



**Amnesty International Leeds Group**

Submissions from  
Amnesty International Leeds Group  
for  
Universal Periodic Review 2012  
of the  
United Kingdom of Great Britain and  
Northern Ireland

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**Treatment of Bajuni Asylum Seekers**

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## I) Introduction

1. This submission is based on Amnesty International Leeds Group's first-hand experience of aiding asylum seekers in their cases. The report has been compiled by a volunteer for the Manuel Bravo Project<sup>1</sup>, with the assistance of expert witnesses linked to Amnesty International Leeds Group. It highlights two failings by the United Kingdom of Great Britain and Northern Ireland ('the UK') in the treatment of Bajuni applicants for asylum.
2. The Bajuni are a discrete minority group from Southern Somalia. They have traditionally lived in the town of Kismayo and on islands off the south coast. With the deteriorating situation in Somalia, they are frequent subjects of attack from larger tribes; including ethnic cleansing, kidnapping, beating, murder, looting and rape. Since the early 1990s, many Bajunis have fled their homeland while some attempted to remain. Some sought refuge in Kenya, where they were also subject to hostility from locals, until 1997 when the Jomvu refugee camp was closed. Thereafter, some returned to their homeland only to be forced to leave once more. Others sought asylum elsewhere.
3. Expert witnesses linked to Amnesty International Leeds Group have examined over 400 Bajuni asylum seekers, of which 190 were within the Reporting Period.
4. It is submitted that State procedures for determining asylum applications operate in a discriminatory way upon the Bajuni, contrary to the norms listed at paragraph 5 below. In particular, two problems have emerged, resulting in the dismissal of many Bajuni asylum applications and consequent ill-treatment of Bajunis:
  - a. Sprakab (see paragraphs 7 - 12 below): The UK commissions linguistic analysis from Skandinavisk Språkanalys AB ('Sprakab'), a privately-owned company. Analysis is conducted by telephone interview with asylum seekers. The resulting report forms the basis upon which the UK Home Office and courts determine country of origin.

Conducting interviews by telephone, using the methodology employed, is inappropriate. This leads to unreliable conclusions, which are misused by the State as determinative of nationality.
  - b. Reports (see paragraphs 14 - 19): The *Joint British, Danish and Dutch Fact-Finding Mission to Nairobi Kenya 17 – 24 September 2000* ('the 2000 Report') and the *Joint Danish, Finnish, Norwegian and British Fact-Finding Mission to Nairobi Kenya 7 – 12 January 2004* ('the 2004 Report') are inaccurate in various respects. They are used by the State when deciding applications.
  - c. Consequences (see paragraphs 20 – 22): The unwarranted refusal of asylum claims leads to extreme personal hardship for asylum seekers.

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<sup>1</sup> The Manuel Bravo Project is a charity that provides free legal assistance to asylum seekers who do not receive legal aid. This submission is not made on their behalf but does draw on the writer's experience of working with asylum seekers.

5. The following norms, amongst others, are applicable:
  - a. Convention relating to the Status of Refugees, Article 3;
  - b. Universal Declaration of Human Rights, Articles 14 and 15;
  - c. International Covenant on Economic, Social and Cultural Rights ('ICESCR'), Articles 2(2) and 11.
  - d. International Covenant on Civil and Political Rights, Article 26.
  - e. Articles 8 and 14 of the European Convention on Human Rights and Fundamental Freedoms ('ECHR') as incorporated into domestic law by the Human Rights Act 1998;
  - f. United Nations Minorities Declaration (GA Res 47/135), Articles 3, 4(1) and 5(1). Commentary on the United Nations Minorities Declaration by the Working Group on Minorities provides that any action for the protection of minorities should focus on the protection of the physical existence of persons belonging to minorities, including protecting them from genocide and crimes against humanity;
  - g. Customary international law principles of non-discrimination and equality before the law. These principles apply to all within the state's jurisdiction, not only to citizens.
  
6. It should also be noted that recommendation 21 of the Report of the Working Group on the review of the UK (A/HRC/8/25, outcome adopted in decision 8/107) urges protection "of the children and families of... refugees."

## II) Sprakab

7. The telephone interview and the resulting report are inappropriate.
  
8. Conducting an interview by telephone is inappropriate because:
  - a. Many Bajuni are not familiar with using telephones. In one case, this was the first time the interviewee had used a telephone.
  - b. The telephone connection can be poor and there is often considerable background noise and interruptions. It is difficult for interviewees to hear questions.
  - c. Asylum seekers are often distressed and disoriented. The impersonal nature of a telephone conversation adds to their confusion. This may cause adverse inferences to be drawn from answers they give (or feel unable to give), with regard to very personal and traumatic experiences. A face-to-face interview would allow them more opportunity to express themselves as they would wish.
  - d. Interviewees feel so uncomfortable speaking about traumatic incidents that they may break down and the interview has to be stopped. Recordings heard by independent linguistic experts demonstrate that questions are sometimes put in a disbelieving, impatient, patronising or

bullying way e.g. “You say they beat you because you’re a Bajuni, why [laughing] are Bajunis not human beings?”

9. The methodology used by Sprakab is inappropriate because of the:
- a. *List of questions*: Interviewers work from a standard list of questions. Many questions are inapplicable to the Bajuni islands. Examples include whether there are factories, churches (where the Bajuni islands are solely Muslim), mountains etc. The responses cannot determine what local knowledge the interviewee possesses. Questions are sometimes repeated: on one recording an interviewee was asked her age three times. Furthermore, more than half of the questions are ‘closed questions’, requiring a one-word answer that does not provide probative material.
  - b. *Utility of material*: Of the responses, many are not linguistically useful. In particular, single words cannot elicit the vocabulary, syntax, phonology, and morphology of the interviewee.
  - c. *Length of interview*: Interviews are short, only 20 minutes long as compared with an expert witness who may take up to 3 hours. 20 minutes is insufficient to make a proper analysis, as an average of only 8 minutes is contributed by the interviewee, little of which is continuous speech.
  - d. *Default language*: The interviewee is addressed in Swahili rather than Kibajuni. He will respond in the same language, not least because Swahili is an official language whereas Kibajuni is the dialect of a disempowered minority. His failure to use Kibajuni will then be taken as evidence that he does not speak Kibajuni, whether or not he has spoken Kibajuni at any other stage of proceedings (such as using a Kibajuni interpreter when interviewed by the Home Office). At the same time, where an interviewee doesn’t understand a Swahili word or the accent of the interviewer, this is also interpreted as evidence of his lack of credibility. As many Bajuni are illiterate, they are unable to explain theoretical differences between Swahili and Kibajuni if asked to do so.
  - e. *Transgression of Guidelines*: Interviews do not adhere to the Guidelines<sup>2</sup> for forensic linguists.<sup>3</sup> The ways in which the interviews transgress the Guidelines are set out within this paragraph as a whole.
  - f. *Qualifications of analysts*: The interviewers and analysts are anonymous. Although it is asserted that they are suitably qualified, there is no evidence of this. Those unattributed qualifications that are

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<sup>2</sup> ‘Guidelines for the use of language analysis in relation to questions of national origin in refugee cases’ *International Journal of Speech, Language and the Law: Forensic Linguistics*, vol. 11(2), 2004. The full text can be found at <<http://privatewww.essex.ac.uk/~patrickp/language-origin-refugees.pdf>>

<sup>3</sup> Further details can be found in the report of Professor D Nurse, ‘Overview of Sprakab linguistic analyses of Bajuni refugee claims’ (2004-10). This can be accessed at <[http://www.ucs.mun.ca/~dnurse/pdf/sprakab\\_reports.pdf](http://www.ucs.mun.ca/~dnurse/pdf/sprakab_reports.pdf)>

listed have no relevance to Kibajuni.<sup>4</sup> It is clear Kibajuni is not the first language of the interviewers. Their conclusions on whether (for example) the interviewee is a native Kibajuni speaker cannot therefore be relied on. Neither do reports include references to supporting academic publications or to the evolving sociolinguistic background in the Somali/Bajuni region.

- g. *Time taken for analysis*: Resulting reports are prepared without sufficient consideration. On some recordings the interviewer can be heard to say they will compile one within three minutes. Reports comprise between 300 – 800 words, sometimes containing repetitions. This is inadequate for complex cases.

10. This methodology contributes to unreliable results. Reports should begin by setting out the linguistic data and then proceeding to analysis and conclusion. The data in Sprakab reports is incomplete, and not expressly linked to the conclusions. Sprakab reports assert that interviewees are “with certainty” not from Somalia but rather Tanzania or Kenya. This degree of certainty is untenable from a 20 minute test using the methods employed. Amnesty International Leeds Group knows of no case where anything less than certainty has been expressed; nor does it know of any cases where claims to be Bajuni have been supported by Sprakab.<sup>5</sup>
11. Individuals are not mono-lingual or mono-cultural.<sup>6</sup> Linguistics professionals maintain that language analysis cannot determine origin as distinct from where someone has been socialised.<sup>7</sup> The displacement of Bajunis thus makes this methodology even less reliable, as many Bajuni have been socialised in other areas.
12. Therefore, the use to which the State puts Sprakab reports is inappropriate, and contrary to the State’s own policy. Indeed, in an asylum claim which directly challenged Sprakab’s analysis, Sprakab’s manager conceded that language analysis cannot determine nationality.<sup>8</sup> In our experience, however, the certainty expressed may be critical where the applicant has little rebuttal

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<sup>4</sup> Professor P Patrick, ‘Sociolinguistic issues in language analysis for determination of origins’ (2009), available at <[privatewww.essex.ac.uk/~patrickp/papers/LangUEJun09.ppt](http://privatewww.essex.ac.uk/~patrickp/papers/LangUEJun09.ppt)>

<sup>5</sup> It appears that this is also the experience of others working in this field, see John Brick, ‘Language Analysis for Determination of Origins in light of the recent UK Upper Tribunal decision’, *The Researcher*, volume 5 (Nov 2010), appended.

<sup>6</sup> ‘Guidelines for the use of language analysis in relation to questions of national origin in refugee cases’ *International Journal of Speech, Language and the Law: Forensic Linguistics*, vol. 11(2), 2004. The full text can be found at <<http://privatewww.essex.ac.uk/~patrickp/language-origin-refugees.pdf>>

<sup>7</sup> Eades, Arend et al, ‘Linguistic identification in the determination of nationality: a preliminary report’ (2003); Eades, Fraser et al, ‘Linguistic identification in the determination of nationality: a preliminary report’ (2003); Professor P Patrick, ‘Sociolinguistic issues in language analysis for determination of origins’ (2009); Professor D Nurse, ‘Overview of Sprakab linguistic analyses of Bajuni refugee claims’ (2004-10).

<sup>8</sup> *RB – (Linguistic evidence – Sprakab) Somalia v Secretary of State for the Home Department* [2010] UKUT 329 (UK: Upper Tribunal, Immigration and Asylum Chamber) at paragraph [94]. The full text of the judgment can be found at <[http://www.unhcr.org/refworld/country,,GBR\\_UTIAC,,SOM,,4ca36a1b2,0.html](http://www.unhcr.org/refworld/country,,GBR_UTIAC,,SOM,,4ca36a1b2,0.html)>

evidence to put forward (as is the case with many asylum seekers who do not have access to legal advice and/or who have fled without documentation).

13. Amnesty International Leeds Group understood that Sprakab were no longer being used in Bajuni cases; but we have once again, during the Reporting Period, encountered asylum seekers who have been subjected to these interviews.

### III) Reports

14. The Fact-Finding Mission interviewed elders who left the Bajuni islands in the 1990s. Their views may not be representative of the present situation, nor of the younger generation. These reports, in any event, quickly become out of date because of the vast upheavals in the situation in Somalia.

#### *The 2000 Report*

15. Cases have been refused because a Bajuni asylum seeker names their clan. The report states the Bajuni are a “united people that are not divided into sub-groups.” If this refers to the paucity of in-fighting between clans, it is correct. If it asserts that there are no clans, it is incorrect.
16. Cases are dismissed where the claimant speaks no Somali, as the report says “most... speak some Somali”. Due to the attacks, there is greater separation between the Bajuni and other tribes. This means younger Bajuni and those who lead sheltered lives (particularly women) may not speak Somali.
17. The report states that “the main language spoken by the Bajuni is Kibajuni”. This is contradicted by Ethnologue.<sup>9</sup> Furthermore, a clear delineation cannot be drawn between Kibajuni and Swahili. Kibajuni is a dialect of Swahili, and many younger people will use coastal Swahili - the majority language along the East African coast.

#### *The 2004 Report*

18. The fallacy at paragraph 16 was repeated in the subsequent report, based upon the opinion of one interviewee.
19. The same interviewee identified a custom (“soriyo”) as unique to the Bajuni without saying how common it was. Research indicates it is dying out.

### IV) Consequences and Case-Studies

20. The problems identified above arise from lack of understanding of a minority and an assessment of their cases by reference to misinformation, leading to rejection of genuine asylum claims.
21. Unsuccessful applicants for asylum are left ‘in limbo’. Frequently, travel documentation cannot be obtained for them because the authorities within

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<sup>9</sup> Ethnologue: Languages of the World. <[www.ethnologue.com/languagesofsomalia](http://www.ethnologue.com/languagesofsomalia)>

their perceived ‘country of origin’ dispute that they are nationals or do not cooperate with arrangements to remove.

22. Amnesty International Leeds Group is aware of such Bajuni who live destitute on the streets, contrary to Article 11 ICESCR. Additionally, this is manifestly an interference with their private lives (contrary to Article 8 ECHR) as they have neither permission to remain nor ability to depart.

#### V) Best Practice and Recommendations

23. Some Bajuni are fortunate enough to have access to legal advice and may thereby adduce expert evidence in support of their case (rebutting the State’s case based on Sprakab’s reports and/or the 2000 and 2004 reports). However, this burden should not fall upon the individual applicant, as many are not fortunate enough to be able to access such advice. The starting point should be an appropriate nationality test, which does not put the Bajuni at a disadvantage.
24. Expert linguists recommend that nationality testing should comprise an overall assessment of: knowledge of the surrounding area, understanding of Bajuni customs, knowledge of Kibajuni dialect in context, and indications that first-hand knowledge is being described (such as ability to elaborate when questioned).
25. This was confirmed by the most senior UK immigration tribunal<sup>10</sup>: “What is needed... in cases in which claims to be Somali nationals of Bajuni clan identity are made is first of all: (1) an assessment which examines at least three different factors:
- (a) knowledge of Kibajuni,
  - (b) knowledge of Somali varying depending on the person’s personal history; and
  - (c) knowledge of matters to do with life in Somalia for Bajuni (geography, customs, occupations etc).

“But what is also needed is (2) an assessment which does not treat any one of these three factors as decisive: as the Tribunal noted in *Mohamed Ali Omar* [2002] UKIAT 06844, it is even possible albeit unusual that a person who does not speak Kibajuni or Somali could still be a Bajuni.”

It is submitted that this guidance is preferable to the decision referred to in footnote 8 for the reasons set out above.<sup>11</sup>

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<sup>10</sup> The case of *AJH (Minority group-Swahili speakers) Somalia CG* [2003] UKIAT 00094, at paragraph [33]. The full text of the decision can be found at:  
<<http://www.unhcr.org/refworld/pdfid/46836af2d.pdf>>

<sup>11</sup> A criticism of the *RB* case from the perspective of language analysis can be found (appended) in John Brick, ‘Language Analysis for Determination of Origins in light of the recent UK Upper Tribunal decision’, *The Researcher*, volume 5 (Nov 2010). The original can be found on the website of the Irish Legal Aid Board at <[http://www.legalaidboard.ie/lab/publishing.nsf/Content/The\\_Researcher](http://www.legalaidboard.ie/lab/publishing.nsf/Content/The_Researcher)>

26. Reliance should not be placed on inaccurate or outdated country of origin reports, but rather on expert evidence which allows for ongoing research and an up-to-date understanding of the changing situation in an area of conflict.
27. Home Office assessors and other decision-makers should be provided with appropriate training on minority issues.

## VI) Conclusion

28. Asylum cases are not conducive to quick justice, and even less so where minorities are involved. However, the gravity of the situation asylum seekers find themselves in compels a sensitive and well-informed approach to assessing their claims.
29. State procedures for determining asylum applications operate in a prejudicial way upon the Bajuni, contrary to their rights to non-discrimination and equality before the law when claiming asylum. These procedures prevent many deserving applications from being successful, causing extreme hardship to applicants left destitute and homeless (contrary to Article 8 ECHR and Article 11 ICESCR) because they cannot be returned to their perceived 'country of origin'.
30. Amnesty International Leeds Group respectfully calls upon the UPR Working Group to address this breach of fundamental rights and to recommend the practices outlined in paragraphs 24 – 27.

## Appendices

John Brick, 'Language Analysis for Determination of Origins in light of the recent UK Upper Tribunal decision', *The Researcher*, volume 5 (Nov 2010).



## **Language Analysis for Determination of Origins, in light of the recent UK Upper Tribunal decision.**

*By John Brick, Solicitor, RLS*

As a lawyer practitioner in the area of refugee law and someone with a previous background in language lecturing, translating and interpreting, I noted with particular interest the recent decision of the United Kingdom Upper Tribunal RB - (Linguistic evidence - Sprakab) *Somalia v. Secretary of State for the Home Department*, [2010] UKUT 329 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), hereinafter called the 'Decision' which strongly endorsed Sprakab, the Swedish Language Analysis Company and described the company's evidence as being 'of high quality and its opinions [...] entitled to very considerable weight.'

Though I will make numerous references to this Decision, my intention is not to comment on the merits of the case overall. It is the endorsement of Sprakab's methods, as referred to in the Decision, and the conclusion that language analysis reports and little else besides may be enough to establish nationality that I intend to examine.

This case involved a Somali woman who claimed Bajuni Somali ethnicity. She was the subject of two language analysis interviews which were in turn the subject of four Language Analysis Reports (three of the reports are derived from the first interview). The outcome was that Sprakab (the language analysis company commissioned to do the reports) stated 'with certainty' that the appellant was from Kenya and the language she was speaking was coastal Swahili. In such cases the applicant is usually invited to submit a 'contra expertise report' to rebut the finding of the government commissioned language analysis report. The author of the contra expertise report in this case, Ms Kumbaka, unfortunately predeceased the Hearing.

I examine this Decision's comments on Sprakab in light of some of the criticisms that have been levelled at language analysis companies over several years. It is useful to read this article in conjunction with the Decision itself which issued in September of this year. For ease of reader reference, I refer to the various paragraphs in the Decision as UT1, UT2, UT3 etc. I refer in the main to the procedure followed in the first language analysis because in the vast majority of cases only one language analysis report is prepared in the assessment of an asylum claim.

I employ the term 'linguistics professionals' in this article to clearly delineate between those who have advanced academic qualifications and who are professionals in the scientific, comparative study of language and other educated people who work in languages – typically interpreters, translators, teachers, lecturers and fluent (possibly native) speakers of more than one language. The latter are often (and sometimes confusingly) also termed 'linguists' and this can lead to a confusion of terminology between 'linguistics professional' and other language practitioners i.e. here this refers especially to those who analyse languages, but who are unqualified to do the work of the former.

### Background

The UKUT329 Decision opens with the line, 'it is a matter of common experience that it is sometimes possible to tell where people come from by the way they speak.'

But it is the concept that the language analysis company used here (Sprakab) have devised a system to identify an ab origine mode of speaking different from any later socialization or language mixing that may occur which is at issue. While it may indeed be possible to 'sometimes' tell where people come from by the way they speak, the ability to state 'with certainty' where someone is (or is not) from has been hotly contested by a series of senior linguists and respected linguistic associations. The criticisms I mainly refer to date from Eades et al (2003,2009) to Professor Peter Patrick (2009), and Professor Derek Nurse (2004-2010).

Linguistics professionals have maintained that language analysis cannot be used reliably to determine national origin; they can only indicate (and not with scientific precision) where someone has been socialised. Eades and Arends (2003)<sup>1</sup> criticised language analysis reports as being over-generalised, containing the erroneous assumption that an individual is mono-lingual and mono-cultural.

At UT94 of this Decision, the Sprakab manager states that language analysis cannot determine nationality. Yet the conclusions that Sprakab reach in their reports state, 'that an applicant speaks a variety of their language found 'with certainty' in/not in the country or region they purport to come from, but somewhere entirely different . The wording of the report does not state that the applicant speaks a certain dialect or language that cannot establish nationality but may be helpful when considered with a multiplicity of other factors. In practice the 'with certainty' qualification is a powerful incentive for decision-makers to consider the report as being determinative of nationality. Here too at UT159 of the Decision this is endorsed: 'Sprakab provides an honest, serious and useful guide to establishing the location where a person learnt to speak'.

#### Guidelines

The concerns of senior linguists and respected linguistics organizations that their reputation and the reputation of their discipline was being tarnished by these reports of 'very poor quality' (Eades and Fraser 2003)<sup>2</sup> and eventually led, by means of a wide consultative process among linguistics professionals, to the production and endorsement of a set of Guidelines in 2004. (full set of Guidelines available on [privatewww.essex.ac.uk/~patrickp/lhr/ss16workshop.pdf](http://privatewww.essex.ac.uk/~patrickp/lhr/ss16workshop.pdf))<sup>3</sup>

The Guidelines were published in a special issue of the International Journal of Speech Language and the Law – the peer-reviewed journal shared by the International Association for Forensic Phonetics and Acoustics (IAFPA) and the International Association of Forensic Linguists (IAFL) They continue to be endorsed by an impressive list of linguistics professionals and linguistics organizations in Australia, Great Britain, Europe and the United States. A mention of the Guidelines is made at UT121.

Ms Tina Cambier-Langeveld (Cambier-Langeveld 2007) the phonetician,<sup>4</sup> suggested that an amendment needed to be made to Guideline 3 (language reports should be

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<sup>1</sup> Linguistic Identification in the Determination of Nationality: A Preliminary Report , Eades, Arend et Al, 2003.

<sup>2</sup> Linguistic Identification in the Determination of Nationality: A Preliminary Report, Eades Fraser et Al 2003

<sup>3</sup> Guidelines for the use of Language Analysis in Relation to Questions of National Origin in Refugee Cases, Eades, Arend et Al, June 2004

<sup>4</sup> Language Analysis: how to include both linguistic expertise and native competence and why. Cambier-Langeveld and Samson, 2007

made only by qualified linguists with recognized and up-to-date expertise). The role of educated analysts in language analysis is important because they can authenticate the utterances as opposed to linguists verifying their presence.

A new resolution was passed at the 2009 IAFPA conference as follows:

“In cases involving the analysis of language and speech for the determination of national identity, IAFPA recognises the contribution to be made by:

- (i) Linguists and educated native speakers with the latter working under the guidance and supervision of the former;
- (ii) Linguists with in-depth research knowledge of the language(s) in question. The conclusion expressed should in all cases reflect not only the strengths and weaknesses of the material analysed but also of the personnel involved.”

Though many linguistics professionals have not endorsed this resolution, I mention it because the Sprakab manager states in evidence at UT95 that the ‘company abides by the IAFPA resolution’

#### Bajuni people and the languages they speak

Chambers, Trudgill and Schilling-Estes (2004)<sup>5</sup> state that languages are not monolithic - they are characterised by regional and social variation

At UT96 the Sprakab manager implies that the Bajuni clan continue as before to be monolingual speakers of Kibajuni without any language interference from outside sources.

The eminent Professor Derek Nurse, Professor Emeritus of Linguistics, Memorial University, St John’s, Canada also referred to in UKUT329, responds to the above (Comments on Determination and reasons, 15th September 2010) that while the Bajuni clan would have spoken only Kibajuni 20 years ago, it is different today. The upheavals and dispersal of Bajuni has resulted in a kind of continuum where there are elderly Bajuni islanders who still speak fluent Kibajuni but there are those – still of Bajuni ethnicity - who speak only Swahili, at the other end of the spectrum. They are usually young and live in Kismayo on the mainland. In between are many variations of Bajuni-Swahili. Responding to the issues raised at UT110, Professor Nurse explains that for comparative purposes, linguistics professionals use a standard (“Swadesh”) list with 100 basic vocabulary words. If the list is filled out for Kenyan Bajuni then Somali Bajuni, the result is identical – there are no differences between the two. It is a false distinction. There are minute local differences between the different islands in Somalia. From the foregoing, it can be seen that the reality of what languages Bajuni speak is a great deal more complicated than simply characterizing an applicant as either Kibajuni or Swahili-speaking.

#### Use of Bajuni and/ or Swahili interpreters

At UT93 we are given details concerning the first language analysis interview in June 2007. The (Kibajuni speaking) interviewer 240, we are told, uses Swahili ‘because 97% of those claiming to be Bajuni are in fact Swahili’

This approach lacks objectivity as it assumes the appellant not to be Bajuni before she has uttered a word. As the appellant is addressed in Swahili it may be expected she will then adapt her speech to that of the interviewer, making the production of a valid

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<sup>5</sup> The Handbook of Language Variation and Change. Oxford: Blackwell 2004 Chambers, Trudgill and Schilling Estes (Eds)

language analysis report very difficult. This seems to be belatedly conceded by Sprakab as the later February 2010 interview is conducted by a Kibajuni speaker.

The Upper Tribunal did not follow Sprakab's initial approach. At UT53 it is noted they appointed Kibajuni-English interpreter. At UT53 this court-appointed interpreter was then clearly instructed only to communicate in Kibajuni and no other language.

Yet in attempting to explain the apparently fluent communication exchange that followed between two Kibajuni speakers, it is suggested in the Decision at UT151 that the Kibajuni interpreter somehow ignored the direction of the Tribunal. In my own experience, interpreters are appointed by the court services using a known reputable agency. He or she swears to follow the direction of the court and to faithfully interpret only what is said in the languages to be interpreted. It seems remarkable *ex-post facto*, that the reasoning for the apparently fluent communication between two Kibajuni speakers is that they are not speaking the language that the appellant claims to speak and the interpreter has been ordered by the court to speak.

The appellant at UT52 also points out that her interview in July 2007, lasting 4 hours 25 minutes, was conducted in Kibajuni - the Kibajuni speaker presumably vetted and appointed by a state approved interpreting agency. It is incorrect to draw no inference from the seamless listening and speaking skills of the Kibajuni speaking appellant as is done at UT151.

At UT122 of the Decision it is clear that the Tribunal has been made aware that considerable differences can exist between Kibajuni and Swahili.

This Decision at UT171 clearly endorses the concept that Sprakab has devised and refined a reliable system for finding out where people come from, based on how they talk

"[...] where there is clear, detailed and reasoned linguistic analysis leading to an opinion expressed in terms of certainty or near certainty it seems to us that little more will be required to justify a conclusion on whether an applicant has the history claimed."

In the following I examine the linguistic analysis (procedure) and the terms of certainty mentioned above in the Decision.

#### The linguistic analysis procedure

At UT 88 we are told that 'language analysis at Sprakab is a two-stage process'. It starts with an analyst listening to a specimen of speech. Typically, the analyst converses with the person whose speech is to be analysed. At UT 94 best practice guidelines seem to indicate that the analyst should run through the tape three times, produce a draft report, then discuss this with a linguist.

At UT160 it is suggested that the biggest weakness in the Sprakab system would be the alleged expert in the language saying 'I do not think people who come from there talk like that'. It goes on to say that using trained linguists to carefully examine the recorded speech and explain the opinion can overcome this.

But at UT94 we see that the procedure was different in this case. The interviewer 240 (not the analyst) talks with the appellant in Swahili not Bajuni. A 'preliminary indication' is given to the Home Office 'straight away', without any assistance whatsoever from the linguist. The role of the analyst is not clear.

This breaches the 2004 Guidelines, Sprakab's own two-step procedure (between analyst and linguist) and the IAFPA guideline which Sprakab holds itself to. Accordingly the aforementioned potential major weakness in the Sprakab system are present for this first interview.

Professor Nurse<sup>6</sup>, also referred to in the UKUT329 Decision, has listened to a number of recorded Sprakab interviews of Somali Bajunis. He notes that at the conclusion of several interviews involving Somali-Bajunis, the interviewer can be heard phoning a colleague, saying that he'd phone them back 'with the result' in three to five minutes.

It may be the case that the analyst and linguist go on to examine the full recording following that preliminary indication. But there is nothing in language analysis reports to indicate the nexus between preliminary finding and end result.

#### Quality of language analysis reports

Eades in her description of language analyses carried out in Australia in 2003 (Eades and Arends et al 2003)<sup>7</sup> described it thus:

'Typically, an anonymous translator/interpreter providing a highly confident judgment of speaker origin on the basis of a small number of lexical items and poorly described linguistic patterns observed in a short tape-recorded interview'.

The question we need to ask therefore is if anything has changed?

Professor Nurse<sup>8</sup> has not seen the actual reports that featured in the instant case but has no reason to believe they differ from the countless others he has seen. At UT119 Mr Davison (for the appellant), describes the much later interview and report of February 2010 (just before the Hearing - the original interview and report were in 2007) - as being of a high standard) The Professor describes the reports he has seen as, *inter alia*, 'brief, careless, lacking in supporting evidence, unreliable and unconvincing.' They do not set out all the data but invariably give just a few examples. He finds that the analyses usually fail to base conclusions on actual data. Their claims at UT93 to make due allowance for dialect and language mixing has never been discussed in any form that would be acceptable to professional linguists.

#### The 'with certainty' qualification

UT159 of the Decision notes that Sprakab doesn't claim to be infallible. But the 'with certainty' qualification suggests the kind of scientific reliability given in fingerprint and DNA evidence which Guideline 4 (2004 Guidelines) advises against.

This Decision defends the 'with certainty' qualification because it is open to the analyst to also use a lesser qualification ('most likely in', 'likely in', 'possibly in'). Indeed at UT89 it is noted that, following close consultation between analyst and linguist, a report will 'usually' select one of the four qualifications. Yet this seems to be rarely, if ever, the case. In my two years of examining language analysis reports, I have never encountered anything other than the 'with certainty' qualification. Professor Nurse has confirmed that he has also only encountered the 'with certainty' qualification. All the 14 Somali reports examined by Professor Peter Patrick in his study (Sociolinguistics issues in LADO, Peter Patrick, April 2009) carried the 'with certainty' qualification.

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<sup>6</sup> Comments on 'Determination and Reasons', Professor D. Nurse, September 15<sup>th</sup> 2010

<sup>7</sup> Op cit

<sup>8</sup> Op cit

The Decision FS (Treatment of Expert Evidence) Somalia [2009] UKAIT 00004 'found Sprakab 'less than impressive' in this regard. The Immigration Judge noted that Sprakab had concluded (again 'with certainty') that the appellant spoke a variety of Somali found in northern Somalia. The appellant seemed to be speaking a type of language mixing that resulted in a hybrid variety of Somali spoken nowhere in Somalia (and perhaps arising as a result of physical relocation). True, there were elements of northern Somali, but there were also elements of southern Somali in the speech. The appellant's unusual language variety was picked up by the author of the contra report but went unacknowledged by the Sprakab report.

Government agencies in this jurisdiction often note that the language analysis reports are only one of several factors to be considered (a recommendation contained both in the 2004 Guidelines and the UKBA guidelines alike).

But the consistent 'with certainty' conclusion can be critical when there are little other factors to consider. Often in Somali-Bajuni cases, it can lead judges and decision makers to believe that the definiteness of the conclusion obviates the caveat that language analysis reports alone simply cannot determine nationality.

In this Decision at UT118 Mr Davison (for the appellant) also mentions that immigration judges in the UK often do treat Sprakab analyses as though they are determinative.

In this jurisdiction too, the recent Judgment: J – v- MJELR & Ors [2010] IEHC 251, at paragraph 4 of the Judgment, Cooke J in that case notes:

[...] the present case turned entirely upon the issue of credibility and, in particular upon the question as to whether the appellant was telling the truth when he said that he was from Somalia and spoke the Bajuni dialect of Swahili'.

The comment at UT171 that 'little more will be required to justify a conclusion on whether an applicant or appellant has the history claimed' seems not only to treat the analysis report as overwhelmingly determinative but rejects the guideline used by most agencies that a language analysis report must be a part of the overall evaluation of the asylum application.

#### Expertise and professional abilities

##### Criticism of Ms Kumbaka's methods (contra expert)

At UT18,117,161 we are told Sprakab's methods are superior to those of Ms Kumbaka and that she is not a linguist. At UT 19 the Sprakab manager criticises her for not having visited the islands and for not having proper educational qualifications and a lack of linguistic qualification. She is also criticised for not adhering to the 2004 Guidelines.

It is ironic how the criticisms that the Sprakab manager level at the contra expert here echo those that have been leveled repeatedly at Sprakab themselves!

Professor Peter Patrick<sup>9</sup> in discussing the credentials of analysts examined 14 Somali cases. One of the analysts only possessed a degree in linguistics. This is different to the Sprakab claim of analysts 'typically having a background in linguistics.' We are also told that Sprakab literature notes that it trains its linguists to think critically and that the analysts obtain 'extensive training from linguists'. But we know nothing of

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<sup>9</sup> Sociolinguistic issues in Language Analysis for determination of Origins, Professor Peter Patrick, April 2009

the pedagogic methodology employed or what accreditation Sprakab possesses as an educator in the area of linguistics for people they only occasionally employ.

At UT85 the manager states that Sprakab employs 'linguists' who have qualifications in various relevant disciplines. In Professor Patrick's analysis on the 14 Somali cases (op cit), he noted that credentials were cited in maths, chemistry, law and computers. None of the linguistics professionals had any expertise in Somali languages. In this Decision we find that the analysts have worked in Bajuni-speaking areas, have mastered Bajuni to a very high level or speak it to 'the level of a mother tongue'. These abilities are not precisely defined.

Professor Nurse in his own comments on the Decision<sup>10</sup> notes that Sprakab themselves contravene most of the 2004 Guidelines. None of their analysts are actually native Bajuni and none of them have visited the islands in question.

A proper native Kibajuni analyst is required for the language interview and a thorough and up to date knowledge of the islands is required for analysing the applicant's knowledge of the islands. At UT96 the manager's claim that 'not much has changed' in twenty years on these islands is unsupported by country of origin information. The skills and training of interviewer 240 (the Bajuni speaker) are unknown. How he elicits the linguistic utterances required for analysis is not really clear.

Most Sprakab Bajuni experts are recruited in Sweden and haven't been to the islands at all and/or haven't been to Somalia in close on 20 years (EA19 and EA249 both being a case in point here). Hardly surprising given the unstable political situation of that country.

We are not given any basis or further insight into how the manager comes to her opinion on the stasis of the language despite the constant upheavals and dispersal of Bajuni peoples since the early 1990s. Under cross examination she finally concedes that maybe people leaving the islands might have other language influences. Analyst EA19 in cross examination readily concedes that islanders could be influenced by other languages.

#### The Sprakab system

Sprakab literature<sup>11</sup> informs us that they have conducted 40,000 language analysis reports over the ten years they have been in existence. They have, the Decision concludes at UT154, 'devised and refined a system for analysing language'.

The same literature suggests they have the academic means to explain their system as they maintain a language council of university academics to keep them informed on language matters. Yet there is, to date, no discernible academic output or reasoned explanation of how they have scientifically devised and refined a system that is so at odds with so many of their senior colleagues.

The Decision makes the argument that 'language analysis is a developing discipline and will become subject to more peer review. But at UT98 of the Decision, the Sprakab manager has already stated that their data is not subject to peer review and says nothing about changing this stance at any time in the future.

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<sup>10</sup> Comments on 'Determination and Reasons', Professor D. Nurse, September 15<sup>th</sup> 2010

<sup>11</sup> SPRAKAB Language Analysis Information, Sprakab 2010

### Expert evidence

A major imbalance in the UKUT329 Decision is the unfortunate absence of Ms Kumbaka, the author of the contra expertise report and a defence of that report. At UT141 the Decision notes that Professor Nurse cannot be treated as an expert witness, as the points of factual dispute would need to be addressed by way of live evidence and cross-examination. It is regrettable that Professor Nurse or someone of similar stature was not present to challenge and rebut the Sprakab expert evidence. Unsurprisingly without that important evidential counterbalance, the Decision finds Sprakab's approach to be 'altogether superior' to Ms Kumbaka's report.

At UT165-166 Professor Nurse's criticisms are discounted. At UT165 it notes that the interview was conducted 'in a language which he did not approve'. In point of fact Professor Nurse makes the response<sup>12</sup> that interviews are supposed to be conducted in the interviewees (applicant/appellant's) dialect or language. In this case the interviewer should have spoken Bajuni not Swahili.

At UT166, his overview of Sprakab reports and conclusions is criticised as only commenting on negative reports. Professor Nurse informed me (ibid) that he read 50 Sprakab reports of refugees claiming to be Somali Bajunis. He had no way of knowing how typical those reports were. They happened to be all negative; they were not selected for their negative conclusion. The Upper Tribunal in UKUT329 may have been more mindful here of the (unsupported) Sprakab claim at UT97 that their reports support about 60% of applicants. But at UT93 we are also informed that the first interview was carried out in Swahili because statistically 97% of applicants claiming Bajuni ethnicity are Swahili speaking Kenyans. This would accord with Professor Nurse only encountering reports with negative findings.

At UT156 the Decision differentiates between the applicant and the decision maker - only the applicant wants one particular result whereas the decision maker wants only the right result. At UT98 the manager 'is certain' that the information on the database is accurate because 'otherwise Sprakab's customers (exclusively government agencies) would be 'dissatisfied'.

But Professor Patrick paints the role of the government agencies in a much harsher light. Language analysis is a gate-keeping mechanism 'performed in the context of general government disbelief or hostility to refugees'. As the government agencies are Sprakab's only customers, it is hard to imagine them expressing much dissatisfaction in the light of Professor Patrick's opinion, where the real potential complainant, the applicant or appellant in question, may have been deported and unable to mount any further challenge.

### Conclusion

This Decision makes much of anonymity but Guideline 6 of the 2004 Guidelines agrees that 'linguists should provide specific evidence of professional training and expertise, with the right to require that this information remain confidential'. What is contested is the suggestion at UT154 that language analysis companies can 'self-check' thus obviating any requirement for external scrutiny.

A manifestation in this Decision of the necessity of this requirement is demonstrated by the many assertions and generalisations made by Sprakab on paper and in evidence without any proper backup data. An open and transparent approach to anonymised

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<sup>12</sup> Op cit



data, an explanation of how it is processed and used, an ongoing scrutiny of procedure and methodology is surely possible without compromising anyone's safety, security or anonymity in any way. It is not the anonymity that undermines Sprakab reports; it is the perceived lack of professional skills and suspect procedures and systems which are at issue. A system of accreditation and regulation would lead to higher quality reports that, as Mr Davison at UT139 puts it, would be 'suitably detailed, precise, sourced and compiled by experts, and which would have a part to play in that they could establish what language or dialect the applicant spoke, without claiming to establish nationality.

It is clear from the foregoing that until such a system is in place, decision makers must be urged to use caution in reliance of these reports as the only or most important criteria in determining nationality.

With thanks to Professor Derek Nurse, Emeritus Professor of Linguistics, Memorial University, St John's, Canada for his comments on this Decision and his observations on language analysis and Sprakab reports in general.

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