Forensic Evaluation of Refugees from Myanmar

Gangaw Zaw, PhD, Shoba Sreenivasan, PhD, and Laljit Sidhu, PsyD

Forensic evaluators may have little experience and knowledge of the political context of Myanmar, the Burmese people, and the refugee crisis. Oppression of several ethnic minority groups has marked Burmese military rule of Myanmar for several decades. Protracted trauma exposure, both pre- and post-migration, among refugee populations increases the risk for mental health disorders, particularly depression, anxiety, alcohol abuse, and posttraumatic stress disorder. These experiences may result in anger and psychiatric manifestations that bring Burmese refugees in conflict with the law in their host country. Culture influences how mental distress is experienced and reported, and it can influence a forensic evaluator’s assessment of psychological-legal matters, such as competency to stand trial and asylum evaluations. The salience of cultural competence becomes particularly pressing given the small number of those of Burmese background in the United States. Most evaluations will be performed by forensic mental health professionals who are not Burmese in ethnicity, nor familiar with Burmese culture. In this article, we provide a backdrop of the military suppression of ethnic minorities prior to discussing the integration of cultural matters in forensic assessments of competency to stand trial, competency for extradition, and asylum seekers in Burmese refugees.

Key words: Burma; Rohingya Muslims; refugee; forensic evaluation

Myanmar (formerly called Burma) is a Southeast Asian nation geographically located between India, China, Thailand, and Bangladesh. Evaluators conducting forensic evaluations may have little awareness of the country of 55 million people and its culture, and more importantly, knowledge of the political context of Myanmar, or the refugee crisis. Oppression and suppression of ethnic minority groups in their religious and cultural practices, as well as human rights violations (forced labor conscription, killings, torture, rape, abductions), have for decades marked Burmese military rule of Myanmar.¹ ² Between fiscal years 2010 and 2020, refugees from Myanmar represented 20.8 percent (or 125,137) of all refugees admitted to the United States under this status.³ In August 2017, attacks by the Myanmar military escalated, resulting in widespread violence and further displacement of Rohingya Muslims. The additional displacement of over one million Burmese individuals was caused by the Burmese military coup in February 2021.⁴ Recent Homeland Security statistics for refugees and asylum seekers identified as coming from Burma (Myanmar) noted that between 2012 to 2021 there were 92,030 individuals representing approximately 19 percent of the total refugees and asylum seekers in the United States.⁵ These statistics highlight the need for knowledge and understanding of the impact of the refugee experience precipitating posttrauma psychiatric decompensation and aggressive or other criminal behavior. Clearly, prolonged and repetitive trauma exposure among refugee populations increases the risk for mental health disorders,
particularly depression, anxiety, alcohol or drug abuse, and posttraumatic stress disorder (PTSD), or other trauma reactions.

In addition, the manner in which Burmese refugees experience and interpret mental distress bears special attention in forensic assessments. Forensic evaluations addressing psychological-legal matters that emerge commonly among refugees are asylum evaluations and mental competency for extradition. Currently, the Burmese population in the United States is approximately 233,347 of over 331 million people living in the country. Consequently, the salience of cultural competence becomes particularly pressing given the exceedingly small number of those of a Burmese background in the United States and the fact that most referrals will be performed by psychologists or psychiatrists who are not Burmese in ethnicity, nor familiar with Burmese culture, while the refugee population is rapidly expanding. Moreover, current psychological tests, actuarial methods, or structured professional judgment tools commonly used to address forensic matters, such as violence and sexual violence risk assessments and competency to stand trial, are highly unlikely to have a Burmese normative base, much less one specific to the concerns of Burmese refugees.

In this article, we provide a backdrop of the Burmese military suppression of ethnic minorities and the developmental trauma and related disorders that may be relevant to violence or other criminal offending behaviors. We also offer general guidance in the integration of cultural matters in forensic assessments of Burmese refugees to the United States.

Political and Cultural Backdrop

After Burmese independence from the British in 1948, internal wars between various political groups and ethnic minorities followed. From 1948 until 1962, Burma remained a democratic country, albeit one with several internal conflicts and rebellions. In 1962, the Burmese military took control over the country. In 1989, to create a unified national identity, the country’s name was changed to the “Republic of Myanmar.” Nationalism is driven by the dominant ethnic population from the “Bama” state. This dominant group constitutes approximately 68 percent of the population who are predominantly Theravada Buddhist (89%). Christians, Muslims, and Hindu religious groups are in the minority. The military suppression of ethnic minorities has been most egregious in their treatment of Muslim minorities.

Distrust of the Justice System

Court systems differ from country to country and the immigrants’ understanding of U.S. laws and criminal justice may be colored by their experiences in their home country. While the legal system of Myanmar follows English common law, the political and military influence over judges remains a major obstacle to fair and impartial implementation of justice. In addition to civilian courts that adjudicate civil and criminal matters and courts-martial for cases involving military personnel, village chiefs also exercise some quasi-judicial authority that includes powers of investigation, arrest, and punishment. The context of prolonged authoritarian rule, persecution, and torture as experienced by the Myanmar refugees unsurprisingly exerts a powerful distrust of the justice system. Refugees who have faced persecution are likely to hold such perceptions, which should be considered in an evaluation of adjudicative competency in criminal and immigration proceedings. Such experiences color the perception and willingness to trust legal professionals. According to the Myanmar Justice Survey, the people of Myanmar see their relationship with the state and law in terms of its authority over them, rather than protecting their rights. The survey found that a majority viewed the legal system as lacking accountability (40%), corrupt (28%), and having biased dispute resolution (18%).

Trauma and Justice Involvement

The rate of Burmese refugees’ involvement in the U.S. justice system remains difficult to discern through existing criminal justice statistical databases. Using an FBI database, the New American Economy Research Fund found that in areas where Burmese refugees resettled across the United States, there has been a decrease in detected crime. A caveat is that immigrant communities may not report crime victimization to the police. The reasons for underreporting are varied and based upon the experience of the community: fear of deportation, that the crime was not important enough to report, mistrust of the police, believing they can handle the crime on their own, retaliation, or fear of getting the offender into trouble. This response to crime may be a function of a trauma learned in their childhood and reinforced in their communities. Of note, a substantial portion
of Rohingya refugees were children at the time of their exodus. One study estimated that over 65 percent of a group of over 6,000 were under the age of 18; others have estimated 50 percent were under the age of 12 at the time of exodus from Myanmar. Exposure to early violence as victims or witnessing such acts against others has been suggested to contribute to subsequent disruptive behavior. Trauma in the refugee camps may precipitate anger and behavioral dyscontrol, leading to domestic violence, violence related to alcohol use, or child abuse. Sexual violence may also emerge defensively as a reaction to the experience of victimization; that is, the abused may become the abuser. Postmigration stressors, such as navigating U.S. cultural and language barriers, poverty, unemployment, and the living situation of cramped apartments with multiple families, further aggravate the risk for behavioral problems, some of which may lead to conflicts with the law. Forensic evaluators should consider the sources of disruptive behavior, anger dyscontrol, and interpersonal violence as potential trauma reactions rather than conduct disorder or antisocial personality disorder.

Persecution of Rohingya Muslims

The most persecuted and oppressed ethnic groups in Myanmar have been Rohingya Muslims. The Rohingya were brought by the British to Burma from India to serve as cheap labor and have resided in the upper northwestern portion of Burma in the Rakhine state. The indigenous Burmese have viewed the Rohingya Muslims as alien outsiders and therefore dangerous. The colloquial characterization by the dominant Burmese of the Muslim minorities as “kalar,” or foreign, was often applied pejoratively to dark-skinned ethnic minorities. In 2012, when rioting and violence broke out in the Rakhine state led by an Islamic extremist group, this aggravated indigenous Burmese antipathy toward the Rohingya Muslims. Such hostility has also been fostered in social media where Rohingya Muslims are characterized as illegal residents. By 2017, the Myanmar military escalated oppressive laws and perpetrated violence and genocide against the Rohingya Muslim minority. A mass exodus of the Rohingya refugees to Bangladesh ensued. Current estimates are that there are one million refugees primarily concentrated in camps in Bangladesh. On February 1, 2021, the Myanmar military takeover of the parliamentary government resulted in an increase of refugees and displacement of over 1.4 million people from all regions because of destruction of property and towns, insufficient food, persecution, torture, and violence. Such religious and ethnic discrimination experienced in Myanmar by Rohingya refugees as perpetrated by the dominant Burmese population may fuel distrust of forensic evaluators. Therefore, forensic evaluators should consider whether mistrust or evasiveness encountered in the evaluation may be attributed to an adaptive reaction to experienced oppression from those of the dominant culture.

Trauma Experienced by Refugees

When evaluating Rohingya refugees, a trauma-informed framework that integrates the experience of cumulative trauma is required. Riley et al. described the range and extent of the trauma experienced by 495 Rohingya Muslim refugees living in Bangladesh refugee camps between 2017 and 2018. The interviewees reported severe traumatic exposure, including witnessing the killing of a family member by security forces (100%); exposure to frequent gunfire (98.6%); witnessing destruction and burning of their villages (97.8%); repeated exposure to violent images against Rohingya on websites and social media (e.g., Facebook, RVision, WhatsApp) (95.3%); being forced to do things against their religion (e.g., eat pork, cut their beards, remove veils or caps) (94.9%); threats against their ethnic group (93.3%); and witnessing dead and maimed bodies (91.8%). Two-thirds (67.3%) of the interviewees reported witnessing sexual violence or humiliation and abuse of others. Approximately one-third reported being coerced into sexual activity, inappropriately fondled, or forced to remove their clothing. The intense prolonged trauma experiences of those escaping persecution may not be adequately captured by categorical systems such as the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5-TR) for PTSD. Cumulative and prolonged violence and torture along with postmigration resettlement stressors and reluctance to express emotional distress can contribute to a unique set of psychological reactions, and, though not a formal diagnosis, may also result in complex, chronic, and severe stress reactions that can overlap other conditions (panic attacks, depression, or psychosis). Consequently, the forensic evaluator should perform a comprehensive review of trauma events and reactions experienced in Myanmar and in postmigration trauma incidents.
Rohingya View of Mental Illness

Culturally driven reluctance to admit to mental distress may lead to erroneous conclusions by a forensic evaluator regarding the presence of legally relevant symptoms. In a systematic review of mental health problems in Rohingya refugees, Tay et al.² described several cultural barriers related to acknowledging mental health distress. These authors noted that the Rohingya people’s concept of self is different from the Western mind-body divide. Tay and colleagues² highlighted several idioms related to emotional pain or suffering, including being restless or having no peace of mind. A strong sense of hopelessness may precipitate suicidal ideation. As Islam condemns suicide, Rohingya may conceal suicidal ideation because of shame and fear of being judged. Terms for psychosis may be conveyed as the brain not working or as being mad or crazy. Also, in some rural areas where animism is prevalent, this belief may also influence perceptions of mental illness.²⁹,³⁰ Spirit possession may characterize the communication of psychosis, with care sought through traditional healers and religious leaders. Tay et al.² noted that Rohingya refugees tend not to seek mental health care in part because of the shame and stigma of mental illness. There may be a belief that severe mental health problems reflect a curse by Allah for their misbehavior. The absence of terms for depression, PTSD, and anxiety in the Rohingya dialect complicates assessment and treatment. Yet, Riley et al.²⁵ found that among Rohingya refugees, 61% would meet the cutoff for the DSM-5 definition for PTSD and 84% would meet criteria for depression or anxiety.

Religion as Cultural Script for Mental Illness

Religious beliefs often influence cultural life scripts, including how individuals approach various areas of their lives, which would include how to deal with mental distress.³³,³⁴ Whereas Rohingya individuals’ outlook on mental illness may be influenced by Islam, they may also be influenced by the broader cultural outlook based on the central beliefs of Theravada Buddhism, the dominant religion in Burma. These beliefs may contribute to a reluctance to disclose emotional distress.

Dukkha is the belief that in life, everyone experiences physical and mental suffering (e.g., old age, sickness, sorrow, lamentation, dejection and despair, separation from a desired object or person).⁵,³⁵ The belief in dukkha may lead to an acceptance of mental distress and suffering as part of life and something that individuals must live with rather than seek relief.³⁴,³⁶ In the context of those who have fled because of persecution by the Myanmar military, there may be a belief that the suffering was caused by their karma (including actions in a past life) and they are repaying for their sins in this lifetime.³⁰

There may be a belief that someone with a mental disorder is possessed by an evil spirit.²⁹,³⁰,³⁴ Moreover, discussing mental distress with others may be viewed as weakness, as individuals are expected to control their own minds.³⁰,³³ Consequently, acknowledging mental illness becomes taboo and those who have psychiatric disorders may be stigmatized.³⁰,³⁷ As dukkha means unquestioning acceptance of one’s suffering, the expression of mental distress may be described in cognitive terms as “thinking too much,” “feeling confused,” or “sate puu dal” (worried mind).

The Burmese view of verbalizing suffering may represent overthinking and having a “wrong focus” that leads to stigmatization of mental illness and seeing it as taboo and something to be ashamed of.³⁰,³⁷ Emotional distress may be characterized as an unclear mind² and discussing mental distress with others may appear to signify the inability to control one’s own mind.³⁰,³³ Forensic evaluators should be mindful of the cognitive descriptors used to describe emotional distress by Burmese Theravada Buddhists.

Unique Forensic Contexts

As of 2021, there were 10,325 new asylum seekers in the United States from various countries around the world.⁴ Since 2008, more than 117,000 refugees from Burma were granted entry into the United States.³⁸,³⁹

Asylum Seekers

Even though the terms are sometimes used interchangeably, asylum seekers and refugees are legally distinct under U.S. law.⁴⁰ Asylum seekers are making a claim of refugee status, but their case has not been determined and they are already in the United States or at a port of entry. In contrast, refugees are outside the United States and seek entry into the country. For the forensic mental health practitioner in the United States, an evaluatee is likely designated an asylum seeker. The effect of immigration proceedings can have serious consequences for respondents and their families. In cases
of asylum seekers, a return to their country could put their lives at risk. The individuals being evaluated are in a state of vulnerability and evaluations in this arena affect important decisions for individuals and their families. Those working in this arena must understand the immigration system and conduct evaluations with a diverse population through a cultural lens, including understanding the historical background and sociopolitical context of the individual's experience and the immigration court process.\textsuperscript{40,43} The requests for evaluations exceed the availability of mental health evaluators to conduct these evaluations, even though the evaluations often help the asylee in court.\textsuperscript{44,45} Despite forensic psychiatrists being well-poised to conduct such evaluations, few forensic evaluators perform asylum evaluations, because of a lack of tangible rewards, such as financial compensation, promotion, or other professional recognition.\textsuperscript{45}

Baranowski\textsuperscript{46} reports that 89 percent of asylum seekers who underwent a medical-legal evaluation were granted asylum, whereas only 37 percent of applicants without a medical-legal report were granted asylum. This underscores the influence of mental health evaluations in the granting of asylum.

Commonly, there is no official documentation of the specific stressor experienced. Psychological evaluations are a mechanism to document the sequelae of multiple traumatic events experienced in asylum seekers’ home countries or in refugee camps, and to connect observed mental disorders with their trauma histories. Interviews of refugees and awareness of the political situation, torture, genocide, and other atrocities can be relied upon as corroboration of the trauma. Moreover, within the published literature, Riley et al.\textsuperscript{25} found that in a sample of Rohingya refugees interviewed, 63 percent were unjustly detained and 56 percent reported being tortured or receiving deliberate systematic infliction of physical or mental suffering (55.5%).

As already noted, Rohingya refugees’ experience of extreme, prolonged, and repetitive trauma (encompassing torture, slavery, and genocide campaigns), as well as post-migration refugee camp experiences of deprivation, and domestic violence or repeated childhood sexual or physical abuse may lead to the development of complex PTSD. While complex PTSD is not an official diagnosis, it has been documented among those who have experienced terrorism or violence to promote ethnic cleansing.\textsuperscript{7} PTSD has the added elements of affective dysregulation, severe anger outbursts, self-harm, persistent somatization, or recurrent dissociation and personality changes that can color interpersonal interactions, and may lead to erroneous conclusions of a personality disorder such as antisocial or borderline personality disorder.\textsuperscript{38,47} Other problems that may arise could be lack of cooperation with the evaluation or being passive-aggressive (e.g., behaving in an obsequious manner outwardly while being unreasonably late for the interview or leaving early). Failure to understand the experiential aspects of the Rohingya refugee risks pejorative conclusions that can color forensic conclusions.

**Competency in Immigration Proceedings**

Forensic evaluations are necessary to document the physical or psychological evidence associated with the asylee’s claim.\textsuperscript{47} The forensic evaluator then provides a medical-legal affidavit that may or may not corroborate the asylum seeker’s claims of torture and persecution. As a caution, corroborating asylum seekers’ reported incidents is often not realistically possible, as there may not be any documentation, few or no witnesses, and family reports may not be reliable. Consequently, emphasizing how behaviors and symptoms are consistent with what is observed among particular groups and cultures is the best practice. Foreign nationals are eligible to apply for asylum in the United States when individuals are unable or unwilling to return to their country of origin because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Forensic mental health evaluations of asylum seekers focus on the sequelae of persecution and trauma witnessed or experienced and its effects on the applicant’s mental health.\textsuperscript{42,46} While a detailed discussion of the complex immigration court process is beyond the scope of this article, there are three basic aspects to such proceedings: most immigration proceedings have the potential for removal (i.e., deportation) from the United States; removal proceedings are considered civil and nonpunitive; and immigration respondents are not guaranteed the same constitutional rights as criminal defendants.\textsuperscript{27} As U.S. immigration policies are not based on law and are influenced by political and public sentiment, individuals face the stress of uncertainty.\textsuperscript{40} As political administrations change, so do the policies that affect immigration. Finally, individuals may have
Forensic Evaluation of Myanmar Refugees

been detained and separated from their families for extended periods of time.\textsuperscript{42,46–48}

Established in \textit{Matter of M-A-M},\textsuperscript{49} the standard for competency in immigration proceedings consists of three prongs: “whether he or she has a rational and factual understanding of the nature and object of the proceedings, can consult with the attorney or representative if there is one, and has a reasonable opportunity to examine and present evidence and cross-examine witnesses” (Ref. 49, p 484). As in criminal proceedings, respondents are presumed competent. As respondents are not afforded a right to counsel, they often proceed \textit{pro se}; the burden of determining whether a competency assessment is appropriate falls on the immigration judge.\textsuperscript{36,50} As increased responsibility is placed on the respondent, a higher level of competency is required than in criminal proceedings.\textsuperscript{6,19} In the context of an immigration evaluation, respondents may fear deportation if they acknowledge or report anxiety, depression, or other symptoms of mental illness. Respondents may want to appear resilient and minimize impairment, so they are seen as a desirable contributor to the United States rather than a burden.\textsuperscript{27}

While there are legal services that offer free assistance, there are not enough legal representatives to meet demand. This is confounded by language and cultural barriers that limit the respondent’s ability to access such services.\textsuperscript{39} For Burmese immigrants facing these hearings, the exceedingly small number of those in the United States of Burmese descent, and the complexity of dialects and idioms, may limit access to skilled interpreters. Respondents’ competency-related abilities can be affected by the trauma in their home countries and refugee camps, as well as the stress of migration and acculturation processes, stigma and marginalization, discrimination, and the threat of removal, all of which destabilize an individual’s mental health.\textsuperscript{50}

\textbf{Fictitious Case Example}

This case is fictionalized; the case facts do not represent any specific individual. Rather, the case was constructed to highlight the trauma and other diagnostic questions we have discussed and to present the types of case that a forensic evaluator may encounter. We describe the challenges that can arise in assessing competency to stand trial in a Rohingya refugee.

A Rohingya Muslim man in his mid-20s with no prior criminal or psychiatric history is referred for a competency to stand trial evaluation. He and his family had recently been granted U.S. asylum status and were residing in a small refugee community in the Pacific Northwest. He was charged with attempted sexual assault. After the girl reported the incidents to her schoolteacher, Child Protective Services were notified and the police were called. The elements below illustrate how the impact of the refugee experience could potentially influence trial competency.

\textbf{Jail Context as Trigger for Paranoia}

While awaiting trial, the context of incarceration caused the young man to become noncommunicative and withdrawn when approached by his attorney, thus precipitating the competency evaluation. The initial competency evaluation was conducted by an individual of non-Burmese background. During that evaluation the young man spoke of possession by spirits and endorsed fears that he would be killed by the jail authorities. He claimed that it was the spirits that were punishing him and not to know where he was or acknowledge that he was facing criminal charges. When asked basic questions about his age, his parents, and his siblings, however, he answered these in a coherent manner. Coupled with no prior history of psychosis, the inconsistent presentation of the young man (e.g., he was not suspicious of the evaluator) and description of atypical visual hallucinations of seeing spirits in his cell, the first evaluator concluded he was either amplifying symptoms or malingering. This illustrates the risk posed for misinterpretation when the evaluator has not considered the ethnocultural matters.

During the second forensic evaluation by a psychologist of Burmese extraction, the young man became extremely deferential toward the evaluator. Questioning revealed that he was now fearful that he would be in more trouble if he was not respectful of the evaluator. He demonstrated difficulty understanding the gravity of his legal situation and presented in a childlike manner. Rapport was established by discussion of shared ethnic experiences, such as favorite Burmese food. The evaluation slowly proceeded toward his experiences in Myanmar and the refugee camp. Questioning revealed that his early childhood and adolescence were spent in refugee camps, though he seemed to recall little about the experience. Through collateral information obtained from his family, it was clear that this young man’s psychosocial development was stunted by exposure to multiple
The family members described the young man’s significant short-term and long-term memory loss while in the refugee camp. That trauma resulted in early adolescence when beaten about the head he had suffered a head injury with loss of consciousness interviews with family members indicated that he and compounded by his childlike manner. Collateral inability to respond to even the simplest of questions could have been interpreted as malingering given his difficulty in providing a coherent history, punctuated by frequent lapses in memory. At face value, this evaluator, the young man exhibited a great deal of trauma, and PTSD symptoms, both observed and noted by his family, was consistent with both PTSD and traumatic brain injury (TBI). Together these conditions affected his understanding or accepting that they have caused harm by criminal actions. TBI may be overlooked without careful history taking and collateral information and may lead to erroneous conclusions about amplification or malingering when there is inconsistency or lack of coherence in the report of history and symptoms.

Burmese refugees may be wary of all authority figures, including forensic professionals, given their trauma exposure or even the experiences of residing under military rule. Disclosure and transparency are unlikely to occur, particularly in those who are facing criminal sanction. They may fear that there is subterfuge on part of the evaluator, or even that they are working for the Burmese military, which may reflect real experiences in country and in camps. When an interpreter is used, consideration must be given to the possibility the Burmese interpreter may speak a different dialect than the client, which may create communication and language errors.

Determining whether a noncommunicative presentation represents paranoia or other clinical syndromes or simply evokes caution is a difficult task; therefore, as much as possible, securing the trust of evalees and recognizing the context of their responses is important before pathologizing the presentation.

**Conclusion**

Culture influences how mental distress is experienced and reported, and it can influence a forensic evaluator’s assessment of psychological-legal matters, such as competency to stand trial and asylum evaluations. The salience of cultural competence becomes particularly pressing given the exceedingly small number of those of a Burmese background in the United States. The cultural knowledge of an individual of Burmese descent would be invaluable in such assessments but the numbers of forensic psychiatrists or forensic evaluators of such a background is quite limited. Moreover, even if the forensic evaluator is of Burmese origin, the evaluator’s lived experiences are not necessarily the same as those of the individual being assessed. For example, the evaluator may be of the Bama majority, with important differences in culture, socioeconomic status, and religion. It is important to the assessment that the forensic evaluator develops a good grasp of the Myanmar political crisis and the violence inflicted upon the civilians, particularly the Rohingya ethnic minority. A starting point, and one that can facilitate the development of rapport, is asking about individuals’ trauma experiences in refugee camps or the military violence.
Most are eager to discuss the trauma experience, as it relates to politics and camp life, more readily than any matters regarding their families or specific personal emotional struggles. Such knowledge gives the evaluator the context in which to place the evaluatee’s history and be able to explore the person’s individual experience and exposure to the military violence.

References

37. Swe KM. Buddha the compassionate teacher. Washington: May-Su-Thin-Nu & Brothers Maw; 2002

Volume 52, Number 1, 2024