

# Experts and the Judiciary: Reflections of an Anthropological Expert in The Field of Asylum and Migration Law

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## Abstract

In this paper I draw on my experience as an anthropologist, twenty-three years work as a country expert and extensive research on asylum and immigration law and practice to assess how litigation has shaped the role of country experts and the way their evidence is evaluated by Judges who sit in United Kingdom's Immigration and Asylum Tribunal (IAT) and in the English Court of Appeal. I begin by looking at the history of applied work in Anthropology and my growing involvement as an Anthropological 'expert' involved in asylum and immigration law. I then examine litigation in the British courts which has attempted to define and regulate the role of experts and their evidence. Finally, I discuss my work as a country expert and how the courts have assessed the 'validity' of my evidence by drawing on a diverse range of asylum claims. The paper concludes that while experts confront a range of constraints imposed by the law, they can successfully challenge judges to rethink their assumptions and ensure that vulnerable refugees are granted protection.

In the mid-1990s I received an unsolicited email from a barrister asking me to write an 'expert' report for a child who was claiming asylum in the UK. I had never heard of 'country experts' nor was I aware of the form which the report should take or what issues it should address. It took me an entire week to draft a short report at the expense

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of my obligations as an academic in a British university.<sup>2</sup> I never heard the outcome of that appeal. Since that inauspicious beginning I have written over five hundred reports and I have conducted extensive fieldwork and research on the British asylum system. This paper examines the provision of ‘cultural expertise’, a term which Holden (2019) and Henderson *et al* (2020) have used to describe a specific role taken up by academics who provide expert evidence to the courts which enables judges/mediators to better understand key socio-cultural and other issues which are relevant to the case. Holden is particularly interested in the engagement of anthropologists as experts in the legal process. In this sense, cultural expertise should not be confused with the ability attributed to anthropologists of understanding a society’s ‘culture’ based on ethnographic research.

Section (i) examines how my career as an academic anthropologist became intertwined with work as a ‘country expert’, and how expert witnessing expanded from a part-time preoccupation to become the focus of my professional work and research. Section (ii) provides an overview of litigation which has sought to regulate the work of country experts. In section (iii) I draw on my experience as an anthropological expert to show the tensions between experts and the judiciary and how my work has sought to challenge judicial interpretations in an attempt to secure protection for refugees.

## Anthropology, the Academy and Applied Work

The discipline of anthropology has constantly changed since it was introduced as a University subject in the early to mid-twentieth century in the USA and the UK. Throughout the twentieth century the discipline was dominated by university-based academics pursuing ‘pure’ research, many of whom disdained ‘applied’ work. This state of affairs persisted despite the fact, as Merrill Singer (2008, p. 330) has noted, that during World War II ‘three-quarters of all professional anthropologists [in the US] active at the time worked for some war-related government department or program

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2 Country experts are drawn from anthropology, sociology, history, journalism, law and so on and are expected to possess an extensive knowledge of the country from which an asylum seeker originates from. Lawyers should send experts the appellants entire case file which includes two interviews with UKVI, UKVIs Refusal Letter, representations by the appellant’s lawyers and related UKVI correspondence, witness statements from the appellant addressing issues raised by UKVIs refusal to grant protection and medical reports (if relevant to the claim). A list of experts in the UK gives some idea of the different types of expertise on offer, see: <https://www.ein.org.uk/experts>.

on a full- or part-time basis'. In North America and in Britain the 1950s and early 1960s witnessed an expansion of university education, including an expansion in the number of anthropology departments, which produced far more graduates than could be employed in the academy resulting in large numbers of graduates working in applied anthropology outside the academy (Akeroyd *et al*, 1980; Briody, 1995). At roughly the same time the rise of the international development industry saw increasing numbers of professional anthropologists employed to devise and implement policy and working in various capacities on development projects. Since that time anthropologists have increasingly been employed in development, community-based organizations, charities and various types of welfare and medical programs including, in recent years, research into pandemic diseases like HIV-Aids and Covid-19.

Henrika Kuklich (2008, p. 3) has pointed out that the impact of cyclic changes in funding has affected the ability of universities to employ anthropologists, undertake research and teach students. Over the past three decades universities have become much more managerially focused in a process that has seen the downsizing and sometimes elimination of anthropology departments, growing job redundancies and the use of increasingly insecure contracts to hire staff (cf. Kok *et al*, 2010; Siltaloppi *et al*, 2019). This process of neo-liberal reform has transformed British universities and has placed growing pressure on staff to bring income into the university by teaching growing numbers of students, securing grant/research income and obtaining consultancies from the public and private sector to shore up university finances.

The university where I obtained my first 'permanent' contract in the United Kingdom in 1991 was in the throes of this process when I arrived following a period of unstable employment including doctoral fieldwork in Africa (1977-78), teaching at an African university (1981-85), work as a consultant for a British charity in Ethiopia (1987-88) and a one-year post-doctoral post (1990-1991). I was encouraged to engage in development consultancy work which was undertaken in addition to standard academic responsibilities. Work as a consultant provided me with a way to escape the increasingly tedious politics of university life and it made considerable money for the university.

Consultancy work, which took up several months each year, occurred at the same time as I was asked to write expert reports for individuals seeking asylum. Unlike development consultancies which involved visits to projects in Africa, expert witnessing primarily involved desk research and required me to draw on my fieldwork and on

published research to write reports for submission to the courts alongside an asylum application. In contrast to consulting, my interest in expert witnessing arose from the obligations I felt towards my informants/friends in Africa which could only be repaid indirectly by assisting individuals fleeing persecution. For me, expert witnessing became a new form of applied anthropology.

There has been extensive criticism within anthropology of applied work. Ill-informed criticism has often reflected the disdain felt by academic colleagues for anything other than 'pure' research on the grounds that meddling in the lives of others is messy and unethical and that it is a-theoretical and does not contribute useful knowledge to the discipline. One of the main critics of anthropological involvement in international development has been Arturo Escobar (1991, p. 676) who argued that anthropologists have facilitated a form of development that: 'has functioned as a mechanism of power for the production and management of the Third World.'

In reply to Escobar and other critics, David Gow (2002, p. 300) has written about this dispute in which some academic anthropologists have referred to development anthropology, and by implications other forms of applied work, as its 'evil twin'. Gow replied that: 'Evil is not a word normally associated with anthropology, academic or applied,' Gow went on to say that 'it is my contention that one way to better understand

– and perhaps appreciate – development anthropology is through a critical analysis of the values, specifically the ethics, underlying this subfield, as demonstrated in the writings and practices of those anthropologists actively engaged with development, and the extent to which their work has made a difference, presumably for the better.'

Gow argued that development anthropologists had not taken development for granted nor have they neglected to engage with ethical or professional concerns. Labeling development anthropology as 'evil' is, he says, a reflection of the ignorance of academic anthropologists about applied work. Other anthropologists have weighed into this argument in an attempt to address the critics and rehabilitate the image of anthropologists involved in applied/development work by ethnographically demonstrating anthropology's contribution to development (Grillo and Rew, 1985), by critically evaluating development 'discourse'/knowledge (Grillo and Stirrat, 1997) and by critiquing key aspects of development policy and practice (e.g. Cook & Kothari,

2001). While tensions have remained in anthropology departments regarding the value of applied work, by the mid-to late 1990s anthropological engagement with development was such that the distinction between pure and applied was no longer sustainable given the growing overlap between research and practice, and policy and theory (Gardener *et al*, 2015, p. 60).

A different approach to this debate, where the central issue is the role of anthropologists as experts, has been taken by David Mosse (2011) who has argued that while an in-depth ethnographic study of expertise based on long-term participant observation etc is not possible, in part because expertise is an extension of certain social roles and because experts do not form discrete and observable social groups, nevertheless a form of

para-ethnography is 'capable of exploring the moral ambiguity of expert roles' to understand how experts engage in formulating, brokering and implementing 'global' policy ideas. Mosse acknowledges that international development reflects neoliberal policies which are implemented via a new institutionalism that promotes a specific social engineering agenda. However, he seeks to promote research which makes transparent what is invisible: namely the unanticipated effects of policy (i.e. the illiberal consequences of liberal policy), the underpinning rationale of development policies (i.e. that the institutional mythologies embedded in it fail to understand local realities), the striking capacity of policy to misunderstand and misrepresent complex events and the illusion of certainty found in official policies. The ethnography of aid that he promotes is one which seeks to discover how international development produces 'expertise' and how expert knowledge is formulated, implemented and contested among policymakers, in development organizations, in projects and in local communities.

While anthropologists working in development are undoubtedly engaged in different practices, they work in quite different contexts than country experts, Mosse provides a useful approach to analyse and understand the role of experts as 'a category of practice' (Mosse, 2013). His approach can usefully be adopted to examine the work of expert witnesses. A para-ethnography of expert witnessing also needs to look at how experts negotiate their relationship with the Law. In this respect Livia Holden (2019, p.

190) has called for a 'deontological' approach to expert witnessing which requires drawing a clear contrast between 'the procedural requisites of expert witnessing and their limitations for an effective use of anthropological knowledge', i.e. between the

constraints imposed by the law and the ethical demands of one's profession. In this paper I provide a para-ethnographic account of my work as a country-expert – which acknowledges the ambiguities, vulnerabilities and professional dilemmas I have experienced – involved in providing academic knowledge in a process that enhances the legitimacy of the judiciary. Due to the limitations of space I am unable to deal with the wider context in which anthropological expert witnessing is situated which would require a critical examination of legal institutions and legal reasoning, how law is contested and how migration management is undertaken by governments and resisted by individuals around the world.

## The Impact of Litigation on Experts

In 1998 the English judiciary created section 35 in the Civil Procedure Rules which regulates and sets out the duties of 'experts' who provide evidence to the courts. These rules stipulate that 'It is the duty of experts to help the court on matters within their expertise' and that 'This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid.' Furthermore, the rules specify the form which an expert report must take. In effect, the Civil Procedure Rules and legislation subordinates experts to the judiciary (Redmayne, 2001; Jones, 1994), requires experts to act as a neutral party in appeals and makes it possible for the law to misuse/misappropriate anthropological knowledge for its own ends (Riles, 2006).

Subsequent litigation has established additional obligations which experts must meet. For example, in November 2002, sec. 101(1) of the Nationality, Immigration and Asylum Act 2002 sharply curtailed the right of appeal by an asylum claimant to material 'errors of law' made by Immigration Judges (IJs) who decide asylum claims. Prior to the Act, many decisions had successfully been overturned when IJ had erred in their analysis of the facts of the case, including errors in assessing expert evidence. As a result of this Act, lawyers have had to be more careful about how cases are argued and how a case is supported by expert evidence.

In 2003 there was growing criticism from lawyers about the poor quality and biased nature of the country reports which the UK's Visa and Immigration department (a department in the British Home Office, UKVI) relied upon in appeals (Carver, 2004; Yeo, 2004) and about the Tribunal's decision to convene country guidance cases to set a precedent on a range of complex issues. Lawyers were concerned that some of the cases

chosen by the Upper Tribunal of the IAT (UT) to hear a case, all of which had initially been refused, were factually too weak to provide a reasonable basis for identifying the ‘categories of risk’ that were to be used to decide whether failed asylum-seekers and Foreign National Prisoners could ‘safely’ be deported to their country of origin without breaching their rights under the 1951 Refugee Convention. What is important for this paper is that the IAT required both parties to obtain as much up-to-date evidence, including evidence from country experts, as possible. This requirement placed considerable pressure on country experts whose evidence was to be challenged by UKVI and scrutinized by IJs.

*NM and Others (Lone women — Ashraf) Somalia* CG [2005] UKIAT 00076 reviewed three asylum claims in which IJs had adopted an inconsistent approach to case law and to the same evidence (¶137). The situation provided the rationale for the UT to convene ‘Country Guidance’ (CG) hearings with the stated intention of curtailing possible errors of law by IJs. CG cases were not intended to set legally binding ‘factual precedents’ but to provide a new standard to identify the issues which subsequent, related cases should deal with (see Tribunals Judiciary, 2014, Part 4, 12.2).

Subsequent litigation focused on the role of country experts and the validity of their evidence. Thus, in *LP (LTTE area — Tamils — Colombo - risk?) Sri Lanka* [2007] UKAIT 00076 the UT decided that failed Tamil asylum seekers were not at risk of serious harm from the Sri Lankan authorities. It decided at ¶7 that ‘the weight to be given to expert evidence... and country background evidence is dependent upon the quality of the raw data from which it is drawn and the quality of the filtering process to which that data has been subjected. Sources should be given whenever possible’ (my emphasis). Clearly the UT clearly has little understanding about social science research (see Campbell, forthcoming). In this case UKVI sought to curtail the weight attached to the evidence of country experts and it argued that the Home Office/UKVI ‘should be able to assess whether a country expert is presenting a balanced picture and/or is exaggerating or presenting a partial or inaccurate account’ (¶18). Against this argument counsel for the appellant argued that it was widely recognized that ‘experts provide not only factual information but opinions on those facts’ and that both should be given appropriate weight by the Tribunal (¶26). This case was one of the earliest attacks by UKVI on experts in its attempt to undermine their evidence and it illustrates UKVI’s hostility towards experts who present a more nuanced and in-depth analysis of the

situation in an appellant's country of origin than UKVI makes available in its own reports.

In 2006 the case of *CM Kenya v SSHD* (the Secretary of State for the Home Department, the Home Office) was appealed to the English Court of Appeal. It concerned a case where IJs had twice wrongly decided that it was safe to return a Kenyan woman to Nairobi on the basis that she would not be subjected to Female Genital Mutilation. In this case the IAT had failed to consider and give appropriate weight to all the evidence from the country expert, Professor Aguilar. Since the appellant's case had already been heard twice and IJs had erred in both decisions, the Lord Justices decided that the appellant should be granted asylum. Similar concerns about the tendency of the IAT to be 'too dismissive' of expert evidence can be found in the Court of Appeal's 2007 decision in *SA Syria & IA (Syria) v SSHD* when it dismissed the evidence of Amnesty International (2004) and reports by country experts Dr Alan George and Ms Laizer. The two appeals were allowed and returned to the Tribunal to be reheard.

In *HH & Others (Mogadishu — armed conflict — risk) Somalia* CG [2008] UKAIT 00022, legal counsel for the SSHD mounted a protracted cross-examination of Professor Lewis, Dr Luling and Dr Mullen in an attempt to undermine their evidence and destroy their professional credibility. The case concerned the appeals of three female Somali nationals and whether they could safely be returned to Somalia which was experiencing 'international armed conflict'. The UT found that Professor Lewis 'had strongly held opinions [which] to some extent compromised his ability to be objective' and that he had not read all the objective evidence (¶282). Furthermore, he had 'a jaundiced view of the UN' for its unwarranted support for the Transitional Federal Government, he relied too heavily on his own 'human' sources, and he had not critically read material from two Diaspora websites which he relied upon (¶283-286). With regard to Dr Luling, the UT found that she had failed to 'discharge the duty of an expert' (¶287) and that her reports were 'problematic', often 'unsourced' and that 'in these appeals we have been unable to attach much weight' to her evidence (¶289-291). Finally, with regard to Dr Mullen, the UT stated that he 'was probably best placed to assist the Tribunal' even though 'some of the assertions' in his oral evidence 'did not appear to be supported in the background materials, included those cited in his reports' (¶292).

Indeed, the outcome of asylum litigation favoured the SSHD and her attempts to regulate experts and their evidence. For instance, in *SI* (expert evidence – Kurd – SM confirmed) Iraq CG [2008] UKAIT 00094, the UT decided that the failure of the Home Office/UKVI ‘to adduce her own expert evidence cannot imbue expert evidence submitted by an appellant with any greater value than it merits’. In *SD* (*expert evidence*) *Lebanon* [2008] UKAIT 00078, the UT stated that experts ‘must refer the Tribunal to any cases which he is aware of and which may detract from what is said about him in cases he has referred to.’ In addition, in *FS* (*Treatment of Expert Evidence*) *Somalia* CG UKAIT 00004, the UT stated that ‘Immigration Judges have a duty to consider all the evidence before them when reaching a decision in an even-handed and impartial manner. In assessing the evidence before them they must attach such weight as they consider appropriate to that evidence. It may on occasions be appropriate to reject the conclusions reached by an expert. What is crucial is that a reasoned explanation is given for so doing.’

Given the direction of litigation, it is notable that in 2008 *The Times Higher* (Newman, 2008) published an article entitled ‘Tribunal experts fear attacks on integrity’. The article reported that fourteen Middle East experts had written to the President of the IAT complaining that Home Office lawyers ‘routinely resort to attacking the integrity and credentials of experts’. The experts asserted that part of the reason for these attacks stemmed from the fact that the courts were under pressure to ‘deny people entry into the United Kingdom.’

Throughout this period UKVI was also making ‘express authorizations’ to exempt it from the Race Relations Act 1976 in order to test the ‘language of origin’ of individuals from specific countries who were applying for asylum. Inconclusive pilot tests in 2001 were followed by extensive testing which required asylum applicants to submit to a phone interview with a language ‘expert’ employed by a private firm to determine whether s/he was really from ‘their claimed country of nationality’. Asylum policy instructions (2015) set out very clear procedures which UKVI officials and ‘linguists’ in the firms contracted to carry out this work were supposed to follow to arrive at an ‘expert’ analysis of an individual’s spoken language. As independent research subsequently discovered, however, neither officials or private firms were following the procedures; the entire process was fundamentally misconceived, problematic and resulted in considerable injustice (Campbell, 2013; Ngom, 2015). Successful challenges to these tests had been mounted using evidence from qualified sociolinguists and

barristers – which focused on the absence of qualifications of the ‘experts’ employed by the firms and the poor quality of their linguistic analysis – which UKVI was unable to effectively counter. However, the situation changed completely after the IAT convened the first, and only, case to hear evidence on how language tests to determine an asylum applicant’s country of origin were actually conducted.

In *RB (Linguistic evidence — Sprakab) Somalia* [2010] UKUT 329 (IAC) the Tribunal selected a factually weak case which was heard without the benefit of oral evidence from an independent sociolinguist. Rather than looking at the key issues in this and related cases — i.e. dialect, ‘language mixing’, claims about deficiencies in linguistic knowledge, the failure of the commercial firm contracted by the Home Office to interview RB in her native language as stated in UKVI policy etc. — the Tribunal focused instead on the need for the firm’s personnel to remain anonymous. The evidence provided by Sprakab’s director was not questioned, nor were questions asked about whether ‘language analysis’ was capable of determining the country that an asylum applicant came from.<sup>3</sup> The Tribunal problematically concluded that the ‘linguistic analysis reports from Sprakab are entitled to considerable weight’, a decision which endorsed UKVI’s fundamentally flawed policy.

UKVI’s ability to rely on language testing was finally curtailed when the Scottish Court of Sessions — the equivalent of the English Appeal Court — decided the case of *M.A.B.N. & Anor v The Advocate General for Scotland Representing the Secretary of State for the Home Department & Anor*, [2013] CSIH 68. In that decision the court held that ‘the Sprakab reports were deficient in numerous respects. It was accepted ... that the comments in the reports that the applicants had “deficient” knowledge of their home areas was clearly outside the claimed expertise of the report writers and were without any expert foundation. Comments on credibility and demeanor were similarly inappropriate, as they would be in any expert report – this is the domain of the judicial body, not an expert witness. The Court noted in strong terms that being a native speaker of a language does not confer expertise in the identification of dialects within that language, their particular features, or the geographical or social distribution of the

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3 3 In 2004 the International Association for Forensic Phonetics and Acoustics set out clear guidelines on ‘language determination’ which the commercial firm that was contracted to UKVI was not adhering to. See: <https://www.iafpa.net/the-association/code-of-practice/> (accessed 21 April 2020).

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In short, the Court of Sessions found that the ‘expert linguists’ employed by Sprakab were not qualified to carry out language determination, that their reports failed to state the methodology employed to analyze speech, and that the Upper Tribunals decision in *RB (Linguistic Analysis - Sprakab) Somalia* [2010] UKUT 329, which had been upheld by the English Court of Appeal, should not be given any weight because it departed from the ordinary rules of evidence.

I was not targeted by UKVI in the way that the experts identified above were until late 2015 when the Independent Chief Inspector of UK Borders, whose office reviews UKVI policies etc. (UK Government, nd), convened a meeting with UKVI to discuss their recently published Country of Origin (CoI) Reports on Eritrea that I had been contracted to review (IAGCI, 016a; IAGCI, 016b). I was highly critical of the reports for their selective citation of objective evidence, because UKVI had failed to observe and follow established guidelines in conducting research and reporting objective evidence for the Refugee Determination System and because the reports clearly reflected the policy of the British government to refuse asylum to Eritreans. UKVI rejected my review and immediately mounted a fact-finding mission to Eritrea to find information in support of their position that it was safe to return Eritrean asylum seekers (their efforts proved unsuccessful) (See the decision for *MST and Others (national service – risk categories) Eritrea* CG [2016] UKUT 00443 (IAC)).

Nevertheless, it remains the case that UKVI does not submit its own expert evidence in asylum appeals and that the principal tactic used by the Home Office is to discredit the expert involved in the case in an attempt to undermine the weight which the Tribunal/court can attach to their evidence.

## **Anthropologists, Country Experts and the Law**

In this section I draw on my experience as a country expert on Ethiopia and Eritrea to show how my work was affected by government rules and litigation and how my evidence was evaluated. The Horn of Africa is comprised of a number of countries which have produced massive numbers of refugees as a result of regional conflict. For instance the 1998-2000 border war between Eritrea and Ethiopia, which was ruthlessly pursued by a combination of trench warfare and the use of jet fighters and combat helicopters, displaced well over one million people along their shared border, resulted in the death of several hundred thousand soldiers, and produced a massive flow of refugees out of the region towards Europe, the Middle East, North America and beyond (Campbell, 2014). Many of the applications for asylum which are dealt with in this paper concerns individuals who fled from, or were otherwise affected by, this war.

Over the years immigration caseworkers, solicitors and barristers have sought reports from me on a growing range of issues many of which fall within the domain of anthropological study including: kinship, ethnicity, culture, family, religion, the status of children, female circumcision which is accepted as 'objective' country information. I am also asked to comment about how both governments distinguish between political supporters and members of banned political organizations, the nature of and access to social/health services, the role of the security services, conscription, conditions in prison, discrimination etc.

When I was first asked to write an expert report in 1997 I was completely in the hands of the lawyer who was instructing me regarding the issues I should address, the format of my report, and questions as to what constitutes 'evidence'. My first case concerned an 'unaccompanied minor' who was said to be 'an illegitimate half-caste'. The question put to me was whether he was a member of a 'social group' as defined by the 1951 Refugee

Convention (an issue about which I knew nothing) (UNHCR, 2002).<sup>4</sup> I was specifically asked to address three issues: (1) was the youth a 'dependent' in Amhara culture? (2) was it likely that he was ostracized as a result of his illegitimate birth? Finally, (3) if he were 'returned' to Ethiopia, would he be discriminated against and would he have access to state support?

The appellant's case file was emailed to me, and I was given seven days to write a report. The instructing lawyer emailed me his comments on my draft which I incorporated into my final report. Shortly before the hearing, the lawyer emailed me a note which said: 'We would like to thank you for your thorough and intricate analysis. Our learned adjudicators often fight shy of complexity, preferring to conclude that anything quite so subtle must be outside the scope of the Geneva Convention.' I am still not sure whether he was praising my work or being ironic.

As with the majority of the reports I submitted on behalf of asylum applicants, I was not sent a copy of the IATs decision. It was not until 2008 when I had conducted fieldwork in the asylum system that I began to understand how asylum decisions were processed, argued and decided.

In 2004, I accepted instructions to provide expert evidence for *HB (Ethiopia EDP/ UEDP members) Ethiopia CG* [2004] UKIAT 00235 which was a country guidance case. I was given one day to research and submit my report. The case concerned an Ethiopian male who claimed that, as an activist and member of an ethnic-based opposition political party, he had been imprisoned, ill-treated, released on bail only to once again find that he was being sought by the police. At this point he fled to the UK and applied for asylum.

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4 The Refugee Convention identifies five 'reasons' for persecution namely race, religion, nationality, political opinion or membership of a particular social group, and the acts of persecution or the absence of protection against such acts. "Membership of a particular social group" is the ground with the least clarity and it is not defined in the Convention. However, it has been invoked with increasing frequency 'with States having recognised women, families, tribes, occupational groups, and homosexuals, as constituting a particular social group ...' (UNHCR 2002: ¶11).

I was asked to address the ‘plausibility’<sup>5</sup> of the appellant’s account, which was supported by considerable ‘objective evidence’,<sup>6</sup> and I argued that if he were returned to Ethiopia he would be at risk for a ‘Convention reason’. I was particularly concerned about the Tribunal’s reliance on a CoI report written by UKVI which provided a detailed overview of political events in Ethiopia at a time when the government had imposed reporting restrictions and had censored the press. How, I asked, was UKVI able to source its report?

The Senior IJs (SIJs) refused the appeal on the basis that the defendant’s claim lacked credibility. With respect to my evidence the SIJs stated at ¶25 that: ‘We do not find that we can attach significant weight to Dr Campbell’s report. Principally because the description in the appellant’s history given to Dr Campbell does not accord with the appellant’s own account’ (this happened because the instructing lawyer had failed to send me a copy of the appellant’s Home Office interview). While the Tribunal accepted my evidence that the Ethiopian embassy was monitoring political dissidents in London, they concluded at ¶28 that: ‘we are unable to accept that this means that the Embassy’s officials are capable of monitoring the activity of every Ethiopian citizen... It cannot be inferred that the Appellant, described by the organisation itself as “discharging his responsibilities by way of attending meetings and paying his membership contribution” is an obvious target for surveillance.’ Following on from the litigation reviewed earlier, in dismissing my evidence the UT ‘preferred’ its own inferences about embassy surveillance to my ‘speculative evidence’.

In a 2007 case on which I was instructed, I had reservations about the appellant’s narrative of detention and flight from Ethiopia which I raised with his lawyer. Because

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5 ‘The plausibility of an account is assessed on the basis of its apparent likelihood or truthfulness in the context of the general country information and/or the claimant’s own evidence about what happened to him or her’ (Home Office 2015: ¶15.64). The concept is quite different to the notion of credibility which UKVI defines as: ‘‘It is the task of the fact-finder, whether official or judge, to look at all the evidence in the round, to try and grasp it as a whole and to see how it fits together and whether it is sufficient to discharge the burden of proof. Some aspects of the evidence may themselves contain the seeds of doubt. Some aspects of the evidence may cause doubt to be cast on other parts of the evidence... Some parts of the evidence may shine with the light of credibility. The fact-finder must consider all these points together’’ (¶15.2).

6 The term refers to different types of documentation/evidence which can be corroborated; it is often used to refer to CoI Information (see Henderson, Moffat & Pickup (2020, sec. 16).

the lawyer was concerned about his client's mental health, the client was referred to a psychiatrist whose diagnosis was that the appellant was experiencing 'suicidal ideation' caused by serious abuses inflicted on him in detention. The medical report suggested that as a result of trauma, it was to be expected that his account was lacking in detail. The Tribunal accepted both reports and granted the appellant asylum. This case points to the importance of establishing good working relations and clear communication between experts — who rarely interview asylum applicants — and lawyers, because experts rarely speak the language/dialect of the appellant. In addition, UKVI always attacks the credibility of experts who interview applicants for relying on the appellant's evidence.

However, this rarely happens because collaboration is limited to email (there is no face-to-face contact) and the turn-around time between accepting instructions and submitting a report is short.

In 2007, I secured a research grant to undertake ethnographic fieldwork in the UK's asylum system over a two-year period. Fieldwork took the form of participant observation in law offices, the Tribunal and in the Court of Appeal — where notes were taken of meetings and legal proceedings — as well as in refugee/community organizations. We also interviewed lawyers, barristers, government officials and refugees, analysed large numbers of asylum case files and official documents and used the Freedom of Information Act 2000 to secure government reports etc. (Campbell, 2017). For the first time it became possible to comprehend how different institutions and actors — UKVI officials, government lawyers, independent lawyers, judges, refugees and other organizations in the 'asylum field' — operated. I was able to follow asylum claims to understand how they were argued and decided in the courts including claims alleging statelessness (Campbell, 2011), claims by Eritreans and Ethiopians which invoked the Refugee Convention (Campbell, 2014), and claims involving terrorists (Campbell, 2020). This research informed my work as a country expert.

For example, I became increasingly involved in providing evidence on the issue of disputed nationality, military conscription and war crimes. In late 2010, myself and Gunter Schroder were instructed to provide evidence in the case of *ST (Ethnic Eritrean — nationality — return) Ethiopia* CG [2011] UKUT 00252(IAC). In this case the appellant, ST, claimed that he had been detained by the Ethiopian authorities, held in harsh conditions, interrogated and beaten. When he was released from detention he was

subjected to reporting and residence conditions only to be summoned by the authorities for further questioning. Instead, he fled to the UK in 1999. His initial appeal was refused but this decision was successfully appealed against and was reheard as a CG case. The question before the UT was whether the Ethiopian authorities had unlawfully deprived him of his Ethiopian nationality.

The expert evidence reviewed Ethiopian law, events surrounding the border war and how Ethiopia had treated Eritrean nationals and Ethiopian-born ethnic Eritreans (individuals of Eritrean ethnicity/decent who had been born and raised in Ethiopia). During the course of three days the court heard legal argument from both sides, and spent one day hearing oral testimony from both experts who provided a wealth of new evidence which supported the appellant's claim that Ethiopia had deprived at least one hundred thousand ethnic Eritreans of their Ethiopian nationality. Most of these Eritreans had been stripped of their property and deported into Eritrea, though thousands of others fled Ethiopia. In addition, at least one hundred thousand 'Eritreans' who continued to reside in Ethiopia were deprived of their nationality.

After reviewing Ethiopian, British and international law on nationality and hearing expert evidence the UT accepted legal argument by ST's counsel and decided that if ST were returned to Ethiopia he would no longer be considered a national and that he would not be able to work, own property, engage in public employment or access health and educational services. In addition, he would not be able to vote and would be subject to considerable insecurity. The UT granted ST protection and concluded that he had been persecuted and deprived of his nationality (§127), a decision which was instrumental in securing status for appellants in a large number of subsequent appeals. The UT's decision also overturned a number of previous CG decisions which had arrived at a radically different view.

The issue of nationality was a pressing one for thousands of Eritrean nationals and for ethnic Eritreans who had been born in Ethiopia who had fled the border war, many of whom had grown up and/or had been born outside their country of origin in Sudan, Saudi Arabia and elsewhere. When these individuals applied for asylum, western governments disputed their nationality in an attempt to refuse them protection. For instance, in *TB7-05972* and *TB7-05973*, which was heard by the Immigration and Refugee Board of Canada, I provided evidence in the case of two brothers who claimed that their parents were born in Eritrea and had fled to Sudan in the 1970s from where

they migrated to Saudi Arabia. Their family had falsely obtained Ethiopian passports because they opposed Eritrea's ruling party and because they feared deportation to Eritrea in the event that they lost their residence status in Saudi Arabia. The brothers feared 'severe mistreatment in Eritrea because they opposed the Eritrean government and its form of military/national service, and due to their perceived political opinion as failed asylum seekers' (¶3).

My report provided important evidence about: (1) the historical and political context in which Sudan had supported the Eritrean independence movement, in part by issuing United Nations Convention Travel Documents to Eritrean refugees which allowed them to travel to the middle-east; (2) how Saudi Arabia facilitated the migration of Eritrean refugees by issuing Iqama, work permits, thereby loosening the sponsorship requirements for them to enter the country and work (which is why their Saudi identity papers indicated that their parents nationality was Eritrean prior to Eritrea existing as an independent state); and (3) about current political conditions in Eritrea. My evidence, together documentary evidence and the brother's oral testimony convinced the IRB that the appellants had a 'well-founded fear of persecution' if they were returned to Eritrea and that they were not Ethiopian nationals. The Board granted both brother's refugee status.

*Appeal DA/01682/2014* was a fresh asylum application against a decision made in 2008 in which an IJ had decided that the appellant's account of his escape from prison and from conscription in Eritrea was not credible. I provided evidence regarding the appellant's nationality, about military conscription and about how individuals escaped from prison and left the country. My report also reviewed relevant case law. My evidence supported the appellant's claim that he would have been called up for military service in 1995, that in 1998 military service had become indefinite (and that no one had been demobilized) and that without completing military service the appellant would not have been issued a passport or given an exit visa. On the basis of the evidence, the IJ overturned the original decision and concluded that: I find in terms of the Immigration Rules ... that there has been such a material change of circumstances since the 2008 deportation order, particularly bearing in mind 'MA', 'MO' and Dr Campbell's reports ... such as to make the appellant's deportation order unlawful.<sup>7</sup>

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7 The reference is to two earlier CG cases addressing the same issue.

It is important to note, however, that this case is unusual because IJs frequently set aside expert evidence to refuse asylum and deportation appeals. This is particularly the case when, during the course of an appeal, the IJ decides that the appellant had not provided a 'truthful account' to the court, the argument being that the expert has been misdirected by false evidence and their report cannot be accepted.<sup>8</sup>

In *PA/00219/2018* the appellant was facing deportation to Ethiopia. He had arrived in the UK in 1994 from Ethiopia and been given exceptional leave to remain. However, in 2001 he was convicted of a serious offence and imprisoned for two years as a result of which UKVI sought to deport him. He challenged the deportation order by claiming that as an Ethiopian-born ethnic Eritrean he had been stripped of his Ethiopian nationality. He also claimed that he was an Eritrean national and could not be deported to Eritrea because it would violate his Convention rights. The Tribunal identified *ST Ethiopia 2011* as the relevant case law to determine the appellant's nationality; also, at issue was whether his Art. 3 and Art. 8 rights would be violated if he were returned to Ethiopia.<sup>9</sup>

Professor Riggan and I were instructed to provide evidence in this case. Various legal arguments were heard about the seriousness of the appellant's criminal record and social services reported that the appellant was unlikely to reoffend. The expert evidence focused on the deportation of his family from Ethiopia to Eritrea during the border war — we reviewed a wide range of historical material and examined legal documents issued to the appellant's family – how the Eritrean authorities registered deportees and the current citizenship of his family. Based on legal argument and our expert evidence, the IJ found that 'following the deportation of his parents to Eritrea, the appellant was arbitrarily deprived of his Ethiopian nationality' (¶41) and that he was formally entitled to Eritrean nationality (¶42-43). The IJ accepted that 'the uncontested facts of the appellant's case place him into the category, or categories, of persons who were arbitrarily deprived of their Ethiopian nationality, namely the child of parents deported following the outbreak of war'. The IJ also found that the appellant had made a bona

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8 This occurred in two appeals which I provided evidence in, AA/166100/2010 and DA/00490/2012.

9 Art. 3 of the European Convention on Human Rights states that: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.' Art. 8 is the 'Right to respect of private and family life'.

vide application to the Ethiopian embassy for a passport which had been refused. The Tribunal decided that (¶62):

1. The Appellant has demonstrated ... that on return to Ethiopia he would face a real risk of persecution, on the ground of ethnicity because he has been deprived of his citizenship of Ethiopia;
2. his claim under Article 3 of the ECHR succeeds for the same reason;
3. alternatively, we find the appellant has demonstrated ... that he is entitled to Eritrean nationality and that on return to Eritrea, he would face a real risk of persecution, on the grounds of imputed political opinion, by reason of military service. His Article 3 claim succeeds for the same reason.

This was the only time in my twenty-three years as a country expert when I was able to compare notes with the other expert prior to the appeal. The situation underlines the solitary conditions under which experts work and it also points to the effectiveness of the strategy adopted by the barrister arguing the case to ensure that both experts were thoroughly prepared and singing from the same hymn book.

A recent case involving allegations of war crimes in Ethiopia illustrates how expert evidence provided in support of an asylum applicant was mis-used to refuse his appeal. In *PA/14172/2018* the appellant had entered the UK on a visitor's visa in 2012 and claimed asylum one year later. Five years after he applied for asylum UKVI refused his claim and set out its reasons in a forty-one page 'Refusal Letter' (RFL) which summarized his claim and immigration record and set out the reasons why his claim was refused (Amnesty International, 2004; Hobson *et al* , 2008; Campbell, 2017).<sup>10</sup> Using the information he had provided, the RFL set out his involvement as a junior officer in the Derg – the military junta which overthrew Emperor Haile Selassie – when he was a 'Surveillance and Investigation Officer' in the Interior Ministry and required to conduct surveillance on alleged enemies of the Derg. Later the appellant served as a civilian Immigration Officer at the port of Assab, Eritrea where he and his agents undertook surveillance against 'valid threats' to public safety. In 1991 the Derg was overthrown,

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10 RFLs vary from five to forty pages and are often little more than quick cut-and-paste efforts by case workers who are under pressure to quickly decide claims.

and imprisoned without charge for two years. On being released the appellant claimed that he was constantly harassed by officials in the new government who wanted him to work for them, which he refused to do. In 2001, and again in 2009, he was briefly detained for supporting a banned political party.

UKVI relied on limited, publicly available information to argue that the appellant was an officer in the Derg who had been involved in ‘crimes against humanity’. It rejected his asylum claim citing Art. 1F of Refugee Convention which states that: ‘The provisions of this Convention shall not apply to any person to whom there are serious reasons for considering that: Article 1F (a) – he has committed a crime against peace, a war crime or a crime against humanity ...’ The remaining twenty-three pages of the RFL set out UKVI’s legal reasoning for denying the appellant asylum.

Two ‘bundles’ of documents related to the claim were filed in court: the Home Office bundle contained two hundred plus pages and appellant’s bundle contained one hundred fifty pages.<sup>11</sup> The IJ had my report, reviewed the bundles and considered the oral testimony of the appellant and legal arguments made during the appeal. The ‘objective evidence’ relied upon in UKVI’s RFL was flawed. UKVI failed to understand part of the appellant’s claim because it misunderstood the Ethiopian calendar causing it to miscalculate the timeline, and its accusations against the appellant failed to fit its assessment of his involvement with the Derg. In addition, UKVI provided a grossly simplified account of the emergence of the Derg, its activities (including atrocities committed by the Derg and by anti-Derg forces) and the way the Derg ruled the country. My report provided evidence that military and civilian officers were required to implement the policies of the Derg, many of which were brutal and led to the death of tens of thousands of individuals. However, junior officers – which the appellant claimed to be – were not members of the Derg had not devised the policies. I also provided objective evidence which supported the appellant’s claim to have been imprisoned, but not tried, in 1991 and about the policies of the new Ethiopian government and the ethnic unrest which its policies had given rise to. There was no independent evidence

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11 These are bundles of papers submitted by the two parties. They contained the appellants’ statements, correspondence between his counsel and UKVI, human rights reports, copies of case law and UKVI’s two interviews with the appellant, the RFL and his written asylum statement.

to corroborate UKVIs accusation that the appellant had carried out crimes against humanity.

Nevertheless, and regardless of accepting much of my evidence, the IJ concluded that there was sufficient evidence to determine that the appellant had committed crimes against humanity. Specifically, during the appeal the appellant had ‘failed to answer questions’ including whether he had a rank, and he ‘gave a convoluted explanation for why he was not in fact a lieutenant’ (¶39). The fact that he had ‘maintained relationships with former (Derg) colleagues’ was also said to have undermined his credibility (¶43).

The IJ observed that, ‘considering the evidence in the round it is difficult to assess the appellant’s claim. On the one hand he has shown himself to be a less than reliable witness shifting his account in an attempt to react to or predict the respondent’s reservations, refusing to answer some questions and being ambiguous in his answers to others’ (¶49). The IJ accepted ‘the centerpiece’ of his story that he was a counterintelligence officer, that after 1993 he lived in peace in Ethiopia and that around the year 2000, he had supported an opposition political party. The IJ concluded the appeal by quoting Lord Brown in *R (JS Sri Lanka) v SSHD* 2010 UKSC 15 who said: ‘Put simply, I would hold an accused disqualified under Art 1F if there are serious reasons for considering him voluntarily to have contributed in a significant way to the organization’s ability to pursue its purpose of committing war crimes, aware that his assistance will in fact further that purpose’ (¶54). The IJ refused the appeal because the appellant’s in part because his oral evidence was found to lack credibility.<sup>12</sup> I am astounded that the IJ refused the appeal by relying upon my evidence which seriously questioned the validity of UKVIs unsubstantiated assertions that the appellant had committed crimes against humanity.

## Conclusion

The discipline of Anthropology has expressed unease about its members involvement in applied work, though this situation has changed in recent decades as universities have become much more managerial and under pressure to generate income. Indeed, it

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12 The IJ noted that he would have refused the case in any event because the appellant did not have a well-founded fear of persecution on return to Ethiopia (¶63).

was partially in response to such pressures that I first became involved as a consultant in international development and as a country expert. The problem which faces anthropologists has been how to juggle the demands of working as full-time academics while simultaneously working as a consultant/expert, and how to ensure that applied work was carried out professionally, ethically and rigorously.

In this paper I have provided a para-ethnography of my work as a country expert involved in providing cultural expertise to resolve asylum claims decided by judges. The work of development experts is quite different from country experts: the latter work in a much more isolated environment and their task primarily involves desk research. Seldom are they involved in face-to-face consultations with lawyers, and they are rarely called to give evidence in court. Country experts submit anthropological knowledge to an adversarial legal system which is dependent upon our expertise to legitimize the authority of the judiciary; though the law always contests the value of our evidence.

My para-ethnography has identified the role of legal discourse and key aspects of government policy which legitimizes how initial asylum claims are uniformly refused and how judges are able to set aside, misuse and misconstrue expert evidence. For instance, the law attempts to regulate experts by requiring them to adopt a position of 'procedural neutrality' which can undermine an anthropologist's responsibility to vulnerable individuals and subaltern groups. The legal process also ensures that expert evidence and the reputations of experts are heavily scrutinized in a process that favours the governments' efforts to refuse asylum.

However, as the cases discussed in this paper show, anthropological expertise constitute 'a category of practice'. Anthropologists can counter legal constraints by providing research and evidence which addresses key legal issues in a case and which challenges judges to rethink their assumptions and their understandings about the social world which asylum applicants come from to counter assumptions that applicants are not economic migrants, and that their claim for asylum falls within the remit of the Refugee Convention.

Anthropologists are able to remind IJs and the state regarding the law's responsibility to protect the rights of vulnerable applicants. The imposition of procedural neutrality represents an attempt to redefine the very nature of anthropological ethics — which is

to provide evidence to defend relatively powerless individuals — in order to bolster the authority of government and the courts; this imposition can and should be resisted.

As the cases discussed in this paper demonstrate, anthropological experts occupy an ambiguous position in the legal process: we are appointed and managed by lawyers, compelled to write reports which conform to specific expectations, our evidence is questioned and our reputations are undermined in a legal process that is weighted in favour of the government. Nevertheless, with our evidence lawyers can successfully challenge legal and bureaucratic decision-making to secure protection for refugees. The process is flawed – by poor legal representation and sometimes by the poor quality of expert evidence – but good working relations and clear communication between lawyers and experts, especially when expert evidence is supported by research, can be an effective combination. In this sense my ethnographic research into the British asylum system has provided me with a significant advantage to understand how the courts argue and decide asylum claims which has proved useful in a wide range of claims. The most notable advantage arose from my involvement in *ST Ethiopia 2011* which overturned previous country guidance cases on the issue of nationality. That case established my reputation as an expert and has enabled large numbers of asylum applicants to secure protection who would otherwise have been deported and transformed into stateless persons.

As the cases also demonstrate, no expert is infallible: we make mistakes. Furthermore, the courts misuse our knowledge in a process that attempts to subordinate anthropologists to the dictates of the law. Even so, work as an anthropological expert can be highly rewarding when it ensures that governments are held to account to fulfill their legal obligations under the Refugee Convention to provide protection to vulnerable refugees.

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