



The Mechanisms for Trauma in LGBT Asylum-Seekers coming to North America

Special Topics in Global Health Final Paper

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Executive Summary

The unique dual minority status of LGBT Refugees makes them especially susceptible to the mental health disorders of PTSD and Depression. Following a primary-source literature review, NGO landscape analysis, and asylum policy analysis, a mechanism came forward beyond the synergistic pre-flight, flight, post-flight mechanism of social isolation, abuse, and violence. The process of applying for asylum itself can create new trauma through the untrained exploration of asylum adjudicators in both Canada and America. We recommend changes to the policy and process to be more inclusive of LGBTQ identities, implement positive community building programs like social support groups, and strengthening the overall network between refugee services and mental health services through training and cultural competency.

Introduction

In comparison to HIV/AIDS in the Men who have sex with Men (MSM) population, Leishmaniosis in the migrant populations of the Middle East, and depression in the developed populations of the West, we do not know anything about health outcomes, especially mental health, of Lesbian, Gay, Bisexual, and Transgendered (LGBT) refugees coming to our shores. As the “refugee crisis” rises to new heights as the civil war in Syria continues on, along with the cooling of political and economic strife in Central America and the Caribbean, and general age-old conflicts in the Middle East and Central Africa fades into the background, new racialized, gendered, and heteronormative perceptions of asylum are being created and new questions must be addressed: How can we as host countries best facilitate the assimilation of all incoming refugees? How can the process of asylum and the conditions of one’s home country affect the productivity of refugees here? Following the nature of health outcomes within doubly vulnerable populations in the past, there is an argument to be made that there may be a possible, if not

burgeoning, epidemic of PTSD and Depression in the incoming populations of LGBT Refugees caused not only by the circumstances of their intersectional identity but the nature of asylum itself. And while mental health in LGBT-related asylum is not the most prevalent disease pathway, it is one the most sensitive indicators of our own immigration policy. We as a country must be equipped to handle the health burdens and mental health concerns of these incoming populations to ensure a speedy assimilation before damaging perceptions and stereotypes set in and treatment and assimilation become all but possible.

The Problem

Many population-based studies state that lesbian and gay individuals have higher rates of depression and PTSD, however, the actual rates are widely debated. PTSD or Post-Traumatic Stress Disorder is a psychiatric disorder that occurs after experiencing a severely traumatic event, such as violence or abuse, causing them to relive the trauma inducing event over and over again through thoughts and memories. And, depression or Major Depressive Disorder is the presence of one of the many depressive disorders, or low mood and suicidal emotions, one the largest risk factors for this disease is major life changes such as loss, trauma, or migration. While the rates of PTSD and Depression in refugees are not estimated, the number of traumatic life events for refugees are substantially higher than the general American population with around 30% of these populations experiencing some form of abuse or torture. ¹

It is a given with this information, that LGBT Refugees have a higher prevalence of PTSD and Depression than the general population or their derivative identities. It is estimated that less than 5% of incoming refugees or 4,000 of America's 80,000 applying refugees are LGBT identifying, however, only 500 disclose their sexuality. ²Which can be deleterious for assimilation because depression and PTSD are estimated to cost about 3.2 billion of the United

States' GDP annually for the larger population, and we assume the possible loss of productivity among incoming LGBT refugees and refugees at-large will be enormous as well³⁴.

This problem is especially salient to Canada and the U.S. because of their status and geopolitical location in comparison to Europe and other western developed countries. Immigration policy within North America is almost entirely reflective of people's will, with the luxury of sharing only a single border with a developing nation, it is not held victim to the constant flux of people like Europe is after any economic or political downturn. Both of these nations are known for their lax attitudes towards mental health care, mixed opinions on homosexuality, and complex healthcare systems. ⁵⁶⁷Within these contexts, especially vulnerable populations such as LGBT refugees can become indicators for the oppressive force of the law and be buried by it. That is why for this analysis a uniquely health policy approach is necessary, to resolve the high mental health burden on LGBT asylum-seekers in North America the relevant laws and policies must be known, analyzed, and amended. To achieve this we will discuss the current legal framework around asylum and specifically LGBT asylum; the issues that stem from the current asylum process; interventions and actors within this subfield; and policy and research recommendations for the future.

The Legal Framework of LGBT-related Asylum

LGBT-related asylum is ensured by three laws and precedent setting cases in particular in North America The UN Refugee Convention of 1951, The US' Toboso-Alfonso case of 1994, and Sadeghi-Pari v. Canada. The UN Refugee Convention of 1951 defines what Refugees are and places legal obligations on the ratifying states including the U.S. and Canada to protect them. The US' Toboso-Alfonso case of 1994 allowed for Refugees to be accepted on the basis of their social status as a Homosexual and the persecution of said status. The Sadeghi-Pari v Canada

court case established that LGBT-related persecution is grounds for filing for asylum, and even the need to be discreet about one's own sexuality can count as a form of persecution. Despite the modern legal platform the reality of LGBT asylum continues to be a harrowing process.

For many the process begins at the border, but depending on which country you arrive at the process will differ. In America 1) you can file a **I-589 form**, after, if the application is accepted, 2) you must head to a USCIS field office for fingerprinting, background checks, and interview, you can choose to have an attorney during this process or not. After which 3) the Asylum officer will then declare if you do or do not fit the definition of a refugee. However, 4) if your application is refused then an **I-862 form** or a notice to appear before a judge is filed and the deportation process may start. 5) This is when you can start the Defensive Asylum Process to prevent deportation, this also occurs if you are apprehended without legal documents at any time, you will be given a legal representative and trialed by an Immigration judge in an adversarial like fashion.⁸⁹

In Canada, however, the process begins with 1) acquiring a lawyer, 2) filing a refugee Basis-of-Claim form and preliminary interview with the Canadian Border Services Agency or with the Citizenship and Immigration Canada Office, 3) an Immigration Officer will declare you eligible for a hearing or not and, finally, 4) 30 to 60 days later you are given a hearing where you must provide sufficient evidence that either a target of your country's government or that you will face persecution from your host country. If you disagree with the ruling you can make appeal in certain instances, requiring protection and escaping persecution is called "Person-in-Need-of-Protection" and "Convention Refugee" respectively^{10,11}

Critical Primary-Source Literature Review

The reality for LGBT-Asylum seekers differs from this legal framework, largely this is because LGBT related asylum revolves around the Particular Social Group clause. Thanks to the laws mentioned above in both America and Canada LGBT identities count as a particular social group, meaning that the identity of being LGBT alone is warrant enough to apply for asylum. However, particular social groups must pass the three tests of immutability, recognizability, and association¹². Immutability, that is, all members of the groups having and being defined by an innate immutable characteristic; recognizability, that is, all members of the group being recognizable by a single characteristic to the larger society; association, can the individual member in question being easily associated with that group. Thanks to the primary-source work of the five organizations, Rainbow Health Ontario, Forced Migration Review, Immigration Equality, the Migration Policy Institute, and EGale, we've learned that the LGBT identities do not cleanly map on to these three requirements. To stay within the acceptable bounds of these test LGBQ asylum seekers must create an acceptable western-centric gay identity narrative, a sense of group membership in places where LGBTQ networks may be besieged or nonexistent, an immutable same-sex sexual life, and a narrative of the development of a gay or lesbian identity completed the day you enter the courtroom. Not only are these assumptions invalid, she asserts, but they are unfair, they do not prove a homosexual identity and places unnecessary burdens on people who due to persecution cannot live their true identity.

The three tests of asylum ignore the fluidity of sexuality, the continuity of "coming-out," and the variety of sexual expression. Beyond that, these tests downright erase the possibility of a bisexual application due to questions of the immutability of their sexual identity, their recognizability as a social group, and a lack of a legal interpretation and definition under American law. ¹³For other sexually dissident identities, there's no representation for these groups

beyond the precedent set by the supreme court, however, Canadian law explicitly mention LGBT identities as a particular social group within the text of the law. In addition, there are legal precedents in Canada that honor the fluidity of sexuality, bisexuality, and the process of coming out, however, this doesn't change the reality that many cases do not apply these precedents.¹⁴

The Epidemic of Mental Health Disorder in LGBT Asylum-Seekers

Refugees and LGBT individuals are vulnerable to PTSD and Depression because of the negative life experiences characteristic to their respective identities. For refugees, the traumatic pathways can be divided into pre-flight, flight, and post-flight. The pre-flight phase usually includes bearing witness to great political or natural upheaval, the loss of one's home, belongings, or loved ones, and deep emotional trauma. During the flight phase, the individual may be forced to make the arduous journey from their ruined homes to their possible vestige, during which they can fall victim to sexual violence, physical violence, or emotional violence, or even be forced perpetrate violence. Once resettled in the post-flight phase refugees can face structural violence, including racial, ethnic, or religious discrimination that can bar them from jobs, health care, and housing.¹⁵

Academic research has strongly linked LGBT-identities to child abuse, providing another pathway beyond the day-to-day discrimination and violence characteristic to the LGBT identity in adults. Researchers believe the mechanisms that lead Gender-sexual minorities to be vulnerable as adults are also present and especially salient as children, including Gender non-conforming behavior, social isolation, elevated risk-taking behavior due to isolation, and low esteem due to perceived stigma. This vulnerability leads to higher incidences of physical and emotional violence from family, friends, and peers.¹⁶

Factoring in the reality that many refugees make their journey out of political conflict in early life as children, teenagers, and young adults; a causal, research-backed mechanism is made for the high potential for LGBT refugees and asylum-seekers to experience PTSD and depression. Some of the uniquely traumatizing experiences that make this pathway include the pre-flight experiences of child abuse, verbal, emotional and physical abuse due both to geopolitical upheaval and gender non-conforming behavior, along with the experiences of social isolation and elevated risk-taking behavior because of it, which reaches all stages of flight. Though, this is not the only mechanism of trauma relevant to LGBT asylum.¹⁷

Mechanism of Asylum created trauma

The process of asylum itself can be a tool for creating trauma, in the hands of an untrained adjudicator it can become a weapon that tears apart these vulnerable, traumatized, LGBT asylum-seekers and leaves lasting wounds that may never see a mental healthcare practice. The issue centers around the fact that courts focus on the homosexual identity over homosexual acts and oppression, and place the burden to prove this western, homosexual identity on the asylum-seeker. Homosexual practices are analyzed with scrutiny, and many times prejudice, to no avail. Closeted, bisexual, and those of non-binary gender identities are downright rejected or humiliated in asylum court for not conforming to the standard homosexual identity. The literature review reveals stories of gay men and lesbian women being rejected on the basis of being too gender-conforming, not “appearing” to be gay, for not just “hiding” it.¹⁸

Then despite reliving their trauma, child abuse, sexual abuse, and torture they are rejected for not conforming, and for not displaying a strong concrete path of "coming-out." For being lost in between the realization of their sexuality and their persecution for it. The biggest barrier between the hurting LGBTQ populations of asylum-seekers and the mental health care they need

within these western countries is the strict, biased, unforgiving interpretation of the LGBT identity. ¹⁹The forceful recreation of the western-centric legal and cultural interpretation of sexuality in these asylum-seekers fleeing persecution is an added violence, another source of mental illness, compounded on top of the mental burdens these refugees encounter in their old homes and their new homes. The least that can be done, is to provide special care during the asylum process regarding LGBTQ issues.²⁰

Approaches

In addressing the mechanisms of poor mental health in LGBT Asylum-seekers in our borders, many solutions were put forward. Recommendation for refugee services and adjudicators include, citing the credibility of the applicant as a measure of whether an LGBT claim is dubious instead of the claim itself; approaching uncomfortable topics with grace and kindness; not focusing on previous marriages or the one-year filing deadline but rather the “changed circumstances clause;” and reinterpreting it as a space for the coming out process. Recommendations for mental health services include creating social support groups, fostering a sense of community and bringing role models of assimilation and perseverance for these refugees. However, the rectification is not only social support groups and more mental health care support for these groups, but a reliable and strong network between our refugee resettlement services and health care providers in total. ²¹Currently organizations like Rainbow Health Ontario, Forced Migration Review, Immigration Equality, the Migration Policy Institute, and EGale are providing training services and analyses and syntheses of best practices for governmental refugee services however the disconnect between mental health proponents and the government remains ever large. ²²There are no other interventions being done beyond training programs and social support groups.²³²⁴

Conclusions

This mechanism as a whole and the literature review that created it leave questions to be answered, is there bias in asylum law as is, what is the ideal measure for a sexuality-based claim, and how can we grasp what is truly going on with LGBT Refugees? Despite the wonderful, summative nature of the presented documents on current LGBQ Asylum discourse, this dataset still lacks the rigor of a purely academic dataset and it's open to unique problems because of it. These organizations, fail qualitatively and quantitatively to address the issue of causality regarding mental illness, asylum, and isolation, in LGBTQ refugees. The mechanism serves only as an anecdote and is not experimentally or statistically proven as of yet. Since these are all conjectures the true reality is unknown. Finally, due to existing partnerships and an overall lack of data, there appears to be only one voice on this critical issue, no opposition, no dissent, which is worrying for any field, it is devastating this is all the data there is. Future analyses must have academic rigor, the causal pathways of mental burden must be proven to inform policy and intervention.

Our take home message is that to address the unique mental health challenges of incoming LGBT Asylum-seekers there must be stronger unity between mental health care services and refugee services. Ensuring a strong pathway of care between new refugees and trained services with cultural competence would prove beneficial according to current research. For America, the policy recommendations include adding explicit guidelines and definitions of LGBTQ identities eligible for asylum to the law books, providing a culturally competent lawyer and translator for incoming refugees, then providing access to strong mental health care programs that assume trauma and provide social support rather than

challenging their claim to trauma.²⁵ For Canada, critics advise overturning Bill C-31 because it is believed that it is not considerate of the unique experiences of LGBTQ identities across developed nations,^{26,27} providing translation services for refugees,²⁸ and that refugee health services should be expanded to allow for mental health service intermediaries such as social workers and psychologists.^{29,30} Regardless of the background of these incoming refugees, the best way to ensure their quick, speedy assimilation is by taking them as citizens whole, mental health problems and all, and treating them as such. Healing them holistically, spirit, mind, and body, and giving them the best start we possibly can.

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