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A mixed-method study of expert psychological evidence submitted for a cohort of asylum seekers undergoing refugee status determination in Australia

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ABSTRACT

The levels of exposure to conflict-related trauma and the high rates of mental health impairment amongst asylum seekers pose specific challenges for refugee decision makers who lack mental health training. We examined the use of psychological evidence amongst asylum decision makers in New South Wales, Australia, drawing on the archives of a representative cohort of 52 asylum seekers. A mixed-method approach was used to examine key mental health issues presented in psychological reports accompanying each asylum application, including key documents submitted for consideration of asylum at the primary and review levels. The findings indicated that the majority of decision makers at both levels did not refer to psychological evidence in their decision records. Those who did, particularly in the context of negative decisions, challenged the expert findings and rejected the value of such evidence. Asylum seekers exhibiting traumatic stress symptoms such as intrusive thoughts and avoidance, as well as memory impairment, experienced a lower acceptance rate than those who did not across the primary and review levels. The findings raise concern that trauma-affected asylum seekers may be consistently disadvantaged in the refugee decision-making process and underscore the need to improve the understanding and use of mental health evidence in the refugee decision-making setting. The study findings have been used to develop a set of guidelines to assist refugee decision makers, mental health professionals and legal advisers in improving the quality and use of psychological evidence within the refugee decision-making context.

Introduction

In 2012, there were 479,300 asylum applications registered across Europe, North America, and Australia, the second highest number recorded in the last decade (UNHCR, 2012a, 2012b). Under international law, a refugee is defined as a person outside of his or her country of origin and who is unable to avail him or herself of the protection of and return to that country, owing to a well-founded fear of persecution for reasons of "race, religion, nationality, membership of a particular social group or political opinion". *Non-refoulement*, a key provision in the 1951 Geneva Convention Relating to the Status of Refugees, proscribes the removal of refugees to their country of origin where their safety could be threatened.

The Indochinese refugee crisis during the late 1980s led to the widespread implementation of refugee status determination procedures to assess the claims of asylum seekers. This occurred in response to growing concern amongst resettlement nations, that a growing proportion of asylum seekers were seeking economic opportunities rather than protection from persecution (Robinson, 1998). Since this time, formal procedures to assess asylum claims have been established by the UNHCR and by the vast majority of countries involved in the permanent resettlement of refugee populations (Hamlin, 2012).

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Within Australia, the site of the current research, refugee protection applications are assessed within a two-tier structure, initially by officials of the Department of Immigration and Citizenship (DIAC), which we refer to hereafter as the primary level. If the applicant receives a negative outcome at the primary level they can have their protection claim reassessed by the Refugee and Migration Review Tribunal (RRT/MRT) (we refer to this decision-making stage as the review level) (Hunter, Pearson, San Roque, & Steel, 2013; Kneebone, 1998). At each stage, the asylum seeker is required to make a written application and may also be required to give oral evidence in support of their claim during hearings or interviews. The decision maker will determine whether the applicant is eligible for the grant of a protection visa based on review of the written and oral statements and supplementary evidence, including country information from government and non-government organizations, case law, and forensic information such as medical, psychological or linguistic evidence. Decision makers at both primary and review levels face complex and substantial challenges in reaching a decision in that they must evaluate not only any evidence, but also the credibility of the applicant and the plausibility of their account, whether they are likely to face persecution if returned home, and the possibilities of internal relocation or alternative options for the person within the country of origin.

There is a growing recognition that asylum seekers invariably face difficulties in providing evidence to support their claims of persecution since they are often unable to obtain documentary evidence of persecution upon fleeing the country of origin (Cohen, 2001b; Dauvergne & Millbank, 2003). As a consequence, decision makers in asylum recipient countries have tended to focus on consistency, standard disclosure, and demeanor as key criteria for assessing the credibility of an applicant's claim (Cohen, 2001a, 2001b; Kagan, 2003; Kneebone, 2003; Macklin, 2006; Millbank, 2009). In response to the reliance on such assessments, mental health professionals have raised particular concern about the effects of traumatic exposure on the testimonies of asylum seekers, relating to memory impairment, presentation, and reporting of information (Herlihy, Gleeson, & Turner, 2010; Herlihy & Turner, 2006, 2009; Meffert, Musalo, McNiel, & Binder, 2001).

In particular, there is concern that exposure to refugee-related traumas and the psychiatric sequelae associated with such exposure may adversely impact the refugee decision-making process. For the most part, refugee decision makers will lack specialized mental health training and as such may interpret mental health symptoms as evidence undermining an applicant's credibility (Prabhu & Baranoski, 2012). Research undertaken with refugee populations supports the general concern that the presence of posttraumatic stress symptoms is associated with memory impairment. For example, Herlihy, Scragg, and Turner (2002) in a UK-based study of refugees subjected to repeated interviews documented a relationship between severity of posttraumatic stress symptomatology and narrative discrepancies in the refugees' accounts. In particular, they found greater discrepancies concerning details considered as peripheral rather than central to the core traumatic narrative (Herlihy et al., 2002). Although there have been some contrary research findings (Eytan, Laurencon, Durieux-Paillard, & Ortiz, 2008), data from available studies broadly support this observation. For example, Moradi et al. (2008) found that severity of posttraumatic stress symptoms is associated with reduced specificity of autobiographical memories in refugees (Moradi et al., 2008). Traumatic events involving sexual violence have also been found to be associated with limited disclosure of sensitive information as a result of interpersonal, cultural, and psychological factors, which may impact on the decision-making process (Bogner, Brewin, & Herlihy, 2010; Bogner, Herlihy, & Brewin, 2007).

Findings from research with other trauma-affected population groups have identified a broad array of cognitive and memory domains that show evidence of impairment. For example, individuals exhibiting posttraumatic stress symptoms have a heightened tendency to report overgeneralized memory that lacks specificity compared to those who do not display such symptomatology (McNally, Lasko, Macklin, & Pitman, 1995). Trauma survivors also show fragmentation and disorganization in their traumatic memories (Foa, Molnar, & Cashman, 1995; King et al., 2000; Southwick, Morgan, Nicolaou, & Charney, 1997), a finding that also holds for adverse non-traumatic memories in trauma survivors (Jelinek, Randjbar, Seifert, Kellner, & Moritz, 2009).

There is a large body of evidence from clinical and experimental studies that trauma-affected individuals display a bias in recall for important or central details of an event at the expense of peripheral or irrelevant materials (Brewin, 2011), although some research has also found that memory for traumatic events (e.g. sexual violence) is enhanced, rather than impaired, under conditions of extreme stress (Bernsten & Rubin, 2007, McNally, 2003; Porter & Birt, 2001). A meta-analytic review of 27 studies of the effects of stress on eyewitness testimony identified a relationship between levels of anxiety and impaired memory recall for both central and peripheral types of information, suggesting that stress may disrupt the construction of mental representations of complex emotional scenes (Warring, Payne, Schacter, & Kensinger, 2010). These conflicting findings might reflect methodological differences in assessing stress and approaches to defining memory (Brewin, 2011). Some studies have investigated the role of dissociation in precipitating and maintaining PTSD. In particular, the presence of self-reported dissociation has been found to be a significant predictor of fragmentation in trauma narratives (Brewin, 2007). Furthermore, engaging in avoidance of trauma-related thoughts and memories, a key feature of PTSD, has been shown to be associated with severity of PTSD symptoms over time (Ehlers, Mayou, & Bryant, 1998; Joseph et al., 1996).

In concert, these findings raise concern about the possible impact of posttraumatic stress and mental health impairment on asylum testimonial evidence and subsequent refugee decision making. Observations from mental health professionals in refugee-forensic mental health settings highlight the potential risks of refugee decision makers interpreting mental health issues as undermining asylum seekers' credibility (Prabhu & Baranoski, 2012; Steel, Frommer, & Silove, 2004; Turner & Herlihy, 2009). Prabhu and Baranoski (2012) report that a traumatic history is routinely narrated with the omission of important details and/or with a flat affect as a result of the symptoms of numbing and avoidance, which may raise suspicion amongst decision makers. Cultural factors also play a prominent role in many aspects of narrating a traumatic event (e.g., cultural differences in temporal orientation; disclosure of sexual violence) and in the psychiatric presentation of the traumatized asylum seeker. In the refugee determination context, decision makers have demonstrated a tendency to interpret narrative inconsistencies in asylum seekers' accounts as evidence of lack of credibility (Masinda, 2004; Rousseau, Crepeau, Foxen, & Houle, 2002). Rousseau et al. (2002) in a seminal study of adverse refugee status decisions by Canadian decision makers identified that cultural, psychological, and systemic issues (e.g., lack of knowledge about psychiatric expertise, cultural misunderstandings) exerted a negative impact on the refugee decision-making process. Masinda (2004) identified an association between asylum seekers exhibiting posttraumatic stress symptoms and adverse decision outcomes. Legal professionals within the forensic context have also been found to exhibit misunderstandings about the nature of eyewitness testimony (Granhag, Stromwell, & Hartwig, 2005).