in offering social, emotional and practical support (ref 37).

For advice and information on local HIV services in the UK, including voluntary organisations, call Terrence Higgins Trust on 0845 12 21 200 (THT Direct)

Guidelines for examination

For guidelines on the examination of Victims of Sexual assault, please refer to the National Guidelines:

www.agum.org.uk/guidelines/htm

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A Legal Analysis of Rape as Torture: Introduction

by Ellie Smith*

The following two chapters provide guidance as to when rape constitutes torture within the legal meaning of that term. They establish that the rape of an individual who is in the de facto custody of the State, by a representative of the State, constitutes an act of torture,¹ and that the rape of an individual who is not in State custody, but who is raped by an official of the State, may constitute torture, depending upon the underlying purpose of the act.

Together, the two chapters examine the definition of torture and the classification of rape within the international, European and UK domestic regimes. International and non-European codes, instruments and caselaw have been included for their persuasive and instructive value, providing, as they do, an invaluable insight into the interpretation of terms that also arise within the European and domestic fora, many of which have developed alongside, and in some cases as a direct result of, their international counterparts.

Chapter 10, which examines international treaties and caselaw, demonstrates that rape *per se* engenders severe pain and suffering within the meaning of the definition of torture, and that as a result, once an act of rape has been proven, the pain threshold for a finding of torture will be deemed reached. International jurisprudence shows that purpose is a key element in defining an act as torture, and that the list of prohibited purposes is not exhaustive. In addition, case law has established that for an act of rape to be classified as torture, it need not occur solely for one of the prohibited purposes, and even that the prohibited purpose need not be the predominant purpose. Finally, Chapter 10 shows that State liability cannot be avoided where the act is beyond the

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¹ De facto custody is a broad term that includes not only rape of individuals in State detention facilities but also, for example, the rape of individuals in military detention, those subject to house arrest and those raped in their homes. Custody would include the temporary, illegitimate or de facto control or restraint of an individual's liberty.

perpetrator's official duties, contrary to specific instructions or even outside the knowledge of his superiors.

Chapter 11 is divided into two parts, dealing with European and UK practice respectively. Part I demonstrates that there is a presumption of State responsibility for harm occasioned to an individual in detention, and that the use of unnecessary force against a detainee will constitute an aggravating factor when considering whether the act complained of amounts to torture. The rationale for both principles applies equally to acts committed against an individual who is in the *de facto* custody of a State official. In addition, Part I shows that the European Court of Human Rights recognises that rape entails the infliction of acute pain, and that it is prepared to identify a State-like purpose without hearing evidence on the point once severe pain and suffering has been established.

Part II provides an examination of the consistency of the UK's domestic practice with international standards, indicating the shortcomings of domestic practice and, where possible, suggesting how domestic practice might be brought up-to-date and in line with international practice and jurisprudence.²

Although separate, the chapters complement each other and are intended to be read together. Definitions of various terms, instruments and bodies are used consistently throughout both chapters, and, therefore, abbreviations used in Chapter 11 may have been initially spelled out in Chapter 10.

The chapters relate specifically to female rape, although many of the principles identified will apply equally to cases of male rape.

2 At the time of writing, a claim for asylum in the UK that has been certified as manifestly unfounded enjoys only limited rights of appeal. Significantly, certification is not possible where the claimant has been subjected to torture in the past, and as a result, adjudicators and tribunals are occasionally required to consider whether a given instance of rape amounts to torture. The practice of certification has not been continued in the Nationality, Immigration and Asylum Act 2002, and cases decided under the new Act cannot be certified under the previous statutory regime. At the time of writing, Home Office Presenting Officers have been instructed to withdraw outstanding certificates, although this instruction might be changed at any time.

CHAPTER 10

A legal analysis of rape as torture in the international and regional (non-European) fora

by **Ellie Smith**

Before examining the question of how rape has been treated and categorised within the various international and regional instruments and fora, it is useful first to consider how torture per se has been defined by those treaty bodies. Once these treaty definitions have been examined, it is possible to consider the issue of rape within the overall context of torture and so to assess when, and under what circumstances, rape might amount to torture within the legal meaning of the term.

Given the incorporation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (the “European Convention” or “ECHR”) into UK domestic law, and the impact this has had upon domestic implementation and interpretation of human rights standards, the European Convention will be referred to briefly in this section for the sake of completeness. It will be analysed and interpreted more fully in Chapter 11.

The international legal prohibition of torture – an overview

No country publicly supports the use of torture or opposes its eradication, and despite an all-too-frequent variance between international pronouncement and practice, torture is universally condemned at a global level.¹

The potential subjects of the prohibition

The prohibition of torture can apply both to States and to individuals.

Human rights law regulates the relationship between the State and all individuals within its jurisdiction. Obligations are imposed on the State, and their breach gives rise to the international responsibility of the State. This responsibility in turn entails a right of reparation for the victim. Humanitarian law, or the Law of Armed Conflict, similarly imposes obligations on States relating to the treatment of non-combatants (including captured soldiers), which encompasses the proscription of torture of persons protected by the Geneva Conventions.

There have been a number of attempts to identify domestic analogies as a means of illustrating the legal nature of State responsibility under international law in general, with breaches being likened to tortious actions, contractual breaches (particularly where the obligation is treaty-based) and public law “delicts”. The International Law Commission has advocated a two-tier approach, categorising breaches by a State of its international obligations generally as “internationally wrongful acts” or “international delicts”, while identifying a further category of offences as international crimes. The latter would encompass serious and widespread abuses of fundamental human rights,² and would include, for example, the systematic torture of detainees.³

Unlike human rights law, humanitarian law creates legal obligations that bind not only States but also individuals. As a

1 International commitment to the abolition of torture has been enunciated, for example, by the UN General Assembly, in the promulgation of its Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 3452 (XXX) of 9th December 1975. The Declaration describes at Article 2 any act of torture as “an offence to human dignity” which should be “condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights”.

result, an individual may be tried before a criminal or military tribunal for a breach of the Geneva Conventions. Such an offence would include the torture of those not involved in, or at least no longer involved in, a conflict.

Criminal law can also be invoked against those accused of committing acts of torture. Under the UN Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (the “UN Convention”) States party are required to establish criminal jurisdiction over an individual perpetrator where an offence is committed within the State’s jurisdiction, by its nationals or where the victim is a national of that State. Any other State may also establish criminal jurisdiction over torture on the basis of universal jurisdiction, with the result that an alleged individual perpetrator may be tried in any State, regardless of the nationality of either the perpetrator or his victim, and irrespective of where the act(s) complained of took place.⁴ Finally, the UN Convention includes a “try or extradite” requirement, whereby a State that does not seek to investigate and prosecute an alleged perpetrator within its jurisdiction must extradite the individual to a State that will.⁵

The legal bases for the prohibition: customary international law and treaties

The legal prohibition of torture has been adjudged to constitute a rule of *jus cogens* or peremptory norm of customary international law, that is, “a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted”,⁶ binding all States irrespective of their treaty obligations and, as a fundamental norm attaining the highest standard of customary international law, overriding all other

2 Yearbook of the International Law Commission (1976), vol. ii, part 2 (A/CN.4/SER.A/1976/Add. 1 (Part 2)), Chapter III B, Draft Articles on State Responsibility, Article 19; noted in Nigel S. Rodley, *The Treatment of Prisoners Under International Law*, Second Edition, 1999, p.108.

3 See Nigel S. Rodley, *op cit*, p.108.

4 Article 7.

5 Articles 5(2) and 7.

6 Article 53 of the Vienna Convention on the Law of Treaties, 1969.

customary international norms other than those of a similar *jus cogens* status.⁷

In addition to its proscription at a customary international level, the prohibition of torture has been elucidated in declaratory and treaty form.⁸

In 1948 the General Assembly of the United Nations incorporated the prohibition into the Universal Declaration of Human Rights (the “Universal Declaration”), Article 5 of which reads:

“No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment”.

The principle was later incorporated into, and reflected in, other international instruments. Article 7 of the International Covenant on Civil and Political Rights (1966) (“ICCPR”) echoes the provisions of Article 5 of the Universal Declaration, adding the express prohibition that:

“In particular, no one shall be subjected without his free consent to medical or scientific experimentation”.

In addition, the prohibition of torture was addressed specifically in the UN Convention, imposing particular obligations and duties upon signatory States to take certain steps aimed at the eradication, prevention and prosecution of torture as a criminal act, requiring all States party to enact domestic legislation criminalising the

7 The nature of the *jus cogens* principle against torture was elucidated by the Trial Chamber in the case of *Furundzija*, 10th December 1998, (IT-95-17/1-T), noting at para 153-4 that “Because of the importance of the values it protects [the prohibition of torture] has evolved into a peremptory norm or *jus cogens*, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from by states through international treaties or local or special customs or even general customary rules not endowed with the same normative force. Clearly the *jus cogens* nature of the prohibition against torture articulates the notion that the prohibition has now become one of the most fundamental standards of the international community”. See also the Pinochet judgment, *R v. Bartle and the Commissioner for Police for the Metropolis and Others Ex Parte Pinochet*, House of Lords, 24th March 1999.

8 Although these are not entirely distinct from the customary status of the proscription, as these treaties and declarations are themselves evidence of the existence of the prohibition in customary international law.

practice, to ensure that an appropriate investigative system exists in order both to bring alleged perpetrators to justice⁹ and to guarantee that victims of torture are compensated.¹⁰

The prohibition has also been codified in a number of regional charters, such as the European Convention,¹¹ the African Charter on Human and Peoples' Rights (1981)¹², the Inter-American Convention on Human Rights (1969)¹³ and the Inter-American Convention to Prevent and Punish Torture.¹⁴

In addition to its inclusion in what are traditionally regarded as human rights instruments, the prohibition of torture is essential to the protection afforded by the provisions of humanitarian law, or the laws of armed conflict, and so is included in the various treaties and conventions regulating that area. International humanitarian law requires States and their combatants to refrain from committing acts of torture against civilians and soldiers who are no longer involved in the conflict. Common Article 3 of the Geneva Conventions prohibits "violence of life and person, in particular murder of all kinds, mutilation, cruel treatment and torture",¹⁵ and is applicable in both international and internal conflicts.

9 Article 2 requires any State party to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction".

10 Article 14 requires any State party to "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible".

11 At Article 3, discussed in further detail in Chapter 11.

12 At Article 5, which provides that "Every individual shall have the right to the respect of the dignity inherent in the human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading treatment or punishment and treatment shall be prohibited". The prohibition of torture in this Convention is worded differently from other regional treaties, since it reflects the historical experiences of the African continent, and is coupled with an express prohibition of all forms of slavery.

13 At Article 5 (1) & (2), which provide that "(1) Every person has the right to have his physical, mental and moral integrity respected. (2) No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person". In addition, Article 12 requires any State party to ensure that "its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction".

14 Signed on 9th December 1985 at Cartagena de Indias, Colombia.

15 The four Conventions of 12th August 1949 are: (i) Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; (ii) Convention for the

Although States have traditionally been recognised as the subjects of international law, following the Nuremberg trials, in the aftermath of the Second World War, the international community acknowledged that individual criminal liability under international law might be incurred in respect of certain crimes, including war crimes and crimes against humanity (both of which encompass torture), and subsequently, torture as an international criminal offence in its own right.¹⁶ As a result, the legal prohibition of torture has now been recognised and incorporated into the statutes of the various international criminal tribunals.¹⁷

Defining torture within the international domain

Despite the widespread condemnation of torture propounded in the various instruments referred to above, few have attempted to define the term, and definitions are contained only in the 1975 Declaration of the General Assembly of the United Nations (the “1975 Declaration”), the UN Convention and the Inter-American Convention to Prevent and Punish Torture, all three of which are considered in turn below. As a result, it is also necessary to examine how the term has been interpreted and applied by treaty bodies and tribunals within the human rights and humanitarian legal spheres respectively.

Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; (iii) Convention Relative to the Treatment of Prisoners of War; and (iv) Convention Relative to the Protection of Civilian Persons in Times of War.

- 16 There is a helpful and informative description of the development of individual liability for acts of torture in Lord Browne-Wilkinson’s judgment in *R v. Bartle and the Commissioner for Police for the Metropolis and Others Ex Parte Pinochet*, House of Lords, 24th March 1999.
- 17 It has been expressly proscribed as a crime against humanity in circumstances where it has been committed “as part of a widespread or systematic attack against any civilian population on national, ethnic, racial or religious grounds”: Article 3 of the Statute of the International Criminal Tribunal for Rwanda. Similar provisions can be found in Article 7 (1) of the Statute of the International Criminal Court, whilst Article 5 of the Statute of the International Criminal Tribunal for the Former Yugoslavia provides that torture will constitute a crime against humanity where “committed in armed conflict...and directed against any civilian population”. In the case of the International Tribunals for the Former Yugoslavia and Rwanda, the jurisdiction of both fora extends to acts of torture in breach of the Geneva Conventions (Articles 2 and 4 of the respective Tribunal statutes), and this finds an echo in Articles 8(2)(a)(ii) and 8(2)(c) of the Statute of the International Criminal Court. Torture is proscribed as a war crime in the Statute of the International Criminal Court when committed “as part of a plan or policy or as part of a large-scale commission of such crimes” – Articles 8(2)(a)(ii) and 8(2)(c).

A human rights law interpretation

During the historical development of a definition of torture, a symbiotic relationship quickly emerged between the UN and European bodies responsible for the judicial enforcement of anti-torture provisions. Whilst the development of the European definition of torture is considered in more detail later in this chapter, it is pertinent to make reference here to aspects of the European system.

In the *Greek case*¹⁸ the European Commission of Human Rights, in a report adopted on 5 November 1969, provided some guidance on the interpretation of the term, suggesting that the word “torture” was used to describe an aggravated form of inhuman treatment, carried out for a specific purpose, such as obtaining information or a confession. This guidance subsequently informed the thoughts of those proposing and refining the text of the 1975 Declaration, Article 1 of which reads:

“1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.”

The wording of the 1975 Declaration suggests that torture is principally distinguishable from inhuman treatment by the level of pain or harm inflicted, and this notion was expressly endorsed by

¹⁸ (1969) 12 Y.B. 1, discussed in further detail in Chapter 11.

the European Court of Human Rights (“ECtHR”) in the case of *Ireland v. UK*.¹⁹

Two years after it adopted the 1975 Declaration, the General Assembly asked the Human Rights Commission to draw up a draft torture convention “in the light of the principles embodied in the Declaration”. After seven years of preparatory work, the UN Convention was adopted on 10 December 1984, Article 1 of which provides:

“For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

In expanding upon and further interpreting the definition contained in the UN Convention, it is useful to bear in mind the rationale of the Convention and the intended subjects of its provisions. According to the Convention’s *travaux préparatoires*²⁰ the UN Convention was intended to address acts of torture in respect of which the State could properly be considered to bear some responsibility, the rationale being that in instances where an act of torture was committed not by a public official but by a

¹⁹ The ECtHR noted at paragraph 167 of its judgment that “it was the intention that the [European] Convention, with its distinction between “torture” and “inhuman or degrading treatment” should, by the first of these terms, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering...this seems to be the thinking lying behind Article...of Resolution 3452 (XXX) adopted by the General Assembly of the United Nations on 9 December 1975”. This is another example of the symbiotic relationship between the United Nations’ and European systems essential to the international evolution of the definition of torture. The case of *Ireland v. UK* is discussed in more detail in Chapter 11.

private actor, it was reasonable to expect the perpetrator to be dealt with by the State's domestic criminal judicial machinery. By contrast, where an act of torture is perpetrated by a State official – for example a member of the security forces – the drafters of the Convention felt that the domestic investigative and judicial processes might not function normally or otherwise be compromised as a result of State involvement in the act. It is for this reason that the drafters chose to restrict the definition of torture in the Convention to public or official acts.

With this in mind, when reading the definition contained in Article 1 of the UN Convention in the light of its drafting history three aspects merit further comment: (i) the status of the perpetrator; (ii) the relevance of the purpose underlying the act; and (iii) the finite category of potential victims of torture for the purposes of the Convention:

(i) Given the evident intention of the drafters to proscribe acts of torture committed by or with the acquiescence of the State, acts of torture committed by private individuals were not intended to fall within the ambit of the Convention,²¹ and a suggestion by French delegates participating in the drafting Working Groups that the Convention define torture based solely upon the intrinsic

20 The *travaux préparatoires* of the UN Convention are not easily available in UN documents. The bulk of the preparatory work for the UN Convention was conducted by Working Groups established by the Commission on Human Rights, and the principal source materials which have been published consist of the seven reports produced by those Working Groups. No records of the deliberations of the Working Groups were made, and many of the proposals and suggestions discussed by the Working Groups have not been published: see J. Herman Burgers and Hans Danelius, *The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

21 “the Convention does not deal with cases of ill-treatment which occur in an exclusively non-governmental setting. It only relates to practices which occur under some sort of responsibility of public officials or other persons acting in an official capacity” (J. Herman Burgers and Hans Danelius, *The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, page 1). This is logical, given that human rights law typically recognises only States as subjects of international law and therefore only States can be held responsible under international human rights conventions. The definition of “public officials or other persons acting in an official capacity” has, however, been interpreted broadly in the case of so-called “failed-states” by the Committee Against Torture, the implementing body of the UN Convention. In the case of Somalia, for example, the Committee concluded that certain warring factions were in *de facto* control of areas of the country and had established quasi-governmental institutions exercising prerogative comparable to legitimate governments, and to that extent could be described as “public officials” for the purpose of the Article 1 of the UN Convention. (See CAT Communication No. 120/1998; Sadiq Shek Elmi, at para 6.5).

nature of the act and irrespective of the perpetrator's status was rejected by other State delegate participants.

(ii) The requirement that an act of torture be committed for a specified purpose is a less obvious one than that relating to the involvement of a State official in the act, but stems from the same basic premise. The purposes listed in Article 1 of the UN Convention share a common element: they relate, to varying degrees, to the furtherance of the State's policies and interests. As a result, the identification of the purpose lying behind an act allows the conduct of an official of the State to be ascribed to the State itself, and so making possible a finding of State responsibility under the terms of the Convention.

The insertion of the phrase "such purposes as" prior to the purposes listed in Article 1, reflecting a similar phrase in the 1975 Declaration, indicates that the list is not exhaustive, although the phrase also implies that any other purpose must be of a similar nature to those expressly cited, i.e., it should also contain some connection with the offending State's interests and/or policies.²²

(iii) While Article 1 limits the application of the UN Convention to perpetrators who are either public officials or other persons acting in an official capacity, the potential category of victims to be protected by the Convention is not delimited by the language of the Article, which provides simply that torture should not be inflicted "on a person". Despite this, however, the drafting history of the provision indicates that the potential category of victims is not intended to be indefinite.

The 1975 Declaration was drafted by the Fifth UN Congress on the Prevention of Crime and the Treatment of Offenders "to include, in the elaboration of the Standard Minimum Rules for the Treatment of Prisoners, rules for the protection of all persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment". As noted above, the General Assembly mandated the Commission on Human Rights to draft the UN Convention on the basis of its

22 A remote connection will suffice. See for example J. Herman Burgers and Hans Danelius, *The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, pages 118-9, where the authors note that "the common element of the purposes referred to in the definition should rather be understood to be the existence of some – even remote – connection with the interests or policies of the State and its organs".

earlier Declaration, and drafting work was conducted under the agenda heading “Question of the human rights of all persons subjected to any form of detention or imprisonment”. Finally, Articles 10 and 11 of the Convention make explicit reference to individuals “subject to any form of arrest, detention or imprisonment”, providing a strong indication that the UN Convention was intended to apply solely to those who have been detained by the State or at least could be regarded as being in the *de facto* custody of a perpetrator acting under the authority of the State or a State-like group.²³

A further definition of “torture” is contained in Article 2 of the Inter-American Convention to Prevent and Punish Torture,²⁴ which provides that:

“For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as a personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

“The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.”

This definition appears to provide a broader interpretation to that contained in the UN Convention in two significant respects: (i) the Inter-American Convention, unlike its UN counterpart, does

23 See for example J. Herman Burgers and Hans Danelius, *The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, page 120, where the authors note that “The history of the Declaration and Convention make it clear that the victims must be understood to be persons who are deprived of their liberty or who are at least under the factual power or control of the person inflicting the pain or suffering” [emphasis added].

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not require that the pain and suffering inflicted should be severe,²⁵ and even appears to remove the requirement of actual pain or suffering where the perpetrator's intention was to "obliterate the personality of the victim or to diminish his physical or mental capacities";²⁶ and (ii) it provides that torture might exist where pain or suffering is inflicted *for any purpose*, as opposed to the more limited range of purposes contained in the UN Convention.

A humanitarian law interpretation

As a result of a paucity of precedent defining torture within international humanitarian law, tribunals have frequently had recourse to human rights law, with a view to establishing the content of the prohibition at the international customary level, and in the past this has led to the wholesale adoption and incorporation of human rights principles into humanitarian law.²⁷

This approach failed to recognise the differences between the two legal regimes and that the emergence of a legal definition in the human rights arena was ostensibly a function of the environment in which it developed. These problems were acknowledged by the International Criminal Tribunal for the Former Yugoslavia ("ICTY") recently in the case of *Kunarac*.²⁸ In that case three men were convicted of violations of the laws or customs of war and with crimes against humanity in respect of rape, torture, enslavement and outrages upon personal dignity. The three men had participated in a Serb campaign to ethnically cleanse the municipality of Foca of Muslims, between early 1992 and mid-1993. Muslim women were particularly targeted during the campaign, and many from the region were held together in

25 However, such a requirement would probably be read into the definition as a result of its requirement at customary international law.

26 In practice it is probable that such conduct would occasion the infliction of pain and suffering.

27 This was done most recently by the ICTY in the case of *Prosecutor v. Furundzija*, Case IT-95-17/1-T, Judgment, 10th December 1998, where the Tribunal observed at para 159 that "International law, while outlawing torture in armed conflict, does not provide a definition of the prohibition", and so went on to examine human rights principles, concluding that the definition of torture contained in the UN Convention represented customary international law.

28 *Prosecutor v. Kunarac, Kovac and Vukovic*, Cases IT-96-23 and IT-96-23/1 "Foca"; Judgment of the Trial Chamber 22nd February 2001; Judgment of the Appeals Chamber 12th June 2002

municipal buildings, which had been established as detention centres. Women from the centres were systematically removed to other locations to be raped by Serb forces and sometimes held for months as “slaves” or sold on to other units. During that time, authorities in the region either turned a blind eye to the women’s suffering or participated in their maltreatment. The three were involved in the movement and rape of many women during that period.²⁹

In that case the Trial Chamber of the ICTY noted that human rights norms could be transposed into humanitarian law only to the extent that they accommodated and reflected the specificities of the latter area of law,³⁰ and that as a result the definition of torture contained in Article 1 of the UN Convention was to be viewed as an interpretative aid only.³¹

Turning to the definition contained in the UN Convention, the Tribunal sought to identify elements of the human rights law definition which it considered extraneous to international humanitarian and criminal law and those which it considered represented the status of customary international law, concluding that for the purposes of international humanitarian law the elements of the offence of torture were:

- (i) the infliction, by act or omission, of severe pain or suffering, whether physical or mental;
- (ii) that the act or omission was committed intentionally; and
- (iii) the act or omission must have as its purpose obtaining information or a confession, punishing, intimidating or coercing the victim or a third party or discriminating against the victim or a third party on any ground.³²

In its subsequent consideration of the case, the Appeals Chamber of the ICTY largely approved the analysis provided by the Trial Chamber, adding by way of clarification that the “public official” requirement contained in the UN Convention reflected customary international law only to the extent that it concerned the obligations of a State, but did not reflect customary

29 The case is discussed in more detail below in relation to the treatment of rape within the international fora. See para 10.4.

30 At para 423

31 At para 434

32 At para 449

international law more broadly in relation to the definition of the *crime* of torture for the purpose of finding *individual* criminal responsibility under international humanitarian and criminal law.³³

Nature of State Responsibility for torture

International anti-torture provisions clearly impose negative obligations on States – to refrain from committing acts of torture against individuals within their territories. An examination of the various international instruments, however, reveals that the duty is more extensive and onerous than this, requiring States to take *positive* measures to protect individuals within their jurisdiction from treatment attaining the levels of severity proscribed. Article 2(1) of the ICCPR, for example, requires States both to “respect *and to ensure* to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant” [emphasis added], whilst Article 2(1) of the UN Convention mandates signatory States to take “effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”.³⁴

As a consequence of this broad and proactive duty, State liability will not necessarily be limited to acts committed by its officials in the pursuance of their public duties, but may extend to liability for

³³ At paras 147-8. The same rationale should also have led the Appeals Chamber to reach a similar conclusion in relation to the “prohibited purpose” requirement, since, as already noted, this requirement exists in order that individual actions can be ascribed to the State where appropriate. In the case of individual criminal liability such an ascription would not take place, and so the element could only be considered part of customary international law in so far as it applied to State responsibility. This point is reinforced by the definition of torture used in the Statute of the International Criminal Court. Article 7(2)(e) provides that “‘Torture’ means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions”. The Court deals solely with individual criminal responsibility, and so the definition of torture used in its statute contains no reference to any “prohibited purpose”.

³⁴ Similar guidance as to the nature of these proactive measures is provided by the Human Rights Committee, in their General Comment 20, Forty-fourth session (1992), which notes at paragraph 8 that measures taken by States party should include “legislative, administrative, judicial and other measures ...to prevent and punish acts of torture and cruel, inhuman or degrading treatment in any territory under their jurisdiction”. Specifically, the Human Rights Committee indicate that States should act to disseminate information to the wider public as to the proscription of such treatment [paragraph 10], provide appropriate training of medical and law-enforcement personnel [paragraph 10] and include within their domestic legal system a right of redress [paragraph 14].

harm inflicted by private actors, where the State has failed to take the necessary protective and/or investigative steps. In its decision in the case of *Kunarac*,³⁵ for example, the Trial Chamber of the ICTY observed that the protection afforded by Article 7 ICCPR “was not limited to acts committed by or at the instigation of public officials”,³⁶ and the Human Rights Committee, in its General Comment 20, indicated that in the event that full and adequate measures to protect individuals had not been taken, States might incur liability in respect of harm “inflicted by people acting in their official capacity, outside their official capacity or in a private capacity” [emphasis added].³⁷

In addition to potential responsibility for the actions of private individuals, States are also responsible for those of public officials who are acting outside of their official capacity or in breach of express orders. In his judgment in the *Pinochet* case,³⁸ for example, Lord Hutton noted that “a state is responsible for the actions of its officials carried out in the ostensible performance of their official functions notwithstanding that the acts are performed in excess of their proper functions”. The matter is dealt with fully and comprehensively in *Oppenheim’s International Law*:

“In addition to the international responsibility which a state clearly bears for the official and authorised acts of its administrative officials and members of its armed forces, a state also bears responsibility for internationally injurious acts committed by such persons in the ostensible exercise of their official functions but without that state’s command or authorisation, or in excess of their competence according to the internal law of the state, or in mistaken, ill-judged or reckless execution of their official duties. A state’s administrative officials and members of its armed forces are under its disciplinary control, and all acts of such persons in the

35 *Prosecutor v. Kunarac, Kovac and Vukovic*, Cases IT-96-23 and IT-96-23/1 “Foca”; Judgment of the Trial Chamber 22nd February 2001.

36 At para 432

37 Forty-fourth session (1992); which provides at paragraph 2 that “it is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity”. The General Comment goes on to describe the measures which a State party should take in order to comply with this positive obligation.

38 *Regina v. Bartle and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet*, House of Lords, 24th March 1999

apparent exercise of their official functions or invoking powers appropriate to their official character are prima facie attributable to the state....With regard to members of armed forces the state will usually be held responsible for their acts if they have been committed in the line of duty, or in the presence of and under the orders of an official superior".³⁹

Finally, Herman Burgers, the Chairman-Rapporteur of the UN Convention, together with his co-author Hans Danelius, notes in his commentary on that Convention that "if torture is performed by a public agency, such as the security police, the government of the country has no defence under the Convention in saying it was unaware of the act or even disapproved of it once it was performed".⁴⁰

Rape as Torture – International fora

The position of rape and sexual violence in the international legal regime – an overview

Before going on to examine how the various international instruments and treaty bodies have interpreted the relationship and interrelationship between rape and torture it is useful to consider briefly the standing of rape within the general international legal framework, looking at the declaratory positions and views of international bodies, as well as the legal status of rape within both the humanitarian and human rights regimes.⁴¹

Declaratory provisions

The vulnerability and susceptibility of civilian women to acts of rape and other forms of sexual violence, particularly during armed conflicts, has been acknowledged with concern in a wide-ranging number of international pronouncements and declarations. Article 38 of the Vienna Declaration and Programme of Action, for example, states that:

39 J. Herman Burgers and Hans Danelius, *The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, page 545

40 J. Herman Burgers and Hans Danelius, *The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, page 120

41 Note that the issue of rape and the breach of the right not to be subjected to torture is considered separately below.

“Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response”.⁴²

Similar indications of concern have been made by the various treaty enforcement bodies. The Committee on the Elimination of Discrimination against Women, for example, note in their General Comment on Article 6 of the apposite Convention, that:

“Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures”.⁴³

And the UN’s Human Rights Committee have observed that:

“Women are particularly vulnerable in times of internal or international armed conflicts”.⁴⁴

In its Resolution 1325,⁴⁵ the UN Security Council denounced the threat that armed conflict poses to the bodily and sexual security of women, and called upon

“...all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls...to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of

42 A/CONF.157/24. Adopted by the World Conference on Human Rights, Vienna, June 1993

43 General Recommendation No. 19 – Violence Against Women, adopted by the Committee during its Eleventh Session, 1992

44 General Comment No. 28, Article 3 (Equality of rights between men and women), at para 8, Sixty-eighth session (2000)

45 Adopted by the Security Council at its 4213th meeting, October 31 2000

sexual abuse and emphasising the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual violence against women”.⁴⁶

And most recently, the Secretary General, in a report produced pursuant to that Resolution, indicated that:

“Existing inequalities between men and women, and patterns of discrimination against women and girls, tend to be exacerbated in armed conflict. Women and girls become particularly vulnerable to sexual violence and exploitation.”⁴⁷

Humanitarian provisions

Rape constitutes a criminal act under the international laws of armed conflict.⁴⁸ In the context of international warfare, Article 27 of the Fourth Geneva Convention explicitly proscribes sexual violence and abuse, indicating that:

“Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault”.⁴⁹

Article 147 of the same Convention contains a list of “grave breaches” of humanitarian law. This list includes “torture or inhuman treatment, including...wilfully causing great suffering or serious injury to body or health”, and the Inter-American Commission on Human Rights has interpreted this provision as

46 see paras 9 – 11

47 Secretary General’s Statement to Security Council on Women, Peace and Security, Press Release SG/SM/8461, SC/7551, WOM/1366, 28th October 2002

48 See for example the ICTY’s Appeal Chamber’s judgment in the case of *Kunarac, Kovac and Vukovic*, 12th June 2002 (IT-96-23 and IT-96-23/1), where it observed at para 67 that “There is no question that acts such as rape...torture and outrages upon personal dignity are prohibited and regarded as criminal under the laws of war”.

49 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12th August 1949

including rape.⁵⁰ This interpretation has been confirmed by the International Committee of the Red Cross, declaring that for the purposes of Article 147 the “serious offence” of “deliberately causing great suffering or seriously harming physical integrity or health” includes sexual abuse.⁵¹

The interdiction is further enforced by Article 76(1) of Additional Protocol I to the Geneva Conventions,⁵² which expressly prohibits rape and other forms of sexual abuse, stating that:

“Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault”.

In the case of non-international conflict, Common Article 3 of the 1949 Geneva Conventions strictly prohibits attacks on civilians, including:

“(a) Violence to life and person, in particular...cruel treatment and torture...(c) Outrages upon personal dignity, in particular, inhuman and degrading treatment”.

The proscription is strengthened by Article 4(2) of Additional Protocol II, which provides that:

“1. All persons who are not participating directly in the hostilities, or have ceased to participate in them, ...shall be entitled to respect of their persons...

2. The following shall be prohibited at all times and at all places with respect to the persons referred to in paragraph 1:

50 *Raquel Martin de Mejia v. Peru*, 1st March 1996, Report 5/96, Case 10.970, Annual Report of the IACHR, 1995. This case is discussed in more detail below, at section 10.5.

51 International Committee of the Red Cross, Aide Memoire (December 3rd, 1992), quoted in *Rape as a Crime under International Humanitarian Law*, Theodor Meron, American Journal of International Law 87 (1993), p. 426

52 First Protocol Additional to the Geneva Conventions of 12th August 1949 Relating to the Protection of Victims of International Armed Conflicts.

(a) Attacks against the life, health and physical and mental integrity of persons, in particular...cruel treatment such as torture...

(e) Attacks against personal dignity, especially humiliating and degrading treatment, rape, forced prostitution and any form of indecent assault”.⁵³

Rape during armed conflict therefore gives rise to a grave breach of the Geneva Conventions. The Fourth Convention, together with Protocol I, establishes that any act of rape committed individually will constitute a war crime, and, where perpetrated as a result of an orchestrated policy or on a widespread or systematic scale, may amount to a crime against humanity.⁵⁴

The offence of rape is incorporated into the respective jurisdictions of the ad hoc tribunals for Rwanda and the Former Yugoslavia, and both fora have actively promulgated significant and creative judgments in the prosecution of sexual violence.⁵⁵ In the case of *Akayesu*,⁵⁶ for example, which concerned the trial of a former mayor of Taba commune in Rwanda, the International Criminal Tribunal for Rwanda found that the defendant had facilitated the violent rape and abuse by local militia and/or police of many displaced Tutsi women who had sought refuge at the bureau communal. The tribunal considered that rape on such a massive and brutal scale constituted an act of genocide, the first time that an international court had either ruled on genocide or made a correlation between genocide and rape.⁵⁷

Similarly progressive jurisprudence emerged from the ICTY in the case of *Kunarac*, the first time that an international tribunal had

53 According to the ICRC Commentary on the Additional Protocols of 8th June 1977 to the Geneva Conventions of 12th August 1949, the purpose of the prohibition contained in Protocol II was to reaffirm and complement common article 3 and to strengthen the protection of women.

54 For more details see *Rape as a Crime under International Humanitarian Law*, Theodor Meron, *American Journal of International Law* 87 (1993)

55 The Statute of the Yugoslav Tribunal expressly incorporates, at Article 2, all offences constituting grave breaches of the 1949 Geneva Conventions, while Article 5(g) of the Statute proscribes rape as a crime against humanity. The Statute of the Rwandan Tribunal includes rape as a crime against humanity at Article 3(g), and rape as a grave breach of the Geneva Conventions at Articles 4(a) and (e).

56 *Jean-Paul Akayesu*, 2nd September 1998 (ICTR-96-4)

either brought charges or convicted an accused based *solely* upon crimes of sexual violence.⁵⁸

Finally, for the purposes of international humanitarian and criminal law, rape falls within the aegis of the International Criminal Court (“ICC”), and is identified in its Statute as either a war crime⁵⁹ or as a crime against humanity,⁶⁰ depending upon the manner and scale of its infliction. It will be interesting to see how that court interprets and applies the proscription of sexual violence in the future.

Human Rights provisions

The infliction of gender-based violence typically raises issues under general human rights norms aimed at securing personal integrity and preventing the infliction of physical or psychological harm.⁶¹ According to the United Nations Human Rights Committee, violations occur particularly where women do not enjoy equality of rights and treatment with men,⁶² and the UN Committee on the Elimination of Discrimination against Women, for example, notes that:

57 The Trial Chamber found that rape and other forms of sexual violence would constitute genocide where committed with the intent to destroy a particular targeted group, and concluded that sexual violence was an “integral” part of the process of the destruction of the Tutsi ethnic group, given that the rapes were systematic and perpetrated solely against Tutsi women. The Chamber also defined rape, for which there was no commonly accepted universal definition, as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence, including rape, is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact”.

58 12th June 2002 (IT-96-23 and IT-96-23/1). The facts of the case are set out above, at paragraph 10.2.2.

59 Article 8(2)(b)(xxii)

60 Article 7(1)(g)

61 See the various Convention articles outlined above in the section on international and regional anti-torture provisions. While that section deals exclusively with torture, anti-torture provisions contained in general human rights instruments also proscribe other forms of ill-treatment.

62 See for example General Comment No. 28 (on Article 3 ICCPR), which notes at paragraph 2 that individuals are unable to enjoy the rights under the International Covenant on Civil and Political Rights, 1966, where they are not guaranteed those rights on an equal basis and in their totality, providing that “States should ensure to men and women equally the enjoyment of all rights provided for in the Covenant”.

“Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”.⁶³

In addition to breaching general human rights provisions on the proscription of harm and suffering, the rape of women will also attract the protection of gender-specific human rights provisions. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁶⁴ requires signatory States to end any act or practice of discrimination against women.⁶⁵ Sexual violence is brought within the auspices of the Convention to the extent that it “impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions”.⁶⁶ In its General Comments on Article 1 of CEDAW the Committee on the Elimination of Discrimination Against Women define the phrase “discrimination against women” as including the infliction of gender-based violence,⁶⁷ and this interpretation was subsequently adopted by the General Assembly in its Declaration on the Elimination of Violence against Women,⁶⁸ indicating that the prohibition of gender discrimination requires States to “pursue by all appropriate means and without delay a policy of eliminating violence against women”.⁶⁹

63 General Recommendation No. 19, Eleventh session (1992), para 1

64 1979

65 Article 2(d)

66 Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, Eleventh session (1992), para 7, General Comment of Article 1 of the Convention

67 General Recommendation No. 19, Violence Against Women, Eleventh session (1992), para 6.

68 United Nations General Assembly, A/RES/48/104, December 20th 1993. The resolution reflects General Comments adopted by the Committee on the Elimination of Discrimination against Women during its Eleventh session in 1992. In its General Comment on Article 1 of the Convention on the Elimination of all forms of Discrimination Against Women, the Committee notes that “The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence....It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”. General Recommendation No. 19, para 6.

69 See in particular Article 4. The Resolution expressly covers “Physical, sexual and psychological violence perpetrated or condoned by the State” – see Article 2(c) – and provides that States should adopt proactive measures to eliminate gender-based violence within their jurisdictions, including the passage of effective domestic legislation providing protection for women, together with adequate and prompt investigation and prosecution of offenders – see Article 4 (c)-(d). A similar suggestion is contained in the Committee’s

How have those jurisdictions dealt with rape as torture?

Having considered how the prohibition of rape might be encompassed within the various international treaty regimes, it is appropriate to examine how those regimes and international bodies have classified the act in their respective judicial deliberations and pronouncements.

In his report to the UN Human Rights Commission, Peter Koojimans, the first Special Rapporteur on Torture, defined rape as constituting torture.⁷⁰ The position was expanded upon by his successor, Nigel Rodley, who noted that:

“since it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture”.⁷¹

A similar conclusion as to the classification of the act was reached by the UN Special Rapporteur on Contemporary Forms of Slavery, Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Gay McDougall, who noted, with particular reference to the prohibited purpose of discrimination, that:

“...in many cases the discrimination prong of the definition of torture in the Torture Convention

General Recommendation 19 (1992), para 24(b), which provides that “States parties should ensure that laws against...rape, sexual assault and other gender-based violence give adequate protection to all women”, and see also para 24(t)(i) and (ii). In addition, the Committee on the Elimination of Discrimination against Women suggested in their General Recommendation No. 12 that States party include information in their periodic reports about domestic legislation in force aimed at the protection of women “against all kinds of violence...including sexual violence”. Adopted by the Committee during its Eighth Session, 1989.

70 UN Doc. E/CN.4/1986/15, at para 119.

71 Oral introduction to his 1992 Report to the Commission on Human Rights, E/CN.4/1992/SR.21, para 35. In his first report Nigel Rodley also listed various forms of torture, which included rape and the insertion of objects into bodily orifices – see the Report of the Special Rapporteur, para. 119

provides an additional basis for prosecuting rape and sexual violence as torture”.⁷²

This conclusion has been reinforced by caselaw. The position of rape as torture has been considered within the humanitarian legal field by the ICTY in the case of *Kunarac*.⁷³

Having analysed the interpretation of the term “torture” for the purposes of humanitarian law,⁷⁴ the Trial Chamber proceeded to consider the consistency of rape with that definition, and concluded that the acts of which the defendants were accused constituted torture. In considering whether the *particular victims* of the accused had experienced the necessary levels of pain and suffering to fall within the definition of the term, the Appeals Chamber concluded that rape *per se* occasioned harm of the relevant levels, and that as a result the threshold of pain and suffering for the purpose of defining torture would be deemed to be reached once rape had been established:

“Sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterisation as torture. Severe pain or suffering, as required by the definition of the crime of torture, can thus be said to be established once rape has been proved, since the act of rape necessarily implies such pain or suffering”.⁷⁵

Also of particular interest in its judgment was the approach of the Appeals Chamber to the requirement that torture be committed for a specific, prohibited purpose. In their appeal two of the defendants sought to argue that their motives in committing the acts of rape were purely sexual,⁷⁶ and that as a result they had not pursued one of the prohibited purposes listed in the definition of

72 Final Report, E/CN.4/Sub.2/1998/13, 22nd June 1998, at para. 55.

73 12th June 2002 (IT-96-23 and IT-96-23/1). The facts of this case are outlined above, at paragraph 10.4.3.

74 See section 10.2.2.

75 At paras 150-1 of the Appeal Chamber’s judgment

76 *Kunarac*, Appeal Brief, para 122, and *Vukovic* Appeal Brief, para 166.

the crime of torture identified by the Tribunal. In response to this suggestion, the Appeals Chamber concluded that:

“...there is no requirement under customary international law for the act of the perpetrator to be committed *solely* for one of the prohibited purposes listed in the definition of torture”⁷⁷ [emphasis added]

On this point, the Trial Chamber observed that the prohibited purpose need only be *part* of the motivation for an act of torture, and need not even be the *predominant* purpose.

The classification of rape as torture was considered in the human rights context by the Inter-American Commission on Human Rights, in the case of *Raquel Martin de Mejia v. Peru*.⁷⁸ The case arose out of military actions following the killing of several soldiers by an armed opposition group in the town of Posuzo, near the Applicant’s hometown of Oxapampa. During the night masked soldiers, driving government-owned vehicles, arrived at the Applicant’s home and arrested her husband, a political activist, lawyer and journalist. His half-buried body was found three days later on the banks of a local river and showed clear signs of torture. After taking her husband away, the soldiers returned to the Applicant’s home where one of them raped her. The same soldier returned to her home again later the same night, and again raped her. The Applicant complained to the Inter-American Commission about the torture and killing of her husband and her rape.

In considering whether the acts of rape amounted to torture, the Commission noted the prohibition of torture contained in Article 5(2) of the Inter-American Convention on Human Rights. In the absence of a definition in that Convention, the Commission referred to the definition contained in the Inter-American Convention to Prevent and Punish Torture.⁷⁹ From that definition the Commission distilled three components of the crime of State torture: (1) the intentional infliction of physical and/or mental pain

⁷⁷ At para 141

⁷⁸ 1st March 1996, Report 5/96, Case 10.970, Annual Report of the IACHR, 1995. The position of the ECtHR on rape as torture is analysed subsequently in Chapter 11.

⁷⁹ See section 10.2.1.

and suffering, (2) for a specified purpose, (3) by a public official or private person acting at the instigation of the former.

The Commission concluded that rape *by its nature* caused physical and mental suffering in the victim, and so met the first element of the crime. In this case it concluded that the act had been committed by a public official, and with the purpose of punishing and intimidating her. Having found all of the elements fulfilled, the Commission concluded that the rape of the Applicant in those circumstances constituted an act of torture.⁸⁰

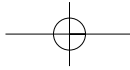
Conclusion of this section

Rape has been classified as an act of torture within the international human rights, humanitarian and criminal fora and this, together with the various categorisations of rape by the ad hoc international criminal tribunals, is a step both in the recognition of the severity of the act and a move towards the greater protection of victims of rape.

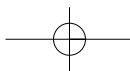
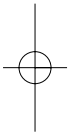
The comments of the Tribunal in *Kunarac* provide useful guidance as to how the identification and application of a purpose might be applied by courts and tribunals in the future.⁸¹ The sexual politics of rape are enormously complex and it is too simplistic an analysis to ascribe a single motive or purpose for rape. The recognition of this fact, coupled with the acknowledgement that on almost all occasions the act will serve at least to intimidate the victim, suggests that the international bodies may be prepared to define rape as torture on a more frequent basis. The presumption of severe pain and suffering once rape has been established is a welcome development, and as a result it is likely that tribunals will find that rape will amount to torture in many more instances of individual criminal responsibility, and, when perpetrated by a public official acting in a non-personal capacity, will constitute torture contrary to human rights standards.

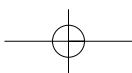
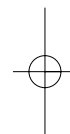
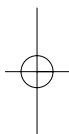
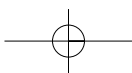
⁸⁰ The Commission in this case did not examine the level or severity of pain and suffering occasioned by rape, since the definition contained in the Inter-American Convention to Prevent and Punish Torture does not require a particular level of suffering.

⁸¹ Although see comments about individual criminal responsibility and the purpose requirement, section 10.2.2.



International jurisprudence and pronouncements are of indirect effect in the UK's domestic courts, having persuasive rather than binding value. Given the symbiotic relationship between the development of the UN Convention and Article 3 ECHR, however, together with the direct incorporation of those international standards and proscriptions into the UK's domestic criminal law, the persuasive value of these instruments and judicial pronouncements is high, and as a result domestic interpretation and implementation would benefit from close analysis and study of developments and practice at the international level.





CHAPTER 11

A legal analysis of rape as torture: Article 3 ECHR and the treatment of rape within the European system

by **Ellie Smith**

Having considered in Chapter 10 how both torture per se and rape as torture have been defined and treated by various international treaty bodies and juridical fora, it is now necessary to examine the question of how the issues have been treated nearer to home. Part I of this Chapter examines the definition of torture in the European regime before going on to consider how this has been applied to instances of rape. Part II examines how International and European principles and practice have been applied within the domestic fora.

Part I – Torture and rape under European law

Overview: the nature of Article 3

Article 3 ECHR provides that:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”¹

The article therefore proscribes the infliction of treatment or punishment which constitutes torture, *or* is inhuman *or* degrading, identifying three separate component parts of the provision, *all*

¹ The wording of the Article corresponds to Article 5 of the Universal Declaration save for the omission of the word “cruel”, which the drafters felt was too subjective.

three of which impose individual and distinct obligations on signatory States. This essay addresses only the first of these elements.

The fundamental nature of the article is evident from its wording. Expressed in language which provides for no qualification or exception, the prohibition contained in Article 3 is absolute, with the result that its breach can never be excused or justified.² The significance and importance of the provision is underlined by its exclusion from the ambit of Article 15 of the Convention, with the effect that there is no permissible derogation from the article even in times of war or other public emergency threatening the existence of a signatory State.³

The nature and extent of State responsibility under the article

On an initial reading, Article 3 appears simply to identify the right of an individual not to be subjected to torture (or to inhuman or degrading treatment or punishment) at the hands of the State or its officials, and to that extent imposes a *negative* obligation on States party, i.e. to refrain from acting in breach of those rights. When Article 3 is read in conjunction with Article 1 ECHR, however, which obliges States to “secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention”,⁴

2 This applies irrespective of the conduct of the applicant or the perceived threat the applicant might pose to national interests or security. See for example the case of *Chahal v. UK*, (1997) 23 EHRR 413, which involved the attempted return of a prominent Sikh separatist to India. The Court observed at para 79 that “Article 3 ...enshrines one of the most fundamental values of democratic society. The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim’s conduct.”

3 According to article 15(1) of the Convention a contracting State “may take measures derogating from its obligations under [the] Convention” in time of war or other public emergency which threatens the life of a contracting State. Article 15(2), however, provides that certain articles, including article 3, are excepted from this provision. The absolute and non-derogable nature of Article 3 was expressed by the Court in the case of *Ireland v. UK*, (1979 – 80) 2 EHRR 25, at para 163, where the Court observed that “....The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim’s conduct. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4 (P1, P4), Article 3 (art. 3) makes no provision for exceptions and, under Article 15 para. 2 (art. 15-2), there can be no derogation therefrom even in the event of a public emergency threatening the life of the nation.”

4 Section I of the European Convention covers articles 2 – 18, and contains the substantive rights of the Convention.

it becomes apparent that the obligations of a signatory State are more extensive, mandating States party to adopt positive measures to protect those within its jurisdiction from ill-treatment at the hands of *private actors*.⁵ As a result, States party are obliged to ensure, for example, the promulgation of domestic legislation outlawing conduct severe enough to fall within the thresholds of the article, that any allegations of breach are promptly and effectively investigated, and the provision and enforcement of meaningful and adequate judicial sanctions against those responsible.⁶

The imposition upon signatory States of a positive obligation of protection produces a correspondingly broad potential State responsibility for acts of harm suffered by individuals, which is not only limited to liability for acts of torture committed by its own servants whilst acting in their official capacity, but may also include liability for the acts of public officials that are *ultra vires* or performed in breach of specific instructions. In the case of *Cyprus v. Turkey*,⁷ for example, the Commission concluded that the Turkish government was responsible for a number of rapes committed by Turkish soldiers, including two officers, stating:

“It has not been shown that the Turkish authorities took adequate measures to prevent this happening or that they generally took any disciplinary measures following such incidents. The Commission therefore

5 This interpretation has been confirmed in the jurisprudence of the European Court, in the case of *A v. UK*. A was a child who was being beaten with a garden cane by his stepfather. The beatings were severe enough to bring the treatment within the scope of treatment prohibited by Article 3. Although A's stepfather was prosecuted, UK legislation provided a defence of reasonable chastisement, and so he was not convicted of assault in the domestic courts. The ECtHR found that the existence of legislation which effectively rendered permissible treatment otherwise contrary to Article 3 was unlawful, with the result that the UK was itself in breach of Article 3. A further example is given in the case of *Plattform Artze fur das Leben v. Austria*, (1991) 13 EHRR 204, where the ECtHR concluded that in principle a State was required to protect demonstrators from harm at the hands of private actors – in this case, counter-demonstrators.

6 In the case of *Osman v. UK*, (2000) 29 EHRR 245 the Court observed that the positive duty to protect life, imposed upon States by Article 2, included the promulgation of “effective criminal law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions”.

7 (1982) 4 EHRR 482

considers that the non-prevention of the said acts is imputable to Turkey under the Convention.”

In addition the ECtHR, in the case of *Ireland v. UK*,⁸ stated in relation to the interrogation techniques used by British officials against Irish prisoners:

“It is inconceivable that the higher authorities of a state should be, or at least should be entitled to be, unaware of the existence of such a practice....under the Convention those authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected.”⁹

Defining Torture

Tools to interpretation and the European Convention as a living instrument

Before going on to examine how “torture” within the meaning of Article 3 has been defined by the ECtHR and Commission, it is useful to consider briefly the methods of interpretation which have been employed, particularly as they differ from the stricter approaches to statutory interpretation adopted by the UK’s domestic courts.

As an international instrument, the interpretation of the European Convention is governed by rules of international law contained in the Vienna Convention on the Law of Treaties (1969).¹⁰ The primary means of interpretation is expressed in Article 31(1) of the Vienna Convention:

⁸ (1979 – 1980) 2 EHRR 25

⁹ Paragraph 159

¹⁰ Although the Vienna Convention on the Law of Treaties was enacted *after* the European Convention, and Article 4 of the Convention indicates that it does not have retrospective effect, the ECtHR acknowledged in the case of *Goldier v. UK* (1979 – 1980) 1 EHRR 524, at paras 29 – 30 and 34 – 36, that the principles of interpretation contained in articles 31 – 33 of the Vienna Convention represented and expressed principles of international law, and that therefore they could use them in the interpretation of the European Convention.

“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and *in light of its objects and purpose*” [emphasis added].

As a result, the ECtHR and Commission have adopted a teleological approach to the interpretation of the European Convention, which in turn requires that provisions be given a “practical and effective” rather than a “theoretical and illusory” analysis, and which permits recourse to the Convention’s preamble, annexes and related agreements in seeking to define its terms.¹¹ In addition, supplementary or secondary methods of interpretation permit consideration of the instrument’s *travaux préparatoires* and an examination of the circumstances of its conclusion where primary methods of interpretation prove inconclusive.¹²

Jurisprudence of the ECtHR and Commission indicates that the European Convention is to be viewed as a “living instrument” and interpreted according to “notions currently prevailing in democratic states”.¹³ As a result of this dynamic approach to its interpretation, the European Convention, although over 50 years old, is able to respond to modern-day problems and so retain its vitality. Interpretation of the terms of the European Convention has consequently evolved through caselaw, and as a result older decisions or judgments of the European Commission or Court should be treated with caution, as they will provide less reliable guidance to the interpretation of Convention rights than their more recent counterparts.

In adopting this approach, the Court and Commission have sought to raise the standards required of States in the protection of human rights,¹⁴ with the result that acts which might not have fallen within the threshold of Article 3 in the past might now

11 Article 31(2) of the Vienna Convention; for an application of the principle by the ECtHR, see *Artico v. Italy*, (1980) 3 EHRR 1

12 Article 32 of the Vienna Convention.

13 *Van der Musselle v. Belgium*, (1984) 6 EHRR 163

14 In the case of *Selmoumi v. France*, (1998) EHRLR 510, at para 101, the ECtHR held that “the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.”

engage State responsibility under that article.¹⁵ Consistent with this approach, more contemporary jurisprudence of the ECtHR demonstrates a heightened sensitivity to the need to provide protection, particularly of individuals who are vulnerable or in a weakened position vis-à-vis the State or its officials.

The evolution of a torture definition

Although Article 3 ECHR clearly prohibits torture in absolute terms, the provision contains no indication as to the meaning or nature of the acts it seeks to proscribe. Despite the obvious difficulties this lack of interpretation engenders, the omission is not accidental – the *travaux préparatoires* of the European Convention reveal that delegates concerned in the drafting of the provision feared that the inclusion of illustrations of particular instances and examples of torture¹⁶ might weaken the text of the overall prohibition¹⁷ and so chose instead simply to assert an unqualified legal interdiction.

15 For a recent enunciation of this principle see *Selmouni v. France*, (1998) EHRLR 510, at para 101, where the Court held that “certain acts which were classified in the past as “inhuman or degrading treatment” as opposed to “torture” could be classified differently in future...the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies”.

16 A proposal to identify instances of torture within the text of the article was made by Mr Cocks, British representative to the Consultative Assembly, in 1949. In the proposal Mr Cocks suggested that after the prohibition of torture already contained in the draft article the following be included: “In particular, no person shall be subjected to any form of mutilation or sterilization or to any form of torture or beating, Nor shall he be forced to take drugs nor shall they be administered to him without his knowledge and consent. Nor shall he be subjected to imprisonment with such an excess of light, darkness, noise or silence as to cause mental suffering.” *Travaux préparatoires* 2, pp 2-4 and 36, quoted in A. Cassese, *Prohibition of Torture and Inhuman or Degrading Treatment or Punishment*, from *The European System for the Protection of Human Rights*, edited by R. St. J. Macdonald, F. Matscher and H. Petzold, 1993.

17 Mr Teitgen, the French representative to the Consultative Assembly, expressed his concerns that conduct which was not explicitly condemned in the text of the article might instead be taken as permissible: “If we add a commentary on [the article], whose terms have been carefully weighed, we shall limit [its] scope to the comments we make...if, in our Resolution, he enumerates a certain number of means of torture which he wishes to have prohibited, he risks giving a wholly different interpretation from that which he hopes to make, namely that the other processes of torture are not forbidden...I really think that the best way of stating the fundamental principle...behind which every man of heart and conscience will immediately and entirely take his stand, is simply to state that all torture is prohibited. When this is stated in a legal document and in a diplomatic Conference, everything has been said. It is dangerous to want to say more, since the effect of the Convention is thereby limited.” A. Cassese, *op cit*, pp 44-46.

That aside, the *travaux préparatoires* of the European Convention are unhelpful and largely inaccessible. Given the symbiotic relationship existing between the European and United Nations models, however, and the substantially parallel development of definitions within the two systems, it can be assumed, for the limited purpose of interpretation, that the rationale and meaning of a term, evident in the working papers of one instrument, can be transposed into the other where identical language has been adopted.

The primary aid to the interpretation of the article, however, must remain the deliberations and jurisprudence of the ECtHR and Commission.

The legal definition of the word “torture” was first considered by the European Commission in the *Greek case*,¹⁸ which arose out of the conduct of security personnel following political unrest in Greece in the mid 1960s. During that period a number of individuals were detained by the government, many of whom claimed to have been subjected to torture at the hands of State officials whilst incarcerated.

In its 300-page Report, the Commission analysed the meaning of the term as follows:

“The word ‘torture’ is often used to describe inhuman treatment which has a purpose such as the obtaining of information or confessions, or the infliction of punishment, and is generally an aggravated form of inhuman treatment.”

By “inhuman treatment” the Commission meant:

“...at least such treatment as deliberately causes severe suffering, mental or physical which, in the particular situation, is unjustifiable.”

The definition received amplification from the ECtHR the following year, in the case of *Ireland v. UK*.¹⁹ The case concerned five interrogation techniques used by British police whilst

18 (1969) 12 Y.B. 1

19 (1979 – 80) 2 EHRR 25

questioning suspected IRA members.²⁰ In its judgment, the Court examined the relationship between “torture” and “inhuman treatment” within the meaning of Article 3, and concluded that “it was the intention that the Convention with its distinction between torture and inhuman treatment should by the first of these terms attach a *special stigma* to deliberate inhuman treatment causing very serious and cruel suffering” [emphasis added], indicating that the level of suffering occasioned by torture should be particularly severe before the thresholds of that provision could be breached.

The early jurisprudence of the Court and Commission therefore identified four distinct component parts of the definition of torture:

- (i) that the treatment be deliberate/intentional;
- (ii) that the treatment cause severe suffering;
- (iii) that the suffering occasioned could be physical or mental;
- and
- (iv) that the harm be inflicted for a specified purpose.

Whilst the scope of application of the term has evolved since the Court’s and Commission’s earlier caselaw, the elements identified above remain constant indicators in the finding of torture. Significantly, however, subsequent caselaw has provided important guidance on the emphasis to be accorded the various components.

(i) Treatment must be deliberate

As an aggravated form of inhuman treatment,²¹ the commission of torture must be intentional. Whilst lesser breaches of Article 3 may be committed by passive action or omission (such as poor or insanitary detention facilities), to date the ECtHR has found States responsible for acts of torture only where harm has been consciously and actively occasioned.

20 The techniques employed were: (1) forcing suspects to stand against the wall for long periods of time and in uncomfortable positions; (2) forcing suspects to wear dark hoods during interrogation; (3) depriving suspects of sleep; (4) subjecting suspects to continuous noise; and (5) failing to provide suspects with adequate food and water.

21 In the *Greek* case, *ibid*, which identified torture as a form of aggravated inhuman treatment, the Commission noted that inhuman treatment should be deliberately inflicted – see above.

(ii) *Severe suffering*

The disagreement between the Commission and Court in the case of *Ireland v. UK*²² over what treatment might amount to torture is particularly instructive, based as it was upon the severity of suffering occasioned, and firmly identifying the *level* of pain inflicted as the fundamental core of any determination of torture. The central and instrumental role which this factor plays in the judicial finding of torture is illustrated in the ECtHR's subsequent jurisprudence: where very severe mental or physical pain or suffering has been identified and proven, the Court has been prepared to *assume* the existence of other definitional elements, without first hearing express evidence or argument as to their presence.²³

Although established in 1959, the ECtHR did not make a judicial determination of State torture until 1996, and this is indicative of the very high threshold, established by the Court in *Ireland v. UK*, which should be attained before the proscription could be considered breached.²⁴ The jurisprudence of the Court since then, however, and, in particular, a shift in its consideration of the *level* of severity of treatment required for a finding of torture, provides an illustrative example of its interpretation of the Convention as a dynamic, living instrument. Whilst on the facts of its first finding of torture, outlined below, it is difficult to see how the Court could have reached any other conclusion, the contrast between that case and the approach adopted by the Court subsequently is striking, and provides a clear example of the Court's stated desire to raise the standards of human rights protection.²⁵

In the Court's first finding of torture, *Aksoy v. Turkey*,²⁶ the applicant, a suspected member of the Kurdish PKK, was detained by security personnel and subjected to a number of extreme forms of ill-treatment classically identified with torture, including

22 (1979 – 80) 2 EHRR 25

23 This is particularly so in the case of purpose, discussed further below, and also re intent. By contrast, the Court has never assumed the existence of severe suffering where the remaining three elements of torture have been identified.

24 *Aksoy v. Turkey*, (1996) 23 EHRR 553

25 This is discussed in more detail below.

26 (1996) 23 EHRR 553

Palestinian hanging²⁷ and electric shocks.²⁸ The Court had no hesitation in concluding that the applicant had been subjected to torture:

“The Court considers that this treatment was of such a serious and cruel nature that it can only be described as torture.”

By contrast, in the later cases of *Selmouni* and *Dikme* the Court, acknowledging the desire to promulgate greater protection standards,²⁹ found France and Turkey respectively liable for acts of torture in respect of severe physical beatings and threats, with nothing more, indicating that harm previously falling short of the threshold might subsequently be “upgraded” by the Court in future decisions.³⁰ In addition, the Court noted in both cases that the ill-treatment of individuals in the custody of a State official was to be considered particularly reprehensible.³¹

The assessment of the severity of treatment for the purpose of defining torture is relative, and the Court or Commission will have regard to all of the circumstances of the case, including “the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and health of the victim, etc.”³²

27 The victim is suspended by their arms or wrists, which are tied behind their back.

28 Full details of the ill-treatment inflicted on the applicant are contained in the judgment at para 60.

29 See *Selmouni v. France*, (1998) EHRLR 510 at para 101; see also para 92 of the Court’s judgment in *Dikme v. Turkey*, (no. 20869/92), 11th July 2000, citing with approval para 101 of the *Selmouni* judgment.

30 In both cases the applicants alleged more serious treatment, but were unable to prove all of the acts alleged. In the case of *Selmouni*, for example, the applicant complained of having been raped with a truncheon. He was also unable to prove that permanent eye damage was occasioned by beatings which took place. In the case of *Dikme*, the applicant complained of being subjected to Palestinian hanging and a mock execution.

31 In the case of *Selmouni*, and cited with approval by the Court in *Dikme*, the Court noted at para 99 that “in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in article 3”. As noted in the introduction to this chapter, the notion of deprivation of liberty would include cases of *de facto* custody. For further elaboration see *Ribitsch v. Austria*, 4th December 1995, Series A no. 336, p. 26.

32 *Ireland v. UK*, (1979 – 80) 2 EHRR 25, at para 162; See also more recently *Selmouni v. France* (1998) EHRLR 510, para 100; *Dikme v. Turkey*, (no. 20869/92), 11th July 2000, para 94. In the case of *Ireland v. UK*, Fitzmaurice, in his dissenting opinion provided some further amplification and guidance on the relative factors pertinent to a finding of torture,

(iii) *Pain can be physical or mental*

The Commission in the *Greek* case indicated that the word “torture” might encompass:

“...the infliction of mental suffering by creating a state of anguish and stress by means other than bodily assault”.

This interpretation was confirmed by the Court in the case of *Campbell and Cosans*,³³ which concerned the potential application of corporal punishment in Scottish State schools to the children of the applicants, where it held that:

“...provided it is sufficiently real and immediate a mere threat of conduct prohibited by Article 3 might itself be in conflict with that provision. Thus to threaten an individual with torture might in some circumstances constitute *at least* ‘inhuman treatment’”[emphasis added].

The notion was approved more recently by the Court in the case of *Dikme v. Turkey*,³⁴ which concerned the detention, ill-treatment and torture of two suspected Dev Sol activists by security personnel. In addition to various forms of physical ill-treatment, one of the applicants claimed to have been subjected to constant verbal threats and a mock execution. In regard to the psychological cruelty inflicted upon him, the Court observed:

“With regard to the other acts of violence allegedly committed on the first applicant, particularly those likely to cause mental suffering...the Court acknowledges that,

noting that “Although the degree of intensity and the length of such suffering constitute the basic elements of torture, a lot of other relevant factors had to be taken into account. Such as: the nature of ill-treatment inflicted, the means and methods employed, the repetition and duration of such treatment, the age, sex and health condition of the person exposed to it, the likelihood that such treatment might injure the physical, mental and psychological condition of the person exposed and whether the injuries inflicted caused serious consequences for short or long duration are all relevant matters to be considered together and arrive at a conclusion whether torture has been committed”.

33 (1982) 4 EHRR 293

34 No. 20869/92, 11th July 2000

depending on the circumstances, such assaults may fall within the scope of Article 3 of the Convention even though they may not necessarily leave medically certifiable physical or psychological scars”.³⁵

(iv) Specific purpose

As in the case of the UN Convention, the European Convention was designed to regulate State treatment of individuals within their jurisdiction. In order to assess State responsibility for acts of torture committed by State officials or individuals acting in an official capacity, it is necessary to consider whether the acts complained of can be ascribed to the State, and therefore the identification of a purpose is essential. As with its UN counterpart, the purposes enunciated by the Commission in the *Greek* case share a common characteristic in so far as they relate to the State’s policies or interests, and likewise, while the language of the Commission suggests that the list is not exhaustive, it is clear that any other purpose should be of a similar nature.³⁶

Although subsequent caselaw of the ECtHR and Commission retains the need to identify a purpose before a judicial determination of State torture can be made, as noted previously, the Court has exhibited a willingness to identify a State-related purpose without first hearing evidence on the point where severe pain or suffering has been established, without first hearing specific evidence or argument on matter.³⁷

³⁵ At para 80

³⁶ The close relationship between the development of the definition of torture at both a European and international level is discussed in Chapter 10, at section 10.2.1.

³⁷ See section 2.3.2 (ii). In the case of *Dikme v. Turkey*, (no. 20869/92), 11th July 2000, for example, there was no argument from either party as to the purpose of the ill-treatment, the Court noting simply at para 95: “The Court considers that such treatment was intentionally meted out...with the aim of extracting a confession or information about the offences of which he was suspected”, thus concluding that the acts complained of had been inflicted “by agents of the State in the performance of their duties”. See also the case of *Aksoy v. Turkey* (1996) 23 EHRR 553, where the Court, having examined the nature and severity of the treatment to which the applicant had been subjected, went on to conclude at para 64: “It would appear to have been administered with the aim of obtaining admissions or information from the applicant”, without hearing any specific argument or evidence on the alleged purpose of the treatment. A similar approach was adopted by the Court in the case of *Aydin v. Turkey*, discussed in more detail below, at para 85, where it noted: “The applicant and her family must have been taken from their village and brought to Derik gendarmerie headquarters for a purpose, which can only be explained on account of the security situation in the region...and the need of the security forces to elicit information.

In addition, the Court and Commission have established a rebuttable presumption that a State will be liable under Article 3 in respect of any harm suffered by an individual whilst in detention, thus shifting the onus of proof firmly on to the impugned authorities. In order to avoid legal responsibility under the article, a State will need to establish, to the satisfaction of the Court or Commission, a credible explanation as to how the injuries arose – for example, that any injuries sustained by an applicant were already in existence at the time that the individual was taken into custody, were self-inflicted or were incurred during an attempted escape. The presumption was initially expounded by the Commission in the case of *Tomasi v. France*,³⁸ and has since been confirmed by the Court and applied in cases of State torture. In the case of *Aksoy v. Turkey*,³⁹ for example, the Court noted:

“...where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation as to the causing of the injury, failing which a clear issue arises under Article 3 of the Convention.”⁴⁰

Although the presumption will, *prima facie*, bring the acts complained of within the ambit of Article 3 generally, it will not necessarily bring them within the definition of torture unless also accompanied by a finding of severe mental or physical suffering. The presumption is particularly significant in the context of ascribing the action to the State, however, since it is grounded upon the premise of State responsibility, and so to a limited extent negates the necessity of identifying a specific purpose.⁴¹

The suffering inflicted on the applicant during the period of her detention must also be seen as calculated to serve the same or related purposes.”

38 (1992) 15 EHRR 1: In this case the applicant, a French national charged with a number of criminal offences including murder, was slapped, punched and kicked by officers during a prolonged period in police custody. The French authorities were unable to account for the number of documented bruises on the applicant’s body, which the Commission concluded could have occurred only during his period of detention, and on that basis the Commission found France culpable for the harm inflicted. See paras 108 – 111.

39 (1996) 23 EHRR 553

40 At para 61; for similar pronouncements in torture cases see also *Selmouni v. France*, (1998) EHRLR 510, at para 87; see also *Dikme v. Turkey*, (no. 20869/92), 11th July 2000, para 78

Article 3 ECHR and the classification of rape

As already seen, the European Convention retains its vitality and relevance through its interpretation as a living instrument, and the evolutionary approach of the Court to its construction and meaning is no more apparent than in the classification of rape under Article 3.

There is little jurisprudence on how the Court and Commission have chosen to categorise rape,⁴² and older caselaw, whilst illustrative of the general shift in the Court's approach to interpretation, reflecting that seen in cases of torture generally, is of little use to *current* interpretations, providing historic information only.⁴³ The most illustrative and recent case on the subject, however, is that of *Aydin v. Turkey*:⁴⁴

In that case the Court was asked to consider the treatment of a 17-year-old girl detained by Turkish security officials as a suspected PKK collaborator. During her detention, the applicant was subjected to various forms of severe physical ill-treatment, including rape. The Court considered the *cumulative* nature of the treatment experienced, and determined that the combination of the rape and the other forms of physical persecution amounted to torture. The Court went on, however, to state that it would have reached the same conclusion *on either of the grounds taken separately*, concluding that the act of rape alone amounted to torture in this instance, the first time that the Court had classified rape as such.

Significantly, although indicating that the act of rape occasioned "acute physical pain" the Court did not go so far as to say that all acts of rape would constitute torture within the meaning of Article

41 In practice the Court has still ascribed a purpose where harm has been inflicted upon an applicant in detention, although as noted above, this is often done without hearing prior evidence on the matter.

42 Although cases have come before the Court or Commission where rape has been alleged but was not proven – see for example, *Selmouni v. France*, *op cit.*

43 In the case of *Cyprus v. Turkey*, 4 EHRR 482 (see esp. paras 357 – 374) for example, the Commission considered a complaint brought by Cyprus against Greece in respect of widespread abuses committed by Turkish soldiers against Cypriot civilians. In relation to the act of rape, the applicant government alleged "wholesale and repeated rapes of women of all ages from 12 to 71, sometimes to such an extent that the victims suffered haemorrhages or became mental wrecks...members of the same family were repeatedly raped, some of them in front of their own children...Victims of rape included pregnant and mentally retarded women" (para 358). The Commission at para 374 that the incidents of rape constituted only inhuman treatment within the meaning of Article 3.

44 (1997) 25 EHRR 251

3, and as a result each case will need to be considered on its individual merits. The judgment of the Court does, however, provide some guidance as to the circumstances which, in its view, aggravated the cruelty and severity of the act and hence indicate when such a categorisation might be made:

“While being held in detention the applicant was raped by a person whose identity is still to be determined. Rape of a detainee by an official of the state must be considered to be an especially grave and abhorrent form of ill treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim....The applicant was also subjected to a series of particularly terrifying and humiliating experiences while in custody...having regard to her sex and youth and the circumstances in which she was held.”

Notably, the determinative factor for the Court in its assessment of rape as torture in this case was the confinement of the applicant and the weakened, dependant and vulnerable position this consequently placed her in vis-à-vis the State officials within the detention facility. The rationale applied by the ECtHR in its judgment would apply equally to cases of *de facto* custody, where a victim would find herself in a similarly vulnerable and weakened position vis-à-vis State officials or representatives. Interestingly, and based upon a strict reading of the Court’s wording, while it considered the applicant’s age and sex to be relevant factors to its finding of torture in relation to the various, non-sexual forms of physical ill treatment suffered by the applicant, these elements are not referred to in its conclusions on the act of rape, suggesting that the Court might have reached the same conclusion irrespective of the victim’s age and sex.

Concluding observations – the development of a definition of torture, Article 3 ECHR, and the classification of rape

Whilst the lack of a definition of torture in Article 3 engenders some practical problems in its application, the flexibility which this approach permits, coupled with the dynamic interpretation afforded the European Convention, enables the European

enforcement mechanisms to apply the proscription to new and evolving situations, retaining the vitality of the instrument and ensuring the continuing protection of individuals from harm at the hands of member States.

The shift in the application of the term, illustrated by the Court in the case of *Selmouni* in particular, is a welcome one, indicating a desire at the regional level to heighten protection standards. The broader interpretation adopted in that case suggests a greater willingness to make judicial determinations of torture in future cases, and this will in turn provide further guidance on the meaning and interpretation of the term. In following this course, however, the Court is walking a fine line, and must ensure that the greater protection it wishes to promulgate does not occur at the expense of the normative value of the proscription, where lowering thresholds to raise standards might discredit or devalue the concept of torture and the “special stigma” which the word connotes.⁴⁵

The decision of the Court in *Aydin* is consistent with the approach followed by the Court and Commission in their deliberations on torture generally, and in particular, on the heightened onus and responsibility placed upon States by both bodies for the ill-treatment of individuals in State custody. Given the presumption of State liability which such harm engenders,⁴⁶ the earlier judicial pronouncements on the reprehensible nature of the use of unnecessary physical force against those in custody,⁴⁷ the recognition that rape occasions the victim acute physical pain⁴⁸ and the Court’s willingness to identify a State-type purpose where severe pain and suffering have been established, it is both arguable and foreseeable that the rape of an individual in the custody of the State, by an official of the State, would now consistently be regarded by the ECtHR as an act of torture.

45 This concern was expressed in relation to Article 3 in general by four members of the European Commission, in their partially dissenting opinion in the case of *Warwick v. UK*, noting that a lowering of thresholds for Article 3 risked “overloading the content and of amplifying the Article with matters of a lesser degree of severity and thus weakening the very serious nature of a breach of Art.3”, Comm. Rep., 18th July 1986, p.21, quoted in A. Cassese, *Prohibition of Torture and Inhuman or Degrading Treatment or Punishment*, from *The European System for the Protection of Human Rights*, edited by R. St. J. Macdonald, F. Matscher and H. Petzold, 1993.

46 See section 11.3.2 (iv).

47 Referred to above at section 11.3.2 (ii).

48 See above re *Aydin v. Turkey*.

Part II – Torture and rape under the UK’s domestic laws

The effect of the incorporation of the European Convention into UK domestic law and the impact of ECHR jurisprudence on UK decision-making processes

The European Convention was incorporated into UK domestic legislation by the Human Rights Act 1998 (HRA), rendering ECHR provisions directly applicable and enforceable in domestic courts. Section 2(1) HRA requires domestic courts to have regard to the jurisprudence and decisions of both the ECtHR and Commission of Human Rights in considering any question involving a Convention right:

“A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any – (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights, (b) opinion of the Commission.....(c) decision of the Commission....so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.”

Notably, whilst the HRA does not directly render ECtHR and Commission jurisprudence binding upon domestic courts, it contains a forceful provision in so far as the interpretation of Convention rights are concerned,⁴⁹ and this applies irrespective of the respondent State party in European decisions.⁵⁰

49 Although where a domestic court chose to ignore the jurisprudence of the ECtHR or Commission, a judgment could still be appealed to Strasbourg. The wording of Section 2 enables UK courts to depart from Strasbourg jurisprudence: during the Bill’s Committee stage Lord Irvine of Lairg considered when such a departure might be made, noting that “The Bill would of course permit United Kingdom courts to depart from existing Strasbourg decisions and upon occasion it might well be appropriate to do so, and it is possible they might give a successful lead to Strasbourg. For example, it would permit the United Kingdom courts to depart from Strasbourg decisions where there has been no precise ruling on the matter and a Commission opinion which does so has not taken into account subsequent Strasbourg court case law.” [HL Committee 18.11.97, Cols 514-515], and later noted that “There may also be occasions when it would be right for the United Kingdom courts to depart from Strasbourg decisions. We must remember that the interpretation of the convention rights develops over the years. Circumstances may therefore arise in which a judgment given by the ECtHR decades ago contains pronouncements which it would not be appropriate to apply to the letter in the circumstances of today in a particular set of circumstances affecting this country.” [HL Report, 19.1.98. Cols 1270-1271]

Although Article 1 ECHR, which obliges signatory States to secure European Convention rights to everyone within their jurisdiction, was not incorporated into the HRA,⁵¹ ministerial statements made during the passage of the Act suggest that this omission is not indicative of the government's intention to ignore the provision, and indicate instead that by passing the Act the State was securing Convention rights to everyone within its jurisdiction within the meaning of that article, and so rendering the provision superfluous.⁵² As a result, it is clear that the provisions of Article 1 were intended to have effect within the UK, confirming acceptance by the State, at the domestic level, of the broader, positive obligations that the article incorporates and which already exist at a regional level.⁵³

A definition of torture in the UK domestic system

Liability for torture exists within the UK domestic system both as an offence under criminal law and as a civil right, i.e., the right of an individual not to be subjected to torture. In both cases the existence of the prohibition stems from the incorporation of international provisions – in this case the UN Convention and the European Convention respectively. Given the symbiotic relationship between the development of the terms in the two international

50 Section 2(1) does not suggest that only ECtHR and Commission decisions concerning the UK should be used in the interpretation of Convention rights in domestic courts, and during the passage of the Human Rights Act the Lord Chancellor expressly indicated that the section was intended to require courts to consider all Strasbourg decisions, regardless of the identity of the State party: HL Debs (committee stage) col 513, 18th November 1997.

51 Article 1 ECHR provides that "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention". Section 1 of the HRA 1998 provides for the incorporation of "the Convention rights" into UK domestic law. "Convention rights" are defined as being articles 2 – 12 and 14 of the Convention, together with articles 1 – 3 of the First Protocol and articles 1 and 2 of the Sixth Protocol. Article 1 is not included in the schedule to the Act.

52 See comments of the Lord Chancellor, Lord Irving of Lairg, Hansard HL 18th November 1997, Column 475, where, rejecting the suggestion that article 1 be incorporated into UK domestic law, he noted: "The Bill gives effect to Article 1 by securing to people in the United Kingdom the rights and freedoms of the convention." Following the decision of the Court of Appeal in *Pepper v. Hart* (1993) AC 593 it has become possible to refer to ministerial statements made during the passage of a bill as an aid to interpretation where statutory wording is ambiguous, obscure, or where the literal meaning of the wording leads to an "absurdity". In order to be used as an interpretative guide a ministerial statement must itself be clear, and made in Parliament.

53 These broader obligations are discussed above at section 11.2 in relation to the nature of Convention rights at a European level.

instruments, it is possible to use one to inform the definition of the other at the UK level.

The proscription of torture in UK law

Article 2(1) of the UN Convention Against Torture provides that “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdictions”, and Article 4 requires all States party to ensure that “all acts of torture are offences under its criminal law”. In 1988, the UK incorporated the prohibition of torture as a criminal offence into its domestic legislation, as section 134 of the Criminal Justice Act 1988 (“CJA”).

In addition, as a result of the incorporation of the European Convention into domestic law, the provisions of Article 3 have now become part of domestic legislation, rendering the right of individuals within the UK not to be subjected to torture (or to inhuman or degrading treatment or punishment) enforceable in domestic courts as a civil right.

Defining torture within the UK

Section 3 HRA obliges the UK courts to interpret other domestic statutory provision in a manner compatible with Convention rights,⁵⁴ and so in ascribing a legal definition to the term, domestic courts must be guided by the existing jurisprudence of the ECtHR. The interpretation of the term at the European level is therefore of direct relevance in the analysis of the term’s domestic interpretation.⁵⁵

Guidance as to interpretation of the term is also provided by section 134 CJA. The definition of torture found in the CJA largely

⁵⁴ During the passage of the Bill both Jack Straw MP, Home Secretary, and Lord Irvine of Lairg, the Lord Chancellor, stressed the wish for domestic courts to strive to find an interpretation of domestic legislation that is as consistent as possible with Convention rights: see HC Committee 3.6.98, Col 422 and HL Report 19.1.97, Col 1262 respectively.

⁵⁵ Note also that Article 1(2) of the UN Convention indicates that the definition of torture contained in Article 1(1) is “without prejudice to any international instrument or national legislation which does or may contain provisions of wide application”, with the result that while the definition contained in that article should be followed when applied domestically, where there is another definition or application which exists in the international or domestic fora – for example, through the jurisprudence of the ECtHR or as a result of the domestic interpretation of the Article, then the interpretation which provides the widest protection and benefit should be applied.

reflects that contained in the UN Convention, which the legislation seeks to incorporate, section 134(1) – (3) providing that:

“(1) A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.

“(2) A person not falling within subsection (1) above commits the offence of torture, whatever his nationality if:

(a) in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence

(i) of a public official; or

(ii) of a person acting in an official capacity; and

(b) the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents or acquiesces in it.

“(3) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or omission”.

Like Article 1 of the UN Convention, section 134 CJA identifies elements of the crime of torture and provides a broad description of what is meant by the term, rather than furnishing a full and complete definition. As in the international context, the rationale and need for avoiding a strict definition has been recognised within the domestic sphere. For example, Mr Justice Moses notes in one case that:

“...it seems to me that there is a danger in providing some principle which would be designed to protect those at risk from torture within the straightjacket of a definition. The nature of human behaviour is such, that acts or omissions which may constitute torture cannot be wholly predicted or foreseen. It would be too easy for those seeking to justify their behaviour, or to escape the consequences of their conduct, to use a definition as a means of escaping the consequences of their activity. A definition may have the danger of impeding or inhibiting the very protection that it is designed to afford”.⁵⁶

The wording of section 134 does, however, provide a useful starting point in the elucidation of a domestic definition, and the interpretation of the term at the international level will be of relevance here, although it should be noted that there are some differences between the wording, and consequent meaning, of Article 1 of the UN Convention and section 134 CJA.

Notably, the domestic proscription expressly provides that acts of torture may be committed by omission, whilst this is merely implicit in Article 1 of the UN Convention. In addition, where the UN Convention requires that the act be committed pursuant to a specific, State-like purpose, the UK provision requires that the act be committed “in the performance or

purported performance of...official duties”. Given the rationale behind the international provision⁵⁷ it is likely that the two requirements in fact have similar effect.

Most significantly, however, the UN Convention provides only a very limited exemption from liability in respect of pain and suffering arising out of the application of lawful sanctions, and expressly states that the order of a superior officer or public authority may not be invoked as a defence. Similarly, no exceptional circumstances, such as a state of war or public

⁵⁶ *R v. The Secretary of State for the Home Department, Ex Parte Sarbjit Singh*, High Court, Queen's Bench Division, 2nd February 1999.

⁵⁷ See Chapter 10, section 10.2.1.

emergency, could justify an act of torture. This approach is entirely consistent with that of the ECtHR in its jurisprudence on the absolute nature of article 3 (referred to above). By contrast, section 134(4) CJA indicates that:

“It shall be a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.”

The clause is clearly at odds with the absolute prohibition of torture contained in the international instruments. Despite earlier calls from the UN Committee Against Torture to amend the wording of the CJA in order to bring it into line with Article 2 of the UN Convention, the provision remains on the domestic statute books.⁵⁸

Like the UN Convention, the application of section 134 CJA is limited to acts which engage the responsibility of the State, through its public officials or representatives or as a result of its omissions.⁵⁹ As a consequence of excluding the application of domestic torture provisions from private perpetrators, it has been argued that severe ill-treatment inflicted by a public official in the absence of any “public” motive – i.e. purely for personal, sadistic reasons – will not fall within the ambit of section 134, or otherwise within the definition of torture based upon the interpretation of Article 3 ECHR by domestic courts.⁶⁰ In reality, of course, even where the predominant motive of a perpetrator is sadistic it will typically be accompanied by an element of punishment, discrimination or intimidation which would bring the act within the scope of the definition.

58 See *Concluding observations of the Committee against Torture: United Kingdom of Great Britain and Northern Ireland*, 17/11/98, at paras 4(e) and 5(c)

59 As a consequence, there is still no criminal offence of torture under UK law in respect of purely private actors. Although beyond the scope of this chapter, it is debatable whether the UK has met its obligations under either Article 1 ECHR, to “secure to everyone within their jurisdiction” the right not to be tortured, or whether the UK has taken “effective legislative...measures to prevent acts of torture” within the UK for the purposes of the Article 2(1)UN Convention, particularly in light of the drafters’ clear indication that acts of private torture existed and were expected to be dealt with by a State’s domestic criminal judicial mechanisms.

60 This is discussed in more detail below, in relation to the treatment of rape within the domestic system.

It can be assumed that where a public official has committed such an act there will be, to some extent, a recognisable State or public policy of impunity, toleration or acquiescence, and the ECtHR has indicated that a State will remain liable for the *ultra vires* actions of its representatives committed in breach of express instructions.⁶¹ As already noted,⁶² the ECtHR has exhibited a willingness to assume or identify the existence of a State-related, official purpose without hearing argument on the point where severe pain and suffering has been established.

In addition, where severe pain and suffering was inflicted by a State official on an individual in the custody of the State the ECtHR has established a rebuttable presumption in favour of State responsibility for the act,⁶³ which will negate the need to identify the motive of the perpetrator.

As a result, and depending upon the standard of proof to be applied in a given instance, State responsibility for allegedly “private” acts may still arise. When inflicted in State custody, the presumptions and principles identified above militate strongly in favour of a finding of State torture within the meanings of Article 1 UN Convention/section 134 CJA or Article 3 ECHR

Treatment of rape as torture – the domestic system

As noted above, State liability for torture may arise in respect of the allegedly “private” acts of State officials, and depending upon the forum and the corresponding standard of proof required, it should be the exception rather than the rule for acts of torture committed by public officials against individuals in detention to be regarded as private, criminal offences rather than as acts giving rise to State accountability. Despite this, however, the UK’s domestic courts continue to conclude that acts which might constitute torture are instead purely personal, and the treatment and categorisation of rape at the hands of public officials is a particularly striking example of this practice.

Whilst there is substantial domestic jurisprudence on the crime of rape within UK law, courts have seldom been required to consider the correlation between rape and torture. The question

⁶¹ This is discussed at section 11.2.

⁶² See the section on specific purpose in relation to the interpretation of Article 3 ECHR, above at section 11.3.2 (iv).

⁶³ This is discussed above. See section 11.3.2 (iv)

has arisen, however, in the field of asylum law, and particularly where claims had been “certified” as manifestly unfounded, providing the applicant with limited avenues of appeal. Significantly, a claim for asylum could not be certified where the applicant had previously been subjected to torture.⁶⁴

It is appropriate to consider the issues of rape in detention (which will include *de facto* custody) and rape in other circumstances separately, since their classification or otherwise as acts of torture will hinge upon the application and interpretation of different human rights principles:

Rape in detention

The classification of rape in detention was considered by Collins J. in the case of *Okonkwo*.⁶⁵ The case concerned the asylum claim of a Christian woman from Nigeria, living in the predominantly Muslim north of the country, who alleged that she had been assaulted by security personnel on two separate occasions because of her religion and on one of those occasions had been raped and badly beaten by a group of men, including an army official. She later learned that the attack had been orchestrated by the official concerned.⁶⁶ The Secretary of State refused her claim for asylum, and, concluding that there was “no reasonable likelihood that the applicant had been tortured in the past”, certified her claim. The certificate was upheld by the Special Adjudicator, and the Applicant sought judicial review of the Adjudicator’s decision and the

⁶⁴ The procedure was originally introduced in the Asylum and Immigration Act 1993 (as amended by section 1 of the Asylum and Immigration Act 1996), and was maintained by Schedule IV, para 9 of the Immigration and Asylum Act 1999, which provides that a claim could be certified in a number of circumstances, including where there was no general perceived risk of persecution in the claimant’s country of origin, fear was not based on a Convention reason or where the claimant’s fear was deemed to be “manifestly unfounded”. In addition, claims could be certified where fraudulent entry was suspected, and in this case, where the applicant produced an invalid passport and failed to alert the immigration officer of that fact when seeking entry into the UK (para 9(3)). According to para 9(7) of the schedule, however, a certificate should not be issued, or should not be upheld on appeal, if the evidence adduced in support of the applicant’s claim for asylum established “a reasonable likelihood that the appellant has been tortured in the country or territory to which he is to be sent”. As noted in the introduction to Chapters 10 and 11, this practice is not continued in the new Nationality, Immigration and Asylum Act 2002, and at the time of writing Home Office Presenting Officers had been instructed to withdraw certificates in existing cases.

⁶⁵ *R v. Special Adjudicator ex parte Ogochukwu Chigioke Okonkwo*, [1998] Imm AR 502.

⁶⁶ *Ibid.*, see pages 503-504

discharge of the certificate, arguing that the rape to which she had been subjected amounted to torture.

In summarising the issue for determination in this case, Collins J. questioned whether the rape should, “*in the circumstances in which the rape was perpetrated*,” have been regarded by the Adjudicator as torture” [emphasis added],⁶⁷ and in particular, whether the Special Adjudicator had been correct *in law* in concluding that the Applicant’s rape did not constitute torture. The scope of the application was therefore limited to a consideration of the appropriateness and correctness of the legal principles applied, and did not involve a re-examination of the facts of the case.

In concluding that the Special Adjudicator had been correct in law, Collins J. distilled the essence of the rationale applied:

“The point that the adjudicator is making is that if rape is committed without any motives other than merely to seek sexual gratification by an offender, then normally it will be difficult to regard that in the ordinary use of language as torture...It seems to me that when one is considering torture one inevitably must have regard to the motive....the motive of the person who carries out the violence must be material in deciding whether the rape can properly be said to constitute torture within the context of the schedule.”⁶⁸

In other words, if a public official committed rape *solely* for his own sexual gratification then the act could not amount to torture.

However, while the human rights principle identified in *Okonkwo*, when considered in isolation, is open to the interpretation Collins J gives it, its application to this case is arguably inappropriate. As already noted,⁶⁹ the ECtHR has clearly established that a rebuttable presumption of State liability arises in respect of harm occasioned to an individual whilst in State custody. The standard of proof in an asylum claim is low, requiring claimants to establish facts only to a reasonable degree of

⁶⁷ *Ibid*, at page 503

⁶⁸ At page 506

⁶⁹ At section 11.3.2 (iv)

likelihood, significantly below the balance of probabilities test in civil matters. A rebuttable presumption of State responsibility would more than satisfy this standard, particularly when one bears in mind that the official purpose underlying the act need not be the perpetrator's predominant purpose or motive, and that in any event, and in the absence of a perpetrator or State representative from the Claimant's country of origin, there will be no evidence available to the adjudicator or tribunal which might rebut the presumption. Furthermore, where doubts arise, an applicant has the benefit of those doubts.⁷⁰ In any event, where an individual has been detained because, for example, of political opinions, religious practices or ethnicity⁷¹, then it is highly likely (and the standard of proof for the applicant is only one of reasonable likelihood) that any harm occasioned to them during their detention was inflicted, at least in part, for the same reason, and this was the conclusion reached by the ECtHR in the case of *Aydin*.⁷²

As a result, a domestic asylum tribunal should usually conclude that any act of rape committed by a State official against an individual in State custody constituted torture.

Non-detention rape

Although the principle identified by Collins J. in *Okonkwo* is inappropriate to the consideration of a case of rape in detention, it may be appropriate to the categorisation of non-detention rape.

As observed, State torture is defined in international and regional treaties and Conventions as an act *committed by someone acting in an official capacity*, so that a distinction needs to be drawn between acts committed on behalf of the State, and those

70 *Handbook on Procedures and Criteria for Determining Refugee Status*, UNHCR, Geneva 1979. Paragraph 204 "The benefit of the doubt should ... (only) be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts."

71 Article 1A(2) of the UN Refugee Convention refers to "... persecution for reason of race, religion, nationality and membership of a particular social group or political opinion ...".

72 *op cit*; at paragraph 85 of its judgment the ECtHR concludes that the applicant and her family had been taken from their village and detained in order to extract information from them about the security situation in the region and the activities of the PKK. It went on to note that "The suffering inflicted on the applicant during the period of her detention must also be seen as calculated to serve the same or related purposes".

which are purely personal to the perpetrator.⁷³ To do this, courts are required to consider the *purpose* of the act, and where there is some “official” purpose or motivation (i.e. a motive which seeks to further the interests of the State, irrespective of whether those interests are legitimate) – such as obtaining information or a confession, humiliation or intimidation of the victim or a third person – the act can be ascribed to the State and can be called torture within the terms of the relevant Convention.

For a tribunal to conclude that an act of rape was a “personal” or “private” act which did not engage State responsibility, it would have to satisfy itself that sexual gratification was the perpetrator’s *sole* motive. This is the only way the act could be perceived as *entirely* personal to the perpetrator, since, as noted previously, it has been acknowledged at an international level that where sexual gratification accounted for only *part* of the perpetrator’s motive, even where it was not the dominant motive, then the additional presence of a State-type purpose will still allow the courts to attribute the act to the State and therefore to describe it as torture.⁷⁴

Problems arise, however, in the practical application of this principle to a domestic asylum case. In order properly to apply international human rights standards to other areas, care must be taken to ensure that the manner of incorporation respects the specificities of each area. The principle, as expressed and worded by Collins J. in *Okonkwo*, provides a clear example of how a failure to do this renders the principle ineffective and its application impractical.

In order to consider whether an act of rape could be described as purely personal to the perpetrator a tribunal would have to conduct an examination and assessment of the perpetrator’s thought processes and state of mind at the time the act was committed. However, unlike a criminal case, such as *Kunarac*,

73 As indicated earlier, this is because human rights treaties are concluded between States and are designed to regulate how a State treats individuals within its territory (at the time that these treaties were concluded it was assumed that individuals committing abuses *in their personal capacity* would be dealt with by the State’s domestic criminal law machinery). As a result, only States can be liable for the breach of these Conventions and treaties at an international level.

74 See for example para 141 of the ICTY Appeal Chamber’s judgment in *Kunarac*, discussed in chapter 10 at section 10.5, and in respect of torture in general, see the earlier section on torture within the UK legislative system.

where evidence is directly available through the examination and cross-examination of the accused, or a human rights case such as *Aydin*, where argument on State responsibility is available by virtue of the presence of the Respondent State itself, the perpetrator of a rape in an asylum application will not be present. As a result, any attempt to determine the underlying motive or purpose is illusory at a practical level.

In the absence of the perpetrator, seeking to establish evidence of personal motive or purpose risks inviting the distasteful practice whereby a judicial body enters into an assessment of the age and appearance of the victim in order to determine whether it was conceivable that the perpetrator could have been motivated purely by his own sexual gratification. Such assessments have already been made in the context of the 1951 Refugee Convention, where the assessment of the presence or otherwise of a purely personal motive of an act of rape has been used in order to determine State responsibility. One such example of this practice is the case of *Nyabako*,⁷⁵ which concerned the asylum and human rights claim of a 54-year-old Zimbabwean MDC supporter, who had been threatened and raped by government supporters. In that case, despite already finding that the Applicant was raped because of her political opinions (actual or imputed), and so rendering further consideration of the point superfluous, the Tribunal went on to consider the age and appearance of the Applicant, noting that “we hope the appellant will forgive us, *at her time of life*, for saying that *the motive is unlikely to have been ordinary lust*” [emphasis added]. A similar assessment was made in the case of *Thevashayam*,⁷⁶ which concerned the rape of a 52-year-old Sri Lankan woman. In concluding that there was no future risk of harm upon return, the Tribunal indicated that “Without wishing to appear unchivalrous, we have to say that there can be no significant risk of rape *at her age*” [emphasis added].

These absurd and illogical attempts to deduce motive and/or purpose from the age or perhaps appearance or demeanour of the applicant could be avoided if the principle was instead translated into the domestic asylum system in a manner which recognised the

75 *Josephine Nyabako v. The Secretary of State for the Home Department*, Immigration Appeal Tribunal, 12th September 2001

76 *Mariamamma d/o Thevashayam v. The Secretary of State for the Home Department*, Immigration Appeal Tribunal, 31st January 2002

features and limits specific to that system. If Collins J. had sought to identify the presence of *any State-type purpose* (and has been seen, this need not be the predominant purpose), rather than the existence of a purely personal motive, then the problem of a lack of evidence due to an absent perpetrator could be circumvented, and the distasteful and degrading practice of an adjudicator assessing the attractiveness of a rape victim need not occur.

In order to assess the presence of a State-type purpose, an adjudicator or tribunal can draw upon a number of other human rights principles and presumptions, many of which are still to be taken on board by the UK's judicial bodies, which may lead them to conclude, to a reasonable degree of likelihood, that the rape to which the claimant had been subjected amounted to torture. Those principles, together with an analysis of the consistency of current domestic practice with European and international standards, are examined in more detail below. It is also worth noting here that the UK's Immigration Appellate Authority Gender Guidelines, produced to help adjudicators and tribunals when confronted with issues relating to gender or sexual violence, suggest that rape is typically intended to inflict "violence and humiliation", and is generally not sexually motivated.⁷⁷

Consistency of the UK position with European and international approaches

The treatment and analysis of rape as torture within the UK's asylum system has failed to keep pace with, and to reflect, the jurisprudence and practice of the ECtHR and Commission, despite the requirement contained in section 2 HRA to do so.⁷⁸ In addition, domestic fora have, to a large extent, ignored the persuasive precedent from other (non-European) international treaty bodies.

One disturbing example of this is the conclusion that the act of rape by a public official or other person acting in an official capacity does not attain the minimum threshold of pain and suffering required for the purpose of defining the act as torture. In the *Okonkwo* case, for example, Collins J. suggested that rape was no more than on a par with a serious assault, and that "it is not a normal use of language to regard a serious assault without more as

⁷⁷ Immigration Appellate Authority, *Gender Guidelines*, 2A.18

⁷⁸ The nature of this "requirement" is discussed above, at section 11.6.

torture”, finding the act lacking the requisite degree of severity to merit its classification as torture.⁷⁹

This approach runs counter to international jurisprudence, where it is established that the act of rape necessarily entails the infliction of severe pain and suffering both at a physical and psychological level, and that as a result, once the fact of rape has been proven, severe pain and suffering for the purpose of defining torture will also be deemed proven.⁸⁰ Whilst the ECtHR has not *explicitly* indicated that it regards an act of rape *per se* as automatically engendering severe pain and suffering within the meaning of the definition of torture, its willingness to assume and ascribe the occasioning of such harm in the case of *Aydin v. Turkey*⁸¹ suggests that its views are close to those of its other regional and international counterparts.

The ECtHR observed in *Aydin* that the exploitation of a victim’s vulnerability and weakened position vis-à-vis the State whilst in the custody of the State rendered an act of rape “especially grave and abhorrent”.⁸² In addition, the ECtHR, since *Aydin*, have expressed a willingness to raise protection standards, and by doing so have effectively lowered the threshold of pain and suffering required before an act might be classified as torture. As a result, it is highly likely that any act of rape would be deemed to attain the requisite thresholds for the purpose of the legal definition of that term.⁸³ With this in mind, it should also be recalled that where severe pain and suffering have been established, the ECtHR has shown a willingness to assume the presence of a State-like purpose, without first hearing evidence on the point. This approach, if replicated in the domestic tribunal system, would negate the need to investigate the personal and sexual motives of the perpetrator, particularly when one bears in mind that in order to establish torture before the

79 Referred to above, page 506.

80 See the case of *Kumarac*, discussed in Chapter 10 at section 10.5, for an example of this principle within the humanitarian law field. For an example from the human rights arena, see the Inter-American case of *Raquel Martin de Mejia v. Peru*, discussed in Chapter 10 at section 10.5, where the American Commission concluded that rape by its nature entailed pain and suffering of the degree anticipated by the definition of torture contained in the Inter-American Torture Convention.

81 At para 83. The case is referred to in more detail above, in section 11.4.

82 *Ibid*

83 This is discussed in more detail at point 11.3.2 (ii)

ECtHR, a claimant must do so beyond reasonable doubt, whereas in domestic asylum claims, torture need be established only to a reasonable degree of likelihood.

As already observed in the context of rape in detention, domestic courts and tribunals must recognise the principle, clearly enunciated by the ECtHR on many occasions, that a State will be prima facie liable in respect of harm occasioned to an individual in State detention. In addition the UK's courts and tribunals are yet to acknowledge that a State will remain liable for the *ultra vires* acts of its officials, or even for acts committed in breach of express instructions. Recognition of this principle within the domestic asylum system would militate in favour of a finding, to a reasonable degree of likelihood, that a State retained responsibility for an act, and so that act could not be described as purely personal to the perpetrator, particularly when one bears in mind that where an official has committed an act there will be, to some degree, State acquiescence or a policy of toleration or impunity.

Finally, UK domestic practice is inconsistent with European jurisprudence in its assumption that a finding of torture invariably requires the identification of some persistent or ongoing course of violence.⁸⁴ In *Okonkwo*, for example, Collins J., agreeing with the Adjudicator's suggestion that rape, "*as part of a general course of ill-treatment....might be described sensibly and within the normal meaning of the language as torture*" [emphasis added], indicated that "*a persistent course of violence over a period of time, involving unpleasant things such as pulling of toe nails or other such persistent violence could perfectly properly be regarded as torture*" [emphasis added]. In the case of *K*⁸⁵ the Special Adjudicator held that "I am satisfied that the rape in this case did not amount to torture within the accepted definitions...[it] was not part of a persistent course of violence over a period of time",⁸⁶ and in the

84 This may be necessary in order to establish persecution for the purposes of the Refugee Convention, but is not relevant in the case of torture for the purpose of Article 3 ECHR/Section 134 CJA, and the position most likely stems from a current propensity for the tribunal to blur or confuse the distinction between the two different concepts.

85 Decision of the Special Adjudicator is referred to in the appeal, *K v. The Secretary of State for the Home Department*, Immigration Appeal Tribunal, Appeal No.[2002]UKIAT03172, 26th July 2002

86 Although the decision was appealed, the Tribunal held that the Special Adjudicator had misdirected herself as to the question, and so the analysis was not corrected.

case of *Mariama Kaba*⁸⁷ the Adjudicator, in considering whether an act of rape amounted to torture, found that “Violence alone, unless there has been a consistent course of violence over a period of time would not in the circumstances constitute torture”. This position is plainly wrong when judged against that of the ECtHR, which held in *Aydin* that a single act of rape constituted torture.⁸⁸

Conclusion of Part II

There is a worrying lack of inclination or ability on the part of domestic adjudicators and tribunals to differentiate between purely personal acts of State officials and those which, whilst unauthorised by the State or beyond the scope of an individual’s position, were committed by the perpetrator whilst acting in their “official” capacity and with a view to the furtherance or pursuance of some State interest.⁸⁹ It is clearly the effect of the European Convention that while the former cannot be directly attributed to the State, the latter *will* incur State responsibility.⁹⁰ In most such instances, of course, a State will deal with a perpetrator according to its own internal judicial mechanisms and so, by providing a domestic remedy for breach (in accordance with Article 13 ECHR), will not

87 *Mariama Kaba v. The Secretary of State for the Home Department*, Appeal No. [2002] UKIAT02289, 2nd July 2002

88 This is also entirely consistent with the drafting history of the UN Convention, during which a British proposal to insert the word “systematic” into the definition was defeated.

89 There are numerous examples: in the case of rape specifically see *Faridah Nalukenge v. The Secretary of State for the Home Department*, Appeal No. [2002]UKIAT02044, 19th June 2002, where Trigger J. held that the Applicant’s rape was “the action of rogue soldiers *taking advantage of their position* to commit these crimes upon her”[emphasis added]; see also the case of *Secretary of State for the Home Department v. Dhaya d/o Velayutham*, where the Tribunal suggested that a certificate should be upheld, despite finding that the individual concerned had been raped by a number of soldiers. The tribunal indicated that the incidents were no more than “escapades by lecherous soldiers on frolics”, despite also acknowledging that “rapes by security forces do occur...it is not easy for the authorities to deter this sort of activity on the part of their more brutal and licentious soldiery”. As noted above, even where a State has tried to prevent acts of torture, this will not alter the fact of torture in the past for the purpose of certification, although the success of that State action would obviously impact upon the claimant’s risk of future harm on return.

90 See for example the views of the ECtHR in *Ireland v. UK*; they have already been quoted earlier, but merit repetition here: “It is inconceivable that the higher authorities of a state should be, or at least should be entitled to be, unaware of the existence of such a practice. Furthermore, under the Convention those authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected.”

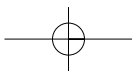
incur liability at the international level. Cases will proceed to the ECtHR only where a Signatory State has failed to investigate and address a complaint. Such a failure will, of course, be of great relevance to the issue of degree of likelihood of harm upon return in the case of an asylum seeker. Similarly, where a State has acted to prosecute a perpetrator, this will impact upon the credibility of an individual's fear of harm upon return. Action or otherwise on the part of the offending State will *not*, however, alter the fact of past torture, and this distinction must be maintained by the tribunals in the UK when assessing the existence of previous torture.

Inconsistencies between international and domestic practice in the application of human rights standards and norms operate to the detriment of the torture survivor seeking asylum in the UK, and the case of rape of an individual by an official or representative of the State is a particular example of this failure.

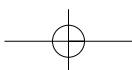
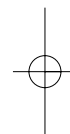
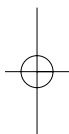
Given the presumption of State liability for harm suffered in detention, a UK tribunal should usually conclude that the rape by an official of an individual in custody was the responsibility of the State, and that consequently that act amounted to torture.

In so far as the identification of purpose is concerned, it is clear that while the perpetrator of a rape might be motivated in part by sexual gratification, this is unlikely to be the sole motivation for such an act, and the *Gender Guidelines* for the Immigration Appellate Authority in the UK themselves indicate that rape is rarely committed for sexual motives. Evidence of a perpetrator's motive is highly unlikely to be forthcoming and relies (as in the cases cited above) on the supposition and prejudices of decision makers which undermine the standard of proof in asylum cases.

In order to identify the fact or otherwise of State responsibility for such harm, judicial bodies in the UK should seek instead to identify the presence or absence of a State-like purpose, rather than the existence of a purely personal motive. Such an approach not only recognises the fact that acts such as rape by a public official or by a person acting in an official capacity are rarely motivated by a single factor, but will also help to prevent the distasteful practice of a tribunal assessing a victim's age and appearance in order to gauge the possible motivation of the perpetrator which, in common sense, as well as in asylum law, cannot be achieved. In light of the continuing State responsibility in respect of the *ultra vires* acts of public servants, and the willingness of the Courts to recognise the



severity of pain and suffering occasioned by rape and to ascribe a State-like purpose to an act occasioning such pain and suffering, UK tribunals should frequently conclude that non-detention rape by a State official or representative constituted torture.



Legal Analysis: Conclusions and closing remarks

by **Ellie Smith**

The prohibition of torture is a fundamental and inviolable norm of international law, and the practice is inexcusable and abhorrent under any circumstance. The recent dynamic development of international jurisprudence has significantly enhanced the protection of human rights in general, and the identification of rape as an act of torture provides a particularly cogent example of this advance. The recognition by the international community of rape as a war crime or act of genocide is an especially positive step, providing as it does greater protection of rights at a time when they are most susceptible to infringement.

This heightened awareness and protection is largely mirrored at a regional level, but unfortunately it has remained largely absent within the UK's domestic asylum jurisprudence. Given that the prohibition of torture within the UK stems from the direct incorporation of international standards and terms, it is vital that national courts ensure that those international terms and concepts are given their correct and rational interpretation, and to that extent a close analysis of international standards and developments by national bodies is vital if those concepts are to be correctly applied within the domestic system. Whilst some encouragement is derived from the willingness of Collins J in the case of *Okonkwo* to examine the definition of torture from the international fora as an interpretative guide to the domestic term, it is clear from the above that there is a significant and worrying lack of consistency between the interpretation of provisions at the international and domestic levels, which has operated to the detriment of the torture survivor in the UK's domestic courts. It is essential to the protection of these vulnerable individuals that such shortfalls be rectified.

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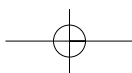
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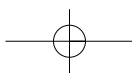
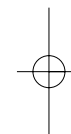
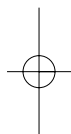
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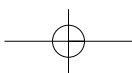
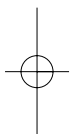
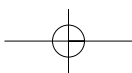
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CHAPTER 12

Conclusions

by Dr Michael Peel and Ellie Smith

Rape in any situation is traumatic and humiliating. It is, by definition, an unwanted intrusion of the most intimate nature. Both women and men who have been raped are generally very unwilling to talk about the experience. In some cultures victims of rape are considered to be responsible for what happened to them, and in many others there is social stigma and exclusion. Even in more “liberal” societies, those who have been raped are reminders of the harsher side of that society and may be shunned by their friends. It is therefore no surprise that few people are willing to talk openly about having been raped.

Torture, too, is something that survivors find it hard to talk about. They often use words like “unspeakable” to describe their experiences, and very rarely want friends or family to know what has happened to them. The humiliation, the inability to stop the torture, and the powerlessness to help others – all become part of an experience that the victim thinks is better off not thought about or discussed, even in private. Thus when rape and torture occur as a single or series of events, the physical and psychological consequences for the victim can be overwhelming. The chapters in this book are testimony to the fact that all too often victims find it very difficult to cope with the experience, and, furthermore, that the process of seeking asylum in the UK aggravates the consequence of their experience.

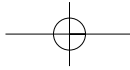
In some countries, the rape of women in detention is almost universal, and in many countries a woman who has been tortured has almost certainly been raped as part of the abuse. Soldiers have frequently committed acts of rape – it has been seen as one part of “rape, plunder and pillage” for more than a millennium. In many countries, security agents, when coming to a house to arrest a man, will rape the women (and girls and boys) while they are there, or come back to the home later knowing that the women are unprotected.

For the last few years it has come to be recognised that men are raped in detention too, not only by other prisoners as part of the development of the hierarchy but also by the guards themselves. We do not know how common male rape is because few men are willing to disclose their experience.

Professor Bernard Knight, a renowned forensic pathologist, in his introduction to the Medical Foundation's *Guidelines for the Examination of Survivors of Torture*, points at the similarity between torture and child abuse, noting that in both cases the violence was performed in secret by those who are supposed to be protecting their victims. Now we must accept that, as child abuse can include sexual abuse, torture often includes sexual assault, and that sometimes sexual assault is the only torture.

In the past, rape has frequently eluded the classification of torture because it has been deemed of insufficient severity to breach the "pain and suffering" threshold required, or in the alternative, that it was committed by a non-state agent, including a state official acting in his personal capacity and driven purely by lust, with the result that responsibility for the act could not be ascribed to the State. The various human rights and humanitarian treaty bodies, together with international and regional courts, now recognise that the act itself is sufficiently serious to reach the pain and suffering threshold required, while caselaw indicates that a State will retain responsibility for the actions of "rogue" officials. As a result, a state official who perpetrates an act of rape is far less likely to be deemed acting in a purely personal capacity.

Being raped has consequences far beyond the event itself. For women, there is the risk of pregnancy, and sometimes the physical and psychological difficulties in caring for the ensuing baby. For both sexes, there is the risk of sexually transmitted diseases, especially HIV which leads to death within a few years in most countries as a result of inadequate antiviral medication and the infrastructure required to provide it. Sometimes there can be physical damage, and the threat of such harm can be as disabling as the damage itself. Most importantly, there is psychological harm, identified and described throughout this volume. Depression, anxiety and an inability to trust are common, as are headaches, nightmares and intrusive memories. These are common symptoms in those who have experienced torture, so it is no surprise to see them in those who have experienced rape as torture.



However, this book also discusses some of the ways that victims can be helped with these problems. Psychological and psychiatric treatment, counselling and support are all beneficial, as is helping the survivor get her or his life back together, and to function socially in a new environment. An important part of this is recognition that the victim of torture is entitled to international protection. This protection provides the stability necessary to rebuild a life and indicates that somebody in authority believes their account.

