

Rochester Institute of Technology

RIT Digital Institutional Repository

Student Work

Student Scholarship

4-11-2023

The Language of LGBT Asylum Discrimination: In a Globalized Age

Sophie Watkins

Rochester Institute of Technology, spw4863@rit.edu

Follow this and additional works at: <https://repository.rit.edu/student>

Recommended Citation

Watkins, Sophie, "The Language of LGBT Asylum Discrimination: In a Globalized Age" (2023). Accessed from <https://repository.rit.edu/student/27>

This Paper is brought to you for free and open access by the RIT Libraries. For more information, please contact repository@rit.edu.



THE LANGUAGE OF LGBT ASYLUM
DISCRIMINATION: IN A GLOBALIZED AGE



DECEMBER 6, 2022

SOPHIE WATKINS

SHE/THEY

RIT INGS CAPSTONE

Transgender asylum seekers, escaping countries that would otherwise sentence them to death for their gender expression, are forced to express traits to prove their gender identity to asylum officials in order to attain relative safety. Anti-homosexual laws exist in over 70 countries, a majority of the concentration of these laws are in Africa and west Asia (ilga.org). South Africa exists as a bit of a gay haven in the sense that there are constitutional protections for LGBT (Lesbian, Gay, Bisexual, Transgender) people and, according to ILGA (The International Lesbian, Gay, Bisexual, Trans and Intersex Association), the only country in Africa with such protections. As transgender social movements gain traction, awareness is increased, but the data is centric on the countries and cultures with such movements and therefore builds a false narrative about gender identities.

Several cultures not only have already accepted trans and non-binary people as members of society but have long-standing established language for a third gender. People migrating from a country with such language to a country without, are stereotyped and subject to societal expectations for gender expression. In general, differences in language often lead to judgement or outright misunderstanding, which can then lead to medical misdiagnoses, employment rejection, and distrust. The intersections of migrant status and gender identities exacerbate potential discrimination through misinterpretation. Discrimination against transgender asylum seekers is informed and enforced by regional language and culture.

Due to the nature of the extreme minority status of transgender people worldwide: oversampling and extrapolating data helps to fill the gaps of information in places with anti-gay propaganda laws. An overwhelming percentage of LGBT migration research is focused on cisgender gay men, but when lumped under the acronym, the data on gender non-conforming migrants becomes more obfuscated (Hucke 2022, 206). The unfortunate truth is that many laws

which oppress homosexuality, use it as an umbrella term and find ways to include as many people as possible. Meanwhile, protections against homosexual discrimination are used to protect the smallest possible social group. Being transgender is categorized as a sexuality when said sexuality is criminalized or seen as a separate issue from sexuality when LGB (Lesbian, Gay, Bisexual) protections are in place. Interpretation of how to define transgender and homosexuality is therefore left up to the people assigned to enforce those policies.

This paper begins with an explanation of language and some terminology that is foundational to the research. Followed by a breakdown of various gender identities and how gender is related to culture, language, and asylum globally. The next section will briefly show the extreme nature of violence against the transgender population and how human rights are violated in progressive countries. Next, the paper covers the legal issues transgender asylum seekers are facing in South Africa specifically.

LANGUAGE AND TERMINOLOGY

Language helps people to communicate and share experiences; by nature, linguistics determines how the world is perceived. There are over 7000 known living languages and within them a wide variety of masculine, feminine, and neuter-gendered words. In languages with gendered nouns, perceptions of inanimate objects are described with associated gender-role adjectives.

“For example, Boroditsky, Schmidt, and Phillips (2003) conducted a study — in English — of native speakers of Spanish and German (all of whom were fluent in English); participants in the study were asked to provide (English) adjectives to describe (English) nouns that had been chosen because they had opposite grammatical genders in Spanish and German. Subjects tended

to choose adjectives that aligned with the grammatical gender of the noun in their native language. For example, native German-speakers described a picture of a bridge (which is feminine in German) as “beautiful” and “elegant” while native Spanish-speakers described the same (masculine in Spanish) bridge as “big” and “dangerous” (Boroditsky, Schmidt, and Phillips 2003). Thus, the results suggest that grammatical gender shapes the way we think about inanimate objects without inherent biological gender” (Jakiela, et al. 2018, 11).

The German word for “bridge” is “brücke” and has a feminine declension while the Spanish word is “puente” is masculine. Association of the gender of the word and the description of the object are automatic. Native speakers of gendered languages hold the gender of objects in their mind subconsciously as necessitated by the structure of the language. Noun modifying description words must be in agreement or the sentence structure fails.

Umbrella terms, also known as hypernyms or superordinates, are a linguistic attempt at capturing the essence of the meaning of subordinate words, for example “mammal” is an umbrella term that includes “dog,” “human,” and “dolphin.” Scientifically the category of mammal is important for classification, but linguistically this essentializes the individuals in favor of a more simplified summary. “LGBT” (and its many alternative forms) is an acronym which attempts to unify gender and sexual minorities under one categorical term, but the data is weighed in favor of the majority of its members.

Covering is defined as *“the process through which people individually and collectively downplay characteristics identifying them as members of oppressed and marginalized groups” (Heller 2009, 295).* Reverse covering is when one is compelled to display those very same characteristics in an attempt to prove themselves as a member of said group.

IDENTITY POLITICS

Transgender and Gender Non-conforming may also be used as umbrella terms, but there is a loss of nuance in identity when dealing with differing cultures. Because umbrella terms and pre-conceived LGBT categories paint an essentialized *global* transgender person, asylum seekers may not use terminology that the official is familiar with. Many countries already have language to include sexual minorities, third, or fourth genders. In some cases, however, there may not be language for the identity due to harsh restrictions against “gay propaganda”. Sometimes, cultural practices go unlabeled until there is outside interaction as the behaviors are not seen as uncommon.

“For example, in Haiti, some men who would likely self-identify as gay in the United States or Canada use the acronym MSM (men who have sex with men) for themselves. While the term was originally used as a behavior descriptor in the field of HIV epidemiology, in Haiti it has become an expression of self-, or at least behavior-identification” (Fox 2022, 114)

For the Haitians, the HIV/AIDS epidemic brought global north countries into their nation and this new language (MSM) was necessary to identify potential victims and slow the spread of disease. The act of such labeling brings about an assumption of understanding, but their homosexual behaviors likely developed independently from western movements as evidenced by the need for a label at the time. Cultural relativism is a lens often applied when researching social groups different from one’s own, yet sexuality and gender are often imagined as biological, binary, and steadfast, thus creating the illusion of a global homogeneity of sexuality and gender.

Assumptions made about identity based on language become clearer when observing beyond the binary of male and female. Third genders and non-binary identities tend to be conflated and generalized, but culture can vary how one chooses their outward expression and terminology adoption. Masculinity and femininity are performed socially, and their definitive traits vary widely from country to country. “Hijra,” “kinnar,” “khawaja sira” are examples of genders in India and Pakistan which exist beyond the western binary (Fox 2022, 114). These identities are embedded in the caste systems of the regional culture, yet these labels may not exist in western healthcare; A third gender with cultural connotation becomes lumped under the umbrella term of transgender, the nuance is lost and with it an important piece of identity. Cultural context is important because within more restrictive countries transgender individuals may feel pressured to cover their gender identity and not challenge the cultural norms. Laws that ban gay propaganda are censorship laws, laws that strip away language from LGBT people to attempt at suppressing gender and sexuality expression. Without this language, the ability to self-identify is restricted.

Identity and culture become increasingly important when seeking asylum. Social workers may advise LGBTQ asylum seekers to behave in a stereotyped manner to better convey themselves to the asylum officials. The cycle of stereotypes is perpetuated by continued reinforcement of those traits. Traits that could out them as transgender while living in their home countries, covering, and avoiding language or any stereotypical behaviors, only to then be expected to slam into reverse and expose all the things they were once terrified to show. The risk of displaying the wrong traits in their home country being ostracization, jail, or violence and the risk of not reverse covering within the asylum state being jail, deportation, or violence. (Heller 2009, 297). Risk of asylum rejection increases because the asylum seeker may not feel natural or

comfortable expressing themselves outwardly as they are fleeing on account of said discrimination against them.

VIOLENCE AND DISCRIMINATION

Considering that asylum seekers are generally fleeing oppressive situations, trauma is likely to be a part of the story. Language barriers cause a dramatic decline in mental health care, as subtle choices of words are instead filtered through a much smaller lexicon available in the unfamiliar language. Without interpreters or multi-lingual providers, trauma and mental illness can go undetected and therefore untreated.

“The analysis of the 723 interviews with asylum seekers, conducted by a team of nurses in Geneva, suggests that language concordance and the use of interpreters can increase the detection of traumatic symptoms among asylum seekers and the likelihood of referral to mental health care” (Bischoff 2003, 510).

Suicide within the trans community is disproportionately high when compared to the rest of the population. According to a report by the American Foundation for Suicide Prevention, *“Sixty percent of respondents who said they had been refused medical care because of antitransgender bias reported a lifetime suicide attempt” (Haas 2014, 12).* In a 2000 study it was found 35% of transgender people had suicidal ideations and 16% attempted suicide prior to transition. In another study, out of 2000 cases reviewed only 16 possible suicide deaths were reported among trans people who had gender confirmation surgeries (Dean et al 2000, 129). These data show the rates of suicidal ideations are lower when one has access to healthcare and correct hormones. In a 2022 Trevor Project National Survey on LGBTQ Youth Mental Health, it was discovered that 45% of LGBTQ youth in the US seriously considered attempting suicide in

the past year. Suicide attempts are notably higher in unaccepting environments and lower when in more accepting ones (Table 1).

Surveyed Group	Suicide Attempts
Refused medical care due to antitransgender bias	60%
Transgender; no transition	16%
Transgender; with gender confirmation surgery	~1%

Table 1 Source: revised from: thetrevorproject.org

Within the year 2022, 327 transgender and gender-diverse people were murdered. Data from Transrespect versus Transphobia Worldwide states that nearly all of those murdered were transgender women; the average age being around 35 years old. (Table 2) These data were released on the 8th of November, 2022. As of the 20th, transgender day of remembrance, a list of names ages and locations of transgender deaths was released including 390 confirmed transgender deaths (translivesmatter.info). Only one name listed was from the African region, despite such oppressive anti-LGBT laws. Lack of data is not because there are not any transgender deaths in the region, but identification of such victims is silenced by the criminalization of gay propaganda.

Global Reported Trans and Gender Diverse Murders	327
Of Victims; Trans Women and Trans Feminine	95%
Of European Victims; Migrants	36%
Average Age of Victims	31-40 years old

Table 2 Source: revised from transrespect.org

Data regarding transgender populations in South Africa and the surrounding region has proven difficult to obtain. Because of the high risk associated with not only being transgender, but spreading “gay propaganda,” these data are erased or never created in the first place. LGBT identity and language surrounding such identities are censored and covered-up out of fear of legal or social repercussions. To ascertain transgender issues in South African migrant populations some extrapolation from similar cases is required. We can assume that if acceptance and affirming healthcare decrease suicide rates in progressive countries, it would be likely that the opposite may also be true. When more data from the region becomes available a similar type of polling can be done.

GENDER AND LEGAL PROBLEMS IN SOUTH AFRICA

South African asylum seekers who are trying to access the transgender affirming healthcare that South Africa offers, deal with rigid definitions of gender and nationality. Although there is access to healthcare and hormone replacement therapy for refugees, the queues for the asylum office for new seekers and renewals are gendered male and female. This can pose a massive problem when a transgender person has begun transition and must queue up the following year. They check for identification and by law must verify their information against the fingerprints, photograph, and gender listed at the time asylum status was granted. The problem that South Africa deals with is the dilemma of inability to change the gender marker on legal paperwork. The South African government cannot legally change the gender of a transgender refugee unless they make them a citizen, because the change would not be accepted by the persons origin country. The refugee will have to deal with using this identification form that states confusing information at banks and for job applications until they gain citizenship. *“Simply having to queue with many others and choosing to identify as either male or female is*

compounded by the fact that specific countries or regions queue on certain days. For participants, then, some of whom are either living in stealth in South Africa—living outside their country-of-origin communities in South Africa—or are living in country-of-origin communities in South Africa because they provide support but are not out to them, there is very real concern about being seen” (Camminga 2017, 65). Even though they are seeking protections from their home country’s criminal laws, they are not safe or protected against discrimination in South Africa both legally and civilly.

Criminalization isn’t as simple as criminal court; it carries a lot of stigmas into the civil world. People seeking asylum based on gender-identity are likely coming from countries with oppressive sexuality and gender-identity laws. In extreme cases, LGBTQ people are sentenced to death just because of their identity. In more common cases, they are ostracized from society and are made to feel like a criminal in day-to-day life. From the Columbia Law Review, Melissa Murray wrote, *“Civil sanctions may not only communicate to the individual that [their] conduct was “wrong” or “bad.” They are likely to dissuade others from engaging in the conduct – thereby extending their regulatory impact through general deterrence” (Murray 2016, 610).* Simply by stating that homosexuality is a criminal offence, that mindset is projected into society which effects how people view others they may assume are LGBT and how they view themselves. In civil society, LGBT people could have their jobs, families, and safety threatened just because of their sexuality and gender-identity. Instead of having any form of legal protections against discrimination, reporting an attack might be seen as an admission of being a criminal and could lead to jail followed by even more societal punishments.

Laws are intended to increase conformity and predictability in a society, so if old laws are infrequently imposed because it is difficult to monitor peoples’ private lives, they are hindering

predictability by remaining on the books. Gay sex is still punishable by law in Kenya, with a sentence of up to 14 years in jail. Enforcers of sodomy laws cannot possibly monitor every household and therefore rely on stereotyping behaviors or other criminal statuses to determine who is guilty. Outdated laws, such as sodomy laws, create a class of criminal where punishment only happens in conjunction with other law violations or as a means of discrimination.

Because of their vague nature, umbrella terms are defined by the people enforcing policies. The United Nations guides credibility assessments stating that self-identification should be taken as an indication of sexual orientation or gender identity (Jakulevičienė 2012, 198). Some transgender applicants can provide evidence such as witness statements or photographs, but when unable to provide this evidence, the assessor must rely on their testimony alone. If the assessor and asylum seeker speak different languages or have different understandings of LGBT terminology, the assessor could mistakenly assume the applicant is lying. *“The interviewer should take duly into account the applicant’s psychological involvement and create a safe environment for them. In addition, decision makers should avoid stereotypical images and fix westernised ideas of what sexual orientation is”* (Jakulevičienė 2012, 205). The interviewer’s approach can stunt the interview as well, with leading, misinformed, or offensive lines of questioning.

CONCLUSION

Empirical data is extremely difficult to find on transgender populations in the local sense and thus must be conducted on a global scale for quantitative data. Case studies and qualitative research can be used to gain insights into regional problems, but informed care requires individualized assessments. As it stands, definitions of umbrella terms provide cohesion,

community, and representation, but also assume that individuals will generally fit neatly into those categories.

Research on this topic could be expanded by comparing population size to deaths per country with progressive LGBT supportive policies. Linguistic studies on gender exist, but more could be gained from transgender specific studies. Most of the data used in this paper for mental health were from American sources and limited to where transgender populations are easier to quantify. Until it is safe for individuals to self-report their gender identity, the data will be limited as exposing themselves could be met with legal punishment. Self-reporting will be necessary as data on who is granted asylum based on gender identity is not information typically released by the federal government.

Reverse covering demands are in themselves an oppressive concept as they essentialize stereotypes, ones that may not even be present in the community an individual is from. Language does determine how things are interpreted, but in many cases an attempt at accurate interpretation isn't even made by the destination country. Self-advocacy is expected of asylum-seekers who are already facing many social and economic obstacles, leading to violations of privacy and increased acts of discrimination.

BIBLIOGRAPHY

- Barnes, Nielan. "Within the Asylum-Advocacy Nexus: An Analysis of Mexican Transgender Asylum Seekers in the United States." *Sexuality, Gender & Policy*, vol. 2, no. 1, May 2019, pp. 5–25, 10.1002/sgp2.12000.
- Bischoff, Alexander, et al. "Language Barriers between Nurses and Asylum Seekers: Their Impact on Symptom Reporting and Referral." *Social Science & Medicine*, vol. 57, no. 3, Aug. 2003, pp. 503–512, www.sciencedirect.com/science/article/abs/pii/S0277953602003763, 10.1016/s0277-9536(02)00376-3. Accessed 14 Nov. 2019.
- Camminga, B., and John Marnell. *Queer and Trans African Mobilities: Migration, Asylum and Diaspora*. Google Books, Bloomsbury Publishing, 16 June 2022, books.google.com/books/about/Queer_and_Trans_African_Mobilities.html?id=TdvLzGEACAAJ. Accessed 28 Nov. 2022.
- Camminga, B. "Categories and Queues." *TSQ: Transgender Studies Quarterly*, vol. 4, no. 1, Feb. 2017, pp. 61–77, 10.1215/23289252-3711541. Accessed 6 June 2020.
- Fox, Samara. "Evaluating LGBTQ Asylum Seekers." *Asylum Medicine*, 2022, pp. 113–122, 10.1007/978-3-030-81580-6_8. Accessed 28 Nov. 2022.
- Haas, Ann, et al. *Suicide Attempts among Transgender and Gender Non-Conforming Adults FINDINGS of the NATIONAL TRANSGENDER DISCRIMINATION SURVEY*. 2014.
- Hayek, F A. *Law, Legislation, and Liberty, Volume 19*. University Of Chicago Press, 2021.
- Heller, Pamela. "Challenges Facing LGBT Asylum-Seekers: The Role of Social Work in Correcting Oppressive Immigration Processes." *Journal of Gay & Lesbian Social Services*, vol. 21, no. 2-3, 23 Apr. 2009, pp. 294–308, 10.1080/10538720902772246.

Human Rights Watch. "Q&A: US Title 42 Policy to Expel Migrants at the Border." *Human Rights Watch*, 8 Apr. 2021, www.hrw.org/news/2021/04/08/qa-us-title-42-policy-expel-migrants-border.

Jakiela, Pamela, and Owen Ozier. "Gendered Language." *Papers.ssrn.com*, 4 June 2018, papers.ssrn.com/sol3/papers.cfm?abstract_id=3191646. Accessed 7 Dec. 2022.

Jakuleviciene, Lyra, Laurynas Biekša, and Egle Samuchovaite. "Procedural Problems in LGBT Asylum Cases." *Jurisprudencija* 19.1 (2012)*ProQuest*. Web. 28 Nov. 2022.

Murray, M. (2016). RIGHTS AND REGULATION: THE EVOLUTION OF SEXUAL REGULATION. *Columbia Law Review*, 116, 573-623.

"Remembering Our Dead - Reports." *Remembering Our Dead*, tdor.translivesmatter.info/reports. Accessed 28 Nov. 2022.

Shaw, Ari. *Winston Luhur Letlhogonolo Mokgoroane PUBLIC OPINION of TRANSGENDER RIGHTS in South Africa Public Opinion of Transgender Rights in South Africa | 1*. 2021.

Stryker, Susan. *Transgender History*. Berkeley, Ca, Seal Press, 2008.

"The International Lesbian, Gay, Bisexual, Trans and Intersex Association | ILGA." *Ilga.org*, www.ilga.org. Accessed 7 Dec. 2022.

The Trevor Project. "2022 National Survey on LGBTQ Youth Mental Health." *The Trevor Project*, 2022, www.thetrevorproject.org/survey-2022/.

"TMM Update TDoR 2022." *TvT*, 8 Nov. 2022, transrespect.org/en/tmm-update-tdor-2022/. Accessed 28 Nov. 2022.

UNHCR. "The 1951 Refugee Convention." *UNHCR*, 2019, www.unhcr.org/en-us/1951-refugee-convention.html.

Yogyakarta Principles.org – the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. yogyakartaprinciples.org/. Accessed 28 Nov. 2022.