

Legal services: Best, promising, and emerging practices

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“True peace is not merely the absence of tension: it is the presence of justice.”

Dr. Martin Luther King, Jr.

This paper discusses legal processes and the critical need for torture survivors’ access to seek justice. The focus is on the psycho-social benefits of various forms of legal intervention as part of a multi-disciplinary approach of recovery. Six studies on current promising and emerging practices from the U.S. and other countries which document the therapeutic effect of law in the treatment of survivors of torture and other traumas are reviewed. The authors have analyzed these articles with the intent of providing insight into practices that have proven to be effective and can be replicated and built upon. At the very least, these studies give deeper meaning to the positive effect that legal intervention, delivered in various forms, can have on the life of a torture survivor.

Mental health and healthcare providers have known for many years, through informal observation, that the mental and physical health of torture survivors seeking refuge in the U.S. improves upon the granting of an im-

migration benefit. A temporary work permit, which serves as both an identity document and a pathway to self-sufficiency in the U.S., boosts survivors’ mental and physical well-being. A grant of asylum, of course, which is a more permanent benefit, has an even more dramatic effect. As one article boldly proclaims “Winning asylum is essential to recovery for a torture survivor in a country of refuge.”¹

For refugees entering this country with certain benefits and formal access to services, family reunification and adjustment of status can increase the sense of stability and security. In addition to the asylum seeking and adjustment of status processes, justice and access to the pursuit of justice can bring additional therapeutic effects.

Advocacy

For many torture survivors, legal redress may be nearly impossible, but other efforts which facilitate a sense of justice through legal means have had a positive psychological and/or physical impact on the survivors.

The long-term effects on survivors of being in limbo have been documented in a study entitled “Liminal legality: Salvadoran and Guatemalan immigrants’ lives in the United States.”² This article articulates the negative psychological effects of legal limbo. An undocumented status “can affect anything from the immigrants’ health risks, their vulner-

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ability in the streets, and their ability to combat domestic violence, to their health-seeking behaviour, their chances in the labor market, their wages and their identities” (see Menjívar for Guttmacher 1984; Hirsch 2003; Salcido and Adelman 2004; Menjívar 2002b; Simon and DeLey 1984; Uriarte et al, 2003; Massey, Durand and Malone 2002; Rodriguez and Hagan 2004).² The individuals in this study have resided in the U.S. for twenty years or more after fleeing violence in their home countries, yet many still remain in a legal limbo where they are protected from returning to their home countries but are not granted a permanent status that allows for reunification with family and assimilation within the United States. This legal limbo has had a negative effect on their family and social networks.

One legal, therapeutic outlet for this population has been their advocacy and organizing efforts “to work with the law as a means to obtain justice”.² Advocacy and community organizing has helped transform victims of political manipulation to a group empowered as a collective to contest, redefine and reinterpret the law.² Indeed, their efforts created enough political pressure to change the law in their favour. Older arrivals welcomed their more recent compatriots to the community, redefined familial relationships due to forced separation of family members, and reconstituted social and faith networks. The lessons of this promising practice have been replicated with different ethnic communities, including torture survivors, who have been resettled in the U.S.³ Intentionally building upon this promising practice to benefit torture survivors can create a powerful means to help improve their health, functioning and productivity through community building and empowerment. Table 1.

Psychological evaluation

The benefits of taking affirmative actions to

seek legal redress for survivors can be realized even though there may not be an immediate legal resolution. An emerging practice in the realm of multidisciplinary approaches is captured in an article which discusses the therapeutic effects of the psychological evaluation process for torture survivors who are seeking asylum through the cumbersome legal process in the U.S.¹ A majority of the torture survivors in federally funded rehabilitation programmes in the U.S. are seeking legal protective status to avoid a forced return to their offending country where their lives may be at risk. An important aspect to seeking this legal protection is the need to document torture to support the legal claim to humanitarian protection.

The article observes that survivors typically make efforts to forget the torture experience and argues that the psychological evaluation process has been beneficial to them in several ways. First, the evaluation is critical to their asylum cases because it corroborates their claims, describes their symptoms, and can address issues of inconsistencies or memory lapses which impact credibility. Second, the evaluation process itself may have a therapeutic effect on the survivor by assisting the survivor in verbalizing his or her narrative in a consistent manner, in informing the survivor that current symptoms are the result of past trauma, and in empowering the survivor to testify in court. Finally, the evaluator could assist the survivor by helping the survivor manage arousal or symptoms that emerge during the evaluation session.¹

The benefits¹ of the psycho-legal partnership cannot be ignored as having an impact on a torture survivor’s health, functioning and productivity, particularly considering that in most instances empowering a survivor to take affirmative steps to seeking legal protection bestows to them a means of taking control and an opportunity to be a key participant in

Table 1. *Legal Services for Torture Survivors*

Article	Type of Practice
1 Gangsei D, Deutsch AC. Psychological evaluation of asylum seekers as a therapeutic process, <i>Torture</i> 2007;17(2):79-87.	Emerging
<i>Advocacy</i>	
2 Menjivar C. Liminal Legality: Salvadoran and Guatemalan immigrants' lives in the United States. <i>AJS</i> 2006;111(4):999-1037.	Promising
3 Newland K, Tanaka H, Barker L. Bridging divides: The role of ethnic community-based organizations in refugee integration. Migration Policy Institute & International Rescue Committee, 2007.	N/A
<i>Psychological Evaluation</i>	
4 Gangsei D, Deutsch AC. Psychological evaluation of asylum seekers as a therapeutic process. <i>Torture</i> 2007;17(2):79-87.	Emerging
<i>Mediation</i>	
5 Snajdr E. Gender, power, and the performance of justice: Muslim women's responses to domestic violence in Kazakhstan. <i>Am Ethnol</i> 2005; 32(2):294-311.	Emerging
<i>Multi-Disciplinary Approach</i>	
6 Agger I. Justice as a healing factor: Psycho-legal counseling for torture survivors in an Indian context. <i>Peace and Confl: J of Peace Psychol</i> 2008;14(3):3315-33.	Emerging
7 Tol WA, Komprow IH, Jordans MJD, Thapa SB, Sharma B, De Jong JT. Brief multi-disciplinary treatment for torture survivors in Nepal: A naturalistic comparative study. <i>Int J of Soc Psychiat</i> 2009;55(1):39-56.	Best

the process. While this study recognizes that further studies are warranted, the emerging practice demonstrates the many forms and benefits of multidisciplinary approaches.

Mediation

An emerging practice in Kazakhstan which seeks solutions for victims of domestic violence through a form of mediation and counseling outside of the formal legal system highlights the importance of understanding cultural and religious norms within the affected population. It is an illustrative example of a psycho-social approach to accessing justice.⁴ This practice is a departure from formal methods of legal redress and contributes to systemic legal change by focusing on the foundations of evolved legal systems and the formation and impact of societal norms.

Little confidence exists in the Kazakh legal

system as it is a newly formed and developing system. As a result, the availability of legal redress of domestic abuse violations is limited. Cultural norms and traditional gender roles are not reflected in the formal legal system, and the local perception is that governmental enforcement of domestic violence abuse is ineffective at best and often counter-productive.

The Society of Muslim Women (SMW) is an informal, grassroots religious movement, or, as a founding member describes it, a spiritual self-help organization for Kazakh women.⁴ The organization offers not only assistance for victims of domestic violence, but also offers prayer meetings, engages in charity work, publishes a magazine, and arranges traditional Muslim marriages in a matchmaking capacity.⁴

SMW operates to give victims an option to seek "justice" and reconciliation through

community mediation. The members serve as mediators, listen to both the husband and wife, and even to their families⁴ to determine best solutions in keeping with cultural, religious and social norms. This method intends to empower women to seek resolution to a personal and private situation in a way that respects their own culture, traditions and gender roles. The methods employed provide an alternative to a public and many times counter-productive governmental response to domestic violence. While not conclusive, this article is an example of an emerging practice that access to justice in an emerging government through informal quasi-legal mediation tends to not only have a therapeutic effect on the victims and their families, but also on shaping the ways legal systems are imagined, constituted and legitimized.⁴

Through this approach the study found that women gained a sense of belonging and solidarity. This example might be instructive for service providers in the U.S. who offer only separation as a remedy to domestic violence victims.⁴ While it is possible for torture survivors to be victims of domestic violence, this practice may be harder to implement in the torture survivor's context because rarely does a victim have the opportunity to confront their perpetrator, let alone have their grievances mediated. However, recognizing the power and influence of "community", which celebrates positive cultural norms and practices, could prove to have therapeutic effects on survivors, especially when formal legal redress is not possible. This noteworthy emerging practice highlights the role of law and access to justice for torture survivors.

Multi-Disciplinary Approach

The Center for Victims of Torture in Nepal⁵ assists torture survivors in prosecuting perpetrators and seeking compensation. The programme also provides mental health serv-

ices. In a study the programme conducted to evaluate a broad range of symptoms, including functioning and disability,⁵ the authors hypothesized that providing multidisciplinary services to survivors, which included mental health, basic medical, and an opportunity to seek legal redress for injustices suffered, would improve psychiatric symptoms, functioning and disability more than a comparison group receiving only psycho-education sessions.

Several limitations were noted by the authors: the length of the study was limited to five weeks and it is not known if legal redress was realized in any of the cases. Additionally, one individual's sense of injustice, related to a lack of redress for the trauma, appeared to be an independent factor of psychiatric problems.⁵ Yet, the study concluded that a multidisciplinary approach which included legal services in a naturalistic treatment setting was moderately more effective in decreasing somatic symptoms and disability and increasing subjective well-being and functioning when compared with psycho-education sessions alone.⁵ The therapeutic effect of the pursuit of justice through legal remedies did not require a positive legal outcome.

Like the Nepal study, a multidisciplinary approach (psycho-legal) to treatment of torture survivors was implemented by Jananeethi, a human rights organization in India. The approach was described as client-centered and included the following multi-disciplinary services: 1) cognitive-behavioural counseling, 2) educating clients about their legal rights, and 3) the pursuit of justice through the judicial process.⁵ The overall objective of this study was to increase awareness amongst the survivors of their legal and human rights and support their individual and collective fight for legal justice. In contrast to the focus of the Nepal study, where effectiveness was specifically measured by improvements in psychiatric symptom measures, functioning

and disability, this general objective placed emphasis on the effect of access to justice in a multi-disciplinary approach.

Access to justice in the India study came in many forms including legal education, direct legal assistance, and encouragement to participate in systemic advocacy as a collective. Jananeethi staff employed the “testimony method” developed in Chile during the military dictatorship of the 1970s, which assumes that public testimony about human rights violations not only becomes a means of obtaining justice, but is a cathartic and positive reframing experience for survivors.⁵

However, this study acknowledged “grotesque delays in the justice process” in India.⁶ Settlement of human rights matters in India was trapped within a cycle of delay and neglect within their legal system.⁶ Additionally, and not surprisingly, some of the survivors still had problems dealing with stress and other psychological demands,⁶ and impunity may have hindered the survivors’ individual healing.⁶

Despite these challenges, the study found that the psycho-legal approach directly resulted in survivors’ feelings of empowerment and support while self-esteem was strengthened and knowledge about the legal system increased.⁶ The lesson learned from this study, which is consistent with a conclusion drawn in the Nepal study, is that the pursuit of justice through legal remedies produced a healing result for survivors, even in cases where there was no positive legal outcome.

Summary

Treatment for torture survivors typically requires a multidisciplinary approach because the sequelae of torture include physical, psychological, social, and often, particularly in the case of those survivors who are seeking refuge and adjustment of status in the U.S., legal needs. Formal legal assistance, when delivered as part of a comprehensive programme

of other services, can positively impact the therapeutic process. With only six articles to review, it is clear that more rigorous study and evaluation needs to be undertaken to prove the efficacy of the many legal services being provided to survivors of torture.

Learning Points

The process of seeking redress, whether through a legal action against the torturer or indirectly by exposing the human rights violations in an asylum proceeding, can be a cathartic and therapeutic experience for the survivor. The evaluation process for an asylum claim, even though it may be a single intervention, is therapeutic to the survivor.

Highly Recommended Readings

- Allden K, Baykal T, Iacopino V, Kirschner R, Özkalipli O, Peel M, Reyes R, Welsh W, editors. Istanbul Protocol: manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment. Geneva: United Nations. Office of High Commissioner for Human Rights, 2001.
- Germain R. American Immigration Lawyer’s Association’s Asylum Primer: A Practical Guide to U.S. Asylum Law and Procedure, 2009.

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6. Agger I, Ansari F, Suresh S et al. Justice as a healing factor: psycho-legal counseling for torture survivors in an Indian context. *Peace and Conflict: Journal of Peace Psychology* 2008;14:315-33.